

Have Mercy upon Me O Lord:  
A History of Benefit of Clergy in Early Modern England

By  
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*This Dissertation is dedicated to*

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## Abstract

In Medieval England, a long-standing tradition allowed priests and monks accused of crimes to seek a change of venue in order to be judged by their peers in the ecclesiastical courts. What qualified as a priest was subject to interpretation at multiple levels and this interpretation allowed some lay criminals to take advantage of the privilege. Under the Tudors, as the Reformation began to reform the legal and political structure of England, benefit of clergy survived the process as a newly-declared lay privilege. Rather than grant a reprieve as it had with ordained men, the new version of benefit of clergy led to the defendant being branded on the thumb. A second offense would lead to execution for repeated criminality. Consequently, the offer of mercy led to an explosion of lay claims, at one point comprising 47% of all felony trials in England. Ultimately the criminal justice system converted this sense of forgiveness and mercy into a punishment in itself, by adding new penalties from whipping to imprisonment and even transportation.

The story of benefit of clergy is one about the state's gradual project of isolating marginalized people and marking them – physically – as subjects to the state and to its secular courts. First priests were drawn into the course system, then vagabonds and foreigners. Eventually women found themselves offered the benefit, if only to begin convicting them in higher numbers. Finally, the offer of benefit of clergy made its way to imperial colonies in Jamaica, Barbados, the Chesapeake, and Massachusetts. This dissertation argues that this project grew out of a series of momentary crises that, when taken together, fundamentally transformed the criminal justice system's reliance on mercy and replaced it with a stronger, more centralized state with increasing power over traditionally marginalized groups.

## **Introduction**

### **Benefit of Clergy in English History: Mercy, Power, and the State**

From approximately 1164 until the eighteenth century, the English legal system allowed first-offense felons to escape the harsh penalties for their crimes through a plea of mercy. The idea was to punish the offender yet preserve local communities and families, to demonstrate both the terrible power and tremendous mercy available through the royal courts. This legal defense was called benefit of clergy. It began as a clerical privilege and grew into a tool of the royal courts by virtue of the Reformation and associated legal changes. By 1536, the benefit lost its clerical trappings; by the seventeenth century it was employed purely as defensive plea.

Benefit of clergy is no longer a plea in the British criminal courts. Yet its legacy helped shape the modern legal code. Over a hundred statutes addressed an evolving definition of the plea, from altering the list of eligible claimants and associated crimes to effecting new and harsher additional penalties for those claimants.<sup>1</sup> In 1489, a criminal who was allowed clergy was then branded as a sign of his received mercy. By 1576, the brand might be accompanied with up to a year's imprisonment. Following 1670, the plea might be coupled with a sentence of Transportation.<sup>2</sup> And so we see a common privilege undergo drastic reconsideration from the Middle Ages until it was replaced by banishment and the prison system before being abolished entirely in the nineteenth century.<sup>3</sup>

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<sup>1</sup> For a list of all 122 statutes formally touching benefit of clergy, see Appendix 2

<sup>2</sup> 18 Elizabeth c 7 adding year's imprisonment, 22 Charles II c 5 on Transportation, and 1718 Act of Transportation

<sup>3</sup> The populace required a few attempts to ensure the full repeal of benefit-of-clergy statutes. 7&8 George 4 c 27, 7 William IV and 1 Victoria c 91, and 4&5 Victoria c 22

The plea was not a minor alternative to conviction, nor was it equivalent to acquittal. Pleading clergy was an exchange of ideas between defendant and authorities: a supplication to the Crown in exchange for mercy on the criminal's first offense. The benefit did not supersede conviction in the early modern period. Instead, it was a conviction that reduced the punishment in exchange for a promise of future good behavior and allegiance to the crown. The privilege began as a change of venue for ordained men – priests, bishops, monks, and those in minor orders – to allow them judgment by their religious peers in the ecclesiastical courts. Accordingly, the plea grew out of England's plural legal structure and reflected a growing legal savvy among the populace.<sup>4</sup> Its conception grew out of Biblical recommendations to protect men who had dedicated their lives to God. With time, the process of secularization during the Reformation enabled “clergy” – as contemporaries referred to the privilege, distinct from preachers and holy employees – to be employed by Parliament to control, encourage, or discourage a populace. At its height in the seventeenth century, we see claimants at least attempt clergy in 47% of all felony cases, and 24% of all trial cases.<sup>5</sup> The language of the law and the realities of court enabled – at least in part – the rise of a “Bloody Code” of capital punishment for a wide variety of crimes as legislators assumed only repeat criminals would suffer the ultimate punishment.<sup>6</sup>

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<sup>4</sup> The early modern period witnessed fluctuating and competing jurisdictions within England, allowing some convicts and defendants to seek alternative means to seek justice depending on potential outcome. In this way, providing mercy in the royal courts helped to draw defendants there; in other ways, benefit of clergy was used to combine jurisdictions, such as that of the Admiralty. For a discussion on legal pluralism in general, see Sally Engle Merry “Legal Pluralism,” *Law and Society Review* 22 (1988), 869-96.

<sup>5</sup> Whether they were successful in their claim depended on the individuals at court, the time period, changing definitions of benefit of clergy, literate abilities, social obligations, and many other factors. JS Cockburn, *Introduction*, Calendar of the Assize Records HMSO: 1979, pp. 119 and 141; JS Sharpe, *Crime in Early Modern England*, Longman: 1999, pp. 93-94.

<sup>6</sup> For a sense of the nature of the Bloody Code and whether it was persecuting the average criminal, see Douglas Hay, 'Property, authority and the criminal law' in Hay et al. (ed.), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*. New York: 1975, pp. 17-64. I discuss Hay's interpretation throughout this dissertation. See also E. P. Thompson's somewhat more complex discussion of the role of capital punishment in “The Crime of

Richard Morris observed: “Benefit of clergy is one of those historical accidents which became embedded in the English legal system, survived for many centuries because it served a purpose far different from that for which it had been devised.”<sup>7</sup> To demonstrate the application of this plea at different historical moments, let us examine cases from three very different periods. In 1327, a priest was convicted of theft. In court, he proved his status as a priest by providing papers of Ordination. Upon receiving clergy, he stated that “if he were a layman, he would now be hanged.”<sup>8</sup> Over 200 years later, playwright Ben Jonson was indicted for manslaughter. He had fought a duel with another actor, Gabriel Spencer, and killed him cleanly on 22 September 1598.<sup>9</sup> The sentence for such action was execution by hanging. Yet Jonson, a layman with no clerical training, did not die for his crime. He read aloud in court and left the courtroom a “criminous clerk” – alive by the grace of the Queen and by virtue of his literacy.

Two hundred years after Jonson, a poor layman named Simon LeBlanc pilfered goods from a series of boats in Southampton. His crime of theft was compounded by crossing the water, for by doing so he traversed multiple jurisdictions while committing a single crime.<sup>10</sup> Overwhelming evidence allowed the court to find him guilty, but at the conclusion of trial, the local community delivered a petition sponsored by 40 well-respected men. This petition

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Anonymity from Albion’s Fatal Tree” *Whigs and Hunters: The Origins of the Black Act*. Penguin: 1990, pp. 378-432

<sup>7</sup> Richard B Morris, “Review: Benefit of Clergy in America and Related Matters. By George Dalzell” in *University of Pennsylvania Law Review*, Vol 105 No 3 (Jan 1957), pp. 436-438. Quote from p. 436

<sup>8</sup> Seipp No 1327.097, <http://www.bu.edu/phpbin/lawyearbooks/display.php?id=5961> (Accessed 17 August 2012). Database of Year Books cites Fitzherbert Corone 155 and Brooke Clergie 8, fol. 142 for the information contained. Alternatively, see Donald W. Sutherland, *The Eyre of Northamptonshire*, 3-4 Edward III (1329-1330), vol. 2, SS 791, London: 1983, p. 98

<sup>9</sup> Helen Ostovich, Holger Schott Syme, and Andrew Griffin, *Locating the Queen's Men, 1583-1603: Material Practices and Conditions of Playing*. Ashgate Publishing: 2009, p. 91

<sup>10</sup> Home Office Papers of the National Archives, Kew HO 47/28/7 (April 1801)

explained that LeBlanc and his family had undergone hard times. He was a “poor man” whose family was suffering through the recent rise in the prices of food provisions, the petition explained.<sup>11</sup> Although his crimes made him ineligible to claim benefit of clergy as it existed in 1799, the Court allowed him the legal fiction of being a “clerk convict” and LeBlanc went home to care for his family. All three of these cases describe vastly different conditions in radically changed political atmospheres, yet all three relied on the same legal privilege, a form of forgiveness for a select group of offenders.

By studying the history of benefit of clergy, we simultaneously view the evolution of Parliament, government, and the law. We also see values and assumptions of a society undergoing dramatic and influential change. Benefit of clergy evolved alongside English culture. Through the laws of this privilege, we view the rights of marginalized groups, including witches,<sup>12</sup> pirates,<sup>13</sup> those engaging in sodomy and sexual experimentation,<sup>14</sup> rapists,<sup>15</sup> foreigners and immigrants,<sup>16</sup> Catholic recusants,<sup>17</sup> Egyptians or “gypsies,”<sup>18</sup> atheists,<sup>19</sup> blasphemers,<sup>20</sup>

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<sup>11</sup> Home Office Papers of the National Archives, Kew HO 47/28/7 (April 1801)

<sup>12</sup> Witchcraft Statutes: 33 Henry VIII c 8, 1 James c 12. Note: All Statutes are referenced according to the number system contained in John Raithby, ed. *The Statutes of the Realm printed by command of his majesty King George the Third; in Pursuance of an Address of the House of Commons of Great Britain; from Original Records and Authentic Manuscripts*. Vols 1-7, Great Britain: 1801. More specific quotes later come from a variety of sources including manuscripts in the House of Lords Parliamentary Archives and contemporary copies on Early English Books Online. Unless otherwise cited, the George III volumes may be assumed.

<sup>13</sup> Piracy Statutes: 27 Henry VIII c 4, 28 Henry VIII c 15 and Ordinance 20 Sept 1649

<sup>14</sup> Sodomy Statutes: 25 Henry VIII c 6, 2/3 Edward VI c 29

<sup>15</sup> Rape and Adultery Statutes: 18 Elizabeth c 7, 39 Elizabeth c 9, Ordinance 10 May 1650

<sup>16</sup> Foreigners and Immigrant statutes: 1/2 Philip and Mary c 4, 42 George III c 92 and 43 George III c 155

<sup>17</sup> Recusant Jesuit Statutes: 27 Elizabeth c2 and 35 Elizabeth c 2

<sup>18</sup> Egyptians Statutes: 12 Henry VIII c 10, 1/2 Philip and Mary c 4 and 5 Elizabeth c 20

<sup>19</sup> *Laws of the Interregnum*, Ordinance 9 August 1650

women as thieves,<sup>21</sup> women as equal subjects before the law,<sup>22</sup> educated subjects,<sup>23</sup> forgerers and impersonators,<sup>24</sup> and many others. Through testimony at trial, we read descriptions of communities and families, the emotion of trial and reprieve, and the changing perceptions of women as subjects to royal power. The law occupies a fascinating place in society: not a perfect representation of the pluralism of opinions, yet a calculated policy designed to favor the state while being openly accepted by the wider kingdom. This delicate balance allows us to see an idealized state of social function. When coupled with the expressions of real life in litigation, the execution of power can temper that idealized state. What remains is a blend of social ideals and the troubles facing real families in early modern England.

In 1710, a society of gentlemen published a poem concerning benefit of clergy and its history, capturing the origins in ordination, the position of lay criminals hoping to plead, and the impact of this tradition on English law:

Q:      Apollo prepare,  
           I'll make you stare.  
 For I'll put you to your Neck-Verse  
           Howe'er you harangue,  
           You'll certainly hang  
 Except you the matter rehearse  
           And that is to tell  
           (And pray do it well  
 Without any banter I charge ye)  
           Why the Neck Verse is said,  
           And when it was made  
 The Benefit of Clergy?

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<sup>20</sup> *Laws of the Interregnum*, Ordinance 10 May 1648

<sup>21</sup> “An Act Concerning Women Convicted of Small Felonies”: 21 James c 6

<sup>22</sup> “An Act to Take Away Clergy from Some Offenders and to Bring Others to Punishment”: 3 William & Mary c 9

<sup>23</sup> As examples of judgments, see Fitzherbert’s *La Graunde Abridgement*, fol 210r and Sir William Staunford, *Plees del Coron* (1557), fs.133a-b. For Statutes, see 25 Edward III st 6 c 4-5 and 6 Anne c 9

<sup>24</sup> Forgery laws: George I c 8, 15 George II c 13, 32 George II c 35, 4 George III c 37, 13 George III c 56, etc.

A:     When Popery long since  
           With Tenets of non-sense  
 And ignorance fill'd all the Land  
           And Latin alone  
           To Church-men was known  
 And the reading a legible Hand  
           This privilege then  
           To save learned Men  
 Was granted 'em by Holy Church  
           While Villains whose crimes  
           Were lesser nine times  
 Were certainly left in the Lurch  
           If a Monk had been taken  
           For stealing of Bacon  
 For Burglary, Murder, or Rape  
           If he could but rehearse  
           (Well prompt) his Neck-verse,  
 He never could fail to escape  
           When the World grew more wise  
           And with open Eyes  
 Were able to see through the Mist  
           Twas Thought's just to save  
           A Laity Knave  
 As well as a Rascally Priest."<sup>25</sup>

This poem elegantly conveys the confusing history of this priestly privilege that would eventually offer the “laity knave” a chance for redemption. It identifies the role of clergy to “save learned men” even when the learning of such men was memorized, performed, or poorly executed (“well prompt” by the examining official). Here we see the meandering change of benefit of clergy over time; published just after the reading requirement was abolished, this poem nevertheless accurately captures the contradictions and fascinating second changes inherent in the benefit. Few literary references would portray so well the complicated and ever-changing

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<sup>25</sup> *The British Apollo, or Curious Amusements for the Ingenious. To which are added the most Material Occurrences Foreign and Domestick, Perform'd by a Society of Gentlemen.* Printed for the Authors, by J Mayo at the Printing Press, against Water Lane in Fleet Street (1708-1710). Vol III, no 72, Newberry Library Rare Collection, Case Folio A51.1611

versions of the liberty during the early modern period. The definitions were altered by law almost constantly, each to attend to a new challenge to governance and ordered society. Yet there was an idea underlying the benefit throughout this period: that learned men, regardless of the quality of their learning or the measure of their character, might earn the blessings of mercy by reading their neck-verse. Granting such mercy would enhance the sense of justice in the commonwealth.

Definitions of benefit of clergy changed radically by practice and by statutory mandate. These alterations occurred so often that it was sometimes difficult for contemporary writers to accurately present the privilege to local Justices of the Peace. I attempt to deal with this problem by presenting my project chronologically, according to major periods with distinct definitions for claiming the benefit. These periods include the medieval origins (325 to 1489), the Reformation-era alterations (1512 to 1540), the legislative changes begun under the Tudors and continued under their successors (1530 to 1625), and the experiences of defendants in Court throughout the early modern period (1575 to 1718), focusing heavily on the Stuarts. Furthermore, I have compiled an appendix of Statutes to track the changing status of benefit of clergy.<sup>26</sup> Throughout the project, I refer to the privilege in many ways: as the “benefit” or “privilege” or “clergy;” as an immunity, exemption, right, or exception; as the defense plea, variation, medieval change of venue, or mercy. These are mere euphemisms designed to prevent the repetition of writing “benefit of clergy” in every other sentence.

One of the more straightforward historical definitions came from John Cowell’s 1607 law dictionary *The Interpreter*:

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<sup>26</sup> Appendix 1 gives a summary of the most important statutes; Appendix 2 provides every statute pertaining to benefit of clergy from 1164 until 1841.

Clergie is an auncient liberty of the church, which hath bene confirmed by diuers parlaments, and is, when a priest, or one within orders, is arraigned of felony, before a seculer iudge, he may pray his clergie. which is as much, as if he prayed to be deliuered to his ordinarie, to purge him selfe of the offence obiected.<sup>27</sup>

Briefly, Cowell gave us the origins and a popular understanding of the privilege. However, since it was published in 1607, it appears that Cowell has outdated information for his definition. In 1576, Parliament removed the requirement of delivering claimants to the Ordinary.<sup>28</sup> Even earlier, in 1536, the benefit itself was removed from ecclesiastical privileges and offered to any who might use it: “such as be within holy Orders, shall be henceforth stand and be under the same peins and dangers ... as other persons, not being within holy Orders.”<sup>29</sup> Cowell’s description did not incorporate such statutory change, even though the local Justices were well aware of these alterations.<sup>30</sup> Nevertheless, we find similar language in the definitions of clergy later in the century, such as in Thomas Blount’s *Lexicon* and other publications.<sup>31</sup> Zachary Babington wrote a definition for the privilege in 1677, continuing to include the long-abandoned religious angle to the lay version:

all persons within Holy Orders, which by the Laws of this Realm ought, or may have their Clergy for any Felonies, and shall be admitted to the same, shall be burnt in the

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<sup>27</sup> John Cowell, *The Interpreter: or Booke containing the signification of vvords wherein is set foorth the true meaning of all, or the most part of such vvords and termes, as are mentioned in the lawe vvriters, or statutes of this victorious and renowned kingdome, requiring any exposition or interpretation. ... Collected by Iohn Cowell ...* Cambridge: 1607, under “benefit of clergie”

<sup>28</sup> 18 Elizabeth c 7, “An Act to take away Clergy from the offenders in rape and burglary, and an order for the delivery of clerks convict without purgation,” *The Statutes of the Realm*, Vol IV, p. 617

<sup>29</sup> 28 Henry VIII c 1, “An Act that Abjurers in certain cases shall not have Clergy” *The Statutes of the Realm* Vol III, p. 651.

<sup>30</sup> See Chapter Four for an elaborate discussion of statistics according to the Assize Records.

<sup>31</sup> Blount, Thomas. *Nomo-lexikon, a law-dictionary interpreting such difficult and obscure vvords and termes as are found either in our common or statute, ancient or modern lawes : vvith references to the severall statutes, records, registers, law-vvbooks, charters, ancient vvdeeds, and manuscripts, wherein the vvords are used : and etymologies, vvhere they properly occur / vvby Thomas Blount of the Inner Temple, Esq. .* In the Savoy : Printed by Tho. Newcomb, for John Martin and Henry Herringman ..., 1670 under “Benefit of Clergy”

hand, in like manner as Lay Clerks in such Cases, and shall suffer all such pains, dangers, and forfeitures as Lay persons in like Cases.<sup>32</sup>

Yet the demand to see proof of ordination had been abandoned 150 years before the publication of this passage and even the delivery to the Ordinary had ceased after 1576, unless the defendant really was ordained and required a disciplinary visit to the local Bishop.

In a more straightforward example, a 1650 advice book to Justices of the Peace stated clearly the connection between felonious offender and appropriate cooperation:

A man indicted acknowledgeth Felony, and approveth, and when his appeal appeareth, the appellee praeth his Clergy, he shall not have his Clergy. He that is arraigned of any Felony thereof he might have his Clergy, if he stand mute or otherwise abuse himself, that he should be put to his pennance... he shall not lose the benefit of his clergy, for he is not put from that by a Statute.<sup>33</sup>

These definitions are but a few examples of the many different explanations that use a variety of approaches for explaining the changing role of clergy in the English legal system. Parliament may have an idealized concept of what clergy was and how it ought to be implemented; the occasional clergy statute includes a brief history of the privilege before presenting a new alteration to its function. Yet variation remained part of the system, as local tradition emphasized different practice as described in different books. Without knowing who read which instructional book, it is difficult to discern exactly how the application of the benefit changed. Perhaps an example of the confusing and ever-changing nature of benefit of clergy caused the 1621 call for a committee of lawyers to research and capture precisely the current status of the privilege, in

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<sup>32</sup> Babington, Zachary. *Advice to grand jurors in cases of blood asserting from law and reason that at the King's suit in all cases (where a person by law is to be indicted for killing of another person) that the indictment ought to be drawn for murther, and that the grand jury ought to find it murther, where their evidence is that the party intended to be indicted had his hands in blood, and did kill the other person / by Zachary Babington, Gent.* London: Printed for John Amery, 1677 Harvard Law School Library, Wing B248

<sup>33</sup> Collyn, Nicholas, "Appendix D: In What Cases a Man may have his Clergy, & What not" *A Brief Summary of the Lavves and statutes of England.* London: 1650, f.25

order to create a uniform version to apply evenly throughout the kingdom.<sup>34</sup> However confused historical philosophers and legislators might have been concerning the specific claims of the benefit, the trial records bear out a much more consistent application.<sup>35</sup> With slight variation, throughout the kingdom, a felonious offender would plead clergy sometime just before or after conviction, after which officials would measure a performance of public reading to allow the defendant to avoid execution. The successful defendant would be branded and freed through the grace of the king.

Ultimately, the importance of studying the ancient privilege as it was employed to support the Tudor/Stuart government lies in observing the slow centralization of England as it transforms from kingdom to nation-state. I follow a tradition well-established by luminaries in the field including JS Cockburn, JH Baker, John Langbein, Krista Kesselring, JM Beattie, JA Sharpe, and many others. “Statutory enactments and legal treatises tell us part of the story of legal change; the rest must be gathered from the reluctant, incomplete records of trials, pre-trial procedures, and sentencing practices.”<sup>36</sup> What resulted was a blend of the legal narrative as it was shaped by social expectations and cultural values of the moment. The process of strengthening the legal code by incorporating benefit of clergy into new policies was a haphazard project, achieved not by design but through a long series of compromises seeking to solve temporary problems. Over the course of a few centuries, the many small compromises formed a revolution in the manner in which benefit of clergy was offered and administered. In the process,

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<sup>34</sup> It seems the committee who received this task remained inconclusive by the time James I prorogued Parliament. Nevertheless, the demand to make it uniform is telling. See “The Anonymous Journal X” in *Commons Debates of 1621*, ed by Wallace Notestein, Frances Helen Relf and Hartley Simpson. Vol II. Yale University Press: 1935, p. 68

<sup>35</sup> I explore the trends of trials in Chapter Four from the fifteenth century to the eighteenth century.

<sup>36</sup> Jeffrey Sawyer’s words on this approach perfectly captured my view of what constitutes a strong legal project. See Sawyer, “Benefit of Clergy in Maryland and Virginia” in *The American Journal of Legal History* Vol 34 No 1 (January 1990), pp. 49-68; quote from p. 51

it served less to allow larger numbers of criminals to avoid punishment, as an immunity might suggest, but also functioned to draw larger groups of subjects into royal jurisdiction by marking them criminals.

For approximately 700 years of English history, benefit of clergy allowed a variety of defendants to escape punishment for their crimes. Depending on the historical moment, the crime committed, or the status of the person involved, the legal consequence could range from winning a change of venue from royal courts to ecclesiastical courts to being forgiven and branded rather than executed or even sentenced to hard labor. Occasionally, the defendant could walk out a free person without any consequences at all; in later years, the exchange for avoiding execution meant perhaps a year's imprisonment or seven to fourteen years' Transportation to British colonies throughout the world.

## Mercy, Authority, Historiography

The key to threading an exception into the legal system of England relied on the powerful idea of mercy. The persistence of benefit of clergy in English laws raised numerous questions about the role of mercy in justice, the impact of exemptions on local communities, and the manifestation of power when tied to offering exceptions. Shakespeare identified the power of forgiveness in his play *The Merchant of Venice*:

The quality of mercy is not strain'd,  
It droppeth as the gentle rain from heaven  
Upon the place beneath. It is twice blest:  
It blesseth him that gives and him that takes.  
Portia, *The Merchant Of Venice*<sup>37</sup>

As Portia explained, the presence of mercy in resolving a dispute grants more than a second chance or a method of recourse for a sin or crime. Both parties benefit: the receiver of mercy avoids the full punishment and the granter of mercy gains power over the guilty party. By intervening on the victim's behalf, the authority gains power by creating a sense of indebtedness. St. Augustine assumed the same about mercy and considers forgiveness to be one of the greatest conversion tools at the hands of the Church.<sup>38</sup> He asserted to Macedonius that the power of granting mercy even to a very guilty man was that it transferred the debt of the sinner from society to the Church. Owning a man's debt could be very lucrative. The consequences of intervention may have stirred emotions of loyalty far greater than the elective relationship between two people within a social hierarchy. Even those associated with the indebted man might be grateful and therefore more loyal and willing to support the merciful party. Augustine

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<sup>37</sup> William Shakespeare, *The Merchant of Venice*, Act 4, scene 1, 180–187

<sup>38</sup> Letters 152 and 153 of St Augustine, from E.M. Atkins and R.J. Dodaro, eds. *Augustine: Political Writings*. Cambridge Texts in the History of Political Thought. Cambridge University Press: 2001, pp. 70-87

cast mercy as an ideal method to entice people towards fealty to the Church and the salvation of their souls.<sup>39</sup>

Thomas Hobbes observed through his character the Philosopher that “The Benefit of Clergy comes in upon another account, and importeth not any extenuation of the Crime; for it is but a Relick of the old usurped Papal priviledge, which is now by many Statutes so pared off, as to spread but to few Offences, and is become a Legal kind of Conveying Mercy, not only to the Clergy, but also to the Laity.”<sup>40</sup> Hobbes portrayed the evolution of this priestly privilege accurately. The usurpation of the benefit occurred during the Reformation and found ready acceptance in the Tudor and Stuart courts. Granting mercy captured submission over the receiver and enhanced the authority of the King to the point that by the time of Hobbes’ publication, clergy was no longer merely a rare mercy but a common plea for any felon.<sup>41</sup>

Scholars have explored the benefits of mercy. In 1990, Jeffrey Sawyer concluded that “benefit of clergy functioned generally, as did the pardon, to help make the administration of criminal justice more flexible.”<sup>42</sup> Superficially, the immunity benefited the receiver of mercy, but the resolute retention of this privilege functioned to support the administration of an ordered society.<sup>43</sup> Edward White’s assessment of the English Common Law praised its persistent ideal

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<sup>39</sup> I discuss this in further detail in Chapter One, pp. 42-43 of this dissertation. See Letter 153 of St Augustine, pp. 79-81

<sup>40</sup> Hobbes, Thomas. *The art of rhetoric, with A discourse of the laws of England by Thomas Hobbes of Malmesbury*. London: 1681, p. 110. British Library, Wing H2212

<sup>41</sup> I examine the statistics behind the complicated trial collections in Chapter Four.

<sup>42</sup> Jeffrey K Sawyer, “Benefit of Clergy in Maryland and Virginia” in *The American Journal of Legal History*, Vol 34, No 1 (January 1990), pp. 49-68. Quote from p. 67.

<sup>43</sup> Scholarship concerning the balance of maintaining an ordered society while allowing for local fluctuation has received a lot of attention. The consensus seems to be that a single method of order was impossible and that variation was essential for keeping the peace. See for example Keith Wrightson, “Two Concepts of Order: Justices, Constables, and Jurymen in Seventeenth-century England” in John Brewer and John Styles, eds. *An Ungovernable People: The English and their Law in Seventeenth and Eighteenth Centuries*. London: 1980, pp. 21-46. Anthony

that when the jury was in doubt, “the most merciful side should be taken.”<sup>44</sup> White described the English legal system in glowing terms: “There is no doubt but that the English common law is the outgrowth of the most enlightened system of jurisprudence that the world has ever seen, for it represents the best thought of the brightest minds of civilization’s most progressive people... in thorough accord with proper and just ideals.”<sup>45</sup> To White, the mercy of benefit of clergy was part and parcel of the genius of common law; mercy benefited the pleading convict while effectively purchasing the debt from the criminal.

Krista Kesselring’s study of mercy in Tudor England found “the general pardons useful in a number of immediately practical ways: as expressions of gratitude; as elements of festivity; and as bargaining tools with the political and religious elite for various forms of cooperation.”<sup>46</sup> The latter cooperation was the most important method for giving advantage to both parties involved in an exchange of mercy and forgiveness. Kesselring claimed that “They allowed the Tudor sovereigns to make statements about the perceived gravity of an offense at moments of particular tension; to encourage the conformity of outlaws and religious dissidents; to clear the dockets of past offenses without appearing to ignore them; and to present themselves as

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Fletcher and John Stevenson, "Introduction" to Anthony Fletcher and John Stevenson, eds, *Order and Disorder in Early Modern England*. Cambridge: 1985, pp. 1-40. Cynthia Herrup, *Common Peace: Participation and the Criminal Law in Seventeenth Century England*. Cambridge: 1987, pp 1-11. James Share, “The People and the Law” in Barry Reay, ed, *Popular Culture in Seventeenth-Century England*. London: 1985, pp. 244-270. More recently, Garthine Walker published her book with a comprehensive review of the historiography of crime and social order in her “Introduction” to *Crime Gender and Social Order in Early Modern England*. Cambridge University Press: 2003, pp. 1-8

<sup>44</sup> Edward White, *Legal Antiquities*, p. 232.

<sup>45</sup> White, *Legal Antiquities*, pp. 222-223

<sup>46</sup> Krista Kesselring, *Mercy and Authority in the Tudor State*, Cambridge University Press: 2003, p. 72

merciful.”<sup>47</sup> In sum, the granting of a second chance gave a small pleasure to the condemned, who gained an extension of life, but conferred as well political currency to the grantor.

Granting mercy was a method for increasing loyalty and drawing affection from the populace. It affected not only those who received it directly but also their friends, families, and community members. Sympathy from powerful actors attributed an element of human understanding to the office which granted mercy. Those completely unaffected by the life saved might nevertheless hear of it and feel inspired by the bold and public act of forgiveness. As benefit of clergy lost the function of merely granting a change of venue for priests, it was recast as a grant of benevolence from the king. The expanded use of this tradition enhanced the image and reputation of the Crown. From 1500 to 1700, benefit of clergy was recast and redefined as a privilege specific to Englishness rather than associated with its ecclesiastical and Popish roots.

Despite the presence of benefit of clergy throughout English history, the legal variation has received surprisingly limited scholarly attention. Although benefit of clergy might appear briefly in survey books or larger projects, the research projects dedicated to it exclusively exist in small numbers. Leona Gabel’s 1929 tome on benefit of clergy during the Middle Ages was the first to address the benefit. Her work argues that the mutability of benefit of clergy relied entirely on its focus on the definition of the Latin “*clericus*.” Who was considered a clerk? Candidates included the ordained priest, a man of the cloth, rank-and-file devout Christians, and even clerks of any organization or institution. To some, it was anyone who could read. These definitions challenged not only Ms. Gabel but also the justices of the medieval period, who met to discuss such matters and recorded them in the Year Books and other historical records.

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<sup>47</sup> Kesselring, p. 72

Ultimately, Gabel's focus on the medieval period found that the shift in benefit of clergy that would occur during the Reformation began under Henry II. However, the attempts to either abolish the special clerical privilege or offer it more general in a weakened form to laymen were rejected by a more powerful medieval Church. Once national churches were established following the Break with Rome, what began under Henry II was reformed and re-established, to the benefit of the State. Gabel's investigation allowed the struggle between Church and State take central stage through the lens of legal immunity. Framing the history of benefit of clergy in that way provided a remarkable introduction to the benefit's later history, as the Reformation transformed institutions and the age of Parliamentary authority took shape.

Ten years after Gabel's book appeared, CB Firth published an article on the subject of benefit of clergy during the reign of Edward IV.<sup>48</sup> Her work was particularly important because this period saw a rise in questionable pleas of the benefit and a flurry of new discussions among justices, ecclesiastical representatives, and royal legislators over how to measure eligibility at court. The decades of the Wars of the Roses led to a series of petitions, to the Pope and the English King, begging for recommendations that might prevent any harm coming to priests while curbing the excessive use of "questionable" defendants. Firth's conclusion relied on the age-old narrative of the Tudors as a family of despots. She viewed the period just prior to Henry Tudor's ascent as one of chaos that begged for a strong central hand. And the confusion of this chaos was reflected in the conflicting application of benefit of clergy. Others along this tradition, including Arthur Ogle, portrayed the confusion over granting clergy to criminals of questionable eligibility as symptomatic of the corruption of the church spilling into the temporal courts and prolonging

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<sup>48</sup> CB Firth, "Benefit of Clergy in the Time of Edward IV" *English Historical Review*, Vol 32, (1917) pp. 175-191

the disorder of the Wars of the Roses.<sup>49</sup> Firth's work was very helpful in contextualizing the political confusion over the right to claim the benefit just prior to the Reformation, but the temptation to see precursors to the Reformation in every conflict fails to appreciate disagreement on its own terms, and instead casts history as progressing firmly toward an "inevitable" clash with the Church. Benefit of clergy was not a symptom of the Church's corruption, for it was not present in all Christian states and its form was unique to the government of England itself.

JG Bellamy took the history of clergy to a new technical level by providing a legal history of clergy during the fifteenth and sixteenth centuries in 1984. His work drew from pamphlets, opinions, trial records, and legislation between 1402 and the end of Elizabeth's reign. Bellamy's focus on legal documents suggest that "To outward appearances there were virtually no changes of importance of noteworthy discussions about it between 1403 and about the middle of the century, but thereafter the debate was considerable."<sup>50</sup> By the mid-fifteenth century, benefit of clergy had been adopted as a possible lay claim. Whether this was a theoretical adoption or a spike in actual lay claims is difficult to ascertain, as Gable pointed out with her discussion of the slippery nature of the defining term "*clericus*."<sup>51</sup> Nevertheless, legal scholars and justices began discussing the different levels of eligibility much more frequently in the second half of the fifteenth century. Bellamy traced the conflicting, almost rambling

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<sup>49</sup> Arthur Ogle, *Tragedy in Lollards' Tower*. Pen-in-Hand, Oxford: 1949, pp. 162-168. For a more balanced approach to the long-term consequences of the Hunne case, see GW Bernard, "The Hunne Affair" in *The Late Medieval English Church: Vitality and Vulnerability Before the Break with Rome*. Yale University Press: 2012, pp. 1-16. Bernard argues that the Hunne case provides us with great insight of the tension between clergy and lay offenders, especially as ecclesiastical and temporal leaders attempted to negotiate their faith while preserving the peace. Nevertheless, he warns us repeatedly against seeing this as a precursor to the Reformation, as it was hardly foremost in the mind of Henry VIII during his later "Great Matter." Only perfect hindsight can place significance over Hunne and we must take care to avoid forcing such connections.

<sup>50</sup> JG Bellamy, "Benefit of Clergy in the Fifteenth and Sixteenth Centuries" in *Criminal Law and Society in Late Medieval and Tudor England*, St Martin's Press: 1984, pp. 115-164 quote from p. 124

<sup>51</sup> Leona Gabel, "The Term *Clericus*," in *Benefit of Clergy in England in the Later Middle Ages*. Smith College Studies in History Series Vol XIV (1929)pp. 62-91

developments from 1403 to about 1600, as benefit of clergy underwent secularization. Bellamy does not employ the term “secularization,” but his analysis presented the slow and steady removal of ecclesiastical influence over benefit of clergy. By the end of his period, the Ordinary no longer came to assess and collect eligible convicts.<sup>52</sup> Instead, the justice allowed or denied them clergy and the defendant was either free to go home or died on the scaffolds.

Each of these works focused on the role of benefit of clergy at different points in its life cycle, from its medieval childhood to its eighteenth-century old age. Yet one book attempted to draw from these periods in a single narrative in 1955. George W Dalzell’s *Benefit of Clergy in America & Related Matters* was essentially a popular version of what I try to recreate here, albeit with deeper academic focus and wider research.<sup>53</sup> Dalzell attempted to trace the history of benefit of clergy from its development in England to its inconsistent presence in British American and Caribbean colonies. The power of Dalzell’s narrative was greatly diminished by its astonishing lack of citations. Out of necessity to lay the groundwork for his true focus, benefit of clergy in the Americas, he hastily drew together a rough history of the privilege through quotes and cases that have no underlying trail or reference. His audience was the armchair novice, reading into history without concern for research and sources. In spite of the absence of a citation system, Dalzell quite accurately describes the long-lasting legacy of the clerical privilege and its changing definition: the balance between mercy and penalty according to judicial discretion in countries that have adopted some form of the English common law; the modern communities that grew out of Transportation; the growth and replacement of secular courts over

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<sup>52</sup> Bellamy states that the Ordinary is no longer involved on p. 164, but the Canterbury Archive records indicate that Ordinaries were still involved in collecting ordained priests claiming the new lay version following 1576. In final version, cite page number of Chapter four here.

<sup>53</sup> George Dalzell, *Benefit of Clergy in America and Related Matters*. Winston-Salem, N.C.: 1955

ecclesiastical ones; and the special consideration of felony.<sup>54</sup> Dalzell did less to prove an argument in this volume, but his narration or “biography” of the benefit clearly established the slow transition of clergy from ecclesiastical privilege to method of defense, at first uniquely offered in England but eventually applied in many Anglophone countries. Benefit of clergy was a Christian tradition, but nowhere else was it preserved as it was in England, where it took on a new life as other Christian kingdoms abandoned it.<sup>55</sup>

The most recent treatment of the privilege came in the past decade, as JH Baker wrote an article on the secularization of benefit of clergy in the century from 1450 to 1550. His article was the culmination of his research for the *Oxford History of the Laws of England* and the Selden Society transcription of the *Reports of John Spelman*.<sup>56</sup> Baker supported Bellamy’s technical legal history and illustrated that the minute decisions of late fifteenth-century justices and legal scholars contributed to the concerted Reformation-era effort to retain benefit of clergy while other ecclesiastical privileges were targeted for abolition. He argued that by the time of the Reformation, benefit of clergy had already adopted a primary secular purpose. My own research reveals that there was much discussion over this, as legal pens of the 1530s created an elaborate

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<sup>54</sup> Dalzell, *Benefit of Clergy in America and Other Matters*, p. 270

<sup>55</sup> Very little has been written on benefit of clergy on the Continent, which suggests that it was not nearly as important outside of England as it was within. Charles Henry Lea wrote an overview of the benefit in 1869. “Benefit of Clergy” in *Studies in Church History*. A French lawyer named Chassanée entertained the idea of animals receiving benefit of clergy when they were put on trial for crimes like destroying crops or assaulting humans, as I discuss in Chapter One (reference page in final version)The Council of Trent encouraged princes to continue observing the privilege (Sess. XXV de Ref., c. xx), indicating its continued existence. See The Catholic Encyclopedia, “Ecclesiastical Privileges” [http://oce.catholic.com/index.php?title=Ecclesiastical\\_Privileges](http://oce.catholic.com/index.php?title=Ecclesiastical_Privileges) (Accessed 27 October 2012) . The only scholarly treatment on the benefit as it existed in medieval France can be found in two volumes by Robert G Nestal, but they focus more on the challenges of lay claimants during the medieval period that led up to France’s slow abandonment of the privilege rather than later Reformation-era changes. *Le Privilegium Fori En France du Decret de Gratien a la Fin du XIV Siecle*. Paris: 1924 [http://archive.org/stream/leprivilegiumfor01gnuoft/leprivilegiumfor01gnuoft\\_djvu.txt](http://archive.org/stream/leprivilegiumfor01gnuoft/leprivilegiumfor01gnuoft_djvu.txt) (Accessed 15 November 2012)

<sup>56</sup> JH Baker, “Introduction” *The Reports of John Spelman*. Vols xciii and xciv, London: 1977-78, pp. 327-334

debate over recasting English history in terms of owning the legal exemption of clergy.<sup>57</sup> On the one hand, such arguments would fall flat without a powerful lay version, proving Baker's point, but if the lay version was indeed overwhelming or complete then such pamphlets would not have been so controversial, showing that the clerical version still maintained substantial influence on the eve of the Reformation. Without the earlier historical events, the final transition from ecclesiastical privilege to royal offering would not have been possible. Had these lawyers and justices failed to uphold the lay interpretations of the privilege during the middle ages, the 1530s pamphlets would have had very little evidence to support their argument. Instead, small debates throughout the medieval period contributed to a revisionist history during the 1530s in order to enhance the power and authority of the English King in matters of religion.

Baker's history of clergy was authoritative but ends short of the whole story by concluding with the Henrician Reformation. After the benefit was secularized during the 1530s, the number of prisoners who claimed it exploded. Our most reliable sources come from the Home Counties and London, which have been preserved so carefully in the latter portion of Elizabeth's reign and beyond. These trials recorded a spike in claims following the sixteenth century. The regional focus of the source material may ultimately disguise variation from other counties. Expanding a study to include regional differences would have created too diffuse a resource base for this project, so I focused on the collections of Home Circuit Assize records and reports concerning the Old Bailey. In these documents, claims of clergy grew until they reached approximately half of all felony cases concluded with a plea of clergy, successful or not.<sup>58</sup> This

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<sup>57</sup> I expand this further in the section "Pamphlet Literature" in Chapter Two, pp. 107-129

<sup>58</sup> Cockburn, *Introduction*, Calendar of Assizes Records, p. 119 and 141

was a stunning development for an exemption that had once reached only a small group of privileged clerks (and some pretenders) in the fifteenth century.

Plenty of well-known scholars have discussed benefit of clergy in passing, including luminaries of the field like GR Elton, JM Beattie, Thomas Green, JS Cockburn, and JS Sharpe.<sup>59</sup> I draw from these academics throughout this work, but their few pages of discussion rarely give us an encompassing understanding of the privilege. Each scholarly treatment of clergy seemed to focus on one moment and was unable to trace its centuries-long transformation. Often the definitions and context given to explain benefit of clergy rely on outdated information or ignore laws that had altered its status. To give a larger sense of the story, I have attempted to focus on its entire history, from the beginnings at the Council of Nicaea and its Biblical origins to the transition from ecclesiastical privilege to lay defense, until it was slowly replaced by Transportation and imprisonment, and finally abolished as part of Peel's reforms in the 1830s.

By then, England had become Britain, and Britain was ruling an Empire. Benefit of clergy extended to imperial holdings, first in Ireland and then in the American Colonies, Caribbean holdings, and even India. Although the benefit was abolished via Parliamentary Statute, benefit of clergy has snuck into modern legal traditions across the world, maintaining a presence long after it was eliminated from the legal system. The modern system adopts an appearance of equality. If all prisoners are to be treated the same, sent to the same prison for the same experience regardless of rank, status, or crime committed, then no one could plead

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<sup>59</sup> There are many references to benefit of clergy among these works. For instance: G.R. Elton, *The Parliament of England, 1559–1581*. Cambridge, 1986, pp. 63–66; GR Elton, *The Tudor Constitution: documents and commentary*. Cambridge University Press: 1960, p. 55-63; JM Beattie, “Benefit of Clergy and Offenses Against Property” in *Crime and the Courts in England, 1660-1800*. Princeton University Press: 1986, pp. 82-112, 141-148, 182-189; JS Cockburn, “Trial by the Book? Fact and Theory in the Criminal Process, 1558-1625” in *Legal Records and the Historian*. The Royal Historical Society: 1975, pp. 60-79 and also *Introduction to the Calendar of Assizes*, pp. 119-124; Thomas Green, “The Jury and the English Law of Homicide, 1200-1600,” *Michigan Law Review* Vol 74, No 3 (Jan 1976) pp. 413-499, especially pp. 473-491. JS Sharpe, *Crime in Early modern England, 1550-1750*. Themes in British Social History, Longman: 1999, pp. 94-99

exemption for their educational background. Clergy did not function in a modern system based on an ideal of egalitarian justice. And yet, tales of clergy in Commonwealth countries appeared in trial records, particularly in those with slave economies. I elaborate on these modern remnants of clergy's long history in my Conclusion chapter.

Throughout history, scholars and politicians have alternately spelled its name with capital or lower case letters; I have opted to refer to the benefit in lower case. However, I have capitalized three words throughout this project: "Ordinary," "Justice," and "Transportation." My decision to capitalize these positions and legal practice is to distinguish the representative of the bishop (Ordinary) from the adjective (ordinary). Similarly, the concept of fairness (justice) is distinct from the title (Justice). Finally, capital letters can distinguish the concept of transporting goods via cart or train (transportation) with the practice of banishing criminals to another land (Transportation). Parliamentary legislation is alternatively referred to as Acts, Statutes, or Laws, which convention renders capitalized. These uses reflect a personal decision and do not necessarily coincide with a larger scholarly consensus. Indeed, with works on benefit of clergy centuries old, capitalization seems to vary by generation.

Wherever possible, I have consulted the original scrolls from the House of Lords Archives in Westminster. However, due to the delicate nature of such valuable documents I have employed the online collection known as the *Statutes of the Realm*, volumes I through VII, published under King George I. This has provided an easily accessible source with consistent language without using the individual surviving published laws after each individual session. Yet the single collection is also fraught with some inconsistencies, as the records of laws already repealed were not recreated in full. Other problems arose as mistakes in the transcriptions were bound to occur. Double-checking contemporary publication of Statutes often but not always

solved such problems. Some laws had identical and vague wording; other years could not be found preserved among archival papers. Additional material from the National Archives in Kew, England and throughout valuable holdings in the United States, such as the Newberry Library and the Huntington Library, and online collections like HeinOnline and Early English Books Online provided me with insight into legal pamphlets, questionnaires, and commentary. Advice books to the Justices of the Peace and legal pamphlets about the current state of the law were similarly essential to measuring the position of benefit of clergy as it was interpreted by those charged with keeping the peace.

## Benefit of Clergy in Practice

In 1682, new Justices of the Peace throughout England might have received one of many recently-published advice books.<sup>60</sup> These books catered to the idea of providing an homogenous experience throughout England's legal system. Within its covers, JPs would find advice for reprimanding, bring to court, convicting, and punishing a guilty criminal, including scripts for the specific words needed to be said in public. For instance, at the moment of conviction, a JP was advised to stand next to the defendant and ask, "Look upon the Prisoner you that be sworn, what say you, is he guilty of the Felony whereof he stands indicted, or not guilty?"<sup>61</sup> The Justice was then to record the names and conviction of the criminal, including a note of "*Sus*" for "suspended sentence" should the convict be eligible to plead clergy.<sup>62</sup>

What followed was a public interview concerning property, social position, and faith. If the convict was an Anglican in good standing, with some property or at least two men of property supporting his plea, and willing to go "down upon your knees, and say *God save the King and his Honorable Bench*," then the accused may begin the clergy plea.<sup>63</sup> The prisoner was handed a book. Before the audience of the court, including officials, clerks, other defendants, and

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<sup>60</sup> *The Office of the Clerk of Assize: Containing the Form and Method of the Proceedings at the Assizes, and general Gaol-delivery, as also on the Corwn and Nisi Prius side. Together with the Office of the Clerk of the Peace. Shewing the true manner and form of the proceedings at the Court of General Quarter Sessions of the Peace. With divers Forms of Presentments and other Precendents at Assizes and Session. With a Table of Fees thereunto belonging. The second edition Corrected and Amended, with several new additions.* London, Printed for Henry Twyford in Vine Court, Middle Temple, 1682. From now on "Office of the Clerk of Assize"

<sup>61</sup> *Office of the Clerk of Assize*, p. 49

<sup>62</sup> *Office of the Clerk of Assize*, p. 49 and also in Francis Watt, *The Law's Lumber Room* (London 1845), p. 5

<sup>63</sup> *Office of the Clerk of Assize*, p. 50

lawyers, the defendant had to read a passage. Most often, the passage was the “Miserere.”<sup>64</sup> Should the convict be successful, the Justice of the Peace was to write “*Po Se Cul Nul Bona Pe Li Cre*” by the name; if the convict were incapable of reading the selected passage satisfactorily, the normal sentence of death would be upheld and the JP was to record “*pe li fed non legit jo’ sus*.”<sup>65</sup> There were variations to this, as clerks convict might plead their clergy prior to a certain conviction, or criminals who confessed were given an easier passage to read. Although the Church was no longer a part of benefit of clergy at the moment of this book’s publication, some of the advice recommends using an Ordinary to administer the reading test.<sup>66</sup>

Once this public performance had ended, and the Calendar of records “made perfect” by the recording JP, the book was to be handed to the presiding Justice of the Assizes for review.<sup>67</sup> At this point, the criminal was taken to the center of the courtroom and held down by officers of the court. The 1682 advice books states: “A convict person shall be marked openly before the Judge upon the brawn of his left Thumb with an M for Murder and with a T for another Felony.”<sup>68</sup> Some commentators of the period interpret the M for Malefactor and the T for theft, adding to the interpretations of the branded mark.<sup>69</sup> The iron used for branding was

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<sup>64</sup> “Have mercy upon me, O Lord, according to thy loving kindness: according unto the multitude of thy tender mercies blot out my transgressions.” is Psalm 51 of the King James Bible

<sup>65</sup> The abbreviated Latin is short for “*posuit se culpa nul bona petit libro cauteribitur*” or in layman’s terms: “Puts himself [to trial], is guilty, has no chattels; asks for the book, reads, was branded.” The second phrase stands for “*petit libro, non legit, io suspensus*” or roughly “Asked for the book but could not read and thus was hanged.” My thanks to Karl Shoemaker for assisting me in understanding the Latin abbreviations. *Office of the Clerk of Assize*, pp. 53-4. A similar description of advice appears in Sir Thomas Smith, *Commonwealth of England* (London: 1565): “The commissary must say *Legit* or *Non legit*, for these be words formal. If he say *legit*, the judge proceedeth no further to sentence of death; if he say *non*, the judge forwith proceedeth to sentence,” p. 112

<sup>66</sup> *Office of the Clerk of Assize*, p. 56

<sup>67</sup> *Office of the Clerk of Assize*, p. 57

<sup>68</sup> *Office of the Clerk of Assize*, pp. 58-59

<sup>69</sup> Thomas Blount lists the M for “Malefactor” in his entries relating to benefit of clergy, the miserere, and indictments, for instance. See *Nomo-lexikon* (1670). However, John Cowell’s *Interpreter* (1607) remarks that the M

approximately three feet long. With one or two officials holding the convict, the public gaoler or Sherriff was responsible for placing the red-hot end of the poker on the brawn of the left thumb. A well-placed bribe or friendly relationship might alter this process. See for instance a case in the American Colonies that outraged legal commentator Richard Starke in the later eighteenth century. He wrote that the branding was applied with “an Iron Scarcely heated.”<sup>70</sup> Indeed, such a false punishment might be interpreted as “rather a Piece of absurd Pageantry, tending neither to the Reformation of the Offender, nor for Example to others.”<sup>71</sup> Nevertheless, most people claiming clergy were branded with the iron glowing red-hot, as evidenced by cases explored in Chapter Four where repeat offenders were denied clergy a second time due to the existing scars on their hands.

Following the completion of branding the convict in the fleshy area of muscle at the base of the left thumb, “shall thereupon be enlarged, by the Justices, before whom the Clergy shall be granted, or by them detained longer in prison, at their discretion, so it be not for longer time than a yeare.”<sup>72</sup> Whether or not to sentence the clergied convict was tied to the Justice’s impression of needing to encourage at-risk repeat offenders to think twice before stealing or assaulting a second time. For those who did not need a year to think about acting within the confines of the law, they could walk out of court minutes after being burned in the hand.

The procedure in 1682, so carefully described, did not represent the process throughout the life of benefit of clergy. Securing and executing a successful plea of clergy changed

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stood for murder under “Benefit of Clergie.” Modern historians tend to state that it stood for Murder, but I imagine justices took advantage of the ambiguity of “M” for criminals pleading clergy for a variety of crimes.

<sup>70</sup> Richard Starke, *Office and Authority of a Justice of the Peace Explained and Digested*. Williamsburg, Virginia: 1774, p. 88

<sup>71</sup> Starke, p. 88

<sup>72</sup> *Office of the Clerk of Assize*, p. 57

dramatically from the High Middle Ages until its abolition in the nineteenth century. The alteration in procedure reflected equally the evolution of parliamentary definitions via Statute and the education and traditions of local officials. Benefit of clergy was one of those traditions that gave discretion to officers of the court. Passages explaining the process of clergy and its rapid changes punctuate each chapter that follows, particularly dominating the material in Chapter Four.

### **Organization of the Dissertation and Arguments**

This study is about the ways benefit of clergy contributed to the changing interaction between secular authority and a wider populace. By adopting a minor exemption and portraying it as a purely English tradition, the Crown was able to capitalize on a rhetoric of nationalism through theories of mercy. In turn, the provisions of exception enhanced the authority of the King and Parliament. This transition did not happen in a single moment, nor was it a controlled change overseen by a single minister. Rather, a series of events occurred, primarily in the sixteenth century, and each of these events led to a minor change in the role of benefit of clergy. After over a hundred years of such minor changes, the benefit had fundamentally transformed into a completely different plea of defense. As England expanded through colonies in the New World, these pleas and defensive options would travel with it to empower the reputation of the Empire in similar ways that it had once empowered the office of the Crown.

To explore the moments of change, I present the medieval history of benefit of clergy in Chapter One. Here I highlight some of the more important moments in clergy's history, as the

struggle between Church and State confirmed the privilege for errant or accused priests to be protected from secular punishment. The unique privilege of protecting what were called “criminous clerks” was not well-received by a larger population. Not only did it seem to reward ordained men who broke the law, it also facilitated a life of crime for lay criminals who donned priestly garb or learned to read. In the first chapter, I review the medieval theorists who supported benefit of clergy as a valuable privilege upholding the values of a religious and merciful society. I also present the protestations from communities who felt these protections went too far in preventing convictions. Growing tension concerning suspicious claimants who may or may not deserve the privilege came to a head and required sound judgment to effect a compromise. The compromise came under Henry VII in 1489. Expanding on these ideas while tracing the evolution of the benefit’s medieval childhood, the first chapter argues that the conflict of the fifteenth century over who may claim their clergy set the stage for a larger project of centralized government in the sixteenth century.

The second chapter addresses the changes of the Reformation, when the history of benefit of clergy became one of many avenues for pamphleteers to justify Henry VIII’s decision to break with Rome. During this period, the recasting of the history of the benefit provided powerful arguments concerning the hierarchy of the Crown over that of the “foreign” Pope. This chapter covers major disputes between Henry’s administration and the Church in Rome preceding and during the Reformation. Benefit of clergy played a constant role in the legislation changing social and political landscape of the 1530s. In fact, from 1530 to 1603, Parliament averaged 1.5 benefit-of-clergy laws per session, with some sessions passing as many as four laws employing the privilege as a method of implementing new policy.<sup>73</sup> During this period, the laws served as

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<sup>73</sup> See Appendix 2 for the list of clergy laws and their year of passage. This figure represents 52 statutes passed over 34 sessions of Parliament in 70 years, 1531 to 1601, or 1.5294 statutes per session.

one element of propaganda, as new legislation changing the definition of benefit of clergy worked to explain the history of clergy while glorifying the authority of the King. The final meeting of the Reformation Parliament abolished the clerical version of benefit of clergy, stripping it of its ecclesiastical association and appropriating the benefit entirely for laymen pleading mercy from the Crown. Ultimately, the power of mercy became a tool for Parliament to employ while crafting the surgical procedure to separate the Church from English society. In addition to depriving the clergy of their traditional privileges, the Reformation Parliament began changing legislation to cover social issues from the relationship between masters and servants to the treatment and punishment of vagabonds. Sodomy was newly criminalized in a move that appears to have facilitated the confiscation of the monastic lands. This chapter covers the story of using a traditional church-related mercy to centralize government and strengthen the king's authority over his subjects.

The changing description of benefit of clergy did not end with the tumultuous Reformation Parliament. Chapter Three traces the persistent use of the benefit in the remaining Tudor years to address issues from neighboring conflicts to matters of national security. This chapter focuses on the three methods employed by Parliament to temper a new law through benefit of clergy. Lawmakers could prohibit an action by deeming it "unclergyable," or ineligible for the privilege. Heinous crimes like murder and rape became unclergyable early in the sixteenth century. Alternatively, Parliament could criminalize an action but discourage it by categorizing it as a felony with possible allowance of clergy. In this way, convicts could be allowed clergy, branded and released rather than suffer the full penalty of the law. Laws that discouraged actions often included three-tier punishment systems for troublemakers, vagabonds, witches and sorcerers, or those who spoke seditious words against the monarch. Finally,

Parliament was able to encourage certain behaviors by offering or denying benefit of clergy. Those who rejected the King's authority in royal courts were not allowed later to beg their clergy. Jurors who returned false verdicts could be similarly stripped of their rights and privileges. The possibility of pleading mercy should a defendant be convicted was a powerful tool for ensuring that people cooperated with the courts from the very moment of arrest.

Chapter Three, then, is the story of Parliament's assumption of control over benefit of clergy and the methods used to manipulate this official forgiveness as a tool for Parliament's own growing power. The three methods of changing benefit of clergy are all related to the application of power: discouraging, encouraging, or prohibiting behavior of the populace. I argue that although each law was the temporary solution to a minor problem, taken together they represent a major revolution in defining and applying benefit of clergy. This revolution facilitates the centralization of Tudor government and foreshadows the relationship between state authority and subjects in the seventeenth century and the similar relationship between an imperial power and its colonies.

We see this relationship evolve in the descriptions of court, analyzed in Chapter Four. My intent in the fourth chapter is to balance the analysis of idealized laws as presented in the third chapter by revealing how those laws were executed in court. My analysis covers trial records, public descriptions, treatises, and pamphlets concerning the Old Bailey in London. To fill out popular understanding of the methods of benefit of clergy, I draw from plays and poems, which assume in their readers a certain familiarity with the law and experience in their references to "reading the book" or being "burned in the hand." Through this chapter on litigation, I argue that benefit of clergy underwent a transformation from a positive mercy or forgiveness to a sentence itself of pain and punishment. This process was slow and gradual. It began in 1576, when the law

allowed a year's imprisonment to clergy claimants that might be at risk for offending a second time. It grew with the addition of more punishments and the option of Transportation in 1670. The climax of this "mercy" turned extreme punishment came with the transfer of the branding location from the thumb to the face in 1699. Even the wording of the trial literature reflected the shift from mercy to vengeance against the defendant, as later Old Bailey records state that benefit of clergy was "sentenced" rather than "allowed," by the end of the seventeenth century.

The analysis of these trial records also gives us a chance to view the manner in which different defendants were treated by Court officials. In particular, the treatment of women changed over time. At first clerks of the court made reference to cases where women received death due to their exclusion from the benefit. Sometimes juries declared such women innocent despite the evidence against them. In 1624, women were granted clergy for "smale felonies," but not until 1691 were women allowed to take advantage of clergy "where a man being convicted of any felony for which he may demand the benefit of his clergy."<sup>74</sup> The sudden extension of this exception – during a time when clergy was restricted in favor of punishments like Transportation and imprisonment – led to a surprising "feminization" of the clergy in trial records, where the numbers showed an overwhelming favor toward female claims. In Chapter Four, I contextualize this shift toward women in the larger application of benefit of clergy at a local, courtside level.

The case of women is particularly significant, as benefit of clergy was used as a carrot to draw them into full subjection to the jurisdiction of the Court. The significance is explored in part of my Conclusion, when I follow the story to the British Empire and the offer of benefit of clergy to colonial subjects as a method of imperial expansion. What the English government

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<sup>74</sup> "An Acte concerning Women Convicted of Smale Felonies" 21 James 1 c 6 Parliamentary Archives, House of Lords HL/PO/JO/10/13/7 and "An Act to Take away Clergy from some Offenders and to Bring Others to Punishment" William & Mary c 9 Parliamentary Archives, House of Lords HL/PO/PU/1/169/3&4 W&Mn3

learned during the Reformation and its aftermath was later employed to draw criminal subjects away from their traditional systems of arbitration so they might embrace British presence and British legal sensibilities. Benefit of clergy became significant in the treatment of slaves and criminals living in slave societies, where a privilege distinguished social status. The consequences of this phenomenon allowed benefit of clergy to be present in Commonwealth and colonial countries all over the world.

Ultimately, this dissertation tells the story of an early modern government centralizing its authority through the rhetoric and application of medieval power, mostly drawn from the weakened Church. The stronger centralized government was then able to hone the availability of benefit of clergy in such a way that it encouraged subjects to cooperate with the legal system from the beginning of an investigation if they hoped to take advantage of the mercy later on. The changing availability of clergy also created special relationships between the government and women, foreigners, those considered to be sexual deviants, religious dissidents, and other isolated groups. The success of drawing these groups more firmly within the control of a single, secular, royal legal system provided an ideal case study that could later be applied throughout the world in an imperial context.

In her opening chapter on benefit of clergy in the medieval period, Leona Gabel commented, “In many respects, the age is faithfully mirrored in the history of an institution relatively so limited as benefit of clergy.”<sup>75</sup> She was writing about the tension between Church and State through the lens of the *privilegium clericale*, but she may as well have been writing about the concerns of the Tudor Stuart age. Benefit of clergy touched on the fears of specific groups paramount to a time of tremendous social and religious change. As political institutions

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<sup>75</sup> Gabel, p. 6

lost their religious definitions, so too did benefit of clergy. Her sentiments concerning the use of clergy as a faithful mirror to the time period continued until the use of imprisonment and Transportation began to supersede allowances of pleading one's clergy. And consequently, as Dalzell summarized, "The history of the privilege runs along two lines, the progressive enlargement of the classes of persons who might claim it, parallels (with some fluctuations) by the reduction of the number of offenses for which it might be claimed."<sup>76</sup> Eventually, the system of corporal punishments and mercies was replaced by a system of prisons. Yet the modern era contains examples of surprising applications of benefit of clergy, in the United States, in Barbados, in Jamaica. Lawyers in the early twentieth century compared the tradition of probation to benefit of clergy, stating that both were granted by grace rather than right.<sup>77</sup> The consequence of the benefit's evolution to a legal standard reflecting the benevolence of English traditions was to help install British institutions in communities across the world.

During the 1530s, the Reformation Parliament was faced with reconstructing the privileges of the clergy following the break with Rome. Had the Members of that Parliament dissolved clergy, the English legal system might have adopted a more French style of law less dependent on tradition, judicial discretion, and forgiveness. By appropriating the medieval tradition of mercy for specific groups, the legal system continued to allow for judicial discretion at the local level through grants of mercy including benefit of clergy. This application of mercy strengthened the reputation of King and Parliament, invited local subjects to cooperate with royal courts from the very beginning of an investigation, and enticed colonial subjects to align with the

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<sup>76</sup> Dalzell, *Benefit of Clergy in America*, p. 15

<sup>77</sup> Indeed, there are plenty of suggestions that judges were still granting benefit of clergy in Massachusetts and Chicago in the early twentieth century, but primary sources confirming that fact are elusive. What seems clear is the connection between clergy and probate courts. See Frank W. Grinnell, "The Common Law History of Probation: An Illustration of the 'Equitable Growth' of Criminal Law," *Journal of Criminal Law and Criminology* 32, no. 1 (1941), pp. 15-34. Richard Chappell echoes benefit of clergy when he discusses probation as a manner of grace and not right, "The Courts Interpret the Federal Probation Act" in *Journal of Criminal Law and Criminology* Vol 29 No 35 (1939), pp. 708-717, especially p. 710.

British throughout the world. Consequently, this minor exemption from punishment became tremendously influential and facilitated the central position of the royal courts for over 700 years.

**Chapter One:**  
**Benefit of Clergy, Benefit of Laity**  
**Appropriating an Ecclesiastical Privilege in Medieval England**

The story of benefit of clergy as a major feature of English Common Law rests on its transition from a purely ecclesiastical privilege favoring ordained servants of God to a royal offer of mercy to laymen regardless of profession or ordination. The former definition represents the medieval version of the benefit. The latter existed largely in the post-Reformation era. Ultimately, the liberty became secularized and tied to nationalism rather than to clerical status or religious service. Long before the process of appropriation began, however, benefit of clergy was a minor liberty available to a small group of ecclesiastical men. In order to see the growth and institutionalization of benefit of clergy, we must examine how the privilege functioned in medieval England.

For most of the middle ages, the benefit protected priests, monks, and other men in orders. These men were deemed special in passages of the Bible. Councils, Biblical scholars, bishops, and popes upheld the special status of God's servants throughout the medieval period. Writings about the value of mercy and Christian love served to cement the place of the benefit throughout Christendom. In England in particular, challenges to the status quo failed to eliminate the specific privilege of clergy under Henry II and Edward III. Rather, such attempts to temper or abolish ecclesiastical privilege of escaping criminal justice resulted in making the benefit more powerful within English traditions.

Much of this would change in the fifteenth century, as clever criminals and philosophical justices began to re-evaluate the underlying definition of who could claim this valuable privilege. A successful claim of the benefit during the medieval period commuted a sentence of death to a retrial under the more lenient ecclesiastical judges.<sup>1</sup> A debate concerning the eligibility of claimants with questionable ordination accelerated among secular justices and the Bishops' representatives called Ordinaries.<sup>2</sup> The conditions for accepting claims from men who were not fully ordained occupied a grey area under the written laws of England. Furthermore, the clergy did not want a sterner definition of "clergy" as that might lead to the untimely deaths of clerks for technicalities or problems with paperwork. A centralized database of ordained men in good standing did not exist in medieval England. Furthermore, ecclesiastical authorities did not want to risk weakening their special privilege by attacking pretenders. Between the ecclesiastical and secular authorities, the ultimate power responsible for resolving questions on ecclesiastical privileges remained unclear. Subsequently, benefit of clergy became subject to a legal debate in the fifteenth century.<sup>3</sup>

This debate would ultimately create a compromise between church and state. The compromise in turn opened the door to a new, secularized version of clergy that was outlined

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<sup>1</sup> By nature of relying on judicial discretion, variation would define both ecclesiastical and secular legal systems in England. However, the arsenal of judgments at hand lent the Church Courts a lenient favor, as evidenced by R.M. Helmholz, *The Spirit of Classical Canon Law*, University of Georgia Press: 2010, pp 157-283, especially p. 262. See also JH Baker, *The Oxford History of the Laws of England*, Vol VI, pp. 233-254.

<sup>2</sup> The process of Ordination had many steps, inviting a debate on how many levels of ordination had to be achieved in order to declare a person "ordained." Beginning the process of preparing for priesthood did not mean one would make the entire journey and the Church relied on partially ordained people to serve the parishes. See Tim Cooper, *The Last Generation of the Catholic Clergy: Parish Priests in the Diocese of Coventry and Lichfield in the Early Sixteenth Century*. The Boydell Press: 1999, pp. 7-36

<sup>3</sup> The debate focused on how to measure eligibility of clergy. Should justices only grant this exemption to proven priests, or could the appearance of clerical education suffice? Would granting clergy to those who technically qualified weaken the clerical privilege, to the delight of those who mistrusted the special status of clerks? I discuss this below in greater detail.

specifically by law but existed secondarily to the ecclesiastical version. Many historians have incorporated benefit of clergy into a wide variety of scholarly projects, spanning the law, church, society, politics, foreign relations, and general surveys of the period.<sup>4</sup> However, by conflating the primary and secondary versions of benefit of clergy in the middle ages and the tenets of the debate on the merits of the privilege in the fifteenth century, many historians have misunderstood what the privilege was to English law. Some historians viewed it as a medieval relic dominated by Tudor despotism; others saw it as evidence of a coming Reformation.

Particularly confusing has been the retention of the name “benefit of clergy” long after the clerical status of the claimant became irrelevant. The misnomer celebrated elements of the clerical training process, such as literacy, even though the “clergy” part was later discarded. Such a substantial change in definition led to the understandable confusion among historians of parallel subjects. For instance, reformation historians such as Arthur Ogle and AG Dickens presented a vision of English villagers who resent local clergy’s eligibility for escaping justice through their form of diplomatic immunity.<sup>5</sup> The “looming Reformation” interpretation assumed that all clerical convicts were indeed ordained men comprising a flock of dishonest ecclesiastical criminals protected by a corrupt church. In this interpretation, the clerical privilege contributed to a picture of a longer, unavoidable movement that would dismantle the idea of a decaying, weakened, corrupt Church. In this interpretation, those seeking reform or abolition of benefit of clergy were cast alongside the Lollard Movement as harbingers of England’s eventual

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<sup>4</sup> For the historiography specific to benefit of clergy, please see my Introduction. Historians referencing benefit of clergy in passing cover diverse subjects. See for instance JW Adamson, “The Extent of Literacy in England in the 15<sup>th</sup> and 16<sup>th</sup> centuries” in *The Library*, Vol IV No 10(1929) pp. 163-193 and Robert Lockyer, *Tudor and Stuart Britain*, third edition. Longman: 2005, pp. 21 to 34, and dozens of other books listed in my bibliography.

<sup>5</sup> Much of the character of the medieval privilege was indeed diplomatic in nature, although modern diplomatic immunity is quite far removed from the medieval benefit of clergy. Arthur Ogle, *Tragedy in Lollards’ Tower*. Pen-in-Hand, Oxford: 1949, pp. 162-168 and AG Dickens, *The English Reformation*. London: 1964, pp. 90-91, 103

break from Rome. As we will explore below, elements of the legal debate in the century preceding the Reformation show that the clergy claim was not so simple. The lay claims alone demonstrated that this privilege was not specific to clergy or a uniformly unethical Church.

Historians of education and literacy from JW Adamson to David Cressy rightly included benefit of clergy in their research, reflecting the relationship between claiming and proving one's literacy. Isolated cases began the tradition of accepting literacy as proof of clerical status, but these would later contribute to the debates over the burden of proof of eligibility: was ability to read enough evidence? Historians of education do not grapple with these contentious arguments and instead assume that only priests could take advantage of the change in jurisdiction in their passing references to the benefit.<sup>6</sup> The question of status did not enter their discussion of the privilege and its relation to rates of literacy and education.

Legal historians of the nineteenth century portrayed the medieval privilege as open to only servants of the Church and their households.<sup>7</sup> GR Elton thought William Searle Holdsworth was right when he suggested that “the whole system was on the way out; only the reaction against Henrician severity came to preserve it in its secularized form, to act as an absurd moderator on the absurd savagery of the eighteenth-century criminal law.”<sup>8</sup> As recently as 2009, J Patrick Coby included a demonstration of the difficulty this privilege posed for authority figures: “Benefit of clergy contravenes the principle of unified government; it is therefore a

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<sup>6</sup> Many such scholars do accurately include peers in this group, literate or otherwise, due to a law granting clergy to peers under Edward VI (1 Edward VI c12). See JW Adamson, “The Extent of Literacy in England in the 15<sup>th</sup> and 16<sup>th</sup> centuries” in *The Library*, IV (1929) pp. 163-193 and David Cressy, “Levels of Illiteracy in England 1530-1730” in *Historical Journal*, vol 20, (1977), 1-23.

<sup>7</sup> Henry Charles Lea, *History of Sacerdotal Celibacy in the Christian Church*. Watts: 1907, p. 288 and Frederick Maitland's “Outlines in English History” from the *Collected Papers of Frederick William Maitland*, Vol II ed. H.A.L. Fisher. Cambridge University Press: 1911, pp. 417-496

<sup>8</sup> GR Elton, *Reform and Renewal: Thomas Cromwell and the Common Weal*. Cambridge University Press: 1973, p. 136

*prima facie* danger to peace” precisely due to its special treatment of priests.<sup>9</sup> A hole so large in the criminal justice system surely betrayed the respect afforded to England’s common law. A closer examination of the evolution of a legal liberty is warranted to contextualize whether allowing systemic exceptions to criminals weakened the law or strengthened it.

The frequent inclusion of benefit of clergy in these and other historical works is striking, particularly when the writers assume the privilege as a surviving element of dying medieval legal traditions, therefore discarding it just as it began a rebirth to become a quintessential piece of the English system.<sup>10</sup> The early modern period witnessed large growth of this “dying” privilege, from rare appearances in quarter sessions to as much as half of felony cases at the Assizes.<sup>11</sup> The underlying message of unengaged historical works assumes that the benefit was part of the decaying influence of the Church. The later functions of the benefit, in Elizabethan or Protectorate England, might come as a surprise to such historians, as benefit of clergy was offered to the majority of English subjects, even to women and foreigners. Parliamentary and trial records revealed the plentiful and growing reliance on benefit of clergy directly following the medieval period. The assumption that later iterations of the privilege continued to be tied to the Church itself is reasonable when one encounters benefit of clergy from a thematic historical lens, such as that of the history of education. However, these interpretations have not accurately reflected the character of the benefit in the later middle ages or the evolution it followed during the early modern period.

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<sup>9</sup> J Patrick Coby, *Thomas Cromwell: Machiavellian Statecraft and the English Reformation*. Lexington Books: 2009, p. 30

<sup>10</sup> Details on the central importance of benefit of clergy to the early modern law will be explored more fully in Chapters 3 and 4.

<sup>11</sup> JS Cockburn puts the precise figure at 47% in *Introduction to the Calendar of the Assizes*, HMSO: 1986, pp. 121-124

Many of these historians have focused on material beyond the law. By contrast, legal historians have offered a closer telling of the story of benefit of clergy during this period. John Baker and Krista Kesselring highlighted a 1489 statute that introduced a version of the privilege to both laity and clergy as significant well before the Reformation.<sup>12</sup> We may conveniently and appropriately use this statute as a marker to separate the medieval form of benefit of clergy from its very different early modern counterpart. However, it would be incorrect to assume that the passage of new legislation marked a rippling change in the regional courts. It remains a common assumption that change occurred from the passage of Statutes, an assumption that privileges Acts of Parliament over the varying procedures throughout England. A closer examination of trial records reveals that tradition often preceded statutory change.<sup>13</sup> Such an approach did not always reflect the debate over issues and its inconsistent application. The Act of 1489 was one of those laws designed to address practice already in place. Laymen had been claiming benefit of clergy long before Parliament formally extended a limited right to them. The formal offer would provide a common legal path to escaping a first offense felony punishment while protecting clerical lives and privileges. This compromise would end a decades-long debate over the term “*clericus*.”<sup>14</sup> Surprisingly, it would then open another debate during the Reformation.

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<sup>12</sup> The offer to laymen was with considerable restrictions, dependent on the proof of literacy, and only offered to men convicted of felony. JH Baker, *The Reports of John Spelman*, II, Selden Society, XCIV (1978), “Introduction” 327-334; Krista Kesselring, *Mercy and Authority in the Tudor State*. Cambridge University Press: 2003 pp. 46-47

<sup>13</sup> Paul Brand discusses this directly by giving examples of laws that appear to be innovative until one discovers that the conditions of the new law were already in force by tradition in local courts. *Kings, Barons, and Justices*. Cambridge University Press: 2003, particularly in his Conclusions pp. 388-399

<sup>14</sup> Joel Samaha, *Law and Order in Historical Perspective: the Case of Elizabethan Essex*. New York: 1974, pp. 59-60; Bellamy, “Benefit of Clergy,” pp. 115-164; and Baker, *The Reports of John Spelman*, p. 332. Leona Gabel’s entire project rests on various definitions of “clerk” in her book, *Benefit of Clergy in England in the Later Middle Ages*. The History Department of Smith College: 1929, pp. 62-91.

The 1489 Statute confirmed the lay right to claim. Language in earlier statutes confirming the legitimacy of benefit of clergy and the special status of the Church within England had opened the door to exploitation of these ecclesiastical privileges. The language of official recognition had created some confusion by the fifteenth century. The manipulation of candidates who were not fully ordained may have been encouraged by royal justices under two working ideas. Some justices may have sought to err on the side of delivering too many criminals to the Church rather than pay fines for unjustly sending a priest to his death.<sup>15</sup> Such relaxation of requirements would explain Gabel's discovery of claimants with occupations ranging from butchers to fishmongers. This might be interpreted as evidence of cautious judges seeking to save lives in cases of disputed eligibility.

Other Justices may have actively tried to dilute the clerical privilege as a reflection of personal resentment of the Church by granting it boldly to undeserving secular claimants with dubious claims. Motivation of such Justices is difficult to determine since the result of over-allowing clergy was the same. Ultimately, royal authority could not deny literate men of questionable clerical status the ecclesiastical privilege without threatening the lives of priests and consequently offending the Church. The decision was fraught with political consequences for punishing men with ties to Rome. After 1489, the secular courts received Parliamentary direction to accept lay claims on a first offense and to limit subsequent pleas by marking the criminal

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<sup>15</sup> Leona Gabel explains, p. 53: "The principal duty of the Ordinary in the secular court was to claim clerks brought before the justices... The Ordinary might demand the clerk on arrest...at the formal hearing before the secular tribunal...the accused clerk was summoned...In this case the Ordinary claimed him for canonical trial." Failure to interact in these two occasions meant a fine or series of fines. *Benefit of Clergy in England in the Later Middle Ages*. Smith College Studies in History, Vol 14 (1929). Year Books records sometimes included moments of tension between secular and ecclesiastical representatives arguing over who ought to be fined. See Seipp No 1488.003 (<http://www.bu.edu/phpbin/lawyearbooks/display.php?id=21288> Accessed on 2 November 2012) . In print, see Mich. 21 Hen. 6, in Sir Anthony Fitzherbert. *Corone* 10 & 12; Hil. 9 Edw. 4, f.48. Fines were explained in terms of the offense committed in England and Wales. *The Boke that Teacheth to keep a Court Hundred*, f.30v British Library Rare Books Room 1381.a.12 Records list publication as 1559 but the content and one publication reference page suggests an actual date of 1544. I discuss the fines in greater detail below.

bodies physically as a legal record. This compromise could save lives while establishing a common legal standard of proof, as I discuss below. To understand the transition of clerical privilege to a cornerstone of English law, we must first understand the ecclesiastical origins of the privilege and the long-standing interaction between Church and State that created the possibility of forgiving felonious offenses and enhanced the benefit's long-term presence in the English legal tradition.

### **The Ecclesiastical Tradition and Secular Authority**

Proponents of the benefit cited Biblical origins through the verse, “Touch not mine anointed, and do my prophets no harm.”<sup>16</sup> This verse received attention at the Council of Nicaea in 325 CE, when Constantine granted his support for the legal exemption by arguing that priests were sent to Earth to judge men, and could not be judged themselves by mankind.<sup>17</sup> After Nicaea, leaders such as the Byzantine ruler Justinian adhered to the idea that the clergy could not be held subject to lay courts.<sup>18</sup> The practice of allowing clergy their own courts and punishments spread throughout Christendom during the Middle Ages, developing processes and traditions particular to each region.<sup>19</sup> Papal decrees occasionally called for a uniformity of the privilege but the immunity continued to be subject to local secular authority and respect for ecclesiastical

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<sup>16</sup> See Psalms 105:15 and 1 Chronicles 16:22 in the King James version of The Bible

<sup>17</sup> Henry Charles Lea. “Benefit of Clergy” *Studies in Church History*, (1883), p. 172

<sup>18</sup> SP Scott, “The Enactments of Justinian: The Novels” in *The Civil Law*, XVI. Cincinnati: 1932.

<sup>19</sup> The Visigoths and Charlemagne stood against allowing the privilege, for example. Lea discusses the widespread inconsistencies of the benefit in Christendom in his book *Studies in Church History*, pp. 171-186.

offices. Gratian's Decretal of the twelfth century collected a list of privileges, including benefit of clergy, but placed the impetus for claiming on local ecclesiastical authorities.<sup>20</sup>

Amidst specific decrees and pieces of legislation protecting prophets and priests, philosophers and prolific writers considered the benefits of applying mercy to save unsavory characters in times of need. St Augustine defended the use of exception in punishments in 414. He wrote about the rewards of applying mercy for the enhanced reputation of the Church. Writing to Macedonius, who had expressed concern for the apparent problem of offering mercy and exemptions from legal punishment, Augustine asserted that mercy was a profoundly Christian trait. He argued that in addition to the Christian ideals of mercy, offering the forgiveness led to an appropriation of the debt incurred against society and drew it within the power of the Church. Beneficiaries of mercy were then beholden to the Church for their very well-being and survival. This created a bond between sinner and Church, allowing the Church to direct a more active punishment through whatever means they wished.<sup>21</sup> Superficially, Christians must vouch for the convicted "For otherwise punishment will end this life for them, and once it is ended, they will not be able to bring their punishment to an end."<sup>22</sup> More broadly, Augustine saw institutional benefit through such actions: "as a means of commending gentleness, so that truth, when preached by those who pardon, may be not be so much feared as loved."<sup>23</sup> Certainly

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<sup>20</sup> Walter Ullman credits Gratian's Decretal in his chapter on the subject, "The Scholarship of Canon Law" in *Law and Politics in the Middle Age: An Introduction to Sources of Medieval Political Ideas*. Cornell University Press: 1975, pp. 162-189. See especially his note on p. 183 n2: "Gratian, *Dict*, post cap 47 C. XI qu. 1; and chapters 8, 42, and 43; decretal legislation: X: II, 2, 12; VI: II, 2, 2; III 2, 1."

<sup>21</sup> Macedonius wrote to Augustine asking specifically about intercession by Church leaders in Letter 152. Augustine responded with praise for the very Christian practice of protecting all troubled or disadvantaged members of society, particularly convicts in Letter 153. See E.M. Atkins and R.J. Dodaro, eds. *Augustine: Political Writings*. Cambridge Texts in the History of Political Thought. Cambridge University Press: 2001, pp. 70-87

<sup>22</sup> Letter 153, p. 73

<sup>23</sup> Letter 153, p. 81

royal authority could enjoy an enhanced reputation and trust after employing mercy rather than severity.

A similar advantage was found with the continued use of mercy and grants employed during the fourteenth century, when the King's General Pardon became fashionable. This tradition can be found throughout the early modern centuries. Helen Lacey focused on the initial fourteenth-century development of pardons, taking special note of the authority wielded by "the idealised vision of a monarch dispensing mercy with the equitable insight that only a divinely appointed king could hope to attain."<sup>24</sup> Krista Kesselring built on this idea of a balance between mercy and authority in her book on the subject: "Mercy was considered an essential part of sovereignty, both a necessary and legitimate adjunct to justice."<sup>25</sup>

The rise of benefit of clergy was almost characteristic of Roman Canon Law, according to Richard Helmholz. He explained that "It left more scope for freedom in interpreting and developing legal principles. It left more room for judges whose 'hands were free' from temporal bindings to follow local traditions and needs."<sup>26</sup> In other words, Helmholz argued that ecclesiastical tradition in England on the eve of the Reformation was one of local variation and compromise, seeking to find a just solution that preserved the community. This was precisely the tradition associated with judicial discretion in English common law. The medieval development of English legal systems infused secular law with the freedom of interpretation that Helmholz

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<sup>24</sup> Helen Lacey, *The Royal Pardon: Access to Mercy in fourteenth Century England*. York Medieval Press: 2009, p. 177

<sup>25</sup> Kesselring, p. 3

<sup>26</sup> Richard Helmholz, *Roman Canon Law in Reformation England*. Cambridge University Press: 1990, p. 19. Helmholz traces the post-Reformation development of law based on these early observations, arguing that the later English traditions were largely based on canon ideals of local flexibility. He concludes: "[C]ommon lawyers adopted some ideas drawn from the Roman canon law... Here it is proper only to show how the ecclesiastical lawyers made affirmative use of what the Roman canon law taught them to call 'the municipal law' of England" p. 188.

found in canon law during the late middle ages. In his work *The Spirit of Classic Canon Law*, Helmholz concluded that “Securing the independence of the clergy from secular control, implementing the superiority of the spiritual over the temporal, and building up the material strength of the church were conscious goals of the canonists. They shaped the law.”<sup>27</sup> What is striking about this passage is that it could so easily apply to later Justices and their use of parliament-supported judicial discretion, where the actions at trial shaped the national character of the law more thoroughly than the definitions ratified in Parliament affected local practice.

The specific element of mercy that became the medieval version of benefit of clergy existed in England in some form prior to the Norman invasion. Evidence of its continuation rather than genesis can be found in the Ordinance of 1072 under William I confirming rather than introducing the separation of ecclesiastical and royal courts. This Ordinance referenced the relationship between the ecclesiastical and royal courts and forbade them both from discussing the same legal issue. In particular, the Ordinance forbade “any layman [to] summon another man to judgment apart from the jurisdiction of the bishop.”<sup>28</sup> In other words, laymen did not have the right to summon ecclesiastical men. The hierarchy of the Church separated the two and the Ordinance cemented this separate chain. This does not mean that ecclesiastical men were given *carte blanche* to act as they wished. The Ordinance failed to establish that men under the authority of the Bishop could claim immunity from the royal courts, but it separated both

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<sup>27</sup> Richard Helmholz, *The Spirit of Classical Canon Law*. University of Georgia Press: 1996, pp. 394-95

<sup>28</sup> William Stubbs, *Select Charters and other illustrations of English Constitutional History*, Ninth Edition. London: 1913, pp. 99-100. The quote comes from a much longer sentence in Latin: “Propterea mando et regia auctoritate praecipio, ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundret placita teneant, nec causam quae ad regimen animarum pertinet ad iudicium secularium hominum adducant, sed quicumque secundum episcopales leges, de quacunque causa vel culpa, interpellatus fuerit, ad locum quem ad hoc episcopus elegerit et nominaverit veniat, ibique de causa vel culpa sua respondeat, et non secundum hundret, sed secundum canones, et episcopales leges rectum Deo et episcopo suo faciat.”

authority and punishment in such a way that sharply divided the experience of a defendant depending on ordained affiliation.

One could say that the Ordinance facilitated rather than established the benefit in England. A formal reference to the benefit as an established element in the English legal system came in the form of a royal charter under Stephen. His Oxford Charter of 1136 recognized the authority of the ecclesiastical courts.<sup>29</sup> Essentially, this recognition allowed the church courts to deal exclusively with the clergy, regardless of the offense committed. Ultimately the Charter supported the tradition of sending criminous clerks to their own jurisdiction for trial and punishment.

The clerical privilege began to take form under Henry II. After the confusion of Stephen's reign, Henry II sought to establish specific reforms concerning the relationship between royal and ecclesiastical authorities in England. In the 1164 Constitutions of Clarendon, Henry II authorized a set of articles concerning the rights and behavior of English clergy. The third clause addressed benefit of clergy specifically:

Clerks charged and accused of any matter, summoned by the king's justice, shall come into his court to answer there to whatever it shall seem to the king's court should be answered there; and in the church court to what it seems should be answered there; however the king's justice shall send into the court of holy Church for the purpose of seeing how the matter shall be treated there. And if the clerk be convicted or confess [in secular courts], the church ought not to protect him further.<sup>30</sup>

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<sup>29</sup> Gabel, p 24. William Stubbs confirmed Gabel's observation with a deeper discussion of the language in *Select Charters and other illustrations of English Constitutional History*, p. 148, especially n1. For the full text of the Charter in Latin, see the same Stubbs volume, pp. 142-44.

<sup>30</sup> Translation is mine, but found to be very similar to Ernest Henderson's translation in, "Constitutions of Clarendon" in *Select Historical Documents of the Middle Ages*. London: George Bell and Sons, 1896, which quoted clause 3 on p. 13. The whole document in English can be found on pp. 11-15. For the original, see William Stubbs, "Constitutions of Clarendon" in *Select Charters*, pp. 161-167. The quote's original Latin: "Clerici retati et accusati de quacunque re, summoniti a Justitia regis venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiae regis quod ibidem sit respondendum; et in curia ecclesiastica, unde videbitur quod ibidem sit respondendum; ita quod Justitia regis mittet in curiam sanctae ecclesiae ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de cetero eum ecclesia tueri." Latin from Stubbs, pp. 164-65.

In other words, Henry's reforms meant that ordained clergy would be tried in either court, depending on the specific crime they stood accused of committing, but not based solely on their status. The clause would constitute a victory of secular authority over the special status of the Church. Allowing priests a special exception presented both a hole in royal jurisdiction and a barrier between the royal authority and the judges charged with keeping the peace. If this clause went into effect, a clergyman's conviction would not lead to clerks judging clerks but treated as any other case in royal jurisdiction. The clause even asserted that if the alleged crimes straddled the jurisdictions of both courts, the King's representatives would prevail and the Church would have to abandon its tradition of providing clemency for its law-breaking members.

Such a bold step asserting royal power to be superior to that of the Church would not go unnoticed. The Archbishop of Canterbury, Thomas Becket, challenged the King's attempt to claim authority over the Church, creating escalating tension that eventually led to Becket's infamous murder.<sup>31</sup> In the aftermath of Becket's death, Henry had to relinquish some of his grand reforms, particularly the articles affecting the rights of the clergy. Through public penance and negotiations with the Pope, Henry II ushered in an era of Church dominance over the rights of clergy to manipulate local courts and receive lenient or nonexistence penalties for crimes. As JH Baker commented, after the Becket incident "benefit of clergy was made secure as a complete immunity from secular jurisdiction in criminal cases, saving only the power of the secular arm to arrest and detain the clerk until he was claimed" by the Ordinary.<sup>32</sup> For the Church, a man in any

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<sup>31</sup> A classic account of the relationship between Becket and Henry II and the central role of benefit of clergy in their dispute can be found in Maitland, "Henry II and the Criminous Clerks" in *The English Historical Review*, Vol. VII, No. 26 (Apr., 1892), pp. 224-234. A more recent assessment of the conflict, with interesting commentary on the impact on the development of Common Law can be found in John Hudson, "Angevin Reform" in *The Formation of the English Common Law: Law and Society in England from the Norman Conquest to Magna Carta*. Longman: 1996, pp. 118-156, especially the section "Henry II and Reform" beginning p. 144.

<sup>32</sup> J.H. Baker. *An Introduction to English Legal History*. London: 1971, p. 281; Gabel, p. 27.

place in the ordination process ought to qualify for the benefit, but as Leona Gabel revealed, ordination would become difficult to define.<sup>33</sup>

The late twelfth-century ecclesiastical triumph over the Constitutions of Clarendon secured the rights of ordained men throughout the realm to move their trials from the King's courts to the more lenient ecclesiastical courts. More importantly, the Church had won an ideological victory by securing the privileged status of its members in relation to secular law. In the decades following, English kings confirmed their support for the clerical privilege. The 1267 Statutes of Marlborough enforced the clergy's right to refuse to answer in front of a royal justice, under the logic that the ecclesiastical courts were their primary jurisdiction.<sup>34</sup> Edward I authorized legislation in 1275 guaranteeing the safe and swift delivery of criminous clerks to their Ordinary without intervention from the King or his servants.<sup>35</sup> Over the next century, three statutes addressed the rights of the clergy: the 1315 act *Articuli Cleri* under Edward II, the 1351 *Pro Clero* under Edward III, and the 1402 Benefit of Clergy Act under Henry IV. These three statutes confirmed the special status of ordained men as exempt from royal authority in criminal matters. Yet with each formal royal acknowledgement, the privilege became increasingly subject to the specific guidelines underscored by royal authority. The language of these supportive measures would pave the way for later ambiguity in eligible claimants for the privilege. The resulting ambiguity would become a significant catalyst for change during the fifteenth century.

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<sup>33</sup> Gabel observes that "The thirteenth century, however, witnessed an important extension in the interpretation of *clericus* and consequentially a wider distribution of the privileges attached thereto." She then goes on to explain the extension of ordination privileges and the growing tension among claimants with claims that occupied an increasingly gray area for justices and Ordinaries until the Tudor Age, pp. 63-64.

<sup>34</sup> 52 Henry III c 27, "Statutes of Marlborough." This would be changed by 28 Henry VIII c 1 and made permanent by 32 Henry VIII c 3

<sup>35</sup> 3 Edward I c 2

## Fourteenth Century Support

In 1511, French lawyer Bartholomew Chassanée published his thoughts on the practice of putting animals on trial for having broken human laws.<sup>36</sup> Holding God's creatures accountable for their crimes was a natural but rare extension of the law. For instance, in 1499 a town put on trial a bull who had mauled to death a boy of fourteen years.<sup>37</sup> In 1379, Philip the Bold, Duke of Burgundy, authorized a petition of mercy to save the lives of two herds of swine who had been sentenced to death for infanticide after eating some of their piglets.<sup>38</sup> Countless examples of animals, from beetles and mice to pigs, dogs, and horses, were put on trial in the medieval period for crimes against law and God.<sup>39</sup> Chassanée sought to free these animals from their fate, serving as one of the earliest animal rights' lawyers.<sup>40</sup> Among his thoughts on the subject was the question of whether such accused animals might be relieved of their punishment by claiming a form of immunity known as benefit of clergy.<sup>41</sup> Ultimately, Chassanée concluded that animals were laity and therefore, in the medieval period, ineligible for claiming any clerical privilege in court. And yet the fact that he would even consider this defense for the trials of animals shows

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<sup>36</sup> Bartholomew Chassanée, *Consilium Primum, quod tractatus jure dici potest propter multiplicem et reconditam doctrinam, ubi luculenter et accurate tractatur quaestio illa: De excommunicatione animalium insectorum*. Paris and London: 1511. Sometimes "Barthélemy de Chasseneuz"

<sup>37</sup> Chassanée, translated by Edward Payson Evans in "Appendix A" of *The Criminal Prosecution and Capital Punishment of Animals*. London: 1906, p. 396

<sup>38</sup> Chassanée in Evans "Appendix A", p. 342

<sup>39</sup> Paul Schiff Berman, "Rats, Pigs and Statues on Trial: The Creation of Cultural Narratives in the Prosecution of Animals and Inanimate Objects," *New York University Law Review* Vol 69: 1994, pp. 288-326 and Hampton L. Carson, "The Trial of Animals and Insects. A Little Known Chapter of Medieval Jurisprudence," *Proceedings of the American Philosophical Society* Vol 56: 1971, pp. 410-415.

<sup>40</sup> Chassanée's life was dramatized in the 1993 film, *The Hour of the Pig*, starring Colin Firth.

<sup>41</sup> EP Evans, *The Criminal Prosecution and Capital Punishment of Animals*, p. 25

that the privilege was flexible in the perceptions of lawyers and trial officials. The plea was open to interpretation and present within a variety of trial cases.

Scholarly attention on benefit of clergy outside of England is sorely lacking, perhaps because of the unique qualities the privilege adopted within individual Christian kingdoms.<sup>42</sup> For example, Louis of Bavaria responded supportively to the 1359 clerical complaints that secular officials had been arresting ordained men; he punished those officials with the forfeit of their possessions and subjected them to further ecclesiastical prosecution.<sup>43</sup> Alternatively, in Italy, the Signors of Milan Lucchino Visconti and Gian-Galeazzo Visconti both denied priests their right to claim, Lucchino by asserting that statutes applied to all within his realm in 1346, and Gian-Galeazzo by decreeing every subject, regardless of clerical status, was subject to his courts in 1388.<sup>44</sup> Officials in Spain forcibly degraded their criminous clerks from the Church throughout the thirteenth century, but fell in line with the supporting the Church during the fourteenth century and became very supportive of the clerical immunity under Ferdinand and Isabella.<sup>45</sup> In 1204, Philip II of France attempted unsuccessfully to force clergy to degrade their offending members and submit those criminals after degradation to the secular courts. Louis IX, Phillippe-le-Hardi, and Phillippe-le-Bel all attempted to curb those special privileges afforded to the clergy during the thirteenth century.<sup>46</sup> Across Europe, the cases of benefit of clergy appeared anecdotal rather than persistent. The source with clearest presentation of benefit of clergy in medieval

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<sup>42</sup> The most reliable source in English seems to be the outdated history by Charles Henry Lea in *Studies in Church History* (1883). In French, Robert G Nestal explores the privilege as it functioned in medieval France without clear attention paid to the politics of legislation changes. *Le Privilegium Fori En France du Decret de Gratien a la Fin du XIV Siecle*. Paris: 1924

<sup>43</sup> Lea, p. 191

<sup>44</sup> Lea, p. 193

<sup>45</sup> Lea, pp. 194-5

<sup>46</sup> Lea, pp. 197-207

Europe is well over a hundred years old, by Charles Henry Lea. From that collection we receive most of the above examples.

Another book published in 1924 examined the confusing status of benefit of clergy in France.<sup>47</sup> Genestal reviewed a variety of judicial conclusions that contributed to French ideas of who might claim clergy. He concluded “the French custom is as favorable to the privilege as the canon law and the canon doctrine are. In certain cases, the secular justice would only refuse the privilege to men with an illegally granted tonsure. Its audacity never went further.”<sup>48</sup> In France as in England, some question over who might claim was drawn out in conflict among the ecclesiastical and secular judges. However, in England tradition and law would eventually support benefit of clergy as part of the legal system. In France, “it would appear the evolution of the jurisprudence from the beginning of the thirteenth century to the end of the fourteenth century went from strictness to leniency, thus following the evolution of canon law.”<sup>49</sup>

French eligibility relied on tonsure more than literacy, but continued to restrict who might claim to those associated with the Church.<sup>50</sup> French cases outside of ordained claims were rare and the privilege was discontinued with the Council of Trent. Accordingly, scholarship on the *privilegium fori* in France had less to investigate than in England, where the Reformation allowed benefit of clergy to grow rather than diminish. “The classical canon law linked the privilege to the clerk position. However, that rule, giving the privilege such a wide range, was

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<sup>47</sup> R Genestal, *Le Privilegium Fori en France*. Editions Ernest Lerous: 1924.

<sup>48</sup> Genestal, p. 17. The original passage: “En somme, en ce qui concerne l'extension du privilège à tous les clercs, la coutume française est aussi favorable au privilège que le droit et la doctrine canonique. La justice séculière a pu seulement dans certains cas refuser effet aux tonsures illicitement accordées. Sa hardiesse n'alla pas plus loin.”

<sup>49</sup> Genestal, p. 243. The original passage: “il apparaît que l'évolution de la jurisprudence du début du XIII<sup>e</sup> à la fin du XIV<sup>e</sup> siècle s'est faite de la sévérité à l'indulgence, suivant en cela l'évolution du droit canonique.” Many thanks to Rêmy Joans for his assistance in confirming my English translation.

<sup>50</sup> See n62 below for a discussion of tonsure in medieval material culture and as proof of ecclesiastical status.

not be kept whole. The Church itself in the 16th century granted it only to those who had taken the Holy Orders. Minor clerks would only benefit from the privilege as long as they would serve the Church.”<sup>51</sup> In other words, the sixteenth century witnessed the French version of clergy falling into disuse, primarily because in France the distinction among holy orders, minor orders, and laity was never clarified in terms of pleading benefit of clergy. The privilege would be cast of one of many clerical benefits that contributed to a broken ecclesiastical system.

The power of kings over clergy living within their realms created tension between Philip the Fair and Boniface VIII in 1294 to 1303. Although the primary issue of conflict dealt with taxation, the official announcements and bulls made declarations that would shape later royal relationships with the clergy within their kingdoms.<sup>52</sup> The dispute began with taxation of clerical holdings, but the larger issue was that of control. Who had the final word over clerical standing, the pope or the king? Boniface issued a Papal Bull called *Clericis Laicos* to challenge the idea that the King of France could arbitrarily raise taxes on the clergy.<sup>53</sup> Philip’s response was to create a council of religious people in order to condemn the Pope and his threat of excommunication. Rather than assert – as monarchs would during the Reformation – that the King had power over the Pope, Philip sought to discredit Boniface completely. He rejected Boniface’s choice for Papal Legate, Bernard Saisset, and even arrested Saisset to be tried at royal courts. The conflict between the king and pope grew so intense that Philip’s representatives

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<sup>51</sup> Genestal, p. 147. The original passage; “L’Eglise elle-même au XVI<sup>e</sup> siècle ne la laissera subsister que pour ceux qui ont reçu les ordres sacrés. Les clercs mineurs ne jouiront plus du privilège du for que tant qu’ils resteront au service de l’Eglise.” See also conclusions on p. 190: “C’est à ce sage principe que l’Eglise finira par en venir elle-même au xvism siècle.”

<sup>52</sup> Brian Tierney, *The Crisis of Church and State, 1050-1300*. Prentice Hall: 1964, especially pp 172-179

<sup>53</sup> Tierney, *Crisis of Church and State*, p. 175 and Philip Hughes, “*Clericis Laicos* and the First Encounter” in *Philip the Fair and Boniface VIII: State vs Papacy*, ed by Charles T Wood, Holt, Rhinehart, and Winston: 1971, pp. 19-33

captured the Pope in 1303.<sup>54</sup> Boniface died soon after and relations with his successor, Clement V, were more amicable. By the fifteenth century, the French kings supported the clerical liberty and sought to combat the problem of secular officials who arrested clerks and denied them access to the ecclesiastical immunity.

Two centuries later, the Council of Trent upheld the right of Catholic priests to pray their clergy, but scholars have not emphasized the tradition in Europe as it was practiced in England.<sup>55</sup> In most Christian regions, the privilege was a matter of tradition. In England, it was a matter of law. Accordingly, the legal definition evolved over time and each piece of legislation interacted

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<sup>54</sup> Tierny, *Crisis of Church and State*, pp. 180-192; see especially the first decrees of Clement V reprinted on p. 192, which speak of Philip in glowing terms as “our son” and with “full and sincere affection.”

<sup>55</sup> The Council confirmed the continued existence of this special relationship between Catholic princes and the clergy serving in their kingdoms or duchies in the final session, chapter ten. “Chapter XX: The Rights Of The Church Are Recommended To The Princes For Observance And Protection: The holy council, desirous that ecclesiastical discipline be not only restored among the Christian people, but also forever preserved unimpaired against all obstacles, besides those things which it has ordained concerning ecclesiastical persons, has deemed it proper that secular princes also be admonished of their duty; being confident that as Catholics whom God has willed to be protectors of the holy faith and the Church, they will not only allow that the Church be restored her right but also will lead back all their subjects to due reverence toward the clergy, parish priests and the higher orders, and will not permit their officials or inferior magistrates through any spirit of covetousness or imprudence to violate the immunity of the Church and of ecclesiastical persons, which has been established by the authority of God and the ordinances of the canons, but that they, together with the princes themselves, render due obedience to the sacred constitutions of the supreme pontiffs and councils. It ordains therefore and commands that the sacred canons and all the general councils, as also other Apostolic ordinances published in the interest of ecclesiastical persons, the liberty of the Church, and against the violators thereof, all of which it renews by the present decree, be accurately observed by all. And hence it admonishes the emperor, kings, states, princes, and each and all, of whatever state or dignity they may be, that the more bountifully they are adorned with temporal goods and with power over others, the more religiously should they respect those things that are of ecclesiastical right as ordinances of God and as covered by His protection; and that they suffer them not to be infringed by any barons, members of their families, governors, or other temporal lords or magistrates, and above all by the ministers of the princes, but that they punish severely those who obstruct her liberty, immunity and jurisdiction. To these they themselves should be an example in the matter of piety, religion and protection of the churches, in imitation of their predecessors, those most excellent and religious princes, who not only defended the Church against injuries by others but by their authority and munificence promoted her interests in a special manner. Wherefore, let each one discharge his duty sedulously in this matter so that divine worship may be celebrated devoutly and the prelates and other clerics may remain quietly and without hindrances in their residences and in the discharge of their duties for the benefit and edification of the people.” See <http://www.catholic-forum.com/saints/trent25.htm> (Accessed 17 November 2012). The clause does not establish specific cases or dictate terms of use. The vague wording encouraged a continued use of mercy for priests without demanding its continued existence. Raymond Bulan and Frederick Parrella, eds. *From Trent to Vatican II: Historical and Theological Investigations*. Oxford University Press: 2006, pp. 120-130. See The Catholic Encyclopedia, “Ecclesiastical Privileges” [http://oce.catholic.com/index.php?title=Ecclesiastical\\_Privileges](http://oce.catholic.com/index.php?title=Ecclesiastical_Privileges) (Accessed 17 November 2012)

with a corpus of rights, privileges, practice, and procedure. The fourteenth century would witness long-standing, important legislation to make uniform the understanding of the benefit – although the practice remained wildly inconsistent – culminating with the 1406 “Benefit of Clergy Act” under Henry VI to portray benefit of clergy as an exclusive but official priestly privilege and to explain how it ought to be administered at the local level. The case of England stood apart from the privileges as defined in the rest of Christendom.

In 1315, Parliament published a Statute of articles known as the “*Articuli Cleri*.” The rights and responsibilities of clergy serving in England were laid out in sixteen articles collected in a single document. The parliamentary bill was the result of a twenty-year long discussion between Church and State that began with a 1280 query under Edward I to understand the current state of affairs between ecclesiastical and royal courts.<sup>56</sup> The 1280 investigation led to disputes in 1309 and 1315 concerning the specific jurisdictions and key rights for the Church. Among other things, the *Articuli Cleri* addressed two key elements of clerical privilege: Sanctuary and Benefit of clergy. The final clause specifically confirms the privilege of clergy to demand their benefit and threatens punishment for any person, secular or religious, who interferes with a clerk’s delivery to the local Ordinary.<sup>57</sup> Although only one clause deals directly with benefit of clergy, other articles supported the division of jurisdictions and the Church’s right to try their members separately from other subjects.

Even as these articles confirmed certain privileges, they also indicated the mutability of the benefit into something different from its original form. The majority of the Statute *Articuli Cleri* attempted to create a uniform set of standards for clergy serving in England, addressing

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<sup>56</sup> JH Denton, “The Making of the ‘Articuli Cleri’ in 1316” in *The English Historical Review*, Vol 101, No 400 (July 1986), pp. 564-595

<sup>57</sup> 9 Edward II st 1 c 16

varying customs of dress, lodging, and public activities. Five of the articles collaborated to confirm the safety of a clerk's person when dealing with trials. The third clause prohibited violence against clergy and the fourth clause forbade their defamation. Clause six upheld the clear divide between the ecclesiastical jurisdiction and royal courts with a slight reservation: the separate courts could debate the same legal issue. That particular clause permitted claimants of the benefit to attempt acquittal in a secular court before being tried in an ecclesiastical court. Acquittal would avoid any negative repercussions to the clergy's career, including suspension or even being defrocked and returned to the royal courts for retrial and execution.<sup>58</sup> The thirteenth clause dictated that spiritual men "without sufficient learning" could be removed from the spiritual courts and placed before the King's justices for trial.<sup>59</sup> The penultimate clause forbade secular judges from forcing criminal clerks to abjure the realm.

All of these articles worked together to clarify the accepted behavior and special status of clergy in England. They also served as a guide for cooperation between the functioning courts of England. Should a judge from the king's courts ignore the status of a priest and sentence him to corporal pain, that Justice had effectively caused both the defamation and personal violence against the said priest, violating clauses 3 and 4 of *Articuli Cleri*. Clerical defendants "without sufficient learning" – effectively illiterate – had to be tried in the secular courts. For those men who occupied a grey area between the two categories, their cases could have been tried in both

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<sup>58</sup> CB Firth shows that Convocation outlined the "proper" proceedings of a clergy claim in her article on benefit of clergy during the reign of Edward IV. Prisoners found to be anything but fully ordained clerks were to be returned to the royal courts for new trial, p. 180, but those who were notorious offenders were to be kept indefinitely in the Bishop's prisons, according to a letter on the matter in the fourteenth century, p. 186. Indeed, it seems that the idea of defrocking a priest or Bishop and returning him to the secular courts was not followed and instead the Ordinary would simply keep the offender in prison for life, denying him the process of purgation, pp. 188-191. Yet in theory at least, the idea existed that a heinous offense could lead to the defrocking of a priest and his return for full punishment without his clerical privilege.

<sup>59</sup> The clause is unclear about who would remove the illiterate clerk from the ecclesiastical courts. The option may have been carried out by the Ordinary or by a representative of the royal courts, but it seems more likely that the framers of the bill wished for the cooperation of ecclesiastical officers. The language is not specific enough to tell.

courts before their status would be confirmed or denied through the act of purgation;<sup>60</sup> if denied, the statute dictated that the defendant must be returned to the secular courts for subsequent punishment. Setting expectations for clerical behavior and inter-legal cooperation enabled a more cohesive approach to ensuring that justice was done in England. This somewhat centralized guideline made possible the maintenance of the two separate jurisdictions while protecting the person and reputation of an accused clerk. In doing so, however, they created a strict description of people who may or may not claim clergy. The fact that Parliament was determining the rights and responsibilities would later hold greater significance than if this had come from Rome.

The language found in the *Articuli Cleri* indicated a growing (or persistent) unease from royal justices in granting clergy their privilege. Perhaps this reflected a sense of injustice and undue protectionism; alternatively it might reveal judicial feelings of anticlericalism. Maybe Justices needed a central authority to explain how to measure who could or could not claim. Regardless, the law became clear: should a man claim his clergy he ought to be delivered to the Ordinary without delay. A Justice's personal disapproval or suspicion should not result in a defendant waiting in a royal gaol for years or longer.<sup>61</sup> The Ordinary should likewise cooperate with the secular judges and return any suspiciously illiterate men to stand trial in the royal courts.

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<sup>60</sup> John Cowell explains the process of purgation: "Purgation is a cleering of a mans selfe from a crime, whereof he is probably and publiquely suspected, and thereof denounced to a Iudge... The forme whereof is vsuall in the Spiritual courte, the man suspected taking his oath that he is cleere, of the fault obiected, and bringing so many of his honest neighbours, being not about twelue... to sweare vpon their consceicnces that he sweareth truly, or hath taken a true oath." For complete exoneration, one's reputation was paramount. Cowell references the connection between purgation and benefit of clergy in his law dictionary *The Interpreter*. London: 1607, under "purgation." Tim Cooper describes it more directly: "Purgation involved the accused swearing an oath as to his innocence supported by the oaths of a number of individuals, usually between two and twelve, specified by the judge and normally determined by the seriousness of the allegations. These *compurgators* were not actually required to swear to the innocence of the accused but to his general reputation... the system could be quite perfunctory, since the same names of compurgators recur repeatedly." *The Last Generation of the English Catholic Clergy*, p. 175 n171.

<sup>61</sup> The law would not have a lasting effect in reducing the wait for Ordinaries to claim the defendants. CB Firth describes cases where claimants waited for relief for as long as twenty years in her article, "Benefit of Clergy in the Time of Edward IV" in *English Historical Review*, 1917, xxxii, 175-191, particularly pp. 187-191

The reference to learning would have long-lasting ramifications for benefit of clergy. Although there were multiple ways of proving one's clerical status, such as tonsure,<sup>62</sup> only one was likely to travel with a clerk: his literacy and education. Some jurors measured eligibility through the habit of the accused or the production of his ordination papers.<sup>63</sup> Still others trusted the word of the local ecclesiastical authority that the man was indeed an ordained priest or monk. However, in the absence of papers or priestly habit, the ability to read was deemed in practice and here, in legislation, to be a suitable proof of clerical training. Using a measurement of literacy would persist until Queen Anne's reign in 1706.<sup>64</sup>

Under Edward II, the Statute *Articuli Cleri* supported the privilege of clergy to be tried before their own courts but also drew strict lines around those who could claim and be delivered. Anyone demonstrating Biblical knowledge and literacy could be counted as clergy, with accompanying privileges. Secular judges were to ignore personal misgivings and deliver such persons to the Ordinary, who in turn had to accept the offender. The parliamentary definition of

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<sup>62</sup> Tonsure was "a sacred rite instituted by the Church by which a baptized and confirmed Christian is received into the clerical order by the shearing of his hair and the investment with the surplice (A large-sleeved tunic of half-length worn by all the clergy)." W. Fanning. "Tonsure". In *The Catholic Encyclopedia*. New York: Robert Appleton Company: 1912. Retrieved October 1, 2011 from New Advent: <http://www.newadvent.org/cathen/14779a.htm> (Accessed 22 August 2012). The performance of ordination included altering daily appearances through hair, posture, and dress. For a discussion of material culture and the performance of religious devotion, see Françoise Piponnier, and Perrine Mane, *Dress in the Middle Ages*; Yale University Press; 1997, especially "Social Order, Moral Order and the Regulation of Appearances" in Chapter Six, pp. 39-89. Tonsure was somewhat controversial, especially as the Reformation gained traction. Foxe claimed that "tonsure maketh not a priest" in his *Book of Martyrs*, and he very well may be right, considering the problems caused by the appearance of tonsure (p. 545), which mostly created confusion over actual status of ordination. In 1516, an ordinance declared that no one ought to receive tonsure in England unless he be elevated above minor orders to the status of sub-deacon and therefore eligible for the benefit. This may be in response to the 1514 Blackfriars debate over benefit of clergy and "minor" versus "holy" orders. See the "Ordinance that for the next five years no one shall receive the clerical tonsure in England unless at the same time he be promoted to all minor orders and that of sub-deacon" National Archives, Kew SC 7/26/16.

<sup>63</sup> Papers were granted only after years of training and a final Examination of Ordination, granted only after the applicant had proven that he was of free and legitimate birth, could demonstrate adequate knowledge of canon law, had achieved minimum age requirements, remained unmarried, and in acceptable health. Cooper, *The Last Generation of English Catholic Clergy*, pp. 13-14

<sup>64</sup> Abolition of reading requirement came in 6 Anne c 9, *The Statutes of the Realm*, Vol VIII, p. 563

benefit of clergy was upheld in 1351 by Edward III in his own collection of articles concerning the lives and actions of clergy, *Pro Clero*.<sup>65</sup> In two clauses, Edward III's parliament confirmed the clerical privilege and outlined a system of fines for those Justices who did not deliver a clerk to the local Ordinary in a timely manner. In order to address the complaint "that secular Clerks, as well Chaplains as other Monks and other People of Religion, have been drawn and hanged by Award of the secular Justices, in Prejudice of the Franchises of Holy Church," the Statute declared that "all Manner of Clerks as well secular as religious...shall from henceforth freely have and enjoy the Privilege of the Holy Church."<sup>66</sup> The bill continued by addressing the suspicions of the royal Justices, requesting that they put their personal feelings aside in order to follow protocol. The defendants may or may not be ordained clerks in good standing, but one who pled clergy must be delivered to the Ordinary for clarification rather than convicted in secular court regardless.<sup>67</sup> Furthermore, delivery must be timely; Justices could not attempt to punish men for claiming clergy by imprisoning them for years as they waited for the Ordinary to collect them.

Historians have pointed to *Pro Clero* as a significant development in the history of benefit of clergy. Leona Gabel argued that it was a measure protecting ordained clergy from undue prosecution and that it transformed the benefit from tradition to law.<sup>68</sup> However, this statute was not innovative or unique in its subject matter. *Pro Clero* merely reiterated provisions established through *Articuli Cleri*. Perhaps the proximity of *Pro Clero* to Edward III's groundbreaking and important statutes outlining the distinction between felony and treason drew

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<sup>65</sup> 25 Edward III st 6, c 4-5

<sup>66</sup> *Ibid*

<sup>67</sup> *Ibid*

<sup>68</sup> Gabel, pp. 35-6

attention from scholars that was then applied to *Pro Clero*.<sup>69</sup> Bellamy discussed the two statutes together as though they were directly related.<sup>70</sup> Yet mere chronological proximity of these laws would not explain the scholarly claim that *Pro Clero* granted the right for all literate Englishmen to claim the benefit.<sup>71</sup> The 1315 law invoked the concept of measuring literacy through the phrase “sufficient learning,” but the tie between education and clerical status was omitted in the 1351 statute. WR Jones argued that the 1351 Act extended the benefit to all literate persons as a preventive act following years of debate between Edward III and the English clergy over how to stem the convictions of clergy in secular courts.<sup>72</sup> Yet it was *Articuli Cleri* and not *Pro Clero* that specifically mentioned “sufficient learning.” There was no specific mention of literacy in the language of the statute. At best there was some evidence that Edward III discussed the connection of literacy and the benefit with ecclesiastical authorities.<sup>73</sup>

I suspect the confusion of scholars originated with the distinction in *Pro Clero* between clerks “secular as well as religious.” AL Cross even wrote explicitly: “In 1350, an ordinance of the clergy (i.e., *pro clero*) included within the scope of the privilege ‘all manner of clerks as well secular as religious.’ This was apparently interpreted to mean all who could read.”<sup>74</sup> Cross and other scholars have confused secular clergy with literate laity. The matter is one of misrepresenting what these categories meant to medieval society. Those under the term

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<sup>69</sup> “Declaration what offences shall be adjudged Treason” 25 Edward III st 5 c2

<sup>70</sup> Bellamy, “Benefit of Clergy,” pp. 116-117

<sup>71</sup> Gabel and Bellamy are not the only people to speak of *Pro Clero* in these terms. See also AL Cross on benefit of clergy and Ed White’s *Legal Antiquities* for similar commentaries.

<sup>72</sup> WR Jones, “Bishops, Politics, and the Two Laws: The Gravamina of the English Clergy: 1237-1399” in *Speculum*, 1966, pp. 229-238.

<sup>73</sup> Bellamy, “Benefit of Clergy” p. 121

<sup>74</sup> AL Cross, “Benefit of Clergy in the Eighteenth and early Nineteenth Century” in *The American Historical Review*, vol 22 no 3 (1917), p. 552

“religious clergy” lived in isolation in monasteries, convents, or chantries, while those known as “secular clergy” served the laity in a parish or region.<sup>75</sup> Both groups were fully ordained clergy, and not merely groups of laymen who volunteered at the local churches. Scholars may have misread the term “secular clerks” to mean that *Pro Clero* offered the benefit to all Englishmen who could demonstrate the skills and knowledge of a clerk – defendants who would be known after 1489 as “lay clerks.” However, a “secular clerk” was merely an ordained man who brought religious service to secular people.

A strict reading of the 1315 and 1351 statutes reveals that *Articuli Cleri* emphasized learning, while *Pro Clero* highlighted the problem of royal justices delaying the delivery of claimants to their Ordinary. Those literate lay defendants could only claim the privilege by posing as clergy. They could not claim in their own right, as some historians have argued. Fortunately, George Dalzell was correct when he claimed that “in the fourteenth century, the royal courts...substituted a method of identification that could not be defeated by a shave, a haircut, and a change of clothing. The test became the ability to read.”<sup>76</sup> Although Dalzell shunned the use of references in his popular history of benefit of clergy, his conclusion reflected the surviving evidence of the period. The courts, not the law, were responsible for the literacy test’s central importance.

By the time Henry IV came to the throne, the definition of benefit of clergy gave rise to complaints that claimants began a life of crime based on repeated use of the privilege. In the “Benefit of Clergy Act” of 1402, Parliament reconfirmed the clerical privilege but claimed that the Archbishop of Canterbury had agreed to hand over repeat offenders even if they were in

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<sup>75</sup> Margaret Bowker, *The Secular Clergy in the Diocese of Lincoln, 1495-1520*. Cambridge University Press: 1968

<sup>76</sup> George Dalzell, *Benefit of Clergy in America and Other Matters*. Winston-Salem: 1955, p. 16

orders so that “common thieves” might be prosecuted in the royal courts. After affirming that the King intended to honor all past observances of the benefits and privileges of the clergy, the Act declared that “no such Clerk convict of such Treason or that he be a Common Thief... shall make any Purgation” but will be returned to the King’s Courts for punishment.<sup>77</sup> The Act upheld the privilege, but attempted to reduce repeat offenders. Furthermore, the bill took treason off the list of offenses for which a convict could plead benefit of clergy.

The timing of Henry IV’s Benefit of Clergy Act coincided with the beginning of a shift in the treatment of the privilege in the courts. Generally speaking, the English legal system experienced strong leadership under the early Norman kings followed by a period of confusion under Stephen, after which Henry II moved to strengthen and unify the law by codifying practice ostensibly widespread and accepted under his grandfather’s reign.<sup>78</sup> Becket’s death interrupted Henry’s reform and strengthened the power of the Church within England as a consequence of their conflict. However, this dominance of the Church would not persist. The mutable form of the term *clericus* – and the protection it afforded – led to some confusion over how the benefit ought to proceed in the courts themselves. Royal attempts to contain that confusion established a set of rules and opened the door for performances at court by defendants whose primary occupations spanned a growing range. In doing so, Parliament asserted its authority and began to legislate in a way that provided direction to the process of allowing benefit of clergy while simultaneously weakening the position of the Church. The latter stance would not become apparent until much later. More immediately, these laws would lead to informal lay claims and eventually the formal extension of the privilege to any literate layman convicted of felony.

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<sup>77</sup> 4 Henry IV c 3

<sup>78</sup> Gabel, p. 24

## Lay Clerks

The fifteenth century was a time of confusion and chaos in England. Politically, the Wars of the Roses interrupted governing with battles and abrupt changes in kings and administrations. According to the 1486 Croyland Chronicle, Crown policies dictating taxation and property rights were in constant flux, “without regard to whom they had been granted, and applied the whole thereof to the support of the expenses of the crown.”<sup>79</sup> Local independence with inconsistent centralized oversight was a common feature of the political landscape. Regional variation was an inevitable side effect of such frequent and drastic change. Although modern historians seem to agree that the civil wars were not invasive in the lives of most English subjects, JG Bellamy has argued that there was an increase in crime and a decrease in standardized prosecution.<sup>80</sup> Against this background, local processes for accepting, denying, and testing a defendant for clerical status fluctuated considerably. In 1555, the historian Edward Hall described the history of the benefit during the fifteenth-century struggle in this way: “The privilege did norish and encrease abundantly theves & murtherers...[those] truly founde gilty from the beginning [were] both excused & set at libertie. And oftentimes the sooner, for the escape of a poor knave, skant worth

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<sup>79</sup> W Fulman, *Rerum Anglicarum Scriptores Veterum*, translated by HT Riley in *Ingulph's Chronicles*, Oxford University Press: 1854, p. 559

<sup>80</sup> JG Bellamy, *The Criminal Trial in Later Medieval England: Felony before the Courts from Edward I to the Sixteenth Century*. University of Toronto Press: 1998, p. 9

a dandyprat.”<sup>81</sup> Common criminals developed a reputation for using deception to claim the once-exclusive privilege to further their lives of crime. Petitions to the kings and other authorities outlined the problem and suggested ways to curb repeat offenders who used clergy to enable their criminal livelihoods. In the courts, justices attempted to prevent questionable defendants from claiming properly, against the guidelines established in the Benefit of Clergy Act of 1402 that cautioned to err on the side of benevolence. The actions of royal court officers potentially endangered the lives of clergymen, which prompted groups of clergy and Convocation to complain about their members being imprisoned for years for want of formal Ordination papers.<sup>82</sup> The system was fraught with inconsistencies.

The groups who saw defects in the process of granting clergy attempted to rectify those problems by bringing them to the attention of authorities through petitions. In 1421, a group identifying themselves as the “People of Oxfordshire, Berkshire, and Buckinghamshire” petitioned the Privy Council and Parliament concerning the rambunctious behavior of some Oxford scholars who had, among other things, enabled the escape from the Ordinary’s gaol of clericied criminals who seem to have had the reputation of repeat offenders and questionable clerical status.<sup>83</sup> The petition suggested that these criminals of unclear religious association be granted their clergy but banished from the realm unless they could prove their ordination or pay a fine of 100 marks. Emphasizing the opposite problem, Convocation petitioned the King in 1449 on behalf of four chaplains who had been indicted without regard for their status and

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<sup>81</sup> A “dandiprat” was a small silver coin worth threepence. Edward Hall, *The unyon of the two noble and illustre famelies of Lancastre and Yorke* London: 1555, p. 51.

<sup>82</sup> Alternatively, Tim Cooper argues that Ordination papers could be replaced with a testimonial of ordination from a local ecclesiastical representative. See Cooper, *The Last Generation of the English Catholic Clergy*, p. 14

<sup>83</sup> “The People of Oxfordshire, Berkshire, and Buckinghamshire to the Commons of Parliament” SC 8/24/1158 National Archives, Kew, England

exemption.<sup>84</sup> And yet, in 1454, the House of Commons sent a petition to the King complaining of excess lay criminals taking advantage of the privilege. The Commons complained that “murders manslaughteres rapes robbers and other theftes felonously doo within this your realm daily encrease and multiplie...[who] can rede by cause of the grete boldnes of their clergy” persuade the Ordinary of their false status and pay “summes of monie” for their successful purgation.<sup>85</sup> The petition complains that such bribes enable criminals to prolong a life of crime. These petitions and others described an atmosphere of chaos and confusion about the role of the benefit in the fifteenth-century law courts.

Convocation remained persistent in their drive to find a solution. In 1460, it collected a list of issues requiring the King’s attention. Of these nine issues, five pertained to benefit of clergy.<sup>86</sup> Convocation’s solutions for the benefit were: the Ordinary should make the final decision in cases dealing with clerks; the king ought not to interfere with censure against secular officials who tried to deny a priest his clergy, leaving the problem to the Church; and those claimants whose status was doubtful should be judged by the Church and not by secular officials. In this document, Convocation asked for greater ecclesiastical control over the immunities and privileges of the clergy.

Henry VI did not acknowledge this petition, but Edward IV responded in November of 1462.<sup>87</sup> In addition to supporting the clerical immunities, his subsequent charter declared that the decision to accept someone as a clerk rested with the royal Justice who witnessed the

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<sup>84</sup> England and Wales, *Calendar of Patent Rolls 1446-52*, vol. 5, London: 1909, p. 302, John G Bellamy, *Criminal Law and Society in Late Medieval and Early Tudor England*. St Martin’s Press: 1984, p. 125

<sup>85</sup> “A Petition from The House of Commons to the King,” C 49/30/16, National Archives, Kew, England

<sup>86</sup> Gerald Bray, ed. *Records of Convocation VI*, pp. 113-15

<sup>87</sup> “Charta Edward IV de Libertatibus clericorum” in David Wilkins. *Concilia Magnae Britanniae et Hiberniae, a synodo verolamiensi ADCCCXLVI*. Vol III, London, 1737, pp. 583-585

demonstration of literacy rather than the Ordinary. The Charter cautioned acceptance over denial, but warned that Ordinaries who tried to deny someone their clergy after a successful demonstration of literacy – perhaps as a move to accept only those “true” clergy – would be found in violation of the courts and subsequently fined. The language of the Charter suggested that Edward IV either wished to uphold the authority of secular justices or considered Ordinaries to be the likelier party to interfere with the process of claiming clergy.

Edward’s charter was apparently considered an inadequate response to the complaints of Convocation; they renewed their petition in 1471, complaining of the royal charter’s ineffectiveness.<sup>88</sup> The renewed petition claimed that the Ordinary did not perform the central role that the charter had awarded him in cases of benefit of clergy, although whether that was due to an uncooperative attitude or outright interference from secular officers was not explained. In 1480, in yet another petition, Convocation informed the King of the continuing problems with the clerical privilege.<sup>89</sup> This petition requested that temporal officers deliver clerks to the bishops without imprisoning them for lengthy periods of time.<sup>90</sup> The persistent complaints did not include new points of dispute over the benefit, but largely repeated the previous description of grievances, indicating that Edward IV’s charter did little or nothing to address the disputes, defend the rights of the Church, or relieve the pressure on convicted priests.

The clergy in England did not appeal only to the king in their attempts to obtain security for their privileges. In 1476, Convocation petitioned Pope Sixtus IV for further assistance. However, the resulting papal bull did not address benefit of clergy in particular; Sixtus IV

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<sup>88</sup> “Bulla Sixti quarti pro libertate clericorum et rerum suarum; et ne ipsi clerici per laicos arrestentur, aut molestentur in personis sen rebus suis, etc.” in Wilkins’ *Concilia*, Vol III, pp. 609-610

<sup>89</sup> “Convocatio praelatorum et cleri provinciae Cant, 21 die mensis Martii, in eccles. S Pauli London” in Wilkins’ *Concilia*, Vol III, pp. 612-13

<sup>90</sup> “Convocatio praelatorum...” Wilkins’ *Concilia*, Vol III, p. 613

threatened excommunication for secular justices who arrested those in orders specifically on fabricated charges of perjury with the ulterior motive of property confiscation instead of the triumph of public order.<sup>91</sup> The unfocused nature and broad topics of the papal decree made it was no more effectual than Edward IV's charter. Without adequate attention from the Pope, Convocation turned again to the King with the 1480 petition mentioned above.

The primary subjects of these petitions – dismissing a plea of clergy or allowing it for someone whose status was unclear – were well-documented. The collection of interesting cases comprising the Year Books recorded a case in 1482 where the Justices concluded that an illiterate clerk should always be denied his clergy, while a literate layman may have it.<sup>92</sup> Their conclusion recommends that the law be clear on its reliance on literacy rather than actual clerical status, which can be difficult to define or measure. Sir William Staunford noted in his 1557 *Plees del Coron* that during the reign of Henry VI a judge named John Prisot did not allow criminous clerks to pray their clergy at trial.<sup>93</sup> Prisot insisted that they plead guilty or not guilty, postponing the Ordinary's role until after the clerk had submitted himself to the direct authority of the King. Staunford also reported two clerks who were denied their clergy and executed under Edward IV due to a poor reading performance.<sup>94</sup> In the second case, either prejudice from the secular examiner or poor education meant death, and the English clergy feared the threat to both their privilege and their personal safety.

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<sup>91</sup> “Bulla Sixti quarti...” Wilkins’ *Concilia*, Vol III, pp. 609-610; Bellamy, p. 128

<sup>92</sup> Seipp No 1482.157abr, Michaelmas Term, 22 Edward IV (1482). Also reported in Fitzherbert’s *La Graunde Abridgement*, fol 210r

<sup>93</sup> Sir William Staunford, *Plees del Coron* (1557), fs.133a-b

<sup>94</sup> Sir William Staunford, *Plees del Coron* (1557), f123

In her book *Benefit of Clergy in England during the Middle Ages*, Leona Gabel argued that the entire privilege hinged on the flexible definition and relative status of *clericus*. In a community where virtually all members were involved with religious work and devotion, the nature of defining the legitimate claimants of a privilege like clergy became increasingly difficult. Gabel found successful claimants with almost “every variety of occupation represented” in a typical medieval village: tailor, fishmonger, grocer, laborer, tanner, draper, husbandman, yeoman, goldsmith, haberdasher, barber, apprentice, spicer, mason, cooper, and vestment-maker.<sup>95</sup> When court officials recorded claimants of clergy, they listed their primary occupations, and those occupations were rarely related to a church.

Gabel worked under the assumption that there were far greater numbers of lay claimants in the fifteenth century than previously assumed. She hypothesized briefly that the primary occupation may have masked an honest association with the Church at times, in terms of volunteer work or fulfilling holes associated with the growing practice of pluralism.<sup>96</sup> Possible part-time employees with little formal association with the Church and incomplete records of ordination could have performed the work of absent priests who held multiple benefices. Other claimants might have been part of a clergy’s household, the members of which may have also been protected. Lea suggested that benefit of clergy might have even extended to a priest’s live-in concubine.<sup>97</sup> However, this explanation was unlikely to be true for each of these hundreds of names. The implication was that these were laymen openly allowed their clergy under Justices

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<sup>95</sup> Gabel provides full lists of name, occupation, age, and literate ability, pp. 81-84; quote from p. 81

<sup>96</sup> Gabel, pp.77-79

<sup>97</sup> Reports of this protection were inconsistent. Henry Charles Lea considered to be common courtesy, but records lack detailed evidence of affiliation to support this claim and his own citations are insufficient to prove anecdote or representative example. See Lea’s *History of Sacerdotal Celibacy in the Christian Church*, Watts: London, 1932, p. 288

who cared only for a proof of literacy instead of letters of ordination, sending all who claimed to the Ordinary and letting the ecclesiastical courts sort them out. For this information, Gabel culled the occupation lists associated with the trial records.

The historian's most difficult task was to measure rates of claims and true status of those claimants from extant documents. Names and occupations may not accurately reflect the level of ordination or eligibility for a clergy claim. The trial records themselves recorded claimants whose primary occupations were outside of the Church, making secondary associations invisible and difficult to determine. There remains little way for historians to determine the "true" status of such claimants. However, we may analyze the decisions of Justices or the language of statutes and petitions to gauge the way lawmakers and enforcers thought about benefit of clergy in the fifteenth century. Piecemeal evidence suggests that the number of people passing as "clerks" was growing throughout the fourteenth century and that it did not necessarily include only those associated with the Church. Or, as Gabel concludes: "It points to a state of affairs in which the practical distinction between a 'clerk' and a layman in every-day affairs was in very many cases negligible or even non-existent."<sup>98</sup> Her conclusion about the mutability of what constituted a "clerk" may explain why, contrary to the references of modern historians, benefit of clergy had become conceptually a lay privilege by the middle of the fifteenth century, before Parliament extended it formally to non-religious subjects.

The distinction between lay and clerical was too fine to separate the privileges from one or the other. The extreme difficulty in proving without a doubt the status of a claimant put the royal justices in a position to consider the privilege for any who were confident enough to claim it, true status notwithstanding. Without a clear message from a central authority, the benefit

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<sup>98</sup> Gabel, p. 77

would continue to fluctuate according to the varying interpretations of local justices. If a central database tracking ordained men and their occupied positions had been available, the controversy over who might be a “true” clerk may have been solved. However, Bishops and other high-ranking church officials did not have anything beyond a local list at their discretion.<sup>99</sup>

By the end of the Wars of the Roses, a new dynasty and a new era began as Henry Tudor ascended the throne. It seems fitting that a ruler who focused on reform throughout major administrative systems would also be the person to authorize a substantial change in the laws addressing benefit of clergy. Although there is no way of knowing if Henry VII saw the petitions from the previous decades and familiarized himself with the tension surrounding benefit of clergy, the language of the 1489 statute implied that the writers of the Act were aware of the two main problems affecting the benefit. The law asserted that “diverse persons have been the more bold to commit murder, rape, robbery, theft, and all other mischeifvous deeds, because they have been continually admitted to the benefit of the Clergy,” and created a solution to their ambiguous position.<sup>100</sup> Parliament authorized two separate forms of the privilege, both designed to protect those claiming the other. For those common thieves, rapists, murderers, and lifetime offenders, Parliament authorized their allowance of the clergy, but only once. To prevent future claims, those allowed their clergy would be branded on the brawn of the left thumb, with either a T for thief or an M for manslaughter or malefactor. After the mark was made in open court before the judge, the admitted layman would be delivered to the Ordinary as though he were fully ordained but with little concern if he were not. By creating a distinct right for lay first offenders to claim,

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<sup>99</sup> Tim Cooper traces the process of Ordination from its early stages of training through the official examination and ceremony in his book, *The Last Generation of English Catholic Clergy*, pp. 7-36. See also Richard Helmholz on the process of Ordination, *The Spirit of Classical Canon Law*, pp. 63-64, 302-303

<sup>100</sup> Preamble of 4 Henry VII c 13

Parliament extended a mercy to the King's literate male subjects, but the branding requirement limited the abuse decried in the fifteenth-century petitions.

Primarily, the law granted clergy formally to the laymen who were already claiming it by tradition, deception, or confusion about the law. Additionally, the law extended protection over ordained men who had full rights to claim the privilege but found themselves unable to read properly, produce papers of ordination, or otherwise prove their status without a doubt to the court. Those claimants who were indeed clergy in orders but had difficulty proving their position would be able to claim the lay version instead of risking execution. Their lives would be saved. The new law concluded with the following provision: "if any person at the second time of asking his clergy, because he is within orders, hath not there ready his letters of his orders, or a certificate of his ordinary witnessing the same, that then the justices afore whom he is so arraigned, shall give him a day by their discretion to bring in his said letters or certificate."<sup>101</sup> And should he be unable to produce his letters, he may rely on the lay version to claim. Ordained claimants were still permitted their clergy multiple times, free of branding, in accordance with the medieval right of the Church. A lay man caught twice with no proof would experience the full extent to the law.

With the King's authorization, Parliament stabilized the privilege while acknowledging the application of this first-offense mercy for laymen who had no formal attachment to the Church. One could say that the 1489 Act introduced the formal acceptance of lay claimants and opened the door for future reforms that would increase the eligibility of common criminals to use the benefit to escape capital punishment. However, by the fifteenth century, lay claims had already become the more prominent form of the "clerical" privilege and that this law merely

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<sup>101</sup> 4 Henry VII c 13, clause four

equalized the claims of ordained men to those of laymen. Taking into account the widespread flexibility of the liberty during the fifteenth century and commentary from various authorities concerning the claims of laity, by 1489 the “benefit of clergy” had already become open to manipulation and dependent on a legal fiction in which men from all occupations pretended to be ordained with the court cooperating in the fiction, if only to save lives and preserve the peace. If “*clericus*” was measured only by literacy and not by proof of status, the claimant status was less about tension between Church and State and more about judicial discretion in each individual case. Furthermore, the statutes affecting benefit of clergy immediately following this Act formally acknowledging lay claims have a distinct lay focus, implying that already “benefit of *clergy*” had become a misnomer.

## Benefit of Laity

Benefit of clergy originated as a privilege of the Church, authorized by Church Councils and upheld by the authority of Biblical verse. The distinct tradition of English common law had altered its process in England compared to its similar privileges in other Christian kingdoms.<sup>102</sup> In 1489, Parliament authorized the clear, legal claims of literate laymen to use the benefit of clergy and live the legal fiction of “lay clerks.” Without formal ordination, the successful reader would be delivered to the Ordinary and undergo purgation as if he were ordained. Gabel suggested the prominence of lay claimants with her work on occupations of criminous clerks throughout the fifteenth century. Trial documents did not record whether the claimant had verifiable associations with the Church and even the term *litteratus* can be misleading.<sup>103</sup> Standards of achieving “literacy” are flexible: such a term might mean reading and writing Latin fluently, or it might suggest the ability to sign one’s name. Standards of education and testing were not a feature of medieval training.<sup>104</sup>

We may never know strict numbers of lay claimants in the fifteenth century, but analysis of other documents sheds light on the reputation and primary function of benefit of clergy prior to 1489. Statutes immediately following this law dealt with problems affecting largely lay groups. One would assume that a law geared to allow liberty primarily to clergy and only partially to laity would continue legislating toward ordained clergy as the primary function of the exemption. However, the opposite occurred, and more laws created policy concerning primarily

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<sup>102</sup> Charles Lea “Benefit of Clergy” in *Studies in Church History*, (1883), pp. 169-219

<sup>103</sup> Gabel, pp. 81-82

<sup>104</sup> Indeed, this was one of the chief complaints of supporters of the Reformation.

lay claimants with laws affecting ordained claimants added as only a secondary clause. The wording of the 1489 law itself suggests a primary focus on the laity rather than clergy. A system of fines for denying someone the benefit more often affected Ordinaries than Justices, suggesting a propensity on Ordinaries' part towards rejecting possible lay claimants because they knew they were not verifiable priests. Finally, petitions and documents from earlier in the fifteenth century suggest that lay claimants were using the privilege enough to commit a lifetime of crimes rather than clergy required this protection for a brief struggle with the law. Baker concluded in a brief essay on benefit of clergy in 2003: "At some point between the mid-fourteenth and mid-fifteenth centuries, benefit of clergy became secularized."<sup>105</sup> The alterations established under Tudor rule would only cement this secularization.

The Act of 1489 was an acceptance of conditions already in practice. The description of the statute speaks volumes: "Clergy Shall be allowed but once. A convict Person shall be marked with the Letter M or T. A provision for them which be within Orders."<sup>106</sup> Primarily, this act defines clergy as the lay privilege that will be allowed a single time from that point on. "[E]very person, not being within Orders, which once hath been admitted to the benefit of his Clergy, oftsoons arraigned of any such offence [Murder, etc], be not admitted to have the benefit or privilege of the Clergy."<sup>107</sup> As a secondary clause, a provision is added acknowledging that true clergy may still claim the benefit any time they stand in front of a royal justice, so long as they

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<sup>105</sup> JH Baker "The Secularization of Benefit of Clergy, 1450-1550" in Mario Ascheri (ed.), *"Ins Wasser geworfen und Ozeane durchquert"*. *Festschrift für Knut Wolfgang Nörr*, Köln 2003, pp27-37; quote from p. 27

<sup>106</sup> There is some question about this title being an eighteenth century abbreviation or summary of the law rather than a fifteenth century commentary. The opening editor's note suggests that statutes no longer in force were not included with full text. However, this rule was applied inconsistently, leading some question as to what editorial changes were made. All my quotes for statutes come from the multi-volume collection England and Wales, *The Statutes of the Realm (1225-1713), Printed by Command of King George III*. London: 1812-1822, which I try to correlate with contemporary collections of statutes whenever possible. The contemporary collections are more frequent after 1500. 4 Henry VII c 13

<sup>107</sup> 4 Henry VII c 13 *The Statutes of the Realm*, Vol II, p. 538

can prove they have in fact undergone ordination, through “his letters of his orders, or a certificate of his ordinary witnessing the same.” Without such a letter, the second-occasion claimant is “to lose the benefit of his clergy, as he shall do that is without Orders.”

In this Act, the culmination of a century of debate and dispute, the clerical benefit became secondary to the lay privilege. The primacy of the lay version would continue; just two years later, a new Act concerning benefit of clergy addressed the problem of soldiers deserting their captains without leave.<sup>108</sup> The overwhelming majority of people who would commit this crime would be laymen, not clergy, but after the enforcement of this Act their crime would be unclergyable. Furthermore, in 1497, Parliament made all forms of petty treason unclergyable but significantly added a secondary provision protecting the rights of verifiable clerks. The law was passed in response to the detestable murder of one Richard Tracey by his servant James Grame.<sup>109</sup> Future petty traitors, violating the order of society, would not be permitted their clergy. True clergy could continue to claim until the Reformation Parliament specifically took away their clergy for petty treason in 1531/2.<sup>110</sup> The later Act establishes that petty traitors in orders will have the privilege of life imprisonment in lieu of death, while their lay brothers suffered the deaths of traitors.<sup>111</sup>

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<sup>108</sup> 7 Henry VII c 1

<sup>109</sup> 12 Henry VII c 7 “An Act to Make Some Offences Petty Treason” mentioned the Grame and Tracey conflict as the impetus for the Act. *The Statutes of the Realm*, Vol II, p. 639

<sup>110</sup> 23 Henry VIII c 1. A provision is made for those in Holy Orders to be imprisoned for life rather than either allowed clergy or put to the gallows; a further provision for those who may pay a surety for some freedom.

<sup>111</sup> 23 Henry VIII c 1. This distinction stood only for five years, until 1536. In that year, the clerical requirement was dropped entirely. 28 Henry VIII c 1.

Finally, in 1512 Parliament moved to make certain cases of murder unclergyable.<sup>112</sup> The preamble decried heinous murders throughout the realm, committed without remorse or punishment, declaring future murders committed near churches, the highways, or in a home putting the inhabitants in fear to be unclergyable crimes. In order “to put the said murthers, felons and diffendors in more fear and dread so to offend,” the statute deprived such heinous offenders of their privilege. The primary focus of the law was, again, common criminals rather than priests. Ordained clergy were not treated until the secondary clause, which protected men of God in a brief phrase: “Such as been within Holy Orders only except[ed].”<sup>113</sup> All of these statutes were primarily directed at controlling the behavior of laymen. Benefit of clergy was an established form of control. The design of the law tied the privilege primarily to laymen rather quickly after the first official creation of the lay version of the benefit. Such speedy application indicated a longer tradition of allowing laymen to claim the benefit already in place within courts throughout the kingdom.

## Conclusion

Laws addressed benefit of clergy as a lay plea first and clerical plea second beginning with the 1489 statute. However, there were a variety of sources that preceded the formality of statutory law in treating benefit of clergy in this manner. One prominent source covered the

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<sup>112</sup> 4 Henry VIII c 2

<sup>113</sup> The Church responded negatively to language of the protective clause in this Act, since “holy orders” would not protect those in “minor orders.” Still, the protective clause was secondary to the overall point of this statute, which was to address common criminals and not murderous priests. As I explore in Chapter Two, the Church’s overreaction was an attempt to stem the loss of political capital in other arenas.

discussions among royal justices in their legal findings. Petitions, legal commentaries, and even proposed bills for Parliamentary consideration foreshadow the transition from benefit of *clergy* to benefit of *laity*.

Royal justices discussed the ambiguous status of claimants throughout the fourteenth century. Some of these discussions were recorded in the Year Books.<sup>114</sup> For example, in 1456, a defendant who read very well was awarded his clergy and delivered to the Ordinary, only to be rejected as a layman and returned to the secular courts. The defendant read again in court, very well, and the Justices convinced the Ordinary that he must take the defendant for he had read well, twice.<sup>115</sup> Later on, in 1482, a similar conflict arose where the Ordinary challenged the status of a clerk and refused to accept him. The justices decided:

He (the prisoner who read well but was refused by the ordinary) will be, in such a case, remanded...and that this would be understood (prise) as a law everywhere... otherwise, if he (the prisoner who claimed benefit of clergy) did not read well, and the ordinary wanted to take him, yet notwithstanding this he will be put in execution (hanged) and this was held as well as law.<sup>116</sup>

In other words, the quality of literacy and learning was emphasized in the letter of the law and so a prisoner's reading must have taken precedence over the actual status as a clergyman or layman. Justices agreed that it was literacy – not ordination – that opened the door for pleading one's clergy. The conflict was not so much about clerical status or distrust of priests as it was rival jurisdictions attempting to assert their authority over each other. The secular justices could deny

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<sup>114</sup> Baker has a nice discussion on the pros and cons of using Year Books in legal history in his *Introduction to English Legal History*. I intend to engage with his observations after I have included more from the recently published and transcribed parliamentary rolls from the medieval period.

<sup>115</sup> Seipp No 1456.049, Trinity Term, 34 Henry VI (1456). Also reported in Fitzherbert's *Pleas del Corone*, fol. 209r

<sup>116</sup> Seipp No 1482.157abr, Michaelmas Term, 22 Edward IV (1482). Also reported in Fitzherbert's *Pleas del Corone*, fol 210r

or approve clergy on their own terms and dismiss the ecclesiastical privilege as irrelevant if they focused on levels of literacy rather than church records or status.

Cases from the fifteenth century in which literate criminals of unknown clerical status lost their plea of benefit of clergy revealed that the Ordinary, and not the royal justice as clergy had complained in fifteenth-century petitions, was often the reason a claimant was denied the privilege. Situations in which the Ordinary decided a criminal was not worthy of exemption appear in the Year Books of 1458, 1469, and 1481;<sup>117</sup> during the same period, no trial record conveyed an anticlerical sentiment or interfering obstinacy stemming from the justices.<sup>118</sup> The only case in the fifteenth-century Year Books in which the king's servants denied a man his clergy seems to be due to a perception of injustice rather than quibbling over status. In 1481, a defendant read his book and escaped punishment for robbery, while his illiterate accessory received a sentence of execution. The justices decided that the primary actor should not receive the "advantage" while the secondary actor went to the gallows. Instead of letting the accessory go free, they determined that the guiltier of the two would be denied his clergy in this case, and both should be executed.<sup>119</sup> The Year Books did not cover every trial of the fifteenth century, so our picture may be incomplete, but again such cases were suggestive of a persistent trend of lay claimants whose successful allowance of clergy was hindered by the fact that they are not ordained and the Ordinary attempted to deprive them of their claims.

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<sup>117</sup> Seipp Nos. 1456.049, 1469.012, and 1481.032. In print, see Sir Robert Brooke *La graunde abridgement, collecte & escrie per le iudge tresreuerend Syr Robert Brooke chiualier, nadgairs chiefe Iustice del common banke*, under "Clergie." Tottell: 1573, pp. 1, 17 and 18, respectively.

<sup>118</sup> Seipp No 1481.032. In print, see Brooke *Clergie* 18.

<sup>119</sup> Seipp No 1488.003. In print, see Mich. 21 Hen. 6, in Sir Anthony Fitzherbert. *Corone* 10 & 12; Hil. 9 Edw. 4, f.48.

Perhaps more convincingly, legal treatises from the 1530s also mentioned the recurring problem of Ordinaries, not Justices, rejecting criminals who read satisfactorily. An anonymous author wrote in 1534 of fifteenth-century Ordinaries whom the King's Bench had to fine repeatedly due to their refusal to follow the law and accept clerks into their custody.<sup>120</sup> Christopher St German also reported that Parliament had to devise such fines in order to enable a smoother process for claiming clergy, and eliminate the problem of stubborn Ordinaries.<sup>121</sup> The Year Books and legal commentary implied that the issue was less one of anticlerical sentiment and more due to individual Ordinaries' refusals to admit strangers or questionable persons to their care and responsibility, even if the criminals were indeed clerks, but from another shire. Quite possibly the Ordinaries understood that accepting non-clerical defendants would dilute the strength of their special status. Alternatively, they may have preferred to control the final decision over who would be claimed or not under the privilege, the risk of fine notwithstanding.

Furthermore, a system of fines had been set up to penalize Ordinaries who tried to stand against those delivered to their care.<sup>122</sup> Originally, as Bellamy explains, "The task of the Ordinary, when the arraigned prisoner asked for benefit of clergy, was to determine if in fact he was a *clericus* and so entitled."<sup>123</sup> However, by the fifteenth century, the authority of royal courts was growing and fining uncooperative Ordinaries was one way of ensuring that claimants received their clergy by the letter of the law and not the spirit of a Church-given clerical status. Where fourteenth-century statutes refer to delivery as "Ordinaries demanding them," fifteenth-

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<sup>120</sup> Anonymous. *A Treatise Prouyng by the Kynge's lawes that the bishops of Rome, had neuer right to any supremitie within this realme* (1534), f13a

<sup>121</sup> Christopher St German, *A Treatise Concernyng the Division Between the Spirituality and the Temporality* (1532), p. 34

<sup>122</sup> Baker, *The Reports of John Spelman*, p. 327 n7

<sup>123</sup> Bellamy, "Benefit of Clergy in the Fifteenth and Sixteenth Centuries" p. 119

century charters and Year Book records listed punishments for Ordinaries who prevaricated based on the quality of reading or lack of clerical garb.<sup>124</sup>

In addition to the petitions and cases discussed above and Gabel's long list of clerks with lay occupations, there were a number of petitions to the King from families of people who claimed their clergy in the hope of reclaiming confiscated lands or property after the claim was allowed. These petitions tend to be written by wives, widows, or children of the claimants who were allowed clergy and died in prison awaiting their ecclesiastical trial.<sup>125</sup> No similar petitions survive for those in orders, who presumably would not have legal wives or legitimate children petitioning on their behalf.<sup>126</sup> Such petitions are not quantifiable evidence, only anecdotal and suggestive of a larger trend where lay clerks were accepted openly by both courts well before Henry VII extended the benefit formally to laymen.

Finally, the clearest indication that benefit of clergy was functioning as a benefit of the laity well before 1489 can be found in the language of proposed legislation from the House of Commons to the King in 1454. Remarkably, this bill outlined the basic tenets of the 1489 Statute four decades before Henry VII came to the throne of England.<sup>127</sup> In this petition, written as a suggested bill seeking royal approval rather than agreement from the House of Lords, the Commons claimed that "murders manslaughteres rapes robbers and other theftes felonly doon

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<sup>124</sup> Contrasting the language of *Pro Clero*: 25 Edward III st 6 c 4 and the later events from the *Year Books*, Trinity, 9 Edward IV, no 41

<sup>125</sup> Examples of such petitions are: SC 8/112/5552, a petition from a widow whose husband died awaiting trial after being allowed his clergy; SC 8/75/3741, a son petitioning on behalf of his father who was convicted as a clerk but kept in Thorpe at a price of 8 marks and never released. See also C 1/46/314 and C 1/64/58, both widows' petitions to reclaim forfeited goods after their husbands were allowed clergy but died in prison. National Archives, Kew, England.

<sup>126</sup> Although such assumptions are not perfect, as many clerks seem to have had wives and families. Edward Peters, "History, Historians, and Clerical Celibacy" in Michael Frassetto, ed. *Medieval Purity and Piety: Essays on Medieval Clerical Celibacy and Religious Reform*. New York and London: 1998, pp. 3-22

<sup>127</sup> Petition from the House of Commons to the King, 33 Henry VI. C 49/30/16, National Archives, Kew, England.

within this your realm daily encrease...[who] can rede by cause of the grete boldnes of their clergy.” As a result of these career criminals, “th’ordinary for the tyme beyng refuseth or disclaymeth any such p[er]sones or p[er]sone” because of their suspicion of the claimant’s status. Accordingly, these Ordinaries received fines and penalties but continued to refuse claimants who had been delivered to them from the secular courts. The Commons therefore proposed that all who receive their clergy be documented “by writte, wryttes, warrantes or warrant to all other Justices” so that if the laymen were to claim a second time, only those who proving their letters of ordination may receive the benefit, thus reducing the number of recidivist murderers, thieves, or rapists within the realm.

The similar wording of the 1455 proposal and the 1489 statute is striking. The Commons was proposing a system of “certificates” to be delivered to all the Justices of the Peace in every shire and to every gaoler. This was perhaps an ambitious paper trail, but the petition/bill demonstrated clearly both the problem of repeat offenders and the existence of the reputation of lay criminals taking advantage of the benefit long before Parliament “extended” the privilege to the laity in 1489. Furthermore, the petition suggested that the House of Commons knew and accepted that they could not prevent lay use of the clerical privilege. Instead, they sought only to restrict it as best they could. In this early solution, the Commons proposed the documentation of each and every claimant to be held in a central database in London. In the 1489 statute, branding the skin of the claimant would ultimately replace the complicated process of collecting and maintaining that central list of every lay claimant.

We cannot quantify what percentage of fifteenth-century claimants of the benefit were members of the laity because the measurement of occupation and association with the local parish is nearly impossible. However, we can determine that benefit of clergy was well on its

way to functioning primarily as a lay privilege rather than a clerical one long before the statute of 1489 formally created a lay version of the benefit. Henry Tudor's revolutionary statute was less of a change and more of an update to existing law. That statute codified statutory law to catch up with the practice at court. Even if the problem of common thieves and lay claimants were a misperception, the existence of the proposed legislation from 33 Henry VI demonstrates that Parliament had already proposed a system that extended the benefit to the laity decades before the 1489 statute. By the middle of the fifteenth century, benefit of clergy had become largely a misnomer. Lay claimants had appropriated the privilege and were using it with increasing numbers. Judges agreed that there were legal grounds to permit literate laymen to claim the benefit. Henry VI did not act on the 1454 Commons' solution, either because it was too ambitious to document all the claimants and send that record to representatives in each shire, or because of the other political distractions in the latter half of the 1400s prevented the implementation of such an ambitious policy. During this period of inaction, petitions from concerned citizens, Parliament, and Convocation continued to seek a centralized solution to make uniform the process of allowing clergy. However, it was not until Henry VII gave his assent to 4 Henry VII c 13 that a central authority enacted such a solution.

Parliament understood that they could not stop those of questionable clerical status from pleading the benefit, but they could stem the tide of repeat offenders through the proposed branding process. A brand itself would not function as a legal record. Rather, it would signal to the court officials that a legal record existed somewhere. Ideally such a sign would curb the excessive use of the benefit as a way to enable a life of crime. Having a brand did not reduce judicial discretion or sympathy, but it did set in place a system of limitations whereby laymen could claim the privilege in their own right as literate English men. Repeat offenses could lead to

the gallows while still protecting the status of holy ordained men. The law of 1489 recognized and accepted the existing state of affairs: ratifying benefit of clergy as the lay privilege it would remain for hundreds of years.



## Chapter Two: Surviving the Reformation: Justification, Tradition, and Authority

When Parliament formally acknowledged the right of laymen to take advantage of benefit of clergy in 1489, its policy reflected a compromise between protecting existing priests in the system while offering laymen a legitimate form of mercy. The goal was to create a two-tiered system that continued to protect priest while directing justices in the case of questionable status or openly lay claims. After 1489, the lay version began to take precedence in both legislation and administration. Parliament legislated to restrict or reduce the use of clergy among lay criminals but added protections for men in orders during these minor changes in policy. The protection of major orders would change permanently during the Reformation Parliament. In 1536, Parliament passed a temporary measure that would permanently redefine benefit of clergy and cause the phrase to become a misnomer. The measure abolished the unfettered use of the benefit by ordained men. The Statute 28 Henry VIII c 1 concluded that “suche as be within holy orders shall from hensforth stande and be under the same paynes and daungers...as persons not being within holy Orders; any provision or excepcion...or custome of this Realme to the contrary thereof notwithstanding.”<sup>1</sup> With this clause, the clerical status became irrelevant to a plea of clergy. The centuries-old tradition was essentially abolished, with a new lay version in its place. All future “criminous clerks” would be assumed laymen and branded before being delivered to the Ordinary and released. The 1536 provision was made permanent in 1540.<sup>2</sup>

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<sup>1</sup> 28 Henry VIII c 1, *Statutes of the Realm*, Vol III, p. 652

<sup>2</sup> 32 Henry VIII c 3

That the clerical benefit would survive the English Reformation is remarkable. Yet its very survival depended on the lay version formally recognized in 1489. By legislating toward the English subject rather than privileges for Church men, Parliament was able to tie this first-offense forgiveness to the mercy and authority of the King. That a similar ecclesiastical privilege of Sanctuary would not be preserved in the same way during the Reformation Parliament is striking.<sup>3</sup> The endurance of benefit of clergy came as a result of many converging historical narratives: the slow increase of power and authority granted to Parliament during the Reformation; nascent ideas of nationalism setting England apart from the rest of Christendom; and the steps already taken to grant the benefit to some educated laymen, which had begun in practice throughout the late medieval period and received royal and parliamentary assent under Henry VII.

The 1530s provided a series of sharp changes to benefit of clergy both legally and philosophically. These would come from legislation altering who could claim clergy and for what actions, and also from writers explaining the exemption in a new way to justify the changes under Henry VIII's regime. Before the Reformation, clergy had two definitions: first, the original *privilegium clericale*, which protected ordained men from suffering in the King's courts. Second, the weaker lay privilege, which allowed a lay man to claim clergy for a first offense should ordination not be demonstrable. The former clerks with proofs of ordination were allowed to claim as often as they needed. The latter group could only claim once and that claim was accompanied by the pain of branding the skin. The searing scar did not act as a legal document

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<sup>3</sup> Sanctuary had been established clearly under canon law in the Church, but in England the tradition of claiming exemption from punishment through specially-marked areas like churches was codified into secular law as well. The idea was to stay in the holy place, free of violence, for approximately forty days. This time in a safe place could be used to arrange a pardon or petition a local authority or even arrange to leave the country. The privilege lost favor in the post-Reformation era but was not abolished until 1624. For a short, fact-filled treatment, see John Baker, "The English Law of Sanctuary" in *Ecclesiastical Law Journal*, 1990, 2, pp. 8-13. For a longer, more detailed investigation, see Karl Shoemaker, *Sanctuary and Crime in the Middle Ages*. Fordham University Press: 2010.

itself, but as an indicator that there existed, somewhere, a document proving that he had claimed clergy before. Illiterate men and repeat offenders could not claim. Women were not allowed the plea regardless of education or personal merit.<sup>4</sup>

Much of the story of abolition and survival began with the powers and awesome mission of the Reformation Parliament. Over the course of seven sessions in seven years, between 1529 and 1536, the Reformation Parliament dealt with enormous issues of reform. Historians have placed this particular meeting of Parliament as “one of the most important assemblies ever to gather in England.”<sup>5</sup> The original business that led to the summons of Parliament quickly passed from legislating Henry VIII’s divorce from Catherine of Aragon and led to revolutionary change in religion and national identity. Fundamental religious reform became the goal of this powerful parliament. The two Houses began the process of restructuring existing religious institutions and the power of the English clergy. This process coincided with other reforms, as Parliament criminalized behaviors traditionally tried under ecclesiastical jurisdiction. Drawing ordained subjects more firmly under the King’s authority helped set the stage for reviewing and confiscating the monastic lands after 1536.

Benefit of clergy became a useful tool by connecting many of these changing goals of the Reformation Parliament. In 1532, the effects of claiming the privilege were harshly altered. Rather than allowing clergy to plead the book and obtain freedom, Parliament temporarily offered only life imprisonment. Other acts used the privilege as a way to enforce parliamentary goals, such as the 1534 attempt to bring piracy and crimes committed on the sea within the

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<sup>4</sup> As I discuss in Chapter four, some poorly educated yet highly meritorious individuals – popular, hard-working, and well-supported community members – were allowed clergy regardless of their reading skills.

<sup>5</sup> Quote from Stanford Lehmborg, *The Reformation Parliament: 1529-1536*. Cambridge University Press: 1970, p. vii. Such conclusions are supported in GW Bernard, *The King’s Reformation: Henry VIII and the Remaking of the English Church*, Yale University Press: 2005, pp. 206-213 and RK Gilkes, *The Tudor Parliament*, University of London Press: 1969, pp. 112-121, among others.

jurisdiction of the King's Courts, as I outline below. Over the course of seven years, at least ten acts mentioned the liberty specifically. The 1536 Act declaring actual clerical status unimportant to eligibility was not a sudden act to demean clerical privileges; rather, the statute was the culmination of a slow and steady transformation of benefit of clergy

The frequent appearance of the benefit within Reformation statutes coincided with a pamphlet literature campaign in the 1530s. Ideas in these pamphlets explained and justified the radical decisions of government to the general populace. The literature used themes of English history, Common Law precedent, and Biblical interpretation in order to justify what must have seemed like radical change on the local level. Some legal commentators seized upon moments of the struggle between Church and State where the State appeared to assert superior authority by legitimately altering the benefit to the English Clergy. Statutes that had made forms of High Treason unclergyable or confirmed the literacy requirement as proof of eligibility provided an apparent precedence for the assertion of Henry's authority over the Church in England. In turn, the establishment of secular authority over religious issues opened the door for Parliament to legislate against a variety of behaviors by using the benefit as either reward or punishment.

The Reformation Parliament returned to the issue of benefit of clergy on ten separate occasions.<sup>6</sup> These ten acts would lay the groundwork for a complete elimination of the clerical version of the privilege. By using benefit of clergy as the tool that created harsher penalties for newly unacceptable behaviors, Parliament increasingly cast the privilege as a lay right first and clerical right second. By the last of the seven sessions, the clerical status was finally deemed to

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<sup>6</sup> Parliamentary history during the sixteenth century is made somewhat difficult by the lack of surviving diaries recording the specifics of any given debate. The Journal of the House of Commons only began keeping records in 1547; the House of Lords merely took subject lists of debates without recording the key issues or points of contention. Therefore, benefit of clergy may have been discussed at other times in great detail but not record such debate survives. The sum result of the statutes can be measured by close reading of language and the preambles give wonderful idealized histories of the privilege, as much as we can trust them for their idealism.

be irrelevant. These gradual limitations to the benefit and the final abolition of the clerical version coincided with the important issues raised by royal writers in the pamphlet literature campaign. As we will see, such writers presented the age-old clerical privilege as unique to England and part-proof of the right for any English King to take leave of the Papal fold and create his own church.

During the turbulent period of the 1530s, Parliament took on new powers and established social, political, and religious change. By narrating the history of the privilege in a particular way, those who supported the moves towards Protestantism found benefit of clergy to be a useful tool. The reformed benefit would in turn support the Tudor enhancement of Parliamentary power later in the century.<sup>7</sup> Preserving benefit of clergy after the break with Rome upheld the argument that the liberty originated from the power of the King rather than the Pope, suggesting the King's supreme authority. New ideas about the special status of England, as evidenced by previous

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<sup>7</sup> The changes in constitutional theory before and after the Reformation century have received a lot of scholarly attention – as they ought to. The power of the Reformation Parliament provided the King with a momentary authority for his project of seeking independence from the Pope, but in the end it facilitated Parliament's eventual rise to overcome the power of the Crown. On the Fifteenth Century, see SB Chrimes, *English Constitutional Ideas in the Fifteenth Century*. Cambridge University Press: 1936 and B Wilkinson, *Constitutional History of England in the Fifteenth Century (1399-1485)*, New York: 1964, especially pp. 278-294. Paul Cavill, *The English Parliaments of Henry VII, 1485-1504*. Oxford University Press: 2009. Elton noted, "By 1485 it was taken for granted that Parliament met occasionally and only if it was needed for a special purpose, usually the granting of money." *Tudor Constitution*, Cambridge University Press: 1982, p. 233. In the Tudor Century, scholars elaborating on the momentary steps towards a stronger Parliament include Lehmborg's remarkable books on Tudor Parliaments and Loach on Marian Parliaments. See *Reformation Parliament, 1529-1536*. Cambridge University Press: 1970 and *The Later Parliaments of Henry VIII, 1536-1547*. Cambridge University Press: 1977, as well as Jennifer Loach, "Conservatism and Consent in Parliament, 1549-1559" in Loach and Tittler, *The Mid-Tudor Polity*, 9-28 and Loach, *Parliament and the Crown in the Reign of Mary Tudor*, Oxford University Press: 1986. MAR Graves, *The House of Lords in the Parliaments of Edward VI and Mary I*. Cambridge University Press: 1981, especially pp. 173-200. Much has been made of Elizabethan continuation of Parliamentary growth. See for instance Conrad Russell, *Crisis of Parliaments: English History 1509-1660*, Oxford University Press: 1971, especially pp. 300-341, GR Elton, *The Parliament of England, 1559-1581*, Cambridge University Press: 1986. The importance of these books when taken together is that they elaborate on over a hundred years of slow methodical enhancement of centralizing parliamentary power without trying to prove that this was a goal of Henry VIII or even Henry VII. By taking crisis by crisis and moment by moment, the reputation of Parliament was able to argue effectively through struggles under the Stuarts that they represented the People and the people wished to have some command over the actions of the Crown. This is especially well said in the recent essay by Alan Cromartie, who argues that the minute steps of thinkers such as St German and James I & IV led to broad long-term effect culminating in John Locke's proto-democratic political theory. See his work, *The Constitutionalist Revolution : an Essay on the History of England, 1450-1642*. Cambridge University Press: 2006, especially pp. 33-58, 80-114, and 275-280.

interactions between Pope and King, helped preserve and transform the benefit, which would attain a prominent place within the criminal trial throughout the early modern period.

## **Statutes of the Reformation**

The Reformation Parliament engaged with thorny issues from controlling sexual mores by criminalizing sodomy at the statutory level to strengthening the temporal courts and the authority of royal proclamations. The primary goal of the Parliament was to solve the conflicting needs of the State in terms of religious affinity. However, the “most maligned Commons” also introduced solutions to lesser-known domestic challenges throughout the sessions.<sup>8</sup> Each statute had to be read three times in both Houses and receive the royal assent before it could become law; in addition, time was spent between readings in committee, rewriting specific language of legislative drafts. Many of the statutes had well-connected sponsors in the Privy Council or immediate circle around the King. Other laws originated from less-connected authors but garnered enough support during each session to pass the required number of readings successfully.<sup>9</sup> The major trends of reform during the 1530s addressed religion, of course, but also

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<sup>8</sup> Lehmborg speaks of the “Most maligned Commons” in Ch 2 of his *Reformation Parliament*, pp. 8-35. As Lehmborg writes upfront on p. 8: “Perhaps no House of Commons has been so maligned as that which assembled in 1529. Nearly every sort of special interest has been alleged....The most common complaint, however, was the opposite one: that the House was subject to undue royal influence.” This is particularly important as we investigate how one seven-year Parliament could change so much. Their combination of special interests and complete royal attention – through the King and all his ministers – enabled and encouraged massive and rapid change in England. The “maligned” Commons wanted to empower their localities to improve conditions while also enhancing royal power if it meant appropriating influence from the foreign pope.

<sup>9</sup> It is not always possible to determine who introduced a bill and if any bill was based on an individual’s desire to create new policy or if that person was acting on another person’s behalf. GR Elton spent much of his career outlining the influence of Thomas Cromwell but GW Bernard makes a wonderful point in demonstrating how little we know about the actual dynamic of Henry and Cromwell’s relationship through their letters. See GW Bernard, “Elton’s Cromwell” in *Power and Politics in Tudor England*, Ashgate: 2000, pp. 108-128. Based on Bernard’s

issues of foreign diplomacy, social peace, legal jurisdiction, and trade. Many of these trends were hopelessly intertwined, and benefit of clergy was one such legal structure that kept otherwise disparate issues bound together.

Among the ten statutes of the Reformation Parliament that addressed benefit of clergy by name, only two substantially affected the process of claiming: the 1532 session first denied ordained men the act of purgation and second replaced delivery to the Ordinary with life imprisonment. These acts both appear to focus directly on the clerical version of the privilege. By denying the act of purgation, Parliament simplified the benefit to prevent clergy from escaping all punishment. Prior to this act, claimants of the clergy would plead and wait to be delivered to the Ordinary. Once in the Ordinary's possession, the criminous clerk could either confess outright to receive spiritual punishments or he could collect twelve or more men of good reputation to swear upon his innocence.<sup>10</sup> The two statutes cut off the spiritual penalties and replaced the potential release from prison with a lifelong sentence in the Bishop's Prison, preventing the clerk convict from ever returning to his previous life as he would have prior to the 1532 Parliament.

The first 1532 statute stated that the convicted clerk "shall not in any way from henceforth be suffered to any purgation nor be set at liberty, but remain and abide in perpetual prison under the keeping of the ordinary."<sup>11</sup> The transformation of the clerical privilege was harsh, but not entirely callous: if two people were willing to post a surety – a promise of goods

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convincing words, I am suspicious of any strong claims to knowing exactly who proposed which piece of legislation and the motivations behind them. Regardless of motivations, we can still examine the words and effects of the laws.

<sup>10</sup> Spiritual punishments ranged from cleansing through prayer to defrocking and forced removal from Orders JH Baker, *Reports of Cases from the time of King Henry VIII*, Selden Society: 2003, p. 92

<sup>11</sup> 23 Henry VIII c 1: *Statutes of the Realm*, p. 390

equal to £80, in exchange for the prisoner's freedom<sup>12</sup> – then the priest could leave the prison and continue to live his life in peace, so long as he did not offend again. The practice of surety originated in Norman Law, and adding a clause to specify the possibility of surety was not necessary for one to take advantage of it. By adding it specifically to this bill, the writers emphasized how the law could be lenient for those with sufficient means or financially-secure friends.<sup>13</sup> In general, sums of money did indicate a leniency for wealthy claimants, as a flat fine would affect poor families more harshly than affluent ones. There existed only anecdotal evidence of poor men acting as sureties during the early modern period.<sup>14</sup> Such cases generally remained elusive. If these situations were not unique, conceivably any clergyman who had not lost the trust of his community could use the surety clause to escape life imprisonment. No extra protection extended to either claimants in orders or the laymen seeking their single-use privilege. The change was temporary, to expire at the end of the next meeting of Parliament.

In addition to changing the possible clemency for successful claimants, the 1532 session targeted gaol escape. The language of the other 1532 Act asserts that breaking out of gaol “shall be from henceforth deemed and adjudged felony, and the offender therein shall have and suffer such pain of death and penalty and loss of his lands and goods as for other felonies.”<sup>15</sup> Here, the Act made a distinction between those in orders and the laymen using the benefit. Those who could prove their ordination, who were then recaptured after an escape, could plead their clergy a

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<sup>12</sup> John Palsgrave, “Leclaricissement de la Langue Francoyse” 1530, under “Surety.” Bellamy provides us with the sum of £80, although he does not cite his source. See John G Bellamy, *Criminal Law and Society in Late Medieval and Early Tudor England*. St Martin's Press: 1984, p. 141

<sup>13</sup> See Alexandra Shepard, “Manhood, Credit and Patriarchy in Early Modern England c 1580-1640” in *Past and Present*, no 167 (2000), pp. 75-106 and also Elsa de Haas, “Concepts of the Nature of Bail in English and American Criminal Law” in the *University of Toronto Law Journal* (1946), pp. 385-400, especially pp. 392-96.

<sup>14</sup> Shepard, p. 89

<sup>15</sup> 23 Henry VIII c 11: *Statutes of the Realm*, Vol III, p. 404

second time and be returned to the Bishop's Prison: "If any such offender be within Holy Orders that is to say of the orders of subdeacon deacon or priesthood," then he shall merely be returned to the Ordinary's prison, unharmed and goods intact, but forcibly degraded from their ecclesiastical positions to prevent a third offense. Laymen would not be so lucky; for their second offense, the punishment would be death. The effect of the Act was to rein in planned gaol-breaking, by counting it as a second felony. Clergy at sub-deacon or higher ordination remained protected, though imprisoned, while the other escapists had their lives cut short by the hangman's noose. This would be the last version of clergy that privileged the truly ordained over the lay claimants.

Considering the breadth of issues requiring the attention of Parliament in 1532, the focus on clerks convict escaping gaol is curious. No direct evidence survives to point to a single catalyst for this prohibitive statute against prison-breaking. However, the timing of this act occurred just after a major gaol-break of clergied criminals in the county of Chester. A letter described a broad escape of prisoners during the visitation of the Archdeacon of Chester, William Knight, during the watch of Richard Smyth. Gaoler Smyth agreed to help the criminous clerks avoid the process of purgation and escape the gaol in exchange for money. He hid the clerks at a house about thirty miles away.<sup>16</sup> Although the surviving document is damaged,<sup>17</sup> it seems that this prison break was successful. William Knyght wrote to Chancellor Thomas More with a complaint against Richard Smyth in an attempt to obtain a trial and compensation of £200 from Smyth. Thomas More received the complaint in the twenty-second year of Henry's reign –

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<sup>16</sup> "William Knyght, archdeacon of Chester. v. Richard Smythe, complainant's official" *The National Archives*, Kew C 1/649/8

<sup>17</sup> The document is torn and possibly burnt along the right edge, preventing us from reading the last 4-6 words of each line. A tear in the middle of the document also interrupts comprehension, but enough can be read through the faded lines to understand most of what occurred.

the same year that Parliament wrote and passed a new statute concerning the attempts of clergied convicts to break prison. This event could have been the catalyst for the change in procedure, or it may be the only one of multiple events for which we have a surviving description. Regardless, a prison break occurred and the next session of Parliament made the act of breaking out of gaol to be felony, a second felony, and therefore only those who could prove their ordination would be able to avoid a death sentence after breaking out of prison.

The 1532 Acts altered the lenient nature of claiming one's clergy. The language within those Acts contrasted sharply with a Statute from the previous year touching on similar themes. An Act in 1531 targeted murderers who killed through stealth and secret by using poison as their weapon. That 1531 Act declared murder by poison to be High Treason against the King as well as the victim.<sup>18</sup> However, the language of this Act used treason as a way to circumvent political discord between Parliament and clergy; an earlier draft of the Act made that particular type of murder to be a felony without benefit of clergy.<sup>19</sup> Krista Kesselring has written about the contrast between the earlier draft, which attempted to focus on denying clergy for this kind of homicide, and traditional interpretations of the final draft, which focused on the unclergyability of all acts of Treason.<sup>20</sup> GR Elton saw this act proclaiming murder by stealthy poison to be treason as "in fact, the dying echo of an older common law attitude which could at times be negligent of the real meaning of the word [treason]."<sup>21</sup> In contrast, Kesselring viewed it as a tentative step to sharply diminish the power and exceptionalism enjoyed by English clergy while the process of

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<sup>18</sup> 22 Henry VIII c 9

<sup>19</sup> "Bill Concerning Poisoning." National Archives, Kew E 175/6/12

<sup>20</sup> Krista Kesselring "A Draft of the 1531 'Acte for Poysoning'" in *The English Historical Review*, Vol. 116, No. 468 (Sep., 2001), pp. 894-899

<sup>21</sup> Elton, *The Tudor Constitution*, p. 60

rejecting Papal authority took shape. The timing of this act was significant. Parliament showed equivocation towards whether they ought to be challenging religious privileges or not; by 1532, no such hesitation is evident in the language of Statutes. The comparison between the 1531 Act and the subsequent Acts that made various behaviors unclergyable during the Reformation Parliament revealed a stark difference in the language and approach as political leaders embraced the decision to create a new Church of England and abandon the appeals to Rome to fix Henry's marital and foreign relations problems.

The probable reason for this disparity in concern over the feelings of clergy during limitations of their criminal benefit was Convocation's formal Submission of the Clergy.<sup>22</sup> Acts that followed the Clergy's declaration of loyalty to Henry were less tentative in determining the process of claiming clergy. There was still a little favoritism for clergy, since they continued claiming their privilege multiple times, even after a conviction of gaol-break, but this favoritism was slight indeed, for it came with a prescription for life imprisonment instead of simple release. Stanford Lehmborg argues that the Commons of 1532 was unhappy with ecclesiastical abuses, especially concerning heresy and the power of the Ordinaries. No Commons, he wrote, had ever grumbled even a tenth as much as this assembly.<sup>23</sup> Elton concluded that the 1532 session's "first achievement was to reduce the clergy to impotent obedience."<sup>24</sup> Indeed, Acts of Parliament had

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<sup>22</sup> Michael Kelly, "The Submission of the Clergy" in *Transaction of the Royal Historical Society*, (fifth series), Vol XV (1965), pp. 97-119. Kelly disagrees with GR Elton's view on the subject, as argued in his article "The Commons' Supplication of 1532" *English Historical Review*, volume 66 (1951), pp. 512-513. GW Bernard, "The Pardon of the Clergy Reconsidered" in the *Journal of Ecclesiastical History*, XXXVII (1986), 258-282. For the original text, see 25 Henry VIII c 19 in *The Statutes of the Realm*, Vol III, pp. 460-461

<sup>23</sup> Even the Parliament of 1529 did not complain as much. Lehmborg, *The Reformation Parliament*, p. 138.

<sup>24</sup> GR Elton, "The Commons' Supplication Against the Ordinaries" p. 507

an anticlerical nature about them at the 1532 session. Perhaps Parliament felt emboldened when the clergy surrendered their legislative power and confirmed their loyalty to the King.

In addition, though, the anti-clerical language of Parliament during this period reflected precedent. The precedent occurred in the 1510s; by the time of the 1532 Submission, Parliament could draw from matters settled twenty years before without fear of reprisal or revolt from Convocation. Not only had previous statutes affected the condition of benefit of clergy without successful challenge, such as those Acts passed under Henry VII, but a rigorous debate over the privilege itself occurred earlier in the reign of Henry VIII. The struggle between Convocation and Parliament had led to a formal debate designed to settle the matter. The outcome of this earlier debate established long before the summons of the Reformation Parliament that the two Houses held power over the clergy's special privileges and could restrict, extend, or abolish such benefits as they saw fit. In the moment, the debate might have seemed unimportant; with hindsight, it became a precedent that would further empower the King and Parliament.

The conflict began with the 1512 session of Parliament, when a remarkable Act barred murderers, highwaymen, robbers of churches and churchyards, and housebreakers from claiming their clergy. The statute, "Punishment of Murthers," sought to eliminate the criminal attitude held by "diverse unreasonable and detestable persons" reflecting "little regard [for] the punishment," for those "lacking grace."<sup>25</sup> The Act mentioned a wide-spread contempt for peace and order in the realm, and deprived "persons so offending" of their ability to "beat [the courts] bold[ly] with [benefit of] the Clergy."<sup>26</sup> In other words, the Act claimed that criminals had become audacious in their crimes due to an excessive reliance on the privilege. The law targeted

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<sup>25</sup> 4 Henry VIII c 2: *Statutes of the Realm*, Vol III, p. 348; the reference to grace refers to those not in orders.

<sup>26</sup> 4 Henry VIII c 2: *Statutes of the Realm*, Vol III, p. 348

criminals who took advantage of the old clerical privilege to pursue a life of crime. The law warns that “Robberies, Murthers and Felonies daily increase more and more, and being committed and done in more heinous, open, and detestable wise, then hath been oft seen in time past.”<sup>27</sup> In an attempt to curb such blatant disregard “for the common wealth of this realm,” Parliament attempted to eliminate the benefit for cases of murder and specific types of robbery.<sup>28</sup> The Act was temporary, “to endure to the next Parliament.”<sup>29</sup>

The Statute itself was an important move towards establishing peace within the realm. It began to tighten the enforcement of benefit of clergy throughout England in order to reduce the number of violent crimes and murders. The idea of serial murderers was not a pleasant one, and the Act would theoretically reduce the number of cases involving recidivist lay offenders who murdered, plead clergy, and lived to murder a second time. The language of the statute implied that there were problems with people pleading clergy multiple times, even though laymen ought to have received it only once. Legislators continued to protect fully ordained clerks with the following clause: “such as been within Holy Orders only [will be] except[ed].”<sup>30</sup> With that clause, the intent was clear: this statute affected lay claimants and restricted only the lay version of benefit of clergy. Furthermore, since members of the minor orders were more populous in the early fifteenth century than in the early sixteenth century, the omission of those below subdeacon

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<sup>27</sup> 4 Henry VIII c 2: *Statutes of the Realm*, Vol III, p. 348. Interestingly, popular perceptions of increased crime rates can be found in almost any period. See JS Cockburn, “The Nature and Incidence of Crime in England 1559-1625: A Preliminary Survey” in JS Cockburn, ed. *Crime in England 1550-1800*. Princeton University Press: 1977, p. 51

<sup>28</sup> By targeting criminals who were accused of crimes spanning multiple counties, Peter Heath argues that Parliament was purposefully targeting laymen. He argues persuasively that ordained priests were frequently attached to a single, stationary house and less likely to commit crimes across multiple counties. Of course, clergy traveled but this explanation fits with the idea that Parliament was playing with dual versions of the benefit in their legislation. See *English Parish Clergy on the Eve of the Reformation*. University Toronto Press: 1969, pp. 14-15

<sup>29</sup> 4 Henry VIII c 2: *Statutes of the Realm*, Vol III, p. 348

<sup>30</sup> 4 Henry VIII c 2: *Statutes of the Realm*, Vol III, p. 348

did not affect a great number of people.<sup>31</sup> The law passed without any immediate reaction from the Church, Convocation, or Pope. In fact, Convocation only mentioned the statute to give it a brief positive appraisal in 1514.<sup>32</sup>

Not until the Act was to be made permanent at the following session of Parliament did the Church prepare an attack on the assumptions within it. On 4 February, 1515, The Abbot of Winchcomb Richard Kidderminster delivered a highly critical sermon against the statute's pending renewal at the newly-called Parliament.<sup>33</sup> The opening sermon of Convocation was high-profile. It was a message to the current session of parliament, held concurrent to Convocation, intent to influence Members of Parliament to abandon renewing the law.<sup>34</sup> Kidderminster railed against Parliament's attempt to restrict the "Liberties of the Holy Church," in his speech coinciding with the Parliament that would entertain whether to renew or drop the Act. By focusing on religious texts, Kidderminster attempted to prove that the authorization for

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<sup>31</sup> Tim Cooper, *The Last Generation of the English Catholic Clergy: Parish Priests in the Diocese of Coventry and Lichfield in the Early Sixteenth Century*. Boydell Press: 1999, p. 35 and JAH Moran, "Clerical Recruitment in the Diocese of York 1340-1530: Data and Commentary" in the *Journal of Ecclesiastical History*, Vol XXXIV (1983), pp. 19-54, especially p. 35, where she details the average number of acolytes to priests from the thirteenth and fourteenth centuries, demonstrating that minor orders were in decline while fully ordained priests were in higher demand.

<sup>32</sup> Speaking in a public forum to Convocation in 1514, the priest John Taylor referred to the 1512 Act in a positive light by emphasizing the protection of the common peace. Yet this appraisal was apparently forgotten by the following year. See Gerald Bray, ed. *The Records of Convocation*, Vol VII., Boydell: 2005, and Peter Cunich, "John Taylor: Catholic Priest and Diplomat" in *DNB*. Oxford University Press: 2004

<sup>33</sup> *Journal of the House of Lords*, Vol I, (1802), pp. 25, 30-34, 38 and 40, JH Baker, *The Reports of John Caryll*, Vol II, Selden: Selden Society, 2000, p. 684

<sup>34</sup> We can infer that Kidderminster spoke on behalf of the clergy for two reasons: first, the significant occasion on which he addressed this politically-charged issue; and second, from the broad support he received from his fellow clergymen after the subsequent debate at Blackfriars. When the King's justices concluded that Kidderminster's opinion was wrong, they suggested he recant in a new sermon; however the English clergy refused to allow him to change his public opinion, and members with the appropriate authority instead put the royal representative Henry Standish on trial in order to challenge his opposition to Kidderminster's argument. Whether or not the clergy selected Kidderminster's topic, his argument reflected the position of the Church on benefit of clergy and parliamentary power. See John Foxe, *Book of Martyrs: A Universal History of Christian Martyrdom from the Birth*. EC Bidle: 1840, pp3-4.

marking clergy as exempt from secular law originated from Pope, Bible, and God.<sup>35</sup>

Kidderminster concluded that “the said act was made utterly against the law of God and the liberties of [the] Holy Church...[and] all the makers of the same act – that is to say, both spiritual and temporal – who were party to the act had incurred the censures of the Holy Church.”<sup>36</sup> Any attempts to restrict it from even the lowliest members of the clergy – that is, lectors, acolytes, and other clergy in minor orders – were contrary to God’s Word regardless of the specifics of the Act.<sup>37</sup> He even cited the Pope by referring to “by the [Lateran] decretal” that “all clerks who have received any manner of orders, major or minor, are exempt from temporal punishment for criminal causes before temporal judges; for [the pope] said that minor as well as major orders were ‘holy’.”<sup>38</sup>

Much of Kidderminster’s claims were not actually contained in the conclusions of the Lateran Council,<sup>39</sup> but his argument was enough to give Parliament pause. Henry VIII concluded that there could be no legitimate renewal of the Act without a formal debate on the subject. Representatives for both sides were chosen and a debate called at Blackfriars in 1516. The

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<sup>35</sup> Kidderminster’s arguments referred to three main documents: the Act of Parliament, the Biblical text “Touch not mine anointed,” and the decree of May 5, 1514, issued by the Fifth Lateran Council. Unfortunately, only scraps of Kidderminster’s “long and active career” survive, and no copies of this famous sermon are extant. However, we have the law reports of Robert Keilway and John Caryll, which describe in detail the tenets of Kidderminster’s sermon.

<sup>36</sup> *Caryll’s Reports*, p. 684

<sup>37</sup> Keilway, Robert. *Reports d'Ascuns Cases (Qui ont evenus aux temps du Roy Henry le Septieme . . . [and] Roy Henry le huitiesme) . . . Ovesque les Reports d'ascuns Cases prises per le Reverend Juge Guillaume Dallison . . . & per Guillaume Bendloe [etc.]*. London: 1688, f.180b

<sup>38</sup> *Caryll’s Reports*, p. 684.

<sup>39</sup> In contrast to Kidderminster’s claims, the 1514 decree from the Lateran Council focused on general reforms in the church, considering issues of concubinage, lay extortion of holy men, and the renewal of some previous constitutions. The decree never mentions benefit of clergy by name or description. See Papal Decree of the Fifth Lateran Council, 4 May 1514 in Norman P Tanner, ed. *Decrees of the Ecumenical Councils*. Georgetown University Press: 1990, pp. 609-614

Debate was recorded in great detail by Sir John Caryl and published in his Reports.<sup>40</sup> Specific arguments covered many issues of religious and political power; it is not necessary to recount those that did not pertain to benefit of clergy. The important point made by the representative for the Spirituality was that there were some instances in the Bible that described monarchs granting privileges and exemptions to the anointed men of God from local punishment. The representative of the Temporality, Henry Standish, was able to counter this point with years of history and specific statutes wherein English Kings had granted ordained men this exemption after various Popes had requested it.<sup>41</sup> In the very act of asking, Standish argued, these Popes had indeed established that the King, and not the Church, retained the higher authority to grant or change or deny benefit of clergy within the realm. The arguments of Standish were upheld by another doctor of divinity, a Dean in royal service named John Veysey.<sup>42</sup> Collectively, they wholly convinced the presiding justice, Sir John Fyneux.<sup>43</sup>

Gradually, more clergy came to agree with the side representing the Temporality. Finally, Henry VIII came to close the proceedings himself, declaring:

By the ordinance and sufferance of God we are king of England, and the kings of England in times past have never had any superior but God alone. Therefore take good heed that we wish to maintain the right of our crown and of our temporal jurisdiction...Therefore we will not agree to your desire now any more than our forebears have in times past.<sup>44</sup>

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<sup>40</sup> The *Journal of the House of Lords*, the *Records of Convocation*, Polydore Vergil's *Anglica Historia*, and Edward Hall's *Chronicle* all mention the affair, among others, but their references are brief in comparison to Caryl's account. *Keilway's Reports*, another detailed description of the debate, is most likely a Law French translation of *Caryl's Reports*, as Keilway's description matches the order of Caryl's account very closely.

<sup>41</sup> *Caryl's Reports*, pp. 684-688; Charles Lea, *Studies in Church History*, London: 1869, pp. 187-88, 198

<sup>42</sup> *Oxford Dictionary of National Biography* Veysey.

<sup>43</sup> JH Baker, "Fyneux, Sir John (d. 1525)" in *Oxford Dictionary of National Biography*. Oxford University Press: 2004

<sup>44</sup> *Caryl's Reports*, p. 691

Such words hold significance for those who know the story of the English Reformation and the actions that Henry VIII would take in the next two decades. However, we should not read too much importance into them.<sup>45</sup> Henry was speaking to this specific issue and not foreshadowing his future desire to become Supreme Head of the Church of England. All that was established clearly was Parliament's right to alter benefit of clergy in their attempts to legislate the Common Peace. The Spirituality won a small victory, in preventing the immediate renewal of the 1512 law during the prolonged debate.<sup>46</sup> However, considering that the law had not really targeted the minor orders in the manner that the clergy had claimed, the long-term price the clergy paid was substantial. Their challenge had resulted in the conclusion that Parliament did indeed hold the power they had been attempting to use and this conclusion suggested that Parliament could theoretically demand even more policy changes for the good of the kingdom. The justices established that Parliament could in future restrict benefit of clergy without fear of clerical retribution. This decision created precedent for Parliament to use later, when the history of benefit of clergy became a useful venue for justifying the validity of Reformation-era changes.

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<sup>45</sup> For historians who view the Reformation as an inevitable overthrow of an old, crumbling, bloated Church, the Hunne event and Henry's speech demonstrates part of the scope that would lead, ultimately, to the Reformation and a more centralized nation-state. However, viewing the Reformation as an inevitable series of actions that "progress" to a specific condition places too great an importance on a speech that could not have known how the struggle would escalate and transform English society. AG Dickens and Arthur Ogle are among historians of using their hindsight to interpret such events, and they do so by sacrificing plausible knowledge at the moment of these decisions. A more balanced approach – which coincidentally includes many of the commentary emphasized in my own research – can be found in GW Bernard's new book *The Late Medieval Church: Vitality and Vulnerability before the Break with Rome*. Yale University Press: 2012, pp. 1-16. Bernard concludes that the Hunne Affair is important to Reformation history not because it indicates the growing storm of the 1530s, but because it shows the strength and vitality of the pre-Reformation Church while highlighting how involved Henry VIII was in affairs both spiritual and temporal. Indeed, Tim Cooper analyzes the case and concludes: "the evidence no longer appears to support the alleged widespread notoriety of Hunne's Case of 1514-1515 and a heightened mood of anticlericalism, certainly outside London and the Legal Profession." *The Last Generation of the English Catholic Clergy*, p. 36

<sup>46</sup> The renewal act passed the House of Commons and was sent to the House of Lords on 23 February 1515. It received two readings before being remitted again on 23 March. From that point it stagnated, most likely due to the debate going on at the same time at Blackfriars. See *Journal of the House of Lords*, Vol I, pp. 25, 30-34, 38 and 40.

Parliament did not immediately seize upon this declaration of superior authority. It was merely one of many pre-Reformation struggles between church and state that required one side to step down. The 1532 Submission of the Clergy was the sign that opened the door for Parliament to alter the privilege more fully without real fear of retribution from Convocation. We see the shift clearly: in 1531, Parliament employed the use of “treason” in order to make the act of poison unclergyable. In contrast, the parliamentary sessions of 1534 and 1535 authorized new statutes restricting claims of clergy without any concern for protecting the ordained men with a traditional phrase like “Protecting always those in Holy Orders.” The 1515/6 debate had created a precedent, but precedent was not always enough. The 1532 Submission of the Clergy cemented the position of Parliament’s supremacy to Convocation in matters of English law and order. After 1532, statutes would convey ideas and language that established Henry’s conceived authority and parliamentary jurisdiction more distinctly. However, this was not achieved solely through precedent, law, and religious submission. While Convocation and other religious representatives in England tried to figure out where they could exist in Henry’s new plans, a growing body of pamphlet literature began playing with these and other ideas. This group of publications sought to present a series of arguments that would justify and expand the reforms of the Reformation Parliament. Their messages and arguments empowered Parliament and strengthened the force of the statute while redefining the traditionally clerical privilege.

## Pamphlet Literature, 1515-1540

The policy changes that comprised the early Henrician Reformation were ambitious and highly controversial. From the late 1520s until the end of Henry's life, legal scholars and intellectuals strove to argue for and against religious issues, legal jurisdiction, and the validity of Henry's choices. Much of this literature resulted from a combination of political patronage and personal faith. Elton has written on the many pamphlets published to support the King's position under the direction and patronage of Thomas Cromwell.<sup>47</sup> Henry VIII sought to enhance his position from King to Emperor,<sup>48</sup> and his minister Thomas Cromwell "was anxious that theoretical justification of that position be put forth. This involved defining the King's jurisdiction in law."<sup>49</sup> In addition to the official campaign to explain the motives behind religious reform, scholars wrote independently concerning the theoretical conflicts. Both official and independent commentaries sought to explain how new religious policy and a strengthening state fit into the already-existing common-law structure.

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<sup>47</sup> GR Elton "Propaganda" in *Policy and Police: The enforcement of the Reformation in the Age of Thomas Cromwell*. Cambridge University Press: 1972, pp. 171-3; Franklin le von Baumer, *The Early Tudor Theory of Kingship*. Yale: 1940, pp. 225-237

<sup>48</sup> We should not confuse Henry's use of the word "emperor" with new Imperialism and the British Empire. As John Guy wrote convincingly, both Francis I of France and Henry VIII viewed their realms as an empire in the same tradition of the Roman Empire. As Guy notes, "There was not yet a definite association with the subjugation of provinces or colonies, although Henry VIII, like Edward I, initiated a policy of territorial centralization within the British Isles." Henry's imperial actions are only significant in retrospect. At the time, he was creating a lineage with the Classical Roman idea of empire. See John Guy, "Monarchy and Counsel Models of State" in Patrick Collinson, ed. *The Sixteenth Century, 1485-1603*. Oxford University Press: 2002, pp. 113-142, quote from p. 118. Virginia Murphy describes Henry's active participation in the oversight of scholarly works designed to justify the "imperial" reforms of the 1530s in "The literature and propaganda of Henry VIII's first divorce" in MacCulloch, Diarmaid, *The Reign of Henry VIII: Politics, Policy, and Piety*. St Martin's Press: New York, 1995, pp. 135-158

<sup>49</sup> Shelley Lockwood, "Marsilius of Padua and the Case for the Royal Ecclesiastical Supremacy: the Alexander Prize Essay" in *Transactions of the Royal Historical Society*, 6<sup>th</sup> Series, Vol 1 (1991), p. 92

The many strands of evidence supporting or countering the King's decisions sparked a pamphlet war in the 1530s. Benefit of clergy became a surprising source of evidence that could support the King's assertions of supremacy. Henry's decision to break with Rome and establish a new politico-religious system in England required a public relations campaign to support the monarchy, either by rewarding sympathetic writers or soliciting works to justify these actions to the literate population.<sup>50</sup> Writers found specific events in the long history of benefit of clergy that demonstrated the supremacy of the King or Parliament. Some writers dedicated whole chapters of their books to exploring the use of benefit of clergy as a symbol of the King's autonomy and superior authority or the significance multiple competing jurisdictions within the realm.<sup>51</sup> They recast the Christian tradition of granting clergy an exemption from secular punishment as a particularly English privilege.

The contrast between the conversations presented in judicial records of the fifteenth century and the pamphlets of the 1530s suggests to me that the appropriation of benefit of clergy was a conscious attempt to employ this history in a brand new way. By explaining thoroughly how moments of papal-royal interaction led to an event that might be interpreted as the Pope submitting to the King – such as asking for benefit of clergy to be honored instead of ordered under threat of interdict – the writers suggested that these were conscious decisions conveyed by writers who supported the King's radical program of Reformation. This interpretation of the

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<sup>50</sup> Kevin Sharpe, *Selling the Tudor Monarchy: Authority and Image in Sixteenth-Century England*. Yale University Press: 2012, especially pp. 61-78 and 81-128

<sup>51</sup> Christopher St German, "Chapter Sixth" of *Concerning the Power of the Clergye and the Lawes of the Realme* (1535), Jasper Fyllol, "Of the King's Great benignity and favor used always towards the clergy and of their great presumption and cruelty showed against his grace and his lay subjects: Ca ii" in *The Enormytees of the Clergy* (1533), and Anonymous, *A Treatise Prouyng by the Kynges Lawes that the Bishops of Rome had Neuer Right to Any Supremitie within this Realme* (1534)

benefit's long development portrayed the King as a symbol of mercy and authority.<sup>52</sup> Other pamphleteers only mentioned the privilege in the context of additional legal evidence that they felt proved the king's superior power.<sup>53</sup>

Thomas Cromwell's "government-employed pens" used many lenses to recast Henry's radical decisions as both legitimate and understandable.<sup>54</sup> Benefit of clergy became just one of many ways of justifying and explaining the massive social, religious, legal, and economic reforms that accompanied the English Reformation. Ultimately such theoretical arguments were necessary to convince a largely Catholic populace that the new religious policies of Henry VIII were valid,<sup>55</sup> undoing the great "injustice" that had been the pope's usurpation of power and authority that rightfully belonged to the king. All of these small lessons came together for Henry, making benefit of clergy a very useful historical explanation for the justification of his authoritative aspirations over the newly-formed Church of England. Joad Raymond explained that "during the 1530s, official and semi-official propaganda began to appear under the guidance

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<sup>52</sup> For the purpose of this discussion, pamphlets connecting religious policy to themes of royal mercy, jurisdiction, and nationalism have been isolated, and the authors' possible connections to Cromwell or other important ministers taken into consideration. Even writers with no clear association with Cromwell, whose message nevertheless supports the royal prerogative, have been assumed to have been at least aware of the royal attempt to support Henry's decisions with intellectual arguments. They all enjoyed some degree of circulation and influence. Elton, *Policy and Police*, pp. 171-74 and Baumer, pp. 212-13; Murphy "The Literature and Propaganda of Henry VIII's First Divorce," pp. 135-158, and Sharpe, *Selling the Tudor Monarchy*, pp. 81-128

<sup>53</sup> For example, see Anonymous, *A treatise wherin Christe and his teachinges, are compared with the pope and his doings* (1534), Anonymous. *Oration of True Obedience*, Thomas Berthelet: 1535 and Alexander Alesius, "Of dyuers powers that the clergie hath by the law of god The. ii. Chapit" *A Treatise Concerning General Councille, the Bishop's Council, and the Clergy* (1538)

<sup>54</sup> GR Elton, *Policy and Police*, p. 173

<sup>55</sup> The assertion that England was largely Catholic used to be a matter of debate; See especially AG Dickens for a traditional account of a largely indifferent populace unsympathetic to the crumbling Catholic Church in his work *The English Reformation*. New York: 1964. However, that view was challenged in JJ Scarisbrick *The Reformation and the English People*. Blackwell: 1984 and Eamon Duffy's *The Stripping of the Alters: traditional religion in England 1480-1580*. Blackwell: 1992. Most recently, works by Ethan Shagan, Christopher Haigh, and Richard Rex, among others, have indicated somewhat of a consensus that indeed the English people were largely devout just prior to the English Reformation

of Thomas Cromwell.”<sup>56</sup> The word “guidance” is crucial to understanding the relationship to government, as some were merely sympathetic writers while others were clearly under the system of patronage that led to Cromwell and the King. “Henry also encouraged the rewriting of English history in order to promote the independence of the crown from Rome, and to present clerical intervention in the English polity as manifestations of tyranny.”<sup>57</sup> The rewriting of history is precisely where benefit of clergy enters the Reformation pamphlet narratives.

Henry VIII’s embrace of Protestantism could be easily cast as opportunism. In order to guard against such a flimsy interpretation, pamphleteers focused on two primary discussions of history involving the benefit of clergy. One interpretation was that the long history of granting forgiveness on the King’s terms meant that the King had more authority without English borders than the Pope. The other argument emphasized the shameful sins of clergymen that would require repeated applications of the clergy. Together, these arguments portrayed Henry’s actions as perfectly reasonable and even obligatory in defending the kingdom.

Examples of the ordained clergy’s special privileges and inappropriate behavior can be found in the works of Jasper Fyllol, Alexander Alesius, and a few anonymous writers. Two predominant authors who focused on the connection between benefit of clergy and the authority of the State were Fyllol and St German.<sup>58</sup> Fyllol was a known servant of Cromwell who sat as an MP during the Reformation Parliament.<sup>59</sup> St German was a man of modest mercantile origins

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<sup>56</sup> Joad Raymond, “What is a Pamphlet?” in *Pamphlets and Pamphleteering in Early Modern Britain*. Oxford University Press: 2003, pp. 4-26, quote from p. 15

<sup>57</sup> Raymond, p. 15

<sup>58</sup> Fyllol, *Enormytees of the Clergy*, chapter ii, and St German, *Diuisiō of the Spirituality and the Temporality*, “Chapter Sixth”

<sup>59</sup> Rex, pp. 1043-45

who wrote extensive legal commentaries.<sup>60</sup> By focusing on the behavior of clergy, these writers can draw the general populace into their worldview through the clergy's own poor reputations. Alesius described the unfair "diverse powers that the clergye hath by the law of God"<sup>61</sup> while establishing the injustice of these powers within the realm of a more powerful king. Christopher St German agreed when he claimed that a society became strained when "clerks within orders be more favored than clerks that be not within orders."<sup>62</sup> The similar phrases employed by these and other authors imply that the writers were reading and responding to each other or at least starting from the same assumptions. In 1535, St German wrote about the history of benefit of clergy in his musings about power and jurisdiction in England; almost identical historical documents and events were subsequently cited in the anonymous pamphlet *Provyng by the King's Lawes* and again in Alexander Alesius's 1538 work, *Concerning the Bishop's Council and the Clergy*.<sup>63</sup> The fact that authors incorporated each other's arguments is not necessarily evidence that all pamphlets originated from a single orchestrator, such as Cromwell.<sup>64</sup> Rather, the similarities among pamphlets merely suggest the probability that the writers were aware of each other's arguments and that these pamphlets had some degree of influence on the shaping of ideas.

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<sup>60</sup> JH Baker, "Christopher St German" in *The Oxford Dictionary of National Biography*. Oxford University Press: 2004

<sup>61</sup> Quote is from Alesius, *Concerning the Bishop's Council and the Clergy*, f6b. See also Fylloll, *The Enormytees of the Clergy*, especially "Chapter ii" I am following the plausible argument put forward by Richard Rex's close reading of *Enormytees* and Fylloll's work *The Possessyons of the Clergie* (1532), which have been attributed to anonymous or to incorrect publication dates by STC, but were most likely written by Fylloll and published in 1532 and 1533 respectively. For a thorough examination of Jasper Fylloll and his pamphlets, see Richard Rex, "Jasper Fylloll and the Enormities of the Clergy: Two Tracts Written during the Reformation Parliament" in *Sixteenth Century Journal*, Vol 31 No 4 (Winter 2000), pp.1043-1062.

<sup>62</sup> St German, *The Diuision Between the Spirituality and the Temporality*, f32b.

<sup>63</sup> St German, *Concerning the power of the Clergye*, Anonymous, *Provyng by the King's Lawes*, and Alesius, *Concerning General Councille, the Bishop's Council, and the Clergy*

<sup>64</sup> Robert Hutchinson, *Thomas Cromwell: The Rise and Fall of Henry VIII's Most Notorious Minister*. London: 2007, pp. 197-99

Staunch Catholic defenders did not ignore the pamphlet debates. Sir Thomas More responded to the claims put forth by Christopher St German. When St German published his *Treatise Concerning the Diuision betwene the Spirituality and the Temporality*, More replied with his *Apology*. St German then wrote *Salem and Bizance*, to which More replied in 1533 with his *Debellation of Salem and Bizance*. These works contributed to debates covering a wide variety of religious and political issues. St German clearly viewed the clergy as corrupt and overly powerful. He was especially suspicious of benefit of clergy, the ancient right which “was neuer sufficiently proued, as farre as I haue herde.”<sup>65</sup> St German argued that this privilege was the offer of the king and none other, discouraging any argument that it was mere ancient custom to cover the special status of an ordained man in the service of the Lord. Even more important, however, was St German’s interpretation of the English Common Law as a system of conscience that had co-existed with religious doctrine. Its reliance on the nature of man, in St German’s theory, made the royal authority and local tradition an independent system that did not require divine blessing. Therefore, to St German, the special privileges of the clergy mocked a natural, almost mathematical law based on human conscience and even violated the relationship between Man and God.<sup>66</sup>

In response, More argued that the privileges afforded to the clergy only made them more humble men in the eyes of God, saying that even those who commit crimes and plead to the Ordinary are made “to seke out theyr fawtes [faults]”<sup>67</sup> More presented the ecclesiastical privileges as connecting the sacred servants of the Church with the holy sacraments – sacraments

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<sup>65</sup> Christopher Saint German, *Treatise Concerning the Division between the Spirituality and Temporality* (London: 1533), f30r

<sup>66</sup> This is the interpretation proposed by John Guy in “Thomas More and Christopher St German: The Battle of the Books” in Alistair Fox and John Guy, *Reassessing the Henrician Age: Humanism Politics and Reform, 1500-1550*. Blackwell: 1986, pp. 95-120, especially pp. 102-104

<sup>67</sup> Thomas More, *Apology* (London: 1533), p. 80

that Henry VIII no longer decreed to be part of the English Church.<sup>68</sup> Indeed, the format of the debate between St German and More may have reflected the dual nature of the Church's power itself: split between Constantinople and Rome, or within each kingdom, between the Spiritual and Temporal authorities.<sup>69</sup> Some of St German's primary arguments relied on the interpretation of benefit of clergy as a mercy stemming from the King's authority, granted voluntarily to the Pope and his representatives in history.<sup>70</sup> More's arguments stood in direct contrast to that, believing their position, privileges, and actions to stem from divine power deriving from the Pope. His works do not address the issue of benefit of clergy by name and address the larger question of authority. In part, this published debate contributed to More's ultimate disgrace and execution.<sup>71</sup>

St German appeared to be writing on his own accord, with sympathy for the King's decisions. His works were part of a larger system of books and pamphlets, some rewritten and re-published throughout the 1530s to remind readers of their points or to revise the arguments as the decade progressed. Frequently the writers can be traced clearly to Cromwell's patronage. Whether they were commissioned specifically or merely agreed with Cromwell's ideas, these pamphleteers succeeded in supporting the idea that benefit of clergy had not been the purview of the Pope. Instead, benefit of clergy was a gift granted by the authority of the king. In light of this interpretation of history, the continued existence of the benefit provided further evidence that the desires of Henry VIII to break with Rome were entirely legal and justified.

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<sup>68</sup> JB Trapp, ed. *More's Apology*, vol ix of *The Complete Works of Sir Thomas More*. Yale University Press: 1979, pp. xv-liv.

<sup>69</sup> Trapp, *Complete Works of Thomas More*, p. lii

<sup>70</sup> Alistair Fox, *Politics and Literature in the Reigns of Henry VII and Henry VIII*. Oxford: 1989, pp. 108-127

<sup>71</sup> John Guy, "Thomas More and Christopher St German: The Battle of the Books" pp. 95-120

The origins of and motivations behind these ideas are not easily discerned from existing documents. When Elton discussed “propaganda” pamphlets, he was not describing the equivalent of a modern-day media campaigns in terms of scope and central organization. Some writers used their words to connect with Cromwell’s complex organization of patronage.<sup>72</sup> However, it would be inaccurate to assume that the pamphlets written and published during this period form an orchestrated public relations campaign akin to twentieth century government campaigns. Not all of the pamphlets that supported Henry’s radical revisions can be traced back to the King, and sometimes a series of pamphlets that argue similar points can be mistakenly attributed to intentional propaganda.<sup>73</sup> When political commentators agree or disagree with government policy, their arguments contributed to a discourse that helped either smooth acceptance from the larger populace or interrupted the implementation of new policy. Where possible, I have tried to show the relationships between writers and ministers, but the presence of their pamphlets and supportive arguments remain important even if someone like Christopher St German were only finding legal support on his own accord and not based on promise of promotion from a member of the Privy Council. Whether formally hired or merely sympathetic, these pamphlet writers created arguments of similar political and religious thought. They must have been aware of each other, many times working together, and published soon after each other, so their works ought to be considered together.

The ideas put forth in the pamphlet literature of the 1530s can be divided into waves. In the beginning, the legal commentary highlighted evidence that supports Henry’s plea to hold the

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<sup>72</sup> Franklin le van Baumer, *The Early Tudor Theory of Kingship*, pp. 225-237

<sup>73</sup> Jon Robinson argues that the origins of these pamphlets are less important so long as we understand the many of them were designed with government policy in mind; similar but unofficial pamphlets merely assisted in distributing such ideas to the literate population. See his chapter “The Murky Waters of Court Politics and Poetic Propaganda” in his larger book, *Court Politics, Culture and Literature in Scotland and England, 1500-1540*. Ashgate: 2008, pp. 141-161

divorce trial within England rather than in Rome, where Catherine of Aragon's nephew Charles V had control over the Pope. However, as the 1530s wore on, and the complete Reformation began to take shape, the pamphlet message shifted to attack clerical privileges, emphasize Henry's ultimate authority, and highlight the benevolence of a long line of English Kings who had granted papal requests not out of obligation but of mercy and honor for the service provided by ordained men in England. Finally, after the conclusion of the Reformation Parliament, pamphlets began to focus on the realm of England itself and the need to encourage patriotic loyalty to the King above any personal conscience.

Works of the earlier 1530s put forward evidence that supported Henry's desire to secure England as the location for his divorce trial.<sup>74</sup> For instance, the history of benefit of clergy was cast as a lens for viewing the long-lasting power struggles between Church and State. Previous occasions during which popes and English kings had communicated about privilege, authority, and jurisdiction could be interpreted as proof of a hierarchy of power between them. In the past, the Pope had asked the king to grant clergy to specific individuals, or to preserve the right for all English clergy. In the very act of asking, these pamphlets asserted, the pope proved his inferior status to the King with respect to authority and jurisdiction within England.<sup>75</sup> For this argument, St German reviewed the history of benefit of clergy during the fifteenth century, when priests were supposedly hanged while laymen took advantage of their immunity and escaped punishment.<sup>76</sup> "Men of religion were drawn and hanged by the award of secular justices," he explained, "wherefore it was accorded and granted by the king in his said parliament that all

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<sup>74</sup> Murphy, pp. 135-138

<sup>75</sup> *Prouyng by the King's Lawes*, Chapter ii, and St German, *Diuisiion Betwene the Spirituality and the Temporality* f30b

<sup>76</sup> St German, *Concerning the Clergy*, f15b-16b; See Chapter Two for more on the 15<sup>th</sup> c benefit of clergy

manner of clerks as well secular as religious should [also] be” treated the same, convicted and hanged.<sup>77</sup> When the clergy had complained about abusers of their immunity, St German related, they had petitioned the king multiple times instead of seeking redress through the pope, allowing for the interpretation that the privilege fell in the king’s jurisdiction.<sup>78</sup> St German attempted to use Convocation’s decision to seek a solution through the King’s authority as proof that they understood the clerical benefit to originate with royal power. In *Prouyng by the King’s Lawes*, such examples are described at length, leading its author to conclude that “both the sayd jurisdictions belonge, and ever have belonged, to the king” and indeed, “clergie never hadde any jurisdiction to hold pleas in this realm, but onely by the custome of the realme and by the sufferance of the kynges” of England.<sup>79</sup> The clergy’s rights and jurisdiction within England originated from the authority of the king, the author of *Prouyng* argued, and therefore benefit of clergy derived from royal authority rather than ecclesiastical right.

Parliament interacted with some of these pamphlet ideas. The 1532 statute “An Act Concerning Convicts of Petit Treason, Murthers, etc” began with a preamble that included many interpretations of the privilege as it recounted the history of benefit of clergy.<sup>80</sup> This was the statute that ultimately converted the sentence of suffering purgation to one of lifetime imprisonment, as discussed above. The framers of this act began with an abbreviated history of the privilege. The focus on statutory alterations of the privilege allowed lawmakers to emphasize

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<sup>77</sup> St German, *Concerning the Clergy*, f15a-16b

<sup>78</sup> The clergy had, in fact, contacted the Pope in an attempt to solve their problems. “Bulla Sixti quarti pro libertate clericorum et rerum suarum; et ne ipsi clerici per laicos arrestentur, aut molestentur in personis sen rebus suis, etc.” in Wilkins’ *Concilia*, iii, pp. 609-613. When the Pope’s response was inadequate, Henry VII came up with a viable solution. St German’s history of the benefit was not accurate, but it did not need to be. His goal was to persuade his audience.

<sup>79</sup> *Prouyng by the King’s Lawes*, f10b

<sup>80</sup> 23 Henry VIII c 1: *Statutes of the Realm*, Vol III, pp. 389-390

that previous parliamentary-driven changes had been accepted. By standing the test of time, such laws confirmed the legitimacy of Parliament's power to alter or deny the traditionally clerical right. Among other significance historical events, the statute referred to the 1371 submission of the Archbishop of Canterbury, wherein the Archbishop agreed that traitors against the King and Realm would forgo their traditional exemption.<sup>81</sup> This submission tacitly recognized the King's authority of granting or denying the privilege, if only by choosing the King as the receiver of the petition rather than the Pope.<sup>82</sup> The author of *Prouyng by the King's Lawes* went further in the argument supporting the idea that the privilege originated in local English authority rather than in the authority of the pope or the Bible.<sup>83</sup> A recurring piece of evidence referred to papal correspondence during the reigns of Edward III and Henry IV, in which the pope asked the king to grant benefit of clergy and cooperate in matters of bastardy, bigamy, and divorce. Through these examples, pamphleteers and legislators sought to demonstrate situations that implied a king had more power than a pope. According to their arguments, benefit of clergy was the king's prerogative. The king's ability to dictate or alter exemptions to the court's penalties also supported the idea of his superiority to the authority of the pope; furthermore, papal requests submitted to the king provided more evidence of the pope's lesser power over English matters. Had the Pope been truly more powerful, the Pontiff could have simply commanded England to release his servants. Instead, proponents of this interpretation argued, benefit of clergy was

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<sup>81</sup> This submission was in response to 4 Henry IV c 3

<sup>82</sup> In 1371, during Wycliff's time, the House of Commons petitioned the King against ecclesiastical appointments. The result was a Statute in 1371 that reviewed existing ecclesiastical charters and powers. By asking the King rather than the Pope, the House was making a tacit statement concerning the source of authority over such privileges. This statement would not be fully embraced into an argument about hierarchical power until the 1530s. See 45 Edward III, *The Statutes of the Realm*, Vol I, p. 393

<sup>83</sup> *Treatise Provyng by the King's Lawes*, f5b-6a.

merely a symptom of the long-lasting respect kings of England had shown toward the clergy serving England.

The very origins of this privilege seemed to speak to the idea of superior jurisdiction. Clergy had claimed that their exemption from secular punishment originated from the Bible.<sup>84</sup> St German mentioned that the Spirituality claimed benefit of clergy as part of divine law, “which they apply only to priests.”<sup>85</sup> In order to dispel the clerical argument, St German asserted that all Christians were “anointed,” either through baptism or through an event like the royal coronation. Therefore the phrase “touch not mine anointed” could deem all Christians exempt from secular law. Of course, having an entire populace as exempt from the law of the land was hardly desirable for the common peace, so Parliament’s duty was to refine and restrict this privilege. St German concluded that benefit of clergy must be of secular and not divine origins.<sup>86</sup>

If the clergy wished to argue that benefit of clergy was a purely clerical right, there must have been a challenge to earlier statutes in English common law that altered or restricted the privilege. An example of this appearing in pamphlets included the 1351 statute barring those convicted of high treason from pleading their clergy.<sup>87</sup> The anonymous author of *Provyng by the King’s Lawes* also referred to the unclergyability of treason as proof that benefit of clergy fell within the jurisdiction of the Temporality. The pamphleteer concluded, “it appears that for treason and felonies touching the king, they were never admitted to their clergy, nor yet at this

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<sup>84</sup> The Biblical verses involved were Psalms 105:15, and 1 Chronicles 16:22. Both St German and the anonymous author of *Provyng by the King’s Lawes* refuted the clergy’s claims of Biblical origins of the privilege; while the inspiration may have been Biblical, they concluded, the king granted the privilege.

<sup>85</sup> St German, *Concerning the Clergy*, sig C1b

<sup>86</sup> 23 Henry VIII c 1: *Statutes of the Realm*, Vol III, pp. 389-390; St German *Concerning the Clergy*, sig C1b

<sup>87</sup> St German, *Division*, f30b-31a. The statute was 25 Edward III c 4 and confirmed in 4 Henry IV c 30.

day shall not.”<sup>88</sup> Edward Hall’s *Chronicle* supported these assertions by giving the example of a friar who was unable to claim his clergy for treason.<sup>89</sup> Hall’s anecdote was accompanied by an explanation that a clerk, regardless of “how heynous or detestable a cryme soo ever he had committed (treason onely except)” should fortunately “be saved, and committed to the Bishoppes pryson.”<sup>90</sup> The author of *Prouyng by the King’s Lawes* highlighted the significance of the case of treason by implying that an act truly against the divine law would not be able to stand. “For if they ought not to be so used by the law of god, then no king’s case could be excepted out of the same...it has not been hard that the clergy at any time have been able to disprove the king’s power, nor the laws of the realm therein.”<sup>91</sup> The example of high treason as a crime that the clergy had been unable to challenge successfully became important for the argument that Parliament created benefit of clergy, and therefore could alter it, or take it away, at their discretion.

The second wave of pamphlets was written after the initial conflict over divorce became a decision to break with Rome entirely. This second wave attempted to demonstrate that England was a special case within Christendom, and that it was a country whose independence was guaranteed through specific developments in its unique history.<sup>92</sup> St German’s views, outlined above, found company in Fyllol’s publications. Fyllol wrote of the clerical privilege that “priests

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<sup>88</sup> *Prouyng by the King’s Lawes*, f14a

<sup>89</sup> Hall’s *Chronicle* was not an ideological pamphlet but rather a history of Tudor England. Its relevance to this discussion is in its subject matter and as a contemporary work of history, reflecting the politics of Tudor England.

<sup>90</sup> Edward Hall, *The Union of the Noble and Illustre Famelies of Lancastre and York* (1548), f50b

<sup>91</sup> *Provyng by the King’s Lawes*, f14a

<sup>92</sup> See as examples St German’s *Diuisio Betwene the Spirituality and Temporality and Concerning the Clergy*, (1535) Jasper Fyllol’s *Enormytees*, and Henry VIII’s *The Glasse of Truth*

have had too much favor here *in this land* [due to] *the king and his lords temporall*.<sup>93</sup> Since their special treatment came from parliamentary “statutes in favor of such clerks murderers and others,” Fyllol reasoned, then the authority over benefit of clergy resided squarely within the Temporality.<sup>94</sup> Further, the privilege marked England as different from other countries in Christendom that had not developed the immunity so fully in their legal systems. Fyllol apparently did not approve of the immunity; he went on to discuss in detail the harmful social effects of such preferential treatment of one group over another.<sup>95</sup> Fyllol’s opinion suggests that an even offering of the exemption would enhance the positive impact on the legal system. St German also emphasized the apparently secular origins of the benefit, noting that the privilege’s specific form and status were unique to England.<sup>96</sup> Benefit of clergy, according to these two men, was evidence of the king’s superior power in his realm, and of England’s special condition implied through the existence and prominence of the legal exemption.

Discussions of clerical immunity often led to criticisms of clergy’s behavior. Fyllol accused clergymen of taking advantage of people through the artful use of dice and cards, committing felonies and murders, and then “misusing...[the] *temporall possessions* of the clergy contrary to the commaundement of god, ye olde lawe, and contrarye to the example and teching of chryst in the newe lawe of his gospel.”<sup>97</sup> Significantly, Fyllol appeared to be referring to common law and the benefit of clergy here as belonging to the Temporality and only used by the

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<sup>93</sup> Emphasis mine. Fyllol, *The Enormytees of the Clergy*, f7b

<sup>94</sup> Fyllol, *The Enormytees of the Clergy*, f9b

<sup>95</sup> Fyllol, *The Enormytees of the Clergy*, f10a-11b

<sup>96</sup> St German, *The Diuision Betwene the Spirituality and the Temporality*, fs 31a-34b

<sup>97</sup> Emphasis mine. See Fyllol, *The Enormytees of the Clergy*, f5a-6b

clergy. Alesius similarly mentioned the clergy's many treasons, murders, and felonies. He noted the clergy's focus on their perceived ability to "putteth away sin" through auricular confession, which Alesius feels to be false.<sup>98</sup> Alesius, who was a Scottish theologian who worked with Cromwell at Lambeth Palace and the University of Cambridge,<sup>99</sup> argued instead that confession could do nothing to alleviate sin. This change in attitude towards confession coincides with the 1532 alteration in trial procedure that replaced purgation with lifetime imprisonment.<sup>100</sup> In addition to these references to clergy's misbehavior, other anonymous works portrayed clergy as guilty of arbitrary defamation, rape and ravishment, malicious accusations of heresy, and murder.<sup>101</sup>

Although ordained clerks were criticized for escaping punishment through the benefit, some writers saw their ability to claim and receive exemption as symbolic of the king's mercy and authority. One anonymous tract concluded that "the clerks shall enjoy the liberties of the Church, according to the custom of the realm, [yet] yielding themselves to the law of the realm."<sup>102</sup> In other words, although the immunity was a clerical privilege, clergy could only

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<sup>98</sup> Alesius, f14b; quote is from f8b

<sup>99</sup> Gotthelf Wiedermann, 'Alesius [Allane or Alan], Alexander (1500–1565)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, May 2008 [<http://www.oxforddnb.com/view/article/320>, accessed 2 Nov 2012]

<sup>100</sup> 23 Henry VIII c 1: England and Wales, *The statutes at large, in paragraphs, and sections or numbers, from Magna Charta, to the end of the session of Parliament, March 14. 1704. in the fourth year of the reign of Her Majesty Queen Anne. ... With alphabetical tables. In three volumes.* London: 1706, pp. 389-90. The text of the law does not explain the need for change in benefit of clergy, but it does present a brief history of the immunity.

<sup>101</sup> Anon. *Provyng by the King's Lawes*, f24a-25a; see also Anon. *A treatise wherin Christe and his teachings, are compared with the pope and his doings*, f6a. Investigations by Cromwell's servants revealed cases of sexual activity including women, men, and children connected with cloistered monks and nuns. For an extended discussion of these findings, see Chapter three, n65 to n72.

<sup>102</sup> *Provyng by the King's Lawes*, f14b.

claim it by subjecting themselves to the king's courts. The clergy themselves seemed to be aware of this argument; St German reported that priests were uneasy about appearing in front of temporal judges, even if only to claim their privilege.<sup>103</sup> Appearing in the secular court required the acknowledgement of the King's power, which granted the clergy exemption. Some priests did their best in the early sixteenth century to avoid claiming clergy by attempting a valid mistrial due to poorly filled out court records or other technicalities that did not force them to supplicate themselves to the king's justices.<sup>104</sup> St German interpreted the eventual cooperation between men in orders and the secular justice system as proof of the connection between the king's authority and the clerical immunity. He further cited the implicit secular origins of the benefit that enabled Henry VII to extend it formally to laymen.<sup>105</sup> Ultimately, thousands of cases recorded clerks who obtained their exemption; to claim was to participate, and this indicated that clergy were subject to the king's laws and courts even as they pled to escape its penalties.<sup>106</sup>

These attacks on the clergy began to transform towards the end of the decade as other pamphlets reframed the argument into a new wave of arguments that emphasized the pope's absolute lack of power and authority within England. These pamphlets had a more nationalistic tone to them and argued in favor of what might be termed patriotism. Writers such as Alexander

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<sup>103</sup> St German, *Concerning the Clergy*, Chapter Sixth, f14b

<sup>104</sup> Marjorie Blatcher describes specific examples of missing victims' names or incorrect occupations that led to mistrial in her book *Court of the King's Bench: a Study in Self-Help, 1450 to 1550*. London: 1978, pp. 52-53

<sup>105</sup> St German, *The Division Betwene the Spirituality and the Temporality*, fs 31a-34b

<sup>106</sup> These conclusions contribute to larger issues pertaining to royal power and spiritual hierarchies. See Richard Rex, *Henry VIII and the English Reformation*. Basingstoke: 1993, Chapters 1 & 4, John Guy's discussion on published debate, especially his chapter, "Thomas More and Christopher St German: The Battle of the Books" in Guy and Alistair Fox, *Reassessing the Henrician Age: Humanism, Politics, and Reform, 1500-1550*. Oxford: 1986, pp. 95-120. J Christopher Warner on Henry VIII's new authority and his need to continue leading as a Christian Prince in *Henry VIII's Divorce; Literature and the Politics of the Printing Press*. Woodbridge: 1998, pp. 89-112 and Alistair Fox on Thomas More's role as dedicated servant and resistant Catholic during the propaganda debate in his book, *Politics and Literature in the Reigns of Henry VII and Henry VIII*. Oxford: 1989, pp. 108-127 and 209-230.

Alesius and Sir Richard Morison depicted the pope as a usurper of power that could only belong to the prince of a realm.<sup>107</sup> Alesius used scripture in an attempt to prove that the pope had asserted his authority where he had none, describing the Bishops of Rome as having “vsurped honor, power, riches, libertie, and suche other” from princes in their own realms.<sup>108</sup> “The kyng’s maiestie,” asserted the author of *Prouyng by the King’s Lawes*, “hath thereby no new power given unto him, but that the self same power and supremitie hath always before been in his most noble progenitors” even though the pope had usurped their authority.<sup>109</sup> These and similar pamphlets found the developments of benefit of clergy useful to their overall goal. The more the history and existence of the benefit helped the Protestant cause or the growing power of Parliament, the less ideal it was for Parliament to respond by abolishing that “English” privilege.

Those pamphlets that used benefit of clergy and its place in English history framed the conflict of secular and papal jurisdictions into a context of nationalism. Nationalism during the English Reformation has received some fascinating scholarly attention, and much of it focused on the pamphlet literature produced during the 1530s as the starting point for forming an English national identity. While much of the Reformation literature was directed by Crown representatives, other writers published concurrent documents participating in the debate over the role of the Crown in religious matters. Yet both sides of the debate seemed to emphasize the position of England as a *nation* in arguing the validity (or lack thereof) of the Reformation goals. Stewart Mottram’s recent work on the subject, *Empire and Nation in Early English Renaissance Literature*, portrayed both sides as using a new way of speaking about England even as they

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<sup>107</sup> Alesius, *A Treatise Concerning the General Council...* and Morison, *An exhortation...*

<sup>108</sup> Alesius cited Matthew Chapter 18, concerning the autonomy of princes within their realms; quote is on f24b

<sup>109</sup> *Prouyng by the King’s Lawes*, f3a

argued with each other. The product was a rhetoric of Englishness, a separate distinct “nation” or “empire.”<sup>110</sup> Mottram’s work sees the Break with Rome as paramount to the emergence of a separate English identity. Alan Maccoll laid the foundation for Mottram’s later work by demonstrating how Reformation pamphlet writers re-imagined events in English history to form a cohesive English identity. Maccoll explored this transformation of identity throughout publications of the remaining Tudor period.<sup>111</sup> Scholars may quibble with the specifics of Elton’s *Tudor Revolution in Government*, but the idea “that the changes of the 1530s were therefore of relatively limited significance will not bear examination.”<sup>112</sup> The process of the revolutionary spirit that changed social structure in the mid-sixteenth century did so under a banner of English exceptionalism, and that led to the rhetoric of proto-nationalism.<sup>113</sup>

If the trend in nationalism began indeed with the Reformation, then the idea of a separate English version of benefit of clergy – one that had two distinct forms – informed this conversation. Accordingly, the distinction between the lay and clerical forms of benefit of clergy

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<sup>110</sup> Stewart Mottram, *Empire and Nation in Early English Renaissance Literature*, Studies in Renaissance Literature series, 25. Cambridge University Press: 2008

<sup>111</sup> Alan Maccoll, “The Construction of England as a Protestant ‘British’ Nation in the sixteenth Century” in *Renaissance Studies* 18:4, Winter 2004, pp. 582-608; see also Anthony Fletcher, “The first century of English Protestantism and the Growth of National Identity” and DM Loades, “The Origins of English Protestant Nationalism” both in Stuart Mews, editor, *Religion and National Identity: Studies in Church History* (1982).

<sup>112</sup> Alan GR Smith, *The Emergence of a Nation State: The Commonwealth of England, 1529-1660*, second edition. Longman, 1997. Quote from p. 87, foreshadowing the argument of the book’s chapter 11 “The Early Tudor Revolution: the Significance of the Reformation Era, 1529-1558” pp. 87-96, but also setting the stage for Smith’s conclusion that “the sixteenth and early seventeenth centuries... saw such stress on the differences between England and other countries... England herself asserted her claim to be a ‘nation state’ free of all external authority, when she rejected papal jurisdiction during the 1530s....it set the country in a basic direction which was not altered until the ‘return to Rome’ this time an economic rather than a religious Rome – which Britain’s accession to the Common Market in 1973,” p. 376. This bold claim places my research in early nationalistic pamphlet writers in a much larger scale, but one that agrees that the Reformation arguments took on a very important nationalistic rhetoric.

<sup>113</sup> Most nation-states did not develop a single identity until later in the early modern period. Nevertheless, some scholars see this moment in English history as representative of nationalist tendencies. JP Sommerville accepts the literary expressions of an early English nation, but argues that these early expressions of nationalism were not strong enough to follow James’ ideal into a united Britain. “Literature and National Identity” in *The Cambridge History of Early Modern English Literature* David Lowenstein and Janel Mueller eds, Cambridge University Press: 2002, pp. 459-486 and Claire McEachern, *The Poetics of English Nationhood, 1590-1612* Cambridge University Press: 1996, pp. 5-6

became symbolic of other ecclesiastical struggles, as theorists argued for (or against) Henry's assertions of dominant jurisdiction within his realm. For the population receiving the messages of these pamphlets, adhering to the arguments put forth by Henry's supporters meant that England's institutions had a positive quality – even an English character – and that loyalty to the nation should supersede loyalty to the foreign pope.

In the religious conflict of the 1530s, rhetoric portrayed the pope as a foreign threat and the king as the English representative and protector of the nation. As popular uprisings occurred in shires like Lancashire and Cornwall, Morison wrote tracts against rebellion and sedition, preaching the virtues of national obedience. In 1536 he declared, "If England coude speake, might it not say thus? I am one, why doo you make me twayne?"<sup>114</sup> This plea for unity cuts across the identity politics of Catholics and Protestants. It could easily apply to clergy versus laity, or the allegiance afforded to the ordained who maintained that their special privileges derived from a foreign power rather than the king.

Most of Morison's tracts and pamphlets reflected a nationalist argument, and exhorted all Englishmen of any status to be loyal to their country and its leader before a foreign bishop. His message was most potent in his 1539 tract *An exhortation to styrre all Englyshe men to the defence of theyr countrey*.<sup>115</sup> The whole of his *Exhortation* was to convince the English people to be loyal to their English roots first, especially to stand together against the agents of the pope who threatened the autonomy of the realm. Morrison's works perpetuated the idea of England as special and worthy of one's complete loyalty, an idea exemplified through England's unique relationship with the otherwise Christian ideal of benefit of clergy. His ideas consequently

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<sup>114</sup> Sir Richard Morison, *A Lamentation, in VVhiche is shevved what Ruyne and destruction commeth of seditious rebellyon*, Thomas Berthelet: 1536, sig A4

<sup>115</sup> Sir Richard Morison, *An exhortation to styrre all Englyshe men to the defence of theyr countrey* (1539)

depicted the pope as a usurper of sovereign authority and challenger to English unity. Morrison became a pamphleteer later in the Reformation. His works benefited from earlier pamphlets that constructed an idea of England's singular character, from the history of benefit of clergy to other English institutions as primary evidence.

The best example of a nationalist work that preceded Morrison's ideas was the "anonymous" 1532 work *The Glasse of Truth*, reported to have been written by Henry himself.<sup>116</sup> Henry argued against the pope's power within England, citing the problems of jurisdiction and claiming his own power as taking precedence within England.<sup>117</sup> His work falls squarely in the second wave of pamphlet literature, that England was a special case within Christendom, a unique product of its own laws and history. Nevertheless, *The Glasse of Truth* has a decidedly nationalist tone that sets up the third wave of patriotic pamphlets beautifully. Henry's arguments are consistent across publications: even the 1533 Act of Appeals incorporated similar language that supported Henry's nationalist position. "This Realm of Englonde is an Impire," it declared, with its leader commanding supreme authority over the subjects and systems within its borders,

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<sup>116</sup> Shelley Lockwood discusses the reasons for Henry to express his justification for the Reformation. She notes that he altered the coronation oath to include the protection of customs "lawfull and not prejudiciall to his crowne or imperial jurisdiction" as a defense of his new religious policy and a promotion of his position as imperial commander in England. See Lockwood, "Marsilius of Padua," p. 91. GR Elton argues against the instinctive but groundless idea of Tudor despotism and uses the significant decision to republish Padua's ideas during the Reformation to emphasize his point in "The Political Creed of Thomas Cromwell" in *Studies in Tudor and Stuart Politics and Government II: Parliament / Political Thought*, Cambridge University Press: 1974, pp. 215-235; Harry S Stout argues for the importance of reimagining Padua's ideas in his article, "Marsilius of Padua and the Henrician Reformation" *Church History* 43:3 (September 1973) pp. 308-318; Franklin L Baumer, "Thomas Starkey and Marsilius of Padua," *Politica* 2 (1936) pp. 188-205; and Elton extends the discussion to include Starkey's publications and their influence on new statutes in "Reform by Statute: Thomas Starkey's Dialogue and Thomas Cromwell's Policy," *Proceedings of the British Academy* 54 (1968) pp. 165-188; See also the role played by Ockham's ideas in Martin Ossikovski, "Marsilius of Padua and William of Ockham on Institutional Infallibility" in *Recherches de Théologie et Philosophie Médiévales* 77:2 (2010), pp. 299-311

<sup>117</sup> Henry VIII, *The Glasse of Truth*, f23b

in contrast to the pleas and arguments of the Pope.<sup>118</sup> Here, the use of the word “empire” denoted an evolving idea of what imperial power was: a humanist reference to the reputation and power of the Roman Empire. England was not yet Britain nor the British Empire. The reference here was historical rather than forward-looking to the future imperial project of Britain.<sup>119</sup> It stood in stark contrast to contemporary political organisms like the Holy Roman Empire, which dominated multiple cultures. Henry’s 1533 use of the word “Empire” to signify complete independence from the pope reflects a definition involving an immutable sovereignty and an emphasis on autonomy.

Over the course of the 1530s, pamphleteers depicted the pope first as one who interfered in local matters despite previous events that had set England apart as special within Christendom, and then as a usurper who had no inherent authority outside Rome itself.<sup>120</sup> Pamphlets exaggerated the claims against the Bishop of Rome in order to stir feelings of nationalism in their readers. The term “Nationalism” was not yet used in the 1530s, but ideas of a nation that required a form of patriotism were present in early modern England. The word “nation” appeared in both John Palsgrave’s 1530 dictionary and Sir Thomas Elyot’s 1538 dictionary.<sup>121</sup> Elyot’s

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<sup>118</sup> “An Acte that the Appeales in suche Cases as have been used to be pursued to the See of Rome shall not be from henceforth had ne used but wythin this Realme” 24 Henry VIII c 12 in *The Statutes of the Realm*, volume III, pp. 427-429. The *Oxford English Dictionary* uses this particular quote as one of its examples when it defines “empire” as “the country of which the sovereign owes no allegiance to any foreign superior.” *Oxford English Dictionary*, under “Empire.” Second edition, Oxford University Press: 1989

<sup>119</sup> See comments from n.49 in this chapter. John Guy, “Monarchy and Counsel Models of State” in Patrick Collinson, ed. *The Sixteenth Century*. 113-142, Virginia Murphy, “The literature and propaganda of Henry VIII’s first divorce” in MacCulloch, Diarmaid, *The Reign of Henry VIII: Politics, Policy, and Piety*. St Martin’s Press: New York, 1995, pp. 135-158, and Nicholas Canny, ed. “The Origins of Empire” *The Oxford History of the British Empire*, Volume I. Oxford University Press: 1999, pp. 1-33

<sup>120</sup> Stewart Mottram, “Reading the Rhetoric of Nationhood in two Reformation pamphlets by Richard Morison and Nicholas Bodrugan” in *Renaissance Studies*, volume 19, number 4 (2005), pp. 524-540.

<sup>121</sup> John Palsgrave, *Lesclarcissement de la Langue Francoyse* (1530) and Sir Thomas Elyot *The Dictionary of Sir Thomas Elyot* (1538)

definition did not merely denote a people living within a certain area, but those who shared cultural ceremonies or traditions.<sup>122</sup> Religions specific to such regions were influential in forming the nation-state. In 1538, Thomas Starkey framed the early modern nation in terms of the protection of the King, and his character Lupset sought “to defend thys custume long usyd in our reame & nation.”<sup>123</sup> Starkey’s other printed work, *A Preface to the Kynges Hyghnes*, focused on how “we myght as membres of one body, being coupled together, and knitte against in unities, runne in one course and after one fashion” as Englishmen, thereby overcoming the interferences of the Bishop of Rome.<sup>124</sup> In an effort to stigmatize the pope as foreign, Starkey and Morison described what might be termed a “national character” across England, despite its many regional variances.

Although benefit of clergy existed in theory throughout Christian kingdoms,<sup>125</sup> the presence and local form of the immunity reflected its unique place in English culture. Parliament had established a history of defining benefit of clergy via statute where other European countries had not. The kings had struggled with popes over this issue and many others, and all claimants – lay or clerical – had to appear in secular courts even to obtain their exemption. In the words of one pamphleteer, “Clerelye it semeth” the clerical privilege “may holde no plea directly by the Lawe of God, but onely by the custome of the Realme.”<sup>126</sup> England’s benefit of clergy differed greatly from other Christian kingdoms – indeed, only in England did benefit of clergy survive the

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<sup>122</sup> Sir Thomas Elyot, under “nation.”

<sup>123</sup> As quoted in the *Oxford English Dictionary* under “nation,” citing Thomas Starkey, *England in the reign of Henry the eighth, a dialogue between Cardinal Pole and Thomas Lupset 1538*, Sir William Forrest, ed. 1878, p. 106

<sup>124</sup> Thomas Starkey, *A Preface to the Kynges Hyghnes*, (1536), f2a

<sup>125</sup> Charles Lea, “Benefit of Clergy” in *Studies in Church History*, (1883), pp. 169-219.

<sup>126</sup> *Prouyng by the King’s Lawes*, f 16a

Medieval period.<sup>127</sup> Peculiar to England were the dual existence of clerical and lay forms until 1536, the scripted process of claiming, and the considerations of literacy as the measure of eligibility. The benefit developed on a local level before being absorbed as part of common law in the larger legal system. Over the course of centuries, as Parliament's power stabilized, the benefit received legitimacy through the increasing power of the statute. Casting benefit of clergy as particularly English supported Henry's controversial decisions during the English Reformation, but it powerfully contributed to the autonomy, authority, and authenticity of the English King.

### **Social Statutes, 1532-1536**

The pamphlet literature served many purposes. One of the unintended consequences of the organized propaganda scheme was the complete transformation of the reputation and status of benefit of clergy. The ecclesiastical exemption transformed from a clerical privilege that was occasionally allowed to lay claimants to a strictly lay right offered to those literate Englishmen on their first offense. This transition can be seen in the way benefit of clergy was used in Reformation-era statutes that had little to do with religious reform. GW Bernard has asserted that the Reformation Parliament had an agenda of reform that targeted social, economic, and political problems in addition to the religious situation at hand.<sup>128</sup> The consequences of such Statutes were

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<sup>127</sup> Lea, "Benefit of Clergy" pp. 169-219

<sup>128</sup> GW Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church*. Yale University Press: 2005, especially pp. 225-227.

far-reaching, as I discuss at length in Chapter Three. In light of the relationship between these laws and the pamphlet literature of the 1530s, some brief discussion will suffice here.

Early statutes in the 1530s seemed ambivalent as Parliament began altering the privilege slowly by addressing lay issues while attaching a protective secondary clause for those in orders. Nevertheless, these “special privileges” were much less benevolent than the traditional forgiveness awarded to criminous clerks. Gradually over the course of the 1530s, the clerical version of benefit of clergy was stripped of its initial strength and offered more specifically to laymen. This two-pronged approach would change after the Submission of the Clergy in 1532.

By 1533, Parliament began using the privilege to shore up the King’s Courts. The “Act for Stondyng Muet & P[re]remptorily Challenge” attempted to enhance cooperation in the courts by allowing clergy only to those who responded clearly to their charges.<sup>129</sup> Already those who refused to participate could be pressed to death under the practice of *peine et dure* but clergy was nevertheless employed to strengthen the draw of a single, central, royal jurisdiction within the kingdom of England. Another use of restricting benefit of clergy to empower the State occurred in 1534, when Parliament categorized the sexual acts known as “buggery” as unclergyable felonies. This alteration in policy took some sexual offences out of the ecclesiastical courts and into the royal courts, allowing some intervention from the King in prominent or politically important cases. In 1534, during the throes of Reformation change, the new definition of clergy was imposed on the thirteen counties of Wales. Piracy and the jurisdiction of the admiralty were further targeted in 1535, as Parliament designed a scheme that brought the crimes committed upon the sea into the King’s Courts and diminished the discretion of admiral justice. This Act

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<sup>129</sup> 25 Henry VIII c 3 *The Statutes of the Realm*, Vol III, pp. 439. I discuss these statutes in much greater detail in the first section of Chapter three. Here I am simply including them for contextualizing the other, more important clergy statutes of the 1530s.

against piracy coincided with an Act to deprive servants guilty of stealing 40 s or more from their masters of their ability to plead clergy. The appearance of these acts demonstrated a new, sudden re-conceptualizing of the benefit during the rapid changes of the legislative English Reformation.

These statutes covered disparate concerns of great interest, but one characteristic remained constant: none of these laws were designed to affect ordained men specifically. Clauses protecting priests or other ordained men were no longer tacked on with concern that Convocation would counter the new restrictions. The contours of the debate at Blackfriars no longer spoke to the relationship between politics and religion in England; the conversation itself had changed. After 1532, with the possible exception of buggery, these acts all targeted social behaviors that had little to do with clerical status. The gradual use of benefit of clergy to target social discord set the stage for the coming abolition of the clerical version in 1536, set temporarily and renewed permanently in 1540. From dissolving the monasteries to enforcing new religious doctrine, benefit of clergy did not seem to be one of the more contentious issues coming out of the 1530s parliaments. Its constant presence would continue in later Tudor parliaments, but the privilege itself was changed forever.

The Tudor period would ultimately use benefit of clergy to effect change within social issues throughout the sixteenth century. Later developments built upon the decisions of the Reformation Parliament. Subjects tied to the benefit included foreign diplomacy, trade, social interaction, and common criminal behavior. None of that would have been possible had the Reformation Parliament not intersected the gradual abolition of the clerical version of the privilege with the waves of pamphlet literature legitimizing the power and authority of King and Parliament.

## Conclusion

During a decade when clerical privileges were under attack, the best-known privilege, benefit of clergy, survived the onslaught of statutory reform. The language and short-term goals of each individual statute addressing benefit of clergy during the 1530s suggests that there was no carefully executed plan to deprive clergy from their special privilege while upholding the lay version. Yet this is precisely what happened. There were multiple key steps to the process, each act solving a specific problem, and each element was essential to set up the final declaration that benefit of clergy would be applied “clerical status notwithstanding.” When taken together, these acts redefined the benefit for a newly reformed Tudor government.

Had Henry VII not solved the fifteenth-century complaints about executed priests or recidivist laymen taking advantage of an ecclesiastical privilege by creating two parallel forms of the exemption, the 1530s Parliament would not have had the option for solving social issues or bringing ordained monks and priests under royal jurisdiction. The manner in which the attacks on clerical privileges were carried out stood on the application of benefit of clergy to laymen. The clear right of Parliament to alter the benefit was established in 1515, creating a precedent that would become valuable to legislation during the Reformation. These small events would also become helpful to the dozens of pamphlets that sought to explain and support the new reforms under the Henrician regime.

Most importantly, the benefit continued to be useful to Parliament beyond the immediate changes of religious reform. The continued existence of the privilege supported the idea that

England was special, setting it apart from the rest of Christendom. The history of the benefit created a narrative of English monarchs whose respect and love for the priests and their people had developed a tradition of mercy in the royal courts. The first-offence liberty incorporated a sense of mercy with the power and authority of the throne. The process of building this argument had specific goals, but once those goals were achieved – creating a series of arguments that supported the ambitious aims of religious reform – the illicit use of the benefit by laymen had transformed into something fully English, something to be preserved and valued, something that could enhance the power of Parliament to address new social problems affecting the Common Peace of the Realm. Statutes used the language of benefit of clergy as a form of both incentive and restriction.

Whether the Members of Parliament realized it specifically or not, benefit of clergy could enhance their authority through the rewards of forgiveness and mercy. As we shall see in the remaining chapters, continued use of the privilege helped build the jurisdiction of parliamentary power through the use of benefit of clergy and applying it to all manner of behaviors, institutions, and specific people. Benefit of clergy facilitated the collapse and consolidation of some jurisdictions, from ecclesiastical to the Admiralty.

The new function of benefit of clergy survived the Reformation as a lay right granted by the king firmly outside of clerical ordination. Yet survival was not a goal; the immediate policy changes accomplished through recasting the benefit were the goals. As new parliaments were summoned, benefit of clergy remained a central subject of Tudor parliamentary sessions. The sum result of these continued acts would serve three purposes: to encourage, discourage, or prohibit behavior. By the end of the Tudor Era, benefit of clergy would be central to the early modern legal system. Parliament passed statutes changing the benefit regularly for the remainder

of the sixteenth century and frequently included clergy in the wording of new statutes for the next three hundred years. As a result, benefit of clergy would take on a central role to the criminal system and shape future policy permanently separated from its ecclesiastical roots.



### **Chapter Three: Post-Reformation Laws Pertaining to Benefit of Clergy**

As Henry VIII and his ministers orchestrated a well-executed attack on the Church, benefit of clergy underwent a transformation to become a secularized tool for use in Parliament. The new definition of the liberty would serve the interests of government for the next 150 years, by offering or denying clergy for specific actions as a way to craft government policy. Superficially, such a large exemption from royal punishment appeared to create an enormous hole in the legal justice system. After all, expanding the eligibility of avoiding punishment through the benefit might undermine legal consistency throughout the kingdom. However, the positive consequences of threading mercy into the legal system far outweighed any weakness. By increasing Parliamentary authority with each statute governing the applicability of benefit of clergy, this apparent hole in the system actually served to strengthen the role of the royal courts in settling disputes and keeping the peace in local communities.

Almost every Tudor session of Parliament from 1530 until 1604 altered who could take advantage of the benefit and who could not, refining the list of eligible claimants during a period of seventy-five years. During this period, Parliament used the benefit to uphold new policy or strike down perceived threats to society through three distinct approaches: discouraging, encouraging, and prohibiting specific behavior. As the benefit was re-cast to survive the Reformation in the 1530s, Parliament began to use this tool to continue reorganizing royal authority. It was not enough for the benefit to survive the Reformation through pamphlet literature, as outlined in the previous chapter; it also had to prove to be tangibly helpful to the

new position of King and Parliament in England. To accomplish this, Parliament employed benefit of clergy as the carrot to strengthen the authority of royal proclamations and the participation in royal courts.

This chapter traces the role of benefit of clergy during a period of massive legal change. Parliament employed the clerical privilege in a purely secularized manner, incorporating the benefit in new legislation touching a wide variety of behaviors, from vagrancy and sexual deviancy to national security and diplomacy. By forbidding behavior outright –rendering it “unclergyable” – a law could send a strong message to an individual on trial or a group of people whose fealty was in doubt. By discouraging behavior, on the other hand, the governing authorities from London could enhance the image of the King through performances of mercy, benevolence, and multi-tiered second or third chances. Finally, by offering benefit of clergy only under specific conditions, Parliament could use the medieval tradition to strengthen royal institutions while drawing traditionally marginalized groups such as women and immigrants into formal royal jurisdiction.

The process of the Reformation transferred authority from multiple jurisdictions to the increasingly centralized government. How this happened, and what caused such realignment of power, has been the subject of multiple studies. GR Elton referred to the process as the “Tudor Revolution in Government.”<sup>1</sup> Elton’s work was a watershed in the field: a departure from the description of Tudor “despotism” in the sixteenth century. Elton saw the necessary side effects of England’s withdrawal from the Catholic fold as an administrative revolution orchestrated under Thomas Cromwell that set the stage for modernization. Scholars challenged Elton's theory

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<sup>1</sup> GR Elton, *Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII*. Cambridge University Press: 1953

immediately, beginning with reviews of his book.<sup>2</sup> The crux of Elton's thesis rested on a singular interpretation of Cromwell's total and complete control over royal finances, policy, and proposed legislation. Yet it seemed unlikely that a single man could do so much – or even that having a “prime” minister in charge of affairs was so radical, considering the power and influence of Wolsey.<sup>3</sup> This seemed an unlikely twist after the medieval model. More scholars became engaged with the evidence and fifty years of scholarship would be framed by this debate.

The intensity of Elton's proposed shift in thinking about Cromwell's role in altering government led to a series of debates in *Past & Present* in 1963.<sup>4</sup> Ultimately the context of the original proposal was not accepted by consensus, but the idea driving Elton's book was one that bore the test of time.<sup>5</sup> The Tudors did indeed transform government. Parliament and royal influence experienced a manner of “revolution” in that there was measurable and sudden change affecting the administration of government in England. From there the devil is in the details, as elements of Elton's proposal were re-considered. David Starkey challenged Elton's theory by moving away from an explanation of revolution as designed by a single minister. He argued instead that the massive changes in government were the result of a variation in household

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<sup>2</sup> For example, see R.B. Wernham, “Tudor Revolution in Government by G.R. Elton [Review],” *English Historical Review*, Vol. 71, No. 276 (Jan., 1956), p. 93

<sup>3</sup> John Guy, *The Cardinal's Court: The Impact of Thomas Wolsey in Star Chamber*. Sussex: Harvester Press, 1977, p. 26

<sup>4</sup> The debate was published over the course of three years, giving all parties sufficient time to frame their replies. See G.L. Harriss and Penry Williams, “A Revolution in Tudor History?,” *Past & Present*, 25 (1963), pp. 3-58; J.P. Cooper, “A Revolution in Tudor History?” in *Past & Present* 25 (1963), pp. 110-12; G.R. Elton, “The Tudor Revolution: a Reply,” *Past & Present*, 29 (1964), pp. 26-49; G.L. Harriss and Penry Williams, “A Revolution in Tudor History?” *Past & Present*, 31 (1965), pp. 87-96; and G.R. Elton, “A Revolution in Tudor History?,” in *Past & Present*, 32 (1965), pp. 103-9. Natalie Mears creates a fine narrative of these articles in her work, “Court, Courtiers and Culture in Tudor England,” *Historical Journal*, 46:3 (Sep., 2003), pp. 703-22

<sup>5</sup> Natalie Mears, “Court, Courtiers and Culture in Tudor England,” *Historical Journal*, 46:3 (Sep., 2003), pp. 703-22

departments, from two to three.<sup>6</sup> John Guy rephrased the debate to be one of continuity rather than change, pointing to judicial procedure and comparing the Privy Council, the Star Chamber, and Parliament as growing institutions rather than an explosive, radical departure from the previous century.<sup>7</sup> GW Bernard cast a measurable revolution with or without the prominent role of Cromwell, arguing that one can measure change without necessarily being able to trace the motivations for that change.<sup>8</sup>

Ultimately, all of these historians supported a tempered version of the original premise: that the Tudor period of government was not a period of despotism, but a new birth in centralizing and strengthening government. Brendon Bradshaw agreed that Cromwell was a central figure in the project of centralizing administration during the Reformation even if he challenged the idea that such reorganization was an absolute transformation.<sup>9</sup> In the book dedicated to this debate – *Revolution Reassessed*, edited by David Starkey and Christopher Coleman in 1986 – the introduction included an overview of the challenges to Elton’s original premise but conceded that the subsequent research remained inconclusive in dismissing Elton’s idea entirely.<sup>10</sup> Ultimately, there was indeed massive, measurable change. And benefit of clergy was revolutionized alongside the other administrative institutions.

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<sup>6</sup> David Starkey, “Court and Government.” in *Revolution Reassessed: Revisions in the History of Tudor Government and Administration*, Christopher Coleman and David Starkey, eds. Oxford: Clarendon Press, 1986, pp. 29-58

<sup>7</sup> John Guy, *Tudor England*. Oxford University Press: 1988

<sup>8</sup> Bernard’s views most closely match my own, as I attempt to trace the effects of change without pretending to know completely the motivations behind each Statute. GW Bernard, “Elton’s Cromwell” in *Power and Politics in Tudor England: Essays by GW Bernard*. Ashgate: 2000, pp. 108-128

<sup>9</sup> Brendon Bradshaw, “The Tudor Commonwealth: Reform and Revision” in *Historical Journal*, xxii (1979), pp. 459-469

<sup>10</sup> Christopher Coleman, “Professor Elton’s ‘Revolution,’” in *Revolution Reassessed*, pp. 1-11, especially pp. 5-6.

The consistent use of benefit of clergy during the Tudor period coincided with an enormous rise in Parliamentary authority and prominence.<sup>11</sup> The increasingly powerful Parliament included clauses pertaining to the benefit in a wide variety of policy changes. In turn, the widespread application or denial of benefit of clergy created increased opportunities to invoke the privilege for various criminals. From 1530 until 1600, trials that included an attempt to claim clergy rose steadily.<sup>12</sup> The reformation of the benefit during the Tudor period was not a cohesive project, planned and executed by a single person. Rather the transformation was the product of dozens of bills, each set to solve the problem of a specific moment, which coalesced to renovate benefit of clergy as a cornerstone of the English law. This chapter will explore the various laws used to recast benefit of clergy and the overall redefinition of a privilege during a period of rapid growth and transformation. Let us first consider the frequency of these laws:

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<sup>11</sup> Conrad Russell, *Crisis of Parliaments: English History 1509-1660*, Oxford University Press: 1971; Stanford Lehmburg, *Reformation Parliament, 1529-1536*. Cambridge University Press: 1970; Paul Slack, "Social Policy and the Constraints of Government, 1547-1558" in Loach and Tittler, eds. *The Mid-Tudor Polity, c 1540-1560*. Rowman and Littlefield, 1980; MAR Graves, *The House of Lords in the Parliaments of Edward VI and Mary I*. Cambridge University Press: 1981

<sup>12</sup> Cockburn, *Introduction*, p. 121

Regnal Year	Clergy Laws	Regnal Year	Clergy Laws
23 Henry VIII	2	1&2 P&M	1
24 Henry VIII	0	2&3 P&M	2
25 Henry VIII	2	4&5 P&M	1
26 Henry VIII	1	1 Elizabeth	1
27 Henry VIII	3	5 Elizabeth	4
28 Henry VIII	2	8 Elizabeth	2
31 Henry VIII	0	13 Elizabeth	0
32 Henry VIII	1	14 Elizabeth	3
33 Henry VIII	3	18 Elizabeth	1
34/35 Henry VIII	1	23 Elizabeth	1
35 Henry VIII	1	27 Elizabeth	1
37 Henry VIII	2	28&29 Elizabeth	0
1 Edward VI	2	31 Elizabeth	1
2&3 Edward VI	3	35 Elizabeth	2
3&4 Edward VI	1	39&40 Elizabeth	4
5&6 Edward VI	2	43&44 Elizabeth	0
7 Edward VI	0	1 Jacobi	2
1 Mary	2	Total / Average	54 / 1.54

This period witnessed a stunning flurry of laws that would invoke benefit of clergy more than any other time. The table shows that benefit of clergy featured consistently in almost every session of parliament from the Reformation Parliament to James' accession. Out of 34 sessions, only six did not address the privilege outright. The remaining sessions made up for those six, sometimes writing as many as four laws in a single session. On average, Tudor parliaments wrote 1.54 clergy statutes per session after 1530. The charted Statutes demonstrate a steady, persistent appearance of the benefit throughout the sixteenth century, averaging one and a half statutes per session of parliament covering approximately 75 years. Parliament's frequent use of the privilege sharply increased directly after the Submission of the Clergy in 1532 and continued unabated as the lay version of clergy became the primary definition of the benefit during the

1530s.<sup>13</sup> In addition to explicit Acts invoking the benefit, still others frequently applied the privilege by virtue of renewing Acts, or setting aside unclergyable acts as exempt from the monarch's traditional General Pardon.<sup>14</sup> Acts that referred to forms of mercy including the benefit but failed to mention clergy by name have not been included in the above chart. Such references are difficult to count but their existence would heighten the number of average laws concerning privileges during the Tudor period.

Curiously, the use of clergy to effect change dropped off suddenly upon James' accession. The cause of this sudden disinterest in employing the benefit for new policy changes or altering its definition is not clear. Perhaps the sheer number of social issues tied to benefit of clergy during the Tudor parliaments was sufficient by the next century; alternatively, the leadership under the Stuarts may have created a new dynamic. Scottish law did not offer benefit of clergy. New advisers might not be so quick to rely on the privilege when putting new policy into effect. Whatever the reason, there is a dearth of clergy statutes and the history of benefit of clergy takes place increasingly in the courts during the Stuart Dynasty. Stuart Parliaments do post laws concerning the privilege, but these laws adopted a new character. One form of manslaughter and specific forms of witchcraft became unclergyable in 1604. After the initial Stuart session, the privilege was not used explicitly again until the abandoned proceedings of 1621, when a Judge's Bill granted women a limited use of the benefit for some forms of larceny.<sup>15</sup>

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<sup>13</sup> The use of benefit of clergy during the 1530s is highlighted more clearly in Chapter Two. Krista Kesselring summarizes the sharp change in dialogue within Parliament in her article on the "A Draft of the 1531 'Acte for Poysoning'" in *The English Historical Review*, Vol. 116, No. 468 (Sep., 2001), p. 897.

<sup>14</sup> Such acts that implied benefit of clergy but did not name it explicitly have not counted toward my final list of Statutes or factored into the math of the above chart.

<sup>15</sup> The offer of limited benefit to women convicted of petty larceny was approved into law in 1624, 21 Jacobi c 6

By the end of the sixteenth century, the fundamental definition and central role of benefit of clergy had changed so dramatically that legislators of the Reformation Parliament might not have recognized it. By 1600, claimants of clergy no longer observed the traditions that had tied it to clerical status, including delivery to the Ordinary, and they could claim it for actions that had little to do with clerical status. The privilege had become tied to seemingly unrelated issues such as the authority over particular jurisdictions on land and sea. When laws were inspired by specific, traceable events during this period, I have endeavored to show the relationship between the initial offense and the resulting legislation. However, oftentimes what led to new legislation did not anticipate how that legislation, when connected with other new Statutes, would increase access to the once-ecclesiastical form of clemency. The sum result of using the benefit throughout the remaining sixteenth century was to cement its place in the courts and to ensure its continued existence for centuries to come.

### **Strengthening Royal Institutions**

Concerning the moment when separating from the Catholic Church became inevitable, George W Bernard wrote, “At one level, Henry’s break with Rome might have been thought to be simply a jurisdictionary quarrel with the pope that could potentially be resolved by further negotiation ... [but] Henry remained insistent on his royal supremacy for the rest of his reign.”<sup>16</sup> The story of benefit of clergy during the Reformation fits neatly into this observation. By appropriating the ecclesiastical privilege, the Temporality was able to use it repeatedly to bolster

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<sup>16</sup> Bernard, *The King’s Reformation*, p. 225

the idea of superior royal jurisdiction for the remainder of Henry's reign and beyond. Further negotiations might have solved the quarrel; Catherine of Aragon's death in 1536 (and Anne's execution in the same year) might have solved Henry's concerns naturally, but by then the principles at stake had moved beyond matters of love and marriage. Following the surrender of Convocation to Henry's leadership even in matters ecclesiastical, the hypothetical proofs of the superiority of the English monarch – as outlined in the analysis of pamphlets in Chapter Two – became assumed fact and were written into new laws.

Innovative legislation further cemented increased authority under the Crown in the following decades. Many of these statutes began incorporating benefit of clergy as an extra tool to strengthen new policy that previously would have had nothing to do with clergy, including laws governing servants, soldiers, and vagrancy. Lawmakers built upon the Reformation propaganda ideal that the privilege was secular in origin, representing mercy that flowed only from the person of the King. The idea of a benevolent monarch enabled legislation to reinforce the idea of the superiority of the monarch at the fore of political discourse.

By using benefit of clergy, Parliament underscored the evidence of the historical power of the English King *over* the Pope. In 1534, Members of Parliament enacted a Statute using the privilege to ensure the cooperation with the King's Courts.<sup>17</sup> In 1535, a statute deeming piracy to be unclergyable assumed the secondary effect of diminishing the Admiralty's Courts and establishing that criminals who wished to claim clergy must be delivered to royal courts on land.<sup>18</sup> Parliament passed an Act to punish the "detestable" act of Buggery under threat of death without possibility of clergy in 1534, with surprisingly far-reaching implications that I will

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<sup>17</sup> 25 Henry VIII c 3

<sup>18</sup> 27 Henry VIII c 4

discuss below.<sup>19</sup> These Statutes and others like them had the effect of bolstering royal jurisdiction in a time when the ecclesiastical equivalent was in decline.<sup>20</sup> Such Statutes and the shift toward secular power “struck at the very roots of the moral authority of the church courts at England,” never to be reclaimed.<sup>21</sup> During this monumental shift, benefit of clergy became helpful as a way to cast the monarch’s power as superior to that of the pope within England. To that end, clergy was offered only in particular ways, to those subjects who cooperated with royal officials from the very beginning of their legal troubles. In these Statutes, clergy contributed to the execution of justice, which became an extension of royal authority.

In 1534, the fourth session of the Reformation Parliament had the brilliant idea of using the benefit to ensure that cases would be brought to the King’s courts. “An Acte for Standyng Muet & P[ere]mptorie challenge” used the possibility of clemency through benefit of clergy as a way to encourage cooperation with the royal courts in matters of robbery.<sup>22</sup> The Statute attempted to discourage stubbornness in accused criminals who refused to answer to their charges in court. By standing mute, or by challenging the participation of over twenty jurors, subjects could reject and render ineffective the established process of upholding the common peace through investigations. Following the passage of this law, refusing to cooperate or interfering with the jury process would strip a defendant of his ability to claim clergy upon conviction. In other words, if the accused had a chance to be convicted, the accused had better cooperate from the beginning, since the alternative to clergy was a sentence to the gallows.

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<sup>19</sup> 25 Henry VIII c 6 *The Statutes of the Realm*, Vol III, p. 441

<sup>20</sup> Ralph Houlbrooke traces the shift among jurisdictions in his book, *Church Courts and the People during the English Reformation, 1520-1570*. Oxford University Press: 1979

<sup>21</sup> Houlbrooke, p. 263. As a result of these changes, some traditional offenses lost criminal status while others were transferred to the secular courts under royal jurisdiction.

<sup>22</sup> 25 Henry VIII c 3

Court records were not kept uniformly at this period, so it is difficult to measure in strict numbers how this Statute was put into effect within the trial system. In March 1594, Assize records from Hertfordshire preserved the case of George Lawrimer, labourer, who refused to plead to the charges of assault and highway robbery. As a consequence of his refusal to speak, he was sentenced to be pressed to death.<sup>23</sup> Similarly, in 1611 William Sherley refused to speak with regards to his charge of grand larceny.<sup>24</sup> He was also sentenced to *peine forte et dure* while those found guilty with him were allowed benefit of clergy.<sup>25</sup> Ultimately, the Act supported a political dialogue that strengthened the power and jurisdiction of the King's courts and officially made disruption of trial an illegal and dangerous risk for the defendant.

The language of the Statute was more pointed than merely invoking the benefit as a secondary tool for strengthening the idea or institution of the King's courts. The Act itself began with a recital of the recent statutes concerning benefit of clergy so as to establish its current definitions within England. Doing this was especially important considering the volatile debate throughout the kingdom concerning the power of the Church or the King over priests and subjects alike. The Statute effectively cemented the new definition of benefit of clergy by summarizing the historical narrative that adopted the Reformation-era ideas of the royal origins of the privilege. By the time of the Bill's passage, ordained clergy still had the unlimited use of their privilege based on their status within the church, although that unlimited status would be abolished within two years. The first few lines of the Act reviewed the difference between lay and clerical claims while it underscored restrictions placed on benefit of clergy in 1532: that

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<sup>23</sup> Case No 686, JS Cockburn, ed. *Calendar of Assize Records: Hertfordshire Elizabeth I*. HMSO: 1975, p. 108

<sup>24</sup> Case No 620, p. 96 of Essex Assize Records under James I.

<sup>25</sup> See Case No 606 describing Sherley's many accessories to grand larceny and –eventually – gaol-break, p. 94 of Essex Assize Records under James I

certain crimes, such as murder and arson, were too heinous for clemency and could not be clerried. Criminals accused and convicted of such crimes should “suffer death in such manner and forme as...yf they be no clerkys.”<sup>26</sup> The only exception to this was the actual men in Orders who could prove their position in Subdeacon or above through papers of Ordination. Only they could escape execution for such serious offenses. The strict rules over who could claim led to a new problem, the Statute explains: since the 1532 Act in question “extendith only to suche p[er]sones as be fonde gyltie after the due course of the lawes of this lande, dyvers and many greate arrant [offenders] stonde muet and sometime chelnge peremptory over the number of [twenty] or else wyll not directly answer to the same inditementis.”<sup>27</sup> In other words, though the benefit had been recently restricted to elude the most heinous of offenders, the same offenders have realized that they might not be convicted if they refuse to cooperate. In order to counter stubborn uncooperative defendants, Parliament decided to tie the very possibility of mercy to the requirement of immediate cooperation, beginning with the moment of arrest.

The effect of this Statute encouraged all suspects to participate in the legal process, to cooperate with authorities, and to answer to the royal command invoked at court. The potential to claim clergy was the opposite of threatening a criminal with death through *peine forte et dure*. Furthermore, the Act clarified that those accused of crimes committed in multiple counties cannot plead the book for multiple counts. Men who committed a crime and fled the law would forgo their right to claim in the very act of fleeing. The secondary clause discouraged criminal flight by rescinding benefit of clergy from those accused of crossing county lines. By explicitly

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<sup>26</sup> 25 Henry VIII c3 *The Statutes of the Realm*, Vol III p. 439

<sup>27</sup> 25 Henry VIII c3 *The Statutes of the Realm*, Vol III p. 439

tying mandatory participation to eligibility of benefit of clergy, the framers of the Statute identified the significance of clergy as a tool for discouraging resistance of defendants on trial.

This Statute goaded all players to participate to their fullest ability, by answering questions and cooperating with the juror selection process.<sup>28</sup> The effects of this law drew contrast to the relationship between priests and the clerical version of benefit of clergy prior to the Reformation. In both cases, taking advantage of royal mercy through the privilege required a formal acknowledgement of the King's authority. Marjorie Blatcher has shown that in the early decades of the 1500s some ordained priests would go out of their way to avoid pleading benefit of clergy or cooperating with the royal courts at all through her study of the King's Bench cases.<sup>29</sup> Even though the benefit for ordained clergy was an unlimited, full exemption from court penalties, the very act of pleading one's clergy was a formal submission to the king's authority. Bowing to the king was an uncomfortable requirement for privileged clerks.

In order to avoid such public performances of power, criminous clerks attempted to falsify court documents by providing inaccurate information or skipping required steps at trial.<sup>30</sup> For instance, in 1509, when John, Abbot of Whitby was indicted for the rape of Elizabeth Robinson, he avoided the public disdain of pleading guilty and claiming clergy at trial by providing inconsistent information in the court documents, including the location of the crime

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<sup>28</sup> Defendants were allowed some say in who would be considered their "peers." Allowing a defendant's social enemy to judge the guilt might be seen as unfair and those accused were able to ask certain people to stand down from the jury list. However, an "uncooperative" defendant was one who challenged above twenty separate people. At twenty, the defendant gave the impression of being uncooperative more than concerned for a "fair" trial. See JH Baker, *The Reports of John Spelman*, Selden Society: 1977, p. 94. See also the text of 25 Henry VIII c 3 "An Act for standing mute and preemptorily challenge."

<sup>29</sup> Marjorie Blatcher, *The Court of the King's Bench, 1450-1550*. University of London Athlone Press:1978, pp. 52-3

<sup>30</sup> Blatcher, pp. 56-58

and the nature of his occupation.<sup>31</sup> Incorrect court documents could lead to a mistrial, and a mistrial would have the same effect for a criminous clerk as pleading benefit of clergy without the unseemly act of submitting to the king and begging his mercy through the benefit. Indeed, the Abbot escaped punishment for his alleged violation. In the “Standing Mute” statute, such prevarications would mean a forfeit of claiming the benefit even if the subject were not sentenced to being pressed. In this scenario, benefit of clergy became the carrot while the tradition of *peine forte et dure* remained the stick for cooperating early and fully with authorities.<sup>32</sup> Alleged criminals would be forced to cooperate from the very beginning if they hoped for any reprieve.

The combined elements of the “Acte for Stondyng Muet &c” were not radical or overly ambitious. Each part of the Act was a reasonable stance for clarifying when and how a defendant might take advantage of the lay version of benefit of clergy. But the primary result of this statute went beyond depriving the privilege from violent offenders or resistant disturbers of the peace. Rather, the statute was about enhancing the central position of the royal courts. The Act discouraging resistant defendants was not the only Reformation-era statute to use the benefit as a way to strengthen royal jurisdiction in relation to others. A piece of legislation aiming to reduce the growing problem of piracy and crimes committed on the seas sought a similar enforcement of temporal courts over other jurisdictions.

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<sup>31</sup> Blatcher, p. 57, citing the National Archives document KB 27/909/jr21

<sup>32</sup> The power of court was diminished when officials had to employ torture in order to encourage cooperation. Offering mercy was a clean way to encourage such things without resorting to physical coercion. See Frederick Pollock and Frederic William Maitland, *The History of English Law*, v. 2, Cambridge University Press: 1968, pp. 650-651

Piracy became a major problem in the Tudor period. The Privy Council records show that the issue of piracy came up for debate regularly.<sup>33</sup> During the influx of American gold into the European economy, piracy became an even more lucrative attraction than before. Over the course of the Tudor period, though, piracy would begin to occupy a space between criminal act and naval security. Under Queen Elizabeth in particular, the idea that piracy could benefit the Crown led to the practice of privateering. Under her father, however, piracy was associated with smuggling and viewed as a threat to a balanced economy and foreign diplomacy.<sup>34</sup> In early 1536, Parliament responded to these developments with a bill entitled “An Acte conc[er]nyng Pyrottes & Robbers of the See.” The apparent primary goal of this statute was to contain the growing problem of piracy and the resulting interruptions of trade. However, a more significant alteration to due process was added to the bill. The secondary clause established that benefit of clergy could only be claimed on land, in any county in the kingdom. Men on English ships in international waters were still subject to the laws of the realm. The language of the statute blames the actions of the Admiralty, which had a reputation for leniency in matters that did not directly threaten the order of command. Additionally, offenders of land-based crimes could be found hiding in a “havyn, ryver, or creke where the Admyrall or Admyralles p[re]tende to have jurysdiccion” in order to gain access to that lenient court.<sup>35</sup> Lehmberg observed that “such criminals had often escaped because of the civil law applied in admiralty courts; [following this

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<sup>33</sup> Indeed, the Calendar of State Papers for Edward, Mary, and Elizabeth show a slew of multiple-day discussions covering the issue of piracy across many years: 1548, 1552, 1565, 1566, 1575, 1576, 1577, 1578, 1579, 1580, 1586, 1587, 1599, 1600, 1603 and beyond. See the Calendar of State Papers on < <http://www.british-history.ac.uk>> Accessed on April 7, 2012.

<sup>34</sup> David Starkey, “Voluntaries and Sea Robbers: A Review of the Academic Literature on Privateering, Corsairing, Buccaneers, and Piracy” *Mariner’s Mirror*, Vol 94 No 1 (2011), pp. 127-147. Susan Ronald, *The Pirate Queen: Queen Elizabeth I, Her Pirate Adventurers, and the Dawn of Empire*. Harper Collins Publishers: 2007.

<sup>35</sup> 27 Heny VIII c 4 *The Statutes of the Realm*, Vol III, p. 533

Act] they were now to be tried before royal commissioners, who were instructed to summon grand juries and treat their indictments according to common law, as if the felonies had been committed on land.”<sup>36</sup> Lionel H Lang traced a history of Statutes that paint the jurisdiction of the Admiralty as a more lenient option for property crimes in particular.<sup>37</sup> The language of the Act itself conveyed the tension between the competing authorities.

Admiralty courts have no clear historical year of formation but grew, like many English legal institutions, out of tradition.<sup>38</sup> These courts dictated disputes over maritime trade where the authority of local councils or royal courts was unclear. Blackstone suggests that the courts were recognized formally under Edward III, when Flemish merchants required the King to pay for attacks on their merchant ships traveling near to England, but that situation did not seem to be the first meeting of an Admiral’s Court.<sup>39</sup> Following the actions of Edward, most likely in an attempt to maintain allies rather than to create a separate jurisdiction, the Admiralty courts were formally required to address merchant disputes and crimes committed upon the sea.<sup>40</sup>

The early modern period was one of fluctuating and contrasting jurisdictions, particularly during the aftermath of the Reformation. In a few cases, benefit of clergy assisted in the amalgamation of these jurisdictions. The Piracy Act was one of these instances. After the Act fundamentally altered the control of the Admiralty courts, piracy began a transformation from a

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<sup>36</sup> Lehmborg, *The Reformation Parliament*, pp. 238-39

<sup>37</sup> Lionel Laing, “Historical Origins of Admiralty Jurisdiction in England” in *Michigan Law Review*, Vol 45 No 2, December 1946, pp. 163-182, especially p. 165

<sup>38</sup> Laing explores the possible dates of origin in his article “Admiralty Jurisdiction,” pp. 163-166

<sup>39</sup> Sir William Blackstone, *Commentaries on the Laws of England in Four Books. Notes selected from the editions of Archibald, Christian, Coleridge, Chitty, Stewart, Kerr, and others, Barron Field’s Analysis, and Additional Notes, and a Life of the Author by George Sharswood. In Two Volumes.* (Philadelphia: J.B. Lippincott Co., 1893). Vol. 1 - Books I & II, p. 67

<sup>40</sup> Laing, “Admiralty Jurisdiction,” pp. 163-182

dishonorable form of criminality to behavior that would be later covertly encouraged by Queen Elizabeth in her struggle against the rich Spanish Empire.<sup>41</sup> Under the Queen, piracy occupied an ambiguous space between criminal act and national security. Piracy under Henry VIII was not the proto-navy it would become in his daughter's reign. Elizabeth carefully used Privateers to enforce English mercantilism. Under Henry, alternatively, piracy was a criminal threat to trade and foreign diplomacy with access to ships that could escape the traditional ideas of jurisdiction. No pirate ships were used to attack the Spanish or other enemies in a bid to assert English control under Henry. Pirates were violent thieves. Accordingly, Henry's parliaments employed the threat of piracy in the 1530s as a justification to redirect authority toward the King's Courts.<sup>42</sup>

Henrician parliaments worked to "limit the jurisdiction of ecclesiastical courts by redesigning certain offenses as temporal crimes for trial in ordinary courts."<sup>43</sup> The Statute touching those who stood mute in court and the Piracy Act contributed to this goal. Other Statutes from this period also aimed to strengthen the powers of State. In 1539, for example, Parliament used the power of Statute to empower royal proclamations with the force of law.<sup>44</sup> In this striking cross-fertilization of State power, Parliament asserted that a crisis might require the King to create emergency policy without a formal parliament. In such cases, the royal proclamation might replace parliamentary statute.<sup>45</sup> Joel Hurstfield initially cast this law that

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<sup>41</sup> GD Ramsey, *The Politics of a Tudor Merchant Adventurer: Letters to the Earls of East Friesland*. Manchester University Press: 1979. See also DB Quinn and AN Ryan, *England's Sea Empire, 1550-1642*, part of the Early Modern Europe Today series, JH Sherman, editor. London: 1983.

<sup>42</sup> The Buggery Act of the same year would use socially unacceptable sexual behavior to perform a similar re-alignment in jurisdictional control, this time focusing on priests and monks (as I discuss below)

<sup>43</sup> Richard Davenport-Hines, *Sex, Death, and Punishment: Attitudes to Sex and Sexuality in Britain since the Renaissance*. Collins: 1998, p. 59

<sup>44</sup> 31 Henry VIII c 8

<sup>45</sup> Cromwell's draft of this legislation has been seen as the height of despotism, but the nuances of the law imply less of a despotic use of proclamations and more of a strengthening of centralized government. The law was repealed

strengthened the royal proclamation in terms of evidence of the classic Tudor Despotism. Elton's later treatment of the 1539 Act smoothed over that bold statement and wrote instead in support of the idea of the post-Reformation stronger Parliament with the leadership of the King.<sup>46</sup> The re-designation of certain acts from minor ecclesiastical offenses to major felonies certainly occurred in a similar act in 1534. Once again, the withdrawal of clergy from a newly-minted felony strengthened the severity of the Act.

This other 1534 Act targeted non-normative sexuality in a very short piece of legislation criminalizing the early modern offense of buggery. "Buggery" was a slippery term that could include diverse non-normative sexual acts, from oral sex to same-sex relations to bestiality and necrophilia.<sup>47</sup> The statute, "An Acte for the Punyshment of the Vice of Buggerie," claimed to fill a void in statutory law, since unacceptable sex acts had "not yett sufficient and condigne punyshment appointed and limytted by the due course of the lawes of this Realme."<sup>48</sup> Although the bill used "buggery" as the crime, the focus of the law was not the average adventurous married couple. Nor was the law inspired by a well-publicized case of bestiality: Sir Edward Coke falsely attributed the origins of the law to a story of a wealthy woman who copulated with

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less than a decade later. See GR Elton, *England Under The Tudors* London: 1974. For a debate over the larger role played by Royal Proclamation, see GR Elton "The Good Duke" in *Studies in Tudor and Stuart Politics and Government* Vol I. Cambridge University Press: 2003, pp. 231-237, especially p. 236

<sup>46</sup> Joel Hurstfield found this Act to be a bold move of despotism in his article, "Was There a Tudor Despotism After All?" in *Freedom Corruption and Government in Elizabethan England* (London 1973) pp. 23-49. GR Elton rejected that view in a much more balanced approach that suggested the king-in-parliament model. See "Henry VIII's Act of Proclamation" in *Studies in Tudor and Stuart Politics and Government*. Cambridge University Press: 1974, pp. 339-354. The latter interpretation seems to have been adopted by consensus. See PR Roberts's discussion on the issue in his chapter, "The 'Henry VIII Clause' Delegated Legislation and the Tudor Principality of Wales" in Thomas Watkin, ed. *Legal Record and Historical Reality: Proceedings of the Eighth British Legal History Conference*. Continuum International Publishing Group: 2003, pp. 37-42

<sup>47</sup> OED "Buggery"; John Cowell claims that this "sin against God, Nature, and the Law" was brought to England by the Lombards. Cowell's *The Interpreter*. London: 1607, under "Buggery"

<sup>48</sup> 25 Henry VIII c 6 *The Statutes of the Realm*, Vol III, p. 441

a baboon and gave birth to a monstrous baboon-human hybrid.<sup>49</sup> The Journal of the House of Lords was much more specific by describing the legislation as a “Bill against Sodomie.”<sup>50</sup> Overtly, the bill gave the State authority to prosecute sexual misconduct among men.

The debate over the issue of sodomy began in the House of Lords. It passed its three readings in quick succession to be enacted briskly.<sup>51</sup> The final version of the Act created provisions against “the detestable and abomynable vice of mankynde or beaste.”<sup>52</sup> The statute determined such acts to be felony, in line with any other felony at common law, meaning that, if convicted, the offenders should suffer death and loss of goods, chattels, lands, etc. Furthermore, “no p[er]son offendyng in any suche offence shalbe admyttid to hys clergie.”<sup>53</sup> Parliament essentially drew all men suspected of same-sex relations out of the ecclesiastical jurisdiction and into the royal courts by categorizing sexual misconduct as a civil offense and prohibiting the use of clergy to escape such charges.

Prominent historian of sexuality Alan Bray has found that “There is no evidence whatsoever of any absolute increase in hostility to homosexuality” during the early modern period.<sup>54</sup> Although the issue of sodomy among men received repeated statutory attention under the Tudors and Stuarts, his research has not found any rise in cultural references to fears of same-

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<sup>49</sup> Sir Edward Coke, “On Sodomy” in *The Third Part of the Institutes*, Chapter Ten, p. 58.

<sup>50</sup> The bill was introduced on 19 January 1534 and read again on 21 and 22 January before being sent to the Commons on 7 February. See *The House of Lords Journal*, Volume 1, History of Parliament Trust: 1767-1830, pp. 60-61 and 65. The final list of Acts, including the “Act of Sodomie” is listed on p. 83.

<sup>51</sup> As noted in n29, the bill received a speedy three readings before being sent to the House of Commons for approval without any recorded interruptions from either house.

<sup>52</sup> 25 Henry VIII c 6, *The Statutes of the Realm*, Vol III, p. 441

<sup>53</sup> *Ibid*

<sup>54</sup> Alan Bray, *Homosexuality in Renaissance England*. London: 1982, p. 92

sex coupling. Why should Parliament address this issue in the midst of the 1530s, with such alarm and strong penalties?

The answer lies in the Reformation-era shifts of power and jurisdiction. Traditionally, sexual problems – from frigid wives and impotent husbands to adulterers and harlots and bastards – would have been prosecuted in the ecclesiastical courts.<sup>55</sup> Consequently, we read that Lord Hungerford was executed for sodomy in 1541, while in the same year, the trial of an Eton headmaster allowed merciful imprisonment and not death for the same crime committed with some of his pupils.<sup>56</sup> Prior to the Reformation, such cases would have been heard in the ecclesiastical courts, but following 1534 they were regarded as belonging to the jurisdiction of royal officials. Church officials persisted in policing sex when they could. The “bawdy courts” held hearings on suspicions of sexual misconduct throughout the early modern period. Sexual crimes were prosecuted in waves of political anxiety. However, as R. B. Outhwaite noted, “Not many men, for example, were brought into court for sodomy or bestiality, perhaps only partly because such practices became felonies tried at common law after 1534.”<sup>57</sup>

The timing of the bill and the urgency with which it was debated and passed in the House of Lords suggested an alternative motive for criminalizing relationships between men. This raised the question of which men were causing such concern. Historian Randolph Trumbach has concluded that the criminalization of buggery “was a first step in justifying the dissolution of the

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<sup>55</sup> Houlbrooke, pp. 60-61, 75-79, and 84-85. See also Martin Ingram’s book, *Church Courts, Sex, and Marriage in England, 1570-1640* for more of the story. Cambridge University Press: 1987, especially “Part One: The Legal and Social Background” pp. 25-167

<sup>56</sup> Bellamy, *Tudor Law of Treason: An Introduction*. Routledge:1979, pp. 42-43 and JH Baker, “Sexual Offenses,” *The Oxford History of the Laws of England*, Vol IV, 1483-1558. Oxford University Press: 2003, pp. 562-563, especially note 102 on p. 563

<sup>57</sup> R.B Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860*. Cambridge University Press: 2006, p. 59. See also Martin Ingram, *Church Courts, Sex, and Marriage in England, 1570-1640*, Past & Present Publications: Cambridge University Press, 1990, p. 152

monasteries and the seizure of their endowments.”<sup>58</sup> Among other Reformation-era policies, the criminalization and deprivation of benefit of clergy created new weapons through which the King’s ministers could investigate and threaten the monasteries of England.

Immediately following the passage of the Act that criminalized the “detestable and abominable vice of buggery,” Thomas Cromwell established an investigation into the monasteries’ private world. He distributed a formal questionnaire concerning the sexuality of religious clergy living in cloistered communities: the monasteries, convents, and universities of England.<sup>59</sup> This questionnaire would be one of the first steps to controlling the bodies of religious men in England. Fortunately, some copies of this questionnaire have survived.<sup>60</sup> The inquiry constitutes a fascinating investigation into the feasibility of the confiscation of large tracts of ecclesiastical property based on the personal behaviors and interactions of the religious people living on the lands. By documenting the personal lifestyles of religious people, sexual pleasure could be cast as crimes against the realm. Accordingly, ordained men could be made subject to extreme criminal penalties in the royal courts without access to their traditional legal privileges.<sup>61</sup>

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<sup>58</sup> Randolph Trumbach, “Renaissance Sodomy 1500-1700” in Matt Cook, ed *A Gay History of Britain: Love and Sex between Men since the Middle Ages*, Greenwood World Publisher: 2007, pp. 45-76; quote from p. 49

<sup>59</sup> FD Logan, “Thomas Cromwell and the Vicegerency in Spirituals: A Revisitation” in *The English Historical Review*, ciii (1988) pp. 658-669

<sup>60</sup> Two copies exist at the British Library: Cotton MS Cleopatra F ii fos 131-135 and Add MS 32,091 fos 121-122. See also Wilkins *Concilia*, Vol III pp. 784-785.

<sup>61</sup> It is difficult to say if any of these prohibitions led to new trials. The legal changes appear to involve posturing and threats aimed at the church and its cloistered members. Trial records are not well-kept until the Assize collections under Elizabeth I. There are indeed some cases of buggery in the Assize courts, though mostly involving bestiality rather than sodomy. See the case of Robrt Pytkyn of Little Gaddesden, indicted for bugger of a red cow but found not guilty in 1576. Thomas Rees was similarly accused of buggering a horse in 1583 but “At Large.” William Gerson was less fortunate and found guilty of buggering his horse in 1590: “To Hang.” Thomas Rice was accused of buggering a two steers in 1596 but found not guilty. *Calendar of the Assizes of Elizabethan Hertfordshire*, Case 78 p. 13, Case 304 p. 48, Case 474, p. 76, and Case 829, p. 130. Similar cases can be found in other Elizabethan courts, but curiously not under James. Assize volumes for Kent, Hertfordshire, and Sussex from 1559 to 1649 contain only one case of buggery between men out of 26 buggery cases total. In 1645 the Kent records

The inquiry was comprised of 86 questions that were administered by commissioners sent to the convents, monasteries, and universities throughout England. The questions included issues ranging from details of how often the King's health was praised to the appearance of women or young boys in the dormitories of monks.<sup>62</sup> By asking about a secret rendezvous with boys smuggled into monasteries, the practical arrangements of bedding and sleeping patterns, the frequency of using romantic phrasing in dialogue or written letters, and the exchange of gifts and tokens that might indicate an inappropriate relationship,<sup>63</sup> royal representatives were able to draw the once-protected ordained men and women into the royal jurisdiction and threaten to punish them with felonious severity without benefit of clergy. Under threat of execution, the members of these cloistered communities were forced to cooperate with Cromwell's project to survey and confiscate the monastic lands and buildings. Resistance could lead to persecution under the new buggery laws and ultimately to the loss of life.

Once the questionnaire was strengthened through the statutory criminalization of specific forms of sexuality, its power was direct. Certain members of the Church who might persist in their loyalty to the Pope in Rome were brought within royal jurisdiction. Whether they were engaging in the prohibited behavior themselves or merely living among those guilty of it, such personal choices diminished the strength of the institutions that had been in the best position to challenge the religious reforms. The sexual lives of monks were no longer a spiritual sin to be examined through the ecclesiastical courts. Instead, buggery became a felony. Bernard proposes that "buggery" was even designed to include masturbation, which might further target those

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include a case of Henry Gibbs who committed buggery with William Phillpott, an oatmeal-maker. Both were found guilty; Gibbs was to hang but William Phillpott was reprieved after sentencing. See *Calendar of Assize Records for Kent under Charles I*, Cases 2271-2272, p. 471

<sup>62</sup> Bernard, *The King's Reformation*, p. 249-257

<sup>63</sup> Bernard, *The King's Reformation*, p. 251

living a celibate life.<sup>64</sup> But the Act was not designed to execute dozens of monks or to confiscate their small personal possessions. The Act was designed to facilitate the intimidation of closed religious communities. The sudden royal presence in these traditionally cloistered and isolated institutions provided an opening that would enable the later attack, confiscation, and distribution of monastic lands.

The Questionnaire was sent to religious institutions ahead of visits by officials or servants of Cromwell. Visitations followed soon after, with reports of sexual misconduct trickling in and recorded in the *Letters and Papers of Henry VIII*. On 5 November 1535, a report concerning the house of St Martyn's in Dover mentioned that "The convent reverently received the King's commission on Oct. 31, sealed with his ecclesiastical seal."<sup>65</sup> Richard Layton reported to Cromwell in August of 1535 a priest in St Austin's who had become father of six children by various women and who had a license from the Pope to keep a concubine.<sup>66</sup> In September 1535, Cromwell explained to Sir Gregory Casale that the King was "obliged to send [the monks] to prison lest the contagion should spread" after reporting on the monks' purposeful disgrace and their "ready tongues, [who] vomited their venom over them, forgetful of their duty to their King and charity to their country."<sup>67</sup> In October of the same year, Layton discovered another priest surrounded by women who had born his children; the prior of Shelbrede was said to have seven

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<sup>64</sup> Bernard *The King's Reformation*, p. 259

<sup>65</sup> *Letters and Papers of Henry VIII*, Vol IX No 756, 5 November 1535. <http://www.british-history.ac.uk/report.aspx?compid=75676> (Accessed on 30 December 2012)

<sup>66</sup> *Letters and Papers of Henry VIII*, Vol IX, No 168, August 1535. <http://www.british-history.ac.uk/report.aspx?compid=75664> (Accessed 30 December 2012)

<sup>67</sup> Cromwell is not specific in offenses, often hinting at the problem behavior rather than forthcoming with the details of either sex or sedition. *Letters and Papers of Henry VIII* Vol IX, No 240 September 1535 <http://www.british-history.ac.uk/report.aspx?compid=75666> (Accessed 30 December 2012), and GW Bernard, *King's Reformation*, p. 646 n130. See also State Papers 1/102 fos 85-100 at The National Archives, Kew.

different women and “his monks four or five each.”<sup>68</sup> Layton discovered that “The prior of Dover and his monks are as bad as others. Sodomites there is none, for they have no lack of women. The abbot of Langden is worse than all the rest, the drunkenest knave living.”<sup>69</sup> On 22 December, Layton discovered nuns in London pregnant and two with already three “fair children” between them.<sup>70</sup> Such investigations uncovered mostly a pattern of sexual activity across the convents and monasteries of England, with no open discoveries of sodomites.

This pattern would change in February of 1535/6, when a visitation of dozens of monasteries yielded discoveries in direct relation to the sodomy law. John ap Rice discovered five monks guilty of sodomy at Garadon; one with ten different boys.<sup>71</sup> His work at Shelford similarly uncovered three known sodomites. At Thurgaton, ten sodomites (“some with boys”) were revealed to the royal representative. Carlisle Monastery contained seven known sodomites. In all, this single report included 157 men accused of sodomy by the King’s representatives across 42 institutions, amidst even more cases of adulterers, concubines, superstitions, and bastard children.<sup>72</sup> The threat of execution for violating laws such as sodomy opened the closed religious communities to royal representatives. Faced with potential charges that could endanger the lives of their fellows, the abbots and priors were forced to take the secular evaluation of their religious institutions quite seriously. Cases of drunkenness, disorder, and sexual license were

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<sup>68</sup> *Letters and Papers of Henry VIII* Vol IX, No 533 4 October 1535. <http://www.british-history.ac.uk/report.aspx?compid=75671> (Accessed 30 December 2012)

<sup>69</sup> *Letters and Papers of Henry VIII* Vol IX, No 669, 23 October 1535. <http://www.british-history.ac.uk/report.aspx?compid=75674> (Accessed 30 December 2012)

<sup>70</sup> *Letters and Papers of Henry VIII* Vol IX, No 1005, 22 December 1535. <http://www.british-history.ac.uk/report.aspx?compid=75682> (Accessed 30 December 2012)

<sup>71</sup> *Letters and Papers of Henry VIII* Vol X, No 364, 28 February 1535/6 <http://www.british-history.ac.uk/report.aspx?compid=75418> (Accessed 2 January 2013)

<sup>72</sup> *Letters and Papers of Henry VIII* Vol X, No 364, 28 February 1535/6 <http://www.british-history.ac.uk/report.aspx?compid=75418> (Accessed 2 January 2013)

investigated alongside charges of sodomy as these religious servants were drawn well into royal jurisdiction.

Benefit of clergy was not the central point of reform or dissolution in the spiritual institutions of England. However, this Act employed a traditional clerical privilege in order to diminish the strength of priests and monks throughout the kingdom. The purposeful appropriation of this tradition that had favored so many priests is particularly striking when we examine the scope of dissolution and its impact on England's Catholic clergy in the 1530s.

Here we have examples of benefit of clergy assisting with the increasing strength of the State during a time of fluctuating authority. Brendan Bradshaw argues that the decisions concerning major change, in particular the dissolution of the monasteries, were not a matter of fact until 1536.<sup>73</sup> However, the slow appropriation of benefit of clergy was a prominent theme during this Reformation Parliament even if there was no evidence of a long-term intention to recast clergy in order to facilitate the strengthening of royal power and jurisdictions. By the end of the Reformation Parliament, the manner of the benefit's contributions was wholly separate from the medieval version of the privilege. Clergy was denied to defendants who refuse to cooperate, and worked to draw men in orders into royal jurisdiction should they be suspected of sexual crimes. With the Church under attack during the Reformation, subjects could be coerced into using royal courts and accepting the augmented parliamentary power if they voluntarily choose to use these secular institutions. Offering exemption from felonious execution persuaded subjects to accept the growing royal authority during a time of diminished Church presence.

The fact that an ecclesiastical privilege survived the Reformation in a form applied to the laity does not explain the widespread use of the benefit that followed. The rise in claiming rates

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<sup>73</sup> Brendan Bradshaw, *The Dissolution of the Religious Orders in Ireland under Henry VIII*. Cambridge University Press: 1974, p. 47

was the product of tying the privilege to a variety of policies designed to extend the royal authority. The incidental but persistent use of benefit of clergy as part of a solution touching dozens of problems enabled the wider application of the privilege throughout England. The benefit could be offered or withdrawn while Parliament re-examined the strength and existence of rival institutions like the Admiral Courts and monasteries. Such transitions are an important part of the Tudor narrative, but so too were the interactions between royal power and subjects in discouraging socially unacceptable behavior and undesirable actions.

### **Laws Discouraging Behavior**

As the Medieval version of clergy was discarded, the most prominent function of benefit of clergy was to grant deserving felonious offenders a second chance. Discouraging acts of assault, theft, or disorder allowed an opportunity for wicked men to reform themselves and contribute to the common peace. The most frequent crime to lead to a successful claim of the benefit was larceny.<sup>74</sup> Allowing a man reprieve after his conviction was not the same as refusing to prosecute him at all, although the sentence was virtually identical. With a claim of clergy, a second offense looked quite different. Without clergy, if a jury was too sympathetic to convict for instance, a second conviction would be viewed the same as the first. So even in forgiveness, clergy served a valuable purpose of creating a legal trail of criminal behavior. In addition, the symbolic mercy offered to educated men sent a nuanced message to the community about royal power and “Englishness.” Benefit of clergy took on a unique character within England.

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<sup>74</sup> See Chapter Four, pp. 225-226 of this dissertation for information on trial records and prominence of larceny

Ultimately, since Parliament had redesigned laws concerning benefit of clergy and ecclesiastical offenses, there existed a precedent for royal authority to supersede the authority of the Church and especially of the foreign authority of the Pope.<sup>75</sup>

The basic premise of the benefit granted reprieve. But benefit of clergy was also employed to create a series of harsher punishments. In these multi-tiered punishments, the first offense might not be considered a felony, but the third offense would be, as in the case of damaging property by witchcraft. In the process, minor crimes could then increase in severity of punishment as an adult man increased the frustration of local authorities. Punishments with multiple levels had the effect of offering forgiveness to a first offense regardless of the status or literacy of the claimant involved, but extending that forgiveness to literate laymen only on the second offense. All first offenders received a warning but second offenders risked execution if they were not literate. Some of these offenders might even be women or the illiterate (both of whom would be ineligible for clergy) but receive clemency the first time, according to the staggered clauses of the Statute. By prescribing death without allowance for clergy for a second or third offense, Parliament effectively discouraged such actions from the population but opened forgiveness to a larger group than a mere clergyable felony would provide. Examples of these multi-tiered punishments include vagrancy, witchcraft, and sedition. Tudor era statutes began to prescribe a much more complicated series of punishments with multiple levels of penalty, using benefit of clergy as an option after multiple offenses rather than on the first prosecution.

A very good example of this type of multi-layered punishment was the ever-changing scheme for discouraging vagabonds. The dissolution of the monasteries and the changing demographics of a growing England created a perennial problem in homelessness and

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<sup>75</sup> Franklin le van Baumer, *Early Tudor Theory of Kingship*, Yale University Press: 1940, paraphrasing his appraisal on p. 72

vagrancy.<sup>76</sup> Under Edward VI, as homelessness and unemployment rose, Parliament established a multi-tiered system for identifying, isolating, and punishing vagabonds.<sup>77</sup> The identification involved branding the sin into the offender's body, marking the vagabond with the crime. The idea was to discourage the act of begging or long-term unemployment in the first place by publically identifying offenders and using their bodies as a message to prevent other people from begging. One of the first Acts of the Edwardian parliaments defined vagabonds as those who did not have any sickness or disability or who likewise did not have the income from landed interests to remain idle but yet chose to remain idle and unemployed.<sup>78</sup> The harsh and densely layered penalties for vagrancy suggest that homelessness was a critical problem during the mid-Tudor years. Many historians have suggested that the threat was imaginary and reflected the population boom of the sixteenth century more than a vacuum in social services.<sup>79</sup> Nevertheless, Edwardian legislators sought to discourage groups of vagrants.

Parliament intended to punish idle subjects with a complex system that discouraged perceived laziness on multiple levels before finally threatening execution. The 1547 Statute established characteristics to identify vagabonds. Such people were then given a brief time period – as little as three days – to find work. If they are unable to find “some honest and allowed art, science, service or Labor” then they may be “taken for a Vagabond” and delivered to two Justices of the Peace. If the JPs found these alleged vagabonds to be as idle and loitering as

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<sup>76</sup> Paul Slack, *The English Poor Law, 1531 to 1782*. Cambridge University Press: 1995, pp. 9-13

<sup>77</sup> 1 Edward VI c 3, *The Statutes of the Realm*, Vol IV, pp. 5-8

<sup>78</sup> 1 Edward VI c 3, *The Statutes of the Realm*, Vol IV, p. 5

<sup>79</sup> CSL Davis, "Slavery and Protector Somerset: The Vagrancy Act of 1547," *Economic History Review*, 2d Ser., XIX (1966), pp. 533-549, esp pp. 536-538; Linda Woodbridge, *Vagrancy Homelessness, and English Renaissance Literature*, University of Illinois Press: 2001, p. 1-6; William Carroll, *Fat King, Lean Beggar: Representations of Poverty in the Age of Shakespeare*, Cornell University Press: 1996, p. 36

reputed, the JPs could “adjudge the said person living so idly to such presentation to be his Slave.” Slaves would be branded upon the breast with a large V and sentence to two years’ hard labor under a local master of good repute.<sup>80</sup>

The vagabond was sentenced to work for two full years under this master. Should the man, considered a temporary slave, attempt to escape his fate before the two years were completed, the local JP was to recapture the vagabond and mark him on the breast with an “S” over the V, for Slave. At that point, the court system “shall adjudge the loiterer and runaway to be slave forever” and the man would be considered a slave to the master for life. Any further attempt to escape made the slave a felon, to suffer the pains of death as felons should.

After establishing the basic tiers of punishment, the statute addressed the applicability of clergy in a second clause.<sup>81</sup> Here, a claim of the benefit would not let a vagabond go free. The Act instead called for eligible first offenders to receive a reduced sentence of a single year in slavery. While the average vagabond would be declared slave for life on a second offense, literate laymen were allowed to escape the lifetime penalty by posting surety with a claim of clergy and demonstration of literacy. The process of claiming also saved the privileged defendants from being branded on the chest. The claimants still received a brand, but only one on the thumb, as with any claim of the privilege. Successful claimants would be delivered to the Ordinary, who could employ the slaves for the prescribed year on his own lands or select a man of good repute to employ the offender. So long as the perpetrator learned his lesson, the punishment fit the crime by prescribing labor for the labor-resistant.

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<sup>80</sup> The primary clause and all the quotes related to it are from *The Statutes of the Realm*, Vol IV, p. 5

<sup>81</sup> Clause 2 of 1 Edward VI c 3, *The Statutes of the Realm*, Vol IV, pp. 5-6

This complicated system for punishment utilized many of the early modern punishments in an attempt to curb the problem of roaming vagabonds across the realm. By including an incremental system of punishment, the new system purported to give the poor and homeless various opportunities to find work. However, a lifetime of idleness could lead to a searing brand on the chest, a lifelong sentence of slavery, or even execution – unless the unemployed vagrant was literate. For the literate vagabond, benefit of clergy provided a separate path to the consequences of unemployment or idleness.

Witchcraft was another crime for which multi-tiered punishments created second chances in addition to the use of benefit of clergy. In 1541, under Henry VIII, witchcraft and sorcery were declared new felonies without possibility of clergy. The preamble described sorcery as acts to inflict bodily harm, to impersonate royal persons, or even to attempt creating silver and gold out of nothing. Common acts of sorcery were the “great hurt and damage of the King’s Subjects, and loss of the souls of such offenders, to the great dishonor of God, Infamy, and Disquiet of the Realm.”<sup>82</sup> The Henrician Act strictly prohibited all acts of sorcery, deeming them to be Felony without benefit of clergy. However, this temporary Statute was later amended for a more nuanced approach. Perhaps authorities felt that witchcraft was something that innocent people might do by accident; dabbling in black magic without fatal results might be forgiven for the first offense. Theoretically, the girl accused of using a love potion would be sentenced to death under the Act. The permanency of execution in such a sympathetic case probably explains the passage of a more complex, multi-tiered approach to punishing first- and second-offenders.<sup>83</sup> The

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<sup>82</sup> 33 Henry VIII c 8, “The Bill Against Conjurations & Witchcrafts and Sorceries and Enchantments” *The Statutes of the Realm*, Vol III, p. 837

<sup>83</sup> For examples in practice as it pertains to English legal development see Alan MacFarlane’s *Witchcraft in Tudor and Stuart England: A Comparative and Regional Study*. Routledge, London: 1970, especially pp. 94-99 and 251-252; Keith Thomas *Religion and the Decline of Magic*, Oxford University Press: 1998, pp. 517-558; and James

relationship between witchcraft and the punishment creates a difficult position for the historian, as the imaginary crimes associated with these stark punishments are entirely based on fear of magic without any substantial evidence to tie physical wrong-doing to any particular criminal.<sup>84</sup> Nevertheless, Parliament took witchcraft very seriously and used benefit of clergy in order to create a series of increasing penalties for continued use of enchantments.

As with vagabonds, witches and sorcerers received a multi-tiered punishment system under Elizabeth in 1563.<sup>85</sup> The Act deemed witchcraft involving the death of a human as unclergyable, but mitigated lesser uses of magic. Injury to someone without express bodily harm was considered an offense for which clergy may be claimed. The first conviction of magical harm would lead to public whipping and a year's imprisonment. The public nature of the punishment would send a strong message to any other would-be witches in the community. Suspicion of a second offense where the victim of black magic was harmed or killed would lead to death by burning without allowance of clergy.<sup>86</sup> These layers of punishment reflected some of the difficulties in determining and prosecuting crimes of witchcraft, which was often not specifically about stamping out supposed deals with the devil or manipulation of evil spirits but rather settling local disputes or creating order out of disordered houses, both familial or religious.

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Sharpe *Instruments of Darkness: Witchcraft in Early Modern England*, University of Pennsylvania Press: 1996, pp. 88-94 and 105-127

<sup>84</sup> MacFarlane discusses the problem of evidence in his opening chapter of *Witchcraft in Tudor and Stuart England*, pp. 3-13. The terms themselves – witchcraft, sorcery, trickery – can mean different things to different witnesses, and the forms of legislation attempted to encompass all offenses without punishing “cunning folk” for “white magic.” The resulting contradictory nature of information as gleaned from court documents and testimony make studying witchcraft and the law particularly challenging for historians.

<sup>85</sup> 5 Elizabeth c 16 “An Act against Conjurations, Witchcraft, Enchantments, etc” *The Statutes of the Realm*, Vol IV, pp. 446-47

<sup>86</sup> 5 Elizabeth c 16, *The Statutes of the Realm*, Vol IV, pp. 446

A layered approach gave local authorities the tools to administer levels of justice tempered by the realities of problematic evidence and complex community relationships.

The subject of witchcraft persecution has received a lot of attention in the past four decades. While many theories have connected a series of events during the early modern spike in cases of magic, no single hypothesis can explain the apparent explosion of prosecution over the crimes of sorcery and witchcraft. The themes of explanation have varied from a reliance of the formation of nation-states and centralization of secular, royal authority to the rapid religious change associated with the European reformations.<sup>87</sup> Class warfare, misogyny, and social tensions could explain many of the accusations, sensationalist trials, and communities torn apart by accusations of witchcraft.<sup>88</sup> The rise of capitalism and the increase of wealth disparity – particularly in light of the rise of vagrancy and poverty following the dissolution of the monasteries in England – might also shed some light on the increased incidence of witchcraft during the period between 1450 and 1700. Yet no single theory adequately explains the sudden rise in accusations across kingdoms with diverse religious beliefs nor its precipitous fall in the mid-eighteenth century. The most compelling argument explaining the witchcraft phenomenon

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<sup>87</sup> Concerning nation-states, Hugh Trevor-Roper, *The European Witch-craze of the Sixteenth and Seventeenth Centuries*, Harmondsworth: 1969, and the majority of witchcraft projects from the nineteenth century. Concerning religious influences in persecuting witchcraft, consider Wallace Notestein's PhD Thesis *A History of Witchcraft in England from 1558 to 1718* published by the American Historical Association: 1922. and Keith Thomas's book *Religion and the Decline of Magic*.

<sup>88</sup> The classic publications investigating witchcraft from below were works from the 1970s by Alan Macfarlane, *Witchcraft in Tudor and Stuart England*, and Keith Thomas, *Religion and the Decline of Magic*. The role of misogyny and fears concerning assertive women in witchcraft were explained in Barbara Ehrenreich and Deirdre English, *Witches, Midwives, and Nurses: A History of Women Healers*, Writers and Readers Publishing Cooperative: 1973, and Lyndal Roper, *Oedipus and the Devil: Witchcraft, Sexuality, and Religion in Early Modern Europe*, Routledge: 1994, among many others. While not all convicted witches were women, approximately 80% of them were, indicating a strong gendered element to discovering and punishing dark magic. Sharpe, *Witchcraft in Early Modern England*, Longman: 2001, pp. 9-10

appears to tie all of these theories together: social fears associated with poverty and powerful, assertive women during a period of burgeoning nationalism and the rise of income disparity.<sup>89</sup>

Concerning the witchcraft Statute of 1563 in particular, a consensus has been reached about a few key cases in the early 1560s that emphasized the need for a more fluid and powerful law against various levels of witchcraft. Sir Edward Waldegrave and his collaborators of zealous religious supporters gave rise to a series of accusations concerning witchcraft in the early 1560s.<sup>90</sup> The trials of these cases found the law to be wanting. The subsequent witchcraft law of 1563 has been the subject of numerous interrelated theories. In John Neale's project on the Elizabethan Parliaments, he pointed to this law as evidence of an active Puritan presence in Parliamentary faction.<sup>91</sup> GR Elton took this idea a step further by including the wider Protestant factions and their goals of silencing or discouraging open Catholics as much as possible.<sup>92</sup> Norman Jones took a higher ground. He attributed this law less to faction and more to religious suspicion. His theory was that this witchcraft law was drafted to give Elizabethan magistrates a sturdier guide for dealing with superstitious Catholics. In particular, this criminalized the Catholic tradition of white magic. Thus the new law created treasonous and felonious guidelines for targeting someone for belief-based actions without actually seeking to know their inner conscience.<sup>93</sup> Ultimately, the law probably reflected all three theories: the growing power of a

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<sup>89</sup> See for instance James Sharpe's 1996 work *Instruments of Darkness*, Garthine Walker's chapter, "The Strangeness of the Familiar: Witchcraft and the Law in Early Modern England" found in Angela McShane and Garthine Walker, eds, *The Extraordinary and the Everyday in Early Modern England: Essays in celebration of the work of Bernard Capp*, Palgrave MacMillan: 2010, pp. 105-124, Malcolm Gaskills' recent article "Witchcraft and Evidence in Early Modern England" in *Past & Present*, 198 (2008), pp. 33-70.

<sup>90</sup> "Clerke v Waldegrave." The National Archives, Kew, England C 3/207/16.

<sup>91</sup> John Neale, *Elizabeth I and Her Parliaments*. New York: WW Norton: 1966, p. 117

<sup>92</sup> GR Elton, *The Parliament of England 1559-1581*. Cambridge University Press: 1986, p. 181

<sup>93</sup> Norman Jones, *Faith by Statute, Parliament and the Settlement of Religion 1559* London: Royal Historical Society, 1982, pp. 172-176

Puritan faction at Court, the concern of Protestant MPs over the boldness of persistent Catholics, and the need for some legislation that could be used to discourage Catholics further.<sup>94</sup> The subsequent legislation could then be applied to Catholics and non-Catholics alike who acted with suspicious ritual when squabbling with neighbors.

Benefit of clergy was a way to discourage accusations of witchcraft that resulted from tensions among neighbors without de-criminalizing sorcery itself. The witchcraft statute included a third tier of magical offenses beyond death or bodily harm: attacks on property by spells and charms. Such enchantments were discouraged to a lesser degree by giving three separate levels of punishment. The first offense led to public whipping, a way to send a message to other would-be witches. The second offense meant the forfeiture of all goods and chattels. Only the third offense of sorcery designed to hurt the property of a social enemy would finally declare the alleged witch or sorcerer to be felon without possibility of clergy, even if no person were harmed or killed in the act. The variety of approaches reflected the different elements of witchcraft believed to be available to those cunning folk, from white witches to the black arts. The Bible itself presents about five different types of witches, from minor to extreme, and these were appraised in a 1590 work by Henry Holland.<sup>95</sup> The supernatural movement of an object was not the same as attacking an animal or the person of a neighbor.<sup>96</sup> None of those offenses were as serious as the curse that might lead to sickness and death. Therefore, rather than punish all

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<sup>94</sup> This is Norman Jones' conclusion in his chapter contribution. "Defining Superstitious: Treasonous Catholics and the Act against Witchcraft of 1563" in Charles Carlton, Robert Woods, Mary Robertson, and Joseph Block, eds, *State, Sovereigns, & Society in Early Modern England: Essays in Honour of AJ Slavin*. St Martin's Press: New York, pp. 188-203

<sup>95</sup> Henry Holland, *A Treatise Against Witchcraft*. Cambridge: 1590, fs. B4-D4

<sup>96</sup> Witchcraft took many forms in the early modern imagination. See Stuart Clark's *Thinking with Demons: the Idea of Witchcraft in Early Modern Europe* for a comprehensive discussion on the various phenomena blamed on witchcraft during this period. Clarendon Press: 1991

sorcerers equally, the theme of the punishment was to discourage future offenses. Benefit of clergy played a key role in that goal of discouraging sorcery.

James I repealed Elizabeth's complicated system of punishment in 1603/4.<sup>97</sup> The replacement law abandoned the idea of merely discouraging the use of sorcery and witchcraft. Fearing more intense uses of black magic – including the specific fear of using dead bodies to commit acts of magic and sorcery against living subjects – his first session of Parliament deemed all acts of witchcraft to be felony without benefit of clergy.<sup>98</sup> The new Act was much simpler and transitioned the status of witchcraft from a merely discouraged crime with second chances to a starkly forbidden, never-forgiven, act against god and nature. This new, harsher language reflected the idea that witches were “loathe to confess without torture.”<sup>99</sup> Beginning with James' reforms against sorcery and witchcraft, corporal and capital punishment would be an essential part of rooting out witches and cunning folk. Benefit of clergy would not be a part of the royal efforts to discourage the use of witchcraft. In Stuart England, all forms of witchcraft, no matter how small or subtle, meant death as felon, without benefit of clergy.<sup>100</sup>

The value of using levels of punishment including the benefit for various offenses was that it allowed for local discretion and mercy in offenses that were difficult to establish and prove. Sedition against the Crown was another example of a serious crime that required nuance and punishment. Under Elizabethan policy in 1581, Parliament discouraged treasonous speech

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<sup>97</sup> James appears to have had a heavy hand in the 1604 legislation. See PG Maxwell-Stuart, “King James's Experience of Witches, And The 1604 English Witchcraft Act.” *Witchcraft and the Act of 1604*. Eds. J. Newton and J. Bath. Brill, 2008, pp. 29-46

<sup>98</sup> 1 Jacobi c 12, “An Act against Conjurations, Witchcraft, and Dealing with Evil and Wicked Spirits” in *The Statutes of the Realm*, Vol IV, pp1028-29

<sup>99</sup> 1 Jacobi c 12

<sup>100</sup> The classical comparative work on Tudor and Stuart Witchcraft is Alan MacFarlane's *Witchcraft in Tudor and Stuart England*.

and Jesuit activity in England.<sup>101</sup> There was a careful balance to be struck between acts of treason in the name of religion and persecuting people for their faiths; an overzealous approach risked the rebellion of a populace and a reputation as a cruel monarch.<sup>102</sup> Accordingly, carefully crafted punishment for sedition was a multi-layered approach with the first offense leading to the loss of both ears. The corporal disfigurement served as a constant reminder of the offender's severe rejection of the Queen. The second offense immediately meant death: felony without benefit of clergy. Of course, Parliament could have simply made the first offense unclergyable, or clergyable so that second offenders were put to death. Yet the existing alternative was more inclusive: it allowed offenders – literate or not – a chance to supplicate themselves to the Queen's mercy without the physical and shameful punishment of disfigurement. In turn, this enhanced the reputation of the Queen among her harshest critics: seditious libelers. The existing punishment was worse than allowing clergy for the first offense – losing both ears outweighed a small brand on the thumb – but loss of ears became a message to all who saw the offender. In allowing life for the subject in this first offense, the policy against seditious words about the Queen found itself a walking piece of propaganda. Perhaps only a very determined rebel would lose both ears yet persist in speaking openly against the Queen; besides, such repeat offenders would be sentenced to death under the new law.

With the new Statute concerning sedition, the law provided a guide for punishing Jesuits who worked to spread dissatisfaction and treason among Her Majesty's subjects without necessarily delving into the prosecution of all Catholics. In 1676, a book exploring this theme

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<sup>101</sup> 23 Elizabeth c2 “An Act against seditious words Uttered against the Queen” in *The Statutes of the Realm*, Vol IV, pp. 659-61

<sup>102</sup> Even Christopher Haigh's relatively harsh biography of the Queen asserts this point that Elizabeth was determined to justify treason statutes as rooting out behavior threatening her person and realm rather than focusing on the faith and beliefs of a subject's conscience. *Elizabeth I: Profiles in Power*, second edition, general editor Keith Robbins. Pearson and Longman: 1998, pp. 42-43

demonstrated the dangers of refusing to persecute Catholics in the history of the latter sixteenth century as it contributed to the Gunpowder Plot of 1605 and the French massacre of the Huguenots.<sup>103</sup> Jacques-Auguste de Thou discussed the conspiracies against Elizabeth and the need for balancing legislation against actions and crimes rather than prohibiting personal beliefs. Her approach ensured that private beliefs could be left alone if there were no challenge to her person, allowing some room for matters of faith.<sup>104</sup>

In order to discourage assistance to enemies of the state and to prevent subjects from declaring their allegiance to their faith over the allegiance to the Crown, later Elizabethan Parliaments set up a multi-level punishment scheme for devout Catholics and those who harbored Jesuits. Jesuits themselves were declared felons without benefit of clergy and their actions in undermining Elizabeth as Queen and Sovereign were easily dismissed as treasonous. Yet the issue of punishing their accessories was more complicated. Elizabethan policy was less ambitious about punishing the private beliefs of her people. Yet helping enemies of the state was something that had to be addressed on a practical level. In 1584, Jesuits were declared Traitors

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<sup>103</sup> Jacques-Auguste de Thou, *The histories of the gunpowder-treason and the massacre at Paris together with a discourse concerning the original of the Powder-Plot; proving it not to be the contrivance of Cecill but that both the Jesuits and the Pope himself were privy to It*. London: 1676. This edition is a later publication and translation of de Thou's "History of His Time," a work covering religious history of the Reformation from 1609 and beyond. Within that commentary, the Frenchman demonstrated a clear understanding of Elizabeth's roles – either real or performed – in creating a balance of government religion and non-conforming sects without allowing too much dissent among the greater population. For more information on these editions, see Samuel Kinser, *The Works of Jacques-Auguste de Thou*. The Netherlands: 1965, pp. 6-78.

<sup>104</sup> Haigh, *Elizabeth I*, p. 43. Much has been written on the position of Catholics in England, both as English subjects and faithful Papists. See Peter Holmes' important work on the mental suspension of conflicting beliefs in his book *Resistance and Compromise: The Political Thought of the Elizabethan Catholics*. Cambridge University Press: 1982, especially on casuistry pp. 99-125. Adrian Morey argues that Queen Elizabeth had to raise her power over Catholics both within and without England's borders if with the laws of the 1570s, but that this action raised the position of Catholics. See *The Catholic Subjects of Elizabeth I*. George Allen & Unwin: 1978, especially pp. 59-74 and 191-199. Morey's ideas led to a host of material on the case of Catholic martyrs, Peter Lake and Michael Questier's "Agency and Appropriation at the Foot of the Gallows: Catholics (and Puritans) confront (and Constitute) the English State" in their authoritative book, *The Anti-Christ's Lewd Hat: Protestants, Papists, and Players in Post-Reformation England*. Yale University Press: 2002, pp. 229-280 and especially p. 232.

and their helpers were considered felons without allowance of clergy.<sup>105</sup> In 1592, the approach against Catholics and their support for Jesuits was softened slightly.<sup>106</sup> Catholics were required by law to worship publicly in the Church of England. Those who found such public worship to be contrary to their conscience were asked to abjure the realm.<sup>107</sup> Only refusal to worship with the Church of England or to leave the realm risked declaration of felony and inability to claim clergy. Harboring recusants who have been asked to leave the realm became a criminal act but one that could be dealt with by paying fines.<sup>108</sup> The distinction between the political and personal, the subject and the faithful, was a purposeful but delicate balance; as Elizabeth famously wrote to Francis Bacon, “I would not open windows into men's souls.”<sup>109</sup> Her concern was for the stability of England during a time of particular religious turmoil.

These newly-made felonies were inextricably linked to the challenges of the later Elizabethan regime. The presence of a Catholic alternative monarch within English borders and the dangerous position of foreign diplomacy under risk of war created even more tension for the relationship between Elizabeth’s Parliament and her subjects. The need to balance policy that

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<sup>105</sup> 27 Elizabeth c 2

<sup>106</sup> 35 Elizabeth c 1 and 35 Elizabeth c 2

<sup>107</sup> 35 Elizabeth c 1

<sup>108</sup> 35 Elizabeth c 2 allowed husbands to pay a fine of 10 to protect members of their households who continued to sympathize with Catholics. Wives were a significant part of this debate, for the loyal Protestant husband might have dominion over his wife but not over her conscience. He was therefore, under this act, permitted to protect her by paying fines for her indiscretion. Prosecuting those who violated these rules required a fine balance indeed. “When the Elizabethan state confronted the threat of Catholicism it sought to distinguish between religion and politics, treason and faith, but the nature of that very distinction, compounded by the conventions and demands of the last dying speech, left events of the scaffold open to a number of competing interpretations.” Questier and Lake combining Foucault with Elizabethan politics in *The Anti-Christ’s Lewd Hat*, p. 280. John Bossy makes a similar point in his work *Christianity in the West, 1400-1700*, Oxford: 1985, p. 158. As a note of comparison, James I and Charles I were “notoriously unwilling” to execute Catholics, almost in spite of the Gunpowder Plot. Questier and Lake, p. 232 n5.

<sup>109</sup> Peter Brimacombe, *All the Queen's Men: The World of Elizabeth I*. Palgrave Macmillan. New York: St Martin’s Press, 2000, p. 125.

discouraged subjects from adhering to Catholic traditions or aligning themselves with Catholic nations without alienating such subjects to the point of rebellion was paramount to Elizabeth's success as Queen. She had learned from her sister's example and sought a more subtle form of persecution and national security. Benefit of clergy fit in this series of multi-tiered punishment by opening certain doors and offering first or second chances without abandoning the authority that the royal jurisdiction had within the realm. As usual, the policies using benefit of clergy here were beneficial to the state even as the state offered mercy to English subjects.

By offering benefit of clergy or lesser punishments for the first or second offences, a slew of behaviors were discouraged but not severely punished until a trend of repeated offenses had been established. The layers of punishment established for vagabonds, witches and sorcerers, and those guilty of sedition played into a larger performance of mercy. The public role played by both parties was crucial to a balance of justice. "At least two actors participated in every performance of pardon...both benefited, although in different and unequal ways. The monarch asserted royal power with an eye to reinforcing royal authority; the recipient escaped the penalty for his or her offense."<sup>110</sup> Yet the performance was only part of the expression of mercy; Kesselring explains that granting mercy only served to underscore the dominance of royal authority. Those in power "employed mercy to stake claims to authority over new subjects when expanding the territories under their control."<sup>111</sup> This was especially true as jurisdictions came into flux during the Reformation and beyond. During the sixteenth century, benefit of clergy fit into this theoretical framework of mercy as a facilitator of power. Debt became transferred to an individual from society in general. As a result, we can see a balance between the ideals of mercy

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<sup>110</sup> Kesselring, p. 3

<sup>111</sup> Kesselring, p. 205

and the increased centralization of authority in England through the use and appropriation of benefit of clergy in order to discourage certain behaviors.

The survival of benefit of clergy across the turbulent 1530s and beyond meant the survival of a tool that could discourage unwanted behaviors while actively enhancing the authority of the King. Mercy may provide a venue through which subjects could negotiate the terms of their subjugation, but their very position as subject to the King's authority was not itself up for debate.<sup>112</sup> The value of mercy led to the use of the benefit in statutes throughout the sixteenth century. Tudor-era statutes that incorporated benefit of clergy could not be painted as a cohesive, directed project. And yet, perhaps by accident, these laws performed a specific service to the ruler and come together to create a fabric of legal structure. By the seventeenth century, the laws touching benefit of clergy were almost unrecognizable compared to those from a hundred years before. The surviving convict returns to his community as a walking advertisement for the mercy of the king, only further expanding the reputation of the royal office. Yet not everyone was inspired by acts of royal mercy. Some cases were too important, or too heinous, for second chances. Parliament denied all mercy to such offenders and fully prohibited such behavior.

## **Laws Prohibiting Behavior**

By allowing second and third chances for some behavior, but adding to the penalties for each offense, the legal system could employ benefit of clergy to discourage some behaviors

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<sup>112</sup> Kesselring, p. 208

effectively. Creating a multi-tiered system was not the primary function of laws pertaining to the benefit. The majority of laws were enacted to target a specific act as an unclergyable felony.

Statutes withdrawing the possibility of clergy under the Tudors fall into three broad categories. The first and most prominent type of prohibition disallowed clergy for those found guilty of particularly heinous crimes. Usually, such statutes were legislated after a specific case came to a court: the rape of a child; the contracted murder of a neighbor; the poison of alms-seekers with food from a Bishop's home. Parliament's primary responsibility in passing criminal law was to prevent such horrible crimes, so depriving such acts of the privilege was a reasonable solution. The second category of prohibitive statutes denied clergy in order to strengthen social order. Social-order laws might reflect concerns of the moment: protecting Peers of the Realm or maintaining the proper relationship between master and servant.<sup>113</sup> Finally, many prohibitive statutes concerned issues of national security. Examples of this category might include targeting soldiers who abandon their posts, protecting certain areas like Court from violent behavior, or even harboring enemies of state. These actions might threaten the kingdom without falling directly into the category of treason. Therefore, Parliament targeted such behavior by marking it unclergyable. These three categories – gruesome criminal behavior, the maintenance of social order, and matters of national security – employed benefit of clergy to strengthen the tenets of each new legislative policy.

Of course, particularly violent crimes were among the first behaviors to be declared unclergyable. Statutes that withdrew clergy from the harshest crimes fit into a longer historical idea that marked treason as unclergyable. But not all of those crimes removed from clergy were equally dangerous. For instance, a prohibitive measure in 1562 declared cut-pursing or pick-

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<sup>113</sup> Statutes were not always about implementing new policy; they were also messages to the general population about acceptable social mores. For legislation on servants and masters, see the 1535/6 Statute 27 Henry VIII c 17

pocketing to be felony without benefit of clergy.<sup>114</sup> The differences between stealing goods from a public house and cutting a purse off of a man's body are negligible, but the former allowed pleas of clergy while the latter did not. The list of prohibitive clergy laws is somewhat contradictory and inconsistent. An example of such inconsistency can be found in the legislation targeting the theft of horses versus sheep. The crime of stealing a single horse received repeated attention throughout the sixteenth century, declaring that particular form of theft to be unclergyable. In contrast, sheep-thieves could claim the benefit even if they stole hundreds of sheep in one evening.<sup>115</sup> The function of these animals most likely dictated their social value. A sheep provides wool and meat, but a horse was a laborer, a form of transportation, an emotional companion and, in the end, a source of meat.<sup>116</sup>

In order to provide balance between authorizing some level of forgiveness without causing the system to collapse under the weight of repeat offenders, legislators deemed many violent acts to be unclergyable. In other words, Parliament prohibited rather than discouraged that behavior. There was no clemency for murder.<sup>117</sup> Often a particular crime would be declared unclergyable following a sensational trial that captured the public's imagination. There are three rather good examples of a phenomenal trial leading to clergy restrictions during the Tudor

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<sup>114</sup> The 1566 Statute reformed the claiming rights of "certain felonious offenders" specifically including cut-purses. See 8 Elizabeth c 4 in *The Statutes of the Realm*, Vol IV p. 488

<sup>115</sup> For horse-theft, see 37 Henry VIII c 8, 1 Edward VI c 12, 2/3 Edward VI c 33, 31 Elizabeth c 12, and 10 William III, c 12; For sheep-theft, see the 1740 Statute 14 George II c 34

<sup>116</sup> Furthermore, it seems that horse-theft was a far larger problem than sheep-theft, since a stolen horse could cover much land quickly and be resold within 24 hours. Sheep are difficult to herd quite so quickly and therefore sheep were a more difficult target.

<sup>117</sup> Murder was unclergyable, but lesser offenses including "felonious killing" and accidental manslaughter often allowed clergy, depending on the merits of each case. See Sir Thomas Edlyne Tomlins' under "Homicide" in *The Law-Dictionary: Explaining the Rise, Progress, and Present State, of the English Law, in Theory and Practice; Defining and Interpreting the Terms or Words of Art; and Comprising Copious Information, Historical, Political, and Commercial, on the Subjects of our Law, Trade, and Government*. London: Longman, 1797

century: a case of poison in the house of Bishop Fisher in 1531; the case of Benet Smyth, whose legal troubles prompted Parliament to pass an Act in 1557 against hiring an assassin to kill by contract; and a 1574 case of child-rape, when it was discovered that no specific law prohibited the carnal knowledge of a girl younger than twelve. As Tom Green has concluded, “Parliament dealt, in short, with those acts that incurred public outrage and seemed beyond the most generous limits of legitimate mercy.”<sup>118</sup> Mercy served a valuable function in the balance of early modern power, but granting mercy in the face of public outrage would not benefit the ruling classes as well as would the satisfaction of demands for justice.

During the reign of Mary and Philip, the Privy Council worked to contain the atrocious actions of a man named Benedict Smyth, commonly called Benet.<sup>119</sup> Benet Smyth had been involved in conflict with his neighbors, the Ruffords, for about a decade. After multiple lawsuits, trespass, and destruction of goods and land, Benet Smyth took the dispute to the next level and arranged for some rogues of London to stalk and kill his social enemy, Giles Rufford.

The series of legal cases that comprise the Smyth-Rufford dispute are interesting within themselves.<sup>120</sup> They began with a letter of complaint from the uncle of Giles Rufford, Robert Rufford. Robert was a Chaplain for Edlesborough who woke up one night to see Benet Smyth

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<sup>118</sup> Tom Green, “The Jury and the English Law of Homicide, 1200-1600” in the *Michigan Law Review*, Vol. 74, No. 3 (January 1976), p. 461

<sup>119</sup> England and Wales, “22 November 1555,” *Journal of the House of Commons: vol 1: 1547-1629* (1802), pp. 40-52; *Acts of the Privy Council of England*, New Series, Vol V, 1554-1556. John Roche Dasent, ed. London: 1892, pp. 191, 206, 231, & 243

<sup>120</sup> There are a number of records that survive concerning the Smyth v Rufford legal interaction. Although we do not have a complete picture from start to finish, there is enough to give an overview of the situation. In the National Archives, the records for the Court of Requests (REQ) retained a complaint by Robert Rufford against Benet Smyth and Smyth’s timely response. (REQ 2/6/159 and REQ 2/8/172) *The Acts of the Privy Council of England*, Vol V, summarized discussions and recorded letters concerning the dispute. *The Journal of the House of Commons*, vol I, documented the public hearings against Benet Smyth and logged the debates concerning Parliament’s power to intervene. The 1555 Statute’s preamble narrated the case, albeit with 20/20 hindsight and plenty of harsh words against Benet Smyth for his decisions throughout the neighborly conflict. The will of Giles Rufford also survives at the National Archives, and a contemporary diary by Henry Machyn mentioned the outcome of the trial.

destroying his garden. The complaint described the older, wealthy man chopping down fruit trees, tearing up vegetables, eating what he could and tossing the rest into a great pile in the center of the garden. Smyth also reportedly went into the shed where the Chaplain stored his food and emptied it too on the lawn. When Smyth could eat no more, he took the animals out of the barn and led them to the pile of food, destroying all of Chaplain Rufford's stores as the poor victim watched from his bedroom.

According to Benet Smyth's answer, Smyth was merely asserting his ownership over disputed land. Smyth claims that the Chaplain had begun using the Close next to the Chaplain's cottage even though that land belonged to Smyth. Therefore, Smyth argued, the destruction of food and plants was legal, for it was his own property. Sir William Blackstone would later emphasize the pre-industrial crime of "committing waste" in a period when farmland was precious and failed harvests an annual threat to a community's prosperity. "The chief duties of the tenant are: to pay rent, to refrain from denying the landlord's title, to make ordinary repairs, to refrain from committing waste, and to strictly observe and fulfill the conditions and covenants in the lease."<sup>121</sup> Perhaps because Smyth was a landowner rather than tenant, the letters in this case appear not to take this offense into account in the case of Smyth.

The resolution of this dispute is not known. What is known is that over the next eight years, Benet Smyth leveled multiple law suits against the Rufford family. He accused Giles Rufford multiple times of stealing a velvet cloak and a purse containing the relatively large sum of £16 10s on three separate occasions. In August 1553, Smyth purchased a writ against Giles Rufford and others unnamed. Bills and writs were different approaches to early modern courts. A

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<sup>121</sup> Sir William Blackstone, *Commentaries on the laws of England: in four books*, Volume 1. Cockcroft & Co: 1876, p. 327. See a simpler discussion in *The Student's Blackstone: Being the Commentaries on the Laws of England of Sir William Blackstone, Knt., abridged and adapted to the present state of the Law*. W. Clowes and Sons: 1885, pp. 341-342

bill was pursued by a Justice of the Peace and followed when there was substantial evidence against the accused. A writ permitted a wronged party to pursue their cause despite the lack of clear evidence, but only if they put their own money up to support the court costs. These costs could be repaid by the guilty party, but the plaintiff lost the money if he lost the case.<sup>122</sup> The purchased writ was unsuccessful, as the justice dismissed the case for lack of evidence.

Immediately after losing his case, Benet was called to appear before the Privy Council for “speking of woordes” and in September the Council wrote a series of letters mulling over the “variaunce betwene Giles Rufforde and Benet Smyth.”<sup>123</sup> Yet this attention did not deter Smyth from seeking justice.

Benet Smyth purchased a new writ in a new venue, accusing Giles Rufford of robbery and felony in Hertfordshire rather than Buckinghamshire. Giles again denied any wrongdoing and “put himself upon the country.”<sup>124</sup> Giles was found not guilty. Benet Smyth immediately appealed the decision, to no avail. After the floundering of the third lawsuit, Giles responded with a suit of conspiracy and slander. Giles’ bill shows there was some clear evidence for this case, while Benet had been dealing in purchased writs. The judge found both Smyth and Godfrey guilty of legal harassment. They were fined £90 plus £10 for court costs. The ruling appears to have sent Benet Smyth over the edge.<sup>125</sup>

As his actions were later described, “being led with the instigation of the Devil and increasing in more mischief and malice,” Benet Smyth sent John Godfrey to London to hire

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<sup>122</sup> JH Baker, *An Introduction to English Legal History*. Butterworths: London, 2002, pp. 40-42

<sup>123</sup> *Acts of the Privy Council of England*, New Series, Vol IV, 1552-1554, pp. 335, 340

<sup>124</sup> 2&3 Philip and Mary c 17 *The Statutes of the Realm*, Vol IV, p. 292

<sup>125</sup> The most comprehensive narrative of this series of events can be found in the preamble to the parliamentary statute 2&3 Philip and Mary c 17 *The Statutes of the Realm*, Vol IV, p. 293

some rogues to kill Giles Rufford.<sup>126</sup> The law had not helped him, and so he turned to extralegal resolution. John Godfrey found two men for the job: Francis Conyers and John Spenser, yeomen late of London.<sup>127</sup> These two men were paid £40 and began to track Giles Rufford across the countryside.<sup>128</sup>

They caught up with him on 10 September, 1555. Later Francis Conyers would confess to having killed Giles himself, with a javelin and a dagger at Alconbury Weston in Huntingfordshire. Spenser was the one who collected an additional 20s for having completed the job. A tailor familiar with the situation testified that Smyth had sent him “to Conyers and Spenser, bidding them to go out of the Realm to Flanders; for which Message Smyth gave Roland Ten Shillings.”<sup>129</sup> The murderers did not get far; they were captured and interrogated until the entire crime was confessed.

The story is an interesting one, with murder, intrigue, and the involvement of a whole village. Yet its significance was not in the gruesome details of the case itself. The significance was that the Privy Council acted quickly to prevent Benet Smyth from taking advantage of benefit of clergy and getting away with arranging a murder. There was no law to prevent someone from contracting murder. Instead of allowing the hired criminals to be executed while

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<sup>126</sup> 2&3 Philip and Mary c 17, *The Statutes of the Realm*, Vol IV, p. 293

<sup>127</sup> There is some evidence that John Godfrey knew John Spenser personally. In 1554, a John Spenser filed a bill of complaint against a John Godfrey in the city of Winchester over some disputed land. Although these might be different men, the names John Godfrey and John Spenser only left extant documents during the 1550s, opening the possibility that these could be the same men using the law to settle personal disputes. It may also explain how Benet Smyth came to hire men “late of London” if they were associates of his servant, Godfrey. “The Answer of John Godfrey to the Byll of Complaint of John Spenser” The National Archives, Kew, England. Court of Chancery, C 4/21/84

<sup>128</sup> It is possible that Giles suspected that he was in imminent danger. He wrote a letter to Mr. Dormer of the Privy Council before his death after fleeing the town. This could explain why the hired killers had to track him across three counties. We do not know the nature of Giles’ last letter; neither the letter nor a description of its contents survives. *Letters of the Privy Council*, National Archives, Kew. PC 2/Edward VI Vol II, f12

<sup>129</sup> “22 November 1555,” *Journal of the House of Commons*, pp. 45

Benet Smyth was branded and allowed to go free, Parliament intervened and put Benet Smyth's trial on hold. Giles Rufford's widow, Marjorie Rufford, acted as a "most true subject and dayley Oratrice," to encourage swift action from the Privy Councilors.<sup>130</sup> Sir Henry Bedingfield was chosen to take custody of Benet Smyth. Smyth was installed in the Tower of London and required to give testimony to the Privy Council rather than be tried in the Assizes.

Conyers and Spenser were convicted quickly. However, their sentences of death were stayed so that they might testify against Benet. Their testimony was needed because Smyth refused to confess his involvement in the crime. Francis Conyers described how the murder was done, while John Spenser recounted his interactions with John Godfrey and the description of Giles as Benet's enemy. Godfrey and the Tailor, Roland, accounted their roles as messenger to the men who were waiting "at Ryckmansworth, after the Murder done," and each of the witnesses "justified to Benet Smythe's Face the same."<sup>131</sup> On 22 November, 1555, Benet Smyth finally confessed to having arranged for the murder.<sup>132</sup> Sir Henry Bedingfield received a letter asking him to send Benet Smyth to the Speaker of the House to answer to his charges, where he confessed the crime publicly.<sup>133</sup>

Parliament heard the confession of this contractor of murder. Yet at the time of his speech, there was no law to punish the person who hired another to commit a crime on his behalf. Parliament would ultimately pass a law to criminalize Benet's behavior, but first they had

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<sup>130</sup> 2&3 Philip and Mary c 17, *The Statutes of the Realm*, Vol IV, p. 292. The *Oxford English Dictionary* emphasizes the word Oratrice as a female petitioner, particularly in cases appealing to a higher authority. Daniel Lysons emphasizes that Marjorie "procured" the statute in his *Magna Britannia: Being a Concise Topographical Account of Several Counties of Great Britain*, Vol I part III, London: 1808, p. 691.

<sup>131</sup> "22 November 1555," *Journal of the House of Commons*, pp. 45

<sup>132</sup> "22 November 1555," *Journal of the House of Commons*, pp. 45

<sup>133</sup> *Papers of the Privy Council*, National Archives, Kew PC 2 / Mary Vol V f322

to intervene directly by depriving Benet of his ability to claim benefit of clergy. In the Statute 2&3 Philip and Mary c 17, Benet Smyth was officially deprived of this defense. The entire legal story was related in the preamble of the Statute, with a pronounced condemnation against the accused man. After its publication, when the Statute became law, Benet Smyth was taken to Newgate.<sup>134</sup> The sheriff of London took him into custody on 22 December 1556; the Privy Council noted that an attorney solicitor charged Smyth with murder on 27 January 1555/6.<sup>135</sup> Smyth was finally returned to Buckinghamshire to stand trial in March of 1555/6.<sup>136</sup>

Smyth was convicted of murder and sentenced to hang. The diarist Henry Machyn recorded Smyth's death, adding that Smyth was put to death before those who had actually murdered Giles Rufford. On "the 9<sup>th</sup> day of Marche was hanged at Brykhyll Benet Smyth, in Buckinghamshire, for the death of master Rufford, gentleman, the which Conyers and Spenser slew..." Then on the 17<sup>th</sup> of March John Spenser "was hanged beyond Huntington in chains...for the death of master Rufford of Buckinghamshire, [beside] his fellow Conyers."<sup>137</sup>

The execution of those responsible for the death of Giles would seem to be a victory for the general ideals of justice. Those serving the Privy Council and Parliament worked well together to prevent a man from escaping justice for ordering the death of a neighbor. Yet that was not the end of the story. Procuring murder in secret was a troubling offense. Parliament had already struggled with the problems of secret murder when it came to poison. A similar case of hidden murder had come up in 1531 concerning death by poison. The prominence of that

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<sup>134</sup> *Papers of the Privy Council*, National Archives, Kew PC 2 / Mary Vol V f336

<sup>135</sup> *Papers of the Privy Council*, National Archives, Kew PC 2 / Mary Vol V f365

<sup>136</sup> *Papers of the Privy Council*, National Archives, Kew PC 2 / Mary Vol V f380

<sup>137</sup> Machyn also recorded on the same page that later that week "burned at Oxford [was] doctor Cranmer, late Archbishop of Canterbury." "1556 (Jan - Jun)" *The Diary of Henry Machyn: Citizen and Merchant-Taylor of London*, (1848), pp. 99-109. Machyn often recorded the executions of interesting or significant individuals.

particular crime in the public mind stemmed from the celebrity of the household in which it occurred. The household of Bishop Fisher was rocked when a cook, Richard Roose, added poison to some porridge.<sup>138</sup> Whether the porridge was intended for the Bishop was unclear,<sup>139</sup> but when it was given to some alms-seekers, the beggars died. Parliament responded by passing legislation that deemed murder by poison to be high treason.<sup>140</sup> Lawmakers reasoned that the secret nature of this act could attack a man in his own home, at his own dinner table. To lawmakers, the severity of the crime warranted a harsh punishment. Execution was a natural choice, but by what method? Legislators debated how to categorize the crime. Ultimately they would decide to declare it treason. Evidence uncovered by Krista Kesselring shows that the treasonous conclusion was not the original intend. An earlier draft of the resulting Statute had made this crime unclergyable.<sup>141</sup> In the final draft, Parliament's decision to declare the offense to be treason was most likely designed to avoid a fight with the English clergy over their special privileges before the clergy submitted to the King in 1532.<sup>142</sup> Restricting this right had led to a

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<sup>138</sup> William Stacy, "Richard Roose and the Use of Parliamentary Attainder in the Reign of Henry VIII" in *The Historical Journal* No 29:1 (1986), pp. 1-15

<sup>139</sup> For differing treatments of the intent behind Roose's situation, see Stacy, "Richard Roose and the use of Parliamentary Attainder" pp. 1-15. John G Bellamy, *Tudor Law of Treason*, pp. 24-25; Penry Williams, *The Tudor Regime*. Oxford University Press: 1979, pp. 225-226. Stacy views the absence of a common law trial as perhaps the most significant element of the Roose conflict, suggesting that concern over the poison would have led to a very strict trial rather than a showy punishment with attainder. Williams and Bellamy join Elton in suggesting that this was a vestige of medieval punishments. GR Elton *Policy and Police: The Enforcement of the Reformation in the Age of Thomas Cromwell*. Cambridge University Press: 1972, pp. 263-270 and 419-22. And again, Elton *Reform and Reformation: England 1509-1558*, Cambridge University Press: 1977 especially pp. 292-294 and 299.

<sup>140</sup> The legislation in its final form is "An Act for Poisoning" 22 Henry VIII c 9

<sup>141</sup> Krista Kesselring, "A Draft of the 1531 'Acte for Poysoning'" in *English Historical Review*, vol 116, no 468 (Sept 2001), pp. 894-899 and Stanford E. Lehmberg, *The Reformation Parliament, 1529-1536*. Cambridge University Press: 1970, p. 153

<sup>142</sup> Two classic works on the process of procuring the submission of the English clergy can be found in Michael Kelly, "The Submission of Clergy: the Alexander Prize Essay" in *Transactions of the Royal Historical Society*, fifth series, Volume XV (1965), pp. 97-119 and JJ Scarisbrick, "The Pardon of the Clergy, 1531" in the *Cambridge Historical Journal*, Vol XII, No 1 (1956), pp. 22-39, especially pp. 34-35.

lengthy struggle in 1514-1515, involving the accidental death of Richard Hunne, a trial on the nature of clerical privileges, and a final speech from Henry VIII declaring that “the kings of England in times past have never had any superior but God alone.”<sup>143</sup> The Act for Poisoning was debated in 1531, when the King’s choices were more strained than they would be later in the decade. And so, we see statutes concerning benefit of clergy after 1532 gaining greater courage to deprive various people or actions their benefit.

The parallels between the Act against Poisonyng and the case of Benet Smyth were made explicit by historian William Stacy. He commented on the parallels of parliament’s treatment of the cases, noting that attainder was one glaring difference. “Declaring the crime high treason also denied Roose benefit of clergy, but this could have been accomplished without attainting him of high treason. In Queen Mary’s reign parliament denied Benet Smith his pea of benefit of clergy without attainting him or denying him a common law trial.”<sup>144</sup> Both trials effected an *ex post facto* punishment, but one did so through the language of treason and attainder while the other merely denied the possibility of claiming the altered post-Reformation definition of benefit of clergy. The connection of making murder by poison and murder by contract both unclergyable relates the perception and fear of an invisible threat in the circles of government during the sixteenth century.<sup>145</sup> In these ways, the two cases were remarkably similar.

Just as the Act of Poisonyng made one form of murder unclergyable, albeit through the language of treason, Parliament made the act of contracting murder to be an act beyond

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<sup>143</sup> JH Baker, *The Reports of John Caryll*, Vol II, Selden: Selden Society, 2000, p. 691. I discussed the proceedings at length in Chapter Two

<sup>144</sup> Stacy, “Richard Roose,” pp.4-5, n19 for the specific mention of the parallels between Roose and Benet Smyth.

<sup>145</sup> The act of murdering someone at Court was also deemed to be unclergyable in an unnecessary and redundant act of 1541/2, emphasizing the fear of sudden attack within government circles. 33 H8 c12 barred violence at court and stealing from the King, depriving any such criminals their right to claim clergy.

forgiveness in its final session under Mary in 1557. Criminalizing it while the Benet Smyth case was on hold might not have affected the outcome of that trial. Therefore, Parliament acted unilaterally to deprive one man of his right to claim clergy. As a form of mercy that stemmed from the king's person and not from the Church or even through Common Law, as argued throughout the 1530s, Parliament could legislate to withdraw it as needed. After Benet was prevented from escaping his punishment through the benefit, MPs could later design legislation to prevent others from contracting the same offense of sending strangers to kill their social enemies. Both the 1531 Act and the 1555 Act worked to preserve social order and raise the status of royal authority as a peacekeeping figure.

Blanket statutes that deprived certain types of criminals of their clergy were often the result of a specific well-publicized crime. The Richard Roose poisoning case from Bishop Fisher's house was one example and Benet Smyth's arrangement to have his neighbor killed was another that led to new legislation criminalizing their behavior. In 1576, another trial case revealed the inadequacies of the law. This case, involving definitions of rape and consent with children, combined with two others at the time and illustrated the need for new legislation that addressed the sexual assault of children. Ultimately, the law specified that children under a certain age were incapable of giving consent to sexual activity.

One of these cases involved a Scot known only as "WD" who had alleged ravished a 7-year-old girl. We know of some of the details of this trial as it was conveyed in the Reports of Sir James Dyer.<sup>146</sup> The case came before the Queen's Bench during the Michalmas Term of 1571. The details of the crime committed raised a number of questions. Initially, the Justices debated whether the Scot had the right to claim *trial per medietatum lingue* since he was born in

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<sup>146</sup> Dyer's Reports, Vol III, p. 304a. See *The English Reports*, Vol 73: King's Bench Division London: 1907, p. 683 via *HeinOnline*.

Scotland.<sup>147</sup> Under custom, defendants from other regions could request that the jury include representatives from the local and home jurisdictions, ensuring a sense that the jury was indeed a trial of peers.<sup>148</sup> However, Scotland was more than a change of venue; it was a separate kingdom. Therefore, the Scottish request was a controversial one. The trial also coincided with a politically turbulent time for Anglo-Scottish relations as Mary Stuart, Queen of Scots, had recently arrived in England under suspicious circumstances. The tense atmosphere made the prosecution of a man claiming to be Scottish-born all the more precarious as English diplomats trod carefully around the international situation. Yet the justices concluded that Scottish was close enough to English that the man would be tried as any other man.<sup>149</sup>

He was tried for raping the young girl. Dyer related that women and matrons gave witness against him and he was subsequently convicted. However, during the process of sentencing, the presiding justices suggested that his crime might not technically be illegal, for no statutory or common law precedent existed that specifically criminalized the carnal knowledge of a girl under the age of twelve. There had been rape laws on the books, but these laws hinged on the matter of consent as given by a woman over twelve years.<sup>150</sup> The law was inadequate to

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<sup>147</sup> This literally means “of the half-tongue” and juries selected under this concept were comprised of half native and half foreign participants. The idea was to ensure the defendant would receive a fair trial according to custom. For information on this kind of jury in English Common Law, particularly as it pertained to the development of statutes, see Marianne Constable’s *The Law of the Other: the Mixed Jury and the Changing Conceptions of Citizenship*. University of Chicago Press: 1994, especially definitions on p. 16 and 191. Deborah A Ramirez examines the presence of this concept in modern US jury selection, which cannot deny a juror based solely on that person’s racial identity. See her article “The Mixed Jury and the Ancient Custom of Trial by Jury *de medietatum lingue*: History and a Proposal for Change” in *Boston University Law Review*, Volume 74 Issue 5 (November 1994), pp. 777-817

<sup>148</sup> Constable, pp. 16-17

<sup>149</sup> Dyer’s Reports, Vol 3, p. 304a (HeinOnline version, p. 683). The question of persecuting aliens is explored further using this case as an example by historian Mortimer Levine in his article “A More than Ordinary Case of Rape” published in *The American Journal of Legal History*, Vol. VII No 2 (Apr 1963), pp. 159-164

<sup>150</sup> The 1275 Westminster Statute under Edward I strictly prohibited the ravishment, carnal knowledge, or kidnapping of a woman or maiden “within age.” The punishment required action from royal authorities within 40 days and prescribed upon conviction the imprisonment of the offender for two years plus a nominal fine. The limited punishment of this Statute, combined with the ambiguity of being “within age” created the problem of those

convict. The justices “doubted [the crime] of rape in so tender a child,” according to contemporary definitions. WD was permitted to go free.<sup>151</sup>

This case became well-known for two reasons: not only was the scandal of the event great enough to warrant the attention of the public at large, but the issues of the status of Scots in England was a politically hot topic in the 1570s as Parliament pressed Queen Elizabeth to act decisively against the Catholic sister-queen Mary Stuart.<sup>152</sup> Most likely as a result of this case, Parliament met to address the issue of rape of girls under the age of consent in a 1576 session.<sup>153</sup>

The resulting statute addressed many issues at once. A secondary clause would have a fundamental impact on claiming the benefit. Since 1536, lay claimants had been allowed their clergy regardless of clerical status. Both ordained and lay claimants were allowed the privilege only once and branded on the brawn of the left thumb. Following the brand, all claimants followed the legal fiction of becoming criminous “clerks” and were delivered to the Ordinary to suffer purgation. This latter step was a formality of legal fiction. The 1576 law eliminated the final step. Instead, it provided justices with a few options: ordained priests would indeed continue to be delivered to their ecclesiastical superiors, while convicts who seemed to be at risk to offend again could be sentenced to additional punishments as a method for discouraging future criminal behavior. To the point of the Act itself, the primary clause confirmed that any person found guilty of committing rape or burglary after June of 1577 would be declared guilty of

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engaging in child-rape. See 3 Edward I c 13 in *The Statutes of the Realm*, volume I, p. 29. For a discussion of the evolving definitions of rape during Renaissance England, see Barbara Baines, “Effacing Rape in Early Modern Representation” in *English Literary History*, Vol 65 No 1 (Spring 1998), pp. 69-98

<sup>151</sup> Dyer, Vol III p. 304a (HeinOnline version, p. 683). See also Mathew Hale, *Historia Placitorum Coronae*, p. 630, 631 or Hale’s *Pleas of the Crown*, both avail via ECCO or William Hawkins *Pleas of the Crown* p. 420

<sup>152</sup> Jenny Wormald, *Mary, Queen of Scots: Politics, Passion, and a Kingdom Lost*. London: 1988

<sup>153</sup> Sir Edward Coke specifically makes the connection between the Scot case and the subsequent statute in *The Third Part of the Institutes of the Laws of England, concerning High Treason, and other Pleas of the Crown, and Criminal Causes*. London: 1797, p. 60

felony and would “suffer paynes of Death and feofeyte as in cases of Felonie hath ben used and accustomed by the Common Lawes of this Realme, withowte any Allowaunce of the Privilege of Benefite of Clergie.”<sup>154</sup> Furthermore, the statute addressed directly the issue of rape:

And for playne declarcon of Lawe, Be yt enacted, That yf any person shall unlawfully and carnally knowe and abuse any Woman Childe under the Age of Tenne yeeres, everie suche unlawfull and carnall knowledge shalbe Fellonye and the Offendr therof beinge dewlye convicted shall suffer as a Felon without Alloweaunce of Cleargie.

The new statute directly settled the debate between the justices in 1571, as conveyed by James Dyer. Coke explained that any ravishment or carnal knowledge of a woman against her will was rape, and therefore punished by death without possibility of benefit of clergy.<sup>155</sup> The 1576 statute tied the relatively new crime of child-rape to the longer-standing traditional definition of rape by making both heinous actions to be felony without possibility of clergy. Like the “new” crime of contracting murder or killing through the stealth of poison, this legislation took a moment of judicial confusion and used it to create a more uniform legal code. That meant using benefit of clergy again to strictly prohibit the startling act of raping a child.

The carnal knowledge of children fell into the category of crimes so heinous that it ought not be named, let alone committed. The act of attacking a child in such a way has no access to mercy. Coke made similar claims to acts of sexuality, describing buggery as “a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the Ordinance of the Creator, and by order of nature, by mankind with mankind, or with beast, or womankind with beast.”<sup>156</sup> The issues demonstrated the intersection of sexuality, assault, and social order. After all, such “persons so offendyng litell regarde the punysshment...but bere them

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<sup>154</sup> 18 Elizabeth c 7, *The Statutes of the Realm*, Vol IV, pp. 317-318

<sup>155</sup> Coke’s *Third Institutes*, p. 60

<sup>156</sup> Coke’s *Third Institutes*, p. 58

bolde of their Clergy” and escape punishment.<sup>157</sup> There were some crimes that were simply too grievous to allow those convicts to roam the country aside again. Benefit of clergy emboldened such criminals to commit the more heinous crimes again; those guilty of more despicable crimes were beyond the community’s acceptance. The above commentary of criminals’ little regard was written in 1512 but the words paint an accurate picture of how the benefit required strict balance under subsequent legislating Tudor parliaments. The privilege could be a tool of mercy but only if those convicted of truly awful behavior were not allowed to delight in their release through clergy. Those who were allowed their clergy had to understand the mercy that saved their lives and owe the forgiven punishment to the royal authority that granted it to them. This balance in the idea of forgiving a few while prohibiting the remainder was used to prohibit particularly unwanted or outrageous behavior for the remainder of the Tudor Century.

Not all offenses deprived of clergy in this way were particularly heinous or outrageous. Occasionally minor offenses were deemed unclergyable simply to emphasize unacceptable trading practices. An example of this can be found in a 1558 law condemning the conveyance of leather out of the realm without permission.<sup>158</sup> Once again benefit of clergy proved to be a useful tool for strengthening a given law, even if leather-smuggling was not a major threat to the cohesion of society. Invoking clergy provided clear direction with regards to trade. In the case of leather, Parliament was legislating on fair trade practices where benefit of clergy strengthened the new policies. Preventing criminal behavior was certainly a powerful motivation behind some Tudor statutes, but at times more important were the ideological messages conveyed by taking a hypothetical offense or a singular event and dedicating a whole Act against the ideas behind the

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<sup>157</sup> “For Murthers” 4 Henry VIII c 2 in *The Statutes of the Realm*, Vol III, p. 49

<sup>158</sup> 1 Elizabeth c 10

offense. The messages hidden within the laws stood for clarifying social boundaries and protecting the hierarchy of government and society.

Such messages can be found in the multi-tiered laws covering vagabonds, witchcraft, and Egyptians, which I have already discussed. In the name of keeping order, benefit of clergy was deprived of vagabonds wandering the realm and Egyptians whose reputation of criminality made them attractive targets for deportation.<sup>159</sup> Since “people who call themselves Egyptians” were foreigners, legislation limiting their presence was also a way to protect the English people from immigrants and outside forces. The behavior of vagabonds, witches, and sturdy beggars was carefully monitored and repeat offenders were threatened with whipping, imprisonment, forced “slavery,” and finally execution without possibility of clergy.<sup>160</sup>

Statutes seeking to prohibit behavior out of concern for social hierarchy were reflected in the 1535/6 Law addressing thieving servants. A provision sought to prevent servants from violating their masters’ trust by stealing excessive amounts of goods or money from their homes.<sup>161</sup> The bill specifically focused on the violation of trust involved when a servant steals a large amount in goods or money from his or her master. The law arbitrarily selected 40 s as the threshold sum. Any stolen goods or money exceeding that amount would constitute felony

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<sup>159</sup> For “evil” vagabonds and sturdy beggars, see 27 Henry VIII c 25, 28 Henry VIII c 6, 31 Henry VIII c 7, 1 Edward VI c 3, 5&6 Edward VI c 2, 5 Elizabeth c 20 (on vagabonds and those wandering the countryside calling themselves Egyptians), 14 Elizabeth c 5 (on vagabonds and the first Poor Laws), 39 Elizabeth c 4, and 1 Jacobi c 7. For additional statutes on “Egyptians” see 22 Henry VIII c 10, 1&2 Philip & Mary c 4, and 5 Elizabeth c 20

<sup>160</sup> I discussed the use of branding, whipping, imprisonment, and even slavery as forms of discouraging vagabonds above. These trends led to a bill of lifetime slavery proposed in 1621 that never became law. For branding and slavery, see the 1547 statute 1 Edward VI c 3, “An Act for the Punishment of Vagabonds and the Relief of the Poor and impotent persons” in *The Statutes of the Realm*, Vol IV, pp. 5-8. Transcriptions of the 1621 draft can be found in *Commons Debates of 1621*, “Volume VII: Appendices” ed by Wallace Notestein, Frances Helen Relf and Hartley Simpson. Yale University Press: 1935, pp. 54-55. See microfilm of the original manuscripts (destroyed in the 1832 fire) in *The National Archives*, State Papers Collection, SP 14 118:77

<sup>161</sup> 27 Henry VIII c 17

without benefit of clergy.<sup>162</sup> In other words, if a servant violated the trust of the social hierarchy enough to swindle the master and head of household of such a large amount, that person should suffer death without possibility of forgiveness. Theft was not the main problem here: the primary issue was one of violating the master/servant relationship.

According to the language of the Statute itself, the act of stealing so large an amount from a trusting master constituted a “heinous offence contrary to the trust that the master or mistress putteth in the servants.”<sup>163</sup> By focusing on trust, the framers of the law targeted the core issue at hand: that early modern English society rested on an inter-dependence of hierarchy that could not be jeopardized by forgiving thieving servants through a claim of clergy. A household was a family, a congregation, a “little commonwealth.”<sup>164</sup> The violation of the molecular representation of the kingdom at large served as a threat to the entire realm. Among the more serious offenses was that of trust, and theft violated trust vital to the master/servant relationship. Some theft might be reasonably expected in the master/servant relationship, but Parliament determined that any stolen goods exceeding 40s would be considered felonious theft without possibility of clergy “and put to execution as if he be no clerke.”<sup>165</sup> The goal was not to find such servant-thieves and punish them for their crimes, but to prevent these crimes from happening in the first place by removing any possibility of State forgiveness and restoring, theoretically, the

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<sup>162</sup> Sir Edward Coke notes that the Henrician statutes “do not define what burglary is, but take away the benefit of clergy from certain kinds of burglary,” going on to note that putting the owner in pain and fear is worse than the specific amount taken. *Third Institutes*, p. 65

<sup>163</sup> 27 Henry VIII c17, *The Statutes of the Realm*, Vol III, pp. 549-550

<sup>164</sup> RC Richardson explores the various ways servants and their families were seen as the smallest building block of society. His book *Household Servants in Early Modern England* explores the expression of this idea through drama, law, and real life interactions as recorded through wills, letters, and other sources. Richardson attributes the commonwealth quote to Robert Cleaver’s *Godly Forme of Household Government*. London: 1598 on p. 125 of his book. See *Household Servants in Early Modern England*. Manchester University Press: 2010, p 125

<sup>165</sup> 27 Henry VIII c 17, *The Statutes of the Realm*, Vol III p. 550

Master/Servant trust to its prioritized position in Tudor society. The intimacy of that relationship was essential to maintaining the structure of society. This law was repealed under Edward's comprehensive Felony Law of 1547 and never renewed. Sir Edward Coke later noted that apprentices and youthful servants were exempt from the harshness of the penalty and that Stuart era servants convicted of large thefts were claiming their clergy.<sup>166</sup>

The Felony Law of 1547 also upheld England's complex social hierarchy. Perhaps the lengthy repeal of all felony laws could be cast as the ideal moment to do away with benefit of clergy once and for all, but Edward's Parliament chose not to do that. Instead, however, the ninth clause confirmed that benefit of clergy was available to any defendant whose conviction involved a felony that had not specifically been deprived of clergy. The thirteenth clause then granted clergy to all Peers of the Realm, regardless of their ability to read, and allowed them to forgo the performance of branding. The thirteenth clause declared that "The Lord and Lordes of Parliament and the Peer and Peeres of this Realm...claiming the benefitte of this Acte, though he cannot read, without any burning in the hand, [and] without loss of inheritance" may always have their clergy unless their actions had been specifically set apart by act of Parliament as unclergyable. Therefore, outside of crimes declared unclergyable from murder and arson to horse-theft, all Peers were allowed clergy regardless of clerical status, ability to read, or amount of property owned.<sup>167</sup>

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<sup>166</sup> Coke, *Third Part of the Institutes*, p. 105

<sup>167</sup> This particular element of benefit of clergy would later prove difficult to dissolve. Benefit of clergy was abolished as part of the Reform Acts in 1827. A confirmation Act was passed in 1831 to emphasize that benefit of clergy in all its forms was no longer a part of English Common Law. In 1841, Parliament passed a third Act again confirming that benefit of clergy had been abolished ever for those Peers who assumed they could still pray their clergy if they found themselves in legal trouble. See 7&8 George IV, c 53, 7 William IV and 1 Victoria c 91, and 4&5 Victoria c 22, respectively.

The passage of this clause within a larger reform Act concerning English felonies and treasons was perhaps the most striking protection of social structure involving benefit of clergy. Within fifteen years of abolishing the purely ecclesiastical version of benefit of clergy, Parliament chose to shift the protected status of priests to that of the Peerage. By denying any requirement of all short of birthright, Edward's Parliament enhanced the position of Peers and governors in the Realm, granting the peers what was once reserved for privileged priests. Edward's ministers were more interested in preserving the strength of social classes. Such concerns were particularly important in the middle of the sixteenth century. Economist Douglas Allen recently theorized that the function of the peerage in the hierarchical state underwent drastic change during the redistribution of monastic lands during the early modern period.<sup>168</sup> Using theories of economic compulsion, he was able to demonstrate the mathematic relationship between noble families and their social obligations to those reliant on them. With ownership of large tracts of land came the responsibility to govern those who lived on the land and struggled among each other in the local villages. The relationship between land ownership and service in Parliament grew during the Tudor era. Ultimately this relationship manifested legislation that reflected the challenges of local criminality, maintenance of order, and keeping of the common peace. If Allen's theories hold true, then the incidence of new legislation protecting the special position of such people during the mid-sixteenth century would be a timely addition to the shift in noble families. Granting benefit of clergy would not be an empty promise, but a privilege for those leaders in local government.

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<sup>168</sup> Douglas Allen sees the role of the peerage to be an interaction of opportunity, responsibility, trust, paternalism, ideas of natural order, in mathematical terms in his article "A Theory of Pre-Modern British Aristocracy" in *Explorations of Economic History*, Volume 46, Issue 3, July 2009, pp. 299-313

A 1597 Statute further contributed to ideals upholding social structure. The Statute criminalized the carrying away of heiresses of great fortunes and forcing them to marry against their wills. This Statute is a fascinating display of conservation of property by controlling the bodies of young women. A superficial reading of the law might interpret the language as a protection of young women from forced marriage. However, the law took as inspiration an earlier law from Henry VII that criminalized romantic entanglements between potential heiresses and unsuitable partners. The earlier Statute concerned the matter of incidental theft of property involved with marrying an heiress.<sup>169</sup> Since the fifteenth-century law, Philip and Mary had reduced the penalties for inappropriate romantic unions to five years' imprisonment rather than absolute death.<sup>170</sup> The Elizabethan law reverted punishment to the original concerns raised under Henry VII. The Elizabethan Act painted a dark picture of women, both young maids and older widows, being kidnapped and forced to marry the "misdoers" against their will in order to take advantage of their impending inheritance. Some of these girls were reportedly raped or "defiled, contrary to the Will of God" to put the women in a position where defending their virtue required them to consent to an unwanted marriage.<sup>171</sup> The language was lifted almost directly from the Act as it was passed under Henry VII. The Elizabethan alterations made the marriage of property-holding women an unclergyable felony. As the Elizabethan version asserted, "Clergy

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<sup>169</sup> See 3 Henry VII c 2 "An Act Agaynst Taking Women Agaynst their Willes" *The Statutes of the Realm*, Vol II p. 512

<sup>170</sup> 4&5 Philip & Mary, c 8 focuses on inheritresses in particular, allowing for the woman so "carried away" to agree to her forced marriage but on the condition that her choice of love lead to her fortune being left to her next of kin. See *The Statutes of the Realm*, Vol IV, pp. 329-330

<sup>171</sup> 39 Elizabeth c 9. *The Statutes of the Realm*, Vol IV, p. 910

hath been heretofore allowed to such offenders,” giving these thieves a valid way to kidnap, marry, and absorb a fortune without any clear path to penalty, punishment, and deterrence.<sup>172</sup>

In his commentaries on the subject, Sir Edward Coke focused on the matter of the woman’s consent. He suggested that there were four separate characteristics to be fulfilled in order for a man to be convicted under this act.<sup>173</sup> First, the woman in question had to be either wealthy or an heiress apparent to great wealth. Second, her will must be violated; to Coke, this issue was about her assault as much as it was about stolen property. Third, the action of being carried away must then be either consummated through rape or the woman must be forcibly married to the man. Finally, the relationship between kidnapper and woman could not be one of ward or bondwoman to the man. For these reasons, Coke gave the example of a woman who suffered all four of these offenses in the twenty-sixth year of Elizabeth’s reign.<sup>174</sup> That woman was not adequately protected by law in spite of the offenses she suffered; there was little recourse against the man who violated her.

A case of inadequate legislation again led to action by Parliament. Yet the Act did not seem to account as much for the safety and well-being of young girls subject to manipulation or vulnerability. More central to the theme in a law against carrying off heiresses was the potential of that woman to be worth a great deal of money. Coke claimed that marrying a resistant woman was not a crime if she lacked wealth in property or moveable. Richard Helmholz emphasized the various religious commentaries that insisted all marriage was to be free from coercion regardless

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<sup>172</sup> 39 Elizabeth c 9. I have found no case evidence of this offense occurring in the surviving trial records from the Elizabethan period, which suggests that this law was more of an ideological statute against hypothetical kidnapper-thieves rather than the response to a specific incidence of heiresses taken against their wills.

<sup>173</sup> Coke, *Third Institutes*, pp. 60-62

<sup>174</sup> Coke further cites Dyer’s Reports, but the example is not included in the modern collection of Dyer’s work.

of the economic background of either property.<sup>175</sup> Although baptism could be coerced, marriage must remain absolutely free. And yet clandestine marriages – including the nuptials of those fleeing parents’ disapproval or a young bride whose friends did not agree on the groom – occupied a grey area in canon law.<sup>176</sup> Rape was indeed an unclergyable crime, but the coercion involved in marrying a pretty but penniless girl against her will was no explicit crime at all.<sup>177</sup> The violation of her person or forced marriage constituted a theft of a great amount of money. That was the focus of this law. The transfer of wealth was the crime at the heart of this statute, not the safety of women. Should a man carry off a woman of means and wealth, he would suffer the pains of death without allowance of clergy.

Beyond domestic matters, benefit of clergy was used in statutes addressing issues of national security. Examples of legislation that focused on security include Statutes that deprived clergy from declared enemies of the state, like Jesuit Priests under Elizabeth or the invasive bands of “Egyptians” that brought disorder to local communities.<sup>178</sup> Unlawful assembly and riots

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<sup>175</sup> Richard Helmholz, *The Spirit of Classical Canon Law*, University of Georgia Press: 1996, pp. 237-240

<sup>176</sup> Helmholz, *Spirit of Canon Law*, p. 240

<sup>177</sup> The Church did not approve of such things, but secular law had no prohibition on Statute. Indeed, the rape of young, poor, or unprotected girls seems to have been extremely under-reported. Servants might complain of rape through the honorable word of their masters seeking to find justice for them, but the issue of raping those with very little power has led to severe under-reporting in trials records that do not match anecdotal entries in casual records such as letters. The connection between rape and pregnancy was strong, creating a contemporary demand for marriage to follow. See “Sexual Morality and Sexual Offences” in JA Sharpe’s *Crime in Seventeenth Century England*, Past and Present Publications, Cambridge University Press: 1983, pp. 57-70. For comparison in the medieval period, see John Carter, *Rape in Medieval England: An historical and sociological study*. University Press of America: 1985 and J.M. Beattie for subsequent centuries in his book, *Crime and the Courts in England, 1660-1800*, Princeton University Press: 1986, pp. 124-127 and 129-132.

<sup>178</sup> Catholics lost many of the privileges to claim clergy or sanctuary under Elizabeth. Those who harbored Priests could be declared felons without benefit of clergy according to a 1584/5 Statute 27 Elizabeth c 2. In 1592/3, the first two Acts forbade Catholics from leaving without license or sending their children abroad to Catholic schools but also forced them to abjure the Realm if they refused to adopt uniformity. 35 Elizabeth c1 & c 2

were deemed unclergyable following the Prayer Book and Kett Rebellions under Edward VI.<sup>179</sup> This measure was adopted to prevent new direct challenges to the monarchy, particularly under the minority regime.<sup>180</sup> In 1572, following the Northern Rebellion of 1569, Elizabeth's Parliament declared the holding of a castle or fortress against her Majesty to be an unclergyable offense.<sup>181</sup> Murder at court, threats to ambassadors, and slanderous bills against those at court were deemed actions too far and therefore unclergyable.<sup>182</sup> Impersonating an officer or traveling in disguise as a soldier was a felony without clergy.<sup>183</sup> Benefit of clergy facilitated the adoption of these standards during a time when enemies of the State might be English-born and eligible for claiming clergy unless Parliament specifically intervened.

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<sup>179</sup> For an overview of the events of the 1549 rebellion and relevant correspondence, see Shagan's new interpretation as presented in "Protector Somerset and the 1549 Rebellions: New Sources and New Perspectives." In *English Historical Review*, Vol. 114, No. 455 (Feb., 1999), pp. 34-63. Shagan challenges the notion that Somerset colluded with radicals and rebels. By reading closely nine letters of correspondence, Shagan is able to reveal the process of diplomacy with disgruntled subjects in the mid-Tudor period. He argues convincingly that the long-standing consequences of treating with rebels was not a precursor to later conflicts such as the English Civil Wars. Instead, it was a practical approach to governance by trying to understand the complaints that plagued the kingdom. In terms of benefit of clergy, passing legislation to deny rebels this forgiveness establishes a firm government policy in light of a more nuanced negotiation with those in power, including Somerset.

<sup>180</sup> The 1549 rebellions are a striking example of these threats to Edward's regime. Ethan Shagan provides us with a focused discussion of the Protector's options during the uprisings in his article "Protector Somerset and the 1549 Rebellions: New Sources and New Perspectives" in *The English Historical Review*, Vol 114 No 455 (February 1999), pp. 34-63.

<sup>181</sup> Since all treason was by default unclergyable, the extra clause declaring it unclergyable merely underscores how unacceptable an act like occupying a fortress for rebellion against the Queen would be for any subject. Considering the actions of the previous year, when Northern earls attempted to depose Elizabeth and put in her place Mary Queen of Scots newly married to the Duke of Norfolk, the double prohibition – both treason and deprived of clergy – serves to emphasize the heinous threat of such an act. 14 Eliz c 1 "An Act for the punishment of such as shall rebelliously take or detain...[the queen's land or castles]" *The Statutes of the Realm*, Vol IV, p. 588

<sup>182</sup> Murder and theft at Court was specifically forbidden in a Statute of 1541/2 along with attacking ambassadors. See 33 Henry VIII c 12. In 1545, Henry's parliament came out against the anonymous production of slander in pamphlets or words, 37 Henry VIII c 10. Parliament made seditious words against the Queen to be unclergyable in 1580/81, with the Act 23 Elizabeth c 2.

<sup>183</sup> A soldier who abandoned his post was declared felon without benefit of clergy under Edward in 1548 (2&3 Edward VI c 2); Impersonating officials or soldiers was deemed unclergyable under 39 Elizabeth c 17 in 1597/8.

Each of these Statutes served to defend matters of national security. They gave local communities the tools for defending against conspiracies while sending powerful messages to subjects who might consider challenging the Crown. This was particularly important under Elizabeth and during the imprisonment of Mary, Queen of Scots. Elizabeth's administration struggled with Catholic insurgents and foreign Catholic threats.<sup>184</sup> As Parliament's significance grew during the Tudor period, sending ideological messages through existing legal structures was just as important as curbing the abuse of privileges or ending a specific crime wave.

At a basic level, any felony was "prohibited." Yet the clauses of legislation show that some laws were more prohibited than others. Purely prohibitive laws protected social institutions, diffused threats of national security, and sought to prevent the most heinous breaches of the peace. The prohibitive Statutes contributed to a larger discourse of crafting social norms, at times functioning as a form of propaganda. And yet, not all laws invoking benefit of clergy were about denying the privilege from certain offenses. Sometimes offering a privilege to groups of people could encourage behaviors that contributed to a peaceful kingdom in working order.

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<sup>184</sup> Victor Houlston recently examined the Catholic resistance to Elizabeth's reign by isolating specific writings or individual movements in his book *Catholic Resistance in Elizabethan England: Robert Person's Jesuit Polemic, 1580-1610*. Ashgate: Institutum Historicum Societatis Iesu, 2007. His chapter on Spanish interpretations of Burghley and his analysis of the "Myth of England's Catholic Destiny" are particularly illuminating with regards to the motivations behind Catholic struggles. The movement was only partially about personal faith, as borne by the carefully-written laws concerning Catholicism and treason at this time. See also Christopher Haigh on personal piety and the uneven administration of treason laws in "Puritan Evangelism in the Reign of Elizabeth I," *The English Historical Review* Vol. 92, No. 362 (Jan., 1977), pp. 30-58 and his chapter "The Church of England, Catholics, and the People" in C Haigh, ed. *The Reign of Elizabeth I*. London: 1984, pp. 195-220. Elliot Rose provides a more balanced approach in his book *Cases of Conscience: Alternatives Open to Recusants and the Puritans under Elizabeth I and James I*, Cambridge University Press: 1975. He presents the case of law in theory and in practice, allowing us to see the ideology behind careful law and the realities of a life where – try though they might to keep Catholics out of government business, in some counties it was impossible to do so and uneven administration of Elizabethan treason laws followed. See especially pp. 11-22 and 58-70.

## Laws Encouraging Behavior

Among the papers of Thomas Ellesmere, Lord Egerton, there exists a late Elizabethan report detailing a brief history of the persistent difficulty caused by overly-sympathetic jurors.<sup>185</sup> Thomas Mynnatt, whose signature lies at the end of the paper, listed examples of cases, the jurors' "false" judgments, and the punishments the jurors received for standing against justice in their decisions. The parchment is a wonderful snapshot of the relationship between royal authority and local participants. Early modern jurors could so easily elicit compassion for their neighbors even when they stood accused of gruesome crimes. Sympathetic jurors might then return an "vntrwe & false verdict," contrary to the evidence but agreeable to the idea that the defendants might mend their ways if given a second chance. The untruthful and sympathetic judgments embodied a major threat to the homogeneity and consistency of executing statutory law throughout the kingdom. Carefully crafted policy was worthless if it had no meaningful way of being enforced. Furthermore, the Privy Council could not merely reverse such "untrue" verdicts, since they had to respect the common law tradition of jury trials. However, the jurors could be counseled, punished, and discouraged from returning those questionable judgments in the future.

The Thomas Mynnatt document detailed how simply these jurors were punished in Henry VIII's reign: they were summoned by the King's Sergeant of Arms to answer for their behavior. Under Phillip and Mary, a jury who acquitted four thieves "contrary to the evidence" were called before the Attorney General, convicted of willful perjury, and committed to the Fleet, a London-

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<sup>185</sup> "Admonition of Jurors," The Huntingdon Library, San Marino, California EL 2657

area prison.<sup>186</sup> Mynnatt records three Elizabethan cases where jurors were not only called to answer a royal authority, convicted of a charge, and imprisoned in the Fleet, but they were also required on a certain day to “goe about Westminster Hall with papers on their heades, declaring their offences. And [they were] to stand with papers at the next assizes at Hereford” while a sermon against them was delivered to a full congregation. Furthermore, Elizabethan offenders were to be fined £20 each.<sup>187</sup> As the sixteenth century wore on, the prescribed penalties were not adequately preventing future offenders, so the admonition of sympathetic jurors became increasingly public, as a warning to future participants of a jury trial.

Parliament dealt directly with this problem in a handful of statutes during the Tudor era. The primary attack on this sympathetic behavior that rendered the justice system weak and inconsistent was the statute “An Acte conc[er]nyng p[er]jury & Punnyshment of untreue v[er]dictes.”<sup>188</sup> The law asserted that the jury trial was the backbone of English common law, and overly-sympathetic jurors who returned an acquittal of a guilty man softened the backbone of England. To prevent this weak element, the statute threatened attainder and a fine of up to £40 for verdicts decided in contrast to the evidence presented at trial. The Act was renewed with new or similar conditions throughout the Tudor period, under Mary and Elizabeth.<sup>189</sup> Acts extended the punishment for jurors in Wales in 1534;<sup>190</sup> Elizabeth’s Parliament extended the relationship between sympathy and perjury in 1563 and extended the new definition to Welsh juries in the

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<sup>186</sup> For a full history of the Fleet Prison, see Roger Brown’s narrative-driven book *A History of the Fleet Prison, London: The Anatomy of the Fleet*. Studies in British History, Vol 42, Edwin Mellon Press: 1996.

<sup>187</sup> “Admonition of Jurors,” The Huntingdon Library, San Marino, California, EL 2657

<sup>188</sup> 23 Henry VIII c 3 “An Acte conc[er]nyng p[er]jury & Punnyshment of untreue v[er]dictes” *The Statutes of the Realm*, Vol III, p. 365

<sup>189</sup> 23 Henry VIII c 3 was renewed under 1 Mary St 2 c 13 (1553), 5 Elizabeth c 9 (1563), and 13 Elizabeth c 25 (1571).

<sup>190</sup> 26 Henry VIII c 4

same year.<sup>191</sup> In 1584, Parliament took on “mistaken verdicts” themselves, declaring them to be impermissible if they went contrary to the evidence in court.<sup>192</sup> The 1584 law allowed for judicial sympathy, but only under the condition that criminals seeking mercy or release maintained an actual conviction before receiving the pardon or lenient sentence. Mercy granted by a judge through legal means was a different process than jurors whose compassion led them to bend the rules. The continued concern over the issue of uncooperative jurors throughout the sixteenth century, as portrayed through Thomas Myannatt’s documented list of specific instances, demonstrates the persistence of the jury problem throughout the kingdom.

In some ways, sympathy and judicial intervention were important elements in early modern justice. Scholars began to focus on this balance of judicial action and crime as a dimension of social history in the 1970s and 1980s.<sup>193</sup> Joel Samaha found evidence of overly sympathetic juries throughout England, but particularly in Elizabethan Essex.<sup>194</sup> JS Cockburn’s analysis of the Assizes Records supported Samaha’s findings and their work contributed to JS Sharpe’s criminal survey of the early modern period.<sup>195</sup> Furthermore, this element of sympathy served as the backbone of English communities. The law was not an institution that served to catch people out when they broke the law. As Cynthia Herrup explored in her book *The Common*

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<sup>191</sup> 5 Elizabeth c 9 “An Act for the Punishment of suche persones as shall procure or commit any wyllfull Perjurye” and 5 Elizabeth c 25 “An Acte to fill upp Juries De Cicumstantibus lacking in Wales”

<sup>192</sup> 28 Elizabeth c 8 “An Act for Redress of Erronious Judgements in the Courte commonly called The Kinges Benche.” *The Statues of the Realm* Vol IV, p. 714

<sup>193</sup> Frank McLynn, *Crime and Punishment in Eighteenth Century England*, Psychology Press: 1989, pp. 128-129, Barbara Hanawalt, “The Female Felon in Fourteenth-Century England” in *Viator* 5, (1975), pp. 253-268 and Carol Z. Wiener, “Sex Roles and Crime in Elizabethan Hertfordshire” in *Journal of Social History* Vol. VIII, No. 4 (Summer, 1975), pp. 38-60, especially pp. 39-40

<sup>194</sup> Joel Samaha, *Law and Order in Historical Perspective: The Case of Elizabethan Essex*. New York: Academic Press, 1974

<sup>195</sup> Cockburn, *Introduction to the Calendar of the Assizes* and JS Sharpe, *Crime in Early Modern England, 1550-1750*. Longman: New York, 1999

*Peace*, judgments were best rendered when the full position of a defendant's place in society was well-understood.<sup>196</sup> "They [jurors] were generally more lenient in crimes carrying punishments over which they had less control, even if the threat to local peace was more severe."<sup>197</sup> Taking this in mind, benefit of clergy might be able to award jurors a little more control over keeping the peace without having to resort to bold legal fiction, which sets up the consequences of this merciful bill nicely.

Historians have therefore outlined a steady tradition of facilitation between the law and individual cases as they came before Justices.<sup>198</sup> Garthine Walker complicated this view in her own research, showing that although "Pre-modern women are often said to have benefited from lenient treatment relative to men within the criminal justice system...the noted exceptions would seem to undermine the general point about equality before the law even in theory."<sup>199</sup> The real experiences of women beyond the law presents a much more complicated navigation of women in institutions of power. The benefits of giving sympathetic judgments to women can be overstated. Often the informal mercy applied at a local level had more to do with connections among family and community than they did with clear-cut gender preferences. This was no special condition for women; it merely contributed to a larger society that was based on patriarchal care and concern. Granting roughly half of the population an escape regardless of the situation would appear to undermine rather than improve local relationships. Herrup's suggestion that common peace was contained through the patriarchal benevolence of jurors and justices

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<sup>196</sup> Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England*. Cambridge University Press: 1987, pp. 143-146

<sup>197</sup> Herrup, pp. 144-145

<sup>198</sup> Especially the surveys by Cockburn, Sharpe, and Beattie, and McLynn, pp. 128-129

<sup>199</sup> Garthine Walker, *Crime, Gender and Social Order in Early Modern England*. Cambridge University Press: 2003 p. 113

complicated the idea of “order” when women were granted access to pleading benefit of clergy. Rather than rely on traditional leniency for women, granting clergy could provide stricter control in the legal system by offering an avenue for conviction that did not force execution.<sup>200</sup>

A very brief Act of 1624 becomes highly significant when we view it in light of the tradition of mercy and the persistent need for consistency across juries throughout England. In the final session of James VI & I, Parliament took the surprising action of extending benefit of clergy to women convicted of “small felonies.”<sup>201</sup> After a century of restricting the pool of eligible claimants through mostly prohibitive statutes, Parliament suddenly offered clergy to literate women convicted of small offenses. The value of the goods taken during these larcenies had to be over 12*p* but under 10*s* for the women to be eligible. If we are to trust the preamble of the Act, the reason for Parliament’s sudden benevolence towards female thieves was for the extreme violence women suffered under the law. “Whereas by the Lawes of this Realme the Benefitt of Clergie is not allowed to Women convicted of Felonie, by reason whereof, many Women doe suffer Death for small Causes.”<sup>202</sup> To remedy the extreme violence of sentencing women to death for the theft of relatively small amounts, Parliament granted women a limited form of the benefit, “but onlie such an Offence as in the like case a Man might have his clergie.” Female convicts who claim successfully would then be branded thieves in open court. In addition, individual convicts might receive additional punishments that ranged from whipping,

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<sup>200</sup> I explore the gendered division of benefit of clergy in Ch 4, pp. 264-265 of this dissertation, which shows a “feminization” of clergy when it comes to convictions following the extension of clergy claims to women in 1624 and 1691. See also Appendix 3 for a chart of the spike in claims following the 1691 law granting women full access to the benefit.

<sup>201</sup> 21 James I&VI c 6 “An Acte Concerning Women Convicted of Small Felonies”

<sup>202</sup> 21 James I&VI c 6, *The Statutes of the Realm*, Vol IV, p. 1216

the stocks, or a year's service in the House of Correction, according to the discretion of the presiding justice.

Despite the straightforward explanation of the Statute, the trial records from this era tell a quite different story. JS Cockburn has edited a collection of the Assize Records for the Home Circuit from 1575 until 1660.<sup>203</sup> Trials from the fifty years prior to the passage of this Act show that women were not, in fact, dying in large numbers. Quite the contrary: there were a number of mechanisms that kept women off the gallows. An analysis of the Assize trials reveals that not a single woman was sentenced to death for a clergyable crime in the Home Circuit region in the decades leading up to the 1624 Act. This is a far cry from the State executing droves of female thieves, as the Statute claimed in the preamble.

The mechanisms that kept women alive relied mostly on the ideal of the woman as the weaker and more delicate sex. Pregnant women were particularly protected by the law, at least in theory. There are certainly parallels to be drawn in the traditions of benefit of clergy for men and benefit of belly for women. This division is illustrated well by an Elizabethan trial in Kent. Thomas Cooper and Margery Jones stood accused of stealing linen goods from Edward Glover.<sup>204</sup> Both were found guilty, but Cooper pled his clergy while Jones pled her belly. A Jury of Matrons found her to be quick with child and her plea was allowed. Both defendants returned home. This is not to say that each gender had an equal benefit; Krista Kesselring has rightly dispelled the myth that these reprieves carried the same weight.<sup>205</sup> Men who claimed their clergy were branded and released to freedom at the conclusion of their trial. Alternatively, Women's

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<sup>203</sup> See JS Cockburn's collection of Assize records or chapter four for a more complete discussion

<sup>204</sup> Kent, Vol I, pp. 137-38 No 790

<sup>205</sup> Krista Kesselring, *Mercy and Authority in Tudor State*, Cambridge University Press: 2003, Appendix II, pp. 212-214

trials were not concluded with the plea, but merely postponed until after the birth of the child. Theoretically she would give birth and return to Court to endure her punishment.<sup>206</sup> Before women were granted alternatives like benefit of clergy, approximately half of female defendants attempted to claim benefit of belly regardless of age, fertility, or active sex life.<sup>207</sup> For instance, Frances Dolan conveys the example of a post-menopausal elderly woman, Anne Bodenham, who was allowed benefit of belly at a shocking seventy years of age.<sup>208</sup> If anything, a successful claim – even in the absence of a confirmed pregnancy – bought a woman enough time to raise money or influence enough to obtain a pardon. Often the declaration of pregnancy reflected popularity among the local community or sympathy from the Justices, jurors, or matrons more than it revealed a woman quick with child.

Benefit of belly became more of a postponement of execution for pregnant, felonious women.<sup>209</sup> The option existed, in Cockburn's opinion, "to give assize judges considerable discretion in the punishment of female felons. Pregnancy only delayed execution of the death sentence: after the delivery the felony was, in theory, hanged."<sup>210</sup> In contrast, a successful plea of

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<sup>206</sup> Surprisingly, there are few works on the traditional reprieve known as benefit of belly. James Coldham wrote a convincing article on the subject called "On Pleading the Belly: A History of the Jury of Matrons" in *Criminal Justice History* 6 (1985), pp. 1-64. Criminal histories often mention the possibility, and Kesselring treats the subject in an Appendix to her book *Mercy and Authority in the Tudor State*, but a longer, focused study would be advantageous to understanding further the treatment of childbearing women under English criminal law. The medical process of detecting pregnancies is described in TR Forbes, "A Jury of Matrons" in *Medical History*, Vol 32 No 1 (January, 1988), pp. 23–33

<sup>207</sup> JS Cockburn, *Introduction*, pp. 121, 123

<sup>208</sup> Frances E Dolan, "Reading, Writing, and Other Crimes" in Valerie Traub and Lindsay Kaplan, eds. *Feminist Readings of Early Modern Culture: Emerging Subjects*. Cambridge University Press, pp. 142-166

<sup>209</sup> JS Cockburn states that 49% of women pled benefit of clergy, with only 38% of such pleas being successful. See his *Introduction* p. 121. The cases compiled in James C Oldham's Appendix on cases of pleading belly reveal that Elizabethan trials granted belly most often, with almost 300 cases of successful pleas – regardless of actual pregnancy. Under James women were less successful, at only 72 claims. But both Elizabeth and James had similar rates of success: 58% under Elizabeth and 55% under James. Oldham "On Pleading the Belly: A History of the Jury of Matrons" especially p. 11 and Appendices on pp.33-42

<sup>210</sup> Cockburn, *Introduction*, p. 122

clergy led to what was essentially a full reprieve for literate men. They would not be punished for that crime after the plea was accepted at court. Therefore, benefit of belly cannot be accepted as a female version of benefit of clergy. Women did not have the clergy at their disposal.

Nevertheless, women had other options for escaping the death penalty before receiving their own version of benefit of clergy under James I. The Assize records show that female accomplices were repeatedly released while their male counterparts were convicted and allowed clergy. For instance, a 1572 case in Kent records that William and Elizabeth Chadwyck broke into a house to steal and assaulted resident Joan Lambe during the burglary.<sup>211</sup> Despite the fact that the indictment included many acts that had been declared unclergyable, the Kent Assize Justices allowed William clergy in exchange for a guilty plea while Elizabeth's bill was merely returned *ignoramus* for not enough evidence.

Similarly, in 1591, two men and a woman broke into the Hertfordshire home of John Gill. The apparent leader of the thieves, Robert Woodward, pled guilty and was allowed his clergy; his two accomplices were ineligible for clergy and coincidentally found not guilty.<sup>212</sup> Later that year, also in Hertfordshire, Christopher and Mary Warpar broke into a house to steal clothes.<sup>213</sup> Christopher was found guilty while Mary was found not guilty. In fact, Christopher attempted to claim his clergy, but he could not read satisfactorily. Christopher went to the gallows while Mary survived. In 1595, when three people entered the house of John Wethered to steal various items and money, only the man was convicted and allowed his clergy, while both female accomplices were found not guilty.<sup>214</sup> These cases are not isolated anecdotes illustrating the occasional

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<sup>211</sup> Kent, Vol I, p. 109, No 610

<sup>212</sup> Hertfordshire, Vol I, p. 85 No 531

<sup>213</sup> Hertfordshire, Vol I, p. 90 No 566

<sup>214</sup> Hertfordshire, Vol I, p. 111 No 704

compassion for female criminals; virtually every entry in the Assize records involving a mixed-gender group of alleged criminals from 1576 until 1621 resulted in male convictions and either pronouncements of not guilty or *ignoramus* for the female participant. In such cases, the Justices of the Assizes repeatedly accepted a guilty plea of the male partner in crime in exchange for the life of a woman.

When women broke the law on their own in the Assize records, without male accomplices to absorb the legal consequence, still other options were available to early modern justices with compassion for the female defendants before them. The act of punishing one member of the criminal party in place of the “weaker sex” was not possible if the crime involved three women, for instance, or the trial sought a solution for a dispute between two women. In such cases, juries sometimes returned surprising explanations for theft or even death. For instance, in 1596, a spinster named Catherine Trott assaulted her neighbor Edith Pendleburie. Catherine knocked Edith to the ground on May 25, inflicting injuries from which Edith died on 8 June.<sup>215</sup> Despite evidence given against Catherine by witnesses of the assault, the jury declared that poor Edith had died from “divine visitation.” This explanation suggested that God’s presence in her frail body was ultimately the cause of death – not the felonious assault. Catherine Trott was allowed to go free. Divine Visitation – the unexplained death of a person attributed to God’s divine presence in their person – was an excuse recorded throughout the Assizes by both men and women facing situations where clergy might not be an option. Anne Lamb stood accused of striking her husband Bernard and killing him in 1633, but he too was found to have died by divine visitation.<sup>216</sup> Despite the accusation of Petty Treason, Anne Lamb was found not

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<sup>215</sup> Hertfordshire, Vol I, p. 122 No 772

<sup>216</sup> Kent, Charles I, pp. 192-93 Case No 926

guilty and released to her family. Her situation was shared among others in Kent during the mid-seventeenth century.<sup>217</sup> Divine Visitation was not as common as fictional criminals or a benefit of clergy plea; the Middlesex Rolls include 33 entries from 1555 to 1603 and the Assize records include less than a dozen cases from Elizabeth to Charles II.<sup>218</sup>

The situation of female thieves changed suddenly after 1624. On 20 June 1625, a spinster named Mary Lesford stole 8s from William Keene.<sup>219</sup> She was caught, charged with Grand Larceny, and brought before the Assizes in Kent. Mary Lesford was convicted, but claimed her clergy for the 8s. She read aloud in court and received a brand on her thumb in public before the Justices released her. Her case was the very first case of the first session of the Assizes after the new 1624 Statutes went into effect. In the same session of Kentish Assizes, three other women were permitted their clergy. Joan Thomas, Margaret Thompson and Mary Leigh, all spinsters, were convicted of Grand Larceny for having stolen various forms of clothing from one Richard Wily. Even though these women were accused of breaking into a house to steal 12 shillings' worth of goods, an amount too high for a woman to claim clergy, they were found guilty of a lesser amount: 4s 10d. Thomas and Thompson pled their clergy for the reduced charge, received a brand, and were permitted to leave the court.<sup>220</sup>

The immediacy with which female convicts took advantage of the Statute is striking. Female thieves were unlikely to watch the proceedings of Parliament with bated breath.

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<sup>217</sup> See especially Kent under Charles I and Charles II

<sup>218</sup> John Cordy Jeaffreson, ed. *Indictments, Recognizances, Coroners' Inquisitions, Post Mortem, Orders and Memoranda from 3 Edward VI until the End of the Reign of Elizabeth I*. Quarter Sessions Records, London: 1886. Assize records for Kent, Elizabeth I until Charles II. Cases of Divine Visitation can be found on p. 122 of the Hertfordshire Assizes under Elizabeth, p. 400 of Kent records under Elizabeth, pp. 75, 192-193, 299-300, 412, 414, and 460-461 in Kent under Charles I, and pp. 11-12, 166, 226, 335, and 365 for Kent under Charles II.

<sup>219</sup> This occurred in 1625, Kent, Charles I, p. 4 Case No 10

<sup>220</sup> Also occurred in 1625, Kent, Charles I, p. 4 Case No 19

Therefore the speed with which they used this extension is curious. In a time before defense lawyers advised their clients of pertinent legal loopholes, these women took immediate advantage of a short statute allowing them clemency. Even more curious is that the justices immediately permitted an official undervaluing of the goods stolen. In other words, these first cases of clergy allowed to women bent the rules by ensuring the goods stolen fit within the parameters of clergy as described by the 1624 law allowing it only in cases of theft that were valued under 10s. In addition, these cases ignored elements in the crime that stood outside the simple theft, such as house-breaking (an unclergyable crime). The concerted effort altered details in order to allow women the right to claim their limited form of clergy immediately after the specifics passed both Houses.

Without legal counsel for defendants, criminals from uneducated classes nevertheless seemed to know a good amount of the law, as illustrated by Tim Stretton's book on women and the law courts *Women Waging Law*.<sup>221</sup> And yet, for women to take advantage of benefit of clergy with such immediacy suggests that the justices might have been advising them. To understand how the women knew of their rights and put together a defense we must analyze the proceedings of the 1621 Parliament that initially designed, debated, and passed the clergy legislation for some forms of crimes committed by women.

The policy to extend clergy to women originated in the failed session of 1621. These meetings were abruptly dissolved over the conflict of the Protestation, and the bills temporarily

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<sup>221</sup> For the rise of defense lawyers in the eighteenth century, see Allyson May, *The Bar and the Old Bailey, 1750-1850*. Chapel Hill University Press: 2003, pp. 87-117. For women's relationship with the law, Tim Stretton gives a fantastic critical view of how women were able to manipulate the law for their own needs in *Women Waging Law in Early Modern England*. Cambridge University Press: 2005. His discussion on women's legal consciousness based on women's claims during the early Stuart period (pp. 160-164) demonstrated with raw data and statistics what Susan Silbey argued in her literature review on the subject. Silbey observed that the law was not the purview of a small elite group of lawyers and law enthusiasts, but a constant presence in popular culture and daily life. "Legal Culture and Legal Consciousness" in *International Encyclopedia of Social and Behavioral Sciences*. Pergamon Press: 2001, pp. 8623-8629

abandoned. Some of the Acts, like the Act for women convicted of “Smale Felonies,” would be immediately revived in the following session without much alteration. Six separate diaries provide information on the 1621 debates.<sup>222</sup> The great majority of the surviving accounts give great details to the debates on foreign policy, monopolies, and the rights of free speech.<sup>223</sup> Between these surviving accounts and the Journals of the Houses, there is a lot known about much of the debates that occurred in the 1621 session of parliament despite its sudden dissolution. And yet, unfortunately the “bill for women to be burnt in the hand” receives only passing references in all of these records.<sup>224</sup> We know the bill was debated and read on February 13, March 10, March 17, April 26, and May 14, 1621. Each of these days includes a brief entry on the subject, without any substantial content. On the first day of its presentation, a Mr Fanshawe responded by calling for a committee to be formed to discuss the historical rights of benefit of clergy and investigate its current status in England.<sup>225</sup> No apparent report from such a committee, if it did indeed meet to record the history of the privilege, survives in these diaries or the official Journals of the Houses. Unfortunately, within the six surviving diaries, there is only one reference that reveals the possible motivation behind granting women a muted form of benefit of clergy. Yet this mention is quite valuable.

On February 13, 1621, John Smyth of Nibley recorded in his *Observations at the Parliament* the introduction of a “Bill, sent by the Judges, to allowe women clergy.”<sup>226</sup> The key

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<sup>222</sup> These journals have been edited and published in seven volumes. See Wallace Notestein, Frances Helen Relf, and Hartley Simpson, eds. *Commons Debates of 1621*. Yale University Press: 1935

<sup>223</sup> Robert Zaller, *The Parliament of 1621: A Study in Constitutional Conflict*. Berkeley University of California Press: 1971

<sup>224</sup> Quote is from “The Anonymous Journal X”, transcribed and edited by Notestein et al in Vol II, p. 203

<sup>225</sup> The “Anonymous Journal X”, transcribed and edited by Notestein et al in Vol II, p. 203

<sup>226</sup> *Observations at the Parliament by John Smyth of Nibley*, transcribed and edited by Notestein et al, Vol V, p. 254

clause in this brief recording is the phrase “sent by the Judges.” A judge’s bill would imply that the direction given to this Act did not originate from Privy Councilors, but from the judges, perhaps as a consequence of their observations while hearing Assizes cases. The names of the judges have not survived. But if women were not being convicted in any great numbers prior to 1624, as the trial records have shown, then offering women benefit of clergy might have been designed to encourage jurors and justices to begin finding female defendants guilty. Even if a woman pled clergy and received the exemption from punishment, she would at least begin leaving a record of her crimes. Jurors were less likely to give an illegal pass or untrue verdict to a female defendant if she had a criminal record. It seems from viewing the trial records that women were frequently being permitted to commit crimes without penalty as jurors too compassionate towards the “weaker sex” allowed them to go free regardless of the facts of the case.

After 1624, as women could begin pleading clergy, the conviction rate increased.<sup>227</sup> Jurors might continue their persistent sympathy, but this time it would be to ensure the value of goods stolen remained under 10s so that women could plead their clergy. Second or third offenders would be punished severely, and justice could prevail, even if the conviction were for a lesser crime, as in the house-breaking case.<sup>228</sup> And so we see the case of Susan Mockett, who was convicted of grand larceny in 1626 and allowed her clergy. She continued her criminal ways

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<sup>227</sup> For an example of that, examine the JS Cockburn transcriptions of Assize records for Kent under James I and Charles I. the Jacobean collection conveys mercy for most female defendants, while the Caroline records find them convicted with clergy. *Calendar of Assize Records: Kent*, volumes James I and Charles I.

<sup>228</sup> The extension of clergy reached full equality during the crime wave of the 1680s and 1690s. The relationship between this spike in crime, the role of women, merchants of London, and Parliament will be explored in the next chapter.

and was found guilty again of grand larceny for two different events in 1627. Since Mockett had pled her clergy already, she was sentenced to hang.<sup>229</sup>

We see the rise in women's convictions by reading through the Kent Assizes themselves. Kent is the county for which Assize records are best preserved and formally printed, thanks to the hard work of JS Cockburn. For the years of 1618 to 1624, we come across very few women sentenced to death for clergyable crimes. There were no female larcenists from 1618 to 1622; only two women convicted of infanticide.<sup>230</sup> In the 1623 session at Maidstone, we do see a spike in women accused of grand or petty larceny – but all of them are declared “not guilty.”<sup>231</sup> In that same session, thirteen men were allowed clergy, twelve of them for larceny.<sup>232</sup> The following session in 1624 included no female felons yet 16 cases of men claiming clergy for larceny.<sup>233</sup> Suddenly the picture changes for female defendants in 1625. We see the case of Mary Lesford convicted as the very first woman at the 1625 sessions – and granted clergy at that. She is joined in that first session with seven other convicts, four of whom plead clergy while the other three are whipped.<sup>234</sup> In the years to follow the number vary but women are consistently allowed their clergy (or whipped) where previous sessions had merely declared them not guilty. In the years from 1625 to 1629, we see a total of 26 cases concerning female thieves accused of larceny. Of

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<sup>229</sup> *Calendar of the Assize Records Kent* under James I, Case Nos 136, 176, and 194, pp. 28, 38, and 41.

<sup>230</sup> *Calendar of the Assize Records Kent* under James I, pp. 133-143

<sup>231</sup> The only exception is the case of Alice Westbrooke, accused of being an accessory to Grand Larceny. Her accomplice was convicted and allowed clergy, while she remained “At large.” See Case No 854 p146 amid the rest of the sessions on pp. 144-154. Other cases of women found not guilty at that session can be found in Case Numbers 851, 856, 859, 871, 872, pp. 146-149.

<sup>232</sup> Maidstone Sessions, *Calendar of the Assize Records Kent* under James I, pp. 144-154.

<sup>233</sup> Maidstone Sessions, *Calendar of the Assize Records Kent* under James I, pp. 155-157.

<sup>234</sup> *Calendar of the Assize Records Kent* under Charles I, pp. 3-14

those, 13 were clergied or attempted to have clergy.<sup>235</sup> Three of those cases include the repeat offender Susan Mockett, noted above, who almost had clergy three times but who received a sentence of hanging on the third attempt.

The effect of offering women a small version of benefit of clergy was not drastic, but it did provide some measureable change in how women experienced the trial system. Rather than be dismissed repeatedly as a minor offender, returned “*ignoramus*” or “not guilty,” a woman might be whipped or clergied and returned home. Then, if she re-engaged with her criminal lifestyle, a jury might be less resistant to sentencing her to death for her crimes. By expanding benefit of clergy, Parliaments were able to manipulate the officials of court to create a more persistent line of convictions. Distinct from discouraging or openly prohibiting certain behaviors, these latter laws focused on upholding existing institutions and inviting cooperation for maintaining social order at a local level. Statutes that sought to encourage cooperation were necessary for the sister laws that denied clemency for outrageous or unwanted actions to resonate throughout the realm.

## Conclusion

In this chapter, I have endeavored to trace the relationship between Parliament and benefit of clergy that reflects the growing centralization of government in the sixteenth century. Much has been written on this subject of government expansion, and the precise nature or

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<sup>235</sup> I included all cases involved women who might be eligible for clergy – so I excluded those accused of crimes such as infanticide. Of the grand larceny accusations, four were whipped rather than branded by pleading clergy. One woman, Bridget Plomer, was almost allowed free by a rebellious jury. A justice intervened and sentenced her to death with her accomplice husband, Case No 379 pp. 76-77. See *Calendar of the Assize Records Kent* under James I, pp. 4-85.

measured intent behind the Tudor era shift is continually under debate.<sup>236</sup> Benefit of clergy played a role in that massive transformation. By offering and denying the privilege to groups of people, Parliament was able to employ benefit of clergy as a tool to achieve a series of distinct goals. Many of these goals were the consequence of a specific crisis. Taken as a whole, they create an unintentional movement that could not have been designed but nevertheless contributed to the revolution of Tudor institutions. Over the course of this period, 1530 to 1604, benefit of clergy shifted from a special privilege of the clergy to a cornerstone of criminal defense upon accusation of felony. The liberty was used to control rebellions and poverty, to protect the kingdom from threats both foreign and domestic, and to uphold social institutions. Diving the laws into three themes of motivation – to prohibit, discourage, and encourage behavior – does not reflect the intent of individual lawmakers. To my knowledge, no Member of Parliament referred to these laws in such categories. Rather these three distinctions serve as an interpretative method for organizing the sheer number of laws touching benefit of clergy between 1530 and 1604.

At no other time in English history did Parliament employ benefit of clergy to address so many subjects in such varied ways. Nor would it be used as frequently again. Yet by using the benefit during this particular period of legislative activity, it became part of the larger narrative of a growing government preoccupied with social standards and international status. Krista Kesselring notes that during this period, “Mercy was considered an essential part of sovereignty, both a necessary and legitimate adjunct to justice.”<sup>237</sup> Offering mercy to larger groups while

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<sup>236</sup> See n 4-6 on pp. 133-134 of this dissertation

<sup>237</sup> Kesselring, *Mercy and Authority*, p. 3

carefully blocking it from particularly threatening behaviors facilitated the growth of Parliament and the Tudor State.

After the ascension of the Stuarts, the relationship between Parliament and Crown grew increasingly strained. The explosion of Statutes under the Tudors waned somewhat under the Stuarts and benefit of clergy became less of an issue for Parliamentary authority or the mercy of a monarch as much as the procedural questions became an issue for the courts. The transition from a clerical privilege to a cornerstone of Common Law – allowing a safety valve of redemption for a small segment of the population depending on the needs of local order – had received enough attention that there remained fewer immediately needs for new legislation employing benefit of clergy. Accessory to murder, buggery, and similar “heinous” crimes had already been treated formally in the law. As a result, Acts employing benefit of clergy declined during the seventeenth century. Stuart laws, on the other hand, tended to focus on matters of claiming clergy in court: who may claim, for what actions, and what order the process of claiming might take.

One primary exception falls under the years of the Rump Parliament. Six bills received rapid passage through the House of Commons between 1648 and 1650. All six were prohibitive laws – Acts targeting behaviors by withdrawing any possibility of clergy. Puritan leaders chose to draw traditionally ecclesiastical offenses concerning religious belief and sexual behavior into the civil courts. By doing so, the offenders of such crimes were subject to the secular courts rather than the ecclesiastical ones. Among these offenses were blasphemy, adultery, and atheism, and the laws declared that such offenses were to be unclergyable, unforgiveable crimes.<sup>238</sup> In

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<sup>238</sup> In total, these acts criminalized Piracy, Catholic Recusancy, sexual offenses, blasphemy, atheism, and heresy. C.H. Firth, R.S. Rait, eds. *Acts and Ordinances of the Interregnum, 1642-1660*. 1911, Vol I, pp. 1133-1136, Vol II, pp. 387-389

fact, the criminalization of fornication and adultery meant that consensual sex outside the bonds of marriage would be more heavily punished than a rape: both parties involved in an extramarital affair would be executed under the law, but with rape only one person lost life. Keith Thomas argued convincingly that this act was not so much a product of the Puritans in government nor an anomaly in legislation; rather there had been building pressure to enhance penalties for adultery for some time.<sup>239</sup> The law was ineffective for prosecuting large numbers of sexual “deviants” and its passage did not lead to an overwhelming number of defendants at court.<sup>240</sup> The temporary measure failed to be renewed at the next sessions.<sup>241</sup>

The short six statutes remain the only seventeenth-century example of clergy statutes adopting similar tactics to the Tudor style. The way clergy was used to draw new subjects into a jurisdiction beyond the ecclesiastical authority is significant, for it had been done before under the Tudors and would be done again under a British Empire in foreign lands. Beyond this brief flurry of Puritan activity, the privilege had already become a cornerstone of the English legal system by the end of Elizabeth’s reign. Accordingly, the further incorporation of clergy in each parliament session at the rate it experienced under the Tudors greatly diminished under the Stuarts.

The law is only an imaginary force; the authority of any given statute extends only so long as the collective population agrees to adhere to its power. Therein lies the power of the law

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<sup>239</sup> Keith Thomas, “The Puritans and Adultery: The Act of 1650 Reconsidered” in *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill*. Donald Pennington and Keith Thomas, eds, Clarendon Press: Oxford, 1978, pp. 257-273

<sup>240</sup> I could not find any trials reflecting this Act in the Assize records, and Ann Hughes only finds one such example in Michelmas of 1653. See the Warwick County Records, Volumes I-IV *Quarter Sessions Order Books 1625-1665* SC Ratcliff and HC Johnson, eds Warwick: 1935-1938, Case No 108. Similar cases of fornication can be found in Case numbers 111, 113, 119, 121, and 243. Ann Hughes, *Politics, Society and Civil War in Warwickshire, 1620-1660*, Cambridge University Press: 2002, p. 288 especially n 150.

<sup>241</sup> It would be renewed in later parliaments, as outlined in Appendix 2. Blair Worden treats this subject of sex at court briefly in her book *The Rump Parliament, 1648-1653* Cambridge University Press: 1977, p. 232-234

as an expression of government philosophy or a piece of propaganda. As long as the public believes in the authority of the legislation, its statements become definitions of society and nationalism. The published Acts were enforced and encouraged at the local level. The local courts and quarter sessions became ideal carriers for building a common sense of Englishness throughout a kingdom that was anything but homogenous. Even the Parliament that passed these laws was diverse and mired in disputes. Yet the language of the laws collectively portrays a specific idea of England and the obligations and political philosophy of a people.

The processes at court did not always follow the letter of the law. Justices attempted to solve local conflicts and neighborly disputes without necessarily handing down the harshest penalties written in parliamentary statute or practiced through common law tradition. Practice stood apart from ideology encased in legislation. If the Tudor years were marked by the persistent attention and use of benefit of clergy, the Stuart era was a period of judicial discretion and alteration at the pleading level. The few seventeenth-century statutes invoking the benefit worked mostly to establish how people claimed and what options Justices might have to ensure the first-time offender did not relapse after receiving clemency. Stuart parliaments abandoned the approach of the Tudor parliaments, which offered or denied the benefit to large groups of people in a single statute as a way to enrich the reputation of the monarch, or offer incentives for working with the administration, or focus on specific behaviors that were plaguing the kingdom. By 1604, the legal parameters were mostly in place. The Stuart changes to benefit of clergy would focus instead on procedure, as I explore in the next chapter.



## **Chapter Four: Pleading, Reading, Branding: Benefit of Clergy in Practice**

The legislative process that tied benefit of clergy to various social, political, and religious concerns was largely disconnected from the practical experience of convicts at trial. Many of the laws discussed in previous chapters functioned either as a stance against a theoretical action or as a way to align statutory law with the reality of what already occurred in the courts. As the Tudors gave way to the Stuarts, Parliament's use of benefit of clergy changed dramatically. The number of clergy statutes dropped significantly and those that were designed under Stuart parliaments concerned mostly the practice of claiming across the courts of England. Over the course of the Stuart period, benefit of clergy underwent yet another transition. What began as a demonstration of the mercy and power of the King slowly became an act of vengeance and enforced physical suffering in the courts. The importance of getting a second chance due to the grace of the King diminished and a new emphasis on retribution emerged. Clergied criminals may have avoided the death sentence, but they endured suffering and severe punishment nonetheless.

By 1700, clergy was no longer a form of mercy or forgiveness as much as it was an alternative punishment, as public as whipping or execution. By 1718, the role of clergy had fallen sharply, to be replaced by rising alternatives like imprisonment and Transportation. In order to understand this gradual transformation, we must examine trial records, publications, and measurements of practice over the course of the Tudor/Stuart period.

Measuring practice presents its own series of problems. For this chapter, I draw information from three broad collections of trial-related documents. One group of records

includes Cockburn's transcribed Assize trials for the Home Counties, particularly Kent, from 1559 until 1675.<sup>1</sup> By focusing on the records of a court in the same general region, we can see changes in claiming in the same community over time. A typical claim of clergy recorded in the Assizes followed this format: "On *X* day, *Name* stole *Goods* from *Name*. Guilty; allowed clergy." From such simple entries, the exact procedure of claims and negotiation might be difficult to discern, but within those exceptions and variations the practice of clergy becomes clear. When an entry clarifies that a subject could not read, for instance, or that the victim of theft was "an unknown man," the variations point to deviations from unspoken standard procedure. Furthermore, people who made multiple successful claims of clergy, or were allowed the brand even though they could not fully read, or followed some other variation to the law, their cases serve to provide us with a glimpse into the more common traditions by emphasizing how some practices were different or unreliable.

Prior to the regular keeping of the Assize records, a collection of legally significant judicial decisions known as the Year Books recorded how clergy functioned in the courts. Instead of a documentation of every single trial, this collection merely reported on cases of interest for other judges. Accordingly, the judgments in the Year Books do not help us understand statistics as much as they settled theories and questions pertaining to the law. Benefit of clergy did not feature prominently these cases. Nevertheless, the records are useful for preserving a sense of how the privilege worked and what questions were raised. The collection of trials contained in the Year Books stretched from 1268 until 1535. After the conclusion of Year Book cases and before the Assizes were formally collected under Elizabeth, there was a dearth of carefully preserved and consistent trial records. During this period of uneven documentation, the

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<sup>1</sup> Where possible, I relied on the Kent records for continuity, but I supplemented these by examining all available volumes of the Assize transcriptions.

Kings Bench collection at the National Archives in Kew preserved lists of names which were reported to London as a central collection of previous claimants. Such scraps of paper with ten or twenty names on them are known as the “Clergy Rolls.”<sup>2</sup> These lists of names tell us little about who was receiving the benefit, under what circumstances, where, or why. As a result, they do not feature in this chapter as they have in studies by Kesselring and Cockburn.<sup>3</sup>

By the late seventeenth-century, the public enjoyed published accounts of the most sensational crimes prosecuted in London. A series of documents with entitled with some variation of “A True Narrative of the Proceedings at the Sessions-House in the Old Bayly” recorded brief summaries of the most grisly murders, neighbor disputes, or appalling crimes. Most importantly, these pamphlets concluded with a statistical summary of the Old Bailey convictions. For instance, the final page might say “There were in all 9 condemned, 6 men and 3 women, 9 burned in the hand, 14 transported.”<sup>4</sup> These sensationalist publications served to entertain while sending clear messages to the public about obedience and behavior, punishment and authority. For the historian, these publications give us a clear picture into the rates of claiming clergy at the end of the Stuart era.

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<sup>2</sup> These lists are contained in KB 9 and KB 23 of The National Archives in Kew, England. Calling for the lists of names occurred after 1518 by tradition but became regularized by Parliamentary Statute 34 & 35 Henry VIII c 14 in 1543. The new statute was designed to prevent the abuses of clergy during the period of transition under the Henrician Reformation. See J.S. Cockburn, *Introduction to the Assize Calendars*, pp. 118-19 and Kesselring, *Mercy and Authority in the Tudor State*, Cambridge University Press: 2003, p. 48.

<sup>3</sup> Cockburn discusses these lists of names in his *Introduction* on p 118. Although a law under Henry VIII dictated that all names ought to be sent to a central location in London for validation, no record of such reporting survives and only the lists of names remain. See also Krista Kesselring, *Mercy and Authority in Tudor England*, p48, especially n100

<sup>4</sup> Both sample titles were drawn specifically from a pamphlet in the British Library entitled *A True Narrative of the Proceedings at the Sessions-House in the Old-Bayly which began on Wednesday the 26<sup>th</sup> of February 1678 and ended on Thursday the 27<sup>th</sup> following. Where were several arraigned and tried for several felonies burglaries and clipping and the most remarkable of which are here faithfully related. With the number of the persons that received sentence of death, burn'd in the hand, transported and to be whipt. With Allowance*. London, Printed for DM: 1678. British Library Rare Books Collection: 23.a.8836

According to Cockburn, benefit of clergy offered reprieve for 47% of felonious male convicts between the years of 1559 and 1675.<sup>5</sup> This includes successful pleas of clergy, unsuccessful pleas, or situations where clergy ought to have applied but did not for some technicality, which was mentioned by the judges in the official record. Beattie measured the success rate of benefit claims somewhat differently, by using later records. Beattie's conclusion is that "sixty per cent of those convicted of simple grand larceny at the Surrey assizes in the half century after 1660 successfully pleaded clergy at that point."<sup>6</sup> These statistics hold true in the Old Bailey collections, where the conclusion of each scandalous report of the Old Bailey trials included a statistic summary of those punished. An analysis of those pamphlets that remain intact revealed that there were more clergied criminals between 1674 and 1711, even when adjusting for unclear numbers in the original phrasing, such as "7 or 8" or "several." Of those pamphlets in good use, I found 454 sentences of death and 596 sentences of branding resulting from pleas of clergy over the course of 53 sessions.<sup>7</sup> The sensationalist reports for each session show a correlation between those executed, those transported, and those burn'd in the hand.

Innovations in criminal justice provided the Court with the chance to merge existing and new punishments by the end of the seventeenth century. For instance, rather than choosing between whipping for a lesser crime or execution for a felony, a judgment could offer benefit of

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<sup>5</sup> I trust Cockburn's thorough statistical analysis of his own ten-volume transcription of Assize records in the *Introduction* volume, p. 119. His conclusions match what is presented when one reads through the records themselves.

<sup>6</sup> JM Beattie, *Crime and the Courts in England, 1660-1800*. Princeton University Press: 1986, pp. 451-452

<sup>7</sup> More information about this can be found in the Appendix, where the chart and the bibliography for the pamphlets are presented in order to demonstrate the measurable change in claiming practices. Many of the pamphlets were incomplete, with the final page of numbers missing; others were scattered among collections. My point here was not to be comprehensive but to make a point about the general trends. By using 53 of those pamphlets with a complete breakdown of the sentencing fate of those on trial, we see a pretty consistent situation where cases of benefit of clergy matched or exceeded cases that ended in execution or transportation. It should be noted, though, that the concluding statistic roundup sometimes overlooks transportation, so the total number reported (128) for the Old Bailey sessions may be incomplete. See Appendix 3 for more information

clergy with the added penalty of a year's imprisonment or even Transportation. Benefit of clergy endured as a large percentage of pleas in every session before suddenly plummeting around the Act of Transportation of 1718. Following 1718, clergy continued to appear in every new felony-creating statute, but only by virtue of making all new felonies immediately unclergyable. Cockburn sees clergy rates dropping to about 1% as transportation and imprisonment became increasingly favored among Justices.<sup>8</sup>

This chapter seeks to explore, first, the practical changes in the process of pleading as it was expected in the abstract of the law. Second, it investigates the exceptions to the rule, the role of judicial discretion, and the changes to the court requirements for reading and branding. The contrast between ideal and real pleading provides us with insight to the power of benefit of clergy in early modern cultural imagination. When applicable, I have traced such changes to new and relevant statutory legislation. In other cases, the practice was tied to precedent and tradition. Some situations were decided less on ability to read and legal entitlement than they were on the conditions of the defendant: a sympathetic plea from an illiterate father of six, or a well-known and liked person down and out who might receive a sympathetic allowance of clergy based on the pleas of the local town. If we wish to understand benefit of clergy in the law, we must also examine benefit of clergy in practice.

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<sup>8</sup> Cockburn, *Introduction*, pp. 118, 120

## Pleading

The process of pleading clergy changed a great deal during the Tudor/Stuart period. Although these changes in practice failed to move in uniform steps, examples can be taken together to formulate a common, though not universal, experience. In the fifteenth century, when clergy remained officially the privilege of ordained men and unofficially the second change for opportunistic, insidious laymen, the theoretical process began with an arrest and trial. At any point in the trial, the privileged man could declare his claim. Some priests held off actually claiming for as long as possible, since claiming in royal courts meant surrendering to the King's authority in that space. Before claiming, a mistake in the court papers over a name or occupation could lead to a dismissal of the case without having to bow down before royal authority.<sup>9</sup> Marjorie Blatcher gives the example of convicted murderer Richard Kirkeby, who was able to escape his sentence of execution because the victim's name was never known and the court papers remained therefore incomplete.<sup>10</sup> The very last point for claiming clergy was at the moment of sentencing. Defendants could prove eligibility in multiple forms and these proofs became the subject of discussion among judges. Defendants had to convince judges of their eligibility. This could be accomplished in various ways: through appearance, dress, and tonsure; through the presentation of ordination papers; or by the sworn word of local ecclesiastical officials on behalf of the defendant.

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<sup>9</sup> Marjorie Blatcher describes multiple cases of alleged criminals manipulating the paperwork requirements in order to avoid an upheld conviction in her book, *The Court of the King's Bench, 1450-1550: A Study in Self-Help*. The University of London Athlone Press: 1978, pp. 52-57.

<sup>10</sup> Blatcher, p. 53, citing King's Bench records 27/909/r.r.8d from The National Archives in Kew.

An individual's inability to prove ordination and eligibility did not necessarily sentence a man to death in the fifteenth century. As explored in the first chapter on the medieval roots of the benefit, judges were often at odds with Ordinaries, as both parties argued over whether an individual with insufficient proof should be transferred to the Bishop's prison.<sup>11</sup> Ordinaries did not wish to allow what they saw as a weak application of ecclesiastical privileges to imposters. Meanwhile, the secular Justices wished to follow their interpretation of the letter of the law. This tension was lessened somewhat with the 1489 statute that offered benefit of clergy to convicts who could not prove ordination absolutely. Instead, claimants would be allowed the benefit but only with a performance of reading in front of the justices and jurors. After proving literacy, a court official branded the thumb in open court. Then convicts – either proven clerks with immaculate skin or literate clerks with branded thumbs – were delivered to the Ordinary for penance and forgiveness. Ordinaries who then refused the literate clerk could be fined £100.<sup>12</sup>

Some local Ordinaries did not approve of the privilege for criminals, especially if they were not local people known to the bishop's representative. Such men might refuse to accept delivery of clerks who had questionable claims for eligibility. However, those who did so ran the risk of incurring fines for rejecting eligible convicts.<sup>13</sup> For instance, in 1481 an Ordinary denied a well-read man and allowed him to hang under suspicion that he was not a genuine clerk.<sup>14</sup>

Similar cases were recorded in 1456 and 1469, although in both earlier cases the refusal of the

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<sup>11</sup> See Chapter One, pp. 71, 74-77

<sup>12</sup> Bellamy, "Benefit of Clergy in the Fifteenth and Sixteenth Centuries," p. 124

<sup>13</sup> 7 Edward IV and 9 Edward IV, Fitzherbert, *Les Reports des Cases en Ley en temps due Roy Edward IV*, London: 1680, pp. 21 and 28

<sup>14</sup> This case was related to a Newgate arrest and trial. See the Seippe collection of Year Books from Boston University, Seippe No 1481.032. < <http://www.bu.edu/phpbin/lawyearbooks/display.php?id=20754>> Accessed on February 5, 2012

Ordinary and Archdeacon to receive the well-read men led to fines of varying amounts and restrictions on privileges.<sup>15</sup> These disputes created conflict, for Justices could not summarily deny a possible priest and send him to execution and at some level it was the Ordinary's responsibility to take those who showed evidence of an education – even if, ultimately, those well-educated criminals were not in fact ordained.

What happened to convicts after delivery to the Ordinary varied widely. Secular authorities had designed procedure to ensure that guilty should not escape punishment entirely. The Ordinaries were supposed to claim their clerks and investigate further into their innocence or guilt. Technically, clergy claimants had to swear their innocence through purgation and amass a group of twelve reputable men to swear belief in their claim. Successful convicts were then purged of their accusation and guilt and allowed to return to their lives.<sup>16</sup> However, this was not always resolved smoothly and quickly. For instance, an ox-thief named Richard Crosse was held in a bishop's prison for 23 years, from 1442 until his release in 1465.<sup>17</sup> In 1467, John Chedworth, Bishop of Lincoln, ordered the release of two clerks, one who had been held for 18 years and the other for 25 years, well since the reign of Henry VI.<sup>18</sup> C.B. Firth sees this as punishing the clerks in spite of the command "touch not mine anointed" which functioned as the Biblical reasoning for the maintenance of benefit of clergy.<sup>19</sup> Keeping these men imprisoned reflected the unique

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<sup>15</sup> The system of fines came from the Rolls of Parliament. See *Rotuli Parliamentorum*, John Strachey, ed. Vol V, (London: 1767-77), f. 151b. See also Seippe Nos 1469.012 and 1456.049 <<http://www.bu.edu/phpbin/lawyearbooks/display.php?id=20051>> and <<http://www.bu.edu/phpbin/lawyearbooks/display.php?id=19068>> Accessed on February 5, 2012.

<sup>16</sup> John Robert Wright discusses purgation in the medieval period in "Purgation of Criminous Clerks," a subchapter of his book, *The Church and the English Crown, 1305-1334: A Study Based on the Register of Archbishop Walter Reynolds*. PIMS: 1980, pp. 217-222

<sup>17</sup> Firth, p. 187

<sup>18</sup> Bishop Chedworth's list is cited on Firth, p. 187

<sup>19</sup> The justification came from 1 Chronicles 16:22. See Firth, pp. 185-191

situation of each case, from the disapproving Ordinary to a sense that the offender might repeat his actions if he were not sufficiently deterred and even to the point where complicated legal matters kept a cleric in limbo for years. Nevertheless, these cases are striking precisely for their rarity. Most men suffered purgation more quickly, proving their innocence through the sworn oaths of their friends and family.

Failing to suffer purgation had dire consequences: the cleric convicted was defrocked and returned to the king's courts for sentencing as though ordination had never occurred. However, evidence of these consequences occurring is nonexistent.<sup>20</sup> In 1402, fourteenth-century recommendations were codified into law under Henry IV to ensure that guilty clerks be imprisoned and fed only bread and weak beer throughout the week, subsisting on alms from friends or strangers.<sup>21</sup> Firth argues that "A clerk delivered *absque purgation* was condemned to lifelong imprisonment, and a mere *clericus convictus*... may well have had sufficient punishment by confinement for months or years in an episcopal prison."<sup>22</sup> In other words, claimants of clergy were delivered to the bishop's prison but then either allowed to make their purgation or simply kept for life without defrocking and delivery back to the king's courts for execution. By claiming clergy, convicts may be avoiding execution, but the alternative was no paradise.

By the reign of Henry VIII, these disputes seemed to have calmed, particularly following the 1489 law applying a limited form of benefit of clergy to laymen or ordained men without substantial proof of eligibility. With the 1536 Statute making all claims of the benefit to be equal

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<sup>20</sup>John G Bellamy, "Benefit of Clergy in the fifteenth and sixteenth centuries" in *Criminal Law and Society in Late Medieval and Tudor England*. St Martin's Press: 1984, pp. 115-164.

<sup>21</sup>Firth, p. 186. The Letters of Islip from 1351/2 were referenced specifically in the "Benefit of Clergy Act" of 4 Henry IV c 3.

<sup>22</sup>Firth, p. 190

regardless of ordination, no special privilege for only ordained men remained. The process finally adopted a sense of uniformity. Men stood accused of a crime, went through trial, invoked their clergy either before or after pronouncement of guilt, proved their eligibility through ordination papers, reading, or some other means, and were ultimately delivered to the Ordinary for penance. Of course, the assumed role played by judicial discretion meant that uniformity was no guarantee, but the theory of procedure had adopted order and conformity.

Curiously, the deliverance to the Ordinary retained its central importance even after the clerical version of this privilege was abolished. Assize records under Elizabeth prior to 1576 note delivery to the Ordinary after any clergied criminal was recorded. For instance, in 1560 one Edward Holte was convicted of manslaughter by stabbing. After pleading his clergy, he was delivered to the Ordinary after reading successfully.<sup>23</sup> Similar cases were recorded in Kent in the years between 1562 and 1565, and again in 1573 and 1574. Yet not all cases of clergy led to a note of delivery.<sup>24</sup> The deliverance to the Ordinary for ecclesiastical purgation seems to fulfill tradition more than a new lay function.

The process of delivering convicts to the Ordinary changed in 1576, in a law concerning the raping, ravishing, or carrying away of women.<sup>25</sup> Parliament sought to make such sexual crimes unclergyable. Seeking to criminalize heinous acts against women was hardly contentious. However, the bill included a secondary clause to alter the procedure of a claim. Delivery had become a cumbersome part of the legal fiction that was a layman pleading his clergy and

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<sup>23</sup> For the trial of Edward Holte, see the Elizabethan Kent records, p. 16 No 83

<sup>24</sup> It is unclear if the delivery was a notation of convenience – ie, it had occurred already when the record was made – or if only certain people and a specific set of criminals warranted delivery during the Kent Assize Sessions. For examples of these cases, see Cockburn's volume on Assize records from Elizabethan Kent, pp 8 to 146, case numbers 83, 158, 197, 202, 246, 248, 261, 343, and 747. In Case 211 and 675, Justices delivered Lawrence Baker, burglar, and Cornelius Vanderstrict, killer, to the local vicar, pp. 40 and 120-1 respectively.

<sup>25</sup> In the final draft, I will cite the pages of Ch 3 dealing with this law.

becoming a “criminous clerk.” The Statute stated: “Every pson... allowed to have the benefitt or Priviledge of his or their Clergie shall not be deliyvered to the Ordinarye as hath ben accustomed.”<sup>26</sup> Instead, after having been convicted, allowed, and burned in the hand, such criminals “shall forthwith be enlarged and delivered owte of Pryson.”<sup>27</sup> The third clause further added that the Justices “shall or may, for the further correcon of suche psons to whome suche Clergie be allowed, deteyne and kepe them in pryson... so as the same do not exceed one year.”<sup>28</sup> At the discretion of the Justices – presumably, those best positioned to make the decision – those offenders at risk of breaking the law a second time might be further dissuaded by up to a year’s imprisonment. In this law, delivery to the Bishop’s representative was thus replaced with the physical labor and mean conditions of the local prison or bridewell. Assize records show a delay between the publication of this new enhanced power and its execution. None of the Elizabethan Assizes for Hertfordshire or Kent took advantage of assigning additional penalties to clergied defendants, and it is not until 1616 when we finally see a man plead his clergy and be remanded to Kent for additional punishment.<sup>29</sup> In 1631, Thomas Hare and Thomas Norman were also sentenced to an extra month’s detention in the house of correction after pleading their clergy for larceny in Kent.<sup>30</sup> In the same session, two more cases of clergy were sent to the house of correction and the trend continued into 1632.<sup>31</sup> The trial records suggest that the terms of the

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<sup>26</sup> 18 Elizabeth, c 7, *The Statutes of the Realm*, Vol IV, p. 617

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*

<sup>29</sup> See the case of John Nuberry in Jacobean Kent, No 375, p. 73

<sup>30</sup> See Kent under Charles I, Nos 656 and 660, pp. 134-135

<sup>31</sup> See the Assize records of Kent under Charles I, specifically the cases of Joseph Shepard, No 674 on p. 137 and the co-defendants James Webb and Miles Basey, No 667 on p. 136. Mr Basey would serve two months, as he was indicted on additional crimes in the same session and sentenced to another month in case No 668, p. 136

Elizabethan Statute did not take effect until the Stuart era. Once the trend began, however, its momentum grew. The additional punishments that followed contributed to an overall shift in the benefit as it became less of an act of mercy and more of an alternative punishment to execution. In later years, the 1576 law assumed inordinate significance.

Meanwhile, the small percentage of successful claimants who actively worked as ordained clerks continued to be delivered to the Ordinary after conviction. Records of delivery survive in the Canterbury Archives. In 1603 and 1607, letters of delivery were drawn up to record two criminous clerks, Thomas Nevile and Johann Phillips, delivered to the Archbishop of Canterbury after conviction and public pleas of clergy.<sup>32</sup> While laymen returned to their families, ordained men reported to the equivalent of their religious families: the local bishop's representative. The tradition may have been discontinued in the early Jacobean era, however; no record of delivery survives in England from after 1607.<sup>33</sup> An Ordinary was engaged to administer the reading test in colonial Virginia through at least 1628.<sup>34</sup> The delivery of priests in these isolated cases seems to be a remnant of the past that was quickly losing relevance in a system that viewed all clerks convict as laymen.

The overwhelming majority of claimants reported in the Assize records from 1559 to 1660 concerned offenders convicted of grand larceny or related crimes including burglary, housebreaking, or highway robbery. To a much lesser extent, clergy was allowed to those convicted of other crimes under special circumstances. When it came to the specifics of a case, it seems that statutory provisions were used more as a guide than a strict rule. Although arson was

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<sup>32</sup> The Canterbury Archives, DCB 9/9 and DCB 9/35

<sup>33</sup> One such report of delivery for William Swift under James I has no date and might therefore be from after 1607, but the three examples seem to stem from the same decade. The Canterbury Archives, DCB 9/29

<sup>34</sup> Jeffrey Sawyer, "Benefit of Clergy in Maryland and Virginia" in *The American Journal of Legal History* Vol 34 No 1 (Jan 1990) pp. 48-68, especially the details on the role of the Ordinary on p. 59

strictly unclergyable by 4/5 Philip and Mary c 4, a thirteen-year-old boy named John Shepe was allowed to read his book and escape the death penalty in 1581.<sup>35</sup> The crime appeared to be malicious – the boy broke into a barn in order to set a fire – but the Justices sympathized with the boy’s age and attributed his rambunctious behavior to his youth. They allowed him mercy in the sentencing.<sup>36</sup>

Occasionally, convicts were allowed to plead for the violent crime of “felonious killing.” Murder was an unclergyable crime, but murderers were allowed clergy under extenuating circumstances. Consider the case of Robert Rychardson, who struck William Blacke after finding fault with Blacke’s work at the plow. Blacke died of his wounds, but since Rychardson was an employer merely correcting his servant, the Justices allowed him his clergy.<sup>37</sup> A similar case occurred in the 1640s, where a jury found Susan Adams, gentlewoman, guilty of murdering her servant during a moment of overzealous correction. After the verdict, the jurors expected for the woman to plead her clergy. However, women could only claim the benefit for theft at that time. Horrified by the idea that they would send a gentlewoman to her death for upholding her duty as a mistress in correcting a servant, the jurors sent a petition to Parliament to clear the woman’s name. Parliament drafted an exemption on behalf of Susan Adams specifically.<sup>38</sup> While benefit of clergy might work to undermine the legal system, there existed enough flexibility to allow for

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<sup>35</sup> See “An Act that Accessories in Murder and divers Felonies shall not have the benefit of clergy” 4/5 Philip and Mary c 4 for unclergyability of arson. See also the Elizabethan Kent records, p. 184, case No 1072

<sup>36</sup> Legally, children of any age convicted of felony should have received the fullest punishment of the law. Indeed, the National Archives at Kew contains records of children as young as twelve being hanged for murder and other crimes – Pleas of the Crown PC 1/2717. Only in Victorian Britain did Parliament begin setting different standards for age and punishment. Nevertheless, during the early modern period, judicial discretion and jury sympathy often saved the lives of guilty but sympathetic child defendants. The Parliamentary Statute 42 and 43 Victoria c 49 distinguished between “Child,” “Young Person,” and “Adult” in 1879. National Archives, CLA/047/LSJ

<sup>37</sup> Elizabethan Kent Assize records, p. 95 No 530

<sup>38</sup> “House of Lords Journal Volume 9: 11 February 1647,” *Journal of the House of Lords: volume 9: 1646 (1767-1830)*, pp. 3-5.

those exceptions that would work to uphold the social hierarchy. As Tom Green noted, “the expansion of benefit of clergy in the fifteenth and sixteenth centuries allowed juries to convict without condemning to death defendants who had committed simple homicide.”<sup>39</sup> The process began to change, but some felonious killing had an air of justification through upholding social strata or preserving the self in defense.

Similarly, in cases of confession, Justices might allow clergy for a case of homicide or “felonious killing” as Assize records list the crime. This occurred in 1583 with Thomas Wylles and again in 1586 with Thomas Candy, both of whom confessed to having struck men who later died of the wounds. The confession led to an allowance of clergy.<sup>40</sup> Cases of felonious killing might be described as self-defense. The trial of Hugh Tunstone, convicted of murder, follows this pattern. After winning a game of cards, Tunstone exchanged words with his opponent before returning to his Master’s house for the evening. His opponent, William Belche, followed him the whole way home, at which point Tunstone ran his pursuer’s head through with a knife, inflicting injuries from which he died. The questionable element of danger and stalking may have convinced the Justices to allow clergy in this situation.<sup>41</sup> The cases involving manslaughter for various reasons pepper the Assize records of Kent well into the Restoration, with charges of murder receiving allowance of clergy throughout the 1660s and in 1673 and 1675.<sup>42</sup>

Nevertheless, the charges of murder, buggery, arson, and rape remain a clear minority.

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<sup>39</sup> Tom Green, “The Jury and the English Law of Homicide, 1200-1600” in the *Michigan Law Review*, Vol. 74, No. 3 (January 1976),” p. 475

<sup>40</sup> For Thomas Wylles, see Elizabethan Kent Assize records, No 1205 on p. 203. For Thomas Candy, see No 1517 on p. 253.

<sup>41</sup> See Elizabethan Kent Assize Records, p. 215 No 1285

<sup>42</sup> See Kent Assizes under Charles II, Nos 1835 and 1968 on pp. 337 and 362

The overwhelming majority of clergy claims in the Assizes were for counts of Larceny. The records from Elizabethan Hertfordshire, as an example, record 171 cases of clergy pleas. Of those, 168 were for larceny and only 4 were for other crimes like felonious killing.<sup>43</sup> In Jacobean Essex during the 1610s, slightly more convicts were able to claim for other crimes, but again the predominant crime for which benefit of clergy was granted remained larceny. Among 124 total pleas of benefit of clergy between 1610 and 1619, only nine were associated with felonious killing or homicide. The remaining 115 convictions were all grand larceny or burglary reduced to larceny.<sup>44</sup> The 1660s witnessed a slight rise in the ratio of allowances for clergy to manslaughter, but again larceny remained the overwhelming majority: out of 80 cases in Kent, only ten granted clergy for manslaughter and the remainder covered larceny.<sup>45</sup> These numbers demonstrate that benefit of clergy was associated most strongly with grand larceny but occasionally with situations where someone was murdered under extenuating circumstances – during a scuffle,<sup>46</sup> a moment of temper,<sup>47</sup> or unplanned accident.<sup>48</sup>

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<sup>43</sup> These numbers were created by counting the number of clergy cases including a failed attempt by a convict who failed to read convincingly. One claimant pled clergy for both larceny and burglary, hence the 172 pleas but only 171 records.

<sup>44</sup> Again, these statistics come from counting the cases of people who attempted to plead clergy, successfully or otherwise, from 1610 to 1619. See Essex Assizes under James I, pp. 71-225

<sup>45</sup> Statistics gleaned from the records of Kent Assizes under Charles II, pp. 1-204. There were a few missing assize collections during this period so the numbers do not include trials from 1667-1668 but nevertheless give the sense of overwhelming grants of clergy for larceny with a few exceptions for manslaughter.

<sup>46</sup> See the case of Robert Rawson indicted in Elizabethan Hertfordshire for felonious killing where an attack turned deadly. He was allowed clergy in 1596, Case No781, p. 123

<sup>47</sup> For instance, the 1663 case of Robert Southwell who struck Jane Tuckey in the stomach, inflicting injuries from which she died a few weeks later. See Case No 462 p. 86 of the Kent Assizes under Charles II

<sup>48</sup> In July of 1665, Thomas Cullen was found guilty of manslaughter after he broke a friend's ankle by accident. The ankle became infected and the poor man Gregory Jull died a month later from his wounds. Cullen was allowed clergy. See Case 794 p. 150 of the Kent Assizes under Charles II.

The Assize records indicated that the system of pleading clergy followed this loose process: a writ or arrest, followed by a trial a few months later, and conviction, at which point most claimants of clergy began their plea.<sup>49</sup> Depending on the complications of the case, the availability of the witnesses, and the rounds of circuit Justices, defendants could wait up to a year for their trial.<sup>50</sup> Without a plea of clergy, conviction passed straight into the final stage of sentencing.<sup>51</sup> Eligible defendants could claim at any point before conviction, but most liked to wait to ensure that there would be a conviction in the first place before beginning the process of avoiding execution. Occasionally, the guilty who knew the evidence was too much to hope for a “not guilty” or “*ignoramus*” return would confess and frequently their confession led to a more sympathetic set of court officials willing to allow clergy for borderline cases or shaky literacy. This is certainly how some convicts of clergyable crimes were saved: their cooperation and confession led to leniency in allowing them to claim clergy for practices withdrawn from clergy via statute.<sup>52</sup>

Whether these variations were due to criminal manipulation or the actions of court officials is unclear; Cockburn remarked that “Assize judges often ignored the statutory rules, both in allowing clergy to those convicted of non-clergyable offences and in granting the benefit

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<sup>49</sup> See JH Baker, *An Introduction to English Legal History*, pp. 181-182 on benefit of clergy. See also JS Cockburn, *A History of English Assizes, 1558-1714*, Cambridge University Press: 1972, pp. 128-129 and Tom Green, “Jury and English Law of Homicide” pp. 488-492

<sup>50</sup> For instance, in 1608 the average wait time for a trial in Sussex was three months, but among the trials was Thomas Waters, who waited almost a whole year for trial, and Margaret Bygge and Elizabeth Androwes, who waited over seven months. See Assize Records for Sussex under James I, Case 114 on p. 23 and Case 102 on p. 23.

<sup>51</sup> Sir William Blackstone, *Commentaries on the Laws of England, in Four Books*, Vol II. Philadelphia: 1893, pp. 365-366. See the larger section “On Benefit of Clergy” pp. 365-374

<sup>52</sup> Examples of this can be found throughout the Assize records. Cockburn discusses the phenomenon in his book, *A History of English Assizes*, pp. 125-129

to men who had already been branded.”<sup>53</sup> Following the conviction, plea of clergy, and branding, convicts were either released back into society or sentenced to an additional stint of punishment, ranging from whipping to stocks or imprisonment.

Under Elizabeth, convicts were delivered to the Ordinary until 1576 and released afterward. Only under the Stuarts did clerigied criminals begin to receive additional punishments. Following this development of extra punishments, and after later laws extended the privilege to laymen and laywomen in 1624 and 1691, “all women, all peers of parliament, and peeresses, and all male commoners who could read were discharged in all clergyable felonies...yet all liable, (excepting peers and peeresses,) if the judge saw occasion, to imprisonment not exceeding a year.”<sup>54</sup> Local Justices had at their discretion the power to determine how much of a threat the clerigied criminal might be to society. They could be allowed free without any additional punishment, or given a series of additional penalties based on the particulars of each case. Presumably such local discretion would strengthen community ties far better than any blanket recommendation by Parliament. Judicial discretion provided the balance between litigation and legislation for the Common Peace.

Much later, in the 1660s, Parliament entertained the idea of expanding the options for judicial discretion in order to include Transportation. Beattie argued that there was large distrust in the system of branding and releasing criminals: “that those who were not sent to the gallows were merely branded on the thumb and discharged was a matter of wide concern by the 1660s. That concern gave rise to a variety of efforts to enlarge the punishments that might be imposed

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<sup>53</sup> Cockburn, *Introduction*, p 119; see also *A History of the English Assizes*, p. 129

<sup>54</sup> Blackstone, *Commentaries*, Vol II, p. 370

on convicted felons.”<sup>55</sup> There were three false starts to establish a link between clergy and transportation, with earlier drafts requiring revision in order to pass. A successful bill did not pass until 1670, and then it was tacked on as a secondary clause to a bill making the theft of woolen cloth an unclergyable felony. The second clause allowed convicts to be sentenced to Transportation in the cases where offenders showed particular risk of offending again. Parliament explicitly asked that Justices seek out possible repeat offenders or untrustworthy convicts and then “to cause such offender to be transported to any of his Majesty’s plantations beyond the seas there to remain for the space of seven years.”<sup>56</sup> Parliament thus further empowered local Justices to act as they saw best for the local communities. While in theory this would allow any case of clergy to be sentenced to Transportation, very few cases led to that final destination. Under Charles II, only two criminals were transported under this bill, one convicted in 1669 and another convicted in 1671.<sup>57</sup> Transportation would not become a common sentence until the reigns of Charles II’s successors, as I discuss below.

The 1670 clause tying transportation to pleas of clergy acts almost as a non sequitur to the bill’s primary business of condemning the theft of woolen cloth off the rack at nighttime. Yet it is perhaps the more powerful of the two clauses in this Act. Parliament had attempted to tie the possibility of Transportation to pleas of clergy at the 1664 session. Multiple drafts of this law have survived the Parliamentary Archives fire of 1834. The earlier versions give us an insight to the process of debating specific barriers to an innovative new policy, especially as those barriers relate to social convention.

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<sup>55</sup> Beattie, *Crime and the Courts*, p. 470

<sup>56</sup> 22 Charles II c 5 in *The Statutes of the Realm*, Vol V, p. 1657

<sup>57</sup> Calendar of Assize Records, Kent under Charles II: No 1061, p. 196; No 1416, p. 259

The initial draft of that bill brought up the Elizabethan law which had discontinued the delivery of convicts to the Ordinary and expanded judicial powers to sentence troubled convicts to extra punishments. Hoping to build on that judicial discretion from 1576, the 1664 drafts began to encourage transportation in addition to whipping or imprisonment. “And the judge judges or justices before whom such conviction shall be shall conceive the person or persons soe convicted fitt to be sent to some of his Majesty’s plantations beyond the seas.”<sup>58</sup> Those particularly violent or theft-prone convicts receiving grace through benefit of clergy would have seven long years in a colony like Jamaica or Virginia to reconsider their life choices.

The draft appeared stable enough, granting a new tool for judges to employ while keeping the peace. Yet there remained areas of contention. Ultimately these issues proved difficult enough to prevent the bill from becoming law and it was abandoned after its first and second attempts. The surviving multiple drafts of this bill reveal that the primary area of contention concerned the question of how to treat married women. Sentencing a cleric woman to be transported set undue punishment upon her possibly innocent husband, who would lose his helpmate and perhaps endure increased hardship during her absence. Parliament had already debated the relationship of responsibility between husbands and wives when the 1610 session considered punishment for Catholic recusant wives and its potential impact on dutiful, Anglican husbands. The 1610 statute “For the Administering of the Oath of Allegiance to Married Women,” established that husbands could not be held accountable for all of a wife’s actions.<sup>59</sup> Parliament had debated the issue extensively because members did not wish to punish husbands

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<sup>58</sup> “An Act for transporting of persons convicted of felony within Clergy (or for Pettite Larceny) beyond the Seas” 28 May 1664 Parliamentary Archives in the House of Lords, HL/PO/JO/10/1/319

<sup>59</sup> 7&8 Jacobi I, c 6

by depriving them of their wives.<sup>60</sup> In the end, they decided on a compromise solution absolving men of their wives' culpability, but giving them the option of taking punishment upon themselves. Men who were fond of their popish wives could pay a monthly fee to keep them out of prison, but it was their choice to either keep their wives by their sides or to let the state imprison them for their continued allegiance to Rome. The conclusion was that husbands had an interest in keeping their wives safe, but they should not be summarily punished for the unlawful actions of a spouse.<sup>61</sup>

The proposed Act of 1664 tying benefit of clergy to Transportation addressed similar issues in separating families. Since some kinds of female criminals were allowed their clergy, the law might tear at the fabric of marriage once again if a Judge sent a wife away to Virginia for three years as extra punishment for her crime. A second draft of the bill added that if a woman were married and able to produce either a register documenting that fact or the priest who married her, then she was no longer eligible for Transportation. The only exception was applied to husband-and-wife accessories who had stood trial for the same crime and were sentenced to be Transported together. Yet this was not a perfect solution, for a second draft of the bill suggested that the provision protecting married couples would only enable female clerks convict to convince a man to marry them between arrest and sentencing. Consequently, a third draft added a provision that any marriage protecting the united couple had to occur prior to the initial offense. Everything else in the bill remained identical; the only elements to change included an

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<sup>60</sup> "House of Lords Journal, Volume 2: July 1610" *Journal of the House of Lords: Volume 2: 1578-1614* (1767-1830), pp. 642-662

<sup>61</sup> Indeed, Elizabeth Forrester ties the balance of control and responsibility for marital relationships to male honor itself. Regardless of the behavior of women in real life, the idealized relationships involved power, control, and patriarchal supremacy. "Male Honour, Social Control and Wife Beating in Late Stuart England." In *Transactions of the Royal Historical Society*, Sixth Series, Vol VI (1996), pp215-224.

elaboration on the rules concerning women, *sole* or *covert*, and how to measure if criminal women were trying to marry merely to escape execution or Transportation.

The policy was finalized in 1670, but Justices did not take advantage of it immediately, suggesting that the energy put into crafting the law was somewhat wasted. The feared marriages of opportunity remained hypothetical. Clearly the troubling element in this law was how to treat women without threatening the institution of marriage, an issue wholly unrelated to benefit of clergy. Parliament was concerned about how to punish women without punishing their husbands and maintaining the familial unit. Perhaps that was an idea that affected their own personal lives more than questions of criminality. The central issue was not about the benefit as much as it was about preserving the discretion of judges without giving them license to put undue stress on one of the basic building blocks of society: marriage and family.

The various drafts involving this law were ultimately unsuccessful in solving the problem of marriage. When the elements of the 1664 bills connecting benefit of clergy to Transportation passed in 1670, the concerns over marriage and family were simply dropped. Perhaps the impasse of 1664 served to clarify that judicial discretion was in fact ideal for matters that would change from case to case. The latter bill originated in the House of Commons, passed through committee and was sent to the Lords through William Beecher on 9 March.<sup>62</sup> The House of Lords sent it to committee on 17 March, and there it acquired the additional clause. The altered version of the bill passed on 18 March.<sup>63</sup> The successful Statute assumed that a good Justice would make an informed opinion based on what would be best for the local community, including whether a newly married couple would be left intact or forcefully separated.

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<sup>62</sup> March 1670, *Journal of the House of Commons: Volume 9: 1667-1687* (1802), pp. 129-132

<sup>63</sup> 17 and 19 March 1670, *Journal of the House of Lords: Volume 12: 1666-1675* (1767-1830), pp. 310-315

The primary change in the process of pleading during the early modern period was the shift from an assumed ordained man claiming a fiercely-protected right to the sense of mercy granted by the king and finally to an additional form of punishment under judicial review and discretion. By the turn of the eighteenth century, benefit of clergy was no longer a symbol of the monarchy's divine grace, but a trick of common law, a compromise that allowed for a second chance while adding on a sense of bodily suffering and corporal punishment through whipping, imprisonment, or branding. Douglas Hay even reflected this change by defining benefit of clergy in relation to its added punishment rather than its merciful exemption: to Hay, benefit of clergy was "the right to lesser sentence of transportation on first conviction for the capital crime of grand larceny."<sup>64</sup> Insight into this period has been preserved through popular publications that retold the trial details from London's Old Bailey. Such pamphlets assume a sense of this disapproval for those claiming the benefit. The authors relished in the sordid details of criminals and their decisions, making light of poor choices made by criminals. Consider two women "formerly convicted of felony" and branded according to statute. They "might have had the King's Pardon for transportation, but refused it" and were thus sentenced to die.<sup>65</sup> Those who claimed their clergy were sometimes called names, such as "old Notorious and Incurable

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<sup>64</sup> D Hay, "Property, Authority, and the Criminal Law" in *Albion's Fatal Tree*, ed D Hay, P Linebaugh, JG Rule, EP Thompson C Winslow. London: 1975, p. 22 n2. Hay's controversial legal interpretations use benefit of clergy in their argumentation. I fit my history of benefit of clergy into this historiography in my conclusion, which focuses on the changing tradition of the benefit until its abolition in 1827 and beyond. [My final draft will cite specific pages] In Langbein's famous challenge to the classic compendium, "Albion's Fatal Flaws" he cites Doug Hay's dismissal of the benefit as further evidence of the inaccuracy of that collection's class-based argument. John Langbein, "Albion's Fatal Flaws" *Past & Present* No. 98 (Feb., 1983), pp. 96-120, especially p. 117, n 67.

<sup>65</sup> *A True Narrative of the Proceedings at the Sessions-House in the Oldy Baly begun on Wednesday the 8<sup>th</sup> of this Instance December, 1675, and there continuing till the Saturday Following: Wherein seventeen Men, two women, and a boy about fourteen years of age received judgement to dye for their several offenses. Besides, neer twenty that received the mercy of the King for Transportation; twelve had the Benefit of the Clergy; and were onely Burnt in the Hand, six to be whipt at the Carts Tayl, etc. With all the Particular Circumstances of their trials and the Nature of their Crimes.* With Allowance, Roger L'Estrange. Printed for Benjamin Pierce, 1675, p. 8. The British Library, Rare Books collection, 23.a.8829

Thieves” while others were commended for their apparent innocence in spite of conviction, and praised for being allowed their clergy.<sup>66</sup> Yet the procedure itself – the process of claiming clergy at trial – was only part of the story. Also subject to change were the reading requirement and the administration of the brand upon the skin of the offender. These two elements of pleading clergy also underwent transformation during the Tudor/Stuart era. Both would be abolished in the eighteenth century, but only after they contributed to the role of clergy as it transformed from mercy to vengeance.

## Reading

*Miserere mei, Deus, secundum misericordiam tuam (Have mercy upon me, O God, according to thine heartfelt mercifulness).*  
~Psalm 51

By reading these words aloud, in English or Latin depending on the conditions set in each court, a criminal could earn freedom. The *Miserere* was the traditional verse chosen for proof of literacy. Since successful reading of this passage saved a man from hanging, it was colloquially referred to as the “neck verse.” Officers of the court who distrusted the defendant’s true ability to read might hand the book open to the wrong page or upside down as an extra test for recognizing true reading ability or mere learning by rote. The use of literacy as proof of clerical status was a

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<sup>66</sup> See for instance *The Narrative of the Proceedings at the Sessions House in the Old Bayly December 12, 13, 14, & 15 1677. Containing the Tryal of the Woman for Coyning, who is Condemned to be Burnt. With an account of the Highway-men. Also the Tryals and Condemnation of Several Other Norotious Melfactors. And also the number of those that are Condemned Burnt in the Hand, Transported, and to be Whipt.* With Permission Ro Lestrage. Printed for DM: 1677, p. 8, The British Library Rare Books Collection, 23.1.8831, and the case of a lusty but considered innocent man convicted of rape in *A True Narrative of the Proceedings at the Session-House in the Old Bayly, September 6, 1677. Setting for the Tryal of a man for a Rape; and an Account of several other notable Tryals, Facts, and Circumstances. With the number of those Burnt in the hand, Transported, etc.* With Permission: Roger L’Estrange. London: Printed for DM, 1677, pp. 4-5. The British Library, Rare Books Collection 23.a.8826

matter of tradition, perhaps inspired by the 1315 statute *Articuli Cleri*, which tied claims to “sufficient learning” but not specifically to reading. As I explained in Chapter One, many historians have pointed to Edward III’s *Pro Clero* as the moment of codifying the reading requirement, but the laws did not mention literacy explicitly. The use of reading as a measurement arose out of tradition rather than statute.<sup>67</sup> JH Baker noted the inconsistent administration of the reading test, explaining that while the early modern tradition was to ask for a reading of the “Neck-verse,” in the reign of Richard II the traditional verse was Psalms 15:5: “He that putteth not out his money to usury, nor taketh reward against the innocent. He that doeth these things shall never be moved.”<sup>68</sup> Technically, the reading passage could be anything, but an appropriate passage usually sought forgiveness from God as well as the courts. The shift in chosen verses parallels the shift in justification of benefit of clergy. In the medieval period, the idea was that criminous clerks escaped accusation and suffered purgation in order to prove their innocence; after the Reformation, claiming the benefit was tied to the King’s mercy in spite of having wronged the community.

In a published tract of 1555, William Staunford described the process of reading as administered by the Ordinary in the secular court.<sup>69</sup> The claimant was handed the Bible and asked to read a selected passage. Should the performance prove successful, the delivery would be

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<sup>67</sup> *Articuli Cleri*, 9 Edward II st 1 c 16, *Pro Clero* 25 Edward III st 6 c 4-5 See Chapter One, pp. 53-60 of this dissertation for more detail.

<sup>68</sup> Quoting Psalms 15:5 from the King James Bible. An alternative version uses “bribe” rather than “reward.” See M Jack Suggs, Katharine Doob Sakenfeld, and James R Mueller, eds. *The Oxford Study Bible: A complete Guide to the World of the Bible*. Oxford University Press: 1992, p. 559. JH Baker, *The Reports of John Spelman*, Vol II, Selden Society, XCIV (1978), p. 329

<sup>69</sup> William Staunford, *Plees del Coron*, London: 1555, f.133

complete; if the reading were questionable, local tradition determined whether the king's Justices or the Ordinary cast the final vote over the fate of the claimant.<sup>70</sup>

While the tradition of reading grew out of need to prove clerical status, the reading test persisted even after the 1536 elimination of the clerical version of the legal loophole. Proof of literacy remained, leading one man to comment that benefit of clergy favored "learning in general, and reverence of mankind and man's blood (which *in persons of use* is not to be shed lightly)."<sup>71</sup> The continued emphasis on literacy separated society in a way that was further supported by the Act under Edward VI allowing all peers to plead clergy regardless of literacy. The policies encouraged a sense of class division that favored "persons of use" (the educated and well-born) while leaving the illiterate to die on the scaffolds. Shakespeare's Jack Cade gave this damning assessment of the system: "Thou hast appointed justices of peace, to call poor men before them about matters they were not able to answer. Moreover, thou hast put them in prison; *and because they could not read*, thou hast hanged them; when indeed only for that cause they have been most worthy to live."<sup>72</sup> Lawrence Stone considered the burst of literacy and valuing of education during this period to constitute a "revolution" reflected in other institutions – including benefit of clergy.<sup>73</sup>

The ability to read set one apart from the rest of society and granted benefits rooted in both practicality and status. In addition, the measurement of literacy tied the innovative lay version of the benefit to its ecclesiastical roots while providing local Justices with a measure by which they could deny clergy to some defendants deemed perhaps too dangerous to release back

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<sup>70</sup> Baker, *John Spelman*, Vol II, p. 330

<sup>71</sup> Emphasis mine, drawn from a quote of James Hobart, Sergeant at Law, in Baker, *John Spelman*, Vol II, p. 331

<sup>72</sup> Emphasis mine, from William Shakespeare, *2 Henry VI* (IV. vii. 39-51)

<sup>73</sup> Lawrence Stone, "The Educational Revolution" in *Past & Present*, No 28, pp. 41-60

into the community. A particularly heinous, risky criminal might be found to read poorly in order to deny that criminal the chance to offend again, while a sympathetic or young defendant's poor reading might be accepted out of care for the situation.

A clear distinction between educated and illiterate was impossible to establish. The reading requirement was not a uniform experience. It relied on local judicial discretion, unique cases of need, and community dynamics. The defendant who read might be given second chances or allowed to forgo the public performance. Elisha Cole claimed that "even the women (by a late Act of Parliament) have (in a manner) the benefit of their clergy, tho' not so much as put to Read; for in such Cases where Men are allow'd it, the Women are of course sizz'd in the fist without running the risque of a Halter by not Reading."<sup>74</sup> In other words, sympathetic defendants – a woman led astray by her "natural" weaknesses, or a popular man down on his luck but still supported by the good will of his community – might be allowed to skip standard elements of procedure. By allowing variation, jurors could avoid the discomfort of putting a delicate woman or popular neighbor to death.<sup>75</sup> Cole's dictionary claimed that women skipped

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<sup>74</sup> Coles, Elisha. *An English dictionary explaining the difficult terms that are used in divinity, husbandry, physick, phylosophy, law, navigation, mathematicks, and other arts and sciences, containing many thousands of hard words, and proper names of places, more than are in any other English dictionary or expositor: together with the etymological derivation of them from their proper fountains, whether Hebrew, Greek, Latin, French, or any other language: in a method more comprehensive than any that is extant / by E. Coles ...* London: 1677, under "Neck-Verse"

<sup>75</sup> The case of women often gives rise to confusion and complication. Consider the case of a bigamous woman in 1676, when "there was another (though not so famous) instance of the contrary sex, a woman being indicted for having two husbands at once alive, which being fully proved she was found Guilty and her sex not being capable of the benefit of clergy, was likewise condemned to dye." In the same session, a man with seventeen different wives throughout England was allowed his clergy. Nevertheless, members of the Old Bailey stood firm and watched the man read his book while the woman was put to death. See *A True Narrative of the Proceedings at the Sessions Holden for London and Middlesex at Justice-Hall in the Old Bayly the 10<sup>th</sup> and 11<sup>th</sup> Days of May 1676. Setting forth the Tryal and Condemnation f the man for having several Wives, and the woman for having several Husbands: and other most material Passages. And also an Account of the Tryal for the women who was arraigned as being accessory to the Sacrilegious Robbery of St Giles Church: with the Tryal of the man for buying the Plate off her. And likewise how many are Condemned, how many Burn'd in the hand, and Transported. These are to Satisfie all People, that the Book of the Sessions with the aName of John Millet, was the Tryals Four sessions ago. With Permission, Ro L' EStrange.* London, Printed for JA (1676). The British Library Rare Books Collection 23.a.8832

the reading performance and received a brand immediately upon conviction before sending them home. During the early modern period, variation was the rule rather than the exception. The literacy requirement could be circumvented, and what constituted an acceptable demonstration of reading changed with each governing Justice. Therefore it is worthwhile to consider the proofs of literacy as they functioned in courts during the early modern period.

Most Assize records did not mention the use of reading during a plea of clergy except in cases where the defendant was deemed to be unable to read. The records were cursory rather than detailed. The majority examples of cases presented the facts and announced the innocence or guilt of the defendant before the plea of clergy occurred. Then the convict either read the book clearly to receive the brand or proved to be unable to read and was sentenced to hang. Occasionally we can guess the influence of a particularly harsh judge. In Elizabethan Hertfordshire, for instance, the sessions of 1590 to 1593 witnessed a sudden rise in the number of claimants who were found to be unable to read and sentenced to hang. The Justice in common during these rounds was Robert Clarke.<sup>76</sup> Clarke began touring Hertfordshire for the Assizes beginning in 1590, just as the increase in rejected claims began, and was replaced in 1596, as clergy claims relaxed again. In the mid-1590s, Clarke moved from the Home Circuit to the Norfolk circuit.<sup>77</sup> While there was no preserved commentary from the records to understand if Robert Clarke was purposefully raising the bar for quality reading, he may have been the common thread that denied twelve convicts their clergy. In contrast, the four sessions just before and after Robert Clarke's service denied zero attempts to read. So although Clarke allowed

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<sup>76</sup> Elizabethan Hertfordshire, pp. 72-113

<sup>77</sup> JH Baker claims Clarke went North in 1593, but existing Assize records show his active involvement until at least 1595; the error may be due to a conflict in dating conventions. J. H. Baker, "Clarke, Sir Robert (d. 1607)," *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, Jan 2008. <http://www.oxforddnb.com/view/article/5525>, accessed 18 April 2013

clergy to 39 convicts, the twelve people found “unable to read” and sent to the gallows stood in contrast to the records of judges who came before and after.

Only two men were denied clergy for failing to read adequately in the next thirty years: in March of 1623, Robert Houghton and Ranulph Crewe denied the plea to Nicholas Banester and William Penfould.<sup>78</sup> Curiously, both these denied convicts were trying to claim clergy for unclergyable crimes: Banester stood accused of shooting a man with a pellet gun, while Penfould had been accused of stealing horses. Perhaps the failure to read to the Justices’ satisfaction was tied to the relative seriousness of these men’s crimes. These moments of determined proof seem to reflect more on the principles of the presiding Justice than the actual literacy of the individuals, although the records themselves could be simply exercising selective reporting. Some Justices considered the leniency of the reading test to be less pity than mere irresponsibility.<sup>79</sup>

Nevertheless, examples of failed reading did show up randomly throughout the period. Frequently when one person failed, the accessories were allowed to go free or found not guilty, in an apparent acceptance of one man’s life for the collective crime. Consider the case of Jeremy Gladman and his friends in 1616. Accused of stealing money from Hugh Trafford, Gladman claimed his clergy but failed to read. He was sentenced to hang but his accessories allowed free.<sup>80</sup> In 1632, a husband-and-wife team of thieves were brought to justice. When the husband, William Mawditt, failed to read, he was sentenced to death but his wife was declared not

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<sup>78</sup> Jacobean Sussex, pp. 112-113

<sup>79</sup> Indeed, Cockburn brings such commentary to our attention when citing a letter to Burghley in 1595. The Hatfield MS collection, MS 17/81-2.

<sup>80</sup> Hertfordshire under James I, No 770 pp. 164-165

guilty.<sup>81</sup> The phrase “claimed clergy but unable to read; to hang” can be found throughout the Assize records.<sup>82</sup> If anything, these cases demonstrate the various tools available to Justices if they wished to apply a safety-valve for the accused before them. Such options gave Justices autonomy with the exceptions necessary for keeping the peace and preserving communities.

If defendants were unable to read, they might not be lost. Benefit of clergy was not the only way to escape punishment. The Assize records contain a number of inventive alternatives to putting a sympathetic defendant to death. Perhaps the most intriguing example of this is the surprise culprit. As JS Cockburn explained, “Since a verdict of ‘murder by persons unknown’ was not acceptable at law, juries wishing to acquit in such cases had either to name a different killer or to advance an alternative, non-prejudicial explanation for the death.”<sup>83</sup> Accordingly, there were verdicts of “not guilty” accompanied with the pronouncements of guilt upon fictitious names like John of Noke, John Love, William Death, John Slye, John Lellowe (“lay low”), William Stranger, and John in the Wind. If the records are to be believed, a man named John of Noke, John a’Noke, or John ap Nokz roamed the countryside committing murders for sport.<sup>84</sup> The collective alleged actions of similarly-named fabricated men allowed juries to set free defendants whose extenuating circumstances made it appear reasonable to let them go. The discretion was entirely at the jury’s mercy, so the details of the case presented by the defense were important.

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<sup>81</sup> Kent under Charles II, No 866, p 180

<sup>82</sup> In Elizabethan Kent, when the reading requirement was administered with generosity, we find four cases of failing to read: Nos 1570, 1785, 1819, and 1894. In Jacobean Sussex, there are five such cases: Nos 398, 597, 598, 599, 793. But by Charles I in Kent, the larger county, Nos 23, 174, 195, 302, 463, 672, 862, 866, 1280

<sup>83</sup> Cockburn, *Introduction*, p. 113

<sup>84</sup> Some examples of this can be found in Cockburn’s collection of Assizes. See Hertfordshire under Elizabeth, No 999, p. 160 and No 101, p. 18; in the Essex Assizes under James I, Nos 484, 485, 490, pp. 76-77; Kent under Charles I, No 926, pp. 192-193, and others. Cockburn, *Calendar of Assize Records*, HMSO: 1977-1993.

Consider for instance a case in Hertfordshire in 1600, when John Tidswell killed his social enemy William Howe in self-defense with a rapier. Howe attacked Tidswell first and died in the ensuing scuffle. Rather than engage with the laws of self-defense and questions of clergy, the jury declared Tidswell “not guilty; John Noke killed him.”<sup>85</sup> In 1577, Agnes Hill was indicted for infanticide when she smothered her bastard daughter hours after her birth. Hill had no hope for clergy at the time, and her recovery from this recent birth meant a plea of benefit of belly unlikely. But instead of sentencing her to death, the jury found her “Not Guilty; one at Noke did it.”<sup>86</sup> In a 1610 session in Essex, cases involving extenuating circumstances received similar treatment. Two women stood accused of killing other women in separate cases of high emotion, and a man allegedly came home to find his wife struggling against the amorous advances of a strange man and killed the stranger on the spot. All three cases against the defendants were thrown out and the violent deaths blamed on the nefarious “John Lellowe.”<sup>87</sup> How striking that the murders blamed on the fictional hitmen dealt so often with sympathetic defendants: women fighting each other, men acting in self-defense or in protection of loved ones, or the sad case of a dead baby.

In addition to the blame shifting to mysterious countryside murderers, Justices could point to the presence of the Almighty to explain a tragic death. The Kent records in particular allowed multiple alleged murderers go free because of divine intervention. Consider the case of Anne Lamb, who struck her husband on the head from which he died. Rather than find her guilty of petty treason, the Justices found her innocent of the charges and blamed the death instead on

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<sup>85</sup> Hertfordshire under Elizabeth, No 999, p. 160

<sup>86</sup> Hertfordshire under Elizabeth, No 101, p. 18

<sup>87</sup> The cases of Agnes Frogge, Robert Berden, and Agnes Hardye in the Essex Assizes under James I, Nos 484, 485, 490, pp. 76-77

“Divine Visitation.” In other words, while fighting with his wife, Bernard Lambe was occupied by the spirit of the Lord and the sheer force of divinity present in his body caused him to expire.<sup>88</sup> Similarly, in Elizabethan Kent, the Lord intercepted a husband, John Brightlinge, with openly admitted murderous impulses and killed his intended victim by Divine Visitation before she had the chance to consume the poison he had put in her dinner. John was found not guilty for his wife had died of divine visitation.<sup>89</sup> And in 1670, Anne Dawe, Anne Easterby, and Margaret Easterby stood accused of murder. Anne Dawe had given birth to a bastard child, whom she strangled as it took its first breath. The Easterby sisters beat a servant named Mary Turner until she died. Fortunately, in both cases, God occupied the child and the servant, overwhelming them with His spirit, and killing them before their attackers could finish their murderous goals. All three women were found innocent and free to go.<sup>90</sup>

The most stunning cases of assigning blame to Divine Visitation occurred in a single session of 1644, when employees at the local gaol in Maidstone were accused of murdering a group of inmates in their custody. Helen Taylor, Marsh Archly, William Mathewes, and John Morris were all found dead in their cells at two separate facilities.<sup>91</sup> Evidence pointed specifically to those in charge of the gaol. Stood together accused of felonious homicide by neglect or design, the Justices found the employees of both gaols not guilty. Rather than find them responsible for the deaths, the records suggest that all of the victims had died by Divine Visitation. Perhaps this is a genuine belief by court officials that the employees had acted in good faith. Alternatively, the judgment might solve questionable trust issues if those in charge of

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<sup>88</sup> Kent under Charles I, No 926, pp. 192-193

<sup>89</sup> Elizabethan Kent, No 2427, p. 400

<sup>90</sup> See Kent under Charles II, Nos 1235 and 1236, p. 226

<sup>91</sup> See Kent under Charles I, Nos 2200-2203, pp. 460-461

caring for inmates had indeed murdered them on purpose or by accident. In either case, by offering an alternative explanation rather than a guilty plea and mercy through benefit of clergy, the image of the two gaols was preserved and the nasty case of four dead inmates could be put behind them.

In these cases, what was particularly striking was that fictional alternatives or incredible theories often applied when benefit of clergy was not available, or was impractical, for the case at hand. Rather than committing a woman to the gallows, the court officials pointed to mysterious strangers. Instead of punishing an authority figure for defending his family, the presence of God could take the blame to give the patriarch a second chance. The women in these cases might have pled clergy had they been men – manslaughter and “felonious homicide” were allowed clergy for men, after all – but women were not granted equal clergy rights until 1691. The men receiving special explanations may have been illiterate and themselves ineligible to claim clergy. Perhaps the ineligibility of these specific defendants explains the court’s decision to use invented figures or even the divine spirit as an alternative, clemency-delivering explanation.

JS Cockburn pointed out that leniency was necessary for keeping the peace. In order to allow clergy to function as a safe alternative according to each situation, “judges usually interpreted the literacy test leniently, helped the prisoner, condoned prompting or allowed the plea on compassionate grounds.”<sup>92</sup> The judge could determine how strict the reading must be and there are examples of this uncertainty in the records of the Old Bailey. For instance, in 1674, a man bemoaned “his little skill in orthography [and] declared that if he had come to his book he would have needed a prompter to have made a good clerk of him: but he was saved from that

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<sup>92</sup> Cockburn, *Introduction*, p. 119

trouble by his Jury, who brought him in not guilty.”<sup>93</sup> The casual mention of the readiness to prompt men on the stand might reflect the genuine spirit of helping everyone to claim clergy to their best chance.

In 1676, a man accused of having seventeen wives but indicted for marrying four steeled himself for the test by practicing his reading skills beforehand. A court observer wrote, “He should be excluded from the benefit of his Clergy... being well tutor’d in that Skill which not a fresh man in that University is ignorant of.”<sup>94</sup> The quote suggests that the polygamist’s studying paid off, for he read as well as any graduate. The court allowed him clergy for his performance.

In 1678, a young boy “pretending not to be above ten years of age” was found in possession of a stolen salt shaker worth more than ten shillings. At his trial, the boy’s elder thief-friends “gave aim and directions, and this little Mercury did the Feat; for which he was found guilty, but in pity to his age, he was onely burnt in the Hand.”<sup>95</sup> The young boy was able to read successfully and

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<sup>93</sup> Anon, *An Account of the Proceedings at the sessions held at Justice Hall in the Old Bayly which began on the 14<sup>th</sup> of October Last With the trials, condemnation, and execution of William Pricket and William Palmer with the trials of several other malefactors, for divers kinds of felonies: as thefts, burglaries, bigamy, murder, receiving of felons, forgery, &c.* Printed for DM, 1674, pp. 5-6. The British Library, Rare Books 23.z.8834

<sup>94</sup> Anon, *A True Narrative of the Proceedings at the Sessions Holden for London and Middlesex at Justice-Hall in the Old Bayly the 10<sup>th</sup> and 11<sup>th</sup> Days of May 1676, Setting for the Tryal and Condemnation of the man for having several Wives and the woman for having several Husbands: and tother most material passages. And also an account of the Tryal of the Woman who was arraigned as being accessory to the Sacrilegious Robbery of St Giles Church: With the Tryal of the man for buying the Plate off her. And likewise how many are condemned, how many Burn’d in the hand, and Transported. These are to Satisfie all People, that the Book of the Sessions with the Name of John Millet, was the Tryals Four Sessions Ago. With Permission, Ro L’Estrange.* London: Printed for JA (1676), pp. 3-4 The British Library, Rare Books Collection 23.a.8832

<sup>95</sup> Anon. *A True narrative of the proceedings at the sessions-house in the Old-Bayley, May 16, 17, & 18, 1678 setting forth the tryal & condemnation of Charl. Pamplin, for killing Lieutenant Charles Dalison, neer Covent-Garden : with a particular account of the tryals and condemnation of three men for robbing on the highway, and two others for horse-stealing : and likewise the tryal and conviction of a yound [sic] lad for stealing one hundred and forty pounds out of a goldsmiths shop in Lumbarb Street : and an exact relation of all other remarkable proceedings : with the number of those that are condemn’d, burn’d in the hand, and to be whipt, &c. : these are to give notice, that the book of the sessions that came out first, printed for Benj. Harris, is false, imperfect, and without order.* London: 1678, p. 2

lived to tell the tale. While the author of this tale seems to be skeptical of this application of the benefit, he also praised the young boy for his ability to complete the task so well.

The quality of literacy was forever in doubt and relied on a Justice's discretion to determine a passing or failing grade. JM Beattie noted that "The literacy test was a crucial fiction in the administration of the law: if it had been taken seriously in all cases, hundreds of offenders would have gone to the gallows every year for the most minor offenses against property." Furthermore, he concluded, "most offenders could have been denied clergy on the grounds of their illiteracy had the courts insisted."<sup>96</sup> The variation took a sharper focus with judicial officials whose benevolence led them to help criminals in need. In 1625, Sir John Bennet was disgraced in Parliament after it was discovered that he had been taking bribes and teaching criminals how to read as they awaited trial.<sup>97</sup> Sir John was 68 years old at this point and pled ill health at his defense. Rather than put him on trial, he was expelled from the House of Commons and put under house arrest. He wrote a pamphlet justifying his decision to teach alleged criminals how to read the "Psalm of Mercy" as they awaited trial.<sup>98</sup> He felt it had been his Christian duty to teach "prisoners indicted and convicted for lesser felonies" the ability to learn the verse by rote. After all, "not to appeare [in court] it will bee impossible, and to appeare without this Psalme of mercy, it will be intolerable" for the men would die without Sir John's help.<sup>99</sup> Bennet was eventually fined £20,000 before he died in February of 1627.

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<sup>96</sup> Beattie, *Crime and the Courts*, p. 474

<sup>97</sup> Sheila Doyle, "Bennet, Sir John (1552/3–1627)," *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, Jan 2008. <http://www.oxforddnb.com/view/article/2106>, (Accessed 21 Oct 2012)

<sup>98</sup> Sir John Bennet, *The Psalme of Mercy, or, A meditation vpon the 51. psalme by a true penitent. Imprinted by Felix Kyngston, and are to be sold by Robert Milbourne, at the great south-doore of Pauls*. London: 1625.

<sup>99</sup> Bennet, *The Psalme of Mercy*, f.5

The reading experience provided a line in the sand for condemning or saving a convict. Historian Donald Veall conveyed a 1652 sentiment that “Were it not for the favour of the Court, not one in twenty could save their lives by reading.”<sup>100</sup> The practice of allowing the illiterate to feel their way through unfamiliar texts and abilities found resonance in plays and poems alike. Phillip Massinger included a comment from one of his characters about another as a fool who “lookes as if he were / conning his neck-verse.”<sup>101</sup> Christopher Marlowe’s “Jew of Malta” includes a scene in which a man tried to save two men by teaching them to memorize the neck-verse before their court appearance. Pilia-Borza explained the frantic memorization like this: “Vpon mine owne free-hold within 40 foot of the Gallowes, conning his neck-verse I take it, looking of a Fryars Execution, whom I saluted with an old hempen prouerb, *Hidie tibi, cras mihi*, and so I left him to the mercy Of the Hangman.”<sup>102</sup> Sadly, Ithamore entered just in time to remark that the friar had been unsuccessful yet patient as he faced his death after failing the reading test. A certain shared understanding of the function of benefit of clergy and the role of reading is contained in these lines, showing the delicate balance between seeking clergy and summoning enough knowledge to read convincingly.

Occasionally, when the reading test failed and execution seemed the next step, Justices would allow the defendant to plead Transportation in lieu of punishment. This occurred in 1683, for instance, when a man named John Butler “craved Benefit of his Clergy, but when he came to

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<sup>100</sup> Donald Veall quoting J March’s 1652 book “Amicus Republicanae” in *The Popular Movement for Law Reform, 1640-1660*, Oxford, Clarendon Press: 1970, p. 4 n4

<sup>101</sup> Philip Massinger *The Great Duke of Florence* (1636)

<sup>102</sup> Christopher Marlowe, *The Jew of Malta*. Later edition, published in London: 1633 (the original was published in 1589 or 1590)

the Book could not read, so upon his further Importunity was set aside for Transportation.”<sup>103</sup> Blackstone interpreted the law after 1670 as allowing extra punishments for all who claim clergy, replacing the consequence of branding. He claimed that by the late seventeenth century all those who “by the law shall be entitled to the benefit of clergy, and liable only to the penalties of burning in the hand or whipping, the court, in their discretion, instead of such burning in the hand or whipping, may direct such offenders to be transported to America.”<sup>104</sup> However, Blackstone was slightly incorrect; cases of clergy sentenced to Transportation did not forgo the other elements of claiming, but rather had a wider variation of experiencing the consequences of claiming one’s clergy. For instance, in 1674, those who wished to plead clergy at the Old Bailey were brought together to the bar and asked to demonstrate their literacy one after another. “And first those that were capable of being admitted to the benefit of their Clergy... that could read desired that benefit, others prayed Transportation which was granted them as the Court saw cause.”<sup>105</sup> They who failed the reading performance began to receive Transportation instead of a noose. And so there were three options: criminals who claimed clergy and went home with branded thumbs; criminals whose claims were tied to secondary punishments like Transportation; and criminals who could not read at all, but prayed Transportation in order to avoid execution.

Whatever benefits the Justices found in persisting with the reading requirement, they were not enough to encourage Justices to require a uniform measure of literacy at all trials.

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<sup>103</sup> Anon. *The True Proceedings of the Sessions begun at the Old Bayly on Thursday the 24<sup>th</sup> of May 1683 Giving an Account of the Several Tryals viz. for murders felonies etc with the Condemnation of those Convicted.* London, Printed by George Croom, in Thames Street over against Baynard’s Castle, 1683, p. 4. The British Library Cup Collection, 21.g.32/34

<sup>104</sup> Blackstone, *Commentaries*, Vol II, p. 371

<sup>105</sup> *Old Bailey Proceedings Online*, July 1675, <http://www.oldbaileyonline.org/browse.jsp?div=s16750707-1>, (Accessed on May 12, 2012)

Eventually, the reading test would be administered so sporadically that Parliament eliminated the requirement entirely. Under Queen Anne, Parliament added a clause to a general Act on branding in 1706. In the fourth clause of 6 Anne, c 9, the Act noted that although court officials asked convicts to “read as a clerk” in order to allow them to claim their privilege, the reading test “by experience is found to be of no Use.”<sup>106</sup> Certainly the inconsistencies of the reading test rendered its results inconsequential. Either the Justice liked the defendant for clergy or he did not. Actual performance began to affect the outcome less and less as the seventeenth century wore on. The reason for eliminating the reading test has been made clear in the clause of the statute: the administration of the test fell entirely on the mercy of an individual Justice. Some Assize tours included Justices who wished to have perfect reading in order to allow the privilege, while others openly assisted the criminal in spelling out the words or recalling the *Miserere* by memorization. Shifting standards in how well a defendant had to read can be found by measuring years where specific Justices disallow a defendant from clergy because of a shaky reading performance. Such examples stand out when Justices serving in the years before and after adopt a more lax approach. Ultimately, the reading test did nothing to ensure that only a certain class of person took advantage of the clerical privilege. The practice also did not preclude multiple claims or ensure that the most heinous criminals were taken out of society and hanged for their crimes. It had no practical use beyond creating a fictional obstacle through which local court officials could establish the outcome for felons pleading for mercy. In the words of Edward White, “The burning in the hand, which was a necessary part of the procedure of the privilege of clergy, was

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<sup>106</sup> 6 Anne c 9 s 4, *The Statutes of the Realm*, Vol VIII, p. 583

not ordained by the statute as a punishment but merely to enable the court, on a subsequent arraignment of the offender, to ascertain if the defendant had been accorded his clergy.”<sup>107</sup>

There was more to the condition of clergy at this point. The changing tide of criminal policy away from mercy and toward more “egalitarian” and consistent punishments like imprisonment and transportation began to replace the traditional claims of clergy. The abolition of the reading test coincided with the egalitarian ideal that suggested punishing all criminals the same. Michael Ignatieff traced this form of identical punishment as it took shape in the eighteenth century in his book *A Just Measure of Pain*. No matter what crime led inmates to live in Pentonville, they all wore the same clothes, went through the same routine, and covered their faces with the same hoods as they attended the same church.<sup>108</sup> His work found the period of 1690 to 1720 to be one of four accelerated periods of change in the way social misfits – from the criminal to the lazy – were punished.<sup>109</sup> And this period corresponded with the demise of benefit of clergy as a safety valve. The rise of imprisonment began to replace the need to brand clergyed criminals. Rather than save them from execution, juries could simply send them to gaol. These trends correspond with Parliament’s sudden realization that the reading test served no clear purpose to protect one class of convict while punishing another. The reading test was finally discarded at the beginning of a century of penitentiary reforms and benefit of clergy became more perfunctory than before.

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<sup>107</sup> Edward White, *Legal Antiquities, A Collection of Essays Upon Ancient Laws and Customs* FH Thomas Law Book Co, St Louis: 1913, p. 231

<sup>108</sup> Michael Ignatieff, *A Just Measure of Pain: The Penitentiary and the Industrial Revolution, 1750-1850*, “Introduction” Parthenon Books: New York, 1979, pp. 3-14 and in particular pp. 7-10

<sup>109</sup> Ignatieff, pp. 12-13

## Branding

*Such burning is to him a marke or brand:  
The necke is spared, if the tongue can reed.  
Somtimes of punishments ther's commutation,  
Somtimes repriuell, or procrastination<sup>110</sup>*

~Sir John Stradling

Benefit of clergy became known by its bodily consequence: the branding of human skin. By the end of the seventeenth century, records reported cases of clergy by numbering those convicts who were then “burn’t in the hand.”<sup>111</sup> The very mention of a mark or brand conjured imagery of mercy and clemency following a claim of the privilege: the hot iron against the skin was much kinder than a noose around a broken neck.<sup>112</sup> The association began with the 1489 injunction to create a limited form of the benefit available to claimants of questionable clerical status. Those who could not prove their ordination received the pain of a red-hot iron on the fleshy area at the base of their left thumbs: a brand of a “T” for thief or “M” for manslaughter or malefactor. After the conviction, a man hired by the court for this purpose would examine the criminal’s hand, ensure it had not been previously scarred, and then “vouchsafe’d to be a witness and subscribe his Mark.”<sup>113</sup>

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<sup>110</sup> Sir John Stradling, *Beati Pacifici* (1623), lines 1677-1680

<sup>111</sup> All of the Old Bailey pamphlets giving a “true narrative” of events summarizes those who have claimed clergy by noting the number of those “burn’d in the hand” at the conclusion of each session. At this point, after 1670, claiming clergy has transitioned to being synonymous with the human brand.

<sup>112</sup> A branding iron survives in the museum of Lancaster Castle in the United Kingdom

<sup>113</sup> As reported in the Old Bailey pamphlets. *The Narrative of the Proceedings at the Sessions House in the Old Bayly December 12, 13, 14, & 15 1677. Containing the Tryal of the Woman for Coyning, who is Condemned to be Burnt. With an account of the Highway-men. Also the Tryals and Condemnation of Several Other Norotious Melfactors. And also the number of those that are Condemned Burnt in the Hand, Transported, and to be Whipt.* With Permission Ro Lestrange. Printed for DM: 1677, p. 8, The British Library Rare Books Collection, 23.1.8831

The permanent branding of a body for the sins of a moment created a complicated relationship between the “forgiven” criminal and the rest of society. Marks upon the skin have been described as “memory in the flesh” and a symbolic expression of a person’s relationship to the community.<sup>114</sup> Many cultures and groups encourage tattoos or scarring to symbolize an individual’s placement in that group.<sup>115</sup> The precise nature of pictures etched in skin or scars earned in battle or rituals can symbolize the permanent place of individuals within their social group. Even ideals of beauty are built on the specific ways specific individuals paint or sculpt their skin, hair, and body.<sup>116</sup> So it was as well with branding in England. Branding the criminal body was a way to mark specific persons with their lawbreaking past. Suspects undergoing trial whose thumbs had been branded symbolized the existence, somewhere, of a legal document. Their relationship to the court was presented with the mark on the hand. Following the inscription of this painful message, all who saw the shameful mark would know immediately of a moment in such people’s pasts when they crossed a line of social decency and descended into criminality.

Superficially, the brand acted as an indication of this transgression against social acceptability. Technically, the brand only suggested the existence a legal document; it did not serve itself as proof of a formal conviction.<sup>117</sup> If a clerigied criminal were returned to court and

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<sup>114</sup> See Jane Caplan’s collection of essays, *Written on the Body: The Tattoo in European and American History*. Princeton University Press: 2004. Peter Trachtenberg describes his own life in terms of scholarly discussions of memory and social status in his memoir *Seven Tattoos: A Memoir in the Flesh*. New York: 1997.

<sup>115</sup> See CP Jones, “Stigma and Tattoo” in *Written on the Body*, pp. 1-16 For a fascinating study of the symbolic relationship of people to gangs and sailors to the sea through tattooing each other, see Samuel Steward, *Bad Boys and Tough Tattoos: A Social History of the tattoo with gangs, sailors, and street-corner punks*. New York: 1990.

<sup>116</sup> Barker, D.J., & Barker, M.J., “The Body as Art.” *Journal of Cosmetic Dermatology*, 1, (2002), pp. 88-93

<sup>117</sup> In Baker’s words, “The mark was not itself a matter of record, but a warning to the officers to search for the record of the previous conviction, so that it could be counterpleaded to any fresh prayer of clergy.” This is supported by opinions by John Spelman, Richard Littelton, and Roger Yorke. See Baker, *John Spelman*, Vol II, p. 332

accused of another crime, then the court officials had an obligation to write to London and learn of the records there concerning the accused. If no record could be found, the brand had to be ignored. Only by examining a first conviction would a Justice be able to reject a second plea of the benefit – at least in theory. If no record were found, the defendant could plead his clergy and a new branded mark could theoretically be burned into the old scar.

Sympathetic juries took advantage of this degree of separation between the scar on the hand and the actual physical legal record in order to allow repeated claims of friends or poor defendants. Each such decision was governed by local reputations and impressions. A good example involved the Feild brothers of Hertfordshire, who are recorded as being accused of clergyable felonies on six different occasions between 1613 and 1615.<sup>118</sup> Joseph and Edward stood in front of the Assizes accused of various forms of theft, involving money, food, and goods. Each time the brothers were convicted and allowed clergy, occasionally put in gaol for a brief period. In 1615, Edward was sentenced *in absentia*, while “at large.”<sup>119</sup> In that case, Joseph tried to plead his clergy for the sixth time and was finally denied and sentenced to death. Edward remained “at large” by the end of that Assizes. Curiously, each case that ended in repeated acceptance of their clergy pleas was heard by the same Justice. Justice Henry Montagu had given the brothers multiple chances, even stretching the limit of the law in order to do so, but the brothers had proved to be weaker than the task and failed to mend their ways.<sup>120</sup> Montagu kept

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<sup>118</sup> See the Hertfordshire Assizes under James I, Nos 529, 536, 593, 650, 691, 693, 724.

<sup>119</sup> Case No 724 states “Joseph found guilty on the first count; to Hang. Edward is at large.” Assize Records for Hertfordshire James I, p. 155.

<sup>120</sup> Henry Montagu was a rising lawyer who emphasized the importance of a justice in creating a fair judgment for the benefit of local communities. Michael Dalton’s *A Country Justice* was dedicated to Montagu in light of this ideal. Brian Quintrell, “Montagu, Henry, first earl of Manchester (c.1564–1642),” *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, Jan 2008. <http://www.oxforddnb.com/view/article/19020> (Accessed 21 Oct 2012)

giving them second chances. Then during the very first session in Hertfordshire for which Henry Montagu was replaced with Henry Hobart and Robert Houghton, the Feild Brothers ran out of good will. They were found guilty with no option to plead clergy a “second time.” Whether this repeated forgiveness belied the affection of or personal connection to Henry Montagu is difficult to discern. Either way, the Feild brothers received multiple second chances at the discretion of Montagu until they were finally executed for their crimes under new Justices.

The brand functioned as an indicator, then, rather than a strict legal document. Justices could view the brand and made decisions accordingly, even if those decisions were somewhat extra-legal. Justice Henry Montagu was perhaps lenient toward the Feild family, but other Justices also made decisions with the brand informing their judgment but not quite forcing their hand. Why not merely create a paper trail, as was initially proposed by a parliamentary bill in 1455?<sup>121</sup> Why not simply rely on the Clergy Rolls, lists of clergied names sent to London that still survive in the National Archives today? There were unspoken, social benefits to marking a condemned criminal who was saved by virtue of the King and the mercy built into the English legal system. While those who saw the survivor might immediately know of a criminal past, they would also know in that same glance that the offense had been forgiven, that the mercy of the King had been so great that a person’s life had been saved. Furthermore, this person owed a life to the King and any good done in those remaining years was owed entirely to this forgiveness. This is precisely what St Augustine had explained to Macedonius in his letters concerning the transfer of debt from a sinner against society to the mercy-granting institution.<sup>122</sup> To forgive was to assume a debt and to create a relationship of obligation between offender and authority figure.

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<sup>121</sup> “Petition from the House of Commons to the King, 33 Henry VI.” C 49/30/16, National Archives, Kew, England

<sup>122</sup> See E.M. Atkins and R.J. Dodaro, eds. *Augustine: Political Writings*. Cambridge Texts in the History of Political Thought. Cambridge University Press: 2001, pp. 70-87

The scarring of the thumb spoke volumes about the past of the individual and the power and benevolence of institutions in England.

The point of branding the skin was multi-faceted. By melting one's past into the very skin, it created a permanent memory on the hand; almost a tattoo of criminality. Most immediately, the scarred mark served as a reminder to the criminal of the relationship between violating the Common Peace and suffering death. On a secondary level, the brand informed anyone who saw it of the criminal's past and reprieve. One might assume it reminded the criminal that another offense might not end in a moment's discomfort but in the ultimate sentence of death. The mark told the story of previous troubles to a new arresting officer of the court. Most importantly, the mark upon the hand served as an advertisement of royal mercy. Through each message, the clarity of life saved through a mechanism stemming from the King's grace was symbolized in the painful mark of burned flesh by hot metal.

Not everyone who pled their clergy had to suffer the pain of being burned. Most importantly, members of the peerage were declared exempt from the branding requirement in a special Act of Parliament in 1547.<sup>123</sup> The statutes stated, "By virtue of this act, of common grace, any Lord or Peer of the Realm will claim the benefit of this Act without burning in the hand or loss of Inheritance."<sup>124</sup> The act tied the exemption of peers from branding to their right to keep inheritance, connecting the privilege of clergy to status, property, and social structure. Trial records showed that influential people who were not peers could still buy their way out of the branding process. A well-placed political petition could earn a pardon for the branding portion of the sentence and a bribe could convince the court official to use a cold iron in open court. A little

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<sup>123</sup> 1 Edward VI c 12, "An Act for the repeal of certain statutes concerning treasons felonies" clause 13 extends the benefit to all peers regardless of literacy and pardons the requirement to brand them on the hand.

<sup>124</sup> 1 Edward VI c 12 clause 13. See *The Statutes of the Realm*, Vol IV, p. 21

play-acting, and the wealthy or fortunate individual could escape the lifetime stigma of the brand in addition to escaping the hangman's noose.<sup>125</sup>

In addition to passing the bill protecting the Peerage from being branded, the 1547 session of Parliament designed a policy that employed benefit of clergy to prevent the scourge of unemployment. "An Act for the Punishment of Vagabonds" prescribed a series of penalties including permanent branding to prevent anyone from staying "idle" too long.<sup>126</sup> Twenty years earlier, Henry VIII had ordered the English Reformation and part of the reforms included shutting down monasteries and convents. Traditionally, these institutions had cared for members of society who were at a disadvantage: the disabled, the poor, the elderly, and orphans. After the religious orders were dissolved and the buildings sold to private families, England experienced a sudden spike in homelessness and vagrancy. In order to discourage what Parliament saw as a choice to avoid work, sturdy beggars – grown men with no obvious reason to be incapable of performing hard labor – could be sentenced to multiple years of servitude or even "slavery" to a local master if they were found to be idle for longer than a month.

The first offense required a brand of V across the chest, for "vagrant" and the person was sent to a workhouse. The shame that came with this permanent marker worked to prevent the idle person from vagrancy in the future. However, a second offence led to a new letter branded on the offender's chest: S for slave. Once branded a "slave" the vagrant was assigned to two years of hard labor to a local, reputable master. Such men were allowed a diet of only bread and water.

The third offense of willful idleness could lead to death by hanging. This statute put many people

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<sup>125</sup> Of course, the records are difficult to prove that someone was acting. Should a defendant bribe the guard successfully for a cold brand, the event was unlikely to be recorded. All we have are suggestions of impropriety in literary references – such as the comments in the poem "Atheist's Help at a Dead Lift" which I discuss in the conclusion.

<sup>126</sup> 1 Edward VI c 3, "An Act for the Punishment of Vagabonds and the Relief of the Poor and impotent persons" in *The Statutes of the Realm*, Vol IV, pp. 5-8

at risk for permanent social ostracization. Returning soldiers, the mentally ill, or those forced to leave their homes due to poverty or diseases like the plague found no relief in the old monasteries but wandered the countryside looking for odd jobs for sustenance. Significantly, the session of Parliament that forgave the criminal actions of wealthy and socially stable peers also emphasized the punishment of the lowest, most vulnerable members of society. And so, a person suffering poverty and bad luck could be forever marked upon the skin for their period of misfortune. The permanent brand would mark them always by a condition that might have been temporary.

The three-tier branding system described above was temporary and expired at the 1549 session without renewal. Parliament would later return to the idea of marking the “evil-disposed persons” for their idleness. In 1597, Elizabeth revived the Edwardian proposal but omitted the use of branding as a deterrent for “Rogues and Vagabonds.”<sup>127</sup> The first session of James I, in 1604, found this to be an overly generous measure, as merely calling someone idle and setting them to work did not provide adequate shaming. This bill returned to the permanent branding of hot iron on the skin and placed the faith of peaceful work in the power of social stigma. “Be it ordained and enacted, that such Rogues... be branded in the left shoulder with an hot burning Iron of the breadth of an English shilling with a great Roman *R*” for Rogue, and sent back to their place of birth.<sup>128</sup> The law complains that existing policy did not mark the person as a rogue or vagabond permanently, and so the shame of having been idle or relied on trickery or theft rather than honest work was missing. Furthermore, Parliament did not simply reenact the idea of branding a man’s chest or shoulder. They also prescribed that the offender be sent back home for

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<sup>127</sup> 39 Elizabeth c 17 was an act targeting “lewd and wandering persons” particularly those posing as soldiers or members of government. *The Statutes of the Realm*, Vol IV, p. 915

<sup>128</sup> 1 Jacobi c 7 in *The Statutes of the Realm*, Vol IV p. 1024

a year. Anyone who has attended a high school reunion can imagine the power of this shaming device. Not only was the convict marked painfully for indecency, but forced to return home a criminal for “the space of a year.”

In 1621, Parliament attempted to create a new system of deterring the underclass of unfortunates: the unemployed, homeless, or sick. Parliament redesigned a system to create a sub-class of slaves: men who had been found twice to be sturdy beggars or idle vagrants.<sup>129</sup> The proposal suggested that those who were unemployed for the space of two months might suffer 8 years’ labor as “Slaves” and that they “being condemned as Slaves during life and be used unto any Public works in the Kingdome,” would have to demean themselves properly and become new men in order to earn their freedom. However, the men who served the eight years and continue to be much the same would then be declared slaves for life, branded as such, and threatened execution should they ever try to escape. In light of the emerging new world settlements with slave economies during this crucial period – Jamestown was founded in 1607 and Plymouth was founded in 1620 – the idea that English subjects might be cast into a lower class of “slaves” for life is particularly striking.

This bill never passed into law due to a dispute with the King that canceled all 1621 legislation and suddenly dissolved Parliament,<sup>130</sup> but it shows the ongoing debate among MPs and the relationship between lawmakers and the larger population. The Tudor period of flux was plagued by a rise of population and the dissolution of the social system provided traditionally by institutions associated with the Catholic Church. That being said, there was also a rise in private

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<sup>129</sup> Vol VII: Appendices in *Commons Debates of 1621*, ed by Wallace Notestein, Frances Helen Relf and Hartley Simpson. Yale University Press: 1935, pp. 54-55. See copies of the now-destroyed original manuscripts in *The National Archives*, State Papers Collection, SP 14 118:77

<sup>130</sup> Robert Zaller, *The Parliament of 1621: A Study in Constitutional Conflict*. Berkeley, University of California Press, 1971

institutions. WK Jordan explores the world of Tudor philanthropy in his book on the subject, finding that there was indeed a flurry of replacement activity following the dissolution of the convents and monasteries.<sup>131</sup> The ability for private institutions to curb the effects of poverty during the Tudor-era population boom remains in doubt. This private solution was subject to local demand and failed to provide evenly across England. The consequences contributed to tensions between classes in early modern England.

In these policies, English subjects might be branded for poverty and misfortune. They might also be branded for acts of sedition against the King and the Church of England. A most infamous case of branding for religio-political reasons can be found in the crowds that observed the mutilation of three men for their beliefs: William Prynne, John Bastwick, and Henry Burton.<sup>132</sup> Prynne in particular was held accountable for having published a work against the celebration of Feast Days like Christmas and the availability of depraved Theatre in London.<sup>133</sup> His work was widely interpreted as an attack on the Catholic Queen Henrietta Maria. John Bastwick had published a similar tract for Leveller leader John Lilburne.<sup>134</sup> Henry Burton was found guilty for seditious sermons. All three stood trial for having published seditious libel. William Prynne received a harsh sentence on June 14, 1637: a lifetime of imprisonment, a

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<sup>131</sup> WK Jordan, *Philanthropy in England, 1480-1660*. Russel Sage Foundation: 1964, especially the discussion on Elizabethan challenges, pp. 83-102, and the gaps between the law and real terms of living in poverty in Tudor/Stuart England, pp. 126-142. Jordan describes early Stuart society as one “more of equanimity, less of anger; more of certainty, less of doubt regarding the ability of the society to handle its problems,” (p. 180). Yet this was also the period with increasing tensions among government plagued by an inconsistent regional service of social support. Judith Bennett explores this tension in her study on the transition from Medieval to early modern charities. See Judith M Bennett, “Conviviality and Charity in Medieval and Early Modern England” *Past & Present* No. 134 (Feb., 1992), pp. 19-41

<sup>132</sup> William M. Lamont, *Marginal Prynne, 1600-1669* (London, 1963), p. 40

<sup>133</sup> William Prynne, *Histriomastix*, London: 1632

<sup>134</sup> John Bastwicke, *Letanie of Dr. John Bastwicke in four parts*. London: 1634

£5,000 fine, and mutilation.<sup>135</sup> He was to be branded on both cheeks with the letters “SL” for “Seditious Libel.” All three men, John Bastwick, Henry Burton, and William Prynne, lost both ears. Henry Burton’s ears were cropped too close and he lost a lot of blood during the punishment. Prynne was the only one to receive the double-brand on his face. This was less than a small symbol noting a criminal past and the benevolence of English legal traditions. This was an opportunity to seek vengeance against challenges to the Crown and show that vengeance to those who viewed the mutilation.

Considering the appearance of a brand and the social stigmas attached to it, we may be reminded of the plight of poor Hester Prynne in Nathaniel Hawthorne’s *The Scarlet Letter*.<sup>136</sup> Scholar Muktar Ali Isani reviewed previous scholarship that conjectured the relationship between Hester and William Prynne in an article on the subject. His work tied the case of William Prynne’s branding to Hawthorne’s epic tale of Puritan shaming, showing that Hawthorne was purposeful in his naming Hester for the English tradition and tragedy of branding blasphemous non-conformists.<sup>137</sup> The evidence in Isani’s paper drew from Hawthorne’s ownership of at least one of Prynne’s writings and from commentary that Hawthorne recorded in a commonplace book in his possession. In light of Hawthorne’s investigation of the impact of social stigma in English history, we could connect the larger use of branding to Hawthorne’s

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<sup>135</sup> The trial records have been well-preserved. See “Trial of William Prynne Esq. in the Star Chamber for writing and publishing a book called ‘Histriomastix’ or ‘A Scourge for Stage-Players’” CUST 109/19 in *The National Archives*, Kew, England

<sup>136</sup> Nathaniel Hawthorne spins the tale of a young woman who bore a bastard child and was sentenced to wear the badge of her harlotry every day for her life: an A for “Adulterer.” Her subsequent suffering at the hands of a disapproving village creates almost an unbearable situation. *The Scarlet Letter* (1850).

<sup>137</sup> Muktar Ali Isani, “Hawthorne and the Branding of William Prynne” in *New England Quarterly* Vol. 45, No. 2 (Jun., 1972), pp. 182-195

commentary in the novel. Criminal behavior from vagrancy to blasphemy posed a sinful threat to the order of English society.

Branding a convict of such things served as a warning both for the sin and for the increased punishment should the offender be found guilty a second time. The connection was one of social stigmas a penalty equally appropriate to execution or imprisonment in the eyes of early modern Justices and judicial officials. The variation depends on the reason for branding: either saving a life through benefit of clergy, or acting as a lesson for those who might also wish to libel the Crown.

Under the Protectorate, a Quaker named James Naylor was famously found guilty of blasphemy and punished by branding his forehead with a prominent B for blasphemer. Additionally, his tongue – which spoke the blasphemy – was bored through with a stake.<sup>138</sup> Nevertheless, these forms of branding were a minority of incidents. Their very infamy reveals how the public received the shock of branding for religious reasons. Overwhelmingly, a brand on the skin resulted from a felonious offense and a claim of clergy in open court. And so, in 1625, mere months after women received the right to claim clergy, one Anne Pyneon, spinster, was indicted for grand larceny, found guilty, and “branded according to statute.”<sup>139</sup>

Over the course of the early modern period, these variations and experiments of branding criminals or sinners for a variety of acts did not become common. In fact, branding remained primarily associated with claiming benefit of clergy and maintaining the single-use legal record through the scar. As the Stuart period wore on, benefit of clergy transitioned from a useful tool

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<sup>138</sup> For an interesting analysis of the relationship between this highly publicized trial and its relationship to an uneasy state, see A Wilson, “Naylor’s Case and the dilemma of the Protectorate” in *The University of Birmingham Historical Journal*, Vol X (1965), pp. 44-59

<sup>139</sup> Sussex Assizes under James I, No. 786, p. 146

of a secular government to a procedural tool for seeking a balance between justice and mercy. The performance of mercy fell out of favor as the courts continued with the business of trying and punishing criminals. Part of this revision of focusing on punishment and not just exemptions played into the 1691 decision to grant women the benefit in any case “where a man being convicted of any felony for which he may demand the benefit of his clergy.”<sup>140</sup> Beattie ascribed the passage of this bill to an active petition from London-area merchants to stem the rise of female shoplifters.<sup>141</sup> The consequences of granting women full clergy rights were striking. Following 1691, there occurred a remarkable transformation in the trial records as they related to female defendants, as measured in the published reports of the interesting trials.

In the Old Bailey pamphlets in particular, there is a striking and sudden “feminization” of benefit of clergy. While sessions from 1690 and before record an unremarkable collection of male names for the nine sentenced to clergy, similar reports for 1693 include 28 female names out of 46 claimants total.<sup>142</sup> By 1697, those pleading clergy included 17 women but only three men.<sup>143</sup> Such numbers were not isolated. Beattie’s comprehensive analysis of the Old Bailey and

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<sup>140</sup> 3 William & Mary c9 s6, Parliamentary Archives HL/PO/PU/1/169/3&4 W&Mn3

<sup>141</sup> JM Beattie, “The Revolution, Crime, and Punishment in London, 1690-1713” in *Policing and Punishment in London, 1660-1750: Urban Crimes and the Limits of Terror*, Oxford University Press: 2001, pp. 313-369

<sup>142</sup> First pamphlet was Anon, *The Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday and Thursday being the 15<sup>th</sup> and 16<sup>th</sup> Days of January, 1690*. London, Printed for Langley Curtis at Sir Edmonbury Godfrey’s Head near Fleet Bridge: 1690. BL 112.f.46.19. The second two pamphlets were as follows: Anon, *The Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday, Thursday, Friday, and Saturday the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Days of December 1693*. London, Printed for Richard Baldwin at the Oxford-Armes in Warwick-Lane, 1693. BL 1480.d.21.6. Third pamphlet was Anon *Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday, Thursday, and Friday being the 12<sup>st</sup>, 22<sup>nd</sup>, and 23<sup>rd</sup> Days of February, 1693/4*. London, Printed for Richard Baldwin at the Oxford-Armes in Warwick-Lane, 1693/4.

<sup>143</sup> Anon, *Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday, Thursday, Friday, and Saturday, being the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Days of December 1697*. London, Printed by JD for

other trials showed a similar focus on women during the 1690s and early 1700s. His research revealed women to comprise 51.2% of defendants during the 1690s, when women typically comprise between 15-20% of all criminal defendants.<sup>144</sup> This feminization would be temporary. As time wore on and more male criminals were brought to trial than women, the numbers began to return to a gendered balance once again.

By the end of the Stuart period, branding ceased to be a mark of the saved person and became part and parcel of the punishment itself. The move to grant women full equality before the law in terms of benefit of clergy in the 1690s was not a motion of mercy, but one of determination for increased convictions. The *Letters and Papers* under William and Mary did not mention the bill. However, a close reading of the interactions among the Houses of Parliament revealed the mission of this Act. The wording in the title and the text was clear: bringing women to punishment.<sup>145</sup> On 27 January, 1691/2, the House of Commons made revisions to the bill in order to ensure that the robbing of shops was purposefully included in providing women with clergy, indicating that houses were less of concern than shop-lifting. This concern was borne out in the Old Bailey records.<sup>146</sup> Finally, the commentary in the Journal of the House of Commons revealed that the Committee studying the bill ensured that the bill would “give the Woman the

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Andrew Bell at the Cross-eyes and Bible in Cornhill, and Sold by R Bldwin at the Oxford-Armes in Warwick-Lane, 1697. BL, 1480.d.21.8

<sup>144</sup> The rate of conviction varies by culture and history but remains surprisingly constant. See Beattie, *Policing and Punishment*, p.65 and statistics for US convictions at <http://bjs.ojp.usdoj.gov/content/homicide/gender.cfm> (Accessed on May 1, 2012)

<sup>145</sup> “To bring others to Punishment; whereby Women were to have the Benefit of that Act, as to such Offences where Men have the Benefit of Clergy.” This specifically states that women are to be brought to punishment as men are, indicated what the records have borne, which is that women frequently avoided punishment in a variety of ways. 3 William & Mary c 9 s 6, in *The Statutes of the Realm*, Vol VI, pp. 311-12

<sup>146</sup> “House of Commons Journal Volume 10: 27 January 1692,” Journal of the House of Commons: volume 10: 1688-1693, British History Online, <http://www.british-history.ac.uk/report.aspx?compid=29204> (Accessed on 22 November 2012).

Benefit of the Clergy in like Cases with the Man; and to suffer but as the Man suffers in that Behalf.”<sup>147</sup> Raising the point that women were to “suffer” seems especially important to this bill’s passage. The goal of this bill had less to do with mercy and more to do with leveling the board so that criminals could be prosecuted evenly.

Without clergy as an option, women were often dismissed without conviction. With clergy, they could be convicted and branded but not put to death until repeat offenses demonstrated their character beyond compassion. Beattie’s proposed explanation concerning London merchants seeking a stronger method of punishing female shop-lifters found resonance in the court-level spike of female claimants that followed the reception of clergy equally among genders. This was but one way that clergy began to transform from a performance of mercy from the king and into a stricter assurance of punishment. “On the face of it, the granting of benefit of clergy to women on the same basis as men, in 1691, looks more like a concession to defendants,” Beattie decided, “but the statute of 1691 was almost certainly intended not so much to save women from the gallows as to encourage prosecutions and convictions as a way of increasing deterrence.”<sup>148</sup> The consequences were an increase in female convictions, rather than a decrease in women sent to the gallows.

Another contributing factor was the ability to assign extra punishments to those who pled clergy. Doing such would not make sense for the medieval existence of the benefit, but clergy had been evolving since Henry VII recognized lay claims in 1489. Justices began to play with additional punishments as part of the incentive for reprieved criminals to avoid recidivist actions under the Stuart Dynasty. Whether these additional punishments were effective is difficult to

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<sup>147</sup> “Punishment of Offenders” 27 January 1692, *Journal of the House of Commons*: Volume 10: 1688-1693, in British History Online, <http://www.british-history.ac.uk/report.aspx?compid=29204> (Accessed 22 November 2012).

<sup>148</sup> Beattie, *Policing and Punishment*, p. 318

measure. What is clear is the transformation of imagining the brand. Rather than view the brand as a grateful alternative to the gallows, the Stuart Justices saw it as a painful sentence itself, a singular moment to inflict pain on the offender. The transformation in imagining the brand was expressed in the language recording the clergy pleas in the Old Bailey. No longer did Justices “allow” or “grant” clergy. Instead, Old Bailey reports discussed the “sentence” of clergy, or the brand “so ordered.” It was a force, a compelling action by the State onto the subject.

By 1689, the conclusions of the Old Bailey began to report that “the court gave judgments as follows” before listing those “sentenced” to be branded for benefit of clergy.<sup>149</sup> The trend drifted away from a sense of granting mercy out of royal affection and moved instead toward the idea that it was one of many punishments ordered by Justices more familiar with the law than the defendants. The contrast to the pamphlets of the Reformation era shows a transition from the message of mercy and grace to something more functional in the courts themselves.

Benefit of clergy was no longer a hold-over from the clerical protections of the medieval period. By around 1700, “any first offender might, in the case of a clergyable felony, escape the death penalty; there was ample provision for his punishment, branding, whipping, imprisonment, confinement in the workhouse, transportation, employment on the navigation, and forfeiture.”<sup>150</sup> Years of lay claimants had overwritten the sanctity of the ecclesiastical privilege and the Stuart Justices wished to check the new claims by using their Parliament-given ability to compound punishments for claimants. Eventually, the extra punishments went beyond whipping and

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<sup>149</sup> See for instance Anon, *The Proceedings on the King’s Commission of the Peace and Oyer and Terminer and Gaol Delivery of the Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday and Thursday being the 9<sup>th</sup> and 10<sup>th</sup> Days of December, 1689*. London: Printed for Curtis at Sir Edmonbury Godfrey’s Head near Fleet Bridget: 1689. The British Library Rare Books Collection 112.f.46.18

<sup>150</sup> Arthur Lyon Cross, “The English Criminal Law and Benefit of Clergy during the Eighteenth and Early Nineteenth century” *The American Historical Review*, Vol 22, No 3(April 1917), pp. 544-565; quote from pp. 557-558

imprisonment to a new consideration of the brand and its role in marking claimants of the benefit.

This focus on punishment would become even more severe in 1699. If the idea behind offering benefit of clergy to criminals was that they would be able to reform their ways and take their second chance seriously, the brand was a permanent reminder of how close they came to death for their actions contrary to law. “[T]he mark of the brand was hidden and could hardly act as a deterrent to others.”<sup>151</sup> In 1699, Parliament came to the conclusion that a small brand on a person’s thumb was insufficient as a deterrent against future offenses. A thumb was easily tucked into a sleeve and the criminal past could be disguised. And so, “For the better apprehending” of felons, Parliament proposed a change to the placement of the brand. The proposal moved the position of scarring from the thumb to “the most visible part of the left cheek nearest the nose.”<sup>152</sup> The idea behind this was, according to the law, “many evil-disposed persons might be deterred from offending should the *punishment by law* be made more visible.”<sup>153</sup>

Finally, the brand itself was a punishment, not a merely legal record or a symbol of mercy. The underlying message was that the convict should experience shame and social pressure as part of the punishment. Even though benefit of clergy was a form of mercy akin to the general pardon, lawmakers attempted to ensure the discomfort of the first offense was sufficient to prevent any recidivism. The goal to make conviction visible was part of this project to reduce recidivism. We can only imagine the pain and suffering that is a piercing-hot iron applied directly to the cheek right next to one’s nose; consider the impact after recovery being

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<sup>151</sup> Beattie, *Crime and the Courts*, p. 490

<sup>152</sup> 10 William III c 12, *The Statutes of the Realm*, Vol VII, p. 511-12

<sup>153</sup> Emphasis mine. 10 William III c 12, clause 6, *The Statutes of the Realm*, Vol VII, p. 512

released from prison and interacting with those in free society with a legal conviction marked into the center of one's face. The very first impression any person would give to a potential friend, neighbor, employer, or hired horseman would be the person's criminal background. Forever a lawbreaker, this person could not hide the judgment that was now permanently marked upon the cheek.

The change was immediately put into effect in the courts. The Old Bailey records show that the position of the brand was immediately rearranged. The very next publication of the sessions tells the tale of James Jones, indicted for stealing two yards of "Norwich Stuff" valued at 40 shillings and accordingly sentenced to be "burnt in the visible part of the left cheek" in spite of it being his "first fact" of crime against the society.<sup>154</sup> Not everyone who qualified for the face brand received it; the Assize records in Kew reveal a handful of cases in 1700 where the local Justice waived in Parliament's demand that he "see the same [brand] strictly and effectually executed [on the face.]"<sup>155</sup> Occasionally some clerigied criminals received the brand on the cheek while others were allowed to be burned on the thumb, without any discernible difference.<sup>156</sup> The deciding difference may have reflected status or bribe, but the pamphlets do not specify any distinction among those branded on the thumb or on the face.

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<sup>154</sup> Anon. *The Proceedings on the King's Commission of the Peace and Oyer and Temriner and Gaol Delivery of Newgate, held for the City o London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, and Saturday, being the 24, 25, 26 and 27 days of May, 1699.* London: Printed by F Collins in the Old Bailey, 1699. BL 1480.d.21.14

<sup>155</sup> Quote is from the statute in 1699; see 10 William III c 12, *The Statutes of the Realm*, Vol VII, p. 511-12. See the National Archives in Kew, England, ASSI 35/140/8/2, 9, 12, and 30 for examples of exemptions.

<sup>156</sup> See for instance the cases reported in 1702, when those convicted of theft were branded on the cheek but a bigamist was burned in the hand for keeping two wives. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Gaol-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey on Wednesday and Thursday being the 14<sup>th</sup> and 15<sup>th</sup> days of October, 1702.* London, Printed for Elizabeth Mallet: 1702. BL 1480.d.21.17

The alteration to the branding element of benefit of clergy would not last. Only seven years later, in 1706, Queen Anne's parliament repealed this brutal change.<sup>157</sup> The brand would return to the thumb. According to the preamble of the law, "It has been found by experience that the said punishment has not had its desired effect by deterring such offenders... on the contrary, such offenders being rendered thereby unfit to be entrusted or employed in any honest and lawful way become the more desperate."<sup>158</sup> In other words, the social stigma for the first offense was so great, so overwhelming, that branding the convict's cheek had the undesirable effect of permanently marking the offender as an active criminal. In the words of Sir William Blackstone, "such an indelible stigma being found by experience to render offenders desperate, this provision was repealed."<sup>159</sup> Cast out of communities, villages, and towns, this person was forced to wander the countryside, stealing and making their way from one place to another growing ever more desperate with every eviction. The social stigma attached to modern American sex offenders has been shown to have much the same effect; once released from prison, these convicts return to free society only to be bullied out of jobs, housing developments, and neighborhoods.<sup>160</sup> The pressures of modern conformity through dress and style also existed in early modern England. Any breach in fashion expectations that concerned so many then as they do today would be minimized when compared to the breach of social acceptance that was showing one's face with the mark of criminality burned forever into it.

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<sup>157</sup> 6 Anne c 9

<sup>158</sup> 6 Anne c 9, *The Statutes of the Realm*, Vol VIII, p. 563

<sup>159</sup> Sir William Blackstone, "Of the Benefit of the Clergy," *Commentaries on the Laws of England in Four Books. Notes selected from the editions of Archibald, Christian, Coleridge, Chitty, Stewart, Kerr, and others, Barron Field's Analysis, and Additional Notes, and a Life of the Author by George Sharswood. In Two Volumes.* (Philadelphia: J.B. Lippincott Co., 1893), Vol II, p. 1033

<sup>160</sup> Meloy, M., Shaleh, Y., & Wolff, N. "Sex offender laws in America: Can panic-driven legislation ever create safer societies?" *Criminal Justice Studies*, Vol XX, 2007, pp. 423-443

Furthermore, the court officials might have been aware of the enormity of the sentence associated with branding a face with the mark of criminality. Beattie explained that “there is strong evidence that the real reason [for restoring the location of the brand] was that branding on the cheek had been in fact evaded by court officials.”<sup>161</sup> Beattie provided examples of offenders receiving exceedingly faint marks on their faces by slightly warmed or even cold irons. He did not elaborate on what “strong evidence” exists, but his theory would explain the repeal after only seven years of implementation.

Instead of saving the life of a first-offender, benefit of clergy with its newly placed brand was having the effect of sentencing that convict to a slow, painful death through unemployment, homelessness, and social ostracization. Convicts had little opportunity to become law-abiding subjects as suspicion clouded their every interaction. They were defined forever by their lawbreaking life moment. By branding a criminal clearly on the cheek, the stigma was so great that it broke the contract with the general population: what was mercy if it came at such a great cost that the person could never return to normalcy? Symbolically, branding the face was akin to casting the convict out of civilized society; therefore, pleading one’s clergy was no mercy at all. It was a complex punishment, a sentence for life.

## **Conclusion**

In 1718, the consequences for criminal behavior shifted from bodily harm and mutilation to banishment. The Act of Transportation of 1718 would permanently change the effect and

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<sup>161</sup> Beattie, *Crime and the Courts*, p. 493

advantage of benefit of clergy but offering increased incentives for transporting prisoners rather than simply releasing them.<sup>162</sup> Transportation created a network of cheap labor that could supplement slave labor and settle the colonies while punishing criminals without necessarily executing them. JS Sharpe estimated that clergy fell from 24% of all trial cases to less than 1% following this bill.<sup>163</sup> Beattie noted the immediate impact Transportation had on the tradition of clergy. “Clergyable branding and whipping were not in fact to disappear entirely for property offences, but the immediate move to embrace transportation established the dominance of the new punishment – a dominance that was to endure into the 1770s.”<sup>164</sup> Rather than plead clergy and return home with a sore thumb, convicts would plead clergy or pray for a pardon of Transportation or even have Transportation pushed upon them as a result of pleading clergy. For two, three, seven, or fourteen years, the convict would live and work across the seas, first in the American colonies and later in the prison colonies of Australia.<sup>165</sup> The option of receiving the branded thumb as a memorable lesson for abiding by the law was no longer available.

In the process of shifting solutions for crime and criminality in Britain, benefit of clergy began to contribute to a new project of Empire. Although clergy did not play a role nearly as large as other imperial motivations, its presence can be found in many early British colonies: Ireland, the American settlements, and the Caribbean. Ultimately, this shift changed benefit of

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<sup>162</sup> “An Act For the Further Preventing of Robbery, Burglary and Other Felonies, and For the More Effectual Transportation of Felons, and Unlawful Exporters of Wool; and For the Declaring the Law upon Some Points Relating to Pirates,” 4 George I c 11

<sup>163</sup> JS Sharpe, *Crime in Early Modern England*, pp. 93-94. For felony cases, Cockburn suggests that Assizes in the 1700s led to pleas of the benefit 47% of the time. He also sees a dramatic drop following 1718. Cockburn’s *Introduction*, p. 141

<sup>164</sup> Beattie, *Policing and Punishment in London*, p. 432

<sup>165</sup> A Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*. Oxford University Press: 1990 and Robert Hughes, *The Fatal Shore: A History of Transportation of Convicts to Australia, 1787-1868*. Collins Harvill: London, 1987

clergy and its central importance to the English legal system following 1718, but it did not abolish the privilege. That would take more than a century longer, first in 1827 and then, more permanently, in 1837 and 1841, as the change in law was put into effect differently in regions and required additional statutory attention to confirm its abolition.<sup>166</sup>

The process of claiming benefit of clergy began with a plea after conviction but before sentencing. For most of the early modern era, the privilege ended with a successful performance of reading and a brand upon the hand. This process was not unique to the Stuarts; the procedure of court had been established under Tudors, and even those guidelines had some roots in the medieval period. However, the story of clergy in the seventeenth century appears to be one of departure rather than continuation. The privilege evolved from a place of performative mercy that upheld the divinity and benevolence of the King to a vengeful punishment in itself, designed to make the criminal actor suffer even if he or she was escaping execution. By the end of the Stuart period, clergy existed as a punishment, inflicted in open Court, performed as lesson to those in the audience so that the person seeking clemency experienced the suffering prescribed by the King's representatives for violating the law.

The statutes passed under the Stuart Dynasty were less about institutional change and social concerns, as they were under the Tudors. By contrast, legal changes to the benefit under the Stuarts were designed to make uniform the claiming process or to clarify issues raised in court. Most Stuart parliaments addressing clergy debated who could claim, and under what circumstances, and how they would experience the alternative to execution: questions of the brand placement or whether a convict was to be released or imprisoned or transported. A few exceptions to litigation-focused laws occurred under Oliver Cromwell. The so-called "Blue

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<sup>166</sup> I will explore clergy in imperial settings and address the story of abolition in my conclusion

Laws” used benefit of clergy to criminalize behavior formerly categorized under ecclesiastical jurisdictions. This included blasphemy, adultery, incest, fornication, atheism, and drunkenness. This brief return to Tudor-style restrictions of behavior using clergy as the mechanism did not last. Beyond Cromwell’s bills in 1648-1650, the other Stuart legislation over the privilege was focused on matters of court pleas. The question of women’s position before the law came up twice, in the 1620s and again in the 1690s, but both occasions seemed to be the product of concerns about criminals taking advantage of either a loophole or weakness in the law as it existed. Rather than concentrate on the status of England via foreign diplomacy and social order, the Stuart legislation focused on practical matters of claiming.

By the end of the Stuart Dynasty, with William III and Anne, benefit of clergy had become something entirely different from the privilege saved and preserved during the Reformation. Rather than emphasizing Christian mercy, the application of the brand and additional punishments on successful claimants underscored that clergied criminals were not escaping punishment after all. Old Bailey records transitioned from the early Stuart tradition of “granting” or “allowing clergy” so that Justices “sentenced” a defendant the benefit by the 1680s and 1690s. The change was subtle but important. Criminals were to suffer for their sins even during reprieve. Adding a physical penalty to the plea of clergy was important to instill a lesson about the consequences of law-breaking and disruption of the peace.

This is not to say that the growing focus on punishment and suffering did not completely erase the sense of forgiveness and mercy that could be applied through benefit of clergy. Petitions from local communities seeking to save the life and fortune of a man down on his luck can be found from the latter eighteenth century. In the 1790s, for instance, a group of forty individuals drafted a petition begging the local Justice to allow James Parker, fisherman, the

ability to claim clergy for theft. The community swore on the man's character and stated that the high price of provisions had led him to steal animal carcasses out of want and not greed.<sup>167</sup>

Similar petitions were filed in the 1780s and 1790s for seaman John Innis. He was clearly guilty of stealing four containers of liquor, and even tried to escape dressed as a fine lady. However, he was a young man led astray and the community felt confident that his family could lead him back to righteousness if only the local Justice allowed Innis his clergy for his unclergyable crime.<sup>168</sup>

In these specific cases, a community rose up to protect one of its weakest members through an ancient tradition of mercy. In such moments, benefit of clergy retained its Reformation-era sense of mercy. Yet such cases were the exception, not the rule in the seventeenth century. AL Cross referred to the "ghost of benefit of clergy, strangely transformed from its original shape."<sup>169</sup> It hovered, perhaps available, but seldom used as it once was during the Stuart era. Over 200 offences were unclergyable felonies carrying a capital punishment after 1800, but only 25 such offences had a real chance of execution.<sup>170</sup> In Hanoverian England, clergy was increasingly relegated as a medieval holdover, superseded by Transportation and the rise of the prison. Statutes made new offenses automatically unclergyable but most of these crimes were not commonly offended anyway. Old Bailey records following the 1718 Act of Transportation recorded a sudden, sharp drop in clergy claims. Of 25 convicts, only two claimed clergy in 1719,

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<sup>167</sup> The people of Southampton were confident in James Parker's character. See *The National Archives*, Kew, England, HO 47/28

<sup>168</sup> The case occurred at Newcastle-upon-Tyne at Christmas. See *The National Archives*, Kew, England, HO 47/17

<sup>169</sup> Arthur Lyon Cross, "The English Criminal Law and Benefit of Clergy during the Eighteenth and Nineteenth Centuries" *The American Historical Review*, Vol. 22, No. 3 (Apr., 1917), pp. 544-565, quote from p. 551

<sup>170</sup> These numbers result from comparing the statistics posed by Sir Spencer Walpole, Sir William Blackstone, and Sir James Mackintosh in Cross, "English Criminal Law and Benefit of Clergy," p. 548

and from 1722-1749 the rate of clergy claims fell to just 8%.<sup>171</sup> The new punishment rested with imprisonment and Transportation. Mercy lost favor to a more stern approach to law and order with an influence of equal treatment for all offenders. For the last century of its availability, benefit of clergy transitioned into a rarely-employed relic of another era, tacked onto Statutes by habit rather than design, until Parliament saw fit to abolish it entirely.

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<sup>171</sup> John Briggs, Christopher Harrison, Angus McInnes, David Vincent. *Crime and Punishment in England, 1100-1990: An Introductory History*. University College of London Press: 1996, p. 69



### **Conclusion: Benefit of Clergy and the Making of the Modern World**

Benefit of clergy survived the Reformation and persisted within the English legal system because it was tied so fully to the growth of various English institutions during the early modern period. Offering mercy allowed justices to hold communities together and provide a layer of forgiveness in enforcing the law. The very existence of the benefit strengthened the law and made it more attractive as a chosen jurisdiction in a period when jurisdictions competed with each other for more traffic and fines. As royal courts slowly became the supreme law of the land over the course of the early modern period, benefit of clergy was offered or denied to criminals, tying the privilege to hundreds of actions. The frequency with which average criminals could claim the benefit across Assize records and reports over the Old Bailey is striking: almost half of felony cases and a quarter of all cases involved an attempted plea of clergy. As a consequence, judges were empowered to take stock of the merits of a case and the impact of a criminal's life on the affected community. Such discretion blended with powerful laws to enhance the authority of royal courts while adjusting for the necessities of early modern life. The application of benefit of clergy finally began to wane with the rise of new penalties replacing capital or corporal punishments.

Following the Transportation Act of 1718, the English justice system experienced a shift away from judicial discretion and toward imprisonment.<sup>1</sup> Benefit of clergy had held a transitional

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<sup>1</sup> The reasons behind the rise of the prison are complex and have justifiably received a good deal of attention. The classic theoretical treatment is found in Michel Foucault's *Discipline and Punish: the Birth of the Prison*. Alan Sheridan, trans. Random House: 1977. Foucault's reliance on psychological power reveals a very real transition but might be an oversimplified theory of a complex problem. A more grounded historical approach is found in Michael Ignatieff's *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*. Peregrine Books:

position between the religiosity of the medieval state and its modern equivalent. The eighteenth and nineteenth centuries witnessed the rise of the prison. Rather than experiencing the loss of limb or life, prisoners began to pay for their transgressions with time. The tradition of allowing clergy to first-offense felons subsequently lost its value to the court. At the parliamentary level, the benefit continued to feature in new statutes, but only in terms of marking a new crime “unclergyable.” The privilege did not disappear overnight, but it began to lose favor. Literary analyses of society registered this change. Through literary commentary in the seventeenth versus nineteenth or twentieth centuries, the persistent presence of clergy in English social references became clear even as the defense plea itself faded into the background at court.

In 1670, an anonymous poet gave form to the discomfort of granting clergy to sinister criminals in a poem called “The Atheist’s Help at a Dead Lift: viz, the Benefit of Clergy.”<sup>2</sup> The poem conveyed a complex and fascinating understanding of the general role of mercy for criminals living in a moral society. The beginning of the poem created a tirade against those unbelievers or malcontents who turn to read the Bible only when it would be in the position to save their necks. “If Justice catch Leviathan in’s hook / Will he implore the Benefit of his Book?” Calling such claimants “Ravenous Harpies” who “for shelter sneak under clergies’ wing,” the poet continued to narrate to the inevitable meeting of atheist and Maker. There, trembling, the atheist’s charms failed him and the Devil abandoned him. So while a Christian martyr might bravely face the rack or torture and die for his beliefs, the Atheist left his belief as soon as his life was threatened. One might consider such blatant disregard of the atheist’s

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1978, especially pp. 3-14. John Howard, *State of the prisons in England, Scotland, and Wales*. JM Dent & Sons, 1929. William Forsythe, ed. *The State of Prisons in Britain, 1775-1900*, Vol II. Routledge: 2000. For a more casual overview, see Edward Marston, *Prison: Five Hundred Years of Life Behind Bars*. Kew, National Archives: 2009.

<sup>2</sup> Anonymous, *The Atheist’s Help at a Dead Lift: Viz, The Benefit of Clergy*. London: 1670. See transcription in Appendix 4

philosophy to be cowardly. However, the poet portrayed the flimsy devotion to Atheism as a benefit to Christendom. “Were Law not ham-string’d, and forc’d to lie idle / ‘Twould quickly drive the Atheist to his Bible.” When the Devil forsook an Atheist and the Atheist pled clergy instead, the act of partaking in Christian tradition and reading the Bible aloud created a strong enough debt that it might just save the soul of the Atheist in the end. “He now betakes himself unto our Creed / Which he from end to end Vouchsafes to read / At’s Ordinaries bidding: and thanks God.” Ultimately, the poet expressed how easy it was to mark the uncaring criminal with disdain for using clergy to escape death even when communion itself was not the priority. But the poet also cautioned the reader to avoid judging the offender, for the Christian mercy might serve to save a soul in the end. Inducing a criminal to read the Bible should be seen, in the poet’s eyes, as a moral element of the law. For the poet, mercy was not enough; it became the reading of the Bible that drew the soul away from criminal behavior and into the light.

Of course, the opinion of this poet was just one expression of how acceptable or despicable the benefit was for society in general. A 1615 play by Richard Brathwait discussed the perils of marriage by invoking the neck-verse, using the imagery of courts and mercy to describe the gentle laughter of a miserable, abusive wife.<sup>3</sup> In this case, a husband married to a woman who was “selfe-will’d, vntamed, head-strong, forward / Immodest, indiscreete, peeuish, vntoward” would continue to suffer as though sentenced to death. Sharing her bed was compared to the gallows; her words were cast as powerful as a strangler’s hands around his throat. But of her laugh, her moments of kindness in between such terrible abuse, was for the author a form of mercy: “Her Humor is my neck-verse.” For the playwright, the moment of touching God, the

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<sup>3</sup> Richard Brathwait, *An Epigramme Alluding to the Second Satyre of Ariosto, where he Taxeth the Clergies Pride and Ambition [from A Strappado for the Divell]*. London: 1615, p. 113.

Bible, and mercy in a life otherwise marked by terror and criminal punishment was comparable to the rare moment of bliss in an otherwise toxic marriage.

A cautionary tale about witchcraft from 1683 held similar views. The all-knowing observer warned those guilty of the Black Arts against mistaking earthly justice for divine approval, saying “You may have the benefit of Clergy / That's more than Hell will award ye.”<sup>4</sup>

Yet the witches were quick to correct the observer:

But we Witches to be sure are deluded,  
From this, and all other favours excluded.  
Tho we can ne're so well rehearse,  
We are not allowed our *Neck Verse*;  
But yet, we can allow them a Hearse.  
A Dram or so, let 'um look to't,  
Teach 'um to deny us the Book,  
When we need no Prompter to overlook.<sup>5</sup>

These references demonstrate a popular understanding of benefit of clergy's process at court and the consequences of such a plea for the entire community. The ability to read was required yet an arbitrary measure of a person's worth for reprieve and second chance. There also seemed to be an implication from the witches that depriving some crimes of clergy while granting it for others had no justice behind it. Those categories were arbitrary and worthwhile of revenge by those unfairly or randomly excluded from the privilege.

All of these literary references captured the general understanding of the privilege of clergy as a generous consequence of a trial completely unrelated to merit, virtue, or innocence. The assumption, that claimants may or may not be fully literate and that the criminals may or may not have sound reason for receiving clemency, pervaded such references. In 1706, the plea of clergy would lose the literacy requirement. Subsequent statutes were overwhelmingly negative

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<sup>4</sup> Robert Dixon, *Canidia, or a Witch's Rhapsody in Five Parts*, London: 1683, p. 80

<sup>5</sup> *Canidia*, p. 80

in their mention of clergy – that is, they included clauses regarding the benefit, but only in order to specify that the new crime would not allow clergy. Essentially, most statutes that followed created a new felony and immediately marked it as a capital offense without possibility of pleading clergy.

Between 1718 and 1827, Parliament passed almost sixty statutes with clauses regarding the benefit. The majority of these laws dictated punishment for relative new financial crimes: forgery, artificial creation of bank notes, impersonating an officer to obtain secret documents or payroll papers, counterfeiting stocks or bonds, transferring public funds, etc.<sup>6</sup> Of these, few expanded the claims of clergy to convicts of new crimes. One exception would be the 1823 Act “An Act for allowing the benefit of clergy to Persons convicted of certain felonies,” which enabled minor offenses previously declared unclergyable to be eligible for the benefit. Examples of such larcenies include sheep-stealing and wool-stealing, which had been clergyable for a very long time anyway. Only in 1723 and 1670, respectively, did those acts lose benefit of clergy.<sup>7</sup> In the period following the rise of both Transportation and the prison, the privilege ceased to be a form of mercy and became an avenue for additional punishments, albeit punishments that were still kinder than execution. In the eighteenth and nineteenth centuries, those claiming clergy could be then branded, whipped, installed in a workhouse, engaged in navigation as sailors for the Empire, transported or otherwise punished for their crimes.<sup>8</sup> Such claimants were alive, but they were not simply granted clergy and allowed to go free.

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<sup>6</sup> See Appendix 2 for a full recounting of these laws

<sup>7</sup> In 1723, the “Black Act” made such acts unclergyable in 9 Geo. 1 c. 22; in 1670, the law was 22 Charles II c 5

<sup>8</sup> Arthur Lyon Cross reviews these punishments and their statistics in his article “The English Criminal Law and Benefit of Clergy during the Eighteenth and Early Nineteenth century” *The American Historical Review*, Vol 22, No 3(April 1917), pp. 544-565, especially pp. 558-561

All of this would change with the final transformation away from second chances and into a more thorough, simplified system of punishment beginning with “An Act for repealing various Statutes in England relative to the Benefit of Clergy” of 1827.<sup>9</sup> This statute was part of the so-called “Peel’s Acts” which sought to codify law.<sup>10</sup> Just four laws simplified over 300 separate previous Acts.<sup>11</sup> Under Robert Peel, the random assortment of crimes and varying levels of punishment were reformed. Instead of individual crimes leading to capital punishment as they had been passed one by one in the previous five hundred years, Peel’s reforms kept only twenty capital crimes, greatly reducing arbitrary distinctions or crimes that were essentially the same but held to different specific acts – for instance, forgery of coins and forgery of stamps.<sup>12</sup> Ultimately, the number of statutes involved was misleading and confusing for practicing lawyers and law enforcement officials, and continues to mislead and confuse historians of the era today, as Randall McGowen recently argued.<sup>13</sup> Peel’s reforms simplified the code of law. The process

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<sup>9</sup> 7&8 George 4 c 27

<sup>10</sup> John Hostettler, especially “A Century of Law Reform” in *A History of Criminal Justice in England and Wales*. Waterside Press: 2009, pp. 194-213; Peter King, *Crime and Law in England, 1750-1840: Remaking Justice from the Margins*. Cambridge University Press: 2006, pp. 22-27

<sup>11</sup> Those laws included The Criminal Statutes Repeal Act of 1827 (7&8 George IV c 27), The Larceny Act of 1827 (7&8 George IV c 29), The Malicious Injuries to Property Act of 1827 (7&8 George IV c 30), and The Offences against the Person Act of 1828 (9 George IV c 31)

<sup>12</sup> Cross writes “Eventually, the persistent efforts of Sir Samuel Romilly and Sir James Mackintosh to reform the bloodthirsty criminal code prevailed. Sir Robert Peel, before he resigned the office of Home Secretary in November 1830, had reduced the number of capital penalties to about a score. As a consequence, benefit of clergy, which had practically served its turn in mitigating the terrors of the law, was done away with in 1827.” Quote from p. 564; discussion is on pp. 564-566

<sup>13</sup> Randall McGowen criticizes those historians largely responsible for pointing to the unwieldy number of Statutes enforced through capital punishment, noting that sheer number of Acts does not translate into rates of criminal behavior. See “Making the ‘Bloody Code’? Forgery Legislation in Eighteenth-Century England” in Norma Landau, *Law, Crime, and English Society, 1660-1830*. Cambridge University Press: 2002, pp. 117-138

rendered benefit of clergy largely unnecessary in a system already moving steadily toward punishments involving prisons rather than gallows.<sup>14</sup>

The statute itself gives a brief history of the privilege. The history contained therein was not necessarily a sound legal or cultural story of the significance of incorporating mercy into the criminal justice system. The references to Acts did not emphasize those most important dates or large pamphlet debates that had served to alter the application of the privilege to various groups of people. Instead, the Act of abolition captured the project Peel had hoped to execute: establishing the long list of contradictory and confusing laws from the past in order to demonstrate the need for a single, simplified law in England. By the end of the Statute, 139 separate laws were listed with references to titles and paragraphs, some focused entirely on the benefit and others only marginally important to the practice. In 7&8 George IV c 27, all of these laws were stripped of their original motivations – from weakening the admiralty jurisdiction or targeting threats to national security or making specific crimes more heavily prosecuted – and simplified into a single recommended trial process without benefit of clergy.

The single 1827 Statute was insufficient to abolish the long-standing privilege. Courts allowed benefit of clergy after its passage. For instance, in 1832, Henry Russell was permitted to claim his clergy after he commanded his impregnated servant to have an abortion by taking arsenic. The arsenic killed the poor servant and Russell was charged with being an accessory to murder. At trial, Russell claimed his clergy and received a sentence of Transportation for seven years. Justification for allowing clergy relied on the idea that the abortion had killed the servant

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<sup>14</sup> Peter King, “Punishing Assault: The Transformation of Attitudes in the English Courts” in *Crime and Law in England*, pp. 227-254

accidentally, and manslaughter was not as reprehensible as pre-conceived murder.<sup>15</sup> Cases such as these led to another Act in 1837 confirming the termination of benefit of clergy in England. Under Queen Victoria, an Act named “An Act for abolishing the Punishment of Death in certain cases” confirmed the new absence of clergy for criminal cases.<sup>16</sup> The Act also explained that the loss of the privilege did not mean that mercy was no longer a prominent feature of the English legal system. Rather, the Statute presented imprisonment, Transportation, whipping, and other lesser punishments as the replacement of pleading, reading, and branding.

Finally, in 1841, Victoria’s Parliament addressed the issue a third and final time, explicitly confirming that benefit of clergy was not long a part of the possible defense pleas, even for Peers of the Realm.<sup>17</sup> The final bill was entitled “An Act to Remove Doubts as to the Liability of Lords and Peers of Parliament to Punishment in certain cases of Felony” and declared that Peers of the Realm ought to be punished as any subject of Her Majesty’s might be. There was no indication that a particular case led to this final word on the subject, but since Edward VI had granted peers special access to clergy based on status rather than literacy in 1547, a separate law was necessary in order to reverse the long-standing Act that had not been included in the 1827 list of benefit-of-clergy laws.

In the same period, new laws had to be also enacted in order to abolish the benefit throughout the Empire. Peel’s substantial changes to the system of English Law required some adjustment on the imperial level. In the same year that the benefit was abolished in England, it

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<sup>15</sup> *Rex v Henry Russell*, 1832, as presented in Sir Edward Ryan, *Court for Crown Cases Reserved for Consideration: and Decided by the Judges of England*, Great Britain, Saunders and Benning: 1837, pp. 356-368

<sup>16</sup> 7 William IV and 1 Victoria c 91

<sup>17</sup> 4&5 Victoria c 22

was also abolished in Ireland.<sup>18</sup> In India, a law was passed “for improving the Administration of Criminal Justice in the East Indies” and adjusting the existing legal system to adopt the new reforms. Within that law, benefit of clergy was abolished for English subjects living in India.<sup>19</sup> The benefit was not quite the cornerstone of criminal law in the colonies of the First British Empire as it was during the same time in England. Nevertheless, it was persistent and at times quite common, particularly in the eighteenth century. Most legal servants of the Crown were English-born judges familiar with the legal system and willing to offer the same elements in the colony. Cases of claiming were found easily in Barbados, Jamaica, Maryland, Virginia, and beyond. Each local justice system had its own unique version of the English Common Law, and as a consequence the parameters of who could claim and for what crimes were different in each jurisdiction, even though the court officials and justices were often English-born and -educated.

Jamaica provides a good example of the manner in which English legal traditions were implemented but with a specific eye to the Jamaican society. Court officials were supposed to be “one of the best quality, who hath practiced and is well read in the Laws of England.”<sup>20</sup> A description of Jamaican laws from 1683 claims that the English law on the island was greatly simplified, with fewer court officials, smaller juries, and fewer types of writs. Rather than arrested by force, the suspect was contacted eight days before trial and requested to present himself voluntarily. The enclosed island reduced the threat of an escape attempt. The English-trained JPs and Justices brought the plea of clergy with them to new colonies, but the benefit was offered to more narrow crimes on Jamaica than elsewhere.

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<sup>18</sup> 9 George IV c 54

<sup>19</sup> 9 George IV c 74

<sup>20</sup> The Preface of *Laws of Jamaica, passed by the Assembly, and confirmed by His Majesty in Council, Feb. 23. 1683. To which is added, a short account of the island and government thereof. With an exact map of the island.* (1683). Newberry Library Ayer Collection 1000.5 J25 A2 1683

The criminal concerns of authorities in British Jamaica differed from those on mainland England. Sheep-stealing, shop-lifting, and assault were less threatening than keeping the slave and free populations separate and “ordered.” The laws passed by the Assembly of Jamaica focused on keeping up white populations and maintaining rules for the movement of enslaved peoples. Between 1756 and 1804, 74 entries in the Assize records of Jamaica record a punishment of branding after pleading benefit of clergy.<sup>21</sup> A formal declaration under the Earl of Carlisle and approved by royal assent in 1679 stated “That the Laws of England be declared to be in force in Jamaica” and these laws included criminal law and allegiance to the King.<sup>22</sup>

Like Jamaica, Barbados law was a blend of the English system and local Assembly laws for plantations. The order of government in Barbados transported English Justices to form a Council of twelve who were required to assist the Governor of the Island. English laws were considered to be in force on the island, although additional legislation was needed to apply legal standards to challenges unique to a slave economy.<sup>23</sup> The Assembly was responsible for passing such legislation through a slightly larger group of 22 well-respected men who designed laws for the King’s approval. Then both the English laws and Barbados-specific legislation were enforced by local Justices of the Peace. A list of JPs from 1683 shows 48 men with very English or Welsh names.<sup>24</sup> The Assembly’s laws do not mention benefit of clergy specifically, focusing instead on

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<sup>21</sup> Jonathan Dalby, *Crime and Punishment in Jamaica: A Quantitative Analysis of the Assize Court Records*, The Social History Project, Department of History, University of the West Indies, Mona: 2000, pp. 74-76. Unfortunately, the race of the claimant is not recorded in Dalby’s appendices. Further research in the records of Kingston might yield a racial dimension and more details about the defendants.

<sup>22</sup> No 945, 2 April 1679 “The State of the Business of Jamaica Represented to His Majesty in Council on the 2nd April 1679” in the *Calendar of State Papers: Colonial Office*, 1677-1680, p. 347

<sup>23</sup> Statements to this effect can be found asserting the rule of English Law while requesting local specifics in the *Calendar of State Papers: Colonial Office*. See for instance Nos 974, 1034, 1036, 1047, and 1075 on pp. 354, 380-382, 386-87, and 401 of the volume covering 1677-1680

<sup>24</sup> Barbados, *The Short State of Barbados and the Government thereof: A remarkably Interesting Manuscript*. (1700) Newberry Library Ayer MS 827

the delicate balance between white and black inhabitants of the island. Nevertheless, trial records and commentaries show that benefit of clergy was offered by English-trained Justices. For instance, in 1828, Justices petitioned the King to allow benefit of clergy to a slave in Barbados.<sup>25</sup> The slave, Jack Stephen, had stolen a cow, but when the justices tried to allow him his clergy, they found that the law was unclear about the availability of clergy to slaves. They suspended the trial in order to write to the King about their intent to amend Jamaican law to include slaves in the ability to plead clergy when appropriate.<sup>26</sup> The trial records associated with the King's Bench in Barbados are less well-organized than those in Jamaica, and more research is needed to measure whether pleas of clergy were common or exceptional in that particular British colony.

More focused attention could reveal the changing relationship between the English legal system and individual colonies in the British Caribbean. Did each colony follow the passage of legislation in a timely manner, or incorporate new laws only if they were needed on the local level? Additionally, the status of claimants in Jamaica, Barbados and Bermuda requires more analysis to determine if clergied criminals were only those of English birth, or if slaves and locally-born claimants were allowed to plead their clergy. Surely it is significant that the royal ideals of mercy that assisted in strengthening the state during the Reformation were also used in colonial regions during the First Empire. To underline such connections, the trial records and local supplemental Statutes must be considered among a variety of British colonies.

The situation was slightly different in the American colonies. There, local offenders were part of a largely English settlement and could take advantage of the benefit in a manner similar to England. Since benefit of clergy was tied to Transportation after 1670 and especially after

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<sup>25</sup> "Despatches from John Brathwaite Skeete" 21 August, 1828. The National Archives, Kew, Colonial Office CO 28/102/36

<sup>26</sup> *Ibid*

1718, offenders in England were sent for labor in the colonies. The result was a largely mixed community of white settlers, indentured servants, and transported criminals working with an influx of African slaves and pockets of Native American inhabitants.

The arrival of white felons as workers led Benjamin Franklin to publish a lament against the arrival of as many as 52,000 felons over the course of the seventeenth century. In an editorial called "Felons and Rattlesnakes," Franklin argued that England's practice of disseminating its felonious population through the system of Transportation was against "this kind Reason, "That such Laws are against the Publick Utility, as they tend to prevent the Improvement and well peopling of the Colonies."<sup>27</sup> Franklin felt the influx of felons weakened the strength of community in the colonies. In order to drive home his impression of their impact, Franklin suggested that colonists begin sending England boxes of rattlesnakes, native to North America, and similarly threatening to anyone forced to live in their company.

Franklin's work is a powerful piece of rhetoric and focuses on the additional punishment of Transporting convicts who sometimes had pled the benefit. His own communities had already established the claims in specific colonies.<sup>28</sup> Massachusetts allowed claims of clergy for a case of murder in 1732 and cases ending with the benefit can be found until the Revolution decades later.<sup>29</sup> Maryland allowed clergy to criminals often enough that repeat offenders had to be turned

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<sup>27</sup> Benjamin Franklin, "Felons and Rattlesnakes" *The Pennsylvania Gazette* 9 May 1751. <http://franklinpapers.org/franklin/framedVolumes.jsp?vol=4&page=130a>, (Accessed on 27 December 2012)

<sup>28</sup> George Dalzell, *Benefit of Clergy in America and Related Matters*. Winston-Salem, N.C.: 1955, pp. 95-8, Jeffrey K Sawyer, "Benefit of Clergy in Maryland and Virginia" in *The American Journal of Legal History* Vol 34 No 1 (Jan 1990) pp. 48-68 Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660*. University of Georgia Press: 1983, pp. 48-58. Chapin includes a chart on clergy claims found on p. 113

<sup>29</sup> Alan Rogers, *Murder and the Death Penalty in Massachusetts*, University of Massachusetts Press: 2008, p. 22-24, 38

away to seek mercy along another avenue.<sup>30</sup> In Virginia, benefit of clergy became more common after women were declared eligible to claim and the literacy test was abolished in 1732; in the same year, slaves were also declared eligible to claim.<sup>31</sup> Jeffrey Sawyer argued that benefit of clergy was not merely a holdover of English justice, as we might characterize the benefit as it was applied in the British Caribbean.<sup>32</sup> Instead, Sawyer portrayed the privilege as a fundamental cornerstone of the Chesapeake justice system, just as the privilege existed in England at the same time. His analysis of surviving trial records for the General Court of Virginia suggested that between one-fourth and one-third of all felony trials ended in a plea of benefit of clergy.<sup>33</sup> An analysis of each individual state's relationship between the English common law system and the frequency of clergy pleas might help clarify how the British system spread across the globe while exploring whether mercy and images of the royal grace continued to resonate outside of England.

The events of the Boston Massacre are well known to most schoolchildren in the United States. Perhaps less-well-known is the fact that two of the soldiers responsible for opening fire on a group of demonstrating Bostonians, Matthew Kilroy and Hugh Montgomery, were able to escape their punishment by pleading benefit of clergy under Massachusetts law.<sup>34</sup> The memory

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<sup>30</sup> Raphael Semmes, *Crime and Punishment in Early Maryland*, 2<sup>nd</sup> edition. Johns Hopkins University Press: 1970, pp. 21-35

<sup>31</sup> Lawrence Friedman, *Crime and Punishment in American History*, Basic Books: 1994, p. 44, Arthur P Scott, *Criminal Law in Colonial Virginia*. University of Chicago Press: 1930, pp. 103-107, and Edward White, *Legal Antiquities: A Collection of Essays Upon Ancient Laws and Customs*. FH Thomas Law Book Co, St Louis MO, 1913, p. 241

<sup>32</sup> Sawyer, "Benefit of Clergy in Maryland in Virginia," particularly pp. 50-52 and 65-68

<sup>33</sup> Sawyer, p. 59

<sup>34</sup> John Adams acted as defense lawyer to these claimants. See Charles Francis Adams, ed. *The Works of John Adams, Second President of the United States with A Life of the Author*, Vols I-X but especially Vol III pp. 99-101, 283. Boston: Little, Brown & Co, 1856. Hiller B Zobel, *The Boston Massacre*. Norton & Company: 1970, pp. 124 and 269. See also Rogers, *Murder and the Death Penalty in Massachusetts*, p. 32-34

of Britain's legal escape for these soldiers may have spoken to the founding legislators of the new country, but the period itself also featured a transition away from physical punishments including ear-cropping, whipping, the stocks, and the physical branding still associated with a plea of benefit of clergy. The alternatives of imprisonment and fines appeared to be far less repugnant to the ideologies of the new Republic.<sup>35</sup> And so, either by inspiration or the embrace of a new era of punishment, the American federal government passed a reform bill in 1790-1791 that eliminated the availability of benefit of clergy at the federal level.<sup>36</sup>

States were then left to maintain or abolish the privilege at a local level. For instance, Maryland abolished the law in 1809, dictating that in future "every person heretofore deemed clergyable shall be sentenced to undergo a confinement in the penitentiary for any time not less than one year nor more than five years" essentially replacing pleas of clergy and branding with the prison system.<sup>37</sup> Kentucky continued to allow clergy until 1847.<sup>38</sup> North Carolina eliminated "burning in the hand" in 1816, but continued to allow pleas to women (1806), to those convicted of manslaughter (1825), and to felons convicted on the first offense of any brand new statute that did not specifically bar the use of benefit of clergy (1855).<sup>39</sup>

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<sup>35</sup> Sawyer, pp. 65-66

<sup>36</sup> "An Act for the Punishment of Certain Crimes Against the United States" Section 31 of the Crimes Act of 1790. "And be it further enacted that the benefit of clergy shall not be used or allowed, upon conviction of any crime, for which, by any statute of the United States, the punishment is or shall be declared to be death." Full text of the Act can be found at George Washington University [http://www.gwu.edu/~ffcp/exhibit/p6/p6\\_7.html](http://www.gwu.edu/~ffcp/exhibit/p6/p6_7.html) (Accessed 8 January 2013) or <http://constitution.org/juris/fjur/2fj5.txt> (Accessed 8 January 2013)

<sup>37</sup> "An Act Concerning Crimes and Punishments" 1809 in Virgil Maxcy, ed. *The Laws of Maryland*. Baltimore: 1811, Vol 4 p. 138

<sup>38</sup> White, *Legal Antiquities*, p. 236

<sup>39</sup> These examples are drawn from White's *Legal Antiquities*, p. 240. More thorough research on the life of benefit of clergy in the United States following the federal abolition is clearly necessary to understand the logic behind prolonging the privilege at the state level while eliminating it after the Revolution.

The occasional availability of clergy to slaves from the Caribbean to colonial North America and the American South would benefit from more focused scholarly consideration. In Jamaica, slaves convicted of violence against their masters or running away were sentenced to death, according to justices commenting on the situation in 1783, and they were executed by local gaolers rather than the Deputy Marshal who executed white felons sentenced for capital offenses.<sup>40</sup> The potential for slaves to claim clergy for their crimes was in doubt in Barbados, leading to the 1828 petition asking for clarity on the matter discussed above.<sup>41</sup> The question was general rather than specific: cases of slaves claiming clergy did occur and 1828 was not the first occasion of a slave trying to claim the benefit. Whether such slaves received mercy due to sympathetic court officials, a sense of preservation of property, or some other reason may never be known. Furthermore, the standing of slaves could have changed from place to place and from official to official.

The position of slaves within the American slave states depended entirely on the ideas of local courts. For instance, in Kentucky slaves were granted more mercy than that of a freedman, perhaps due to the slave's dual role as a human capable of fault and as a piece of property. The Laws of Kentucky stated that "When any negro, mulatto, or Indian, whatsoever, shall be convicted of any offence within the benefit of clergy, judgment of death shall not be given against him or her upon such conviction, but he or she shall be burnt in the hand, by the gaoler,

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<sup>40</sup> This related judicial comments on the slave case *Rex v Sleater*, in September 1783. See Helen Tunnicliff Catterall and James J Hayden, eds. *Judicial Cases Concerning American Slavery and the Negro*, Vol V, published by the Carnegie Institution of Washington. Washington DC: 1937, pp. 354-55.

<sup>41</sup> Justices in Barbados postponed the trial and wrote to the King and his advisers to clarify the question in 1828. "Despatches from John Brathwaite Skeete" 21 August, 1828. The National Archives, Kew, Colonial Office CO 28/102/36 (see above, n 24)

in open court, and suffer such other corporal punishment as the court shall think fit to inflict.”<sup>42</sup> Subsequently, the courts in Virginia and Maryland were equipped with branding irons for this purpose. The branding ceremony was done in public and incorporated elements of performativity as the receiver of clergy openly admitted the crime and bravely stood while the brand was applied by the gaoler. The preservation of life while maintaining enslaved status seems tied to the slave economies of the Chesapeake, of Kentucky, and of much of the original Southern colonies.

In Virginia, the condition of a slave named Mary Aggie helped to define benefit of clergy law in 1732.<sup>43</sup> Mary had hoped to buy her freedom in 1720 but had been unsuccessful. She was later convicted of stealing from her owner by living her life as if she were free. At her trial, Mary tried to plead clergy to escape punishment but was disallowed from the privilege by her status as a slave. Instead, the Governor of Virginia pardoned her actions and instructed the Assembly to pass new Statues guaranteeing the rights of all Virginians to plead clergy for felony cases, a law that endured for sixty years.<sup>44</sup> Linda Rowe noted that “County courts, the venue for slave trials, had branding irons after 1732, the year the General Assembly granted slaves limited access to benefit of clergy.”<sup>45</sup> Such examples can be found throughout the trial records of American states

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<sup>42</sup> Section 20 on p. 1475 of A.G Hodges, *A digest of the statute laws of Kentucky, of a public and permanent nature: from the commencement of the government to the session of the Legislature, ending on the 24th February, 1834 : with references to judicial decisions*. Published by the State of Kentucky: 1834

<sup>43</sup> Anne R. Willis, “The Masters’ Mercy: Slave Prosecutions and Punishments in York County, Virginia, 1700 to 1780” (M.A. thesis, College of William and Mary, 1995), p. 104, 137-148

<sup>44</sup> John Hemphill, “Mary Aggie, 1728-1731” in the *Dictionary of Virginia Biography*, edited by John T. Kneebone, J. Jefferson Looney, Brent Tartar, and Sandra Gioia Treadway. Richmond: Library of Virginia, 1998, pp. 42-43. [http://www.encyclopediavirginia.org/Aggie\\_Mary\\_fl\\_1728-1731](http://www.encyclopediavirginia.org/Aggie_Mary_fl_1728-1731) (Accessed 9 January 2013)

<sup>45</sup> Linda Rowe, “The Benefit of Clergy Plea” *The Colonial Williamsburg Interpreter*, Volume 19, No. 1 (1998). [http://research.history.org/Historical\\_Research/Research\\_Themes/ThemeReligion/Clergy.cfm](http://research.history.org/Historical_Research/Research_Themes/ThemeReligion/Clergy.cfm) (Accessed 21 April 2013)

following the formal abolition of benefit of clergy in 1791. These instances show the variety of ways in which the medieval privilege continued to have an impact on lives in the New World.

Throughout literary and legal references, benefit of clergy was portrayed as varied and arbitrary. Through the course of the early modern period, the benefit enabled government institutions in London to take a more centralized, even-handed approach to justice throughout the English kingdom. Clergy facilitated the supremacy of royal courts, contributed to a body of works that named the King as the most powerful within the commonwealth, and maintained the full subjectivity of English-born men and women. Priests, foreigners, suspects of particular crimes, women, settlers, colonials, and slaves were all granted clergy as a way of proving that they were indeed subject to the authority of the royal courts. Without this subjectivity, they might take advantage of existing uncertainty, from juror discomfort with convicting a sympathetic defendant or the argument that they did not actually belong within the given jurisdiction. Women, for instance, could argue that they were merely obeying their husbands in committing a crime early in the seventeenth century. Previously, priests could similarly refuse to answer a royal justice and claim a change of venue through the Ordinary. Over time, its reputation for granting second chances to deserving and undeserving defendants in equal measure continued. Even after the repeal of clergy laws, lawyers and historians continued to make reference to this historic legal plea and its consequences for the English state. Even popular magazines made reference to the privilege in order to prove a larger point.

In 1944, George Orwell wrote a critical essay about a famous artist called “Benefit of Clergy: Some Notes on Salvador Dali.”<sup>46</sup> Orwell had been struck by Dali’s extreme cruelty as

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<sup>46</sup> George Orwell, “Benefit of Clergy: Some Notes on Salvador Dali” in *The Collected Essays, Journalism, and Letters of George Orwell*, Vol III “As I Please: 1943-1945.” Sonia Orwell and Ian Angus, eds. London: Secker and Warburg, 1968, pp. 156-165

conveyed in Dali's recent autobiography.<sup>47</sup> Examples of this cruelty included Dali kicking his young sister in the head as hard as he could, flinging a young schoolboy off a bridge and almost killing him, and viciously attacking a young woman when in his late twenties. He tortured and killed animals. Upon meeting his future wife, Dali described himself as struck with the intense urge to kill her. He went as far as to pull her head back as far as it would go by yanking on her hair and threatening the integrity of her neck; he commanded her to tell him every erotic thing she wished him to do to her, speaking of the thrill of power and lust. And the biographical pieced claimed that she responded, "I want you to kill me!"<sup>48</sup> Orwell furthermore explored Dali's open attraction to necrophilia, finding himself sexually aroused by skulls, dead bodies, rotting corpses.<sup>49</sup> Orwell felt shock and disgust at the desires of this famous artist.

In response to reading of Dali's life, Orwell wrote, "He is as anti-social as a flea." And to the end of this essay on Dali's life, Orwell argued that,

It will be seen that what the defenders of Dali are claiming is a kind of *benefit of clergy*. The artist is to be exempt from the moral laws that are binding on ordinary people. Just pronounce the magic word 'Art', and everything is okay: kicking little girls in the head is O.K... So long as you can paint well enough to pass the test, all shall be forgiven you.<sup>50</sup>

To Orwell, no valuable piece of art was worth the cruelty of oppressing the human soul so fully. Dali seemed to destroy his moral compass in order to produce more abstract and shocking images. And yet Orwell rightfully asserted that "If Shakespeare returned to the earth to-morrow,

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<sup>47</sup> The biography in question was Dali's *The Secret Life of Salvador Dali*. Dial Press: New York, 1942.

<sup>48</sup> Orwell, p. 157

<sup>49</sup> Orwell, pp. 158-160

<sup>50</sup> Orwell, p. 160

and if it were found that his favourite recreation was raping little girls in railway carriages, we should not tell him to go ahead with it on the ground that he might write another *King Lear*.”<sup>51</sup>

In this essay about the life of Salvador Dali, Orwell continued a long tradition of using benefit of clergy as a commentary of acceptable and unacceptable behavior. Literary references to the benefit are found throughout this dissertation. For the poet in “A Dead Man’s Lift,” atheism was the worst offense of all.<sup>52</sup> And yet, the poet concluded that offering forgiveness might bring the atheist to God – and the anonymous writer considered that to be a fair exchange for saving a soul. For twentieth-century Orwell, cruelty and necrophilia were the worst offenses. Neither should be tolerated even if doing so meant receiving another brilliant work of art – not even for a second *King Lear*.

By the time of Orwell’s essay, benefit of clergy had been abolished in England for at least a hundred years. Nevertheless, the privilege remained a part of the common cultural memory, as witnessed by Orwell’s ease of reference. In this dissertation, I have portrayed the privilege as a cultural reflection of English values. In the medieval period, it demonstrated the value of priests to society, a benefit to protect the holy representatives of God during moments of tension between Church and State. It grew into a slightly different matter during the fifteenth century as increasing numbers of laymen were allowed the benefit for their crimes based on literacy rather than ordination. During the Reformation, the benefit served as a helpful justification for the drastic policies of Henry VIII while a newly-empowered Parliament employed the lay version of the benefit to assist in the project of changing political institutions.

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<sup>51</sup> Orwell, p. 161

<sup>52</sup> See Appendix 4 for a copy of the poem and my discussion on pp. 279-280 of this dissertation

In the aftermath of the Reformation, claims of benefit of clergy increased as more crimes and criminals were allowed the benefit. Claiming clergy in the seventeenth century had the dual effect of encouraging judicial discretion for allowing second chances and tempering compassionate jurors so they might convict a sympathetic defendant without having to execute him or her. In the process, such “weak” defendants were drawn more fully into the royal jurisdictions and even marked with their subjectivity. This process was found in similar fashion across the early empire, as slaves and others are allowed their clergy in places like Jamaica. In 1800, Parliament passed legislation to outline how clergy might apply to those living in India: they had to be born of English parents and the crime accused had to be clergyable in order to allow the defendant to escape the gallows and accept transportation instead.<sup>53</sup> The method of applying punishment in the form of mercy allowed imperial officers and settlers to use tempered violence when upholding English law in colonial contexts. Elizabeth Kolsky noted that “Physical violence was an intrinsic feature of imperial rule.”<sup>54</sup> Her book on colonial justice in British India explored the contradictions of law and justice as it applied to local and imported inhabitants. The case of British Jamaica extended what Kolsky found in her study of Indian officers. She explicitly drew from the sugar plantations of Jamaica to compare her findings of violence and mixed signals of justice on the tea plantations of India.<sup>55</sup> The ambiguous position of a ruling colonial elite occupied a similar position in the exported law as the priests did to medieval law and women did to Stuart juries. And again in India, such people found difficult to convict.

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<sup>53</sup> 39&40 George III c 79

<sup>54</sup> Elizabeth Kolsky, *Colonial Justice in British India*. Cambridge University Press: 2010, p. 1

<sup>55</sup> Kolsky, p. 15-18 and 187

Benefit of clergy helped strengthen the English state for hundreds of years through a delicate balance of legislative power and merciful exceptionalism. Even today, the idea of the benefit persists as wave after wave of Catholic scandal reveals that the Catholic Church has colluded to protect its representatives from secular prosecution. Hundreds of years after the Tudors replaced the ecclesiastical privilege, the Church continues to implement the idea that their leaders are the only ones truly capable of handling the crimes of ordained men. I would argue that this is not the version of benefit of clergy the modern world ought to embrace. In a nation that imprisons more than one person out of every one hundred, perhaps a first offense plea would help alleviate the burden of our prisons. Certainly the lay version of benefit of clergy would serve the society better than the attempts by the Catholic Church to protect its offending priests through a secretive, medieval version of the original ecclesiastic exemption.

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This dissertation was conceived with the hope of understanding the English Reformation more clearly. In a century dominated by expanding government control and weakening clerical privileges, the survival of benefit of clergy during the English Reformation was a curious accident of history. Surprisingly, the continued existence of this religious privilege after other clerical privileges were abandoned was not itself the most important part of clergy's history. Instead, the consequences of the benefit bolstered policies of the state. In the process, claimants of the benefit adopted a legal fiction. They became "criminous clerks." They were branded as sinners, but grateful to the absolution that came with the brand. Women could not be priests but would eventually be allowed to plead clergy. A significant fictional rhetoric built around benefit

of clergy from its very beginning, becoming a part of the legitimate ideal of granting mercy even as it adopted more double standards.<sup>56</sup> Abstract Biblical quotes did not necessarily mean that God wished priests to be allowed to rape and murder without any consequences. Women could not be priests but could become criminous clerks. These fictions served to reconcile the legal result of enhancing royal reputation while granting a single-time reprieve – even a reprieve that worked more to secure future convictions than it did to give a criminal a second chance.<sup>57</sup>

By expanding a new secularized version of this once-clerical privilege, the government was then able to employ the benefit in a broader project of parliamentary expansion while enhancing the reputation of the king as the supreme authority and his courts the highest jurisdiction in the kingdom. Denying certain criminals the ability to claim was balanced by Statutes that offered clergy anew to populations who might be hesitant to cooperate with the English legal system. Similarly, benefit of clergy drew women more firmly into conviction, literally marking them as subjects to the royal court by virtue of the branding system. The same might later be said of slaves and colonists living under British rule throughout the Empire.

Toward the end of the early modern period, the creation of the so-called “Bloody Code” was facilitated by the continued existence and possibility of claiming benefit of clergy. The growing strength of punishments exhibited in eighteenth century England grew on pillars of the system’s mercies: pardons, judicial discretion, and the benefit itself. We have seen the resistance of local juries to sentence harsh penalties on sympathetic defendants. Legal tools including the

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<sup>56</sup> Lon Fuller, *Legal Fictions*. Stanford University Press: 1967, pp. 49-92

<sup>57</sup> Fuller, p. 51. Legal fiction can be found throughout the competing jurisdictions of early modern England. See for instance an analysis of coexisting contradictions in Theodore Plucknett, *A Concise History of the Common Law*, fifth edition. Boston: Little Brown and Co, 1956, pp. 386-87. W.S. Holdsworth found similar coexisting fictions where defendants might adopt a different justification depending on the lore of the court in which they were charged, *History of English Law* seventh edition, London: 1956, pp. 219-222. See also Marjorie Blatcher’s study of the necessary lies invoked within legal paper work in her book, *The Court of King's Bench: a Study in Self-Help, 1450-1550*, London: 1978, pp. 114-37.

benefit allowed sentencing to proceed more smoothly as it was offered to larger groups of people.

The history of the privilege allows us to view England's transition from a minor participant in the larger, unified Christendom to an unparalleled imperial force. Granting benefit of clergy to foreign-born people in areas that had only recently accepted the British legal system holds great symbolism during the era of the First Empire. As British colonizers embarked on their mission of civilizing new areas with messages of Christianity and the institution of slavery, the law and its elements of forgiveness were held up as examples of British civilization. Only because of this desire to prove the purity of the English legal system is it possible for us to see so many examples of slaves and colonial people claiming a medieval privilege reserved once exclusively for the ordained servants of the Catholic Church. What began as a liberty or right of the Church eventually became a tool for empire by offering a solution between execution and acquittal.

Benefit of clergy touches on a wide variety of the main issues for the early modern period. Particularly under the Tudors, major threats to the kingdom were legislated often by employing benefit of clergy – either through offering or denying it. In the process of studying this legal device, we have the chance to view the transition of government policies from a medieval structure to a modern one. We observe the shift in punishment from physical penalties to psychological ones as whipping and bored tongues give way to long-term imprisonment. How fitting that benefit of clergy should be enshrined in law as a lay benefit under Henry VII, and abolished for the prison system under Peel in 1827. These markers coincided with England's departure from medieval traditions and the step into modernity and the height of British Imperialism. The intervening 350 years embraced a tradition of variation: penalties

recommended for undesirable actions but potentially avoided should the conditions be appropriate in the eyes of the ruling justice. This variation was crucial to the period of transition but lost its relevance under Victorian rule.

Perhaps the most striking element of the story of benefit of clergy is how the frequent use of mercy serves to strengthen political institutions rather than weaken them. One might assume that allowing up to a quarter of felons a method for escaping justice for their crimes would diminish the effectiveness of that system. And yet, from the outcome of the Wars of the Roses to the public relations campaign of the Reformation, the use of benefit of clergy to forgive allowed the Crown to weave the fabric of absolute authority. The king's representatives could sentence a defendant to death or allow the plea to be successful, alternatively supporting a community by executing harsh justice or by allowing one of its members to go free. With either outcome, the royal authority behind benefit of clergy was able to appear noble.

What was true for the formation of the English state during the early modern period held true for a parallel imperial power in the New World. More research is required to understand fully the role of benefit of clergy in the American colonies and the British Caribbean. Its connection to strengthening the state and building an empire is paramount, especially when we see the relationship between benefit of clergy and Transportation.

Benefit of clergy was not the only justification for the changes made under Henry VIII to the religion and institutions in England. Nor was it the most prominent theme. However, the argument became a useful tool for justifying his actions and strengthening the authority of a growing parliamentary influence. Following the sessions of the Reformation Parliament, the benefit continued to act as a useful tool during a period that witnessed an overwhelming transition of Parliament as a legislative force responsible for legislating policy across categories:

national security, sexual deviancy, criminal behavior, and social status or gender. In the seventeenth century, the hundred years after the Reformation, local courts continued to allow this privilege to establish stronger ties within communities and eventually to create a more uniform sentencing experience based on local needs. In this way, the existence of benefit of clergy enabled the growth of the English nation in the early modern period. Its medieval roots would pave the way for imperial expansion in the modern world.



Appendix 1:  
Major Events in Benefit of Clergy in England

- 1164      Constitutions of Clarendon affix benefit of clergy to the Statutes of England first by doing away with the privilege and then reversing the law after Thomas Beckett is found murdered
- 1315/6    *Articuli Cleri* confirms the role of benefit of clergy to protect medieval clergy
- 1351      *Pro Clero* clarifies who may be imprisoned and for what causes, especially clergy serving English communities. Many historians falsely attribute the reading requirement to a provision in this Statute
- 1489      Parliament formally offers a lay version of benefit of clergy, marked by a system of branding in the brawn of the left thumb
- 1536      Benefit of clergy becomes a misnomer, as the ecclesiastical version is abolished and only the single-use benefit remains
- 1576      Claimants of clergy can be sentenced to additional punishments including a year in prison or whipping. Delivery to the Ordinary is found to be no longer necessary and a judge can dispatch the branded convict directly home.
- 1624      Women are granted the benefit for petty larceny of goods valued under 10 shillings
- 1670      Benefit of clergy is tied to Transportation as an extension of the 1576 Act
- 1691      Women are granted full rights to claim clergy wherever men may have it
- 1699      The brand is moved from the thumb to the cheek
- 1706      The brand is returned to the thumb after complications of such harsh punishment; in the same Act, the reading requirement is abolished.
- 1718      The Act of Transportation gives rise to alternative punishments and marks the decline of benefit of clergy
- 1827      Benefit of clergy is officially abolished in England and throughout the Empire

Appendix 2:  
An Index of all laws pertaining to benefit of clergy, 1164 to 1841

Year	Statute	Name	Description
1164	n/a	Constitutions of Clarendon	A major point in the conflict between Henry II and Thomas Becket stemmed from Henry's attempt to abolish benefit of clergy. Clause 3 declared that clerks would have to answer to the King's Courts when appropriate and the Church Courts when appropriate, but if the King's Justice found them guilty, the Church would not protect them further.
1267	52 Henry III c 27	Statutes of Marlborough	Marlborough confirmed that even if a clerk refused to answer before the king's courts, he would not be forced to respond, or subject to punishment for refusing because of established rights and privileges as a clerk.
1275	3 Edward I c 2	Statute of Westminster	Westminster guaranteed that clerks would be delivered to the Ordinary without intervention from the King
1275/6	4 Edward I c 5	Statute of Gloucester	Gloucester criminalized bigamy and marked bigamists as ineligible for claiming clergy. Men who married twice were barred from taking their privilege in accordance with a Papal injunction from a Council in Lyons
1315/6	9 Edward II st 1 c 16	Articuli Cleri	These clauses attempted to clarify clerical behavior and status. Clause 3 prohibited violence against clergy; clause 4 prohibited defamation of clergy; clause 6 permitted temporal and spiritual courts to debate the same legal issue; clause 13 dictated that spiritual men "without sufficient learning" could be removed from the spiritual courts and placed before the king's courts; clause 15 prohibited secular judges from ordering criminal clerks to abjure the realm; clause 16 confirmed the absolute right of clergy to claim their privilege and exhorted secular judges to send them to the Ordinary upon claiming clergy.
1351	25 Edward III st 5 c 2	Untitled	Clause 2 of this Statute distinguished between treason and felony, which is important as treason is unclergyable.

1351	25 Edward III st 6 c 4-5	Pro Clero	<i>Pro Clero</i> confirmed and defined the privilege for all clerks, secular and religious; it also prohibited secular judges from putting clerks into jail instead of following protocol and sending them to their Ordinary. Many historians point to this law erroneously as the rise of literacy as the defining mark of eligibility, but there was no explicit mention of literacy in this law and later commentary by Justices established that the conditions were not settled by 1351.
1402	4 Henry IV c 3	Benefit of Clergy Act	This Act from early in Henry IV's reign confirmed the rights of clergy to escape secular judgment and punishment in favor of ecclesiastical jurisdiction. The law explained that thieves and petty traitors would be delivered to the Ordinary for judgment. Common thieves with repeat offences could be stripped of their clerical status and returned to the common courts depending on the judgment of ecclesiastical courts.
1489	4 Henry VII c 13	An Act to take away the benefit of clergy from certain persons	This Act created two coexisting forms of the benefit. For the laity, Clergy was allowed once, with branding of M or T to prevent a second claim. Those in Holy Orders were exempt from the brand: they were allowed to claim as before but only upon proving their ordination through papers or testimony from a local Bishop's representative.
1491	7 Henry VII c 1	An Act against Captains for not paying soldiers their wages, and against soldiers going from their captains without license	In this Act, soldiers and sailors who leave their posts without authorization were declared felons without benefit of clergy. It targeted laymen serving the military in particular.
1496/7	12 Henry VII c 7	An Act to make some offences petty treason	By this law, petty treason – the act of killing one's immediate superior – became unclergyable. There is a suggested exception for priests, confirmed explicitly in a later Reformation-era Act that clarified that priests could no longer claim clergy for petty treason.
1512	4 Henry VIII c 2	For Murthers	By this Act, murders and robberies committed in sacred places, near the highway, or in a house putting its inhabitants in fear were all deemed ineligible for clergy. The law concluded with a provision for those in Holy Orders, but later Church officials argued that the clause left those in minor orders in doubt. Expired in 1515.

1530/1	22 Henry VIII c 9	An Act for poisoning	This Act made murder by poison to be treason and punished by death by boiling. An earlier draft declared poisoning to be an unclergyable felony. The final draft replaced the clause with a declaration of treason, perhaps to avoid conflict with Convocation.
1531/2	23 Henry VIII c 1	An Act that no person committing Petty Treason Murder or Felony shall be admitted to his Clergy under Subdeacon	This law's preamble gave a thorough history of the privilege before reinstating the lapsed law of 1512 against murderers. It further declared that those in Major Orders would no longer suffer purgation, but be committed to prison for life. There is a provision made for surety.
1531/2	23 Henry VIII c 11	An Act for breaking of prison by Clerks Convict	Those who escaped their sentence of life imprisonment lost clergy unless they were ordained. Lay offenders would be executed, while ordained clergy were returned to the prison. This law might have been the product of a jail-break that occurred the year before during a bishop's visitation.
1533/4	25 Henry VIII c 3	An Act for standing mute and preemptorily challenge	The importance of this law was that it reinforced the threat of <i>peine forte and dure</i> by also denying stubborn defendants the right to claim clergy if eventually found guilty. This further encouraged defendants to cooperate from the very beginning.
1533/4	25 Henry VIII c 6	An Act for the punishment of the vice of buggery	Parliament criminalized buggery as a felonious offense without benefit of clergy, drawing all offenders into the royal jurisdiction regardless of whether the offender were ordained. This may have been a purposeful design to draw monks and priests into royal jurisdiction.
1534	26 Henry VIII c 12	An Act for Purgation of convicts in Wales	The goal of this law was to apply 23 Henry VIII c 1 to the whole of Wales. In addition, the final clause replaced purgation with life imprisonment but allows for freedom if surety is posted.
1535/6	27 Henry VIII c 4	An Act Concerning Pirates and Robbers on the Sea	With this law, crimes of piracy became unclergyable. Additionally, the admiral's jurisdiction was more carefully defined and folded into the larger royal jurisdiction. There was no provision for Ordained clergy on the seas.
1535/6	27 Henry VIII c 17	An Act concerning such as been put in trust by their masters and after do rob them	Servants stealing 40s or more were denied their clergy by this law. There were no protective provisions for ordained clergy. Text survives in the House of Lords Archives, but is not included in the comprehensive seven-volume set because

			this law was repealed by the time of the publication of <i>The Statutes of the Realm</i> .
1536	28 Henry VIII c 1	An Act that felons abjuring for Petty Treason, murder, or felony shall not be admitted to the Benefit of their Clergy	This was a very important Act that abolished the traditional ecclesiastical privilege. The bulk of this Act renewed old policies and prevented them from expiring. Clergy was barred from crimes committed in sacred places, or near a highway, or from a house that was robbed putting the inhabitants in fear. It confirmed that priests and monks were also subject to petty treason laws. Finally, the law clarified that future claims of clergy will not take into consideration whether the convict was ordained; those in orders no longer had unlimited claims.
1536	28 Henry VIII c 15	An Act for punishment of pirates and robbers of the sea	This minor law was a renewal of the pirate act, 27 Henry VIII c 4; clause 3 prohibited such criminals from claiming their clergy
1539	31 Henry VIII c 8	An Act that Proclamations made by the King shall be obeyed	This law confirmed the right of the King to use Royal Proclamations in order to dictate new punishments in consultation of his Council. It also declared offenders who might leave the Realm without permission to be traitors (therefore ineligible for clergy). Similar to the Act against Poisoning.
1540	32 Henry VIII c 3	For the Continuation of Certain Acts	A law made perpetual 28 Henry VIII c 1, rendering the ecclesiastical privilege of benefit of clergy nonexistent. Future priests would have to claim as laymen would and be branded.
1541/2	33 Henry VIII c 8	The Bill against Conjurations and witchcrafts and sorcery and enchantments	This Act set up a variety of punishments for criminalizing witchcraft culminating in the unclergyable felonious charge on the third offense when damaging property, and unclergyable on first offense if harming or maiming people.
1542/3	34&35 Henry VIII c 14	An Act for a Certificate of Convicts to be made into the King's Bench	Parliament presented a new policy of reporting all convictions to the King's Bench in order to document successful claims of clergy and prevent second claims, tracking crime throughout the realm.
1546	37 Henry VIII c 8	The Act of Vi & Armis left out of any Indictment lacking these words: Vi & Armis, shall be good	This law included a side provision of a larger statute about format barred horse-theft from being allowed their clergy.

1547	1 Edward VI c12	Act for the Repeal of Certain statutes concerning Treasons, felonies, etc	Clause IX addressed benefit of clergy and Sanctuary, affirming the unclergyability of murder and felonies from horse-theft to house-breaking. It confirmed the right of clergy outside of these cases.
1548	2/3 Edward VI c 29	An Act against Buggery	Reinstated the Buggery Act of 1533 since the first statute of Edward VI's reign had repealed it with all other felonies. There is also a clause that barred testimony from those who might have ulterior motives against the defendant.
1548	2/3 Edward VI c 33	An Act that no man stealing a horse or horses shall enjoy the benefit of his clergy	Because of doubt and confusion after 1 Edward VI c 12, this law clarified that horse-theft is unclergyable and punishable by death
1550	3/4 Edward VI c 5	An Act for the Punishment of Unlawful assemblies and rising of the King's subjects	This law was passed amidst the uprisings of Edward VI and marked the gathering of undesirable groups to be felony without benefit of clergy. Specifically, groups of twelve or more were to be considered high treason if they failed to follow orders to disperse. In addition, those distributing seditious pamphlets and inciting riots were also felons without benefit of clergy.
1552	5/6 Edward VI c9	An Act that no man robbing any House shall not be admitted of the benefit of his clergy	Renewal of expired acts that had made certain crimes unclergyable but were interrupted by the Felony Law under Edward VI. Created all house-breaking as felony without benefit of clergy.
1552	5/6 Edward VI c10	An Act to take away the benefit of clergy from such as robbe in one shire and fly into another	Those caught running away from a clergyable offense were no longer eligible for the clergy if they crossed county lines. It rewarded those who cooperated rather than fleeing authorities.
1554	1&2 Philip and Mary c 4	An Act for the punishment of certain Persons calling themselves Egyptians	Enforced 22 Henry VIII c22 expelling gypsies from England, giving them 11 days to depart. Those who tried to remain would be felons without clergy or sanctuary. Accessories to those who remained would be liable for £40 penalty. Newly discovered gypsies had 20 days to leave. After 40 days they would be unclergyable felons; a clause provides exception for those who abandon their "naughty" ways and join up as soldiers or became apprentices. Provision made for children

1555	2&3 Philip and Mary c 17	An Act to take away the Benefit of Clergy from Benet Smith for the Murther of Rufford	A specific case where the state intervened in order to prevent a man who contracted murder from demanding clergy. This is a unique public act designed to deprive a single person, Benet Smyth, of his clergy.
1557/8	4&5 Philip and Mary c4	An Act that Accessories in Murder and divers Felonies shall not have the benefit of clergy	This law declared that those who helped in unclergyable acts could no longer claim clergy for those acts, including petty treasons, murder, robbery, arson. Also confirmed the right of peers of the realm and MPs to be tried by their peers regardless of the alleged crime involved. This Act was designed to fill the void which Benet Smyth took advantage.
1563	5 Elizabeth c 17	An Act for the Punishment of the Vyce of Sodomye	The law revived 25 Henry VIII c 6 confirming that buggery is an unclergyable felony
1563	5 Elizabeth c 20	An Acte for the Punishment of Vagabondes callyng themselfes Egiptians	Those found to be comforting Egyptians by the space of a month were adjudged felons without benefit of clergy
1566	8 Elizabeth c 4	An Act to take away the benefit of clergy from certain felonious offenders	Primarily, this Act criminalized pick-pockets. It focused on the tradition of pickpockets / cutpurses who work in fairs and markets and during execution spectacles, without fear of being caught, even dressed in the "cloke of Honesty" who should not in future have the right to claim clergy. The second clause discussed secondary offenses -- if during the second crime's purgation or trial the first crime is discovered, such defendants would be barred from clergy.
1576	18 Elizabeth c 4	An Acte for the Setting of the Poore on Worke, and for the Avoyding of Ydlenes	This Act set up the first Poor Laws. The third clause designated the third offense of being found idle to be a felony without benefit of clergy.
1576	18 Elizabeth c 7	An Act to take away Clergy from the offenders in rape and burglary, and an order for the delivery of clerks convict without purgation	A landmark law that ended the tradition of delivering criminous clerks to the Ordinary. It began as a law to criminalize rape, particularly that of children. The second clause canceled Ordinary delivery and recommend immediate release into society. The third clause gave discretion for judges to order more dangerous offenders to be imprisoned for up to a year as an added correction or otherwise punished.

1585	27 Elizabeth c2	An Act against Jesuits Semynarie Priestes and such other like disobedient Persons	This law declared that all Jesuits or Seminary Priests born within the realm as guilty of High Treason. It also focused on their aiders and abettors, depriving all involved of the right to plead clergy for any felonies committed during concealing their presence.
1589	31 Elizabeth c12	An Act to avoid Horse Stealing	This law criminalized horse-theft by increasing the penalties and declaring horse-thieves to be ineligible for clergy.
1593	35 Elizabeth c 2	An Acte against Popishe Recusantes	This legislation declared that Popish Recusants must depart if specifically commanded to leave; those who failed to follow such a command would be guilty of felony without clergy.
1598	39 Elizabeth c 4	An Acte for punyshment of Rogues Vagabondes and Sturdy Beggars	The law ordered vagabonds to be banished or committed to the gallies. A second offense of being found idle would declare such rogues to be felons without benefit of clergy.
1598	39 Elizabeth c 9	An Act for the taking away of clergy from offenders against a certain statute made in the third year of the reign of King Henry the Seventh, concerning the taking away of women against their wills unlawfully	Since women could possess property in their own right or as heiresses, this law concluded that stealing them away tantamount to theft of property. Such actors would be considered felons without benefit of clergy. The law only applied to the principals, procurers, or accessories to the crime.
1598	39 Elizabeth c 15	An act that no person robbing any House in the day time although no person be therein, shall be admitted to have the benefit of his clergy	Whereas housebreaking before was unclergyable if inhabitants were put in fear and dread, Parliament used this law to make all housebreaking and robbery to be unclergyable if the goods stolen exceed 5s, regardless of the fear of witnesses.
1598	39 Elizabeth c 17	An Acte against lewde and wandering persons pretending themselves to be Soldiers or Marryners	Should vagabonds or idle persons impersonate soldiers in an attempt to explain their wanderings or to take advantage of trusting subjects, this law sentenced such persons to a variety of punishments and declared their behavior as felony without benefit of clergy
1604	1 James c 8	An act to take away benefit of clergy from some kind of manslaughter	This Act criminalized dueling. In order to solve the problem of deaths due to sudden rage, drunkenness, hidden displeasure but without malice aforethought, the act would be manslaughter but it would not be a clergyable offense. Provisions were made for self-defense, preservation of the peace, and the correction of children or servants.

1604	1 James c 11	An Acte to restrayne all persons from Marriage until their former Wyves and former Husbandes be deade	This law clarified that marrying again when other spouses were still alive was unacceptable. Such offenders would be guilty of felony and put to death, without clergy. An exception was made for those who did not hear from spouses for at least seven years.
1604	1 James c 12	An Acte against Conjuracion Witchcraffe and deadline with evill and wicked Spirits	Those using witchcraft, enchantments, invocations or conjuration of spirits, were to be adjudged felons, without clergy.
1624	21 James c 6	An act concerning Women convicted of small felonies	By reason that "many women do suffer death for small causes" those female thieves convicted of stealing feloniously (over 12p) but under grand larceny (under 10s) or being accessory to such will be granted BC, branded in the hand, and whipped/stocked/imprisoned for less than a full year for further correction, at the judge's discretion. Temporary measure; made permanent in 1627 under Charles I
1624	21 James c 28	An act for continuing and reviving of diverse statutes and repeal of diverse others	Continued some temporary acts that declared crimes such as stabbing as unclergyable
1627	3 Charles I c 5	An Act for Contynuancc and Repeale of divers Statutes	This law repealed and extended a variety of older temporary laws. In particular, it made permanent 21 James I c 6, which granted women a smaller form of benefit of clergy -- for larceny only.
1648	Ordinance 2 May 1648	The Blasphemy Ordinance	Made a long list of blasphemous statements or publications and heretical views that upon obstinate continuation or second offence would be felony without benefit of clergy.
1650	Ordinance 10 May 1650	An act for suppressing the detestable sins of Incest, Adultery, and Fornication	This law listed what relationships fall under category of "incest" and declared all such unions be felony without benefit of clergy; so too were all cases of adultery outside of ravishment.
1666	18 Charles II c 3	An Act to Continue a former Act for preventing of Theft and Rapine upon the Northerne Borders of England	This act continued a temporary act from 14 Charles II c 22 that had designated thieves, rapists and spoil takers in Northumberland and Cumberland to be felons deprived of clergy. The earlier version of the bill did not make such acts unclergyable. This new version of the law denied clergy.

1670	22 Charles II c 5	An Act for taking away the benefit of clergy from such as steal cloth from the rack and from such as shall steal or embezzel his majesty's ammunition	This act was the product of multiple failed attempts to add Transportation to the benefit. Here, the Act criminalized any theft of cloth, especially at night off the drying racks, as felony without clergy. It also empowered 31 Elizabeth c 4 s 1 to make the felony of ammunitions-theft to be unclergyable. Finally, the last clause allowed for transportation of clergied criminals at the judges' discretion. If transportation was refused or if prisoner escaped or returned before 7 years, the convict would be executed according to this statute.
1691	3 William & Mary c 9	An Act to take away clergy from some offenders and to bring other to punishment	Primarily, this law gave women the right to claim clergy. The preamble reviewed who was eligible to have clergy; declared the receipt of stolen goods to be clergyable felony. Theft from one's lodgings is clergyable felony. After declaring the injustice of denying women their clergy, the law then granted women the right to claim clergy wherever men might also have done so. The seventh clause encouraged a system of cross-county centralized records in order to reduce repeat claimants. Temporary.
1694	6&7 William & Mary c14 s 1	For the Continuation of Some Acts	Continued the temporary act 3 William & Mary c 9 permanent, awarding women benefit of clergy equal to men.
1696	8&9 William III c 27	Escape of Debtors etc Act	Only marginally related to benefit of clergy by denying it to escaped prisoners or returned transported convicts for their felony of escape. Theoretically, the previous act of breaking prison, which was declared unclergyable during the Reformation Parliament, might be interpreted differently from escaping an order of transportation. Therefore the slight difference in wording was necessary to deal with the increased use of Transportation.
1699	10 William III, c 12	An Act for the better apprehending prosecuting and punishing of Felons that commit Burglary Housebreaking or Robbery in shops Warehouses Coach houses or Stables or that steal horses	In an attempt to curb rising (real or perceived) crime rates, this law considered all theft of 5s or more to be unclergyable. It also viewed the crimes of stable-theft and shoplifting to be clergyable in order to secure new convictions. The final clause moved the location of the brand from thumb to cheek as a more visible deterrent for "evil-minded" persons

1706	6 Anne c 9	An Act for repealing a clause in the act entitled An act for the better apprehending prosecuting and punishing Felons that commit Burglaries Housebreaking or Robberies in Shops Warehouses Coach houses or Stables or that steal Horses	This law altered 10 William c 12 to return the location of the brand from face to hand, with imprisonment at judge's discretion. Declared the placement on the cheek led to almost total ostracization and unemployment. Finally, Clause 5 deemed measuring literacy "found to be of no Use" and abolishes the reading requirement entirely
1712	12 Anne C7	An Act for the more effectual preventing and punishment Robberies that shall be committed in the House	This Act dropped the requirement that house be "broken" for the theft to be unclergyable. All theft to the value of 40s or more would be unclergyable. Furthermore, the act of entering a house in day OR night with intent to commit felony would itself be unclergyable. There was a provision included for children and apprentices who commit such acts while still younger than 15 years.
1714	1 George I St 2 c 5	Riot Act	This law made felons without clergy those who rioted and stood against a proclamation to disperse.
1716	George I c 8	Bank of England Act	Forging and counterfeiting Bank of England bills, exchequer bills, or other certificates of value were declared felony without clergy by this law.
1721	8 George I c 24	Piracy Act	In this law, offenders convicted of piracy were excluded the benefit of clergy. Piracy was already declared unclergyable many times, so the new act might have simply served as a reminder.
1722	9 George I	An Act for the more effectual punishing wicked and evil disposed persons going armed in disguise and doing injuries and violence to the person and properties of the His Majesty's subjects	This law declared violent and disguised criminals to be felons without benefit of clergy.
1724	11 George I c 29	Continuation of Acts, etc	The law continued a variety of temporary Acts, including a law that made the willful destruction of ships unclergyable
1725	12 George I c 33	Suitors of Court of Chancery Act	By this law, deficient account owners with the Bank of England were ordered to bring in their balance sheets for examination under oath. The refusal to cooperate was considered an unclergyable felony.

1731	6 George II c 33	Destruction of Turnpikes, Etc	Those found guilty of destroying turnpikes were to be transported by this Act; if they returned before the end of their transported sentence, they would be guilty of unclergyable felony and put to death.
1732	6 George II c 37	Perpetuation of Various Laws Act	This law declared cutting hop-binds felony without clergy; it specifically took away clergy from thieves in counties of Northumberland and Cumberland
1734	8 George II c 20	An Act for rendring the laws more effectual for punishing such persons as shall willfully and maliciously pull down or destroy Turnpikes for repairing Highways, or Locks, or other Works erected by Act of Parliament for making Rivers navigable, and for other Purposes therein mentioned	The law declared that all those mentioned in the title to be felons without possibility of claiming clergy
1741	15 George II c 13	Bank of England Act	This policy clarified the unclergyability of embezzlement from the Bank of England by absconding with notes, bills, warrants, bonds, deeds, securities, moneys, or effects.
1742	16 George II c 15	Return of Offenders from Transportation Act	This Act reiterated that transported criminals who return to England before their sentences finished would be considered felons without benefit of clergy
1758	32 George II c 35	Salaries of Judges Act	The law set forth the official salaries of judges and made the forgery of related stamps or official documents to be felony without clergy
1763	4 George III c 37	Manufacture of Cambrics Act	The law criminalized the breaking into shops with intent to steal or destroy any materials or implements as unclergyable. Clause 26 also mentioned those who forge or counterfeit stamps, marks, or seals to be felons without clergy
1767	7 George III c 50	Post Office Offences and Isle of Man Postage Act	With this law, robbing the royal mail would be an unclergyable felony
1768	8 George III c 21	Paving of London Act	Forging documents associated with orders/payments for maintaining the streets of London were felonies without benefit of clergy by the passage of this Act
1769	9 George III c 29	Malicious Injury Act	Injuring mills with malicious intent would declared unclergyable after this law

1771	11 George III c 29	City of London Sewerage Act	The act of forfeiting the papers associated with annuities for maintaining the London Sewer system became unclergyable with this law.
1772	12 George III c 23	Relief of Insolvent Debtors	Prisoners convicted of perjury suffered as felons without clergy after this law.
1772	13 George III c 56	Sale of Spirits Etc Act	This law made counterfeiting notes of taxes paid on a variety of goods (soap, linens, paper, etc) to be unclergyable. Associated with policies leading up to the American Revolution.
1773	13 George III c79	An Act for the more effectual preventing the forging of the Notes or Bills of the Governor and Company of the Bank of England	This legislation declared again that forgers were felons without benefit of clergy.
1785	25 George III c 31	Treasurer of the Navy Act	Another law criminalized the forging the name of the Treasurer and similar people to obtain money from the Bank of England will suffer death as felon without benefit of clergy
1792	32 George III c 55	Reduction of National Debt Act	All counterfeit or forged certificates of money were created felons without benefit of clergy
1795	35 George III c 127	Relief of Traders of Grenada Act	Counterfeiting Certificates pertaining to the traders of Grenada were unclergyable felony.
1795	36 George III c 9	Passage of Grain Act	In light of the shortages of grain, this law sought to make a second offense stealing of grain or destroying storehouses or caught carrying grain away from storehouse to mean death without clergy. It basically confirmed that the second offense did not lead to transportation, but rather execution.
1799	39 George III c 37	Offences at Sea Act	Persons tried of murder or manslaughter on the seas but found guilty only of manslaughter, were confirmed to claim clergy in line with the laws pertaining to crimes committed on land
1799	39 George III c 45	An Act for making perpetual...	Made perpetual previous temporary acts about forgery crimes and clergyability.
1800	39&40 George III c 79	Government of India Act	Confirmed the rules of transportation where clergy cannot be claimed; asserted that natives of India must be born "of European Parents" if they expect to escape the gallows and be transported instead.
1802	42 George III c 92	Aliens Act	Transported persons who were found within the realm after escaping shall be felons without clergy and put to death by this Act

1803	43 George III c 113	Casting Away of Vessels, etc	Persons willfully casting away, burning, destroying vessels or ships were considered felons without clergy
1803	43 George III c 155	Aliens Act	This law affected transported persons found within the realm after escaping would be felons without clergy and put to death.
1805	45 George III c 10	Quarantine Act	Another Act made forgeries unclergyable; this one emphasized documents pertaining to quarantine.
1805	45 George III c 72	Manning of the Navy Act	This law set out how the navy would be paid but also declared the falsification of wage reports or the impersonation of officers to be unclergyable.
1806	46 George III c 45	Treasury of the Ordinance Act	Any person who forged or counterfeited (including accessories and procurers) the name or hand of a treasurer for the effect of receiving money on their behalf, will be felons without clergy
1806	46 George III c 20	Receiver General of Stamps Act	By this Act, forging instruments, stamps was declared felony without clergy
1807	47 George III c 55 (session 1)	Charge of Loan Act	Those who counterfeited certificates or similar documents will be considered felons without benefit of clergy
1808	48 George III c 1	Issue and Payment of Exchequer Bills Act	Penalty on forging Exchequer Bills was felony without benefit of clergy
1808	48 George III c 129	An Act to repeal so much of an Act passed in the Eighth Year of the Reign of Queen Elizabeth	This law tried to make larceny a stricter crime, particularly larceny from cut-purse or pick-pocketing. It even declared some forms of larceny off of an individual to be unclergyable.
1809	49 George III c 64	Reduction of National Debt Act	Those who counterfeit certificates of money were be felons without their clergy
1809	49 George III c 92	Charge of Loan Act	Forging Certificates or uttering Orders was felony without benefit of clergy
1810	50 George III c 62	Isle of Man Smuggling Act	Those who shot at officers of the Royal Army or a commissioned militia would be felons and transported or imprisoned at the discretion of the court but would not have benefit of clergy; those aiding abetting would also be felons without clergy
1811	51 George III c 41	Stealing of Linen Act	Repealed an earlier act making the theft of linen to be felony without clergy, and recast some penalties for "more effectually preventing such felonies" recommending imprisonment and transportation instead of death
1811	51 George III c 61	Charge of Loan Act	Forging Certificates and Orders was declared felony without benefit of clergy by this law

1812	52 George III c 14	An Act for the more exemplary Punishment f Persons destroying or injuring any Stocking or Lace Frames or other Machines or engines used in the Framework knitted manufactory	Amidst the resistance to manufacturing and industrialization, this Act declared Luddites to be felons without benefit of clergy for breaking machines
1814	54 George III c 151	Office of Agent General for Volunteers etc Act	Forging bills in the hand of the Agent General, or pretending to be him, etc were declared felony without Clergy
1816	56 George III c 22	Custody of Napoleon Buonoparte Act	Anyone aiding to rescue Napoleon were declared a felon without benefit of clergy
1817	57 George III c 20	Pay of Naval Officers Act	Forging certificates or bills dealing with Naval Officers was made felony without clergy by this Act
1817	57 George III c 79	Transfer of Stocks Act	Counterfeiting stock certificates became felony without benefit of clergy
1821	1&2 George IV c 73	Transfer of Public Funds Act	Counterfeiting associated documents were felony without benefit of clergy
1822	3 George IV c 24	An Act for extending the Laws against Receivers of Stolen Gods to Receivers of Stolen Bonds, Bank Notes, and other Securities for Money	This law made persons receiving or buying Security for Payment of Money, knowing same to have been stolen, prosecuted as receiving Stolen Goods to be felons without benefit of clergy
1823	4 George IV c 48	An Act for enabling Courts to abstain from pronouncing Sentence of Death in certain Capital Felonies	Parliament gave the Courts more discretion over pronouncing the death sentence for convicted felons excepting only Murderers.
1823	4 George IV c 53	An Act for extending the Benefit of Clergy to several Larcenies therein mentioned	This Act made clergyable a list of previously unclergyable felonies, and replaces punishment with Transportation and service: cutting, taking, stealing, or carrying away, stealing or embezzling naval goods, cloth or wool,
1823	4 George IV c 54	An Act for allowing the benefit of clergy to Persons convicted of certain felonies	Makes clergyable a list of previously unclergyable felonies, and replaces punishment with Transportation and service: unlawfully hunting or fishing on estates; highway robbery also permitted to be clergyable
1825	6 George IV c 25	Criminal Law Act	This Act defined the rights of convicts who received pardons or who received punishment for clergyable felonies. It reminded jurors that ordination had no place in pleading clergy and limited the effects of

			how a clergy claim will benefit the convict.
1826	7 George IV c 64	Criminal Law Act	Confirmed that those people convicted of unclergyable crimes shall not have their clergy. The point seemed to be to lessen the leniency of any one given justice in favor of homogeneity across English courts.
1827	7&8 George 4 c 27	An Act for repealing various Statutes in England relative to the Benefit of Clergy, and to Larceny and other Offences connected therewith, and to malicious Injuries to Property, and to Remedies against the Hundred	The Statute abolished benefit of clergy throughout England. It began with a full text of the repeal, followed by a long list of every law on record pertaining to benefit of clergy (though with some errors).
1827	7&8 George 4 c 53	Excise Management Act	Perhaps due to habit, this piece of legislation created a new felony: that of forging instruments to obtain money from the bank. After declaring it felony, the text specified that it is unclergyable in spite of the coexisting proposal to abolish clergy entirely.
1837	7 William IV and 1 Victoria c 91	An Act for abolishing the Punishment of Death in certain cases	Perhaps in response to some confusion, this law confirmed that benefit of clergy was indeed abolished in 1827. It also declared that mercy continued to be an important part of English law but in other ways, with examples of mercy including punishments from imprisonment to transportation.
1841	4&5 Victoria c 22	Felony Act of 1841	In a final piece of legislation, this short law confirmed that benefit of clergy was no longer available to anyone, including the Peerage. Since the Peerage were granted clergy in a special law under Edward VI, some confusion over the applicability of common clergy persisted until the passing of this Act.

### Appendix 3

#### Gender and Crime in Late Stuart England

The Humanity Research Institute has digitized thousands of reports on the horrors of crime and justice available through the *Old Bailey Online*.<sup>1</sup> Conveniently, these anonymous pamphlets concluded with the numbers of punishments applied at the end of each session. Accordingly, when the numbers are fully filled in and the names included, we may see how men and women were claiming their clergy. The following chart is incomplete precisely because I excluded those conclusion pages that failed to include a gendered breakdown of punishments. Some pamphlets included the language of this summary without inserting the final numbers at all. The subsequent chart is not comprehensive, but it does give us a clear example of how people were claiming in the late Stuart age. What follows the chart is a bibliography of the pamphlets consulted at the British Library in interpreting the changes of claiming clergy from about 1677 to 1710.

Before 1691, women could claim benefit of clergy for some limited cases, namely larceny valued between 12d and 10s. After 1691, they could claim for any case where a man may have it. This led to a backlog of repeat offenders who finally received a conviction with their claim. For a temporary period of roughly 1693 until 1704, the majority of criminous clerks were women. This began to fade under Queen Anne. Soon after, benefit of clergy was replaced with imprisonment and Transportation, especially after the Transportation Act of 1718. This chart is designed to support material covered in Chapter Four, particularly following note seven.

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<sup>1</sup> Tim Hitchcock, Robert Shoemaker, Clive Emsley, Sharon Howard and Jamie McLaughlin, *et al.*, *The Old Bailey Proceedings Online, 1674-1913* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), version 7.0, 24 March 2012).

Date	Executed	Whipped	Trans	Clergy	Men	Women
6 Sept 1677	0	0	3	4	2	2
28-31 Aug 1678	10	2	1	17	16	1
15-16 Jan 1679	7	2	0	8	7	1
28 Feb 1682	12	0	10	3	3	0
18-19 April 1683	6	5	9	6	4	2
6-8 April 1687	11	9	3	9	8	1
12-13 May 1687	9	3	3	9	7	2
1-4 July 1687	11	12	1	10	9	1
31 Aug 3 Sep 1687	13	7	0	9	9	0
12-13 Oct 1687	9	12	0	6	5	1
16 May 1689	23	0	2	23	21	2
9-10 Oct 1689	10	0	0	10	8	2
15-19 Jan 1691	0	4	5	3	3	0

*Women Granted full access to benefit of clergy (1691)*

Date	Executed	Whipped	Trans	Clergy	Men	Women
6-9 Dec 1693	16	3	0	25	10	15
21-23 Feb 1694	16	7	0	21	6	14
23-28 Feb 1697	21	13	0	16	6	10
8-11 Dec 1697	18	7	5	20	3	17
8-13 June 1698	10	8	1	32	10	22
20-25 July 1698	3	3	5	30	15	15
24-27 May 1699	5	8	0	23	16	7
11-14 Oct 1699	10	8	2	6	3	3
14-16 Jan 1701	9	16	0	8	4	4
14-15 Oct 1702	2	1	0	10	1	9
13-14 Oct 1703	2	4	0	5	2	3
1-2 June 1704	3	8	some	9	3	6
6-8 Dec 1710	4	16	0	22	13	9

See Bibliography under Old Bailey Pamphlets for the source material contributing to this graph.

Appendix 4  
Atheist's Help at a Dead Lift Viz Benefit of Clergy

What! Hector God and Man? Yet fear to die  
Under the Guilt of Blood or Felony?  
If Justice Catch Leviathan in's hook,  
Will he implore the Benefit of's book?  
Will Ravenous Harpies, who make prey of all,  
(Laicks and Clerks) that in their Pounces fall,  
(Rather than try the Strength of Hangman's string)  
For shelter sneak under the Clergies wing?  
Will fight of Axe, will thought of Tyburn quell  
The Atheist's Courage, and bread sense of Hell?  
Thus guilty Joah to th' horns of th' Altar fled;  
Trembling Tiberius thus crept under bed  
At every Thunder-clap; tho' in clear Skie,  
He durst al Gods that ever were defie  
Caius would make himself all Gods in one,  
Assuming Mars's Target, Venus Zone  
Minerva's Helmet, Jove his Thunder-mace,  
Neptune his Trident, limping Vulcans Pace;  
Commands his Statue in this Garb to stand,  
T' affront great Judah's God in his own Land,  
And sacred Temple; but for all these brags,  
At sight of Lightning his proud Courage flags:  
His Brazen face Etherial flashes pale:  
Heavens painted fire, his Confidence do's quail.  
That God and Death were nothing, that food said  
Than whom nee'r man was more of both afraid.  
Nero, when haunted with his Mother's Ghost,  
When found himself by Gods just anger tost,  
Tr'd all the Charms his Atheism could invent  
To conjure up his Spirit, and prevent  
The Entertainment of the thoughts of God;  
Or Deaths black page, the Sempiternal Load  
Of guilty and pain: but the By-standers read  
In's gastly looks, his Soul was Captive led  
To the belief of the' angry Deity,  
Hells Torments and Souls Immortality.  
    The Puff-paste Atheist's Soul, for all his Jetting,  
    Gives in, like Yorkshire Cloth, and shrinks its  
    wetting.  
There's no Religion but Martyr's bred;  
In its Defence men glory to be led  
To Goal or Gibbet. Christians triumph in  
Their Witnessings to thieves, without a skin:  
Out-brav'd the Rack, the Fire, and thousand forms  
Of Grimmet visag'd Death, the fiercest Storms  
Of all Assailants. This side's rosted through,  
Turn th' other side to Fire (O Tyrant) now.

*Licensed according to Order.*

Cries on. In Pharlaris's Bull another sings  
Melodious Anthems, till he Torment brings  
To his Tormentors. But what Linz can see  
The Devils Martyrs? Devil a Martyr's be.  
In all his Archives there's not one Man's Name,  
Who solid his Life to buy his Master Fame.  
Some desp'rate sinner may, by peice-meal, rot  
Himself into a Sacrifice to th' Pot  
Or Pox; or, in the head of blood, may stake  
And venture all at once for Doxies sake;  
Yet 'tis but Vent'ring; for his hope to scape  
Commits upon his Reason a slie Rape,  
And spurs him on to what he would not dare  
Were he of his Deaths Certainly aware.

    But should the Devil trust the Atheist, when,  
    To save his Neck, there's nothing else in Ken,  
Saving his Neck-Verse, he would then forsake him,  
And, without Curse or Oath, bid Devil take him.  
He now betakes himself unto our Creed,  
Which he from end to end Vouchsafes to read,  
At's Ordinaries bidding: and thanks God  
For's good old Granam, whose well-manag'd rod  
Beat into's head the Penitential Psalms,  
He'll kiss the feet of Church-men in these Qualms:  
No Saint to th' Atheist now! Can't stand his ground,  
When pale Death's Terrors thus assault him round:  
These Terrors so amaze and Jenkenize him,  
A Jew, to save his life, might Circumcise him.  
Force him to look on Death, he sees beyond it  
The Certainty of things he never found yet.  
Were Law not ham-string'd, and forc'd to lie idle,  
'Twould quickly drive the Atheist to his Bible.

    For Shame, you braving Hectors, learn to dare;  
    Unforc'd, to fix yourminds on things that are.  
In the Unseen World; or that immortal spark  
Within you, which your Lusts rake up ith' dark:  
Dare to know your whole self, and Future State,  
In a calm Mood, before your Lives last date.  
Dare, at a distance, look on Death's grim Face.  
'Twill then look on you with such smiling grace.  
As it approachest nearer, that you'l haste  
Into its Arms; and cling about its wa[i]ste;  
For fear it should depart, and not your Soul,  
Now having sipt of Heavens Nectar-bowl.  
Presented in Deaths hand, you'l long to be  
Where Nectar flows to all Eternity.

*FINIS.*

## Bibliography

### Primary Sources

#### Manuscripts

- A Collection of Loose-leaf Papers. The National Archives, Kew, England. King's Bench. KB 33/12/1
- "The Answer of John Godfrey to the Byll of Complaint of John Spenser." The National Archives, Kew, England. Court of Chancery, C 4/21/84
- Barbados, *The Short State of Barbados and the Government thereof: A remarkably Interesting Manuscript*. (1700) Newberry Library Ayer MS 827
- "Bill Concerning Poisoning, 22 Henry VIII." National Archives, Kew, England. Exchequer E 175/6/12
- "Clerke v Waldegrave." The National Archives, Kew, England. Court of Chancery, C 3/207/16
- "Commission by dean and chapter to receive certain clergy charged or convicted of felonies claiming benefit of clergy." Canterbury Cathedral Archives 1603 DCB 9/9
- "Commission by archbishop to receive certain clergy charged or convicted of felonies claiming benefit of clergy" Canterbury Cathedral Archives 1607 DCB 9/35
- "Commission by archbishop to receive certain clergy charged or convicted of felonies claiming benefit of clergy" Canterbury Cathedral Archives n.d. DCB 9/29
- Cromwell, Thomas. "Letters to John Rastell" The National Archives, Kew, England. State Papers. SP 1/85
- "Despatches from John Brathwaite Skeete" 21 August, 1828. The National Archives, Kew, Colonial Office CO 28/102/36
- England and Wales. "An Acte concerning Women Convicted of Smale Felonies" 21 James 1 c 6 Parliamentary Archives. House of Lords HL/PO/JO/10/13/7
- England and Wales. "An Act to Take away Clergy from some Offenders and to Bring Others to Punishment" William & Mary c 9 Parliamentary Archives. House of Lords HL/PO/PU/1/169/3&4 W&Mn3
- England and Wales. "An Act to Take Away Clergy from Some Offenders and to Bring Other to Punishment." 3 William & Mary c 9 s 6, Parliamentary Archives HL/PO/PU/1/169/3&4 W&Mn3
- England and Wales. "An Act for the Punishment of Vagabonds and the Relief of the Poor and impotent persons" The National Archives, Kew, England State Papers Collection, SP 14 118:77
- England and Wales. "A Petition from The House of Commons to the King," National Archives, Kew, England. Court of Chancery C 49/30/16
- Flude, Richard and Elizabeth, his wife, previously the wife of Edmund Sawyer, of Bristol, merchant, who died in prison at Salisbury, a clerk convict. "Flude v The Sheriffs of London." National Archives, Kew, England. Court of Chancery, C 1/64/58
- Fyvele (Filey), Jonette de, widow of William de Filey. "Petition of King and Council." (1319) National Archives, Kew, England. Special Collections SC 8/112/5552.
- "Goods of Egyptians, 34 Henry VIII." The National Archives, Kew, England. Exchequer E 101/518/28

- “Goods of Egyptians, 31 Elizabeth I.” The National Archives, Kew, England. Exchequer E 199/4/50
- “Interrogatories to be put to Anthony Yates, John Moody and Ralph Bennett on behalf of Peter Roos, esquire, probably from the case Roos v Cardinall.” The National Archives, Kew, England. Court of Star Chamber STAC 10/1/132
- “Lists of named convicts embarked on the convict ship Elphinstone for Van Diemen's land: with correspondence.” National Archives, Kew, England. Pleas of the Crown PC 1/2717
- Middlesex Quarter Sessions. “Alexander Carnes, of Haymarket, testifies that he suspects Joan Brown and Elizabeth Berkley of stealing goods to the value of fifty pounds from his chamber.” London Metropolitan Archives. MJ/SP/1690/02/014
- Middlesex Quarter Sessions. “Anne Johnson of East Smithfield accuses Mary Davis of stealing goods.” London Metropolitan Archives. MJ/SP/1695/01/006
- Middlesex Quarter Sessions. “Anne Shingle and Elizabeth Collard individually accuse Elizabeth Greene and Elizabeth Young of stealing from the shop of Richard Skingle.” London Metropolitan Archives. MJ/SP/1692/04/012
- Middlesex Quarter Sessions. “Elias Fletcher accuses Elizabeth Beckwell of stealing from him.” London Metropolitan Archives. MJ/SP/1692/04/025
- Middlesex Quarter Sessions. “Frances Dugan testifies that Eleanor Smith and Ann Smith stole from her. Eleanor and Ann Smith confess to the crime.” London Metropolitan Archives. MJ/SP/1690/04/035
- Middlesex Quarter Sessions. “Jane Stelle, widow, petitions for the discharge or transportation of her daughter, Jane Steele, who is “very foolish in all her actions.” London Metropolitan Archives. MJ/SP/1691/02/010
- Middlesex Quarter Sessions. “John Lark denies knowing anything about a theft from Philip Moss and Mary Dyer, wife of John Dyer, confesses to receiving stolen goods from him.” London Metropolitan Archives. MJ/SP/1674/06/001
- Middlesex Quarter Sessions. “John Martyn testifies that Elias Hutchins stole 7 guineas and 15 shillings from him in Saint Swithins church. Elias Hutchins denies it.” London Metropolitan Archives. MJ/SP/1675/04/001
- Middlesex Quarter Sessions. “John Miles of Coxhill, Essex, butcher, testifies that John Sedgwick allowed a female pickpocket to escape.” London Metropolitan Archives. MJ/SP/1692/01/033
- Middlesex Quarter Sessions. “List of persons charged for an unlawful assembly in Devonshire Square.” London Metropolitan Archives. MJ/SP/1686/02/001
- Middlesex Quarter Sessions. “Mary Evison, wife of William Evison of Saint James, Westminster, victualler, accuses Mary Beastley alias Mary Shaw of larceny.” London Metropolitan Archives. MJ/SP/1696/02/007
- Middlesex Quarter Sessions. “Mary Thomas, of Hoxton, testifies that Elizabeth Firman stole a silver porringer and other things from the kitchen of Arthur Barmidiston” London Metropolitan Archives. MJ/SP/1690/10/028
- Middlesex Quarter Sessions. “Peter Tom of Saint Martin in the Fields, mercer, accuses Elizabeth Jolly alias Elizabeth Barnpart of stealing from his shop.” London Metropolitan Archives. MJ/SP/1692/04/011
- Middlesex Quarter Sessions. “Petition from the Grand Jury at Middlesex to the King's Most Excellent Majesty.” London Metropolitan Archives. MJ/SP/1687/05/001

- Middlesex Quarter Sessions. "Stephen Stritch of Saint Giles in the Fields, Chandler, and Eleanor Layton alias Eleanor Greene accuse Katherine Burnett and Ann Billon of stealing goods which Katherine Burnett denies." London Metropolitan Archives. MJ/SP/1695/05/018
- Middlesex Quarter Sessions. "Susannah Snoxell, servant to Robert Andrews of Saint Clement Danes, coffee seller, and Anne Maddox accuse Katherine Magennis of burglary to which she confesses." London Metropolitan Archives. MJ/SP/1692/04/017
- Middlesex Quarter Sessions. "Thomas Hardwick Senior Thomas Hardwick Junior John Cole and Jacque Dolby accuse George Clare and others of riot and assault on 29<sup>th</sup> June 1689." London Metropolitan Archives. MJ/SP/1689/07/001
- Middlesex Quarter Sessions. "Whitehall Present King's Most Excellent Majesty in Council." London Metropolitan Archives. MJ/SP/1679/01/002
- Mynatt, Thomas. "Admonition of Jurors," The Huntingdon Library, San Marino, California. EL 2657
- "Norfolk, Home and South-Eastern Circuits: Indictment Files." National Archives, Kew, England. Records of the Assizes ASSI 35/140/8/2, 9, 12, and 30
- "The People of Oxfordshire, Berkshire, and Buckinghamshire to the Commons of Parliament" National Archives, Kew, England. Special Collections SC 8/24/1158
- "Petition from the House of Commons to the King, 33 Henry VI" The National Archives, Kew, England. Court of Chancery, C 49/30/16
- Porter, Alice, Wife of Thomas Porter. "Porter v The Mayor of London." National Archives, Kew, England. Court of Chancery C 1/46/314
- "Report of Christopher Fawcett on 1 individual petition (prisoner) on behalf of John Innis, Seaman." The National Archives, Kew, England. Home Office HO 47/17
- "Report of Simon Le Blanc, on 1 individual petition." The National Archives, Kew, England. Home Office HO 47/28
- Rufford, Giles. "Will of Giles Rufford." The National Archives, Kew, England. Probate Wills. PROB 11/37
- Rufforde, Robert. "Robert Rufforde, chaplain of the chantry in the church of Edlesborough, Buckinghamshire v Benet Smyth: land in Edlesborough." The National Archives, Kew, England. Court of Requests, REQ 2/6/159
- Rose, John William. "Report of John William Rose, Recorder of London, on 1 collective petition." (April 1801) Home Office Papers of the National Archives, Kew HO 47/28/27
- Smyth, Benet or Benedict. "Robert Rufford, chaplain of the chantry in the church of Edlesborough, Buckinghamshire, v Benet Smyth: the rectory and parsonage of Edlesborough." The National Archives, Kew, England. Court of Requests, REQ 2/8/172
- Thistlewhayte, Jeffrey, "Petition by Thistlewhayte that as he had been indicted for adultery two years ago, he might now be brought before the assizes for trial." National Archives, Kew, England. Assize Records. ASSI 45/5/3/107
- Thorp (Thorpe), William de. "Petition of King and Council." (1330) National Archives, Kew, England. Special Collections SC 8/75/3741
- "Trial of William Prynne Esq. in the Star Chamber for writing and publishing a book called 'Histriomastix' or 'A Scourge for Stage-Players'" The National Archives, Kew, England Board of Customs CUST 109/19
- "William Knyght, Archdeacon of Chester. v. Richard Smythe, complainant's official" The National Archives, Kew, England. Court of Chancery C 1/649/8

## Old Bailey Pamphlets

- Anonymous. *An Account of the Proceedings at the sessions held at Justice Hall in the Old bayly which began on the 14<sup>th</sup> of October Last. With the trials, condemnation, and execution of William Prickett and William Palmer with the trials of several other malefactors, for divers kinds of felonies: as thefts, burglaries, bigamy, murder, receiving of felons, forgery, &c.* Printed for DM 1674 British Library Rare Books 23.a.8834
- Anonymous. *A Narrative of the Proceedings at the Sessions-House in the Old Bayly from Wednesday the 7<sup>th</sup> of July instant, to Saturday the xth. Being a full and true account of the Tryals, Examinations, and condemnations of several Malefactors, for several crimes. And also an account of the trial and condemnation of Elizabeth Lillyman, who killed her Husband, for which she was condemned to be Burned with the manner of her deportment at her trial and likewise the Rose Goodman, who was condemned for stripping of Children and other Fellonious Crimes. The number condemned was eleven, six to be Transported, ten burnt in the hand, and six to be whipt at Carts Tayle. With Allowance.* [damaged] 1675. British Library Rare Books 23.a.8833
- Anonymous. *A True Narrative of the Proceedings at the Sessions-House in the Old Baly begun on Wednesday the 8<sup>th</sup> of this Instant December, 1675, and there continuing till the Saturday Following: Wherein seventeen Men, two women, and a boy about fourteen years of age received judgment to dye for their several offenses. Besides, neer twenty that received the mercy of th king for Transportation; twelve had the Benefit of the Clergy; and were onely Burnt in the Hand, six to be whipt at the Carts Tayl, etc. With all the Particular Circumstances of their trials and the Nature of their Crimes. With Allowance, Roger L'Estrange. Printed for Benjamin Pierce, 1675. British Library Rare Books 23.a.8829*
- Anonymous. *A true Narrative of the Proceedings at the Sessions Holden for London and Middlesex at Justice-Hall in the Old Bayly the 10<sup>th</sup> and 11<sup>th</sup> Days of May 1676, Setting forth the Tryal and Condemnation of the man for having several Wives, and the woman for having several Husbands: and other most material Passages. And also an account of the Tryal of the Woman who was arraigned as being accessory to the Sacrilegious Robbery of St Giles Church: With the Tryal of the man for buying the Plate of her. And likewise how many are Condemned, how many Burn'd in the hand, and Transported. These are to Satisfie all People, that the Book of the Sessions with the Name of John Millet, was the Tryals Four Sessions Ago. With Permission, Ro L'Estrange. London: Printed for JA (1676). British Library Rare Books 23.a.8832*
- Anonymous. *An Exact Narrative of the Proceedings at Chelmsford Assizes July 23, 24, &c 1677. Giving account of the trial of a seaman for a Rape. A Woman Convicted for having two husbans. A person for murder, found only manslaughter. And all other Remarkable Occurrences. With the number of Persons there condemned to be Burnt in the hand &c. To which is added, a True and Lamentable Relation of the Late Barbarous and Bloody Murder Committed near Bishops Stafford. With Allowance, Printed for MJ 1677. British Library Rare Books 23.a.8830*
- Anonymous. *A True Narrative of the Proceedings at the Session-House in the Old Bayly, September 6 1677. Setting for The Tryal of a man for a Rape; and an Account of several other notable Tryals, Facts, and Circumstances. With the number of those Burnt in the*

- hand, Transported, etc. With Permission: Roger L'Estrange. London: Printed for DM, 1677. British Library Rare Books 23.a.8826*
- Anonymous. *A Narrative of the Proceedings at the Sessions House in the Old Bayly December 12, 13, 14, & 15 1677. Containing the Tryal of the Woman for Coyning, who is Condemned to be Burnt. With an account of the Highway-men. Also The Tryals and Condemnation of Several other Notorious Melfactors. And also the number o those that are Condemned Burnt in the Hand, Transported, and to be Whipt. With Permission Ro Lestrangle London: Printed for DM: 1677 British Library Rare Books 23.1.8831*
- Anonymous. *A True Narrative of the Proceedings at the Sessions-House in the Old-Baily: Beginning on the 11<sup>th</sup> of this Instant July 1677. Wherein is contained the Tryal of the Woman for Committing that odious sin of Buggery with a Dog; And likewise of the Man for Bugging of two Mares. With the trial of the young Maid that poisoned her Mother, a Maid, and two Gentlewomen, and all the rest of the most remarkable Tryals there; with an Account of how many are Condmned to die, how many Burn'd in the hand, to be Whip'd and Transported. With Permission. London: Printed for DM: 1677 British Library Rare Books 23.1.8827*
- Anonymous. *A True Narrative of the Proceedings at the Sessions-House in the Old-Bayly which began on Wednesday the 26<sup>th</sup> of February 1678 and ended on Thursday the 27<sup>th</sup> following. Where were several arraigned and tried for several felonies burglaries and clipping and htemost remarkable of which are here faithfully related. With the number of the persons that received sentence of death, burn'd in the hand, transported, and to be whipt. With Allowance. London, Printed for DM: 1678 British Library Rare Books 23.a.8836*
- Anonymous. *The Narrative of the Proceedings at the Sessions-house in the Old Bayly, begun the 28<sup>th</sup> of August and ended the 31<sup>st</sup> of 1678. Containing the Tryals of several for murder: and also of the hywaymen that robbed the laceman; one for a rape and all other the malefactors that for any considerable crimes were there arraigned. The Tryala fo theFemale Muggleton, which was at the last sessions. With the number of those that were condemned, burn'd in the hand, transported, and to be whipt. With allowance, Roger L'estrage. London: Printed for DM 1678. British Library Rare Books 23.1.8828*
- Anonymous. *The True Narrative of the Proceodings of the Sessions House in the Old Bayly which began on Thursday the 15<sup>th</sup> of this Instance January 1670 and ended on Fryday the 16ths. Giving an Account of most of the remarkable trials there viz for murder felonies and burglaries etc with a particular relation of their names and the places of their committing their facts with the number of those condemned to dye burnt in the hand, transported and to be whipt. [no publisher]: 1679 British Library Cup. 21.g.32/74*
- Anonymous. *The True Narrative of the Proceodings at the Sessions House in the Old Bayly which began on Thursday the 26<sup>th</sup> of this February last past and ended on Monday the 1<sup>st</sup> of March following 1679 London Printed by DM 1679 British Library Cup. 21.g.32/75*
- Anonymous. *The Tryals and Condemnation of Several Persons for Murders Felonies and Burglaries which began on the 16<sup>th</sup> of this instant July 1679 and ended won Fryday the 18<sup>th</sup> at the Sessions house in the Old Bayly with the number of those that are condemned burned in the Hand, transported, and to be whipt.(1679) British Library CUP.21.g.32/46*
- Anonymous. *The True Narrative of the Sessions Begun at the Old Bayley on Wednesday the fifteenth of October 1679 Giving an Account of the Proceedings against the Westminster Scholars and three persons found guilty of killing a bailiff there. The trial of three other*

- persons likewise found guilty of murdering another bailiff in Datchy Lane the Tryals of three persons condemned for Robbery on the high way and of a woman convicted of high treason and to be burnt to death for clipping of money. With all other remarkable passages there happening: the Number and Names of all the several persons condemned and their respective offences as also those that were burnt in the hand or are to be whipt tor transported.* (1679). British Library Cup.21.g.32/35
- Anonymous. *The Narrative of the Proceedings at the Sessions for London and Middlesex, Begun at the Old Baily on Wednesday the 10<sup>th</sup> of December 1679. Giving an Account of all the material Tryals there etc. With the number and names of the several persons condemned to die, and their particular crimes. As also how many burnt in the hand etc.* (1679). British Library Cup.21.g.32/48
- Anonymous. *The Narrative of the Proceedings at the Session house for London and Middlesex giving an account of the trials of divers traitors clippers coyners highway-men and other notorious offenders. The number condemned to die to be whipt etc with their respective crimes.* London: Printed for T Davis, 1680. British Library Cup.21.g.32/47
- Anonymous. *The Narrative of the most material proceedings at the sessions for London and Middlesex Begun July the seventh, 1680. Giving an account of the proceedings against John Giles, for being one of those that made the late barbarous attempt against Justice Arnold. As also of diverse other persons convicted of several murders robberies on the highway burglaries and other felonies and all other remarkable trials there; together with the names and crimes of all that received sentence of death the number of those burnt in the hand etc.* (1680) British Library Cup. 21.g.32/49
- Anonymous. *The Tryal and Condemnation of Several Notorious Malefactors at a Sessions of Oyer and Terminer holden for the City of London County of Middlesex and Gaol Delivery of Newgate: Beginning August the 31 ending Sept the 1 1681 at the Sessions House in the Old Bayley.* London, printed for Langley Curtiss on Ludgate Hille: 1681 British Library Cup.21.g.32/45
- Anonymous. *A True Account of the Proceedings at the Assizes Held for the County of Surrey at Croydon begun on Wednesday the 28<sup>th</sup> of February 1683 and there continued for several days.* London, printed by George Croom in the Thames Street over against Barnard's Castle: 1683 British Library Cup.21.g.32/41
- Anonymous. *The True Narrative of the Proceedings of the Sessions House in the Old Bayly which began on Wednesday the 18<sup>th</sup> of this Instant April and ended on Thursday the 19<sup>th</sup> following; Giving an Account of most of the Remarkable Trials there, viz for Muder Fellonies and Burglaries etc with a particular Relation of their Names and the places of their committing their facts with the number of those Condemned to Die Burned in the Hand Transported to be Whipt.* London: Printed for Languley Curtis 1983 [sic: 1683]. British Library. Cup.21.g.32/31
- Anonymous. *The True Proceedings of the Sessions begun at the Old Bayly on Thursday th 24<sup>th</sup> of May 1683 Giving an Account of the Several Tryals viz for murders felonies etc with the Condemnation of those convicted.* London, Printed by George Croom, in Thames-Street over against Baynard's Castle, 1683. British Library Cup.21.g.32/34
- Anonymous. *An Account of the Proceedings on the King's Commissions of the Peace, and Oyer and Terminer, and Gaol-Delivery of Newgate, held for the City of London, and County of Middlesex at Justice-Hall, in the Old- Bayly, the 27<sup>th</sup> and 28<sup>th</sup> Days of February 1683/4.*

- London: Printed by George Croom, at the Blew Ball in Thames Street: 1684 British Library 1480.d.21.1
- Anonymous. *The Proceedings on the Kings Commissions of the Peace And Oyer and Terminer and Gaol Delivery of Newgate held for the City of London and the County of Middlesex at Justice-Hall, in the Old Bayly, the 8<sup>th</sup> 9<sup>th</sup> 10<sup>th</sup> of December, 1686.* This May be Printed, December the 13<sup>th</sup> 1698, R.L. London, Printed by D Mallet, next door to Mr Shipton's Coffee-House near Fleet Bridge 1686. British Library 112.f.46.1
- Anonymous. *The Proceedings on the King's Commissions of the Peace and Oyer and Terminer and Gaol Delivery of Newgate held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> of April 1687.* [Publishing details have been cut off] British Library 112.f.46.2
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 12 and 13<sup>th</sup> of May 1687.* This may be Printed, RLS May the 14<sup>th</sup> 1687. London, Printed by D Mallet, next Door to the Star, between Fleet Bridge and Bridewell Bridge: 1687 British Library 112.f.46.3
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 1<sup>st</sup> 2d and 4<sup>th</sup> of July, 1687.* With Allowance, July the 4<sup>th</sup>, 1687. London; Printed by D Mallet, next door to the Sing of the Star between Fleet Bridge and Bridewell Bridge: 1687 British Library 112.f.46.4
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 31<sup>st</sup> of August and 1<sup>st</sup> and 3d of September 1687.* This may be printed, RLS September the 4<sup>th</sup> 1687. London, Printed by D Mallet (1687) price 2d British Library 112.f.46.5
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 12 and 13 of October 1687.* London, Printed by D Mallet 1687 British Library 112.f.46.6
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 7<sup>th</sup> 8<sup>th</sup> and 9<sup>th</sup> days of December 1687* (London, 1687) British Library 112.f.46.7
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 11th 12 of July 1688.* July the 13<sup>th</sup> 1688 John Shorter, Mayor. London, Printed by George Croom, 1688 British Library 112.f.46.12
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 31st of August and 1<sup>st</sup> of September 1688.* September the 3<sup>rd</sup> 1688 John Shorter, Mayor. London, Printed by George Croom, 1688. British Library 112.f.46.13
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 10<sup>th</sup> and 13<sup>th</sup> days of October 1688.* October the 13<sup>th</sup>

- 1688 John Shorter, Mayor. London, Printed by George Croom, 1688. British Library 112.f.46.14
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 5<sup>th</sup> and 6<sup>th</sup> of December 1688.* London 1688. British Library 112.f.46.15
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly the 16<sup>th</sup> of May 1689.* London 1689. British Library 112.f.46.16
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday and Thursday being the 28<sup>th</sup> and 29<sup>th</sup> days of August, 1689.* London, Printed for Langley Curtis at Sir Edmonbury Godfrey's Head near Fleet Bridge: 1689 British Library 112.f.46.17
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday and Thursday being the 9<sup>th</sup> and 10<sup>th</sup> Days of October, 1689.* London, Printed for Langley Curtiss at Sir Edmonbury Godfrey's Head near Fleet-Bridge, 1689 British Library 1480.d.21.2
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday and Thursday being the 9<sup>th</sup> and 10<sup>th</sup> days of December, 1689.* London, Printed for Langley Curtis at Sir Edmonbury Godfrey's Head near Fleet Bridge: 1689 British Library 112.f.46.18
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Baily on Wednesday and Thursday, being the 15<sup>th</sup> and 16<sup>th</sup> Days of January, 1690.* London, Printed for Langley Curtis at Sir Edmonbury Godfrey's Head near Fleet Bridge: 1690 British Library 112.f.46.19
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday Thursday, Friday, and Saturday being the 11<sup>th</sup>, 12, 13<sup>th</sup>, and 14<sup>th</sup> Days of December, 1689.* London, Printed for Langley Curtis at Sir Edmonbury Godfrey's Head near Fleet Bridge: 1689. British Library 112.f.46.20
- Anonymous. *A Further Account of the Proceedings at the King's Commission of the Peace held at Justice-Hall in the Old-Bailey.* London, printed for F Collins in the Old-Baily 1699, where any Person may have Advertisements Inserted. British Library RB.23.b.87
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Friday, Saturday and Tuesday being the 15<sup>th</sup> 16<sup>th</sup> and 19<sup>th</sup> Days of January 1691.* London, Printed by Thomas Braddyll and are to be sold by Richard Baldwin at the Oxford-Armes in Warwick-Lane, 1691. British Library 1480.d.21.5
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at*

- Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, and Saturday being the 6h, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Days of December 1693* London, Printed for Richard Baldwin at the Oxford-Armes in Warwick-Lane, 1693. British Library 1480.d.21.6
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, and Friday, being the 21<sup>st</sup> 22<sup>nd</sup> and 23d Days of February 1693/4* London, Printed for Richard Baldwin at the Oxford-Armes in Warwick-Lane, 1693 British Library 1480.d.21.7
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, and Saturday being the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> days of December, 1697* London, Printed by JD for Andrew Bell at the Cross-keys and Bible in Cornhill, and Sold by R Baldwin at the Oxford-Armes in Warwick-Lane, London: 1697. British Library 1480.d.21.8
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Friday, Saturday, Monday, and Tuesday being the 14<sup>th</sup> 15<sup>th</sup> 17<sup>th</sup> and 18<sup>th</sup> Days of January 1697.* London, Printed by J Darby in Bartholomew Close for Andrew Bell at the Cross-keys and Bible in Cornhill, 1697. British Library 1480.d.21.9
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, Saturday, and Monday, being the 23d, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 28<sup>th</sup> Days of February 1697.* London, Printed by J Darby in Bartholomew Close, 1698 British Library 1480.d.21.10
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, Saturday, and Monday, being the 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>th</sup>, and 25<sup>th</sup> Days of July, 1698.* London, Printed by J Darby in Bartholomew Close: 1698 British Library 1480.d.21.11
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, Saturday, and Monday, being the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup> Days of June 1698.* London, Printed by J Darby in Bartholomew Close: 1698 British Library 1480.d.21.12
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, and Saturday, being the 24, 25, 26, and 27 days of May, 1699.* London, Printed by F Collins in the Old Bailey, 1699. British Library 1480.d.21.15
- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, Friday, and Saturday, being the 11, 12, 13, 14 days of October 1699.* London, Printed by F Collins in the Old Bailey, 1699. British Library 1480.d.21.14

- Anonymous. *The Proceedings on the King's Commission of the Peace and Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and County of Middlesex at Justice-Hall in the Old-Bayly on Wednesday, Thursday, and Friday, being the 14, 15, 16 days January 1701.* London, Printed for Elizabeth Mallet, next door to the King's Arms Tavern, by Fleet Bridge 1701. British Library 1480.d.21.16
- Anonymous. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Goal-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey on Wednesday and Thursday being the 14<sup>th</sup> and 15<sup>th</sup> days of October, 1702.* London: Printed for Elizabeth Mallet: 1702. British Library 1480.d.21.17
- Anonymous. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Goal-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey on Friday, Saturday, Monday, and Tuesday being the 15<sup>th</sup> 16<sup>th</sup> 19<sup>th</sup> and 19<sup>th</sup> days of January, 1702.* London: Printed for Elizabeth Mallet, next he King's Arms Tavern, by Fleet-Bridge: 1702. British Library 1480.d.21.18
- Anonymous. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Goal-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey on Wednesday, Thursday, Friday, and Saturday, being the 8,9,10,and 11 Days March, 1703.* (1703). British Library 1480.d.21.19
- Anonymous. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Goal-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey on Wednesday and Thursday being the 13<sup>th</sup> and 14<sup>th</sup> days of October, 1703.* London: Printed for Elizabeth Mallet: 1703. British Library 1851.c.19.5
- Anonymous. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Goal-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey on Thursday and Friday being the first and second days of June, 1704.* London: Printed for Elizabeth Mallet: 1704. British Library 1851.c.19.7
- Anonymous. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Goal-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bailey on Wednesday, Thursday, and Friday, being the 6,7,8 days of December, 1710.* Printed for Samuel Crouch at the Corner of Popes Head Alley in Corhill and Sold by A Baldwin near the oxford-Arms in Warwick Lane, 1711. British Library 1480.d.21.20
- Anonymous. *The Proceedings on the Queen's Commission of the Peace and Oyer and Terminer and Goal-Delivery of Newgate, held for the City of London and County of Middlesex, at Justice-Hall in the Old Bayly on Wednesday, Thursday and Friday being the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> days of December 1711.* London: Printed by John Humfreys in Bartholomew-Lane, 1711. British Library 1851.c.19.22

### Printed Materials

- Adams, John. *The Works of John Adams, Second President of the United States with A Life of the Author*, Vols I-X. Charles Francis Adams, ed. Boston: Little, Brown &Co, 1856

- Ames, Richard. *Keeping our Christmas, not far from Tom Jolly's and The Search after Claret* (1691)
- Anonymous. Articles devised by the whole consent of the King's most honourable Council, Thomas Berthelet: 1533
- Anonymous, *The Atheist's Help at a Dead Lift: Viz, The Benefit of Clergy*. London: 1670
- Anonymous. *The Office of the Clerk of Assize: Containing the Form and Method of the Proceedings at the Assizes, and general Gaol-delivery, as also on the Corwn and Nisi Prius side. Together with the Office of the Clerk of the Peace. Shewing the true manner and form of the proceedings at the Court of General Quarter Sessions of the Peace. With divers Forms of Presentments and other Precendents at Assizes and Session. With a Table of Fees thereunto belonging. The second edition Corrected and Amended, with several new additions*. London, Printed for Henry Twyford in Vine Court, Middle Temple, 1682
- Anonymous. *Oration of True Obedience*, Thomas Berthelet: 1535
- Anonymous. *A Treatise Prouyng by the Kynge's lawes that the bishops of Rome, had neuer right to any supremitie within this realme* (1534)
- Anonymous, *A Treatise wherin Christe and his Teachinges, are compared with the pope and his doings* (1534)
- Alexander Alesius, *A Treatise Concerning General Councille, the Bishop's Council, and the Clergy* (1538)
- Atkins, E.M. and Dodaro, R.J. eds. *Augustine: Political Writings*. Cambridge Texts in the History of Political Thought. Cambridge University Press: 2001
- Babington, Zachary. *Advice to grand jurors in cases of blood asserting from law and reason that at the King's suit in all cases (where a person by law is to be indicted for killing of another person) that the indictment ought to be drawn for murther, and that the grand jury ought to find it murther, where their evidence is that the party intended to be indicted had his hands in blood, and did kill the other person / by Zachary Babington, Gent*. London: Printed for John Amery, 1677 Harvard Law School Library, Wing B248
- Bastwicke, John. *Letanie of Dr. John Bastwicke in four parts*. London: 1634
- Bennet, Sir John. *The Psalme of Mercy, or, A meditation vpon the 51. psalme by a true penitent. Imprinted by Felix Kyngston, and are to be sold by Robert Milbourne, at the great south-doore of Pauls*. London: 1625
- Blackstone, Sir William. *Commentaries on the Laws of England: in four books*, Volume 1. Cockcroft & Co: 1876.
- Blackstone, Sir William. *Commentaries on the Laws of England in Four Books. Notes selected from the editions of Archibald, Christian, Coleridge, Chitty, Stewart, Kerr, and others, Barron Field's Analysis, and Additional Notes, and a Life of the Author by George Sharswood. In Two Volumes*. Philadelphia: J.B. Lippincott Co: 1893.
- Blackstone, Sir William. *The Student's Blackstone: Being the Commentaries on the Laws of England of Sir William Blackstone, Knt., abridged and adapted to the present state of the Law*. W. Clowes and Sons: 1885
- Blount, Thomas. *Nomo-lexikon, a law-dictionary interpreting such difficult and obscure words and terms as are found either in our common or statute, ancient or modern lawes : with references to the severall statutes, records, registers, law-books, charters, ancient deeds, and manuscripts, wherein the words are used : and etymologies, where they properly*

- occur / by Thomas Blount of the Inner Temple, Esq. , In the Savoy : Printed by Tho. Newcomb, for John Martin and Henry Herringman ...*, 1670
- Bond, J. *A Compleat Guide for Justices of Peace*. (1696)
- The British Apollo, or Curious Amusements for the Ingenious. To which are added the most Material Occurrences Foreign and Domestick, Perform'd by a Society of Gentlemen.* Printed for the Authors, by J Mayo at the Printing Press, against Water Lane in Fleet Street (1708-1710). Vol III, no 72, Newberry Library Rare Collection, Case Folio A51.1611
- Brathwait, Richard. *An Epigramme Alluding to the Second Satyre of Ariosto, where he Taxeth the Clergies Pride and Ambition [from A Strappado for the Divell]*. London: 1615
- Bray, Gerald, ed. *Records of Convocation, Vols I-VI*. Boydell Press: 2006
- Brome, Alexander. *Rump, or, An exact collection of the choycest poems and songs relating to the late times by the most eminent wits from anno 1639 to anno 1661*. London: 1662
- Brooke, Sir Robert. *La graunde abridgement, collecte & escrie per le iudge tresreuerend Syr Robert Brooke chiualier, nadgairs chiefe Iustice del common banke*, under "Clergie." Tottell: 1573
- Browne, Arthur. *A compendious view of the civil law and of the law of the admiralty : being the substance of a course of lectures read in the University of Dublin. 2nd ed., with great additions.* London, 1802
- Chassanée, Batholomew. *Consilium Primum, quod tractatus jure dici potest propter multiplicem et reconditam doctrinam, ubi luculenter et accurate tractatur quaestio illa: De excommunicatione animalium insectorum.* Paris and London: 1511.
- Calendar of Assize Records: Essex Indictments, Elizabeth I.* JS Cockburn, ed. London: HMSO, 1978
- Calendar of Assize Records: Essex Indictments, James I.* JS Cockburn, ed. London: HMSO, 1982
- Calendar of Assize Records: Hertfordshire Indictments, Elizabeth I.* JS Cockburn, ed. London: HMSO, 1975
- Calendar of Assize Records: Hertfordshire Indictments, James I.* JS Cockburn, ed. London: HMSO, 1975
- Calendar of Assize Records: Kent Indictments, Elizabeth I.* JS Cockburn, ed. London: HMSO, 1979
- Calendar of Assize Records: Kent Indictments, James I.* JS Cockburn, ed. London: HMSO, 1980
- Calendar of Assize Records: Kent Indictments, Charles II.* JS Cockburn, ed. London: HMSO, 1997
- Calendar of Assize Records: Surrey Indictments, Elizabeth I.* JS Cockburn, ed. London: HMSO, 1980
- Calendar of Assize Records: Surrey Indictments, James I.* JS Cockburn, ed. London: HMSO, 1982
- Calendar of Assize Records: Sussex Indictments, Elizabeth I.* JS Cockburn, ed. London: HMSO, 1975
- Calendar of Assize Records: Sussex Indictments, James I.* JS Cockburn, ed. London: HMSO, 1975
- Catterall, Helen Tunnicliff, and Hayden, James J, eds. *Judicial Cases Concerning American Slavery and the Negro, Vols I-V*, published by the Carnegie Institution of Washington. Washington DC: 1937

- Chapin, Bradley. *Criminal Justice in Colonial America, 1606-1660*. University of Georgia Press: 1983
- Cleaver, Robert. *Godly Forme of Household Government*. London: 1598
- Coke, Sir Edward. *The First Part of the Institutes of the Laws of England*. London: 1628
- Coke, Sir Edward. *The Second Part of the Institutes of the Laws of England*. London: 1642
- Coke, Sir Edward. *The Third Part of the Institutes of the Laws of England*. London: 1644
- Coke, Sir Edward. *The Fourth Part of the Institutes of the Laws of England*. London: 1671
- Coles, Elisha. *An English dictionary explaining the difficult terms that are used in divinity, husbandry, physick, phylosophy, law, navigation, mathematicks, and other arts and sciences , containing many thousands of hard words, and proper names of places, more than are in any other English dictionary or expositor : together with the etymological derivation of them from their proper fountains, whether Hebrew, Greek, Latin, French, or any other language : in a method more comprehensive than any that is extant / by E. Coles ...* London: 1677
- Collyn, Nicholas, "Appendix D: In What Cases a Man may have his Clergy, & What not" A *Brief Summary of the Lavves and statutes of England*. London: 1650
- Coverdale, Miles. *Biblia the Byble, that is, the holy Scripture of the Olde and New Testament, faithfully translated in to Englyshe*. Southwar: 1535
- Cowell, John. *The Interpreter: or Booke containing the signification of vvords wherein is set forth the true meaning of all, or the most part of such words and termes, as are mentioned in the lawe vvriters, or statutes of this victorious and renowned kingdome, requiring any exposition or interpretation. ... Collected by Iohn Cowell ...* Cambridge: 1607
- Cox, Sir Richard. *Hibernia anglicana, or, The history of Ireland, from the conquest thereof by the English, to this present time with an introductory discourse touching the ancient state of that kingdom and a new and exact map of the same / by Richard Cox ...* , London : Printed by H. Clark, for Joseph Watts ..., 1689-90
- Crompton, Hugh. *A Fardle of Fancies, or, a Medley of Musick, Stewed in Three Ounces of Oyrle of Epigrams*. (1657)
- Dixon, Robert. *Canidia, or a Witch's Rhapsody in Five Parts*, London: 1683
- Dekker, Thomas, *Atiro-Mastix. Or The vntrussing of the humorous poet As it hath bin presented publikely, by the Right Honorable, the Lord Chamberlaine his seruants; and priuately, by the Children of Paules*. London: 1602
- Dunton, John, 1659-1733. *A Voyage Round the World* (1691)
- Elyot, Sir Thomas. *The Dictionary of Sir Thomas Elyot* (1538)
- England and Wales. *The Boke that Teacheth to keep a Court Hundred*, f.30v British Library Rare Books Room 1381.a.12
- England and Wales, *Calendar of Patent Rolls 1446-52*, Vol. 5, London: 1909
- England and Wales. *The Statutes Prohemium Iohannis Rastell*, 1527
- E.W, *Statuta Pacis: Or A perfect Table of all the Statutes (now in force) which any way concerne the Office of a Justice of Peace. Cleerly also setting down the severall duties of Sheriffes, Head-officers or Corporations, Stewards in Leets, Constables, and other Officers, so far forth as the said Statutes do in any sort concern them. Faithfully collected, and alphabetically digested under apt Titles*. London: 1644 British Library Rare Books Collection 516.a.10

- Firth, CH and Rait, RS, eds. *Acts and Ordinances of the Interregnum, 1642-1660*, Vols I and II. London, Published by H. M. Stationery Office, printed by Wyman, 1911
- Fish, Simon. *A supplication of the poore commons Whereunto is added the supplication of beggers.* (1546)
- Fitzherbert, Anthony. *La Graunde Abridgement*, fol 210r
- Foxe, Edward. *The Determination of the most famous and excellent Universities of Italy and France, that it is unlawful for a man to marry his brother's wife and that the pope hath no power to dispense therewith*, Thomas Berthelet: 1531
- Foxe, Edward. *De Vera Differentia regiae potestatis et ecclesiasticae...opus eximium.* Thomas Berthelet: 15334
- Foxe, John. *Book of Martyrs: A Universal History of Christian Martyrdom from the Birth.* EC Bidle: 1840
- Franklin, Benjamin. "Felons and Rattlesnakes" *The Pennsylvania Gazette* 9 May 1751. <http://franklinpapers.org/franklin//framedVolumes.jsp?vol=4&page=130a>, (Accessed on 27 December 2012)
- Fulman, W. *Rerum Anglicarum Scriptores Veterum*, translated by HT Riley in *Ingulph's Chronicles*, Oxford University Press: 1854
- Fullwood, Francis. *The church-history of Britain from the birth of Jesus Christ until the year DC.XLVIII endeavoured by Thomas Fuller.* London: 1655
- Fyllol, Jasper. *The Enormytees of the Clergy* (1533)
- Fyllol, Jasper. *The Possessyons of the Clergie* (1532)
- Hall, Edward. *The unyon of the two noble and illustre famelies of Lancastre and Yorke.* London: 1555
- Gairdiner, James. *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, Vol I. Longman: 1965
- Gardiner, James. *De Vera Obedientia*, Thomas Berthelet: 1535
- Gilbert, Geoffrey, Sir. ***The law of evidence.*** 6th ed, London: 1801
- Giles, Jacob. *A New Law Dictionary: Containing the Full Definition of Words*, (1744)
- GT, of Staple Inn. *The Attourny of the Court of Common Pleas, or Directions and Instructions concerning his Practice therein. Together with Fees due to the Judges and Offices there. And in the Kings-Bench. And also Fees and Ordinances in Chancery.* London: Printed by EG for Mathew Walbancke at Grays-Inne-Gate: 1648 British Library Rare Books Room 883.f.4
- Hale, Mathew. *Historia Placitorum Coronae.* London: Robert H. Small, 1847
- Hale, Matthew. *Pleas of the Crown: In Two Parks: Or, A Methodical Summary of the Principal Matters Relating to that Subject: With Several Hundred References, Never before Printed, to the Ancient and Modern Books of the Law: and Likewise Three other Treatises by Sir Matthew Hale, Viz of Sheriffs Accompts, Trial of Witches, and Provisions for the Poor.* JN Assignee of Edw Sayer, London: 1716
- Hall, Richard. *The Life & Death of that renowned John Fische Bishop of Rochester: comprising the highest and hidden transactions of church and state, in the reign of King Henry the 8th. With divers morall, historicall, and political animadversions upon Cardinall Wolsey, Sir Thomas Moor, Martin Luther, with a full relation of Qu Katherines divorce.* 1655
- Hawkins, William. *Pleas of the Crown: A Treatise of the Pleas of the Crown, or A System of the Principal Matters Relating to that Subject, digested under Proper Heads.* Printed for S Sweet, London: 1824

- Hawthorne, Nathaniel. *The Scarlet Letter* (1850)
- Henderson, Ernest F. *Select Historical Documents of the Middle Ages*, London: George Bell, 1910
- Henry VIII. *A Glasse of the Truth*. London: Thomas Bertelet, 1532
- Hinckley, John. *Two Sermons Preached before the Judges of Assize. 1. At Reading, on Cant 7-4. 2. At Abingdon, on Ps 82.1. With two other sermons, Preached at St Maries in Oxford. 1. On, 1 Cor 15, 10. 2. On Psalm 58.11. By John Hinckley, MA Minister of the Gospell at Colleshill Berks*. Oxford: 1657
- Hobbes, Thomas. *The art of rhetoric, with A discourse of the laws of England by Thomas Hobbes of Malmesbury*. London: 1681, p. 110. British Library, Wing H2212
- Hodges, AG. *A digest of the statute laws of Kentucky, of a public and permanent nature: from the commencement of the government to the session of the Legislature, ending on the 24th February, 1834 : with references to judicial decisions*. Published by the State of Kentucky: 1834
- Holland, Henry. *A Treatise Against Witchcraft*. Cambridge: 1590
- Jamaica. *Laws of Jamaica, passed by the Assembly, and confirmed by His Majesty in Council, Feb. 23. 1683. To which is added, a short account of the island and government thereof. With an exact map of the island*. (1683). Newberry Library Ayer Collection 1000.5 J25 A2 1683
- Jeaffreson, John Cordy, ed. *Indictments, Recognizances, Coroners' Inquisitions, Post Mortem, Orders and Memoranda from 3 Edward VI until the End of the Reign of Elizabeth I*. Quarter Sessions Records, London: 1886
- Johnson, J. *The Laws Respecting Women, reprinted from the J Johnson edition, London 1777*. Shirley Raissi Byseiwicz, ed. Oceana Publications: Dobs Ferry, New York, 1974
- Keilway, Robert. *Relationes quorundam casuum selectorum ex libris Roberti Keilvvey ar': qui temporibus fœlicissimæ memoriæ Regis Henrici Septimi, & inclitissimi Regis Henrici Octavi, emergerunt, & in prioribus impressionibus relationum de terminis illorum regum, non exprimuntur: in lucem editæ, anno xliiij. illustrissimi regni serenissimæ Reginae nostræ Elizabeth*. London: 1602
- Lydgate, John. *This lytell treatyse compendiously declareth the damage and destruction in realmes caused by the serpente of diuision*. Robert Redman: 1535
- Machyn, Henry. *The Diary of Henry Machyn: Citizen and Merchant-Taylor of London*. JG Nichols, ed. Camden Society Series: 1848
- Marlowe, Christopher. *The Jew of Malta*. London: 1633
- Marsilius of Padua. *The defence of peace: lately translated out of laten in to englysshe. with the kynges moste gracyous priuilege*. Robert Wyer: 1535
- Maryland. "An Act Concerning Crimes and Punishments" 1809 in Virgil Maxcy, ed. *The Laws of Maryland*. Vol IV. Baltimore: 1811, p. 138
- Massinger, Philip. *The Great Duke of Florence* (1636)
- Mathew, Simon. *A sermon at St Paulis*, Berthelet: 1535
- MacNally, Leonard. *The Rules of Evidence on Pleas of the Crown: Illustrated from Printed and Manuscript Trials and Cases*. London, 1802
- More, Thomas *More's Apology*. JB Trapp, ed. Vol IX of *The Complete Works of Sir Thomas More*. Yale University Press: 1979
- Morison, Sir Richard. *Apomaxis Calumniarum Convitiorumque*, Thomas Berthelet: 1535

- Morison, Sir Richard. *An Invective against the great and detestable vice of treason*, Thomas Berthelet: 1539
- Morison, Sir Richard. *A Lamentation, in VVhiche is shevved what Ruyne and destruction commeth of seditious rebellyon*, Thomas Berthelet: 1536
- Morison, Sir Richard *An exhortation to styrre all Englyshe men to the defence of theyr countreye* Thomas Berthelet: 1539
- Nash, Thomas. *The Unfortunate Traveller* (1594)
- Nelson, William. *The Rights of the Clergy of that Part of Great Britain, call'd England, as established by the canons, the Common Law, and the Statutes of the Realm*. The third edition, corrected, with large additions. London: 1732
- Notestein, Wallace. Frances Helen Relf and Hartley Simpson, eds. "The Anonymous Journal X" in *Commons Debates of 1621*, Vol II. Yale University Press: 1935
- The Office of the Clerk of Assize: *Containing the Form and Method of the Proceedings at the Assizes, and general Gaol-delivery, as also on the Corwn and Nisi Prius side. Together with the Office of the Clerk of the Peace. Shewing the true manner and form of the proceedings at the Court of General Quarter Sessions of the Peace. With divers Forms of Presentments and other Precendents at Assizes and Session. With a Table of Fees thereunto belonging. The second edition Corrected and Amended, with several new additions*. London, Printed for Henry Twyford in Vine Court, Middle Temple, 1682
- Palsgrave, John. "Leclaricissement de la Langue Francoyse" 1530
- Polydore Vergil. *The Anglica Historia of Polydore Vergil*. Denys Hay, ed. and trans., Camden Series, Vol LXXIV. London: Royal Historical Society, 1950
- Prynne, William. *Histriomastix*, London: 1632
- Raithby, John. ed. *The Statutes of the Realm printed by command of his majesty King George the Third; in Pursuance of an Address of the House of Commons of Great Britain; from Original Records and Authentic Manuscripts*. Vols 1-7, Great Britain: 1801
- Reeves, John. *History of the English Law, from the Time of the Saxons, to the End of the Reign of Philip and Mary*. (1787)
- Ryan, Sir Edward. *Court for Crown Cases Reserved for Consideration: and Decided by the Judges of England*, Great Britain, Saunders and Benning: 1837
- Saint German, Christopher. *Answer to a Letter cum privilegio* Thomas Godfray: 1535
- Saint German, Christopher. *Concerning the Power of the Clergye and the Lawes of the Realme* (1535)
- Saint German, Christopher. *Doctor and Student, Dialogues I and II*, Robert Redman: 1535
- Saint German, Christopher. *A Treatise Concernyng the Division Between the Spirituality and the Temporality* (1532)
- Sampson, Richard. *Oratio*, Thomas Berthelet: 1534
- Shaftesbury, Anthony Ashley Cooper, Earl of. *Characteristicks of Men, Manners, Opinions, Times*. (1711-1714)
- Shakespeare, William. *The Merchant of Venice* (1623)
- Shepherd, William, esq. *The Whole Office of the Country Justice of Peace. Wherein is plainly set down all their Power and Duty both in and out of the Quarter Sessions. With the Ordinances and Acts of this present Parliament abridged, that in any way converneth their Power*. London: 1652 British Library Rare Books Collection RB.23.a.9633
- Shorrocks, Derek. *Bishop Still's Visitation 1594 and The 'Smale Booke' of the Clerk of the Peace for Somerset, 1593-1595*. Somerset Record Society: 1998

- Starke, Richard. *Office and Authority of a Justice of the Peace Explained and Digested*. Williamsburg, Virginia: 1774
- Starkey, Thomas. *England in the reign of Henry the eighth, a dialogue between Cardinal Pole and Thomas Lupset* 1538
- Starkey, Thomas. *A Preface to the Kynges Hyghnes*, (1536)
- Staunford, Sir William. *Plees del Coron* (1557)
- Strachey, John, ed. *Rotuli Parliamentorum*, Vol V. London: 1767-77
- Stradling, Sir John. *Beati Pacifici* (1623)
- Stuart Royal Proclamations*, ed by James F Larkin and Paul L Hughes. Vols I and II. Oxford Clarendon Press: 1973
- Swinnerton, Thomas. *A little treatise against the muttering of some papists in corners*, Thomas Berthelet: 1534
- Tanner, Norman, ed. *Decrees of the Ecumenical Councils*. Georgetown University Press: 1990
- Thomas, John Henry, Fraser, John Farquhar, and Tyrwhitt, Robert Philip, eds. *The Reports of Sir Edward Coke, Knight, in Thirteen Parts (new ed)*. J Butterworth & Son: 1826
- Thou, Jacque-August de. *The histories of the gunpowder-treason and the massacre at Paris together with a discourse concerning the original of the Powder-Plot; proving it not to be the contrivance of Cecill but that both the Jesuits and the Pope himself were privy to It*. London: 1676
- Tomlins, Sir Thomas Edlyne. *The Law-Dictionary: Explaining the Rise, Progress, and Present State, of the English Law, in Theory and Practice; Defining and Interpreting the Terms or Words of Art; and Comprising Copious Information, Historical, Political, and Commercial, on the Subjects of our Law, Trade, and Government*. London: Longman, 1797
- Wilkins, David. *Concilia Magnae Britanniae et Hiberniae, a synodo verolamiensi ADCCCXLVI*. Vol III, London, 1737
- William of Ockham, *A dialogue between a knight and a clerk*, Thomas Berthelet: 1533

## Secondary Sources

### Publications

- Abbott, LW. *Law Reporting in England, 1485-1585*. University of London: Athlone Press, 1973
- Adamson, JW. "The Extent of Literacy in England in the 15<sup>th</sup> and 16<sup>th</sup> centuries" in *The Library*, Vol IV No 10(1929) pp. 163-193
- Allen, Douglas. "A Theory of Pre-Modern British Aristocracy" in *Explorations of Economic History*, Volume 46, Issue 3, July 2009, pp. 299-313
- Allen, Robert C. *Enclosure and the Yeoman*. Clarendon Press: Oxford, 1992
- Amussen, Susan Dwyer. *An Ordered Society: Gender and Class in Early Modern England*. Basil Blackwell: 1988.

- Atkins, EM and Dodaro, RJ eds. *Augustine: Political Writings*. Cambridge Texts in the History of Political Thought. Cambridge University Press: 2001
- Baines, Barbara. "Effacing Rape in Early Modern Representation" in *English Literary History*, Vol 65 No 1 (Spring 1998), pp. 69-98
- Baker, JH. "The English Law of Sanctuary" in *Ecclesiastical Law Journal*, 1990, pp. 8-13
- Baker, JH. *An Introduction to English Legal History*. Butterworths: London, 1971
- Baker, JH. *The Oxford History of the Laws of England*, Vol VI. Oxford University Press: 2003
- Baker, JH. *Reports of Cases from the time of King Henry VIII*, Selden Society: 2003
- Baker, JH. *The Reports of John Caryll*, vol ii, Selden: Selden Society, 2000
- Baker, JH. *The Reports of John Spelman*. Vols XCIII and XCIV, London: 1977-78
- Baker, JH. "The Secularization of Benefit of Clergy, 1450-1550" in Mario Ascheri (ed.), "*Ins Wasser geworfen und Ozeane durchquert*". *Festschrift für Knut Wolfgang Nörr*, Köln 2003, pp27-37
- Baker, JH. *Legal Records and the Historian*. The Royal Historical Society: London, 1975
- Barker, D.J., & Barker, M.J., "The Body as Art." *Journal of Cosmetic Dermatology*, 1, (2002), pp. 88-93
- Baumer, Franklin le von. *The Early Tudor Theory of Kingship*. Yale: 1940
- Baumer, Franklin le von. "Thomas Starkey and Marsilius of Padua," *Politica* 2 (1936) pp. 188-205
- Beattie, JM. *Crime and the Courts in England, 1660-1800*. Princeton University Press: 1986
- Beattie, JM. "The Revolution, Crime, and Punishment in London, 1690-1713" in *Policing and Punishment in London, 1660-1750: Urban Crimes and the Limits of Terror*, Oxford University Press: 2001, pp. 313-369
- Bellamy, John G. "Benefit of Clergy in the Fifteenth and Sixteenth Centuries" in *Criminal Law and Society in Late Medieval and Tudor England*, St Martin's Press: 1984, pp. 115-164
- Bellamy, John G. *The Criminal Trial in Later Medieval England: Felony Before the Courts from Edward I to the Sixteenth Century*. Toronto: 1998
- Bellamy, John G. *Tudor Law of Treason: An Introduction*. Routledge: 1979
- Berman, Paul Schiff. "Rats, Pigs and Statues on Trial: The Creation of Cultural Narratives in the Prosecution of Animals and Inanimate Objects," *New York University Law Review* Vol 69: 1994, pp. 288-326
- Bernard, GW. "The Hunne Affair" in *The Late Medieval English Church: Vitality and Vulnerability Before the Break with Rome*. Yale University Press: 2012, pp. 1-16
- Bernard, GW. *The King's Reformation: Henry VIII and the Remaking of the English Church*, Yale University Press: 2005
- Bernard, GW. "Elton's Cromwell" in *Power and Politics in Tudor England*, Ashgate: 2000, pp. 108-128
- Bernard, GW. "The Pardon of the Clergy Reconsidered" in the *Journal of Ecclesiastical History*, XXXVII (1986), 258-282
- Bernard, GW. "Elton's Cromwell" in *Power and Politics in Tudor England: Essays by GW Bernard*. Ashgate: 2000, pp. 108-128
- Blatcher, Marjorie. *Court of the King's Bench: a Study in Self-Help, 1450 to 1550*. London: 1978
- Bossy, John. *Christianity in the West, 1400-1700*, Oxford: 1985
- Bowker, Margaret. *The Secular Clergy in the Diocese of Lincoln, 1495-1520*. Cambridge University Press: 1968

- Bradshaw, Brendon. "The Tudor Commonwealth: Reform and Revision" in *Historical Journal*, xxii (1979), pp. 459-469
- Bradshaw, Brendan. *The Dissolution of the Religious Orders in Ireland under Henry VIII*. Cambridge University Press: 1974
- Brand, Paul. *Kings, Barons, and Justices*. Cambridge University Press: 2003
- Bray, Alan. *Homosexuality in Renaissance England*. London: 1982
- Briggs, John, Harrison, Christopher, McInnes, Angus, Vincent, David, eds. *Crime and Punishment in England, 1100-1990: An Introductory History*. University College of London Press: 1996
- Briggs, John. *Crime and Punishment in England*. New York: St Martin's Press, 1996
- Brimacombe, Peter. *All the Queen's Men: The World of Elizabeth I*. Palgrave Macmillan. New York: St Martin's Press, 2000
- Brennan, Gillian. *Patriotism, Power and Print: National Consciousness in Tudor England*. Pittsburgh (PA): Duquesne University Press, 2003
- Brown, Roger. *A History of the Fleet Prison, London: The Anatomy of the Fleet*. Studies in British History, Vol 42, Edwin Mellon Press: 1996.
- Bulan, Raymond, and Parrella, Frederick, eds. *From Trent to Vatican II: Historical and Theological Investigations*. Oxford University Press: 2006
- Burnet, Gilbert. *A History of the Reformation of the Church of England*, London: 1714
- Cameron, Joy. *Prisons and Punishment in Scotland: from the Middle Ages to the Present*. Edinburgh, 1983
- Canny, Nicholas. "The Origins of Empire" *The Oxford History of the British Empire*, Volume I. Oxford University Press: 1999, pp. 1-33
- Caplan, Jane. *Written on the Body: The Tattoo in European and American History*. Princeton University Press: 2004
- Carroll, William. *Fat King, Lean Beggar: Representations of Poverty in the Age of Shakespeare*. Cornell University Press: 1996
- Carson, Hampton L. "The Trial of Animals and Insects. A Little Known Chapter of Medieval Jurisprudence," *Proceedings of the American Philosophical Society* Vol 56: 1971, pp. 410-415
- Carter, AT. *A History of English Legal Institutions*. London: Butterworths & Co, 1902.
- Carter, John. *Rape in Medieval England: An historical and sociological study*. University Press of America: 1985
- Cavill, Paul. *The English Parliaments of Henry VII, 1485-1504*. Oxford University Press: 2009
- Chappell, Richard. "The Courts Interpret the Federal Probation Act" in *Journal of Criminal Law and Criminology* Vol 29 No 35 (1939), pp. 708-717
- Chrimes, SB. *English Constitutional Ideas in the Fifteenth Century*. Cambridge University Press: 1936
- Clark, Stuart. *Thinking with Demons: the Idea of Witchcraft in Early Modern Europe*. Clarendon Press: 1991
- Coby, J Patrick. *Thomas Cromwell: Machiavellian Statecraft and the English Reformation*. Lexington Books: 2009
- Cockburn, JS. "Debate: The History of Violence in England, Some Observations" in *Past and Present*, 1985, No 108, p. 215
- Cockburn, JS. "The History of Crime in Late Medieval and Early Modern England: A Review of the Field" in *Social History*, vol 7 No 2 (May 1982) pp. 187-203

- Cockburn, JS. *A History of English Assizes, 1558-1714*, Cambridge University Press: 1972
- Cockburn, JS. *Introduction*, Calendar of the Assize Records HMSO: 1979
- Cockburn, JS. "Trial by the Book? Fact and Theory in the Criminal Process, 1558-1625" in *Legal Records and the Historian*. The Royal Historical Society: 1975, pp. 60-79
- Cockburn, JS. "The Nature and Incidence of Crime in England 1559-1625: A Preliminary Survey" in JS Cockburn, ed. *Crime in England 1550-1800*. Princeton University Press: 1977, pp. 49-71
- Coldham, James. "On Pleading the Belly: A History of the Jury of Matrons" in *Criminal Justice History* 6 (1985), pp. 1-64
- Coleman, Christopher. "Professor Elton's 'Revolution,'" in *Revolution Reassessed: Revisions in the History of Tudor Government and Administration*. Clarendon Press: 1986, pp. 1-11
- Constable, Marianne. *The Law of the Other: the Mixed Jury and the Changing Conceptions of Citizenship*. University of Chicago Press: 1994
- Cooper, JP. "A Revolution in Tudor History?" in *Past & Present* 25 (1963), pp. 110-12
- Cooper, Tim. *The Last Generation of the Catholic Clergy: Parish Priests in the Diocese of Coventry and Lichfield in the Early Sixteenth Century*. The Boydell Press: 1999
- Cressy, David. "Levels of Illiteracy in England 1530-1730" in *Historical Journal*, Vol 20, (1977), 1-23
- Cromartie, Alan. *The Constitutionalist Revolution : an Essay on the History of England, 1450-1642*. Cambridge University Press: 2006
- Cross, Arthur Lyon. "The English Criminal Law and Benefit of Clergy during the Eighteenth and Early Nineteenth century" *The American Historical Review*, Vol 22, No 3(April 1917), pp. 544-565
- Cruz, Jo Ann H Moran. "England: Education and Society" in Rigby, SH (ed), *A Companion to Britain in the later Middle Ages*. Blackwell: 2003, pp. 451-471
- Dalby, Jonathan. *Crime and Punishment in Jamaica: A Quantitative Analysis of the Assize Court Records*, The Social History Project, Department of History, University of the West Indies, Mona: 2000
- Dali, Salvador. *The Secret Life of Salvador Dali*. Dial Press: New York, 1942
- Dalzell, George. *Benefit of Clergy in America and Related Matters*. Winston-Salem, N.C.: 1955
- Davenport-Hines, Richard. *Sex, Death, and Punishment: Attitudes to Sex and Sexuality in Britain since the Renaissance*. Collins: 1998
- Davis, CSL. "Slavery and Protector Somerset: The Vagrancy Act of 1547," *Economic History Review*, Second Series, XIX (1966), pp. 533-549
- Denton, JH. "The Making of the 'Articuli Cleri' in 1316" in *The English Historical Review*, Vol 101, No 400 (July 1986), pp. 564-595
- Derrett, DM. "The Affairs of Hunne and Standish" in *More's Apology*, vol ix of *The Complete Works of Sir Thomas More*, ed. JB Trapp, 1979, pp. 216-237
- Dickens, AG. *The English Reformation*. London: 1964
- Dickens, AG. *Reformation Studies*. London: 1982
- Dolan, Frances E. "Gentlemen, I have One Thing More to Say: Women on Scaffolds in England, 1563-1680" *Modern Philology* Vol 92 No 2 (Nov 1994), pp. 157-178.
- Dolan, Frances E. "Reading, Writing, and Other Crimes" in Valerie Traub and Lindsay Kaplan, eds. *Feminist Readings of Early Modern Culture: Emerging Subjects*. Cambridge University Press, pp. 142-166

- Duffy, Eamon. *The Stripping of the Alters: traditional religion in England 1480-1580*. Blackwell: 1992
- Durston, Gregory. *Crime and Justice in Early Modern England, 1500-1750*. Barry Rose Law Publishers Limited, Chichester, West Sussex: 2004
- Dwyer, Deirdre. "Expert Evidence in the English Civil Courts, 1550-1800" *The Journal of Legal History* Vol 28 No 1 (2007), pp. 93-118
- Ehrenreich, Barbara and English, Deirdre. *Witches, Midwives, and Nurses: A History of Women Healers*, Writers and Readers Publishing Cooperative: 1973
- Ekirch, Roger. *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*. Oxford University Press: 1990
- Elton, GR. "The Common's Supplication of 1532" *English Historical Review*, Vol 66 (1951) pp. 507-534
- Elton, GR. *England under The Tudors* London: 1974
- Elton, GR. "The Good Duke" in *Studies in Tudor and Stuart Politics and Government* Vol I. Cambridge University Press: 2003, pp. 231-237
- Elton, GR. "Henry VIII's Act of Proclamation" in *Studies in Tudor and Stuart Politics and Government*. Cambridge University Press: 1974, pp. 339-354.
- Elton, GR. *The Parliament of England, 1559-1581*. Cambridge, 1986
- Elton, GR. *Policy and Police: The enforcement of the Reformation in the Age of Thomas Cromwell*. Cambridge University Press: 1972
- Elton, GR. "The Political Creed of Thomas Cromwell" in *Studies in Tudor and Stuart Politics and Government II: Parliament / Political Thought*, Cambridge University Press: 1974, pp. 215-235
- Elton, GR. *Reform and Reformation: England 1509-1558*, Cambridge University Press: 1977
- Elton, GR. *Reform and Renewal: Thomas Cromwell and the Common Weal*. Cambridge University Press: 1973
- Elton, GR. "Reform by Statute: Thomas Starkey's Dialogue and Thomas Cromwell's Policy," *Proceedings of the British Academy* 54 (1968) pp. 165-188
- Elton, GR. "A Revolution in Tudor History?," in *Past & Present*, 32 (1965), pp. 103-9
- Elton, GR. *The Tudor Constitution: Documents and Commentary*. Cambridge University Press: 1960
- Elton, GR. *Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII*. Cambridge University Press: 1953
- Elton, GR. "The Tudor Revolution: a Reply," *Past & Present*, 29 (1964), pp. 26-49
- Evans, Edward Payson. *The Criminal Prosecution and Capital Punishment of Animals*. London: 1906
- Firth, CB. "Benefit of Clergy in the Time of Edward IV" *English Historical Review*, Vol 32, (1917) pp. 175-191
- Fletcher, Anthony. "The first century of English Protestantism and the Growth of National Identity" in Stuart Mews, ed. *Religion and National Identity: Studies in Church History* (1982), pp. 309-318.
- Fletcher, Anthony and Stevenson, John, eds. *Order and Disorder in Early Modern England*. Cambridge: 1985
- Foucault, Michel. *Discipline and Punish: the Birth of the Prison*. Alan Sheridan, trans. Random House: 1977
- Forbes, TR. "A Jury of Matrons" in *Medical History*, Vol 32 No 1 (January, 1988), pp. 23-33

- Forrester, Elizabeth. "Male Honour, Social Control and Wife Beating in Late Stuart England." In *Transactions of the Royal Historical Society*, Sixth Series, Vol VI (1996), pp215-224
- Forsythe, William, ed. *The State of Prisons in Britain, 1775-1900*, Vol II. Routledge: 2000
- Fox, Alistair. *Politics and Literature in the Reigns of Henry VII and Henry VIII*. Oxford: 1989
- Friedman, Lawrence. *Crime and Punishment in American History*, Basic Books: 1994
- Fuller, Lon. *Legal Fictions*. Stanford University Press: 1967
- Gabel, Leona. *Benefit of Clergy in England in the Later Middle Ages*. Smith College Studies in History Series, Vol XIV (1929)
- Gaskill, Malcolm. "Witchcraft and Evidence in Early Modern England" in *Past & Present*, 198 (2008), pp. 33-70
- Gay, Edwin F. "Inclosures in England in the Sixteenth Century" in *Quarterly Journal of Economics*, No 17 Vol 4, (1903), pp. 576-597
- Gilkes, RK. *The Tudor Parliament*, University of London Press: 1969
- Gonner, ECK. *Common Land and Inclosure*. London: 1966
- Graves, MAR. *The House of Lords in the Parliaments of Edward VI and Mary I*. Cambridge University Press: 1981
- Green, Thomas. "The Jury and the English Law of Homicide, 1200-1600," *Michigan Law Review* Vol 74, No 3 (Jan 1976) pp. 413-499
- Griffiths, Paul. *Lost Londons: change, crime and control in the capital city, 1550-1660* Cambridge University Press: 2008
- Grinnell, Frank W. "The Common Law History of Probation: An Illustration of the 'Equitable Growth' of Criminal Law," *Journal of Criminal Law and Criminology* 32, no. 1 (1941), pp. 15-34.
- Groom, Matthew. "England: Piety, Heresy, and Anti-clericalism" in *A Companion to Britain in the Later Middle Ages*. Blackwell: 2003, pp. 381-395
- Guy, John. "Monarchy and Counsel Models of State" in Patrick Collinson, ed. *The Sixteenth Century, 1485-1603*. Oxford University Press: 2002, pp. 113-142
- Guy, John. "Thomas More and Christopher St German: The Battle of the Books" in Alistair Fox and John Guy, *Reassessing the Henrician Age: Humanism Politics and Reform, 1500-1550*. Blackwell: 1986, pp. 95-120
- Guy, John. "Monarchy and Counsel Models of State" in Patrick Collinson, ed. *The Sixteenth Century*. 113-142
- Guy, John. *The Cardinal's Court: The Impact of Thomas Wolsey in Star Chamber*. Sussex: Harvester Press, 1977
- Guy, John. *Tudor England*. Oxford University Press: 1988
- Haas, Elsa de. "Concepts of the Nature of Bail in English and American Criminal Law" in the *University of Toronto Law Journal* (1946), pp. 385-400
- Hanawalt, Barbara. *Crime and Conflict in English Communities, 1300-1348*. Harvard University: 1979
- Hanawalt, Barbara. "The Female Felon in Fourteenth-Century England" in *Viator* 5, (1975), pp. 253-268
- Haigh, Christopher. *Elizabeth I: Profiles in Power*, second edition, general editor Keith Robbins. Pearson and Longman: 1998
- Haigh Christopher. *English Reformations: Religion, Politics, and Society under the Tudors*. Clarendon Press: 1993

- Haigh, Christopher. "Puritan Evangelism in the Reign of Elizabeth I," *The English Historical Review* Vol. 92, No. 362 (Jan., 1977), pp. 30-58
- Haigh, Christopher. "The Church of England, Catholics, and the People" in C Haigh, ed. *The Reign of Elizabeth I*. London: 1984, pp. 195-220
- Harriss, GL and Williams, Penry. "A Revolution in Tudor History?" *Past & Present*, 25 (1963), pp. 3-58
- Harriss, GL, and Williams, Penry. "A Revolution in Tudor History?" *Past & Present*, 31 (1965), pp. 87-96
- Hay, Douglas. "Property, authority and the criminal law" in Hay et al. (ed.), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*. New York: 1975, pp. 17-64
- Heath, Peter. *English Parish Clergy on the Eve of the Reformation*. University Toronto Press: 1969
- Helmholz, Richard. *The Spirit of Classical Canon Law*, University of Georgia Press: 2010
- Helmholz, Richard. *Roman Canon Law in Reformation England*. Cambridge University Press: 1990
- Herrup, Cynthia. *Common Peace: Participation and the Criminal Law in Seventeenth Century England*. Cambridge: 1987
- Holdsworth, WS. *History of English Law* seventh edition, London: 1956
- Holmes, Peter. *Resistance and Compromise: The Political Thought of the Elizabethan Catholics*. Cambridge University Press: 1982
- Hostettler, John. "A Century of Law Reform" in *A History of Criminal Justice in England and Wales*. Waterside Press: 2009, pp. 194-213
- Howard, John. *State of the prisons in England, Scotland, and Wales*. JM Dent & Sons, 1929
- Houlbrooke, Ralph. *Church Courts and the People during the English Reformation, 1520-1570*. Oxford University Press: 1979
- Houliston Victor. *Catholic Resistance in Elizabethan England: Robert Person's Jesuit Polemic, 1580-1610*. Ashgate: Institutum Historicum Societatis Iesu, 2007
- Hughes, Ann. *Politics, Society and Civil War in Warwickshire, 1620-1660*, Cambridge University Press: 2002
- Hughes, Philip. "Clericis Laicos and the First Encounter" in *Philip the Fair and Boniface VIII: State vs Papacy*, ed by Charles T Wood. Holt, Rhinehart, and Winston: 1971, pp. 19-33
- Hughes, Phillip. *The Reformation in England*, Vol I. London: 1963
- Hughes, Robert. *The Fatal Shore: A History of Transportation of Convicts to Australia, 1787-1868*. Collins Harvill: London, 1987
- Hurstfield, Joel. "Was There a Tudor Despotism After All?" in *Freedom Corruption and Government in Elizabethan England* (London 1973) pp. 23-49
- Hutchinson, Robert. *Thomas Cromwell: The Rise and Fall of Henry VIII's Most Notorious Minister*. London: 2007
- Ignatieff, Michael. *A Just Measure of Pain: The Penitentiary and the Industrial Revolution, 1750-1850*. Parthenon Books: New York, 1979
- Ingram, Martin. *Church Courts, Sex, and Marriage in England, 1570-1640*. Cambridge University Press: 1987
- Ingram, Martin. "Scolding Women Cucked or Washed: A Crisis in Gender relations in Early Modern England" in Jenny Kermode and Garthine Walker, eds, *Women, Crime, and the Courts n Early Modern England*. University of London College Press: 1994, pp. 48-80

- Innes, Joanna and Styles, John. "The Crime Wave: Recent Writing on Crime and Criminal Justice in eighteenth-century England" *The Journal of British Studies* 25 (October 1986) pp. 380-435
- Isani, Muktar Ali. "Hawthorne and the Branding of William Prynne" in *New England Quarterly* Vol. 45, No. 2 (Jun., 1972), pp. 182-195
- Jack, Sybil. "Conflict of Common law and Canon Law in Early Sixteenth-Century England: Richard Hunne Revisited." *Parergon*, No 3 (1985)
- Jones, CP. "Stigma and Tattoo" in Jane Caplan, ed. *Written on the Body: The Tattoo in European and American History*. Princeton University Press: 2004, pp. 1-16
- Jones, Norman. "Defining Superstititions: Treasonous Catholics and the Act against Witchcraft of 1563" in Charles Carlton, Robert Woods, Mary Robertson, and Joseph Block, eds, *State, Sovereigns, & Society in Early Modern England: Essays in Honour of AJ Slavin*. St Martin's Press: New York, pp. 188-203
- Jones, Norman P. *The English Reformation: Religion and Cultural Adaptation*. Blackwell: 2002
- Jones, Norman. *Faith by Statute, Parliament and the Settlement of Religion 1559* London: Royal Historical Society, 1982
- Jones, WR. "Bishops, Politics, and the Two Laws: The Gravamina of the English Clergy: 1237-1399" in *Speculum*, 1966, pp. 229-238
- Jordan, WK. *Philanthropy in England, 1480-1660*. Russel Sage Foundation: 1964
- Kelly, Michael. "The Submission of the Clergy" in *Transaction of the Royal Historical Society*, (fifth series), Vol XV (1965), pp. 97-119
- Kesselring, Krista. *Mercy and Authority in the Tudor State*, Cambridge University Press: 2003
- Kesselring, Krista. "A Draft of the 1531 'Acte for Poysoning'" in *The English Historical Review*, Vol. 116, No. 468 (Sep., 2001), pp. 894-899
- King, Peter. *Crime and Law in England, 1750-1840: Remaking Justice from the Margins*. Cambridge University Press: 2006
- King, Peter. "Punishing Assault: The Transformation of Attitudes in the English Courts" in *Crime and Law in England*, pp. 227-254
- Kinser, Samuel. *The Works of Jacques-August de Thou*. The Netherlands: 1965
- Kolsky, Elizabeth. *Colonial Justice in British India*. Cambridge University Press: 2010
- Lacey, Helen. *The Royal Pardon: Access to Mercy in fourteenth Century England*. York Medieval Press: 2009
- Laing, Lionel. "Historical Origins of Admiralty Jurisdiction in England" in *Michigan Law Review*, Vol 45 No 2, December 1946, pp. 163-182
- Lake, Peter and Questier, Michael. "Agency and Appropriation at the Foot of the Gallows: Catholics (and Puritans) confront (and Constitute) the English State" in their authoritative book, *The Anti-Christ's Lewd Hat: Protestants, Papists, and Players in Post-Reformation England*. Yale University Press: 2002, pp. 229-280
- Lamont, William M. *Marginal Prynne, 1600-1669*. London: 1963
- Langbein, John. "Albion's Fatal Flaws" *Past & Present* No. 98 (Feb., 1983), pp. 96-120
- Langbein, John. *Prosecuting Crime in the Renaissance*. Harvard University Press: Cambridge, Massachusetts, 1974
- Lawson, Peter. "Property Crime and Hard Times in England, 1559-1624" in *Law and History Review*, 1986, Vol IV p 96-127
- Lea, Henry Charles. "Benefit of Clergy" in *Studies in Church History*. (1869)
- Lea, Henry Charles. *History of Sacerdotal Celibacy in the Christian Church*. Watts: 1907

- Lehmberg, Stanford. *The Reformation Parliament: 1529-1536*. Cambridge University Press: 1970
- Lehmberg, Stanford. *The Later Parliaments of Henry VIII, 1536-1547*. Cambridge University Press: 1977
- Levin, Carole. *The Heart and Stomach of a King: Elizabeth I and the Politics of Sex and Power*. University of Pennsylvania Press: 1994
- Levine, Mortimer. "A More than Ordinary Case of Rape" published in *The American Journal of Legal History*, Vol. VII No 2 (Apr 1963), pp. 159-164
- Linsell, Tony. "Nations, Nationalism and Nationalists." In Linsell, Tony (ed.), *Our Englishness*. Anglo-Saxon Books: 2000, pp. 49-74
- Loach, Jennifer. "Conservatism and Consent in Parliament, 1549-1559" in Loach and Tittler, *The Mid-Tudor Polity*, 9-28
- Loach, Jennifer. *Parliament and the Crown in the Reign of Mary Tudor*, Oxford University Press: 1986.
- Loades, David. "The Origins of English Protestant Nationalism" in Stuart Mews, ed. *Religion and National Identity: Studies in Church History* (1982), pp. 297-307
- Lockwood, Shelley. "Marsilius of Padua and the Case for the Royal Ecclesiastical Supremacy: the Alexander Prize Essay" in *Transactions of the Royal Historical Society*, 6<sup>th</sup> Series, Vol 1 (1991), pp. 89-119
- Lockyer, Robert. *Tudor and Stuart Britain*, Third Edition. Longman: 2005
- Logan, FD. "The First Royal Visitation of English Universities, 1535" *The English Historical Review* Vol 106 No 421 (Oct 1991), pp. 861-888.
- Logan, FD. "Thomas Cromwell and the Vicegerency in Spirituals: A Revisitation" in *The English Historical Review*, ciii (1988) pp. 658-669
- Lysons, Daniel. *Magna Britannia: Being a Concise Topographical Account of Several Counties of Great Britain*, Vol I part III, London: 1808
- Maccoll, Alan. "The Construction of England as a Protestant 'British' Nation in the sixteenth Century" in *Renaissance Studies* 18:4, Winter 2004, pp. 582-608
- MacFarlane, Alan. *Witchcraft in Tudor and Stuart England: A Comparative and Regional Study*. Routledge, London: 1970
- Maitland, Frederick. "Outlines in English History" in the *Collected Papers of Frederick William Maitland*, Vol II, ed. H.A.L. Fisher. Cambridge University Press: 1911, pp. 417-496
- Maitland, Frederick. "Henry II and the Criminous Clerks" in *The English Historical Review*, Vol. VII, No. 26 (Apr., 1892), pp. 224-234
- Maitland, Frederic William and Pollock, Frederick Pollock. *The History of English Law*, v. 2, Cambridge University Press: 1968
- Marston, Edward. *Prison: Five Hundred Years of Life Behind Bars*. Kew, National Archives: 2009
- Maxwell-Stuart, PG. "King James's Experience of Witches, And The 1604 English Witchcraft Act." *Witchcraft and the Act of 1604*. J. Newton and J. Bath, eds. Brill: 2008, pp. 29-46
- May, Allyson. *The Bar and the Old Bailey, 1750-1850*. Chapel Hill University Press: 2003, pp. 87-117
- McEachern, Claire. *The Poetics of English Nationhood, 1590-1612* Cambridge University Press: 1996

- McEachern, Claire. "Literature and National Identity" in David Lowenstein and Janel Mueller (eds), *The Cambridge History of Early Modern English Literature*. Cambridge University Press: 2006, pp. 313-342
- McGowen, Randall. "Making the 'Bloody Code'? Forgery Legislation in Eighteenth-Century England" in Norma Landau, *Law, Crime, and English Society, 1660-1830*. Cambridge University Press: 2002, pp. 117-138
- McIntosh, Marjorie. "Social Change and Tudor Manorial Leets" in JA Guy and HG Beale, eds, *Law and Social Change in British History*. Royal Historical Society: 1981, pp. 73-85
- McLynn, Frank. *Crime and Punishment in Eighteenth Century England*, Psychology Press: 1989
- McMullan, J. "Crime, Law, and Order in Early Modern England" in *British Journal of Criminology*, Vol 27 No 3 (1986), pp. 252-274
- Mears, Natalie. "Court, Courtiers and Culture in Tudor England," *Historical Journal*, 46:3 (Sep., 2003), pp. 703-22
- Meloy, M., Shaleh, Y., & Wolff, N. "Sex offender laws in America: Can panic-driven legislation ever create safer societies?" *Criminal Justice Studies*, Vol XX, 2007, pp. 423-443
- Merry, Sally Engle. "Legal Pluralism," *Law and Society Review* 22 (1988), pp. 869-96
- Moran, JAH. "Clerical Recruitment in the Diocese of York 1340-1530: Data and Commentary" in the *Journal of Ecclesiastical History*, Vol XXXIV (1983), pp. 19-54
- Morey Adrian. *The Catholic Subjects of Elizabeth I*. George Allen & Unwin: 1978
- Morris, Richard B. "Review: Benefit of Clergy in America and Related Matters. By George Dalzell" in *University of Pennsylvania Law Review*, Vol 105 No 3 (Jan 1957), pp. 436-438
- Mottram, Stewart. *Empire and Nation in Early English Renaissance Literature, Studies in Renaissance Literature series*, 25. Cambridge University Press: 2008
- Mottram, Stewart. "Reading the Rhetoric of Nationhood in two Reformation pamphlets by Richard Morison and Nicholas Bodrugan" in *Renaissance Studies*, Vol XIX, No 4 (2005), pp. 524-540.
- Murphy, Theresa. *The Old Bailey: eight centuries of crime, cruelty and corruption*. Edinburgh: Mainstream, 1999
- Murphy, Virginia. "The literature and propaganda of Henry VIII's first divorce" in MacCulloch, Diarmaid, *The Reign of Henry VIII: Politics, Policy, and Piety*. St Martin's Press: New York, 1995, pp. 135-158
- Musson, AJ. "Turning King's Evidence: The Prosecution of Crime in Late Medieval England" *The Oxford Journal of Legal Studies*, Vol 19 No 3 (Autumn 1999), pp. 467-479
- Nestal, Robert. *Le Privilegium Fori En France du Decret de Gratien a la Fin du XIV Siecle*. Paris: 1924
- Neale, John. *Elizabeth I and Her Parliaments*. New York: WW Norton: 1966
- Notestein, Wallace. *A History of Witchcraft in England from 1558 to 1718*. PhD Thesis. American Historical Association: 1911
- Ogle, Arthur. *Tragedy in Lollards' Tower*. Pen-in-Hand, Oxford: 1949
- Orwell, George. "Benefit of Clergy: Some Notes on Salvador Dali" in *The Collected Essays, journalism, and Letters of George Orwell*, Vol III "As I Please: 1943-1945." Sonia Orwell and Ian Angus, eds. London: Secker and Warburg, 1968, pp. 156-165
- Ossikovski, Martin. "Marsilius of Padua and William of Ockham on Institutional Infallibility" in *Recherches de Théologie et Philosophie Médiévales* 77:2 (2010), pp. 299-311

- Ostovich, Helen, Syme, Holger Schott, and Griffin, Andrew. *Locating the Queen's Men, 1583-1603: Material Practices and Conditions of Playing*. Ashgate Publishing: 2009
- Outhwaite, RB. *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860*. Cambridge University Press: 2006
- Paton, Diana. *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870*. Duke University Press: 2004.
- Peters, Edward. "History, Historians, and Clerical Celibacy" in Michael Frassetto, ed. *Medieval Purity and Piety: Essays on Medieval Clerical Celibacy and Religious Reform*. New York and London: 1998, pp. 3-22
- Pettegree, Andrew. "A. G. Dickens and his critics: a new narrative of the English Reformation" in *Historical Research* vol 77 no 195 (2004)
- Plucknett, Theodore. *A Concise History of the Common Law*, Fifth Edition. Boston: Little Brown and Co, 1956, pp. 386-87
- Pollard, AF. *Wolsey*, Second edition, Collins: 1965
- Powicke, Maurice. *The Reformation in England*. London: 1967
- Prest, Wilfred R. *The Inns of Court under Elizabeth I and the Early Stuarts, 1590-1640*. Longman: 1972
- Pugh, EPH. "A grain shortage of the 1520s." *Local Historian*, Vol II (1962), pp. 20-37
- Pugh, EPH. *Imprisonment in Medieval England*. Cambridge University Press: 1968
- Quinn, DB and Ryan, AN. *England's Sea Empire, 1550-1642*, part of the Early Modern Europe Today series, JH Sherman, editor. London: 1983
- Ramirez, Deborah A. "The Mixed Jury and the Ancient Custom of Trial by Jury *de medietatum lingue*: History and a Proposal for Change" in *Boston University Law Review*, Volume 74 Issue 5 (November 1994), pp. 777-817
- Ramsey, GD. *The Politics of a Tudor Merchant Adventurer: Letters to the Earls of East Friesland*. Manchester University Press: 1979
- Raymond, Joad. "What is a Pamphlet?" in *Pamphlets and Pamphleteering in Early Modern Britain*. Oxford University Press: 2003, pp. 4-26
- Rex, Richard. "Jasper Fylooll and the Enormities of the Clergy: Two Tracts Written during the Reformation Parliament" in *Sixteenth Century Journal*, Vol 31 No 4 (Winter 2000), pp.1043-1062
- Rex, Richard. *Henry VIII and the English Reformation*. Basingstoke: 1993
- Richardson, RC. *Household Servants in Early Modern England*. Manchester University Press: 2010
- Robinson, Jon. "The Murky Waters of Court Politics and Poetic Propaganda" in his larger book, *Court Politics, Culture and Literature in Scotland and England, 1500-1540*. Ashgate: 2008, pp. 141-161
- Roberts, PR. "The 'Henry VIII Clause' Delegated Legislation and the Tudor Principality of Wales" in Thomas Watkin, ed. *Legal Record and Historical Reality: Proceedings of the Eighth British Legal History Conference*. Continuum International Publishing Group: 2003, pp 37-42
- Roeper, Lyndal. *Oedipus and the Devil: Witchcraft, Sexuality, and Religion in Early Modern Europe*. Routledge: 1994
- Rogers, Alan. *Murder and the Death Penalty in Massachusetts*, University of Massachusetts Press: 2008

- Ronald, Susan. *The Pirate Queen: Queen Elizabeth I, Her Pirate Adventurers, and the Dawn of Empire*. Harper Collins Publishers: 2007
- Rose, Elliot. *Cases of Conscience: Alternatives Open to Recusants and the Puritans under Elizabeth I and James I*, Cambridge University Press: 1975
- Rowe, Linda. "The Benefit of Clergy Plea" *The Colonial Williamsburg Interpreter*, Volume 19, No. 1 (1998).  
[http://research.history.org/Historical\\_Research/Research\\_Themes/ThemeReligion/Clergy.cfm](http://research.history.org/Historical_Research/Research_Themes/ThemeReligion/Clergy.cfm) (Accessed 21 April 2013)
- Russell, Conrad. *Crisis of Parliaments: English History 1509-1660*, Oxford University Press: 1971
- Samaha, Joel. *Law and Order in Historical Perspective: the Case of Elizabethan Essex*. New York: 1974
- Samaha, Joel. "Gleanings from Local Criminal Court Records: Sedition Amongst the "Inarticulate" in Elizabethan England" in *Journal of Social History*, Vol VIII No 4 (1975), pp. 61-79
- Sawyer, Jeffrey. "Benefit of Clergy in Maryland and Virginia" in *The American Journal of Legal History* Vol 34 No 1 (January 1990), pp. 49-68
- Scarisbrick, JJ. *Henry VIII*. London: 1968
- Scarisbrick, JJ. *The Reformation and the English People*. Blackwell: 1984
- Scott, Arthur P. *Criminal Law in Colonial Virginia*. University of Chicago Press: 1930
- Scott, SP. "The Enactments of Justinian: The Novels" in *The Civil Law*, XVI. Cincinnati: 1932
- Semmes, Raphael. *Crime and Punishment in Early Maryland*, 2<sup>nd</sup> edition. Johns Hopkins University Press: 1970
- Shagan, Ethan. *Popular Politics and the English Reformation*. Cambridge University Press: 2003
- Shagan, Ethan. "Protector Somerset and the 1549 Rebellions: New Sources and New Perspectives." In *English Historical Review*, Vol. 114, No. 455 (Feb., 1999), pp. 34-63
- Share, James. "The People and the Law" in Barry Reay, ed, *Popular Culture in Seventeenth-Century England*. London: 1985
- Sharpe, JS. *Crime in Early Modern England*, Longman: 1999
- Sharpe, JS. *Crime in Early modern England, 1550-1750*. Themes in British Social History, Longman: 1999
- Sharpe, JS. *Instruments of Darkness: Witchcraft in Early Modern England*, University of Pennsylvania Press: 1996
- Sharpe, Kevin. *Selling the Tudor Monarchy: Authority and Image in Sixteenth-Century England*. Yale University Press: 2012
- Shepard, Alexandra. "Manhood, Credit and Patriarchy in Early Modern England c 1580-1640" in *Past and Present*, no 167 (2000), pp. 75-106
- Shoemaker, Karl. *Sanctuary and Crime in the Middle Ages*. Fordham University Press: 2010.
- Shoemaker, Robert. *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c 1660-1725*. Cambridge University Press: 1991
- Silbey, Susan. "Legal Culture and Legal Consciousness" in *International Encyclopedia of Social and Behavioral Sciences*. Pergamon Press: 2001, pp. 8623-8629
- Slack, Paul. *The English Poor Law, 1531 to 1782*. Cambridge University Press: 1995
- Slack, Paul. "Social Policy and the Constraints of Government, 1547-1558" in Loach and Tittler, eds. *The Mid-Tudor Polity, c 1540-1560*. Rowman and Littlefield, 1980, pp. 94-115

- Smith, Alan GR. *The Emergence of a Nation State: The Commonwealth of England, 1529-1660*, second edition. Longman, 1997
- Sommerville, JP. "Literature and National Identity" in *The Cambridge History of Early Modern English Literature* David Lowenstein and Janel Mueller eds, Cambridge University Press: 2002, pp. 459-486
- Stacy, William. "Richard Roose and the Use of Parliamentary Attainder in the Reign of Henry VIII" in *The Historical Journal* No 29:1 (1986), pp. 1-15
- Starkey, David. "Court and Government." in *Revolution Reassessed: Revisions in the History of Tudor Government and Administration*, Christopher Coleman and David Starkey, eds. Oxford: Clarendon Press, 1986, pp. 29-58
- Starkey, David. "Voluntaries and Sea Robbers: A Review of the Academic Literature on Privateering, Corsairing, Buccaneering, and Piracy" *Mariner's Mirror*, Vol 94 No 1 (2011), pp. 127-147
- Steward, Samuel. *Bad Boys and Tough Tattoos: A Social History of the tattoo with gangs, sailors, and street-corner punks*. New York: 1990
- Stewart, Alan. *Close Readers: Humanism and Sodomy in Early Modern England*. Princeton University Press: 1997
- Stewart, Alan. "A Society of Sodomites: Religion and Homosexuality in Renaissance England." Laura Gowing, Michael Hunter, and Miri Rubin, eds. *Love, Friendship, and Faith in Europe, 1300-1800*. Palgrave: 2005, pp. 88-109
- Stone, Lawrence. "Debate: The History of Violence in England, A Rejoinder" in *Past and Present*, 1985, no 108, pp. 214-222
- Stone, Lawrence. "The Educational Revolution" in *Past & Present*, No 28, pp. 41-60
- Stout, Harry S. "Marsilius of Padua and the Henrician Reformation" *Church History* 43:3 (September 1973) pp. 308-318
- Stubbs, William. *Select Charters and other illustrations of English Constitutional History*, Ninth Edition. London: 1913
- Suggs, M Jack, Sakenfeld, Katharine Doob, and Mueller, James R, eds. *The Oxford Study Bible: A complete Guide to the World of the Bible*. Oxford University Press: 1992
- Sutherland, Donald W. *The Eyre of Northamptonshire, 3-4 Edward III (1329-1330)*, vol. 2, SS 791, London: 1983
- Thirsk, Joan. "Tudor Enclosures" in *The Rural Economy of England: Collected Essays*. Hambleton Press: 1984, pp. 65-84
- Thomas, Keith. *Religion and the Decline of Magic*, Oxford University Press: 1998
- Thomas, Keith. "The Puritans and Adultery: The Act of 1650 Reconsidered" in *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill*. Donald Pennington and Keith Thomas, eds, Clarendon Press: Oxford, 1978, pp. 257-273
- Thompson, EP "The Crime of Anonymity from Albion's Fatal Tree" *Whigs and Hunters: The Origins of the Black Act*. Penguin: 1990, pp. 378-432
- Tierney, Brian. *The Crisis of Church and State, 1050-1300*. Prentice Hall: 1964
- Trachtenberg, Peter. *Seven Tattoos: A Memoir in the Flesh*. New York: 1997
- Trevor-Roper, Hugh. *The European Witch-craze of the Sixteenth and Seventeenth Centuries*, Harmondsworth: 1969
- Trumbach, Randolph. *Sodomy Trials*. Series on Marriage, Sex, and the Family in England, 1660-1800. Garland Publishing, New York and London: 1986

- Trumbach, Randolph. "Renaissance Sodomy 1500-1700" in Matt Cook, ed *A Gay History of Britain: Love and Sex between Men since the Middle Ages*, Greenwood World Publisher: 2007, pp. 45-76
- Ullman, Walter. *Law and Politics in the Middle Age: An Introduction to Sources of Medieval Political Ideas*. Cornell University Press: 1975
- Valient, John. *The English Reports*, Vol 73: King's Bench Division London: 1907
- Veall, Donald. *The Popular Movement for Law Reform, 1640-1660*, Oxford, Clarendon Press: 1970
- Walker, Garthine. *Crime Gender and Social Order in Early Modern England*. Cambridge University Press: 2003
- Walker, Garthine. "The Strangeness of the Familiar: Witchcraft and the Law in Early Modern England" found in Angela McShane and Garthine Walker, eds, *The Extraordinary and the Everyday in Early Modern England: Essays in celebration of the work of Bernard Capp*, Palgrave MacMillon: 2010, pp. 105-124
- Warner, J Christopher. *Henry VIII's Divorce; Literature and the Politics of the Printing Press*. Woodbridge: 1998
- Wiener, Carol Z. "Sex Roles and Crime in Elizabethan Hertfordshire" in *Journal of Social History* Vol. VIII, No. 4 (Summer, 1975), pp. 38-60
- Wernham, RB. "Tudor Revolution in Government by G.R. Elton [Review]," *English Historical Review*, Vol. 71, No. 276 (Jan., 1956), pp. 92-95
- White, Albert, and Notestein, Wallace, eds. *Source Problems in English History*. New York: Harper and Brothers, 1915
- White, Edward. *Legal Antiquities, A Collection of Essays Upon Ancient Laws and Customs* FH Thomas Law Book Co, St Louis: 1913
- Wilkinson, Bertie. *Constitutional History of England in the Fifteenth Century (1399-1485)*, New York: 1964
- Williams, Neville. *The Life and Times of Henry VIII*. London: 1973
- Williams, Penry. *The Tudor Regime*. Oxford University Press: 1979
- Wilson, A. "Naylor's Case and the dilemma of the Protectorate" in *The University of Birmingham Historical Journal*, Vol X (1965), pp. 44-59
- Woodbridge, Linda. *Vagrancy Homelessness, and English Renaissance Literature*, University of Illinois Press: 2001
- Worden, B. Blair. *The Rump Parliament, 1648-1653* Cambridge University Press: 1977
- Wormald, Jenny. *Mary, Queen of Scots: Politics, Passion, and a Kingdom Lost*. London: 1988
- Wright, John Robert. *The Church and the English Crown, 1305-1334: A Study Based on the Register of Archbishop Walter Reynolds*. PIMS: 1980
- Wrightson, Keith. "Two Concepts of Order: Justices, Constables, and Jurymen in Seventeenth-century England" in John Brewer and John Styles, eds. *An Ungovernable People: The English and their Law in Seventeenth and Eighteenth Centuries*. London: 1980, pp. 21-46.
- Yelling, JA. *Common Field and Enclosure in England 1450-1850*. Archon Books: 1977
- Zaller, Robert. *The Parliament of 1621: A Study in Constitutional Conflict*. Berkeley University of California Press: 1971
- Zeeveld, W Gordon. *Foundations of Tudor Policy*. Harvard University Press: Cambridge, Massachusetts, 1948
- Zobel, Hiller B. *The Boston Massacre*. Norton & Company: 1970

### Unpublished Theses

Willis, Anne R. "The Masters' Mercy: Slave Prosecutions and Punishments in York County, Virginia, 1700 to 1780" (M.A. thesis, College of William and Mary, 1995)

### Web-based Databases

British History Online, *Acts of the Privy Council of England*. Vols 1-46. <http://www.british-history.ac.uk/catalogue.aspx?gid=156&type=3> Accessed April 2013

British History Online, *Calendar of State Papers*. <http://www.british-history.ac.uk/statepapers.aspx> Accessed April 2013

British History Online. *Journal of the House of Lords*, Vol I-XII, (1802) <http://www.british-history.ac.uk/catalogue.aspx?gid=44&type=2> Accessed April 2013

British History Online, *Journal of the House of Commons*. Vols I-XII (1803) <http://www.british-history.ac.uk/catalogue.aspx?gid=43&type=2> Accessed April 2013

British History Online. *Letters & Papers of Henry VIII*. Vols I to XXI. <http://www.british-history.ac.uk/report.aspx?compid=75676> Accessed April 2013

Mills, Tim and Harris, Sarah. *Earls Colne: Records of an English Village 1375-1854*. Essex Record Office (2002) <http://linux02.lib.cam.ac.uk/earlscolne/contents.htm> Accessed April 2013

The National Archives, *Ancient Petitions Online*. Special Collections: SC 8 <http://discovery.nationalarchives.gov.uk/SearchUI/browse/C13526> Accessed April 2013

The New Advent, *The Original Catholic Encyclopedia*. Various authors. <http://oce.catholic.com/index.php?title=Home> Accessed April 2013

Old Bailey Online (OBO). Tim Hitchcock, Robert Shoemaker, Clive Emsley, Sharon Howard and Jamie McLaughlin, et al., *The Old Bailey Proceedings Online, 1674-1913* [www.oldbaileyonline.org](http://www.oldbaileyonline.org) Version 7.0, (Accessed April 2013)

Oxford Dictionary of National Biography (DNB). Various authors. <http://www.oxforddnb.com/> Accessed April 2013

Oxford English Dictionary (OED). Various authors. <http://www.oed.com/> Accessed April 2013

Year Books. David J. Seipp, ed. *Legal History: The Year Books*. Boston University. <http://www.bu.edu/law/seipp/> Accessed April 2013.

Kneebone, John T. Looney, J. Jefferson Tartar, Brent, and Treadway, Sandra Gioia, eds. *Dictionary of Virginia Biography* (DVB). Richmond: Library of Virginia, 1998. <http://www.encyclopediavirginia.org/> (Accessed April 2013)