REVIEW

Dennis R. Klinck, CONSCIENCE, EQUITY AND THE COURT OF CHANCERY IN EARLY MODERN ENGLAND. Farnham, Surrey: Ashgate, 2010. xii + 315 pp. ISBN 9780754667742. £70.

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The notion of conscience was at the heart of justifications for the jurisdiction and actions of several courts in medieval and early-modern England, and remains important today. This book seeks to understand what "conscience" meant in reference to the early-modern Chancery, the period which saw the last ecclesiastical Chancellors and the emergence of a more "law-like" Chancery. Klinck identifies several related issues: how did conscience determine the jurisdiction of the Chancery; did "conscience" impose standards, and if so from where did these standards come; were these standards objective or subjective?

The book is divided into nine chapters. Aside from the introduction and conclusion (both of which are excellent), the arrangement is chronological: chapters 2-4 cover the medieval period, early-sixteenth century and later sixteenth-century respectively. Chapters 5 and 6 form a unit, considering the theological material for the early-seventeenth century and then the legal material; chapters 7 and 8 repeat this format for the later-seventeenth century. Due to the continuing use of older ideas, the later chapters cannot be read in isolation.

As any legal historian will admit, English lawyers have not always been forthcoming in explaining the conceptual basis for their activities. Theoretical ideas were rarely clearly, coherently or comprehensively articulated. This challenge to Klinck's project is addressed by using non-legal material. As he rightly observes "what is unarticulated comes from somewhere" (181). Klinck proceeds from the contentious premise that lawyers would reflect wider social ideas about conscience, which a powerful recent article by Michael Macnair ("Equity and Conscience" (2007) 27 OJLS 659) expressly rejected. Klinck relies on the work of theologians known as casuists: divines who sought to provide answers or guidance to particular questions of conscience.

Supporting Macnair, parts of Klinck's book shows legal writers steadfastly repeating the ideas and words of their predecessors, seemingly oblivious to changes in the wider context (e.g. 219-221). However, in other places Klinck's premise seems justified, with strong parallels (if not clear links) identified between contemporary casuist ideas and lawyers (e.g. Lord Nottingham on 233). Crucial support for Klinck's approach is his consideration of the norms applied in Chancery: if Chancery applied substantive norms derived from conscience, conscience cannot merely refer to the superior fact-finding capabilities of the Chancery (as Macnair argued). Klinck assembles material for the entire period which shows references to "conscience" in identifying the norms to be applied in specific cases.

Klinck's conclusions on the notion of "conscience" are clear. Conscience had a range of meanings. In many cases, as per Macnair's main conclusion, it was a reference to superior fact-finding abilities. However, Klinck shows that such an idea was not unique to lawyers in

early-modern England. Even Macnair's technical meaning of conscience is reflected in (or a reflection of) wider ideas.

The most significant contribution of this book is that in other cases "conscience" seems to generate standards which resolved disputes. These standards were objective until the mid-seventeenth century. Higher order law was usually at the basis of conscience, although human law was recognised as generating obligations in conscience. Later, theologians began to take a more individualised approach to matters of conscience. Rules of higher order law became more difficult to identify, and conscience changed from a standard by which actions were assessed to one where individual intentions were evaluated. Issues of conscience became less "law-like". However, the idea of conscience in the Chancery retained its older objectivity, diverging from wider contemporary notions of conscience and developing a meaning which removed the power for assertions of "conscience" to shape substantive legal norms. Klinck associates this development with the emergence of Chancery "case law". His conclusion about the Chancery in the late-seventeenth century is the same as Macnair: conscience is defined by "what the courts of conscience do" (Macnair, *op.cit.*, 680).

This objectivity was not mere conservatism: the Chancery came under "more pervasive, radical, and political" attacks from the mid-seventeenth century (225). Older justifications for the jurisdiction of the court were inadequate. Although Klinck does not make this link himself, as the concept of conscience became increasingly subjective, references to conscience itself may have aggravated the attacks. Klinck highlights that Lord Nottingham seems to have been aware of the criticisms and sought to address them (e.g. 226) by stressing the regularity of Chancery's proceedings and the basis of its actions in law. Doing so made the work of the Chancery ever more "law-like" and more remote from contemporary notions of conscience.

Klinck's method is less successful when applied to the question of how conscience determined the jurisdiction of the Chancery. Theologians did not trouble themselves with the distinction between justiciable and non-justiciable matters of conscience. Klinck acknowledges this (146) and draws out some parallels, but these are weaker than the links identified for the issue of the substance of conscience.

The discussion of non-legal material appears well-supported by the literature cited. The medieval ideas will be familiar to readers who have read work on Christopher St German, but the later material is not well-known to legal historians. The legal sources are limited to printed material. The real strength of the book is in bringing together the legal and non-legal material. Klinck does this well, although the absence of precise cross-references is frustrating. Chapters 5-8 are the strongest in the book, perhaps because they feature more sustained discussion of the non-legal material following the outpouring of casuist literature in the seventeenth century (107). The broad thesis Klinck advances is supported by the evidence he adduces and his methodology vindicated.

The book's title refers to both "conscience" and "equity". Klinck focuses on the concept of "conscience", but generally uses "equity" only as a synonym for the Chancery and its jurisdiction. Given current legal history suggests a shift from the idea of "conscience" to "equity" at some point in the period (4), this is unfortunate. Klinck stresses the continued use of the language and idea of "conscience", but this is only half the issue: what about the concept of "equity" in relation to "conscience"? There are places where the quoted material would have supported such a discussion (e.g. the material on Christopher St German, 143 and 179), but the question is left unconsidered. Exploration of this issue would have been a significant contribution to legal history.

The book suffers from occasional anachronism, and although this never undermines the wider argument, it does affect individual points. For example, Klinck consistently uses the language of "convenience" to refer to pragmatic/policy concerns, interpreting an early-modern use of the word in the same way (91). Norman Doe has demonstrated that the word had a quite different meaning in medieval law (Doe, *Fundamental Authority in Late-Medieval English Law*, 161-174), and may still have done so into early-modern law (a point which is half-heartedly acknowledged in a footnote on 119, but never applied). This raises some doubts about Klinck's discussion.

These concerns do not detract from the broad conclusions, but they left this reader less convinced than is desirable. Nevertheless, the general methodology is convincing and the doubts do not seem to undermine the conclusions, which are supported by the evidence presented.