

Washington University Law Review

Volume 2 | Issue 1

January 1917

The Temple and the Inns of Court

James Love Hopkins
Esq.

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Law Commons](#)

Recommended Citation

James Love Hopkins, *The Temple and the Inns of Court*, 2 ST. LOUIS L. REV. 001 (1917).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol2/iss1/1

This Article is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

ST. LOUIS LAW REVIEW

Vol. II

Published by the Undergraduates of the
Washington University Law School

No. 1

THE TEMPLE AND THE INNS OF COURT.

The American lawyer who can view the Inns of Court and the Temple unmoved by stirring and often half-forgotten memories, has no need for foreign travel. In these surroundings the steady roar of the world's greatest city cannot divert the mind trained to an appreciation of the common law from the inspiration given to tower and casement and tomb-slabs and paving stones by the generations of lawyers who here have studied and worked in the gladsome light of jurisprudence. So alluring a trail of thought, running back to the very shadows of the middle ages, can be inspired in the mind of the English-speaking lawyer nowhere else, even amidst the ruins of ancient Rome, where were the beginnings of the earlier civil law.

Of these sacred structures which surround the traveler who stands before the Temple Church, or in the more modern buildings of Lincoln's Inn or Grey's Inn many volumes have been written. It is a common complaint of the older men of the English bar that their history is neglected by the English students of today, and that neglect has led to lectures addressed to those students upon the history of the English bar and these houses of study and worship.

The Beginnings of London.

The age of London has long been one of the mooted questions of history. One ancient work, *Bibliotheca Legum Angliae*, asserts that in the year B. C. 444 Dumwallo Molmuthins was King of England, and that "he built at London the Temple on the spot on which the Church of the Temple now stands." Modern science assures us that in B. C. 444 the site of the Temple was in the bed of the Thames,

that London did not exist when Julius Caesar landed in Britain, B. C. 55, nor did it exist on the second Roman invasion in A. D. 43.

It is settled, however, that there was a fortified Roman camp on the site of modern London, on what is now called Ludgate Hill, in the fourth century, and the famous wall was built enclosing the buildings and a square mile or so of grazing land, between A. D. 350 and 370.

The Location of the Inns of Court.

A stone's-throw beyond the Cathedral, just outside the shadow of the tower, a few steps this side of the House of Parliament, one approaches the Temple Church, Temple Gardens, and the Inner and Middle Temple. That section of the City which has been styled "the legal quarter of London" stretches for not quite a mile to the West of the old Roman wall.

In this old City of London were located Staple Inn, Bernard's Inn, Thavie's Inn, Clifford's Inn, the Inner and Middle Temple, Serjeant's Inn; while Lincoln's Inn, Grey's Inn, Clement's Inn and the New Inn, were within the City. Most of these Inns have vanished. The modern Lincoln's Inn is very modern indeed. The Inns of Chancery have disappeared. Clifford's Inn was long in litigation, and was finally destroyed. Serjeant's Inn was sold in 1877 and the proceeds divided up among the then serjeants. New Inn was destroyed to permit the Strand to be widened. There was a Lyon's Inn, where Coke taught, demolished finally to make room for the Globe Theatre. Another small inn, called Chester Inn, was destroyed by the Protector Somerset, to make room for his palace, which is still known as Somerset House. Dove's Inn and Simond's Inn were minor in size and were made an end of long since.

The Inns of Court remain—the Inner and Middle Temples, Lincoln's Inn and Grey's Inn. By Royal charter they hold the exclusive power to admit students to the bar of England. They, too, have the power to disbar. These powers they have uniformly exercised to the credit of themselves and the bar. They have produced, and are now producing the best trained lawyers, of the highest professional ethics, in the world. It was not flattery when James I in their charter of August 13th, 1608, referred to these Inns of Court as "those four colleges, the most famous in all Europe."

Early Legal Education in England.

Prior to the 13th century, and nearly until its close, there was no systematic regulation of the bar. The Inns of Court have their

origin in the law schools of the 12th century, during which century churchmen and others more or less skilled in civil and canon law came in great numbers from continental Europe to teach law in London. There was scarcely a clergyman, William of Malmesbury says, who was not also a lawyer. All were willing to teach or to act as counsel in or out of court. These churchly gentlemen, from their efforts to instruct in the canon and civil law, soon ventured upon the teaching of the common law. It was in this period that the interminable conflict of common law *versus* civil law commenced, destined to be a long and bitter contest. In 1164 clerks and priests were forbidden to lecture on natural philosophy or municipal law, outside their monasteries. In 1217 they were prohibited from appearing as advocates in the secular courts. In 1234, Henry III ordered the suppression of the schools of law within the City. In 1254, a bull of Pope Innocent IV forbade the clergy to teach the common law. From 1234 to 1289 the legal profession was infested by practitioners troubled neither by legal ability or scruples; and the latter year brought an epidemic of judicial scandal, with resulting exposure and trial of judges and minor court officers.

In 1292 the statute *De Attornatis et Apprenticiis* directed the Chief Justice of the Common Pleas and his fellow judges to provide a certain number of serjeants and barristers from each county, who should compose the bar and have the exclusive privilege of practicing in the courts.

It is believed, though not conclusively proven, that there was a lawyers' guild in London in the 12th century, which comprised masters, apprentices and students, and that this guild developed into the Inns of Court. However this may have been, there is no doubt that the lawyers and their apprentices then commenced to form self-governing societies, studying and for the most part living in hospices, or inns, leased to one or several of the senior lawyers. It soon developed that each Inn had a governing body called "Masters of the Bench," elected from the Readers. The reader lectured on the statutes and presided at the moots, and was elected from the apprentices-at-law, later called Utter Barristers. Beneath the Utter Barristers were the Inner Barristers, apprentices or students—all three terms meaning the same thing. The students came from the general school, or university, or from the Inns of Chancery, which had become preparatory schools for the Inns of Court.

The expressions "Utter" and "Inner" applied to the barristers are

said to have arisen as follows: Moots were held usually twice a week. The moot was a contest upon a hypothetical case, presided over by the Benchers as judges, and argued by opposing sets of counsel, each set comprising one Utter Barrister and one Inner Barrister. The judges sat at the Bench Table; the Utter Barristers in the case on trial at the extreme ends of the bench or form reserved for counsel, and the Inner Barristers sat between them.

After the Inns of Chancery had become preparatory schools for the Inns of Court, students were required to attend an Inn of Chancery for one or two years, then an Inn of Court seven or eight years before being called to the bar as Utter Barristers. After admission as an Utter Barrister, three more years of study in his Inn were required before he was allowed to practice in Westminster Hall. During the 17th century these periods were greatly shortened. But these long years were not devoted exclusively to legal study. Writing in 1463 Sir John Fortescue says, "There they learn to sing, to exercise themselves in all kinds of harmony. There, also, they practice dancing and other noblemen's pastimes, as they used to do, which are brought up in the King's house."

The Council of Legal Education now prescribes an attendance to either Inn of Court for twelve terms, running four terms to the year. The courses of study in the several Inns are identical.

Why "The Temple"?

Hugh de Payens, a Knight of Burgundy, after winning laurels at the capture of Jerusalem in 1099, gathered about him eight other valiant fighters to guard the pilgrims who were swarming to the shrines of the fallen city. Before the Patriarch of Jerusalem this little band of inspired adventurers took vows of perpetual chastity, obedience and self-denial. Enrolled by the Patriarch as regular canons, and in 1128 coming under the patronage of St. Bernard, the Council of Troyes settled their constitution as the order of Knights Templars, which was confirmed by the Pope. The order comprised knights, priests and serving brethren. They became the wealthiest society in all the world, districting their possessions in Europe into nine divisions, of which England was one. The date of the advent of this order to England cannot be definitely fixed; it was in the early part of the 12th century, and their abode was in Chancery Lane. In 1160 they removed to the banks of the Thames, and built that curious round church which is known the world over, not by reason of its connection with the Knights

Templars but by its identity with those great storehouses of law, history and romance, the Inner and Middle Temple.

The official career of the Order was less than two centuries in duration. With the approval of Pope Clement it was dissolved by the Council of Vienne in 1312. Of the causes which produced its downfall much has been written, for the most part a wierd mixture of obvious truth and probable falsehood. The basic reason for its troubles is that the days of romantic chivalry were over, and great as were many of the Knights in courage and fidelity, in piety and in adventure, the Order had outlived its usefulness.

Before its dissolution the Knights had long occupied the Temple property, which was composed, besides the Church, of two portions of buildings; that near the Fleet was consecrated, and was then known, as now, as the Inner Temple. The buildings devoted to secular uses lay nearer the Thames, and formed the group known as the Middle Temple. The lawyer-tenants grouped themselves in these buildings, and the two societies took the names of the two groups of buildings, retaining ever since the Temple Church as their joint place of worship. For centuries grounds of dispute, as to boundaries or otherwise, accumulated between the two societies, until either litigation or compromise became inevitable. Wisely deciding upon the latter course, the societies settled all of these differences by a deed of partition in 1732.

Since then these two colleges of the law have lived side by side in harmony, each with great pride in its own history and traditions. The Temple Church has been maintained and beautified by the contributions of both societies, each having space reserved in the auditorium for its members. Many of the Benchers, Masters of the Temple and other members of the Inns have there been baptized, married and buried. There many hundreds of foundlings have been left, and have been cared for by the joint efforts of Inner and Middle Temple. These human mites have been promptly named "Temple," and though the mortality among them has been frightful, many an Alice Temple or Henry Temple has lived and thrived and grown to maturity through the never-failing charity of these attendants of Temple Church.

Of all the illustrious dead buried in or beside the church none has excelled in the memory of good work, as lawyer, antiquary and historian of the law, "John Selden, a learned and judicious antiquary, of the Hon. Society of the Inner Temple, a Bencher," who was interred

within the church, "near the steps where the Saints Bell hangeth, in a sepulchre of marble," on December 14th, 1654.

Let us linger for a moment beside the effigies of the Knights, recumbent upon the floor, and then pass out to the long, narrow cemetery, where we must walk over the flag-stones which roof the tombs of many whose names have been effaced by passing footsteps through many centuries. Here we find the elevated tomb of Oliver Goldsmith. It is the anniversary of his birth, and the grave is a mass of flowers. Some one still loves the memory of the gentle, gracious author of "The Vicar of Wakefield."

Then one farewell glance at the quaint exterior of this little church where long ago the Knights drowsed through the services, dreamily musing over the Crusades, and joust and tournament. The Order was cruelly handled at the end, in France. The historian tells us "Fifty-nine Knights and their Grand Master, Jacques Molay, were accused of heresy, condemned, and consigned to the flames, protesting their innocence, and appealing to God against the Pope and King Philip IV."

A curious sequence is that of the tenants of these Temple buildings—knights and lawyers. And yet to one who has worked and lived with lawyers for many years a flood of memories of modern deeds of real chivalry suggests that the spirits of the ancient Templars may have remained here to inspire the Benchers, Masters and students with something of the courage that fought its way to the Holy Sepulchre, something of the love of humanity that drew the sword from its sheath to protect the defenseless pilgrim.

"The knights are dust,
 "Their swords are rust,
 "Their souls are with the saints, we trust.

What does our nation owe to the Inns of Court?

Our best literature—law, history, drama, romance, poetry, belles-lettres.

Our noblest inheritance from any source—the Common Law.

Five signers of the Declaration of Independence came from the Middle Temple: Edward Rutledge (Governor of South Carolina), Thomas Heyward (Judge), Thomas McKean (Chief Justice, Supreme Court of Delaware), Thomas Lynch and Arthur Middleton. The Middle Temple also gave us Peyton Randolph, president of the Continental Congress; John Rutledge, of the committee which

drafted our first constitution, and William Livingstone, another of the framers of the constitution.

The Order of the Coif.

No consideration of the history of the Inns of Court can properly omit some reference to this Order, whose origin, as Bellot says, cannot be traced with any certainty. Its first recorded recognition was under the style of *Servientes Regis ad Legem*. The members of that order were summoned by writ to attend the King in Council, and the lawyers so honored were known as countors, or *Narrators Banci*. The earliest of these writs now accessible was issued by Richard II. The members of this order constituted a body from which the judges and itinerant justices were selected. Gradually the order acquired the name of "Order of Serjeants," of which we find the following in the "*de laudibus legum angliae*" of Foescue. "No man be he ever so cunning in the law of the realm shall be exalted to the office and dignity of a Justice of the Court of Common Pleas or the Common Bench, unless a Serjeant, nor plead in the Court of Common Bench. He must have spent sixteen years in the said general study of the law and take to the wearing of the quoif."

"Countors" was the French, and "narrators" the Latin, name for the Serjeants. Each word may be translated as "pleader." They are mentioned in the Statute of Westminster the first, 3 Edward I, and in 5 Henry V, c. 10.

When a serjeant was initiated there was thrown over his head a covering of white linen, an emblem of knightly service closely akin to the white lawn of the Knights Templars. In later days this linen was drawn together in the shape of a skull-cap, and this in turn gave way to a cap of silk. When wigs were adopted, the wig had a round black patch with a white border, covering the round opening at the top of the wig, this patch and border typifying the coif and black silk skull-cap. The patch on the wig is said to be a relic of the hood worn by ecclesiastics to conceal the tonsure.

The order was elaborately dressed. The serjeants wore long, priest-like robes having a cape "furred by lambskin" and a hood. The colors of these gowns were governed by occasion—purple on saints' days and holidays; a blue-brown for sitting at *nisi prius* and attending such social functions as levees and drawing-rooms; violet, worn in court in Term time; scarlet for State occasions of ceremony.

The serjeant might accept, as a general retainer, a gown fashioned after the livery of royalty or some noble house. The statutes

from Richard II to Henry VIII against giving liveries and retainers specially excepted such gowns from their inhibitions.

The serjeants' Feasts in the Halls of the Temple were interrupted for a visit and offering at the chapel of St. Thomas in Cheapside, whence the serjeants went to the shrine of St. Erkenwall in St. Paul's, where after having made their offerings they were appointed to their pillars by the steward of the feast, and returned to their banquet. These feasts were of costly character, one held in October, 1555, costing almost seven hundred pounds sterling. Grand feasts, with large numbers of guests, were given by the serjeants at Lambeth Palace and elsewhere.

The custom followed to this day by judges in addressing each other as "brother" arises from the fact that in these earlier times all English judges were necessarily members of the order and "brethren of Serjeants' Inn."

In 1871 the Judicature Acts did away with the making of serjeants, and judges were no longer required to be of the degree of the Coif. The then members of the order in 1877 caused their corporation to be dissolved and their property (between Chancery Lane and Fetter Lane) sold. They were not unanimous in this disposition of their property, and many of the serjeants refused to accept any part of the proceeds, while others devoted their share in the money to charitable purposes.

Quaint and curious as the Order of the Coif was, it had a long and honorable history, and in many ways was of service to society. Always, of course, the lawyer is the target for the humorist, and the Coif did not make its wearers immune from the jester and satirist.

Butler, in *Hudibras*, thus describes a serjeant in Westminster Hall, his rhyme being written during the reign of Charles II:

"To this brave man the Knight repairs
For Counsel in his Law Affairs
And found him mounted in his Pew
With Books and Money plac'd for show
Like Nest Eggs to make Clients lay
And for his false opinion pay."

The Inns of Court and the Drama.

The Christmas revels were a feature of life in all of the Inns. The Master of the Revels was also styled the Christmas Prince, and with his officials, servants and guards was elected by the fellows of

his Inn. First came the dinner, then the "dancing" referred to by Fortescue, followed by a play or masque, the masque itself supplanting the revels during Charles the First's reign. The last revel of which we have anything like a full description occurred in Inner Temple Hall, February 2, 1733.

We read that "the Master of the Revels took by the right hand Lord Chancellor Talbot, and he with his left took Mr. T. Page, who, joined to the other Judges, Serjeants and Benchers present, danced or rather walked about the coal fire according to the old ceremony three times, during which they were aided in the figures of the dance by Mr. George Cooke, the Prothonotary, then upward of sixty; and all the time of the dance the ancient song, accompanied with music, was sung by Toby Aston, dressed in a bar-gown."

Milton's "Comus" was the greatest of all the masques in literary merit, although the cost of its production can hardly have equalled the cost, over 21,000 pounds sterling, of the "Triumph of Peace," in honor of Charles and his queen, on Candlemas Day, 1633.

Elizabeth's attention was called to Christopher Hatton by his graceful dancing in officiating as Master of the Revels. He became one of his monarch's many favorites, as evidence of which she made him, in 1587, Lord Keeper of the Great Seal. He has gone down in history as "the Dancing Chancellor," although elsewhere, as in England, we may even now find upon the bench gentlemen whose charms of person, and presumably their skill in "dancing" are far superior to their legal knowledge or judicial ability. Chancellor Hatton was reputed to be one of the joint authors of "Tancred and Gismund," whose performance in Inner Temple Hall in 1568 was attended by the Virgin Queen.

The production of these plays was forbidden by the Government in 1642 because of the "great disorder and scurrility" produced "by lewd and lascivious plays."

Among the players employed in these productions was Shakespeare. Among the authors was Wycherley, whose profligacy was only exceeded by his wit. Of all the romantic escapades of these ancient Inns possibly none excels in charm the visits of the beautiful Duchess of Cleveland to Wycherley's chambers in the Inner Temple, "disguised as a country girl, with a straw hat on her head, pattens on her feet, a basket in her hand," while her monarch impatiently longed for her return to his royal presence. As pictures of contemporaneous manners, without regard to standards of morality or decency, the plays of Wycherley are artistic jewels.

While so many of the ancient institutions and customs have disappeared from the Inns of Court, they still occasionally renew the masque or play. "The Masque of Flowers" was produced in one of the Inns in 1887, and Robert Browning's "Stafford" was played in the Inner Temple in 1890.

But for the most part life in these Inns is very modern and full of exacting labor. The visitor is impressed by the quiet of the Inns, broken only by the hollow roar of modern London without, and as he emerges to contact with the crowds of the narrow streets and the clamor of their traffic he is apt to think of Charles Dickens' sententious expression.

"Who enters here leaves noise behind."

JAMES LOVE HOPKINS.