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NOTABLE ECCLESIASTICAL LAWYERS: XV

Henry Charles Coote (1815–1885)

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Proctors were the workhorses of the ecclesiastical courts in England, as they were across most of western Europe. They prepared the routine documents and made the required appearances on behalf of the parties in the civil causes that came before those tribunals.[1] Every English consistory court was served by a resident staff of proctors. For historians, however, it has not been the proctors but the judges, advocates and academics who have received the lion's share of attention.[2] That emphasis does seem appropriate. By contrast with the advocates, few proctors are found among the men admitted to fellowship in Doctors' Commons in London, and even fewer were authors of treatises that have claimed and retained a place in historical accounts of English ecclesiastical jurisdiction. As a rule, proctors were not university graduates; they were paid accordingly less for their services than advocates were, and they have left fewer marks on the historical record than did the advocates.[3] The few among the English proctors who have attracted any modern interest (like the subject of this note) have done so because they also did something else – something seemingly more worthy of note than the routine practice of ecclesiastical law. This neglect, natural though it has been, risks going too far in ignoring the contributions of the men who made up the great majority of ecclesiastical lawyers.

1 For what has been written about the proctors, see I Churchill, *Canterbury Administration* (London, 1933), vol I, pp 450–452; B Levack, 'The English Civilians, 1500–1750' in W Prest (ed), *Lawyers in Early Modern Europe and America* (London, 1981), pp 108–128; R H Helmholz, 'The education of English proctors, 1400–1640' in J Bush and A Wijffels (eds), *Learning the Law: teaching and the transmission of law in England 1150–1900* (London and Rio Grande, OH, 1999), pp 191–210. Some of the duties of proctors are to be found in a treatise on procedure, printed in F D Logan, *The Medieval Court of Arches* (Woodbridge, 2005), pp 90–97.

2 Examples are W Holdsworth, *History of English Law* (London, 1922–1966), vol XII, pp 646–676; R Storey, *Diocesan Administration in Fifteenth-century England* (second edition, York, 1972); P Brand, *The Origins of the English Legal Profession* (Oxford, 1992), pp 148–157; P Fournier, *Les Officialités au moyen âge* (Paris 1880), pp 32–41; C Donahue Jr, 'The ecclesiastical courts: introduction', in W Hartmann and K Pennington (eds), *History of Courts and Procedure in Medieval Canon Law* (Washington, DC, 2016), pp 265–266.

3 D Coquillette, *The Civilian Writers of Doctors' Commons, London: three centuries of juristic innovation in comparative, commercial and international law* (Berlin 1988), pp 44–94; C Allmand, 'The civil lawyers', in C H Clough (ed), *Profession, Vocation, and Culture in Later Medieval England* (Liverpool, 1982), pp 155–180; R Marchant, *The Church under the Law: justice, administration and discipline in the Diocese of York* (Cambridge, 1969), pp 52–56.

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Examination of the person and career of Henry Charles Coote demonstrates the worth of taking a closer look.

COOTE'S LIFE AND CAREER

Coote was the son of Charles Coote, the advocate who (among other accomplishments) compiled the work known as *Sketches of Eminent English Civilians*. It was the first published catalogue of the lives and careers of the men whose names were found in the subscription book of Doctors' Commons.[4] Wherever he could, the author added a description of their persons and careers that remains valuable to this day. The elder Coote was 55 years old at the time of his son's birth. By then it was certain that he would not be a financial success as an advocate. In the *Sketches*, he described himself as having 'rather patiently waited [for] employment than eagerly sought it'.[5] Too few clients came. Perhaps that points to one reason why the son did not follow his father in the study of civil law at Oxford.

Henry nevertheless did follow the father in his choice of profession and was admitted a proctor at Doctors' Commons in 1838.[6] Within the courts of the Church, he subsequently made a speciality of practice before the Prerogative Court of Canterbury (the PCC), the tribunal which exercised the Archbishop of Canterbury's prerogative jurisdiction over wills and estates of persons who had died with property worth more than £5 in more than one diocese.[7] The PCC was the principal probate court in England, and Coote was proud, even boastful, of the Church's hold on this segment of the English legal system. In his view, 'the nation has owed a deep debt of gratitude to the clergy and this court for the maintenance and defence of the freedom of testamentary disposition'.[8] As he wrote those words, the nation was about to renege on that 'deep debt'. Enactment of the Court of Probate Act in 1857 ended the Church's hold on what remained of its jurisdiction over last wills and testaments. The PCC disappeared. The Act established a secular system of courts of probate in its place.[9]

Coote made the transition, however. Doctors' Commons was wound up but its members were invited to continue as barristers and solicitors in England's other courts.[10] Even if it was a grudging choice, Coote accepted the invitation,

4 C Coote, *Sketches of the Lives and Characters of Eminent English Civilians* (London, 1804).
5 Ibid, p 133.
6 G D Squibb, *Doctors' Commons: A history of the College of Advocates and Doctors of Law* (Oxford, 1977), p 195.
7 See J Ayliffe, *Parergon: juris canonici Anglicani*, tit 'Of last wills and testaments, codicils etc.' (London, 1726), p 534; C Kitching, 'The Prerogative Court of Canterbury from Warham to Whitgift', in R O'Day and F Heale (eds), *Continuity and Change: personnel and administration of the Church of England, 1500–1640* (Leicester, 1976), pp 191–214.
8 H C Coote, *Practice of the Ecclesiastical Courts with Forms and Tables of Costs* (London, 1847), p 31.
9 Court of Probate Act, 20 & 21 Vict c 77 (1857).
10 Squibb, *Doctors' Commons*, pp 102–109.

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extending and exercising his knowledge of the law of wills and trusts in its new setting. He became a solicitor and in 1858, he produced what would become the standard treatise on the subject, *Practice of the Court of Probate*. This work filled an obvious need. Coote's intent was to make 'the old learning of Doctors' Commons, in its new statutory context, available to the unspecialised legal profession'.[11] It was an immediate success. The first edition was followed by the second and third in 1859 and 1860. By the time of Coote's death on 4 January 1885 it had reached its ninth edition. The treatise was not allowed to die with its author; instead it was taken over and continued by T H Tristram (1825–1912). Long known as *Tristram and Coote's Probate Practice*, its most recent edition (the thirtieth) appeared in 2006.[12]

By any measure, Coote's career was one of accomplishment. He also wrote a guide to the law and courts of admiralty.[13] He entered the field of historical controversy, first in journal articles and then in a small book called *A Neglected Fact in English History* (London, 1864). Today, whatever reputation he enjoys among historians comes from the best known of his historical research rather than for his work as a proctor or solicitor.[14] This book's theme, supported by numerous examples, was that many of the laws and institutions of Roman Britain did not disappear with the invasions of the Angles and the Saxons. Rather, they were taken into Anglo-Saxon practice and left a permanent mark on the later history of English law. Modern scholarship has returned to this subject, although its students rarely mention Coote's *Neglected Fact*.[15] Perhaps the work is 'extreme and over-simplified' in some of its treatment of the evidence.[16] It is nonetheless a book that can be read with profit.

COOTE AS A PROCTOR

Whatever his other accomplishments, it is as a proctor that Henry Charles Coote deserves attention in a series devoted to notable ecclesiastical lawyers. Most significantly in this regard, he stands out as the compiler of a noteworthy formulary, a book of documents used in litigation, joined together with his own commentary on its contents. This work was published as *The Practice of the Ecclesiastical Courts* (1847). It is a fine example of the contribution most

11 J H Baker, *Monuments of Endlesse Labours: English canonists and their work 1300–1900* (London and Rio Grande, OH, 1998), p 169.

12 A 'third supplement' to this edition was published in 2010.

13 H C Coote, *The New Practice of the High Court of Admiralty of England* (London, 1860).

14 [Anon], 'Coote, Henry Charles (1815–1885)', rev Nilanjana Banerji, *Oxford Dictionary of National Biography* (Oxford, 2004), <http://www.oxforddnb.com/view/article/6245>, accessed 17 Nov 2016.

15 See J Hudson, *The Oxford History of the Laws of England, Volume II 871–1216* (Oxford, 2012); P Wormald, *The Making of English Law: King Alfred to the twelfth century, volume I: legislation and its limits* (Oxford, 1999); H G Richardson and G O Sayles, *Law and Legislation from Æthelberht to Magna Carta* (Edinburgh, 1966). None mentions Coote's work.

16 It was so described in the *ODNB* entry noted above (n 14).

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characteristic of the work of English proctors. In fact, Coote's *Practice* followed and improved upon a tradition that stretched back to the thirteenth and fourteenth centuries, a tradition that was still alive in the nineteenth.[17] For centuries, proctors had collected the forms then used in the courts into what are now called either formularies or precedent books. Their compilers did so for their own uses and for those of the men who would come after them in the consistory courts. With the passage of time and the shrinkage of ecclesiastical jurisdiction in England, most of these collections have disappeared. But many also remain today – virtually all of them in manuscript.[18] They are to be found in some unexpected places but the largest part remain in diocesan and county record offices throughout England.[19] It is a large class with many variations; some of them are quite short, others are long and exhaustive. Probably their closest equivalent in the world of the common law would be the many books of entries that were compiled and used by generations of English common lawyers.[20]

Little attention has been paid to formularies in recent accounts of the work of the ecclesiastical courts. They seem both elementary and tedious to most modern students. Indeed, as a young man I myself described them as 'of little use in understanding actual practice' in the courts of the Church.[21] This was a mistake on my part. It was true in a sense, but it ignored the function that formularies were meant to serve. They were designed to allow proctors both to understand and to make proper use of the procedures and formal documents needed in litigation. They were not intended to allow historians to draw conclusions about the frequency or the efficacy of particular features of the Church's legal system. Without the forms and other aids found in formularies, proctors would have been at sea in serving their clients. With them, they could act effectively. That is what the formularies were meant to accomplish and it is what they did accomplish. Coote's *Practice of the Ecclesiastical Courts* thus belongs within a long and creditable tradition of his profession.

It is one of the best of its kind but of course necessarily also one of the last – 996 pages in an octavo edition, including 102 pages devoted to the author's scholarly introduction to the history and legal status of ecclesiastical jurisdiction in England. His treatment, the Introduction announced, would be 'confined to the more striking and curious features' of his subject.[22] This is true, at least in part. The volume contained controversial material, such as the forms taken from

17 An informative predecessor, also compiled by a proctor, was T Oughton, *Ordo judiciorum; sive methodus procedendi in negotiis et litibus in foro ecclesiastico-civili* (London, 1738).

18 See eg D M Owen, *Ely Records: a handlist of the records of the Bishop and Archdeacon of Ely* (Cambridge, 1971), pp 29–34.

19 Some have also been dispersed across the world. The University of Chicago, for example, has a copy: Joseph Regenstein Library, Special Collections, MS 1660.

20 See Holdsworth, *History of English Law*, vol V, pp 383–386.

21 R H Helmholz, *Marriage Litigation in Medieval England* (Cambridge, 1974), p 22.

22 H C Coote, *The Practice of the Ecclesiastical Courts* (London, 1847), p 102.

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the disciplinary proceedings brought against Dr Edward Drax Free for gross sexual improprieties, a case that had scandalized Victorian society.[23] Coote also discussed the controversial subject of jactitation of marriage – false and malicious boasting of the existence of a marriage bond. Suits against such boasters were, he noted, 'of very unfrequent occurrence' but, leading as they did to 'a judicial imposition of silence upon the offender', he held to the view that they were nonetheless 'of great practical utility'.[24]

Most of the Introduction, however, is taken up with a sober assessment of the origins of ecclesiastical jurisdiction and a description of its character. It is particularly full in explaining the slow steps that had led to the establishment of the Archbishop of Canterbury's prerogative rights to administer the estates of those who had died with *bona notabilia* in more than one diocese.[25] Coote's narrative takes full account of the canon law on the subject. It comes complete with citation of the texts and mediaeval commentary on texts found in the Gregorian Decretals and also an account of the force of custom in the *ius commune*. In addition, he had at least some familiarity with English common law, citing authority found in the Yearbooks, Glanvill, the *Abbreviatio placitorum*, *Fleta*, and the works of John Selden.[26]

Coote's Introduction thus demonstrates the extent of legal sophistication that a proctor could achieve, despite the lack of a university degree or association with the Inns of Court. It is also balanced by the author's pride in the court system in which he had grown up and prospered. The convenience of the wide dispersal of spiritual courts among local communities, the 'precise and accurate method' of gathering evidence within them, and the base they long enjoyed in the 'refined and ancient' sources of Roman law, taken together, had produced what he called 'the most beneficial consequences for the English law and institutions'.[27] At the same time, Coote was frank in acknowledging the existence of a fault inherent in England's system of ecclesiastical courts. The weakness that afflicted spiritual jurisdiction, he wrote, 'always consisted in its inability to enforce its own decrees'.[28] The courts of the Church depended upon the temporal sword to deal with contumacious defendants.[29] Even with this handicap, for Coote the lasting value of ecclesiastical jurisdiction over the centuries seemed evident. England's law had been enriched by its existence.

23 Ibid, pp 158–176. A modern account of the case and its consequences is R B Outhwaite, *Scandal in the Church: Dr. Edward Drax Free, 1764–1843* (London and Rio Grande, OH, 1997).
24 Coote, *Practice of the Ecclesiastical Courts*, pp 357–361.
25 Ibid, pp 61–86.
26 Ibid, pp 22, 90, 95–96.
27 Ibid, pp 12–13.
28 Ibid.
29 The reference is to the process of Signification to the Chancery.

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CONCLUSION

The greater part of Coote's *Practice of the Ecclesiastical Courts* was not, of course, taken up by its author's discussion of the merits of the Church's legal system. The book was mostly a collection of documents. It provided the forms, together with commentary, that were used by all proctors in the diocesan courts. They had been useful; soon they would be useless. New forms would be needed. Despite Coote's passage to the status of solicitor, it is difficult not to believe that he was anything but saddened when the greater part of the jurisdiction of the ecclesiastical courts was swept away by the Parliamentary statutes a few short years after this work's publication. There was no second edition. Coote had taken pride in his service as a proctor. A proctor's office, he wrote, had always been to assist 'the illiterate or inexperienced client', acting 'to guide him through the difficulties and niceties of his suit'.[30] Very soon thereafter, the disappearance of that office would be a reality he had to accept.

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30 Coote, *Practice of the Ecclesiastical Courts*, p 12.

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