

## NOTABLE ECCLESIASTICAL LAWYERS: II

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### Richard Zouche (1590–1661)

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Among seventeenth-century English civilians, none aimed higher than Richard Zouche. He was never reputed to be a man anxious for personal fame,<sup>1</sup> but he did not lack honorable ambition. He followed a path being laid out by the stellar European jurists of his time, men such as Joachim Mynsinger (1514–1588), Hugo Grotius (1583–1645) and Antoine Favre/Antonius Faber (1557–1624). That path led to prominence in legal practice and appointment to a judgeship of one or more of the great European courts. It led to entry into political life, usually including prominent service in church or state. It led to appointment as professor in one or more of the law faculties in the principal European universities and to publication of multiple works of legal scholarship. And it led to an international reputation as a jurist, one not limited to a single land or to a single field of law. The career of Richard Zouche had all these. It was with good reason that Brian Levack described him as ‘the most distinguished civilian that Oxford produced in the seventeenth century’.<sup>2</sup>

Zouche, a scholar of New College from 1607, graduated BCL in 1614 and DCL in 1619, directly after which he was admitted as an advocate in the Court of Arches.<sup>3</sup> The next year he was also appointed as Regius Professor of Civil Law at Oxford. A succession of upward steps followed, leading to several ecclesiastical offices and finally to his appointment as Judge of the High Court of Admiralty in 1641. During the years of the Interregnum, his role in government was limited by his own royalist sympathies, but he did not disappear from view. The Parliamentary visitors permitted him to retain his academic posts in 1648, and he served as a member of the commission of lawyers appointed in the 1650s to deal with the internationally troublesome case of a murder said to have been committed by the Portuguese ambassador’s brother. He held the Oxford chair

1 A Wood, *Athenae Oxonienses* (London, 1813–20), vol 3, p 511.

2 B Levack, ‘Law’, in N Tyacke (ed), *The History of the University of Oxford*, vol 4 (Oxford, 1997), p 563.

3 See T Holland, ‘Introduction’, in R Zouche, *Iuris et iudicii feccialis, sive, iuris inter gentes et quaestionum de eodem explicatio* (Washington, DC, 1911), i–ix.

until his death, using the position to write in the region of fifteen books on various aspects of the civil law.

It is the character of these law books, rather than the progression of his professional career, that deserves the special attention of modern English ecclesiastical lawyers. They mark Zouche out as a particularly notable civilian, and they show the cosmopolitan road open to one of their predecessors in the hundred years after the accession of Queen Elizabeth. In some senses it was the high road. Whether it was the best road for a man such as Zouche to have taken is a different question, one that it is probably unfair to ask nearly four hundred years later. At the time, however, it must have seemed a natural choice, perhaps also the wisest choice.

Zouche's writings on the law fall into four different categories, all of which were also staples of contemporary legal literature on the Continent. The first consisted of introductions to the Roman and canon laws. They were primarily intended for law students, but they also proved useful beyond the earliest stages of a legal career. Zouche's entry in this field, *Elementa jurisprudentiae* (first edition, 1629), is like many similar introductory works written on the Continent; any comprehensive bibliography of the literature of the *ius commune* devotes many pages to them.<sup>4</sup> They were guides to the first steps in the study of the civil law but, depending on the predilections of their authors, they could also lead students further into the complexities of contemporary jurisprudence. Among them, Zouche's work is on the elementary side. It was addressed to 'the studious youth of Great Britain'<sup>5</sup> and its stated purpose was to encourage them to take the first steps towards mastery of the *ius commune*. The book was not a failure: it was published again in Oxford in 1636 and, in common with many such works, it was reprinted several times on the Continent, in both Leiden and Amsterdam (1652, 1653 and 1681).

The second category covers collections of interesting, often unsettled, legal questions. Zouche's *Quaestionum iuris civilis centuria* (first edition, 1660) belongs to this class, as do a few other compilations of his.<sup>6</sup> The extent of the publication of similar works on the Continent during these years is quite astonishing. *Quaestiones*, *Singularia*, *Observationes* and *Resolutiones* (and others with variants of these titles) poured forth from European presses during these centuries. Their popularity is particularly puzzling because the texts in most of them have no discernible order. Using them required either industry or an index. But it is apparent from the regularity with which at least the best among them were

4 Eg M Lipenius (1630–1692), *Bibliotheca realis iuridica* (Leipzig, 1757), vol 1, pp 723–754.

5 'Iuventuti Magnae Britanniae iuris studiosae'. See R Zouche, *Elementa jurisprudentiae* (first edition, 1629), preface.

6 Eg R Zouche, *Cases and Questions Resolved in the Civil Law* (Oxford, 1652; in English).

cited by other jurists that they served a purpose. Zouche would have known some of them very well. This was a natural field for a civilian to enter.

The third category is made up of investigations of specialized fields of law within the *ius commune*. More than one of Zouche's books belong to this category, the best known being the *Iuris et iudicii fecialis sive iuris inter gentes ... explicatio* (first edition, 1650), familiar today because it was reprinted and translated in 1911 as part of the Carnegie Institution's initiative to make available classic works of international law. The obvious Continental comparison is with Hugo Grotius' great work *De iure belli ac pacis* (first edition, 1625), which is cited many times in Zouche's pages. It also made a connection with the work of Zouche's celebrated predecessor as Regius Professor, Alberico Gentili. Its success is shown by its publication on the Continent, including a translation into German.<sup>7</sup> Another work, devoted to maritime law, *Descriptio iuris et iudicii maritimi* (first edition, 1640) also fitted within this tradition, as did Zouche's later topical treatment of crimes committed by ambassadors.<sup>8</sup>

The final category is constituted of descriptions of local courts and treatments of local variants of the *ius commune*. *Descriptio iuris et iudicii ecclesiastici secundum canones et constitutiones Anglicanas* (first edition, 1636) was Zouche's principal effort in this field. Most European works like it are now forgotten, and it can be surprising for a modern student of legal history to discover how many of them were compiled. There were hundreds. In Italy, for example, works of *Praxis* were compiled for virtually every important legal centre.<sup>9</sup> Like them, Zouche's *Descriptio* provided straightforward exposition of ecclesiastical jurisdiction in contemporary England. Also like most of them, its citations were more often Continental than local. In dealing with the law of benefices, for instance, Zouche drew heavily upon the *Corpus iuris canonici*, together with its glosses, and also substantial works on the subject by Panormitanus (1386–1445/53), Pierre Rebuffi/Petrus Rebuffus (1487–1557), François Douaren/Franciscus Duarenus (1509–1559), Marco Antonio Cucchi/Marcus Antonius Cucchus (1505–1567), Nicolaus Garcius (d 1645), and Aghostino (Augustinus) Barbosa (1589–1649).

This last work probably retains the greatest interest for modern ecclesiastical lawyers. It was written by a civilian seemingly optimistic about the future. It incorporated the additions to the law of the Church made by Parliamentary statutes and the 1603/1604 canons, but it made no mention of the challenges to the

7 Latin editions were published in Leiden in 1651, The Hague in 1659 and Mainz in 1661. The German edition, translated by Alfred Vogel, was published as *Algemeines Völkerrecht, wie auch algemeines Urtheil und Ansprüche aller Völker* (Frankfurt, 1666).

8 R Zouche, *Solutio quaestionis veteris et novae, sive de legati delinquentis iudice competente dissertatio* (first edition, 1657).

9 Lipenius, *Bibliotheca*, 646–663, lists works from Florence, Genoa, Luca, Mantua, Milan, Pavia, Naples, Parma, Bologna, Rome, Ferrara, Perugia, Sicily, Venice and Verona. In some cases, these included only statutes and *decisiones* drawn from the local courts.

spiritual courts then being mounted by some common lawyers. It did not deal with writs of prohibition or praemunire. It did not cite the opinions of Sir Edward Coke. Instead, it confidently proclaimed that all ‘violators of ecclesiastical liberty’ were ipso facto excommunicated.<sup>10</sup> It treated the English monarch’s title of Supreme Governor not as a sign of surrender to lay power but as a guarantee that the English Church would ‘forever retain its liberty and hold its rights and privileges fully and inviolate’.<sup>11</sup> Zouche was no crypto-papist; he defended the clergy’s right to marry and he regarded the power of the popes as happily in the past.<sup>12</sup> But here he shied away from jurisdictional dispute. Unlike the similar works of Cosin and Ridley,<sup>13</sup> his *Descriptio* was not a counter-attack against aggressive common lawyers. Zouche did know something of the common law,<sup>14</sup> and he was capable of entering the lists of contemporary controversy.<sup>15</sup> However, he did not confront opponents in the *Descriptio*. It was an English example of a European-wide class of legal literature.

The character of this work explains in some measure why Zouche has not attracted as much attention among modern historians as have some of the other civilians.<sup>16</sup> Historians are most interested in conflict or in major events. Zouche’s life was filled with neither. Of course, there are other reasons too. As a writer on the law, he was not the equivalent of a Grotius or a Covarruvias. And he was also unlucky. A large part of his professional career coincided with the Interregnum, when the spiritual courts ceased to exist in England. Even in death he may be thought unfortunate. He died in 1661 and so failed to share in the advantages that the Restoration brought to other English civilians. His life was far from tragic, however, and he has not been altogether forgotten: his portrait – a handsome effort – is held by the National Portrait Gallery, while one of his books was republished more than three hundred years after his death. But he deserves to be remembered today for more than this. His life and works should stand as a reminder of the international reputation to which an English civilian could legitimately aspire in the seventeenth century.

- 10 R Zouche, *Descriptio iuris et iudicii ecclesiastici secundum canones et constitutiones Anglicanas* (Oxford, 1636), pt IV, § 8.
- 11 *Ibid.*, pt I, § 8: ‘Et semper prospicere ut ecclesia sit libera et omnia iura et privilegia integra et inviolate retineat’.
- 12 *Ibid.*, pt II, § 4.
- 13 R Cosin, *Apologie for sundrie proceedings by iurisdiction ecclesiasticall* (London, 1591); T Ridley, *View of the civile and ecclesiastical law* (London, 1607).
- 14 See B Leveck, *The Civil Lawyers in England 1603–1641* (Oxford, 1973), pp 128, 138, 149.
- 15 Of this nature was R Zouche, *The Jurisdiction of the Admiralty of England Asserted against Edward Coke’s Articuli Admiralitatis* (London, 1663). Note, however, that it was published after his death.
- 16 Eg D Coquillette, *The Civilian Writers of Doctors’ Commons, London* (Berlin, 1988). John Cowell (1554–1611) is probably the best example of a civilian whose fame rests on contemporary controversy: see eg J Kenyon, *The Stuart Constitution* (Cambridge, 1969), p 8.