
BY BERTIE WILKINSON, M.A., Ph.D.,
PROFESSOR OF HISTORY IN THE UNIVERSITY OF TORONTO.

IT is possible that the real nature of the constitutional crisis of 1233-4 has been obscured by the modern tendency to see in it primarily the first example of a constitutional opposition to the domination of household officials, fortified by the possession of the small seal.¹ No doubt the concentration of office in the hands of Peter de Rivaux² was both striking and unpopular, including, on 15 June 1232, the custody of the small seal for life.³ As against this is to be placed the fact that the whole theory is based on a distinction between the household and other officials, difficult to sustain at any time before the fifteenth century,⁴ almost impossible at the beginning of the thirteenth. There is also the fact that, though the whole episode is very well recorded by two good historians, one of whom, Roger of Wendover, wrote not long after the event, and the other, Matthew Paris, had a keen eye for administrative matters, there is no reference in the chronicles to any such opposition to the household. On the contrary, there is clear and explicit reference to an opposition to the council. And the council, not the household, was, under the circumstances of that period, a much more logical and, almost, inevitable, object of attack on the part of the magnates. Finally, it is to be noted, the most eminent of the officials attacked by the magnates, Peter des Roches, apparently held no position in the household in 1233: he seems to have been nothing more than a member of the council. Hugh Segrave was a justiciar; Robert Passelaw

¹ Tout, Chapters, I, 227.
² Ibid., I, 216; Cal. Ch. Rolls, I, 156; C.P.R. 1232-47, p. 7.
was in the exchequer—an office of 'state'. Peter de Rivaux, amongst his numerous offices, was treasurer of the exchequer. All the evidence alike agrees that the crucial question in 1233-4 was the king's council. The magnates refused to serve on a council dominated by Poitevins. A friar, Robert Bacon, told Henry at Oxford, in June 1233, that there would be no peace until the two Peters had been removed from the council. In October 1233 the bishops threatened to excommunicate them. Edmund Rich denounced them in February 1234. In June 1233 the Earls and Barons told Henry that unless the alien counsellors were dismissed, they would call together the common council of the realm and elect a new king. On the other hand, Peter des Roches asserted that the king was entirely free to call whatever foreigners he wished to the defence of the realm and of his crown, and—presumably also—to give him counsel and advice.

The dispute went deeper than simply the question of personnel. Henry not only excluded men like the Bishop of Winchester and the Earl of Chester from his council, and apparently included in it, at one time, only Hubert de Burgh and a few ministers, the domesti whom he had already asserted his right to choose, in his letter to Honorius III of 1223; he also, by granting to the leading ministers their offices for

1 Tout, Chapters, I, 220, n. 3. He was Peter de Rivaux's deputy as treasurer of the exchequer.
2 With regard to his use of the small seal, Professor Tout scrupulously records, "...I cannot however find that Peter made any direct effort to impose the authority of the domestic chancery, which he controlled, over the official chancery, presided over by Neville"; Chapters, I, 222-3.
4 Ibid., III, 244.
5 Ibid., 245.
6 Ibid., 268-9.
7 Ibid., 244, 245.
8 Ibid., p. 241. The fact that this followed the refusal of the magnates to serve on a council dominated by the Poitevins shows that the centre of the dispute was the council, though Peter did not mention the council in his assertion above.
10 Matthew Paris, Chron. Maj., III, 165, 204, 205, 221, 240. Men like Walter Brackley, removed from office about the same time as Hubert, and at this time Treasurer of the Chamber, P.R. 1225-1232, p. 481.
11 Quoted in my Studies, p. 138: that "negotia regni idem rex principaliter cum suorum domesticorum consilio ordinaret".
life,\(^1\) set up a ministerial council that apparently could not be, though in fact Hubert later was, removed. He went even farther than this. He pushed to extreme limits the duties and responsibilities he gave to these advisers. By every tradition, they represented his counsellors on his own personal problems — on the *negotia regis*. The magnates had an undeniable right to give their assent to matters affecting the community at large — the *negotia regni* of the age of Edward I. But Henry chose to settle precisely these momentous problems with his limited council. He had, in fact, told Honorius that it was this very type of business — *negotia regni* — which he proposed to settle ‘principally’ with the counsel of his *domestici*.\(^2\) As early as 1228 he pointed with pride to the fact that he could dispose of very weighty and difficult matters with their advice.\(^3\) This was the precise charge of the Archbishop of Canterbury: that Henry ‘omnia regni negotia, per consilium Huberti Justiciarii, aliiis spretis magnatibus, desponebat’.\(^4\) After the dismissal of Hubert in 1232, exactly the same complaint was levied against Peter des Roches and Peter de Rivaux: ‘et sic contigit, ut illorum consilio et arbitrio universa regni negotia ordinaret’.\(^5\) Thus Henry, pushed by his ideas of prerogative and by the memory of his father’s humiliations, tried to solve the new constitutional problem created by the evolution of the council as a definite body with important and definite functions, by asserting an extreme and unwarranted claim on the part of the monarch, a claim certain to evoke bitter opposition.

There can be no doubt whatever that, beneath the surface

---

\(^1\) Peter of Rivaux made Treasurer of the Chamber for life; Walter Mauclerc made Treasurer for life; Ralph Nevill made Chancellor for life; Hubert de Burg made Justiciar of Ireland for life; see *Cal. Charter Rolls*, I, 156; *ibid.*, p. 165; Miss M. Mills, ‘The Reforms of the Exchequer, 1232-42’, in *Trans. Royal Hist. Soc.* (4th series), X, 111-33; Tout, *Chapters*, I, 214-20. The motive behind Hubert’s appointment as Justiciar of Ireland is, however, obscure. Mr. Orpen suggests that it was an attempt to save him from his enemies by leaving a way of retreat open to him; *Ireland under the Normans*, III, 178. Apparently the grant was not effective.\(^2\) In the letter cited above.


\(^4\) Ibid., p. 240.
of the quarrel between the Earl Marshal and Henry in 1233-4, there was the supremely important question of the council, suddenly introduced into the forefront of constitutional problems by the policy of Henry III. It was not a question of the small seal or the household, though both these may have been involved: it was a question as to what sort of institution should be at the very centre of government and administration, next to the king.

Henry was, in the end, and partly through the death of Richard the Earl Marshal, in Ireland, compelled, for a time, to give way. But he did not suffer complete defeat. The problem of the council was by no means solved. Thus, what Henry conceded, and how he conceded it, is a matter of considerable constitutional importance which should be treated more fully than has hitherto been the case.

The crisis of 1233-4 was finally settled at a great colloquium at Gloucester, in which Henry was reconciled to his magnates. So far as we know, neither the small seal nor the household was discussed. The whole reconciliation turned on the council. The council was said to have betrayed the Earl Marshal and caused his death, by letters sent to the magnates of Ireland. The councillors were actually charged with financial irregularity and with using the king's seal evilly and quite unbeknown to the king. Neither charge was, apparently, ever pressed; and neither charge was satisfactorily substantiated at the colloquy of Gloucester. When Edmund Rich had read out the council's letter of betrayal, Henry confessed that he had once, under compulsion of the councillors, commanded his seal to be affixed to letters which had been presented to him, letters whose contents he did not know. But no attempt was made to point to his seal on the letter of the council, and no assertion was made that the letter which Edmund read was, in fact, the letter Henry had been compelled to seal. The councillors were not even

---

1 It is not always made clear that Henry had surrendered to the opposition before Richard's death, though Stubbs (C.H., II, 49) is quite clear on the point. Richard died 16 April; Peter des Roches was dismissed on 10 April. Richard's death was an added complication in the reconciliation between Henry and the magnates, already arranged. Henry had a clear responsibility for his death. The problem was now, how to throw this responsibility on to the old councillors about to be dismissed. Cf. Tout, Chapters, I, 224-5.
accused, at that council, or later, of compelling the king to seal. The whole story of his being compelled is unworthy of belief. It is unlikely even, that Henry had been ignorant of the content of letters against the Earl, sealed with his seal. Why should his ministers keep him in ignorance? He was entirely in agreement with the policy which was being pursued. The whole scene of reconciliation is fairly obvious play-acting, the motive for which, suggested above, is perfectly clear. How much truth there was in the insinuations and charges there made, it is difficult to say. The one thing certain is that it represented the complete, if temporary, defeat of the council, the disgrace of the old councillors and the acceptance by Henry of new councillors acceptable to the magnates.

The councillors' letter, read out by Edmund Rich, is, however, of very real interest, because of the light that it throws on the experiment of a ministerial, expert and responsible council, made by Henry III, the first real illumination since the beginning of Henry's personal rule. The letter is possibly quoted, in part, by Roger of Wendover in describing the attack on the Earl Marshal. At least Roger gives what is almost certainly

1 Some aspects of the story of Wendover about the plot to destroy the Earl Marshal have been effectively discredited by G. H. Orpen in Ireland under the Normans, III, 67-9. He makes it clear, amongst other points, that Henry cannot be acquitted of responsibility for the contents of the documents to which he put his seal. Mr. Orpen also refuses (quite rightly in my opinion) to accept the sincerity of Henry's lamentations on the news of Richard's death. He points out that the king, some time later, called the Earl a 'bloody traitor'. It fell outside the scope of Mr. Orpen's work to examine the reconciliation at Gloucester; but he is so clearly sceptical about the whole of Wendover's story that he probably would have at least doubted the sincerity of the king's attack on his advisers. It does not seem, under the circumstances, as if the term 'play-acting', used below, is too strong. The scene at Gloucester is, from almost any angle, one of the most remarkable in the thirteenth century. Some other aspects of the complicated story behind it have been dealt with by Professor F. M. Powicke in 'The Murder of Henry Clement and the Pirates of Lundy Island', in History, XXV, 285-310.

2 P. 387, n. 1.

3 Wendover says, in fact, that he quotes, not from the letter of betrayal, by the council, which Henry was compelled to seal, but from a 'charter of betrayal' which was 'also' sent. There were also sent charters 'of confirmation' asked for by the Irish lords—'those councillors frequently conceded to the magnates, by the king's charter, all the rights of the Marshal in Ireland'. Thus it is quite certain that, as we should expect, the magnates got authorization or
a letter by the council.¹ It shows the councillors exercising astonishing, but not inexplicable power. It was outrageous of the councillors to state that the king and the kingdom were ruled by their advice,² and to undertake that the king would keep his pledge to the Irish lords. On the other hand, the council is conceived, even by these inflated members, as still an advisory body. It had no executive power of its own; it was the king who ruled, though swayed by the council’s advice. Moreover, the council had, as we should expect, no seal. When the councillors wished to send a joint communication to Ireland, they did this under all their individual seals. The council was still only advisory, even in this first, rash, experiment of Henry III. It was still the council we should expect to find, in view of the evidence as to its early nature which has been set forth elsewhere.³

What was the relationship of the councillors to the privy seal, it is impossible to say. It has been suggested⁴ that Peter Rivaux was in charge of the privy seal at this time, and that, therefore, this seal was available for the use of the council, if not in the capacity of seal of the council, at least as replacing the great seal. When the bishops complained in 1234 that “sine sigillo Petri de Revalles vix aliquod negotiam fit in regno”,⁵ the seal they referred to, it has been suggested, was the privy seal.⁶ This is, accordingly, the seal which they affixed to their encouragement under the king’s seal, in the form of a royal charter. Unless Henry had no control at all over his own seal, he can hardly have been entirely ignorant of all such documents as these.

¹ Most probably Wendover recorded the actual letter read by Edmund Rich. The reason why Wendover did not say that this was the letter Henry had been compelled to seal, as had been suggested by the scene at Gloucester, was perhaps that Henry himself and Edmund had not asserted as much at Gloucester, and because the form of the letter which he quotes (ending in the informal Valete never yet found in letters under either great or privy seal) made it very unlikely that the king’s seal had, in fact, been affixed to this particular letter, in spite of the plain suggestion made at Gloucester.

² Quorum consilio rex et regnum regitur.

³ In my Studies, Chapter III.

⁴ Tout, Chapters, I, 224-5.


⁶ Though this is unlikely. It is very difficult to believe that the bishops would describe the king’s seal as “sigillum Petri”. Nor would the bishops have been able to conclude, “whence it seems that they do not really have you
letter, along with their eleven seals. This last is, however, unlikely. No one mentions it. A seal which Wendover and Matthew Paris referred to simply as the seal of the king,\(^1\) and which Henry simply called ‘my seal’\(^2\) was, at any period, but particularly at such an early period as this, probably the great seal.\(^3\) In any case, the chancellor was, in all probability, a member of this council just the same as Peter; the great seal was accordingly just as accessible as the privy seal, and much better known to the Irish lords. It was just as much the seal of the council as the privy seal—possibly more.

The real problem behind this letter does not seem to be with which royal seal it was sealed, but whether it was sealed by Henry’s seal at all. Wendover, in his narrative, seems to be giving us a rationalizing of the story set up at the colloquy at Gloucester, by the collaboration of Henry and Edmund Rich. But the only letter he quotes, just like Edmund, was a letter from the council. It is hard to escape the conclusion that he invented the eleven seals of the councillors plus the royal seal, on some other letter, out of fidelity to the impression which had already been given at Gloucester, when he compiled his narrative for the year 1234.

The reason why the suggestion of a royal sealing had been made at Gloucester in the first place, it may be suggested, was that everybody knew that the Irish lords must have received some direct authorization from the king, before they would attack the Earl. This is what Wendover makes clear. The letter of as their king’, if Peter had been using the king’s seal. The bishops made the situation quite clear. Peter was authorizing the use of the great seal, instead of the king, by his seal or his command, that is, by word of mouth or under his seal. The two methods are simple alternatives. The alternatives are simply between verbal or written commands. The written commands or authorizations, therefore, would naturally be under Peter’s own seal. The idea of using the privy seal extensively for the purpose of authorizations for the use of the great seal, as well as for direct orders to the king’s ministers and others, was not established until some generations later than this.

\(^1\) *Flores Hist.*, III, 72; *Chron. Maj.*, III, 265.
\(^2\) *Flores*, III, 90; *Chron. Maj.*, III, 294.
\(^3\) The fact that the Irish magnates replied “sub sigillo secrete” which seemed of some importance, in this connection, to Professor Tout, does not seem to help us determine what seal, if any, Henry affixed to his council’s letter. Probably the Irish lords only had one seal each.
the councillors alone was obviously not enough. The only way in which Henry could evade his own responsibility for the action of the Irish lords was by claiming that his seal had been put on the letters of authorization either unwillingly, or in ignorance. He even tried to maintain both, though he carefully refrained from saying which letters. Apart from this consideration, there was no need for him to make any 'confession' at Gloucester, at all. The real situation, it may be suggested, is that there had been, not one, but many letters sent to Ireland authorizing action against the Earl, and issued, in a perfectly normal and straightforward way, under the great seal. Wendover, in his tortuous narrative, admits as much. The *Annals of Osney*, practically the only source, save Wendover and Matthew Paris, to comment on the episode, talks of Richard's betrayal by certain letters secretly sent to him as if from the lord king (that is, under the king's seal), which letters, nevertheless, did not come from the king's conscience. Wykes talks of Richard's death 'by command of the king'. There can hardly be a doubt that Henry had commanded the attack on Richard under his great seal. Common sense suggests it, in any case. In this case the whole story of the king's seal on the letter of the council loses much of its point.

For what it is worth—and with all reserve—the suggestion may be made that Wendover's narrative actually makes much better sense if the whole passage, 'and although the king was entirely ignorant of the tenor of the letters, they [the councillors] compelled him to affix his seal, to which they also added their own seals, eleven in number, and they sent that cruel writing to Ireland. A charter of this betrayal was also sent to the magnates of Ireland . . . and to other men sworn to the said Marshal, but faithless', is omitted. The obscurities of Wendover's account would then disappear. He would simply tell us that the council 'composed letters of unheard of treachery which contained in part the iniquity which follows'. Then he would quote the letter or letters of the council. After this he would continue, with strict logic, 'When, therefore, the aforesaid magnates of Ireland had heard the tenure of the

1 *Annales Mon.*, IV, 78.  
letters'. This logical sequence disappears if the passage about Henry's sealing is inserted. It is just possible—though there is no direct evidence on the subject whatever—that the reference to Henry's sealing was added (perhaps in the light of the clear insinuations at Gloucester) to a narrative, already composed, based on a straightforward story of betrayal by the council. It is curious, at least, that this minor uncertainty should exist, along with other, and major, uncertainties, in Wendover's account.

Apart from this, the other and final problem is, why was this a 'shameful betrayal'? Why was the letter of the councillors, the terms of which Wendover gives, an 'iniquity'? This is very hard to see. After all, as the councillors truthfully stated, the Earl was an outlaw, enemy of the king, engaged in open war. It does not seem to have been improper for Henry to have promised his lands, forfeit to the king, to those who attacked him in the king's name. There is no reason why this should have reduced the colloquy at Gloucester to tears, even before Henry's confession. It is perhaps permissible to suggest that what struck the magnates with horror was the spectacle of the king's council inciting the Irish to attack one of their own order, actively promoting a civil war in the interests of the king and settling the gravest affairs of state without reference to the general body of the magnates and, particularly, without reference to the Archbishop of Canterbury and the church. This illustrated all the dangers of the system Henry had set up and the spirit which the Earl Marshal had been attacking when he died. The shocking thing about the letter was that it showed the Earl to have been defending the right when he was slain; it proved conclusively that he was no mere rebel, but a martyr for the common good. It not only did this but, expertly con-

1 Ann. Mon., II, 315. 2 Wendover, in Flores Hist., III, 72.

It is very doubtful if the letter even procured the Earl's death. Apart from the question of chronology, which makes this doubtful, it is to be noticed that Matthew Paris, in one of the few changes he made in Wendover's story, modified the assertion of Wendover to the effect that the Poitevins were afraid of the brother and friends of the Earl 'whose death they had procured'. Matthew changed this phrase into 'whose death they seemed to have procured'; Chron. Maj., III, 293; Flores Hist., III, 90. 4 Ibid., III, 90.
trived, it directed the wrath of the barons away from Henry and towards his council. But though Henry availed himself of it to the full, he abated none of his original claims. It is true he had, even before the production of the letter, changed his council, appointing Hubert de Burgh, Gilbert Basset and Richard Seward. He dismissed Peter des Roches, Peter Rivaux, Stephen Segrave and Robert Passelaw. He restored complete amity between himself and his magnates, led by Edmund Rich. He admitted his old advisers had been evil. But he did not admit that he had not the right to choose his own advisers, and he said nothing about any future restrictions of their power. In a year or two, the battle over the council—a battle between two rights, the most obstinate of all battles—would inevitably begin all over again. Meanwhile, the problem of the use of the privy seal by the councillors, if it had ever existed, would be entirely forgotten. It seems probable, on the whole, that it had never existed at all.