

The Legal and Cultural Worlds of the Early Modern Inns of Court

A Folger Institute Faculty Weekend Seminar
Directed by Christopher Brooks

Themes, Questions and Readings

Note: The questions below are of course suggestive rather than prescriptive. The readings aim to introduce subjects; I'll be glad to supply further bibliographical details on request.

1. 'Educational revolution', or merely a 'heyday'?

The differences between the inns of court and chancery and the early-modern universities are as important as their similarities, but both types of institution can with some justice be seen as part of a common history of early-modern 'higher education'. Although not so great in absolute terms, the numbers of young men admitted to the inns followed much the same pattern as that found at the universities. Dramatic sixteenth-century increases lasted well into the last third of the seventeenth century and were accompanied by the institutional and architectural growth necessary to house the new members. Lawrence Stone saw the increases in numbers at the inns of court, alongside those at the universities, as part of a suite of radical changes in social mobility, and education, that were integral to his sociological account of the mid seventeenth-century 'English Revolution'. It is essential to keep in mind that non-professional members (largely the sons of gentry) had long been attending the inns, and that most of their characteristic institutional features were forged in the late fourteenth and fifteenth centuries. Nevertheless, there is no doubt that the increases in numbers at the inns were associated both with dramatic growth in the size of the legal professions, and with generally high levels of geographical (and intellectual?) mobility amongst early modern youth stretching from the yeomanry and townsmen, to the gentry. By, 1600, moreover, there was an evident intellectual vitality at the inns that made them worthy constituents of the 'third university of England'.

- 1) *What was the nature and significance of the growth of the legal professions in sixteenth and seventeenth-century England?*
- 2) *What do we make of the fact that large numbers of the sons of the gentry attended university, or joined one of the legal inns, although they did not intend to become a clergyman or a lawyer?*

- 3) *Are the institutional differences amongst the inns, the universities, and apprenticeship as significant as the common patterns of geographical and educational mobility amongst early-modern young people?*

Reading:

- J. H. Baker, Legal Education in London, 1250-1800 (Selden Society Lecture, 2007)
- C. W. Brooks, Pettyfoggers and Vipers of the commonwealth: The 'lower branch' of the legal profession in early modern England (Cambridge, 1986)
- C. W. Brooks, 'Apprenticeship, social mobility and the middling sort' in J. Barry and Brooks, eds., The Middling Sort of People: culture, society and politics in England, 1550-1800 (Basingstoke, 1994)
- C. W. Brooks, Lawyers, litigation and English Society (1998), esp. ch. 4.
- W. R. Prest, The Inns of Court Under Elizabeth and the Early Stuarts (1972)
- W. R. Prest, The Rise of the Barristers (Oxford, 1986)
- L. Stone, 'The Educational Revolution in England 1560-1640', Past and Present, 28 (1964)

2. Educational institutions, or urban spaces for vagrant lawyers, students, and entrepreneurial men of letters?

The most important single fact about the early modern legal inns was that they housed a highly mobile legal profession. Lawyers of both 'branches' of the legal profession were constantly travelling from their homes in the localities to London for work in the courts at Westminster Hall, and then back again. The inns were unincorporated voluntary societies that regulated entry into lodgings and provided meals in commons. Chambers were very often owned, or indeed built, by individual members. They were frequently passed down amongst kin or acquaintances. Obtaining a lease to a chamber was probably more troublesome than gaining an admission, and, over time, there was a tendency for chambers to be leased to non-members, not to mention amateurs who joined without any intention of practising law. Hence significant proportions of the residents of the inns were individuals who did not necessarily have much to do with the law or, indeed, with the inn of which he was a member. The call to the bar at a legal inn did not become an essential qualification to plead in court until the 1590s, and the call was achieved by clocking up dinners in hall rather than demonstrating that a programme of study had been completed. Nevertheless, the senior lawyers who composed the governing bodies of the inns dealt with practical matters, such as the building and decorating of halls, libraries, chambers and gardens, that contributed to their institutional character, and from time to time they exercised discipline over the profession that was demanded by either the judges or the privy council.

- 1) *How far did the legal inns as a group, or as individual societies, generate distinctive institutional and intellectual identities?*

- 2) *What light does the material culture of the inns shed on their character and intellectual life?*
- 3) *Should the early modern history of the legal inns be seen primarily as a chapter in the history of the relationship between London and the provinces?*

Reading:

J. E. Archer, E. Goldring and Sarah Knight, eds., The Intellectual and Cultural World of the Early Modern Inns of Court (Manchester, 2011)

C. W. Brooks, The Admissions Registers of Barnard's Inn 1620-1689 (Selden Society Supplementary Series vol. 12, 1995). Introduction

P. Goodrich, 'Easting law: commons, common land, common law', Journal of Legal History, 12 (1991), 246-67

Prest, Inns of Court

P. Raffield, Images and Cultures of Law in Early Modern England (Cambridge, 2004)

3. Pedagogy and learning (legal and lay):

There had always been an educational dimension to the institutional life of the inns. This consisted primarily of laying on lectures, given by active professional lawyers, as well as supporting oral learning exercises such as moots and bolts. Many contemporary and modern commentators have, however, been highly critical of the legal inns as educational institutions. There was little (known) supervision of 'students', hardly any compulsory provision, and no monitoring of progress. It is a wonder that those who wanted to become lawyers learned anything, not to mention the fate of 'amateur students' susceptible to the temptations of London. Yet, this is a subject that has been seriously under-explored, especially since the manuscript evidence for legal education is remarkably rich. Hundreds of lectures (or 'readings') given at the inns survive, either in the form of the scripts of those who gave them or notes made by those who listened. Alongside commonplace books, and the notes (or reports) that lawyers made of arguments in court, this material provides an insight into professional learning and expertise that can be as deep as the researcher cares to make it. There is also scope for a consideration of change over time. There appears to have been a movement from an emphasis in the fifteenth century on collective oral learning to a greater dependence on judicial dicta and writing in the seventeenth. At the same time, the role of printing in legal education still requires further work. In the sixteenth century, with the exception of the reports of Edmund Plowden, legal printing actually lagged as much as a half-century behind what was available in manuscript copies, even though law books were amongst the first products of the printing press. Sir Edward Coke's printed reports were dominant in the early seventeenth century at least in part because they were so unique. The civil wars and interregnum saw an unprecedented boom in legal printing, but

some writers have associated the flowering of print with what appears to have been the gradual decline in the intellectual life of the inns in the late seventeenth century.

- 1) *How did early modern lawyers learn the law?*
- 2) *Assess the role of print in early modern legal learning?*
- 3) *Does the modern emphasis on forms and procedures cause us to miss the evidence of intellectual vitality at the early modern legal inns?*
- 4) *Discuss Wilfrid Prest's proposition that 'the prime institutional reason for the failure of the inns as law schools was a main cause of their success as liberal academies'.*

Reading:

J. H. Baker and S. E. Thorne, Readings and Moots at the Inns of Court in the Fifteenth Century (Selden Society, vol. 105, 1990).

J. H. Baker, ed., Readers and Readings in the Inns of Court and Inns of Chancery (Selden Society, Supplementary Series, vol. 13, 2000). A catalogue of readings with a guide to where copies and notes can be found.

J. H. Baker, The Oxford History of the Laws of England, Vol VI, 1483-1558 (Oxford, 2003)

C. W. Brooks, Law, politics and society in early modern England (Cambridge, 2008), esp. chs 2-4.

M. McGlynn, The Royal Prerogative and the Learning of the Inns of Court (Cambridge, 2003)

N. Mathews, William Sheppard, Cromwell's Law Reformer (Cambridge, 1984)

Prest, Inns of Court

R. Ross, 'The commoning of the common law: the Renaissance debate over printing English law, 1520-1640', University of Pennsylvania Law Review, 146 (1998), pp. 323-461

4. Legal thought; politics:

There is not much evidence that the individual legal inns (either as collections of students or the governing bodies) had, or were thought to have had, distinctive 'political' personalities. Yet, there is no doubt that the legal district in Holborn, and the courts at Westminster, were the intellectual nerve centres of English legal thought and practice. They were also places where professional, as well as non-professional knowledge and ideas, could be obtained, appropriated, and literally 'taken away' for consumption in the provinces. Dinner in commons, a drink in the pub, or a stop at a late seventeenth-century coffee house must have provided plenty of opportunity for gossip or the exchange of professional, and public, news. Although a fairly standard set of readings had been identified as essential starting points for students by the mid

seventeenth century, the common law was not as canonical a discipline as might be imagined, largely because the reliance on reports of arguments in court, combined with the habit of commonplacing, tended to stress making comparisons between arguments, and identifying distinctions within them, rather than the articulation of completely formed accounts of either the nature of English law or its place in the constitution. Nevertheless, recent research has suggested that public speeches in the localities of various kinds provided an important venue for the transmission of legal ideas into the localities. J. G. A. Pocock's idea of a common law mind, which was informed largely by a notion of an unchanging 'ancient constitution', has proven remarkably resilient as a starting point for understanding the relationship between lawyers and politics in the early Stuart era, but the formulation itself has been challenged in various ways, and in any case, one problem with it has been that it has tended to inhibit consideration of how the common law mind might have changed over time.

- 1) *How might we best characterise the common law mind?*
- 2) *What can the inns of court contribute to the understanding of the 'public sphere' in early modern England?*
- 3) *Was Hobbes right in thinking that the growth of the inns of court and the universities were a prime cause of the mid century civil wars.*

Reading: This is a vast subject, hence the suggestions below are mere starting points.

Brooks, Law, politics and society, esp. pp. 22-4, 67-92, 157-60, 211, 296-301, chs. 6-8.

A. Cromartie, The Constitutionalist Revolution: an essay on the History of England 1450-1642 (Cambridge, 2006).

J. Greenberg, The radical face of the ancient constitution: St Edward's 'laws' in early modern political thought (Cambridge, 2001)

M. Lobban, A History of the Philosophy of Law in the Common Law World 1600-1900 (Dordrecht, 2007)

J. G. A. Pocock, The Ancient Constitution and the Feudal Law: a Reissue with a Retrospect (Cambridge, 1987)

J. Sommerville, Politics and ideology in England, 1603-1640 (1987)

5. Religion:

Perhaps surprisingly, Sir Thomas More was not the only sixteenth-century common lawyer reluctant to endorse the Break from Rome or the growth of Protestantism. Although there were ardent reformers amongst Elizabethan lawyers, the influential Edmund Plowden refused to conform, and the regime was frequently concerned about the infiltration of the inns by papists. On the other hand, by the early seventeenth century, they were also developing a track record of

appointing notable clergymen, including Richard Hooker, James Ussher, and John Tillotson, as preachers. Many early modern lawyers were deeply religious in their personal lives, but it is arguable that religion and common law were largely incommensurate as intellectual disciplines, a subject that needs further exploration.

- 1) *Why, and with what justice, were sixteenth century governments concerned about popery at the legal inns?*
- 2) *Was the late seventeenth-century presbyterian Roger Morrice correct in his assessment that the lawyers had always been great friends of the non-conformists and the campaign for freedom of conscience?*
- 3) *How significant were the differences between law and religion as intellectual disciplines?*

Reading:

- C. W. Brooks, 'Law and religion in early modern England' (forthcoming article, typescript to be made available online)
- A. Cromartie, Sir Matthew Hale, 1609-1676: law, religion and natural philosophy (Cambridge, 1995)
- R. M. Fisher, 'The reformation of church and chapel at the Inns of Court 1530-1580', Guildhall Studies in London History, 3 (1979), 223-47.
- G. Parmiter, Elizabethan popish recusancy in the inns of court (London: Institute of Historical Research, 1976)
- Prest, Inns of Court and Rise of Barristers
- G. J. Toomer, John Selden: a life in scholarship (2 vols., Oxford, 2009)

6. Literature, drama, the arts:

The place of the inns of court in the early history of English drama has always been a subject of interest to literary scholars, not least because the inns were arguably a cradle for the development of the genre, and because they continued to put on performances of masques until the 1630s. Inns-of-court men made up an important part of the audience in Elizabethan and early Stuart theatres. Scholars have also long been aware of the links between the inns and major poets and writers such as Ben Jonson, John Donne, and John Marston. More recently, an emerging school of 'law and literature' scholars have been writing interestingly on the relationship between legal institutions and ideas and the development of a number of genres. Yet the synergies between literary work and the inns (or legal thought) often seem to be postulated rather than clearly articulated. At the same time, Prest's conclusion that the general intellectual life of the inns began to decline soon after the accession of James I may be overly pessimistic, but it provides food for thought.

- 1) *How convincing are attempts to link literary developments of the early modern period with the legal inns or the law more generally?*
- 2) *What do literary activities at the inns tell us about the nature of the legal profession or legal thought during this period?*
- 3) *Does the 'professionalization' of the early seventeenth century inns explain why they subsequently became more closely associated with historical writing rather than with imaginative literature?*

Reading:

- Archer, Goldring and Knight, eds., The Intellectual and Cultural World of the Early Modern Inns of Court, (includes a good bibliography of the extensive literature)
- S. Mukherji, Law and Representation in Early Modern Drama (Cambridge, 2006)
- Prest, Inns of Court
- E. Sheen and Lorna Hutson, eds., Literature, Politics and Law in Renaissance England (Basingstoke, 2005)
- B. Whitted, 'Street politics: Charles I and the Inns of Courts' Triumph of Peace, The Seventeenth Century, 24 (1) (2009), pp. 1-26
- A. Wigfall Green, The Inns of Court and Early English Drama (1st ed, 1935)
- J. Winston, 'Expanding the political nation: *Gorboduc* at the Inns of Court and succession revisited', Early Theatre, 8 (1) (2005)

7. Decline or transformation?

Like the universities, the inns of court and chancery suffered from dramatic declines in enrolments at the end of the seventeenth century, and in the case of the inns this was accompanied by an atrophy of the learning exercises so drastic that formal legal education had to be re-invented in the nineteenth century. In fact, the failure of the learning exercises may well have come first, since these were severely disrupted by the civil wars and never recovered. The growth and persistence of forms of apprenticeship (or pupilage) within the profession may have mitigated the worst effects of this on legal education, and in addition, printed books may have helped fill the gap. But, the decline in numbers was accompanied by an 'exodus of the gentry', and there does not appear to have been the same level of general intellectual vitality at the inns after 1640 as there had been before. Yet, so little is known about the fifty tumultuous years between 1640 and 1688 that any judgment about them can only be described as provisional.

- 1) *How should we account for the atrophy of the learning exercises at the inns in the second half of the seventeenth century?*

- 2) *To what extent, and in what ways, did the inns, and lawyers, continue to contribute to the general intellectual life of the country after 1660?*
- 3) *Should the 'decline' of the inns be associated with a decline in the importance of law and the legal profession during the eighteenth century?*

Reading

Brooks, Lawyers, litigation, chs. 3, 5, 6

Cromartie, Sir Matthew Hale

T. W. Evans, 'Study at the Restoration Inns of Court', in J. A. Bush and A. Wijffels, eds.,
Learning the Law: teaching and transmission of English law, 1150-1900 (London, 1999)

J. C. Kassler, The Honourable Roger North: on life, morality, law and tradition (Farnham, 2009)

D. F. Lemmings, Gentlemen and Barristers: the inns of court and the English bar 1680-1730
(Oxford, 1990)

H. Nenner, ed., Politics and the Political Imagination in Later Stuart Britain: Essays presented to
Lois Green Schworer (Woodbridge, 1998)

B. Shapiro, Probability and certainty in seventeenth-century England : a study of the
relationships between natural science, religion, history, law, and literature (Princeton,
1993)