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THE INNS OF COURT

THE tendency of modern lawyers is to permit the profession to become a mere business and to give little or no attention to the tradition and romance of the law. During more than five centuries the Inns of Court have occupied an important place in the history and development of our jurisprudence. The constant growth and continuity which characterizes the great body of English law is not found in the native or national law of continental countries like France and Germany. Toward this characteristic entirety of English law the Inns of Court have contributed largely, for through the centuries of its chief development they have provided lawyers and students of the law—place, opportunity and inclination for the study and exposition of legal principles. In fact if the history of the Inns of Court is traced back into the obscurity of tradition, it will appear that for almost seven hundred years the Inns have been the abode of law and lawyers.

The great characters of the Inns of Court and their life and work are, to some extent, known to the American student of law and to the American practitioner. Some knowledge of the kind and manner of the institutions which trained Coke and Seldon, Mansfield and Eldon, Erskine, Coleridge and Anson might well be cultivated. No student of the English language, nor teacher, nor writer but that is at least to some degree familiar with the great names of English literature. Coke and Eldon are as much a common heritage to the American student of law as Shakespeare and Dickens are to the American student of English. The American practitioners of two or three generations ago were much more familiar with the great names of English jurisprudence than the present generation of lawyers. The modern tendency of both the bar and the bench is toward the immediately practical, and the average law school with its hurry to prepare men for the practice has contributed in large part for this condition. If any general criticism were to be offered upon the present curriculum of the modern law school it would be that too little emphasis, or in many instances none at all, is placed upon the history and the tradition of the law.

Perhaps one reason for the lack of general interest in the Inns of Court as the abode of the great body of the common law, is the

popular feeling that the common law itself has come to be inapplicable to present needs. We frequently hear of the harshness of the common law, and we frequently have lawyers as well as laymen largely attributing so-called miscarriages of justice to the common law and to its alleged inelasticity. In some instances, at least, a proper study and perspective would disclose that our interpretation on this side of the water has been partly at fault, as for example in interpreting such a well known maxim as "*volenti non fit injuria*" (to one willingly undertaking the risk of injury no legal damage can result), courts have sometimes misunderstood the true meaning of the law Latin, and interpreted the maxim as equivalent to "*scienti non fit injuria*." Often misunderstanding by the courts of original principles cause at least a part of the social injustice which has generally been attributed exclusively to common law doctrines.

In spite of the criticism heaped upon it the common law remains with us. The acts of our legislatures and all our various statutes, state and federal, have developed and aided and qualified and changed many common law principles, but however changed or qualified in particular matters, the common law remains as the great body of substantive rights upon which our jurisprudence is founded, and as such we are interested and concerned, or we ought to be interested and concerned, in its history and growth. This history and growth centers unofficially at least in the Inns of Court, and because of this an outline of their establishment, growth and influence is interesting.

While there is no authentic record that the Inns of Court began earlier than about the fourteenth century, yet it is suggested that the reason for them and their actual beginnings may be traced to that same great event and the same great document that is the foundation of much of our law and many of our liberties—Magna Carta 1215. The 17th chapter of Magna Carta provided that the court of common pleas should no longer follow the person of the king, but should be held in some fixed or certain place. Prior to Magna Carta the courts had followed the person of the king, and this had proved expensive and unsatisfactory, often resulting in a complete denial of justice. So one of the rights exacted from King John in Magna Carta was that the court of common pleas no longer follow the person of the king. Pursuant to this provision of Magna Carta, the City of Westminster was designated as the fixed abode of the royal courts of justice. At this time London and Westminster were distinct and separate cities. Between the two was an open country of fields and meadows sloping

to the Thames. When the court sittings and the courts had been fixed definitely at Westminster, practitioners at the bar naturally found it convenient to take up some sort of residence in the vicinity of the courts. It is not surprising that they congregated into groups and constituted themselves clubs or societies. They eventually leased and otherwise acquired premises in which their members might be housed, and thus they established for themselves hostels or inns where they might over a tankard or otherwise, discuss the courts and the law—sometimes to upbraid, sometimes to praise.

Four groups or associations of lawyers eventually made their appearance. These four groups each maintained an inn or hostel, and as if to seek an air of quiet and enjoyment these inns were located in the open country which lay between the City of London and Westminster and sloped to the Thames in fields and meadows. The establishment of these four groups or societies of lawyers was aided, if not caused, by another development in connection with the courts. During the period when the judges of the King's Court followed the person of the king, the practice of the law was almost an exclusive privilege of the clergy. The clergy formed practically the only educated class during this period, and they were the chief advocates of persons desiring their causes presented in the courts. This condition of affairs, to-wit, the clergy's monopoly of knowledge, including legal knowledge, grew less and less with the development of commerce and commercial intercourse, and about the time the Inns of Court took their organized beginnings during the fourteenth century, the churchmen had not only largely disappeared as advocates, but finally their right to practice in the King's Courts was altogether denied. This circumstance largely increased the number of lay lawyers and doubtless contributed to the strength and position of their societies. The elimination of the clergy stimulated the legal profession and gave a new impetus to the study of law. The Inns attracted students in increasing numbers from all parts of England. Commercial and industrial development increased litigation and enlarged the need for more men trained in the law. Students or apprentices applied for admission to the societies of lawyers, and when received as members in any one of these societies they became attached to this or that particular Inn.

A further historical circumstance that aided in the development of the Inns of Court and made the study of law more accessible and attractive to laymen was the nationalizing of the practice of law through the elimination of French and the establishment of English as the language of the courts.

While these developments in the profession of the law were taking place, the mediaeval trade guild had put in an appearance. These trade organizations were an outgrowth, or at least a reflection, of the commercial and industrial development of the time. They were associations organized for the mutual benefit of their members—semi-social in character, serving in part to raise the standard of the members of a particular trade, and in another sense serving to control and monopolize for the benefit of their members the opportunities for practicing a particular trade. They were not quite trade unions in the modern sense of the term, but they had some of the earmarks of modern trade unions. They were a kind of trade union, club and fraternal organization combined.

It would be incorrect and inaccurate to suggest that the Inns of Court were merely trade guilds of lawyers. They were that in part but very much more than that. They had something of that aspect in that they were essentially associations made up of masters and apprentices, practitioners and students. That far, they had something of the characteristics common to the mediaeval trade guilds. They excluded from practice in the courts all who had not served apprenticeships or periods of study in their organizations. They probably acquired this exclusive right and privilege of preparing students and calling them to the bar by assuming it, as the same right and privilege was assumed by the mediaeval trade guild. At least it nowhere directly appears by any act of Parliament that this right was ever formally conferred upon the Inns of Court.

As guilds or voluntary associations of practitioners and learners of the law, the Inns evolved their own regulations and customs, and while those differed somewhat in each particular Inn, in matters of detail, as in the colleges of Oxford and Cambridge, nevertheless the general character of the training which a student received was to all intents and purposes similar, regardless of the particular Inn to which he attached himself. Each Inn was governed by an independent executive chosen by the Masters, and the membership or personnel of an Inn was usually divided into three orders: Benchers or Masters of the Bench Utter or Outer Barristers, and Inner Barristers. When the student first entered he became an Inner Barrister, that is, in the Hall of the Inn,—the official meeting place where, members were said “to eat their way to the bench”—he occupied with others of his kind a space reserved in the lower portion. This was separated from the other portions of the hall by a wooden railing or bar. He was said

to be an "Inner Barrister" because he must needs sit inside this bar or railing. The second order were the Utter or Outer Barristers; those who had been called to the bar and were privileged to sit outside the railing. These latter composed the great body of regular practitioners. The third order comprised the Benchers, or as they were sometimes called, the Ancients. These gentlemen were privileged to occupy a dais in the upper portion of the hall which extended across its entire width. They were a self-perpetuating body, unrestricted as to numbers, and they chose their members and increased their membership from the senior members of the bar. Usually an Outer Barrister, on becoming King's Counsel, was invited to the bench. That is, he became a Bencher. Being elevated to the Bench did not mean that one had become a judge of a court, but merely that he had entered this select group of lawyers. Barristers of long standing and special reputation were usually chosen to become Benchers. These Benchers constituted the governing body of a society, and it was these Benchers, or Masters of the Bench, who conducted and controlled the organization, established and modified its regulations, and promulgated from time to time the necessary rules for its control.

Considerable human interest attaches to the quaint and curious regulations that were sometimes promulgated, to-wit:

"No one is to wear a beard of more than a fortnight's growth, for a third offense he will be expelled from the society."

"No fellow is to wear a sword or buckler or cause the same to be borne after him in the town."

"The Inner Barristers are to be put out of Commons for refusing to dance in hall on Candlemas day when the judges were present and if it occurs again they are to be disbarred."

The Inns of Court as such should not be confused with the Inns of Chancery, which were other and different organizations. True, they made their first appearance about the same period, and it may be that for a time the Inns of Chancery were not distinguishable from the Inns of Court, but they soon became known as the "lesser Inns" and came to be subordinated to the four greater Inns. The four greater Inns and those that have always been and still are the Inns of Court are The Middle Temple, the Inner Temple, Lincoln's Inn and Gray's Inn.

Nearest to the Thames and almost on the banks of the river stand the Middle and the Inner Temple occupying lands and buildings for-

merly belonging to the Knight Templars. Spencer referred to them as

“Those bricky towers
The which on Themmes brode aged back do ryde,
Where now the studious lawyers have their bowers,
There whylome wont the Templar Knights to bide,
Till they decayed through pride.”

The next of the Inns of Court in distance from the Thames is Lincoln's Inn, presumably so called because established upon properties belonging to Henry DeLacy, Earl of Lincoln. The fourth of the Inns of Court is Gray's Inn, so named because the premises upon which it was established formerly constituted the ancestral domain of the Grays of Wilton.

The minor Inns or Inns of Chancery acted for a long time as preparatory schools for the preliminary training of students who might afterwards seek admission to the Inns of Court. They were the institutions in which students received their pre-legal training. This condition whereby the Inns of Chancery became preparatory schools for the preliminary training of students ceased after the middle of the sixteenth century. Prior to that time both sets of Inns were open to either branch of the profession—that is, to barrister and solicitor alike, and whether a student aspired to be an “attorney at law” or “counsellor at law” raised no restriction against him in either the Inns of Court or the Inns of Chancery. Just after the middle of the sixteenth century the Inns of Court expelled all solicitors and attorneys and left only the Inns of Chancery open to them. For some reason the Inns of Chancery deteriorated in discipline, lost their prestige and finally disappeared when the Court of Chancery confirmed the sale of Clifford's Inn in 1900. The education and admission of solicitors is now controlled by the “Incorporated Law Society,” organized under Act of Parliament and Royal Charter.

The distinction between barristers and solicitors is for Americans an interesting feature of the English profession. The solicitor is the business man. Litigants employ him first hand and never directly employ a barrister. To the solicitor belongs the task of gathering and systematizing the evidence and managing the practical features of the client's case. He calls in and consults with the barrister as counsel. The barrister passes on points of law, and when suit is determined conducts the case before the court and jury. The solicitor has no right to act as advocate in the court. The barrister controls no legal business except what is brought to him by the solicitor. Intercourse

between the two classes of the profession is governed by a strict code of etiquette. A barrister rarely condescends to speak of his fees. His clerk deals with all such base and material matters, and the shrewder and more diplomatic the barrister's clerk who haggles over the amount of fees, the more lucrative becomes the particular barrister's practice.

The Inns of Court, when fully established, together with the Inns of Chancery, became in a sense a university of law. This so-called university was not dissimilar in character and constitution to the universities of Oxford and Cambridge. Each Inn had its group of residential buildings, its gardens and quadrangles, its chapel and its general dining hall, meeting place and library. Students kept terms and listened to lectures or readings, and carried on their studies. A call to the bar was in effect a degree from a law university. Many of the lectures or so-called readings delivered at the Inns of Court were of great learning and importance and became almost authoritative interpretations and expositions of the law. It was not at all infrequent for the Inns of Court readings to be cited in argument before the courts, and the courts frequently gave to them the importance of unofficial court opinions. Some of these readings have been handed down and still survive as classics in the profession—of such is "*Bacon's Reading on the Statute of Uses.*"

Not only was the student trained in the substantive law, but before being called to the bar each student was required to participate in a certain number of trials or moots. These were imaginary cases, but they offered a real opportunity for students to learn the actual practice and tactics of conducting cases in court. It was usually the custom for an Inner Barrister to open the case and for the Benchers to hear the case. One or more Inner Barristers addressed the Benchers on behalf of the plaintiff; other students or Inner Barristers participated for and in behalf of the defendant, as each had prepared himself. Then two Utter Barristers undertook the task of restating the case on each side, giving the Inner Barristers or students an example of how the case on each side should be analyzed and presented. The students, after attempting to handle the case themselves, thereby obtained the benefit of immediately listening to a handling of the same case by experienced lawyers, as the Utter Barristers always were. Afterwards the Benchers rendered a decision on the matter and at the same time offered such criticism of the presentation and conduct of the case as might be helpful.

The time which a student spent before being called to the bar varied, but only "painful and sufficient students" were to be called and only those who had "frequented and argued grand or petty moots." When a student had duly attended readings and lectures and conducted the necessary moots and had grown "ripe in the knowledge of the law" and was "approved withal to be of honest conversation," he was, by general agreement of the Benchers, "called to the degree of Utter Barrister and so enabled to practice law both in his chambers and at the Bar."

By the early part of the eighteenth century, the Inns tended away from the old standard of "painful and sufficient students." They became more or less formal institutions in which the members devoted themselves to social rather than intellectual matters. Readings ceased and official instruction went into the discard. Mere residence and eating dinners became the *sine qua non* for admission to the bar. The discontinuance of regular legal study saw the Inns transformed for a time into an abode of letters instead of law. Blackstone was preparing his "*Commentaries*," but more in connection with his role as a lecturer at Oxford than as a member of the Inns of Court—while Johnson and Goldsmith, Swift and Addison, Southey, Cowper and Lamb and Fielding were keeping terms at the Inns of Court.

By the middle of the nineteenth century it became apparent that some method of re-establishing regular legal study should be adopted. Under the direction of the "Council of Legal Education," readings and lectures were revived and made to perform their former functions. Regular attendance at lectures was required unless a student wished to submit to a special examination. Examination for admission to the bar was divided into two parts—a preliminary examination and a final examination. The final examinations have during the last twenty-five years become more and more severe. In addition to these examinations required for admission to the bar, the custom obtains of students reading a year or more in the chambers of practicing barristers, and this custom has virtually become a requirement for admission to the bar. But the Inns still stand, and the necessity remains of eating a required number of dinners as a member of some Inn during each term and for the three years covering the regular period of study and preparation for admission to the bar.

In each Inn from time to time and at different times the ceremony attending a call to the bar differed in point of detail, but generally the

Benchers sat at the table in the open hall with the candidates who had been previously notified of their call. Each candidate was provided with a glass of wine. When the time for the ceremony for the calling of the candidates to the bar arrived, the senior barrister arose and addressed them, directing their attention to the dignity and importance of the high calling to which they aspired. A senior student usually replied on behalf of all the candidates. "Call parties" were often held afterwards. These were dinners or banquets which gave ample opportunity for the declaration of good fellowship and the expression of good cheer. A call to the bar was an occasion of social as well as professional importance, and the young practitioners who were coming into the profession were made to feel that the members of the bar were interested in welcoming them as newcomers. It was something more than the modern practice of signing one's name to the roll of attorneys and paying a fee. The event was enriched by the presence of older practitioners and the candidate for admission was made to feel that he was entering a profession where at least something of good fellowship mixed and mingled with the business and routine of life.

Judges, and even Lord Chancellors, sometimes put off their accustomed dignity and danced around the fires with the barristers and students in a rousing chorus of good fellowship.

"Full oft within those spacious walls
When he had fifty writers o'er him
My grand lord-keeper led the brawls
The seals and maces danced before him."

Today, after seven hundred years of continuous existence, the Inns of Court are still functioning as the abode of students and masters of the law, and in them and from them the great body of English common law is still developing. Its principles have been shaped and reshaped, generation after generation, to meet the necessities of Anglo-Saxon social and business experience. The Inns are in a sense the original temple of our common jurisprudence. They ought not be entirely neglected by the American student of law and the American practitioner, and the excuse for this article is to call brief attention to something of their place and importance. If one visits them today he will not find them surrounded by fields and meadows. In all the externals they are completely changed. Fortescue observed that they were placed "in the suburbs out of the turmoil and noise of the city"

But they are now in the midst of London's busiest activity. They are surrounded by a myriad of thoroughfares and a dense confusion of people and places. Endless traffic moves back and forth. But take the turn into the Lane of the Middle Temple and walk toward the Thames, you will almost immediately enter the premises of the Inns. Here you find courts and quadrangles and gardens, worn and ancient pavements, quaint old buildings and ample spaces and quiet. Here on every hand you breathe the air and feel the presence of scholarship, industry and service. Here in large measure abide the romance, the tradition and the greatness of English law

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