DISCIPLINE OF THE CLERGY: MEDIEVAL AND MODERN

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Discipline of the clergy is a subject of perennial interest—both in the popular press whenever something sensational takes place, and among the clergy and thoughtful lawyers when they are confronted either with the general problem of how best to fashion the church's law or the more immediate problem of how to deal with offenders against the church's law. The subject also has a long history. The purpose of this article is to bring to light a chapter from the century or so before the Reformation. Evidence taken from the medieval canon law and from the court records of the later Middle Ages may be of interest—and perhaps even relevance—to members of the Ecclesiastical Law Society. It has been my pleasure and good fortune to discover that many of them are not immune to the claims of history.

The presentation of the material falls into three parts. The first deals with the formal canon law of the medieval church. The second deals with practice involving discipline of the clergy that took place before the English ecclesiastical courts during the years before the Reformation. The third deals with the present: both with recent historical interpretations of that period and with today's law about discipline of the clergy.

The Canon Law

The starting point for dealing with misconduct by the clergy in the classical canon law, formulated in the twelfth and thirteenth centuries, was that they were subject to discipline by their bishops. Bishops could call them to account before a meeting of a synod, by personal intervention, or (later) in criminal proceedings brought before an ecclesiastical court. This was an episcopal function, although it could also be exercised by his deputies. It was an exclusive jurisdiction. Under most circumstances clerical discipline was no business of the laity. Although there was some disagreement among the canonists,[1] the *communior opinio* was that no layman could bring a criminal accusation against a cleric or even testify in one brought by someone else. This rule had ancient antecedents, and Gratian devoted a long *Quaestio* to exploring

* This article is a revised version of a talk delivered on 28 June 2001 before a meeting of the Ecclesiastical Law Society held at the Inner Temple. The following abbreviations are used in this article:

BI	Borthwick Institute of Historical Research, York
BL	British Library, London
CCA	Cathedral Library, Canterbury
CUL	Cambridge University Library
LJRO	Lichfield Joint Record Office
RO	Record Office

The following system of citation to the texts of the *ius commune* is used:

Dist. 1 c. 1	*Decretum Gratiani*, Distinctio 1, can. 1
C. 1 q. 1 c. 1	----------, Causa 1, quaestio 1, can. 1
X 1.1.1	*Decretales Gregorii* IX, Lib. 1, tit. 1, cap. 1
Cod. 1.1.1	*Codex Justinianus*, Lib. 1, tit. 1, lex 1
gl. ord.	*Glossa ordinaria*

[1] For an indication of some of the scholarly disagreements, see Hostiensis, *Summa aurea* (Venice 1573), Lib. V, tit. *De accusationibus*, no. 5.

their import in Causa two of the *Decretum*. It also appeared in the Gregorian Decretals. Two famous decretals of Pope Alexander III (d. 1181), *Cum P. Manconella* and *De caetero*, stated the rule plainly: In criminal matters, 'laymen are not to be admitted either in accusing or testifying against the clergy'.[2] This prohibition became a commonplace of the classical canon law.[3]

Several justifications were advanced in favour of the prohibition. One was drawn from a biblical example. When Jesus cleansed the Temple of money changers, he did so himself. He did not employ other men to do the work for him. So the church, following his example, should do its cleansing itself.[4] Others rested on analogies to basic principles and texts of the canon and civil laws. Just as a son was prohibited from bringing a public criminal accusation against his own father, so should the spiritual sons of the church be prohibited from accusing their spiritual fathers. It perverted the right order of society for sons to set themselves up in judgment over their fathers. The same reasoning applied to complaints by inferiors against superiors, and this was thought to bar the laity from taking legal action against the clergy.[5]

Still other justifications for the rule rested upon some basic assumptions underlying the canon law. Ancient principles held that the clergy and the laity were two distinct and separate orders of society. Insofar as possible a distance was to be kept between them.[6] Thus clerics should not accuse laymen before temporal courts, and laymen should not accuse clerics before spiritual courts. A more utilitarian reason given for the rule depended on what might be called *utilitas ecclesiae*, that is promotion of the interests of religion and the church. The laity should be taught to love their pastors and to obey them.[7] Although pastors sometimes made mistakes, in the long run it was preferable to keep the sheep from reproaching them. It would not do to have them call their master's every action into question. No flock prospers thereby, and in addition it could be said that the virtue of humility was taught by this rule. A final justification rested upon legal presumptions about probable intent. Accusations should be not be accepted from a person's enemies. What the canonists had been taught to regard as a traditional hostility of the laity against the clergy created a presumption that accusations made by the former were being made out of enmity for the latter.[8] Such accusations ought therefore to be excluded under the law.

All of these justifications now seem like variations on a theme. It was the avowed aim of the canon lawyers of the twelfth and thirteenth centuries to secure the independence and strength of the church's position in society. The *Decretum* grew out of the great movement for reform of church and society, one of the aims of which was the increase of sacerdotal power in the world.[9] The rule against accusations being brought against the clergy by the laity served that aim. This was not a matter of

[2] X 2.20.14: X 5.1.10.

[3] See, e.g., Angelus de Clavasio, *Summa Angelica* (Nuremberg 1492), s.v. *Teste*, no. 18., stating the rule plainly and citing C. 2 q. 7 c. 38; Willelmus Durantis, *Speculum iudiciale* (Basel 1574, repr. 1975), Lib. III, Pt. 1, tit. *De accusatione* § 3, no. 2; Panormitanus, *Commentaria in libros Decretalium* (Venice 1617), ad X 5.1.12, nos. 5–6.

[4] C. 2 q. 7 c. 15.

[5] C. 2 q. 7 c. 9. See also *gl. ord.* ad X 5.7.12 s.v. *quisque tenetur*.

[6] C. 12 q. 1 c. 7: 'Duo sunt genera Christianorum'. See also *gl. ord.* ad C. 2 q. 7 c. 6: 'quia sicut discreti et separati sunt laici a conversatione clericorum'.

[7] C. 2 q. 7 c. 8.

[8] C. 2 q. 7 c. 5.

[9] Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century* (Berkeley and Los Angeles 1972), pp. 89–92.

embarrassment to the clergy. The rule's purpose was not concealed in the justifications given for the rule, and it was never simply a matter of procedural efficacy. More was involved than the technical restrictions on the right to bring criminal accusations found in the first title of the ninth book of the *Codex Justinianus*.[10] The clergy's rightful place in society was at stake.

As with most rules of the *ius commune*, the prohibition against lay accusations against clerics admitted of exceptions. It would have been both impossible and unwise to insist on the rule in all circumstances, and the *glossa ordinaria* to Alexander III's decretal listed two principal situations where the prohibition did not apply.[11] First, the rule was inapplicable where the layman was prosecuting an injury to himself or to his own property. If, for example, a clergyman feloniously took a layman's chattels, the layman injured thereby had every right to bring an accusation against the clerical thief. But this rationale would not justify an accusation of neglect of duty or adultery, for instance, except perhaps where the layman's wife was involved. Second, some crimes (*crimina excepta*) were regarded as so heinous in nature that their punishment was more important than upholding the rule. Simony, heresy and treason were the textbook examples. In them, sons were in fact encouraged to accuse their fathers, and the laity were permitted to accuse the clergy. In such cases, the argument from *utilitas ecclesiae* cut the other way.

Under the classical canon law laymen could also play a subsidiary role in the vindication of the criminal law. The inquisitorial procedure that was introduced, or at least confirmed, by Pope Innocent III (d. 1216) was normally initiated by the existence of *fama publica* against a person.[12] Widely held suspicion held by persons of good repute took the place of an accuser. The procedure did not spare men in holy orders, and public fame sufficient to warrant starting criminal proceedings against a cleric might easily circulate among the laity. So could inquisitorial criminal proceedings be brought against individual clerics. But the law held that such a role on the part of the laity—really as carriers of information more than anything else—did not amount to the right to initiate, or even to testify in, criminal proceedings. That right and duty rested with the bishop.

Medieval Court Proceedings

For a lawyer and historian concerned with application of the law of the church, statement of the academic law leads naturally to examination of evidence found in the records of the ecclesiastical courts. In particular it leads to the Act Books of the fifteenth century and the first years of the sixteenth, the first period for which such records survive in any quantity for the English church. What they show is surprising. It turns out to be the opposite of what one expects from having perused the writings of the canonists. So far as I know, this evidence has not been examined before in the light of the canon law,[13] and quite apart from its relevance in the modern context, it

[10] E.g., Cod. 9.1.12, restricting the right of women to bring criminal accusations.
[11] *Gl. ord.* ad X 5.1.10 s.v. *laicus*.
[12] X 5.1.19. See generally, Richard A. Fraher, '*The Theoretical Justification for the New Criminal Law of the High Middle Ages: Rei Publicae Interest, Ne crimina remaneant impunita*', 1984 University of Illinois Law Review, pp. 577–595; Henry A. Kelly, '*Inquisition and the Prosecution of Heresy: Misconceptions and Abuses*', Church History 58 (1989), pp. 439–451.
[13] A considerable amount of scholarship has been devoted to assessing the conduct of the clergy in the years prior to the Reformation. Among them: Margaret Bowker, *The Secular Clergy in the Diocese of Lincoln 1495–1520* (Cambridge 1968), pp. 85–128; Peter Heath, *The English Parish clergy on the Eve of the Reformation* (London and Toronto 1969); Ralph Houlbrooke, *Church Courts and the People during the English Reformation 1520–1570* (Oxford 1979), pp. 173–213; Peter Marshall, *The Catholic Priesthood and the English Reformation* (Oxford 1994).

deserves to be known for what it has to say about the history of the ecclesiastical law in England.

In the fifteenth century, the records demonstrate clearly that many *ex officio* prosecutions were in fact being brought against the clergy for alleged failures to live up to their spiritual obligations. Many were begun at the initiative of the laity. Prosecutions against the clerics who presided over the home parish of the laymen involved were particularly frequent. These proceedings, whether initiated by the churchwardens or by other parishioners, appear to have violated the canonical prohibitions against criminal accusations being made by laymen against clerical order. Indeed, they did violate the spirit of the prohibitions. There were, it is true, ways in which permitting these accusations could be rationalised in formal terms under existing canon law. But surely more important is the substance: clerical discipline was being enforced by lay men and women who had no apparent direct personal interest in the matters at issue.

A significant portion of these proceedings were brought for sexual offences, such as the prosecution of John Payn, vicar of St Olave's in London, who was unlucky enough to have been 'caught in the fields committing adultery with a certain woman',[14] or the apparently libidinous Robert Hag, beneficed in the city of York, who, it was claimed, 'lives so dishonestly that he sends no woman away unviolated'.[15] The most consistent offender of these I have come upon was the subject of a prosecution brought in 1443 in the diocese of Hereford. The vicar of Clone was accused of having lived in concubinage with Margaret ap Dod over an eight-year period and fathering four children by her.[16] Perhaps there on the Welsh marches, clerical marriage still held on as an old custom, despite centuries of effort to eradicate it. It is hard to be sure. Nor can one be certain how best to evaluate many of the prosecutions involving looser allegations of acting suspiciously with a woman that were initiated by parishioners. The allegations that were made, even if true, did not necessarily mean that sexual relations had occurred between them. One should also keep in mind how much gossip there was in medieval parishes and how mean spirited much of it was.

Allegations of sexual impropriety are not, in any event, the most significant or even necessarily the most numerous of the prosecutions that were undertaken against the clergy in the fifteenth century. The most significant from the modern vantage point were those for not upholding the religious and financial standards appropriate to the clerical order. Admittedly, there is an element of anachronism present in drawing this distinction. Clerical celibacy was a religious standard. However, assessing the legal role of the laity, and their opinions towards church and clergy during the fifteenth century, requires moving beyond sexual peccadilloes.

How to describe the nature of these entries involving the clergy being brought before the courts at the behest of the laity? No categorization from the time exists and none I could devise would be air tight, but probably one does not go too far wrong by treating them under three headings: failures involving the sacraments; failures involving church property; and failures in other personal conduct. In all of them, laymen were being allowed to invoke the church's disciplinary jurisdiction in the century or so before the Reformation.

[14] Ex officio c. Payn (London 1470), Guildhall Library, London, Act Book MS. 9064/1, f. 3v.
[15] Ex officio c. Hag (London 1489), Guildhall Library, London, Act Book MS. 9064/2, f. 206: 'inhoneste vivit quia nullam feminam dimittit inviolatam.'
[16] Ex officio c. Dayo (Hereford 1443), Hereford RO, Act Book O/2, p. 53.

The first of these appears with surprising frequency, and the cases tend to show—although they do not prove—the importance of the church's services and sacraments to the fifteenth century laity. For example, there is a case from 1447 brought against the vicar of Malling in the diocese of Rochester. Asked to come to the bedside of Thomas Draper to administer the Eucharist and the sacrament of extreme unction, he went instead to a tavern with a widow named Joan Sandhurst, saying that Draper was sure to live to the next day. Draper did not, and the vicar found himself the defendant in an *ex officio* case brought before the consistory court.[17] Purposeful as well as negligent failure to provide the sacraments to the laity was also the subject of prosecutions begun by the laity. For instance, the 1470 Act Book of the Commissary Court of London contains the allegation that the rector of St Katherine Coleman 'refused to give the sacrament of the Eucharist to John White because he [White] would not let the rector have fifty pence.'[18] Why the rector refused, the record is not full enough to say. Perhaps White owed him the money. But withholding the sacrament from a parishioner was not a legitimate way of collecting a debt, and the ecclesiastical courts provided a forum for making that point. The same could be said of a suit initiated by the churchwardens of the parish of Emneth in Norfolk against the curate there. They alleged that he 'refused to visit those of his [female] parishioners who were ill before their purification'.[19] Perhaps this curate's refusal was a not very subtle way of encouraging them to come for the ceremony known as 'churching of women', but it also landed him in a disciplinary case before his ecclesiastical court. The sick women had, it appears, something like a right to spiritual ministrations at his hands.

Probably the most frequent of the cases involving the sacraments were those actions brought by a group of parishioners against either a monastic house or the incumbent of a parish church for failure to provide religious services. A fifteenth century precedent book from the diocese of Salisbury provides an example of the common form. The *incoli* or inhabitants of the hamlet of W. brought a *causa subtractionis divini servicii sive inventionis capellani* against the vicar of G. It alleged that he had violated the duty to provide a clergyman for them according to the terms under which his vicarage had been established.[20] It is worthy of particular note that these *incoli* were not dependent upon the diocesan bishop's discretion or even his aid in seeking a remedy. They were given a direct right to sue in the ecclesiastical courts. Nor can the formulary be dismissed as mere theory. The Act Books contain numerous cases brought by laymen to secure adequate spiritual ministrations of one sort or another.[21]

Suits brought to protect ecclesiastical property against the clergy themselves—a second category—point to an important aspect of parish government in the fifteenth century. Much of it was put into the hands of the laity, typically the elected churchwardens. The most frequent of the suits involving ecclesiastical property were those brought by the churchwardens against parsons for failing to keep chancels and vic-

[17] Ex officio c. Vicar of Malling (Rochester 1447), Kent Archives Office, Act Book DRb Pa. 2, f. 62. See also Ex officio c. Vicar of Hollingbourne (Canterbury 1451), CCA, Act Book X.1.1, f. 27: 'dimisit vicariam suam inofficiatam et in defectu eius puer Thome Totman iacuit per ii dies non baptizatus'.

[18] Guildhall Library, London, Act Book MS. 9064/1, f. 5 'Rector ibidem recusavit dare sacramentum Eukaristie Johanni White ex hoc quod non potuit habere ab eo 1 d.'

[19] Ex officio c. Ade (Ely 1465), CUL, EDR Liber B, f. 24v: 'recusat visitare infirmas parochianas ante purificationem earundem'.

[20] Wiltshire RO., Trowbridge, MS. D1/45/1, f. 1710.

[21] E.g., Ex officio c. Pope, vicar of Aldeburgh (York 1441), BI, Act Book D/C.AB1, f. 99; Ex officio c. Warde (London 1484), Guildhall Library, London, Act Book MS. 9064/2, f. 94v (withholding chantry services); Parishioners of Overton c. Bruce (Hereford 1492), Hereford RO, Act Book I/1, p. 30v: 'causa subtractionis divini officii'.

arage houses in repair.[22] The laity of the parish were not content to leave it to the parson's successor to sue for dilapidations. And a few of these cases were quite picturesque, if that is the word, like the attempt in 1467 to require the parson of Wisbech in the diocese of Ely to produce the two surplices the churchwardens claimed belonged to the parish, not to the parson.[23] In any event, the church's rules against alienation of ecclesiastical property were apparently being enforced in proceedings initiated by parishioners or their representatives.

The third category—a catch-all—consisted of attempts by parishioners to correct the moral conduct of the clergy. I have already mentioned the sexual cases. But allegations of consistent drunkenness,[24] sodomy,[25] simony,[26] revealing secrets learned in confession,[27] holding incompatible benefices,[28] or habitual non-residence[29] that were brought against the clergy are also not hard to find in the Act Books of the century before the Reformation.[30] A few of them seem quite fantastic, such as the case brought against the vicar of Fenton in Yorkshire in 1518. Among other misdeeds, he was alleged to have fathered two illegitimate children, to have dressed in female garb while he was saying vespers, and to have heard the confessions of his parishioners while he was drinking in a tavern.[31] It seems very like some of what one reads in today's newspapers.

The court records sometimes put disciplinary matters like these under more general headings, like cases brought for 'causing dissension among the parishioners'[32] or proceedings initiated supposedly 'for the correction of the soul' of the cleric.[33] Just how these clerical souls needed correction, the formal records do not always say. One assumes greater specificity would have been required at trial. But it is evident in any event that parishioners were complaining about one sort of failing or another on the part of their own clergy, finding fault with men who were 'acting more like peasants than priests'.[34] The results were legal prosecutions to discipline the clergy, even some-

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[22] E.g., Presentment of parish of Wisbech (Ely 1480), EDR, Liber B, f. 30: 'Yconomi presentant quod cancellus patitur defectum in fenestris in defectu rectoris et vicarii adeo quod candelabria et alia ornamenta ecclesie deturpantur et deteriorentur'. Other examples: Ex officio c. Hamond (Hereford 1442), Hereford RO, Act Book O/2, p. 67; Ex officio promoto c. Twys (Lichfield 1468), LJRO, Act Book B/C/1/1, f. 216v; Ex officio c. Brown (Canterbury 1470), CCA, Act Book Y.1.11, f. 110.

[23] Presentment of Parish of Wisbech (Ely 1467), CUL, EDR Liber B, f. 26.

[24] Ex officio c. Goodgam (Winchester 1523), Hampshire Record Office, Act Book 21M65/C1/2, f. 8: 'super delicto ebrietatis'.

[25] Ex officio c. Benet (York, 1410), BI, Act Book D/C.AB.1, f. 21: 'commisit peccatum sodomiticum cum diversis hominibus eiusdem ville'.

[26] Ex officio promoto c. Rule (Lichfield 1464), LJRO, Act Book B/C/1/1, f. 2v: 'negotium correctionis sive symoniace pravitatis'.

[27] Ex officio c. Coke (Canterbury 1469), CCA, Act Book Y.1.11, f. 57v: 'notatur quod revelavit confessionem Agnetis filie sue spiritualis'.

[28] Ex officio c. Aunswell, Hereford RO, Act Book O/27, pp. 93–4 (1517).

[29] Churchwardens of Pedewel c. Pedewich (Bath and Wells 1459), Somerset RO, Taunton, Act Book D/D/Ca 1, p. 296: 'causa non residencie'.

[30] See also the many examples in William Hale, *A Series of Precedents and Proceedings in Criminal Causes, 1475–1640* (3d ed. Edinburgh, 1973), Index (pp. 170–171), s.v. Clerical Misconduct.

[31] BI, Act Book D/C.AB.2, f. 206v.

[32] Ex officio c. Pecok (Canterbury 1514), CCA, Act Book Z.3.3, f. 6v: 'de communi rixatione et litium suscitatione inter parochianos et pomposa ostentatione in locis mercati'.

[33] E.g., Ex officio c. Spake (Lichfield 1464), LJRO, Act Book B/C/1/1, f. 5: 'causa correctionis animae domini Thome Spake rectoris ecclesie parochialis de Crayton Basett ex officio ad promotionem Roberti Gilson de eadem parochia'.

[34] Ex officio c. Kay (Archdeaconry of St Albans 1515), Hertford RO, Act Book ASA 7/1, f. 5v: 'laborando tam ante missam quam post ad instar rustici potius quam presbiteri'.

times to force their deprivation under the rubric of a *causa privationis*.[35] Most of the cases were settled well short of that extreme sanction.[36] Negotiation and accommodation were routinely tried. But offending clergy were sometimes required to do public penance for their offences,[37] and intermediate sanctions like sequestration of the income of a benefice or temporary suspension from office were available and in fact sometimes applied.[38]

From a legal point of view what is interesting about all these cases is not the repetition or the scale of allegations of clerical misconduct. It is far from certain that all the allegations were true, and in any event the huge clerical army of the fifteenth century was bound to contain its share of reprobates. What is interesting from the point of view of the canon law is that the laity were being permitted to bring the allegations, directly or indirectly, before the courts. The practice appears to have been contrary to the intent of the classical canon law, which reserved such accusations to the bishop or his agents.

How was this violation of the canon law justified? There is little explicit discussion of the subject to be found in the works of the late medieval canonists. Simple desuetude is certainly one possibility. That was the fate of much of the canon law. However, the more likely answer is that the result was reached by stretching the categories and procedure available under the law. It could reasonably have been said, for example, that the laity were merely serving the function of bringing *fama publica* to the attention of the bishop's officials in *ex officio* cases. They were not therefore 'accusers' in the technical sense of the word. This reasoning would have fitted the inquisitorial procedure authorised by Pope Innocent III. Indeed, this may have been part of a more general movement in the church. Ecclesiastical courts in other areas of Europe would also seize upon this justification for allowing indiscriminate accusations to be brought against the clergy.[39]

Other justifications could also have been advanced for reaching this result. For instance, it might be said of *ex officio promoto* jurisdiction, in which laymen were allowed to invoke the jurisdiction of an ecclesiastical court to bring a complaint against their clergy, that this was not formally inconsistent with the canonical rule, because in theory prosecution rested with the judge even though in fact the laymen conducted it. Or it could have been said that the cases involved an exception for 'public crimes'. Where public crimes were involved, laymen were permitted to invoke the criminal jurisdiction of the courts, and even such 'crimes' as failure to care for a parsonage might be defined as one affected with a public interest.[40] It was, in effect, an

[35] E.g., Ex officio c. Ludlow (Lichfield 1464), LJRO, Act Book B/C/1/1, f. 5v: 'causa privationis domini Thome Ludlow, ..., ex officio et ad promotionem parochianorum ibidem'; Ex officio promoto c. Lawes (Bath and Wells 1528), Somerset RO, Taunton, Act Book D/D/Ca 2, p. 56.

[36] In a 1527 letter to Cardinal Wolsey, Richard Fox (d. 1528), successively bishop of Exeter, Durham and Winchester, himself claimed that he had never deprived a man in the more than forty years he had been a bishop. See *Letters of Richard Fox*, 1486–1527, P. S. Allen and H. M. Allen eds. (Oxford 1929), p. 151.

[37] E.g., Ex officio c. Grene (York 1443), BI, Act Book D/C.AB.1, f.98: 'quod incedat coram processione in ecclesia cathedrali Ebor' nudis tibiis et pedibus, superpellicio suo tantummodo indutus per sex dies domincales, . . .'.

[38] E.g., Prebendal church of Bugthorp (York 1434), BI, Act Book D/C.AB.1, f. 94 (Sequestration of revenues at complaint of three parishioners against the vicar).

[39] See Card. Domenicus Tuschus (d. 1620), *Practicarum conclusionum iuris in omni foro frequentiorum* (Lyons, 1634), Vol. A, Concl. 160: '[I]stae fallentiae raro vel nunquam admittuntur quia iudices communiter procedunt ex officio et per inquisitionem etiam si nullus accusat'.

[40] It was so said by Julius Clarus (d. 1575), *Practica criminalis* (Venice 1595), Quaest. 14, no. 21. It is worth noting, however, that Clarus gave the traditional rule and did not qualify it by saying it was poorly observed in practice, as he in fact did in several other instances.

actio popularis.[41] Or it could even have been claimed in the suits where parishioners sued in their own name to recover spiritual services, that this was merely giving a broad meaning to the term interest—'standing' it would be called in modern legal parlance—because the canon law always allowed them to vindicate their own personal rights and interests before an ecclesiastical court. The suits were being brought as much to secure adequate spiritual ministrations as they were to punish the clerics involved. As this was a recognised distinction in the canon law, it might have been claimed that this purpose justified what might otherwise have seemed to violate the canon law's prohibitions. All these justifications are admittedly guesses—rationales only hinted at by the records themselves—not reasons that were the subject of recorded discussion at the time. But the fact remains: the laity were initiating prosecutions in the ecclesiastical courts against the parochial clergy.

Modern Questions

A final question is the modern relevance of this evidence. I want to raise two points.[42] The first is its relation to the recent controversy about the attitude of the laity to religion in England prior to the Reformation. Many readers will be familiar with it. The older view—though I am myself just old enough to remember when it was itself a revisionist position—is associated with the scholarship of A.G. Dickens.[43] It holds that fifteenth and early sixteenth century English men and women had a hunger for more satisfying spiritual fare than the formal, clerically dominated religion of medieval Catholicism, and that, among other things, this spiritual hunger manifested itself in a kind of anti-clericalism that was its inevitable consequence. The Reformation built upon a base of religious opinion widely held among the English people. They welcomed a liturgy they could understand. The Reformation was a natural outgrowth of the attitudes of the laity, not simply an act of state. The newer, revisionist view is associated with the work of J. J. Scarisbrick and Eamon Duffy.[44] It holds that there was widespread, popular support for traditional Catholic devotional practice in the century before the Reformation, and along with it went a general respect for church and clergy. The Reformation was forced upon an unwilling populace. Whatever anti-clericalism existed in sixteenth century England was likely to have been the result of the Reformation, not its cause. The sacramental powers of the clergy were objects of veneration, not indifference or derision, among the people.

These two positions seem quite inconsistent. At least their proponents have not found much common ground. Nevertheless it can be said that the evidence from the court records provides a measure of support for both sides. Indeed it may shed a little new light on the subject. On the one hand, it supports the revisionist view, because it shows the attachment of the laity to existing ecclesiastical institutions. Parishioners would not have undertaken the expense and trouble of bringing suit to compel the performance of church services unless they had cared about them. They were not indifferent about the substance of their religion. On the other hand, the evidence from court records also supports the older view, because it shows that the laity were not simply passive and happy recipients of the sacraments at the hands of

[41] It was so classified, for example, in the notebook of a seventeenth century English civilian: see Commonplace book, British Library, Add. MS. 72544A, f. 5v.

[42] I leave aside its relevance to the so-called Stubbs-Maitland controversy, because I have already expressed my reading of the anachronistic character of that controversy at some length in *Roman Canon Law in Reformation England* (Cambridge 1990), pp. 4–20.

[43] See A. G. Dickens, *Lollards and Protestants in the Diocese of York: 1509–1558* (Oxford 1959).

[44] J. J. Scarisbrick, *The Reformation and the English People* (Oxford 1984); Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, c.1480–c.1580* (New Haven, Conn., 1992).

a revered clergy. Laymen had a mind of their own about their religion. They were not shy about asserting it. They took the initiative. I would not myself call this 'anti-clericalism' on the part of the laity, but neither would I call it 'pro-clericalism'.[45] It was a concern for their own spiritual welfare backed by the right to do something about it. This was a prominent feature of religious sentiment in England during the fifteenth and early sixteenth centuries. One of the merits of the records of the ecclesiastical courts is that they bring that feature into the light.

The second point involves clerical discipline today. Here it would be an obvious mistake to claim a great deal for a study based on records compiled hundreds of years ago. But the present is worth considering in light of its past. There are parallels in the law of the two eras, though also many differences. I mention two. First, today the church is governed by rules designed to prevent irresponsible accusations being made against the clergy. Under the Ecclesiastical Jurisdiction Measure 1963, for example, the consent of six or more persons, all of whom must be on the electoral roll, is required before a complaint against a cleric can be prosecuted.[46] Under the Incumbents (Vacation of Benefices) Measure 1977, the similar requirement is two-thirds of the PCC.[47] Second, there is the reservation of power of decision in the diocesan bishop. Under the Ecclesiastical Jurisdiction Measure 1963, upon proper complaint being made, it is the bishop who 'shall either decide that no further step be taken' or else 'refer the complaint for inquiry by an examiner', after he has interviewed the accused and the complainant in private. If he decides against proceeding, 'no further action shall be taken by any person in regard thereto'.[48] Under the Incumbents (Vacation of Benefices) Measure 1977, it is the bishop who, after initial investigation and failure of attempts at mediation, may 'if he thinks fit, direct the secretary of the diocesan synod to institute such enquiry'.[49]

These rules both have the effect of reserving clerical discipline to the officers of the church. That was the same result promised by the rules of the classical canon law. I do not say—indeed I do not think—that the motivation is identical. There is less division made between the spheres of clergy and laity in today's law, and there is even greater desire to settle matters through mediation and reconciliation than was true in earlier centuries.[50] The similarity in outcome is nonetheless striking. In both systems, complaints heard before ecclesiastical tribunals against the clergy for immoral and criminal behaviour are to be choked off insofar as possible. That may be sensible. But even making allowance for the many differences between the fifteenth century and the twenty-first, the history of what happened to the medieval church's rules stands as a warning against over-confidence on our part in the wisdom of such efforts to avoid litigation. The interests the laity asserted in the ecclesiastical courts in the century or so before the Reformation—and continued to assert afterwards—were real and important interests. They were vital parts of maintaining the laity's spiritual wel-

[45] On anti-clericalism and for a review of the literature, see Joseph Block, *Factional Politics and the English Reformation, 1520–1540* (Woodbridge 1993) and Richard A. Cosgrove, 'English Anticlericalism: A Programmatic Assessment', in: *Anticlericalism in late medieval and early modern Europe*, Peter Dykema and Heiko Oberman eds. (Leiden 1993), pp. 569–581 . The initiative of the laity is also one theme of Lawrence G. Duggan, '*The Unresponsiveness of the late medieval Church: A Reconsideration*', *Sixteenth Century Journal* 9 (1978), pp. 3–26, at p. 8.

[46] Ecclesiastical Jurisdiction Measure 1963, s 19(b), cited in Mark Hill, *Ecclesiastical Law*, 2nd edn. (Oxford 2001), p. 346.

[47] Incumbents (Vacation of Benefices) Measure 1977, s 1A(1)(c) (renumbered by the Incumbents (Vacation of Benefices) (Amendment) Measure 1993, s 1): see Hill, p. 401.

[48] Ecclesiastical Jurisdiction Measure 1963, s 23(1), (2): see Hill, p. 347.

[49] Incumbents (Vacation of Benefices) Measure 1977, s 3(1) (amended by the Incumbents (Vacation of Benefices) (Amendment) Measure 1993, s 3(2)): see Hill, p. 403.

[50] Norman Doe, *Canon Law in the Anglican Communion* (Oxford 1998), pp. 78–80.

fare, as the laity themselves saw it. To witness that interest being asserted, apparently in the teeth of the canonical rules, is one of the rewards—and one of the lessons—to be derived from the study of the law as it was put into practice in England's spiritual courts.

LONDON LECTURES 2002

Date and time	**Wednesday, 24 April 2002, 5.30–6.30 p.m.**
Speakers	**The Revd Justin Welby, rector of St James Southam** **Mrs Isobel Chapman, diocesan secretary for Coventry**
Subject	**Business and administration practice in the diocese of Coventry**

Date and time	**Wednesday 19 June 2002,5.30—6.30 p.m.**
Speaker	**Dr Augur Pearce, Centre for Legal Research and Policy Studies, Oxford Brookes University**
Subject	**Episcopacy and the Common Law**

Date and time	**Wednesday 11 September 2002, 5.30 — 6.30 p.m.**
Speaker	**Anthony Jeremy, solicitor, research fellow at the Centre for Law & Religion, University of Cardiff**
Subject	**Incitement to religious hatred**

Date and time	**Wednesday 27 November 2002, 5.30 — 6.30 p.m.**
Speaker	**Charles Mynors, chancellor of the diocese of Worcester**
Subject	**Disability rights and the Church**

The venue for all lectures is **Serle Court, 6 New Square, Lincoln's Inn, London WC2A 3QS**. The Ecclesiastical Law Society is grateful to Serle Court for providing its seminar room for these lectures.

https://doi.org/10.1017/S0956618X00004452 Published online by Cambridge University Press