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A table of contents for *The Churchman* can be found here:

https://biblicalstudies.org.uk/articles_churchman_os.php

The 1552 Reform of English Church Discipline

Gerald Bray

The Henrician Reformation

The sixteenth-century attempt to reform English church discipline began on 10 May 1532, when Edward Fox, the royal almoner, presented the convocation of Canterbury with three articles for their acceptance.¹ The articles were the end result of several months of debate over the legislative and judicial powers of the clergy, which had already produced a protest from the House of Commons on 18 March,² followed by a point by point refutation from the bishops on 12 April.³ They came from King Henry VIII, or rather from Thomas Cromwell, a protégé of Cardinal Wolsey who had managed to survive his benefactor's downfall, and who was already exercising considerable influence in ecclesiastical affairs. The articles were debated for a few days, but although many of the clergy were unhappy with them and the exchanges were heated, they were assented to without alteration on 15 May.⁴

The following day, Archbishop William Warham took the convocation's assent to the king and made his personal submission to Henry's authority at the same time.⁵ The way was now clear for the government to act as it wished, though as yet there was no concrete proposal for serious reform of the existing canon law.

Elaborating such a proposal would clearly have taken some time, but a framework for change had been established, which would endure (in slightly different guises) into the next reign and eventually bear fruit in the *Reformatio legum ecclesiasticarum* of 1552. Archbishop Warham died on 22 August 1532 and, following the custom of the time, the appointment of Peter Ligham as his official principal (dean of the arches) lapsed as well. Cromwell seized the opportunity and on 18 September he appointed Richard Gwent as Ligham's successor, even before Thomas Cranmer could be installed as the new archbishop.⁶ This procedure was irregular, because the dean of the arches was the archbishop's personal appointee, but it seems that Cromwell was unwilling to wait any longer than necessary. Probably he wanted to make the point that the crown was now the dominant force in ecclesiastical affairs, and it can be said with some certainty that Cranmer was not able to appoint his own man until after Gwent's death in 1543.⁷ Gwent was one of the king's

chaplains and seems to have been a reformer of sorts, though not in the sense which that term would soon acquire.⁸

What happened next is obscure, but it is known that the legislation authorizing the appointment of the commission of thirty-two was piloted through both Houses of Parliament during the course of March 1534, and received the royal assent at the closing session on 30 March, the day before the convocation of Canterbury voted to abjure the papal supremacy.⁹

This act forbade convocation to legislate independently of the king, though whether this meant that it required the assent of parliament as well was less clear and was later disputed by parliament, which naturally assumed that its approval was also needed.¹⁰ What the act envisaged was a new and streamlined version of the existing canon law which would replace all previous legislation, though provision was made for the existing law to remain in force until the royal assent was given to a new set of canons, as long as it did not contradict any of the laws, statutes or customs of the realm or go against the royal prerogative.¹¹ By the time the act was passed, determining what the canon law of England actually was had become a matter of urgency, because the simultaneous abjuration of papal supremacy made further appeal to Rome impossible.

The commission envisaged in 1534 was never formally appointed, but we know that Richard Gwent, joined by his fellow lawyers, John Oliver, Edward Carne and John Hewys, produced a preliminary set of canons within eighteen months of the initial request for them. When these men first got together is unknown, but they had already been at work for some time when Gwent wrote to Thomas Cromwell on 6 October 1535 saying: 'If it be your pleasure we will come and report to you how far forward we are in these new laws; but we dare not until we hear from you.'¹² They were then in Uxbridge because of the threat of plague in London, but were forced to return to London for the re-opening of the courts. However, they had not completed their task, as a further letter from Gwent to Cromwell, dated 27 October, makes plain.¹³

It appears that Gwent got a favourable reception to his first letter, but what happened after the second one is unknown. Whether he was able to see the king or not, no more is heard of this group of four. Writing almost a generation later (in 1571), John Foxe noted the rather mysterious interruption of their activities, but did not know whether this was because of the distemper of the

times or the sluggishness of those involved. In favour of the former possibility is the fact that it was during the time that the men were at Uxbridge that the faculty of canon law at Oxford was dissolved.¹⁴ This was part of a wider process of creating a single legal culture, and reinforcing the canon law, in whatever form, would have been a barrier to that. But in favour of Foxe's second suggestion is the fact that, shortly after Gwent announced that the draft canons were nearly ready, a bill was prepared and enacted in parliament which once again authorized the king to appoint a commission of thirty-two (on the ground that that had not been done in 1534), but this time set a limit of three years for the commission to complete its work.¹⁵ The time limit was probably intended as a spur to get the process moving, but nothing happened and Gwent was soon busily involved in helping to oversee the dissolution of the monasteries. By the time he was finished with that, the three years had run out and nothing more was heard of the canons.

The Edwardian Reformation

The 1536 legislation authorizing a new canon law commission was repeated in 1544, but this time it was allowed to continue for the duration of the king's life and could also introduce new canonical legislation, not merely revamp the old.¹⁶ Yet once again no commission came into being and, when Henry died on 28 January 1547, the act automatically lapsed. It therefore took a third act of parliament to get the job of canon law revision under way, but that had to wait until the third session of Edward VI's first parliament, which did not open until 4 November 1549. In that session there was a two-pronged attempt to reform the ecclesiastical jurisdiction. In the House of Lords on 14 November the bishops present complained that episcopal authority was being ignored and undermined by royal proclamations, and that this was a serious cause of popular disorder. This was almost certainly a reference to the way in which the Duke of Somerset had used proclamations to deal with religious matters, and Somerset's fall on 10 October made it possible for them to complain openly for the first time, but it may also have been a way to reopen the whole canon law question.¹⁷ The Lords listened sympathetically and directed the bishops to prepare a draft statute dealing with the matter, which could then be debated by parliament and enacted into legislation.¹⁸

On the same day, a bill was introduced into the Commons which would have

restricted the administration of ecclesiastical justice to university graduates with at least four years of training in the civil law.¹⁹ The bill was engrossed on 18 November and passed on 3 December, when it was sent up to the Lords.²⁰ There it was read for the first time on 5 December and for the second on 10th December, after which no more was heard of it.²¹

Meanwhile the bishops had drawn up legislation and presented it to the upper house, also on 18 November. Their draft was rejected because it appeared to give too much power to the episcopate, but a committee was formed to make amendments to it and to bring it back.²² The bill passed in the House of Lords²³ but in the House of Commons it failed in the third reading on 22 January.²⁴ The day before, however, the Commons had initiated another bill which revived the Henrician legislation for a canon law commission, though with only sixteen members instead of thirty-two. That bill was read again and passed on the following day, after which it was sent to the House of Lords.²⁵

The Lords received the canon law commission bill and gave it its first two readings on the same day.²⁶ During the following week they proceeded to restore the original number of thirty-two commissioners, and passed the amended bill on the afternoon of Friday 31 January, at the same time as they passed the ordinal bill which had just returned from the Commons. It then returned to the House of Commons for final approval, which was granted in a first reading on the same day and the two further readings on 1 February 1550, the last day of the session.²⁷ As in the 1536 statute, an obligation was laid on the commission to have its work completed and ready for enactment within three years from that date.

The format of thirty-two members had, by this time, become traditional (even though the commission had still never met), providing for equal representation from the clergy and the laity, though there were some differences of detail from what had obtained previously. According to the 1550 statute, the clergy had to include at least four bishops, but the lay representatives were no longer required to be members of the two houses of parliament. Instead, at least four had to be common lawyers.²⁸ Nothing more was done until 6 October 1551, when the privy council finally approved a provisional list of thirty-two names.²⁹ With one or two slight alterations, this list reappears in the journal of King Edward VI for 10 February 1552,³⁰ and the actual commission, containing the final list of approved names, is in the patent rolls dated 12

February 1552.³¹ The Privy Council also provided for the appointment of a drafting committee of eight, drawn equally from each of the four groups which made up the commission, which was constituted by royal proclamation on 11 November 1551.³² It was envisaged that this committee would do the work of preparing and editing the proposed canons, which it would then submit to the full commission for ratification. The *Reformatio* was essentially the work of this drafting committee (or part of it). Whether the full commission of thirty-two ever met to ratify their work is unknown and probably unlikely, but if it did, it could hardly have done any more than rubber stamp the finished text.

The drafting committee began its work on 12 December 1551³³ and was in full swing by early March 1552.³⁴ But not everyone was pleased by this progress, and there is some evidence that Nicholas Ridley and Thomas Goodrich were doing their best to hinder its work because they feared what the consequences of too radical a reform would be.³⁵ Anxiety over the approaching deadline soon set in and became sufficiently serious that a bill for a new commission was read twice in the House of Lords and engrossed on 1 April 1552.³⁶ It got no further, but on 14 April the House of Commons voted to extend the three-year time limit for completing the work, and sent the bill to the Lords. There it was read twice but failed to pass, as Parliament was adjourned the following day and there was no time to get it through.³⁷

The need to respect the 1 February 1553 deadline seems to have concentrated minds wonderfully, especially when we consider that many of the same people were concurrently engaged on a new prayer book and on what were to become the Forty-two Articles of Religion. In a letter to Heinrich Bullinger dated 5 October 1552, Richard Cox mentioned that the revised prayer book had been approved³⁸ and the articles of religion were calendared among the state papers on 20 October.³⁹ The same letter makes a veiled allusion to difficulties being encountered in the production of the *Reformatio*, and two letters dated the previous day also mention it.⁴⁰ Then on Saturday 8 October the Privy Council asked Cranmer to delay his departure from London until the following Tuesday, because they wanted to discuss 'certain matters' with him.⁴¹ Among those matters may have been canon law reform, which according to a note penned by King Edward VI (on 13 October) figured on the Council's agenda at that time. But if Cranmer was present for the discussion, it must have occurred on 11th October, since he retired to Canterbury the following day.⁴² It seems quite possible, even

probable, that this meeting provided the occasion for which the manuscript in the British Library now known as 'MS Harleian 426' was compiled. It is clearly in an unpolished state, which may be explained by the need for haste at this juncture. It may be that Archbishop Cranmer put together the titles which he already had, re-ordering them along the way, in anticipation of his discussion with the Privy Council. Drafting was still going on and at the last minute four extra titles were included, though this happened too late for them to be edited or even added to the table of contents. It may even be that the one or two changes which are in an unidentified hand were made at this meeting by someone who was particularly sensitive to the claims of the royal supremacy.⁴³ In any event, it seems that the Privy Council must have encouraged the work to go forward towards completion in time to meet the deadline, since that is what actually happened.

The Reformatio legum ecclesiasticarum

It is immediately obvious to anyone who compares the *Reformatio* with the Henrician canons of 1535 that they are very different kinds of documents. Whereas the Henrician canons are little more than a compilation of existing sources, occasionally re-worded, contracted or even slightly expanded, the *Reformatio* is an independent work in its own right. Only very occasionally can it be shown to have quoted directly from an earlier source,⁴⁴ and in many cases what we are really looking for are precedents, rather than sources in the strict sense of the term. But although this is true, it would be a great mistake to go to the opposite extreme and claim that the *Reformatio* was a serious attempt to suppress medieval canon law and replace it with something which reflects the Protestant reformation, the ideas of certain reformed theologians, or a humanist desire to recover the 'purity' of ancient Roman law. Once we understand that the drafting committee of 1551-52 was at least as concerned with producing a text in what to them was an elegant Latin style as it was in changing the law, we shall see that behind the rhetorical flourishes and reclassified grammar there is a very substantial continuity with the medieval tradition. This is particularly true in the titles which deal with purely legal matters,⁴⁵ where the medieval inheritance accounts for at least ninety-five percent of the material, and virtually all of the remainder can be ascribed to the work of fifteenth and sixteenth century canonists working in that tradition. Protestantism is largely confined to the

doctrinal titles,⁴⁶ though reformed ideas can also be found in the titles which deal with worship and church order.⁴⁷ The titles dealing with matrimony and divorce are something of a grey area, in that they touch on both doctrine and ecclesiastical law, which may explain why most of the disputes about legal ‘innovations’ in the *Reformatio* have focussed on them.⁴⁸

The first and most obvious place to look for sources is in the Henrician canons of 1535, which the *Reformatio* was originally intended to take over and complete. There are a large number of thematic correspondences between the two documents, though it is difficult to be sure how much use the drafting committee made of the earlier text, since it also had access to the original sources and may have got its material directly from them instead. Nevertheless, there are certain titles where the correspondence is so great, not merely in the content but (more importantly) in the order in which it is reproduced, that direct dependence on the Henrician canons is virtually certain. Furthermore, these titles are all among those which do not appear in ‘MS Harleian 426’, which suggests that as the drafting committee ran out of time it relied more heavily on the earlier canons and did little more than rewrite them in more elegant Latin.

When we look back behind the Henrician canons to the medieval tradition of canon law, we discover that the compilers of the *Reformatio* were familiar with it and made extensive use of the *Corpus iuris canonici*, though once again without adopting the order of the Decretals. There is a good deal of rewriting of the original material, but relatively little in the way of addition. Omissions (and deletions) are more frequent, but although the abolition of papal supremacy over the Church of England was certainly a factor in this, obsolescence and general inapplicability also played an important rôle. Cases where the old canon law was deliberately altered because of a changed theological perspective resulting from the reformation are extremely rare, and even in the doctrinal titles there are often canonical precedents for what appear at first sight to be ‘Protestant’ ideas.⁴⁹

The Protestantism of the *Reformatio* is most evident in matters of controversy which were living issues in 1552, rather than in historical disputes involving the *Corpus iuris canonici*. Thus, for example, the definition of which biblical books are canonical Scripture was formulated with respect to the then recent decision of the Council of Trent, since the subject was not mentioned in the

old canon law at all.⁵⁰ There are even cases, such as the determination of the number of ecumenical (general) church councils, where the conservative drafters of the *Reformatio* appealed to the canonical tradition for support against what was then coming to be accepted at Rome.⁵¹

The evidence clearly suggests that the drafting committee regarded the *Corpus iuris canonici* as their legal inheritance, just as much as it was of any other church in western Christendom, and that they felt free to use it as such.⁵² The same is true of the work of the classical canonists, which they consulted much more extensively than the compilers of the Henrician canons had. There is no doubt that they made considerable use of Panormitanus, not least because his work was already easily available in more than one printed edition.⁵³ They also made great use of the *Speculum iudiciale* of William Durand (known as the ‘Speculator’), which had just appeared in print.⁵⁴ The drafting committee may also have possessed a copy of the *Tractatus universi iuris*,⁵⁵ an eighteen-volume encyclopedia of canon law which was then brand new, and it is quite likely that they also consulted Hostiensis, who had long been popular in England, though his works were still available only in manuscript.⁵⁶ Beyond that it is hard to say, since the canonists readily copied each other and it is always possible that the drafting committee picked up ideas from lesser known works. All we can do is trace the ideas expressed in the canons of the *Reformatio* to a plausible source in the canonists, which is enough to demonstrate the former’s lack of originality or innovation. What actually transpired in the committee, however, is now impossible to determine.

Another obvious source of legal material is the collection which we now call the *Corpus iuris civilis*, the great compendium of Roman law which had been enjoying a considerable revival since the mid-fifteenth century. Those who promoted this revival were well aware of the links between canon and civil law, but they tended to regard the former as inferior to the latter in its understanding and application of Roman jurisprudence. This point of view was certainly familiar to the drafting committee and was probably shared by them, at least in a general way.⁵⁷ Certainly they did not hesitate to adopt large portions of the Roman civil law, though they were careful to recognize that it was subordinate to English custom and parliamentary statute.⁵⁸ This raises the question of the ongoing relationship between Roman law and English custom, which we have grown used to understanding as

the progressive defeat of the former by the latter, even if it is generally recognized that modern English common law has absorbed a number of Roman elements into its system.

The relationship of the *Reformatio* to the work of the Protestant reformers is a more complex question. On the one hand, there can be no doubt that the document was intended to form the third great pillar of the reformation, standing for church discipline alongside reformed doctrine (the Articles of Religion) and worship (the Book of Common Prayer), and so one might expect to find changes of a similar degree of magnitude in a revised canon law. On the other hand, the text itself is inherently conservative (as was the legal establishment) and in the purely administrative and procedural titles most of its 'changes' can be reduced to attempts to improve the speed, fairness and cost of the administration of justice's universal sources of complaint which scarcely needed a religious reformation to make themselves heard.

The connection between the *Reformatio* and the main constitutional documents of the English Reformation is not difficult to establish. The early titles have a clear link to the Forty-two Articles of 1553, covering most of the same themes in somewhat greater detail. Similarly, there are occasional references to the 1552 Prayer Book as the only recognized form of worship.⁵⁹ John Foxe expressed objections to this in his Preface, as well as in a marginal note next to chapter 19.1, but it seems that he was mainly bothered by those 'remnants of popery' which the prayer book still contained and did not object to set prayers as such.⁶⁰ In any case, it is perfectly clear that the *Reformatio* merely supplemented the various acts of uniformity on this point, and would not have required alteration as long as the principle of having a set form of worship was maintained. The Ordinal (1550) which is attached to the prayer book but is not a part of it, is not mentioned in the *Reformatio* at all, though the threefold pattern of holy orders and the requirements placed on them are clearly assumed by it. Its main effect seems to have been to make a title dealing with ordination unnecessary, and there is nothing specifically geared to that subject in the text. The Homilies (1547)⁶¹ are not mentioned either, although it was clearly assumed that a homily would be read when a sermon was not preached.⁶² It is obviously inconceivable that the drafting committee would have produced a text which did not coincide with the other foundational documents of the Edwardian church; the only surprise is that so little is said

about them. In fact all the classic formularies of the Church of England, apart from the Articles of Religion, could have been altered or abandoned without necessitating any corresponding change in the *Reformatio*.⁶³

Of course, the heart of the matter does not lie in these things, but in the influence, real or imaginary, which was exercised by those Protestant theologians who openly challenged traditional social values, and in particular, the long-standing bans on clerical marriage and on divorce a *vinculo*.⁶⁴ Generally speaking, the reformers wanted to introduce the former and recognize the latter, at least in certain circumstances. On the subject of clerical marriage, the *Reformatio* obviously followed this pattern, which in any case had already been legislated as a parliamentary statute.⁶⁵ Furthermore, it was not simply a matter of granting permission for clerical marriage; denying its validity was regarded as a heresy, and that was clearly a concession to Protestant sentiment.

The question of divorce a *vinculo* is rather different. The scriptural basis for allowing this is not as clear as it is in the case of clerical matrimony, and is restricted to cases of adultery.⁶⁶ Traditional canon law had not made this connection however, probably because it was foreign to Roman law. The Romans regarded adultery as a crime which could be punished like any other felony, whereas divorce was just the dissolution of a marriage and was more about the restitution of the dowry than about punishment in the usual sense. The old canon law had respected this distinction, treating adultery in Book 5 of the Decretals and divorce (however that was understood) in Book 4. The Henrician canons followed suit, in spite of their general re-ordering of the traditional shape of the canons. Here the *Reformatio* clearly innovated along scriptural lines, not only by putting adultery and divorce together in a single title for the first time, but also by allowing for the latter principally in the case of the former.

Little more would have to be said about this were it not for the suggestion, apparently first made by John Keble (1792-1866) in 1857,⁶⁷ but since repeated and developed by a number of different authorities,⁶⁸ to the effect that the doctrine of the *Reformatio* on divorce is dependent on the influence of continental reformers, and more especially on Martin Bucer (1491-1551), who is known to have written extensively on the subject after his arrival in

England in April 1549. Furthermore, it is well known that Bucer's remarks, which take up a considerable portion of his *De regno Christi*, a treatise on the Christian reformation of the state addressed to King Edward VI and actually presented to him (*via* Sir John Cheke) on 21 October 1550, were excerpted and translated by John Milton in the seventeenth century, as part of Milton's campaign in favour of lax divorce laws.⁶⁹ This circumstance led Keble and others like him to suppose that Milton's 'liberal' views on the subject went back to the first generation of reformers and found their way into the *Reformatio* because of Bucer's close connections with men like Archbishop Thomas Cranmer, Peter Martyr Vermigli, Walter Haddon and Sir John Cheke. What evidence is there to support such a view?

Bucer died on 28 February 1551, about eight months before the canon law commission was appointed, but probably he would have been asked to join it had he been alive and well enough to take part.⁷⁰ Sir John Cheke had a copy of *De regno Christi* which would presumably have been available for the commission's use, though it was not printed until 1557.⁷¹ There is no doubt that Bucer's views would have been known to most, if not all, of the members of the drafting committee, who may well have shared them to some extent. But if there is a certain degree of affinity between Bucer's thought and that of the *Reformatio*, consanguinity is another matter altogether. The big difference between the *De regno Christi* and the *Reformatio* lies in the fact that the former advocates complete state control of both marriage and divorce, which the latter does not. Bucer followed the precepts of Roman civil law, many of which were already current in New Testament times, a fact which is often reflected in the works of the church fathers, as he pointed out. But none of the drafters of the *Reformatio* had any thought of relinquishing ecclesiastical jurisdiction over these matters, nor did they show much interest in adopting Roman civil law as their basis for deciding them.⁷² In their eyes, matrimony was still 'holy' even if it was no longer technically a sacrament, and they intended to keep it that way.⁷³ The point was not lost on John Milton, who praised Bucer to the skies because he supported civil marriage and divorce, but who made no mention of the *Reformatio* (even though it had been reprinted twice only a few years before he wrote his tract and he must have known about it), probably because it was much less favourable to his cause. The conclusion therefore must be that the similarities between Bucer and the *Reformatio* are not strong enough to indicate direct dependence of the latter on the former, and that in its basic structure and intention, the

De regno Christi is a different kind of work from the one which the drafting committee was trying to produce.

The possibility that Jan Sasaki may have made a similar contribution with respect to church discipline was put forward by the late Basil Hall, who based his belief on the fact that the Privy Council granted Sasaki a sum of money on 19 November 1551.⁷⁴ Unfortunately, the acts of the Privy Council do not say what the money was for, and Hall's assertion that it was a payment for services rendered in the composition of the *Reformatio* is made impossible by the date, which is too early for that. Perhaps Sasaki did have some say in the final text, since he was a member of the commission of thirty-two, but what that might have been is unknown and is unlikely to have been very significant.

Conclusion: The political failure of the *Reformatio legum ecclesiasticarum*

When Archbishop Cranmer presented the final text of the *Reformatio* to the House of Lords it was criticized and rejected by John Dudley (1502-53), Duke of Northumberland and effective head of the government.⁷⁶ Cranmer and Northumberland were never close, and the latter seems to have objected in principle to the kind of church discipline which adoption of the document would have imposed on the laity as well as on the clergy. But John Foxe believed that the king would have approved it if he had lived to attain his majority, and that its failure to pass in 1553 was due to a political accident rather than to any deep difference of policy between the spiritual and the temporal authorities.⁷⁷

On the other hand, it is quite possible that Northumberland realized that there was a danger inherent in giving the church control of its own affairs. In constitutional terms, it was not clear whether passage of the *Reformatio* would have been an abdication of parliamentary responsibility for the church or a confirmation of it or a curious combination of both. The likelihood is that it would have resulted in a form of legislative autonomy similar in some ways to that which the Church of England has enjoyed since 1919, in which parliament would have claimed supremacy over the church in theory but left most of the day-to-day running of affairs to the bishops and clergy. However, that could easily have led to a situation in which the bishops would pursue policies highly displeasing to parliament, of which the attempt to recover lost property was a prime example, but which would have been awkward for parliament to

deal with without calling the whole idea of autonomy into question. It certainly looks as if Northumberland saw such a situation developing and decided not to take any risks. Whether Edward VI would have pursued a different policy is impossible to say, though no doubt he would have had to put Northumberland in his place if he were to rule effectively at all. Perhaps that would have led to the enactment of the *Reformatio* a few years later, but the problems inherent in granting ecclesiastical legislative autonomy would not have gone away. The probability is that even if the *Reformatio* had become law it would sooner or later have been abrogated, or allowed to become a dead letter, and real control would have reverted to the Crown, if only because the church was too large and too powerful an institution to be left to its own devices.

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ENDNOTES

- 1 For a full discussion of this, see G.L. Bray, *Tudor church reform. The Henrician canons of 1535 and the Reformatio legum ecclesiasticarum* (Woodbridge, 2000).
- 2 'The supplication of the Commons', in G.L. Bray, *Documents of the English Reformation* (Cambridge, 1994), pp. 51-6.
- 3 *Ibid* pp. 57-70.
- 4 This was also the day on which Sir Thomas More resigned as lord chancellor.
- 5 See M. Kelly, 'The submission of the clergy', *Transactions of the Royal Historical Society*, 5th series, XV (1965), 97-119. Kelly's conclusions were largely adopted by S. E. Lehmborg, *The Reformation Parliament 1529-1536* (Cambridge, 1970), pp. 142-3. Warham also brought Henry the seventeen canons which had been agreed by convocation earlier in the year. The king ratified them and they were subsequently included in the official act book. See G.L. Bray, *The Anglican Canons 1529-1947* (Woodbridge, 1998), xxxiv-xl, 2-67.
- 6 Cranmer, who was abroad at the time, was approached to become archbishop after Warham's death, but he delayed for a while and did not return to England until January 1533. See D. MacCulloch, *Thomas Cranmer* (New Haven and London, 1996), pp. 41-78.
- 7 In a letter to Cromwell dated 2 November 1535, Cranmer tried to have Sir William Petre appointed as dean of the arches, but without success. See *Letters and papers, foreign and domestic, of the reign of Henry VIII* (21 vols., London, 1861-1910), IX, 252-3, no. 741.
- 8 On Gwent, see G. Williams, "Two neglected London-Welsh clerics, B. Richard

Gwent", in *Transactions of the Honourable Society of Cymmrodorion* (1961), 33-43. He was admitted to Doctors' Commons on 20 April 1526 (G.D. Squibb, *Doctors' Commons. A history of the college of advocates and doctors of law* (Oxford, 1977), p 143). For further details of his career and appointments, see A. B. Emden, *A biographical register of the University of Oxford, A. D. 1501 to 1540* (Oxford, 1974), p 252.

- 9 Bray, *Documents*, pp. 109-10. This action was followed by the university of Cambridge (2 May), the convocation of York (2 June) and finally the university of Oxford (27 June), by which time the king had already acknowledged it (9 June). It became law on 4 November by the act of supremacy, 26 Henry VIII, c. 1, 1534 (*Statutes of the Realm*, III, 492).
- 10 In 1604 James I ratified the canons of that year even though parliament refused to accept them, and he got away with it. His son Charles I tried something similar in 1640 (though with the added complication that he allowed convocation to continue sitting after the dissolution of parliament, something which was regarded as unconstitutional) but was unsuccessful. However, the legal position was never clarified and remained ambiguous until 1919, when a representative national assembly with limited legislative powers was established for the Church of England. Even then, the exact status of the 1640 canons was still in doubt; they were not finally (and unambiguously) disposed of until 7 May 1969, when the current revised canons were promulgated.
- 11 The pre-reformation canon law still retains a residual authority in the Church of England, at least to the extent that it has not been repealed by statute. For the history and the current position, see Lynne Leeder, *Ecclesiastical Law Handbook* (London, 1997), pp. 5-9, who concludes, p 9: 'All pre-reformation canon law, so far as this is not repugnant nor contrary to the laws of England, forms part of the ecclesiastical law of England.'
- 12 *Letters and Papers*, IX, 181-2, no. 549. For the dates of the law terms as used in the court of arches, see C. R. Cheney, *A Handbook of dates for Students of British History* (3rd edn., Cambridge, 1997), pp. 73-4.
- 13 *Letters and Papers*, IX, 232, no. 690.
- 14 This probably happened on 6 September 1535, when the visitation injunctions were delivered to Oxford, and was certainly complete by 12 September. It is recorded in a letter of that date from Dr Richard Layton, who administered the dissolution, to Thomas Cromwell, in *Letters Relating to the Suppression of Monasteries*, T. Wright (ed.), (London, 1843), pp. 70-1. The Cambridge faculty was dissolved on 22 October 1535, when Dr Thomas Legh, acting as Thomas Cromwell's surrogate, published the king's injunctions in that university. See

- Collection of statutes for the university and colleges of Cambridge (London, 1811), pp. 196-201. The suppression of the canon law faculty is mentioned on p 200. See also J.E. Mullinger, *The University of Cambridge from the Earliest Times to the Royal Injunctions of 1535* (Cambridge, 1873), p 630. On the visitations themselves, see F.D. Logan, 'The first royal visitation of the English universities, 1535', *English Historical Review*, CVI (1991), 861-88.
- 15 27 Henry VIII, c. 15, 1536 (*Statutes of the Realm*, III, 548-9). The three-year period was to be counted from 14 April 1536, the last day of the parliamentary session.
 - 16 35 Henry VIII, c. 16, 1544, (*Statutes of the Realm*, III, 976).
 - 17 This ulterior motive was assumed, for example, in W. Cobbett, *The Parliamentary History of England from the Norman Conquest in 1066 to the year 1803* (36 vols., London, 1806-20), I, cols. 591-2.
 - 18 *Lords' Journals*, I, 359.
 - 19 *Commons' Journals*, I, 11.
 20. *Ibid* I, 12.
 21. *Lords' Journals*, I, 366-7.
 - 22 *Ibid* I, 360.
 - 23 *Ibid* I, 367-71. It was read for the first time on 11 December and for the second on 17 December, at which point it was committed to the king's attorney for revision. It was brought back to the Lords and engrossed on 23 December and was read for the third time on 24 December, when it was passed.
 - 24 *Commons' Journals*, I, 13-15.
 - 25 *Ibid*.
 - 26 *Lords' Journals*, I, 384.
 - 27 *Commons' Journals*, I, 16. It became law as 3-4 Edward VI, c. 11, 1549-50 (*Statutes of the Realm*, IV, 111-12).
 - 28 The number four is an anachronistic survival from the earlier draft, when a commission of only sixteen had been suggested. This is clear from that fact that when the thirty-two were appointed, the bishops and the common lawyers each numbered eight. It will be remembered that earlier legislation had not specified how the clerical representation was to be apportioned.
 - 29 *Acts of the Privy Council*, III (1550-2), 382.
 - 30 *Literary remains of King Edward the Sixth*, J.G. Nichols ed, (London, 1857), p 397.
 - 31 *Calendar of the patent rolls preserved in the Public Record Office. Edward VI* (4 vols., London, 1926), IV (1550-3), 354. Permission for action to be taken, but no list of names, is found in the *Acts of the Privy Council*, III, 471-2, dated 2 February

1552.

- 32 The proclamation is printed at the beginning of the *Reformatio*, immediately after Foxe's preface. Approval for it to be issued was given by the privy council on 9 November. See *Acts of the Privy Council*, III, 410.
- 33 The date is given in a letter from a German student at Oxford, known as John ab Ulmis, to Heinrich Bullinger (1504-75), dated 10 January 1552. See *Original letters relative to the English Reformation, written during the reigns of King Henry VIII, King Edward VI, and Queen Mary, chiefly from the archives of Zürich*, H. Robinson (ed.), (2 vols., Cambridge, 1846-7), II, 444.
- 34 As indicated in a letter from Peter Martyr Vermigli to Bullinger, 8 March 1552. See *Ibid* II, 503. There is also a letter from Ralph Skinner to Bullinger, dated 5 January, but no year is given. Robinson thought it was 1550, but 1552 seems much more likely. See *Ibid* I, 313-14.
- 35 At least this is what Martin Micronius (1523-59), Dutch chaplain in London from 1549-53, claimed in a letter to Bullinger, 9 March 1552. See *Ibid* II, 504.
- 36 *Lords' Journals*, I, 419. There were thirteen bishops present: Canterbury, York, London, Winchester, Bath and Wells, St Asaph, Carlisle, Chichester, Norwich, Bristol, St David's, Gloucester and Exeter. Six of them (Canterbury, London, Winchester, Bath and Wells, Exeter and Gloucester) were on the existing commission.
- 37 *Commons' Journals*, I, 23; *Lords' Journals*, I, 428.
- 38 It was authorized in the act of uniformity passed on 15 April 1552 (5-6 Edward VI, c. 1 - *Statutes of the Realm*, IV, 130-1) and came into use on 1 November 1552. The letter is in *Original letters*, ed. Robinson, I, 123-4.
- 39 *Calendar of state papers, domestic series, of the reign of Edward VI*, C.S. Knighton (ed.), (London, 1992), p 268, no. 739.
- 40 One is from Cranmer to Calvin, printed in *Corpus Reformatorum* XLII (*Calvini opera* XIV), col. 370. The other is from Peter Martyr Vermigli to Heinrich Bullinger, printed in *Gleanings of a Few Scattered Ears*, during the period of the reformation in England, G.C. Gorham (ed.), (London, 1857), p 286.
- 41 *Acts of the Privy Council*, IV, 138.
- 42 Nichols, *Literary Remains*, p 547. According to the Privy Council records, Cranmer did not attend any of its meetings from 12 October 1552 until 21 February 1553.
- 43 This is particularly true of the changes in *Reformatio* 20.23. The one in *Reformatio* 21.1 (in the same unknown hand) is just a simple clarification of the meaning.
- 44 *Reformatio* 46.1, for example, comes from D, 1 c. 5 (Fr, I, 2).
- 45 *Reformatio* 11-18, 25-32, 34-55.
- 46 *Reformatio* 1-7.

- 47 *Reformatio* 19-24, 33.
- 48 *Reformatio* 8-10.
- 49 For example, the belief that the Hebrew and Greek originals of the texts of Holy Scripture should be regarded as the authentic ones for legal purposes (*Reformatio* 1.12) seemed to most people in the sixteenth century to be a 'Protestant' idea, but it appears in Gratian's *Decretum* (D, 9 c. 6 S Fr, I, 17), a fact which must have been known to at least some of the members of the drafting committee.
- 50 Trent, 8 April 1546 (C.O.D., 663-4).
- 51 *Reformatio* 1.14. Cf. D, 15 cc. 1-2 (Fr, I, 34-6). The ecumenical status of the council of Trent was an obvious bone of contention between Rome and the Protestants (not to mention the Eastern Orthodox churches), and gradually the custom of accepting it, along with fourteen medieval councils, as 'ecumenical' in addition to the first four was accepted in Roman Catholic theology. But this has never been defined by the magisterium, as the editors of the *Conciliarum oecumenicorum decreta* (Bologna, 1973) were careful to point out in their preface.
- 52 On this subject, see R. H. Helmholz, *Roman Canon Law in Medieval England* (Cambridge, 1990).
- 53 Nicholas de Tudeschis (1386-1445) was bishop of Palermo (Panormus) and wrote a major commentary on the *Liber extra* which was published in nine volumes (Venice, 1475) and later in six (Lyon, 1524). Either edition could easily have been used by the drafting committee.
- 54 (1231-96). Bishop of Mende (France). Durand completed his *Speculum* about 1271 and revised it about 1287. Additions were later made by Baldus de Ubaldis (c.1327-1400), which were included in the first printed edition (Lyon, 1547).
- 55 Published at Lyon, 1549.
- 56 Henricus de Segusio, Bishop of Ostia (c.1190/1200-71), wrote a famous compendium of canon law called the *Summa aurea* (1250-1) and a commentary on the *Liber extra* (1271). The former was first printed at Lyon (1587) and the latter at Venice (1581), but both had been widely quoted by John of Athon (c.1340) and William Lyndwood (1430) and thus were well known and highly respected in England. Moreover, he had been in England from 1236-44 as part of the household of Queen Eleanor and had therefore witnessed the legation of Otho (1237-41) and perhaps also the initial implementation of Gregory IX's *Decretals* in England. For the impact of his years in England on his subsequent writings, see Noel Didier, "Henri de Suse en Angleterre (1236?-1244)", *Studi in onore di Vincenzo Arangio-Ruiz nel XLV anno del suo insegnamento* (4 vols., Naples, 1953), II, 333-51.
- 57 We should not forget that when the canon law faculties were suppressed in the

universities (1535) they were replaced by chairs in civil law.

58 *Cf. Reformatio* 27.43.

59 *Reformatio* 5.10; 19.16.

60 Of course, Foxe was referring primarily to the 1559 book, which retreated somewhat from the Protestantism of the 1552 book (which was the one referred to in the canon). The extent of his 'puritan' leanings is unclear, and it is known that he did not fully support 'puritanism' as it developed after 1571.

61 Only the first book of homilies was available when the *Reformatio* was written; the second book did not appear until 1563, and the last homily in it was not added until 1571.

62 *Cf. Reformatio* 7.(7).

63 This is a reminder to us of the importance of the articles within the overall settlement; the popular modern view that the essence of Anglicanism is to be found in the prayer book and ordinal, rather than in the articles, cannot be sustained from the evidence. Where the *Reformatio* is concerned, at least, it was the other way round.

64 This is what we now understand by divorce, i.e. the dissolution of a legally valid marriage. See the next section for a detailed discussion.

65 *Reformatio* 2.20. Cf. 2-3 Edward VI, c. 21, 1549-50 (*Statutes of the Realm*, IV, 67).

66 Matt. 19:9.

67 J. Keble, *Sequel to the argument against unduly repealing the laws which treat the nuptial bond as indissoluble* (Oxford, 1857), pp. 201-4.

68 See below. Sachs, 'Thomas Cranmer's *Reformatio*', pp. 105-16, has the fullest discussion of the subject.

69 M. Bucer, *De regno Christi*, F. Wendel (ed.), (Paris, 1955). Translated (except for the titles on divorce) by W. Pauck, *Melanchthon and Bucer* (Philadelphia, 1969). Milton's translation of most (but not all) of the titles on divorce, originally published on 15 July 1644, can be found in *Complete Prose Works of John Milton* (8 vols., New Haven, 1953-82), II, 416-79.

70 He was ill for much of his short stay in England, and was only able to lecture at Cambridge (where he was Regius Professor of Divinity) for a few months in 1550.

71 At Basel.

72 In sharp contrast, for example, to what they had to say about testaments. *Cf. Reformatio*, 27.43.

73 *Cf.* article 26 of 1553 (25 of 1571), *Bray, Documents*, pp. 298-300.

74 *Acts of the Privy Council*, III (1550-2), p 420.

75 B. Hall, 'John a Lasco, the humanist turned Protestant, 1499-1560', *Humanists*

and Protestants (Edinburgh, 1990), pp. 171-207. See especially p 201. This article was originally published as a separate pamphlet (London, 1971).

- 76 Dudley was made earl of Warwick on 16 February 1547, less than three weeks after Edward VI became king. He effectively replaced the duke of Somerset in a kind of *coup d'état* on 10 October 1549, though he did not assume Somerset's title of lord protector. On 11 October 1551 he had himself created Duke of Northumberland, but after the failure of his attempt to place Lady Jane Grey on the throne (6-19 July 1553), he forfeited his titles and was executed (22 August 1553). David Loades describes him in *The Reign of Mary Tudor: Politics, Government and Religion in England, 1553-1558* (2nd edn., London, 1991), p 98: 'Having been hailed as "an intrepid soldier of Christ" after his break with the conservative Wriothesly in 1550, he had become by 1553 the outstanding example of a "carnal gospeller" one who paid lip-service to the faith but whose actions belied his words.'
- 77 What is certain is that if it had passed in March 1553 it would have been repealed later in the year by Mary I, who dismantled all Edward VI's ecclesiastical legislation as soon as she could. See 1 Mary I, c. 2, 1553 (*Statutes of the Realm*, IV, 202).