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**Gilbert Foliot and the Two Swords: Law and Political Theory in
Twelfth-Century England**

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Twelfth-Century England**

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Gilbert Foliot and the Two Swords: Law and Political Theory in Twelfth-Century England

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Over the last fifty years or so, historians have largely neglected Gilbert Foliot, the man who was Bishop of London during the 1160s and 1170s, as representative of any larger theoretical position, dismissing his famous polemic letter *Multiplicem nobis* as the product of envy and thwarted ambition. In this dissertation I argue that Gilbert Foliot was neither out of step with the attitudes of his contemporaries nor driven blindly by anger and envy. Rather, his position was the result of legal training combined with his experience as a cleric in the tumultuous years of twelfth century England. Foliot's legal training inculcated in him a political theory stressing a bifurcated authority structure in which the clerical and lay "swords" would be drawn to complement one another, but were at the same time necessarily separate and independent. Thus he believed that the Church's success in its goal of saving souls was reliant on the goodwill and protection of an effective and powerful king. During the Anarchy of King Stephen's reign, Foliot urged his clerical brethren to unleash the sword of excommunication against barons who

committed crimes, and he was frustrated by the lack of coercive power he felt King Stephen ought to have exercised over the rebellious knights who terrorized the countryside. Later, during the reign of Henry II, Foliot feared that the archbishop's new insistence on clerical superiority would limit the king's lawful coercive power, while pushing the king to work against the Church rather than with it. Foliot, the jurist, found the archbishop's argument not only ill-advised, but legally illegitimate and dangerous. Thus Foliot's diatribe in *Multiplicem* should be understood not simply as a moment of anger, but as representative of a valid strain of thought in the English clergy, and that the attitude toward the crown on the part of churchmen was more dynamic than historians have recognized.

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CHAPTER ONE: PIETY AND POLITICS IN TWELFTH-CENTURY ENGLAND

1.1. INTRODUCTION

Considering the importance of the Church as a driving force in twelfth-century political history, the complex relationship between piety and Church involvement in lay politics during this time period remains surprisingly under-explored. The natural assumption is that pious clerics, with a few notable exceptions, feared the encroachment of lay authority as economic and political structures began to grow in sophistication during the eleventh and twelfth centuries. Lay control could easily lead to the diminution of ecclesiastical liberties that had been gradually increasing since the founding of Cluny in 910. The Church, therefore, had no reason to support the growth of secular authority, and worked, as a body, to undermine any increase in lay authority that threatened, even potentially, Church autonomy. For its part, the increasingly powerful lay leaders resented Church interference in secular matters, and continually attempted to exert authority over the Church in a variety of ways, from investing bishops to naming popes to trying clerics in royal courts. This was more or less Tellenbach's analysis of the Investiture Conflict, and following him many historians have assumed that the fanatical piety of Gregory VII and his resentment of imperial intervention underlay the relationship between Church and state from the eleventh century through the course of the twelfth, culminating in several peaks: Boniface VIII's *Unam sanctam*, Innocent III's interdict of England, and the famous showdown between

Henry II and his archbishop of Canterbury, Thomas Becket.¹ The line between Gregory and the later events in this narrative is a more or less straight one.

This analysis, however, runs counter to a demonstrable concern among equally pious clerics that the growing power of the Church during the twelfth century might damage the Church through increasing worldliness, a trend that historians notice at other points in history. The movement toward religious poverty during the following century, for example, led by the mendicants, has drawn considerable interest.² As the Church continued to grow in secular power over the later Middle Ages, historians document increasing unrest among the pious right up to the Reformation, which was at least partially a reaction to the worldly behavior of the papacy during the late fifteenth century.³ Current understanding of any concern over worldliness among the clergy in the twelfth century is limited to the ascetic movements toward monastic reform, typified by the Cistercians.

Yet if the Cistercian movement and the related movements for monastic reform were aimed at curtailing religious involvement in the world, one might reasonably ask

¹ Gerd Tellenbach, *Church, State and Christian Society at the Time of the Investiture Contest*, RF Bennett, trans. (Toronto: University of Toronto Press, 1991). Tellenbach frames the Gregorian argument in terms of *libertas*, arguing that in the Church alone could “any part of the supernatural freedom of Christ be seen pushing its way into terrestrial affairs” (p. 132). While he shows that other voices within the Church distrusted this movement, notably Peter Damian, Tellenbach argues that the majority of Churchmen coming out of the investiture crisis were interested in unity, and believed that Church independence from lay authority was the natural, or at least correct, state of affairs.

² See for example, Lester Little, “Saint Louis’ Involvement with the Friars,” *Church History* vol. 33, no. 2, pp. 125-48, as well as Little’s discussion of economics and piety in *Religious Poverty and Profit Economy* (Ithaca: Cornell University Press, 1978). Published the same year as the latter, Alexander Murray’s *Reason and Society in the Middle Ages* (Oxford: Oxford University Press, 1978), pp. 314-404, also examines the push to isolate the spiritual from the secular in the early 13th century.

³ On the Church’s vulnerability to the charge of worldliness, see (among many others) Euan Cameron, *The European Reformation* (Oxford: Clarendon, 1991) pp. 21-37; Steven Ozment, *The Age of Reform*, (New Haven: Yale University Press, 1980) pp. 135-182; Diarmaid MacCulloch, *The Reformation* (New York: Penguin, 2003) pp. 35-43...et al.

where the countermovement to eliminate the Church from control over secular authority is located. A search among the work of historians into this particular question returns limited results, because very few studies exploring this theme have been produced over the last fifty years or so, despite an interesting historiographical argument over the theoretical relationship between the “two swords” of clerical and lay authority that evolved over the same time period. One of the few was an interesting discussion of Abbot Pontius of Cluny written by Hayden White in 1958, which posited that the ill-fated abbot was actually the last gasp of Gregorianism at Cluny, and that with the rise of Peter the Venerable the Cluniac ideal had come to more closely mirror the Cistercian.⁴ This milieu in turn made possible the acquiescence of Calixtus II in the Concordat of Worms, a decidedly non-Gregorian agreement. White’s article, and another related work on Bernard of Clairvaux, have had little impact on scholarly debate.⁵

It is apparent, though, that any twelfth century impulse toward clerical control of the laity as a fundamental element of the Gregorian movement was tempered by the concern that the Church was growing increasingly involved in affairs that were better left to others in the secular sphere. The following study will explore this attitude by discussing the ideas of a man who was both a credible witness, and whose voice has been, as representative of an ideal, almost entirely ignored. This man was the bishop of London, Gilbert Foliot, who chose King Henry’s side against the archbishop of Canterbury, Thomas Becket, in their famous fight.

⁴ Hayden White, “Pontius of Cluny, the “Curia Romana” and the End of Gregorianism in Rome,” *Church History*, vol. 27, #3 (1958), pp. 195-219.

⁵ Hayden White, “The Gregorian Ideal and St. Bernard of Clairvaux,” *Journal of the History of Ideas*, vol. 21, #3, 1960, pp. 321-348. Compare White’s ideas from circa 1960 to Adriaan Bredero’s take on the abbacy of Pons, *Cluny et Cîteaux au douzième siècle: L’Histoire d’une controverse monastique* (Amsterdam, Holland University Press, 1985), which ignores the arguments of both White and Tellenbach, portraying Pons as overly austere.

That Foliot's voice has become marginalized is one of the unfortunate ironies of twelfth century history. Foliot favored the idea that the crown should have the right to punish malefactors in criminal cases, even when the defendant happened to be under clerical orders, a violation of the Gregorian ideal of clerical superiority. Foliot was an honorable man and experienced jurist who made a solid legal argument for his position, and through most of his life was regarded as an proponent of clerical humility, yet by the end of the century, he would be derided as grasping and ambitious, the servant of evil and the enemy of God, not because of his legal and political ideas but because his attitude toward legal reform brought him into direct conflict with Becket, the most famous saint and martyr of the Middle Ages. It is through the unfortunate lens of that discord that historians have tended to view, and dismiss, him.

However, if we hope to understand the twelfth century intersection of piety and politics and its influence on the creation of the English common law we would be hard pressed to find a better representative of English legal, religious and political thought than Foliot. The span of his life saw the complacent authority of Henry I, the unfortunate civil war during the reign of King Stephen, and the promise of legal reform during the reign of Henry II. Foliot had an unusual training in Roman law that qualified him to inject cogent observations into contemporary legal and political discourse. As a cleric, his career trajectory from monk to prior to abbot to bishop brought him close enough to the seats of power to observe the important events of his day, yet kept him far enough removed to make him a credible witness. He knew and corresponded with every player of significance on the political and ecclesiastical scenes, including Henry II, a number of knights and barons, bishops, saints, and popes. Moreover, hundreds of his

letters have been preserved, along with numerous charters and homilies; a trove of primary documentation remarkable for any figure in the Middle Ages.

The evidence gleaned from these sources reveals a man with a fine legal mind and a keen grasp of the political and religious problems confronting the world in which he lived. He learned to appreciate order during the years that the Anarchy savaged it, while at the same time and for the same reason he learned to dread the potential of naked secular power. He was a pragmatist who wrote with vigor on the subject of the law, demonstrating an interesting and offhand ability to use both civil law and canon law principles interchangeably when circumstances warranted it, anticipating and later building upon Gratian's *Decretum*.

First and foremost, though, he was a monk who identified with a contemporary movement in the Church toward monastic and clerical piety. Foliot entered the Church at the beginning of a promising legal career, likely for reasons of faith.⁶ He chose Cluny when Cluny "attracted men of deep spiritual commitment."⁷ He earned the reputation of an ascetic, declining meat and wine and living austere even as a bishop, yet his letters show a sarcastic, and even caustic sense of humor.⁸ His sermons inspired others to lead lives of simplicity and piety. He was, it seems, a decent man who practiced what he preached in spiritual matters, and who believed in the greatness of God and the critical importance of God's Church. He died in 1180 after serving for three decades as one of the her most powerful representatives in the realm of England.

⁶ Morey and Brooke, *Gilbert Foliot and His Letters* (Cambridge, Cambridge University Press, 1965) pp. 76-78.

⁷ David Knowles, *The Episcopal Colleagues of Thomas Becket* (Cambridge: Cambridge University Press, 1951), p. 38.

⁸ The comment on Foliot's austerity appears in a letter from Alexander III, penned in the year 1163. *Materials for the History of Thomas Becket*, "Epistolae," p. 26.

His remarkable piety makes it all the more ironic that he should step into the glare of history's spotlight as the opponent of Thomas Becket. Becket's argument with King Henry II during the years of Foliot's London episcopate established principles that would color the relationship between the English crown and the Church for centuries. Becket himself may actually have been a marginal figure in the legal fight that developed at the end of his life and after, but the outcome in the Compromise of Avranches was largely built in response to the manner of Becket's unfortunate demise.⁹ England's vigorous ecclesiastical court system and the benefit of clergy were the product of Becket's valiant stance against the king's attempt to centralize the administration of justice in his realm.¹⁰ Becket became a hero for his martyrdom, while the arguments of his opponents, including Foliot, who articulated a much different relationship between clerical and lay authority, gradually faded from historical consideration in the rising tide of clerical power in what is often referred to as the Papal Monarchy.

If historians focus on the ideas of Becket's opponents, including Foliot, a more nuanced attitude toward secular authority emerges. Where Becket hoped to insure clerical dominance in the relationship between Church and crown, Foliot articulated a

⁹ Avranches absolved Henry of any wrongdoing in the matter of Becket's murder, and as a part of the agreement, Henry did public penance. More importantly, the king was obligated to swear an oath of fidelity to Alexander III through the papal legate who was present at the council. As this was precisely the period when canon law began to dramatically increase in importance under the series of pontiffs colloquially termed the "lawyer popes," the timing of the compromise was crucial to the spread of canon law in England. Ironically, Henry's stance against Becket was initially aimed at curtailing the jurisdiction of canon courts in England. Thus Becket was in this issue more successful in death than he had been in life. See Mary Cheney, "The Compromise of Avranches of 1172 and the Spread of Canon Law in England," *EHR* no. 222 (1941) pp. 177-197.

¹⁰ Stanley Grupp, "Some Historical Aspects of the Pardon in England," *The American Journal of Legal History*, vol. 7, #1, p. 57; William Maitland, "Henry II and the Criminous Clerks," *English Historical Review*, vol. 7, #26, pp. 224-34; C.R. Cheney, "The Punishment of Felonious Clerks," *English Historical Review*, vol. 51, #202, pp. 215-36.

relationship based on lay and religious equality. Where Becket saw no danger in a papacy increasingly involved in the affairs of the world, Foliot hoped to keep the papacy supreme only in the realm of spiritual authority, in a world where the swords of king and Church might be drawn in the areas appropriate to each. Where Becket assumed that religious authority would always act in the interest of the faithful, and must therefore reign supreme over all other powers in the world, Foliot's experience during the Anarchy as both monk and jurist forced him to a more realistic conclusion. Where Becket would keep under the lighter jurisdiction of the bishop's court clerics who were manifestly guilty of crimes such as extortion and rape, Foliot saw these crimes as secular and deserving of secular prosecution and punishment. Where Becket and his supporters believed in a Church of worldly pomp and spectacle, Foliot believed in simple piety and asceticism. Moreover, Foliot was supported in his defiance of Becket by the majority of the English episcopate, especially those with formal legal training.¹¹ In the years of Becket's self-imposed exile, Foliot was looked to not simply as the mouthpiece of the king, but as the *de facto* leader of the English Church, and as a diehard and unquestioning papal supporter who acted as a check on the king's authority and a vital conduit between the papacy and the king.

The following study will examine some of Foliot's ideas, set against the twelfth century legal theory and political developments that were the backdrop of his life. The first chapter discusses the primary source material for Foliot and places him into a historiographical setting, showing that he has received mixed attention and divergent historical interpretation. The next chapter examines Foliot's origins, his education and

¹¹ Knowles, *ECTB*, pp. 12-38

his entrance into the Cluniac monastic system. Chapter Three discusses Foliot's particular experience in the English Anarchy, detailing his position in the center of gruesome fighting in the Southwest, and his eloquent support for the Angevin cause of Matilda. Chapter Four will examine Foliot's rise as a diocesan bishop in Hereford as Henry II became master of England and Becket become his Chancellor. Chapter Five will discuss Foliot's relationship with the king and Becket, focusing on the content of Foliot's political masterpiece, the letter *Multiplicem nobis*. Chapter six will discuss Foliot's working relationship with Henry II and the political and legal context that led to the writing of *Multiplicem*.

In total, this study will show that Foliot's positions on piety and lay authority make sense if placed into the context of his life. His arguments were not, as some historians have asserted, founded in fear of the monarch or envy of the archbishop, but were instead well-considered and carefully articulated. Moreover, by examining the political and legal philosophy that Foliot articulated at various points in his life, specifically his discussions of the "two swords" metaphor on lay and ecclesiastic authority, it will help to confirm the existence of a school of thought advocating a relationship between the powers based upon an assumption of equality. Ultimately this study will show that Foliot's thoughtful position against Becket warrants consideration of a larger movement toward deference to lay authority that existed in England during his time, and which was eventually obscured by the tide of clerical zeal that followed in the wake of Becket's murder.

CHAPTER TWO: FOLIOT IN SOURCE AND HISTORIOGRAPHY

2.1. SOURCES AND MANUSCRIPT TRADITION

The historian who focuses attention on Foliot is blessed with an embarrassment of riches. The largest and most important of the sources that can help us to reconstruct Foliot's life and career is the extraordinary record of his correspondence housed at Oxford's Bodleian Library in a volume entitled *E Musaeo 249*. This book consists of some 200 folios of vellum, approximately 8 x 5 inches in size, and includes copies of correspondence in Latin both to and from Foliot. The production of most all the sections can be authoritatively dated to around 1180, though they seem to have been assembled later. They may have formed an earlier version that was rebound in the early 13th century.¹ The letters, therefore, were transcribed while Foliot was still alive, though by this time he was slipping into blindness and may have had limited ability to directly oversee their production. A number of hands are evident in the volume, but one particular hand, presumably belonging to the original editor of the collection, is present in all of the quires, save a quire with the transcription of Foliot's infamous diatribe against Becket, "*Multiplicem nobis*," that is inserted into the inside cover at the end of the volume. The order of the documents follows an internal logic where each of the

¹ Except where noted, the manuscript information distilled on the following pages is taken from the detailed treatment by Adrian Morey and Christopher Brooke in their volume, *The Letters and Charters of Gilbert Foliot*, (Cambridge, 1967), pp. 1-22. In this I am profoundly indebted to their exhaustive scholarship.

quires is designed to fit together into a larger whole. It is known because of this that a few quires are apparently missing, though it is impossible to determine whether the omissions were deliberate or the result of loss when the volume was rebound. There are few marginalia on the folios; a few minor corrections or clarifications of the text that were probably added by the editor, and several different page numbering systems (in Arabic numerals) that were obviously added much later.

Inscriptions in *E Musaeo* illuminate its path from Foliot's scriptorium to the present day. It was held for a time during the 13th century at the library of Westminster abbey, not far from St Paul's where assumedly it was initially produced (as it was Foliot's see). A 14th century inscription indicates that the priory of Belvoir in Leicestershire, near Nottingham, held it at that time. It apparently remained in the neighborhood, as the next inscription, which marks the transfer of ownership of the book to the Bodleian library in 1754, records that until that moment it had been the property of Sir Thomas Cave, also of Leicestershire.

Supplementing *E Musaeo* are several related collections. *Douce MS 287*, also at the Bodleian, dates from approximately the same time period as *E Musaeo*. *Douce* contains seventeen of Gilbert's letters, most duplicated in *E Musaeo*, but a few found nowhere else. The primary purpose of the volume seems to have been to collect documents pertaining to the Becket controversy, though also included are portions of Henry of Huntington's *Historia Anglorum* and William FitzStephen's description of London. It is interesting that the documents relating to Becket collected here show both sides of the debate. The *Summa cause inter regem et archiepiscopum*, which supports Becket is included, but so also are Foliot's "*Multiplicem*" and a series of testimonials

from 1169 in favor of Foliot in his case against Becket before the papal curia. Variances within the texts of the letters indicate that *Douce* is not a direct copy of *Musaeo*, but was perhaps assembled using a primary collection available to both editors. Another surviving, roughly contemporary volume of materials that echoes *E Musaeo* is a volume at Rome's Biblioteca Alessandrina, *MS 120-A*. Like *Douce*, this volume has collected a good deal of Becket information, but unlike *Douce* the materials regarding Foliot seem a fairly direct copy of *E Musaeo*, though in several places mistakes in copying and grammar have been corrected, and in some places the text has been restored. A manuscript at the Hereford Cathedral Library, *MS P. i. 15*, contains a number of the letters sent out under Foliot's name during his tenure at Gloucester. Another at the British Museum, *Royal MS 8 A. xxi*, contains material from both Gloucester and Hereford.

In addition to the letters, Foliot also wrote a number of homilies that have survived in a manuscript at the British Museum, *Royal 2. D. xxxii*. These likely were written in the 1160s, at the height of the Becket controversy, and are dedicated to Ailred of Rievaulx. Likewise, the volume contains a collection of Ailred's sermons on Isaiah, dedicated to Gilbert Foliot. A commentary on the *Pater noster* written in his later years survives in the Worcester Cathedral Library at *MS Q 48*, fos. 60-69. Another commentary on the *Canticle*, also dating from the last decade of Foliot's life, is located in the British Museum as *Royal MSS 2. E. vii*. This particular commentary, alone of the commentaries and sermons, was reprinted in Migne in the 19th century as part of the *Patrologiae Latinae* (v. 202 pp 1147- 1307). In the Migne edition the commentary is prefaced by a copy of a letter of Gilbert's to Robert Foliot, the bishop of Hereford.

None of the entries in *E Musaeo* or the related letter collections come from the period before Foliot became abbot of Gloucester. For evidence of Foliot's life before this period one must look elsewhere, and direct evidence here is frankly sketchy. Information about his family and education can be discerned from comments he makes later, and analysis of these contacts show roughly when and where he was during the first three decades or so of his life.

As his career advanced, though, mention of him or his circumstances becomes more frequent in the historical record. Foliot's whereabouts during the Anarchy can be determined in large measure not simply by Foliot's own hand in the letters, but by the evidence of various chroniclers. With the accession of Henry II to the English throne, source material on Foliot widens greatly, first because of his stance on the Angevin cause and then because of his attitude toward Becket. As Bishop of London he occupied a central role in the unfolding drama with the archbishop. Following Becket's death, an enormous number of documents quickly emerged to chronicle the events. Correspondence that might otherwise have vanished was carefully copied and preserved. Those who had stood against Henry completed an array of saint's lives to publicize every aspect of Thomas' life. The collected source materials for the Becket crisis filled seven complete volumes in the 1870s, compiled by James Craigie Robertson and published in the Roll Series.²

These volumes contain an extraordinary amount of material, painstakingly compiled and edited. Among the *vitae* writers collected in the series are John of Salisbury, Edward Grim, the *Vitae* of William of Canterbury, William FitzStephen and

² Robertson and Sheppard, *Materials for a History of Thomas Becket, Archbishop of Canterbury* (Longmans, 1875-85).

Herbert of Bosham, and the *Vita* and miracle collection of the abbot of Peterborough. Although much of this material is written by his antagonists and disparages Foliot, a surprising amount remains that supports his position. The *Epistolae*, collected in volumes V-VII come from all sides in the dispute and were written, obviously, as the crisis unfolded. Also in the Rolls Series are the works of Foliot's archdeacon at London, Ralph Di Diceto, including his *Ymagines Historiarum*, which provides an important window into the workings of Foliot's household and in many cases provides a competing version of, or at least a competing perspective on, the fight between Henry and Becket as it is presented in the writers of Becket *vitae*.³ Taken in total enough information survives to assemble a decent picture of Foliot's perspective through the productive middle years of his life.

2.2. FOLIOT IN HISTORIOGRAPHY

Given his utility as a source for one of the most minutely examined episodes in medieval history, and given the volume of primary material he left behind, very little historical research has centered upon Foliot himself. Historians tend to use Foliot as a source for particular events, especially the meetings between Becket and Henry in the run up to Becket's exile, but spend very little time considering this man who so vociferously opposed the archbishop. Most who have occasion to treat Foliot, especially

³ Ralph Di Diceto, *Opera Historica*, vol. I and II, Stubbs, ed, *Rolls Series* (London: Longmans, 1876).

those who see in Becket a martyr to a greater cause, dismiss Foliot's arguments against Becket as the products of envy, fear, or priggishness.⁴ In this they are guided by a good deal of twelfth century documentation that supported Becket, but which was written after Becket's murder, during a period when support for the martyred archbishop was solidifying.⁵

It was only after Becket's murder, and indeed fairly slowly considering the speed of his canonization, that unanimity of opinion on Becket's righteousness developed, but once it had set in, the assumption of Becket's sanctity gained an iron grip upon the imaginations of those interested in his story.⁶ Becket's opponents were tarred with the brush of envy, worldliness or cowardice. David Knowles, a historian clearly sympathetic to Becket, discussed at length the shortcomings of Foliot's colleagues in a series of lectures gathered in 1951 into a volume called *The Episcopal Colleagues of Thomas Becket*. Yet when discussing Foliot himself, Knowles' position grows distinctly ambivalent, because neither "cowardly, nor "worldly" can be readily applied to Foliot. On this account, historians have tended to label Foliot as "enigmatic," or "difficult."⁷

The problem, as these historians have identified it, has been the difficulty in reconciling the Foliot who was by all contemporary accounts a pious and decent man, with the Foliot who opposed Becket's stand against Henry, because opposition to

⁴ See, for example, Smalley, *The Becket Conflict and the Schools*, p. 186: "...He compromised too much and too long for his reputation. One can easily see why. Henry frightened him; Becket offended his sense of decorum and his common sense."

⁵ Stefanie Jansen, *Wo ist Thomas Becket?*, pp. 172-195.

⁶ Ibid., for a discussion of the solidification of the pro-Becket position. See also the concluding chapter of Frank Barlow's *Thomas Becket*, especially on the rate at which support for Becket gelled.

⁷ For "enigmatic," Knowles, *Episcopal Colleagues of Thomas Becket*, p. 37; "difficult," Morey and Brook, *GFL*, p. 2. Beryl Smalley refers to him as "daunting and controversial," *The Becket Conflict and the Schools*, p. 167.

Becket ought, *ipso facto*, to demonstrate impiety. There are two camps at work here: one dominated by Catholic clergy and the other by historians who have focused on Becket's remarkable conversion.⁸ The former have been loath to cast aspersions on Thomas' name, or open an attack on the secular growth of the high medieval papacy, which in some ways Foliot ardently opposed, and which Becket unflinchingly supported. This might be accounted for by the tendency of Protestants to see in Becket a proto-reformer, and the insistence of Catholics to keep him as one of their own, though this is of course speculation.⁹ Two of the historians whose work has concentrated in some degree on Foliot have come from this clerical camp – David Knowles and Adrian Morey. As Benedictines in the years leading up to Vatican II there seems in their scholarship a hesitation that might be laid at the door of a tendency to “toe the party line,” and not lose Becket as an exemplar of Catholicism in the face of opinion that wanted to place him into the tradition of proto-Protestants like Peter Waldo and John Wycliffe.

Knowles especially, in his *Episcopal Colleagues* wrestles mightily with the “dilemma” of Foliot in relationship to Becket. The author paraphrases John of Salisbury's rhetoric at the height of the dispute, introducing Foliot as “the leader of the synagogue who raised the clamour for innocent blood; the Achitophel, who gave counsel as if one should consult God, against his master; the Judas, who made a pact upon the body of Christ.”¹⁰ Yet in the same paragraph he describes Foliot as “The

⁸ Knowles and Morey, two of the most influential Becket/Foliot historians, were both Benedictines writing in the 1940s and 50s, directly during the years leading to and immediately after Vatican II.

⁹ In support of this idea, see Robert Scully SJ, “The Unmaking of a Saint: Thomas Becket and the English Reformation,” *Catholic Historical Review*, vol. 86, #4, pp. 579-602.

¹⁰ Knowles, *ECTB*, p. 38.

mirror of religion and glory of the age, the luminary who shed a luster even on the great name of Cluny.”¹¹

Knowles’ admiration of Becket seems to have warred with his respect for Foliot, particularly as he examined Foliot’s actions during the Becket struggle later in the book, where his attitude toward Foliot warms considerably. Early on, his account of Foliot’s character is clearly a negative one, and most of the personal asides he makes in introducing Foliot can be easily countered. On Foliot’s noteworthy correspondence, Knowles intones: “We seem in his letters to be reading the day-to-day decisions of an ecclesiastical statesman – as it might be a Randall Davidson – rather than the persuasions and perplexities of a leader or a saint.”¹² The letters are “of greatest value for the church historian” (note the lower case “c” in “church”, indicating Foliot’s utility only to those interested in matters of local history), and “badly in need of critical editing...treacherous... lacking... incorrect... erroneous”...etc. On Gilbert’s accession to the abbacy at Gloucester, “Gloucester was a house of no more than modest consequence,” a comment not only gratuitous but possibly incorrect considering the wealth of the abbey and its strategic importance during the years of the Anarchy when Foliot was made its master. And then: “(Foliot) had learned how to obey and be obeyed... prizing external, formal obedience,” though not, evidently in the shapes of either the archbishop, his dangerous uncle Miles of Gloucester, King Stephen, King Henry, Empress Matilda or Pope Alexander III, all of whom he defied at one point or another. On Foliot’s personality: “He would seem to have been a reserved man, with few intimate friends, and to have inspired respect and even admiration, but little

¹¹ Ibid.

¹² Davidson was a solid but lackluster leader of the Anglican Church from 1923-1928.

affection.” This last remark despite demonstrable friendships with Archbishop Theobald of Canterbury and St. Ailred of Rievaulx, among others, and a genial comment from the normally acerbic Walter Map years after Becket had been declared a saint.¹³

By the conclusion of the second chapter, Knowles concludes that Foliot was motivated by his desire for the archbishop’s throne, the idea that was floated by several writers of Becket’s *vitae*, and indeed by both John of Salisbury and by Becket himself during the depths of his disagreement with Henry:

(Foliot’s) icy current and compulsive course kept due on. Disappointed ambition, perhaps all the more painful because unacknowledged, the unwillingness to admit virtue in the recently converted publican, and inborn dislike of anything noisy or violent, of any trace of *panache*; the strong personal bias; the unfortunate series of accidents which made him an almost *ex officio* leader of the opposition and advocate of the king – all these contributed to make Gilbert Foliot the adversary of the archbishop.¹⁴

In later chapters of the book, however, Knowles treats Foliot with respect and even a sort of grudging admiration. He acknowledges Foliot’s personal dilemma not simply in terms of being forced into impiety in his support of the king, but due to his own sense of justice and his personal sense of piety that might be the governing factor in his decision to support the king. While Knowles writes disparagingly of Foliot’s masterpiece of vitriol, *Multiplicem*, he also appreciates its brilliance.¹⁵ He notes the relationship between Foliot’s ideas and those of Gerhoh of Reichersberg, though he significantly fails to explore their implications.¹⁶ Likewise, he acknowledges the strain

¹³ *ibid.* Each of these quotations are taken from pages 39-41. The comment from Walter Map came in 1179 when Foliot, half blind and very old, had evidently begun work on a new book. Map declared him “a treasure house of goodness and wisdom.” *De nugis curialium*, Montague James, trans (London: Honorable Society of Cymmrodorion, 1924).

¹⁴ *Colleagues*, p. 49.

¹⁵ *Ibid.*, p. 123.

¹⁶ *Ibid.*, p 153.

of working within the system of English “feudalism” and maintaining the cleric’s adherence to canon law.¹⁷ Through the course of ten pages or so, Knowles also acknowledges that Foliot might have acted according to canonical principles that inferred the independence of spiritual and temporal authority, but he is at the same time careful to divorce himself from them, claiming (though not well supporting) that they could never have worked in practice, and that Becket’s position was the more realistic.¹⁸ This becomes more difficult to accept upon repeated reading of Knowles’ argument, as is his declaration in the concluding chapter that the “freedom of outlook” that allowed Foliot and his colleagues to dispute Becket’s position was “due to the freedom which the Church had enjoyed under Stephen, and to the surveillance exercised by Theobald and Thomas during its early years.”¹⁹ In the end, Knowles returns to an almost unmitigated support for Becket, but it is clear that he has had some trepidation in doing so.

His Benedictine colleague, Adrian Morey, shares Knowles’ conflicted attitude toward Foliot. Morey spent a great part of his professional life involved in the most comprehensive study of Foliot and his work that has been produced. Along with the father-son team of Zachary Nugent Brook and Christopher Brooke, Morey produced two book-length treatments specifically focusing on Foliot. The first, *The Letters and Charters of Gilbert Foliot* (1965), was as the name suggests an annotated collection of letters and charters updating and significantly improving on a similar 19th century effort

¹⁷ Ibid.

¹⁸ Ibid. pp. 140-54.

¹⁹ Ibid, p. 155.

by Giles.²⁰ Morey and Brooke expanded the original abbreviated chancery script into unabbreviated Latin, provided a weighty manuscript tradition and analysis of the sources on Foliot, wrote a synopsis of the major events in his life, and provided thumbnail introductions in English to each of the primary entries. The second book, *Gilbert Foliot and his Letters*, released a year later, was more biographical in nature, although the authors state at the outset that they consider a biography of Foliot in the traditional sense of the word impossible due to the lack of sources.²¹ The work consists of a number of essays, each covering a theme in Gilbert's life. Among others, there are chapters on Gilbert's approach to the law; on the style of the *ars dictaminis* in the 12th century and Gilbert's place in that tradition; on his undoubted part in a forgery committed at Gloucester while he was abbot; and on his relationship with Thomas Becket.

The authors show a complex person who rose to the heights of Church administration precisely because of the virtues his contemporaries repeatedly ascribed to him. He was not, they argue, without friends or intimates. "At the height of the crisis (with Becket and Henry) a pile of testimonials was gathered and sent on his behalf to Rome; this however was evenly balanced by an ample pile of abuse collected from friends of the archbishop."²² On the literary style of his letters, they argue that no one could "claim him as a master of the art," but that the sorts of letters we have are not the types that were generally agonized over.²³ Nonetheless, they admit that there are

²⁰ G. Giles, *Gilberti ex abbate Gloucestriae episcopi primum Herfordiensis deinde Londoniensis epistolae...*etc. (Oxford 1846).

²¹ Morey and Brooke, *Gilbert Foliot and his Letters* (Cambridge (England): Cambridge University Press, 1965), p. 1.

²² Ibid. p. 14.

²³ Ibid.

“flashes of humor,” and that when he took the time to write carefully, his ability was “astonishing.”²⁴

Yet Morey and Brooke cannot wholly divorce themselves from the idea that there must have been some flaw in Foliot's character. Foliot is not allowed to simply disagree with Becket, a prohibition that results in a curious tone of reserve cast over the introduction to the book. They repeat many of Knowles' assertions, again seeming to damn with faint praise: “He was...something of a scholar, a capable bishop.”²⁵ Even by light of their own later discussion, his education and scholarship were outstanding, his preaching effective and his legal opinions peerless. “A forceful, active man, lacking originality of mind,”²⁶ though they will also write that his opinions, especially his tendency to employ civil concepts in canon law, would become accepted by the canonists.²⁷ As with Knowles, it appears that only Foliot's attitude toward Becket reduces him in their esteem, but this loss of respect translates into all aspects of Foliot's character. Fundamentally, they agree with Knowles on the need to square Foliot the enemy of Becket with Foliot the devoted scion of the Church.

Significantly, Z.N. Brooke's individual work on Foliot shows none of this ambivalence. His 1931 *The English Church and the Papacy*, provides a more critical treatment of the archbishop, and a more genial treatment of Foliot. Brooke argues that Becket was the consummate natural actor who could visualize a role to play and then become the role itself. Becket's position was heartfelt, but grounded on exemplar rather than logic. As Chancellor he acted as the perfect chancellor; as archbishop, he “pictured

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.* p. 1.

²⁷ *ibid.* p. 66.

himself as one of the Church's heroes, patiently resisting the tyrant on behalf of the freedom of the Church, submitting to adversity and exile, enduring, nay welcoming martyrdom at the last."²⁸ Compared to Knowles' treatment of Becket in his 1970 biography, *Thomas Becket*, Brooke's cold assessment seems almost heretical.

Brooke is intrigued by Gilbert Foliot, whom he casts as a man evidently above moral reproach and a famously learned scholar and lawyer. Foliot had the ability to see beyond both the king's and the archbishop's arguments, finding his enduring loyalty only with the Church and the pope, in the Cluniac tradition. "He considered that for the Church, peace was preferable to privilege, and he was repelled by the attitude of the archbishop."²⁹ Becket's limited experience in the clergy and his theatrical frame of mind prevented him from understanding expedience, and the lack of a logical framework to support his position prevented him, paradoxically, from moving away from it. Ironically Z.N. Brooke was the scholar who initially began work on the collection of Foliot's letters that Morey completed with Brooke's son, Christopher. Had the father continued to guide the research, *Gilbert Foliot and His Letters* might have struggled less with the "problem" of Gilbert Foliot and bluntly observed what the historical record shows: that a great many churchmen in England were at the time of the conflict opposed to Becket's position against Henry.

It is worth noting also that Brooke's arguments came into the debate at the tail end of an earlier age when historians' attitudes toward Becket were far more critical. As the twentieth century opened, the tide of Becket's popularity was at ebb. While public imagination favored the archbishop's pious and miraculous story, professional

²⁸ Brooke, *The English Church and the Papacy* (Cambridge, 1931) p. 193.

²⁹ Ibid. p. 198.

historians' attitudes tended to border on hostility. An 1898 biography concluded that Becket's genius "lay in his faculty of self-adaptation... He belonged to the class of men who make the best servants and the worst masters."³⁰ Josiah Cox Russell, writing for the Haskins Society at about the same time, declared Becket a "'political saint,' one who (along with Hugh of Lincoln, Edmund Rich and Thomas of Cantilupe) owed his popularity and his sainthood to political rather than religious considerations."³¹ Even William Stubbs, the late nineteenth century master of medieval documents, wrote that Roger of Salisbury, Henry of Winchester and Anselm were "in different ways the precursors of Thomas Becket, who combined singularly the worst political qualities of all three."³²

By the middle of the twentieth century, Becket scholarship had warmed a good deal, while historians' portrayals of Foliot cooled. Part of the reason for this change must be laid at Knowles' feet, as an enormously influential and personable historian. Many of the treatments of Becket's life produced after Knowles' *Episcopal Colleagues* parrot Knowles' conclusions on Foliot. Richard Winston's 1967 book, *Thomas Becket*, for example, describes Foliot as "a man of tact, learning, shrewdness and literary as well as ecclesiastical ambition (whose) colleagues seem to have respected more than they loved. But beneath the cold exterior was a man who could give way to passion."³³ He continues: "envy there certainly was, for Gilbert Foliot had every reason to believe

³⁰ Lewis Radford, *Thomas of London before his Consecration* (Cambridge: Cambridge University Press, 1894), p.238.

³¹ Josiah Cox Russell, "The Canonization of Opposition to the King in Angevin England," *Anniversary essays in Medieval History by Students of Charles Homer Haskins*, Taylor and Lamonte, eds. (Boston, 1929) p. 280. Quoted in "The Becket Controversy in Recent Historiography," *Journal of British Studies*, Vol. 9, no. 2, p. 7.

³² William Stubbs, ed. *Gesta Regis Henrici II*, intro. p. xxix.

³³ Richard Winston, *Thomas Becket* (New York: Knopf, 1967) p 118.

that he was better fitted for the office.”³⁴ He relates one of Foliot’s famously tart statements against Becket: “The king has worked a miracle. Out of a secular man and a soldier he has made an archbishop!” But Winston works in a slap at Foliot as a “vegetarian and teetotaler,” intended to portray Foliot as bloodless rather than devout.³⁵

Yet the greatest damage to Foliot’s reputation has come at the hands of Becket scholars so evidently enthralled by Becket’s story that they cannot forgive Becket’s contemporary enemies. While Knowles and Morey come almost grudgingly to their conclusions on Foliot, these latter historians seem to ignore the possibility that Becket’s enemies might have acted for motives contrary to the opinions of Becket’s very biased contemporary supporters, upon whose recollections they have based their work. The leading two figures in this camp are Beryl Smalley and Anne Duggan. Smalley’s 1973 examination of the Becket controversy is ultimately even more critical of Foliot than Knowles’.³⁶ In *The Becket Conflict and the Schools* she excoriates Foliot as a coward and traitor to the Church. She all but labels his choice to enter Cluny as mercenary, though such a motivation would seem strange in a man so long admired for his asceticism, especially given Cluny’s reputation for indulgence at that time.³⁷ She argues that Foliot should have supported the papal cause against Henry, because his earlier writings, including those during the Anarchy, so gracefully articulated the resistance to

³⁴ Ibid. p. 119.

³⁵ Ibid. p. 124. The notion that Foliot was a strict vegetarian likely springs from the complimentary letter from Alexander III, who in 1163 urged him not to fast when ill and to drink wine according to the *Rule* of St. Benedict. The fishpond letter would obviously contradict any notion of Foliot as vegetarian.

³⁶ This should not in any sense cheapen the scholarship provided by Dr. Smalley on Foliot. In the very few pages she devotes to him, she outlines brilliantly a connection between Foliot and Robert Pullen that even Morey and Brooke had failed to note (pp. 174-176). She recognizes that Foliot was a solid scholar, and at moments an original one, yet still concludes that his attitude toward Becket had been the product of cowardice and fear, despite evidence to the contrary presented in *GFL*.

³⁷ Ibid. pp. 178-79.

tyranny.³⁸ She also claims that Foliot never presented the *Constitutions of Clarendon*, one of the chief documents in dispute between Becket and Henry, as anything other than evil, and thus was forced to attack Becket on personal grounds.³⁹ Chapters five and six of this study will take up the question of *Multiplicem* in detail, but again there is little in the letter that can be easily refuted, and even the charge of simony that Foliot levels at Becket is not beyond the boundaries of possibility, as Knowles himself admits.⁴⁰ Most notably, Smalley sidesteps the political questions raised by *Multiplicem*, countering that the letter employs “tactics in preference to theory.”⁴¹

One could argue that the very structure of Smalley’s book betrays an antipathy to Foliot. The work ostensibly examines the contemporary intellectual response to the Becket crisis, and several of the major intellectuals involved are given chapters. But while Herbert of Bosham, whose education was solid but no more impressive than Foliot’s, and indeed was nowhere near as impressive in matters of law, and Becket, whose advanced education consisted of a brief spell in Paris, are each given their dutiful chapters, Foliot, whose education was first-class, rubs shoulders with a few other miscreants in a chapter on those who disagreed with the archbishop. In sum, she writes of Foliot that he “threw the mantle of piety over compromise,” which, examined

³⁸ Ibid. p. 177. The problem here is that Smalley sets up a false and unnecessary dichotomy between the position of support for Pope and Becket and support for king. The pope’s cause and Becket’s were not necessarily one and the same. Foliot argued for an independent papacy and ignored the proscriptions on the clergy that Henry had instituted in response to Becket’s intransigence and treachery. Becket forced his bishops to sign an agreement at Woodstock binding themselves to the customs of the realm, and then refused to sign it himself

³⁹ Ibid. p. 182. While the former is partially correct, Foliot’s only substantial problem with the *Constitutions* was the limitation on appeal to Rome, which, it should be noted, Becket reluctantly swore to uphold and Foliot repeatedly ignored. *Multiplicem*, Smalley writes, “is a tissue of half-truths and inconsistencies.

⁴⁰ Knowles, *Historian and Character*.

⁴¹ Smalley, p. 183.

objectively is not necessarily a bad thing.⁴² Indeed, many of the points she makes can be seen as evidence of Foliot's character and worth. Yet she concludes that he was ultimately one-dimensional:

He never disputed the theories which he had learnt, for all his hedging and for all his personal attacks on Becket and for all the influences brought to bear on him since his schooldays. He looked into his mental mirror and saw there the image of a good prelate. Perhaps the blows which killed Becket may have cracked it for a moment: we cannot know what went on in his mind.⁴³

She is never, ultimately, able in this work to overcome an assumption that Becket was cheered on by his pious peers, and jeered only by fatuous, arrogant and impious boors.

Like Smalley, Anne Duggan of King's College has recently produced a work equally favorable toward Becket and hostile to his critics.⁴⁴ Her scholarship is undeniably vast and her acquaintance with the Becket controversy has been informed by the outstanding effort of an edition of Becket's archiepiscopal correspondence that she published in 2000.⁴⁵ She argues, correctly, that the bishops were terrified of the king's anger, but she neglects to explore the possibility that Henry's reforms were beneficial, that there was more at stake than simple power, and that the bishops' calls for compromise on the part of their metropolitan might have been motivated by a sense that reform was needed. On the question of Foliot, she, like Knowles, is "puzzled," in that he "was a man of education, a Cluniac monk of long standing, an experienced abbot and

⁴² Smalley, p. 167.

⁴³ Ibid. p. 186.

⁴⁴ Anne Duggan, *Thomas Becket* (London: Arnold, 2004).

⁴⁵ Anne Duggan, *The Correspondence of Thomas Becket, Archbishop of Canterbury 1162-1170* (Oxford: Clarendon, 2000).

bishop. He seems on the whole to have been a good bishop,” and here she plunges the knife, “though heavily tarred with nepotism.”⁴⁶

She floats as a hypothesis the charge Becket made in one of his most obsequious letters, that Foliot was motivated primarily by the desire to protect himself and his family.⁴⁷ Since one cannot determine with any precision who his family members were and the sort of influence they wielded, this is a difficult argument to follow and very difficult to prove. Further, Foliot was so violently angry at that particular letter that he wrote *Multiplicem* in response, and pointedly devastated Becket’s suggestion on these lines. Duggan’s book works over the same ground as Knowles and Smalley, while using little of Frank Barlow’s more recent and more critical examination of Becket’s life.

Not all historians have followed the line against Foliot. Historians partial to Henry II have tended (not surprisingly) to support Foliot. W.L. Warren’s 1973 biography *Henry II* lauds Henry’s legal reforms for preserving the English customary law rather than allowing ecclesiastical courts and their functionaries to dominate English jurisdiction. Such a move, he writes, “could have imparted to the administration of royal justice an authoritarian bias from which only revolution could have rescued it.”⁴⁸ Lengthy sections of Warren’s book deal exclusively with the necessity and evolution of the reforms over the 1150s and 1160s, and a 70-page chapter on Becket paints a picture far more critical of the archbishop than most of the earlier scholarly

⁴⁶ *Thomas Becket*, p. 119. The same charge might easily have been brought against any of Foliot’s contemporaries, including Archbishop Theobald, whose reputation is generally considered above reproach, and who arranged for the accession of his brother to the see of Worcester.

⁴⁷ Duggan, *Correspondence* #96, p. 428.

⁴⁸ WL Warren, *Henry II* (Berkeley: University of California Press, 1973), p. 360.

attempts. In his view Foliot is an almost tragic figure who found himself trapped in a hideous conflict between an irresistible king and an intractable (and foolish) archbishop.

Barlow's *Thomas Becket* is probably the most complete and evenhanded biography of the archbishop that has yet been produced.⁴⁹ He pulls no punches in its sober depiction of Becket as a social climber of limited ability but formidable political skill, brought low by a conflict that proved too much for him. Barlow's attitude toward Foliot mirrors Warren's, but he goes much further into Foliot's reasoning, at least to a certain extent taking letters like *Multiplicem* at face value, without assuming that Foliot's resistance to Becket was necessarily guided by impiety. Barlow also notes the similarity between Foliot and Gerhoh, as had Knowles. In his discussion of Foliot's behavior at the councils that led to Becket's flight, he is extremely sympathetic toward Foliot's position, recognizing that at Clarendon, especially, Becket's behavior was very difficult to explain.⁵⁰ Barlow is less pleased with Foliot toward the end of the book, especially regarding the coronation of young Henry, but he at least allows that Foliot might have felt justified in his participation, and notes that every standing Bishop in the realm took part in the "illegal" ceremony as well.⁵¹

Stefanie Jansen's 2002 monograph, *Wo ist Thomas Becket?* builds on the themes developed by Barlow, arguing that historians of the conflict must recognize that sources written after the murder could not help but be tainted by the murder itself.⁵² If one concentrates on the sources written before the murder, we see that there was no

⁴⁹ Frank Barlow, *Thomas Becket*, (Berkeley: University of California Press, 1986).

⁵⁰ Ibid. pp. 99-100.

⁵¹ Ibid. p. 207.

⁵² Stefanie Jansen, *Wo ist Thomas Becket? Der ermordete Heilige zwischen Erinnerung und Erzählung* (Husum: Matthiesen Verlag (Historische Studien 465), 2002).

unanimity of opinion toward the archbishop before he met his fate in 1170. On the contrary there was a great deal of debate over Becket's stand not only in England and Rome, but throughout France and Germany as well. This argument would also tend to vindicate Foliot as a representative of a contemporary strain of political thought rather than a reactionary fighting against Becket for purely personal reasons.

2.3. THE TWO SWORDS DOCTRINE IN HISTORIOGRAPHY

The imagery that Foliot employs in his description of how the relationship between Church and secular government ought to work warrants consideration in its own right. The "two swords" metaphor Foliot employs to describe the relationship between secular and ecclesiastical power, has received surprisingly little attention from these historians given the backdrop of accreting secular power and the burgeoning papal monarchy of the twelfth century. The historiography is there, and it is important, but it is appropriate to note that historians have tended to overlook the dualist attitude of the separation of the spheres in favor of the theory that developed among clerics during the twelfth and especially the thirteenth centuries, by which both of the swords were under the command of clerical authority. There was an important time between the Gelasian articulation of the philosophy in Western Christendom and its widespread adoption in the later Middle Ages, during which the powers were assumed to be coequal and necessarily separate. During the eleventh and twelfth centuries, both before and after the Investiture Conflict important segments of the clerical elite saw the need for the swords

to act independently of one another, and thus Foliot's arguments can be viewed not simply as self-serving, but as evidence of a common understanding of political theory. The timing of this change in the understanding of the two swords illustrates the centrality of Foliot as a witness to it, while providing an important glimpse at the friction that the changing attitude meant for the old guard.

The two swords doctrine developed out of the scene in Luke's Gospel where Jesus warned his disciples that they ought to arm themselves against the coming trouble, i.e. his impending arrest. The disciples replied "Behold, here are two swords" (*"Ecce duo gladii hic"*), to which Jesus enigmatically responded, "It is enough," (*"Satis est"*), and then departed for the Mount of Olives.⁵³ From this passage the fifth century pope Gelasius articulated a theory whereby both lay authority and clerical authority had their rightful places within the world. The question, according to the representatives of those authorities during the subsequent centuries, was which side, if either, had the ultimate authority. Most historians (with notable exceptions) agree that at least until the tenth century the powers were assumed to be in some way cooperative and coequal. By the time of the Investiture Controversy of the eleventh century, however, and the conflict between the two powers, it is apparent that something had begun to change. There were some who claimed that the relationship was best categorized as cooperative – the phrase they most often employed was *"dualitas"* – in which each power was supreme within its own sphere. On the other hand, at some point before 1200 a theory developed whereby the clergy ought to control both swords: directly in the case of excommunication, and indirectly in the ability to direct the use of the lay or "material" sword. By this theory,

⁵³ Luke 22:38, Vulgate.

advanced in varying degrees by writers such as John of Salisbury and Innocent III, the pope had the right to force lay authority to heel, keeping ultimately (in the opinion of some canonists) the ability to depose monarchs who disagreed with them. Since this debate had such long lasting influence on both political and religious history, the development of the idea of clerical supremacy has occasioned debate among modern historians.

Modern historiography on the two swords theory begins with Carlyle's classic six-volume study of medieval political thought in the early part of the twentieth century.⁵⁴ The early view among historians, reflecting perhaps an element of anti-Catholic bias, held that at its base the two sword interpretation was geared toward the control of the secular by the ecclesiastical. Writing a few decades later, Gerd Tellenbach, for example, glosses over the struggle in the years following the Investiture Conflict, stating that Gregory VII was the culminating moment of the shift to ecclesiastical control. While Tellenbach focused upon that particular moment, the actual struggle that resulted from Gregory's innovation is almost entirely ignored in the epilogue to the monograph, the Church's position remaining defined between the Investiture Conflict and the Protestant Reformation.⁵⁵ The most articulate early spokesman for the enduring dominance of the spiritual sword was Cambridge professor Walter Ullman, who argued in several books during the middle of the twentieth century that papal control had been the goal of the Church for centuries, including during the time that Gelasius first articulated the two swords metaphor. Ullman believed that those

⁵⁴ R.W. and A.J. Carlyle, *A History of Medieval Political Theory*, vol. II, (New York: Putnam, 1909) pp. 76-93.

⁵⁵ Tellenbach, p. 166-67.

periods when the Church articulated (or suffered) the *dualitas* argument were isolated ones, and that the idea of clerical supremacy in temporal matters could be traced all the way back to St. Ambrose, if not earlier.

The historian most responsible for challenging this view was Fr. Alphonse Stickler of Turin, who accused Ullmann of dramatic oversimplification and of ignoring evidence that would paint a very different picture of the twelfth century debate over authority. Stickler's challenge to Ullmann would open a vehement historiographical debate. The thirteen page review of Ullmann's *Medieval Papalism* Stickler wrote for *Traditio* in 1951 lays out the bulk of Ullmann's thesis, but then goes on to show how Ullmann's view of the canonists were very carefully orchestrated to present a distorted view of papal authoritarianism. Moreover, as one of the very small crowd of canon law historians of the mid-century, Stickler's disappointment with Ullmann's book was palpable:

It is with great anticipation that the reader opens *Medieval Papalism*. Here at last, he hopes, is a full, methodical, and competent discussion of the intricate canonistic doctrines which will shed new light on the problem of Church and State in the Middle Ages. But...instead of a scrutiny which does justice to the method and the thought of the medieval canonists, the reader is faced with a general synthesis which has now carried the outworn, all too familiar tenets of a biased school of historiography into the field of canonistics... The very form of presentation stresses this one sided approach... to wit, that in the writings of the canonists everything was subordinated to the one aim of making the papacy the central institution of a world government and of proving the inferiority of the emperor by the sacred authority of the law.⁵⁶

Stickler's review was not unimportant – *Traditio* was an established journal among academics interested in Church and legal history, and such a long review,

⁵⁶ A.M. Stickler, "Concerning the Political Theories of the Medieval Canonists," *Traditio* #7, 1949-1951, pp. 462-463.

especially one so carefully documented, might reasonably have brought a response from the author of the original work. At first Ullmann ignored the challenge, completing a few years later a longer and more detailed study of the growth of papal authority, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power*.⁵⁷ In this work, he greatly expanded his original thesis to include lengthy discursions on the Frankish world and the implications of the Donation of Pepin and Charlemagne's coronation, and especially on the Investiture conflict. Then, in the preface to second edition of the work in 1962 he fired back at Stickler's criticisms, stopping just short of identifying him by name.

These writers – they are less numerous than their vociferously publicized views would suggest – conveniently overlook that the very term and idea of a *dualitas* of government was the invention of the excommunicated and deposed Henry IV to be used as an instrument against the papacy... These writers now wish to tell their unsuspecting and uninitiated readers was the official papal programme from which only the thirteenth century papacy deviated.⁵⁸

Ullmann charges that those who assert “a point of view such as this stand convicted before the historic forum on the charge of ignorance of the sources or culpable lack of understanding of the papal theme.”⁵⁹ He claims that the views of his opponents are “falsifications,” and that “the secret to the papacy's success in the Middle Ages lay precisely in that it inflexibly adhered to its programme and principles and vital axioms because they held them to be of divine origin. Any other explanation or ‘view’ comes dangerously close to asserting the changeability of divinity itself.”⁶⁰

⁵⁷ Walter Ullmann, *The Growth of Papal Government in the Middle Ages: A study in the ideological relation of clerical to lay power* (London: Methuen, 1962).

⁵⁸ Ullmann, *The Growth of Papal Government in the Middle Ages*, 2nd ed. p. x.

⁵⁹ Ibid.

⁶⁰ Ibid, p. xi.

Ullmann's insistence on the monolithic nature of the papal power structure would be largely destroyed by the recognition of multiple poles of power within the Church throughout its history. On the specific question of the two swords, Stickler had already advanced his theories in articles written in the late 1940s, and then directly countered Ullmann in an article in 1954.⁶¹ He dismissed completely the idea that some sort of hierocratic Church control had existed throughout western Christendom from the patristic period, describing in detail the arguments of a great number of twelfth century canonists (including some mentioned by Ullmann) who clearly argued for a separation of clerical and lay authority. He also noted that at the time of the Investiture Conflict, Henry IV presented not only the term "*dualitas*," but the Gelasian two swords argument as well. One would have expected Gregory VII to employ the metaphor had the theory been understood to support papal supremacy.⁶²

With this established, he turned to what he considered the fundamental question: if the swords were meant to act independently, or perhaps as some sort of a check on each other's authority, what would be the basis for the theory's legal legitimacy? How was the argument made by the canonists? How did it come into being, and how had it shifted to support the hierocratic ideas espoused in *Unam sanctam* and elsewhere?⁶³ To answer this, Stickler argued that the roots of the legal theory lay in the new civil analysis of law following the rediscovery of *Corpus iuris civilis* – that it was the reintroduction of Roman law, coupled with the work of Gratian during the 1140s.

⁶¹ A.M. Stickler, "Sacerdozio e Regno nelle nuovo recherche attorno ai secoli XII e XIII nei Decretisti e Decretalisti di Gregorio IX," *Sacerdozio e Regno da Gregorio VII a Bonifacio VIII* (Rome, 1954).

⁶² Thus Ullmann's claim of Henry's initial use of the term "*dualitas*" falls flat; the context of Gelasius' initial use of the sword metaphor specifically mentions two separate powers. Henry may have used the specific phrase "*dualitas*" for the first time in a political context, but to say that the idea was an entirely new one seems a highly strained reading of the sources.

⁶³ Morrall, *Political Thought*, p. 56

The problem, Stickler identified, was the difficulty the canon courts faced in punishing serious malefactors, because the Church was bound by canons that forbade the clergy from shedding blood. Therefore, the theory arose that the secular sword was instituted to fill in where the ecclesiastical could not, to give bite to the ecclesiastical bark, so to speak. Stickler showed that the term “*gladius materialis*” originally described by Gratian had specifically referred to the problem of the *potestas sacerdotalis* in allotting punishment, and was later conflated with the sense of control over secular power in the writings of the canonist Huguccio in the 1160s. Huguccio in turn tutored Innocent III, who by the end of the century was expanding the political authority of the papacy as none before him. Stickler’s thesis provides the legal basis for a claim of ecclesiastical and secular independence predating or even dominating political theory before the mid-twelfth century. In this light, it would have been precisely the sort of argument that would have appealed to an aging civilian, like Gilbert Foliot, working in a canon court during the 1160s.

The specific argument of Gratian aside, Stickler was not entirely original – Carlyle had noted the potential for mutually independent natures of the Gelasian swords in 1909 as had others.⁶⁴ Yet Carlyle, for his exhaustive thoroughness, painted with a very broad brush the relationship between Church and State during the years of the 9th and 10th centuries, with Italian bishops viewing their contemporary secular authorities as barbaric. Such an argument works for Marroza and her family, but falls short of the growing religious and political sophistication of Otto and his descendants, placing Carlyle into Ullmann’s mold.

⁶⁴ Carlyle, pp. 198-199.

With the publication of Stickler's review and articles, several historians began exploring the debate among canonists during the twelfth century. Jesuit scholar Joseph Lecler in 1952 produced an essay on the Church's insistence on a divided power structure in western Christendom, emphasizing the unique nature of this relationship and stressing its early adoption.⁶⁵ In the same collection as Stickler's "Sacerdozio" another Italian historian, M. Maccarone argued that the theory of ecclesiastical control of the material sword was not common until the thirteenth century.⁶⁶ Perhaps more importantly, Friedrich Kempf wrote a pair of articles challenging not only the notion of a papal hierarchy, but of the monist papal control of the Church in the early Middle Ages as a general concept.⁶⁷ Gerhard Ladner published on one of the principal stumbling blocks of Ullmann's work – the distinction between *Ecclesia* and *Christianitas*.⁶⁸ The work of these authors in the 1950s paved the way for Brian Tierney (a student of Ullmann's, no less) to demonstrate the limitation of papal authority in the high Middle Ages, and how civil importation into the canons as a part of this argument led to the development of a constitutional framework in public law, anticipating the work of Kantorowicz on the separation of the political and natural bodies.⁶⁹

For several years Ullmann's ideas remained ascendant, although the growing body of literature critical of his argument was becoming alarming. Nonetheless, Marcel

⁶⁵ Joseph Lecler, *The Two Sovereignities: A Study of the Relationship between Church and State* (New York: Philosophical Library, 1952).

⁶⁶ "Potestas directa e Potestas indirecta," *Sacerdozio E Regno* (1954).

⁶⁷ Friedrich Kempf, "Die papstliche Gewalt in der mittelalterlichen Welt," *Miscellanea Historica Pontificalis* 21, 1959, pp. 153-166.

⁶⁸ Gerhard Ladner, "The Concepts of *Ecclesia* and *Christianitas* and their Relation to the Idea of Papal "Plenitudo Potestatis" from Gregory VII to Boniface VIII," *Sacerdozio e Regno*, pp. 49-77.

⁶⁹ Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150-1650* (Cambridge: Cambridge University Press, 1982); Idem, *Origins of Papal Infallibility, 1150-1350: A Study on the Concepts of Infallibility, Sovereignty, and Tradition in the Middle Ages* (Studies in the History of Christian Thought, vol. VI) (Leiden: Brill, 1973).

Pacaut in 1959 wrote that the goal of theocracy had been the universal understanding of the two swords since the ninth century including during the Gregorian reform period and after.⁷⁰ Undaunted by his detractors, Ullmann continued through the 1960s to write of the continual growth of the papal authority. In 1967 he produced a volume intended for a wider audience, *A History of Political Thought: The Middle Ages*, in which he again emphasized the desire of the clergy at all times to control the use of the material sword.⁷¹ By this time, however, mainstream academic reviewers began to chide him about this assumption in light of the scholarship of Stickler, Kempf and others.⁷² By the 1970s the mainstream of historiography on medieval political theory had generally shifted to the *dualitas* model. Stanley Chodorow's 1972 book on Gratian and Political theory sat firmly in Stickler's camp.⁷³ John Watt struck a conciliatory note in his 1966 monograph on the canonists and authority, but while he muted the vociferous debates of the canonists, he showed clearly that such debate existed in the twelfth century.⁷⁴ Watt was chosen in 1988 to write the *Cambridge History* article on the relationship between Church and State. While cautious in his approach the conclusions are distinctly "Sticklerian," showing carefully how support for papal authority grew dramatically during the late twelfth and especially the thirteenth centuries.⁷⁵

⁷⁰ *La Théocratie. L'Église et le Pouvoir au moyen-âge* by M. Marcel Pacaut (Paris: Aubier, 1957).

⁷¹ Walter Ullmann, *A History of Political Thought: The Middle Ages* (Harmondsworth: Penguin, 1965).

⁷² For example, see Gordon Leff's review in *The English Historical Review*, Vol. 82, No. 323, pp. 378-9: "Where more would take issue with him firstly is in his through-going claims for papal supremacy... Dr. Ullmann seems to ignore how many thirteenth century canonists were prepared to enunciate some kind of balance between the powers."

⁷³ Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum* (Los Angeles: University of California Press, 1972).

⁷⁴ J.A. Watt, *The Theory of Papal Monarchy in the Thirteenth Century* (London: Burns and Oates, 1965).

⁷⁵ J.A Watt, "Spiritual and Temporal Powers," *The Cambridge History of Political Thought c. 350-c.1450*, J.H. Burns, ed. (Cambridge: Cambridge University Press, 1988).

None of the studies on Foliot have taken the debate much into account, though it seems in hindsight a logical consideration. Morey and Brook focus some attention on Gerhoh of Reichersberg, who also employed the swords argument, but they deny that Foliot had access to Gerhoh's writing, and assert that the argument would not have cut any ice with the papacy in any event.⁷⁶ The changing attitude toward canon and civil questions of authority demonstrated by Stickler and others call this conclusion very much into doubt. Likewise, Beryl Smalley overlooks this particular historiographical argument, concentrating her discussion of the twelfth century English attitude toward *regnum* and *sacerdotum* instead on the ideas of Robert Pullen, teacher of both John of Salisbury and Gilbert Foliot.

This was an excellent idea, since Pullen was perhaps the most important English theologian of the century. He used the Gelasian sword metaphor directly. Pullen, however, never stated that the ecclesiastical sword should guide the material sword, much less that the former should dominate the latter, a most serious difficulty in Smalley's argument. She temporized it this way: "Pullen does not state that the secular ruler wields his sword under the Church's direction, but he implies it. The secular ruler enforces ecclesiastical discipline by means of temporal punishments."⁷⁷ Considering Smalley's treatment of Foliot, this is an extraordinary admission in several ways. First, it states precisely what Stickler had argued was Gratian's motive for the relationship between the lay and ecclesiastical swords – the coercive power to correct sinners. Second, given the arguments that had been made over the previous two decades it reveals an assumption on Smalley's part that Ullmann was in some sense correct, that

⁷⁶ *GFL*, pp. 177-8.

⁷⁷ Smalley, *The Becket Controversy*, p. 43.

the argument was always about ecclesiastical control even when it was unstated. And third, this sentence alone would tend to vindicate Foliot in his argument on behalf of Henry, since it states that the ruler ought to enforce ecclesiastical discipline, which was precisely what Henry and Foliot were arguing in the case of the criminous clerks. However, Smalley argues just the opposite, that her assumption of Pullen's implication makes John of Salisbury's papalism the logical heir to Pullen's two swords, and chides Foliot for not following the maxims that she has placed into the mouth of his teacher. She suggests that Foliot's interpretation of clerical autonomy reflected Pullen's in the letters Foliot wrote during the Anarchy, but that he had changed somehow by the time of the Becket crisis. However, if one simply goes by Pullen's words rather than the implications that Smalley derives from them, Foliot suddenly becomes consistent. During the Anarchy, he complained that the destruction of churches and the harassment of clerics overstepped the boundaries of proper lay behavior, and during the Anarchy Becket's insistence that criminous clergy be shielded from royal punishment overstepped clerical authority. While in the former case his anger was colored by his contempt of King Stephen as an ineffectual and possibly illegitimate king, and in the latter his anger was colored by his contempt for Becket as an upstart with no clerical or legal training, there is no need to read more into the situation than exists on its face. Foliot acted consistently and within the bounds of understanding that existed among his peers.

Throughout his life, Foliot articulated a relationship between clerical and temporal authority that was truly Gelasian in nature. Both Church and laity were necessarily independent of one another, so that both might act in such a way as to insure

a harmonious and just society that protected the innocent and provided for them the opportunity to act in a Christlike manner. There is no sense, in Foliot's writing, of a desire to see the Church subverted to the wishes of the crown. As any pious Cluniac, he supported an independent papacy. He also desired that the sword of government be used effectively to punish malefactors who disturbed his sense of justice and order, and wrote that to do this required a monarchy unfettered by clerical control. He sought a balanced relationship between a vigorous clergy and a vigorous crown. As this study will show, his desire to see a purely bifurcated authority structure is evident in his earliest extant letters, penned during the political crisis of the reign of King Stephen, so it seems unlikely that the argument for *dualitas* was a creation of the late twelfth-century. His case therefore supports the views of Alphonse Stickler more than Walter Ullmann. Let us now turn our attention to Foliot's formative years, the schooling that provided his political assumptions, and his observations on the first political crisis that tested those assumptions, the case of the Empress Matilda at the second Lateran Council.

CHAPTER THREE: MASTER OF SCHOOLS

3.1. FOLIOT'S FAMILY AND SCHOOLING

As with most any person outside of the nobility in the 12th century, it is difficult to determine with certainty Foliot's ancestry or immediate parentage, but fortunately for the purposes of this study such certainty is unnecessary beyond establishing the broad outlines of his regional and class background. This was largely accomplished by Morey and Brooke in *Gilbert Foliot and His Letters*. Foliot was born sometime around the year 1105 to a family of the lower aristocracy, but both sides of his family were working to advance their positions. On his mother's side, it seems that Foliot was related to one of the de Chesney families, knights who are mentioned in Domesday but who would not attain any significant stature until the Anarchy of the 1140s. They chose Stephen's side, and lost the gains they had made at the accession of the Angevins. By the end of the twelfth century traces of the family disappear from the historical record.¹

Foliot's paternal family seems to have been somewhat more important, though again none would attain significant distinction until the Anarchy. His most famous relation, and the one to whom he would owe the most important step of his life, his abbacy at Gloucester, was Milo of Gloucester, whose support for Matilda would earn him the earldom of Hereford. Gervase of Canterbury refers to Foliot as blood kin

¹ *GFL*, pp. 34-35.

(*consanguineum*) to Milo's son Roger, which establishes the link.² Morey and Brooke venture a hypothesis that another of Foliot's paternal relatives was the son of Roger, the Steward for the English Honor of the Scottish king, Malcolm.³ Such a background would clarify, given the relationship between King David (who forswore the English throne) and Henry II, the source of Gilbert's early loyalty to the Angevin cause. More importantly, it could explain how Gilbert was able to rise into the ecclesiastical stratosphere of his day. It was not unheard of for educated men of the middling sort to find their way into positions of authority in the 12th century, but it was nonetheless unusual, and Foliot in his letters seems to indicate a sense of social superiority.⁴ Legal obligations directly to the kings of Scotland, without any intermediate vassals, would indicate that his family was very highly placed.

Even without this particular relationship, however, simply on the basis of what is directly discernable it seems that Foliot's family wielded noteworthy influence in both the secular and laic spheres in the southwest, counting as its members several knights, bishops and abbots as well as an earl or two. One de Chesney became tenant-

² *GFL*, pp. 36-38. The evidence for the relationship is straightforward. Gervase of Canterbury, (*Opera Historica*, p. 162) writes "Quod ut videt Gilbertus Foliot eo tempore Herefordensis episcopus, consanguineum suum comitem Rogerium adiit,...etc." "It seems that Gilbert Foliot, at the time bishop of Hereford, approached his kinsman Count Roger...etc." More detailed information on Milo and his family has been compiled by David Walker, "Miles of Gloucester, Earl of Hereford," in *Transactions of the Bristol and Gloucester Archaeological Society*, (1958), pp. 66-84. The evidence for this link is further strengthened by a letter from Rainald, the abbot of Evesham, who refers to Milo as his own uncle, and who refers to himself as Gilbert's uncle. See the *Chronicle of Evesham Abbey*, p. 98.

³ *GFL*, pp. 38-41.

⁴ There are a few places where Foliot seems to take a condescending attitude toward Becket's London merchant background, specifically in the letter from the English Bishops to Becket in 1166 (*LCGF* #167, pp. 222-225), which everyone, including John of Salisbury and Becket assumed to have been written by Foliot. Becket certainly interpreted the comments as a slight, writing in reply defensively that his family origins were respectable, and that Peter himself had simply been a fisherman. *The Correspondence of Thomas Becket*, Anne Duggan, ed. #95, pp. 404-405.

in-chief in the region of Oxford in the 1140s.⁵ Gilbert's uncle Hugh de Chesney held land in Northamptonshire and Bedfordshire as well, and knight's fees held by other members of the family were scattered throughout the region. Before the Anarchy, William de Chesney held Marston, near Oxford, possibly as Sheriff.⁶ He had been a significant player in the siege that led to Matilda's critical defeat at Oxford in December of the previous year, and had been an important fixture in Stephen's army since the siege of Winchester in 1141.⁷ William used this modest but respectable background, along with apparent military acumen and friendship with Stephen to gain total control of Oxfordshire from 1143 onward. William's brother, Robert de Chesney, was made Bishop of Lincoln in 1148, an interesting distinction in that he was one of a very few bishops of English ancestry in England at that time.⁸

Gilbert's paternal relatives, even discounting the possible Scottish connection, were more impressive. In Gloucestershire, Gilbert's uncle Milo was second in power only to Robert of Gloucester himself, the favored illegitimate son of Henry I, and a major force in the Anarchy that followed his father's death. Like his cousin by marriage, William de Chesney, Milo used the Anarchy to ascend the political ladder from castellan to aristocrat. And likewise he had been responsible for the placement of important clergy – not only in Gilbert Foliot as abbot of Gloucester, but, along with his associate and relative by marriage, Payne FitzJohn, in the selection of Robert Bethune for the see of Hereford in 1131.⁹

⁵ *GFL*, p. 34.

⁶ H.E. Salter, ed., *Cart. of the Abbey of Eynsham* (1907), p.415 n4.

⁷ Crouch, *The Reign of King Stephen*, p. 205.

⁸ *Cartulary of Eynsham*, p. 411, citing Giraldus Cambrensis.

⁹ Walker, "Miles of Gloucester," p. 75.

Gilbert's fortunate placement in both the minor aristocracy and clergy gives his voice a particular relevance on matters concerning the divide between secular and laic concerns, one that is strengthened by his origins. Had Gilbert been born to a family of lesser means, even if he had been able to break into the upper reaches of power, his allegiance would have more strongly rested with the Church that had provided him with his only opportunities in life. A number of his later detractors came from such origins.¹⁰ Conversely, if his kinship ties were in the nobility, he would likely have played too important a role in the politics of his day to give the insight of a more or less disinterested observer, concerned with both sides of the debate but having no particular dog in the fight. By luck or design Gilbert emerged from the Anarchy with his career and reputation largely unscathed, a feat his noble Cluniac colleague, Bishop Henry of Winchester, for example, was unable to accomplish.¹¹ In part this was due to his support of the side that prevailed, but it is also due to the geographical and socioeconomic accidents of his birth, and to the intellectual capacities that helped to raise him to power.

Foliot's childhood is even more obscure than his ancestry, for the obvious reason that no one thought to write about him, and since his county of origin cannot be determined with certainty, speculating on his early schooling in specific terms is impossible. It is clear by the level of his erudition that he had studied from childhood, undoubtedly through the formulaic memorization of Latin grammar and scripture. As a child, like most boys destined for clerical careers, he would have learned to chant in

¹⁰ Both Herbert of Bosham and John of Salisbury complained consistently about financial difficulties.

¹¹ Henry of Blois, the bishop of Winchester, was the brother of King Stephen. He had been one of the agents responsible for putting his brother on the throne of England, but also quarreled with his brother over the relationship between Stephen's government and the Church. With the accession of Henry II the bishop of Winchester, while still a force in the English Church, would never again wield the sort of power he had under Stephen.

plainsong as a choirboy, giving him a foundation in both scripture and Latin pronunciation.¹² It is likely that his early education took place in either a cathedral, monastery or parish school; by virtue of his familial circumstances and his return to Gloucester and Hereford, one can assume that his school lay somewhere along a rough and very long line drawn between Lincolnshire and Cornwall.

Around the age of fifteen, probably between the years of 1120 and 1125, he studied at Exeter in preparation for more advanced schooling elsewhere. This explains an exchange of letters between Foliot and Robert Pullen, who taught at Exeter in the 1120s. Foliot's salutation to Pullen is unambiguous as to their relationship: "To his dearest teacher and a lord who has earned an honor, Robert..."¹³ Pullen was earlier at Paris, but if Foliot were born around 1105, as evidence suggests, he would have been too young to meet the great theological teacher in France.¹⁴ Exeter's location in the southwest, where it is certain that Foliot had ties, coupled with the timing, point strongly to the possibility that Foliot spent time there.

Beyond this point, the record thins in a frustrating manner. Pullen lectured at Oxford a decade later, during the period when his pupils included John of Salisbury. His lengthy *Sentences* has also survived intact, yet of his earlier formative work nothing is left.¹⁵ The political ideas in Pullen's *Sentences* may have had an impact on Foliot's thought, especially regarding the respective jurisdictional territories of Church and laity, but in this particular instance the letter is silent on the matter. His correspondence with

¹² For general education in England see either of Nicholas Orme's books: *From Childhood to Chivalry, The Education of English Kings and Aristocracy, 1066-1530* (New York: Methuen, 1984); or *Education and Society in Medieval and Renaissance England* (London: Hambledon, 1989).

¹³ LCGF #48, pp. 84-85 "Magistro suo karissimo domnoque meritis honorando Roberto..."

¹⁴ Francis Courtney, *Cardinal Robert Pullen; An English Theologian of the twelfth Century* (Rome: Universitatis Gregorianae, 1954), pp 6-8.

¹⁵ Ibid.

Pullen in late 1145 regards Foliot's congratulations for the latter's promotion and his plea for aid in a legal matter pertaining to a group of clerks in Salisbury.¹⁶

Similarly, evidence for the situation of learning in Exeter in the early decades of the twelfth century is also incomplete. As records for schools in England go, those for Exeter in this period are as good as those for any school outside of London. Nevertheless there is still only a rudimentary understanding of the sorts of people drawn to study there or why they chose to go. Nicholas Orme's work on education in the region suggests that at least by the second half of the century the university had become a magnet for students from England and even further afield.¹⁷ By virtue of his age at the time, it is likely that Foliot had his early lessons in rhetoric here, though these would not have come from Pullen, who taught what would today be considered university courses in theology. Foliot likely completed his grammar training at Exeter and listened to Pullen's lectures in his teens, as he contemplated the future direction of his studies and prepared himself for advanced work in law on the continent.

Foliot left Exeter around 1125, armed with an impressive grasp of Latin rhetoric, as demonstrated by the quality of the prose in his correspondence. He also had at least some training in theology, but at this point he made the significant decision, perhaps the first significant decision he would make about his life, to pursue the study of Roman law on the European continent. His choices of venue for such study were limited to a few burgeoning towns whose schools would, in this century and the next, explode into importance as training grounds for service to Church or lay lord. Both Paris and

¹⁶ This dispute with the chapter in Salisbury is taken up in detail in Chapter Four, below.

¹⁷ Nicholas Orme, *Education in the West of England, 1066-1548* (Exeter: University of Exeter, 1976) p. 46.

Chartres, the latter especially, had faculty in Law in the early 12th century. Montpellier was another possibility. Yet in all likelihood Foliot chose to study at Bologna. There is no direct evidence of this, but the circumstantial evidence is weighty.

There were few copies of the *Corpus iuris civilis* in Western Europe during the 1120s, and still fewer places to find detailed discussion of it. Largely lost to the west for several centuries, a copy of the *Corpus* had been found in central or southern Italy in the late eleventh century.¹⁸ This particular copy, known as the Florentine manuscript, was probably produced during the late sixth century. From it, all copies of the *digest* that circulated in Western Europe during the Middle Ages were derived. The size and complexity of the text and the lack of commentary upon it limited its spread during the first decades after its rediscovery. Irnerius, the famous eleventh century jurist, brought a copy to Bologna at around the turn of the twelfth century.¹⁹ Until the 1120s, Bologna was the only place one might acquire an extensive education in civil law.²⁰ No British copies of the *Corpus* from the early to mid-twelfth century have survived to the present day, and there are very few mentions of them in the historical record. One of these few, in fact, appears in one of Foliot's letters, an 1153 message to Robert de Chesney, in which Foliot describes his work on Robert's copy of the *Digest*, which Robert had

¹⁸ Stein, *Roman Law in European History*, p. 43.

¹⁹ Stephen Kuttner, "The Revival of Jurisprudence," in *Renaissance and Renewal in the Twelfth Century*, Robert Benson and Giles Constable, eds. (Cambridge (MA): Harvard University Press, 1982), pp. 300-304. It is worth noting that an alternative chronology has been proposed by Charles Radding (*The Origins of Medieval Jurisprudence 850-1150* (New Haven: Yale University Press, 1988)), who argues that one might interpret certain aspects of earlier medieval jurisprudence as indicative of knowledge of the *Corpus*. His thesis, however, was effectively refuted by Stanley Chodorow in his review of the book (*Speculum*, vol. 65, #3, pp. 743-745).

²⁰Kuttner, *ibid.* p. 319.

asked Foliot to gloss.²¹ Given the timing of Foliot's education there are only two possibilities. Either he gained a familiarity with civil law through Gratian's *Decretum*, which married civil and canon principles and which appeared in England around 1150; or, if his familiarity can be demonstrated earlier, then he studied civil law directly through the *Corpus* somewhere on the European continent.

The latter alternative is easy enough to establish through two letters written while Foliot was Abbot of Gloucester, between 1138 and 1148. The first, written some time between 1142 and 1148, was addressed to Jocelin de Bohun, the bishop of Salisbury, requesting gentle treatment for a clerk named Adelard.²² Foliot writes, "The authority of ancient custom and practice is not without value, and where it does not sin in God it is allowable so that antiquity is not shaken by its own roots."²³ The first clause of this sentence is a direct quote from the *Corpus*.²⁴ The second letter is his lengthy reply to Brian FitzCount in 1143, which suggests a correlation to the *Corpus* in two ways.²⁵ First there are several direct references to the *institutes* and the *digest* in the text. As a part of his argument Foliot notes a division in the law consisting of three broad categories - divine law (*ius divinum*), natural law (*ius naturale*), and human law (*ius humanum*) - and then subdivides human law into the civil law (*ius civile*) and the law of nations (*ius gentium*).²⁶ His description of natural law, for example, slides in and

²¹ LCGF #106, p. 145, to Robert de Chesney "You asked to have your *Digest* glossed and corrected, and behold (my colleague) Ambrose has kept at it, threshing it out. (Digestam corrigi et glosari precipitis, et ecce Ambrosius vester laborare non desinit in tritura)."

²² LCGF #17, p. 53. The dating of the letter is based on the salutation. Gilbert calls Jocelin Bishop of Salisbury, a position he did not hold until 1142, and calls himself Abbot of Gloucester, which he gave up at his elevation to bishop of Hereford in 1148.

²³ "Consuetudinis ususque longevi non vilis est auctoritas, et ubi non peccatur in Deum tollerabile est ut radicibus suis antiquitas inconcussa permaneat."

²⁴ *Code*, 8 52, 2.

²⁵ LCGF # 26, pp 61-65.

²⁶ *Ibid*, p. 63.

out of a verbatim quote from the opening book of the *Digest* (1,1,1 (Ulpian)): “And natural law is that which nature teaches not only us but also all animals...that they have young and raise them and care for them... etc.” There are other similar quotations scattered throughout the letter as well: *Institutes* 1, 2, 2; *Novels* 115, 3; *Digest* 50, 17, 129 (and 178); *Code* 8, 2, 3, 1. These are specific references to a wide variety of contexts within the *Corpus* ; Gratian would likely not have given him such variety even if it were somehow established that a copy of the *decretum* had found its way to England by 1144, the latest date that the letter could possibly have been written.²⁷ Moreover, the very division of the law that Foliot uses, while not entirely taken from Ulpian in that he claims a *ius divinum* that would have alarmed the pagan jurist, nonetheless bears the stamp of Ulpian and could not have come from Gratian, who bases his division of types of law on the writings of Isidore.

Thus it can safely be concluded that Foliot’s education took place on the European continent. He might have become acquainted with the *Corpus* somewhere other than Bologna, but this idea strains credibility more than doubt, because he clearly studied the law so early in the century. He could not have entered the monastery at Cluny much later than 1130, which means that his study of law had to have been completed during the 1120s. The work of Irnerius on the *Corpus* was in full swing during the first decades of the century, and while copies *Corpus* had by the 1120s already found their way to other cities, especially in Italy, the first commentaries on them were only completed within the ten or fifteen years before Foliot began his advanced study. It was after this point, during the 1130s and 40s that the rise of the

²⁷ On the dating of this letter, see Chapter 3, below.

importance of civil law elsewhere in Europe began. Therefore it is difficult to believe that Foliot's education in the *Corpus*, part of which must have taken place while Irnerius was still alive, could have been gained anywhere outside of Italy, and indeed outside of Bologna.²⁸ There was little reason for him to go elsewhere, since Bologna was already known as the center of civilian study. If he were planning to come all the way from Britain and did not attend Bologna, it is difficult given the other circumstances of his erudition to determine why he would choose to study elsewhere. There is even a degree of geographical evidence to support the argument that he went to northern Italy: upon completion of his study he entered the monastery at Cluny, which is located not far from the route a person traveling homeward from Italy to England would likely take.

Foliot's choice to specifically study civil law is also an unusual one. During the 1120s it was still almost unknown in his homeland, and this may supply a key to understanding his personality. At the time Foliot made his way to Italy, the knowledge and use of civil law was largely limited to the Italian city-states that had quickly seized upon the reconstructed *Corpus*, in response to the burgeoning financial needs of their economies and out of recognition of the civil law's superiority to the Germanic codes that formed the backbone of jurisprudence in the northern part of the peninsula.²⁹ By contrast, in England, civil law was as yet almost entirely unused. Most legal cases there were adjudicated either by the customary courts or "Hundreds," or by the royal courts, which all used the customary law of the realm, or by the ecclesiastical courts, which

²⁸ His use of the *Corpus* also seems to have a Bolognan flair. He has a tendency to quote verbatim with just enough mistakes to guarantee he was working from memory. See *GFL* p. 64 and notes.

²⁹ Stein, *Roman Law in European History*, p. 42-45.

used canon law.³⁰ Had he been a cleric (which at the time he was not), with a particular interest in law he would likely have concentrated more on canon law than he evidently did, since the study of civil law would not yet have helped with the canons. There was indeed a demonstrable antagonism among clerics toward the civil law, since the goals of civil law seemed to neglect the principles of Christianity, and sections of the *Corpus* had been collected from the writings and opinions of purely pagan jurists like Ulpian and Gaius. This antipathy would find expression a decade after Foliot left Bologna – in a vain attempt to shelter the canons from secular contamination the second Lateran Council in 1139 would forbid churchmen from its study.³¹

Canonists nonetheless increasingly sought in the *Corpus* remedies to difficult legal situations. The Roman law offered several advantages. It was readily adaptable to a variety of situations, resting, in a way, on equity as the ultimate goal.³² For the more broadminded cleric, such a goal might be reconciled with the fundamental nature of Christianity. For the layman, it appealed to a greater sense of tradition and order than either canon or customary law, recalling the greatness of antiquity that twelfth century intellectuals were trying to reinvigorate.³³ One can surmise then that Foliot was drawn to the civil law out of some combination of intellectual curiosity and the recognition of

³⁰ R.C. van Caenegem, *The Birth of the English Common Law*, (Cambridge (England): Cambridge University Press, 1973), pp. 1-27.

³¹ Lateran II, canon ix, "Therefore, we forbid by apostolic authority this practice (clerical learning of civil law) to continue, so that the monastic order and the order of canons may be preserved without stain in a state of life pleasing to God, in accord with their holy purpose." *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner (Washington DC: Georgetown University Press, 1990)

³² Stein, pp. 49-52.

³³ Benson and Constable, *Renaissance and Renewal*, esp. Robert Benson, "Political Renovatio: Two Models from Roman Antiquity," pp. 339-386; Norman Kretzman, "The Culmination of the Old Logic in Peter Abelard," pp. 488-511; and Herbert Bloch, "The New Fascination with Ancient Rome," pp. 615-636." On English intellectuals' involvement in the movement, see Rodney Thompson, "England and the Twelfth Century Renaissance," *Past and Present*, no. 101 (Nov. 1983), pp. 3-21.

the limitations of both the canon and customary laws that dominated the courts of his homeland. It can also be assumed that Foliot's memory was exceptionally good even by the standards of his day, since the lack of any indexing in the enormous *Corpus* during the early decades of the twelfth century required extensive memorization on the part of any who would learn its secrets. To excel in its study also required aptitude in both recollection and logic, that one might take disparate entries in the *Corpus* and combine them in innovative ways. Finally one can assume that Foliot's ability in letters was also impressive at an early age, as rhetoric was the skeleton upon which the law was draped.

Whatever his motivations, he learned the law extremely well, so much so, that the English author of a theological work known as the *Ysagoge in Theologiam*, written sometime in the 1130s or 1140s, dedicates it to Gilbert Foliot, who was still in France at the time, with the epigraph, "...so that what England sends to France is supported by the judicious approval of the most famous man of learning on either side of the Channel."³⁴ Foliot was well known for learning, at least among his English compatriots. A much later letter of around 1162 states that Foliot might well have chosen a laic career over a regular one, and that the Church had gained by pagan philosophy's loss.³⁵ This particular letter is ambiguous as to the nature of Foliot's employment, and the flattery is calculated to reflect on the correspondent, abbot Hugh of Cluny, who had recently been deposed.³⁶ It is also possible, by a different reading of the passage, that he

³⁴ Michael Evans, "The *Ysagoge in Theologiam* and the Commentaries Attributed to Bernard Silvestris," *Journal of the Warburg and Courtauld Institutes*, Vol. 54. (1991), pp. 1-42. The dating of the letter is explained in the article, proving that the recipient could not have been Gilbert the Universal.

³⁵ *MB*, vol. V. pp 30-31. "...Qui (Foliot) mundanum philosophum vero Christo philosopho sic mutavit, ut istius veritatem retineret, illius astutiam non abjiceret: qui magistrum scholarum sic dimisit, ut discipulatum idiotarum Christi devotus addisceret."

³⁶ This is obviously not St. Hugh of Cluny, but the second abbot of that name (1156-61).

deserted his teacher for a life in the cloth. Nonetheless, it seems apparent either way that he had worked toward a career along more secular lines, and then, for some reason abandoned it and undertook holy orders. When he did so he would have been in his mid-twenties, sometime around the year 1130.

3.2. FOLIOT AND CLUNY

The reason Foliot chose to undertake holy orders is unknown. Foliot himself never directly mentions his motivations, though during the peak of his turbulent disagreement with Becket he comments on how he enjoyed the serenity of his life as a monk, a life he knew for less than twenty years.³⁷ It would seem that around the year 1132 he had attained some level of distinction in his studies (the systematic use of degree titles was not yet widespread), most likely permission to teach law, and was heading toward home in Britain.³⁸ Along the way, he turned aside to the venerable and remarkable abbey at Cluny, due either to an onset of spiritual fervor or a calculation that his career opportunities would be enhanced by doing so. Both possibilities were common during the twelfth century, and both likely apply to Foliot.

Cluny's establishment and the fervor of its members were situated in time to ride the crest of a wave of religiosity that swept Europe during the tenth and eleventh

³⁷ LCGF #195, p. 266.

³⁸ Restrictions on permission to teach were at this time coming into practice at Bologna (Hastings Rashdall, *The Universities of Europe in the Middle Ages*, vol. 1 pp 123-24). Foliot's familiarity with the *Corpus* and the time when he must have entered Cluny (see below) indicate that he departed during the early 1130s.

centuries, and which would culminate in the mendicant orders.³⁹ The enthusiasm for religious donation was so great among the aristocracy in his homeland that during the eleventh century that it became a demonstrable drain on Norman estates.⁴⁰ The Cluniac priory at Abbeville, which Foliot would take charge of in the 1130s, had been founded by a donation of the Count of Ponthieu, Guy, whose elder brother, Enguerrend, was likely killed at Hastings.⁴¹ When the Normans invaded England in 1066 they brought their habit of monastic support with them, and Cluniac monasteries were the favored recipients of their largesse. Consequently, if Foliot were simply entering the Church for more or less mercenary reasons, a career as a Cluniac would certainly appeal.⁴² Milo of Gloucester, of course, was a benefactor of the Benedictine house at Gloucester, which was why he would be able to arrange Foliot's election as Abbot in 1139. Like most of his aristocratic contemporaries, Milo gave to multiple institutions; at the time of his death two churches, Gloucester and Llanthony would fight over the right to inter him.⁴³

Cluny's tendency to gamble on youth and potential, elevating men in their twenties and thirties to lead priories and the great abbey itself, would also mean rapid

³⁹ Herbert Grundmann, *Religious Movements in the Middle Ages*, Ed. Edition. (South Bend: University of Notre Dame Press, 1996).

⁴⁰ Sidney Painter, "The Family and the Feudal System in Twelfth Century England," *Speculum* 35 (1960), p12.

⁴¹ *The Gesta Normannorum Ducum of William of Jumièges, Orderic Vitalis, and Robert of Torigni*, vol. 1, van Houts, Elisabeth M.C., ed. (Oxford: Clarendon Press, 1992).

⁴² Most of the players involved in the reign of Henry I and in the anarchy that followed were involved in such giving, up and down the scale of power. Henry's second wife Adeliza would give to the monastery her husband had founded along Cluniac lines at Reading, as did his brothers-in-law David of Scotland and Jocelin of Louvain. Henry's minstrel, no less, founded a priory and hospital of Augustinians, complete with a stone church, in London. Stephen founded Faversham abbey and populated it with monks from Cluny, as well as the abbey at Furness that would later join the Cistercians. The de Lacy's, who figured highly in early 12th century Norman affairs, founded the abbey of Pontrefact in 1090, and continually gave for the abbey's upkeep. See Charlotte Newman, *The Anglo Norman Nobility in the Reign of Henry I* (University of Pennsylvania Press, 1988), pp. 74-77.

⁴³ *Cart. Glouc.* Vol. I, p. lxxv.

advancement for a young man of intellect. Freed from the interference of lay authority, the Cluniacs were able to choose young men with both apparent piety and aptitude for administration. This, coupled with its tendency to promote youth allowed Cluny to maintain for more than a century one of its original projects, the production of uniform texts for use in the liturgy.⁴⁴ This central goal required enormous intellectual capital in the form of literate monks able to work in the *scriptoria*. Thus, Cluny gathered some of the greatest minds of the tenth and eleventh centuries, and would later continue to attract intellectual churchmen, which may also help to explain why Foliot, the recent graduate of the schools, would choose to take the cloth there.⁴⁵ Although Cluny's reputation had been somewhat damaged by a bizarre crisis in 1125, when a deposed abbot raised an army and took over the monastery, under the abbacy of Peter the Venerable, Cluny quickly regained its footing as a leading monastic system in Europe.⁴⁶ While some, notably Bernard of Clairvaux and Peter Damian, fired salvos at Cluny's complacency in the face of new monastic reform movements, like the Augustinians and Cistercians, the overall reputation of Cluny at the time that Foliot entered the monastery was favorable.⁴⁷

⁴⁴ Bredero, Adriaan, *Christendom and Christianity in the Middle Ages : the relations between religion, church, and society*; trans. Reinder Bruinsma (Grand Rapids, Mich.: W.B. Eerdmans, 1994), p. 21.

⁴⁵ *ibid.*

⁴⁶ The traditional view of this episode is that the leadership of the abbot in question, Pontius, had been marred by a number of disputes of both sacramental and monetary nature. Eventually, he was pushed out of the abbacy, and formally resigned as abbot before Pope Calixtus. Pontius then made a pilgrimage to Palestine where he apparently acquitted himself well militarily. Upon his return he gathered a group of supporters, some of whom seem to have been monks that had run from their own monasteries. At the head of this ragtag band Pontius attacked Cluny in 1125, and then with the aid of local peasants he was able to coax into joining him, he held Cluny for several months. The invaders were not able to hold against the determined and disciplined force of knights who retook the abbey and reinstalled Peter (the Venerable) as abbot in 1126.

⁴⁷ On the fight between the Cluniacs and Cistercians, see Devid Knowles, "Cistercians and Cluniacs; the Controversy between St. Bernard and Peter the Venerable," in *Historian and Character*, pp. 50-75.

Moreover, recent scholarship coming from a variety of directions suggests that the relationship between Bernard and Peter was not as vitriolic as has previously been believed. Hayden White argued in 1958 and 1960 that Peter and Bernard were both opponents of the earlier Gregorianism typified by Gregory, Urban, and Paschal II.⁴⁸ Stanley Chodorow echoed this theme in his 1971 analysis of the papal election of 1119.⁴⁹ Adriaan Bedero, while assigning a very different motivation to the controversy over the abbacy of Pontius, nonetheless places Peter and Bernard on the same side of the argument, and like later scholars would claim that the famous exchange of letters between Bernard and Peter, was not an exchange at all. Rather, he argues, Peter was defending the style of Cluniac monasticism to Cluniac monasteries, and in principle agreed with the reforms, which he began to institute in Cluny itself in 1132.⁵⁰ More recently, this analysis has been expanded by Giles Constable, who argues that there was more agreement than disagreement among the various monastic movements, in contrast to earlier historians' focus on an assumed hostile relationship that might be construed from Bernard's letters concerning Cluny.⁵¹

What does Foliot's decision to enter Cluny, then, tell us about his character? There are two ways to interpret the evidence. On one hand, Foliot was a highly educated member of the gentry or aristocracy of extraordinary education. His choice to study the burgeoning field of civil law demonstrates his susceptibility to new ideas and to intellectual challenge. He attained significant rank as a scholar and then took his

⁴⁸ White, "Pontius of Cluny," and "The Gregorian Ideal."

⁴⁹ Stanley Chodorow, "Ecclesiastical Politics and the Ending of the Investiture Contest: The Papal Election of 1119 and the Negotiations of Mouzon," *Speculum*, vol. 46, #4 (1971), pp. 613-640.

⁵⁰ Adriaan Bredero, *Cluny et Citeaux au douzieme siècle: L'Histoire d'une controversé monastique* (Amsterdam, Holland University Press, 1985).

⁵¹ Giles Constable, *The Reformation of the Twelfth Century* (New York: Cambridge University Press, 1997) pp. 130-135.

learning with him into the sheltering walls of the monastery that for the previous two centuries had led western monasticism in wealth, piety and prestige. He quickly ascended the leadership hierarchy of the Cluniac system, perhaps attaining the distinction of prior at Cluny, certainly of prior of Abbeville. As a monk he traveled widely, often, and in good company.

All told, then, an argument might be made that Foliot was an ambitious man who used a brief career as a simple monk as a stepping-stone to larger and better things. This is especially likely if one accepts earlier analyses of the antagonistic relationship between Cîteaux and Cluny. Cluny offered respectable monasticism coupled with a by this time arguably casual attitude toward privation, certainly compared to upstart ascetic communities like Cîteaux, whose most notable son, Bernard, wrote his broadside at Cluny's complacency, the *Apologia*, in 1125.⁵² Foliot seems precisely the sort of monk Peter Damian would have shunned in the previous century, made even more objectionable by his worldly and dangerous education as a lawyer, of the dangerous civil law no less, in a society that had grown further from righteousness as towns and the money economy began to develop. Thus one might reasonably conclude that Foliot's vocation was not a spiritual one, and that his career was based on ambition more than on devotion, an important conclusion given his detractors' arguments during the later Becket crisis. Such a picture would certainly fall into line with other descriptions of Foliot's character that emerged in the years following Becket's death.

Yet the evidence for Foliot as a worldly opportunist must be balanced against other conflicting evidence. His letter to Amice, the countess of Leicester, dating from

⁵² For this dating I am relying on Constable's *The Letters of Peter the Venerable* (Harvard, 1967), vii, pp. 270-274.

around 1165 reminisces on the serene pleasure he found in his life as a monk, but also intimates that his earlier life, i.e. as a young man and student, had been one of “excess.”⁵³ Foliot’s letter speaks of long internal conversations with his conscience in the silence of the abbey, of regret for early mistakes, of years spent in torment before being settled by the peace of the Lord.⁵⁴ Much of the letter is trope, after the style of Augustine or Gregory the Great, but it is also uncharacteristically personal, and given the turmoil he found himself in at the time the letter was written, there is little reason to doubt the authenticity of his feeling.⁵⁵ Given the ascetic bent that marked his reputation, even later in life when as a bishop his asceticism marked him as something of a zealot, it is more likely that his turn to Cluny was motivated by an honest and heartfelt piety..

The circumstances of Cluny at precisely the moment he took the cloth also support this idea. While historians currently debate whether Peter the Venerable’s reforms were in response to letters from Bernard or simply in recognition of the straits the monastery found itself in following the abbacy of Pontius, Peter was working intently to mend Cluny’s faults during the 1120s and 30s. It is unlikely that Peter would have elevated Foliot so quickly had he not been confident of Foliot’s intelligence, his capacity for administrative leadership, and also, it cannot be doubted, his devotion. The abbot could ill-afford to misjudge the men he entrusted with authority so hard on the heels of the Pontius disaster. Nor would he have kept such men close to him as advisors and traveling companions if they failed to live up to his hopes and expectations. Foliot

⁵³ *LCGF* #195, p. 266. “O michi quid memorem soliloquia sancta que cum sponso suo anima quondam mea dum eam claustris silentia tegerent et tenerent, in spiritum elevata permiscebat?...”

⁵⁴ *ibid.*

⁵⁵ Morey and Brooke point out that the language used in the letter, as well as the references to the Song of Songs makes it more the original product of the twelfth century than a conscious echo of Gregory. *Ibid.*, p. 266, n. 5.

accompanied Peter in 1139 to the Second Lateran Council as an advisor during the arguments in the papal curia between Stephen and Matilda over the disputed succession of the English throne.⁵⁶ This some eight years after first entering the abbey as a simple monk, perhaps three years after Foliot had been elevated to prior of Abbeville, and seven years after Peter began reforming Cluny along more ascetic lines. Had Foliot proven a dud, or worse, a poser, there would be little justification for Peter calling him from his priory.

On balance, it seems likely that Peter recruited Foliot from within the ranks of his brotherhood, recognizing in him the advantage of an extraordinary and useful education and connection to a number of powerful English families. He then translated Foliot to head the priory of Abbeville, whose proximity to the Norman territories held by the English crown made Foliot an attractive choice for its leadership. He may even have placed Foliot there in response to the changing political situation in England. While there is no doubt that Foliot was a prior of Abbeville, he says as much in a letter written in 1172, it is difficult to determine the year he was actually installed there.⁵⁷ Assuming that he entered Cluny around 1130, and that his novitiate lasted a year, and that he was made a prior at Cluny a year or so later, he could not have arrived at Abbeville much before 1135. This raises the interesting possibility that events within England led to this second important step in Foliot's rise to fortune - that Peter sent Foliot to Abbeville around 1136 in response to the death of Henry I and the potential problems and power vacuum that his death opened.

⁵⁶ John of Salisbury, *Historia Pontificalis* 84-85, et al..

⁵⁷ *LCGF* #220, p. 293-294; Foliot remarks in passing that he had been prior at Abbeville. Interestingly, however, there are no records at Abbeville that confirm his presence there, and indeed the surviving record indicates another possible prior at the time that Foliot was evidently there.

3.3. FOLIOT, MATILDA, AND THE SECOND LATERAN COUNCIL

At word of King Henry's death in early December of 1135, his nephew, Stephen of Blois quickly crossed the channel, with the aim of claiming the crown for himself. He was denied a landfall at Dover and the gates of Canterbury were closed to him, but at London he was welcomed and support for his claim was promised. With the aid of his brother Henry of Blois, the bishop of Winchester, he was able to secure the treasury, and then with a small retinue was able to present the archbishop of Canterbury with a *fait accompli*. After Stephen promised to restore a number of the Church's liberties ostensibly infringed upon by his uncle, the archbishop crowned him king of England on December 22.⁵⁸ The Normans generally accepted Stephen and made no effort to place Henry's daughter, Matilda, on the throne, despite earlier oaths to support her. Nonetheless, by the first week of December, Matilda had launched attacks from her base in Anjou and had taken possession of several castles in southern Normandy with an eye toward making her own bid for the throne. By January, the Welsh had also risen against the new king, along with the Scots, both championing Matilda's right.⁵⁹

Against the backdrop of this growing turmoil Foliot was sent to the Priory of Sts. Peter and Paul at Abbeville. Abbeville is ideally placed to observe the political currents among the powerful who controlled France, Normandy, Flanders and England,

⁵⁸ R.H.C. Davis, *King Stephen*, 3rd ed. (London: Longman, 1990), pp. 12-21; David Crouch, *The Reign of King Stephen* (London: Longman, 2000) pp. 30-35.

⁵⁹ Marjorie Chibnall, *The Empress Matilda: Queen Consort, Queen Mother and Lady of the English* (Oxford and Cambridge: Blackwell, 1991), pp. 45-87.

situated as it is just sixteen miles from the English Channel, directly between the Pas de Calais and Normandy. Abbeville is almost equidistant from Caen, Paris and London. Although there is no direct proof that Peter the Venerable had sent Foliot there because of its strategic location, the coincidence is suggestive. The dispute for the succession of the English throne was one of the most important events in Western Europe during the 1130s, as it involved the interests of several powerful factions: the French king Louis VI; the Norman barons who had recently shown themselves capable of carrying a fight as far away as Byzantium; the counts of proto-industrial Flanders; and of the English themselves. Moreover, there were few alternative Cluniac houses where Foliot might have been sent to keep an eye on Anglo-Norman affairs. There were only four houses that were direct dependencies of Cluny in England during the 1130s: Lenton, Lewes, Montacute and Thetford, and none of them lost an abbot in 1135 or 36.⁶⁰ It seems fantastic that Peter would at this moment happen to place Foliot, a young English Cluniac with a strong background in law and blood kinship to various English and Norman families, in Abbeville simply by chance. More likely, contemporary developments had dictated the next course of Foliot's life.

At the time that Foliot arrived at the monastery of Sts. Peter and Paul, around 1135, Matilda's first attempt to gain the throne was being or had already been rebuffed. At Henry's death she took control of several castles in southern Normandy, about a hundred miles southwest of Abbeville, but when it became apparent that her support among the Norman barons was weak and that they would support Stephen even ahead of one of their own counts, Stephen's elder brother Theobald, her husband, Geoffrey of

⁶⁰ Knowles, Brooke and London, *The Heads of Religious Houses England and Wales 940-1216* (Cambridge: 1972) pp. 114-25.

Anjou refused to risk any more military capital to press her claim. Her position was even more attenuated in that her husband's army had brutally attacked a number of castles that might have come voluntarily into Matilda's camp. For the first time the Angevins, previously distrusted, were now actively disliked by the Normans.⁶¹ The relationship between Anjou and Normandy that Henry I had tried to cement with the marriage of his daughter to the house of Anjou had at least temporarily blown apart.

Militarily thwarted, Matilda turned her attention to the Church in the hope that the Pope might intercede on behalf of the oaths taken by the English and Norman barons. In 1139, she made a formal attempt to secure papal recognition at the Second Lateran Council, which had been called to address a number of doctrinal issues following the death of the anti-pope, Anacletus II, who had died in 1138. It was here that Matilda's path would cross Foliot's for the first time. Some five hundred churchmen from across Western Europe attended the council, among them Peter the Venerable and one of his advisors, the prior of Abbeville, Gilbert Foliot. Foliot recounted his participation in the council and Matilda's case around five years later in his letter to Brian FitzCount.⁶² Foliot had left Abbeville in early March, 1139, and arrived at Cluny sometime around the middle of the month. Peter, Foliot and the rest of their party then left for Rome, where they arrived in time for the opening of the council on April 2.⁶³

⁶¹ Marjorie Chibnall, *The Empress Matilda*, pp. 72-73, citing Orderic vi, pp. 470-71: "The Angevins remained in Normandy for thirteen days and made themselves hated for ever by their brutality."

⁶² *LCGF*, # 23, pp. 60-66.

⁶³ John of Ypres, *Chronica monasterii S. Bertini*, XLIII, in *Thesaurus Novus Anecdotorum* v. III (Paris, 1717) p. 638.

Several canons of particular relevance to Foliot's story were promulgated at Second Lateran, not least of which was the strong discouragement of the study of civil law among the clergy, on the grounds that those clerics who engage in such work "make themselves the advocates of suits; and since they have to neglect the psalmody and hymns, placing their trust in the power of fine rhetoric instead, they confuse what is right and what is wrong, justice and iniquity, by reason of the variety of their arguments." The document continues: "The imperial constitutions testify that it is truly absurd and reprehensible for clerics to want to be experts in the disputes of law courts."⁶⁴ Perhaps Peter the Venerable grinned at his young associate as this particular canon was read aloud.

Peter's decision to include Foliot, though, was probably in part due to the latter's experience in law, and perhaps in equal measure to his proximity to the succession dispute in England and Normandy.⁶⁵ In his description of the events, Foliot refers to himself "the least of the Cluniacs (*Cluniacensium minimus*)" among the "great" (*magno*) gathered in the room.⁶⁶ The issues he heard there rested on both English and Norman custom and on matters of canon law. Foliot's *obiter dicta* of the proceedings are a fortunate coincidence. Since the experience also helped to shape Foliot's attitude toward Stephen, Matilda and the disputed succession, which would influence his career in a number of ways, it is worthwhile to recount the high points of his description.

⁶⁴ 2 Lat. Canon ix, translation mine.

⁶⁵ Carolyn Shriber, *The Dilemma of Arnulf of Lisieux* (Bloomington: Indianapolis University Press, 1990), p. 16, and n. 30, p. 146.

⁶⁶ *LCGF*, p. 65.

Matilda was represented, Foliot recalls, by the Bishop of Angers, Ulger, who argued that Stephen had usurped the throne in direct violation of his own oath to Henry, and was thus guilty not only of the usurpation but of perjury as well.⁶⁷ Ulger argued that Matilda's was the claim of hereditary right, and that the earlier oaths of the churchmen and magnates in support of her invalidated Stephen's coronation. Speaking for Stephen's delegation was the young archdeacon of Sens, Arnulf, later Bishop of Lisieux, who had written a widely circulated, incendiary (and to modern eyes unconscionably anti-Semitic) pamphlet against Innocent's rival Anacletus. Arnulf placed a terrific value on *ad hominem*, attacking Anacletus, who was of distant Jewish ancestry, as a Jew and the son of a Jew, and accusing him of deflowering his Jewish sister, of having by her illegitimate Jewish children, and then of traveling in the company of a tonsured concubine with a boyish face who dressed in the garb of a young cleric, making Anacletus guilty of a host of perversions.⁶⁸ Since Anacletus' election as Pope was arguably as valid as Innocent's, such support likely endeared him to Innocent, which may well be the reason Stephen chose him to speak on his behalf.⁶⁹

Foliot watched as Arnulf opened his case at the council with the argument that Matilda's birth was illegitimate. This striking conclusion was based on the claim that her mother, Eadgith of Scotland, had been under holy vows at the time of her marriage to Henry I. This was not strictly true, as she was merely promised to the Church and had taken no vows. In the moment the argument was given, however, no immediate rebuttal could be offered. As much as anything else this may have been due to surprise, as the

⁶⁷ Ibid.

⁶⁸ Schriber, *Dilemma*, p. 17.

⁶⁹ Ibid.

argument was so specious.⁷⁰ Particular evidence of Eagdith's vow was not at hand, and in the moment no legal reply could be made. Arnulf then claimed that the allegiance to Matilda sworn by so many bishops and magnates had been made under the duress of implied threats from her powerful father. Finally, Arnulf argued that Henry had on his deathbed rescinded his favor for Matilda, dissolved the oaths made to her, and demanded a new oath of loyalty to Stephen by those present.

John of Salisbury's depiction of the event, written many years later and assembled from the recollections of various people, has Ulger rising to Matilda's defense in a lashing personal attack on Arnulf himself:

"I marvel, Arnulf, at your presumption in attacking now he is dead the man whom you and your fathers and brothers and whole family worshipped as long as he was alive; the man who raised you and your kindred from the dust. I would marvel at the shamelessness of your lies were it not that your whole race is garrulous and deserves to be held up as an example of sinful life and skill and effrontery in lying. In these arts you are conspicuous even among the Normans. Further, by treacherously accusing your dead lord of incest, you lift your heel against your mother, the holy Roman Church, for the Church confirmed the marriage you attack, and lord Paschal, bishop of Rome, anointed the daughter born of it as empress. This he could never have done to a nun's daughter, nor was he ignorant of the truth, for it was not a secret marriage contracted in the darkness dear to the likes of men like you. As for your statement that the king changed his mind...neither you nor Hugh could possibly know his last requests for neither of you was there."⁷¹

Unfortunately, this eloquence is the result of willful fiction on the part of John, who was not present at the council. Foliot actually witnessed the meeting and states specifically that no one rose to Matilda's defense against these charges, though in hindsight he comes to many of the same conclusions that John would state openly many years later.

⁷⁰ Chibnall, *Empress*, p. 76.

⁷¹ John of Salisbury, *Historia Pontificalis*, Marjorie Chibnall, ed. (London: Thomas Nelson, 1956) pp. 84-85.

Examined from the immediate vantage point of the moment, the evidence clearly shows that Matilda had the right. The oaths taken should have been binding, whether Henry's vassals feared him or not. Henry was an effective and when necessary ruthless king in much the same manner as his father the conqueror. By an extension of the argument made in favor of abrogating the oaths of the barons, any agreement between a powerful king and his subordinates would be invalid, and no one, least of all Arnulf, was making such an argument. The argument that Matilda's birth was illegitimate was simply ridiculous. Foliot later observed that the marriage between Henry and Eagdith had been sanctified by none other than Anselm of Canterbury, who was already being spoken of as a candidate for sainthood.⁷² So far as can be determined, Foliot had no bias in the matter: he had no evident kinship to the Angevins, nor indeed a demonstrable relationship to any of the participants in the dispute. He appears to have been simply a pious young fellow with an interest in justice, and he concluded that it was not being done with respect to Matilda.

In the larger context of Second Lateran, however, it is difficult to see how any woman would have made much headway against a man, as a number of the canons produced there cast an anti-feminine shadow over the proceedings. Some of these canons indicate merely an oblique distrust of women, such as the proscription against clerical marriage and the concern over the study and practice of healing arts, but others are more direct. Women were forbidden to live together in independent monasteries unaffiliated with male organizations or unregulated by the rule of Basil or Benedict. Nuns were all but forbidden from housing male travelers in their convents, and they

⁷² Chibnall, *Empress Matilda*, p. 76.

were forbidden to sing offices with canons or monks. This overall climate would make difficult Matilda's bid to remove a sitting king and place herself on the throne.⁷³

In the end, Innocent half-heartedly took Stephen's side, thankful for Arnulf's ability to incite emotion in the face evidence. The pope refused to make a final judgment on the issue, but he did confirm for the time being Stephen's lordship of England and Normandy. Significantly, however, he did not confer on Stephen the right to declare his children as heirs to the kingdom or duchy, so that particular matter was left in doubt. Matilda already had two sons with the Count of Anjou, so the pope's intransigence over blessing Stephen's issue takes on dramatic coloring. It would pave the way for the ultimate resolution of the conflict fifteen years later with the accession of Matilda's eldest son as Henry II. At the moment, blocked by the Church, the empress would again begin agitating for control of England via military means. Before the end of 1139, the civil war in England would enter a new phase.

The entire episode likely left a bad taste in Foliot's mouth with regard to the functioning of law in the Church courts, and indeed to the honesty of his fellow clerics. In these early years, Foliot, shrewdly taciturn or simply quiet in indecision, never declared openly for either Stephen or Matilda, but a number of important churchmen in England declared for one or the other, and then placidly broke their word as circumstances changed. In the former category, Henry, the Bishop of Winchester and a former Cluniac, might be grudgingly excused since he was the king's brother. But in the latter category, bishops like Roger of Salisbury and his nephews, Alexander of Lincoln and Nigel of Ely, seemed oblivious to their vows, filling castles with arms and taking an

⁷³ For the anti-feminist argument, see Chibnall, *Matilda*. For evidence that Henry I was trying to clear the way for his daughter to assume power in England upon his death, see Judith Green, "Unity and Disunity in the Anglo-Norman State," *Historical Research*, #62 (1989), pp. 120-123.

active part early in the struggle.⁷⁴ Clearly this could not be easily reconciled with the pious spirit of the canons that emerged from the Lateran Council that Foliot observed, nor with Foliot's particular style of asceticism. Roger and his relatives supported Matilda so long as it suited their purpose, but they did not do so out of any sense of religious devotion or even simple principle.

On the other hand, laymen like Robert of Gloucester and Brian FitzCount would laboriously pen documents, documents known to Foliot, describing devotion to Matilda as a matter of personal honor based upon the oaths that they had, in their view, sacredly sworn. The irony is curious. Foliot was thirty years of age and had entered the clergy, at least in part, out of religious sentiment. Yet the pope could not bring himself to declare a principled stand on the most troubling difficulty his homeland would know for almost a half century. Further waffling on the part of clerics toward lay authority would continue to disturb Foliot as the breakdown of both clerical and temporal authority continued into the depths of the English Anarchy.

⁷⁴ The most complete analysis of these clerics and their actions during the 1130s is found in Edward Kealy, *Roger of Salisbury, Viceroy of England* (Berkeley: University of California Press, 1972).

CHAPTER FOUR: FOLIOT IN THE ANARCHY

4.1. FOLIOT AT GLOUCESTER

Knowledge of Foliot's movements and whereabouts during the Anarchy is hampered by the paucity of documentary evidence that mentions him, though he can be placed at a few points. It seems likely, for example, that he was present at the 1139 hearing over Roger of Salisbury. He accompanied Matilda to Lincoln when her forces had taken the king captive, and journeyed with his friend Theobald, the archbishop of Canterbury, to the Council of Rheims in 1148. He likely spent a good deal of time in Gloucester and Hereford in the course of his career as abbot of the former and bishop of the latter. Beyond this, very little of his movement and activity can be discerned. However, his letters lay out for us to a substantial degree his attitudes toward a number of problems related to the Anarchy. The following section will examine the competing strains in Foliot's outlook – his reputation as a churchman and his love for the Church, and his disgust at the disintegration of any secular political structure capable of guaranteeing either the liberty or security of the people of the realm. These growing difficulties help to explain Foliot's concern over Becket's initial rise to the archbishop's throne and his horror as he watched Becket's archiepiscopacy unfold.

At the time that Foliot came to Gloucester in 1139, it was a comparatively wealthy town with strategic and economic interest to the English nobility that had lately spent considerable effort to maintain its control. The town and its Benedictine abbey each had a long history of importance. Under the later Saxon kings, the Witan had met for its winter session at Gloucester. Like London and Winchester, it was one of the three places where the kings formally wore the crown. William the Conqueror chose to keep Gloucester as the home of his winter court – it was at one such court in Gloucester in 1185 that his musings led to the establishment of the Domesday survey. He built a new royal castle and residence within the town itself, separate from Kingsholm, not far from the town's monastery, St. Peter's. It was the Conqueror who also masterminded the restoration of St. Peter's, giving the project to his chaplain, Serlo, in a bid to associate himself with the older traditions of the English monarchy.¹

When he took charge as abbot in 1072, Serlo had perhaps ten monks and novices, and the abbey was virtually destitute. Through sheer determination he caused Gloucester's abbey to eclipse its earlier influence and expand its grip to encompass a number of other properties. By 1095 the abbey re-established control over the lucrative manors of Froucester, Colne-St.-Alwin, Northleach, Odynton, Standish and Barton, and others.² Serlo also commissioned the building of a new church and abbey after the initial structure burned in 1088. The structures that Foliot took charge of date from this period.³ At Serlo's death it was already impressive, housing more than one hundred

¹ John Britton, *The History and Antiquities of the Abbey and Cathedral Church of Gloucester* (London: Longman, Rees...et. al., 1829), p. 7.

² Ibid.

³ William Henry Hart, ed., *Historia and Cartularum Monasterii Sancti Petri Gloucestriae*, vol. I, (London: Longman Green et al., 1863), p.12.

adult monks and a corresponding number of novices.⁴ Domesday reports that in the years since the conquest, the value of the individual properties controlled by St. Peter's roughly doubled, in keeping with the general trend of the region. But the total number of manors controlled by the abbey rose sharply, with a corresponding boost to the abbey's income.⁵ When King Stephen reconfirmed the possessions of the abbey of St. Peter in 1139 the charter was of considerable length.⁶ From its eleventh century nadir, the wealth and position of Gloucester's abbey had risen until it was among the greatest in the realm at the time of Foliot's appointment as abbot.

Two months before the Second Lateran Council opened, Walter de Lacy, the abbot of St. Peter's in Gloucester, had died. How Gilbert's election as his successor was arranged is unclear, but his kinship to Milo of Gloucester, who was in control of the local region as the first waves of Anarchy began to buffet the southwest, no doubt played a part. By acclamation or force the monks of Gloucester put forward Foliot's name as the new abbot. Two brothers were dispatched from Gloucester to fetch Foliot, whom they likely found in Italy. He returned with them to England in late May and was taken to Worcester, to be blessed by Robert de Bethune, the bishop of Hereford, on the feast of Whitsuntide, which that year fell on June 11.⁷ The following day he set out southward for Gloucester, where he probably arrived on the 13th or 14th of the month. It must have been a bittersweet moment; after fifteen or so years away, Foliot had

⁴ David Welander, *The History, Art and Architecture of Gloucester Cathedral* (Wolfeboro Falls, NH: Sutton, 1991) p. 24.

⁵ John Morris, ed. and trans., *Domesday Book* (Chichester: Phillimore Press, 1982), p. 165c.

⁶ *Historia ... Gloucestriae*, p. 14.

⁷ *Ibid.*

returned to his homeland to head a large and important abbey, yet the storm clouds were darkening upon the horizon, as England slipped into an increasingly bloody civil war.

As he entered the town, quite a large crowd of the local populace came out to cheer his arrival and have a look at him. He was still a young man, around thirty-five, and was probably touched by the appearance of the well-wishers who lined the road up to the abbey.⁸ Then he was taken inside the spacious new church and installed in his seat. The building had not been touched by fire or other disaster for seventeen years, so the paintings on the walls were likely in excellent condition, the new nave airy and spacious, and as it was mid-June, the temperature agreeable. Florence of Worcester reports that the mood was celebratory, hopeful that the new abbot of whom all had heard such tales of learning and influence would further help to boost still further Gloucester's rising fortunes.⁹

His most immediate concerns were with his relationship to his powerful and dangerous uncle and benefactor, Milo of Gloucester, and with Milo's relationship to King Stephen. These were Foliot's protectors against the increasing incursions of the Welsh, which would form a backdrop to a number of the letters Foliot wrote as abbot.¹⁰ Milo, who was also the king's constable in Gloucester, remained cagey about his political opinions.¹¹ Outbreaks by the Welsh in 1138 had brought Stephen and an army to Gloucester, and Milo had used the opportunity to score points with the monarch, who was acutely aware of his need to cultivate friendships in the southwest part of his

⁸ Florence of Worcester, pp. 265-66. *Historia ... Gloucestriae* (London: Longman, 1863), p. 18.

⁹ Ibid, and Weiland, *Record*, p. 26.

¹⁰ For example, *LCGF* # 10, to Osbern, #13, Robert Bethune...etc.

¹¹ David Walker, "Miles of Gloucester, Earl of Hereford," in *Transactions of the Bristol and Gloucester Archaeological Society*, (1958), pp. 70-72.

realm.¹² At the end of the year, the abbot of St. Peter's was on his deathbed, and succumbed the following February. It was at this moment that Milo suggested to Stephen that his Cluniac nephew fill the vacant position, a suggestion Stephen agreed to, and Foliot was called from France.¹³

The surfeit of Stephen's goodwill toward Gloucester was squandered not long after Foliot's arrival. There appeared at this point to be a concerted motivation behind the Southwestern barons' lawlessness; it was no longer the standard "testing" of a new monarch that David Crouch claims was common during the period.¹⁴ Now, it seemed to be focusing around the growing support among the barons in the region for Matilda and the Angevin cause. The locus of battle was moving into the southwest, around Bristol, where Matilda's open ally, Robert of Gloucester held his principal power base. Milo declared for Matilda immediately upon Robert's arrival in the summer of 1139, and Matilda herself chose to live in Gloucester at one of the ancestral homes of the English monarchy.¹⁵ Foliot, as the abbot of the important local monastery, was now in the heart of the rebellion. While parts of England were almost untouched by the fighting, Gloucestershire wasn't one of them.¹⁶ Foliot's attitudes toward the relationship between political and clerical authority developed within this violent context.

¹² While Robert of Gloucester was still on the fence regarding his support for Matilda, Stephen recognized him as a threat (Davis, *King Stephen*, pp. 34-38). Robert's primary holdings in England were in the Southwest.

¹³ *Historia Monasterii S. Petri Gloucestriae*, p. 17.

¹⁴ David Crouch, *The Reign of King Stephen* (Harlow: Pearson, 2000), pp. 72-84.

¹⁵ Chibnall, *Matilda*, pp. 83-84.

¹⁶ *Ibid.* Crouch and others have argued that the characterization of Stephen's reign as "anarchical" is perhaps undeserved, but in specific areas, such as the west and southwest, Oxfordshire and Lincolnshire, the fighting was at times pronounced and desperate, as the *Gesta Stephani*, among other contemporary documents, makes clear.

4.2. THE CASE OF BISHOP ROGER

His first substantial brush with the growing conflict occurred in a showdown between the king and his brother, Henry of Winchester, over the treatment of one of the most powerful clerics in England, Roger of Salisbury. Roger had risen from obscurity as a parish priest to the pinnacle of royal service, acting at the death of Henry I as *Maire de Palais*, a position that placed him in charge of the entire royal household, including all fiscal and administrative matters.¹⁷ For reasons that are not entirely clear, and may have simply reflected prudence, Roger and his nephews, Nigel of Ely and Alexander of Lincoln, began building castles and assembling a disturbingly large retinue of knights during the course of 1138-39.¹⁸ Stephen's close advisors began warning the king about the potential threat that Roger's family represented. At a council he called at council Oxford in late June of 1139, a dispute broke out between retainers of the king's most trusted supporter, count Waleran of Meulan and the knights of Bishop Roger.¹⁹ Several of the bishop's men were killed and many others were taken prisoner. In the aftermath, as the bishops prepared to return to their strongholds, the king's men laid hands upon both Roger and Alexander, demanding that they hand over their castles as a token of their good faith. They hesitated, and Stephen used the pretext of their hesitation to have them taken prisoner. Roger was thrown into a wet, dirty cowshed and held there while Stephen decided what to do about him. For several weeks the forces of the bishop and

¹⁷ *Roger of Salisbury; Viceroy of England*, pp. 9-12.

¹⁸ *Ibid.*

¹⁹ There are a number of sources that treat this infamous episode, including the *Gesta*, and William of Malmesbury's *Historia Novella*. A surprisingly detailed account is also found in the *Life of Christina of Markyate*, whose anonymous author was evidently present at the proceedings.

the king fought, but in the end the castles held by Roger's family were reduced, and by the end of July the crisis was over.

Roger's situation put into focus precisely the sort of confusion over the secular and ecclesiastical swords that Foliot would discuss at various points in his career. Foliot, whose asceticism was acknowledged even among his detractors, likely viewed Roger's worldly behavior with distaste. He had no difficulty with a bishop wielding what he called the "sword of the Lord (*gladium dei*)," but this was not the sword that Roger employed, nor were his actions geared toward spiritual goals.²⁰ Foliot disapproved of clerics acting in a worldly manner, as a letter roughly contemporary to the Roger of Salisbury incident bears out. The unnamed recipient of the letter was evidently a bishop, whom Foliot extolled for the strength of his kindness and firmness, pointing out that where many bishops fail to continue in their spiritual duties upon anointment as bishop, his friend has not neglected his responsibilities. Foliot took a slight dig at those bishops who ascend the ladder but forget their obligations, both spiritual and temporal.²¹

Sometimes the opinion is professed that under the gift of Christ the vow is lessened. Yet in you, the concern for your flock is ever watchful, and thus the work taken on for the soul is never complete. You argue and implore, reprove and defend – and where the bandage does not prevail over illness, you do not fear to cure with precise amputation... a heart clearly commendable in that it shows grace to the meek and discipline to the resistant. ²²

²⁰ LCGF #1, #2, #12...etc.

²¹ LCGF #12, pp. 48-9.

²² Ibid. "Est aliquando profecta sententia ut sub tributum Christi sponsa redigatur. Sed in te cura pastoralis evigilat, ut quod animo presumptum est nequaquam opera compleatur. Arguis, obsecras, increpas et defendis, et quos foment non prevalet precisionis ferro curare non pertimescis – pectus sane commendabile quod mansuetis exhibet gratiam et contumacibus disciplinam. Cum manna virgam in sanctuario divina reponit auctoritas, sic plenitudinem pastoris erudiens ut et de pectore gratiarum bonis exhibeat totum quod dulce est, et contumaciam reprimat disciplina.

This hardly describes the behavior of Bishop Roger and his associates on the episcopal bench, who lived very much within the world, and gave little heed to either spiritual propriety or to their religious duties. The *Gesta stephanie* takes Roger and his nephews to task for:

...Disregarding the unsullied and simple Christian religion, devoting themselves instead to battle and the pomp of the world that people wondered at the company of knights upon which they were surrounded by every side²³

However, despite Foliot's displeasure at Bishop Roger's worldly behavior, the showdown between Stephen and Roger would have pleased him no more than it did the author of the *Gesta*. Roger appears almost entirely unreligious, it is true, in the sense that devotion associated itself with the ideals of chastity, humility and poverty; as Henry Mayr-Harting once described him, he was a "civil servant who became a bishop, and who remained a civil servant after his consecration."²⁴ He was nonetheless an ordained priest, and the bishop of the diocese of Salisbury, and for this reason alone was due significant deference from the king. He was also more than seventy years old. There is also reason to suspect that Stephen had set a trap for him at the council of Oxford, intending to use some violence as a pretext to reduce Roger as a threat.²⁵

Roger's colleagues on the episcopal bench, led by Stephen's brother Henry, the bishop of Winchester, called a synod in August to denounce the king's actions toward Roger. Although no record exists of the participants at the synod, it is likely that Foliot attended the proceedings – the first Church council that had been called since he had

²³ *Gesta* p. 73.

²⁴ "Hilary, Bishop of Chichester and Henry II," *EHR*, vol 78, no 307, p. 211.

²⁵ Davis, *Stephen*, p. 29.

taken his position as abbot, and one that met within a few days ride from Gloucester.²⁶ The synod expressed a number of growing ambivalences within the English Church during the early years of the Stephen's reign, ambivalences that would become important for Foliot throughout his long career.

There was the underlying tension between those who believed that churchmen must divorce themselves from worldly concerns in order to best serve God and serve man, i.e. the developing ideal of the high medieval reform movement that would lead first to the Waldensians and then quickly, in a more palatable form, to the Mendicants.²⁷ Against this there was also the deep concern over the treatment of the Church at the hands of the laity.²⁸ However, the primary jurisdictions of law in the realm of England, namely the various canon and royal courts that had developed during the peace of the reign of Henry, were rapidly becoming objects of contempt as no one recognized any authority aside from their own ability to enforce their will.²⁹ The concept of Norman feudalism, which Henry's political might had effectively bent to his own will, was antithetical to the needs of the society that had emerged during the intervening years in

²⁶ There are no lists of participants at Winchester, but Foliot was a high-ranking cleric in the region, and we know from his letters that he was a frequent participant at such conferences. Moreover, as the substance of the synod involved a question of law, namely the legality of laying hands upon a bishop without the benefit of a finding at canon law, his participation would likely have been as welcome at Winchester as it had been at the Lateran Council earlier in the year. There are a number of sources that treat this synod, at least cursorily, including the *Gesta*, and William of Malmesbury's *Historia Novella*. A surprisingly detailed account is also found in the *Life of Christina of Markyate*, whose anonymous author was evidently present at the proceedings. He claims that not only did the Bishops and Archbishop and a concourse of the Clergy attend, but also the abbots of almost the whole of England (*abates fere totius Anglie*). One can assume with some confidence that he was present.

²⁷ Lester Little, *Religious Poverty*, pp. 113-170.

²⁸ Barlow, *The English Church 1066-1154*, pp. 304-306. See also David Spear, "The Norman Empire and the Secular Clergy 1066-1204," *JBS*, vol 21, #2 (Spring 1982), pp. 1-10. Robert Kealey's biography (*Roger of Salisbury* (University of California Press, 1972)) also provides an analysis of Church attitudes toward Roger's trial and its outcome.

²⁹ Barlow, *The English Church* (p. 277)

response to economic pressures and to his own administrative reforms.³⁰ Stephen's inability to control the countryside and bring to justice violent men bent on attacking members of other societal estates exposed serious cracks in the foundation of English governance. The synod at Winchester was the Church's first attempt to wrestle with this growing problem.³¹

Bishop Henry set the tone for the council in his opening address in which he condemned not only the arrest of the bishops, but also the seizure of what was arguably Church property. "The incarceration of bishops and the seizure of their property," he stated, "was in the past the habitual work of secular authorities."³² This is an interesting remark in that it directly contrasts an earlier age with his own, and expects that the laity will treat clerics deferentially. However, while the clergy was united in its outrage at Stephen's treatment of Roger, it was clearly difficult in the same spirit of religious simplicity for clerics to claim a theological basis for the bishops of Salisbury, Ely and Lincoln to hold castles, much less to hold them against the king. Agents of the king drove this point home as they chided the assembled clerics, who then retired to deliberate for several days. The discussion revolved less around Roger's claim of property than with the claim of customary procedure, and more importantly, clerical immunity.³³ At length, the synod broke up after meekly chiding the king for departing from his own policy of recognizing the liberty of the Church, outlined just six months earlier.

³⁰ Warren Hollister, *Henry I* (New Haven: Yale University Press, 2001), pp. 349-369.

³¹ Emily Amt, *The Accession of Henry II*; also, Paul Dalton, *Conquest Anarchy and Lordship: Yorkshire, 1066-1154* (Cambridge: Cambridge University Press, 1994).

³² William of Malmesbury, *HN*, p. 30 (chap 472).

³³ Kealey, pp. 194-5.

Stephen won this particular battle, but lost, as he did so often, more than he had gained. He had opted to defend himself at the council, giving the Church an implicit authority it might not have been able to advance, and at the same time angered them by sending his chamberlain, Aubrey de Vere, to browbeat them into submission.³⁴ The king's hold on the English clergy, which had seemed unshakeable earlier in the year, had suffered a substantial blow³⁵. By his callous treatment of both Henry and Roger, Stephen had managed to annoy his two most powerful supporters in the English church.³⁶ This in turn was underscored by the growing unease among the clergy of the bitter treatment of the churches and peasantry as the Anarchy deepened. Coupled with Stephen's inability to reduce his enemies at Bristol, while the local populace suffered at the hands of both sides, loyalty for Stephen among the clergy wavered as 1139 waned.³⁷

Likewise, Foliot's attitude toward Stephen was not a favorable one. Up to this point, his personal interactions with Stephen and his supporters had been limited to the presentation of his case at second Lateran, his acceptance of the lands of St. Peter's monastery, and the council at Westminster.³⁸ At Lateran, Foliot had watched as Stephen was given the throne of England, for no better reason than that he already held it. The assertion of Matilda's illegitimacy was ignored, leaving no underlying legal support for Stephen's claim, as both Foliot and John of Salisbury would later comment.³⁹ At

³⁴ Davis, p. 32.

³⁵ Barlow, *The English Church*, p.

³⁶ Davis, p. 32-33.

³⁷ Ibid.

³⁸ These are the only instances that can be proven; there may be other interactions, but it is doubtful. Stephen's ancestry is in Blois, not England; his grab for the throne was unexpected as Stephen's elder brother, Theobald, was perhaps the more logical choice. From what little is known of Foliot's life before 1138, there seems little reason to suspect that Foliot's orbit and Stephen's crossed before the Lateran council in 1138.

³⁹ John of Salisbury, *Historia Pontificalis*, Marjorie Chibnall, ed. (London: Thomas Nelson, 1956) pp. 84-85; Foliot, *LCGF*, #26, p. 65.

Winchester, Stephen's treatment of the Church proved unfortunate. Although Foliot never directly expressed his attitude toward Stephen at any time before 1141, there were obvious reasons for his growing distaste for Stephen that would find open expression in his stinging rebuke of Stephen's government in his letter to Brian FitzCount.⁴⁰ These reasons would increase as Foliot found his monastery in the center of a growing violence that neither Stephen nor his enemies could bring under control.

Matilda's arrival in Gloucester a few months later brought fighting into the immediate vicinity. Six months into his abbacy, a rising tide of violence swelled around Foliot and threatened to engulf his community, treating him at close range to the hideous features of medieval warfare. A few weeks after Matilda's return, Earl Robert of Gloucester took the opportunity to assemble a force and march on nearby Worcester. At first the inhabitants, warned of the advancing army, huddled in the cathedral and then the castle, hoping to survive the devastation of the town. John of Worcester's account includes depressingly authentic touches of the real nature of siege warfare and its toll on the local population: children and babies crying in terror in the cathedral as the monks sing the offices, mothers grieving their dead. Parts of the town were burned out of sheer spite.⁴¹

In turn, when Waleran returned to Worcester a few weeks later, he took a force and sacked Sudeley, barely 10 miles from Gloucester. While he could cover this attack with the excuse that the man who had it in his possession, John Fitz Harold, had recently joined the Angevin cause, the primary motive seems to have been revenge.⁴²

⁴⁰ Foliot, *ibid.*

⁴¹ John of Worcester, *The Chronicle of John of Worcester, III, The Annals from 1067-1140*, P. McGurk, ed. (Oxford: Oxford University Press, 1998) p. 56-57.

⁴² *Ibid.*, and Crouch, *Stephen*, pp. 114-116.

He paid back evil with evil, and carried off the possessions and livestock of John's men, with winter coming on. Geoffrey Talbot made another of several attacks on Hereford in December of that year. Stephen marched against the bishop of Ely in January, flushing him from his castle in the marshes there, and driving him to meet up with Matilda in Gloucester.⁴³ Gloucester had become one of the centers of the war.

4.3. FOLIOT AND WAR; THE SPIRITUAL SWORD

Foliot's reaction to all of this is well documented, as the earliest letters in his collection that can be confidently dated were written during the resumption of fighting in Hereford, the episcopal see of Gilbert's new diocese, in the spring of 1140. Hereford had been a locus of conflict since 1138, when forces led by Talbot, recently traded by his royal captors for the bishop of Bath, attacked and took the royal garrison of the town. In December of 1139, he and Milo had joined forces to attack the town. Milo took a position on the Cathedral grounds with little apparent regard for its occupants. The knights stabled their horses in the church, and dirt for the rampart was taken from the convenient churchyard cemetery, exposing the "bodies of parents and relations, some half-rotten, some quite lately buried, dragged piteously from the depths."⁴⁴ Upon this rampart Milo erected a siege engine, and from this vantage point he was able to hammer the royal position with artillery. The fusillade caused extensive damage to the parts of town that lay within or near the line of fire, and the town was again largely burnt, the

⁴³ Crouch, *ibid.*, p. 117.

⁴⁴ *Gesta Stephani*, p. 109.

third time in as many years.⁴⁵ The psychological effect was perhaps worse; warfare was usually cruel to local inhabitants involved in siege, but one can scarcely imagine the grisly sight of arms, legs and heads sticking out of earthen works built on what was until only weeks earlier the most sacred ground in the town.

Foliot writes on this occasion two letters – one to the dean of Hereford cathedral, Ralph, who had been evicted during the fighting; and one to Robert Bethune, the bishop, who had fled the region.⁴⁶ Both of them, among the earliest extant letters, placed number one and two in the *E musaeo* volume, use the militaristic rhetoric, including the sword metaphor, but both draw a sharp distinction between the ways that clerics are to employ the ecclesiastical sword and the way that knights ought to employ their material ones. The first letter is a long one, close to a thousand words in the original Latin, in what would prove to be typical of Foliot's style in that the central section is an extended homily, liberally interspersed with biblical and classical allusions. Foliot had a reputation as a preacher, and one can begin to see why in this first letter, in that he strikes the necessary line between gentle piety and an almost martial call to harden Ralph's will to what he must face.⁴⁷

Rejoice, my love, rejoice and consider - consider that the turmoil is eased by your devotion to all that is good, so long as you carry the marks of Christ Jesus, so long as you carry his cross; so long as you struggle for justice and the liberty of the Church. You haven't come a pampered knight into the Lord's battle, but barefoot, clad in wool and armed with the banner of the cross for the highest king.⁴⁸

⁴⁵ Ibid.

⁴⁶ *LCGF*, nos. 1 and 2.

⁴⁷ On the style of Foliot's letters and on his homiletics, Morey and Brook have provided the most comprehensive treatment. *GFL*, pp. 8-31.

⁴⁸ *LCGF* #1 p.33-34. "Gaude, dilecti mi, gaude et attende. Attende inquam quam pio voto te bonorum omnium turba prosequitur, dum portas in corpora tuo stigmata Christi Iesu, dum crucem eius baiulas,

As he closes he imparts the hope that if Ralph is to be martyred, he will be an inspiration to those around him who love him. Cold comfort, perhaps, but to a man facing the very real possibility of death, with little chance for escape, it was likely the most comforting thought worth contemplating.

In the next letter, to the bishop of Hereford who had removed himself from the scene, he gives a report of the damage, of which the bishop of course was already well aware. “Homes are ruined, barns destroyed, goods stolen, possessions torn apart, furniture scattered. And what of your people? ... Tears stand on the cheeks of your sons; who shall wipe them away?”⁴⁹ Then he urges the bishop to action, using the sword imagery directly from Ezekiel:

Yours look to you, father; to you they beg for solace in their lamentation. You have been given the staff – it would not be remiss if you shaped it into a switch. Just as in the prophet: The sword is sharpened, polished that it might glitter. Let it stay firm in the hand for the punishment and vengeance for the shame of the flock of the God of Israel. Do you hear the Lord’s reproach to the unbelievers? Have you not prepared your hands for battle and your fingers for war?⁵⁰

Note that in the letter to his unnamed friend quoted above, he speaks to the importance of a bishop maintaining an even strain in this regard, commenting that both manna and the scourge are necessary in equal measures. “From the heart, understanding grants to the good all that is sweet, and reprimands the contumacious with discipline.”⁵¹ This is not necessarily a difficult paradox to square. Foliot lived at a time when law and order, as he understood it, was at a low point, and his training in law, and the fact that

dum pro iustitia et ecclesie libertate in agone decertas. Non delicates miles in Domini bella venisti. Pedes nudi, vestis lanae, vexillum crucis in minibus, summi regis exprimunt armaturam.”

⁴⁹ *LCGF* #2, p. 36, “Confracte sunt domus, apothecae disparte, sublata vasa, distracte pecunie, suppellex undique dissipata.”

⁵⁰ *LCGF* #2, p. 36. “Te pater ista rescipiunt, te lenimen sibi lamenta deposcunt...etc.

⁵¹ *LCGF* #12, p. 49.

he chose to enter Cluny, would tend to support the idea that he was to some degree an idealist. At its most fundamental level, law is concerned with justice, thus it is not unreasonable to find in Foliot something of a “might for right” mentality. Thus he consistently urges his superiors to act more forcefully in combating the depredations of the knights in the region who are no longer leashed by any sort of secular law.

Nonetheless, Foliot never pushes in his correspondence for the clergy to take into their hands any sort of material sword. He searches for the balance between lay and ecclesiastical authority and the spheres of their respective jurisdictions. The clerics’ inability to curb the predatory behavior of the knights helps explain Foliot’s concern with lay authority and the ability of the king to draw his own sword. Foliot urges the clergy to draw their sword, but there is only so much that they can do with it. Combating the sorts of crimes he is confronting requires a greater coercive power than he can urge them to use. The greatest power, excommunication, will not necessarily avail the clergy in the situation he sees around him.

The list of Foliot’s letters that deal with such difficulties is an impressive one, and in each case the desired punishment is an ecclesiastical one. In 1140 he asked leave of his superior, bishop Simon of Worcester, to excommunicate a local troublemaker named William de Beauchamp, who had “ceaselessly pursued to the ultimate misery the affliction of his fellow man.”⁵² Later in the same year, he begged Simon to “take into his hand the sword of the Lord” against a group of knights who had turned the church of St. Mary in Slaughter into a castle.⁵³ In 1141, he requested that Robert Bethune of Hereford take action against the Welsh raiders out of Archenfield, that he “would pour

⁵² *LCGF* #3 p. 38.

⁵³ *Ibid*, #5, p. 40.

out justice for us (*nobis iustitiam exhibeatis*).”⁵⁴ In December of 1143 Foliot was unable to leave his abbey to accompany Archbishop Theobald, likely on a journey to Rome, because he had to preserve the property of his abbey from the encroachments of his own kinsman, now earl of Hereford:⁵⁵

The Lord who sees all hearts knows how ready I would be to take part in your negotiations, unless I feared emerging dangers on all sides of the church to which I am bound. Your holiness will certainly know that we have never before been so beset as by the storm that rages against us. Today we labor in many cases against the earl of Hereford, whose thirst for all we have has begun to burn brightly. ⁵⁶

Note here the distinction between what each branch of authority might do:

And this same man, whom we might hope would protect our Church if we were away, we see since we are present is a most dangerous enemy. Thus we have sharpened the weapons of the Church against him. ⁵⁷

Around 1145 Foliot writes again to Simon of Worcester, this time begging for relief from the evil brothers Henry and Ralph of Caldy, who, as the *Gesta* put it, “were utterly steeped in craft and treachery, very ready to set pillage and strife on foot everywhere, most eager to commit crime and sacrilege,” who “imposed a yoke of the most dreadful slavery on all by compelling forced labor of different kinds,” and who “continually plundered especially the possessions of the churches.”⁵⁸ Scattered among his letters during the Anarchy are numerous other examples of Foliot’s attempts to have some sort of penalty imposed upon those who were despoiling the countryside.

⁵⁴ Ibid, #13, p. 49.

⁵⁵ The questionable date of the letter means that there is some uncertainty over the identity of the earl Foliot mentions. It is likely his uncle Milo, but could conceivably be his son, Foliot’s cousin.

⁵⁶ *LCGF* #24, p. 59.

⁵⁷ Ibid.

⁵⁸ *Gesta*, p. 189.

Unfortunately, the arms of the Church were no real match for men so steeped in the concerted effort to enrich themselves by bringing misery to their fellow man. The Caldy brothers are a perfect example of this, and just as Foliot complained about their depredations in his neighborhood, he would have observed with grim satisfaction their denouement. The threat of the Church did nothing to dissuade the Caldy's. Not until one of them was caught and hanged before his own castle did his brother flee the region, and in fact England, and leave a respite of peace in his wake.⁵⁹ While advancing the liberties and responsibilities of the Church might have seemed a laudable goal in 1135, by 1143 Foliot contemplated whether it could possibly be worth the price that the Church was paying in the lack of stability. Nor were the results of the disturbance confined to the secular world. Foliot was involved in a number of cases that demonstrated that without some sort of lay authority, the Church was unable to police its own members.

4.4. FOLIOT'S SUPPORT FOR THE ANGEVIN CAUSE

Whatever the changing fortunes of the principal actors during the early 1140s, by 1141 Foliot had clearly made up his mind to support Matilda, and unlike others he would not again change his mind on this subject. He could have found solid reasons to support either side in the conflict. But why he finally chose to side with Matilda reveals more about the intersection of Foliot's religious and political attitudes than any other actions or deeds from the period of his abbacy. Here was the germination of the ideas

⁵⁹ Ibid.

that would eventually derail his relationship with Becket twenty years later. He had already come to the conclusion that legitimate secular authority was a necessary part of a peaceful Christendom. The nature of this authority was the primary bone of contention between Foliot and Becket. It is worth asking how Foliot came to this position. Why did he choose to back Matilda, a move that pushed him into the Angevin camp, when the Church had declared Stephen the legitimate ruler?

The most obvious answer is simple geographic proximity: he had lived down the street from Matilda, as it were, for almost two years. His abbey, moreover, was located in the middle of the Angevin stronghold in England, and prudence would dictate that he side with those in closest proximity in order to save his own skin and the skins of his monks. This would have become even more imperative once Milo of Gloucester, his patron for the abbacy, had changed sides and declared for Matilda.

But as appealing as that explanation might be, it does not entirely square with the facts. While Milo's presence might have constrained Foliot from siding with Stephen, it would not constrain him from openly defying Milo a short while later when Foliot began to publicly criticize his uncle for his depredations in Hereford and for his ongoing battle with the bishop, Robert Bethune, over Milo's excommunication.⁶⁰ Foliot did not shrink from fights with Milo, who also lived in the same town, so it is unlikely that he should automatically support Matilda when the only forces at her disposal were those of the same Milo of Gloucester. Besides, shortly after knowledge of Foliot's support of Matilda became widespread, this particular concern was eliminated through

⁶⁰ Bishop Roger Bethune put an interdict on Milo's lands sometime before November of 1143 (ie Milo's death). Foliot believed the sentence was justified, as Milo had tried to lay a tax on the churches in his region (*Gesta*, pp. 104-6), but pleaded to Henry of Winchester, the legate, that he and his monks be exempt from its provisions (*LCGF* #22, pp 56-7).

Milo's accidental death in 1143.⁶¹ If Foliot had been coerced into support for Matilda, he would have changed sides when the coercive threat was removed.

It should also be noted that geographic proximity to the empress rarely improved one's opinion of her. Her husband, Geoffrey of Anjou, had her sent from his domicile within the first months of their marriage.⁶² Henry of Winchester, after acknowledging her right to govern the English at Oxford in 1141, could only stand a few months of her company before retreating back to Wolvesey.⁶³ Her manner so enraged the people of London that they rose up *en masse* against her, and the people of Winchester and the peasants of the surrounding countryside took it upon themselves to savagely beat those men of her army whom they happened to capture on foot during the rout from their city.⁶⁴

For an example of how other clerics nearby managed to support Stephen, one need look no further than Robert of Lewes, bishop of Bath. Bath, at a distance of no more than ten miles from Robert of Gloucester's stronghold in Bristol (the *Gesta* makes the distance six miles), was in far graver and more continuous danger than the abbey of St. Peter's in Gloucester, yet Robert of Lewes, so far as is known, never wavered in his support of the king, except for the brief period when his benefactor, Henry of Winchester, declared that he (and the English Church with him) would support Matilda.

⁶¹ David Walker, "Miles of Gloucester, Earl of Hereford," in *Transactions of the Bristol and Gloucester Archaeological Society*, (1958), pp. 82-84.

⁶² Symeon of Durham, *Symeonis monachi opera omnia*, T. Arnold, ed. (London: Rolls Series, 1882-5)., v. 2, p. 283. In fairness, Marjorie Chibnall does her best to rehabilitate Matilda's difficult reputation, and she is doubtlessly correct in her evaluation that many of the contemporary sources were driven by chauvinism to dislike the prospects of a ruling queen. Still, there are certain instances where she seems to have acted with an extraordinary degree of officiousness in her dealings with her supporters. Foliot, however, apparently liked her, and remained on good terms with her during the Anarchy and for the rest of her life.

⁶³ *Gesta*, pp. 119-121.

⁶⁴ *Gesta*, p. 135.

Indeed, Bishop Robert's support for the king was so intense that he is a likely candidate for the authorship of the *Gesta Stephani*, the contemporary history most favorable to the king.⁶⁵ The style of the work suggests two periods of writing, the first after Stephen was restored in 1141, and the second in the mid 1150s, after Henry had acceded to the throne, and Stephen's fate in the history books had largely been sealed. In other words, at the moment that it became apparent that her son would become king, Robert wrote a work whose descriptions of Matilda were most unflattering. There is every reason to suspect that had Foliot wanted to, he could have taken a stand against Matilda, or at least simply accepted her rule quietly.

Nor can it be said that there were not good reasons for Foliot to support Stephen, in addition to the empress's abrasive personality. The pope had taken the position at the second Lateran Council that Stephen's rule was legitimate. Granted, Foliot had been present and probably had some insight into the underlying feeling of the synod, but still, his decision to go against the stated policy of supporting Stephen seems at least provocative. Stephen had many powerful supporters among the clergy, both before and after the incident with Roger of Salisbury, because by all accounts Stephen at least tried to treat the clergy well, especially during the early years of his reign. Stephen's family had a reputation for unusual piety and his own personal life seemed above reproach.⁶⁶ The clerics reckoned him a good risk in comparison to his domineering uncle, King Henry, and his apparently domineering cousin, Matilda. In turn, Stephen granted the Church significant leeway in the liberties granted at Oxford in 1136. Among other things, Stephen agreed not to endorse simony, not to undermine a bishop's right to

⁶⁵ *Gesta*, xxxi – xxxvii; Barlow, *The English Church* p. 93.

⁶⁶ *ibid*, p. 92.

dispense with Church property as he saw fit, to prevent sheriffs from taxing Church property, and significantly for this study, he confirmed upon the bishops the legal jurisdiction over churches and clerics, at which Henry had been chipping away.⁶⁷ Stephen seemed a fairly sure bet in his support for Church liberty, or at least he did so in the early 1140s. The incident with Roger of Salisbury was troubling, but not so troubling that the clerics were interested in finding another horse to back. If Church liberties were Foliot's primary concern, he could have easily found a way to support Stephen in the same way that many of his ecclesiastical brethren did.

Stephen also had a conspicuous track record of supporting Cluniacs, or at least allowing the nepotism of his brother to favor them. Henry of Winchester, except for the period when it seemed that Matilda had presented him with a *fait accompli*, supported Stephen and had an excellent reputation as a cleric, and was both a Cluniac and a papal legate. Stephen appointed not only Gilbert Foliot, but also other Cluniacs: Robert to head the abbey at Winchcombe, and Peter to head Malmesbury.⁶⁸ Robert of Lewes, Stephen's supporter in the diocese of Bath, was also a Cluniac, and was given the bishopric of Bath by Stephen in 1136. Hugh of Amien, the Cluniac archbishop of Rouen, was Stephen's clerical representative to the synod concerning Roger of Salisbury and spoke eloquently in the king's defense.

From a legal standpoint, the Oxford charter increased the jurisdictional latitude of the Church as well. How this worked out in practice has been the subject of discussion, between such historians as Frederick Maitland, Christopher Cheney, David

⁶⁷ Davis, *King Stephen*, p. 17.

⁶⁸ John of Worcester.

Crouch, Frank Barlow, Emily Amt, and most recently Graeme White.⁶⁹ It seems likely that the Church was gaining in authority under Stephen's reign, in part because of the king's inability to exercise control over his own jurisdiction. The Church, with courts that continued to hear cases, had begun to encroach upon areas of jurisdiction that had belonged to the king during the reign of Henry I. Thus, there was every reason for a devoted cleric and zealous champion of the Church's liberties to support the king if only because of his apparent weaknesses which might be exploited for the benefit of the Church.⁷⁰ Yet Foliot remained a supporter of Matilda.

In time, Stephen would prove to be less friendly to the Church than he had been during the first years of his reign. He would increasingly interfere in Church affairs, as in his attempt to prevent Cistercian Henry Murdac from taking the see of York in 1147.⁷¹ Yet even these attempts were lost in his inability to maintain order as his reign progressed. While Stephen had come to power with the blessings of the Church, in the end he was unable to even guarantee the safety of the clerics, which the clerics viewed as his primary responsibility, in order that they might in turn protect the souls of the peasantry. "Stephen, in the eyes of the Church," Barlow writes," changed from a model

⁶⁹ Graeme White, *Restoration and Reform, 1153-1165, Recovery from Civil War in England* (Cambridge: Cambridge University Press, 2000).

⁷⁰ Crouch's take on this is extremely interesting, in that he argues that Stephen gave a deference to the Church that neither his predecessor nor his successor allowed. Stephen, according to Crouch, wanted to act as a Christian king and knight, and hoped to create a relationship between himself and the Church based on deference. While his point is eloquently made (*Stephen*, pp. 295-314), it ignores Stephen's own double dealing with men such as Geoffrey de Mandeville and others, not to mention his treatment of Bishop Roger and his nephews on the episcopal bench. It also begs the question, that exercised Foliot, of whether a diminution of royal authority would help the Church, if it also meant a sacrifice in societal stability. While White and others argue convincingly that the term "Anarchy" is carelessly used, Foliot's experience, and the evidence of his own hand indicates that the times in which he was abbot of Gloucester and bishop of Hereford were troubled, to say the least.

⁷¹ See Reginald Poole, "The Appointment and Deprivation of St. William, Archbishop of York," *EHR* vol. 45, #178, pp. 273-281.

prince-elect into the worst kind of tyrant, the oppressor who could not even protect his victims from the oppression of others.”⁷² But this was years after Foliot publicized his support of Matilda. In 1143, following the rout of Matilda’s forces at Winchester, Stephen had been reinstated as king, and the Church was still, to a great degree, in his corner.

So if Gilbert swam against the tide of opinion among his fellow clerics, we might hope that it was due to some demonstration that Matilda’s supporters cared more for either the laity or clergy than the king’s, but here again we are disappointed. The actions of Matilda’s supporters, even as reckoned by the chroniclers most sympathetic to her, were if anything more grievous to the peasantry and townspeople. Already by 1140, still early in the discord, there were shocking reports of pillage on the part of Stephen’s detractors. Hereford, of course, springs to mind, but there were so many others: Worcester, the abbey of Winchcombe, Sudely, Winchester. In one particularly egregious moment earl Robert sacked the town of Nottingham, far from his own power-base, simply to inflict pain on the peasantry in an area controlled by the king.⁷³ The Scots, who had supported Matilda from the start, acted with great cruelty toward the English against whom they fought in the skirmishes that led up to the Battle of the Standard. Unarmed men were murdered within sight of their families, while women and children were roped together by the neck and taken north into slavery.⁷⁴ The Angevins in Normandy were notably cruel when they began to break through Maine in 1138.⁷⁵

⁷² Barlow, *The English Church* p. 192.

⁷³ RHC Davis, *King Stephen*, pp. 42-3.

⁷⁴ Henry of Huntington, pp. 116-7; Ailred of Rievaulx, *Relatio de Standardo*, pp. 193-6.

⁷⁵ Orderic Vitalis, v. 6, pp. 455-7.

But neither could the supporters of the king claim that his forces treated the churchmen or the common people with much more respect. The reality here is that there seems to have been no side that acted with goodness or decency as its primary (or even secondary or tertiary) guiding principle. While the Angevins had the edge perhaps in indifference to suffering, it was only because their cause was the more desperate. Both sides treated the peasantry as an unimportant part of the background as they brought their weapons to bear upon one another. Later, as the Anarchy became even more pronounced, neither side would be able to curtail the activities of renegade knights who fought only for their own gain, which with depressing regularity happened to be either stealing the belongings of peasants, or destroying them in order to prevent their utilization by their opponents. Thus looking here provides no explanation of why Foliot should have declared with such force his support for Matilda. Absent any discernable outside influence that should have swayed his decision, his own explanation seems the most credible: that Matilda had the better legal basis for her claim on the throne.

4.5. STRONG, LEGITIMATE GOVERNMENT; FOLIOT'S LETTER TO BRIAN FITZCOUNT

The occasion for his declaration of support was the response to a manifesto in support of Matilda written by a knight named Brian FitzCount sometime before 1143. Although the original argument by FitzCount is lost, part of an exchange of letters between him and Henry, the bishop of Winchester, survives, in which he details the primary reasons for his own support of the empress. In this instance, his remarks were prompted by a letter bishop Henry had written to him, also in response to his manifesto,

chiding him for his men preying on attendees of the bishop's fair at St. Giles. Henry argued that FitzCount's continued loyalty to Henry I's wishes regarding Matilda was misplaced and anachronistic, and urged Brian not to make the mistake of Lot's wife, whose insistence upon looking back turned her into a pillar of salt.

FitzCount's response is classic in its laconic understatement: "as for Lot and his wife," he writes, "I've never seen them nor known their company... and I never knew a precept that forbade looking backward."⁷⁶ On the contrary, he states, Henry of Blois himself, the papal legate, had urged not two years earlier in the wake of Matilda's success at Lincoln, that the barons and clerics of England look back to their original oaths in support of Matilda. Brian's own support had never wavered in the vicissitudes of the current upheaval; he had known where his responsibility had lain all along – with the woman to whom he swore fealty. His duty lay with her not only because it was the right thing to do, but because he, the illegitimate son of a Breton lord, owed everything he had - his arms, his lands and his men - to her father. FitzCount knew the meaning of honor, even in troubled times, and was prepared to risk everything in its support.⁷⁷

Foliot echoes and applauds his upbringing and sense of fairness and honor in the letter he writes in reply to the earlier manifesto.⁷⁸ This may actually help to date the letter as before September of 1142, since his description of FitzCount's early life was likely not a part of FitzCount's original work, nor is there reason to suspect that Foliot had a copy of the letter to Henry, who would likely not have kept or circulated a letter

⁷⁶ HWC Davis, "Henry of Blois and Brian Fitz Count," *EHR* vol 25, # 98, pp 297-303, provides the text of the letter and a commentary.

⁷⁷ *Ibid.*

⁷⁸ *LCGF* #26, pp. 60-66.

concluding with a direct and credible assault on his own sense of honor.⁷⁹ FitzCount may have lifted Foliot's rhetoric to use in his own letter against the bishop. In any event, it would appear that he had asked for Foliot's opinion on the legal argument he made in the manifesto, which Foliot identifies for us as the question of hereditary right and inheritance.

According to Foliot, inheritance was the central issue - questions of a woman's legitimacy as ruling queen aside - for it was not simply the title that Matilda wanted, and the authority, but also the land itself and what could be done with it. Since the conqueror had changed the status of land tenure in England so that everything was held of the king in one way or another, this was a serious question.⁸⁰ It would be especially troubling to Foliot, too, because of his training in civil law and the civilian concern with property. Was she to receive nothing at the death of her father? Were all of his goods to be transferred to the son of the count of Blois? As Morey and Brooke point out, the grounds for legitimacy of kingship in the twelfth century Anglo-Norman world were debatable.⁸¹ Primogeniture was growing more important, perhaps, but not a single ruler in England between 1042 and 1189 was the eldest surviving son of the king.⁸² It does not seem that Henry particularly liked Matilda either (he waited and vacillated on selecting her) yet she is the one that he chose – not his nephew Stephen, whom he actually did like, nor Robert, who was capable and his favorite child.⁸³ Matilda's case

⁷⁹ Ibid.

⁸⁰ For a discussion of the critical importance of inheritance in Anglo-Norman society, see Davis, *King Stephen*, pp. 67-8.

⁸¹ *GFL*, p. 109.

⁸² Edward the Confessor was not the son of Harthacnut; William was the son of the Duke of Normandy; William Rufus and Henry I were both kings while their eldest brother was alive; Stephen was the son of the Count of Blois; Henry II was the son of the Count of Anjou. Richard I was the first to break this pattern.

⁸³ Hollister, *Henry I*, pp. 308-326.

dealt not so much with political legitimacy in terms of whatever created political legitimacy in the twelfth century Anglo-Norman mind, but rather in the question of inheritance and whether in the legal ideas of the twelfth century, one's right to inheritance in any way could be legitimately appropriated by another.

Stripped of the political and personal sidebars, and examined solely within the framework of the law, this potential explanation for Foliot's choice to support the empress gains strength. Foliot was initially a jurist trained in the intricacies of civil law and canon law, and he likely had practical experience with the customary law of the Anglo-Norman world. This no doubt accounts for his reputation as a legal authority, and as an important legal mind in the empress' camp it is the reason why FitzCount had asked his opinion. From the juridical standpoint, there was simply no way in any of the legal traditions familiar to Foliot that Stephen had the right to the inheritance of his uncle, unless Henry had at some point expressly disinherited his daughter, and for such a drastic move, involving the rule of the entire realm of England and Normandy, more would have been required than the word of a few men present at Henry's death. This was especially true if those men might have feared the prospects of an Angevin sitting on the throne, and whose account of Henry's change of heart could be considered suspect.

As a lawyer, Foliot knew precisely the legal answer to Matilda's claim, regardless of the pope's inability or impotence to face the uncomfortable byproducts of justice in this case. A woman would have to sit the throne, and the pope would have to depose a man who had been anointed. Had a self-styled king and his unruly band of supporters not usurped the throne in the first place, the disastrous civil war that wracked

the country would never have occurred, and the peace of the reign of Henry I, which even Henry of Winchester had respectfully and publicly acknowledged at Winchester in 1140, would have continued into the reign of his daughter and son-in-law.⁸⁴

Foliot opened the letter with astonishment (*pertrahit in stuporem*) that FitzCount has had no training in letters, yet could put forth a book on this complicated legal issue.⁸⁵ Knights were not renowned for their subtlety in intellectual matters. Past the condescension, Foliot provided an examination of the legal issues not simply in Foliot's own tradition of *ius civile* and the *ius gentium*, but also in divine and natural law. He seized upon what was evidently the central claim of FitzCount's pamphlet: that Matilda should be queen as the sole, legitimate heir of her father.

In terms of the divine law, Foliot argued that the work of the fathers must be carried on by the children, as Jesus had carried on his father's work as a youth in the synagogue.⁸⁶ It is apparent through allusions to FitzCount's earlier work that Robert of Gloucester, upon considering the same issue, had on more than one occasion quoted the book of Numbers as the text upon which he had concluded that his sister had the right to become queen.⁸⁷ The story of Zelophehad tells of a man who had died without sons and whose daughters had rightly claimed his inheritance. Foliot affirmed that the passage was on point in Matilda's case as a matter of *ius divinum*. Crouch wonders, as did Morey and Brook, whether Foliot deliberately omitted the verse immediately following, which says that daughters must not marry outside of their tribe – a potential reference to

⁸⁴ William of Malmesbury, *Historia Novella*, pp 29-30.

⁸⁵ *LCGF* #26, p. 60.

⁸⁶ Luke ii, 48.

⁸⁷ *LCGF* #26, p. 62.

Matilda's marriage to Geoffrey - but as Chibnall points out this is a red herring.⁸⁸ Not only did Matilda marry Geoffrey at the insistence of her father (she and the count evidently disliked each other), but their blood relationship was so close that king Henry had to petition to have the marriage endorsed by the Church because of the potential problem of consanguinity.

Foliot then moves on to natural law to support Matilda's right. As to the definition and importance of natural law, he makes the interesting comment that due to their extreme age and their universal applicability, the laws of nature are second in importance only to divine law, and are thus to be esteemed more highly than any laws of man. For this particular case of Matilda and Stephen, natural law supports the claim of a daughter or any offspring over any more distant relation. Not only humans but animals are more inclined to their own young, loving and caring for them above all other creatures. Bloodlines are of crucial importance – the more distant relations are mixed with the blood of others, and thus the fervor toward them is less than toward one's own children. This can be seen simply, Foliot argued, in the fish of the seas and little birds (*avicule*) of the forest.⁸⁹ It is *natural* that the claims of children should supercede the claims of their cousins. "Observe nature, lest you would expel her from you; prudently content yourself with her justice."⁹⁰

Finally Foliot turned to his original forte, what he refers to as "human" law, which after the style of Ulpian he divides into *ius civile* and *ius gentium*, the former being the laws of a particular locality and the latter the overarching laws of human

⁸⁸ Crouch, "Robert of Gloucester and the Daughters of Zelophehad," *Journal of Medieval History*, 11, pp. 227-43; *GFL*, pp. 116-7; *Empress Matilda*, pp. 85-86.

⁸⁹ *LCGF* #26, p. 62.

⁹⁰ *Ibid.*

society as a whole.⁹¹ In both, he claimed, Matilda had the better right. Using the guidelines laid down in the *Novels*, he asserted that the law would not permit the head of any household to renounce the sons or daughters of a legitimate marriage without particular mitigating causes:

These causes are: if one should strike one's father with the hand, either manifestly and provably hoping for his death, or showing ingratitude for kindnesses, for whose intervention the law allows him to disinherit freely. None of these will be found in the present case."⁹²

Rather, each of her actions from the time of her childhood had been done at the behest of her father: as a girl she had crossed the sea to marry a man of her father's choosing and had faithfully acted as his wife and consort until his death. She had then returned home at her father's call and married another man, despite the fact that she was now reckoned a Queen and Empress and her new husband merely a count. And she had stood by him as he gradually grew in power to control not only Anjou, but also Maine, Tours and Normandy.⁹³ In no way could one find just cause in the law for Henry to disinherit his daughter.

Nor had her father disinherited her, Foliot continued, his anger seeping into the prose. He did not believe at all the story of Henry's deathbed change of heart. As far as Foliot was concerned the matter was closed when her inheritance was confirmed by all of the great barons of the realm who swore a holy vow to support her. Foliot excoriated those who had ignored their pledges, striking out to support Stephen or to further their own ambitions. Not a single man of the great barons initially called to swear the oath remained alive in 1143, yet how many of the survivors had forgotten their honor?

⁹¹ Ibid, pp. 62-3.

⁹² Ibid., p. 63.

⁹³ Ibid.

“What a time worth forgetting!” he writes sarcastically, echoing Horace.⁹⁴ “The very act of recalling the scandal shames our people.” Then, turning to Stephen, the architect of the current troubles, he rails:

Who has brought England to this insensible condition? I call that leader wretched, whoever it is, in whom overflow such perjury, murder, arson, assault, destruction and disgrace. When will he be untroubled, who has corrupted the kingdom, defiled the priesthood and inflicted grave opprobrium not only on the present but on the future posterity?⁹⁵

Foliot had been asked only to respond to the legal questions brought up by FitzCount’s manifesto. At this point he had done so, and at considerable length – the letter was already more than a thousand words. Yet Foliot continued for another thousand, expounding the horrors of a world without leadership or discernable natural order to things. The weakest in society suffer as men make themselves their own kings, preying on the weaker around them. Foliot’s political commentary combines his legal and religious training with his understanding of the political culture of the Roman world and gives a fantastic glimpse into his view of the function of government. Citing *Maccabees* he recalled the evil done by the descendants of Alexander after their realm had been broken up into smaller and smaller kingdoms.

...the evils multiplied in the world, and so they are multiplied today. What I realize I lament into the ears of a friend: that the number of kings we suffer is only limited by the number of towns. We labor together in the mud, preserving only the shadow of liberty.⁹⁶

The importance he laid on central control and its use to preserve freedom is interesting, as it seems to offer an almost Whiggish opinion of the role of medieval

⁹⁴Ibid. “O tempora digna taceri!”

⁹⁵ Ibid, pp. 63-4.

⁹⁶ Ibid, p. 64.

monarchy more in line with that of Fritz Kern than of most current political historians.⁹⁷ It should be clear that even at this early date, Foliot had begun to articulate for himself a picture of government that required a measure of stability to preserve liberty, not unlike the ideas expressed by his antagonist, John of Salisbury, in his celebrated *Policraticus*.⁹⁸ Yet differing from the *Policraticus*, Foliot did not assume that clerical leadership was necessarily equal to the task of governing the world, nor of directing its governance. It was on this point that Foliot would ultimately turn from Salisbury. At this time, however, for Salisbury and Foliot, both observing the destruction of their homeland, stability and law had become the only hopes of society, and where the leaders failed to recognize the law, there must be an underlying natural law to show people what is right.

Nor does it seem that Foliot chose to walk in lockstep with the religious authority in Rome, again in contrast to Salisbury. He finished the letter to Brian with a description of the proceedings of Matilda's appeal at Second Lateran.⁹⁹ The reader gets the feeling that Foliot had been searching for a forum in which to describe what happened to Matilda's rights upon the death of her father. When Arnulf of Lisieux rose against her, he may have wanted to say that a woman had no right to inherit the throne, but there were simply too many examples to the contrary across Europe, not only in the inheritance of monarchy, but also in inheritance among both the nobility (daughters routinely inherited from barons) and among the lesser estates as well.¹⁰⁰ The law could

⁹⁷ Fritz Kern, *Kingship and Law in the Middle Ages*, S.B. Chrimes, trans. (Westport, Ct: Greenwood Press, 1985), pt. I, "The Divine Right of Kings and the Right of Resistance in the Early Middle Ages."

⁹⁸ On John's attitude toward the relationship between lay and clerical authority, see (inter alia) Cary J. Nederman; Catherine Campbell, "Priests, Kings, and Tyrants: Spiritual and Temporal Power in John of Salisbury's *Policraticus*," *Speculum*, Vol. 66, No. 3. (Jul., 1991), pp. 572-590.

⁹⁹ *Ibid.*, pp. 65-66.

¹⁰⁰ Foliot does not identify Arnulf, but John of Salisbury does, and there are enough similarities between their accounts to be confident of Arnulf's identity as spokesman for Stephen. On the status of women and

not set aside the rules of inheritance simply because they were inconvenient, and Arnulf knew it. Thus he had launched an attack against the legitimacy of Matilda's birth, claiming that Henry, who all knew was a passionate man, had spirited Matilda's mother from a monastery, and that therefore the marriage was invalid.

At the time, the counsel for Matilda was so taken aback by the accusation that he was unable to respond.¹⁰¹ But on later consideration it occurred to Foliot that none other than Anselm of Canterbury, who at the time was already being discussed as a saint, and whose theological contributions were above reproach, had celebrated the marriage.¹⁰² The idea that a king renowned for wisdom, if not outright cunning, and a bishop renowned for his sanctity would between them allow such an illegitimate marriage to take place strained credibility. The proceedings made a mockery of the Romans, and cast a shadow over the sparkling reputation of the queen mother.¹⁰³ Foliot was entirely disgusted. In closing what he wryly admits was at that point a very long letter (*se extendit epistola*), he urged FitzCount, who had already suffered greatly for his support of Matilda, and who grimly held on to a piece of land on the frontier of Matilda's sphere of influence, to stay his course and to keep fighting the good fight.¹⁰⁴

4.6. WEAKNESS IN THE ECCLESIASTICAL COURT STRUCTURE

their ability to inherit and exercise power, see Theodore Evergates, ed. *Aristocratic Women in Medieval France* (Philadelphia: University of Pennsylvania Press, 1999).

¹⁰¹ *LCGF* #26, p. 64.

¹⁰² *Ibid*, p. 65.

¹⁰³ *Ibid*. p. 66.

¹⁰⁴ *Ibid*, p. 66.

The disenchantment with the workings of the papal curia that Foliot intimates in his letter to FitzCount finds echoes elsewhere in his frustration with the episcopal courts, which had grown in responsibility as the secular power had weakened, and proven unequal to the tasks. During the 1140s, Foliot became involved in a variety of legal matters, usually acting in an *amicus* capacity, but in at least one case actively representing a particular side. Foliot's involvement with these cases shows his flexibility in the administration of justice and his familiarity with a variety of legal forms. For example, in one such case he urged the bishop of Worcester to postpone a hearing against Foliot's clerk, Wimund, who had taken a man's wife into custody for surety on a debt.¹⁰⁵ This occasioned no raised eyebrows *per se*, but the woman's husband died before he had a chance to repay, and Wimund was accused by the bishop of taking the payment in the form of illicit relations with the woman. While this case involved canon law on two levels – the clerical status of the accused and the sexual nature of the crime - the standard of proof demanded by the bishop is decidedly Anglo-Norman: compurgation by seven character witnesses. Foliot argues that the burden is too high, and that the bishop shouldn't hear the case anyway since he himself had brought the charge.¹⁰⁶

Some of the legal actions Foliot was involved with appear small and cryptic, as in the letter that urged the bishop of Llandaff to remove an itinerant monk who had occupied a church that didn't belong to him in one of the areas disputed during the fighting.¹⁰⁷ A number of cases, however, involve more than one letter and obviously

¹⁰⁵ LCGF #9, p. 47.

¹⁰⁶ *ibid.*

¹⁰⁷ *Ibid* # 14, p. 50.

were adjudicated over a protracted period of time, and with competing ecclesiastical courts at work seemed impossible to bring to a close expeditiously. The lengthiest dispute described in Foliot's letters occurred over the abbacy of the Benedictine monastery at Cerne.¹⁰⁸ Foliot's involvement in the matter, which dragged on for several years, illustrates the effects of political turmoil on the workings of the Church.

Sometime around 1144 or 1145, Jocelin of Salisbury, recently invested as bishop of that diocese, decided to crack down on the lax monastery at Cerne, the Benedictine house of Sts. Peter and Ethelwold, led at the time by an abbot named William Scotus.¹⁰⁹ After arranging for his deposition, the monks of the abbey, either freely or by coercion from the bishop, elected for their new leader Foliot's prior at Gloucester, Bernard, a man of noted reformist zeal. Bernard reluctantly agreed to take the abbey, concerned that his personality would clash with the casual attitudes that had developed during the abbacy of William. Foliot gave his blessing, however, and Bernard left for his new home. Soon after he arrived, difficulty arose from a quite unexpected quarter. Jocelin of Salisbury refused to give his blessing, necessary under the circumstances, without monetary compensation. Bernard, the reformer, was taken aback by the sudden show of blatant simony, and wrote to Foliot outlining his concerns on the matter, and on the apparent laxity of the monks whom he now led. Foliot appealed to the papal legate and asked all parties to come to a hearing on the matter, which he held on June 10, 1145. Bernard prevailed; Jocelin was instructed by the legate

¹⁰⁸ For more on the Cerne situation, see *LCGF* pp. 507-509. See also Morey and Brooke, "The Cerne Letters of Gilbert Foliot and the Legation of Imar of Tusculum," *English Historical Review*, vol. 63, #249, pp. 523-527.

¹⁰⁹ For the particulars of the case, *LCGF*, pp. 507-509.

to perform the blessing, and he did so. He then retired to Salisbury. Bernard returned to Sts. Peter and Ethelwold, assuming that all would be well.

The monks, however, revolted against his authority almost immediately. A party of them left the abbey for Rome, hoping to have the matter taken up on appeal by the pope. Then the original abbot, William, reappeared on the scene and physically drove Bernard from the monastery. It could have seemed to Foliot a pint-sized version of the great upheaval at Cluny during the years immediately prior to Peter the Venerable's abbacy. Foliot wrote to archbishop Theobald, who in turn ordered Jocelin to evict William once again, but the bishop, no friend to the man who had exposed him to the legate as a simoniac, coolly refused to act. Foliot then tried to have the matter settled by the new earl of Gloucester, Milo's son. But as one of the monks loyal to Bernard set off for the earl's council, he was pulled from his horse and beaten by a band of monks loyal to William, perhaps augmented by some laymen of the local community. Foliot then wrote to the pope asking for some way to resolve the situation, and was authorized to empanel four bishops to hear the matter and decide it. Yet before they were able to do so, the monks who had originally set off for the Holy See returned with their own candidate, the brother of Bernard of Clairvaux, Nivard. Matilda wrote to Gilbert expressing her support for this new candidate. His connection with the great Cistercian made Nivard an obviously qualified choice, but, as Gilbert explained to the Empress, there was still the matter of the council, also authorized by papal mandate, and of Bernard himself who had been blessed as abbot.¹¹⁰ He could not resign without permission – which he finally sought and received at Rheims in 1148. Bernard returned

¹¹⁰ *LCGF* #63, p. 98.

to Gloucester, and eventually was made abbot at the monastery at Burton, where he remained.

The confusion surrounding this affair gives a glimpse into the state of law in the local religious communities during this tumultuous political period. Without the authority of the lay world, the religious world was almost powerless to find solutions to certain types of problems. Cerne lay in the area where neither the king nor Matilda had clear control, and the monks used this uncertainty to push their own agenda against both the new abbot and the diocesan, Jocelin. The matter finally resolved itself, but only after an extended period of time, and only after an “obscure community” had defied “bishops, primate and Pope.”¹¹¹

It also clearly points out the problems of adjudication by canon law when secular confusion combined with the increasingly complex legal situation in mid-twelfth century Rome. The pope had given authorization for Foliot to convene a council of bishops to decide the matter, but others working within the curia vested with the power to act in the pope’s name had approved simultaneously another candidate. Distance and complexity combined with disorder to produce a climate hostile to adjudication, which after all is the primary purpose of the law that Foliot had studied so assiduously. As a monk schooled at Cluny and steeped in certainty of both the *Rule* and the *Digest* he would find the affair unsettling. Difficulties with appeal would become an ever-greater problem over the course of the next decades as appeal to Rome became an increasingly important component of canon procedure.¹¹² This would be apparent to

¹¹¹ *LCGF* p. 509.

¹¹² See, inter alia, Cheney, “The Compromise of Avranches of 1172 and the Spread of Canon Law in England,” *EHR*, 56, no 222 (1941) pp. 180-184; C.R. Cheney, *From Becket to Langton* (Manchester: Manchester University Press, 1956) pp. 73-99. Also, as an overview, see, John Moore, “Papal Justice in France Around the Time of Innocent III,” (*Church History* vol. 41 (1972) #3, pp. 295-306) which notes

Foliot already in the 1140s with the spread of Gratian's *Concordance* and its doctrine of papal sovereignty, and would become even more so during the 1150s as Foliot sat as judge-delegate in his own episcopal court as bishop of Hereford and then London.

Against the backdrop of this political and clerical complexity, Foliot wrote to request assistance or to give opinions on all sorts of diverse legal matters during the Anarchy, and asking for aid for many different people under many different circumstances. His difficulties with Jocelin of Salisbury in the matter of Bernard at Cerne did not preclude him from writing to Pope Julius in 1145 in support of Jocelin's claim against his dean, Azo. Indeed, years later he and Jocelin would become friends and even unlikely partners in the last of Becket's attacks; the excommunications of Foliot and Jocelin in 1170 would lead more or less directly to Becket's murder. Foliot wrote during the Anarchy several letters asking bishops, who nominally had jurisdiction over crimes committed against clerics, to act against one local brigand or another – not simply as in the case of Milo in Hereford, which while frowned upon by the truce of God might be put down to military necessity, but in other sorts of cases as well, as in the case of the Caldý brothers.

Foliot's political leanings did not prevent him from trying to get action against individuals fighting on the Angevin side, either. Sometime around 1144 Foliot wrote to Jocelin, begging him to take action against John the Marshal and Walter de Picquigny, Angevin supporters who were harassing (*infestare* is the delightfully descriptive infinitive he employed) the countryside.¹¹³ Similarly, he begged leave sometime before 1143 to excommunicate William de Beauchamp, the Sheriff of Worcester, for various

that papal justice meant "endless litigation, fruitless expense, wasted effort and, in the long run, a weakened system of ecclesiastical courts, both episcopal and papal."

¹¹³ Ibid, #32, pp. 71-72.

offenses, at a time when William may have been nominally fighting on behalf of Matilda.¹¹⁴

Usually, however, Foliot's anger in the letters was not directed at individuals. Rather he called attention to larger but specific problems created by the Anarchy. In this, the 1140 letter to Robert Bethune described above is more typical, as is an 1145 letter to pope Eugenius III, where he described how once again forces had turned a church (in this case at Malmesbury) into a castle.¹¹⁵ Churches seem to have been convenient military structures; another letter of indeterminate date complained to Simon of Worcester that the Church of St. Mary in Slaughter had also been fortified and the occupants turned out.¹¹⁶

Evidence of Foliot's frustration at the inability of the bishops to act decisively in such cases, or their lack of will in general to fight for the right can be seen in his letter to the unnamed bishop, written at some point during the 1140s, and clearly influenced by the deficiencies of many of his clerical brothers. Notice also the use of amputation (as by sword) in his metaphor:

...where you do not prevail with the bandage, you do no fear to cure with precise amputation – a heart clearly commendable in that it shows grace to the meek and discipline to the resistant. Thus divine authority again places the rod in the sanctuary together with the manna, as understanding the fullness of what it means to be pastor, so that both from the heart of grace he grants to the good all that is sweet, and reprimands the contumacious with discipline.¹¹⁷

Both sides of the equation were important for Foliot – reward for the righteous and punishment for the contumacious. Many of Foliot's letters express his concern that

¹¹⁴ Ibid, #3, p. 38.

¹¹⁵ Ibid, #35, pp. 74-5.

¹¹⁶ Ibid #5, p. 39.

¹¹⁷ ibid #12, p. 48.

clerical leaders seem either unwilling or unable to level the “sword” of justice. In the quotation above, the sword imagery is expressed almost subliminally in the original Latin: “...*et quos fomento non prevalet precisionis ferro curare non pertimescis...*” The allusion is to Cicero’s *Philippics*, but the use of “ferro” connotes a weapon, too. Foliot continues in his description of the proper behavior of a bishop:

For my part, it pleases me that you attend perspicaciously to the pastoral rule, and because you knew what had to be done to fulfill the job of bishop, you have carried it out no less bravely than prudently. In this work of virtue, all virtue shines clearly to me. For it is prudence to know what is appropriate, justice to grant what is necessary; strength not to fear the man who is dear to you; and to dare all in the virtue of the spirit all that is holy.¹¹⁸

One can also detect here a running allusion in the letter to Gregory the Great’s “Pastoral Care;” Foliot leaves little doubt of what he expects from a prelate. As his political and legal philosophies developed, this insistence on both protecting the righteous and punishing the wicked would be readily apparent. However, his experience with the *ecclesia*’s attempts at policing its own left Foliot unconvinced of her ability to mete out justice without the cooperation of the secular sword.

4.7. PIETY AND FRIENDSHIP

Foliot’s letters and their contexts indicate that through the 1140s he was developing a reputation not only as an expert in law, but also for piety and preaching. Indeed, these two aspects of his mind seem inextricably linked – when asked for

¹¹⁸ Ibid, p. 49.

assistance in legal matters he unfailingly intertwines legal ideas or theories with scriptural passages, usually along the lines of canon law, but occasionally not. In a way, he “preaches” a legal case as well as arguing it. His masterpiece along these lines is a letter written sometime during the forties where upon receipt of a gift of fish and an admonishment not to be greedy (probably for asking for his fish so often) he asked Robert Bethune for the right to make a fishpond.¹¹⁹ Here, considering the constant environment of war against which it was written, Foliot’s prose has a particular poignancy. As he contemplates the fish, he sets out on a meandering course over the symbolism of the fish in Christianity, how St Peter, the patron of his abbey and of Cluny had been the great fisherman who was challenged not only to catch fish but the souls of men. “You prompt me” he writes:

...to perpetual consideration of the purposes of the Lord, that with his hook he has drawn me, long tossed upon the waves, and placed me in a great city in an assembly of his holy monks. But I should not speak as if I were certain of my own conversion, for a man knows not whether he deserves love or hatred; such things are reserved for the future. It is praiseworthy not so much to have stood in a holy place, but to have stood fast in holiness. In vain do we run if we do not understand, and a good beginning is only rewarded upon successful completion...To us let this parable (of the exodus) apply: to pass out of Egypt is indeed to pass from the shadow of blindness and ignorance and to arrive into the light of faith; the passage out of the sea is to breathe in again the youth of grace after the old age of sin.¹²⁰

Then Foliot turns his attention to necessity and conduct despite adversity, comparing the souls of men to the waters of the Jordan which are divided to either be drawn out and raised up or to run lost to the sea:

Those who are not affected either by adversity or prosperity, yet are constant in giving thanks, are those on the right, but those on the left are they who will for a

¹¹⁹ For a description of the circumstances of this letter, see *GFL*, pp. 85-6.

¹²⁰ *LCGF* #6, p. 41.

while believe, but in time of temptation fall away, and they cannot bear the lightest stroke of the rod, they quickly pass on and are submerged in the flood and perish. Wherefore I may not boast concerning my band of holy men, unless I am induced to consider and imitate their conduct. While you send me these fish, which are drawn out of the deep and are now dead, you teach me, now drawn out of the depths of time, not to incur the penalty of death.¹²¹

He then compares the fish to man, saying how the parts of the fish correspond to the mind and body of man:

The scales signify virtue, which with the roots of charity join within man to fortify and protect him, and to adorn him as well. The fins signify lofty contemplation, in that by these the fish is brought from the depths and makes a leap above the water, but the weight of his body will bring him down again.¹²²

So it is that the mind is embedded within the body – it can contemplate things greater than itself, yet cannot free itself on earth from the shackles of the world. Thus, Foliot concludes, his own body cannot function so perfectly as his mind, and he still desires fish. Since he cannot restrain his own envy over the bishop's fishpond, he wryly closes, perhaps the bishop might, for the sake of Foliot's soul, grant him the right to make a small fishpond at the abbey. There is no record of whether Robert fulfilled the wish, nor is the exact date of the letter known. Regardless, within a few years Bethune would pass away, and Foliot would be given his cathedral at Hereford. Then he could indulge his passion for fish at will, or at least wrestle with his heart's desires while in comfortable control of the access to them.

Other evidence of Foliot's piety during the Anarchy comes through the few surviving non-epistolary sources produced in his name. From this approximate period survives a commentary he wrote on the *Song of Songs*, as well as a collection of his

¹²¹ Ibid.

¹²² *ibid.* p. 42.

homilies on Sts Peter and Paul dedicated to Ailred of Rievaulx.¹²³ Others were moved enough by hearing him preach either to produce homilies dedicated to him, or to seek his spiritual advice. After hearing him preach to his chapter at some point during the 1140s, Hamo, the head of the Cistercian house of Bordesley, asked him to write a collection of sermons for him. His response to Hamo, which became the introduction to a collection now lost, is typically graceful and elegant.¹²⁴ He evidently produced other collections of sermons as well during his life, and other men, including Ailred, also a Cistercian, would dedicate collections of their own sermons to him.¹²⁵ His friendship with Ailred, coupled perhaps with an encounter at Rheims in 1148, would lead to an acquaintance and exchange of letters with none other than Bernard of Clairvaux.¹²⁶ At Bernard's death he wrote another Cistercian friend, William de Hinet, a touching panegyric on the famous abbot.¹²⁷ There is no reason to suspect, given his education and his circle of correspondents, that Foliot was anything but an engaging and interesting person. Conclusions that Foliot was cold, unemotional and friendless have very little basis in the evidence that follows him from his abbacy forward. He seems to have had a wide and growing circle of friends and a reputation as a devout, intelligent and holy man.

The most important of the friendships that emerges from this period is with the Archbishop of Canterbury, Theobald. Despite their political differences (Theobald

¹²³ Commentaries on the *Song of Songs* in Migne, ed, *Patrologia Latinae*, vol. ccii, pp. 1147-1304; Homilies in *Tractatus super isti sunt duae olivae*, BL MS Royal 2 D. xxxii (s. xiii, Christ Church), fols. 138v – 168v.

¹²⁴ *LCGF* #7, pp. 44-5.

¹²⁵ *PL*, vol. cxcv, p. 361 ff.

¹²⁶ *LCGF* #72, pp. 105-106.

¹²⁷ *Ibid*, #108, pp. 146-149.

initially supported Stephen) there was apparently a fast friendship that developed between these men. They shared similar attitudes on many issues. Both seemed to view the ideal relationship between the Church and crown as mutually supportive, more in the tradition of Lanfranc than Anselm.¹²⁸ Neither apparently welcomed the sort of autonomy from the king that earlier reformers, like Gregory VII, had envisioned. They desired freedom from the crown only insofar as the king, in the ideal situation, would not interfere with episcopal elections, would exempt Church property from taxation or tallage, and would condemn simony.¹²⁹

Again like Lanfranc, both men were also extremely interested in law. In Foliot's case this is obvious, but Theobald also added significantly to the study of law among his circle.¹³⁰ Stubbs argued that Theobald's household "satisfied the want that was later filled by the university system."¹³¹ William Hook, writing around the same time, concluded that it operated as a precursor to the Inns of Court.¹³² In this Foliot, the local expert on civil law in the days before the works of Gratian had become widely available, would have been an enormously useful resource. Foliot seems also to have acted under Theobald's instruction as judge-delegate in the regions of England controlled by the Angevins; Foliot acted as a bridge between clerics on either side of the frontier.¹³³ Like Foliot, Theobald also seems to have been a "law and order" bishop, greatly concerned with the application of law in the punishment of malefactors, who

¹²⁸ Avrom Saltman, *Theobald, Archbishop of Canterbury* (London: University of London / Athlone Press, 1956).

¹²⁹ Z.N. Brooke, *English Church*, pp 175-76.

¹³⁰ Saltman, *Theobald of Canterbury*, p. 165 ff.

¹³¹ Stubbs, *Seventeen Lectures* (1886) p. 142.

¹³² WF Hook, *Lives of the Archbishops of Canterbury*, v. 2, p. 142.

¹³³ Saltman, *Theobald*, p. 23.

worried that the appeal in canon law might prove an insurmountable burden to justice. This was certainly true by the first years of Henry's reign if not earlier, when Pope Adrian accused Theobald of conspiring with the king to "bury" appeals in order to keep them out of the papal curia.¹³⁴

In sum, then, Foliot seems to have led an upright life, deeply committed to his understanding of spirituality, balanced against the necessity of scrappily fighting for his abbey and his friends and family. It would be misleading to say that Foliot was unambitious, yet at the same time it would be inaccurate to portray him as a man driven by the desire for advancement within the Church and society. There were enough contemporary clerics, like Roger of Salisbury and Nigel of Ely, who fell so clearly into this category that they bring Foliot's character into sharp relief. These were not men whom a notably pious man, like Ailred, would ask to edit or write a collection of sermons. There were also priests who straddled the line, both working for the Church and for themselves, as did Henry of Blois, who was both a devout Cluniac and a capable administrator. But if Foliot is placed upon this spectrum he will fall toward the side of asceticism and reform. He was not averse to the idea of moving upward into the ranks of the episcopate, as he was gifted and intelligent, but what he writes, and the way that he writes it, indicates that he identified with the powerful reformers of his day. Foliot believed in, or at least gave considerable lip service to, the concept of humility. There is little reason, and no evidence at all, to suppose that he schemed for the position of bishop of Hereford, as there would be no reason to assume that he schemed for the archbishopric of Canterbury. He went where he was called. Because he was gifted in

¹³⁴ WJ Millor, intro. to John of Salisbury's Letters (1955), pp. xxxv-viii.

preaching and administration, and perhaps because he had made many friends, he was called upward. To refuse advancement would have been out of character, for Foliot and for most people; but because he was elevated in rank there is no cause to assume that his ambition was driven by pride.

His arguments during the Anarchy for the clerical sword seem both unambiguous and logical. Foliot believed that the clergy ought to use their sword when appropriate, but wrote about the importance of proper, legitimate lay authority. His enthusiasm for the use of the ecclesiastical sword is obvious and he uses the imagery often, yet there is nothing in his writing to suggest that he contemplated the supremacy of the ecclesiastical sword, or that he believed that the clergy might somehow direct the use of lay authority. If anything, he indicates that legitimate lay authority, when acting in tandem with ecclesiastical authority, would naturally do the right thing. Before turning to his use of the sword imagery in the conflicts of the 1160s, we need to examine his path from the abbacy of Gloucester to the episcopacy of Hereford. This will be the subject of the next chapter.

CHAPTER FIVE: TYING TOGETHER THE EARLY AND LATE - FOLIOT AS BISHOP

5.1. THE CIRCUMSTANCES OF FOLIOT'S ELEVATION

The next step in Foliot's advancement, his elevation in 1148 from the abbacy of Gloucester to the see of Hereford was made possible by a complex intersection of circumstances involving dissatisfaction with Stephen's reign at the highest reaches of the aristocracy and clergy. Ironically, this occurred during the same period when Stephen won the crucial victories that would finally solidify his hold on power. Stephen tried to demonstrate authority wherever he could against either the Church or the aristocracy, who would in turn scheme against him or desert his cause for their own, in a vicious circle. While the English episcopate tended to give Stephen a great degree of latitude, over the 1140s Archbishop Theobald increasingly chafed at the king's attempts to control him. Foliot followed the archbishop into brief exile as, ironically, John of

Salisbury would follow Becket. His loyalty earned him ordination as bishop and added to his reputation for piety, but cost him at least temporarily the trust of the Angevins and may ultimately have cost him the Archbishopric of Canterbury.

Matilda's political fortunes declined over the 1140s, but Stephen made a number of tactical mistakes that played into the hands of his enemies. His ham-handed, treacherous destruction of Geoffrey de Mandeville and Ranulf of Chester removed substantial opposition to him in the East Midlands, but at the same time pushed wavering supporters into the camp of his enemies.¹ Other outbreaks of violence among opportunists uninterested in the larger political questions continued. Foliot witnessed another of these dreadful campaigns in 1144-45, as he reported to Pope Eugenius of the fighting in Malmesbury, where once again the local church had been taken over and fortified. "It is scarcely possible for (the abbey's) misfortune to be increased," he wrote,

...as the place is extremely neglected and the monks dispersed. Where at the time of holy father Adhelm the *Laus Dei* was resounding, there is today an armed mob of hangers-on gathered for every impiety, and a crowd of soldiers is debauched.²

Typically, in keeping with Foliot's character, the letter's larger import is to beg for a legate to come and bring justice, with as he puts it "the sword of the lord."³

Stephen's support also began to waver among the clergy. As noted above, his problems with the Church had begun in 1138 with his successful attack on Roger of Salisbury in retaliation for Roger's suspected treachery. However, it was from another ecclesiastical quarter entirely, the archbishopric of York, that the king's greatest

¹ See Davis, pp. 75-95; Crouch, 213-228...etc.

² *LCGF* #35 p. 74-75.

³ *Ibid*, "*gladius Domini*."

difficulties began, because his insistence on naming the new archbishop made him the enemy of St. Bernard and the Cistercians.

The problem with York had begun with the death of the archbishop, Thurstan, in 1140. As a candidate for his successor, the Cistercians put forth one of their own, William, the abbot of Rievaulx, while the king and his brother the bishop of Winchester, who was at the time the papal legate, were able to secure the election of one of their nephews, William FitzHerbert. The Cistercians were furious, and Bernard of Clairvaux began to take an uncomfortably personal interest in the election.⁴ Already displeased with Bishop Henry for his political involvement, Bernard was infuriated when Henry, as one of his last official acts as legate, consecrated his nephew as bishop. Without papal approval, however, he could not be archbishop, and Bernard undertook a campaign to ensure that such approval never came, and Stephen began overtly supporting the Cluniacs.⁵

The deciding factor came with the election to the papacy in 1145 of the Cistercian, Eugenius III. With the full power of the papacy behind him, Bernard was able to arrange the deposition of Archbishop William in 1147.⁶ No Norman king had been forced to accept a bishop against his will, let alone an archbishop. Stephen's inability to control the Church in the English tradition was laid bare for his aristocracy to ponder. Worse, his impotent attempts to bring the Church to heel in York damaged

⁴ Knowles, "The Case of Saint William of York," *Cambridge Historical Journal*, Vol. 5, No. 2 (1936), p. 167.

⁵ *Calendar of Documents Preserved in France*, pp 819-20, outlines the struggle over Savigny. Stephen in 1148 built the Cluniac monastery of Faversham.

⁶ Knowles, "William," p. 167.

his interests in the papal curia in the matter of his son's coronation, which by 1147 was becoming critically important.

Foliot had expressed hope that the new pontiff, Celestine II (1143-44), might find a more equable solution to Matilda's cause.⁷ Though his papacy was short lived, Foliot and Matilda were rewarded in that Celestine did restate and thus reinforce the position of Lateran II in regard to the legitimate claim of Stephen's progeny to the throne. While Stephen's right to keep the throne was upheld, the pope also declared that in the matter of the succession, no changes were to be allowed, meaning that the field remained open to Matilda's son, who though still a teenager was beginning to become a player on the scene.⁸ Henry of Winchester was no longer papal legate, and all of the power of the Church in England was vested in Foliot's friend, Theobald, the archbishop of Canterbury who was proving to be increasingly independent and resourceful against his rival for power, Henry of Blois.⁹ As Matilda left England for Normandy late in 1147, Robert of Gloucester dead and with him her hopes of becoming queen, Stephen again hoped to gain permission to anoint his son as his successor. But with even less influence over Theobald than he had had over his brother, and with the enmity of Bernard of Clairvaux and his associate Eugenius III, it seemed increasingly unlikely that such permission would ever be given.

⁷ *LCGF*, #26, p. 66: "Sed iam nunc Deo propitio, et favente parti huic domno papa Celestino, vincula solventur, qhe muta fuere loquentur."

⁸ There is an echo of the importance of this decision in the changing address used by the author of the *Gesta* in describing Henry of Anjou. In the entries for 1147, the author, who was clearly sympathetic to Stephen, refers to Henry as "iustus regni Anglorum heres et appetitor (lawful heir and claimant to the kingdom of England); *Gesta* 204 -5.

⁹ Their conflict over supremacy had begun almost immediately upon Theobald's ascension to the archbishops throne in 1139, when Henry was papal legate and obviously had the ear of the king. Although Theobald was no Cistercian, his alliance with the white monks came naturally out of a common sense of purpose against Henry of Winchester and Stephen. Saltman, *Theobald* pp 20-21.

Worse, from Stephen's point of view, it was apparent that the Angevin side was finding favor in the papal curia; it had taken three popes, five years and a continued civil war, but finally the ideas put forth by Foliot in his letter to FitzCount were beginning to find an echo in papal policy. Not to suggest that Foliot had anything to do with the change in mood – there is no evidence at any rate to suggest it. But the pretext upon which Innocent had made his decision was legally thin, as Foliot had pointed out. Stephen's increasing reputation for duplicity coupled with the increased awareness that the Church was unwilling to anoint Stephen's son, cleared the way for a solution to the problem of the English Anarchy, and that solution was the eldest son of the Empress, the charismatic teenager who would in 1154 become Henry II.

What Stephen needed was to reestablish to his barons that he could be as strong as his predecessors in his control of the Church, an idea that had recently been dealt the blow at York. Therefore, when Eugenius called a council at Rheims in 1148, Stephen decided to limit the participation in the conference to those bishops he felt he could control to a greater degree: Robert Bethune of Hereford, William of Norwich and Hilary of Chichester, an expert in canon law who would eventually prove one of Foliot's closest allies in the fight against Becket.¹⁰ Stephen had little to lose by this display of force, since his reputation with the papacy and the supreme authority in the Church was at low ebb. Gauging the reaction of the bishops, it could also be argued that Stephen correctly interpreted the feelings of the episcopate as being unwilling to follow their leaders into open enmity with the king.¹¹ His decision to limit participation was perhaps

¹⁰ John of Salisbury, *Historia Pontificalis*, p.6.

¹¹ There are a number of scholarly discussions on the peculiar loyalty of the English episcopate to the king rather than the archbishop, a tendency that would obviously color the Becket controversy in the 1160s. For the loyalty of the bishops at this particular point in time, see Saltman's discussion of Foliot's accession to the see of Hereford, *Theobald* pp. 108-110.

also influenced by the realization that the proceedings would be almost entirely dominated by the Cistercians, and he needed at this particular moment to deny whatever would strengthen the position of the men he found opposing him at every turn. He pointedly denied permission for the archbishop to attend, instructing the bishops he sent to give Theobald's apologies.¹²

Theobald, however, also wanted to demonstrate his independence to the power block of the king and the bishop of Winchester. He and his associates snuck out of the kingdom, boarding a tiny fishing boat hidden in a bay on the Channel and made their way to France. Among the party were probably both Gilbert Foliot and the younger clerk, Thomas Becket.¹³ It was an unfortunate crossing according to John of Salisbury who gives us the only account: "The vessel would carry no more than thirteen men and lacked the necessary rigging, so (Theobald) arrived more as a survivor than a passenger."¹⁴

Foliot probably knew many of the important participants in the council before he arrived. He had met Eugenius in 1146 when he had accompanied Theobald to Paris.¹⁵ He had likely met Bernard of Clairvaux at the same time, as he and Eugenius cooperated closely before Rheims and to a lesser extent afterwards. Foliot and Bernard were in any event sufficiently acquainted before the council for Bernard to request immediately before the council of Foliot information on the foundation of one of the

¹² Gervase also suggests that Stephen was motivated by the desire to weaken Theobald's position re Henry in the eyes of the papacy (Gervase, p. 134).

¹³ One cannot place Foliot with certainty at Rheims, but the preponderance of the evidence is that he did attend. It is possible that he remained in England until he was summoned to his consecration at St. Omer (Saltman, p. 108-9), but this does not square with John of Salisbury's account. More likely he took the boat with Theobald.

¹⁴ John of Salisbury, *HP*, p. 7.

¹⁵ Saltman, pp. 108-9.

abbeys in his region.¹⁶ Foliot's position on Stephen's legitimacy as king would have endeared him to Bernard, and his feelings for Bernard were confirmed in the panegyric Foliot wrote to William de Hinet at the occasion of Bernard's death in 1153.¹⁷ The English delegation, of course, he knew well; some few he had traveled with, the others, Hilary of Chichester and Robert Bethune especially, were personal and perhaps even close, friends. The Cluniacs in attendance were certainly known to him as well, as were some of the local regular clergy; he had served as prior in Abbeville, not far removed from Rheims, for several years. The only clouds to mar his participation were Stephen's continued successes on the battlefield, the consequent losses of his chosen side in the civil discord, and the unexpected death of his colleague Robert of Bethune.

Stephen's victories were mitigated by the growing belief that Matilda's son, at least, would likely succeed onto the English throne. The king's refusal to allow the bishops called to the conference to attend had given Eugenius and Bernard the ammunition that they needed to begin proceedings for his excommunication. Theobald, unexpectedly, rose to the defense of the king. His plea for mercy surprised Eugenius, who remarked, "look, brothers, to the man who lives the gospels in our own time, who loves his enemies and prays for his persecutors."¹⁸ This ended Stephen's excommunication and the accompanying threat of interdict, at least for the time being. Still, the writing was on the wall as far as the relationship between Stephen and the Church. While Foliot had much to fear in Stephen's potential victory, he could take

¹⁶ *LCGF*, #72 (pp. 105-106). The letter had to be written before Rheims or quickly afterwards as Foliot still uses the salutation "dictus abbas Gloucestrie".

¹⁷ *LCGF* # 108, pp 146-49.

¹⁸ John of Salisbury, *Historia Pontificalis*, p. 7.

comfort in the fact that he at least found himself on the side of ecclesiastical authority, which had not always been the case.

The death of Robert Bethune, however, was likely a shock. It had to have occurred quickly, as he had been hale enough to travel and passed away during the conference. He and Foliot had lived in close proximity and been consistent correspondents for a decade, and the tone of their correspondence, as evidenced by the letter on the fishpond, suggests friendship.¹⁹ If his death were an unfortunate surprise, though, the steps that followed immediately afterward had to have taken Foliot's breath. Theobald immediately suggested to the pope that Foliot be given the now vacant see of Hereford.²⁰ The pope agreed, and without resort to the customary election, Eugenius elevated Foliot under the proviso that he would obtain royal support.

Two problems thus presented themselves to Foliot. The first was gaining the support of the king when it was known that Foliot supported his enemies, a problem that was compounded by the fact that immediately upon returning to England after the council at Rheims, Stephen demanded that Theobald leave the realm and Foliot chose to follow him into exile. They evidently did not inform Stephen of their move on the bishopric of Hereford, and instead finessed the matter by turning for consultation to Henry of Anjou, Matilda's son, while they were away from England. Henry, after all, was looking more and more as the heir apparent to the English throne; why not ask his permission? Henry obliged, but refused to invest Foliot unless he swore on the Gospels to do fealty to him within a month of the consecration, and also swore that he would not do fealty to Stephen. This negotiated the first hurdle.

¹⁹ *LCGF*, #6.

²⁰ John of Salisbury, *HP*, p. 47.

The second problem was that Foliot's consecration as bishop would normally have involved the participation of other English bishops, and in this case the three bishops summoned to perform the rite, Robert of London, Jocelin of Salisbury and Hilary of Chichester, refused to take part in the ceremony.²¹ Their hesitation was understandable, as it seemed that papal authority aligned itself with Bernard and Theobald in an attempted "end run" around the necessity of gaining the king's permission to perform such an office.²² Or, perhaps more correctly, it was telegraphing its growing unwillingness to allow Stephen to establish a dynasty. Either way, it was an obvious infringement on the traditional arrangement between the English kings and their bishops, one that Foliot in any other circumstances would probably have refused to take part in. Eugenius ignored this mutiny and authorized Theobald to perform the ceremony with whatever bishops were close at hand. Foliot was ordained bishop in September of the year in the Church of St. Omer, with a host of French bishops assisting. Part of the ceremony involved laying the open gospel upon the head and neck of the newly ordained; John of Salisbury claims that the passage the Bible had fallen open to was Jesus' admonition to Peter in the Garden of Gethsemane: "Are you asleep? Could you not watch one hour with me?" By this he intimated that Foliot was so eager for the see that he would not wait to proceed by the proper channels.²³

The sequence of events surrounding Foliot's elevation is uncertain, as the only person to chronicle them was John of Salisbury in his *Historia Pontificalis*. John completed this section of the work in around 1164, when the division between Foliot

²¹ *Historia* p. 48.

²² *Ibid.*

²³ *ibid.*

and Becket was growing pronounced. John sided with the archbishop and therefore had reason to denigrate Foliot's reputation.²⁴ Also, at this point the events he was describing were more than a decade in the past, and he may not have been an eyewitness to the proceedings. Nor is his account without mistakes. His explanation for why Stephen denied permission for Theobald to travel to Rheims is clearly and drastically in error.²⁵ In the same passage that he describes Foliot's elevation, he mistakenly identifies Henry II as the duke of Normandy, a title that he could not claim for at least another year. His account must be taken with caution. On the whole, though, one can assume that at least the broad strokes of the story John outlines are correct, as they also match the epistolary evidence for the event in Foliot's collection.²⁶ Foliot handled his elevation to Hereford very badly.

²⁴ While it is almost certainly true that Foliot's behavior as he took the bishopric of Hereford was unfortunate, Salisbury's faint condemnation of his actions is couched in such a way that one cannot help but notice the obverse similarity between this situation and the one in 1163 over the Constitutions of Clarendon. In the latter case, Foliot might well be viewed as committing a breach of precisely the same principle of law. The *Historia* may have been written as late as 1165, at which point the enmity between Salisbury and Foliot was deep, when enormously disparaging letters began to circulate among the major players, and when the jury was still very much out on the degree of honor in Becket's behavior. It would not be out of character for Salisbury to write the passage precisely to point out the similarity for those who remained undecided, and to twit Foliot more effectively than was possible in the growing histrionics of the correspondence. Indeed, the irony that Foliot would be condemned and excommunicated by Becket for creating just such a schism seems almost too perfect to be real. No copies of the letters between Theobald and Henry survive, nor do any record of their existence other than Salisbury's claim. Nor do any of Foliot's letters address the controversy, even obliquely. This proves nothing, of course - he may not have been aware of what Salisbury had written, and if he was we may simply have no record of his reply. See also Chibnall's Introduction to the *Historia*, p. xxxviii-xxxix.

²⁵ Ibid. The supposed problem with St. Malachi and his desire to leave the realm cannot be correct, because the difficulty Salisbury chronicles was some years in the future.

²⁶ Specifically the letters #74, through #78. In the last week of April or sometime in May of 1148, Foliot writes (#74) that he has recently returned to England from the council with the Pope and that (#75) he had made good time crossing the Channel. The last (#78) explains in July that he and Theobald had arrived in Arras. This series of letters deals with the potential excommunication of the bishops who chose not to attend Rheims, and a set of law suits that demanded Foliot's attention, all in keeping with John's description of the events. For another take on the veracity of John as a historian, see Chibnall's discussion of this in the introduction to her edition of the *Historia Pontificalis*, xxxi - xvi.

But while in hindsight this seems an unfortunate lapse in judgment on Foliot's part, he could justify his actions to his conscience. The pope himself in his presence had given Foliot a command - a command that undoubtedly pleased Foliot, but a command nonetheless. As a Cluniac, he had sworn an oath to obey the pope above all others, including the king. Foliot disapproved of Stephen's rule of England and considered it almost illegitimate. The current Church hierarchy disapproved of Stephen's behavior, so Foliot could certainly have felt within his rights to ignore the concerns of Robert, Jocelyn and Hilary, in the interests of some greater good. Moreover, if Stephen were given the opportunity to sway the decision over the bishopric of Hereford, he might have insisted on one of his own lackeys, to the detriment of both the Church and its flock.²⁷ The archbishop of Canterbury had been using Foliot as a conduit for dispensing justice into the West Midlands and uniting the realm spiritually, as the Anarchy divided it politically, for several years. Hereford was Foliot's homeland, or was close to it. There are any number of reasons why Foliot would have agreed to accept immediate anointing.

And while his acceptance of the see can be easily regarded as self-serving, and indeed any objective observer must come to the conclusion that in some degree it was so, it must also be pointed out that at this point Foliot was placed directly between two opposing and dangerous men – the king of England and the man who it was becoming increasingly apparent would replace him. Someone was going to be profoundly angry

²⁷ This argument would have been thin, however, based on Stephen's track record of supporting William Fitz Herbert at York. William had in fact proven to be a decent archbishop, despite his deposition from the archsee in 1147. After the death of Murdoc he was once again raised to the archbishopric. In 1148 however there was a taint of disgrace to his name, following accusations of bribery and the sale of relics to finance his trip to Rome to receive his pallium. See the *Catholic Encyclopedia* for the outline of William's life (he was later canonized as St. William of York). A more scholarly appraisal can be found in Knowles "The Case of St. William of York," op. cit.

with Foliot for his participation, and the man whom he ultimately chose to anger, Henry, may have held this against him for quite some time.²⁸ Salisbury points out that the passage the Gospel opened to made Foliot look grasping; yet there were more passages on the page, and at least one of the two on either side of the citation Salisbury makes had to be there as well. The verse immediately preceding says, “‘Abba, Father, all things are possible to you. Take this cup away from me, but not what I will but what you will;’” and the one immediately following: “Watch and pray that you may not undergo the test. The spirit is truly willing, yet the flesh is weak.”²⁹ Foliot’s decision, at least on one level, showed a degree of courage in the face of substantial and demonstrable danger. His spirit, it can be argued, had made the right choice, and his flesh would presumably have to pay.

5.2. THE AFTERMATH OF THE ELEVATION, AND THE RELATIONSHIP BETWEEN CHURCH AND MONARCHY

When he arrived back in England, the bill for this courage, if that is indeed what it was, came due. Stephen summoned Foliot into his presence and demanded of him the oath of fealty which, as the undisputed master of England he had every right to expect.³⁰ If Foliot had any courage, it deserted him, and he made the proper obeisance. Stephen would have been informed of the unusual circumstances of the anointing by Robert, Hilary or Jocelin. The king suspected or knew outright that Foliot did not support his position on the throne, and was obviously casting his lot with Theobald as he had left

²⁸ Saltman, p. 110; *LCGF* #104, pp. 142-4, and discussion.

²⁹ Mark xiv, 36-38 (New American Translation).

³⁰ *Historia Pontificalis*, p. 48.

England both to attend Rheims and to follow him into exile in France.³¹ Whether he was aware of Foliot's letter to Brian FitzCount, or any other public proclamations in support of the empress now lost to the vicissitudes of time, whether in other words he knew the depths of Foliot's disapproval, is impossible to know. How much Stephen knew of Foliot's alleged promise to Henry is also another matter, as the bishops may not have been privy to such information. John of Salisbury tells that Henry shot off an indignant letter to Theobald voicing his anger, to which Theobald allegedly replied that Foliot in essence had had no choice in the matter, as if he had failed to swear fealty he would have risked a schism within the Church, which was true enough.³²

Theobald's exile, and Foliot's part in it, lays out another interesting aspect of the relationship between the powers in England – the ambivalence of the clergy toward royal authority. Despite his weakness, Stephen's attempts to control the clergy were not altogether unsuccessful, because individual clerics were reluctant to disobey him, even given direct instructions to do so by the archbishop and the pope. When the archbishop returned to Canterbury late in April, Stephen hurried there to meet him and demanded an explanation. Hearing none to his satisfaction, he demanded that Theobald leave the realm.³³ Within a few days the archbishop complied, leaving for exile in France. Foliot went with him again, writing to Eugenius describing their situation: "(I) have remained with your son and our father and dearest lord of Canterbury during the days of his exile. We have no home or residence of our own but have wandered from place to place."³⁴

³¹ Although the record on this is silent, it is possible that Foliot had also been exiled for his participation at Rheims, though he gives no indication of this in #78, the letter to Eugenius written while he was in exile, where we might expect to see it.

³² *Historia Pontificalis*, pp. 48-49.

³³ Gervase p. 135.

³⁴ *LCGF* p. 111, no. 78. This letter, likely written in August of the year 1148, is the last preserved letter of Foliot as abbot.

During this period, both Theobald and Stephen tried to gain an advantage over the other. Stephen was still thwarted in his ambition to have his son crowned as his successor, in that Eugenius would override neither the precedent of the Lateran council's decision of 1139 nor the recent support of that decision of his predecessor Celestine. But with Theobald in exile and Matilda out of the country Stephen sensed that he might have gained the upper hand, and demanded that Theobald, who alone could anoint his son as king, perform the rite in order to return home.³⁵ Theobald instead ratcheted up the tone of the disagreement by laying the realm under an interdict. Foliot had a few weeks earlier laid an interdict upon the earl of Hereford, with whom he was still in dispute, and it appears that the clergy in his new diocese acquiesced.³⁶ However, in the archdiocese, Theobald's papal interdict was almost entirely a failure. His diocese was expressly forbidden to appeal the interdict, yet the archdeacon of London and his associates did so nonetheless. The mass and offices were performed throughout the realm saving only Canterbury, and even there the monastery of St. Augustine continued to say the mass, and the monks appealed the interdict, again in direct contravention of papal mandate.³⁷

In this particular battle with Theobald, Stephen was the victor. Indeed he might have continued to press his advantage but for his continuing need to obtain anointing for his son. Also, Theobald's next play was brilliant – he returned to England under the protection of Hugh Bigod, who was in the Empress' camp.³⁸ At Framlingham in Suffolk

³⁵ Davis, pp 102-103; Saltman 28-30.

³⁶ *LCGF* #77, p. 110. In the salutation to this particular letter, Foliot refers to himself as “Abbot of Gloucester and by command of the lord pope vicar of the church of Hereford (*“Glocestrie dictus abbas et Herefordensis ecclesie mandato domni pape vicarius”*)”, which both dates the letter as before his approval by the king and shows the ambiguity of his position at that particular moment.

³⁷ *Historia Pontificalis* p. 46. Repeated in Gervase p. 136, likely working from John's *Historia*.

³⁸ Gervase, p. 136.

he was able to conduct the jurisdictional business of the archbishopric, Theobald seemed almost to be declaring for the Angevins. With Matilda finally off of English soil, this was the last thing that Stephen needed. He and Theobald quickly found an equitable solution to their estrangement and in October of 1148 Theobald returned to Canterbury and lifted the interdict. A number of the bishops had been excommunicated at the pope's insistence due to their lack of participation at Rheims, but Theobald brought most of them back into the fold quickly and without rancor. In this, again, Foliot was his helper in the west, as he had taken up residence in Hereford shortly after the reconciliation with the king; it was at this point that Stephen confirmed Foliot into his see.³⁹

The fact that the bishops refused to go to the council is symptomatic of the underlying ambivalence among the English clerics toward the papacy. As Frank Barlow has shown, the English Church, at least under the Normans, had little patience for disputes between the king and the pope, and in the case of such disputes tended to side with the monarchy even against the archbishop. "(English clerics) wanted neither a Henry I nor a Henry of Blois. Nevertheless, if a choice had to be made, they would probably have preferred a "good" king."⁴⁰ A number of customs point out the almost proprietary attitude of the king toward the Church: the king took custody of vacant abbeys and bishoprics (*ius regale*); he confiscated the wealth of dead prelates (*ius spolii*); after 1107 with the cooperation of the English clergy he formally invested the bishop with his lands and chattels.⁴¹ Nor were these rights much disputed until

³⁹ Saltman, pp. 118-20.

⁴⁰ Barlow, *The English Church*, p. 308.

⁴¹ Ibid, pp. 115-116.

Stephen's accession to power, and once in power he tried constantly to ignore the provisions forced upon him by his brother in return for the crown. The degree to which the Church gained power at the expense of the king during the reign of Stephen is debated, but it seems clear, and the behavior of the English bishops during the council at Rheims and their refusal to cooperate with Foliot's elevation illustrates, that the clerics in England were at least open to the idea that the king deserved a degree of autonomy from the papacy.⁴²

During the Anarchy, Foliot's teacher Robert Pullen wrote his *Sententiarium libri octem*, in which he described the nature of the relationship between government and Church using the metaphor of two swords – one to rule and protect the body, and the other to rule and protect the soul - arrayed into the form of a cross.⁴³ In Pullen's view neither sword could be more important than the other. Instead, they must act together as parents in the discipline of children, lovingly correcting faults, but never turning their corrective powers onto each other.⁴⁴ The king should not intrude into the Church's use of the sword to strike for the soul, and neither should the Church intrude upon the king's right to strike a blow for the body. Pullen also wrote that the prelate must know that he is subject to the king in the matters of the world: "The king obeys the priesthood in the commands of God; the prelate should know himself subject to the king

⁴² Barlow, writes: "Stephen's power was much reduced (in comparison with Henry I's). The disputed succession, the new king's character, his lower standing as the son of a count, ...the rise of the Cistercian party, all these sapped his authority." *English Church* p. 303. Compare this to Crouch, who claims that Stephen gave little away in his concessions to the Church, and that what he agreed to, at least in the Oxford Charter of 1136, simply made *de jure* what was already *de facto*. (*King Stephen*, pp 298-300).

⁴³ Hartmut Hoffman, Die beiden Schwerter im Hochmittelalter," *Deutsches Archiv* XX, pp. 93-94.

⁴⁴ Pullen, Book VI, #56 (PL clxxxvi)

in the business of the world.”⁴⁵ Similarly, the writings of Gerhoh of Reichersberg, Foliot’s senior by around ten years, also conclude that the secular authority needs to act as a check on the ecclesiastical when the ecclesiastical strays into the world of lay authority.⁴⁶ While Foliot sided in the particular case of Stephen against a monarch he believed illegitimate and impotent, the rest of the English episcopate chose to lay low in the conflict, or, in the cases of Robert, Jocelyn and Hilary, to openly side with the king against the Church. Pullen, shows the theological cover they could have used to justify their action.

Thus when Henry II took the throne and became interested in reestablishing royal jurisdiction in areas where he suspected it had been lost by his predecessor, that the clergy were generally willing to countenance his desires. This predisposition could only have been sharpened by the dismal turn of events during the Anarchy, which happened to coincide with both an uptick in spirituality in England, and with the damage to the peasantry that the Anarchy caused. From this milieu Foliot would arise as one of the principal clerics in the realm; a friend to the archbishop, a competent jurist, a pious priest, and an avowed Angevin supporter. He occupied his position in Hereford on the episcopal bench through the last years of Stephen’s reign and through the first years of Henry II.

There is little in Foliot’s episcopacy in Hereford to further the examination of his attitude toward the relationship between Church and the crown, as they seem to have been formed by this time. The administration was now stable; there was a healthy

⁴⁵ (*Obediat rex sacerdoti in mandates Dei; noverit praesul se subiectum regi in negotiis saeculi*). Quoted in Hoffman “*Die beiden Schwerter im hohen Mittelalter*,” *Deutsches Archiv* xx (1964) pp. 93-94. Hoffman’s translation is into German, the English translation here is mine.

⁴⁶ Ibid. Gerhoh of Reichersberg, “*De aedificio Dei seu de studio et cura disciplinae ecclesiasticae*” (P. L., CXCIV, 1187-1336; Sackur, 136-202).

tension between the king's court and the bishops.' With the accession of Henry II in 1154, Theobald recognized that the new king wanted to roll back some of the license that the clergy in England had assumed with the decrease in royal authority under his predecessor.⁴⁷ Still, the level of rancor at no time approached the level of difficulty between Theobald and Stephen. While the question of criminous clerks could have come up during Theobald's tenure, the cases never came to trial, and Theobald seemed inclined to work with the king as much as was possible.⁴⁸ Foliot's letters from the 1150s show a bishop with an active court, in which he took a leading role, and when he chose to step aside he provided explanations carefully grounded in civil law.⁴⁹ There is one interesting letter in which Foliot writes to the young earl of Gloucester, Robert's son, William, addressing the latter's resistance to corruption, which confirms Foliot's attitude toward the righteous life of self-denial.⁵⁰ His attitude toward both piety and the Angevin cause remained obvious. For a time, at least, there was calm before the storm. It would eventually be broken after Theobald's death, with the accession to the archiepiscopal see of the king's chancellor, the archdeacon of Canterbury, Thomas Becket.

Foliot's experience during the Anarchy had a great bearing on his development as a cleric and on his later views of the importance of strong monarchy that could defend the Church where the Church could not defend itself. Through the 1140s, Foliot watched as the secular legal structures disintegrated, to the detriment of both clerics and

⁴⁷ Saltman, pp. 163-64, gives an excellent summary of the tensions between Theobald and Henry, noting that Henry was already beginning to encroach uncomfortably into areas that made Theobald uncomfortable. Nonetheless, in the cases where Theobald might have resisted, he tended not to, notably in the case of Hilary of Chichester's attempt to regain control over Battle Abbey.

⁴⁸ Saltman, pp. 160-2.

⁴⁹ See for example the series of letters regarding the break of sanctuary in Evesham, *LCGF* #s 93-96.

⁵⁰ *LCGF* #88, pp. 122-3.

the common people. While there were some advances for clerical independence in the *Charter of Liberties* granted by King Stephen in 1136 and in the expansion of the authority of Church courts in the period leading up to the accession of Henry II, Foliot ultimately believed that these liberties came too dear. Moreover, the crisis over the Cerne monks showed an area where the Church had difficulty dealing with its own structural problems and curbing the behavior of its own members. At the same time, the developing complexity of the canon law system and its potential for virtually unlimited appeal meant that cases that he observed might stretch over years and end without resolution. He was willing to see certain advances of Church prerogative sacrificed, within reason, in order that a harmonious relationship might develop between the Church and the secular government. Like much of the clergy, he was willing to grant some latitude to the new king in his desire to clean up the realm and assert his own authority.

5.3. THE WORKING RELATIONSHIP: HENRY II AND THEOBALD

Among Henry's chief concerns after the Anarchy was to reestablish the authority of the monarchy against his Church at home, and against the claims of the pope, which had been so disastrous to his predecessor's reign.⁵¹ Archbishop Theobald realized early on the direction Henry's plans were taking and was naturally cautious. He wrote to Henry of his concerns around 1155 in a letter drafted by John of Salisbury, who was at the time a clerk in the archbishop's household.

⁵¹ ZN Brooke, *England and the Papacy*, pp. 198-99.

The children of this age have advised you to diminish the authority of the Church in order to enhance the dignity of your royal position. Whoever these people are, they surely attack your greatness and bring about the wrath of the Lord.⁵²

Theobald's anxiety is understandable. What is surprising is his inclination to grant the king latitude in a number of areas, especially in favoring restrictions on the ability of both clergy and laity to appeal directly to Rome without approval from the royal curia, one of the great sticking points that would emerge between Becket and the king.⁵³ Theobald, in the same way as Foliot, and using similar language, paints a picture of dual powers working together. Note how in the following letter, sent specifically to push Henry to continue supporting Alexander against his rival, antipope Victor IV, Theobald weaves in this idea of Church and monarchy working with an implied equality:

When the members of the Church are united in both loyalty and love, when princes show due reverence for priests and priests render faithful service to princes, then do kingdoms enjoy that true peace and tranquility which must always be the goal of our desire. We have always been vigilant in the preservation and promotion of unity, and have freely spent body and goods that these powers might agree⁵⁴

While the motive was partially expedience, Theobald desired a mutually supportive relationship between his office and Henry's. At the very least there was no hint of the rancor that would swamp the relationship between the offices during the episcopate of his successor, Becket.

⁵² *PL*. 199, ep. 64 part 3, col 49. Trans. Saltman, in *Theobald*, p 154.

⁵³ On Theobald's relationship with Henry and their common vision for legal reform, see Warren, *Henry II*, pp. 442-43.

⁵⁴ *Ibid*, and *Letters of John of Salisbury*, CNL Brooke ed and trans., vol. 1, #116, p. 190. Brook argues that the letter was likely drafted by Salisbury in his capacity as Theobald's assistant. The letter was sent under Theobald's name, however.

Regardless of the motive, on appeals to the papal curia Theobald clearly supported the king in ways that went beyond papal approval. ZN Brooke and Saltman both show that limitation on appeals to Rome had long roots in the English tradition. Saltman cites an 1161 case involving a man named Richard of Anesty, who needed to go across the channel to obtain permission from the king to continue his appeal to Rome before Theobald would allow the case to proceed.⁵⁵ Saltman points out that there are two records of the case, and that it is only through Richard's account that Theobald's insistence upon royal approval is known. John of Salisbury, writing later, neglects to mention this, perhaps purposely, in an attempt to deny that Theobald and Becket saw this issue differently.⁵⁶ Theobald not only acquiesced to this policy of restricting appeal, but actually supported it on the grounds that local bishops were in a better position to know the circumstances and ramifications of a case better than the distant papacy.⁵⁷ Dozens of Theobald's letters to the papal curia in the late 1150s show edginess toward unlimited appeal, and imply qualifications for cases to be heard abroad rather than at home in either the king's or the bishop's court.⁵⁸

There are several bases for concern over papal appeal that bypassed royal sanction, not least of which was the ability of plaintiffs, facing defeat, to peremptorily appeal. In describing one such case, Theobald comments:

After examining these witnesses and finding they agreed closely with the evidence, we took their oath and were about to give judgment...when William, without alleging any hardship and illegally it seemed to us, made an appeal to your most excellent consistory."⁵⁹

⁵⁵ Brooke, *English Church* p. 203; Saltman, *Theobald*, p. 155.

⁵⁶ Saltman, *ibid.*

⁵⁷ *Henry II*, p. 442-45 also discusses this.

⁵⁸ *LJS* vol 1, #s 50-80.

⁵⁹ *Ibid*, #84, p. 132.

Theobald was annoyed that one of the plaintiffs in a suit within his court had the ability to simply run out and take his case elsewhere where he felt he might have a better chance at prevailing. A letter to Hilary of Chichester lays out his attitude toward how and when and where justice must be served in court:

That disputes within your jurisdiction find their way to us is a sign of weakness or negligence... our labor will be increased and you will lose your reputation for virtue.⁶⁰

Theobald had no desire to see his own reputation damaged in the eyes of his peers on account of his inability to find equitable solutions to the cases in his see. In this, the might of the king was a welcome constraint on the growing litigiousness of his flock. The almost limitless potential for appeal within the canon system was one of the principal problems with Church courts at the time, and while such appeals might enrich the papacy (and indeed would do so over the next centuries) they also contributed to the increasingly tortuous nature of the system.⁶¹ Thus there was also the concern with simple justice, which would be increasingly important to a Church that was developing in the twelfth century both more sophisticated and personal theologies and the only centralized court system in Western Europe. Justice needed to be reasonably swift and sure, and according to Theobald such surety was best found close to home:

The transgressions of malicious persons are best punished by those who have the most intimate knowledge of the merits of the parties concerned and have received power from the Lord to correct them thoroughly.⁶²

Theobald also realized that the use of foreign courts increased the likelihood of forgeries, which his court and those of his subordinates would have to deal with: “In

⁶⁰ Ibid, #61, p. 102.

⁶¹ John Moore, “Papal Justice,” op. cit.

⁶² Ibid.

addition, we beg you to give us a ruling on the punishment to be inflicted on those who forge your letters: it is difficult for us to await your advice on individual cases of this kind every time they arise.”⁶³

The concern with papal appeal is likewise seen in Foliot’s letters dating from before his elevation to the see of Hereford in 1148 through the end of Theobald’s life and later. This is not to say that Foliot did not have reason to appeal to the papal curia during these years, far from it, but it is generally apparent that such appeals ought to take place only when other options had been exhausted, or in cases where the specifics were too complicated for his court to adequately adjudicate. He was not pleased, for example, when the lax monks at Cerne appealed directly to the papal curia, ignoring his own decision and that of their bishop, and necessitating the awkward meeting with Matilda.⁶⁴ In that case, as in the case of William in his appeal from Theobald’s court, it was clear that the plaintiffs simply bolted before a final decision had been made, hoping that a more distant judge would be likely to find in their favor before their opponents had the ability to mount a proper case so far from home.

As bishop of Hereford, there is more evidence of Foliot’s problems with unrestricted access to the pope’s court. A striking example concerns the issue of the election of Richard de Belmeis as bishop of London in 1152-4. Due to complications in the process of adjudicating the election, Pope Eugenius had appointed John of Canterbury as archdeacon of St. Pauls in London, while Richard, unaware that the pope had done so, gave the position to Ralph di Diceto.⁶⁵ This in turn led to problems

⁶³ Ibid, #57, p. 98. *Henry II* p. 443.

⁶⁴ See page 97-8 above.

⁶⁵ See Stubbs’ introduction to the *Historical Works of Ralph di Diceto* (RS, 1876) pp. xx-xxxviii.

between the pope and the bishop, who was widely supported by the clergy in England. Foliot wrote several letters on behalf of Richard, including one where he compared the negotiation of the papal appeal to sailing the treacherous waters around the braying, many-headed Scylla.⁶⁶

This particular sequence of letters also points out the double-edged sword of royal control, as Richard's difficulties stemmed from King Stephen's earlier refusal to accept him as bishop. The hope was that a stronger, clearly legitimate king would be able to set right the annoying tendency of litigants to appeal outside of the jurisdiction, while protecting and working with the clergy and their courts. Such a desire would seem naïve and unsophisticated, were it not shared by other notables (like Theobald) and had Henry not proven to be more or less concerned with justice. It would turn out that they were all on the same page, though they could not know it at the time, as Henry was still two years from becoming king. At the moment of Richard de Belmeis' problems, Foliot only noted the potential problems of the Roman court and unlimited appeals to it.

5.4. BECKET AND HUMILITY

While Foliot was interested in finding a successful and balanced relationship between the king and the Church, he never abandoned his ideals of the humility and piety necessary for success within the Church. He was thus as concerned as any of his

⁶⁶ *LCGF* #103, p. 142. The letter is addressed to Richard de Belmeis, about to depart for Rome. "Lividorum latratuum Scillas undique erumpentes audimus; omnes aura Sancti Spiritus flante prospere enavigabitis."

episcopal colleagues over the rise of Theobald's clerk, Thomas Becket, who began to enter the picture in the 1150s. As a youth, Thomas' education had not distinguished him, though he had an evidently gregarious nature and was by all accounts easy to like. After a few halting attempts to work in the service of magnates and merchants, he found employment in Theobald's entourage as a clerk in the archbishop's court. While his background and parentage were unimpressive, and set him up for hazing at the hands of his wealthier co-workers, especially Roger Pont-l'Eveque, he persevered and ultimately rose to the lucrative position of archdeacon. He developed a reputation as a dandy, dressing and living sumptuously, a reputation that was furthered when he went, at Theobald's suggestion, into service for the king, where he became chancellor. Becket became extraordinarily wealthy, and in turn used that wealth to reflect grandeur on Henry's court. It was said that he lived better than the king himself, and the remark was not entirely in jest. His train as ambassador to the king of France consisted of some 200 horsemen and their attendants, beautifully outfitted at Becket's direction, with 12 packhorses to carry the silver table service alone. Becket himself brought two-dozen changes of clothes of the finest silk.⁶⁷

Becket's lifestyle sat uncomfortably with the more disciplined clergy, as he kept his original position of archdeacon of Canterbury, which was lucrative, as his wealth steadily grew. During the period of reform within the Church that had already produced the austere Cistercians, and would within decades produce a number of movements dedicated to poverty, including the Cathars, Waldensians and Friars, Becket lived a life that can only be described as opulent. Moreover, his connections with the archbishop's

⁶⁷ Two of Becket's clerical biographers, William FitzStephen and Herbert of Bosham take special delight in describing the luxurious nature of Becket's lifestyle as chancellor. See *MTB* vol. III, (FitzStephen) pp. 29-30 for the particulars of his embassy to France.

court quickly cooled. Becket had found himself at home with the king's court, and distanced himself from Theobald, poverty and his clerical detractors.⁶⁸ Becket embraced the trappings of his new career, and there is no indication that he despised them, except for a comment by one of his biographers after his death that he had himself secretly whipped at the hand of a priest during these years, in hopes of mortifying himself and atoning for his behavior.⁶⁹ The report is scarcely credible, however; nothing in his outward behavior as chancellor indicated a displeasure with the turn of fortune's wheel; on the contrary a number of his actions could be regarded by clerical observers as sinful.

Sometime toward the beginning of 1160, archbishop Theobald became gravely ill, but continued nevertheless to weigh in on the important matters of his see. Chief among these during that year was the potential schism of the Church over the papal election. Two rival claimants, Octavian and Alexander, had been elected, and the Church's position on whom to back needed to be decided. In this, the cooperation between the Henry and Theobald was perfectly complicit, a model of relations between the British monarchy and church. Henry allowed the Church to decide for Alexander, but managed to keep the door open for a potential change of heart. This was an important moment of foresight, as the schism between Alexander and the anti-pope Victor would form a constant backdrop to the struggle between the king and Becket. As the Church met in council at London under the direction of a physically infirm

⁶⁸ Barlow, *Becket*, pp. 49-50.

⁶⁹ FitzStephen, *Vita S. Thomae, MTB* vol iii, p. 22. FitzStephen was not in Becket's company at the time of the alleged whipping; the information was second hand at the least and might easily reflect the gathering assumption of Becket's sanctity.

Theobald, however, such a struggle seemed unlikely as the relationship between Henry and his clerics appeared perfect.

Foliot described the outcome of the council in a letter to Alexander in late 1160.⁷⁰ The letter is interesting not simply in its assumption of the close workings of Henry and his clergy, but also because of a legal principle on the election of the pope that Foliot elucidates. Using a series of precepts from the *codex* regarding municipal courts, Foliot suggested that elections for the papacy should rely on a two-thirds majority of the Cardinals. This is the earliest known suggestion along these lines, which would become codified in the election decree of 1179, and which controls papal elections to this day. The idea may have suggested itself to Foliot because Alexander himself had been elected by just such a vote, but it is interesting, and once again a testament to Foliot's legal capabilities, that he was the first to mention the civilian jurisprudence to justify this particular system.⁷¹

While the unity of the clergy and the king in the matter of Alexander's succession likely gratified the aging archbishop, he likely also felt keenly at this moment the apparent loss of his protégé and archdeacon Becket to the king's chancery. Through his servant, John of Salisbury, Theobald wrote in his declining months repeatedly begging both Henry, the king, and Becket, to come to see him before he succumbed.⁷² Of Henry he needed assurance that he would keep his allegiance to Alexander, and that he would take care of an election to the see of Exeter.⁷³ He may

⁷⁰ *LCGF* #133, pp. 175-77.

⁷¹ *Ibid*, p. 176, n. 4. On the 2/3 election provision, see Otto Gierke, *Das Deutsche Genossenschaftsrecht*, III (Berlin, 1881) p. 321.

⁷² Brooke, *English Church*, p. 192.

⁷³ Barlow, *Becket*, p. 61, *Letters of John of Salisbury*, #'s 120-123, 127-129.

also have desired Henry to release, at least temporarily, Becket from his duties as chancellor, since with his own illness much of the business of the archdiocese was falling to an overwhelmed staff.⁷⁴ He likely also wanted to discuss Becket's future with him. It is unknown whether Theobald expected Becket to follow him upon the archbishop's throne, some sources say he did while others deny it.⁷⁵ Theobald wanted at least to say goodbye to the man who had come to his service with almost nothing and had risen to hold more power in the realm than any man save the king himself.

Both Henry and Becket were in France, and neither would come. Henry was at war again with Louis over the castles of the Vexin.⁷⁶ Becket's refusal is more difficult to square. At this particular moment it is hard to see how he couldn't drag himself away from the king. There are likely two interlocking explanations, one dealing with his total identification at this point with his service to the king, the other with an assumption that any interview with Theobald at this point in his career would be a painful one. Becket had abandoned everything that might have put him in conflict with his role as Chancellor. Foliot noted Becket's ingratitude, and would use it to twit him when the controversy broke out.

Foliot would also denigrate Becket on the other two decisions he made at this point – to lead an army of the king and to place a scutage on the clergy. In the first, Becket chose to lead the king's army in Toulouse in support of Eleanor of Aquitaine's right to the region. In one respect this was an enormously courageous undertaking, as all of Henry's barons had turned down the command as doomed to failure. Becket

⁷⁴ Salisbury, *ibid.*, #'s 128-9.

⁷⁵ Barlow, *op. cit.* p. 61

⁷⁶ *Chronicles of the reigns of Stephen, Henry II., and Richard I; The Chronicle of Robert of Torigni*, Robert Howlett, ed. *Rolls Series* iv. (1889) pp. 208-211.

acquitted himself brilliantly, taking several towns and at one point entering single combat with a French knight, whom he unhorsed. This turn of events, by the son of a London merchant with no known formal military training, was astonishing. At the time, however, Becket was also a cleric who should not have drawn blood.⁷⁷

The other decision that Foliot would use to criticize Becket was the nature of the scutage he used to fund the Toulouse campaign. Church property was normally exempt from demands for knights' fees, but in 1159 the king demanded payments from the large ecclesiastical properties as well. This must have been done with the complicity of the chancellor, common enough knowledge that in regard to the action even John of Salisbury later noted that the "hand that had once buried its knife in the bosom of the Church now protected it."⁷⁸ Such exactions were not unheard of, but the clerics probably resented that one of their own should have neglected to protect them from the tax. Even stranger, however, was the insistence that a number of the properties also pay additional gifts to the king, and that only some of the clergy were fined in this manner. The bishops of York, Lincoln, Bath, Winchester, London, Norwich and Worcester were all penalized in this way, as were a number of abbeys, while other similar institutions were mysteriously passed over. Foliot's see of Hereford, for example, was never charged the exaction. For this there was little or no precedent, and appeared capricious

⁷⁷ The irregularity of his actions in this regard are much debated, even in the original sources. Barlow argues that such activities were not unusual for clergy in minor orders during the Middle Ages. However, a great deal had changed in the century leading up to Becket's campaign at Toulouse. Herbert of Bosham admired Becket both for his display of finery as an emissary in France, and for his bravery and military skill at Toulouse. Herbert, however, seems incapable of criticizing his patron, Becket, and thus his remarks must at all times be taken critically. Edward Grim, on the other hand, has no patience whatsoever for Becket's earlier life and exploits, preferring to emphasize the magnitude of his conversion after becoming archbishop. He castigates Becket for his part in the military exploits of 1159-60, pointing out how many innocent lives Becket condemned to death by his leadership in the campaign. Barlow, *Becket* pp. 58-59.

⁷⁸ Salisbury.

as well. These were undoubtedly matters Theobald hoped to discuss with the Becket before he died. Interestingly, Becket never showed any later misgivings about his decision not to visit Theobald in his last days. While others, including Foliot and John of Salisbury, spoke with warmth of the archbishop, Becket was to his dying day consistently cool on the subject.⁷⁹ He may have been personally embarrassed by his behavior, or there may have been some animosity between them that time has lost. However, his refusal to come to Theobald's bed as he lay dying scored him few points with the English clergy, nor with Foliot, who would later castigate Becket for his militarism and his ingratitude. Theobald finally died on April 18, 1161. At his side was John of Salisbury, who unlike the chancellor recognized how much he owed the archbishop and stayed with him during his painful, lingering illness and last hours.⁸⁰

5.5. DESIGNS ON THE SEE OF CANTERBURY

Theobald's death left an enormous vacancy in the Church. Henry had no need to fill the position quickly, as in the meantime, partly due to Alexander's gratitude for Henry's support of his papacy, he had been given permission to have any bishop he chose anoint his son as his successor. Considering that his predecessor on the throne had had his dynastic ambitions effectively blocked by the intransigence of the archbishop of Canterbury and the hostility of the pope, facts that Henry had used to his own advantage, this was a welcome concession. He already had the assent of the barons and bishops to support his sons, an agreement he had reached with them at Wallingford

⁷⁹ Barlow, *Becket*, p. 61.

⁸⁰ Salisbury's letters in *PL*, 199, ep. 59, cols. 42-43; and *Theobald*, pp. 55-56.

on April 3, 1155.⁸¹ Foliot, representing Hereford, was likely in attendance, though no list of the participants survives. Henry may thus have felt no need to hurry in choosing the archbishop and declaring the succession. His failure to do this while he had the chance would eventually haunt him in the disaster of 1170.⁸² It may also be that he delayed the creation of Theobald's successor because he already had in mind Becket, and he knew that the conservative clerics might disapprove of this choice and he wanted to allow time to soften the blow.

Becket was not the only possible choice for the archbishop's throne, obviously. The translation of bishops into the see of Canterbury was not unheard of, but it was unusual in recent history. The most traditional candidate would have been an abbot with experience in administration and the built-in assumption of detachment from the world that marked the theoretically perfect candidates of the preceding century, Lanfranc and Anselm. Two abbots in England had sufficient reputation and authority to have been elevated to the archbishopric, William of Norwich and Robert of Wells. Both were growing old by 1161, though, and William had the added stigma of having led the Church's indignant response to Becket's scheme to collect ecclesiastical scutage in 1158-9. The next best possibility would have been a bishop who had previous monastic experience. There were two, both of them Cluniacs: Henry of Winchester and Gilbert Foliot. Henry might have been in ideal choice in many ways, considering the sorts of

⁸¹ Robert of Torigni, in *RS* #82 pt.4, p. 184.

⁸² Why Henry failed to secure anointing for his son is a mystery, considering that it is clear he had the right in 1161. It may have been that his plan to place Becket into the see of Canterbury assured him that this would no longer prove to be a problem. The bull that Henry received also enabled him to secure the assistance of the archbishop of York in the coronation, which ironically is precisely what happened in 1170 and led to the second excommunication of Foliot. Perhaps Henry realized that by using the archbishop of York he would be opening an enormous can of worms over the rights of the bishops in the south and the liberties and supremacy of Canterbury, a continual source of conflict within the English Church.

legal reforms that the king was already contemplating. As King Stephen's brother, he had used every advantage to advance Stephen's claim, although their relationship was far from perfect. There was a cynicism to Bishop Henry's reputation that might have worked well to the advancement of the royal cause. He had even been elected to the see once before, in 1138.⁸³ He also, however, seemed to be developing a surprising reputation for piety in his later middle years, which would have given Henry pause, even if he had been considering the Bishop of Winchester.⁸⁴ This idea was ultimately a non-starter, however, since the chance of King Henry elevating Stephen's brother to any post was extremely remote.

Which could have left Foliot at the head of the short list. Foliot had lengthy experience as an administrator at Cluny, Abbeville and Gloucester. His reputation among his colleagues was peerless, so there is little likelihood that his fellow clerics would raise any objection to his nomination. He had long been a supporter, and a vocal one, of the Angevin cause during the Anarchy; a friend of Henry's mother and a conduit for Church administration in the regions controlled by Henry's family and supporters.⁸⁵ Plus, Foliot had the advantage of a legal education, which might, theoretically anyway, have dovetailed neatly into Henry's evident plans for legal reform.

Yet Foliot was not entirely without sin in Henry's eye, as he had made such a hash of his elevation to the see of Hereford. Henry had written angrily against Foliot's character at the time, if John of Salisbury is to be believed.⁸⁶ Even if Salisbury overstated the future king's indignation, there can be no doubt that Henry noticed the

⁸³ Knowles, *ECTB* p. 34

⁸⁴ *ibid.*

⁸⁵ *LCGF* #s 58-60, for example.

⁸⁶ *HP*, p. 48.

slight when directly against his vow Foliot made an obeisance to King Stephen. Besides, Foliot was if anything too devout. Henry's plans for the Church in his realm included the dismembering of a variety of the gains made by the Church during the Anarchy. He would not likely have chosen a man who so clearly devoted to mother Church that he had a reputation for neither eating meat nor drinking alcohol. There was no obvious indication that Foliot would have approved of the king's planned experiments in legal jurisdiction any more than he had enjoyed the scutages Henry had conspired with Becket to lay upon the Church. In this Foliot's legal education might actually have weighed against him, as he might have been able to discover painful and annoying ways to legally circumvent Henry's plans. Henry had enough potential problems with the developing legal nature of the papacy; he didn't need to bring one of these new Church lawyers right into the center of the English episcopate.⁸⁷ Foliot could operate independently of the king, as well, since his respectable (and very likely wealthy) family would provide him a comfortable cushion of support. Weighed against all of this, there was no serious reason, aside from his obvious qualifications as a cleric and administrator, to take a chance on Foliot for the job. Henry needed his own man in the position, preferably one who relied on Henry for his very existence. Such a man was already occupying the chancery.

There were plusses and minus to the scheme of anointing and elevating Becket. On the plus side, obviously, was the assumption that in Becket Henry would have a loyal friend heading the Church; one who also held the keys to the temporal kingdom in the chancery. There can be no doubt that in Henry's mind Becket, if he were elevated to

⁸⁷ See the excellent discussion of Henry's aims for reform and his relationship with the new legalistic papacy in Warren, *Henry II*, pp 420-423.

the archbishop's throne, would keep his current office. Only a few years earlier such an excellent arrangement had been created in the Empire, when Barbarossa had given his own chancellor, Rainald of Dassel, the archbishopric of Mainz in 1156.⁸⁸ Becket also had clearly demonstrated an ability to use the law for the betterment of the king, and an elastic interpretation of his clerical vows, at least regarding poverty.

Weighed against this potentially cozy relationship, however, was the possibility of outrage among the clerics in the English Church. Not only was Becket not an abbot, he wasn't even an ordained priest. His position in Canterbury was technically archdeacon – a job notorious for its potential for corruption, and Becket had become rich while holding the office. He had engineered the use of taxes against individual churches and in doing so had exasperated a number of clerics. While under minor orders he had taken arms in Toulouse and was responsible for a great number of deaths. His general demeanor seemed entirely at odds with the office, which expected at least a nod to frugality and self-sacrifice, and preferably outright asceticism. Becket had made a name for himself on both sides of the Channel as a man of impeccable taste and remarkable ostentation. While Henry could count on Pope Alexander's support in return for Henry for recognition of his papal claim against the German antipope, Victor, the bishops in England were another matter, and Henry needed to make some attempt to placate them, or at least wait a sufficient amount of time for the bishops to begin clamoring for a new leader. This was likely Henry's motivation in waiting so long before announcing Becket as his choice.⁸⁹

⁸⁸ Barlow, *Becket*, p. 67. The emperor also used the archbishop of Mainz as a sort of co-chancellor in charge of Italy.

⁸⁹ Warren also discusses the possibility that Henry believed Becket would continue the policies of Theobald, and had chosen him because he needed someone who would not raise too many eyebrows as candidate for archbishop (*Henry II* p. 451ff.) "Becket was no puppet; he was the nearest approach Henry

If so, then the king timed his announcement perfectly, because when the choice was announced, there was little public outcry. Henry had sent his justiciar, Richard de Lucy, with the word that the assembled monks and suffragan bishops at Canterbury were to “ask for, choose and receive” Becket as their leader. It seems that there was some hesitation, or that some time passed between the nomination and the actual election, because during this period Foliot objected, perhaps the only man to do so.⁹⁰ For this, Foliot explains, he risked royal anger and indeed was punished for his stance with some form of exile, not only for himself but for his family as well. “We spoke out to some extent for the Church’s release, and immediately heard the word of proscription and we were cruelly sentenced to exile, not only us, but my father’s house and all related to us by marriage.”⁹¹ The exile to which Foliot alludes is unknown, but likely took place sometime during the interval between the death of Theobald and Becket’s election. The circumstance to which Foliot alludes is unclear, however he seems to have had some factual basis for the comment as the letter was written to a man who as

could find or hope to find to a man cast in the mould of Archbishop Theobald.” Warren’s hope here is to show that Henry was a reasonable man interested in accommodating the clerics as much as possible, and who would not risk revolt among his clerics over the appointment to the office. This is very difficult to square with Becket’s behavior before his elevation, however. The Church as a body, including Theobald, expressed anger over the scutage issue, and Becket had never expressed any sort of religious sentiment. Becket came out of Theobald’s court, but there is no evidence to suggest that he styled himself as another Theobald either before or after his elevation. Foliot’s explanation in *Multiplicem*, that Henry browbeat the clerics into accepting Becket, is more in keeping with the known circumstances.

⁹⁰ *LCGF* p. 230. The circumstances of the election of Becket are unclear. It is known that more than a year passed between the death of Theobald and the election of Becket, but it is not known when exactly Becket’s name was put forward. Barlow speculates (*Becket* p. 69) that Henry had probably discussed the matter in a meeting with the senior bishops in England, Roger of York, Hugh of Durham, Robert of Lincoln and Hilary of Chichester, that took place in Normandy sometime during the spring of 1162. If this were the case, then the word of the king’s plan would have spread quickly. It is also possible, and perhaps even likely, that rumor had spread before this point. Foliot alludes to punishment, but it seems unlikely that this occurred after the election since he was translated to London in reasonably short order. Thus his objection probably came earlier, perhaps at the same time that Henry called the meeting in Normandy.

⁹¹ *LCGF* p. 231. “...et exilio crudeliter addicti sumus, nec solum persona nostra, sed et domus patri mei et coniuncta nobis affinitas...”

chancellor would have had intimate knowledge of such punishment, and indeed the comment is phrased in such a way that it seems Becket was in some way associated with it. “Who could resist the torrent of the orders and commands of the king? The royal sword was in *your* hand...”⁹² Something had happened to him and his family during those months. Not entirely cowed, he raised his voice in complaint again during the assembly at Canterbury on May 23, 1162 for the election of Becket.

It also seems that he was not the only one concerned about Thomas’ suitability for the position, and alludes to the dissent in *Multiplicem*:

Who could refuse what the king commanded with such force of will, when he was pushing us by means of so important a messenger (de Lucy) upon which everyone knew you had fixed the eyes of your heart, to which all of your supporters were pressing forward with threats and terrors, promises and flatteries?⁹³

While Foliot was the only one to go “on the record,” he was voicing a shared concern of the clergy. Even FitzStephen and Herbert of Bosham grudgingly admit that this was the case, though they skip lightly over the details of the pressure brought to bear upon the clergy at the hands of Becket and the king’s agents.⁹⁴ In the end Foliot was forced to acquiesce in the face of the *fait accompli*.⁹⁵ No one else was going to oppose the election publicly. When Foliot asked Hilary of Chichester to delay the vote, Hilary, ever the royalist, replied, “Why? Is there some doubt about who the king is?”⁹⁶ Later, perhaps later that day, Foliot is said to have commented that the king had

⁹² Ibid, p. 231.

⁹³ Ibid.

⁹⁴ *MTB* III, pp. 35-36, and 182-184.

⁹⁵ Ibid., p. 36.

⁹⁶ *Thomas Saga Erkibyskups*, Magnuson, ed., Rolls Series, (London: Longman, 1875), p. 75. On Hilary’s loyalty, Henry Mayr-Harting, “Hilary of Chichester and Henry II,” *EHR* vol. 78, #307, pp. 209-224.

performed a miracle, in that “from a secular man and a knight he (had) fashioned an archbishop.”⁹⁷

The chroniclers spend little time on Foliot’s immediate motivations for opposing Becket, pointing out that the dissent was quickly overcome. Foliot gives us no doubt about his opposition, however, as much of the opening of *Multiplicem* deals with Becket’s conniving for the episcopal see. He claims that the Church was being “strangled” by this alliance of King and chancellor. First, Foliot reverses the charge of ambition and directs it at Becket, and for good measure couples it with the charge of simony in a long-term bribe that began with his solicitation of the chancery. “Is there anyone,” Foliot tartly remarks,

so heedless that he does not know that you obtained the dignity of the Chancery by making a bid of many thousands of marks, and thus having glided into the port of Canterbury on this golden breeze that you came finally to its rule?”⁹⁸

The accuracy of this charge with regard to the chancery is questionable, and Barlow, for example, has dismissed it, but William FitzStephen felt there was enough question regarding this to explain that it might have been taken as simony, since the chancery was so often the stepping stone to a bishopric.⁹⁹ “Many indeed know,” Foliot continues sarcastically on Becket’s sumptuous lifestyle, “how religiously, how scrupulously, how canonically and by what merit of life the archbishop’s throne was

⁹⁷ Ibid. “...dixit mirum fecisse regem, qui de homine saeculari et de milite quodam fecerat archiepiscopum.”

⁹⁸ *LCGF* p. 230. “Ad ipse...quis ignorat, quis tam resupinus ut nesciat vos certa lictatione proposita cancellariam illam dignitatem multis marcharum milibus obtinuisse et aure huius impulsu in portum cantuariensis ecclesie illapsum, ad eius sic tandem regimen accesisse?” trans. Duggan, *CTB* p. 503.

⁹⁹ Barlow *Becket*, p. 43; Knowles, *Historian and Character* p 106 n.1; FitzStephen in *MATB* vol. III, p. 18. As for the payment itself, Barlow points out that it is untraceable on the pipe rolls, though this cannot be taken as proof that such a payment did not take place. Ralph Niger, in John of Salisbury’s circle, also alludes to a payment for the chancery, from a quarter one would not expect to see confirmation of such a bribe. Knowles, Morey and Brooke all admit the likelihood that the bribe actually happened.

secured.”¹⁰⁰ He claims that Becket had watched the decline of Theobald like a vulture, never coming to visit his patron in his declining months, but sweeping into England immediately afterward:

Theobald, our good father of holy memory...had closed his final day, and you, who certainly did not close your all-vigilant eyes in this misfortune, immediately made a hasty return from Normandy to England.¹⁰¹

Then Foliot describes the scene at the time of the vote with masterful acidity, finishing with the charge he would repeatedly return to – that Becket’s stubborn and one-dimensional intransigence had led to the disaster of the king’s enumeration of liberties and the subsequent disaster:

So that you should not apply the sharpened blade to the wounds again, the Church obeyed the commands, and pretended it desired what it did not wish in order to avoid what it feared. Oh, how far were the hearts of all good men from this deed; how dissenting the votes! ...This is the way that you entered the sheep’s sheepfold, assuredly not by the door but by climbing in another way. And by this entry, Father, you have deprived the Church of the liberty that she had preserved through so many centuries. If her life is as you describe it, then it is you who have rendered her lifeless.¹⁰²

Such were Foliot’s stated reasons for opposing Becket. Becket’s biographers, of course, claim that his reasons were for opposing Becket were based on his own desire for the Archbishop’s see. It is fair to ask if they were correct. Did Foliot covet the archbishop’s throne in Canterbury? For a variety of reasons, it appears that the answer is no. He may have wanted it, and he would certainly have felt himself more highly

¹⁰⁰ *LCGF*, p. 230. “Quam pie, quam sancta, quam canonice, quo vite merito id exigente, multis quidem notum est.”

¹⁰¹ *ibid.*, Duggan, *CTB*, p. 503, “Diem suum clauserat ille bonus et bone memorie pater noster Theobaldus... et vos qui cordis oculos in casum hunc pervigiles minime claudebatis, confestim a Normannia celeres in Angliam reditus habuistis.” The timing is difficult to square here, as almost a year passed between Theobald’s death and Becket’s return with Richard de Lucy. Foliot does separate these events, however: “Ex intervallo directus est a domni nostri regis latere vir magnus et sapiens moderator regni Ricardus de Luci...”

¹⁰² *CTB*, p. 505.

qualified for the job than Becket was, but there is no evidence that he tried to secure it for himself, and he could have had little serious hope for it.

Translation of any bishop was an extremely rare event in the years leading up to the 1160s. It had happened only three times in the previous century in the Anglo-Norman world. In 1069, Bishop John of Avranches had been translated to Rouen; in 1100, Bishop Gerard of Hereford had been translated to York; and in 1114, Bishop Ralph of Rochester had been made archbishop of Canterbury. This last episcopacy had been a trying one, as Ralph had refused to consecrate one of his colleagues as archbishop of York unless he professed obedience to the see of Canterbury. Henry of Winchester may have tried to have himself made archbishop of Canterbury, so at least Orderic tells us, but was unable to secure translation. In short, there was certainly no clear pattern of translating bishops into the see of Canterbury at the death of Theobald. Rather, the typical pattern was the elevation of an abbot – the ascetic nature of monasticism reduced the chances of corruption, increased the chances of intelligence, or at least learning, and experience as abbot gave likelihood of administrative expertise.¹⁰³ The archetypes for archbishop of Canterbury were Lanfranc, Anselm, and Theobald. While Foliot had experience as a monk, he had become bishop in the interim, and it would have been highly unusual for him to be made archbishop of Canterbury. Indeed, he would have been the first bishop since the Norman conquest so translated. His translation to London later was highly irregular. Certainly there was no reason to suggest that Foliot by virtue of his position believed he had a significant chance at replacing Theobald at Canterbury.

¹⁰³ Warren, pp. 447-50; *GFL*, pp. 149-50.

Still less is there evidence that he schemed for the position. John of Salisbury reported in letters to Becket during the most vociferous fighting between Foliot and Becket that Foliot had coveted the job, and that this was his reason for failing to support Becket's candidacy. Becket himself floated the idea back among his supporters, and finally intimated in his letter to the clergy of England of 1166 that this was the case. It was this comment perhaps more than any other that so infuriated Foliot that he penned *Multiplicem*. He addresses the question of his own desire for Canterbury in the second paragraph, "We have never for a moment felt the sting of ambition for this honor that you now have."¹⁰⁴

While Foliot might be suspected of protesting too loudly to cover what was essentially true, this seems to be a case where he protested loudly simply because the charge was untrue and galled him. The evidence of his own hand suggests that he never schemed for the job. If anyone would have been aware of attempts to gain the see, that person was Henry, since ultimately he would be the man responsible for giving his approval. Yet in a letter written to Henry during 1173, three years after the murder of the archbishop, Foliot states that he had never sought the position, nor for any of the other advancements that had fallen upon him during his august career. The circumstances of the letter were the delayed election of Becket's replacement at Canterbury, when a number of the participants protested Foliot's presence:

They (the monks of Canterbury) say that I schemed for the episcopate of Canterbury... But it is known to have never been true. Indeed in my first

¹⁰⁴ *LCGF* #170, p 230, *CTB* p. 501. "Confidenter et libere respondemus asserentes utique quoniam ad ea que vestra sunt ambitionis stimulus nunquam vel momenti sensimus. Honorem hunc nulli unquam invidimus." On all of the translations of *Multiplicem*, see also the work of Anne Duggan in her *Correspondence of Thomas Becket* (Oxford, 2000), pp. 499-537, whose translations into English are wonderfully elegant, and have been used extensively as noted.

promotion to prior of Cluny I was appointed by the order, and next prior of Abbotville, hence abbot of Gloucester; afterward bishop of Hereford and next was translated to London. I can state confidently that at no time did I canvas for what I nevertheless consequently obtained by the permission of God.¹⁰⁵

Further down in the letter he explains how he had begged God throughout his career to keep him from the sin of cupidity. What else could he say when faced with such accusations? Still, most of what he says can be roughly verified. While there is no mention of his advancements at Cluny and Abbeville to make any comment, it is difficult to see how in Abbeville he might have schemed for the abbacy of Gloucester. If he had, his relationship with his benefactor for the position, Miles, did not long survive. He had no time to scheme for the bishopric of Hereford. Robert Bethune died unexpectedly. Although Foliot took the advancement with alacrity that some might find disquieting, there was a risk attached to accepting the bishopric that Foliot must have known well. It was likely in connection with this move that Foliot met the future king for the first time, and the situation resulted in Henry's initial anger at Foliot. If Foliot's conscience were in any way troubled by the incident, he would hardly have reminded Henry of it in this letter where he was begging the king's indulgence over the delay in selecting a new archbishop. With regard to the bishopric of London, he would beg both publicly and in a letter to Henry not to be translated to the new see. And finally, in regard to the archbishopric of Canterbury, Henry would have known as no other man whether Foliot had solicited the job or begun any sort of campaign to have his name put forward. It seems highly unlikely, then, that he did so.

What is discernable in Foliot's character also speaks against the likelihood that he had much desire for the metropolitan see. Clearly he was moving up the ladder of

¹⁰⁵ LCGF #220, pp. 293-94.

success in the English Church, but he doesn't seem to have been making much worldly hay of his advancement. He already had the reputation of an ascetic. He took the losing side in the Anarchy over principle.¹⁰⁶ His episcopal court maintained a brisk efficiency through his tenure and he took an interest in its workings, as his letters and charters taken as a whole make abundantly clear.¹⁰⁷ In other words, he was neither a timeserver nor an accumulator, like for example Henry of Blois who still grew rich in his bishopric of Winchester as the decision to make Thomas Archbishop was made. One somewhat cryptic comment from the satirist Nigel Wireker refers to Foliot's business interests in Italy, suggesting that he was careful with his possessions, but this information comes from a single line in the *Speculum stultorum*.¹⁰⁸ Little can be gleaned from it aside from the idea that Foliot had ties to Italy, and that he was personally wealthy. Of his own estates there is no record, and had he been notoriously mean or greedy, he had enough enemies later in life who would have used such personality flaws against him overtly. There is no evidence to suggest that Foliot feathered his nest through advancement, except for a doubtful comment made by John of Salisbury in his *Historia Pontificalis* in around 1164, during the depths of Foliot's disagreement with Becket.¹⁰⁹

¹⁰⁶ *LCGF* #26, pp. 60-66, and above.

¹⁰⁷ *GFL*, pp. 230 ff., 216-226...etc.

¹⁰⁸ Nigel de Longchamps, *Speculum Stultorum*, J.H. Mozley, ed (Berkeley: University of California Press, 1960), line 775. The line states that Foliot had hired a merchant to take care of his business interests in the hope of "lengthening his nose." Perhaps this was a double-entendre referring both to Foliot's wealth and to his appearance – the only such note in records of Foliot. It would also indicate that Foliot was well-known in his day. The reference to Italy strengthens the argument that he had studied there.

¹⁰⁹ John writes that upon receiving the see of Hereford, Foliot attempted to keep hold of the abbey of Gloucester as bishop, in the same way that Henry had maintained control of Glastonbury after his ordination as bishop of Winchester (*Historia* p. 48). There is no other source for this, however, and as we have seen, John had reasons for exaggerating any possible flaw in Foliot's character. Morey and Brooke also conclude that John's claim was probably incorrect. *GFL* p. 150.

There is every reason to suspect that Foliot disliked Becket when his name was put forward as Archbishop, and that this dislike led to naked fury as the relationship between Henry and Thomas disintegrated. For what it was worth, Foliot probably considered himself more qualified for the job, as he had a solid career as a jurist and Church administrator and had no record of damaging Church interests. However, in *Multiplicem* he states categorically that he had no desire for the position, after claiming God as his witness – a claim he would have taken very seriously.

It is to (the Lord) and before him that we speak; under his scrutiny freely and confidently, that we send you in return not lies and fictions but those things which are supported by a true conscience, as we declare that never for a moment have we felt ambition for the honor that you have. We have never envied anyone for that honor.¹¹⁰

In this Foliot may cautiously be taken at his word. On balance, there is no substantial reason to suppose that Foliot either seriously wanted the job of archbishop or entertained the notion that he would be selected for it, and it seems clear that even if in his secret heart, as he put it, he needed to beg for God's grace, the charge of envy, which has been made so often, is without documentary foundation.¹¹¹

One might ask then why he felt compelled to deny the charge more than once. Certainly he felt the need after Becket's comments suggesting Foliot's envy, which was one of the underlying causes for Foliot to write *Multiplicem* in 1166. In the later letter of 1173, he was simply explaining to the king the delay in the election of a new archbishop, and pointing out what the king already knew – that he had not "schemed" for the position of archbishop.¹¹² Foliot's repeated denial may simply be due to his

¹¹⁰ LCGF #170 pp. 229-230.

¹¹¹ "In my secret heart I call to my Lord God that he would infuse me with his grace. (In secretis itaque cordis mei dico Domino Deo meo, quia sufficit michi gratia sua)," LCGF #220, p. 294.

¹¹² Ibid.

perception that some of his colleagues were prepared to think ill of him. While Foliot did not expect to be made archbishop, and he did not scheme for the position, it is likely that his name had been put forward, perhaps strongly so. There were no available monks to elevate to the position of archbishop.¹¹³ It would be odd if no one had publicly mentioned Foliot's name as a possible successor during the long year that separated Theobald's death and the election of Becket by the suffragans.¹¹⁴ That he was put forward as a rival candidate would explain Foliot's repeated protestation of his own temperance and humility, without contradicting the evidence that he neither expected nor worked to receive the position. It would also help to explain the rivalry between Foliot and Becket that seems apparent from the day of Becket's elevation.

Foliot's animosity toward Becket thus stemmed from his dislike of the man, his evaluation of Becket's abilities, his refusal to act in a Christlike fashion as archdeacon of Canterbury, and his assumption that Becket would damage the critical relationship between the crown and the Church, probably by giving Henry precisely what he wanted. He could not, in retrospect, have been more right about the immediate damage, nor more wrong about the way that the damage would be caused. Becket's election was not the end of the line for Foliot, however. Within a year of Becket's elevation, Foliot was translated to the see of London, becoming the fourth cleric so translated since the conquest.

¹¹³ Barlow, *Becket*, pp. 64-5.

¹¹⁴ As Morey and Brook point out, "there is much about the election of 1162 which is obscure." Since such a great deal of time passed between Theobald's death and Becket's election, it is natural to assume that a degree of "lobbying and intrigue" filled the later months of 1161. *GFL*, p. 150.

5.6. FOLIOT'S TRANSLATION TO LONDON

Foliot had already had a good deal of contact with the see of London when he was tapped as the successor to bishop Richard de Belmeis, on whose behalf he had written several letters to the pope a decade earlier, when Richard's episcopacy faced several problems. A series of ten of Foliot's letters detail these difficulties, which began with Richard's accession during in the final years of Stephen's reign, 1152-1153.¹¹⁵ First, in a familiar attempt to exercise authority over the Church, Stephen refused for some time to approve the election of Richard, evidently having a candidate of his own for the position. The pope was adamant that Richard should be entitled to what was canonically accomplished. Foliot wrote to Richard both to comfort him and explain that the king's approval would be eventually granted.¹¹⁶ Richard invited Foliot to come with him to Rome when the case was heard in the *curia*, but Foliot replied that he would be prevented from doing so by the imminent arrival of the future king, Henry II.¹¹⁷ Another group of letters detail a problem between Richard and Pope Eugenius immediately after royal approval had finally been given. Richard had chosen Ralph di Diceto for the position of archdeacon, while the pope had already ordered John of Canterbury to take the job. The impasse was finally resolved when John was offered the position of treasurer of York in 1154.¹¹⁸ Ralph was archdeacon of London throughout the years of Foliot's tenure there.

¹¹⁵ *LCGF*, #s 99-103

¹¹⁶ *LCGF* #100, p. 139.

¹¹⁷ *LCGF* #101, pp. 139-40.

¹¹⁸ *LCGF* #s 102-3, 109, pp. 141-142, 150-51.

Foliot's relationship to the see was renewed upon Richard's death in 1162, when then-chancellor Becket requested Foliot to take over administration of the London diocese in the interim. A series of very businesslike letters follows this request. First, Foliot begs the king to let this particularly challenging cup pass him by:

"I implore you not to be angered, my lord... The lord chancellor has asked if I would take up the supervision of the episcopate of London, and if I would make a division of the revenues of the same between the diocese and the bishop's household. I trust to the mercy of the Lord that he will incline my lord king's heart to my petition... that I might exert myself in devoted return to God."¹¹⁹

There is an element of self-preservation in Foliot's request. The finances of the see of London at the time were evidently a shambles.¹²⁰ There may have been an element of graft in the diocese, or at least some sort of malfeasance.¹²¹ Foliot had no desire to be sucked into the middle of the fight between the diocese and its creditors. Moreover, administering the see of London would also mean spending a great deal of time close to Canterbury, the scene of his recent humiliation. In this, the letter also indicates reluctance to being drawn back into the center of the realm. If Foliot wanted to place himself in a position of visibility, not to mention wealth, this would have given him the opportunity. Foliot resisted, although ultimately he was prevailed upon to accept the responsibility, as evidenced by another letter of that year to Thomas Becket, who was now the archbishop of Canterbury. In the letter, Foliot along with his episcopal brother in the diocese of Lincoln, Robert de Chesney, informed Becket that Richard had given over the affairs of St. Paul's to his archdeacon, Hugh, and requested that Hugh be shielded from the diocese' creditors.¹²² The content is not particularly important, it is

¹¹⁹ *LCGF* #139, p. 182.

¹²⁰ *GFL*, p. 98.

¹²¹ *Ibid.*

¹²² *LCGF*, #140, pp. 182-183.

simply a business letter, but it shows that Foliot had been pushed into taking on the settlement of the household.

The fact that the king and chancellor were interested in using Foliot to oversee the diocese of London may indicate that Henry had already planned to move him to St. Paul's on a permanent basis. Foliot was qualified for the job, and had been a supporter of the Angevins. Henry wanted allies in key positions in the Church, and just as he envisioned Becket of greater use to him as archbishop, Foliot would be of more use to him in London as his chaplain than in distant Hereford. Henry may also have been aware by this point that his relationship to Becket was not going to be a smooth one.¹²³

If Foliot found the likelihood of his translation to the see of Canterbury unlikely, based upon the history of the Church in Norman England, he would have found the prospect of translation to St. Paul's even more remote. The two former translations under the Normans had been to metropolitan sees; there had never been a bishop in England transferred from the see of his consecration to another. The pope himself may have needed some convincing along these lines, as the king and Becket dispatched the archdeacon of St. Paul's, Ralph di Diceto, to Paris to meet with the pontiff and express the king's desire that Foliot should be brought closer to the center of the realm.¹²⁴ Alexander responded with letters directly to the Christchurch chapter and to Foliot, each endorsing the unusual move.¹²⁵ His letter to Foliot, issued from Paris on the nineteenth of March 1163, indicates that there had already been some maneuvering:

¹²³ *GFL*, p. 98.

¹²⁴ Ralph Di Diceto, "Ymagines Historiarum," in *Opera Historica*, vol. i, Stubbs, ed, Rolls Series (London: Longman et al, 1876) pp. 308-310.

¹²⁵ *Ibid*, p. 309, for the text of the Christchurch letter; the Foliot letter *LCGF* #141.

We have received letters from our dearest son in Christ, Henry the illustrious king of the English, and our venerable brother Thomas the Archbishop of Canterbury and also from our dear brother the archdeacon “R.” of London, that the king greatly desires and requests that you be translated to the church of London, so that you would carry therein the concerns and pastoral responsibilities.¹²⁶

The tone conveys the idea that Foliot resisted translation. So indeed do the letters from Thomas and Henry, which are in no way congratulatory – they rather implore him to take the honor that had been bestowed upon him by his superiors in the secular and clerical worlds, the king, archbishop of Canterbury and the Pope, as well as the monks of London, who had unanimously requested him.

Henry’s letter, which was witnessed by Becket, dwells more on Foliot’s political skills than on his reputation for spirituality, which seems in keeping with Henry’s designs for the Church in his realm. The letter to Foliot also gives some indication of Foliot’s stature among his peers: “...at once both your respected status and undamaged integrity commends your Excellency to me; indeed not only to me but to all familiar with the reputation of your name.”¹²⁷ While Henry mentions Foliot’s abilities as a spiritual guide: “(your) wholesome counsel for the soul is given in the balance from your heart,” he returns to Foliot’s secular abilities and reputation, praising Foliot’s “characteristic dignity, which brings healthy and efficacious council on the state of the realm, and the business of governance in the kingdom.”¹²⁸ These are references to

¹²⁶ *LCGF* #141, p. 184. The “R” presumably refers to Ralph di Diceto.

¹²⁷ *LCGF* #143, p. 185. “simul et honesti corporis integritas indemnis vestram michi commendavit commendabilemque reddidit excellentiam, nec michi solum verum omnibus ad quos vestri nominis fama pervenit.”

¹²⁸ *ibid*, “...cui sepius anime salubre consilium a cordis vestri procedens examine datum est.” “...proprie dignitate, de regni statu, de gerendis in regno negotiis, sepius et sepius sanum et efficax adhibuistis consilium.”

Foliot's use to the Angevins and Theobald during the Anarchy, yet they are odd (and telling) accolades for the man Henry sought for the role of his personal confessor.

Likewise, Becket's first letter stresses Foliot's secular abilities. Written from Windsor late in March, it is businesslike and arguably lacking in warmth. "The London church," he writes, "long without its pastor, desires to appoint a bishop with outstanding and honest personal merit, knowledge of letters, and wisdom in secular concerns that equal the dignity of the city."¹²⁹ And then:

After great consideration of the matter, the desire of the clergy, and the wishes of the Lord King and myself, as well as the decision of the Pope, all agreed unanimously that you should be transferred to the pastoral care and responsibility of the church of London.... We enjoin you by the authority of the Lord Pope to accept the request of the London church that you be translated to her.¹³⁰

The last lines soften the tone slightly, mentioning that Thomas has "feelings of sincere affection" for Foliot (a claim difficult to accept under the circumstances of Becket's recent election, but perhaps evident of a change in Becket's spiritual mood). He hopes that Foliot, being near to Canterbury might aid Becket in his new tasks (a belief that Becket may have legitimately held).¹³¹

Foliot expressed dissatisfaction even after receipt of the Pope's command, or at least made public his discontent over his new post. His hesitation is not surprising, as he had in the past been on the receiving end of Henry's wrath, and knew that the appointment was apparently being made for secular reasons. He would also have

¹²⁹ *LCGF* #142, p. 184, "Inde est quod ecclesia London suo iamdudem orbata pastore, talem sibi desiderat episcopum subrogari, qui civitatis excellentie honeste vite merito, litterarum scientia, rerum quoque prudential secularium adequetur."

¹³⁰ *Ibid.* Magna itaque super hoc deliberatione habita, convenerunt in hoc unanimis cleri postulatio, voluntas domni Regis et nostra, ordinatio quoque apostolica... ad ecclesie Lond(inensem) regimen transferri, et in ea curam et sollicitudinem pastorem gerere debeatis...etc."

¹³¹ *Ibid.*

regarded the translation to London as a sort of consolation prize, one to which a degree of humiliation would attach. To this Becket wrote another letter a few weeks later in a somewhat different tone than his first – more spiritually based and more flattering of Foliot’s religious vanity.

Don’t take it hard, dear brother in the Lord, that we have placed so great a burden on your shoulders and summoned you to the care of a greater church. This was pre-ordained by the salvific mercy of God. Your moral qualities, your outstanding reputation in religious matters, your wisdom from above, your good works in the church of Hereford, all have provided that you should “go higher, friend.”¹³²

And then, a few lines later: “The lighted lantern that has lain as if hidden under a bushel basket has now been placed on the lampstand so that it can spread its light wide and far through the house of the Lord.”¹³³ And finally, Becket reminds Foliot of his pastoral duties to the king, as well:

Moreover since the lord Pope has entrusted the care of the lord king’s soul especially to you, what could be more appropriate than that you should occupy the see of the royal city, to which public affairs often draw the lord king, where he might often be instructed by your discourse and strengthened by your counsel.¹³⁴

The tone of the second letter could be read as evidence of Becket’s spiritual conversion, which evidently had begun around the same time the letter was written, or perhaps a little earlier. Becket had made the most overt gesture to this change in his attitude when he returned the chancellor’s seal to the king, much to the latter’s chagrin. Becket’s resignation as chancellor has occasioned both admiration and condemnation from historians. Warren, writing during the 1970s, maintained that there was no need

¹³² *LCGF* # 144, p. 189. The last comment, “Amice, ascende superius,” is taken from Luke, 14: 10.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

for Becket to have given up his lay office – that he could simply have delegated the running of the Chancellor’s office to deputies.¹³⁵ Anne Duggan has recently countered that this was not a realistic course of action. Becket knew full well what would be expected of him as archbishop, none better, and could not in good conscience serve both masters.¹³⁶

Foliot’s immediate reaction to this move is unknown, other than to say at various points in the controversy of the 1160s that Becket seemed always to choose to “fan the flames of disagreement” rather than to find common ground upon which to build with the king.¹³⁷ He was likely surprised by it, however, and perhaps baffled by it. The action might also have been regarded as somewhat mercenary, in that he returned the seal to Henry immediately after receiving the pall.¹³⁸ One interpretation was that he planned to do so all along, but wanted to wait until his accession had become irrevocable. Henry was evidently angered by the move.¹³⁹ There was no reason for the archbishop to have acted so provocatively – there were metropolitans on the European continent who acted as chancellors to their sovereigns.¹⁴⁰ Foliot’s awareness of this is apparent through his discussions with Ralph di Diceto, who became his archdeacon upon his translation to London.¹⁴¹ His opposition to Becket’s election had had little to do with the latter’s status as chancellor. Rather, it was based on Becket’s ill-use of the Church and with the legal problems of the uncanonical nature of the election in that

¹³⁵ Warren, *Henry II*, p. 456.

¹³⁶ Duggan, *Thomas Becket*, pp. 30-32.

¹³⁷ eg. #170, “disagreements were multiplied, indignation was inflamed and hatred firmly entrenched.”

¹³⁸ Guernes, vv. 741-50; Di Diceto, pp. 307-8.

¹³⁹ Guernes, *ibid.*

¹⁴⁰ That this was common knowledge in St. Pauls is attested by Ralph di Diceto, p. 306.

¹⁴¹ See *ibid.*, p. 307.

Henry had nominated him.¹⁴² Di Diceto states that the resignation was the first in a line of disagreements that brought about the state of conflict between Henry and the Church.¹⁴³ Foliot shared a similar opinion since much of Ralph's chronicle is informed by conversations with Foliot.¹⁴⁴

While professor Duggan is persuasive in her argument that Becket could not continue to serve as chancellor, she fails to satisfactorily address the greater difficulty – why Becket failed to inform the king that he could not remain in his lay office if he were made Archbishop of Canterbury. Thomas knew that Henry planned to make him archbishop, as several of the *vitae* mention that Thomas intimated to the king that he might not like Thomas as archbishop.¹⁴⁵ Why not simply tell the king that he would not serve in both offices? It is absurd to suggest that Henry planned to elevate Thomas to the archbishop's throne on the basis of his chancellor's spiritual leadership – there is no evidence to suggest that he did, anyway, and nothing in Thomas' recent past would suggest an underlying sanctity. Henry wanted his own man to control the Church in his realm, so that he might avoid some of the lay-ecclesiastical difficulties that arose during the Anarchy. No historian, Duggan included, has claimed otherwise. Nor can it reasonably be claimed that the thought of resigning the chancellorship occurred to Becket only after he had received the pall, as he resigned almost immediately.¹⁴⁶ The

¹⁴² For Foliot's reasons, see *Multiplicem nobis*, LCGF # 170, pp. 230-31, and discussed below. According to an edict of Adrian IV, an Englishman no less, in 1156, just a few years before the election of Becket, no bishop could be elected if he had been nominated by a secular power. *Regesta Pontificum Romanorum* II. No. 10139.

¹⁴³ Ibid. p. 306

¹⁴⁴ Stubbs, "Preface" *ibid.* pp. xl-xli

¹⁴⁵ EG. Herbert Bosham, *MTB* III, p. 181.

¹⁴⁶ *Ymagines Historiarum*, p. 306-7. This is the point that Duggan makes – she claims that his acceptance of the pall a few months after his consecration led to his profound spiritual conversion. Yet if this is so, and he had no earlier intimation that he could not satisfactorily discharge both offices, then why do Bosham and others record his remark to Henry about his potential to dislike him as archbishop? The

reality is that had he told Henry of his resolve, Henry would never have made him archbishop.¹⁴⁷ The logical conclusion is that Becket was guilty of precisely what he and his associates accused Foliot of – ambition.

This was how Foliot saw it, when he raised the question of Becket's ambition in *Multiplicem*. Foliot introduces the charge of ambition by clearing himself of the charge of simony, first by oath:

As cupidity is the root of evil, necessity compels us to begin with this point, lest those who are easily persuaded of evil things hold us suspect of it. The Apostle says, "Who knows the secret hearts of men, except the spirit of man who is within him?"¹⁴⁸ The secrets of men indeed lie hidden from men, and the Lord sees the depths of their hearts from heaven. Things unknown do not pass him by; things hidden do not deceive him. "The word of God is powerful and more penetrating than any two-edged sword. No creature is invisible in his sight."¹⁴⁹ It is to him and before him, freely and confidently, under his scrutiny, that we speak.¹⁵⁰

Foliot's vehemence here is impressive, and gives particular force to the specific, legalistic denial of simony that immediately follows:

We have never served anyone with gift, service, faith, or favor in order to prepare ourselves to gain sacrilegious access to the summit of this eminence in any way or by assistance of any kind.¹⁵¹

Then he turns to the subject of Becket's ambition and accuses him, with characteristic cynicism, of simony:

Indeed, if we may go back to those beginnings (of your archiepiscopacy), is there anyone in the whole of our world, anyone so heedless, that he does not

explanation of Becket as coveting the archbishop's throne, while hardnosed and detracting from Becket's saintly image, simply fits the circumstances and evidence better.

¹⁴⁷ Ibid, p. 307.

¹⁴⁸ I Cor. 2:11.

¹⁴⁹ Heb. 4:12-13.

¹⁵⁰ LCGF #170, p. 230, CTB p. 501.

¹⁵¹ Ibid. On the legalistic nature of this denial, cf. the definition of simony in Gratian: C. I qu.i c.114 col. 403.

know that you obtained the dignity of the Chancery by making a bid of many thousands of marks, and thus, having glided into the port of the church of Canterbury on this golden breeze came finally to its rule?¹⁵²

The charge of simony has been argued both ways, and it is on balance possible to dismiss this particular charge as wishful thinking on Foliot's part.¹⁵³ It would be very difficult for such a sum to have never found its way into the pipe rolls; if a payment had existed record of it would be somewhere in the financial records of the king's treasury, and it is not. The underlying question of ambition is less easy to refute, however, especially given that he did not resign the seal until after his accession was accomplished by both secular and canon law. Becket desired the independence of the archbishop's throne, the ultimate office available to him in the land of his birth. Once he had achieved the ultimate office, he could afford to demonstrate pious humility. There is something in this that does not sit well.

That Foliot saw or respected the change of heart in his superior is doubtful. He might also have suspected that Becket harbored ill-feelings toward him – despite its self-effacing flourishes, “our imperfection that we see in many things may be lessened by your holiness” – the second letter closes with the comment that Becket would be unable to attend his formal translation.¹⁵⁴ “If only it had been possible for you to come last Sunday,” Becket wrote, “we might have attended your arrival with honor. As it is, however, duty calls us away, and we have sent our archdeacon and the Bishop of

¹⁵² *ibid*

¹⁵³ Surprisingly, Knowles was inclined to accept Foliot's word on this, arguing “That no notice of this payment appears in the relevant pipe roll does not necessarily prove the falsehood of the assertion.” *Historian and Character*, p. 106, n. 1. Barlow, however, finds the charge baseless due to the lack of any notice within the financial records of the kingdom. *Thomas Becket*, p. 43. See also *CTB* v. 1, p. 502 n. 10.

¹⁵⁴ *CTB* #8, p. 24, “...verum etiam imperfectum nostrum, quod in multis videmus, tua beatitudine suppleatur.”

Rochester to wait upon you.”¹⁵⁵ If Foliot were looking for a reason to distrust Becket’s sincerity, this would give it to him. Becket may have genuinely wanted Foliot close to him, but Foliot, in the moment, saw that the man, against whom he alone among the clergy had spoken openly, would be absent when Foliot arrived in his native city. Regarding the translation itself, though, there could be no serious response or evasion from his new responsibilities. The pope told him to accept translation, and he did so in April of 1163.

5.7. TOURS, 1163, AND THE PRIMACY OF LONDON

The circumstances of the translation also demonstrate Foliot’s reluctance to unbend toward the archbishop. Foliot pointedly refused to offer obeisance to Becket in any ceremony, claiming that he had already sworn obedience to the office of the archbishop of Canterbury when he had been ordained bishop of Hereford.¹⁵⁶ The new archbishop interpreted this refusal as an affront (perhaps with good reason – just as Foliot, he would be alive to the potential for friction between himself and the new Bishop of London), and complained to Pope Alexander when both he and Foliot attended a council at Tours the following month (May 1163).

The fact that so many of the ranking bishops (all but three) in England attended this council is another interesting wrinkle in the relationship between Henry and the

¹⁵⁵ Ibid. “Utinam, si fieri posset, priori die Dominico Lond venisses, ut tuum adventum digno suscipere honor, ubi tunc presentes aderimus. Nunc autem quoniam negocia nostra illinc nos avulsere, archidiacono nostro vices nostras comissimus, adiuncto etiam illi domno Roffensi...etc.”

¹⁵⁶ Upon the accession of a new bishop, it was customary for him to make a public declaration of respect and obedience to his metropolitan.

Church, simply for the fact that Henry allowed such extraordinary participation.¹⁵⁷ English monarchs had traditionally kept their bishops from attending general councils, especially large numbers of them together. Stephen's refusal to give permission for Theobald and Foliot to attend the council of Rheims was just such a case. Foliot interpreted Henry's move as an attempt to show he meant no ill to the Church, at a critical moment when Alexander was threatened by the antipope, Victor IV, who was in turn openly supported by the Pope's dangerous neighbor, Frederick Barbarossa. Foliot continued to cite the fortitude of the king toward the Church, if not to Becket, throughout the crisis, "(The king) perseveres in his firm constancy and loyalty to you and the blessed St. Peter."¹⁵⁸ As Warren notes, Alexander was grateful enough for Henry's generosity in allowing attendance that he wrote him a letter afterwards expressing his thanks, and even going so far as to declare that:

On this account no detriment or disadvantage ought to come upon (Henry) or his successors, nor by any reason of this should a new custom be introduced into the realm, or the privilege (*dignitas*) of the realm be diminished in any degree.¹⁵⁹

Since there was already developing friction between Becket and the king over the matter of the seal and a growing number of legal cases against clergymen, Alexander's declaration to Henry and his support for Foliot, the king's traditional Angevin supporter, indicate that the Pope was unenthusiastic about Becket's initial intransigence. Henry was showing himself to be a powerful king who supported the

¹⁵⁷ For the record of those in attendance, see Robert Somerville, *Pope Alexander III and the Council of Tours* (Berkeley: University of California Press, 1977).

¹⁵⁸ *LCGF* #155, p. 204. This particular letter is to Alexander in 1165, but the sentiments Foliot expresses here are repeated numerous times in his letters to other Churchmen. Henry's loyalty to the Church is one of Foliot's prime exhibits of the righteousness of the king's cause.

¹⁵⁹ *Regesta Pontificum Romanorum*, II, no. 10834, quoted in Warren, *Henry II*, p. 452.

pope and sent his bishops to the general council. Such a king was far more valuable as an ally to the papacy than as an enemy.

On the subject of Foliot's relationship to Alexander, the two had elements of their backgrounds in common; they were approximately the same age, both had spent significant time studying law (and Alexander teaching) in Bologna, and both had the unusual distinction of having studied civil law in the days before Gratian. They probably knew each other; their correspondence, even during the depths of the fight between Henry and Becket, was civil, and indeed cordial. The pope took seriously Foliot's analysis of the situation. Foliot had a reputation as an intelligent and pious servant of the Church, who had already survived one tumultuous period of upheaval in his homeland. Becket, on the other hand, had no such reputation to precede him. Alexander already saw potential problems with Becket, and this realization would lead him to carefully craft responses to Henry, Foliot and Becket showing his support for the former, once the latter had begun making waves over the obeisance slight.¹⁶⁰

There is no record of the conversation with Alexander over Foliot's refusal to perform obeisance – it was conducted face to face at the Council of Tours and not via correspondence – but a letter to Becket in June of 1163 from Alexander lays out the dispute. The Pope settled firmly in Foliot's favor. Considering the ambiguity of most responses from the papal curia (more on this below) this particular letter to Becket is admirable in its decisiveness.

We remember that we advised you to be content with that first profession, which the bishop of Hereford (Foliot) had made to your predecessor and his successors... It might seem that the bishop was being accused of broken faith if he were compelled to make another profession. It is not the custom of the

¹⁶⁰ On Alexander's attitude toward Becket, see Barlow, *Thomas Becket*, P. 97.

Roman Church to compel a bishop to make profession twice on account of translation. Therefore, because you have accepted our counsel and warning in this matter, we decree that no harm should come to you or your church from this, but that those who succeed the bishop in the church of London should be obliged to make the appropriate and customary profession to you and your successors.¹⁶¹

Foliot's refusal to swear before Becket may have been innocent – Alexander's letter gives a plausible explanation of why Foliot might not want to make the profession more than once, presumably reflecting the case that Foliot himself had made to the Pope at Tours. Still, it is unlikely that Foliot wanted much to profess obedience to the man who only two years earlier had, in Foliot's words, "plunged a dagger into the bowels of the Church."¹⁶² It has also been suggested, though the evidence is scanty, that Foliot already planned at this point to make a claim for metropolitan status for the see of London, a move that would be facilitated by the lack of any declaration of obedience, but this is a doubtful reading of the situation.¹⁶³

The simple overview of the situation is that the relationship between the sees of London and Canterbury under their respective new masters had gotten off to a rocky start. Likewise, Becket, was continuing to drift into a position in opposition to the king during the summer of 1163. Foliot watched from close range as the quarrel with the king unfold in the months after he left Hereford. It was during this period that any chance of Foliot supporting Becket evaporated. Several of Becket's moves indicated that the new archbishop failed to understand the consequences of his indecision and his

¹⁶¹ *CTB* #11, p. 31 (trans. Duggan). See also *Pope Alexander III and the Council of Tours*.

¹⁶² *LCGF* #170, p. 231.

¹⁶³ This idea is advanced and dispatched in *GFL*, pp. 151-162. Foliot had actually written to uphold the metropolitan status of Canterbury in an earlier letter (c. 1158). While his predecessors in the see of London, including one of his own kinsmen, had attempted to advance London over Canterbury, and the idea was not unknown to Foliot, he himself never suggested it until much later, in 1169, after facing his second excommunication.

apparent attempts to provoke the king. Then, when Becket finally chose a decisive course in October, it was one that led to folly in the open enmity between the king and the Church.

Foliot's attitude toward the relationship between lay and clerical authority had not changed with his time on the episcopal bench in Hereford and London. With the exception of the turbulent way in which he was made bishop, he continued to respect the purview of lay power. Likewise, he continued to articulate positions that kept the two spheres separate, and that recognized that lay authority had a role independent from clerical intervention. In this he was in the mainstream of clerical opinion, or at least of the same opinion as the archbishop. While he disliked Becket, and spoke openly against his elevation to the metropolitan see as this seemed to him a mockery of ecclesiastical power, there was no open enmity between them until the difficulties that arose with the legal fight over the relationship between ecclesiastical and lay authority that developed in the 1160s. It is to Foliot's role in this struggle that we now turn our attention.

CHAPTER SIX: FOLIOT, THE TWO SWORDS AND THE CRISIS

6.1. THE DETERIORATING RELATIONSHIP BETWEEN HENRY AND THE ENGLISH CHURCH

By the late 1150s, Foliot had established his position as a defender of the roles of both Church and monarchy, seeing in the polity of his day a bifurcated structure of authority in which each side reinforced the other. As his letter to Brian FitzCount demonstrates, he sought a strong, independent monarchy capable of enforcing peace in the realm. It is also worth noting that at no point in the letter, which is a remarkably direct commentary on political theory in practice, does Foliot even hint that the Church ought to direct Stephen to enforce clerical discipline. Likewise, none of his letters during the Anarchy demand, even rhetorically, that any military authority enforce the discipline he attempts to mete out through the use of the spiritual sword. Foliot, and other clerics, petitioned the monarch to enforce decisions made in ecclesiastical courts, and indeed there are agreements worked out at councils during the Anarchy whereby the king could disinherit malefactors whom clerics had excommunicated.¹ However the idea that the Church would control or order the king to act is so conspicuously absent from Foliot's correspondence, that in reading his letters one gets the feeling he would

¹ H. R. Loyn, *The English Church*, p. 131.

have found such an idea bizarre. He disapproved of Stephen, but his solution was a strengthened monarchy, not one subservient to the desires of the Church. Foliot and his colleagues sought cooperation, not control.

In this, then, Foliot's experience casts serious doubt upon the argument of Ullmann and others that historians should see a continual progression of accreting power within the Church prior to the late twelfth century. Despite Stephen's apparent weakness, clerics in England repeatedly sought compromise with him, where the Church and the temporal government would act together toward a commonly shared goal. The analysis presented by Alphonse Stickler, which argued that during this period political theory echoed the Gelasian ideal of *dualitas*, seems far better supported by Foliot's writings. Moreover, the contemporary councils in England, especially the council called by Theobald at London in 1151, indicate a growing awareness that temporal authority exists in order to counterbalance the fundamental lack of coercive power in canon law.² That lack of coercive power, moreover, was crucial, because the power of coercion by physical force, even indirectly, was expressly denied by the canons. With the accession of Henry II, the king and Theobald worked to find a relationship where both would express their authorities cooperatively in the interest of justice.

It was this relationship that Becket endangered by his insistence upon expanding the purview of clerical authority. His actions at four critical junctures confirmed to Foliot that Becket was unprepared to navigate the complex waters of the relationship, and that his inability was a destabilizing factor in the association between Henry and the

² Saltman, p. 29.

Church. When the crisis that his failures engendered led to the three councils that preceded Becket's exile, at Westminster, Clarendon and Northampton, the archbishop's indecisiveness and lack of familiarity with legal custom exacerbated an unnecessary rift between Henry and his Church. The rift began with Becket's apparent attempts to demonstrate his independence by goading the king, and with his inability to sharply delineate areas of spiritual and temporal authority.

6.2. THE LINES OF AUTHORITY BECOME BLURRED

Foliot claimed that the relationship between Henry and Becket, which he watched from close range in his new position in London, began to deteriorate immediately upon Becket's accession as archbishop. The cause of this deterioration, in Foliot's view, was Becket's attempts to expand his own authority in ways that angered the king. In *Multiplicem* he expounds at length that during Theobald's tenure as archbishop and the period immediately following his death, the relationship between Henry and the Church had been a pacific one. In an offhand way Foliot's characterizes Henry as 'pious,' and makes an implicit comparison between Stephen and Henry by labeling the latter "*bono principe*." Even in 1166, as the furor surrounding Becket's exile increased, Foliot was determined to show that the excesses were on the archbishop's side and among his supporters. He also drew attention to Becket's military record in France, an action that also attenuated the proper distinction between temporal and clerical power:

Until the day after you received the government of the realm from our pious king indeed the Church enjoyed the greatest peace (except that she felt your

hands heavily upon her to equip the army for Toulouse). There was general contentment under the rule of a good prince; the whole population rejoiced with great joy. The kingdom gave devoted and holy service to the priesthood and the priesthood supported every command of the good king.³

He stressed that it was Becket's responsibility to preserve this harmony, but instead the archbishop chose to fan the flames of disagreement rather than seek cooperation with the monarch, behavior that Foliot considered sinfully proud:

We were hoping and looking for an increase of graces with your promotion, but behold, from that moment for our sins everything was turned upside down. It is a virtue to avoid sin when it arises and immediately dash the evil offspring of the mind against the rock of Christ as soon as they are born. Accordingly, a man of your prudence should have ensured that the disagreements gradually arising between the kingdom and you did not grow too serious, that the tiny spark did not flare up into so great a fire, to the ruin of so many. But it was managed differently, and from causes too numerous to list disagreements were multiplied, indignation was inflamed and hatred firmly entrenched.⁴

One cannot entirely fault Becket in this, as much of the early friction seems calculated to distance himself from the king in order to shore up his support among the powerful clerics, like Foliot. Since his ecclesiastical pedigree was lacking, Becket needed to demonstrate his fitness as the leader of the Church in England, though this explanation tends to undermine the characterization of Becket's election as unanimous and, apart from Foliot's comments, without dissent.⁵ Roger of Pontigny, who claimed in

³ LCGF #170, p. 232, . "A pio rege nostro suscepto regni gubernaculo, ad illum usque diem ecclesia quidem sancta alta pace floruerat, excepto quod, ut diximus, ad instaurandum in Tolosam exercitum manus vestras nimis in se graves agnoverat; de cetero sub bono principe cuncta gaudebant, iocundissime letabantur universa. Regnum sacerdotio devotum sancta prestabat obsequium, et sacerdotio firmissime fulciebatur ad bonum omne Regis imperium..."

⁴ *ibid.*, *CTB* p. 507. "In vestra vero promotione gratiarum sperabamus et expectabamus augmenta, et ecce peccatis exigentibus ilico turbata sunt universa. Virtus est peccato cum exurgit occurrere, mentisne sinistros fetus ad petram que Christus est statim cum nascunter allidere. Opertebat itaque vestram providisse prudentiam, ne dissensiones inter regnum et vos paululum in immensum excrescerunt, ne de scintilla tenui in multorum perniciem tantus ignis exurgeret. Actum secus est, et ob causus quas enumerare longum est, dissensiones aduacte sunt, inflammata est ira, et odium fortiter obfirmatum."

⁵ Warren, pp. 452-3.

his vita that there was universal support for Becket, cannot have it both ways – if Becket felt secure in his piety and his support among the monks of Canterbury and the clergy, whom he claims elected him “with one heart and will,” there was no need for the continual and showy declarations of his loyalty to the Church that punctuated the months of 1163.⁶ Other vitae indicate that especially among the monks of Canterbury, who had hoped for another monk to replace Theobald, there was acrimonious debate before they gave their assent to the election. Becket also immediately made a point of pressing Canterbury’s primacy over York, which while angering his old rival Roger Pont L’Eveque, at first passed under the radar of the king’s concerns. Becket’s attempts to bring his potential enemy, Foliot, to heel with a declaration of obeisance might also fall into this category of demonstrating Becket’s insistence on the supremacy of the see of Canterbury. His rationale is understandable, but to Foliot, the larger consequence of antagonizing the king seemed disturbingly inappropriate.

The most extreme of these actions, Becket’s return of the chancellor’s seal, appears calculated to not only please some extremists in the Church, but also to declare his immediate and irrevocable independence from Henry. During the months that followed this momentous action, the king and his archbishop repeatedly quarreled over various issues, climaxing in the famous councils of Westminster (June 1163), Clarendon (January 1164) and finally Northampton (October 1164). There are a number of ways to interpret what went wrong, and while Foliot comments on the events of the summer of 1163 a few years later (citing “causes too numerous to list”), one cannot determine simply from his letters which of Becket’s actions he found the most

⁶ Roger of Pontigny, *Vita Sancti Thomae*, in *MTB* vol. IV p. 11.

troubling.⁷ Moreover, in the specific councils where the relationship between the king and Becket unraveled, the particular objects in contention shifted: at Oxford it was the criminous clerks; at Clarendon the customs of the realm; and at Northampton Becket's personal culpability to the charge of treason, and his attempt to shield himself with the Church. In each case, Foliot took a somewhat different stance in response. However, from the period when the relationship began to decline through the last of the councils at Northampton, Foliot's deepening annoyance at Becket's inability to set any sort of firm course can be readily seen, and even worse his insistence on badgering the king in moments when conciliation might have proved the wiser and more beneficial course.

The direct evidence for Foliot's attitude toward Becket is limited to the correspondence, but other sources can provide some indication of how those around Foliot, or were in contact with him, felt. The most important of these sources is Ralph di

⁷ The specific reasons for the break between Henry and Becket occasion considerable debate for an event so well-documented. Richardson and Sayles (*Governance of Medieval England* (Edinburgh, 1963) argue that the primary difficulty was over the benefit of clergy and had been stewing since the Oxford Charter made during the reign of Stephen. Charles Duggan places this argument into a larger European context, arguing that the mid twelfth century was a period of increasing papal centralization not only in England but across the continent, and that trouble was bound to break out once the ineffective reign of Stephen had come to an end ("From the Conquest to the Reign of King John" in *The English Church and the Papacy in the Middle Ages*, C.H. Lawrence, ed. (London, 1965), and "The Becket Dispute and the Criminous Clerks" *Bulletin of the Institute for Historical Research*, 1962 p. 1). Saltman's work on Theobald, however, argues that any increase in the power of the Church in England during this time was illusory. Likewise Frank Barlow (*The English Church and the Papacy 1066-1154*) fails to find substantial advance in the power of the Church in England during the reign of Stephen, and from this one should logically conclude that the larger issue of clerical power in England was not a significant issue for the people involved in the crisis of the 1160s. Knowles (*Episcopal Colleagues*) lays out three different arguments – Becket's adherence to a Gregorian scheme of Church supremacy in lay affairs, the general problem of the Church's ability to meddle in the relationship between the king and his vassals, and the specific problems of clerical abuse and benefit of clergy during 1162-3. He rests, however, on the "greater questions" theory: "...the matter of criminous clerks was not in truth the issue over which the great contest was fought. That issue was the broader and more essential one of the overall control of the Church by secular authority" (p. 55). Warren sets himself in almost direct opposition to Knowles (*Henry II*, pp. 459-60). He argues that the other events of 1163 were peripheral – it was only the matter of the criminous clerks, which he claims as a central part of Henry's reform program, which drove the king to action against the archbishop. "The test came over the attempt to deal adequately with those members of the clergy who were suspected of having committed crimes" (p. 459).

Diceto's *Ymagines Historiarum*, a history of the period between 1147 and 1172, compiled sometime around 1175, after Becket's murder. Di Diceto, the archdeacon of London, was in Foliot's confidence and was also legally trained. In several of the surviving manuscripts of the *Ymagines*, Ralph inserts at the end of the document a list of the steps that led to the final break between Becket and the king, and Becket's canonization. The document is interesting in that it provides a quick sketch of how the men in St. Paul's viewed the disturbing developments of 1163.⁸ The first of these was the resignation of the seal, which clearly set the tone.

The second step Ralph lists was the king's insistence that one of his own men, Geoffrey Ridel, be appointed as the new archdeacon of Canterbury, after he forced Becket to resign this lucrative position.⁹ If Becket had tried to hold the archdeaconry as archbishop, it says little for his earnest desire to divest himself of secular concerns, but makes sense if Becket wanted to insulate himself as much as possible from the king. The archdeacon's control over the bishop's court and administration was a lucrative position, one that Becket had continued to hold the entire time he was chancellor. Duggan argues that Becket did not actually try to hold on to the archdeaconate and was willing to pass it to someone else, but the fact that di Diceto claims it, even writing after the murder of Thomas, strongly supports the idea that he tried to keep the position, and even if it were not so, it was evidently viewed that way by Foliot and his staff in St. Paul's.¹⁰ Becket had had ample opportunity to give up the archdeaconry during the long years he had been chancellor, and during the year he had been archbishop; why had he

⁸ Di Diceto, II, pp. 279-81.

⁹ Ibid.

¹⁰ Duggan, p. 34. See also Barlow's *Thomas Becket*, which argues that Becket tried to hold the archdeaconate plurally.

delayed? Again, if Foliot were looking for reasons to be critical of Becket, this gave him another.

Other events of 1163 listed by di Diceto dealt with direct intrusions of the archbishop into the relationship between Henry and his vassals. One principal case involved the excommunication of the knight William of Eynsford. William had declared the right to name the priest of the parish church on his lands, a right that was disputed by Becket, who installed his own candidate, a priest by the name of Lawrence. When William evicted the priest and his servants, Becket summarily excommunicated him. In this he was almost certainly acting outside of the law and outside of custom, which earned the disapproval of Foliot and his staff.¹¹ Regardless of whether William had the right to name the priest of Eynsford, the archbishop had no right to excommunicate him over the issue, since the case dealt with a question regarding rights associated with property, and since excommunication interfered with the political obligations between Henry and his vassals. While the *novel disseisen* was not in place by 1163, di Diceto indicates that there were other procedures in place.¹² The king was clearly interested in these sorts of property disputes, which were legion during the years following Stephen's reign. Becket's action regarding William was not only extra-legal; it represented a clear conflict of interest of the sort Henry was determined to root out. This particular case also shows how Becket either overstepped the traditional boundaries that separated jurisdiction in England, or was unaware of them.

¹¹ Di Diceto, II, p. 279.

¹² The case of parsonage of Hinton, below, indicates that there was already some procedure for adjudicating disseisen in place in 1158. The earliest surviving copy of *novel disseisen* is in Glanville, a decade or so later, but this obviously indicates that the writ itself was an earlier creation. What is important here is that Henry clearly was interested in cases like this, and Theobald chose to work with him rather than against him on such adjudication.

It also explains why di Diceto chose to include it in his list, as there are a number of issues which modern historians consider important but which are ignored in the *Ymagines*. The archbishop of Canterbury traditionally had no authority to excommunicate one of the king's tenants in chief without consulting (and in truth gaining the approval of) the king. Faced with similar difficulties, Theobald, on more than one occasion, had declined to punitively step between the king and his men. He had chosen not to excommunicate Robert of Valognes in 1158, even under papal mandate to do so, because Henry had asked him not to.¹³ He had also acquiesced to the king's judgment in a case similar to William's over the parsonage of Hinton; he had initially removed the parson, but ceded to the king the jurisdiction to replace him.¹⁴ Foliot himself had dealt with a number of cases of clerical *seisen* during the anarchy.¹⁵

If the king had the traditional power to judge such cases, and was doing so justly, there was no reason for the new archbishop to leap into this particular region of jurisprudence. Foliot had no evident desire to expand the sphere of royal justice, as his letters of appeal in these cases are uniformly addressed to bishops and abbots. Nor did

¹³ The case is instructive in this context. Robert's family had enjoyed the right to collect wood in a forest held by the monks of St. Albans, but the abbot, fearing that the family might consider claiming hereditary right to the property if the use was continued denied access to the land to Robert when he came into his inheritance. Robert indeed appealed to the king who issued a preliminary stay against the abbot and sent the case to his justiciar, Robert, earl of Leicester. The abbot refused to present himself before the earl, claiming initially that he was outside of the jurisdiction of the king's court, and that in any case he would not submit to the authority of a mere magnate. Robert found against him by default, and Valognes, realizing that he would likely lose if the case were heard by the king, began cutting down the wood. The abbot appealed to the pope, who ordered the knight's excommunication, but the bishops, including Theobald, refused to comply. Eventually, the abbot submitted himself before the justiciar and the case was decided in his favor. This is clearly the way that Henry, and evidently Theobald, felt that such cases of *seisen* ought to be decided. *Gesta Abbatum Monasterii Sancti Albani* I, pp. 159-64.

¹⁴ *Letters of John of Salisbury*, #102, I, pp. 162-63. See also Warren, p. 336 n. 1 and p. 458.

¹⁵ For examples of such cases, see *LCGF* #14, where Foliot writes to Uhtred of Llandaff to remove the monk who has occupied the church of Chepstow; #28, over control of the church of Eastleach, among others.

he want to remove jurisdiction over seisen cases entirely from the sphere of the ecclesiastical jurisdiction, where both appellants were clerical, as he plainly lays out in *Multiplicem*.

During the Anarchy, however, there had been no other alternative in cases balancing lay and clerical right. Foliot's men in St. Paul's saw justice being done in cases handled by Henry regarding disputes over clerical or lay tenure, and being done according to custom; the system was not "broke," as the saying goes, so there was no cause to fix it. Becket's rush to excommunicate William of Eynsford without the king's approval or consultation, or even appeal to Rome, indicated one of three things: either he was unfamiliar with legal tradition and custom in England, he was attempting to garner secular power for himself; or he was gratuitously needling the king. None of these were desirable in the archbishop of Canterbury.

Shortly after the Council of Tours, when the relationship between the king and the Church ought to have been amicable, Becket stepped into a question regarding payments to sheriffs during a council called at Woodstock, in July of 1163. Though neither Foliot nor di Diceto mention the event, Foliot was present and could not help but take note again of Becket's seeming determination to infuriate the king when there was no cause to do so. At Woodstock, the king outlined a new plan for collecting the traditional payments to sheriffs known as "sheriff's aid," where such payments would in future go directly to the exchequer. Becket, to the surprise of all present, replied that he would continue to pay the sheriffs directly based upon the individual sheriff's need and performance, but he would not allow such payments to go directly into the royal

coffers.¹⁶ In this area Becket's input was neither desired nor relevant; there was no question that the payments should be made, and the sheriffs were royal agents. This was a procedural matter entirely within the royal purview. The king evidently stared at Becket incredulously, and then shouted, "By the eyes of God, it shall be given as revenue and entered in the royal rolls; and it is not fit that you should speak against this, as no one will oppose your men against your will."¹⁷ To which Becket, matching the king's determination, shot back, "By the reverence of the eyes by which you have sworn, there shall be given from all of my land or the property of the Church not one penny."¹⁸ Becket's creation of a prerogative here seems another needless attempt to provoke the king against the archbishop, and by extension, the rest of the clergy.

6.3. CRIMINOUS CLERKS AND THE COUNCIL AT WESTMINSTER

The question of clerks convicted of serious wrongdoing does not figure on di Diceto's list, despite the fact that this was one of the key issues Henry explicitly mentions at Clarendon. Foliot, however, discusses at it at length in letters to both Becket and Pope Alexander. During the spring and summer of 1163, several cases of extraordinary clerical abuse had come to the attention of the king, who demanded that

¹⁶ The primary source on this is Edward Grim's *Vita*, *MTB* II, pp. 373-4. Also, Roger of Pontigny, *MTB* IV pp. 23-4. et al.

¹⁷ The implication here is that people would not oppose the archbishop over the potential peril to their souls. This was not an area of law that had anything to do with religious standing, but Becket was making it one, apparently by fiat.

¹⁸ Grim, *ibid.* Trans. Warren, p. 458. Duggan argues that in this Becket was saying what no one else in the room could dare to – that the knights also would not want this revenue to become a customary part of royal taxation, and that in this he was "likely voicing the opinion of every baron in the room" (p. 38). But again, it was not Becket's place to get involved in this secular debate, considering that no one questioned that the money itself ought to be paid.

the Church find some way of curbing the outrageous behavior of a few of its clerks. Becket's actions with regard to these crimes demonstrated to Foliot at once the inconsistency of the archbishop's position, his unfamiliarity with canon law and the customs of the realm, and the limitations of the Church courts in dealing with such matters. Given Foliot's impassioned letters during the Anarchy, searching for adjudication through the "sword of the Lord," and his lengthy discussion of the issue in *Multiplicem*, this was clearly a matter close to his heart.

The first of the famous cases involved an older accusation of homicide against one of the canons of Bedford, a priest named Philip de Brois.¹⁹ Apparently the priest had been tried before the bishop of Lincoln on the charge of murder, but had been acquitted against the evidence on a technical issue of canon law. In the spring of 1163 one of the sheriffs saw an opportunity to bring the case before the royal justices in Henry's new system of itinerant courts, the Eyre, but Philip, for obvious reasons refused to admit the Eyre's jurisdiction over him. A shouting match ensued in the presence of the king's justice, during which Philip publicly defamed the sheriff. The canon was called to answer for the charge before Henry, and admitted that he had spoken rashly in the heat of the moment. The king attempted then to try the canon for both the initial murder and for the defamation, claiming that an insult against his justice was an insult against his royal person. Becket intervened however, and tried Philip only for the defamation, in his own court at Canterbury. Found guilty, the cleric was forced to forfeit two years' income and make a formal apology before the justice. This was not an insignificant punishment, but in the climate of increasing rancor between the king and

¹⁹ FitzStephen, *MTB* III, pp. 45-46.

the archbishop, Henry was infuriated that the punishment for a man likely guilty of murder was so light.²⁰

The most notorious of the 1163 cases involved a clerk in Worcestershire who seduced a young woman and then murdered her father, apparently to keep him from coming between them, or perhaps to prevent him from exposing the relationship.²¹ Given the severity of the crime and its secular nature, the king demanded that the clerk be tried before the royal justices. Becket again stiffened against this suggestion and instead bound the clerk over for trial before the bishop, who refused to let the sheriff take him into custody.²²

Part of the trouble lay in the fact that so many people in England were under holy orders at the time. Perhaps one sixth of all the men in England had taken some clerical vow that entitled them to preferential legal treatment.²³ Few of them were actually priests or monks; most were in lower orders, some were married, and few of them had given their lives completely over to the Church. At the same time, a large percentage of these men, even of the priests and deacons, were unbeneficed and poverty-stricken. Thus they had virtual immunity for crimes that they committed, while their poverty gave them great motive for committing crimes, especially property crimes like theft or burglary. Hard on the heels of the case of the Worcestershire cleric accused of murder, came a clerical case of simple theft in London. A clerk in the church of Mary-le-Bow was accused of stealing a silver chalice. Henry demanded that the clerk be tried before the royal justices, and again Becket refused. However this time, when the

²⁰Ibid.

²¹ Ibid.

²² *ibid.*

²³ See Warren, *inter alia*, p. 460.

clerk was found guilty in his court Becket had him branded on the face in punishment, probably to appease the king.²⁴ It had the opposite effect. Not only had the archbishop probably broken canon law in inflicting corporal punishment, in light of the leniency shown to accused and convicted murderers, Becket's actions seemed capricious, and even cruel, and they angered Henry. They ran contrary to the separation of authorities that Foliot, by all evidence, considered appropriate.

Henry's outrage is understandable, especially given the proximity of these crimes to the perception of lawlessness of the Anarchy. As Emily Amt has shown, the restoration of order was one of Henry's primary concerns, especially during the early years of his reign.²⁵ In a famous comment, di Diceto remarks that the king acted on behalf of those who could not help themselves, and this is also instructive here. If Henry saw his role as the defender of the weak, serious crimes of ranking clergy against the unprotected required his immediate attention. If the Church courts were incapable of finding justice in such cases, then the monarchy and its power were necessary as a court of last resort. In the canonical system, the maximum possible penalty for such offenders was either expulsion from the clergy, or the limitation of their income – corporal punishment was out of the question. Henry argued that such punishment was not commensurate with the nature of the crimes in question, and asked that the defendants, if found guilty and dismissed from holy orders, be given over to the royal authorities for punishment. Becket refused on the grounds that such a system would amount to a form of double jeopardy, and would mean two separate punishments for the same offense.²⁶

²⁴ *ibid.*

²⁵ See Emily Amt, *The Accession of Henry II in England*, esp. Chapters 7 and 8, pp. 113-49.

²⁶ The position of the canon law on the issues involved at Clarendon has been extensively debated among modern historians. See Maitland "Henry II and the Criminous Clerks," in *Roman Canon Law in the*

Foliot's theory on this larger issue of clerical and temporal authority is outlined in an extended section of *Multiplicem*. Here, he presents a dialectic that explores the potential legality under canon law of a system where clerics could and perhaps should be tried by temporal authority. He repeatedly mentions the two swords of governance and the importance to society that both exercise power over their own spheres, and that they should be drawn together in mutual support. The tone of the letter is angry and sarcastic, but the content and the deliberation in the letter are fascinating. He starts by presenting the canons in opposition to temporal authority over clergy.

A man of your (Becket's) prudence was not unaware of the apostolic decree expressed in this form: "No bishop should be brought before any civil or military judge, neither for a civil nor for a criminal case," and the other, "If a clerk is brought before a secular judge he may not answer or make a plea."²⁷

Foliot follows with the stipulation that nonetheless the bishop should not act outside of consultation with the Pope citing a quote from Gelasius I's letter to Bishop Hepedius. This particular reference is also interesting in that it recalls Gelasius, the originator of the "swords" metaphor.

'By what daring and rashness do you write that you are prepared to go to Ravenna when the canons clearly command that no bishop should litigate at the court without seeing and consulting us first?'²⁸

And then in opposition he cites the doctrine that the king's anointing puts him on par with the clergy, one of the fundamental bases for royal autonomy from clerical authority

Church of England (London: Methuen, 1898), pp. 132-48.; Warren, *Henry II*, p. 464 ff., Charles, Duggan, "'The Becket Dispute and the Criminous Clerks,'" *Bulletin of the Institute for Historical Research*, #35 (1962), pp. 1-28; and most recently Duggan, *Thomas Becket* pp. 46-60. It deserves notice that there is an uncomfortably apparent inverse relationship between historians' approval of Becket and their assessments of the legality of the Constitutions under the canons.

²⁷LCGF #170, pp. 235-36. *CTB*, p. 515, The first cite is Gratian, C.II, qu. I, c.8 [col. 628], ascribed to Boniface I, as well as Justinian's *Novellae* 123.8; the second cite is also Gratian, C.II qu.i, c.8, ascribed to the Council of Agde (506).

²⁸ *Ibid.*, *CTB* p. 517 C. 23, q. 8.

in canon law. Foliot appears convinced in his argument here, suggesting that he believed the issue had been a settled one at the time that he was trained in law. The discussion had evidently been reopened, though, since the papacy had recently been forbidding the use of chrism in anointing monarchs at their coronations. This development suggests that the idea of clerical control over temporal authority was a novel one. Here is how Foliot puts it in 1163:

But perhaps you judge these matters with deeper knowledge and clearer mind, and because sacred unction sanctifies the king...so that like Christ he may always strive to manage with appropriate restraint what has been entrusted to him, you distinguish him from the others and consider him not only a secular but an ecclesiastical judge.²⁹

To support this general idea, Foliot cites a case also used by Gratian. Whether he thought to employ the case because he was familiar with it or because Gratian cited it cannot be determined:

In support of this perhaps you recall that Pope Leo IV wrote to emperor Louis thus: "If we have done anything incompetently and if we have not kept to the path of just law towards our subjects, we wish everything to be set right by the judgment of yourself or your envoys and determined by their lawful examination, so that what has been done indiscreetly should not remain for the future."³⁰

Then he indicates that this was currently a popular interpretation:

If that is your judgment, many agree with your discretion in this conclusion; out of respect for the sacrament they consider it is proper for the king to investigate and determine by the examination of royal jurisdiction not all cases relating to the Church and Church personnel, but those that they distinguish.³¹

²⁹ Ibid.

³⁰ Ibid. The cite is again Gratian, C.2, qu.7, c 41. Leo IV to Louis the Pious. Duggan in *CTB* (p. 517 n. 34) casts doubt upon the canon by claiming its authenticity is "highly dubious." Still, canon law in the twelfth century was plagued by conflicting and erroneous entries, despite Gratian's attempts to bring them into accord. None of Foliot's contemporaries argued that this particular quotation was illegitimate.

³¹ Ibid.

The implications of this canon and its interpretation would tend to demolish Ullmann's argument that the Church had always aimed for control over lay authority. This was not a situation where Foliot departed from accepted "Church" doctrine for the sake of expedience, as Ullmann declared all deviations from the ecclesiastical goal of total control to be, but one where Foliot laid out the relevant jurisprudence for a cleric he considered powerful but ignorant. The phrase "many agree" is extremely important here. Foliot was not advancing anything new. That Gratian also reports the case indicates that many in fact did agree. The lay sword had a fundamental right to independence, and had the right under certain circumstances to judge in clerical matters.

Foliot explained carefully the types of cases where secular authority should have no right to jurisdiction – those cases that rest solely upon those things that the Clergy receive by divine law. Some are internal Church matters that do not bear the scrutiny of the world, as in civil cases between clerics. Others concern "temporal things owned by the Church by divine law alone...such as tithes and oblations."³² But there are, Foliot continued, areas where the Church owns things "that have been bestowed upon her through the acts of men alone."³³ And then, a few sentences later, he concludes:

Therefore, since there is a twin power from God, one sacerdotal and the other royal, they confirm by the authority of the fathers that each takes precedence over the other according to its nature, and can be judged by the other according to its nature; so there should be an exchange between kings and bishops, in which they alternatively judge and are judged, perhaps a bond of affection, a duty of respect, and a necessity for each to keep peace with the other.³⁴

And here is the point. Foliot argued that Becket not only erred in his insistence that clerics can accept no judgment of a secular authority, which from the standpoint of

³² Ibid.

³³ Ibid.

³⁴ *ibid.* p. 237., *CTB* p. 521.

canon law is a disputable claim, but also in the destructive relationship that the archbishop had cultivated from the moment he accepted the pall. Especially in matters of debatable legality, which Foliot had written on many times, Becket should have behaved with more circumspection. “This was the cause,” Foliot wrote, “and provided the king the occasion to turn his mind and resolve to demanding the royal dignities and their public recital.”³⁵

This recitation was Foliot’s larger anxiety, though he sympathized with the king in his concern that the Church courts were unable to mete out justice to the sorts of criminals that had increasingly found their way into the cloth. The unstated law was at once harsher and gentler than one written down, because once stated, or worse, written down, the law became an inflexible contract that could not be bent when expedience or justice demanded. Further, Becket’s branding of the clerk in London struck him as crossing the line into secular authority in the worst possible way. It disturbed him that Becket did not understand the legal customs of the realm; but the fact that he could so blithely disregard canonical authority in an area so basic as the Church’s antipathy to corporal punishment, purely in an attempt to pacify the king, was revolting. While one can look back at Becket’s life and surmise that he saw the error of his weakness later, Foliot had no such luxury. He saw a place where accommodation and balance with the king needed to be found, not a place where a vacillating archbishop should suddenly dig in his heels against an idea of secular authority that he incorrectly understood.

This is precisely what happened over the following months. In October of 1163, the king addressed the particular concern of criminous clerks at a council at

³⁵ Ibid. p. 232.

Westminster. Although other issues were discussed, the *vitae* of Becket are in general agreement that the problem of criminous clerks was the central issue.³⁶ It was at this meeting that the king demanded first that any clerics accused of “great crimes” be deprived of the protection of the Church. Herbert of Bosham has the king state that:

clerks would be more prone to do evil unless after the spiritual penalty, they were subjected to corporal punishment, and that those who were not restrained from such outrages by the thought of their sacred orders would hardly trouble overmuch with the loss of them. Moreover, (the king) argued, the more worthy they were than other men of the privilege of clergy, so much the greater was their guilt; wherefore they should be coerced by the sterner penalties whenever they were detected in crime.³⁷

How Foliot replied to this particular idea is not recorded, however he would have agreed with the latter comment that the clergy should be held to a higher standard. He echoes the concept of the last being first in *Multiplicem* and elsewhere: “Holy humility subjects itself to every human creature because of God, and the further it lowers itself, the higher and more splendidly according to the Lord’s words does it deserve to be exalted.”³⁸

Multiplicem glosses over the councils of Westminster and Oxford (“What need is there to recall the activities at London and Oxford?”), and dives into Clarendon where Foliot indicated Becket’s leadership really began to fall apart.³⁹ However, Herbert of

³⁶ One of the issues evidently dealt with a long-running case involving the monastery of St. Albans. The witness list of the document that makes the final finding in the case gives us the evidence of heavy episcopal participation, including Thomas Becket, Roger of York, Henry of Winchester, Nigel of Ely, William of Norwich, Hillary of Chichester, Jocelyn of Salisbury, Walter of Rochester, Hugh of Durham, Gilbert of Hereford (sic), Bartholomew of Exeter, and Richard of Coventry. A number of influential abbots also attended, including Foliot’s friend, Ailred of Rievaulx. The clerical participation would tend to support the idea advanced by Herbert of Bosham that the conference was called to address specifically the problem of criminous clerks. C. W. Foster, ed., *Registrum Antiquissimum of the Cathedral Church of Lincoln*, vol. I (1931) pp. 64-66.

³⁷ Herbert of Bosham in *MTB* IV pp. 299-300.

³⁸ *LCGF* #170, p. 238.

³⁹ *Ibid*, p. 233.

Bosham, who was also present at Westminster, mentions that more than one cleric was willing to consider the king's overture regarding the criminous clerks. While he does not name them, given that Foliot's is the only extensive defense of the idea, it seems logical that Foliot would be among those who thought that perhaps the king ought to be accommodated in this regard. Herbert sneers at "those who were apparently prepared to put their learning at the king's service in order to curry favor with him;" this shaft could easily have been aimed at Foliot, with his famous education.⁴⁰ Foliot would also have been moved, and may have been involved in, Henry's citation of a line frequently found in the canons; "Let him be handed over to the court."⁴¹ Becket and Roger of York, however, would not consent to this, and remained staunchly opposed to the idea as the king tried various arguments to persuade the clerics of the importance of lay punishment.

To Herbert's version of the events, William of Canterbury adds that Henry finally claimed that such had been the procedure during the time of his grandfather, Henry I, and he would not relinquish the right to punish clerics guilty of misdeeds.⁴² When Becket again responded that he would not yield on this point, Henry asked the fateful question, from which the entire house of cards collapsed. Would they, he asked, agree simply to abide by the legal customs of the realm of England? At this, the bishops withdrew and considered how to proceed. The question was loaded. If they said yes, they might open themselves to the possibility of other, more profound difficulties. The interpretation of custom was elastic at this point before the widespread use of written

⁴⁰ Herbert, *op. cit.*, p. 300.

⁴¹ *LCGF* #170, p. 238.

⁴² William of Canterbury, *Vita et Passio S. Thomae*, in *MHTB*, vol. 1, p. 13.

documents. Who could tell what sorts of customs Henry, or his descendants, might “discover” in England’s tradition? However, if they responded negatively, they would seem to be placing themselves above and beyond royal law entirely, a situation that might quickly disintegrate into the same sort of nightmare scenario that had gripped Europe during the investiture conflict of the previous century.

After private discussion of these issues, the bishops returned to Henry’s hall and announced that they would keep the ancient customs, saving only those that interfered with the vows they had taken as clerics: “saving only our order,” was the phrase used. Henry polled them, forcing them to make the declaration aloud. Like all but one of the others Foliot repeated the phrase, “*salvo ordine meo*.” Only Hillary of Chichester, the other legal expert, gave his unqualified support for the customs of the realm in good faith (“*bona fide*”), but this angered the king, who rebuked him for not having the courage to stand with the others.⁴³ Nonetheless, it is interesting that both of the acknowledged legal experts on the episcopal bench, Foliot and Hillary, sided in a fundamental way with the aims of the king. When the meeting adjourned for the evening, the only concession Henry had been able to wring out of the archbishop was the repossession of the castles that Becket had still held from the period when he was chancellor. The next morning, fearful no doubt of the consequences of what had transpired, the bishops rose to find the king departed; he had left before dawn leaving an ominous silence behind him. The bishops, Foliot among them, quickly left, hoping to locate the king and again ingratiate themselves with him. The conference had been a disaster for the relationship between the clergy and the king.

⁴³ Herbert of Bosham, p 274-5; Gervase, p. 174.

6.4. THE CUSTOMS OF THE REALM: THE COUNCIL OF CLARENDON

There was evidently a great deal of interest in the disagreement, as immediately following the Westminster council a number of emissaries from the pope arrived in England to offer advice to all sides. This interest was likely catalyzed by Pope Alexander's own difficulties with the emperor of Germany. Frederick had recently brought an army into Italy to enforce the antipope Victor's right to the papal see, a move that drove Alexander into France. Alexander enjoyed the support of a majority of the clergy, and had been given protection at Sens by his solid supporter Louis VII, but Louis held a comparatively small piece of ground. In contrast, Henry II controlled an enormous territory that stretched from Aquitaine to the border of Scotland. Henry seemed to be in Alexander's camp, and had sent his bishops to the Council at Tours; Alexander could therefore ill-afford to see this apparent ally annoyed, especially over paltry concerns. He watched the situation in England over the course of 1163 with deep concern, and dispatched a number of envoys to England in October, including Philip of Aumone, Bernard's prior at Clairvaux, urging moderation on Thomas.⁴⁴

Foliot returned to London where he was approached on two fronts to try to find a way to make peace between the king and the archbishop. Arnulf of Lisieux was the first to come to him, as he had arrived at the council of Westminster late, but was already in England, so would have beaten the papal letter that Foliot received in October or November.⁴⁵ Foliot, it will be recalled, had known Arnulf for at least

⁴⁴ William of Canterbury, *MTHB* vol. 1, pp. 31-3.

⁴⁵ Schriber, *The Dilemma of Arnulf of Lisieux*, pp. 100-101.

twenty-five years, as Arnulf had successfully spoken against Matilda at the Second Lateran Council in 1138. Now, he had crossed the channel to come to Henry's side, probably to gain the king's favor as Henry's relationship with Arnulf had never been a very comfortable one for the bishop, and he now saw an opportunity to assist his own fortunes by helping the king out of a difficult situation.⁴⁶

In discussions with the king soon after his meeting with Foliot, Arnulf had counseled that there was already a nucleus of support for the king's position among the bishops of England. Among these were Roger of York, who could be persuaded to join any fight against Canterbury, and Hilary of Chichester, who had already tried to take the oath of support without the offending clause. He also suggested Gilbert Foliot, which again supports the idea that Foliot had been the bishop willing to grant the king the right to punish clerics who had been defrocked. Foliot had taken the oath in the same way as all the others, probably out of loyalty and the sense that at that moment it was wisest to present a united front. It is conceivable that Arnulf suggested Foliot because he had already expressed public opposition to Becket at the election, or because it may have been common knowledge that Foliot disliked Becket, though there is no evidence for this position. Arnulf probably suggested Foliot because like Hilary he had the legal training to make an effective argument for the king and had already done so at the council.

Quickly after Arnulf's contact with Foliot, Alexander III also sent a letter to Foliot urging him to find some accord between Henry and Becket.⁴⁷ The timing of this letter must be placed in context. The last time that Alexander had had any dealings with

⁴⁶ Ibid..

⁴⁷ *MTB* vol. v pp. 61-62.

Henry was a few months earlier, when he had thanked Henry for his support of the Council of Tours and reconfirmed for him the “privileges of the realm,” in an apparently legal context. Henry had not brought any of this up at Tours, indeed he had not attended the council nor had the spokesman for the archdiocese of Canterbury spoken for him; things were evolving rapidly at that moment. Alexander’s declaration had been to a king who he felt was loyal and whose friendship was worth cultivating. Alexander had also fairly snubbed Becket with the letter over Foliot’s obeisance shortly afterward. Suddenly it appeared as if the new archbishop of Canterbury was openly antagonizing this potentially friendly king. Alexander thus wrote letters both to Becket, urging him to moderation, and to Foliot, urging him to find a way to make peace between the combatants.

We know that the king is swayed by consideration of your prudence and honesty, as he petitioned to have your see transferred so that he might benefit from your advice and counsel. We know moreover in truth that we will otherwise perish together.⁴⁸

He begged Foliot to put out the sparks that had arisen in the Church, hoping that a concord might be quickly reached. There is nothing in Alexander’s tone to indicate to Foliot, at the outset of the crisis, that the pope wanted any kind of fight with Henry at all. This may have reflected prudence alone in Alexander’s desire to keep Henry on his side, but there is no hint of an ulterior motive or of a desire on Alexander’s part to move in the direction Becket was pushing the law. The letter simply pointed out to Foliot that he had the ear of the king, and to tell the king that Alexander desired conciliation rather than conflict.

⁴⁸ Ibid.

It is apparent just how isolated Becket had become during the last weeks of 1163. He had pushed the king repeatedly over trifling but annoying issues until the king had finally pushed back in such a way as to imperil the critical elasticity of the relationship between the crown and the clergy that Theobald and others had tried to cultivate. If possible, this development needed to be countered at once. Others beside Foliot had been in contact with the archbishop in October and November: Arnulf of Lisieux saw the opportunity to act as peacemaker and had visited Becket after visiting with the king and Foliot. Hilary of Chichester, likewise, came with the proposal that the king meant no uncanonical actions in his declaration of the ancient customs of the realm. Papal envoys from Sens also arrived to pressure the Archbishop. Perhaps most significantly, the influential Cistercian, Philip, abbot of L'Aumone and St. Bernard's prior, arrived with Robert of Melun, who would soon take up Foliot's former see in Hereford. Philip and Robert also urged restraint on the part of Becket. Like Hilary, they claimed that the king had only pushed back in an effort to show strength before his barons.⁴⁹ The pope himself wrote a letter late in October advising Becket to find some way to live with the king and not to push against him. The pope went so far as to admonish the archbishop to remain as much as possible in Canterbury, and to avoid traveling, especially traveling with a large retinue that might draw unfavorable attention to the archbishop:

Finally we direct and order your fraternity to return to the Church of Canterbury and travel as little as possible about the country, and keep with you only the smallest number of attendants that you absolutely need. We are giving you this

⁴⁹ See Guernes in *MTB* vol. IV, p32.

particular advice so that you may not be compelled to renounce the rights and dignities of your church by any fear or misfortune that might befall you.⁵⁰

It seems that no one came to him from outside of his court urging him to stand his ground. Becket, according to the prevailing ecclesiastical opinion in late 1163, was primarily at fault in this increasingly volatile situation. He reconsidered the whirlwind that the council at Westminster had raised, and finally decided that his intransigence over the clause “*salvo ordine suo*” had been unfortunate.

Thus chastened, the archbishop of Canterbury arrived at the king’s court in Woodstock immediately prior to Christmas, prepared to take the oath without reservations, in good faith. By this point, however, Henry was waiting to spring the trap shut on him, perhaps sensing Becket’s weakness and angered that Becket had turned against him, returned the chancellor’s seal, and tried on several occasions to expand his prestige at the king’s expense. When Becket arrived at Woodstock, Henry would not hear his oath. Instead, he insisted that Becket make the oath before the king’s barons, just as his initial, defiant claim at Westminster had been made. Becket was told to gather the bishops and prepare them once again to take the oath publicly at the king’s residence of Clarendon.

⁵⁰ *CTB* # 19, p. 51. Duggan carefully argues that the king was seeking “an accommodation – not a compromise, but a formula for reconciling the English Church to the king.” Barlow reads the evidence much more bluntly, however, and sees in the letter the pope’s concern that Becket may actually have been becoming a danger to the Church. “From the point of view of the papal curia, Thomas was a liability, even a menace. There was little merit in his cause and all could see that he was a troublemaker. He had to be restrained.” As for Duggan’s claim that the pope had actually done nothing *to* Becket, and that the letter cautiously urged the archbishop to stay the course, I am compelled to wonder what else the pope might possibly have said to the ordained archbishop of Canterbury. Had he handed the archbishop over to his fate at the hands of the king he would have seriously damaged the growing calls for clerical independence that characterized the late twelfth century papacy. Even Becket’s resignation at this point would open a host of potentially unpleasant doors. The tone of Alexander’s letter speaks for itself; Becket was very much alone, and deservedly so, during 1163-4.

Foliot arrived at the Council of Clarendon, one of the principal events in English constitutional history, around January 15, 1164. The meeting was well attended on both the clerical and lay sides. All but three of the bishops of the realm attended the council, the only ones who did not, the bishops of Rochester, Bath and Durham, missed due to age or infirmity. Of fifteen potential earls, ten were present, and the number of barons and their retainer knights was impressive. Henry wanted all to be present to witness what would take place, as he hoped in the council to finally put the lid on Becket's intransigence and his attempts to impede any legal reforms that might tangentially impact the power of the Church in England.

For an event so well-attended, and having such a crucial importance, the narrative evidence of the council is surprisingly sparse. The writers of Becket *vitae* who give much detail were not present, each were writing at least ten years after from the actual events, and tend to conflict on several important details. Becket's two primary biographers, Herbert of Bosham and William FitzStephen, were both present at the council, yet both gloss over the actual events that took place. There has been some speculation as to why this is the case; even Becket's most ardent modern supporters note the lack of information given, and agree with Becket detractors that the archbishop's behavior was at least puzzling and at most even embarrassing.⁵¹ For the same reason, Foliot gives the best insight into the council, as he uses Becket's behavior there as an example of the terrible leadership that was destroying the relationship between Henry and the Church. Still, Foliot dwells on the issues more than on the

⁵¹ Duggan, eg. p.

sequence of events, so there is some doubt as to how precisely the proceedings unfolded.

It would seem that when the council was convened, Henry opened with the statement that concerning the matter of the Church's attitude toward the customs of the realm, things had gone too far and he had been too often provoked to accept that the clerics should swear "in good faith." The king no longer trusted what they meant by "good faith," and that therefore they must agree to abide by the customs of the realm, period. Foliot writes in *Multiplicem*, "Our Lord King vehemently demanded that we promise to observe them without any reservation."⁵² This pronouncement was met with dismay and horror on the part of the clerics. Who could guess what the king would claim as a custom after he had backed the churchmen into blindly accepting them? The implication of duplicity had been shifted from the king to the Church, for Henry's demand was ostensibly made because of Becket's earlier intransigence. Foliot reports that the gathered knights came increasingly to view Becket as treasonous as the council wore on: "The princes and all the great nobles of the realm had broken into a very great rage."⁵³ The bishops, led by Becket, declined to submit, standing as one:

There surely we stood with you, who we believed were standing firm in the Spirit of the Lord. Indeed, we stood immoveable, we stood without fear. We stood firm to the loss of our wealth and the torture of our bodies, ready to suffer exile and the sword as well, if the Lord had permitted it.⁵⁴

Foliot's comment about standing without fear is exaggeration, because the threat was real. There were a number of murders of bishops during the eleventh and twelfth centuries, and most of them came about due to religious intransigence in conflict with

⁵² *LCGF* #170, p. 233, *CTB* p. 509.

⁵³ *LCGF* #170, p. 233, *CTB* p. 509.

⁵⁴ *Ibid.*

political will.⁵⁵ Foliot's description of the knights who burst into the room where the bishops were confined underlines this concern:

They came shouting and crashing into the room where we were sitting and throwing off their cloaks and thrusting out their arms, telling us in these words: 'Pay heed, you who scorn the laws of the realm and do not accept the king's commands. These are not our hands that you see here, nor our arms, nor these in fact our bodies; they belong to our lord the king, and they are most ready to be directed at this moment in accordance with his every pleasure, to avenge every wrong committed against him, to carry out his will, whatever it is... Withdraw your resolution; bend your wills to his command while it is still possible, that you might escape your peril!⁵⁶

Yet the bishops remained united. "Did any man, father, have sons more united in their declaration? Did anyone have sons more of one mind?"⁵⁷ They could not, and would not blindly accept a royal definition of the legal relationship between themselves and the crown, and they were ready to face martyrdom in order to uphold their responsibilities. It was an impressive scene. Foliot named the bishops who joined with Becket, finishing the list with his own name. It is significant, in fact, that listed are each of the bishops who had and would again find themselves in opposition to Becket. When the letter was written, it was in angered response to a letter from Becket, faulting the clergy of England for not standing up to the king. Foliot challenged Becket again:

"Your letter accuses us of turning away on the day of battle; of not rising up in opposition; of not standing like a wall for the Lord's house. Let the Lord judge between us; let him judge for whom we stood, for whom we refused to give way before the threats of princes; let him judge who fled, who was a deserter in the battle."⁵⁸

⁵⁵ Fryde u. Reitz, eds., *Bischofsmord im Mittelalter* (Göttingen: Vandenhoeck & Ruprecht, 2003), esp. pp. 97 – 159.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid., *CTB* p. 511

On this particular issue, not the matter of the criminous clerks, but on the blind acceptance of the rights of the Church laid out by an angry sovereign, they stood firm.

There is no doubt that noble Henry of Winchester, most steadfast in the spirit of the Lord, stood firm; Nigel of Ely stood firm; so did Robert of Lincoln, Hilary of Chichester, Jocelyn of Salisbury, Bartholomew of Exeter, Richard of Chester, Roger of Worcester, Robert of Hereford, Gilbert of London.⁵⁹

Apparently, too, the strategy seemed to be working, at least according to Foliot. “The attacker gave way to all of them (the bishops), not they to his strength; looking on their temporalities as so much dung, they risked themselves and their followers for Christ and his Church.”⁶⁰

Apparently, at some point during the third day, Becket caved in to the pressure however. How this happened is, again, a source of conflict within the sources. FitzStephen says that the moment was less than awe-inspiring, as Becket tearfully submitted out of fear of death and in the hopes that his capitulation would mitigate the king’s anger.⁶¹ Herbert of Bosham states that the collective appeals by a pair of Templars and William of L’Aumone, who claimed that the king only needed this as a method of saving face, combined with the fear of some of the bishops, led him to accept the king’s demands grudgingly.⁶² Herbert, however, was writing twenty years after the

⁵⁹ *ibid*, pp. 233-34. Knowles notes that Foliot omits the names of Roger of York and William of Norwich. Roger may well have begged off out of fear for his own skin. But Knowles also says that part of the reason for Becket’s about-face was his compassion for William of Norwich and Jocelyn of Salisbury, both of whom were on the outs with Henry. This does not account, though, for Jocelyn’s courage in standing against the king. Further, as Gilbert describes the scene, the threat was overtly physical. Had Henry actually planned to kill the bishops, it does not seem logical that he would not have singled out one or two. They stood or fell collectively. In this categorization William FitzStephen seems to agree (see below).

⁶⁰ *Ibid*.

⁶¹ *MTB* III, p. 48, “Tandem ultimi regis nuntii venerunt, lacrymis et verbis expressis ei seorsum tracto significantes quid futurum erat, si non adquiesceret. Timore mortis et ut regem mitigarit adquievit...etc.”

⁶² *MTB* III, p. 279.

fact, for an audience that had already accepted that Becket was a saint, while Foliot was writing only three years after the event to Becket himself. Foliot had his own reasons for exaggerating, but he could not openly lie about so public an event so soon after it had taken place. He claims that Becket's resolution collapsed after he had gone off to consider the matter on his own, "away from the association and advice of his brethren."⁶³

When he returned, he burst out (*prorupit*) "It is my lord's will that I should forswear myself; I submit for the present and incur the guilt of perjury, to do penance in the future as far as I can."⁶⁴ He then required all of the bishops to do the same, at which they were deeply disheartened:

When we heard the words we were dumfounded, sighing deeply and looking eye to eye, we lamented what we saw as a man's fall from the height of virtue and steadfastness.⁶⁵

The last comment again needled Becket over his inability to stay with a particular course of action, coupled with a lack of respect for the unforeseen consequences of his actions, an unfortunate facet of Becket's character that even some of his modern apologists admit.⁶⁶ Becket's reversal at Clarendon, just as at Westminster and Woodstock, indicated that the archbishop was even worse in his new post than Foliot had considered when his name had initially been put forward by the king. At that time, there had been the fear that Becket would act in concert with the king to perform some sort of mischief to the relationship between the king and the Church, destroying the balance that better, more circumspect clerics had worked to establish in the early

⁶³ *LCGF* #170, p. 234.

⁶⁴ *Ibid.*

⁶⁵ *ibid. CTB*. P. 511.

⁶⁶ EG. Knowles, *Thomas Becket*, p. 87.

years of Henry's reign. Now, however, it was increasingly apparent that the fault lay in Becket's inability as a leader or an administrator. *Multiplicem*, especially, takes Becket to task for his failure to recognize the dangers of the game that he played with the king, a game that Becket played for pride rather than for the good of the Church. He was acting like an amateur, but his failures had deep, long-term consequences. The comment Foliot makes on how Becket would accept the penalty for perjury, and force it upon his underlings again gives evidence of Becket's lack of spiritual respect, or his ignorance of it. As far as Foliot was concerned, at that moment they had pledged the Church itself to an uncertain fate.

Henry did not prolong that uncertainty. Upon receipt of their oaths he had a group of "older and wiser nobles" produce a document where the actual customs were enumerated. This had evidently been considered or planned in advance, since the wording of the "Constitutions of Clarendon," as the document is called, was careful and legalistic, but it seems also that the document itself was assembled after Becket had promised to abide:

He (the archbishop) himself approved the demands and solemnly promised our lord the king without reservation that he would in the future faithfully observe the royal dignities and the ancient customs of the realm, which were recounted before the assembly and set down in writing, and under the virtue of obedience he ordered us to bind ourselves by a similar promise.⁶⁷

To Foliot, the enumeration of the customs may actually have come as something of a relief, for even in this document there was a degree of latitude, and few of the provisions seemed to run entirely counter to canon law. The conclusion to the document notes that:

⁶⁷ *ibid.*

There are many other great customs and privileges pertaining to holy mother Church and to the lord king and the barons of the realm which are not contained here. Let them be safe for our holy Church and the lord king and his heirs and the barons of the realm.⁶⁸

At least, it seemed, that the king was not interested in extracting every advantage from the situation – he was interested only in a narrow range of situations that pertained to his current argument. The reach of the Constitutions by no means attacked the fundamental independence of the clergy. They did not demand that clerks accused of secular crimes be brought before royal justice, for example, without first consulting the Church courts as to how to proceed. Moreover, the customs themselves appeared to be an accurate representation of the situation in England prior to the Anarchy. No one, at least, offered an argument that they were not, and there were a number of people present and in Becket's household, including Foliot, Hilary of Chichester, and Henry of Blois, who would have known a great deal about the systematic working of the relationship under Henry I, which were at that moment only thirty years in the past.⁶⁹

The canonical legitimacy of the Constitutions has been the subject of a very great deal of dispute among scholars Maitland argued that Henry's reforms followed canon law more closely than Becket's intransigent position did.⁷⁰ According to Maitland, clerks convicted by the bishop's court for secular crimes ought to be bound over to the king's court for secular punishment, was a practical solution. Not surprisingly he used the letters of Foliot and the *Ymages* of di Diceto to reach this conclusion. More recently, Charles Duggan has written that within reason the king had

⁶⁸ Stubbs, *Select Charters*, p. 167.

⁶⁹ See Barlow, *Thomas Becket*, p. 102, for a discussion of the question of whether the documents actually represented the earlier customs of the realm.

⁷⁰ Maitland, *Roman Canon Law of the Church of England* (London: Methuen, 1898), Chapter IV, "Henry II and the Criminous Clerks," pp. 132-47.

a good case to make in canon law, but that the open-ended nature of the relevant clauses in the Constitutions of Clarendon exceeded the bounds of the law. If Henry had said that certain types of clerics might be susceptible, or if he had spelled out in greater detail what sorts of crimes might be covered by such punishment, the canons might have supported him. As it was, however, he sees the document as an over-reach.⁷¹ Anne Duggan paints a picture of canon law generally moving in the direction of favoring clerical immunity, but like Morey and Brooke she downplays the writings of Gerhoh and others who wanted to contain the Church's role in the secular world, or who at least resisted the expansion to which Charles Duggan refers, and who, according to Barlow, formed a significant voice in the contemporary discussions of Church policy.⁷²

As noted earlier in this study, however, the most relevant historiography on this issue comes from the small group of canon law specialists who began exploring the medieval relationship between lay and clerical power in the 1940s and 50s. It seems fairly clear, or at least it is generally agreed among historians of medieval political theory, that Gratian's attempt to delineate the powers, either echoed or anticipated by Foliot in *Multiplicem*, represented the beginnings of a critical shift in the attitude that would ultimately create the papal monarchy of the thirteenth century. Moreover, as Stickler argues, it was an unintended shift; in the 1160s the idea that the clergy ought to control the lay sword was not yet widespread. Gratian did not argue that the clergy had a naturally superior role – far from it. He was concerned that the clergy could not shed blood and thus could not effectively discipline those whose crimes put them outside of

⁷¹ Charles Duggan, "The Becket Dispute and the Criminous Clerks," *Bulletin of the Institute of Historical Research*, #35 (1962), p. 27.

⁷² Barlow, *The English Church*, pp. 308-310.

clerical discipline. The person who commits murder has already imperiled his soul; excommunication in such a case is far less of a punishment than the eternal punishment that awaits him after death. This, however, is small comfort to those who must live with the murderer in this life. Without the credible threat of corporal punishment, Gratian noted, the murderer might continue to harm his neighbors, and justice would not be done. He found in response to this problem a doctrine in civil law that would allow a separate legitimacy for lay authority, and then found canons to support it. In order for the doctrine to work, however, the lay authorities had to work independently of the clergy, so that the clergy would remain unstained.⁷³ Otherwise, the Church would be complicit in, and responsible for, acts of corporal punishment. This was clearly forbidden under canon law. The clergy involved in cases where such punishment would be appropriate could wash their hands of the matter by “relaxing” the guilty to the secular authorities. They could not, however, direct the secular authorities to perform such punishment.

When Bernard of Clairvaux wrote of the use of the lay sword “at the nod of the clergy” (*ad nutum sacerdotis*) he either did not understand the subtlety of the problem, or described a situation that existed only in a very limited set of parameters.⁷⁴ It was only later, perhaps in the 1180s, that the doctrine of ecclesiastical control of all authority began to find a voice. The discussions around this issue were beginning in the 1160s, but the stronger papal position had simply not yet found a legal footing in a world where law was increasingly important. Becket’s stand against the king may have

⁷³ Stickler as noted above on page 37.

⁷⁴ Watt, “Spiritual and Temporal Powers,” pp. 373-4.

been exciting to his followers, but they were demonstrably without an established foundation, and to the clerics trained in law they were innovative and dangerous.

The idea that Foliot or Hillary of Chichester, the legal experts, argued against Becket out of caprice does not stand up if examined from this angle. They knew the law. They were probably familiar with Gratian. Foliot, at least, had been periodically writing for two decades about the relationship that ought to exist between the two swords. He saw the same problem outlined by Gratian in Becket's use of corporal punishment against the clerk at the Church of Mary-le-Bow. When he observed Becket pushing against the king, it offended his sense not of propriety so much as his sense of law, and in response to these problems he wrote a legal response discussing the characteristics and balance of the relationship of the swords laid down by Pullen, Gratian, and others. Each time Becket vacillated, either toward capitulation or toward contumacy, it put the English clergy into greater danger.

At the critical moment at Clarendon, the bishops were faced with the document that had been prepared.⁷⁵ Unfortunately, the preamble listed the bishops whom Becket had forced to swear their assent to the customs blindly, as if to put an exclamation point on the entire business. But then Becket played his next card, which, probably infuriated Foliot more than any other single maneuver. Becket took a chirograph of the document, but refused to affix his seal to it, stating that he needed to consider whether the document was acceptable.⁷⁶ The bishops' names were prominently placed at the top of

⁷⁵ This interpretation seems to follow the course of the evidence. Foliot remarks that after they had sworn their assent, some of the older nobles went off to prepare the document. Clarendon began on January 14th, the bishops were holed up for three days before Becket agreed to the customs, but it wasn't until the 25th of January that the document was produced and the names enrolled. It is reasonable to conclude that the Constitutions were drafted during the week in between.

⁷⁶ There is some disagreement in the sources on this. FitzStephen says that Becket appended his seal, but his is the only vita that says he did so; the others are insistent that he did not. Foliot does not tell us one

the document, but Becket's was not, and he instantly began to find a way to twist out of the bargain. His followers, however, now had their names affixed to the document swearing their approval; if the provisions were in the future found by the pope to be uncanonical, the men were still bound by oath to support them, and would face the anger of either the pope or king in any dispute that might arise from them, while Becket might still come away unscathed. As Foliot puts it, Becket was already bound by the promise he had sworn, just as the bishops were. "It is written that the words of the priest should always keep company with the truth."⁷⁷ Yet Becket sent word to Alexander immediately, asking him to vacate the document sight unseen. At the same time, Henry wrote a letter asking the pope to confirm them.

Alexander III rejected them out of hand, but from this nothing can be deduced. The very suddenness of the written declaration of the customs was disturbing and alien to the incremental workings of Alexander's curia. Alexander maintained his grip on all parties by never giving an answer outright on any question of significance. The quarrel between York and Canterbury, for example, was a comparatively straightforward one. All that was necessary was to find a principle to which the court might hew, and then make a finding based upon it. Yet Alexander refused to do so, because it was in his best interest not to. The appeal process in the papal curia was inherently slow and complicated. When coupled with the pope's need to maintain healthy and friendly relationships with all of his allies, this ponderous procedure could continually issue conflicting positions and maintain a constant state of uncertainty.⁷⁸

way or the other. He seems to feel that Becket's initial promise was binding, as all of theirs had been, since a priest's words were a bond.

⁷⁷ *LCGF* #170, p. 234, *CTB* p. 513.

⁷⁸ John Moore, "Papal Justice," *op. cit.*

This indeed is one of the recurring difficulties that Foliot, Theobald and others had seen in the appellate process in the papal curia, and likely drove Foliot to tacitly accept, or at least find legal justification for, Henry's centralized system of royal justice. If a matter as simple as where the respective archbishops in England might carry their crosses could not be ironed out in the twelve years of Alexander's pontificate, one can hardly assume that his qualified rejection of the Constitutions amounted to an outright rejection of their contents. The very composition of such a written document would threaten the maneuverability of the law that was the essence of papal power; of course he would reject it. It should also be kept in mind that when Alexander issued his response to the document from Clarendon, he did so only on the *idea* of the document rather than on its actual merits, as he had no copy of it to study, and based his decision only on what Becket had suggested was their failing.⁷⁹ While Alexander released Becket from his obligation to observe the written customs, he also gave legatine powers to Henry's favored candidate, and Becket's enemy, Roger of York. Alexander, thus, was still playing both sides of the street.

While Foliot was displeased that the document had been put into writing, he did not entirely despair, and apparently hoped that the king's anger would cool. He also hoped that that since Henry had bested his annoying protégé things might return to a state of normalcy.

By this conclusion was the dispute ended; in this way was the priesthood's peace made with the kingdom. Israel went down into Egypt, from whence we read that it later came up with great honor. We also clung to the firm hope that what our lord the king was demanding under the temporary sway of anger would

⁷⁹ See Grim's *Vita*, *MTB* II, p. 383.

be restored to a good state, to God's glory and his own honor, when his passion had cooled.⁸⁰

Becket, however, armed with the right to ignore the provisions, began once again to probe at Henry:

...That first disturber of the peace (Becket) was jealous of the tender peace, and we who were already hoping to hold to the port after navigating through the hurricanes were swept into the deep by winds blowing from the North.⁸¹

Foliot says that the conflict entered a new and more serious phase with Becket's attempt to flee the realm while under the provisions of Clarendon, which occurred even before Alexander had returned his preliminary decision against them.

You had just made the solemn promise to the king that you would not leave the realm unless you had secured his license... Nevertheless after a few days you set your sails to the wind and prepared to leave the realm, with the king wholly ignorant of it.⁸²

This was an especially troubling action. Of the clauses in the Constitutions, the proscription on clerics leaving the realm without royal approval was among the less onerous. Even Anselm, who had abjured the realm in opposition to William Rufus' hostility to the Church, had done so quietly and with the king's permission. Likewise, he had waited until Henry I had asked him to return to do so.⁸³

Foliot, for his part, had technically left the realm illegally with Theobald to attend the council of Rheims, as John of Salisbury was keen to remind him at around the time that *Multiplicem* was written.⁸⁴ Foliot could argue that the situations were not analogous, though. Foliot was inclined to question Stephen's legitimacy, and although

⁸⁰ LCGF #170, p. 234, CTB p. 513.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Barlow, *William Rufus* (London: Methuen, 1983) pp. 300-307.

⁸⁴ John of Salisbury, *Historia Novella*, pp. 29, 51-2.

the pope was at the time recognizing Stephen's right to sit the throne, the matter was still under adjudication and no final pronouncement had been made. Theobald's flight was certainly not as legally awkward as Becket's attempt to flee, since the latter did so immediately after swearing that he would not, another violation of Becket's word. Foliot claimed that Henry was astounded (*stupuit*), which is likely true, and that he feared that if Becket had arrived in France the opinion of the Church and the commons would be that the king had "ejected Christ's minister from the kingdom after breaking into the wild fury of a tyrant, due to his hatred for Christ."⁸⁵ Here Foliot drifts into uncomfortable hyperbole, as he does in the next clause, "He would rather have received a mortal wound at your hand than have incurred this injury to his reputation throughout the whole of the Christian world, through you and yours."⁸⁶

Becket made another attempt to flee in the summer of 1164, but the king treated the incident with outward levity. He is reputed to have joked on the archbishop's return that Becket must have concluded that the Island of Britain was not large enough for the two of them.⁸⁷ Although Henry did not hold Becket liable for his attempt to flee under the provisions of the Constitutions that he had sworn to abide by earlier in the year, the friendly basis of their relationship was ruined.⁸⁸ Henry found the excuse to destroy Becket in, once again, a legal matter where Becket had ignored custom. Foliot observed how, in response, Becket claimed that any attack on him was an attack on the Church itself, attempting to insulate himself from punishment with the clerical loophole. Once

⁸⁵ *LCGF* # 170, p. 235.

⁸⁶ *Ibid.*

⁸⁷ Herbert of Bosham, pp. 293-94.

⁸⁸ Warren, p. 485.

again, Becket demonstrated his lack of understanding of the proper roles of temporal and spiritual authority.

6.5. BECKET AS CRIMINOUS CLERK: THE COUNCIL AT NORTHAMPTON

The events that culminated in the council at Northampton and Becket's flight to France began with a case involving disputed land tenure, brought by one of the most fanatical of the Angevin supporters, John the Marshall.⁸⁹ John claimed that a particular property on one of the manors belonging to the archdiocese of Canterbury belonged to his family, and sought in the bishop's court, before Becket, to regain lawful possession. Becket found against him, summarily, and dismissed the case, whereupon John took the case before the royal justices complaining that he could not get satisfaction in the case. Henry called Becket to answer the charge, and Becket refused to come, despite the fact that he was legally obligated to do so. Foliot's account of Becket's action is simple and direct:

A citation was issued to you by our lord the King, that your highness present himself before him on a particular day, so that he might by his own examination complete what had not been done at his command, and terminate the case by a final judgment. You did not allow the citation to be served, but you sent him a reply declaring that you would not obey him in this matter.⁹⁰

⁸⁹ John was a long-time supporter of the Angevin cause. During the Anarchy; when Stephen threatened to kill his son, William, who had been a hostage in the royal court, John had replied to the king that he might as well go ahead and slaughter the child, as he had the "hammer and anvil to produce more nails." John's history demonstrates a fairly fanatical devotion to Henry and his family; it would be in keeping with his character to oblige the king by bringing a baseless case before the archbishop in an effort to trap him.

⁹⁰ *LCGF* #170, p. 235, *CTB* p. 515.

The transmission of the reply may well have been a slap back at Henry for making the request through his sheriff rather than through more personal and dignified channels. In any event, the move was uncalled for, and, like the attempts to leave the realm, likely breached customary law.

Why Henry used this case instead of the earlier cases of attempted flight may be due to the fact that in the case of John the Marshall the king had the archbishop dead to rights, and not on a thorny question of religious authority that might be abrogated by the pope, if Alexander finally chose to condemn the Constitutions. In the purely secular case of Becket's refusal to either properly assain himself or appear before the king, there could be no doubt that the archbishop had transgressed, and not even his own bishops, who were royal barons as well as spiritual leaders, could ignore the insolence.⁹¹ Years later, some of the *vitae* authors claimed that the archbishop had sent the excuse of illness, but none of the earlier accounts mention this, nor does the earliest, Foliot. William FitzStephen writes from his own memory of the events, saying specifically that "with respect due to the king and the oath to liege homage... (Becket) had little defense or excuse; ...he had neither come nor pleaded sickness nor urgent business."⁹²

Becket was only summoned once, however, and most proceedings against a person so accused would give him more than one chance before dropping the entire weight of legal authority upon him. The alacrity with which the king summoned Becket to Northampton may tell us something about his mindset. For Henry, the case combined

⁹¹ According to Glanville, there were somewhat formal procedures for declaring ones inability to answer a legal summons (the term commonly used was "assain.")

⁹² Eg. *MTB* III, p. 52. There are a number of sources on whether Becket had an excuse for not properly essoining himself. Knowles has the best discussion of the matter in *ECTB*, pp. 69-70, n. He concludes that Becket did not have a proper excuse, and even if he did, he did not give the excuse in the proper fashion. Therefore the king had every right to call him to Northampton to answer.

all of the elements he needed: an aggrieved baron being denied land that the archbishop kept for himself; a clear-cut case of the archbishop ignoring his secular legal responsibilities; and a distinct assumption on the archbishop's part that he had the same rights as the king, in an area where this was clearly not so. The king might send for Becket to respond in person on a secular matter; it was not the bishop's right to refuse on such a case any more than any other baron had that right. In the face of such determined insolence any other baron of the realm might be deprived of his land, and, to the mind of the other barons, rightly so. The law, in its administration by the king, needed to be upheld, or the fragile structure of medieval government might quickly unravel, as it had during the years that preceded Henry's reign. The case he had against Becket was airtight, and so Henry issued a summons for the archbishop to appear before his court, not to answer on any charge related to Clarendon, but on the simple charge of failure to appear. It was demanded that Becket make an appearance at the royal residence of Northampton the following month, October, for trial.

Foliot's account of the proceedings at Northampton actually downplays his own role there, which was a significant one. As the other secular barons, the bishops were called to sit in judgment of Becket's secular misdemeanors. There are a number of versions of what happened at Northampton, at least seven of them, including the *vitae* of Herbert of Bosham, William FitzStephen, Edward Grim and Alan of Tewkesbury. Among the accounts, though, only Foliot sat upstairs in the hall with the barons and bishops as the case was deliberated. His account again is the one closest in time to the actual events, and the only one to dwell at enormous length, several pages, on the specific legal issues at stake.

Becket arrived on the sixth of October. He knew the severity of the charge facing him, but it is unlikely that he could have surmised that Henry planned to break him completely at the conference. The archbishop swept onto the scene displaying anything but penitence for his misdeed, or the humility that some priests, like Foliot and Theobald, would have expected from the primate of England. Rather, he came with a retinue of some forty clerks, as well as assorted priests and monks, and his escort of knights.⁹³ They found Henry away hunting for the day and their allotted rooms occupied by the seneschal of Normandy and his retinue.⁹⁴ Becket and his group took up residence in the local Cluniac monastery and sent word to the king requesting him to clear their quarters, which Henry did. The trial opened two days later on Thursday, October 8, 1164.

In Foliot's account of Becket's tribulations, the themes of pride and inexperience on the part of the archbishop are repeatedly stressed. Becket's arrival with so great a party, almost as large as the royal household, impressed Foliot unfavorably. It is with this typical lack of humility that Foliot leads his description of the first day of Becket's trial. He uses the words "dignity," "restraint," and "elegance" in his description of the assembled nobles, juxtaposing their impressive mien against Becket's petulant behavior:

The people assembled as one man, and when all had taken their seats according to their dignity and rank, with becoming restraint and elegance (the king) set forth what has been said concerning the spurning of his mandate as a charge against you. Then, without waiting or asking for the advice of your brethren, you confirmed what he was alleging by your hasty confession, adding that you had not obeyed the king's mandate because John, who had brought the king's

⁹³ Anonymous (I), *MTB* IV, p. 45.

⁹⁴ FitzStephen, *MTB* III, p. 49.

mandate to you, had sworn not in your presence, but on a particular troper he had produced.⁹⁵

Unfortunately, however, this was not a defense against the initial charge that had brought him before the king. As Foliot puts it, “It was said in the assembly that this was not the kind of case in which the royal mandate should have been disregarded, and that in offenses of this kind it is of the custom of the realm for the king’s claim to be satisfied with a monetary fine assessed at this mercy.”⁹⁶

Foliot states that Becket assented to this: “Your highness submitted to a royal sentence, being wary of a full judicial settlement.”⁹⁷ Foliot skips over the evident discussion in the king’s chamber that ensued and is mentioned in several Becket vitae. Both the secular barons and the bishops believed that Becket was guilty, but neither group wanted to pass a sentence upon him. The bishops claimed that it was a secular crime, so that one of the barons should be the one to give him the news. The barons on the other hand claimed that Becket was not a layman, and thus one from the Church should inform him that a judgment had been entered against him and a fine had been assessed. Ultimately the task was given to Henry of Winchester, the eldest of the bishops present, with the most impressively noble pedigree. He came down from the upstairs chamber and delivered the message to Becket, who later expressed indignation that any of the bishops had taken part in a proceeding against him.⁹⁸ Still, a number of

⁹⁵ *LCGF* # 170, p. 235, *CTB* p. 515. In other words, John did not actually take an oath in Becket’s presence by placing his hand upon a Bible, but rather pretended to do so by placing his hand on a troper, or missal.

⁹⁶ *ibid*

⁹⁷ *ibid*

⁹⁸ Duggan ponders why the bishops were willing to go along with the initial charges that were laid against Becket at Northampton, concluding that they did not realize that Henry was going to continue to bring charges against Becket until he was ruined. When they decided finally that the king had gone too far they put their feet down and refused (*Thomas Becket* p. 81). It is difficult to understand her confusion here, however. To the earliest charge, on the failure to answer the summons, Becket agreed to accept the

bishops swore surety for the fine imposed upon the archbishop, and there the matter should have dropped.

Unfortunately, Henry was not finished. He had the evidence he needed against Becket, he had succeeded in getting the bishops to go along with him against their leader. He probably decided that he would never have as good a chance to eliminate Becket as the one that presented itself at that particular moment. And so, Henry began to require Becket to answer for a series of debts. As Foliot and the rest of the assembled Churchmen watched in mingled dread and disgust, the king demanded that Becket account for a series of loans for which he had acted as guarantor when he was still actively working as chancellor. Becket demurred, claiming that he did not have the books ready before him to answer the charge, but Henry pressed the matter, pushing the bishops and barons, most of whom by this time felt uneasy about what was happening, to condemn the archbishop. The potential fines that Becket was facing grew to staggering proportions over the course of the day. While initially a few of the other clerics and a few laymen agreed to stand surety for the debts, it became clear that Henry

sentence, so there is no confusion on that point, though it should be noted that the vitae describe Becket's anger afterwards (on Tuesday) that the bishops had taken part. Moreover, the penalty for such a crime, Foliot again tells us, was a fine and nothing more. The series of financial questions, charges of embezzlement, concerned the period when Becket was chancellor, not bishop. The suffragans had no cause to intervene on his behalf as a cleric, and as secular lords they were responsible for adjudicating these matters. They may also, as Barlow offers, have felt that Becket was paying the price for his fanciful behavior as chancellor, and thus may have felt no interest in stepping in on his behalf. Alan of Tewkesbury (*MTB* II, pp. 326-28) says that the bishops on Saturday discussed how the entire matter was personal and had nothing to do with an attack on the Church. However, the charge brought on Tuesday was immediate and of a different nature altogether. Knowles points out that the new appeal was contrary to Clarendon (*ECTB* p. 79), but there is more to it than that. Becket's attempt to enjoin the bishops from passing further sentence on him was in act of treason, in that it obligated a group of the king's lords to not perform their lawful duty for the crown. Duggan's assertion that they realized finally that the king was acting unjustly is bewilderingly incorrect. The problem was that they knew that Becket was acting contrary to the law, and when the king heard what Becket had done that morning, he demanded that they lawfully find him guilty of what was now a very serious charge which might involve his death or mutilation. Becket was clergy – they did not want the thought of his blood on their hands, and thus at this point their protestations become strident.

was inclined to ask for a detailed expense sheet ranging into the entire royal outlay for a period of several years, and there was no one within the kingdom who could have covered that sort of sum.

The meeting dragged on all of Thursday and through Friday as well, while it became clear that Henry was bent on ruining the archbishop. He called a number of times for guidance from his bishops. Late in the afternoon on Friday, after the king had demanded an accounting of all of the empty abbacies and benefices that he had controlled, a sum that could exceed 30,000 pounds, the bishops assembled to give Becket advice.⁹⁹ Alan of Tewkesbury writes that Foliot then reminded Becket of his humble origins, and of all that he owed to the king in his rise to the top.

Alan's comments seem in line with the themes of humility and loyalty that Foliot expands upon throughout *Multiplicem*.¹⁰⁰ Foliot intimates at a number of points that the archbishop's actions had been whimsical and dangerous, and also frankly disloyal. Not only does he mention throughout the letter that Becket owed a great deal to the king, but it is interesting how he slides more oblique attacks against Becket's loyalty into other contexts. For example, as he sarcastically describes the heavy-handed way that Becket had used the might of the king to guarantee himself the archbishop's throne, he also notes that he had bitten another of the hands that had fed him well: "After a while Richard de Lucy, that great and wise master of the kingdom, whom you have now likewise fittingly and deservedly binding by the chains of anathema, was sent

⁹⁹ On the debt, see Herbert, *MTB* III, p. 300. Herbert, Alan and FitzStephen all discuss in varying detail the advice that the bishops gave to the archbishop.

¹⁰⁰ Alan of Tewkesbury, *MTB* II, p. 326.

from the side of our lord the king (to force the candidacy of Becket onto the suffragan bishops).”¹⁰¹

Foliot’s advice to Becket as they sat in the room at Northampton was to swallow his significant pride and resign the archbishop’s throne. There would be no appeasing the king at this point and it would be fruitless to try to do so, and any continuance of this disturbance could cause damage to the church. This suggestion met with both agreement and disagreement. Hilary of Chichester agreed that under the current circumstances that it seemed the most logical alternative. Henry of Winchester, however, who had already tried to buy Henry off of Becket’s back through a payment of two thousand pounds, argued that for Becket to resign would set a dangerous precedent. In the future, anytime that the king disagreed with the Church he might go after the clergy, an intolerable situation. Foliot considered this, but in view of the options, as Hilary stated, there were no rational alternatives.¹⁰² The discussions continued on and off for the next day, as the pressure on Becket continued to rise. By Friday evening the lay barons stopped coming to see him, increasing his sense of isolation.

On Monday, Henry demanded that the assembled barons make a decision on Becket’s case and find him guilty not only for the money that he owed, but also for treachery in going back on his word at Clarendon. Since both cases were secular ones, the bishops were placed in an extremely awkward position. The proper verdict upon the evidence was clear; they had seen Becket take the oath and they had seen him try to wriggle out of it, and they had seen that he could not account for large sums of money

¹⁰¹ *LCGF* #170, p. 231. “Ex intervalluo directus est a domni nostri Regis latere vir magnus et sapiens moderator regni Ricardus de Luci, quem laquies anathematis innodatum hodie digne sic merito honorastis.”

¹⁰² FitzStephen, *MTB* III, pp. 54-56 for more on the debate and discussion among the bishops.

that had been in his care before he became archbishop. Whether he could have done so at another time was immaterial. Foliot, in fact, on Saturday had tried to delay the verdict until the records could be brought to the court, but Becket rebuked Foliot for this presumption, declaring that he had never stated that he would produce the documents.¹⁰³ Thus, there was reason to doubt that Becket could ever come up with them, and therefore appeared guilty on these charges. Regarding the breaches of the Constitutions of Clarendon, the Pope had repudiated them, but the English bishops themselves had sworn to uphold them. Henry was in a position to accuse them of treachery if they did not declare a verdict with the lay barons. Indeed, the assembled discussed other, earlier, cases of clerical treachery, including those of Stigand, Arnulf of Seez, and Odo of Bayeux.¹⁰⁴ The bishops were aware that the customs of the realm certainly permitted them to weigh in on this type of issue, and the king might insist that it was their duty to do so. And the fundamental difficulty that they faced, what underlay the entire question of their participation, was that Becket was guilty, and they knew it. They knew that the king was attempting to destroy him, and they might have felt that it was unfair or even cruel, but they knew that on the charges of not appearing when summoned, and probably on the charge of attempting to flee the realm without royal license, the king had the archbishop dead to rights.

¹⁰³ Alan of Tewkesbury, *MTB* II, p. 239. Foliot's actions might be construed as either an attempt to buy time or as an attempt to push the archbishop to accept the judgment of the court, or both. Foliot claims that he wanted Becket to accept the court's verdict, because he believed that the archbishop could beat the charge by a claim of the civil device of "*in rem versum*." For more on this, see below, "Making the Case for the King." Becket's startled reaction might have been countering either move, or both.

¹⁰⁴ FitzStephen, *MTB* III, p. 65. Each of these clerics had been charged with wrongdoing. The most on point of the three cases would be Odo, who had been found guilty of defrauding the crown and had been forced to return several properties. He had also taken arms while under holy orders.

On Tuesday, Becket worked several clerical maneuvers to try and keep the bishops from entering secular judgments against him. First, he berated the bishops, who had been for the previous days under enormous coercion to render judgments against Becket, for participating and entering judgments against him. He also shot off an appeal to the pope to invalidate any judgments against him by his juniors. Then, he forbade them from entering any judgment until the pope had settled the matter. He also ordered them to excommunicate any member of the laity, any of the barons, who might find against him.¹⁰⁵

This was a clear attempt to circumvent royal justice to save his own skin, and one that Foliot could not evidently countenance, because from this point Foliot began to work actively against the archbishop. Later political theorists in England would make much of the legal concept of the different bodies a man might occupy in various aspects of his life, which played such a crucial role in the English Civil War, but the roots were growing in the twelfth century.¹⁰⁶ The barons had every right according to customary law to find civil judgments against the physical body of the archbishop, as they had done in the past in the cases of Odo of Bayeux and William of St. Calais.¹⁰⁷ Insofar as Becket was acting as a representative of the king, he was one of them, and they owed a duty to the king to bring him into the fold of justice. Becket had already tacitly acknowledged this on the first day of the council when, as Foliot bitterly reminded him, “Your highness submitted to the royal sentence.”¹⁰⁸

¹⁰⁵ FitzStephen, p. 64, says the appeal occurred after the council had met on Tuesday; Herbert of Bosham, p. 302-303., says that it happened that morning.

¹⁰⁶ Ernst Kantorowicz, *The King's Two Bodies*, reprint edition (Princeton: Princeton University Press, 1997).

¹⁰⁷ On these trials, see Orderic Vitalis, III, pp. 188-92; and Symeon of Durham, I, pp. 170-95.

¹⁰⁸ LCGF #170, p. 235.

Thus, Becket's attempt to forestall any judgment against himself violated the spirit of justice in a number of ways, seemed unacquainted with the common law of the realm, denied the judgment he had himself accepted before the king began to put the financial screws to him, and seemed simply cowardly as well. It also tried to use the clerical sword, in a way, to circumvent the valid authority of the lay, and imperiled the souls of Becket's suffragans who had taken binding, legal oaths to the king. In response, Foliot sent an appeal of his own to the pope, hoping to forestall the archbishop's attempts to force his suffragans to excommunicate on the basis of lawful decisions on secular matters, for in doing so the bishops responsible for the excommunications would imperil their own souls.¹⁰⁹

Then, Becket seized the opportunity of a mass to further intimidate his detractors from finding against him, again using the threat of ecclesiastical sanction to undermine royal authority. He chose a votive mass for St. Stephen, with the useful introit text taken from Psalm 119, "Even though princes sit and talk against me, your servant meditates on your statutes." If this attempt to link his fate to a higher cause in the Church fired up sycophants like Herbert of Bosham, it had the opposite effect on Foliot, who watched the circus with growing anger.

Becket tried to leave the church and proceed to the hall still wearing his clerical vestments and pall, but two Templars who were present would not allow the archbishop to use his office in this way. After removing his vestments he rode to the castle with a few of his supporters. When he passed the gates, he dismounted, and struck perhaps with a new idea, took his heavy cross from the bearer and proceeded to carry it across

¹⁰⁹ Herbert of Bosham, *MTB* III, p. 303.

the courtyard to the entrance to the hall. At this, Foliot finally snapped, along with several of the other bishops. The cross represented the metropolitan see of Canterbury, and in a sense the entirety of the Church. They grabbed the cross, trying to wrench it from Becket's hands. A weird tug of war ensued. Foliot spat in exasperation at Becket, "If the king were to brandish his sword as you brandish yours, what hope can there be at making peace between you?"¹¹⁰

This particular image, of Foliot and Becket wrestling with the cross, is brilliantly evocative of the stakes as Foliot saw them, the moment when Foliot's attitude toward Becket was most visible. What Foliot wanted, ultimately, was peace between the parties, because it was only through peace that the vital work of the Church might be achieved. Much of Foliot's adult life had been formed by the situation where the Church suffered because her aims had diverged from the king's, because the king had been unable to fulfill his role as the keeper of the peace. Becket threatened the accord that had grown since the long years of the Anarchy. Unwilling to seek that accord without a wholesale capitulation on the king's part, the archbishop had brought from his arsenal the ultimate weapon.

Worse, he had brought this weapon not because of an attack on the Church; he had not brought it out at Clarendon when the bishops truly were united against the attack of the king. Instead, Becket had brought it out when he personally was facing destruction. Foliot feared that he would bring the Church down with him in another nightmarish conflict. The comment on the swords, that the king might brandish his as Becket brandished the ecclesiastical in the form of the cross, is the perfect summation

¹¹⁰ FitzStephen, *MTB* III, p. 57ff.

of Foliot's political theory. The phrase echoes through twenty years of his writings, through Gratian and the canonists, and is recorded not by himself in *Multiplicem*, but in a vita written by one of Becket's most ardent supporters, who like the archbishop was wholly untrained in law.

Most of Becket's biographers are proud of the archbishop's behavior at Northampton, because in comparison to Henry's, Becket's actions seem almost unobjectionable. But his supporters wrote from the distant vantage of the era after Becket's murder. In truth, Becket's behavior at Northampton was ultimately as disgraceful as Henry's, as the archbishop would as much as admit later in life, when he despaired of his retreat to France and told Herbert of Bosham that he would not run again. If Becket truly believed that Henry meant to kill him, and he believed that it was the Church that Henry was ultimately threatening, then Becket should have stood his ground and accepted the martyr's death that was granted to him. Instead, he gathered the appurtenances of the Church around him as armor, to dissuade the king from taking his life, or worse, throwing him into a dungeon to be forgotten.¹¹¹

Ultimately, the problem was that Becket equated an attack on himself as an attack on the Church. William FitzStephen reports that he said as much to Foliot as they

¹¹¹ Duggan takes Becket's part in this, saying that if the archbishop had yielded to the king, then the rights of the Church would have been curtailed. She allows Becket to associate himself fully with the Church, rather than seeing as Foliot would, that his dealings with the king were separate from his position as bishop (*Thomas Becket*, pp. 76-77). Both Alan and FitzStephen note that the bishops saw the quarrel as between Becket and the king personally, which indicates that not only Foliot but many if not all of the suffragans shared his view. Even Henry of Winchester realized that the quarrel was a personal one – he simply wanted to pay the fine for Becket in the hopes that any collateral damage to the Church might be minimized. Even if Duggan's acceptance of Becket's role is allowed, the archbishop's behavior is nonetheless distasteful. Warren's evaluation of Becket's performance is crueler, but likely closer to the mark, given the historical record. He writes that it was the threat of a sentence that would imprison Becket and remove him from the public eye that spurred his desperate attempt to armor himself with the Church, "Becket was not yet ready for martyrdom – and never for this kind of martyrdom. (*Henry II*, p. 489.)

wrestled: “(With the cross) I would preserve the peace of God, of myself and of the English Church. You will say as you please, but if you were I, you would see things differently.”¹¹² Foliot saw this as showboating, as another example of the archbishop’s massive pride. He realized that it was possible to be a good and loyal cleric without following Becket, who was not the Church itself, but merely one of its representatives. Becket’s vanity, however, could not allow for this interpretation. His humble origins led him to value his image exceedingly, and he could not allow such ignominy to define his life. He thus gathered the Church around him like a shield.

Foliot regarded this behavior as sinful. Becket used spiritual authority to protect himself from lawful punishment for a temporal crime, another hideous blurring of the proper relationship between the powers. In the process he continued to damage the Church that Foliot loved. Besides, there was no serious threat to Becket’s life, as Foliot wrote repeatedly in *Multiplicem* - this indeed is one of the principal themes throughout the letter. “The death that no one cared to give you” is the blistering summation of Foliot’s contempt for Becket’s posturing. Finally the archbishop wrenched the cross from the bishops and strode to the door, remarking, “I know what I’m doing.” When asked by one of the archbishop’s men if he would allow the archbishop to carry his own cross, Foliot replied, “He always was a fool and he always will be a fool.”¹¹³

When Foliot and the bishops again convened with the king they informed him that the archbishop had enjoined them from passing sentence upon him and had sent an appeal to the pope on the question of whether a bishop could be tried by his inferiors.¹¹⁴

¹¹² FitzStephen, *MTB* III, p. 57.

¹¹³ The phrase is captured in several of the *vitae*; FitzStephen, *MTB* III p. 57, eg.

¹¹⁴ Foliot sketches the arguments and their canons in *Multiplicem*, pp. 234-5. See below for a discussion of them.

At this, Henry instantly demanded a decision on his actions, as now he had appealed directly to the pope without the king's permission and instructed his vassals (in the form of his bishops) to disobey their own responsibilities to the king, in addition to the other instances of treachery that Becket had already faced. Henry was oblivious to the entire cross issue, or if he knew about it, it didn't faze him. The bishops, however, were desperate to find a way out of their dilemma. Although Foliot had written the appeal to the pope, they were still bound canonically by the archbishop's order, and as a block they refused to pass sentence upon him. In the midst of the furious debate, Henry of Winchester came down again to Becket, but this time he urged Becket to resign.¹¹⁵ Others followed, begging the archbishop to yield, but Becket was unmovable.

Finally, Foliot, Hilary and Roger of York presented a compromise to the king. If he would free them from their oaths to pass judgment on the criminal charge, they in turn would immediately write an appeal to the pope indicating that Thomas had committed perjury and that he had sworn his bishops to do the same, and that on these grounds he should be removed as archbishop.¹¹⁶ The suggestion had some teeth, because Alexander had not yet found entirely against the Constitutions and Roger was currently papal legate. Becket's behavior had been outrageous; there was a case against him, and the legate and the two most august minds in Romano-canon law were willing to draft the appeal. Henry took the deal.

Here again is evident the connection between Foliot's thinking and that of Gerhoh of Reichersberg. Gerhoh proposed exactly the same procedure to deal with a bishop who had violated his oath, so the idea of presenting such a case before the pope

¹¹⁵ Grim, *MTB* II, p. 395.

¹¹⁶ Anonymous (I), p. 49.

was not without foundation.¹¹⁷ The fact that Henry readily agreed to the compromise indicates his impression of the papal mood – he thought that Alexander was on his side, and not on the side of the archbishop, or that he at least had an open mind. The Council of Tours and the visits of Philip of Aumon and Arnulf of Lisieux counseling accommodation with the king were less than a year in the past. Henry believed that he and the pope had common ground in their dislike of Becket's stance. There is nothing in the record to suggest that Henry was yet threatening the pope in any way, nor that he had any inkling that Alexander might find summarily against him. Up until this point Henry had seen the him try to appease both sides in decisions that were fairly just, all things being equal. Henry's willingness to take the deal also indicates that both Henry and the bishops actually believed that Becket was guilty, or at least that there was a case to be made that he was. If they had not, Henry would hardly have let the bishops off of the hook so easily.

Foliot along with the rest of them now descended to the lower chamber where Becket waited, relieved that the weight had been at least shifted from his shoulders if not entirely lifted. It did not appear that his bishops would help the king to take him into custody. It might still happen, but he would not be taken easily. Without the bishops' cooperation to give a religious patina to the proceedings, few men would dare to join in the king's condemnation. The clerics were now bound by the Pope's future decision. Becket also believed, as much as Henry, in the rectitude of his position. He could face the Pope with a clear conscience.

¹¹⁷ Knowles, *ECTB*, pp. 82-3.

As they sat on the bench and the barons continued to argue upstairs, Becket told the bishops that he had never agreed to anything at Clarendon that conflicted with his vows, and that the pope would realize this. This comment must have raised an eyebrow or two, for the characterization was nothing like what they had committed themselves to, and if it had indeed been so light, they would not now be hunkered on a bench in the king's castle, listening to the shouts that still might determine the archbishop's fate. Foliot wrote, "...you had just made a solemn promise to the king," and, "The words of a priest should always keep company with the truth."¹¹⁸ He accepted none of Becket's attempts to turn from his responsibilities. Hilary of Chichester went further and argued with Becket in the chamber, stating that the entire mess that the Church in England found itself was the archbishop's fault and no one else's. He had required the oaths and then required that they should break them. Small wonder that the king was enraged.¹¹⁹

Soon afterwards the barons came down from the king's chamber preparing to pass secular sentence on the archbishop for the secular crimes he had committed. Still, it was no small thing to pass sentence on the ranking representative of the Church in the realm, and the earl of Leicester, who had been delegated the responsibility, stammered over the task, until finally foisting the job onto the earl of Cornwall, who stood beside him.¹²⁰ Becket, sensing an advantage in the earls' indecision, sputtered with rage that they had no right to pass judgment upon him, or even to lay hands upon him, and he would not accept or submit to their judgment or sentence.¹²¹ It was never revealed what

¹¹⁸ *LCGF* #170, p. 234, *CTB* p. 513

¹¹⁹ FitzStephen, *MTB* III, pp. 65-6. That one of Becket's biographers would report these comments that tend to denigrate Becket gives further credence to their accuracy.

¹²⁰ *ibid*, p. 67.

¹²¹ *Ibid*.

the barons had decided, and the clerics had already left the room when the barons took up the question on their own, so all were in the dark. Becket swore at a few of the barons and knights present – he called one of them a pimp and told another that if he were not a clerk he would have run him through. Taking again his cross in hand, this time more like a physical weapon, he swept from the room and into the courtyard where he mounted his horse and rode off.¹²² At Foliot's prompting, Henry gave an order that under no circumstances was the archbishop to come to harm at the hand of any of his men.¹²³

Later in the evening, Foliot and Hilary came to discuss the matter with Becket, who was at dinner. They told him that they had come to an agreement that would save the situation and keep Becket in his see. Becket would need to turn over two of the properties held by Canterbury and contested by the king. To the lawyer-bishops it must have seemed an equitable solution. Becket had committed a crime, of that there was no doubt in their minds, the Church in England was laboring in danger, and all that was being requested were two parcels of land, one of which was already in the king's possession.¹²⁴ Becket refused. He claimed that the king held the parcel unjustly, and that he would not trade the possessions of the Church in an unjust solution. Foliot and Chichester withdrew in frustration, and later that night Becket fled from the realm. He would not return to England for five years.

In the interim Foliot became the de facto leader of the English clergy and developed his own relationship with Henry II. As much as possible, he and Henry

¹²² Several *vitae* describe this scene: Ibid, pp. 67-8; Grim, *MTB* II, p. 398...etc.

¹²³ William of Canterbury, *MTB* I, p. 37.

¹²⁴ Ibid, ff.

worked toward the same goals, crafting law that delineated spiritual and temporal authority, yet encouraged those authorities to work in cooperation. Nonetheless, there were periods when Foliot found himself in uncomfortable opposition to the king. His was the unpleasant duty to act as a conduit between the pope and the king during a period when their aims were at times opposed to one another. This was especially true in the monetary disputes that arose when Henry tried to keep the revenues of benefices unoccupied due to the archbishop's self-imposed exile.

Foliot also noticed with irritation that as the exile lengthened into years, and the archbishop's rhetoric grew strident, that Becket continued to wrap his missteps with the cloak of religious devotion. Becket likely believed that his actions, or at least most of them, had been the correct and pious things to do, including his attempts to expand the prerogatives of the Church. Foliot, however, did not see it that way. For Foliot, the dispute had always been about Becket's misunderstanding of the proper relationship between the Church and the king. It was furthered by actions that were demonstrably illegal on the part of the archbishop, ending with Becket's illegal and cowardly flight. The correspondence grew increasingly caustic over the spring of 1166, and culminated in the exchange that led to *Multiplicem nobis*, the circumstances of which will be taken up in the next chapter.

CHAPTER SEVEN: THE FINE LINE

7.1. CRAFTING THE RELATIONSHIP WITH HENRY

It is tempting to assume that Foliot and Becket's supporters hated one another in the aftermath of the run from Northampton, but such would be an anachronistic view, as things were in actuality much more complicated. The bitter antagonism between Becket's camp and Foliot's took time to develop, during which Becket was forced into (and then embraced) a life of poverty and reflection, while Foliot tried to maintain some balance between a dangerous and angry monarch and the Church he had served for most of his adult life. The periodic shafts sent across the channel by the archbishop made Foliot's job of containing the king's wrath against the clergy and the pope increasingly difficult. When Becket finally accused Foliot and the clergy in England of disloyalty and, worse, cowardice, Foliot responded with *Multiplicem*. The letter was written in anger, but its content, as this study has attempted to show, was not unreasonable.

Foliot remained for a time on good terms with several of Becket's supporters. John of Salisbury wrote to Foliot in around November of 1165, making "overtures to the bishop of London who is said to stand highest in the king's favor," to "do what he could to reconcile me with the king."¹ Salisbury was on the outer reaches of Becket's

¹ Salisbury to Bartholomew of Exeter, *MTB* V, p. 544.

orbit, and was always more hopeful than stalwarts like Herbert that an accord between the archbishop and the king might be found.² Salisbury's faith that Foliot would work on his behalf shows that the battle lines between Foliot and Becket's camp had yet to solidify. Moreover, as things began to shake out it appeared that Foliot was the ranking churchman in the diocese of Canterbury, if not in the entire realm of England, Archbishop Roger of York notwithstanding, and was thus responsible for administering the see for the benefit of the archbishop. Henry had already begun referring to Becket as the "former archbishop," but Foliot had the luxury of no such illusion. Becket, exiled or not, was still the leader of the English Church, and in the performance of his clerical duties, Foliot was beholden to his rank, regardless of his personal feelings.

A few days after Becket's departure to France, Foliot made the trip to see the Pope at Sens, along with Hilary of Chichester, Roger of York, Roger of Worcester, and Bartholomew of Exeter to argue the case they had sworn to make in the negotiation with Henry at Northampton. Their instructions were very clear and specific: they were to ask only about the unfitness of Becket to hold the office. They were not to engage in any argument with the archbishop or his supporters before the papal curia. They were to wait for three days for a response, and if none came they were to return immediately to English soil. All of these Foliot and his comrades did. According to Herbert's account of the event, Foliot spoke so harshly of the archbishop that Alexander actually told him to tone down his rhetoric, as he was doing more harm than good to his own cause. Likewise, Hilary, an old stalwart of the papal curia, made an embarrassing pun that caused the assembly to burst out laughing. Roger of York stepped forward to cover the

² Barlow, *Thomas Becket*, pp. 130-31.

confusion, and then finally Bartholomew made the final entreaty to the Pope to make a speedy finding in the case.³

Alexander, of course, would do no such thing, “speedy ruling” being a phrase foreign to his nature. Herbert’s recollection of Foliot’s heat may be an accurate representation, although it might not be. It was written more than twenty years later, and by that time Foliot was dead, and Thomas had become wildly famous as a saint and martyr. Foliot was certainly still angry over Clarendon and Northampton, and might have over-reached. If so, it is the only known instance where eloquence eluded the bishop of London. William had reason to make Foliot look small; the episode he relates might be a fabrication, or at least an exaggeration. There is even the implication of a divine miracle in that Hilary’s mistake was astounding coming from “a master of grammar.”⁴

In any event, it was not Foliot’s establishment of the facts of the case, nor Hilary’s pun, that did the most damage to the king’s cause. Rather, it was the arrival of the archbishop himself. With a flair for the dramatic, Becket tearfully laid at Alexander’s feet the chirograph from Clarendon, and removed his ring and gave it to the Pope, claiming he was unworthy to wear it. After some consideration, Alexander raised Becket to his feet, and gave him back the ring, permanently eliminating any hope that Becket’s potentially uncanonical election could be used to remove him from the archbishop’s throne.⁵ Alexander did not rule on the case of the Constitutions

³ Alan of Tewkesbury, *MTB* II, p. 338.

⁴ *Ibid.*

⁵ The incident is described in Alan of Tewkesbury, including the suggestion that getting rid of Becket might have been in everyone’s best interest. Alexander, however, decided that Becket’s fight was worth fighting, at least for the moment (Alan of Tewkesbury, *MTB* II, pp. 344-45).

immediately, but it was apparent that neither would he summarily remove the archbishop at the request of the king and the suffragans. Despite this tentative support for Becket, it was also apparent that the archbishop was an embarrassment to the Pope, and Alexander, at least for the first few years of the exile, would not allow Becket the power to do as he wished – which was to excommunicate his enemies and bring them to heel. Alexander was still, characteristically, disappointing everyone while keeping them beholden to him for future favor.

Foliot and the others returned to England with the news. Henry played a fairly devastating card against the archbishop by expelling his entire household from England, sending them into exile for as long as Becket chose to remain outside of the realm.⁶ Not all went; among others Becket biographer William FitzStephen remained. Henry also froze the assets of the see of Canterbury, preventing them from being sent to France. If Becket chose to live as an exile, Henry reasoned, he would do so without the comfort of the revenues given to the see from royal lands and holdings. Let his friends in the French king's court pay for him. Henry even demanded the holdings of the families of Becket's clerks – a fairly monstrous and unjust action, indicative of the depth of his anger. As long as Becket remained in France the hold on the archbishop's properties would be a constant problem for him, and would over time peel away some of his supporters.

This move to eject Becket's household made Foliot, as dean of Canterbury, the ranking cleric in the realm of England, save only in those districts of York and Durham.

⁶ Bosham reports this incident with the greatest pain. He evidently had enjoyed the good life that was part of living with the archbishop's court. Exile meant privation, and Herbert was clearly disappointed in his new surroundings. *MTB* III, pp. 358-60. For Herbert's dress and bearing, FitzStephen, *MTB* III, pp. 100-101.

He suddenly found himself responsible for the wealth of the see, and the collection of tithe money and its transfer to Alexander, and was thus placed in an ever-tightening grip. This new responsibility was very great, and depending upon the mood of Henry was fraught with peril. Foliot also needed to collect a royal tax for the Church known as Peter's Pence, and send it along to the pope – an unenviable task at any time and now extremely difficult given the king's anger that the archbishop still held the see, now by the pope's hand, no less. At the same time, Foliot needed to make all possible attempts to appease the pope and steer Henry away from denouncing Alexander and allying himself with the pope's enemy, Frederick Barbarossa.

It was, to put it mildly, a difficult situation, to which was added yet another bizarre twist. Foliot may have had little significant chance of being made archbishop of Canterbury in 1162, but as the acting dean of Canterbury in a situation where the king was actively seeking, and with legally justifiable cause, the removal of the archbishop, Foliot almost certainly became Henry's choice to fill the job if it were to become available. Thus the more that Foliot worked to advance the case against Becket, which he believed in, the more he advanced his own personal ambition. This would not have bothered most people, but the impropriety probably bothered Foliot a very great deal. He needed to deny the ambition others in Becket's camp were accusing him of, while at the same time no doubt secretly wondering if they weren't right, since he felt himself a better candidate than the archbishop.

Through 1165, keeping Henry from turning to the side of the anti-pope would prove one of the highest of his priorities. A number of sources indicate that in early 1165, both the Pope and Louis VII were concerned that the situation with Becket might

be driving the king to an alliance with Barbarossa.⁷ In fact, Henry already had purely political reasons to make an alliance with the emperor. A marriage between one of his daughters and the emperor's son could place an enormous squeeze on his closest rival over his holdings in Anjou and Aquitaine – who happened to be Louis VII, who coincidentally happened to play host to both Alexander and Becket.⁸ If an alliance with the Germans might scare Alexander into dismissing the archbishop of Canterbury, so much the better.

Unfortunately, in May, Henry was outfoxed by the bishop of Cologne, who put the word out that Henry's advisor, John of Oxford, had sworn an oath to Victor IV's imperial successor, Paschal III. Henry denied that he had done any such thing, and given the vehemence of his denial it seems likely that his protestations were truthful, but Becket's supporters instantly seized upon the supposed event to urge that the Pope find against Henry on the Constitutions of Clarendon and to lay an interdict on England until he made amends to the archbishop.⁹ On the other hand, the suggestion that Henry had been engaging in any negotiations with Barbarossa had unnerved both Louis and Alexander. Once again, however, Alexander was too shrewd to be swayed into hasty action on either front. He used the opportunity to lay aside the appeal of Foliot and the other bishops over the question of Becket's forcing them to act contrary to their secular responsibilities. Thus that particular card was no longer on the table for Foliot to play. However, Alexander also chose the opportunity to effectively muzzle Becket and his

⁷ John of Salisbury, for example, writes to Becket of a conversation with Louis in February, where he states that the king is less "warm" toward Becket than he had been. "On my continuing to press him he replied that though he loved your person dearly and approved your cause, he feared that if he persuaded the Pope to take any step which might lead to the alienation of the English king from the Church of Rome, he might in future be blamed for the loss of so great a friend." *MTB* V, p. 162.

⁸ Warren, p. 493.

⁹ Barlow, *Becket*, pp. 136-137.

supporters, by a letter that forbade Becket from taking any precipitous acts against the king until the following Easter.¹⁰ So the threatened excommunications were put on hold for the moment.

Alexander also wrote to Foliot, thanking him for all he had so far done, and asking him to visit the king and impress upon him his responsibility as a loyal son of the Church to the archbishop of Canterbury.¹¹ In addition, the pope continued to press Foliot heavily for the collection of Peter's Pence. Thus, according to the letter, he was to meet with the king, cajole him about his most bitter enemy, and then demand that he pay a substantial bill that had come due. It is not surprising that Alexander had to write Foliot twice before he would undertake this unpleasant assignment.¹² Finally in August Foliot took Roger, the Bishop of Hereford, to Henry's camp on the Welsh March. Henry's campaign had not gone well, but he received Foliot with at least some degree of grace. After this meeting, Foliot returned a lengthy and detailed reply to Alexander, laying out the royal position.¹³ At moments the letter is obsequious, but then other sentences read as veiled threats. Foliot dressed up Henry as well as he could, but the danger in continuing to antagonize him over the matter of the archbishop was obvious.

The king, Foliot wrote, received the bishops of London and Hereford "in a temperate manner and full of restraint."¹⁴ Henry was not, Foliot asserts, in any way interested in seeking to follow the anti-pope:

On the contrary, so long as you continue to bestow your paternal favor upon him, he will love you as a father and revere and cherish the holy Roman church

¹⁰ *MTB V (epistolae)*, pp. 179-80.

¹¹ *Ibid*, pp. 200-202.

¹² *Ibid*, and pp. 294-296.

¹³ *Ibid*, pp. 321-322; repeated in *LCGF* #155, pp. 202-206.

¹⁴ *LCGF* # 155, p. 203.

as a mother, humbly submitting him in obedience to your sacred commands, saving to himself his royal dignity and prerogative.¹⁵

The phrase he uses to describe the king's position on the customs is a slap back at the Church, "*salve sibi sua regnique sui dignitate.*" If Becket wants to continually throw such phrases at the King, Foliot advised, the king was fully prepared to throw them back. As for why the king has neglected for many months to contact the pope over this difficult problem, Foliot replies that,

...when he had stood firmly by you with his whole heart and soul, and had placed his whole mind and all his strength at your disposal, your holiness afterwards made no fitting or worthy response to him. He has been rebuffed in every request he has made to you. Still, he hopes in your fatherly goodness that he will receive less harsh treatment from you, and perseveres in his loyalty to you and to St. Peter.¹⁶

As to the question of royal permission on appeals to Rome:

He simply asserts the ancient custom of his realm, the right and duty in civil cases to hear the case first, and none of his clerks should leave his dominions unless they first have a mandate from him. Should any one of them wish to appeal to your excellency, when such permission has not been granted to him, the king would raise no objection.¹⁷

This concession, if Henry actually made it, would be a major step toward eliminating canon challenges to the Constitutions.¹⁸ Foliot may have offered it in the belief that he could actually bring the king to accept the provision, or, conceivably, he may have realized that the king was not particularly serious about it and was willing to offer it as a bargaining chip. Foliot would break the proscription on direct papal appeal

¹⁵ Ibid, p. 204.

¹⁶ ibid

¹⁷ ibid, p. 205.

¹⁸ It has been debated widely. Sayles and Richardson (*Governance in England*) argue that the initial clause (#8 in the Constitutions of Clarendon) had simply applied to cases in the archdeacon's courts. While the unrestricted appeals of Foliot and others during the crisis would support this conclusion, the prima facie case does not support their view. The clause contains no written exception.

several times over the course of the next few years, and indeed had already done so with his appeal from Northampton.

Regarding Henry's recent contact with the emperor, Foliot claims that while Henry knew Frederick was a schismatic, he did not realize that he had been excommunicated. If he had known, he would never have entered any sort of negotiations with him, in accordance with the dictates of Church law. As regards the unfortunate story that Henry's clerks had sworn an oath to Paschal, Henry was prepared to "amend the fault by the advice and decision of the Church," providing that proof of the breach could be produced."¹⁹ This is another throw-away line, as no proof of John of Oxford's oath could ever be found, and indeed Henry planned already to make him archdeacon of Salisbury, a move that would antagonize Becket the following year.

As for the archbishop himself, Becket had not been exiled by the king and was welcome whenever he chose to return.

The archbishop is free to return to his church in peace and safety whenever he is so minded; nevertheless he will have to answer for certain charges brought against him respecting a breach of the royal privileges that he has sworn to uphold. If in any instance a church or a clerk can prove that he or it has received injury from the king or his servants, the king will be prepared to give full satisfaction in accordance with the decision of the Church.²⁰

Following this essentially line-by-line rebuttal of Alexander's letter to the king, Foliot gave his own spin on the controversy, stating that of the king's position "we would that it had been more in conformity with your will." However, he continued,

We venture to bring to the notice of your holiness, that our lord the king has justified himself when he pledges himself in all matters in dispute to obey the

¹⁹ *LCGF* # 155, p. 205.

²⁰ *ibid.*

counsel and judgment of the Church in his realm, and promises on no account to hinder the return of our lord the archbishop of Canterbury.²¹

He urged the Pope to restrain his own zeal in dealing with the king. He especially and specifically implores the Pope not to excommunicate the king, as doing so “might irrevocably turn from their obedience to him – God forbid – both the English king and many of his subjects.” The stakes for the Church were extremely high. Foliot finishes the letter with a note on the difficulty of raising Peter’s Pence, which he would continue to work at for the next two years.²²

In this letter can be seen Foliot’s determination to try to keep the king’s secular authority intact, while maintaining the independence of the Church, the stance that defined Foliot throughout his career. He despised Becket as an incompetent who had generally made a hash of things, but still hoped for the best in these early months of exile, before positions on both sides became obdurate. Through the fall and winter of 1165 this hope was extinguished, and by July of 1166 Foliot wrote his masterpiece of vitriol, *Multiplicem nobis*.

7.2. “MANY THINGS TO US”

The circumstances that produced *Multiplicem* had to do with Becket’s increasing marginalization over the winter of 1165-6. With the weapon of excommunication apparently denied him, and with it his ability to harm Henry directly, the king simply stopped communicating with the archbishop. Henry, angry and sensing advantage, had

²¹ *ibid.*

²² See *LCGF* letters 156 and 179. Foliot was still attempting to overcome difficulties in the collection of the tax as late as 1167, though the bulk of the money is sent late in 1165 (# 156).

dug in his own heels, and had convinced himself that he could ride out the storm without being forced to reconcile with the archbishop. Foliot's letter to Alexander displays Henry's certainty that he held all of the cards. After all, the pope had muzzled Becket, no money from English lands was being sent for his support, and Foliot and the king's selected archdeacon, Geoffrey Riddell, were ably administering the see of Canterbury.

Indeed, a great deal of legal work was accomplished in the period following Northampton. Clarendon had already provided the basis for the Assize Utrum, which governed the determination of whether land was held of the king or the Church, and which was strengthened into royal pronouncement during Becket's exile, perhaps as early as 1165.²³ Even more important for the long-term picture of English common law, early in 1166 the king and his council met again at Clarendon to discuss potential ways of adjudicating criminal cases when no victim cared to commit himself to the danger of an appeal. From this came the groundbreaking Assize of Clarendon, promulgated before the eyre circuit began in the spring of that year, which introduced the forerunner of the grand jury.

Several provisions in the Assize deal with the Church, especially clauses twenty-one and twenty-two. The former enjoins any religious house in England from accepting novitiates until they have had their names cleared under the assize of any wrongdoing. The obvious concern was that law-breakers might try to enter the clergy before being brought to royal justice by the sworn oaths of their neighbors. Although there are no witness lists of the Assize of Clarendon, it would be odd indeed if, as the ranking cleric

²³ *Constitutions of Clarendon*, c.9. Charles Donohue, "Biology and the Origins of the English Jury," *Law and History Review*, vol. 17, no.3 (Fall, 1999).

in the realm, and a legal scholar to boot, Foliot were not involved in the discussions that produced the document.²⁴ His experiences during the Anarchy and his track record of distaste for impious clergy would ensure his support for a document seen by the zealots in Becket's camp as a further infringement upon the liberty of the Church. For Foliot, however, it was a completely appropriate document in line with what he had written about the independence of lay authority and his concern over the ecclesiastical courts' ability to protect itself from abuse.

Likewise, the twenty-second clause of the Assize gives power back to the Church in that it puts secular weight behind Church law. This particular provision concerned the appearance of a group of Cathars in 1165. The Assize of Clarendon strengthened their episcopal punishment by extending penalties to any who might give aid to the broken Albigensians:

Any one in all England (is forbidden to) receive in his land or his soc or the home under him any one of that sect of renegades who were excommunicated and branded at Oxford. And if any one receive them, he himself shall be at the mercy of the lord king; and the house in which they have been shall be carried from the town and burned. And each sheriff shall swear that he will observe this, and shall cause all his servitors to swear this, and the stewards of the barons, and all the knights and free tenants of the counties.²⁵

This episode and the provision in the Assize that covers it may have been made directly at Foliot's behest, as he had recently been involved in the case, as is shown in his own epistolary record. Responding to two letters from the bishop of Worcester in 1165 on the question of the same group of Cathars, Foliot recommended that the bishop confine the heretics, and perhaps flog them moderately (*cum moderata severitate*) until a

²⁴ The original of the Assize has been lost; the earliest document that mentions the provisions of the Assize is the Assize of Northampton, and no original witness list is included in the copy.

²⁵ *Constitutions of Clarendon*, c.21.

council of the clergy might gather to decide what to do about them.²⁶ Foliot's uncertainty on the use of corporal punishment is instructive. The provision in the Assize strengthens its decision in what was, at least on its face, a religious matter, and provides an acceptable punishment.

Such a marriage of Church and crown in the correction of sinners was precisely the proper exercise of both swords that Foliot described in *Multiplicem* a few months later. The working relationship between Henry and Foliot was an effective one, as they both saw. With Becket far out of the picture, there was no reason to try and bring closure to the archbishop's unsettled situation.²⁷ In a sense, Becket was already confined in the remote monastery in Pontigny to which Louis, not knowing what else to do with the exiled archbishop, had sent him.²⁸ Things looked bleak for Becket in early 1166, when even Louis appeared to be inclined to stabilize relations with his occasional rival, Henry, a move which could mean only trouble for Becket's cause. At around Easter of 1166, Herbert of Bosham and John of Salisbury came to the king, who was visiting with Louis in Angers, begging that he might release to them the revenues from their English benefices. John hoped that he might be restored to royal favor, but could not in good conscience recognize the Constitutions of Clarendon, and so left empty-handed. Herbert was insulting to the king, telling Henry to his face that his right to be

²⁶ LCGF #s 157, 158, pp. 207-210.

²⁷ Barlow, *Thomas Becket*, p. 140.

²⁸ Barlow, Knowles and Warren all establish Becket's defensive posture during these years, showing that at this time, Becket likely believed his cause to be in serious trouble. At the same time, he was surrounded by the most fanatical of his supporters, like Herbert of Bosham, who were constantly encouraging the archbishop to act against the king (see Barlow, *Thomas Becket*, pp. 122 ff.

king was illegitimate, since his father had not been king.²⁹ None of the envoys made any difference in the king's stance toward Becket.

Alexander, however, was back in Italy by the summer of 1166, and felt that he could better ride out any controversy kicked up by the increasingly troubled archbishop of Canterbury, and thus allowed his earlier proscription of Becket to lapse at Easter, giving the archbishop in addition the power to act as papal legate. This move reflected Alexander's concern that Henry seemed willing to jettison Becket entirely, and the pope hoped to balance the scales a little. Becket fired off a series of letters to the king, which the king ignored.³⁰ Their tone grew strident as it became apparent that the king was not planning on responding.³¹ In the second of the letters, Becket laid out his version of the relationship he envisioned between *regnum et sacerdotum*, which was markedly different than the relationship that Henry was currently negotiating with Foliot.

The attitude of Becket's camp is strikingly, disturbingly Gregorian. Becket neither hoped for nor did he envision the equality of the two swords. Becket believed himself not Henry's equal, but his superior, and from his distant exile he lectured Henry to this effect in no uncertain terms. "Christian kings should submit their judgments to

²⁹ See William FitzStephen's *vita*, op. cit. Herbert's comments seem either gratuitously rude or foolishly chauvinistic. They do not seem to account for the possibility of a king dying without sons, nor do they allow for the traditional election of kings in England and indeed in the Germanic world. Herbert was also dressed in the latest Imperial fashion, as William tells us. His foppish demeanor sharply contrasts to the asceticism of Bernard and Anselm (and Foliot), and provides another clue for his adulation of Becket, with his reputation for fine living. The fact that as Herbert insulted the king, he asked for money is also instructive as to the personalities involved. Their stated characterization of Henry as a monster is also belied by their trust in Henry's moderation and guarantee of safe-conduct, even when Herbert seems to have been coolly and deliberately provocative.

³⁰ It should also be pointed out that these letters were likely not written by Becket himself; his Latinity and grasp of canon law, and even of theology were unequal to the tasks of writing these detailed arguments. Becket may have overseen their production, and he certainly approved their transmission, but most of the letters from his household were drafted either by Herbert of Bosham, who had expertise in theology, and Lombard of Piacenza, who had expertise in law.

³¹ Warren, p. 494.

ecclesiastical prelates, not set their judgments above them,” he wrote.³² As if to put an exclamation point upon his position, Becket included a quote directly from Gregory VII, writing during the investiture fight of the previous century: “There are indeed two things by which the world is principally ruled: the sacred authority of the priests, and the royal power. Of these, the power of the priests is the greater.”³³ The silence that greeted these weighty pronouncements was deafening.

By summer, Becket’s frustration began to peak, just as the letters formally authorizing his powers as legate arrived from Rome. On Whitsunday, he declared as null a variety of the provisions of Clarendon, forbade his flock from their observance in any way, and excommunicated a number of the king’s men and a few clerks as well. Among the latter was John of Oxford, whom the king had put forward as archdeacon of Salisbury. He also suspended Jocelin of Salisbury, ostensibly for his part in allowing John to be made archdeacon.³⁴

The letters of excommunication were delivered to the English via an anonymous monk, who laid them into Foliot’s hand as the bishop was performing mass. The fact that the man was unknown to Foliot was considered something of an insult, but also may have reflected the messengers’ concern for their own safety. Henry had forbidden contact between the exiles and the English until such time as Becket made satisfaction; the notice of the excommunications breached this decree directly, and the person who delivered the notice might expect to answer before a very angry king. As it was, when Foliot took the letters he assumed that they were requests for petitionary prayers, and

³² *CTB*, pp. 337-8.

³³ *Ibid*, pp. 338-9 and n. 27.

³⁴ The terms of the excommunications are spelled out in Becket’s letter to Archbishop Rotrou of Rouen, dated June 12, 1166. For the text and a translation, *CTB*, #81, pp. 324-329.

was greatly surprised by their content. It was likely the first word he had received of Becket's new status as papal legate, which threw a different light on things. So long as Becket was merely archbishop, Foliot could in many ways ignore his mandates, while they were under the lengthy appeals that he and the other bishops had written. However as legate, Becket could not lightly be ignored without committing a grave offense against the papacy, which Foliot, ever the papal supporter, was unwilling to do. In response, Foliot wrote a letter to Henry outlining his concerns and begging the king to allow him to bend, as the letter directed him.³⁵

With the evident backing of the king in this, Foliot then called a council of the clergy in London, at which he both circulated the archbishop's demands, and began to draft an appeal to the Pope and a letter to Becket, both of which were sent in June under in the name of the English bishops and clergy. In the former, Foliot again discussed pointedly the nature of the relationship between the Church and Henry. He reminded Alexander that the king had received him and the bishop of Hereford graciously when they had visited him on the Welsh march. Henry, Foliot wrote, had taken the Pope's concerns to heart, and had been acting as the model of a proper Christian monarch.

For the king, most Christian in his faith, most honorable in the bond of his conjugal chastity, an incomparably vigorous preserver and strengthener of peace and justice, works by means of vows and utter fervency so that scandals are removed from his realm, and sins and their stains are eliminated, so that peace and justice everywhere prevail, and all flourish and rejoice under this very man because of high security and tranquil peace.³⁶

Security was one of Foliot's primary concerns, and indeed was the basis for Gratian's dualist position. Foliot saw in Becket's intransigence, supported by the

³⁵ *LCGF* #168, pp. 225-6.

³⁶ *LCGF* #166, p. 220.

hotheaded Herbert of Bosham and the intellectual champion of papal authority, John of Salisbury, an unfolding nightmare where the swords seemed to be drawn against one another. In England, in the intervening months a better situation had evolved, that worked for the benefit of not only the Church and the crown, but most importantly for the souls and prosperity of the flock. The king had shown forbearance in his attitude to the clergy, and had used the discord to work for their benefit:

When he began to realize that the peace of his realm was being significantly disturbed by the irregular departure of certain haughty clerics, showing due reverence to the clergy, he brought their transgressions to the judges of the Church, the bishops, so that the sword came to assist the sword, and the spiritual power established in the populace and strengthened among the clergy the peace that the king was fostering and maintaining.³⁷

He returns again to the two swords analogy, and then explains how they are currently supporting each other in England. The themes are consistent – justice and peace. What more, Foliot implied, could be desired from the relationship between the king and his clergy?

Under these circumstances the fervor of each party has shone brightly: under this standing court of bishops, homicide, or anything of this sort, would be punished in the ecclesiastical court; but with the king deeming that if the penalty did not correspond appropriately to the offense, and that it would not provide well for keeping the peace, so that if a lector or acolyte should kill someone, he would not be protected solely by the loss of the aforesaid order. Thus, the clergy, deferring to the divinely established order, and the lord king following up the sin with righteous odium as one hopes, and intending for peace to be more deeply rooted, a certain holy strife has arisen that, we believe, is excusable before the Lord in the simple aim of each party.³⁸

Foliot also explained why the king felt the need for the Constitutions of Clarendon. His explanation, stripped of all rhetorical flourishes, is essentially an accurate one. Henry

³⁷ Ibid.

³⁸ *ibid.*

had not sought the Constitutions early in his reign, nor even during the months when he and Becket began to quarrel. It was only after Becket had shifted his position and the clergy as a body had threatened to deny the traditional rights that the king of England might expect, that he had produced the document that had caused such difficulties. While the Church found the written enumeration of the royal prerogatives to be disturbing and worrisome, it was ultimately to prevent misunderstandings that the document had been created.

Lest the strife surrounding this controversy be dragged into posterity, the king wills that the customs and dignities of his realm to the present time, which for the kings before him were observed by ecclesiastical persons in the realm of England, be delegated to the notice of the public, not in a demonstration of dominance, nor in a contemplation of the suppression of ecclesiastical liberty, but in the desire for the establishment of peace.³⁹

Then, Foliot turned his attention to the nature of the excommunications that Thomas had leveled from Vezelay. He questioned not only their legitimacy as lacking in due process, as would be expected by a legal authority, but also the political wisdom of antagonizing the king's closest advisors, like the justiciar Richard de Lucy (excommunicated for his part in drafting the Constitutions of Clarendon) and master-forester Thomas Fitz Bernard (for usurping the chattels of the see of Canterbury in Becket's absence). In all, five of Henry's advisors had been excommunicated.

(Becket) has bound by the sentence of excommunication certain faithful and trusted men of our lord the king, of the first rank of the realm, nobles in positions specifically close to the king, at whose hands the counsel of the king and the business of the realm is directed, who were given no summons, no defense, and who, they assert, are unaware of their guilt. They have not been convicted, nor have they confessed. Yet their excommunications have been officially and publicly announced.⁴⁰

³⁹ *ibid*, p. 221.

⁴⁰ *Ibid*.

Foliot also complained of Jocelin of Salisbury's rough treatment at Becket's hands. The bishop had done no explicit wrong, yet he had been banned from performing the duties of his office, again "absent and without defense, without confession or conviction." Foliot also charged that the "cause of his suspension, of simply being in the same province (where a crime was committed) or otherwise, has been sanctioned arbitrarily."⁴¹ Foliot again played on the danger of continuing to attack the king in this way:

If this perverse order of justice, or we might say "disorder," should advance around the king or the realm, what then will we guess might ensue? The days are evil, and you have the chance of harming a very great many, unless the royal and priestly powers embrace together the course of peace and grace that until recently has been torn asunder. And if we should, in solidarity with our clergy, pass away into the dispersion of exile, and, God forbid, recede from fidelity to you, should we prostrate ourselves to the evil schismatics into the abyss of iniquity and disobedience?⁴²

Foliot's understanding of the papal predicament was subtle. He was not threatening Alexander, but rather pointing out that the souls of many would be damaged, and that the pope would ultimately be responsible for the damage, if he chose to follow the archbishop's reckless course of action.

This, ultimately, was the ending to avoid. The question as Foliot presented it was not so much one of power, which is the viewpoint of Becket and his advisors (and

⁴¹ Ibid. The case against Salisbury is indeed a strange one and may have been based on some personal grudge. It may have had to do with Salisbury's inability or unwillingness to prevent John of Oxford from taking the archdeaconry of the diocese of Salisbury, this was the reason given in Becket's letter to the bishop of Rouen, but Becket also pursued a vendetta against Jocelin for the next several years. John of Oxford's installation as archdeacon must have been a particularly bitter blow to Becket's advisor, John of Salisbury, who may have wanted the post, but this still seems a weak pretext for all that Becket did to Jocelin, an aging man, over the next several years. Barlow (*TB*, p. 149) suggests that it may have had something to do with Salisbury's aristocratic background, but this is merely conjecture.

⁴² Ibid, p. 222.

perhaps Alexander), but one of salvation. The salvation of souls is almost entirely lacking from the correspondence of Becket. His concerns were more temporal: the dignity of the archbishop's office, the power of the see to protect its rights, and the surety of the income it derives from the royal properties. He may have felt that all of these were necessary for the salvation of souls, but he certainly does not harp on this aspect of the Church's function, except when he lectures Henry on his need for penitence for his sins before the Church. Foliot's concerns are an interesting contrast.

As of course you see through all of this, it is the shortest route to the loss of religion for all and the subversion and destruction of the clergy together with the people. Thus lest your apostles be wretchedly subverted by necessity from the Church, lest our lord the king and those serving the people be turned, God forbid, from their obedience to you...we appeal to your sublimity by writing and spoken word, and designate the term of the appeal the day of our Lord's Ascension.⁴³

The length of the appeal's term, which was almost a year from the date the letter was drafted, was also a calculated move. The longer the term, the more pressure was brought on Becket, who was living hand to mouth along with his enormous household in exile. Foliot was determined to make them sweat as long as possible.

At the same time, Foliot also composed a letter, again in the name of the bishops and clergy of England, to Becket, designed to both needle the archbishop and to make public the grievances of the clergy toward their departed leader. With the excommunications of Vezelay, the gloves in the fight among the clergy began to come off, and Foliot managed to work in several digs at Becket's non-clerical background. The sarcasm with which he describes Becket's humility and prudence is barely concealed:

⁴³ Ibid.

We were hoping, father, that what was thrown into disorder at the beginning of your unexpected departure to distant parts would, with the help of God's grace, be restored to the serenity of their original peace through your humility and prudence. The general report that everyone heard immediately after your departure was a comfort to us, ...that you were not rising up with any scheme against the king and his realm while you were overseas, but bearing the burdens of your freely-chosen poverty with restraint, applying yourself to reading and prayers, redeeming the loss of past and present time with fasting, vigils and tears, and, engrossed in spiritual activities, rising by increasing virtue to the perfection of sanctity.⁴⁴

This pretended serenity had been recently shattered by the round of letters and excommunications from France, which seemed designed to incite the king's anger even further. Becket had also, Foliot notes, written the last letter without even the "customary salutation," threatening the king himself with excommunication.⁴⁵

Foliot's digs are designed to damage Becket's reputation in the eyes of his followers; he seems almost to be goading Becket at times, but the seriousness of the situation and the hope that a reasonable solution might be found also comes through the text of the letter as well.

If you please, your discretion should consider where it is going and whether it can obtain the end it seeks by these efforts. Indeed, these rash actions have caused us to fall from our high expectations; and we who once conceived the hope of obtaining peace are now being thrust back from the very threshold by deep despair. As long as battle is being waged as if with a drawn sword, no place can be found to beg for peace on your behalf.⁴⁶

This is an unfair and frankly disingenuous ploy on Foliot's part. How else might Becket have been expected to act? In Foliot's defense, though, he probably had held out hope that Becket would continue to molder in his remote abbey of Pontigny, or that Becket

⁴⁴ *LCGF* #167, p. 223.

⁴⁵ *ibid*

⁴⁶ *Ibid.*

would tire of his exile and eventually take another benefice in France, right up until word of the excommunications came through to London.

Foliot also spent a bit of time in this letter, as elsewhere, describing Becket's rise to prominence through Henry's munificence ("All men are deeply conscious of how kind our lord the king was to you"), and notes that the Church had not exactly courted Becket as Theobald's replacement.⁴⁷

Henry willed you to be immovably rooted in the things of God, and with his mother (Matilda) dissuading and the kingdom crying against it, and God's Church, sighing and weeping as much as it was able, the king strove to raise you up to the dignity in which you now preside.⁴⁸

Again, this comment may have been calculated to twit him about the lower class status into which he was born. Becket certainly took the comment this way, and would reply sharply to the insinuation in the lengthy letter he wrote in response. But it is quite possible that Foliot, whose asceticism was well-known, was in earnest when he implored Becket to "spare your reputation, and spare your renown; and endeavor to overcome your lord with humility and your son with love."⁴⁹ It was easy enough for Foliot to make this plea for humility, since his birth was evidently more aristocratic than Becket's; humility does not sit perhaps as well on shoulders of men who have been given all they have, than it does for people whose very act of giving gains them instant notoriety.

When Foliot turns to more substantive issues, he echoes his letter to Alexander, noting that Henry might well turn away from the Pope and embrace his rival if an accommodation were not speedily found:

⁴⁷ Ibid.

⁴⁸ *ibid.* p. 224.

⁴⁹ Ibid.

What would happen if our lord the king, whom peoples and kingdoms follow through the Lord's generosity, were to withdraw from the lord Pope through your provocation and action – which God forbid – and perhaps refuse to obey him in the future, because he has denied him relief against you? And indeed, what supplications, what gifts, how many great promises are tempting him to that? Yet he has stood firm on the rock until now, and with a high mind he has triumphantly spurned all that that world has to offer.⁵⁰

Indeed, the emperor was trying to pry Henry out of the grasp of the Pope, and despite the confusion surrounding John of Oxford's mission to Germany, Henry had remained steadfast in his loyalty to the Pope. It would seem that the reason for this was that Henry was fundamentally as Foliot presented him: a reasonably pious man who believed in Alexander's legitimacy, who had backed him at Tours when he could have turned either way. That belief would be sorely tested by the Vezelay excommunications, just as Foliot predicted.

If it pleases your highness, you should cancel your plan and ponder, if you please, what the result will be for the lord Pope, the holy Roman Church, and you yourself, if it were to go forward. But perhaps the high-minded in your entourage do not allow you to go down that path. They are exhorting you to put what you are thirsting for to the test, to exercise the power of your elevated rank against our lord the king and everything that is his.⁵¹

These comments, aimed at Herbert and his zealous colleagues would have hit very close to home because they were almost certainly correct. John of Salisbury had been hoping to find some sort of accommodation, and was sufficiently aware of the exigencies of papal politics, that he realized the tenuous nature of the ground upon which Becket was jumping.⁵² John, however, was not at Pontigny; by accident or design he was on the outskirts of Becket's household in exile. He wrote letters to Becket,

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Barlow, *Becket*, pp. 130-31.

urging him to moderation, sealing the letters with the instruction that the letter was for his eyes only, in the hopes of avoiding the zealots that Foliot mentions.⁵³ Salisbury and Foliot had much to argue about in terms of political theory, and a growing personal rancor with Salisbury in impecunious exile and Foliot with the benefice and comfort that Salisbury reasonably thought that his service and intellect merited. But their common loyalty to the papacy is beyond question, and both were canny enough to realize that Henry might not take lying down the sorts of missiles that Becket was now sending his way. Becket's inner circle was run by Herbert, whose conduct earlier in the spring, when he had denied to Henry's face his legitimacy as king, left no doubt as to the antagonism he was willing to offer in the name of the archbishop.⁵⁴ It is interesting just how well Foliot understood what was happening around Becket, and what forces were driving him to take such a fearsome and dangerous stand against the king.

Foliot closes the letter with a comment on the extra-judicial nature of Jocelin of Salisbury's suspension, claiming that it was the product of anger rather than justice. "This is a new form of judicial procedure," he remarks sarcastically, "hitherto, we hope, unknown to the laws and canons, first to condemn and then to examine the fault." The letter ends with notice of the appeal and the fixation of the term to Ascension.⁵⁵

Becket's household sent two responses to the letters, one aimed at the English clergy as a group, and the other aimed specifically at Foliot, who they realized was the architect of the appeal and letters.⁵⁶ Becket has little to answer on the legal charges, and

⁵³ Ibid.

⁵⁴ On John of Salisbury's unique status in Becket's household, see Barlow, *ibid.*

⁵⁵ *LCGF* #168, p. 225.

⁵⁶ There were four different drafts of letters produced, by Herbert and Lombard; only one was sent. Barlow, *Becket*, p. 152-153.

so tends to fall back on theology, stressing the impropriety of the leader being judged by his underlings, and on the specific phrase he and Herbert have hit upon to act against royal judgment of criminous clerks. The letters are well crafted and cogent, but above all else they show that Becket's party and Foliot were simply not talking about the same things. Foliot was interested in the harmonious relationship between king and Church, and how that might be obtained through equal powers operating in concert. For Becket, the question was one of dominance, pure and simple. As far as he is concerned, the only way that a harmonious relationship between the Church and the king might be structured was if the Church ultimately had all of the power, and that the crown could not act without the Church's authorization, which would only be given in matters beneficial to the Church and her mission.

The individual charges leveled by Foliot's letters are taken one by one. Becket answers the charge of low-birth testily, as one might expect, comparing himself to St. Peter, the fisherman. Indeed the parallels here with his supposed speech to Henry after Clarendon, where the two met on horseback, is so striking that one wonders if stories of the meeting, which circulated in the *vitae* written later, were not lifted from the 1166 letter. "Peter, chosen from the fisherman's trade, and made Prince of the Church, and by shedding his blood for Christ, earned a crown in heaven and a name and glory on earth."⁵⁷

Becket's explanation of the legality of John of Oxford's excommunication likely carried little weight with Foliot. Becket relied upon two quotes from the canons. First, from Gregory VII, he writes, "Any bishop who permits fornication by priests or

⁵⁷ *CTB*, p. 404-5.

deacons or the crime of incest in his diocese, for payment, or does not attack the deed...should be suspended from office.”⁵⁸ This hardly covered either John or Jocelin’s supposed sins. Then, from Pope Leo, “Any bishop who consecrates as a priest someone they are not permitted to consecrate, shall not have the right of ordination in the future.”⁵⁹ Again, this was grasping at straws and extrapolations. The worst that might happen to Salisbury, even if the canon specifically pertained to John of Oxford’s case, was that Salisbury would be prohibited for a time from ordaining others, not that he would suffer instant excommunication, as he glibly extrapolates in the letter.⁶⁰ Becket could have called either John or Jocelin at the very least to answer for the charges at his temporary residence, and he did neither. The canons were not ready to accept the sort of carefree power that Becket used in the execution of these two sentences, though the matter was open to debate.

It is in his discussion of the conflict with the king, and especially of his finances, that Becket shoots widest of the mark, and from these particular comments likely that *Multiplicem*, in all of its controlled and brilliant fury, was born. Becket’s version of the events leading up to Northampton was overblown, and all who read his account knew it. It was inserted into a rising monologue on Becket’s poor treatment at the hands of his suffragans, so that the reader might be swept along by the tide of rhetoric, but nonetheless was meaningless. “Has it slipped your memory what was done to me and to God’s Church when I was still in England? ...When Canterbury was forced to appeal to the audience of Rome because of the wrongs continually against him and God’s

⁵⁸ Gratian, C2, qu. I, c.14.

⁵⁹ Ibid, C2, qu. III, c. 11.

⁶⁰ *CTB*, pp. 409-413.

Church?”⁶¹ There was no long string of abuses before Northampton. Henry, until he decided to break the archbishop financially (and *only* financially), had acted entirely within the law. Even his insistence on the written enumeration of the customs was not against canon law – it was simply uncomfortable for its practitioners on both sides of the aisle who hoped to exploit the inherent uncertainty in unwritten law.

Then, on his departure from England, Becket sententiously explains, “I chose for the time being to turn aside, that I might live more safely in the house of the Lord than in the tents of sinners, until the evil was completed, the hearts of the wicked unveiled, and the secret thoughts of the hearts revealed.”⁶² This was nonsense. Becket fled because he was terrified, possibly for his life, but more likely of a term in some dungeon. For him to dress this up as a brave advance to a different locale, from which he might better be able to guide his flock, was not only ridiculous; it was insulting to those members of the Church who were forced to stay and deal with the potential wrath of the king that his very departure would almost certainly produce. He did not leave the realm as Anselm did, debating a principle and abjuring lawfully. No papal interdict had been laid upon England, nor at the time was it even considered. For what then should the clergy have abandoned the souls of their flocks? In his letter to Foliot personally, Becket had the temerity to actually accuse Foliot, “bitterly, and perhaps not in the best taste,” of personal cowardice: “But you say to me, ‘My Father, I am afraid.’”⁶³ This was almost unbearable, as was Becket’s solution to Foliot’s alleged fearfulness:

⁶¹ Ibid, pp. 395-97.

⁶² *ibid.*

⁶³ “Sed dicis michis, ‘Pater mi, de quibus me calumpniaris absoluam me paucis. Tunice mee timeo,’” *CTB*, p. 436-7. The quotation on the bitterness of Becket’s accusation is from Knowles, *ECTB*, p. 122.

My brother, the better you inform him and strive to convince him by every means of God's will about the preservation of his Church's peace, about not desiring things that have not been granted to his ministry, about honoring God's priests – and he should consider not who they are, but whose servants they are – the more salutary it will be for him, and the more secure for you.⁶⁴

In other words, if Foliot would only meet with the king and explain to him face-to-face Becket's radical position on the superiority of the Church over secular rule, which Foliot disagreed with in principle, then Foliot's position would be safer with the king properly admonished to submission. From Becket's exile, which many, including Foliot, would characterize as spineless, the nerve shown here was breathtaking. Nor was this the first time that Becket had made such an accusation. Earlier in the year, before things began to come to a head, Becket had shot off a condescending letter to Foliot where he suggested directly that Foliot's refusal to back Becket was due to personal fear.

We have something to say about you and for you, by reminding you how conscientiously you bore what happened, with what anguish of mind you concealed the wrong done to God in us – the wrong done to us because of God, the wrong indeed done to you through us – when in us the Lord Jesus Christ was again dragged before the prince's judgment seat, again in us ordered to be crucified. Was it to protect yourself and your relations from the burden of confiscation and exile? This is hardly the way that Christ wished to save himself, when he even laid down his life for his followers, whose brothers he is and whose flesh he shares, leaving us an example that we should do the same thing.⁶⁵

This conceit is answered thoroughly in *Multiplicem* – Foliot and his family had already been damaged by the king over his resistance to Becket's election as archbishop. He was hardly averse to running the risk of personal ruin in a fight with lay authority. As for Becket's insinuation that he was Christ crucified again, the comment

⁶⁴ Ibid.

⁶⁵ CTB, #65, pp. 252-3.

was not only tasteless, but that it should be followed quickly by an admonition to lay down one's life, which Becket certainly had not done, neither at Clarendon nor Northampton, was infuriating. Lest there be any question over whether the two swords of power are equal, Becket again included another of Gregory's incendiary readings of Gelasius: "He who rules the realms of both men and angels ordained two powers under him, princes and priests, the one earthly, the other spiritual, the one serving, the other ruling."⁶⁶ Foliot ought then to abandon his principled, educated, experienced stand, and mouth the words that led to what at the time had been the greatest division in the history of western Christendom. It seemed to Becket a simple and reasonable request.

From Foliot's anger over Becket's elastic interpretation of his personal history emerged the manifesto of *Multiplicem nobis*. Taken as a whole, *Multiplicem* is a remarkable document, which even Foliot's critics admit. Knowles declares that as a work of twelfth-century rhetoric, it is the only document that rivals Bernard's *Apologia ad Willelmum* - high praise indeed.⁶⁷ Moreover, Knowles admits that Foliot's task was the harder, in that he needed to lay out concisely a very complicated set of circumstances. The letter carries the reader along through a variety of emotional states. First, it sarcastically chides Becket for pretending that his accession to Canterbury was the work of a grateful English church rather than the extortion of a determined monarch. It elaborates principle through careful logic and persuasive eloquence. It ridicules Becket's declaration of his own bravery in dealing with the king, and shatters the illusion that the intransigent position taken by Becket, in ignorance, could in any way bring the king to reconciliation both entirely chastened and with open arms, as Becket

⁶⁶ *CTB*, p. 438-9.

⁶⁷ *ECTB*, p. 123.

insisted in his letter. What is most impressive, however, is that Foliot never in the letter unbends to naked hatred – there is nothing excessive in the letter. It is vitriolic, to be sure, but it is at no point vituperative.

This study has already presented much of *Multiplicem* as it related to the various stands taken by Becket before the exile, but a few more comments about the content and style are worth consideration. In the letter, Foliot castigated Becket, not without cause, for desiring money above all things, implying that his whole way out of Northampton might have been found if he simply gave back to the king all that he had and then lived in poverty. This likely touched a nerve in Becket, because in large part it was true. As the son of a merchant, Becket would be keenly aware of the cost of things, and displayed a marked appreciation of finery. Plus, his legitimacy before the eyes of his household and the monks of Christchurch hung to a great degree on his ability to preserve the properties of the see of Canterbury. If he had begun to do abandon them to the king, the monks and priests would suspect, given his earlier relationship with Henry, that Becket was conniving to remove the wealth (and with it the independence) of the Church in England. So Becket was both inclined personally to a certain degree of greed, and was indeed pushed professionally to it.

Yet if we examine the suggestion that Becket might give everything up and be the better for it from the point of view of Foliot's lifestyle, his history, and the political position that he elaborates at different points along his career trajectory, it is apparent that his comment on Becket's potential poverty may have been in some way heartfelt. Becket likely could not have pursued such a course of action even if he had considered it. Foliot didn't have to see it that way though, and he willfully chose not to. Rather he

simply saw Becket's earlier lifestyle, only four years in the past at the time he wrote *Multiplicem*, and assumed that nothing had changed. Becket might make a show of acting the perfect archbishop, but he had never internalized the meaning of poverty and service in the years he worked in Theobald's court as archdeacon. He had never made the decision to live a Christlike life when such a decision might have come from his heart. As it was, Becket simply had used the archdeacon's position to enrich himself and gain a foothold in the chancery.

In contrast, Foliot never worked to amass anything but influence in his service of the Lord, and he would argue that he had not worked to amass that, either – that it had simply come to him out of work and God-given aptitude. He famously avoided any sort of sumptuous lifestyle, a fact that puts the barb again in his comment in *Multiplicem* that all knew by what style of life Becket had earned the archbishop's throne. In Foliot's eyes, Becket's lifestyle alone should have precluded the possibility of his attaining the highest clerical rank in the land, because he believed that it was the responsibility of the higher clergy to live abstemiously in accordance with their station as the humble servants of God. Humility is the key:

Holy humility subjects itself to every creature because of God, and the further it lowers itself the higher and more splendidly according to the Lord's words does it deserve to be exalted. If only this whole affair had remained within the limits of this humility...⁶⁸

So when he complained to Becket that he could simply have given up the belongings that had followed him as chancellor, he was not speaking entirely hypothetically. Of Henry's behavior, he continues to paint the picture of a loving, almost doting monarch, which is the weakest point of the letter:

⁶⁸ LCGF #170, p. 238, CTB p. 523.

If only you had accepted the judgment of the royal court when our lord the king requested certain debts from you, when he requested that he be given only that which the law required, for the sum of money that he recalled had accumulated in your hands from certain escheats.⁶⁹

The implication that Henry suddenly recalled that there had been a number of benefices that ought to have escheated is plainly silly. There can be no doubt that Henry knew precisely what he was going to do to Becket before the Council of Northampton convened. When Becket realized how the king was going to break him it was clearly a terrifying moment, not just for Becket but for all thoughtful people present. Henry's obvious plan could only end at that point in some catastrophe – either the archbishop would be imprisoned or removed from power, either of which would significantly change the relationship between Church and state. Still, Foliot's portrayal of the king as a benevolent sovereign who had been wounded and wronged by an erring minister takes nothing away from the fact that Henry used property to attack Becket, and Becket refused to give the property up. According to Ralph Di Diceto, Becket had to be pushed from the office of archdeacon of Canterbury.⁷⁰ Thus Foliot also suggested an innovative but exceedingly dangerous course of action that Becket might have followed:

For what risk lay in (taking) a sentence on this petition? (The king) wished you to be transferred from the court to the governance of the Church, and as many believe, he freed you from any obligation to him by that fact. But if there is to be no consideration of debts, since one who is removed from office is freed from debts, the case could for the most part have been resolved by the defense that 'it had been converted to the master's benefit,' and if something could not be included in the account, security for the remainder could have been given to the one who was demanding, more in anger than in avarice, and this civil action could have been terminated with a very honorable peace, without all this turmoil.⁷¹

⁶⁹ Ibid.

⁷⁰ Di Diceto, vol. II. p. 280.

⁷¹ *LCGF* p. 238, *CTB*. P. 523

This particular defense is straight from Foliot's Bologna schooling. There are several Roman formulae for cases to clear a defendant of an obligation. This particular one is adopted from the *Digest*, (15.3.1, Ulpian, on debts incurred during service).⁷² There is no way of knowing whether such a *ius commune* defense would have held any sway in the king's court. If so, it paints an interesting and fluid picture of Henry's attitude toward law, and his willingness to experiment with other formulae from outside of English custom.⁷³

It is not known if Foliot actually suggested this course of action in his conversations with Becket at Northampton. The other sources simply say that Foliot's opinion was that Becket should resign. But even if Foliot had suggested to Becket that he try the *in rem versum* defense, Becket would have recoiled in both fear and horror. It was the ultimate roll of the dice – to accept the king's judgment at a moment when the king was infuriated. It would have meant at the very least the removal of any disputed properties from the see of Canterbury, and might ultimately have stripped away all of Becket's personal properties, and might even have meant that the archbishop would still be tossed into some dungeon somewhere.

One cannot fault Becket for refusing to submit at Northampton, and perhaps he cannot be faulted for running from the country, but given what had happened, it is understandable that Foliot, the voice of the Church in England at the time, should have

⁷² Ed. *The Civil Law*, SP Scott, trans. (Cincinnati: Central Trust Company, 1932). Among other comments, Ulpian states "the action on the ground of the employment of property for another's benefit is destroyed by the action on the *peculium*, because what has been employed for the benefit of the master and paid on account of the slave, has been bought into the *peculium*, just as if it had been paid by the master to the slave himself, but only so far as the master has paid in the action on the *peculium* what the slave had used in his affairs; otherwise, if he has not paid it, the action based on the employment of the property remains." See also Knowles, ECTB, for more on this theory.

⁷³ Duggan, CTB, p. 522-3, n. 48.

taken offense at Becket's urging that the clerics should be ready to accept death. Becket certainly hadn't, nor had he risked less glamorous punishment. Foliot casts Becket's refusal to accept the judgment as another form of cowardice, implying that the archbishop had hidden behind the idea of clerical immunity, the immunity that he wanted extended to other guilty clerics, simply to save his own skin. "But you say that it is unheard of that the archbishop of Canterbury should ever be compelled to such things in the king's court," and here he jabs deeply into the heart of Becket's unfitness for his office,

...and you might have said that it was unheard of for an officer of that court ever to have climbed up by so rapid a transfer to that court that he who has charge of the court today would tomorrow control the Church, that someone fresh from the enjoyment of birds and hounds and the other delights of the court should stand before the altars and dispense the things of the spirit to the priests and the bishops of all the realm.⁷⁴

It must have been especially galling that Becket should sing this refrain at the same time he was urging the English clerics to protect his properties in Canterbury. Foliot argued that it was the loss of his fortunes that initially drove him to ask the clerics to lay down their lives for him.

Are your annual revenues so important to you that you wish to acquire them with the blood of your brothers? But when Judas brought back the money, the Jews threw it out because they knew that it was the price of blood."⁷⁵

He insinuated that Becket's pride and greed were the twin causes of all the troubles, coupled with an almost childlike unawareness of the forces around him, and that his behavior at Clarendon and Northampton were of no value, except in that they brought the anger of the king. "What did you achieve by these actions except that you

⁷⁴ *ibid.* p. 238, *CTB* p. 523.

⁷⁵ *Ibid.* p. 240. *CTB* p. 527.

carefully avoided the death that no one thought fit to inflict?”⁷⁶ “What was accomplished by bowing the knee at Clarendon, beginning a flight at Northampton, changing your dress to skulk for a while, and secretly slinking out of the confines of the kingdom?”⁷⁷ Furthermore, once the anger of the king had been raised to a peak of intensity, once Henry was furious, Becket turned tail and ran from the scene, no longer playing his dangerous game of pride and feigned concern for the Church, but safe away in his self-imposed exile.

From France you are arranging to pilot the boat that you abandoned without an oarsman amidst the waves and the sea. With what effrontery, father, have you invited us to death, a death that you both feared and fled, as you have revealed to the whole world by such obvious evidence? What affection urges you to lay on us the burden that you have thrown down? The sword that you fled is threatening us, against which you chose to throw stones, not fight hand to hand. Perhaps you invited us to the same flight; but the sea was closed to us, and after your departure all ships and ports were forbidden to us. The islands are very strong fortresses for the king, from which hardly anyone can escape or extricate himself. If we must fight, we shall fight at close quarters. If battle is joined with the king, in which we strike with the sword, a returning sword will find us there; where we inflict a wound, we shall not be able to avoid receiving wounds in return.⁷⁸

Nor, Foliot takes pains to explain, does he fear death. He had demonstrated his willingness to suffer the consequences of his faith at Clarendon, and lays out a passage on the beauty of the heavenly realm that he fully hopes to see in time.

The sufferings of this world are scarcely worthy to be compared to the future glory that will be revealed in the saints; and what now is a light and momentary tribulation will produce for the elect a weight of eternal glory beyond measure.⁷⁹

⁷⁶ Ibid, p. 239. *CTB* p. 525.

⁷⁷ Ibid.

⁷⁸ Ibid p. 239-40, *CTB* p. 527.

⁷⁹ Ibid p. 239, *CTB* p. 525.

In a tantalizing aside he says, “for a long time these considerations remained in our mind; for a long time these promises drew our desire after them.”⁸⁰ To what is he referring here? To the period after Clarendon, when he worried what the next direction of the argument with the king might take? Or is he recalling the dangers of his own flight with Theobald for the liberties of the Church? In any event, by the time the letter was written, he had come to a fundamental conclusion about martyrdom and man’s desire for it: “It is not the pain that makes the martyr, but the cause. To suffer hardships religiously is an honorable thing; to suffer hardships wrongly and obstinately is dishonorable.”⁸¹ Becket’s urging his clerics to accept martyrdom falls into the latter category, as it is based primarily on upholding Becket to the detriment of the Church. As for Becket’s own courting of the sword through his repeated attempts to goad the king, “To submit to the sword for Christ is the highest praise and victory; rashly to call it down upon oneself is clearly obvious madness.”⁸²

And for what does Becket ask the clergy to put themselves in harm’s way? What catastrophic issue was at stake in England? For Foliot, there were many comforting aspects to the religious situation in his homeland. There was no dispute over the elements or doctrines of the faith, “none about the sacraments, none concerning morals.”⁸³ At that moment the Albigensian heresy was beginning to push ripples across Europe and into England; that the English government took no part in such dangerous

⁸⁰ *ibid*

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ *ibid.* p. 240.

unorthodoxy was indeed reassuring.⁸⁴ Henry was a reasonably religious man and the realm was a reasonably devout one. While Henry had intimated that if a solution to the impasse with Becket were not found, he might make some sort of alliance with the emperor, this had not yet come to pass, nor did it seem to be seriously considered. It had only been contemplated briefly, when Henry's anger over the Vezelay excommunications almost drove him into the emperor's camp.

The entire problem, Becket's exile and the fractured state of the English Church, came down simply to a fight over customs, and long-established customs at that.

This is the cause to which you are flying to arms and striving to brandish over his sacred and noble head – a matter in which it is very significant that he did not himself issue those decrees, but found them thus established, as the whole history of the realm bears witness.⁸⁵

If this tree of customary rights were to be uprooted, though, it would require the removal of more than perhaps they wanted to see taken away. Foliot extended the metaphor of the tree to Becket's antagonism of the king and his attempts to club him with clerical authority. As Foliot put it, "the prudent man may take out with care what force incompetently applied could not properly remove."⁸⁶

Foliot advocated working with the king rather than against him, arguing that the stand that Becket had taken against the king had done no good, while there were examples of how preaching and patience might do more for the cause of the Church, if less for Becket's personal vanity.

⁸⁴ There is only one mention of the Albigensians in English documents at this time – a comment in the Assize of Clarendon (1166) that sentences any Cathar to branding and exile, and sentences any who give them lodging to the burning of their possessions.

⁸⁵ LCGF #170, p. 240. *CTB*. P. 527.

⁸⁶ *Ibid*.

Your predecessor, the renowned father Augustine (of Kent) rooted out many wicked things from this realm, and as he illuminated the king himself with his faith, he removed not a few evil customs from him, not indeed by abusive words, but rather by blessing and preaching, by salutary exhortation, and by powerfully swaying the minds of the great to the good.⁸⁷

More recently, he noted, John of Cremona had worked with Henry I to end some of the more egregious, anti-canonical customs of the realm of England. Likewise, at the behest and gentle exhortation of the clergy, after finally being blessed with an heir, Louis of France “removed many burdens which history had confirmed until now without attack... not by hurling threats against the divinely chosen prince, but by the prompting and advice of the Church.”⁸⁸ “These men,” he observes, “would have achieved very little had they rushed to take up weapons.”⁸⁹ Tact and patience, he counsels, would have prevented the rift in the relationship between Henry and the Church; now they were the only tactics that might heal it.

Taking *Multiplicem nobis* in total, one must recognize the letter for what it is: a polemical work intended to sway an audience into support for Foliot’s position on Becket’s departure. It was written in anger, specifically anger that Foliot and the other bishops had been left in the lurch, as it were, by Becket’s self-imposed exile. For Becket to call upon the senior clerics in England to defend the Church against the king had been too much for Foliot to bear. Since 1163 Foliot had been working desperately to keep the Church from disintegrating in England, and also working feverishly to keep Henry from turning to an alliance with the emperor against Rome, a move that might have circumvented the desires of the majority in the Church, resulting in a dreadful

⁸⁷ *ibid.*

⁸⁸ *ibid.* pp. 240-41. *CTB* p. 529.

setback to the pre-investiture world. At the moment that Becket chose to send his ill-timed letter to the English clergy, Henry might have been tempted to abandon his support for Alexander and thus destroy the balance between lay and ecclesiastical by potentially destroying the Church. Foliot believed that Becket's intransigence had become a stumbling block to fixing what he viewed as the greatest problem of his age, the papal schism. Moreover, Foliot, as the de facto leader of the Church in England, was singled out for scorn by Becket as he sat uncomfortable but safely ensconced in a French monastery. The letter is the product of its moment in time, and was undeniably penned in heat.

None of this takes away from the veracity of its observations, however. It was intended for public consumption in England, in the Papal curia, and in Becket's household. While Foliot has a tendency to overstate with rhetorical flourish the king's benevolence, he could not state anything that was factually untrue without risking his reputation. Thus, ordinary details such as the timing of events and the pressure placed upon the English Church at various points are difficult to condemn as falsehoods. To cite but one example, the pressure that Henry placed through de Lucy upon the suffragan bishops to elect Becket is almost certainly an accurate representation found in no other account. Becket was a controversial choice, not simply among the monks at Christchurch, who feared the power of any archbishop of Canterbury, but among the rank and file bishops and clergy themselves. Becket's scheme to tax the Church over Toulouse, which both FitzStephen and Herbert ignore as they marvel at his dashing

⁸⁹ Ibid. p. 240.

military skill, could not have evoked a similar response among the mature clerics who were responsible for selecting the new archbishop. They were undoubtedly pressed by the full weight of royal power to support Becket's candidacy, a theme glossed over or ignored by Becket's starry-eyed biographers.

It is also worth noting that while *Multiplicem* was derided among Foliot's enemies in Becket's train, especially Herbert of Bosham, attempts to refute it were oddly mellow. Had Foliot written a diatribe against Becket, based on *ad hominem* and spite, it would have been an easy document to refute, and Foliot's reputation in the eyes of his contemporaries would have declined considerably. Yet none of this occurred. There is no evidence that Foliot's star dimmed among his fellows at all. Alexander, who must have known of the letter, continued to correspond with him. The pope speedily rescinded Foliot's excommunication in 1169. Salisbury wrote a half-hearted missive to Baldwin, the archdeacon of Totnes, concerning the letter, which significantly failed to address any of the points made by Foliot.⁹⁰ No one wrote against them, and Foliot continued as the voice of the Church in the archdiocese of Canterbury until the return of Becket in 1170. While this does not prove that his contemporaries agreed with the points made in *Multiplicem*, it certainly tends to support the idea that they did so more than it would support the alternative that they did not.

7.3. Conclusion

⁹⁰ *Letters of John of Salisbury*, #187. The silence in the wake of *Multiplicem* is one of the key areas where historian's interpretations differ. Where Smalley calls the letter a "tissue of half-truths and inconsistencies," Barlow, commenting on Salisbury's failure to address the points made in the letter concludes, "John does not seriously challenge Gilbert's chronicle of the events, he reinterprets them from Thomas' point of view, others he discreetly passes by." Barlow, p. 156.

The greatest value, however, in *Multiplicem* lies not in its reconstruction of the events, and the spin that counters later biographical accounts, but in the lengthy and fascinating discussion of the legality of clerical punishment in royal courts, and the related discussion on the ultimate relationship between the lay and ecclesiastical swords. Foliot's vision of a Church that concentrates solely on spiritual matters found expression at a crossroads in ecclesiastical history, when the increasing power of the Church courts led some canonists to place into the hands of the pope a universal political power. This was justified during the late twelfth century by a twisted reading of the two swords doctrine, one that dismissed the concerns of Gratian and argued for a temporal legitimacy tied to Church approval. By this theory, clerical authority had the right to make and break monarchs, with no countervailing power to prevent clerical excess. This doctrine led toward *Unam Sanctam*, Wycliffe, and ultimately to the Protestant backlash.

At the crossroads, however, this progression was by no means expected, because in the 1160s a great number of clerics, especially those with legal training, found a basis in the law for a system of dual authority. Becket's stance energized his supporters, and the fantastic manner of his martyrdom guaranteed his position as a saint, but canon authorities in the subsequent decades would not change their political theory based upon Becket. On the contrary, one of the most important canonists of the next generation, an English cleric known as Ricardus Anglicus, used arguments remarkably similar to Foliot's in articulating the problem of clerics wielding secular authority, even indirectly. Johannes Teutonicus kept this cautious position in his *glossa* on the *Decretum*, produced around 1216, the same time period that Innocent III was moving the papacy to

increasing power.⁹¹ It would take another thirty or forty years, and the *glossa* of Bernard of Parma, to grant the Church a widely accepted theory on unchecked papal authority.

This study has tried to show that Gilbert Foliot's position as an opponent of Becket's strong Gregorianism was a natural and understandable reaction to the circumstances of both twelfth century English politics and canon law and civil law scholarship. Foliot's education and experience with the Anarchy, coupled with his concern over Becket's initial vacillation and later intransigence, caused him to articulate a position with widespread currency among his peers. In this he runs counter to any modern idea that pious clerics in the middle of the twelfth century despised temporal authority. *Multiplicem* was obviously written in anger, yet it was not the product of the illogic of blind rage, nor was it carelessly assembled. It accurately outlined the dangers of ever-expanding clerical authority into the temporal world. For this, Foliot should be applauded rather than scorned.

⁹¹ Watt, pp. 78-380.

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