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THE INNS OF COURT AND THE IMPACT ON THE LEGAL  
PROFESSION IN ENGLAND

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AT THE present day there are many eminent lawyers who have received a part, perhaps the greater part, of their legal grounding at Oxford or Cambridge or other universities, but there was a time when no legal teaching of any consequence, except in Canon and Roman law, was obtainable anywhere outside the Inns of Court. Sir Wm. Blackstone called them "Our Judicial University." In them were taught and trained the barristers and the judges who molded and developed the common law and the principles of equity.

The Inns were not in earlier times, as they are now, inhabited merely during the daytime by lawyers and students who dispersed in all directions to their homes every night. They were close communities, and their members not only observed their customs, accepted their discipline and owed them loyalty (all of which things they still do) but actually lived their lives within the precincts.

In these communities the older members, practicing lawyers, of course, joined freely in the teaching of the younger lawyers and the students, by moots and mock trials and discussions. There were probably not many books from which a student could teach himself. Education of this sort was bound to have a highly practical flavor, and so it is small wonder that the English common law, judge-made by men who had themselves been taught in this way, is more empirical than logical, and follows the line of building up case upon case rather than the line of general exposition or codification.

The Inns of Court first came into being after the breaking up by Henry III in the 12th and 13th centuries of the schools of law which existed in the city of London under clerical control. Colonies of lawyers and a group of hostels for the reception and education of law students sprang up outside the western city walls. The

Templars, Bishops, Earls and Barons, who had their mansions, palaces, and manor houses in the countryside between Holborn and the Thames, for one reason or another presently disappeared, and the lawyers took their place.

The Templars were forcibly expropriated, and their successors, the Knights of St. John and Jerusalem, leased their riverside estate to the lawyers. This locality was later divided into the Inner and Middle Temples.

Another company of lawyers settled in the palace of the Bishops of Chichester and in the domain of the Earl of Lincoln. This Society became known as Lincoln's Inn.

A third company became tenants of the manor house of the Greys de Wilton, and became known as Gray's Inn.

Such, briefly, was the origin of the four Inns of Court. They started as humble hostels or seminaries and became organized institutions with recognized authority, dignified habitations and honored names. Even today nobody may practice at the Bar without being a member of one of these Inns of Court.

There were, however, about a dozen inferior inns called Inns of Chancery—as it were, preparatory colleges for the Inns of Court.

Later there were also the Serjeants Inns in Fleet Street and Chancery Lane. Members of the Inns of Court on becoming serjeants had to transfer to these special Inns. Serjeants had the exclusive right of practicing in the Court of Common Pleas, and nobody could be raised to the common law Bench unless he had previously been a serjeant. Thus, the judges became separated from their old Inns. Serjeants were, however, abolished during the 19th century (1877) and their Inns dissolved. A judge, therefore, now continues as a bencher of his Inn of Court.

The Inns of Court have for centuries been governed by Benchers, or Masters of the Bench. This governing body is self-appointed by co-option from barristers of the Inn. In the Middle and Inner Temples a meeting of Benchers is called a Parliament. In Lincoln's Inn it is called a Council. In Gray's Inn it is called a Pension. The

different Inns are naturally individualistic, each having its own peculiar rules and customs, but in all matters affecting the organization, discipline and etiquette of the profession as such they act alike.

Education has always been the principal care of the Benchers. But there have been many changes of method. At one time the curriculum was very long, as much as 7 or 8 years (12 years in Elizabethan days), and later, in the 18th century when the standards of legal education decayed, it became very short. It is a strange contrast that in that century of great culture, in which the Bench and Bar shared fully, the Inns of Court so lamentably neglected their educational functions. Sir Gerald Hurst in his excellent book on Lincoln's Inn tells us that an examination for call to the Bar became no more than a legal fiction. Verbal questions were put to students in stock words. If appropriate answers were given, no more evidence of fitness was expected of them before call. Proposals to found lectureships are recorded in the Black Books from time to time, but even up to 1845 they always stood adjourned. They had a few champions such as Brougham, but on the whole there was no demand. The creation by the four Inns of the Council of Legal Education in 1852 was the first step towards educational revival. At the present day a student takes approximately three years to pass his examinations, and to qualify for call to the Bar. After that he can practice at once, though he always spends about a year in the chambers of an older barrister as a pupil to learn the practical side of the law.

To go back to the very old days, a student began in an Inn of Chancery, and then graduated to an Inn of Court and became an inner barrister (so-called from the seating arrangements in the hall of the Inn). After a time he became an outer (or utter) barrister, and eventually an ancient.

Both inner and outer barristers assisted in the training of students. This training was mainly oral. The chief instructor was called the Reader. This was an important position, and its holders had to give magnificent feasts which cost so much money that only

rich men could accept the office. This system of readings fell into disuse as might be expected in the eighteenth century.

Other important forms of education in the Inns (not so much for the benefit of the students perhaps as for the more junior barristers) were bolts and moots, which in their early form are long ago obsolete. A bolt was a case propounded for argument among the inner barristers and conducted by the outer barristers. A moot (as then practiced) consisted of the putting of a doubtful case by an outer barrister in hall after supper, which was argued by one or two benchers. A mimic law suit followed in which inner and outer barristers and benchers took part.

There is a variety of facets grave and gay which make up the educational picture alone in the history of the Inns of Court. For anyone who is interested to pursue the subject in detail there are many sources, including notably the writings of Sir John Fortescue who was Treasurer of Lincoln's Inn in 1437. I could wish that as Treasurer of Gray's Inn more than 500 years afterwards I had been able to find the time to write about the life and duties of our modern Inns of Court. Fortescue's day seems to have been a more comfortable one for lawyers than our own, if we can accept his description of the judges as leading a quiet and pure life "free from all worry and worldly cares." They breakfasted on bread and ale, sat only from 8 A.M. to 11 A.M., spent their afternoons "studying the laws, reading Holy Scriptures and otherwise in contemplation at their pleasure," and had supper at 5 P.M.

The Inns of Court since their earliest days had given much time and attention to revels and sports, not so much to relieve professional austerity (as Sir Gerald Hurst aptly puts it) as to fit students to attend the Sovereign's Court in later life.

Fortescue mentions this rather strange aspect of the Inns. He describes the Inns of Court in the 15th century as a "sort of academy or gymnasium . . . where they learn singing and all kinds of music, dancing and such other accomplishments and diversions which are called revels, as are suitable to their quality, and such as are usually practiced at court. At other times, out of term, the

greater part apply themselves to the study of the law. . . . Knights, Barons, and the greatest nobility of the kingdom often place their children in these Inns of Court, not so much to make the laws their study, much less to live by the profession . . . but to form their manners and to preserve them from the contagion of vice. . . .”

The Bar drew its members from the influential sections of society, and the Crown recruited courtiers from the Inns of Court and expected to be amused by them. Thus, all the Inns gave revels a serious place in their educational systems. Unintended developments of these more sportive exercises are occasionally recorded. Thus at one time fox-hunting (of a kind!) and cat-hunting took place in hall. The reformer William Prynne, in the middle of the 17th century, wrote that when he was a student and young barrister all the Inns kept open revels, dancing, dicing, and music in their halls every Saturday night until 11 or 1 of the clock and many times until 4 in the morning. Revels were discontinued by decree of the Long Parliament at the time of the Commonwealth. They were revived after the Restoration for a brief period only. The 18th century was perhaps too sophisticated for such forms of amusement—or, as I have already mentioned, even for the graver side of legal education!!

The history of six centuries cannot be compressed into as many pages, and I have only endeavored to peep into it here and there. To those who desire a rather fuller account, without embarking on lengthy research, I can recommend a recent book, “The Story of our Inns of Court,” by D. Plunkett Barton, Charles Benham and Francis Watt, to which I am myself much indebted.

The study of the history of these unique and ancient institutions, which still rule the barristers’ side of the legal profession (the solicitors are ruled by the Law Society as an entirely separate side) leads one to speculate on the causes of some of the things which may seem peculiarly English to lawyers from the Continent of Europe when they make the acquaintance of our Legal Profession. Is our reluctance to codify our law due at all to the old habit of studying it piecemeal by discussions in the evening between

those who have spent the day on concrete cases? Is the pride of place which we still give to the judge and the practicing lawyer, as opposed to the professor, in the exposition and development of our law, due to the Inns of Court having for so long been the main fountain of legal education? I shall leave those as moot points. But of one thing I am certain, that the invaluable personal relationships both of bench and bar are deeply rooted in some six or seven centuries of Inn history and tradition. The easy-going companionship of the bar, which enables (indeed requires) two barristers, meeting even for the first time, and regardless of their respective seniority, to deal with one another and trust one another like old friends, is a direct product of that communal hierarchy among equals which is the pride of the Inns of Court.

If I may be forgiven for intruding a personal note, I hope that it may be of interest to see my own effort at translating the old feeling into practical advice. This is how I tried to do it in talking to the barristers whom I, as Treasurer of Gray's Inn, had just called to the Bar in Hilary Term 1949:

"It is now the wish and privilege of the Masters of the Bench to drink to your good fortune in the profession into which it has been my honor to complete your entry. More than five centuries here look down on the formation of the tradition which you tonight inherit. Personally, I try to hand on to you the torch which I received on my call night from Master Plunkett Barton. It was my privilege not only to be called by him but 14 years later to find in him as a brother bencher that learning lightly worn, that friendship freely given and that kindness which I shall always cherish. I mention that because the comradeship and interest of its members one in another is the particular glory of our ancient House.

"Over the last two centuries three strong strands have contributed to the advocacy of the English Bar. There have been the militant advocates from Erskine to Russell and F. E. Smith whose lambent genius still brings dead pages to impassioned life. There has been the strain whose roots were firmly in the great non-conformist tradition in our land although they might be devoted sons

of the Established Church. Their moral earnestness and weighty phrase have often hushed a crowded court.

“There has been and will always be a third school whose pellucid exposition of intricate legal problems and complicated facts has been an intellectual pleasure not only to the tribunal which they addressed but to all who heard. That type of mind changes little from Sir John Holt to Lord Atkin. I cannot tell which of these will claim you. I can say, however, that these strands are plaited together by the duties and standards of the profession. It is in honesty in advice and candor in presentation alone that the confidence of the Bench and the public in the advocate depends.

“Many people will give you more shrewd advice in the pathway to success but I remind you of this. No solicitor will return to you unless he feels that by coming to you he has lightened the burden of responsibility which he himself carries. To the creation of that feeling nothing contributes so much as the moral and professional integrity which you maintain.

“I cannot but note that you whom I have called are gathered from many parts of the British Commonwealth and Empire. There is not one of your homelands where the system of law of which you are sealed tonight has not left a strong mark and benefit. Remember that alone among the legal systems of the world it puts the pursuit of justice above even the pursuit of truth. Henceforward you, too, are the ministers of justice unregimented by formal rules but inspired and guided by great traditions.

“Finally, I cannot but remind you that although few lawyers claim to be more than the cement of society the Bar has contributed to the history of this country anvils that have worn out many hammers. In two world wars, Pitt and Perceval and Asquith, men bred to the Bar, took years of intolerable strain.

“It is in learning and applying the lessons of justice, humanity, and public duty that I wish you ‘God Speed.’ ”