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THE LEGAL PROFESSION DURING THE MIDDLE AGES: THE EMERGENCE OF THE ENGLISH LAWYER PRIOR TO 1400*

XVIII

THE APPRENTICES

(1)

The Royal Rescript of 1292, among other matters, had referred to addiscientes (apprenticii, apprentices). Thus it appears that outside the relatively small circle of practicing pleaders (narratores) or practicing attornati, there existed a number of “apprentices” or “learners of the law.” Naturally, prior to the year 1270, the English legal profession itself was still inconspicuous. Hence mere aspirants to this inconspicuous profession were still more inconspicuous, so much so that they had no official status. But by the year 1300 the courts as well as the statutes had taken notice of them. Chief Justice Bereford’s remark in 1310 to Westcote, a counsel, implied that the latter’s observations had been very instructive for the apprentices: “Really, I am much obliged to you for your challenge, and for the sake of the young men here [in court] . . . .” On another occasion the same Bereford instructed the “youngsters” in the court on some point of law. As early as 1293, we are informed, serjeant Gossefeld, arguing before the Common Bench about a writ, was interrupted by the remarks of an apprentice; and in 1327, a puzzled apprentice, seeking information, interposed a personal question while in court which was promptly answered.

These apprentices, it goes without saying, had a great deal to learn, such as the mechanical details of about thirty

* Final part of a three-part series.
forms of action. But there were only a few ways of learning all this, and if the apprentices were to learn something about the law and especially about the law in action, it would have to be by attending court sessions to listen and observe what transpired at the bar. The study of law and legal practice was still in its classical stage: a man learned to master the profession by associating with and observing experts practice their profession in court.

The progress of these "youngsters" or apprentices, who by no means were always young men, would be more rapid and probably more efficient if they took notes of what they heard, and if they borrowed from one another, copied or discussed their notes. This system of note-taking, in the opinion of Maitland, is the historical origin of the Year Books; in fact, the earliest Year Books, Maitland believes, were really "student's notes." Such a theory explains some of the irregularities and peculiarities of these documents.

The apprentices, who during the thirteenth century began to attend court sessions, in all likelihood also attached themselves to some accomplished and experienced legal practitioner in order to learn the law through intimate association and close observation of practice. It is not known, however, whether the earliest common law learners also studied law systematically and with the help of texts, as, for instance, was done by the canon law lawyers and students. This training by association and observation is fully in keeping with the apprenticeship method observed among the various mediaeval guilds; it suggests that

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1 It is interesting to note that a similar theory was advanced as regards the origin of Aristotle's *Metaphysics*. Cf. Chroust, *The Composition of Aristotle's Metaphysics*, 28 THE NEW SCHOLASTICISM 58 (1954).

2 Lay practitioners also must have studied some law books; both canon law lawyers and common law lawyers delighted in quoting maxims of the Roman law, which they probably found in the *Liber Sextus* (the "Sext") of Pope Boniface VIII of 1298.
the English legal profession of the thirteenth and fourteenth century was about to become a closed guild or association of professional men.

As early as 1275 the authorities began to take notice of the existence of an active legal profession which gradually had been emerging since about 1250. By the year 1292 the class of apprentices apparently had become sufficiently numerous and sufficiently important not only to be officially acknowledged, but also to be regulated. Before 1292 we hear very little of apprentices, but after that date they became rather prominent. By the year 1362 or 1363 the apprentice was referred to in a statute as "Esquier [esquire] apprentice du Loy."

During term time the apprentices probably flocked to London from all parts of the realm. It is quite likely that they soon began to live together in hospitia and formed clubs or societies, four of which were destined to become immortal as the Inns of Court. It may also be surmised that there prevailed a spirit of good fellowship among these apprentices as there often was among mediaeval students in England and on the Continent. In 1342, long before the great Inns of Court had been fully established, Justice Sharshulle (or, Shareshulle) remarked to William de la Pole, a Baron of the Exchequer: "When you and I were apprentices . . . I remember the following case. . . ." And in 1366 Wilby and Skipwith told counsel in court: "We never heard that exception being taken, though it is common enough among the apprentices in the inns." The remark means, no doubt, that this exception was considered good enough for beginners practicing in the moots, but not good enough to stand up in court. Thus by the middle of the fourteenth century the Bench as well as the Bar had begun to reminisce about their happy "student days."

The London City Ordinance of 1280 assumed that the legal practitioners of the city possessed some definite and apparently well-established means and ways to learn the
law. Obviously, the proper means and ways of studying law were by attending court sessions either in the city courts or at Westminster. By the year 1304 or 1305, the city seems to have made it a common practice to appoint or elect its officials from the ranks of the most experienced or, as we would say, most promising, apprentices of the law. This policy, which does great credit to a progressive city, was probably copied by the Royal Rescript of 1292, which recommended for promotion to "full attornati" only young men of good standing who were most willing to learn (addiscentes).

(3)

It is not unlikely that there were also different grades of "law students" or apprentices in the hospitia. Since serjeants and other experienced lawyers (and probably some of the justices) seem to have lived in the hospitia also, it would not be too farfetched to presume that on occasion the latter instructed the younger men, who in turn assisted the older men in some of their minor legal tasks. It was at the hospitia that the learned and the learner talked (or "taught") law, and it might have been possible that the more experienced men occasionally staged a "moot" for the benefit of the younger men, or perhaps for their own amusement or for the purpose of rehearsing a case.

Dwelling together in the hospitia, the apprentices certainly learned the law by intimate association. Law "taught" in this fashion is truly "tough" law, but it would be difficult to devise any scheme of learning law better suited to harden a future generation of legal practitioners in a time when law books were practically unknown. The moots turned the apprentices into adroit pleaders and skilled lawyers. At the same time these moots were a constant rehearsal and review for the more accomplished lawyers. Such legal training, which was "collegiate" in the
true sense of the term, soon attracted the better men of the realm. It fostered the growth of a kind of professional aristocracy, while at the same time it promoted respect for authority and competence. It also produced, in an atmosphere of good fellowship, a strong esprit de corps, providing thereby a solid basis for a cohesive and efficient class of professional men who harbored high ideals as to the greatness of their calling. Such an attitude will tend to preserve and strengthen that boldness in the face of tyranny, injustice and caprice, which is the hallmark of a true lawyer. It nurtured in men those lofty standards of professional deportment, professional honor, and professional probity, which subsequently made the English legal profession a truly noble calling. It also produced a professional mentality as well as an attitude which in the years to come would make the English legal profession the zealous promoters and faithful guardians of the English common law and of the "immemorial rights of an Englishman."

(4)

It is difficult to say exactly when the apprentices acquired the right to be heard in court. One apprentice by himself conducted an important case in 1381. It also may be presumed that as the business of the serjeants increased, these apprentices were called upon to take over some of it, especially the minor law suits. A document which dates back to the reign of Edward II (1307-1327), and perhaps even to that of Edward I (1272-1307), contains a reference to "the crib" (cribbe), the traditional place where the apprentices sat in court when auditing some interesting trial. Around 1310, in a petition to the Crown, the apprentices of the Common Bench likewise referred to this "crib," the mediaeval "nursery" of the English Bar. In 1337 a John de Codyngton, who calls himself "un Apprentiz de la Court de nostre seigneur le Roy et Attourne," petitioned Parlia-
ment that, although he was not liable to military service, he was threatened with being called to the colors, to the detriment of his clients and to his own professional ruin. On evidence that he was an *attornatus*, he was relieved, but the Council disregarded the fact that he was also an apprentice. Apprenticeship, it seems, did not yet confer a special status or special privilege.

By the end of the fourteenth century, however, the apprentices seem to have received definite official recognition. For instance, apprentices-at-law who dwelled in the city of London were exempted from paying a fine for failure to appear in a Wardmote. It might even be maintained that they formed something like a junior bar. This can be gathered from the fact that in 1381 the Council, at the request of the Commons, appointed a commission including "certain persons of the better Apprentices de la Lois," to find how the law might better be administered.

(5)

In the year 1292 King Edward I ordered his justices to make some provisions for the apprentices (*addiscentes*) in law. Here the term "apprentice" definitely meant a learner or student. But in 1379 King Richard II (1377-1399) decreed that every serjeant and "great apprentice of the law" should be taxed at the same rate as a baron. It has already been pointed out that in 1381 a legal commission was appointed, which consisted of two justices, two serjeants and four apprentices. This would indicate that by the end of the fourteenth century the apprentices were no longer mere students, but men of prominence in their profession, competent to give legal advice not only to private clients but also to the government, and sufficiently successful in their professional activities to be taxed on a par with the serjeants, the barons, and the aldermen of London.
Between 1292 and 1380, therefore, events must have taken place in the ranks of the English legal profession which account for the rise of the apprentices to prominence during that period. Traditionally, the Inns of Court have been credited with having brought about this ascendancy of the apprentices. However, these Inns probably did not yet exist in the form in which they were known during the fifteenth and sixteenth centuries when they assumed their great prominence in English legal education. Hence it must be surmised that it was the historical forerunners of the Inns of Court rather than the Inns themselves which contributed to the rise of the apprentices.

Since the earliest records of the Inns of Court are lost, practically nothing is known about their forerunners. Nevertheless, it may be assumed that these forerunners developed in the following manner. In the beginning the "students" and apprentices probably dwelled separately from each other, often lodging with practicing lawyers in various places. Later a party of students or apprentices, perhaps with the aid of an established lawyer, formed a sort of free association and jointly leased a suburban house, which they turned into their headquarters. It seems that these joint dwelling places were soon called hospitia. Like the Halls at Oxford, these hospitia were both living quarters and study centers. Probably at the request of the landlord or lessor this society named one of its members as the person responsible for all the others. In due course this person became the "head" of the society. It is also possible that groups or associations of students and apprentices formed around some senior master — in the case of law students around an experienced legal practitioner of repute, who headed the group and probably directed its

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3 In 1312 the Chancellor was enjoined to keep a hospitium where his clerks were expected to live together. This hospitium, which is at the basis of the subsequent Inns of Chancery, probably provided a model for the later formation of the Inns of Court.
studies. A record of the year 1345 states that the widow of Robert Clifford in that year leased her house, which later was called Clifford's Inn, to *apprenticii de banco* (apprentices-at-law) for ten pounds annually. We also know that Furnival[1]'s Inn was a dwelling place of apprentices-at-law before the year 1400, and that during the reign of Edward III (1327-1377), "certaine of the reverend . . . professors of the Lawes . . . obtained a . . . Lease of this [Inner?] Temple . . . to pay yearly Ten Pounds." Early in the fourteenth century some lawyers reached an agreement with Thomas, the Earl of Lancaster, who died in 1322, for lodgings in a mansion that later became the Middle (?) Temple.

(6)

The origin of the Inns of Court, like that of many mediaeval universities, still is shrouded in obscurity. The following facts, however, may help us understand the general manner in which these Inns came about. As early as 1235 there existed a "law school" of sorts in the city of London. In that year King Henry III ordered that no master (*regens*) of a law school should in the future be permitted to "teach law" in the city. It must be assumed that the closing of the London "law school" was directed not against the teaching of English law, but against the teaching of civil (Roman) and canon law.\(^5\) Also, in the year 1224 or 1225 Henry III fixed the Court of Common Pleas at Westminster. These two incidents may have influenced the subsequent emergence and development of

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\(^4\) This was also done at the University of Paris, among other places.

\(^5\) The closing of the "law school" in London was not necessarily directed against the teaching of Roman and canon law. In 1235 a great famine and pestilence ravaged the city, causing the death of 20,000 (?) people. Therefore the closing of the school might have been only a sanitary precaution.
the Inns of Court. The fixing of the Court of Common Pleas at Westminster, which was soon to become the most important royal court, had a tendency, at least for term time, to bring together the leading legal practitioners of England from all parts of the realm. As a result the practitioners were compelled to find suitable living quarters for the duration of the sessions. Such quarters were probably established in various dwellings in and near London. The "students" and the "masters of law," who had been disbanded as a "school" by the injunction of Henry III in 1235 also had to find new quarters. Obviously, these men had come to London to "study" law and prepare themselves for the practice of law, for the city of London had become the great legal center of the realm.

Having been driven beyond the boundaries of the city, they were not easily discouraged or persuaded to give up their intention to become lawyers. They merely moved out of the city and settled in the "suburbs," that is, outside the city walls or city boundaries, where the royal order of 1235 had no force, but where they were still as near as possible to the city itself and to Westminster. In this fashion the practicing lawyers and the "students" may have been brought together in the same living quarters, the more so, since there was probably a shortage of convenient and adequate dwellings outside of the city. Fortescue insists

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6 It must be borne in mind that during this period the term "inn" or "hostel" (hospitium) had not yet acquired the narrow meaning attached to the word "inn" (hotel, tavern) in modern times. In London, "hostel" formerly meant the grand mansion of a grandee, or the "house" of some holy order, or the chamber of some governmental body. Lincoln's Inn, for instance, was probably the mansion of a Thomas de Lincoln, who rented the place to the "society" for eight pounds, while Gray's Inn was probably the abode of the Barons Gray of Wilton. The Inner Temple and the Middle Temple formerly were hospitia of the Order of the Templars.

7 Westminster was then what might be called a western "suburb" of London.

8 Waterhouse, in his Commentary to Fortescue, published in 1663, has well stated this situation at page 523: "It is probable at first hand that men that studied the Common Laws dwelled and lodged in diffusion, where being far from the Courts

Continued on page 277
that these inns were situated between the seat of the royal courts at Westminster and the city of London because within the city “the turmoil of the crowds might disturb quiet study.” They were “some distance apart, in a suburb of the city, nearer those courts which are thus easily accessible to the learners every day.”

Approximately 1311, presumably on the invitation of Sir Henry Lacy, Earl of Lincoln, a group of lawyers and apprentices moved into an abode which later became known as Lincoln’s Inn. Subsequently, as the English legal profession grew larger, more and morelodgings of this sort were required. In this manner inns were springing up around Chancery Lane, as the various colleges developed in Oxford and Cambridge. During the following one hundred and fifty years this system consolidated into the four major Inns of Court: Gray’s Inn (approximately 1391), Middle Temple (approximately 1404), Lincoln’s Inn (approximately 1422), and Inner Temple (approximately 1440), to each of which some smaller inns or Inns of Chancery became attached.

Whatever the origin of the Inns might have been, however, it would be an anachronism to say that the apprentices of the fourteenth century were the residents of the organized and regulated Inns of Court. Like the apprentices or barristers of a later date, the early apprentices, of Westminster and uncertain to be found by those who desired their skill and advice, they to avoid that trouble to themselves and their clients . . . did associate and join their studies and lodgings . . . all of the Profession resorting to the common residence, and so making one public presence of Law and Lawyers. After they increased, men of name, withdrawing themselves for convenience of more room and better air, as their Clients followed them, so also young Students, admirers of them, joined themselves to them, till at last by time and agreement they grew into some proportion of a body, which had so much of head and members, Lawes and Servants, as are necessary to the subsistence of Honour, and a perpetuation of Being.”

9 During the riots of 1381, the rioters, who, among other grievances, were also threatening abolition of the existing law and extermination of the legal profession, demolished a place called Temple Bar where the better class of apprentices lived, and sacked the “houses” of lawyers.
to be sure, were mostly candidates for serjeanty. However, they were not yet part of that organized and regulated educational and communal life which later became synonymous with the famous Inns of Court, simply because these Inns had not yet fully emerged.

XIX

REMUNERATION OF THE LEGAL PRACTITIONER

(1)

Not until the end of the thirteenth century, and probably later, did the majority of the English legal practitioners become professional men who made a living by charging and accepting regular fees for their efforts. The emergence of the paid professional lawyer, as we have seen, was closely related to one of the decisive events in mediaeval history, namely, the rise of the guild system, which in the various domains of skilled and expert endeavors encouraged the formation of professional orders and organizations. Prior to this event those who rendered legal services to others generally were mere friends (amicis) or relatives (jugales) of the party. Obviously, such friends or relatives could not demand or accept a fee, except perhaps as a "gift of gratitude." In fact, some historical sources indicate that these advisors were enjoined from accepting a fee, an interdict which was enforced on the Continent as late as the fifteenth century.

With the further development of English law and procedure, legal assistance became more technical and involved. Hence more effort, study, technical knowledge, and

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10 When the clerics were compelled to give up the active practice of law, it was taken over by laymen, who were probably the first lawyers in England regularly to demand a fee for their services.
skill became necessary for a man to qualify as a lawyer. No longer was the law a field for the dilettante. Those who applied themselves to the ever more difficult task of practicing law in behalf of others began to do so as a means of livelihood. In addition, it increasingly happened that clients were no longer persons dependent on influential friends or relations for their protection, but people who engaged the skill and experience of a lawyer on account of his professional accomplishments and reputation. Hence, unlike the protector or lord, the latter had no moral duty of assistance. In the absence of any such moral obligation, the services rendered by the lawyer became professional and, therefore, could be sold for a price.

(2)

It is not certain when compensation for legal services originated, but early writings indicate that even prior to the thirteenth century the practice existed and was a subject of comment. Richard of Anesty informs us of the expenses incurred in his famous case against Mabel de Francheville (about the middle of the twelfth century). These expenses included *dona* (gifts?) which he distributed among clerical lawyers (*clerici*), lay lawyers (*placitatores*), and various persons who assisted him in this prolonged and involved litigation. Although Richard's records itemized every disbursement, it may well be, however, that the sums of money paid to various individuals for their services were not really fees in the ordinary sense of the term, but gifts of gratitude. As a matter of fact, he mentioned only the distribution of lump sums of money to the *clerici* and *placitatores*, rather than definite charges for particular services. In 1176, the Abbot of Abington offered an Italian lawyer (*clericus et juris-peritus*) one mark in silver in trust (*recepturus*), but not
in cash, if he would take on the Abbot’s case. The lawyer, however, declined. This transaction may reflect Italian rather than English custom, and it is not impossible that the whole idea of a lawyer’s fee was imported to England from foreign countries.

John of Salisbury, who died in 1180, insists that in his time the causidici made money from law suits. Like Peter of Blois, who recognized the lawyer’s right to a reasonable fee (salarium, salary), John of Salisbury admitted that the lawyer was entitled to a legitimate fee (merces, wages). Since it was only fair for the practitioner to sell his support and expert opinion, he concluded that a reasonable compensation, together with the reimbursement of certain expenses incurred by the lawyer, should be paid by the client. However, the lawyer should not take a pecuniary interest in the law suit itself. John of Salisbury does not mention a definite sum of money as the maximum legal fee that may be charged, although, like other ecclesiastical writers of his time, he was probably acquainted with the official limit of ten thousand sestertii established long ago by the Roman Emperor Claudius (41-54 A.D.). Being a clergyman, he also recommended the gratuitous representation of the poor and distressed.

William of Drogheda, who wrote about 1239, in his Summa Aurea de Ordine Iudiciorum, took a more direct approach to the problem of legal fees. The lawyer (advocatus), he insisted, may accept whatever remuneration the client offers, unless it be unreasonable. However, he

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11 John of Salisbury, Bishop of Chartres in France, seems to have been acquainted with the forensic practices of twelfth century England. He was connected with the Law School in Cambridge (probably from about 1150 to 1176), and indeed seems to have been a practicing lawyer, who probably appeared in some of the great litigations of his time. His observations on the English legal profession are part of his work Policraticus, which was published about 1159.

12 Cf. Chroust, The Legal Profession in Ancient Imperial Rome, 30 NOTRE DAME LAW. 521, 585-87 (1955). The maximum fee of 10,000 sestertii was enforced until the end of the Roman Empire. It was taken over by ecclesiastical writers of the Middle Ages, who found it in Roman law sources.
should never buy or acquire an interest in the litigation, or bargain for an indefinite sum of money, though he could accept payment in advance. William of Drogheda maintained that the *advocatus*, especially when representing the defendant, ought to see to it that he gets his fee before the court hands down a final decision. If necessary, he should delay the decision just to secure payment. If he cannot get satisfaction in any other way, he is advised to withhold the “papers” until he is paid: “Don’t be put off by the client’s big promises for a reward, for they are often empty and meaningless. Keep in mind the doctor’s principle: ‘get your money while the patient is still sick.’” But when charging a fee, the lawyer should be considerate, taking into account the person with whom he is dealing. At no time ought the fee exceed one hundred *aurei* (pieces of gold) — a maximum fee established by the Romans during the first century A.D. Under certain circumstances it might even be advisable to remit part of the fee, especially if the client is a person of consequence. Also, the amount of the fee ought to be determined by whether the lawyer wins or loses the case. If a definite sum has been agreed upon, an action for recovery will lie. Conversely, a client could not sue for recovery of an advance payment in case the lawyer should be prevented from appearing in court or if the case should be settled out of court. If no agreement concerning the lawyer’s remuneration has been reached, the court must fix the amount payable to the lawyer. It will do so by taking into account the nature of the law suit, the forensic ability of the lawyer, the amount of time and effort the latter had spent on the case, and the general custom of the court or jurisdiction where the case was tried.\(^\text{13}\)

Prior to the year 1300 there are only a few instances

\(^{13}\) This principle was incorporated in the *Digest* of Justinian, and reiterated in the *Mirror of Justices*, which stated that four points were to be considered: “The amount (or value) of the matter in dispute; the labor of the serjeant; his value as a pleader, determined by his eloquence and repute; and the custom of the court.”
where definite lawyer’s fees have been recorded. In 1278 Adam de la Rue received a remuneration of five shillings for his legal services. In 1289 the Prior of Dunstable, in accordance with an agreement which he had previously made with his “lawyers,” paid a fee of twenty solidi to Roger of Hecham and the same amount to Henry Spigurnel and Walter of Aylesbury. In 1308 Oxford paid an attorney’s fee of six shillings and eight pence and a narrator’s (or serjeant’s) fee of thirteen shillings and four pence, twice the amount paid to the attornatus. In 1321 King Edward II paid Serjeant le Scrope thirteen pounds, six shillings and eight pence. The annual retainer fees which were paid to the city attorneys of London already have been mentioned. In addition to their fees, lawyers were also entitled to full reimbursement of all expenses incurred while working for a client.

In secular litigations cash payment of a lawyer’s fee gradually became the custom, although less wealthy clients might still pay their lawyer partly in cash and partly in kind. In 1331 a woman bitterly complained that she not only had paid her attorney ten shillings in cash, but had also given him butter and cheese to the value of six shillings. The payment in kind, needless to say, was frequently necessitated by the general scarcity of currency, so that debts often had to be discharged in kind. The gift of robes to lawyers, especially to serjeants, in lieu of a cash fee, was a common practice during the fifteenth and sixteenth centuries. Gratuitous legal services, particularly in the case of a poor client, were by no means unknown, however; and the lawyers often displayed a studied indifference to fees in the case of an important and powerful client.

A legal practitioner could enter directly into a contract of employment with his client. Such contracts, particularly in the case of serjeants, often stipulated a definite fee for services rendered over a fixed period of time. When compensation thus came to be stipulated in advance, there
naturally arose disputes concerning payment. In 1282 Hugh Donvile agreed to be the attornatus of Sir Walter Hopton for a period of five years for half a mark annually, but in 1292 he had to sue for this fee, which apparently Sir Walter had refused to pay. Likewise, in 1331 Piers of Quarndon was granted recovery of a fee of six shillings and eight pence which had been promised to him by a client. Hence it seems that at a rather early stage in the development of the English legal profession the lawyer, including the serjeant, could sue the client for his fee. In the case of serjeants, however, this practice was interrupted in the seventeenth century.\(^{14}\)

(3)

It has already been noted that in the year 1379 Richard II decreed that every serjeant and “great apprentice of the law” should be taxed at the same rate as barons and aldermen of the city of London, indicating that the leading lawyers in the realm were reaping very considerable rewards for their professional efforts. Fortescue once remarked that there was no lawyer throughout the whole world who by reason of his office made as much money as the English serjeant. It is commonly held that serjeants, as a rule, charged and received about twice the fee paid to ordinary lawyers or attornati.

By the middle of the fifteenth century there seems to have existed something like a general scale of lawyer’s fees. “If no certain sum of money be promised,” Serjeant Moyle maintains, “a serjeant [shall have] forty pence and . . . an attorney, twenty pence.” It appears, therefore, that by this

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\(^{14}\) In 1629 or 1630, it was ruled that a serjeant no longer could sue for his fee, since his remuneration was not merces (wages) but an honorarium (gift of honor). Ulpian, the great Roman jurist of the early part of the third century, A.D., had promulgated the same rule, which subsequently was incorporated in the Corpus Iuris of Justinian.
time the rule that serjeants could demand twice the fee of an attorney was accepted universally. In the year 1432 Commons petitioned that the "Fees and Rewards" of the judges, serjeants, and attorneys be regulated. Such regulation was embodied in the act of 10 Hen. 6, stat. 2 (1432). As time went on, the practice of law, whether exercised by serjeants or attornati, increasingly became a money-making occupation and, hence, a professional activity. Originally, the fees paid for legal services were relatively small. But with time they became larger, and in some instances, oppressive, especially wherever lawyers employed dilatory tactics merely to collect additional fees. Various efforts were made to regulate the ever-vexing fee problem and to prevent extortion or the acquisition of an excessive share in the proceeds of litigation. These frequent regulations, which as often as not were ignored, are in themselves a strong indication that the whole problem of legal remuneration was still arbitrary and haphazard, and that the average lawyer of the period tried to get as large a fee as he possibly could wrest from his client.

XX

LANGUAGE AND COSTUME OF THE LAWYER

(1)

William the Conqueror, in order to make England and Normandy "of one speech," had decreed that no one should conduct a cause in the curia regis except in French (Norman-French, and later Anglo-French). This decree was still in force during the early fourteenth century, although it was beginning to be ignored. Robert of Gloucester, who wrote between 1260 and 1300, observed that the Normans in England spoke only their own language, and that "the
great men in this land . . . keep to that language. For unless a man knows French, people think little of him." Some of the English upper class, it must be assumed, preferred speaking French. In fact, during the reign of Henry II (1154-1189), the French language of the King's court was carried throughout the country. Yet when the upper class wished to reach the English speaking populace, it was necessary to use the English language.

There was nothing unusual in the deliberate effort of the Norman Conquerors to impose their language on the Anglo-Saxons, especially in matters of an official nature. Thus, formal pleas, written or spoken, were in French; and as late as 1280 the narratores still used the French language in court. In fact, they were employed because they could tell the litigant's tale in the official language of the court, that is, in either French or Latin. Written exceptions were always composed in French.

(2)

Around the year 1150 we hear that the advocati may plead in ecclesiastical courts in either French or English, if one of the parties is a layman and, hence, should be ignorant of Latin. William of Drogheda maintained that "advocatio may be in English, French or Latin." But the use of the English language apparently was permitted only as an exception, whenever a layman could not find an advocatus to conduct his litigation. This would indicate that in the beginning the official court language or lawyer's language in ecclesiastical proceedings was Latin or, under certain circumstances, Norman-French or English. In lay litigations, Norman-French (and occasionally Latin) was in general use, as pointed out above. The English language asserted itself in court only gradually during the transitional phase from the Anglo-Norman to the "English"
period. During this transitional period and for a time subsequently, therefore, the higher courts were practically tri-lingual.

Colloquial English, as has been shown, only gradually gained ascendancy in the higher English courts. In the lower courts, however, English had asserted itself at a rather early stage. A trial before a jury, needless to say, made a knowledge of English mandatory. In 1362 King Edward III decreed that the English language might replace French as the official language in the higher law courts; and as early as 1356, if not earlier, the city of London decided that plaintiffs might plead in English in the city courts. However, this city ordinance, as well as the Act of 1362, was not always observed. For some time to come, French, that is Norman-French, Anglo-French or "Law-French," remained the official language of the pleadings, while English became the language of the argument.

The mediaeval English legal practitioner who hoped for some success at the Bar therefore had to be tri-lingual. Without a fair command of either French or Latin he could not possibly expect to do an adequate job in court, and without a knowledge of English he would have been unable to communicate with most of his clients. Also, the various legal instruments and papers, as well as the many royal statutes which the lawyer had to read and interpret, were written either in Latin or French, even though the "Law-Latin" or "Law-French" of the time, measured by the accepted linguistic or stylistic standards, was often of a decidedly inferior kind.

(3)

It does not appear that the early English legal profession ever deliberately devised special robes or garbs for itself. It simply adopted and in fact perpetuated ecclesiastical
(Benedictine) and scholarly fashions which were in vogue during its formative stage. The long gown, which is a modified descendant of the old Roman toga, came into the English courts through the clergy. This simple long robe was often parti-colored (stripped diagonally or vertically, but not necessarily black). When the prevailing fashions changed from the long and flowing garment to the short and light surcoat, the expanding English legal profession in its growing class consciousness strove to differentiate itself from other vocations by insisting on the retention of the long robe. In this fashion the robe gradually became part of the corporate insignia of the English legal profession, manifesting, as it were, a sense of dignity through the display of a traditional attire. When the English legal profession became consolidated and more uniform during the early part of the fourteenth century, it is not surprising that in a spirit of corporate self-consciousness and professional pride it should pay increasing attention to its formal attire. In this manner the idea of a "forensic uniform" came into existence, which suggested a special attire to be worn by all those who belonged to the "corporation" or had official business in the courts.

The English universities also seem to have contributed to the lawyer's attire. In early days especially the advocati were university men and even magistri from either Oxford or Cambridge. It is quite likely that for reasons of prestige these "academicians" also wore their academic gowns in court. This fashion of the "academicians" subsequently was copied in part by the non-academic lawyers, particularly the serjeants.

In addition to the long robe, some of the legal practitioners wore the hood, the coif (the "silk"), and the two bands (which were really two strings tied under the chin) to hold the coif in place. For a long time the coif was almost the emblem of the higher ranks of the English legal profession, especially of the serjeant and the royal
justices. Although the coif has often been identified with the hood, the old ecclesiastical *cappa*, it was not the only or even the most conspicuous hood. Originally, the coif was a rather modest hood, often made of white linen or silk, which protected the bearer in bad weather. The hood was really a detachable addition to the gown or long outer garment. During the Middle Ages it was worn universally by both sexes.

The coif (*coyffe, coifea quoiffe, quoif, cuphia, quaif*) was the most constant and distinctive feature of the serjeant's dress. From this silken head gear, which subsequently became a guild emblem, serjeanty also derived the designation of "Order of the Coif," and promotion to serjeanty was referred to as "taking the silk." Other attire worn by the serjeants on solemn occasions included a long red robe with a short cape, often embroidered with ermine, and a short hood, each side of which was a different color. The real dignity and rank of a serjeant became manifest in the regulation that "neither the justice nor yet the serjeant shall ever put off the coif, not even in the presence of the King, though he may be in talk with His Majesty's Highness."

XXI

PROFESSIONAL DEPORTMENT AND PROFESSIONAL DISCIPLINE

(1)

The so-called *Leges Henrici Primi* of the eleventh century bitterly decried the many injustices committed by powerful persons in the name of the law. During the reign

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15 The story that the coif was invented to mislead the court by concealing the tonsure of clerics who defied the interdict against their appearance as practitioners in the lay courts probably is without foundation.
of Henry I (1100-1135) we hear that “those who are called justices (justitiarii) were the ringleaders (caput) of all injustice. The officers of the law (vicecomites et praepositi), who were in charge of the administration of justice and of good laws, were fiercer than thieves and robbers and desperate oppressors.” Throughout the twelfth and thirteenth centuries the lawyers in particular were greatly criticized. It was claimed that every type of incompetent and corrupt person was admitted to the practice of law. John of Salisbury vehemently chastized the pettiness, greed, and venality of the English causidicus. He referred to lawyers as extortionists who fomented litigation solely to derive extravagant gains from the misery of the litigants. He also decried the costliness of legal assistance which permitted only the rich to retain legal counsel. He censured the practice of lodging false or frivolous charges, entertaining costly law suits, making dilatory or unfounded defenses, accepting bribes and indulging in champerty. To be sure, he conceded that the practitioner might sell good counsel (sanum concilium), for law (and custom) permitted lawyers to do so, but in charging for their services they should exercise discretion and fairness. The court should provide the parties with advocates of equal ability, and if the opposing lawyers are not equally matched, the court should “restore the balance” by re-assigning counsel. When assigned by the court to represent a litigant, the lawyer must comply under pain of disbarment. He must act in good faith and protect the interests of his client with utmost diligence. He may never use trickery or chicanery, nor negotiate with the opposing lawyer. Neither should he “bully” the opponent or mislead the court by false statements.16

16 Many of the complaints and suggestions made by John of Salisbury seem to have been influenced by Roman experiences and regulations. Cf. Chroust, The Legal Profession in Ancient Imperial Rome, 30 Notre Dame Law. 521, 579 (1955).
Peter of Blois, the friend and contemporary of John of Salisbury, likewise complained bitterly about the low state to which the legal profession of his day had sunk:

Nowadays the legal practitioners (patroni causarum) serve only for money. The once respected title and noble profession of advocacy has been debased by flagrant venality. For only a low creature sells his tongue, traffics in law suits, breaks up valid marriages, dissolves friendships, rekindles the ashes of dead litigation, tears up agreements, distorts contracts, ignores just privileges and, in order to get money, perverts the laws by laying traps and pitfalls.\textsuperscript{17}

(2)

The fact that for three centuries after the conquest nearly all important litigation was carried on either in French or Latin, did not endear the legal profession to the general public. To most Englishmen, French and Latin were mysterious and often suspicious languages, thought to be used to deceive people and strip them of their possessions. In addition, some of the great law suits of the twelfth and thirteenth centuries were litigated by foreigners, that is, by lawyers brought from Italy. All this certainly added to the unpopularity of the budding English legal profession, and to the general suspicion of lawyers. Also, the mystery of pleading and later the technicalities of the writ system did much to discredit the lawyer.

The “political songs” of the twelfth and thirteenth centuries are full of invectives against the corrupt judges, court officials, and lawyers. Naturally, there were instances of deplorable and unconscionable conduct on the part of some lawyers; of such misconduct certain lawyers always have been guilty. These instances became the topics of

\textsuperscript{17} Matthew of Paris also bitterly complained about the “bellowing legalists” whom the Crown employed. He probably had in mind the Romanists (civil or Roman law lawyers) and canonists, who in his time were mostly foreigners and, hence, ignorant of English law.
bitter denunciations and biting satires. The primitive casualness which characterizes early legal representation undoubtedly accounted for much of the complaint by contemporary clients and observers. The most frequently deplored mischief was champerty and maintenance. These forms of malpractice, however, were probably holdovers from the days when a bargain between a lawyer and his client was of the same nature as any other bargain between two men. It may be surmised that the lawyers of the time as a class were neither better nor worse than other professions or classes. Generalizing from some instances of revolting behavior, writers and chroniclers of the time turned their wrath upon the whole profession, thereby proving only that the alleged depravity of the lawyer is, and always has been, a popular subject for sweeping criticism and a perennial topic of fanciful diatribe.

(3)

By the end of the thirteenth century, when the English lawyer had attained, or was about to attain, a truly professional status, it was felt that something had to be done about control and regulation of the professional conduct of the legal practitioners. During the period from Henry III (1216-1272) to Edward II (1307-1327), a number of attornati and other legal practitioners were proceeded against by action or information for professional misconduct. Britton, who wrote almost contemporaneously with the London City Ordinance of 1280, has put into the mouth of King Edward I (1272-1307) the following remark:

Let inquiry also be made concerning Our serjeants and Our Attorneys... whether through favor or otherwise they have permitted or suffered any great Lord of the country or others to continue in seisin of any franchise... , and let such be punished by fine.
It seems that some of the King's serjeants made bargains with their opponents or treated them too gently and, it was suspected, not without advantage to themselves. Such incidents would explain the popular belief that the King's lawyers were venal and corrupt.

There also was much suspicion that unscrupulous officials, including judges and clerks of the royal courts, were in collusion with dishonest lawyers. Such abuses and instances of malpractice led to the disciplinary provisions of the First Statute of Westminster of 1275, especially chapter twenty-nine, which contains prohibitions and penalties against unscrupulous lawyers and against misuse of royal office, applicable to royal judges and clerks. A later statute, which probably dates back to the reign of Edward II (1307-1327), also attempted to deal with instances of collusion between Bench and Bar. Barons of the Exchequer were enjoined from admitting to practice "any attorneys but only in Pleas that pass afore them in the Benches and Pleas where they be assigned by Us." Clerks and other lower officials of the court were forbidden to admit an attorney. Any admission to practice in violation of this statute was deemed null and void. About 1292, and perhaps earlier, Edward I issued a statute, often referred to as De conspiratoribus, [11 Edw. 1 (1283 ?)], which read:

Whereas it is openly forbidden by the King, in his Statutes, that anyone of the Court of the King or of any other Court whether Justice, Clerk or Serjeant-Contour attorney or apprentice..., shall take in hand or maintain any plea in our Court... to champerty; they nevertheless do take to champerty, and upon other bargains, from all persons in all the Courts, whereby the people have been often maltreated, disinherited and ruined through such maintainers..., the King... has ordained and established that he who shall henceforth be attainted of such emprises... shall have imprisonment of three years and then make fine at the king's pleasure....
Similar provisions are to be found in 3 Edw. 1, c. 25 (1275), 13 Edw. 1, c. 49 (1285), and 28 Edw. 1, cc. 10-11 (1300).

As early as 1259 Henry III gave the city of London a charter in which it was provided, among other matters, that if any causidicus should be convicted of having stipulated for his remuneration any part of the (real?) property involved in the litigation, he would lose his fee and be suspended from practice. Britton, towards the end of the thirteenth century, suggested that if an appeal be abated because through the negligence of the lawyer it was badly drawn up "or through other default of the serjeant, who ought to understand the art or business of pleading," the latter ought to be fined one hundred shillings, but "if there was malice, let him go to prison and be disbarred." The London City Ordinance of 1280 also provided that no countour (serjeant) might buy an interest in the case he was pleading, or take pay from both parties in any action at law, or defeat the purpose of the law. Neither should he take money from a client and afterwards abandon him or become affiliated with the opposing party.

The legal practitioner also was admonished not to be negligent in his professional activities or duties. For instance, around 1300, Dublin and Waterford decreed that a pleader or attorney might be fined or imprisoned for making a mistake. However, there are only a few instances on record where this threat was actually put into effect. While pleading or arguing in court, the lawyer was not to "crowd" the Bench or revile other persons; and the Mirror of Justices, composed between 1285 and 1290, insists that a serjeant or pleader "will not by blow, contumely, brawl, threat, noise or vile conduct disturb any judge, party, serjeant, or other persons in court, or impede the hearing or the course of justice." A pleader guilty of any manner of corruption or contempt of court might be suspended. The abuses most consistently aimed
at in these various regulations, however, were champerty and extortion.

It may be gathered from a decree of Dublin and Waterford, dated about 1300, that pettifoggers already were at work during the thirteenth century:

If a foreigner bring a writ against a citizen and the pettifogger of the town undertakes to be attorney for the foreigner against the citizen, he shall...go to prison. For it cannot be that he does not know the counsels of the town, and if he does anything against any citizen, he is perjured. But he can very well be an attorney by express permission, of the Mayor and the Bailiffs, though not otherwise.

This suggests that, particularly in the smaller and more remote provincial towns or counties, some people, who possessed a modicum of education, cast themselves in the role of "legal advisors." They probably attempted to earn a modest living by rendering all sorts of "legal services."

The increase in the incidents of professional malpractice between 1300 and 1400 was due not only to the litigiousness of that period, but also to a large extent to the fact that existing forms of law at times encouraged "sharp practices" by unscrupulous lawyers. John Bromyard, in his Summa Predicantium (written between 1380 and 1390), devotes whole chapters to the many abuses practiced by contemporary lawyers. Legal chicanery was probably a widespread and regular practice; and to trump up charges, however frivolous, against an adversary, was one of the most effective means of countering inconvenient charges against oneself. The prevalence of false indictments and malicious law suits became the topic of constant and, in the main, justified complaints. Also, the forgery of documents or records of all sorts seems to have been a fairly common occurrence. When statutes were passed against such practices, they were utilized to throw suspicion on
To prevent collusion between Bench and Bar, King Richard II in 1384 enacted a statute [8 Richard 2, c. 3] which recited an earlier statute of 1346 [20 Edw. 3, c. 1]:

Whereas in the time of Edward III it was ordained that justices as long as they should be in the Office of justices "... should not give Counsel to any great or small in things or affairs, where the King is a Party or which in any wise touch the King....," it is "now ordained that neither they nor the Barons of the Exchequer while in office, shall give Counsel... or be of any Man's Counsel in any Cause Plea, or Quarrel hanging before them or in other of the King's Courts and Places...."

It seems that at one time it was not uncommon for members of the Bench to advise clients or members of the Bar, and to accept fees for doing so. Naturally, a justice could always withdraw from the Bench and return to the practice of law.

As a result of these objectionable practices, the latter part of the fourteenth century became the golden age for the unscrupulous and corrupt lawyer. It was not mere greed which caused many of these evil practices, but rather the excessive number of legal practitioners, among them persons morally and professionally ill-qualified for the proper practice of law. The Rolls of Parliament of 1402 record that the Commons petitioned that something ought to be done about the excessive number of lawyers in the realm. The Commons complained bitterly about the many incidents of malpractice, which were the result of an overcrowding of the profession. It was pointed out that attorneys and other practitioners were ignorant of the law, and that improper persons were constantly and indiscriminately admitted to practice by improper authorities. Some of the practicing lawyers, it was said, were too young and too inexperienced, while others were wholly negligent in

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18 This situation calls to memory the issue whether the Statute of Frauds can be invoked in order to commit fraud.
the performance of their professional duties. Lawyers further were accused of collusion and erasures in writs and documents. To relieve this situation, the Commons prayed that not more than four, five, or six attorneys be admitted to practice from each county. As a result of this complaint, a statute [4 Hen. 4, c. 18 (1402)] was enacted in an endeavor to regulate and supervise more stringently the English legal profession by Parliament.

Neither the Statute of 1402, nor subsequent statutes, nor the various London ordinances dealing with regulation and supervision of the legal profession, succeeded in correcting the many prevalent abuses which cast a shadow on the mediaeval legal profession of England. However, it should be borne in mind that statutes during the Middle Ages were often mere moral admonitions — high-sounding expressions of pious intentions rather than "laws" in the sense of determinations of mandatory standards of conduct.

Professional misconduct was not limited to those attorneys who were engaged in the active practice of the law. Corruptness was rampant, too, among attorneys who held high public offices in the Government. Thus in the year 1330 a royal writ addressed to the Sheriff of Leicester recited that there had been many oppressions by various persons of authority. "Our counsellors among them," who were often "people who indulged in malpractice" and

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19 This may be gathered from the necessity of another petition by Commons to King Henry IV in 1411, complaining again that there were too many attorneys and lawyers in the realm. As in 1402, grievous charges were made against the legal profession, including the complaint that lawyers practiced wholesale deceit and extortion, committed grave errors, and inflicted great injuries on the public. Commons also suggested that the number of attorneys admitted to practice in each shire be limited strictly, according to the size of the shire, and that attorneys take an oath every term that they always would be faithful to their clients. This time the attorneys took alarm and promptly presented a counter-petition denying the charges made by Commons. They pointed out that, if acted upon, the original petition would cause more harm than good. The issues raised and denied in 1411 were never settled.
"maintenance of false suits." In 1350 King Edward III ordered the Sheriff of Kent to have some fit persons returned to Parliament, who must not be professional lawyers, maintainers of causes or persons who made a living by practicing law. In 1372 a statute was passed which provided that no "Man of the Law following Business in the King's Court," be returned to Parliament. This statute, which aimed at the exclusion of professional lawyers from "politics," was a deliberate but apparently unsuccessful attempt to arrest an inevitable development, namely, the ever-growing influence of professional lawyers on all matters of public and political concern. The lawyers apparently had begun to realize the advantages connected with taking an active interest in the political affairs of the realm. The Statute of 1372 also gave expression to the prevailing distrust of all lawyers and legal practitioners.

XXII
CONCLUSION

By 1400, or perhaps shortly thereafter, the English legal profession had completed the first major stage of its emergence and was about to enter upon a period of consolidation. The legal practitioners of mediaeval England, who developed out of a variety of rather primitive notions con-
cerning forensic assistance and representation in litigation, originated in the main with two basic forms of "a helper in forensic distress," namely, the advisor-advocate or pleader, and the agent-substitute or *attornatus*. These two fundamental types of "legal aid" and their different functions subsequently became the foundation of the two main branches of the English legal profession.

The pleader, who in the course of time assumed a variety of names, essentially was a sort of "mouthpiece" who stood by the side of the real party to a litigation and told the party's tale in the proper language of the court without representing or substituting for the party. In the beginning he was nothing more than a casual helper, friend, or intermediary, but by the end of the thirteenth century he definitely had become a professional man. The *attornatus*, on the other hand, who likewise appeared under different names, was the representative or substitute for the real party, one who stood in the party's place and whose words or acts were considered to be those of the party himself. Originally the *attornatus* was nothing more than a casual and severely restricted agent, authorized to perform a specific act in the place of the litigant whom he represented. By the end of the thirteenth century this casual representative became a professional man as well as the full representative of the party, equipped with the authority to commit the party in all acts and phases of a litigation. Since full substitution, however, was considered quite unusual, the appointment of an *attornatus* originally was restricted severely by a number of forms and safeguards, and was granted only as an exceptional favor by the sovereign. Gradually these restrictions were relaxed. Around the year 1330 the professional pleader and *attornatus* to a large extent had replaced both the casual "helper" and the amateurish representative. At approximately the same time the royal Bench was taken over more and more by professional lawyers, with the result that the administration of justice throughout the realm came to rest on a
sounder and more regular basis. Such a development, in turn, called for a professional Bar. Also, in the course of the thirteenth century the royal civil service, including the royal courts, passed into the hands of laymen. This general trend towards professionalism, like a number of the more progressive notions about legal representation, was prompted to a large degree by certain practices long established in the ecclesiastical courts. These ecclesiastical practices, on the other hand, to some extent had been fashioned after Roman notions concerning legal representation.

Together with the advent of professionalism came a tendency towards organization. The pleaders in particular seem to have followed the general trend of the time, forming professional associations or guilds in order to perpetuate, monopolize, and exalt the practice of their particular professional skills. For the sake of convenience as well as cooperation, some legal practitioners began to congregate in hospitia or "inns," where they were soon joined by apprentices who sought out the company and guidance of experienced masters. At the same time, and as a result of professionalism as well as organization, a number of statutes and ordinances were passed to put the legal profession under supervision and control. This was done primarily to regulate the admission to legal practice and to prevent malpractice.

After the year 1400 the English legal profession set out to consolidate itself. This further advance was facilitated by the emergence of the Inns of Court, which came into their own during the fifteenth century. The Inns, which not only prepared a man for the successful practice of law but also called him to the Bar, were responsible for the ultimate bifurcation of the English legal profession.†

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