REDEFINING BENEFIT OF CLERGY DURING THE ENGLISH REFORMATION: ROYAL PREROGATIVE, MERCY, AND THE STATE

by

Lesley Skousen

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Lesley Skousen
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A Note on Modernization

For this project, I have retained the Old Style of dates, beginning each year on January 1 instead of March 25. I have tried to preserve the original authors' spelling and punctuation, but when that seriously interrupted a reader's ability to understand the language, I have modernized their prose.

MA Thesis
Chapter One: Introduction

An Auncient Liberty of the Church: Benefit of Clergy in English History

> Clergie is an auncient liberty of the church, which hath bene confirmed by diuers parlaments, and is, when a priest, or one within orders, is arraigned of felony, before a secular iudge, he may pray his clergie…Howbeit there [have] be[en] many statutes made…whereby the benefite of clergy is abridged… The auncient course of the law in this point of clergy is much altered…Clerks be no more delivered to their ordinaries to be purged, but now Every Man, though not within orders, is put to reade at the barre, being founde guilty, and convicted of such felonie as this benefit is still granted for; and so burnt in the hand and set free for the first time.
>
> – John Cowell, *The Interpreter* (1607), under "Clergie"

Benefit of clergy was a prominent feature of England's legal system from the High Middle Ages until the reign of George III. Originally a privilege for the ordained members of the Church that commuted their sentences to the ecclesiastical jurisdiction, benefit of clergy became part of local custom and England's Common Law, gradually applicable to members of the laity in addition to the clergy.[1] Piecemeal tradition originating in localities meant that benefit of clergy claims followed different processes in specific regions, and left questions of jurisdiction and authority ambiguous. As a result, lay criminals came to "abuse" the system, but frequently their alleged abuse was fully within the letter of the law, if not the spirit. The uncertain clerical status of claimants affected the benefit's regional enforcement, which was sporadic, uneven, and subject to local convention. Parliament, Convocation, and councils in Rome attempted to pass legislation in response to the irregular enforcement, but with each altering solution came a new set of problems. By the time John Cowell wrote the description above, the status of clerical ordination had become irrelevant to the claimants. A

[1] Laity could claim the privilege if they were literate, were dressed as priests, or could recite from memory the *Miserere*, or Psalm 51. *Oxford Study Bible, The*, Revised English Edition with the Apocrypha. Ed. M. Jack Suggs, et al. New York: Oxford University Press, 1992.

successful claim did not reflect the clerical status of the criminal in the seventeenth century. As Cowell points out in his brief definition, what began as a privilege for the clergy was later "abridged" in England to encompass laymen accused of felony. Exceptions included the illiterate, immigrant subjects, and women. Women were allowed the privilege in cases of petty theft in 1624, but could not claim the immunity fully until 1691.[2] Specifics about the crime committed could also preclude the possibility of claiming clergy, as Parliament began marking particularly serious or threatening crimes as "unclergyable."[3] The benefit of clergy John Cowell described in 1607, therefore, was a mutilated, complicated, legal curiosity.

The transformation of benefit of clergy from a purely clerical protection into a potential option for almost any lay criminal was long and complicated. At times, Parliament could have abolished benefit of clergy via statute, or the king could have challenged its applicability in his jurisdiction, but instead they saved, altered and enforced the benefit as necessary. Benefit of clergy became a fixture in English legal history, surviving the fate of other clerical privileges such as sanctuary and abjuration.[4] Parliament's decision to alter the immunity suggested that secular legislators had jurisdiction over it and therefore clergy were subjects to parliamentary statute, rather than fully exempt from it due to papal intervention. Furthermore, the presence of the liberty lent England a sense of shared, culturally-pervasive mercy. By depicting the benefit in such a way, Reformation pamphleteers were able to use benefit of clergy in the debate in the 1530s regarding England as an autonomous nation independent from the Pope's control.

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[2] See 21 James I c 6 and 4 William and Mary c 9 in *Statutes of the Realm*; See also Krista Kesselring, *Mercy and Authority in Tudor England*, Cambridge University Press: 2003, p. 212-14

[3] For example, those convicted of treason (12 Henry VII c 7), horse theft (37 Henry VIII c 8), piracy (27 Henry VIII c 4), buggery (25 Henry VIII c 6), and many other specific "heinous" crimes were denied the possibility of claiming their clergy.

[4] Kesselring, p. 46

In 1540, Parliament enacted legislation that confirmed the king's power to alter benefit of clergy via royal proclamation.[5] At the next session, two years later, Parliament passed a bill that denied the possibility of clergy to all practitioners of witchcraft and sorcery.[6] These statutes are remarkable purely because they show that far from abolishing the clerical privilege during the Reformation, Parliament was interested in continuing to exert control over that particular liberty even as it diminished the number of people who could claim it. Instead of abolition, Parliament subjected the exemption to a number of alterations that ultimately put the authority of this mercy within the king's power, and their own. Like confiscating the monasteries and arrogating to the Crown the pope's power as Head of the English Church, Henry VIII and his advisors effectively took complete ownership of a legal tradition with strong ecclesiastical ties.

Most historians of British history are familiar with benefit of clergy, and the topic is popular enough to receive an indexical entry in most books on sixteenth-century England.[7] Its passing reference in so many works of history would give the impression to the student of early modern England that benefit of clergy has received a great deal of attention. However, the references to this legal loophole are usually brief. There are only three major works that have attempted to provide a history of benefit of clergy in the past century. In 1917, CB Firth wrote a history of benefit of clergy during the reign of Edward IV; in 1929, Leona Gabel revealed the developments of benefit of clergy in the Middle Ages; and in 1986, JG Bellamy wrote an extensive chapter tracing the developments of benefit of clergy during the fifteenth and sixteenth centuries. These works have left much to be desired in understanding

[5] 31 Henry VIII c 8 in *Statutes of the Realm*
[6] 33 Henry VIII c 8 in *Statutes of the Realm*
[7] See, as examples, the wide variety of topics covered by the books listed in the attached bibliography. Each book listed includes at least a single entry for "benefit of clergy" in its index.

significant aspects of why this form of mercy was not abolished as the Tudors consolidated control and centralized power. Gabel explored the significance and ambiguity of the term "clericus," which was on occasion applied to uneducated men and even women in Medieval England. Firth put benefit of clergy into a context of power between sovereign and nobles. Bellamy isolated the criminal element, and described developments of benefit of clergy in terms of criminal law. None of these works then address satisfactorily the cultural presence of this mercy, its reciprocal influence with changing religion in England, and why it may have been valuable for the English authorities to maintain this option instead of ruling with an immobile iron fist. I intend to explore these themes, and to propose exactly why benefit of clergy survived the Reformation while so many other conditions of the Church were mutated and abolished.

During the Reformation Parliament, various acts affecting benefit of clergy distinguished between coexisting two forms of the privilege: one that benefited only those who could prove their ordination; and another for laymen who could read. Henry VII had created these two versions in response to uncertainty about the liberty during the mid-fifteenth century. In chapter two, I trace the fifteenth-century chaos and struggle that led to the 1489 statute establishing two forms of the immunity. According to complaints from Parliament and Clergy alike between 1455 and 1483, undeserving laymen used a fourteenth-century loophole to claim exemption from legal penalties. By proving literacy, these alleged criminals took advantage of a statute that was supposed to ensure the protection of clergy who were arrested without any proof of ordination.[8] Concurrently, some priests lost their

[8] For the Charter, see *Records of Convocation, vol vi: Canterbury 1444-1509*, ed by Gerald Bray, pp. 113-115; for Edward's response, see "Charta Edward IV de Libertatibus clericorum" in David Wilkins. *Concilia Magnae Brittanniae et Hiberniae, a synodo verolamiensi ADCCCXLVI.*.vol iii, London, 1737, pp. 583-585

privilege and died on the scaffold due to poor education or malicious convictions based on anticlerical resentment in court officials. In an effort to find a solution to these problems, Henry VII altered the way laymen could claim benefit of clergy, and restored the full clerical privilege for those who could prove their ordination. After the creation of these two parallel forms of the exemption, Parliament was able to target one version or the other in response to specific problems of social order within the realm.[9] This occasionally caused debates between Church and State, as I relate in chapter three,[10] but it set a precedent with two key tenets: first, Parliament proved its authority to alter the lay version without negatively affecting the privileges of the clergy; and second, the king established that he, not the pope, had the power to create and redefine benefit of clergy.[11] The Reformation Parliament, which convened from 1529 to 1536, took full advantage of these conclusions and legislated to control either the lay group or the clerical group as current events warranted.

During the religious change of the 1530s, the traditional clause that ensured the clerical version remained intact – "those in Holy Orders Except[ed]"[12] – disappeared from the wording of the statutes regarding benefit of clergy. In 1532, Parliament transformed the clergy's full exemption and delivery to their local Ordinary into a commutable sentence of life imprisonment. By 1536, all further differences between the clerical and lay forms of benefit of clergy fell away with an Act of Parliament declaring that the clerical status of

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[9] For example, Parliament denied laymen who stole 40*s* from their masters the ability to claim, but continued to allow clergy to claim in such situations. See 27 Henry VIII c 17 in *Statutes of the Realm*

[10] Most famous of these was a debate at Blackfriars in 1515, which reflected some of the Hunne case in addition to issues of ecclesiastical jurisdiction. See *Caryll's Reports*, ed. by JH Baker. Selden Society, vol 115. Selden: 2003, pp. 683-695

[11] The conclusion was the result of hearings before a panel of justices at Blackfriars 1515-1517, in which a panel of judges from both ecclesiastical and temporal courts found in favor of the King. Subsequently, the clergy were asked to retract their previous assertions that the king and Parliament were acting against the law of God. See *Caryll's Reports*, , pp. 683-695

[12] For examples, see 25 Henry VIII c 6, 27 Henry VIII c 4, 27 Henry VIII c 17, and 28 Henry VIII c 1 in *Statutes of the Realm*

claimants would no longer be taken into account and that the justice system would treat all criminals as laymen and therefore brand clerks and laity alike when granting criminals their clergy.[13] I argue in chapter four that Parliament slowly prepared the way for this significant change over the course of the 1530s, and finally suspended the clerical version in 1536, until the next session. Once Parliament made the elimination permanent in 1540, the clerical status of a claimant would become irrelevant and the courts would treat all criminals as lay claimants. Although a sort of benefit of clergy survived the Reformation, it was a mere shadow of its former self. Essentially, Parliament abolished benefit of clergy during the Henrician Reformation, and promoted a limited lay version in its place.

Concurrent with the abolition of the clerical application of benefit of clergy during the 1530s, pamphleteers and propagandists found it useful to draw upon the history of benefit of clergy in order to find support for Henry's new religious policy.[14] In chapter five I explore the arguments such authors employed while I establish an historical context for their publications. By casting benefit of clergy as specific in form to England, these writers were able to put the legal exemption into a frame of nationalism that proved the superiority of the king's jurisdiction. Some writers even went so far as to argue that a secular benefit of clergy caused mercy to be an integral part of England's legal system. Benefit of clergy occurred in other areas of Christendom but the effect on other European cultures was markedly different from that in England. The pervasiveness of the privilege in English society and its

[13] 28 Henry VIII c 1 in *Statutes of the Realm*

[14] The Propaganda campaign sought to support Henry's radical religious policy. Many authors used benefit of clergy in passing, and a good number saw the exemption as important enough to dedicate whole sections or chapters of their pamphlets and books to the exploration of benefit of clergy as a measure of the king's ultimate authority in English history. See Chapter Five for more information.

applicability to those outside of the Church could be attributed to the codependence of common law and parliamentary statute in England.

Benefit of clergy ostensibly originated through the Biblical verse, "Touch not mine anointed."[15] It was more specifically constructed during the Council of Nicaea in 325, when Constantine gave all clergymen his support for the exemption based on their status by arguing that they were sent to Earth to judge men, and could not be judged themselves by mankind.[16] After Nicaea, leaders such as the Byzantine ruler Justinian adhered to the idea that the clergy could not be held subject to lay courts.[17] The practice of allowing clergy their own courts and punishments spread throughout Christendom during the Middle Ages, although particular leaders, such as Charlemagne, occasionally forbade the clerical immunity within their regions. Benefit of clergy was a part of the religious experience throughout Europe, but each location set up a process for claiming the benefit particular to that community; despite papal decrees and interventions, there was no uniform "benefit of clergy" that any centralized authority enforced.

As a result, benefit of clergy had different meanings in Germany, Italy, Spain, and France during the High Middle Ages. In many European communities, the populace resented the ordained criminals' escape from justice, while assuming that the lay criminals of the later Middle Ages were "rogues" who "eagerly availed themselves of the conflict between the secular and ecclesiastical courts to escape altogether the penalty of their crimes."[18] Local attitudes concerning the privilege meant that the enforcement and structure of benefit of clergy varied from region to region. For example, Louis of Bavaria responded supportively

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[15] See Psalms 105:15 and 1 Chronicles 16:22 *The Oxford Study Bible*
[16] Lea, Charles. *Studies in Church History*, (1883), p. 172
[17] SP Scott, "The Enactments of Justinian: The Novels" in *The Civil Law,* XVI. Cincinnati: 1932.
[18] Lea, p. 197

to the 1359 clerical complaints that secular officials had been arresting ordained men; he punished those officials with the forfeit of their possessions and subjected them to further ecclesiastical prosecution.[19] Interestingly, both Marsilius of Padua and William of Ockham, whose respective works *Defensor Pacis* and *A Dialogue Betwene a Knight and a Clerke* would be reprinted during the 1530s for their pertinent opinions on jurisdiction, ecclesiastical authority, and benefit of clergy, found refuge in the court of Louis of Bavaria.[20] Alternatively, in Italy, the Signors of Milan Lucchino Visconti and Gian-Galeazzo Visconti both denied priests their right, the former by asserting that statutes applied to all within his realm in 1346, and the latter by decreeing every subject, regardless of clerical status, was subject to local courts in 1388.[21] Officials in Spain forcibly degraded their criminous clerks from the Church throughout the thirteenth century, but fell in line with the desires of the clergy during the fourteenth century and afterwards became very supportive of the clerical immunity.[22]

The Medieval French treatment of this contentious privilege included instances of royal defiance followed by centuries of support for the privilege. In 1204 Phillip II attempted unsuccessfully to force clergy to degrade their offending members and submit those criminals after degradation to the secular courts. Louis IX, Phillippe-le-Hardi, and Phillippe-le-Bel all attempted to curb those special privileges afforded to the clergy during the

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[19] Lea, p. 191
[20] Marsilius of Padua, *The defence of peace: lately translated out of laten in to englysshe. with the kynges moste gracyous priuilege* (1535). The translator, William Marshall, changed the document as he put it into English. William of Ockham, *A Dialogue Between a Knyght and a Clerke*. See also Shelley Lockwood, "Marsilius of Padua and the Case for the Royal Ecclesiastical Supremacy" in *Transactions of the Royal Historical Society* 6th Series, Vol 1 (1991), pp 89-119; I explore this further in Chapter Five
[21] Lea, p. 193
[22] Lea, pp. 194-5

thirteenth century.[23] Perhaps in response, Boniface VIII tried to isolate the regional problems that benefit of clergy caused with his *Liber Sextus* in 1298, which applied to England, France and the rest of Christendom uniformly. However, the document was unable to create one legal process for all the European systems through which clerks could be exempt from punishment. By the fifteenth century, the French kings supported the clerical liberty and sought to combat the problem of secular officials who arrested clerks and denied them access to the ecclesiastical immunity.

The case within England was similar to that of France during the Middle Ages. Benefit of clergy played a role in the infamous clash between Henry II and Thomas Becket in 1164 concerning the Constitutions of Clarendon. One of the primary tenets of this document was to restrict the ability of those in orders to plead their clergy.[24] Becket argued against this vigorously, accusing the secular courts of being incapable to judge a religious man properly, and decrying the very act of a clerk submitting himself to the secular courts as degrading.[25] After Becket's assassination, Henry II was forced to recant the declarations of this document, an act that marked the end of royal challenges to benefit of clergy for some centuries. After the Becket incident, JH Baker asserts, "benefit of clergy was made secure as a complete immunity from secular jurisdiction in criminal cases, saving only the power of the secular arm to arrest and detain the clerk until he was claimed" by the Ordinary.[26] Like the attempts in France, Henry's desire to circumvent the privilege failed, and successive kings of England supported the clerical right until the Tudor period.

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[23] Lea, pp. 197-207
[24] See the Constitutions of Clarendon in Albert Beebe White and Wallace Notestein, eds., *Source Problems in English History* (New York: Harper and Brothers, 1915), especially tenets one and three.
[25] Leona Gabel, *Benefit of Clergy in England in the Later Middle Ages*. Smith College Studies in History, vol. XIV. Massachusetts: 1929, p. 26.
[26] J.H. Baker. *An Introduction to English Legal History*. London: 1971, p. 281; Gabel, p. 27.

This is not to say that benefit of clergy remained static in Medieval England. Edward III altered the immunity significantly in 1351, when Parliament passed an act granting the exemption to any literate Englishman.[27] The reasoning behind this statute concerned the prevention of detainment and trial of clergy who did not have their ordination papers or other proofs of holy status readily available upon investigation.[28] The test of literacy would theoretically protect those who had indeed gone through clerical training, and were thus able to read, while extending the protection to the very few literate laymen not in orders. As most educated men outside of the Church in the fourteenth century were of the upper echelons of society,[29] Parliament and those at Court supported Edward III's measure extending benefit of clergy to all literate Englishmen.

Following the 1351 statute, England's criminal justice system experienced a rise in educated criminals, who learned to read before embarking on a life of crime in order to escape punishment if captured. Benefit of clergy in the fifteenth century became correspondingly disorganized, as more laymen took advantage of the new opportunity. Convocation, Parliament, and Pope all tried to find a solution for lay overuse and allegations that clerks were being denied their right to claim and sent to the gallows, as I describe in Chapter Two. Although Edward IV granted a charter to the clergy securing their rights in 1462, and Richard III renewed it upon his succession, the charter must have been weakly enforced.[30] Only by the time Henry Tudor had taken the crown of England was a solution found: in 1489 Parliament secured the clerical privilege, but created a second, weaker form

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[27] 25 Edward III, c 2

[28] JG Bellamy, *Criminal Law and Society in Late Medieval and Early Tudor England*. St Martin's Press: 1984, p. 119

[29] Cruz, Jo Ann H Moran. "England: Education and Society" in Rigby, SH (ed), *A Companion to Britain in the later Middle Ages*. Blackwell: 2003, pp. 451-471

[30] In Chapter Two I review the evidence that the Charter had little power and no impact on the courts

for the laity. Lay criminals would be branded with an 'M' for Murderer or 'T' for Thief in order to prevent multiple claims of the exemption, while clerks could theoretically continue to claim repeatedly, since no number of crimes would impact their elite position as men of God with their own court system and punishments. Such a compromise had long-lasting ramifications and provided the groundwork through which Parliament was able to take control over the benefit as a lay privilege during the 1530s, as I discuss in Chapter Four.

When exploring the history of benefit of clergy from the chaos of the mid-fifteenth century until the abolition of the clerical version and permanent establishment of the lay version in its place during the 1536 and 1540 sessions of Parliament, there are some pitfalls to avoid. For example, there is a lack of diaries extant for parliamentary sessions during this period. While later parliaments of early modern England, particularly in Elizabeth's reign and in the seventeenth century, have left us amateur accounts of the debates, few such collections of notes exist of the parliaments in early Tudor England. Therefore, when the *Statutes of the Realm* do not provide information on the catalyst for an act, or on the intentions of the writers and sponsors, we frequently have to infer the motivations based on other sources. The letters and papers of various Tudor kings, diplomats, and courtiers only rarely shed light on particular issues. When applicable, records of Convocation, trial records, legal treatises, and Tudor historians' narratives such as that of Polydore Vergil and Edward Hall's *Chronicle* can also contribute to our understanding, but their biases must be taken into account. During the Reformation, a surge in pamphlet literature provided still more information, but each of these sources must be carefully considered, as Thomas Cromwell and other Reformation actors had political motivations for discouraging the writers from speaking plainly. The *Statutes of the Realm* often stand as our most reliable source, since the

process of passing legislation required three readings and approval in both houses. The wording of the statutes was specific and often a close reading of the Act yields more information than the pamphlets and histories of the time. However, due to the lack of extant diaries or detailed descriptions of parliamentary debates as discussed above, the authorship of any piece of legislation often remains unknown or unclear. In such cases, I have tried to include the possibilities of authorship by referring to the king's authority, through which it became law, or to specific possible authors, or to the House in which the law originated, when known.

Overtly, the importance of benefit of clergy to the Reformation was secondary. Yet its history and development reflects significant trends, events, and interactions present in England from 1455 to 1540. Ultimately the secondary nature of the importance of this pervasive legal loophole reveals much about the controversial events leading up to and during the English Reformation. The propaganda campaign of the 1530s, which Henry VIII's ministers organized in support of his radical decisions, highlighted the vitality of the ancient liberty as writers recast benefit of clergy as a layman's right. Tying it to English birth and manhood might not seem as significant a change as the confiscation of the monasteries or the Break with Rome, nor as momentous as considerations of doctrinal modifications and the influences of Continental religious thought. However, the history of benefit of clergy exemplified Church/State interaction and struggle through the Middle Ages; indeed, an example of a struggle that the king's office ostensibly "won" over the fifty years before and during the Henrician Reformation. In this way, the history of benefit of clergy, encompassing its journey from a clerical liberty to an accessible English mercy, was helpful in arguing for the superiority and authority of Henry VIII to make the radical religious policy

changes he did during the 1530s. The survival of a first-offense mercy would have centuries-long ramifications, as Parliament continued to alter and recast the privilege depending on crime waves, political changes in government, and events of national importance even tying to empire and colonization. After the Tudors successfully took ownership of the liberty, subsequent secular governments could make benefit of clergy into whatever suited their purposes.

Over the course of the sixteenth century, benefit of clergy moved from being a tool through which clergy could establish their degree of importance, difference, and superiority in opposition to the rest of society, to a tool of government to control, give mercy to, and intimidate a populace at large. As parliaments of the eighteenth century developed the "Bloody Code," they took into account the possibility of first-offense exemptions when devising the harshness of the penalties for each new crime.[31] Eventually, a criminal's plea of clergy would result in a seven- or fourteen-year transportation to the colonies, in either America or Australia, ultimately contributing to the British Empire.[32] Such major trends in later British history would not have been possible had the Reformation Parliament merely abolished benefit of clergy along with so many other specific ecclesiastical rights and privileges. Instead, Parliament made important alterations to the exemption, incorporated it into the king's authority, and established benefit of clergy as an English right. Although the statutes affecting benefit of clergy may not have impacted England as seriously as change in ecclesiastical structure or religious policy, they nevertheless contributed to discussions of English nationalism during the 1530s, impinged on the lives of the larger Tudor populace,

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[31] John Beattie, *Crime and the Courts, 1600-1800*. Princeton University Press: 1986, p. 503
[32] Roger Ekirch, *Bound for America: The Transportation of Convicts to the Colonies, 1718-1775*. Clarendon: 1987, pp. 16-17

and eventually influenced secular policy after all traces of the privilege's clerical origins had been forgotten.

MA Thesis
Chapter Two

"Clergy Shall be allowed but once…A Provision for them that be within Orders"[33]: Benefit of Clergy in Crisis and the Tudor Solution

In the mid-fifteenth century, the legal privilege benefit of clergy became the subject of intense scrutiny among the clergy, laity, and officers of secular courts. The English clergy repeatedly petitioned the king in vain to address "abuses" of the clerical privilege. They described two distinct problems: the king's courts were denying priests their benefit, in some areas habitually; and career criminals posing as clergy persistently escaped punishment and returned to their lives of crime. The kings of England had either ignored these petitions, or responded inadequately through poorly-enforced charters, in 1462 and 1483. Henry VII acted more directly. He centralized much of the control of government by observing closely matters of finance, jurisdiction, foreign policy, and religion, and this attention extended to the roles of Justices of the Peace, the criminal justice system, and benefit of clergy.[34] The resulting Act of Parliament essentially separated the ecclesiastical immunity into two forms: one for the clergy, which followed tradition and could be claimed multiple times; and one for the laity, which was available only once, and incurred a branding on the thumb to prevent additional claims. In formally separating the lay and clerical claimants, Henry's Parliament established a secular version of the holy liberty. Literate lay claimants no longer had to pretend to be verifiable clergy in order to claim immunity; instead they had their own privilege, based on their ability to read and their status as English men. This distinction

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[33] 4 Henry VII c 3, in England and Wales, *The statutes at large, in paragraphs, and sections or numbers, from Magna Charta, to the end of the session of Parliament, March 14. 1704. in the fourth year of the reign of Her Majesty Queen Anne. ... With alphabetical tables. In three volumes*, 1704, p. 313
[34] Roger Lockyer, *Henry VII*. Longman's: 1968, pp. 31, 37-38, 44-47, and 59-63

became law after Convocation requested that the king and Parliament produce a solution, and the act of asking had long-lasting ramifications for relations between Church and State. Ultimately it contributed to the conclusion that Parliament had the authority to alter and define benefit of clergy, as they sought to control lay crime and address larger clerical issues.

The disorder that Henry VII's Act would temporarily quell had been building for over a century. In 1351, Parliament had extended the clerical privilege to all who could read. The decision to extend the benefit to all literate persons was a preventive measure following years of debate between Edward III and the English clergy over how to stem the convictions of clergy in secular courts.[35] The measure allowed a clerk's education to stand in place of formal ordination papers in proving his clerical status, and thus prevented the execution clerks who could not otherwise demonstrate their eligibility.[36] The Act offered benefit of clergy to those in orders and to all literate Englishmen, most of whom were either clergy or the well-educated children of the country's social elite.[37] The Act also opened the door for criminals of any background or criminal situation to claim the immunity, as long as they had the diligence to learn to read first. Indeed, fluent literacy was not necessary; courts often chose the same passage as the reading sample, so rote learning or memorization of that one passage could function as "proof" of clerical status.[38] Successive claimants would belong to

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[35] WR Jones, "Bishops, Politics, and the Two Laws: The Gravamina of the English Clergy: 1237-1399" in *Speculum*, 1966, pp. 229-238.

[36] Gabel, *Benefit of Clergy in England in the Later Middle Ages*. The History Department of Smith College: 1929, pp. 35-6 and 25 Edward III c 4 in *Statutes of the Realm*

[37] Cruz, Jo Ann H Moran. "England: Education and Society" in Rigby, SH (ed), *A Companion to Britain in the later Middle Ages*. Blackwell: 2003, pp. 451-471; Gabel, pp. 78-80.

[38] JH Baker, *An Introduction to English Legal History*, London: 1971, pp. 281-2; Peter Heath, *English Parish Clergy on the Eve of the Reformation*, University of Toronto Press: 1969, p. 121; David Seipp, *An Index and Paraphrase of Printed Year Book Reports, 1268-1535*, www.bu.edu/law/seipp, Seipp No. 1482.157abr. For a printed copy of the same case, see Sir Anthony Fitzherbert, *La graunde abridgement collect par le iudge tresreuerend monsieur Anthony Fitzherbert, dernierment conferre auesq[ue] la copy escript, et per ceo correct: aueques le nombre del fueil, per quel facilement poies trouer les cases cy abrydges en les lyuers dans,*

a pool of eligible men made up of clergy and literate laymen. Although decisions varied in local courts, in 1482 justices agreed that one whose literacy was well-proven should be delivered to the Ordinary even if he were clearly not a clerk employed at an ecclesiastical institution.[39] Yet in the decades before and after the justices asserted such a conclusion, clergy argued that the laity should not be allowed the immunity, regardless of literacy, and described lay claimants as abusers of the system.[40] The clergy felt their right should be restricted to themselves, and should not extend to lay criminals.

A second problem with benefit of clergy as it stood in the fifteenth century was that secular courts did not always honor the clerical exemption, and their officers, for whatever personal motivations, occasionally sent convicted priests to execution without allowing them to read their book or see the local Ordinary.[41] In 1449, for example, four chaplains were indicted with malicious disregard for their status and exemption.[42] This outrage led to a petition on their behalf from Convocation to the King.[43] Sir William Staunford noted in his 1557 *Les Plees del Coron* that during the reign of Henry VI a judge named John Prisot did not allow criminous clerks to pray their clergy at trial.[44] Instead, Prisot insisted they plead guilty or not guilty, postponing the Ordinary's role until after the clerk had submitted himself to the authority of the king's courts. Staunford also gave the example of two clerks who did

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nouelment annote: iammais deuaunt imprimee. Auxi vous troues les residuums de lauter liuer places icy in ceo liuer en le fyne de lour apte titles. Tattell: 1565, f. 20

[39] Seipp, *An Index and Paraphrase of Printed Year Book Reports*, Seipp No 1482.157abr; in print, see Fitzherebert f.20

[40] See for example *Records of Convocation, vol vi: Canterbury 1444-1509*, ed by Gerald Bray, p. 115 or "Convocatio praelatorum et cleri provinciae Cant, 21 die mensis Martii, in eccles. S Pauli London" in *Concilia Magnae Brittanniae et Hiberniae, a synodo verolamiensi ADCCCXLVI.*.vol iii, London, 1737, pp. 612-13

[41] CB Firth, "Benefit of Clergy during the reign of Edward IV" in *English Historical Review*, vol 32, No 126, pp. 186-8

[42] John G Bellamy, *Criminal Law and Society in Late Medieval and Early Tudor England*. St Martin's Press: 1984, p. 125

[43] England and Wales, *Calendar of Patent Rolls 1446-52*, vol. 5, London: 1909, p. 302

[44] Sir William Staunford, *Plees del Coron* (1557), fs.133a-b

not read satisfactorily, and were thus denied their clergy and executed under Edward IV.[45] In the second case, either prejudice from the secular examiner or poor education meant death, and the English clergy feared the threat to both their privilege and their safety.

Ordained clerks whose claims of immunity failed could have been victims of fifteenth-century anticlericalism, a concept that historians interpret as evidence of popular resentment of poor quality clerical service or even heretical views that deemed clerical positions in society as invalid.[46] Christopher Haigh identifies three branches of anticlericalism: "The ideology of erastian reformers, the theology of the priesthood of all believers, [and] the gut reaction of the neglected parishioners."[47] The malicious conviction of clergy despite their ancient immunity from secular punishment would have most likely fallen into the last category, although those responsible could have also possessed heretical views. Judges and court officials who denied clergy their privilege may not have acted legally. Instead they may have been taking advantage of the benefit's ambiguity in order to express their personal disdain for holy men who flouted the law, committed felonies with little concern for the peace of the realm, and felt neither punishment nor regret for their actions. That interpretation is persuasive, as references to popular disapproval of clerks who avoided punishment appear throughout the Middle Ages, on the Continent as well as in England,[48] and since it reflects the clergy's own summary of the situation.[49]

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[45] Sir William Staunford, *Plees del Coron* (1557), f123.
[46] Matthew Groom, "England: Piety, Heresy, and Anti-clericalism" in *A Companion to Britain in the Later Middle Ages*. Blackwell: 2003, p. 381
[47] Christopher Haigh, "Anticlericalism and the English Reformation" in *The English Reformation Revised*. Cambridge University Press:1987, p. 57
[48] Charles Lea gives many examples of such expressions on the Continent throughout the Middle Ages. Charles Lea, "Benefit of Clergy" in *Studies in Church History*, (1883), pp. 169-219. In England, Edward Hall referred to any claimant, lay or clerical, as a "poore knave skant woorth a dandyprat." Hall, *The unyon of the two noble and illustre famelies of Lancastre and Yorke* London: 1555, p. 51. See also Chapter One
[49] See below, where I analyze Convocation's petitions to the Crown

However, reports included in the Year Books depict a different problem. Cases from the fifteenth century in which literate criminals of unknown clerical status lost their plea of benefit of clergy reveal that the Ordinary was often the reason a claimant was denied his privilege. Situations in which the Ordinary decided a criminal was not worthy of exemption occurred in 1458, 1469, and 1481;[50] during the same period, no trial record conveys an anticlerical sentiment stemming from the justices.[51] The only case in the fifteenth-century Year Books in which the king's servants denied a man his clergy seems to be due to a perception of injustice. In 1481, a defendant read his book and escaped punishment for robbery, while his illiterate accessory received a sentence of execution. The justices decided that the primary actor should not receive the "advantage" while the secondary actor went to the gallows. Instead of letting the accessory go free, they determined that the guiltier of the two would be denied his clergy in this case, and both should be executed.[52] The Year Books do not cover every trial of the fifteenth century, so our picture may be incomplete. Perhaps more convincingly, legal treatises from the 1530s also mention the recurring problem of Ordinaries rejecting criminals who read satisfactorily. An anonymous author wrote in 1534 of Ordinaries whom the King's Bench had to fine repeatedly due to their refusal to follow the law and accept clerks into their custody.[53] Christopher St German also reported that Parliament had to devise such fines in order to enable a smoother process for claiming clergy,

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[50] Seipp Nos. 1456.049, 1469.012, and 1481.032. In print, see Sir Robert Brooke *La graunde abridgement, collecte & escrie per le iudge tresreuerend Syr Robert Brooke chiualier, nadgairs chiefe Iustice del common banke*, under "Clergie." Tottell: 1573, pp. 1, 17 and 18, respectively.
[51] Seipp No 1481.032. In print, see Brooke *Clergie* 18.
[52] Seipp No 1488.003. In print, see Mich. 21 Hen. 6, in Sir Anthony Fitzherbert. *Corone* 10 & 12; Hil. 9 Edw. 4, f.48.
[53] Anonymous. *A Treatise Prouyng by the Kynge's lawes that the bishops of Rome, had neuer right to any supremitie within this realme* (1534), f13a

and eliminate problems stubborn Ordinaries posed.[54] The Year Books and legal commentary imply that the issue was less one of anticlerical sentiment and more due to individual Ordinaries' refusals to admit strangers or questionable persons to their care and responsibility, even if the criminals were indeed clerks, but from another shire.

Many conditions placed a defendant's claims of priesthood in doubt. In the disorganized world of the medieval and early modern legal systems, local inconsistencies, and lost ordination papers could result in an ordained man's conviction and execution.[55] However, reasons of bookkeeping were not always enough to explain the unjust death of a clergyman, and malicious attempts to undermine the status of the clergy or to target an individual out of spite could have also contributed to failed claims of the clerical benefit. Although the English clergy never mentioned the Ordinary as a crucial player in denying priests their immunity, they noted both the lay overuse of the clerical privilege and the problem of undue executions of clerks when they addressed the issues through Convocation, the ecclesiastical legislative body parallel to Parliament.[56]

Whether the clergy had a valid complaint or were particularly sensitive about their power and privileges is difficult to discern. Certainly laymen were taking advantage of the exemption and posing as clerks to escape punishment, but were such defendants anything approaching lifelong criminals? CB Firth argued in 1917 that lay "clerks" were not as great a threat as Convocation claimed, citing as evidence the long, painful process of claiming clergy

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[54] Christopher St German, *A Treatise Concernyng the Division Between the Spirituality and the Temporality* (1532), p. 34

[55] Later statutes aimed at correcting the problems discussed in this paper mentioned ordination papers in particular; as clerks were given time periods in which they could find papers and show them to officials it seems the presence of such papers were of significant importance. Still, alternative means for proving ordination were necessary; hence legalized proof involving literacy, clerical dress, or high-ranking Church officials who could vouch for one's status.

[56] See the *Records of Convocation VI*, pp. 113-115, 213, and 303

in the fifteenth century.[57] A successful claim often took years to complete, according to her examples.[58] Frequently courts required twelve people "of good fame and repute" to vouch for the criminal, and arranging that number of people could be difficult and time-consuming when one was in jail with limited resources.[59] In addition, each step of the claiming process was contingent on the cycles of regional courts; a preliminary hearing might occur during one session, the conviction during another, oaths to swear that a man was indeed a clerk in still another, until many years had passed.[60] The lengthy process simply did not accommodate the legendary career criminal. Leona Gabel has found extensive lists of lay clerks in the rolls from Richard II to Edward IV, including tailors, fishmongers, smiths, shipmen, yeomen, coopers, butchers, and husbandmen.[61] "The appearance of laborers among those whose literacy is at least sufficient to secure for them the benefit of clergy" observes Leona Gabel, "is significant, especially before the day of the printed book."[62] We can establish that there were indeed lay claimants taking advantage of the clerical exemption, but whether the threat of repeat lay offenders taking advantage of the system was real or imagined remains less clear. The only example offered in the Year Books concerning a repeat offender around this time was the 1484 case of merchant Richard Hains, who was indicted in multiple counties of robbery but who always pled his clergy and escaped punishment.[63] Yet one justice suggested that the "plaintiff had pursued defendant from ward

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[57] Firth, pp. 187-191
[58] Firth, p. 187.
[59] Firth, p. 188
[60] First, pp. 189-191
[61] Gabel, p. 81. Gabel includes a list of claimants on pp. 82-4 that includes age and occupation of 68 lay claimants from the Consistory Court in London, 1467 to 1476. Although the list does not prove the idea that "career criminal" were abusing the system, it does establish that many laymen were claiming to be priests and receiving immunity due to literacy and not due to their clerical status.
[62] Gabel, p. 81
[63] Seipp No 1484.031. In print, see Stanford, *Plees del Coron* 166, 167, 21.

to ward, from parish to parish" in an attempt to ensure the defendant was finally punished for his initial offense. This case does not concern another crime by a repeat offender; rather the situation was one of persistent prosecution from local court to local court, according to the justices' summary. The defendant continued to read his book and escape punishment at each juncture. Between 1455 and 1483, the perceived threat posed by career criminals – real or imagined – was sufficient to launch Parliament and Convocation into action.

In 1455, the Lower House of Parliament submitted a petition to the king complaining about benefit of clergy.[64] Parliament presented the dilemma as it affected the realm: felonies "daily increase and multiply" and "the persons that be clerks and can read by cause of the great boldness of their clergy" contributed to the rise in crime by evading punishment.[65] Furthermore, they asserted, criminals were keeping their stolen goods safe during their purgation so that they might return and take up where they left off, again committing "murder, manslaughter, rape, robbery, or theft."[66] In order to combat this problem, Parliament suggested to Henry VI that those who pray their book a second time may be ineligible for benefit of clergy and executed.[67] Instead of the possibility of unlimited chances to claim the clergy, the second offense would be declared high treason – a crime ineligible for benefit of clergy. This suggestion came at an early stage of the legislative process; whether Parliament really meant to confiscate the goods of a repeat claimant and treat him as a traitor is not explicitly revealed in the surviving petition. The petition also neglects to mention if their proposal took clerical status into account. There was no proposed exception

[64] *Rotuli Parliamentorum*, vol v, pp. 333-4
[65] Rot. Parl., v, 333a
[66] Rot. Parl., v, 333a
[67] Rot. Parl. v, p333b

for those in orders outside of the requirement that the Ordinary reject the claimant. Such solutions must not have been acceptable, as no statute resulted from this discussion.

The last Convocation to meet under Henry VI, in 1460, issued a similar complaint on the matter, which petitioned for the reform of many issues affecting the clergy. Key issues in the petition were diverse, addressing romantic partners and problems of shelter, clothing, and food. The primary difference between Convocation's petition and Parliament's suggestions was that while Parliament highlighted problems of crime and peace within the realm, Convocation's petition focused instead on jurisdiction and matters of ecclesiastical authority. The document has nine points, five of which concern benefit of clergy. The most important recommendations were the following: the Ordinary would make the final decision in cases dealing with clerks; the king ought not to interfere with censure against secular officials who try denying a priest his clergy; and those claimants whose status was doubtful should be judged by the church and not by secular officials. [68] In this document, Convocation asked for greater control over the immunities and privileges of the clergy.

Henry VI's successor, Edward IV, responded to these and similar concerns in the form of a royal charter in November of 1462. A charter was a written grant from the sovereign power that conferred certain rights or privileges to a group of people. In 1607, John Cowell explained that "Charters of the king are those binding contracts, whereby the King passeth any graunt to any person or more, or to any bodie politique" with the purpose of outlining exemptions, privileges, or awards of land, depending on the type of charter.[69] As with a proclamation, copies of a charter would be sent to all the parishes in which the orders

[68] Gerald Bray, ed. *Records of Convocation VI*, pp. 113-5
[69] Cowell, under "charter"

were to be enforced. Edward IV's charter decreed that in future, the local Ordinary would determine who could claim their clergy. If the Ordinary denied benefit of clergy to a criminal who read well, the Ordinary could be subject to hefty fines. The document also confirmed the power of the church to make good on threats of censure or excommunication against the king's officials who did not exempt priests from execution.[70] The charter afforded the clergy special protection from lay harassment, but did not permit secular officials to examine any clergy for literacy or any other test of ordination. Edward IV's charter had the potential to strengthen ecclesiastical jurisdiction significantly, and to weaken the power of the king, since it put greater emphasis on the roles of ecclesiastical officials than servants of the king's courts. Furthermore, the charter invited English clergy to write to the pope on matters of benefit of clergy without fearing charges of *praemunire*. The document denied any jurisdiction of English temporal courts over those in orders, and provided the ecclesiastical courts with more authority over the criminal justice system when it involved members of the Church. As Gabel argues, and as subsequent developments imply, the King's attempt to address the complaints involving the privilege were most likely symbolic rather than practical solutions, intended to placate the clergy of England.[71] The charter did not affect change on a local level, whatever its provisions. The fears, valid or exaggerated, that clerks would be deprived of their rights and executed and that cunning lay criminals would take advantage of the liberty, persisted.[72]

The most compelling evidence that Edward's royal charter was merely diplomatic and not an appropriate solution was that the clergy were not satisfied in the years after it took

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[70] "Charta Edward IV de Libertatibus clericorum" in Wilkins' *Concilia*, p. 585
[71] Gabel, pp. 82-84, 123
[72] Gabel, p. 123

effect. In 1471, Convocation sent a new petition to the king complaining of the royal charter's ineffectiveness. The charter had ostensibly aimed to release those in orders who had claimed their clergy but who were then kept perpetually in jail instead of being delivered to the Ordinary.[73] Subsequent petitions complained that the Ordinary did not perform the central role that the charter had awarded him in cases of benefit of clergy, although whether that was due to an uncooperative attitude or outright interference from secular officers is not explained. In 1480, in yet another petition, Convocation informed the king of the continuing problems with the clerical privilege.[74] This petition requested that temporal officers deliver clerks to the bishops without imprisoning them for lengthy periods of time.[75] The persistent complaints did not include new points of dispute over the benefit, but largely repeated the previous description of grievances, indicating that Edward IV's charter did little or nothing to address the disputes, defend the rights of the Church, or relieve the pressure on convicted priests.

The clergy in England did not appeal only to the king in their attempts to obtain security for their privileges. In 1476, Convocation petitioned Pope Sixtus IV for further assistance. However, the resulting papal bull did not address benefit of clergy in particular; Sixtus IV threatened excommunication for secular justices who arrested those in orders specifically on fabricated charges of perjury with the ulterior motive of property confiscation instead of the triumph of justice.[76] The unfocused nature and broad topics of the papal decree meant that it was no more effectual than Edward IV's charter. Without adequate

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[73] "Bulla Sixti quarti pro libertate clericorum et rerum suarum; et ne ipsi clerici per laicos arrestentur, aut molestentur in personis sen rebus suis, etc." in Wilkins' *Concilia,* iii, pp. 609-613
[74] "Convocatio praelatorum et cleri provinciae Cant, 21 die mensis Martii, in eccles. S Pauli London" in Wilkins' *Concilia*, iii, pp. 612-13
[75] "Convocatio praelatorum…" Wilkins' *Concilia*, iii, p. 613
[76] "Bulla Sixti quarti…" Wilkins' *Concilia*, iii, pp. 609-610; Bellamy, p128

attention from the pope, Convocation turned again to the king with the 1480 petition mentioned above.

Perhaps due to these incessant complaints, Richard III confirmed his brother's charter in 1483, but the new king eventually proved to be just as inactive as his brother in enforcing his charter. In March of the same year, he sent a letter to the bishops of the realm concerning the matter, in which he alluded to those of the Spirituality who strayed "from the true way of virtue and good living."[77] Richard offered advice, but accepted that offenders should be exempt from the secular courts and receive punishment within their own ecclesiastical justice system.[78] For those who persisted in their lives "of crime and vices," Richard III exhorted the bishops to reform, repress, and punish them "condignly after their demerits; not sparing for any love, favour, dread or affection."[79] Local courts ignored the application of the renewed charter, such as the stipulation that those in orders should not convene in front of a secular judge at all, and that the judges should send those in orders immediately to the Ordinary for all judgment. Within two years, Convocation felt it necessary to pass legislation "that no secular officer shall arrest or have arrested any spiritual person under pain of excommunication."[80] Richard III may have been concerned about benefit of clergy, but he was unable to settle the matter.

By the time Henry Tudor took the crown of England in 1485, the clergy had attempted many times to request, petition, and coerce kings into solving the conflict over benefit of clergy, but to no avail. Even the threat of excommunication from Sixtus IV, which

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[77] "Richard III to the bishops, 10 March 1483" in *Letters of the Kings of England*. James Orchard Halliwell, ed. vol i, London: 1848, pp. 153-55
[78] *Letters of the Kings of England*, p. 154-55
[79] *Letters of the Kings of England*, p. 154
[80] *Records of Convocation*, p. 303

targeted agents of the king's courts who denied clergy their immunity, apparently had no effect.[81] Parliament had also recognized the magnitude of the problem, and petitioned the king with their own solution. Nevertheless, inconsistencies and abuses had persisted until Henry VII came to the English throne. In the fourth year of his reign, Parliament passed an act that finally dealt with the twin problems of lay abuse and denial of the privilege to clerks. Although the Act did not end dispute over the privilege, the statute set forth a clear solution under the authority of King and Parliament.

Previous parliaments had addressed benefit of clergy; acts under Henry II, Edward III, Henry IV and other kings had defined, limited, and altered the clerical privilege using parliamentary statute.[82] One act, which Parliament passed during the reign of Edward III, had declared high treason as an unclergyable offense, and the English clergy had never successfully challenged this restriction of their privilege. Some clerks who were guilty of high treason had circumvented the law and avoided punishment, but not through benefit of clergy. John Morton, for example, committed high treason against Edward IV, but the King pardoned his crime. Morton survived to become a bishop and even the Primate of England.[83] Another clerk, Thomas Blake, similarly committed high treason during the civil war, but obtained a pardon through his connections with the Bishop of Norwich.[84] However, since Parliament had made high treason unclergyable, those convicted of the crime were usually hung, drawn, and quartered without any intervention or opportunity to plead clergy.[85]

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[81] Wilkins' *Concilia* vol iii, p. 609; see also Bellamy, p. 128 and Firth, p. 179
[82] For examples, the Constitutions of Clarendon under Henry II; and Statutes 3 Edward I c 2, 25 Edward III c 6, and 5 Henry IV, c 5
[83] Christopher Harper-Bill "John Morton (d. 1500)" in *Oxford Dictionary of National Biography*. Oxford University Press: 2004.
[84] Firth, p. 181
[85] JH Baker, *An Introduction to English Legal History*, pp. 283-4

Significantly, the designation of high treason as a crime for which clerks could not avoid punishment implied that secular powers could supersede religious authority to manipulate and alter the clerical privilege. The benefit was not simply an all-encompassing gift from God that exempted holy men from all punishment. The immunity from punishment referred to particular types of crimes, mostly felonies. Furthermore, if the king had the power to create and control benefit of clergy, it follows that he could decide to abolish it or reform it as necessary.[86]

Henry VII's Parliament did not attempt to abolish the privilege, however. Retracting support for the clergy could have been catastrophic for a new king and a new dynasty, and might have led to the corporal punishment of priests despite their holy status. The MPs instead reformed benefit of clergy in direct response to specific problems described in the numerous fifteenth-century petitions. Henry VII and his parliament sought a compromise in the statute 4 Henry VII c 13, the Act entitled: "Clergy Shall be allowed but once. A convict Person shall be marked with the Letter M or T [:] a provision for them which be within Orders."[87] In this landmark statute, Henry VII formally separated those eligible for the privilege according to their clerical status. Already Edward III had enacted a statute that provided all literate subjects the right to plead clergy, but Henry VII forced them to prove their clerical status before being given to the Ordinary for spiritual punishment. For those literate lay subjects who found themselves in court, corporal punishment could be avoided but only if they suffered the pain of being branded by a "T" or "M" for "thief" or "murderer,"

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[86] Later monarchs certainly considered the origins of benefit of clergy as within their power, but Henry VII may not have thought of it that way. He may have seen the problems associated with benefit of clergy as an opportunity to solve a problem for the clergy and create order where order currently did not exist. See Roger Lockyer, *Henry VII*. Longman's: London, 1968, pp. 37-8 and 62-3

[87] 4 Henry VII c 13, *Statutes of the Realm,* p. 313-14

in the brawn of the left thumb. This marked the literate lay criminal, and prevented a second escape from punishment through benefit of clergy. However, a member of the ordained clergy could use the benefit repeatedly, as before, and did not have to suffer the injustice and pain of branding, as long as papers were produced proving his clerical status. If no papers were found within a day, the Ordinary could vouch for the priest.[88] The Act made a distinction between lay and clerical claimants. Parliament restored the appropriate privilege to real clergy, while assuming tighter control over the claims of laymen and curbing lay "abuse" of the privilege.

Previous kings had previously tried to protect only those in orders and their attempts had proven unsuccessful, inadequate, or insincere. Parliament created this truncated version of benefit of clergy for the lay, literate, male populace as a catch-all for clergy without papers and as an additional gift of mercy for laymen. Parliament could have eliminated the possibility for any layman to claim, but found it useful instead to preserve the informal tradition of allowing Englishmen outside the Church read their book. The new king's tenuous dynasty rested on the stronger army at Bosworth and the support of Parliament; Henry may have wished to build his support and popularity by bestowing mercy on first-time offenders via the single-use version of the common law benefit. Furthermore, Henry Tudor's penchant for supervising details of government has been well-documented,[89] and the compromise that this statute symbolized may have merely reorganized a chaotic legal loophole into two specific categories that the royal courts could then monitor. Henry had thus effectively restored the status of priests and the sanctity of this privilege to the clergy,

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[88] 4 Henry VII c 13: *Statutes of the Realm*, p. 314

[89] For example, see Neville Williams, *The Life and Times of Henry VIII*. London: 1973, pp. 68-99 and 172-191, or Lockyer, *Henry VII*, especially pp. 97-104.

embraced the authority to alter a right of the Church, and displayed mercy by providing a lay version of the exemption.[90]

Following the 1489 act, which formalized the lay version of benefit of clergy, Parliament was able to pass legislation responding to the behavior of lay criminals without encountering resistance from the clergy. Two such acts targeted lay claimants under Henry VII. In 1492, Parliament declared those soldiers who abandoned the king's service without permission to be felons without possibility of benefit of clergy.[91] Five years later, in 1497, petty treason joined high treason as an unclergyable crime.[92] Neither of these acts provided a clause maintaining the clergy's right to pray the book if they were convicted of these crimes. Yet such a provision was hardly necessary, because the targets of the acts were both clearly lay groups. Soldiers were predominantly laymen, and the Act making petty treason unclergyable was inspired by a specific event involving a lay servant who had committed petty treason. There were three forms of petty treason: a servant murdering a master; a wife murdering her husband; or a monk murdering his abbot. However, as we shall see, a plethora of evidence points to the 1497 Act as clearly targeting only the servant/master relationship, and not a wife/husband or clerk/superior homicide.

The Act "For Murther" responded to concerns about the relationship between lay master and servant. The legislation responded to a trial in which Parliament tried James Grame for plotting to kill his master.[93] Having plotted a heinous crime with a perceived

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[90] Krista Kesselring has traced the development of mercy as a powerful tool beginning with the reign of Henry VII and fully developed by Henry VII's successors. See Kesselring, *Mercy and Authority in the Tudor State*. Cambridge University Press: 2003, particularly pages 11-14, 25, 58-59, and 183

[91] *Statutes of the Realm,* 7 Henry VII c 1

[92] *Statutes of the Realm,* 12 Henry VII c 7

[93] William R Stacy, "Richard Roose and the use of Parliamentary Attainder in the Reign of Henry VIII" in the *Historical Journal*, Vol 29, No 1 (1986), p.4

disregard for social hierarchy, Grame pled his clergy to evade punishment after his conviction. Any other literate servant could have theoretically followed Grame's example to escape punishment, inviting fears that literate servants everywhere might begin to disrupt England's peace by killing their masters. In order to prevent such crimes, Parliament made acts of petty treason unclergyable. The subsequent Act targeting petty traitors was born from a desire to prevent future such murders against the perceived natural order of power.[94] The Act did not affect wives who killed their husbands, for no woman could claim benefit of clergy at that time. It also did not concern clerks or mention ordained men at all; as Bellamy points out, "there was incidentally no suggestion clerks should forfeit the privilege if they killed their prelate."[95] There was no resulting protest from Convocation after the passing of the act, and trial records have not yielded evidence of clerks convicted for petty treason under this statute.[96] Most importantly, Parliament did eventually restrict clergy from claiming their privilege in cases of petty treason, but not until 35 years later, in 1532, when the clerical version of benefit of clergy changed from total exemption and spiritual purgation to the stark prospect of life imprisonment.[97] If the 1497 Act applied to clergy, the 1532 law and its specific mention of clerks and their continued ability to escape punishment for crimes of petty treason would have been both contrary to law and completely unnecessary. Thus, in

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[94] Note that when a master killed a servant, far from being petty treason, the crime was considered manslaughter. See *Roger Yorke's Notebook*. *Reports of Cases from the time of King Henry VIII*. Selden Society, vol. I: 2003 p. 92 and the case of Susan Adams in 1647 which drew upon definitions of manslaughter, petty treason, and murder as they were established during the 15th century: "11 February 1647" in *Journal of the House of Lords*, vol ix (1802), pp. 3-5. As a mistress who beat her servant to death, Adams was permitted to plead her clergy for manslaughter and avoid the noose despite the death and her gender.

[95] Bellamy, p. 131

[96] Staunford, *Plees Del Coron*, fs.123-135, Baker, JH, ed. *Reports of Cases from the time of King Henry VIII*. Selden Society, vol. I: 2003, James Gairdner, *Letters and Papers Illustrative of the Reigns of Richard III and Henry VII*, vol I: 1965. Baker, *An Introduction to English Legal History*, pp. 281-291, and Heath, pp. 121-128

[97] 23 Henry VIII c 1: *Statutes of the Realm*, pp. 389-390 "An Act Concerning Convicts of Petit Treason, Murthers, etc"

the 1497 case, Parliament used the restriction of the recently created lay version of benefit of clergy to encourage behavior in the lay population as a strategy to preserve social hierarchy.

The condition of benefit of clergy during the fifteenth century was marked by uncertainty, inconsistency, and ambiguity. Both Convocation and Parliament had a vested interest in establishing and redefining what exactly benefit of clergy provided its claimants: Convocation wished to ensure immunity for its members, while Parliament hoped to control crime. Both these legislative bodies aimed to restrict undue claims of benefit of clergy while preserving the traditions and processes throughout England. Yet the nature of the medieval English legal systems did not afford a clear solution, nor did the kings of the latter fifteenth century necessarily have the power or opportunity to reform and implement new changes to this curious legal loophole. Ultimately, the Parliament of Henry VII provided a key distinction that protected the liberty of those in orders while offering a merciful exemption to some first-time lay offenders. Eventually the creation of two types of benefits would perpetuate the centuries-old contention between the authority of Church and State; nevertheless, during the reign of Henry VII the statute's compromise ended petitions and complaints concerning the privilege from both Convocation and Parliament.

The relationship between Parliament and Convocation, and between the secular and ecclesiastical courts, would not always run so smoothly on matters involving benefit of clergy. Henry VII formalized a layman's ability to claim, but marked it as distinct from the clergy's privilege. Previous lay claimants who had assumed a false identity of priesthood, could claim the lesser version without any such pretense after 1489. Parliament had to be specific in preserving the clerical version when its members designed legislation restricting the lay version. Otherwise they risked engaging with Convocation over issues of

jurisdiction. Such a debate occurred during the 1510s under the reign of Henry VIII, stemming the renewal of legislation and leading to the harassment of representatives on both sides for their respective participation in the debate. Until that debate occurred, however, the average literate criminal could escape the noose in his own right; he did not have to "pretend" to be a clerk. For the time being, benefit of clergy achieved a balance between functions of clerical right and royal mercy that would endure through the heady process of the Reformation fifty years later.

MA Thesis
Chapter Three

Benefit of Clergy in Pre-Reformation England: Crime, Privilege, and Anticlericalism, 1512-1529

The status of benefit of clergy in England became the subject of much debate in the 1510s, owing mostly to three significant events. First, an Act of Parliament in 1512 restricted criminals guilty of specific acts from pleading benefit of clergy, although it excluded the clergy from the new restrictions. Second, a delayed response to the 1512 Act led to a formal debate between various learned men concerning the jurisdictions of Church and State within England. Finally, the untimely death of Richard Hunne while in the custody of the Church mired the Spirituality in scandal, and contributed to the underlying themes of their challenge to Parliament's authority over their exemption from secular punishment. The sum result of these events was to confirm that within the realm of England, Parliament and the king had the right to determine the definition and extent of the exemptions provided through benefit of clergy. Frequently historians[98] have cited these events as examples of anticlericalism that in turn helped explain the relatively peaceful English Reformation; however, a close examination of the events and arguments at issue indicates that the case for anticlericalism is not as strong as such historians have assumed in the past. The clerical challenge of Parliament's jurisdiction over benefit of clergy weakens the argument that they were victims of virulent anticlericalism. The events of the 1510s, most importantly, would ultimately pave the way for the Reformation Parliament of the 1530s to restrict, redefine, and

[98] The argument that anticlericalism was a major "cause" of the Reformation in England permeates the great majority of pre-Reformation works; for a discussion of which works deviate from the tradition, and the current consensus, see Ethan Shagan, "Introduction" in *Popular Politics and the English Reformation*, Cambridge University Press: 2003, pp. 1-28, or below.

restructure clerical rights and privileges within England based solely on the proven authority of the king.

The 1512 session of Parliament passed a remarkable Act preventing murderers, highwaymen, robbers of churches and churchyards, and housebreakers who put the residents in fear of their lives from claiming their clergy. The act, "Punishment of Murthers," targeted men who "imagin[ed] and…feigned" that they could take advantage of the fuller version of immunity from secular punishment, which was set aside for those in orders only.[99] The writers of this Act targeted laymen who committed crimes boldly, filled with the confidence that if they were caught they could escape punishment by pleading their clergy and receiving a softer, ecclesiastical punishment.

The statute purported to change the "little regard [for] the punishment," of crimes of "diverse unreasonable and detestable persons" who were "lacking grace."[100] The Act mentioned their contempt for peace and order in the realm, and deprived "persons so offending" of their ability to "beat [their persecution] bold[ly] with [benefit of] the Clergy."[101] In other words, the Act claimed that criminals had become audacious in their activities due to an excessive reliance on a privilege that should not have applied to them. Such a law was necessary because the legislators perceived that "Robberies, Murthers and Felonies daily increase more and more, and being committed and done in more heinous, open, and detestable wise, then hath been oft seen in time past."[102] In an attempt to curb such

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[99] 4 Henry VIII c 2: England and Wales, *The statutes at large, in paragraphs, and sections or numbers, from Magna Charta, to the end of the session of Parliament, March 14. 1704. in the fourth year of the reign of Her Majesty Queen Anne. ... With alphabetical tables. In three volumes*. London: 1706, p. 348

[100] 4 Henry VIII c 2: *Statutes of the Realm*, p. 348; the reference to grace refers to those not in orders.

[101] 4 Henry VIII c 2: *Statutes of the Realm*, p. 348

[102] 4 Henry VIII c 2: *Statutes of the Realm*, p. 348. Interestingly, popular perceptions of increased crime rates can be found in almost any period. See JS Cockburn, "The Nature and Incidence of Crime in England 1559-

blatant disregard "for the common wealth of this realm," Parliament sought to eliminate the benefit for cases of murder and specific types of robbery. Furthermore, the law prescribed that criminals who had outstanding accusations in multiple counties would lose the right to claim their clergy in more than one case, a clause that targeted roving repeat offenders more than clergy of any level of ordination, who were employed at an ecclesiastical institution.[103] The Act was temporary, "to endure to the next Parliament."[104]

The statute itself was an important move towards establishing peace within the realm. It attempted to tighten the enforcement of benefit of clergy throughout England, while reducing the number of cases involving recidivist lay offenders who boldly committed crimes while taking advantage of the clerical immunity regardless of the disruption the criminals caused to the community. Such lay offenders should have only claimed their clergy once, after which their branded thumb would prevent repeated escape, according to the stipulations of the 1489 statute. However, there seems to have been some concern that these lay criminals were still taking advantage of the unlimited claims afforded to men in orders, and committing heinous crimes without limitation. In order to target these abusers of the system, yet allow the clerical privilege to remain intact, the legislators added a clause at the end of the first paragraph: "such as been within Holy Orders only [will be] except[ed].[105] The assertion that the law would not affect clergy above the position of sub-deacon implies that Parliament intended to restrict the lay version of benefit of clergy.[106]

1625: A Preliminary Survey" in JS Cockburn, ed. *Crime in England 1550-1800*. Princeton University Press: 1977, p. 51

[103] Peter Heath, *English Parish Clergy on the Eve of the Reformation*. University Toronto Press: 1969, pp. 14-15

[104] 4 Henry VIII c 2: *Statutes of the Realm*, p. 348

[105] 4 Henry VIII c 2: *Statutes of the Realm*, p. 348

[106] 4 Henry VII c 13

Like many laws, the statute became open to interpretation after its publication. The single clause protecting the clergy from Parliament's new restrictions on their immunity had an ambiguous quality. The use of the phrase "Holy Orders" in the 1512 law was ambiguous. Contemporary convention held that the "Holy Orders" were distinct from the minor orders, although the phrase could be used to mean all levels of clergy. Therefore, although the statute makes no mention of clergy in minor orders, and explains at length the problems of common lay criminals "without grace" who were taking advantage of the clerical privilege, readers could interpret the law as an attack on criminals in minor orders. Therefore, some members of the clergy might not be protected from Parliament's aggressive new restrictions on the immunity. The omission of any mention of the minor orders, whether purposeful or accidental, in turn led to a confrontation between Church and State over jurisdiction in the law, the rights of one legislative body over the other, and the status of those in minor orders.

The minor orders were the levels of ordination before subdeacon: porter, lector, exorcist, cantor, and acolyte.[107] Men in minor orders were usually employed in a holy house or institution and assisted in ceremonies, by administering perfunctory duties such as lighting candles, reading Biblical passages, or singing. Minor orders stood in contrast to the higher level major orders, which were the episcopacy, priesthood, and diaconate. Minor orders were ideally the apprentice positions for holy orders, but advancement was not guaranteed. The distinction between levels of ordination meant that the Act of 1512 would have put those in minor orders in the same category as "lay clerks," or those laymen who successfully read their book and thus received branding instead of the full secular punishment for their crimes. John G Bellamy claims that the issue of minor orders mattered little, for "clerks in minor

[107] *The Catholic Encyclopedia*. New York: 1909, under "minor orders"

orders continued to pray their clergy in secular courts before the Ordinary examined them."[108] Law reports record various examples of priests claiming their benefit during the 1510s. For example, Robert Chaloner described a convicted criminal who proved his ordination and was allowed to read his book again despite a previous conviction.[109] The law of 1512 appears to have targeted lay criminals in both theory and practice, while protecting members of the Church.

The remarkable aspect of this act, then, was not its apparent intention, as gleaned from the text of the law, but rather the clergy's delayed reaction during the 1510s. There was little response to the new restrictions of benefit of clergy immediately following the publication of the statutes. The publication and dissemination of the new laws to each parish in the realm signified that they had come into effect. Aside from a brief, positive appraisal in front of Convocation in 1514,[110] there was no ecclesiastical response to the statute until February 4, 1515, when Richard Kidderminster, the abbot of Winchcomb, delivered a highly critical sermon against the statute's pending renewal at the next meeting of Parliament.[111] As we shall see, the significance of Kidderminster's sermon was not its content, but rather its timing, historical context, and consequences.

Kidderminster's sermon opened the 1515 session of Convocation. The subject of the sermon was political, intended to send a message on behalf of the clergy to the secular

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[108] JG Bellamy, *Criminal Law and Society in Late Medieval and Early Tudor England*. St Martin's Press: 1984, p. 138 and footnote 21. See also Heath, p. 125

[109] J.H Baker, "Reports by Robert Chaloner." *Reports of Cases from the time of King Henry VIII*, Vol. ii, Selden: Selden Society: 2004, p. 278-9.

[110] The priest John Taylor referred to the act in a positive light in front of Convocation in 1514. See Gerald Bray, ed. *The Records of Convocation*, vol vii., Boydell: 2005, and Peter Cunich, "John Taylor: Catholic Priest and Diplomat" in *DNB*. Oxford University Press: 2004.

[111] *Journal of the House of Lords*, vol I, (1802), pp. 25, 30-34, 38 and 40, JH Baker, *The Reports of John Caryll*, vol ii, Selden: Selden Society, 2000, p. 684

powers.[112] Kidderminster railed against Parliament's attempt to restrict the "Liberties of the Holy Church," anticipating of the present parliament to renew the act. His arguments referred to three main documents: the Act of Parliament, the Biblical text "Touch not mine anointed," and the decree of May 5, 1514, issued by the Fifth Lateran Council.[113] Kidderminster declared, "The said act was made utterly against the law of God and the liberties of [the] Holy Church…[and] all the makers of the same act – that is to say, both spiritual and temporal – who were party to the act had incurred the censures of the Holy Church."[114] He argued that benefit of clergy originated from Biblical text and therefore formed part of divine law; thus any attempts to restrict it were contrary to God's Word regardless of the specifics of the act.[115] In addition, the 1514 decree from the Lateran Council supported the clergy in the matter; for as Kidderminster declared, "by the [Lateran] decretal, all clerks who have received any manner of orders, major or minor, are exempt from temporal punishment for criminal causes before temporal judges; for [the pope] said that minor as well as major orders were 'holy'."[116]

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

[113] Unfortunately, only scraps of Kidderminster's "long and active career" survive, and no copies of this famous sermon are extant. However, we have the law reports of Robert Keilway and John Caryll, which describe in detail the tenets of Kidderminster's sermon.

[114] *Caryll's Reports*, p. 684

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

[116] *Caryll's Reports*, p. 684. In contrast to Kidderminster's claims, the 1514 decree from the Lateran Council focused on general reforms in the church, considering issues of concubinage, lay extortion of holy men, and the renewal of some previous constitutions. The decree never mentions benefit of clergy by name or description.

The significance of Kidderminster's sermon is its timing; there is no evidence that the clergy had objected to the 1512 Act when Parliament first implemented it. Convocation attempted to prove the inadequacies and illegality of the law through Kidderminster's sermon just prior to the law's renewal three years later. While Kidderminster may have written the speech himself, the opportunity to give the opening sermon to Convocation was a politically important one. Furthermore, when Kidderminster was later asked to recant his views, the English clergy protested that he should not, clearly supporting the opinion he put forth.[117] Kidderminster was indeed speaking on behalf of the clergy.

The sermon coincided with the opening of the session of Parliament that would vote whether or not to renew this act. Yet if Kidderminster's arguments were valid, and minor orders were also "holy," as the Lateran Council asserted, all those in any level of ordination should have been able to claim their clergy due to the protection of all in "holy orders" mentioned in the statute itself. Therefore, the statute would only prevent lay criminals from using an ecclesiastical privilege. If that were the case, Convocation should have had no objection against the law; it would not have concerned its members whatsoever. Essentially, Kidderminster's critique highlighted three problems transcending the apparent issue of criminous clergy in minor orders: the origin for the clerical immunity; the question of whether secular or ecclesiastical jurisdictions stood superior within England; and the assertion that clerical privileges were absolute and should not be subject to any parliamentary statute, even if Parliament included clauses providing exception for their members.

See Papal Decree of the Fifth Lateran Council, 4 May 1514 in Norman P Tanner, ed. *Decrees of the Ecumenical Councils*. Georgetown University Press: 1990, pp. 609-614

[117] *Caryll's Report*, p. 693; see below

The Act of 1512 received no surviving criticism upon its publication indicating that the statute infringed the rights of the clergy in particular. If the delayed response was due to a rise in the number of convicted men in minor orders, the Year Books do not reflect the rise in prosecution of the lower clergy. What seems more likely is that the clergy saw the public event of opening Parliament and Convocation as an opportunity to approach the Temporality over matters of jurisdiction. Although the law did not explicitly target clergy, the omission of protection for those in minor orders implied that Parliament was asserting its power over ancient rights and privileges of the Church. Regardless of the practical application of the law against criminals of lay or clerical background, the English clergy took a stand in defense of their courts and privileges.

Following the sermon at St Paul's, the temporal lords and members of the Commons urged the king to call for a debate on the issue. Henry VIII acquiesced, and a debate between learned doctors representing both sides occurred at Blackfriars in London, before a panel of justices.[118] The name of the representative of the clergy has not survived. Representing the king and Parliament was Henry Standish, "a doctor of divinity and warden of the Mendicant Friars in London."[119] Standish had once preached before the king, in 1511. The law reporter neglects to state whether Standish's role in the Blackfriars Debate was due to powerful political connections or a personal conviction that his argument was valid and morally necessary.

Standish began by arguing that "the said act, and also the conventing of clerks before temporal judges in criminal cases…may well stand with the law of God and with the liberties

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[118] *Caryll's Reports*, p. 684
[119] Chibi, Andrew A, "Henry Standish" in *DNB*. Oxford University Press: 2004; quote is *Caryll's Reports*, p. 684

of the Holy Church."[120] To justify this interpretation, he argued that all men should be subject to common law and obligated to appear before the courts as examples of "things which advance the public weal of the whole realm, which public weal ought to be favored in all the laws of the world."[121] Standish argued, in other words, that the good of the realm should be held above all other individual privileges. Preventing criminals from breaking the law promoted peace, and therefore could not be against the law of God.

In contrast, the representative for the Spirituality cited an unnamed papal decree that had stated that bringing "clerks before temporal judges in criminal cases is a sin in itself."[122] As discussed in chapter one, many medieval papal decrees and earlier councils and synods established the Church's support for the clerical immunity; nevertheless, not all secular leaders tolerated benefit of clergy in their realms. The clergy's representative could have been referring to the Constitution of Boniface VIII in 1298 or that of Clement V in 1312.[123] Since all Christians are "bound to obey [papal decrees] on pain of mortal sin," the Spirituality's representative reasoned, the 1512 law violated against the unnamed decree, and therefore violated the law of God. The Spirituality's point was not a strong one; as Standish asserted, papal decrees were sometimes minor in importance, and even the clergy were guilty of disobeying them. Standish demanded to know if this meant the clergy, including high-ranking bishops, were therefore guilty of offending the law of God.[124] Standish continued to

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[120] *Caryll's Reports*, p. 684
[121] *Caryll's Reports*, p. 684
[122] *Caryll's Reports*, p. 684
[123] Charles Lea, *Studies in Church History*, London: 1869, pp. 187-88, 198
[124] Standish gave the example decree that all bishops must be at their respective houses during all feast days. The great majority of those present at Blackfriars were breaking that decree during the hearings. *Caryll's Reports*, p. 685

argue that the pope had merely usurped the authority that really belonged to the king.[125] He sought to convince the justices that the leaders of autonomous countries are responsible only to God. Therefore, decrees must be formally received in England to be binding in England, and laws created for the good of the realm would originate from their leaders, whose consultation with God would prevent violation of divine law. Standish did not elaborate on what would constitute the "reception" of a decree, nor did he discuss further the problem of consecrated sovereigns who had indeed violated divine law, but his assertion left his adversary with no response.[126]

The key Biblical phrase behind benefit of clergy, "Touch not mine anointed," came from Psalm 105."[127] In response to Standish's arguments, the Doctor of the Spirituality pointed out that the benefit's original sanction came from the Bible itself, and therefore "the exemption of clerks was by the express commandment of our savior Jesus Christ."[128] Standish corrected the clergy's representative, saying that these words were not Christ's, but those of King David in his Psalter. Again, the representative for the clergy had no answer. The judges, who "had heard and perceived the said arguments…made motion…, [that] the said Abbot of Winchcomb [Kidderminster] should repair to the said St Paul's Cross and openly renounce his said former sermon."[129] They ruled in favor of Standish, the king's jurisdiction, and the text of the Parliamentary statute.

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[125] See Chapter Five
[126] *Caryll's Reports*, p. 685
[127] This phrase is first mentioned in Psalms 105:15, and again in 1 Chronicles 16:22. *Oxford Study Bible, The*, Revised English Edition with the Apocrypha. Ed. M. Jack Suggs, et al. New York: Oxford University Press, 1992.
[128] *Caryll's Reports*, p. 685
[129] *Caryll's Reports*, p. 685

The English ecclesiastical authorities utterly refused to permit Kidderminster's recantation. Instead, they began proceedings against Standish on charges of *praemunire* and heresy, based on his unconventional interpretation of the 1512 law and jurisdiction over benefit of clergy. Convocation demanded Standish consider four articles against him. The Archbishop of Canterbury also submitted a list of articles to Standish, to be answered in front of an ecclesiastical judge. The temporal judges and the House of Commons became concerned for Standish "in his great danger" of receiving censure from the Church, and of ultimately being convicted and punished for heresy out of malicious revenge for his defense of the king. Henry summoned the Dean of his chapel to determine if Standish had made a mistake in defending the secular jurisdiction. The Dean, Dr Veysey, declared, "upon his faith and conscience, and upon his allegiance, that the conventing of clerks before temporal judges according to the form which has always been used within the realm of England may well stand with the law of God and the liberties of the Holy Church."[130]

Despite Dr Veysey's support, the trial of Standish continued. Standish's crimes were intertwined with the legality of the 1512 statute. Convocation accused him of believing, among other things, that minor orders were not holy, that benefit of clergy did not derive from divine law, and that papal decrees bound only those who received them. He responded to these charges, "that minor orders are in one respect holy, and in another respect not holy."[131] He agreed that "the conventing of clerks before a secular judge is not against positive divine law." Finally, Standish asserted that ecclesiastical laws did not bind a community unless they were formally received, especially if the new law went against

[130] *Caryll's Reports*, p. 687
[131] *Caryll's Reports*, p. 688

established custom in the region, defined as "practice for thirty years."[132] Standish elucidated further the separation between Biblical verse and its pragmatic legal interpretation with the example "honor thy father." The father may be a physical father or a spiritual father, he asserted, and a father who commits a crime can be tried by a judge, for he is not that judge's father. Similarly, if a spiritual father commits a crime, he can be tried by the temporal courts. "Every clerk who comes before [the judge] is not *his* spiritual father," and therefore can be tried.[133] The logical extension of Standish's argument is that such practical examples of legal situations do not actually contradict relevant Biblical verses, and therefore clerks may be judged by a secular court without violation of the Bible. Standish did not mean that benefit of clergy had no Biblical support and should therefore be abolished. Rather, he indicated that benefit derived from the power of the king, not the pope or the Bible. Parliament could therefore alter, restrict, and redefine benefit of clergy.

Standish might have found himself facing "the malice of the clergy," had the king's Dean, Dr John Veysey, not agreed with him. Veysey "argued to the same effect, and made the same reasons" in defense of the Parliamentary right to restrict the benefit of clergy. Chief Justice Sir John Fyneux also came to Standish's aid, arguing that many holy, well-respected kings had upheld the right of temporal courts to try clerks.[134] Fyneux "was convinced that the abuses [of the court system] were against the spirit of the original privileges and that preserving [those excessive privileges] was against the interests of the church."[135] In other words, the survival of the legal loophole had occurred because of the king's affection and

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[132] *Caryll's Reports*, p. 688. Standish did not explain how to "receive" ecclesiastical law; nor did he explain his distinction concerning practices that had been established for over thirty years.
[133] *Caryll's Reports*, p. 689; italics are mine
[134] A prominent example of such would be Charlemagne. See Lea, p. 180.
[135] JH Baker, "Fyneux, Sir John (*d.* 1525)" in *Oxford Dictionary of National Biography*. Oxford University Press: 2004

respect for the clergy in England, not out of inherent rights of the clergy themselves. Fyneux also established that bishops had previously accepted the benefit's altered terms from the Temporality. Therefore, either conventing clerks before temporal judges was legal, or all bishops since then, no matter how well-respected, were guilty for their historic cooperation. Standish was no longer "one poor friar…alone against all the bishops and the clergy of England."[136] As more clergy took the side of the king, the argument built in his favor, until Henry VIII decided the debate had come to its natural conclusion. He called for the termination of the proceedings against Standish with a speech:

> By the ordinance and sufferance of God we are king of England, and the kings of England in times past have never had any superior but God alone. Therefore take good heed that we wish to maintain the right of our crown and of our temporal jurisdiction…Therefore we will not agree to your desire now any more than our forebears have in times past.[137]

With this speech, Henry ended the debate on the matter, protected his servant, and declared valid the decision of his judges that Kidderminster was wrong and must recant. Benefit of clergy could in fact be defined by Parliament. The king's representatives had successfully convinced the presiding justices that it was a privilege originating from common law in England out of respect for clerical services rendered to society, and harkened to previous decisions within Christendom that recommended, but did not require, benefit of clergy within individual states.[138] The justices concluded that the Biblical admonition "Touch not mine anointed" *supported* benefit of clergy but did not *create* it. The Spirituality won a small victory, in preventing the immediate renewal of the 1512 law during the

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[136] *Caryll's Reports*, p. 690
[137] *Caryll's Reports*, p. 691
[138] See, for example, Councils that upheld the tradition of benefit of clergy beginning in 325 with Nicaea, followed by multiple cases of regional leaders denying clergy their privilege in their locality. Chapter One.

prolonged debate.[139] However, since that law had not really targeted the minor orders in the manner that the clergy had claimed, the price the clergy paid in arguments over jurisdiction negated their small victory. The justices concluded that Parliament would in future be able to restrict benefit of clergy without fearing clerical retribution. The judges had ruled in favor of the king, and eventually the clergy would have to accept that ruling.

What we know of the Blackfriars Debate comes primarily from John Caryll's detailed report. While this is not the only source documenting the affair, it is the most comprehensive.[140] His thorough narrative contributes to the interpretation that the original 1512 statute aimed to reduce lay crime by limiting access to the clerical exemption from punishment, rather than to attack the English clergy or exclude the minor orders from their privilege. Caryll begins his narrative with the following summation of the 1512 law:

> By authority of the parliament held…in the fourth year of our present lord King…murderers, robbers in churches and highways, and robbers of men in their houses should be ousted from benefit of clergy, with the sole exception of those who are in Holy Orders…by virtue of which act many common and horrible murderers and thieves were ousted from their clergy and put in execution, to the great increase and advancement of the public weal of the whole realm, and to the great discomfort and fear of all such common murderers and thieves.[141]

Immediately Caryll painted the 1512 law as one that protected the clergy and targeted "common" or lay criminals. While his phrasing does not assert that the protective clause covered minor orders, neither does it not imply that Parliament targeted them, either. Caryll

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

[140] The *Journal of the House of Lords*, the *Records of Convocation*, Polydore Vergil's *Anglica Historia*, and Edward Hall's *Chronicle* all mention the affair, among others, but their references are brief. *Keilway's Reports*, another detailed description of the debate, is most likely a Law French translation of *Caryll's Reports*, as Keilway's description matches the order of Caryll's account.

[141] *Caryll's Reports*, pp. 683-4

simply ignores the problem of men in minor orders when introducing the Act that began the dispute. He then introduces Richard Kidderminster and his sermon, and dedicates the remainder of his space to the Blackfriars Debate itself, depicting Kidderminster's sermon as the spark that set off the contention between secular and ecclesiastical jurisdictions. Curiously, Caryll then interrupts his own narrative to provide an historical context for the 1512 law, the clergy's response, and the debate: he relays the story of Richard Hunne and his mysterious death in ecclesiastical custody. The historical context of Kidderminster's sermon implies that public scandal may have contributed to the clergy's motivations just prior to the Blackfriars Debate.

On December 4, 1514, Richard Hunne died in an ecclesiastical prison, apparently murdered. How Hunne actually lost his life is irrelevant to our subject.[142] The popular perception was that Hunne had been murdered by a vindictive clergy who were so blinded by their greed that they had lost their ability to be moral leaders in society. Polydore Vergil wrote, "When the news of this reached the common people and made its way through the town, it was remarkable how great the uproar became… [with] loud accusations that the wicked and cruel agents of the bishop had strangled an innocent man who was a singular friend of the poor."[143] Hunne's imprisonment for heresy charges was the latest in a litigious struggle that had begun with Hunne's refusal to pay a mortuary fee for the death of his

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[142] Hunne was found hanging in his cell from his silk girdle. Upon investigation, the king's coroners found evidence that Hunne was strangled and his body arranged to look like suicide. Edward Hall, *The unyon of the two noble and illustre famelies of Lancastre and Yorke* London: 1555, p. 131, Polydore Vergil, *Anglica Historia*, pp. 229-231, and *Caryll's Reports*, 685. Thomas More thought it was as it seemed. In his *Apology*, he recalls an encounter with Hunne, "When I talked with him and feared that if he were in the bishop's prison, his ghostly enemy the devil might make him there destroy himself." More, *Apology*, vol ix of *The Complete Works of Sire Thomas More*, Yale University Press: 1963-1997, p. 126. Elton has reasoned it may have been the accidental result of a prison scuffle, clumsily covered-up by the jailor. See GR Elton, *Reform and Reformation*, Harvard University Press: 1977, p. 53.

[143] Vergil, p. 229

unpropertied five-week-old son Stephen.[144] Hunne viewed the fee as extortion and accused the priest of *praemunire.* The priest responded with the heresy charges that led to Hunne's mysterious death. Surprisingly, the litigious dueling did not end with Hunne's life. The Church continued to prosecute him for heresy, found him guilty, burned his corpse, and confiscated his belongings.[145] Meanwhile, those responsible for his imprisonment acted somewhat suspiciously. His jailor, Charles Joseph, initially fled London and sought sanctuary in Westminster with fellow suspect William Horsey, Chancellor to the Bishop of London.[146] Why Horsey claimed sanctuary instead of his clergy is curious; Elton speculates that by then, the clergy were ready to take a stand against any threat to their special immunities, and so they did not want Horsey charged in a secular court at all, even if only to plead clergy and escape punishment.[147] Regardless, both officials were indicted for murder.

The whole episode highlighted some of the less attractive practices of the clergy, such as imposing arbitrary ecclesiastical fees and prioritizing loyalty to the pope over loyalty to the king. The Church appeared to cover up a crime in order to protect its members in the aftermath of Hunne's death. Kidderminster's oration defending the unlimited privilege of benefit of clergy also stood in stout defense of clerks. His sermon protecting the clerical privilege reflected the context of the popular perceptions that the Church saw itself as outside of the law in the Hunne case, which had occurred in the two months preceding

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[144] Sybil Jack, "Conflict of Common law and Canon Law in Early Sixteenth-Century England: Richard Hunne Revisited." *Parergon*, No 3 (1985), pp. 131-2

[145] A move to restore Hunne's goods to his widow and surviving children failed in the House of Lords. See *Journal of the House of Lords*, vol. I, pp. 40-41. John Foxe claims this is because in that session of Parliament, spiritual lords outnumbered (and outvoted) the temporal lords. Foxe, p. 4

[146] *Caryll's Reports*, p. 685

[147] Elton, *Reform and Reformation*, p. 54.

Kidderminster's sermon.[148] By attacking Parliament's attempt to restrict benefit of clergy in any form, Kidderminster was able to assert what the clergy felt were the true rights of the Church, and thereby explain the legality of the actions of any member of the clergy whose pseudo-criminal actions may have been perceived as dubious by the larger English population. Furthermore, sixteenth-century chroniclers tied the persecution of Standish following the Blackfriars hearing to the events surrounding Hunne's death. As John Foxe wrote, "The clergy looked on the opposition that Standish had made to their immunities, as that which gave rise to Hun's first suit."[149] The clergy's fear of Parliament's infringement on their rights corresponded with how the populace perceived the Spirituality's privileges and ostentation. An overt defense of their immunity, even one that did not accurately reflect the words of the 1512 statute, was an opportunity to dispute the popular reaction to the implications of the Hunne Scandal and to provide a sense of legitimacy for clerical privilege.

The specifics of the Blackfriars Debate over benefit of clergy, outlined above, essentially established two oppositional themes. The English clergy argued that benefit of clergy originated with Biblical authority, and that a secular power could not alter it in any way. Standish countered that benefit of clergy was a privilege rooted in England through the tradition of common law and upheld by Parliament, although he admitted it had roots in the Church and the Bible. Such a discrepancy of opinions presents a problem for the historian because some members of Convocation also sat in Parliament. We are unable to ascribe clearly a continuous opinion for the Spirituality and the Temporality when those bodies shared members. The seventeenth-century historian Gilbert Burnet claims that in 1512 the

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[148] Vergil, p. 229. JJ Scarisbrick, *Henry VIII*, London: 1968, p. 47. Philip Hughes, *The Reformation in England*, vol I, London: 1950, pp. 150-151

[149] Foxe, *Book of Martyrs*, p. 4

Spiritual Lords had ensured the protection of the English clergy by adding both the Holy Orders clause and the temporary status of the act.[150] If the bishops themselves had written in the protections for the clergy, they must have realized, as Foxe argued, that the clerical stance during the Blackfriars Debate reflected a defense of their jurisdiction and theoretical liberties more than the specifics of the law itself. Burnet explained the difficulty in unearthing the motives behind this episode, "of which none of our historians having taken any notice,"[151] since, "from among the other sad losses sustained in the late burning of London, this was one, that almost all the registers of the spiritual courts were burnt."[152] If the clergy were taking on aspects of the law itself instead of attacking the Parliament's offensive attempt to alter at all benefit of clergy, both Standish and the representative of the clergy would have been well-served to bring up the issues of wording from the law itself. However, neither side pursued specific phrasing, preferring instead to remain in the lofty rafters of theoretical power, jurisdiction, and authority.

Therefore, the Blackfriars Debate was only superficially about the specifics of the 1512 statute. Underlying the specifics of Kidderminster's refutation of the law were larger issues at hand concerning power, jurisdiction, loyalty, and ancient privilege. Kidderminster's arguments were not completely accurate in reflecting the wording of the statute, or of the Lateran Council's decree. The debate may have overlooked the specifics of the law in order to challenge more bluntly Parliament's right to create any law regarding an ecclesiastical

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[150] Burnet writes, "To make it pass through the House of Lords, [the spiritual lords] added two provisos to [the act] – the one, for excepting all such as were within the holy orders of bishop, priest, or deacon; the other, that the act should only be in force till the next parliament. With these provisos it was unanimously assented to by the Lords of the 26th of January, 1513." Where Burnet found these details is curious, since he later points out the Convocation Registers for these dates were burned in the Great Fire, and no such information can be found in the *Journal of the House of Lords* itself. Gilbert Burnet, *A History of the Reformation of the Church of England*, London: 1714, p. 20

[151] Burnet, p. 19

[152] Burnet, p. 29.

privilege. Essentially, the debate was a response to the popular outcry against the clergy after the Hunne death. Certainly John Caryll's report of the events leading up to the debate reflects this interpretation. His narrative connects the debate and the Convocation's constructed arguments to Hunne's death and the popular response. In addition, the records of the House of Lords and what survived of Convocation do not reveal any attempt to explain whether the minor orders were purposefully omitted or not. Considering the turbulent fallout following the death of Hunne, Convocation could have painted the potential renewal of the 1512 Act as an example of the Temporality's unjust anticlericalism and apparent ecclesiastical persecution while deflecting popular ideas that their members saw themselves as outside the law.

Through the arguments of the Doctor for the Spirituality, we see an idealized autonomous Church outside of secular jurisdiction, subject first to the Pope and only on occasion to the King of England, portrayed as a perfectly legal and moral institution that Parliament had recently and unfairly attacked. Such a portrayal neatly addresses the popular perception resulting from the Hunne situation as well as the inconsistencies within the clergy's argument concerning the 1512 statute and related documents. Bellamy observes that as the Hunne Scandal continued, the Blackfriars Debate "had become a head-on collision between church and state, the most crucial conflict for well over a century and probably the most important since the reign of Henry II."[153] Such a contention had larger ramifications than simply protecting the limited ability of those in minor orders to commit crimes and avoid prosecution in secular courts. Essentially the clergy could use the dispute over their

[153] Bellamy, p. 136

benefit in order to challenge the jurisdiction of Parliament over their rights, which they could then apply, if successful, to other ecclesiastical matters within England.

Convocation's response to the 1512 Act is further noteworthy when one considers that the law in question was not the first to alter benefit of clergy without providing a protective clause for all members or the clergy. For example, under Henry VII, Parliament had deprived deserting soldiers of their clergy without any clause protecting those in orders. Similarly, Parliament had excluded those convicted of petty treason from claiming their clergy in 1497. Both of these cases targeted lay criminals, and did not elicit a protest from the clergy. Contemporary sixteenth-century sources portray the 1512 Act as a similar attempt to control lay claimants. *Caryll's Reports* clearly focused on the claimants "without grace" who were "ousted of their clergy…to the great increase and advancement of the public weal."[154] John Foxe depicted the law and this debate as an example of the clergy's "insolence" and sense of entitlement, which contributed to England's disdain for their elitism. In Foxe's narrative the events had more to do with the embarrassment over Richard Hunne's death than an actual assault on the clergy's rights and privileges.[155] Perhaps more reliably, the Catholic Priest and Diplomat John Taylor praised the positive, secular aspects of the Act in front of Convocation in 1514 even as he stood in defense of a proposed ecclesiastical tax on those in minor orders.[156] His appraisal predated Kidderminster's contentious sermon and Convocation's challenge at Blackfriars. These sources, despite some

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[154] *Caryll's Reports*, pp. 684-5, and *Keilway's Reports*, f. 180b
[155] John Foxe, *Book of Martyrs*, p. 3.
[156] *The Letters and Papers of Henry VIII*, vol i, 3033. Christopher Haigh, *English Reformations: Religion, Politics, and Society under the Tudors*, Oxford University Press: 1993, p. 77. See also PRN Carter, "Taylor, John (*d.* 1534)" *Oxford Dictionary of National Biography*, Oxford University Press,: 2004, and *Records of Convocation*, vol vii

apparent bias against the pre-Reformation clergy, accurately refer to the 1512 law as legislation aimed at criminals and not specifically as an attempt to target England's clergy.

In contrast, modern historians frequently cite the deprivation of benefit of clergy from minor orders as the primary purpose of the act. Arthur Ogle wrote, "a very remarkable Act of Parliament…withdrew from clergy in minor orders…their agelong immunity from the ordinary law punishments for crime."[157] Philip Hughes wrote that the point of the Act was "to deprive of what was called 'benefit of clergy' clerics in minor orders accused of a felony."[158] Elton wrote that the 1512 Act "limit[ed] benefit of clergy to men in 'holy orders'."[159] Elton is correct in this statement, but follows it with a discussion of how the law affected minor orders, not laymen, and attributes the problem to criminous clergy, despite the references to laymen in the act.[160] Maurice Powicke wrote that "Parliament had recently renewed a Statute – a temporary measure passed in 1512 – depriving murderers and robbers in minor orders of benefit of clergy."[161] Powicke makes two mistakes here: first, Parliament had not yet renewed, and in fact had failed to renew, the Act of 1512; second, again, the application of the Act to those in minor orders would have been incidental and accidental, as the phrase "minor orders" never appears in the act. Moreover he ignores the great majority of the text, which focuses on the applicability to lay claimants.

The problem with these descriptions of the statute is twofold: first, the Act never mentions those in minor orders specifically, and goes on at length about common criminals threatening the peace of the realm; and second, the Spiritual Lords in the Upper House added

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[157] Arthur Ogle, *The Tragedy of the Lollard's Tower: The Case of Richard Hunne and its aftermath in the Reformation Parliament, 1529-1536*. Oxford: 1949, p. 162
[158] Hughes, p. 151
[159] Elton, *Reform and Reformation: England*, p. 53
[160] Elton, *Reform and Reformation*, pp. 53-54.
[161] Maurice Powicke, *The Reformation in England*. London: 1967, p. 20

provisions to protect those in orders.[162] Perhaps the bishops who successfully argued in favor of adding such protection intentionally targeted minor orders with their ambiguous clause, but it is just as possible that they did not realize how it would in theory affect those in minor orders. Indeed, actual criminals in minor orders do not seem to have been deprived during the three years the statute was in effect.[163] The focus on minor orders reflects less the text of the law, and more the clerical response. Even if the House of Commons had intended to deprive all murderers, thieves, and other specific criminals of their ability to claim the ecclesiastical exemption, the House of Lords had not approved the statute until those clauses protecting the clergy had been added.[164] As noted above, no immediate clerical outcry responded to the publication of the act, implying tacit approval of or at least indifference at the statute's first appearance. Not until 1515 did the clergy fight the law's renewal, and by then England's clergy was mired in the Hunne Scandal, which had implications for the clerical immunity from secular prosecution. Thus, the English clergy were desperate to prove their legitimate jurisdiction and authority.

Those scholars quoted above are all concerned with the struggle for power between Church and State. Alternatively, legal historians tend to focus on the text of the statute. Krista Kesselring described the law as "a statute of 1512 [that] removed the benefit of clergy from men who committed murder, felony on consecrated ground, or robbery on the king's

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[162] Burnet, p. 20

[163] See JH Baker. *Reports of Sir James Dyer*. vols. 109-110 Selden Society: 1994; *Caryll's Reports*; *Year Books of Henry VIII*, ed by JH Baker. Selden Society, vol 119: 2002; *Reports of Cases from the Time of King Henry VIII*. See also David Seipp, *An Index and Paraphrase of Printed Year Book Reports, 1268-1535*, www.bu.edu/law/seipp, 1512-1515.

[164] 4 Henry VIII c 2: *States of the Realm*, p. 348

highway or in houses with people present."[165] She does not emphasize the restriction of benefit of clergy from the minor orders by omission, but focuses instead on the lay criminals the law was designed to restrain. She sums up the reaction accurately when she writes that "several clerics launched a concerted attack upon the measure, which they believed to violate ecclesiastical law and privilege."[166] Her use of the verb "believe" is significant, for it reflects the separation between the wording of the law and the arguments against it three years later. Bellamy focuses on the "lesser clerical orders and literate laymen" who suffered from the alteration of benefit of clergy, drawing both from what the Act stated blatantly, and how the use of the term "holy orders" was interpreted years afterwards.[167] Those historians focusing on Pre-Reformation England most likely would look at the debate following the law and glean from that struggle what the law concerned, whereas a legal historian might privilege the law's words itself outside of a religious context. As a result, religious historians such as those discussed above often portray the 1512 law against lay criminals, which neglected to mention specifically minor orders in the clause protecting clergy, as an example of the anticlericalism in England that ultimately led to the break with Rome. Combined with the infamous Hunne case and the Blackfriars Debate, these events typically surface in the larger historiography depicting anticlericalism as a major cause of the Reformation.

Anticlericalism is difficult to measure. How many cases of disputes between the laity and their clergy were products of personal dislike, and how many were a reflection of common resentment of the clerical privileges and special status? Does an attempt to curb crime either among lay criminals or men in minor orders constitute anticlericalism or sound

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[165] Krista Kesselring, "A Draft of the 1531 'Acte for Poysoning'," in *The English Historical Review*, Vol. 116, No 468 (September, 2001), p. 897
[166] Krista Kesselring, *Mercy and Authority in the Tudor State*. Cambridge University Press: 2003, p. 47.
[167] Bellamy, p. 132

public policy? A superficial examination of the 1510s reveals Parliament passing an apparently anticlerical law, followed by a popular outcry against the clergy who murdered "with malice"[168] Hunne, a "singular friend to the poor"[169] in 1514, after which "how great the uproar became, what lamentations were raised, and loud accusations that the wicked and cruel agents of the bishop had strangled an innocent man."[170] The subsequent debate at Blackfriars depicted a clergy who demanded their autonomy and rejected all English authority, preferring the power of the Pope over that of the King, further exemplifying the greedy, elitist clergy as separate from the common people. Thus anticlericalism reveals tension between the Spirituality and the Temporality of England sufficiently enough to explain the ease with which Catholic England became Protestant.

Christopher Haigh has challenged this view aggressively, first in an article published in *History* in 1983, and then in his book *The English Reformation Revised*.[171] Haigh argues that anticlericalism, while present in pockets for specific reasons, was largely a product of, and not a cause of, the Reformation.[172] Haigh develops the ideas of Scarisbrick and Elton, who had challenged the "dying church" argument, and presents evidence discouraging the anticlericalism interpretation, such as the lack of anticlerical legislation responding to the Hunne situation,[173] and the continuing rise in numbers of priests, which peaked during the 1510s.[174] Haigh contends that anticlericalism did not become a major force in England until

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[168] *Caryll's Reports*, p. 685
[169] Vergil, p. 229
[170] Vergil, p. 229
[171] Christopher Haigh, "Anticlericalism and the English Reformation" in *History*, vol 68, issue 224, October, 1983 pp. 391-407, and Haigh, *The English Reformation Revised*.
[172] Haigh, "Anticlericalism and the English Reformation" in Haigh, ed. *The English Reformation Revised*, Cambridge University Press: 1987, pp. 56-74. For his argument, see especially pp. 58-60.
[173] Haigh, "Anticlericalism and the English Reformation", pp. 56, 68-69.
[174] Haigh, "Anticlericalism and the English Reformation" pp. 70-72

after the Reformation statutes took effect.[175] After 1536 the laity began to express scorn for the power of the ecclesiastical courts; tithing disputes increased,[176] and litigation against clerical abuses burgeoned from the 1530s to 1590s.[177].

Haigh's 1993 publication *English Reformations* further expounded upon these ideas as he explored the rigors of popular devotion and involvement with the "Church Unchallenged."[178] Haigh's discussion of benefit of clergy is a tale of overly defensive clergy who sought to reverse diminishing ecclesiastical court business and frequently got into arguments with parishioners that spiraled out of control. Like the Hunne case, the disputes resulted in vengeful litigation instigated from both sides.[179] Haigh attempts to demonstrate that the defensive posture was not matched by lay offensive aggression, through a long series of statistics. For example, heresy accusations and mortuary fee disputes frequently resulted from interpersonal conflicts, and were not omnipresent throughout the realm.[180] Haigh rejects the argument that the 1512 law was an "attack" on the clergy, and he counters that the clergy were not united in such an interpretation. Haigh cites the clergy who supported Standish as evidence.[181] "The Hunne and Standish affairs," he argues, "presented the clergy

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[175] Haigh even goes so far as to assert that what he describes as the "Very Anticlerical Commons" of 1529 as merely the session of Parliament that attacked Wolsey's corrupt and powerful practices. However, the evidence does not overwhelmingly support his argument; as groups of diverse people began grumbling about Wolsey and similar powerful ministers, surely their collective resentment begins what most historians refer to as "anticlericalism." From that session there is a broad upswing, which gathers anticlerical support as the Reformation continues. See Haigh, "Anticlericalism and the English Reformation" p. 62, and Scarisbrick, *Henry VIII*, pp. 250-252

[176] Ralph Houlbroke, *Church Courts and the People during the English Reformation, 1520-1570*, Oxford: 1979, pp. 122-136.

[177] Haigh, "Anticlericalism and the English Reformation" pp. 67-69.

[178] This is Haigh's title for the pre-Reformation period. *English Reformations*, p. 23.

[179] Haigh, *English Reformations*, p. 77

[180] Haigh, *English Reformations*, pp. 41-54

[181] Haigh, *English Reformations*, p. 81. See also my discussion above of John Taylor, John Fyneux, and John Veysey whose arguments joined those of Standish

as ruthless defenders of existing privileges and arrogant claimants of more."[182] Essentially, the clergy's attempt to use the law of 1512 as a launching-pad to argue their legitimacy backfired. Far from being the victims of widespread anticlericalism, in Haigh's view, they were the aggressors, attempting to use recent events as a catalyst for change in formalizing their rights and privileges in England.

Other histories of this period support some of Haigh's argument, even if unintentionally.[183] Elton initially describes the early decades of the sixteenth century as years in which "the clergy themselves attracted more dislike than love…Popular anticlericalism thrived on tales of gluttonous monks, lecherous friars, ignorant and dishonest parish priests."[184] Yet he admits this description contradicts "modern research [that] has demonstrated the falseness of many of the conventional charges against the clergy… [T]he quality of parish clergy…was in fact improving from the later fifteenth century onwards."[185] An example of such "modern research" is Peter Heath's study on the clergy in Pre-Reformation England. Heath found that although power struggles between Church and State are ubiquitous in English history, the state of the parish clergy was remarkably healthy during the 1510s and 1520s.[186] More significant, perhaps, is JJ Scarisbrick's observation that "a striking fact about [the Hunne episode] is that it was the only really serious case of its kind

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[182] Haigh, *English Reformations*, p. 83
[183] Margaret Bowker, *The Secular Clergy in the Diocese of Lincoln, 1495-1520*. Cambridge University Press: 1968; Christopher Harpert-Bill, *The Pre-Reformation Church in England, 1400-1530*. London: Longman, 1989, and Richard Rex, "Jasper Fyloll and the Enormities of the Clergy: Two Tracts Written during the Reformation Parliament" in *Sixteenth Century Journal*, Vol 31 No 4 (Winter 2000), pp.1043-1062.
[184] Elton, *Reform and Reformation*, p. 9
[185] Elton, *Reform and Reformation*, pp. 9-10
[186] Heath, p. 193

that the anticlerical lobby of the time could produce and which modern historians have been able to cite."[187]

Arthur Ogle's study of the Richard Hunne episode is a noteworthy example of Scarisbrick's statement, for Ogle struggles to connect this episode to later events without being able to point to similar instances of hostility against the Church. Ogle emphasizes the clear anticlericalism associated with the Hunne case, which does indeed convey a stark division between the Spirituality and the Temporality, but then nimbly jumps from the Hunne events to 1529 and the beginning of the Reformation Parliament, stopping only briefly to discuss the contributions of benefit of clergy.[188] Ogle must arrange his narrative this way, because there is little to support the theory of a growing anticlerical movement from 1515 to 1530. The 1515 session of Parliament failed to pass any anticlerical legislation rectifying the great "wrongs" of the Hunne situation,[189] and no new attempts followed in subsequent sessions. The 1523 session of Parliament passed no statute that could be considered anticlerical;[190] furthermore, there were no uprisings against the clergy over any episode akin to the Hunne case, and the Church retained a healthy number of new priests and servants in the early decades of the sixteenth century.[191]

Other works have adopted Haigh's interpretation of anticlericalism in their narratives of the Reformation. Norman Jones nods respectfully to Haigh's investigations, although his

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[187] JJ Scarisbrick, *The Reformation and the English People*. Edinburgh: 1984, p. 47
[188] Ogle, *The Tragedy of the Lollards' Tower*. Part One deals with Hunne, with an appendix discussing benefit of clergy and the 1512 law; Part Two deals only with the Reformation Parliament, as though those sessions of Parliament were the natural second act, despite the fifteen intervening years.
[189] A move to restore Hunne's goods to his widow and surviving children failed in the House of Lords. See *Journal of the House of Lords*, vol. I, pp. 40-41; see also Bellamy, p. 136
[190] Haigh, *Reformation Revised*, p. 56; *Statutes of the Realm*, pp. 359-367
[191] Haigh, *Reformation Revised*, p. 58

work is chronologically too late to contribute to the debate.[192] Ethan Shagan's well-received work *Popular Politics and the English Reformation* establishes the devout nature of England's faith prior to the Reformation, and investigates the struggles of local communities to understand and respond to the changing nature of official religion as the Reformation progressed. He comments that "few historians today would deny that in a simple contest between AG Dickens' interpretation on the one hand, and Haigh's or Duffy's interpretation on the other, Haigh and Duffy win hands down."[193] Shagan's book depicts anticlerical situations as pervasive in English history, but "whatever resentment existed between clergy and laity in the later Middle Ages was neither necessary nor sufficient to produce widespread spiritual upheaval."[194] Haigh's criticism of the anticlericalism argument has taken hold, but it cannot be accepted wholly, for Haigh seems to suggest that there was absolutely no anticlericalism at all. Richard Rex notes the importance of Haigh's work for its impact in questioning the importance placed on a vague concept such as anticlericalism, but also critiques Haigh for having gone too far in the other direction.[195] A tentative consensus seems to be that while individual anticlerical situations existed, they were not a movement that could have "caused" the Reformation.[196]

If anticlericalism was not as pervasive a force as once thought, the Blackfriars Debate cannot be dismissed as the clerical response to yet another anticlerical attack on their rights and privileges. Instead, the debate follows a parliamentary attempt to curb crime by limiting

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[192] Norman Jones, *The English Reformation: Religion and Cultural Adaptation*. Blackwell: 2002, p. 2
[193] Shagan, p. 5
[194] Shagan, p. 133
[195] Rex, p. 1045
[196] Andrew Pettegree concludes somewhat in favor of Haigh's impact on the historical narrative of the Reformation in England. See Pettegree, "A. G. Dickens and his critics: a new narrative of the English Reformation" in *Historical Research* vol 77 no 195 (2004), pp. 39–58.

the excessive use of the privilege by those outside of the Church. Whether the law was framed as a result of anticlerical feelings in the House of Commons becomes irrelevant; more important is Convocation's aggression three years after the statute's publication. When put in the context of the Hunne situation, Kidderminster's sermon and the subsequent debate become examples of asserting the autonomy of the Church in England and recapturing a level of ecclesiastical jurisdiction during a time when the business of the Church Courts was declining.[197] Benefit of clergy was merely the vehicle through which this particular struggle between Church and State could be settled; the rights of minor clergy and anticlerical attitudes of a populace, or of the MPs in the Lower House, were superfluous to the higher goal.

Conflicts between the ecclesiastical and secular powers were omnipresent in English history. The problem with interpreting such conflicts as "anticlericalism" during the 1510s is that such a designation during this particular period makes wider claims concerning the social and religious turmoil the Reformation caused for the rest of the sixteenth century. If relations between the laity and the clergy were contentious just before the Reformation, it suggests that the Henrician Reformation was more than the political solution to the king's personal desires. An historian who cites the 1512 statute, or the debate that followed, as an example of "anticlericalism [as] a very important force of change long before the crisis of the Reformation" attaches the larger and more contentious claim that such events therefore "caused" the Reformation.[198] The evidence of how Parliament phrased the statute, how the

[197] Houlbrooke, p. 11
[198] AG Dickens, *The English Reformation*, Second Edition, Penn State University Press: 1991, p. 10

English clergy responded to it, and the particulars concerning the Hunne episode do not necessarily support such a broad assertion.

What we can ascertain from the episode is that the 1512 statute was not overtly anticlerical in its final form. We also have no evidence that the bill was anticlerical in its first draft, when it was sent from the House of Commons to the House of Lords; both versions, with or without the clause specifically protecting members in Holy Orders, could have the well-meaning focus of combating the continuing problem of lay criminals, who had been taking advantage of the clergy's privilege for centuries.[199] Since the clergy waited almost three years before staging a protest, we can speculate that the omission of protection for those in minor orders was less important than the stand taken against the very idea of Parliament making any alteration to those rights particular to the clergy. Whether or not Parliament's infringement actually hurt clerks is irrelevant; what is significant is that the clergy lost their case. As Derrett notes, "Thus the affair of Standish, though it may not have been realized at the time, cut England in a real sense off from Europe," and led directly to the political movement of the 1530s.[200] The symbolic end of the debate and the Standish affair gave England an upper hand and a sense of authority in the age-old contest of competing jurisdictions. The contest came to a head ironically because the Spirituality used a law targeting primarily lay criminals as a symbol of their exceptional condition. Instead of securing their status and proving their superior jurisdiction, the debate established that the English clergy were subject to Parliamentary statute. Past examples of statutes limiting

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[199] See Chapter Two; see also Leona Gabel, *Benefit of Clergy in England in the Later Middle Ages*. Smith College Studies in History, vol 29: 1929

[200] DM Derrett, "The Affairs of Hunne and Standish" in *More's Apology*, vol ix of *The Complete Works of Sir Thomas More*, ed. JB Trapp, Yale University Press: 1979, p. 237

benefit of clergy prevailed. Parliament's power over the clergy was enhanced, and that superiority would legitimize the drastic changes of the 1530s.

If the Blackfriars Debate had not established who could create benefit-of-clergy laws and definitions, based on its particular development as part of England's Common Law, many of the legal reforms made in the 1530s would have had less precedent on which to rely. Henry would later return to his 1517 claim that "By the ordinance and sufferance of God we are king of England, and the kings of England in times past have never had any superior but God alone."[201] Henry's statement was inspired by debate over benefit of clergy, but became immensely powerful during his later fight for the divorce and supremacy over the Church in England. The "anticlericalism" of the 1510s can therefore be dismissed as both irrelevant to the specifics of the religious change in the 1530s and as not potent enough to have resonated through the relatively peaceful 1520s. Indeed, anticlerical sentiment cannot be deemed significant until Henry began to implement the religious policies now viewed as the English Reformation. In the place of the vague idea of "anticlericalism," we find a clergy overly eager to defend their authority and jurisdiction, but no aggressive secular organization that actively challenged them. The real mistake was Kidderminster's sermon. His assertions led to the justices' decision that benefit of clergy was not actually an ancient right of the Church, but a privilege granted by the secular authority of the king of England. That decision would contribute more to the power of the Reformation Parliament to implement Henry's new policy than abstract ideas of anticlericalism among the populace.

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[201] *Caryll's Reports*, p. 691

MA Thesis
Chapter Four

Benefit of Clergy, 1529-1540:
The Reformation Parliament and the Abolition of an Immunity

The acts of the Reformation Parliament concerning benefit of clergy can be divided roughly into two categories: those that targeted lay clerks, and those that changed the privilege for fully-ordained clergy. Not every act had a clear lay or clerical intention; in 1531, for example, a new definition of treason covertly denied benefit of clergy to poisoners regardless of their level of ordination. However, the context of most of these laws belies the privilege's name to reveal a target group not necessarily in orders. Between 1532 and 1536, Parliament passed six acts that affected the lay version of benefit of clergy, but only two acts altering the clerical version. The second of those two acts, however, was the most significant concerning the privilege during Henry VIII's reign. The Act of 1536 decreed that the clerical version of benefit of clergy would be eliminated, and all future literate male criminals treated as "lay clerks." With the abolition of the clerical version, only the lay privilege remained. Despite the retention of clerical language, ecclesiastical employment of future claimants became irrelevant, and claimants of benefit of clergy no longer received spiritual punishments. As a result of these statutes, benefit of clergy ceased being a "benefit" for "clergy," and became a completely secular legal loophole independent of any connection to ordination.

Some difficulties emerge in studying this particular period, as Stanford E Lehmberg discusses at length in his unparalleled study of the Reformation Parliament.[202] Little

[202] Standford E Lehmberg, *Reformation Parliament, 1529-1536*, Cambridge University Press: 1970, p. viii

documentation survives from the House of Commons, and the *Journal of the House of Lords* is intermittent, with no extant records for the sessions between 1515 and 1533, nor for the 1535 session.[203] There are no personal diaries from the time. We have the somewhat biased narrative of Edward Hall and the letters of the Imperial Ambassador, Eustace Chapuys. The *Letters and Papers* of Henry VIII occasionally mention the creation and passage of various acts, but not always, and discussion is rarely thorough. Therefore, it is difficult to determine motivations behind many of the important bills that Parliament debated and passed between 1529 and 1536. We fortunately have the wording of the statutes themselves, some of which exist in multiple drafts. The *Statutes of the Realm* are, in some ways, our best source of information, since these statutes would have been published and spread throughout the realm upon the dissolution of Parliament. The texts of the acts themselves can give us important clues to the inspiration and social impact of each law.

Over the course of seven sessions, the Reformation Parliament sought to implement those changes in religious policy that Henry's political situations demanded. Much of these changes affected the clergy in a plethora of ways. The 1529 session dealt with many financial measures against corrupt or pluralist clergymen. In 1532, MPs presented Henry VIII with the Supplication Against the Ordinaries, a petition that reiterated many of the financial problems at issue in the 1529 session of Parliament but focused more on the immense, arbitrary power Ordinaries commanded with charges of heresy.[204] Those accused of heresy defended themselves at their own expense, and the accusations were often malicious, leading to an abuse of power by individual members of the clergy. In the same

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[203] "22 December 1515" and "15 January 1534", "30 March 1534" and "10 June 1536" *Journal of the House of Lords*, vol 1, London: 1802, pp. 57-59, 81, 85.
[204] Edward Hall, *The unyon of the two noble and illustre famelies of Lancastre and Yorke.* London: 1555, p. 784

year, Parliament obtained the Supplication of the Clergy, by which Convocation agreed to pass legislation only with the king's approval. The Supplication gave the king the power to review all existing canon law.[205] Concurrent with the Supplication, the Commons passed significant statutes concerning benefit of clergy that affected only those in orders. Between 1534 and 1535, three more statutes deprived various lay groups of their eligibility to claim. However, before Parliament passed these specific statutes concerning benefit of clergy, and before the Submission of the Clergy in 1532, another law altered the privilege in 1531. Superficially this law is about treason, and not immunity to felony punishment. The significance of the 1531 statute was that it deprived men in orders their benefit of clergy without doing so obviously, exemplifying Parliament's caution in how they attempted to alter the clergy's special rights. Its members' reservations would not last.

Thus, the first Act to address benefit of clergy in the Reformation Parliament does not mention the privilege by name. The 1531 "Acte for Poysoning" declared homicide by poisoning to be an act of treason.[206] Parliament produced the law while playing its role of high court, rather than merely creating legislation through private and public bills. One of John Fisher's cooks, Richard Roose, poisoned some porridge. Although the bishop himself was never in any great danger, the poisoned food was given to strangers asking for alms, and two of them died. GR Elton interprets the poison statute as an anomaly in the history of Tudor legal development, both because the crime of poisoning was elevated inexplicably to

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[205] See 25 Henry VIII c 19 "An Act Concerning the Submission of the Clergy" in *The statutes at large, in paragraphs, and sections or numbers, from Magna Charta, to the end of the session of Parliament, March 14. 1704. in the fourth year of the reign of Her Majesty Queen Anne. ... With alphabetical tables. In three volumes*. London: 1706, p. 422. See also Michael Kelly, "The Submission of the Clergy: The Alexander Prize Essay" in *Transactions of the Royal Historical Society,* 5th Series, Vol 15 (1965), pp. 97-119. Convocation submitted the Supplication in 1532, but it did not become an act of Parliament until 1534.

[206] 22 Henry VIII c 9: *Statutes of the Realm*, p. 386

treason, and the punishment prescribed – and suffered by Richard Roose – was death by boiling.[207] Elton describes the 1531 Act as "the dying echo of an older common law attitude which could at times be negligent of the real meaning of the word ['treason']."[208] Elton assumes that the categorization of poison as treason was merely Tudor legalese for a particularly heinous crime. However, Krista Kesselring ties the law to benefit of clergy by analyzing earlier drafts of the act, in which the crime was categorized as an unclergyable felony, without exception for those in orders, major or minor.[209] Her article, "A Draft of the 1531 'Acte for Poysoning'," examines the trouble MPs experienced while framing early versions of the law, as some members of the Upper House disagreed with the Lower House over whether the Act could pass without some symbolic clause protecting those in holy orders. Ultimately supporters of the law circumvented the objection by dropping any reference to benefit of clergy and relying on the established convention that all treasonous offences were unclergyable.

This was not the first time a crime was declared unclergyable without provision for those in holy orders. Parliament had passed statutes in the 1490s denying benefit of clergy to soldiers and sailors who abandon the king and to those guilty of petty treason had no clause protecting real clerks.[210] However, the version of the Act for Poisoning that made it unclergyable did not pass. By transforming the crime into treason, Parliament recast it as an act against the Crown, by extension making the crime unclergyable. High treason, now

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[207] GR Elton, *The Tudor Constitution: documents and commentary.* Cambridge University Press: 1960, p. 60; 22 Henry VIII c. 9
[208] Elton, *The Tudor Constitution,* p. 60
[209] Kesselring, Krista. "A Draft of the 1531 'Acte for Poysoning'," in *The English Historical Review*, Vol. 116, No 468 (September, 2001), pp. 894-899
[210] 12 Henry VII c 1&7

encompassing homicide by poison, had been unclergyable since Edward III's reign.[211] The restriction had been confirmed under Henry IV and extended to include petty treason under Henry VII.[212] After 1497, then, all treason, high or petty, became unclergyable offences, regardless of the criminal's true clerical status.

Kesselring argues that the clergy were still too powerful to allow any infringement on their rights before the Submission of 1532.[213] The Blackfriars Debate of the 1510s may have ended in favor of the ability for Crown and Parliament to define benefit of clergy,[214] but until 1532, Convocation still had the power to create canon law and to protest effectively. Reprisal legislation from Convocation would have complicated Parliament's attempt to produce legislation responding to the trial of Richard Roose in a timely and effective manner. For reasons unknown, the king himself became involved with Roose's trial, leading Kesselring to wonder if a member of the Boleyn faction actually engineered the poisoning in Fisher's house for political security.[215] Since Fisher was an ardent supporter of Queen Catherine, his untimely demise would remove a barrier to that faction's ascendance. In any case, Henry addressed Parliament and "asked them to consider both ecclesiastical immunity for offenders and Roose's case,"[216] but Parliament did not comply. Instead, they reframed the crime as treason if the poison proved fatal, circumventing the debate of limiting clerical privilege while still passing the law on their own terms. Parliament passed the Act of 1531, declaring murder by poison treason, and Bishop Fisher's servant suffered the horrible pain of

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[211] Matthew Hale *Pleas of the Crown*, London: 1707, pp. 9-11
[212] 12 Henry VII c 7; Leona Gabel, *Benefit of Clergy in the Later Middle Ages*, (1929), pp. 58-59
[213] Kesselring, Poisoning, p. 897
[214] See Chapter Three
[215] Kesselring, Poisoning, p. 896
[216] Kesselring, Poisoning, p. 896. The king's support for Roose points to Kesselring's conjecture that Roose was working for the Boleyn faction.

death by boiling. Although the treason case does not overtly appear to affect benefit of clergy, earlier drafts of the law show the clergyability of the crime were at issue. In the next session of Parliament, writers would not have to be so clever in altering the clerical privilege.

In 1532, Parliament passed two bills concerning benefit of clergy, and witnessed Convocation relinquish their power through the Submission of the Clergy. Stanford Lehmberg argues that the Commons of 1532 was unhappy with ecclesiastical abuses, especially concerning heresy and the power of the Ordinaries. No Commons, he writes, had ever grumbled even a tenth as much as this assembly.[217] Elton writes that the 1532 session's "first achievement was to reduce the clergy to impotent obedience."[218] Indeed, acts of Parliament had an anticlerical nature about them at the 1532 session. Perhaps Parliament felt emboldened when the clergy surrendered their legislative power, and as a result the difficulties that had occurred during the early proposals of the 1531 poisoning draft disappeared. Whether the timing of Convocation's submission is significant or not, the very first bill of the 1532 session dealt men in major orders a decisive blow: it denied them the process of purgation and replaced it with lifelong imprisonment.

With the publication of the first Act of the 1532 sessions, the practical use of benefit of clergy at trial changed for those in orders. Previously, a man above the order of subdeacon could plead his clergy for a crime and be delivered to his Ordinary as either clerk convict or clerk attaint.[219] The temporal courts would then send for the Ordinary to claim the

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[217] Even the Parliament of 1529 did not complain as much. Lehmberg, *The Reformation Parliament*, p. 138.
[218] GR Elton, "The Commons' Supplication Against the Ordinaries" in *English Historical Review*, vol lxvi (1951), p. 507
[219] A man who pled clergy before conviction was a clerk convict, and could keep his goods after his purgation; a man who waited for conviction before praying his clergy forfeited his property if convicted. See Trinity Term 1529 of Roger Yorke's Notebook, in JH Baker, ed. *Reports of Cases from the time of King Henry VIII*. Selden Society, vol. I: 2003, p.91.

man as a clerk, and if the Ordinary did not come, the temporal justices could give the priest a book to read in order to prove his clerical status.[220] If the Ordinary then rejected a man who had proven his literacy, the judge could fine the Ordinary and force the Ordinary to take the criminal anyway. The pressure to compel an Ordinary to take the criminal provided a door through which determined lay criminals could convince a judge of the criminal's (false) clerical status and allow the criminal to escape the lay version of benefit of clergy, which allowed only one claim and required branding on the thumb.[221] Once in the possession of the Ordinary, the clerk would confess his sins and receive a spiritual punishment, ranging from cleansing through prayer to defrocking and forced removal from Orders.[222] After experiencing the purgation of his soul, he could go back to his ecclesiastical position and live life much as he had before the crime occurred, if, that is, he had not been degraded during the incident. While not all Tudor legal processes were uniform, benefit of clergy generally followed the above course.[223]

The first 1532 statute superseded the process, forcing the Ordinary to condemn the priest to life in an early modern jail: the convicted clerk "shall not in any way from hensforthe be suffered to any purgation nor be set at liberty, but remain and abide in perpetual prison under the keeping of the ordinary."[224] The transformation of the clerical privilege was harsh, but not entirely callous: if two people were willing to post a surety – a

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[220] Anonymous, *A Treatise Prouyng by the Kynge's lawes that the bishops of Rome, had neuer right to any supremitie within this realme*…. (1538) f15a-b. See also Baker, *Reports of Cases from the time of King Henry VIII*, p. 92

[221] While this process persisted for some time, it did allow for a few variances. Roger Ekirch mentions that judges occasionally permitted cold irons to be used for the "branding," although he is studying later centuries. Roger Ekirch, *Bound for America*, Clarendon: 1987, pp. 15-16.

[222] *Reports of Cases from the time of King Henry VIII*, p. 92

[223] JH Baker, *Legal Records and the Historian*. The Royal Historical Society: London, 1975, pp. 73-77, and JH Baker, *An Introduction to English Legal History* Butterworths: London, 1971, pp. 281-2

[224] 23 Henry VIII c 1: *Statutes of the Realm*, p. 390

promise of goods equal to £80 in exchange for the prisoner's freedom[225] – then the priest could leave the prison and continue to live his life. The practice of surety had originated in Norman Law, and the clause permitting it here was not strictly necessary for its use, as it was part of common law to allow surety. However, the writers of the law may have wished to point out how the law could be somewhat circumvented for those with sufficient means.[226] Law reports and other sources that mention surety are not specific on the amount of money required by the offender's two friends, but Alexandra Shepard provides anecdotal evidence of poor men acting as sureties in the early modern period.[227] If these situations were not unique, conceivably any clergyman who had not lost the trust of his community could use the surety clause to escape life imprisonment. Only a close examination of trial records could tell us how frequently the surety clause was used and whether it was only applicable to the wealthier offenders. Aside from providing surety, priests could no longer receive complete immunity from their secular crimes. While they might avoid death through benefit of clergy, they no longer had the opportunity to serve penance and return to their livelihoods after the conclusion of the ordeal.

Since claiming clergy now meant life in prison for those in orders above the level of sub-deacon, one may be unsurprised to discover Parliament passed another benefit-of-clergy bill at the same session prescribing punishment for jail-break. In order that successful claimants of the clerical version of benefit of clergy "should stand in dread of" orchestrating

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

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

[227] Shepard, p. 89

an escape, that action "shall be from henceforth deemed and adjudged felony, and the offender therein shall have and suffer such pain of death and penalty and loss of his lands and goods as for other felonies."[228] However, "if any such offender be within Holy Orders that is to say of the orders of subdeacon deacon or priesthood," then he shall merely be returned to the Ordinary's prison, unharmed and goods intact, but forcibly degraded. The effect of the Act was to punish those clergy in minor orders or laymen who had successfully posed as clergy in major orders, and also to target priests who had been defrocked but had escaped before being delivered for further punishment at the King's Bench. Clergy at subdeacon or higher ordination remained protected, though imprisoned, while the others had their lives cut short by the hangman's noose.

The 1532 statutes effectively ended the careers of criminals who had ostensibly used ordination and benefit of clergy to continue their unlawful livelihoods, for even ordained clergy could no longer simply suffer purgation and return to freedom.[229] Furthermore, the statutes altered the legal position of clergy in major orders. The reason behind the change may be revealed in Alexander Alesius' 1538 tract *A Treatise Concerning General Councille, the Bishop's Council, and the Clergy*, in which he dedicated an entire chapter to benefit of clergy. Alesius was a Scottish-born Lutheran theologian who had studied with Melanchthon until 1535, at which point he came to the English Court and made immediate impressions on the King, Cranmer, and Cromwell.[230] Cromwell enlisted Alesius's help in his propaganda campaign to inspire popular support for Henry's new religious policies. Alesius published

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[228] 23 Henry VIII c 11: *Statutes of the Realm*, p. 404

[229] The problem of recidivist criminals using benefit of clergy to maintain their lifestyles may have been completely imaginary; there is little evidence of a class of roving career criminals systematically claiming their clergy through the clerical version of benefit of clergy between 1489 and 1532.

[230] Gotthelf Wiedermann, 'Alesius [Allane or Alan], Alexander (1500–1565)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004

subsequent pamphlets examining a broad range of particularly English institutions that supported Henry's new regime. In his discussion of the power of preaching and the corresponding fallacies of the "bysshops of Rome," Alesius claimed that "As for the puttyng away of sin, no prist maye doo it."[231] Alesius sought to prove two primary points: that preaching was essential to understanding God; and that all manner of behavior required penance.[232] The second point involved benefit of clergy, for all sins, regardless of the status of the sinner, required punishment according to the customs of the realm, and not mere confession through the pretensions of the clergy to erase sinful actions. Although the king may exert his mercy and grace, only God had the power of forgiveness.[233] Neither confession nor purgation was sufficient to cancel out sin or crime. Perhaps the Church of England's new attitudes regarding a priest's inability to cancel out sin through Confession inspired this particular change in the clerical form of benefit of clergy.

Interestingly, both 1532 laws preserved the distinction between clerical and lay criminals despite altering heavily the clerical version. In the same year, Christopher St German appraised the laws, concluding, "clerkes within holy orders have greater privilege, concernyng theyr clergie, than clerkes that be not within orders."[234] St German does not discuss how these issues address those in minor orders; he uses "clergie" interchangeably with "priest" and makes a distinction between literate men outside the church and those with ordination papers as though there were no middle ground.[235] St German mused about the

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[231] Alexander Alesius, *A Treatise Concerning General Councille, the Bishop's Council, and the Clergy* (1538), f8b
[232] Alesius, f8a
[233] Alesius, chapter two, especially f7a-9b
[234] Saint German, Christopher. "A Treatise concernynge the diuision between the spirytualtie and tempraltie" (1532), f. 33a-33b
[235] St German, "Diuision" f31b-33a

problems of priests being judged by laymen, reasoning "yf that custome turn into an occasion and boldenes of thefte and murder, and other like thinges agynst the kynges peace," then those in major orders should be thankful for the privileged treatment they receive above other men.[236] Ultimately, St German was unsure of how to summarize the recent statutes, "never the lesse I leve that matter [of preferred treatment for clergy] to the determination of others."[237] The distinction between lay and ordained clerks created a marked separation among Englishmen, and contributed to what many 1530s pamphleteers referred to as the division of England. What occurred in 1532 was a partial destruction of the clerical privilege. As a result, the clerical benefit was greatly different after 1532, but Parliament did not yet eliminate all distinctions between clerical and lay claimants.

Parliament passed three statutes from 1534 to 1535 concerning benefit of clergy, and all three dictated new rules for specific groups of lay criminals. Each statute contributed to the secularization of the legal loophole. The sessions in 1534 and 1535 targeted the "detestable act of buggery," piracy, and dishonest servants. The withdrawal of benefit of clergy from such groups was an attempt at social control and to clarify matters of jurisdiction. Parliament wrote statutes concerning benefit of clergy between 1534 and 1535 in order to curb specific crimes, but not necessarily to attack the remaining rights of members of the clergy.

In January 1534, the House of Lords debated what would become the Buggery Statute.[238] Buggery usually refers to the "unnatural" act of sodomy, but could also refer to any non-traditional act, from creative sex acts between a man and a woman to bestiality or

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[236] St German, "Diuision" f. 34a
[237] St German, "Diuision" f. 33b
[238] *Journal of the House of Lords*, vol 1, pp. 60-65

even necrophilia.[239] Historically, the word buggery seemed to have functioned as another word for heresy.[240] Given these multiple possibilities, the Buggery Statute could have been targeting a wide variety of crimes and criminals. Fortunately, the notes of the House of Lords are more specific, as the secretary used the word "sodomie" instead of the Latin verb *paedico, paedicare*, "to commit buggery."[241] The statute focused primarily on sodomites, and to a lesser extent on bestiality. Parliament perceived a failure in England's existing system of laws in that there was no punishment for "the detestable and abominable Vice of Buggery committed with mankind or beast."[242] In order to fill the void, "the same offence [shall] be from henceforth adjudged Felony," and those found guilty shall "suffer such pains of Death, and losses, and penalties of their goods, chattels, debts, lands, tenements and heredicaments."[243] The crime would be unclergyable, and specifically "Justices of Peace shall have power and authority…to hear and determine the said offence."[244] While JPs determined most felonies, the clause confirming as much prevented any claim from ecclesiastical court officials that the sin of buggery would actually fall in their jurisdiction. Finally, the measure was temporary, to last only until the next Parliament. Ultimately it would be renewed in 1536. While a side-effect of this law altered benefit of clergy by restricting who could claim it, the law primarily provided guidelines for punishing those

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[239] Jacob Giles *A New Law Dictionary: Containing the Full Definition of Words*, (1744), under "Buggery." Giles defined it as "*carnalis copula contra Naturam*" with man, woman, or beast.
[240] *Oxford English Dictionary*, Second Edition, Oxford University Press: 1989, under "Buggery." Among the quotes provided are excerpts from the thirteenth century tying buggery to "Abominable heresy" but more common are examples of their definition: "Unnatural intercourse of a human being with a beast, or of men with one another, sodomy. Also used of unnatural intercourse of a man and a woman."
[241] Elyot, Thomas, Sir, 1490?-1546. *Bibliotheca Eliotae Eliotis librarie*, 1542 under "Buggery"
[242] 25 Henry VIII c 6: *Statutes of the Realm*, p. 415
[243] 25 Henry VIII c 6: *Statutes of the Realm*, p. 415
[244] 25 Henry VIII c 6: *Statutes of the Realm*, p. 415;

whose sexual preferences were non-procreative. Its applicability to benefit of clergy was secondary, and those it affected were not specifically in orders.

Just as the Act of 1512 had sparked a debate on the competing jurisdictions of the Spirituality and the Temporality, the Act of 25 Henry VIII c 4 clarified matters of jurisdiction. The latter Act sought to deal with crimes committed on the seas, especially piracy, and concerned the jurisdiction of the king over seafaring English subjects. Before Parliament passed the Act in 1534, murders and other felonies committed on boats had fallen under the jurisdiction of Admirals, but Parliament wished to rearrange the criminal process so that overseas crimes would receive a trial in front of the king's representatives on land. The jurisdiction of Admirals had been, originally, an extension of the Royal Prerogative.[245] As the King's Bench, the Chancery, borough courts, and other jurisdictions competed, their powers and processes grew different from one another, and the discrepancy is what ultimately led to the necessity of a law addressing disparities in legal enforcement. Benefit of clergy would have technically been applicable, but the conditions under which claimants could plead their privilege successfully would vary from those courts on land.[246] The disparity between the courts prompted Parliament to pass legislation in favor of uniformity.

The statute attempted to explain a certain problem concerning jurisdiction: "Pirates, Thieves, Robbers and Murtherers upon the Sea, many times escape unpunished, because the trial of their offences hath heretofore been ordered before the Admiral." Because of tradition in admiral courts, "before any judgment of Death can be given against the Offenders, either they must plainly confess their offence…or their offences be so plainly and directly proved

[245] Lionel Laing, "Historical Origins of Admiralty Jurisdiction in England" in *Michigan Law Journal*, p. 167
[246] Laing, pp. 173-4

by witness indifferent…which cannot be gotten but by chance at few times."[247] Problems of evidence resulted in a dearth of convictions. While these crimes were not committed on English soil, they involved English subjects, so Parliament wrote an act to bring the crimes under the king's jurisdiction. Part three of the law expressly denies criminals on the sea eligibility to claim clergy. "For Robberies, Felonies, and Murthers done upon the Seas…the Offenders shall not be admitted to have the benefit of their Clergy, but be utterly excluded thereof."[248] With the Piracy Act, Parliament took over the Admiralty's jurisdiction over crime, and made all felonies committed there unclergyable, affecting mostly guilty lay seamen.

In 27 Henry VIII c 17, Parliament denied servants guilty of stealing 40 shillings or more their right to sanctuary and benefit of clergy. The text of the statute is concise, with no additions concerning the protection of particular groups such as those in major orders. The entire Act read as follows: "A Servant imbesilling his master's goods to the value of forty shillings, shall lose the priviledge of his Clergy and Sanctuary."[249] Those servants stealing plate, money, or goods from their masters' households could not escape the noose. Once again, the target of the Act was a group of laymen: corrupt servants. Their clerical status was irrelevant.

These three statutes focused on buggery, piracy, and servants, and detracted from the traditional forms of benefit-of-clergy statutes by omitting the customary exception for clergy. It is difficult to establish whether the three statutes focused only on laymen or targeted clergy as well. Some mid-sixteenth century pamphlets portrayed buggery as rampant in the

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[247] *Statutes of the Realm*, vol I p. 452
[248] *Statutes of the Realm*, vol i, p. 452
[249] 27 Henry VIII c 17: *The Statutes of the Realm*, p. 465

monasteries. Simon Fish wrote of monks "on whom the vengeaunce of God is so manifestly declared for their beastly buggery."[250] Sir Richard Morrison marveled in 1536 that "with monkes and friars, howe yonge novices maye stand in steade of yong wyves."[251] A determined historian could interpret the Act as an overt attack on monks just two years before Cromwell began inspecting monasteries for their dissolution. In the same vein, the Piracy Act covered all who committed crimes while traveling across the seas, which might have included chaplains and priests, and the Act against embezzling servants theoretically affected servants of God. However, the laws are not specific enough for an historian to conclude persuasively that Parliament was actually targeting monks, sea-faring clergy, or private chaplains. Furthermore, when Parliament renewed these temporary measures in 1536, the clerical status of criminals was by then irrelevant. The three statutes most likely targeted lay criminals, not clergy.

We can conclude, then, that the majority of the statutes passed between 1531 and 1535 targeted lay criminals, from the poisoner Richard Roose to pirates and servants. Only the first statute of 1532 – in which Parliament deprived clergy of their right to purgation and prescribed them life in prison – addressed the clerical function of benefit of clergy, and a surety clause guaranteed that well-connected clerks could still avoid imprisonment. Eventually the 1532 law would matter little, for in 1536, Parliament rearranged benefit of clergy in England, renewing some laws and abolishing other functions. The priests would

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[250] Simon Fish, *A supplication of the poore commons Whereunto is added the supplication of beggers*. 1546, p270

[251] Sir Richard Morrison, *A lamentation in whiche is shewed what ruyne and destruction cometh of seditious rebellyon* 1536, pp. 8-9

never recover their enhanced version of the clerical privilege, even during the brief Counter-Reformation under Mary I.[252]

"An Act that Abjurers in certain cases shall not have Clergy," 28 Henry VIII c 1, outlined and renewed the many recent changes to benefit of clergy and other clerical privileges.[253] The 1536 statute comprised seven parts, and touched on diverse elements of crime and punishment. The first point established that one in sanctuary could not claim sanctuary twice; that is, if a criminal already in sanctuary were to commit a felony again, sanctuary would be revoked, and the offender executed. The second point declared that a single judge should try roving criminals, in order to prevent them from claiming the immunity for diverse crimes in different shires. Third, Parliament finally renewed the temporary Act of 1512, which had caused so much contention at Blackfriars in 1515. Clergy was not an option for criminals whose transgressions had occurred in protected areas: hallowed areas, such as churches and cemeteries; the king's highway; or in occupied homes "the owner or dweller in the said house, his wife, his children or servants then being within, and put in fear and dread by the same."[254] The statute added arson of or near granaries to the areas protected from crime, due to insufficient food supplies.[255] The third point made an

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[252] Mary's very first order of business in Parliament was to repeal various felony statutes of Edward and Henry, in order to replace the protections of England's clergy in matters of *praemunire* and Catholic worship. Curiously, neither she nor her Parliament used this opportunity to return to the clergy their ancient exemptions from secular punishment. Benefit of clergy is not mentioned during her reign's statutes; I suspect the omission is further evidence of the overly lay emphasis of the privilege in the sixteenth century. Her chance to renew the clerical privilege passed, and felony law was only addressed that first statute of her reign. *Statutes of the Realm*, pp. 708-09.

[253] 28 Henry VIII c 1: *Statutes of the Realm*, pp. 479-481

[254] 28 Henry VIII c 1: *Statutes of the Realm*, p. 480

[255] Pugh, E. P. H. "A grain shortage of the 1520s." *Local Historian*, vol 2 (1962), pp. 20-3, 33-7.

allowance for those clergy "such as be within Holy Orders, that is to say, of the orders of Subdeacon or above, all only except[ed]."[256]

In addition, those who stood mute in court, refusing to plead when asked or to cooperate during a criminal inquiry, would not have the opportunity to claim benefit of clergy after conviction. The stipulation was designed to encourage cooperation for those guilty people trying to escape all prosecution; under this law, a criminal would benefit from being forthcoming about a crime because he would be awarded the right to plead clergy. However, a murderer, petty felon, or female offender, whose crimes were unclergyable, would still do well to keep quiet. The fifth point of the statute contributed to the encouragement of the accused to cooperate with the legal system, adding that if 20 persons swore to the guilt of a man or if evidence overwhelmingly pointed to his guilt, yet he still stood mute, he would also lose his potential benefit to claim. The sixth tenet renewed the 1534 statute, outlawing "the Detestable vice of Buggery, committed with mankind or beast, [as] Felony," and stripped those offenders of their ability to read their book.[257]

The final paragraph of the Statute is the only one that explicitly targeted England's clerks. It states:

> And be it also enacted by authority aforesaid, that such as be within holy Orders, shall be henceforth stand and be under the same peins and dangers for the offences contained in any of the said statutes and be used and ordered to all intents and purposes, as other persons, not being within holy Orders.[258]

[256] 28 Henry VIII c 1: *Statutes of the Realm*, p. 481
[257] 28 Henry VIII c 1: *Statutes of the Realm*, p. 480
[258] 28 Henry VIII c 1: *Statutes of the Realm*, p. 480

With the final paragraph, all previous statutes in which ordained clergy were allowed different treatment from all other claimants were made invalid in one fell swoop.[259] Priests and bishops who had enjoyed their exemption from secular punishment could no longer claim benefit multiple times;[260] they would be branded just like other literate male criminals, and they would not be able to steal from a church, monastery, or any "hallowed place" without the expected application of the full force of the law. The statute enforced the lay definition of benefit of clergy for all criminals, "Any provision or exception specified in any of the said Acts, or any other usage or custom of this Realm to the contrary thereof notwithstanding."[261] Even one of the clauses of this very law – the third provision, excepting clergy from prosecution of felony committed in hallowed places, near the highway, or in an occupied residence – provided an exemption for those in orders. The wording of the third point referred to past acts that Parliament was renewing, and the clause was most likely lifted directly from the original act. The final, all-encompassing paragraph rendered invalid all previous exemption clauses, and put the clergy on the same level as any literate husbandman, artisan, or aristocrat.

The provisions in the Act made permanent some old laws and introduced new ones, but it was a temporary measure, only to be enforced until the next Parliament. The 1540 session made it perpetual, in 32 Henry VIII c 3: "For the Continuation of Some Acts." The Act was similar in length to the Act of 1536, and largely repeated verbatim the points of the

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[259] Elton claims this act "demolished benefit of clergy (in most crimes) for members of the Church but created it for members of the peerage" but the creation of a lay version occurred in 1489, and the benefit was for any literate person, not only those belonging to the upper classes. See Elton, *Reform and Reformation, England 1509-1558*. Cambridge University Press: 1977, p. 343

[260] Contemporary legal treatises have not made it clear how the 1532 replacement of spiritual purgation with life imprisonment would have affected the clerical right to claim clergy as often as they required it. Conceivably, those who posted sureties could then claim clergy a second time, but their sureties would lose the goods posted.

[261] 28 Henry VIII c 1: *Statutes of the Realm*, pp. 480-481

previous statute. However, the final paragraph reiterated and embellished the most important part of the 1536 law: the denial of special status accorded to clergy.

> Such persons as be or shall be within holy orders, which by the laws of this realm, ought or may have their clergy for any felonies, and shall be admitted to the same, shall be burnt in the hand in like manner and form as lay clerks be accustomed in such cases, (2) and shall suffer and incur afterward all such peins, dangers and forfeitures, and be ordered and used for their offences of felony, to all intents, purposes, and constructions, as lay persons admitted to their Clergy be or ought to be ordered and used by the laws and statutes of this realm; any statues, laws, provisions, privileges, customs, or any other thing to the contrary thereof heretofore used notwithstanding.[262]

The language of the legislation focused on those who would be in holy orders, a marked difference from the earlier statutes concerning benefit of clergy. The Act established exactly what clergy in holy orders could claim, and reiterated their place as equals with all other criminals. The above paragraph refers to lay clerks as something of a default claimant of benefit of clergy, while categorizing "such persons as be in holy orders" as new to the lay version of the immunity. The clergy lost one of their special privileges: the elite version of benefit of clergy. The loss was permanent, for the statute was intended to "continue and endure in force and strength, and be observed and kept forever."[263]

Between 1529 and 1540, the clergy lost many of their privileges. Parliament abolished mortuary fees and attacked the practice of holding multiple benefices. Convocation's submission meant that it could no longer create canon law without the king's assent, and all past laws became subject to his approval. Clergy retained the right to sanctuary, but Parliament altered that immunity to exclude multiple claims and forbade criminals to claim it again if they committed another crime while under its protection.

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[262] 32 Henry VIII c 3: *Statutes of the Realm*, pp. 504-5.
[263] 32 Henry VIII c 3: *Statutes of the Realm*, p. 505. Ultimately, this law was not observed and kept forever, rather observed only for seven years. Upon Edward VI's succession, his first parliament created a new felony law that summarily repealed and replaced all previous felony laws.

Parliament did not formally abolish benefit of clergy until the reign of George III; for all appearances, benefit of clergy survived the Reformation as Parliament assumed control of various clerical privileges. However, the evidence shows that the clergy's special privilege was eradicated between 1536 and 1540, after which only the lay version of the benefit remained. Furthermore, the great majority of the benefit-of-clergy statutes targeted laymen – perhaps in direct response to the numbers in which laymen claimed their clergy – while contributing to the secularization of benefit of clergy in English Law. Although the clerical privilege ended, the lay version continued, adopting the language of the clergy for future claimants. For centuries after 1540, all laymen who claimed the benefit would be described as "clerks" who "prayed their clergy," and law dictionaries as late as 1732 would continue to describe it as an "ancient liberty of the church."[264] However, the *clerical* privilege did not survive – only a lay version remained, and it was only a shadow of the benefit's original stature.

In the first sessions of the Reformation Parliament, neither House reformed benefit of clergy. They preferred instead to tackle the financial abuses of many ecclesiastics, especially those embodied by Cardinal Wolsey, whose extreme power had inspired hostility from other politicians.[265] In 1532, as Convocation relinquished its independence and legislative rights, Parliament redefined benefit of clergy without fear of defensive response. Still, most of the laws affecting benefit of clergy between 1531 and 1535 dealt specifically with lay claimants, because benefit of clergy was in practice primarily a lay privilege at this time.[266]

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[264] Nelson, William. *The Rights of the Clergy of that Part of Great Britain, call'd England, as established by the canons, the Common Law, and the Statutes of the Realm.* The third edition, corrected, with large additions. London: 1732, pp. 202-3

[265] AF Pollard, *Wolsey*, Second Edition, Collins: 1965, p.225-6

[266] Peter Heath, *English Parish Clergy on the Eve of the Reformation*. University Toronto Press: 1969, p. 126.

Parliamentary sessions in 1536 and 1540 cemented the idea that the clerical privilege had actually become one for the laity, when their acts abolished the clerical version of the privilege. Meanwhile, as Parliament slowly refined how benefit of clergy would function in England, propagandists and their sympathizers used the privilege's history in tandem with other English institutions in order to garner support Henry's religious policy. As we shall see, some pamphlets framed their arguments in terms of nationalism, and benefit of clergy seemed to support their claims that the king's power within the English realm was superior to that of the pope. As Parliament eradicated the clerical form of benefit of clergy, pamphleteers glorified its history and place in English Law to ensure the success of the Henrician Reformation.

MA Thesis
Chapter Five

Clerical Privilege, National Loyalty, and Ecclesiastical Supremacy in England: The Pamphlet Literature of the 1530s

The policy changes that comprised the early Henrician Reformation were highly controversial. As Henry sought a political solution that best served his personal purposes, his officials disseminated ideas and explanations among the English populace in order to clarify not only the reasoning behind his recent decisions, but also to argue the legitimacy behind them. Henry VIII "wanted to exercise the powers of the King as Emperor," as Virginia Murphy wrote, and his minister Thomas Cromwell "was anxious that theoretical justification of that position be put forth. This involved defining the King's jurisdiction in law."[267] For the purpose of explaining policy and authority, Cromwell arranged for the commission of a series of pamphlets addressing multiple issues that would affect the English people.[268] These works, complemented by similar arguments from those sympathetic to the new religious ideas, used England's history, religious texts, and circumstantial evidence in an attempt to show that the king's jurisdiction was highest in England, theological change justifiable, and the realm indeed independent from the pope. Ultimately such theoretical arguments were necessary to convince a largely Catholic populace that the new religious policies of Henry

[267] Shelley Lockwood, "Marsilius of Padua and the Case for the Royal Ecclesiastical Supremacy: the Alexander Prize Essay" in *Transactions of the Royal Historical Society*, 6th Series, Vol 1 (1991), p. 92
[268] GR Elton, "Propaganda" in *Policy and Police: The enforcement of the Reformation in the Age of Thomas Cromwell*. Cambridge University Press: 1972, pp. 171-3.

VIII were valid,[269] undoing the great "injustice" that was the pope's usurpation of the power and authority that rightfully belonged to the king.

Although the supporting arguments in the literature of the 1530s were vast and covered many subjects, authors wishing to establish the superiority of royal jurisdiction drew upon the history and existence of benefit of clergy in order to prove that Henry's power was supreme in England. A few writers, including Christopher St German, Jasper Fyllol, and an anonymous author, dedicated whole chapters of their books to exploring the significance of this legal curiosity, analyzing the status of the privilege in relation to competing jurisdictions within the realm.[270] Other writers, including Alexander Alesius and more anonymous pamphleteers,[271] mentioned the privilege briefly as they discussed additional evidence that they felt proved the king's superior power. As a result, these pamphlets reframed the history of benefit of clergy to provide precedence that supported the king's decisions. Pamphlet literature recast benefit of clergy as evidence of Henry's superior jurisdiction, which in turn

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

[270] Christopher St German, "Chapter Sixth" of *Concerning the power of the Clergye and the lawes of the realme* (1535), Jasper Fyllol, "Of the King's Great benignity and favor used always towards the clergy and of their great presumption and cruelty showed against his grace and his lay subjects: Ca ii" in *The Enormytees of the Clergy* (1533), and Anonymous, *A Treatise Prouyng by the Kynge's lawes that the bishops of Rome, had neuer right to any supremitie within this realme* (1534)

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

contributed to a larger body of work emphasizing England's special national character as independent of all foreign influences, included the authority of the pope.[272]

The arguments that drew upon benefit of clergy as evidence were not uniform, but similarities in the literature were great enough for us to infer that the pamphlets must have built upon each other, or upon a dialogue among the writers. For example, both Fyloll and Alesius explored what Alesius described as the "diverse powers that the clergye hath by the law of God"[273] and agreed with St German it strained a society when "clerks within orders be more favored than clerks that be not within orders."[274] These and other authors added to each other's work when they spoke of jurisdiction in similar ways, implying a written or spoken dialogue. In 1535, St German wrote about the history of benefit of clergy in his musings about power and jurisdiction in England; almost identical historical documents and events were subsequently cited in *Prouyng by the King's Lawes* and in Alesius's work in 1538.[275] The fact that authors incorporated past arguments is not necessarily evidence that all pamphlets originated from a single orchestrator, such as Cromwell.[276] Rather, the similarities among pamphlets merely mark the probability that the writers were aware of each other's arguments. These sympathetic writers cannot be assumed to have been "government-

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[272] Henry VIII, *A Glasse of Truth*. Berthelet: 1532; Sir Richard Morison, *An exhortation to styrre all Englyshe men to the defence of theyr countreye* (1539); and Anonymous, *A Treatise Prouyng by the Kynge's lawes*. See also Scarisbrick, *Henry VIII*, University of California: 1972, p. 264.
[273] Quote is from Alesius, *Concerning the Bishop's Council and the Clergy*, f6b. See also Fyloll, *The Enormytees of the Clergy*. I am following the plausible argument put forward by Richard Rex's close reading of *Enormytees* and Fyllol's work *The Possessyons of the Clergie* (1532), which have been attributed to anonymous or to incorrect publication dates by STC, but were most likely written by Fyloll and published in 1532 and 1533 respectively. For a thorough examination of Jasper Fyloll and his pamphlets, see Richard Rex, "Jasper Fyloll and the Enormities of the Clergy: Two Tracts Written during the Reformation Parliament" in *Sixteenth Century Journal*, Vol 31 No 4 (Winter 2000), pp.1043-1062.
[274] St German, *The Diuision Between the Spirituality and the Temporality*, f32b.
[275] St German, *Concerning the power of the Clergye*, *Provyng by the King's Lawes*, and Alesius, *Concerning General Councille, the Bishop's Council, and the Clergy*
[276] Robert Hutchinson, *Thomas Cromwell: The Rise and Fall of Henry VIII's Most Notorious Minister*. London: 2007, pp. 197-99

employed pens," as GR Elton referred to pamphleteers under royal patronage, but many belonged to the complex system of patronage linking them to Cromwell.[277] For the purpose of this discussion, pamphlets connecting religious policy to themes of royal mercy, jurisdiction, and nationalism have been isolated, and the authors' possible connections to Cromwell or other important ministers taken into consideration. Anonymous tracts or pamphlets whose authors have no clear ties to Cromwell still attempted to argue in support of royal policies. Therefore their themes are worth considering alongside those that historians have established to be works of propaganda.[278] Whether or not each individual pamphlet could be dubbed "official" or "Cromwellian" propaganda,[279] they all enjoyed some degree of circulation and influence. Taken together, pamphlets that used benefit of clergy as evidence recast the privilege as a specifically English tradition that incorporated the idea of the king's mercy into arguments demonstrating his superior jurisdiction and authority. By doing so, benefit of clergy contributed to larger debates characterizing England itself.

The predominant arguments and theories present in the supportive pamphlets of the 1530s evolved as the Henrican Reformation progressed. Pamphlets of the earlier 1530s highlighted evidence that privileged Henry's jurisdiction in an attempt to secure England as the location for his divorce trial.[280] As the Break from Rome emerged as the new goal, pamphlets from the mid-1530s suggested that England was a special case within Christendom, a country whose independence was guaranteed through specific developments

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[277] GR Elton, *Policy & Police*, p. 173; Franklin le Baumer, *The Early Tudor Theory of Kingship*. Yale: 1940, pp. 225-237

[278] For a list of those works I have consulted for this chapters, see Appendix Two

[279] Elton, *Policy and Police*, pp. 171-74 and Baumer, pp. 212-13; See also Virginia Murphy "The Literature and Propaganda of Henry VIII's First Divorce" in Diarmaid MacCulloch, ed, *The Reign of Henry VIII: Politics, Policy, and Piety*. St Martin's Press: New York, 1995, pp. 135-158

[280] Murphy, pp. 135-138

in its unique history.[281] Towards the end of the decade, however, other pamphlets reframed the argument in order to emphasize that the pope had absolutely no power within England and had merely assumed sovereign power where he did not possess it. Writers such as Alesius and Sir Richard Morison depicted the pope as a usurper of power that could only belong to the prince of a realm.[282] Alesius used scripture in an attempt to prove that the pope had asserted his authority where he had none, describing the Bishops of Rome as having "vsurped honor, power, riches, libertie, and suche other" from princes in their own realms.[283] "The kynge's maiestie," asserted the author of *Prouyng by the King's Lawes*, "hath thereby no new power given unto him, but that the self same power and supremitie hath always before been in his most noble progenitors" even though the pope had usurped their authority.[284] These and similar pamphlets found the developments of benefit of clergy useful to their overall goal. As we shall see, their authors even reinterpreted past events in order to garnish public support for the political changes during the Reformation.

Constructed within these larger arguments were persistent themes regarding English institutions. Among these topics were the state of benefit of clergy in England, the morality of clerks who claimed their immunity, and how the legal privilege affected the peace of the realm. Related to the issue of clerical immunity was the ostensible immorality of the clergy, a group that the treatises generally depicted as criminal and untrustworthy. Writers also discussed the subjection of clerks to the Temporal courts. The purpose of these messages, whether Cromwell arranged it or a writer sympathetic to new policy coincidentally saw it as

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[281] See as examples St German's *Diuision Betwene the Spirituality and Temporality* and *Concerning the Clergy*, (1535) Jasper Fyllol's *Enormytees*, and Henry VIII's *The Glasse of Truth*
[282] Alesius, *A Treastise Concerning the General Council…* and Morison, *An exhortation…*
[283] Alesius cited Matthew Chapter 18, concerning the autonomy of princes within their realms; quote is on f24b
[284] *Prouyng by the King's Lawes*, f3a

such, was first to inculcate in their readers a feeling of distrust against those who clung to their allegiance to the pope, second to replace that allegiance with loyalty to the King, and third to explain the legitimacy behind Parliament's authority to alter fundamentally the Church in England.

Two predominant authors who focused on the connection between benefit of clergy and the authority of the State were Fyloll and St German.[285] Fyllol was a known servant of Cromwell who sat as an MP during the Reformation Parliament.[286] St German was a man of modest mercantile origins who wrote extensive legal commentaries.[287] St German's works attracted the attention of Thomas More, with whom St German was able to debate after securing Cromwell's patronage.[288] Chapters within the works of Fyllol and St German used benefit of clergy as a lens through which the turbulent issues of the 1530s could be examined. If they could prove that benefit of clergy was not merely an "Ancient Liberty of the Church,"[289] but more properly a form of mercy that the King of England granted to some criminals, by extension they could show that other ancient rights and traditions associated with the Church might actually derive from the king. To suggest religious traditions were well within royal dominion would be immensely useful to Henry and his Privy Council as they implemented the Reformation. Fyllol wrote of the clerical privilege that "priestis have had too much favor here in this land [due to] the king and his lords temporall."[290] Since their special treatment came from parliamentary "statutes in favor of such clerks murderers and

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[285] Fyllol, *Enormytees of the Clergy*, chapter ii, and St German, *Diuision of the Spirituality and the Temporality*, "Chapter Sixth"
[286] Rex, pp. 1043-45
[287] JH Baker, "Christopher St German" in *The Oxford Dictionary of National Biography*. Oxford University Press: 2004
[288] JB Trapp, ed. *More's Apology*, vol ix of *The Complete Works of Sir Thomas More*. Yale University Press: 1979, pp. xv-liv.
[289] Jacob Giles, *The Interpreter* (1607), under "clergie"
[290] Fyllol, *The Enormytees of the Clergy*, f7b

others," Fyllol reasoned, then the authority over benefit of clergy resided with the Temporality.[291] Further, the privilege marked England as different from other countries in Christendom that had not developed an immunity so fully in their legal systems. Fyllol apparently did not approve of the immunity; he went on to discuss in detail the harmful social effects of such preferential treatment.[292] St German also emphasized the temporal authority that provided benefit of clergy, noting the benefit's form was particular to England.[293] Benefit of clergy, according to these two men, was evidence of the king's superior power in his realm, and of England's special condition implied through the existence and prominence of the legal exemption.

Discussions of clerical immunity often led to criticisms of clergy's behavior. The conduct for which writers expressed disdain was vast and diverse. Fyloll accused clergymen of taking advantage of people through the artful use of dice and cards, committing felonies and murders, and "misusing…temporall possessions of the clergy contrary to the commaundement of god ye olde lawe and contrarye to the example and teching of chryst in the newe lawe of his gospel."[294] Alesius mentioned the clergy's many treasons, murders, and felonies. He also noted their presumption that ecclesiastical law might be superior to that of Parliament, as well as their falsely claimed ability to "putteth awaye sin" through auricular confession.[295] Alesius argued that confession did nothing to alleviate sin; the change in attitude towards confession might explain why in 1532 Parliament altered benefit of clergy to

[291] Fyllol, *The Enormytees of the Clergy*, f9b
[292] Fyllol, *The Enormytees of the Clergy*, f10a-11b
[293] St German, *The Diuision Betwene the Spirituality and the Temporality*, fs 31a-34b
[294] Fyloll, *The Enormytees of the Clergy*, f5a-6b
[295] Alesius, f14b; quote is from f8b

prohibit spiritual purgation and enforce life imprisonment instead.[296] In addition, anonymous works also portrayed clergy as guilty of arbitrary defamation, rape and ravishment, malicious accusations of heresy, and murder.[297]

Although clergy were criticized for reading their book and escaping punishment, some writers saw even their escape as symbolic of the king's jurisdiction and mercy. The anonymous tract *A Treatise Prouyng by the King's Lawes that the Byshops of Rome, had never ryght to any Supremitie within this realme* concluded that "the clerks shall enjoy the liberties of the Church, according to the custom of the realm, [yet] yielding themselves to the law of the realm."[298] In other words, although the immunity was a clerical privilege, clergy could only claim it by subjecting themselves to the king's courts. Only through the surrender to the secular justice system could they obtain their exemption; to claim was to participate, and this indicated that clergy were subject to the king's laws and courts even as they pled to escape its penalties. Since Parliament had granted clergy this benefit, every clerical claimant of the privilege became proof of the supreme jurisdiction of the king's laws, as passed by his parliaments, even as criminals stood immune to secular punishment. St German used the subsequent cooperation between men in orders and the secular justice system, if only for the purpose of claiming exemption, as proof of the connection between the king's authority and generosity and the clerical immunity. He further cited the implicit secular origins of the

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[296] 23 Henry VIII c 1: England and Wales, *The statutes at large, in paragraphs, and sections or numbers, from Magna Charta, to the end of the session of Parliament, March 14. 1704. in the fourth year of the reign of Her Majesty Queen Anne. ... With alphabetical tables. In three volumes*. London: 1706, pp. 389-90. The text of the law does not explain the need for change in benefit of clergy, but it does present a brief history of the immunity.
[297] Anon. *Provyng by the King's Lawes*, f24a-25a; see also Anon. *A treatise wherin Christe and his teachinges, are compared with the pope and his doings*, f6a
[298] *Prouyng by the King's Lawes*, f14b.

benefit that enabled Henry VII to extend it formally to laymen.[299] The clergy seemed to be aware of this argument; St German reported that priests were uneasy about appearing in front of temporal judges, even if only to claim their privilege.[300] As another example, ecclesiastical authorities pressured Dr Horsey to claim sanctuary instead of benefit of clergy in 1514 so that he would not be "convented" in a secular court, even if only to claim his immunity.[301]

A significant recurring theme within the pamphlets of the 1530s drew upon the history of benefit of clergy as an example of long-term power struggles between Church and State. Previous occasions during which popes and English kings had communicated about privilege, authority, and jurisdiction could be interpreted as proof of a hierarchy of power between them. In the past, the Pope had asked the king to grant clergy to specific individuals, or to preserve the right for all English clergy. In the very act of asking, these pamphlets assert, the pope proved his inferior status to the King with respect to authority and jurisdiction within England.[302] For this argument, St German reviewed the history of benefit of clergy during the fifteenth century, when priests were supposedly hanged while laymen took advantage of their immunity and escaped punishment.[303] "Men of religion were drawn and hanged by the award of secular justices," he explained, "wherefore it was accorded and granted by the king in his said parliament that all manner of clerks as well secular as

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[299] St German, *The Diuision Betwene the Spirituality and the Temporality*, fs 31a-34b
[300] St German, *Concerning the Clergy*, Chapter Sixth, f14b
[301] See Chapter Three, or Baker, JH, ed. "Dr Standish's Case, Trin.-Mich. 1515" in *Reports of Cases by John Caryll*. Vol II. Selden Society: 2000, pp. 683-692, p. 686 and GR Elton, *Reform and Reformation 1509-1558*. Harvard University Press: 1977, p. 54.
[302] *Prouyng by the King's Lawes*, Chapter ii, and St German, *Diuision Betwene the Spirituality and the Temporality* f30b
[303] St German, *Concerning the Clergy*, f15b-16b; See Chapter Two for more on the 15th c benefit of clergy

religious should [also] be" treated the same, convicted and hung.[304] When the clergy had complained about abusers of their immunity, St German related, they had petitioned the king multiple times instead of seeking redress through the pope, allowing for the interpretation that the privilege fell in the king's jurisdiction.[305] In St German's history, he attempted to use Convocation's decision to seek a solution through the King's authority as proof that they understood the clerical benefit to originate with royal power. In *Prouyng by the King's Lawes,* such examples are described at length, leading its author to conclude that "both the sayd jurisdictions belonge, and ever have belonged, to the king" and indeed, "clergie never hadde any jurisdiction to hold pleas in this realm, but onely by the custome of the realme and by the sufferaunce of the kynges" of England.[306] The clergy's rights and jurisdiction within England originated from the authority of the king, anonymous argued, and therefore benefit of clergy derived from royal authority, as did other rights and institutions that the king was only regaining in the 1530s.

Parliament conveyed a similar interpretation in the introductory paragraphs of the 1532 parliamentary statute "An Act Concerning Convicts of Petit Treason, Murthers, etc."[307] In the history of benefit of clergy that opened the statute, the lawmakers claimed that previous successful acts survived the test of time even as they altered the clergy's ancient right. Specifically the statute described the Archbishop of Canterbury's submission in 1371, and his promise that thereafter clergy convicted of high treason would forgo their

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[304] St German, *Concerning the Clergy*, f15a-16b
[305] The clergy had, in fact, contacted the Pope in an attempt to solve their problems. When the Pope's response was inadequate, Henry VII came up with a viable solution. St German's interpretation need not be accurate, merely persuasive to his audience. See Chapter Two
[306] *Prouyng by the King's Lawes*, f10b
[307] 23 Henry VIII c 1: *Statutes of the Realm*, pp. 389-390

immunity.[308] His submission implied a recognition of Parliament's power and right to change benefit of clergy. The author of *Prouyng by the King's Lawes* went further in the argument supporting the idea that the privilege originated in local English authority rather than in the authority of the pope or the Bible. The writer referred to papal correspondence during the reigns of Edward III and Henry IV, in which the pope asked the king to grant benefit of clergy and cooperate in matters of bastardy, bigamy, and divorce, among others.[309] Through these examples, writers sought to demonstrate situations that implied the king had more power than the pope. Benefit of clergy was the king's prerogative. The king's ability to dictate or alter clerical rights partially proved his superiority to the authority of the pope; furthermore, papal requests submitted to the king provided more evidence of the pope's lesser power over English matters.

Similarly, pamphleteers considered the origins of benefit of clergy as they determined the jurisdiction to which the privilege belonged. The clergy claimed that their exemption from secular punishment originated from the Bible."[310] St German mentioned that the Spirituality claimed benefit of clergy as part of divine law, "which they apply only to priests."[311] As mentioned above, clergy argued that their privilege had Biblical origins, implying absolute right under divine law. To their argument St German responded that in one sense all Christians were "anointed," either in baptism or through the King's coronation, thereby making all Christians exempt from secular law, which was hardly desirable. Furthermore, Parliament had been able to alter and redefine benefit of clergy through

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[308] This submission was in response to 4 Henry IV c 3
[309] *Treatise Provyng by the King's Lawes*, f5b-6a.
[310] The Biblical verses involved were Psalms 105:15, and 1 Chronicles 16:22. Both St German and the anonymous author of *Provyng by the King's Lawes* refuted the clergy's claims of Biblical origins of the privilege; while the inspiration may have been Biblical, they concluded, the king granted the privilege.
[311] St German, *Concerning the Clergy*, sig C1b

statutes, as its history in 23 Henry VIII c 1 describes, bringing St German to the conclusion that benefit of clergy must be of secular and not divine origins.[312]

The unclergyability of certain crimes also proved in some authors' eyes that benefit of clergy originated in the jurisdiction of both King and Parliament. St German wrote of the example of high treason, which had become unclergyable during the reign of Edward III.[313] After Parliament had passed the statute, clergy were no longer exempt from punishment for crimes of treason.[314] The anonymous author of *Prouyng by the King's Lawes* also referred to the unclergyability of treason as proof that benefit of clergy fell within the jurisdiction of the Temporality. The pamphleteer concluded, "it appears that for treason and felonies touching the king, they were never admitted to their clergy, nor yet at this day shall not."[315] Edward Hall's *Chronicle* supported these assertions by giving the example of a friar who was unable to claim his clergy for treason.[316] Hall's anecdote was accompanied by an explanation that a clerk, regardless of "how heynous or detestable a cryme soo ever he had committed (treason onely except)" should fortunately "be saved, and committed to the Bishoppes pryson."[317] The author of *Prouyng by the King's Lawes* highlighted the significance of the case of treason by implying that an act truly against the divine law would not be able to stand. "For if they ought not to be so used by the law of god, then no king's case could be excepted out of the same, and also it has not been hard that the clergy at any time have been able to

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[312] 23 Henry VIII c 1: *Statutes of the Realm*, pp. 389-390; St German *Concerning the Clergy*, sig C1b
[313] St German, *Division*, f30b-31a. The statute was 25 Edward III c 4 and confirmed in 4 Henry IV c 30.
[314] The unclergyability of treason was confirmed under Henry IV. Although petty treason was unclergyable for layment under Henry VII in 1497, Parliament did not make petty treason unclergyable for those in orders until 1532.
[315] *Prouyng by the King's Lawes*, f14a
[316] Hall's Chronicle was not an ideological pamphlet but rather a history of Tudor England. Its relevance to this discussion is in its subject matter and as a contemporary work of history, reflecting the politics of Tudor England.
[317] Edward Hall, *The Union of the Noble and Ilustre Famelies of Lancastre and York* (1548), f50b

disprove the king's power, nor the laws of the realm therein."[318] The example of high treason as a crime that the clergy had been unable to challenge successfully became important for the argument that Parliament created benefit of clergy, and therefore could alter it, or take it away, at their discretion.

Additionally, publishers sought to prove the origins of benefit of clergy within the Temporal realm in order to show that all subjects of the realm were within the dominion and jurisdiction of the king. William of Ockham had written that it was the duty of the Temporality to protect the Spirituality from invaders; consequently, he argued, the Spirituality was in debt to the Temporality for this service and therefore completely subject to the King.[319] Thomas Berthelet, the royal printer, reproduced Ockham's fourteenth century tract in 1533, perhaps because Ockham's reasoning was so pertinent to the events of the 1530s. Ockham's argument called for the allegiance of the clergy to the king, both because they were Englishmen first and because the king provided for their safety as his subjects.[320] Ockham further addressed benefit of clergy and other clerical privileges in his *Dialogue* in connection to the good of the realm. The Clerk raised two questions: "Shall the kynge bereave and take awaye from us, the graces granted us by kynges, that were his predecessours and by other noble princes? And may he fordo the privileges of blessed fathers granted to holy church?"[321] The Knight responded as follows: "if any privilege that is graunted, be founde and knowen hurtefull and grievous to the common weale, it maye be

[318] *Provyng by the King's Lawes*, f14a
[319] William of Ockham, *A Dialogue Between a Knyght and a Clerke*, (1533), f22a-23b
[320] Ockham, f 22a-23b. One wonders how the obvious counterargument may have altered Ockham's assertion, namely, that the clergy protected laymen from evil and sin, leaving the Temporality in the Spirituality's debt.
[321] Ockham, f23a-b

repealed and fordone in tyme of neede."[322] Ockham's characters reason that not only did benefit of clergy originate from the king, but the king, "for the necessary busines of the realme, maye alter and change (as reason and tyme requireth) the graces and privileges to you granted, and by the lawes establysshed."[323] Therefore, regardless of clerical status, all Englishmen were subject to the king; their privileges originated from the king; and the king's creation of these clerical privileges put his jurisdiction above that of the pope within England.

Alesius echoed Ockham's argument concerning jurisdiction. Alesius was a Scottish-born reformer who spent three years in Wittenburg before coming to England to assist "in finding a theological settlement for the church" of England.[324] Upon arrival, he received the patronage and protection of Thomas Cromwell and began writing pamphlets arguing in favor of Henry's policies, using his years and experience in Wittenberg to argue against papal authority. In a book on General Councils, clerical rights, and the power of Rome, Alesius summarily stated that the King had dominion over all his subjects, including those in orders.[325] He argued that the "power of jurisdiction, that the clergye hathe used in tyme past," in reality "be the law of man."[326] Alesius sought to challenge the authority tradition had afforded the pope, the Church, and the clergy by examining Biblical scripture and highlighting where tradition and the Bible deviated. He dedicated an entire chapter to challenging the idea that bishops or the pope could make laws that apply to a country from outside that country's borders; not only did his argument discount any papal authority over

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[322] Ockham, f23b
[323] Ockham, f24a
[324] Gotthelf Wiedermann, 'Alesius [Allane or Alan], Alexander (1500–1565)', *Oxford Dictionary of National Biography*, Oxford University Press, Sept 2004
[325] Alesius, f4a-5b
[326] Alesius, f10b-11a

benefit of clergy, but also supported the assertions of Henry, his ministers, and other propagandists that the king possessed the ultimate authority within English borders. Complementing Alesius' point, an anonymous pamphlet asserted "The King commands the whole country as his subject and who of the clergy is exempt from that commandment? I think none."[327] The writer of this work – *Prouyng by the King's Lawes* – also argued that should the pope enter England, or presume to claim authority over anyone within England, he essentially "did a trespass here" and his actions would be illegal.[328] The effect of these books and pamphlets was to pressure their readers to abandon loyalty to Rome for commitment to the King and England.

Berthelet's new printing of Ockham's *Dialogue* was not unique; other printers took advantage of past works, and writers of the 1530s engaged with their ideas. These reprints put forward theories that contributed to the arguments of new pamphlets; for instance, Alesius supported Ockham's arguments concerning privilege and power.[329] Robert Redman reproduced John Lydgate's fifteenth-century pamphlet *This lytell treatyse compendiously declareth the damage and destruction in realmes caused by the serpente of diuision* in 1535.[330] In addition, Robert Wyer reprinted a "corrected" tract by Marsilius of Padua, translated into English, in the same year.[331] Again, the themes were appropriate for events and ideal for propagandizing during the 1530s. In the fourteenth century Ockham had privileged the temporal powers of local leaders over the spiritual power of the pope in his

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[327] *Prouyng by the King's Lawes*, f2a-b
[328] *Provyng by the King's Lawes*, f7b
[329] Alesius, f10b-11a
[330] John Lydgate *This lytell treatyse compendiously declareth the damage and destruction in realmes caused by the serpente of diuision* (1535).
[331] Marsilius of Padua, *The defence of peace: lately translated out of laten in to englysshe. with the kynges moste gracyous priuilege* (1535). The translator, William Marshall, changed the document as he put it into English. Lockwood, "Marsilius of Padua," pp. 89-119

writings, claiming the importance of the commonwealth over spiritual hegemony. Marsilius had engaged with ideas of sovereignty, although not specific to the power struggles between Church and State. Lydgate had dealt with the pope's intervention in local affairs. These tracts did not discuss benefit of clergy specifically, but their subjects concerned related topics of jurisdiction and authority. Most importantly, their words resonated with the events and policies of the Henrician Reformation.

Those pamphlets that used benefit of clergy and its place in English history framed the conflict of secular and papal jurisdictions into a context of nationalism. The distinction between the lay and clerical forms of benefit of clergy became symbolic of other ecclesiastical struggles, as theorists argued for (or against) Henry's assertions of dominant jurisdiction within his realm. For the population receiving the messages of these pamphlets, adhering to the arguments put forth by Henry's supporters meant that England's institutions had a positive quality – even an English character – and that loyalty to the nation should precede loyalty to the foreign pope.

Although historians have argued that nationalism developed as a concept in the eighteenth-century, nationalist movements pre-dating the Industrial Revolution have been identified in recent years.[332] Certainly events and pamphlet literature of the Reformation inform us about ideas of "Englishness" long before nation was tied to the French Revolution.

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[332] JP Sommerville, "Literature and National Identity," and Claire McEachern, "Literature and National Identity" in David Lowenstein and Janel Mueller (eds), *The Cambridge History of Early Modern English Literature*. Cambridge University Press: 2006, pp. 459-486 and 313-342, respectively; see also Liah Greenfeld, *Nationalism: Five Roads to Modernity*. Harvard University Press:1992, Claire McEachern, *The Poetics of English Nationhood, 1590-1612*. Cambridge University press: 1996, Gillian Brennan, *Patriotism, power and print : national consciousness in Tudor England*. Pittsburgh (PA): Duquesne University Press, 2003, and Stewart Mottram, "Reading the Rhetoric of Nationhood in Two Reformation Pamphlets by Richard Morison and Nicholas Bodrugan" in *Renaissance Studies*, vol 19 no 4 (2005). For nationalism since 1000, see Tony Linsell, 'Nations, nationalism and nationalists'. *In* Linsell, Tony (ed.), *Our Englishness*. Anglo-Saxon Books: 2000, pp. 49-74

Henry's new religious policies forced the English population to choose between religion and country. The resulting struggle to convince the subjects to remain loyal to England used the rhetoric of early modern patriotism.[333] Some pamphlets depicted Henry VIII's very title of "Prince" as evidence of his superior authority in England. In 1517, Henry had ended a debate at Blackfriars over the jurisdiction of benefit of clergy with a speech in which he made a remarkable claim couched in nationalism: "By the ordinance and sufferance of God, we are king of England, and the kings of England in times past have never had any superior but God alone."[334] His claim to "have no superior but God" would lie dormant for at least a decade, but by the 1530s the idea that the king of England had no superior but God was prominent within pamphlet literature, for its political implications were enormously relevant to the reorganization of religion. Writers used ideas of nationalism to encourage obedience to the king and to justify the king's religious policy. Sir Richard Morison, an established voice for Cromwell's propaganda and Henry's policy,[335] wrote extensively about the duty of subjects to be loyal to their country before their faith, while editors altered famous historical works concerning civil duty in order to adapt their historical theories to the contemporary nationalist requirements of Henry and his Privy Council.[336]

Marsilius of Padua wrote extensively about the nature of civil community and the organization of power.[337] He had originally theorized about the collective sovereignty of a

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[333] Brennan, pp. 29-49
[334] *Caryll's Reports*, p. 691
[335] Historians seem to agree that Morison was a close friend of Cromwell's. See Elton, *Policy and Police*, pp. 185-86 and 190-93, Baumer, pp.212-213, and Jonathan Woolfson, 'Morison, Sir Richard (*c.*1510–1556),' *Oxford Dictionary of National Biography*. Oxford University Press: 2004 .
[336] Almost all of Morison's works have strong nationalist themes; see my discussion below. Both William of Ockham and Marsilius of Padua produced works that 1530s editors or publishers found applicable to the events of the Reformation; both these 14th-century theories found refuge at the court of Louis of Bavaria before producing their original works. See also works by Henry VIII himself, specifically *The Glasse of Truth*
[337] Joseph Canning, *A History of Medieval Political Thought 300-450*. Routledge: 1996, pp. 155-56

people, but William Marshall's translation of Marsilius' tract *Defensor Pacis* into English in 1535 creatively transformed the original message into "a case for the royal ecclesiastical supremacy."[338] The conversion took some ingenuity, and Marshall's translation is more a new work than a re-publication of an historical document. The tract made connections between nationalism, obedience, and ecclesiastical and royal authority. Marshall drew greatly upon Marsilius's anti-papal rhetoric in order to frame England and its leader in terms of autonomy within Christendom. Marshall's stated intention in translating and distributing the adapted ideas of Marsilius was to expose "the juste power and authority of the Emperour [Henry VIII], as of the usurped power of the bysshop of Rome, otherwyse called the Pope."[339] Marshall's work did not mention benefit of clergy, but his pamphlet was one of the earlier works to describe the usurpation of the pope while explaining the higher jurisdiction of the king in his efforts to convince the "good and gentle reader" of the importance of national obedience, and the legitimacy of Henry's religious policy.[340]

In the religious conflict of the 1530s, rhetoric portrayed the pope as a foreign threat and the king as the English representative and protector of the nation. As popular uprisings occurred in shires like Lancashire and Cornwall, Morison wrote tracts against rebellion and sedition, preaching the virtues of national obedience. In 1536 he declared, "If England coude speake, might it not say thus? I am one, why doo you make me twayne?"[341] Although he was referring to the rebellion in Lancashire, he worded his statement in such as way that it could be applied perfectly to those clergy who maintained difference through a special

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[338] Marsilius of Padua, *The defence of peace: lately translated out of laten in to englysshe. with the kynges moste gracyous priuilege* (1535); quote is from Lockwood, "Marsilius of Padua," p. 91
[339] Marsilius of Padua, Marshall's Introduction, f1a
[340] Marsilius of Padua, Marshall's Introduction, f1a
[341] Sir Richard Morison, *A Lamentation, in VVhiche is shevved what Ruyne and destruction commeth of seditiouc rebellyon*, Thomas Berthelet: 1536, sig A4

privilege that had been derived from a foreign power rather than the king. Most of Morison's tracts and pamphlets reflected a nationalist argument, and exhorted all Englishmen of any status to be loyal to their country and its leader before a foreign bishop. His message was most potent in his 1539 tract *An exhortation to styrre all Englyshe men to the defence of theyr countreye*.[342] The whole of his *Exhortation* was to convince the English people to be loyal to their England roots first, especially in light of his perception that agents of the pope were then threatening the autonomy of the realm. Morrison's works perpetuated the idea of England as special and worthy of one's complete loyalty, and consequently depicted the pope as a usurper of sovereign authority. His argument draws upon and refers to other pamphlets that constructed an idea of England's singular character using benefit of clergy and other England institutions as primary evidence.

Henry too seemed to have promoted what might be recognized as a nationalist attitude. In his 1532 work *The Glasse of Truth*, Henry argued against the pope's power within England, citing the problems of jurisdiction and claiming his own power as taking precedence within England.[343] Shelley Lockwood mentions that Henry altered the coronation oath to include the protection of customs "lawfull and not prejudiciall to his crowne or imperial jurisdiction" as a defense of his new religious policy and a promotion of his position as imperial commander in England.[344] Even the 1533 Act of Appeals made Henry's position clear: "This Realm of Englond is an Impire" it declared, with its leader commanding supreme authority over the subjects and systems within its borders.[345] The *Oxford English Dictionary* uses this particular quote as one of its examples when it defines

[342] Sir Richard Morison, *An exhortation to styrre all Englyshe men to the defence of theyr countreye* (1539)
[343] Henry VIII, *The Glasse of Truth*, f23b
[344] As quoted in Lockwood, "Marsilius of Padua," p. 91
[345] Lockwood, "Marsilius of Padua," p. 91.

"empire" as "the country of which the sovereign owes no allegiance to any foreign superior."[346] Certainly, that example stands in stark contrast to political organisms like the Holy Roman Empire, which dominate multiple cultures. Nevertheless, Henry's use of the word "Impire" to denote complete independence from the pope reflects a definition involving an unquestionable sovereignty.

Over the course of the 1530s, pamphleteers depicted the pope first as one who interfered in local matters despite previous events that had set England apart as special within Christendom, and then as a usurper who had no inherent authority outside Rome itself. Pamphlets exaggerated the claims against the Bishop of Rome in order to stir feelings of nationalism in their readers. "Nationalism" was not yet used in the 1530s, but ideas of a nation that required a form of patriotism were present in early modern England. The word "nation" appeared in both John Palsgrave's 1530 dictionary and Sir Thomas Elyot's 1538 dictionary.[347] Elyot's definition did not merely denote a people living within a certain area, but those who shared cultural ceremonies or traditions.[348] In 1538, Thomas Starkey framed the early modern nation in terms of the protection of the King, and his character Lupset sought "to defend thys custume long usyd in our reame & nation."[349] Starkey's other printed work, *A Preface to the Kynge's Hyghnes*, focused on how "we myght as membres of one body, being coupled together, and knitte against in unitie, runne in one course and after one

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[346] *Oxford English Dictionary*, under "Empire." Second edition, Oxford University Press: 1989
[347] John Palsgrave, *Lesclarcissement de la Langue Francoyse* (1530) and Sir Thomas Elyot *The Dictionary of Sir Thomas Elyot* (1538)
[348] Sir Thomas Elyot, under "nation."
[349] As quoted in the *Oxford English Dictionary* under "nation," citing Thomas Starkey, *England in the reign of Henry the eighth, a dialogue between Cardinal Pole and Thomas Lupset* 1538, Sir William Forrest, ed. 1878, p. 106

fashion" as Englishmen, thereby overcoming the interferences of the Bishop of Rome.[350] In an effort to stigmatize the pope as foreign, Starkey and Morison described what might be termed a "national character" across England, despite its many regional variances.

Stewart Mottram has found the issues resulting from the Reformation to be inextricable from ideas of early modern nationalism, as the debates over theology and ecclesiastical structure led to arguments establishing independence based on national character in modern terms.[351] By extension, those pamphlets that used benefit of clergy as proof of the legitimacy behind Henry's innovative decisions did not merely depict a legal feature present throughout Christendom. Although benefit of clergy existed all over Europe in various forms,[352] the presence and local form of the immunity reflected its unique place in English culture. Parliament had approved of benefit of clergy repeatedly via statute, the king had struggled with the pope over this issue and many others, and all claimants – lay or clerical – had to appear in secular courts even to obtain their exemption. One pamphleteer reviewed these details before concluding that "Clerelye it semeth" the clerical privilege "may holde no plea directly by the Lawe of God, but onely by the custome of the Realme,"[353] in distinction from other cultures. The dual existence of clerical and lay forms, the process of claiming, and the considerations of literacy were particular to England. It developed on a local level before being absorbed as part of common law in the larger legal system and was finally confirmed through parliamentary statute. Casting benefit of clergy as particularly English further contributed to the autonomy, authority, and authenticity of Henry's power as the English King.

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[350] Thomas Starkey, *A Preface to the Kynge's Hyghnes*, (1536), f2a
[351] Mottram, pp. 523-540
[352] Charles Lea, "Benefit of Clergy" in *Studies in Church History*, (1883), pp. 169-219.
[353] *Prouyng by the King's Lawes*, f 16a

Encouraging the populace to accept and cooperate with Henry's proclaimed right over the Church in England required convincing arguments that privileged the king's authority over that of the pope, while simultaneously stirring feelings of national identity. The history and existence of benefit of clergy contributed to the arguments that promoted Henry's position as the highest authority in the realm, answerable only to God, and as Supreme Head of the Church. Benefit of clergy contributed to the larger body of work tying nationalism and royal power to matters of religion. At the same time as the publication of the 1530s pamphlets, Parliament altered benefit of clergy significantly, abolishing the clerical version of the privilege, and retaining only the lay benefit that Henry VII had created in 1489. The removal of clerical status from the privilege placed it within reach of any literate layman, if only once. The lay version that survived the Reformation was part of English common law, and its development and continued existence suggested that mercy was an integral part of England itself, even if that mercy was itself conditional. As part of the evidence proving Henry VIII's right to take back the power that historically the pope had assumed, benefit of clergy rose in importance within the realm during the 1530s. Henry's successors would find the surviving privilege useful as they attempted to control unwanted behavior in the realm and performed acts of mercy. As subsequent parliamentary statutes continued to alter the "ancient liberty of the church," benefit of clergy retained its position as a symbol of English mercy and power, regardless of its growing limitations, until its abolition in 1827.

MA Thesis
Chapter Six: Conclusion

Benefit of Clergy and the English Reformation

The transitional events touching benefit of clergy between 1455 and 1540 reveal larger issues and tensions affecting England. On a local level, these tensions reflect a discomfort with rates of crime and the effectiveness of the criminal justice system. On a national level, the struggles exemplify the power negotiations between Church and State before and during the English Reformation. Each time period isolated within this thesis witnessed specific problems that either directly affected benefit of clergy, or were reflected in the immunity's functions in society and prominence in high politics.

During the Wars of the Roses, for example, the uncertainty of sovereign leadership coexisted with an uncertainty about who could claim, who should claim, and how claims were to be processed. Also uncertain was the question of who presided over the benefit: king, pope, or immutable divine law. The typical medieval power struggle continued between Church and State as Convocation negotiated with King, Parliament and Pope in an attempt to settle questions concerning the liberty. Upon the accession of Henry VII, the "Accountant King," Parliament finally dealt with the problems of lay abuse and clerical prosecution by formally extending limited immunity to literate Englishmen through a weaker lay version. While historians may not be able to designate Henry VII's policies as a "centralization" of Tudor institutions, his polities did confine much of England's infrastructure to royal approval, and the new uniformity of benefit of clergy reflects his style of leadership.

The exemption from secular punishment can furthermore shed light on anticlericalism in the period just prior to the Reformation. Analysis of trial records suggests that resentment toward priests was not in fact reflected in the royal justices' denying priests the "advantage." In contrast to the narrative of a restless populace and malicious collection of royal servants, the Year Books and legal treatises of the time reveal that Church members in the Ordinary position were often uncooperative, despite what Convocation's fifteenth- and sixteenth-century complaints may have claimed. The statute of 1512, which historians have long considered an act of anticlericalism by Parliament,[354] carried heavy overtones targeting specifically lay claimants. The resulting debate over the elusive phrase "holy orders" and its ramifications for those in minor orders at Blackfriars was not therefore a single incident encapsulating popular unrest between the laity and the clergy during the 1510s. Instead, that confrontation depicted tensions between competing court jurisdictions and involved shared members – either as representatives in both Convocation and Parliament or in positions of ecclesiastical authority and at Court – subsequently leading to issues of divided loyalty.

Problems of divided loyalty affected the populace as well, as evidenced by pamphlet literature of the 1530s that attempted to convince the English people of their national duty and obligations of obedience to the king. Such pamphlets used the history of benefit of clergy in England as they attempted to prove the country's special national privilege, the legitimacy of the king's new powers, and the superiority of the king's jurisdiction over that of the pope. Once again the presence of benefit of clergy in these pamphlets connected high politics to local reception, exposing the cultural impact of immunity from secular punishment while also supporting changes in royal policy through the benefit's history.

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[354] For a discussion of such historians, see Chapter Three

The Reformation in England itself began in the 1530s with drastic legislation during the Reformation Parliament. Benefit of clergy had been subject to parliamentary change in the past – as Parliament offered it to literate criminals, for example, or denied it to traitors – but the ecclesiastical privilege had never before received so much attention in so short a time. As the conditions of the clergy and the structure of the Church in England transformed, so too did the privileges of those in orders and their lay counterparts. Many rights specific to the clergy were abolished, such as mortuary fees and abjuration. Even sanctuary lost its place soon after the Reformation had begun. However, benefit of clergy endured – in a fashion.

Although it was not abolished, the exemption was permanently altered. The lay version survived and became a more prominent social tool than before, while clergy lost their unlimited immunity along with their monasteries. Future Tudor monarchs were able to take advantage of the secularized version to reduce crime and punish specific offenses even as they upheld the benefit's existence as evidence of their mercy – a mercy particular to England and its legal system.[355] In 1547, Edward VI's first Parliament repealed all previous felony laws, but ensured that benefit of clergy continued to be restricted. The Act, most likely designed by Protector Somerset personally,[356] attempted to simplify felony law through wholesale repeal of the previous piecemeal statutes that had altered elements of the privilege over time. In their place was a simple list of unclergyable felonies. In 1553, Catholic Mary repealed most of her Protestant brother's legislation, but did nothing to

[355] Krista Kesselring, *Mercy and Authority in the Tudor State*. Cambridge University Press: 2003, pp. 46-48.
[356] JG Bellamy, *Criminal Law and Society in Late Medieval and Tudor England*. St Martin's Press: 1986, p. 147

reinstate the clergy's former right to stand outside of the royal courts.[357] Perhaps she had more pressing matters requiring her attention as she returned England to the papal fold, or perhaps the lay version had been a part of English law for too long for her to abolish the layman's right and restore the benefit to its purely clerical form. By the time of her reign, benefit of clergy had been a pervasive element of legal culture regardless of clerical status officially for almost sixty years, since 1489, and unofficially for two centuries, since 1351. Elizabeth took benefit of clergy to its most significant level of symbolic mercy. Famous for her performances and public displays of affection as "wife" to her realm,[358] Elizabeth's parliaments made unclergyable the crimes of cut-pursing, horse theft, rape, kidnapping, and slander against the queen, among others.[359] Significantly, these statutes made a point of highlighting the grace inherent in the benefit's continued existence.[360]

The secularized privilege continued to evolve throughout the centuries after the Tudors. In 1624, women were allowed to claim the benefit for petty theft; in 1691 they were afforded the full privilege.[361] In 1706, the literacy requirement was abolished, so any first-time offender facing charges could claim their clergy regardless of education.[362] However, the abolition of the literacy requirement changed the privilege itself. Instead of an act of mercy, benefit of clergy became a mere lesser sentence: in lieu of execution, the claimant

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[357] Mary did restrict those deemed "Egyptians" from being able to plead their clergy in an act recommending their swift removal from the realm. See 1/2 Philip & Mary c 4

[358] Carole Levin, *The Heart and Stomach of a King: Elizabeth I and the Politics of Sex and Power*. University of Pennsylvania Press: 1994, pp. 16, 43-44

[359] See 8 Elizabeth c 4, 31 Elizabeth c 12, 18 Elizabeth c 7, 43 Elizabeth c 13, and 23 Elizabeth c 2, respectively.

[360] Bellamy, p. 152 and Levin, p. 16. Elizabeth did the same thing with the traditional royal pardon that concluded most sessions of Parliament, regardless of their long list of criminals ineligible for it. See Kesselring, pp. 67-72.

[361] 21 James I c 6 and 4 William and Mary c 9, John Beattie, *Crime and the Courts, 1600-1800*. Princeton University Press: 1986, p. 503

[362] 5 Anne c 6

received six to twenty-four months' hard labor. By 1718, the Act of Transportation tied the pleading of benefit of clergy to deportation to the Colonies, first in North America, and then to Australia.[363] In 1779, the recommendation that claimants receive branding, originally legislation written by the Parliament under Henry VII to establish the two separate forms of the immunity, was abolished. Courts began to recommend straightforward penalties of transportation instead of requiring the plea of clergy before sending a convict to Australia. As benefit of clergy became less common and less significant to the criminal justice system, Parliament saw fit to abolish the right completely as a relic of the past, in 1827.[364]

Benefit of clergy stands as a microcosm through which major issues in English history can be viewed from 1455 to 1540. From anticlericalism and competing jurisdictions to local frustrations with audacious criminals and the implementation of a large-scale religious reformation, the study of this legal curiosity further elucidates English concerns of the time. Particularly significant is the fact that at the moment of vast ecclesiastical change, Parliament declined to abolish the "Ancient Liberty of the Church." Legislators seem to have identified the value of providing a limited exemption to part of society. In doing so, they accepted that benefit of clergy was not merely an elite privilege for those in orders, but part of English common law. By respecting the limited right of all Englishmen to prove their literacy and escape punishment for a first offence, essentially those in power signaled to the larger population that they would uphold those other rights which common law had afforded them, even if Parliament had yet to uphold them. Furthermore, although most subsequent laws concerning this right would actually restrict its future use, the continued presence of

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[363] 4 George I c 11, Roger Ekirch, *Bound for America: The Transportation of Convicts to the Colonies, 1718-1775*. Clarendon: 1987, pp. 16-17

[364] 7&8 George IV c 27

benefit of clergy gave criminals the opportunity to interact with a criminal justice system instead of merely becoming subject to it.

I have tried to show how the development of benefit of clergy was contingent on the immediate needs of the English authorities in the fifteenth and sixteenth centuries, and each immediate need contributed to greater long-term trends that facilitated the endurance of this clerical privilege. While Henry VII sought to solve a dilemma in the ambiguity of the law by creating the two separate forms of benefit of clergy, Henry VIII attempted to use the immunity to establish his supremacy first through the Blackfriars Debate, and then throughout the 1530s, just as English ecclesiastic power hierarchies were restructured and co-opted by the English Crown. In this way, the story of how benefit of clergy survived the Reformation becomes suddenly important, for its history was applied to the developments of the 1530s to ease the introduction of the new religious regime. Subsequent Tudor sovereigns were also able to capitalize upon the use of this merciful legal tool, either by providing it as an option, or denying it to those accused of specific, considerably heinous crimes. After the Reformation, benefit of clergy became a useful tool for combating crime. Although it appeared to be a form of mercy originating from the Crown, it generally acted as a restriction, so that the ideal of a liberty derived from England's Common Law remained only an ideal, and alleged criminals of particularly disruptive crimes could be prosecuted without their option to read the book. The events reviewed in this paper account for the clerical privilege's slow secularization over the course of less than a century. The ramifications of that would be far-reaching.

The transformation of the privilege from a benefit for the clergy to a benefit for the laity assisted the acceptance of the Henrician Reformation. The retention of the legal

loophole signified that the king's recent drastic changes in the Church would not lead to his rescinding personal rights. More directly, the Reformation Propaganda and sympathetic writers used the English version of this exemption to support new religious policy. Instead of eliminating the clerical immunity, Parliament manipulated and altered it to fit the needs of the Crown at the same time as the king's servants took ownership of other ecclesiastical institutions, from the monasteries to the Church hierarchy to the social applications of theology. More importantly, it readjusted English legal culture so that subjects could obtain a reprieve for a criminal mistake regardless of clerical status, and, eventually, regardless of gender or even literacy. Parliament's decision to retain the lesser lay version of benefit of clergy instead of abolishing it with the other clerical privileges would continue to affect the realm, and even the Empire, on multiple levels for the next three centuries.

Appendix One:
Compilation of Statutes Relating to Benefit of Clergy, 1489-1546

Reign of Henry VII

1489 4 Henry VII c 13 (313-314) "Clergy Shall be Allowed but Once: A Convict person shall be marked with M or T. A provision for them that be within Orders"
- Clergy will be allowed once, with branding, clergy in major orders only excepted

1492 7 Henry VII c 1 (316) "The Penalty of a Captain or Souldier…not doing their duties"
- Soldiers and sailors who desert the king cannot have clergy

1497 12 Henry VII c 7 (330) "For Murther"
- Petty treason will not have clergy

Reign of Henry VIII, Pre-Reformation

1512 4 Henry VIII c 2 (348) "For Murthers"
- Crimes committed in sacred places, near the highway, in a house putting its inhabitants in fear unclergyable; provision for those in holy orders. Also, clause for preventing claims in multiple jurisdictions

Reign of Henry VIII, Reformation Parliament

1531 22 Henry VIII c 9 (386) "An Acte for Poysonyng"
- Death by poison a treason; earlier draft attempted to make poisoning an unclergyable felony

1532 23 Henry VIII c 1 (389-390) "An Act Concerning Convicts of Petit Treason, Murthers, etc"
- Those in Major Orders who claim clergy will no longer suffer purgation, but instead be committed to a prison for life. Provision made for surety.

1532 23 Henry VIII c 11 (404) "An Act for Clerk Convict Breaking Prison"
- Those who escape prison will be without clergy unless in Major Orders, in which case they will be returned to the prison.

1534 25 Henry VIII c 6 (415) "The punishment of the Vice of Buggery"
- Buggery shall be felony without BC; wording includes the king's pleasure and the assent of lords spiritual and temporal when deciding this to be both felony and unclergyable.

1535 27 Henry VIII c 4 (452-3) "For Pirates and Robbers on the Sea"
- Pirates shall not have their Clergy; murders, felonies, and robberies at sea will be punished like that within the realm, without benefit. No provision.

1535 27 Henry VIII c 17 (465) [*Unnamed, For Servants*]
- Servants stealing 40 shillings or more denied clergy. No provision for ordained clergy.

1536 28 Henry VIII c 1 (479-481) "An Act that Abjurers in certain cases shall not have Clergy"

- Renewal of past acts: no clergy claimed for crimes in sacred places, or near a highway, or when robbing a house in the presence of the inhabitants. One in Sanctuary who commits a crime again will not have Sanctuary twice but be executed. Those standing mute at trial cannot claim clergy. Buggery is a felony with clergy. Those in Major Orders will henceforth be treated as all others.

1536 28 Henry VIII c 15 (486-87) "For Pirates"

- Renewal of Pirate Act, 27 Henry VIII c 4; clause 3 prohibits such criminals from claiming their clergy.

Reign of Henry VIII, Post-Reformation Parliament

1540 31 Henry VIII c 8 (491) [*Unnamed, for proclamations*]

- Declares the right of the king to use Royal Proclamation to make crimes and assign punishments, with the advice of his council. Also declares offenders who leave the Realm without permission to be a traitor.

1540 32 Henry VIII c 3 (504-505) "For the Continuation of Certain Acts"

- Made perpetual 28 Henry VIII c 1. Specifies that those in Major Orders will indeed be branded just like all other claimants.

1542 33 Henry VIII c 8 (539) "*Unnamed, for witchcraft*"

- Denies clergy to all sorcerers and conjuror of witchcraft

1546 37 Henry VIII c 8 (613) "The Act of Vi & Armis left out of any Indictment lacking these words, Vi & Armis, shall be good"

- All who steal any horse shall not be allowed their clergy, a side provision of a larger statute

Appendix Two:
A Compilation of Pamphlets and Books Considered to be
"Propaganda" or at least Sympathetic to the Royal Prerogative

Alesius, Alexander. *A Treatise Concerning General Councille, the Bishop's Council, and the Clergy* (1538)
Anonymous. *A Treatise Prouyng by the Kynge's lawes that the bishops of Rome, had neuer right to any supremitie within this realme* (1534).
Anonymous. *A treatise wherin Christe and his teachinges, are compared with the pope and his doings* (1534)
Anonymous. *Articles devised by the whole consent of the King's most honourable Council*, Thomas Berthelet: 1533
Anonymous. *Oration of True Obedience*, Thomas Berthelet: 1535
Fyloll, Jasper. *Against the Possessyons of the Clergye*, John Skot: 1532
Fyllol, Jasper. *Enormytees vsyd by the clergy here floweth dyuers enormytees vsyd by the clergy, and by some writers theyr adherentis*, John Skot: 1533
Henry VIII. *A Glasse of Truth*, Thomas Berthelet: 1532
Lydgate John. *This lytell treatyse compendiously declareth the damage and destruction in realmes caused by the serpente of diuision* (1535).
Marsilius of Padua, *The defence of peace: lately translated out of laten in to englysshe. with the kynges moste gracyous priuilege* (1535)
Morrison, Sir Richard. *An exhortation to styrre all Englyshe men to the defence of theyr countreye* (1539)
Morrison, Sir Richard. *A Lamentation, in VVhiche is shevved what Ruyne and destruction commeth of seditious rebellyon*, Berthelet: 1538
Morrison, Sir Richard. *Apomaxis Calumniarum Convitiorumque*, Thomas Berthelet: 1535
Morrison, Sir Richard. *A Remedy for Sedition*, Thomas Berthelet: 1538
Morrison, Sir Richard. *An Invective against the great and detestable vice of treason*, Thomas Berthelet: 1539
Sampson, Richard. *Oratio*, Thomas Berthelet: 1534
St German, Christopher. *A Treatise Concernyng the Division Between the Spirituality and the Temporality* (1532)
St German, Christopher. *A Treatise concerning the power of the Clergy and the lawes of the Realme*, Godfray: 1535
Swinnerton, Thomas. *A little treatise against the muttering of some papists in corners*, Thomas Berthelet: 1534
William of Ockham, *A Dialogue Between a Knyght and a Clerke* (1533)

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Anonymous. *Articles devised by the whole consent of the King's most honourable Council*, Thomas Berthelet: 1533

--- *The Determination of the most famous and excellent Universities of Italy and France, that it is unlawful for a man to marry his brother's wife and that the pope hath no power to dispense therewith*. Thomas Berthelet: 1531

--- *Oration of True Obedience*, Thomas Berthelet: 1535

--- *A Treatise Prouyng by the Kynge's lawes that the bishops of Rome, had neuer right to any supremitie within this realme*, Thomas Berthelet: 1538

--- *A Treatise wherin Christe and his teachinges, are compared with the pope and his doings*. Thomas Berthelet: 1534

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Fitzherbert Sir Anthony. *La graunde abridgement collect par le iudge tresreuerend monsieur Anthony Fitzherbert, derniermentconferre auesq[ue] la copy escript, et per ceo correct: aueques le nombre del fueil, per quel facilement poies trouer les cases cy abrydges en les lyuers dans, nouelment annote: iammais deuaunt imprimee. Auxi vous troues les residuums de lauter liuer places icy in ceo liuer en le fyne de lour apte titles*. Tattell: 1565

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--- *Book of Martyrs: A Universal History of Christian Martyrdom from the Birth*. EC Bidle: 1840

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