

## REDISCOVERING ANGLICAN PRIEST-JURISTS

# VI: Francis Mason (1566/7–1621)

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## Introduction

During the reign of Elizabeth I the ecclesial and legal ‘revolution’ under Henry VIII, to establish in England a national church under the royal supremacy, was converted into a ‘settlement’. It steered a course between radical puritans and recusant Catholics. Clothed in legal propriety, this settlement was articulated both juristically and theologically by the great Richard Hooker (d. 1600). After the return to Rome under Mary, the Elizabethan Acts of Parliament re-established the English Church, revived legislation made under Henry VIII and Edward VI, and imposed uniformity in worship. The period also sees the use of ‘soft-law’, like Articles, Admonitions, and Advertisements. Parliament rejects the *Reformatio Legum Ecclesiasticarum* in 1571, but Canons were passed piecemeal in 1571, 1575, 1585, and 1598. The turn of the Welsh Tudors to rule ended in 1603. The Scottish Stuarts came next. The reign of James I (1603–1625) saw bitter dispute between the King and the common lawyers over the royal supremacy in matters ecclesiastical. But there was one lasting legal landmark: the Canons Ecclesiastical 1603/4.<sup>1</sup> This new code was studied theologically by a contemporary cleric, Francis Mason. Whilst several notable civilians from that time have become well-known—such as John Cowell (d. 1611), Daniel Dun (d. 1617), Clement Colmore (d. 1619), and Thomas Ridley (d. 1629), Francis Mason is largely unknown.<sup>2</sup> However, he is very worthy of inclusion in the canon of Anglican priest-jurists. What follows sketches the life and career of Mason, outlines his treatise on the Canons, and discusses that

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<sup>1</sup> See N Doe and S Coleman (eds), *The Legal History of the Church of England: From the Reformation to the Present* (Oxford, forthcoming February 2024), chapters 3 and 4.

<sup>2</sup> For example, R Helmholz, *The Profession of Ecclesiastical Lawyers: An Introduction* (Cambridge, 2019) makes no mention of Mason, but has chapters on Dun and Colmore, and references to Cowell and Ridley.

treatise in a wider context, including comparing it with a similar work by Bishop Edward Stillngfleet (d. 1699).<sup>3</sup>

### The life and career of Francis Mason

Francis Mason was born in County Durham. The identity of his parents is unknown, although it has been suggested that they were poor, and that one brother of Francis may have been Henry, rector of St Andrew Undershaft, and a younger brother, John, in 1620 became vicar of Yazor, Herefordshire.<sup>4</sup> Francis Mason entered Oriel College, Oxford, in 1583, was elected a probationer fellow of Merton College in 1586, and graduated BA in 1587 (from Brasenose College), and MA in 1590 and BD in 1597 (from Merton). He was licensed to preach 30 June 1597. For having ‘vented unseemly words’ against a BD student (Thomas Aubrey), in 1591 Mason was deprived of the liberties of the university for one year; however, he appealed successfully.<sup>5</sup> On the occasion of the visit of Elizabeth I to Oxford in 1592, he participated in an after-dinner debate before the Queen on whether civil disorder can be justified. In 1599 Mason became rector of Sudbourne, with the chapelry of Orford, in Suffolk, holding the office until his death. He married Elizabeth Price. They had three children—and of these, two, Elizabeth and Samuel, were baptised at Orford, in 1604 and 1606, respectively.<sup>6</sup>

Mason was author of several important works. His first, *The Authority of the Church in Making Canons and Constitutions* (1607), a defence of the code of canons of 1603/4, is the principal focus of this study and is treated in its second section. Mason continued to defend the Church of England with a work refuting Roman attacks on the validity of the Anglican episcopacy. The work, *Of the Consecration of the Bishops in the Church of England* (1613), traces the episcopal succession as a ‘golden chain’ which extended ‘link by link’ to bishops of Henry VIII’s time, ‘which our adversaries acknowledge to be canonical’, and beyond.<sup>7</sup> It is dedicated to George Abbot, Archbishop of Canterbury (1611–1633), and stimulated criticism from several Roman Catholics. These criticisms led Mason to work on a new edition of his book (in Latin)—but he abandoned this due to ill-health. However, at the request of Archbishop Abbot, the civilian Nathaniel Brent (d. 1652) worked on the manuscript and it was published in 1625.<sup>8</sup> The book was a success. An English

<sup>3</sup> I am grateful to Susan and Peter Lock, of Halesworth, Suffolk, and their daughter Stephanie (and her husband Edward Doe) for having inspired the idea for this article after a visit in November 2021 to Orford, Suffolk.

<sup>4</sup> B Porter, ‘Mason, Francis (c. 1566–1621)’, *Dictionary of National Biography*, vol 37 (London, 1885–1900), 417–419 at 417. Nothing further is known about John.

<sup>5</sup> *Ibid.*, at 419.

<sup>6</sup> See N Cranfield, ‘Mason, Francis (1565/6–1621)’, *Dictionary of National Biography* (Oxford, 2004).

<sup>7</sup> *Ibid.*; he describes how there may be doubt as to whether Mason wrote the whole of the work.

<sup>8</sup> Mason’s manuscript (in Latin) was entitled *De Ministerio Anglicano*, and Brent’s edition *Vindiciae Ecclesiae Anglicanae*. It was reprinted in 1638. Brent was made Warden of Merton College, Oxford, in 1622, and later became Commissary of the Diocese of Canterbury, and later still judge of the Prerogative Court.

translation by John Lindsay (d. 1768) was published as *A Vindication of the Church of England* in 1728, 1734 and 1778. Mason's defence of the English Church earned him the title *Vindex Ecclesiae Anglicanae*.<sup>9</sup>

In 1619, Mason was appointed as Archdeacon of Norfolk, and as such presided over his own ecclesiastical court. However, according to Bertha Porter, Mason 'appears to have had the archdeaconry bestowed upon him at an earlier date (probably 1614)' but the appointment was contested, and a petition from his wife for the archdeaconry was supported by Abbot, Archbishop of Canterbury, and by John Williams, Bishop of Lincoln.<sup>10</sup> Although he was unwell, the following year Mason attended the court of King James as a royal chaplain and he preached before him twice in January 1621. At this time he states that his recent infirmities had occasioned him to divert his course of life from 'disputation to devotion'.<sup>11</sup> Nevertheless, in his two sermons Mason criticised the morals of the King.<sup>12</sup> Both sermons were published.<sup>13</sup>

Mason died in December 1621 at Orford, where he had built the parsonage. He was buried at St Bartholomew's Church, Orford, four days before Christmas. In 1622 his widow Elizabeth organised the installation of a monument to his memory in the chancel. It is now at the east end of the south aisle in the Lady Chapel. It depicts Mason kneeling at a prayer desk in MA gown, with scarf and ruff. Below the memorial is a curious inscription of 1720 by the rector, Josiah Alsop (d. 1722): it states that Mason was rector of Orford for 80 years (it was but 22), and that he was 110 years old when he died (he was but 55).<sup>14</sup> It has been suggested by Porter that Alsop was probably misled by the signature of Mason occurring at the foot of each page of the register at the church for over 80 years, to attest the accuracy of the transcript into a parchment book of the old paper registers, which was effected during Mason's rectorship.<sup>15</sup>

## The Mason treatise on the Canons Ecclesiastical

Francis Mason wrote a major treatise on the Canons Ecclesiastical 1603/4. It is entitled *The Authority of the Church in making Canons and Constitutions*. It was published in London in 1607. It was re-issued in Oxford in 1634 after the Vice-Chancellor of the University ordered it to be reprinted 'in opposition to what Dr Prideaux read his lecture upon' on 12 July of that year.<sup>16</sup> It was

<sup>9</sup> Porter (note 4), at 418.

<sup>10</sup> Porter (note 4) 418 cites *Hist. MSS. Comm.* 4th Rep. p 277, 'where the suggested date, 1622, is clearly wrong'.

<sup>11</sup> 'Address to the Reader' (London, 1621; republished by Lindsay, 1747).

<sup>12</sup> Cranfield (note 6).

<sup>13</sup> 'Upon David's Adultery' and 'Upon David's Politick Practices' (London, 1621; republished by Lindsay, 1747).

<sup>14</sup> R Tricker, *St Bartholomew's Church, Orford, Suffolk: A Brief Guide* (1997), 9.

<sup>15</sup> Cranfield (note 6); and Porter (note 4).

<sup>16</sup> Cranfield (note 6): citing an 'Act' from Queen's College, Oxford, MS 390, fol. 68r. John Prideaux (d. 1650) was Regius Professor of Divinity, and leaned toward Calvin: see S Hampton, *Grace and Conformity: The Reformed Tradition and the Early Stuart Church* (Oxford, 2021), esp ch 1, 'The Act

further re-issued in London in 1705, with a dedicatory epistle by the non-juror George Hickes (d. 1715) and a recommendation by Henry Compton, Bishop of London (d. 1713), and again in London in 1707. It was also appended to the 1728 London edition by John Lindsay of Mason's *Vindication* and it appears in volume 4 of *Christian Institutes* (1837) by the cleric and scholar Christopher Wordsworth (d. 1846).<sup>17</sup> It is based on a sermon preached by Mason in 1605 (on the third Sunday after Trinity) at the Green Yard, Norwich, and is dedicated to Richard Bancroft (d. 1610), the Archbishop of Canterbury before Abbot.<sup>18</sup>

The work defends the Church's authority to make Canons 'concerning things indifferent', and 'the obedience thereto required: with particular application to the present estate of the Church of England'. The purpose of this enterprise is to keep together the various factions in the English Church on the basis of the Scriptural norm quoted on the title page, beneath the title: 'Endeavour to keep the unity of the spirit in the bond of peace' (Ephesians 4.3).<sup>19</sup> While not stated at the outset, the work was written primarily for clergy.<sup>20</sup> As Cranfield suggests, it is 'a moderate defence' of the church and is intended 'to remind all parties in the church that division was a much greater scandal than that alleged in the enforcement of ceremonies'; and that: 'Mason hoped that "this olive branch", that is, "an exhortation to holy obedience", would serve to correct those carried away "rather from weakness than of wilfulness"'.<sup>21</sup>

The treatise consists of 47 paragraphs. It deals with two broad themes: the 'explication' of the Canons (that is, their foundation, function and field of operation); and their 'application'. It then has 'confutations' of non-conformist views, 'exhortations' and 'inducements' by which Mason seeks to bring those with conscientious objections to conform to the English Church.<sup>22</sup>

### **The 'explication' of the Canons Ecclesiastical**

Mason opens with the Scripture text: 'Let all things be done honestly and by order' (1 Cor. 14.10) which applies not only to the Church of Corinth 'but the Church of England, the Church of Geneva, and all the Churches of the Saints'; he also uses it 'to interlace certain points of Church government concerning

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Lectures of John Prideaux'. In his *A Synopsis of Councils* (1654) 54, of the 1603 Canons he writes: 'The London Synod, in which 141 Constitutions, relating to the pious and peaceable government of the Church, presented to King James by the bishops and others deputed [to] meet together, are worthily confirmed by his regal authority'; one of his 'inquiries' is whether the 'laity have only a receptive not a prescriptive authority in commanding the rites of the Church'.

<sup>17</sup> Porter (note 4), at 418.

<sup>18</sup> *Authority* (1607, first edition, printed for John Norton), title page.

<sup>19</sup> *Authority*, title page.

<sup>20</sup> *Authority*, para 28, at 30: 'my brethren of the Ministry, for whose love I have undertaken this labour'.

<sup>21</sup> Cranfield (note 6) citing *Authority*, Dedication.

<sup>22</sup> *Authority*, para 2, at 2: as this speaks only of 'explication' and 'application', his 'confutations', 'exhortations' and 'inducements', strictly, come under 'applications', but I devote separate sections to them in this study; para 1, at 1, sets out the scope of the sermon. The spellings of Mason's words in this study have been modernised.

the public performance of Prayer, thanksgiving, and prophesying'.<sup>23</sup> Indeed: 'this text is a Canon of Canons' for the church and its government, as 'all Ecclesiastical Canons must be cast in this mould', being 'a golden Canon or Regula' by which 'all Christian Churches must be ruled' in things 'necessary' and things 'indifferent'.<sup>24</sup>

First, then, the *distinction*—between things necessary and things indifferent. For Mason, a thing necessary is one God has 'in his word precisely and determinately commanded or forbidden', 'expressly or by infallible consequence': to break it is a sin. A thing indifferent is one 'the Lord has not so commanded nor forbidden, but is contained in the holy Scripture, rather potentially than actually, comprehended in general directions, not precisely defined by particular determinations'; and 'whether it concern Church or common-wealth', such a thing 'is left to the Lord's vicegerents upon earth, who according to the exigence of the state, may by their discretion command it to be done, or to be left undone, and both without sin'.<sup>25</sup> That is, the Canons *must* reflect 'mandatory' divine laws and *may* reflect 'directory' divine laws.

Second, *examples*—from Holy Scripture and the sacraments. Some things are 'commanded for a season' (e.g. sacrifices), or 'forbidden for a season' (e.g. eating meat), or 'indifferent for a season' (e.g. erecting altars). Others are 'everlastingly commanded' (e.g. the sacraments) or 'everlastingly forbidden' (e.g. to sin), or 'everlastingly left indifferent' (e.g. as to eating, drinking and apparel). Some 'are correspondent to the Law written in our heart', that is, 'the Law of Nature' or 'the Law Moral'—these too may be necessary or indifferent. Indifferent things may become necessary by some other divine commandment; for instance, drinking wine is 'in nature indifferent, but being sanctified by the Lord Jesus to a sacramental use, it is not in the power of man to cancel or annul the holy institution of that heavenly Lawgiver'. In turn, the duty to baptise is necessary as 'the perpetual commandment of Christ'; but whether the water used to baptise is 'in a font, or a bason' or is applied 'by dipping or sprinkling once or thrice, God hath neither commanded, nor forbidden, he has left it as a thing indifferent'. Likewise, 'the Lord's supper is a thing commanded': but whether the bread is leavened or not is a thing indifferent, like the colour of the wine 'red or white'; and 'the cup is necessary', but 'whether it be gold or silver, wood or stone, God ... has left it as a thing indifferent'. Mason then sums up these points: 'Things necessary, are the weightier matters of the Law ... But things indifferent being of a variable nature, are referred to the discretion of the Church'.<sup>26</sup>

Third, *the judges*—that is, of conformity to the Scriptural 'Canon of Canons' (1 Cor. 14.10, quoted by Mason at the outset)—are 'they whom the Lord has made Church governors' to 'control the public judgment of the Church', because 'in the Church of God there must be an order'. In England, 'the King

<sup>23</sup> *Authority*, para 3, at 3; para 4, at 4–5, is a gloss on 1 Cor. 14.10.

<sup>24</sup> *Authority*, para 5, at 4.

<sup>25</sup> *Authority*, para 6, at 4–5. Here Mason echoes Hooker.

<sup>26</sup> *Authority*, para 6, at 6–8: he cites Scriptural texts and (on what wine is used) Calvin, 'Cal. Inst. 4.17.43'.

and those which under the King have the regiment of the Church, lawfully committed unto them, have lawful authority to make Church orders'.<sup>27</sup>

Fourth, *substantive limits*—on the authority of those who make Canons. For Mason, 'though Church governors may make Church lawes, yet they may not establish what they list'. Rather: 'All their Canons must be framed according to the general Canons of the holy Scripture, which may aptly be reduced to these two'—honesty and order (1 Cor. 14.0). In turn, Canons are 'honest' if they are 'decent', i.e. 'to the glory of God, and the edification of the Church, without scandal', and they must effect 'order' as 'God is the God of order, and not of confusion'. So: 'If all things must be done to edification, then Church governors must duly intend the soul's health of God's people, framing all their Canons for the common good', the 'purpose of the Church of Christ'. For example: 'If all things must be done in order, then the Lay-man must not be suffered to intrude himself into the office of a Minister, in ministering the Word and Sacraments: nor the inferior Minister to usurp [what] belongs to the Bishop, but every man must keep his own rank, and therein proceed according to order'.<sup>28</sup>

In a nutshell, for Mason: 'That which God hath certainly commanded, man may not forbid: that which God has certainly forbidden, man may not command or impose by any law'.<sup>29</sup>

Fifth, *obedience*. According to Mason, 'as Church governors may make Church laws, so all that live in the bosom of that Church, must respectively observe the same'; or else, things will not be done 'honestly and according to order' (and so will violate the 'Canon of Canons'; 1 Cor. 14.10). Also, 'as the enacting of good laws, so the observation of them is necessary'; and as 'human laws do so bind the conscience', failure to observe them is a sin for 'God only reigns in the consciences of men', and 'sin is the transgression of the law, that is, of law Divine'. Indeed: 'when God's law is so entwined with man's law, that man's law cannot be broken without the violation of God's law, then the breach of man's law is not without sin'.

Therefore if an Ecclesiastical Canon be made of a matter lawful, in a lawful manner, to a lawful end, by lawful authority, according to the general rules of Scripture, containing in it nothing repugnant to Scripture, nothing contrary to faith or good manners, then that law is approved in the sight of the Almighty.<sup>30</sup>

Sixth, *the implications of obedience*. Mason's view that the Canons Ecclesiastical seem 'not merely human, but in some sort Divine', has important effects:

<sup>27</sup> *Authority*, para 7, at 8–9: citing e.g. Rom 13.1; 1. Pet. 2. 13; and Coke: 'S. Edw. Cook. de iure Regis eccl.'.

<sup>28</sup> *Authority*, para 8, at 9–11; he also gives examples from the field of ceremonies of what needs to be done 'decently' (e.g. in baptism, music, preaching, vesture, and the pulpit), as well as from the natural world.

<sup>29</sup> *Authority*, para 9, at 13.

<sup>30</sup> *Authority*, para 9, at 12.

‘Whosoever resists power, resists the ordinance of God,<sup>31</sup> and they that resist shall receive to themselves condemnation; and therefore we must be subject for conscience sake’. However, ‘Christian liberty’ remains unaffected, because it ‘consists in not breaking wholesome laws’. In point of fact, ‘our Church governors have liberty to establish whatsoever (being in itself indifferent) shall to their wisdom seem most expedient; always provided, that all things be done honestly and in order’. But when they legislate on things necessary, their laws are merely declaratory; thus:

if authority command the same thing which God commands, or forbid that which he has forbidden, this is not the enacting of a new law, but a dutiful declaration and due execution of God’s law. But those things which God has neither commanded nor forbidden, he has left to be disposed by the law of man. In which case the Sovereign may command his subject, and the Church her children; and it is the duty of the inferior therein to be obedient.<sup>32</sup>

Also, nor do such laws, which command or forbid things indifferent, violate Christian liberty:

He that denies this ... dissolves ... government, overthrows families, corporations, Churches, and kingdoms, and wraps all things in the dismal darkness of Anarchy and confusion. And though this be in some sort the abridging of your liberty, yet it is for the common good, and according to the rules of equity, and the Prince or Church in so commanding you, do no further abridge your liberty than God does allow them to.<sup>33</sup>

Seventh, *enforcing* the Canons: the Church ‘may censure [its] disobedient children: God has given to his Church in all ages, not only a rule for direction, but a rod of correction: this is the judgment of all learned men, as appears by the practice of the whole Christian world’.<sup>34</sup>

### **The ‘application’ of the Canons Ecclesiastical**

Mason does not ‘call the present laws in question’, for they exist ‘to quiet and settle the unresolved conscience’ and enable ‘cheerful obedience to God and the Prince’ – and ‘the authority of the Prince in things indifferent, is the very foundation of Christian obedience’.<sup>35</sup> Citing Coke, Mason writes: ‘By the ancient lawes of this realm, this kingdom of England is an absolute Empire

<sup>31</sup> For the idea in Elizabeth jurisprudence and legislation, see N Doe, ‘Ralph Lever (c. 1530–1585)’ (2023) 25 *Ecc LJ* 66–80 at 74.

<sup>32</sup> *Authority*, para 9, at 13.

<sup>33</sup> *Authority*, para 9, at 13–15: in para 9 he cites: on conscience, 1 John 3.5, ‘Calvin and other learned Divines’, such as Beza; on submission to authority, Rom 13.1; on ceremonies, the Act of Uniformity 1559; on law which enjoins what is unjust, Augustine and Gratian, ‘Grat. dist. 1. Cap. 2’.

<sup>34</sup> *Authority*, para 10, at 15: para 10 ends: ‘And thus much of the explication, and so I come to the application’.

<sup>35</sup> *Authority*, para 11, at 15.

consisting of one head, which is the King, and of a body politic, which body politic the law divides into two general parts, the Clergy and the Laity'.<sup>36</sup> However, unlike Coke, for Mason the King is 'an absolute Sovereign [and] by the law of God supreme governor over all persons and causes Ecclesiastical and Temporal'. He then describes how by Act of Parliament, 'Convocation shall be assembled always by virtue of the Kings Writ, and that their Canons shall not be put in execution, unless they be approved by Royall assent'.<sup>37</sup>

Crucially, for Mason, the Canons Ecclesiastical are binding on the clergy and laity alike:

by his sovereign authority published, commanded and enjoined to be diligently observed, executed, and equally kept by *all the subjects of this kingdom*, have a binding force, and are in the nature of a law, and therefore may be justly called the King's Ecclesiastical laws, in making whereof the Church of England without all controversy proceeds honestly and in order.<sup>38</sup>

Mason then provides the reasons or justifications for a selection of Canons, first in the field of 'ministry' (paras 12–26) and then in relation to 'ministrations' (para 27). He uses criteria which he set out in the first part of the treatise: on their nature, makers, purposes, and effect.

First, 'ministry'—in which there is no 'parity': the clergy are subject to their bishops who are 'advanced above the rest, being indued with the power of giving orders and the exercise of ecclesiastical jurisdiction' (as in apostolic times).<sup>39</sup> Some relevant 'honest, decent, and holy' Canons regulate: the time and place of ordination (Canon 31); and the quality and examination of ordination candidates (Canon 34). In this discussion, he opines that 'a general dissolution of parishes, and five reduced to one', is 'a woeful and lamentable reformation'; moreover, 'many Church livings have been so pared to the quick, that now they are hardly able to yield vital nourishment, so sharply have they been lanced and lost their best blood'; Mason goes on to defend the role of the gentry in the exercise of their rights of patronage over church livings.<sup>40</sup>

Then, he defends Canon 36 requiring clergy to subscribe to the Articles of Religion, Book of Common Prayer, and Ordinal, all of which 'contain nothing but that which may be tolerated with a good conscience'. The intention underlying the Canon, according to Mason, is 'to the end that they which should teach other men obedience, may be good subjects themselves'.<sup>41</sup>

<sup>36</sup> *Authority*, para 12, at 15, citing 'Sir Edw. Cooke de iure Reg. eccles. folio 8. b. Monarchy'.

<sup>37</sup> *Authority*, para 12, at 15, citing 8 Hen. VIII [c. 19].

<sup>38</sup> *Authority*, para 12, at 15–16; emphasis added.

<sup>39</sup> *Authority*, para 13, at 16–17 citing e.g. 1 Tim 5.22 and Titus 1.5 and 5.19 and 22, Chrysostom and Ambrose.

<sup>40</sup> *Authority*, paras 14–17, at 17–21.

<sup>41</sup> *Authority*, para 18, at 21–24, citing e.g. Whitgift, Alesius, Calvin (who required subscription from the laity also), and Bucer; para 19, at 24 deals with the laying-on of hands at ordination (also citing Calvin).



Mason moves to appointments: 'our Church is careful to make good Ministers, so she has a singular regard in placing them', but 'many Patrons in placing their Clerks have golden gifts in more precious account than gifts of grace'; so the church in Canon 40 has 'providently appointed an oath against simony'; Mason exhorts ministers 'to make a conscience of this oath, when they enter their livings', for they cannot expect 'God will bless their proceedings, if they shall make their beginnings with simony, and colour it over with perjury'.<sup>42</sup> Moreover, because 'our Church is desirous that men may enter their livings with a good conscience, so she is graciously provident that they may discharge their duty when they are entered' in the form of various rules in the Canons requiring clergy to reside in their livings (Canons 41–45).<sup>43</sup>

In similar vein, Mason justifies the rule requiring clergy to swear to obey the directions of their bishops: 'as the Church of God in all ages has had some which after good and plausible beginnings, have notwithstanding proved firebrands of schism, and sounded the trumpet of sedition ... the oath of canonical obedience is a touchstone to try their present affections, a bridle to curb their future passions, and a gracious means to preserve the precious peace and unity of the Church'.<sup>44</sup> Clergy must also be diligent in their preaching, because 'Sermons heretofore in some places have been very rare and dainty, insomuch that father Latimer in his time compared them to strawberries, which came but once a year'. Therefore, Canon 45 obliges clergy residing on their benefices to preach every Sunday (unless lawfully hindered); and if they are not licensed to preach, they must (under Canon 46) procure monthly sermons, or else read the prescribed homilies publicly set out by lawful authority (under Canon 49).<sup>45</sup>

Next, Canons on clergy lifestyle: 'as our Church desires that doctrine may shine like the light of the Lord upon the holy candlestick, so she is careful that the conversation of her Ministers be such as may adorn the Gospel of Christ', as required by Canon 75: 'In making of which Canon, the Church of England may seem to have set before her eyes that golden sentence, Let thy Priests O Lord be clothed with holiness, and let thy Saints rejoice and sing' (Psalm 132.9). He widens the idea to dress: 'as they should be inwardly decked with godliness and grace, so it is enjoined, that their outward apparel shall be sober and grave, every way correspondent to their calling, that all things may be done honestly and by order' (Canon 74).<sup>46</sup>

Second, Mason comes to 'ministrations'. He describes at length worship according to the Book of Common Prayer. He mentions no Canons, but it is 'our duty to make the most charitable and christian construction' of the Prayer Book: 'and if we cannot of our selves satisfy ourselves, we are referred for resolution of our doubts to the Bishop of the Diocese, of whom what interpretation is to be expected, the Church does teach us, binding him to do

<sup>42</sup> *Authority*, para 19, at 24.

<sup>43</sup> *Authority*, paras 20 and 21, at 24. Needless to say, these Canons contain exceptions to these rules.

<sup>44</sup> *Authority*, para 22, at 24–25.

<sup>45</sup> *Authority*, para 23–24, at 25.

<sup>46</sup> *Authority*, paras 25 and 26, at 25.

nothing contrary to the book, and proclaiming withal in the book, that nothing is ordained which is not the very pure word of God, or evidently grounded upon the same: and therefore his interpretation being accordingly performed should in reason satisfy and content us'.<sup>47</sup>

Needless to say, using only selected Canons, Mason does not offer a comprehensive coverage of the Scriptural and theological foundations or justifications for every norm in the 1603 code; and there are nuances, exceptions, and points of interpretation with which he does not engage. Nor does he present the historic antecedents in Roman canon law of their substantive content. Nevertheless, as we shall see, his theological reflection does presage the later jurists.

### **The 'confutation' of objections to the 'orders and ceremonies' of the English Church**

Mason devotes rather more coverage to his 'confutation' of various objections to the 'orders and ceremonies' of the Church. He does so on the premise that 'God has loved the Church of England above many other Churches', and has 'adorned her with sundry gifts and graces', like 'a beautiful garment of changeable colours'; he lists many of them as things indifferent which all English clergy regardless of whether they tend to Rome or Geneva may perform with a good conscience.<sup>48</sup> Moreover, he refutes the puritan view that the Church should allow only what God in scripture expressly commands—for example, things not commanded by God but which the Church lawfully practises as *adiaphora* include the use of surplices, giving of rings in marriage, signing with the cross in baptism, and kneeling for Holy Communion.<sup>49</sup>

There follow refutations that the 'orders and ceremonies of our Church were not apostolic'. Here he explains that doctrine is 'eternal and unchangeable' and 'plentifully delivered' in Holy Scripture, whereas 'discipline (especially the ceremonies) is for the most part variable, according to circumstance of time and place' and 'sparingly delivered' in Holy Scripture.<sup>50</sup>

He refutes the view 'that our ceremonies are Popish and Antichristian' with examples of acceptable Roman practice that may be more 'inconvenient' than 'unlawful'. He argues that it is not possible to find 'a Church upon the face of the earth so angelical, that it shall be void of all inconvenience' and no-one should, 'for a bare inconvenience, break out of the common pale, transgress the law of his Prince, leave his pastoral charge, and make a rent in the Church of Christ'. Here, as elsewhere in the treatise, and perhaps surprisingly, Mason prays in aid elements of the work of Calvin. For example, at Geneva 'the Wafer-cake' was used at the Lord's Supper which some considered 'a thing so offensive' that they were minded not to receive it; he continues: 'But Calvin

<sup>47</sup> *Authority*, para 27, at 25–29; he cites the Preface to the Prayer Book for the rule about referral. This paragraph ends what Mason describes as his 'declaration', after which comes his 'confutation'.

<sup>48</sup> *Authority*, para 28, at 29–31; he cites e.g. Whitgift's *Admonitions*.

<sup>49</sup> *Authority*, para 29, at 31–32.

<sup>50</sup> *Authority*, para 30, at 32–36.

being demanded his judgment, wished them rather quietly to use it, than to make any tumult in the Church of God' and 'did earnestly admonish them, not to be contentious about a thing indifferent'. As a result: 'The Ministers and people of Geneva, virtuous and godly men, did follow this counsel of Calvin, and quietly yielded their consent, and I hope you will not accuse them that they wounded their conscience'.<sup>51</sup>

Lastly, Mason refutes those who propose for England 'the pattern of reformed Churches, which have rejected these ceremonies, as though it were our duty therein to follow them'. The ceremonies those churches rejected and which the English Church has retained: are things indifferent; fall within the principle of Christian liberty; and represent 'the diversity of ceremonies in divers countries', and 'divers customs in the same country'. Also: 'in Churches independent, one is not bound of necessity to follow another'; but 'it is the duty of every private man to conform himself to the laudable custom of the Church wherein he lives'.<sup>52</sup>

### **The 'exhortation' of Mason to the clergy**

Mason exhorts the clergy 'to perform all holy obedience to God and the Prince', for it is not right to withhold from the 'cheerful discharge of so gracious a duty', because 'the supposed blemishes of our church be inconveniences only', which Calvin described as 'tolerable'.<sup>53</sup> Mason gives the following reasons. Disobedience is based on 'reasons artificially deduced' and 'probabilities only', rather than 'necessary and demonstrative reasons' that the orders, etc. of the English Church are 'contrary to God's word'. The 'conscience of a subject' ought not be 'discharged in disobeying the commandment of his Prince upon deceivable probabilities'. The 'reasons out of Scripture against our orders ... prove no such matters of necessity', as for instance in relation to calls for church discipline by 'lay presbytery' rather than by bishops.<sup>54</sup>

Mason then moves more fully to the matter of conscience. Those who claim 'our orders to be unlawful ... pretend that the conformity required [to them] is against [their] conscience'. He exhorts them to enquire whether theirs may be 'an erroneous conscience', and if it is, whether this can take away 'the sin in disobeying the lawful commandment of lawful authority'. For Mason, it does not; so: 'you are bound in conscience to reform your conscience, or at least to suspend your judgment'. Therefore: 'let me entreat you to have always one eye

<sup>51</sup> *Authority*, para 31, at 36–39; for Calvin, see also nn 26, 33, 41, 53, 59; para 32, at 39–41, cites Elizabeth's Injunctions; para 33, at 42–45, is on vesture; para 34, at 46–48, on music in church: 'For the sweetness of harmonical sounds doth insinuate itself into the soul of man, preparing the affections for the service of God, lifting up the heart towards heaven, delighting the mind, kindling devotion, and ravishing the spirit with celestial joy'.

<sup>52</sup> *Authority*, para 37, at 57–60.

<sup>53</sup> *Authority*, para 38, at 60–61: 'I wish that you which in other things so magnify and admire the person of Calvin, would in this point follow the sound judgment, grave counsel, and tractable disposition of Calvin'.

<sup>54</sup> *Authority*, para 39, at 61–62.

fixed upon the nature of things indifferent, and the other upon the duty of a subject to his Sovereign'.<sup>55</sup>

### **The 'inducements' of Mason to obey the Canons**

Mason concludes with five 'inducements' for tender consciences to conform to the orders and ceremonies of the Church. First, 'the charge which Christ gave to Peter' to feed his lambs—this 'matter of substance' trumps 'a matter of ceremony'.<sup>56</sup> Second, the divine command: let every soul be subject to authority, i.e. the King as 'supreme governor over all persons, and causes ecclesiastical and temporal'.<sup>57</sup> Third, 'regard your mother the Church of England so wailing and wringing her hands to see such distraction in her own bowels'—failure to do so encourages both Rome, which will 'undermine ... Church and common-wealth, while we are contending one with another', and the Brownists,<sup>58</sup> who seek 'an actual separation and rent from the Church of England'. Do so for 'the quiet of the Church', 'the unity of the spirit in the bond of peace', and 'because the points in question are the public constitutions of the venerable convocation, which is the Church of England representative, in whose voice your own voice is included'.<sup>59</sup> Fourth, honour canonical obedience.<sup>60</sup> Finally, 'call to mind the flock of Christ', 'the common people', for whom ministry is given, and who 'shall find more comfort in prayer to God, in the works of charity, and mortifying the deeds of the flesh, than in troubling themselves with such fruitless disputes' about the authority to make canon law. After all: 'it is the shepherd's duty not to wander after the sheep, but to go before them like stars, instructing them in the right way'. Mason ends with a prayer, as he did his sermon.<sup>61</sup>

### **The Mason treatise in context**

To put Mason's treatise in context, three simple observations may be made. First, the treatise is significant because of its date: Convocation made the Canons

<sup>55</sup> *Authority*, para 40, at 62–64; para 41, at 64–65: e.g. Augustine 'forsook his own errors to follow a truth discovered by a Donatist'. There is therefore no 'discredit' in the reformation of conscience (para 42).

<sup>56</sup> *Authority*, para 43, at 65–66, citing John 21.15.

<sup>57</sup> *Authority*, para 44, at 66, citing Rom 13.1.

<sup>58</sup> The 'Brownists' were the followers of Robert Browne (d. 1633), the puritan separatist.

<sup>59</sup> *Authority*, para 45, at 67–69; he deals too with the counter-argument that the Marian martyrs should not have opposed the return to Rome because Convocation supported that return; again he prays in aid Calvin.

<sup>60</sup> *Authority*, para 46, at 69–72.

<sup>61</sup> *Authority*, para 47, at 71–72: 'To conclude, let us all proceed by one rule, that we may mind one thing. And the Lord of heaven blesse this land, both Prince and people. The Lord blesse this Church and the Ministers thereof. O Lord in thy mercy make up the rents and breaches of Sion. O gracious father knit our hearts to thee, and one to another, that we may love and fear thy name, and keep the unity of the spirit in the bond of peace. Grant this O God of all grace and peace, for thy Son our blessed Saviour his sake, to whom with thee and the holy Ghost be rendered all praise, glory and majesty in the Church, from generation to generation. Amen'.

Ecclesiastical in 1603, James I approved them in 1604, Mason delivered his sermon on them in 1605, and his treatise appears in 1607. It is, therefore, one of the earliest theological accounts, perhaps the earliest, of the Canons Ecclesiastical. His view that the Canons were generally binding differs from that of Edward Coke (d. 1634) whose 'On the power of the Church to Make Canons' (which echoes Mason's title) held that Convocation alone could not make binding laws for ecclesial 'outward government', but it could 'for and concerning things properly belonging to doctrine and divine knowledge for the institution of the soul and reformation of conscience'.<sup>62</sup> Yet, Mason's view was common at the time, and appears in Hooker (d. 1600) and in *Bird v Smith* (1606), although others (including some judges) shared Coke's view.<sup>63</sup> Later clerical jurists continued to hold that the Canons of 1603 bound the laity (including Gibson (1713)), but of course in *Middleton v Crofts* (1736) Lord Hardwick in King's Bench famously held that they only bound the clergy unless declaratory of statute and common law—the Canons did not of their own force bind the laity because they were merely created by a clerical assembly in which the laity had no representation; and they had not been approved by Parliament.<sup>64</sup>

Second, Mason was merely one of a number of scholars writing on canon law in the first five years of the reign of James I. Two contemporaries, both civilians, are Cowell and Ridley. John Cowell (1554–1611) was Regius Professor of Civil Law at Cambridge (1594–1611), Master of Trinity Hall (from 1598), Vicar-General to Archbishop Bancroft of Canterbury (from 1608), and author of *Institutiones Juris Anglicani* (1605) and a law dictionary, *The Interpreter* (1607). But unlike Mason, Cowell enters into dialogue with common lawyers, although, like Mason, staunchly supported royal supremacy in ecclesiastical causes.<sup>65</sup> Thomas Ridley (c. 1550–1629) was an advocate at Doctors' Commons, and, *inter alia*, Chancellor of the Diocese of Winchester from 1596, Vicar-General to the Archbishop of Canterbury from 1611 (succeeding Cowell), and member of the Court of High Commission. Like Mason, he did not seek to reconcile the canon law with the common law. Indeed, it was to Ridley, Cowell and Sir Edward Stanhope that Archbishop Bancroft turned, to compile the Canons of 1603. However, Ridley is in a different league to Mason: his *A View of the Civil and Ecclesiastical Law* (1607), dedicated to James I, is an extraordinarily sophisticated book which traces the antiquity of the civil and ecclesiastical law and their importance to England; but, like Mason, he defends the canon law—and Mason would doubtless have

<sup>62</sup> D Smith, *Sir Edward Coke and the Reformation of the Laws: Religion, Politics and Jurisprudence* (Cambridge, 2014), 135–136: no date is given for Coke's treatise. See also F Rogers, *Ecclesiastical Law* (1840), 253: 'Coke says, a convocation may make constitutions, by which those of the spirituality shall be bound, for this, that they all, either by representation or in person, are present; but not the temporality. 12 Rep. 73'. See also *The Case of Convocations* (1611) 12 Co Rep 73.

<sup>63</sup> R Helmholz, 'The Canons of 1603: the contemporary understanding', in N Doe, M Hill and R Ombres (eds), *English Canon Law: Essays in Honour of Bishop Eric Kemp* (Cardiff, 1998), 23.

<sup>64</sup> 2 Atkyns, 650.

<sup>65</sup> See I Blaney and D Coquillette, 'Legal Ideology and Incorporation I: The English Civilian Writers, 1523–1607' (1981) 61 *Boston University Law Review* 71.

approved of Ridley's view that: 'to deny a free course to the Civil and Ecclesiastical Law in this Land, in such things as appertain to their profession, or to abridge the maintenance thereof, is to spoil his Majesty of a part of his honour' and 'to disarm the Church of her faithful friends and followers, and so to cut the sinews ... of Ecclesiastical discipline, and to expose her to the teeth of those, who for these many years have sought to devour her up; and so now would do it, if the merciful providence of God, and gracious eye of the Prince did not watch over her'.<sup>66</sup>

Third, Mason may be compared with other clerical jurists who together in the later seventeenth century likewise linked the Canons to conscience. His proposition that there is a duty under divine law imposed on the consciences of people to obey the human law was more fully developed in the work of Robert Sanderson (d. 1663) – and Jeremy Taylor (d. 1667) built on Sanderson to apply the idea to the 'canons' and 'ecclesiastical law'.<sup>67</sup> Mason is perhaps more like Edward Stillingfleet (d. 1699), Bishop of Worcester (1689–1699). Like Mason, Stillingfleet was an advocate of unity within the Church of England: two of his books deal with the 'mischief' and 'unreasonableness' of separation within the church;<sup>68</sup> and like Mason, he was exercised by the relationship between church law and conscience – the first part (1698) of his two-volume work on 'Ecclesiastical Cases' is on the duties and rights of the parochial clergy 'stated and resolved according to the principles of conscience and law'.<sup>69</sup> More relevant to us is his *Of the Obligation to Observe the Ecclesiastical Canons and Constitutions* (1696).<sup>70</sup>

Like Mason, Stillingfleet deals with 'the Authority by which Ecclesiastical Canons and Constitutions do oblige', and 'the Way and Manner' in which they oblige. He too invokes conscience. Five brief examples: (1) 'if there be not sufficient Authority, there cannot be that Obligation on Conscience, which supposes a legal Exercise of Power, or a just Right to command'; (2) 'Our Obedience to the Orders of our Superiors, is due by Virtue of that Divine Law which requires us to be subject for Conscience-sake'; (3) 'But our Obedience is to be regulated by the Order of Justice, i.e. it ought to be according to Law'; (4) 'Therefore it is necessary, in the first place, to enquire, Whether there be among us any such things as Ecclesiastical Laws, i.e. such Rules, which according to the Constitution of our Government, we are bound to observe'; and (5) needless to say, his conclusion is solidly in the affirmative:

For we are Members of a Church established by Law; and there are legal Duties incumbent on us, with respect, not only to the Laws of God, but of the Realm. For, although our Office and Authority, as Churchmen, has a

<sup>66</sup> Quoted by I Blaney, 'The Source and Limit of the King's Ecclesiastical Law: 1603–1660', in N Doe and S Coleman (note 1), ch 4.

<sup>67</sup> N Doe, 'Robert Sanderson (1587–1663)' (2022) 24 Ecc LJ 68–86.

<sup>68</sup> Namely: *The Mischief of Separation* (1687) and *The Unreasonableness of Separation: Or, An Impartial Account of the History, Nature and Pleas of the Present Separation from the Communion of the Church of England* (1680); he also wrote *A Rational Account of the Grounds of Protestant Religion* (1664).

<sup>69</sup> The second part is on the ecclesiastical jurisdiction and courts.

<sup>70</sup> It is based on a Visitation 29 October 1696.

higher Original; yet the Limitation of the Exercise of it, is within such Bounds as are allowed and fixed by the Law of the Land.

Stillingfleet then discusses 'how far our Ecclesiastical Constitutions are grounded upon the Law of the Land, which cannot be done without searching into the Foundations of our Laws. Which lie in three Things: 1. Immemorial Custom. 2. General Practice and Allowance. 3. Authority of Parliament'.<sup>71</sup> He cites Bracton, Coke, Hale, and others. That is another story.

There is no obvious contemporary parallel, however, with Mason and his effort to identify the theological basis of the Canons which he selected for consideration. For that we have to wait for later generations of clerical jurists, amongst whom Edmund Gibson (1713) stands out.

## Conclusion

On the one hand, Mason's treatise on the authority of the Church to make Canons is significant because: it is one of the earliest to be written after the Canons of 1603 were made; it attempts to uncover the purposes of selected Canons theologically (and in doing so offers a theocratic view of the Canons); and it expresses the common assumption of the age that the Canons were binding on both clergy and laity. In this latter, Mason differs from Coke (whom he occasionally cites). Mason makes every effort to justify obedience to the Canons to enable the puritan faction in the English Church to conform with a good conscience. His use of and admiration for Calvin in this regard is noteworthy. His treatment of things necessary and things indifferent is obviously reminiscent of his contemporary Hooker (d. 1600). However, Mason does not offer a comprehensive coverage of the entirety of the code of Canons of 1603; he merely selects about ten of the 141 Canons, and those applicable in the main to ordination and residence; he does not provide a detailed analysis of these Canons, particularly in terms of the exceptions contained in them or their provenance in the pre-Reformation Roman canon law; nor does he provide a juristic analysis in terms of rubrics, rights and duties, in his very lengthy treatment of the ceremonies of the English Church; and his use of Acts of Parliament is rudimentary and superficial. Nevertheless, the structure of his work is a model of practical or applied canonical reflection as relevant today as in Mason's time: the underlying theology of the Canons in general; the precise theological basis, content, and purpose of selected Canons; the answer to objections; the exhortation to critical reflection; and the invitation to accept the legitimacy of the Canons. Furthermore, his argument that the Canons Ecclesiastical bind also in conscience, presages the work of later clerics in the 'cases of conscience' tradition, notably that of Sanderson (d. 1663). Mason's work is very different from that of his contemporaries, the civilians Ridley and Cowell. But it is similar to yet less juridical than that of Edward

<sup>71</sup> *Obligation*, 326–327; see 362–374 for e.g. Vaughan LCJ (the 1603 Canons bind lay people because the power to create them came from an Act of Parliament, 25 Hen. VIII c. 19) ) and Coke (that they do not).

Stillingfleet at the end of the century. In sum, Francis Mason defended the Canons Ecclesiastical to which he advocated filial, selfless obedience. It is perhaps ironic, then, that the first performance in 1968 of a music drama by Benjamin Britten was at St Bartholomew's Church, Orford, where Mason rests in peace: *The Prodigal Son*.