Jnl of Ecclesiastical History, Vol. 70, No. 4, October 2019. © Cambridge University Press 2019 750
doi:10.1017/S0022046918002671

Ecclesiastical Prisons and Royal Authority in the Reign of Henry VII

by MARGARET McGLYNN
University of Western Ontario
E-mail: *mmcglyn@uwo.ca*

After his appointment as chief justice of King's Bench in 1495, John Fyneux pressured the ecclesiastical hierarchy through indictments for escapes which explored which officials had responsibility for the prisons and how they were managed, and thereby successfully asserted the royal right of oversight. By the end of Henry VII's reign his bishops, faced with ruinous fines like other lords, had largely accepted their role as gaolers under royal authority, and thus contributed to the bureaucratisation of the hierarchy which Henry VIII would exploit to such good effect.

The writings of Edmund Dudley, Henry VII's minister, reflect the apparent tension in the relationship between that king and the English Church. In *The tree of commonwealth*, Dudley argued that the king should 'support and meyntein his churche and the trew faith therof in all rightes as farr as in hym lyeth'.[1] Dudley's 'Petition', however, written while he awaited his execution for treason, admitted that the king 'was much sett to haue many persons in his danger at his pleasure, and that aswell spirituall men as temporall men'.[2] While some of this tension may be attributable to Dudley's changed circumstances, Gunn has pointed out that many powerful laymen in this period 'seem to have combined with a conventional late medieval faith a preparedness to extend royal power over the church'.[3] The exercise of strong royal leadership in the Church was not new, in England or elsewhere, and much of

CPR Hen. VII = *Calendar of patent rolls Henry VII*, London 1916; TNA = The National Archives

The research for this article was supported by the Social Sciences and Humanities Research Council of Canada.

[1] Edmund Dudley, *The tree of commonwealth*, ed. D. M. Brodie, Cambridge 1948, 24.
[2] C. J. Harrison, 'The petition of Edmund Dudley', *EHR* lxxxvii (1972), 82–99.
[3] Steven Gunn, 'Edmund Dudley and the Church', this Journal li (2000), 509–26. Anthony Goodman suggests that Henry's faith was conventional in a more continental

the distaste for Henry's approach, then and now, has focused on his supposed financial rapacity and his use of bonds and recognizances.[4] But while Henry was not averse to the collection of money, he was much more interested in using a pending debt as leverage over the unruly lords whom he found himself governing.[5] While Henry's tactics were unorthodox, they were always legal: Bacon noted that as Henry 'governed his subjects by his laws, so he governed his laws by his lawyers', and the legal profession played an important role in establishing the various ways in which royal power could, and could not, be extended.[6] Much of this happened in contexts that historians have only recently begun to explore in depth, in readings at the Inns of Court, for example, or in the practical administration of quotidian areas of dispute, such as tithes.[7] Palmer's work on the latter has demonstrated how the development of effective common law mechanisms allowed John Fyneux, an astute and long-serving chief justice of King's Bench, to assert royal power and limit the church courts' role, and how these mechanisms were embraced by both lay and clerical plaintiffs. Tithes were not Fyneux's only concern, however, and his interest in the management of ecclesiastical prisons demonstrates his desire and capacity to assert royal interest in new areas as well as consolidating it in areas which had traditionally been disputed.

At the beginning of his reign Henry VII set out to restore law and order, and benefit of clergy was one focal point of that effort. Benefit of clergy originated in the Church's claim that clergy should not be subject to secular jurisdiction, but by the later fifteenth century it had been both refined and expanded in quite specific ways. In England, benefit of clergy meant that a man convicted of felony who could read in Latin at an acceptable level would be delivered from the common law court where he was convicted to the custody of the local bishop or abbot. After a period of imprisonment

model: 'Henry VII and Christian renewal', in Keith Robbins (ed.), *Religion and humanism* (Studies in Church History xvii, 1981), 115–25.

[4] Gunn, 'Edmund Dudley', 511. The classic debate over Henry's financial rapacity remains G. R. Elton, 'Henry VII: rapacity and remorse', *HJ* i (1958), 21–39; J. P. Cooper, 'Henry VII's last years reconsidered', *HJ* ii (1959), 103–29; and G. R. Elton, 'Henry VII: a restatement', *HJ* iv (1961), 1–29.

[5] Dudley argues in his petition that 'it were against reason and good conscience, these manner of Bondes should be Reputed as perfect debtes: for I think verily his [Henry's] inward mynde was never to vse them': Harrision, 'Petition', 87. Gunn notes that while Dudley collected over £38,000 from the Church between 1504 and 1508, only a third was in cash and the rest was in the form of bonds: 'Edmund Dudley', 518.

[6] Francis Bacon, *The history of the reign of King Henry VII*, ed. Jerry Weinberger, Ithaca 1996, 133.

[7] Margaret McGlynn, *The royal prerogative and the learning of the Inns of Court*, Cambridge 2003; Robert Palmer, *Selling the Church: the English parish in law, commerce and religion, 1350–1550*, Chapel Hill, NC 2002.

in the ecclesiastical prison a convict clerk could be purged by the oath of a number of compurgators and return to the community.[8] Clerks attaint, by this time understood to be those who were convicted by their own confession, were not eligible for purgation and were to remain in prison for life. Complaints about benefit of clergy, then and now, fall into two basic categories. Firstly, though the benefit was theoretically available only to those in orders (minor as well as major), the use of a reading test in court meant that in practice it was available to any layman who could pass the test. The test remained relatively undefined, so the level of Latin literacy required was potentially quite low. As a result, benefit of clergy provided a somewhat random way to mitigate the impact of the death penalty on English felons, thus potentially either undermining the rule of law, or stunting its development. Secondly, the bishops' prisons are often perceived as revolving doors through which repeat offenders would emerge to prey once again on the community. When the secular authorities turned their attention to this odd artefact in the late 1480s their focus was on the first issue, the ability of laymen to claim clergy. A decade later their attention had moved to the second issue, the bishops' capacity to hold and manage convict clerks. This change in focus reflects a shift from concern about the problems benefit of clergy posed to a recognition of its possibilities in the re-working of the criminal justice system. Fyneux, once again, played a role in this shift. The pressure that his court placed on the ecclesiastical hierarchy meant that by the end of Henry VII's reign episcopal prisons were firmly within the remit of the common law, and the Church was imbricated in secular society in yet another dimension.

The emergence of official interest in benefit of clergy is most visible in a statute of 1490 which both accepted and restricted the ability of laymen to claim clergy. It claims that 'divers persones lettred hath ben the more bold to committe murdre rape robbery thefte and all othre myschevous dedys, bicause they have ben continuelly admitted to the beneffice of the Clergie as ofte as they did offend in any of the premises' and provides that every literate offender who successfully claims clergy is to be branded on the left thumb, and any man thus branded seeking benefit of clergy a second time is to produce a certificate of his orders before being delivered to the Ordinary.[9] The privilege is thus left intact for those in orders, and even laymen can use it once, but repeat lay offenders are out of luck.

Without the gaol delivery records, which do not survive for the reign of Henry VII, the impact of the 1490 statute cannot be gauged , but the records of King's Bench suggest that the court was becoming increasingly

[8] Both the number of compurgators and their status could vary, but it was usually around a dozen, and they were usually clerics.

[9] *Statutes of the realm*, London 1816, ii. 538.

interested in benefit of clergy. In the first decade of Henry VII's reign benefit of clergy most often appears there in the form of suits against the bishops for the escape of men in their custody. The records of fifty-seven men claiming benefit of clergy between 1485 and 1494 survive in King's Bench, of whom forty-six were escapees. Though the numbers are small, they suggest a couple of things: in the first place, records of claims which are not associated with escapes start to appear in the record in 1489 (*see* fig. 1).[10] This may be coincidence, but it does suggest that the statute of 1490 corresponded with a growing interest in keeping track of criminous clerks. In the second place, while men were both claiming clergy and escaping from prisons from the beginning of the reign, the early 1490s seem to have seen a rash of escapes. It is not clear if this was because more men were claiming benefit, more were escaping, or more bishops were being indicted for the escapes, and all three are likely. The bishops' indictments do not usually give any details of the crimes for which the men were convicted, so they cannot help us understand the experience of the clerks themselves, but they do allow us to see when and how the common lawyers turned their attention to the bishops, and how their focus shifted over the years.

Thomas Langton, the bishop of Salisbury, seems to have been under some pressure from the beginning of the reign. Three men escaped from his prison on 10 January 1487, and the escape was investigated on 24 July 1488 under a commission issued out of the exchequer. This suggests that in the first instance this was seen as a way to raise money while maintaining royal pressure on the bishops, in typical Henrician fashion.[11] Langton appeared in the exchequer and showed a charter of 1486 which confirmed the liberties which Henry III had granted to 'God, the church of Salisbury and Bishop Richard [Poore] and his successors', including the privilege to be quit of all escapes.[12] In early 1489 James Hobart, the attorney-general, accepted that the bishop's plea was sufficient in law, but asked the court to make him pay a fine for the escapes. Langton argued that since Hobart could not maintain his plea in law, he could not be fined and he asked to be dismissed. After some deliberation the barons of the exchequer agreed, and the record was witnessed on 6 February 1489

[10] Claimants are included for the year in which they claimed clergy rather than the year in which they escaped.

[11] This was the same kind of process that Henry used against his secular servants, so it is not surprising to see him using it against a spiritual one. Langton had been a diplomat and a courtier under both Edward IV and Richard III and was on the wrong side in 1485. On 6 October 1485 Henry granted custody of the temporalities of his see and of the bishop himself to Peter Courteney, bishop of Exeter, because of his 'many rebellions'. A month later Langton was given a full pardon, but he did not resume his political career and seems to have spent the rest of his life in his diocese: *The register of Thomas Langton, bishop of Salisbury, 1485–93*, ed. D. P. Wright, Oxford 1985, p. xi.

[12] Ibid. 66–7.

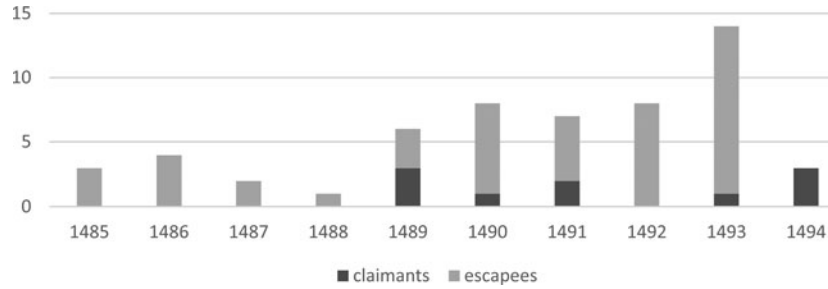

Figure 1. Benefit of clergy claims recorded in King's Bench, 1485–94.

and subsequently entered into the bishop's register. This 1489 reaffirmation of the 1486 confirmation of Henry III's charter should have left Langton in a fairly secure position, but Hobart was obviously unhappy with the outcome of the case, and in 1490 he got an opportunity to try again, when three men escaped from the bishop's prison at Sonning, Berkshire. This time the case came to King's Bench, where Langton appeared at Easter 1491 with a charter from 11 November 1217, presumably the same one which had been so thoroughly confirmed.[13] Hobart challenged the charter again, but King's Bench found it as satisfactory as the exchequer had, and the bishop was discharged for the escapes.

While Langton's charter withstood Hobart's pressure, John Esteney, the abbot of Westminster, was less lucky. Indicted for the escape of fourteen men in September 1492, he argued that one of the supposed escapees had in fact gone through compurgation and been legally released, but he took responsibility for the other thirteen escapes, and he was fined £1,300, £100 per escapee.[14] After another escape in 1510, Abbot Islip appeared at King's Bench with a grant of Edward the Confessor which provided that the abbey should be pardoned all escapes.[15] Since Esteney would presumably have presented such a grant if it were available in 1492, this suggests that it had been constructed in the meantime to avoid another

[13] TNA, KB9/388 mem. 80; KB27/919 rex mem. 8.

[14] TNA, KB9/395 mem. 26; KB27/926 rex mem. 11. By the late fifteenth century £100 seems to have been standard. *The boke of justices of peas*, London 1505 (*RSTC* 14862), Bi, says explicitly that the fine for an escape from a secular prison is 100*s.* and 'yf ony persone convycte and in the pryson of the Ordinary' escapes the fine is £100. Readings at the Inns of Court varied: Reading E says the escape of a clerk convict or attaint will cost the Ordinary £100, but Readings B, C and G reduce the bishop's liability in the case of a clerk convict: *The rights and liberties of the English Church*, ed. Margaret McGlynn (Selden Society cxxix, 2015), 39, 14, 20, 54. The abbey probably paid the fine in instalments: a surviving bond from 1494 may be associated with this: Westminster Abbey Muniments 33088.

[15] TNA, KB27/996 rex mem. 18.

ruinous fine, implying that the abbey expected to see ongoing attention to such escapes and had provided for the eventuality.

These episodes at Salisbury and Westminster show the common lawyers beginning to pay serious attention to escapes from bishops' prisons, but these simple cases were shots across the bishops' bows. When five men escaped from the bishop of Salisbury's prison on 30 October 1493, King's Bench took the opportunity to probe more deeply into the responsibilities of a range of ecclesiastical officials. The see of Salisbury was vacant when the men escaped: Langton, the bishop into whose hands all the men had been delivered, had been translated to Winchester on 27 June 1493, four months before the escape.[16] The usual assumption was that *sede vacante* the archbishop of Canterbury was responsible for the spiritualities of the see, but instead the dean and chapter of Salisbury were indicted.[17] In April 1496 they appeared in King's Bench to argue that they were not responsible for the prison. Hobart disagreed, and the case was continued while the net was spread more widely.[18] Langton appeared in King's Bench in Easter term 1500: he pointed out his translation to Winchester in June 1493 and made the orthodox argument that *sede vacante* the archbishop of Canterbury, in this case John Morton, was responsible.[19] He asked for the case against him to be dismissed. There were clearly discussions going on behind the scenes, for in Hilary 1501, following consultation with the serjeants and the king's attorney, the court concluded that Langton's plea was not sufficient in law and fined him £400.[20] Though this is the standard fee for the escape of four clerks convict, and suggests that the responsibility for the escape was seen to lie with Langton, it was not the end of the matter. The dean and chapter of the cathedral were not sure that they were out of danger, and in Michaelmas term 1501 they appeared with an order from the king to drop the case against them.[21]

The outcome of this peculiar case in Salisbury may have been affected by a similar case involving an escape from the prison of the bishop of Bath and Wells in August 1495. This time six men escaped.[22] All had been convicted at the Ilchester gaol delivery: John Sparke in April 1488, four together in July 1493 and John Davy in April 1495, just four months before the escape. The bishop's indictment came from a commission to enquire into escaped clerks convict and attaint which sat on 27 September 1498,

[16] TNA, KB9/402 mem. 22.

[17] Thomas Kebell noted that the guardian in spiritualities was the Ordinary when the bishop was dead, but did not mention vacancies: *Rights and liberties*, 25.

[18] TNA, KB27/936 rex mem. 7; KB27/939 rex mem. 4.

[19] TNA, KB27/949 rex mem. 16. Langton appeared first in November 1498, but asked for a delay.

[20] TNA, KB27/958 (Hil. 16 Hen. VII) in the fines section of the roll. The court said that it wished to be further advised on the fifth man.

[21] TNA, KB27/939 rex mem. 4.

[22] TNA, KB9/417 mem. 124.

three years after the escape, and a couple of months before Langton appeared for the first time at King's Bench for the Salisbury escape.[23] The bishopric of Bath and Wells had had a good deal of turnover in the seven years between John Sparke's conviction and his escape. At the time of Sparke's incarceration Robert Stillington was bishop and took custody of him. Stillington died in May 1491 and the see was vacant until June 1492, when Richard Fox was translated from Exeter. Robert Coker, William Heynes, William Mede and Matthew Arowsmyth were all given into Fox's custody, and he remained bishop of Bath and Wells until 1494, when he was translated to Durham. Bath and Wells was once again vacant until the translation of Oliver King from Exeter at the end of 1495, and it was during this vacancy that John Davy was convicted in April and the six men escaped in August 1495. In the Salisbury case the dean and chapter were indicted for the escape *sede vacante*, but here the indictment properly notes that Morton was the Ordinary. It also adds, however, that Oliver King, then bishop of Exeter, held the temporalities, of which the prison was a part.[24] This suggests a new line of attack, and King was quick to refute it. King and Fox both appeared separately in Trinity 1499 to argue that the accepting and custody of clerks convict or attaint belonged to the Ordinary and that the archbishop of Canterbury was Ordinary and custodian of the spirituals *sede vacante*.[25] Fox's appearance is somewhat unexpected, since he had no jurisdiction over the prison at the time of the escape, but given the punishment of Langton in 1501, and Fox's position at the centre of government, it is likely that he knew what was being discussed behind the scenes, and was keen to ensure that he personally would not be held responsible for the cost of these escapes.[26] Cardinal Morton finally appeared in King's Bench in Easter 1500 to elaborate the argument implied by the reference to King's custody of the temporalties: he stated that the house within which the escapees were kept was part of the bishop's palace in Wells, which was parcel of the temporalities of Bath and Wells. Morton claimed that Fox was seised of the temporalities until he was translated to Durham, i.e. until 20 February 1495, but that letters patent dated at Westminster on 16 February 1495 gave Oliver King custody of the temporalities for as

[23] TNA, KB9/417 mems 123, 124. The commission is dated 24 July 1498.
[24] TNA, KB9/417 mem. 124; KB27/950 rex mem. 10.
[25] TNA, KB27/952 rex mems 13, 14.
[26] Fox was one of Henry VII's closest advisors. Davies describes him as 'a supremely competent statesman' and an effective, if absent, bishop: C. S. L. Davies, 'Fox, Richard', *ODNB*, <https://doi.org/10.1093/ref:odnb/10051>. By 1487 King was secretary to Henry VII and was largely an absentee bishop both of Exeter and of Bath and Wells, though Steven Gunn notes that he spent more time in his diocese after 1499: 'King, Oliver', *ODNB*, <https://doi.org/10.1093/ref:odnb/15580>.

long as they remained in the king's hand.[27] Morton may have been trying to draw a fine distinction between responsibility for managing the building and responsibility for the clerks themselves, but in effect we see the archbishop of Canterbury argue that clerks convict were part of a bishop's temporal jurisdiction.[28]

Though the escapes happened earlier in the decade, the Salisbury and the Bath and Wells cases were being argued in tandem between 1499 and 1501, and their implications were alarming for much of the ecclesiastical hierarchy. Cardinal Morton could have found himself responsible for all the escaped prisoners in the southern province *sede vacante*, as well as for his own prison. With eighteen dioceses in his portfolio, and with the translation of bishops frequently dominoing across the landscape, the £600 at stake in the Bath and Wells case might well have seemed like the tip of a very expensive iceberg.[29] Similarly, the fine of Langton for the escape of Salisbury prisoners after his departure for Winchester suggests that he was being held responsible for the general conditions under which the prison had been managed, rather than for the actual escape: the charter which had foiled Hobart a decade earlier was useless, since he was not bishop of Salisbury at the time of the escapes. This willingness to distinguish between responsibility for the general management of the prison and responsibility for the actual escape probably accounts both for the nervousness of the dean and chapter in the Salisbury case, since they could still have been held responsible for the actual escape, and for Fox's desire to pre-emptively establish his distance from the Bath and Wells case.

The courts kept the pressure on the bishops in the early years of the next century. On 12 January 1504 six men escaped from the archbishop of Canterbury's gaol at Maidstone. Three of the men had been convicted at

[27] *CPR Hen. VII*, ii. 47 has the restoration of temporalities to King as the new bishop of Bath and Wells on 6 January 1496, but no record of a previous grant. In March 1498 King was pardoned for the escape of all clerks convict in his custody while he was bishop of Exeter: TNA, C66/581 mem. 24 (22); *CPR Hen. VII*, ii. 131.

[28] The case was pushed off until Hilary term 1503 but then faded away without resolution. More than 90% of the clerks convicted in this period were laymen, and this may have contributed to Morton's willingness to make this argument.

[29] The administration of a diocese *sede vacante* was an opportunity for profit for the metropolitan: Christopher Harper-Bill calculates that Norwich contributed £572 7*s.* 5*d.* to the archbishop's coffers between December 1499 and May 1500: *The register of John Morton, archbishop of Canterbury, 1486–1500*, iii, Woodbridge 2000, 2. The archbishop of Canterbury had secured confirmations of his *sede vacante* rights from the pope as recently as 1494 and 1495, presumably in response to such grants as Henry's to Oliver King. The confirmation specifically recognised that the archbishops 'exercise great care in the foresaid churches and dioceses and incur great expense by their labours in visitation and the exercise of jurisdiction, and that he should receive the profit who bears the burden': *The register of John Morton, archbishop of Canterbury, 1486–1500*, i, ed. Christopher Harper-Bill, Leeds 1987, 64.

the gaol delivery at Maidstone in May 1502, one at the session of the peace in Sandwich in June 1502, and two at gaol deliveries in the castle of Canterbury, one in July and the other in December 1503.[30] The archbishop's steward, Thomas Bourchier, was indicted for the escapes, and he argued that it was never his responsibility to receive prisoners and guard them, but it was the archbishop's and, *sede vacante*, the prior and convent of Christchurch.[31] This is the first time that a lay official was indicted for an escape from a bishop's prison, and this case makes it clear that the court was continuing to explore the ways in which responsibility was distributed. But Bourchier's response is quite peculiar, since in January 1504, when the men escaped, Canterbury was not vacant: Henry Deane died in February 1503 and was succeeded by William Warham in November of that year. The only event in this sequence which fell during the vacancy was the gaol delivery in July 1503 at which Robert Hunter was delivered to the custody of the dean and convent. This suggests, again, that King's Bench was pushing to expand responsibility for an escape beyond the bishop in charge of the prison at the time of the escape, but rather than including just the previous bishop, it might also redound to any other bishop, dean, chapter or convent that had had responsibility for the prison when any escaped clerk arrived or departed. The prior and convent did not argue against this, but received a pardon for the escape and the discharge of any fines in July 1504.[32]

Though the results of these cases were somewhat inconclusive, the process of responding to them had significantly changed the understanding of the law. Not only had the crown demonstrated that it was willing and able to hold bishops responsible for the state of the prisons in their old dioceses as well as their current dioceses and to hold deans, convents and chapters responsible for prisons *sede vacante*, it had enticed, or provoked, the archbishop of Canterbury into arguing that the custody of clerks convict was part of the temporal responsibility of a bishop. Morton's argument served his own financial purposes, but it also reflected the direction of government policy, and Fyneux took the opportunity to hammer it home. In the year book for Trinity 1500 he argues that if a clerk convict or attaint is committed to the Ordinary, 'the custody of him is temporal and not spiritual, for the action is temporal, and the judge who commits him, and the authority by which he is [committed] and the imprisonment is also'.[33] Ten years earlier such a statement

[30] TNA, KB9/433 mem. 9.

[31] His argument was accompanied by a warrant from the king, in English, dated 6 November 1504, to accept his plea and discharge Bourchier for the escapes: TNA, KB27/974 rex mem. 6.

[32] TNA, KB27/976 rex mem. 11. It was recorded in King's Bench in the summer of 1505.

[33] YB Trin. 15 Hen. VII, p. 9, pl. 8; Robert Brooke, *La Graunde Abridgement*, London 1573 (*RSTC* 3827), Corone 53, cf. Corone 222.

would have sounded outlandish; by 1500 Fyneux could argue that he was paraphrasing the archbishop of Canterbury. Henry VII was generally less concerned with establishing theoretical rights than with practical authority, however, and Fyneux was similarly inclined.[34] The yearbook quickly goes on to argue that the Ordinary would be punished if he allowed a clerk convict or attaint to be bailed or released, or if the clerk's imprisonment was harder or easier than it should be; that if the Ordinary refused to allow the clerk to undergo his purgation, the king would send a writ to enforce it; and that the king could pardon the clerk without purgation, all of which proved that the Ordinary's custody was temporal.[35] Thus when it came to the custody of clerks convict and attaint, Fyneux implied that the bishops were effectively temporal officers, holding their charges by the king's authority and subject to his commands regarding their management and delivery.

The records of King's Bench across these same years demonstrate that Fyneux's comments were neither speculative nor academic. Not only did he expect bishops who allowed prisoners to escape to be punished with substantial fines, his court also explored what constituted an escape. After twenty men escaped from his prison at Stortford in November 1493, Richard Hill, the bishop of London, argued in King's Bench that five of them were held in 'a certain house called the prisonhowse within the castle and shackled in chains and iron shackles and placed on a post in the same prison'.[36] He claimed that at 3 a.m. on 23 November the chained men broke the post and door of the house and escaped, making a lot of noise in the process. William Sheppard and John Valentyne, the wardens of the gaol, heard them and followed them, and within fifteen minutes they had recaptured the men and returned them to the prison. The timing was important, for readings at the Inns of Court argued that if the prisoner remained always in sight it was not an escape, but 'if he was out of [the gaoler's] view, even if he saw him afterwards and re-took him, still this is an escape'.[37] It seems likely that the bishop was trying to argue here that the same principle applied to hearing, since it was hard to argue that the gaoler had kept the escapees in his sight at 3 a.m. The court wished to be further advised on the men in chains, and fined the bishop £1,400 for the other escapees.[38] Though the legal issue was not resolved here, the discussion makes it clear both that the bishops' prisoners

[34] McGlynn, *The royal prerogative*, 247–8.

[35] YB Trin. 15 Hen. VII, p. 9, pl. 8.

[36] TNA, KB27/930 rex mem. 7.

[37] *Rights and liberties*, Reading B, 13. Reading A and E refer only to fresh suit, and Reading E argues that a sheriff shall not be liable for an escape if he has the accused available when he is required in court: *Rights and liberties*, 5, 44.

[38] The case then fades from the records: TNA, KB9/431 mem. 24; KB27/993 rex mem. 10.

were generally held in shackles, and that not every prisoner who escaped actually went free. Another escape from the prison at Eccleshall in September 1506 reinforces the point. In this case the men 'feloniously broke a house called a prisonhouse within the stone walls of the castle of the … bishop of Eccleshale in the … county of Stafford and escaped from the house and all of them escaped and went at large feloniously within the castle'.[39] When the bishop of Coventry and Lichfield appeared at King's Bench in 1509 he claimed that the indictment was insufficient for a variety of reasons, one of which was that it did not specify whether the men were at large within the castle or confined within the prison house, and whether, when they broke out of the prison, they were still confined within the castle.[40] His point about the difference between escaping the prison and escaping the castle is an important one. When the abbot of Westminster or the bishop of London was indicted for the escape of a dozen or more prisoners, this gives an alarming image of hardened criminals spreading out across the city and potentially returning to a criminal underworld. But if the scenario raised here was common, that the prisoners escaped from the house within which they were kept, but not from the castle within which that house was situated, then indictments for escapes take on a different significance. There is no doubt that some clerks did make a clean break; in the escape from Stortford five escapees of twenty were recaptured, but the others probably got away. But both the readings and the cases indicate that the technical definition of escape was being refined. The casual attitude of the earlier readings was being replaced with an expectation of closer control: if the prisoner was out of the gaoler's control, i.e. out of his sight during the day or his hearing at night, the gaoler could be charged, even if the escapee was recaptured in short order or had never managed to leave the confines of a larger complex, such as a castle.

When a criminous clerk completed his term in the bishops' custody he had to be purged before release, and the courts asserted their interest in this matter too. On 13 June 1493 Thomas Hawes, Sr, was indicted for the murder of John Freeman and pleaded not guilty.[41] The following day the jury was sworn, but before they gave their verdict Hawes confessed to the murder and claimed benefit of clergy. Roger Church, the bishop of Lincoln's Ordinary, appeared, and Hawes duly read and was delivered. As a confessed murderer, Hawes was a clerk attaint rather than a clerk convict, which meant that he should not have been eligible for purgation. Nevertheless, in November 1496 Hawes appeared at Westminster and detailed how he was purged by twelve clerks on 25 March 1495 before William Greybarn, vicar of Banbury, and Roger Lupton, vicar of the

[39] TNA, KB9/443 mem. 19.
[40] TNA, KB27/993 rex mem. 18.
[41] TNA, KB9/410 mem. 54.

prebendal church of Cropredy, *sede* Lincoln *vacante*, and released, one year and nine months after delivery.[42] The record of Hawes's delivery did not make his status as a clerk attaint explicit, but the court was not sure how to deal with the problem of his purgation: it is odd that Hawes was charged rather than his wardens, the dean and chapter, and it was not until the summer of 1498 that the court decided to issue a *certiorari* for proof of the purgation to Greybarn and Lupton, presumably hoping to find some irregularity in the procedure. The clerics appeared that autumn and certified that Hawes was kept in the bishop's prison at Banbury until he was purged according to the canon law. Hawes went *sine die*.

Here the matter might have rested, but in the summer of 1501 a commission on escapes returned to Hawes's case and this time the dean and chapter were indicted for the escape, in January 1502. The return in King's Bench rehearses the information from Hawes's conviction, though it clarifies that he 'by reason of the aforesaid attaint … was committed and delivered to the prison of the bishop at Banbury … by the aforesaid Roger [Church]'.[43] This record also adds that the bishop died on 30 September 1494 and the chapter of Lincoln was Ordinary for all spiritualities, including for clerks convict and attaint, until 26 May 1495. John Walle, canon of the cathedral church, was appointed to the spiritualities: 'he had custody of Hawes, then in prison in Banbury', and he approved the commission for Greybarn and Lupton (now respectively identified as doctor of theology and doctor of decrees) to admit Thomas and four others to their purgation, thus allowing a clerk attaint to escape.[44] This record thus corrects the ambiguity in the record of the original delivery by clarifying the attaint, while also highlighting the role of the dean and chapter *sede vacante* and putting the responsibility for the improper purgation squarely on them. The dean and chapter delayed their response, but in February 1506 they appeared with Roger Lupton, pleaded not guilty, and presented a warrant from the king discharging them.[45]

Similar issues probably lie behind the case against the bishop of Norwich, Richard Nykke, who was indicted in September 1505 for the escape of five prisoners from his prison at Bishop's Lynn on 8 February 1504. The five men appear together in the original indictment and in the roll recording the bishop's first appearance in King's Bench in November 1505, when he

[42] TNA, KB9/410 mem. 53; KB27/941 rex mem. 8.

[43] TNA, KB27/960 rex mem. 9.

[44] Both were Cambridge men: Greybarn was a graduate of Clare College, admitted to his doctorate in 1470–1, Lupton of King's College, admitted to his doctorate in 1503–4: A. B. Emden, *A biographical register of the University of Cambridge to 1500*, Cambridge 1963, 268, 377.

[45] The warrant is dated 3 December 1504 and is in English. Greybarn had died by February 1502: Emden, *Biographical register*, 268.

asked for a delay until the following January.[46] Unusually, however, each escape was handled separately when the bishop returned in Hilary 1506, and the full text of each individual indictment was provided, allowing us to see their crimes, and the Ordinary to whom they were delivered.[47] All five were convicted of burglary, though at different times and places: William Bumbyll, a pardoner, was convicted in August 1497 and delivered to the bishop of Norwich. Richard Langle, a labourer/tailor, was convicted in March 1499 and delivered to John Tombrigge, chaplain, vice-gerent of the cardinal-archbishop of Canterbury, *sede* Norwich *vacante*. Thomas Fuller, a labourer, was convicted in January 1501 and delivered to the prior of Christchurch, since both Canterbury and Norwich were vacant at the time. Thomas Blackborn, a tailor, was convicted in September 1501 and delivered to John Tombrigge, chaplain, this time described as the Ordinary appointed by Roger Church, doctor of decrees, who had in turn been appointed the official of Norwich *sede vacante* by the prior of Christchurch *sede vacante*.[48] Finally, Laurence Woley, a butcher, was convicted in October 1501 and delivered to the bishop of Norwich.[49] Thus three of the five men had been delivered *sede vacante* in three different contexts, and a variety of officials had been responsible for their custody, but in this case the focus was on Bishop Nykke. Richard Belamy, the bishop's attorney, argued that the men had remained in custody until 20 October 1503 when, in the presence of Thomas Hare, the bishop's official, they had publicly purged themselves in the chapel or hospital of St John the Baptist in the town of Bishop's Lynn.[50] William Bumbyll thus served six years and two months for his crime, Richard Langle four years and seven months, Thomas Fuller two years and eleven months, Thomas Blackborn two years and one month and Laurence Woley two years.[51] It is not clear why all the extra information was provided for these men, or what Nykke was trying to argue, other than that they had been properly purged. The periods of time in custody varied substantially, and they seem to bear little relationship to the crimes committed: William Bumbyll had the smallest haul, stealing beads of white amber worth 5*s*., a gold ring worth 5*s*., 2 silver rings worth 2*s*. and a St James shell worth 8*d*., while Laurence Woley broke into the close and home of the abbess of Brusyard, from whom he stole cattle worth 16*s*., and the close of John Lowindenys, from whom he

[46] TNA, KB9/438 mem. 54; KB27/977 rex mem. 16.
[47] TNA, KB27/978 rex mems 13–16.
[48] Church was an experienced official: he spent time in the administration of Coventry and Lichfield, Lincoln, Rochester and Worcester, and was vicar-general to the absentee bishop of Bath and Wells: *Reg. Morton*, iii. 3.
[49] TNA, KB9/438 mem. 54; KB27/977 rex mem. 16.
[50] TNA, KB27/978 rex mem. 13.
[51] TNA, KB27/978 rex mems 13–16.

stole cattle worth 17*s*.[52] Nevertheless, Woley was released having served a little more than a third of the time Bumbyll put in. There were no laws about the period of time any clerk convict should serve for any given crime, however, so if the purgations were in fact properly administered, Nykke should have gone *sine die*. Cavill characterises the original indictment as 'outrageous' and part of a 'concerted attack by Hobart not only on the bishop, but also on the exercise of ecclesiastical jurisdiction' resulting from a dispute over *praemunire* cases in the diocese.[53] Even if this particular indictment was driven by a wider dispute between the two men, however, it raises the same kinds of issues about *sede vacante* jurisdiction that we have seen elsewhere, and Nykke's overload of information suggests that he felt vulnerable on the purgations.[54] Hobart asked for a postponement to Easter, when the bishop appeared in King's Bench with a pardon for all escapes before 10 March 1506.[55]

The growing engagement of the secular authorities in the management of clerks convict is clear from the records of King's Bench. Though they have featured prominently here, Langton and Nykke were not the only bishops to feel the weight of the court's attention: before the end of Henry VII's reign, bishops and deans of the dioceses of Worcester, Exeter, Coventry and Lichfield, London, Canterbury, Norwich, Bath and Wells and Rochester all appeared before King's Bench to answer for clerks convict in their custody.[56] Most of these men presented pardons, and Abbot Esteney's and Bishop Hill's ruinous fines did not become the

[52] TNA, KB27/978 rex mem. 13; KB27/978 rex mem. 16. Fuller was also convicted of two burglaries: KB27/978 rex mem. 14.

[53] P. R. Cavill, '"The enemy of God and his Church": James Hobart, praemunire, and the clergy of Norwich diocese', *Journal of Legal History* xxxii/2 (2011), 127–50. Harper-Bill argues that after Morton's death Hobart carried out a 'sustained campaign against ecclesiastical jurisdiction', including *praemunire* proceedings, encouraging charges against clergy at quarter sessions and an attack on Bishop Nykke's probate jurisdiction: *Reg. Morton*, iii. 20. Steven Gunn notes that Hobart was replaced as attorney-general in July 1507 with no compensating promotion and in November he paid Dudley £533 6*s*. 8*d*. in cash for a pardon, suggesting that Hobart did not come out on top in the battle: *Henry VII's new men and the making of Tudor England*, Oxford 2016, 286. Cavill agrees with Ives that Hobart's resignation is probably not directly connected with the *praemunire* cases: 'The enemy of God', 147.

[54] It is striking that two of the very few examples of pardons for clerks convict recorded in the patent rolls came from Norwich, Henry Denby in 1502 and John Parker in 1506: *CPR Hen. VII*, ii. 273, 466; *Calendar of close rolls Henry VII*, London 1963, ii. 42. It is tempting to speculate that in Parker's case at least Nykke's fight to prove the due purgation of these men in 1505 made him more concerned to have records of the legal exit of every clerk from his custody.

[55] TNA, C66/600 mem. 17 (7); *CPR Hen. VII*, ii. 484. The pardon was dated at Westminster on 26 April 1506.

[56] TNA, KB27/958 rex mem. 2; KB27/965 rex mem. 7; KB9/448 mem. 38; KB9/431 mem. 23; KB9/431 mem. 24; KB9/433 mem. 9; KB9/438 mem. 54; KB9/442

norm. Nevertheless the regular indictments, the court appearances and the processes (and costs) of securing a pardon served quite effectively to assert royal authority. Ecclesiastical officials around the turn of the century became accustomed to secular scrutiny of their management of their prisons, and accepting of the royal jurisdiction that such scrutiny implied. This is reflected in the shifting language of the bishops' registers. John Lemyng, chaplain, was purged in October 1491. The bishop's register records that 'on account of this [crime] he was imprisoned by the lay power until at last he was delivered by the king's justices to be judged in the ecclesiastical court by Robert bishop of Bath and Wells, according to canon law, as he is a literate clerk'.[57] At the end of the decade, in December 1499, William Jamys, John Saunders, Thomas Lambert and Dom John Browne were purged at Salisbury, and the court certified that they were 'released from prison, insofar as this pertained to the ecclesiastical court'.[58] This was considerably less robust than the statement regarding Lemyng and suggests that the message about the restricted authority of the ecclesiastical system over clerks convict was percolating down from King's Bench.

It is no secret that Henry VII wielded financial penalties masterfully as he established his authority, and these cases demonstrate the same strategy at work as he extended it. In the late 1490s King's Bench imposed substantial fines on bishops who had been careless in their custody of clerks convict and sent a clear signal that the secular authorities intended to take a close interest in such matters in the future. The court kept steady pressure on the hierarchy for the next decade and a half, and although the king pardoned rather than fining in the second half of his reign, secular authority over ecclesiastical prisons was simply accepted by 1509. Thus when Henry VIII issued a general pardon on his accession, Christopher Bainbridge, the archbishop of York, responded by issuing a general commission for the purgation of all clerks convict in his prison, the only way in which such felons could be released.[59]

This understated, pragmatic and consistent expansion of royal control has significant implications. It has proved remarkably easy for both contemporaries and historians to present Henrician ministers as hostile to the Church: the description of Hobart by an exasperated and frustrated Bishop Nykke as 'an enemy of God and his church' and of Fyneux by a rather calmer Steven Gunn as an 'enemy of sanctuary' are both supported

mem. 33; KB9/442 mem. 82. The bishop of Hereford was also pardoned for the escape of two men in 1499: *CPR Hen. VII*, ii. 154.

[57] *The register of John Morton, archbishop of Canterbury, 1486–1500*, II: *Variae sede vacante*, ed. Christopher Harper-Bill, Woodbridge 1991, 14–15. [58] Ibid. ii. 161–3.

[59] Borthwick Institute, York, Abp Reg 26, fo. 74v. The commission noted that if there were objectors to the purgations the convicts should be returned to the prisons, which was standard procedure, so Bainbridge did intend to maintain the canonical process, even if the men in question would be released far sooner than normal.

by good evidence, and yet both tell only a small part of the story.[60] While both men were comfortable challenging specific actions or omissions of particular bishops or abbots, in the instances provided and elsewhere, they were clearly not anti-clerical in either the positive sense of seeking religious reform or the negative sense of opposing abuse.[61] Nor were they looking to challenge papal power or the power of the English clergy in any general way. They were, however, willing to insist that whenever possible English clerics must claim, enforce or defend their rights through the English court system. This legal stance has always been most visible in fights over *praemunire*, but it is equally visible in the tithe litigation that Palmer explicated, and in the extension of control over ecclesiastical prisons outlined here.[62] And in their desire to preserve their financial security, bishops, deans and chapters were willing to negotiate over the boundaries between temporal and ecclesiastical jurisdiction and to accept royal jurisdiction over the men in their prisons. This represents a real innovation. It had long been recognised that tithe disputes could properly be pursued in both secular and ecclesiastical courts, though there was always room for skirmishes over the boundaries, but by the end of Henry VII's reign the ecclesiastical hierarchy was consistently co-operating with the legal profession to manage the confinement of criminals, something well outside any traditional definition of the Church's role, and that co-operation continued steadily for the next two decades.

Ethan Shagan argues that the English Reformation drove conservative believers to divide over their relationship to royal authority thereby weakening their ability to combine to resist theological change, and understanding how this happened is key to understanding its progress.[63] If Henry VII consolidated royal authority politically and financially, Fyneux extended it legally with his consistent, practical and effective assumption that if the

[60] For Fyneux see Gunn, 'Edmund Dudley', 524; he refers to Nykke's description of Hobart in 'Edmund Dudley', 516, and Cavill takes it as the title of his article on the *praemunire* proceedings against Nykke. It has been suggested that both Henries were less hostile to sanctuary than traditional accounts imply: Peter Kaufman, 'Henry VII and sanctuary', *Church History* liii (1984), 465–76; Shannon McSheffrey, *Seeking sanctuary: crime, mercy and politics in English courts, 1400–1550*, Oxford 2017. I will develop that argument and extend it to benefit of clergy in *The king's felons* (forthcoming).

[61] The most recent iteration of the extensive literature on anti-clericalism began with Christopher Haigh, 'Anti-clericalism and the English Reformation', *History* lxviii (1983), 391–407. Haigh's characterisation of it as a 'convenient fiction' is challenged for the pre-Reformation period in P. R. Cavill, 'Anticlericalism and the early Tudor parliament', *Parliamentary History* xxxiv (2015), 14–29.

[62] Daniel Frederick Gosling outlines the increase in *praemunire* cases in the reign of Henry VII and Fyneux's involvement with them: 'Church, State and Reformation: the use and interpretation of *praemunire* from its creation to the English break with Rome', unpubl. PhD diss. Leeds 2016, 158–71.

[63] Ethan Shagan, *Popular politics and the English Reformation*, Cambridge 2003.

common law could be used to solve a problem, it should be, even when that problem had traditionally been in the remit of the Church. After three decades of this approach, it is hardly surprising that when Henry VIII set out to assert the subordination of the Church to the Crown, the faithful disagreed on the proper boundaries between the two; and so Cromwell hatched the egg that Fyneux laid.