

Doctor's Commons

By Kevin Tang

For half a millennium the separation between the spiritual law and the temporal law assured the livelihood and existence of a band of practitioners known as the Doctors' Commons in London. The jurisdiction grew out of the early episcopal courts recognised by William I in 1072. It was a bastion of Canon and Ecclesiastical Law. A distinct strain of Canon Law developed in England after the Reformation. This was the quintessential spiritual jurisdiction as distinct from the temporal courts and its profession. In a blaze of glory, Doctors' Commons came and went.

Origins - α

The institution 'Doctors' Commons' arose 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. Doctors' Commons refers to the learned specialists in Canon and Ecclesiastical law trained in the Roman law (civilian law) tradition and procedures. Doctors' Commons, as a title, was in use by 1532. It was conceived as a voluntary society for practitioners and scholars to live and practice amongst one another and to keep a 'common table' and as scholars they '*commoned*' on site. In this respect, it was similar to the Inns of Court but Doctors' Commons was exclusively for those who practised in the Ecclesiastical and the Civil law courts in London. It was never a teaching institution. This was the age when Civil law, Canon law and theology were pre-eminent university subjects. The common law was an orderless science the apprenticeship of which was lengthy.

Before 1850, most lawyers, especially in Western Europe were men who had taken Holy Orders. The main centres of theological and civil law learning since before the Dark Ages included Bologna in Italy, The Sorbonne in Paris and Oxford and Cambridge in England amongst others. Most of the canon law at the time arose externally to England and England developed its own system in time. Almost all of the members of Doctors' Commons held the degrees of DCL from Oxford or LLD from Cambridge.

Scenario

Originally Doctors Commons was located in chambers in Paternoster Row by St Paul's Cathedral in the 1490s. By 1568 the Doctors' Commons became a much larger institution and there were many more advocates and visiting scholars from all over Christendom from the centres of theological scholarship Church Law and Civilian law e.g. The Sorbonne in Paris, Montpellier and Poitiers in France, Coimbra in Portugal and Valladolid in Spain.

Ammonius, Henry VIII Latin secretary, responded to a letter from Erasmus of Rotterdam (1466-1536) dated 18 November 1511, enquiring about the possibility of lodgings in London. Ammonius suggested to Erasmus that lodgings were available in the Doctors' Commons. Ammonius expressed the view that the venue was, however, no better than a privy (*cloaca*).

Erasmus was one itinerant scholar distinguished in the field of theology who visited Doctors' Commons but he does not appear to have ever been a member of the society or college known as Doctors' Commons. Other sojourners included Francois Rabelais (1494-1553), Michel de Montaigne (1533-1592) and Jean Calvin (1509 – 1564). There were vast records on membership and signed subscription books for each year of its existence. In any event, it was more likely that Erasmus and his theological status entitled him to stay with his friend Lord Mountjoy in Mountjoy House which became the second and most significant location of Doctors' Commons. Doctors Commons acquired the land when the lease over the previous, modest premises became difficult to maintain. The old building was destroyed in 1666 in the Great Fire of London. Dr Henry Harvey, the Dean of Arches and Master of Trinity Hall Cambridge in 1559, facilitated the purchase. Dr Harvey knew that venues for the sittings of the Court of Arches were itinerant. Earlier the court sat mostly under the arches in the St Mary-le-Bow Church, hence its name.

Cardinal Wolsey (1515-1529 Chancellor) had proposed a more salubrious college to be built for the Doctors. In 1568, when Doctors' Commons moved to Knighttrider Street, the accommodation was known as a colony or an *appanage* of Trinity Hall Cambridge. A large

stone house with a garden was constructed. Doctors' Commons was granted a Royal Charter by King George III on 22 June 1768 where the Charter specified that the college was for Doctors of Law, '*exercerit in the Ecclesiastical and Admiralty Courts*'.

At Mountjoy House convenience was supreme. It had two quadrangles. When the society moved in 1568, the premises comprised of a large hall where the Court of Arches sat and a new court room was built for sittings of the High Court of Admiralty and also the prerogative Court of Canterbury and the Bishop of London's Consistory Court. There was a dining hall and above which was a grand room, where the most valuable asset of the Society was stored. By this time, the Doctors' Commons had amassed a library of books which was unique throughout Christendom – there were early manuscripts by Gratian *The Decretum*, countless medieval illuminated manuscripts, folios in vellum, rare theological works and eg. the original Rolls of Oleron. It



was an Aladdin's cave of knowledge through the ages of ecclesiastical, theological and Church literature.

Dickens observed the following in *David Copperfield* of this rather curious jurisdiction of wives, wills and wrecks:

'You shall go to Doctors' Commons one day, and find them blundering through half the nautical terms in Young's Dictionary, apropos of the 'Nancy' having run down the 'Sarah Jane,' or Mr Pegotty and the Yarmouth boatmen having put off in a gale of wind with an anchor and

cable to the 'Nelson' Indiamen in distress; and you shall go there another day, and find them deep in the evidence, pro and con, respecting a clergyman who has misbehaved himself; and you shall find the judge in the nautical case, the advocate in the clergyman's case, or contrariwise. They are like actors: now a man's a judge, and now he is not a judge; now he's one thing, now he's another! Now he's something else, change and change about; but it's always a very pleasant, profitable little affair of private theatricals, presented to an uncommonly select audience.'

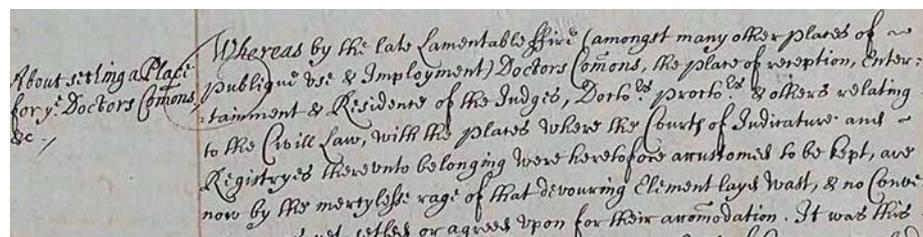
Causas

The practitioners of Doctors' Commons had to its name at least four monopolies. The cases that the advocates appeared in were of a certain type.

First was Ecclesiastical Law and Church Law and part from dealing with the more delicate questions of excommunications (requiring a bell, a book and candles), cases were centred on misbehaving clergy - *criminous clerks*, faculties and dispensations, heresy, tithes, pew rights, church smiting and it was also an appellate jurisdiction (referrals came from a bewildering array of first instance courts eg. archiepiscopal, episcopal, decanal, prebendal etc...).

Second, the Doctors practised in mercantile law (Admiralty and Maritime), in salvage and carriage cases, the law of prize and shipwreck, not to mention the cases of piracy on the high seas, were common. The advocates of the Doctors' Commons regularly argued commercial causes as merchant ships sailed into London from every corner of the Earth. This was the age of the *lex mercatoria* (the law merchant), the origins of the commercial lists in England, Australia and other common law jurisdictions. It commenced with self-regulating merchants from the Renaissance onwards in and around Continental Europe. A great part of the success of Doctors' Commons is directly attributable to the critical mass of professionals with international contracts of sale and carriage and which expertise had direct and practical application. It was the most lucrative aspect of the monopolies of Doctors' Commons.

Thirdly, the Prerogative Wills office was an annexe of the Doctors' Commons. Members of the public could inspect a will, if they wished, for a fee. The Bank of England did not accept probate from elsewhere except the



London based Doctors' Commons. The bank would not pay out. A will of any value or significance would need to be proved by a member of Doctors' Commons and a formula was used denoting it. One significant will which arrived for probate/letters of administration was that of Napoleon Bonaparte, who died on 5 May 1821 at St Helena.

Fourthly, the Doctors' Commons also practised in marital disputes.

It was a much fabled curial procedure and susceptible to Dickensian characterisation and theatrical description. Another rare jurisdiction peculiar to the Doctors' Commons was the High Court of Chivalry which had been in operation since the 14th Century. Its business was confined to disputes over armorial bearings, all decided according to the law of Arms. The court has only sat once since 1737 and was the last English court to use the procedure of the Civil Law.

Dramatis Personae

Doctors' Commons was a whole jurisdiction. It comprised of two particular professions. The proctors were in essence the equivalent to Solicitors in the heathen courts. The advocates, however, appeared as Counsel, as barristers would before the judges in the Royal Courts. The Judges were appointed from the ranks of Counsel. It was often the case that in the jurisdiction, and any commission could be full time or part time and this had the effect of advocates straddling the Bar and Bench – advocate one day and judge the next and *vice versa*. There was also the equivalent to an attorney or law officer, a King's Advocate in the jurisdiction.

The advocates and judges wore scarlet robes trimmed in Ermine. The proctors wore black robes trimmed in Ermine.

The procedure for admission was usually to that of the Court of Arches as an Advocate and the candidate would petition the Archbishop of Canterbury to be admitted. If successful the Archbishop issued a fiat to the Vicar-General who would prepare a re-script to the Dean of Arches requiring him to admit the candidate as an Advocate of the court and the admission would occur at the next session of the Arches Court. One could be qualified in civil or canon law but not necessarily.

Mise-en-scene

There is one known colour plate entitled 'Doctors' Commons' which was published in 1808 Ackermann's microcosm of London showing the interior of the main court (Mountjoy House) with a court in session complete with

proctors and advocates before a judge sitting. It is described in *Sketches by Boz* and brought to life in Dickens' *David Copperfield*, when David considers becoming a Proctor in Doctors' Commons:

'What is a proctor, Steerforth?' said [David].

Why, he is a sort of monkish attorney,' replied Steerforth. 'He is, to some faded courts held in the Doctors' Commons — a lazy old nook near St. Paul's Churchyard — what solicitors are to the courts of law and equity. He is a functionary whose existence, in the natural course of things, would have terminated about



two hundred years ago. I can tell you best what he is, by telling you what Doctors' Commons is. It's a little out-of-the-way place, where they administer what is called ecclesiastical law, and play all kinds of tricks with obsolete old monsters of acts of Parliament. . . . It's a place that has an ancient monopoly in suits about people's wills and people's marriages, and disputes among ships and boats.' [Charles Dickens, *David Copperfield*, Ch. 23, 'I Corroborate Mr. Dick, and Choose a Profession,' instalment 8, Dec. 1849]

Res Extincta - Ω

The Doctors' Commons jurisdiction was dissolved in 1857 when its Royal Charter was surrendered under power conferred by statute establishing the new Probate Court. The demise had been gradual and insidious. The monopolies of the Doctors' Commons would not survive the Victorian era.

Three Royal Commissions were appointed in the 1830s into Ecclesiastical and Church Law and the Diocesan system. Moves had been made to undermine the Doctors' Commons.

Inevitably, all advocates admitted in any of the Ecclesiastical courts were given rights of audience in any court in England and eligibil-

ity for appointments as if they had been called to the Bar on their admission date as advocates. The college was empowered to dispose of its assets as it saw fit and to surrender the Charter to the Crown, whereby it would be dissolved and any residual property would belong to its members in equal shares. Within days of those statutory enactments, the Matrimonial Causes Act that the Court of Divorce and Matrimonial causes were to be henceforth secular. All practitioners had a right of audience. By 1858, the Court of Probate and the High Court of Admiralty granted rights of audience to all practitioners.

For close to one thousand years, the Ecclesiastical and Canon Law jurisdiction were exclusively the domain of the Doctors of Civil Law. The two most vociferous members of the college who raised objection to the dissolution of the college were Doctor John Lee and the college's newest fellow Doctor Thomas Tristram. Both fought valiantly but in vain.

One argument remains for the survival of Doctors' Commons. The dissolution of the Royal Charter was imperfect. Consistent with the words of the Charter, at all times Doctors' Commons always had one member in existence – the Dean of Arches who was

not only the president of the college *ex officio* but also a member of the college. The Dean of Arches' successors included Lord Penzance and others until Sir Lewis Dibden who outlived the last elected fellow. Without the writ of *quo warranto* issued by the Crown, the college was arguably still extant. No positive act of dissolution was performed. Its governing body arguably endures to this day. An entity remains upon which *quo warranto* proceedings could act.

The Courts adjourned and the Doctors ceased to appear. The precious library fetched a large sum of money when sold to private collectors. The premises was sold in 1865. In 1867, the buildings were demolished and the jurisdiction vanished into thin air.

Relevantly, a few decisions in Whitehall ended the Doctors' prestigious monopolies. Their forebears were the Canonists of the Middle Ages and their learned inheritance ceased. They had been expunged from the record.

Sic transit gloria mundi...