



## BOOK REVIEWS

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EDITED BY RUSSELL DEWHURST

### **Church Courts and the People in Seventeenth-Century England— Ecclesiastical Justice in Peril at Winchester, Worcester and Wells**

ANDREW THOMSON

UCL Press, London, 2022, 268 pp (paperback £25), ISBN: 9781800083134

In his foreword to this book, the Emeritus Dean of Winchester provides a mini-history of the ecclesiastical courts from the time of the disciple Paul to the present day. By the seventeenth century, says Trevor Beeson, these courts were a relic of a medieval past limping on until their inevitable decline and fall. Beeson gives thanks for their eclipse and suggests that the lesson of this book is that the distaste for the ecclesiastical courts remains, and more reform is needed. Andrews Thompson's first-rate study of the workings of the consistory courts of Winchester, Worcester and Wells during the seventeenth century does not, however, bear out the crude stereotyping of ecclesiastical justice that the foreword would suggest. It is instead a thoughtful, rigorous and eminently readable study into a decade of research in the diocesan archives. He offers the reader a clear and methodical description of the various procedures, personnel, causes and sanctions of the three consistories, and ably plots trends, contextualising them with historical, legislative and cultural goings-on.

What is surprising is the extent to which the eminent lawyers who served as chancellors, vicar generals and officials principal of the three dioceses generally played little role in presiding at and managing the business of their courts. Instead, Thompson details how little most of the chancellors actually intervened in their courts and how to a great extent the business was heard by deputies of lesser stature and training. Nonetheless, Thompson credits the deputies—largely clergymen—with the capability of conducting the day-to-day business of the consistory court and suggests that these clerics might have been well placed to combine a pastoral approach to the application of law in their dioceses.

Thompson's description of the various legal offences and sanctions is accessible and useful. Offences included sex before marriage, incontinence (sexual fornication), bastardy, clandestine marriage, incest, failure to attend church or take communion, working on the Sabbath, recusancy and dissent, misbehaviour, standing excommunicate, non-payment of church rate and

default of the duties of clerical office or as churchwarden. Thompson peppers each category with illuminating data and case studies and shows how changes in cultural attitudes and the strength of the church to enforce these matters varied. Variation from diocese to diocese is also noted.

Studies of the church courts so often concentrate and seek to find the causes of their decline. They commonly have a sense of inevitability about that decline. This book thankfully creates the space and invests the labour in recreating the workings of the courts during the period and does not sacrifice that attention by leaping to discussing and diagnosing decline. Each chapter of this book ends with finding the fault in the courts or other historical ingredients which is pointing to decline. What the book does well to avoid, however, is associating that decline with a value judgement, that in the 'Whig view of history', history only points in one direction, and that is the march of progress. Therefore, Thompson does not overly criticise the courts for hearing moral causes that today would be considered purely private matters such as sex outside of marriage. He recognises that such matters were considered by the government and society in general to be of concern and we might ourselves muse what modern-day pre-occupations such as anti-social behaviour and hate crime are considered worthy of criminal sanction. Where the book does particularly find fault is in the sanctions that the courts have available to them. These became increasingly toothless and out of step with society. It is in chapter 4 and then again in chapter 6 that the book provides one of the best argued explanations for the decline of the courts, attributable in the main to the lack of efficacy in church court sanctions particularly with the abolition of the *ex officio* oath in 1661, the movement of moral matters to the secular courts due largely to acts of parliament and because those courts did have teeth, and because toleration of other protestant religion after the Toleration Act 1689 ended the monopoly of the Church of England as regards conforming to a uniform religious system. Interestingly, Thompson points out the enthusiasm of bishops such as Stillingfleet, Burnet, Patrick, Kennett, Wake and Archbishop Tennison for the Reformation of Manners in the late 1600s and early 1700s to be enforced through the secular courts and how several bishops themselves became magistrates. They therefore 'connived, doubtless unwittingly, in the transfer of business from church to secular courts'.

Where I might have appreciated more guidance—but in a book so full as this with data, stories, insight and trends, one cannot have everything—is to what extent the practices of the consistory courts were rooted in a distinctly canonical and civil law tradition and set within their own historical ecclesiology. For example, it would have been interesting to look at why the courts were so reliant upon oaths. Was this intrinsic to the inquisitorial nature of the church courts? Was the practice of compurgation—where persons known to the accused but who had not necessarily witnessed the offence

would stand up and give on oath testimony as to the truthfulness of the accused's own oath – which comes in for criticism in the book, part of a distinct canon law or Roman tradition or was it just a continuation of a practice from feudal times that had been done away for criminal cases by the Constitutions of Clarendon in 1164? Or a mixture of the two perhaps. He wonders why the courts persisted in carrying on with this practice when the punitive enforcement of oaths had been done away with in 1661 and when secular courts were doing so nicely with juries. In such cases, it might be helpful to consider the extent to which the consistory courts were applying distinctively canonical or civilian principles which were part of the DNA of the church courts in England or not, and how easily it would have been for the courts to abandon such practices and then go over to something like evidence before a jury.

In the appendix to the book are lots of useful tables with the data from the three courts of the breakdown in the different charges over the decades, sanctions imposed, the guilt rate, and so forth. The book is an excellent study and while it could be described as 'local history' by its being rooted in its case studies, it pans out and makes one of the most valuable studies of ecclesiastical justice in the seventeenth century that there is.

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## Christianity and Constitutionalism

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Constitutions are crucial to the flourishing of human communities, whether in state or church. Concerns have recently been expressed by a constitutional watchdog about the erosion of integrity in British public life, partly through a casual attitude to constitutional norms.<sup>1</sup> Constitutions are the matrix of order and liberty which together make for human happiness. In their aspect as political communities the churches require constitutions. Richard Hooker (d. 1600), not mentioned in this book, showed how the church was not only 'a body mystical', but also 'a politic society'. Constitutions underpin the moral integrity of institutions and should be adhered to, especially by leaders in

1 See the Fourth Report from the United Kingdom Constitution Monitoring Group (March 2023), *The Constitution in Review*. <<https://consoc.org.uk/publications/>>, accessed 1 June 2023.