The English Quarrel of Crown and Mitre: Ecclesiastical Liberties
from Thomas Becket to Thomas More, 1170-1535

Matthew Flanders

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THE ENGLISH QUARREL OF CROWN AND MITRE:
ECCLESIASTICAL LIBERTIES FROM THOMAS BECKET TO
THOMAS MORE
1170-1535

by

Matthew Flanders, B.A.

A Thesis Presented in Partial Fulfillment
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Matthew Flanders

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Master of Arts in History

V. Elaine Thompson  Dr. Elaine Thompson
Supervisor of Thesis Research

Dr. Jason Pigg
Director, School of History & Social Science

Thesis Committee Members:
Dr. Elaine Thompson
Dr. Bryan Zygmant
Dr. Jeffrey Hankins

Approved:          Approved:

Donald Kaczvinsky  Ramu Ramachandran
Dean of Liberal Arts  Dean of the Graduate School
ABSTRACT

Two rival sets of law, canon and common, warred for supremacy in England from 1170-1535. Just as with any battle, casualties followed. Where Becket and Henry II fought the first battle in this clash of legal systems, More and Henry VIII would end it. The deaths of Thomas Becket in the twelfth century and Thomas More in the sixteenth century bear a striking resemblance, but while this superficially indicates a consistency of outcome, it also probes further into a consistency of conditions which made such an outcome likely. The difference between common and canon law, and the feud born therein, was not due to the choice characteristics of any individual canonist or common lawyer. It was, rather, born from the very nature of each set of law and the subset of rival principles each employed. This thesis coordinates both the political and principled understandings of each martyrdom as to construct a more holistic account of common law’s ascendance and dominance over canon law from 1170-1535. Frederick Maitland and Frederick Pollock’s “enemy theory,” the idea that there were lasting conflicts between the church and state in England, is relevant for this discussion, but it has fallen prey to insightful critiques by David J. Seipp. Therefore, before the “enemy theory” can be used, it must be resuscitated and altered. The Becket controversy of the twelfth century begins the process of the enemy theory’s revival through a demonstration that, despite the deep friendship Becket and Henry enjoyed, the two still quarreled as both became increasingly entrenched by their adherence to their own separating principles.
Thomas More, likewise, concludes this process of revival through a demonstration of his commitment to the common law insofar as he was not yet called to choose between them. Once Henry VIII moved to consolidate the spiritual and temporal powers and place himself as the arbiter of theology of the Church of England, More recused himself to silence; he argued that he could not profess two rival principles concurrently. The revival of this theory of quarrel will therefore go into great detail of the personal characteristics of the important figures involved to demonstrate how, even in spite of the fellowship each enjoyed, the underlying tension of principles remained.
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DEDICATION

For Olivia, *amor animusque vitae meae*, that these sacrifices might all be worth it yet.
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CHAPTER 1

INTRODUCTION

This is the first precept of law, that "good is to be done and pursued, and evil is to be avoided." All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.

– Thomas Aquinas, Summa Theologiae, I.II Q94, A2

Quite simply, the object of law is justice. Immediately, however, questions of whose justice or which rationality to follow complicate that simplicity the law strives to have. English law from 1170-1535 exposes this foundational problem of jurisprudence through the dramatic episodic clashes between secular and religious persons. Two rival sets of law, canon and common, warred for supremacy in England. Just as with any battle, casualties followed. The deaths of Thomas Becket in the twelfth century and Thomas More in the sixteenth century bear a striking resemblance, but while this superficially indicates a consistency of outcome, it also probes further into a consistency of conditions which made such an outcome likely. The growing tension between ecclesiastical and regal courts, which had lain mostly dormant since the Conquest in 1066, exploded into a rage between Thomas Becket and Henry II with insults and
censures flying from the throne of London and the seat of Canterbury. The Becket feud overturned the “peace” established by William the Conqueror following the aftermath of the Norman invasion. William had granted the Church some liberties regarding the use of separate ecclesiastical courts, but the issue of jurisdiction remained relatively quiet.¹ This silence was not the product of a harmony of principles, but rather, a quiet non-aggression pact between the Crown and the Mitre. Becket’s defiance of Henry II did not create the issue of legal supremacy, instead it rendered explicit the tension that was already brewing as far back as Pope Gregory VII’s humiliation of Henry IV at Canossa a century prior in 1076. Becket’s defiance ended with his martyrdom, but the conditions which marched Becket to the sword were not the same as those which led More to the executioner. Where Becket and Henry II fought the first battle in this clash of legal systems, More and Henry VIII would end it. The common law which laid the foundation of the Becket controversy would be consummated with the martyrdom of Thomas More in 1535.

Common law’s triumph over canon law through Thomas More’s martyrdom and Henry VIII’s break from Rome held far reaching legal, political, and theological ramifications. Legally, Henry VIII merged common and canon law together through caesaropapism.² No longer would there be two rival sets of law; Henry VIII would dissolve the problem of jurisdiction by definitively placing the King’s courts above the ecclesiastical. Canon law would continue to be practiced, but never again would it hold the same stature as it had before the Reformation. Politically, Parliament was threatened

to comply with Henry VIII’s ascendance due to its consistent anti-clericalism and fear of the Tower. Theologically, the normative thrust of canon law was derived from the apostolic succession of the Pope, but now common law was to take on this same sanctification through the fusion of king and pope in the figure of Henry VIII. Yet despite canon law’s grand defeat in the sixteenth century, it had been largely left unchanged after the similar Becket controversy in the twelfth century. What changed? In other words, what was it about common law at its origins in 1170 that the Becket controversy ended with an uneasy negotiation but despite a similar martyrdom in 1535 led to its consummation and domination over canon law?

Coordinating the martyrdom of Becket and More together reveals this dynamism of English law during the period between 1170 and 1535. The legal structure of England was not one of a static, unchanging, and repetitive clash – it was dynamic, with both a changing system of laws and an equally changing series of monarchs to execute them. This thesis argues that the change in legal context between the twelfth and sixteenth centuries explains the difference between Becket’s post mortem “victory” and More’s “defeat.” It is in this way that the legal dimension of the clash between Crown and Mitre shines as the means par excellence of understanding England’s break with Rome under Henry VIII. It is commonplace to argue that the English monarchy from Henry II to the Reformation wrestled with ecclesiastical power, but the legal dimension of this struggle is often misunderstood as being mostly political. The English reformation was just as political and legal as it was theological, and the disputation of Henry VIII’s marriage was

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fought on both battlefields simultaneously.\textsuperscript{6} The rise of caesaropapism in the figure of Henry VIII\textsuperscript{7} was the natural conclusion of the disputation on ecclesiastical liberties raised by Henry II. Thus the history of the rise and dominance of the common law must take into consideration its two most important moments: the advent of jurisdictional disputes laid explicit by Henry II and Thomas Becket and the dominance of those courts by Henry VIII in his execution of Thomas More. It is therefore fitting that a history of the rise of common law should be bracketed by the martyrdoms of Thomas Becket and Thomas More.

Considering the martyrdom of More in light of the Becket controversy peels away the tempting interpretive layers that have too easily been placed on these dramatic episodes. Both Becket and More found themselves standing precariously on the fault lines emerging between the Crown and the Mitre as they were given the unenviable role as arbiter between the two powers. English history has never truly seen a harmony between the Pope and the Crown – any retroactive fitting of its history to indicate such an overgeneralization misunderstands both the implicit and often explicit tension between the two powers. Such a tension pulls on political as well as theological threads. The political dimension of the feud has been well recorded and repetitively interpreted by either those wishing to defend the Church, those wishing to defend the Crown, and historians uneasily wading into this larger debate. The political interpretation of both controversies strips each argument of the principles which support them, looking only

\textsuperscript{6} G.R. Elton, \textit{Reform and Renewal: Thomas Cromwell and the Commonweal}, (New York, Cambridge University Press, 1972): 129, “The whole system [of Canon law], being both alien and papal, lay exposed to a double attack from nationalists and royal supremacists.”

\textsuperscript{7} Scarisbruck, \textit{Henry VIII}, 280.
through the lens of power and the ways in which both the secular and religious attempted to gain and wield that power. The discussion of their principles, let alone its veracity, is noticeably absent given the stark line drawn between history and philosophy. In spite of this, the issue strikes at the very heart of Christian political thought – understood to be a deeply theological dogma - in its system of distribution of power to both the temporal king and the spiritual Bishop of Rome. The congruence of these political contests and theological debates manifests, interestingly, as martyrdom. Thomas Becket and Thomas More equally bore the weight of this struggle, not only as political agents but as what they considered to be principled defense of their faith. While the political dimension has been thoroughly considered, what remains is whether their deaths were due by light of their conscience, the veracity of their principles, or in their calculated political defiance. The conflict thus presented, a deeply legal quarrel filled with many legal conclusions as wrought from legal principles, becomes suddenly enlivened by the drama of martyrdom. The richness of Christian doctrine, while used as the stage for the political drama to unfold, becomes suddenly placed along the sword’s edge, calling men of means to lay down their life in its defense. The dramatic character of martyrdom – the hagiography and cult-like observance of feast days and memorials – requires the historian to take seriously the principles which that martyr felt demanded their own sacrifice. Both Becket and More, as agents of the Crown and the Pope, implicitly held two sets of principles which would expand into two rival sets of obligations. One obligation was derived from Catholic canon law which was justified through its appeal to scripture and natural law. Canon law was coordinated by the Pope and executed by the hierarchy of clerics and laymen who willfully acknowledged their loyalties to both the Roman Catholic Church
and their temporal king – rendering their due unto both Christ and Caesar. Likewise, Becket and More were also both Chancellors of England and as such had acknowledged their loyalty to their king. Their lives ended in martyrdom precisely because of an adherence principles once each had felt that their two loyalties – Caesar and Christ – had drifted apart. The cold legal dispute which masks the English quarrel, once peeled back, reveals this raging fire of underlying principles.

This thesis coordinates both the political and principled understandings of each martyrdom as to construct a more holistic account of common law’s ascendance and dominance over canon law from 1170-1535. The political analysis of Thomas Becket and Thomas More is quite extensive, and it is within this channel that most of the histories of English law have comfortably resided. Quite obviously, the clash between Becket and Henry II was a feud of jurisdiction and an exercise of power. Becket was not only defending the Church with its theology and sacraments, but also in its execution of power derived from those sacraments. Henry, likewise, sought to reinvigorate the power of the Crown as it had deteriorated during the tenure of his predecessor, Stephen. Power should be understood in this context as the execution of a specific will derived either from some set of principles or from personal fiat. Histories of Becket from Frank Barlow’s *Thomas Becket* to W.L. Warren’s *Henry II* have used this language of power to draw out the degree to which Becket or Henry acted from either a set of principles or from arbitrary desire for increased control of the legal apparatuses they wielded. Through this language of power, however, the personal characteristics and convictions of each figure are

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8 Matthew 22:21; Romans 13:1
downplayed, as it is assumed that men at such an elevated stature as archbishop and king naturally desire to grow the power of their office. The personal accounts of Becket and Henry often seem more as adjunct notes rather than as serious considerations for an understanding of their motivations. For example, W. L. Warren’s critical history of Becket argues that Becket’s zealous defiance was not born from piety, which is difficult to critique as such, but rather from a personal ego driven to elevate himself above the King.\textsuperscript{10} The discussion of Becket’s morals, let alone his conscience, would require that history undertake the much more difficult task of piecing together his morality and to take seriously those convictions which Becket himself believed he was defending.

Such a history that takes into consideration these principles, which unquestionably contributed to Becket and Henry’s decisions, would therefore have to wade uneasily into larger debates regarding both the principles themselves and the rival sets of rationalities which produced them. This is not altogether a straightforward venture, and many histories and biographies of Becket, Henry II, More, and Henry VIII have elected to emphasize the alternative political dimension of their feuds in light of this. The result, therefore, is an isolated discussion of Becket or Henry’s character as an ancillary, but ultimately subordinate, discussion to that of the political conflict of the twelfth century. Henry II is usually praised with this method since he was not explicit in his principles, but rather straightforward in his commitment to pragmatism and “refusal to be drawn into ideological debate.”\textsuperscript{11} Contrariwise, even flattering portraits of Becket such as those from his earliest biographers, John of Salisbury and William of Canterbury,  


\textsuperscript{11} Ibid., 517.
have discussed at length his holiness and piety but fail to fully explore the political tension between Becket and Henry born therein. William contended that Becket’s defense of the Church was derived from a rich history of Catholic theology with a systematic enumeration of principles. The actual characteristics of Becket, save for his courage in the face of martyrdom, are noticeably absent in William’s latent analysis that it was the ultimate truth of the Christian faith which drew Becket into conflict with the King.\textsuperscript{12} William of Canterbury implies that it was Becket’s virtue and courage to stand firm in his principles rather than to acquiesce to temporal pleasure that drew him into conflict with Henry.\textsuperscript{13} In this view, the Becket controversy was born out of the veracity of Catholic doctrine, not because of any historical particularity of Becket.\textsuperscript{14} The result is an impenetrable wall between Becket’s early biographers’ accounts of his personality and their analyses of the feud. From this, the political dimension dissolved into its more primordial quarrel of principles. Scholarship has followed this trend and has been written in either of these camps: either the emphasis is almost entirely on the political aspect of their feuds or it is on the principles and veracity of Church teaching in light of secular expansion. Both methods, while certainly capturing an aspect of this English quarrel, fail to grasp the issue holistically. A feud of jurisprudence required a negotiation of power along with the principles of rationality used in justifying the expansion or retraction of that power.

\textsuperscript{13} Ibid.  
\textsuperscript{14} Ibid., 2. 306-308.
The issue presented thus demands a more nuanced account of the controversies from 1170 to 1535 which requires a proper place for both a discussion of principle along with a discussion of political power. To this it is argued that it seems that even Becket and Henry understood the issue before them as principally a matter of jurisdiction and power, a political feud which would demand a political history. Becket and Henry feuded through conventions and councils, not treatises and dissertations. The Constitutions of Clarendon, the locus of the Becket controversy, were articles of legal jurisdiction, not dialogues of theological disputations. Becket’s condemnation of Article 1 of the Constitutions of Clarendon, as he argued, was not that it violated the sanctity of the Church’s sacraments, but that it seized clerical immunity in the ecclesiastical courts by demanding that “if a dispute should arise between laymen and clergy...[it would be] tried and concluded in the court of the lord king.”\(^\text{15}\) Becket and his council even condemned the fifteenth custom regarding pleas of debts. While in a theological context debt is derived from considerations of “divine justice,” it does not totally belong to the theologians, but also to the king with other temporal concerns such as taxation that remained unquestioned by the Church. It would do little for them to argue with the King through appeals to principle. Instead, the Church opted for a simpler avenue -- namely, negotiation, evident through Pope Alexander's hope for renewed diplomacy, by, for example, releasing him of the duty to give a “formal oath” to the Church.\(^\text{16}\) Consequently, as evident throughout the Church hierarchy, the Becket controversy has been rendered as a political dispute between different factions of power -- Archbishop and King -- vying for

\(^{15}\) Ibid., Constitutions of Clarendon, 1.17.

\(^{16}\) Ibid., Hebert of Bosham, 3. 440-2, 444-51.
control. While this is tempting, and which has certainly been taken up by learned historians of Henry II, such as W.L. Warren, the political layer of the Becket feud is still but only one layer and, I would argue, not the most revelatory of the quarrel as a whole.

Likewise, Thomas More’s struggles in the sixteenth century lend itself to this same political interpretation, given the overtly calculative character of its central figures like Cromwell and Henry VIII.\(^\text{17}\) The matter between Becket and Henry easily transforms into a larger discussion between the relationship of the Crown and the Mitre since Becket was the Archbishop of Canterbury. The same cannot be said of Thomas More and Henry VIII. More, the lawyer and humanist, was not a member of the clergy, and so his feud with the King cannot be so easily used to discuss the larger relationship between the Church and the Crown. This challenge has not gone unnoticed, and despite the difficulty of parsing through the political to grasp the principle, Jasper Ridley’s *Statesman and Saint* explicitly attempted to dethrone More as a figure of saintly virtue. Ridley directly critiqued More’s principles to cast serious doubt on whether More had allowed himself to be martyred for the immortal glory of a noble death.\(^\text{18}\) Ridley should be commended in taking More’s principles seriously as relevant causes to consider when understanding the complexities of the Reformation in England. However, Ridley’s zealous critiques of More have themselves been critiqued and have not been generally taken up by other scholars of More.\(^\text{19}\) In light of this, Peter Ackroyd’s *Thomas More* provides a more robust

\(^{17}\) Joseph D. Ban, “English Reformation: Product of King or Minister?,” *Church History* 41, no.2 (1972): 186-187.


biography of More which emphasizes the machinations between different secular agents but which does not use the martyrdom to draw derivative theological conclusions. Where Ridley eschewed the political to critique More’s principles, Ackroyd creates a balanced conversation between the political contests of More and Henry and an exposition of More’s principles. However, Ackroyd still treats More’s conscience, the very heart of his opposition, as a separate concern from the King’s “Great Matter.” In both Ridley and Ackroyd, discussions of the political and practical layer of the More controversy are separated, and through this distance a conceptual gap emerges where More’s principles do not communicate to his actions, but are understood as isolated from them. This conceptual gap has plagued the history of the common law since an entire sphere of human action has been either ignored or downplayed for the more “realistic” concerns of political motivations. Furthermore, the history of common law exists as a disjointed arena of political actors fighting through political means to arrive at something distinct from the law of the Church to which can be positively called “English law.”

It is beyond the scope of this paper to provide an account of the “spirit of English law” – indeed, it is doubtful whether such an account could be given without the pain of overgeneralization. The spirit of English law, with its contradictions, corrections, and disputes is not singular and therefore cannot be singularly analyzed. There is not a “spirit,” but rather, “spirits” of English law – contests and struggles over what that spirit demands. The content of English law, in this historical context from the martyrdom of Thomas Becket to that of Thomas More, was carried on by rival schools of jurisprudence born from rival rationalities. There is room to provide more nuance, but let it be sufficient to discuss the two larger schools of jurisprudence which quarreled from the twelfth to the
sixteenth centuries. While it is certainly undesirable to provide a lofty generalization with little practical application, a history of quarrels over what the spirit of English law should be can provide an insight into the development of English law and institutions. These schools of thought differed not only in the actual precepts of the law but also in the manner in which the law is to be known, justified, and promulgated. Catholic jurisprudence, built from the fundamentals of Aristotelian political thought, argued that a real distinction exists between the worldly and other-worldly ends of man. The idea follows that there ought to be two institutions to take care of each end of man respectfully. In this view, not only are there to be two sets of law to deal with each end of man, but also two sets of rationalities through which man is to know what those laws enjoin. The worldly king is tasked with coordinating the means for man’s worldly ends, while the spiritual father of the apostolic succession, the Pope, is to care for man’s supernatural ends. Just as man’s worldly ends are subordinate to his supernatural end, so too should the worldly king be subordinate to the Pope only insofar as such subordination is due. This implies that kings are to bow to the Pope as a higher authority, but importantly, it also creates a separation of duties that grant liberties to those same worldly kings from Papal puppeteering.20

Henry II was born into this legal framework, and it was from within this concert of natural and supernatural ends that he provided the foundation for common law through a second school of jurisprudence. Henry inherited a secular legal system in England which was thoroughly diminished, either through the calculations of the rising reform Popes a

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century prior, or by the haphazard execution of law under his predecessor Stephen.\textsuperscript{21} For Henry II, the increase of his own power would manifest both as a law emanating outward from himself and a legal apparatus which could promulgate and enforce that law. Henry crafted a series of roaming justices that would hear cases and render judgement in accordance with what the other justices had also decided.\textsuperscript{22} This is quite different from the hierarchical and strict system of Gratian’s *Decretum* which formed the basis for canon law. English law existed before Henry II and continued to exist after Henry VIII, but the time between these two monarchs reveals a struggle for legal supremacy between the Catholic canon law and this new burgeoning common law.

There was no “law of England” before the Plantagenet dynasty despite several attempts of consolidation, coordination, and standardization of law during and after the Roman occupation of Britain. Henry II had established the foundations for common law through Renulf de Glanvil’s *Tractatus de Legibus et Consuetudinibus Regni Anilae* – The Treatise on the Laws and Customs of the Kingdom of England, commonly referred to as *Glanvil*. This monumental legal work was written sometime between 1187 and 1189, after the climax of the Becket controversy. Therefore, while certainly contributing to the establishment of common law, *Glanvil* did not contribute the legal arguments presented in the controversy. *Glanvil* can be used as a rough trajectory from when Becket and Henry quarreled such that the events that transpired can be loosely interpreted in light of its legal analyses. The best source of English law in line with *Glanvil* and the most advanced legal compendium before Henry II was the Domesday Book, completed in


1086. William the Conqueror’s “Domesday Book” was a two-volume compendium of land and other assets in the towns under his domain and was consulted by the King and his officials mainly for matters of the treasury. The Domesday Book provided no pretense of universality or of immutability; it was simply a record of assets and of law which could be repeatedly turned to for consistency. Domesday was itself incredibly complex and remarkably thorough, displaying an appealing model which Henry II was apt to appropriate. It was not the product of theological doctrine nor of dialectic. Domesday, and secular English law as a whole, sought not for the purity of its premises or the simple growth of its own jurisdiction for legitimacy – it was made for bureaucratic control of a sprawling empire. Rather, common law, as engendered by Domesday, appealed to its own internal consistency and worldly pragmatic concerns for its legitimacy. Canon law justified itself by means of its appeal to the salvation of souls, common law did so by means of its pragmatic necessity. Both systems of law are equally normative, but the principles alter the scope of each. From its origins under Henry II, the common law never intended to replace canon law, only to limit it. The content of these limitations came from the “ancient customs” of William which Henry had consistently invoked, and it is these customs which cemented the liberties which Becket believed he was called to preserve. The specific content of canon law was bolstered by the theological discourse, but the content of the common law included these arbitrary, but normative, customs. In this way, common law, unlike canon law, was not the fruit of

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24 Ibid., 11-14.
philosophic contemplation or the enumeration of legal maxims, but instead the slow construction of precedent as derived from a growing system of justices to render practical judgments.

This system eventually blossomed into a serious alternative to the Roman law of the Church and was consummated by the English Reformation. David J. Seipp provides an excellent history of the growth of the common law in his 1993 article, “The Reception of Canon Law and Civil Law in the Common Law Courts before 1600.” In his work, Seipp “investigates the common lawyers’ attitudes towards canon law and civil law in the period from 1300 to 1600.” In an apparent contrast to this history, Seipp argues against what he calls the “enemy theory,” the view that “the justices, sergeants, and barristers of the common law courts regarded canonists and civilians as their enemies in a struggle for legal and political supremacy within England.” Seipp rightfully argues that the enemy theory does not fully take into consideration the ways in which common lawyers readily accepted precepts of Roman law and transformed them into working principles within the common law framework. Seipp argues further that “common lawyers paid attention to canon law…and concentrated most particularly on the topics raised by overlapping common law and ecclesiastical court jurisdiction [showing] a respectful attitude towards canon law and civil law.” If Seipp is correct in his analysis, then the question of the exact content of the English quarrel is dissolved altogether. Against Seipp, it should be noted that the “enemy theory” thus presented is too personal to hold any substantial

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29 Ibid., 388-389.
30 Ibid., 390.
ground. It is clear within the historical record that Seipp aggregated that common lawyers showed serious respect to the ancient foundations of canon law. However, if there was truly no competition for supremacy, then how could Seipp’s theory account for the English Reformation’s consistent references to “supremacy” and overthrowing Papal authority? From the outset of Henry VIII’s break from Rome, the road to Reformation was paved along both theological and legal lanes. Henry VIII presented a legal argument for the divorce just as he had presented a Biblical exegesis of Leviticus and Deuteronomy. Henry’s assumption of the Papal power as “the only Supreme Governor of [England]…as well in all Spiritual or Ecclesiastical things or causes, as temporal” was a clear theological ground from which the divorce could stand. This theological ground was simultaneously a foothold for the evolution of the common law to consume the spiritual jurisdiction which had until then been relegated to the sphere of canon law. Canon law justified its existence on its own theological principles; a disruption of that theology would trickle into a disruption of the law as well.

If Seipp is correct, then this disruption would not be considered a contest for supremacy, but instead, a mere development where common and canon lawyers worked relatively peacefully alongside one another. The “enemy theory” is incorrect insofar as it brings the quarrel down to the individual barristers and common law theorists and places upon them the agency of the struggle. While Seipp is correct that there is little evidence of interpersonal animosity between common and canon lawyers, this misses the central thrust of what I shall call the “struggle theory,” which argues that it was the principles employed which quarreled rather than the lawyers and sergeants invoking them. While certainly there were individual lawyers who “appreciated canonists and [civil lawyers],”
this does not account for the stubborn immobility of common and canon legal principles. Where the two doctrines overlapped on matters such as bastardy and marriage, there was little conflict, but this accidental overlap should not be confused with an actual agreement of common and canon lawyers. An accidental agreement would be an agreement of outcome, while a substantial agreement would consist of a mutually agreed rationality which moved from a set of accepted principles to conclusions. Seipp even admits to this inconsistency of principles in that “[common lawyers’] contact with canon law and civil law stretched their powers of generalization.” It is entirely possible for common lawyers to agree with canonists from 1170-1535, but such an agreement, which is the heart of Seipp’s critique of the “enemy theory, does not indicate that the quarrel for “supremacy” was solved. It is precisely because the two legal systems were founded on different theological principles that an agreement between persons might be possible only insofar as one of those principles is quieted or where they by chance overlap. Such was the case with Thomas More, who was repeatedly entreated by Thomas Cromwell to simply sign the Oath of Supremacy and quietly oppose the King within the confines of his conscience. More could have easily signed the Oath of Supremacy, which saw the King clearly assume papal power, but this would certainly not be seen as an agreement of principle, but rather an acquiescence to political power. What is logically impossible is to admit simultaneously to the supremacy of the Pope and of the King. It is no coincidence that this is precisely what More argues in his trial.

According to More, agreement could

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31 Ibid., 397.
32 Ibid., 405.
33 The Trial of Sir THOMAS MORE Knight, Lord Chancellor of England, for High- Treason in denying; the King's Supremacy, May 7, 1535. the 26th of Henry VIII.
only be rendered by means of silence, not of an actual resolution of two sets of contradictory principles.

The martyrdom of Thomas Becket and Thomas More thus share this peculiar characteristic of otherwise silent principles emerging at the forefront of a legal quarrel. In order to revive the “enemy theory,” it must first undergo a necessary correction of emphasis. Seipp argues that “eminent legal historians’ generalization about the supposed hostility of common lawyers towards the civil law and canon law have discouraged researchers from seeking out specific points of canonists or civilian influence”\textsuperscript{34} and that “common lawyers in the fifteenth and sixteenth centuries were thus neither ‘wholly ignorant’ of civil law and canon law nor ‘completely insular’ in their professional outlook.”\textsuperscript{35} If the enemy theory is corrected by emphasizing a conflict of principles, invoked by some and quieted by others, and not of the individuals \textit{per se}, then the history of the English legal quarrel can fully account for the martyrdom of Becket and More. Seipp’s citation of common lawyers’ respect for canon law does not account for how contrary legal principles, as manifest by Becket and More, could lead to the drama of martyrdom. In another way, had there truly been no contest of supremacy between two rival set of legal principles, then how would Thomas Becket or Thomas More’s obstinate defiance of the common law lead to martyrdom? If instead the opponents of the quarrel were not the individual canonists and common lawyers, but those institutions built off rival schools of legal principles, then the degree of tension will be the result of the degree of adherence to them. An emphasis on principles can thus account for how both Becket


\textsuperscript{35} Ibid.
and More were led to martyrdom through their repeated citation of and adherence to a set of principles which set itself apart, and more importantly above, the common law.

While individual common lawyers and canonists communicated legal principles to each other, the foundations of each set of law was never truly in doubt. Common lawyers had no pretenses that their system of law was totally convertible with canon law. This implies a difference in the justificatory foundation of each system of law whereby any exclusion of a principle of canon law was possible through the defense of the real existence of an independent common law. As Seipp rightfully argues, a defense of the separate existence of common law demonstrates how “common lawyers never merged or confused canon law or civil law with their own law [and] did not treat those laws as superior sources of authority, or as ‘background’ rules underpinning common law.”\textsuperscript{36} The difference between common and canon law, and the feud born therein, was not due to the choice characteristics of any individual canonist or common lawyer. It was, rather, born from the very nature of each set of law and the subset of rival principles each employed. Therefore, the history of English law from 1170-1535 should indeed be understood as a quarrel of supremacy. This analysis will involve discussing the extent to which the political and principled spheres of this quarrel acted in concert. The Becket controversy of the twelfth century begins the process of the enemy theory’s revival through a demonstration that, despite the deep friendship Becket and Henry enjoyed, the two still quarreled as both became increasingly entrenched by their adherence to their own separating principles. Thomas More, likewise, concludes this process of revival through a demonstration of his commitment to the common law insofar as he was not yet called to

\textsuperscript{36} Ibid., 419.
choose between them. Once Henry VIII moved to consolidate the spiritual and temporal powers and place himself as the arbiter of theology of the Church of England, More recused himself to silence; he argued that he could not profess two rival principles concurrently. The revival of this theory of quarrel will therefore go into great detail of the personal characteristics of the important figures involved to demonstrate how, even in spite of the fellowship each enjoyed, the underlying tension of principles remained.

The lives of Saint Thomas Becket and Saint Thomas More are like stanzas in a poem which rhyme throughout English history. The resounding chorus is one of struggle, quarrel over the supremacy of the Church, and disputation, and the stakes could not be higher – the Crown, the Church, and the English people all have something to lose. In the twelfth century, the newly ordained Archbishop of Canterbury, Thomas Becket, underwent a miraculous change of heart and laid down his life in defense of the supremacy of the ecclesiastical courts. Similarly, in the sixteenth century Thomas More laid down his life in defiance to Henry VIII’s demand for fealty from his subjects on the matter of his divorce of Catherine of Aragon. The similarities range from nominally superficial to profoundly theological. Superficially, a Thomas obstinately refused to support a Henry as king who encroached on the disputed rights of the Church.

Theologically, both were drawn into a larger quarrel that pitted the two swords of the medieval polity in deadly combat. The political philosophy of Christendom shook under the weight of Becket and More’s reverberant defiance. As a result, both Thomas Becket and Thomas More were canonized for their martyrdom in defense of the Catholic Church. Thomas More, however, stands out from his Canterbury counterpart in multiple ways: he was a layman, a statesman, and lawyer, and most importantly he was not a friend of the
King before his defiant opposition. In this way the feud between More and Henry VIII diverges from Becket and Henry II, and the more poetic understanding of Becket’s martyrdom is not sufficient to understand that of More’s. These two dramatic episodes, however, still reveal the nature of the struggle between the common and canon law – the emerging English law was able to finally dominate its Roman rival through the means of martyrdom.
CHAPTER 2
HISTORIOGRAPHY

The English quarrel presented must be elaborated through a synthesis of two larger strands of English history: the first, those histories which analyze the specific doctrines of English law and how it developed within a landscape of other complex legal structures each with their own claims to authority and jurisdiction. This first history is sprawling with many authoritative historians such as Frederick Pollock, Frederick Maitland, and Theodore F.T. Plucknett writing broader holistic accounts of English law, all inclined towards the thematic for the sake of generalization and coherency. Maitland and Pollock’s *The History of English Law before Edward I* achieves this generalized history by the sheer volume of its material and the great breadth of the work itself. Maitland and Pollock have been lauded for their effort and as such this work has steadily remained as authoritative within the larger historiography of English law. Though where Maitland and Pollock achieve an understanding of English law through a sacrifice of depth in exchange for breadth, there remains within this context of legal history further need for corroboration of the arguments found therein with the conclusions wrought from more particular studies. Therefore, the second of the two strands of English history which this research will coordinate is that of the particular people involved in their direct conflicts with the King and his *curia regis*. The most revelatory events in the history of the rise and dominance of English canon law, as this history centrally argues, are the
martyrdoms of Thomas Becket in the twelfth century at the hands of Henry II and Thomas More in the sixteenth century at the hands of Henry VIII. The period from 1170-1535 as bracketed by these two martyrdoms helps to particularize the claims made by larger histories of English law and can therefore corroborate those claims with the events of particular moments where common and canon law came into direct conflict.

In light of this need for particular evidence to suggest the applicability of the “enemy theory” this history will consider the growth of common law through discussions of two saints at its origin in the twelfth century and at its triumph over canon law in the sixteenth century. The murder of Thomas Becket and the trial of Thomas More have shown a remarkable lasting influence on English hagiography and these two events shine as the examples *par excellence* of the English quarrel of jurisprudence. The story of Becket and More share much in common – they were both martyrs, they were both chancellors of England, and they both died through what is undoubtedly a legal dispute. Much can be gleaned, therefore, from a history of the two by looking at the similarities of their stories. It is by no means provocative to claim that the Becket controversy, while clearly involving the vibrancy of Becket and Henry’s personalities, was a significant legal development with the rise of the *curia regis*. The very heart of the contention between Becket and Henry was about the jurisdiction of the *curia ecclesiastica* and whether clerics could be tried separately in the King’s courts. Likewise, the penultimate moment before the dramatic martyrdom of Thomas More was his trial before a jury and his passionate speech in defense of a legal principle: *Qui tacet consentire videtur.*

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men were unenviably caught in the friction of these jurisdictional clashes of regal and ecclesiastical courts. Therefore these two independent figures can be sewn together through the common thread of a legal history. Furthermore, their differences also speak to a larger history that remains to be told during this period from 1170-1535. Where Thomas Becket and Henry II met in councils and loudly voiced their dissenting opinions, Thomas More, famously, kept a prolonged silence on the tumultuous events of the Henrician Reformation. Where Thomas Becket was murdered, Thomas More had a trial. Where Thomas Becket was an Archbishop, Thomas More was but a lawyer. It is in these differences, which themselves have not been adequately highlighted, that contextualizes the similarities.

Thomas Becket and Thomas More, however, have yet to be systematically placed alongside one another in a singular narrative charting a historical trajectory from one to the other. In a November 7, 2008 roundtable discussion on the trial of Thomas More, Sir Michael Tugendhat, Judge of the High Court (Queen’s Bench) in London mentions in passing that, “[More] was not murdered like Thomas Becket”\(^\text{38}\) and that the legal dimension of More’s situation contributes significantly to the distinction between the two saints. Likewise, by virtue of the sheer breadth of Plucknett’s *A Concise History of the Common Law*, both More and Becket are mentioned as important figures in two different chapters, but they are not mentioned with any hint towards their relationship within this history. Similarly, Harry Potter’s 2015 *Law, Liberty, and the Constitution: A Brief History of the Common Law* spends the entirety of chapter five devoted to “Becket and Criminous Clergy” but only a few pages to Thomas More’s “attempted reconciliation

\(^{38}\) Ibid., 135.
with [the arbitrariness] of [common law].”\textsuperscript{39} Virtually every history of Thomas Becket or Henry II, because of their limited historical frame, never mention Thomas More and the eventual trajectory of the conflicts begun in the twelfth century. Candace Lines’s \textit{Secret Violence: Becket, More, and the Scripting of Martyrdom} does place these two figures together but only through the lens of hagiography. Lines argues that the stories of Becket and More have been subject to similar “interpretative quarrels” as born from similar “interpretative fluidity,”\textsuperscript{40} but this is still only done within an analysis of the cult of More’s assumption and incorporation of the cult of Becket’s pictures and images. Lines does mention Henry VIII’s concentrated effort to strip Becket from the privileges gained through his title of saint, and so her history is not totally without a consideration of the legal dimension of this hagiographic shift. She continues her hagiographic argument by noting that “Thomas [Becket] was being officially transformed into a traitor [while] More was becoming a saint.”\textsuperscript{41} Such a transformation was done through a royal decree in 1538 asserting that “the service, office, antiphons, collects, and prayers in his name… [were to be] erased and put out of all books.”\textsuperscript{42} Lines contributes the first serious work on Becket and More as taken collectively, but this still focuses on the social effects of martyrdom at the conclusion of their feuds. There are other passing mentions in notable works following a similar argument to Lines, such as Thea Tomaini’s chapter on Thomas Becket in \textit{The Corpse as Text: Disinterment and Antiquarian Enquiry}. Tomaini’s

\begin{footnotes}
\footnotetext{39}{Harry Potter, \textit{Law Liberty and the Constitution: A Brief History of the Common Law} (Woodbridge: Boydell, 2015), 101-102.}
\footnotetext{41}{Ibid., 17.}
\footnotetext{42}{Tudor Royal Proclamations 1.276}
\end{footnotes}
research likewise only focuses on the war of interpretation surrounding Becket\(^{43}\) without actually piercing the legal disputes at the heart of his conflict. Both Becket and More certainly lend themselves to such a historiographical hagiography. Nevertheless, a history of a continuous legal conflict remains relatively uncharted.

Maitland, Pollock, and Plucknett have mapped out the general landscape of English legal history, but no one has sufficiently explored it with considerable depth. Maitland and Pollock write that the development of canon law came at a crucial moment in English legal history wherein the twelfth century saw the distillation of legal principles into two rival sets of “common laws” – one common to Rome and the other to England. Maitland and Pollock discuss at length the doctrines of Gratian’s *Decretum*, the foundational twelfth century compendium of canon law, and the ways in which common law was affected by the content of these decretals along with the conflict engendered from overlapping jurisdictions. Maitland and Pollock show a clear admiration of canon law as a rival of great importance even in the midst of the clear support for common law and the *leges Henrici*. After their discussion of the distillation of Roman principles into Gratian’s *Decretum*, Maitland and Pollock immediately reveal that “the demarcation of the true province of ecclesiastical law was no easy task [and] it was not to be accomplished in England, in France, in Germany, without prolonged struggles.”\(^{44}\)

Maitland and Pollock’s quick pivot from a narrative filled with distant admiration to prolonged and pervasive struggle reveals the limited extent to which they believed the

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two systems could exist comfortably alongside each other. Maitland and Pollock thus establish the prevailing interpretation of English legal history – that from the twelfth century to at least the reign of Edward I in the fourteenth century, Roman law and canon law slowly waned in support and appeal while common law concomitantly grew to predominate. Maitland’s analysis is so particular and exact that it deserves to be quoted in full:

Never in England, nor perhaps in any other country, did the state surrender to the ecclesiastical tribunals the whole of that illimitable tract which was demanded for them by the more reckless of their partisans. Everywhere we see strife and then compromise, and then strife again, and at latest after the end of the thirteenth century the state usually gets the better in every combat. The attempt to draw an unwavering line between ‘spiritual’ and ‘temporal’ affairs is an attempt to achieve the impossible. Such it will always be if so-called ‘spiritual courts’ are to exercise any power within this world of time. So ragged, so unscientific was the frontier which…divided the territory of secular from the territory of ecclesiastical law that ground could be lost and won by insensible degrees.45

This does not imply that Roman law and canon law were not practiced in England after the Henrican Reformation nor is it meant to indicate the superiority of English common law in any capacity over its Roman counterpart. It does, however, indicate that the common law courts grew in substance and between the twelfth and sixteenth centuries so much so that canon law could not be used as a serious alternative for appeals during the tumultuous Henrician Reformation.

Sir Frederick Pollock and Frederick Maitland’s watershed 1898 The History of English Law before the Time of Edward I chronicles English law from before the Conquest to the twelfth century as the “Age of Glanvil” and finally to the thirteenth

century as the “Age of Bracton.” This analysis charts the ways in which English law was able to stand on firmer ground through a distillation of the “Englishness” of the law inherited from Rome. More specifically, the main focus of Maitland and Pollock’s work extends from Henry II up to Edward I, which seems appropriate given the overall purpose of the history as a broad overview of the formation of some legal system that can be positively labelled “English.” The History of English Law is divided into two sections, the first as an overview, and the second as a closer analysis of the developments of specific English doctrines of criminal law. Maitland and Pollock describe those distinctively English elements of the law through two main ways. Firstly, through a positive assertion of particular English developments of specific doctrines in section two and, secondly, through juxtaposing canon law and the Roman law of the Italian jurists against the evolving English law as to highlight their points of departure. Though the “Englishness” of the law swelled into the *Henrici Legi*, the work of England’s own line of “Caesar Henricus,” it nevertheless encountered canon law in almost exactly the same way as other monarchs on the continent would throughout the eleventh and twelfth centuries. Indeed, Maitland and Pollock insist that the struggle over jurisdiction was a problem felt similarly in England, France, and Germany. This pattern would imply either a consistency of legal principles among those secular systems canon law encountered or a consistent principle within canon law itself as to lead to jurisdictional conflict.

Maitland’s monumental *Sketch of English Legal History* is one of the earliest contributions to the “enemy theory.” He provides a similar argument to that which he

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46 Frederick Maitland and Frederick Pollock, *The History of English Law before the Time of Edward I*, vol. 1, 84.
proposed with Pollock. Maitland details the rise of English law as it grew out from under the shadow of Roman and canon law. Maitland himself has been warmly labelled the “Patron Saint of the historical profession… [and] standing at the start of developments which dominated English historical writing.”\textsuperscript{47} Other historians such as Patrick Wormald have also echoed this sentiment,\textsuperscript{48} and it is clear that despite disputes about Maitland’s arguments, he was nevertheless the historian who ushered many of the debates themselves. Maitland simultaneously proposed the enemy theory between the ecclesiastical and royal courts and also took it to be a matter of fact that English law grew in quality the more it had been purified of “foreign law.”\textsuperscript{49} With his enemy theory firmly in place, Maitland takes on the side of the English against encroaching Italian law as exported from the Bishop of Rome. In support of this understanding of Maitland, his continual use of “us” and “our” clearly indicates that he is writing for a distinctively English audience. This also suggests that his remarks of “foreignness” are meant to contrast with the purity of Englishness. Maitland continues by maintaining that canon law, as a foreign enemy, was derived from Roman law which had begun to slowly take shape on the continent after the victorious conquests of the Germanic tribes. As the Middle Ages continued, Roman law survived in southern France and Italy where it became “debased and vulgarized”\textsuperscript{50} until it finally matured in the beginning of the twelfth century.\textsuperscript{51} Maitland then quickly remarks that the growth of canon law in England

\textsuperscript{49} Frederick Maitland, \textit{A Sketch of English Legal History} (New York and London: Knickerbocker Press, 1915), Kindle Location 576.
\textsuperscript{50} Ibid., 534.
\textsuperscript{51} Ibid.
immediately manifested as conflict with the Crown through the persons of Henry II and Thomas Becket. This conflict, Maitland argues, was a “battle [where] neither combatant had gained all that he wanted [and] thenceforward until the Protestant Reformation…a border warfare between the two sets of courts was always simmering.”

Theodore F.T. Plucknett adds a significant contribution to Maitland and Pollock’s enemy theory in his 1929 work, *A Concise History of the Common Law*. Plucknett’s purpose, simply put, is to provide an overall history of English law as it formed within a context of canon, civil, and general European law while simultaneously providing deeper historical analyses of specific legal divisions such as procedures, crimes, torts, real property, contracts, equity, and succession. Many historians have noted the integrity of Plucknett’s work and the ease at which he is able to compile his sprawling work into a rather straightforward history. Nevertheless, Earl Murphy’s otherwise glowing review of the fifth edition still highlights some of the problems others have with Plucknett’s history. Most notably, Murphy claims that Plucknett’s greatest critics charge him with a type of historical nostalgia for the Middle Ages. Murphy’s criticism comes from his larger understanding of *A Concise History of Common Law* as more of a justification for contemporary positive English law rather than as a disinterested historical observer. Maitland and Pollock can also be seen within this critique, as they also consistently praise English law against intrusive foreign elements. Their use of first person plural pronouns implies they understood their own audience, just as Plucknett does, as being distinctively

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52 Ibid., 562.
English. Corroborating this parallel, Plucknett views himself as indebted to the writings of Maitland and Pollock where without them “neither this nor [any] other short history of English law could be written with any degree of confidence.”\(^5^4\) Plucknett self-consciously carries on the arguments found in Maitland and Pollock through a clear elaboration of the enemy theory.

In the first part of book I, Plucknett puts forth a concise history that only takes 80 pages but which covers everything from William’s Conquest in the eleventh century to the period of liberalism and reform in the nineteenth century. Most relevant for this history are chapters two on “The Conquest to Henry II: The Beginnings of Administration” and chapter eight on “The Tudors: Renaissance, Reformation, and Reception.” In chapter two, Plucknett defends the enemy theory by firstly crafting an account of Henry II where he cites him alone as the “greatest politician of his time,”\(^5^5\) who, by virtue of his greatness, created “one of the most critical epochs in the history of the common law.”\(^5^6\) This period saw the origins of a systematic common law and a movement called the Reception when many secular courts on the continent adopted civil law practices. Both were born from the same Roman legal precepts from which canon law had already begun to incorporate. Plucknett describes the Reception not as a simple development in English legal history, but as an intimacy between church and state where secular law and those who stand to benefit from its execution felt threatened. Plucknett cites Maitland here when he suggests that “the reign of Henry VIII and the common law

\(^5^5\) Ibid., 19.
\(^5^6\) Ibid., 16.
itself was in danger from the civilians.”

While not going to the extremes that Maitland suggests, Plucknett still agrees on the more fundamental premise that the point of contact between common and Roman law, as it developed into canon and civil law, whether it be in 1170 or 1535, was an irritation for common lawyers. Plucknett later introduces Henry VIII in chapter eight as one who inherits this legal landscape and whose Reformation of the Church became a simultaneous reformation of law. These parallel reformations became intertwined in one narrative where, by virtue of the medieval state’s intimacy with the Church, any effect on the ecclesia would naturally trickle into the legi ecclesiastici. Naturally, then, Plucknett renders the quarrel of Henry VIII and the papacy as an “attack upon the foundation of the Church [which] was bound to undermine the mediaeval state as well.”

Plucknett continues to discuss this same dynamic in later periods, but only this time from Henry II to Henry VIII is relevant for the current discussion.

Maitland, Pollock, and Plucknett’s conception of common and canon law’s inimical quarrel are all well received in English legal history, but the two important responses that should be noted are those which seek to refine their arguments and those which seek to undermine them. Of the first, Tom Johnson’s “Law in Common: Legal Cultures in Late-Medieval England” helps show the neglected problem of “legal pluralism” among contemporary academic debates. While not addressing the issues of Becket and More specifically, Johnson’s work builds from the foundation of the “enemy theory” set by Maitland and Pollock by addressing the ways in which different sets of

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58 Ibid., 41.
curia interacted legally – and geographically. Johnson expands on Maitland and Pollock through this noteworthy addition of a geographic dimension to the conflict superadded to the already established jurisprudential conflict. Of the second type of response to Maitland and Pollock, David J. Seipp congregates the works of J.L. Barton, Peter Stein, and J.H. Baker to highlight the diminished status of the enemy theory which shows the increasing need for a more nuanced understanding of the interrelationship between common and canon law. Seipp argues that the enemy theory laid out by Maitland, Pollock, and Plucknett is less of an accurate analysis of conflict during this period but was actually the “product of a nineteenth-century nationalism, eighteenth-century Whiggism, and seventeenth-century anti-Catholicism.”

Seipp critiques Maitland, Pollock, and Plucknett indirectly by claiming that they are writing a history as a mirror for their own feelings towards canon law and admiration for common law more so than a legitimate narrative of historical legal developments. Seipp then continues his argument by looking at the enemy theory directly. He argues that the enemy theory has not only inaccurately understood the true relationship between common lawyers and canonists, but also that “generalizations about the supposed hostility of common lawyers towards the civil law and canon law have discouraged researchers from seeking out specific points of canonist or civilian influence on common law doctrine, procedure, or reasoning.”

According to Seipp, the enemy theory fails in this regard because the alleged conflict between common and canon law does not account for how many common lawyers “showed a respectful attitude towards canon law… [and] regarded these bodies of law as

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60 Ibid., 420.
comparable to their own in many respects.”61 It is difficult to deny the thrust of Seipp’s critique. It is true that any generalization must be able to account for those particular circumstances which are said to give rise to the theory in the first place. Hence, this history will revitalize the enemy theory that Seipp rightfully critiques by channeling it through a legal history of the martyrdoms of Thomas Becket and Thomas More. A closer look at these two figures is therefore appropriate.

What has been demonstrated thus far is a general historiography of English law and the rise and critique of the “enemy theory” as laid out by Maitland and Pollock, defended by Plucknett, and finally critiqued by Seipp. It is difficult to address the arguments given for and against the enemy theory precisely because of the breadth those arguments employ. It is difficult firstly to coordinate such an array of evidence to strike down a theory which itself suggests a kind of generalization which easily sweeps aside particular matters in favor of larger claims. Thus Seipp’s citation of individual common lawyers’ amicability towards canonists misses the generalized character of Maitland and Pollock’s work and instead attacks a more indefensible claim than that which the enemy theory makes. Maitland and Pollock could easily retort to any critique of the enemy theory which cites particular examples that such derivations do not themselves invalidate larger macro-trends which they have applied to the whole of English law from Henry II to Edward I. Likewise, the argument is made against Maitland and Pollock that their generalized narrative fails to interpret sufficiently the individual episodes which justified the generalization in the first place. From this reading, the theory is in some way a mischaracterization of the period as a whole and therefore in need of refinement. It is

61 Ibid., 390.
understandable why Seipp would set out to refine the enemy theory with a deeper look into the citations of common lawyers and canonists as to place the foundations for the enemy theory on more solid ground backed by more particularized evidence. If this history is to coordinate the generalized history of English law with the particular episodes of Becket and More, then it must take seriously the methodological problem which Seipp reveals. To utilize the enemy theory is therefore to find within the manifold records of conflict between Crown and Mitre a consistent theme which, out of those particular episodes, evinces a need for such a generalization rather than particular deviations. The history of Becket and More can be crafted in a new way as a means of justifying the generalizations wrought by Maitland, Pollock, and Plucknett. This serves to contextualize their generalizations within a deeper analysis of these two important moments.

This contextualization is the heart of this research. As such it becomes vitally important to place the histories of Becket and More within a larger history of English law as either to aggregate support for the enemy theory or to continue the larger debate about its refinement. If the episodic accounts of Becket and More are to be placed within this larger history, then the more particular the accounts become, the more useful they will be for its application. In other words, evidence brought together in the particular accounts of Becket and More can reveal the degree to which the enemy theory can accurately and satisfactorily explain the causes and effects of these accounts. It is fitting, therefore, that this history, which seeks to bracket the history of common law with an analysis of the Becket and More controversies, should focus principally on the highly particularized character of the personal relationships these martyrs had with their kings. This personalized account will have to fit within the larger structure the enemy theory
provides and thus will have to consider the ways in which Becket and More themselves interpreted their own conflicts. While the “enemy theory” was certainly developed by historians writing after the period of 1170-1535, the people chiefly involved interpreted these events in a similar manner, indicating their own feelings of hostilities for the other. This gives reason to believe that even if the “enemy theory” does not fully capture the heart of the tension from 1170-1535, it nevertheless captures the feelings and motivations of those involved who themselves appear to corroborate this narrative.

The enemy theory, therefore, stands in need of deeper analyses of individual episodes with which to support its arguments. In light of this, the two episodes most readily applicable to this discussion of the quarrel of English legal supremacy are those of Thomas Becket in the twelfth century against Henry II and Thomas More in the sixteenth century against Henry VIII. Both stories strike at the very heart of the medieval world, both evoke images of dramatic clashes riddled with betrayal, love, loss, and sacrifice. The dramatic character of these two martyrdoms has been treated at length within smaller histories of each individual. Both Becket and More, however, have not been treated within this larger strand of legal history and so this research will have to coordinate two different strands of English history: the first one laid out by Maitland and Pollock has already been treated at length. The second, however, regarding the individual characters must have its own historiography as it has thus far operated mostly independent of the disputations found within the histories of the first strand.

The life and martyrdom of Thomas Becket has attracted many clerics, laymen, scholars, and hagiographers, and each has contributed in part to the growing narrative surrounding this dramatic episode of English medieval history. Among the first to report
on Becket were those closest to him, his early biographers. John of Salisbury, William fitzStephen, and Herbert of Bosham compose the most intimate portraits of Becket and thoroughly detail his time as archbishop, to a lesser extent his time as chancellor, and even lesser still his early childhood and education. These biographers peppered their study of the man with a retrospective kindling of his sainthood. This same affliction, with regards to the historical discipline, mars both Becket and More scholarship. It becomes especially challenging when trying to render an accurate account of Becket’s life with a careful distinction between the man and the saint. Nevertheless, these three men were Becket’s clerks and were most likely to paint a knowledgeable, albeit flattering, portrait. These works were first seriously compiled by James Craigie Robertson in 1875, whose “Materials for the History of Thomas Becket, Archbishop of Canterbury” have proven invaluable to historians of Thomas Becket. Indeed, almost every Becket historian encountered after this time has cited the Materials as an authoritative compendium of primary sources from which to draw some derivative narrative of Becket’s life. The Materials cover almost everything in the vita et passio – life and passion – of Becket from his beginnings as an archdeacon under Theobald to his martyrdom in 1170 and canonization in 1173. Such an extensive account, while certainly leaving room for further analysis, has provided many historians of Becket a suitable reference for those sources which are most accurate given their proximity to the martyrdom. Following the guidance set by other histories, this research draws heavily from the Materials in the original Latin to preserve the accuracy of those texts.

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Among the first modern histories of Becket which have emerged, Richard Winston’s 1967 *Thomas Becket* and Frank Barlow’s 1986 *Thomas Becket* provide a good historical overview of Becket complemented by a deep political analysis of the judicial concerns surrounding the controversy without straying too far into rash theological interpretations. Martyrs inspire both histories and hagiographies. It is difficult to narrate the Becket controversy, necessarily electing to include facts and exclude others, without implicitly supporting or opposing him. Barlow renders this congenital problem bare before his reader with a clear understanding of his precarious situation, stating that he is “not a partisan of either royal or ecclesiastical power…[but that] it is open to [his] readers, should they so wish, to reflect further or draw the moral.” Other historians such as Morris Bishop and Christopher Brooke provide a footnote on Becket since Henry II is their primary concern. In this, they follow Barlow in speaking almost exclusively on the history, not the *tragedy*. Barlow takes for granted the martyrdom of Becket, so his actual study of the sanctity of the man takes only a cursory aside at the beginning and end of the book. Regardless of Barlow’s attempt at neutrality, the story itself is so readily sewn with interpretations that the reader cannot help but uncover its unintentional moral subtext. Barlow’s neutrality, which has been the dominant academic means of Becket analysis, has, however, precluded further discussions of principles, both theological and legal, from taking on serious consideration in their own right.

While Barlow explicitly attempts to create a neutral sketch of Becket, the same cannot be said of W.L. Warren’s 1973 work, *Henry II*, which details the controversy with an apologetic tone for Henry and a scornful distaste for Becket’s policies. Warren devotes

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63 Ibid., xi.
the entire third section to the Angevin monarch’s relationship with the Church and the many quarrels which resulted from his ecclesiastical policy. Warren should be credited in this regard for aggregating the various strands of Henry II’s life into one sprawling biography which boldly pursues the interwoven political, economic, and legal debates. Nevertheless, Warren ardently maintains that the Becket controversy, by virtue of its limited historical scope, is not adequate for an underlying analysis of Henry’s ecclesiastical policy holistically nor as a means of understanding his views on Becket as an isolated history from an overall narrative of Henry’s life.64 This is why the quarrel is presented not as an isolated event in Warren’s work but rather as part of a continuum which begins before Becket and ends after him. Warren highlights the problem of ecclesiastical jurisdiction during the span of the seven years which the quarrel had raged in earnest, but only as means of dismissing it as typical of Henry’s policies. He therefore views this period as unsubstantial when analyzing the larger relationships between church and state during the reign of Henry II. He consistently maintains a firm position throughout the third section of Henry II that the controversy cannot reveal further insights into Henry’s ecclesiastical policies because Becket “belongs to an early phase of Henry II’s career, and one which, in the context of the whole, seems untypical.”65 Thus Warren can speak a great deal to the specifically legal characteristic present within the Becket controversy, yet he consciously remains silent on the long reaching effects the controversy had on English law. Warren remains mostly alone in this branch of particular history insofar as the legal dimension of the controversy is concerned, but still he does

65 Ibid., 400.
not believe that such a particular account can meaningfully contribute to some larger history. It is at this juncture that this present history seeks to refine Warren’s analyses through a rigorous demonstration of the Becket controversy’s demonstrative power in the larger historiography of English law.

Barlow, Winston, and Warren all belong to an older era of Becket history as each wrote larger sprawling biographies, but the contemporary histories of Becket mostly focus on smaller parochial issues each varied in scope, method, and audience. Among these are John Guy’s *Thomas Becket: Warrior, Priest, Rebel*, Paul Webster’s *Crown Versus Church After Becket: King John, St Thomas and the Interdict*, Gesine Oppitz-Trotman’s *The Emperor’s Robe: Thomas Becket and Angevin Political Culture*, and Thea Tomaini’s * Appropriated Meanings: Thomas Becket*, all of which are noteworthy contributions to Becket scholarship and demand serious attention – and all of which, by virtue of their parochial discussions, do not address the place which the Becket story fits into the larger history of English legal developments. This is not to fault those historians, only to place this research within a context of these histories and to demonstrate its necessity as a means of discourse of the arguments found within them to the arguments found in Maitland, Pollock, Plucknett, and Seipp.

Among these modern histories, John Guy’s *Thomas Becket: Warrior, Priest, Rebel* stands as both a premier work and an outlier in this discourse, but which similarly avoids legal analyses of the controversy as a means of emphasizing the purely biographical nature of the work. Written as a dramatic retelling of Becket’s life, Guy’s *Thomas Becket* focuses almost exclusively on Becket’s ascendance to archbishop and climatic martyrdom. While this is a rewritten biography in line with the works of Barlow
and Winston, it is nevertheless a firm defense of Becket and a clear condemnation of Henry’s character and actions. The modern histories of Becket, either parochial or biographical, all appear to be content in this regard in that they do not place Becket within a history of legal developments, let alone tracing such developments from any earlier time through him to any later time. Maitland, Pollock, and Plucknett all reference Becket but not in depth, and most modern histories of Becket mention the law but not in depth as to draw further conclusions.

Such remains the dominant histories of Becket, which, by avoiding the martyrdom in its natural moral dimension, have not seriously tackled the Becket controversy in another dimension of principles, the law. The same cannot be said of Thomas More, who by the sheer fact that he was a barrister and presented legal arguments at the curia regis naturally inclined histories of this episode to focus on those legal arguments found in the trial. Eminent among these histories is R.H. Helmholz, whose prolific career has contributed significantly to both English legal history and the more particular scholarship on Thomas More. For just one instance of Helmholz’s contributions, his chapter, “Thomas More and the Canon Law” in Medieval Church Law and the Origins of the Western Legal Tradition, investigates the degree to which Thomas More was knowledgeable of the medieval ius commune.66 Helmholz concludes that More certainly knew some precepts of canon law and used them in his defense wherever applicable but also that he held the scholastic method with its intricate legal distinctions.

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in contempt. Significantly, Helmholz demonstrates a method of historical analysis whereby More is seen in light of his contemporary legal landscape, both ecclesiastical and regal, and as contributing to that landscape through his humanistic disdain for scholasticism and his legal training as a common lawyer. That More was a lawyer is no small auxiliary note to his own *vita et passio*; rather, centrally informative of it. Helmholz profoundly demonstrates this means of historical analysis through his seamless discussion of Thomas More within a larger history of English legal history.

Just as with Becket, this history will draw from the rich scholarship of Thomas More and the most immediate source is the biography completed by his son-in-law, William Roper. Roper, a Lutheran later converted to Catholicism by More himself, wrote his biography as a preliminary hagiography that would later be incorporated into the annals of Church history. The sixteenth century saw the beginnings of More scholarship and interpretations of his defiance fell largely along religious lines. Catholics upheld him as a figure of virtue, and even Protestants argued that both More and Bishop Fisher were paradigms of learning and erudition. This portrait of More would not stand forever. With the advent of the twentieth century, British historians saw in More and Fisher the center of backwards religious opposition to what would become the formation of their Protestant nation-state. More scholarship, both in admiration of his fealty to his conscience and in scorn of his rejection of Protestant progress, is deeply interwoven with each particular view of history in its function and design. More, far more than Thomas

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67 Ibid., 388.
69 Ibid., 5.
Becket, has fallen prey to the disputations of Whig history. In light of these developments, More has been slowly reinterpreted with more contemporary works such as Peter Ackroyd’s 1998 *The Life of Thomas More* which crafts a solid historical foundation for the More story without discussion of the episode in a larger historical trend.

The scholarship on More, however, is not as neatly coordinated as Becket’s. Whereas the history of Becket usually unfolds as either a biographical work or as a small adjunct to histories of Henry II, Thomas More, by virtue of his trial, has been repeatedly analyzed either in a biographical register or by legal historians in a smaller episode of English legal developments. Among these legal analyses of More, *Thomas More’s Trial by Jury: A Procedural and Legal Review* incorporates articles by Helmholz, Elizabeth McCutcheon, Henry Kelly, and others to provide an extensive legal analysis of the final moments of Thomas More’s life. Helmholz discusses the intersection of Thomas More and the natural law, and McCutcheon analyzes More’s prison letters to his daughter, Margaret. Both contribute to one larger scheme of More history where he is placed within a larger trajectory of English legal history. *Thomas More’s Trial by Jury* does not provide a singular and definitive thesis, because it is merely an aggregation of various theses on More’s position in English legal history. Nevertheless, it understands More’s trial as an important moment within that history. Again Helmholz contributes significantly to this view of More scholarship, and as such this method of analysis which focuses on the legal dimension of the controversy emerges as one both authoritative and attractive for other historians.
Following from this, More scholarship has been divided along these methodological lines with one side focusing on the legal dimension of his trial within a trajectory of legal history and the other considering his life as a mostly insular study of an important Reformation figure. For an example of the second, G. Marc Hadour’s *Thomas More’s Spirituality* offers a vivid picture of a man who laid down his life for his conscience when called upon to sacrifice his deepest convictions. Evident from the reverential tone is Hadour’s respect for the martyr, but his silence on the martyrdom speaks a great deal on the priorities of his history. Hadour argues further that “the title also says “Thomas More” – not “Saint Thomas,” the canonized martyr who had shed his blood for the faith; not even “Sir Thomas,” the good servant on whom knighthood was bestowed in 1521. This investigation will not go beyond the year 1520.” Hadour is perfectly content with speaking about Thomas More without reference to either his knighthood or sainthood, an attempt to reach the objective qualities of the man by separating More from these value-laden interpretive layers. In a similar construction to those particular histories of Becket, Hadour’s analysis of More resists deeper analyses of More himself, and so he must wrestle with the congenital problem of hagiography when writing on the man biographically. In order for this history to truly corroborate the enemy theory with analyses of particular episodes within a larger legal history, it must incorporate the biographical method, exemplified by Hadour, but must also appreciate the precarious relationship of history and hagiography. Hadour preemptively quelled anxieties over this issue of hagiography through his attempt to distance his discussion from either a

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condemnation or commendation by sorting between “sir” and “saint” to get to the man himself. It is not within the scope of this paper to argue whether Hadour was successful, but it is nevertheless relevant that the very structure of *Thomas More’s Spirituality* underscores a problem of interpretation which any other biographical history must appreciate.

Jasper Ridley, on the other hand, writes his 1982 *Statesman and Saint* as a historical diatribe of More in relation to the nobility of the often hushed importance of Thomas Wolsey. Ridley’s work is incredibly bold as it explicitly admits its own desire for provocation. Ridley stares down the dominant interpretation of More in an attempt to demystify the record, arguing that “it is surely time to make a different assessment.” Ridley continues: “a careful examination of More reveals…that the saint was the worst kind of intolerant fanatic, an idealist gone astray, who begun as a brilliant intellectual but developed first into a sycophantic courtier and then into a persecuting bigot.” Sainthood holds no implications for Ridley; the sanctity of More’s actions granted by the authority of the Church falls on deaf ears. It is interesting to note that the original publishing title for the work is *The Statesman and the Fanatic* – Ridley’s values are unmistakable.

Other historians such as Elizabeth McCutcheon have noted Ridley’s inappropriate and unconvincing history, but it still remains open whether Ridley’s work should be considered rival to other More histories such as Peter Ackroyd’s *The Life of Thomas More*, John Guy’s *The Public Career of Sir Thomas More*, and Alistair Fox’s *Thomas More: History and Providence*. Elizabeth McCutcheon’s 1985 “Three Biographies of Sir

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72 Ibid., Preface.
Thomas More” elaborates the problem with More scholarship thus: “Ridley too often measures More by rules and values that (at best) ill fit a far more complex and many-faceted person than Wolsey.” Yet McCutcheon argues only that each of these More histories, including Ridley, provides “fresh, sympathetic, and subtle portraits of a more complex, comprehensive and comprehensible figure whose problems and dilemmas we can sympathize with.” McCutcheon does not categorically reject Ridley despite recognizing *Statesman and Saint* as “unconvincing and wholly negative.” Indeed, she notes that it “is [still] useful insofar as it defines one extreme [of More].” Stronger than what McCutcheon admits, it should be noted that Ridley offers an attempt that is more polemical than historical and should not, on account of its manifold theological presuppositions, be labelled as a historical analysis of More rivaling that of Ackroyd, Fox, and Guy.

Jasper Ridley and G. Marc Hadour both underscore in their own way and to varying degrees the inherent problem of theological presuppositions when attempting a purely historical biographical work of a canonized saint. A few solutions present themselves when facing this problem: a historian can simply ignore their own commitments to their theological presuppositions and expand on them through their history at which point this renders their account theological in character, which comes at the cost of its historical fidelity – this is the method undertaken by Ridley. Likewise, the historian can attempt to acknowledge their own theological presuppositions and attempt to distance themselves

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74 Ibid., 92.
75 Ibid., 91.
from them in which case the history loses the normative thrust it would naturally like to make – this is the method undertaken by Hadour. Lastly, the historian can avoid both of these options by talking about the theologically neutral dimension of the law, in which case Thomas More qua saint is not relevant, only Thomas More qua common lawyer – this is the method undertaken by Helmholz and McCutcheon. These two historians take seriously this legal dimension of Thomas More’s martyrdom, but their histories ring similarly to those of Becket. Just as with Becket, neither Helmholz nor McCutcheon abstract from More’s trial some legal trajectory. As such, their history remains relatively isolated within this larger ocean of English legal history and does not attempt to mesh either with or against the enemy theory of Maitland and Pollock.

The histories of Becket and More can be therefore be distilled into one of two main methods: either the work is biographical and elaborates a thorough account of their lives, or the work is legal and unfolds the legal arguments presented and developed through the length of their controversies. Neither, however, speaks to the larger history abstracted from these episodes as found in the enemy theory formulated by the authoritative voices of Maitland, Pollock, and Plucknett. This history will seek to act as a liaison between these two histories through a discussion of each particular episode in English legal history – Becket and More – as to corroborate the claims of Maitland, Pollock, and Plucknett while also providing for the necessary critiques Seipp provides. In this way, this history will address an evidentiary gap in the enemy theory by a concert of the legal and biographical dimensions of Becket and More. At the same time, this history leaves the task of carrying on this thesis further into other episodes of English history to other historians. Notable among these is the demands of King John in the concessions of
Magna Carta in the thirteenth or the Investiture Controversy of the eleventh century which drew Anselm and Henry I into a similar struggle over the exact domain of church and state. The synthesis method this research uses is not limited to only the episodes of Becket and More, but can be applied to other quarrels from the time of the Conquest and the origin of concrete concessions to ecclesiastic courts until the quarrel of supremacy in the sixteenth century. If the period from 1170-1535 is to be bracketed by these two martyrdoms then the intersection of the diverse historical and theological inquiries presented must be able to particularize the claims of the enemy theory while also demonstrating their potential for abstraction. This research will therefore particularize the enemy theory in two instances – Becket in the twelfth century and Thomas More in the sixteenth century. This same method, once demonstrated effectively, can be used in other episodes of English legal history to renew certainty in the arguments of Maitland, Pollock, and Plucknett. It is to the first of these episodes in the twelfth century with the ascendance of Henry II that we now turn.
CHAPTER 3

THOMAS BECKET AND HENRY II

“Well, Thomas Becket, are you satisfied? I am naked at your tomb and your monks are coming to flog me. What an end to our story. You, rotting in this tomb, larded with my Barons’ daggers, and I, naked, shivering in the draught, and waiting like an idiot for those brutes to come and thrash me. Don’t you think we’d have done better to understand each other?”

-Jean Anouilh, Becket

Thus begins Jean Anouilh’s 1959 play, Becket. The story of Thomas Becket’s miraculous change of heart as he donned the mitre of Archbishop and defended the sanctity of the Church’s ecclesiastical courts against Henry II is a much beloved story since Anouilh’s 1959 play and the movie adaptation in 1964 starring Peter O’Toole and Richard Burton. However, Anouilh’s account – the popular history that has been readily distributed – is fraught with historical inaccuracies and clear mischaracterizations. The tragic fall of the actual Becket-Henry relationship was the product of several simultaneous events with varying degrees of importance. Firstly, the Angevin monarch’s

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76 Becket, Act I, Scene I
77 Chaucer’s Canterbury Tales themselves are the stories of travelers as they make a pilgrimage to Canterbury to visit the shrine of Thomas Becket. It is difficult to stand fully aware of how Becket and his martyrdom shaped the Christian mind in England.
seizure of Stephen’s “anarchy” had predisposed him to establish a consistent and sprawling system of law that would restore England to the efficiency enjoyed by Henry I. This burgeoning system of law would run directly against the established canon law and the Crown set itself on a collision course with the Church. Secondly, the personal relationship between Henry and Becket gave the new Archbishop reason to believe that loud and obstinate rejection of Henry’s demands at Clarendon in 1164 could lead to a strong and successful rebuke of the King’s encroaching grasp on Church authority. Becket had every reason to believe that his personal dealings with Henry would allow him to control the King where other bishops and barons were forced into silent compliance. Becket’s brutal martyrdom at the hands of four of Henry’s barons, however, reveals a deadly miscalculation.

Becket’s martyrdom is typically attributed to the chance and ill-chosen words of Henry: “Will no one rid me of this turbulent priest?” However, if this were the total truth, then it is unlikely that a mere slip of tongue would have led to the murder of a figure as titanic as the Archbishop of Canterbury. The martyrdom itself was most likely the result of this accidental utterance but the feud, I argue, was not. The Becket controversy that ripened Henry’s wrath was the product of several forces that lay outside each man’s parochial control. I argue that the collapse of Becket’s friendship with Henry was the product of the inherent limitations of each of the offices they held and that the differing incentives and goals of the Crown and the Mitre naturally tore the two apart. Henry II’s directive in restoring the Crown to the authority it felt under Henry I required a consistent and extensive legal code, a common law. The theoretical support for such an undertaking, whether or not Henry explicitly knew it, required the absence of a higher authority to
which appeals could be made. The Constitutions of Clarendon explicitly laid out such a scheme where there would be no courts, appeals, or judgments higher than the King’s. Despite Henry’s later retraction of such a categorical move, the central thrust of the Constitutions was to establish one justice with the ecclesiastical courts subordinate to the royal. The Crown had every reason to make such a move: the coordination and standardization of law through a system of precedent cases made by appointed judges would probably render more just decisions. The Archbishop of Canterbury, wielding canon law, with its claim to total and immutable justice as derived from total and immutable truth, naturally felt threatened as the two competing legal codes could not both be hierarchically superior to the other. Where Henry II’s common law had positioned itself above William’s earlier ecclesiastical protections, the Church argued for its own supremacy as a vassal for the authority of God. The good Archbishop, therefore, would be one who defended the honor of God, the Catholic Church, and the Roman Papacy, as was his sacred task conferred at his consecration. The good king, following the principles laid out by his coronation, would be one who swiftly executed and adjudicate

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78 The rite of ordination sets forth the archbishop’s duties: “…from this hour henceforward will be obedient to Blessed Peter the Apostle, and to the holy Roman Church, and to our Holy Father... and to his successors canonically elected. I will assist them to retain and to defend the Roman Papacy without detriment to my order. I shall take care to preserve, to defend, increase and promote the rights, honors, privileges and authority of the holy Roman Church, of our Lord, the Pope, and of his aforesaid successors. I shall observe with all my strength, and shall cause to be observed by others, the rules of the holy Fathers, the Apostolic decrees, ordinances or dispositions, reservations, provisions and mandates...And if through me any such alienation shall occur, I wish, by the very fact, to incur the punishments contained in the constitution published concerning this matter.”

the law such that everyone in his realm was held under his scrutiny and afforded his protections. In this way, Henry’s virtue as king and Becket’s virtue as archbishop naturally separated the two as each office, guided by two rival theories of authority, came into conflict regardless of the personal affections of the office-holder.

As common law swelled into a conglomerate of precedent cases, the threat it posed against canon law became palpable. If we take Gilbert Foliot at his word when he claims that there was “general contentment under the rule of a good prince” before Thomas Becket, then such peace was achieved through canon law’s dominance over the historically weak and uncoordinated secular English law. What I must show, therefore, is that Thomas Becket’s feud with Henry was a manifestation of this clash of legal codes. I will demonstrate this through a history of common law and its development under Henry II and how its growing pains were a consequence of a formative struggle against its chief objector. Canon law was able to separate itself further from the lay authority under Stephen’s “anarchy,” and the liberties it enjoyed were under threat with Henry’s ascension and explicit agenda of restoration. While the two codes were themselves not wholly incompatible, the uneasy existence of two separate pillars of English society vying for supremacy naturally exposed both to an uncomfortable friction.

The reach of the controversy itself indicates the depth of the principles appealed to by both Henry and Becket, consciously or not. Becket was far more explicit than Henry about the principles he sought to invoke and defend, though Henry had operated

under no less a passionate defense of his own principles despite his argument for pragmatism. It is this quarrel – that between principle and practical – manifest through these human pillars of England that delivered the coup de grâce to Becket and Henry’s friendship. Though Chancellor Becket would have not considered the King’s law a threat to himself, Archbishop Becket’s ardent opposition can be understood as a theological opposition to common law and a defense of canon law. Becket understood the existential threat the common law posed to the canon law, and his defiance can be read afresh as that of a defense of the theological and legal commitments of the Church.

This history will therefore focus on three interrelated elements: the history of common law as it rivals canon law, the personal relationship of Henry II and Thomas Becket, and the martyrdom of Becket for defiance of the King. The relationship and martyrdom of Becket is just as crucial as the history of common law, because it demonstrates that the quarrel sprung from the offices of Crown and Mitre, not just from the personalities of their occupants. Becket’s break with the King’s favor is magnified by the friendship the two enjoyed before 1162, and it is because the two held such a strong fraternity that the continuation of the conflict extends beyond them. The bishops that supported Becket’s nomination to the vacant archbishopric had hoped that such a friendship between these two otherwise antagonistic and emulous powers would finally lead to a better and more Christian society. Everyone involved, Becket included, could not have predicted the events that transpired.

Those events have been interpreted by historians with hagiographic flairs, and such threads cannot be understood without a biographical sketch to operate as a foundation for further analysis. Such a biography must be able to lay out certain core facts of Becket’s
life before the saint emerges from the sinner so that the life after can be scrutinized in its proper context. The great controversy and martyrdom surrounds the Becket story so much that it becomes quite difficult to give an account of Becket without foreshadowing his eventual climactic doom. There are two main sections of Thomas’s life: the worldly Becket and the spiritual Becket. It is difficult to say exactly when the sudden conversion and transformation of his desires took place, but it is a safe estimate that his ascent to Archbishop of Canterbury conferred a sacred honor that he felt was his duty to defend. It becomes difficult to address the spiritual Becket by pointing to the worldly Becket’s personality and characteristics. The same holds true when assessing the character of the worldly Becket, as his history falls prey to a kind of retrospective fitting. Becket biographers such as William fitzStephen are apt to draw hidden signs of his eventual sainthood in order to prove that he was in fact worthy of such a title. Still others like Frank Barlow heighten the degeneracy and worldliness of the martyr to accentuate his later holiness once he ascended to the archbishopric, thus rendering the transformation more miraculous. The historian must navigate a cautious course between the Scylla of “hidden and latent sainthood” and Charybdis of “heightened worldliness” when crafting a narrative of the worldly Becket in order to render an appropriate and accurate account of his life.

Still it must be argued that such a biographical account is relevant in an overall political discussion of the quarrel of church and state in England. The Becket controversy is an episode in a larger saga: a stanza in a poem with melodies that rhyme throughout

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English history. In this particular verse, the personalities of the two men chiefly involved, Henry II and Thomas Becket, must be given their proper place, as it is precisely in their relationship, and the decay thereof, that the great controversy echoes the larger English quarrel. The biography of Becket, the true worldly character who evolved into a spiritual father and pastor, illuminates and reflects the character of his king, Henry II. The boyish friendship the two shared speaks a great deal to the desires and motivations of Henry as he saw in Becket a friend and collaborator willing to enact his regal will. Stronger still, the fact that Henry felt betrayed once Becket had transformed into the character of the pious priest also reveals the limits Henry placed on his own power. In face of what would be ostensibly treason, Henry’s continuous use of councils and negotiations without resort to brute force underscores the importance and centrality of the Becket-Henry relationship in the controversy. The channels of diplomacy open to Henry were those which he was willing to use, not necessarily those which were imposed upon him. Other opponents to Henry were met with swift vengeance, as seen in the immediate campaign to reclaim lands lost under Stephen’s reign. Yet Becket’s opposition to the King was not met with the same brutal and dominating response. Henry’s willingness to negotiate with Becket while brutally suppressing his barons indicates the need for a place of his personal relationships in the larger discussion of his regime. In this way, a well-crafted biography of Becket helps provide a firm foundation for a stronger understanding of Henry II. The friendship the two shared is vital to understanding the political philosophy of Henry II. It is because Henry felt some love for Becket that he had little intention of executing him; likewise, it is because he came into power with presuppositions of the divinity of the Church that he had little intention of consuming it.
Henry’s relationship with the Church can be channeled through his relationship with Becket, but their relationship can only be partially understood by a look at their public lives. Becket’s early life and initial ambitions paint a more complete picture of his life. Unfortunately these records have only been scarcely recorded and only partially recovered. Thomas Becket was born on December 21, 1119 to Matilda and Gilbert Becket, a Norman merchant living in London. Thomas could not be considered a nobleman, though neither was he a peasant. His father had some tenuous aristocratic connections to the count of Brionne, but this did not help the Becket’s in London, since his father had to leave to take up trading. Becket’s formative years were sparsely recorded given his relative unimportance, and his biographies tend to jump to his entrance into Archbishop Theobald’s household. Thomas was enrolled in some of the London grammar schools between 1130-1141 when he was around ten to twenty-one, but he was not considered a “great mind” and much less a “prodigy.” Thomas’s schooling was sporadic during this period, but eventually he went to Paris where some of the best theologians lectured and were trained. Paris had become increasingly desirable for men who wanted to climb the ladders of the Church. Clerks were born in Paris to facilitate the burgeoning bureaucracy of the English Church and to aid their clergy in executing the increasingly complex duties of their offices. Thomas, however, did not complete his

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82 Contrary to the 1959 play and 1964 movie, Becket, Thomas was not a Saxon but in fact a Norman like his King. The playwright, Jean Anouilh, had learned of this fact too late in production of the play but had kept it in due to the importance of this plot point despite acknowledgement that it was not true.

83 Frank Barlow, Becket, (Berkley, University of California Press, 1968), 12.

84 The 1964 Becket paints Becket as an erudite man who constantly outthinks and outwits the King and his boorish barons. While this is not totally inaccurate - Becket was known for his thoughtful and profound articulation - this was usually not on display during his worldly life before he ascended to Archbishop.
education at Paris and was recalled back to England in 1141 due to the death of Matilda, his mother.

Becket’s education offers a fresh interpretation of his ascent to nobleman: his failure to finish the program in Paris and become a *magister*\(^{85}\) led him to find alternative paths up the social ladder. Once the secular path of education had been closed off to the ambitious Gilbert and Thomas, the most immediate alternative at their disposal was the system of ecclesiastical patronage. Gilbert’s ties with Theobald helped procure for the young Becket a position as clerk. When Theobald became Archbishop of Canterbury, Thomas quickly became one of his favorite clerks due to his ability to temper the oft rash and inarticulate arguments of his superior. Thomas was consecrated deacon and then later appointed to Archdeacon of Canterbury. Even before his nomination to Archbishop, it seems that his climb up the clerical ladder had already been far more successful than that of his academics. It is difficult to overestimate the importance Archbishop Theobald had on the young Becket. Theobald had raised Becket to higher positions than he enjoyed as a layman and gave him an opportunity to produce meaningful successes in securing the election of Roger of Point l’Eveque to the Archbishopric of York.\(^{86}\) By the time of his appointment to Lord Chancellor in 1155, Becket already had an extensive knowledge and experience in ecclesiastical affairs, and his earthly success was due almost totally to the benevolence and patronage of the aged Archbishop. It is no coincidence, then, that we find Becket’s style of archiepiscopal government similar to that of Theobald’s, as both had utilized “patient diplomacy, perseverance, sometimes dignified resistance to

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\(^{86}\) Ibid., 37.
superiors, and often overbearing behavior to inferior authorities.” Theobald was a powerful Archbishop and moved to solidify Canterbury as the unrivaled head of the Church of England, a newly restored position that Thomas would have been keen to maintain. The seeds of Thomas’s firm defense of Canterbury against Henry were already sown by Theobald.

Such a defense would come once Becket donned the mitre, but in the early period of his life, his companionship with Henry was based on mutual interest and debauchery. Becket’s profligacy is well-attested, and even his most flattering hagiographers accept this into the Becket canon. Once Theobald had helped Henry secure his possession of England from his recently deceased cousin, Stephen, Becket had come into close confidence with the new monarch. As Henry raised Becket to Lord Chancellor, the splendor and pomp of the office flowed quite naturally. The King had presented his new friend with demonstrations of “ostentation and worldliness…once he had fully established himself at the royal court.” Many of Becket’s earlier biographers, such as William FitzStephen and John of Salisbury, attempt to cloak such displays of worldly pleasure as the masks of an otherwise dormant saint. FitzStephen, who admittedly set out to write a hagiography, claimed that Becket “ate and drank very sparingly in order that his rich table might leave a rich alms.” While it is probably true that Chancellor Becket was not one for gluttony, it is most likely due to his colitis and not a sign of latent saintly

87 Ibid., 39.
88 Ibid., 44.
virtue. Similarly, FitzStephen argued that Becket had “never soiled his chastity [and] even the King [had] laid plots day and night to seduce him to fall.” According to his confessor, Brother Robert, the chaste Becket had apparently never succumbed to the desires of the flesh. This is equally suspicious, as Robert had only been Becket’s confessor after Becket’s appointment as Chancellor and provided a “deafening silence on his earlier lifestyle.” Even if FitzStephen’s account of Chancellor Becket rings true, it is highly probable that Thomas led a debauched life during his education at Paris, as John of Salisbury reported that Becket had “indulged in the rakish pursuit of youth [and] was proud and vain, and silly enough to show the face and utter the words of lovers.” The early life of Becket from 1119-1141 was filled with the typical activities expected of the son of a London merchant. Regardless of the eventual martyr he would become, Chancellor Becket clearly led a normal life for twelfth century England, and it is this character whom Henry felt a warm fraternity.

That friendship between Henry and Becket soon blossomed into an efficient synergy where each offered something useful for the other. Becket was able to curb Henry’s oft displays of wrath, and Henry was able to reward his chancellor with almost unlimited credit. Becket’s achievements in Henry’s campaigns against the Welsh kings and in France against Louis VII demonstrate the effectiveness, if not rashness, Henry loved him for. Becket had accompanied Henry on his earliest campaigns to restore the

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93 Ibid., 127.
might of his great-grandfather William and to dispel the chaos caused by his predecessor, Stephen. Henry had launched a campaign against Owain of Gwynedd on July 17, 1157\textsuperscript{94} to secure the north and reclaim what he felt was his lost inheritance. The penitent monk and pious pacifist was either buried or non-existent in this earlier stage of Becket’s life. Becket’s most intimate clerk, John of Salisbury, regards the warrior Becket as one hue of an infinitely complex chameleon who was “forced to dissimulate [and] pretend that he is [like Henry and his Barons]” in order to survive at court.\textsuperscript{95} John’s account conveniently hides the zeal with which Becket executed the will of the King in conquering both the northern lands and during the Toulouse campaign against Louis VII.

However, in John’s defense, Becket had demonstrated his defiance of the King even in this early stage of his career. Early in the Toulouse campaign, Becket had urged Henry to attack the retreating Louis at Chateau-Narbonais in order to crush his forces, but the barons of the war council had urged Henry to use caution.\textsuperscript{96} Becket increased his demands and accused the barons of cowardice, but Henry had sided with them and ordered his chancellor to remain silent.\textsuperscript{97} Only in light of French reinforcements to Chateau-Narbonais and disease infecting Henry’s camps did he finally agree to Becket’s plan\textsuperscript{98} – though the advantage he once enjoyed had evaporated. Becket, however, went on another attack and had secured Cahors and two other fortified castles at great risk to himself and his knights.\textsuperscript{99} This small episode, at the height of Henry and Becket’s

\textsuperscript{94} Ibid., 109.
\textsuperscript{95} Ibid., 123.
\textsuperscript{96} Ibid., 113
\textsuperscript{97} Ibid.
\textsuperscript{98} Leo T. Gourde O.S.B. “An Annotated Translation of the Life of St. Thomas Becket By FitzStephen.” (Loyola University Press, 1943), 43.
\textsuperscript{99} Ibid., 44.
friendship, indicates both Becket’s defiance and Henry’s refusal to punish him. The outspoken and rash temper Becket demonstrated in the Toulouse campaign would follow him during his tenure as Archbishop. Becket had learned not only that he could openly and loudly defy Henry, but also that by doing so he could circumspectly execute his own maneuvers and win the favor of the King. The feud between Archbishop Becket and Henry would be an evolution from, not a categorical rejection of, the earlier disputes between the warrior-Chancellor Becket and his king.

The clerical Thomas, however, was not whom Henry II had fallen in love with and was not the collaborator he had desired would support him. The worldly Becket, concomitant with the clerical, was far from the saint that his early hagiographers paint him to be. As Henry loved Thomas, it was the worldly Henry who loved the worldly Thomas. Becket’s change of heart set him on a path that Henry could not follow. Henry’s friendship with Becket was not established on any Christian conception of virtue, as the debauched king would have hardly kept close friends wholly unlike himself. Becket himself, reported FitzStephen, had told Aschetin, the Prior of Leicester, that “the King and I know for certain that if I am ever promoted to that dignity [of Archbishop of Canterbury] I will have to forfeit either the King’s favor or (which God forbid!) my service to God Almighty.”¹⁰⁰ Once Becket rose to Archbishop of Canterbury and swore off his life of pleasure, Henry had the option either to establish a new friendship devoid of such debauchery or to painfully exorcise his once beloved friend who had become too different than himself.

¹⁰⁰ Ibid., 34.
Nevertheless, Henry’s relationship with Becket from his coronation in 1154 until 1162 when Becket became Archbishop of Canterbury was established on a mutual understanding of kingship and hierarchical authority. The 1157 case of Battle v. the Bishop of Chichester demonstrates Thomas’s resolve to support the will of his king, as this case reflects a similar, albeit less inflamed, dispute between the rights of the Church and the Crown. Thomas heard the case of Walter de Lucy, abbot of Battle, who had sought the vacant bishopric of London but was blocked by Bishop Hilary of Chichester.101 The embittered Walter began to resist Hilary and denounced him for exceeding his authority on account of a supposed charter granted by William the Conqueror whereby Battle would be exempt from Hilary’s jurisdiction.102 Thomas heard the case at Colchester with Henry, Richard de Lucy, Robert de Beaumont, Richard de Humez, Walter of Battle, and Hilary of Chichester present for the proceedings.103 The case continued normally until Hilary’s defense speech caught the attention of Henry: “The Church of Rome marked out by the ordained successors of the Prince of the Apostles, has achieved so great and so marvelous preeminence throughout the world that no bishop, no ecclesiastical person at all, may be deposed from his position without its judgment and permission.”104 Hilary’s prophetic defense would lay out the future quarrel between Becket and Henry; if Thomas had sided with Hilary then he would be clearly defending the principle of ecclesiastical exemption from regal jurisdiction. Likewise, if

102 Ibid., 103; Frank Barlow, Becket, (Berkley, University of California Press, 1968): 50.
104 Ibid., 104.
Thomas sided with Walter de Lucy then he would unmistakably confirm the precedent for the King to command and depose of ecclesiastical authority as was established under William the Conqueror. Even Archbishop Theobald had come to Hilary’s defense and argued that royal charters had no authority over ecclesiastical concern. Becket rebuked Hilary with a telling address of his own loyalties: “You have forgotten your allegiance to the King, to whom you have, we know, taken an oath of fealty. You should therefore be prudent.”¹⁰⁵ Thomas, Theobald’s once beloved clerk, in good faith with the King, sided against Hilary and had thus clearly broadcasted his commitment to establish one consistent and exhaustive law handed down from the King. Henry ended the case abruptly with his own prophetic warning: “May the splendor of my reign never see a time when things I decree, as dictated by reason and by the counsel of my archbishops, bishops, and barons, are to be criticized or judged by you and your ilk.”¹⁰⁶

While *Battle v. the Bishop of Chichester* appears to demonstrate Henry’s resolve to extend regal jurisdiction over ecclesiastical exemptions, the document itself demands a more careful examination. In 2001, Nicholas Vincent proved that the recordings of this case as made by the monks of the Battle Abbey to be in part a forgery.¹⁰⁷ Abbot Walter’s victory in the case, and Henry’s stance against Hilary are probably accurate,¹⁰⁸ but Thomas’s attitude should be seriously questioned. Thomas had sided with Henry, allegedly bringing damning evidence before the court of Hilary’s hypocrisy. Yet eleven years later in 1168 Becket wrote that “the bishop of Chichester…[had] apostolic

¹⁰⁵ Ibid., 105.
¹⁰⁶ Ibid.
¹⁰⁷ Ibid., 106.
¹⁰⁸ Ibid., 107.
privileges on his side.” Becket’s letter thus indicates either a complete reversal of his argument during the trial or that the record of the case itself incorrectly bolsters Abbot Williams’ position. Becket historian John Guy leaves this final assessment open to debate. While it may be nearly impossible to reconstruct Becket’s true judgment and considerations during the case, Henry’s outbursts during the case and after are reasonably consistent, and thus we can rely on the text for some analysis.

Even if we grant Battle v. Bishop of Chichester as a partial fabrication, the outcome of the case did support the Battle Abbot, and in this Becket either collaborated with the King in prosecution of Bishop Hilary or was at least complicit in Henry’s judgment. There are no records of Becket voicing any serious objection to the outcome of the case, nor is this inconsistent with the rest of his tenure as Chancellor. The chronicle of Battle indicates, despite its obvious support of the Battle Abbey at the expense of Bishop Hilary, that Thomas Becket had executed the office of Chancellor with as much zeal and purpose as he had as clerk and Archdeacon under Theobald. Henry had assumed that such zeal to enact the regal will would follow the man. Becket’s loyalties, however, as demonstrated by Battle, followed the office.

Henry II admired Becket and had reasonably decided that he could help organize his sprawling empire instrumentally through him. In a move to consolidate power, Henry appointed Lord Chancellor Thomas Becket to the vacant Archbishopric of Canterbury. This was not totally without precedent; Pope Alexander III had allowed Hugh of Champfleury to retain his position as Chancellor of France under Louis VII while

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109 Ibid.
ascending to the bishopric of Soissons. Furthermore, Frederick Barbarossa had Rainald of Dassel placed as Archbishop of Cologne in 1159, and it is probably this that Henry sought to emulate. Most bishops, despite their initial objections, had decided it would be best to have a friend of the King sitting as archbishop, since “Henry was on his way to becoming a very strong ruler…and it was essential to have an archbishop who could get on with the King, deal with him tactfully and prudently.” Thomas Becket, the worldly profligate and libertine, became Archbishop of Canterbury on June 3, 1162 by royal decree of Henry II. The celebration and high hopes of Becket and Henry would soon fade as the duties and burdens of Archbishop fell sharply on Becket’s back.

The feud began as a matter of juridical liberty and delineation of authority. Henry had met with Becket on October 1, 1163 to discuss the consolidation of courts and to “consent [to having] clerks who [were] caught committing crimes…be degraded, deprived of all protection of the Church, and handed over to [Henry’s] court for corporal punishment.” To this Becket responded that “[old kings’ abuses] do not give us the authority to assent to anything that is done against God or our order or office in the Church that divine dispensation has committed us.” The battle lines were clearly drawn with Becket, transformed by the mitre, securing the sanctity of ecclesiastical courts, and Henry, who felt betrayed by his ascendant Archbishop, attempting to provide one consistent law over England. As the matter grew louder with threats of excommunication and censure flying, it is not difficult to see how Henry’s wrathful plea, “Will no one rid

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111 Ibid., 67.
112 Ibid.
113 Ibid., 65.
115 Ibid., 149.
me of this turbulent priest?” could be misconstrued as a direct order to butcher the obstinate Archbishop. As four knights climbed the Canterbury steps to fulfill their supposed duty, Becket prayed, “Into thy hands, O Lord, I commend my spirit. For the name of Jesus and the defense of the Church, I embrace death.”

On Tuesday December 29, 1170, Thomas Becket was pierced by the swords of four of Henry’s knights. The feud between Thomas Becket and Henry II echoed throughout the halls of England, beckoning pilgrims to arrive in Canterbury and venerate the butchered martyr on the steps where the fateful controversy had reached its climax. This echo would evolve into a fugue of voices proclaiming the sanctity of Becket, the nobility of his cause, and the savagery of his execution. Henry II was eventually forced to make his peace with his Saxon people and the Papacy by submitting himself to a grueling penance. The pronunciation of Becket as saint would arrive shortly thereafter on February 21, 1173.

While the conflict soared towards this climactic end, the quarrel itself was steeped in the deepest principles of each man. Histories which render the clash as between a practical Henry and a theoretical Becket cloud the core issue of 1163-1170. While Becket’s commitment to the principles of the Catholic Church are beyond doubt, Henry’s commitment to equally demanding principles is often masked with a small gesture towards the practicality and forwardness of the Constitutions of Clarendon. The argument of Henry’s “practicality” hides the theoretical commitment to such practicality and the principles employed as to argue that a diplomatic negotiation was needed from 1163-1170. Thus the analysis of the feud has usually been undertaken in two ways: firstly, through a biography of each individual as to elucidate some agenda that renders the feud

116 Ibid., 366.
tractable, or secondly, through a legal analysis of the Constitutions of Clarendon, the Assize of Clarendon, the Assize of Northampton, or any of the letters and statements attributed to either Becket or Henry as to weigh the coherency and veracity of their arguments. Both of these analytical methods have their place, and this history will coordinate both closely together. Historians of Becket such as Richard Winston and Frank Barlow have painted an otherwise flattering biographical sketch of Thomas Becket with a legal analysis as an adjunct support. W.L. Warren devoted only one section of his biography of Henry II to Becket and only a fraction of that to a breakdown of their arguments. In each of these histories the mixture of the personal and legal analysis of the feud forms a single narrative.

My analysis, following the histories of Barlow, Winston, and Warren, will use the biographical sketch painted to sharpen the legal lens of the Becket controversy. While the legal register of the conflict is often divorced from the biographical, I argue that it is only through a principal understanding of the character and friendship of each man that the legal arguments each employed exhibit their fullest depths. It is poetic to characterize Becket as the martyr who died for the truth in the face of a licentious and turbulent monarch, but the arguments he employed and those which Henry rebut unveil a larger, more troublesome issue between the Church and the King. The feud’s existence and culmination in such a murder indicates either that (1) Becket was willing to sacrifice his life and his friendship with Henry for the vainly motivated immortal glory enshrined in martyrdom; the responsibility falls mostly on Becket. (2) Henry was unwilling to grant any ecclesiastical liberties whatsoever; the responsibility falls mostly on Henry. (3) Lastly, that the friendship the two shared deteriorated as the result of forces outside of
each man’s immediate control. The biographical sketch painted earlier helps guide the narrative towards a sober middle path between the first two extremes. Becket and Henry’s extended friendship from 1154-1162 makes it extremely unlikely that their fraternal understanding ended the moment Becket was consecrated Archbishop. The feud began, continued, and ended as the result of Becket’s commitment to the duties conferred upon him as Archbishop, despite the love he felt for his king. Even though Lord Chancellor Becket and Henry had disagreements, he had consistently bowed beneath the royal hand. His friendship, however, extended past the duties of his office as Lord Chancellor, and there is no reason to believe that this same feeling would not extend past the duties of Archbishop. It is therefore difficult to place the emerging distance between Archbishop Becket and Henry as the result of either Becket or Henry’s particular temperaments, as it was those same temperaments which had drawn the two together before Becket’s consecration. It is far more likely that Becket’s feud with Henry was born out of Becket’s observance of the obligations he felt were placed upon him. Those obligations are the mandates derived from the office, not the man, and as such the English quarrel, while enacted through men in office, cannot be reduced to those men in office.

The duties and struggles of Crown and Mitre must therefore take a more central position in the narrative of the Becket controversy. Bishop Foliot had argued that the Church and Crown were comfortably aware of their relationship and had enjoyed a period of peace and prosperity under Henry II. This, however, seems to be either naïve or willfully unaware of the actual legal developments of the twelfth century. Henry II had every intention to create one consistent and expansive law that flowed outwards from the
Crown. The General Eyre, the systematic arrangement for nationwide visitation of all counties by royal justices, was but one organ of the evolving body of English law under Henry’s reign. Henry firmly believed that this evolution was a resuscitation of ancient custom cultured under William, but this is far from the truth. Henry’s desire was for a uniform and singular law – the mere presence of canon law stood as a block against this. The customs Henry II wished to codify fell prey to the barbed critiques of Becket, wielding the newly refined canon law of Gratian’s *Decretum*. The “ancient customs” Henry invoked were neither those which had any sense of consistency, nor were they those which placed the Crown’s justice above the Church’s. Ecclesiastical and civil courts had long been delineated under William and his successors, and Henry’s argument fell woefully short. The “customs” Henry appealed to are also quite arbitrarily defined as only those which Henry I had established prior to Stephen. It is to Henry’s inheritance of “anarchy” as one cause of England’s legal systematization and subsequent quarrel that we turn.

Henry’s insistence on a singular justice stems in part from his inheritance of the disarrayed kingdom of Stephen. The “Anarchical Period,” as it has been haphazardly called, saw the growth of unchecked violence and ineffective attempts to reign in local counties.\(^\text{117}\) Stephen’s seizure of the Winchester treasury and coronation as monarch in 1135 were early signs of a clumsy reign,\(^\text{118}\) yet the full breakdown of the English courts would not take effect until he had rallied most of the officials around himself. On pain of generalization, Stephen was not completely to blame for the “nineteen winters [the

\(^\text{118}\) Ibid., 203.
English] had to endure,“¹¹⁹ though his ineptitude in control of the sprawling bureaucracy established by Henry I had done little to curb the mounting tide. To chart the decline of Stephen’s control, Edward Kealey tabularized the record of writs flowing from the chancery. While Henry I had issued an average of 9 royal writs for the last fourteen years of his reign from 1121-1135, Stephen had 13 for the first five years and then plummeted to 6 royal writs for the last 14 years of his reign from 1141-1154.¹²⁰ Stephen’s external control broke down due to the overturn of personnel, especially that of Bishop Roger of Salisbury, Henry I’s chaplain and Chancellor.¹²¹ Without a learned and steady system of advisors and clerks, Stephen had little to turn to when attempting to control his domain. Kealey argues that the drop in governmental efficiency was due mostly to Stephen’s rash overturn of chancery personnel. While Stephen’s anarchical government could be credited to the absence of learned men from the King’s Council;¹²² larger still, there is also the absence of a system with which those men would have enacted the King’s decrees.

The lack of a strong central justice under Stephen caused two distinct but concomitant shifts in power: smaller counties increasingly rivaled the King’s authority and acted with relative impunity, and secondly, the Church was able to seize more authoritative control of government administration. Geoffrey II de Mandeville, Earl of Essex, is perhaps the most famous example of such an anarchical rise in the lay sphere.

¹²¹ Ibid., 205.
¹²² Ibid., 216.
during Stephen’s reign, and his involvement in the civil war of the twelfth century has helped cement him among historians as the great champion of anarchy.\(^\text{123}\) When Henry I died, the inheritance of the throne became entangled in a contest between Stephen of Blois and Matilda, the daughter of Henry. Henry I had married Matilda to Geoffrey V, count of Anjou, which was not accepted by the barons, as they felt England would be seized by the count. A civil war ensued where the barons hesitantly supported Stephen. Matilda fled to France and bore her first son, Henry II. Among these barons was Geoffrey de Mandeville, who supported Stephen in his military campaigns. Stephen crafted a charter appointing Geoffrey the Earl of Essex in 1140 as a reward for his devout loyalty and service. Stephen, without the tight administrative control of Henry I, delegated powers to his barons, and Geoffrey suddenly became immensely powerful. Geoffrey’s loyalty was short lived, as the Empress Matilda had written to Geoffrey recognizing him as Earl of Essex and “granting him the custody of the Tower of London, the shrievalty and justiciarship of Essex, the lands of his paternal grandfather in England and Normandy, together with some lands of the royal demesne in Essex and the service of twenty knights.”\(^\text{124}\) Geoffrey could hardly refuse and quickly backed Matilda with an open rebellion against Stephen. Geoffrey had captured Stephen, but released him in 1141, reverting back to his original allegiance after further concessions in yet another charter.\(^\text{125}\) The dates of these charters is still in dispute, but they signify an important aspect of

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\(^{125}\) Ibid., 315.
baronial administration that Henry II and Thomas Becket inherit: the barons’ ambitions and hunger had seized so much power that Stephen’s unwanted decentralized system was totally broken, extremely corrupt, and wholly inconsistent.

The Becket controversy itself can also be placed in the light of Stephen’s reign, as the disorder of the secular power allowed the ecclesiastical courts to grow. Thomas Becket, fifteen years older than Henry, had his first taste of public life and duty under the long collapse of Stephen’s reign.¹²⁶ The customs Becket believed were common and justified were those which took back the patronage of churches away from lay parishioners and place it in the custodian of monasteries and bishops. The most relevant ecclesiastical growth under Stephen was the increase in cases heard by the ecclesiastical courts. It is not clear that this was a result of the uncoordinated law or the absence of a coherent legal apparatus with which to deliver writs and a judgement therein. Both, however, would be swiftly resolved under Henry’s reign in 1154. The task of restoration set before Henry also included the question of the Church: would restructuring the throne include a return to custom before Stephen and a seizure of the liberties the Church had wrought or would restoration be impossible and a new relationship between church and state have to be forged? The decision was not particularly easy for Henry, as a stretch of regal power had to admit its dependency on the Church’s conferment of divine acceptance. Henry owed his entire coronation to these same liberties, as it was Archbishop Theobald’s political maneuvers against Stephen that cost his son, Eustace, the crown.

Henry’s response to the anarchical disorder he inherited was the reform of both the law itself and the manner in which that law was known and interpreted. This is not to say that the institution of what would become known as the “common law” was the product of a few sweeping revolutionary reforms. Henry’s legal policies were slowly enacted over the span of his entire reign beginning in 1154. Henry’s policies mostly center on the overlapping jurisdictions of the byzantine legal system – both royal and ecclesiastical – that had developed in England. The twelfth century English legal system was a complex of courts including those “of the vill and the manor, shire courts, borough courts, honorial courts and the ecclesiastical courts of archbishops and bishops, and the newer courts of archdeacons, and…the court of the lord king.”  

Each had a certain scope: the vill would hear those cases relating to petty crimes, the manor those which pertained to the landlord’s estate, the ecclesiastical courts those which pertained to the clergy, and the King’s court heard any remaining cases and appeals the King wished to hear. The overlapping jurisdiction of the ecclesiastical and royal courts would be the kindle of the feud between Becket and Henry, but it was the law which those courts interpreted which enflamed it.

The simplicity Henry desired would be the outcome of his endeavor, not the start. Such simplicity would be the removal of sheriffs in the “Inquest of Sheriffs” of 1170 and the establishment of a circuit of justices known as the General Eyres. The establishment of a system of sheriffs, justices, and juries was used to help coordinate and codify a sprawling legal landscape and to bend England under one coherent rule. In the spring of

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1170, Henry II removed many sheriffs from office on grounds of maladministration, misuse of funds, and abuse of power.\textsuperscript{128} It was the sheriffs’ responsibility to formulate a case and, if necessary, bring it before a jury, and to have a roaming Justiciar render a judgment.\textsuperscript{129} The General Eyre would then discuss their decisions amongst each other and formulate some continuously evolving doctrine with which to assess future cases. This standardization, however, came with the alarming risk of royal obsolescence. The more he delegated authority, the less influence he had to affect the particular decisions of each case. To curb his potential impotence, Henry devised a system where petty assizes – the form of action coupled with the writ which originated it\textsuperscript{130} - allowed for smaller pleas to be heard by royal justices while still allowing for certain writs like the praecipe to be granted by Henry on an \textit{ad hoc} basis. In this Henry could reasonably delegate authority to his royal justices while still controlling the flow of writs from a central position. The result was a simpler hierarchical machinery whose goal was to provide a consistency of judgement through a standardized system of writs while still maintaining a strong royal presence through limited delegation.

As the standardization of the courts grew, it was not long before the overlapping jurisdictions of the two largest \textit{curia}, ecclesiastica and \textit{regis}, would be marked for conflict. The problem was not so much that Henry and Becket had differing schemes of justice, but rather that the two had rival and incompatible legal codes to operate and defend – canon and common law. Bishop Foliot, notably the most vocal clerical opponent

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\item\textsuperscript{128} Ibid., 287-290.
\item\textsuperscript{129} Ibid., 293.
\item\textsuperscript{130} Ibid., 292.
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to Becket, claimed that there was “no question of faith or morals involved in the dispute, [but] simply a matter of church administration.”\(^{131}\) While certainly Foliot is correct in that the dispute was about administration, the principles which guided that administration\(^{132}\) were also pushed into conflict. Staff and scepter were now “two swords” drawn into combat due to the historical development of the doctrine of papal supremacy and the incommensurability of the evolving legal doctrine Henry had established. Common law mirrors canon law in that both were developed from a desire to strengthen their respective monarchies as to claim authoritative supremacy. However, as both powers attempted to reform and refurnish their legal apparatuses, both had claimed the supremacy of their position and their law. The humiliation of the German Emperor Henry IV at the feet of Gregory VII at Canossa a century prior sent an unmistakable message to the monarchs of Europe that the papacy, once organized efficiently, was to be a formidable international organization. The papacy had been strengthened on the continent, but England only felt this in waves afterwards. While Henry II had granted concessions to the Church and had respected those charters and liberties granted by William the Conqueror through Henry I, the more recent growth the Church experienced under Stephen had to be addressed and wrested back. The development of common law was the first step on a long path that placed the King in direct conflict with the canon law of the Pope.

The advent of the “Reform Popes” marked a new stage in ecclesiastical law where the renewed interest of a papal monarchy captivated Rome. Prominent among these popes were Gregory VII, Alexander III, Innocent III, Gregory IX, and Innocent IV. The

\(^{131}\) Ibid., 521.
\(^{132}\) Matthew 22:21
lay Investiture Controversy of the previous century and the titanic repercussions of Henry IV begging Gregory VII for forgiveness on account of his excommunication lay the groundwork for a solid argument in support of papal supremacy. The Holy Roman Emperor’s excommunication and penance was the dawn of a coming age of reform and growth from Rome – an ordeal Henry II would not want to duplicate in his sprawling and overextended empire. The particular customs of each ecclesiastical region had to fall to the dominant and centralized hand of the Pope and the requisite codification of law. The canonists who built upon the old Roman law had “devised a rational basis for a general attack on custom,”¹³³ and their justification was that “if Christianity was to continue against the disruptive forces of feudalism, the papal monarchy was a necessity.”¹³⁴ Just as Henry II would codify the customs of Henry I as to strengthen his central position, the reform popes forged a new canon law as to enforce papal supremacy. The problem, therefore, was not that the specific provisions of common law and canon law were totally incompatible, but rather that both legal systems justified themselves through claims to supremacy.

Despite this road towards conflict, neither Henry nor Becket truly believed that common and canon law were totally incompatible. Both legal systems would be in agreement on many issues, and on many others the Church remained silent. For example, Henry’s greatest issue during the early years of his reign was not the abuses of the clergy, but rival claimants to property and the problem of inheritance. The Church had even simplified the older civil law on inheritance and ownership which “was easily adapted

¹³⁴ Ibid., 309-310.
and a recent disseisin was protected by Henry II’s Assize in the same way as a recent dispossess in canon law.”¹³⁵ Henry was not opposed to the specific constitutions of canon law, nor was he antagonistic towards canonists. It would not be until January 1164 at Clarendon that Henry would finally turn his attention to the troublesome issue of criminous clerks, who he felt were subject to both canon and common law. For the decade prior, Henry had used and adapted the legal apparatus at his disposal to handle issues of inheritance – a problem born out of the relatively peaceful transition from Stephen. The Treaty of Westminster of 1153 paved the way for Henry’s ascension to the throne not as the illustrious conqueror but the compromising diplomat ready to extend the royal will through the instrument of royal law. His chief concern was to “return to the status quo ante bellum”¹³⁶ and the codification of the ancient customs established by William the Conqueror and Henry I. Henry needed a new law that could be built on custom but not limited to it.

Likewise, since 1140 the Church had also attempted to codify “customs” with Gratian’s Decretum and Peter Lombard’s Sentences.¹³⁷ This new codification of canon law, similar to the new formulation of common law, was an attempt to use previously recognized customs while curbing their inconsistencies. The “great spirit of the canon law” was that “the law could not make provisions for every hypothetical case [and] the door was always open for custom...[but] custom was binding only when it is reasonable,

¹³⁵ Ibid., 304.
i.e. when it is in accordance with the principles of the Church.” It is in the last clause here that common law and canon law, which are born from the same motivating thrust, diverge. The system of itinerant justices crafted by Henry was also to modify custom as it seemed reasonable, but the standard for such a rationality was not given through divine revelation nor the Magisterium. For the common lawyers, the standard of rationality with which to judge custom was handed down by the King and lesser judges. Canon lawyers, however, appealed to custom insofar as such custom respected the core doctrine of the Church, now in the hands of an increasingly powerful papal monarch. While “custom” bore the problem for both legal systems, the respect of that custom and the rationality employed through its systematization pushed each into conflict.

The development of common law as to exist alongside canon law was never a tenable option from its inception. Henry himself knew as much – what he was asking was not actually a mere revival of “ancient custom,” but rather a grand step out from under the cloak of Papal jurisdiction in order to firmly plant the King’s authority on more solid ground. While Henry certainly believed that common law and canon law were not incompatible in substance, the supremacy both claimed set him on a dangerous course against the Papacy. The result of the lay Investiture Controversy and Henry IV’s humiliating penance before Gregory VII had shocked Henry II. The threat of papal interdict and excommunication with a subsequent baronial revolt was a serious possibility under the renewed strength of the reform popes, and Henry tread cautiously in his dealings with Adrian IV and Alexander III. W.L. Warren argues that Becket had remained steadfast to this strand of “Gregorianism” that had “threatened to reopen the

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138 Ibid., 303.
whole delicate question of the status of the clergy within the state.”¹³⁹ It is a gross speculation that “Becket saw himself as another Gregory VII…[wanting] Henry II on his knees begging for forgiveness,”¹⁴⁰ though it is reasonable to argue that the spirit of Becket’s arguments were in line with Gregory. The memory of Canossa was fresh in both Henry and Becket’s minds, and the two legal codes they wielded were done in light of the Gregorian controversy of the previous century.

Becket’s problem with common law was not so much the content of the law but rather the scope of the law. Becket had argued along accepted Church lines that “Christian kings ought to submit their administration to ecclesiastical prelates not impose it on them.”¹⁴¹ Becket continued that “God Almighty has willed that the clergy of the Christian religion should be governed and judged, not according to public laws and by secular authorities, but by bishops and priests.”¹⁴² Becket’s stance could not be clearer: the two authorities of church and state were both granted by the grace of God, but the Church had a higher calling, a more authoritative breadth, and therefore a more comprehensive and dominant law. In a January 7, 1169 letter to Henry, Becket reminded his King that “I offered you…that for God’s honour and yours I was ready to place myself entirely in God’s mercy and yours, so that I might thus earn your peace and favour.”¹⁴³ Becket was quick to follow up that “I conceded, therefore, my lord, that I would observe [the ancient customs], as far as I could, saving my order…and that I have

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¹³⁹ Ibid., 514.
¹⁴⁰ Ibid.
¹⁴¹ Materials, Epistolae, V, 274-5
¹⁴² Ibid.
¹⁴³ Archbishop Thomas of Canterbury to King Henry of England, January 7, 1169: 186
never more willingly served you than I am still prepared to do.”144 Becket here presents the nuance of his argument. The theological commitment to the supremacy of canon law did not entail complete disobedience to the Crown. Only in those matters which pertained exclusively to the secular authority did Thomas believe he owed obedience and to those ecclesiastical matters he owed obedience to the papal monarch. Becket’s Gregorianism, against Warren’s interpretation, was not arbitrarily contrived from the ravings of his ego, but was instead firmly established in canon law and in the customs of the Church.

Though this might hint that Pope Alexander III had a strong grasp on the Archbishop’s decisions and judgments during Henry’s reign, this is not true. For example, the isolation which England enjoyed allowed for the continuation of the quarrel between York and Canterbury during the early years of Becket’s tenure as Archbishop. Thomas Becket was largely left to his own judgment and without much aid from Rome even at the height of his feud. Furthermore, the international situation developing did not help the relationship between Becket and Alexander III. Alexander was the first of a long series of canon lawyers to become Pope, and he was bolstered by the reform movement of his predecessors.145 Alexander had attempted to prevent Frederick Barbarossa from establishing himself in northern Italy and had rallied an army to his cause. From 1164-1176, notably concurrent with the Becket controversy from 1163-1170, Alexander’s attention was consumed by this international crisis with Frederick and his support of Becket was noticeably weakened. Becket and Alexander still maintained a lengthy correspondence, but as 1170 drew closer, Alexander had granted Becket “the power to

144 Ibid. (emphasis added)
discharge the duties of your office over the people, the realm, and the King himself, freely, without the obstacle of an appeal, if after the mature and serious reflection of a priest you judge that it is appropriate and advantageous for you and your church.”

Alexander had essentially told Becket to handle the issue himself and do whatever it was that seemed advantageous. This was not the intercession of a powerful international monarch that Becket had wanted. He warned Alexander that “those who are loyal to you are afraid that while you are waiting for better times to exercise justice, the best time was slipping away.”

Alexander positioned himself more as a mediator than as an authority throughout the conflict, and this has often been attributed to Alexander’s reluctance to enter another quarrel with yet another monarch in the middle of an ongoing international crisis.

Alexander himself was forced to flee Rome, as Frederick Barbarossa and his Archbishop Rainald captured the city and installed the antipope Paschal III. Soon after, a disease ravaged the German army, taking Rainald, and the conquering Barbarossa was forced to retreat north. Once the issue was resolved, Alexander turned his attention to Becket and Henry with the goal of compromise, not subjugation. Alexander had even admonished Becket for liberally discharging excommunications while negotiations of the Constitutions of Clarendon were still advancing. Alexander helped orchestrate one final meeting at Montmartre in 1170 with hopes that might end the feud. The meeting fell apart

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146 Pope Alexander to Archbishop Thomas of Canterbury May 1168: 166.
147 Archbishop Thomas Becket to Pope Alexander June 1168: 169.
149 Ibid., 270. Becket remarks “The schismatical Frederick has been ignominiously humiliated.”
with Henry obstinately refusing to grant the *osculum pax* – the kiss of peace – to signify good will between the King and the Archbishop. Becket blamed Alexander, claiming that, “who will dare to resist that King whom the Church of Rome encourages and arms with such triumphs, leaving a pernicious example to posterity?”\(^{150}\) Once more, Becket’s feeling of betrayal came from his zealous loyalty to his office. From Becket’s perspective, the Archbishopric is subservient to the papacy, but these obligations, or as Henry would call *customs*, are only compulsory insofar as they are aligned with Church teaching. By the end of the Montmartre conference Becket believed that his office was alone in a fight that the papacy had neglected and refused to enter. Becket’s loyalty, therefore, was to the pope but only insofar as the spirit of canon law, the *reasonableness of this custom*, allowed. While the feud between Henry and Becket is often framed from a biographical chart of their character, I argue that an understanding of the spirit of canon law and Becket’s loyalty therein reveal the depths of the feud in a legal register. Canon law’s claim to reasonable custom counters common law’s claim to royal precedent, and Becket’s refusal to comply with the King and with Alexander stems from his observance of canon law and the actions its strict dictates enjoin.

W.L. Warren’s *Henry II* argues instead that the quarrel between Becket and Henry cannot be used to focus the King’s larger policy towards the Church, since Becket’s understanding of his King had remained static while the young Henry had evolved once Becket was exiled in 1164. Warren argues that “the Archbishop’s quarrel with the King proved irreconcilable because the conception of the King’s intentions remained crude and

It is to this objection that we now turn our attention. Warren’s main objection to the argument I have presented is that Becket and Henry were torn apart not because of the inherent incompatibility of their offices, but that “in denouncing what [Becket] took to be Henry’s ecclesiastical policy he was denouncing that narrow conception of royal rights which, it is likely, he himself had helped to foster in the young king’s mind: he thought he knew what Henry would do because that is what he would have done in Henry’s place.” That Becket’s quarrel with the King was born out of “what he would have done in Henry’s place” is an amount of speculation that exaggerates the historical record, but it is the first claim, Becket’s denouncement of Henry’s ecclesiastical policy as born from his narrow conception of royal rights, that demands the most serious attention.

Warren refines his argument further that “the Church’s objection was that the form of the safeguards he demanded offended canonical principles, but not that his concern was itself reprehensible.” Warren is correct insofar as most of the articles in the Constitutions of Clarendon were accepted by the bishops, and even Becket himself, and that Henry’s main concern was understandable. However, it is not simply that Becket defied Henry because he objected to the content of the Constitutions as reprehensible in themselves. He had explicitly admitted that his concern was for the sanctity of his principles. Thus, while Becket could have practically reached some negotiation with the King, as Anselm had done with Henry I, the principle of ecclesiastical supremacy was too heavy a burden for realpolitik to prove advantageous for both parties. As Warren admits,

\[152\] Ibid., 401-402.
\[153\] Ibid., 448. (emphasis added)
the Constitutions of Clarendon demanded theoretically incompatible doctrines to be placated into a practical negotiation. The sacrifice of principles is proportionate to their importance, and it is not difficult to see how Archbishop Becket would see the principle of spiritual supremacy over worldly powers to be a vital one to protect.

The Church, however, had indeed negotiated and sacrificed principles as Archbishop Theobald demonstrated during the early years of Henry II’s reign. Henry hoped that Becket would replace Theobald and collaborate with him to combat rampant criminality after the reign of Stephen. On the matter of excommunication, a clear extension of ecclesiastical authority, Henry had felt that “it pertained to his royal prerogative that no one who held of him in chief should be excommunicated with his being consulted.”\(^{154}\) A tenant-in-chief was any person who held land directly as a result of the king, which was usually seen as an extension of himself. In this way, an excommunication of any tenant-in-chief would be by extension an attack on the Crown. When questioned by Becket, Henry had argued that this was a “well known custom of the realm.”\(^{155}\) Archbishop Theobald had earlier supported this prerogative when declining to excommunicate Robert of Valognes despite being commanded by a papal mandate. Theobald cited the King’s argument that “he had forbidden his bishops to pronounce [a] sentence of excommunication on any of his barons.”\(^{156}\) Henry’s argument from custom was in fact sound: William the Conqueror had established a principle shortly after the Norman Conquest that none of his “tenants-in-chief…might be excommunicated without

\(^{154}\) Ibid., 458.  
\(^{155}\) Ibid.  
\(^{156}\) Ibid.
the knowledge and consent of the King.” Theobald, in recognition of this custom, had thus placed his loyalty to his king above his loyalty to Church authority. This does not constitute a negotiation of principles, but an exchange. Despite Henry’s insistence that he did not want to consume ecclesiastical under regal will, the collaboration between Church and Crown, as evident by Theobald’s submission, required at least one party to abandon some set of principles.

Henry had once again argued from custom, and in this it was understandable to assume that Becket would follow the same custom as his predecessor, Theobald. Theobald, while a noble Archbishop and pious man, collaborated in a way which Becket could not follow. While consultation of the king for excommunications was in fact a custom, it still does not counter Becket’s main argumentative thrust. Becket was not questioning whether the kings before had ordered their bishops not to excommunicate their barons, but whether kings should have ever gained that power. The gap between Becket and Theobald further widened by 1163 when the case against William of Eynsford had reached the audience of the Archbishop. William had actually seized a priest, Laurence, and expelled him from Eynsford Church. Becket, in an unmistakable move against Henry, revived the Archbishop’s power and excommunicated William. Warren argues that the excommunication during Eynsford was a “public gesture of disapproval of any interference with ecclesiastical jurisdiction, even such well-meaning interference as King Henry’s attempts to prevent disseisin without trial.” Once again,

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158 Ibid., 145.
the argument becomes misconstrued as whether Becket believed Henry had a calculating scheme to destroy the Church through a seizure of its excommunicative power. Becket had only restored the power of excommunication that had been historically recognized under ecclesiastical jurisdiction.\textsuperscript{160} Becket had even decided to absolve William from excommunication in a show of good-will to the King and to assuage his anger.\textsuperscript{161} Becket’s motivations, therefore, were not to curb the insatiable appetite of an unruly king, but rather to restore the privileges that he felt Canterbury, and the Church at large, were entitled to enjoy.

The problem can be elaborated thus: had Becket and Henry’s feud, the English quarrel, truly been the simple misunderstanding of the zealous Archbishop who failed to recognize the subtle and practical concerns of Henry, then the blame falls entirely on the man Becket and attributed to his personal characteristics. Warren’s history of the feud indicates as much with a consistent discussion of Becket’s strengths and weaknesses qua person and not qua Archbishop of Canterbury. This interpretation, while not totally inaccurate, is still lacking in that it does not account for the repetition and consistency of this quarrel from St. Anselm in the eleventh century to St. Thomas More in the sixteenth century. If the quarrel was the result of Becket’s imprudence, then this does not account for the feud between Anselm and William Rufus, Anselm and Henry I, and Thomas More and Henry VIII. While each of these episodes hold important particularities that cannot be swept aside, what unites them is the clash between papal and royal law as derived from deeper commitments and perceived obligations. Warren is most likely not willing to

\textsuperscript{160} Matthew 18:18; Luke 6:22
contend that in each instance of this English quarrel it was the particular characteristics of each man who rendered an otherwise negotiable problem as insoluble. Becket’s final refusal of the Constitutions of Clarendon and then his eventual martyrdom at the hands of his King were the result of the incompatibilities of two distinct offices – Crown and Mitre – defending two distinct legal codes – canon and common law – each vying for supremacy. While we can grant Warren that Becket’s rash temperament definitely heightened the feud such that the martyrdom was avoidable, it is unlikely that the quarrel itself could have had as clean a solution as Warren suggests.

It is possible to synthesize Warren’s critiques of Becket and support of Henry with my argument for the permanence of the quarrel as it extends past the particularities of each man. Henry, according to Warren, understood the problem simply and as such provided a simple solution: a harmony could exist between church and state if the ecclesiastical courts were to simply allow royal courts to apprehend and punish criminals that had so far evaded justice. Henry had no intention of swallowing ecclesiastical courts entirely and effectively strangle the Church into submission. In the spirit of his other policies to restore the Crown to that of his grandfather, Henry had indeed earlier supported the Church admirably and had cooperated fully with Pope Alexander III in 1160 and 1163, when Henry had allowed the exiled Pope to convene a council of bishops at Tours which lay under his jurisdiction.162 Warren cites Henry’s aid to Pope Alexander as an exercise in diplomacy and a “general desire to establish amicable relations with the highest ecclesiastical authorities.”163 Henry would then continuously use liberal

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163 Ibid., 452.
interpretations of “ancient customs” to negotiate amicable terms between canon law and his newly formed common law. From Henry’s perspective the feud was not one of philosophical maxims and theoretical principles. His position was clear and simple: he wanted harmony between church and state, and he believed that a singular and consistent justice would effect this.

In this Warren is exactly correct, and it does not contradict the impersonal interpretation of the feud that I have thus constructed. It is precisely that Henry did not want to feud that the existence of the quarrel becomes impersonal. While Henry certainly later went on to publicly decry and humiliate Becket, the feud was not born out of a long-standing personal conviction to control the Church and dominate the clergy. It was not Henry’s desire when he was crowned in 1154 to hold the Church in contempt like William Rufus or to weakly succumb to the expansive institution like Stephen. Henry II’s emulation of Henry I was an attempt to restructure the kingdom and establish a semi-permeable barrier between the Church of England and Rome as to effectively administer justice without the constant looming presence of the Roman Pontiff. The feud, then, becomes not a matter of Henry’s personal temperament and judgment but rather one of bureaucratic administration and delineation of authority. Even Gilbert Foliot had admitted that the King “had no wish to interfere with appeals to [the Pope’s] court, but merely claimed to himself the right, in civil causes, of first taking cognizance of the case according to the ancient usage of the realm… [and] should it be prejudicial to [the] authority or honor [of the Church] in any respect, he would submit the matter to

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164 Henry, in writs to the bishops and sheriffs: “You know how wickedly Thomas, archbishop of Canterbury, has acted towards me and my kingdom and how basely he has fled.” Materials, Epistolae, V, 151-2
correction at the next general council of the Church in his realm." The problem, as Becket perceived it, was not that the King wanted to consume the Church through plotting its capitulation; rather, it was that even the simple appeal to ancient custom was itself incompatible with canon law buttressed by the papacy and the magisterium.

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“When a man takes an oath, Meg, he's holding his own self in his own hands. Like water. And if he opens his fingers then—he needn't hope to find himself again. Some men aren't capable of this, but I'd be loathe to think your father one of them.”

-Robert Bolt, A Man for All Seasons

Thomas More speaks prophetically in Robert Bolt’s 1960 play, A Man for All Seasons, when describing the ambivalence in his heart once two rival sets of obligations began to drift apart during the reign of Henry VIII. This process began subtly and slowly during the Becket controversy four centuries prior, but the outcome of that episode did not reveal the true extent to which a wedge had been struck between ecclesiastical and royal obligations by the two swords of the medieval polity. The dramatic conclusion of Becket and Henry’s clash saw the depressed monarch under Papal interdict, forced to offer concessions for the terrible sin weighing down his conscience. The Compromise of Avranches of 1172, as these concessions became known, exonerated Henry of Becket’s death, but also demanded that Henry rescind any property taken from Canterbury during the feud and provide two hundred knights to “serve for a year with the Templars in the

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166 A Man For All Seasons, Act II, Scene VII
Holy Land.” It seems that finally in death Becket was able to secure those liberties of the Church which he had been unable to in life.

Yet for all these concessions and compromises post mortem, the groundwork for England’s separation from the Holy See was subtly laid in plain sight. Henry never did send the two hundred knights he had promised at Avranches, and had remained steadfast in his commitment to the Constitutions of Clarendon, the very document he was meant to revoke. Henry loudly proclaimed that he would “willingly redress whatever [he] had done amiss; but if anyone attempted to impede or abate the rights, customs, and dignities of [his] realm, [he] would hold him as a public enemy, for [he] would not stomach any diminution of the dignities and customs which [he] had inherited from [his] predecessors.” The same arguments Henry had used against Becket throughout the controversy from 1163-1170 were reaffirmed, masked by a new language of concession. The discordant clash of sacerdotium and regnum was never harmonized, only quieted – slowly creeping to the forefront over the next four hundred years. The dispute between Thomas More and Henry VIII was not a mere repetition of the Becket controversy, but the symbolic resonance is unmistakable. Where Thomas Becket argued in defense of the liberties of the ecclesiastical courts, Thomas More argued in defense of the division between regal and papal power and the derivative obligations born therein. Both martyrs conceived of their struggles as between the supremacy of the Church against an encroaching temporal king. Even Henry VIII, the very figure of royal power, supports

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169 Ibid.
this understanding of resonance. Henry VIII heard within the Becket story a tale of
defiance and a clarion call for “all who felt an inarticulate resentment at the heavy hand
of the King’s authority.” The death of Thomas Becket captivated the medieval mind,
spawning both the “Cult of Becket” and an entire economy of pilgrimage to Canterbury.
Even until the sixteenth century, many came to pay their respects to the famed English
martyr of ecclesiastical liberty. Henry VIII saw the veneration of Becket as a direct attack
on his own authority. This insecurity provides further evidence that both More and Henry
saw their struggle in some way resonant with the Becket controversy of the twelfth
century.

What remains to be analyzed is in what dimension the historian ought to place this
resonance. Theologically, More’s commitment to silence strikes at the very heart of the
principle of conscience objections to temporal power. Historically, both of these conflicts
involved the political and judicial machinations of the Crown set against the Church. In
this historical setting, the historian places Becket and More along the same dimension
which charts a narrative from the one to the other. Legally, both conflicts explicated the
common law – Becket fought against its first applications with regards to ecclesiastical
liberties – More used it to fight against Royal supremacy. Each of these has been taken
up by learned historians such as Thomas Maitland, J.J. Scarisbrick, and R.H. Helmholz,
and it is from these authoritative analyses that this history elects the legal dimension.

Thomas More’s trial is unmistakably a legal issue. This small point is often
overlooked, but subconsciously understood. Historians of More such as R.H. Helmholz
and Elizabeth McCutcheon have shown with great profundity the legal character of

170 Ibid., 518.
Thomas More’s feud, trial, and martyrdom. Helmholz and McCutcheon both contribute to the outstanding 2011 procedural legal review, Thomas More’s Trial by Jury. In this work, they render the trial in its historical context as a window into the proceedings of common law during the sixteenth century. Furthermore, Thomas More’s Trial by Jury devotes a considerable amount of time to an analysis of the trial in relation to contemporary common law proceedings. As far as Helmholz and McCutcheon are concerned, the trial of Thomas More sat on the juncture of legal, theological, and political dimensions – three of which constitute the heart of medieval man. Yet Thomas More’s trial also sits on a fault line, with the medieval world on one side and the new, turbulent Reformation unfolding before him on the other. More’s trial does not cause the English Reformation, but it does demonstrate how it struck at the very heart of the medieval world. Thus Thomas More’s Trial by Jury is commendable for illustrating just the extent to which the historical developments of Reformation coincide with the legal usurpation of the spiritual province as a means of executing the newly strengthened royal prerogatives.

Henry VIII is an obviously central figure in the history of Reformation. He began as a medieval king with his eye towards the harmonization of regnum and sacerdotium, but he ended as a new, unprecedented amalgam of those two powers. The resulting synthesis gave Henry a newfound ability to look down upon his subjects both from within the temporal dimension that he had always enjoyed, and now from the dizzying heights of the divine. The separation of these two pillars of medieval society which Henry II had believed divine and impregnable were brought together by Henry VIII’s sheer force of will. Indeed, the conflict for Thomas More becomes more awesome once understood that he stood on the threshold of the medieval world. On one side was the grumbling piety of
Henry II who, with begrudging acquiescence of Roman influence, accepted the Church’s doctrines of temporal and spiritual power. On the other was Henry VIII whose defiance and obstinate refusal to accept papal judgment concomitantly rebuked the very distinction which had brought Henry IV to his knees at Canossa and Henry II to the lash. More’s silence, trial, and martyrdom – while not causing the consolidation of regal power – nevertheless stands as a definitive marker of a waxing Reformation and waning papal influence.

Thomas More was martyred for a similar reason as Becket, but the difference in outcome *post mortem* is the result of a difference in context. Thomas More was not a cleric; his defense of the Church was not born out of an obligation that can be as readily seen as Becket. By virtue of being the Archbishop of Canterbury, Becket had a set of real obligations conferred upon him by his consecration. Thomas More, however, was a lay Catholic and a barrister of the common law who was not called upon to defend the Church in the same way. Simply put, More’s motivations are thrown into question in a way that Becket’s are easily identifiable. The result is that the “enemy theory” is easier to apply to Becket than to More, but it is still possible and useful to do so. The enemy theory is applied to Becket through this channel of obligations. Becket zealously executed the duties of his office – whether that be deacon, Lord Chancellor, or archbishop – he faithfully did what he was sworn to do. Thus, the zealous archbishop would exemplify those principles in a way that others who had sat on the throne of Canterbury would not. By virtue of his piety, whether to his earthly king or his spiritual father, Becket wielded the powers entrusted to him. Becket was thrust into conflict with Henry precisely because of the way in which such a zealous archbishop brought to the
forefront principles which had heretofore been left mostly out of direct disputation. Maitland, Pollock, and Plucknett’s enemy theory can thus be easily extracted from Becket because this twelfth century conflict had an easily discernable dimension of principles. Thomas More, however, is not as simple. Since More was a Lord Chancellor and a barrister of the King’s court, it is more difficult to see how he represents the quarrel between Crown and Mitre since he did not himself say he was a representative of the principles he had defended. For the enemy theory to aid in an analysis of his martyrdom it must be sufficiently demonstrated that More is open to such an analysis and that he represents in some capacity one of the two powers which were in conflict.

The episodic clash between Crown and Mitre – and the common and canon law which each wielded – is a legal issue in the sixteenth century just as it was with Becket in the twelfth century. This episode, while not exhaustively so, can be separated into two complementary components: the legal quarrel over the “Great Matter” and the trial and martyrdom of Thomas More as a result of his silent dissent. Of the first component, J.J. Scarisbruck provides a phenomenal analysis of the legal arguments both for and against the King in his 1968 work, *Henry VIII*. While Scarisbruck undoubtedly endorses the idea that there existed an irritable friction between Henry VIII and the Church over this matter, it does not seem that he would go so far as to abstract the enemy theory from this incredibly complex juncture of political, social, legal, and theological conflicts. Where Scarisbruck is hesitant, Henry VIII himself offers some insight to his own understanding of the issue before him: “I shall never consent to [the Pope] being judge in the [divorce].

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Even if his holiness should do his worst by excommunicating me and so forth, I shall not mind it, for I care not a fig for all his excommunications. Let him follow his own at Rome, I will do here what I think is best.” The cracks emerging between England and Rome, as Henry understood it, rested on the fault line of judgement and jurisdiction – a matter resting squarely within legal studies. In this way, Maitland, Pollock, and Plucknett’s enemy theory can be applied to the more particular studies of the Great Matter of the early sixteenth century principally because this was a legal issue and therefore open to the full breadth of legal histories and extrapolations.

Likewise, the trial of Thomas More is open to this same application of the enemy theory since it, too, is but one moment in a long legal history which resulted in a waning canon law and a waxing common law. The trial was a product of the common law and it unfolded just as any trial would with a reading of the indictment, a pleading of not guilty, argumentation, evidence, and a verdict rendered from a jury. The conclusion of the trial would also be taken up by legal historians as the natural conclusion of the legal developments which had driven More to the block. The martyrdom of Thomas More, however, is not a climatic end to the reign of canon law in England nor of any legal history. On the contrary, it is but one important episode on a vast continuum and an unmistakable sign of canon law’s impotence in the assertion of its claims as the steward of spiritual affairs. The full extent of their weakness could be rendered no more

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explicit than from the mouth of Henry himself who boasted that “the spiritual men were ministers of the Crown, his clergy, exercising an authority delegated by him.”

Following from this assumption of spiritual power, “the Courts Christian, hitherto a separate legal system lying alongside the royal courts but piped to Rome, ran now to the Curia Regis.” Scarisbruck supports the argument that the theological struggles of the Great Matter eventually unfold as derivative legal developments. From this reading, Henry VIII consummated the common law with its triumph over canon law. This history cannot assert the larger and unwieldly claim that the martyrdom of Thomas More caused this triumph, only that the outcome of the trial was likely given the context of common law’s triumph.

To apply the enemy theory to the trial is to also consider the wider political arena each battle was fought in. The political landscape, simply put, was crowded by titanic figures of incredible reserves of will. Henry VIII, Thomas Cromwell, Thomas Cranmer, Thomas More, and Bishop Fisher each worked to secure their own agendas. These political men flood the trial with their desires and schemes, and thus this multifaceted gem demands a careful, nuanced appreciation of the jury and their predictable verdict in light of exterior forces operating upon them. Henry Kelly, Louis Karlin, and Gerard Wegemer allude to a new consensus that the trial was actually not predictable, but carefully prepared and the “judges were amenable to reasonable arguments.” They quickly dispute this new consensus and instead offer support for the argument that

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174 Scarisbruck, Henry VIII, 384.
175 Ibid., 385.
More’s trial was a “political miscarriage of justice.”\textsuperscript{177} One look no further than the machinations of Thomas Cromwell\textsuperscript{178} and the perjury of Richard Rich\textsuperscript{179} to evince this interpretation. Thomas More was a formidable lawyer and yet he could not save himself with the defense that the Oath of Supremacy was wrongly made because the judges “alone have no power to enact anything, without the consent of all other Christians, which is contrary to the unity and concord of the Christian religion.”\textsuperscript{180} In a court of the king, no appeal to doctrine which lay outside and above its jurisdiction would hold enough weight to exonerate More from the three charges brought against him. From this view, the trial of Thomas More did not provide the \textit{coup d'grace} for canon law, but the impotence of More’s appeals to doctrine outside the \textit{curia regis} unmistakably demonstrate the sheer power of the King and the inability of the Church to save one of its most ardent defenders. The political maneuvers of the King, as Kelly et. al demonstrate, would not allow further delays or annoying spiritual obstinace.

Yet here an important distinction should be noted: the enemy theory rightly understood speaks not only of the historical reality of judicial conflict, but also that such conflict was engendered by the incommensurate principles each power asserted. There were others such as Thomas Cromwell and Thomas Cranmer, who, during this time, do not reveal the true extent to which the church and state came into conflict because they did not hold the same reverence for their conscience as More had. Of course this

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\textsuperscript{177} Ibid. \\
\textsuperscript{179} William Roper, \textit{Lives of St. Thomas More} (London: J.M. Dent & Sons Ltd, 1963), 42, 44. \\
\end{flushright}
argument should be tempered to mean that Cromwell and Cranmer did not act with the same zeal for their conscience and did not explicitly voice serious objections to the King in a way that would lead to their deaths as More had. For More, however, the Oath of Supremacy did violate his morals and in this he differed from his contemporaries in holding true to his conscience even until death. Therefore, the martyrdom of Thomas More is a finale in one sense in that the Henrician Reformation, once it had rendered explicit the principles that were in conflict, forced More to stand upon a “two-edged sword so that one who obeyed [the King] imperiled the salvation of his soul, while one who opposed it would lose his life.”

Where other common lawyers and canonists demonstrated clear signs of agreement and amicability, this was done out of negotiation in a pragmatic sense, not an actual diplomacy of principles. The death of Thomas More shows a difference outcome where once the Lord Chancellor actually committed to the claims each curia made he was led into an untenable and unenviable position of conflict. This is the very center of the enemy theory.

It is unavoidable at this point to continue without reference to the serious objections raised by R.H. Helmholz in his 1990 work, Roman Canon Law in Reformation England. Helmholz offers a sober interpretation of the Tudors’ relationship with ecclesiastical jurisdictions through an attempt to glean from the legal records of the spiritual courts a continuum of conflict and compromise. Both of these, as Helmholz argues, do not lend themselves to studies of individual episodes isolated from another, but, instead, indicate a consistency of policy where the temporal and spiritual courts felt a

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181 Ibid., 190. “vestrum decretum simile esse gladio ancipiti, ut qui obtemperaret periclitaretur de salute animae, qui adversaretur amitteret vitam.”
frictional irritation that eventually blistered by the Henrician Reformation. Helmholz explicitly states here that, “there were no decisive events” claiming that “what turns out to be only a temporary phenomenon can too easily be elevated into a final turning point [and] when this happens, later evidence seems contradictor, or at least highly inconvenient.” Evident of Helmholz’s disdain for a history of “turning points” is that Thomas More is not mentioned at all in this work, and Becket is only mentioned in passing once. For this research to support the martyrdom of Thomas More as a decisive event directly contradicts the interpretation provided by Helmholz. This is a fairly serious objection that must be treated at length before continuing in elevating More to a final turning point in just the way Helmholz decries. It must be shown, therefore, not only that Thomas More’s trial is evident of the friction between common and canon law, but also that it is representative of a series of climatic clashes that eventually led to common law’s predominance over its counterpart. This is not an easy task and should be taken with considerable care as the dangers Helmholz presents are easy to fall into.

The primary concern when discussing More as some definitive moment as the thematic finale to drama built from Becket is that this fails to fully capture the extent to which canon law continued with reasonable effectiveness even after the martyrdom of 1535. David J. Seipp and Helmholz both show the amicability between common lawyers and canonists and this matter has been mostly put to rest. The argument, properly understood, is not that there weren’t any conflicts between the two curia, only that such

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183 Ibid., 29.
conflicts existed in a separate, abstract dimension of principles that when grounded in historical reality do not manifest as dramatic clashes and romantic struggles. There were definitely some clergy who felt that Parliamentary action and common law, by virtue of the temporal sphere in which they operated, could not limit the jurisdiction of the Church, but the civil lawyers “were not among them.”¹⁸⁵ Though the true extent of Helmholz’s argument is not as broad as it seems *prima facie*. He argues that “there were also many matters of disagreement that *could* have separated the courts of Church and Crown, had either side attempted to implement the full extent of its jurisdictional claims.”¹⁸⁶ From this reading, Helmholz is not saying that there was no contest for supremacy between the two *curia*, only that such a contest never boiled into serious and radical revolutions of judicial administration. Since Helmholz, McCtucheon, Plucknett, and Seipp have all essentially and sufficiently corroborated the same account of a general communication of lawyers and principles between common and canon law, this history cannot demonstrate otherwise. Rather, for the discussion of Thomas More to evince the enemy theory, it must demonstrate that when otherwise implicit principles are rendered explicit, the rivalry between the scepter of the Crown and the staff of the Pope manifests as violence and martyrdom.

Helmholz’s anxieties can be used to temper the arguments of this history while not altogether denying them. This history addresses Helmholz’s critiques of labelling any event during the Reformation as climactic by firstly defending the thesis that the trial of Thomas More represents an unmistakable point on which English legal history hinges.

¹⁸⁵ Helmholz, *Roman Canon Law in Reformation England*, 162.
¹⁸⁶ Ibid., 1.
This is not to imply that the trial of Thomas More is the moment at which common law definitively bested its opponent, but that it is nevertheless evidence of a period in which this supremacy did in fact take place. Furthermore, Helmholz is hesitant both to the label of any event as “definitive” along with the claim that canon law was drawn into a perennial conflict with its regal counterpart. To argue that Thomas More’s trial is evidence of such a conflict between *sacerdotium* and *regnum* is to analyze this moment within a larger strand of legal history with a resonance in the Becket controversy four centuries prior. The legal analysis of Thomas More’s trial reveals the changes in Henry VIII’s justification of his own legal power and how this affected the courts spiritual through a change in soul, even if the actual structure of the courts remained relatively intact. Helmholz admits this, understanding that the Oath of Supremacy was indeed a sacrifice of principles even if the actual mechanics of the courts remained consistent both *ante* and *post* Reformation. To assuage the anxieties of Helmholz, then, this history of Thomas More will have to contextualize the King’s Great Matter as a legal issue. It will also have to sufficiently demonstrate that the trial of Thomas More is evidence of a shift in the way the canon law was *perceived*, not *practiced*. While Helmholz is certainly correct that the canon law continued to be practiced even after the supremacy of 1535 and the martyrdom of More, it nevertheless fails to fully address why this event has been traditionally seen as the “finale” to the interpretative method he rejects. Even if canon law continued to be practiced, even Helmholz admits that it was waning and undeniable that any waxing of regal power came concomitantly with a waning ecclesiastical authority. It is therefore fitting that the trial be rendered as evidence of these changes in the courts by firstly looking at the broader context of the King’s “Great Matter” and the
legal arguments provided and biblical exegesis provided by the most learned men throughout Europe.

The Great Matter of Henry VIII has been treated in many histories and with so much variety that it is difficult to offer any new insight or to find any available gap to fill in. Even the legal analyses which this history provides have been treated at length within other notable works such as J.J. Scaribruck’s authoritative *Henry VIII*. Furthermore, the problem of ecclesiastical jurisdiction has been equally treated with such a broad stretch of histories that it is similarly difficult to contribute significantly to that discussion. What more can be said that has not been said? This analysis of Henry VIII, however, will not be a mere biography of the man nor a disputation on the legal arguments presented in defense of his claims to spiritual supremacy. Rather, this work, in order to remain relevant and to offer humbly something fresh to this massive history, must render Henry VIII and his quarrel with Thomas More as part of the larger narrative found within Maitland and Pollock’s enemy theory.

The Great Matter of Henry VIII began with an insecurity, a desire, and a legal debate. It is certainly well understood that Henry VIII’s proposed divorce from Catherine of Aragon was spurred on by her inability to produce a male heir, the consequences of which threw the entire possibility of a lasting Tudor dynasty back into question.\(^{187}\) This should be highlighted for sake of clarity: the Great Matter grew out of an insecurity in the continuation of the Tudor lineage; the solution to this problem, as Henry saw it, meant to rapidly grow the organs of the Crown.\(^{188}\) Henry was not concerned with the theological


consequences of his marriage that he would later come to defend. It seems entirely more reasonable to argue that he was concerned with the power over England which his father had haphazardly managed to hold on to after the Battle of Bosworth Field in 1485.\textsuperscript{189} The matters of anti-clericalism, the interpretation of Leviticus and Deuteronomy, and the supremacy of the Crown over spiritual issues were all beyond the sight of Henry at this early stage in 1527.\textsuperscript{190} The divorce was not the product of a theologically-minded Henry unable to reconcile his marriage with his lamentable and unavoidable textual interpretations of Leviticus. Instead, Henry’s theological conclusions were born from his political machinations. This is not to imply that he operated from any less of a theology than had his opponents, but only that the theology which he had been committed to was explicit only after he had defined what he had desired. The divorce, simply put, was born out of this desire.\textsuperscript{191} Such desire, however, demanded legal arguments if it was to win Pope Clement VII’s dispensation.\textsuperscript{192} This point might seem trivial, but it nevertheless underscores the causal link between the political structure of England and the legal quarrel which ensued. The divorce seamlessly transitioned from a personal desire to produce an heir to a legal disputation with auxiliary theological imports and biblical

\textsuperscript{189} E.E. Reynolds, \textit{The Field is Won} (Milwaukee: Bruce Publishing Company, 1968), 295.
\textsuperscript{190} Christopher Haigh, “Anticlericalism and the English Reformation,” in \textit{The English Reformation Revised}, ed. Christopher Haigh (Cambridge: Cambridge University Press, 2000), 57. Not every historian agrees on this point about anti-clericalism. Christopher Haigh argues that anti-clericalism is a pervading platitude and myth that never bore much attention after the “Reformation Parliament.”
\textsuperscript{191} Scarisbruck, \textit{Henry VIII}, 152.
\textsuperscript{192} Ibid., 155.
exegeses.\textsuperscript{193} Where the desire had nurtured the matter, the legal struggle would see its conclusion.

The first point to consider, then, is the degree to which the Great Matter was a significant legal development in its own right or whether it was a mere continuation of what came before to what came after. Henry VIII inherited the medieval world that had been the backdrop for Henry II and Becket four centuries prior. In that earlier drama, both figures left the role of church and state mostly unquestioned, disputing instead over the smaller issue regarding temporal jurisdictional limits. Henry II had no intention of consuming the courts Christian nor did he entertain ideas of a twelfth century Henricianism.\textsuperscript{194} Henry II had “flirted with imperialists [but] he had withdrawn hastily from the brink of schism when it yawned inconveniently before him;” whereas Henry VIII stumbled into Reformation by means of his desire to put to rest the matter of royal succession. Henry II was a distinctly medieval king in this regard – not entertaining desire for consumption of the \textit{curia ecclesiastica} nor the administration of the sacraments. Henry VIII, however, while not initially demanding these concessions from the Church did see them come to the pass for the sake of his divorce. The difference between the medieval and Reformation views, as this reading would have it, is that there existed a real distinction between temporal and spiritual affairs – any disputes would not question this base axiom, only derivative claims over specific points of jurisdiction.

Even still, the medieval idea that there a line existed somewhere between temporal and spiritual power is not itself a categorical claim over the entirety of the

\textsuperscript{193} Ibid., 152.

\textsuperscript{194} Warren, \textit{Henry II}, 521.
medieval world. Closer inspection at the actual jurisdictions of both *curia, ecclesiastica* and *regis*, shows an overlap on both fronts where both clerics and laity touched concerns that at least in principle were reserved for the other. A brief detour into Chichester at the time of Henry’s Reformation can help illustrate this point further. Stephen Lander demonstrates this argument sufficiently in “Church Courts and the Reformation in the Diocese of Chichester, 1500-58” noting that “in the city of Chichester, for example, archbishop, bishop, and dean exercised ecclesiastical as well as temporal jurisdiction.”

This overlap is similarly seen in other well-administered diocese such as “York, Norwich, and Chester, and of certain deaneries in the archdeaconry of Taunton.” The medieval world had come to such a messy and byzantine overlap of jurisdiction that by the sixteenth century it is reasonable to conclude such jurisdictional encroachments would naturally be reciprocal. Such reciprocity is born from a similar desire for efficient administration, even if the actual content of that administration differs. The motivations of the bishop derive from their pastoral care, Lander notes, and these depend almost entirely on “the efficiency and authority of [the] Church courts.” From 1500-1558 the bishop of Chichester moved to consolidate the sprawling system of courts under his control as such a complexity of jurisdiction limited his own authority. Chichester had itself underwent a period of internal reformation despite the context of Henricianism that

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196 Ibid., 54.
198 Lander, *Church Courts and the Reformation in the Diocese of Chichester, 1500-58*, 34.
199 Ibid.
dominated the early sixteenth century. Contrariwise, the motivations of the Crown, multifarious in their own right, are often obfuscated by a multitude of lesser positions with their own agendas. Nevertheless, the record of ecclesiastical censures in office cases by the courts of the archdeaconry of Chichester show that from 1520-1521 there were 105 cases total, in the middle of the Reformation from 1533-1534 there were 85, and following the aftermath this sank even further from 1537-1538 to a mere 78 cases. The courts at Chichester never truly recovered from this.\textsuperscript{200}

What the case of Chichester demonstrates is just the extent to which the Reformation extended past the problem of the Great Matter and had already touched the jurisdictions of the spiritual courts for decades prior to the momentous clash of the 1530s. Considering the Reformation with this broader account pierces the layers of generalized platitudes about rising anti-clericalism or of a complete collapse of ecclesiastical judicial administration which has often been attributed to the English Reformation.\textsuperscript{201} To place the Great Matter as a legal struggle within the nebulous complex of English Reformation histories thus runs the risk of just these same platitudes and overgeneralizations which have been a blemish on otherwise well-articulated theses.\textsuperscript{202} At this point, Christopher Haigh offers an insight that this type of history falls victim to a distinct “whiggish” interpretation. Haigh notes that the outcome of the English Reformation was a Protestant England, and too often “the history of the English Reformation has been written as…a history of the progressives and the victors in which those men, ideas, and issues seen as leading towards the final Reformation result are linked together in a one-sided account of

\textsuperscript{200} Ibid., 50.
\textsuperscript{201} Haigh, \textit{Anticlericalism in Reformation England}, 56.
\textsuperscript{202} Ibid., 56.
Henry VIII, as the “victor” of this sixteenth century quarrel, must be considered with Haigh’s insights in mind such that his role within this history is not seen as predetermined or normatively justified. Such predetermination, as a Whig history would present it, would draw a distinction between “reformation” and “revolution;” where the former connotes something real and good in need of maturity into something better, whereas the latter indicates something wicked or rotten in need of a new radical and antagonistic structure only achieved through the destruction of the old. To cast aside such predetermination is to ask the question whether England underwent a reformation or a revolution. In another way, was the English Reformation a product of subtle and increment theological changes which eventually accreted into a new church, and therefore a new administration of law; or was it instead a jolt of pent-up frustrations about clerical abuse, Roman oversight, and foreign law?

Whether the English Reformation was an incremental reform of the Church with a clear line of continuity or whether it was a shock of change indicates whether Henry VIII himself, as the clear head of the Reform movement, was an agent of continuity or of change with regards to the authority and jurisdiction of the curia ecclesiastica. The distinction must be further drawn between Henry as an agent himself with his “official” Reformation born from his royal decrees and the Reformation Parliament with their acts, and local diocese like Chichester who bore their own struggles for years before the questions of supremacy came into its own. Helmholz supports the latter interpretation, arguing that “as far as the Church’s loss of jurisdiction is concerned, by the time the ‘official’ Reformation arrived, a jurisdictonal reformation in the Church courts had

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203 Ibid., 30.
already happened." Scarisbruck supports this as well, noting that Henry merely gave a voice to a will for Reformation that had preceded him – the actual force of which was not of his making. Nevertheless, Henry was far from a passive figure or merely a guide of the religious and legal whirlwind that was beginning to storm in England. Henry VIII, by his increased demands for autonomy against Pope Clement, broke with the medieval understanding of spiritual and temporal jurisdictional distinctions, and thus affected the authority to which the courts Christian had appealed. In this way Henry VIII broke from the understanding that Henry II held in the twelfth century by ushering in a new reign of regal power that he argued, as a Christian prince, “never had any superior but God.”

Still, Henry VIII uttered this proclamation of autonomy from a weak position in 1515; the ‘official’ Reformation would not effect any radical change until at least the 1530s with the demands brought forth by the Acts of Supremacy. The stronger position Henry would enjoy during the climax of the controversy was not the sole product of his own machinations – it would take other operatives like Cromwell and Cranmer to help secure the royal will, especially when it concerned an otherwise risky venture like the Reformation. Henry VIII, therefore, was not the sole person responsible for the English Reformation and the Great Matter is but one episode among many that had gradually driven the English towards their repudiation of Rome – even the great power of the Tudor monarch was not enough to singularly effect such change. Neither Henry VIII’s fifth parliament, the aptly named “Reformation Parliament,” nor the elevated seat of the

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204 Helmholz, Roman Canon Law in Reformation England, 33.
205 Scarisbruck, Henry VIII, 251.
206 Keilway, Reports (1602), 180. J.J. Scarisbruck Henry VIII 249
archbishop of Canterbury were alone responsible for the Reformation. All these points taken together focus the blurry image of the Reformation into a clear picture: the changes to the *curia ecclesiastica* were not undertaken by any one individual nor the product of any one moment – the Reformation extended past individual people, offices, and parliaments.

Maitland, Pollock, and Plucknett’s enemy theory explains why the Reformation stands beyond the works of individual people and offices just as it had with the Becket controversy four centuries prior. The enemy theory posits that Becket and Henry II were drawn into conflict precisely because of Becket’s passionate execution of his *duties*, whatever they be, and that such zeal would bring to the fore those principles which had been implicitly quieted by negotiation for the sake of peace between Church and Crown. Similarly, just as Henry VIII was not singularly, nor were any individual person, Thomas More included, responsible for the English Reformation indicates that *something* more than personal agency was the cause. The most reasonable conclusion, if not any particular person, is the amorphous disposition of each office, the very principles which guide them towards their ends as executed by those people in office. Henry II and Henry VIII do not share a similar personality or a similar conception of the sacred, but their struggle remains consistent, even if the outcome differs because both were wielding a similar throne with similar incentives. Both monarchs had quarreled with a cleric over the exact limits of their jurisdictions and both had demanded autonomy as derived from “ancient custom.” Still, the context of post-Conquest England in the twelfth century

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209 W.T. Waugh, “The Great Statue of Praemunire.” *The English Historical Review* 37, no. 146 (1922): 179. Waugh argues here that this can be seen in the preamble
did not lend itself to the same repudiation of Rome in the way that Reformation England eventually would in the sixteenth century. The enemy theory describes just this line of similarity that transcends the historical particularities of any individual episode but which informs them with an intelligible narrative of institutional conflicts. Crown and Mitre, as two distinct offices, were drawn into such a conflict by virtue of the latent principles each held, and, once explicit, struggled. It is no coincidence that as these principles become more explicit, the conflict between these two pillars of the medieval polity manifested as legal argumentation, theological disputation, and ultimately, martyrdom. Each of which are *principled* disputations forming a *principled* conflict.

A brief chart of the arguments Henry employed throughout the campaign for the divorce help illustrate the extent to which sustained papal obstinacy unearthed principles which had been otherwise buried for centuries. Interestingly, the first two arguments Henry used were not English customs, nor were they royal prerogatives. The first was a biblical exegesis of Leviticus, “Thou shalt not uncover the nakedness of thy brother’s wife: it is thy brother’s nakedness” and the second, “If a man shall take his brother’s wife, it is an impurity: he hath uncovered his brother’s nakedness; they shall be childless.” The case seems fairly straightforward – Henry had married Catherine of Aragon, the wife of his late brother, Arthur. Once Catherine repeatedly failed to produce a male heir, Henry argued that the earlier dispensation granted by Julius II was nullified given the clear doctrinal ban found in Leviticus on marrying a brother’s widow. Against to the original statute of praemunire, “The commons added that since the things thus attempted by the pope were manifestly prejudicial to the Crown and the King’s immemorial rights, they and all the commons of the realm wished to uphold the King to the death in the face of these and all other encroachments on his prerogative.”

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210 Leviticus 16:16; Leviticus 20:21.
Henry, however, were the words of Deuteronomy, “When brethren dwell together, and one of them dieth without children, the wife of the deceased shall not marry to another; but his brother shall take her, and raise up seed for his brother.”211 If Henry was to cite Leviticus he must do away with Deuteronomy, and if he was to reconcile the two together then he was to enter into a theological tradition he was wholly unprepared for. The vast resources of continental scholars were called upon to provide an answer for or against Henry’s interpretation of Leviticus, and therefore the divorce which came from it. In a foreshadowing of his eventual supremacy, Henry operated in this early stage of the divorce in 1529 as his own secular magisterium.

The Pope, wielding a long history of biblical reconciliations,212 rebuked Henry’s interpretation of Leviticus, following Bishop Fisher’s argument that either “they must cling to traditional exegesis and lose their point, or else they must push forward a new one which lacked the respectability which only hallowed authority could bestow.”213 A full detail of the arguments employed on either side is not relevant for the current discussion, but the manner of argumentation reveals Henry’s underlying motivations. Henry, as fidei defensor, would naturally work from within this Roman context to forward arguments – supplying biblical exegeses and calling upon scholars from across the continent to defend his case on the Church’s terms. Yet the motivation for all of this was not to parse through the dense interpretative layers of Leviticus and Deuteronomy to arrive at a correct understanding in the same way that someone like St. Augustine had. The motivation, simply put, was for the divorce; which itself was a means to producing

211 Deuteronomy 25:5.
212 Scarisbruck, Henry VIII, 167.
213 Scarisbruck, Henry VIII, 170.
an heir with Anne Boleyn. Biblical reconciliation was not the goal of Henry’s machinations, but the means, and once these proved to be useless against the full force of the Papal magisterium, Henry changed tactics.\footnote{Geoffrey de C. Parmiter, *The King’s Great Matter: A Study of Anglo-Papal Relations 1527-1534* (New York: Barnes & Noble, 1967), 126.} Whereas the first *biblical* arguments he presented were on *Roman* terms, these new *legal* arguments he presented were to be on *English* terms.

Once Henry’s biblical arguments failed to sway the Pope to his cause, it is no coincidence that he would then turn to the legal dimension, filled with its decretals, maxims, and principles. Most dramatic of his new batch of legal arguments was the doctrine of *ne extra Angliam litigare cogantur* – except in England, no Englishman is compelled by necessity to present in court. In August 1530, Henry VIII had sent ambassadors to Rome to plead his case before the Pope. Seeing that the Roman bishop would not judge in his favor, Henry changed tactics, arguing instead that he was not even under the jurisdiction of the Roman court by virtue of his Englishness. Henry VIII cited the ancient custom *ne extra Angliam litigare cogantur* to argue that he reserved the right to avoid submission to foreign jurisdiction.\footnote{State Papers published under the authority of Her Majesty’s Commission Volume VII: King Henry VIII Part V. – continued (1849) page 261 letter from King Henry VIII to Ghinucci, Benet, and Sir G. da Casale} Henry’s argument was that Catherine of Aragon was only subject to English law and the Church could not hear her case in Rome. Only the Archbishop of Canterbury, with a foot in both the English and Roman camps, “could grant a final sentence as primate and legate in England.”\footnote{J. Robert Wright, *The Church and the English Crown, 1305-1334: A Study Based on the Register of Archbishop Walter Reynolds* (Toronto: Pontifical Institute of Medieval Studies, 1980), 154.} The papal nuncio
promptly rejected this argument, citing the universality of Church jurisdiction, but this did not deter Henry from continuously citing this “inviolable, unquestionable fact.”

Henry had actually correctly argued that this English privilege had been partially sanctioned by Pope Alexander III in the Compromises of Avranches in 1172. Yet this privilege had waned in support “in the late thirteenth or at least early fourteenth century” where there was “comparative silence about it.” The principle had been consciously and quietly discontinued from most royal and papal documents and can hardly be called a vibrant and animated praerogativa regis consistently appealed to for centuries. More reasonably, Henry’s invocation of this principle was just as pragmatic as was his citation of Leviticus and dismissal of Deuteronomy. Henry’s pragmatic citation of ne extra demonstrates most clearly his singular motivation to secure the divorce through whatever channels available to him. As arguments lost their utility, Henry’s loyalty to the truth behind the arguments he presented curiously fell with it. Once the biblical arguments had failed, without hesitation or recourse to his conscience, Henry swiftly moved to this new front of argumentation and cited whatever snippet of principle appeared to support his cause. Henry’s entrenchment into pragmatism is perhaps the best picture of the royal will unrestrained by any adherence to a set of foreign principles imposed on him.

This same move to legal principles was followed by another doctrine, praemunire. Cromwell executed the praemunire maneuvers of 1530 and 1531 to intimidate the clergy and attack the entire body of ecclesiastical courts on the charge that

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they had violated the law by virtue of their very existence. These were timed, calculated attacks on the entire Canterbury convocation as to pressure the clergy into submission and to recognize Henry as the “sole protector and supreme head of the English Church and clergy.” The first round of charges were against fourteen clerics, eight of which were bishops – Geoffrey Blythe of Coventry and Lichfield, Richard Nix of Norwich, Henry Standish of St. Asaph, Thomas Skeffington of Bangor, Nicholas West of Ely, John Fisher of Rochester, John Clerk of Bath and Wells, and Robert Sherborne of Chichester. John Guy, following Scarisbruck, brings further attention to four important figures charged with praemunire: Fisher, Standish, West, and Clerk. These four were the loudest opponents of the divorce and Catherine of Aragon’s most ardent supporters. Indeed, Guy goes so far as to argue that their presence among those charged “is so vital since it confirms that at least two of the praemunire cases were for a reason other than impending clerical taxation.” Following the charges, writs of praemunire facias were written and delivered, bringing these clerics before the King’s courts to be tried. Yet, curiously, the charges were inflated by Thomas Cromwell to include the entire clergy of Canterbury, and he charged the entire body with “illegal” exercises of spiritual jurisdiction. Just as mysteriously, in 1531 the clergy eventually capitulated to the £100,000 price for Canterbury’s pardon. The aftermath of these charges was anticlimactic: the actual constitution of the curia ecclesiastica remained intact, with the

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221 Ibid., 482.
222 Ibid., 485.
same justices and the same lawyers adjudicating just as they had before 1531. For all Henry’s posturing, the “victory” won by the *praemunire* charges was not a real conquest, but an implicit understanding that the English clergy would not support the Pope in light of Tudor threats. As Henry marched on towards his total repudiation of Rome, this episode convinced him that the clergy would not stand in his way as they had against Henry II four centuries prior.

The *praemunire* maneuvers conclude one important aspect of Henry’s changing tactics from 1520-1531: the motivation to utilize legal procedures to effect political change was born out of the previous failures of the canon law and biblical claims he had made during the early stages of the divorce campaign. Taken together *ne extra Angliam litigare cogantur* and *praemunire* put up an impressive front; the ecclesiastical courts simply could not muster an adequate defense. Clement was taken aback by Henry’s invocation of *ne extra Angliam litigare cogantur* and the clergy could do little but give in to the Tudor demands in light of the *praemunire* charges. The road to Roman repudiation was still on the horizon, but these changing tactics are pregnant with meaning. Henry’s expedient citation of otherwise inconsistent principles, as a distilled image of royal will, places the subsequent clash between royal and papal power within a larger history of perennial conflict. The masquerade of biblical exegeses and legal principles, once stripped away, reveals the more primal motivation underlying these royal prerogatives – royal succession. Thus as the Great Matter continued on, Henry’s true motivations became clearer, shedding convention and courtesy as the divorce campaign arrested. His

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223 Ibid., 502.
practical concerns with succession, which shed conventional “principles” for this quasi-Machiavellian concern, was itself a principled commitment. The enemy theory, as a conflict between the very principles of Crown and Mitre, thus extends past the individual offices or those men in office – Henry VIII and his anxieties over succession provide no reason to rebuke this argument. The curia ecclesiastica and curia regis had remained mostly at peace largely because the principles which justified the existence of both were not explicitly stated, and had each court actually attempted to gain the full jurisdiction their principles gave to them, this would lead to disastrous consequences for both. Henry VIII’s shifting tactics provide a lucid understanding of his real, practical motivations and simultaneously render explicit the Church’s claims to universal breadth which had been heretofore been quieted in the sake of peace.

Nowhere else did these principles echo out than in the chamber of the King’s court during the trial of Thomas More on July 1, 1535. Just as the Great Matter was contextualized by the larger legal quarrel between the curia regis and ecclesiastica, so too does the trial of Thomas More work within this same framework. Yet, before placing More within the narrative constructed by Maitland’s enemy theory, it must be first demonstrated that he is the chief exemplar of its arguments. Why Thomas More? Why not the bishop of Rochester, John Fisher – a cleric and a figure of prominent opposition to Henry’s repudiation of Rome? Bishop Fisher was more vocal and clearly more of a nuisance to the rising Henry, and he was tried and executed in a similar fashion to Thomas More. Fisher was among those charged by Cromwell in the praemunire maneuvers and who in 1530 argued against both the Parliament and the King. Fisher compared both to the faithlessness in Bohemia and warned against the destruction of the
Church. Fisher is the ideal candidate for any history of a consistent force of opposition whose principles remained steadfast, even until his execution. But this history elects Thomas More, the humanist philosopher and statesman. He was never consecrated deacon nor priest, and as such his allegiance to the Bishop of Rome was driven from his faith, not his office – from conscience, not duty. Whereas Thomas Becket could abandon his title of Lord Chancellor and retreat to the Archbishopric, he could at least play the role of the saint understandably willing to lay down his life for his office. Thomas More’s options, however, were quite limited. More had nothing to turn to after his recusal and no honor to defend. He was a layman positioning as a cleric without the office to support such a doctrinal defense. Thomas More’s obligations, real or perceived, are more questionable than that of Becket, Fisher, and Wolsey if only for the reason that the latter were clerics and had at least nominally devoted their lives to the Church and a defense of her sacraments and jurisdiction. More is not like this – he had real obligations to his king for he was Lord Chancellor and a “man well learned … in the Common Law.” He had even earlier defended the King’s claims to being a “good shepherd… [who] forseeth and provideth for althyng.” Contrariwise, he also had real obligations to the Pope insofar as he was a member of the cosmopolitan body of Christ. He was torn no matter which way he threw his allegiance, and his trial, more so than Fisher’s, demonstrates just the extent to which he held incompatible principles once the two were rendered explicit.

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226 Ibid., 761.
227 Ibid., 764.
The trial of Thomas More in 1535 was the vocal expression of this frustration of principles. Against some prominent historians following the line of J. Duncan M. Derrett who argue that the verdict eventually rendered was not predetermined, this history sides with the older interpretation as revived by Henry Kelley, Louis Karlin, and Gerard Wegemer in their 2011 work, *Thomas More’s Trial by Jury*. The older interpretation argues that the trial itself was a miscarriage of justice; a failure of the court to accept More’s citation of *Quit tacet consentire videtur* and his argument about silence implying assent, not dissent. The jury eventually rendered a verdict after a perjured testimony by Richard Rich and a mere 15 minutes of debate – the execution of the once prominent Chancellor only garnered what appeared to be an afterthought of the jurors’ minds. The setting of the trial evinces the point further. This was a trial at the King’s Bench in Westminster – it was composed of Sir Thomas Audley as Chancellor, 19 commissioned justices (only 17 present), and a set of 12 chosen jurors. It takes little imagination to see how a court of the king, after just repudiating the jurisdiction of the Pope, moving against the clergy with the *praeminure* maneuvers four years prior in 1530-1531, and a confirmation of supremacy from the Parliament in 1534, would be almost coerced into rendering a guilty verdict. Interpreted otherwise, the judges would be forced to somehow reconcile More’s silence and the laws of Parliament; therefore, actively adjudicating whether the Parliament was indeed impotent to even legislate on the “case of primacy.”

In essence, for the trial to judge More guilty is to side with Parliament and to judge him

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innocent is to overturn an act of Parliament – a mechanism of judicial review anachronistic for this trial.\textsuperscript{229}

The trial should be seen in this context as an exposition of the enemy theory since More’s theological commitments held little ground for the \textit{curia regis} he was arguing within. This argument ultimately rests on the previous claim that the judges were not open, as a fair trial would imply, to More’s arguments since the very mechanism they operated was opposed to the conclusions More had reached. More had tread cautiously during the actual course of the trial, certain not to expound any radical line of argument or to voice his conscience which he knew would have violated the Act of Supremacy. More never did “maliciously” deprive the King of the titles Parliament had bequeathed since his silence, as he argued, implied assent to the law rather than dissent from it. Yet for all of his legal arguments against the first accusation of silence, the second against collusion, and third against Richard Rich’s perjury, More could do little to actually sway the mind of the jury. This point is important to emphasize since the judges’ opposition to theological posturing evinces the stark separation between the \textit{curia ecclesiastica} and the \textit{curia regis}. This difference lies in their procedural method. The trial was itself an obvious product of the royal courts, not modeled after the inquisitorial process of the ecclesiastical courts, which would have demanded “at least two witnesses or adequate

\textsuperscript{229} Roper, \textit{Lives of St. Thomas More}, 45. “Forasmuch as, my lord,’ quoth he, ‘this indictment is grounded upon an Act of Parliament directly repugnant to the laws of God and his holy Church, the supreme government of which or of any part whereof, may no temporal Prince presume by any law to take upon him, as rightfully belonging to the See of Rome… This realm, being but one member and small part of the Church, might not make a particular law disagreeable with the general law of Christ’s Universal Catholic Church, no more than the City of London, being but one poor member in respect of the whole Realm, might make a law against an Act of Parliament to bind the whole Realm.”
documentary instruments.” Since Henry had already established supremacy over the courts Christian, there was little room for any theological import or appeal for More to avoid conviction. The distinct royal qualities of the curia disposed the court before the trial had begun to conviction. More could do little to argue for his loyalty to the Church in a court which had just sworn off the ecclesiastical procedures of inquisition.

Once More pleaded “not guilty” and the jury heard the indictment read in full, the trial began in earnest on July 1, 1535. It is not relevant to expand on the entire length of the trial, but it is useful to be reminded of the three parts of the accusation: More’s “malicious” silence, his collusion with Fisher, and lastly his conversation with Richard Rich. Without recourse to import of contemporary legal motions and procedures, this history will follow Kelly et. al in their analysis of the actual exposition of the trial utilizing contemporary legal language while understanding the limits of its application. In this instance, it is anachronistic to refer to the arguments propelled by Cromwell against More as “counts” since this term was used by a plaintiff in a civil case. There were multiple “charges” against More, though by the sixteenth century this would have been only understood as one singular “charge” – More himself divides the accusations as “parts, heads, and chapters.” In each instance, the “charges” were not about heresy but treason. The former, a crime against the Church, the latter against the King. More was charged with the malicious intent to deprive Henry of what Parliament had confirmed – his supremacy as head of the Church of England. As such the accusations were not against Henry qua Pope but Henry qua Caesar. Though the two were merged by

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231 Ibid., 7.
232 Ibid.
Parliamentary fiat, they were separate concerns for the court to consider. The matter of
the Church, while clearly affecting More’s judgement, was outside of the 17 judges’
concerns – for them, only the loyalty to the King was in dispute. In this is found the first
serious point of delineation between More’s concerns about Parliamentary jurisdiction
and the court’s about loyalty. Never could this be clearer than the duke of Norfolk, who,
after the verdict “guilty” resounded in the hall, claimed More had “plainly revealed [his]
mind’s stubborn malice.” To which More replied, “your Statute was wrongly made,
because you deliberately swore your oaths against the Church, which alone is
whole…and you alone have no power to enact anything, without the consent of all other
Christians, which is contrary to the unity and concord of the Christian religion.”233 Where
the duke of Norfolk argued More maliciously deprived the King of his title, More’s
response moved beyond what the court could consider, concerning the issue of
Parliament and its jurisdiction of spiritual matters. The gap between the concerns of the
judges and More reveal the limits to which justice could have been rendered in curia
regis. The judges had assumed the legitimacy of the law and were tasked with
adjudicating it accordingly; More could provide little against their decision since he had
in his heart denied the King’s supremacy and at least had implicitly been guilty of what
he was charged with. Yet More argued that he was not guilty since the law was unjustly
made and so no justice could flow from it.234 For More to be found innocent, however,
the very law itself would have to be overturned and the courts would have to
spontaneously create and enforce some primordial act of “judicial review.” Since this was

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233 Kelly, Karlin, and Wegemer, eds., “Guildhall Report,” in Thomas More’s Trial
by Jury, 193; Roper, Lives of St. Thomas More, 45.
234 Reynolds, The Field is Won, 368.
practically impossible for the judges and the jury, they could only work from within the common law they were given, and, as such, they found Thomas More guilty of maliciously depriving the King of the titles Parliament bequeathed.

Derrett and his followers have granted the judges in this case a sense of judicial honesty where they had operated an impartial court as derived from an impartial mind. The implication from this interpretation is that More was judged fairly given the contemporary procedures and the evidence provided. If this is true then Derrett and his followers would have to accept that the alternative innocent verdict, had it been pronounced, was equally as likely had More presented a stronger defense. Kelly et. al take up the opposing view of Derrett’s interpretation. If Derrett and his followers are correct, then More’s trial was not predetermined and his trial operated insularly, isolated from the rage of Reformation unfolding around them.\(^{235}\) Where the Reformation touched each strand in the grand fabric of sixteenth century England, this one trial stands apart and unmolested. Furthermore, if the context of Reformation was absent from the court room, then it is reasonable to assume a reciprocity where the trial could do little to affect the legal structure informing and surrounding it. For the judges to be \textit{truly} open to the More’s arguments and the innocent verdict equally viable to the guilty, then the courts would have to side either with the King and uphold Parliament’s legislative power or, as More argues, tear down the Oath as an illegitimate encroachment over spiritual matters. Derrett directly counters this, stating that, “the suggestion that if the court had accepted More’s motion they would have all been traitors within the meaning of the Act of Treason is nonsense: if the Act had been ‘void’ they would themselves have been

\(^{235}\) Derrett, “The Trial of Thomas More,” 468.
secure.” It is not clear how Derrett could make such a claim as it was by virtue of More’s defiance of the Act of Supremacy that had brought him to trial and there is no reason to suspect Henry would have tolerated one court’s “treasonous” ruling. Kelly et. al. have demonstrated the faults in Derrett’s interpretation at length in Thomas More’s Trial by Jury and it is unnecessary to duplicate their work. Nevertheless, it should be noted that Derrett’s interpretation, if the trial really was “normal” in some capacity, derives such normality from the arguments presented without reference to the very act of Parliament itself which had certainly guided the people present at the trial to operate simultaneously as political as well as judicial operatives. The very act of Parliament and the demands of the King cannot be silenced in this discussion so that the mechanics of the *curia* are examined in such an isolated way that the trial becomes just another formulaic manifestation of common law. Infused with the drama of political machinations and theological commitments, the trial takes on a lively quality, animated as it were with the very spirit of religion and the necessities of conscience. Kelly cites John Baker’s acute observation here that “the uneasiness which everyone feels about More’s conviction stems from the obnoxious character of a statute which virtually forced a man to incriminate himself on a matter of conscience.” Simply, placing the trial within a larger context of the praemunire maneuvers and the English Reformation unearths the extent to which the trial was predetermined since Henry VIII would suffer no more obstinacy from those learned men he had once respected.

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236 Ibid., 468.
237 Baker, Spelman’s Reports, 2:139-140
238 Reynolds, The Field is Won, 370. “As Fitzjames did not offer an escape route, Audley had no option but to condemn Sir Thomas More to death at Tyburn.”
The predetermination of the guilty verdict is vitally important for the larger understanding of the way two rival sets of principles, once laid explicit before the court at Westminster, had come into irreconcilable conflict. Thomas More’s fate rested in the hands of the unlearned jury who were tasked with figuring out whether he had deprived the King of his Parliamentary granted titles, and only then whether such actions were indeed done maliciously. Kelly notes here that “they could not have been expected, given the realities of the pressures upon them,” to judge against the obvious will of the King. Henry VIII wanted More dead just as he had Fisher. Indeed, E.E. Reynolds goes as far as to argue that Henry VIII had twisted the procedures of the court to secure the verdict by demanding that “More should not be allowed to justify himself apart from answering the evidence brought against him.” The jury operated under such an immense an immediate pressure under which they could do little to judge “rightly” given the larger tumultuous events of the Reformation unfolding around them. Had they proclaimed More innocent then they would be arguing either that the actions presented in the indictment did not fall under the scope of the specific statute, or that Henry VIII’s titles were illegitimately granted as More had claimed. The first option seems unreasonable since the jury was unlearned in the technicalities of law, and the second option would require them to essentially overturn an act of Parliament. It was largely beyond the scope of the jury to determine whether the statute was to be narrowly interpreted as to simultaneously hold that More did believe the King was not the Supreme Head of the Church, but that

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239 Ibid., 367.
despite this the statute of Parliament could not condemn him since he had not done so “maliciously.” The jury, then, found itself deliberating More’s second line of argumentation: that Parliament itself could not grant Henry any title as regards the entire body of Christ since they were themselves not representative of that body. To this they had either to follow the principles of the Church which had asserted its own autonomy over the spiritual and pastoral care of souls or to throw their support for the newly established principles of Henry VIII who was attempting to wrest away that power. The principles guiding the jury, therefore, demanded a loyalty to Parliament over those of the Church where each had asserted their own supremacy. After the guilty verdict was read, More cut to the heart of the issue, stating his own principles: “I have never found an approved doctor of the Church to hold that any layman is the head of an ecclesiastical order.” This argument, however, held little water for a jury firmly in the pockets of the King and which could do little to overturn his claim to absolute authority over the Church

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241 Ibid., 49.
CHAPTER 5
CONCLUSION

The Archbishop of Canterbury, Henry’s once beloved friend, closest collaborator, and finally his most outspoken opposition, was pierced by the swords of four barons on December 29, 1170. The triumphant barons, in boorish pride, marched away shouting, “Reaus! Royal knights, king’s men, king’s men!” Much to the dismay of the entire continent, Becket was laid waste in his feud against his king, and, for a moment, it seemed that Henry had finally won the great struggle which had locked Crown and Mitre in conflict for the past eight years. Monks at Canterbury frantically worked to clean the body and prepare it for burial as word of the gruesome murder had already begun to spread. Henry is reported to have loudly wept at the news, the pyrrhic victory crippling the monarch who had earnestly loved Thomas even until his final moments. Pope Alexander, likewise, went into a period of mourning for a week after hearing of the treachery. Even before Becket’s canonization on Ash Wednesday, February 21, 1173, pilgrims trickled into Canterbury to revere the new martyr and to ask for his intercession. The burgeoning cult was confirmed by the King during his visit to the crypt at Canterbury in 1174. There he submitted himself to a grueling flagellation led by Gilbert Foliot, publicly confessing to his sins in leading to the unfortunate death.

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244 Ibid., 251.
Yet for all the pomp surrounding the final moments of the Becket controversy, it is doubtful whether the same conflict extended past the twelfth century. Certainly this dispute was born from the particular personalities of Becket and Henry, the zealousness of Becket matching the shrewdness of Henry. Indeed W.L. Warren goes as far as to blame the controversy on Becket’s stubbornness and pride, which reduced an otherwise negotiable issue to an insoluble argument. For Warren’s interpretation to be correct, the issue cannot be perennial. This would imply that the conflict would extend past the man in just a way that a history of personality cannot. The trajectory of jurisdictional conflict which this history presented from Becket to More, however, demonstrates a continuity which cannot be so easily explained away with reference to each individual’s personalities. One point in the middle of Becket and More, for example, is John Pecham, the Archbishop of Canterbury, who clashed with Edward I over similar concerns of ecclesiastical privileges. This history followed Pecham in evoking the memory of his martyred predecessor within a larger narrative that transcended him. In a strong letter of protest, Pecham availed himself of the memory of Becket, reminding Edward that “St. Thomas suffers martyrdom all day so long as the causes of his martyrdom are daily renewed.”

There are important differences between Becket and Pecham – the former failing to complete his education, the latter a theologian. Pecham’s controversy surrounded the specific cases able to be heard in the ecclesiastical courts, Becket’s concerned the matter of criminous clergy. Nevertheless, Pecham himself emphasized the similarities between their conflicts with specific attention on the “cause of martyrdom.”

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Becket’s conflict, at least as Pecham understood it, was not isolated to the twelfth century. Nor is he alone in hearing the Becket controversy speak to larger disputes of ecclesiastical liberties. By so doing, each who invoke Becket’s memory reveal the extent to which the controversy had succinctly encapsulated this English quarrel. The dramatic twelfth century feud spoke not only to the particular affections of Becket and Henry II, but also to the underlying issue between church and state that had continued to boil even until the thirteenth century.

By the sixteenth century, with Reformation pressing in on England, the Cult of Becket held roots firm in the soil of the English memory. A host of archbishops and kings had already begun to interpret the controversy as a reflection of future ecclesiastical struggle. Becket had been eternally silenced by his death, but his voice resounded in the ears of the English and the royal courts abroad. His tomb attracted the public, the clergy, and even reigning monarchs who all felt compelled to visit the shrine of the martyr. Elevated figures like Louis VII of France and Henry III all knelt before Becket’s shrine, praying for his intercession – how strange that the very face of ecclesiastical dissent was entreated to pray for royal needs. Even the ascendant Henry Tudor held a special devotion to St. Thomas; among other things, including in his will a “silver gilt statue of himself in a kneeling position to be placed at the shrine.”

Henry VIII held a similar reverence for Becket as had his father, decrying the popularity of the Lollards and throwing in his support for the famed martyr through a visit alongside Emperor Charles V in 1520. This was not the caesaropapist Henry of 1525, but the fidei defensor, who was

247 Ibid., 586.
at least nominally supportive of the Church and its saints. The same man would later
order the destruction of Becket’s shrines and ban all adoration of him. Becket could not
defend himself and his order from beyond the grave, but Henry certainly felt as if he was
a palpable threat that should be dealt with during the height of the Reformation.

The memory of Becket was very much alive in the sixteenth century, and as the
Great Matter boiled into yet another feud, it would not be long before the King turned his
eye to the famed martyr. Henry VIII ordered an injunction in 1538 to have Becket’s
bones taken from the crypt, burned on a pyre, and have the ashes spread in front of a
large crowd. The shrine was stripped of its glory, destroyed, and handed over to the
Crown. Even Thomas Cranmer, Becket’s eventual successor, was said to have introduced
a new seal of Canterbury since the old depicted the martyrdom. As Canterbury grew
closer to royal favor, Becket grew further. An amusing story grew where Cromwell
supposedly accused the deceased Becket of disturbing the realm and was called upon “to
defend himself from beyond the grave.”²⁴⁸ Becket could obviously not make the
appointment, and, failing to hand himself to the King’s judgement, forfeited his shrine
and prestige. Many historiographers, such as Henry Jenkyns and Charles Le Bas Webb,
have dismissed this story while others such as Archbishop Manning and D.R. Woolf
believe that some form of the story most likely happened. It is unimportant whether any
legal proceedings ever took place. Instead, the story itself speaks to a larger history which
consistently places Becket and Henry VIII as two opponents in a larger struggle
regardless of time.

²⁴⁸ Thea Thomani, “Appropriated Meanings: Thomas Becket” in The Corpse as
Text: Disinterment and Antiquarian Enquiry, 1700-1900” (Woodbridge: Boydell Press,
2017), 96.
The Injunctions of 1538 thus provide additional evidence for Maitland and Pollock’s enemy theory. Any historian could weave together a history of conflict, overlooking areas of compromise and exaggerating small disputes. In this case, however, Becket and More’s conflicts resonate so profoundly that the similarities did not escape Henry VIII. Stronger still, Henry VIII’s moves against Becket are readily tractable within a history of conflict where the two are seen as belonging to the same quarrel. Out of everything the King could do in the midst of the Reformation, why would he turn his attention to Becket? It certainly seems that Henry VIII heard the voice of Becket as an echo continuing to voice from the grave the same dissent he had in life. The twelfth century martyr was alive in Canterbury, animated by the feet of pilgrims and the devotion in their hearts. Just as Henry had repudiated Rome to secure the divorce, so too would he supplant devotion to Becket with sworn fealty to the Crown.

Much has been said of the Royal Supremacy, the English Reformation, and the effects each had on the legal structures of England from 1170-1535. Rich and varied histories such as Plucknett’s *A Concise History of the Common Law*, Helmholz’s *Canon Law in Reformation England*, and Maitland and Pollock’s *The History of English Law before Edward I* have all considered the political, legal, and theological dimensions of these transformative centuries. The great breadth and depth of these works make further studies labor to unearth anything new. Furthermore, other particular histories such as Thea Thomani’s *Corpse as Text* have discussed the ways in which Tudor reinterpretations of Becket were carried out for the same insecurity that had sent More to the block. The line between the two has not been so easily defined and has not garnered as much attention as had particular studies of each event. This history carried on the work
of these titanic figures in English historiography as to thread a larger narrative of
continuous quarrel over legal jurisdictions and ecclesiastical liberties.

The strongest abstraction from this continuity of conflict is the enemy theory laid
out by Maitland and Pollock and later defended by Theodore Plucknett. I am not alone in
this application as Becket, Pecham, More, and Henry VIII all have at some point
interpreted their own conflicts as one battle in a prolonged war. By virtue of being a
generalization, this theory attaches to the royal and ecclesiastical offices and emphasizes
systemic over personal agency. As soon as this theory is engaged, the issue is raised as to
whether such a theory, generalized as such, could truly account for the particularities and
idiosyncrasies of events stretched over four centuries. To escape the problem of
incorrectly particularizing a generalization, this history considered each controversy –
Becket and More – as representative of a larger clash of legal codes. This struggle for
supremacy is most readily seen between common and canon law as both exercised
authority within jurisdictions that often overlapped, exposing both to irritable friction.
The common law, while itself disorderly at times and subject to different agendas,
nevertheless stands as a generalized account of royal instruments which enacted the royal
will. Likewise, this history used canon law as a generalized account of the ecclesiastical
instruments which enacted the ecclesiastical will. There is room to debate the precise
ways in which the courts differed from Henry – certainly the curia regis took a life of
their own as they were influenced by Parliament. It is equally a mistake to assume that all
of the curia ecclesiastica were uniform in their methods and that each took orders from
the Pope. The precisions of these arguments were beyond the scope of this paper and
ancillary thoughts attached to the more central issue of jurisdictional conflict.
Particular episodes of English legal history, whether it is Becket in the twelfth century or More in the sixteenth, were distinct and this cannot be brushed aside so easily. The particular historiographies of each event were considered in their own right before sewn into a larger fabric of English legal history. To avoid a misguided application of the enemy theory, the presented history of Becket and More appreciated such particularities with an interpretative approach appropriate for each saint. Firstly, to understand the Becket controversy is to sort between the particularities of the man to arrive at the duties of the office. The discussion naturally follows onward from a biographical sketch into the controversy proper from 1163-1170 where Becket’s zealosity is either the very heart of sainthood or the crucible of his undue hubris. To extrapolate anything from a controversy so ripe with personality, so mixed with character, is to sufficiently explain those particularities away as to arrive at some generality which could be applied to future conflicts. This history followed this conceptual scheme by highlighting Becket’s friendship with his king and piety as Archbishop to highlight the duties conferred on him. Thomas More, however, stands apart from his Canterbury counterpart in that he was not a cleric, and therefore not charged with defending the liberties of the curia ecclesiastica. His motivations cannot be so easily imported into the legal and political discussion of Reformation England, and so a different approach to this history is needed. It is no coincidence, then, that we find histories of Thomas More electing to distance a discussion of his conscience from the legal dimension of his struggle, separating the two to avoid obscuring the intricacies of his trial. As More did not inherit any duties per se, the enemy theory could only apply if it was sufficiently shown that he was representative of the Church, even if not in an official capacity. To accomplish this arguably difficult task, this
history went at length to discuss the inherent legal dimension of the Great Matter and the context of More’s trial to underscore the limitations of the court in their ability to adjudicate fairly. To generalize Becket is to move past his personality whereas to abstract from More is to appreciate the nuance of his trial within a larger sea of Reformation interpretations.

The issues present in Becket historiography are best demonstrated by the debate between W.L. Warren and Frank Barlow. Warren’s *Henry II* presented the troublesome issue from 1163-1170 as primarily a misunderstanding of the overzealous Becket who readily inflamed an otherwise negotiable issue. Contrarily, Frank Barlow and Richard Winston paint the conflict as that between a boorish monarch and a faithful martyr. Both narratives, however, do not fully capture the depth of the quarrel’s legal dimension as it extended past the personalities and characteristics of each man. Becket’s devoted support of the King during his administration as Lord Chancellor was not changed by his consecration, but redirected. The energy Becket brought to the office in the execution of his duties was consistent during his term as Lord Chancellor and as Archbishop. The discussions of his character in both narratives – either virtuous or vicious – fail to fully address the reason why such a zealous execution would lead to such a dramatic quarrel. This history has discussed at length Becket and Henry’s friendship as to counter the dominant theory proposed by W.L. Warren that the feud was simply a matter of *misunderstanding*. If the feud was simply a misunderstanding then it was Becket’s personality and disposition to defy, as Warren argues, which barred him reconciliation with the King. However, Becket demonstrated his insubordination earlier during the Toulouse campaign and so his charge to defend the ecclesiastical courts *against* the
encroachment of the King’s Bench was not a sign of a sudden shift, but rather an expected consistency. This consistency reveals a deeper layer of the quarrel that pierces the veil of each individual character and which reveals the motivations and incompatibility of the offices each wielded.

The complexities of the Becket-Henry feud have been distilled into these two dominant narratives: that Becket was a fanatic, or that Becket was a pious saint. The history I have presented moved past this discussion as to place it within a larger context of the growth of common law. The concurrent growth of common law under Henry II and the new canon law by the reform popes inflamed the dormant crisis laid rest by the Investiture Controversy a century prior. It is only within this larger discussion of these evolving legal codes that Becket and Henry’s positions during the feud can be intelligibly stripped from their personalities which are misconstrued as engendering it. Henry’s inheritance of Stephen’s anarchy motivated him to find and develop a new legal system that would nominally reconstruct the efficiency of his grandfather. Likewise, Becket, filled with the spirit of a renewed interest in a papal monarchy, sought to reinvigorate Canterbury and spread centralized order over the Church of England. Each man had a commitment to a rival legal code that demanded incompatible obligations as derived from equally rival principles. Contrast this with Anselm and Henry I who were able to reach an agreement regarding the Investiture Controversy because both had a similar conception of the position of the temporal and spiritual government. Becket and Henry, however, in a new age marked by the advent of the quest for papal supremacy, would not hold that same shared understanding. A negotiation was unlikely when both legal codes claimed supremacy and demanded unequivocal authority. The feud, as I argue, is best understood
as Becket and Henry playing the first battle in a long war between common and canon law in England. The prevalence of this quarrel between Crown and Mitre indicates something deeper than what any individual man may say or do during their tenure. That Henry VIII and Thomas More were called up into a similar – albeit importantly distinct – quarrel with similar outcomes is either the work of the similar affections of each monarch and each saint, or that the very office and code of law each defended drew each towards their positions.

Taken together, the Great Matter and Thomas More’s trial evince Maitland, Pollock, and Plucknett’s enemy theory since both unearth the foundational principles guiding the Crown towards succession and the Church towards its autonomous pastoral care. Further conclusions can be drawn later, but let it be sufficient to discuss here the Great Matter and the trial as two events within the history of common law that demonstrate its supremacy over its canon counterpart. This history went to great lengths to demonstrate just the extent to which the Great Matter was more than just the product of the choice personalities of Henry VIII, Thomas Cromwell, Wolsey, or any other individual, but that the entire episode requires the interlacing machinations of several forces all working outside any one of their parochial control. As seen from this more abstract angle, this historical episode in the growth of common law eschews the immediate threat of particularized critiques whereby the events of the English Reformation become quarantined by way of over-emphasizing the agency of the people chiefly involved. By placing such an emphasis on the individual, any history would become necessarily particular – the actions, as derived from individuals, can really only speak of those individuals. Any history would struggle to abstract from such a
particularized account and place them within a larger narrative that operates outside of
their limited horizon of agency. It is important, then, to understand Henry VIII both as an
individual agent with a degree of autonomy and personality while still understanding him
as an inheritor of an office with its own guiding principles and intrinsic motivations. To
place Henry VIII and his struggle for the divorce within this larger history of the common
law and to utilize the enemy theory as a viable generalization of the period is to place
some causality within the individual insofar as is appropriate and to grant causality to the
entire evolving regal institution, broadly construed, with its own motivations and
incentives.

At least one incentive, as has been demonstrated, included securing the
succession, and so it is no coincidence that this basic desire for Henry VIII guided the
English Reformation haphazardly towards greater theological and legal claims than had
been intended at the beginning. These theological commitments, with their derivative
legal suppositions, were a series of developments of royal prerogatives, and as this desire
ran contrary to the will of the Church, the two were brought into conflict. Still, for this
conflict to fit within a larger generalization, it must be shown that this was not the
product of particular people and therefore confined to them, but that it is a continuation of
a larger struggle. Only then could Maitland, Pollock, and Plucknett’s enemy theory apply
since it speaks to larger strands of continuity that wash away small particularities in favor
of similarities. For the enemy theory to apply, the analysis of this conflict should leave
room for particular agents and their effects in this larger arena while simultaneously
providing room for a more abstract discussion of how the entire mechanisms of Crown
and Mitre disputed the boundaries of their jurisdictions. This history interpreted the Great
Matter in just this way as it extended past the individuals, even ones so great as Henry VIII. Just as Henry can be understood with all the vibrancy of an individual, it cannot be denied that royal succession is a motivation born from the very throne upon which he sat rather than as an accidental desire which just-so-happened to form within him as an individual.

At this point the curia regis, and the common law it wielded, can be understood as flowing outwards from the King and to some degree as adjudicating in accordance with the royal will. The will of the monarch is here understood as a haphazard conglomerate of desire born from the nature of personal temperament and disposition and the nature of the Crown itself. As the ecclesiastical courts owed their allegiance and authority to the Bishop of Rome, the temporal to their reigning monarch. While the larger mechanism of the Crown moved to secure the divorce, the curia regis grew to accommodate a body of law which had hereto been firmly secured by their ecclesiastical counterpart. Canon law certainly continued to be practiced throughout England, but the fountain of justification from which it drew its authority was running dry. It would never again reign as the preeminent authority as the temporal courts had moved to coopt this power. Canon law, however, was not simply another political institution vying for “power” – it had its own theological presuppositions to justify the separation of its courts from those of the temporal power. Henry VIII, in moving against the Church, therefore, jettisoned the theological commitments necessary in acquiescing to ecclesiastical authority to secure the more primal concerns naturally as they flow from the very nature of the Crown. With this emphasis on the courts, the divorce soars above to a new, larger struggle between the very principles which guided the Church towards securing its
ecclesiastical liberties and those which moved the Crown to secure its succession –
principles which run as a vein throughout the history of common law down to Henry II.

Emphasizing the courts in this way also exposes the most famous trial of this entire quarrel to the same extrapolation. The trial of Thomas More represents this same struggle along a dimension of principles writ small, as it were. Such an extraordinary trial has lent itself to a variety of methodological approaches and interpretations of its components; each of which have their own merits and are laudable in themselves. This history emphasized the underlying principles as they violently emerged from under the many layers placed on them throughout the growth of the medieval courts. This trial, with all its problems and pressures, was at some fixed position in the middle, a contest between two rival obligations which could not be obeyed in the same court of law. More, as a subject of the Crown and a member of the body of Christ, could not simultaneously sort between his obligations to his king and his pope as the two were torn apart over the matter of supremacy. The jury, just as with More, could not have sided with the King without implicitly denying the Pope’s claims to cosmopolitan authority. Likewise, they could not have sided with the Pope without implicitly denying the King’s sovereignty. The very heart of the medieval world – Church and Crown – were pulling apart with More and the jury caught on the emerging fault line. More’s lucid observation that he stood upon a “two-edged sword” becomes all the more revealing when his trial is taken out of isolation and placed in a larger history of legal conflict. Such conflict ebbed and flowed, sometimes roaring loudly but more often a quieted dissent. Scarisbruck and Helmholz attribute this to a tacit “negotiation” between the ecclesiastical and royal courts, but this should not be understood as an actual negotiation of principles. Helmholz
argues here that, “ecclesiastical acquiescence in, and consequent enforcement of, the common law’s position … shows that, however reluctantly and at least where important principles were not at stake, joined in what amounted to a collective change of mind about the division between the temporal and the spiritual sides of life.” The trial of More adds to Helmholz’s analysis in that his struggle really did involve important principles which were at stake, and which explicitly brought to the fore those principles which had hereto silently guided Parliament and the Church. Standing in this precarious position, More chose his conscience to the loss of his body rather than to sacrifice his soul to save it. The trained common lawyer could do little to sway the mind of the jury which had bowed before the dominant presence of the ascendant Henry. If he was not enough, the machinations of Cromwell and the perjured testimony of Richard Rich would secure the verdict of the trial, long determined before it had begun. Thomas More’s trial was not the moment of canon law’s defeat, but it nevertheless demonstrates its impotence to save him in this moment in which he appealed to the authority which bore its justification.

This is the enemy theory laid out in full. Common and canon law were drawn into conflict once more in the sixteenth century, not because of any individual barrister or from any individual decretum, but because of the authority to which both appealed. Canon law justified itself by its appeal to divine scripture and the magisterium of Rome. Under this medieval scheme, no other voice could be supreme to God and the Church was his mouthpiece as dictated by Christ to Peter. The medieval world of Henry II and

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249 Helmholz, Roman Canon Law in Reformation England, 33.
250 Reynolds, The Field is Won, 366.
Becket had conceptualized man as extended through spiritual and temporal dimensions with ecclesiastical and royal power to care for man’s bifurcated ends. The frontier of each was unknown and disputable, and so what began as a neat, conceptual framework turned into a bloody arena with political agents on either end working to secure the liberties they believed to be their due. Henry II cited the “ancient customs” established by William the Conqueror; Becket cited his “order” and the dictums of scripture. Once the flurry of emotion abated, Henry eventually capitulated to the Church and had accepted the penance demanded by the Pope in the Compromises of Avranches. Four centuries later, however, in a revolutionary move which shook the very foundations of the medieval state, the Crown had assumed the power of spiritual steward and thus wrenched from the Church the authority to dispense with justice over the entirety of man, not just the temporal fraction of him. The Church of England during the sixteenth century could do little to stand the onslaught unleashed by the ascendant Henry VIII once he had consolidated control over Parliament and his courts. In a weakened position, the Church could not exercise their claims to jurisdiction. Perhaps it was that Henry saw Pope Clement as impotent in the face of his demands, a lesser heir of greater men, leading a weakened Rome long bereft of lordship. This, then, is the true extent of Henry VIII’s revolution – not only as a political move out from under the papal shadow, but also a theological commitment to Henricianism and a step towards the Crown ruling over a new man, not the split man of the medieval world. Common law triumphed over canon law in adjudicating matters which had heretofore been granted only to the courts Christian. Canon law was not to be exterminated or quelled by Henry VIII, but his courts
encroached so pervasively into the spiritual realm that the legal landscape of England would never revert back to this medieval state.


