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Ecclesiastical Discipline and the Crisis of the 1680s: Prosecuting Protestant Dissent in the English Church Courts

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This article argues that as a part of the Tory reaction (1680–5) England's church courts were revived and utilised in the prosecution of religious dissent. The records of the church courts in three deaneries in and around London demonstrate that the numbers of prosecutions in the courts increased significantly in the early 1680s after the defeat of the Exclusion Bill and that the vast majority of these prosecutions were for religious offences. This brief flowering of persecution sought to 'exclude the excluders' and to remove political and religious dissidents from positions of secular power and from parish vestries.

In September 1677 the bishop of Norwich was subjected to a lengthy harangue by his dining companion. Edmund Bohun, a hardline Anglican, was horrified at the poor state of the Church of England, assailed by impudent Dissenters from without and undermined by the ideologically unreliable within. The only solution, Bohun argued, was for the bishop to use his political influence to secure a complete remodelling of the Suffolk bench. His 'very worthy' friends could then

> resist the schemes of the upstarts who, under the pretence of prudence and moderation in ecclesiastical affairs, are ruining both church and state and are lamentably endeavouring to tear them in pieces, while by certain quibbles they altogether evade and permit others to evade the execution of the laws.[1]

This article is based on an MPhil dissertation for which I was fortunate to be supervised by Gabriel Glickman. I am extremely grateful to him, as well as to Grant Tapsell, for their advice and support.

[1] Anthony Fletcher, 'The enforcement of the Conventicle Acts, 1664–1679', in W. J. Sheils (ed.), *Persecution and toleration* (Studies in Church History xxi, 1984), 235–46 at p. 243.

Bohun's immediate wish was not fulfilled. However, the polarising Exclusion Crisis of 1679–81 vindicated his warnings at a national level, and for the final five years of Charles II's reign supporters of the Church launched an intensive campaign of harassment of Dissenters, and their Anglican sympathisers. Members of the episcopate supported this programme, and some also directly utilised their own 'Bishop's courts' to prosecute nonconformity.

A study of the records of three deaneries (all peculiars of the archbishop of Canterbury) shows that the church courts, restored in 1660 but often considered to be moribund in modern historiography, were functioning sufficiently well for them to be further reanimated and utilised in the 1680s in a concerted attempt to prosecute religious dissent. Moreover the surge in prosecutions reflected an Anglican agenda which was hostile to dissent and believed that it was theologically justified and politically necessary to use coercion against those who did not fully subscribe to the Church of England. The officials of the church courts thus sought to purge nonconformists, partial conformists and the 'upstarts', attacked by Bohun and others, who supported or tolerated them, from vestries and parishes.

I

With the return of the monarchy in 1660 all the pre-war ecclesiastical courts apart from High Commission were revived and used to prosecute breaches of spiritual and moral rules (*ex officio* cases) and provide a means for resolving disputes between individuals over, for example, slander and marital disputes (instance cases). The instance causes, comparatively well studied by historians, have proved a rich source of material on social mores. Office offences, effectively brought by the church authorities themselves, less so.

Though restored, there remains debate among historians about the courts' role, activities, effectiveness and powers. In 1991 John Spurr considered that 'most of the church courts of Restoration England remain unstudied and consequently all generalisations about them remain fragile'.[2] According to Andrew Thomson '[I]n the mid-seventeenth century… they suffered suspension, from which they never fully recovered.'[3] Thomson's work looked at Winchester and he cited other local studies to support his view that the church courts declined in importance

[2] J. Spurr, *The Restoration Church of England, 1646–1689*, London 1991, 209.

[3] A. Thomson, 'Church discipline: the operation of the Winchester consistory court in the seventeenth century', *History* xci (2006), 338–9.

after 1660.[4] However, Thomson's work did not really seek to understand the workings of courts in the 1680s on their own terms, but rather to 'measure the impact of the mid-century crisis, … [and] compare court activity in the 1620s and the 1670s'.[5] For historians of social morality too, the effort to re-establish the church courts in London after 1660 'proved largely impossible' and they 'never regained their position'.[6] However, Jens Åklundh's recent survey of ecclesiastical discipline points out that the substantial efforts of Restoration nonconformists to avoid or mitigate the sanctions of the courts suggests that they were not, in fact, merely 'brutum fulmen'.[7]

Whether the courts were successfully re-established in 1660 is thus a matter for argument. Their behaviour is also disputed. Historians studying sexual offences have tended to suggest that, insofar as the office jurisdiction of the church courts was utilised, it was seeking to impose the Church's moral standards on the community.[8] Brian Outhwaite noted that in the Restoration period 'the focus of prosecutions shifted strongly to breaches of the religious code' and James Sharpe, while suggesting the courts declined after 1660, noted that their work 'was increasingly limited to the enforcement of religious conformity'.[9] Moreover doctoral studies of particular courts and localities have also found that there was an emphasis on the enforcement of religious discipline. Martin Jones considered that 'those not attending their parish churches' became 'the main target of presentments' and that there was a change in business only after Charles II's death. Similarly, over half the office presentments between 1662 and 1685 in the Exeter diocese involved absence from church.[10]

[4] C. E. Davies, 'Enforcement of religious conformity in England, 1668–1700', unpubl. D.Phil diss. Oxford 1982; W. M. Marshall, 'Administration of the dioceses of Hereford and Oxford, 1660–1760', unpubl. PhD diss. Bristol 1979; Anne Whiteman, 'The re-establishment of the Church of England, 1660–1663', *Transactions of the Royal Historical Society* v (1955), 111–31.

[5] Thomson, 'Church discipline', 340.

[6] F. Dabhoiwala, *The origins of sex: a history of the first sexual revolution*, London 2012, 51, and 'Prostitution and police in London *c.*1660–*c.*1760', unpubl. D.Phil diss. Oxford 1995, 94.

[7] Jens Åklundh, 'The church courts of Restoration England, 1660–*c.*1689', unpubl. PhD diss. Cambridge 2018, 129–35.

[8] For example, Ralph Houlbrooke, *Church courts and the people during the English Reformation, 1520–1570*, Oxford 1979; Martin Ingram, *Church courts, sex and marriage in England, 1570–1640*, Cambridge 1987; and S. M. Waddams, *Sexual slander in nineteenth-century England: defamation in the ecclesiastical courts, 1815–1855*, Toronto 2000.

[9] R. B. Outhwaite, *The rise and fall of the English ecclesiastical courts, 1500–1860*, Cambridge 2006, 81; J. Sharpe, *Crime in early modern England*, London 1988, 38.

[10] M. Jones, 'The ecclesiastical courts before and after the Civil War: the office jurisdiction in the dioceses of Oxford and Peterborough, 1630–1675', unpubl. B.Litt. diss. Oxford 1977, 127; P. Jackson, 'Nonconformists and society in Devon, 1660–1689', unpubl. PhD diss. Exeter 1986.

William Gibson noted that excommunication was used as an electoral weapon from 1678 onwards, with significant increases in excommunications between 1681 and 1683.[11]

The attitudes of those in positions of responsibility in the Church reflected different perspectives on the role of the courts. Spurr has suggested that there was a change in the ecclesiology of the Church between the 1660s and the 1680s: 'by the 1680s a new generation of ministers, trained in the High-Church attitudes of Restoration Oxford and Cambridge, was replacing the moderate parish clergy of the 1660s'.[12] Jeremy Gregory has claimed that the key to understanding the outlook and behaviour of Restoration clergy was their fear of the 1640s and 1650s repeating themselves.[13] The Anglican clergy in the period, however, was by no means united in its political outlook, and 'did not represent a homogenous political body'.[14] Consequently there was no clear and unambiguous policy on enforcing penal laws against dissent, and 'evidence clearly shows the considerable impact that vigorous individual persecutors – "worrying wolves", "Angerymen", and "inraged devils" – could have in their localities'.[15] Individual bishops could animate their ecclesiastical court structures to produce 'periodic drives against dissent … [which] could be locally intensive'.[16] Moreover the effectiveness of church courts in combating dissent was contingent on the determination of various individuals within courts vigorously to prosecute. As Spurr argues, the 'church's whole creaking disciplinary machine had to be animated from the top: it simply would not work without the cajoling and threatening, the charges to incumbents and churchwardens, and the visitations of the bishops and their officials'.[17] William Lloyd, bishop of St Asaph, was conscious of the shortcomings of the churchwardens in making presentments, complaining to Sancroft that 'the defects can never be known by the presentments of the churchwardens … They will forswear themselves over and over rather than bring expense on themselves and on their neighbours'.[18] This was a general problem for 'attempts to enforce religious conformity often foundered upon the unwillingness of

[11] W. Gibson, 'The limits of the confessional state: electoral religion in the reign of Charles II', *HJ* li/1 (2008) 27–47 at p. 41.

[12] Spurr, *The Restoration Church,* 235.

[13] J. Gregory, *Restoration, Reformation, and reform, 1660–1820: archbishops of Canterbury and their diocese*, Oxford 2000, 44.

[14] G. Tapsell, 'Pastors, preachers and politicians: the clergy of the later Stuart Church', in G. Tapsell (ed.), *The later Stuart Church, 1660–1714,* Manchester 2012, 71–100 at p. 88.

[15] Idem, *The personal rule of Charles II, 1681–1685*, Woodbridge 2007, 71.

[16] Outhwaite, *Rise and fall*, 81.

[17] Spurr, *The Restoration Church*, 190.

[18] W. J. Sheils, 'Bishops and their dioceses: reform of visitation in the Anglican Church, *c.*1680–*c.*1760', *CCEd Online Journal* i (2007), 31.

communities, and in turn constables, to ruin the livelihoods of their neighbours because they happened to worship at illegal conventicles'.[19] In terms of its *de jure* legal framework, England, between the passage of what historians refer to as the Clarendon Code (1661–5) and the Act of Toleration in 1689, was a land of 'the Great Persecution'. In reality, many of those with the power to enforce persecutory laws prioritised good neighbourliness, the 'peaceful co-existence of Anglicans and Dissenters', over religious uniformity. Under the stress of national polarisation in the 1680s, this *modus vivendi* broke down, and laws, both secular and ecclesiastical, were enforced far more rigorously.[20]

Whatever damage was inflicted on the church courts during the Interregnum, on their reintroduction after 1660 they regained significant theoretical powers to enforce laws against religious dissent. They could instigate prosecutions in cases of recusancy, as well as against churchwardens who were guilty of neglect of duty, often by not enforcing the laws against Dissenters.[21] Although recusancy statutes, derived from Edwardian and Elizabethan uniformity provisions under which attendance at church was made mandatory, had originally been intended to penalise Catholics, in the Restoration era they were also used against Protestants. This was deeply resented by Dissenters, who sought in 1679 to have an order issued which distinguished between Quakers and Catholics in the prosecution of recusancy. The opposition of the bishops, however, ensured that the scheme failed.[22] The strongest sanction available to the ecclesiastical courts was to excommunicate an offender. As an excommunicate an individual was not able to conduct civil business (particularly making wills), and additionally a bishop had the power to issue a writ *de excommunicato capiendo*, requiring the local sheriff to imprison the excommunicate until they were reconciled.[23]

There is debate on whether this most powerful punishment was important in practice. Outhwaite notes that some of those cited to appear before ecclesiastical courts refused, possibly because they did not actually fear them.[24] Some clergy also complained about excommunication – alleging that it was not only unsuccessful in enforcing religious uniformity, but

[19] M. Goldie, 'The unacknowledged republic: office-holding in early modern England', in Tim Harris (ed.), *The politics of the excluded, c.1500–1850*, Basingstoke 2001, 153–94 at p. 166.

[20] Fletcher, 'The Conventicle Acts', 235; Tim Harris, *London crowds in the reign of Charles II: propaganda and politics from the Restoration until the Exclusion Crisis*, Cambridge 1990, 71.

[21] Outhwaite, *Rise and fall*, 58.

[22] C. V. Horle, *The Quakers and the English legal system, 1660–1688*, Philadelphia, PA 1988, 220–1.

[23] *The Anglican canons, 1529–1947*, ed. G. Bray, Woodbridge 1998, p. cx.

[24] Outhwaite, *Rise and fall*, 81–2.

actively hindered that goal, as excommunication often merely meant the offenders, having been banned from Anglican churches, went to conventicles instead.[25] Though Thomson concedes that the sanction could 'impose leper status on its victims', he argues that by the 1670s court officials had realised that their 'over-use of excommunication' had reduced its effectiveness.[26] Additionally, securing the arrest of excommunicates through a writ *de excommunicato capiendo* was difficult and expensive, meaning that it was infrequently used.[27] However, it is incorrect to say that there is a consensus that excommunication was essentially an empty threat, and there is substantial evidence that its contemporary critics who complained 'fanatics fear as little our excommunication as the Papists and indeed I find no sect much dreading it' were exaggerating.[28]

Indeed Quakers do seem to have dreaded the sanctions of ecclesiastical courts. When a Meeting for Sufferings asked lawyer Thomas Corbett if a writ *de excommunicato capiendo* could actually lead to their imprisonment, they heard 'it hath been sometimes, though but rarely, put in execution since the king's restoration'.[29] In other Meetings Friends expressed concerns that excommunication could be used to invalidate wills or lead to a situation where Quakers were simultaneously imprisoned as excommunicates and fined for recusancy.[30] In 1687 the Cambridge Dissenter Ann Docwra complained that 'Laws have been so multipled against Dissenters from the Church of England that they clash one against another; some statutes are to compel people to come to Church, others are to Excommunicate them from it.'[31]

Meanwhile hardliners did not believe that excommunication was an empty weapon in the fight against Dissent. The bishop of Oxford, John Fell, excoriated by Baptists as the creator of 'the persecuted shire of England', believed that excommunication could 'make examples' of prominent Dissenters. He was highly suspicious of the reliability and conformity of parishes that gave returns of *omnia bene* to visitations.[32] Some in the laity also believed that excommunication could be an effective tool against Dissent. In anticipation of the calling of another parliament, one Norfolk gentleman in early 1681 wrote to Jenkins asking 'whether the prosecution against Dissenters ought not to be prosecuted to excommunication for not coming to church and receiving the Sacrament, in corporations especially, thereby to incapacitate them from being elected or electors of members of

[25] Ibid. 83. [26] Thomson, 'Church discipline', 342.
[27] Spurr, *The Restoration Church*, 217.
[28] A. Walsham, *Charitable hatred: tolerance and intolerance in England, 1500–1700*, Manchester 2006, 27. [29] Horle, *The Quakers*, 236. [30] Ibid. 240.
[31] L. Phillipson, 'Quakerism in Cambridge before the Act of Toleration (1653–1689)', *Proceedings of the Cambridge Antiquarian Society* lxvii (1987), 15.
[32] M. Clapinson, *Bishop Fell and non-conformity: visitation documents from the Oxford diocese, 1682–83*, Oxford 1980, pp. xiv, xxxiv, 34.

Parliament'.[33] Aside from demonstrating intriguing lay awareness of the nuances of ecclesiastical law, this statement demonstrates that whatever personal consequences excommunication could have against an individual, it held the potential to be weaponised against the political power of Dissenters – a fact recognised by many Anglicans.

For the ecclesiastical courts to function effectively they needed appropriate personnel and, as Åklundh notes, the most important figures for the effective functioning of ecclesiastical courts were the civilian lawyers who oversaw them.[34] Critically for the cases in the Canterbury peculiars in the 1680s, the leading officials were all pugnacious defenders of the monarchy and Anglican Church. The deaneries of the Arches, Croydon and Shoreham were the three most important peculiars of the archbishop of Canterbury, with the Dean of the peculiars acting as Dean of the court of Arches. As Dean of the peculiars his jurisdiction was equivalent to that of an archdeacon; as Dean of the court of Arches he exercised an appellate jurisdiction for the province of Canterbury.

Sir Robert Wiseman (dean 1672–84) had taken his LLD degree in 1640, and held a Fellowship at Trinity Hall, Cambridge, until 1653. He had lodgings in Mountjoy House, the home of Doctors' Commons, in the 1650s.[35] In 1657 he published *The law of laws* arguing for the necessity of the civil law particularly in external relations. He had it reprinted in 1664 with a strong defence of the powers of sanctions imposed by church courts. With the Restoration he was appointed advocate general and knighted and in 1672 made official principal of the court of Canterbury, Dean of the Arches and Vicar-General of the archbishop of Canterbury as well as President of Doctors' Commons. He held the offices until his death and was a brother- in-law of Lord Keeper North.[36] His sister was married to Sir Richard Wiseman, the 'political associate' of Danby, who was 'naturally prone to equate political opposition with religious Nonconformity'.[37] Clearly then, Robert Wiseman was a staunch Tory. He believed strongly in the importance of the ecclesiastical courts, in the sanctions that they could impose, and he held Dissenters in clear and open contempt.

Richard Lloyd (dean 1684–6) was the son of a Parliamentary colonel but was considered a 'devout Anglican and a Tory'. He 'stood high in favour' with Nathaniel Crewe, the bishop of Durham, who made him spiritual

[33] G. Tapsell, 'Parliament and political division: the last years of Charles II, 1681–85', *Parliamentary History* xxiii (2003), 251.

[34] Åklundh, 'Church courts', 14.

[35] G. Squibb, *Doctors' Commons*, London 1977, 78.

[36] N. G. Jones, 'Wiseman, Robert', *ODNB*, <https://doi.org/10.1093/ref:odnb/58166>.

[37] J. Ferris, 'Wiseman, Sir Richard', in B. D. Henning (ed.), *The history of parliament: the House of Commons, 1660–1690*, London 1983, <https://www.historyofparliamentonline.org/volume/1660-1690/member/wiseman-sir-richard-1632-1712>; D. R. Lacey, *Dissent and parliamentary politics in England, 1661–1689*, New Brunswick, NJ 1969, 372.

Chancellor of the diocese and supported him as MP for the City from 1679. On his death in 1686 Crewe thought his loss irreparable and that as Dean of the Arches there could hardly be 'a fitter person for learning, loyalty, and integrity'.[38]

Both they and their successor, Thomas Exton, were associated with Trinity Hall, Cambridge, where they had been trained in civil law. From 1567 Trinity Hall had affiliations with Doctors' Commons, to which all practitioners in the civil courts had to subscribe. Indeed, the civil lawyers (civilians) formed a small and close-knit body whose original social status was generally lower than that of the common lawyers but who claimed a higher social status than a barrister. In the period 1603–41 there were about 200 civilians, in comparison with perhaps 2,000 barristers, and of those 200 probably only about 15 practised on a regular basis.[39] Compared to common lawyers, the civilians were regarded as far less independent of the judges and the opinion of the royal court, being more concerned with their own preferments. 'Archbishops, bishops and archdeacons directed the activities of their ecclesiastical judges' and the civilians 'almost invariably served the interests and upheld the policies of those members of the central government upon whom they depended for their livelihood'.[40]

Although they might come into conflict with members of the Anglican clergy over offices, they had a reputation as 'staunch champions of the liberties, doctrines and laws of the Anglican church', and strongly resisted the exercise by the common law courts of the removal of cases from them by means of prohibitions. At the outbreak of the civil war they were regarded as implacable opponents of Puritanism and upholders of the doctrine of divine right. However, for the period after the Restoration recent research by Åklundh has remarked on the number of clerics, such as Samuel Parker, who complained bitterly about the failures of the church courts in that when Dissenters were prosecuted 'all their appeals are accepted at the Arches … so that it is not possible for mee to proceed against any person or in any cause without the charges & troubles of a long law suit'.[41] In practice the number of such failed appeals must have been small, as on Åklundh's figures there could only have been at most about seven such

[38] J. M. Rigg, 'Lloyd, Nathaniel', *ODNB*, <https://doi.org/10.1093/ref:odnb/16849>; G. Hampson, 'Lloyd, Sir Richard', in Henning, *The history of parliament: the House of Commons, 1660–1690*, <https://www.historyofparliamentonline.org/volume/1660-1690/member/lloyd-sir-richard-ii-1634-86>. Crewe was, according to the author of the *ODNB* entry, notorious as 'the churchman who was James II's principal collaborator': M. Johnson, 'Crew, Nathaniel, 3rd Baron Crew', *ODNB*, <https://doi.org/10.1093/ref:odnb/6683>.

[39] B. Levack, *The civil lawyers in England, 1603–1641: a political study*, Oxford 1973, 3–26.

[40] Ibid. 32–3.

[41] Quoted in Åklundh, 'Church courts', 70.

appeals a year in the whole of the southern province between 1661 and 1700.[42]

The officials of the Canterbury church courts were personally connected to each other. They held clear sympathies for the Anglican and royalist interest, and therefore would have been willing to see the courts used to prosecute religious nonconformity as political and religious tensions increased by 1681. They also had strong connections to the royal court as evidenced, for example, by Lloyd and Wiseman's connections to Secretary of State Leoline Jenkins. Jenkins was himself a member of Doctors' Commons, having been admitted in 1664, and was a noted Admiralty judge. In 1675 he was assessed for hearth tax at his lodgings in Doctors' Commons where Wiseman also lived. Jenkins left a legacy of forty volumes in folio and quarto to Doctors' Commons to 'begin their library', the volumes to be chosen by Richard Lloyd who was to have first choice of two. He also contributed to the refurbishment of St Benet's Paul's Wharf, the church of Doctors' Commons, where 'altar bells, pulpit, most of the ornaments and a silver bason' were given by Sir Leoline Jenkins, Sir Robert Wiseman and Sir Thomas Pinfold.[43] Pinfold, an official of the London consistory court, is particularly intriguing as he shows the connections between those who used ingenious and legally innovative methods against dissent in church courts and the most dubious fringe of informers. When 'Captain' John Hilton, who led a gang of informers 'operating within, on the margins of, and outside the pale of the law', sought (unsuccessfully) to prosecute Sir Robert Clayton, Pinfold acted as a character witness for him. Indeed, a later Whig ballad attacking the much-loathed Hilton described him as the creature of 'Pinfold, that spiritual dragoon, who made / By soul-money a pretty thriving trade'.[44]

Thus, in the Canterbury peculiars, when the Exclusion Crisis occurred the church courts had substantial theoretical powers to impose excommunication and those powers could be utilised practically. The lawyers in charge of the peculiars were notable for their high Anglican sympathies and Tory links and those lawyers increasingly saw dissent as a political and religious threat that needed to be rooted out. And in these deaneries, with the animating force at the top able and willing to adopt a hard line, it was not surprising that the prosecutions in the church courts increased in response.

[42] Åklundh states that there were 631 appeals from the dioceses within the southern province between 1661 and 1700 'most of which concerned testamentary cases': ibid.

[43] Squibb, *Doctors' Commons*, 78.

[44] Mark Goldie, 'The Hilton gang and the purge of London in the 1680s', in Howard Nenner (ed.), *Politics and the political imagination in later Stuart Britain: essays presented to Lois Green Schwoerer*, Rochester, NY 1997, 43–74.

II

For this study the records of three deaneries, all of which were peculiars of the archbishop of Canterbury, have been considered. The Arches deanery consisted of thirteen of the ninety-seven intra-mural London parishes; Shoreham of thirteen of about 300 Kentish parishes; and Croydon of seventeen parishes situated mostly in Surrey. The churchwardens' presentments, citations, act and assignation books survive for different periods but nevertheless give a fairly comprehensive picture of the activity of these courts in the period between the mid-1670s and the late 1680s.[45] The records have some significant limitations, and this author can sympathise with G. R. Elton's description of them as 'among the most repulsive of all the relics of the past'.[46] The citations and presentments were produced in the form of single sheets of paper so it is highly likely that some individual cases and returns may no longer be present. Several parishes appear to have produced no citations or presentments – presumably their records have not survived at all.

There are presentments from all thirteen of the Arches parishes between 1672 and 1699 but only from nine during the period 1682–5. Similarly, only seven of seventeen Croydon and only twenty-seven of thirty-five Shoreham parishes produce citations. This suggests though that it is whole parish records that have been lost rather than individual presentments. Additionally, some documents are badly damaged, or have details of prosecutions that appear to have been intentionally crossed out.[47] Nevertheless, as a whole, the records allow a general overview of the intensity and patterns of prosecutions instigated by the church courts in the three deaneries.

In the fifteen years between 1672 and 1687 the practice of the Canterbury peculiars changed drastically. Until about 1682 there were remarkably few presentments or citations for religious offences. In Croydon deanery, although there were regular citations for non-payment of rates or assessments, there were only three other citations for possible religious offences between 1672 and 1680. So in March 1672 Thomas and Susan Smith were cited for being married without banns or licence; in May 1676 Jonathan Davies was cited for going to a conventicle and refusing to bring his scholars to be catechised; and in August 1678 six Putney residents were cited for not attending church.[48] The picture for

[45] These are all held at Lambeth Palace Library under the following call numbers: citations: Arches, 1672–1826, VH 52; Croydon, 1672–1826, VH 53; Shoreham, 1672–1826, VH 54; churchwardens' presentments: Arches, 1672–1845, VH 60; Croydon, 1664–1885, VH 61; Shoreham, 1666–1885, VH 62; act books, 1664–93, VH 75; assignation books, 1664–1850, VH 76.

[46] Åklundh, 'Church courts', 2.

[47] For example, some of the cases from St Dunstans in the East, LPL, VH 52, fo. 18.

[48] LPL, VH 53.

presentments by churchwardens is similar. Those for the Arches start in 1672 and between then and 1682 almost all the churchwardens report in terms such as 'omnia bene' or a similar form of words. In May 1675 Thomas Pilkington and George Godday state that 'Wee whose names are hereunder written Churchwardens of the parish of St Mary Bothawe doe certify that wee have nothing presentable in our parish.'[49] The only exceptions in the Arches deanery were a presentment of Edward Helden in December 1675 by the wardens of St Mary Bothaw for 'pullinge downe the wall which did enclose our Churchground'; another in 1678 for 'digging up a Cloyster adjoining' the church; two for non-attendance at St Dunstan's in 1675; one against Mary Meades who did 'strike and spitte upon another person'. In May 1677 Chamberlen Donne and John Heath of St Mary Bothaw report that they do not have a church but 'doe meete by Sufferance in a Parlor' and in May 1679 Thomas Cooper of St Pancras Soper reports nothing except 'one or two papists which have bin informed against before Sr John Frederick and Sr Robert Clayton two justices of the peace'.[50]

This changes dramatically from 1682. Between then and 1686 some 420 separate citations were made for religious offences. Some individuals were presented more than once so there are something under 400 individuals involved. Of those, ninety were women described only by reference to their husbands with about a dozen being described as widow. The small number of women prosecuted (and the fact that court records frequently only consider women as relatives of men) shows that the courts in the 1680s should be viewed in a substantially different way to later assessments by social historians. Meldrum's study of London, for example, claimed that from 1700 there was an 'institutional context … [of] the relative decline of the consistory by mid-century that occurred in tandem with an increasing female exclusivity'.[51]

Almost all the presentments were for non-attendance at church or not receiving the sacrament, which have here been considered together. The question of what precisely constituted nonconformity had long been unclear. Whiteman notes that ministers, responding to the third article of the 1676 Compton census about the number of Dissenters, expressed confusion in their answers. Did nonconformity mean refusal to attend church, or non-receipt of the sacrament? In extreme cases this could increase the number of 'Dissenters' in a parish from less than fifty to over 1,100.[52] However, the distinction was certainly not made consistently in the records studied by either churchwardens or ministers.

[49] LPL, VH 60/1, fo. 32.

[50] LPL, VH 60/1, fo. 19.

[51] Tim Meldrum, 'A women's court in London: defamation at the bishop of London's consistory court, 1700–1745', *London Journal* xix/1 (1994), 1.

[52] Anne Whiteman, 'General introduction', in *The Compton census of 1676: a critical edition*, ed. A. Whiteman and M. Clapinson, London 1986, pp. xxxvii–xxxix.

Apart from the non-attendance citations there were ones for not paying the church rate or the Easter offering (twenty-nine), not paying tithes (eight), or denying tithes (five). Eight individuals were accused of being papists and three of being Quakers. In addition, four were accused of offences relating to baptism according to the rites of the Church of England; one of creating a disturbance in church; one of building a stable in the church yard; and another of keeping his shop open during service time.

Of the citations by far the largest number (282) came from the Shoreham deanery and the smallest from Croydon (seventy-five). To make any estimates of the scale of prosecutions in the time period, however, it is essential to bear in mind that, for example, the Arches deanery consisted of only thirteen London intra-mural parishes. In total, there were ninety-seven parishes within the walls and a further dozen outside. A rough calculation might therefore assume that in fact there could have been about eight times the number of citations from City of London parishes alone. Of the parishes studied six were situated in wards considered by de Krey to have a comparatively low level of population and high level of wealth and none were situated in the most populous wards.[53] Thus it is possible that the level of prosecutions throughout London was significantly higher. Moreover seven of the parishes were in what de Krey describes as 'Whig' wards so that there might well have been an element of targeting of political as well as religious opponents.

The pattern of presentment in all three deaneries, and for the deaneries considered separately, differs substantially (*see* Figures 1 and 2). Two significant points emerge. First it is clear that the surge in prosecutions only started well after the dissolution of the Oxford Parliament in March 1681 and the Tories' attack on London's Whigs in 1682, suggesting that the courts increased their activity at the same time as the Tory reaction. Secondly, the examination of prosecution in the Canterbury peculiars shows that prosecution rates of parishes geographically located within London peaked in 1682, compared to two years later for Croydon and Shoreham. The 1684 peak for non-London parishes can probably be explained by a combination of greater oversight of the church courts by diocesan officials in Canterbury and further anti-dissenting feeling caused by the discovery of the Rye House Plot in 1683. That the peak came earlier in the parishes located in London suggests that Dissenters who claimed that the church courts were prosecuting Whigs in an attempt to influence the London shrieval elections were correct. According to de Krey, by September 1681 'the Privy Council had, in fact, already decided to answer the call for Protestant union by encouraging

[53] G. de Krey, *London and the Restoration: 1659–1683*, Cambridge 2005, 275–92.

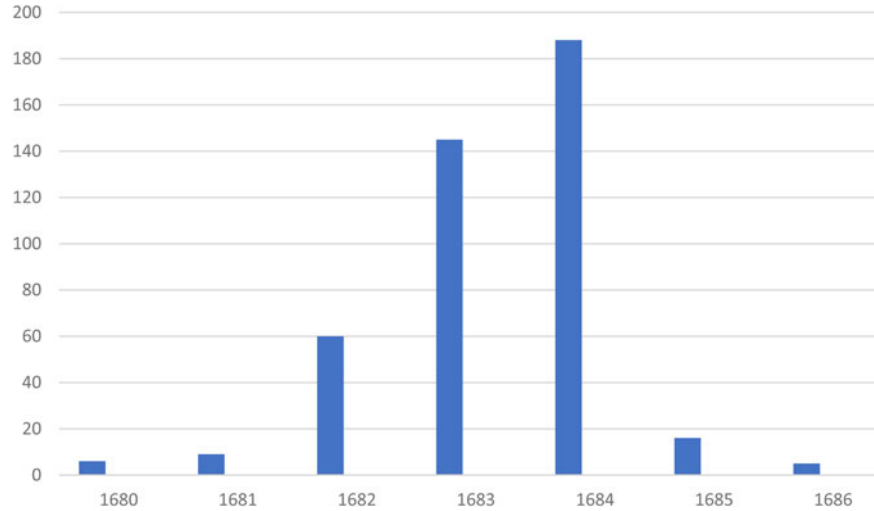

Figure 1. Combined citations in Arches, Croydon and Shoreham deaneries.

enforcement of the statutes against non-conformist preaching and meetings'. He sees two strands to this attack, the prosecution of Dissenters in the criminal courts and the *quo warranto* proceedings, and notes that 'the renewal of religious coercion coincided with the election of common councilmen on 21 December was no accident'.[54] The increase in ecclesiastical court citations show that the major third strand of this initiative was the use of the ecclesiastical courts in which dissenters could be cited for non-attendance with a view to disqualifying them from office.

III

It is therefore clear that the courts not only continued to prosecute for religious offences, but also used their powers in response to a political crisis blamed on Dissenters, which threatened the Church of England. To accomplish this, however, unreliable parish officials needed to be removed.

The parish was the basic unit of administration in Stuart England and the vestry of the parish consisted of the incumbent together with the churchwardens and other parishioners, all of whom were laymen.[55] Select vestries were ones where only some parishioners were involved, and these in

[54] Ibid. 241–3.

[55] For a good summary see M. J. Braddick, *State formation in early modern England, c 1550–1700*, Cambridge 2009, 291–333, and A. Fletcher, *Reform in the provinces: the government of Stuart England*, New Haven 1986.

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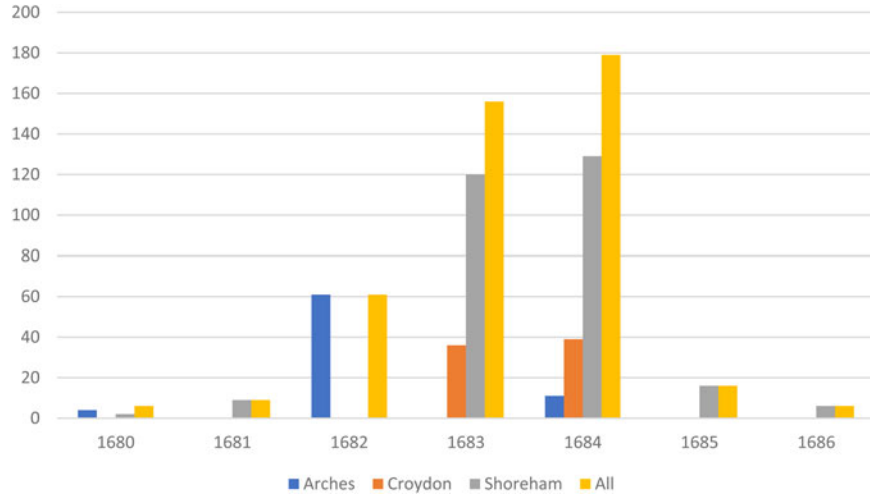

Figure 2. Citations in Arches, Croydon and Shoreham deaneries.

particular could give local elite oligarchies – sometimes Anglican, sometimes nonconformist – the power to exert significant control in their localities.[56] Within the parish the churchwardens were vital as without their support it was difficult to prosecute Dissenters effectively.[57]

Offenders were usually brought before the notice of the ecclesiastical courts through the presentments made by churchwardens, so that where churchwardens tolerated dissent or partial conformity little could be done. The ire caused amongst Anglicans by ineffective or hostile churchwardens is demonstrated by Nicholas Adee, vicar of Crickdale, in his visitation sermon of 1682. He condemned 'you who are Church-wardens: your Faults I need not tell you, for the whole Town and Country talks of them. Matters would never have come to this pass, had you, and such as you, made Conscience of your Oaths'.[58] One vicar in Oxfordshire complained that when he opposed a nonconformist serving as churchwarden

> after I came out of the church the ring-leading Dissenter came to me and insolently asked what my reason was to oppose that parish: I told him I did only vindicate my own right, and that I would never give my vote for any man to be a church officer who did not frequent the church and sacrament.[59]

[56] Paul Seaward, 'Gilbert Sheldon, the London vestries, and the defence of the Church', in Tim Harris, Paul Seaward and Mark Goldie (eds), *The politics of religion in Restoration England*, Oxford 1990, 53–7.
[57] Horle, *The Quakers*, 32.
[58] N. Adee, *A plot for a crown, in a visitation sermon at Crickdale*, London 1685, 20.
[59] Spurr, *The Restoration Church*, 204.

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In Oxford, Bishop Fell was known to be highly suspicious of parishes which gave returns of 'omnia bene' in response to visitation queries.[60] Seeking to regain control of churchwardens, he asked archdeacon Timothy Halton to inspect the parish of Chipping Norton – 'whither the conventicle be still continued: whither the churchwardens of the last year have yet receivd the Sacrament'.[61] Problems with churchwardens appear to have been fairly widespread.[62]

Churchwardens might be reluctant to prosecute for non-attendance because they were themselves sympathetic to fellow non- or partial conformists. Others might simply not want to cause dissension within the parish. But as the church authorities in the early 1680s became more concerned with ensuring compliance with Anglican discipline it is not surprising that there was an increased attempt to ensure conformity by demanding that churchwardens who were potentially unreliable give in presentments and take oaths. If church courts could replace recalcitrant churchwardens (whether whiggish or dissenting) it would enable the Anglican Church better to operate its institutions for the prosecution of non-attendance.

The intensification in the use of ecclesiastical courts came in the context of a growing crackdown against dissent in London. Charles II had been repeatedly forced to dissolve his parliaments to prevent the passage of an exclusion bill and anti-government plots abounded. Of particular concern was the arrest in 1681 of the opposition leader the earl of Shaftesbury, whose papers contained a draft 'association' against the duke of York.[63] However, Whig control of the London shrievalty ensured that the carefully selected grand jury did not issue treason charges, but gave a return of 'ignoramus', and the earl had to be bailed. Accompanying his release in November were riotous anti-government bonfires, which helped to convince Anglicans both of the need to prosecute nonconformity, and of the limitations of secular courts in the capital.[64] Moreover, by the 1680s, the clergy were more intellectually confident of their right to prosecute in the church courts, with Augustinian arguments justifying coercion on theological grounds frequently cited.[65]

It is noteworthy that in the Arches at least the initial impetus to prosecution in the parish came from incumbents rather than from the churchwardens.

[60] Clapinson, *Bishop Fell*, p. xxxiv. [61] Ibid. 34.

[62] Both Horle and Walsham note how the failure of churchwardens to prosecute Dissenters was commented upon and disapproved by the Anglican hierarchy: Horle, *The Quakers*, 89; Walsham, *Charitable hatred*, 92. [63] Tapsell, *Personal rule*, 27.

[64] Tim Harris, 'Cooper, Anthony Ashley', *ODNB*, <https://doi.org/10.1093/ref:odnb/6208>.

[65] Mark Goldie, 'The theory of religious intolerance in Restoration England', in Ole Grell, Jonathan Israel and Nicholas Tyacke (eds), *From persecution to toleration: the Glorious Revolution and religion in England*, Oxford 1991, 337–42.

A minister opposed to dissent could help to break the power of recalcitrant lay officials.[66] The presentments that survive prior to 1682 were all made by the lay churchwardens who generally reported that there were no matters of concern. However, from November 1682 incumbents began to make the presentments. The rector of St Mary Bothaw was Richard Owen, a friend of John Evelyn known for his orthodox High Anglican views.[67] Owen's presentment, which indicates confusion over nonconformity similar to the Compton census queries,[68] stated that

> I doe distinguish them into these 3 Ranks, (leaving out that conforme as they ought) 1 of those yt come not to Churtch at all for ought I know; 2 of those yt doe come but not frequently; 3 of those yt frequently come but receive not ye H Sacrament at my hand.

He then lists twenty-four individuals, all of whom are subsequently cited with the notes that Owen had made attached to the citations, so that, for example, James Claypoole is described as a 'stiff Quaker' in both presentment and citation; Richard Harbin similarly as a 'blind man' and Mr Hambleton and Mr van Hadden as 'of the Dutch church'.[69] The citing of a member of the Dutch church is surprising, given that a recent study of bequests made by them found no 'general feeling among testators that it was important to support Presbyterianism or other forms of Nonconformist Protestantism in England'. However, Owen's presentment is the only one to cite a member of a stranger church in London.[70]

Owen, however, was not the only incumbent to adopt the unusual step of making the presentments himself. George Roberts, 'clerk and curate' of All Hallows Lombard Street, Elkanah Downes, rector of St Leonards Eastcheap, Nathaniel Salter, rector of St Michael Royal and Lionel Gatford (together with churchwarden Edward Adern) of St Dionis Backchurch all did so in November and December 1682, having never done so previously and never doing so again.

This unusual initiative by incumbents can also be seen in London diocese, where in 1684 Thomas Lant, the rector of Highgate and Highbury (together with his churchwarden, Francis Pierce), presented twenty-seven individuals for not receiving the sacrament, and John Wolfe, the curate of Northolt, also made presentments. It would seem

[66] See the case of Edward Fowler: Mark Goldie and John Spurr, 'Politics and the Restoration parish: Edward Fowler and the struggle for St Giles Cripplegate', *EHR* cix (1994), 574. [67] Bertha Porter, 'Richard Owen', *ODNB*, <https://doi.org/10.1093/ref:odnb/21025>. [68] Whiteman, 'General introduction', p. xl.

[69] LPL, VH 52, fo. 11.

[70] Catherine Wright, 'The kindness of strangers: charitable giving in the community of the Dutch Church, Austin Friars, in the late seventeenth and early eighteenth centuries', in M. Davies and J. Galloway (eds), *London and beyond: essays in honor of Derek Keene*, London 2012, 201–22.

likely that this unusual pattern followed a specific intervention from the ecclesiastical authorities. By late 1681, at the direction of Sir Robert Wiseman, the court issued instructions for 'Churchwardens to make and exhibit theire Presentmentes in writing fairly written'.[71] By July of the following year, they also made demands for particular churchwardens to hand in their returns and to take their oaths of office. At All Hallows Lombard Street the court ordered 'Robt. Aldred to give in his P[r]esentm[en]t. John Rudd to take ye Oath of Churchwarden'.[72] The instructions here served two purposes. First, the court was able to ensure that churchwardens correctly presented parishioners who failed to attend church. Secondly, and perhaps more importantly, the requirement that the churchwardens take the oath might be an opportunity to get rid of Quaker churchwardens.

In July 1682 the court ordered 'James Claypoole Churchwarden' of St Mary Bothaw 'to take Oath'.[73] In December of the same year, the rector, alone without the churchwardens, presented James Claypoole as a 'stiff Quaker'. A successful merchant, Claypoole had been active in London nonconformist politics – attaching his signature to a 1680 petition to the king complaining of mistreatment of Friends by ecclesiastical courts, along with William Penn and Richard Whitpaine.[74] By March 1683 his letters were complaining of the burden both civil and ecclesiastical persecution was having upon him, and later that year he emigrated to join his family in America.[75] Moreover in the 1660s he had been a neighbour of Thomas Pilkington, another churchwarden at St Mary Bothaw in the 1670s and a leading supporter of Exclusion in parliament and opponent of the *quo warranto* campaign against London's charter in the 1680s.[76]

In Charlwood in Croydon deanery, a religiously divided parish, a number of individuals were cited for not receiving the sacrament in 1683 and 1684. John Humphrey and Thomas Hinton had both previously served as churchwardens as had William Greenville or Greenfeill.[77] Charlwood was another parish with a minister likely to take a hard line on partial conformity. Its rector, Henry Hesketh, had been noted as a persecutor of Quakers in the 1670s, but after appointment as Charles II's chaplain in 1678 he also attacked other dissenting groups and published a number of sermons inveighing against partial conformity. Hesketh's sermons argue that the

[71] LPL, VH 52, fo. 5. [72] Ibid. fo. 6. [73] Ibid. fos 6, 8.

[74] W. Mead, *A particular account of the late and present great sufferings and oppressions of the people called Quakers upon prosecutions against them in the bishops courts,* London 1680, p. v.

[75] N. Zahedieh, 'Claypoole, James', *ODNB*, <https://doi.org/10.1093/ref:odnb/50425>; Jordan Landes, *London Quakers in the trans-atlantic world: the creation of an early modern community,* Basingstoke 2015, 59.

[76] G. S. De Krey, 'Pilkington, Sir Thomas', *ODNB*, <https://doi.org/10.1093/ref:odnb/22280>; *London and Middlesex 1666 Hearth Tax*, ed. M. Davies, C. Ferguson, V. Harding, E. Parkinson and A. Wareham, London 2014, ii. 690.

[77] LPL, VH 53 b 2, fos 4, 6, 7.

Church of England should punish anyone refusing to participate fully in Anglican worship, should have the power to decide religious questions and sanction those who rejected its decisions. The intensification of the prosecution of Dissent demonstrated by Hesketh shows the development of support for an Anglican Church that was less willing to ignore variations of religious practice for the sake of unity.[78] In a 1679 sermon he argued 'let those that are excrementitious and quite rotten, fare as they will; I would choose to be bald for ever, rather than to have those Hairs that should bring Leprosie … I think it wiser to lose, rather than retain a mortified Member, that would certainly endanger the whole Body'.[79] Most likely the 'mortified Member' referred to the non-Quaker Dissenters in Charlwood, who sought some involvement with the Church of England as opposed to total separation. But Hesketh was making plain that he wished the excrementitious to be excluded from the Church, something much more than simply trying to impose a basic uniformity on his parish. The fact that he produced new justifications for prosecution indicates that his attitude to dissent had hardened by the late 1670s. Intellectually, he claimed that ecclesiastical sanctions for failure to receive holy communion were 'establisht as a Canon, in the Apostolical Canons, and in the Council of Antioch too'.[80] Practically, he expanded his activities from prosecuting obstinate Quakers who refused to pay their tithes to prosecuting other nonconformists for incorrect observance of the Anglican sacrament, which also involved excommunicating and therefore removing any partially conforming churchwardens.

The prosecutorial initiative in the courts faltered and faded by late 1684. The wording of the presentments reverts to the earlier forms of words. In October 1684 the churchwardens in Bexley state 'This to satisfie your onorable cort that wee the churchwardens of bexly have not any presentments in our sade parish of bexly for all is omny beny',[81] and in November 1686 the churchwardens of St Mary Bothaw, Roger Arkinstall (himself cited for non-attendance in December 1682 by the rector) and John Ottage 'doe certifye that there is nothing presentable'.[82] This halt in prosecutions was connected to James II's abandoning his old Anglican allies in an effort to create a coalition of Protestant Dissenters and Catholics which could ultimately achieve the repeal of the Test Acts. The new king's

[78] R. Sewill and E. Lane, *The free men of Charlwood*, Crawley 1980; E. Vallance, 'Henry Hesketh', *ODNB*, <https://doi.org/10.1093/ref:odnb/13125>. See also Henry Hesketh, *The charge of scandal and giving offence by conformity refelled and reflected back upon separation*, London 1683.

[79] H. Hesketh, *The dangerous and almost desperate state of religion*, London 1679, 20.

[80] Idem, *An exhortation to frequent receiving the holy sacrament of the Lord's Supper*, London 1684.

[81] LPL, VH 62.

[82] LPL, VH 60/3.

actions removed the prospect of ecclesiastical courts being used as a means of creating and enforcing Anglican uniformity.[83]

Moreover, the surge in prosecutions was for religious, not for moral offences. In Croydon deanery six out of seventy-five cases were connected to moral offences, none of seventy-six in the deanery of the Arches, and seven out of 282 in Shoreham.[84] Furthermore, in Shoreham, where records after 1685 are best preserved, religious prosecutions stopped after the following July, while cases of bastardy continued to be presented, once again making up the vast majority of cases.[85] It should be noted also that at least a couple of the apparently moral offences may have had religious significance.[86] Certainly the presentment of Thomas Farrowe and Maria Mason, of Bassingbourn in Ely diocese, 'for pretending to bee Married but wee know not how, neither have they p[ai]d the feese to ye Minister'[87] suggests that presentments for apparently moral breaches might target nonconformists who refused to participate in marriage or baptisms through the Church of England.

IV

By 1680 many Anglicans were thoroughly convinced that Dissent posed an ever-growing threat, and needed to be prosecuted out of existence, rather than reconciled with. The civilian lawyers who controlled church courts were aware that they could be brought into service in such a drive. Thus the early 1680s saw an extraordinary revival of the courts for a very particular purpose. Anglican authorities succeeded in reanimating the disciplinary mechanisms available to them to present religiously and politically suspect residents. In response to the overlapping crises of dissent and exclusion not only were the secular courts and the *quo warranto* proceedings utilised but the church courts also were revitalised to provide a vital third prong to the attack on political and religious dissent.

In the absence of a professionalised police force, the implementation of any drive against opposition required the use of a variety of overlapping legal and semi-legal approaches, including excommunication. Moreover, Tory fears of 'fanaticism' present within the institutions of the Church were to some extent justified. The politically-savvy figures who operated

[83] Scott Sowerby, *Making toleration: the repealers and the Glorious Revolution*, Cambridge 2013, 26.
[84] LPL, VH 53, 52, 54.
[85] LPL, VH 54, second bundle fos 25, 27. Note also that in the diocese of London in the same period only 9 out of 197 presentments were for moral offences: London Metropolitan Archives, DL/B/B/001/MS09583/005; DL/B/F/001/MS11164/021.
[86] For example, LPL, VH 53/2, fo. 4.
[87] Phillipson, 'Quakerism in Cambridge', 21.

its courts were well aware that they needed to purge Dissenters who held parish office in order for prosecutions to run smoothly. Ecclesiastical courts were neither irrelevant nor confined to morality enforcement in the Restoration period. When Whigs bemoaned the 'Bishop's Courts' they were not using the rhetoric of opposition to prelacy to attack a paper tiger. Rather the courts formed a meaningful part of the Anglican reaction against religious and political dissent in the last years of Charles II's reign.