

The English and Colonial Bars in the Nineteenth Century

Daniel Duman



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IN THE NINETEENTH CENTURY

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To My Parents

ABBREVIATIONS

BPP	British Parliamentary Papers
<u>DNB</u>	<u>Dictionary of National Biography</u>
<u>Hansard</u>	<u>Parliamentary Debates, 3rd series</u>
<u>LJ</u>	<u>Law Journal</u>
<u>LT</u>	<u>Law Times</u>
PRO	Public Record Office

Note: All books cited in this study were published in London, unless otherwise indicated.

PREFACE

Five years ago, having nearly completed a study of the royal and ecclesiastical judges appointed in England between 1727 and 1875, I decided to broaden the perspectives of my research by embarking on an examination of the entire upper branch of the legal profession during the eighteenth and nineteenth centuries. This book incorporates the major part of that work. During the time that I have been engaged on this project I have accumulated many debts that I would now like to acknowledge.

I would like to thank those institutions and individuals who made their facilities available to me and who allowed me to consult the materials in their possession. These include: the British Library, the Public Record Office, the Principal Probate Registry in Somerset House, the Bodleian Library, the University Library Cambridge, the Institute of Historical Research, the Hertfordshire County Record Office, the director of the Sheffield City Libraries, the Masters of the Bench of the Honourable Society of the Inner Temple, the Senate of the Inns of Court and the Bar, the Wine Committees of the South-Eastern and Western Circuits, the Lambeth Palace Library, the Berkshire County Library and the Zalman Aranne Library at Ben-Gurion University of the Negev. I would like to express my appreciation to those individuals whose family papers I was privileged to consult: the Earl Cairns, the Earl of Carnarvon, the Earl of Halsbury, the Earl of Selborne, the Earl of Wharncliffe, the Baron Coleridge, the Baron Monk Bretton, Sir James Alexander Stephen Bt., and Mr John Blofeld QC.

I am also grateful to all those individuals from whose advice and help I benefited while engaged in this study: Professor W.R. Cornish of the London School of Economics, Professor Eliot Freidson of New York University, Professor Shmuel Galai of Ben-Gurion University, Professor Paul Lucas of Clarke University, Dr Christopher Brooks of Durham University, Dr Wilfrid Prest of the University of Adelaide, Mr Raymond Cock of Sussex University and Mr Thomas Telenko of the University of Michigan. This book has been much improved by the invaluable

suggestions and comments made by Professor David Spring of the Johns Hopkins University, Dr W.D. Rubinstein of Deakin University and Professor Stephen E. Tabachnick and Dr Robert Liberles of Ben-Gurion University who read the early drafts of this study. Of course any remaining inaccuracies of fact or interpretation are my responsibility alone.

From the beginning of this project I received encouragement from Mr David Croom, as well as his understanding when I failed to meet more than one deadline. I want to thank Mrs Lili Lang who typed the final version of the book in preparation for publication. Travel and research grants from Ben-Gurion University of the Negev allowed me to spend several summers in England studying the gentlemen of the long robe, and aided me in transforming the raw data into a finished work. I am also grateful to the editors of the Journal of Social History for allowing me to use material that first appeared in that publication.

While I was engaged in this study I became seriously ill and owe an enormous debt to those doctors and nurses at Soroka and Beilinson Medical Centres who treated me during this difficult period. I want to extend my special appreciation to Drs Yona Ben-Yakar and Ferit Tovi whose concern for both my physical and emotional well-being could not have been greater, and to my dear friend Dr John Posner who was always ready with a sympathetic ear and wise counsel.

Finally I must acknowledge the help that I received from members of my family. My mother and mother-in-law allowed themselves to be recruited to type the early draft, my brother made important suggestions about the organisation of the book, my son Yoav - who was born soon after I began - permitted me to use a small corner of my study as long as I did not disturb him, and most of all my wife Marion who was more or less willing to be exploited as research assistant, editor, proof-reader, typist, nurse and companion during very trying circumstances.

INTRODUCTION

Two decades ago the professionals ranked among the most neglected of all English social groups.(1) Fortunately since then both historians and sociologists have devoted considerable energy to investigating individual professional occupations, and the process and meaning of professionalisation.(2) For the nineteenth century alone we now have monographs on the Anglican clergy, medical practitioners, army and navy officers, chartered surveyors, university dons, architects, engineers and superior court judges.(3) Yet as impressive as this list is, especially when supplemented by shorter studies of many other occupations, much remains to be done both in analysing particular professions and in placing the entire group in social and historical perspective.(4) My ultimate goal here is to contribute to the realisation of these objectives.

This book is primarily a study of the personnel and institutions of the English bar during the reign of Queen Victoria, but it is more than simply the chronicle of an ancient and respected profession. Its wider significance emanates from the fact that the bar is, in my view, the classic English profession as measured by nearly all the criteria usually associated with professionalism: autonomy from external interference, monopoly over practice, the possession of esoteric knowledge and skills, corporate unity and a position of dominance over a clientele dependent upon professional advice. Therefore an analysis of the bar will naturally shed light on the evolution of the professions as a whole. In the six substantive chapters I examine: the dimensions of the bar and the origins of its members; the governance of the profession; the careers of practising barristers in England and her colonies; the members of the bar as wealth-holders, landowners and company directors; and the place of the gentlemen of the long robe in the world of Victorian high politics. I conclude with an essay that makes use of my research on the history of the bar and the bench in the eighteenth and nineteenth centuries in order to challenge and revise the orthodox view of the character and development of the English professions.

At this point I want to comment on two vital aspects of this study, namely the scope of the subject matter and the methodology employed in analysing it. Surprisingly perhaps, the task of defining who is to be subsumed under the title of 'barrister' is considerably more difficult than might be supposed. It seems logical to assume that just as a doctor is a man who practises medicine or a clergyman is a minister of religion, so a barrister is someone whose principal vocation is advocacy in the courts of law. In fact, had I adopted this criterion, thereby limiting my research to the practising members of the English and colonial bars, I would have condemned the majority of the members of the profession to continued historical neglect. On the other hand, the inclusion of any man who had acquired the qualification of barrister-at-law regardless of his occupation creates other equally perplexing problems. For example, the call to the bar did not in itself foster the development of that corporate identity that we typically associate with members of a profession. In all likelihood barristers defined themselves according to their principal occupation rather than as inns of court men. Thus the esprit de corps that united practising barristers in England and Wales probably did not extend even to their colonial counterparts, much less to those country gentlemen, businessmen or civil servants who had early in their lives been called to the bar.

In order to minimise these difficulties without ignoring their existence, I have chosen to examine the bar in the most comprehensive manner possible without losing sight of the fact that our main concern here is the history of a profession. To this end I have placed the practitioners on centre stage while at the same time devoting considerable attention to the members of the bar in some of their other guises. Finally I have tried to show, especially in the chapter on politics, that while inns of court men were not all cut from the same cloth, a sojourn at the Temple, Lincoln's Inn or Gray's Inn helped a man to see the world from a lawyer's point of view even if it did not necessarily transform him into a lawyer.

Prosopography seemed the most effective means of investigating the structure and character of the bar. However, this choice created a methodological problem: what was the best way to collect the data?(5) During the nineteenth century thousands of men were called to the English bar. Not only would it have been impossible given the available resources to include them all, but such a procedure would probably have led to a situation of rapidly diminishing returns as little would have been added to the picture presented here despite the additional investment of research. Consequently I decided to make use of sampling techniques and construct random samples of the profession. This task was made considerably easier by the fact that in both 1835 and 1885 books were published that contained not only the names of all living barristers in each of

the two years but short biographical entries on each man as well. Rather fortuitously these two books more or less span the Victorian era; the first was written just two years before Victoria's accession and the second, two years before her fiftieth jubilee. The former, compiled by James Whishaw and entitled A Synopsis of the English Bar, contains the names of 2477 men while the latter, Men-at-the-Bar, the work of the prolific nineteenth-century genealogist Joseph Foster, lists 7521 barristers.

Ten per cent samples of the bar in 1835 and 1885 form the centrepiece for this study. Yet while these data provide a good overview of the profession they do not tell the entire story and must be supplemented by samples of important sub-groups of barristers as follows: all of the judges appointed to the superior courts between 1875 and 1901 (n=53); all of the colonial chief justices who served in the years 1865 to 1901 (n=156); a 50 per cent random sample of the County Court judges named to the bench between 1847 and 1901 (n=116); a 20 per cent sample of Queen's Counsel who took silk in the years 1800 to 1901 (n=155); all barrister/MPs elected to the House of Commons in 1880 (n=130); all barristers who sat in Cabinets between 1815 and 1914 (n=60); and all Indian (non-European) barristers living in 1885 (n=108).

In total this portrait of a profession includes data gleaned from the biographies of more than 1700 barristers. Fortunately the nineteenth century was the heyday of genealogy and so the historian has a vast wealth of printed sources and manuscripts from which to gather information about the birth, social origins, education, careers, and wealth of his subjects.⁽⁶⁾ Nevertheless in some cases finding even the most elementary data was extremely difficult. This was especially true for the samples of the bar in 1835 and 1885, despite the works of Whishaw and Foster, since the barristers in those groups did not constitute an elite, but merely the rank and file of a profession.

The biographies compiled from this material provided both the quantitative skeleton around which the entire study is built and the details of individual careers that have been employed to exemplify the statistics. I have also endeavoured wherever possible to let the barristers speak for themselves through autobiographies, memoirs, letters, diaries, parliamentary debates and professional journals. In addition some use has been made of Victorian literature, though only with extreme care, since many fictional barristers while interesting character studies were not necessarily representative members of their profession.⁽⁷⁾ My hope is that the combination of statistical and literary evidence will provide the reader with a balanced picture of the nineteenth-century English barrister and his universe.

NOTES

1. Until then the most important study of the English professions was A.M. Carr-Saunders and P.A. Wilson, The Professions (Oxford, 1933).

2. For examples of the sociological literature see Geoffrey Millerson, The Qualifying Associations: A Study in Professionalisation (1964); H.M. Vollmer and D.L. Mills, Professionalisation (Englewood Cliffs, New Jersey, 1966); J.A. Jackson (ed.), Professions and Professionalization (Cambridge, 1970); Philip Elliott, Sociology of the Professions (1972); Terence J. Johnson, Professions and Power (1972); Eliot Freidson, Profession of Medicine, A Study of the Sociology of Applied Knowledge (New York, 1972); Magali Sarfatti Larson, The Rise of Professionalism, A Sociological Analysis (Berkeley, 1977).

3. Diana McClatchey, Oxfordshire Clergy 1770-1869 (Oxford, 1960); Brian Heeney, A Different Kind of Gentleman, Parish Clergy as Professional Men in Early and Mid-Victorian England (Hamden, Conn., 1976); Sir George Clark and A.M. Cooke, A History of the Royal College of Physicians of London (3 vols., Oxford, 1964-72); M. Jeanne Peterson, The Medical Profession in Mid-Victorian London (Berkeley, 1978); Gwyn Harries-Jenkins, The Army in Victorian Society (1977); Michael Lewis, The Navy in Transition (1965); F.M.L. Thompson, Chartered Surveyors: The Growth of a Profession (1968); Sheldon Rothblatt, Revolution of the Dons (Cambridge, 1968); Arthur Engel, 'From Clergy to Don, the Rise of the Academic Profession in Nineteenth Century Oxford', unpublished PhD thesis, Princeton University, 1975; Barrington Kaye, The Development of the Architecture Profession (1960); W.H.G. Armytage, A Social History of Engineering (1961); Jennifer Morgan, 'The Judiciary of the Superior Court 1820 to 1968: A Sociological Study', unpublished M. Phil. thesis, University of London, 1974; Daniel Duman, The Judicial Bench in England 1727-1875: The Reshaping of a Professional Elite (Royal Historical Society forthcoming). For a more general treatment see W.J. Reader, Professional Men (1966).

4. Examples of shorter studies are D.H.J. Morgan, 'The Social and Educational Background of Anglican Bishops, Continuities and Changes', British Journal of Sociology, 20 (1969), pp. 295-310; A.W. Coats and S.E. Coats, 'The Social Composition of the Royal Economic Society and the Beginnings of the British Economic Profession 1890-1915', British Journal of Sociology, 21 (1970), pp. 75-85; B.W.G. Holt, 'Social Aspects in the Emergence of Chemistry as an Exact Science: the British Chemical Profession', British Journal of Sociology, 21 (1970), pp. 181-99; C.J. Dewey, 'The Education of a Ruling Caste: the Indian Civil Service in the Era of Competitive Examination', English Historical Review, 88 (1973), pp. 262-85; Andrew T. Scull, 'From Madness to Mental Illness: Medical Men as Moral

Entrepreneurs', European Journal of Sociology, XVI (1975), pp. 218-61; Andrew T. Scull, 'Mad-Doctors and Magistrates: English Psychiatry's Struggle for Professional Autonomy in the Nineteenth Century', European Journal of Sociology, XVII (1976), pp. 279-305.

5. Lawrence Stone, 'Prosopography', Daedalus, 100 (1971), pp. 46-75. In most cases the percentages given in this study have been rounded off to the nearest whole per cent.

6. The main sources for biographical information were: F. Boase, Modern English Biography (6 vols., 1965); Burke's Peerage, Baronetage and Knightage; Burke's Landed Gentry; W.P. Blaidon, Records of the Honourable Society of Lincoln's Inn, Admissions (2 vols., 1897); Debrett's House of Commons and Judicial Bench (1880); Dictionary of National Biography; Directory of Directors (1889); Joseph Foster, Men-at-the-Bar (1885); Joseph Foster, Register of Admissions to Gray's Inn, 1521-1889 (1889); Joseph Foster, Alumni Oxonienses 1715-1886 (4 vols., Oxford, 1888); Joseph Foster, 'Register of all Barristers called to the Inns of Court to 1887' (20 vols.), manuscript deposited in University Library Cambridge; Law List; Return of the Owners of Land 1872-3; BPP, (England, Wales and Scotland), LXXII (1874); (Ireland), LXXX (1876); M. Stenton (ed.), Who's Who of British Members of Parliament 1832-1885 (1976); H.A.C. Sturgess, Register of Admissions to the Middle Temple (3 vols., 1949); The Times (obituaries); J. and J.A. Venn, Alumni Cantabrigenses 1754-1900 (10 vols., Cambridge, 1940-54); James Whishaw, A Synopsis of the English Bar (1835); Who was Who. In addition I have used the probate acts in the Public Record Office and Somerset House and a variety of school and local directories.

7. On the difficulties in using literary evidence see Peter Laslett, 'The Wrong Way Through the Telescope, a note on literary evidence in sociology and historical sociology', British Journal of Sociology, XXVII (1976), pp. 319-42.

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