

THE PROFESSION OF ECCLESIASTICAL LAWYERS

Historians of the English legal profession have written comparatively little about the lawyers who served in the courts of the Church. This volume fills a gap; it investigates the law by which they were governed and discusses their careers in legal practice. Using sources drawn from the Roman and canon laws and also from manuscripts found in local archives, R. H. Helmholz brings together previously published work and new evidence about the professional careers of these men. His book covers the careers of many lesser-known ecclesiastical lawyers, dealing with their education in law, their reaction to the coming of the Reformation, and their relationship with English common lawyers on the eve of the Civil War. Making connections with the European *ius commune*, this volume will be of special interest to English and Continental legal historians, as well as to students of the relationship between law and religion.

R. H. Helmholz is Ruth Wyatt Rosenson Distinguished Service Professor of Law at The University of Chicago Law School. He is the author of *Marriage Litigation in Medieval England* (Cambridge University Press 1974), *Roman Canon Law in Reformation England* (Cambridge University Press 1990), and *Oxford History of the Laws of England: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (2014).

LAW AND CHRISTIANITY

Series Editor

John Witte, Jr., Emory University

Editorial Board

- Nigel Biggar, University of Oxford
 Marta Cartabia, Italian Constitutional Court / University of Milano-Bicocca
 Sarah Coakley, University of Cambridge
 Norman Doe, Cardiff University
 Rafael Domingo, Emory University / University of Navarra
 Brian Ferme, Marcianum, Venice
 Richard W. Garnett, University of Notre Dame
 Robert P. George, Princeton University
 Mary Ann Glendon, Harvard University
 Kent Greenawalt, Columbia University
 Robin Griffith-Jones, Temple Church, London / King's College London
 Gary S. Hauk, Emory University
 R.H. Helmholz, University of Chicago
 Mark Hill QC, Inner Temple, London / Cardiff University
 Wolfgang Huber, Bishop Emeritus, United Protestant Church of
 Germany / Universities of Heidelberg, Berlin, and Stellenbosch
 Michael W. McConnell, Stanford University
 John McGuckin, Union Theological Seminary
 Mark A. Noll, University of Notre Dame
 Jeremy Waldron, New York University / University of Oxford
 Michael Welker, University of Heidelberg

The Law and Christianity series publishes cutting-edge work on Catholic, Protestant, and Orthodox Christian contributions to public, private, penal, and procedural law and legal theory. The series aims to promote deep Christian reflection by leading scholars on the fundamentals of law and politics, to build further ecumenical legal understanding across Christian denominations, and to link and amplify the diverse and sometimes isolated Christian legal voices and visions at work in the academy. Works collected by the series include groundbreaking monographs, historical and thematic anthologies, and translations by leading scholars around the globe.

Books in the Series

- The Immortal Commonwealth: Covenant, Community, and Political Resistance in Early Reformed Thought* Davey P. Henreckson
Great Christian Jurists in American History edited by Daniel L. Dreisbach and Mark David Hall
Great Christian Jurists and Legal Collections in the First Millennium Philip L. Reynolds

Cambridge University Press
978-1-108-49906-4 — The Profession of Ecclesiastical Lawyers
R. H. Helmholz
Frontmatter
[More Information](#)

- Law, Love, and Freedom: From the Sacred to the Secular* Joshua Neoh
Great Christian Jurists in French History Olivier Descamps and Rafael Domingo
Church Law in Modernity: Toward a Theory of Canon Law Between Nature and Culture Judith Hahn
Common Law and Natural Law in America: From the Puritans to the Legal Realists Andrew Forsyth
Care for the World: Laudato Si' and Catholic Social Thought in an Era of Climate Crisis edited by Frank Pasquale
Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties John Witte, Jr.
Great Christian Jurists in Spanish History Rafael Domingo and Javier Martinez-Torron
Under Caesar's Sword: How Christians Respond to Persecution edited by Daniel Philpott and Timothy Samuel Shah
God and the Illegal Alien Robert W. Heimbürger
Christianity and Family Law John Witte, Jr. and Gary S. Hauk
Christianity and Natural Law Norman Doe
Great Christian Jurists in English History edited by Mark Hill, QC and R. H. Helmholz
Agape, Justice, and Law edited by Robert F. Cochran, Jr and Zachary R. Calo
Calvin's Political Theology and the Public Engagement of the Church Matthew J. Tuininga
God and the Secular Legal System Rafael Domingo
How Marriage Became One of the Sacraments Philip L. Reynolds
Christianity and Freedom (Volume I: Historical Perspectives, Volume II: Contemporary Perspectives) edited by Timothy Samuel Shah and Allen D. Hertzke
The Western Case for Monogamy Over Polygamy John Witte, Jr.
The Distinctiveness of Religion in American Law Kathleen A. Brady
Pope Benedict XVI's Legal Thought Marta Cartabia and Andrea Simoncini

Cambridge University Press
978-1-108-49906-4 — The Profession of Ecclesiastical Lawyers
R. H. Helmholz
Frontmatter
[More Information](#)

CAMBRIDGE

Cambridge University Press
978-1-108-49906-4 — The Profession of Ecclesiastical Lawyers
R. H. Helmholz
Frontmatter
[More Information](#)

The Profession of Ecclesiastical Lawyers

AN HISTORICAL INTRODUCTION

R. H. HELMHOLZ

University of Chicago



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-49906-4 — The Profession of Ecclesiastical Lawyers
R. H. Helmholz
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108499064

DOI: 10.1017/9781108614887

© R. H. Helmholz 2019

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2019

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Helmholz, R. H., author.

Title: The profession of ecclesiastical lawyers : an historical introduction / R. H. Helmholz.

Description: New York: Cambridge University Press, 2019. |

Series: Law and christianity | Includes bibliographical references and index.

Identifiers: LCCN 2019000692 | ISBN 9781108499064 (hardback) |

ISBN 9781108713092 (paperback)

Subjects: LCSH: Christian lawyers – England – Biography. |

Law – England – Christian influences – History. | Ecclesiastical courts – England – History. | BISAC: LAW / Legal History.

Classification: LCC KD620.H45 2019 | DDC 262.9092/242–dc23

LC record available at <https://lccn.loc.gov/2019000692>

ISBN 978-1-108-49906-4 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>Preface</i>	<i>page</i> ix
<i>Abbreviations</i>	xi
<i>Records in Diocesan Archives</i>	xiii
<i>Table of Citations to the Roman and Canon Laws</i>	xv
PART I THE PROFESSION DESCRIBED	1
Introduction	3
1 The Law of the Legal Profession: Advocates and Proctors	7
2 The Education of Ecclesiastical Lawyers	39
3 Ecclesiastical Lawyers and the Protestant Reformation	59
4 English Ecclesiastical Lawyers before the Civil War	68
PART II THE PROFESSION ILLUSTRATED	93
5 Roger of Worcester (d. 1179)	95
6 Gilbert Foliot (d. 1187)	101
7 William of Drogheda (d. 1245)	108
8 John de Burgh (d. 1398)	115
9 Adam Usk (d. 1430)	121
10 Richard Rudhale (d. 1476)	127

viii	<i>Contents</i>	
11	Daniel Dun (d. 1617)	133
12	Clement Colmore (d. 1619)	139
13	Arthur Duck (d. 1648)	145
14	William Somner (d. 1669)	151
15	Richard Zouche (d. 1661)	157
16	Sir Leoline Jenkins (d. 1685)	162
17	Hugh Davis (d. 1694)	169
18	George Lee (d. 1758)	174
19	Thomas Bever (d. 1791)	181
20	Francis Dickins (d. 1755)	188
21	Arthur Browne (d. 1805)	194
22	Henry Charles Coote (d. 1865)	201
	<i>Bibliography</i>	207
	<i>Index</i>	227

Preface

For two particular reasons, I am grateful for the opportunity to publish this book. One is that it has enabled me to make good use of information uncovered in the course of my research in the archives of the English ecclesiastical courts – a task and a pleasure that has occupied virtually all of my academic career, now over fifty years in length. The other is that it has given me the opportunity to remedy one of the deficiencies of the survey of the history of the English ecclesiastical courts that appeared as a volume in the *Oxford History of the Laws of England* (2004). It left out the people. Here I have endeavored to put some of them back.

For the chance to do this, I owe a special thanks to John Witte, Jr., the Robert Woodruff, McDonald Distinguished Professor of the Law at Emory University. He suggested the possibility to me, and he encouraged me to persevere and to make use of the opportunity. The special combination of scholarly expertise and entrepreneurial ability, both of which he possesses in abundance, are matters of wonder to me. I am grateful for both of them. Two other scholars have also contributed in a special way to the appearance of this book. One is Robert Ombres, OP. He first suggested that I might undertake the collection of short biographies of English civilians that would appear in the *Ecclesiastical Law Journal*. When I demurred, he insisted. I had no alternative, he told me. I surrendered, and it turned out that he had been right. The results form Part Two of this book, and what at first seemed like a chore turned out to be a source of learning and even enjoyment. The other is Sir John Baker. Every living English legal historian owes a debt to him and to his scholarship, of course. I do myself, but his lead in producing the first collection of short biographies of the English civilians, published as *Monuments of Endlesse Labours* in 1998, paved the way for my own efforts along the same lines. In addition, I wish to thank the anonymous reviewer for

the Press, who both read the book's text with care and saved me from mistakes and infelicities aplenty.

I am of course aware that some of the conclusions I reached in the course of research that are presented in these pages are out of line with those of many other writers on the same subject, historians whose work I admire. This book paints a rosier picture of the world of the English ecclesiastical lawyers than the one found in most of these accounts. They see decline; I see stability and even advance in the years before the outbreak of the English Civil War in the 1640s. Some part of this difference is attributable to my own reliance on the evidence found in the manuscript records of the ecclesiastical courts themselves, compared to their preference for governmental and societal sources drawn from outside that circle. But I think not all. In this context, I can only hope that, despite this disagreement, the book manages to add something to the history of the legal profession in England. That is its purpose – to show that the lives and careers of English ecclesiastical lawyers have played a legitimate part in the growth and development of the legal profession.

Abbreviations

TEXTS OF THE *IUS COMMUNE*

Dig. 1.1.1	<i>Digestum Justiniani</i> , Lib. 1, tit. 1, lex 1
Cod. 1.1.1	<i>Codex Justiniani</i> , Lib. 1, tit. 1, lex 1
Inst. 1.1.1	<i>Institutiones Justiniani</i> , Lib. 1, tit. 1, lex 1
Cod. Th. 1.1.1	Codex Theodosianus, Lib. 1, tit. 1, lex 1
Dist. 1 c. 1	<i>Decretum Gratiani</i> , Distinctio 1, can. 1
C. 1 q. 1 c. 1	———, Causa 1, quaestio 1, can. 1
X 1.1.1	<i>Decretales Gregorii IX</i> , Lib. 1, tit. 1, cap. 1
Sext 1.1.1	<i>Liber Sextus</i> , Lib. 1, tit. 1, cap. 1
Clem. 1.1.1	<i>Constitutiones Clementinae</i> , Lib. 1, tit. 1, cap. 1
Comp. I, 1,1,1	<i>Compilatio antiqua prima (secunda etc)</i> , Lib. 1, tit. 1, cap. 1
<i>gl. ord.</i>	<i>glossa ordinaria</i> (standard commentary on the texts of the <i>Corpus iuris civilis</i> and the <i>Corpus iuris canonici</i>)
v.	verbo (reference to <i>glossa ordinaria</i> or other commentary on a legal text)

For references used to refer to the works of commentators on the texts of the *ius commune*, treatises written by English civilians, and other legal works cited in the notes, see the Bibliography at the end of this volume.

GENERAL REFERENCES

<i>Bl. Comm.</i>	William Blackstone, <i>Commentaries on the Laws of England</i> (1765–69)
BL	British Library, London
Bodl.	Bodleian Library, Oxford

<i>Bracton, De Legibus</i>	<i>Bracton on the Laws and Customs of England</i> , ed George Woodbine, trans Samuel Thorne (1968–77)
C & Y Soc.	Publications of the Canterbury & York Society
<i>Coke on Littleton</i>	Edward Coke, <i>First Part of the Institutes ... or Commentarie on Littleton</i> (1628)
<i>Councils & Synods II</i>	<i>Councils & Synods with other Documents Relating to the English Church II</i> , A.D. 1205–1313, ed F M Powicke and C R Cheney (1964)
CUL	Cambridge University Library
DD	<i>Doctores or Domini</i>
d.p.	<i>dictum post</i>
<i>Ecc LJ</i>	<i>Ecclesiastical Law Journal</i>
<i>EHR</i>	<i>English Historical Review</i>
LPL	Lambeth Palace Library, London
<i>LQR</i>	<i>Law Quarterly Review</i>
<i>NILQ</i>	<i>Northern Ireland Legal Quarterly</i>
ODNB	<i>Oxford Dictionary of National Biography</i> (2004 et seq.)
SS	Publications of the Selden Society
Wilkins, <i>Concilia</i>	D Wilkins, <i>Concilia Magnae Britanniae et Hiberniae</i> (London 1757)
ZRG	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte</i>

Records in Diocesan Archives

References to act books and other manuscript material in the records of the English ecclesiastical courts are given by diocese or archdeaconry, followed by the classification used in the office or archives where these records are kept. The latter are:

Canterbury	Canterbury Cathedral Archives, Canterbury
York	Borthwick Institute for Archives, University of York, Heslington, York
Bath & Wells	Somerset Archives and Local Studies, Taunton
Bristol	Bristol Archives, Bristol
Buckingham (archdry)	Centre for Buckinghamshire Studies, Aylesbury
Carlisle	Cumbria Archive Centre, Carlisle
Chester	Cheshire Archives and Local Studies, Chester
Chichester	West Sussex Record Office, Chichester
Cornwall (archdry)	Cornwall Record Office, Truro
Coventry & Lichfield	Lichfield Record Office, Lichfield
Durham	University of Durham Library, Palace Green, Durham
Ely	Cambridge University Library, Cambridge
Essex	Essex Record Office, Chelmsford
Exeter	Devon Archives & Local Studies, Exeter
Gloucester	Gloucestershire Archives, Gloucester
Hereford	Herefordshire Archives and Records, Hereford
Hertford (archdry)	Hertfordshire Archives and Local Studies, Hertford
Lincoln	Lincolnshire Archives, Lincoln
London	London Metropolitan Archives, London
Norwich	Norfolk and Norwich Record Office, Norwich
Oxford	Oxfordshire Archives, Oxford

Peterborough	Northamptonshire Record Office, Northampton
Rochester	Kent History and Library Centre, Maidstone
St. Albans (archdry)	Hertfordshire Archives and Local Studies, Hertford
Salisbury	Wiltshire County Record Office, Trowbridge
Sudbury (archdry)	Suffolk Record Office, Bury St Edmunds Branch
Winchester	Hampshire Archives and Local Studies, Winchester
Worcester	Worcestershire Archive and Archaeology Service, Worcester

Table of Citations to the Roman and Canon Laws

ROMAN LAW

Dig. 1.19	7
Dig. 1.3.31	197
Dig. 3.1.1	10
Dig. 3.1.3	10
Dig. 3.3.1–78	16
Dig. 3.3.1	10
Dig. 3.3.54	18
Dig. 12.2.1–42	124
Dig. 18.1.74	154
Dig. 23.2.1–68	191
Dig. 24.3.2	78
Dig. 25.3.1–9	78
Dig. 25.4.1	118, 186
Dig. 28.1	191
Dig. 32.1.39	43
Dig. 40.1.6	15
Dig. 41.1.9	154
Dig. 42.1.1–64	41
Dig. 42.1.60	42
Dig. 43.26.22	132
Dig. 48.1.13	11
Cod. 1.14.5	43, 143
Cod. 2.7–8	7
Cod. 2.7.11	12
Cod. 2.7.14	36
Cod. 2.12.10	25

Cod. 2.13.15	114
Cod. 5.4.1–29	191
Cod. 5.34.11	179
Cod. 5.59.5	44
Cod. 6.23	191
Cod. 6.33.3	43
Cod. 7.45.1	23
Cod.10.12.2	126
Cod.11.26.1	42
Cod. Th. 2.10.1–5	7
Cod. Th. 2.12.1–7	7
Inst. 1.10.1–13	191
Inst. 2.12	19
Inst. 4.13.11	21
Nov. 71.1	7

CANON LAW

Dist. 7, De pen. c. 1	10
Dist. 12, c. 4	131
Dist. 37 c. 27	119
Dist. 62 c. 2	66
Dist. 63 c. 12	66
C. 3 q. 6 c. 4	104
C. 3 q. 7 c. 2	10
C. 5 q. 3 c. 1	15
C. 5 q. 3 c. 2	11
C. 15 q. 3 c. 1	104
C. 11 q. 3 c. 63	34
C. 35 q. 10 c. 7	14
X 1.6.2	66
X 1.24.1–4	154
X 1.32.1	14
X 1.36.1–11	26
X 1.37.1	14, 19
X 1.37.3	14
X 1.38.1–15	14
X 2.12.5	135
X 2.13.13	43
X 2.14.5	99

Table of Citations to the Roman and Canon Laws

xvii

X 2.19.11	37, 112
X 2.20.37	131, 176
X 2.20.49	37
X 2.24.1–36	124
X 2.24.36	143
X 2.26.7	142
X 2.26.15	131
X 2.28.1–73	99, 106
X 2.28.11	99
X 3.1.1	56
X 3.2.8	42
X 3.2.9	119
X 3.5.12	98
X 3.39.8	98
X 4.2.14	193
X 4.17.13	131
X 4.19.1	43
X 5.1.15	15
X 5.1.17	24
X 5.7.1–16	107
X 5.7.10	10
X 5.12.6	126
X 5.36.9	30
X 5.39.1–60	132
Sext 1.6.13	13
Sext 1.19.1–9	14
Sext 1.19.5	19
Sext 2.6.1	37
Sext 2.14.2	124, 125
Sext 2.15.1–12	99
Sext. 5.2.1–20	107
Clem. 1.10.1–4	14
Clem. 2.1.2	37
Clem. 2.3.1	136
Clem 2.12.1–7	99
Clem. 5.3.1–3	107
Clem. 5.8.1	126
Clem. 5.11.2	37

Cambridge University Press
978-1-108-49906-4 — The Profession of Ecclesiastical Lawyers
R. H. Helmholz
Frontmatter
[More Information](#)
