The legal professions of fourteenth-century England: Serjeants of the Common Bench and Advocates of the Court of Arches

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Introduction

My topic is the legal professions (I use the plural advisedly) in fourteenth-century England. As is well known, the various legal systems of fourteenth-century England, even the local system, were thoroughly professionalized, but that does not mean that there was a single developed legal profession. It is not clear that there was. The classic sociological definition of a profession is a group of people who make their living by employing their learning on behalf of other people by whom they are in some way compensated.¹ For this group to be fully a profession, it must have: a sense of group identity; a great deal to say about, if not total control over, admission to the group; a system for passing on its learning to a new generation; norms of behaviour with regard to the exercise of its professional duties; and a system for enforcing those norms. So defined, Paul Brand sees the English legal profession developing among the practitioners in the Common Bench during the reign of Edward I in the last quarter of the thirteenth century.² That the narratores of the Common Bench developed into a profession in the reign of Edward I is undeniable. This group came in the fourteenth century virtually to monopolize positions as justices on both benches. Hence, as Brand argues, the English legal profession developed

¹ Of a number of fuzzy lines that are suggested by this definition, one is particularly worth noting. In the Middle Ages the ‘learning’ is not the learning that is involved in working with one’s hands or making things. Hence, artists, architects and surgeons were not professionals, even if they had all the other characteristics of a profession (as they did in some places and times).

around what came to be called the serjeants at law of the Common Bench, the attorneys in the same court, and, eventually, the justices of both benches. He also sees, though the evidence does not allow us to see it so clearly, similar developments taking place in at least some of the local courts, and perhaps other royal courts as well. He does not argue that these groups were fully integrated into the profession of the central royal courts. Eventually this happened, but not in the reign of Edward I.

What happened after the reign of Edward I is curious for those who are looking for the origins of the English legal profession. The professional group of serjeants that originated in the reign of Edward I got smaller and smaller in the fourteenth century. This does not mean that the number of ‘lawyers’ declined in that century; indeed, it seems to have gotten larger. But inverted commas are necessary when we speak of lawyers in the fourteenth century because it is not entirely clear that most of those whom we would call ‘lawyers’ normally thought of themselves as such. Nor is it clear that contemporaries outside of the professional group(s) painted them with a single brush. This is not to deny that at least some of the pressure that led to professionalization came from the outside. The development of professional ethical standards came in response to such pressure, and control over admission may have. The question is whether those who were applying the pressure perceived themselves as acting with regard to a single group. The way that lawyers are described in the languages in use in the fourteenth century casts some doubt on whether the concept of lawyers as a single professional group existed in the minds of contemporaries, and that doubt in turn leads us to question whether it existed in fact.

While we have no doubt that in the fourteenth century the serjeants of the Common Bench, the ‘graduate’ serjeants who became justices, and those apprentices who were in the process of becoming serjeants formed a professional group, we may have more doubt about those lawyers who practised in other royal courts. They were certainly professionals in the sense that they were not lay gentz, as the Year Books call the non-professionals; many, perhaps most, of them had some of the training that ultimately led to becoming a serjeant. Even confining ourselves to the Common Law, however, it would perhaps be better to speak of the legal professions of the Common Law rather than the legal profession of the

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3 See Table.
4 See Appendix.