

## Early Modern Ecclesiastical Law and Consistory Courts

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Attention to the law and its development across the medieval and early modern centuries has never been out of fashion and scholars continue to take a keen interest in the topic. The last decade alone has seen the production a number of first-rate studies; volumes honoring the scholarship of Paul Brand and Christopher Brooks and a collection of essays published in the Catholic Press of America's History of Medieval Canon Law series serve as just a few examples. [\(1\)](#) These volumes have assembled among their essayists luminaries in the field of legal history: James A. Brundage; Charles Donahue Jr.; and John H. Baker; to list just a few of names familiar to anyone working in medieval and early modern studies. A frequent contributor to the robust historiography of both canon law and common law is Richard Helmholz, whose outstanding work in the field was itself honored in a collection of essays published in 2015. [\(2\)](#)

Particularly noteworthy in recent scholarship is a focus on practitioners of the law, not just its theorists.

Helmholz has frequently commented on lawyers in his many publications, and they serve as the topic of this new book. In *The Profession of Ecclesiastical Lawyers: An Historical Introduction*, Helmholz examines the exercise of canon and civil law by advocates and proctors who served England's ecclesiastical courts. While the book's geographical focus is not communicated in its title, the study's setting is immediately apparent in Helmholz's prefatory remarks. He identifies the book's purpose as remedying 'one of the deficiencies' (p. ix) of his tour de force *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (published in 2004), the first volume in the Oxford History of the Laws of England series. Here, Helmholz states, his intention is to put the people responsible for the functioning of ecclesiastical justice squarely into the frame.

In the opening body chapters of Part I, 'The Profession Described', Helmholz focuses on the emergence of the profession of ecclesiastical lawyers in England. 'The Law of the Legal Profession: Advocates and Proctors' traces the evolving responsibilities of advocates and proctors, from their Roman origins into the early modern world. The centuries after 1200 saw the establishment of an identifiable profession of ecclesiastical lawyers, characterised by the creation of ethical standards and professional practices, the regulation of fees and numbers of practitioners and the development of educational requirements. A deeper exploration of qualifications is the subject of Chapter 2, 'The Education of Ecclesiastical Lawyers'. Helmholz concurs with others that advocates were the better educated of the two groups, taking university degrees and completing a Year of Silence before taking clients. Less attention has been paid, though, to the training of proctors, a circumstance Helmholz remedies through an examination of two under-utilised types of evidence: instructional literature and the formularies, case reports, and manuscript notes preserved in the archives of ecclesiastical courts. Helmholz notes that some proctors did take degrees, although he identified none who completed doctorates. He also suggests that, like modern college students who begin coursework without graduating, some proctors may have studied at university without earning degrees or leaving traces in the records. University education was not, however, required for proctors. Helmholz concludes that their training was more likely to have been acquired through apprenticeship, including the passing down of knowledge from father to son, and the study of procedural manuals that taught proctors what to say in court and how to prepare documents at each stage of litigation.

The next two chapters ('Ecclesiastical Lawyers and the Protestant Reformation' and 'English Ecclesiastical Lawyers before the Civil War') are organized chronologically, as their titles suggest, rather than thematically. Attention shifts from the medieval development and application of canon and civil law in England to the trials and tests of Reformation, including the potential dangers to the profession posed by the Tudor attempt to rewrite church law, the ultimately stalled *Reformatio legum ecclesiasticarum*. Although the mid-16th-century decades of religious change opened the possibility for dramatic alteration to the profession of ecclesiastical lawyers, Helmholz convincingly presents these years as characterized by considerable stability and continuity.

Helmholz then moves to the early decades of the 17th century, when the ecclesiastical courts stood at the height of their success and, paradoxically, on the brink of disaster, as the crisis of the Civil War loomed. In the course of this discussion, Helmholz offers what may be the volume's most valuable contribution. Where other studies have catalogued threats to and highlighted losses of the profession, Helmholz recounts instead creative attempts by ecclesiastical lawyers to secure jurisdictional expansion. He offers evidence of innovations in the areas of alimony, augmentation of tithes, jactitation (boasting), faculty jurisdiction and pews, and advowson. Not all of the attempts yielded gains, but they do underscore the dynamism of ecclesiastical lawyers in seeking to shore up their place within the kingdom's legal systems. Helmholz reminds readers, too, that the Grand Remonstrance and the Root and Branch Petition complained of the powers of the ecclesiastical courts, a strong indication of the vitality of ecclesiastical justice on the eve of the Civil War. These statements of grievance serve as a caution against dismissing the ecclesiastical courts as unruly, occasionally comical but ultimately ineffectual and easy targets, as some of their critics have done. Helmholz calls on readers to evaluate the courts and their lawyers not through the lens of their mid-17th century suspension and subsequent erosion of authority but instead within their own historical contexts.

Part II, 'The Profession Illustrated', offers eighteen portraits of ecclesiastical lawyers, stretching from Roger

of Worcester and Gilbert Foliot, 12th-century Englishmen whose Continental contacts and opinions shaped canon law, to 19th-century proctor-turned-solicitor Henry Charles Coote, whose career successfully survived the extinction of the Doctors' Commons. The lion's share of this content has already seen an academic audience, thanks to an initiative of *Ecclesiastical Law Journal*, published, as is this book, by Cambridge. Between 2013 and 2017 fifteen of these eighteen biographical sketches appeared in the journal, although not in the chronological order presented here. Only the treatments of Gilbert Foliot, Francis Dickins, and Arthur Brown are entirely original to this book.

These concise biographies provide a focused treatment of each subject's historical setting, contributions, and significance. The diversity of the group Helmholz assembles allows for consideration of the wide variety of roles played by ecclesiastical lawyers. He selects men noted for their erudition at home and abroad (William of Drogheda and Richard Zouche among them) and those lauded as successful university lecturers (Thomas Bever and Francis Dickins). But he also features a proctor and a registrar (Henry Charles Coote and William Somner). This section also draws on under-utilised documents in the archives England's many ecclesiastical courts to great effect. Lawyers' procedural guides and formularies as well as surviving case notes produced by the men in the courtroom shed light on more ordinary careers.

As engaging as each of these micro-histories is, the sum of the full set is definitely greater than each of its parts. Taken collectively, the biographies first establish the vigour and creativity of medieval England's ecclesiastical lawyers and then demonstrate the profession's continued vitality during the decades after Henry VIII's break with Rome and, later, the tumults of the 17th century. This long developmental arc reinforces the conclusions Helmholz posits at the conclusion of Part I: ecclesiastical lawyers weathered the storm of Reformation and would likely have had hope for the future of their profession into the 1630s. As the biographies from the later 17th and 18th centuries make clear, the profession continued to offer satisfaction and success to members, even long after the courts' powers were reduced. Helmholz shows lawyers thoughtful in their application of the law, proud of their work, expansive in their conception of their jurisdiction, and in dialogue both with the texts of the ancient and medieval past and with contemporary theorists and practitioners, on the Continent and beyond.

*The Profession of Ecclesiastical Lawyers* is an illuminating work from one of the leading historians of canon law, and it has value for both a specialist and a general audience. This outstanding study does feel, however, slightly off-balance in terms of chronology, since the scope of Part II exceeds that of Part I by more than two centuries. I would have liked to see that gap eliminated in favour of a single chronological concluding point, a task which could be accomplished with one additional chapter in Part I, carrying the analysis of the state of the courts and their personnel through the 19th century. A brief comment on the general lessons and legacies demonstrated by the individual careers featured in Part II would also give the book a greater sense of closure. It simply moves from the final biographical sketch to the bibliography, without concluding remarks. The issues raised here certainly do not detract from the value of the text. They are driven by my desire to benefit even more fully from Helmholz's insightful analyses, cogent and accessible prose, and obvious breadth of knowledge on a subject over which he has such mastery. One additional observation: due to the challenges of transatlantic mailing during the pandemic, I was granted access only to an electronic copy of Helmholz's book and have not been yet able to consult the hardback volume. Perhaps errors in digitisation explain the few irregularities I identified in my version (a reference on page 63 to the death of Mary I as taking place in late 1588 instead of late 1558, for example).

The challenges of translating information from one format to another serves as one of the bridges between the two publications considered in this review. As every scholar of England's consistory courts knows, the challenges inherent in using representations/re-presentations of information originally delivered in one form but communicated in another is not a modern phenomenon unique to the creation of e-books. Consistory court depositions, such as those from the Consistory Court of the Bishop of Bath and Wells recently published by the List and Index Society, are written accounts of testimony originally delivered orally. The two volumes of depositions transcribed and edited by William Husband reveal a busy court at work in the opening years of the 17th century and, like Helmholz's study of lawyers, move readers beyond institutions to

individuals' experiences with ecclesiastical justice.

Early modern England's ecclesiastical courts have long been of interest to historians. Their records' accounts of defamation, sexual misbehaviour, religious non-conformity, disputes involving probate and marriage, and questions about the value and collection of tithes have allowed for detailed study of various features of early modern England, from F G Emmison's *Elizabethan Life: Morals and the Church Courts*, published 1973, to Martin Ingram's *Carnal Knowledge: Regulating Sex in England, 1470-1600*, published in 2017. (3) Although analysis of consistory court records has typically required long hours in archives or at microfilm readers, accessibility has expanded in recent years thanks to exciting new digital humanities projects which have put records and resources online: the University of York's *Cause Papers in the Diocesan Courts of the Archbishopric of York, 1300-1858*, the University of Exeter's *Court Depositions of Southwest England, 1500-1700*, the *Bawdy Courts of Lichfield* project, and *Consistory: Testimony in the Late Medieval London Consistory Court* are notable examples. (4) Husband's published depositions make a welcome complement to other print and online collections. These new volumes offer readers a thoughtfully arranged view of the inner workings of a bishop's court as well as a memorable glimpse of early 17th-century Somerset.

The first volume contains transcriptions of office depositions, representing nearly 700 manuscript pages, while the second contains instance depositions, approximately 550 manuscript pages. As a set, they show two different sides of ecclesiastical justice: office suits demonstrate the court's disciplinary powers, with actions presented or promoted by court personnel or local churchwardens; instance litigation shows the court as a forum to address grievances within the consistory's jurisdiction by private individuals. Volume I opens with a general discussion of the form, functions, and procedures of English consistory courts. It also includes some specific information about the diocese and its personnel, with a spotlight on Dr Francis James, Chancellor to the Bishop of Bath and Wells. A 'Biographical notes' section follows, offering brief entries on clergy, notaries, and other personnel named in or relevant to the depositions. Each volume concludes a half-page Glossary, Appendices with ancillary information (three for the Volume I and one for Volume II), and a trio of indices (Persons, Places, and Subjects).

A pair of Husband's editorial decisions work particularly well in allowing the depositions to comment on the functioning of the court and in creating a user-friendly format for readers. First, he presents all personal responses from litigants and witness depositions in a given legal action together, in the form of a numbered case file. Reproducing the chronological organisation of the original bound manuscripts would make following the course of an individual cause somewhat cumbersome, since depositions in a single action could be taken on a number of non-successive days, with sometimes pronounced gaps between witnesses, during which the court conducted other business. A complex office suit against one Thomas Pole/Powell/Powle, for example, generated thirty-three depositions, the earliest taken at the start of August 1603 (on p. 309 in the original manuscript) and the last in mid-January 1604 (p. 468). Husband helpfully includes a Calendar at the start of both volumes, indicating the location of individual depositions in the original manuscript, as well as the date and place each deposition was taken, the names of the judge, notary, and deponent, and the name of defendant (office) or title of the action (instance).

A second strength is Husband's presentation of the depositions with their manuscript emendations by the scribe preserved. This editorial choice reminds readers that depositional evidence was oral in its origin and that the written record represents a negotiation between witness and scribe. By using the strikethrough typeface feature to present words and phrases lined through in the original records, Husband lets readers see points of divergence between speaker and scribe, often the result of witness correction when the written account was read back to secure approval and signature. For novice readers of consistory court documents in transcription, this is an important visual means of communicating the jointly-constructed nature of the court's documentary record.

Readers interested in the types of spiritual misbehaviours and interpersonal grievances that drove early modern people into court will find much to reward them in these volumes. As is true for other ecclesiastical jurisdictions during the same time period, sexual offenses, particularly pre- or extra-marital intercourse and

bearing or fathering bastards, commanded a great deal of attention. I counted more than fifty actions of this type in the Office volume, demonstrating the vigilance of churchwardens and officers of the court charged with bringing accused offenders forward for correction. An intense focus on sexual honesty is also on display in instance depositions, where allegations of fornication, adultery, and other inappropriate behaviours generated numerous defamation suits. The desire to protect or restore public reputation ('good name and fame' in contemporary parlance) through the courts was clearly appealing to residents of Bath and Wells, as elsewhere in early modern England. Other alleged misbehaviours in the depositions involve acts of religious deviance on the part of parishioners (blasphemous speech and profaning the Sabbath, for example) and abuse of office by clergymen, primarily through improper performance of their duties or by their failure to maintain standards of morality. Hard-fought probate suits shed light on the distribution of wealth and the impact of family conflict, while contentious disputes over the value and payment of tithes show how competition for resources could pit clergy against their parishioners and neighbour against neighbour.

These volumes will also appeal to readers interested in studying the view of early modern life that witnesses of the ecclesiastical courts offer. Their accounts of the words and deeds of kin, friends, and neighbours offer unprecedented access to the early modern world – even if that access is mediated by the negotiation between witness and scribe discussed above. The records from Bath and Wells capture the voices of a disparate group of both men and women at various stages of life and of the contemporary social hierarchy, from servant Joan Tintyinge, who gave testimony in a defamation suit, to Justice of the Peace Christopher Preston, esquire, who was deposed in a suit involving the tutelage of young heiress Mary Chappell. While deponents' comments on allegations of misbehaviour shed light on the values and attitudes of early modern society, witnesses also revealed a great deal about their daily experiences, the work they did, the company they kept, and what they thought of their neighbours and friends. As they shared their memories and perspectives, deponents talked, sometimes at length, about their own reputations and the reputations of others, as well as offering assessments of their own and others' material worth. Readers of Alexandra Shepard's *Accounting for Oneself* (and those who have followed Jane Whittle and Mark Hailwood's project on early modern work) will discover much in these volumes, too, about people's sense of themselves and others. (5)

The depositions from Bath and Wells make a welcome contribution to the growing collection of consistory court records available outside of record office search rooms, although their utility might have been enhanced through additional context and content. Volume I's introductory material is solid, but not exceptionally illuminating or detailed. A newcomer to the study of consistory courts might benefit from reviewing fine tutorials now available online. A particularly valuable resource is the University of Nottingham's *Archdeaconry Resources* site and its archived special exhibition, 'The Bawdy Courts'. (6) Husband notes in his Preface that the project grew out a University of Bristol MA course (directed from 2000 to 2002) and that the volumes were originally intended for publication by Somerset Record Society prior to their acceptance by the List and Index Society. Perhaps that delay explains the absence of references to more recent scholarship (beyond 2004) or to the digitized collections cataloguing activities of other courts. The inclusion of the type of action in the Calendars would also have been a helpful addition, allowing a reader to identify all defamation or tithe suits with a quick scan, for example. The Subject indices do offer searchability for types of offenses or actions, but they are limited in scope. They do not put all sexual offenses together, for example, so a reader would need to look under multiple headings in Volume I: 'Adultery'; 'Bastard bearing'; 'Fornication'; 'Company keeping'; and 'Inducement for sexual favours'; in order to grasp the volume of litigation in this area.

Examined in tandem with Helmholz's study, the office and instance depositions underscore two important points. First is the busyness of this court in the opening decade of the 17th century. Helmholz cites the volume of litigation in the ecclesiastical courts prior to the Civil War in support of his comparatively optimistic assessment of the profession; Husband's transcriptions certainly demonstrate that the diocesan court hosted its fair share of litigation and kept its court personnel busy. Residents of the diocese clearly availed themselves of the court to secure justice in instance causes and the court's agents were clearly active in pursuing violators of good order and Christian discipline. The officials' vigour did lead to pushback; they were occasionally subject to linguistic abuse and, rarely, even physical assault by those who resented their

work. But the evidence supports the conclusion that operation of ecclesiastical justice in Bath and Wells was functioning at a high level just after the turn of the century.

A second important connection with Helmholz's study involves the personnel of the consistory of the Bishop of Bath and Wells. The importance of the court's notaries is apparent simply by glancing through the Calendars. Either diocesan registrar Edward Huish or notary public Thomas Heath was present at nearly every office deposition, while notary public John Woade was the workhorse of the instance depositions. A number of notaries were named as 'Promoter' in particularly complicated cases and some functioned as proctors. Their presence at court can be glimpsed in the depositions themselves. It was, for example, Mr Mark Tabor, proctor of James Ford, who presented Richard Whitewood with a libel of defamation in a meeting of the court held in the Cathedral Church in Wells in January 1605. When Whitewood responded that he had spoken only of Ford's fornication with his father's servant, not his guilt in fathering a bastard, notary Woade indicated that the words were spoken in the presence of 'the rest of the proctors of the said Court' (II, pp. 73-74).

Dr Francis James, Chancellor to the Bishop of Bath and Wells, is an important background presence in the depositions as well, but on rare occasion the records provide information about his application of the law. Office depositions taken in relation to the complicated sexual history and matrimonial intentions of William Hodges of Ilchester serve as a notable example. In short, Hodges slept with and impregnated two sisters, first Rose and then Eleanor Perrie. Although the first of Hodges's two paramours married another and moved to London, Hodges pined for and wrote love letters to her (inappropriately, in the opinion of witnesses, given that she was then another man's wife). His ongoing devotion to Rose did not keep him from transferring his physical attentions to Eleanor, however. He then reportedly expressed his intention to marry Eleanor. Deponent John Rouse, identified as an advocate, testified 'that the judgment of the Rt. Worshipful Mr Doctor James was that it was an incestuous marriage', since Hodges had fathered a child with Eleanor's sister Rose, and that James 'would divorce the said William and Elinor if they should marry' on those grounds (I, p. 200).

Both Helmholz and Husband expand our understanding of ecclesiastical justice and its impact on early modern people in meaningful ways. Helmholz promises an historical introduction that puts the people—in this case, ecclesiastical lawyers—back into courtrooms as working advocates and proctors and into university classrooms, being educated and educating others as future professionals—and he delivers. The thoughtful sketch he offers of the training and tasks of lawyers and of both continuity and change during the Tudor and Stuart centuries will serve as an invaluable reference to anyone seeking an accomplished, engaging overview of those topics. Equally significant is the compelling case Helmholz makes for reconsidering the traditional narrative of decline by those who cite, among other evidence, the increasing jurisdictional encroachment of the common lawyers. Helmholz does not dismiss the challenges ecclesiastical lawyers faced, but his consultation of archival materials and contemporary literature and his portraits of individuals across eight centuries reveal a more nuanced reality. Husband, too, introduces readers to a memorable group of people: the court officials; alleged malefactors; litigants; and witnesses whose words are represented in the depositions from Bath and Wells. Their accounts, taken across a handful of years at the Tudor-Stuart transition, join the words of witnesses across England in other ecclesiastical courts to reveal more information about how past people understood their work, their faith, their neighbours, and themselves.

## Notes

1. Suzanne Jenks, Jonathan Rose, and Christopher Whittick, eds, *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand* (Leiden, 2012); Michael Lobban, Joanne Bigato, and Adrian Green, eds, *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge, 2019); Wilifried Hartmann and Kenneth Pennington, eds, *The History of Courts and Procedure in Medieval Canon Law* (Washington, D.C., 2016). [Back to \(1\)](#)
2. Troy L. Harris, ed, *Studies in Canon Law and Common Law in Honor of R. H. Helmholz* (Berkeley, 2015). [Back to \(2\)](#)

3. F. G. Emmison, *Elizabethan Life: Morals and the Church Courts* (Chelmsford, 1973); M Ingram, *Carnal Knowledge: Regulating Sex in England, 1470-1600* (Cambridge, 2017).[Back to \(3\)](#)
4. <https://www.dhi.ac.uk/causepapers/> [4] [York] (accessed 17 January 2021); <http://humanities-research.exeter.ac.uk/womenswork/courtdepositions> [5] [Exeter] (accessed 17 January 2021); <https://lichfieldbawdycourts.wordpress.com> [6] [Lichfield] (accessed 17 January 2021); and <http://consistory.cohds.ca/index.php> [7] [London] (accessed 17 January 2021).[Back to \(4\)](#)
5. Alexandra Shepard, *Accounting for Oneself: Worth, Status and the Social Order in Early Modern England* (Oxford, 2015); Jane Whittle and Mark Hailwood, 'The Gender Division of Labour in Early Modern England', *English Historical Review* 73.1 (2020), 3-32.[Back to \(5\)](#)
6. <https://www.nottingham.ac.uk/manuscriptsandspecialcollections/collectionsindepth/archdeaconry/introduction> [8] (accessed 17 January 2021); <https://www.nottingham.ac.uk/manuscriptsandspecialcollections/exhibitions/online/thebawdycourt/introduction> [9] (accessed 17 January 2021).[Back to \(6\)](#)

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### Links

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[5] <http://humanities-research.exeter.ac.uk/womenswork/courtdepositions>

[6] <https://lichfieldbawdycourts.wordpress.com>

[7] <http://consistory.cohds.ca/index.php>

[8]

<https://www.nottingham.ac.uk/manuscriptsandspecialcollections/collectionsindepth/archdeaconry/introduction.aspx>

[9]

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