

The Legal Professions of Fourteenth-Century England: Serjeants of the Common Bench and Advocates of the Court of Arches¹

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.² 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 in the practitioners in the Common Bench in the reign of Edward I in the last quarter of the thirteenth century.³ 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 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.⁴ 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.⁵

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 common lawyer, were it not for the fact that once we get outside the circle of the serjeants and justices we can be less sure about the sense of group identity, common admission and training, and common professional discipline. A notion of multiple professions allows us better to accommodate the clerks, the attorneys, the stewards, the suitors, and the conveyancers, as well as the pleaders at assizes, in the relatively few eyes,

and in the local courts. We are reminded that even today the English legal profession is not as integrated as it is, say, in the United States.

As Brand recognizes, there was another group in fourteenth-century England which ought to be considered under the rubric of ‘lawyers’ or ‘the legal profession’: those who practised in the church courts and in the relatively few non-ecclesiastical courts where the *ius commune* was dominant or who provided advice about such matters to clients both clerical and lay.⁶ Almost all those at the top of the profession had university training in civil or canon law (or both). They certainly fulfilled the first requirement: they made their living by employing their learning on behalf of other people by whom they were in some way compensated. The system for passing on their learning to a new generation was complicated. University training, which was in the control of those who had it, was combined with something like apprenticeship for those who performed functions other than that of advocate. Each of the courts of civil or canon law controlled admission to the ranks of those who regularly practised before it. Each of those courts had a system of professional discipline, and these systems had a strong element of commonality. There is evidence that these systems were enforced. We may have doubt about the criterion of group identity, though it may have existed among the practitioners in the various ecclesiastical courts, particularly in London.

As is the case with the ‘common lawyers’, so too in the case of the ‘canon lawyers’, we may also have doubt as to whether the notion of a single profession quite captures the reality. Like the serjeants of the Common Bench, the advocates of the ecclesiastical courts formed an elite. Many of the judges, including the officials, the chief judges, were drawn from their ranks, and it seems that they sometimes advised the judges when judgments were rendered.⁷ The proctors, roughly the equivalent of the attorneys of the Common Bench, were, like the attorneys, somewhat different. Some of them had some university training; most did not. They seem to have learned by informal apprenticeship. Their admission to practise was controlled, and they were subject to

professional discipline, but these systems were not quite the same as those for the advocates. Even further away were the notaries, who had their own system of training and discipline. Many of those who served as clerks and registrars were notaries, and some of the proctors were. As is the case with the common lawyers, so too in the case of the canon lawyers, we can see how they might combine to form something that could be regarded as a single profession, but it is not clear that this happened in the fourteenth century.

My focus in this paper is on the very top of both the secular and the ecclesiastical legal professions: the serjeants of the Common Bench, the professional pleaders who had an exclusive right to plead in that court, and the advocates of the court of Arches, notionally sixteen men who operated in the highest tier of lawyers of the highest court in the southern ecclesiastical province of Canterbury.

The Serjeants

First, let us try to get some sense of the changes in serjeants' profession over the course of the century.⁸ At the beginning of the reign of Edward II, two justices of the Common Bench were former serjeants; by the end of the century all the justices of Common Bench and Coram Rege were. In short, the serjeants of the Common Bench acquired a *de facto* monopoly of positions as royal justices of these two courts.

The movement in the direction of appointing as justices of the benches only laymen who had been serjeants of the Common Bench has long been noted. The reasons for it are less clear than the fact. That it reflects, in some sense, a growing professionalization of the law seems clear, but Hervey Staunton and John Bousser (Bourchier), to take the two most prominent justices of the reign of Edward II who had not been serjeants, were every bit as professional as William Bereford and William Herle, to take two who had been. The issue was not whether the justices of the two benches were going to be professionals; the issue was what kind of professionals they were going to be. The advancement of men who had served in clerical positions in the court or in

other courts had served Henry III well. Edward I began the practice of appointing serjeants (*narratores*) as justices. When Edward II came to the throne, however, there were many men serving as justices who had not been serjeants. They continued to serve, some with considerable distinction. Both Edward II and Edward III, however, made very few such appointments; Richard II made none.

The fact that only laymen came to serve as justices of both benches could be the result of a preference for laymen or a bias against clerics, or both. The evidence for bias against clerics is not particularly powerful.⁹ There were reasons for preferring laymen as justices *Coram Rege*. This court did a considerable amount of criminal business, and the church, at least formally, forbade the clergy from participating in judgments of blood. In this regard, what is odd is not that the appointments tended to go, and eventually went exclusively, to laymen but that the laymen tended to be, and eventually were all, serjeants of the Common Bench. There was nothing about pleading before the Common Bench that prepared one particularly well for being a judge of a criminal court. One would have thought that at least some of the laymen who served on commissions would have been equally well qualified.¹⁰ In the case of appointments to the Common Bench, it is easier to see why serjeants tended to get them, but here it is hard to see why the clerks were excluded. Perhaps, as Brand suggests,¹¹ the fact that the lay former serjeants could do both jobs led to getting ‘two for the price of one’. This might be particularly true after commissions of gaol delivery, to take assizes, and to hear cases at *nisi prius* tended to be consolidated in the 1340s.

All of this would suggest that there was something about the formation of serjeants that made them particularly suitable for judicial roles in courts other than the Common Bench. (This included not only *Coram Rege* and a wide variety of commissions but also the Exchequer of Pleas.) Unfortunately, our knowledge of how serjeants were formed in this critical period is quite vague. We can probably, however, posit a relatively steady development from multiple centers of

instruction in the late thirteenth century to the more formalized system of readings and moots in what became the inns of court. The latter may have been developing as early as the mid-fourteenth century.¹² If we imagine that the apprentices in the first half of the century received a rather broad formation in writs and in pleading generally, with, perhaps, some focus on the statutes, before they came to focus exclusively on pleading in the Common Bench, we can have a better idea of how it is that the serjeants were suitable appointees for Coram Rege, as well as Common Bench. If we further imagine that the educational process took in far more young men than those who ultimately became serjeants, we have what may be the beginnings of a meritocracy. Those who became serjeants tended to be those who were more clever and persistent, whose health was better, who were better at developing a base of clients, and whose resources allowed them to devote more time to the task. Ultimately, the answer to the question why the serjeants came to dominate the higher ranks of the legal profession in England may be similar to the answer to the question why those trained in civil or canon law (and ultimately both) came to dominate the higher ranks of the legal profession in continental Europe in the same period or why those trained in Latin and Greek came to dominate the imperial civil service in the nineteenth century. The way the training shaped the mind was more important than what filled it. So far we have been approaching the problem as if we were dealing with a rational bureaucratic process in which the men most suitable for performing a specialized task were chosen to do it. But while there was plenty of bureaucracy in the fourteenth century, its operations were far from Weberian. Specific evidence is hard to come by, but the way the process of judicial appointments developed suggests that at some point, probably in the reign of Edward II, the serjeants developed a sense of group identity with the justices. In the fifteenth century, this sense of group identity will be expressed in the fact that the practicing serjeants and the justices were normally members of the Serjeants' Inns and by the fact that the serjeants participated with the justices and the Chancellor in discussions in the informal Exchequer Chamber.¹³ The group was self-

perpetuating; the evidence suggests that the justices made the recommendations as to who would receive the writ that instructed a group of apprentices, as the phrase went, ‘to give gold’.¹⁴

Already in the beginning of our period, they probably also had some influence over who would be appointed as a justice. It is unlikely that they ever controlled that process entirely, but they did succeed in establishing, it would seem by 1343, the principle, only once breached in the latter part of the century, that a justice of either bench must first have been a serjeant.

Monopolies have a tendency to restrict entry. That was certainly characteristic of the serjeants over the course of the fourteenth century. The serjeants of the Common Bench were a small group at the beginning of the fourteenth century, perhaps 30 to 35 men at any one time. By the end of the century they were even smaller, perhaps eight to ten at any one time. One might think that the decline in the number of serjeants over the course of century was related to the decline in the population caused by the Black Death. Perhaps it was in some way, but not in any direct way. Rates of litigation in the central royal courts not only did not decline as a result of the decline in population; they went up rather dramatically.¹⁵

Table 1

Serjeants Eligible to Practice in Michaelmas Term at Five-Year Intervals¹⁶

Year	Count	Avg	%Decl1	%Decl2
1307	35			
1312	40			
1317	40	38.33		
1322	29			
1327	28	32.33	16%	
1332	27			
1337	16	23.67	38%	23%
1342	21			
1347	21	19.33	50%	11%
1352	16			
1357	17	18.00	53%	3%
1362	13			
1367	6	12.00	69%	16%
1372	7			

1377	8	7.00	82%	13%
1382	6			
1387	10	8.00	79%	-3%
1392	8			
1397	9	9.00	77%	-3%

Table 1 gives the number of men qualified to practise before the Common Bench in Michaelmas term at five-year intervals over the course of our period. Every decade until the end of Edward III's reign shows a decline from the first decade, the percentage of decline reaching a high point of 82% in the fifth decade of his reign. The reign of Richard II sees a slight increase in the average number of serjeants, so that in the last decade of the period the proportional decline of serjeants from the beginning of Edward II's reign was lower than it had been at the beginning of Richard II's (77% vs. 82%).

Although there was a decline in every decade from the second decade of Edward II's reign to the last of Edward III's, it was not steady. The last column in the table compares the amount of decline in the decade to that experienced in the previous decade. The largest percentages of decline occurred in the second decade of Edward II' reign (16%) and the first (23%), second (16%) and fourth (11%) decades of Edward III's. Approximately 2/3 of the overall decline had already occurred by the end of 1347, and the decade following the Black Death is not notable for decline. Two of the decades of greatest decline (the second of Edward II and the first of Edward III) correspond nicely with the hypothesis suggested above that within this period the serjeants developed a sense of group identity with the justices. It was basically in this period that they succeeded in establishing their *de facto* monopoly of appointments to the benches, and the table shows that it was in this period that they exercised their monopoly control over admission to their ranks by reducing their numbers by 38%. It took another four decades to achieve a similar reduction.

We know less about the advocates of the Court of Arches than we do about the serjeants of the Common Bench. The medieval records of the Court of Arches have been lost, and the history of the court and its personnel has to be reconstructed from scattered fragments. Recently, however, Donald Logan has put together a list of 102 men who are known to have served as advocates of the court in the period 1307 to 1399.¹⁷ These men were clearly at the top of the canonical legal profession. Eleven of them became bishops. I have attempted to construct a collective biography of these men in order to compare their careers to those of the 174 men who are known to have served as serjeants in the same period. The work is full of statistics, and hence rather boring. At the risk of distorting the evidence a bit, let me here simply describe the lives of five serjeants at law and four advocates of the court of the Arches. Not all of our 276 men were as successful as these were, nor did they all live as long. They are, however, typical of what could happen to someone who had a quite successful career.

We first see William de Bereford as a pleader in the Common Bench in 1281, after he had been an attorney since at least 1269.¹⁸ He was appointed justice of the Common Bench by Edward I in 1292. He served first as puisne justice and then as chief virtually until the day he died in 1326. He was thus a lawyer and a judge for almost 57 years.

Henry le Scrope first appears as a pleader in the Common Bench in 1292.¹⁹ He was a serjeant for seventeen years before he was appointed as puisne justice of the Common Bench, a position that he held from 1309 to 1317, when he was appointed chief justice *Coram Rege*. He vacated that position in July of 1323 and served as justice of the forests beyond Trent from 1324 until 1327. He was reappointed justice of the Common Bench in February of 1327 and served in that position until he was reappointed chief justice *Coram Rege* in October 1329, a position that he held until December of 1330, when he was appointed to the less demanding position of chief baron of the Exchequer, a position that he held for all practical purposes until his death in September of 1336. He was thus a lawyer and a judge for almost 45 years.

Bereford and Scrope could not have been more different. Bereford was a consummate professional. The reporters loved him. He dominates the conversation in the Year Books while he is a puisne justice of the Common Bench, and after he becomes chief, he does so even more. He could not have been an easy judge to appear before. He was caustic, highly learned, and he did not suffer fools gladly. By contrast, the remarks certainly attributable to Scrope in the Year Books either as serjeant or as justice of the Common Bench are few.

Henry le Scrope's career must be considered in conjunction with that of his younger brother Geoffrey, who was created serjeant in 1309, while Henry was serving as justice of the Common Bench.²⁰ Geoffrey was appointed justice of the Common Bench in September of 1323, two months after Henry was demoted from chief justice Coram Rege to justice of the forests beyond Trent. Two terms later Geoffrey was appointed chief justice Coram Rege. He served in that position with brief interruptions until Easter of 1338. He attended the king in the Low Countries from 1338 to 1340 and died by mid-December 1340. He thus served as a lawyer and a judge for almost 29 years.

Henry's demotion in 1323 may be related to the politics of the latter part of Edward II's reign.²¹ The relationship to politics, however, is not simple; Geoffrey was appointed chief justice Coram Rege in 1324. Henry's reappointment as justice of the Common Bench early in February of 1327 certainly suggests that he had earned the trust of those opposed to Edward II. Between them the Scrope brothers held the position of chief justice Coram Rege for all but four terms and a fraction of another from Trinity of 1317 to Easter of 1338. Henry's service as chief justice Coram Rege in 1329–30 was clearly as substitute for his brother, who was on a diplomatic mission.

These two men had much to do with establishing the fortunes of the Scrope family, branches of which were barons of Masham and barons of Bolton in the later fourteenth and fifteenth centuries. They seem to have been operating in tandem throughout most of the reign of Edward

II and well into that of Edward III. Both men were firmly associated with Edward II, and both had to manoeuvre to become acceptable to Isabella and Mortimer and after the fall of the latter to the young Edward III. They did so, however, seemingly without a hitch. Their adroitness was rewarded; both died rich men.

Modern legal history, particularly that written by lawyers, tends to remember Bereford and to forget the Scropes. Bereford is seen as one of the powerful formative forces of the common law, an achievement that was the result of his dominance of the Common Bench for almost thirty-five years. One would not want to understate the importance of Bereford. He seems to be working for the law; whereas the Scropes seem to be working for themselves, or for their lineage.²² And yet, if one asks the question whether it was more important in the fourteenth century to have men who were devoted to making sure that pleading in cases of novel disseisin developed in a sensible fashion or that competent men presided over the prosecutions of those who attempted to settle their grievances by violence and that those who so presided be unfailingly loyal to whatever power had the best claim to legitimacy, it is not at all clear that the answer would not be the latter.

Robert Thorp, knight, was created serjeant in 1339.²³ He was appointed chief justice of the Common Bench in June of 1356, a position that he vacated in April of 1371, having been appointed Lord Chancellor three weeks earlier. He held this position until his death in June of 1372. He thus served as a lawyer and a judge for almost 35 years, 37 if we add his service as Lord Chancellor.

Thorp was created serjeant in the same call as his relative William Thorp. Confusion between the two is rife in the Year Books, as it is between them and their later contemporary Roger Fulthorp. What we do know is that Robert Thorp, having served as serjeant for almost seventeen years and king's serjeant for eleven, was catapulted into the position of chief justice of the Common Bench without ever having served as a puisne justice or baron of the Exchequer. He held this position

for thirteen years until he was made Lord Chancellor. He is one of the few common lawyers of this period who may have had academic interests; one of his executors gave forty marks to Cambridge University that may have been used to build the northern range of the Old Schools.²⁴ The Year Books of Richard II's reign remember his period as chief justice as a kind of golden age.

Robert Belknap was created serjeant in 1362.²⁵ He was appointed chief justice of the Common Bench in October of 1374, a position that he held until January 1388. He was sentenced to death by the Merciless Parliament of 1388 for having joined in a legal opinion too favourable to the king, but the sentence was commuted, and he was exiled to Ireland. He was restored in 1398 and returned to England where he died in January of 1401. Although his career was cut short, he served as a lawyer and judge for a bit over 32 years.

While Belknap was chief justice of the Common Bench, he dominated the court in a way that no chief since Bereford had, and he did it in the same way. Like Bereford, he had a caustic wit that delighted the reporters. In argument, he had a sense for the jugular that is almost modern.

Patience was not his long suit, and in his eagerness to cut to the chase he could make what the reporters and his brothers Skipwith and Holt regarded as mistakes. Had he lived in a formative period or in one in which the politics were less conflicted, he might have enjoyed a reputation as great as Bereford's. As it was, his Year Books suffered substantial losses, and those that survive were not printed until the twentieth century.

In concluding our discussion of the serjeants, let us focus, once more, on 1388, when the Merciless Parliament cleared both benches. One justice lost his head, and the rest were sent into exile. The result was that a number of men who had not been serjeants for long became justices. That done, a number of men who do not seem to have been apprentices for long became serjeants.²⁶ The result was a Year Book which the editor found in comparison with the Year Books of Edward II just a bit dull.²⁷ The recently edited Year Book of 1382–83 is more lively.

Both counsel and the bench seem more willing to range widely; they are more imaginative, and they, or at least Belknap and the reporter, seem to be having more fun. The year 1388–89 could not have been a good year for the justices and the serjeants, even if they escaped the disaster that had just befallen their more senior brethren. Almost everyone left was new on the job, and few if any of them had had the experience that the previous generation of justices and serjeants had.

The temptation to proceed cautiously must have been strong. It was not resisted.

The question is whether this experience had a permanent effect on the court, and, ultimately, on the common law. There are gaps in the Year Books for the following years, but the impression is that they never quite recover the spirit that is evident in 1382–83, and, to lesser extent, in the years immediately preceding 1388. One thing does seem clear. The serjeants and the justices, particularly the former, distanced themselves from politics in the next twenty years.²⁸ This does seem to have had a long-term effect. In October of 1460, the justices refused to render an opinion on the claim of the duke of York to the throne, and the serjeants followed suit.²⁹ None of them would have had a personal memory of the events of 1388, but it is hard to imagine that they did not know of them. The connection, of course, between what was being decided in the Common Bench on a regular basis and the question of succession to the throne is not direct. But it may be that a separation of what we call private law from what we call political and constitutional issues had a dulling effect on the development of the former.

The Advocates

Let us turn now to four well-known advocates of the court of Arches. As mentioned earlier, we can be less precise about these men's legal activities, and that is going to turn out to be the main point about them. I have deliberately excluded from my selection advocates of the Arches who became bishops, because even in the fourteenth century that career move clearly involved moving out of the legal profession.

Gilbert de Middleton is first mentioned in March of 1301, when he received an annual pension of six marks from Osney Abbey so long as he was an advocate of the court of Arches.³⁰ His degrees are never given, but it seems highly likely that he had a degree in law, either canon or civil or both.³¹ Gilbert was ordained a priest in April of 1305. According to archbishop Winchelsey's statutes for the court, Gilbert's ordination as a priest should have disqualified him from the position as one of its sixteen advocates and have limited any practise before it quite severely.³² Gilbert may well have given up his practise in the Arches at this point, for in 1306 we find him as official of the bishop of Lincoln. In 1309 we appears as dean of Arches, the second-ranking judge in the court of Arches, a post that he may have held until he was made official of the court by archbishop Reynolds not later than May of 1314. He occurs in that position as late as 1326. He may not, however, have served as official of Canterbury for all of these twelve or thirteen years. In November of 1316 he was appointed vicar general of Winchester, an administrative not a judicial post, by John Sandale, who was bishop of Winchester and Lord Chancellor. Gilbert served as official of Winchester, *sede vacante*, in 1319 and 1320, and he was appointed once again vicar general of Winchester in January of 1322. Gilbert is also styled 'king's clerk' from 1304 through 1327, and 'king's councillor' from 1310 through 1327. The records of this service are irregular, but at times it was sufficiently intense that it is hard to imagine that he had much time for anything else.³³

Gilbert's service was rewarded. He received a number of pensions from religious houses and prelates. At his death, probably in January of 1331, he was canon and prebendary of Chichester, Wells, Lincoln, and Hereford, and archdeacon of Northampton.

Gilbert's career is difficult to figure out. The initial temptation, particularly for a lawyer, is to see him progressing from advocate of the court of Arches to dean of Arches to official, a total of twenty-six years, until he went into five years of 'semi-retirement' before his death. That is possible on this record, but the record allows us to see only moments rather than periods of

continuous service. This is because we lack for the ecclesiastical courts something like the Year Books, which allow us to say that certain serjeants (and justices) were regularly in attendance at court over a long period of time. We are reasonably confident that Gilbert was not attendant at the Arches from the time he was ordained a priest in April of 1305 until he appears as dean of Arches in 1309. His service as dean of Arches was almost certainly interrupted from the beginning of 1311 to at least the middle of 1313 by royal service that may have involved as many as three trips to France. His service as official of Canterbury was almost certainly interrupted by his service at Winchester. If we add all of these up, his service at the Arches becomes more like thirteen years rather than twenty-six. His appointment as archdeacon of Northampton in 1316 also raises questions about his attendance at the Arches. Unlike non-residentiary canons, who simply collected the income from the benefice, an archdeacon was supposed to visit his archdeaconry.³⁴

A clue to Gilbert's activities may be found in a complicated series of transactions that occurred between 1315 and 1317. By the end of 1317, Gilbert was the vicar general of the bishop of Winchester, archdeacon of Northampton, prebendary of the rich prebend of Thame in Lincoln cathedral, and the life tenant of the manor of Stanton Saint John in Oxfordshire. This last had been given to him by one John Saint John, the head of a powerful family that had its seat at Basing in the diocese of Winchester. The complexity of the transactions that led to this result makes it difficult to be sure that the end result was anticipated when they began in 1315, but it is almost certainly not by chance that the manor of Stanton Saint John is less than five miles from the prebendal church of Thame.³⁵

In 1324 Gilbert founded a chantry for a warden and five priests in the church of Wappenham in Northamptonshire, about 25 miles north of Stanton and Thame. There is one mention of him as official of Canterbury in 1326, but that does not mean that he was actually there. That he is mentioned as king's clerk and councillor in 1327 means that he survived the change of regime,

but, once more, there is no evidence that he was active in the new king's service. It is possible that Gilbert spent the better part of the years from 1324, perhaps even from 1317, until his death early in 1331 looking after his interests in a rather small area just east of Oxford and running about a day's journey north to Wappenham, and, perhaps, acting as archdeacon of Northampton. He may even have celebrated an occasional mass in his prebendal church of Thame.

Adam Murimuth was born between Michaelmas of 1274 and Michaelmas of 1275.³⁶ Our first notice of him is in 1308, when he is called doctor of civil law and advocate of the court of Arches. Archbishop Reynolds gave him dimissory letters to be ordained a deacon or a priest in 1314.

Beginning in 1312, Adam saw extensive service representing various English interests in the Roman *curia* at Avignon. During 1321 and 1322, he served as official and vicar general for Richard Gravesend, bishop of London. In August of 1323, he was sent on a mission by the king both to king Robert of Sicily and to the pope. In 1325, he appears as vicar general for archbishop Reynolds but was also sent by the king on a mission to France. He served as official and guardian of the spiritualities of Exeter diocese *sede vacante* from October 1326 to January 1327. Probably in 1334, Archbishop Stratford appointed Adam official of the court of Arches, and he is still mentioned in that post in 1339, when he also served as Stratford's vicar general. It is unlikely that he was in attendance at the court for the whole period, however, because in 1337 he was on another diplomatic mission for the king to France.

Like Gilbert Middleton, Adam's service was compensated with pensions, but he does not seem to have been as successful as Gilbert at collecting remunerative benefices that involved little or no work, a matter that his chronicle suggests caused him some bitterness. At his death in 1347, Adam was canon of Exeter, canon of Saint Paul's London, and rector of Wraysbury in Buckinghamshire. He had obtained the last in 1337 in exchange for the precentorship of Exeter cathedral, which he had held since 1329. What caused him to make the exchange is suggested by

a letter that bishop Grandisson of Exeter sent him in 1334, which chides him for his absence from the precentorship and accuses him of being overly ambitious. In 1338, Adam obtained a lease from the chapter of Saint Paul's for the manor of Barnes in Surrey.

There is no danger in the case of Adam as there was in the case of Gilbert of thinking of him as a lawyer who worked his way up from being an advocate in the court of Arches to being its official. Indeed, there is no evidence that he was at the court of Arches between 1312 and 1328, and little that he was back in the court before 1334. What we have, then, is a period of service as an advocate of the court probably for four years (1308–12) and another period as official of the court (probably 1334–39), interrupted by service representing English interests at Avignon (1312–19), and a collection of positions, including some diplomatic service, coming increasingly to focus on Exeter, between 1320 and 1334. Grandisson's letter of 1334 suggests not so much that Adam was overly ambitious, but that he was torn between two forceful men, John Grandisson and John Stratford, both of whom wanted his service.³⁷ Stratford seems to have prevailed (though the king interrupted Adam's service for Stratford), but neither Stratford nor the king provided for Adam in the way that they had for others. If we have the figures right, Adam's position in 'semi-retirement' was comfortable,³⁸ but he was certainly not in a position, as Gilbert was, to endow a chantry for a warden and five priests.

In semi-retirement from 1337 to 1347 Adam wrote a well known chronicle.³⁹ What else did he do in these ten years? Perhaps nothing. But like Gilbert, he had ended up in a position where all of his principal interests were easily connected. Wraysbury, Barnes, and Saint Paul's cathedral are all close to the Thames, and it was possible to communicate among them by boat. It is perhaps not too much to imagine that the old priest occasionally celebrated at the altar of Wraysbury and appeared in the choir of Saint Paul's.

John Lydford is described in 1406 as being near 70, giving him a birth date of c. 1337.⁴⁰ He may have been a doctor of civil and canon law by 1370.⁴¹ He was probably in higher orders and

perhaps a priest by 1361. He was certainly a priest at his death because his testament mentions the chalice that he used for celebration in his private chapel.

Lydford served as clerk to William Courtenay when the latter was chancellor of Oxford in 1368. Lydford was admitted as advocate of the court of Arches in October 1371, but he probably never practised there. From 1370 to 1376, he was principally at Avignon, where he served as proctor for Courtenay, now bishop of Hereford. While at Avignon, Lydford also worked for William of Wykeham, who rewarded him by making him official of Winchester in 1377, a post that he held, at least nominally, until 1394. In 1382, he participated in the council that Courtenay, now archbishop of Canterbury, held to condemn the doctrines of John Wyclif. Over the course of his legal career, he compiled a *Notebook*, a formulary that preserves an unusual amount of detail.⁴² In 1385, Lydford became archdeacon of Totnes in Devon, and the chapter records of Exeter show that from that date he increasingly spent his time there. He seems to have been resident entirely at Exeter from 1394. His testament was proved in the consistory of Exeter in December of 1407.

Lydford was not a particularly notable collector of benefices. He obtained a prebend in the free chapel of Bosham in Sussex, probably in 1366. A papal provision resulted in his becoming prebendary of Thorney in Chichester cathedral in 1371. Another papal provision to the rectory of Wonston in Hampshire in 1376 was exchanged for the archdeaconry of Totnes in 1385, at which time Lydford resigned his prebend in Bosham. He was canon of Exeter from 1376. It was perhaps typical of him that he resigned the prebend of Thorney in 1397 (it now being apparent that he would not return to Chichester); others hung on to such prebends until they died.

Lydford's testament⁴³ says nothing of his law books, although we know that he had them. What we do hear of is his beautiful, large, noted breviary, his new *Legenda sanctorum et temporalis*, and his fair Bible. These are the books of a man who could have appeared in choir and who had

the reference materials for composing sermons. He was not an ascetic; the testament also mentions a black maple cup out of which he had drunk much good wine.

If John Lydford's life was so staid as to be almost boring, Adam Usk's made up for it in excitement. Most of what we know about Adam comes from his *Chronicle*, a source that must be used with some caution.⁴⁴ Adam was probably born around 1360 in Usk, in what became Monmouthshire. He was buried in the parish church of Usk in 1430, and a brass inscribed with verses in Middle Welsh still marks the spot. Adam was principal of the school of civil law at Oxford, probably between 1390 and 1392.⁴⁵ He is called doctor of civil law in 1393 when he was one of one of the assessors for bishop Trefnant of Hereford in a heresy trial. He then served as an advocate of the court of Arches for seven years, probably 1395–1402.

Adam left England for Rome early in 1402.⁴⁶ In Rome he secured the patronage of Balthasar cardinal Cossa (later the unrecognized Pope John XXIII), and was papal chaplain and auditor of causes of the sacred palace from April of 1402 to 1406. What he was doing for the next two years is unclear; his own account of them is hard to believe. Chris Given-Wilson, on the basis of new documents and some suppositions, has him obtaining preferment from the Avignonese pope, and, basically, going over to Owen Glyn Dŵr's side in the Welsh rebellion, or at least coming perilously close.⁴⁷ What is clear is that Adam returned to Wales, probably late in 1408, that he was deprived of the rectory of Castle Combe in Wiltshire in January of 1410 on the ground that he was a rebel, and that he sought, and obtained, the king's pardon in March of 1411.⁴⁸

Archbishop Arundel allowed Adam to return to the court of Arches. He is mentioned as an advocate of that court as late as 1419. He held two parochial benefices,⁴⁹ one of which he exchanged and exchanged again, so that he ended up as rector of Llangybi in 1423. Since Llangybi is only a couple of miles south of Usk, we are probably safe in assuming that Adam, like many others, returned to his native place for the last seven years of his life.

Both Lydford's *Notebook* and Adam's *Chronicle* tell us about their practises as lawyers. Adam's practise, at its height, involved greater men and cases in which politics played a more obvious role. Adam's best known service as a lawyer was as a member of the commission that archbishop Arundel convened in the late summer of 1399 to determine what was to be done with Richard II.⁵⁰ There is, of course, nothing in Lydford's *Notebook* about how to get rid of a sitting king, but neither is there anything that involves relations between the king and other monarchs. By contrast, Adam's opinion was sought on the question of the restoration of the dowry of Isabella, daughter of the king of France and Richard II's eleven-year-old widowed queen.⁵¹ The focus of Lydford's practise seems to have been largely on matters internal to the church. Causes involving laymen take up relatively little space in his *Notebook*. His concern is with canon law rather narrowly defined. Adam's practise seems to have involved more laymen, and in the process took in more of the civil-law side of the *ius commune*: cases of arms, cases involving treason, cases involving the interpretation of treaties. He seems to have remained, however, very much a lawyer; diplomacy was not his long suit. When the ambassadors of the elect of the Empire were in England to negotiate the marriage of their lord with the king's daughter Blanche, Adam raised legal objections to the authority of the emperor-elect. Bishop Trefnant told Adam to shut up.⁵²

Lydford's testament and Adam's allow us to make our final comparison between the two men.⁵³ Lydford died a substantially wealthier man than did Adam, but Adam, assuming that he did not exaggerate the value of his estate, did not die poor. Adam's first 'legacy' is a totally standard one, used in a large number of medieval testaments, and appearing in such documents into the sixteenth century: "In the first place, I legate my soul to God, and to the Blessed Virgin and all his saints, and my body to be buried in the parish church of Usk." Lydford's is unusual: "I commend my soul to God, my maker and saviour, beseeching him who bought my soul and the souls of all the faithful with his precious blood, to deal with it according to his mercy and of his

exceeding great kindness and goodness ineffable, when it should have passed from this vale of misery.”⁵⁴ This is a theological statement of the kind that we normally associate with the Reformation and the Counter-Reformation. When we couple this with Lydford’s elaborate instructions designed to insure that the money that he left behind be used for the good for which he intended it and with his equally elaborate insistence that not much be spent on his funeral, we begin to wonder if the prosecutor of Lollards had not caught some of the spirit of the Lollard reform.

Tentative Conclusions

We are now in a position to offer some tentative conclusions, based not only on the potted biographies given above but also on the prosopography that underlies them. There was a substantial difference in the way in which the two legal professions were rewarded. The serjeants, at least until they became justices, made their money from fees that they received from private clients. An ambitious serjeant could aspire to become a justice. Indeed, over the course of the fourteenth century, the serjeants seem to have designed the system in such a way that if they did not get into political trouble and lived long enough, they would become justices.

By and large, the canonists who became advocates of the Arches do not seem to have obtained their principal rewards from fees paid by private clients, though they certainly received some. Like the serjeants (and the justices) they did receive some pensions from men who wanted to be assured of their services, but their principal source of income was benefices. Benefices were not supposed to be just ‘cash cows’, though some canonists treated them as such; they were also offices. While not every canonist performed the duties that were attached to their benefices, some of them, as we have seen, probably did. The benefice system had a tendency to draw the canonists away from practicing law into administrative or pastoral work, or simply into early retirement. The canonists, who were emphatically professional lawyers, were also professional

clergymen, and the clerical culture with which they were imbued placed a higher value on pastoral work than it did on legal.

Canon law was also in this period, much more so than the common law, an administrative law. It dictated how the benefice system was to be operated, how dioceses and archdeaonries were to be administered, who had the authority to do what, and how revenue was to be raised and spent. Hence, there was a greater tendency for canonists to be found in administration than was the case with the serjeants. For those with imagination, ambition and good connections this background in administrative law could be turned to secular government. This was a difference in degree and not in kind. A number of the serjeants also rose to high positions that were not strictly legal in secular government, but it would seem that more canonists did so, particularly if we include the bishops.

The combination of the effect of the benefice system and the fact that canonists more easily turned to administration, be it secular or ecclesiastical, had an effect on the development of the canon law in England. The central royal courts were where the common law was being developed. There was no formal route of appeal from these courts. The court of Arches was the highest ecclesiastical court in the southern province, but that was just one of many provinces in the church, and from all of them appeal lay to the pope. To the extent that canon law was being created judicially in the fourteenth century (and many have argued that it was not a particularly creative period), it was being created in the Roman Rota, not in the court of Arches, at least so far as we can tell. It was also being created, at least on the Continent, by law professors, both in their university teaching and in their *consilia*. In this regard the English system for training canonists proved a barrier. Very few, if any, English canonists of the fourteenth century remained at the university for very long as teachers, and if they gave *consilia*, they do not seem to have ‘published’ them.⁵⁵ There is no English Johannes Andreae, Henricus Bohic, or Antonius de Butrio.⁵⁶ John Aton seems to have spent more time at the university than most, but he wrote

his justly famous commentary on the thirteenth-century legatine constitutions, it would seem, while he was official of York.⁵⁷ The work is interesting, but it stands virtually alone, and no one would seriously compare it with the great Continental commentaries of the period.

This leads to a final, and more dangerous conclusion: The intellectual development of civil law on the Continent in the fourteenth century was substantial, and, by and large, England did not participate in it for the same reason that it did not participate in the development of the canon law. The influence of civil and canon law on the development of the common law in the twelfth and thirteenth centuries was, we now know, substantial, and we are beginning to trace a somewhat different kind of influence in the sixteenth and seventeenth centuries.⁵⁸ I think, however, that it is fair to say that if Johannes Andreae had walked into the Common Bench in the mid-fourteenth century, even if he could have understood the French that was being spoken there (which he might have), he would not have had the slightest idea of what was going on. The same can be said of most of the serjeants of the Common Bench if they had walked into one of Johannes's lectures, even if they could understand the Latin (which they probably could have). That the development of the common law in the later Middle Ages was largely independent of direct influence of the learning in civil and canon law may well account for the fact that English law, even today, is a cousin rather than a sibling of the laws of the nations of Continental Europe,⁵⁹ and that, in turn, may be the result of the way in which the legal professions of England developed in the fourteenth century.

Appendix

The English word ‘lawyer’ does appear in the fourteenth century, but it is not common.⁶⁰ The best known literary portrayal of a lawyer in the century calls him a ‘man of lawe’.⁶¹ That phrase is probably a dismemberment of the Old English *lahman*, ‘lawman’, already obsolete in this period and confined to ancient functions in local courts.⁶² The modern French for ‘lawyer’, *juriste*, does not appear in the *Anglo-Norman Dictionary* (AND) (<http://www.anglo-norman.net/gate/>). As mentioned in the text, the Year Books know *gentz de court* as the opposite of *lay gentz*, and there is at least one instance of *gentz de lei* outside of the Year Books.⁶³ *Legisperitus* is fairly common in medieval Latin, probably as a result of Luke 11:46, 52 (*Et vobis legisperitis vae. Vae vobis legisperitis*).⁶⁴ I have never, however, seen a fourteenth-century ‘common lawyer’ so describe himself (in either Latin or French), perhaps because of the association of *lex* with the learned laws, perhaps because of vague remembrances of Luke.

¹ This piece is dedicated to Paul Brand in more than one way. Its dependence on his work on the legal profession in the thirteenth century is obvious. He also suffered through an earlier oral version of it and generously provided comments, which saved me from a number of errors. That he was not able to persuade me of the unitary nature of the ‘common-law’ legal profession is the result of my stubbornness. This paper is not about that, however; rather it offers a comparison between two groups that Brand recognizes were separate legal professions, the ‘common lawyers’ and the ‘canon lawyers’.

The following abbreviations are employed in the notes: Ames Fdn. = *The Year Books of Richard II*, 7 vols. to date (Ames Foundation, 1914–), cited by volume number. Baker/Sainty = The information given is derived from a combination of that given in Baker, *Serjeants and Sainty, Judges*. Baker, *Serjeants* = J. H. Baker, *The Order of Serjeants at Law, 1383–1875*, Selden Society, Supplementary Series, 5 (London, 1984). Brand, *Origins* = Paul Brand, *The Origins of the English Legal Profession* (Oxford, 1992). BRUO = A. B. Emden, *A Biographical Register of the University of Oxford to A. D. 1500*, 3 vols. (Oxford, 1957-1959). BRUC = A. B. Emden, *A Biographical Register of the University of Cambridge to 1500* (Cambridge, 1963). CCR = Public Record Office, *Calendar of the Close Rolls*; CPR = Public Record Office, *Calendar of the Patent Rolls*. Logan, *Arches* = F. Donald Logan, ed., *The Medieval Court of Arches*, Canterbury and York Society, 95 (Woodbridge, 2005). *Lydford’s Book* = John Lydford’s *Book*, ed. Dorothy M. Owen, Devon and Cornwall Record Society, 19; Historical Manuscripts Commission, Joint Publications, 22 (London, 1974). Musson and Ormrod = Anthony Musson and W. M. Ormrod, *The Evolution of English Justice: Law, Politics, and Society in the Fourteenth Century* (Houndmills, 1999). ODNB = *Oxford Dictionary of National Biography* (<http://www.oxforddnb.com>, subscription access only; the reference is to the person named

unless a different spelling is given). Sainty, *Judges* = Sir John Sainty, *The Judges of England, 1272–1990*, Selden Society, Supplementary Series, 10 (London, 1993). Usk, *Chronicle* = *The Chronicle of Adam Usk, 1377–1421*, ed. C. Given-Wilson, Oxford Medieval Texts (Oxford, 1997). References to Year Book cases are by ‘Seipp number’ (e.g., 1384.024am) found in David Seipp’s massive index of the printed Year Books: <http://www.bu.edu/law/seipp/>.

² 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).

³ Brand, *Origins*, chs. 5–8.

⁴ See Table 1.

⁵ See Appendix.

⁶ Brand, *Origins*, ch. 9. For what follows, see James A. Brundage, *The Medieval Origins of the Legal Profession* (Chicago, 2008); R. H. Helmholz, *The Canon Law and Ecclesiastical Jurisdiction*, Oxford History of the Laws of England, 1 (Oxford, 2004), 221–31.

⁷ This assumes that the phrase *cum consilio iurisprudencium nobis assidencium* that appears in many, but not all, sentences is not just common form. I have convinced myself that it is not always common form, but direct evidence is admittedly thin.

⁸ Much of what follows is based on a prosopographical database, too large to be reproduced here.

⁹ Part of the problem lies in whether we should take the particularly strained relations between the king and members of the hierarchy, as leading to a general bias on the part of the king and lay government against the clerical order. There may, for example, be connections between Edward III’s dispute with archbishop Stratford and what seems to be the solidification of the

practice of appointing only lay justices in the early 1340s, but tracing those connections, if they exist, would take us very far afield.

¹⁰ John Bouchier (ODNB) is a good example. That there was some bias against such men (many of whom were powerful locally) is indicated in the statute, 14 Edw. III, st. 1, c. 16, which requires that for *nisi prius* or the taking of the petty assizes, there be present either a justice of one of the benches, the Chief Baron of the Exchequer ('if he be a man of law' [*home de ley*]), or a sworn king's serjeant (*serjant le roi juree*). This statute seems to have established a model, never fully realized, for the commissions in criminal matters. It would seem, moreover, that the requirement of the statute that a king's serjeant be present in the absence of a justice of the central royal courts was expanded to include any serjeant, whether or not a king's serjeant. Baker, *Serjeants*, 36. For the workings of the commissions in this period, see Musson and Ormrod, 42-74.

¹¹ Private communication. He also suggests that laymen might be thought better at policing the jurisdictional line between the secular and ecclesiastical courts. See, most recently, Millon in Sel. Soc., cxxvi.

¹² Evidence in Baker, Sel. Soc., cv, esp. pp. xxv–xxx.

¹³ Baker, *Serjeants*, 16 and n.3 and *passim*, emphasizes that the serjeants were not a corporation and is at pains to separate the order from membership in the Serjeants' Inns. We probably, however, should not underemphasize the social, if not the legal, connection between the practising serjeants and justices.

¹⁴ Evidence in Baker, *Serjeants*, 38-9, 254, 257.

¹⁵ Counting cases on the plea rolls is difficult, but a recent attempt to do so came up with the following statistics: In Trinity term of 1305, 4,505 cases were brought in the Common Bench; in Trinity of 1336, it was 5,463; in Trinity of 1370 it was 9,154, and in Hilary of 1398 (the Trinity

roll was unavailable when the count was done), it was 8,465. Derived, with the kind permission of the author, from an unpublished paper entitled “The Conceptualization of Change in English Legal History: Evolution, Transformation, Revolution, 1300-1700,” given by Professor Robert C. Palmer at the meeting of the American Society for Legal History in San Diego, November 9, 2002.

¹⁶ Count = the number of serjeants in Michaelmas term of the year in question; Avg = the numerical average of count at the start of the decade, in the middle of the decade and at the end; Decl1 = the proportion of decline of the Avg in this decade from the Avg for 1307–1317; Decl2 = difference between Decl1 in this decade and that in the previous decade.

¹⁷ Logan, *Arches*, 210–13.

¹⁸ Brand in *Sel. Soc.*, cxii, pp. viii–xxi; Harding in ODNB. Biographical details in the biographies that follow will be found in the sources cited in the first note, except where otherwise indicated.

¹⁹ Baker/Sainty; Tait rev. Ramsay in ODNB.

²⁰ Baker/Sainty; Vale in ODNB.

²¹ Tait rev. Ramsay in ODNB suggests a connection with an earlier commission of oyer and terminer, but seems to have missed Geoffrey’s advancement shortly thereafter. See Musson and Ormrod, pp. 152–3.

²² Berford’s service in non-judicial functions, or functions that are only partially legal, like diplomatic missions, while not as extensive as that of Geoffrey Scrope, is still quite substantial. See Harding in ODNB.

²³ Baker/Sainty; Ormrod in ODNB.

²⁴ BRUC, 586. The statement sometimes made that he was master of Pembroke Hall from 1347 to 1364 seems to confuse him with another of the same name. BRUC, *op. cit.*; Ormrod in ODNB.

The master of Pembroke was, of course, a cleric, who held a benefice with cure of souls in Thurston, Suffolk. BRUC, op. cit. Although the CJCP seems never to have married, he was a serjeant and was made a knight, both positions incompatible with orders in this period.

²⁵ Baker/Sainty; Leland in ODNB sn *Bealknap*.

²⁶ Of the eight men known to have become serjeants in Michaelmas of 1388, four (Cassy, Crosseby, Robert Hill, Huls) have no recorded appearances as apprentices (five if we add Clay, whose one appearance as an apprentice is doubtful). John Woderove speaks in an oyer-and-terminer case in Easter 1384 (1384.024am [twice]), William Hankford in a KB case in Hilary 1387 (1387.014am [twice]), William Gascoigne in a KB case in Easter 1388 (1388.045am), and William Brenchley makes a dubious appearance in the same term (speaks once for plaintiff in two of four manuscripts in a case of trespass, apparently in the Common Bench, whereas otherwise, Pinchbeck speaks for the plaintiff, 1388.027am). While gaps in our records make appearances of apprentices rarer in the reign of Richard II than they were in that of Edward III, the only one these who seems to have had substantial experience as an apprentice is Woderove (four years and two terms).

²⁷ Plucknett in Ames Fdn., vii, pp. xvi-xviii. The reviewers were even more disappointed. See Holland in Ames Fdn., iii, p. ix, with references.

²⁸ It has even been argued that they were forced out of politics. See Baker, *Serjeants*, 37-8; Plucknett in Ames Fdn., vii, pp. xvii-xviii.

²⁹ *English Historical Documents, 1327-1485*, ed. A. R. Myers (New York, 1969), no. 223, pp. 416-17.

³⁰ Logan, *Arches*, 199, 201, 210; BRUO 2.1274-5.

³¹ Archbishop Winchelsey's statutes for the court of Arches (1295) state that one could not be admitted as one of the sixteen advocates of the court *nisi iura ciuilia et canonica per*

quinquennium uel quadriennium ad minus in scholis alicuius uniuersitatis uel municipii publice prius audierit et per unum annum ad minus in eodem consistorio steterit. Logan, *Arches*, 7-8.

We do not know, however, how strictly this was enforced.

³² *Nec etiam sacerdotes, aduocati uel procuratores, de numero predictorum, ut supra iurati, existant. Nec presbyteri, si in eodem consistorio quandoque postulare uoluerint uel eciam procurare nisi pro seipsis aut in causis ecclesiarum suarum uel pro suis dominis quorum sunt familiares et domestici aut pro miserabilibus personis et hoc gratis sine salario et dono quocumque in predicto consistorio publice postulent uel officium procuratoris assumant.* Logan, *Arches*, 7. The statute has some ambiguities, but it seems to indicate that membership in the sixteen was confined to men who were not in priestly orders, but that they did not have the exclusive right to appear as advocates (*postulare*) before the court. It is possible that some of the pensions that we see given to advocates of the court were designed to get around the bar on priests appearing before the court by making them *familiares et domestici* of the grantor of the pension.

³³ See CCR 1307-13, p. 338 (18.xii.10); CPR 1307-13, p. 338 (18.iv.11); BRUO, 2:1275 (citing Rymer) (1.vi.11); CCR 1307-13, p. 449 (28.i.12); CPR 1307-13, p. 437 (8.iii.12); James Conway Davies, *The Baronial Opposition to Edward II* (Cambridge, 1918), App. 17, p. 552-3; CCR 1307-13, p. 488 (6.xi.12); *id.*, p. 580 (3.v.13).

³⁴ Dispensations from this obligation could be obtained (and all, or most, archdeacons in this period had officials), but there is no record that Gilbert ever obtained such a dispensation.

³⁵ The details are too complicated to give here, but the evidence, in addition to BRUO, will be found in John Le Neve, *Fasti Ecclesiae Anglicanae, 1300–1541*, rev. H. P. F. King (London, 1962), i; Sel. Soc., xcv, pp. 567–611.

³⁶ Logan, *Arches*, 199, 210; BRUO, 2:1329–30; Kingsford rev. Childs, ODNB.

³⁷ Accord: Roy M. Haines, *Archbishop John Stratford* (Toronto, 1982), pp. 79–80, 115, 455.

³⁸ See *Taxatio ecclesiastica Angliæ et Walie auctoritate P. Nicholai IV : circa A.D. 1291* (London, 1802), pp. 19b, 33a.

³⁹ *Adae Murimuth continuatio chronicarum*, ed. E. M. Thompson, Rolls Series, 93 (London, 1889).

⁴⁰ Logan, *Arches*, 212; BRUO 2.1184; Owen in ODNB; Owen in *Lydford's Book*, 5–11.

⁴¹ The reports of his degrees (in all probability from Oxford) are somewhat confused. Compare BRUO 2.1184 with Owen in ODNB.

⁴² *Lydford's Book*.

⁴³ *The Register of Edmund Stafford (A.D. 1395–1419)*, ed. F. C. Hingeston-Randolph (London and Exeter, 1886), 389-90. See further, text following n. 53.

⁴⁴ Logan, *Arches*, 213, 221. BRUO 3.1937–8; Given-Wilson in ODNB; Given-Wilson in Usk, *Chronicle*, pp. xiii-xxxviii. Donahue in *Tulane Law Review*, 66 (1992) 1760-1, should be ignored.

⁴⁵ Usk, *Chronicle*, 250: *in recessu meo ab Oxon' cathedram meam ciuilem dimisi*. My interpretation of the evidence differs here slightly from that of Given-Wilson, but this is not the place to spell it out.

⁴⁶ Why he did so is unclear. The traditional explanation, that he stole a horse, seems almost certainly wrong. Given-Wilson in Usk, *Chronicle*, pp. xxi–xxiii.

⁴⁷ Usk, *Chronicle*, p. xxix-xxxiii. The account is plausible, if not quite compelled by the existing evidence.

⁴⁸ Given-Wilson (Usk, *Chronicle*, p. xxx-xxxii) dates the deprivation of Castle Combe back to 1407.

⁴⁹ From one of which he was pensioned in 1429 on the ground of ‘long-standing and incurable infirmities’. If Adam’s claim to Kingston Deverill dates from 1402 (Usk, *Chronicle*, 158), then it is not quite true that ‘he did not regain any of the benefices of which he had been deprived in 1407’. Given-Wilson in Usk, *Chronicle*, p xxxiii.

⁵⁰ Usk, *Chronicle*, 62-5.

⁵¹ Usk, *Chronicle*, 100-14.

⁵² Usk, *Chronicle*, p. 122-5.

⁵³ See n. 43; Usk, *Chronicle*, p. 274-5; cf. *id.*, p. xxxvii.

⁵⁴ I have taken the liberty of converting Hingeston-Randolph’s abstract, *op. cit.*, n. 43, into a quotation. I may have a word or two wrong, but the abstract at this point has all the hallmarks of a quite literal translation.

⁵⁵ E.g., the opinion of John Shillyngford on deprivation of a prior (*Lydford’s Book*, no. 188, pp. 99–100) has some aspects of a *consilium*, but compared to Continental *consilia*, it is more like practical advice on how to do it rather than a sustained legal opinion.

⁵⁶ See Kenneth Pennington, *Medieval Canonists: A Bio-bibliographical Listing*, <http://faculty.cua.edu/pennington/1298a-z.htm>.

⁵⁷ Logan in ODNB.

⁵⁸ See Anne J. Duggan, “Roman, Canon and Common Law in Twelfth-century England: The Council of Northampton (1164) Re-examined,” forthcoming in *Historical Research*, <http://www3.interscience.wiley.com/cgi-bin/fulltext/122393703/PDFSTART> (subscription access only); David J. Ibbetson, *Common law and ius commune: Selden Society Lecture Delivered in the Old Hall of Lincoln’s Inn, July 20th, 2000* (2001).

⁵⁹ ‘Cousin’ rather than ‘sibling’, despite the dangers of analogies, might be a way to describe the remarkable results reached for our period in R. H. Helmholz, *The ius commune in England: Four Studies* (Oxford, 2001).

⁶⁰ The *Oxford English Dictionary* (OED) (<http://www.oed.com/>, subscription access only) offers two instances both at the end of the century, one from the ‘B’ version of *Piers Ploughman* (8.59, c. 1377) and the other from Trevisa’s translation of Higden’s *Polychronica* (RS, 3.275, 1387). The *Middle English Dictionary* (MED) (<http://quod.lib.umich.edu/m/med/>), sv *lauier(e)*, offers the ‘A’ version *Piers Ploughman* (8.62, c. 1390), the same from Trevisa, and a quotation from Wyclif (1395). The ‘lawyers’ of whom Wyclif is speaking are pretty clearly students of the *ius commune*; the phrase he quotes comes from the Digest. Trevisa is attempting to find a term for a profession that existed in the ancient world (of which Socrates was not a member). Only Langland may be referring to English law, though he may be simply coming up with a word that alliterates with ‘legistres’, clearly a reference to the *ius commune*. These usages might suggest that ‘lawyer’ had connotations of ‘foreign’ to English-speakers of the late fourteenth century were it not for the fact that we find ‘Robertus le Lager’ and ‘Will. le Lawyer’ earlier in the century (1327, 1336). This may, however, be a surname formed from ‘lawman’ (for which see below), with a Romance prefix.

⁶¹ Chaucer, ‘The Man of Law’s Tale’, introd. l. 33 (address of the host); in the prologue he is called by his proper title ‘sergeaunt of the lawe’ (l. 309).

⁶² OED sv. MED, sv. *laue-man*. The medieval, post-Conquest instances of the word (other than in surnames) are all in sources that purport to be in Latin. A translation of this into Latin (*legis homines*) appears in the *Quadripartitus*. There are, however, two instances in the fourteenth century (*legis homo*, *homo de lege*) which probably in the first case and certainly in the second

refer to common lawyers. *Dictionary of Medieval Latin from British Sources* (DMLBS) (Oxford, 1975–), sv. *homo* 9e, quoting SelCKB, vi, 76 (1351); StRealm, ii, 36 (1384).

⁶³ J. H. Baker, *Manual of Law French* (Aldershot, 1989), svv. *gentz*, *lay*; AND, sv. *lei* (Northumbrian petition).

⁶⁴ DMLBS, sv. None of the instances before the mid-fifteenth century can refer to a common lawyer. The same is true of *legifer* and *legista*, both of which can at times be translated ‘lawyer’. It also seems to be true (with somewhat more doubt) of *jurista*, while *jurisconsultus*, never common, seems to have disappeared by the beginning of the thirteenth century.