

English Lawyers and Law Schools*

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The English lawyer and the English system of courts have always been fascinating studies for the American lawyer. We inherit language, literature, law, and to a less extent government from the British Isles, and our conceptions of judicial procedure and system have come from the same source. Through the years, under the influence of environment and moving conditions much of our inheritance in law and the judicial system has undergone profound changes and adaptations, and the weight of precedent no longer bears heavily upon us. Yet we instinctively recognize it as our original and enthusiastically give it place in our reading and thinking.

The British Empire and the American Republic, for a century and a half, have developed politically and legally in widely divergent ways, and the law and the lawyers and the courts in both reflect today the impact of these divergent influences and national tendencies. As law students we used to make Blackstone fundamental; as history students we placed heavy emphasis upon the annals of England, thinking that both were basic to a correct understanding of our domestic scene. Today the emphasis is lightened but the fundamental interest continues, and so, viewed historically, what the English lawyer is and has been intrigues the American lawyer and the student of the law, and in that spirit I venture to address you upon this subject.

THE PLEADER AND THE ATTORNEY

The first clear view into the past shows us the pleader and the attorney at work in the courts. The pleader was one learned

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in the law and the procedure and was employed by a party to assist and advise him in the conduct of his own case. This was the mode in the early law, and when the curtain lifts in the 13th century it was still customary. We hear of the pleader even in the Laws of Henry I¹ providing that a party may repudiate his pleader's statements upon the judge's usual question "Will you abide by the pleader's statement?" Later in the time of Henry II² his justiciar Glanville employed pleaders on the King's business. We recall that the King's courts had been developing since the Conquest, and a steadily increasing royal business came into the Common Pleas, the King's Bench and the Exchequer, from whose beginnings the great system of common law courts arises, in turn promoting the growth of a vigorous law profession. The judicial staffs were royal judges, chosen by the King, and for a long period they toured the country on Circuit (in Eyre), bringing the King's justice to the people and gradually attracting much of the jurisdiction of the old purely local and communal courts.³

Some of the better-known pleaders are called Serjeants or Serjeant Counteurs, that is, reciters or case staters. However, they are not the Serjeants-at-Law of later times; the name here means merely a busy or practicing pleader, hence of a recognized professional class.

Our first glimpse of the ancient conditions comes in the reign of Edward I,⁴ the "English Justinian," in whose time the courts were already old enough and enjoying sufficient independence to present a major judicial scandal. Most of the judges and many officials were involved in fraud, excessive

¹ About 1115; the most complete of the "Laws" dating between the Conquest and the reign of Henry II, commencing 1154. They are *Laws of William*, *Laws of Edward Confessor* and *Laws of Henry I*, with rare exceptions said to be the laws of the time "when King Edward (Confessor) was alive and dead"—*viz.*, 1064.

² From 1154 to 1189.

³ The old Saxon Witenagemot dispensed a sort of royal justice. The Normans set up the Curia Regis which gradually divided on functional lines into the three Common Law Courts, which came down through the centuries.

⁴ 1272 to 1307.

court costs, and coercion and favoritism. Cleaning up the courts signaled a new era for bench and bar. Important statutes featured the reign of Edward I, familiar to every student of procedure; the Year Books start on their long history of two and a half centuries in the middle of his reign. There seems to be sufficient reason for the emergence of a legal profession.

The attorney was a person who *represented* a party to a suit, who stood in his place or turn and conducted the litigation. He was essentially "dominus litis." *Representation* in early law was anomalous, a rather difficult concept, and so an attorney had to be created with formality. He was appointed under royal writ (a) by a party to litigation, (b) for a particular case, and (c) for the particular court. The party was bound by his acts, and his authority continued until judgment, or the intervention or death of the party. These early limitations were being relaxed and already in the time of Edward I we read of statutes permitting the appointment of attorneys with slight formalities; writs were being issued frequently and a professional class of attorneys was forming. In 1292 the King ordered the judges to appoint a considerable number of attorneys—he thought 140 attorneys and apprentices would be enough. At this date the latter term seems ambiguous but probably includes those who were students of the law, frequenting and following the courts, catching what they could from the proceedings and the discussions of the lawyers in court and out. It is clear that by the end of the Middle Ages the use of the writ for appointing attorneys had been abandoned.⁵

The attorney was always under the control of the court appointing him; for long centuries he was regarded as an officer of the court and this relationship has pointed the way for his professional development and organization.

In these centuries—the 13th and 14th—the number of lawyers and judges was small; half of the judges were clerics, who were of course the principal group of educated or intel-

⁵ Usually placed at 1485, the end of the reign of Richard III of York, and the beginning of the Tudor reigns.

lectually trained persons in the kingdom. There were about fifty judges in the three common law courts, Common Pleas, King's Bench, and Exchequer, a small number of pleaders and around 140 attorneys and apprentices.

In the entire period from Henry I to the time of Edward I (1100 to 1272) we hear nothing of any scheme of legal education, and nothing certain for another century. All that we can extract from these early records⁶ is that there was a legal profession with two branches, distinct in their origins and in their relationship to parties and court. No distinct line between their duties as "practisers" can yet be traced.

THE JUDGES AND THE SERJEANTS-AT-LAW⁷

From about the time of Edward III⁸ the judges and the serjeants dominated the courts and the practice of the law for several centuries. With rare exceptions the judges were selected by the King from the serjeants at law, and the serjeants were chosen by royal writ from the older and more able pleaders, by this time known as barristers. Judges and serjeants lived on the most intimate terms in London and on circuit, saluting each other as "brother," and occupying the Serjeant's Inns for their headquarters. The serjeants were organized into a guild or society known as the Order of the Coif, the coif being the white linen cap which was worn on the head at all times, even in the presence of royalty. The Middle Ages were "guildminded."

The ceremony of creating a serjeant was formal and profuse and deeply impressed the people as well as the lawyers with the public importance of the law as well as the courts. The ceremonial may be thus described: The chief justice of the Common Pleas court, all judges concurring, presented to

⁶ HOLDSWORTH, HISTORY OF ENGLISH LAW, Vol. VI, pp. 471-478; and Vol. II, pp. 311-318.

⁷ See HOLDSWORTH, Vol. II, pp. 485-493; FORTESCUE, DE LAUDIBUS LEGUM ANGLIAE, chs. 48-51; PULLING, ORDER OF THE COIF, *passim*; DUGDALE, ORIGINES JURIDICIALES, chs. 52, 54, 73 and elsewhere.

⁸ Edward III, from 1327 to 1377.

the Chancellor about seven names of the best members of the bar who had been practicing sixteen years or more; the Chancellor sent to each a royal writ commanding him to take upon himself the "degree and state" of a serjeant-at-law, under penalty for refusal. There were then elaborate ceremonies at his Inn of Court, where he was showered with remembrances and testimonials by his brothers of the Inn. Great ceremonies were held at Serjeant's Inn, of which he now became a member, ceasing per custom to be a member of his Inn. Finally, there were ceremonies at Westminster in the Common Pleas court there, the King's Bench participating. Here the induction ceremony took place attended by all judges, members of the Order of the Coif, benchers and all lower members of all the Inns of Court, the *Ancients* of the Inns of Chancery, high officers of state, even the Sovereign, and members of the royal family, nobles, bishops, the Lord Mayor and officials of the City of London.

With impressive formality the new serjeant took the oath: "You shall swear well and truly to serve the King's people as one of the Serjeants at Law, and you shall truly counsel them that you be retained with after your cunning; and you shall not default or delay their causes willingly for covetness of money or other thing that may turn you to profit; and you shall give due attendance accordingly."

Then followed a great dinner, and festivities among the lawyers for seven days, comparable to "a coronation, installment of a bishop, creation of a Knight of the Bath, or the inception of a clerk at the University." All expenses of the festivities were borne by the new sergeants. In addition they gave valuable rings to all worthies connected with the courts and to their friends, and to some persons they gave liveries of cloth. The effective customs required that they thus pay out at least 400 marks (of uncertain value, but probably one mark equaled $\frac{2}{3}$ pound silver in the 12th century. Of indefinitely greater value than $266\frac{2}{3}$ pounds today). But the whole busi-

ness was easily worth the expense. The wide publicity put his name in all men's mouths; his law practice flourished with accelerated tempo; the serjeants up to the 19th century had a monopoly of the practice in the Common Pleas court, were suable only in that court, and were alone eligible to judgeships. They were often made itinerant justices, fines were levied before them, frequently they attended Parliament on courtesy, and there questions of law and law reform would be referred to them by the Parliament or the King's Council. They were made triers of petitions presented to the Parliament. They were most distinguished subjects, representing the majesty and dignity of the law; all doors were open to them.

But not all the benefits were speculative and future; immediately they repaired to Saint Paul's cathedral where each was allotted a pillar, after offerings made at several shrines there, and at this pillar he subsequently received and counseled clients; he "could be seen" there at stated times. Report says that the serjeants quickly recouped their enormous expenditures and accumulated great wealth. Chaucer paints a picture of one in his *Canterbury Tales*:

A serjeant of the law wary and wise,
Who'd often gone to Paul's walk to advise,
There was also, compact of excellence,
Discreet he was and of great reverence;
At least he seemed so his words were so wise.
Often he sat as justice in assize
By patent or commission from the crown;
Because of learning and his high renown
He took large fees and many robes could own.
All was fee simple to him, in effect,
Wherefore his claims could never be suspect.
Nowhere a man so busy of his clas,
And yet he seemed much busier than he was.
All cases and all judgments could he cite
That from King William's time were apposite.
And he could draw a contract so explicit
Not any man could fault therefrom elicit;
And every statute he'd verbatim quote. . . .

Chaucer wrote this around 1390, about the time that Fortescue seems to have had in mind when describing the ceremony.

We may add that the serjeant could also practice in any other court, before the Chancellor, and in the King's Council. He dealt directly with a client; he could be engaged by the client or his attorney for a fixed period, if desired. His fees were paid in liveries or otherwise, and retainers were permitted, for in his favor the statutes forbidding maintenance and the giving of liveries were relaxed.

When a judgeship became vacant, the King by Letters Patent appointed a serjeant; the Chancellor came into the court, the Master of the Rolls administered the oath, the serjeant swore upon the Bible, the Chancellor delivered to him the Letters Patent, and the Lord Chief Justice assigned to him a place upon the bench, which he retained permanently thereafter. No spectacular ceremonial, this.

The institution of the Order of the Coif and the rank of serjeant-at-law flourished right down to the Judicature Act of 1873-1875, which made provision for their gradual extinction.

THE LAWYER AND THE INNS⁹

We find the first definite plan of legal education in the writings of Sir John Fortescue, about the middle of the 15th century. Sir John was an official of Henry VI, the last of the Lancaster kings, and shared all the sorrow of that dismal period. He went into exile in France with the royal family, returning after Edward IV had fought his way to the throne. After swearing allegiance he was made an official in the Yorkist regime, and lived on to a happy and indefinite old age. Fortescue's writings mark him as an able student of law and government; we are indebted to one of his books, "De Laudi-

⁹ HOLDSWORTH, Vol. II, pp. 493-509; DUGDALE, *passim*; BLACKHAM, THE STORY OF THE TEMPLE, GRAY'S AND LINCOLN'S INNS (intimately and pleasingly written by a physician-soldier-barrister with offices in the Middle temple today); WILLIAMSON, THE HISTORY OF THE TEMPLE; BARTON, BENHAM AND WATT, THE STORY OF OUR INNS OF COURT; LOFTIE, INNS OF COURT AND CHANCERY; BELLOT, GRAY'S INN AND LINCOLN'S INN.

bus Legum Angliae," for our first account of the Inns of Court. He tells us there were four of these institutions similarly organized and conducted, existing solely for the teaching of the common law and some cultural studies, and recognized by Fortescue, Coke and Selden as a legal University, on the same footing as Oxford and Cambridge. Each might be called a college. Here the students lived and pursued their studies normally through twelve terms (three years). This first view shows us the same Inns in the same location as today, and the traveler may now roam about in the grounds and buildings of the Middle Temple and the Inner Temple, stretching below Fleet Street down to the Thames Embankment, exactly as he could in Sir John's day. He may wander through the spacious grounds and buildings of Lincoln's Inn just off Chancery Lane, and he may do likewise in Gray's Inn, north of High Holborn, now as then. They were all probably there in these same places in the palmy days of Edward III in the third quarter of the 14th century. Certainly Fortescue was not describing anything recent, but he did not know the beginnings; nor did the lawyers of the next century know anything of the origins of the Inns. Many guesses have been made since those times, but Fortescue accepted them, and so should we, as "going concerns."

We have the records made by the Inns themselves, and they run unbrokenly from then on. Lincoln's Inn records, the oldest, begin in 1422, and all of them contain the vestigia of a previous existence. These records are the "Black Books" of Lincoln's Inn, the "Pension Books" of Gray's Inn, the "Bench Book" edited by Ingpen, of the Middle Temple Inn, and the "Calendar of Inner Temple Records." The business meetings of the members of each Inn were held at intervals, and were designated in Lincoln's Inn the "Council," in Gray's Inn the "Pension," and in the two Temples the "Parliament." We learn here of certain smaller or subsidiary Inns, called Inns of Chancery, attached to the Inns of Court and subject to some kind of supervision. They were located in the vicinity of the

supervisory Inns, and in Fortescue's time were as follows: attached to Lincoln's Inn were Thavy's and Furnival's Inns of Chancery; to Gray's Inn, Staple and Barnard; to Middle Temple, New and Strand; to the Inner Temple, Clifford, Clements and Lyon.

Each of the Inns housed around 200 students and the Inn of Chancery around 100. The "curriculum" of studies included the law of England (the Civil and the Canon Law were taught at Oxford and Cambridge), history, music, scripture, dancing and other "noblemen's pastime, as in the King's House." These were not cheap schools and were attended mainly by the sons of noblemen. Many of the students had no intention of ever practicing law. They expected to become owners of estates, officers of government or leaders of opinion in their counties, and in all of these responsibilities a knowledge of the common law would be useful, perhaps indispensable. Further, the close association of such young men would develop a country-wide "camaraderie," and a degree of culture and character which would add immeasurably to British nationality and coherence.

The Inn of Court sent down Readers to its Inns of Chancery, and at times received students from them, but we are too ignorant to particularize, and they have left no records. However, we do know that they were educational institutions but that they could not "call" to the Bar. Generally speaking they were incomplete and ineffective except in their collegiate or associational opportunities.

A most illuminating account of the Inns of Court at their "golden age," as it is usually called, comes down to us about 1535 from a report made to Henry VIII by Messieurs Bacon, Denton and Cary. This report seems to present them as they had been for a long time. Fortescue's account in "*De Laudibus Legum Angliæ*" and this report, supplementing and reinforcing each other, give us a bright picture.

Each Inn was governed by a group of its oldest members called Benchers. This group was self-perpetuating, selecting

the most ancient of the members when a vacancy occurred. Annually the Benchers selected a presiding officer and a financial staff, who were responsible for the management and who reported to the Benchers at any meetings that might be called. These Benchers also selected each year a Reader from the oldest and most experienced members, who organized and conducted the educational program. The Inn had many house-keeping problems and much office management and consequently employed a staff of paid employees.

Each Inn was a self-governing entity in theory and, with slight and occasional exceptions, in practice. Sometimes the Privy Council or the Chancellor sought to curb or direct certain activities of the Inn, and ordinarily such invasions of autonomy were accepted without vociferous protest, but were ingeniously evaded and soon forgotten, and everything went on as before. The Inn was rightfully and admittedly subject to "visitation" by the judges (not the Courts) but they rarely intervened. Such regulations as the Inn observed were "customary"; no code existed, no act of Parliament touched this independent institution, which had the sole and exclusive function of prescribing and controlling all matters pertaining to the education and the "call" of the barrister and to the supervision of his professional conduct. And so they have continued through the centuries—little islets of independent power in the midst of the greatest Empire the world has ever seen, utterly unaffected in their autonomy by the swirl of modern politics, industry or social revolutions.

The membership of an Inn included various elements; there were the Benchers mentioned above; there were "Utter Barristers," who were members of the professional bar resident in the Inn. When the educational exercises were in progress they sat upon the outer or "utter" benches and pleaded and argued at the call of the Reader. The students were the "Inner Barristers" sitting on the inner benches. During the educational sessions they sat by twos with each utter barrister selected by

the Reader to conduct the discussion. Two of them recited "by heart" the pleadings in Law French in the moot cases, one as plaintiff and the other as defendant.

All of the members thus far mentioned actively participated in the domestic and educational life of the Inn and carried the responsibility. However, there were others living in the Inn even up through the 16th and 17 centuries, who were there rather by sufferance. Among them were professional attorneys, who were not students or participating members, apparently there because they liked the environment. There were also clerks of the courts, living in the Inn and pursuing there the study of the law. These clerks and sometimes the inner barristers acted as attorneys at law in the courts.

In those times there was no sharp cleavage between the education and the practice of the attorneys and the barristers, but segregation became more and more strongly indicated, and we shall see it effective a century and a half after Henry VIII's committee made their report on the Inns of Court. Their place in the juridical and political economy of England was so secure that even that powerful Tudor monarch could find no excuse for interference.

Law study was the serious business of the Inn. Through the Term Times and through the Vacations the work went on. The Reader selected a statute that lent itself readily to discussion; he lectured about what it did or did not cover, and what advantages and disadvantages accrued from it, making a long reach into the past for precedents, and presenting a thorough comparative and analytical study. Then an utter barrister endeavored to show the Reader's argument unsound in important particulars. In order of age the other utter barristers declared their views; the Reader came in for rebuttal, followed by judges and serjeants who might be present, with their views. Then one of the younger utter barristers raised another question about the lecture, and the same debate procedure was pursued. This ended the "reading" for the day, usually consuming about two hours.

After dinner cases put at the Reader's table were argued throughout the dining hall, where every member of the Inn was required to be present. And every night after supper and every fasting day after six o'clock, the Reader and the Benchers discussed cases put by the utter barristers. Afterwards they held a "Moot," at which the Benchers were judges and two utter and two inner barristers were counsel, the pleadings being recited in Law French.

In the Inns of Chancery the same educational procedure was followed, so far as we know, the Reader there being one of the utter barristers of the supervising Inn, sent down by the Benchers for that purpose. In this way was produced the lawyer who made the common law a system of case law, and who made the Year Books. The mootings made him skilled in argument, the readings taught him to analyze, synthesize, and speculate about the theories upon which statutes were built. This system made men pleaders, trained them into advocates, and ended by making them judges.¹⁰

BARRISTERS AND ATTORNEYS¹¹

Since at least 1300 a legal difference between barristers and attorneys has been recognized, reaching distinct cleavage around 1700. Primarily the court has had control over the attorney but not over the barrister. The attorney was always the officer of the court, and closely associated with its prothonotaries, cursitors and clerks; the barrister knew no authority but his Inn. Generally the attorney, by the orders of the judges, must before admission have served five years as a common solicitor or clerk to a judge, serjeant, attorney at law, or to a clerk of one of the courts of common law. The attorney, the clerk and the student who wished to become an attorney were often found as students in the Inns, partaking of the same training as the future barrister. But this was all changed by the latter part of

¹⁰ HOLDSWORTH, Vol. IV, pp. 261-272.

¹¹ HOLDSWORTH, Vol. VI, pp. 431-481; XII *id.*, pp. 75-76; BLACKHAM, *op. cit. supra*, p. 190.

the 17th century, and such students were first relegated to the Inns of Chancery. These presently becoming decadent as educational institutions, the attorneys and students used them as hostels only, and acquired their education "practically."

The nature of the legal work done by the two branches of the profession was increasingly different, and even as early as 1614 the benchers of the Inns go on record with this: "There ought always to be preserved a difference between a Counselor at Law (barrister) which is the principal person next unto the Serjeants and judges in administration of justice, and Attorneys and Solicitors, which are but ministerial persons and of an inferior nature."

This growing distinction left certain areas of practice open, and these came to be filled by clerks of court who looked after much of the pleading, which had now become written, in the clerks' offices; the conveyancing (drawing and using in practice the forms effective in land transactions and in mercantile business) was done by attorneys, barristers and a special class of conveyancers. Gradually, because of the nature of their work, the pleaders and conveyancers became merged with the barristers.

The solicitors who grew up in the newer courts of the 16th and 17th centuries—the Court of Requests, the Star Chamber Court, and the rapidly expanding Court of Chancery—became more and more like attorneys, and so after 1750 these two make one profession. The proctors in the Admiralty Court consolidated with solicitors and attorneys in 1857, and the Scrivener's Guild, after a desperate judicial struggle with the attorneys and solicitors to force them into the Guild if they continued to do the scrivener's business, failed in the litigation and the Guild died, most of the scriveners being absorbed into the legal profession. By the Judicature Act of 1873-1875, all distinctions are merged and we have today one great branch of the legal profession called solicitors and another called barristers, and there are no others practicing law in England.

Ancient custom rules the latter and the acts of Parliament and the courts the former.

THE INNS CEASE TO EDUCATE¹²

The program of legal education described above was arduous for the students and placed a heavy and continuous obligation on the lawyers of the Inns, to whom it doubtless became irksome. The system grew up and came to its preeminence in an age without printing, and when printed law reports and law books began to be plentiful, in the middle of the 16th century and afterwards, the system declined. Slowly to be sure, and with occasional recalcitrance, the Inns relaxed the teaching until by 1700 they were no longer a "Law University," as Fortescue, Coke and Selden had proudly called them. The Inns from that period have steadily built their libraries until each now has a distinguished collection of law books, and the libraries through this long period have more and more become the scene of the student's efforts. The rapidly expanding law business in the spacious days of Elizabeth, the great commercial and industrial prosperity growing out of the empire of the seas which Britain developed in the 17th century meant a busy bar, and when supplemented by printing, meant a new era in law study. The student could read books, sit in on the courts of justice, mingle with lawyers in chambers and on circuit; he rebelled at the grinding procedure of the Inns; he avoided moots, "cut the classes," and reduced the old learning techniques to "hocus pocus" with the connivance of everybody in the Inn. Further, the constitutional upheavals in the reigns of James I and Charles I, the Great Rebellion, the era of Cromwellian dictatorship—all bred unrest, uncertainty, and a moving spirit of change, and by 1700 the Inn as a law school had collapsed. And they never revived the old system. It had flourished for around three centuries, and everybody interested in legal education joined in the chorus "Requiescat in pace." What took its place?

¹² HOLDSWORTH, Vol. VI, pp. 481-493; XII *id.*, pp. 14-46; ROGER NORTH, LIVES OF THE NORTHS, Vol. I; DUGDALE, pp. 300-320.

OFFICE TRAINING¹³

Various lawyers have left on record their recommendations for a program during the century and a half after the failure of the Inns. Sir Matthew Hale in his preface to Rolle's Abridgment gave valuable advice; Phillips in his book "Directions for the Study of the Law" gave sound guidance; but Roger North in his "Discourse on the Study of the Laws" gave the most complete "course." Written about 1700 but not published until 1824, it is possibly a report of the best practice of his time, and so may be set out here as known to the students of his time. He classified his directions into

COURSE	AIDS
Littleton	Terms of the Law
Perkins	Diversity of Courts Old Tenures, and Doctor and Student
Plowden	Fitzherbert's <i>Natura Brevium</i> Crompton's <i>Jurisdiction of Courts</i> Staunford's <i>Pleas of the Crown</i>
Cases temp. Hen. VII	Coke's <i>Jurisdiction of Courts</i>
Keilway	Coke's <i>Pleas of the Crown</i> Coke's <i>Commentary on Magna Carta</i>
Leonard	<i>Petit Brook</i>
Coke's Reports	Coke on Littleton
Dyer	Bracton
Moor	Britton
Crook	Fleta
Palmer	Glanville

These the student must read, commonplace, report and discuss.

Holdsworth's comments on this self-study of law are caustic: "The student could become a competent English lawyer but he would probably learn little else than the rules of English law. And, knowing little else, he would naturally be

¹³ HOLDSWORTH, Vol. VI, pp. 493-499; XII *id.*, pp. 77-91; NORTH, DISCOURSE ON THE STUDY OF THE LAWS. For Blackstone's career, see HOLDSWORTH, Vol. XII, pp. 91-101, 702-737 and Appendix, pp. 745-754; I BL. COMM. *1-37, and see Sharswood's note *37.

wholly destitute of any power to criticise what he knew. . . . This was one of the causes of that complacent assurance of the excellence of English institutions and English law which characterized the lawyers of the 18th century, and found its literary expression in Blackstone's Commentaries."¹⁴

Blackstone attempted to establish the teaching of English law at Oxford, but little was accomplished at the time. Out of his lectures he produced a law book which soon appeared in every part of the English-speaking world. But all the efforts to put law study on a lecture basis, in the Universities or in London, were given cold recognition by the lawyers of the 19th century. Cairns thought the training in chambers primary, the lecture and examination quite secondary. Lord Bowen showed that even in the century following Blackstone law-office training prevailed. Dicey, in assuming the professorship of law at Oxford in 1883, said "If the question whether English law can be taught at the Universities could be submitted in the form of a case to a body of eminent counsel, there is no doubt whatever as to what would be their answer. They would reply with unanimity and without hesitation that English law must be learned and cannot be taught, and that the only places where it can be learned are the law courts and chambers." So far as the Inns of Court were concerned during this long period, they had let down all standards of excellence and "called" to the Bar if the student had merely eaten a few dinners in each term for the required period of "residence." Whatever else the Inns may have been, they were in no sense a "legal university."

THE ATTORNEYS ORGANIZE¹⁵

The barristers from the beginning have been organized in the Inns of Court. The solicitors are today organized in the Law Society. Prior to the 18th century the attorneys at one period had enjoyed some of the privileges and facilities of the Inns. Then for a period their status in the Inns was shifting

¹⁴ HOLDSWORTH, Vol. VI, p. 498.

¹⁵ HOLDSWORTH, Vol. XII, pp. 51-77.

and uncertain; next they were consigned to the decaying Inns of Chancery, which had never been competent to "call" to the Bar. The need of healthy and rugged organization to protect, promote and control the attorneys was urgently felt in the 18th century; acts of Parliament attempted to regulate them through the courts, on the ground that they were officers of the courts, and the courts made numerous regulatory orders. This was not enough; the courts were not always vigilant, their energies were otherwise expended. Some voluntary association of the attorneys seemed to promise better protection to attorney and client and wiser discipline. Accordingly, they organized "The Society of Gentlemen Practisers in the Courts of Law and Equity" about 1730. It probably never had more than 200 members, but it was stimulating and effective. The name was changed in 1800 to "The Law Society."

A new Society was formed in 1831 with its own new building in Chancery Lane, proposing a more ambitious program. In 1832 the two Societies consolidated under the name "The Society of Attorneys, Solicitors, Proctors and others not being Barristers, practising in the Courts of Law and Equity of the United Kingdom." In 1837 the name was pruned into "The Incorporated Law Society of the United Kingdom," and in 1903 it got its present name, "The Law Society."¹⁶ Its efforts have been devoted to encouraging industry and capacity and high standards of conduct, and to upholding the rights and privileges of the lawyers as one of the great professions in the modern state. Holdsworth makes illuminating comments thereon: "In fact neither the rules made by the legislature nor the rules made by the courts were by themselves sufficient to provide an effective organization and discipline for this branch of the legal profession. They were not sufficient because there was no organized body whose business it was to see that the statutory rules were observed, and to set in motion the machinery of the courts."¹⁷

¹⁶ HALSBURY'S LAWS OF ENGLAND, Vol. 18, pp. 835-920; 26 *id.*, pp. 793 *et seq.*; 25 COMPLETE STATUTES OF ENGLAND, pp. 793-859; 29 *id.*, pp. 799 *et seq.*, Act of 1936. (Vol. 25 contains the Act of 1932.)

¹⁷ HOLDSWORTH, Vol. XII, p. 62.

LAW AS IT IS PRACTICED IN ENGLAND¹³

In America a lawyer may be admitted to practice in any court. He deals with any client directly, consults and advises in any business, and may by himself take the client's case from the first conference with the client and the first pleading through all the courts of his state and then over into the Federal system. He has the right of audience as a lawyer. But it is not so in England.

In order to understand how the practice of the law is carried on there today, we must keep in mind that England's legal profession is divided into two great branches, barristers and solicitors. The solicitor has a practical monopoly of the dealings with clients; with rare exceptions he is the sole legal adviser in non-litigious matters, such as company and corporation business, industrial and financial matters, family and estate matters and the multitude of other subjects which stir the individual to seek legal advice. His fees in such matters are fixed by a statutory commission and he may sue if necessary to recover them. Generally speaking, the solicitor is liable for negligence, can bind his client within the scope of his authority, and is protected by the rule of "confidential communications." For professional misconduct he may be disbarred, *i.e.*, struck off the roll of solicitors by the Master of the Rolls, upon sufficient showing by the disciplinary committee of the Law Society.

In litigious business the solicitor deals with the lay client, and here his fees are fixed by their agreement. He makes a preliminary study of the case, handles efforts at compromise, and interviews people and prospective witnesses, organizes all the facts and testimony available and attends to all matters preliminary to litigation. This information is embodied in a document known as a "brief." The solicitor is now ready to confer with a barrister, who must at this stage be retained to

¹³ JENKS, *THE BOOK OF ENGLISH LAW*, pp. 78-88; 25 *COMPLETE STATUTES OF ENGLAND*, pp. 793 *et seq.*; BLACKHAM, *op. cit. supra*, Ch. 23.

attend to all phases of the litigation, and in this conference it is to be assumed that all matters of strategy are thoroughly discussed. Only the barrister except in some inferior courts has the right of "audience" in court and the solicitor from this point on will work through the barrister. In reality the barrister is the solicitor's agent, or the solicitor is the barrister's client, and is responsible for the barrister's fees. The solicitor has no standing in court and the whole conduct of the litigation when once the case becomes of record is the business of the barrister through the court of first instance and on appeal. The original client of the solicitor, who furnishes the business, of course pays the solicitor and all fees and expenses connected therewith; but the barrister will scarcely see him except in court. It is also to be assumed that the solicitor on occasion and by permission may see the judge in chambers to emphasize the need of certain remedies or procedures, such as injunction.

The barrister has little business except as it comes through the solicitor; he may of course do work for another barrister, and is freely open to all the conveyancing which comes in. But his appearance in court, which is his "grand" business, can come only through employment by a solicitor, and he may wait long for his first "brief." The barrister cannot advertise himself, but his clerk can cultivate the solicitor's clerks, and perhaps at luncheon and other places where clerks may see each other much business can be controlled through the fine art of suggestion. Indeed the clerk is an unsung hero in many a barrister's career.

There is no public Roll of Barristers and he is not required to register; he is "called" by his Inn, and thereby becomes a member of the "Bar of the Inn," and *ipso facto* is entitled to audience in the courts. He always remains a member of his Inn. The four Inns cooperate in setting up the "General Council of the Bar," which has the right to take disciplinary action concerning a member of the profession of barrister; disbarment is in the power of the Inn. No court approval or record is made in such cases.

It is an interesting fact that barristers have offices only in London, while the solicitor may be found in any place in England.

There is yet one other practitioner who must be mentioned, the King's Counsel or "K. C."¹⁹ When a barrister feels that he has a sufficient reputation earned usually in a long and successful practice, and wishes to escape the irritations and hardships of the general practice and accept only special cases of great promise in reputation or money or both, he requests the Chancellor for designation as King's Counsel. The King thereupon issues Letters Patent conferring the rank, and in the language of the profession he "takes silk," that is, he now puts on a silk robe instead of the stuff gown he wore as barrister. He is now spoken of as a "Silk." The rank is really a name, not a status; it is doubtful whether it carries any obligation to the King in these times, and the K. C. is free to practice as he likes. Preferment and income are still hazardous; the law practice is a personal matter beyond almost all other lines of endeavor, and the new Silk may find that he overestimated himself in assuming a rank which normally entitles the holder to big cases and large fees. He takes this chance. In a way, he is the present day successor to the "Serjeant-at-Law," now extinct.

PRESENT-DAY LEGAL EDUCATION IN ENGLAND²⁰

The Law Society expressed its dissatisfaction with the office training regime by establishing about 1830 lecture courses in common law, equity and conveyancing and obtained from the judges an order requiring examination of candidates for the profession of solicitor. Twenty years later the Inns of Court introduced lectures and examinations for prospective barristers. The universities of England have established lecture courses that are accredited by the Law Society and the Inns of Court,

¹⁹ BLACKHAM, *op. cit. supra*, pp. 194 *et seq.*

²⁰ Bulletin: *Consolidated Regulations of the Inns of Court* (The Law Society, London); 11 HALSBURY'S LAWS OF ENGLAND, pp. 357 *et seq.*

but both require a final examination of all applicants no matter where they may have learned law. Let us glance at the educational systems of these two admitting authorities as they are in operation today.

The Inns of Court

The Inns act together through a joint committee called the Council of Legal Education, and have promulgated "Consolidated Regulations" governing the admission of students, the mode of keeping terms, the education and examination of students, the calling to the Bar of the Inn, and certificates to practice *under the Bar*. For admission to an Inn the student must have the equivalent of college entrance requirements. He must not be connected with a multitude of livelihood or occasional activities enumerated at great length in the statement which he subscribes under oath, and when he is "called" he must take oath again that he has not been engaged in them and as a barrister will not do so. These are most searching oaths to assure the "purity" of the barrister and his complete devotion to the profession—"The Law is a jealous mistress"!

The student must keep twelve terms—three years—by dining in the Hall of the Inn six evenings of each term; he must come before "grace" and stay until the concluding "grace" is over; this dining together will develop sociability and ease of manner—most useful in the lawyer's profession. This is a survival of the collegiate character of the Inns in the "Golden Age" when they had readings and discussions and moots and quizzes. If the student is concurrently a law student at a university three dinners per term are enough. The term is a period of about three weeks, and the Call night in each term is at the end of fifteen days. In 1938-1939, the terms fixed by the Inns were: Michaelmas, Nov. 2 to 23, Call night Nov. 17; Hilary, Jan. 11 to 31, Call night Jan. 26; Easter, April 18 to May 15, Call night May 3; and Trinity, June 6 to 26, Call night June 21.

The Inns provide a law school but attendance is not com-

pulsory; all must take the same final examination submitted by the Council on Legal Education. Students are encouraged to read in the chambers of a barrister or a pleader, but such office training is not required.

The Call is an ancient formal ceremony in the Hall of the Inn, beginning in the dining hall at dinner, and then moving about in the building to special rooms for special functions, of which refreshments are an indispensable part. By this time the candidates are properly "charged" with their responsibilities as barristers. The student must be twenty-one years of age, must have paid all fees (around 180 pounds), passed all examinations, and his name must have been "screened" or posted in all four of the Inns. After the call he is a barrister, and when he goes into court the judges recognize him with a smile or a nod—no formality. If an Inn refuses to call a student he may appeal to the judges of the High Court as a body, not to the court.

The Inns are not corporations; Parliament never legislates about them, the courts exercise no control, the judges (who are all members of the Inns) have a mild visitorial supervision; their own rules are not rules of law but merely matters of "etiquette."

If a solicitor should desire to become a barrister he may do so after his name is removed from the Roll, and has withdrawn from his former associates in the practice and met the examination requirements. The Inns insist upon high character in the barrister, as in the student.

*The Law Society*²¹

This is incorporated and its powers and duties have been the subjects of many acts of Parliament since 1839, but all were compressed into one general Act in 1932. The regulations for admission of solicitors to practice provide generally for a preliminary education equal to college entrance requirements,

²¹ See generally COMPLETE STATUTES OF ENGLAND, pp. 793 *et seq*; LAW SOCIETY BULLETIN; JENKS, THE BOOK OF ENGLISH LAW, pp. 84-88.

practically the same as demanded by the Inns, and both have approved lists of colleges in Great Britain and Ireland whose requirements are adequate. The legal training for solicitor is more exacting than that for barrister; he must enter into Articles of Clerkship in the office of a solicitor for three or five years, depending upon the conditions, and must spend all of his time in such apprenticeship except that taken for the study of law. Office training and law study must go hand in hand, the theoretical and the practical supplementing each other.

He is required to be in attendance at an approved school of law for at least one year, which by the Law Society's rules is distributed into three terms—Autumn, Spring and Summer—extending from the end of September to the end of June. These terms are not to be confused with the terms of the Inns or of the courts. The Law Society conducts a law school during these three terms, but does not require attendance therein. Two examinations are required, one preliminary, sometime during the period of study, and the other final, for admission to the practice.

The certificate of admission, given by the Law Society, is registered with the Master of the Rolls, and entitles the holder to practice for one year; at the end of each year the solicitor must make a showing and pay a fee for renewal for the next year. On the records he is known as a "Solicitor of the Supreme Court."



In retrospect we can see the education of the English barrister falling into three periods. In the first, from 1300 to the 17th century, the Inns of Court were "legal Universities" of surpassing excellence. There was a collegiate life, law teaching by bench and bar, moots and discussions, a most serious educational program in which lawyers, judges and students all felt the inspiration of a common purpose. This spirit and system were coextensive with the Year Book period, and the Inns reached their "Golden Age" when Tudor times were at their

zenith. After a period of vacillation, the Inns ceased to be an educational institution, and remained inert from the middle of the 17th century until the middle of the 19th. For the last 100 years educational opportunities have been presented by the Inns, optional in their provisions. The libraries of the Inns are large and have been carefully selected. Collegiate life is required only so far as it can be had by "dining in Hall" a few evenings each term. If a student of one of the Inns should be concurrently studying at Cambridge, say, he need "dine in Hall" only three times a term, and this is made as easy as possible. He can run down to London for an evening dinner on Friday, Saturday and Sunday and liquidate this obligation in one trip. To state this rule shows that there is nothing substantial in it; it is purely formal. The only control exercised by the Inns is through the examinations and Call. There can of course be much social and educational stimulus in the Inns today, but it is optional, not a required training. The students in large number read in the chambers of barristers.²²

The training of the solicitor or attorney through the ages has also experienced many vicissitudes. For a long period he was welcomed as a student by the Inns of Court and Chancery, but this association came to seem anomalous, since the Inns managed themselves and the courts regulated the attorneys, solicitors and proctors. It finally developed upon the practitioners to set up for themselves a society which has had frequent changes of name and varying degrees of control. Today the Law Society manages the legal education of the solicitor in a much more positive fashion than does the Inn that of the barrister.

But neither approaches the standards of educational requirement and accomplishment of the law schools with which we are familiar in the United States. Comparable student training is found in large part at Oxford and Cambridge and the University of London, and in Dublin and Edinburgh. The Inns and the Law Society of today do not exhibit a trace of the power and efficacy of the Inns of Elizabeth's day.

²² JENKS, *op. cit.*, *supra*; BLACKBURN, *op. cit.*, *supra*.