

## Aspects of the Inns of Court

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At first glance, the title of my paper today would seem to offer little of interest or relevance to a meeting of the Canadian Catholic Historical Association, and still less to a joint meeting of the French and English sections. But to an historian, there is always the challenge of a Mount Everest: more than a half-century ago Maitland wrote that "there is, perhaps, no more serious gap in the history of mediaeval England than that which should be filled by the tale of the Inns of Court";<sup>1</sup> and that gap still remains. And to the Canadian historian there is a further interest, in that the Inns of Court offer extraordinary materials in the history of Canadian legal education and in the field of English and French relations; and to the Catholic historian, there are aspects of the Inns as a Christian society and institution within a legal system strongly coloured by Christian principles and ideas that merit our careful considerations and continuing reflections.

To the Inns of Court, then: Lincoln's Inn and Gray's, the Inner and the Middle Temple. Their origins are shrouded in mysteries, which wrap their names, their sites, their original functions in uncertainty. To the problems of writing the early history of the Inns of Court I have devoted a separate essay. Even by the end of the fourteenth century, when the evidence in Chaucer and elsewhere indicates that they are well-established and flourishing, they are still little more than names. Certainly, by the time the records of Lincoln's Inn, THE BLACK BOOKS, open in the year 1422, there are long-standing traditions; the Inns had been going some time before that. (Their sense of tradition and antiquity is echoed by that of the common-law judges, whose speech is full of expressions like: "... beyond the time of memory, and as old as the common law"; "Common law has existed since the creation of the world".)<sup>2</sup>

The Inns of Court offered all of the instruction in English common law; for Roman and canon law one went to the universities. It does not help much to compare one of the four Inns with a 20th-century law school: they were much more important than that, for their scope included teaching and the holding of examinations and admission to the bar, but they had many extra-curricular and extra-legal activities, as we shall see. An Inn of Court was all that a modern university law school is, but with the rôles of club, legal society, academy, and social functions super-added.

In the fifteenth and sixteenth centuries, there were as many as a thousand in the Inns, each averaging 200. In 1574, a survey showed that Lincoln's Inn had 13 Benchers, 32 Utter Barristers, and 117 Others (which included inner barristers, students). The students usually came to one of the Inns of Court after a year or two

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<sup>1</sup> F. W. Maitland, in *collected papers*.

<sup>2</sup> Thus Danby CJ and Catesby, 10 Edw. IV. (S. S. 47), p. 38.

at a subsidiary Inn of Chancery – even if the boy had gone to Oxford or Cambridge for two or three years first – though there were always exceptions. Once in an Inn, there were usually seven or eight years of study before being admitted to the bar: Thomas More made it in about five years (1496 to 1501). This means that if the student were between 15 and 18 on admittance to the Inn, then he was from 23 to 25 when admitted to the bar. All of his professional connections thenceforth were with his Inn, which was the sole judge of his readiness to be admitted to the bar; and it would be his Inn which might later (usually about twelve years later) name him to become a bench.

Holdsworth has used the term “the collegiate life of the Inns of Court,”<sup>3</sup> and it serves to point up the fact that the life at the Inns had much the same style and effects upon their members as the collegiate life of the universities of Oxford and Cambridge. (One thinks of George Barnes’s sense of a university as “the pursuit of truth in the company of friends”.) “In both cases [of Oxford and Cambridge] the success of these bodies is due quite as much to the effects of the common life of their members, whether teachers or pupils, upon each other, as to their education curriculum. The pupils not only acquired the learning which their teachers imparted [and their teachers were practising men of law], but also both they and their teachers learnt many other lessons from one another.”

One sees this spirit carried throughout the year. The periods of education and therefore the life of the student were adjusted to the legal year, with its division into the four traditional terms of Michaelmas, Hilary, Easter and Trinity. The student’s year had three parts:

The law-terms when the courts [of common law] were sitting, learning vacations, and mesne or dead vacations.

During the law-terms, Inn activities were confined to afternoons and evenings, the mornings presumably devoted to attendance at Westminster or other courts. The afternoons were spent in argument and discussion, and the evenings in the more formally conducted arguments of mootings.

During the “learning vacations” [when the courts were not sitting], readings replaced the court session in the morning, and the rest of the day was continued as in term time.

During mesne or dead vacations no program was prescribed for the morning; otherwise study continued as during the law terms and the learning vacations, although attendance [in the fifteenth century] was not required. Christmas vacation, lasting from Christmas eve until the day after Epiphany (January 7th) was occupied with elaborate revels and general merriment.<sup>4</sup>

Thus runs Professor Hastings’ summary of the student’s year and his activities during the various vacations and terms; usually at the time of admittance it was specified how many learning and dead vacations he was ‘forgiven’: in effect, how many terms of residence would be required before his admittance to the bar.

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<sup>3</sup> 4 Holdsworth 263.

<sup>4</sup> M. Hastings, *the court of common pleas in fifteenth century England*. Diss. 135.

Once admitted as an Utter barrister, (and often still referred to as apprentice at law) he could practice, but much was still required of him by his Inn: further study, participation in the Inn's educational program (supervision of the moots, especially), and perhaps the honor of serving as a Reader. In such case, he would likely first be assigned as a Reader in one of the affiliated Inns of Chancery, as Thomas More was Reader at Furnivall's Inn for three years or more, Roper tells us, around 1501-2, which was also the time that he lectured on the *Civitate Dei* at Grocyn's Church. The next step for the rising lawyer would be the Readership in his own Inn of Court, which for More came nearly ten years later, in 1510-11 – again, in More's busy and multivalent life, at a time when he was serving as Under-Sheriff of London. The call to a second or double Readership might take another ten years: More waited only four, another sign of his prestige as a lawyer. The common lawyer who had completed a double readership had gone all the way in his education, training and participation in the Inns: he was now at the threshold of promotion to serjeant, which seems generally to have come at the age of 45 or 50, and after 20 years to 30 years of study and practice. (More did not become a serjeant because he was called into the King's Council). It might help to provide bearings if we indicate that from 1400 to 1500, 86 lawyers were raised to serjeantcy from all four Inns; three-fourths, or 58 of these subsequently were raised to the bench. (Many serjeants of course died within a short time.) Until the time of Elizabeth, there was, I believe, never a common-law judge who had not previously been a serjeant.<sup>5</sup>

To summarize: the system of education in the Inns was “practical, and ... the alternation of discussion of hypothetical cases with actual practice and the constant association of students with lawyers actively engaged in the profession gave it vitality,” as Professor Hastings has commented.<sup>6</sup> Vital to this system was a community of learning, living and working together; I shall want to say more about this sense of community later.

For now let us pick up the training in discussions, which were so much like the academic disputations, and the emphasis on the technical language – and, of course, the by-now special language of Law-French itself. We can move to Lévy-Ullman's emphasis on the formalism of the common law:

in all its audacity and ingenuity, with its subtleties and its formalism, its prejudices, its repetitions, its deliberate obscurities, and its mysticism, in short, with all its qualities and faults ... Nothing more was needed to create a legal system and to surround it with the atmosphere of a religion.<sup>7</sup>

Primarily, the Inns were concerned with the technical aspects of legal education, and the great English legal historian, Maitland, has declared that it would be difficult to “conceive any scheme better suited to harden and toughen a

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<sup>5</sup> Wolsey's attempt to break through common-law tradition is satirized in John Heywood's interlude, *Play of Love: see N & Q*.

<sup>6</sup> Hastings, *ibid.*, p. 140.

<sup>7</sup> Lévy-Ullman, *diss.* 140.

traditional body of law, than one which, while books were still uncommon, compelled every lawyer to take part in legal education and every distinguished lawyer to read public lectures.”<sup>8</sup> A sixteenth-century witness, Dr. Thomas Smith in his inaugural lecture as Henry VIII’s first Regius Professor of Civil Law at Cambridge, exclaimed at the eloquence and skill in disputation shown by the students of the Inns – and Smith was not a common lawyer himself. *Deus bone* (he exclaimed):

Even when some point of philosophy or theology comes in question, how aptly and clearly they handle it, with what ease and fullness, with what attractiveness and grace they reinforce their own argument or repel their opponent. In sooth, there is not lacking in them the force of logic or the splendour of eloquence.<sup>9</sup>

Although we know little about education in the Tudor Inns, from this and like evidence we conclude that many things besides law were taught: rhetoric, logic, philosophy, theology, in some manner of measure. Very likely, as we shall see, French as well.

And there was more to life in the Tudor Inns of Court than the professional. It is great fun to read the old registers for the indications that the Tudor lawyers had their problems with beatniks and long-hairs, for there are many references to the length of hair, to fines for beards, and ultimately (we infer from the gradual disappearance of such references) an abdication on this point. There are other kinds of discipline problems among the teen-agers in the Inns, including women in the rooms, but all of this is another matter.

There was both courtly training and intellectual activity in the Inns. There was much dancing as part of the formal Revels – the great Revels being the two-week long Christmas Revels. Doubtless much of Sir Thomas Elyot’s high regard for dancing in *THE BOKE OF THE GOVERNOR* developed during his days in the Middle Temple; and along with dancing and music (which prepared them for the royal court), drama was part of the ancient and elaborate but largely unrecorded rituals of the Revels. There are some interesting parallels between the dramatic entertainments of the Inns and those of the French law students, the Basoche, parallels which have never been explored. As to the intellectual activity, it must for now suffice to declare that more translators and more poets came out of the Inns than from either Oxford or Cambridge during the sixteenth century. Those two great fountainheads of Elizabethan literary activity, the *MIRROR FOR MAGISTRATES* and *GORBODUC*, were both products of the Inns. The bulk of early Anglo-Saxon scholarship, I have pointed out, is the work of common lawyers, and three-fourths of the members of that earliest of learned societies, the first Elizabethan Society of Antiquaries, were members of the Inns of Court. In still another study, I have shown that the common lawyers were among the first laymen to collect books and build libraries: the library of Lincoln’s Inn is the first institutional library in London. And, a final piece of evidence, Lincoln’s Inn was

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<sup>8</sup> Maitland. *Ibid.*

<sup>9</sup> Thomas Smith (q. O’Sullivan, *Inheritance of the Common Law.*)

apparently the first society to subvent the publication of a learned book: appropriately, Minsheu's *Guide into the Tongues*.<sup>10</sup>

For all of these reasons, together with the high standards of legal education during this period (the Golden Age of the Inns), the Inns of Court were indeed with justice called England's Third University. It is the world of Fortescue, the More family, Plowden, Coke, Lambarde, Selden, and a host of others. For the major part of the century, the concepts of taste, the new ideas about politics and literature (of such enormous import in the drama, poetry and prose of the next several decades) came primarily from the Inns. Kantorowicz's *THE KING'S TWO BODIES* has shown how the great transformation of medieval ideas took place during the Tudor period: the smithy was the Inns of Court. These formed the intellectual and cultural centre of Tudor England.

Let me briefly emphasize the multi-lingual atmosphere of the Inns. French is deeply engrained in the fabric of English law. In looking at the beginnings of that law and at the twelfth and thirteenth centuries in particular, it would be well to listen to the words of Professor Sayles stressing the fact that the kings were French after 1066:

They Were Frenchmen, French in language, French in culture, French in interest, and though naturally they prized their power in England, they left their hearts in France.<sup>11</sup>

The twelfth-century Justiciars who were skilled in the administration of law in both the English kingdom and the Duchy of Normandy are important key figures, especially at a time when the English kings were away from England more than they were in it. Not until 1204, "when John was deprived of Normandy by the ruler of France" and compelled to stay at home do we begin to have a fixed, permanent court with a regular staff and records.<sup>12</sup> French (i.e. Anglo-Norman) was the living language, and it was the language of lawyers and of the courts. Despite a statute of 1362, French continued to be the language of pleading in the common-law courts, though by 1400 it was no longer a living language in England. How far into the lower courts it continued to reach is perhaps a matter for questioning, but certainly it was the working language of the Courts of Common Pleas and King's Bench. And the Year Books, which continue to 1535, show unmistakably that Law-French (as we call the French after 1400) was the language of pleaders, serjeants and judges down to that time; and it was the language of the bulk of the legal literature until the end of the sixteenth century, and of a continuing body of it well into the seventeenth century. Cromwell abolished Law-French but Charles restored it in 1660, and it carried on through the first quarter of the eighteenth century. By that time – though there were those who still defended it – it had become corrupt, so much so that we have this famous

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<sup>10</sup> This paragraph is drawn from articles of mine:

<sup>11</sup> G. O. Sayles, "The Court of King's Bench is Law and History," *Selden Society Lecture* (1959), p. 7).

<sup>12</sup> *Ibid.*, pp. 8-9.

passage from Dyer's REPORTS (in the notes added to the edition of 1688)

Richardson, ch. Just. de C. Banc. al Assizes at Salisbury in Summer 1631. fuit  
assault per prisoner la condemne pur felonye que puis son condemnation ject un  
Brickbat a le did Justice que narrowly mist ...<sup>13</sup>

but that Brickbat was thrown in the seventeenth century, and at least as late as More's time the Law-French of the common lawyers was a supple, accurate, technical language.

Elsewhere I have attempted to deal with the question of language instruction in the Inns of Court; I must conclude, but only by inference, that Law-French was taught in the Inns. For the detailed study of the structure and vocabulary of Law-French we must still go to Maitland's masterly introduction in the Selden Society publications, supplemented by the studies of M. Dominica Legge and myself.<sup>14</sup>

What I should like to comment on here is the extent to which Law-French is like the whole of Anglo-Norman a neglected area which lies between the two great disciplines of English and French language and literature. Yet it is precisely the kind of bridging problem which well might recommend itself to study by bi-lingual Canadians and others who are interested in the fate of an earlier dialect of French which was cut off from the main developments of the parent language. One essential difference I would hasten to call attention to: Anglo-Norman shrivelled into an island language used only at the royal court and in the law courts because it was no longer being learned as a mother tongue by 1400; this is not the case of the French language in Quebec today, surely. Yet there is much in the case history of Anglo-Norman which is worth our study; it is a pity that there are so few in Canada who study it, and there are even fewer students of Law-French, which possesses a literature of some priceless attributes. Where else can we find the daily speech so carefully recorded as was that of lawyers and judges? Bilingual societies of the past can be as valuable for comparative studies of the contemporary Belgian and Swiss.

It must be added that Latin was the third language of the Inns. Even in the early sixteenth century it was apparently not much used in ordinary speech, though it was of course employed in the universities and on formal occasions; in the Inns it is chiefly the language of statutes and records. But necessarily any educated man of the Renaissance was schooled in Latin, both to read and to speak it. Every common lawyer of the Renaissance had to be tri-lingual, and a Thomas More was able to write in all three – unfortunately, we do not seem to have his Readings or other efforts in Law-French.

For the legal historian, there has long been the fascination of the Year Books, which are in Law-French. A recent historian has summed them up conveniently:

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<sup>13</sup> Dyer's Reports, 1688.

<sup>14</sup> Maitland, introd. to Year Books 1 & 2 Edward II - 1307-9 (Selden Society 17), rptd. in part in CAMBRIDGE HISTORY OF ENGLISH LITERATURE, vol. I, ch. XX.

These were collections of probably more or less official reports of cases, or parts of cases, intended, in the main, to illustrate and exemplify what could be done under the rules of pleading and procedure applicable to each form of action. They were taken down in court by legal practitioners in the archaic Norman French which had become the language of legal proceedings and legal literature. Comparatively few decisions were quoted, and the discovery or application of general principles appeared to be of little interest to the reporters. They were chiefly concerned with the arguments of counsel and the remarks of individual judges on points of procedure and interpretation, a knowledge of which would be likely to assist a practising advocate in the actual conduct of a case...<sup>15</sup>

It was long traditional to speak of the Year Books as the unique treasure of medieval England; through the work of Franklin B. Pegues on law-reporting on the continent we now know that France too paralleled the English in this as in other respects.<sup>16</sup>

Moving to more modern times, the history of the legal profession in English-speaking Canada has yet to be written; a significant chapter in that history will be the debt to the Inns of Court. Two examples must suffice to show the information that may be more generally available. In the BLACK BOOKS of Lincoln's Inn, under date of a Council minute, May 9th 1796:

The petition of John Caldwell, setting forth that he had dined twelve days in the Hall during the present Easter Term, but through mistake in the days of his attendance had regularly kept but three quarters of the term, and stating that if he is not permitted to be allowed the whole of the term it would prevent his being called to the Bar until Michaelmas Term, 1797, as he proposed to practice at the Canadian Bar, and is apprehensive of losing his passage to Quebec, as it is only in the spring and summer that vessels leave this country for that place, and therefore praying that the remaining half-week might be allowed to make his term complete, – was read and rejected.

*(Black Books, IV, 69.)*

There is no record of his being called to the bar in Lincoln's Inn; but this may be the same Sir John Caldwell (1775-1842), later receiver-general of Lower Canada, who was called to the provincial bar in 1798.

There is another petition from Crofton Uniacke of Nova Scotia in 1822, which was refused; but he was called to the bar in 1825.

*(Black Books, IV, 161, 250)*

I observe that James Boyle Uniacke, Attorney General of Nova Scotia from 1848 to 1854, studied law at the Inner Temple.

*(CANADIANA, X, 177-8)*

Certainly there is another aspect in the history of legal education. Such a vital and seminal institution as the Law Society of Upper Canada, formed in 1797 and incorporated 1822, owed much to the Inns of Court – one has only to look at the gargoyles in the old library of Osgoode Hall, or to study the resemblances that

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<sup>15</sup> Ogilvie. See esp. W. C. Bolland, *THE YEAR BOOKS* (Cambridge 1921).

<sup>16</sup> F. B. Pegues.

carry over to details of coif and gown. We should be able to find out a good deal more about the extent to which the societies of the Inns and their systems of education were studied and adapted at Osgoode, McGill and elsewhere across Canada. It is apparent that the influence of the Inns is to be found even in Lower Canada, but I cannot say anything about the extent of that influence.

There are other aspects which I can only list. Despite increasing research in some areas of Recusant history, too little is known of the careers of Catholic lawyers and judges after 1558. Plowden's career is justly well-known, Elizabeth knew he was a Catholic and wanted to appoint him judge, but how are we to read and comprehend the way in which some members of the More family were able to cling to appointed offices? On the one hand, William Rastell was a Queen's Justice who fled England in January 1563 without license; but William Roper inherited the office of prothonotary of the Common Pleas and was able to pass that office on to his son. The Red Mass of the Lawyers ceased to exist after 1534, of course, and there is nothing to take its place; it was (restored under Queen Mary), but I should like to know more about its currency and devotion to it before 1534. For now, I would suggest that the celebration of the Mass of the Holy Ghost at the opening of the Reformation Parliament in 1529 offers rich food for meditation on the meaning of history, the operation of Providence, and the fruits of the Reformation.

The common-law literature is filled with texts and phrases which are like, but different in curious ways from, the maxims of the Roman lawyer. "Under God and the law" is one which recurs frequently, and it richly indicates the sense of the common lawyer that his country's law was above the will of his prince – *Rex est sub Deo et sub lege*, as Henry of Bracton said – but Machiavelli, and Cromwell were to change that. R. W. Chambers has commented on the contrast between Thomas More's last words and the usual Tudor speech from the scaffold; the words of Thomas Cromwell are normal, he writes:<sup>17</sup>

"I am by the Law condemned to die; I have offended my Prince, for the which I ask him heartily forgiveness"; the victim admits the supremacy of the State which is demanding his head. More's words are the most weighty and the most haughty ever spoken on the scaffold. Dante could not have bettered them. "The King's good servant, but God's first."

Implicit in More's words in the sense of the King's being under God and the law: this is the true inheritance of the common law, as the late Richard O'Sullivan has made clear. But Cromwell's words, though they come from the lips of one trained in the law, carry no sense of that inheritance; from him the Prince and the State are supreme, and he looks to the seventeenth-century notion of the divine right of kings.

Among Tudor lawyers and judges one also hears the phrase "for the love of God and in the name of charity": this too is food for meditation. That much of the transmittal of the inheritance of the common law is the work of the Inns of Court

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<sup>17</sup> R. W. Chambers, *Thomas More* (1935), p. 350 – see further my "St. Thomas More, Lawyer and Judge."

needs little argument, though we do need to explore the workings in greater detail. That inheritance can still throw better light on Thomas More.

During their Golden Age, the late fifteenth and sixteenth centuries, the Inns of Court had great vitality, and there is no doubt that within the legal profession there was a rich sense of responsibility to their vocation. We cannot forget that the lawyers as a class were the first learned laymen, – this is surely of equal importance to us today with the fact of their increasing economic and social importance – in sum, as Trevelyan has put it, “their tradition and their society are a highly characteristic product of the Middle Ages, closely comparable to the universities.”<sup>18</sup> The grounding of their tradition, the preservation of their sense of responsibility to vocation, is something well worth our present concern. Above all, the lawyers had a sense of *communitas*: one of their fifteenth-century Inn statutes begins in a richly suggestive manner:

In honour of Almighty God, of Jesus Christ, our Lord, of S. Mary his mother... and for the increase and multiplication of knowledge and understanding of the laws of the land of England in the worshipful persons, Fellows of the same Society and Inn in the same place in time to come and without end awaiting, and those succeeding and to succeed them ...<sup>19</sup>

It is not just that theirs was a co-opting society and profession; they enjoyed a sense of community, within which there was dialogue – in their Readings, even in the Year Books – and as part of which, or for which, they contributed much, within which they developed as professional lawyers. Jasper Rose, the author of *Camford Observed*, has recently written of the necessity of community:<sup>20</sup> “in a word one prays for a community that loves learning, the good life and good living.” There was such a community in the Inns of Court, and we would do well to study it.

One final reflection. Maxwell Cohen has spoken of “the great process by which society understands and re-examines its laws in order to determine not only the impact of law and society on one another but also to determine what rules of law will improve the social order and its many relations and tensions.”<sup>21</sup> Much of the stance and perspective of More’s *UTOPIA* is owing to the Inns of Court, and a vital part of that “great process” is the work of the historian, and a largely unexplored but potentially valuable body of material is to be found in the Inns of Court.

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<sup>18</sup> G.M. Trevelyan.

<sup>19</sup> Black Books, 1, 41-2. (in personis honorabilibus consortibus eorundem Societatis et Hospicii ibidem temporibus futuris et perpetuis expectantibus continuantibus et continuandis).

<sup>20</sup> IN VARSITY GRADUATE (Summer 1965), pp. 50 & ff.

<sup>21</sup> CANADIANA, VI, 113.