

The church courts in Restoration England, 1660–c. 1689

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After a two-decade hiatus, the English church courts were revived by an act of Parliament on 27 July 1661, to resume their traditional task of correcting spiritual and moral misdemeanours. Soon thereafter, parishioners across England's dioceses once more faced admonition, fines, excommunication, and even imprisonment if they failed to conform to the laws of the restored Church of England. Whether they were successful or not in maintaining orthodoxy has been the principal question guiding historians interested in these tribunals, and most have concluded that, at least compared to their antebellum predecessors, the restored church courts constituted little more than a paper tiger, whose censures did little to halt the spread of dissent, partial conformity and immoral behaviour.

This thesis will, in part, question such conclusions. Its main purpose, however, is to make a methodological intervention in the study of ecclesiastical court records. Rejecting Geoffrey Elton's assertion that these records represent 'the most strikingly repulsive relics of the past', it argues that a closer, more creative study of the bureaucratic processes maintaining the church courts can considerably enhance not only our understanding of these rather enigmatic tribunals but also of the individuals and communities who interacted with them. Studying those in charge of the courts, the first half of this thesis will explore the considerable friction between the Church's ministry and the salaried bureaucrats and lawyers permanently staffing the courts. This, it argues, has important ramifications for our understanding of early modern office-holding, but it also sheds new light on the theological disposition of the Restoration Church. Using the same sources, coupled with substantial consultation of contemporary polemic, letters and diaries, the fourth and fifth chapters will argue that the sanctions of the restored church courts were often far from the 'empty threat' historians have tended to assume. Excommunication in particular could be profoundly distressing even for such radical dissenters as the Quakers, and this should cause us to reconsider how individuals and communities from various hues of the denominational spectrum related to the established Church.

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Preface

This dissertation is the result of my own work and includes nothing that is the outcome of work done in collaboration except as declared in the Preface and specified in the text.

It is not substantially the same as any that I have submitted, or, is being concurrently submitted for a degree or diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my dissertation has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University of similar institution except as declared in the Preface and specified in the text.

It does not exceed the prescribed word limit for the relevant Degree Committee.

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Introduction

(i) *Repulsive Records*

This thesis was initially conceived as a study of religious toleration in Restoration England through the lens of the ecclesiastical courts. Prior to embarking, I was hopeful that the records created by these tribunals could be used to produce a study similar to those of Carlo Ginzburg and John Arnold, both of whom had fruitfully and creatively utilised inquisition trials in different ways to deepen our understanding of broader religious questions in medieval and early modern Europe.¹ My early visits to various English diocesan archives gradually dampened this aspiration. Unlike the ‘intrinsically dialogic’ inquisition sources encountered by Ginzburg that allowed him to excavate the mental world of the Friulian miller Menocchio, I was repeatedly confronted with records that were as overwhelmingly endless as they were textually sparse.² Instead of interrogations, I found formulaic lists of names and court sentences. To make matters worse, the physical state of these court records was often so poor as to render them either partially or entirely illegible. The textually richer deposition books offered a welcome respite from the heavily abbreviated act and visitation books, but these were concerned primarily with interpersonal slander disputes and not the religious tensions in which I was interested. I therefore persisted with the correctional side of the courts, determined to break through their frustrating silence. Despite my best efforts, however, I was eventually forced to concede that, even if the English Menocchio was in there somewhere, he would be hidden behind such a thick veil of bureaucratic jargon that I would not be able to understand him meaningfully. As a result, my initial confidence was temporarily transformed into what the American scholar Susan Scott Parish has characterised as archivally caused ‘moments of worry...plagued by patternlessness, by words and experiences being merely themselves, and by a facticity unrelieved by meaning.’³

It was, therefore, somewhat reassuring to discover that I was far from the first historian troubled by the ecclesiastical court records. As early as 1914, C.W. Foster, Canon of Lincoln Cathedral, and F.S. Hockaday, historian of Gloucester diocese, vividly detailed to the Royal Commission on Public Records how the archives in their respective

¹ Carlo Ginzburg, *The cheese and the worms: the cosmos of a sixteenth-century miller* (London, 1980); John Arnold, *Inquisition and power: Catharism and the confessing subject in medieval Languedoc* (Philadelphia, 2001).

² Carlo Ginzburg, *Clues, myths, and the historical method* (Baltimore, 1992), p. 152.

³ Susan Parish Scott, ‘Rummaging/In an out of holds’, *American Literary History*, vol. 22 (2010), p. 261.

dioceses at first appeared insurmountable. 'In an upper chamber' of the Gloucester diocesan registry, Hockaday encountered 'a pile of documents and MS. volumes, and so on, which were unrecognisable, deep in dust', and Foster reported how 'the larger part of them I found in a state of great confusion...by damp and decay.' 'Many of the visitation and court books', he continued, 'had come to pieces and their sheets had been scattered.'⁴ In 1943, E.R. Brinkworth similarly observed that these records 'are not prepossessing to look at; they are appallingly written in a severely technical language.' It was not surprising, therefore, that of all the 'ecclesiastical records, those of the courts are the least regarded.'⁵ Twenty years later, the archivist Dorothy Owen commented with some exasperation that 'there are so many of these books, scattered among accumulations of ecclesiastical records, they all look alike, they generally consist of forms so abbreviated as to seem devoid of local or personal interest.' 'What student', she asked, 'can possibly want to read them?'⁶ Most damning of all, Geoffrey Elton asserted in 1969 that the ecclesiastical court records 'are among the most repulsive of all the relics of the past - written in cramped and hurried hands, in very abbreviated and technical Latin, often preserved (if that is the right word), in fairly noisome conditions.'⁷

Yet, Elton's assessment was not altogether negative. Indeed, despite their repulsiveness, he believed the church court records offered 'a most promising field of research' because 'they illuminate the history of the Church and people in ways that no other source can.' In short, 'they take one to the realities.'⁸ This mentality was evidently shared by Hockaday, Foster, and Brinkworth as well, as all three conquered their initial aversion to these records to produce important studies on the church courts.⁹ The subsequent publications of Ronald Marchant, Ralph Houlbrooke and Martin Ingram, to mention just a few, only further reinforced the point that, for those willing to face them, the ecclesiastical court records could offer a richly rewarding area of research. After serious intellectual and methodological readjustments, I too eventually came to this

⁴ House of Commons, *Report of the Royal Commission on Public Records*, vol. 3, pt. 2 (London, 1914), p. 24.

⁵ E.R. Brinkworth, 'The study and use of archdeacons' court records: illustrated from the Oxford records (1566-1759)', *Transactions of the Royal Historical Society*, fourth series, vol. 25 (1943), p. 93.

⁶ Dorothy Owen, 'Why and how? Some thoughts on the cataloguing of ecclesiastical archives', *Journal of the Society Archivists*, vol. 2 (1964), p. 567.

⁷ Geoffrey Elton, *England 1200-1640: the sources of history* (Cambridge, 1969), p.105. For a more recent assessment of this kind, see Abigail Anne Young, 'Practice makes perfect: policies for a cross-disciplinary project', in Audrey Douglas & Sally Beth-Maclean (eds.), *REED in review: essays in celebration of the first twenty-five years* (Toronto, 2006), p. 60.

⁸ Elton, *England 1200-1600*, p. 105.

⁹ C.W. Foster, *Lincoln episcopal records* (London, 1913), F.S. Hockaday, 'The consistory court of the diocese of Gloucester', *Transactions of the Bristol and Gloucestershire Archaeological Society*, vol. 46 (1924); E.R. Brinkworth, *Shakespeare and the bawdy court of Stratford* (London, 1972).

conclusion, albeit for reasons that were not principally concerned with the efficiency of the church courts, but rather with the many different ways parishioners, clergymen, bureaucrats, and lawyers perceived and interacted with these tribunals.

(ii) *The structure and procedure of the ecclesiastical courts*

The ecclesiastical courts represented the jurisdictional authority of the English Church. Prior to the Reformation, they formed part of the Europe-wide network of tribunals overseen by the papal court in Rome and worked under the same system of canon law. The Reformation severed these jurisdictional ties, as the monarch replaced the Pope as the supreme head of the English Church and all appeals to Rome were abolished. However, in jurisdictional terms, the break from Rome was partly a formalisation of arrangements that had already evolved in practice. The monarch and the secular courts had increasingly limited the Church's prerogatives in the two centuries prior to the Reformation.¹⁰ More importantly, although several attempts were made in both the sixteenth and seventeenth century to reform the Church's jurisdiction, the Reformation did not bring about a substantive change to either the structure of the English church courts or the content of English canon law.¹¹

According to Barry Till, the network of ecclesiastical courts that survived the Reformation relatively unscathed was 'complicated if not confused.'¹² At the top of the jurisdictional hierarchy in were two courts of appeal: the court of Chancery and the court of Arches, representing the authority of the archbishops of York and Canterbury respectively. These tribunals could hear their own cases as well as appeals from lesser courts in their respective provinces. Beneath them, the regular bishops had their own consistory courts situated in the cathedral of each diocese. Apart from holding regular court sessions, these episcopal courts also embarked on regular visitation tours (usually triennially) across their dioceses to enforce orthodoxy on a local level. Though the reach of the consistory courts was coextensive with the diocesan borders, the jurisdictional map of the medieval and early modern Church was complicated by a number of smaller administrative units. First, most dioceses housed at least two archdeaconries. Exeter diocese, for instance, contained the archdeaconries of Cornwall, Totnes, Exeter and Barnstable. These were headed by archdeacons (generally senior clergymen) who, although subordinate to the bishops, had their own courts and officials and conducted

¹⁰ See, for instance, George Bernard, *The late medieval English Church: vitality and vulnerability* (New Haven, 2012), pp. 27–33.

¹¹ Richard Helmholz, *Roman canon law in Reformation England* (Cambridge, 1990), pp. 27–41.

¹² Barry Till, *The church courts, 1660-1720: revival of procedure* (York, 2006), p. 12.

their own archidiaconal visitations in the deaneries under their jurisdictions. Second, over three hundred peculiar jurisdictions lay scattered throughout the English dioceses.¹³ Usually limited to a single parish, the peculiars were not within the reach of the surrounding episcopal or archidiaconal jurisdictions.¹⁴ They were not, however, jurisdictional free-zones. Rather, as Michael Smith has shown in his study of Hexham peculiar, they tended to be governed by local clergymen who acted as ‘substitute’ judges on disciplinary matters within the peculiars.¹⁵

Though the ecclesiastical courts administered the Church’s jurisdiction, their management depended on a plethora of lay officials. Most famously, each parish was responsible for biannually electing two churchwardens to act as the local representatives of the courts. The occupiers of this rotating, unsalaried office were responsible for a multitude of tasks relating to the local parish church, but perhaps their key function was to detect and report the misdemeanours of their neighbours to the ecclesiastical authorities during either the archidiaconal or episcopal visitations. The courts also relied on a number of salaried, permanent officials. Outside of the court rooms, the apparitors, or summoners, were tasked with delivering citations and other writs to those cited and sentenced by the courts. These citations and writs were, in turn, generated by an extensive bureaucratic machinery that was administered by the court registrars, who were also responsible for the production of the numerous court books. Each court tended to employ one registrar and one deputy registrar who in turn relied on one or two lesser notaries. The church courts also employed two types of lawyers: proctors (the ecclesiastical version of solicitors) and advocates (the equivalent of common law barristers). Prior to the Reformation, the latter of these positions had been filled by clergymen trained in the canon law. However, Henry VIII’s abolition of the study of canon law at Oxford and Cambridge in 1535 opened up profession of ecclesiastical law to the country’s civil lawyers, who responded to the invitation by quickly monopolising both the middling and senior positions in the ecclesiastical courts. By the end of the sixteenth century the civil lawyers had also replaced clergymen as the chancellors of English dioceses.¹⁶ This crucial, albeit often neglected shift, ensured that both the lawyers and judges in the early modern ecclesiastical courts were lay professionals.

¹³ Ibid., p. 8.

¹⁴ For lengthier discussions about the structure England’s ecclesiastical jurisdiction, see R.B. Outhwaite, *The rise and fall of the English ecclesiastical courts, 1500–1860* (Cambridge, 2007), pp. 1-14. Also, Martin Ingram, ‘Church courts in England’ in Charles H. Parker & Gretchen Starr-Lebau (eds.), *Judging faith, punishing sin: consistories and inquisitions in the early modern world* (Cambridge, 2017), pp. 89–103.

¹⁵ Michael Smith, *Pastoral discipline and the church court: the Hexham court, 1680–1730* (York, 1982), p. 1.

¹⁶ For more on the rise of the civil lawyers within the Church’s jurisdiction, see Brian Levack (, *The civil lawyers in England, 1603-1641: a political study* (Oxford, 1973), pp. 158–95.

The English church courts heard two types of cases: office and instance. The former involved correctional cases where plaintiffs were called by the courts to answer for one or several suspected misdemeanours. Such cases could either be instigated by a report from a churchwarden or minister (*ex officio promotio*) or by the judge of the court (*ex officio mero*). Instance cases involved disputes between two litigants, and unlike office suits, which concerned specific canonical infractions, these were usually related to questions of slander and defamation. In terms of evidence, office cases involved the judge interrogating the defendants, though they could also be exonerated through compurgation, which involved at least two parishioners testifying to the innocence of the defendant. In contrast, instance cases required the calling of witnesses who would tell their side of the story before a case could be determined. It is these testimonies which constitute the bulk of the deposition books produced by the church courts. If litigants were found guilty in instance cases, they would be required to pay financial remuneration to the offended party and officially retract all slanderous comments. The guilty litigant would also have to cover the court fees. Sentences in office cases were more dependent on the gravity of the offence. While lesser infractions could result in a verbal admonition, more serious offenders were supposed to undergo the ritual of public penance before being absolved. It was possible, however, to avoid this humiliating spectacle by paying a financial commutation to the courts. The most severe punishment was excommunication, which was meant to exclude individuals from the communion of the Church until he or she obtained absolution through either penance or commutation. Above all, this was a sentence issued against those who contumaciously did not appear to their court hearing.

While the structure of the English ecclesiastical courts remained intact throughout the Reformation, the religious landscape they were instructed to monitor changed dramatically, if not suddenly. Not only was the country's Catholic population now liable to be prosecuted if they did not attend church services, but there also emerged a growing puritan element amongst the country's Protestants that was sceptical about the limited extent of the Church's jurisdictional reforms. As a result, the early modern church courts had the unenviable task of imposing conformity on individuals who did not necessarily recognise their authority or the weight of their censures.¹⁷ To strengthen the Church's position, the first year of Elizabeth I's rule saw the creation of the High Commission courts. Staffed by senior civil lawyers and bishops as well as common law judges, these were separate tribunals explicitly under the royal supremacy that represented an

¹⁷ See, for instance, Ronald Marchant, *The puritans and the church courts in the diocese of York, 1560–1642* (London, 1960).

amalgamation of the country's secular and ecclesiastical jurisdictions. As such, the High Commission courts were equipped with a greater arsenal of coercive measures. For instance, unlike the regular ecclesiastical courts, the High Commission could administer corporal punishments, imprison individuals, and transfer cases between dioceses.¹⁸

As the principal targets of ecclesiastical persecution in Elizabethan and early Stuart England, the puritans became the most vocal opponents of the church courts. It was not only their Catholic structure that caused puritan criticism, but also the courts' use of the inquisitorial *Ex Officio* oaths, which bound defendants to answer all questions before they had been informed of the charges against them. In the eyes of the Elizabethan common lawyer James Morice, the imposition of this oath meant that the English ecclesiastical courts were 'an inquisition more than the Spanish, to sift and ransack the most secret thoughts and consciences of men.'¹⁹ The fees demanded by the Church's tribunals and their lay officials was similarly attested to their unreformed, corrupt nature. As the poet John Milton put it in his first publication from 1641, the business of the church courts involved 'the same alchymy that the Pope uses, to extract heaps of gold and silver out of the drossy bullion of the people's sins.'²⁰

Given their strong distaste for the church courts, it was not surprising that the puritan Long Parliament took swift and radical action against the country's ecclesiastical jurisdiction. On 5 July 1641, both the High Commission and the *Ex Officio* oaths were abolished. The same act also prohibited the regular church courts to punish any spiritual or moral crime, which effectively removed the corrective authority of the Church's jurisdiction. Five years later, in October 1646, the ecclesiastical courts were formally abrogated along with the abolition of the episcopacy. The 1650s were not, however, devoid of spiritual and moral disciplining. Rather, as Bernard Capp has demonstrated, many magistrates 'often imposed far harsher punishments than the old ecclesiastical courts' on those not adhering to puritan ideals concerning godly behaviour.²¹ Nevertheless, the Restoration of both monarchy and Church in May 1660 ensured the return of the old ecclesiastical courts. Before we proceed to investigate how this thesis will analyse these restored tribunals, however, it is necessary to consider the scholarly assessment of the early modern ecclesiastical jurisdiction.

¹⁸ For more on the High Commission, see Roland Usher, *The rise and fall of the High Commission* (Oxford, 1913), and Levack, *The civil lawyers*, pp. 29-30.

¹⁹ James Morice, *A brief treatise of oathes exacted by ordinaries and ecclesiastical iudges* (London, 1590), sig. A4v. See also Ethan Shagan, 'The English Inquisition: constitutional conflict and ecclesiastical law in the 1590s', *The Historical Journal*, vol. 47 (2004), pp. 541-65.

²⁰ John Milton, *Of reformation touching chvrch-discipline in England* (London, 1641), p. 64.

²¹ Bernard Capp, *England's culture wars: puritan reformation and its enemies in the Interregnum, 1649-1660* (Oxford, 2012), p. 259.

(iii) 'The rusty sword of the Church'? - the historiography of the church courts

Martin Ingram observed that 'the puritan/common law myth of the corrupt, unpopular church courts became the myth of historical text books in the late 19th and 20th centuries.'²² Indeed, the narrative of the ecclesiastical courts in Reformation England has often been one of puritan triumph in the face of tyrannical confessional oppression. Concomitantly, the downfall of the Church's tribunals has been hailed as an important step in England's path to modernity. In Christopher Hill's interpretation, the 'rusty sword of the Church' crumbled in the face of puritan opposition. 'The story of the breakdown of excommunication', he claimed, constituted nothing less than 'the story of the breakdown of medieval communities', which in turn 'must have greatly accelerated an intellectual and moral revolution which the courts had previously retarded.'²³

This narrative has, however, been seriously questioned by a group of revisionist scholars more explicitly concerned with the church courts. It was, for instance Ralph Houlbrooke's opinion that the ecclesiastical jurisdiction in late sixteenth-century London was 'a good deal more speedy, flexible, inexpensive, and readily understandable than has been commonly allowed.' More importantly, the courts 'received a great deal more support than their critics have been prepared to admit.'²⁴ Marchant's study on the courts in pre-Civil War York reached similar conclusions. The ecclesiastical courts, he asserted, 'in general provided an effective service to litigants', and though far from universally appreciated, their 'discipline was generally thought to be necessary and the Church was considered the appropriate organ to enforce it.'²⁵ Ingram also pointed to significant popular support towards the courts in Elizabethan and early Stuart Wiltshire, and was adamant that their abolition in the early 1640s should 'not be seen as the inevitable result of long-standing weaknesses and accumulated grievances', but rather as the consequence of the 'personalities and policies of the years immediately preceding the calling of the Long Parliament.'²⁶

Yet, while these scholars forcefully debunked the notion that the early modern church courts were universally unpopular, their research did point to significant shortcomings in the ability of these tribunals to coerce people effectively.

²² Martin Ingram, *Church courts, sex and marriage in England, 1570–1640* (Cambridge, 1988), p. 7.

²³ Christopher Hill, *Society and puritanism in pre-revolutionary England* (London, 1964), pp. 343, 355.

²⁴ Ralph Houlbrooke, *Church courts and the people during the English Reformation, 1520–1570* (Oxford, 1979), pp. 271–2.

²⁵ Ronald Marchant, *The Church under the law: justice, administration and discipline in the diocese of York, 1560–1640* (New York, 1969), p. 204.

²⁶ Ingram, *Church courts*, p. 369.

Excommunication, they have all agreed, was a relatively benign punishment. In the words of F.D Price, most parishioners in Elizabethan England, and particularly those with puritan inclinations, ‘laughed at the spiritual weapons of suspension and excommunication.’²⁷ High non-appearance rates and low numbers of corresponding absolutions led Marchant to conclude similarly that ‘men and women of all classes preferred to accept the disabilities of excommunication as a permanent state of life.’²⁸ On balance, then, the church courts in antebellum England have been characterised as simultaneously competent and inadequate; capable of resolving communal disputes but weak in their ability to punish canonical offenders.

Their Restoration descendants, revived in the summer of 1661 after a near two-decade absence of ecclesiastical discipline, have received a far less favourable assessment by some of the most authoritative scholars of the period. In essence, it has been argued that Parliament’s decision not to revive the two most coercive features of the pre-Civil War jurisdiction, the *Ex Officio* oaths and the High Commission courts, weakened seriously the Church’s discipline, especially in a religious landscape that witnessed the continued proliferation of heterodox groups such as the Quakers and Baptists who willingly dissociated themselves from the restored episcopal Church. In Claire Cross’ opinion, the ‘ancient courts, which did come back, had no laws to administer adapted to deal with the conditions of the later seventeenth century or penalties to inflict which any longer raised real apprehension.’²⁹ According to several scholars, the church courts responded to these new challenges in the worst way possible: by increasing the frequency of excommunications against even the most trivial of offences which only served to dilute further its severity. Thus, John Spurr writes that the restored church courts ‘seemed to have run out of control’ and ‘escaped from effective discipline.’³⁰ As a result, the persecution of dissent in Restoration England has been chiefly attributed to the secular courts and their greater arsenal of coercive measures.³¹

Despite his largely negative assessment, Spurr nevertheless cautioned that ‘most of the church courts of Restoration England remain unstudied, and consequently all generalisations about them remain fragile.’³² However, while it is true that the restored church courts have received less scholarly attention than their pre-Civil War

²⁷ F.D. Price, *The Commission for Ecclesiastical Causes within the diocese of Gloucester and Bristol* (Gateshead, 1973), p. 73.

²⁸ Marchant, *Church under the law*, p. 243.

²⁹ Claire Cross, *Church and people, 1450–1660: the triumph of the laity in the English Church* (London, 1976), pp. 227–8.

³⁰ John Spurr, *The Restoration Church of England, 1646–1689* (London, 1991), pp. 198–215.

³¹ *Ibid.*, p. 211.

³² *Ibid.*, p. 209.

predecessors, several Restoration tribunals have, in fact, been extensively researched in unpublished doctoral dissertations. Underpinned by rigorous quantitative analysis of several diocesan repositories, these have demonstrated the chronological and geographical fluctuations of ecclesiastical prosecutions in Restoration England.

Most tribunals were busy until Charles II's 1672 Declaration of Indulgence, which promised unprecedented toleration towards dissenters, catalysed a temporary decline in business. Its withdrawal the following year, however, re-energised the church courts. Many courts then became heavily involved in the Tory backlash against dissent following the Exclusion Crisis of the late 1670s and early 1680s.³³ As Barry Till, who studied the York church courts from 1660 to 1883, demonstrated, 'the decade immediately after the Restoration did not see the height of their activity. In fact, there was a steady increase of business...from the 1660s until the 1690s.'³⁴ On the instance side, tithe cases continued to provide a steady stream of litigation, as did defamation suits.³⁵ According to these scholars, however, the restored church courts were principally concerned with the various offences associated with nonconformist behaviour. Martin Jones' study on the courts in Peterborough and Oxford found that 'those not attending their parish churches' became 'the main target of presentments.'³⁶ Peter Jackson discovered that out of the 1322 office cases heard before the Exeter consistory court between 1662 and 1685, more than a half involved absence from church while a third concerned individuals not receiving the Lord's Supper.³⁷ This attention to religious observance has also been noted by R.B. Outhwaite, who noted that 'after the Restoration the focus of the courts shifted strongly to breaches of the religious code.'³⁸ This stood in contrast to the concern with moral and sexual misdemeanours that predominantly occupied both their antebellum ancestors and their eighteenth-century successors, and speaks to the particular anxiety with which the Restoration authorities viewed the threat of dissent.³⁹

³³ See statistics in Paul Morton Geldart, 'Protestant nonconformity and sectarianism in Restoration Northamptonshire' (unpublished PhD thesis, University of Leicester, 2006), p. 135; Peter Jackson, 'Nonconformists and society in Devon, 1660–1689' (unpublished PhD thesis, University of Exeter, 1986), p.203; Barry Till, 'The ecclesiastical courts of York, 1660–1883: a study in decline' (unpublished PhD thesis, University of York, 1963), p. 61.

³⁴ Barry Till, 'The ecclesiastical courts', p. 91.

³⁵ Jean Margaret Potter, 'The ecclesiastical courts in the diocese of Canterbury, 1603–1665' (unpublished MA thesis, University of London, 1973), p. 188; Till, 'The ecclesiastical courts', p. 10.

³⁶ Martin Jones, 'The ecclesiastical courts before and after the Civil War: the office jurisdiction in the dioceses of Oxford and Peterborough, 1630–1675' (unpublished B.Litt. thesis, University of Oxford, 1977), p. 127.

³⁷ Peter Jackson, 'Nonconformists and society', p. 243.

³⁸ R.B. Outhwaite, *The rise and fall*, pp. 210–11.

³⁹ Ingram's study showed that moral and sexual concerns 'occupied a large proportion of the courts' time prior to the Civil War. *Church courts*, p. 17. For a study showing that this once more became the predominant concern of the eighteenth-century courts, see Mary Kinnear, 'The correction court in the diocese of Carlisle, 1701–1756', *Church History*, vol. 59 (1990), p. 195.

In terms of efficiency, some theses have confirmed the largely negative assessment of the restored church courts found in the more readily available historiography. For instance, though the records did not allow for a precise figure, Jones estimated that only ten percent of the many excommunications published after 1661 were absolved and argued that this pointed to an unprecedentedly weak ecclesiastical authority.⁴⁰ Henry Lancaster's study on the Wiltshire courts also asserted that the Church's censures 'could be ignored with relative impunity.'⁴¹ The assessment of other graduate scholars has been more nuanced, however. Anne Tarver's thesis on the Lichfield and Coventry courts maintained that 'for those whose allegiance lay outside the established Church' the prospect of spiritual discipline was 'of little significance.' Yet, she added that 'for those within, it still mattered.'⁴² Susan Ann Jones' analysis of prosecutions in the Arden Forest during the Restoration period similarly posited that 'it would be wrong to assume that the corrective powers of these courts were in decline.'⁴³ Most optimistically, Evan Davies, who predominantly studied cases heard outside of the formal court sessions in private courts of audience, argued that non-appearance rates were far lower than previously assumed and that, therefore, 'the assertions about the failure of the post-Restoration church courts are unjustified.'⁴⁴

Collectively, these dissertations have greatly improved our awareness of the restored church courts. They have also generated a more balanced historiographical assessment. Indeed, though by no means denying that the restored church courts faced significant challenges, historians such as William Gibson, Jeremy Gregory and Donald Spaeth now recognise that these tribunals have been too hastily dismissed as impotent.⁴⁵ Despite this important shift, however, the scholarship on the restored church courts has arguably not had a significant impact on broader historiographical developments. These tribunals have, for instance, been conspicuously absent in studies about religious toleration or the evolving nature of the English Church. With the exception of churchwardens, the court officials have also been notably absent from studies concerning early modern office-holding, governance and bureaucracy. Instead, the

⁴⁰ Jones, 'The ecclesiastical courts', p. 118.

⁴¹ Henry Lancaster, 'Nonconformity and Anglican dissent in Restoration Wiltshire' (unpublished PhD thesis, University of Bristol, 1995), p. 106.

⁴² Anne Tarver, 'The consistory court of the diocese of Coventry and Lichfield and its work, 1680–1830' (unpublished PhD thesis, University of Warwick, 1998), pp. 56–61.

⁴³ Susan Ann Jones, 'The Church of England in the forest of Arden, 1660–1740' (unpublished PhD thesis, University of Birmingham, 2009), pp. 201–2.

⁴⁴ Evan Davies, 'The enforcement of religious uniformity in England 1668–1700' (unpublished DPhil thesis, University of Oxford, 1982), p. 1.

⁴⁵ William Gibson, *The Church of England: 1688–1832: unity and accord* (London, 2001), p. 142, Jeremy Gregory, *Restoration, reformation, and reform: 1660–1828: archbishops of Canterbury and their diocese* (Oxford, 2000), p. 199; Donald Spaeth, *The Church in an age of danger: parsons and parishioners, 1660-1740* (Cambridge, 2000), pp. 161–4.

church courts have to a considerable extent remained an enclave of a relatively small group of specialists.

Historians of gender, however, have showed that it is possible to integrate the church courts into studies that are not principally concerned with administrative efficiency. Faramerz Dabhoiwala's 1995 thesis utilised court records to explore attitudes towards sex and prostitution in London in the century after the Restoration.⁴⁶ The following year, Laura Gowing published a ground-breaking study demonstrating that the early modern church court records contained 'a legal and social history that can be more profitably examined outside the notion of success and failure, however we measure them.'⁴⁷ Both Dabhoiwala and Gowing focused their attention on instance cases and the textually richer deposition books, which allowed them to show, as Gowing put it, that the cases 'in which women and men fought about sex, reputation, and marriage can be exceptionally revealing of the experience of gender, sex, morals and language.'⁴⁸ Unsurprisingly, their innovative research has inspired more gender historians to explore the court records.⁴⁹ Among them, Dave Peacock and Fay Bound have focused on slander disputes heard before the Restoration courts to explore aspects of morality and emotion among litigants and their communities.⁵⁰

Even though the following chapters are not principally concerned with gender, the work of these gender historians played a crucial role in reinvigorating my own efforts to tackle the records produced by the restored church courts. In particular, they have shown that, if we approach these 'repulsive' records from a set of different investigative premises, we might encounter histories that at first might not be immediately obvious. However, while the deposition books offered gender historians extensive witness testimonies to interpret, the success of my own endeavours depended in large part on breaking through the formulaic language and silences so characteristic of the act books, visitation books and other bureaucratic writs produced by the courts.

⁴⁶ Faramerz Dabhoiwala, 'Prostitution and police in London, 1660–c. 1760' (unpublished DPhil thesis, University of Oxford, 1995).

⁴⁷ Laura Gowing, *Domestic dangers: women, words and sex in early modern London* (Oxford, 1996), p. 36.

⁴⁸ *Ibid.*, p. 12.

⁴⁹ See, for instance, Garthine Walker, *Crime, gender and social order in early modern England* (Cambridge, 2003), pp. 223–5.

⁵⁰ Fay Bound, 'Emotion in early modern England, 1660–1760: performativity and practice at the church courts of York' (unpublished PhD thesis, University of York, 2000); Dave Peacock, 'Morals, rituals, and gender: aspects of social relations in the diocese of Norwich, 1660–1703' (unpublished PhD thesis, University of York, 1996).

(iv) *Re-approaching the church court records*

The scholarly evaluation of the restored church courts has in large part depended on whether or not historians have deemed these tribunals capable of implementing their censures, particularly excommunication. As we have seen, the courts' detractors have repeatedly pointed to high non-appearance and excommunication rates to argue that the courts were seemingly incapable of successfully coercing those violating the Church's law. The logic behind this argument is undoubtedly sound. But what do we actually know about the individuals who experienced excommunication? The act books, where such sentences were recorded, mention only the original cause of an individual's citation, whether or not he or she appeared, and that an excommunication had been ordered. The same is true for the excommunication writs that were sent to these individuals; they tell us of the original canonical infraction, that an excommunication had been decreed because of the individual's contumacy towards the court, and that the sentence was to be pronounced by the minister of the local parish church. They do not, however, give us an insight into how either the excommunicates themselves or their communities reacted to their sentencing. Consequently, while studies of the church courts are frequently centred around the statistics of excommunication, the excommunicates themselves have remained relatively voiceless. As Martin Jones concluded, 'exactly what the laity thought about the spiritual discipline cannot be discovered.'⁵¹

Historians of other marginalised individuals or groups have been less fazed by such archival silences. Scholars of slaves have been particularly creative in developing methods to uncover the experiences of subjects whose voices were similarly silenced by court bureaucracy. To name but one example, Heather Miyamo Kopelson showed how female slaves brought before the courts in early modern Bermuda 'made an intentional choice to remain silent', and asserted that 'silences in the record do not...have to mean a complete silence of voices through a majority narrative.'⁵² Much can be learned from such approaches, and it could be argued that those Restoration parishioners who chose not to attend their hearing in the ecclesiastical courts were, similar to the slaves Kopelson studied, also adopting a legal strategy of deliberate silence. In terms of available sources, however, the student of late seventeenth-century English excommunicates is more fortunate than the scholar of slaves. For, while the slaves researched by Kopelson were frequently illiterate, excommunicates could belong to all classes of society, were often literate, and some decided to write about their experiences. For instance, stuck within

⁵¹ Jones, 'The ecclesiastical courts', p. 101.

⁵² Heather Miyamo Kopelson, *Faithful bodies: performing religion and race in the puritan Atlantic* (London, 2014), pp. 245–8.

the hundreds of excommunication writs disseminated by the Exeter consistory courts, I discovered a solitary letter by one Francis Pollard who vividly described his experiences as an excommunicate.⁵³ As I visited more diocesan repositories, it became clear that this was not an isolated archival anomaly, and the voices of excommunicates began emerging from sources I had previously found voiceless. Nor were these voices confined to the official ecclesiastical records. On the contrary, excommunicates often reflected on how the censure affected them in both diaries and publications that thus far have received little scholarly attention.

Utilising sources found both within and outside the court records, this thesis will thus suggest that it is possible to discover what at least some excommunicates thought about being subject to spiritual discipline. It will also show that many excommunicates did not find their banishment from Church a trivial matter. Some felt trepidation about its spiritual implications, others feared its potential social and financial repercussions. Still more dreaded the possibility of being sent to prison upon a writ *De Excommunicato Capiendo*, which allowed the restored church courts to order their secular counterparts to imprison anyone standing excommunicated for above forty days. Crucially, this anxiety about the various pressures exerted by excommunication was not monopolised by conformists loyal to the Church of England. On the contrary, committed nonconformists from several dissenting groups expressed concern about the possible consequences of excommunication. As the records within the Library of the Society of Friends reveal, this was particularly true for the Restoration Quakers who, despite their committed opposition to ecclesiastical authority, developed several tactics to evade the Church's jurisdictional snares.

Exploring the lives of excommunicates has, furthermore, allowed this thesis to consider its originally intended theme of religious toleration. For, while excommunication principally targeted the excommunicates themselves, it was supposed to involve their communities as well. More specifically, parishioners were instructed to dissociate themselves from excommunicated individuals in order to quarantine their sinful behaviour and to push them further towards seeking absolution. Yet, such communal co-operation was rarely forthcoming. Conversely, the available evidence suggests that parishioners were regularly willing to overlook the accursed status of excommunicates in their everyday lives. While this does not invalidate the concern expressed by individual excommunicates, it does point to a relatively widespread toleration of those banished from Church that will be further considered in this thesis.

⁵³ Exeter, Devon Heritage Centre, CC. 183, unnumbered folio (Francis Pollard to Francis Cooke, registrar of Exeter Consistory Court, date unknown).

My immersion in the ecclesiastical court records has not merely engendered questions about the lives of those disciplined; it has also forced me to reconsider those responsible for the administration of discipline. While the Church's tribunals have often been associated with its ministry, the documents produced by the Restoration courts bear little evidence of clerical involvement. Conversely, these were records produced and controlled by a hierarchy of lay officials, ranging from the apparitors at the bottom to the diocesan chancellors at the top. For example, while citations and excommunication writs were sent in the bishop's name, they were signed by the chancellors, produced and sent by the registrars, and delivered by the apparitors. Their position was not merely executive, however. On the contrary, it became increasingly clear that it was these officials who were primarily responsible for both the formulation and delegation of ecclesiastical discipline in Restoration England. This impression was reinforced further by a guided tour of the only ecclesiastical court room surviving from the seventeenth century located in Chester Cathedral, which contained no permanent seat for any clergymen.

This lay appropriation of the Church's jurisdiction did not just offend dissenters; it was also a situation with which many Restoration clergymen were deeply uncomfortable. This was a common theme in the correspondence of several bishops, who frequently lamented that their diocesan chancellors had unduly expropriated the jurisdictional duties divinely bestowed on the episcopal office. Above all, however, clerical dissatisfaction with the administration of the restored church courts became apparent when studying the aforementioned excommunication and absolution writs. Either below their formulaic text, on their backs, or in a note attached to them, these occasionally contain messages from parish ministers annoyed at how the lay officials were distorting the spiritual sanctity of the Church's censures for either financial gain or bureaucratic necessity. In these instances, the frustration was not so much levelled at the chancellors as it was against the registrars and proctors. A strong sense of animosity and resentment between the Restoration Church's clergy and court officials, pointing to very different priorities with regard to the administration of ecclesiastical discipline, thus began emerging from sources that had previously been very difficult to penetrate.

The clergy's apparent dissatisfaction with the Church's bureaucrats and lawyers presents a conundrum that has been surprisingly neglected in studies exploring the nature of the Restoration settlement: why were the church courts restored along with their pre-Civil War personnel? The concern expressed by many Restoration ministers about the court officials was not new. In fact, since Henry VIII's decision to invite the civil lawyers into the ecclesiastical tribunals, all subsequent clerical efforts to reform the Church's jurisdiction included efforts either to limit or remove their influence altogether.

For instance, while the Edwardian *Reformatio Legum Ecclesiasticarum* from 1553 and the Laudian canons of 1640 sought to implement very different disciplinary ideals, both were equally critical of how the lay officials, and particularly the civil lawyers, had appropriated the Church's jurisdiction from its ministers. The reflections of several episcopalians in the 1640s and 1650s only further reinforce the point that clergymen from across the theological spectrum regretted how the Church's authority had been delegated to a small group of lawyers. This makes the return of the civil lawyers in the summer of 1661 all the more problematic. The Restoration arguably offered the ideal opportunity to rectify past mistakes, and attempts were made to tackle the church courts inherited from the Laudian Church. Most notably, the Worcester House Declaration, signed by both episcopalians and presbyterians, contained several clauses which would heavily reduce the authority of the civil lawyers. Yet, similar to previous attempts, this failed and, despite continuing opposition from conforming clergymen, the civilians were able to return unproblematically to their previous positions of authority. Why, then, did the Church's ministers not conduct a more forceful campaign to reclaim the ecclesiastical jurisdiction from these officials, once and for all? As we will see, the complicated answer to this question problematises our understanding of the nature of the Restoration Church, particularly with regard to whether it was a Laudian institution or not. Crucially, it also forces us to reconsider why the High Commission and *Ex Officio* oaths were abolished in the summer of 1661.

This thesis will thus argue that, from its Laudian proponents to its more moderate members, the Restoration clergy were overwhelmingly disappointed by the terms of their Church's jurisdictional revival. Rather than merely complaining about the lay mismanagement of the ecclesiastical courts, however, they were dedicated to propagating their own disciplinary ideal. Above all, this was disseminated in over fifty published visitation sermons, in which Restoration clergymen concertedly argued that the English Church should more proactively follow the disciplinary teachings of St. Paul. Not only did the apostle's successful implementation of Christianity in very difficult circumstances contextualise their own Church's struggles with the forces of dissent. Paul also provided a blueprint that emphasised the importance of clerical control over the Church's disciplinary concerns. The Pauline message thus simultaneously provided the ideal counter to both the threats of heterodoxy and the lay officials' encroachment of the Church's courts. Nor was their repeated elaboration on Paul's epistles empty rhetoric, as several clergymen sought to implement a notably more Pauline discipline on a local level, principally by targeting the prerogatives of the diocesan chancellors.

The clergy's concern about the influence wielded by the lay officials in the ecclesiastical courts not only raises important questions about the nature of the

Restoration Church; it also has significant implications for our understanding of governance in the early modern period. Within the ecclesiastical sphere, previous scholarship has predominantly focused on the churchwardens. For good reasons, these elected, temporary, and unsalaried officials have been identified as perhaps the most important linchpins for the successful administration of the Church's discipline. After all, the detection of spiritual and moral crimes depended to a considerable extent on the willingness of churchwardens to report them. Yet, the bureaucrats and lawyers employed by the church courts both before and after the Restoration were not amateurs, but trained, salaried, and permanent professionals. Nor were they necessarily concerned with neighbourly discretion and communal harmony. Rather, their salaries depended on following bureaucratic procedure and on the fees derived from prosecutions. As such, while their presence in local governance does not rule out the idea that early modern England was in some sense a 'monarchical' or 'unacknowledged republic', the conduct of the diocesan chancellors, lawyers, registrars, and apparitors is nevertheless difficult to square with such a depiction of the state and adds a layer of complexity to our understanding of office-holding, governance, and bureaucracy that has not previously been fully acknowledged.⁵⁴

In her study of the early modern Dutch consistory courts, Judith Pollmann asserted that 'other than to count...we should perhaps reorientate our attention to the other merits of what fortunately remain marvellous sources for the lives of early modern Calvinists and the religious culture of post-Reformation Europe.'⁵⁵ This thesis will approach the restored ecclesiastical courts, and their difficult yet equally marvellous records, from a similar direction. It will not follow the example of the more traditional, quantitative assessment found in much previous scholarship; nor will it focus on a particular diocesan tribunal. Rather, it will suggest that court records, together with a range of other sources (such as diaries, sermons, and publications) can be utilised rewardingly to ask different questions about the significance of these tribunals in Restoration society.

Chapter 1 will re-examine the re-establishment of the church courts in the summer of 1661. It will demonstrate that the Restoration witnessed the revival of a century old debate centred around the legitimacy of involving lay officials in the Church's jurisdiction. It will also suggest that the return of the civil lawyers was principally the result of their

⁵⁴ Patrick Collinson, 'The monarchical republic of Queen Elizabeth I', *Bulletin of the John Rylands University Library of Manchester*, vol. 69 (1987), pp. 394–424; Mark Goldie, 'The unacknowledged republic: office-holding in early modern England' in Tim Harris (ed.), *The politics of the excluded, 1500–1800* (Basingstoke, 2001), pp. 153–94.

⁵⁵ Judith Pollmann, 'Off the record: problems in the quantification of Calvinist church discipline', *The Sixteenth Century Journal*, vol. 33 (2002), p. 438.

own significant lobbying against near unanimous clerical opposition. In chapter 2, we will consider in more detail the role played by the chancellors and lesser lay officials in the Church's courts. It will be demonstrated that their significant influence continued to offend clergymen from all ranks. I will also propose that lay control of the Church's bureaucracy raises important questions about the nature of governance in seventeenth-century England. Chapter 3 will proceed to investigate the visitation sermons published in Restoration England and the attempts of clergymen to challenge their local court officials, and suggest that, in disciplinary terms, the Restoration Church could profitably be understood as Pauline in nature. The latter half of this thesis will shift the focus from those disciplining to those disciplined. Chapter 4 will consider how individuals and communities in Restoration England responded to excommunication and question the common scholarly assertion that the chief punishment of the church courts had lost its sting. In so doing, it will not deny that some individuals were seemingly impervious to the pressures of spiritual censures. The aim is rather to explore the experiences of excommunicates on their own terms and not as aberrations from a norm. This theme will be further explored in Chapter 5, which provides a case study of how the Restoration Quakers responded to ecclesiastical censuring. Once more, it will become apparent that the restored church courts were far from paper tigers. Chapter 5 is not, however, a mere elaboration of themes discussed in the previous chapter. For, as we will see, the theology and organisation of the Quakers ensured that they responded in a very particular manner to the pressures of excommunication. Collectively, these chapters will thus seek to escape the efficiency-centred approach that has guided much previous research on the English church courts and attempt to integrate these tribunals into broader historiographical debates.

Chapter One: The restoration of the church courts: history, politics and ecclesiastical law

The Restoration of the monarchy and Church in the spring of 1660 reignited the century-old debate concerning England's ecclesiastical jurisdiction. Would the old system that had been dismantled by the puritan Long Parliament in the 1640s re-appear, or would the Church's laws finally be comprehensively reformed and a new set of spiritual tribunals be established? Following the turmoil of the mid-century, moderates demonstrated a willingness to reach a compromise that would avoid both the persecution of the Laudian Church in the 1630s and the chaos experienced during the Cromwellian Protectorate. Not everyone shared this vision, however. At one extreme, the radical groups that had emerged during the Interregnum pressed for an unprecedented liberty of conscience. At the other, the country's civil lawyers, the professionals responsible for the administration of the ecclesiastical courts prior to their dissolution, lobbied for a full restoration of the Church's antebellum jurisdiction. Yet, when Parliament revived the church courts on 27 August 1661, with the act 'concerning commissioners for ecclesiastical causes', none of these agendas were implemented. It is true that the decision to discontinue the infamous High Commission and inquisitorial *Ex Officio* oaths, as well as the controversial canons of 1640, removed the most coercive aspects of the Church's old jurisdiction.¹ But, this was not tantamount to genuine reform: the rejection of the 1640 canons merely signalled the return of the unsatisfactory canons of 1603, and no broader structural changes were made. Perhaps most importantly, all those lay officials who had previously been in charge of the church courts were invited back to resume the correction of spiritual misdemeanours.

Neither reforming nor fully restoring the old courts, this outcome pleased no one. Why, then, were the church courts resurrected in this particular form? Despite the rich scholarship on the Restoration, this question remains largely unanswered. Most influentially, Anne Whiteman presented their return as a 'by-product of the basic conservatism of the re-establishment of the Church.'² But, if so, why were the High Commission and *Ex Officio* oaths abolished? Answering such questions is difficult because the structure of the new courts did not correspond with any particular group or individual's suggestions. The enigma is further problematised by the rather patchy

¹ *13 Car. II, c.12: An Act for explanation of a clause contained in an Act of Parliament made in the seventeenth year of the late King Charles...concerning commissioners for causes ecclesiastical, 1661*, in J.P. Kenyon (ed.) *The Stuart Constitution, 1603–1688: Documents and Commentary*, 2nd ed., (Cambridge, 1986), pp. 350–1.

² Anne Whiteman, 'The re-establishment of the Church of England, 1660–1663', *Transactions of the Royal Historical Society*, fifth series, vol. 5, (1955), p. 117.

evidence surviving from the discussions taking place inside and outside of Parliament in the lead up to their revival.

Nevertheless, this chapter proposes to reopen the investigation into the restoration of the church courts. In so doing, it will uncover important clues about the actual process of their reopening that have hitherto gone unnoticed. This rather narrow chronological perspective will, however, be complemented by a broader one, which takes into account both the complicated jurisdictional legacy left by the Reformation as well as what Restoration polemicists thought about these courts once they had re-entered English dioceses. Only then can we start to question the assumptions of more recent historians about the reasons for their somewhat peculiar revival.

This chapter will consequently not be limited to exploring the practicalities of how the church courts were restored. It will also aim to further our understanding of the intellectual, historical and legal arguments that were used by contemporaries either to defend or criticise the Church's jurisdictional authority. John Pocock, Jacqueline Rose and others have tended to focus on how intellectuals conceptualised the Church's relationship with other spheres of authority.³ For early modern polemicists there was, however, a difference between considering holistically the Church's legal status vis-à-vis the Crown, Parliament, and the common law on the one hand, and analysing how the Church administered its own law on the other. That does not mean that arguments involving the ancient constitution, or the royal supremacy did not feature in debates about the church courts. Yet, the validity of these tribunals also hinged on a set of questions more specific to the particular management of the courts, and these have received far less attention from historians. How, for instance, could the practice of delegating the bulk of England's spiritual discipline to secular lawyers and bureaucrats be justified? Why did the Church rely on Roman civil law, and was that law really legitimate following the break with Rome? Far from peripheral, these issues became highly contested as contemporaries realised they had the potential to undermine the entire administration of the Church's laws. Nor were their answers always predictable. Indeed, conforming clergymen in particular responded with a surprising ambivalence towards their own courts and the lay officials who ran them and, as will be argued in the latter part of this chapter, this has important ramifications for our understanding of the Restoration Church.

³ John Pocock, *The ancient constitution and feudal law: a study of English historical thought in the seventeenth century*, 2nd ed., (Cambridge, 1987); Jacqueline Rose, *Godly Kingship in Restoration England: the politics of the royal supremacy, 1660–1688* (Cambridge, 2011). See also John Spurr, *The Restoration Church of England, 1646–1689* (London, 1991); Daniel Eppley, *Defending royal supremacy and discerning God's will in Tudor England* (Ashgate, 2007); Richard H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990).

(i) *A Jurisdictional Limbo*

In order to understand the controversies that surrounded the revival of the English ecclesiastical courts in the summer of 1661, we must first begin with a brief discussion of the complicated jurisdictional legacy left by Henry VIII's break with Rome. In a series of legislative measures between 1532 and 1534, the Church's legal position was fundamentally restructured. The English clergy were stripped of their ability to enact new laws without a licence from the monarch, all appeals to Rome were outlawed and Henry replaced the Pope as the supreme head of the English Church. Because the Church's law had for centuries been determined by papal canons, it was acknowledged that such a sweeping reform would require a substantial revision of the ecclesiastical jurisdiction. To this end, the Act for the Submission of the Clergy (1534) decreed that the 'King's highness shall have power and authority to nominate and assign at his pleasure...32 persons of his subjects, whereof sixteen be of the clergy and sixteen to be of the temporality' whose task it would be to align English canon law with the recently proclaimed royal supremacy. Until such a meeting, the existing canons 'which be not contrary nor repugnant to the laws, statutes, and customs of this realm nor damage of hurt the King's prerogative royal' were allowed to continue.⁴ Though seemingly innocuous, this addition would, as we shall see, have a profound impact on the future of the Church's laws.

The following two years saw some steps towards such jurisdictional reform. In October 1535, the study of canon law was abolished at both universities and in early 1536 four canon lawyers finished their draft of what were to become known as the Henrician Canons.⁵ Yet, while the symbolic impact of this legislation was undeniable, the proposed jurisdictional reforms were not followed through. Although they were more of a digest than a reform of existing medieval canon and civil law, the Henrician Canons were never approved by Parliament. More importantly, as Henry's rule took a conservative turn in the late 1530s with the return of much traditional Catholic doctrine, the promised 32 commissioners were never summoned. The study and practice of medieval canon law, furthermore, did not disappear following its abolition in Oxford and Cambridge. Rather, it was integrated into the field of civil law, after its practitioners, the civil lawyers (also known as the civilians), were formally invited by a Parliamentary

⁴ *25 Hen. VIII, c. 19, An act for the submission of the clergy to the King's Majesty*, in Geoffrey Elton (ed.), *The Tudor Constitution: documents and commentary* (Cambridge, 1960), p. 348.

⁵ See Gerald Bray (ed.), *Tudor Church Reform: the Henrician Canons of 1535 and the "Reformatio Legum Ecclesiasticarum"* (Rochester, NY, 2008).

statute in 1546 to replace the canonists as judges, advocates and administrators of the ecclesiastical jurisdiction.

While English Protestants applauded the royal supremacy, there was concern about the cosmetic nature of these legal reforms. MP John Hales openly denounced what he and others perceived as the mere veiling of the medieval canons under the rubric of civil law; both were of Roman origin and, at least from the outside, there appeared to be few substantial differences between the two.⁶ A more comprehensive attempt to revise the Church's law would, however, have to wait until the reign of Henry's son, Edward VI. Guided by advisors eager to push the Church in a more reformed direction, this 'young Josiah' fulfilled his father's intention by inviting 32 commissioners, 16 lay and 16 clerical, to begin the process of jurisdictional reform in November 1552.⁷ Among them were the Archbishop of Canterbury, Thomas Cranmer, as well as the renowned continental reformers, John à Lasco and Peter Martyr Vermigli. The latter described the task at hand in a letter to the Swiss reformer, Heinrich Bullinger, as follows:

the King's majesty has ordained, that as the gospel is received in his kingdom, and the bishop of Rome is driven out, the Church of England shall be no longer ruled by pontifical decrees...for the administration of these laws has for the most part prevailed up to this time in the ecclesiastical court, under the tacit authority of the Pope.⁸

The resulting document, entitled *Reformatio Legum Ecclesiasticarum*, was presented to Parliament in April 1553.

Exactly what constituted a Protestant version of ecclesiastical law was a matter of some dispute amongst both English and continental reformers. Yet, as Torrance Kirby has shown, the key to understanding the *Reformatio* lay in the writings of the exiled Strasbourg theologian, Martin Bucer. His *De Regno Christi*, published in 1550, was heavily inspired by the Swiss theologian, Thomas Erastus, and his defence of royal supremacy over the ecclesiastical sphere. Bucer's writings also provided tangible solutions for the implementation of a more reformed discipline at the parish level. More specifically, in order to counter what he perceived as the clericalist pretences of the English episcopacy, Bucer envisioned a fundamental restructuring of the English

⁶ Christopher Brooks, *Law, politics, and society in early modern England* (Cambridge, 2008), p. 98.

⁷ Catherine Davies, *A Religion of the Word: the defence of the Reformation in the reign of Edward VI* (Manchester, 2002), pp. 8–10.

⁸ Cited in Torrance Kirby, "Lay Supremacy: Reform of the canon law from Henry VIII to Elizabeth I (1529–1571)", *Reformation & Renaissance Review*, vol. 8 (2006), p. 358.

ecclesiastical hierarchy where 'Bishops should decide nothing without the consultation of other presbyters' - a category in which he included both local pastors and lay elders.⁹ In Bucer's vision, these presbyters would manage the church's discipline and transform it from a priestly affair into a process involving entire communities. Public excommunications and penances, he argued, would not only remove the sacerdotal symbolism of medieval sanctions but, more importantly, also serve to reify the boundaries of the godly community. Such reforms were no trivial matter to Bucer, who, along with preaching and the appropriate administration of the sacraments, included spiritual discipline as one of the three lynchpins of the visible church.¹⁰

While Regius Professor of Divinity in Cambridge from 1550 to his death the year after, Bucer became a close associate of Cranmer and Vermigli, and the *Reformatio* relied heavily on his teachings on discipline. It echoed his Erastian insistence on monarchical control of the Church. Without calling for the end of England's medieval ecclesiastical hierarchy, it also advocated a more local administration of discipline by a combination of pastors and elders. It is worth noting that this suggestion would have jeopardised the careers of the recently invited civil lawyers, whose legal training had no place in this new vision of spiritual discipline. As such, the *Reformatio* represented a serious attempt to steer the Church's jurisdiction in a more reformed direction. Yet, at the instigation of the evangelical John Dudley, Duke of Northumberland, who objected to its retention of exclusive episcopal prerogatives, the *Reformatio* was not passed in Parliament.¹¹ The death of Edward two months later suspended the project as Mary I re-forged England's ties with Rome.

Hopes for further jurisdictional reformation were rekindled with the accession of Elizabeth I. The Act of Supremacy of 1559 not only revived but extended monarchical control of the Church by creating a new commission explicitly under the royal prerogative 'to inquire touching all heretical opinions...and hear and determine the same.'¹² Collectively known as the High Commission, these tribunals were bestowed with certain unique powers - such as corporal punishment, imprisonment and the ability to transfer cases between dioceses - which enabled it to function as a kind of supreme ecclesiastical tribunal. In 1571, attempts were made to revive the Bucerian *Reformatio* project, as John Foxe published the document in its entirety and Archbishop Matthew Parker, a student

⁹ Martin Bucer, *De Regno Christi*, in William Pauck (ed.), *Melanchthon and Bucer* (Philadelphia, 1969), p. 284.

¹⁰ For a more comprehensive overview of Bucer's suggestions, see Kirby, "Lay Supremacy", pp. 350-68.

¹¹ Gerald Bray, 'The strange afterlife of the *Reformatio Legum Ecclesiasticarum*' in Norman Doe, Mark Hill & Robert Ombres (eds.), *English Canon Law: essays in honour of Bishop Eric Kemp* (Cardiff, 1998), p. 37.

¹² *1 Eliz. 1, c. 1, Act of Supremacy, 1558*, in Elton (ed.), *Tudor Constitution*, p. 227.

of Bucer's, lobbied the Queen to start the process.¹³ But by then the prospect of jurisdictional reform had become strongly associated with the radical type of protestant puritanism which many bishops, MPs and the Queen herself had come to view as a threat to national stability. The advice of Foxe and Parker was consequently ignored, marking the final nail in the coffin of the *Reformatio* project and ensuring that the ecclesiastical law would continue under Elizabeth as her father had left it - under royal authority but essentially unreformed.

Peter Lake has recently warned against drawing too clear a distinction between puritans espousing a presbyterian vision of church discipline and the conformists rejecting such proposals. The efforts of Foxe and others, he writes, 'represented not a repudiation of the national Church, but rather an attempt to take it over for their own urgently evangelical and disciplinary purposes.' Moreover, far from everyone within the central government opposed such puritan suggestions; William Cecil, Francis Walsingham, and Sir Henry Mildmay, to name just a few, were all closely connected to leading presbyterian divines. Therefore, Lake continues, presbyterianism 'has at least as good a claim as any of the positions canvassed by the conformist opponents of the discipline, not only to realise the full implications and potentials of the English Protestant tradition, but also to deliver the political ends and effects long desired by central elements in the Elizabethan regime.'¹⁴ Nevertheless, the failure to bring about further jurisdictional reform did catalyse a growing disillusionment, especially amongst the more radical puritans, with the regime's willingness to transform 'the Popishe Hierarchie and counterfaite manner of gouerning the churche', as Walter Travers put it, and it forced them to seriously consider whether or not the English Church could legitimately claim to belong to the reformed churches.¹⁵ And though Foxe and other moderate puritans contained their disappointment, that was not true of the more radical sort, like Travers and Thomas Cartwright, who grew increasingly vocal in their criticism of the ecclesiastical hierarchy in the Admonition Controversy of the 1570s.

It was in response to these puritan challenges that the Church's leadership began defining its own conceptions of a reformed discipline. In the words of Anthony Milton, 'puritanism functioned as a "defining other" that could help to formulate a positive

¹³ For more on these attempts, see Mark E. Vanderschaaf, 'Archbishop Parker's efforts towards a Bucerian discipline in the Church of England', *The Sixteenth Century Journal*, vol. 8 (1977), pp. 85–103.

¹⁴ Peter Lake, "'Puritans" and "Anglicans" in the history of the post-Reformation English Church', in Anthony Milton (ed.), *The Oxford history of Anglicanism, volume 1: Reformation and identity, c. 1520–1662* (Oxford, 2017), pp. 358–61.

¹⁵ Walter Travers, *A full and plaine declaration of ecclesiasticall discipline owt off the word off God and off the declininge off the churche off England* (Heidelberg, 1574), p. 5.

conformist vision.¹⁶ In essence, this defence, most famously delineated by John Whitgift and Richard Bancroft (consecutively Archbishops of Canterbury from 1584 to 1610), consisted of asserting that the fulfilment of the royal supremacy had sufficiently reformed the Church's jurisdiction. The Pope had been ousted and the Church was bound to follow its legitimate ruler, especially if he or she argued for the retention of the episcopal order, 'God's own institution'. Remove these pillars of authority, Whitgift warned, and 'let every minister be king and pope in his own parish, and exempted from all the controllment of bishop, magistrate, and prince, and you shall have as many kinds of religion as there is parishes, as many sects as ministers, and a church miserably torn in pieces with mutability and diversity of opinions.' From this perspective, the presbyterian 'disturbers of the peace' were merely seeking to cast England into a chaos and 'God's gospel will therein be as much defaced with factions, schisms, and heresies, as it ever was in the Pope's time with superstition and idolatry.'¹⁷ In this way, conformists turned the essentially unreformed nature of the ecclesiastical jurisdiction into a powerful emblem signifying their Church's righteous struggle against both papal and puritan extremes.

This association between jurisdictional reform and puritan subversion of monarchical authority explains the nature of the canons of 1603. Finalised in the Convocation called by the new king, James I, and under the leadership of Bancroft, then Bishop of London, this new attempt to consolidate the Church's jurisdiction was remarkable for its explicit demand for subscription from both laity and clergy to the royal supremacy. Beyond this, however, the 114 separate clauses of the new canons stopped far short of the *Reformatio*. In the words of Kirby, 'the canons of 1603 essentially comprised a hodge-podge consisting of various Henrician, Edwardian and Elizabethan statutes.'¹⁸ For James, eager to strike a chord between the growing religious divisions of his adopted country, this confirmation of the jurisdictional status-quo was, however, expedient and preferable to steering ecclesiastical politics in a more reformed direction and the canons of 1603 were officially sanctioned as providing the new legal basis for the early Stuart Church.

¹⁶ Anthony Milton, 'Introduction', in *Oxford history of Anglicanism*, p. 8.

¹⁷ John Whitgift, *Defense of the Answer to the Admonition against the Replie of T.C* (London, 1574), cited in John Ayre (ed), *The works of John Whitgift* (Cambridge, 1853), vol. 3, p. 9. See also Daniel Eppley, 'Defender of the peace: John Whitgift's proactive defense of the polity of the Church of England in the Admonition Controversy', *Anglican and Episcopal History*, vol. 68 (1999), pp. 312–35.

¹⁸ Kirby, 'Lay Supremacy', p. 365. See also Richard Helmholz, 'The canons of 1603: the contemporary understanding', in Norman Doe, Mark Hill & Robert Ombres (eds.), *English Canon Law*, pp. 23–35. Helmholz also highlights the medieval influences on these canons, showing, for instance, how 'the whole law of defamation took its origins from a provincial constitution of 1222', p. 31.

The Church's jurisdiction had thus survived the upheavals of the Reformation almost entirely unscathed. No doubt the proclamation of the royal supremacy over the Church was a decisive shift, as was the abolition of appeals to Rome, but very little had affected the ecclesiastical hierarchy or the substance of medieval canon law. The Reformation did, however, bring about one change which was to have a profound impact on the future of the country's ecclesiastical courts that has not been sufficiently emphasised by previous historians: the replacement of the canon lawyers, or canonists, who had staffed the Church's courts prior to the Reformation with civilians. Brian Levack's study has demonstrated how quickly these doctors of the Roman civil law, who had previously been limited to the university and admiralty courts, took 'advantage of the numerous professional opportunities open to them within the Church.'¹⁹ Indeed, by the beginning of the seventeenth century, each diocesan chancellorship was filled by a civilian and as advocates they had come to monopolise arbitration in the ecclesiastical courts as well as the High Commission. This was reflected in the canons of 1603, which required that judges and advocates had to be 'learned in the Civil and Ecclesiastical Laws.'²⁰ Unlike their canonist predecessors, these civilians very rarely had clerical training. Thus, in little over a century, the Church had come to place the administration of its laws in the hands of a small group of lay professionals. The civilians in turn came to rely on the Church for their career prospects, and forged a strong professional identity as 'staunch champions of the liberties, doctrines, and laws of the Anglican church.' This became particularly evident during the anti-puritan campaigns of Archbishops Whitgift and William Laud, during which civilians such as Richard Cosin gained notoriety for their willingness to enforce 'far too rigid standards of religious persecution.'²¹

When scholars consider the secularising tendencies or lay influences within the early modern English Church, they tend to discuss the desire of puritans to involve lay elders, or the Church's legal subordination to either the royal supremacy or the common law.²² However, the oft-neglected decision to rely on civilians to run the church courts represented perhaps the most blatant and literal act of secularisation of the post-Reformation Church. And contemporaries realised it. As we shall see, puritan critics

¹⁹ Brian Levack, *The civil lawyers in England, 1603 – 1641: a political study* (Oxford, 1973), p. 162.

²⁰ Canon CXXVII cited from <http://www.anglican.net/doctrines/1604-canon-law/> (visited 18/08/17).

²¹ Levack, *The civil lawyers*, p. 176.

²² See, for instance, Edward Norman, *Secularisation: sacred values in a godless world* (London, 2002), p. 97; John Sommerville, *The secularization of early modern England: from religious culture to religious faith* (Oxford, 1992), pp. 111–29. For an overview of the scholarly approaches to the secularisation debate, see Alexandra Walsham, 'The Reformation and the "disenchantment of the world" reassessed', *The Historical Journal*, vol. 51(2008), pp. 497–528.

would develop an especially bitter resentment towards their civilian oppressors. But they were not the only ones to protest: the early Stuart Church also became increasingly weary of, and concerned about, the growing civilian control over its jurisdiction. Not only did their liberal use of spiritual censures, unregulated fees, and protraction of suits become increasingly difficult to defend from criticism; there was also a growing sense that, in their capacity as judges, lawyers, and administrators, the civilians had managed to appropriate the Church's discipline from its clergymen. This became particularly palpable during the 1630s, when Laud and others sought to reinvigorate the Church and invest it with unprecedented authority and prestige. Thus, when Charles I reconvened Convocation in May 1640, to consider once more the Church's canons, both houses were reported to 'be as fierce against the chancellors and registrars as the Lower House of Parliament was lately against the jurisdiction ecclesiastical.'²³ The outcome was not, however, a revival of the *Reformatio* programme, which had aimed to devolve power to local pastors and elders. Rather, the Laudian canons sought to limit civilian influence to empower the episcopacy. This can be seen in canon 13, which ordered that only a bishop or his clerical deputy would be allowed to pronounce excommunications, and canon 14, which forbade chancellors from commuting penances for a fee without orders from a bishop. Having previously been appointed for life, the canons of 1640 also decreed that the licence of a chancellor could be revoked at the inauguration of a new bishop.²⁴ As the apologist of the Laudian Church, Peter Heylyn, would later comment, this blatant attempt to place 'the ecclesiastical jurisdiction into the bishops' hands' constituted a 'visible discouragement' to the entire 'civilian profession.'²⁵

Puritan MPs and clergymen voiced no objections to such a rejection of civilian authority. They did, however, fundamentally oppose the Laudian Church's attempt to extract allegiance with the notorious 'etc. oath', and this ensured Parliament's rejection of the new canons.²⁶ The next two decades witnessed the fall of the episcopal Church and an intense debate about how to replace the canons with a new, more godly system. In the Westminster Assembly, meeting from 1643 to 1653, English and Scottish presbyterians, advocating reforms along the *Reformatio* programme clashed with a smaller number of more radical Erastians who argued for the state's exclusive right to

²³ Cited in Julian Davies, *The Caroline captivity of the Church: Charles I and the remoulding of Anglicanism* (Oxford, 1992), p. 267.

²⁴ Church of England, *Constitutions and canons ecclesiasticall* (London, 1640), pp. 1–27.

²⁵ Peter Heylyn, *Cyprianus Anglicus* (London, 1668), pp. 442–3.

²⁶ Davies, *The Caroline captivity of the Church*, pp. 275–85.

correct beliefs.²⁷ The government initially sided with the former, and began the creation of a national network of presbyterian tribunals, or classes, in the latter half of the 1640s. These were constituted along Bucerian lines, whereby the administration of discipline was shared by an assembly of parish ministers and lay elders meeting monthly. As Bernard Capp has showed, a few of these classes became relatively successful, most notably the Manchester classis, which continued to pursue an ambitious programme of moral reform until the late 1650s.²⁸ Yet, most presbyterian tribunals failed to entrench themselves at a local level. Richard Clark has, for instance, demonstrated that the Wirksworth classis in Derbyshire never managed to acquire the required ratio of two lay elders for every minister.²⁹ In London, the situation was similar and in early 1652, the London Assembly feared ‘the utter dissolution of the whole frame of presbyterial government.’³⁰ The government’s lacklustre support was partly to blame for this situation, but according to both Clark and Capp, the principal reason for the stillborn nature of many classes was the significant resistance they encountered among parishioners who objected to the novelty of having lay elders chastise their spiritual and moral shortcomings.³¹ As the minister of St. Peter’s, Paul’s Wharf, reported, his parishioners ‘cannot be induced to choose elders.’³² The presbyterian classes had thus failed to provide a plausible alternative to the old church courts, and by the mid-1650s, the system had all but collapsed. The latter half of the decade instead saw the Protectorate increasingly embrace ideas developed by the emerging radical groups, such as the Quakers and Baptists, who proposed unprecedented toleration and the right of separate groups to regulate themselves independently of a national structure.³³

The lack of discipline during the 1650s was not popular amongst the less radical majority. In the words of John Morrill, ‘it was the good old days, not the Good Old Cause which gained ground’, particularly in the latter part of the decade.³⁴ It was in this climate that the first rumours to restore the old regime and, as we shall see, its ecclesiastical courts began circulating, though the discussions did not begin in earnest until the Restoration of both monarchy and Church was a fact.

²⁷ For a more extensive discussion of these debates, see Chad van Dixhoorn, ‘The Westminster Assembly and the Reformation of the 1640s’, in Milton (ed.), *The Oxford history of Anglicanism*, pp. 430–43.

²⁸ Bernard Capp, *England’s culture wars: puritan reformation and its enemies in the Interregnum, 1649–1660* (Oxford, 2012), p. 52.

²⁹ Richard Clark, ‘Why was the re-establishment of the Church of England in 1662 possible? Derbyshire: a provincial perspective’, *Midland History*, vol. 8 (1983), p. 88.

³⁰ Cited in Capp, *England’s culture wars*, p. 51.

³¹ Clark, ‘Re-Establishment of the Church of England’, p. 88, & Capp, *England’s culture wars*, p. 51.

³² Cited in Capp, *England’s culture wars*, p. 51.

³³ *Ibid.*, pp. 57–8.

³⁴ John Morrill (ed.), *Revolution and Restoration: England in the 1650s* (London, 1992), p. 13.

(ii) Critics

The first year of the Restoration provided good conditions for ecclesiastical reform. Following the backlash against the toleration proposed in the Declaration of Breda, the new king, Charles II, aligned himself with the vision for a broad, accommodating ecclesiastical settlement advocated by moderates from both the presbyterian and episcopalian folds. The priority, as Chancellor Edward Hyde, Earl of Clarendon, expressed it in his opening speech to the Convention Parliament on 8 May 1660, was healing the wounds of the past two decades. Undoubtedly, this would require the re-establishment of law and order: 'let there be some law', Hyde said, 'that may be the rule to that indulgence, that, under the pretence of liberty of conscience, men may not be absolved from all obligations of law and conscience.' But, recognising the fragility of the new regime, Hyde continued by pleading for 'a temporary provision of a lighter yoke, till, by living in wholesome air...they recover enough strength to bear, and discretion enough to discern, the benefit and ease of those laws which they disliked.'³⁵ The Restoration Church, in other words, would have to persuade its many critics of its wholesomeness before resuming its full capacity to prosecute.

Indicative of this aspiration for reform in the name of religious accommodation was the pamphlet *Reasons shewing the necessity for Reformation*, written by the renowned fast sermon preacher and moderate reformer, Cornelius Burges, in the summer of 1660. An open critic of the Laudian Church and active member of the presbyterian delegation at the Westminster Assembly, Burges' proposals rested heavily on the *Reformatio* programme as well as the model for a reduced, or primitive, episcopacy famously developed by James Ussher, Archbishop of Armagh, in the 1640s. His central concern, however, was to provide a very detailed historical investigation into the ancient, original form of English Christianity.

Burges' discussion of the ecclesiastical courts was accordingly focused on discovering when, and by whom, such a tribunal had first been established in England. Unfortunately, the records on this matter were murky: exactly 'how long Bishops and others under them, have had Ecclesiastical Consistories to exercise ecclesiastical jurisdiction, to us is not certain.' However, he had learned from the historical writings of Edward Coke, the Elizabethan and Jacobean champion of the common law, that the creation of a separate spiritual law dated back to the Norman Conquest. More specifically, it had its origin in William I's 'charter to the dean and chapter of Lincoln' that

³⁵ Cited in W. Cobbett & J. Wright (eds.), *The Parliamentary history of England, from the earliest period to 1803*, 36 vols. (London, 1808), IV, pp. 191–3.

prohibited ‘sheriffs in their *Tourne* courts (wherein, before-time, all ecclesiastical matters were heard and determined) to intermeddle any more with ecclesiastical causes, but to leave it to the Bishops.’³⁶ This was a very important point because it proved that the spiritual arm in England had its origin in the secular courts, and that it owed its separate existence to a royal decree. Burges then proceeded to investigate who originally had staffed these tribunals. Despite some claims of ‘the late episcopal party’, the jurisdictional power of the bishops had been limited from the start. Indeed, ‘in the primitive ages of the Church, there was no ecclesiastical jurisdiction exercised but by the bishops, and their consistory of presbytery together.’³⁷ The fact that this had not been the case for several centuries, Burges blamed on the ‘violence of Bishops’, who, since the conquest had continuously subverted royal authority and ‘have ever sharply persecuted all that persecuted popery.’ To curb this once and for all, Burges pleaded for a revival of the *Reformatio* discussions ‘to produce a review of all these things, after the Parliament of [Edward VI] and to call some of the most moderate and able persons of the different parties...that all ordinances of Christ may be restored to their pristine purity.’³⁸

Burges’ pamphlet was thus an explicit call for political action. His deliberate appeal to English history and Christian primitivity was not, however, novel. As Justin Champion has demonstrated, early modern writers frequently turned to the past to further their agenda for contemporary reforms. In an age of religious divisions, where polemicists on all sides charged their opponents with “innovation” and “corruption”, ‘the past, and the presentation of the past’, became both ‘a crucible of ideological dispute’ and ‘a means of creating assurances in an audience.’³⁹ In many ways, the goal of early modern ecclesiastical politics was to rediscover and restore that which had originally been unblemished. This was especially the case in the debates surrounding the English Church, an institution which since the Reformation had struggled to assert its continuity with its unpolluted, primitive foundation by excoriating what were perceived as papal innovations. It was, therefore, the foremost task of Protestant historians such as Burges, like John Foxe a century before him, to trace the continuous deterioration of the Church up to their present time in order to prove that the project of the Reformation was one of restoration rather than innovation. Only then would the true church reveal itself to

³⁶ Cornelius Burges, *Reasons shewing the necessity of Reformation* (London, 1660), p.48. Burges is here referring to a series of edicts passed by William I between 1072 and 1076 which, in the words of Collin Morris, are ‘widely regarded as the foundation for the church courts in this country.’ See Collin Morris, ‘William I and the church courts’, *The English Historical Review*, vol. 82 (1964), p. 449.

³⁷ Burges, *Reasons*, p. 47.

³⁸ *Ibid.*, pp. ii–iii.

³⁹ Justin Champion, *The pillars of priestcraft shaken: the Church of England and its enemies, 1660–1730* (Cambridge, 1992), p. 34.

believers. History was thereby, as John Spurr has written, ‘a matter of salvation before it was a question of scholarship.’⁴⁰ The crux, of course, was that there existed several different interpretations of what exactly constituted this ‘primitive church’ and what could be proved to be a later perversion.

Nevertheless, there was relative unity amongst moderate presbyterians during the early stages of the Restoration and, in October 1660, Charles invited them, along with a group of moderate episcopalians, to discuss the new ecclesiastical settlement at Worcester House in London. The stated purpose of the conference was to reduce the new Church to ‘things necessary’, and although Burges himself did not attend, his friends and colleagues, most notably the Kidderminster minister and fellow attendee of the Westminster Assembly, Richard Baxter, put forward suggestions very similar to those Burges had published earlier in the year. In writing about the meeting in his posthumously published autobiography, *Reliquiae Baxterianae*, Baxter remembered how the presbyterian delegation had come prepared to ensure that the old ecclesiastical courts, that had ‘set upon a way of uncharitable censuring’ of ‘honest Christians’, would not return.⁴¹ On this issue, the episcopalians in attendance agreed, and the final declaration, made in Charles II’s name, promised important changes. For instance, it declared that ‘no Bishop shall ordain, or exercise any part of Jurisdiction which appertains to the censures of the Church, without the advice of the Presbyters.’ It continued by attempting to placate the long standing puritan grievance against the civil lawyers by promising to limit, though not fully terminate, their influence over the Church’s laws; it was Charles’ ‘will and pleasure...that no Chancellor, Commissary, or Official, shall decree any sentence of Excommunication of Absolution, or be Judges in those things wherein any of the ministry are concerned.’⁴² First raised in earnest at the *Reformatio* discussions more than a century earlier, it looked as if spiritual censuring would become the domain of clergymen and their elders.

Puritan objections to the civil lawyers had reached their apogee in 1640, with several anonymous pamphlets satirising their corrupt practices and celebrating their imminent demise. *The Sisters of Scabbards Holiday* condemned ‘all the civil lawyers, the judges, doctors, advocates’ that ‘shall now ready pay for their venery, if they have it, they shall be no more.’⁴³ Another spoke on behalf of the college of civil lawyers, the Doctors’

⁴⁰ John Spurr, ‘“A Special Kindness for Dead Bishops?”: the Church, history and testimony in seventeenth-century Protestantism’, in Paulina Kewes (ed.), *The uses of history in early modern England* (San Marino, CA, 2006), p. 310.

⁴¹ Richard Baxter, *Reliquiae Baxterianae* (London, 1696), p. 231.

⁴² *Worcester House Declaration*, in Andrew Browning (ed.), *English historical documents, vol. 8: 1660–1714* (London, 1953), pp. 365–70.

⁴³ Anon., *Sisters of Scabbards holiday* (London, 1641), p. 1.

Commons, located near St. Paul's Cathedral, and related how the 'Doctors Commons...being very aged' bequeathed its soul 'to the gun-powder makers, to be made into gun-powder, which shall be employed only for the discharge of the new Canons.'⁴⁴ Part of this aversion was due to the civilian prosecution of puritans in the church courts, but their objections also had an intellectual aspect.⁴⁵ This was most thoroughly developed by the less sarcastic Baxter, who spent much energy both before and after the Restoration responding to the civilian objection to presbyterians, which asked 'why blame you Lay-Chancellors...when you set up Lay-Elders?' The answer, said Baxter, was simple: while civilians had secular training 'Church-Elders are not accounted Lay-men, but Sacred Officers.' Elders 'meddle but with one parish, and that but as Assistants to the Pastors, whereas the Chancellors meddle with many hundred parishes, and that as the sole Judge in the Court (when the Bishop is not there, which is usually the case).'⁴⁶

Although the Laudian Church had raised similar concerns in the Convocation of 1640, the Convention Parliament rejected the Worcester House Declaration. As Barry Till has demonstrated, this was predominantly due to conservative fears among royalist MPs that it threatened to reduce the role of the recently restored bishops.⁴⁷ The following year, Baxter published another plea to alter that 'which we conceive amiss in the episcopal government, as it was practiced in the year 1640', warning particularly of the danger of delegating the Church's jurisdiction to the 'chancellors and officials' that 'could not administer that power which originally pertaineth to the officers of the Church.'⁴⁸ But, when the new Parliament, filled with conservative royalists, met in the spring such proposals were no longer welcomed, and only one presbyterian MP, the common lawyer and Master of the Rolls, Sir Harbottle Grimston, would eventually be included in the committee responsible for reviving the church courts.

The failure to reform the Church's jurisdiction was a significant setback for the presbyterians. Baxter lamented 'how the Old Course is now taken in all their courts.'⁴⁹ The Halifax minister and admirer of Baxter, Oliver Heywood, who had preached at Coley

⁴⁴ Anon., *The late will and testament of Doctors Commons* (London, 1640), p. 1. See also, Anon., *A letter from Rhoan in France written by doctor Roane one of the doctors of the late sicke Commons, to his fellow doctor of the civill law* (London, 1640).

⁴⁵ For the courts' targeting of Elizabethan and early Stuart puritanism, see Ronald Marchant, *The Puritans and the church courts in the diocese of York, 1560–1642* (London, 1960).

⁴⁶ Richard Baxter, *Five disputations of church-government and worship* (London, 1659), p. 18; *Reliquiae*, p. 403.

⁴⁷ Barry Till, 'The Worcester House Declaration and the Restoration Church of England', *Historical Research*, Vol. 70 (1997), p. 226.

⁴⁸ Richard Baxter, *Two proposals concerning the discipline and ceremonies of the Church of England* (London, 1661), p. 5.

⁴⁹ Baxter, *Reliquiae*, p. 403.

chapel since 1655, was more dramatic: 'Behold a black cloud thickens, my old adversarrys have now got that advantage against me they have long been seeking.' Soon, he predicted, the old courts would once more 'enter upon the stage to be our rods, and urge us to a conformity to their humours in ecclesiasticks.'⁵⁰ For ministers steeped in the Bucerian notion of the primacy of godly discipline for godly churches, this was simply unacceptable and provided an important catalyst for Baxter, Heywood, and hundreds of other presbyterian clergymen to dissent from the Restoration Church, once the Act of Uniformity, passed by Parliament in May 1662, demanded total obedience to the doctrines and ceremonies of the restored ecclesiastical government. For the next three decades, the new church courts, albeit without the High Commission or *Ex Officio* oaths, would present a continuous source of pressure for these ministers. For some, such as Heywood, this would have serious consequences while for others, such as Baxter, the threat never materialised. Yet, regardless of the outcome in individual cases, this pressure, combined with the ecclesiological and historical objections to these tribunals, ensured that the ecclesiastical courts would frequently feature in the many presbyterian publications castigating the Restoration Church.

It is important to note that not all criticism of the church courts was voiced by puritans. The English common lawyers had long sought to curb the pretensions of the ecclesiastical arm. In jurisdictional terms, this had been most notable in their growing willingness since the reign of Richard II in the late fourteenth century to issue writs of prohibition against any proceedings in the ecclesiastical courts that appeared to threaten the sovereignty of English monarchs. With the writings of Sir Edward Coke, this tension between the two spheres of law took on an increasingly scholarly dimension. A vociferous critic of the Church's and High Commission's right to administer *Ex Officio* oaths on the grounds that they unlawfully cornered defendants into accusing themselves, Coke set out to prove that the Church's jurisdictional powers were not part of England's ancient constitution. It was here that he discovered their origin in William I's meddling with the medieval *Tourne* courts.⁵¹ This showed that the Church's jurisdiction was a relatively recent, foreign addition, especially compared to the common law, which Coke dated to the Saxon period. The moral of this analogy was clear; while the common law was legitimated on account that it was the ancient, immemorial protector of the English liberties, the church courts had only been allowed by the 'sufferance' of English

⁵⁰ Oliver Heywood, *The Rev. Oliver Heywood, B.A., 1630–1702; his autobiography, diaries, anecdote and event books*, 2 vols., ed. Joseph Horsfall Turner (Bingley, 1882), I, pp. 178–9.

⁵¹ Edward Coke, *The fourth part of the institutes of the laws of England: concerning the jurisdiction of courts* (London, 1644), p. 259.

monarchs and Parliaments.⁵² As Daniel Coquillette has demonstrated, these arguments provided an important historical justification for the common lawyers' unprecedented use of prohibitions during the reign of James I.⁵³

The common lawyers of Restoration England continued Coke's studies into the origin of their ecclesiastical counterparts. In 1665 and 1666, William Prynne released three extensive tomes showing 'an exact chronological vindication and historical demonstration of our British, Roman, Saxon, Danish, Norman, English Kings supreme ecclesiastical jurisdiction.' Prynne had been a vocal opponent of the Laudian Church's attempts to extend the clergy's legal prerogatives and had suffered for it by having the letters 'S.L' (seditious libeller) branded to his cheeks by the Star Chamber in 1637. When Charles II appointed him Keeper of the Records in the Tower of London in 1660, he accordingly spent considerable efforts showing the 'illegal constitutions, canons,...inquisitions, excommunications' of not just the popes but also 'some of our popish archbishops, bishops,...and their ecclesiastical officers, courts, upon the rights...of the crown, the king's temporal courts' from King Lucius, England's mythological first Christian monarch in the second century, to the present.⁵⁴ In the following decade, Matthew Hale, who had been appointed Chief Justice of the King's Bench in May 1671, wrote his *History of the Common Law*.⁵⁵ Juxtaposing the common and ecclesiastical laws of the country, Hale demonstrated how the former had 'obtain'd their force by immemorial usage or custom' while the latter was a clear import. It was, therefore, 'most plain that neither the canon nor the civil law have any obligation as laws within this kingdom, upon any account that the popes or emperors made of those laws...for the king of England does not recognise any foreign authority as superior or equal.' Unlike the common laws, they were 'not founded on, or derived from themselves...so they bind us no more than our laws bind Rome.' As such, Hale believed the validity of these laws was 'founded merely on their being admitted and being received by us, which alone gives them their authoritative essence, and qualifies their obligation'⁵⁶ Similar to Coke, Hale thus recognised the validity of the ecclesiastical courts but made sure to place them firmly under the jurisdiction of the temporal sphere.

⁵² For a longer discussion of Coke's writings on 'sufferance', see David Chan Smith, *Sir Edward Coke and the Reformation of the laws: religion, politics, and jurisprudence, 1578–1616* (Cambridge, 2014), pp. 130–7.

⁵³ Daniel Coquillette, 'Legal ideology and incorporation III: reason regulated - the post-Restoration English Civilians, 1653–1735', *Boston University Law Review*, vol. 67 (1987), p. 300.

⁵⁴ William Prynne, *The second tome of an exact chronological vindication and historical demonstration of our British...kings supreme ecclesiastical jurisdiction* (London, 1666), p. b2ii.

⁵⁵ Not published until 1713, Alan Cromartie has showed how it circulated in manuscript form from the 1670s onward. Alan Cromartie, *Sir Matthew Hale, 1609–1676: law, religion, and natural philosophy* (Cambridge, 1995), p. 104.

⁵⁶ Matthew Hale, *History of the common law* (London, 1713), pp. 26–8.

Though both Prynne and Hale were active members of the Cavalier Parliament, they were not selected to the committee tasked on 29 June 1661, with reconsidering 'the [1641] Act that takes away the High Commission Court' and 'report their opinion, how far the coercive Power of the Ecclesiastical Courts are taken away, and to prepare a bill for the same.'⁵⁷ Nevertheless, the committee included several of their colleagues. Sir Heneage Finch, Solicitor General and Speaker of the House of Commons, acted as its chairman, and he was joined by Sir John Kelyng, who in 1663 was appointed Chief Justice of the King's Bench, Job Charlton, MP for Ludlow, Edward Thurland, MP for Reigate, William Yorke, MP for Devizes and Sir Harbottle Grimston. With the exception of Yorke, these members were all noted royalists loyal to the Church of England and deeply sceptical towards any suggestions for either comprehension or toleration. Finch had, for instance, been instrumental in blocking the Worcester House Declaration in Parliament and Kelyng was one of the principal authors behind the Act of Uniformity passed in 1662. This opposition towards nonconformity was not, however, incompatible with the common lawyers' suspicion towards the jurisdictional claims of their civilian counterparts and clergymen, particularly when exercised in the High Commission. Indeed, as Clarendon, a common lawyer by training, would later reflect in his *History of the Rebellion*, the High Commission had 'much overflowed the banks which should have contained it, not only meddling with things that in truth were not properly within their conusance...and grew to have so great a contempt of the Common Law and the professors of it...so that [its officials] made a whole nation...if not their enemy, yet very undevoted to them.'⁵⁸ Unfortunately, none of the common lawyers partaking in the committee recorded anything from its meetings. Yet, the outcome - a restricted though not entirely devolved ecclesiastical jurisdiction stripped of its previous inquisitorial powers - does correspond to the historical view, expressed by many common lawyers, of the necessity of limiting the Church's jurisdictional prerogatives within the English commonwealth.

(iii) Defenders

The efforts of the common lawyers to demonstrate their historical superiority were continuously checked by equally vigorous attempts from the country's civil lawyers to defend the Church's jurisdiction and their role within it. Indeed, according to Sir Roger

⁵⁷ House of Commons, *Journal of the House of Commons*, vol. 8: 1660–1667 (London, 1802), pp. 279–315.

⁵⁸ Hyde, Edward, *The history of the rebellion and Civil Wars in England begun in the year 1641*, 6 vols., ed. William Dunn Macray (Oxford, 1888), I, book III, pp. 257–8.

Owen, a contemporary of Coke's, it was the civilians' frequent questioning of 'the politique frame of the kingdome' that necessitated much of the scholarship produced by the common lawyers.⁵⁹ The most infamous amongst these civilian scholarly endeavours was Richard Cosin's *Apologie for sundrie proceedings by iursidiction ecclesiasticall* published in 1593. As the diocesan chancellor in charge of Archbishop Whitgift's campaign against the puritans, this was Cosin's attempt to counter those charges levelled by the puritan common lawyer James Morice. For instance, while Morice had argued that civilians were learned 'in the canon law onely, which nameth the Popes Testament', Cosin answered that 'it was well knowen, that their profession and degree, is in the ciuill lawes: a lawe being (for the equitie and wisdom thereof) by the space of sundrie quaternions and hundreths of yeers, the common lawe of all the ciuill nations of the world saue one - England.'⁶⁰ Cosin's *Apologie* was, however, more concerned with defending the practices of the civil lawyers than demonstrating the origin and utility of the profession, and he spent most of the tract defending the notorious *Ex Officio* oath.

Other civilians went further in their historical inquiries. In 1607, at a time when the common lawyers under the leadership of Coke were increasing their pressure on the ecclesiastical courts, Thomas Ridley, who had entered the Doctors' Commons in 1590 and been involved in formulating the canons of 1603, published his *A View of the Civile and Ecclesiastical Law*. Observing how 'meanly men esteemed of the civile and ecclesiastical law of this land', Ridley's principal thesis was that the common law and ecclesiastical law were equal under the supremacy which meant that all attempts by the former to control the latter were legally void.⁶¹ Such a bold argument required a solid historical foundation, but unlike his common law rivals, Ridley could not rely on English history exclusively to promote his profession. Instead, he rooted the English civil law firmly in the country's Roman past and showed how, particularly since the Emperor Justinian's codification of Roman law in the sixth century (the *Corpus Juris Civilis*), the civil law had been a guarantor of stability in all civilised nations. This narrative led Ridley to conclude that it was his civil law, and not the common law, which was the true source of equity and arbitration in England. But it was one thing to stand up for the civil law in general, and quite another to justify the more controversial authority of the civilians in the country's ecclesiastical courts. Ridley therefore went into considerable detail showing how his predecessors' employment in the Church actually predated the invitation by Henry VIII in 1546 by over a millennium. More specifically, Ridley found

⁵⁹ Cited in William Klein, 'The ancient constitution revisited' in Nicholas Phillipson & Quentin Skinner (eds.), *Political Discourse in Early Modern Britain* (Cambridge, 1993), p. 40.

⁶⁰ Richard Cosin, *An apologie: of, and for sundrie proceedings by iursidiction ecclesiasticall*, part 2 (London, 1593), p. ci.

⁶¹ Thomas Ridley, *A view of the civile and ecclesiastical law* (London, 1607), p. i.

in the code of Justinian, by sundry lawes, some of his own making, some others of other Emperours before his time, even from the dayes of Constantine the Great, Bishops in their episcopal audience had the practice of these matters, as well criminal as civile, and to that end, had they their Officials or Chancellours, whom the Law called Ecclesiecdici, or Episcoporum Ecdici, that is, Church-Lawyers.

These Ecclesiecdici, he continued, were ‘men trained up in the civile or canon law of those ages to direct [the Bishops] in matters of judgements.’ It was, furthermore, clear that these officials had not been ‘astrict or bound to one place, but to every where through the whole diocesse, which is the very right description of the Bishops chancellors that now are.’ History thus showed that ‘chancellors are equall, or neer equall in time to Bishops themselves.’ This was a lineage that arguably not even the common lawyers and their claim to a pre-historic origin could match, and it proved beyond doubt the delusions of those who claimed ‘that chancellors are but of a late upstart.’⁶² Unsurprisingly, these powerful arguments were soon repeated by other civilians. For instance, the London advocate William Clerk, relied heavily on Ridley’s findings in his *Epitome of certaine late aspersions cast at civillians...and at Bishops and their chancellors* from 1630. The ‘Bishops Chancellors’, Clerk argued, ‘are upstarts no lesse then 1200 years standing the world, so long have Bishops had their Episcopall audience which made them ordinaries, and so long have Bishops had their vicar generals whom we call their chancellors.’⁶³

According to the Restoration biographer David Lloyd, Ridley’s tract pleased James I to such an extent that ‘Sir Edward Coke undertook from thence to prophecy the decay of the Common-Law.’⁶⁴ Though an exaggeration, it is true that both James and his son, Charles I, became patrons on the civil law. This was principally because, while common lawyers often insisted on the primacy of Parliament and the power of the common law to limit the supremacy, the civilians had a collective reputation for being predisposed to absolutism. While not entirely fair, Professor Levack has demonstrated that this reputation nevertheless did have some validity. For example, the Regius Professor of Civil Law at Cambridge, John Cowell, drew on the Justinian *Corpus* to define the power

⁶² Ibid., pp. 155–63.

⁶³ William Clerk, *Epitome of certaine late aspersions cast at civillians, the civil and ecclesiastical lawes, the courts, Christian, and at Bishops and their chancellors* (London, 1630), pp. 22–3.

⁶⁴ David Lloyd, *State-worthies, or, the states-men and favourites of England since the Reformation* (London, 1670), p. 923.

of English kings as absolute in his legal dictionary, *The Interpreter*, from 1607.⁶⁵ Such rhetoric attracted the absolutist tendencies of the early Stuarts, as did the civilians' learning in questions of international law, and ensured royal support despite the frequent criticism of common lawyers and puritans. These privileges were, however, swiftly revoked by the Long Parliament. In the summer of 1641, eleven civilians were impeached for illegal proceedings in the High Commission, and soon thereafter the entire ecclesiastical arm collapsed. Detached from their principal source of income and forced to retreat into the courts of admiralty and chancery, the English civilians did not sit idly by during the subsequent two decades. A few, such as Laud's infamous chancellor in Canterbury, Nathaniel Brent, renounced his role in the persecution of the 1630s and joined the Parliamentary regime.⁶⁶ Others began lobbying for the survival of their profession. For instance, while serving as Master of Chancery, Arthur Duck, Laud's old chancellor in Bath and Wells, prepared an extensive history of the civil law. Published posthumously as *De Usu et Autoritate juris civilis Romanorum* in 1653, Duck's intention was to refute those who claimed that England had been historically immune from the civil law by showing how, in the first century, the Emperor Claudius 'establisht the Roman laws in that part of the island, which he conquered & by a publick edict put down the druids.' This was followed by a demonstration of how, since the Roman invasion, the British had 'not onely conformed to the Roman laws, but also to their manners, habit, tongue.' Indeed, 'whatever was beautifull & decent among our ancestors, we owe to ye manners, virtues & government of ye Romans.'⁶⁷ Similar to Ridley's work three decades earlier, this was a powerful inversion of the common lawyers' conviction of the domestic origin of English law.

Duck's tract was followed in 1655 by Robert Wiseman's *The Law of Laws; or, the excellency of the civil law, above all humane laws whatsoever*. Wiseman had gained his doctorate in civil law in 1639 and had not managed to attain a position in the ecclesiastical courts prior to the outbreak of war. Instead, he was appointed Master of Trinity Hall, Cambridge, a traditional stronghold of civilians, in 1645, and *The Law of Laws* was his attempt to dispel 'the strange conceit that has got into the heads of some men, that the civil law and canon law are one and the same...that if one be admitted, the other will access also.' The civil law of the Roman emperors, Wiseman explained, predated the canon law by several centuries, and throughout history secular rulers had

⁶⁵ Levack, *The civil lawyers*, p. 4.

⁶⁶ Anthony Milton, *Laudian and royalist polemic in seventeenth-century England: the career and writings of Peter Heylyn* (Manchester, 2007), p. 107.

⁶⁷ London, British Library, Lansdowne MS 713 (Basil Kennett, 'English translation of the introductory part of a treatise on the Civil Law, written in Latin by Arthur Duck, LL.D. British Library': Unspecified) (1693), ff. 7–34.

justly regulated ecclesiastical matters. As such, the canon law owed its existence to the civil law. Wiseman's intention was not, however, to debunk canon law but rather to insist on its redundancy in states where the civil law applied; 'canon law...appears to be of little use, when for the ordering of those matters, we may be supplied from the fountain itself, from whence the canon law has got it.' In Wiseman's opinion, this justified the use of civilians in both secular and ecclesiastical disputes but, more problematically, it also suggested that, while the civil and canon law were not identical, the latter was entirely subsumed into the former. Though valid, Wiseman was quick to deny such concerns: 'suppose there was such a necessary concomitancy between these two laws, and that the use and practice of the one would be a sure inlet to the other...does it therefore follow, that the errours and superstitions of the Church of Rome must creep in too?' Surely not, Wiseman continued, for by that logic it would follow 'that because the Old Law, that is full of Jewish rights and ceremonies, is joined to the Gospel...we just therefore presently all become Jews.'⁶⁸

Although rigorous, these scholarly efforts had few practical implications beyond sustaining the professional identity of the embattled civilians. However, their attempts to promote the civil law were not confined to the academic realm. A year after his admittance into the Doctors' Commons, in 1641, Sir Edmund Peirce, who had gained notoriety for his willingness to prosecute puritans in the 1630s as commissary to the Archdeacon of Suffolk, co-authored the Kentish Petition in defence of the Episcopal Church, demanding 'if the coercive power of the Ecclesiastical Courts...be already abrogated...that there be some other power and authority speedily established' that would continue to employ civilians against dissenters.⁶⁹ A more successful bid was made between 1646 and 1648 for the civilians' role in the Admiralty Court, after Parliament threatened to staff it with common lawyers.⁷⁰ A similarly organised defence of their lost role in the ecclesiastical courts had to wait until January 1657, when a 'humble petition of the Doctors of the Civil Law at Oxford University, on behalf of themselves and their profession' was sent to the MP for Hampshire and Oxford's newly appointed chancellor, Richard Cromwell. In this document, some of the country's most respected civilians, such as the Regius Professor of Civil Law at Oxford, Richard Zouche, declared the wholesomeness of their profession 'which was in very high esteeme in other countreys.' The emphasis was on promoting 'the knowledge & sufficiency' of the civilians 'in Ecclesiastical Causes' - an expertise they considered sorely lacking in Interregnum

⁶⁸ Robert Wiseman, *The law of laws; or, the excellency of the civil law, above all humane laws whatsoever* (London, 1656), p. 189.

⁶⁹ Edmund Peirce, *The petition of the gentry, ministers, and commonalty of the county of Kent* (London, 1642), p. 3.

⁷⁰ Coquilette, 'Legal Ideology', p. 301.

England and to which ‘the Courts of Common-Law never made any pretence.’ The Oxford civilians accordingly asked whether Cromwell and Parliament would consider reopening the ecclesiastical courts not only so they could once more ‘enjoye such reasonable meanes whereby they may subsist with comfort’, but, more importantly, because of ‘the equitableness of having respect to persons qualified in the knowledge of the Civil Law [in] employment in such Courts.’⁷¹

When Richard Cromwell presented the petition to the Commons on 22 November 1656, it met with a lukewarm reception. Cromwell himself, however, was more positive towards the civilians’ proposal, as is evidenced by a letter sent to the Speaker of the House of Commons, William Lenthall, on 12 February 1657. Cromwell related how the petition had turned him ‘in favour of the profession & professionals of the Civill Lawe’ and more broadly for a reintroduction of ‘the old lawes, customes & statutes in such cases formerly heard in the Ecclesiastical Courts.’ Given the state of religious disorder England experienced in the later 1650s, Cromwell added that should these courts not reappear, ‘there would be a failure of justice.’ Lenthall was consequently instructed ‘to take the first opportunity & present [the petition] in our House, and so open it and prose it, as you best can, that may be attempted and committed.’⁷² Yet, Lenthall does not appear to have shared the enthusiasm of the prospective Lord Protector and no further Parliamentary discussions on the topic were held for the remainder of the Protectorate. The episode is nevertheless significant because it clearly demonstrates that it was the small clique of English civil lawyers, not episcopalian clergymen, who took the first steps towards a formal restoration of the church courts.

Despite such displays of confidence, the Civil War and Interregnum had clearly been difficult for the civil lawyers. After the Restoration, Peirce complained that not only had he been imprisoned several times for his loyalty to the Crown, but ‘he hath been deprived of all benefit of his profession or any place whatsoever almost twenty years; his chambers at the Doctors’ Commons seized, plundered, and all his books and goods sold.’⁷³ Once it was clear that the monarchy and Church would return, it is, therefore, not surprising to find that several civilians began a more assertive promotion of their profession. The years 1659 and 1660, for instance, saw Peirce publish a series of tracts painting himself and his colleagues as the true defenders of the old Church.⁷⁴ As he put

⁷¹ Kew, National Archives, SP 18/179 f.55 (Petition of Oxford Civilians to Richard Cromwell, Oxford, 23 Jan. 1658).

⁷² Kew, National Archives, SP 18/179 f. 58 (Richard Cromwell to William Lenthall, Speaker of the House, Whitehall, 12 Febr. 1658).

⁷³ Cited in B.D. Henning, *The House of Commons, 1660–1690*, 3 vols. (London, 1983), III, pp. 216–17.

⁷⁴ Edmund Peirce, *The English episcopacy and liturgy, asserted by the great reformers abroad, and the most glorious and royal martyr the late King* (London, 1660); *Angloroum Singultus: or,*

it in his *Vox Verum Anglorum*, the time had come to 'let the Terrour and Apprehension of our eminent danger and distress, rouze up your drouze numbness; and before the knife come to our throats make use of them to utter this *vocem extremam*, and call out for a certain remedy.'⁷⁵ There were, moreover, reasons to be optimistic about the future. The new king appeared to share his father's and grandfather's appreciation for the expertise of civil lawyers, promising in the Worcester House Declaration to 'uphold and maintain the Profession of the Civil Law' despite the frequent presbyterian arguments against it.⁷⁶ Several civilians were also rewarded for their loyalty to the royalist cause during the wars. For example, Wiseman was knighted in May 1661, after having been appointed as Advocate-General at the Doctors' Commons the previous year, Zouche was made president of the Doctors' Commons and Peirce himself was appointed judge of the Admiralty, master in Chancery, and diocesan chancellor of Bath and Wells. Additionally, the Doctors' Commons witnessed a notable increase in membership, with 23 civilians entering from 1660 to 1669 as opposed to the 7 that had entered between 1650 and 1659.⁷⁷

Following this promising start, two civilians were included in the commission reviewing the ecclesiastical jurisdiction in the summer of 1661. The first was Edmund Peirce, who had been elected as MP for Maidstone. He was joined by one of the civilians impeached by the Long Parliament, Thomas Burwell, MP for Ripon, who had not only been returned to his old chancellorship in Durham but had also been appointed to the same position in York. Though outnumbered by the common lawyers in the committee by seven to two, the civilians, and Peirce in particular, took an active role in the ensuing deliberations. Indeed, it was Peirce who presented Parliament with the first report from the committee on 10 July. Interestingly, while the content of this report has not survived, the Parliamentary records note that it was immediately found necessary to add a proviso to what Peirce had presented. According to B.D. Henning, this was related to Peirce's failure 'to provide against the return of the High Commission.'⁷⁸ Though no further evidence has been found to corroborate this assertion, it does seem plausible that Peirce, a firm proponent of the pre-Civil War ecclesiastical courts, would have pushed for a retention of the High Commission. If this was the case, he must have backed down once he returned to negotiate with the common lawyers in the commission, who were far less likely to support the revival of this antebellum bastion of civilian and clerical authority.

the sobbs of England (London, 1660), *England's monarchy asserted* (London, 1660); *Vox Verè Anglorum: or Englands loud cry for their King* (London, 1659).

⁷⁵ Peirce, *Vox Vere Anglorum*, p. 4.

⁷⁶ *Worcester House Declaration*, pp. 365–70.

⁷⁷ Coquilette, 'Legal Ideology', p. 324.

⁷⁸ Henning (ed.), *The House of Commons*, III, pp. 216–17.

But, if Peirce and Burwell lost on the question of returning the High Commission, it also seems reasonable to suggest that they had something to do with the decision to return wholesale the civilians to their old positions of influence in the restored ecclesiastical courts. As we have seen, this was far from a foregone conclusion during the early stages of the Restoration.

For some court officials, the revival of the courts was a cause of celebration. In the words of the new Archdeacon of Colchester, John Hansley: 'blessed be God who...hath brought our courts into their former current, restor'd jurisdiction to its pristine beauty, and turn our captivity from under the committee men, into the milde and sweet government of the episcopal jurisdiction!⁷⁹ Yet, despite their return to the service of their old employer, this enthusiasm was not shared by several more senior civilians who were unmistakably dissatisfied with their new and more confined prerogatives. Most notably, the famed royalist general and new chancellor of Lincoln diocese, Sir Edward Lake. An ardent opponent of dissent, Lake hoped to contribute significantly to the 'Beauty and Splendour' of the Restoration Church by utilising the full potential of his tribunal. These ambitions were thwarted by Parliament's new 'proviso that forbids all Ecclesiastical Judges to tender or administer an oath to any person *Ex Officio*.' In the autumn of 1661 he consequently 'looked upon the cause as derelict' and 'took it up...to give some satisfaction to indifferent men, and to wipe away causeless calumny, and stir up others in the prosecution hereof.' The result was published as *Memoranda: touching the oath Ex Officio* and was 'most humbly submitted to the consideration of Parliament' in early 1662. Relying almost exclusively on the *Apologie* by 'that most able Civilian, Richard Cosin', it began by accentuating the continued threat of dissent. The Restoration, Lake continued, had provided the Church with a second chance to correct errors permitted by the leniency of previous regimes but in order for that to happen, a stronger, not weaker, system of ecclesiastical coercion was necessary. This led him to the virtues of inquisitorial oaths, which alone could force defendants to confess their misdemeanours in the many cases where no formal accuser, other than rumour or 'public fame', could be found. Critics suggesting that they forced 'men to condemn themselves to ignominious confusion, or to wilful perjury and the destruction of their souls' were either misled or puritans persisting in their conscious attempt to subvert the ecclesiastical government. The *Memoranda* also commented on the lamentable decision to discontinue to the High Commission which, in Lake's opinion, effectively stripped 'the coercive power from the Ecclesiastical Courts, and so in a manner made them useless and precarious, if not

⁷⁹ Bodleian Library, Oxford, B. 7. 9. Linc. no. 16.

ridiculous.⁸⁰ By this logic, the reintroduction of both inquisitorial oaths and the High Commission became vital for the survival of the new and fragile Restoration regime.

There is no record of Parliament discussing the *Memoranda*, and though rumours circulated in the spring of 1663 that MPs were beginning to reconsider their decision on the High Commission, the terms of the 1661 statute restoring the church courts were not changed until James II's creation of the Ecclesiastical Commission in 1686.⁸¹ Nevertheless, the civilians continued to push for more extensive powers. In 1664, Wiseman reissued *The Law of Laws* with Lake's entire *Memoranda* approvingly appended.⁸² Four years later, in March 1668, several members of the Doctors' Commons, among them Wiseman, as well as the Dean of the Arches, Giles Sweit and the Oxford Regius Professor of Civil Law, Thomas Bouchier, were invited to comment upon suggestions to reform the 'obnoxious' ecclesiastical courts by several MPs, such as the common lawyer John Ratcliffe of Chester, sympathetic to religious comprehensions for presbyterians in response to Charles II's 'desire to unite his Protestant subjects' following the lapse of the first Conventicle Act in 1667.⁸³ These proposals were heavily inspired by the reforms suggested in the failed Worcester House Declaration and most obviously sought to reduce the influence of the chancellors by transferring their authority to issue excommunications, absolutions, and monetary commutations to clergymen.⁸⁴ Unsurprisingly, the civilians, headed once more by Thomas Burwell in Parliament, objected to such terms and responded in strength by insisting 'that noe one be capable of any ecclesiastical jurisdiction, but a doctor of lawes.' The Parliamentary provisos against the *Ex Officio* oath and High Commission, they continued, should 'bee taken away & the Ecclesiastical law [return] as it was before making that Act...it being ridiculous to thinke that justice can bee administered without coercive power.'⁸⁵ Though not implemented, these suggestions brought the

⁸⁰ Edward Lake, *Memoranda: touching the oath Ex Officio* (London, 1662), pp. 8–41.

⁸¹ The primary evidence of this rumour comes from a letter sent by the Dean of Durham, John Sudbury, to the civil lawyer and archdeacon of Northumberland, Isaac Basire, on 11 Apr. 1663, which stated that 'things go very well in Parliament. I believe you will shortly heare of an appeal of all acts made in the Long Parliament: and then the Starre Chamber, and High Commission will return of course.' Cited in Isaac Basire, *The correspondence of Isaac Basire, D.D.*, ed. W.N. Darnell (London, 1831), p. 224.

⁸² Robert Wiseman, *The law of laws...together with a discourse concerning the oath ex officio and canonical purgation* (London, 1664).

⁸³ T. Becket & P. A. De Hondt (eds.), *Grey's Debates of the House of Commons*, 10 vols. (London, 1769), I, pp. 101–22.

⁸⁴ The proposals also suggested the introduction of a new sentence of contumacy, *De Contumaci Capiendo*, to deal more efficiently with non-appearance. For a more detailed account of these proposals, see Barry Till, 'The ecclesiastical courts of York, 1660–1883: a study in decline', (unpublished PhD thesis, University of York, 1963), pp. 177–85.

⁸⁵ Oxford, Bodleian Library, MS Tanner, vol. 315, ff. 98–99. For Burwell's objections in Parliament, see Henning (ed.), *The House of Commons*, III, p.753.

Parliamentary discussions for a reform to a standstill, and the civilians were able to continue exercising their influence over the courts.

Moreover, it is clear that the Restoration civilians continued the intellectual tradition of their profession. Ridley's *A View of the Civile and Ecclesiastical Law* was reissued in 1662, 1664, 1675 and 1676. Duck's *De Usu* was republished in 1679 and 1689 and translated in manuscript form.⁸⁶ Several new works of civilian scholarship appeared as well. Most famously, John Godolphin published his *Repertorium Canonicum, or, an abridgement of the Ecclesiastical Laws of this Realm* in 1678. Godolphin had been fired from the Admiralty court in 1660 for his willingness to co-operate with the Protectorate and this was his attempt to regain the king's favour. As such, it emphatically underlined the royal supremacy of the Church's laws, but it also repeated Ridley's historical surveys into the Roman Ecclesiecdici.⁸⁷ This was followed by *The Practice of the Spiritual or Ecclesiastical Courts* by the civilian Henry Consett in 1685, though, as the title suggests, this was a more practical work.⁸⁸

Both before and after the Restoration, the English civilians thus continued to fortify their professional identity by undertaking historical enquiries demonstrating their legitimacy and utility in English jurisprudence. Undoubtedly, this strengthened their position and confidence when lobbying for the promotion of their profession. Of course, it could be argued that the limited revival of the church courts was a setback - certainly some civilians saw it this way and would have preferred a wholesale return to the 1630s. Yet, it is worth contemplating what could have happened, first in the summer of 1661 and then in the spring of 1668, had the civilians not been present to intervene on behalf of their profession. In such a scenario, it is not unlikely that the restored ecclesiastical jurisdiction would have been even more limited by common lawyers or significantly reformed by clergymen. It does not seem unreasonable to suggest, therefore, that the nature of the restored church courts, and by extension the entire Restoration Church, was significantly influenced by the civil lawyers.

(iv) Episcopals

It was not only civilians who worked for the revival of a strong ecclesiastical jurisdiction. The spring of 1661 also saw Charles I's old chaplain, the ultra-conservative Peter Heylyn, lobbying for the cause. In a letter sent on 16 March, he informed the similarly

⁸⁶ London, British Library, Lansdowne MS 713.

⁸⁷ John Godolphin, *Repertorium canonicum, or, an abridgment of the ecclesiastical laws of this realm* (London, 1678), pp. 81–5.

⁸⁸ Henry Consett, *The practice of the spiritual or ecclesiastical courts* (London, 1685).

conservative new Bishop of London, Gilbert Sheldon, of his discussions with the renowned royalist publisher and bookseller, Richard Royston, 'about reprinting that learned and laborious book published by Dr. Cosin, anno 1593, entitled An Apology to the Proceedings in Courts Ecclesiastical and more particularly for the Oath Ex Officio against which so much offense has been took of late.' Not published since then, 'the book is out of print and in few mens hands, but of great use satisfying all those doubts and cavills which have been made against the Jurisdiction of Ecclesiastical Courts.' Heylyn ensured Sheldon that the famous royalist publisher agreed and the purpose of the letter was thus to ask 'that something be spared' from the bishop's budget 'towards the furtherance of this work, which I conceive...necessary for the present use of the Church.'⁸⁹

If Sheldon replied, the letter has not survived. Nevertheless, Heylyn's letter shows that a full revival of the pre-Civil War church courts was discussed at the very top of the restored ecclesiastical hierarchy. Its real significance, however, lies in the silence that follows it. Cosin's *Apologie* was not reprinted and in the ensuing months Sheldon and the rest of the Restoration episcopacy were conspicuously silent on matters touching their Church's jurisdiction. This silence stands in stark contrast to the many passionate pleas made by the same group of senior episcopalians in the early years of the Restoration for other aspects of the traditional Church.⁹⁰ It is also difficult to reconcile with recent assessments of a jurisdictionally confident Restoration Church. Jacqueline Rose has, for instance, depicted an institution that for the past two decades had developed an assertive patristic identity by episcopalian clergymen consciously comparing their exile to the pristine pre-Constantinian Church of the third century. Not only did this tangibly reinforce a connection between the exiled Church and the apostolic church fathers, but it also emphasised its ability to thrive independent of a secular ruler. As Rose writes, 'without a nursing parent, there was no need to remain a child.'⁹¹ After the Restoration, it was this *jure divino* mentality that lay behind the confidence with which many clergymen criticised both monarchs and the secular courts when either were perceived to intrude on the Church's jurisdictional authority to censure those straying from the ecclesiastical law.⁹² But, if the Restoration Church was, as Mark Goldie has argued, 'more vigorous, more adamant, than is generally allowed', why were the

⁸⁹ Oxford, Bodleian Library, MS. Tanner, vol. 49 (b), f. 147 (Peter Heylyn, sub-dean of Westminster, to Gilbert Sheldon, Bishop of London, London, 16 Mar. 1661). Heylyn is here referring to the renowned royalist printer, Richard Royston. For Heylyn's efforts to revive other aspects of the Laudian Church, see Anthony Milton, *Laudian and royalist polemic*, pp. 190–222.

⁹⁰ Kenneth Fincham & Nicholas Tyacke, *Altars restored: the changing face of English religious worship, 1547–c. 1700* (Oxford, 2007), esp. chapter 'Altars Restored, 1660–c. 1700', pp. 305–53.

⁹¹ Rose, *Godly Kingship*, p. 132.

⁹² *Ibid.*, pp. 139–73.

episcopalians not more vocal during the process surrounding the revival of the church courts?⁹³ Were these tribunals not the most tangible expression of their Church's jurisdictional independence?

To answer such questions, we must recognise that the theological and ecclesiological arguments made by conformist clergymen in defence of their Church's discipline did not necessarily translate into support for its practical implementation. Indeed, in the decades before the Civil War there was often a considerable tension between the two, and the episcopalian study of St. Paul, Augustine or other sacred sources to validate the government of bishops had to co-exist with a rather striking exasperation with how the diocesan chancellors mismanaged the episcopal courts.⁹⁴ As we have seen, the Laudian canons of 1640 sought to address such concerns by boosting the disciplinary role of the English bishops. What is less well known is that this episcopalian vexation with their civilian assistants carried over into Civil War and Interregnum England. In his *Episcopacy and Presbytery considered* from 1644, the Chaplain Extraordinary to Charles I and future Bishop of Chester, Henry Ferne, combatted presbyterian criticism against the 'Chancellors, Commissaries, Officials' by showing how 'when kings and emperors became Christian [they] shewed great piety in endowing the Church with ample revenues.' However, while Ferne recognised their historical pedigree, more recent experiences were far more difficult to defend: 'to say the truth, they (the diocesan chancellors) were entered at first onely as assessors, to suggest what was doubtful in cases; if they advanced beyond their bound, it is no service but injury done to episcopal government.' Should the ecclesiastical arm be revived to its former strength, Ferne thus wished that the civilians be

excluded wholly from that part of Iudicature, which was by Christ's appointment left to them, who are charged with the cure of soules...were it so, and altogether so, I must needs say (for now is a time to speake plainly) it would much alter the face of Church government, and make it more pleasing, because more like it self.⁹⁵

This was a striking indictment of civilian chancellors that had staffed the ecclesiastical courts prior to the Civil War, and more would follow. In the same year, the Bishop of

⁹³ Mark Goldie, 'Priestcraft and the birth of Whiggism' in Phillipson & Skinner (eds.), *Political Discourse*, p. 212.

⁹⁴ For a few examples of conflicts between the early Stuart bishops and their chancellors, see Kenneth Fincham, *Prelate as pastor: the episcopate under James I* (Oxford, 1990), pp. 156–7.

⁹⁵ Henry Ferne, *Episcopacy and presbytery considered* (London, 1644), pp. 8–9.

Norwich, Joseph Hall, published a defence of episcopacy to the puritan divines in the Westminster Assembly that more explicitly sought to dissociate the old Church from its diocesan chancellors. 'Your wisdoms knows well', Hall began, 'how to distinguish betwixt a calling, and the abuses of the execution thereof.' In other words, though the sanctity of the Church's jurisdiction was unquestionable, 'I should be a flatterer of the times past...if I should take upon me to justifie or approve of all that carriages of some that have been entrusted with the keyes of ecclesiastical government; or to blanch over the corruptions of Consistorial Officers.' The antebellum Church had clearly invested these officials with far too much authority 'and may that man never prosper, that desires not a happy reformation of what ever hath been amiss, or is amiss in the Church of God.' Hall accordingly wished to 'offer the serious consideration' to the delegates 'whether episcopacy, stripped of all circumstances that may be justly excepted against' would not be preferable to the other proposals put forward in the Assembly.⁹⁶

Such criticisms of the old diocesan chancellors continued to be made during the Interregnum. In 1651, the royalist theologian Hamon L'Estrange admitted that 'the truth is, as their authority was too much, so their practice exceeding their authority made our Church obnoxious to such reproach.'⁹⁷ The message was clear: Henry VIII's decision to employ civil lawyers in the ecclesiastical courts had been a grave mistake that had severely damaged the Church's credibility. Coming from some of the most arduous defenders of England's traditional ecclesiastical government, these concessions powerfully demonstrate that loyalty to the old Church did not necessarily extend to its courts. What is equally noteworthy is that, apart from the civil lawyers, no one came to defend the church courts from such accusations. Instead, even such staunch episcopalian apologists as Henry Hammond and John Bramhall, who tirelessly defended the old Church throughout the 1640s and 1650s, met such criticism with a silence indicating their tacit agreement that these courts had been in dire need of reform. Perhaps Sheldon best epitomised this attitude in a short pamphlet published in 1660 where he passingly remarked that the 'Church Discipline' of the 1630s had been 'defective.'⁹⁸ With this in mind, it is not particularly surprising that Heylyn's plan in the spring of 1661 to publish the work of a civilian that symbolised the most inquisitorial aspects of the antebellum ecclesiastical courts was met with a detached silence.

⁹⁶ Joseph Hall, *A modest offer of some meet consideration tendered to the learned prolocutor, and to the rest of the assembly of divines, met at the Westminster, 1644, concerning a form of church government* (London, 1644), pp. 2–3.

⁹⁷ Hamon L'Estrange, *An answer to the Marques of Worcester's last paper* (London, 1651), pp. 47–8.

⁹⁸ Gilbert Sheldon, *The dignity of kingship asserted* (London, 1660), p. 122.

Moreover, it seems plausible to suggest that the difficult memory of the old courts was an important factor in the willingness of the moderate episcopalians at the Worcester House Conference to compromise with presbyterians on matters of discipline. This is often ascribed to the appreciation of Ussher's blueprint for a primitive episcopacy shared by the two groups, and this is certainly plausible.⁹⁹ For instance, in April 1660, just a few months prior to entering the Worcester House Conference, the new Bishop of Exeter, John Gauden, proclaimed to Parliament 'that I own and ever shall do Primitive Episcopacy and Presbytery...we need church government among bishops, presbyters, and people as may carry on the Discipline of the Church for ordination.'¹⁰⁰ Given that the presbyterians advocated essentially the same programme, it is not strange that the two groups were able to agree on a new form of ecclesiastical government co-managed by bishops and presbyters. What is less clear in the current historiography, however, is why the moderate episcopalians were attracted to such a dramatic alteration of the old ecclesiastical jurisdiction in the first place. Their willingness to compromise cannot have been catalysed purely by a desire to produce religious stability. Rather, their readiness to consider disciplinary reform must first and foremost have been caused by the opinion, common among episcopalians, that the Church's old courts had been faulty. From this perspective, the Worcester House Declaration was less remarkable for its promise to introduce presbyterian changes, and more so because it publicly declared the Church's desire to separate from the civil lawyers.

It would, however, be a mistake to assume that Gauden spoke for a majority of episcopalians. As Grant Tapsell has recently written, the Restoration Church continued to harbour considerable 'divisions within both the upper and lower ranks of the clerical order', and many of the more conservative clergymen shuddered at the thought of comprehension for presbyterians.¹⁰¹ For such men, 'tis only a resolute execution of the law that must cure this disease', as Sheldon put it; 'they who will not be governed as men by reason and persuasions should be governed as beasts by power and force.'¹⁰² Yet, as we have seen, despite this eagerness to use the law against those not conforming, the more reactionary episcopalians were equally unimpressed with the old ecclesiastical courts. The question, then, is why the conservative episcopalians did not assume a more assertive role in the revival of the church courts following the failure of the Worcester

⁹⁹ See, for instance, Spurr, *The Restoration Church*, p. 35, and Till, 'The Worcester House Declaration', pp. 203–30.

¹⁰⁰ Cited in Till, 'The Worcester House Declaration', p. 224.

¹⁰¹ Grant Tapsell, 'Pastors, preachers, and politicians: the clergy of the later Stuart Church' in Grant Tapsell (ed.), *The later Stuart Church, 1660–1714* (Manchester, 2012), p. 88.

¹⁰² Cited in N.H. Keeble, 'Introduction: attempting uniformity' in N.H. Keeble (ed.), *Settling the peace of the Church: 1662 revisited* (Oxford, 2014), p. 23.

House Declaration? One reason may be that the revival of the church courts fell to the Commons, of which the Bishops were not part. Another could be that the bishops did not retake their seats in the House of Lords and Convocation until November 1661, and so had not been present to comment upon the bill restoring the ecclesiastical courts. However, neither of these reasons fully explains why Sheldon, who has been described by one historian as the ‘architect of Anglican survival’, and his peers were so silent on the issue in both pulpit and print.¹⁰³ A more plausible explanation for their absence in questions regarding their courts is that the more conservative episcopalians found themselves in a jurisdictional lose-lose situation in the spring and summer of 1661. On the one hand, although the presbyterian proposals promised to limit significantly the influence of the civil lawyers, they would also unacceptably threaten the apostolical office of the episcopacy. On the other, arguing for a reduced role of the civil lawyers only to boost the jurisdictional prerogatives of the bishops and other senior clergymen risked reigniting the controversy about Laudian jurisdictional clericalism. In such a scenario, perhaps the most expedient option was to remain silent.

This chapter has suggested that much of the debate surrounding the English church courts following the Reformation centred upon the legitimacy of relying on the civil lawyers. It has also argued that, despite the longstanding scepticism among both common lawyers and clergymen towards their continued involvement in the Church’s disciplinary affairs, these civilians played a crucial and previously unexplored role in shaping the future of the country’s ecclesiastical courts during the late 1650s and early 1660s. The clergy’s ambivalence about the revival of the church courts is particularly noteworthy, as it complicates the ongoing debate concerning the nature of the restored English Church. The readiness of Gauden and other moderates to consider a more presbyterian system gives some credence to the inclusive, conciliatory institution depicted most famously by Ian Green and John Spurr.¹⁰⁴ Yet, their willingness to negotiate should not be equated with a leniency in questions of ecclesiastical discipline. On the contrary, moderate episcopalians were attracted to the presbyterian suggestions because they promised to reform and strengthen the deficiencies of the old church courts. In our final assessment of the restoration of the church courts, we must, however, remember that this vision of a reformed ecclesiastical jurisdiction was defeated by conservative forces pushing for a return of a lighter version of the antebellum status quo. Yet, it would be equally inaccurate to view the final restoration of the church courts as

¹⁰³ Victor Sutch, *Gilbert Sheldon: architect of Anglican survival* (The Hague, 1973).

¹⁰⁴ Ian Green, *The Re-Establishment of the Church of England, 1660–1663* (Oxford, 1978); Spurr, *The Restoration Church*.

corroborating the rather reactionary Laudian Restoration Church portrayed by historians such as Robert Bosher and Nicholas Tyacke.¹⁰⁵ Indeed, although the ‘Laudian’ label is often used to denote a Church confidently prosecuting its opponents, in more practical terms the Laudian legacy entailed a pronounced irritation with how lay officials, and particularly the civil lawyers, mismanaged the courts. As such, the resurrection of the church courts could only be thought of as evincing a Laudian Church in the more counter-intuitive sense that the process did not involve any senior episcopalian conservatives, who evidently shared their predecessors’ scepticism towards these tribunals.

Instead, the restored Church’s attitude towards its new courts might be more accurately thought of as “anti-civilian”. Though perhaps not the most elegant of labels, it encapsulates the near ubiquitous desire among conforming clergymen to limit the influence of the civil lawyers, while also providing for their diverging opinions concerning the appropriate administration of spiritual discipline. Furthermore, a peek into the religious polemics of subsequent decades indicates that this resentment of the civil lawyers continued to influence the Church’s relationship with its courts. For instance, in 1675, the moderate Bishop of Hereford, Herbert Croft, cursed the diocesan chancellors ‘as a horrid abuse...of the divine authority.’ Though he did not want the civilians to ‘account me an enemy to their profession...all I beg of them is, that they would contain themselves within their own spear of activity, and not intrude into spiritual and sacred matters committed by Christ and his apostles to the priesthood.’¹⁰⁶ Later, in 1681, the conservative controversialist, Henry Dodwell, confessed ‘that Lay-chancellors were disused, and that the Bishop did more consult their Presbyteries, I could for my own part heartily wish’, though he did not ‘think these abuses momentous enough to warrant schism.’¹⁰⁷ There are, then, reasons to think that the administration of the church courts in Restoration England continued much as it had done prior to the Civil War. In order to substantiate such a theory, however, we must shift our focus from the polemics surrounding the Restoration church courts to the records produced by them.

¹⁰⁵ Robert Bosher, *The making of the Restoration settlement: the influence of the Laudians, 1649–1662* (Westminster, 1951); Nicholas Tyacke, ‘From Laudians to Latitudinarians: a shifting balance of theological forces’, in Tapsell (ed.), *The Later Stuart Church*, pp. 46–8.

¹⁰⁶ Herbert Croft, *The naked truth, or, the true state of the primitive church by an humble moderator* (London, 1675), pp. 59–60.

¹⁰⁷ Henry Dodwell, *A reply to Mr. Baxter's pretended confutation of a book entitled, separation of churches from episcopal government* (London, 1681), p. 109.

Chapter Two: '*Desirious to do the utmost in our Courts*': running the church courts in Restoration England

Only one English consistory court survives from the early modern period. Situated in the south-west tower of Chester Cathedral, visitors both then and now must pass through a small archway with the inscription '1636' - the year of its construction - to visit it. Occupying almost the entire room, the court itself is an imposing square enclosure made from heavy oak with benches attached to it. In the middle stands a large table, around which proctors, litigants, and occasionally advocates would discuss cases. The visitor's attention is, however, immediately drawn to the tall throne at the far end of the structure. Overlooking the entire court, this was officially the chair of the bishop but more often than not it was occupied by his diocesan chancellor, also known as his vicar-general, who acted as the presiding ecclesiastical judge. Two smaller seats, also elevated, are located at both sides of this impressive chair. This is where the court registrars or their scribes would sit, allowing them a view of the proceedings whilst recording the transactions unfolding before them. Then, diagonally opposite to the chancellor's seat is perhaps the most peculiar feature of the court - a legless chair, raised on the top of the two sides of the squared structure. In the Cathedral guide, attentive visitors learn that this was the 'apparitor's chair' from which one of the court apparitors would be able to monitor proceedings while also keeping a watchful eye behind him where, through the archway and into the Cathedral nave, he would be able to see those waiting to have their cases heard. Finally, in the far-right corner of the room there stands a small, barely visible door, subterranean to the court floor, from which all of these officials could enter undisturbed.

What was it like for parishioners in early modern England to come into contact with these courts? Was the Church's jurisdiction frowned upon or was it a valued component of parish life? As we saw in the introduction, these are questions that have increasingly interested social historians during the past three decades. Arguably the most important outcome of their research has been to challenge the prevailing stereotype, originating in early modern puritan polemic and later propagated by scholars such as Christopher Hill, that these tribunals were ineffective, offensive, and moribund.¹ Instead, the early modern Church's discipline is now seen to have functioned 'in reasonable accord with the values of the wider society', as Martin Ingram put it.²

¹ Christopher Hill, *Society and puritanism in pre-revolutionary England* (London, 1964), pp. 343–55.

² Martin Ingram, *Church courts, sex and marriage in England, 1570–1640* (Cambridge, 1988), p.11.

Historians concerned with the practical implementation of the Church's discipline have tended to focus on the role of the clergy and churchwardens. But, as visitors to Chester Cathedral will notice, neither had a permanent seat in court. That, of course, does not mean that they were unimportant to the maintenance of spiritual discipline; churchwardens, in particular, were often instrumental in the detection and reporting of misdemeanours.³ But, the absence of a permanent representative from either the churchwardens or the ministers in the courtrooms does suggest that neither were, fundamentally, in charge of the Church's censures. Comparatively little research has, however, been undertaken into the officials staffing the courts permanently.⁴ Indeed, the apparitors, registrars, proctors, advocates, and diocesan chancellors have all been confined to a set of more procedural studies, often in the form of doctoral theses, that tell us more about the complicated structure of England's ecclesiastical jurisdiction than the ambitions and priorities of those staffing it.⁵ The intention of this chapter, therefore, is to bring those permanent employees of the courts in Restoration England into the foreground. Who were they? How did they understand their role as officials in the Church's tribunals? Did their priorities differ from clerical conceptions about spiritual discipline? If so, what was the relationship between these officials and the Church's ministry? In attempting to answer these questions, this chapter will invert the traditional approach to ecclesiastical court records. That is to say, rather than asking what they reveal about wider society and parish life, it will investigate what they can tell us about those responsible for their production. What emerges from such a perspective, it will be argued, is a world of debate and often profound disagreement between lay and ecclesiastical officials that not only deepens our understanding of how these tribunals

³ For more on the role of the early modern churchwardens in general, see Michael Braddick, *State formation in early modern England, c. 1550–1700* (Cambridge, 2000), p. 299; Eric Carlson, 'The origins, functions, and status of the office of the churchwarden, with particular reference to the diocese of Ely' in Margaret Spufford (ed.), *The world of rural dissenters, 1520–1725* (Cambridge, 1995), pp. 164–207. For a closer look at the importance of churchwardens in Restoration parishes, see Donald Spaeth, *Church in an age of danger: parsons and parishioners, 1660–1740* (Cambridge, 2000), p. 63.

⁴ For example, Jeremy Gregory's study on the personnel responsible for the administration of Canterbury diocese in late seventeenth- and eighteenth-century England is almost wholly concerned with clergymen. See, Jeremy Gregory, *Restoration, Reformation, and reform, 1660–1828: archbishops of Canterbury and their diocese* (Oxford, 2000), especially section 1 about 'Personnel', pp. 24–102.

⁵ See, for instance, Barry Till, 'The ecclesiastical courts of York, 1660–1883: a study in decline', (unpublished PhD thesis, University of York, 1963); Martin Jones, 'The ecclesiastical courts before and after the Civil War: the office jurisdiction in the dioceses of Oxford and Peterborough, 1630–1675' (unpublished B. Litt. thesis, University of Oxford, 1977); and Charles Evan Davies, 'The enforcement of religious uniformity in England 1668–1700, with special reference to the dioceses of Chichester and Worcester' (unpublished D.Phil. thesis, University of Oxford, 1982).

functioned in practice but that also seriously challenges our broader assumptions about the nature of early modern office-holding.

(i) *The Apparitors*

Let us begin with those occupying that peculiar chair resting at the corner of the Chester consistory court: the apparitors. Though some were tasked with maintaining order during court sessions, the apparitor's principal task was to travel across a set of parishes, usually divided into deaneries, to deliver citations to those ordered to appear in court. Although indispensable to the functioning of the English ecclesiastical courts, their role as the middlemen between court and parishioner was far from universally appreciated. On the contrary, the apparitors were frequently seen as the bearers of bad news and disruptors of local harmony. Moreover, they had long been accused of exploiting their delivery of citations for personal profit. Most famously, the summoner (a medieval term for apparitor) in Chaucer's *Canterbury Tales* is a deeply unsympathetic figure who fabricates court summons against poor parishioners only to force them to bribe him to dismiss their bogus cases. In the words of Chaucer's Friar, 'without an actual summons an ignorant, he could summon, on pain of excommunication, and they were glad to fill his purse and make him great feasts at the ale-house.'⁶ The Church's leadership was keenly aware that this problem had survived the Reformation. To this end, the 138th clause of the Canons of 1603 targeted the apparitors: 'for as much as we are desirous to redress such abuses and aggrievances as are said to come by Sumners or Apparitors, we think it meet that the multitude of Apparitors be (as much as possible) abridged or restrained.' It was, furthermore, decreed that remaining apparitors 'shall not take up the office of promotors or informers for the court, neither shall they exact more or greater fees than are in these Constitutions formerly prescribed.'⁷

Regardless of such attempts, the apparitor remained a figure of popular disdain. Criticism became particularly scathing in puritan polemic of the Laudian Church in the 1630s and early 1640s. For instance, in his *Of Reformation touching Church Discipline* from 1641, the poet John Milton lambasted the

band of rooking officials, with cloke bagges full of citations, and processes to be serv'd by a corporality of griffonlike promotors and apparitor...what masse of

⁶ Modern translation provided by Larry Dean Benson, Harvard University, and accessed at <http://sites.fas.harvard.edu/~chaucer/teachslf/frit-par.htm> (visited 26/05/2017).

⁷ Canon CXXXVIII: 'The multitude of apparitors restrained', cited from <http://www.anglican.net/doctrines/1604-canon-law/> (visited 27/04/16).

money is drawne from the veines into the ulcers of the Kingdome this way; their extortions, their open corruptions, their multitude of ravenous Harpies that swarme about their offices.⁸

An even more scornful portrayal was published later that year in the anonymous *The proctor and the parator*, in which the apparitor named 'Hunter' brags about his skills in the arts of fraud and deception. 'An old hare', he insists, 'had not more mules to deceive the hounds, then I had to receive cash by deceiving people.'⁹

While Bernard Capp has demonstrated that the presbyterian Classis in London and Middlesex continued to rely on informants during the Interregnum, complains against apparitors nevertheless decreased markedly as the 1640s and 1650s progressed, presumably because the apparitors lost their employment with the collapse of the ecclesiastical jurisdiction.¹⁰ As John Addy's work has demonstrated, however, the reappearance of the church courts in 1661 revived old tensions. For instance, one Cumbrian farmer cited for not receiving the sacrament in 1679 reportedly took the citation 'from the hands of the [apparitor] James Wilson and did drop the same into my breeches and did then affirme that I would wipe my arse with the same.'¹¹ Polemical attacks also reappeared. John Bunyan's *True and Impartiall Narrative* from 1670 contrasted the peaceable Bedford nonconformists with their 'immediate persecutors' who 'are the scum of the people, and chiefly appurtenants of the Commissaries Court.' Worst of all was Francis Feckman, an alehouse-keeper who 'for his last refuge became and apparitor', a role in which, in Bunyan's opinion, he acted 'rather a purveyor for, and a resemblant of Satan, than an officer of a court Christian (as some men stile the Commissaries)'.¹² The heterodox Essex minister and fierce critic of the church courts, Edmund Hickeringill similarly described the Restoration apparitors as 'creeping' men 'covered with darkness and the Night.'¹³ According to the presbyterian minister, Richard Baxter, such sentiments were widely held: the apparitors, he wrote in his 1680 treatise on episcopal government, were men 'whose name is commonly a scorn among the people.'¹⁴ Thus, despite the absence of ecclesiastical court summoners for almost two decades, the stigma against

⁸ John Milton, *Of reformation touching chvrch discipline in England* (London, 1641), p. 63.

⁹ Anon., *The proctor and parator their mourning* (London, 1641), pp. 2–10.

¹⁰ Bernard Capp, *England's culture wars: puritan reformation and its enemies in the Interregnum, 1649–1660* (Oxford, 2012), p. 107.

¹¹ John Addy, *Sin and society in the seventeenth century* (London, 1989), p. 205.

¹² John Bunyan, *A true and impartiall narrative of some illegal and arbitrary proceedings by certain justices of the peace and others* (London, 1670), pp. 3, 13.

¹³ Edmund Hickeringill, *The test or tryal of the goodness & value of the spiritual courts, in two queries* (London, 1683), p. 1.

¹⁴ Richard Baxter, *A treatise of episcopacy* (London, 1681), p. 8.

apparitors appeared to be as strong in Restoration England as it had been prior to the Civil War.

To get a more accurate sense of the work conducted by the apparitors we must, however, move beyond stereotypes and nonconformist publications. Most ecclesiastical tribunals revived after the Restoration employed two or three apparitor-generals. In Chester, three such certificates were issued to John Tibbols, Edward Willis and George Peabody in December 1660, although this number decreased to two with the appointment of Bishop Thomas Cartwright in 1686, who appointed his two sons, Richard and Gervase, to the position. The duty of the apparitor-generals was largely to oversee the delivery of the citations, but they also had a ceremonial role to play during court proceedings. As Philip Floyer, advocate in the Doctors' Commons during the mid-eighteenth century, wrote in his *Proctors guide to the Ecclesiastical Courts*, the apparitor-general 'attends the court in a black gown, carries the mace before the judge, serves all the processes, and is the crier of the court.'¹⁵ As such, it is very likely that it was one of the apparitor-generals who occupied the peculiar 'apparitors chair' in the Chester consistory court. It is far more difficult to ascertain the number of regular apparitors used by an ecclesiastical court. Unlike the apparitor-generals, their role carried no ceremonial function and they were rarely involved inside court proceedings. Nor did the delivery of citations require any formal training. As a result, the identities of individual apparitors often elude us. Only in cases where the original citations (which the apparitors were supposed to sign upon delivery) have survived is it possible to get a sense of who the apparitors were. Thus, in Chester, where the citations have not survived from the Restoration period, most apparitors employed by the consistory court remain elusive figures. Unfortunately, even where the citations have survived, such as in Exeter, producing a precise number of apparitors is problematic. First, not every apparitor signed the citation with his name, and many citations are so badly damaged that signatures cannot be traced. Second, many of the signatures only appear on a few citations, indicating that their delivery was frequently carried out by someone in need of an extra income as opposed to professional apparitors.

Going through the hundreds of citations sent out by the Exeter consistory court during the 1660s there are, however, a few names that keep reappearing. The most frequently appearing is that of John Wadham, resident of Totnes and professional apparitor. Because Wadham recorded the location and date of each of his deliveries, his citations allow us an insight into what was required by apparitors. The most striking aspect of his work is the amount of travel it required. Although the majority of citations

¹⁵ Philip Floyer, *The proctors practice in the ecclesiastical courts* (London, 1746), p. 4.

were delivered in Totnes, he frequently travelled across the southern part of Devon to serve someone their court order. On 7 July 1663, for instance, he travelled 10 miles to Loddiswell only to return the following day to deliver a citation in Totnes. Almost two months later, on 27 August, he appeared in Marlborough; five days earlier he had delivered a citation in Totnes - a distance of over sixteen miles. His other excursions included Ashprington (c. 3 miles from Totnes), Blackawton (c. 8 miles), East Allington (c. 10 miles), and Stokenham (c. 14 miles). Although Wadham appears to have been troubled with few irregularities throughout these commutes, a somewhat frequent concern was the difficulty of locating the cited individual. Usually, this resulted in a second visit a few weeks later (known as a *viis & modis* citation), though occasionally he deemed it necessary to display the citation publicly. This was the case in his visit to Loddiswell, where Wadham recorded on the back of his citation 'how I sate up this [citation] in the Church yard in the time of Divine Service.'¹⁶

To critics of the courts, Wadham surely must have appeared as one of the 'griffonlike' apparitors roaming the countryside 'with cloke bagges full of citations' that Milton so vehemently denounced in 1641. Nevertheless, it is clear from both the length and frequency of his travels that Wadham depended, at least partially, on the income received from delivering citations. In so doing, he was not alone. In February 1688, another apparitor, John Price, employed by the Prerogative Court of Canterbury, issued a petition against some proctors 'who doe imploy other persons in that matter, to the great prejudice of yor petitioner' who declared his readiness 'at all times to serve such processes as shall come out of this court against any persons liveing in or about London & places adjacent' and asked that 'your worship would be pleased to order that such processes may be executed by your petitions whoe will doe the same at just & equall rates.'¹⁷ This petition reinforces the suggestion that not everyone who delivered a citation for the restored church courts was considered a professional apparitor. It also forces us to consider in more detail the salary of the apparitors.

No new table of fees for ecclesiastical officials was produced after the Restoration. Instead, the courts returned to the table used prior to the Civil War, originally produced by Archbishop John Whitgift in 1597, and applied to the whole Church with the canons of 1603.¹⁸ According to this table, the bulk of an apparitor's income would come from the

¹⁶ John Wadham's certificates are inserted without order in the following bundles: CC. 98a, CC. 99, CC. 100, CC. 101a, all held by the Devon Heritage Centre, Exeter.

¹⁷ Kew, National Archives, PROB 39/16 (John Price, apparitor, to Richard Raines, judge of Canterbury Prerogative Court, London, Feb. 1688).

¹⁸ This was reprinted by the civil lawyer, John Ayliff, in his guide to the ecclesiastical law, *Parergon juris canonici Anglicani, or a commentary by way of supplement to the canons and constitutions of the Church of England* (London, 1726).

2 d. 'for every execution of every citation...excommunication and decree per mile.' If a sentence was produced from one of their citations, an additional 1 s. 2 d. could be earned.¹⁹ Thus, although it is very difficult to tabulate precisely how much an individual apparitor was paid for the completion of his duties, there were strong incentives for them to deliver as many citations as possible. This not only irritated those cited but may also have tempted some apparitors to push the boundaries of their office for private gain. This was certainly the opinion of Paul Latham, minister of Warminster in Salisbury, who complained to the consistory court on 20 February 1668, of the apparitor Thomas Clyde who 'hath abused so many in citing them without Process, that they did not...beleeve him to be in earnest.'²⁰ Yet, for even the busiest apparitors, the delivery of citations amounted to a relatively meagre living and it is not surprising to find some of them working for multiple tribunals to earn enough. For instance. Philip Lendon of Crediton, Devonshire, delivered citations for both the consistory and archdeacon's court in Exeter and was also known to occasionally provide information to the local Justice of the Peace, John Tuckfield, about the location of conventicles.²¹ Nevertheless, it is probably safe to assume that most apparitors were not wealthy men and that Bunyan's diabolical persecutor, Francis Feckman, was not alone in combining his work as an apparitor with a second source of income. Indeed, despite of simultaneously working for three separate tribunals, Lendon had to earn part of his living as a weaver.

The table of fees did, however, provide for an additional source of income. More specifically, 4 d. was rewarded for 'every detection' of a misdemeanour. On the one hand, this was a suspicious inclusion given that the canons of 1603 had specifically prohibited apparitors from informing. On the other, the apparitors were uniquely placed to witness the behaviour of parishioners in their travels across parishes. The difficulty, of course, lies in detecting when an apparitor engaged in illicit informing. Unlike informants working for the secular courts who, after the second Conventicle Act of 1670 and during the crackdown against dissent in the first half of the 1680s, were richly rewarded for telling on their neighbours, apparitors and their superiors in the church courts would undoubtedly have been aware of the illegality of such behaviour in their own courts.²² Yet, what actually constituted informing was legally ambiguous. The work of the apparitor

¹⁹ Ayliff, *Parergon juris*, pp. 551–2.

²⁰ Cited in Henry Lancaster, 'Nonconformity and Anglican dissent in Restoration Wiltshire, 1660–1688', (unpublished PhD thesis, University of Bristol, 1995), p. 99.

²¹ Peter Jackson, 'Nonconformists and Society in Devon, 1660–1689', (unpublished PhD thesis, University of Exeter, 1986), pp. 186–7.

²² See Anthony Fletcher, 'The enforcement of the conventicle acts, 1664–1679', *Studies in Church History*, vol. 21 (1984), pp. 235–46; Mark Goldie 'The Hilton Gang and the purge of London in the 1680s', in Howard Nenner (ed.), *Politics and the political Imagination in later Stuart Britain: essays Presented to Lois G. Schworer* (Rochester, 1998), pp. 43–73.

was, almost by definition, under the radar of the authorities and there appear to have been few internal regulations against apparitors reporting what they had seen or heard to the courts. Barry Till has, for instance, pointed to a case appearing before the York consistory court in which one of the apparitors, Christopher Morley, accused the vicar of Hampstwaite, Samuel Sugden, of being a drunkard after observing his behaviour on a trip to the parish.²³

Another way for apparitors to circumvent informing was to report what they had witnessed as deponents. Consider, for instance, the case against Henry Rycroft, minister of Penwortham, for refusing to read out excommunications heard by the Chester consistory court in October 1673. In the ensuing litigation, a friend of Rycroft's described how, as the two of them had been walking to church 'and the last bell was tolling to prayers...a man in black clothes with blewish stockens met them' and 'pulled out of his pocket and [took] a paper out and presented it to the said Mr. Rycroft.' This darkly clad man was the apparitor Robert Henshall who 'was imployed and hired as a messenger by mr. Oldfield, one of the proctors of his consistory court to bring an excommunication to Penwortham.' Rycroft responded that he had 'never seen a petition in latin before' and refused to accept it.²⁴ In Henshall's version of events, however, Rycroft's refusal to receive the excommunication was not due to a deficiency in Latin, testifying instead that Rycroft had repeatedly told him that 'he would not meddle with it', leaving Henshall with no other recourse than to report the matter to his superiors.²⁵ In some cases, the information provided by apparitors was considered suspect. The York consistory court did not, for instance, accept the charges against Samuel Sugden.²⁶ In Rycroft's case, however, the evidence given by Henshall was strong enough to ensure Rycroft's suspension for six months.²⁷ Yet, regardless of the decisions taken by the courts, these instances demonstrate that the boundary between being an informant and simply fulfilling the duties required of an apparitor could be exceptionally blurred.

Despite the canonical injunctions against it, some senior clergymen wanting to extend the reach of the ecclesiastical arm were keen to capitalise on the apparitors' ability to act as informants. In a letter sent to Archbishop Gilbert Sheldon on 10 May 1670, the Bishop of Lichfield, John Hacket, related how 'I can hit of no other remedie [against dissent], then to send out apparitors & spies to the most suspected parishes; and, upon, proove of such neglect, to suspect the incumbent...and to assure the spie or

²³ Barry Till, 'The ecclesiastical courts of York, 1660–1883: a study in decline', (unpublished PhD thesis, University of York, 1963), p. 44.

²⁴ Chester, The Cheshire Archives and Local Studies Service, EDC 5/1674/22.

²⁵ Chester, The Cheshire Archives and Local Studies Service, EDC 5/1673/36.

²⁶ Till, 'Ecclesiastical courts', p. 44.

²⁷ Chester, The Cheshire Archives and Local Studies Service, EDC 5/1673/45.

informer the fourth part of the proffits, wch punishments will startle the rest, and make them double diligent for the future.²⁸ This was a very similar programme to that which had been adopted by Parliament in its declaration of the second Conventicle Act two months earlier, though informants to the secular courts were to be rewarded with a third of the legal profits. But no such proposals were adopted by the ecclesiastical jurisdiction, and Hacket died a few months after sending the letter. Others implemented a similar policy, however. The Bishop of Bristol, Guy Carleton, was frequently criticised for his use of informants in his campaign against the city's nonconformists. According to a report by Samuel Crossman, prebendary of Bristol Cathedral, Carleton tasked 'informants in the streets...to the great dishonour & vexation of some of the magistrates' who were less hostile to the city's many dissenters.²⁹ This is confirmed by the journal kept by Broadmead Baptist Church, which described in great detail how the city's nonconformist population was targeted by the 'Bishops men' in particular. One entry from February 1675, for instance, describes 'how this weeke ye Bishop's informers are very busie, from meeting to meeting, everyday. And soe they come to our publicke meeting...and would not departe until we departed, commanding us to be gone. And because they would not they pull and haule Brother Terrill very much.'³⁰

A deeper understanding of the apparitors, and the many roles they could fulfil, has important implications. Historians of both medieval and early modern England have tended to emphasise the role played by ministers and unsalaried laymen (especially churchwardens) in the detection of canonical misdemeanours. Detection, as Ian Forrest writes, relied in large part 'upon the involvement of the unschooled: the parish clergy and the laity.' Yet, without denying the validity of this argument, the multifaceted role of the apparitors should perhaps caution against focusing too exclusively on the 'social contours' of detection and force us to consider the extent to which officials with clear financial incentives to bring cases to court were also involved in this process.³¹ In this regard, the apparitor also sits uneasily with our current notions of office-holding in early modern England. In his seminal essay on the 'unacknowledged republic', Mark Goldie emphasised the participatory nature of local governance. Focusing on elected secular and ecclesiastical officials, such as the parish constables and churchwardens, he argued that 'beyond Whitehall, government was amateur, part-time and unsalaried.' As such, office-holding 'was highly discretionary, and shaped by diverse conceptions of what

²⁸ Oxford, Bodleian Library, MS. Tanner, vol. 44. f. 206 (John Hacket, Bishop of Lichfield, to Gilbert Sheldon, Archbishop of Canterbury, Lichfield, 10 May 1670).

²⁹ Kew, National Archives, SP 29/319 f. 147.

³⁰ Roger Hayden (ed.), *The records of a church of Christ in Bristol, 1640–1687* (Bristol, 1974), pp. 157–8.

³¹ Ian Forrest, *The detection of heresy in late medieval England* (Oxford, 2005), p. 60.

mattered for good neighbourliness.³² This description, however, is difficult to square with the apparitors who were neither elected nor unpaid, and for whom the maintenance of neighbourliness could only occasionally have trumped the imperative of making a living. As the continuation of our tour across the Chester consistory courtroom will reveal, the same may be said for the remainder of non-elected officials employed by these tribunals, none of whom can be easily reconciled with what Cynthia Herrup has called the 'participatory nature of English government in the seventeenth century.'³³

(ii) The Proctors and Registrars

On 13 September 1661, less than two months after the statutory revival of the church courts, the presbyterian minister of Halifax, Oliver Heywood, was visited 'by a bailiff...whom they haue made an apparitor', who cited him to appear in court two weeks later. Following orders, he later noted how 'accordingly I resolved upon a journey', adding that 'I must appear myself or fee a proctor which I was resolved not to doe.' Once in York, he described how 'I went to the minster and approached towards them sitting in the void place on the north-side of the minster (where they say the consistory court is wont to be kept) who were very busy with other matters.' He was asked 'if I had a proctor', to which Heywood responded 'no, I was there in person', upon which they 'said no more to me but appointed me to come again in three weeks.'³⁴ Understandably, this infuriated Heywood who had made the nearly forty-mile journey between Halifax and York. What concerns us, however, is why Heywood, who had only been eleven years old when the Long Parliament had abolished the coercive powers of the ecclesiastical courts, was so unwilling to hire a proctor in the first place?

In Chester, as in other Cathedrals, the proctors would have been seated around a large table in the middle of the consistory court. Their principal tasks were to provide the necessary documentation for cases (such as libels), to instruct litigants and witnesses when to appear, and to aid them in court. As such, Barry Till is probably correct in suggesting that they were the court officials with whom 'the litigious public mainly dealt.'³⁵ Given this frequent exposition to the public, the proctors were vulnerable to much of the criticism also levelled at their secular counterparts, the solicitors. On a broader level, this

³² Mark Goldie, 'The unacknowledged republic: office-holding in early modern England' in Tim Harris (ed.), *The politics of the excluded, 1500–1800* (Basingstoke, 2001), pp. 154–6.

³³ Cynthia Herrup, *The common peace: participation and the criminal law in seventeenth-century England* (Cambridge, 1987), p. 205.

³⁴ Oliver Heywood, *The Rev. Oliver Heywood, B.A., 1630–1702; his autobiography, diaries, anecdote and event books*, 2 vols., ed. John Horsfall Turner (Bingley, 1882), I, pp. 179–80.

³⁵ Till, 'Ecclesiastical courts', p. 35.

stemmed from a notable distrust among early modern parishioners towards the legal profession in general. As Christopher Brooks has written, because law suits tended to be 'seen as a social evil...attorneys and solicitors were singled out as fomenters of suits'; 'they were the principal villain in the painful drama...which saw innocent clients detached from their money and inheritances by conniving pettyfoggers.'³⁶ To reduce such corruption and the rumours thereof, clause 133 from the canons of 1603 targeted the 'loud and confused cries and clamours of the proctors' who 'give occasion to standers by, of contempt and calumny towards the court itself.'³⁷ Unlike the solicitors, the proctors were also specifically targeted by puritans who were far more critical of the ecclesiastical courts than their secular counterparts. It would, for instance, be difficult to imagine a more fraudulent character than 'Hunter', the apparitor from *The proctor and the parator* we encountered earlier, but his interlocutor, the proctor 'Sponge' gives him a run for his money. 'I always covenanted with the parator', he admits, 'but I sate at home like one of the Spanish inquisitors, and fram'd interrogatories against them that hee brought in.' As is the case with Hunter, Sponge's motives are purely financial without the slightest regard for the spiritual nature of his office, boasting that 'countrey wenches would sell their peticoats rather to pay us then to endure a white sheet.'³⁸ In *The spiritual courts epitomized*, also published in 1641, two equally immoral proctors are depicted colluding with the ecclesiastical judges in fabricating charges against innocent parishioners.³⁹

As a minister steeped in puritan learning who had begun his career in Interregnum England, Heywood is likely to have inherited these stereotypes of corrupt proctors, which probably caused his unwillingness to hire one. As with the apparitors, however, it is very difficult to assess if such prejudices were rooted in actual experiences with corrupt proctors or whether they were a result of a particularly puritan view of ecclesiastical government that was hostile to the very notion of paid officials.

Aspiring proctors required at least four years' training under a practising proctor. Even then, the fact that the restored ecclesiastical courts operated with a set number of proctors (Chester, for instance, employed 5 while the larger consistory court in York hired 8), meant that an aspiring proctor often had to spend several years as a notary public before reaching his goal. Thus, in Chester, John Oldfield, the proctor whom Henshall claimed had originally cited Rycroft, spent the 1660s as a scribe in both the archdeacon's

³⁶ Christopher Brooks, *Pettyfoggers and vipers of the Commonwealth: the "lower branch" of the legal profession in early modern England* (Cambridge, 2004), p. 133.

³⁷ Canon CXXXIII: 'Proctors not to be clamorous in court', cited from <http://www.anglican.net/doctrines/1604-canon-law/> (visited 27/04/16).

³⁸ Anon., *The proctor and parator*, pp. 2–10. Sponge is here referring to the white sheets that those undergoing public penance were required to wear.

³⁹ Anon., *The spirituall courts epitomized in a dialogue betwixt two proctors* (London, 1641), pp. 1–6.

and consistory courts before being promoted in the early 1670s. Once in office, however, the steady stream of cases brought before the diocesan tribunals ensured the proctors a steady income, especially since, as Heywood's case reveals, defendants often had no choice but to hire one. According to the table of fees, proctors received 2 s. for preparing a case, 1 s. for a schedule of excommunication, while the production of a libel was supposed to be rewarded with 5 s.⁴⁰ This was substantially higher than the salaries given to apparitors and the position of a proctor was full-time, yet the proctors had considerable expenses as well, most notably they were responsible for providing the maintenance of apprentices. That many depended on this income is clear from the willingness of proctors to take those withholding these fees to court. Oldfield himself was forced to resort to this no less than five times between 1672 and 1676 (his last year of practice).⁴¹ Till correctly notes that such instances could be interpreted as revealing a lack of respect for the ecclesiastical courts among those withholding the fees, yet they also underline the fact that proctors were salaried officials whose livelihood depended on prosecution.⁴²

The same was true for the registrars, who were seated next to the chancellors in the Chester consistory court. Also a notary public, the position of the registrar required a bachelor's degree in law. His tasks were to record the court sessions, produce the various court orders, such as citations and excommunications, and register and collect the returns of such certificates. As this was too much for one man, most courts employed both a registrar and a deputy registrar as well as occasionally relying on a lesser scribe, usually in the form of a proctor trainee. Because the registrars dealt less frequently with the public than proctors and apparitors, antagonism towards their office is less noticeable in contemporary polemic. Yet, they too had their critics. Edmund Hickinggill warned against the 'Registers...that live by Fees from sinners, whose purses they take upon the Highway to Heaven or Hell; and no repentence will serve the turn, except those motley, ecclesiastical-lay merchants for souls be pleas'd, that is, paid their demands.'⁴³ Equally disapproving, Heywood specifically targeted the registrar of York, George Aislaby, who had 'made a wonderful improvement of it, for besides the place which is worth 500 a year, he hath much increased it by buying *capias*' for excommunicate persons throughout the country' and thereby, according to Heywood, quadrupled his salary.⁴⁴

⁴⁰ Ayliffe, *Parergon juris*, pp. 550–1.

⁴¹ Chester, The Cheshire Archives and Local Studies Service, EDC 5/1673/1, 5/1675/31, 5/1675/22, 5/1675/26, 5/1675/31.

⁴² Till, 'Ecclesiastical courts', p. 41.

⁴³ Edmund Hickinggill, *The black non-conformist* (London, 1682), p. 2.

⁴⁴ Cited in Till, 'Ecclesiastical courts', p. 33. By '*capias*' Heywood is referring to issuing of the writ *De Excommunicato Capiendo* which allowed the church courts to order the imprisonment of excommunicates. For more on this writ, see chapters 4 and 5 of this thesis.

Again, such allegations are extremely difficult to substantiate. What is clear, is that the registrar's office could be lucrative. Registrars would be rewarded near seven shillings for each testimonial and commission registered, six for a sentence, and six for a writ *de excommunicato capiendo*. Together with a number of smaller fees, such as 1 s. 4.d for each absolution, Heywood's estimate does not seem altogether unreasonable for a busy registrar such as Aislaby.⁴⁵ As such, it is not surprising to find registrars in the upper echelons of the social circles within the dioceses they operated. George Aislaby certainly did in York, and the diary of Henry Prescott, deputy registrar in Chester from 1686 to 1719, reveals a diligent official working closely with the diocesan chancellor and in frequent contact with the Bishop and the city's secular leadership.⁴⁶

According to Rosemary O'Day, the office of the early modern registrar was not confined to merely recording and registering. On the contrary, her study revealed an official who 'in order to run the administration efficiently at a bureaucratic level' would frequently 'turn from the implementation of policy towards its decision making.' 'It appears', O'Day continued, 'that because the registrar effectively decided whether an offender should be prosecuted in the courts (unless his case was so important that the bishop or chancellor intervened) it became important to win the registrar over to one's point of view.' O'Day was less instructive, however, on how to prove such proactive behaviour among the registrars since 'the workings of influence and patronage were generally quiet and undocumented.'⁴⁷ Yet, although registrars seldom left personal remarks in the piles of documentation passing through their office, the bureaucratic process which they oversaw has left us some instructive clues about their potential influence. More specifically, the absolution and excommunication certificates sent by the courts required a minister's signature before they could be duly processed by the registrar. Consequently, the return of a certificate provided ministers the opportunity to write a small message either on the certificate itself or on a small, separate note in which they could question the outcome of a particular case, and these allow us to evaluate more concretely the potential influence wielded by registrars.

Prescott's predecessor, William Watkins (deputy registrar from 1661 to 1686) received several such notes that are now intermittently attached in the many act books produced by the Restoration Chester consistory court. One, sent by Zachary Cawdry, vicar of Bartholomey, on 29 August 1672, detailed the case of Anne Sidway, originally

⁴⁵ Ayliffe, *Parergon juris*, pp. 550–551.

⁴⁶ Henry Prescott, *The diary of Henry Prescott, LL.B, deputy registrar of Chester diocese*, 3 vols., ed. John Addy (Chester, 1987).

⁴⁷ Rosemary O'Day, 'The role of the registrar in diocesan administration', in Rosemary O'Day & Felicity Heal (eds.), *Continuity and change: personnel and administration of the Church of England* (Leicester, 1976), pp. 79–93.

cited for having a miscarriage before marriage and excommunicated for a non-appearance in 1669. According to Cawdry, soon after her excommunication

her husband appeared and gave the court satisfaction (as hee tells mee) by way of commutation of her pennance. And I believe it was so, for accordingly, there was sent to mee under ye seale of your office...an Absolution of the said Anne Sidway from excommunication, and I accordingly pronounced her absolved, and the congregation have received her to her communion in publick worship again.

Cawdry was, therefore, surprised to find ‘that the said Anne Sidway againe bee cited for ye same crime to appeare you at this visitation.’ This ‘was likely to cause as much trouble in my congregation, as did the former.’ Cawdry thus pleaded Watkins to ‘please dismissee her from further prosecutions without any more trouble or charge.’⁴⁸ Another message, this time from John Hyde, vicar of Salford, appears in the act book from 1675. Sent on 18 May, Hyde asked Watkins to ‘signify to me in a line, for what cause John Millington of Manchester was presented & excommunicated, he doth not know any reason...nor by whose presentment it is done...Sir be pleased to intimate the cause & how hee may obtaine his absolution & what it will cost.’⁴⁹ As this last comment indicates, the Church’s ministry were aware that the court officials were dependent on the fees they would receive from absolutions and other similar legal decrees. Whether Wilson knowingly manipulated the court’s decrees to double his rates, or whether Sidway’s and Millington’s second citation represented a genuine mistake is very difficult to assess. Wilson’s replies, if he sent any, have not survived, though he appears to have responded favourably to Cawdry’s request, as Sidway was not cited again.

Wilson’s counterparts in other dioceses received similar requests from clergymen puzzled by the decisions of the church courts. In April 1682, Francis Oliver, deputy registrar of Exeter consistory court, received a note from Thomas Ley, vicar of Crediton, attached to an excommunication certificate of three of Ley’s parishioners, all of whom had been banished for failing to prove their receipt of the sacrament. To Ley, this was peculiar given that he had informed Oliver in person that the three had received it, and he found it extremely objectionable that Oliver had proceeded with the excommunication simply for not bringing the correct certificate. His letter accordingly proceeded to denounce the lay officials of the consistory courts for prioritising bureaucratic procedure over spiritual wholesomeness: ‘I am sorry you take advantage of those men who came

⁴⁸ Chester, The Cheshire Archives and Local Studies Service, EDV 1/35, f. 58.

⁴⁹ Chester, The Cheshire Archives and Local Studies Service, EDV 1/44, f. 73.

to the sacrament, for not bringing a certificate, it was their ignorance, & I have assur'd you they did receive it according to the Church of England.' It was unthinkable that the Church's greatest censure should be used against simple administrative blunders: 'Don't mistake my meaning', he continued, 'I would not have a groin less of the discipline of the Church but our laws are censures & not paenae & if there bee a reformation, I hope you will not lay hold of a little mistake to excommunicate again.'⁵⁰ This was not, however, the only such letter which Oliver received, who appears to have cared little for the spiritual concerns of the Devonshire ministry.

Similar comments can be found on absolution certificates. While the ritual of repentance was meant to signify the spiritual absolution of a sinner to their wider community, the practice of commuting public penances that occurred in front of parish congregations for financial payments had long threatened the censure's spiritual credibility. This was certainly the opinion of Richard Thompson, dean of Bristol Cathedral from 1667 and vicar of St. Mary Redcliffe from 1678, who was not afraid to utilise the small space available underneath the formulaic text on absolution certificates to criticise the decision of the registrar and his consistory court. In one of several examples, dated from April 1683, he penned the following on the absolution certificate of one Edmund Raddish: 'Sir! You lately sent me this instrument which referreth to ye case of Edmund Raddish, formerly prosecuted by mee & my churchwardens upon ye 4, 5, 6, 7, 8, 9, 10, 11 & 12 Canons & also upon ye 109, 110, 112 & 113 Canons & those are to signifie to ye notoriety of ye mans schisme, both before & since the date hereof; & that I do not see this is a just or valid Act.'⁵¹ Thompson's objections fell on deaf ears and instead he was prosecuted for refusing to publish the court's absolutions, only narrowly avoiding suspension.⁵²

The significance of these protests, however, does not necessarily lie in their outcomes. Equally important is what this internal dialogue between clergymen and registrars, only occasionally noticeable in the records, tells us about the dynamics of power and influence within the Restoration church courts. Clearly, ministers like Thompson and Ley perceived the registrars as influential figures within the courts and attaching a note to a procedural certificate en route to the registrar's office presented them with the most direct line of communication with the innermost bureaucratic workings of the courts. Whether this was because they believed that the registrars themselves had

⁵⁰ Exeter, Devon Heritage Centre, CC. 173, unnumbered folio.

⁵¹ Bristol, Bristol Archives, EP/J/2/4 1(b), unnumbered folio. The same bundles contain three similar complaints from Thompson.

⁵² For more on Richard Thompson, see Jonathan Barry, 'The politics of religion in Restoration Bristol' in Mark Goldie, Tim Harris & Paul Seaward (eds.), *The politics of religion in Restoration England* (Oxford, 1990), p. 173.

the capacity to influence court proceedings or because they saw the registrars as close confidants of either the chancellor or bishop is not entirely evident. What is clear from these messages, however, is that ministers were fundamentally excluded from the decision-making process of the courts, and many grew visibly frustrated at seeing their sacred office reduced merely to providing the necessary spiritual embellishments to what otherwise appeared to be an entirely lay operation. As we proceed to explore the centrepiece of Chester's consistory court, the judge's chair, this division between the Church and the lay officials operating its court will become noticeably more acrimonious.

(iii) The Civil Lawyers

The previous chapter explored the Church's difficult relationship with its chief legal and administrative officials, the diocesan chancellors. Ever since Henry VIII's decision in 1546 to replace the canon lawyers - the majority of whom had been clergymen - with a small clique of lay civil lawyers, each effort to reform the Church's jurisdiction, from the *Reformatio Legum Ecclesiasticarum* in 1553 to the Laudian canons of 1640 and the Worcester House Declaration published in the summer of 1660, had contained significant clauses to reduce, if not altogether eliminate, the influence of the diocesan chancellors. Indeed, whether they preferred a presbyterian model of devolved pastoral authority, a system emphasising the apostolic office of the bishops, or a version of primitive episcopacy combining the presbyterian and episcopal models, clergymen of the post-Reformation English Church found rare common ground in their desire to reclaim the spiritual arm from these lay officials. Despite this, however, none of the efforts to curb the influence of the diocesan chancellors succeeded, and the civilians were able to return in full force to the Church's courts following their revival in the summer of 1661.

Prior to the Civil War, the diocesan chancellors had become infamous for their eagerness to enforce the Church's severest laws against its critics. A look at the roster of civilians appointed to these positions in Restoration England suggests that little had changed during the two decades during which ecclesiastical discipline had not been in operation. Thomas Burwell, who had been impeached by the Long Parliament in 1641 for his severe treatment of puritans, was returned to his position and, after he had played an active role in the Parliamentary committee responsible for the revival of the church courts, was also appointed to the chancellorship of York diocese. His civilian colleague in that committee, the vocal opponent of nonconformity, Edmund Pierce, was installed as the chancellor of Bath and Wells diocese. In 1663, London diocese saw the appointment of Thomas Exton, a civilian of a similar calibre, who would become notorious among Londoners during the subsequent three decades as a vigorous

opponent of dissent and whom the Earl of Shaftesbury could only describe as 'vile.'⁵³ Most aggressive of all, though, was probably Sir Edward Lake who, after unsuccessfully lobbying Parliament for a return of both the High Commission and the inquisitorial oaths in the months following the reopening of the church courts, was repeatedly accused by Lincolnshire parishioners of unlawfully requiring them to swear the outlawed oaths in his visitation courts.⁵⁴

Despite being stripped of the High Commission and the *Ex Officio* oaths, the diocesan chancellors were thus as assertive and eager to defend the Restoration Church from its critics as their antebellum predecessors had been. The records produced by the restored ecclesiastical courts also strongly indicate that they were able to return to their former positions of influence swiftly. For instance, the voluminous documentation generated by the Chester consistory court contains few traces of any of the bishops that ruled the diocese between 1660 and 1686. This stands in stark contrast to their chancellor, John Wainwright, appointed in April 1661, whose signature appears on each absolution, excommunication, and signification ordered by the court and whose legal papers, correspondence and private documents constitute a significant portion of the material available to researchers visiting the Cheshire Archives. Above all, these papers reveal that it was Wainwright, and not the bishops, who adjudicated cases from the judge's chair in the regular court and who conducted the bulk of visitation proceedings throughout the diocese. The same picture emerges from visiting archives held in Lincoln, Exeter, York and other dioceses, where the court records repeatedly evince the significant influence wielded by the diocesan chancellors. There were, moreover, strong financial incentives for the chancellors to take an active role in the administration of their dioceses. Added to their sizeable annual salary of around £25, they could, for instance, charge 10 s. for every attested and sealed official certificate and 6 s. for every sentence - a rate double that of the registrars.⁵⁵

For those bishops not interested in meddling with the business of the courts, the dominant position of the chancellors within the restored consistorial courts could be relatively unproblematic. According to Till, this was the case in Restoration York, where the three aged archbishops, Accepted Frewen (1660 - 1664), Richard Sterne (1664 - 1683), and John Dolben (1683 - 1686) were content to leave the running of their court to

⁵³ B.D. Henning (ed.), *The history of Parliament: the House of Commons 1660–1690*, 3 vols. (London, 1983), I, pp. 283–4.

⁵⁴ See, for instance, Edward King, *The humble petition of Edward Kinge*, (London, 1666), p.1. For Lake's appearance in court, see "King vs. Lake", "Browne vs. Lake", and "Birch vs. Lake" in Geoffrey Ellis & Max A. Robertson (eds.), *The English Reports: King's Bench Division*, vol. 86 (London, 1902), pp. 499, 569, 817. For a detailed exposition of Lake's defence against the allegations against him, see Kew, National Archives, SP 29/314, f. 134.

⁵⁵ Ayliffe, *Parergon Juris*, pp. 550–1.

their chancellors.⁵⁶ However, similar to their pre-Civil War ancestors, many Restoration bishops were not willing to abandon the disciplinary duties of their apostolical office completely, and in such cases the relationship between bishop and chancellor frequently turned sour. This was the case in Restoration Lincoln, where it did not take long for William Fuller, translated to the bishopric in 1667, to clash with his inherited chancellor, Edward Lake, who did not appreciate his new superior's intention to intervene in disciplinary questions. In a letter to Archbishop Sheldon from 3 April 1669, Fuller described how 'Sir Edward Lake came to speake privately with mee, and after some expostulations, why I should not take the bread out of his mouth...he fairely told me, that he much question me.' The situation deteriorated, and Fuller recalled many more 'threatening speaches I had from him...which I truly cannot longer endure.'⁵⁷ In a second letter sent a few weeks later, he accordingly hoped 'my lord grace will give me leave to invalidate Sir Edward Lake's patent.' This, however, was easier said than done as the chancellors were appointed for life and could not be fired. Thus, even though Fuller demonstrated beyond doubt how 'this vicar-general will assume more power than the Bishop pretends to', Lake was not removed.⁵⁸

Lake may have been singularly abrasive and confrontational, but Fuller's situation was not unique. As early as 1662, the Bishop of St. David's, William Lucy, entered a long legal process to get rid of his chancellor, John Aubrey, though he too was unsuccessful.⁵⁹ William Gulston, Bishop of Bristol from 1679 to 1684, complained that his inherited chancellor, Henry Jones, commuted penances in order to increase his fees. More specifically, he accused Jones of absolving 'a ringleading fanaticke, in ye mans house, without my knowledge, to ye great scandall of all ye Kings friends here & by ye encouragement of ye fanaticks.'⁶⁰ Probably the most public confrontation between bishop and chancellor occurred between Thomas Briggs, chancellor of Chichester from 1672 to his death in 1713, and the aged Guy Carleton, translated to the see in 1679. In Bristol, his previous diocese, Carleton was one of the few Restoration bishops who attended his consistory court relatively frequently, and this was a habit he hoped to

⁵⁶ Frewen, in particular, 'took little or no noticeable personal interest in his courts.' Till, 'Ecclesiastical Courts', p. 12.

⁵⁷ Oxford, Bodleian Library, MS Add C. 305, f. 286 (William Fuller, Bishop of Lincoln, to Gilbert Sheldon, Lincoln, 3 Apr. 1669).

⁵⁸ Oxford, Bodleian Library, MS Add C. 305, f. 292 (William Fuller to Gilbert Sheldon, Lincoln, 19 Apr. 1669).

⁵⁹ For more on Lucy's conflict with Aubrey, see William Gibson "'The most glorious enterprises have been achiev'd": the Restoration Diocese of St David's 1660–1730' in William Gibson and John Morgan-Guy (eds.), *Religion and Society in the Diocese of St David's 1485–2011* (London, 2015), pp. 93–4.

⁶⁰ Oxford, Bodleian Library, MS Tanner, vol. 37, f. 142 (William Gulston, Bishop of Bristol, to William Sancroft, Archbishop of Canterbury, Symondsburry, 27 Sept. 1680).

continue in Chichester. There, however, Briggs had been accustomed to singlehandedly running the consistory and on 28 July 1680, the two clashed in open court after Carleton had ordered an inhibition against his chancellor. In one account of the events, Briggs had made a mockery of Carleton's attempt to control his chief lay official, 'grinning & laughing in the face of the Byshop, endeavor[ing] to make ye factious crowd deride their Byshop after his example.' If his 'designe was to putt ye Byshop into the greatest transports of passion', then he succeeded. The same report describes how Carleton rushed towards him and 'tost off his hatt, upon which Dr. Briggs pusht his lordship on the brest with his fist soe violently yt severall gentlemen standing by did apprehend his lordships life might be much endangered thereby.' This forced Carleton to 'adjourne the court & to goe away leaving ye chancellor behind him to triumph & bee hugged in ye arms of ffactions as hee was.'⁶¹ Yet, that Briggs should have been a champion of the dissenters seems unlikely. As Evan Davies has demonstrated, he had been instrumental in the prosecution of several prominent Chichester dissenters.⁶² Rather, Briggs' actions were more likely caused by his desire to stand up against his new superior. Furthermore, in a different version of that court day, Carleton is portrayed as the antagonist, attacking Briggs 'in a very passionate & angry manner, laying hands upon him, and driving him backwards to the very wall, where the said Dr. his hatt & periwig were both struck off his head.'⁶³ We cannot, therefore, be entirely sure who was the instigator of the dispute. What is clear, however, is that both Briggs and Carleton were eager to control the court without the interference of the other, and Carleton would continue to make several attempts to rid his chancellor, though none of them was successful.⁶⁴

The sessions in Chester consistory court never became quite as dramatic, though there was tension between Wainwright and George Hall, bishop from 1662 to 1668, especially after Hall sought to reduce the fees of his chancellor in 1664 which caused Wainwright to not have 'the revered esteem for his Lordship I could wish I had.'⁶⁵ Friction was not inevitable, however, even in dioceses where the bishop sought actively to partake in the administration of his court, For example, while Bishop of Peterborough, William Lloyd described how 'the chancellor, archdeacon, & myselfe have begun a

⁶¹ Oxford, Bodleian Library, MS Tanner, vol. 149, f. 43.

⁶² Davies, 'The enforcement of uniformity', pp. 85–91.

⁶³ Oxford, Bodleian Library, MS Tanner, vol. 149, f. 105

⁶⁴ Jeffrey Chamberlain, "'A regular and well-affected diocese": Chichester in the eighteenth century', in Jeffrey Chamberlain & Jeremy Gregory, *The national Church in a local Perspective: the Church of England and the regions, 1660–1880* (London, 2002), p. 79.

⁶⁵ Oxford, Bodleian Library, MS Add C. 302, f. 33 (John Wainwright to Gilbert Sheldon, Chester, 4 Mar. 1664).

parochial visitation in this diocese, & we have already visited 132 parishes.⁶⁶ Nevertheless, the many clashes between diocesan chancellors and bishops demonstrate that such collaboration was not a given in the ecclesiastical courtrooms of Restoration England, where even industrious bishops were frequently prevented from exerting their influence. This state of affairs was visible to lower clergymen as well, who frequently complained about the unwarranted authority of the chancellors. For example, Richard Thompson, who had bitterly condemned the mismanagement of absolutions, was reported to have ‘musterd up many grievances and neglects & corruptions in the managment of affairs in this diocess’ at a sermon held in Bristol Cathedral in April 1682, where he emphasised ‘that the chancellor was given to bribery’ and ‘sold mens soules for money.’⁶⁷

The diocesan chancellors were not the only civilians with whom the Church leadership had to deal. Indeed, as in the pre-Civil War period, the majority of the doctors in civil law actually found work as advocates in either of the two higher provincial courts of appeal. Thus, the Chancery court in York employed between two and six advocates during the Restoration, while the number in the Archbishop of Canterbury’s tribunal, the Court of Arches located near St. Paul’s in London, fluctuated between 20 and 28. In both tribunals, their principal task was twofold. First, as experts of the ecclesiastical law, the advocates were often called into lesser diocesan tribunals to provide legal counselling in specific cases where proctors alone were deemed insufficient. Second, they adjudicated appeals sent from these lower courts. Some also fulfilled the function of surrogate chancellors, such as Philip Broome and William Watkins, who stood in for Burwell in York while he was preoccupied in Durham.⁶⁸

Perhaps the biggest source of friction between the civilians and the Restoration bishops arose from the appeal process. An appeal could be commenced within fifteen days of a sentence and would involve significant further costs for the appellants involved if unsuccessful. As Bill Sheils has demonstrated, the Chancery court in York received relatively few appeals during the Restoration, hearing just under 100 cases, most from Chester and the archdeaconry of Richmond, between 1661 and 1684, and steadily

⁶⁶ Oxford, Bodleian Library, MS Tanner, vol. 36, f. 185 (William Lloyd, Bishop of Peterborough, to William Sancroft. Peterborough, 6 Dec. 1681)

⁶⁷ Oxford, Bodleian Library, MS Tanner, vol. 35, f. 45 (Robert Woodward, Chancellor of Salisbury, to Henry Jones, Chancellor of Bristol, Bristol, 19 July 1682).

⁶⁸ Whatever their tasks, all practising advocates were part of the college of civilians, the Doctors’ Commons, located near the Court of Arches, which, as Dr. Squibb has demonstrated, played a crucial role in sustaining the professional identity of the relatively small clique of ecclesiastical lawyers. G.D. Squibb, *Doctors’ Commons: a history of the college of advocates and doctors of law* (Oxford, 1977), pp. 23–30.

decreasing in the following century.⁶⁹ Unsurprisingly, given the considerably larger and more populous nature of the southern province, the two appeal books surviving from the period 1661 to 1700 show that the Restoration Court of Arches heard considerably more. More precisely, a total of 631 appeals from the dioceses within Canterbury province were heard by the Arches during this period, most of which concerned testamentary cases though a significant number dealt with other aspects of ecclesiastical law, such as the suspension of ministers and questionable excommunications.⁷⁰

Unfortunately, because only a minority of these appeals is accompanied by a recorded sentence it is difficult to assess how many of them were successful in convincing either the Court of Arches or Chancery to issue a writ of prohibition against the proceedings in a lesser diocesan tribunal. Regardless of the actual number, however, far too many appeals were successful in the eyes of several prominent clergymen of the Restoration Church who railed at what they perceived to be a habitual obstruction of the Church's discipline. Anthony Sparrow, Bishop of Exeter from 1667 to 1677, lamented how the clergy 'desirous to do the utmost in our Courts for the suppressing of Conventicles, are rendred useless by the Dean of Arches who contrary to the 97 & 98 Canons receive factious appellants...suffers them by that means to continue in disobedience to the great discouragement of our Courts.'⁷¹ Another keen disciplinarian of the Restoration Church, Bishop Peter Mews of Bath and Wells, described how the 'Presbyterian Faction at Chand (a place wch give mee great trouble) they have obteyned Absolutions out of ye Arches' and 'this hath so encouraged the rest of the faction that they now plainly say they care not for our proceedings heer, and indeed not if Absolution from above be so easily obteyned.'⁷² Most disgruntled of all was Samuel Parker, the famous antagonist of Thomas Hobbes, who, while Archdeacon of Canterbury from 1670 to his promotion to the bishopric of Oxford in 1688, wrote several letters to Archbishop Sancroft concerning the civilians proclivity to grant appeals in the Arches. According to Parker, 'howsoever we proceed against offenders here, all their appeals are accepted at the Arches...& how tedious their proceedings are your grace very well knows, so that it is not possible for mee to proceed against any person or in any cause without the charges & troubles of a long law suit.' The excuse provided by Sir Robert Wiseman, Dean of Arches from 1672 to 1684, that 'hee could not help it, in that if hee refused any appeal

⁶⁹ W.J. Sheils, *Ecclesiastical cause papers at York: files transmitted on appeal, 1500–1883* (York, 1983), p. viii.

⁷⁰ London, Lambeth Palace Library, C 1, C 2.

⁷¹ Oxford, Bodleian Library, MS Add C. 305, f. 257 (Anthony Sparrow, Bishop of Exeter, to Gilbert Sheldon, Exeter, 23 June 1669).

⁷² Oxford, Bodleian Library, MS Tanner, vol. 42, f. 119 (Peter Mews, Bishop of Bath and Wells, to Gilbert Sheldon, Bath, 14 Aug. 1674)

hee was lyable to a suit at common law' was not accepted by Parker, who blamed Wiseman and the Arches for 'the subversion of all Ecclesiastical Government.'⁷³

There was some truth in Wiseman's defence. Requests for prohibitions against the restored church courts appeared relatively frequently in both the Court of Common Pleas and the King's Bench, and some were swiftly granted. Sir Edward Lake, for instance, was, as we have already noted, reprimanded several times with a prohibition against his consistory court for his supposed use of inquisitorial oaths. Yet, that such prohibitions were almost automatically approved, as Wiseman suggested in his defence against Parker's allegations, was an exaggeration. Certainly, many of the common lawyers in Restoration England had inherited their predecessors' prejudices about the Church's laws, but most recognised the validity of the church courts so long as they were confined within a set of clearly defined jurisdictional boundaries, and this was reflected in the outcome of several cases. In 1671, for instance, the chancellor of Salisbury diocese, John Elliot, was brought to the King's Bench by a plaintiff claiming that the Church's canons could not be used against conventicles. Responding to the charge, serjeant Baldwin countered that 'prohibitions are only to be granted when the common law is invaded and interfered with.' The judge of the case, Sir John Vaughan, agreed and ruled that 'the spiritual court may proceed against conventicles, as a spiritual offence, tho' not as a civil.' The church courts, he concluded, 'have conusance of all false worshippers.'⁷⁴ In another case from 1683, the King's Bench judges similarly denied a prohibition with the argument that in cases 'concerning an ecclesiastical person and an ecclesiastical matter, it is fit to be tried [in the ecclesiastical court] , and it is no certain rule that a thing triable here is not triable there.'⁷⁵ As the ambiguity of this verdict suggests, it simply was not true that the higher common law courts eagerly jumped on every chance to restrict their ecclesiastical counterparts through prohibitions. Whether or not this meant that Wiseman and other civilians deliberately obstructed the Church's discipline for the private gain brought by hearing appeals is very difficult to assess, though it seems plausible to suggest that there probably was at least a grain of truth in the criticism levelled by Parker and other clergymen. In any case, the many complaints against civilian manipulation of the appeal process serve as yet another powerful reminder that ministers frequently experienced alienation and frustration when seeking to understand or become involved with the Church's courts.

⁷³ Oxford, Bodleian Library, MS Tanner, vol. 42. f. 99 (Samuel Parker, Archdeacon of Canterbury, to William Sancroft, Canterbury, 5 Dec. 1678).

⁷⁴ Ellis & Robertson (eds.), *English Reports*, vol. 86, p. 296.

⁷⁵ Ellis & Robertson (eds.), *English Reports*, vol. 83, p. 451.

(iv) *Church court officials and early modern governance*

From the apparitors to the diocesan chancellors, the lay officials staffing the English ecclesiastical courts were clearly not the most popular men in their dioceses, and at least some of the charges against them were probably well deserved. In attempting to understand the different roles they fulfilled in the administration of the Church's jurisdiction, this chapter has, however, sought to penetrate beyond stereotypes and caricatures. In so doing, it has developed an image of officeholding that sits rather awkwardly with our present understanding of early modern governance. In its concluding remarks, this chapter will thus briefly revisit how historians in the last four decades have tended to conceptualise governance and state formation in early modern England, before exploring how the officials employed by the church courts complicates this picture.

The theory behind the development of the modern state is often associated with the early twentieth-century German sociologist, Max Weber. According to Weber, the modern European state was a consequence of the profound changes that occurred throughout the West in the aftermath of the Reformation. Perhaps the most characteristic feature of this development, he believed, was the creation of rationalised and centralised bureaucracies. Unlike the previous feudal methods of governance that had been characterised by the 'charisma' of individual leaders capable of personally altering the means of administration within a limited area, these new bureaucracies were defined by a routinized, impersonal, and rigidly defined legal structure maintained by a group of educated and salaried specialists.⁷⁶ In contrast to medieval noblemen, these specialists worked under the political leadership, and were employed merely to maintain the means of administration, not reform it. As Peter Lassman explains, the theory behind this type of 'legal rule is contained in the idea that legitimacy is derived from acceptance of the authority of a system of abstract rule' and characterised by the assumption that administrators in such systems are 'completely separated from the means of administration.'⁷⁷

This Weberian model has been utilised by medieval scholars to explain the evolution of English governance following the Norman Conquest, particularly with regard to the growth of the Exchequer. For instance, Michael Clanchy writes that 'unlike the Domesday survey, The Exchequer [from the late eleventh century onwards] set up an administrative machine, multiplying year on year, which pursued named individuals

⁷⁶ For more about Weber's interpretation of political 'charisma' and how it differed from modern means of administration, see Thomas E. Dow, Jr., 'An analysis of Weber's work on charisma', *British Journal of Sociology*, vol. 29 (1978), pp. 83–93.

⁷⁷ Peter Lassman, 'The rule of man over man: politics, power and legitimation' in Stephen Turner (ed.), *The Cambridge companion to Weber* (Cambridge, 2000), p. 92.

through written instruments', and this 'explains how charisma became routinized.'⁷⁸ According to Arthur J. Slavin, Weber was also a powerful influence on an older generation of early modern historians. Geoffrey Elton in particular detected in the 'rational legal order' established by Thomas Cromwell and Henry VIII during the 1530s an increasingly bureaucratic, Weberian state due to its increasingly centralised administration, 'preference for achieved status' and 'depersonalization of office.'⁷⁹

However, ever since the 1980s, when Keith Wrightson argued that early modern England housed 'two concepts of order' – that of the parish and that of the state – and Patrick Collinson famously characterised the English state as a 'monarchical republic', scholars have become increasingly wary of exaggerating the reach of the central state.⁸⁰ The study of early modern governance and state formation has instead shifted to the local arena, where a set of rotating, elected, and unsalaried parish officials, who did not always comply with the government's demands and were often unwilling to report their neighbours to the authorities, have taken centre stage. This does not mean that historians have neglected the role of the country elites or the central authorities, but it has led to an increasing scholarly emphasis on the nonprofessional and discretionary nature of early modern governance at the local level. Thus, Joan Kent writes that in order to understand how governance functioned in the seventeenth century, we must recognise that the success of government initiatives in many ways hinged on 'the compliance of parish vestries and their officers.'⁸¹ A concomitant result of this shift from centre to locality has been to downplay the role of bureaucracy and bureaucrats in the early modern period. For instance, Michael Braddick has commented that the fundamentally participatory nature of sixteenth and seventeenth century government sits uneasily with Weber's insistence on the role of a centralised bureaucracy as the driving force of the state.⁸² Both Goldie and Kent have agreed with this assessment, with the latter commenting that 'scholars quite rightly emphasize that English government in the later seventeenth and eighteenth centuries continued to be unbureaucratic and that it was still staffed by unpaid, unprofessional, part-time officers.'⁸³

⁷⁸ Michael Clanchy, 'Does writing constitute the state?', *Journal of Historical Sociology*, vol. 15 (2002), p. 69.

⁷⁹ Arthur J. Slavin, 'G.R Elton and his era: thirty years on', *Albion*, vol. 15 (1983), p. 222.

⁸⁰ Keith Wrightson, 'Two concepts of order: justices, constables and jurymen in seventeenth-century England' in John Brewer & John Styles (eds.), *An ungovernable people: the English and their law in the seventeenth and eighteenth centuries* (London, 1980), pp. 21–46; Patrick Collinson, 'The monarchical republic of Queen Elizabeth I', *Bulletin of the John Rylands University Library of Manchester*, vol. 69 (1987), pp. 394–424.

⁸¹ Joan Kent, 'The centre and the localities: state formation and parish government in England, circa 1640–1740', *Historical Journal*, vol. 38 (1995), p. 403.

⁸² Michael Braddick, *State formation in early modern England, c. 1550–1700* (Cambridge, 2000), p. 19

⁸³ Goldie, 'Unacknowledged republic', p. 154; Kent, 'centre and localities', p. 376.

There is undeniably much to be said for this interpretation. The early modern English government was much smaller and far less pervasive than the more monolithic Prussian state machinery that Weber observed. For instance, Goldie has estimated that while the royal court employed some 1,200 officials at any one point in the seventeenth century, the same period saw some 50,000 unelected and unpaid parish officials involved in the maintenance of local affairs.⁸⁴ As such, the English state of the sixteenth- and seventeenth-centuries was far more reliant on local co-operation than the Weberian model accounts for. Nevertheless, while the church court officials studied in this chapter were not working for the central state in the strictest sense, they should arguably caution us from entirely abandoning bureaucratic concepts of governance in our study of the early modern period. Indeed, unlike what Braddick called the ‘weakly coordinated and relatively undifferentiated’ nature of elected officials, the proctors, registrars, advocates, and to a lesser extent, the apparitors, represent a class of professional bureaucrats whose permanent function (and source of income) was overseeing a vast administrative machinery that was fundamentally non-participatory in nature and not principally concerned with the maintenance of good neighbourliness or upholding the spiritual wholesomeness of the Church’s discipline.⁸⁵ To be sure, these officials were outnumbered by the multitude of temporary parish officials, but they nevertheless played an important part in the administration of local governance. As such, the court officials should warn us against insisting that local governance in early modern England was entirely unbureaucratic in nature.

Finally, while the activities of the church court officials might not warrant a return to more explicitly Weberian interpretations of the early modern English state, Weber’s thoughts concerning the inherent dangers of bureaucracies are instructive for our understanding of the friction that existed between the ecclesiastical bureaucrats and the Church’s ministry. In Weber’s analysis, the real source of power in bureaucratic authorities lay not with the appointed superiors of such systems. Instead, he argued that it could be located in the ‘specialised knowledge of the expert’ who, unlike his superior, is fully versed in the complicated administrative and legal technicalities characteristic of bureaucratic organisations. This, Weber believed, would create a situation where bureaucrats could develop a greater knowledge of the proper administration of authority than their superiors. In his own words: ‘the power position of a fully developed bureaucracy is always great, under normal conditions over-towering. The political “master” always finds himself, vis-à-vis the trained official, in the position of a dilettante

⁸⁴ Goldie, ‘Unacknowledged republic’, pp. 154–61.

⁸⁵ Braddick, *State formation*, p. 46.

facing the expert.⁸⁶ The potential ramifications of this imbalance of power could have profound consequences. Above all, it meant that bureaucrats could, if unchecked, extend beyond their legitimate sphere of authority and effectively replace the appointed leadership.⁸⁷ This is what Weber referred to when writing about the ‘threatening dominance of experts.’⁸⁸

Although Weber would probably not have recognised the bureaucracy of the Restoration Church as ‘fully developed’, his examination of the power struggle that occurs between experts and superiors could very well be applied to the relationship between the Restoration ministry and the officials staffing the restored ecclesiastical courts. For, although clergymen, and particularly bishops, insisted on their divinely appointed supremacy of the Church’s jurisdiction, they were not the experts and, as such, were essentially not in control. Instead, real power within the English church courts lay, as Weber postulated, with those possessing specialised training and knowledge in the Church’s legal administration – the registrars, proctors, advocates and chancellors. It was they who understood the bureaucratic procedures of the ecclesiastical law, and it was consequently they who could manipulate it. Restoration clergymen, on the other hand, had no formal legal or administrative education and this at least partly explains their frustration with, and inability to challenge, the officials of the church courts. Indeed, their complaints about the unnecessarily bureaucratic procedure of the church courts, or their concerns that court officials were illegitimately seeking to usurp the rightful leadership of the Church, were those of the dilettante trying to challenge the expert, to borrow Weber’s phrase.

As this and the previous chapter have demonstrated, the Church objected to this state of affairs from both a scholarly and a practical point of view. Whether of a conforming or puritanical mould, clergymen could agree that the Church should be in charge of its own courts, and in this regard, little separated the ministry of the Restoration Church from its Laudian predecessor. However, it would be a mistake to think that late seventeenth-century clergymen were merely willing to point out what was wrong with the current administration of the Church’s jurisdiction. On the contrary, the ministry that emerged from the deeply divisive experiences of the Civil War and Interregnum years coupled their attempts at reducing the influence of the Church’s lay officials with a much more constructive message, heavily based on the teachings of St. Paul, that sought to emphasise the sacred disciplinary functions of the clergy. It is to this blueprint, its

⁸⁶ Max Weber, *Economy and society: an outline of interpretive sociology*, edited and translated by Guenther Roth & Claus Wittich (Berkeley, 1922), pp. 991–4.

⁸⁷ For more about this particular danger of a bureaucratic system, see Lassman, ‘The rule of man over law’, p. 92.

⁸⁸ Weber, *Economy and society*, p. 995.

implementation, and what it can tell us about the Restoration Church that the next chapter will turn.

Chapter Three: *'The rule left by St. Paul'*: visitation sermons and the rhetoric of discipline in the Restoration Church

Historians have often coupled the ministry of the Restoration Church with its courts. In the words of Grant Tapsell, the courts 'were regarded by the clergy as a means not just of protecting their own rights and privileges, but also of policing the morals and spiritual activities of the Christian commonwealth.'¹ John Spurr has similarly remarked that 'the authority of the diocesan and national Church was embodied in the ecclesiastical courts.'² As a result, the shortcomings of these tribunals, particularly in inculcating respect among the laity for spiritual censures, have often influenced the scholarly assessment of the Church's clergy.³ To a certain extent, this connection is warranted; the ecclesiastical tribunals were the institutions through which the Church's censures were officially decreed, and the bishops were, at least nominally, in charge of them. Yet, we should be cautious in too readily associating the two. As the previous chapter demonstrated, contemporary court records not only show that clergymen were regularly excluded from the decision-making process of these tribunals, but also that many conforming ministers were deeply critical of how the courts were managed by the lay lawyers and bureaucrats running them. Indeed, far from representing a unified front, many Restoration dioceses were troubled by a tangible animosity between clergymen and court officials.

The Church's ministers were not, however, content merely to complain about disciplinary deficiencies. On the contrary, this chapter will show that many Restoration clergymen were actively involved in promoting a more pastorally oriented blueprint that sought to replace the bureaucratic procedure of the courts with spiritual prudence and, in the process, significantly shift the balance of authority in their favour. In so doing, they collectively turned to St. Paul, whose Acts and Epistles not only resonated particularly strongly with their own post-Civil War context, but also provided a strong justification for an ecclesiastical discipline unblemished by secular involvement. Such rhetoric could be found in contemporary polemic; for instance, the prebendary of Salisbury Cathedral, Lancelot Addison's *A modest plea for the clergy* from 1677, relied on Paul to argue that

¹ Grant Tapsell, 'Pastors, preachers and politicians: the clergy of the later Stuart Church' in Grant Tapsell (ed.), *The later Stuart Church, 1660–1714* (Manchester, 2012), p. 75.

² John Spurr, *The Restoration Church of England, 1646–1689* (London, 1991), p. 209.

³ For instance, Claire Cross has written that 'Ecclesiastics after 1660, in default of more modern canons, had to govern the Church through the outdated canons...the ancient courts, which did come back, had no laws to administer adapted to deal with the conditions of the later seventeenth century or penalties to inflict which any longer raised any real apprehension.' Claire Cross, *Church and people, 1450–1660: the triumph of the laity in the English Church* (London, 1976), pp. 227–8.

the Church's disciplinary authority 'undoubtedly belongs to the Governors of the Church, as they are purely Clergy and none else whatsoever.'⁴ The first section of this chapter will, however, focus on a set of previously unstudied visitation sermons, since this was where the Pauline rhetoric was most frequently and forcefully elaborated by Restoration ministers. The chapter will then suggest that this Pauline mindset permeated several concrete attempts by both senior and lower clergymen to boost their own authority vis-à-vis the courts, before concluding with a few remarks about what this disciplinary vision might tell us about the nature of the Restoration Church.

(i) *The visitation sermons*

Unlike ordinary ecclesiastical courts, which sat regularly throughout the year, episcopal visitations were usually triennial events though not all dioceses adhered to this schedule.⁵ Archidiaconal visitations occurred more frequently, taking place every six months but covering a significantly smaller area. The overarching purpose of episcopal visitations was for the bishops, who otherwise resided in their Cathedral towns when not attending Parliament in London, to gain a personal insight into the spiritual welfare of their diocese. This involved stopping at a number of selected parishes along a pre-planned route where temporary tribunals would be erected to rectify local shortcomings in matters of religion and morality. The episcopal or archidiaconal entourages did not appear unannounced, however. Rather, the visitation process began several weeks prior to departure with the dissemination of a list of visitation articles to the ministers and churchwardens within the dioceses and archdeaconries. From the maintenance of church buildings to the beliefs and behaviour of both parishioners and ministers, these articles delineated in detail what orthodoxy entailed. Ministers and churchwardens would then have a few weeks to detect any local irregularities and, once the visitation had reached their parish or one nearby, present such to the consideration of the visitor. In this way, visitations were, as Kenneth Fincham has written, 'the linchpin of episcopal government', knitting 'together the bishop's role as paternal pastor and legal judge.'⁶

In the decade prior to the Civil War, the Laudian Church had placed a renewed emphasis on the apostolical status of the English episcopacy. As Charles I's chaplain, Peter Heylyn, preached in a sermon at Lambeth Palace in 1639, far from politicians, the bishops were the Church's most pristine soldiers and physicians whose duty it was

⁴ Lancelot Addison, *A modest plea for the clergy* (London, 1677), pp. 131–2.

⁵ The bishops of Norwich, for instance, famously conducted their visitations septennially.

⁶ Kenneth Fincham, *Prelate as pastor: the episcopate of James I* (Oxford, 1990), p. 145.

personally to handle ‘factious and perverse teachers.’⁷ Some, such as the Bishop of Chichester, the disciplinarian Guy Carleton, readily embraced this message and diligently attended both regular courts and visitations in person. However, despite the symbolic importance of the visiting bishop, they were not required to attend their own visitations, and some chose to delegate the time and lengthy travelling required for these tours to their diocesan chancellors. For instance, while Archbishop of Canterbury, William Laud made a habit of sending his chancellor, Nathaniel Brent, to conduct his visitations.⁸

Whether it was carried out by the bishop himself or his commissary, the visitation was one of the premier social events in the calendar of most parishes, gathering notables as well as clergymen from the surrounding area to meet their spiritual governors. The day after the customary dinner, these attendees would be invited to a sermon that preceded the opening of the visitation court. Occasionally, this would be preached by the bishop or archdeacon himself, although it was much more common for one of the lesser clergymen from the region to be tasked with its delivery. Writing about the assize sermons held during the reign of Charles II, Hugh Adlington has commented that the preceding sermon held on these occasions ‘was effectively to be an oratorical and instrumental instructional complement to the delivery of the charge.’⁹ The same was true for the visitation sermon; it too was supposed to set the tone, rhetoric, and context for the ensuing administration of ecclesiastical discipline. It should be noted too that the visitation sermons laid out a guideline that did not simply pertain to the visitation process itself. As Fincham writes, the ‘enforcement of discipline never paused. Once the visitation courts had investigated churchwardens’ presentments, the consistory court resumed their work, and monitored the disciplinary reforms begun at visitation.’¹⁰ The visitation sermons should, therefore, be more aptly thought of as providing a rationale and rhetoric that was meant to permeate the entirety of the Church’s disciplinary mechanism.

Once the restored Church began conducting its own visitations, ministers were once more invited to celebrate the commencement of disciplinary proceedings with a sermon. Between 1662 and 1689, 58 of these reached the printers (for a full list of these sermons, see Appendix A). According to a recent essay by William Gibson, this makes ‘the published visitation sermons’ appearing in Restoration England ‘the largest single corpus

⁷ Cited in Kenneth Fincham, ‘Episcopal government, 1603–1640’ in Kenneth Fincham (ed.), *The early Stuart Church* (Basingstoke, 1993), p. 87.

⁸ *Ibid.*, p. 78.

⁹ Hugh Adlington, ‘Restoration, religion, and law: assize sermons, 1660–1685’ in Peter McCullough, Hugh Adlington & Emma Rhatigan (eds.), *The Oxford handbook of the early modern Sermon* (Oxford, 2011), p. 428.

¹⁰ Fincham, *Prelate as pastor*, p. 145.

of information and advice on the training and continuing professional development of clergy in the discharge of their duty.¹¹ On the one hand, this relatively large number of publications is not particularly surprising; 40 visitation sermons had been published during the reigns of James I and Charles I, and, as Tapsell has written, sermons, far from decreasing in popularity, remained ‘an extremely important section of religious publishing’ in Restoration England.¹² Yet, even though there was a large market, the publication of nearly 60 visitation sermons in less than three decades, all very similar in tone and content, points to more than merely a potentially high readership. More importantly, the number also indicates a concerted will and effort among clergymen to disseminate a particular vision of the Church’s revitalised discipline.

Almost three quarters of the published visitation preachers were vicars or rectors (43 out of 58). While a few of these, such as Richard Sherlock, rector of Winwick in Lancashire, and Nathaniel Bisbie, rector of Long-Melford, Suffolk, were relatively renowned for their staunch defence of religious conformity, the majority enjoyed little fame outside of their parishes. To a large extent, therefore, what follows is not a study of esteemed theologians but rather an inquiry into the mental world of the rank and file of the Restoration Church. The remaining 15 were preached by higher clergy. Thomas Bradley, whose two visitation sermons were published in 1663, was prebendary of York Cathedral throughout the 1660s, and Samuel Gardner served as royal chaplain. Only two bishops published their visitation sermons during this period. First was Edward Reynolds, Bishop of Norwich from 1661 to 1676, whose *The pastoral office opened in a visitation sermon* was also printed in 1663. Then, in 1669 Anthony Sparrow, Bishop of Exeter from 1667 to 1676, published his *Caution to his diocese against false doctrines*, first preached in a parish church in Truro in Cornwall the year before.

Viewed collectively, it would be difficult to put a particular label on the visitation preachers. They included men with presbyterian leanings, such as Bradley, who had willingly complied with the Interregnum Church. Most renowned amongst these was Reynolds, who had played a prominent role in the ecclesiastical reforms of the 1640s and who many believed would not accept his episcopal appointment in 1661. At the other end of the spectrum, we find men such as Sparrow, who had resisted the reforms of the past twenty years and eagerly returned in 1660 to root out opposition to the episcopal Church. Along with Sherlock and Bisbie, we also find William Basset, vicar of Brinklow, Warwickshire, and John Prince, vicar of St. Martins in Exeter, sharing such sentiments. Yet, while difficult to encapsulate, this diversity should not surprise us. Indeed, rather

¹¹ William Gibson, ‘Sermons’, in Jeremy Gregory (ed.), *The Oxford history of Anglicanism, volume II: establishment and empire, 1662–1829* (Oxford, 2017), p. 278.

¹² Tapsell, ‘Pastors, preachers and politicians’, p. 80.

than searching for the particular dominance of one group or another, historians are increasingly coming to view this theological variety as perhaps the most characteristic feature of the Restoration Church. It was, as Tapsell has put it, an institution which resisted 'easy concluding simplifications, especially singular defining labels.'¹³ Moreover, even if we wanted to categorise the published visitation sermons as representative of a particular coalition, we would do well to remember that, prior to the Civil War, moderate puritans and Laudians alike had emphasised the importance of spiritual discipline, though they held different ideals on its appropriate administration. The same was true for the returning and new ministers of the Restoration Church, who continued to place a premium on the correct administration of the Church's censures. It was only to be expected, therefore, that the published visitation sermons would reflect the Church's full theological spectrum.

That divine justice and censure were topics capable of eliciting particularly fiery and impassioned preaching is evident from a few surviving notes taken by diarists attending a visitation sermon. In April 1662, Isaac Archer, the newly installed vicar of Chippenham in Cambridgeshire, travelled to nearby Newmarket to attend his first archidiaconal visitation. The visitor was Anthony Sparrow, then Archdeacon of Sudbury, and chosen to speak at the occasion was Hugo Lloyd, vicar of Fordham. Archer knew of Lloyd and was aware that he had expressed presbyterian opinions and co-operated with the Interregnum Church in the 1650s. He was, therefore, surprised to find Lloyd entering the pulpit to 'make a railing sermon against that which he had so notoriously bin the late dayes.'¹⁴ Twenty years later, on 28 April 1682, the ejected presbyterian divine, Oliver Heywood, travelled to Wakefield where his replacement as vicar of Halifax, Richard Hook, was appointed to preach at the visitation of the Archbishop. According to Heywood, Hook 'acted his part manfully and addressed himself to speak - 1 to the Spiritual Court men, 2 to the officers.' These subjects were, however, 'passed lightly over', and it was not until Hook reached his third topic - 'the separatists' - that his sermon became truly heated and accusatory, telling his listeners that 'If I were a separatist, and acted against the laws as they doe, I should think myself worthy of death.'¹⁵ Both Heywood and Archer, who despite his conformity to the Restoration Church was benevolent to nonconformists, were deeply uncomfortable with such public hostility and left the visitation proceedings soon after the conclusion of the sermon.

¹³ Grant Tapsell, 'The Church of England, 1662–1714' in Gregory (ed.), *The Oxford history of Anglicanism*, p. 46.

¹⁴ Matthew Storey (ed.), *Two East Anglian diaries, 1641–1729: Isaac Archer and William Coe* (Woodbridge, 1994), p. 90.

¹⁵ Oliver Heywood, *The Rev. Oliver Heywood, B.A., 1630–1702; his autobiography, diaries, anecdote and event books*, 2 vols., ed. Joseph Horsfall Turner (Bingley, 1882), II, p. 288.

These two rare snippets from the pews point to two important limitations in studies concerned with early modern sermons. The first and perhaps most obvious is that the published visitation sermons only represent a minority of those preached during the Restoration. While the total number of stops in a visitation tour varied from year to year and diocese to diocese, every stop would include a sermon, and most were not sent to the press. Neither Lloyd's nor Hook's sermons, for instance, reached print, and we only know about them because two critical listeners recorded their reactions. Thus, although there is no reason to think that the printed visitation sermons are somehow unrepresentative or untypical of the genre, we should remember that we have far less access to most visitation sermons preached in Restoration England. The second point is that to listeners such as Archer and Heywood, the delivery of the sermon would have been as important as its content. As Arnold Hunt has shown, sermons in early modern England 'were addressed to the emotions as well as the intellect, and were designed not merely to impart doctrinal information but also to elicit an affective response from the audience, with the help of voice, gesture, and all the other rhetorical skills at the preacher's command.' As a result, we must recognise the 'significant differences between the sermons as preached and the sermon as printed', and while historians have access to the latter, we are often left to speculate what emotional and intellectual reactions the hearing and seeing of a visitation sermon could have elicited.¹⁶

In terms of content, many visitation preachers insisted that the printed version of their sermon corresponded closely to what had been preached. For example, in his *Kalos Proestotoes, or a view of Church-Government*, preached before the Bishop of Rochester at a church in West-Malling and published in 1663, the vicar of Tunbridge in Kent, John Stileman confessed that his printed sermon 'comes forth somewhat larger than it was preached', but he was adamant that it had not been 'a jot altered in any material point.'¹⁷ John Goodman, rector of Hadham in Hertfordshire, promised his readers that his published sermon was confined to what had originally been confined within 'the limits of an hours of discourse.'¹⁸ Thus, despite the several limitations of studying sermons, the printed visitation sermons nevertheless allow us to explore how Restoration clergymen conceptualised their Church's disciplinary duties.

One of the first visitation sermons to reach the printers in Restoration England had actually been preached over two decades earlier in the parish church of Blandford-Forum by the rector of Huish Champflower in Somerset, William Sherley, to mark the visitation

¹⁶ Arnold Hunt, *The art of hearing: English preachers and their audiences, 1590–1640* (Cambridge, 2014), pp. 11–12.

¹⁷ John Stileman, *Kalos proestotes, or a view of Church-government* (London, 1663), p. ii.

¹⁸ John Goodman, *A visitation sermon* (London, 1677), p. ii.

of John Davenant, Bishop of Salisbury, in 1640. The impetus for its publication came from a common lawyer at the Inner Temple named Richard Harris, who had known Sherley and preserved his sermon in its manuscript form following Shirley's death in 1658. In a letter from June 1662, addressed to the recently consecrated Bishop of Winchester, George Morley, Harris explained that this 'relick', which had 'survived the iniquity of those times that opprest him', contained advice and instructions essential 'for our security.'¹⁹ It is not clear whether Morley replied, but he appears to have concurred as the sermon was published later that year with the title *The excellencie of the order of the Church of England, under episcopal government*, with Harris' letter printed on the second page.

As his leitmotif, Sherley had chosen 1 Corinthians 11:34, in which the apostle St. Paul, writing from Philippi in eastern Macedonia, assures the Christian population of Corinth - a city in southern Greece he had previously visited, renowned for its spiritual and moral depravity - that 'the rest I will set in order when I come.' For sermons preceding legal proceedings in general, this was not necessarily the most obvious choice. As Adlington has showed, most assize sermons focused on sections from the Old Testament.²⁰ Nevertheless, the decision to elaborate on the Pauline epistles would not have been surprising. Throughout his travels to establish the Christian religion in Ephesus, Corinth, Rome and other metropolitan areas around the Mediterranean in often very difficult circumstances, Paul represented the original visitor whose teachings in many ways laid the foundations for all subsequent spiritual discipline. The analogy would, therefore, not have been lost on Sherley's audience: just as Paul had promised the Corinthians to return to set things in order, so the Bishop of Salisbury had come to northern Dorset to regulate and remedy any spiritual irregularities. This was a powerful message, and one that Harris understandably wanted the recently restored and fragile Church to take on board and emulate in order to increase its chances of survival during the early stages of the Restoration. This aspiration was not disappointed, for the visitation preachers of Restoration England did not just follow Sherley in choosing a Pauline topic for their sermon; they were adamant that the apostle's lessons were uniquely relevant to their context.

This was partly because Paul provided one of the strongest scriptural sanctions for an episcopal church government. In particular, his instructions to Timothy, a young Lystrian, to govern Ephesus in his stead, and to Titus of Antioch to oversee Crete, could be construed as a powerful starting point for the Church's episcopal lineage. This

¹⁹ Richard Harris, 'Preface' in William Sherley, *The excellencie of the order of the Church of England, under episcopal government* (London, 1662), pp. i-ii.

²⁰ Adlington, 'Assize sermons', p. 427.

argument was, of course, not new to Restoration England. Sherley had preached in 1640 that 'like those that ran in the Olympian games', Paul had 'delivered the light into the hands of posterity' and this meant that the English bishops 'do at this day own no farther degree of authority, than that which St. Paul in those epistles afforded them.'²¹ Yet, this apostolic lineage became particularly potent after the Restoration. Not only did it allow conforming ministers comfortably to ignore the period from 1646 to 1660 (when England officially had no bishops) as an unholy aberration, but it also provided a strong sense of righteousness at a particularly vulnerable time for their Church. Stileman's sermon was, for instance, one long comparison between the Restoration bishops and those first instructed by Paul, and time and again, visitation preachers would elaborate on the same theme.²² In all instances, the retention of episcopacy was presented as the most important litmus test evincing the connection between the restored Church of England and its apostolic Pauline predecessor.

Many visitation sermons continued to detail the struggles Paul had faced. John James, rector of Latimers in Buckinghamshire, explained in 1678 how 'Paul having planted Christianity among the Corinthians', he had soon found 'the heat of their Devotion to be abated' as the recently converted 'broke forth in furious contentions & animosities against each other...and most cruelly tearing the Church of Christ into pieces in its very infancy.'²³ Such violent analogies resonated powerfully with the visitation preachers' vivid memory of the 1640s and 1650s, when the English Church had similarly been bled 'to the last gasp of death, and almost buried in her own confusions', and emphasised further the need for strong episcopal control. For, despite the 'Church's resurrection after the tedious llyad of affliction, her glorious triumph after her bloody vespers', as the Dover vicar, Samuel Hinde put in a sermon delivered in Canterbury Cathedral in 1663, it was clear that England still housed Corinthian levels of immorality and depravity.²⁴ The 'schism, faction and sedition' of the previous two decades, as Sherlock stated, was 'now as much, if not more practiced than ever'; the same 'factors and followers' continued to 'invoke this Church and Kingdom into the sad condition of intense war, blood, and confusion, from whence by the great mercy of God we so lately escaped.'²⁵

Clearly, visitation preachers looked back on the Civil War and Interregnum as a nightmare continuously threatening to recur. In such difficult times, however, Paul's

²¹ Sherley, *Excellencie of order*, p. 8.

²² Stileman, *Kalos proestotes*, pp. 1–29.

²³ John James, *Ad Clerum, a visitation sermon* (London, 1678), p. 1.

²⁴ Samuel Hinde, *England's prospective-glasse: a sermon at a metropolitical visitation* (London, 1663), pp. iii–iv.

²⁵ Sherlock, Richard, *A sermon preached at a visitation* (London, 1669), p. 18.

message was one of perseverance and strength. Despite being ridiculed and imprisoned on several occasions, he had tirelessly pursued the dissemination of Christianity and it was, for instance, thanks to his and Timothy's rigid efforts that Ephesus eventually blossomed into one of the principal seats of the early Church. As such, Paul did not merely allow visitation preachers to contextualise their concerns; perhaps more importantly, he was also a source of hope. Many thus explicitly transformed their surroundings into a contemporary Corinth or Ephesus, because if Paul could succeed there, then they surely could succeed in Restoration England. The rector of Blissworth, Northamptonshire, Robert Boreman, declared in his sermon from 1663 that 'the reproof of St. Paul, who hath been many hundred years dead, yet now speaketh again.'²⁶ Francis Gregory, the rector of Hambleton, Buckinghamshire, similarly told his audience in 1673 that 'what was St. Paul's command to Timothy shall be my request to you.'²⁷ Bradley was even more specific in his sermon given before the Archbishop of York, Accepted Frewen. 'Our business', he began, 'is with the Church of Ephesus' for in that city 'they studied much the black arts' and it was only through Paul's fearless preaching and censuring that the Ephesians became 'convinced of the vanity of those studies.' It was, therefore, clear to Bradley and the other visitation preachers that 'it was our businesse now to reade [Paul's Acts and Epistles], and to consider the contents of it, for not unto Ephesus alone, but unto us doth it belong.'²⁸

Bradley was here referring to the Pauline method of disciplining through which the apostle so successfully converted the first-century eastern Mediterranean world. It should be noted, however, that Paul's acts and epistles were not the only scriptural sections dealing with discipline. The Old Testament had, for instance, been used extensively by puritans and more radical groups during the 1640s and 1650s in their efforts to explore the full extent of God's wrath.²⁹ In the New Testament, arguably the most famous section outlining the different stages of spiritual censure in a Christian Church was found in the Gospel of Matthew, in which Jesus told his disciples that

if thy brother trespass against thee, go and tell him his fault between thee and him alone; if he shall hear thee, thou hast gained thy brother. But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three

²⁶ Robert Boreman, *The pattern of Christianity: or the picture of a true Christian. presented at Northampton in a Visitation Sermon* (1663), p. 2.

²⁷ Francis Gregory, *Concilio ad Clerum, or a visitation sermon preached at Great Wycomb* (London, 1673), p.1.

²⁸ Thomas Bradley, *A sermon ad clerum: at the visitation by the lord Arch-Bishop of York* (York, 1663), pp. 2–3.

²⁹ See, for instance, Blair Worden, *God's instruments: political conduct in the England of Oliver Cromwell* (Oxford, 2012), chapter 'providence and politics', pp. 33–61.

witnesses every word may be established. And if he shall neglect to hear them, tell it unto the church: but if he neglect to hear the church, let him be unto thee as an heathen man and a publican (Matthew 18:15-18)

But it was Paul who most frequently elaborated on the execution and significance of the Church's gradually escalating censures. In the letter to the Thessalonians, for instance, the apostle admonished those professing that Christ had already returned, instructing that 'if any man obey not our word...note that man, and have no company with him, that he be ashamed, yet count him not as the enemy, but admonish him as a brother' (2 Thessalonians 3:15). Only in the most severe cases, after both friendly private admonitions and more public reproofs had been attempted, was excommunication a viable option. This was because, as Paul described in his banishing of both the incestuous Corinthian and the two deniers of Christ's divinity, Hymanaeus and Alexander, the sentence represented the most extreme punishment of all: 'to deliver such a one unto Satan for the destruction of his flesh'. Crucially, Paul insisted that this severity was not an end in itself, but only a means to ensure 'that the sinful nature may be destroyed and the spirit saved on the day of our Lord' (1 Corinthians 5:5). In other words, it was only meant to force a sinner to realise the gravity of his or her sins and thereby leave them with no alternative but to seek genuine absolution. In this way, Paul's disciplining simultaneously emphasised the necessity, severity, and benevolence of the Church's censures.

The Restoration visitation preachers agreed that the process of extirpating sin had to follow these Pauline instructions. 'There must proceed', said Stileman, 'one and another admonition before there be a passing to severer censures.' Most would be won over by 'mild and meek ways', and it was careless for ecclesiastical 'chirurgeons to use corrasives or causticks, where gentler remedies will serve the turn' and 'bind up the broken joint and restore the dislocated member.'³⁰ The most detailed sermon about how this Pauline model was to be applied to Restoration England was delivered by Seth Bushell, vicar of Preston, in his *A warning piece to the unruly*, published in 1673. Bushell elaborated on every stage of admonition and concluded in the end that 'the rule left by St. Paul is, to reject a heretic after the first and second admonition, and to withdraw from him that walketh disorderly.'³¹ While some emphasised the admonitory stages, the more aggressive sermons were keen to focus on the ultimate rejection mentioned by Bushell. Most notably, the rector of Anstey in Hertfordshire, Robert Neville, whose *An English*

³⁰ Stileman, *Kalos proestotes*, p. 17.

³¹ Seth Bushell, *A warning piece to the unruly; in two discourses, at the metropolitcal visitation of Richard, Lord Archbishop of York* (London, 1673), pp. 24–39.

Inquisition for a Heretick, also published in 1673, vigorously applied the tested analogy of a spiritual discipline working as a physician on the body of a corrupted sinner; 'he who is merciful to the bad', Neville argued, 'is cruel to the good' because 'he is a bad chirchueon that out of pity spares the part corrupted, till the gangrene and all the body perish.' 'Tame mercy' was a 'Beast that suckles schism and heresy, till (Hydra-like) they multiply their heads and become insuperable.' But, even in such volatile sermons, the visitation preachers followed Paul's insistence that the ultimate end of such a cutting off, or excommunication, was benevolent. The point, as Neville put it, was simply 'to put them to shame', so sinners could 'be brought back again.'³²

The plethora of active dissenting groups in Restoration England prevented most visitation preachers from targeting any specific group as particularly deserving of the Church's censures. As Bishop Sparrow put it, 'it was not possible for me to caution against every particular error or false doctrine spread amongst you, there being so many that it would have required a volume, to recount and refute them.' In the early 1670s, however, a few preachers did start to raise more explicit concerns about the growth of a relatively new phenomenon: partial or occasional conformity. As John Ramsbottom has pointed out, such behaviour was becoming particularly common amongst presbyterians, who, after the disappointing ecclesiastical settlement of the early 1660s, became increasingly content to appear both at official services in the mornings, to 'avoid open and permanent schism', and then attend a conventicle in the afternoon that catered more specifically to their liturgical preferences. However, while this often involved 'a successful accommodation to the varied and changing character of "Anglicanism" at the local level', it hugely complicated the Church's task of securing conformity by creating an elusive group that considerably blurred the battle lines between conformists and nonconformists.³³ To many visitation preachers, the partial conformist was, therefore, worse than the committed dissenter. As William Gould's 1674 sermon, subtitled *The new way of moderation reprov'd*, argued, 'refractory nonconformists' were at least adherents of their own convictions even if these were 'in defiance of all premises.' Much worse were a group he referred to as the 'episcopal covenanters...whose very character is nonsense', and it was above all their hypocritical moderation and 'wilful omission of the rites of the Church of England' that Gould blamed for 'the overthrow of church-discipline

³² Robert Neville, *An English Inquisition for a heretick: or, the punishment due to hereticks, declared in a sermon preached at a visitation at Ware* (London, 1673), p. 23. For more on the lineage of the analogy of how the Church's censures were supposed to function like a surgeon, see Alexandra Walsham, *Charitable hatred: tolerance and intolerance in England, 1500–1700* (Manchester, 2006), pp. 40–9.

³³ John D. Ramsbottom, 'Presbyterians and "partial conformity" in the Restoration Church of England', *Journal of Ecclesiastical History*, vol. 43 (1992), pp. 249–51.

and government.’ ‘Let them be either thorow conformists or nonconformists’, Gould concluded, the ‘episcopal rod’ was more necessary against ‘the middle moderate practise.’³⁴ John Prince similarly targeted the partial conformists as the greatest threat to the Church: ‘those creeping moles work underground, [and] undermine the foundation, turn up the garden of the Church, hinder growth and spoil the beauty of it.’³⁵

The visitation sermons concurred with St. Paul that excommunication represented the most severe of punishments. As Goodman put it, ‘to be cast out of the Church, and to be delivered up to Satan were accounted equivalent.’ To emphasise its dramatic consequences, many preachers noted how seriously the ancient, pristine Church had taken the censure: ‘the primitive Christians had such an esteem of the dignity of the Church, that to be excommunicated, was so dreadful a doom, as those that pronounced the sentence were wont to doe it with weeping and lamentation.’³⁶ There was, moreover, no reason to believe that its gravity had diminished since then. As Michael Batt, curate of St. James’ in London, explained in his sermon delivered before the Bishop of Norwich, William Lloyd, in 1686, ‘though miraculous inflections are ceased’ since the apostle’s days, it was nevertheless a ‘sentence terrible enough to be excluded from publick ordinances, to be debar’d from the churches prayers and sacraments and banished from the communion of their brethren.’³⁷ Due to the weight of the censure, the visitation preachers agreed with St. Paul that excommunication was far too severe a punishment to be administered lightly. Stileman, for instance, emphasised how, just as ‘men cut not off a limb for a light spot or little irregularity’ so the Church cannot ‘cast off a member, when it may be otherwise cured.’³⁸ The visitation preachers concurred that, should this Pauline blueprint be emulated, it followed that most excommunicates would be appropriately terrified by their curse and therefore willingly seek absolution with the Church.

The problem, of course, was that these were ideals that the Restoration Church from its very inception was very far from realising. One obvious problem was the continued proliferation of several dissenting groups, such as the Quakers and the Baptists, who willingly dissociated from the Church, and who, in the eyes of many clergymen, appeared to show little respect for its censures. ‘Among all these resolved schismaticks’, cried Hinde, ‘what can the poor ministers do, whose flocks are beset and

³⁴ Goodman, *A sermon preached*, pp. 24–7.

³⁵ John Prince, *A sermon preached at Exon at the visitation of the Lord Bishop of Exon* (London, 1674), p. 12.

³⁶ Goodman, *A sermon preached*, pp. 24–7.

³⁷ Michael Batt, *A sermon preached at Bury St. Edmunds before the Right Reverend Father in God, William, Lord Bishop of Norwich* (London, 1686), pp. 23–5.

³⁸ Stileman, *Kalos proestotes*, p.17.

hedg'd with these boars and bryars of contempt'.³⁹ A second and equally serious problem was that, as we saw in the previous chapter, the officials of the restored church courts appeared blatantly and consciously to ignore the Pauline insistence on prudent restraint when administering the Church's censures. This was, according to the visitation preachers, especially true for excommunication which, instead of being reserved for the most serious offences, was frequently handed out for minor offences and misunderstandings. As early as 1663, Stileman thus lamented how it 'had been the sorrow of my soul to see sometimes that high censure of excommunication so abused on slight and trivial occasions.'⁴⁰ This was not only a violation of scriptural discipline, but it also threatened to dilute its spiritual sanctity in the eyes of many non-dissenting parishioners. This was the observation of Batt, who in 1686, commented on how 'persons nowadays despise these chastisements, regard not the Church-censures, and are not afraid of them, nor awed by them as formerly.' Naturally, the visitation preachers made sure to underline the fallacy of such opinions. 'Man's stupid insensibility', continued Batt, 'argues his condition none the better.'⁴¹ Nevertheless, despite their insistence on the continued sanctity of excommunication, the visitation preachers agreed that the situation was serious and in dire need of a remedy.

Several sermons, therefore, spent much energy trying to identify the root of the Church's disciplinary concerns. Some preachers were anxious about a growing sentiment outside of the Church that it was the inadequate conduct of the Restoration clergy themselves that was to blame for England's spiritual deficiencies, and accordingly underlined the importance of appropriate clerical behaviour in the ministry's everyday interactions with parishioners.⁴² One such sermon was *The great efficacy and necessity of good example especially in the clergy*, preached by Thomas Duncumb, rector of Shere, Surrey, in 1671. Malachi Connant, vicar of Upper Beeding, Sussex, also told his colleagues in the pews how they must shine 'with the light of doctrine and perfection of life' and never let their 'light be a false light.'⁴³ Yet, the visitation preachers generally agreed that the popular castigation of clergymen was grossly exaggerated. 'Amongst those eight or nine thousand ministers that are in our Church', preached Francis Gregory,

³⁹ Hinde, *England's prospective-glasse*, p. v.

⁴⁰ Stileman, *Kalos proestotes*, p. iii.

⁴¹ Batt, *A sermon preached*, p. 25.

⁴² See, for instance, John Eachard, *The grounds & occasions of the contempt of the clergy and religion* (London, 1672). For popular and intellectual criticism and resentment of ministers of the Church of England after the Restoration, see, for instance, Justin Champion, *The pillars of priestcraft shaken: the Church of England and its enemies, 1660–1730* (Cambridge, 1992); Donald Spaeth, *The Church in an age of danger: parsons and parishioners, 1660–1740* (Cambridge, 2000).

⁴³ Malachi Connant, *Urim and Thummim, or, the clergies dignity and duty in a visitation sermon preached at Lewes* (London, 1669), pp. 10–17.

‘there may be here or there a man that is scandalous’, but this was a ‘thing neither new or strange at all...and should not be urged as the peculiar crime of ours.’⁴⁴ Thomas Lodington, the rector of Welby, Lincolnshire, agreed: ‘whereas the whole clergy is under contempt...only some of them [are] to blame.’⁴⁵ Instead, the blame was ascribed elsewhere. It was not uncommon, for instance, for visitation preachers to dwell on the ‘confused rubbish’ that was the laity, the ‘earth-worms that neither fear God, nor value their souls’.⁴⁶ Others directed their attention to churchwardens. As Nathaniel Bisbie rhetorically asked those churchwardens present at his sermon, ‘unless you present and make known to the bishops what disorders there are in the Church, how can the Bishop (now that he is come) set things in order?’ A perjurious churchwarden, he continued, only ensured that ‘the Church must still bare the sinner, and partake of the scandal of his crimes.’⁴⁷ The last major target was, perhaps unsurprisingly, the lay officials of the ecclesiastical courts, who, as we have seen in the previous two chapters, presented a perennial headache for many English clergymen both before and after the Restoration. Thus, John Prince ended his sermon with an exhortation ‘that there be no abuses creep into the Ecclesiastical Courts of this Diocess, to the shame and ruine of the Church.’⁴⁸

Rightly or wrongly, many of the visitation preachers deflected the Church’s problems onto other groups. This self-exoneration was, furthermore, coupled with a celebration of the divinely bestowed virtues of their own clerical office. While a few may not have acted that way, ministers, and especially bishops, were praised as ‘God’s professed ambassadours’, a uniquely elevated group who ‘had the name given to us of celestial bodies, and are so exalted in our Christian station above the inferior world of laymen and private Christians.’⁴⁹ Such rhetoric was a far cry from the more austere puritan expressions of the 1640s and 1650s, and it undeniably emphasised to audiences that it was the episcopacy and its subordinate clergy who were the guardians and managers of the Church’s sacred government and censures. This was, moreover, one of the most important lessons the visitation preachers extrapolated from the teachings of St. Paul. According to William Howell, rector of Wilcote, Oxfordshire, the presbyterian insistence on involving the ‘laity or inferiour officers’ was clearly erroneous since ‘Saint

⁴⁴ Francis Gregory, *Concilio ad clerum, or a visitation sermon preached at Great Wycomb* (London, 1673), p. 18.

⁴⁵ Thomas Lodington, *The honour of the clergy vindicated from the contempt of the laity: in a sermon preached at the Arch-Deacon’s Visitation* (London, 1672), pp. 37–8.

⁴⁶ Shirley, *Excellencie of order*, p. 4, Connant, *Urim and Thummim*, p. 5.

⁴⁷ Nathaniel Bisbie, *The bishop visiting, or, a sermon preached before the Bishop of Norwich* (London, 1686), p. 20.

⁴⁸ Prince, *A sermon preached*, p. 44.

⁴⁹ Thomas Duncumb, *The great efficacy and necessity of good example especially in the clergy recommended in a visitation sermon preached at Guilford* (London, 1671), p. 11; Connant, *Urim and Thummim*, p. 4.

Paul hath taught them no such thing; for...the admonition, suspension, and deposition...he hath reserved (as appears very fully by his Epistles to Titus and Timothy) to such as they were, i.e. to Bishops.⁵⁰

Crucially, it was not merely what St. Paul wrote or accomplished that made him a powerful source of authority. Equally relevant for visitation preachers keen to boost clerical involvement in the Church's disciplinary matters was the type of ecclesiastical authority he represented, particularly compared to other patristic figures. Mark Goldie has famously asserted that 'Restoration England was a persecuting society.' According to Goldie, however, the rhetoric for this intolerance was not derived from St. Paul. Instead, it was the fourth-century Bishop of Hippo, St. Augustine, who provided 'the lifeblood of Restoration Anglican polemic.'⁵¹ Unlike the Pauline disciplinary blueprint which, as we have seen, relied on a crescendo of increasingly severe censures ranging from benign admonitions to spiritual banishment, Augustine's instructions to combat the Donatists, a contemporary schismatic group, emphasised the educational potential of fear to convert those in sin. This logic was particularly notable in the writings of the religious polemicist, Henry Dodwell. In a reply to the presbyterian minister, Richard Baxter, Dodwell elaborated how 'fear of Man, as well as of God, has to many proved the beginning of true wisdom.' Far from producing a communion of hypocritical Nicodemites, it could inculcate a 'solid real piety' among people 'whom we find less efficaciously moved to their duty by other means.' Dodwell was here referring specifically to the fear caused by the plausible threat of severe punishments, including corporal ones, since 'such exterior compulsion was a probable occasion to make men alter their opinion.'⁵² This was a more radical solution than that proposed by Paul, and it is easy to see why it would attract confrontational clergymen and polemicists such as Dodwell whose first priority was the eradication of dissent. Yet, despite its apparent potency, Augustinian rhetoric was conspicuously absent from the visitation sermons published in Restoration England.

Why, then, did the visitation preachers omit Augustine in favour of Paul? Although none of them explicitly addressed this question, one plausible answer lies in the different types of ecclesiastical discipline the two represented. Although the Bishop of Hippo had initially combatted Donatism without secular aid, the conversion of the Roman Emperor

⁵⁰ William Howell, *A sermon preached at the first visitation of the Right Reverend Father in God Ralph, Lord Bishop of Chichester* (London, 1676), p. 4.

⁵¹ Mark Goldie, 'The theory of religious intolerance in Restoration England' in O.P Grell, Jonathan Israel & Nicholas Tyacke (eds.), *From persecution to toleration: the Glorious Revolution and religion in England* (Oxford, 1991), pp. 331–68.

⁵² Henry Dodwell, *A reply to Mr. Baxter's pretended confutation of a book entitled, separation of churches from episcopal government* (London, 1681), pp. 192–3.

Constantine in 329 ensured that the successful eradication of this dissenting sect was eventually achieved with the support of the magistrate and other secular officials. For Restoration polemicists, to invoke Augustine was thus to stress the necessity of a church and state alliance against heterodoxy that would rely in equal measure on both the secular and ecclesiastical swords. As Goldie writes, 'what mattered was that Augustine legitimated civil coercion as an arm of pastoral theology, as giving physical force to a spiritual sanction.'⁵³ Such Augustinian rhetoric was, unsurprisingly, frequently heard in sermons explicitly celebrating the union of the secular and spiritual jurisdictions under the Royal Supremacy, such as *A sermon preached before his Majesty*, delivered by the Bishop of Lincoln, Benjamin Laney on 12 March 1665.⁵⁴ St. Paul, on the other hand, stood for an exclusively ecclesiastical discipline that not only predated the arrival of a Christian magistrate, but which fundamentally questioned the trustworthiness of any secular involvement in the Church's affairs. In Ephesus, for instance, Paul had faced significant challenges from the secular authorities and he had worked directly against the city's lay officials in his successful attempt to convert the city into a major seat of the early Christian church. Thus, while Augustine led preachers and polemicists alike to champion secular involvement in the Church's affairs, Paul allowed clergymen such as Stileman to conclude that excommunication 'was so high a censure' that it should 'not be debased to secular ends, nor on low and light occasions.'⁵⁵ Or, as Obadiah Howe, the vicar of Boston, declared in his sermon preached before the visiting Archdeacon of Lincoln in October 1663, the Church's censures represented 'the cedar whom no secular cares shall corrupt, the thorn [that] can prick the hearers heart.'⁵⁶

There was, then, an underlying tension between the secular and the spiritual in many visitation sermons, and occasionally this spilled over into an explicit criticism of the secular courts. For instance, less than two weeks after the promulgation of the second Conventicle Act of 1670, which imposed heavy fines on anyone attending conventicles, William Basset commented that such financial measures would only stiffen the resolve of many dissenters: 'Especially since this late act', he said, 'some of their meetings have sounded as loud with a: *take ye joyfully the spoyling of your goods*.'⁵⁷ A few years later, Gould similarly derided the Conventicle Act as Parliament's 'best salvo' which, 'because

⁵³ Mark Goldie, 'theory of religious intolerance', p. 337.

⁵⁴ Benjamin Laney, *A sermon preached before his Majesty at Whitehall* (London, 1665).

⁵⁵ Stileman, *Kalos proestotes*, p. 4.

⁵⁶ Obadiah Howe, *Basillii doron. or, the royal present as it was delivered in a sermon, in the parish-church of Boston* (London, 1663), p.12.

⁵⁷ William Basset, *Corporal vvorship discuss'd and defended in a sermon preached at the visitation April 21, 1670, in Saviour's-Church Southwark, and published to prevent farther calumny* (London, 1671), p. 27.

it made no difference between the purses and consciences of nonconformists', was wholly misguided.⁵⁸

This scepticism of the secular sphere could turn against the Restoration monarchs as well. Malachi Connant, for example, reminded his listeners that 'we shall meet with few Constantines in our day, to tender to the clergies honors.'⁵⁹ Such concerns, as Jacqueline Rose has demonstrated, were not unique to the visitation preachers but could be heard and read by many conformist ministers in Restoration England who could only observe as their 'monarchs swung, sometimes with alarming rapidity, between upholding the Church and undermining it.'⁶⁰ Yet, the Pauline logic of the visitation sermons allowed them to be particularly scathing of disagreeable royal policies. This was especially apparent following Charles II's decision to grant unprecedented toleration to dissenters in his Declaration of Indulgence in March 1672. It was this act that led Seth Bushell to exclaim dramatically 'now the Hellish Acts are Named and Destruction hath no covering.'⁶¹ To Lodington, the Indulgence represented an open invitation to chaos: 'they will find no where to rest, but scruple, and fluctuate, and change from one persuasion to another, till, at last, they do in effect cast of all religion.' 'His Majesties Indulgence', he continued, had a 'sinister construction put upon it by the practice of some, as if every man were set at liberty to profess what religion, and join himself to what congregation he himself liked the best.' This was particularly catastrophic for England's ecclesiastical jurisdiction, as 'some having committed a crime against our Ecclesiastical laws', were now free to join 'a separate congregation, as to a city of refuge, to save themselves from the lash of the laws.'⁶² This was everything Paul taught against, and compared to Augustine, the apostle represented a system of ecclesiastical government where such open denunciations of the secular arm became both necessary and legitimate.

Yet, while the visitation sermons provided a platform from which to question particular royal policies or tactics used by the secular courts, it would be incorrect to think that they were uniformly hostile to the secular sphere tackling misdemeanours of a religious nature. On the contrary, most visitation preachers praised the royal supremacy of the Church and were silent on the efforts made by the secular courts to help the Church with heterodoxy. This became particularly apparent during the Exclusion Crisis and its aftermath, when sermons began more assertively to adopt such scriptural leitmotifs as 'Honour the King' (1 Peter 2:17) and use publication titles like *The*

⁵⁸ Gould, *Conformity*, p. 44.

⁵⁹ Connant, *Urim and Thummim*, p.12.

⁶⁰ Jacqueline Rose, *Godly Kingship in Restoration England: the politics of royal supremacy, 1660–1688* (Cambridge, 2011), p. 5.

⁶¹ Bushell, *A warning piece*, p.17.

⁶² Lodington, *The honour of the clergy*, pp. 58–61.

sovereigns authority and the subjects duty.⁶³ Again, this fluctuating attitude towards the secular sphere, and particularly the royal supremacy, was not only manifested in the visitation sermons of the period. As Rose has shown, throughout the Restoration, the Church at large was capable of both clinging ‘to its royal nursing parent’, and, if ‘endangered by royal policies,...defiantly assert its own independence.’⁶⁴ But, whether criticising or praising the secular sphere, what was particular about the visitation sermons was their ability firmly to assert the Church’s control over its own disciplinary process, whether it was in cooperation or discord with the royal supremacy or other tribunals.

Their explicit concern about the secular corruption of the Church’s discipline and censures could, however, be interpreted in a different way. Indeed, though royal policies and the secular tribunals occasionally troubled Restoration clergymen, neither actually interfered on a regular basis with the implementation of the Church’s censures. The same could not be said for a different group of lay officials: the diocesan chancellors, advocates, registrars, proctors, and apparitors who staffed and effectively controlled the Church’s own courts. As we saw in the previous two chapters, it was these officials who Restoration clergymen frequently accused of perverting the Church’s discipline. Not only did they appear entirely to ignore the process of admonition that was so vital to the Pauline blueprint, but they also disregarded the apostle’s injunctions against excessive use of excommunication. It could be, then, that when Stileman and other visitation preachers orated about the secular debasement of the Church’s censures, they were referring to the conduct of the civil lawyers and other permanent employees that had dominated affairs of the ecclesiastical courts for much of the seventeenth century. Concomitantly, their insistence on reclaiming the Church’s sanctions for its ministry was perhaps not aimed principally at any royal intrusions or the conduct of the secular tribunals, but rather at reasserting the clergy’s position against the lay officials in their own courts.

This hypothesis would certainly be congruent with the efforts made by several leading English clergymen, from the *Reformatio Legum Ecclesiasticarum* from 1553 to the Canons of 1640 and, most recently, the Worcester House Declaration in the autumn of 1660, to limit the significant influence wielded by these officials, especially the diocesan chancellors. But, more importantly, it is also possible to test by studying the reforms and conduct of both senior and lower-ranking clergymen in their dioceses and parishes. This is because the visitation sermons were not mere rhetoric. On the contrary,

⁶³ Richard Tenison, *A sermon preached at the primary visitation of the Lord Arch-Bishop of Armagh* (London, 1679); Philip Browne, *The sovereign’s authority, and the subjects duty* (London, 1682).

⁶⁴ Rose, *Godly Kingship*, pp.16–17.

the Restoration visitation preachers turned so passionately to St. Paul and his disciplinary guidelines precisely because they contained instructions they understood as absolutely vital for the restored Church to follow. As Stileman rhetorically asked his audience at the end of his sermon, ‘what now remains? but that we turn this Sermon into Practice: And now every one in our places set our selves to the serious exercise, and faithfull discharge of these duties, whether of Governing or Obedience, which God in his word requires of us.’⁶⁵ Thus, when they preached about the apostle’s injunctions about the different steps of the Church’s censures and their significance, it was meant as practical advice for those listening and reading to follow.

(ii) *‘I will keep the power to myself’: Pauline diocesan reform in Restoration England*

A good example of a Restoration clergyman eager to implement a notably Pauline disciplinary agenda is Isaac Barrow. Ordained in 1641, Barrow was an enthusiastic supporter of the Laudian Church and had gained some renown as the chaplain of New College, Oxford, until his ejection in 1646. After the Restoration, he was rewarded for his services to the old regime by being consecrated Bishop of Sodor and Man in July 1663. His arrival on the Isle of Man appears to have been somewhat of a rude awakening, however. As he wrote in report soon after he had arrived on the island, ‘I found the people, for the most part, loose and vicious in their lives...and, indeed, in a condition almost incapable of being bettered; for they had no means of instruction, or of being acquainted with the very principles of Christianity.’ The island’s clergy, he continued, were ‘very ignorant and wholly illiterate.’⁶⁶ The dire state of religion in his new diocese only encouraged his resolve to reassert his episcopal authority. The first step towards this end was taken during the first year of his episcopate, with the dissemination of eight brief instructions to the clergy and ecclesiastical officials under his care. These make it abundantly clear that, in Barrow’s opinion, the principal obstacles to the establishment were neither an incorrigible laity or ignorant clergy, nor perjurious churchwardens or untrustworthy secular officials. Rather, similar to the Laudian canons of 1640, Barrow homed in on the prerogatives and pretensions of his inherited church court officials who had effectively appropriated the island’s ecclesiastical jurisdiction during the brief tenure of his predecessor, Samuel Ruttner. The first clause thus decreed that ‘archdeacons, officials, or registrars, shall have nothing to do’ with fifteen jurisdictional questions Barrow

⁶⁵ Stileman, *Kalos proestotes*, p. 29.

⁶⁶ Cited in Michael Hoy, ‘Isaac Barrow: builder of foundations for a modern nation, the church, education and society in the Isle of Man, 1660–1800’, (unpublished PhD thesis, University of Liverpool, 2015), p. 32.

believed only the bishop and his clergymen were entitled to deal with, such as admonitions, excommunications and any matters concerning heterodox behaviour. The subsequent three articles targeted the island's vicar-generals, also referred to as diocesan chancellors, who could no longer 'order or censure causes contrary to our statutes, and spiritual written laws, though there be some precedents otherwise.'⁶⁷

Concomitant to such a reduction of the influence wielded by the court lay officials was a boost in the disciplinary duties of the clergy, who 'shall be careful and diligent in their places and callings.' For example, following the censuring of an offender, Barrow ordered that registrars had 'to call in for a certificate under every minister's hand touching the performance of their several censures into our records.'⁶⁸ Three years later, in the autumn of 1667, Barrow disseminated a more elaborate set of directives, containing 86 clauses entitled 'the accustomed unwritten ecclesiastical laws.' While these were more generally concerned with delineating the censures for particular misdemeanours, they continued Barrow's efforts to empower his clergy further by, for instance, insisting on the importance of sinners being exposed to public penance under the supervision of a minister rather than paying commutation fees to a lay official. It also ordered that 'when any laws touching spiritual clauses are to be enacted, the bishop, the archdeacon, and whole clergy shall be made privy thereto.'⁶⁹ As Michael Hoy has demonstrated, the most tangible result of Barrow's efforts to rely more on clergymen in the disciplinary process was a reduction in the number of excommunications ordered by the Manx spiritual courts and an increased emphasis on public admonitions, particularly when dealing with the island's sizeable Quaker community.⁷⁰ This stood in stark contrast to Barrow's willingness to discipline his own lay officials straying from his instructions. For instance, following the quick commutation of the waterbailiff, Ferdinando Calcott, with 'soe easie an animadversion [of] sins of soe deep a die', Barrow reproved his vicar-generals for such an 'indulgence or relaxation of the Church Censures.'⁷¹

Although Hoy has shown that Barrow's efforts significantly strengthened the state of orthodoxy on the island, it might be objected that his diocese was hardly representative of the country at large due to its isolation, small size and peculiar local traditions.⁷² Barrow was, however, not unique in having some success with such measures. Another

⁶⁷ Gerald Bray (ed.), *Records of Convocation I: Sodor and Man, 1229–1877* (Woodbridge, 2005), pp. 95–96.

⁶⁸ *Ibid.*, pp. 95–96.

⁶⁹ *Ibid.*, pp. 97–107.

⁷⁰ Michael Hoy, 'Isaac Barrow', (unpublished PhD thesis, University of Liverpool, 2015), p. 54.

⁷¹ *Ibid.*, p. 52.

⁷² For more on the church courts on the Isle of Man, see Anne Ashley, 'The spiritual courts of the Isle of Man, especially in the seventeenth and eighteenth Centuries', *The English Historical Review*, vol. 72 (1957), pp. 31–59; Jennifer Anne Platten, 'The church court system - presentments to the Manx church courts' (unpublished PhD thesis, University of Liverpool, 2010).

example can be found in the episcopate of William Lloyd, Bishop of St. Asaph from 1680 to 1692. A biblical scholar and prolific author, Lloyd was a staunch defender of episcopacy who took the disciplinary duties of his office very seriously, and entered his new Welsh diocese with the intention of carrying out extensive reforms. Thus, when his inherited diocesan chancellor, Dr. Powell, who had controlled the business of the consistory court during the preceding decade, passed away in 1681, Lloyd seized the opportunity to assert his own jurisdictional supremacy. In a letter sent on 28 January of that year to his new chancellor, Edward Davies (whom Lloyd had selected), he bluntly stated that ‘for the chancellorship, tho it is my very great sorrow that it is fallen into my disposal, yet I do not think to dispose of it as my predecessors have done.’ He proceeded to lament how ‘the Bishops are now most unjustly reproached with all the faults of their courts tho they have nothing to do in the exercise of their jurisdiction’, before declaring his new agenda: ‘I will suffer no man’s fault but my own if I can help. Therefore as far as I can I will keep the power to myself.’ As a bishop, Lloyd knew that his extra-diocesan duties, such as attending Parliament, would make such a complete transfer of authority untenable. Yet, even though he intended to delegate his powers to Davies in his absence, he firmly declared that ‘I will give him his patent to hold only during the Bishop’s pleasure. For, to speak plain, I will not give any man power to excommunicate or absolve in my diocese, but the Bishop to whom it belongs by the law of God as far as I understand.’⁷³

The ensuing decade saw Lloyd take a very active role in the diocesan administration of St. Asaph, demanding stronger pastoral involvement in matters of discipline. In repeated letters to Davies he underscored the necessity that before anyone was excommunicated, they ‘should be spoken to by the minister of his parish to know whether he should submit and make satisfaction for his scandal.’⁷⁴ Lloyd himself became very active in attempting to bring dissenters into the Church’s fold with public discussions before anyone would be censored.⁷⁵ In dealing with John Evans, a local independent minister, in November 1682, he detailed to Sancroft how ‘I got to have a private conference with this Evans. We continued it for 2 or 3 daies.’ Upon Evans’ refusal to repent, ‘I offered to discors with him before any others...He refused it. Then I invited him

⁷³ Cited in Arthur Tindal Hart, *William Lloyd, 1627–1717: bishop, politician, author and prophet* (London, 1952), pp. 53–62.

⁷⁴ *Ibid.*, p. 60.

⁷⁵ Such public debates occurred with the Quakers on 22 Sept. 1681 and 6 Aug. 1682, and with the Presbyterians on 27 Sept. 1681, and 28 Aug. 1682. See Eryn M. White, ‘From ejection to toleration in Wales, 1662–1689’ in Alan P. F. Sell (ed.), *The great ejection of 1662: its antecedents, aftermath and ecumenical significance* (Eugene, OR, 2012), pp. 142–6.

to a public conference...to make his refusal as public as was possible.⁷⁶ It was only after the failure of such tactics that Lloyd felt warranted in proceeding to harsher censures. Such an approach often led him to micromanage the business of the court. For example, in one of several similar letters to Davies concerning the publication of numerous excommunication schedules, the Bishop apologised for not 'look[ing] over the schedules before they went for as I remember Mr. Price of Llandfyllin is in it and I would have stopped the publishing of his name till I had given him time to come hither to speak with me. Pray stop the publication if it be not already done.'⁷⁷ Lloyd was also adamant about replacing pecuniary commutations with public acts of repentance. His episcopacy accordingly witnessed several dissenters publicly repenting before their congregations in the customary white sheet.⁷⁸ Though Lloyd's stance towards nonconformity hardened following the Rye House Plot in the spring of 1683, he remained steadfast in prioritising the spiritual wholesomeness of his Church's sanctions over bureaucratic procedure and the potential financial benefits of prosecution, which according to contemporary sources, substantially improved the state of orthodoxy in the diocese. In the words of Robert Wynne, chancellor to Lloyd's successor, Edward Jones, 'perhaps no Bishop ever took possession of the see with more advantage than he did; for the diocese undergone in all respects the strictest regulations under the care and government of the Bishop in the space of twelve years.'⁷⁹

Barrow and Lloyd were exceptional only in so far as their reform efforts met with notable success. However, as the previous chapter demonstrated, they were far from unique amongst the Restoration bishops. Guy Carleton of Chichester, William Fuller of Lincoln, John Hacket of Lichfield, George Hall of Chester, William Gulston of Bristol, William Lucy of St. Davids, and Anthony Sparrow of Exeter all sought to assert their episcopal authority over what they perceived to be a problematic group of court officials, though their efforts more often ended in frustration and failure. What matters for our purposes, however, is not necessarily the success or failure of such attempts, but the vision of ecclesiastical discipline that underpinned them. And though none of these bishops explicitly framed their complaints or reforms in a Pauline rhetoric, their insistence on a more deliberate disciplinary process firmly under the authority of the clergy was clearly in line with how the visitation preachers across Restoration England interpreted the apostle's teachings. Equally, their efforts to curb the authority of lay court officers

⁷⁶ Oxford, Bodleian Library, MS Tanner, vol. 146. f. 33 (William Lloyd, Bishop of St. Asaph, to William Sancroft, Archbishop of Canterbury, St. Asaph, 24 Nov. 1682).

⁷⁷ Cited in Hart, *William Lloyd*, p. 60.

⁷⁸ See, for instance, Oxford, Bodleian Library, MS Tanner, vol. 35, ff. 171, 190.

⁷⁹ Cited in Hart, *William Lloyd*, p. 62.

resonated powerfully with the Pauline warning, frequently echoed in the visitation sermons, against the dangers of secularising the Church's censures.

The view from Lambeth is more difficult to discern. On the one hand, both Gilbert Sheldon and William Sancroft were adamant that the Church's entire jurisdictional machinery be employed against dissent in cooperation with the secular courts, with the former famously commenting that 'tis only a resolute resolution of the law that must cure this disease.' On 8 June 1669, Sheldon, accordingly instructed the 'officials & officers & all & every parochial ministers, parsons, vicars & curates' within Canterbury diocese to 'make speedy enquiry throughout my diocese as well as in places exempt...what & how many conventicles, or inlawful assembles or church meetings are held in every town & parish.' 'When any such conventicles are found out', he continued, 'if by ecclesiastical power & authority they cannot be restrained, you are to complain to the next justice or justices.'⁸⁰ Similarly, in the early stages of the reactionary last four years of Charles II's rule, Sancroft enjoined his 'brethren & all that are entrusted with the management of any jurisdiction under us to contribute what we can, & particularly what the laws of the land, & canons of the church require of us' in the intensifying campaign against dissent.⁸¹ Yet, neither Sheldon nor Sancroft took a particularly active role in the administration of their consistory court, and their private correspondence reveals the same critical stance towards their Church's courts shared by many of their subordinate bishops. For instance, in the midst of the Parliamentary inquiry into reforming the ecclesiastical jurisdiction during the spring of 1668, Sheldon informed the Dean of Arches, Giles Sweit, that 'you cannot but have heard...of the great clamours that are made against the ecclesiastical courts for the delay of justice and other abuses in the proceedings' and instructed him and his fellow civilians 'to sit down and seriously consider what is amiss in your courts and profession, and how to regulate and rectify the same.'⁸² Sancroft was less explicit, but the weekly reports sent to him from his chaplain, George Thorpe, reveal the Archbishop's desire for his Church's courts to replace arbitrary bureaucratic procedures with a more pastorally oriented discipline. In a letter sent on 25 January 1681, Thorp detailed the questionable excommunication of a dissenter in Chislet, Kent, commenting that 'were hopes of conformity are discernible, I know your Grace would not have us proceed to extremitys.'⁸³ In another dispatch, Thorp justified his refusal to grant the commutation of an excommunicated parishioner, stating that 'you according to the

⁸⁰ Oxford, Bodleian Library, MS Tanner, vol. 282, f. 50.

⁸¹ Oxford, Bodleian Library, MS Tanner, vol. 36, f. 7.

⁸² Cited in Spurr, *Restoration Church*, p. 217.

⁸³ Oxford, Bodleian Library, MS Tanner, vol. 33, f. 191 (George Thorpe, chaplain the Archbishop of Canterbury, to William Sancroft, Canterbury, 25 Jan. 1682).

design of the Church desired their repentance not their money.⁸⁴ Thus, while neither archbishop proceeded to reform their dioceses in ways similar to Barrow or Lloyd, they appear to have shared the same Pauline sentiments about the appropriate administration of the Church's censures.

As important as episcopal initiatives could be, the establishment of a more pastorally oriented Church equally depended on the willingness of lower clergymen to engage with disciplinary concerns on a local level. To many nineteenth- and early twentieth-century historians, this is the area where the Restoration Church failed most spectacularly. As C.E Woodruff and W. Danks commented in 1912, its clergy suffered from 'a lethargy bordering on paralysis.'⁸⁵ However, such assessments have been seriously questioned by more recent scholars such as Donald Spaeth and Jeremy Gregory, who have argued that most (though certainly not all) ministers entering the Church after the Restoration were conscientious about their pastoral duties. In Gregory's words, Restoration ministers 'did not want Anglicanism to provide a cosy and lax alternative to the rigorous standards of the puritans' and 'in their own way were just as concerned to spur on the spiritually sluggish.'⁸⁶

It should not surprise us, therefore, that many Restoration ministers took proactive steps to reclaim, at least partially, the Church's jurisdiction from the bureaucrats in the church courts. Spaeth in particular has highlighted how several Wiltshire ministers sought to 'reclaim sectaries through informal persuasion' prior to reporting them to the ecclesiastical authorities. For example, despite his hostility towards dissenters, the rector of Somerford Magna, Nathaniel Aske, purposefully delayed the presentment of his parishioners in order 'to overcome them by love' instead.⁸⁷

A second option less frequently highlighted by modern historians was actively to circumvent or subvert the local courts. One such example can be seen in John Rastrick, appointed vicar of Kirton, Lancashire, in 1673. In a typical passage from his diary, recorded in the winter of 1681, he dwelt on 'how another thing that troubled me was the publishing of excommunications and absolutions from the ecclesiastical court...for those commonly crossed my judgement.' Rastrick especially objected to his observation that drunkards and fornicators appeared to pay their way out of trouble regularly while seemingly innocent, godly dissenters who refused to pay were treated with an

⁸⁴ Oxford, Bodleian Library, MS Tanner, vol. 33, f. 171 (George Thorpe to William Sancroft, Canterbury, 12 Oct. 1681).

⁸⁵ C. Eveleigh Woodruff & William Danks, *Memorials of the cathedral priory of Christ in Canterbury* (London, 1912), p. 376.

⁸⁶ Donald Spaeth, *The Church in an age of danger, parsons and parishioners, 1660–1740* (Cambridge, 2000), esp. chapter 'pastoral care', pp. 108–32.

⁸⁷ *Ibid.*, pp. 159–60.

unwarranted severity. He remembered ‘with what temper and dislike I published the excommunication of some Anabaptists in the town...I know they had their faults, and that of unchurching themselves not the least, but they were pious and honest Christians.’ To avoid such scenarios, he devised a strategy to minimise the potential damage inflicted by court officials prior to the metropolitan visitation in the summer of 1686, ‘they being always more zealous for the observation of their own laws than God’s.’ The visitor was the recently appointed Dean of Arches, Thomas Exton, and Rastrick described how ‘I went to the visitation at Grantham (the next before ours) to observe his proceedings that I might be better prepared what to say...and not be surprised.’ In particular, Rastrick was interested in what questions Exton would ask, as this would allow Rastrick to prepare his own answers to protect both himself and his parishioners. When the visitation finally reached Boston on 7 August, his tactic paid off and Rastrick described how he was able to answer his visitors’ questions satisfactorily, who ‘all turned their backs and went out of the Church immediately’ in frustration.⁸⁸

Following James II’s Declaration of Indulgence in 1687, Rastrick himself embraced nonconformity and it could be objected that his ministry before then was unusually sympathetic towards dissenters. Yet, ministers with stronger conformist leanings were capable of a similar behaviour. For example, in his autobiography written during the 1690s, the Bishop of Bath and Wells, Richard Kidder, reflected on his dealings with the ecclesiastical courts in the early 1680s, when he was still vicar of St. Martin Outwich parish in London. In one particularly revealing instance, following royal orders requiring ‘all parishioners that were of age’ to receive the sacrament, Kidder remembered how ‘one of these scandalous persons came to my house and told me he desired to receive the sacrament.’ Kidder refused on the grounds that he was only ‘ready to give him the sacrament when I thought him fit for it.’ This was not accepted by the parishioner who ‘urged me, and said that the court would proceed against him’, but Kidder remained steadfast. As a result, court officials did not receive the required certificate demonstrating his receipt of communion and proceeded to excommunicate him, much to the chagrin of Kidder who was charged with publicly declaring his banishment from the Church: ‘it seemed to me something off to publish a sentence against the poore man for not communicating when I had refused.’ Kidder, therefore, refused ‘to publish the sentence, but caryed it back to the [Doctors’] Commons and delivered it with my own hands...and thus the matter ended.’⁸⁹

⁸⁸ John Rastrick, *The life of John Rastrick, 1650–1727*, ed. Andrew Cambers (Cambridge, 2010), pp. 96–108.

⁸⁹ Richard Kidder, *The life of Richard Kidder, D.D., Bishop of Bath and Wells: written by himself*, ed. Amy Edith Robinson (London, 1924), pp. 26–7.

Rastrick's and Kidder's actions show how ordinary ministers of the Restoration Church could manipulate the course of ecclesiastical discipline to align it more closely with their own ideals. In both instances, this ideal corresponded with the Pauline message echoed in the visitation sermons for ministers to take a more proactive role in the Church's censures and to use them prudently against only those truly deserving them. Again, we also see how such a sentiment could be channelled against the lay officials and bureaucratic procedure of the restored ecclesiastical courts when their censures threatened to diminish the spiritual sanctity of the Church's punishments.

It must, however, be recognised that not every Restoration minister objected to collaborating with these tribunals. Aske, for instance, had no qualms about presenting those who would not listen to admonitions to 'the court of reformacon.'⁹⁰ Even Rastrick noted that he 'had no scruple to publish' the excommunication of several fornicators 'because I knew they deserved it, being loose livers, and next to Heathens without all religion.'⁹¹ It would, furthermore, be incorrect to think that the pastoral impetus for a more clerically oriented discipline was always directed at the permanent lay officials. As several historians have noted, the elected, temporary, and unsalaried churchwardens also presented a regular source of concern to several Restoration clergymen eager to improve their Church's discipline. Most famously, William Lloyd (no relation to the aforementioned William Lloyd of St. Asaph), Bishop of Peterborough from 1679 to 1685, blamed the spiritual shortcomings in his diocese on 'the falseness and perjury of the churchwardens', and Paul Morton Geldart has showed how his reforming efforts were accordingly focused not on his chancellors or registrars, with whom he got on well, but on instructing 'the most loyall and confiding clergymen' to keep a 'vigilant eye observing any transgression' committed by the churchwardens.⁹² In 1685, this sentiment was carried over to his next diocese, Norwich, where, as Bill Sheils has demonstrated, Lloyd took several measures to rely more heavily on clergymen rather than churchwardens in the visitation process.⁹³

Whether the churchwardens or the permanent court officials presented more problems to Restoration clergymen is very difficult to determine. Both were clearly capable of frustrating ministers seeking to take the reins of disciplinary matters. However, while perjuring churchwardens could undoubtedly undermine the Church's efforts to instil

⁹⁰ Cited in Spaeth, *Church in an age of danger*, p. 160.

⁹¹ Rastrick, *John Rastrick*, p. 96.

⁹² Paul Morton Geldart, 'Protestant nonconformity and sectarianism in Restoration Northamptonshire', (unpublished PhD thesis, University of Leicester, 2006), pp. 135–7.

⁹³ W.J. Sheils, 'Bishops and their dioceses: reform of visitation in the Anglican church c.1680–c.1760', *CCEd Online Journal 1* (2007), accessed at: http://theclergydatabase.org.uk/cce_a1/ (visited 20/12/2017).

orthodoxy, it is worth highlighting that their essential function and legitimacy was not up for debate. Nor did Restoration clergymen, even those as critical as Lloyd, visualise a system of correction without them. As Michael Braddick has written, the Church's method of detection depended, for better or for worse, 'on the willingness of churchwardens to report offences.'⁹⁴ The same could not be said for the salaried lay officials, whose very right to partake in the process of correction was under constant scrutiny from Restoration clergymen of both presbyterian and conformist leanings, many of whom could very well envision a disciplinary method far less dependent on the fees and bureaucratic machinery upheld by the chancellors, proctors and registrars. It is perhaps not surprising, therefore, that these officials became the most obvious targets for clergymen seeking to steer the Church's coercive machinery in a more Pauline, pastoral direction.

(iii) A Pauline Church?

To conclude, this chapter will briefly consider how the clergy's Pauline disciplinary ideal might add to the extensive scholarly discussion concerning the theological and institutional character of the Restoration Church. This is a debate that has frequently been centred around the extent to which the Church after 1660 was similar to its pre-Civil War predecessor. On one side of the argument, several scholars have claimed that the Restoration Church should be understood as a continuation of the Laudian Church. For instance, according to Robert Bosher, it was episcopalian clergymen of a Laudian mould, such as Gilbert Sheldon, who were the principal architects of the conservative nature of the re-established ecclesiastical hierarchy.⁹⁵ More recently, Kenneth Fincham and Nicholas Tyacke have pointed to the restoration of railed altars in many English parishes after 1660 to suggest that Laudian, or Arminian, elements continued to define the theological and doctrinal character of the English Church.⁹⁶ This view has since been developed by Jacqueline Rose, who writes that the Restoration Church 'contained distinctively Laudian elements', particularly with regard to its continued insistence on the *jure divino* nature of the English episcopacy.⁹⁷ However, not everyone has agreed with this depiction of a combative, reactionary episcopalian establishment. To Ian Green, the Restoration Church was a theologically moderate and conciliatory institution containing

⁹⁴ Michael Braddick, *State formation in early modern England* (Cambridge, 2000), p. 299.

⁹⁵ Robert Bosher, *The making of the Restoration settlement: the influence of the Laudians, 1649–1662* (Westminster, 1951).

⁹⁶ Kenneth Fincham & Nicholas Tyacke, *Altars restored: the changing face of English religious worship, 1547–c.1700* (Oxford, 2007), especially chapter 'Altars restored, 1660–c. 1700', pp. 305–52.

⁹⁷ Rose, *Godly Kingship*, p. 18.

'relatively small numbers of active or zealous episcopalians in the parishes.' It was also far more influenced by the 'puritan Church of the Interregnum' than a Laudian label allows for.⁹⁸ John Spurr has similarly proposed that conciliatory churchmen such as 'John Gauden and his allies could plausibly speak for a larger number of Anglican clergymen' than the 'obdurate' Laudians.⁹⁹ From a more theological perspective, Stephen Hampton has argued that the Restoration Church harboured a substantial network of reformed thinkers, such as the Cambridge minister John Edwards, who repeatedly challenged their more Arminian colleagues on a number of theological disputes.¹⁰⁰

However, Grant Tapsell has most recently suggested that the 'messy realities of the later Stuart Church' defies convenient labelling. Thus, rather than emphasising the importance of one faction over another, he instead proposes that we should recognise the co-existence of a plethora of different theological opinions as its most defining feature. From this perspective, the Restoration Church is seen as dominated by neither Laudians nor moderates but rather as an institution which accommodated both and, to a certain degree, found its 'strength in diversity.'¹⁰¹

This is a very helpful and persuasive way to conceptualise holistically the complexities of the Restoration Church. Yet, we should perhaps not exaggerate the extent to which it was defined by internal friction and disagreement. There were undeniably issues which aroused heated debate and divided clergymen into more or less identifiable groups, but there were also areas in which they found common ground. The administration of the Church's discipline was, up to a point, one such area. For, while ministers certainly differed with regard to questions of episcopal authority, or the legitimacy of involving lay elders, they agreed about the fundamental need for the Church's spiritual officers to be in control of its disciplinary apparatus. In so doing, they found a powerful scriptural authority in St. Paul, whose teachings provided strong arguments for a more clerically oriented approach to ecclesiastical sanctions that attracted both Laudian and moderate episcopalians as well as moderate presbyterians. There was also widespread agreement among Restoration clergymen about the need to tackle what many perceived to be the chief obstacle to the success of such a strategy: the lay officials employed by the church courts. In this regard too, inspiration could be found in the Pauline caution heard in the visitation sermons against secularising the Church's authority. This explains why the practical efforts to remould the administration of the Church's laws in a more distinctively Pauline fashion often explicitly targeted the

⁹⁸ Ian Green, *The re-establishment of the Church of England, 1660-1663* (Oxford, 1978), p. 177.

⁹⁹ John Spurr, *The Restoration Church*, p. 31.

¹⁰⁰ Stephen Hampton, *Anti-Arminians: the Anglican reformed tradition from Charles II to George I* (Oxford, 2008).

¹⁰¹ Tapsell, 'The Church of England', pp. 45–6.

prerogatives of these lay officials. In disciplinary terms, then, the Restoration Church might be profitably thought of as “Pauline” in nature. This label accurately encompasses both the inspiration behind the clergy’s pastoral efforts as well as their attitude towards the ecclesiastical courts. Perhaps more importantly, it does so without denying the differences between those arguing for a more pronounced episcopal authority and those prepared to consider some reforms along presbyterian lines.

The success of the clergy’s Pauline initiatives was, however, limited. With the exception of Barrow and Lloyd, most Restoration churchmen seeking to replace the bureaucratic machinery of the ecclesiastical courts with a more pastorally focused discipline failed to make an impact on the administration of the Church’s laws. Not only was the clergy’s relative inability to challenge the ecclesiastical courts on a significant scale a testament to the substantial influence wielded by the lawyers and bureaucrats in charge of them. It also poses interesting questions about the changing nature of the English Church in the closing decades of the seventeenth century. Despite the work of Spaeth and others, several historians have argued that the English Church did not truly embrace pastoralism until the later 1680s and 1690s. According to Nicholas Tyacke, this was partly due to a generational shift, as conservative bishops were increasingly replaced by men of a more moderate puritan mould, such as Sancroft’s successor in Canterbury, John Tillotson.¹⁰² Others have emphasised the dramatic ecclesio-political changes of these two decades, particularly the Toleration Act of 1689, after which, as Gregory has written, ‘the clergy could no longer rely on the combined efforts of the spiritual and secular courts to impose Anglicanism in the parishes.’¹⁰³ While Ralph Stevens’ recent thesis has cautioned against overestimating the impact of this legislation, Brent Sirota has made a convincing case that the challenges posed following the 1688 Revolution did not merely lead to a more pastorally active ministry; it also sparked a surprising willingness among many clergymen to cooperate with the new voluntary societies, such as the Society for the Reformation of Manners, and their extra-institutional methods of moral and spiritual coercion.¹⁰⁴ But, if this was the case, it is worth asking what caused this readiness to embrace the alternative means of discipline provided by such societies? And why did this pastorally focused ‘Anglican revival’ not

¹⁰² Nicholas Tyacke, ‘From Laudians to Latitudinarians: a shifting balance of theological forces’ in Grant Tapsell (ed.), *The later Stuart Church* (Manchester, 2012), pp. 46–70.

¹⁰³ Gregory, *Restoration, Reformation and reform*, p. 234. See also Jeremy Gregory, ‘The eighteenth-century Reformation: the pastoral task of Anglican clergy after 1689’ in Colin Haydon, Stephen Taylor, & John Walsh (eds.), *The Church of England, c. 1689–c. 1833: from toleration to tractarianism* (Cambridge, 1993), pp. 67–85.

¹⁰⁴ Ralph Stephens, ‘Anglican Responses to the Toleration Act, 1689–1714’ (unpublished PhD thesis, University of Cambridge, 2015); Brent Sirota, *The Christian monitors: the Church of England and the age of benevolence, 1680–1730* (London, 2014).

involve more comprehensive efforts to reform the correctional apparatus already in place?¹⁰⁵

A possible answer to this question may lie in the fact that such efforts to amend the church courts had already been attempted and failed, both in terms of broader legislation and more localised initiatives, several times prior to the later 1680s. Indeed, the clergy's frustration with the ecclesiastical court officials had been a consistent feature of the English Church since Henry VII's invitation to the civil lawyers in 1546. This may well have convinced many clergymen of the futility to pursue any further reforms following the Toleration Act. This was the opinion of the bishop perhaps most associated with the pastoral turn of the post-1688 Church, Gilbert Burnet. Appointed to Salisbury diocese in 1689, he described how his initial efforts 'to regulate the Consistory Court' were abandoned out of frustration with his inherited court officials. In his own words, they caused such 'a great grievance to the clergy and laity so I gave over all hope of doing any good in them and gave over going more to them.' This failure is what spurred his famous comment that 'that which is crooked cannot be made straight.'¹⁰⁶ It also provided an important reason for the publication of Burnet's highly influential *A discourse of the pastoral care* in 1692, in which the Bishop advocated a turning away from the courts in favour of a pastoral discipline along the same Pauline lines heard in the visitation sermons: 'If we began much with private applications, and brought none to our courts, till it was visible that all other ways have been unsuccessful...we might again bring our courts into the esteem which they ought to have, but which they have almost entirely lost.'¹⁰⁷ Furthermore, it is also probable that such frustrating experiences either caused or increased the willingness of clergymen such as Burnet to collaborate with the non-institutional means of discipline offered by the new voluntary societies. As such, there is reason to think that the Church's lost monopoly on religious discipline in 1689 did not merely relieve pressure on dissenters. Somewhat paradoxically, it also finally allowed conforming ministers to abandon a system of correction that had been repeatedly criticised since the Reformation. The extent to which this was a path actually taken by clergymen in the 1690s and beyond, and how the church courts were affected by the Toleration Act, are both questions to which this thesis will return in its concluding remarks. Now, however, it will shift its focus from those responsible for the administration of discipline to those affected by it.

¹⁰⁵ Sirota, *Christian monitors*, p. 2.

¹⁰⁶ Gilbert Burnet, *A supplement to Burnet's history of his own time*, ed. H.C. Foxcroft (Oxford, 1902), pp. 499–503.

¹⁰⁷ Gilbert Burnet, *A discourse of the pastoral care* (London, 1692), pp. 191–2.

Chapter Four: '*Admett mee again into the Church*': individual and communal responses to excommunication in the late seventeenth century

As part of its diocesan collection, the Devon Heritage Centre outside Exeter holds an unsorted and severely damaged parcel containing just over 300 excommunication certificates. Printed in Latin, when legible, these formulaic texts reveal the name of the excommunicated individuals as well as the reason behind their original citation to the court. The certificates also contain instructions for local ministers publicly to declare the excommunication in their parish churches in front of their congregations ('*post receptionem presentium tempore divinorum majorique populi multitudine*'). The bureaucratic procedure of the courts then required ministers to verify the completion of such an announcement by signing the certificate before sending it back to the registrar. Thus, on the backside of the certificate ordering the excommunication of John Dagworthy of Belstone for contumacy, we read: 'March 19, 1677, These are to certifie all to whom it doth may concerne, that I Henry Webber, did duely and publicly on the 11th day of March in the fore noon in the time of devine service publish an excommunication against John Dagworthy.'¹ The certificates are far less informative, however, about how individuals such as Dagworthy experienced their excommunication. Unfortunately, this silence is a characteristic feature of almost every type of record generated by the ecclesiastical courts of early modern England, making it very difficult for historians to assess the individual and communal impact of the Church's censures.²

Only very occasionally and haphazardly is this bureaucratic monotony disturbed by rare archival anomalies that provide brief insights into the thoughts and feelings that excommunication could elicit. Found within the above-mentioned parcel of Devonshire excommunications is a solitary and partially torn letter from an excommunicate, Francis Pollard, written to the registrar of the Restoration Exeter consistory court, Francis Cooke. Because Pollard's excommunication has either been lost, or is one of the certificates damaged beyond legibility, the reasons for, as well as the time and place of, his excommunication are difficult to ascertain. Nevertheless, his letter unambiguously declares his unease in standing excommunicated from the Church. He told Cooke how 'I am informed that I was the last sunday excommunicated by an order sent out of yor Court to the Minister...to be publisht without givinge me anye notice of anye such intention.' Although upset by the court's conduct, he proceeded to ensure the registrar

¹ Exeter, Devon Heritage Centre, CC. 183, unnumbered folio.

² The major exception is the many extant Defamation Books, which, as Laura Gowing has demonstrated, can tell us much about the social significance of the church courts. However, these only rarely contain cases which resulted in excommunications. See Laura Gowing, *Domestic dangers: women, words and sex in early modern London* (Oxford, 1996).

that 'I stand not in the least in anye opposition to my Honorable Lord Byshops Court, but ware ever and still am redaye to obaye it and paie my just dues.' He accordingly beseeched Cooke 'to give mee yor orders to admeete mee again into the Church'.³

Pollard's letter raises a number of conundrums. How, for instance, could he not have known about his own excommunication? Did it jeopardise his communal status? And why did he beg for the sentence to be lifted? Such questions are very difficult to answer because Pollard's voice does not appear again in the records. Yet, his apparent discomfort in standing excommunicated deserves further consideration because it seriously challenges the near unanimous scholarly assessment that the censure had lost its potency, particularly in Restoration England. The purpose of this chapter is consequently to consider the extent to which Pollard's unease was representative of the many other late seventeenth-century excommunicates whose attitudes to the sentence, if uttered at all, have been silenced by the formulaic record keeping conventions of the restored church courts. Relying on a range of manuscript and printed sources in which excommunicates reflected on their censure, principally found outside the court records, it will argue that historians have seriously underestimated the potential of the Church's highest sanction. It will not, however, deny that some excommunicates were seemingly oblivious to the censure. Nor will it propose that a particular experience was emblematic of a majority of those enduring excommunication. Heeding Stuart Schwartz's caution that historians have too frequently researched common people only to 'find subjects who act just like their neighbour', the ambition is instead to explore the struggles of those who, for a variety of reasons, felt afflicted by the Church's banishment on their own terms without explaining their experiences as merely aberrations from a norm.⁴

(i) *'Brutum Fulmen': the problem of the obdurate excommunicate*

According to the epistles of St. Paul, the Church's excommunication represented the most fearful sanction of all: the transfer of a sinner from the grace of God into the arms of Satan. In soteriological terms, this officially excluded the excommunicate from the grace of God until his or her repentance. Yet, this was not enough. To prevent the proliferation of such sin, Paul insisted that this spiritual condemnation also had to manifest itself within the temporal world. In his letters to the Romans, he consequently instructed the Christian community to 'mark those who cause divisions contrary to the

³ Exeter, Devon Heritage Centre, CC. 183, unnumbered folio (Francis Pollard to Francis Cooke, registrar of Exeter Consistory Court, date unknown).

⁴ Stuart Schwarz, *All can be saved: religious tolerance and salvation in the Iberian Atlantic world*, (New York, 2008), p. 6.

doctrine which ye have learned and avoid them' (Romans 16:17). He similarly ordered the Christians in Corinth 'not to keep company, if any man that is called a brother be a fornicator, or covetous, or an idolater, or a railer, or a drunkard, or an extortioner; with such an one no not to eat.' (1 Corinthians 5:11). To no small degree, then, excommunication was supposed to be 'coextensive with the life of the individual', as Elisabeth Vodola has written.⁵

Like its pre-Civil War ancestor, the restored Church of England unequivocally intended those it excommunicated to experience both the spiritual and temporal components of the punishment. This is amply demonstrated in the canons of 1603, revived as the jurisdictional basis for the restored church courts in the summer of 1661. Canon 85, for example, ordered churchwardens to ensure that 'in every meeting of every Congregation, Peace be well kept, and that all persons excommunicated, and so denounced, be kept out of the Church.' Canon 65 was more explicit. It ordered ministers to denounce excommunicates publicly 'that others may be thereby both admonished to refrain from their Company and Society...thereby to bring and reduce them into due Order and Obedience.'⁶ More specific instructions were often inserted in the articles of inquiry sent out before episcopal or archidiaconal visitations. For instance, the seventh clause of the questions disseminated prior to the visitation of the Archdeacon of Lincoln in 1665 asked if 'any of your parish keep society with [excommunicates] before they be reconciled to the Church, and absolved?' The same articles also inquired whether ministers ceased their preaching in cases where excommunicates entered their parish churches during divine services:

Doth your Minister when any excommunicate person...is within your Church or Chappel, or intrudes into the same, or will not go out being required...perform the Divine Service, whilst such an excommunicate Person is so present? And doth he not (as he ought) desist, and forbear to such Divine Service, and Sermon, till such Excommunicate Person be gone out of your Church.⁷

Jurisdictional literature was, furthermore, not the only source advising the public about the proper treatment of excommunicates. More mainstream devotional works also

⁵ Elisabeth Vodola, 'The status of the individual within the community according to ecclesiastical doctrine in the high middle ages' (unpublished PhD thesis, Cambridge, 1975), p. 142. See also, Elisabeth Vodola, *Excommunication in the Middle Ages* (London, 1986).

⁶ Church of England, *Constitutions and canons ecclesiasticall* (London, 1604), accessed at: <http://www.anglican.net/doctrines/1604-canon-law/> (visited 24/01/18).

⁷ Church of England, *Articles to be enquired...within the arch-deaconry of Lincoln in the Ordinary Visitation of the right Worshipfull Doctor Raphael Throckmorton, Archdeacon of Lincoln* (London, 1665), pp. 3–5.

contained directives towards this end. For instance, the 'Order for the Burial of the Dead' found in the revised Book of Common Prayer from 1662 asserted that the Church's burial rite was 'not to be used for any that die unbaptized, or excommunicate.'⁸ Finally, excommunication was also supposed to result in a number of legal and financial limitations, such as being unable to buy or sell goods, be employed, or to sue in courts. It is probably fair to assume, therefore, that most people in Restoration England would be aware of both the perils of standing excommunicated and the dangers of associating with anyone banished from Church.

The problem was that this was an ideal the English Church had long fallen short of realising. Indeed, the research of Donald Logan and Rosalind Hill has shown that the figure of the obdurate excommunicate pre-dated the Reformation by several centuries.⁹ Rather than eradicating such troublesome individuals, the period following the break from Rome has often been seen as one when the Church's censures 'lost their spiritual terrors', as F.D. Price put it.¹⁰ According to this argument, the failure to reform the ecclesiastical jurisdiction catalysed increasing opposition to the courts. This was manifested above all in a growing unwillingness, particularly within the puritan movement in the Elizabethan and early Stuart period, both to attend and respect the censures of these tribunals, which in turned spurred court officials to increase the number of excommunications for contumacious behaviour. Thus, Ronald Marchant estimated that around five per cent of the population in the dioceses of York, Chester and Norwich consisted of unrepentant excommunicates, with a further 10 per cent (constituting the families and friends of such individuals) belonging to the 'excommunicate classes.'¹¹ This negative assessment has since been seriously questioned by Martin Ingram, who not only argued that such contumacy estimates have been exaggerated, but also stressed that excommunication often had its intended effect of bringing individuals back into the Church's fold.¹²

But, if the post-Civil War ecclesiastical jurisdiction was neither as unpopular nor as ineffective as has often been suggested, most modern scholarship agrees that the

⁸ Church of England, *The Book of Common Prayer* (London, 1662), p. 182.

⁹ Donald Logan, *Excommunication and the secular arm in medieval England: a study in legal procedure from the thirteenth to the sixteenth century* (Toronto, 1968); Rosalind Hill, 'The theory and practice of excommunication in medieval England', *History*, vol. 42 (1957).

¹⁰ F.D. Price, 'The abuses of excommunication and the decline of ecclesiastical discipline under Queen Elizabeth', *The English Historical Review*, vol. 57 (1942), p. 114. See also Ralph Houlbrooke, *Church courts and the people during the English Reformation, 1520–1570* (Oxford, 1979).

¹¹ Ronald Marchant, *The Church under the law: justice, administration, and discipline in the diocese of York, 1560–1640* (Cambridge, 1969), p. 227.

¹² Martin Ingram, *Church courts, sex and marriage in England, 1570–1640* (Cambridge, 1988), p. 14.

Restoration was the period in which, as Ingram put it, ‘many aspects of the church courts’ work began to suffer a decisive decline.’ This has partly been attributed to the decision to revive neither the High Commission nor the inquisitorial *Ex Officio* oaths, the two most coercive elements of the Church’s antebellum jurisdiction. More weight has been placed on the continued proliferation of heterodox groups dissenting from the Restoration Church, ‘which could not but undermine the strength of the restored ecclesiastical jurisdiction.’¹³ Alexandra Walsham has, for instance, argued that the Church’s censures became ‘an empty threat’ unable to withstand the ‘advancing pluralism of English society.’¹⁴ According to several historians, the restored courts responded to the new religious landscape in the worst way possible: by further increasing the levels of excommunication which only served to exacerbate the older issues of contumacy and obduracy. In the words of John Spurr, ‘a vicious circle was operating, the generous imposition of the penalty meant that many preferred not to answer their citation to the church court.’¹⁵ These conclusions have, furthermore, been substantiated by a number of studies on particular tribunals. Martin Jones’ study, for instance, found that almost half of those cited in Restoration Peterborough and Oxfordshire had been excommunicated and less than ten per cent sought absolution.¹⁶ Henry Lancaster’s work on Restoration Wiltshire similarly found high numbers of excommunications with few corresponding absolutions. As an example, 71 parishioners from St. Johns in Devizes were cast out in 1675 alone, while 113 Trowbridge residents were banished in 1669.¹⁷

It is not surprising, then, that several Restoration clergymen despaired at their inability to instil a wholesome respect for excommunication among their parishioners. For example, in September 1680, the curate of Leeds, James Wilson, wrote to Archbishop Sancroft to express his dismay about many of the ‘meaner sort of peoples besides avowed dissenters from the Church, who absent themselves from the publick worship.’ ‘It is very clear’, he continued, ‘that these common sort of people are more afraid of the penalty of 12 pence weekly¹⁸ than of the sentence of excommunication, which is now accounted by them but *Brutum Fulmen*’ [a futile threat].¹⁹ No one was more

¹³ *Ibid.*, p. 12.

¹⁴ Alexandra Walsham, *Charitable hatred: tolerance and intolerance in England, 1500–1700*, (Manchester, 2006), p. 74.

¹⁵ John Spurr, *The Restoration Church of England, 1646–1689* (London, 1991), pp. 215–16.

¹⁶ Martin Jones, ‘The ecclesiastical courts before and after the Civil War: the office jurisdiction in the dioceses of Oxford and Peterborough, 1630–1675’ (unpublished B.Litt thesis, University of Oxford, 1977), p. 118.

¹⁷ Henry Lancaster, ‘Nonconformity and Anglican dissent in Restoration Wiltshire, 1660–1689’ (unpublished PhD thesis, University of Bristol, 1995), p. 101.

¹⁸ The 1662 Act of Uniformity revived the Elizabethan regime’s fine of 12 pence per week for parishioners not attending divine services weekly in their parish church.

¹⁹ Oxford, Bodleian Library, MS. Tanner, vol. 124, f. 47 (James Wilson, curate of Leeds, to William Sancroft, Archbishop of Canterbury, Leeds, 11 Sept. 1680).

incensed about the apparent popular disdain for the censure than the prebendary of York Cathedral, Thomas Comber, who published his lengthy *A discourse concerning excommunication* in 1684 to investigate 'the proper remedies for it.' Comber was unequivocal that 'there is one great and eminent occasion of this universal corruption that seems to be peculiar to our times, and the mother or the nurse to most of those vices and errors which are the reproach of the age, viz. the contempt of excommunication.' This 'being the only means that the Church hath to punish these crimes', Comber argued that 'if men by ignorance or evil principles can arrive at impudence enough to despise this sacred and salutary penalty, they have nothing left to restrain them from committing and openly abetting these offences, which by these means are grown so general, and so daring, that they are the scandal of our Reformation.'²⁰

As both Wilson and Comber indicated, radical dissenters were not alone in their contempt for excommunication; seemingly conforming parishioners were at times equally unreceptive towards the Church's disciplinary efforts. This phenomenon has been noted by historians as well, with R.B. Outhwaite commenting that apathy or hostility towards excommunication constituted the 'predictable response' even among non-dissenting parishioners.²¹ While this assessment will be strongly questioned below, it is undeniable that some individuals cited to court reacted in precisely such a way. For instance, the unruly churchwarden of Sutton Mandeville in Wiltshire, Salathiel Deane, told his parish vicar, Augustinus Haytor, in 1668 that 'he cared not for the court nor the power of it, it was but excommunication.'²² The apathy amongst such individuals is perhaps best evinced by the fact that few, if any, of them ever bothered to record any further comments about the prospect of spiritual censure. Thus, while they are certainly relevant to this investigation, it is difficult to probe beneath their initial animosity to discover more about how their excommunication was experienced.

The same could not be said for the committed dissenters, who demonstrated a more profound criticism towards the Church's sanctions. Similar to the puritan objections prior to the Civil War, a common trope was to point out the impossibility of respecting the fundamentally unreformed nature of the Restoration Church's jurisdiction. The anonymous author of the 1680 *Discourse concerning excommunication* commented that 'we have had a considerable reformation in doctrine; yet, we have had none in discipline, but proceed according to all popish canons and methods.'²³ The nonconformist critique

²⁰ Thomas Comber, *A discourse concerning excommunication* (London, 1684), pp. i–ii.

²¹ R.B. Outhwaite, *The rise and fall of the English ecclesiastical courts, 1500–1860* (Cambridge, 2007), p. 81.

²² Cited in Lancaster, 'Nonconformity and Anglican dissent', p. 97.

²³ Anon., *Discourse concerning excommunication* (London, 1680), p. 9.

was not, however, rooted in a rejection of spiritual discipline *per se*. On the contrary, most dissenters were firm proponents of their own churches' right to exclude irreligious members. Their rejection of the church courts was instead caused by deep ecclesiological objections to the particular way in which the Church of England administered its discipline. According to the renowned Independent minister, John Owen, the true church was defined not by its national structure but by its doctrinal and disciplinary purity. From this point of view, it followed that Christians were entitled to dissociate themselves from corrupt churches and to found new ones with rules and regulations more appropriate for a godly community. It was on these grounds that Owen justified the nonconformist separation from the established Church. As he rhetorically asked in his *Of schism* from 1657: 'must [I] forever associate myself with wicked and profane men in the worship of God, to the unspeakable detriment and disadvantage of my soul? I suppose nothing can be more unreasonable'.²⁴ Having formed a new religious community, Owen envisioned that a rigid discipline would operate amongst its members. Externally, however, Owen advocated for toleration between the various Protestant communities and argued that no group could have the authority to discipline members of another. As he commented in his *Letter concerning excommunication* from 1683, 'to cut off any from a Church, who was never a member of it by his own consent, nor judge himselfe so to be, is ridiculous'.²⁵

Such a low opinion of the Church's discipline made it possible for some nonconformists to ignore the spiritual consequences of excommunication and to rest assured that their fellow dissenters would not shun them. This was certainly true for the Dartmoor Baptist, John Lane, excommunicated for assisting in the unlawful burial of a coreligionist, who told the apparitor citing him that 'he would not go', and challenging him 'to doe what you can'.²⁶ Moreover, if the Church and its discipline was corrupt, an excommunication could be transformed from the gravest of spiritual punishments into an accolade signifying righteous resistance towards arbitrary oppression. As we will see in the next chapter, this martyrological stance was particularly common amongst the Restoration Quakers, but it found expression amongst other dissenting groups as well. For instance, many independents would have shared the sentiments of their excommunicated coreligionist Thomas Savery of St. Thomas in Exeter, who told the

²⁴ John Owen, *Of schism* (London, 1657), p. 200.

²⁵ John Owen, *A letter concerning excommunication* (London, 1683), p. 17.

²⁶ Cited in P.W. Jackson, 'Nonconformists and society in Devon, 1660–1689' (unpublished PhD Thesis, University of Exeter, 1986), pp. 241–2.

consistory court that 'there is no law that hee knows; that can compel him to receive the sacrament and that he hath calculated long since what his religion would cost him.'²⁷

The restored church courts thus arguably faced greater difficulties than their antebellum predecessors. Yet, a small group of scholars have sought to debunk the suggestion that they were wholly ill-equipped or unsuited to face this significant challenge. Most famously, Donald Spaeth's study on Restoration Wiltshire agreed that excommunication had become 'largely ineffective against those who had already chosen not to attend church' but argued that, with regard to the more conforming sections of society, the church courts was often 'far more effective than their secular counterparts.'²⁸ Several doctoral dissertations have reached similar conclusions. P.W. Jackson's research on the prosecution of nonconformists in Devon, for instance, strongly questioned the prevalent perception that the Restoration witnessed the death-knell of English ecclesiastical discipline.²⁹ Anne Tarver's analysis of the courts in Lichfield and Coventry similarly denied that the Restoration witnessed a particularly weakened form of the Church's jurisdiction.³⁰ The most optimistic evaluation can be found in Evan Davies' 1982 thesis on the tribunals in Restoration Chichester and Worcester. Focusing on cases settled in private courts of audience, he argued that 'the censures of the Church, far from being ignored, were powerful and effective weapons which ultimately prompted even the most recalcitrant to clear their names.' In Davies' opinion, the negative view of the restored ecclesiastical courts was, therefore, entirely unjustified.³¹

Davies' assessment has since been criticised by Andrew Thomson who suggests that his neglect of nonattendance rates and the poor statistics of completed cases at these two diocesan courts undermines his argument.³² The purpose of this brief historiographical survey is not, however, to determine which side of the argument is more correct than the other. As the previous studies of particular dioceses suggests, the inevitable conclusion seems to be that, while it is clear that the restored church courts struggled to implement their censures, the efficacy of spiritual discipline could vary significantly from year to year, diocese to diocese, and even parish to parish. Rather, the point behind exploring this debate has been to underline how central the notion of

²⁷ *Ibid.*, p. 235.

²⁸ Donald Spaeth, *The Church in an age of danger: parsons and parishioners, 1660–1740* (Cambridge, 2000), p. 164.

²⁹ Jackson, 'Nonconformity', p. 217.

³⁰ Anne Tarver, 'The consistory court of the diocese of Lichfield and Coventry and its work, 1680–1830' (unpublished PhD thesis, University of Warwick, 1998), pp. 24–6.

³¹ Evan Davies, 'The enforcement of religious uniformity in England 1668–1700' (unpublished PhD thesis, University of Oxford, 1982), p. 1.

³² Andrew Thomson, 'Church discipline: the operation of the Winchester consistory court in the seventeenth century', *History*, vol. 91 (2006), pp. 338–9.

efficiency, particularly with regard to excommunication, has been to historians interested in the church courts both before and after the Restoration. It is somewhat peculiar, therefore, that the excommunicates themselves have escaped systematic study. That is to say, our current awareness of those standing excommunicated has been almost entirely mediated either by vocal critics of the courts and infuriated clergymen or derived from poor court statistics. Of course, such perspectives must be included in any study interested in the impact of excommunication. Nevertheless, not only should the archival silences muting the experiences of most excommunicates caution us from making overly inclusive statements about those subjected to the censure. A closer look at the lives of particular excommunicates in Restoration England also strongly indicates that far from every excommunicate shared such insouciant or hostile attitudes to the prospect of spiritual banishment.

(ii) *'The heavy pressures of calamity': excommunication and spiritual affliction*

For those who continued to cling to the concept of an inclusive national Church, such as presbyterians, the prospect of schism and open separation from the Church of England was extremely problematic. This was because presbyterian ecclesiology placed a premium on Christian unity and comprehension within one Church. In the words of the influential German theologian Ernst Troeltsch, the presbyterian ideal was "church-type", not "sect-type".³³ This mentality is particularly evident in perhaps the most renowned presbyterian leader, Richard Baxter, who worked tirelessly during both the Commonwealth and the early years of the Restoration to persuade the various Protestant groups to 'unite as far as may be in their practice, though on different principles', and to 'agree on the most loving, peacable course in the way of carrying on our different practices.'³⁴ To presbyterians such as Baxter, the ideal was thus an inclusive national Church in which the fundamentals of religion necessary for salvation would be agreed upon, but which nevertheless left room for different practices in matters considered indifferent. But only so much doctrinal and disciplinary error could be accepted before presbyterians would have no other option but to separate themselves from its communion. This is what happened in the early years of the Restoration, when it gradually became evident that the re-established Church would not comprehend presbyterian differences and instead enforce uniformity to a set of doctrines and

³³ Ernst Troeltsch, *The social teaching of the Christian Churches*, 2 vols., translated by Olive Wyon (London, 1992), II, p. 462. See also Mark Goldie, *Roger Morrice and the puritan Whigs* (Woodbury, 2007), pp. 276–9.

³⁴ Richard Baxter, *Saints' everlasting rest* (1650), sig. B1v. Cited in Tim Cooper, *John Owen, Richard Baxter, and the formation of nonconformity* (Farnham, 2011), p. 143.

practices by which many could not in good conscience abide. As we have already seen, one such practice was the return of the pre-Civil War method of employing civil lawyers to manage the Church's courts, who Baxter deemed 'utterly incapable of calling one of an hundred to repentance or keeping clean the Church.'³⁵ Thus, although more radical dissenters and presbyterians both parted from the restored Church of England, there was a significant difference in the way in which they understood their separation. For the former, schism from a corrupted church was a virtue; for the latter, it was a lamentable last resort.

Given this reluctance to separate from the established Church, it is understandable that excommunication could pose a problematic dilemma for individual presbyterians. This is well demonstrated in the diary of Oliver Heywood, a presbyterian minister and devotee of Baxter from Coley, near Halifax. Suspended from his ministry on 20 June 1662, because 'I want their episcopal ordination', he was visited a few weeks later by an apparitor 'who brought me a citation.' Though Heywood himself had not interacted with the ecclesiastical courts prior to their dissolution in the 1640s, he was aware that ignoring such a citation would almost certainly lead to his excommunication. He recorded in his diary how 'he consulted with many what I should doe and was adviced to make some appearance...or they would excommunicate me for contempt.' Had his opposition to the restored Church been more thorough Heywood might have heeded the advice of those telling him 'to make no address to them to get off my suspension, but silently wait till the Lord open a doore.' Yet, as his many conversations on the matter indicate, the prospect of excommunication was not something Heywood took lightly. On the contrary, Heywood's diary strongly suggests that he belonged to that Baxterian mould of presbyterian who, regardless of their many disagreements with the doctrines and jurisdiction of the restored Church, placed primacy on unity. As a consequence, he decided to appear. However, he was met with such negligence by the York court officials, who refused to inform him 'of what was laid against me' and 'appointed me to come again in three weeks', that his doubts were resolved about the need to conform to a Church practicing such a dishonest form of discipline. He, therefore, chose not to appear again, and when the inevitable excommunication was published in Halifax on 2 November Heywood reacted with notable calm, reflecting that 'the curse causeless shall not come.' A few later entries indicate that Heywood's initial concern about being banished was occasionally transformed into a kind of spiritual liberation, confirming his alienation from a corrupted Church. On 3 January 1663, he thus recorded how 'that which is intended for my greatest ignominy is turned into my greatest glory.' This liberation was both

³⁵ Richard Baxter, *An apology for the nonconformists ministry* (London, 1681), p. 167.

spiritual and communal, as his censure pulled him closer to the Halifax dissenting community; 'I have hitherto injoined spiritual priviledges tho in private yet with comfort: yea I have had a communion of saints in a considerable company at my house every week day or night since I was debarred.' Contemplating his expulsion almost a year later, he rejoiced that 'I get so much nearer to God as men cast me out from them.'³⁶

As Heywood's case suggests, excommunication evidently had the power to radicalise those conflicted about conforming to the Restoration Church to embrace a more committed nonconformity. Henry Care's reflections about his own excommunication show that it also had the capacity to catalyse a growing acceptance of standing outside the Church amongst those who considered themselves conformists. A Whig polemicist who gained some notoriety during the Exclusion Crisis for his sympathy towards dissenters, Care never severed himself from the Church of England.³⁷ However, his excommunication in May 1683, appears to have significantly diminished Care's respect for its spiritual wholesomeness. Similar to Pollard, with whom we began this chapter, Care was not initially aware that he had been banished. In an unaddressed letter, he recorded that 'just now I received notice from London, that on Sunday last I was excommunicated...at the Church of the Holy Sepulchre' in Holborn. This was peculiar to Care given his 'good conscience' for always having been 'a loial subject & peacable Protestant (at just defience of both Popery and Phanaticism)' and his willingness to 'receive that sacred ordinance at the hands of the publique minister, and in that humble and reverent posture too, which the liturgy enjoin'd.' Why, then, was he excommunicated for not receiving the sacrament? According to Care, the whole situation was the result of a refusal amongst both his ministers and court officials to recognise his change of residence to another parish. 'Tis a notorious trueth', he stated, 'that for above a year & an half past, I have not been resident in or near that parish, and tho it were my misfortune to bee bound to pay rent for a little house there for some time sinse, yet my family wholly left it about michaelmas.' But unlike Pollard, Care's exclusion from the Church did not a spark a desire to be readmitted. Conversely, the arbitrary nature of his excommunication propelled him into fundamentally questioning the validity of the Church's censures. He could not understand 'why I should bee obliged by the Canons of the Church or any Law to receive the blessed Eucharist there [i.e. at his particular

³⁶ Oliver Heywood (ed.), *The Rev. Oliver Heywood, B.A., 1630–1702; his autobiography, diaries, anecdote and event Books*, 2 vols., ed. Joseph Horsfall Turner (Bingley, 1882), I, pp. 179–84. For a recent study on Heywood which almost completely ignores his excommunication, see Samuel Thomas, *Creating communities in Restoration England: parish and congregation in Oliver Heywood's Halifax* (Leiden, 2013).

³⁷ For more about Henry Care's life during the Exclusion Crisis, see Lois G. Schwoerer, *The ingenious Mr. Henry Care, Restoration polemicist* (London, 2001), especially chapter 6, "Dissent's defender and religious liberty", pp. 189–219.

parish church] East last' and deduced that an excommunication caused by such a triviality could not be valid. He disagreed vehemently 'with some of the old Canonists' who argued that '*excommunicatio sive justa, sive injusta, est timenda*' [excommunication, whether just or unjust, is to be feared].³⁸ Such a rationale ran totally counter to Care's conception of God's judgements. Indeed, Care believed that in such instances it was likely that 'in the latter case, the dread belongeth to the rash denouncer rather than the passive innocent.'³⁹ In other words, in cases of unjust excommunications, Care believed that the curse of God was redirected from those excommunicated to those excommunicating.

While court registrars tended only to pen down '*non comparendo*' [not appeared] next to the names of those not appearing, Heywood's and Care's cases both demonstrate that neither indifference nor hostility necessarily lay behind such a decision. On the contrary, they suggest the possibility that behind the hundreds of citations surviving from the Restoration period lay a multitude of complicated stories and difficult choices which we should take care not to generalise into a set of predictable responses. Similarly, their reactions to excommunication indicates that the abbreviated '*exco*' written next to or underneath those excommunicated in the surviving act books does not always conceal apathy or scorn. It could equally hide a narrative in which excommunication profoundly affected an individual's relationship with the Restoration Church. Nevertheless, both Heywood and Care more or less confirm the verdict of most historical writing on the church courts. Clearly, some excommunicates were not properly intimidated by the Church's censures, and in the cases of Heywood and Care this actually triggered a growing willingness to stand outside the Church's fold.

The case of the merchant John Eyre reveals that those less critical of the Restoration Church could be far more sensitive to the potential spiritual consequences of excommunication. As Eyre admitted in a letter sent to Sancroft on 17 May 1677, he had been barred for publicly deriding the Church. According to Eyre, this outburst was the result of a momentary lapse and did not reflect his real thoughts and feelings towards the 'purest and most excellent religion in the world.' Such language could, of course, have been hyperbole and it is possible that Eyre was principally concerned about any

³⁸ Care was by no means the first to have put forward this argument. Indeed, in suggesting that the church courts administered excommunications too liberally and arbitrarily, and that the sentence thereby lost its spiritual implication, Care was repeating an argument developed by puritans such as Thomas Cartwright in the second half of Queen Elizabeth's reign. For an excellent discussion of this, see 'The Elizabethan Establishment and the ecclesiastical policy' in John Guy, *The reign of Elizabeth: court and politics in the last decade* (Cambridge, 2010), pp. 126–49.

³⁹ Oxford, Bodleian Library, MS. Rawl., A, vol. 289. f. 127 (Henry Care to unknown, London, May 1683).

financial impact the censure might have on his ability to trade. Yet, his lengthy letter does convey a genuine trepidation about ‘the heavy pressures of calamity I at this time groan under.’ This concern was partly caused by how his excommunication might affect the spiritual wholesomeness of the Church. ‘I must acknowledge’, he told Sancroft, ‘that the sense of all my outward sufferings do not do nearly touch & affect me, as the serious consideration, that I have been hereby made a wicked instrument to wound the Church with scandall.’ Such anxieties were only superseded by concerns for his own salvation. In Eyre’s words, ‘my inbound disease at present is very dangerous & without some speedy relief may for ought I know prove mortall.’ The purpose of his letter was, therefore, to ask for absolution and ‘with humility submit to the sentence of the Church for what I am justly condemned.’ He was ‘much more happy to undergo her severest censure, that I may be restored as an humble penitent than still to continue shut out of her communion as an obstinate offender.’⁴⁰ Two days later, on 19 May, Eyre sent a second letter explaining how he had travelled to the residence of the Bishop of Rochester, John Dolben, and ‘threw myselfe & my sad condition at his feet & he was pleased to receive me with great compassion, & to extend his charity to me with a promise that whatsoever he could do in my behalf he was ready to put in practice.’ The purpose of the second letter was thus to intreat Sancroft to hasten ‘the procuring of my publick restoration & my private comfort.’⁴¹

Eyre was arguably the ideal excommunicate. However, it is important to note that, from the Church’s perspective, the sanctity of excommunication did not depend on the attitude of those undergoing it. In other words, an individual might object to the terms of his or her excommunication, or refuse to recognise the Church’s right to excommunicate, but that did not mean they were in any less spiritual despair. According to Comber, ‘the sentence is as weighty, and more fatal when it is despised, as when it is revered, and shall finally fall more heavy on these arrogant wretches, because the contempt of a divine institution is added to all their other iniquities.’⁴² They might not know it, Comber added, but ‘this casting out of the Church clearly represents their being cast out of heaven, and the delivering them to Sathan.’⁴³ This logic also ensured that the sanctity of excommunication was immune to any administrative errors made by the courts. As William Basset, vicar of Brinklow, Warwickshire, explained in his 1684 tract subtitled *A*

⁴⁰ Oxford, Bodleian Library, Oxford, MS. Rawl. H, Letters. 101, f. 54 (John Eyre to William Sancroft, dean of St. Paul’s, London, 17 May 1677).

⁴¹ Oxford, Bodleian Library, MS. Rawl. H, Letters. 101, f. 55 (John Eyre to William Sancroft, London, 19 May 1677). Though it is unknown whether Sancroft replied, Eyre was able to return to his trade, and appears to have become active in the port of Helsingör, Sweden. See Kew, National Archives, SP 29/392 f.337, SP 29/408 f.99.

⁴² Comber, *A discourse concerning excommunication*, p. i.

⁴³ *Ibid.*, p. 117.

defence of excommunication, as used by the Church of England, such objections ‘can take off nothing from the weight, and power of excommunication, but leaves it terrible to every man, that hath regard to his external safety.’⁴⁴ Thus, while many Restoration clergymen agreed that the church courts used excommunication far too frequently, they also denied that this could in any way diminish its spiritual gravity.

This respect for excommunication, even in cases where it was evidently mismanaged or misdirected by the courts, is evident in the reaction of Rowland Williams, vicar of St. Mary in Caernarfon, Wales. Excommunicated for a failure to pay a small sum to the Doctors’ Commons, Williams wrote to Sancroft on 22 May 1682, to express his frustration at this blatant abuse of the Church’s discipline: ‘I have, I thanke God, served the Church these 22 years and never was so abased at this rate of excommunication.’ Yet, in Williams’ opinion, the ineptitude of the court officials in no way mitigated the spiritual implications of the censure. Indeed, as opposed to Care, Williams very much recognised the validity of the old canonical trope ‘*excommunicatio sive justa, sive injusta, est timenda*’. He accordingly asked the Archbishop to ‘procure me a notandum of absolution.’ This was absolutely vital because Williams experienced his excommunication ‘of so high a nature that I dread it.’ Why else, he added, would he be so ‘impudent & imprudent to flye to my most reverent father for refuge, if I were not surreptitiously drawne from my mothers breast.’ As this analogy so vividly explains, Williams experienced his excommunication as a literal and painful excision from the communion of the Church. Even though he risked being ‘accounted bold to write to your grace’, any offence caused was worthwhile because ‘I am loath to live under the censure of being excommunicated.’⁴⁵

Excommunication could also affect the spiritual welfare of individuals seeking to participate in the services and sacraments of the Restoration Church despite their accursed status. This was certainly the case for Oliver Heywood, whose initial equanimity towards standing excommunicated was eventually disrupted by his characteristically presbyterian unwillingness to separate fully from the established Church. On 20 December 1663, his diary noted how ‘I heard there was to be a preaching at Coley Chapel.’ After ‘a long debate on what I should doe’, in which Heywood no doubt contemplated whether or not his excommunicated status would problematise his appearance, he finally ‘resolv’d to goe to the Chapel to hear what doctrine was delivered to my beloved people.’ What followed was a remarkably dramatic scene. ‘Being there’,

⁴⁴ William Basset, *A discourse on my Lord Arch-Bishop of Canterbury's and my Lord Bishop of London's letters to the clergy touching catechising...also a defence of excommunication, as used by the Church of England* (London, 1684), p. 38.

⁴⁵ Oxford, Bodleian Library, MS. Tanner, vol. 146, f. 85 (Rowland Williams, vicar of St. Mary, Caernarfon, to William Sancroft, Archbishop of Canterbury, Caernarfon, 22 May 1682).

Heywood recorded, 'the churchwarden came in a fury to me before the minister, tooke his text and would take me out.' Upon refusing, the churchwarden 'charged the minister to forbear preaching to an excommunicate person', after which Heywood was eventually forced to leave. He had originally intended to attend a second service in the afternoon, but 'considering the premises I stayed at home.' A similar situation occurred the following December. Once more Heywood noted his 'great desire to wait upon God in publick ordinances.' The previous attempt having gone so poorly, this time he cautiously 'sent a friend to York to consult with some whether I may not according to the Bishops Law goe and hear the sermon in publick tho I be excommunicated.' To his detriment, the answer received on 12 December informed him 'that an excommunicate person is not allowed to be present at prayers or sermons', which once more prevented Heywood from fulfilling his spiritual yearnings. It was this need to partake in the Church's communion which catalysed Heywood to seek for an absolution twice in 1664. The fact that both efforts were 'ineffectual', because Heywood was not ready to accept the 'total compliance' demanded by the court officials, should not deter us from recognising that the elation Heywood initially expressed towards his excommunication was far from fixed.⁴⁶ On the contrary, it was capable of causing him enough distress to induce him to seek formal re-entry into the established Church.

The final humiliation that could face unrepentant excommunicates was the denial of a Christian burial. The rationale behind such rejections rested on the Church's conviction that burying an impenitent sinner was tantamount to sacrilegious desecration, and it followed that the denial of a burial would seriously jeopardise the deceased's salvation. Though extreme, numerous examples reveal that this was a step the Restoration Church was willing to take. For instance, on 3 June 1783, the *Manchester Mercury* reported that a group of builders had discovered the skeleton of a man while working in a field near Grantham in Lincolnshire. The body was covered with something akin to a gravestone which read: 'here lies the body of Zacharias Laxton, deceased the 27th August, 1667, Being for his excommunication deprived the usual place of burial.'⁴⁷ A more contemporary report from Llanfighanel Brynpahaun in Wales similarly stated that a young Baptist girl had been reinterred from the churchyards to the crossroads in early

⁴⁶ The first attempt was catalysed by the churchwarden's removal of him from Coley chapel, after which Heywood recorded that he had received news 'from a friend at York that the proctor who appeared for me to get off my excommunication, had received a shrewd rebuke for speaking on my behalf.' The second attempt occurred after Heywood received news about his inability to attend a sermon, after which he noted that 'meanes hath been used for taking off my excommunication, to satisfy my reverend fathers request upon that account.' Heywood, *The Rev. Oliver Heywood*, I, pp. 184–93.

⁴⁷ *Manchester Mercury*, 3 June 1783.

1682.⁴⁸ That such actions could profoundly disturb communities is evident from a 1679 publication by the Quaker John Harrison, who graphically described how three Norfolk churchwardens exhumed the corpse of a coreligionist, 'breaking the coffin, so as they were forced to tie it together, lest the Corps should fall out' before placing it 'in the Market-Place...to the great Amazment of many People, who were troubled at the sight thereof, she having been some dayes in the ground.'⁴⁹

Christopher Haigh has best encapsulated this desire among dissenting groups to be buried in the Church's cemeteries: 'everyone wanted a Christian burial - and the Church of England had the graveyards.'⁵⁰ Both before and after the Restoration, the denial of burial was uniquely troubling to Catholics. As Peter Marshall has written, this was because 'English Catholicism was simultaneously a species of non-conformist sects, and an imagined version of the Church of England itself, with insistent claims to its infrastructure and endowments.'⁵¹ Thus even though scholars have emphasised the disregard many early modern recusants held towards the Church's discipline, it was nevertheless the friends and families of deceased Catholic excommunicates who most frequently troubled Restoration clergymen eager to preserve the sanctity of their cemeteries.⁵² In a letter to Sancroft, Bishop Peter Mews of Bath and Wells discussed the 'removed body of Mrs Gifford, a Papist who dyed excommunicate, out of the Church.' Though this had raised eyebrows in the Privy Council, Mews was 'sure I did nothing but my duty', adding that anyone thinking he would treat equally those 'who dy excommunicate as those that dye in the Bosom of the Church' were sorely mistaken.⁵³ The Bishop of St. Asaph, William Lloyd, also subscribed to this view, as is revealed by his treatment of 'some Papists [who] came to me for leave to bury one of their dead that died under excommunication':

⁴⁸ Cited in T. Richards 'Y Dechrevadau: Golwg Newydd', *Traf. Cymd. Hanes Bed* (1984–9), pp. 27–8.

⁴⁹ Joseph Harrison, *The lamentable cry of oppression* (London, 1679), p. 28.

⁵⁰ Christopher Haigh, *The plain man's pathways to heaven: kinds of Christianity in post-Reformation England* (Oxford, 2007), p. 6.

⁵¹ Peter Marshall, 'Confessionalisation and community in the burial of English Catholics, c. 1570–1700', in Nadine Lewycky and Adam Morton (eds.), *Getting along? Religious identities and confessional relations in early modern England - essays in honour of Professor W.J. Sheils* (New York, 2012), p. 75.

⁵² In a recent essay, Adam Morton and Nadine Lewycky argued that, for many early modern recusants, 'excommunication was less a bane than a boon: it provided them with a perfect excuse for absenting themselves from services and sacraments that they regarded as abominations.' See, Adam Morton and Nadine Lewycky, 'Introduction' in *Getting along?*, p. 40.

⁵³ Oxford, Bodleian Library, MS. Tanner, vol. 38, f. 111 (Peter Mews, bishop of Bath and Wells, to William Sancroft, Bath, 5 Jan. 1679).

I endeavoured by the handle to bring them to the church but after the long discourse with them found them obstinate & therefore refused them the use of holy ground for their dead. If I did amiss I submit to yor Grace censure for this, But thought it the best way of dealing with a people so much led by the senses as they are, & I hope to do them good by it.⁵⁴

That both Mews and Lloyd felt obliged to defend their actions does, however, indicate the irregularity of such occurrences, and several historians have doubted whether the English Church at any stage was willing systematically to exclude the corpses of excommunicates. In the seventeenth century, the common practice was instead to accommodate such requests with the caveat that ministers would either refuse to provide the service or demand that the burial would take place at night.⁵⁵ According to Lloyd, the logic behind such decisions was not necessarily derived from any Christian charity towards the soul of the excommunicate, but was rather a pragmatic means to save the conforming families of such individuals from the shame of having one of their kin denied a funeral. In his own words, 'where the relations are good conformable people, I have suffered them to bury their dead in the Churchyard (but by no means in the Church & that by night without prayers or any other solemnities).'⁵⁶ Moreover, as John Bossy argued, in situations where the excommunicated state of an individual did not become apparent until after the burial, it was probably more common for clergymen to perform an absolution post-mortem with the tacit recognition of a sinner's posthumous repentance, rather than actually conduct an exhumation.⁵⁷ As David Cressy put it, 'it was much easier to bury than unbury someone.'⁵⁸

Despite the unlikelihood of such events, the mere possibility of being denied burial could nevertheless weigh heavy on the minds of moribund excommunicates. This was the case for William Mayo, whose wife told the Worcester consistory court in October 1691, that her dying husband was 'very much grieved and disquieted in the mind at lying under the censure of excommunication and humbly deserves to be absolved.'⁵⁹ Similarly, in 1704, a Mr. Pudsey informed the Archbishop of York, John Sharp, that an absolution would be 'the only means to bring' his dying brother-in-law some 'comfort in this time of

⁵⁴ Oxford, Bodleian Library, MS. Tanner, vol. 35, f. 190 (William Lloyd, Bishop of St. Asaph, to William Sancroft, St. Asaph, 14 Feb. 1683).

⁵⁵ Marshall, 'Confessionalisation and community', p. 60.

⁵⁶ Oxford, Bodleian Library, MS. Tanner, vol. 35, f. 190 (William Lloyd to William Sancroft, St. Asaph, 14 Feb. 1683).

⁵⁷ John Bossy, *The English Catholic community, 1570–1850* (London, 1975), p. 142.

⁵⁸ David Cressy, *Travesties and transgressions in Tudor and Stuart England: tales of discord and dissension* (Oxford, 2000), p. 132.

⁵⁹ Cited in Davies, 'Enforcement of religious uniformity', p. 183.

affliction and make him with more cheerfulness in spirit.⁶⁰ In this way, the spiritual consequences of excommunication could eventually trouble even long-standing obdurates.

(iii) *'the general rumour of it': excommunication and temporal concerns*

Excommunication was not intended as merely a spiritual affliction; it was also meant to isolate and shame individuals in the temporal world. The extent to which excommunicates actually experienced social pressures has, however, been considered negligible. According to Spurr, 'excommunication did not ostracise the individual as it was supposed to do.'⁶¹ Yet, Heywood's diary clearly indicates that excommunication could generate communal commotion, and, in his letter to Sancroft, Eyre mentioned his desire to receive 'publick restoration', which suggests that not all were impervious to the social strains it might produce. Moreover, historians researching social credit in early modern England have showed how involvement in both the secular and ecclesiastical courts could jeopardise the reputation of parishioners. Exploring the ramifications of debt, Craig Muldrew demonstrated how 'public knowledge of an arrest...could financially damage the credit of a household, leading to the loss of business, and downward social and economic mobility.'⁶² Laura Gowing has similarly shown how defamation suits heard before the London consistory court frequently generated gossip and rumours that could be deeply damaging to the social standings of defendants.⁶³ There is, therefore, reason to reconsider whether or not excommunication could have a similar impact on the lives of those it affected.

While reports of this nature do not abound, some excommunicates clearly feared the social consequences of their banishment from Church. Heywood mentioned one spectacular account following the excommunication of the Halifax blacksmith, John Butterworth, who 'drew his sword, and when prayers were read in the forenoon, and the curate began to read the excommunication, he bad him read it if he durst adding many threatening words.'⁶⁴ Though far less volatile, a similar concern for his reputation was

⁶⁰ Cited in Barry Till, 'The ecclesiastical courts of York, 1660–1883: a study in decline' (unpublished PhD thesis, University of York, 1963), p. 141.

⁶¹ Spurr, *Restoration Church*, p. 216.

⁶² Craig Muldrew, *The economy of obligation: the culture of credit and social relations in early modern England* (Basingstoke, 1998), p. 275.

⁶³ Laura Gowing, *Domestic dangers: women, words and sex in early modern London* (Oxford, 1996), p. 132.

⁶⁴ Though the curate, Thomas Gill, did not dare to continue reading the sentence, it did not prevent the publication of Butterworth's sentence. Oliver Heywood, *The Rev. Oliver Heywood*, II, pp. 253–4.

expressed by the Suffolk knight and scientist, Sir John Pettus, who laboriously explained the illegitimacy of his excommunication in his *Narrative of the excommunication of Sir John Pettus*, published in 1673. Being ‘convinced by some of my worthy friends of the necessity of publishing my own justification’, Pettus used this tract to explain how his wife, following her conversion to Catholicism, managed successfully to procure an excommunication against her husband for refusing to pay alimony following their separation. For Pettus, a man of local and national renown who had been elected MP two years earlier, this was humiliating. The purpose of his publication was consequently not simply to demonstrate his innocence and continued commitment to the Church of England, but also to urge his wife to make a public ‘petition to the King and Counsell, that the excommunication may be honourably discharged.’ Indeed, Pettus would not let the matter rest until ‘some publique submission and publication by some order or council or otherwise be obtained for the vindication of her ungrateful and scandalous aspersions on me, which I presume have been the ground of the excommunication, intruding on...my reputation, which I ever valued as my life.’⁶⁵

In 1664, the London merchant, Robert Cranmer, similarly published a vindication of his own integrity following an excommunication proclaimed by the vicar of Mitcham, Anthony Sadler. Although Cranmer vigorously objected to his sentencing, the tract expressed real concerns that it was ‘of so high a nature, that it excludes a man from the benefit of God’s ordinance, and from the benefit of the laws of the land, and from the burial of a Christian, if he dyes without repealing it.’ Worst of all, though, was Cranmer’s anxieties about how his excommunication might appear ‘before his neighbours and countrymen’ who would not be aware that it had been ‘so falsly and scandalously objected against him.’⁶⁶ Nor were such worries uncommon amongst the merchant communities in Restoration England. In his study on excommunication, John Owen noted how the London merchant community, which included many dissenters, would congregate around the local church when the names ‘of all that were proceeded against...in Publick tables were exposed before all.’⁶⁷ Crucially, such gatherings were

⁶⁵ John Pettus, *A narrative of the excommunication of Sir John Pettus of the county of Suffolk* (London, 1673), pp. 1–16. No such public acknowledgment was made by his wife.

⁶⁶ Robert Cranmer, *Mr. Sadler, Sadled in the vindication of Mr. R. Cranmer of London, merchant* (London, 1664), pp. 1–16.

⁶⁷ Gary S. De Krey’s study of Restoration London has usefully contextualised this situation: following backlash against the Exclusion Crisis in the early 1683, ‘the parish clergy were encouraged to forward the names of all who were deficient in their attendance at church...to the Doctors’ Commons.’ This ‘caused the rumour spreading ‘that thousands would be excommunicated in the London’s archdeacons court, prior to the ward selections of common councilmen, to prevent their participation’ which, though unsubstantiated, caused much concern ‘among freemen concerned about their civic rights.’ See Gary S. De Krey, *London and the Restoration, 1659–1683* (Cambridge, 2006), p. 354.

not an outlet of communal *schadenfreude*, but rather represented a shared recognition that an excommunication could seriously inhibit their ability to conduct business. As Owen noted, ‘that which principally affects the minds of men’ was the awareness that it might be ‘highly prejudicial, to all the trust and trade’ of individual merchants. Not only did it deprive ‘them of all the repose in the law of the land, or publick justice’, but it also ‘breaks all their measurers about the disposal of their affairs.’ It was, therefore, a source of genuine suspense to discover ‘whose names, their own, or of those with whom they are concerned, they shall see next day affixed of the church doors, in order unto excommunication’, and Owen was certain ‘that the general rumour of it gives a general discomposure unto the minds of men.’⁶⁸

There was, then, at least some truth to the assessment made by the anonymous author of the tract *Omnia comesta a belo*, first published in 1667, who claimed that the censures of the ‘merciless spiritual court’ have ‘gotten most of the sober trading part of the Nation discouraged.’⁶⁹ Furthermore, numerous reports indicate that Owen’s analysis applied to merchant communities outside of London as well. In December 1672, the prebendary of Bristol Cathedral, Samuel Crossman, wrote a lengthy report showing how Bishop Guy Carleton’s targeted prosecution of the city’s ‘merchants & trading people’, which Crossman perceived as violating the terms of the Indulgence then in place, ‘will be visible in his Majesties customes of this port.’⁷⁰ The Walloon community of Canterbury also voiced such concerns following the excommunication of two their traders in December 1676. In a petition to Charles II, the leaders of this community described how ‘the said proceedings is a great discouragement to the industry of the said petitioners who brought into your city of Canterbury the art of weaving and in opening many silken manufacturers, where by thousands of English are employed.’⁷¹ Gilbert Sheldon granted this request, demanding that ‘they be absolved’ and ‘that this be done without either oath or expenses.’⁷² Pettus and Sadler were also discharged without having to endure penance.⁷³ That should not, however, divert our attention from the very real anxieties all

⁶⁸ Owen, *Letter concerning excommunication*, pp. 1–3.

⁶⁹ Anon., *Omnia comesta a belo, or, an answer out of the west to a question out of the north* (London, 1667), pp. 9–12.

⁷⁰ Kew, National Archives, SP 29/319, f. 147.

⁷¹ Oxford, Bodleian Library, MS. Tanner, vol. 92 (b), f. 152 (Petition of the Walloon congregation in Canterbury to Charles II, Dec. 1676).

⁷² Oxford, Bodleian Library, MS. Tanner, Vol. 92 (a), f. 168 (Richard Thomson, Doctor of Laws, to Mr. Hirst, registrar of Canterbury Prerogative Court, London, 8 June 1676).

⁷³ For more details about how Cranmer and Sadler managed to resolve their dispute, see Anthony Sadler, *Strange news indeed* (London, 1664), p. 7. Pettus was actually pardoned in 1672, before the publication of his vindication, after the King ordered him to pay £2 alimony to his wife. See B.D. Henning (ed.), *The history of Parliament: the House of Commons 1660–1690*, 3 vols. (London, 1983), III, p. 232.

of them expressed concerning the possibility that their excommunication might negatively affect both their reputations and livelihoods.

There is some evidence that the Church's censures could have an impact in the realm of politics as well. More specifically, although there appears to have existed no legal basis for it, excommunication was occasionally understood as barring individuals from voting. The rationale behind such political exclusion rested on the oft repeated truism first developed by the Elizabethan theologian, Richard Hooker, that 'there is not any man of the Church of England, but the same man is also a member of the Commonwealth, nor any member of the Commonwealth which is not also of the Church of England.'⁷⁴ It followed that since excommunicates were not technically members of the Church, they could be similarly excluded from the politics of the state. According to the 'Taunton burgher' behind the pamphlet *Excommunication excommunicated* from 1680, this was perhaps the most damaging temporal aspect of the censure: 'it incapacitates a freeholder from having a voice in the election of a member to serve in Parliament, and does so bereave a gentleman of all wisdom and understanding, that he's immediately unfit to be chosen to serve in public.' He particularly targeted the Bishop of Bath and Wells, Peter Mews, for 'seeking to pervert that high censure of excommunication so as to make it a state engine, to serve their interests and passions; especially to hinder the peoples' free choice of their trustees to serve in Parliament.'⁷⁵ Although there is little to suggest that such election tampering was widespread, the research of William Gibson has demonstrated that excommunicated voters were occasionally disregarded during the Restoration period. This is amply demonstrated in the controversy surrounding the 1669 Parliamentary by-election in the borough of Bridgwater, Somerset. Following the election of Sir Francis Rolle, the runner-up, Peregrine Palmer, who lost the election with 12 votes against 13, appealed to the House of Commons pointing to irregularities in the voting. Parliament granted his appeal but not for the reasons provided by Palmer. Rather, the Commons ruled in his favour because those voting were 'all persons holding conventicles...and one of them being, at the time of his being elected burgess, actually excommunicated, and not absolved till after the election of the burgess to serve in Parliament.'⁷⁶ In another example, following the defeat of the dissenter John Rushworth for the seat of Berwick in 1676, the high sheriff of Northumberland, Sir Richard Stolte, admitted to the Lord High Treasurer, Thomas

⁷⁴ Richard Hooker, *Of the laws of ecclesiastical polity*, ed. Arthur Stephen McGrade (Cambridge, 1989), p. 130.

⁷⁵ Anon., *Excommunication excommunicated, or legal evidence that the ecclesiastical courts have no power to excommunicate* (London, 1680), pp. 1–24.

⁷⁶ Cited in William Gibson, 'The limits of the confessional state: electoral religion in the reign of Charles II', *Historical Journal*, vol. 51 (2008), pp. 34–5.

Osborne, Earl of Danby, that 'we found many of [the voters] stood excommunicate for not repairing to divine service and not receiving the sacrament, and...we did except against their votes as not legal.'⁷⁷ We should, therefore, be sensitive to the fact that at least some excommunicates would have experienced a degree of political alienation as well.

The most severe consequence of excommunication was undoubtedly imprisonment. While the High Commission, infamous for its capacity to detain offenders, had been abolished, the restored church courts could still issue the writ *De Excommunicato Capiendo*. This allowed them to order officers of the secular arm to imprison anyone standing excommunicated for more than 40 days. Unlike other prisoners, excommunicates were not offered bail, but could only get out of jail by satisfying the Church's demands by repenting their sins. Historians have doubted the extent to which this writ actually posed a real danger to early modern excommunicates, and Restoration clergymen at times complained about the difficulty of actually imprisoning those standing obdurate or about the royal pardons of such individuals.⁷⁸ It was, for instance, the opinion of James Wilson that it 'was so rare in the country that the common people know it not.'⁷⁹ Unfortunately, only the 95 writs issued by the Chester consistory court between 1663 and 1690 have survived from the Restoration period which makes it difficult to assess the accuracy of such statements.⁸⁰ Nevertheless, if this figure was representative of other diocesan tribunals, it does indicate that, while perhaps not particularly common, excommunication writs were certainly not unheard of.

Regardless of the frequency with which *De Excommunicato Capiendo* writs were issued, the possibility of being imprisoned could have a profound psychological and emotional impact on those standing excommunicated. Consider, for instance, the case of the Devonshire Baptist, Henry Farrant, who had been presented at the episcopal visitation in 1669 for going 'abroad to heare the nonconformists.' Failing to attend his hearing, he was excommunicated and shortly thereafter a writ for his imprisonment was ordered against him. A few years later, he wrote a 'breaf account of my former suffering' where he reflected on how this had affected him and his family:

⁷⁷ Cited in Douglas Lacey, *Dissent and parliamentary politics in England, 1661–1689: a study in the perpetuation and tempering of parliamentarianism* (New Brunswick, 1969), p. 111.

⁷⁸ See, for instance, Outhwaite, *ecclesiastical courts*, p. 82. Such royal pardons occurred in the aftermath of the Declarations of Indulgence in 1672 and 1687 and following James II's General Pardon in Apr. 1688. For examples of excommunicated prisoners being released, see Kew, National Archives, SP 29/317 f. 285, and SP 29/422, f. 259.

⁷⁹ Oxford, Bodleian Library, MS. Tanner, vol. 124, f. 47 (James Wilson to William Sancroft, Leeds, 11 Sept. 1680).

⁸⁰ Kew, National Archives, CHES 38/25/4–6. Numerous of these writs ordered the imprisonment of two or more excommunicates.

Not long after I was excommunicated, 4 Bayliffs broke open my dors and beaten my wife, but I escaped, upon another act from the Bishops Court called *capendo*; which was a writ to carry me to prison; then I fled from my family and left them two years and a halfe; then King Charles the Second gave the Liberty of Conscience, then I returned to my family.

Not only was this long absence from his family difficult emotionally, but it also brought significant financial consequences, since ‘while I was wanting, they freed an apprentice which had 2 years and halfe to come of this time, which was above 8 pounds lost to mee.’⁸¹ B.R. White’s study on Farrant’s co-religionists has demonstrated that not all excommunicated Baptists in restoration England chose this path. Most notably, a group of Oxfordshire Baptists under the leadership of Consolation Fox chose in 1669 ‘to obey the laws and stand by the commands of the English Church’ soon after excommunication writs had been issued against them.⁸² The next chapter will further explore the consequences of the *De Excommunicato Capiendo* writ, focusing particularly on how the Restoration Quakers attempted to circumvent it.

(iv) ‘the great scandall I have given’ - commutation, penance and other means of absolution

The Church’s highest sanction was clearly capable of exerting a wide range of constraints on individual excommunicates. Excommunication was not, however, an irrevocable sentence. On the contrary, a range of options existed for those eager to alleviate its pressures. The traditional path towards reconciliation with the Church was for excommunicates to perform public acts of penance. This required them to appear before their congregations, wearing nothing but a white sheet, during a divine service and confess their sins before being reunited with the Church. Margo Todd has demonstrated how important such rituals were for the maintenance of the Scottish kirk. ‘The penitential performance’, she writes, ‘defined the relationship between individual and community as much as between the godly and profane.’⁸³ Historians of the post-Reformation English Church have attached far less importance to acts of public penance due to the ability of excommunicates to pay their way out the Church’s snares with a

⁸¹ Henry Farrant, ‘A breaf account of my former suffering for the satisfaction of some’, in *Transactions of the Congregational History Society*, vol. 1 (Vaduz, 1901), p. 400.

⁸² B.R. White, *The English Baptists of the seventeenth century* (London, 1983), p. 107.

⁸³ Margo Todd, *The culture of Protestantism in early modern Scotland* (New Haven, 2002), p. 130.

financial commutation.⁸⁴ That such practices re-appeared in Restoration England is evident from several contemporary polemicists. Richard Baxter noted with disdain in his *Reliquiae Baxterianae*, first published in 1696, how ‘I have been in most parts of England, and in fifty years time, I never saw one do Penance, or confess his Sin in Publick.’ This proved to Baxter once again that ‘their Courts are meerly as Civil Courts, for Terrour, but not at all to convince men of Sin, and bring them to Repentance and Salvation.’⁸⁵ It was not only critics of the Church who voiced concerns that such practices seriously diluted the sanctity of the Church’s discipline. Echoing the criticisms levelled against the Church of Rome in the early Reformation, the Dean of Bristol Cathedral, Richard Thompson, observed how corrupt court officials, ‘carrying the keys to the ecclesiastical court in their pocket’, habitually ‘sold mens soules for money’ without the slightest regard for their repentance.⁸⁶

Though no official table existed, the notebook kept by Chester’s diocesan chancellor, John Wainwright, gives a rare insight into how much commutations could cost, and suggests that the court received between two and ten shillings in most instances. For example, in May 1663, Thomas Steele of Cholmondeley parish, excommunicated for fornicating with Mary Johnson, paid ‘x d. for himself and 2. d for the woman.’⁸⁷ The vociferous critic of the restored church courts, Edmund Hickerlingill, claimed to have paid 22 shillings for his absolution, commenting that his soul had been ‘bought and sold, sent to Satan and thence redeemed, but not without money.’⁸⁸ While some excommunicates were able to pay their fees without too much trouble, Barry Till is surely correct in suggesting that ‘these fines for absolutions or in commutation of penance must have been a millstone round the neck of the poor.’⁸⁹ Till has, furthermore,

⁸⁴ See, for example, Christopher Haigh, *Reformation and resistance in Tudor Lancashire* (Cambridge, 1975), pp. 229–33.

⁸⁵ Richard Baxter, *Reliquiae Baxterianae* (London, 1696), pp. 397–8.

⁸⁶ Oxford, Bodleian Library, MS. Tanner, vol. 35, f. 45. For a concise account about the early English criticisms against Rome’s selling of indulgences, see Peter Marshall, *Reformation England, 1480 – 1642* (London, 2003), pp. 32–4.

⁸⁷ Chester, The Cheshire Archives and Local Studies Service, EDA 3/2.

⁸⁸ Edmund Hickerlingill, *The Black non-conformist discover’d* (London, 1681), p. vi. For more about Hickerlingill’s several encounters with the church courts, see Justin Champion and Lee McNulty, ‘Making orthodoxy in late Restoration England: the trials of Edmund Hickerlingill, 1662–1710’, in Michael Braddick & John Walter (eds.), *Negotiating power in early modern society: order, hierarchy and subordination in Britain and Ireland* (Cambridge, 2001), pp. 188–205; Lee McNulty, ‘An anticlerical priest. Edmund Hickerlingill (1631–1708) and the context of priestcraft’ (M. Phil thesis., University of Cambridge, 1998).

⁸⁹ Till, ‘ecclesiastical courts’, p. 111. Though Thompson and others regularly complained about the courts’ greed in collecting commutations, Wainwright’s notebook suggests that such fees did not merely line the pockets of corrupt court officials but was either disseminated towards the poor or used to repair the Cathedral. There was also a scheme developed by Archbishop Gilbert Sheldon after the Great Fire of London in 1666 to redirect all commutation fees received in the southern province to the rebuilding of St. Paul’s Cathedral, though it has not been possible to

demonstrated that the courts could demand substantially larger sums from wealthier excommunicates, with one particularly prosperous Durham couple having to pay 80 pounds for their absolution in 1674.⁹⁰

The widespread practice of commutation could be interpreted as a weakness of the ecclesiastical arm. Yet, the willingness of excommunicates to pay such fines also suggests an unwillingness to face the consequences of their censure. Despite his aversion for the courts, Hickeringill paid his commutation for fears of imprisonment. In his own words, the excommunication itself was a 'meer earthly cracker, and bugbear, and frighten none but women and fools, were it not for the writ Excommunicato Capiendo that follows the rear' which 'shall imprison the heretick and bury him in jayl.'⁹¹ For others, it was clearly the shame of appearing before their neighbours in the customary white sheet that pushed them into paying the commutation fee. In one of his dispatches to Sancroft from 20 June 1682, Sancroft's chaplain, George Thorpe, discussed the case of one Robert Churchill, who had pleaded for a commutation 'because he is a taylor by trade & such publick penance would ruin him in his profession, though nothing should be so considerable to him as the rectification of his repentance.'⁹² In June 1686, the Bishop of Norwich, William Lloyd, informed the Archbishop of a similar situation, where an excommunicated minister, Frank Buxton, was 'willing to submit to a retraction but he hoped...that I would not oblige him to retract publicly.'⁹³ The shame of such a public recantation could, moreover, be dreaded by the family and friends of the excommunicate. Four years earlier, in August 1682, Lloyd, then Bishop of Peterborough, had sought advice about a case involving Alicia Roe of Castor parish, excommunicated for giving birth to a bastard child. Lloyd had ordered her penance but the matter was complicated by Alicia's husband, Robert, who 'became enraged & swore he will never cohabit with a woman that hath done penance in a Church & he will not live any longer with her.' Indeed, there were 'no perswasions or arguments that can prevayle with him to alter his obstinate resolution of leaving his wife in case shee undergoes pennance.'⁹⁴

The Church and its courts responded to such requests on a case-by-case basis. With regard to Churchill, Thorpe related that the Doctors' Commons 'made no scruples

detect whether such transactions actually occurred. See Oxford, Bodleian Library, MS. Tanner, vol. 40, ff. 16, 19.

⁹⁰ Till, 'ecclesiastical courts', p. 141.

⁹¹ Hickeringill, *Black non-conformist*, pp. 2–9.

⁹² Oxford, Bodleian Library, MS. Tanner, vol. 33, f. 170 (George Thorpe, chaplain to the Archbishop of Canterbury, to William Sancroft, Canterbury, 20 June 1682).

⁹³ Oxford, Bodleian Library, MS. Tanner, vol. 138, f. 45 (William Lloyd, Bishop of Norwich, to William Sancroft, Norwich, 4 June 1686).

⁹⁴ Oxford, Bodleian Library, MS. Tanner, vol. 147, f. 47 (William Lloyd, Bishop of Peterborough, to William Sancroft, Peterborough, 2 Aug. 1682).

of accepting commutation.⁹⁵ In the case of the Roe couple, Lloyd stated that though 'I am no friend to commutation of penance' an exception might be advisable in this case 'in order to prevent a perpetuall breach betweene Robert & Alicia.'⁹⁶ He was adamant, however, that Buxton perform penance, and on 24 June 1686, Buxton accordingly confessed the 'fowle dishonour I have done to our most holy religion and the great scandall I have given by my late loose and unchristian conversation.'⁹⁷ As this shows, public penances did, in fact, take place in Restoration England. Precisely how frequently such occasions occurred has been a matter of some discussion as a result of the limited information contained in the act books produced by the restored ecclesiastical courts, and the lack of surviving penance certificates from the period. In his study of Oxford and Peterborough, Martin Jones estimated that roughly three fifths of all absolutions were obtained this way.⁹⁸ J.M Potter's research on Canterbury was more optimistic, positing that 'not more than twenty per cent' failed to be absolved.⁹⁹ Though precise figures are difficult to establish, this nevertheless suggests that Baxter's claim of having neither seen nor heard anyone publicly repenting was exaggerated for polemical purposes. This is further indicated by several reports from senior clergymen proudly proclaiming the success of such rituals. For instance, in February 1682, Bishop Lloyd of St. Asaph noted with delight how a local Quaker, holding 'the white staff' and dressed in 'the white sheet', had addressed 'a very full Church' in Llanrwst.¹⁰⁰

A rare bundle of penance certificates issued by the London consistory court provides more detailed insight into how such penances were conducted in Restoration England. Anne Birmingham of Westminster was, for example, sentenced to appear in St. Margaret's parish church, situated on the grounds of Westminster Abbey, on 12 December 1680. The first step of the ritual saw Anne entering the church 'at the ringing of the castlepeale of bell to morning prayer and stand att the porch or church doore where most of the people enter the said Church.' She had to wear 'a white sheet with a white wand in her open hand' and carry a 'paper of accusation on her brest.' She was then required to beg for the 'forgiveness of such as passe by her.' After the first lesson of the sermon, Anne was ordered to 'come into the said church, arrailed as before, and be

⁹⁵ Oxford, Bodleian Library, MS. Tanner, vol. 33, f. 170 (George Thorpe to William Sancroft, Canterbury, 20 June 1682).

⁹⁶ Oxford, Bodleian Library Oxford, Bodleian Library, MS. Tanner, vol. 147, f. 47 (William Lloyd to William Sancroft, Peterborough, 2 Aug. 1682).

⁹⁷ Oxford, Bodleian Library, MS. Tanner, vol. 138, f. 46.

⁹⁸ Jones. *ecclesiastical courts*, p. 110.

⁹⁹ J.M. Potter, 'The ecclesiastical courts in the diocese of Canterbury, 1603–1665' (unpublished M.Phil, University of London, 1973), pp. 199–200.

¹⁰⁰ Oxford, Bodleian Library, MS. Tanner, vol. 35, f. 190 (William Lloyd to William Sancroft, St. Asaph, 14 Feb. 1682).

placed in some eminent place in the body of the Church neare the ministers reading desk where she shall continue during the whole time of divine service.’ Following the service, she had to ‘stand up in the sight of the congregation...and acknowledge her offence after the minister penetentially’:

Whereas to the great offence of almighty God and greife of all good people I have abused in my body by committing the filthy sin of adultery or incontineny with one Francis Singer and by being by him unlawfully begotten with child I doe here before God and this congregation humbly confesse and acknowledge this my offence and am heartily sorry for the same and I doe from the bottome of my heart earnestly repent me of the same...

That this was performed as instructed was verified by the signatures of both the churchwardens and several members of the congregation at the bottom of the certificate.¹⁰¹ Undoubtedly, such experiences could be deeply humiliating, and it is easy to understand why some excommunicates would have preferred to commute their sentences financially if given the opportunity.

Not all excommunicates who wanted to get rid of their censure were willing to take the steps required for absolution, whether this could be attained by a commutation or not. Sir John Pettus, the merchant Robert Cranmer, and the Canterbury Walloon community refrained because it would imply their guilt, and they instead managed to be pardoned by proclaiming the illegitimacy of their excommunication. This was also the strategy pursued by Anthony Sadler, the minister responsible for Cranmer’s sentencing in 1664, who himself was excommunicated and suspended in the spring of 1681 for debauchery. Being advised by the chancellor of Salisbury, Robert Woodward, to ‘come over to Sarum for absolution’, Sadler nevertheless refused, telling Sancroft that, this would be tantamount ‘to confess my selfe a criminal &...to infer the legality of [my] excommunication’, which Sadler was convinced was ‘both arbitrary and tyrannical.’¹⁰² To the disappointment of Seth Ward, the Bishop of Salisbury who had instigated Sadler’s removal, Sancroft appears to have accepted Sadler’s arguments and he was shortly returned to his ministry again, before being excommunicated once more in 1683.¹⁰³

¹⁰¹ London, British Library, Add. MS. 38715, f. 3.

¹⁰² Oxford, Bodleian Library, MS. Tanner, vol. 143, ff. 119–120 (Anthony Sadler, vicar of Mitcham, to Robert Woodward, diocesan chancellor of Salisbury, Salisbury, 23 May 1681).

¹⁰³ Jason McElligott, ‘Anthony Sadler’, in *Oxford Dictionary of National Biography* (2004). Accessed at: <https://doi.org/10.1093/ref:odnb/24457> (visited 07/02/2018).

Another possibility was to apply for an appeal in the Doctors' Commons or a prohibition from the secular courts. Although costly and time consuming, the latter option was the route advocated by a series of fascinating guidebooks published in Restoration England that provided practical advice to alleviate the plight of excommunicates.¹⁰⁴ The first to appear was Henry Care's *The law of England, or a true guide for all persons in ecclesiastical courts* from 1664.¹⁰⁵ It was Care's opinion that 'there is scarce any subject in our law more dark, or less understood than this countering of excommunication, and its penalties', and he accordingly went into considerable historical and legal detail outlining how excommunicates could challenge a juridically questionable sentencing by requesting a prohibition from the secular sphere. Though he could not guarantee the success of such a strategy, his research suggested that it 'is most commonly obtained by suggesting that the said cause doth not appertain to the spiritual jurisdiction.'¹⁰⁶ Later in life, when he had become a renowned proponent of toleration for dissenters, Care repeated these instructions, first in his *English liberties* from 1680, which contained 'plain instructions for all persons concerned in Ecclesiastical Courts', and then in the postscript to his *A perfect guide for Protestant dissenters*, 'touching prosecutions in the ecclesiastical courts.'¹⁰⁷ The same directions could also be found in a number of anonymous pamphlets. For instance, the author of *Excommunication excommunicated* from 1680 advised his readers to 'move the [secular] courts for a prohibition' because 'I am perswaded that thou wilt have justice done by thee by a country-jury.'¹⁰⁸ Perhaps the most comprehensive manual was provided by the author of *The case and cure of persons excommunicated according to the present laws of England* in 1682, who went into considerable detail to show how excommunicates could achieve prohibitions 'both in order to their avoiding excommunication, or delivering themselves from prison...because they have stood excommunicated forty days.'¹⁰⁹

These manuals were all adamant that the Restoration church courts habitually violated English law. As the anonymous author of the *The admonisher admonished*

¹⁰⁴ For more about the costs and time required for an appeal, see James Sharpe, *Crime in early modern England, 1550–1750* (New York, 1999), p. 64.

¹⁰⁵ Care used the name 'H. Cary' on this publication, and though its true authorship has at times been questioned, he would later claim it as his own. See, Henry Care, *English Liberty, or the free-born subject's inheritance* (London, 1680), p. 157. I am grateful to Jacqueline Rose who first identified this connection. See, Jacqueline Rose, *Godly kingship in Restoration England, the politics of the royal supremacy, 1660–1688* (Cambridge, 2011), p.195.

¹⁰⁶ Henry Care, *The law of England, or a true guide for all persons concerned in ecclesiastical courts* (London, 1664), p. 78.

¹⁰⁷ Henry Care, *English liberties*, pp. 154–83; *A perfect guide for Protestant dissenters* (London, 1682), pp. 19–22.

¹⁰⁸ Anon., *Excommunication excommunicated* (London, 1682), p. 23.

¹⁰⁹ Anon., *The case and cure of persons excommunicated according to the present laws of England* (London, 1682), title page.

explained in 1682, there was no basis in either Scripture or the ancient constitution which justified 'such a way of government in this Church, viz. of fines, imprisonments, banishments, or any other corporal punishment, bring persons to conform.'¹¹⁰ Or, in Henry Care's words: 'what ever is done to disturb the quiet and repose of particular subjects, contrary to law, is down right oppression.'¹¹¹ Such claims were arguably legally dubious. The church courts were, in fact, permitted both to fine and imprison excommunicates. Nevertheless, as was discussed in the second chapter of this thesis, the registers of both the Court of Common Pleas and the King's Bench reveal that several excommunicates in Restoration England applied for a prohibition.¹¹² Whether they did so after reading any of the published guidebooks on the subject is difficult to determine. While this posed a serious problem to ministers eager to uphold the spiritual gravity of the Church's discipline, it should be emphasised that the success of a prohibition appeal was by no means a foregone conclusion. Indeed, unless the excommunicate could demonstrate the unlawfulness of his or her censure, the common law judges could be unwilling to intervene with the ecclesiastical sphere.¹¹³ Perhaps this is why Henry Care, although an expert on the topic, chose to plead with the royal court a few months after his excommunication rather than apply for a prohibition.¹¹⁴ What concerns us, however, is not necessarily the success of such strategies, but rather that they were attempted in the first place. For, although the appeal process presented a potential way for excommunicates to get out of the Church's snares without asking for absolution, we should remember that they only pursued such costly and time-consuming alternatives because of their unwillingness to face the potential repercussions of their censure. Moreover, if excommunication only amounted to an empty threat in Restoration England, there could have existed few incentives among Care and the other anonymous authors to publish such lengthy manuals on how to avoid it, let alone any public demand for them. Thus, although the appeal process has been construed as an increasingly swelling Achilles heel of the ecclesiastical jurisdiction, it also highlights the very real concerns among contemporaries about the possible dangers of standing excommunicated.¹¹⁵

¹¹⁰ Anon., *The admonisher admonished: in, a modest and impartial narrative of the proceedings of the ecclesiastical court against James Jones* (London, 1682), p. 108.

¹¹¹ Care, *A perfect guide*, p. 19.

¹¹² See, for instance, Geoffrey Ellis & Max A. Robertson (eds.), *The English Reports: King's Bench Division*, vol. 86 (London, 1902), pp. 78, 113, 1071.

¹¹³ Ellis & Robertson (eds.), *English Reports*, vol. 86, p.296; vol. 83, p. 451.

¹¹⁴ Schwoerer, *Mr. Henry Care*, p. 183.

¹¹⁵ See, for example, Christopher Hill, *The century of revolution, 1603–1714* (Edinburgh, 1961), p. 225.

(v) '*Not worthy of their considerations*': *excommunication and Restoration society*

So far, we have principally been concerned with the excommunicates themselves. But, of course, excommunication was not meant simply to affect those sentenced; it was equally an instruction to their broader communities to avoid such accursed individuals. According to several Restoration clergymen, however, such communal shunning of excommunicates was rarely carried out in practice. 'In ancient times', William Basset explained, 'all men, that were not of their own party did avoid them, and would hold no society, and commerce with them, which tended mightily to shame, convince, and reduce them.' The same could hardly be said for his contemporary England, where Basset observed how 'even they that are of the Church, make hardly any difference between excommunicate persons, and others; as if the thing were not worthy of their considerations.'¹¹⁶ Yet, the experience of a few excommunicates discussed in this chapter suggest that this was not always the case. On 13 February 1663, Oliver Heywood recorded a particularly revealing episode from a dinner party at Shibden Hall. His 'friends' had invited him to dine but on the guest-list was also his successor in the vicarage of Halifax, Richard Hooke, 'who would not stay for dinner, because, as he said, he was bound up by his canons not to eat with an excommunicate person.' Faced with a potentially awkward scenario, Heywood decided to leave and avoid 'that [Hooke] should either loose his dinner, or be defiled, or his conscience perplexed.'¹¹⁷ Heywood's tone was here notably sarcastic, but we should remember that this represented only one of several occasions where his excommunication tangibly obstructed his social life. The matter was more serious for the Devonshire shopkeeper, Henry Farrant. Having only returned to his family following the 1672 Indulgence, he recounted how, in 1673, 'I was again excommunicated, and many goods often strained again and sould.' This time, the vicar of Payhembury, Thomas Potbury, actively sought to mobilise his parish against Farrant by citing those continuing to use his shop, which appears to have caused a notable decline in business. In Farrant's words, Potbury 'caused maney of the parrish of my best customers to be scited to court for setting mee at work being an excommunicated person, so that I had not a days work for many weeks.'¹¹⁸

Undoubtedly, such isolation could be a distressing, painful experience. Yet, not only are Heywood's and Farrant's examples extremely rare, but, on closer inspection, their accounts actually corroborate Basset's observation of a widespread tolerance towards excommunicates. After a few weeks of poor business, Farrant described how

¹¹⁶ Basset, *defence of excommunication*, p. 37.

¹¹⁷ Heywood, *The Rev. Oliver Heywood*, I, p. 190.

¹¹⁸ Farrant, 'A breaf account', p. 400.

members of his community began challenging Potbury's efforts to ostracise him. In particular, the farmer Richard Ven, 'appeared to court and tould [the Chancellor] that except he would mentain my family they would set me at work.' Though there is no record that Farrant was absolved in the process, this intervention appears to have been successful as Farrant noted with relief how 'by that means I had some work againe.'¹¹⁹ Similarly we should not let Hooke's objections to Heywood's attendance at the dinner obscure the fact that Heywood was invited in the first place by a group who were evidently not troubled by his excommunicated state.

Why, then, was Restoration society seemingly unconcerned about having excommunicates walking around in its midst? John Sommerville's work on secularisation offers one speculative approach to this question. In short, he argued that the Restoration period witnessed a 'change from a religious culture to a religious faith'. Above all, this entailed a gradual shift from a public religion, where the spiritual wholesomeness of the religious community was paramount, to a 'devotionalism that was measurably more private, passive, and pietistic.'¹²⁰ If this was the case, it would follow that the spiritual shortcomings of others became less of a concern to the general public. Although we should question whether 'secularisation' is an appropriate label for such a shift, his model does offer a tentative explanation for both the distress experienced by individual excommunicates and society's apparent apathy towards their sentence. It would, however, be unwise to push this hypothesis too far. This is partly because it sits uneasily with our knowledge of the Restoration as a period saturated with religious dispute and tension.¹²¹ Moreover, scholars explicitly concerned with the restored church courts have more persuasively argued that the popular indifference towards excommunication was above all a result of the courts' inflated use of the censure. From this perspective, there were simply too many excommunicates in Restoration parishes to make social shunning a feasible option.¹²² This was also the opinion of some contemporaries. As the minister of Morton in Lancashire, William Quipp, put it after being presented for socialising with excommunicates in 1664, it was something 'he could not possibly avoid.'¹²³

Yet, even if parishioners in Restoration England had recognised the spiritual perils facing those banished from Church, it would not necessarily have resulted in a more

¹¹⁹ Ibid., p. 400.

¹²⁰ John Sommerville, *The secularization of early modern England: from religious culture to religious faith* (Oxford, 1992), pp. 1, 186.

¹²¹ For more about the importance of religion in political and social disputes in Restoration England, see, for instance, Tim Harris, Paul Seaward, and M. Goldie (eds.), *The politics of religion in Restoration England* (Oxford, 1990).

¹²² See, for instance, Lancaster, 'Nonconformity and Anglican dissent', p. 105; Jackson 'Nonconformists and society', p. 222.

¹²³ Cited in Clive Holmes, *Seventeenth-century Lincolnshire* (Lincoln, 1980), p. 225.

active avoidance of them. As scholars of early modern coexistence have acknowledged, religious differences in parishes were 'rarely strong enough to overcome social distance.'¹²⁴ That many prioritised kinship did not, however, mean that religious differences were irrelevant. We should, therefore, be cautious of too quickly conflating a willingness to socialise with excommunicates with a disregard for its spiritual implications. We should also be wary of exaggerating the extent to which this readiness to get along with excommunicates was a novel phenomenon in Restoration England. Indeed, historians researching earlier periods have pointed to a similar coexistence between excommunicates and their communities. Elisabeth Vodola, for instance, emphasised the disconnect between the Church's teachings on excommunication and its practical implications in medieval parishes: 'in even the most mundane matters of everyday life the excommunicate was to be ostracised; and yet, ultimately, he was not excluded entirely from the community.'¹²⁵ Writing on the fate of post-Reformation excommunicates, Ralph Houlbrooke similarly commented that 'it was impossible to ostracise so large a body of people.'¹²⁶ We might consequently see Restoration society's treatment of excommunicates as further evidence of a much older tradition of communal neighbourliness, in which religious differences only sporadically trumped social kinship.

With this in mind, it would nevertheless be difficult to claim that Restoration England did not witness any change in the dynamic between excommunicates and their communities. Despite the attempts from both the secular and ecclesiastical authorities, religious heterodoxy, both in terms of outright dissent and partial conformity, did become far more entrenched in the decades after 1660 than it ever had been prior to the Civil War. On the one hand, this situation could create friction and disharmony within local communities. Yet, in a society where people of different religious persuasions came into increasing contact with one another, the growth of religious pluralism and co-operation was arguably unavoidable. Thus, while Restoration parishes certainly contained their fair share of internal religious turmoil, several scholars have plausibly argued that the period actually witnessed a gradual weakening of the social stigma surrounding dissent and heterodox behaviour.¹²⁷ As Bill Stevenson has written, even committed dissenters 'were widely involved in the day-to-day parish life' in Restoration England, and 'once villagers and townsfolk had lived alongside [them] for a decade or two they came to tolerate

¹²⁴ Keith Wrightson, *Poverty and piety in an English village: Terling, 1525–1700*, 2nd. ed (Oxford, 1995), p. 170.

¹²⁵ Vodola, 'Status of the individual', p. 142.

¹²⁶ Ralph Houlbrooke, 'The decline of ecclesiastical jurisdiction under the Tudors', in Felicity Heal and Rosemary O'Day (eds.), *Continuity and change: personnel and administration of the Church in England, 1500–1642* (Leicester, 1976), p. 245.

¹²⁷ See, for instance, John Miller, 'Containing division in Restoration Norwich', *The English Historical Review*, vol. 121 (2006), pp. 1019–47; Walsham, *Charitable hatred*, p. 47.

them.¹²⁸ Of course, excommunication did not necessarily denote heterodox beliefs. Yet, it does not seem unreasonable to suggest that this trend towards increased communal toleration and co-operation extended to include those banished from the Church as well. Indeed, if many Anglican parishioners could get on reasonably well with members of the more radical sects, there was arguably little stopping them from interacting with excommunicates. Consequently, even though English parishes had a long tradition of not following the Church's directives to ostracise these individuals, it is probably true that the Restoration period witnessed an unprecedented tolerance or insouciance towards excommunicates.

This chapter has sought to uncover the range of reactions catalysed by excommunication in Restoration England. While it has not denied that excommunicates could be both hostile and indifferent to their banishment, it has insisted that many dreaded its consequences for a variety of reasons. Some feared its soteriological effects or expressed concerns about how it might limit their ability to partake in the Church's services. Others were uneasy about its social, financial, or legal impact, and still more were anxious about the possibility of imprisonment. Even those obdurate in their contumacy could be swayed to seek absolution. As such, even though the Restoration Church faced great challenges in trying to instil the appropriate respect for its discipline, Outhwaite's assessment that the restored ecclesiastical courts possessed 'few teeth' seems exaggerated and ignores those whose lives were dramatically affected by excommunication.¹²⁹ The point of this chapter, however, has not been to suggest that a majority experienced their spiritual banishment in one way or another. On the contrary, because the church court records so frequently prevent us from accessing the thoughts and feelings of excommunicates, it has cautioned against attributing a 'predictable response' in the first place. The plethora of different experiences found within letters, diaries and publications should rather encourage a greater scholarly sensitivity towards individual cases. If such a methodology struggles to provide a holistic account of the censure's impact, Schwarz's study has shown that it nonetheless evades the many pitfalls implicit in the assumption that 'the common people in the past have importance only when they represent everyone else.'¹³⁰

This chapter has also suggested that the anxieties expressed by individual excommunicates were rarely shared by their communities. In fact, most parishioners in

¹²⁸ Bill Stevenson, 'The social integration of post-Restoration dissenters, 1660–1725', in Margaret Spufford (ed.), *The world of rural dissenters, 1550–1725* (Cambridge, 1995), pp. 385–6.

¹²⁹ Outhwaite, *ecclesiastical courts*, p. 82.

¹³⁰ Schwarz, *All can be saved*, p. 6.

Restoration England appears to have had few concerns about the supposed spiritual dangers of associating with the excommunicates around them. However we interpret this popular indifference towards the late seventeenth century, it is imperative that we do not take society's apparent indifference as evidence that those enduring the sentence were somehow automatically immune to its pressures. As we have seen, it was possible for excommunicates to be integrated within their communities and still find their censure discomforting, and it would be both unfair and unwise for us to ignore or diminish their concerns simply because they were not reciprocated by wider society. In the following chapter, this dichotomy between the experiences of individual excommunicates and their social integration will be further explored as we proceed to investigate how the Restoration Quakers in particular responded to the pressures exerted by the restored church courts.

Chapter Five: ‘The womb in which are sufferings are principally conceived’: the Restoration Quakers and the church courts

In the early spring of 1687, the prominent Quaker leader, William Penn, published his *Advice to freeholders in relation to the penal laws* intended to encourage Parliament’s support for James II’s forthcoming Declaration of Indulgence. Because the Indulgence promised to enact unprecedented toleration by suspending ‘all manner of penal laws in matters ecclesiastical’, Penn had to persuade his readership of the calamitous consequences of persecution.¹ In so doing, he paid particular attention to ‘the many families we have seen ruined, by the vexation of Citations, and what quickly followed, Excommunications, in the Courts Ecclesiastick.’ He especially lamented ‘the most severe steps of those courts...the burying of a Dissenter alive in Gaol by a writ *De Excommunicato Capiendo*.’² His *The reasonableness of toleration* published later that year, during the brief period in which the Indulgence was in effect, further condemned these ‘scorpions of ecclesiastical censure and excommunication’, whose constant harassment of the Quakers and other dissenters for nearly three decades had ensured ‘that they who would live peaceably and quietly under the Government can have no rest in their families.’ Even worse, he observed how the officers of these tribunals had caused ‘thousands [to] take their plight beyond the sea...to the ruine of the Kingdom.’³

As the ‘intellectual architect’ behind the Indulgence, Penn’s words reflected the Quaker insistence on the invalidity of all religious censoring, and his impassioned language was aimed to sway his readership to the necessity of toleration.⁴ Nevertheless, his comments on the restored ecclesiastical courts are worth further consideration because they stand in stark contrast to what historians have written about the Quakers’ response to these tribunals. Barry Reay has, for instance, argued that, from their re-establishment in the summer of 1661, ‘the church courts held few terrors’ for the confident Friends.⁵ Adrian Davies’ study on the Essex Quakers similarly asserted that ‘Friends ignored the [church] courts’ and that ‘excommunication seems to have been imposed with little effect.’⁶ We are, therefore, faced with a significant conundrum: did

¹ Cited in J.P. Kenyon (ed.), *The Stuart constitution, 1603–1688, documents and commentary*, 2nd ed. (Cambridge, 1986), pp. 389–90.

² William Penn, *Advice to freeholders and other electors of members to serve in Parliament* (London, 1687), p. 9.

³ William Penn, *The reasonableness of toleration* (London, 1687), p.18.

⁴ For a very useful exposition of how Penn and other dissenters influenced James II’s toleration policy, see Scott Sowerby, *Making toleration: the Repealers and the Glorious Revolution* (Cambridge, MA, 2013). Citation from pp. 40–1.

⁵ Barry Reay, ‘The authorities and early Restoration Quakerism’, *Journal of Ecclesiastical History*, vol. 34 (1983), p. 78.

⁶ Adrian Davies, *The Quakers in English Society, 1655–1725* (Oxford, 2000), pp. 23–4.

Penn exaggerate his claims about the damage inflicted by the restored church courts to further his aim to suspend the penal laws? Or, conversely, have scholars underestimated the difficulties faced by the many Friends ensnared in the Church's jurisdiction?

The purpose of this chapter will be to further investigate these questions. As such, it will begin by discussing the many points of conflict that existed between the Quakers and the Restoration Church, and the sources we might use to investigate the interaction between the two. By turning to explore how the Quakers experienced spiritual disciplining, it will then argue that, even though Penn's comments were made with a clear political agenda, they were nevertheless not wholly exaggerated. What follows is not, however, a mere elaboration on the themes discussed in the previous chapter. The theology and organisation of the Restoration Quakers ensured that they reacted and interacted with the church courts in a very particular manner, both in terms of how they endured excommunication and the tactics they developed to counter it. Thus, this chapter seeks not only to question further the prevailing historiographical conception of the restored ecclesiastical courts as harmless paper tigers, but also hopes to contribute to our understanding of late seventeenth-century Quakerism.

(i) *'Poisonous doctrines': points of conflict between the Restoration Church and the Quakers*

Under the leadership of George Fox, the 1650s saw the Society of Friends grow from a small group of religious radicals into a burgeoning national movement. This 'Quaker explosion', as Rosemary Moore has described it, was met with both fear and contempt from the authorities.⁷ Indeed, as the research of Reay and Bernard Capp has showed, it did not take long for the Friends to become the principal targets of the puritan magistrates and clergymen in Interregnum England.⁸ Meetings were often violently disrupted, and its leaders repeatedly imprisoned. Most famously, in 1656, James Nayler was publicly branded, tortured, and humiliated in Bristol for blasphemously re-enacting Christ's entrance into Jerusalem on Palm Sunday.⁹ Added to this, over 300 pamphlets were published against them in the 1650s alone.¹⁰ *The Quakers dream* from 1655 went so far

⁷ Rosemary Moore, *The light in their consciences: early Quakers in Britain, 1646–1666* (University Park, PA, 2000), pp. 22–34.

⁸ Barry Reay, 'Popular hostility towards Quakers in mid-seventeenth-century England', *Social History*, vol. 5 (1978), pp. 387–407; Bernard Capp, *England's culture wars: Puritan Reformations and its enemies the Interregnum, 1649–1660* (Oxford, 2012), pp. 89–90.

⁹ For more on James Nayler and the discussion surrounding his sentencing, see Barry Coward, *The Cromwellian Protectorate* (Manchester, 2002), pp. 82–91.

¹⁰ Rosemary Moore, 'Seventeenth-century context and Quaker beginnings' in Stephen Agnell and Ben Pink Dandelion (eds.), *The Oxford handbook of Quaker studies* (Oxford, 2013), p. 22.

as to accuse the Quakers of clandestine Bible burnings and Devil worshipping.¹¹ In order to understand this volatile reaction against the Friends, we need to consider briefly the basic tenets of Quaker theology.

At its most basic, Quakerism revolved around what George Fox called the 'inner light'. By this, Fox referred to a divine spirit which God had bestowed upon each and every individual to reassure them of their salvation. 'All might come to know their salvation', Fox wrote in his journal, 'for I saw that Christ had died for all men, and was a propitiation for all; and had enlightened all men and women with this divine and saving light.'¹² Such promises of universal salvation were a serious challenge to the dominant predestination theology of 1650s England. Perhaps more seriously, they also seemed to challenge the very purpose of Christ's sacrifice, since if the inner light contained the promise of salvation there was arguably little point to his incarnation and resurrection.¹³ To their many critics, this was a question Friends could not answer satisfactorily, and frequently led to accusations that the Quakers were, in fact, not Christian.¹⁴ The Quaker belief in the inner light also appeared to outsiders to be seriously challenging the utility of the Bible. For, though the Quakers did not deny biblical authority, a crucial component of their theology was that the inner light could not be subjugated to the demands of Scripture. It followed that the rules laid down in both the Old and New Testament were to be obeyed so long as they accorded with the inner spirit. Equally shocking to many observers was their claim that sinless perfection was attainable in this life for all who chose to embrace this inner light. As Richard Baxter commented, 'it seems, they take themselves to be as perfect as Christ himself.'¹⁵

To Baxter and many others, such beliefs clearly justified identifying the Quakers as heretics. The nature of Quaker worship - characterised by a contemplative silence regularly interrupted by members called by the spirit to preach or otherwise physically quiver - further reinforced this notion. The real danger of Quakerism, however, arguably lay in the practical ramifications of Quaker theology. For, in championing the inner light, Friends took very literally the Lutheran notion of a universal priesthood.¹⁶ That is, their peculiar soteriology prompted them not only to diminish the importance of Scripture; it also caused them to reject all institutions and personnel associated with it. In their eyes, the educated clergy were transformed into impostors, churches into 'steeple houses',

¹¹ Anon., *The Quakers dream: or the Devil's pilgrimage in England* (London, 1655), pp. 1–8.

¹² George Fox, *The journal of George Fox: a revised edition*, ed. John L. Nickalls (Cambridge, 1952), p. 34.

¹³ Davies, *The Quakers*, pp. 16–17.

¹⁴ Richard Baxter, *One sheet against the Quakers* (London, 1657), pp. 6–7.

¹⁵ *Ibid.*, p. 8.

¹⁶ Davies, *The Quakers*, p. 19.

and tithes into an arbitrary tax funding a corrupt ecclesiastical structure.¹⁷ The evangelical nature of early Quakerism also ensured that Friends were not content merely to abstain from church services. On the contrary, the Quakers became notorious for their willingness to confront and interrupt preaching ministers, their proud refusal to pay tithes, and for defiantly organising public meetings of worship. Nor was their disregard for tradition and hierarchy confined to the ecclesiastical sphere. Probably as a result of several leading Levellers joining their ranks, Friends gained a reputation as social egalitarians, audaciously addressing both rich and poor with the pronouns ‘thee’ and ‘thou’ and refusing to remove their hats in the company of seniors.¹⁸

Although the inner light was the ultimate source of authority for the Quakers, they did not, in fact, reject Scriptural lessons.¹⁹ In fact, few attached themselves so staunchly to biblical precepts when these were in clear accordance with the will of the inward spirit. Most famously, they read Matthew 5:34-35, where Christ instructed his disciples to ‘Swear not at all’, as a direct command to refuse the swearing of oaths. In a society where oaths represented perhaps the most important litmus test to assure authorities of the loyalty, orthodoxy and lawfulness of subjects, this refusal was looked upon as extremely troublesome and contributed greatly to the popular depiction of Quakers as untrustworthy, disloyal social agitators.²⁰ Perhaps more importantly, it also frequently prevented Friends from escaping the lash of the law, since oaths of loyalty were almost always a required part of the legal exoneration process.²¹ Quaker theology thus ensured that Friends were both the most provocative group, and those most likely to endure the full weight of the law.

The Restoration has, however, often been seen as a turning point for the Quaker movement. According to John Miller, their earlier confrontational nature was ‘reinvented and repackaged’ into something altogether less combative ‘in order to ward off the threat of persecution by the state.’²² This became particularly clear in their response to Charles II’s Declaration of Breda, issued on 4 April 1660, which pledged unprecedented ‘Liberty

¹⁷ Fox, *The journal of George Fox*, p. 26.

¹⁸ Davies, *The Quakers*, pp. 64–5.

¹⁹ *Ibid.*, p. 25.

²⁰ For more on the importance of oaths in early modern England, see John Spurr, “‘Strongest bonds of conscience’: oaths and the limits of tolerance in early modern England”, in Harald Braun & Edward Vallance (eds.), *Contexts of conscience in early modern Europe* (New York, 2004), pp. 151–65; David Martin Jones, *Conscience and allegiance in seventeenth century England: the political significance of oaths and engagements* (Rochester, 1999).

²¹ For more on the importance of swearing in early modern English court rooms, see Barbara J. Shapiro, ‘Oaths, credibility and the legal process in early modern England: part one’, *Law and Humanities*, vol. 6 (2012), pp. 145–78.

²² John Miller, “‘A suffering people’: English Quakers and their neighbours, c. 1650–c. 1700”, *Past & Present*, vol. 188 (2005), p. 103.

to Tender Consciences; and that no Man shall be disquieted or called in Question for Differences of Opinion in Matter of Religion.²³ As this promised to end the harassment of the 1650s, the Quakers were quick to greet the new king with a wave of petitions and letters simultaneously declaring their loyalty to the new regime while urging him to uphold his promise of religious freedom.²⁴ For example, Margaret Fell, George Fox's wife and an important political lobbyist for the Quakers, personally assured Charles II that 'we do love, own and honour the king and these present governors, so far as they do rule for God and his truth, and do not impose any thing upon people's consciences' and pleaded that 'now that you are in power, we caution you to act with mercy and to prevent the persecution of innocent people.'²⁵

Despite such assurances, the political climate in early Restoration England would soon jeopardise the Friends' hopes for toleration. Most urgently, the Fifth Monarchist Rising in January 1661, which saw a group of armed millenarians take to the streets of London to proclaim the rule of Christ, resolved many doubts about the dangers of dissent, particularly the Quakers, who were erroneously implicated in the uprising.²⁶ Later that spring, the reactionary Cavalier Parliament was elected. Filled with episcopalian royalists, its agenda was not reconciliation but revenge against the dissenters its members blamed for the upheavals of the previous two decades, amongst whom they certainly included the Quakers. In their hands, the spirit of the Breda Declaration was replaced by a series of punitive measures, collectively known as the Clarendon Code, targeting anyone not conforming to the doctrines and liturgy of the restored Church.²⁷ That the Cavalier Parliament was particularly anxious about the Quaker threat is clear from the fact that one of those statutes explicitly targeted the 'Mischiefs and Dangers that may arise by certaine Persons called the Quakers, and others refusing to take lawful oaths.'²⁸ In less than two years, the Friends' hopes for toleration had thus been unequivocally quashed and a period of persecution appeared to once more await them.

²³ Cited in Kenyon (ed.), *Stuart constitution*, p. 331–332.

²⁴ Richard C. Allen, 'Restoration Quakerism, 1660–1691', in Angell & Dandelion (eds.), *Quaker studies*, p. 30.

²⁵ Margaret Fell, *A declaration and an information from us the People of God called Quakers, to the present Governors* (London, 1660), p. 2.

²⁶ George Fox publicly renounced all such allegations, affirming that 'that the Spirit of Christ... will never move us to fight and war against any man with outward weapons'. See George Fox, *A declaration from the harmless & innocent People of God called Quakers* (London, 1660), p. 2.

²⁷ Paul Seaward, *The Cavalier Parliament and the reconstruction of the old regime, 1661–1667* (Cambridge, 1988), pp 59–60.

²⁸ House of Commons, *Journal of the House of Commons: volume 8, 1660–1667* (London, 1802), p. 305.

The extent to which the Restoration was a period of suffering for the Friends has been a matter of some debate. On the one hand, the Quakers could not accept the terms of the new penal laws, and Reay has highlighted the willingness of many local magistrates stringently to enforce the terms of the Clarendon Code and the later Conventicle Acts against the Friends.²⁹ William Braithwaite estimated that around 15,000 Friends were imprisoned or fined in the three decades following the Restoration, with 366 dying as a result of their sufferings.³⁰ On the other hand, however, while not diminishing the force of the penal laws against them, both Miller and Davies have suggested that the Restoration was above all characterised by an increasing tolerance towards the Quakers. In Miller's words, 'friction was counterbalanced by sympathy as Friends suffered at the hands of officials and informers.'³¹ Such benevolence from non-Quakers could manifest itself in a number of ways, such as financially aiding Friends troubled by fines, not reporting them to the authorities, or in a willingness to work alongside Quakers in various parish activities.³² As Bill Stevenson has shown, the Restoration also witnessed a greater willingness among Friends 'to propagate a closer relationship with the wider community.' For instance, 'they began to allow the presence of non-Quaker relatives at their weddings...and at the births of their offspring.'³³ Moreover, Miller and Davies have argued that the Quaker commitment to political fidelity shaped the way Friends responded to harassment from the secular authorities. Rather than repeating the strategy of undermining and confronting magistrates they employed in the 1650s, the Restoration decades witnessed the Friends 'weathering the storm of persecution...in a spirit of meekness and resolve.'³⁴ This did not, however, cause Friends to ostracise themselves from the political arena. On the contrary, as will be discussed in greater detail below, their newfound determination to work within the legal framework of the new regime transformed the Quakers into a competent political lobbying group at both the national and local level.

We should, however, be wary of exaggerating the compliance of the Restoration Friends, particularly with regard to the restored ecclesiastical hierarchy. For, while Quakers would repeatedly emphasise their loyalty to both Charles II and Parliament, they remained adamant in their repudiation of the Church. From the perspective of the Friends, there was little difference between a presbyterian and an episcopal institution.

²⁹ Reay, 'Restoration Quakerism', pp. 70–2.

³⁰ William Braithwaite, *The second period of Quakerism* (London, 1919), p. 115.

³¹ Miller, "'A suffering people'", p. 103.

³² Davies, *The Quakers*, pp. 203–12.

³³ Bill Stevenson, 'The social integration of post-Restoration dissenters, 1660–1725', in Margaret Spufford (ed.), *The world of rural dissenters, 1550–1725* (Cambridge, 1995), p. 386.

³⁴ Davies, *The Quakers*, p. 71.

Not only did both fail to recognise the inner light; both also claimed the authority to impose their corrupt set of rules and doctrines on others. That is not to say that Quakers rejected spiritual discipline *per se*. Rather, they shared the sectarian ecclesiological conviction, also held by groups such as the Baptists and Independents, that discipline could only be legitimately exerted upon professing members of a religious group.³⁵ Since Friends did not perceive themselves as members of the Restoration Church, it was, therefore, not surprising that they would object to the efforts of the church courts to discipline them. For example, in his *Query to the Bishops court*, published in 1671, George Fox stated that it was unreasonable to ‘excommunicate such as were never of their church...before they be convinced by sound doctrine and good conversation concerning your religion and worship.’ He also asked his readers to consider ‘whether or no, Timothy and Titus, who were Bishops, had any such courts and laws to force people to heare them....before they were of their religion’?³⁶ Such condemnations of the ecclesiastical courts frequently included comments that hinted at how Friends would react to the prospect of being censured by a corrupt Church. It was the opinion of the Hampshire Quaker, Edmund Gearle, that the Church’s ‘excommunication (or cursing us) from the fellowship with them’ was spiritually inconsequential because Friends ‘dare not be in union with [them]’ to begin with.³⁷ Put more directly, the Nottingham Friend William Smith claimed that ‘your excommunications are void’ in his *General summons from the authority of truth, unto all ecclesiastical courts and officers* from 1668.³⁸ Such explicit attempts to undermine the Church’s jurisdictional authority over the Friends stood in sharp contrast to how many Quakers wrote about the prospect of secular punishments. For example, although he disagreed with the imposition of oaths of loyalty, the Lancashire Friend Richard Hubberthorne nevertheless reassured both Charles and Parliament that the Quakers would remain ‘willingly obedient’.³⁹

Compared to the wave of anti-Quaker tracts that appeared in the 1650s, the ministry in Restoration England responded to the Quaker challenges to their Church’s authority with a remarkable silence. According to Richard Clark, this was not due to a diminished

³⁵ For more about Quaker discipline, both in theory and in practice, see Stephen Angell & Michael Birkel, ‘The witness of Richard Farnworth: prophet of light, apostle of church order’, in Stephen Angell & Ben Pink Dandelion (eds.), *Early Quakers and their theological thought, 1647–1723* (Cambridge, 2015), pp. 83–101.

³⁶ George Fox, *Something by way of query to the Bishops Court* (London, 1671), p. 1.

³⁷ Edmund Gearle, *The three country-mens English answers to the clergy-mens Latine charges, or the lay-mens plaine English, in answer to the unknown language of the pretended spiritual court at Winton* (London, 1664), p. 11.

³⁸ William Smith, *A general summons from the authority of truth, unto all ecclesiastical courts and officers* (London, 1668), p. 8.

³⁹ Richard Hubberthorne, *Something against swearing and concerning the oath of allegiance and supremacy* (London, 1660), p. 1.

antagonism, but rather a result of the strong sense of superiority and distaste many conforming ministers felt towards the Quakers.⁴⁰ As the religious controversialist Thomas Bennet put it in 1705, clergymen had been convinced that Quaker texts 'ought to be burnt rather than confuted.'⁴¹ Yet, episcopalian refutations of Quakerism were not wholly absent from Restoration England. In 1678, the prebendary of Durham, Thomas Comber, countered the 'poisonous doctrines' of the Friends in his *Christianity no enthusiasm*.⁴² Focusing particularly on their belief in the inner light, he insisted that the Quaker phenomenon was nothing new: 'whosoever will compare the doctrines of the Quakers with many of the rotten condemned hereticks...of the Anabaptists' or 'seekers, antinomians, ranters, and those other swarms of locusts in this kingdom, will be forced to acknowledge that...their foundation is the same.'⁴³ Comber continued to restate the older assertions that 'the scriptures are excluded' from Quaker beliefs, which meant that 'a man may be a Quaker Christian without the express knowledge of Christ in the outward...the Great Mogul hath this religion as much as George Fox, [laying] aside all that Jesus was, did, taught, and suffered.'⁴⁴

The Restoration thus witnessed a continued distrust and animosity between clergymen and the Quakers. Moreover, even though the spiritual priorities of the clergy were not necessarily translated into the administration of the restored ecclesiastical courts, the Quakers continued refusal to receive the sacrament, attend services, pay tithes and in any way recognise the authority of the Church, was in clear violation of the revived canons and ensured their frequent citation to these tribunals. But, were Friends as indifferent towards the prospect of spiritual discipline as the contemporary Quaker polemic suggested they would be? Leading Quaker scholars have found evidence which seems to confirm that this was frequently the case. Pointing to a Barking Quaker who told his court officials in 1666 that 'he cared not for any ecclesiastical power', Reay argued that such sentiments 'were probably widespread.'⁴⁵ Davies has similarly suggested that Essex Quakers tended either to ignore citations or appear only to show their contempt towards the church courts, like the group of Boxted Friends who in 1663 appeared only to confirm that they would not respect ecclesiastical censures if it could not be proved that the clergy were 'the true ministers and the church the true church.'⁴⁶ Above all, the audacity of such comments is what caused both Reay and Davies to

⁴⁰ Richard Clark, "'The gangreen of Quakerism': an anti-Quaker offensive in England after the Glorious Revolution', *Journal of Religious History*, vol. 11 (1981), p. 407.

⁴¹ Thomas Bennet, *A confutation of Quakerism* (London, 1705), p. ii.

⁴² Thomas Comber, *Christianity no enthusiasm* (London, 1678), p. xv.

⁴³ *Ibid.*, p. xiii.

⁴⁴ *Ibid.*, pp. 52–3.

⁴⁵ Reay, 'Restoration Quakerism', p. 78.

⁴⁶ Davies, *The Quakers*, p. 24.

suggest that Friends were more or less immune to the censures of the restored ecclesiastical courts.

Assessing how the Quakers interacted with the church courts is, however, far from straightforward. On the one hand, the records kept by these tribunals do occasionally provide useful glimpses into Quaker defiance like those mentioned by Reay and Davies. They also provide some sense of what misdemeanours the Quakers could be brought before the courts for, and Nicholas Morgan has showed how Restoration Friends were particularly likely to be cited for their refusal to pay tithes.⁴⁷ On the other hand, however, the record-keeping conventions of the church courts problematise any effort to categorise the cited individuals into a particular group. As Martin Jones noted in his study on the diocesan tribunals of Restoration Peterborough and Oxford: ‘hundreds were tried for not coming to church but one almost never knows if they were Catholics, Quakers, or just negligent.’⁴⁸ This problem was also encountered by Daniel Beaver in his research on nonconformist prosecution in the Gloucester Vale who found that only ‘35 offenders can be positively identified as Baptists or Quakers.’⁴⁹ In other words, a Quaker could very well be presented to the church courts for a range of ecclesiastical offences without necessarily being recorded as being a member of the Society of Friends. The carpenter Samuel Cater was, for instance, presented to the Ely consistory court in 1665 ‘for refusing to have his Children baptized’, yet the visitation book does not mention that he had already joined the Quakers at that point.⁵⁰ In cases of relatively well-known Friends such as Cater, who became a renowned Quaker polemicist in the 1670s, this might not be particularly concerning. But given that the number of Quakers has been estimated at between 30,000-40,000 in the 1660s, and 50,000 in the 1670s, such cross-referencing is often not possible.⁵¹ A second, and arguably greater limitation of the ecclesiastical court records is that they very rarely give us any insight into how spiritual discipline was experienced. This problem was discussed at length in the previous chapter, but it is worth repeating that non-attendance at court, or not seeking absolution once excommunicated, did not necessarily indicate apathy to the Church’s censures. On the contrary, if we probe beyond the court records, we often find that even committed dissenters could be

⁴⁷ Nicholas Morgan, ‘Lancashire Quakers and the tithe’, *Bulletin of the John Rylands Library*, vol. 70 (1988), pp. 61–76.

⁴⁸ Martin Jones, ‘The ecclesiastical courts before and after the Civil War: the office jurisdiction in the dioceses of Oxford and Peterborough, 1630–1675’ (unpublished B.Litt. thesis, University of Oxford, 1977), p. 149.

⁴⁹ Daniel Beaver, *Parish communities and religious conflict in the Vale of Gloucester, 1590–1690* (Cambridge, MA, 1998), p. 257.

⁵⁰ Cambridge, Cambridge University Library, B/2/56. Previously a Baptist, Cater converted to Quakerism in 1655. For more about Cater’s turn to Quakerism, see Richard Greaves, *John Bunyan and English nonconformity* (London, 1992), p. 93.

⁵¹ Braithwaite, *Second period of Quakerism*, p. 459.

profoundly affected by their excommunications. Despite their outspoken resistance to the church courts, we should, therefore, be cautious before too readily accepting Davies' assertion that 'ecclesiastical records confirm the unyielding Quaker position.'⁵²

(ii) *'The Blessedness of the Persecuted': bias and veracity in the Quaker records*

Where court records are silent, the Quakers' own sources often fill in the blanks. From the movement's inception, Quaker leaders emphasised the importance of recording and publishing accounts of how Friends' were harassed by the law. As early as 1654, the Quaker publisher Thomas Willan asked Margaret Fell to summarise her substantial catalogue of letters so that 'books of sufferings' could be published.⁵³ As the movement grew, increasing emphasis came to be placed on gathering and publishing such testimonies in a central repository, and by 1660 a system had been established where Friends throughout the country organised regular meetings where local sufferings would be recorded and then dispatched to the Quaker leadership in London.⁵⁴ In 1669, the first yearly London Meeting took place, and in 1676, the Meetings for Sufferings became a weekly event attended by some of the most prominent Friends in London, such as George Fox and William Penn. As the clerk to the London Quakers, it fell upon Ellis Hookes not only to record the minutes of these meetings, but also to collect and organise the received correspondence into extensive Books of Sufferings.

The minutes from the London Meetings, the Original Records of Sufferings (essentially a composition of letters sent from Quakers troubled by the law to the London Meetings) and the voluminous Suffering Books are of immense value to historians of seventeenth-century Quakerism. We should, however, be aware that they were crafted to suit a very particular Quaker identity. For instance, it has been noted that reports of particularly obstreperous behaviour were wilfully omitted from the Suffering Books because they did not accord with the more law-abiding, introspective image that the Restoration Quakers sought to present. Thus, while the Sufferings Books are saturated with examples of Friends burdened by tithe prosecutions, or for their refusal to swear oaths, the reader will not find accounts of Quakers punished for such activities as running naked in the streets or destroying church property.⁵⁵ Scholars have also pointed out that

⁵² Davies, *The Quakers*, p. 31.

⁵³ Cited in Kate Peters, *Print culture and the early Quakers* (Cambridge, 2005), p. 203.

⁵⁴ Peters has estimated that by 1656 nearly 300 Quaker pamphlets had appeared in print, by 1666, this number had risen to 1300. Peters, *Print culture*, pp. 1–3, 21.

⁵⁵ While Quakers were actively discouraged from such behaviour, they did not entirely cease during the Restoration period. For instance, the diarist Samuel Pepys noted how Solomon Eccles had publicly undressed in 1667. See Davies, *The Quakers*, p. 26.

it was in the interest of Friends to emphasise suffering. Indeed, persecution was in some ways a welcomed aspect of their desire to insert themselves in the long tradition of Christian martyrdom.⁵⁶ For instance, the Quaker theologian Isaac Pennington (who himself was imprisoned six times during the 1660s), wrote about ‘the Blessednesse of the Persecuted’, and argued that ‘the World’s dislike, enmity and persecution, is an evidence of God’s choice, and of a removal from it towards God.’⁵⁷ It was, furthermore, essential that Friends would endure such persecution in a spirit of humility, as this would further align them as spiritual warriors in the ‘Lamb’s War’ against, and inevitable triumph over, worldly oppression.⁵⁸ The Suffering Books were thus produced with a clear agenda both to accentuate persecution and to depict a very particular Quaker response towards it.

Despite these caveats, scholars have nevertheless argued for the veracity of these Quaker sources. First, while accentuating persecution, it was in the Quakers’ interest not to exaggerate or include uncorroborated narratives. As Miller has written, ‘underlying the carefully assembled details of sufferings ran the assumption that the sheer weight of evidence was sufficient to convince any impartial person’ about the unchristian treatment of the Quakers in Restoration society.⁵⁹ This need for accuracy is above all reflected in the Meetings for Sufferings’ frequent insistence that all received dispatches of persecution be thoroughly checked. Miller thus concludes that, even though ‘the moral bias within the reports is obvious’, that ‘does not mean that they were inaccurate.’⁶⁰ Simon Dixon’s study of the London Quakers has similarly remarked that, although the Suffering Books ‘were created for propaganda purposes’, they can nevertheless ‘be regarded as generally reliable.’⁶¹ Even Davies, who soberly cautions against ‘reliance on these records alone’, commented that the Quaker archives present an ‘indispensable source’ for historians of Quakerism, and Davies himself relied on them to tabulate how many Essex Friends were imprisoned for ecclesiastical misdemeanours.⁶² Moreover, even if we recognise their propensity to emphasise suffering, there is no reason to think that the voices of Friends found within the church court records were any less shaped by their bias. That is, the Quaker defiance found by both Davies and Reay in church

⁵⁶ See, for instance, Naomi Pullin, ‘Providence, punishment and identity formation in the late-Stuart Quaker community, c.1650–1700’, *The Seventeenth Century*, vol. 31 (2016), pp. 471–94.

⁵⁷ Isaac Pennington, *Concerning persecution* (London, 1661), pp. 14–15.

⁵⁸ Quakers here consciously identified themselves with the ‘Lamb’ from Revelation 17:13–14, which describes how satanic authorities ‘shall make war with the Lamb; and the Lamb shall overcome them.’

⁵⁹ Miller, “‘A suffering people’”, p. 74.

⁶⁰ *Ibid.*, p. 74.

⁶¹ Simon Dixon, ‘Quakers and the London parish, 1670–1720’, *The London Journal*, vol. 32 (2007), p. 231.

⁶² Davies, *The Quakers*, pp. 178, 184.

court records was very clearly shaped by the movements' rejection of ecclesiastical hierarchies - and was just as vulnerable to exaggeration as the suffering Hookes documented in the Quaker records.

We should also consider the many narratives of Quaker sufferings published in Restoration England. Detailing personal encounters with hostile court officials and clergymen, these were frequently organised by the members of the London Meetings as a way of attracting broader attention to the harassment of the Quakers. As titles such as the Nottingham Quaker William Gibson's 1678 *The cry of oppression* suggest, these tracts similarly highlighted suffering above other less dramatic features of parish life. Yet, here too it was important to be as accurate as possible. Not only because such texts were frequently published for officials 'to repent of their cruel oppressions which they have acted upon their peaceable neighbours', as Gibson phrased it.⁶³ But also because the Friends were part of a broader nonconformist literary culture which, as Neil Keeble has demonstrated, was characterised by its 'demotic realism' and insistence on authenticity.⁶⁴

Before proceeding with our investigation into Quaker responses to ecclesiastical discipline, note must also be taken of Joseph Besse's monumental *A collection of sufferings of the people called the Quakers*, published in two volumes in 1753. As one of Hookes' successors, Besse had spent the 1730s and 1740s researching the plight of his coreligionists from 1650 to 1689, and this was his attempt to persuade Parliament to halt the continuing persecution of the Quakers 'that is to this day exerted, in opposition to that perfect Christian freedom.'⁶⁵ The result was an overwhelming account of suffering which, as John Knott has written, sought to 'expose the reader to the same basic constancy under persecution over and over again.' As such, it represents 'the best overview of Quaker suffering in the period 1660 to 1689.'⁶⁶

Similar to Penn, Besse made it clear that the restored church courts had been responsible for a significant portion of this persecution. As he stated in his introduction:

multitudes of them were excommunicated, and by writs De Excommunicato Capiendo shut up, and as it were buried alive in prisons and dungeons, where

⁶³ William Gibson, *The cry of oppression* (London, 1678), p. 3.

⁶⁴ N.H. Keeble, *The literary culture of nonconformity in later seventeenth-century England* (Leicester, 1987), p. 283.

⁶⁵ Joseph Besse, *A collection of the sufferings of the people called Quakers*, 2 vols. (London, 1753), I, p. xxix.

⁶⁶ John Knott, *Discourses of martyrdom in English literature, 1563–1694* (Cambridge, 2003), p. 218.

many of them, after long confinement, drew their last breath, and laid down their lives, as true Protestant Martyrs, sacrificed to the influence of Church power.⁶⁷

While Besse's frustration at ecclesiastical oppression should not be belittled, his reference to the Quakers as 'Martyrs' has caused some debate about the bias of the *Collection*. In particular, comparisons have been made to John Foxe's extremely influential study of Protestant martyrs, *The Acts and Monuments* (first published in 1563). As John Knott has written, Besse saw himself 'as presenting a drama akin to Foxe's saga of protestant martyrdom, with those who witness the truth heroically enduring the cruelties upon them.'⁶⁸ The critical question to ask, then, is to what extent this martyrological agenda jeopardised Besse's pursuit of historical veracity?

Overall, historians have argued for the historical accuracy of early modern martyrologies. Analysing Foxe's use of primary sources, Patrick Collinson asserted that the 'martyrologist worked only a little more carelessly and a few shades more partially than would be tolerable in a modern doctoral thesis, but with essentially the same methods.'⁶⁹ More generally, Anthony Grafton has shown that confessional sentiment and religious polemic were often a stimulus to methodological rigour, not an inhibition or obstacle to it. Martyrologies in particular, Grafton writes, were often underpinned by 'a systematic use of primary sources.'⁷⁰ This assessment holds true for Besse's scholarship as well. For, while Besse did not reproduce every single instance of Quaker suffering in Restoration England, a comparison between the *Collection* with the original documents, reveals that Besse took considerable care to be as accurate as possible. For example, the Original Records of Sufferings contain a letter from the wife of the London Friend Richard Ashcroft detailing 'how by the vehement instigation of one named Edward Kempshall a writ of excommunicato capiendo was taken out & served upon' her husband, which Besse copied word for word in his *Collection*.⁷¹ Countless similar examples could be mustered, but the point is clear: Besse tried his utmost, as he stated on the front page of the *Collection*, to present examples 'taken from Original Records and Other Authentic Accounts.'⁷²

⁶⁷ Besse, *Collection*, p. xxix.

⁶⁸ Knott, *Discourses*, p. 218. See also: Thomas Freeman, 'Over their dead bodies: concepts of martyrdom in late medieval and early modern England', in Thomas Freeman & Thomas F. Mayer (eds.) *Martyrs and martyrdom in England, c. 1400–1700* (Woodbridge, 2007), pp. 27–30.

⁶⁹ Patrick Collinson, *Elizabethans* (London, 2003), p. 156.

⁷⁰ Anthony Grafton, 'Church history in early modern Europe: tradition and innovation', in Katherine van Liere, Simon Ditchfield and Howard Louthan (eds.), *Sacred history: uses of the Christian past in the Renaissance world* (Oxford, 2012), p. 17.

⁷¹ For original letter, see, London, Library of the Society of Friends, YY/MfS/ORS, p. 444. For Besse's corresponding entries, see *Collection*, pp. 290, 297–8.

⁷² Besse, *Collection*, front cover.

The *Collection* does, however, share one characteristic limitation of early modern martyrologies, and again a useful point of comparison can be found in Foxe's *Acts and Monuments*. According to Collinson, Foxe's principal faults as a historian were 'not of invention, still less forgery, but of discrimination, interpretation, and most of all deliberate exclusion.' This was particularly true of any evidence that might nuance or lessen the dramatic impact of Foxe's narrative of Protestant triumph in the face of Catholic persecution.⁷³ The same was true for Besse. He did not falsify or invent, but in emphasising suffering he consciously diverted the reader's attention from, or omitted altogether, other aspects of the Quakers' existence in Restoration England. As we turn to explore how Friends reacted to the restored ecclesiastical courts, it will become apparent that Besse was not particularly interested in highlighting the communal support encountered by some Quakers troubled by these tribunals, and that he neglected altogether to mention the concrete measures taken by Friends to evade the pressures of excommunication.

(iii) '*A punishment not much inferior to death itself!*': the experience of excommunicated Quakers

The first step in the process of spiritual censuring was the citation, either delivered in person by an apparitor or nailed to the door of the parish church or residence of the cited individual. Where surviving, the notes left by the apparitors on the back of citations demonstrate that care was usually taken to ensure that the cited individual was appropriately notified.⁷⁴ Nevertheless, as discussed in the previous chapter, excommunicated individuals occasionally complained that they were unaware of the process against them because they had never received their citation. This was also the experience of some Restoration Quakers. The Yorkshire Friend Richard Robinson's 1680 pamphlet *A blast blown out from the north* reported how Joseph Craddock, civil lawyer and commissary to the Archdeacon of Richmond, had imprisoned several Friends upon writs of *De Excommunicato Capiendo* without any of them 'being personally cited, or having any summon served on them, or ever hearing of that proceed, until they were arrested.'⁷⁵ The Suffering Books contained several similar instances. For instance, the Lancashire Friend James Smith claimed in 1678 that he had been a defendant 'upon a sute commenced against him...at the Bishops Court though not personally cited', and

⁷³ Collinson, *Elizabethans*, p. 157.

⁷⁴ For a more extended discussion of apparitors and citations, see chapter 2 of this thesis.

⁷⁵ Richard Robinson, *A blast out of the north and echoing up towards the south, to meet the cry of their oppressed brethren* (London, 1680), p. 44.

'for want of appearance' the court proceeded to 'take out a writ de. excom. cap.' separating Smith 'from his wife, children, and family.'⁷⁶

Another complaint, though less frequently raised, was that even if Quakers had received a citation to appear in court, they were unable to comply because of their inability to understand Latin.⁷⁷ In his *Controversy between the Quakers & Bishops* from 1663, the Quaker preacher Thomas Salthouse pointed out that citations were 'read in an unknown tongue, amongst simple illiterate men, which the people knew not what it was.' Not only was this 'contrary to Pauls doctrine, who said, he would not speak in an unknown tongue', but it also testified to the worrying readiness among court officials to 'trap and ensnare' common people.⁷⁸ This objection was most elaborately developed in Edmund Gearle's 1664 tract aptly subtitled *The lay-mens plain English, in an answer to the unknown language of the pretended spiritual court*. Detailing the violent conduct of court officials who 'have shewed forth works of darknesse towards us, throwing away our hats, and even abusing us', Gearle nevertheless argued that what truly separated the ecclesiastical tribunals as corrupt institutions was their citations. These might declare 'what is demanded, but by reason it is written in such a dark way, not only in Latine, but in such an unsound and uncertain or unknown way' that 'by no means we might understand it, though we much desire the same.' This led him to conclude that both the clergy and lay officials were 'men of such a spirit that seeks to keep us in darknesse and blindnesse, and form the knowledge of those things which concerns our bodies and estates as well as our souls.'⁷⁹ Such claims could, of course, have been a ruse, and an attempt to find a legal loophole. Nevertheless, we should not dismiss the possibility that the failure of Quakers to attend their court hearing was not caused by a determined rejection of the ecclesiastical authorities; it could also have been the result of not knowing about or understanding their citation.

Among those Quakers who received and understood their citation, many underscored their efforts to appear on the dates specified. In discussing the citation of nine Bermondsey Friends in 1677 for a refusal to pay tithes, the London Quaker Joseph Rawbone insisted that, 'being left to the Mercy of the Bishops Court', they 'received their

⁷⁶ London, Library of the Society of Friends, YM/MfS/GBS, vol. 3, pt. 2, p. 776.

⁷⁷ This was not a new objection. During the 1640s and 1650s, the Levellers, and particularly John Lilburne (who eventually joined the Quakers the year before his death in 1657), argued that the law should be understood by the common man. The 1650s saw further criticism of Latin by such radicals as the physician Nicholas Culpepper, culminating with abolition of legal Latin in 1653 by the Rump Parliament. See Diane Parkin-Speer, 'John Lilburne: a revolutionary interprets statutes and common law due process', *Law and History Review*, vol. 1 (1983), p. 291; Nicholas McDowell, *The English radical imagination: culture, religion, and revolution, 1630–1660* (Oxford, 2003), p.108.

⁷⁸ Thomas Salthouse, *A controversy between the Quakers & Bishops* (London, 1663), p. 4.

⁷⁹ Gearle, *three country-mens*, pp. 9–10.

citations to appear, and did appear accordingly several times.⁸⁰ But whereas appearing could frequently prevent excommunication, the fact that the ecclesiastical courts required defendants to swear the oath *de parendo juri et stando mandatis ecclesiae*, binding them to respect the laws of the Church, meant that Rawbone and the others were banished from Church.⁸¹ We learn from Besse that this led to their imprisonment by writs *De Excommunicato Capiendo*, and that two of them, Henry Day and John Farmer, died while in gaol.⁸² The same scenario is frequently repeated in the *Collection*. In 1684, for example, eleven Quakers, all from the village of Whalley in Lancashire, ‘were committed to prison on writs of *De Excommunicato Capiendo* for refusing to swear upon oath, when prosecuted in the ecclesiastical court for tithes.’⁸³ That the Friends felt cornered by this imposition of oaths is evident from the lengthy *account of the late and present sufferings and and oppressions...upon prosecution against them in the Bishops courts* published in 1680. Co-authored by several prominent Quakers, including Ellis Hookes and William Penn, this tract asked court officials to consider that ‘when we are first cited to the Bishops court, although we do appear and manifest our innocency, yet because...we refuse to swear to our answer, no notice is taken of our appearance, but we are soon excommunicated, and then thrown into a noisome gaol.’⁸⁴

This statement arguably exaggerated the willingness of many Friends to respect ecclesiastical citations. It also failed to account for the instances where court officials appeared willing to accommodate the Quaker refusal to swear. In 1683, the London Meetings received letters by the Aldgate Friends John Tyso, Christopher Sibthorp, and Thomas Scott, all detailing what led to their arrest on writs of *De Excommunicato Capiendo*.⁸⁵ All three described how Dr. Thomas Pinfold, civil lawyer and judge at the Doctors’ Commons, was willing to forego the oath and absolve them of their excommunication so long as they brought him certificates proving their attendance at parish church. In Scott’s words, ‘I was admonished...to go to parish church & retane the sacrament & bring a sertificat from the minister & the churchwardens that wee had soe don.’⁸⁶ Unsurprisingly, neither of them could in good conscience comply with such requests and were accordingly imprisoned, and it could be that Pinfold was certain of

⁸⁰ Joseph Rawbone, *A brief narrative of the proceedings of Doctor Parr* (London, 1677), p. 12.

⁸¹ According to the ecclesiastical lawyer, Henry Consett, defendants were also required to kiss the Bible after swearing this oath. See, Henry Consett, *The practice of the spiritual or ecclesiastical courts* (London, 1685), p. 99.

⁸² Besse, *Collection*, p. 700.

⁸³ *Ibid.*, p. 326.

⁸⁴ Ellis Hookes, William Penn, et. al., *A particular account of the late and present sufferings and oppressions of the people called the Quakers upon prosecutions against them in the Bishops courts* (London, 1680), p. lii.

⁸⁵ London, Library of the Society of Friends, YY/MfS/ORS, pp. 201, 202, 205.

⁸⁶ *Ibid.*, p. 205.

this outcome. However, we should not ignore the possibility that Pinfold's omission of the oath represented a willingness to meet the Quaker objections to ecclesiastical authority half-way. If this was so, it might not amount to the degree of leniency and sympathy that Davies discovered in his research on the secular constables, but it would suggest that at least some ecclesiastical officials were capable of showing a degree of understanding towards the Quakers' special circumstances.⁸⁷ Whatever the case, it is telling that Tyso's, Sibthorp's and Scott's statements were excluded from the Suffering Books as well as the *Collection*, as this suggests that both the members of the London Meetings and Besse found such nuanced depictions of ecclesiastical officials unsuitable to their grander narrative of persecution. Their names only appear in December 1686, following James II's General Pardon, when all three were released after having spent almost three years in Wood Street Counter Prison.⁸⁸

The Quakers frequently expressed a palpable concern about the prospect of imprisonment by a *De Excommunicato Capiendo* writ. This is the aspect of ecclesiastical censuring that historians of late seventeenth-century Quakerism have taken most seriously. Craig Horle, for instance, writes that 'the risk of Quakers being imprisoned on processes originating in the church courts was obviously substantial.'⁸⁹ Even Reay postulated 'that the possibilities of its use have been underestimated by historians...who suggest that this penalty was rarely invoked.'⁹⁰ In terms of numbers, this is a difficult hypothesis to substantiate because the original significations (which instructed secular officials to bring excommunicates to prison) do not survive from the Restoration period. We can, however, get some sense of the frequency of excommunication writs against the Quakers from the *Collection*. Besse mentioned a total of 830 excommunicated Friends by name. Out of these, 650 were noted as imprisoned on writs of *De Excommunicato Capiendo*. In terms of excommunicated Quakers, this was arguably not particularly accurate as Besse was not interested in those Friends who were seemingly untroubled by the consequences of their banishment from Church. For instance, Peter Petchey of East Ham in London, who stood excommunicate 'by his own confession for twenty years', does not appear in the *Collection*.⁹¹ The 650 imprisoned excommunicated Quakers mentioned by Besse should also be understood as a minimum, as the martyrologist occasionally neglected to mention by what jurisdiction a particular Friend had been imprisoned, and at times expressed exasperation at detailing every particular

⁸⁷ Davies, *The Quakers*, pp. 176–7.

⁸⁸ Besse, *Collection*, p. 700.

⁸⁹ Craig Horle, *The Quakers and the English legal system, 1660–1688* (Philadelphia, 1988), p. 46.

⁹⁰ Reay, 'Restoration Quakerism', p. 78.

⁹¹ Cited in Davies, *The Quakers*, pp. 24–5.

instance of such suffering. In his chronicle of the London and Middlesex Friends, he even admitted that too many 'had been under the prosecutions in the ecclesiastical court' that 'to mention all the particular instances of this kind would be too tedious.'⁹² Nevertheless, even if we accept 650 as an accurate estimation for the three decades after the Restoration, it is still far higher than many scholars have previously suggested.

A unique aspect of the *De Excommunicato Capiendo* writs was that prisoners could not be financially bailed out of gaol. With the exception of royal pardons, this theoretically meant that excommunicates were supposed to be deprived of their freedom until they had satisfied the demands of the ecclesiastical courts. Because this required both oaths and receiving the sacrament, the prospect of being released accordingly appeared unlikely to excommunicated Quakers. In practice, however, several Friends only spent a few weeks or months in prison. There is also evidence that prison staff were occasionally willing to circumvent the strict regulations of the excommunication writs in their treatment of Friends. For example, in February 1681, the London Meetings received a letter from John Gratton, 'prisoner in derby gaole upon a writt de excommunicato capiendo', detailing how his gaoler had allowed him 'some small liberty to attend the burying of his eldest sonne...for which the gaoler is much threatned by [Thomas] Browne the archdeacon who was his persecutor.'⁹³ In contrasting the cruelty of clergymen with the sympathy of the gaoler, such instances reveal that some Quakers encountered a degree of support and sympathy in their suffering. Nevertheless, the most striking aspect of the many reports of excommunicated Friends is the daunting amount of time many had to spend in gaol for their canonical infractions. Four Cambridgeshire Friends - Henry Harlow, Nicholas Frost, Henry James and John Houghton - spent 'above six years' in Ely Bishop's goal for not paying tithes.⁹⁴ In 1685, John Johnston, John Elliot, and Daniel Fox, all from Leicestershire, were released after having served eight years each for their excommunication. At the same occasion, Thomas Dash was given his freedom after eleven years.⁹⁵ Worst of all, Thomas Sparks was released by James II's pardon in 1686 after thirteen years in a Northumberland gaol.⁹⁶

The difficult conditions in many Restoration gaols meant that many excommunicated Friends suffered severe physical distress or death while deprived of their freedom. The wife of Richard Ashcroft described in her letter to the London Friends how the 'closeness & dampnesse' of Newgate gaol much increased her sixty-five year

⁹² Besse, *Collection*, p. 482.

⁹³ London, Library of the Society of Friends, YM/MfS/M, vol. 2, p. 42. See also, YM/MfS/GBS, vol. 3, pp. 717, 816, 818.

⁹⁴ Besse, *Collection*, p. 97.

⁹⁵ *Ibid.*, p. 345.

⁹⁶ *Ibid.*, p. 157.

old husband's 'distemper' and, according to the 'words upon his dying bed', this 'was the occasion for shortening his days.'⁹⁷ Similarly, when the Suffolk Friend Giles Gringer appeared in Ipswich prison following 'a significavit of excommunication for not going to the publick worship', the jailer placed him 'on a bed where a person had lately lain sick of the small pox, by means whereof [he] took that distemper and died of it.'⁹⁸ Reports of this kind understandably outraged the Quaker leadership in London, and they bitterly condemned how 'by writs of de excommunicato capiendo' Friends had been 'thrown into nasty gaoles and holes, where some have lost their lives, others have been kept in a lingering imprisonment from their wives and families, some four, some five, and some six years.' This, they believed, was 'a punishment not much inferior to death itself!'⁹⁹

Although the polemical intention of such statements was unmistakable, there was nevertheless some truth to the claim that excommunication had the capacity to disrupt close-knit Quaker communities. Richard Ashford's wife described how the imprisonment of her excommunicated husband caused 'greif & trouble' to many in their community 'who wept when they took their leaves again.'¹⁰⁰ Undoubtedly, it was the family members who suffered the most in such instances. Time and again, the Suffering Books and Besse's *Collection* point out that the imprisonment of excommunicated Friends, especially those with children, caused the family 'great loss' and 'sore affliction.'¹⁰¹ The Berkshire Quaker, Frances Thomas, widow to an excommunicated husband who had died while in prison, had 'five children, all under twelve years of age, to provide for by the labour of her hands, and had very little of either clothing or household stuff, having been necessitated to sell what she could toward her and her children's support.'¹⁰² In 1677, the Leicester Friend John Willsford summarised the effects of this ecclesiastical harassment on the Restoration Quakers in his *A general testimony to the everlasting truth of God*. It was 'well known', he asserted, how the 'merciless men' of the church courts 'end families by causing their fathers to be cast into prison, and so in effect make both fatherless and widows.'¹⁰³ Added to this, the potentially calamitous consequences of excommunication must have been a psychological strain on the many Friends who witnessed members of their community being taken away on *De Excommunicato Capiendo* writs. Indeed, although it is difficult to determine, it does not seem

⁹⁷ London, Library of the Society of Friends, YY/MfS/ORS, p. 444.

⁹⁸ Besse, *Collection*, p. 678.

⁹⁹ Hookes, Penn, et. al., *A particular account*, p. li.

¹⁰⁰ London, Library of the Society of Friends, YY/MfS/ORS, p. 444.

¹⁰¹ Besse, *Collection*, p. 81.

¹⁰² *Ibid.*, p. 257.

¹⁰³ John Willsford, *A general testimony to the everlasting truth of God* (London, 1677), p. 11.

unreasonable to speculate that some would have felt anxious that perhaps they might be next.

Although the excommunication writs represented a joint effort by the secular and ecclesiastical jurisdiction, the Quakers often blamed the latter for the damage caused by such writs. Not only was it the ecclesiastical courts that instigated the process of excommunication, but, more importantly, Friends also believed that it was the Church that was responsible for corrupting and manipulating the secular sphere into doing its bidding. 'By this means', Besse wrote, 'many of this people were buried alive, and became sacrifices to the interest of domineering Ecclesiasticks, in causes of which the secular power never had any cognizance.' 'The mitre', he continued, 'exalted itself above the crown.'¹⁰⁴ William Smith rebuked clergymen and ecclesiastical officials for making 'the magistrates your servants and the sheriffs your bailiffs' by forcing them into implementing excommunication writs 'though they well know that such upon whom the writ is to be executed, do not at all deserve such corporal punishment as imprisonment.'¹⁰⁵ Rawbone observed that this ecclesiastical manipulation of the secular arm was not a novelty: 'it hath been the work of the false church in many ages..., and is her endeavours to this day, to get upon the backs of the Lords, Dukes, Kings, and Emperor' who were all 'as tractable unto her, as a beast is under its rider, and ready to do any drudgery for her.'¹⁰⁶ In making such impassioned observations about the relationship between the secular and ecclesiastical jurisdictions, the Restoration Friends were able to contrast forcefully their loyalty to the former with their total aversion and opposition to the latter.

While imprisonment was the most severe consequence of excommunication, Friends were not entirely impervious to its social and financial implications. Consider, for instance, the case of the corn farmer Henry Elliot, who was one of the Arundel Friends excommunicated in 1686. After his sentencing, the local miller was ordered by the parish clergy not to grind Elliot's corn which, Besse writes, 'for the fear of them, he refused to do.' As a result, Elliot 'employed a woman who kept a mill at Arundel to grind for him', but she too was soon 'summoned to court, where they forced her to pay money, and to promise not to grind for him any more.'¹⁰⁷ The potential consequences for those continuing to work for an excommunicated Friend can be seen in the case of the Shropshire farmer, Thomas Palmer. Having been imprisoned upon a 'writ of excommunication' in June 1677, Palmer continued to employ a group of labourers on his

¹⁰⁴ Besse, *Collection*, pp. 652, 2.

¹⁰⁵ Smith, *A general summons*, p. 6.

¹⁰⁶ Rawbone, *A brief narrative*, pp. 6–7.

¹⁰⁷ Besse, *Collection*, p. 734.

farm. Their willingness to remain in Palmer's service did not go unnoticed, however, as 'most of his servants' were soon cited to court, 'who being poor, and to avoid expense, gave no appearance, for which they were excommunicated.' This, in turn, 'brought such fear and disturbance upon them' that Palmer 'lost his harvest for want of workmen, he being himself in gaol and absent.'¹⁰⁸ To William Smith, repercussions of this kind were what made excommunication a truly perilous punishment. Excommunicates, he observed, were deemed 'unworthy of common dealings and society among men; and if any have to do with them by way of dealing, or come into their company by way of society, then they must be lyable unto the same judgement.' This forced Smith to conclude that, even though excommunications were spiritually 'void', they nonetheless tended 'to destroy common dealings and society among neighbours.'¹⁰⁹

There is also evidence that Friends were occasionally harassed physically because of their excommunication. The *Collection* mentions a particularly violent episode from Anderbury, Lancashire, where William and Katharine Cliff were visited by the vicar, George Cragge and two of his servants, on 19 August 1669. The purpose of Cragge's visit was to extract tithes from the Cliffs, but upon not receiving his fees, the encounter took a sinister turn. With notably emotive language, Besse described how Cragge instructed his servants that 'they are excommunicated persons, and if you knock them on the head, there is no law against you: I will be your warrant, the way is clear.' After both refused his command, Cragge 'himself struck the said Katharine with a fork...who was then with child...and pusht her violently on the body several times, and threw her down', which resulted in Elizabeth miscarrying 'her two children, one of which had plain marks of the blows received.' To make matters worse, William 'was sent into prison by a writ *De Excommunicato Capiendo*' a few weeks later.¹¹⁰ A similar, though less graphic, encounter occurred between Francis Whiting, vicar of South Witham, Lincolnshire, and John Milner, an excommunicated Quaker. Also failing to obtain his tithes, Whiting proceeded to 'beat the said John Milner with a stick very cruelly' to such an extent that Milner 'was disabled to go about his business, and obliged to lie by it a quarter of the year together, by which he sustained great loss and damage.'¹¹¹

These reports of imprisonment, financial loss and physical harassment must be interpreted carefully. On the one hand, they do show that Friends were not as immune or indifferent to the pressures exerted by the ecclesiastical courts as historians have previously asserted. On the other, they also strengthen Davies' and Miller's depiction of

¹⁰⁸ Hookes, Penn, et. al., *A particular account*, p. 23.

¹⁰⁹ Smith, *A general summons*, p. 7.

¹¹⁰ Besse, *Collection*, pp. 349–50.

¹¹¹ *Ibid.*, p. 361.

the Restoration as a period of increasing integration and co-operation between Friends and their broader communities. For, while Besse and the *Suffering Books* emphatically draw our attention to how valiantly Quakers endured the best efforts of their ecclesiastical persecutors, Miller is right to suggest that they also include 'evidence that runs counter to the impression they were intended to convey.'¹¹² That is, in the midst of all the suffering, we should not lose sight of those who were clearly willing to continue working for excommunicated Friends, the churchwardens who refused to follow the vicar's orders, or the jailers who allowed excommunicated Quakers a degree of liberty in prison. Their actions all indicate that some Friends received significant sympathy and aid from non-Quakers, and that the Friends themselves were willing to integrate within their broader communities. A similar picture emerges from some Quaker publications. For example, in detailing his own experiences in gaol, the excommunicated Edmund Gearle briefly interrupted his narrative of suffering to thank God that some of his neighbours 'profred to assist our wives and children, so our harvest was brought in.'¹¹³

Excommunicated Quakers could thus at times rely on a degree of communal sympathy and support in their struggles with the ecclesiastical courts. This further highlights a point made in the conclusion of the previous chapter: excommunication in Restoration England, whether it targeted Quakers or not, often did not result in the social shunning that the Church intended it to. On the contrary, parishioners were often willing to ignore the potential spiritual consequences of socialising with excommunicates in the day-to-day activities of local communities. This must have alleviated some of the pressure faced by those banished from Church. Nevertheless, communal charity and co-operation did not always relieve the burden of excommunication. Indeed, as we saw in the previous chapter, there was often a significant dichotomy between how society viewed excommunicates and how those individuals experienced their own excommunication, and it was possible for excommunicates to be socially integrated whilst simultaneously finding their censure discomfiting. The same was clearly true for the Restoration Friends, many of whom suffered considerably because of their excommunication despite not being socially isolated by the non-Quakers around them.

The Restoration Quakers therefore continued to lament publicly the devastating damage inflicted by the ecclesiastical courts. None did so more vividly than William Smith, who declared that these tribunals constituted 'the womb in which our sufferings are principally concerned.'¹¹⁴ There was a degree of defiance in such public expositions of ecclesiastical tyranny. As Rawbone told clergymen and the officials of the Doctors'

¹¹² Miller, 'A suffering people', p. 74.

¹¹³ Gearle, *Three country-mens*, p. 12.

¹¹⁴ Smith, *A general summons*, p. 23.

Commons, 'we intend to make your work publick, that all may see what spirit rules in thine and your hearts, notwithstanding your talk and profession of Christ.'¹¹⁵ Added to this, Friends assured their ecclesiastical persecutors that no amount of harassment would ever persuade them to abandon Quakerism. 'As for the Quakers', Smith confidently declared, 'you may as easily force the sun to go backward, as force them into your practice and observation.'¹¹⁶ Yet, despite the boldness of such remarks, many Quaker tracts also contained a more heartfelt plea to the church courts to cease their oppression. John Willsford, who wrote his tract while imprisoned on an excommunication writ, hoped that the officers of the court would consider his arguments 'and see if ye will answer them & convince me of my error (if in one I be) or release me out of prison.'¹¹⁷ Thomas Salthouse similarly requested that the 'Bishops, Chancellors, Commissaries, parish priests, and all, or any of their ecclesiastical officers' would 'receive this with meekness, and peruse it with patience' in order to secure the release of himself and his fellow coreligionists. These pleas sought to persuade 'such as have hated us without cause' to 'prevent persecution for the future', and made it clear that, ultimately, excommunication was no trivial matter for many Friends.¹¹⁸

In most cases, the addressed bishops and court officials took little notice of these Quaker pleas. Only Willsford claimed to have received a response, as his letter to the court officials was apparently returned to him in gaol with a comment stating that 'we have read his [letter] over...we will not take care to send him an answer, but we will take care to keep him where he is.'¹¹⁹ Publicly exposing the crooked nature of the English church courts was not, however, the only means available to Restoration Quakers in their struggle against ecclesiastical oppression. On the contrary, from the mid-1670s onwards, more tangible measures were developed to protect Friends against the pressures of excommunication.

(iv) 'The great weight of the matter': Quaker strategies against the ecclesiastical courts

According to Besse, the Quakers had endured all forms of persecution with a lamb-like meekness and patience. It was 'divine support' alone that 'bore up the Spirit of the people called the Quakers, for near forty years together to stem the torrent of opposition.'¹²⁰ This providential interpretation of recent events powerfully served the martyrological narrative

¹¹⁵ Rawbone, *A brief narrative*, p. 10.

¹¹⁶ Smith, *A general summons*, p. 26.

¹¹⁷ Willsford, *A general testimony*, p. 13.

¹¹⁸ Salthouse, *A controversie*, p. 25.

¹¹⁹ Willsford, *A general testimony*, p. 16.

¹²⁰ Besse, *Collection*, p. iii.

of the *Collection*. Yet, Besse was here consciously deceptive. As someone who had immersed himself in the Quaker records produced during the Restoration, he must have been aware that his predecessors had relied on far more than divine support to escape the clutches of their persecutors. Throughout the 1650s and 1660s, they had actively petitioned the authorities for a greater leniency towards the Quakers. It was not until the establishment of the weekly London Meetings in 1676, however, that more systematic, centrally organised efforts towards this end were developed, both in terms of assisting individual Friends with legal aid and in establishing more formal mechanisms for political lobbying. No one has done more to uncover this more pragmatic side of the Restoration Friends than Craig Horle. Focusing on the minutes from the London Meetings rather than the Suffering Books, he discovered that the Quakers had gradually ‘metamorphosed from a radical sect ostensibly contemptuous of legal procedure into one which embraced those procedures to thwart their opponents and to produce their own freedom, without sacrificing their own basic principles.’ This was perhaps most evident in the significant legal expertise many leading Quakers began acquiring in the late 1670s, but it was also manifested in their newfound readiness to rely ‘on a phalanx of prominent lawyers, who employed virtually every weapon imaginable’ to shield Friends against legal prosecution.¹²¹ While Horle stressed that such strategies could not entirely alleviate the pressure of the penal laws, he showed that they allowed Friends increasingly to avoid legal punishment.

However, as important as Horle’s study has been for the scholarly reassessment of the Restoration Friends, his research was focused almost exclusively on their interaction with the secular courts. As a result, we know far less about how the Quakers faced up to the significant challenges posed by the ecclesiastical courts.

The immediate impression from the early London Meetings is that the London Friends had no workable solution to the problem of excommunication. At the very first session, which took place on 22 April 1676, the committee was presented with a letter from Thomas Loveday, a Gloucester Quaker imprisoned ‘upon excom. capiend.’ Similar to other letters the Meeting would receive, it asked whether the members were aware of any solution to his predicament. Unfortunately for Loveday, the London Meetings did not at this point have an answer. Instead, they rather reluctantly agreed that a letter was to be returned to Loveday stating that ‘at present, it is the sufferings of many others in the like case & that wee cannot find a way to relieve him.’¹²² This was not the only time an excommunicated Friend would be disappointed with such bad news. In a meeting held

¹²¹ Horle, *The Quakers*, p. 162.

¹²² London, Library of the Society of Friends, YM/MfS/M, vol. 1, p. 1.

on 2 June 1677, the members discussed the case of Nicholas Gates and Moses Neave, two excommunicated Hampshire Friends imprisoned for their absence in the national worship. After some consideration, the attendees once more had to concede that 'the meetings can doe nothing in it at present', although this time they suggested that 'the Bishop of Winchester may be spoken to about it.'¹²³

The first attempts to alleviate excommunicated Quakers were clearly not particularly promising. Yet, the steady stream of letters from Friends across the country inquiring about how to avoid or escape imprisonment provided a strong impetus to develop solutions. The first step in this direction was to take stock of just how many Quakers in each county were imprisoned on excommunication writs. On 25 February 1678, the Meeting thus decreed 'that an account of the prisoners in the severall countyes upon writts of excom. cap. & ecclesiastical processes [was] to be drawne up by the next meeting if it can.'¹²⁴ Given that the Meetings convened weekly, this was a somewhat unrealistic timeline. Nevertheless, from this point onwards, the minutes from the Meetings evince a sustained effort to collect as much information as possible about the many excommunicated Friends lingering in gaol. At the next session, held on 2 March, Hookes was tasked 'according to the order of the last meeting [to] send to the severall counties for the names of Friends excommunicate.'¹²⁵ A week later, it was reported that such a list had been received from York and Hookes was instructed to 'make copies thereof.' Before the next session, several more lists had arrived and on 16 March the Meetings 'agreed that Ellis Hookes present the list of Friends suffering upon Excommunications & make faire copies thereof at the next meeting.'¹²⁶ These reports would continue to arrive throughout the remainder of the 1670s and 1680s, which must have provided the central Quaker committee with a reliable picture of how many Friends were suffering from ecclesiastical censures. But, although useful, the collection of such data was not in itself enough; tangible solutions still remained to be developed.

One of the most pressing concerns faced by the London Meetings came from Friends inquiring whether or not they should attend their hearing in the ecclesiastical court. In the first session, the letter from Benjamin Anchorby was discussed, which inquired 'whether he should appeare in the Bishoppes Court upon a Citation'? At this early stage, the Meeting responded with confidence: 'it was the mind of Friends that if he were free he might appeare & not owne the Authority or Jurisdiction but to testifie to the Truth.'¹²⁷ But, as the letters of imprisoned Quakers began piling up, the Meetings became

¹²³ *Ibid.*, p. 29.

¹²⁴ *Ibid.*, p. 54.

¹²⁵ *Ibid.*, p. 55.

¹²⁶ *Ibid.*, p. 67.

¹²⁷ *Ibid.*, p. 1.

increasingly aware that such an attitude would result in a legally valid excommunication that might result in a writ *De Excommunicato Capiendo*. As a result, the members of the London Meetings became notably more apprehensive about advocating open defiance. Thus, when the Herefordshire Friend, Richard Dolphin, inquired about avoiding imprisonment following his excommunication 'upon his non-appearance' in September 1681, the Meeting did not see 'that he has a legall cause for prohibition or other present relief against the Court.'¹²⁸ This dilemma is further illustrated in the discussion 'concerning the Widdow Jerkell' on the Meeting held on 23 November 1678. Jerkell had been prosecuted 'for opening her shop on Christmas Day (soe called)' and had been imprisoned as a result of her excommunication 'for nonappearance in the ecclesiastical court.' After considering her case, the London Friends concluded that since 'her excommunication being for nonappearance upon the citation of the court', the 'judges will not yield her relief otherwise then by her appearing.' Yet, this was not an acceptable option either since, as the minutes noted, this would require her 'to obey the sentence of the church (soe called)' which 'wee judge she cannot.' Once more, the Meeting was forced to concede that 'Friends cannot find any clearness therein.'¹²⁹ The answer to the Quakers' concern could clearly not be found in the question of whether to appear in court or not.

Horle's study detailed how the London Friends increasingly turned to professional aid to alleviate the pressures from the secular courts. The 'Meetings for Sufferings', he showed, 'often relied...on legal advisors, encompassing the four inns of court, and included eleven men who at various times held superior common law judgeships.'¹³⁰ Given the concern expressed in the Meetings about ecclesiastical censures, it is not surprising that similar approaches were made in cases involving the church courts. At the meeting held on 12 October 1678, one of the most prominent attendees, Francis Dove, presented the case of 'Thomas Davies & other Friends of Windsor imprisoned upon the writt of excommunicato capiendo.' After hearing the details, the members agreed that they were 'to be redressed & sett at liberty by one John Vining, an attorney for 3 d. a peese.'¹³¹ Unfortunately, this was not a successful first attempt. The Meeting was immediately suspicious of Vining, since he 'would not acquaint them with his methods.'¹³² At the following session, on 19 October, it was therefore decided that Dove and Gilbert Laty, another prominent member of the Meetings, would approach Vining

¹²⁸ London, Library of the Society of Friends, YM/MfS/M, vol. 2, p. 70.

¹²⁹ London, Library of the Society of Friends, YM/MfS/M, vol. 1, p. 83.

¹³⁰ Horle, *The Quakers*, p. 188.

¹³¹ Vining had been admitted to Middle Temple in 1670 and was called to the bar seven years later. See Horle, *The Quakers*, p. 291.

¹³² London, Library of the Society of Friends, YM/MfS/M, vol. 1, p. 76.

and 'according to his advice, proceed, soe as that the testimony of truth would not suffer.'¹³³ Once more, however, the Quakers were left unsatisfied. Over one month later, on 23 November, John Dove, who also frequently attended the Meetings, reported that

he and some other Friends had discowrse with John Vining, an attorney employed in order to discharge Tho. Davies and other Friends of Windsor and find that he has noe way consistent with truth to discharge them, upon which they have ordered him to forbear and have also writt to Windsor Friends and gave them account thereof.¹³⁴

It is not clear what exactly it was about Vining's counsel that was not 'consistent with truth', but it must have been an unsettling experience for the members of the London Meetings because no second attempt was made to hire counsel in matters of ecclesiastical cognisance. This stands in contrast to the relative success Restoration Friends found in collaborating with lawyers in cases heard before the secular tribunals.

Having failed to obtain appropriate counsel, the London Friends turned instead to their own legal experts to combat the church courts. Chief among them were Thomas Rudyard and Roland Vaughan, who increasingly began focusing on ecclesiastical cases. Neither having any formal legal training, they could not actually attend court cases. They could, however, challenge the legality of individual cases by examining the copies of the relevant excommunication writs that were stored in the Crown Office in London. Thus, the London Friends began repeatedly sending their own members on missions to locate specific writs. For instance, in the meeting convened on 5 June 1680, 'a *capias* in Lattine...for the takeing & commitment of William Baldwin of Rochester' was discussed, and Hookes was ordered 'to gett it Englished' and then 'see if it be enrolled' in the Crown Office.¹³⁵ The following week, Hookes reported that 'in pursuance of the agreement of last meeting' he 'hath made search in the Crowne Office for the Inrollment of a Writt of Excommunicato Capiendo against William Baldwin...& brought here a cobby of the Inrollment.'¹³⁶ No remedy could be found in Baldwin's case, however, and the same was true for most writs collected and examined in this way. Yet, in a few cases, the search proved more fruitful. On 10 October 1681, after discussing the case of the Derbyshire Quaker John Gratton, Vaughan reported that 'he hath searched the Crown Office for the writ which the said John Gratton is imprisoned on, and that he can find none', which

¹³³ *Ibid.*, p. 77.

¹³⁴ *Ibid.*, p. 82.

¹³⁵ London, Library of the Society of Friends, YM/MfS/M, vol. 2, p. 1.

¹³⁶ *Ibid.*, p. 3.

suggested that Gratton had been unlawfully incarcerated. It was consequently agreed that Vaughan 'write to John Gratton and certify him' of the positive news.¹³⁷ But even in these instances, it did not necessarily ensure the release of Friends, and minutes from Meetings held in both 1682 and 1683 reveal that Gratton remained in gaol regardless of the apparent invalidity of his excommunication writ.¹³⁸

Another strategy was to rely on the goodwill of Parliament. By the early 1680s, after a few years of collecting information about excommunicated Quakers, the members of the London Meetings had gathered enough cases which, in their eyes, unambiguously revealed the unlawfulness of the ecclesiastical courts. To make the most of this data, it was accordingly agreed at the session assembled on 12 September 1680, 'that the sufferings upon writs of de excom. cap. be drawn up & printed by E. Hookes & presented to Parliament.'¹³⁹ A few weeks later, the aforementioned *Account of the late and present great sufferings of the people called the Quakers upon Prosecutions against them in the Bishops Courts* was published and presented to Parliament. This rather lengthy pamphlet, signed by 21 of the most important members of the London Meetings, provided detailed accounts of more than a hundred excommunicated Quakers suffering in gaol. The tract especially emphasised those 'who have dyed prisoners, being committed by writs of excommunicato capiendo', and it concluded by imploring the 'unbyassed men in authority, who are not destitute of humanity' to 'judge how these Coercive and Destructive Proceedings of the Clergy, can consist with a Christian Spirit or Gospel perswasion.'¹⁴⁰

Shortly after its publication, The London Meetings began preparations to introduce a bill of regulation in Parliament against the proceedings of the ecclesiastical courts. On 7 November 1680, the members ordered that 'Friends that keepe the Cash doe meete with them to consider about defraying the charge of manageing the business in Parliament about the irregular proceedings of the Courts called Ecclesiastical.'¹⁴¹ Exactly who among the Quakers possessed such 'Cash' is not clear, but the following session reveal that the necessary funds had been successfully procured: 'upon the endeavours of Friends with Parliament to gaine reliefe against the illegal proceedings of the Ecclesiastical Courts in imposing the writ the de excommunicato capiendo...a charge of about 50 l. hath been expended in order to gaine a Bill of Regulation of the Cowrts proceedings.'¹⁴² Some six weeks later, on the 16 December, such a bill 'for regulating

¹³⁷ Ibid., p. 77.

¹³⁸ Ibid., pp. 182, 210.

¹³⁹ Ibid., p. 23.

¹⁴⁰ Hookes, Penn, et. al., *A particular account*, pp. 36, 42.

¹⁴¹ London, Library of the Society of Friends, YM/MfS/M, vol. 2, p. 23.

¹⁴² Ibid., p. 24.

the proceedings of the ecclesiastical courts' was indeed introduced in the House of Commons.¹⁴³

This was not the first time that Quakers had lobbied Parliament to cease the persecution of their co-religionists. Conditions in Parliament were, however, uniquely favourable in the winter of 1680, since it was filled with Whig MPs, often sympathetic to protestant dissenters, seeking to challenge the succession of Charles II's younger Catholic brother, James.¹⁴⁴ Thus, when the Commons ordered that the matter be 'referred to the Committee appointed to receive complaints against the ecclesiastical courts', it delegated the Quakers' concern to a group that included several MPs known for their support towards nonconformists, such as Thomas Owen of Nerven in Pembrokeshire, and Thomas Freke of Shroton and Melcombe in Dorset. More likeminded members, such as Sir Richard Cust, were added to the committee throughout December, and no significant Tory opposition appears to have been raised towards this bill in particular.¹⁴⁵ This was an important development that seriously opened up the possibility of a more restricted ecclesiastical arm. Unfortunately for the London Quakers, however, the Commons had not concluded its discussions before Charles II began Parliament's four-year long recess in March 1681. Not only did this effectively stop any further debate about reforming the church courts. It also signalled the beginning of a more conservative, Tory-dominated political landscape that was far more hostile to the plight of dissenters.¹⁴⁶ The Quakers would not attempt a similar strategy until the political climate had changed in their favour again, with the accession of James II in February 1685.

Because the London Friends could find no reliable method of aiding their excommunicated coreligionists, their most common strategy to oppose the church courts became one of confrontation. This involved tasking individual members of the Meetings to challenge personally an ecclesiastical judge or bishop of a particular diocesan tribunal and plead that they order the release of one or several Quakers imprisoned on excommunication writs. The first step in this process was to instruct the excommunicated Friends in prison to detail their cases to the London Friends. Thus, on 13 September 1679, the Meetings directed five imprisoned Gloucestershire Friends to submit a report

¹⁴³ House of Commons, *Journal of the House of Commons: volume 9, 1667–1687* (London, 1802), pp. 680-1.

¹⁴⁴ According to Tim Harris, the Whigs were 'the party sympathetic to dissent', while the Tories were championed 'Anglican intolerance.' Tim Harris, *Politics under the later Stuarts: party conflict in a divided society, 1660–1715* (Harlow, 1993), p. 8.

¹⁴⁵ House of Commons, *Journal, volume 9*, p. 680, 695–6; B.D. Henning (ed.), *The House of Commons, 1660–1690*, II, p. 365; III, pp. 190–1.

¹⁴⁶ For a discussion of the reactionary politics that characterized the last four years of Charles II's role, see Grant Tapsell, *The personal rule of Charles II, 1681–1685* (Woodbridge, 2007), especially chapter on 'the politics of religious persecution', pp. 64–91.

of their excommunication. The next step was to delegate one or two members of the Meetings to visit 'the Bishopp of that diocess' to deliver the letter personally. In the case of the five Gloucestershire Friends, Job Bolton and Ben Stark were instructed to visit the Bishop of Gloucester, John Pritchett. Their report from the encounter suggest that this was anything but a fool-proof strategy. Approaching Pritchett 'with their hatts upon their heads', they described how 'the Bishop was greatly intraged theratt & with fury & violence pulled Job Boltons hat, flinging itt on the other side.' The Bishop then somehow received the letter but 'after reading 2 or 3 lynes & finding the word thee or thou therein [he] fell into a greater rage & flung it downe upon the ground and notwithstanding all moderate discourse used to him, in rage he left the room & lost them.'¹⁴⁷ Some of Pritchett's colleagues refused to meet the Quakers in the first place. In November 1681, the London Meeting sought to redress the case of the French Quaker Peter Johan, prisoner 'upon an excom cap. for practising physic without a license', by having 'a letter (in his behalf) to be writ to the Byshopp of Peterborow', William Lloyd. Lloyd would not, however, receive the Friends about Johan's case, and an effort consequently had to be made to 'speak with the Brother of the Bishop...in order to procure some relief for Peter Johan.'¹⁴⁸ Regrettably, this was to no avail and Johan remained in gaol.

Not all bishops were unsympathetic to the Quakers' cause, however. On 18 May 1678, the 'Winsor Friends now in Gaole at Reading upon an excom. capiend. for non-repares of a steeple house [were] referred to Gilbert Laty & Francis Dove to apply themselves to the Bishop of that Diocesse.' Less than a month later, on 8 June, Laty reported back to the London Meetings that 'he hath spoke with the Bishop of Salisbury concerning the Winsor Friends who hath promised to doe what lyes in his power to release them.'¹⁴⁹ Unfortunately, this was the case delegated to the attorney John Vining, who failed to capitalise on the Bishop's intentions. Nevertheless, relying on the benevolence of bishops was clearly not a feasible long term-strategy for helping excommunicated Friends, and the London Meetings attempted it less and less as the 1680s progressed. So much so, that when in April 1684 Gilbert Laty was asked to confront the Bishop of Exeter concerning '5 prisoners upon excom. cap.' he answered that he found 'no inclination' to do so 'because he finds not that the Bishop is concerned therein.'¹⁵⁰

Most attempts to relieve excommunicated Friends fell within the rule of law. There were, however, more covert strategies developed towards this end that were not

¹⁴⁷ London, Library of the Society of Friends, YM/MfS/M, vol. 1, p. 174.

¹⁴⁸ London, Library of the Society of Friends, YM/MfS/M, vol. 2, pp. 90–2.

¹⁴⁹ London, Library of the Society of Friends, YM/MfS/M, vol. 1, p. 65.

¹⁵⁰ London, Library of the Society of Friends, YM/MfS/M, vol. 3, p. 190.

recorded by the London Meetings. On 13 April 1678, William Penn - who at that point was an integral member of the Meetings - sent a letter to the prominent Lancashire Quaker, Phineas Pemberton. In it, Penn requested a novel strategy for dealing with the church courts. Specifically, he requested that Lancashire Quakers should 'with diligence and exactness in forme your selves of the excommunicated persons that are not Friends especially if they be Church goers (as they call them) who are so often handled in the office of the churchwardens.' Given how frequently many church courts issued excommunications, Penn was convinced that such individuals would not be difficult to find. The purpose of locating excommunicated non-Quaker churchwardens was twofold. First, Penn believed that they would be less likely to report Quakers and other dissenters to the authorities. This was not an entirely unreasonable assumption, as churchwardens were cited relatively frequently for failing to comply with the canonical injunctions against dissenters, and it was not uncommon that they were excommunicated for noncompliance.¹⁵¹ Davies has, for instance, highlighted a case from 1665, in which the churchwardens of Coggeshall, Essex, were fined for refusing to distrain Friends' goods.¹⁵² Penn did not merely seek the benevolence of churchwardens, however. He also hoped that some might be 'willing to put the Bishops power of Excommunication on a legal tryal.' In other words, Penn envisioned organising a campaign to mobilise sympathetic churchwardens to counter the authority of the church courts. He was confident that if this could be achieved, it would 'not be improbable that in a little time you may have something Extraordinary upon this subject.' Penn then finished the letter by emphasising 'the great weight of the matter', before instructing the Lancashire Friends to 'keep it from noise & observation as much as you can do' so as to not alert the attention of their ecclesiastical persecutors.¹⁵³

Penn's willingness to collaborate with non-Quakers against the church courts once more shows that Friends were far from a segregated and secluded group in Restoration society. His optimism about the success of this strategy also indicates a certain readiness among at least some parishioners to collaborate with the Quakers. There was, moreover, some precedent for Penn's plans for churchwardens to challenge the authority of the ecclesiastical courts. Just two years prior to Penn writing his letter to Pemberton, the churchwarden of Arundel in West Sussex, Thomas Waterford, had caused quite a stir by publicly questioning the grounds of his excommunication in a brief pamphlet

¹⁵¹ For more about how frequently churchwardens were cited to the restored church courts for a failure to report dissenters, see Andrew Thomson, 'Church discipline: the operation of the Winchester consistory court in the seventeenth century', *History*, vol. 91 (2006), pp. 349–52

¹⁵² Davies, *The Quakers*, p. 212.

¹⁵³ William Penn, 'Letter to Friends in Lancashire', in Mary Maples Dunn & Richard S. Dunn (eds.), *The papers of William Penn, volume one: 1649–1679* (Philadelphia, 1981), pp. 549–50.

published shortly after successfully procuring a writ of prohibition against the Chichester consistory court.¹⁵⁴ Nevertheless, in Penn's case, the content of his letter is more interesting than its consequences as no evidence has been found to suggest that Lancashire Friends acted upon his instructions, nor that a similar scheme was developed elsewhere. Penn, furthermore, seems to have abandoned the project shortly after writing the letter, as he began involving himself more emphatically in the more legally transparent strategies developed by the London Meetings.¹⁵⁵

(v) Quakers, the church courts and the enactment of religious toleration

A few years later, Penn was able to challenge the church courts with the royal backing of James II, and we began this chapter by briefly considering his assessment from 1687 of how these 'scorpions of ecclesiastical censure' had tormented the Quaker community over the past three decades. The question remains, however, whether or not this was an accurate reflection? In some ways, Penn's comments were arguably overstated. No mention was made of those Quakers who had been seemingly untroubled by their excommunication. Nor has any evidence been found of Friends departing for the colonies principally as a result of harassment from the ecclesiastical courts. He also failed to mention that some excommunicated Friends had been aided in their troubles by sympathetic parishioners. Yet, Penn's depiction of the restored church courts was far from hyperbolic. Hundreds of his coreligionists had indeed been imprisoned as a result of their excommunication, to the detriment of not only themselves but also their Quaker communities. Nor was it uncommon for Quakers to have their livelihood and physical wellbeing jeopardised by their excommunications.

The fact that excommunication could have such a significant impact on the Quakers, a group renowned for its staunch opposition to the Church's authority, once more shows that the ecclesiastical courts in Restoration England were not as harmless as historians have often suggested. That the Restoration Friends took the threat of excommunication seriously can above all be seen in their determined effort to counter the church courts with a range of different strategies. Indeed, there would have been little need to hire legal counsel, locate excommunication writs in the Crown Office, introduce

¹⁵⁴ Thomas Waterfield, *A true translated copy of a writ of prohibition* (London, 1676). See also Geoffrey Ellis & Max A. Robertson (eds.), *The English reports: King's Bench division*, vol. 89 (London, 1902), p. 208.

¹⁵⁵ Apart from actively partaking in the deliberations of the Meetings and in the publication of *A particular account*, Penn was also tasked to confront a bishop about an excommunicated Quaker (Samuel Cater) in Apr. 1680. See London, Library of the Society of Friends, YM/MfS/M, vol. 1. p. 167.

a bill to Parliament, or confront bishops personally, if Friends were impervious to the pressures of spiritual discipline. The fact that these strategies met with little success, and that the Quaker leadership was eventually forced to concede that no practical solutions could be found to alleviate excommunicated coreligionists, only further corroborates that Friends found it particularly difficult to circumvent the Church's jurisdiction. As someone who had played an integral part in the development and implementation of these strategies, this was a reality of which Penn was only too aware, and it undoubtedly spurred his willingness to challenge the ecclesiastical courts once the opportunity presented itself with the accession of James II.

James' general pardon initiated a period of respite for the imprisoned Quakers. The new King even specifically ordered those 'exercising ecclesiastical jurisdiction' to release 'any pronounced excommunicate or suffering a writ of de excommunicato capiendo.'¹⁵⁶ Although not universally followed, Besse showed that most Quakers imprisoned on such writs were released shortly thereafter.¹⁵⁷ In the following three years, Penn was joined by several other prominent Friends, such as George Whitehead, in promoting James' efforts to legislate for religious toleration, and a substantial victory was won with the promulgation of the Declaration of Indulgence in 1687.¹⁵⁸ These efforts would soon be frustrated by the overthrow of James II in December 1688. Nonetheless, the Quakers were included within the terms of the more limited Toleration Act implemented by the new Williamite regime in 1689. Promising religious freedom for all Protestant nonconformists, Whitehead thanked God for 'preserving us a living people to his praise until this day, and affording us this present liberty we have of late enjoyed.'¹⁵⁹ The extent to which the Toleration Act alleviated the Quakers has, however, been a matter of debate. On the one hand, Davies has argued that the process of communal integration between Quakers and non-Quakers was developed further. After 1690, he writes that Friends were increasingly 'accepted as an oddity, more a band of annoying eccentrics who could more or less be subsumed in parish culture than a potent threat to the Church and State.'¹⁶⁰ On the other hand, scholars have also demonstrated that the Quakers continued to suffer much harassment from the county elites and the secular courts. Richard Clark has, for instance, noted that 'for the Society of Friends the advent of official

¹⁵⁶ Kew, National Archives, SP 44/336 f.67.

¹⁵⁷ See, for instance, Besse, *Collection*, pp. 38, 74, 164, 480, 574.

¹⁵⁸ Mark Goldie, 'James II and the dissenters' revenge: the commission of enquiry of 1688', *Historical Research*, vol. 159 (1993), p. 58.

¹⁵⁹ George Whitehead, *A Christian epistle to Friends in general of weighty concern* (London, 1689), p. 7.

¹⁶⁰ Davies, *The Quakers*, p. 221.

toleration was of greater significance in respect of the affirmation of the Society's status as a Protestant dissenting group than for any diminution of persecution.¹⁶¹

Evidence suggests, however, that the threat of ecclesiastical censuring decreased markedly for the Quakers as a result of the Toleration Act. Although this act did not technically deprive the church courts of their authority over lay and clerical conduct, it did order that dissenters could no longer be prosecuted 'in any ecclesiastical court for or by their reason of non-conforming to the Church of England.'¹⁶² Thus, Quakers could no longer be prosecuted in the church courts for such canonical injunctions as not going to church or not receiving the sacrament, and both W.M. Jacob and David Wykes have noted that Quaker prosecutions in the ecclesiastical courts fell considerably as a result.¹⁶³ Moreover, a Parliamentary act of 1696 allowed secular courts to hear tithe cases, which further decreased the rate with which Quakers were called to the ecclesiastical tribunals.¹⁶⁴ This did not mean that Quakers were wholly out of the church courts' reach in the 1690s. For instance, in 1695, Parliament declared that Quaker marriages were merely 'pretend' marriages, which confirmed that Friends were liable to pay the marriage taxes to the Church of England. Failure to do so, as Rebecca Probert has shown, could lead to Friends being involved in ecclesiastical suits, and occasionally be subject to excommunication in cases where they did not appear in court.¹⁶⁵ Nevertheless, compared to the previous three decades, the dangers of being prosecuted in the ecclesiastical courts had diminished significantly for the Quakers.

The Friends responded to the changes brought about by the 1690s by becoming less radical themselves. Under the guidance of George Whitehead, who assumed leadership of the London Meeting following the death of George Fox in 1691, emphasis was instead placed on a more Quietist theology. This involved a retreat from, and a more flexible attitude to, worldly affairs.¹⁶⁶ According to Davies, this catalysed 'a radical reversal' in the Quakers' attitude to the ecclesiastical courts: 'once the object of Quaker

¹⁶¹ Clark, 'The gangrene of Quakerism', p. 405. See also David L. Wykes, 'Quaker schoolmasters, toleration and the law, 1689–1714', *The Journal of Religious History*, vol. 21 (1997), pp. 178–92.

¹⁶² Cited in Andrew Browning (ed.), *English Historical Documents, 1660–1714* (London, 1953), pp. 400–3. For a more in-depth comparison between James' Indulgence and the Toleration Act, see Scott Sowerby, *Making toleration: the Repealers and the Glorious Revolution* (Cambridge, MA, 2013), pp. 250–53.

¹⁶³ W.M. Jacob, *Lay people and religion in the early eighteenth century* (Cambridge, 1996), pp. 36–39; David L. Wykes, 'Friends, Parliament and the Toleration Act', *Journal of Ecclesiastical History*, vol. 45 (1994), pp. 51–3.

¹⁶⁴ Wykes, 'Friends, Parliament and the Toleration Act', p. 52.

¹⁶⁵ Rebecca Probert, *Marriage law and practice in the long eighteenth century: a reassessment* (Cambridge, 2009), pp. 158–9.

¹⁶⁶ Robynne Rogers Healy, 'From apocalyptic prophecy to tolerable faithfulness: George Whitehead and a theology for the eschaton deferred', in Angell & Pink Dandelion (eds.), *Early Quakers*, pp. 283–6.

contempt, the courts were acknowledged from the mid-1690s onwards and members were advised to attend when cited.' Davies proceeds to suggest that this U-turn was caused above all by 'pragmatism...since non-appearance enabled a prosecutor to commence proceedings and excommunicate a Friend for contempt.'¹⁶⁷ However, as this chapter has demonstrated, the policy of recommending Quakers to appear in the church courts was not new to the 1690s, nor was it caused by 'pragmatism.' On the contrary, since the late 1670s, leading Quakers had ceased advocating non-appearance precisely because they recognised that the church courts could pose a serious threat to the individual and communal wellbeing of their coreligionists. That this policy was continued in the 1690s only further corroborates my suggestion that the Quakers did not take excommunication lightly.

¹⁶⁷ Davies, *The Quakers*, p. 188.

Conclusion

In the spring of 1687, the Lincolnshire vicar John Rastrick was 'cited into the ecclesiastical court at Lincoln 25 miles off from my dwelling' for six canonical infractions. These included his refusal to wear 'a surplice in all his administrations' and his continued conversation with 'Mr. Richardson, an excommunicate person.' Rastrick was a critic of many aspects of the Restoration Church, and particularly denounced its courts. They were, in his opinion, 'far from concurring with me in what I thought reasonable or just, or standing by me in the discharge of my duty; they being always more zealous for the observation of their own rites and for obedience to their own laws than God's: conniving at the breaches of the latter, but punishing beyond all measure the breaches of the former.' Despite of such a low opinion of the ecclesiastical courts, Rastrick decided to appear in order to avoid punishment. Yet, his hearing did not unfold as Rastrick had expected. Entering the courtroom from the southern aisle of Lincoln Cathedral, he observed that 'the court was very much down in the mouth and far from the heat and violence in their proceedings that I expected.' To Rastrick's further surprise, he was not reprimanded by the court officials receiving him. Rather, he was merely asked to submit a written response to the articles against him. He complied, but later noted that 'I never heard from them since.'¹

The reason for this unusual encounter with the officials in the Lincoln consistory court was that Rastrick's hearing fell 'on the very same day when King James' Declaration of Conscience first came into the Country.' Suspending 'all penal laws in matters ecclesiastical, for not coming to church, or not receiving the sacrament', James' Declaration of Indulgence, promulgated on 4 April 1687, did not only save Rastrick from a difficult encounter with the ecclesiastical authorities.² Rastrick also observed the significant local impact of 'this never expected and unforeseen proclamation': 'all good men rejoiced that by this means the sanguinary laws were suspended and laid aside, and the hands of the persecutors tied.' His 'friend Mr. Richardson' was, for instance, 'much taken with it.' Rastrick's own response was, however, particularly noteworthy, as it led him finally to embrace nonconformity. In his own words: 'though I had no reason to expect much more trouble from the ecclesiastical courts, yet my mind grew uneasie in the practice of many things in conformity which I thought I could not well tell how to avoid. So I resolved to go out.'³

¹ John Rastrick, *The life of John Rastrick, 1650–1727*, ed. Andrew Cambers (Cambridge, 2010), pp. 105–14.

² Cited in J.P. Kenyon (ed.), *The Stuart Constitution, 1603–1688: Documents and Commentary*, 2nd ed. (Cambridge, 1986), pp. 389–91.

³ Rastrick, *The life of John Rastrick*, p. 114.

These episodes from Rastrick's diary provide a rare account of just how quickly James II's Indulgence crippled the coercive capacities of the restored ecclesiastical courts. But, before we explore the fate of these tribunals in the subsequent decades, it is worth reflecting on what his comments tell us about their status in Restoration society prior to the enactment of the Indulgence.

Far from weak and toothless, Rastrick described a world in which the ecclesiastical courts had exerted a significant influence over England's religious landscape. Indeed, Rastrick himself did not feel secure to leave the Church's fold before these tribunals had been curtailed by the Indulgence, and the tangible relief he noticed among his friends and neighbours in its aftermath demonstrates powerfully how sensitive many had been to the pressures of spiritual disciplining. As such, Rastrick's comments substantiate one of the central arguments of this thesis: ecclesiastical discipline was far from trivial in Restoration England. Excommunication in particular had been capable of evoking genuine anxiety amongst those who endured it for a number of different reasons. For some, its spiritual implications were far from negligible. Others dreaded how it might socially or financially affect their temporal existence. Perhaps the most commonly expressed concern was that it opened up the possibility of imprisonment through writs of *De Excommunicato Capiendo*. These apprehensions were, furthermore, not just held by loyal conformists. On the contrary, the previous chapter demonstrated that even the Restoration Quakers, a group committed to their disavowal of the jurisdictional authority of the Church, were far from immune to the pressures of excommunication and developed sophisticated legal and political strategies in order to avoid it.

This thesis has thus challenged the prevalent historiographical depiction of the restored church courts as a relatively impotent institution. It has not, however, suggested that such soteriological or temporal concerns were shared by a majority of those who endured excommunication. As we saw in chapter four, there clearly were excommunicates in Restoration England who were not properly intimidated by the Church's spiritual banishment. The point is rather that the formulaic nature of the ecclesiastical court records does not allow us access to the majority of those who endured the sentence. Indeed, in the many cases where individuals did not record their thoughts about standing excommunicated, it is extremely difficult to discover what life was like for someone banished from Church. We should, therefore, exercise caution before making overly broad generalisations about how individuals and groups reacted to excommunication. Yet, it is precisely because of this bureaucratic monotony and pervasive archival silence within the court records that we should pay particular attention to those who did find their excommunication a disturbing and oppressive punishment.

Even if they constituted only a minority, their experiences may have been shared by excommunicates who have remained voiceless.

However, if excommunication could be a profoundly upsetting experience, such anxieties were rarely reciprocated by wider Restoration society. On the contrary, while the Church continued to teach and preach about the frightful predicaments of those spiritually banished, and the dangers of associating with them, the available evidence indicates that parishioners were largely indifferent towards the supposed risks of socialising with excommunicates. This was not a new development, and it can at least be partially explained by the long tradition in English parishes of prioritising local kinship over religious differences. Nevertheless, as we saw in the final section of chapter four, there are several reasons to think that Restoration communities were uniquely tolerant of excommunicates. First, some historians have proposed that this was a period in which spirituality became less of a communal concern and more of a private one. If this was the case, it would help to explain at least partially both the concern expressed by individual excommunicates and society's apparent insouciance towards their predicaments. A more plausible explanation for society's attitudes towards excommunicates, however, can be found in the work of scholars of religious toleration. Though they have not denied the often volatile religious disputes that existed in Restoration England, they have nevertheless shown that the continued proliferation of pluralism served to diminish gradually the social stigma surrounding religious differences and heterodox beliefs. Given this increased intermingling between different confessional groups, there was arguably nothing particularly unusual or dangerous about associating with those standing excommunicated, and this further explains the successful social integration of many excommunicates in Restoration England. Finally, the rate with which the restored ecclesiastical courts issued excommunications must have further diluted the gravity of the punishment in the eyes of many parishioners.

It is crucial to remember, however, that, while pluralism fostered toleration, it does not necessarily follow that it made the church courts toothless. In other words, social integration did not automatically cancel or alleviate the pressures experienced by individual excommunicates. Conversely, as both chapter four and five demonstrated, it was possible for individuals in Restoration England to both be accepted members of a community and still find their banishment from Church discomfiting. Thus, however we decide to explain society's apparent willingness to interact with excommunicates, we should be careful not to conflate the attitudes of the non-excommunicated majority with the experiences of individual excommunicates. Rather, when confronted with the enigmatic excommunicates of early modern England, future historians should be

sensitive to the full range of responses the Church's most severe punishment was capable of eliciting.

The previous chapters have not been limited to exploring those disciplined by the church courts; they have also sought to shed more light on those responsible for the administration of these tribunals. Chapter one accordingly asked why these courts had been restored in the first place. While previous scholarship has suggested that their resurrection was a by-product of the conservative sentiments guiding those episcopalian royalists in charge of the Church's reconstruction following the failure of the Worcester House Declaration, it argued that episcopalians and presbyterians alike were deeply sceptical about the prospect of reviving the antebellum system of ecclesiastical discipline. In particular, both agreed that it would be a mistake to let the Church's jurisdiction fall once more into the hands of the country's civil lawyers and the lesser lay officials who had staffed the ecclesiastical courts prior to the Civil War. However, as we have seen, the consensus about the need to replace the courts' lay officials with a more clerically oriented discipline only went so far and was unable to transcend broader episcopalian and presbyterian disagreements surrounding the government of the Restoration Church. As a result, the spring and summer of 1661 saw episcopalian clergymen detaching themselves from questions of jurisdictional reform, not because they were nostalgic about the pre-Civil War courts, but because it threatened to push their Church in an unduly presbyterian direction. In so doing, however, they allowed a small group of civil lawyers, eager to return their profession to its former stature within the Church, to grab the initiative in the debates surrounding the restoration of the church courts. And, although they were unable to secure the return of both the High Commission and *Ex Officio* oaths, they were remarkably successful in ensuring the survival of the old ecclesiastical jurisdiction as well as their positions within it.

The revival of the church courts was thus significantly influenced by resourceful civil lawyers exploiting the clergy's deadlock in questions of disciplinary reform. Chapter two considered in more detail the management of these tribunals once they were up and running again. What emerged was an intricate bureaucracy controlled by the civil lawyers (in their capacities both as diocesan chancellors and ecclesiastical lawyers), the proctors, the registrars and, to a lesser extent, the apparitors. Their role was not merely executive, however. On the contrary, these officials frequently extended beyond the mere implementation of policy into the realms of decision making. Far from figures who followed the clergy's directives, it was they who decided whether or not someone was to be censured or absolved. As such, the bureaucrats and lawyers staffing England's ecclesiastical courts raise important questions about the nature of early modern governance. In particular, they remind us that local office-holding was not the exclusive

domain of unpaid amateurs principally concerned with the preservation of local harmony, but also involved salaried, educated professionals for whom bureaucratic processes and financial gain regularly trumped the maintenance of good neighbourliness. We should, therefore, perhaps not overstate the degree to which early modern governance was reliant upon voluntary, unpaid officials, and recognise that this ‘unacknowledged republic’ existed alongside the presence of more bureaucratic methods of administration.⁴

The clergy’s apprehensions about reinstating the courts’ lay officials were thus warranted. A situation soon emerged where clergymen from all ranks of the restored ecclesiastical hierarchy complained about being excluded from the Church’s disciplinary concerns by men without clerical training. As chapter three demonstrated, however, they responded to this problematic state of affairs by proactively propagating a more spiritual, pastorally guided disciplinary ideal. In so doing, they turned overwhelmingly to the blueprint developed by St. Paul, which highlighted the importance of applying a carefully managed process of admonition before proceeding to more severe sanctions. This was not the only disciplinary guide available to Restoration ministers eager to tackle heterodoxy, occasional conformity and immorality, and, as Mark Goldie has showed, they also drew significantly from Augustine’s theory of religious intolerance to combat these threats.⁵ Yet, with regard to questions relating specifically to the administration of the Church’s courts, the apostle’s lessons were uniquely appealing because they provided a strong scriptural justification for the clergy’s supremacy in matters of spiritual discipline. As such, while Augustine’s ideology championed the alliance of the secular and ecclesiastical swords, Paul’s teachings could be utilised to criticise any secular encroachments of the Church’s disciplinary affairs, including any made by the king or the secular courts.

In practice, however, this Pauline ideology was channelled principally against the lay officials within the courts, since it was they who clergymen of both presbyterian and episcopalian persuasions perceived as the chief obstacles to a more clerically oriented discipline. Consequently, as we saw in the latter half of chapter three, the Restoration witnessed several attempts from both bishops and parish ministers to replace the methods of these officials with a notably more Pauline administration of ecclesiastical discipline. And, although most of these efforts were unable to challenge the authority of the courts, the theory and practice of the clergy’s Pauline agenda is significant because

⁴ Mark Goldie, ‘The unacknowledged republic: office-holding in early modern England’ in Tim Harris (ed.), *The politics of the excluded, 1500–1800* (Basingstoke, 2001), pp. 153–94.

⁵ Mark Goldie, ‘The theory of religious intolerance in Restoration England’ in O.P. Grell, Jonathan Israel & Nicholas Tyacke (eds.), *From persecution to toleration: the Glorious Revolution and religion in England* (Oxford, 1991), pp.331–68.

it adds important dimensions to our understanding of the Restoration Church. More specifically, while historians have tended to argue that it was either a moderate or a Laudian institution, the clergy's stance towards the courts suggests that, in disciplinary terms, the Restoration Church might be more appropriately conceptualised as Pauline in nature. Not only does this label encompass the clergy's remarkably unanimous dissatisfaction with these tribunals and accurately reflect their pastoral efforts to challenge them, but it does so without implying that they necessarily shared the same vision for how the Church should ideally be governed.

Despite the vocal criticism from both opponents of the Church and its clergy, the structure and jurisdiction of the ecclesiastical courts remained intact for the first three decades of the Restoration. As we saw in Rastrick's observations, however, serious challenges to their authority were set in motion in the late 1680s. First, in 1687, James II's Declaration of Indulgence promised unprecedented religious toleration. Then, two years later, the Act of Toleration, while in some ways a less radical measure, reaffirmed the liberty of worship for all Protestant dissenters.⁶ Although neither of these two acts technically deprived the church courts of their authority, both explicitly ordered that these tribunals could no longer prosecute individuals because of their nonconformity to the Church of England. The threat of noncompliance with the Church's canons was thus reduced significantly.

At least that was the impression of the country's churchwardens who, in the early 1690s, responded to the enactment of toleration by drastically increasing the volume of 'omnia bene' ('all is well') reports to both archidiaconal and episcopal visitations.⁷ For instance, while the deanery of Holderness presented 165 individuals to the East Riding archdeacons court in 1665, and 124 in 1674, the number fell to 29 in 1691. Buckrose deanery reported 317 to the same tribunal in 1670, but only 12 in 1691.⁸ Tina Isaacs has similarly noted that 'practically every one of the thousands of churchwardens' presentments from the London parishes between 1690 and 1740 contained two words –

⁶ Andrew Browning (ed.), *English Historical Documents, 1660–1714* (London, 1953), pp. 400–3. For a more in-depth comparison between James' Indulgence and the Toleration Act, see Scott Sowerby, *Making toleration: the Repealers and the Glorious Revolution* (Cambridge, MA, 2013), pp. 250–3.

⁷ R.B. Outhwaite, *The rise and fall of the English ecclesiastical courts, 1500–1860* (Cambridge, 2007), p. 83.

⁸ Barry Till, 'The ecclesiastical courts of York, 1660–1883: a study in decline' (unpublished PhD thesis, University of York, 1963), p. 103. See also, Michael Smith, 'A study of the administration of the diocese of Exeter during the Episcopate of Sir Jonathan Trelawny, bart., 1689–1707', (unpublished B.D thesis, University of Oxford, 1978), p. 75.

omnia bene.⁹ This significantly decreased the number of prosecutions against religious offences brought to the church courts. As Barry Till has demonstrated, ‘the charge of not attending or receiving the sacrament...died out with the toleration legislation.’¹⁰ It is with some justification, therefore, that Martin Ingram has written that James II’s Indulgence and the Toleration Act collectively ‘were to prove well-nigh mortal blows for the disciplinary work of the church courts.’¹¹

The Toleration Act did not, however, diminish the importance of spiritual and moral reformation in English ecclesiastical politics. On the contrary, as Faramerz Dabhoiwala writes, the Revolution of 1688 was interpreted by many as ‘God’s way of giving England one last chance to reject sin, irreligion...or else suffer his violent wrath.’¹² But, whereas the church courts had previously provided the principal platform to resolve such matters, the 1690s saw the country’s moral and spiritual wellbeing fall increasingly into the hands of a number of voluntary religious societies, such as the Society for the Reformation of Manners, formed in 1691 by a group of Westminster laymen. These societies carried out a number of educational and philanthropic activities, but they also relied on a network of informants to detect irreligious and immoral transgressors.¹³ Unlike the churchwardens and apparitors, however, these informants reported such individuals to the secular and not the ecclesiastical authorities.¹⁴ Yet, even though these societies effectively functioned as competitors to the established ecclesiastical jurisdiction, they did not stand in opposition to the Church of England. In fact, as Tina Isaacs has shown, many of them, including the Society for the Reformation of Manners, were initially conceived as Anglican organisations, and their work received significant support from both regular clergymen and many bishops.¹⁵

To a certain extent, the readiness of many clergymen to collaborate with the societies reflected the Church’s concern after the Toleration Act to replace earlier tactics of coercion with a more benevolent, educational strategy.¹⁶ However, this thesis has

⁹ Tina Isaacs, ‘The Anglican hierarchy and the reformation of manners, 1688–1738’, *Journal of Ecclesiastical History*, vol. 33 (1982), p. 392.

¹⁰ Till, ‘The ecclesiastical courts’, p. 109.

¹¹ Martin Ingram, *Church courts, sex and marriage in England, 1570–1640* (Cambridge, 1988), pp. 373–4.

¹² Faramerz Dabhoiwala, ‘Sex and societies for moral reform, 1688–1700’, *Journal of British Studies*, vol. 46 (2007), p. 291.

¹³ Isaacs, ‘The Anglican hierarchy’, p. 394.

¹⁴ Dabhoiwala has showed that between 1700 and 1710, ‘well over a thousand prosecutions of sexual offences were brought by the societies almost every year’ to the secular courts. Dabhoiwala, ‘Sex and societies’, p. 310.

¹⁵ Isaacs, ‘The Anglican hierarchy’, p. 399.

¹⁶ See, for instance, Jeremy Gregory, ‘The eighteenth-century Reformation: the pastoral task of Anglican clergy after 1689’, in John Walsh, Colin Haydon & Stephen Taylor, *The Church of England, c. 1689– c. 1833: from toleration to tractarianism* (Cambridge, 1993), pp. 67–85.

suggested that their willingness to co-operate with these extra-institutional groups, whose disciplinary activities undoubtedly undermined the strength of the Church's jurisdiction, was not merely a pragmatic response to the new ecclesio-political realities of the 1690s. It also reflected the clergy's deep-rooted dissatisfaction with their Church's own courts, and a desire to pursue a strategy that might provide clergymen with a greater degree of influence in the country's disciplinary affairs.

The clergy's support for the voluntary societies should not, however, be exaggerated. As many societies began incorporating dissenters in the later 1690s, clerical enthusiasm for partaking in their activities waned considerably.¹⁷ Conservative High Churchmen, who insisted on the Church's divine authority in disciplinary matters, became especially critical of these 'troublesome wasps, that erect themselves into illegal inquisitions', as the Southwark chaplain, Henry Sacheverell, put it in 1709.¹⁸ The early eighteenth century accordingly witnessed further efforts to reform the Church's jurisdiction. In 1705, 1710, 1713 and 1715, Convocation met to discuss the 'dilatatory and expensive methods of [the church courts'] proceedings.' Then, in 1733, Parliament put forward several suggestions for 'better regulating the proceedings of the ecclesiastical courts.' These once more included plans to limit the prerogatives of the court officials, and a proposal first raised in the Parliament of 1668 to limit excommunication to only the most serious offences by introducing a new sentence of contumacy that could more effectively punish those not attending court.¹⁹ However, none of these attempts were successful. Yet, their failure was not the result of any notable support for the church courts from either MPs or clergymen. On the contrary, as the Bishop of London, Edmund Gibson, observed in his account of the 1733 bill, only 'the officers of the Ecclesiastical Courts judged it most convenient that things should remain as they are.'²⁰ Like previous attempts made in the sixteenth and seventeenth centuries, the failure to reform the Church's jurisdiction was rather caused by an inability to agree on how to proceed following such reforms. As Stephen Taylor has written, even though all 'participants agreed about the need to overhaul the ecclesiastical courts, they found it much more difficult to reach a consensus about what reforms were needed.'²¹ Much to the chagrin

¹⁷ For more about the Church's gradual turning away from the voluntary societies, see Ralph Stephens, 'Anglican responses to the Toleration Act, 1689–1714', (Unpublished PhD thesis, Cambridge University, 2015), pp. 86–90.

¹⁸ Henry Sacheverell, *The communication of sin: a sermon preach'd at the Assizes held at Darby* (London, 1709), p. 10.

¹⁹ Stephen Taylor, 'Whigs, Tories and anticlericalism: ecclesiastical courts legislation in 1733', *Parliamentary History*, vol. 19 (2000), pp. 329–55.

²⁰ Edmund Gibson, *An account of the bill lately depending in Parliament, for the better regulating proceedings in the ecclesiastical courts* (London, 1733), p. 3.

²¹ Taylor, 'Whigs, tories and anticlericalism', pp. 345, 354.

of clergymen such as Gibson, the lawyers and bureaucrats staffing the church courts were thus allowed to continue in their practice.²²

Although the enactment of toleration did cause a significant reduction in the number of prosecutions, historians such as W.M. Jacob, Mary Kinnear and Polly Morris have argued that the courts continued to play an important role in matters of morality, sexuality and slander in many parts of the country.²³ There is, furthermore, evidence to suggest that some parishioners continued to take excommunication seriously in the eighteenth and early nineteenth century, though this is an area that requires more research.²⁴ Nevertheless, for a variety of complex reasons, the eighteenth century witnessed a steady decline in all aspects of the church courts' business. According to Outhwaite, urbanisation and shifting social attitudes towards moral and sexual misconduct played an important part in this process, as did several secular encroachments on such matters.²⁵ Thus, by the late 1770s, several courts had stopped handling religious, moral and sexual cases altogether.²⁶ The church courts also lost their monopoly on tithe disputes following a Parliamentary act from 1696 that permitted JPs and the secular courts to handle such cases.²⁷ Defamation suits were heard relatively frequently in the first three quarters of the eighteenth century, but these too were heavily reduced when a Parliamentary statute from 1787 made it illegal to commence suits in the ecclesiastical courts if more than six months had passed since the offence had been originally committed.²⁸ The full extent of this decline was displayed by the Royal Commission on Ecclesiastical Courts in the 1830s. Not only did this reveal that less than 50 correction cases and only 100 defamation suits had been heard across all English dioceses between 1827 and 1829; it also showed that several tribunals had stopped functioning altogether.²⁹ And although the two provincial courts continued to process marriage and testamentary matters until the late 1850s, when a new Court of Probate was created, it was clear that by the early nineteenth century the English church courts had faded into obscurity.

²² For Gibson's critique of the diocesan chancellors, and suggestions for how to limit them, see *Codex juris ecclesiastici Anglicani*, vol. 2 (London, 1713), pp. xxiii–xxvii.

²³ W.M. Jacob, *Lay people and religion in the early eighteenth century* (Cambridge, 1996), pp. 136–140; Mary Kinnear, 'The correction court in the diocese of Carlisle, 1704–1756', *Church History*, vol. 59 (1990), pp. 191–206; Polly Morris, 'Defamation and sexual reputation in Somerset, 1733–1850' (unpublished PhD thesis, University of Warwick, 1985).

²⁴ Jacob, *Lay people and religion*, pp. 149–51.

²⁵ Outhwaite, *The rise and fall*, pp. 95–6.

²⁶ See, for instance, R.P. Ruddock, "'The eye of the bishop": Nottingham causes in the archdeacon's court, 1760–1795, a study in decline' (unpublished MA thesis, University of Nottingham, 1997), p. 95.

²⁷ Outhwaite, *The rise and fall*, pp. 87–8; Till, 'The ecclesiastical courts', p. 67.

²⁸ Outhwaite, p. 84.

²⁹ *Ibid.*, pp. 84, 94, 98.

The restoration of the church courts in the summer of 1661 has often been construed as the catalyst for the downfall of England's ecclesiastical jurisdiction. Above all, scholars have suggested that the continuing proliferation of religious pluralism constituted an insurmountable obstacle, especially since the church courts could no longer be aided by the High Commission or inquisitorial oaths. Spurr, for instance, has written that, after 1660, the history of the church courts was one 'of shrinking business and declining authority.'³⁰ Barry Till's thesis, which covered the years 1660 to 1883, was similarly 'a study in decline.'³¹ Yet, arguably the real cause of decline came with the royal and parliamentary decrees for religious toleration in the late 1680s. For, while the restored church courts might not have been as forceful as their antebellum predecessors, the previous chapters have nevertheless showed that they were capable of seriously affecting the lives of even committed dissenters in the three decades after 1660. Crucially, however, the central contention of this thesis has not been to suggest that the church courts in Restoration England were more or less successful than either their predecessors or successors. Indeed, it has consciously sought to escape the efficiency-based investigative premise that has guided much of the previous scholarship on the ecclesiastical courts. Its principal argument has instead been that, if we inspect them through a set of different lenses, the English church courts can teach us about much more than fluctuating levels of prosecution and significantly illuminate broader historiographical discussions concerning the English Church, religious toleration, and the nature of early modern governance. Future scholars should consequently approach the early modern church courts with a sense of optimism about what else might lie veiled behind the 'repulsive' records produced by these tribunals.

³⁰ John Spurr, *The Restoration Church of England, 1646–1689* (London, 1991), p. 209.

³¹ Till, 'The ecclesiastical courts', front cover.

Appendix A:

Chronological bibliography of published visitation sermons, 1660–1689

- Strode, William, *A sermon preached at a visitation anno 1633* (London, 1660)
- Hansley, John, *A visitation speech delivered at Colchester in Essex* (London, 1662)
- Reynolds, Edward, *The pastoral office opened in a visitation-sermon preached at Ipswich* (London, 1662)
- Sherley, William, *The excellencie of the order of the Church of England: set forth in a sermon at the visitation at Blandford, Anno 1640* (London, 1662)
- Bird, John, *The divine and spiritual ambassadour described in a sermon preached at the visitation at Alisbury* (London, 1663)
- Boreman, Robert, *The pattern of Christianity: or the picture of a true Christian. presented at Northampton in a visitation sermon* (London, 1663)
- Bradley, Thomas, *The dignitie and dutie of ministers of Christ set forth in a sermon preached by the appointment of the most Reverent Father in God, Accepted by the providence of God, Lord Arch-Bishop of York* (York, 1663)
- Bradley, Thomas, *A sermon ad clerum: at the visitation by the Lord Arch-Bishop of York* (York, 1663)
- Hinde, Samuel, *England's prospective-glasse: a sermon at a metropolitical visitation* (London, 1663)
- King, Henry, *A sermon preached at Lewis in the dioces of Chichester by the Lord Bp. Of Chichester, at his visitation held there, Octob. 8, 1662* (London, 1663)
- Stileman, John, *Kalos proestotes, or a view of church-government* (London, 1663)
- Towers, William, *A sermon preached at the visitation of the right worshipfull Dr. Luddington, the reverend arch-deacon of Stowe, in the Church of S. Paul in Lincoln upon the 28 of April, 1663* (London, 1663)
- Wettenhall, Edward, *A sermon against neutrality: preached at the visitation of the Arch-Deacon of Exon* (London, 1663)
- Howe, Obadiah, *Basilidi doron, or, the royal present: as it was delivered in a sermon at the arch-diaconal visitation* (London, 1664)
- Connant, Malachi, *Urim and Thummim, or, the clergies dignity and duty in a visitation sermon preached at Lewes* (London, 1669)
- Sherlock, Richard, *A sermon preached at a visitation, held at Warrington in Lancashire May 11. 1669* (London, 1669)
- Sparrow, Anthony, *The Bishop of Exon's caution to his diocese, delivered in a sermon* (London, 1669)

- Bassett, William, *Corporal worship discuss'd and defended: in a sermon preached at the visitation in Southwark* (London, 1670)
- Sanderson, Robert, *Ad clerum. A sermon preached at a visitation holden at Grantham in the county and diocess of Lincolne* (London, 1670)
- Duncumb, Thomas, *The great efficacy and necessity of good example especially in the clergy recommended in a visitation sermon preached at Guilford* (London, 1671)
- Fuller, Ignatius, *Peace and holiness: in three sermons upon several occasions* (London, 1672)
- Gardner, Samuel, *A sermon preached at the visitation held at High Wickman* (London, 1672)
- Lodington, Thomas, *The honour of the clergy vindicated from the contempt of the laity: in a sermon preached at the arch-deacon's visitation* (London, 1672)
- Bushell, Seth, *A warning piece of the unruly; in two discourses, at the metropolitcal visitation of Richard, Lord Archbishop of York* (London, 1673)
- Gregory, Francis, *Concilio ad clerum, or a visitation sermon preached at Great Wycomb* (London, 1673)
- Neville, Robert, *An English Inquisition for a heretick: or, the punishment due to hereticks, declared in a sermon preached at a Visitation at Ware* (London, 1673)
- Gould, William, *Conformity according to canon justified, and the new way of moderation reprov'd a sermon preached at Exon, at the visitation of the Right Reverend Father in God, Anthony, by Divine permission Lord Bishop of Exon* (London, 1674)
- Jackson, William, *Of the rule of Faith: a Sermon at the visitation of the Lord Bishop of Lincoln* (London, 1674)
- Prince, John, *A sermon preached at Exon at the visitation of the Lord Bishop of Exon* (London, 1674)
- Ward, Hamnet, *A sermon preach't at the primary visitation of the Lord Bishop of Bristol* (London, 1674)
- Bonham, Joshua, *A new constellation: discovered in a sermon preached at the visitation held at Leicester* (London, 1675)
- Howell, William, *A sermon preached at the first visitation of the Lord Bishop of Chichester* (London, 1676)
- Parker, Timothy, *A sermon preached before the Bishop of Chichester* (London, 1676)
- Rossington, James, *A sermon preached at the visitation in Honiton in Devon* (London, 1676)
- Templer, John, *The reason of episcopall inspection asserted in a sermon at a visitation in Cambridge* (London, 1676)

- Aderne, James, *A sermon preached at the visitation of John, Lord Bishop of Chester* (London, 1677)
- Goodman, John, *A sermon preached at Bishops-Stortford, August 29, 1677 before the Right Reverend Father in God Henry Lord Bishop of London &c at His Lordship's primary visitation* (London, 1677)
- James, John, *Ad clerum: a visitation sermon preached at Beckonsfield in the county of Bucks* (London, 1678)
- Tenison, Richard, *A sermon preached at the primary visitation of the Lord Arch-Bishop of Armagh* (Dublin, 1679)
- Hollingworth, Richard, *An account of the spirits working upon the minds of men in several ages in a visitation sermon before Henry, Lord Bishop of London* (London, 1680)
- Browne, Philip, *The sovereign's authority, and the subjects duty: plainly represented in a sermon preached at the visitation in the parish-church of Halstead* (London, 1681)
- Elston, John, *A sermon preached at the visitation of Thomas, Lord Bishop of Exon* (London, 1681)
- Allington, Joseph, *The reform'd Samaritan, or, the worship of God by the measures of spirit and truth preached for a visitation-sermon at the convention of the clergy* (London, 1682)
- Foley, Samuel, *Two sermons...the other, preached at the primary visitation of the Arch-Bishop of Dublin* (London, 1682)
- Fyler, Samuel, *A sermon preach'd at the triennial visitation of the Lord Bishop of Sarum* (London, 1682)
- Barrow, John, *A sermon preached at the triennial visitation of the Bishop of Sarum* (London, 1683)
- Roderick, Richard, *A sermon preached at the Lord Bishop of Bristol's visitation* (London, 1683)
- Kettlewell, John, *Discourse on nature of edification: in a visitation sermon at Coventry* (London, 1684)
- Lowde, James, *The reasonableness of the Christian religion: a sermon preached at the visitation of the arch-deacon of Cleveland* (London, 1684)
- Wooley, Charles, *The decency and order of the Church, as now established, asserted in a late visitation sermon* (London, 1684)
- Adee, Nicholas, *A plot for a crown in a visitation-sermon* (London, 1685)
- Gaskarth, James, *A sermon preached before the Lord Bishop of Bristol, at his primary visitation in Bristol* (London, 1685)
- Kettlewell, John, *The religious loyalist: a visitation-sermon preached at Coles-Hill* (London, 1685)

Batt, Michael, *A sermon preached at Bury St. Edmunds before the Right Reverend Father in God, William, Lord Bishop of Norwich, at the third session of His Lordship's primary visitation* (London, 1686)

Bisbie, Nathaniel, *The bishop visiting, or, a sermon preached before the Bishop of Norwich* (London, 1686)

Clagett, Nicholas, *A sermon preached before the Bishop of Norwich: at the second session of his Lordships primary visitation* (London, 1686)

Crispe, Samuel, *A sermon preached at the primary visitation of the Bishop of Norwich* (London, 1686)

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MS. 954 (absolution of Samuel Washborow, April 1664)

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- SP 29/175 (letter from Christopher Sanderson to secretary Williamson discussing the ecclesiastical court in Richmond, 1666)
- SP 29/237 (letter from George Evans to secretary Williamson concerning the imprisonment of an excommunicated Quaker, 1668)
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- SP 29/307 (account of Thomas Gower, imprisoned three years for an *de excommunicato capiendo* writ, and an Order in Council stating that those in jail because of *de excommunicato* writs will have to remain until the aggrieved party is satisfied, 1672)
- SP 29/310 (account of proceedings against Brome Whorwood asking for King to intervene against the ecclesiastical court, 1672)
- SP 29/314 (letter from Edward Lake to secretary Williamson concerning proceedings in Lincoln's consistory court, 1672)
- SP 29/317 (petition from excommunicated prisoners to annul their *de excommunicato capiendo* writs, 1672)
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- SP 29/375 (letter from Thomas Crostwaith to secretary Williamson detailing excommunication of Sir John Reed, 1675)

- SP 29/376 (account by Samuel Crossman, prebendary of Bristol Cathedral, detailing continual harassment by the Bishop of Bristol, 1677)
- SP 29/408 (letter from the Earl of Anglesey to Dr. Robert Pepper, chancellor of Norwich, to lift the excommunication of a dissenting tradesman, 1678)
- SP 29/414 (letter from Thomas Martin to Sir William Dolben detailing Martin's hunt for excommunicated prisoners, 1680)
- SP 29/416 (letter from Dennis Grenville to Sir Leoline Jenkins about the treatment of clergymen in church courts, 1681)
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- SP 29/421 (letter from James John to the King concerning the release of excommunicated prisoners in the early 1660s, 1682)
- SP 29/431 (letter from Thomas Bartlett to the Bishop of Chichester discussing abuses in his local ecclesiastical court, September 1683)
- SP 29/442 (statement by Mr. Newcourt about the way in which excommunicated dissenters may be alleviated by the common law courts, 1683)
- SP 29/443 (petition to the King concerning the neglect of sheriffs in executing *de excommunicato capiendo* writs, no date)
- SP 31/3 (letter from the Bishop of Bristol to the Earl of Sunderland concerning the acquittal of excommunicated Catholics, 1686)
- SP 44/47 (letter from the King to Lord Hutton, Governor of Guernsey, ordering the local civil courts to aid the ecclesiastical courts, 1677)
- SP 44/62 (letter from secretary Jenkins to Archdeacon Grenville commending him for his actions in the ecclesiastical courts, 1681)
- SP 44/71 (letters and warrants concerning excommunicated prisoners, 1686)
- SP 44/336 (pardon of an excommunicated Quaker, 1686)
- SP 44/337 (pardon of excommunicated Ralph Ward, 1686)
- SP 63/334 (letter detailing how William Martin was sent to prison after a *de excommunicato capiendo* writ, 1673)

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