

Introduction

This book is meant to contribute to the history of one segment of the legal profession, that which was occupied by English ecclesiastical lawyers. It deals with their lives and professional careers from the time a system of ecclesiastical courts, in which most of them practised, came into existence in the thirteenth century up to the time of the curtailment of the scope of ecclesiastical jurisdiction that occurred towards the end of the nineteenth century. It pays particular attention to the years between 1500 and 1640, when the character and future of the courts in which they served was called seriously into question but nonetheless survived, only to be abolished during the Interregnum and then brought back to life in the 1660s.

The book has two parts. The first describes the law that regulated their professional conduct, the nature of their education in becoming lawyers, their reaction to the English Reformation, and the changes and developments during the years that led up to the English Civil War. The second part consists of eighteen descriptive portraits of noteworthy ecclesiastical lawyers. My hope has been that the book's two parts will complement each other, the second providing specific examples of lives and careers spent in the profession described in the first. There is some obvious overlap, repetition even, in the coverage of the two parts. This has proved inevitable. They are both built upon the same body of evidence that is today found in the archives of England's ecclesiastical courts.

Akin to the English common law's division of lawyers into two classes – barristers and attorneys – the profession of the men who administered the church's law was divided into two basic classes: advocates and proctors. The similarity between the divisions in these two English court systems was never exact, and some variety in the terms used within each category also existed.¹

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Common law barristers were sometimes described as advocates, for example. But even when different terms were used, in substance a similarity between these two parts of the legal profession remained. It has long been recognized as an apt parallel. John Cowell (d. 1611) made the connection in his *Interpreter*, for example,² and several other writers, both then and now, reached the same conclusion.³ There were two different classes of lawyer within each jurisdictional system, and in both, the primary distinctions between the two were ones of function and learning. Advocates and barristers argued in favor of the legal positions of their clients; proctors and attorneys took their place in court, thus effectively standing in the client's stead.⁴ Both advocates and barristers were also better educated and more fully versed in legal doctrine than were proctors and attorneys. The judges, who were usually called *Officiales* during the Middle Ages, and later more usually Chancellors in the ecclesiastical courts, were drawn from the first group, only rarely from the second, just as the judges of the courts of common law were chosen from among the barristers.

Recognition of this parallel between the lawyers of the common law and those of the ecclesiastical law also turned out to have at least one meaningful consequence. When the general jurisdiction of the ecclesiastical courts was drastically curtailed in the nineteenth century, the men who had served as advocates in them were invited to continue in practice as barristers without further training; the proctors were similarly permitted to act as solicitors.⁵ At least in areas of law taken over by the common law, the similarity in their prior professional careers was close enough for them to be allowed to continue under a new name.

This book, however, is not directly concerned with this comparison, intriguing though it is and worthy as it also is to be kept in mind. It is about the professional life and work of English advocates and proctors, who were often called civilians from their education and continuing connection with the civil or Roman law. It attempts to describe their preparation for work in the courts of the church and the use they made of what they had learned in

² *The Interpreter (or Booke Containing the Signification of Words)* (Cambridge 1607), s.v. *Attorney*.

³ G Jacob (d. 1744), *New Law Dictionary*, v *advocate* (London 1732); T Wood (d. 1722), *Institute of the Law of England*, Bk IV, c 1 (London 1772), pp 444–45; *Bl. Comm.* vol III *25–26; see also the examples in F Pollock and F W Maitland, *History of English Law*, vol I, (2d edn reissued, Cambridge 1968), p 215, and B Levack, 'The English Civilians, 1500–1750', in W Prest (ed), *Lawyers in Early Modern Europe and America* (London 1981), pp 110–11.

⁴ P Tucker, *Law Courts and Lawyers in the City of London, 1300–1550* (Cambridge 2007), p 272: 'An advocate spoke for his client in the client or attorney's presence ... whereas the attorney substituted for his client'.

⁵ Court of Probate Act, 20 & 21 Vict. c. 77 §§ 40–41 (1857).

that preparation, either at university or as a clerk in an apprenticeship-like position.

Historical study of the legal profession is far from a new subject. In fact, the last quarter of the twentieth century witnessed something close to an explosion of scholarly interest in the history of the legal profession in England. Most of it has focused upon the common lawyers.⁶ That is as it should be. However, even though much less attention has been devoted to the professional work of English civilians, the lawyers whose primary source of employment was in the courts of the church, several exceptions do exist. One need only cite books by Daniel Coquillette,⁷ Brian Levack,⁸ G D Squibb,⁹ J H Baker¹⁰ and also several chapters in academic journals and books of collected essays.¹¹ In addition, several books written to describe the history of the courts themselves have also devoted at least incidental attention to the lawyers who made the system run.¹² So the subject treated here is not written on a blank page. What it is meant to add to the existing studies is derived primarily from two sources not much used in the earlier English language scholarship. The first is the legal literature of the time – the treatment of the lawyers and the legal profession that is found within the *ius commune*. Both the Roman and the canon laws contained rules and principles devoted to the subject, and jurists in England and on the Continent paid attention to it. This mattered in practice. The second addition comes from information derived from an exploration of the

⁶ See the review of the subject by A Musson, 'Men of Law and Professional Identity in Late Medieval England', in T Baker (ed), *Law and Society in Later Medieval England and Ireland: Essays in Honour of Paul Brand*, (London and New York 2018), pp 225–53, at p 225. Its footnotes draw particular attention to works by Brand himself, and also to works by E W Ives, J H Baker, C W Brooks, W R Prest. It also lists other articles devoted to the subject.

⁷ *The Civilian Writers of Doctors' Commons*, London (Berlin 1988).

⁸ *The Civil Lawyers in England 1603–1641* (Oxford 1973).

⁹ *Doctors' Commons: A History of the College of Advocates and Doctors of Law* (Oxford 1977).

¹⁰ *Monuments of Endless Labours: English Canonists and their Work 1300–1900* (London and Rio Grande, OH 1998).

¹¹ See, e.g., P A Brand, *The Origins of the English Legal Profession* (Oxford and Cambridge, MA 1992), pp 143–57; C T Allmand, 'The Civil Lawyers', in C Clough (ed), *Profession Vocation, and Culture in Later Medieval England* (Liverpool 1982), pp 155–82; M Beilby, 'The Profits of Expertise: The Rise of the Civil Lawyers and Chancery Equity', in M Hicks (ed), *Profit, Piety and the Professions in Later Medieval England* (Gloucester 1990), pp 72–90; R O'Day, 'Rise and Fall of the Civilians', in her *The Professions in Early Modern England, 1450–1800* (Harlow 2000), pp 151–61.

¹² See C Chapman, *Ecclesiastical Courts, their Officials and their Records* (Dursley 1992), pp 33–34; R Marchant, *The Church under the Law: Justice, Administration and Discipline in the Diocese of York* (Cambridge 1969), pp 41–60; R Houlbrooke, *Church Courts and the People during the English Reformation, 1520–1570* (Oxford 1979), pp 40–43, 51–52; Brian Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford 1952), pp 40–45.

archives of England's ecclesiastical courts. These contents include the contemporary records and ancillary literature compiled by the English civilians (formularies, case reports, and manuscript notes) for their own use in day-to-day practice. There is a lot of it, and it sheds light on the subject's history that is not available from any other source. The book's primary focus is also upon the working lives of ordinary ecclesiastical lawyers rather than those of the most prominent and successful among them.

One additional word of introduction. The book's concentration is upon what happened in the courts of the English church. It is true that other courts were open to the professional lawyers described in its pages. For instance, courts of Admiralty, Chivalry, and the two English universities all adopted the procedural system in which the civilians were at home. They acted professionally in them. Even the court of Chancery provided a workplace for some of the lawyers trained in the canon and civil laws. In addition, it is true that English civilians were often called upon for diplomatic service; their knowledge of Roman and canon laws was thought to qualify them for dealing with European lawyers. They spoke a common language, one that most English common lawyers were thought not to possess. Some of the best existing scholarship on these lawyers deals with those aspects of the careers of the same men to be described here, as well as the contributions made by civilians to the field of general jurisprudence. Indeed, some of the work of civilians in England has seemed deserving of study because it can be said to have had an impact in the development of aspects of today's legal systems.

Though a legitimate way of studying the subject, this book does not adopt it. The English civilians were primarily ecclesiastical lawyers. The courts of the church provided careers for most of them, and it is upon these courts that this book focuses its attention. Their records have provided the primary basis for descriptions herein. It is also true that much of what the English civilians accomplished in the centuries covered by this book has been swept away by later jurisprudence. Much of it is now obsolete. Some of it now strikes us as unduly harsh or even as slightly foolish. But this book is a work of history, and it appears as part of a series meant to explore different aspects of the relationship between Law and Christianity. From both these perspectives, devoting attention to the routine work of the lawyers who appeared in what were then often called the 'Courts Christian' seems appropriate.