



3-1-1944

Legal Profession in the Middle Ages

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Recommended Citation

Roscoe Pound, *Legal Profession in the Middle Ages*, 19 Notre Dame L. Rev. 229 (1944).

Available at: <http://scholarship.law.nd.edu/ndlr/vol19/iss3/2>

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II

THE LEGAL PROFESSION IN THE MIDDLE AGES

1

PROCTORS AND ADVOCATES IN THE CIVIL AND THE CANON LAW

WE have seen that in Roman law the three functions of agency or representation in litigation, advocacy, and advice—the functions of procurator or attorney, advocate, and jurisconsult—had become differentiated and had each attained a high degree of development. Also we have seen how by the time of Justinian the jurisconsult had become a law teacher, so that for the future, in continental Europe, the advocate's function and the jurisconsult's function of advising were merged and the term jurisconsult was applied only to teachers and writers.

Germanic law brought back into western Europe the ideas of primitive law as to representation in litigation. Parties were required to appear in person and conduct their cases in person except in case of dependents. It is laid down in the Frankish law that "no one in France may appear by attorney except the King." But the ecclesiastical courts, following the Roman practice, allowed representation in litigation. In the earlier Middle Ages these courts are the more significant, and we must look to them for the earlier history of the modern profession.

I

The Ecclesiastical Tribunals

A law of the church had been developing for a long time. As far back as the third century there had been a rapid growth of internal control in Christian religious societies, a system of what was to become law, giving large powers of judging and of discipline to the bishop or overseer of each congregation.

Christianity became a lawful religion in 313, and soon after the only lawful religion. In 385 we find the Bishop of Rome

issuing a decretal, the forerunner of an era of papal legislation. The church had a disciplinary jurisdiction over the clergy. It soon got a large jurisdiction over lay Christians, and in the anarchy of the breakdown of the empire men were glad to go before the bishop as an arbitrator of worldly disputes. About 500, a monk, Dionysius Exiguus, at Rome made a collection of the canons or regulations of the councils of the church and of decretals of the popes from 384 to 498. This collection may be said to be the foundation of the Corpus of the Canon Law or law of the church, which divided the field with Justinian's law, the Corpus of the Civil Law, down to the Reformation. Its significant feature is that it shows the popes declaring the law, and thus in effect making law, for the universal church. In the ninth century, a compilation of decretals got currency in which there were some sixty attributed to the earliest of the popes. These false decretals or Pseudo-Isidorian decretals, were universally accepted as genuine and in the twelfth century were incorporated in the Decretum of Gratian, the first part of the Corpus Iuris Canonici.

Thus for some centuries, while the Roman law was decaying and Germanic law had no means of growth because it was not a taught law and had no Corpus Iuris and no general organs of legislation, only the law of the church was growing. Each Bishop had his court. Each ecclesiastical province had its court of appeal before the archbishop or metropolitan. Also appeals lay to Rome, as in the Roman practice to the emperor, and the pope became supreme legislator and judge in matters ecclesiastical, as the emperor had been in matters temporal. Matrimonial causes, testamentary causes, matters of good faith, defamation, where money reparation was not sought but rather correction of the defamer for his soul's good, and cases of correction, as distinguished from criminal prosecution, as well as matters relating to the conduct and discipline of the clergy, came to be in the jurisdiction of these tribunals. After the twelfth century the study of Roman law in the universities and spread of the law from universities to courts, gradually gave the preponderance to the civil law or law of the state. But to this day, the academic degree of doctor of laws or of doctor of either law (i.e. teacher of the civil and the canon law) bears witness to the two coordinate systems which prevailed in the Middle Ages.

In the *Corpus Iuris Canonici* there are two titles *de procuratoribus* (on proctors), one in the Decretals of Gregory IX (published about 1230), the other in the Sext, i.e. the Sixth Book of Decretals (published by Boniface VIII after 1298). In the first, there is one regulation of Gregory the Great (596). There are two from the last half of the twelfth century. The rest belong to the fore part of the thirteenth century. In the title in the Sext, they date from 1299.

Litigants could appear either in person or by a proctor, unless the judge considered the assistance of a proctor or of an advocate necessary under the circumstances of the case. As in Roman law, a party could choose his own proctor; but that proctor could not substitute another in his place unless that power had been given him expressly. Also the same person was allowed to act both as proctor and as advocate, even in the same case and for the same client. That is, a qualified advocate might act also as proctor. But the requirements for an advocate were much higher than those for a proctor, and the reverse was not true. To be proctor, one had to be of age and of good character. If a monk, he had to have a license from his superior. He had to file in the court a special mandate (i.e. power of attorney). If the client could not write, it must be signed for him by his parish priest or a notary, or by two witnesses. As a consequence, in civil law countries today, it is highly important to have express powers of attorney, since the authority of an attorney is not presumed as in the case in the common law. Proctors were forbidden to buy the litigation. They were to be agents not parties to the cause. Without a special mandate, they could not dismiss an action, compromise or settle it, or do anything beyond due prosecution of the claim or making of the defense before the tribunals. They could take appeals without special authority unless forbidden by the client. The client could terminate their authority by notice, but if this was done after *litis contestatio* (the termination of the stage corresponding to the proceedings *in iure* in Roman law) there must also be notice to the judge and to the adverse party. There were provisions for discipline and for exclusion from practice of proctors who took or contracted for a share in the subject of litigation or excessive fees, or betrayed their duty to their clients.

In the ecclesiastical courts in England the proctor had to

be appointed by the party himself either before the judge or by a formal act in court or else by a proxy or power of attorney under seal. The proxy had to be exhibited in court and entered in the registry. Special proxies for representation of a client on one day or for one occasion having led to delays and abuses, they were forbidden. It was required that they be for a number of days, to be continued if need be. Also proctors were forbidden to entertain a case for two court days without the advice of an advocate. In the later practice of these courts, proctors were commissioned by the Archbishop of Canterbury after completion of an apprenticeship. The profession came to be divided into two branches in these courts, the advocates and the proctors, just as we shall see the profession divided into two corresponding branches in the King's courts.

Advocates were required to be doctors of law or otherwise qualified in the canon law. They were admitted by the bishop, either to practice generally or specially for a particular case. They were required to have a mandate either from the party they were to represent or from the judge, similar to the mandate required for a procurator. They were not permitted to purchase the litigation nor to contract for a share in the subject of the suit, nor to take fees from the other side, having been retained by one side, nor to take excessive fees. For doing such things they were subject to fine and to suspension or expulsion.

Originally, the advocate was required to have studied five years. In the English ecclesiastical courts this was modified by requiring three years' study of the civil and canon law, and it came to be the practice in all countries to admit as advocates any one who had taken the degree of doctor of laws. In the English courts, a libel (that is, the first pleading in a case in the ecclesiastical jurisdiction) was required to be subscribed by an advocate, who thus added the responsibility of a learned lawyer to the mere agency of the proctor. Also a proctor must obtain the advice of an advocate before any but the preliminary investigation of the cause.

In the sixteenth century, the advocates in the ecclesiastical and admiralty courts formed a society, which was incorporated in the eighteenth century. I shall speak of this more fully in another connection.

II

THE CIVIL TRIBUNALS

As has been said, the Germanic law, like primitive law generally, did not admit representation in litigation. Normally, the litigant must conduct his cause in person. The nearest approach to the attorney's function was the forsppeaker. Where two kin groups were negotiating as to the composition to buy off a feud, where a kinsman of one had injured a kinsman in another, the negotiations on behalf of each were initiated by forspeakers—an obvious device to prevent the negotiations from ending in war rather than in peace. Attorneyship did not develop from this crude device, but from the practice of the ecclesiastical courts, which in turn, followed the Roman practice.

In France, which we may conveniently take for an example of the course of development on the Continent, the parties appeared in person in the civil tribunals as late as the year 1200. The rule of the Frankish law that only the King could appear by attorney was not formally abrogated as to the civil courts till the sixteenth century. But the example of the ecclesiastical courts, where litigants had the advantage of representation, made it hard to maintain such a rule, and in practice, from the middle of the thirteenth century employment of attorneys became frequent in the French courts. Legal procedure had become a difficult art, and there came to be organized at each court corporations of men who made a business of receiving mandates *ad litem*, i.e. powers of attorney to conduct causes. In the seventeenth century employment of a duly qualified attorney was made compulsory.

These attorneys had less rank and less repute than the advocates. Down to the Revolution, they were called *procurateurs*, i.e. procurators or proctors (Latin *procuratores*). After the Revolution, they were called *avoués* (solicitors), and one might appear either in person or by attorney. Down to the Revolution, the office was purchasable—as were commissions in the Army in England well into the nineteenth century.

Advocates, too, disappeared with the downfall of the

Roman judicial organization. But the Germanic law allowed forspeakers in certain cases to conduct causes before the tribunals. In the twelfth century these forspeakers became prominent in the church courts, and later got a monopoly of advocacy in the parliaments (i.e. the French superior courts of the old regime) and in the civil tribunals. In the fourteenth century, they formed a brotherhood, whose chief carried a baton, so that the head of the bar in France to this day is called "*batonier*." In the sixteenth century, they came to be called an order. The order was abolished at the French Revolution, but was restored in 1810.

As has been said in another connection, the jurisconsult's function passed to the teachers in the universities in the Middle Ages, if not, indeed, in the Roman empire of the fifth century.

So we have in the church courts proctors and advocates, and so in the English ecclesiastical courts, as they were down to the statute of 1857, proctors and advocates. We have proctors and advocates in the civil or modern Roman law, and so in the admiralty court as it was in England till 1873. In the United States, the representative in litigation in admiralty is still frequently called a proctor. In the French courts we have *procureurs* (proctors) or in modern phrase *avoués* (solicitors) and *avocats* (advocates). In Scotland, which received the Roman law in the sixteenth century, we find writers to the signet (i.e. proctors) and advocates, and the advocates are organized in a corporate body, the Faculty of Advocates.

It will have been observed that in the earlier development of the profession in the modern world the practice of law was in the hands of the clergy. For a long time the clergy were the only educated element in society, and so had a monopoly of the things which called for learning. The judges and counsel were clergymen not only in the courts of the church, but in those of the state as well. But a development of lawyers went along with the development of law. In the twelfth century, lay lawyers became prominent in the courts. In the thirteenth century, they became dominant. Presently, the church forbade the clergy practising in the courts generally and the lay lawyer got the monopoly he has held ever since. One became a lawyer by being admitted to a place in the brotherhood.

2

The Rise of the Legal Profession in England

By the time of Edward I the common-law courts had become well established. The formative period of the courts is from Henry III to Edward I. The legal profession is formative in the reign of Edward I. Its formative period is from Edward I to Henry VI. Under Edward I we find a body of lawyers practising in the courts divided into two branches, attorneys and pleaders — the latter called also *narratores*, *counteurs* or *serjeant-counteurs*. The distinction is the familiar one from Roman law. If one appeared by attorney the attorney represented him. But if he had the assistance of a pleader, he was present by himself or his attorney, but the pleader supported the case by his learning, ingenuity, and zeal. Hence, to this day, in strictness we say “of counsel with” the plaintiff or the defendant. It is the distinction between the agent for litigation and the advocate which goes back to antiquity.

As in all systems, the beginnings of English law regard representation in litigation as something exceptional. As in all systems, it develops slowly. As at Rome originally, the appointment of an attorney was thought of as unusual and only to be allowed on special grounds and with the due and solemn formality of a power of attorney. On the other hand, the appointment of a pleader was not a formal proceeding. In the development of the common law it was only gradually that the attorney was allowed to take the place of his client or represent him for all purposes. For example, at first he could not make admissions binding upon his client. But by the end of the thirteenth century the distinction between the pleaders, who became the serjeants of the following period, and the attorneys, had become clear, although the same person might act as “apprentice,” i.e. a junior being trained by a serjeant, and as attorney until the fifteenth century.

First, then, as to the pleaders. Until later times, one who was charged with felony was not allowed counsel. Indeed, counsel were not allowed in cases of treason until the reign of William III. Except for this, as far back as the laws of Henry I, one was allowed the services of a pleader. It must be borne in mind that at first the pleadings were oral and that jury trial was long a mechanical trial, the jury giving a ver-

dict upon a narrow issue from the knowledge or repute of the neighborhood. Hence, there was no scope or need for advocacy at the trial. On the other hand, skill and learning were eminently required in the pleadings by which the issue to be tried was arrived at. The influence of the church courts, and so of the Roman tradition, as against the idea of the Germanic law, made it possible speedily to develop the type of counsel which was needed.

In the thirteenth century, many professed both the civil and the canon law, and many practiced both in the common-law courts and in the ecclesiastical courts. Many of the practitioners were in orders. But in that century, the church began to discourage the clergy from practising law, and the Fifth Lateran Council (1512-1517) forbade their acting as advocates in the secular courts. In 1237, the advocates in the ecclesiastical courts were subjected to regulations, and these regulations seem to have furnished the model for regulation of the pleaders in the King's courts. All through the thirteenth century we find references to pleaders. The Year Books of the time show a small group of them doing all the work of framing the pleadings in a colloquy with the judges. Also the opinions of these pleaders are cited or reported in the earlier Year Books on a par with those of the judges, and Parliament calls for their opinions along with those of the judges. We are reminded of the Roman *jurisperitorum auctoritas* and the weight of doctrine (i.e. opinions of jurists) in the civil law. Indeed, the older English admiralty reports reported opinions of doctors of the civil law along with decisions of the court.

We first hear of the coif, the characteristic headdress of the serjeant in 1259, and by this time we begin to read of serjeants and apprentices. These apprentices, who were being trained by the serjeants, became the barristers of today. Teaching of law is referred to in 1293, and at the end of the thirteenth century we read of discussions by the students. A chief justice actually suspects them of inventing a moot case to puzzle the court.

In the reign of Henry III the bench begins to be recruited from the bar, although the clergy still man the bench. But a change was taking place. In the time of Edward III, eleven lay lawyers sat on the bench to nine clergymen.

Fortescue, in the reign of Henry VI, shows us the complete

development of the profession at the end of the Middle Ages. It has become formed and organized, and the lines of that organization have endured. As described in Fortescue's book (*De laudibus legum Angliae*) there are three distinct categories: (1) The judges and serjeants; (2) the apprentices, organized in the four Inns of Court, and the Inns of Chancery, comprising (a) the benchers or readers (i.e. lecturers) and (b) the inner barristers or students, eventually to divide again into utter barristers or juniors and inner barristers or students; and (3) the attorneys.

1. *The judges and serjeants.* By the end of the fourteenth century the serjeants at law were a close gild, the members selected by the crown on the nomination of the judges, from which the judges were taken. It is not known exactly when the serjeants attained this position. In the reign of Edward II it was not yet necessary to be a serjeant in order to be eligible for the bench. But in the fourteenth century it became settled that the justices were to be lay lawyers and serjeants. Fortescue compares the serjeants to the doctors of the civil law who alone could be advocates in the ecclesiastical courts and the court of admiralty. The Chief justice of the Common Pleas gave the Chancellor a list of seven or eight of the best lawyers who had been practising at least sixteen years. The Chancellor then by writ commanded them to take on the degree and state of a serjeant. They took an oath to serve the King's people and not to delay justice for profit. Thus the degree of serjeant was a public office. The serjeants were often made itinerant justices and were regarded as already members of the Court of Common Pleas. Parliament referred doubtful questions to them, as it did later to the judges. They had a distinctive dress, especially the white silk coif which they did not put off even in the presence of the King. They were created by letters patent and were paid a fixed salary by the crown, doing some of the work of representing the crown done later by the Attorney General and Solicitor General. On becoming serjeants, they were rung out of their Inn by the chapel bell and took a solemn leave. They ceased to be members of the Inn in which they had been called to the bar and became members of Serjeant's Inn.

A serjeant was inducted by a very elaborate ceremony. First, there was a procession of the benchers and barristers

of the Inn in which he had been a member to Westminster—a very respectable walk from any one of them to Westminster Hall. The courts then sat from eight in the morning till eleven. Clad in a serjeant's robe he and his procession arrived about nine o'clock opposite the Court of Common Pleas. Two serjeants then went out to meet him and escort him into court. He came to the bar and was exhorted by the Lord Chief Justice of the King's Bench. Thereupon he declared upon a writ in a real action, as in the days of oral pleading. The oldest serjeant then made answer and demanded that the writ be read, after which he called for imparlance, i.e. a continuance of the case in order to arrive at a settlement. This fictitious proceeding being over, the new serjeant took the oath.

Next, the serjeants gave a great dinner, the business of the courts being suspended for the festivity and rings were presented by the new serjeant to the nobility present, to the judges, to the officials of the court, to the clerks in the Common Pleas, and to his friends. The rings bore a motto in Latin, and we are always carefully informed what that motto was.

Serjeants had a monopoly of practice in the Common Pleas and could also practice in the other courts of common law and before the Chancellor. We are told that large fees were paid them. They seem to have dealt directly with their clients, instead of with the client's attorneys, whereas in modern times all degrees of counsel came to be retained by and deal only with the attorneys or solicitors. When made judges, they still retained the coif although they had new robes. As members of the gild, they addressed the serjeants from the bench as "Brother." You will remember in *Pickwick Papers* how during the trial of *Bardell v. Pickwick*, Mr. Justice Stareleigh addresses Serjeant Buzfuz from the bench as "Brother Buzfuz."

2. *The apprentices.* Apprentices, that is, the branch of the profession from which the serjeants were chosen, became organized (probably) in the fourteenth century, and were thoroughly organized by Fortescue's time. But they were not organized as a whole body. Instead, they were members of some one of a number of societies, one might say colleges, called Inns, of which there were four Inns of Court and perhaps ten lesser Inns, called Inns of Chancery. Their origin is not known. There are only a few records of them in the four

teenth century. In the 29th Edw. III (1355) there is a reference to "apprentices in their hostels," indicating that they had already been organized in that way at least for some time. The common law was not taught in the English universities of that time. Indeed, it was not taught at Oxford till the eighteenth century. The universities taught the Roman and the canon law. They were clerical institutions. With the rise of the lay lawyer it was necessary to set up institutions for training in the law of the land. The Inns of Court were educational institutions for the study and teaching of the common law. Probably a group of students lived together in a house and this grew into a college, which in the Roman sense connotes a corporation. More than one law school in America of today grew up much in the same way. A group of students in a locality where no school was conveniently accessible organized a class to study law and procured some lawyer, perhaps a retired judge, to teach them. A school developed about this nucleus. In fourteenth-century England, the bodies of teachers and students living together like the fellows and students in a college of that time (and of present-day English University) differentiated into three groups, (a) the older men, the teachers, who became the benchers or readers we meet with in Fortescue's account, (b) their assistants, the advanced students, or utter barristers (i.e. outer barristers, who could plead from without the bar in the days of oral pleading), and (c) the students. Call to the bar was, as it still is, call to the bar of the Inn. This admitted to practice in the courts as the doctorate of a University admitted to practice as an advocate in the courts of the civil law.

3. *The attorneys.* As always in the beginnings of law, attorneys, not allowed at first, were for a long time only allowed grudgingly. Originally, one could appoint another to appear and act for him as his attorney only by royal consent. In the King's court it was necessary that the appointment be made in court. If not, there had to be a special writ authorizing it. But exceptions grew up between the reigns of Henry III and Elizabeth which in the end left nothing of the rule. Professional attorneys begin under Edward I. As late as the fifteenth century, however, apprentices at law might be professional attorneys, and in that century, attorneys might be members of the Inns. But the Inns and the judges came to discourage calling them to the bar, and by the seventeenth

century they had become a wholly separate branch of the profession. They were not members of the Inns nor had they studied there. Nor were they organized in any other way. They were simply admitted to practice in and borne on the rolls of the common-law courts. The result of this history was that, while the barristers were well organized, had a fine professional tradition, and were subject to effective discipline, the attorneys at law and solicitors in chancery had no organization, had come to lose much of the professional tradition, and had ceased to be under effective discipline. This was increasingly so in the seventeenth, eighteenth, and fore part of the nineteenth centuries. The effects are to be seen in Caleb Quirk of Alibi House and Oily Gammon in Ten Thousand a Year, and in Sampson Brass, Dodson and Fogg, and Mr. Wholes in the pages of Dickens.

4. *The Inns of Court and legal education in medieval England.* I have spoken of the origin of the societies of barristers which in England still have charge of the education and admission of members of the upper branch of the profession. You no doubt know that there are now four of these societies—the four Inns of Court which go back almost to the beginning of the common law. Originally, there were these four Inns of Court, and also, perhaps, ten Inns of Chancery. The four Inns of Court were and are Lincoln's Inn, Gray's Inn, The Inner Temple, and the Middle Temple. The Inns of Chancery which were attached to these greater Inns so far as we know were: Attached to Lincoln's Inn, Thavy's Inn and Furnival's Inn; attached to Gray's Inn, Staple Inn and Barnard's Inn; attached to The Inner Temple, Clifford's Inn, Clement's Inn, and Lyon's Inn; attached to the Middle Temple, New Inn and Strand Inn.

Just what control the Inns of Court had over these lesser Inns is quite uncertain. It seems always to have been very indefinite. We know that the greater Inns supplied readers or lecturers to the lesser ones. We know that sometimes they were the landlords of the lesser Inns. Sometimes they exercised a visitatorial power. Visitation was a familiar idea in the Middle Ages. Authority to look into the conduct of the affairs of a church or a religious foundation or society in order to prevent or correct abuses was an everyday matter, going back to the Roman law of Justinian as to pious uses and gifts to charity,

and provided for in the canon law from the earliest times. As a matter of course, every ecclesiastical corporation had a visitor and in consequence the colleges in the English Universities still have them. Indeed, it came to be laid down as a rule of English law that every corporation must have a visitor. The judges were visitors of the Inns of Court. Naturally, the Inns were visitors of the Inns of Chancery attached to them. Sometimes they exercised a disciplinary power, subject to appeal to the courts. Probably the four great Inns were distinct from the first from the "hospices" which grew into the lesser Inns. It is supposed that the students were later brought together in them in order to preserve discipline when the students in hired houses had proved a source of disturbance in the medieval city.

Now something of the history of the four great Inns.

Lincoln's Inn took its name from Thomas de Lincoln, who was King's Serjeant in the middle of the fourteenth century and let a house to the society. At one time it was supposed that a certain Henry de Lacy, Earl of Lincoln, who died in 1312 had been the founder or patron of the society, and accordingly it used the arms of the Earls of Lincoln. But this has been shown to be a mistake. The King's Serjeant's house became ruinous and the society moved into the house of the Bishop of Chichester between 1412 and 1422. The original landlord was in time forgotten and a more illustrious patron was claimed. The society has records going back to 1422, but the earliest records show a settled society with a fixed constitution and established traditions. It must have been organized long before and this is attested by its bearing the name of a landlord of three quarters of a century before.

Gray's Inn got its name from the Lords Gray of Wilton whose house the society occupied. Its oldest records begin with 1569, but an older book, now lost, was once known. The exact date at which apprentices at law became tenants of the house which gave the society its name is not known. Sir William Holdsworth thinks it was about 1370. It is known to have been tenant in 1454. At the dissolution of the monasteries the house passed to the crown, which granted it to the society.

The two Temple Inns get their name from the Knights Templars. On the dissolution of the Templars in 1312 the

property passed to the King. But in consequence of a decree of the Council of Vienna (1324) the lands of the Templars were to pass to the Hospitallers, and Edward III granted it to them. The part outside of the City of London (that is, the old city, which does not extend beyond Temple Bar) namely, the "Outer Temple," was never let to the lawyers. But in 1347, the part within the city was let to "the apprentices at law." At the Reformation, the order of which the property was held was dissolved, and in 1539 its property was vested in the crown, which now became the landlord of the lawyers. Whether there were always two societies as now, or there was one and a subsequent division, is uncertain. At any rate, they were separate before the middle of the fifteenth century. They still have the Temple Church in common.

As to the government of the Inns, it is now as it was then in the Benchers or Masters of the Bench. At Lincoln's Inn they meet in a council; at Gray's Inn in a pension; at the Temple Inns in parliaments. They are self-perpetuating bodies, each presided over by a member elected annually called the Treasurer or Pensioner. They have powers of education, discipline and government very like those of the Fellows of a College at Oxford or Cambridge.

As to the grades of membership, first were the Benchers and Readers—those who had publicly lectured in the Inn. They, as has been said, were the rulers of the society. The serjeants were chosen from them. Second, there were the utter barristers. These were said to be "such that for their learning and continuance (i.e. continual attendance and attention to study) are called by the said readers to plead (i.e. frame the pleadings in) and argue doubtful cases" in the moots. The Benchers were chosen from these; one a year to lecture in the Inn, who was then called a reader, and a certain number for the Inns of Chancery attached to the house. Third, there were the inner barristers. They were the youngest members, who were not yet ready to argue in the moots; were not called to the bar of the Inn.

As to the periods of study, the year was divided into "learning vacations" (between the terms of court in Lent and summer); term time (when the courts were sitting) and "dead vacation," which was an actual vacation. The chief study was in the learning vacations.

As to the process of education, it consisted of three parts: lectures, moots, and taking notes in court. For the learning vacations, the Benchers chose a summer reader from among the senior utter barristers. He was given half a year's notice in order to enable him to prepare his lectures. On the first day of vacation, at eight o'clock in the morning, he lectured publicly in the hall of the Inn, usually on some statute or on some subject of the law. He commented and raised doubtful questions and drew distinctions and put principles behind them, much as the first type of teachers of Roman law in the Italian Universities had done. Then one of the utter barristers took up one of the questions put by the reader and tried to prove that the reader's solution was wrong in point of law. Next, the other utter barristers, in order of seniority, gave their opinions on the point. Thereupon another question was taken up in the same way. We are told that the whole exercise took about two hours. This ended the formal lecture. But after dinner, the other hypothetical cases put up by the reader were argued by the utter barristers and students, and every night after supper the reader and the Benchers discussed cases put by one of the utter barristers.

Then came the moots, or arguments of moot cases. The Benchers acted as judges and two utter barristers as counsel. These arguments were sometimes so well done that we find them reported in the Year Books along with the decisions of the courts, and they were sometimes even cited by the courts. These moots were held also in the dead vacation, the utter barristers taking the place of the Benchers. Naturally, it was important to compel attendance during the vacations, and strict rules were enacted to this end. In the case of students, it was a condition precedent to call to the bar that they had kept a certain number of vacations. It should be noted specially how all the members kept on learning after call to the bar, either by formal study or by teaching.

During term time the students attended the courts at Westminster and took notes. As late as the end of the eighteenth century, there was a students' box in the Court of King's Bench, and an obliging judge would hand the record down to the students so that they could understand what was going on. Such was legal education in the Inns of Court in its heyday as Fortescue described it about 1468. But this medieval system of training gradually decayed and by the eighteenth century

had become a mere form. Reading of books and what was in substance an apprentice education succeeded it. Also after the sixteenth century, the attorneys were apprenticed and had only apprentice training. This had important consequences for legal education in America.

Legal education in the Inns of Court revived in the present century. But the medieval education in the Inns was for its time an admirable system. In contrast to the continental training it was not academic. The teachers were not professors in universities teaching from books. They were not jurists writing commentaries on authoritative texts and seeking to organize and systematize the learning which had grown up about them in the universities. They were practising lawyers, in touch with the law in action, seeking to develop the common law of England as a workable system for meeting concrete problems of adjusting human relations and ordering conduct. This gave a color to the common law which it has retained. Teaching in the Inns of Court was tied to the work of the courts. The common law became characteristically a law of the courts and has been such ever since, whereas the civil law is a law of the universities. This close contact of legal education and the work of the courts had much to do with enabling the judges to develop the common law through judicial decision.

We owe it to this system that the common law was able to withstand the triumphal march of the Roman law in the period of the reception, when, as Maitland puts it, the three R's, Renaissance, Reformation, and Reception swept over western Europe. To it we owe nothing less than the common law.

Roscoe Pound