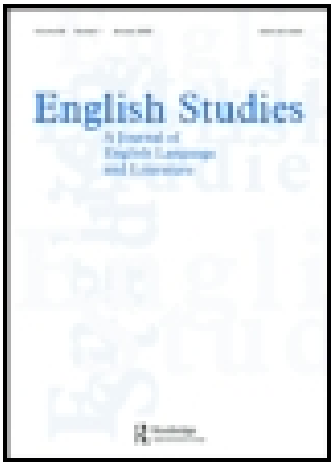

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The Inns of Court.

The reader of many a modern novel, and of many a biography will have asked himself the question that was put to me some years ago by a fellow-student: How does a man become a barrister in England, and what are the Inns of Court? Indeed it was this question that induced me to attempt to convince students of English in this country that they cannot properly study English language and literature unless they study other sides of English life [1]). But at the time I could not answer the question, and even now I cannot point to any single book that gives the information required. Of course there are 'practical' guides to the Bar, and there are authoritative books on the individual Inns of Court, but neither of these kinds of books are the kind that a student of English requires. I believe, therefore, that I shall perform a useful, though humble, task in giving an outline of the organisation of the study of law in England, both in the past and at the presentday.

In his famous lectures, Blackstone, after discussing the value of the study of law for private gentlemen, answers the question how to become a barrister as follows [2]): "Admission to an Inn of Court, and the keeping of terms and attendance at some of the lectures delivered in each of the halls of these ancient societies, constitute the formal proceedings necessary to enable the student to be called to the bar. That he may be able to undertake and perform worthily the duties of a barrister, when he has achieved that honourable degree, the student cannot now do better than follow out what has for many years been the almost universal practice. He should become a pupil in the chambers of a practising barrister of reputation, where he may see and learn, in actual practice, the business of his intended profession. His tutor will direct his studies, and explain to him how to search out, and what is of more importance, how to apply the rules and principles of the law to the cases that are brought before him. This instruction with diligent study of the works of the principal legal authors and of the Reports of the Cases argued and determined in the different Courts, will assuredly enable the student to appear in court, when he is called upon to do so, with credit to himself, and satisfaction to those clients with whose interests he is intrusted." Blackstone has also something to say on the origin of the Inns of Court. He explains, with an absence of dates that would delight a schoolboy, that the study of the common law was excluded from the universities because these were wholly in the control of the clergy, who favoured the Roman (or civil) law. But when the Court of Common Pleas or Common Bench ceased to follow the king and were always held at Westminster, the "professors of the municipal law [3]), who before were dispersed about the kingdom," came to London and formed an aggregate body. "In consequence of this lucky assemblage, they naturally fell into a kind of collegiate order; and, being excluded from Oxford and Cambridge, found it necessary to establish a new university of their own. This they did by purchasing at various times certain houses (now called the Inns of Court and of Chancery) between the City of Westminster, the place of holding the king's Courts, and the city of London, for advantage of ready access to the one, and plenty

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[1]) See the outline in my article *The Study of English* in the sixth number of the *Student's Monthly* (1917).

[2]) The edition I quote from is by Kerr (1857), vol. I, p. 24.

[3]) i. e. common law.

of provisions in the other. Here exercises were performed, lectures read, and degrees were at length conferred in the common law, as at other universities in the canon and civil. The degrees were those of *barristers* (first called *apprentices*, from *apprendre* to learn), who answered to our [1]) bachelors: as the state and degree of a *serjeant*, servientis ad legem, did to that of doctor."

The scheme of study outlined by Blackstone cannot be called an ideal one even from a 'practical' point of view, but when one considers the condition of the English universities in the eighteenth century it is to be doubted whether the Inns of Court fell below their level. And the fact that the text of Blackstone was left unaltered in the edition of 1857 would seem to show that things had not altered much by that time [2]). In the course of the nineteenth century, however, many changes were made, and the earlier history of the Inns was investigated. The chief of these publications are the following:

1. A Calendar of the Inner Temple Records, 1505—1714. Edited by F. A. Inderwick, Q. C. Three volumes. London: Sotheran, 1896—1901.
2. The Records of the Honourable Society of Lincoln's Inn. Black Books, 1422—1845. Four volumes. Lincoln's Inn. 1897—1902.
3. The Pension Book of Gray's Inn. 1567—1669. Edited by Reginald J. Fletcher, Chaplain of Gray's Inn. London. Stevens and Haynes, 1901.
4. Minutes of Parliament of the Middle Temple, 1501—1703. Translated and edited by C. F. Martin. Four volumes. London, Butterworth, 1904—5.
5. Six Lectures on the Inns of Court and of Chancery. Macmillan, 1912.
6. W. B. Odgers. History of the Four Inns of Court: in the Essays in Legal History, ed. Vinogradoff. Oxford 1913.

It is not my business to criticize these books, but it will be useful for the reader to know that he will find the information he requires in the third and fifth books mentioned above; the last is little, if anything, more than a repetition of part of the fifth, and seems to have got into the collection of scholarly essays, read before the International Congress of Historical Studies held in London in 1913, by some mistake of the organizers. The result of the work embodied in these books is that we are able to form some idea of the origin, development, and present function of the Inns of Court, and of the history of the legal profession in England.

Before I attempt to give an outline of the history of the Inns of Court, with which the history of the professions of barrister and solicitor is inextricably bound up, I must explain the name: *Inns of Court.* For *inn* is here used in a sense that is unknown in modern English, although it was once a very common word in English universities. The word denoted a lodging-house or house of residence for students, what is now called a *hostel* [3]). In 1877 the last inn, *New Inn Hall* at Oxford was incorporated with Balliol College, but apart from proper names the word had become obsolete long before that time. At present it is only found in the Inns of Court, for, as we shall see further on, the *Inns of Chancery* and the two *Sergeants' Inns* have also disappeared as such.

There are four Inns of Court: the Inner Temple, the Middle Temple,

[1]) The lectures were read in the university of Oxford.

[2]) The edition in not a reprint of Blackstone's original Commentaries, but the text was brought up to date where necessary, and these changes are marked in the text.

[3]) In present-day use the name *hostel* does not generally imply that the members are taught in the house (see Oxf. Dict. s. v.) it thus differs from a *college*. But the inns of court were really places of teaching as well as of residence.

Gray's Inn, and Lincoln's Inn. It is not certain that the two Temples were distinct societies from the beginning; this used to be the theory but no proof has been forthcoming, and the first mention that we find of them, seems to speak of two societies. It refers to a lease of land by the Knights of St. John of Jerusalem to certain professors and students of the law, about 1354. The Knights of St. John had obtained the land round the Temple Church, when, in the reign of Edward II., the order of the Knights of the Temple was dissolved. The part of the land that lay within the new City wall was leased for £ 10 a year; the part outside the wall (the *Outer Temple*) never belonged to the lawyers. The part inside was divided into the Inner and the Middle Temple. The Church was shared by the two societies. It is possible that there were buildings used by lawyers before this date, but no reference earlier than the fourteenth century has been found.

The history of *Lincoln's Inn* has been traced as far back as 1422 when the society is found in occupation of what had been the townhouse of the bishops of Chichester, who had used it since it was built, in 1227, by Ralph Neville, the bishop of Chichester. The history of the society of Gray's Inn has been traced back to the fourteenth century, but hardly anything is known about it before the fifteenth, when it was in possession of its present buildings.

The inns were really guilds; they were established when Edward I. decreed that there should be a certain number of "apprentices" of the law and attorneys in attendance upon the Courts of Common Law which had recently been permanently settled in London, instead of following the king's court. The reason for their origin given by Blackstone — that the study of the common law was excluded from the universities — may be among those that led to their establishment. Blackstone's statement also points to another fact: the inns were in their nature allied to the colleges of Oxford and Cambridge; they formed a kind of university, but one where special (not exclusive) attention was paid to the study of law. There was in the Inns of Court the same system of discipline, of celibate life, of a common hall, of residence in community, and of compulsory attendance at the services in the chapel. The students were sons of the wealthier classes, and the expense of living in the Inn was great. The gentlemen of the Inns of Court belonged to the Court of the king, hence their name. Besides the four Inns of Court there were ten lesser Inns, called *Inns of Chancery*. In the time of Sir John Fortescue (end of the 15th century) these Inns of Chancery were in a flourishing condition. He says that in each there were "an hundred students at the least; and, in some of them, a far greater number, though not constantly residing. The students are, for the most part, young men.... After they have made some progress there, they are admitted into the Inns of Court, properly so called...." [1])

In the Inns of Chancery resided the *Clerks of the Chancery*, who prepared the writs for all the royal lawcourts, and the younger apprentices who copied these writs and thus acquired some practical knowledge of their future profession.

At an uncertain date, [2]) the Inns of Court succeeded in excluding from their membership attorneys and solicitors who were educated together with the other members of the legal profession. It seems that the attorneys and solicitors retired to the Inns of Chancery, but by the eighteenth century these had practically ceased to exist as places of education.

[1]) *De Laudibus Angliae,* quoted Quarterly Rev. vol. 209.

[2]) Perhaps as early as the sixteenth century, for *Stow* says that in the Inns of Chancery "there live and common together attorneys, solicitors, and clerks belonging to the courts, as well of mere and strict law as of equity and conscience."

The Inns of Court were and are the only authority that has the power to make men barristers, to call men to the Bar, just as a University can grant degrees.[1]) It is not known when or how the Inns obtained this power; the only formal document concerning the relation between the Crown and the Inns is a grant of a patent on August 13, 1608, by James I to the Benchers of the Inner and Middle Temple. But, however acquired, the exclusive right of the Inns to call men to the Bar, and to disbar them, is acknowledged to belong to the governing bodies of the Inns. It is rather curious that a private association should have this right, especially when we consider that the Crown is bound to select its judges from the barristers.

It may not be superfluous to mention that the Inns are independent of each other as well as independent of the Crown. They are like the university colleges in this respect; they also resemble the colleges in the organisation of their government. This is carried on by the *Masters of the Bench* presided over by a *Treasurer*. The latter is elected, and holds office for one year. The Benchers are selected from the members of the Inn by co-option; they must be of ten years' standing i.e. they must have been barristers for ten years. The Inns also resemble the university colleges by having a vocabulary of their own. The meetings of the Benchers have different names in the different Inns: in the Inner Temple a meeting is called a *Bench Table*, or if it is for some specially solemn function, a *Parliament*; in Gray's Inn an ordinary meeting is a *pension*, a solemn one a *cupboard*. The proposal for the admission of a student must be made by a Bencher; the decision is made by the Bench Table. The latter also calls men to the Bar, again on the motion of one of the Benchers.

The standard of admission to the Inns has naturally varied a good deal in the course of the centuries that have passed since their establishment. It can hardly have been very high when a boy of 12 was admitted, as in the case of Sir Philip Sidney. Jeremy Bentham was also admitted at a very early age, fifteen if I remember rightly, but then Bentham was a precocious genius, and his admission cannot be held to prove anything against the standard of admission.

The course of study varied much, and it is not easy to obtain exact information on this subject which does not easily lend itself to picturesque description and is therefore apt to be put into the background, especially by English writers, who if not above 'plodding' in practical life, feel at least that such a thing cannot very well be mentioned in society. In the sixteenth century Nicholas Bacon describes the methods of instruction adopted at Gray's Inn. "There were moots in term time, and then on the first Monday in Lent, and the first Monday after Lammas there began the learning vacations. In term time there were moots in which the Benchers were seated as judges, and an Outer Barrister and an Inner Barrister were assigned on each side as advocates [2]) An Outer Barrister of the Society stated a case and thereupon the Inner Barrister, who was the junior, stated, of course in Norman French, the appropriate pleading for the plaintiff, and the Inner Barrister who was on the other side stated the appropriate pleading for the defendant. Thereupon issue was joined and the two men who were the leaders, and were practising in anticipation of the time when they should

[1]) In the report of the Royal Commission on the Inns of Court in 1855 it was proposed to combine the Inns into a University.

[2]) A student after some years' study could qualify as an "inner barrister". After another seven years he might become an "outer barrister". Five years more might make him an "Ancient", who was qualified to practise in the courts at Westminster Hall.

take charge of people's interests in Westminster Hall, set to and conducted an argument before the Bench of the Society".

A very important part of the life of an inn were the "readings". No barrister could become a bencher unless he had satisfactorily performed his "reading", just as it was by "mooting" or disputing that a student could be called to the Bar. The reading seems to have been something like the public defence of theses by an aspirant to the doctor's degree. The reading was followed by a "feast" and this seems sometimes to have been the most important part of the transaction. It was even found necessary to limit the sum to be spent; at Gray's Inn it was £ 300, an enormous sum if one considers the value of money some two hundred years ago with its present value.

Life at the Inns was not all hard work even apart from the readers' feasts. The student of the history of the English drama has heard of the masks performed in the Inns; many references to masks are found in the pension-books of Gray's Inn. Indeed, some students became members of the Inns for the sake of their social advantages. Sir Walter Raleigh was admitted a student of the Middle Temple in 1575. He "desired to feel the pulse of things, and the Inns of Court were then the geographical and intellectual centre of London. He aspired to be a courtier, and to be a Templar was already half-way to Whitehall. His assertions in later life that he had read no law, which have been held to invalidate his footing in the Temple, only prove how well he chose his club". [1])

Preparation for life at court was officially stated to be one of the duties of the Inns of Court in the seventeenth century. For this reason a mimic Court was held, at Christmas time, in the Middle Temple, and perhaps at other Inns. Descriptions of such a "Grand Christmas" are frequent in the times of Elisabeth and her successors. But the original meaning was lost sight of and it became a mere entertainment in later days. It was abolished in 1669.

Before leaving the history of the Inns of Court, a word must be said about a class of lawyers who were not members of them. These are the *serjeants*, the doctors of the common law as it were. [2]) But whereas in the colleges the doctors were the leading authorities, a barrister had to give up membership of his Inn of Court when he was promoted to be a serjeant. When a member thus left his inn, the chapel bell was tolled and the serjeant went to reside at one of the two serjeants' Inns, one in Fleet Street and the other in Chancery Lane. The serjeant wore a *coif* [3]), originally a kind of white hood made of lawn, which completely covered the head in the same way that a barrister's wig does now. It was afterwards represented by a white border of the wig. Over the coif was worn a black cap, afterwards represented by a small patch of black silk on the top of the wig [4]). The *serjeants-at-law* were the only barristers allowed to practise in the Court of Common Pleas, up to 1846 [5]). No new serjeants have been appointed after 1871. And the Inns were sold by the members. The King can now give the title of *King's Counsel* [6]), originally held by the Attorney-General and the Solicitor-General only; but all barristers can plead before

[1]) Times, *Lit. Suppl.* 1-11, '18, p. 517.
[2]) Serjeants-at-law, or servientes ad legem, were *the King's* serjants or servants.
[3]) Hence a serjeant was said to "take the degree of the coif".
[4]) See Oxford Dict. s. v. *coif.*
[5]) According to *Jenks, A short Hist. of English law,* till 1834.
[6]) A King's Counsel has a right to wear a silk gown (whereas ordinary barristers wear a stuff gown), hence he is said, on appointment, to *receive* or *take silk.* A King's Counsel is also called *a silk,* plural *silks:* The retainer of some eighteen 'silks' and as many junior counsel. *St. James's Gazette* 1884. See Oxford Dict. s. v. *silk.*

all courts of law, or indeed of equity, for this difference has ceased to exist since the reorganisation of the higher lawcourts in 1875.

Before passing to the present organisation of the legal profession, it will be of use if I say a few words about another class of lawyers that has ceased to exist. It has been stated that the Inns of Court taught the common law, and thus prepared their students for practise in the courts of common law in London, and the assize courts in the provinces. But there were formerly, in in fact there still are, large provinces of human relations with which the ~~the~~ common law did (and does) not deal. To mention one, and also the most important of these provinces, the common law knew nothing of the laws of marriage and of testamentary dispositions. These matters were dealt with according to canon and civil (i.e. Roman) law, and by the ecclesiastical courts [1]). The practitioners in these courts, the Ecclesiastical lawyers, were educated at the universities, especially at Cambridge. Indeed one of the Cambridge colleges, Trinity Hall, had been founded by William Bateman, bishop of Norwich, in the time of Edward III, as a school for Theology and Canon and Civil Law. The lectures on Canon Law were forbidden by Henry VIII, who in 1540 founded a Regius Professorship of Civil Law. The doctors of civil law [2]) now practised in the ecclesiastical courts. In 1568 Dr. Henry Harvey, Dean of the Arches [3]), and Master of Trinity Hall, Cambridge, purchased and provided a house for the advocates practising in the ecclesiastical courts, to reside in together. Like the Inns of Court the society thus founded, Doctor's Commons, was a voluntary society. But the members of Doctors' Commons obtained the monopoly of pleading in the Church Courts of the Province of Canterbury. No one could become a member unless he was a doctor of civil law, either at Oxford or Cambridge, and the members were admitted to the Bar by the fiat of the Archbishop of Canterbury. About the time of the Reformation one of the ecclesiastical courts, the *Prerogative Court* was moved to Doctors' Commons. This court dealt with testamentary business when a man left property in more than one diocese.

Doctors' Commons [4]) belonged to Trinity Hall by a 99-year lease, but in 1768 Trinity Hall surrendered its lease of the buildings to the Dean and Chapter of St. Paul's, and the doctors, incorporated by George III, bought the estate for themselves. When the Ecclesiastical courts were abolished (1857) the doctors surrendered their charter of incorporation to the Crown, and obtained an Act of Parliament authorizing their dissolution and the sale of their property. The doctors, for the most part, became barristers. Many of them became Benchers of the Inns of Court.

It now remains to state as briefly as possible, the organization of the Inns of Court at the present-day, and the relation of barristers to the other branch of the legal profession: the solicitors.

The old division of the legal profession, into barristers and solicitors, dating from the thirteenth century [5]), was vigorously attacked by Bentham, who called it absurd that one should have to apply for the help of a

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[1]) At present these matters are settled by statute law, and dealt with by the ordinary courts, for I need hardly remind my readers that the ecclesiastical courts for what we should call civil causes have been abolished.

[2]) The doctors of civil law were laymen. The doctors of canon law had been ecclesiastics.

[3]) The ecclesiastical court of appeal of the Archbishop of Canterbury.

[4]) As in the case of the *Inns of Court*, the name of *Doctors' Commons* is given to the buildings as well as to the society.

[5]) Pollock and Maitland, *Hist. of English Law*, I, 190 ff.

barrister through a solicitor. But in spite of criticism it has been maintained to the present day. Barristers only are allowed to plead in the High Court of Justice, and its offshoots, the Assizes. Solicitors can plead in the County Courts, and manage people's business in the Court of Quarter Sessions, and some less important courts. The chief business of many solicitors, however, is and especially was the management of great estates. In 1880 Escott [1]) wrote: "The custom, which was once common, of placing estates in the management of county solicitors, is gradually falling into desuetude, though still very far from being obsolete." It is further the task of solicitors to draw up wills, to settle the execution of wills, and in general to do what a *notaris* does with us [2]).

Before the Judicature Act of 1875 there were solicitors and attorneys. Solicitors were allowed to practise in the courts of equity, attorneys in those of common law. But the same people were attorneys and solicitors. The reader of Pickwick will remember Messrs. Dodson and Fogg, two of His Majesty's Attorneys of the Courts of King's Bench and Common Pleas at Westminster, and solicitors of the High Court of Chancery. Messrs. Dodson and Fogg were both attorneys and solicitors, making use of a statute of 1729 which allowed any duly qualified attorney to be sworn a solicitor, thus practically abolishing the difference.

Another example that there was no practical difference between the two names is to be found in the following passage from Trollope's *Last Chronicles of Barset* ch. 1: "I can never bring myself to believe it, John," said Mary Walker, the pretty daughter of Mr. George Walker, *attorney* of Silverbridge. Walker and Winthrop was the name of the firm and they were respectable people, who did all the *solicitors'* business that had to be done in that part of Barsetshire on behalf of the Crown, were employed on the local business of the Duke of Omnium who is great in those parts, and altogether held their heads up high, as provincial lawyers often do."

The same statute of 1729 prescribed five years' apprenticeship for attorneys and solicitors, under written articles, to a practising attorney or solicitor. In 1739 was formed a *Society of Gentlemen Practisers in the Courts of Law and Equity.* This was merged, in 1831, with other societies, in a body called the *Incorporated Law Society*, since 1903: *the Law Society.* This voluntary association, with some nine thousand members is to the solicitors what the Inns of Court are to barristers: it acts as the registrar, educator, examiner, and discipliner of present and future solicitors [3]).

To become a barrister, it is still necessary to obtain admission to one of the Inns of Court. But this admission is chiefly a matter of form and of fees. Nobody can be called to the Bar unless he has kept a number of terms, in other words till he has been a member of his Inn for a certain number of years. But this keeping of terms is again a formal matter. Real residence is not required. A student is supposed to have kept his term if he has dined six times in Hall during the term. And those who are at the same time members of a recognized university need only eat three dinners. Thus an Oxford [4]) undergraduate can come up to London one Friday in

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[1]) England I. p. 71.

[2]) A solicitor is thus a lawyer whose work is chiefly that of a *prokureur* and *notaris*. But *prokureurs* who are not at the same time barristers are now very rare in Holland; they represent a past state of the organization of the legal profession.

[3]) Jenks, *Hist. of Modern English Law.*

[4]) Blackstone was the first Vinerian Professor of Law in the university of Oxford.

time for dinner, and leave on Sunday after dinner, and he has kept a term [1]).

Both for admission and for Call to the Bar examinations must be passed as well as fees paid. Formerly these examinations were held by each Inn independently. The regulations for admission to the Inns have been consolidated; the same examining board tests the capacity of candidates who have not a university or similar qualification. But the Inn of Court requires satisfactory credentials before it will admit a student who has passed the examination. No one can compel them to admit a man, just as no one can compel them to call a student to the Bar. The authority to whom the Inns have delegated the duty of examining candidates for admission to the Bar is the *Council of Legal Education* constituted in 1852, on which each Inn has its representative. The chief authority in matters of legal etiquette is the *General Council of the Bar* which in 1894 succeeded the *Bar Committee* constituted in 1883. It is supported by the four Inns of Court, who are represented on it by sixteen members. It does not seem necessary to give details about the consolidated regulations, or the work of the Council of Legal Education. A great deal of information is to be found in the guides to the Bar of which *A New Guide to the Bar* by M. A. and LLB . (4th ed. Sweet and Maxwell, 1914) in probably a fair specimen.

E. KRUISINGA.

[1]) For a description of a dinner in Hall, and lawyers in general, see Patterson, *The Story of Steven Compton*, 1913.

Shelley-Translations.

The translating of poetry is an extremely difficult occupation, which, as a rule, is but inadequately recompensed by its results. Our more practical times gave us the expression: it does not pay, which, indeed, in more than only the lucrative sense, it does not. In Holland readers able to appreciate good poetry are scarce, but they may be supposed to understand the foreign languages well enough to be able to read the verse in the tongue it was felt, thought out and written down in. The more adventurous among them may light upon a fairly good translation now and then and appreciate it, but the majority will read and reread their favourite originals, and rightfully stick up for them. Language is a thing too deeply rooted in, too closely interwoven with man's conscious and unconscious feelings and thoughts that in translating it would not lose some of its passionate intention. For this reason it will always be advisable to read the original, if this enjoyment is anyhow possible. If otherwise, one should take care to get the best translation and never to forget that it is only a translation.

That translating out of a foreign language offers perplexing difficulties is a thing too well known to insist on it for any length of time. However, if we still must have translated poetry, let us be careful that the meaning of the poet's words should be rendered as faultlessly as possible; let us endeavour as best we can to imitate his style, metre and melody; and let us, finally, pay due attention to his words as words. A literal translation, therefore, may be a good translation, but it is not essentially good because literal. In this respect I slightly differ in opinion from Mr. Willem Kloos, who says that the only true principle in translating poetry is: "zich zoo streng mogelijk, ja allernauwkeurigst te houden aan dat wat de groote