



REDISCOVERING ANGLICAN PRIEST-JURISTS: V

Ralph Lever (c. 1530–1585)

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At the Inner Temple there is a manuscript on canon law from the reign of Elizabeth (1558–1603).¹ Thirty-five years before the accession of Elizabeth, the Submission of the Clergy Act 1533 provided for the pre-Reformation domestic canon law of the Roman Church in England, and perhaps the foreign papal canon law,² to apply to the Church of England under the royal supremacy until reviewed by a commission. No commission was appointed. Further statutory provision was made for a review in 1535, 1543 and 1549, and by 1553 a commission had compiled the *Reformatio Legum Ecclesiasticarum*; but this lapsed with the return to Rome under Mary. The *Reformatio* was resurrected when the English Church was re-established under Elizabeth and published in 1571; but it was not accepted by parliament. The 1533 Act, revived under Elizabeth in 1558, also provided for Convocations to make new canons with royal assent. New canons were made in 1571, 1575, 1585, 1597 and 1603, the latter operative till the 1960s. In 1563, the Canterbury Convocation endorsed Thirty-Nine Articles of Religion (coming into effect in 1571); but not a draft of new Articles for Ecclesiastical Government. These landmarks in English ecclesiastical law provide the setting for the Inner Temple manuscript, the text of which was written by Ralph Lever. It treats canon law, Roman Catholics in England, and ecclesiastical officers in the Church of England.

THE LIFE AND CAREER OF RALPH LEVER

John Lever, of Little Lever, Lancashire, and Elenor (daughter of a merchant, Richard Heyton) had seven sons. The second son, Thomas (1521–1577), a Protestant reformer, was fellow of St John's College, Cambridge, and master

- 1 I am very grateful to my colleagues at Inner Temple, Celia Pilkington (Archivist) and Michael Frost (Assistant Librarian) for their invaluable assistance in accessing the manuscript of Ralph Lever's *Assertions*: see below.
- 2 See N Doe, 'Pre-Reformation Roman Canon Law in Post-Reformation English Ecclesiastical Law' (2022) 24 Ecc LJ 1–22.

there from 1551 until 1553 when, on Mary's accession, he went into exile in Zurich and Geneva (where he heard Calvin lecture); after serving as the minister of the English congregation at Aarau, he returned to England in 1559 when he was appointed Archdeacon of Coventry (attending the 1563 Convocation) and Master of Sherburn Hospital, Durham, and, in 1564, a canon of Durham.³ Ralph was the fifth son, born *ca* 1530.⁴

After Eton, like his brothers Thomas, Richard and John, Ralph went to St John's College, Cambridge,⁵ graduating BA in 1548 and, after becoming a fellow in 1549, MA in 1551. Like Thomas, Ralph went into exile in 1553, perhaps as a 'wandering scholar', but it is not known where.⁶ On his return to England in 1559, he resumed being a fellow of his Cambridge *alma mater* and in 1560 incorporated at the University of Oxford where, in 1578, he became a doctor of divinity. One historian of St John's complains that Lever, with others, 'infected the college with an almost incurable disaffection, and laid the seeds of our succeeding divisions'.⁷ Ralph married Margaret (but it is not known when and her maiden name is not known); they had ten children.

In the early 1560s, Lever seems also to have been a tutor to the family of Walter Devereux (1541–1576), later first earl of Essex. Lever wrote a book (1563) about a complex board game 'invented for the honest recreation of students, and other sober persons, in passing the tediousness of time to the release of their labours and exercise of their wits'; in it he sets out 'plain precepts, rules, and tables, that all men with ease may understand it, and most men with pleasure practise it'.⁸ In another book (1573, and dedicated to Devereux), *The Art of Reason*, or 'witcraft', Lever proposes 'a perfect way to argue and dispute' on Aristotelian lines; it is 'one of the oldest logical books conceived in the English language'.⁹ Marcombe considers the books to reflect a 'fascination with logical processes, which [Lever] approached in a somewhat pedantic manner', and one which 'had a significant bearing on his career'.¹⁰

One of Lever's colleagues at St John's College was James Pilkington (1520–1576), also from Lancashire, a reformer in exile (Zurich and Geneva), master of St John's and professor of divinity (1559–1561), and then bishop of

3 B Lowe, 'Lever [Leaver], Thomas (1521–1577)', *Oxford Dictionary of National Biography* (Oxford, 2004).

4 D Marcombe, 'Lever, Ralph (c. 1530–1585)', *Oxford Dictionary of National Biography* (Oxford, 2004, 2008 version).

5 However, see W Hutchinson, *The History and Antiquities of the County Palatine of Durham* (1787) vol II, 187: 'He was admitted scholar in King's College, Cambridge, from Eton school, 1558, and took the degree of doctor in divinity, in St John's College, 1577'.

6 CH Garrett, *The Marian Exiles: A Study in the Origins of Elizabethan Puritanism* (Cambridge, 1938) 218.

7 T Cooper, 'Lever, or Leaver, Ralph, DD (d. 1585)', *Dictionary of National Biography* (Oxford, 1885–1900), vol 33.

8 *The Most Noble, Ancient and Learned Play called the Philosopher's Game* (1563).

9 See M Sgarbi, 'Ralph Lever's "Art of Reason, Rightly Termed Witcraft" (1573)' (2013) 19 *Bruniana & Campanelliana* 149–163.

10 Marcombe (note 4).

Durham (1561–1576). In the latter capacity, Pilkington appointed Lever as his chaplain, rector of Washington (1565), archdeacon of Northumberland (1566), and prebend at Durham Cathedral (1567).¹¹ But in 1572 Lever challenged the articles of an episcopal visitation, was called before the consistory court for disobeying them, and resigned as archdeacon to avoid censure—the chancellor was Robert Swift (1561–1577), a contemporary of Lever at St John’s, a reformer, and a compiler of his own court cases.¹²

When Pilkington died (1576), the see became vacant and Lever was one of the dean and chapter commissaries.¹³ Lever resigned as rector of Washington in 1576 (succeeded by his brother John) and of Stanhope in 1577 (after only two years) to become master of Sherburn Hospital (after the death of the previous master, his brother Thomas). Founded by the Bishop of Durham in *ca* 1181 for the care of leper monks and nuns, and reconstructed in 1429 as alms houses, Lever secured a statute for its governance in 1585.¹⁴ The Act of Parliament 1585: incorporated ‘The Master and Brethren of Christ’s Hospital in Sherborne near Durham’; empowered the bishop to make rules for the hospital and appoint the master; required the master, who had to be a preacher with no other cure of souls, to nominate the brethren; and obliged the master and brethren to swear on oath to obey the rules made by the bishop.¹⁵

Lever also sought reform at Durham Cathedral. Complaining about the grant of leases by dean and chapter, and conduct of the dean (William Whittingham), in 1577 Lever petitioned the queen for a visitation of the cathedral. The bishop of Durham, Richard Barnes (1575–1587), was to assist the commission, and appointed Lever his chaplain. But Lever was disillusioned with the commission: it focused on the validity of Whittingham’s ordination (in exile at Geneva), not his conduct—and proceedings ceased on the dean’s death in 1579. With a new dean, in 1583 Lever sought to reform the cathedral statutes, which, he said, were ‘defective in sundry points touching religion and government’. The chapter, however, was hostile to his plans and Lever died in March 1585 before the new scheme could be properly considered.¹⁶

Lever was buried in Durham Cathedral. His widow, Margaret, later married Thomas Walker; but in 1616 she requested interment in the same place on her death. Scholars are broadly agreed on Lever and his personality. According to

11 He held the fifth stall at the cathedral: Hutchinson, *County Palatine* (1787) vol II, 187.

12 His commonplace book also survives: D Marcombe, ‘Swift, Robert (1534?–1599)’, *Dictionary of National Biography* (2004).

13 Hutchinson (note 11).

14 Cooper (note 7): in 1583 Bishop Barnes ordered justices of the peace to remedy wrongs done to the hospital by assessments, impositions and taxes for bridges and other matters. In 1584, Lever asked Lord Burghley to promote the bill to incorporate the hospital and to rectify ‘abuses that had long existed therein’.

15 Today it is a care home, Sherburn House Charity; see: <<https://sherburnhouse.org/about-us/our-history/>>, accessed 25 October 2022.

16 Marcombe (note 4), 245.

William Hutchinson (1787), Lever was ‘a troublesome non-conformist, and very disobedient to his patron in trifles and srivolous matters’.¹⁷ However, more recently, David Marcombe considers that: ‘Lever was a man of high principles who believed he spoke with the authority of God. He was blunt, fearless, and persistent’; Robert Bellamy describes Lever as ‘a man born to argue’; Michael Hickes thinks Lever was ‘distempered’—and in a letter of 1583 to Burghley, Lever explained that he was prone to uncontrollable fits of sobbing rendering him helpless; and Mary Anne Everett Green wrote that Lever ‘finally fell mad. . . followed by the boys and children with wonderment’.¹⁸

SCHOLARSHIP ON THE LEVER ASSERTIONS ABOUT CANON LAW

As well as his proposals to reform the Durham cathedral statutes, and his successful securing of statutory provision for Sherburn Hospital, Lever also proposed reform of the law applying to the Church of England itself. This is found in his tract, ‘The assertions of Ralph Lever touching the canon law, the English papists and the ecclesiastical officers of this realm, with his most humble petition to her majesty for redress’. The text consulted for this study is that contained in the Petyt collection of manuscripts at the Inner Temple,¹⁹ and bequeathed to the Inn in 1707 by William Petyt, Keeper of the Records in the Tower of London (from 1689), and the Treasurer of the Inner Temple 1701–1702.²⁰ Scholars differ on the date of the tract.

The famous clerical historian John Strype (1643–1737) dates the tract ‘Anno. 1562’,²¹ and presents it among ‘Papers prepared’ for consideration by the Canterbury Convocation of 1563 (which endorsed the Thirty-Nine Articles of Religion).²² Strype then presents his opinions about its content and purpose, its author and audience. With a marginal note, ‘The canon law, abuse of excommunication, etc, offered to be rectified’, Strype writes: ‘The canon law seemed yet to be in some force, which law, contained many things in it directly favouring the bishop of Rome and his superstitions’. Next: ‘therefore a learned canonist *about this time* wrote a tract for the regulation of the

17 W Hutchinson, *The History and Antiquities of the County Palatine of Durham* (1787), vol II, 187.

18 Marcombe (note 4).

19 The Library of the Inner Temple, London: MS Petyt 538/47, fos. 344–345.

20 Petyt was also author of *The Antient Right of the Commons of England Asserted* (1680).

21 *Annals of the Reformation in England* (vol. I, 1709–1725) 357–360, folio 2 (vol. I, pt. I, ch. XXXI); see also the 1824 edition: *Annals of the Reformation and Establishment of Religion* (Oxford, 1824), vol I, 533–537.

22 *Annals* (1824 edition) at 518: ch XXXI: ‘Papers prepared, for doctrine and discipline, to be offered by the synod to the queen, or to the parliament. A catechism composed by Alex. Noted, allowed by the synod. Bills prepared by them for frequenting divine service; and for excommunication. The canon law. A petition for regulation thereof, moved by Ralph Lever. The ill state of the universities’. See also DJ Crankshaw, ‘Preparations for the Canterbury provincial convocation of 1562–3: a question of attribution’, in C Litzenberger and S Wabuda (eds), *Belief and Practice in Early Modern England: A Tribute to Patrick Collinson from his Students* (Aldershot, 1998) 60–93.

canonists, and of the said canon law, and of the abuse of excommunication, and the unjust dealings of some of the queen's delegates; for the queen and this parliament to take into their consideration'. He continues, however: 'though I do not find Raphe Lever, the writer of it (who seems to be the brother of Thomas Lever, and who succeeded him in the mastership of Sherborn hospital) to be a member of this synod, or that it came before the synod, yet I choose here to present it to the readers, as being so agreeable to the matters that have been relating in order to a reformation of things amiss in the church, and very probably offered in this juncture'. He then gives its title and, next, the text of the tract.²³

Strype does not give a reference to the source he used for the Lever tract, so we do not know if it was the Petyt manuscript at Inner Temple; but at the end of the book in which he presents the tract, he lists 'Manuscripts made use of in these Annals', and in the list appears 'MSS. Gulielm. Petyt. *Armig'*, and for some documents he presents in relation to the Convocation of 1563 he references the Petyt manuscripts.²⁴ It is not unlikely Strype knew William Petyt.²⁵

On the basis of the Petyt manuscript at Inner Temple,²⁶ in 1998 the great historian of the Anglican canons, Gerald Bray, dated the Lever tract to 1563—although Bray refers in a footnote to the tract as it appears in Strype (who dates it 1562).²⁷ However, neither the Petyt collection, nor an official 1972 catalogue of manuscripts at Inner Temple, gives a date for the Lever tract—and dates of neighbouring manuscripts in the Petyt volume are not helpful—they are not from 1562–1563 but from the years 1573 and 1580.²⁸ As to content, Bray contrasts the view of canon law in the tract with the 'extreme position of... the canonical fundamentalists'—for whom 'canonical regulations must enjoy the same degree of prestige and acceptance as doctrinal definitions'.²⁹ This was 'precisely the kind of thinking against which the reformers protested, and which they identified with... the pharisees, who were teaching as doctrine the

23 *Annals* (1824 edition), at 532 (357 in the 1725 edition): emphasis added.

24 *Annals* (1725 edition) 103 (list of manuscripts), 335 (paper of Bishop Sandys), 355 (a statute). See also *Annals* (1824 edition) I.522–5 (MS Petyt 538/47, fos. 450–453: A paper for the convocation of 1563); and I.473–84 (MS Petyt 538/47, folios 435–46: General note on matters moved by the clergy, 1563).

25 An illustration of the Temple appears in Strype's *Survey of the Cities of London and Westminster* (1720): C Pilkington, 'A Portrait of the Inner Temple in 1722', *The Inner Temple Yearbook* (2020–21) 112–113.

26 Inner Temple, London, MS Petyt 538/47, fos. 344–345.

27 G Bray (ed), *The Anglican Canons 1529–1947* (Woodbridge: The Boydell Press and Church of England Record Society, in association with the Ecclesiastical Law Society, 1998) 762: 'The Assertions of Ralph Lever touching the Canon Law, 1563'. Bray transcribes the tract: 762–765. He cites the 1824 edition of Strype.

28 J Conway Davies (ed), *Catalogue of Manuscripts in the Library of the Honourable Society of the Inner Temple* (Oxford, 1972) 874: entry 193 gives the title of the *Assertions* and cites '(Strype, *Annals*, IX, pp. 357–60) 2. ff'. Michael Frost, Assistant Librarian, Inner Temple (email to Doe, 26 August 2022) helpfully notes that Conway Davies 'does mention Strype in relation to it, but the reference he gives is different'.

29 Bray (note 27), xxvii.

commandments of men'.³⁰ Bray then writes: 'No-one put it more clearly than the anonymous canonist whose assertions have come down to us as the work of Ralph Lever'.³¹ Bray sums up briefly the views in it: Roman canon law was of human origin and contrary to much of scripture and English law, but those elements of it warranted by scripture and natural law were still part of English law.³² Bray places the tract in the reformers' camp and like Strype associates it with the 1563 convocation: 'All this was very promising from the reformers' point of view, and the preparatory papers for the convocation of 1563 reveal a clear desire for a reform of the ecclesiastical laws along what would later be called "puritan" lines'.³³

By way of contrast, in 2008 David Marcombe writes: 'On 12 January 1585 [Lever] submitted a document to the queen "touching the canon law, the English papists, and the ecclesiastical officers of this realm"', citing 'Durham University Library, York book, fol. 36'. Marcombe notes this date coincides with Lever's proposals for legal reform at Sherburn Hospital and Durham Cathedral.³⁴ He explains this more fully, and slightly differently, in his doctoral study of 1973.³⁵ Lever had 'sometimes radical Protestant beliefs', engaged in 'chronic contentiousness', but avoided 'major confrontation with the hierarchy as far as is known', believed the English Church to be sacramentally, doctrinally, and liturgically authentic, and 'approved of continental Protestantism'—but Lever considered that 'the orders of governance and discipline used at Geneva and [in] other reformed churches were "not so fit for our state as our own are"'.³⁶ Marcombe then discusses the *Assertions*.³⁷ He writes: 'A copy is printed in Strypes, Annals, Vol 1 pt 1. p533/37, but incorrectly dated 1562: according to the York Bk the correct date is Jan. 12 1585'.³⁸ A brief account of selected themes in the tract follows, namely: the monarch as next under God; resisting government resists 'the ordinance of God'; corrupt officials do not impair 'the validity of law' any more than unworthy ministers impair the efficacy of the sacraments; religion should pervade all life; officials should seek God's counsel when making laws; the Court of Delegates was often unjust; and excommunication was against

30 Ibid; Bray cites Mt. xv. 9.

31 Ibid, xxvii.

32 Ibid, xxviii, citing Strype, *Annals* (1824) I.533.

33 Ibid, xlvii; for the papers see 724–765, Supplementary Texts, 2–5, 724–765, namely: 'A paper for the convocation of 1563' (724–725); 'General notes of matters to be moved by the clergy 1563' (727–739); 'Articles for [ecclesiastical] government 1563' (740–761), and 'The assertions' of Lever 1563 (762–756).

34 Marcombe (note 4).

35 D Marcombe (1973), 'The Dean and Chapter of Durham, 1558–1603', Durham theses, Durham University, available at Durham E-Theses Online: <<http://etheses.dur.ac.uk/720/>>, accessed 25 October 2022.

36 Ibid, 200; extensive citations are given. See below for *Assertions*, para 6.

37 Ibid, 200: he cites PK. York Bk. f. 36/40 [PK = Prior Kitchen].

38 Ibid, 200: i.e. Marcombe cites the Oxford 1824 edition of Strype.

scripture and did not bind the conscience. For Marcombe, Lever was ‘a staunch opponent of Catholicism’ and ‘of the continued use of canon law by church courts’ (as much of it was contrary to scripture and English law) and considered those who ‘upheld the canon law were Papists and traitors’ – Marcombe sees this as a ‘somewhat irrational notion’.³⁹

A CONTEXTUAL ANALYSIS OF THE LEVER ASSERTIONS ON CANON LAW

Let us now examine the text of Lever’s *Assertions* and consider whether the portrayals of it outlined above are justified. It is submitted here that, all in all, Lever’s work is rather less puritan-reformist and less about redress or reform than has been understood. The tract and petition consist of 21 paragraphs. Some paragraphs carry several distinct but related assertions. As its title indicates, it deals with three topics: the canon law; English Roman Catholics; and ecclesiastical officers. However, these may be further divided. Lever does not expressly indicate any specific sources for his assertions. Yet, many of the assertions articulate the provisions of the then ecclesiastical law of England as found in statutes, canons, and other regulatory instruments; in this part, these provisions are suggested in the footnotes that follow and where appropriate comparisons are made with the works of contemporaries.

First, the canon law. By this Lever means the Roman canon law.⁴⁰ On the one hand, Lever is critical of it for three reasons: ‘The canon law in these ages devised and made by the church of Rome is in exceeding many points contrary to the written Word of God and repugnant to the positive laws of this realm’; it ‘does chiefly... establish the bishop of Rome his usurped and general authority over all Christendom’; and it ‘breeds in men superstition and a certain security that there is no further increase of faith required but to believe as the church of Rome believes’; as such: ‘it is rightly termed “the pope’s laws”’.⁴¹ On the other hand, Lever also acknowledges that some canon law is rooted in scripture and natural law, applies in England on a statutory footing, seeks justice, and is part of the law of the realm, a wholesome part at that – it is a more nuanced stance than that portrayed by Marcombe. Lever writes: ‘the rules, ordinances and decrees which are printed in the books of the canon law and yet have warrant by the Holy Scriptures and by the laws of nature, and thereupon are in force here at this day, being established by act of parliament to this end, that justice may be ministered to all her majesty’s subjects with indifferency, ought not to

39 Ibid, 201–202: he bases this view on Lever’s *Assertions*, para 6: see below note 50.

40 Lever does not distinguish pre-Reformation domestic and foreign canon law, for which see above note 2.

41 *Assertions*, paras 1 and 2. Lever gives no examples of these criticisms.

be named, reputed or taken by any of her majesty's subjects for foreign or popish laws, but for good and wholesome English laws'.⁴² However, Lever warns that any person who openly defends or uses Roman canon law when that law conflicts with scripture and English law thereby confirms his allegiance to Rome.⁴³

There is little in this first group of assertions, on canon law, that is either distinctly puritan or about legal reform. Lever does not go as far as other more radical reformers, such as William Stoughton (*ca* 1548–1612), a civilian favouring a presbyterian system of church government, and member of parliament 1584–86, who wrote that 'the papal and foreign canon law is already taken away, and ought not to be used in England'.⁴⁴ By way of contrast, for example, Richard Cosin, the Dean of Arches 1583–1597, defended the Church of England against presbyterian criticism and endorsed pre-1533 Roman canon law, citing many works by continental jurists.⁴⁵ Lever is also broadly consistent with Hooker's so-called *via media*.⁴⁶

Second, any person who 'believes the church of Rome. . . to be the true church of God', and that it 'does not err. . . in making of canons, laws and decrees, and in commanding the same to be generally kept of all Christian nations, is a papist'; moreover: 'if he do openly profess the same then he is a disloyal person and not to be taken or used as a subject in the church and commonwealth of England'.⁴⁷ Likewise, any person who professes 'to be a loyal subject to Queen Elizabeth, and yet believes that the Church of England. . . is not indeed, nor ought to be taken for, the true church of God' is 'no lively member of this Church of England'.⁴⁸ Here Lever defines the Church of England,⁴⁹ and he uses scripture for the

42 *Assertions*, para 3. Whilst he does not name the Act, the statute is necessarily one of the following which continued pre-Reformation canon law in England: 25 Hen. VII c. 19 (1533); 27 Hen. VIII c. 15 (1535), 35 Hen. VIII c. 16 (1543), and 3-4 Edw. VI c. 11 (1549), and 1 Eliz. I c. 1 (1558) which revived 25 Hen VIII c. 19 only.

43 *Assertions*, para 4: 'He that in open, show, defend or puts in use the said canon law, being repugnant to God's Word and the laws of the realm, does maintain foreign power and does open himself to the world to be one of that church whose laws he does best approve and like of'.

44 *An Assertion for True and Christian Church Politie* (1604) 39; see RH Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990) 53, n 94 and *The Profession of Ecclesiastical Lawyers: An Historical Introduction* (Cambridge, 2019) 210. He was a non-practising advocate: RA Marchant, *The Church Under the Law: Justice, Administration and Discipline in the Diocese of York, 1560–1650* (Cambridge, 1969) 248.

45 *An Apologie of and for Sundry Proceedings by Jurisdiction Ecclesiastical* (1591): see Helmholz, *The Profession* (note 44), 36, 77, 160. See also Cosin, *An Abstract of Certain Acts of Parliament, Canons, Constitutions and Synodals Provincial* (1584) on harmony between English law and canon law.

46 N Doe, 'Richard Hooker: Priest and Jurist', in M Hill and RH Helmholz (eds), *Great Christian Jurists in English History* (Cambridge, 2017) 115–137.

47 *Assertions*, para 5.

48 This became a fundamental of the Canons Ecclesiastical 1603: 'the Church of England by Law established' is 'a True and an Apostolical Church' and anyone who held the contrary was to be excommunicated (Canon 3).

49 *Assertions*, para 6: namely, 'the Church of England or of Ireland' that is 'at this day reformed by the written Word of God and established by public authority' and in which 'the holy sacraments be rightly

proposition that one cannot owe allegiance to Rome and the Church of England.⁵⁰ In similar vein, anyone who makes ‘open show and profession that he does not think or believe’ that Elizabeth’s is ‘a lawful reign, or a power and authority lawful’, and resists her government, also resists ‘the ordinance of God’. This is because: her reign, power and authority are ‘deeply warranted by the Scriptures’; the ‘sovereign and liege lady’ is ‘upon earth, next and immediately under God’; and to her a person ‘does owe all obedience in the Lord and for the Lord’s ordinance sake’. One who does not: ‘heaps upon himself a just damnation’; ‘ought to be cut off from the body of the realm’ by death or banishment; and ought not ‘enjoy the... benefits of the land’.⁵¹ These assertions are standard representations of the terms of the Elizabethan settlement.⁵²

Third, ecclesiastical officers. By this, it seems, as we see below, Lever means offices to which the power of ecclesiastical governance attaches. Lever deals with the functions, authority, and purposes of those holding office in the Church of England. At the outset, he asserts the rule of law: officers’ decisions must be authorised by law; but Lever offers a pluralistic view of it. In decision-making (e.g. about punishments) ‘the officer ought to assure himself to have warrant by the written Word of God, by the law of nature, by the law of nations, and by the positive laws of this realm so to do’; failure to do so offends God.⁵³ For a person to affirm that ‘the English magistrate has no warrant by law to punish papists and all transgressors’ in England (or Ireland) is ‘disloyally and contemptuously’ to ‘derogate from the law’ and the ‘authority legal’ of the crown.⁵⁴ In other words, for Lever, to deny the legality of a decision when that decision is authorised by the law is itself an unlawful act.

It is perhaps surprising, given the contemporary contentiousness of clergy holding benefices in plurality,⁵⁵ to find that Lever proposes: ‘He that has ability given to him of God to execute more offices than one with as much

administered, the gospel of Jesus Christ is truly preached and the public liturgy duly set forth according to the sacred Scriptures’.

50 *Assertions*, para 6: ‘Christ says, “He that is not with us is against us” [Mt. xii.30] and... “He that is not against us is with us” [Mk. ix.40]’ as ‘no man can serve two masters and that no man can be of God’s church and of the synagogue of Satan, nor that there is any mean state between good and bad, light and darkness, truth and error, Christ and Antichrist, God and the devil’. These biblical verses are as identified by Bray (note 27), 763.

51 *Assertions*, para 7. The sovereign as ‘the highest power under God’ and the duty of obedience ‘by God’s law’ appears in Canon 1 of 1603/4 and impugning the royal supremacy in causes ecclesiastical was censurable by excommunication: Canon 2 of 1603/4.

52 See e.g. Archbishop Whitgift’s Articles 1583, A: Bray (note 27), 770.

53 *Assertions*, para 8: officers are ‘under pain of God’s curse, to punish all papists and transgressors whatsoever’.

54 *Assertions*, para 9: this applies to those who so affirm ‘by word or in writing’.

55 See e.g. Articles from the Lower House of Convocation 1580, Article 4: dispensation for plurality subject to conditions (e.g. learning, ability, reasonable residence): Bray (note 27), 767, MS Petyt 538/38, fols. 188–191.

expedition and to as great a profit to the commonweal as if the same sundry offices should be committed to several persons, ought, when he is appointed thereunto by lawful authority, not to refuse to take the same in hand'; whilst the ability to hold more than one office is from God, conferral of that office must be authorised by law.⁵⁶ In turn, it is not incompatible for a cleric to exercise both spiritual functions and hold an office of ecclesiastical jurisdiction: 'A man may bear office in a Christian society and yet be a preacher of the Word too, especially where his office is no hindrance, but a furtherance and a countenance to that ministry'. Lever provides a scriptural 'warrant'.⁵⁷ That one could hold both a spiritual office and a judicial office in the church was axiomatic.⁵⁸

Lever next deals with the spiritual nature of the exercise of ecclesiastical governance: 'All human officers and magistrates ought daily to meditate upon the Holy Scripture and by it to be directed in all their public affairs'.⁵⁹ On the basis of the example of the kings of Israel seeking God's counsel (as depicted in scripture), Lever proposes a pneumatological approach to ecclesiastical governance: 'all Christian princes, magistrates and people ought to be put in mind how necessary a thing it were for them to seek for the like counsel when they assemble to make laws, or when they do meet together to consult about weighty and public affairs'. Lever continues with: 'For then does God stand in the congregation of princes and is judge among them, when he directs them by his Holy Spirit and instructs them in his holy Word'.⁶⁰

Fourth, positive laws. Lever proposes in one assertion seven points on positive laws: they are humanly made at various levels—by nations, cities, or societies; they must pertain to matters on which scripture is indifferent; they must not conflict with scripture; the subject must obey them; the subject must not reject them on the basis that others have better laws; laws may be changed only by lawful authority; and necessity governs legal reform. The assertion reads:

The positive laws of any nation, city or society, being made of things indifferent and not repugnant to the written Word of God, are not to be misliked or disobeyed of any subject, for that in his opinion other nations, cities or societies have better laws than they be. Neither is it sufferable in a well-grounded commonwealth that private persons should seek for a change without licence first asked of authority and the same

⁵⁶ *Assertions*, para 10.

⁵⁷ *Assertions*, para 11: 'St Paul says thus: "They that govern well are worthy of double honour, but chiefly that they labour in the word and in doctrine": Identified by Bray (note 27), 763, as I Tit. v.17.

⁵⁸ A diocesan bishop decided cases personally in his Court of Audience. An archdeacon presided over a court.

⁵⁹ *Assertions*, para 12; being 'directed' by scripture tallies with para 8: see above.

⁶⁰ *Assertions*, para 13.

granted upon urgent cause. For every change in the commonwealth is perilous, but a needless change of law is most perilous.⁶¹

Next, whilst Lever asserts the rule of law—officials must act according to law—he also thinks the law itself should leave as little discretion as possible to the government officials: ‘The commonwealth, city or society is best governed that has most of her causes determined by law and fewest matters left to the judgment of her officers and governors’.⁶² The idea is common in English constitutional legal history.⁶³ Moreover: ‘A kingdom is the best kind of government, most recommended by the Word of God and most agreeable to the law of nature’; and: ‘no other government [is] fit for the realm of England. . . but only a kingdom’.⁶⁴

The presence of the two assertions in his treatment of positive law—that monarchy is the best form of government and that laws should not be changed frequently—might be important for dating the Lever tract to 1562/3. These very same two issues were the subject of a debate before Elizabeth on her visit to Cambridge in 1564 by which time Lever had resumed his fellowship at St John’s College; the presbyterian Thomas Cartwright (1535–1603), also a Johnian, spoke in the debate and opposed the assertions.⁶⁵ As we have seen, Lever accepted the Elizabethan Settlement and so was certainly not as radical as Cartwright, and other presbyterians like Walter Travers (*ca* 1548–1635), bane of Hooker at the Temple Church.⁶⁶

Lever ends discussion of positive law with an assertion about the purpose of all laws: ‘The end of all laws, both divine and human, and the chiefest care that all princes, magistrates and lawgivers ought to have is this, to see the people of God to be taught, to give Caesar that is due to Caesar, and to God that is due to God’.⁶⁷ This assertion too is standard for the time.⁶⁸

Fifth, excommunication: here, Lever is at his most critical; he writes: ‘Excommunication, as it is now openly used in the Church of England and put in use by certain bishops, their chancellors and other ecclesiastical officers, is most contrary to the written Word of God and not agreeing to such rules in the canon law which are at this day in force by the positive laws of this

61 *Assertions*, para 14; see also note 43 above.

62 *Assertions*, para 15.

63 See e.g. AV Dicey, *Law of the Constitution* (1885, 8th edition 1927) 183.

64 *Assertions*, para 16: i.e. in England and Ireland.

65 See: <<https://www.cam.ac.uk/research/discussion/a-rare-and-merveleous-guest-elizabeth-i-samples-life-in-cambridge-450-years-ago>>, accessed 25 October 2022.

66 For Cartwright and Travers, scripture alone contained sufficient for any system of church polity: see e.g. GR Elton, *The Tudor Constitution: Documents and Commentary* (2nd edition) (Cambridge, 1982) 444–446.

67 *Assertions*, para 17.

68 See Doe (note 46), 123–125.

realm'.⁶⁹ Not only this: if the censure is imposed without complying with five basic procedural standards, then it is against *all* divine and human laws and of no effect: 'If any person be excommunicated or any ecclesiastical judge do pretend any person to be excommunicated' upon 'no sufficient cause', 'no personal summons', 'no matter laid in against the offender', 'no examination of his fault', 'no ordinary form or proceeding in law', then, writes Lever: 'the conscience of such person is free afore God, notwithstanding any such pretended excommunication, which is no excommunication indeed, but is only a painted show of a vain sentence pronounced and practised contrary to all divine and human laws'.⁷⁰

Excommunication was commonly criticised and so the subject of reform in Elizabethan England. For example, the Canterbury Convocation: in 1563 considered articles for ecclesiastical government which dealt with delays in relation to it;⁷¹ in 1580 heard an argument 'concerning reforming the ordinary use of excommunication';⁷² and, more importantly in 1584 passed a canon which provided for the 'reforming' of 'some abuses in excommunication'.⁷³ By way of an aside, the years involved in these reforms do not particularly help in dating the Lever tract as they include the candidates 1563 and 1585. The *Reformatio Legum Ecclesiasticarum* (finalised in 1571 but then abandoned) also proposed new norms on excommunication.⁷⁴

Sixth, Lever wants reform in the practice of, it seems, the Court of Delegates, the final appeal court in spiritual matters administered on behalf of the crown by lay people.⁷⁵ He writes: 'No subject can appeal from any sentence given by her majesty's delegates, be it never so unjust'. As a result: 'the said delegates or at least divers of them have been emboldened shamefully to misuse the sacred chair of justice'. They have done so 'without any consideration' of 'the fear of God or the due executing of their office, according to her highness's directions, or. . . the trust [she] did repose in them, to the hindrance of justice and. . . great annoyance of exceeding many. . . subjects'.⁷⁶ Others also criticised elements of the court's practices, such as that of its judges never setting out the reasons on which their decisions were based.⁷⁷ However, it could be that Lever here was actually criticising the Court of High Commission, which was

69 *Assertions*, para 18.

70 *Assertions*, para 19.

71 Article 10: Bray (note 27), 740 at 743.

72 *Ibid.*, 766 at 767.

73 Canon 4: *Ibid.*, 217 at 227 using MS Petyt 538/38, fols. 188-91; and E Cardwell, *Synodalia: A collection of articles of religion, canons and proceedings of convocations in the province of Canterbury from the year 1547 to the year 1717* (2 vols, Oxford, 1842) II.547-52.

74 *Reformatio*, 33 (reconciling excommunicates): Bray, *Tudor Church Reform* (Woodbridge, 2000) 463-491.

75 Act in Restraint of Appeals 1533 and Submission of the Clergy Act 1533.

76 *Assertions*, para 20.

77 GIO Duncan, *The High Court of Delegates* (Cambridge, 1971), 173 citing a case of 1613.

extensively criticised in this period;⁷⁸ also, its decisions were not appealable to the Delegates.⁷⁹ In any event, Lever was not as radical as presbyterians such as Stoughton who argued for abolition of church courts (replaced by a presbyterian system) and ‘envisaged transfer of causes involving civil law to secular courts which would continue to use civilians’.⁸⁰ By way of contrast, not surprisingly, Richard Cosin, Dean of Arches 1583–1597, was an apologist for the jurisdiction of the church courts; and there were many others.⁸¹

Finally, Lever comes to his petition: ‘For redress of all inconveniences and mischiefs which hereupon have happened and ensued *since the last parliament* or hereafter at any time shall happen and ensue, your most humble suppliant makes petition to your most excellent majesty that such order be taken by *this parliament assembled* as does best agree to your majesty’s laws already established, as does stand with the preservation of your highness’s royal person, and does best serve for the continuance of your majesty’s most happy and prosperous reign’ (emphasis added).⁸² The words in italics bring us back to the matter of dating the Lever tract and petition. On the assumption it is dated either 1562/63 (Strype, Bray) or 12 January 1585 (Marcombe), the ‘last parliament’ and ‘this parliament’ would be those assembled in: 1559 (summoned 1558, dissolved 1559) and 1563 (summoned 1562, dissolved 1567); 1580/1 (summoned 1580 and dissolved 1581) and 1584 (summoned 1584 and dissolved 1586); the latter parliament (1584) had its second session from 4 February 1585 to 29 March 1585.⁸³

For the date of 1562 or 1563 (Strype, Bray), the ‘last’ parliament of 1559 of course passed several statutes dealing with topics Lever addresses; for example: the Uniformity Act revived the Act of 1533 continuing pre-1533 canon law and setting up the Court of Delegates; the Act of Supremacy dealt with the authority of the crown; the Treason Act criminalised, for instance, the opinion that Elizabeth was not the legitimate sovereign.⁸⁴ As Lever states, ‘since the last parliament’, there were problems with the law which it enacted. What Lever styles ‘this parliament’, therefore, might be the parliament of 1563 which was summoned, *inter alia*, to uphold religion ‘notwithstanding that at the last parliament a law was made for good order to be observed in the same but yet, as appeareth, not executed’ to make new laws ‘as playne and as few...[and] as

78 RG Usher, *The Rise and Fall of the High Commission* (Oxford, 1913).

79 Duncan (note 77), 17.

80 Marchant (note 44), 248.

81 Cosin, *Apologie* (1591): see Helmholz (note 44), 33, 50, 132, 188.

82 *Assertions*, para 21.

83 See: <<https://www.historyofparliamentonline.org/volume/1558-1603>>, accessed 25 October 2022.

84 See respectively 1 Eliz. I c. 1 (uniformity), c. 2 (supremacy), and c. 5 (treason).

brief as the matter will suffer'.⁸⁵ Statutes the parliament enacted treated topics addressed by Lever: royal supremacy, treason and excommunication.⁸⁶

If the Lever tract is dated 1585, as Marcombe claims, then the relevant parliaments would be that of 1580/1—i.e. the 'last parliament'—and the next, that of 1584–1586—i.e. 'this parliament'. The 1580 parliament passed statutes requiring obedience of subjects to the crown (and prohibiting absolving them for disobedience and recusancy) and issuing seditious words against the crown.⁸⁷ These same subjects, broadly, continued to be problematic. As such, the 1584 parliament was summoned principally to deal with national security after discovery of a Catholic conspiracy to assassinate Elizabeth and put Mary Stuart on the throne; the Lord Chancellor, Sir Thomas Bromley, reported that Elizabeth did not want the Commons to debate religion—but there were petitions about, for example, the lack of learning in ministry and deprivation of non-subscribing preachers. Bills to which Elizabeth refused her assent included one for disarming Catholic recusants,⁸⁸ as well as, it seems, one to 'overthrow' the ecclesiastical courts.⁸⁹ The 1584 parliament did, however, pass statutes touching religion, despite Elizabeth's reluctance—namely, on the safety of the monarch, Jesuits, and pardons.⁹⁰

In short, the parliamentary agenda and legislation enacted in 1563, contain more subjects which were addressed by Lever in his tract than occurred in the 1584 parliament. The evidence is far from conclusive, but this tends to support the date of the tract as 1562/3 (as suggested by Strype and Bray) rather than that of 1585 (as suggested by Marcombe). As already seen above, the same applies to the Convocation of Canterbury on these same dates.

CONCLUSION

Ralph Lever pursued a ministry which was spent in turns in the university, the parish and the cathedral, and in the ecclesiastical offices of archdeacon and master of a hospital. He wrote a book on a board game and another on Aristotelian logic, one of the oldest on the subject in English. He also lobbied for the Act of Parliament 1585 which provided new regulations for his hospital

85 See: <<http://historyofparliamentonline.org/volume/1558-1603/parliament/1563>>, citing TE Hartley (ed), *Proceedings in the Parliaments of Elizabeth I* (Leicester, 1981) 1.66-79. Thomas Williams, MP and Inner Templar, was Speaker.

86 Namely, 5 Eliz. 1 c. 1 (crown), c. 5 (treason), c. 23 (excommunication).

87 See 23 Eliz. 1 c. 1 (obedience) and c. 2 (sedition), and c. 16 (general pardon).

88 See: <<https://www.historyofparliamentonline.org/volume/1558-1603/parliament/1584>>, accessed 25 October 2022.

89 Archbishop Whitgift of Canterbury, in a letter of 1584 to Elizabeth, wrote: 'There is likewise now in hand, in that same house [the Commons], a bill concerning ecclesiastical courts and visitations by bishops which may reach to the overthrow of ecclesiastical jurisdiction and study of the civil laws': Bray (note 27), lii–liii, as quoted in Cardwell (note 73), I.140–141.

90 See 27 Eliz. 1, c. 1 (security), c. 2 (Jesuits), and c. 30 (pardons).

and sought revision of the statutes of Durham Cathedral. However, Lever is best remembered as the author of a tract and petition on canon law, English Roman Catholics, and ecclesiastical officers. Scholars agree that he was a reformer—he went into exile in the reign of Mary—but they disagree on the date of the tract. Classifying Lever as a ‘canonist’, Strype gives 1562, placing it among papers prepared for the Canterbury Convocation of 1563. Classifying Lever as a reformer, Bray gives 1563, using an Inner Temple manuscript which itself is, actually, difficult to date; and classifying Lever as one who sometimes held radical Protestant beliefs, Marcombe gives 1585, on the basis of a Durham manuscript. The Lever text, it is submitted, is largely a statement of the classical Elizabethan Anglican; there is more in it of Hooker than Cartwright or Travers: Lever most definitely does not espouse Geneva. He recognises Roman canon law not repugnant to scripture as a wholesome part of English law. He advocates loyalty to the English Church as a true church. He requires ecclesiastical government to be in accordance with law, widely defined: divine, natural and human. He sees no incompatibility between holding spiritual office and ecclesiastical jurisdiction. He provides a standard account of positive law, the conditions for its validity, its end, and its infrequent reform. He criticises excommunication, somewhat echoing developments in the norms relating to it, particularly in the Canterbury Convocations of 1563, 1580 and 1584. He offers criticisms of the Court of Delegates, but he seems in favour of plurality, which were not obvious or common positions among his contemporaries. Further work needs to be done on the dating of the Lever text: the agenda and legislation of the parliaments of 1563 and 1584 do not conclusively establish either of these dates as the time when Lever wrote this text. In any event, Lever provides a fascinating case study of a late Tudor clerical ‘canonist’.