BENEFIT OF CLERGY

In English law, benefit of clergy was a provision by which clergymen could claim that they were outside the jurisdiction of secular, royal courts and should be tried instead in an ecclesiastical court under cannon law. Through this mechanism many defendants found guilty of certain felonies were spared the death penalty and given a lesser punishment (Briggs et al, 1996; Sharpe, 1999).

Benefit of clergy arose from medieval disagreements on may issues between the Church and the monarchy (Sharpe, 1999). As part of and during these disagreements, the Church claimed that its own courts had jurisdiction over the clergy. One significant difference between the two was that unlike the lay courts, Church courts did not have the power to impose the death penalty. The term 'clergy' included practically every minor official associated with the Church, as well as priests and bishops. To claim one could be included in the term 'clergy' and thus claim benefit of clergy, as a defendant, all a man had to do was read a passage from the Bible, normally the opening verse of psalm 51. This verse became known as the 'neck verse' since many people evaded the death penalty through being able to read it (Emsley et al, 2016). If he could do this he would be granted benefit of clergy. Over time, it was assumed that every literate adult male could claim benefit of clergy for a first offence (Briggs et al, 1996). To deter recidivism, instead of being sentenced to death, the offender would have 'M' (for murderer) or 'T' (for thief) branded on his thumb or the palm of his left hand. However, by being punished by the ecclesiastical courts, the offender claiming benefit of clergy was effectively 'de-frocked' (Briggs et al, 1996). If the man was accused a second time of murder or grand larceny - theft of items valued at twelve pence (or one shilling) or more - he would be tried in the secular courts and would be executed if found guilty.

A number of modifications were made to the practice of benefit of clergy in the early modern period. Some made access to benefit of clergy more difficult. During the 16th century, for example, a group of offences were removed from those eligible for benefit of clergy such as: robbery, burglary, sodomy, bestiality, rape, murder, witchcraft, horse stealing and theft from churches (Sharpe, 1999). In the 18th century, sheep stealing, theft from a ship, in a navigable river or from a Warf, of goods valued at 30 shillings or more, and stealing mail were added to that list (Briggs et al, 1996). Other changes made it easier to claim benefit of clergy such as the two statutes of 1623 and 1692 that extended benefit of clergy to women; a change that Sharpe (1999) claims showed the practice of benefit of clergy to be 'a nonsense, a proposition best supported by legislation of 1624 which extended the right to claim benefit of clergy to women in an age when the ordination of women as priests would have been unthinkable’ (p 96). A further statue of 1706 widened the access even further when it removed the literacy test, probably because increasing lay literacy made such a test meaningless (Emsley et al, 2016).

The most significant change came when the Transportation Act of 1718 made it possible for the courts to sentence non-capital felons (those who could claim benefit of clergy) to seven years' transportation. It also established a term of fourteen years' transportation for capital felons (people not eligible for benefit of clergy) who had received a royal pardon. This Act significantly reduced the number of people claiming to benefit of clergy - it became the exception rather than the norm. Eventually benefit of clergy evolved into a [legal fiction](https://en.wikipedia.org/wiki/Legal_fiction) in which first-time offenders could receive lesser sentences for some crimes (the 'clergyable' ones). Benefit of clergy was eventually abolished in 1823 with the [Judgement of Death Act](https://en.wikipedia.org/wiki/Judgement_of_Death_Act_1823) which gave judges for the first time the discretion to pass lesser sentences on the first-time offenders.

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**See also: Bloody Code [The]; Corporal Punishment; Transportation;**

**Readings**

## Baker, J. H. (2002) *An introduction to English legal history*.(4th ed.) Oxford: Oxford University Press.

Briggs, J., Harrison, C., McInnes A, and Vincent, D. (1996) *Crime and punishment in England: an introductory history*. New York: St. Martin's Press.

Gatrell, V. A. C. (1994) *The hanging tree: execution and the English people 1770-1868.* Oxford, UK: Oxford University Press.

Emsley, C. Hitchcock, T., Shoemaker, R. (2016) 'Crime and justice - punishments at the Old Bailey' *Old Bailey Proceedings Online.* Available at: <http://www.londonlives.org>

Sharpe, J. A. (1999) Crime in Early Modern England 1550-1750. London, UK: Longman.