

# THE BEGINNINGS OF THE ENGLISH BAR

MICHAEL de L. LANDON

Wilfrid R. Prest. *The Rise of the Barristers: A Social History of the English Bar, 1590–1640*. (Oxford: Clarendon Press, 1986). xvi + 442 pp. Appendices, index. \$62.00.

Prest's book is the first volume to appear in a new series entitled *Oxford Studies in Social History*. It provides a systematic analysis of the social structure and workings of the English bar in the half century immediately preceding the outbreak of the Civil War. In compiling it he has used almost all of the techniques of the modern social scientist. From among the slightly more than 2,000 men called to the bar at London's four Inns of Court during this period, he has selected at random a sample group of 115, some of whom had been born while Henry VIII was still on the throne and some of whom would live to experience the Glorious Revolution. All of them are obscure, only a handful having names that even a specialist in early modern English history would recognize. With the aid of the usual biographical sources for the period, however, supplemented by the findings of the History of Parliament Trust, local histories, the PCC wills collection<sup>1</sup> in the Public Record Office, and of course the records of the Inns, he managed to learn a little bit about all of them. For obvious reasons he found out even more about each of the members of a second sample group that he uses for comparison, the 385 men who served as ruling benchers of their respective Inns during the period. All of them are surveyed, weighed, scrutinized, compared, and classified in a total of nine chapters, accompanied by nine appendices, eighteen statistical tables, and one graph.

The introductory chapter on the structure of the profession in the period does not altogether avoid the problems of terminology that invariably affect any discussion of the topic. Just how the late medieval corps of common law advocates composed of "serjeants" and "apprentices" evolved into the early modern bar made up of "serjeants," "benchers," and "utter-barristers" is not clearly explained. Prest does make clear, however, that because the business handled by the major central common law courts, King's Bench and Common Pleas, more than trebled during Elizabeth's

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<sup>1</sup> The "PCC wills collection" refers to the wills registered for probate in the Prerogative Court of (the archbishop of) Canterbury, and now deposited in the Public Record Office in London. The correct footnote citation would be "Great Britain, Public Record Office, PROB 11."

reign, by 1603 virtually anyone who had been called to the bar at one of the four Inns was regarded as qualified to practice before the Queen's justices in Westminster Hall. Also, that increase in business resulted in a corresponding increase in the number of those called. During James I's reign the trend continued, until the number of members of the bar, at a little over 500, was ten times what it had been just a century earlier. The second and third chapters, which discuss "The Business of the Bar" and "Demand and Supply" expand upon the points made in the Introduction by describing the different kinds of work done by members of the bar in chambers in Westminster Hall or on circuit. An increasingly active market in land, commercial expansion, and the consolidation of central monarchical power all meant more work for barristers; and so more men were motivated to qualify for the profession.

The fourth chapter, "Group Portrait," is the most informative. In it the author demonstrates conclusively that not all, or even most, barristers were recruited, as has been generally believed, from the highest ranks of the landed nobility and gentry. In both of his sample groups, sons of gentlemen, lawyers or office holders, and merchants far outnumber the sons of peers and knights. The benchers, even slightly more so than the ordinary barristers, derived from middle to upper-middle social backgrounds. They came to their Inns from all corners of the kingdom, though for obvious reasons more of them came from the more prosperous and populous areas. Slightly more than half of them had attended a university before entering the Inns (some 50 percent more at Oxford than at Cambridge), but only a handful had stayed long enough to take a degree. Most of them married at least once; and many acquired useful new sources of patronage or capital and additional real estate by doing so. The wives, however, because of their husbands' frequent absences either in London for the terms of traveling on circuit, often had to endure long periods of loneliness.

Prest tells us in his fifth chapter, "Advancement," that marriage was in fact a more certain basis for upward social mobility than a career at the bar. The approximately one in seven of his barristers who did improve their social standing did so more because of opportunities that the practice of their profession brought them for profitable investments in commerce, moneylending, or real estate development than because of the fees they collected. And, although a career in law has generally been considered by historians to have provided the best means of upward mobility in preindustrial England, in fact all the studies indicate that successful trading or profitable farming were much more likely to bring success.

The sixth chapter, "Lawyers and Letters," is appropriately devoid of statistical tables. Most lawyers, it points out, were too

busy working at their professions to be able to devote much time to the arts, sciences, or belles lettres. Also, theirs was a discipline that was not university-based but rather studied in isolation. Of course, some barristers, such as Selden and Ross, made valuable contributions to the study of history and political science. Francis Bacon was a barrister, and so was Edward Hyde, author of the classic *History of the Great Rebellion*. It was as patrons or backers, however, that some of the wealthier lawyers made the profession's principal contributions to arts and letters. In Chapter 7, "Religion," Prest confesses that it is impossible to assess the religious attitudes of the majority of the members of either of his sample groups. But he argues that a jealous resentment of the broad jurisdiction still exercised by the episcopal and other church courts staffed by civil lawyers, combined with a close working relationship with progressive members of the financial and business worlds, must have inclined most of them, even if unconsciously, toward puritan ideas and attitudes.

The final chapter, "Laws, Lawyers, and Litigants," is a general discussion which notes that in the period a certain amount of judicial corruption—as notably exemplified by Bacon's case—and of judicial favoritism toward friends, relatives, and favorites, though sometimes criticized, was tolerated to an extent that is unthinkable today. But Prest concludes that the bar, which like any professional group in any age "had its quota of knaves and fools" (p. 296), was for the most part made up of men who were not only hard-working but also competent and conscientious. That is not to say that lawyers did not on occasion come in for some harsh criticism. As long as there have been lawyers there have been jokes made, and rude things said, about their money-grubbing tendencies and their ethics. So it is not surprising, in a half century when lawyers were increasingly numerous and active, and not only large landowners but also "peasants, artisans, craftsmen, and merchants" (p. 296) were commonly resorting to litigation, that a lot of rude things were said from time to time about the legal profession. Genuine instances and specific grievances, however, are hard to find. Indeed, Prest suggests, what was good for the legal profession in the period was good for England also, "because the barristers can hardly be separated, both as cause and effect, from the victory of an economic and social order which was already in the process of creating the world's first industrial nation" (p. 325).

Unfortunately, however ethical and hardworking the barristers and benchers who make up the author's two sample groups may have been, and however essential may have been their contributions to the cause of progress first championed by their colleague Bacon, in this book none of them come alive for the reader. They remain merely statistics in a sociological study, and none of its conclusions are going to startle any scholar who has worked much with the legal profession in early modern England. Serious

students of law and society in this period, however, will be pleased to see their impressions backed up by such systematic, thorough, and in-depth research. And Appendix E, which provides approximately paragraph-length, annotated biographical notes on every one of the 385 benchers surveyed by the author, will be welcomed by them as an absolute godsend.

MICHAEL de L. LANDON is Professor of History at the University of Mississippi.