

# Excommunication in Postrevolutionary England, 1689–1714

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**Abstract** This article asks why many divines pushed for reform of the Church of England's use of excommunication after the Glorious Revolution of 1688. In response, it argues that, worried by what they perceived as widespread moral decline and the threat posed by the floodgates of Protestant dissent opened up by the Toleration Act of 1689, clergy became concerned that sentences such as excommunication were ineffective and the church would soon cease to be the chief arbiter of certain offenses. In contrast to existing historiography, this article suggests that the urge for reform was not confined to any particular section of the church. Instead, the reform of excommunication was a shared cause, although there was sharp disagreement about how to pursue it. However, despite enthusiasm for change, efforts for reform floundered because of partisan conflict and the legacy of the Tudor Reformation that continued to shape religious life in England well into the later Stuart period. Examining the debate about excommunication allows us to revise our understandings of religion and politics in the last decades of the Stuart dynasty and further develop important concepts such as the long Reformation.

For those interested in questions of religious discipline and clerical authority, the years after the Glorious Revolution of 1688 offer a wealth of subjects to work with. Historians have taken ample advantage of this and written sophisticated treatments of anti-clericalism, the church-state relationship, the reassertion of sacerdotal authority in face of perceived threats to the church, and the intellectual consequences of the perennial stream of contemporary literature that discussed these matters.<sup>1</sup> Perplexingly, however, no one has sought to trace the fate

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<sup>1</sup> It is difficult to do justice to the full range of this secondary literature. However, for some key works, see Justin Champion, *The Pillars of Priestcraft Shaken: The Church of England and its Enemies, 1660–1730* (Cambridge, 1992); Mark Goldie, "Priestcraft and the Birth of Whiggism," in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge, 1993), 209–31; Dmitri Levitin, "Matthew Tindal's 'Rights of the Christian Church' (1706) and the Church-State Relationship," *Historical Journal* 54, no. 3 (2011): 717–40; Brent Sirota, *The Christian Monitors: The Church of England and the Age of Benevolence, 1680–1730* (New Haven, 2014); Jonathan Sheehan, *The Enlightenment Bible: Translation, Scholarship, Culture* (Princeton, 2005); Brian Young, *Religion and Enlightenment in Eighteenth-Century England: Theological Debate between Locke and Burke* (Oxford, 1997); Stephen Taylor, "William Warburton and the Alliance of Church and State," *Journal of Ecclesiastical History* 43, no. 2 (1992): 271–86.

of individual forms of punishments such as excommunication after 1688 and what that can tell us about broader questions that have preoccupied historians of the post-revolutionary decades and of early modern England in general.<sup>2</sup>

To that end, I examine postrevolutionary discussions about excommunication and the related legislative attempts to alter its form and practice. I have chosen to look at excommunication because, at least in theory, it was a sentence that could be handed out to nearly all members of society, and the differing responses to it throw into sharp relief the postrevolutionary Church of England's struggle to fortify itself against perceived threats. In documenting the debates and proposed legislation about excommunication, I ask why churchmen of various stripes felt compelled to press for immediate reforms addressing excommunication. This sense of urgency stemmed from their unease about the meaning and extent of excommunication and their belief that the church stood at severe risk of losing its standing as the arbiter of many offenses, religious and otherwise. Worried that the church would find it difficult to maintain its standing in the midst of moral laxity and unregulated Protestant dissent—an issue that became much more salient after the Toleration Act of 1689—clergy worked to understand the state of sentences such as excommunication that governed the church's relationship with the laity and to find what they could do to improve it.

These concerns were not limited to any particular section of the church. Despite many theological and political differences, the clergy were often united by the cause of defending excommunication and, by implication, the legal privileges of the church against Protestant dissenters and others. This defense took the form of a long-standing campaign that relentlessly dissected the multiple dimensions of excommunication and subjected them to scrutiny both in Parliament and its clerical counterpart, the Convocation of the Province of Canterbury. Churchmen responded to the Restoration critique that excommunication was deeply unfair and ineffective by trying to mitigate its arbitrariness and introducing new measures that would preserve the solemn status of excommunication as one of the church's most hallowed censures. This was a deeply fraught quest that carried well into the 1710s and became intertwined with the many other conflicts affecting English society. Ultimately, however, by the end of the Stuart era, churchmen had to face the grim reality that for the most part their efforts since 1688 had failed. What hindered them was the constant tension in the English past between the legacy of the Reformation and everything that followed it. When it came to excommunication, they faltered when forced to choose between challenging a key legacy of the Reformation and reversing parts of the revolutionary settlement.

<sup>2</sup> There is, of course, a great deal of writing about excommunication in late medieval and post-Reformation England until the Glorious Revolution. See, for example, Rosalind Hill, "The Theory and Practice of Excommunication in Medieval England," *History* 42, no. 144 (1957): 1–11; Richard H. Helmholz, "Excommunication in Twelfth-Century England," *Journal of Law and Religion* 11, no. 1 (1994): 235–53; Leo Carruthers, "The *Great Curse*: Excommunication, Canon Law, and the Judicial System in Late Medieval Society, through the Eyes of an English Preacher," *Caliban: French Journal of English Studies*, no. 29 (2011): 45–60; Aislinn Muller, *The Excommunication of Elizabeth I: Faith, Politics, and Resistance in Post-Reformation England, 1570–1603* (Leiden, 2020); Jens Åklundh, "The Church Courts in Restoration England, 1660–c.1689" (PhD diss., University of Cambridge, 2018). In some of what follows, especially on the Restoration, I am indebted to Åklundh's stellar work on the period.

While some episodes I discuss below are familiar to scholars of later Stuart England, my interpretive emphasis differs from that of existing historiography.<sup>3</sup> New research into the last decades of the seventeenth century, arguing against the deeply held belief in the weakness of post-Restoration church courts, has shown that the later Stuart church's legal power was anything but a spent force.<sup>4</sup> However, such scholarship still asks questions based on misguided assumptions. In the case of excommunication, church courts could still severely discipline both conformists and dissenters. Throughout the 1670s and 1680s, church and crown worked together to deprive several dissenters of their right to vote by excommunicating them.<sup>5</sup> Moreover, as Jens Åklundh has shown, many excommunicates were deeply affected by the spiritual and civil sanctions of excommunication and responded in ways that went far beyond indifference or mockery.<sup>6</sup> But despite the stated ambition to recast how we think of the later Stuart church's legal problems, such arguments tend only to postpone what they view as the inevitable decline of the church's legal authority. Åklundh, for instance, argues that "the real cause of decline came with the royal and parliamentary decrees for religious toleration in the late 1680s." The puzzle, he suggests, is why churchmen did not push for "more comprehensive efforts to reform the correctional apparatus already in place."<sup>7</sup> However, there was indeed a comprehensive push to reform the church's disciplinary machine. Therefore, before looking for the causes of something, it is important to first establish its full outline.

<sup>3</sup> Some themes addressed in this article have been examined much more extensively for the Restoration than for the post-1688 decades. See John Spurr, *The Restoration Church of England, 1646–1689* (New Haven, 1991), 193–219; Jacqueline Rose, *Godly Kingship in Restoration England: The Politics of Royal Supremacy, 1600–1688* (Cambridge, 2011), 115–28, 194–202; Jeremy Gregory, *Restoration, Reformation, and Reform, 1660–1828: Archbishops of Canterbury and Their Diocese* (Oxford, 2000), 200–203. An exception that covers both the Restoration and the postrevolutionary years is Norman Sykes, *From Sheldon to Secker: Aspects of English Church History, 1660–1768* (Cambridge, 1959), 36–67. For the work of church courts in earlier periods, see Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge, 1987); Ronald Marchant, *The Church under the Law: Justice, Administration and Discipline in the Diocese of York, 1560–1640* (Cambridge, 1969); Ralph Houlbrooke, *Church Courts and the People during the English Reformation, 1520–1570* (Oxford, 1979); R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1550–1860* (Cambridge, 2006), 1–77.

<sup>4</sup> Until recently, Christopher Hill's damning indictment of the church's failure to revive the High Commission, the linchpin of the church's pre-civil war legal landscape, was accepted as the final word; Christopher Hill, *Liberty against the Law: Some Seventeenth-Century Controversies* (London, 1996), 199.

<sup>5</sup> William Gibson, "The Limits of the Confessional State: Electoral Religion in the Reign of Charles II," *Historical Journal* 51, no. 1 (March 2008): 27–47.

<sup>6</sup> Åklundh, "Church Courts in Restoration England," 107–40.

<sup>7</sup> Åklundh, 105–6, 185. This theme of postrevolutionary legal decline is also important in Barry Till, *The Church Courts, 1660–1720: The Revival of Procedure* (York, 2006), 27–32. Though largely committed to the narrative of decline, Donald Spaeth offers a more nuanced portrait of ecclesiastical jurisdiction in the diocese of Salisbury. He draws attention to how historians must be careful in precisely defining which arena of the church courts' activity suffered and which did not. In his view, "The church courts' decline was well advanced by 1700, and the church's loss of this aspect of authority could not help but weaken the position of the parish clergy. Nonetheless, the courts were not entirely moribund, for they still provided services which complainants found useful well into the eighteenth-century." In some instances, they could prove to be more effective than secular courts. Donald Spaeth, *The Church in an Age of Danger: Parsons and Parishioners, 1660–1740* (Cambridge, 2000), 59–64, 72–78, 164, quotation at 82. For the course of decline and its reasons, see also Outhwaite, *Rise and Fall of the English Ecclesiastical Courts*, 78–103.

It is also important to reexamine our sense of where the impetus for reform came from. Some historians have interpreted the contest over the church's jurisdiction as driven primarily by the reactionary high church quest to strengthen sacerdotal authority and curb the influence of dissenters in English society. George Every has situated the question of church discipline primarily within the context of the high church resurgence in the last years of Anne's reign.<sup>8</sup> G. V. Bennett has similarly written of a high church- and Tory-led "Anglican attempt at counter-revolution" that aimed at enhancing the efficacy of ecclesiastical jurisdiction.<sup>9</sup> Other historians, while recognizing the bipartisan nature of the concern with matters of discipline and orthodoxy, see the "campaign to restore the traditional disciplinary apparatus of the established church" as largely a high church preoccupation.<sup>10</sup>

Though these analyses offer a compelling picture of the worldview of high church clergy and their lay sympathizers, they pose two important problems. First, they do not account for the broader spectrum of opinion about the problems of ecclesiastical jurisdiction, including ideas about it put forth by some of the most bitter enemies of high churchmen. In part, this is a function of the deeply imbedded historiographical tendency to regard low churchmen as unconcerned with questions of discipline and authority in ways that were supposedly the bread and butter of the more "orthodox" high churchmen.<sup>11</sup> Second, the focus on high churchmen has led historians such as Bennett to attribute the failure of the push to transform ecclesiastical jurisdiction to the inherent backwardness of a high church movement that, despite its best efforts, was ultimately out of place in a rapidly changing world. Likewise, although his analysis is not confined to high churchmen, Duffy echoes Bennett in thinking of ecclesiastical legal reform as unsuited to a new age.<sup>12</sup>

At least in the crucial case of excommunication, it is wrong to treat the postrevolutionary ambition to transform the legal fabric of the church as primarily the work of a reactionary high church movement. A broad range of voices demanded change. What this implies is that the high church agitation on behalf of the church's legal mechanism—albeit a "colossal failure" and "phenomenally unsuccessful," in the estimation of one of its recent students—perhaps succeeded in transforming the broader

<sup>8</sup> George Every, *The High Church Party, 1688–1718* (London, 1956), 147–68.

<sup>9</sup> G. V. Bennett, "The Convocation of 1710: An Anglican Attempt at Counter-Revolution," *Studies in Church History*, no. 7 (1971): 311–19.

<sup>10</sup> Eamon Duffy, "Whiston's Affair": The Trials of a Primitive Christian, 1709–1714," *Journal of Ecclesiastical History* 27, no. 2 (1976): 129–50; Brent Sirota, "The Trinitarian Crisis in Church and State: Religious Controversy and the Making of the Postrevolutionary Church of England, 1687–1702," *Journal of British Studies* 52, no. 1 (2013): 26–54, at 28–29.

<sup>11</sup> Historians, however, have done a great deal in recent years to dispel the notion that latitudinarians or low churchmen were not interested in the theological complexities of sin, grace, and justification and were somehow less orthodox than their high church counterparts. Thanks to other scholarship, it is also no longer correct to suggest that latitudinarians or low churchmen were overly sympathetic to dissenters and consequently would not have been very interested in avenues to discipline them and others. For example, see W. M. Spellman, *The Latitudinarians and the Church of England, 1660–1700* (Athens, 1993) and Mark Goldie, "The Theory of Religious Intolerance in Restoration England," in *From Persecution to Toleration: The Glorious Revolution and Religion in England*, ed. Ole Peter Grell, Jonathan I. Israel, and Nicholas Tyacke (Oxford, 1991), 331–68, esp. 333. But these observations remain confined to the Restoration, and historians have yet to examine them thoroughly in the postrevolutionary context.

<sup>12</sup> Bennett, "The Convocation of 1710," 319; Duffy, "Whiston's Affair," 150.

orientation of clerical beliefs about church discipline and authority.<sup>13</sup> More importantly, the high church zeal for disciplinary reform makes sense only if we recognize that the situation was not one in which zealous reformers on one side were pitted against somewhat indifferent and unimaginative clergy on the other. Instead, those on the other side had their own ideas for reform.<sup>14</sup> It was the intense clash between the many different plans churchmen had that accounts for the fervor of post-revolutionary political and religious life.

Last, while I am critical of certain elements of existing interpretations, they are not wrong per se. What they offer is an incomplete explanation. For example, the partisan conflicts so central to Bennett's and Every's arguments are also important to my sense of the trajectory of excommunication after 1689. But, in the midst of examining partisan bickering, it is important not to lose sight of other explanations, such as those concerned with the legacy of the Henrician Reformation, which did not always figure explicitly in the partisan battles of the day. A more wide-ranging view of the discussions about excommunication and why they did not lead to legislative change is key to understanding the repercussions of the revolutionary settlement. It also helps situate the postrevolutionary decades more effectively into paradigms such as the long Reformation.

## DEBATING EXCOMMUNICATION

In his 1604 treatise concerning the Church of England, republished soon after the Glorious Revolution in 1689, Francis Bacon described excommunication as the “greatest judgment upon the Earth.” Contrasting its divine origins with what he viewed as its inadequate and unfair practice on earth, he suggested that the sentence should be used in a more dignified way so that “the Church may be indeed restored to the ancient vigour and splendour.”<sup>15</sup>

Bacon's postrevolutionary readers would have found much to sympathize with in his view of excommunication. At least in theory, excommunication was meant to be a terrible punishment that entailed crippling sanctions and complete isolation from the religious and social life of the parish. The process worked as follows. If those cited to appear before the church courts for their offenses failed to show up, they were first suspended. Suspension stipulated that they could no longer attend the church. However, if this warning did not work, they were then excommunicated. In addition to being barred from the church, excommunicates were subject to a number of other restrictions. Their fellow parishioners were prohibited from socializing with them, and excommunicates were also forbidden to participate in the legal and economic life of the community. However, this was not all. After a period of forty days, those who still remained contumacious could be thrown into jail through the chancery writ of *de excommunicate capiendo*.<sup>16</sup> In practice, of course, this rather

<sup>13</sup> Sirota, *Christian Monitors*, 190, 222.

<sup>14</sup> I am of course not the first to make this point. For a similar argument, see Stephen Taylor, “Bishop Edmund Gibson's Proposals for Church Reform,” in *From Cranmer to Davidson: A Church of England Miscellany*, ed. Stephen Taylor (Woodbridge, 1999), 169–202, at 176, 185.

<sup>15</sup> Francis Bacon, *Certain considerations for the better establishment of the Church of England* (London, 1689), 21–22.

<sup>16</sup> Outhwaite, *Rise and Fall of the English Ecclesiastical Courts*, 12–13.

streamlined process did not work smoothly. Due to the bewildering complexity of the church court system across England and the simple fact that, as an inherently communal punishment, excommunication required the participation of the entire community to work, it often did not achieve its stated goal of bringing an offender back into the fold of ecclesiastical jurisdiction.<sup>17</sup>

For the post-1688 decades, the kind of detailed evidence about excommunication available for earlier periods is lacking. However, there are good reasons to believe that the frequency of excommunication perhaps declined after the Glorious Revolution. For one thing, the Restoration nexus between church and crown that sought to excommunicate dissenters to prevent them from voting had weakened. Even though there were parliamentary elections every three years from 1694 onward, it is unlikely that the Williamite regime tried to engineer elections through excommunicating dissenters on the same scale as in the 1670s. Moreover, however limited, the Toleration Act of 1689 did offer some protection against arbitrary and excessive prosecution. Nevertheless, excommunications did not disappear. The ambiguities inherent in parliamentary legislation meant that there was still room for exploitation.<sup>18</sup> Quaker schoolmasters, for instance, were routinely subjected to harassment for teaching without a license, and some were excommunicated.<sup>19</sup> Though the number is hard to contextualize in the absence of comparable figures, the Nottingham archdeaconry's figure of 375 excommunications in 1694 suggests that some clergy continued to excommunicate with remarkable zeal.<sup>20</sup> Unlike in colonial Massachusetts where the somewhat indiscriminate use of infant baptism expanded the Congregational community to such an extent that excommunication seemed increasingly unappetizing,<sup>21</sup> the failure of Comprehension in 1689 meant that in England there were no such factors to restrain excommunication. Concerns about the sentence, however, continued to be voiced from all corners of English society, suggesting that, even if fewer people were being excommunicated, the perceived unjustness of excommunication and its status as a marker of divine wrath and social exclusion were still powerful forces in English religious life.

During the last years of the Restoration, Anglican attitudes to excommunication swung in tandem with the wild motions of Stuart politics. At the height of the Tory reaction in 1684, the fiercely anti-dissent polemicist Thomas Comber wrote confidently of the need to bring those who mocked excommunication to their senses and revive the "Fatal Efficacy" of church censures.<sup>22</sup> Yet, just two years later, in 1686, as Anglicans found themselves distinctly out of favor at the court of the Catholic James II, a sermon preached by John Tillotson, the future archbishop of Canterbury, spoke of the righteousness of those persecuted by men with "a blind Zeal for God, and false and mistaken Principles in the matter of Religion."

<sup>17</sup> For a discussion of the many dimensions of excommunication and possible reasons for its ineffectiveness, see Marchant, *Church under the Law*, 220–22.

<sup>18</sup> The extremely ambiguous nature of the Toleration Act is explored in Ralph Stevens, *Protestant Pluralism: The Reception of the Toleration Act, 1689–1720* (Woodbridge, 2018).

<sup>19</sup> David L. Wykes, "Quaker Schoolmasters, Toleration and the Law, 1689–1714," *Journal of Religious History* 21, no. 2 (1997): 178–192.

<sup>20</sup> Till, *Church Courts, 1660–1720*, 22.

<sup>21</sup> David C. Brown, "The Keys of the Kingdom: Excommunication in Colonial Massachusetts," *New England Quarterly* 67, no. 4 (1994): 531–66, at 559.

<sup>22</sup> Introduction to Thomas Comber, *A Discourse Concerning Excommunication* (London, 1684), n.p.

This persecution, Tillotson noted, sometimes came in the form of excommunication. But in such instances, excommunication hardly stood for the damning sentence that, without repentance for one's sins, doomed one eternally. Instead, it represented the evil act of a church "infected with gross Errors and Corruption."<sup>23</sup>

Comber and Tillotson wrote and preached in a world in which some divines had developed a "theory of religious intolerance." Under the influence of patristic writings, notably Saint Augustine's, many writers, especially those with high church inclinations, wrote favorably about coercion as a tool of pastoral care.<sup>24</sup> That this theory became practice is clear from the fact that, in the city of Exeter, around one thousand nonconformists were prosecuted in the 1670s.<sup>25</sup>

Though some of this persecuting fury had abated in the dramatically transformed circumstances of the post-1688 years, excommunication was still treated as something whose form and meaning all clergymen should know. This is best evident from *The PARSON'S Vade Mecum*, a fairly conventional 1693 book of basic information and advice, whose title page announced it to be "Very fit for the Perusal of all Clergymen and Gentlemen." Under the heading "Of Ecclesiastical Censures," it offered its readers a brief account of different forms of excommunication and how each of them corresponded to a different degree of sin and obstinacy in the excommunicate.<sup>26</sup> But few other treatments of excommunication were as dispassionate as this.

First and foremost, excommunication emerged as a favorite target of dissenters hoping to forge a favorable settlement out of the revolutionary tumult of the 1680s. Perhaps the most prominent among these was the Presbyterian stalwart Richard Baxter who, even in the last years of his life, continued his quest for the better treatment of dissenters by the Anglican establishment. In 1689, in a plea to overcome religious and political differences, he published an account of the life of dissenters under the last two Stuart monarchs and in it lavished a great deal of attention on what he saw as the abuse of excommunication. The account was structured in the form of a dialogue between "a silenced minister and a lawyer," and the minister, acting as Baxter's mouthpiece, offered a critique centered primarily on the 1604 canons that, despite efforts to revise them in the mid-seventeenth century, had been inherited unchanged by Charles II. Pointing to many of the 144 canons that recommended excommunication for a variety of offenses, ranging from denouncing the thirty-nine articles of the Church of England as superstitious to not acknowledging "the sacred synod of this nation" as the "true Church of *England* by Representation," the minister condemned not excommunication per se but rather excommunication *ipso facto*. The latter, he argued, violated the very essence of the sentence, which was supposed to proceed through dialogue, admonition, and a genuine offer to repent.<sup>27</sup> Baxter's choice to argue against the way that excommunication was

<sup>23</sup> John Tillotson, *Sixteen Sermons, Preached on Several Subjects and Occasions By the Most Reverend Dr. JOHN TILLOTSON, Late Lord Arch-Bishop of Canterbury; The Second Edition Corrected* (London, 1700), 391, 394.

<sup>24</sup> Goldie, "Theory of Religious Intolerance in Restoration England."

<sup>25</sup> Scott Sowerby, *Making Toleration: Repealers and the Glorious Revolution* (Cambridge, MA, 2013), 201.

<sup>26</sup> *The PARSON'S Vade Mecum* (London, 1693), title page, 7–11.

<sup>27</sup> Richard Baxter, *The English Nonconformity, As under King Charles II and King James II, TRULY STATED AND ARGUED* (London, 1689), 106–19, 123.

practiced rather than the sentence itself makes sense only in light of his own firm commitment, at least before the widespread persecution of dissent during the Restoration, to the validity and critical importance of ministerial authority to exercise discipline.<sup>28</sup>

Besides dissenters like Baxter, low church divines such as Gilbert Burnet also offered interpretations of church discipline and excommunication. Writing in midst of the pamphlet war between John Locke and the high church clergyman Jonas Proast about the uses of coercion as a tool of pastoral care, Burnet put forth a vision of clerical behavior that actively repudiated the basic premises shared by the Restoration theorists of intolerance.<sup>29</sup> He insisted that, for the Church of England and Protestantism more broadly, the future lay in cultivating a ministry whose members proceeded by leading exemplary lives that inspired the laity and by devoting themselves to pastoral care: “the Instructing, the Exhorting, the Admonishing and Reproving, the directing and conducting, the visiting and comforting the People of the Parish.”<sup>30</sup> Coercion had no place in this design. This aversion to force agreed with Burnet’s long-standing “identification of persecution with Antichrist.”<sup>31</sup> However, Burnet was also quick to lament the Protestant Reformation’s failure to restore “*Publick Discipline* in the Church, as it was in the Primitive Times.” But he took aim at those who despaired too much and did not realize that the Church of England still had recourse to some disciplinary measures. As he wrote, “Scandalous Persons ought, and might be more frequently presented than they are, and both Private and Publick Admonitions might be more used than they are.” Between outlining the essence of his scheme of pastoral care and demanding more severe treatment of moral offenders as part of his emphasis on the need to model present-day Christianity on Primitive ideals, Burnet approvingly cited Saint Chrysostom’s view “on the great temper that ought to be observed in the final sentence of Excommunication.” Slightly later in the text, while explaining the profound obligations attending upon ministers in charge of pastoral care, he mentioned that “a Sentence Declaratory of *Excommunication*” could be handed to a negligent priest.<sup>32</sup> Hence, in Burnet’s view, while there was no role in the church for persecution by force, punishment by sentences such as excommunication was sanctioned both by patristic approval and the need to finish the Reformation’s incomplete work in the sphere of discipline.

Burnet’s somewhat measured views stand in striking contrast to those of the unorthodox Anglican clergyman Edmund Hiceringill, who often ran into trouble with fellow Anglicans for his unconventional views. Throughout the Restoration, Hiceringill found himself locking horns with church courts, and he published numerous critiques of what he viewed as their jurisdictional excesses. At the core of his criticisms was an emphasis on the monarchical supremacy over the church and the

<sup>28</sup> Paul Chang-Ha Lim, *In Pursuit of Purity, Unity, and Liberty: Richard Baxter’s Puritan Ecclesiology in Its Seventeenth-Century Context* (Leiden, 2004), 111–13.

<sup>29</sup> On Locke and Proast, see Mark Goldie, “John Locke, Jonas Proast and Religious Toleration, 1688–1692,” in *The Church of England, c.1689–c.1833: From Toleration to Tractarianism*, ed. John Walsh, Colin Haydon, and Stephen Taylor (Cambridge, 1993), 143–71.

<sup>30</sup> Gilbert Burnet, *A Discourse of the Pastoral Care* (London, 1692), x–xi, xvi–xvii.

<sup>31</sup> Tony Claydon, “Latitudinarianism and Apocalyptic History in the Worldview of Gilbert Burnet, 1643–1715,” *Historical Journal* 51, no. 3 (2008): 577–97, at 594.

<sup>32</sup> Burnet, *Discourse of the Pastoral Care*, 74, 123, 191–92.



notion that the church courts' "use of their own names and seals" was an affront to royal authority.<sup>33</sup> He also found church courts and excommunication to be "popish" survivals that did not adhere to the reformed polity of post-Reformation England and were also invalid by the common law.<sup>34</sup> In 1706, he unleashed his polemical energies on excommunication. In a series of essays echoing his broader attack on ecclesiastical jurisdiction, he denounced excommunication as a tool of papal oppression that enriched "Popes, Prelates, and the Holy Church" at the expense of secular authorities.<sup>35</sup>

Few went to the same lengths as Hickeringill. Instead, much like Baxter, they chose to focus on specific instances and castigated not excommunication itself but the way it was employed. An anonymous 1703 tract dwelt at length on a 1692 episode of excommunication and argued that the sentence was deeply unjustified and the proceedings suspect on legal grounds.<sup>36</sup> Then there were those, from a variety of denominational perspectives, who felt that excommunication was either ineffective or a potent symbol of deeper problems in religious life. Writing to John Sharp, the archbishop of York, from Hull in March 1692, the minister Robert Banks complained that some of his parishioners had resorted to being married by a nonconformist minister and were being "seduced to a Conventicle." However, there was little that he could do about it: "I Know I may cite y<sup>m</sup> & run y<sup>m</sup> to an Excommunication, but y<sup>f</sup> only fixes y<sup>m</sup> in their separation, & renders y<sup>c</sup> regaining y<sup>m</sup> next to impossible."<sup>37</sup> For others such as the Scottish Presbyterian Gilbert Rule, excommunication, as it was understood by Episcopalians, exemplified much that was wrong with claims for episcopal power. In replying to the Scottish bishop John Sage, Rule noted that patristic accounts of excommunication, contrary to what Episcopalians such as Sage asserted, showed that bishops did not have the sole power to excommunicate and presbyters were essential to the process.<sup>38</sup>

Naturally, this multifaceted assault on excommunication did not go unanswered. Some authors resorted to emphasizing the solemn nature of excommunication and the gravity of the sins that led to it. Clement Ellis wrote that all Christians are "but one Holy Church . . . till they cut themselves off by *Schism*, or are justly cast out by *Excommunication*."<sup>39</sup> In most cases, however, the tactic was to assert that critics had misunderstood the nature of the punishment, which was neither as harsh nor as arbitrary as they implied. Though there were no clear dividing lines,

<sup>33</sup> Rose, *Godly Kingship in Restoration England*, 194–97.

<sup>34</sup> Justin Champion and Lee McNulty, "Making Orthodoxy in Late Restoration England: The Trials of Edmund Hickerlingill, 1662–1710," in *Negotiating Power in Early Modern Society: Order, Hierarchy, and Subordination in Britain and Ireland*, ed. Michael J. Braddick and John Walter (Cambridge, 2001), 227–48, at 238.

<sup>35</sup> Edmund Hickerlingill, *Essays Concerning I. Excommunications in times of popery; II. Canon-laws and ecclesiastical tyranny; III. Excommunications in these times; IV. The Writ de excommunicato capiendo*. (London, 1706?), 1–6.

<sup>36</sup> *News from a court more commonly than truly called Christian, Spiritual, and Ecclesiastical* (London, 1703).

<sup>37</sup> Robert Banks to John Sharp, 6 March 1692, D3549/6/1/B5, Gloucestershire Archives, Gloucester.

<sup>38</sup> Gilbert Rule, *The Cyprianick-Bishop examined, and found not to be a diocesan, nor to have superior power to a parish minister, or Presbyterian moderator being an answer to J.S. his Principles of the Cyprianick-age* (London, 1696), 52, 69, 83.

<sup>39</sup> Clement Ellis, *The SUMME of Christianity* (London, 1696), 11.

such responses expose some of the fault lines in postrevolutionary religion and politics.

The best example is perhaps John Turner's response to freethinker Matthew Tindal's *The Rights of the Christian church asserted* (1706).<sup>40</sup> In what proved to be one of the most controversial texts published in postrevolutionary England, Tindal had, among other things, launched a comprehensive attack on clerical power, especially as articulated by high churchmen and nonjurors (those who refused to swear allegiance to the new monarchs in 1689 and consequently either left or were ejected from the church). As Dmitri Levitin has argued, Tindal's *Rights* partly aimed at exposing the emptiness of ecclesiastical jurisdiction's claim to independence from the state.<sup>41</sup> Due to his belief in the incompatibility of two independent powers in society, one civil and another clerical, Tindal took excommunication to task as the perfect example of a punishment that repeatedly put the two powers at odds, with—quite literally—fatal consequences. Imagining a scenario in which the clerical power excommunicated someone and thereby required people to avoid him, whereas the civil power required them “to have frequent communion with him,” he tried to unpack the absurdity of having two powers that contradicted each other: “This supposition of two Independent Powers tends to destroy the proof of one Supreme Governor of the Universe,” he observed. Moreover, the penalties that attended excommunication were so severe that, if applied in full, they could literally kill a person by cutting off all contact with society. Among “antient *Germans*,” excommunication had driven some to the heinous sin of suicide. It stood as nothing but a divider of sovereignty and a symbol of the greed of a power-hungry clergy “assuming to themselves a Power of making People most-miserable here, as well as hereafter; either of which is sufficient to enslave the World, but both are intolerable.”<sup>42</sup>

John Turner's response, one among many to Tindal, rejected his mockery of high church pretensions to sacerdotal power and argued that excommunication was not as severe a punishment as Tindal suggested. It entailed only spiritual sanctions, and nothing in the church's laws demanded “Discarding and Rejecting an Excommunicated Person from all Civil Conversation.” Such extremes could be found only in the Church of Rome. Most importantly, since the “External Manner and due Execution” of excommunication were under the authority of the civil magistrate, Tindal's cry about the clergy's greed and usurpation of civil power was meaningless.<sup>43</sup> Others such as the Devon clergyman Humfry Smith relied on arguments similar to Turner's. In a 1708 sermon delivered at the visitation of the high church firebrand Francis Atterbury, the author of a highly controversial 1697 tract, “A Letter to a Convocation Man,” Smith emphasized that the sentence was not irreversible and admitted scope for repentance. He also rebutted Tindal's notion of excommunication as

<sup>40</sup> Matthew Tindal, *The Rights of the Christian church asserted: against the Romish, and all other priests who claim an independent power over it . . .* (London, 1706).

<sup>41</sup> Levitin suggests that “Tindal's ‘Erastian tolerationism’ had its antecedents not in humanist civil religion but in an English Protestant legal tradition of placing ecclesiastical supremacy in crown-in-parliament, derived from the sixteenth-century lawyer, Christopher St Germain.” Levitin, “Matthew Tindal's ‘Rights of the Christian Church,’” 718–20, at 720.

<sup>42</sup> Tindal, *Rights of the Christian Church asserted*, 34, 36, 41, 43, 84, 95–96.

<sup>43</sup> John Turner, *A Vindication of the Rights and Privileges of the Christian Church* (London, 1707), 217–19, 234–35.

being “Instrumental for the Advancing the Spiritual Kingdom of Darkness” by pointing to the divine origins of the sentence and its centrality to punishing sin and corruption.<sup>44</sup> Thus, if critics such as Tindal tried to undermine the foundations of priestly power by pointing out the ridiculousness of excommunication and all that it entailed, defenders of clerical authority responded by insisting on the moderate nature of the punishment and its importance to Christ’s church.

Nevertheless, regardless of where they stood on what excommunication was and how it ought to be administered, most, if not all, churchmen believed that, in one way or another, the current practice was unsustainable and worked toward its reform. Some such as Edward Stillingfleet, the low church bishop of Worcester, argued for using excommunication as sparingly as possible and proposed alternative remedies to deal with disputes about tithes.<sup>45</sup> Other churchmen recommended streamlining the process of excommunication and placing it firmly within the hands of the bishop, likely in light of the fact that most excommunication proceedings and church courts in general were headed by a lay chancellor trained in the civil law and not the bishop or another officer in the holy orders. Among the many changes proposed during the 1689 debates about the comprehension of nonconformists was the suggestion that “the power of excommunication be taken out of the hands of Lay-officers & placed in the Bishop.”<sup>46</sup> Later, in wake of Queen Anne’s charge to the Convocation about the reform of church courts with regard to excommunication and commutation money, one Dr. Walls, who shared Gilbert Burnet’s sense of the incompleteness of the Reformation in the realm of ecclesiastical discipline, noted that excommunication was a rod with “so much smart in it . . . that it is not safe it should be entrusted in any but a fathers (a Right Reverend one I mean) hand.”<sup>47</sup>

The question of who had authority over excommunication was an old one and had also surfaced during the sixteenth century.<sup>48</sup> Later, during the first half of the seventeenth century, there was an attempt, albeit unsuccessful, to ensure that excommunication could be pronounced only by a bishop or by another person in the holy orders. Naturally, this did not go down well with civil lawyers.<sup>49</sup> As the aforementioned proposals show, it remained a bone of contention in the later Stuart era. It was arguably made more contentious by long-standing wider debates about the scope of episcopal power sparked by dissenters’ resentment of the church’s insistence on episcopal reordination of dissenting ministers. The 1662 Act of Uniformity required that only those ordained by a bishop could hold a benefice. Postrevolutionary debates about the comprehension of nonconformists into the Church of England partly faltered due to the church’s refusal to compromise on this issue. Dissenters’ perception that this would amount to a “reordination”—implying that their previous ordination

<sup>44</sup> Humfry Smith, *The Divine Authority, and Usefulness, of Ecclesiastical Censures, Asserted* (London, 1708), 9, 24–29.

<sup>45</sup> Edward Stillingfleet, “Copy of Bishop Stillingfleet’s proposals for reforming the Church,” MS 1743, pp. 111–18, Lambeth Palace Library, London.

<sup>46</sup> “Proposals for the revision of Church ceremonies and liturgy to accommodate nonconformist opinion,” MS 954, p. 31, Lambeth Palace Library.

<sup>47</sup> “Report of a sermon preached by Dr. Walls [George Walls, D.D., canon of Worcester, d. 1727?] in the “College Church at Worcester,” MS 952, p. 36, Lambeth Palace Library.

<sup>48</sup> Marchant, *Church under the Law*, 64.

<sup>49</sup> Brian P. Levack, *The Civil Lawyers in England, 1603–1641* (Oxford, 1973), 164.

by a nonconformist divine was somehow invalid or illicit—made any kind of rap-prochement difficult.<sup>50</sup>

## REFORMING EXCOMMUNICATION

Suggestions for the reform of excommunication were not merely trivial exchanges between churchmen over the future of ecclesiastical jurisdiction. The regular appearance of excommunication on the agenda of both Parliament and the Convocation suggests that these reformers meant business. As early as 1689, the king wrote to Henry Compton, the bishop of London, authorizing and requiring him to propose to the Convocation “taking away the abuses relating to excommunication in the ecclesiastical courts.”<sup>51</sup> Excommunication also featured in the high-church-dominated lower house of Convocation’s representation to the archbishop of Canterbury in January 1705. It noted that, due to the lack of canonically prescribed “public and repeated denunciation” of those who did not reform themselves within three months and so remained excommunicate, “the sentence of excommunication hath been rendered less awful and effectual than it ought to be.”<sup>52</sup> A draft of the representation made another point absent from the final version—namely, that excommunication, though not as effectual as intended, had to be continued until a more reasonable penalty could be found. After that, the church would no longer have to “prostitute the most solemn sentence upon little and frivolous occasions.”<sup>53</sup>

The agitation in Convocation was accompanied by clamor in Parliament. A 1696 bill suggested substituting excommunication with declaring the offender contumacious. The idea was to offer a grace period of twenty days and, if the offender continued beyond that period to be contumacious, the bishop or an ordinary could then approach the Court of Chancery, which was to issue a writ for imprisoning the offender.<sup>54</sup> This process was meant to mitigate the severity of excommunication and get rid of the laborious legal process that came with it. Though the Lords passed the bill on 20 March 1696 and sent it to the Commons for approval, there is no record of any proceedings in the Commons once it was read a second time and sent to committee for further discussion on 27 March.<sup>55</sup> However, in the last years of Anne’s reign, similar legislation was put forth again and debated vigorously.

Beginning in 1710, the reform of excommunication emerged as an important part of what G. V. Bennett has described as an “Anglican attempt at counter-revolution,” Francis Atterbury and his allies’ concerted effort to revive ecclesiastical discipline to undo what they considered to be the negative consequences of the postrevolutionary

<sup>50</sup> John Spurr, “The Church of England, Comprehension and the Toleration Act of 1689,” *English Historical Review* 104, no. 413 (1989): 927–46, at 929–30, 940.

<sup>51</sup> *Calendar of State Papers Domestic: William and Mary, 1689–90*, ed. William John Hardy (London, 1895), 354.

<sup>52</sup> “The Humble Representation of the Lower House on Convocation to the Most Reverend the Lord Archbishop of Canterbury His Grace,” 19 January 1705, in *Records of Convocation: Canterbury, IX: 1701–1708*, ed. Gerald Bray (Woodbridge, 2006), 324.

<sup>53</sup> “Papers relating to the Lower House of Convocation,” Lansdowne MS 940/5, fol. 48, British Library.

<sup>54</sup> “An act for the better regulating of proceedings in the ecclesiastical courts,” MS 640, pp. 146–48, Lambeth Palace Library. This is similar to the version approved by the Lords. The full text can be found in *Manuscripts of the House of Lords*, vol. 2, 1695–97 (London, 1903), 226–27.

<sup>55</sup> *Journal of the House of Commons*, vol. 11, 1693–97 (London, 1803), 533.

settlement. Among other issues, these included the wave of supposedly irreligious literature that flooded England after the lapse of the Licensing Act in 1695, and the resurgence of a strong dissenting interest emboldened by the Toleration Act of 1689.<sup>56</sup> Atterbury and others were also concerned by voluntary associations such as the Societies for the Reformation for Manners, which had allegedly overextended lay jurisdictional reach and in the process weakened the church's hold over punishing moral vice.<sup>57</sup> In the background of all this lay the specter of the hitherto failed high church attempt to regulate "occasional conformity."<sup>58</sup> This issue, which had long been a cause of concern to several clerics, referred to the practice of dissenting officeholders occasionally taking Anglican communion. The practice was meant to allow them to fulfil the provisions of the Test and Corporations Acts, which required all officeholders to take communion according to the rites of the Church of England. Churchmen and their sympathizers naturally railed against the hypocrisy of dissenters and depicted "occasional conformity" as a path through which enemies of church and state could stealthily enter important national offices to undermine the establishment from within.<sup>59</sup> Much to the dismay of Atterbury and other high churchmen, their efforts at fighting these ills, most prominently through the long quest to revive and empower the Convocation, had amounted to very little since large-scale agitation first began in the late 1690s.

Late in 1710, however, a powerful confluence of circumstances—the trial of Henry Sacheverell for his incendiary sermon against Whigs and dissenters, the resulting electoral Triumph of the Tories, and High Church success in Convocation elections—meant that Atterbury could finally proceed with a wholesale effort to recast the mold of ecclesiastical jurisdiction. In face of the antipathy of the queen and Robert Harley, chancellor of the exchequer, the program faltered at first but eventually began to make progress.<sup>60</sup> In 1711, a joint committee of both houses of Convocation recommended moderating excommunication and suggested that ecclesiastical discipline would be better served through "an act of parliament for a writ of 'De contumaci capiendo' in cases, which do not directly concern the Christian faith, or reformation of manners, instead of the writ 'De excommunicato capiendo.'"<sup>61</sup> The

<sup>56</sup> Bennett, "The Convocation of 1710," 311–12. On the Licensing Act, see Raymond Astbury, "The Renewal of the Licensing Act in 1693 and Its Lapse in 1695," *The Library* 55, 33, no. 4 (1978): 296–322.

<sup>57</sup> On the societies and the unintended effects of their work on policing and law enforcement in the long term, see Faramerz Dabhoiwala, "Sex and Societies for Moral Reform, 1688–1800," *Journal of British Studies* 46, no. 2 (2007): 290–319.

<sup>58</sup> Bills aimed at the regulating the practice in 1702 and 1704 came to nothing. A similar bill finally became an act in 1711 but was repealed in 1719.

<sup>59</sup> One such sympathizer was the Tory MP Humphrey Mackworth, who was insistent about the political subversiveness of occasional conformity. Humphrey Mackworth, *Peace at home: or, a vindication of the proceedings of the Honourable the House of Commons, on the Bill for preventing danger from occasional conformity* (1703). On the various dimensions of occasional conformity, see John Flaningam, "The Occasional Conformity Controversy: Ideology and Party Politics, 1697–1711," *Journal of British Studies* 17, no. 1 (1977): 38–62; Mark Knights, "Occasional Conformity and the Representation of Dissent: Hypocrisy, Sincerity, Moderation and Zeal," *Parliamentary History* 24, no. 1 (2005): 41–57; Brent Sirota, "The Occasional Conformity Controversy, Moderation, and the Anglican Critique of Modernity, 1700–1714," *Historical Journal* 57, no. 1 (2014): 81–105.

<sup>60</sup> Bennett, "Convocation of 1710," 312–16.

<sup>61</sup> "The report of the committee of both houses about excommunications, and commutations of penance," 7 March 1711, in *Synodalia: A Collection of Articles of Religion, Canons, and Proceedings of*

report also opined that offenders be given a chance to “to submit to the courts, and so to avoid the highest censure of the church.”<sup>62</sup> By broadening the group of offenders who could be sent to prison from only excommunicates to all who were pronounced contumacious, this change was meant to strengthen the church courts against the church’s enemies, including dissenters.<sup>63</sup>

But the plan to turn these recommendations into legislation was frustrated by a dramatic change in political circumstances. On 8 March 1711, the Marquis de Guiscard, a French spy, stabbed Robert Harley. Though injured, Harley survived the attack, and his popularity soared overnight.<sup>64</sup> He successfully used the outpouring of sympathy to undermine Atterbury and his Tory allies and their political and ecclesiastical agenda. Soon thereafter, the trial for heresy of the mathematician William Whiston diverted everyone’s attention.<sup>65</sup> Whiston’s trial proved to be one of those rare moments during Queen Anne’s reign when virtually all churchmen, low or high, united in the pursuit of a cause. Whiston had previously been attacked by none other than Atterbury himself. However, as Eamon Duffy has argued, the Atterbury-led attempt to transform Whiston’s heterodox opinions into “a test of the legal powers of a counter-revolutionary Convocation” led nowhere.<sup>66</sup> Between the revival of Harley’s prestige and power and the chaos of the Whiston trial, excommunication and legal reform more broadly went quietly away from the scene.

The problem of excommunication, of course, did not disappear and was swiftly back on the agenda in 1713; Atterbury was not one to give up easily. He successfully lobbied Heneage Finch, brother of the prominent Tory statesman Daniel Finch, 2nd Earl of Nottingham, to introduce a bill in the House of Lords in May 1713, meant for “prevention of too frequent excommunication.” In line with the previous proposal from 1711, it mandated that, like excommunicates, those pronounced contumacious should also be denounced in the local church by the parish clerk and imprisoned by writ de Contumaci Capiendo if they continued to persist in their contumacy beyond forty days.<sup>67</sup> Yet this attempt to seek alternative remedies, use excommunication less frequently, and make church courts stronger in the process failed when the Lords, after initially agreeing to the bill, rejected an amendment suggested by the Commons.

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*Convocations in the Province of Canterbury, from the year 1547 to the year 1717*, II, ed. Edward Cardwell (Oxford, 1842), 732–34. This provision is similar to that of the 1696 ecclesiastical courts regulation bill. It also drew heavily on the language used in the bill. For instance, the 1696 bill had complained that “the Said Courts having no other coercive power are necessitated to excommunicate divers persons for contempt in divers cases which do not directly concern the Christian faith or reformation of manners.” *Manuscripts of the House of Lords*, vol. 2, 1695–97, 226.

<sup>62</sup> Cardwell, *Synodalia*, 733–34.

<sup>63</sup> G. V. Bennett, *The Tory Crisis in Church and State, 1688–1730: The Career of Francis Atterbury, Bishop of Rochester* (Oxford, 1975), 166–67.

<sup>64</sup> Brian W. Hill, *Robert Harley: Speaker, Secretary of State, and Premier Minister* (New Haven, 1988), 150.

<sup>65</sup> Bennett, “Convocation of 1710,” 317–18.

<sup>66</sup> Eamon Duffy, “Whiston’s Affair,” 129, 143–46.

<sup>67</sup> “Prevention of too frequent excommunications bill,” 5 May 1713, in *Manuscripts of the House of Lords*, vol. 10, 1712–1714 (London, 1953), 64–65. The period of forty days was later shortened to twenty on 18 June; Bennett, *Tory Crisis in Church and State*, 167.

The issue of excommunication persisted in the months before the Hanoverian succession. In April 1714, an emboldened Convocation attempted to transfer the severity of excommunication to contumacy without subjecting the offenders to the tedious procedures that attended excommunication. It proposed that certain offenses, even some that “more immediately and directly concern the Christian faith and reformation of manner,” should be punished with contumacy and not excommunication. However, all the “civil incapacities and disabilities, to which persons excommunicated are now subjected by the sentence of excommunication,” were also to be inflicted on those pronounced contumacious. It repeated the by-now common refrain that excommunication ought to be used as sparingly as possible and specified the strict conditions under which an ecclesiastical judge could excommunicate someone.<sup>68</sup> As luck would have it, in a near repeat of 1711, the controversy surrounding Samuel Clarke’s views on the Trinity once again ended any hopes of legislative action.<sup>69</sup> After 1714, there was still talk on excommunication, but it did not yield any further results. George Every has drawn our attention to how the failure of excommunication legislation was wound up with other problems such as the social and political sanctions of excommunication and sacramental requirements for officeholders.<sup>70</sup>

However, one other factor needs to be considered to better understand why, despite increasing support for the cause, the practice of excommunication could not be changed. This has to do with the legal changes instituted by Henry VIII in the early sixteenth century and the problems they continued to pose for champions of ecclesiastical law and legal reformers of various stripes. Early modern England was governed by three systems of law: common law, civil law, and canon law. These overlapped significantly and borrowed procedures from one another, but each also had its distinct sphere of operation, including different professional bodies. Common lawyers had the Inns of Court, whereas civilians had Doctors’ Commons. Common law was England’s customary law and relied on precedents to adjudicate matters.<sup>71</sup> Civil law, as it was practiced in England, developed out of the civil law of the Roman Empire and, at least in terms of procedures, incorporated continental influences. Common lawyers and civilians did not always get along, but there were contemporaries who saw some affinity between the two systems. This is best captured by Sir Henry Marten’s comment, “The Common law is the daughter, the civil law is the mother.”<sup>72</sup> Canon law, of course, administered justice on the basis of canons or regulations drawn up by the church, and these were meant to apply both to the clerical hierarchy within the church and the laity. While canon law’s Roman Catholic roots created much consternation throughout the early modern period, many elements of it as it was practiced before the Reformation survived the upheavals of the break from Rome.<sup>73</sup> But there were certainly some major changes.

As part of his bid to limit the juridical sphere of the papacy, Henry VIII had abolished the study of the canon law at Oxford and Cambridge in 1535. The effect was to

<sup>68</sup> Cardwell, *Synodalia*, 777–81.

<sup>69</sup> Every, *High Church Party*, 153–54.

<sup>70</sup> Every, 158.

<sup>71</sup> Marchant, *Church under the Law*, 2.

<sup>72</sup> Levack, *Civil Lawyers in England*, 3, 130, 139.

<sup>73</sup> On this, see R. H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990).

entice civil lawyers into the ecclesiastical sphere. They responded enthusiastically, which “ensured that both the lawyers and judges in the early modern ecclesiastical courts were lay professionals.”<sup>74</sup> However, while canon and civil law eventually found a shared foe in common lawyers’ efforts to usurp jurisdiction and transfer ecclesiastical matters to temporal courts through the writ of prohibition, the two were often at odds.<sup>75</sup> Both Tudor and Stuart churchmen tried to limit the influence of civilians in the church courts but with little success. Even at the Restoration, when several clergymen expressed their dissatisfaction with the prominence of civilians, the latter still managed to stage an impressive comeback.<sup>76</sup>

The fire to limit civilian influence in church courts was hardly extinguished after the Glorious Revolution; in fact, it was disagreement over precisely this issue that doomed the 1713 legislation concerning excommunication. Once the Lords had approved the bill and sent it to the Commons, the latter responded with two amendments. The second, which the Lords eventually agreed to, was meant to limit the fees charged by church court officials to what was “legal and customary.” The first amendment, however, was more charged and was rejected. It required that, in the future, only those who were “Doctors of the Civil Law. . . and are or have been advocates execrent in one of the Courts of the Archbishops for the space of two years” could be “constituted, appointed or deputed Vicar General or Chancellor by any Archbishop or Bishop.” A similar restriction applied to those who wished to be appointed “commissary or official of any Episcopal arch-diaconal or exempt jurisdiction.” After these provisions, the standard amendment that these restrictions were to hold “any law canon or custom to the contrary notwithstanding” almost reads like an attempt to add insult to injury.<sup>77</sup>

It is difficult not to interpret the amendment as a blatant attempt to exploit the desperation of a clerical body bent on reforming excommunication in order to enhance civilian influence within the church’s legal system. But given the tensions that had resurfaced at the Restoration between civilians and their opponents, it is not surprising that the Lords decided that the excommunication legislation was not worth the trouble of placing more power in the hands of civil lawyers. Civilians, of course, were not as powerful and influential as the common lawyers. A staggering 276 members of Parliament who served between 1690 and 1715 were barristers. In contrast, only five MPs—William Beaw, Charles Davenant, Sir Charles Hedges, George Oxenden, and Sir William Trumbull—were civilians.<sup>78</sup>

<sup>74</sup> Åklundh, “The Church Courts in Restoration England,” 4. For further differences between canon law and civil law, see Michael George Smith, *The Church Courts, 1680–1840: From Canon to Ecclesiastical Law* (Lewiston, 2006), 31–37.

<sup>75</sup> On this and related issues that were arguably more salient in the Tudor and early Stuart periods, see Roland G. Usher, *The Rise and Fall of the High Commission* (Oxford, 1913); J. W. Tubbs, *The Common Law Mind: Medieval and Early Modern Conceptions* (Baltimore, 2000); Ethan H. Shagan, “The English Inquisition: Constitutional Conflict and Ecclesiastical Law in the 1590s,” *Historical Journal* 47, no. 3 (2004): 541–65.

<sup>76</sup> Åklundh, “Church Courts in Restoration England,” 14–15, 18–49.

<sup>77</sup> *Manuscripts of the House of Lords*, vol. 10, 1712–1714 (London, 1953), 65–66. For the bill’s journey through the House of Commons, see *Journal of the House of Commons*, vol. 17 (1803), 434, 463–64, 466.

<sup>78</sup> I have derived these numbers from the lists available in David Hayton, *House of Commons, 1690–1715*, vol. 1 (New York, 2002), 721–28.



But, in context of the broader legal system, civil lawyers were still a force to reckon with. As Geoffrey Holmes has argued, even though the years 1680 to 1730 represented “an uneventful, relatively static phase” for the civilians, they still enjoyed some influence within English society. Much as they had done in the previous decades, they continued to serve in the High Courts of Admiralty and Chivalry. Numerous civilians including Sir Leoline Jenkins, Sir William Trumbull, and Sir John Cooke made their mark on various aspects of English diplomacy and law. Moreover, even though the profession was a somewhat restricted one, there was no lack in the postrevolutionary years of those wanting to enter it. They were enticed by the prestige that went with becoming a doctor of law and perhaps by the knowledge that it was easier to advance within the ranks of civilians than in the already crowded corridors of the common law.<sup>79</sup> These factors conspired to keep civil law in good health, and they go some way in explaining why certain sections of the legislature might have rejected amendments that seemed only to strengthen civil law at the expense of clerical power.

The long and fraught postrevolutionary campaign to transform one of the church’s fundamental censures shows that the energies unleashed by the earlier tumults of the seventeenth century continued to exercise many divines, both Anglican and dissenting, well into the early eighteenth century. While there was no clear unity of causes, the many participants who wrote about excommunication and tried to pass legislation to change it were convinced that something was profoundly wrong with this most sacred of punishments. From examining the history of excommunication to understanding how it had affected dissenters during the reign of Charles II, they left no stone unturned. However, their concerns never translated into concrete change. If the reform of excommunication was part of an Anglican counterrevolution, it was defeated by a counterreformation pull that sought to limit if not undo the effects of the Henrician Reformation’s decisions that led to the expansion of civil law into the church courts. Packaged into the high church ambition to limit the pernicious effects of the Glorious Revolution, it was caught between two conflicting impulses that, despite sharing the common goal of undoing the damage done by past events, went in opposite directions, leaving very little room for the possibility that both could somehow be accommodated.

## WHY EXCOMMUNICATION MATTERS

Taking the case of excommunication after 1688 seriously helps us build upon some of the most influential ways of thinking about the English early modern past. The long Reformation is one such notion.<sup>80</sup> Historians have increasingly come to rely on the idea that much activity in English religious and political spheres was driven both by arguments over what the Tudor Reformation was and the sense that changes ushered in by the sixteenth-century upheavals were incomplete and that the nation, whether in 1642 or in 1689, stood in dire need of further reformation. For the complex cluster of events that has come to be known as the Restoration Crisis, between 1679 and 1682, Gary S. De Krey has shown how conformist and nonconformist writers

<sup>79</sup> Geoffrey Holmes, *Augustan England: Professions, State and Society, 1680–1730* (London, 1982), 147–49.

<sup>80</sup> *England’s Long Reformation, 1500–1800*, ed. Nicholas Tyacke (London, 1997).

clashed over contrasting interpretations of episcopal authority, the royal supremacy, religious persecution, and visions for church reform. These disputes, he convincingly argues, were conducted “in different Protestant languages” that encompassed ideas about England’s sixteenth-century Reformation, and, especially for the nonconformists, a profound resentment of the clerical establishment’s supposed betrayal of the basic principles of the Reformation.<sup>81</sup> Likewise, focusing in depth on debates about the royal supremacy during the Restoration, Jacqueline Rose has traced the many complexities and contradictions of this legacy of the Tudor Reformation and how it proved to be a double-edged sword: “Invented to uphold the establishment, supremacy paradoxically ended up subverting it.” She has also demonstrated that, due to the enduring importance of Tudor disputes to the reigns of Charles II and James II, the Restoration is best thought of as part of the “long Reformation” rather than as belonging to a “post-Reformation” era.<sup>82</sup> Last, applying these themes to the post-1688 period, Robert Ingram has argued that “those living in post-revolutionary England paradoxically conceived of themselves as still living in the midst of the very thing which they reckoned had caused the seventeenth-century revolutions: the Reformation.”<sup>83</sup>

These analyses have made a fundamental contribution to our understanding of some of the forces that account for the architecture of religious and political strife in the later Stuart era. De Krey and Rose, in particular, not only explain how questions about the Tudor Reformation preoccupied Restoration polemicists but also pay close attention to how their commitments interacted with the ever-changing political circumstances after 1660. Along the way, they convey a vivid sense of how their subjects were sometimes caught in the web of sixteenth-century contests that acquired more and more layers as time went on.

Building on these arguments, I suggest that as historians we cast the net of analysis even wider. Conceived largely as intellectual histories of how certain legacies of the Tudor Reformation worked out in the dramatically altered circumstances of the post-1660 era, Rose, De Krey, and Ingram’s analyses focus mostly on the realm of polemic in print and manuscript. Though all of them pay some attention to parliamentary politics, it understandably plays second fiddle to ideological disputes outside the parliamentary arena that were both shaped by and, in turn, affected events within the two Houses of Parliament.

While this tells us much about how contemporaries conceived of reform, it does not always explain what happened when these visions of reform collided with the cold reality of the parliamentary maneuvering that often reflected the intricate balance of power in English society. However, as the case of excommunication shows, certain issues can be understood only if we pay attention both to religious polemic and to legislative activity in Parliament in equal measure. Fully appreciating the path of the postrevolutionary campaign to reform excommunication requires that we include both Gilbert Burnet’s vision of the incompleteness of the English

<sup>81</sup> Gary S. De Krey, “Reformation in the Restoration Crisis, 1679–1682,” in *Religion, Literature, and Politics in Post-Reformation England, 1540–1688*, ed. Donna Hamilton and Richard Strier (Cambridge, 1996), 231–52, at 234.

<sup>82</sup> Rose, *Godly Kingship in Restoration England*, 3, 15, 283.

<sup>83</sup> Robert Ingram, *Reformation without End: Religion, Politics and the Past in Post-Revolutionary England* (Manchester, 2018), xii.

Reformation in the sphere of discipline and also the 1713 legislation that failed in part due to the legal complexities of the same Reformation. This way, we get a clearer sense of the simultaneous role of the Tudor Reformation as both the instigator of further reform and in some instances also the chief hindrance to it. The fate of excommunication after the Glorious Revolution is thus a guide not only to the stakes of the postrevolutionary battle over ecclesiastical jurisdiction but also to the Tudor Reformation's occasional work as a self-defeating negative force that obstructed what some took to be the future course of changes begun nearly two centuries ago.

Two areas for further research emerge from this article. First, what happened to excommunication after 1714?<sup>84</sup> Given Jeremy Gregory's recent emphasis on the Church of England's relatively good health in eighteenth-century North America, there is potential to investigate this question not only within the context of England but also across parts of its Atlantic empire.<sup>85</sup> Second, if excommunication did have something to do with the long Reformation, how did it figure in the writings and activities of those eighteenth-century divines who, as Robert Ingram puts it, imagined themselves as living through a "Reformation without End?"<sup>86</sup> In pursuing these lines of inquiry, historians may find new ways to understand the nature of religious authority and how far it could go in delivering "greatest judgment upon the Earth."<sup>87</sup>

<sup>84</sup> For an initial sense of how ideas for legal ecclesiastical reform fared in later years, at least under the administration of Robert Walpole, see Taylor, "Bishop Edmund Gibson's Proposals for Church Reform," 195–97, 201–2; Stephen Taylor, "Sir Robert Walpole, The Church of England, and the Quakers Tithe Bill of 1736," *Historical Journal* 28, no. 1 (1985): 51–77.

<sup>85</sup> Jeremy Gregory, "Refashioning Puritan New England: The Church of England in British North America, c. 1680–c. 1770," *Transactions of the Royal Historical Society* 20 (2010): 85–112.

<sup>86</sup> Ingram, *Reformation without End*.

<sup>87</sup> Bacon, *Certain considerations for the better establishment of the Church of England*, 21.