Doctors' Commons: the civilians' influence on equity and trusts

Abstract

The core of this article lies in its broad examination of the influence that the civil law and the now defunct Doctors' Commons may have had on equity and trusts. Doctors' Commons was like an Inn of Court for civil lawyers based in England. Historically, these civilian practitioners had a monopoly over certain legal jurisdictions, including wills and probate. To show the civilians' influence, this article examines Doctors' Commons' dominion over the proving of wills. It further looks at the civil law's possible development of equity's core concepts, with a specific focus on the Graeco-Roman concept of "conscience".

Introduction

This article evaluates the Roman civil law's[1] connexion to equity and trusts in England and Wales.[2] In particular, it looks at this interface by exploring the juristic reach of the now defunct "Doctors' Commons". Doctors' Commons is also known as the "College of Civilians", and more formally as "the College of Doctors of Law exercent in the Ecclesiastical and Admiralty Court".[3] Stein describes Doctors' Commons as 'the equivalent of an Inn of Court [for civil lawyers], part club, part college, part professional association.'[4] It is argued in this work that the civil law and Doctors' Commons played a role in the historic development of equity and trusts.

[1] For this article "civil law" generally means the law originating from ancient Rome, and not the civil law relating to the regulation of disputes between individuals, etc.
[2] While this work recognises the common law as being jurisdictionally that of England and Wales, it shall hereafter simply refer to this system as the "English legal system" or "English common law", for ease of reference.
[3] George D Squibb, *Doctors' Commons: A History of the College of Advocates and Doctors of Law* (Clarendon Press, 1977) 1.
[4] Ibid 1.

The members of Doctors' Commons were 'learned specialists in Canon and Ecclesiastical law trained in the Roman law (civil law) tradition and procedures.'[5] The doctors' ecclesiastic backgrounds are further acknowledged by Squibb, who suggests that 'In earlier times academic lawyers devoted themselves solely to the civil law and, until its study was forbidden in 1535, to the canon law.'[6] Despite their civil law leanings, Squibb opines that there was "no lack of work" for the advocate-doctors.[7]

In a common law system, the existence of civil law lawyers is highly interesting. Indeed, Doctors' Commons acquired a monopoly over three legal jurisdictions, often colloquially summarised as "wills, wives, and wrecks".[8] Historically the civil lawyers in England were instructed on the proving of wills;[9] this was so given wills and probate's link to religion and the concept of afterlife. Thus, this article is particularly interested in exploring how the civil law may have influenced the trust concept through the proving of wills at the ecclesiastic Prerogative Courts.

A similarity between equity and the civil law lies in the fact that both emerged to provide a flexible approach to remedy the rigours of the highly formulaic common law. Of course, equity's origins can be traced back to the Middle Ages with the office of the Lord Chancellor.[10] Interestingly, the Chancellor was traditionally an ecclesiastic and, *ex officio*, the "keeper" of the reigning monarch's externalised conscience.[11] Moreover, the institution known as Doctors' Commons emerged in the 15th century (albeit the civil law's application in

[5] K Tang, 'Doctor's Commons' [2018] (Autumn) Bar News 76.
[6] Squibb (n 3) 1.
[7] Ibid.
[8] Leonard Cowie, 'Doctors' Commons' (1970) 20(6) History Today <https://www.historytoday.com/archive/doctors-commons> accessed 26 July 2023.
[9] Ibid.
[10] Graham Virgo, *The Principles of Equity and Trust* (4th edn, OUP) 6.
[11] Alastair Hudson, *Equity and Trusts* (9th edn, Routledge) 9-10.

England dates back much further)[12] to provide the necessary ecclesiastic and international expertise that was required for managing and mitigating some legal and political issues.[13]

Both the system of equity and Doctors' Commons were condemned by the nationalistic law reforms of the 19th and 20th centuries.[14] Such reforms focused on developing the legal exclusivity of the State.[15] On this interesting point, this work has been greatly inspired by Glenn's work titled *On Common Laws*.[16] In the preface of his work, Glenn makes the following observation:

> [U]nder the pressures of nineteenth and twentieth century legal thought, and its insistence on the exclusivity and autonomy of national legal systems, the concept of common law, in its primary historical sense, has been largely forgotten. It does live on in the name of the common law tradition, and in the current debate on the need for a new *ius commune* in the European Union, but in both cases the essence of the idea has been lost.[17]

The political pressures described above by Glenn not only brought an end to Doctors' Commons but also led to the "fusion" of equity and common law by the Judicature Act 1873.[18] Furthermore when Glenn describes the "common law" in the above extract, he is not referring to the *Normanesque* common law system that emerged in Britain and spread throughout its colonies. Instead, he is talking about a far more ancient type of common law,

[12] William Senior, *Doctors' Commons and the Old Court of Admiralty: A Short History of the Civilians in England* (Longmans, Green and Co., 1922) 1-14.
[13] Ibid, 35.
[14] H Patrick Glenn, *On Common Laws* (OUP 2005).
[15] Ibid 1.
[16] Ibid.
[17] Ibid.
[18] Hudson (n 11) 15; Virgo (n 10) 7-8 and 20-22.

the *ius gentium* ("law of nations").[19] This concept and its link to Doctors' Commons and equity is explained at a later point.

To answer the central research question, this work tries to understand Doctors' Commons' civil law grounding, and ultimately, how the Roman law may have influenced the system of equity. This is, however, a difficult task. The *ius gentium*, for instance, is not well understood in modern times, since it was a system of law that was never formally acknowledged in writing by the Romans.[20] However, what is clear, is that Rome embraced an approach to the law which allowed different laws (e.g., *ius civile*, *ius gentium*, and local law and custom) to operate simultaneously throughout its empire.[21] Glenn describes this as "roman universality".[22] A sense of the universality of the law is perhaps the greatest legacy that the Roman's left the civilians, as it assisted them in influences the development of legal systems, most notably modern international law.

Prior to the 19th century – which saw a swathe of legalisation aimed at legal centralisation – the English legal system was somewhat more pluralistic.[23] Previously, there existed a range of different legal approaches and systems, e.g., the common law, church law, equity, and the civil law.[24] On that basis, it seems that the common law in England has been more greatly influenced by Rome than some would like to believe. Indeed, in English legal history a relation approach was adopted which allowed written and unwritten normative systems to develop and co-exist, as had happened in the Roman empire.

However, it should be noted at the outset that the author of this work is not arguing that the de-centralised legal system was preferable. It must be acknowledged that, at the time of the 19th century law reforms, significant issues existed with both equity and Doctors'

[19] Glenn (n 14) 2-6.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] John Baker, *An Introduction to English Legal History* (5th edn, OUP).
[24] Ibid.

Commons. On the state of Doctors' Commons during the Victorian era, Baker has emotively detailed the society's issues (quoting Charles Dickens) as follows:

> The doctors' high status and scarlet robes matched those of the [common law] serjeants, but they acquired a similar reputation by the nineteenth century for being a "cosey, dosey, old-fashioned, time-forgotten, sleepy-headed little family party". Many of the Victorian advocates were men of learning and distinction, but the institutions they served were out of tune with the times. Upon the establishment of secular divorce and probate courts in 1857 the doctors were deprived of their monopoly of audience in those important spheres, and two years later they lost their monopoly in the Court of Admiralty. The profession was thereby doomed to extinction.[25]

A review of the literature shows that very little has been written on Doctors' Commons. The *vade mecum* on the subject was composed by Squibb in 1977.[26] In his book, Squibb criticises an earlier publication on the subject, by one Dr Henry Charles Coote,[27] and sets out a thorough account of the origins, membership, and dissolution of the College.[28] Squibb's work's appendices are also highly useful: for instance, Appendix III lists provides a register of all the members of Doctors' Commons between 1505 up to its dissolution.[29] There is, however, no attempt to analyse the precise impact that the doctors had on its legal jurisdictions *per se*. In addition to this 1977 work, there are several shorter pieces to draw

[25] Ibid 180, citing Charles Dickens, *David Copperfield* (1850), ch. 23.
[26] Squibb (n 3).
[27] Henry Charles Coote, *Lives of Eminent English Civilians* (anonymously published 1804).
[28] Squibb (n 3).
[29] Ibid, appendix III.

upon, e.g., Jones[30] and Tang.[31] Some interest has been generated in the civil lawyer's influence within the Courts of Admiralty.[32] But the same cannot be said for equity, and a research gap exists. Therefore, the purpose of this work is to contribute to the literature and fill the extant gap.

Before analysing the civil law's influence, it is necessary for this article to first outline Doctors' Commons. So, the next section provides a brief history of Doctors' Commons. This is necessary for readers to gain an understanding of this institution, which forms the basis of this work. Thereafter, the work provides an analysis of how the civil law of the advocate-doctors has influenced trusts and equity. Finally, some concluding remarks are provided, summing up the themes within the piece.

Doctors' Commons: the civil lawyers

Despite beginning immortalised by the writings of, *inter alia*, Charles Dickens,[33] Doctors' Commons is still little known in legal circles today. Thus, before looking at how Doctors' Commons influenced equity and trusts, it is first necessary to provide a short, history of the College's origins, members, as well as its eventual dissolution.

It is noteworthy that the term "Doctors' Commons" was loosely defined in the work's introduction. In addition to the society proper, it is important to note here that the term "Doctors' Commons" can also be used to refer to the geographical region in London which harboured the civil law and the ecclesiastic court system.[34]

Senior, in *Doctors' Commons and the Old Court of Admiralty* (1922), provides a detailed history of the civilians.[35] While this work's focus is on admiralty law specifically, it

[30] Philip Jones, 'Doctors' Commons' (Ecclesiastical Law, no date) <https://ecclesiasticallaw.wordpress.com/2012/05/17/doctors-commons/> accessed 27 June 2023.
[31] Tang (n 5) 76.
[32] Senior (n 12).
[33] Baker (n 23) 180, citing Charles Dickens, *David Copperfield*.
[34] Jones (n 30).
[35] Senior (n 12).

still provides a good account of the very early history of the civilians in England. Although Senior suggests that the Roman law in England 'came to nothing' against the common law, he nevertheless ruminates that 'once, if not twice, [it] came near to winning'.[36] The work shows that the first teaching of Roman law in England came during the reign of King Stephen.[37] Later monarchs, particularly Edward I, would embrace the knowledge of the *iuris civilis* professors.[38]

As with equity, the civil law emerged as an alternative form of justice to the common law; this was important for some legal areas. For instance, Senior states that 'Yet the Roman Law came to occupy a small field of its own in England side by side with the common law, by usage and immemorial custom.'[39] It was viewed chiefly as a "Law of Nations" and used by statesmen in matters involving private international relations.[40] Whilst the civil law operated separately from equity, it would come to occupy, and influence, that system of law.

Doctors' Commons is said to have formed 'out of a seminary or sacerdotal college known as Jesus Commons which operated in St Paul's Cathedral churchyard in the City of London before 1400.'[41] It is generally accepted that the College of Civilians formed in the 16th century. Senior, for example, suggests that the "collegiate foundation" was formed 'before the death of Henry the Seventh in 1509.', and that Doctors' Commons goes back to 1511.[42] Tang stipulates that the first use of the title Doctors' Commons appeared later in 1532.[43] In Appendix II of his work, Squibb lists the first President of Doctors' Commons as one Richard Blodwell, DCL, Oxford, before 1505.[44]

[36] Ibid 2.
[37] Ibid 3.
[38] Ibid 3-6.
[39] Ibid 11.
[40] Ibid 12.
[41] Tang (n 5) 76.
[42] Senior (n 12) 35.
[43] Tang (n 5) 76.
[44] Squibb (n 3), appendix II.

Whatever the date of origin may be, Senior suggests that 'the way was being prepared for it [the college] long before.'[45] Doctors' Commons emergence was therefore of no surprise, and can be explained by "ecclesiastical polity" together with a growth in merchant trade, following the War of the Roses and especially during the Tudor period.[46] However, it was not until 1768 that a Royal Charter of George III officially incorporated the Society.[47] Geographically speaking, the College was first based at Paternoster Row, London, but later moved to Knightrider Street, London.[48]

The Society was a civil law version of the Inns of Court,[49] except most of its members were doctors of law, usually having read for the degree in either the universities of Oxford or Cambridge.[50] Interestingly, only a small number of the members went on to become advocates.[51] The advocate-doctors of the College were admitted by the dean of arches[52] and practised 'in the ecclesiastical courts and in the Court of Admiralty',[53] together with the Prerogative Courts.[54] However, it is the latter courts that were responsible for the proving of wills and are of interest to this article. Through the Prerogative Courts, a link between the civil law and equity can be established.

As previously mentioned in the introduction, the dissolution of Doctors' Commons came at a time of increased legal centralisation, where the law became regarded as 'the exclusive law of the state'.[55] This resulted in the "fusion" of common law and equity

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[45] Senior (n 12) 35.
[46] Ibid 65.
[47] Tang (n 5) 77.
[48] The Editors of Encyclopaedia Britannica, 'Doctors' Commons: legal society' (*Britannica*, updated by Brian Duignan 26 July 2023) <https://www.britannica.com/topic/Doctors-Commons> accessed 27 July 2023.
[49] Ibid.
[50] Squibb (n 3). In evaluating Doctors' Commons' subscription book, Squibb observed that: 'Of the nineteen most senior members of the Society thirteen (68 per cent) were subscribers, all of them being doctors of law.' See pg. 19.
[51] Baker (23) 180.
[52] Britannica (n 48).
[53] Ibid.
[54] 'Doctors' Commons' (Jisc Archives Hub, no date) <https://archiveshub.jisc.ac.uk/search/archives/c5512a19-ab33-3c27-9414-43da358e2dbc> accessed 27 July 2023.
[55] Glenn (n 14).

pursuant to the Judicature Acts 1873-75.[56] For Doctors' Commons, however, three legislations were enacted in the 1850s which removed its members' long-standing monopolies over the areas of wills, wives, and wrecks; these included the Court of Probate Act 1857, the Matrimonial Causes Act 1857, and the High Court of Admiralty Act 1859, respectively.[57]

The Court of Probate Act 1857, ss. 3-4 extended the jurisdiction of wills and probate to the common law and created a new, secular Court of Probate. Therefore, in the Trinity Term of 1865, the final meeting of the doctors was held, and a motion was passed to disband the College with immediate effect.[58] Its last surviving member, one Dr. Thomas Hutchinson Tristram, died in 1912, signalling the end of the civilians in the English legal system.[59] In an era of legal centralisation and exclusively, a separate system of equity and a society of civil lawyers had become an anachronism.[60]

The influence of the civil law on equity and trusts

This is the most important section of the article since it deals fully with the research question. Nevertheless, the author admits, it is the most demanding part of the work. Ultimately, the exact influence that the civil law had on equity is not easily quantifiable. But, as shown in the introduction, this work is still necessary. Through their monopoly over wills and probate, Doctors' Commons and the civil law clearly had an impact on equity and trusts, historically speaking. And this needs to be acknowledged. This section begins by looking at the influence that the civil law may have had on the trust concept, through the proving of wills.

[56] Britannica (n 48).
[57] Squibb (n 3) 78.
[58] Tang (n 5) 77-78.
[59] Baker (n 23) 180-181.
[60] Interestingly, Tang (n 5) suggests that Doctors' Commons' dissolution may have been imperfect since no writ of *quo warranto* was issued by the Crown. Thus, instead of being seen as dissolved some choose to believe that Doctors' Commons has been in purgatory all this time and is capable of being resuscitated.

Trusts law

As the above section shows, the civilian lawyers of Doctors' Commons had a monopoly over wills and probate. For hundreds of years the doctors were able to influence this area of the law: 'Probate of wills, and litigation related thereto, belonged to the Church courts until 1857.'[61] Baker submits that the common law writ of *de rationabili parte bonorum* operated in the early common law to deal with the sharing and bestowing of personal property.[62] Nevertheless, he goes on to stipulate that:

> In the thirteenth century, however, the spiritual jurisdiction won control of testate and intestate succession to movable estates. Thereafter questions about testaments and distribution on intestacy usually fell to the Church courts. The Church encouraged people to make wills, even to the extent of disposing of all their movables and thereby overriding the guaranteed shares of wives and children.[63]

The fact that matters relating to probate fell within, what Baker describes as, a "spiritual jurisdiction" is evident from some of the wills that were proved at the Prerogative Court of Canterbury ("PCC"). The PCC was an ecclesiastic court.[64] If the property subject to the will was over a certain value, and fell into more than two dioceses, probate would be conducted in the PCC.[65] The PCC dealt with wills and probate in the south of England and Wales; similarly, the Prerogative Court of York heard probate matters for the north of England.[66]

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[61] Baker (n 23) 411.
[62] Ibid.
[63] Ibid.
[64] 'England & Wales, Prerogative Court of Canterbury Wills, 1384-1858' (*ancestry*, no date) <https://www.ancestry.co.uk/search/collections/5111/> accessed 27 July 2023.
[65] Ibid.
[66] Ibid.

The spiritual nature of wills and probate as a jurisdiction can be wholly seen in a selection of wills from Doctors' Commons between 1495-1695. These wills were fortunately preserved and published by the Council of the Camden Society in the 19th century.[67] This publication is interesting. Not only does it show the type of bequests that were being made by people historically, but it demonstrates that even the most elite members of society were required to have their wills proved in the PCC. The wills of eminent people include, amongst others, members of the Royal family, prelates, noble-men and -women, merchants, and the famous members of society.[68] All were subject to the civil law.

Most interesting is how the wills demonstrate not only a mere transference of property, but more still a testament to God. In a highly religious society, the writing of a will must have been a deeply emotive event, as the testator or testatrix thought about the nature of death and their immortal souls. This can be seen in all the wills published by the Camden Society. For instance, Cecily Neville, Duchess of York, mother to Kings Edward IV and Richard III, began her will (proved in the PCC in 1495) in the following way:

> In the name of allmyghty God, the blessed Trinite, fader and son and the holigost, trusting in the meanes and mediacions of oure blessed Lady Moder, of oure blessed Saviour Jh'u Crist, and by the intercession of hold Saint John Baptist, and all the saintes of heven.[69]

Similarly, Dame Maude Parr's will, proved in 1529, states:

[67] John Gough Nichols and John Bruce (eds.), *Wills from Doctors' Commons. A selection from the wills of eminent persons proved in the Prerogative Court of Canterbury, 1495-1695* (Camden Society, 1863).
[68] Ibid v-vi.
[69] Ibid 1.

> In the name of God, Amen… First, I bequethe my soule to almighty God, and my body to be buryed in the Blacke Fryers churche of London, where my husbond lyethe.[70]

Even the more modern examples demonstrate the religious influence in will drafting. In 1674, astrology student William Lilly wrote his will as follows:

> In the name of God, Amen. I, William Lilly, of Hersham, in the parish of Walton-upon-Thames, in the countie of Surry, student in astrology, being at the writing hereof of perfect memory, doe make and ordaine this my last well and testament in manner and forme following. Rendring my soule into the hands of God, my body I leave to be buried at the discretion of Ruth Lilly my wife. My worldly estate I thus dispose it.[71]

The above extracts fully show why the legal jurisdiction of wills and probate was put in the hands of the civilians. It is argued here that the civilians' specialism in this area allowed Doctors' Commons to normatively influence equity and trusts. Indeed, the proving of wills in the Prerogative Courts acted as a direct conduit for them to express their theory of law. For instance, it makes one wonder the influence that the Roman *fideicommissum*[72] had on the civilians and the development of this area; but that is another debate and one that falls outside of the remit of this article.

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[70] Ibid 9.
[71] Ibid 131.
[72] David Johnston, 'fideicommissa' (*Oxford Classical Dictionary*, 7 March 2016) <https://oxfordre.com/classics/display/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-6966;jsessionid=7776F9A1EC3D327548C06A0F720E6E0D> accessed 27 July 2023.

The section below goes on to speculate how Doctors' Commons international law approach may have influenced the historical development of equity in England and Wales.

The system of equity

It has already been established that the fellows of Doctors' Commons were civil law practitioners and academics, who had studied the Roman law in either the universities of Oxford or Cambridge.[73] The system to which they were devotees was ancient and extended back to the Twelve Tables of the Roman Republic.[74]

To understand the legal viewpoint of the doctors, it is perhaps necessary to provide some historical context of the Roman law. However, this section does not provide a deep exegesis of this system, as such a thing would be unnecessary. Thus, the description of the Roman jurisprudence in this article is short and is simply done to help to understand how the doctors may have influenced the system of equity.

Glenn looks at Roman law and Roman universality in his book.[75] There, he suggests that the Romans expressed the law in two principal ways.[76] First, the Romans had developed the *ius civile* (or "civil law"), which is best described as the written law of Rome.[77] Glenn states that the 'Law here is simply the general decree ("commune praeceptum"), which Bracton would have seen as a "general command," and it is common only in the sense that it is that which is applicable in the absence of exceptions.'[78] These laws applied to Roman citizens, were written, and were highly formalistic in nature.[79]

[73] n 50.
[74] Senior (n 12) 1-2.
[75] Glenn (n 14) 1.
[76] Ibid 2-3.
[77] Ibid 3.
[78] Ibid.
[79] Ibid.

In that time, however, another "concept" of law emerged; this other law's *fons et origo* was driven by the empire's expansion and the Roman's increasing connections with foreign territories.[80] To cope with commerce and legal disputes in the conquered lands subsumed by the empire, the Romans recognised another law, the *ius gentium* ("law of nations").[81] Glenn suggests that the *ius gentium* was influenced by Greek jurisprudence and philosophy; it was 'common to all humanity'.[82] But this law was only 'part of a still broader notion of natural law, which applied to the entire world, including animals, and it was distinct from a notion of civil law, which was the law of a particular state or city, applicable to its citizens.'[83]

Thus, despite their faults, the Romans recognised the relational quality of the law, and understood that legal systems can profit from an environment where the general written laws are incubated with other, flexible systems of justice. In the English legal system, the written law of England (common law) has permitted other, specialised systems to be incorporated within it (equity and civil law), embracing the flexibility seen within the ancient Roman jurisprudence.

As already mentioned, Doctors' Commons were, because of their Roman juristic approach, influenced not only but the *ius civile* but the *ius gentium*. This is demonstrated by Coquillette in the following extract:

> This particular attribute of these English civilian jurists was a belief in the perfectability of law, through reason. This belief was critical to their view of the legal process. In part due to their romantic search for the *ius gentium* of the Roman law texts, and in part to their very real international career system, later English civilians

[80] Ibid 2.
[81] Ibid.
[82] Ibid.
[83] Ibid.

> developed a commitment to cosmopolitanism and to the ideal of a rational, universal legal science. This civilian commitment was often in sharp contrast to the localized outlook of the common lawyers.[84]

Here, Coquillette is describing the influence of the English civilians throughout the legal system. However, it is important to bear in mind that their cosmopolitan approach would have been transferred to equity and trusts, given Doctors' Commons monopoly on wills and probate.

From the above, it is interesting to speculate about the civil law's influence on developing, for instance, the equity's concept of conscience. The word "conscience" comes from the Latin *conscientia* and the Greek *syneidesis*[85] and is defined in the Oxford Dictionary as 'The internal acknowledgement or recognition of the moral quality of one's motives and actions; the sense of right and wrong as regards things.'[86] Given the "moral quality" of conscience, Agnew believes that 'Our contemporary understanding of conscience… has been heavily influenced by Christian theology along the way, particularly by the work of Aquinas.'[87] Equity and trusts are still based on the concept of conscience today, through the doctrine of "unconscionability".[88]

Incidentally the Roman law heavily influenced, and largely became, the Roman Catholic Canon law, which was studied and practiced by the civil lawyers in England.[89] Therefore, it is not outside of the bounds of possibility that the Aristotelian/Thomist

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[84] Daniel R Coquillette, *The Civilian Writers of Doctors' Commons, London – Three Centuries of Juristic Innovation in Comparative, Commercial and International Law* (Duncker & Humblot 1988) 8.
[85] 'Medieval Theories of Conscience' (*Stanford Encyclopedia of Philosophy*, 19 January 2021) <https://plato.stanford.edu/entries/conscience-medieval/> accessed 27 July 2023.
[86] 'conscience, n.' (*Oxford English Dictionary*, no date) <https://www.oed.com/search/dictionary/?scope=Entries&q=conscience&tl=true> accessed 27 July 2023.
[87] Sinéad Agnew, 'The Meaning And Significance Of Conscience In Private Law' (2018) 77(3) CLJ 479, 481.
[88] Alastair Hudson, 'Conscience as the organising concept of equity' (2016) CJCCL 261.
[89] RH Helmholz, 'Canon Law and Roman Law' in David Johnston (ed), *The Cambridge Companion To Roman Law* (CUP 2015).

theological concept of conscience would have been within the civilians' purview and advocated by them. Interestingly, research has been undertaken which explores the influence that Grotian international law theory (i.e., *ius gentium et naturae*) had on the conscience.[90] Nijman, for instance, states:

> In early modernity, the influence of Christianities [sic] on the development of (international) law revolved around the concepts of reason and conscience. Christian natural law theory dominated this (trans)formative era of *ius gentium et naturae*: it was a deeply Christian Europe that rediscovered ancient Roman law (*a ratio scripta*) in the eleventh-century… Both legal systems, individually and conjoined as *ius commune*, were applied and enforced by secular and ecclesiastical courts (*forum externum*). Reason and conscience became foundational to moral and legal thought and legal reform.[91]

In law, the concept of conscience is not confined to an "internal acknowledgement or recognition" and is capable of being manifested externally.[92] The externalisation of conscience occurred in the English legal system, when the monarch bestowed upon the Lord Chancellors the title of the "keeper of the conscience".[93] As an ecclesiastic, the Lord Chancellors would have been well versed in the civil law and influenced by Roman and Canon law principles.[94] Hudson goes further and describes the conscience as 'the organising

[90] Janne Elisabeth Nijman, 'Ius Gentium et Naturae: The Human Conscience and Early Modern International Law' (2020) Amsterdam Centre for International Law <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736751> accessed 27 July 2023.
[91] Ibid 1-2.
[92] Hudson (n 88).
[93] Hudson (n 11) 9-10.
[94] Hudson (n 88).

concept of equity' and believes that a primary "root" for the development of conscience in equity came from the Lord Chancellor and notions of the sublime:[95]

> The Lord Chancellors (until the appointment of Lord Keeper Williams at the beginning of the 17th century) had all been ecclesiastics. Therefore, the language of a sublime conscience in which they spoke, as bishops in the Christian church, who ministered and administered the monarch's Conscience, came naturally to them when making judgment.[96]

For this article it is clear that the civilians, which would later establish a society known as Doctors' Commons, had a hand in sculpting equity's concept of conscience, and still more, in the development of equity itself.

Conclusion

This article has outlined the historic role that the advocate-doctors and other members of Doctors' Commons had to the system of equity and trusts in the common law system of England and Wales. It was shown in the introduction that there is only a small amount of literature on Doctors' Commons, most of which includes mere historic accounts of the College and its membership. As such, there has been little attempt to link Doctors' Commons' influence on its monopolised jurisdictions, and this is especially so for equity and trusts. This work does this and, in so doing, fills an important research gap.

[95] Ibid.
[96] Ibid.

The article has shown how the advocate-doctors gained a jurisdiction over, *inter alia*, wills and probate. Using the wills of Doctors' Commons as primary source material, the Prerogative Courts were showcased as a "spiritual jurisdiction" over which the doctors had a monopoly. It was argued that Doctors' Commons was able to enforce its esoteric, cosmopolitan jurisprudence within this legal area over *circa* a thousand years.

Finally, the work focussed on how Doctors' Commons may have influenced the system of equity at large. It was argued that the civilians shared a juristic viewpoint which emphasised the importance of the Roman *ius gentium*, the laws of nations. However, most importantly, these doctors embraced the notion that different laws can exist in a relational setting together. The work speculated the extent to which the civil law could have shaped equity's core concepts and principles, focusing on the law's understanding of "conscience"; this concept particularly was chosen because it is a 'Christianised Graeco-Roman conception'.[97]

However, as Glenn has argued, this age of plurality was crushed by the law reforms of the 19th and 20th centuries, which had nationalistic tendencies and sought to centralise (and secularise) the law into the state.[98] In consequence, equity was fused into the common law and Doctors' Commons was dissolved following the loss of its monopolies. Although these reforms were necessary, it is still interesting to acknowledge the legal history and question its impact on the modern English legal system.

Word count: 5055

[97] Nijman (n 90).
[98] Glenn (n 14).