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A BRIEF HISTORY OF THE LEGAL PROFESSION IN THE WORLD

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The development of the legal profession has received a lot of attention from scholars. This can be seen in Paul Brand's *The Origins of the English Legal Profession* (1992), and J.H. Baker's *The Legal Profession and The Common Law – Historical Essays* (1986). The eminent jurist Roscoe Pound also wrote *The Lawyer from Antiquity to Modern Times* (1953).

ANCIENT GREECE

The earliest people who could be described as “lawyers” were probably the orators of ancient Athens. However, Athenian orators faced serious structural obstacles. First, there was a rule that individuals were supposed to plead their own cases, which was soon bypassed by the increasing tendency of individuals to ask a “friend” for assistance. However, around the middle of the fourth century, the Athenians disposed of the perfunctory request for a friend. Second, a more serious obstacle, which the Athenian orators never completely overcame, was the rule that no one could take a fee to plead the cause of another. This law was widely disregarded in practice but was never abolished, which meant that orators could never present themselves as legal professionals or experts. They had to uphold the legal fiction that they were merely an ordinary citizen generously helping out a friend for free, and thus they could never organize into a real profession—with professional associations and titles and all the other pomp and circumstance—like their modern counterparts. Therefore, if one narrows the definition to those men who could practice the legal profession openly and legally, then the first lawyers would have to be the orators of ancient Rome.

ANCIENT ROME

A law enacted in 204 BC barred Roman advocates from taking fees, but the law was widely ignored. The ban on fees was abolished by Emperor Claudius, who legalized advocacy as a profession and allowed the Roman advocates to become the first lawyers who could practice openly—but he also imposed a fee ceiling of 10,000 sesterces. This was apparently not much money; the *Satires* of Juvenal complain that there was no money in working as an advocate.

Like their Greek contemporaries, early Roman advocates were trained in rhetoric, not law, and the judges before whom they argued were also not law-trained. But very early on, unlike Athens, Rome developed a class of specialists who were learned in the law, known as *jurisconsults* (*iuris consulti*). *Jurisconsults* were wealthy amateurs who dabbled in law as an intellectual hobby; they did not make their primary living from it. They gave legal opinions (*responsa*) on legal issues to all comers (a practice known as *publice respondere*). Roman judges and governors would routinely consult with an advisory panel of *jurisconsults* before rendering a decision, and advocates and ordinary people also went to *jurisconsults* for legal opinions. Thus, the Romans

were the first to have a class of people who spent their days thinking about legal problems, and this is why their law became so “precise, detailed, and technical.”

During the Roman Republic and the early Roman Empire, juriconsults and advocates were unregulated, since the former were amateurs and the latter were technically illegal. Any citizen could call himself an advocate or a legal expert, though whether people believed him would depend upon his personal reputation. This changed once Claudius legalized the legal profession. By the start of the Byzantine Empire, the legal profession had become well-established, heavily regulated, and highly stratified. The centralization and bureaucratization of the profession was apparently gradual at first but accelerated during the reign of Emperor Hadrian. At the same time, the juriconsults went into decline during the imperial period.

In the words of Fritz Schulz, “by the fourth-century things had changed in the eastern Empire: advocates now were really lawyers.” For example, by the fourth century, advocates had to be enrolled on the bar of a court to argue before it, they could only be attached to one court at a time, and there were restrictions (which came and went depending upon who was emperor) on how many advocates could be enrolled at a particular court. By the 380s, advocates were studying law in addition to rhetoric (thus reducing the need for a separate class of juriconsults); in 460, Emperor Leo imposed a requirement that new advocates seeking admission had to produce testimonials from their teachers; and by the sixth century, a regular course of legal study lasting about four years was required for admission. Claudius’s fee ceiling lasted all the way into the Byzantine period, though by then it was measured at 100 solidi. Of course, it was widely evaded, either through demands for maintenance and expenses or a sub rosa barter transaction. The latter was cause for disbarment.

The notaries (tabelliones) appeared in the late Roman Empire. Like their modern-day descendants, the civil law notaries, they were responsible for drafting wills, conveyances, and contracts. They were ubiquitous and most villages had one. In Roman times, notaries were widely considered to be inferior to advocates and juriconsults. Roman notaries were not law-trained; they were barely literate hacks who wrapped the simplest transactions in mountains of legal jargon since they were paid by the line.

MIDDLE AGES

After the fall of the western Empire and the onset of the Dark Ages, the legal profession of Western Europe collapsed. As James Brundage has explained: “[by 1140], no one in Western Europe could properly be described as a professional lawyer or professional canonists in anything like the modern sense of the term ‘professional.’ ” However, from 1150 onward, a small but increasing number of men became experts in canon law but only in furtherance of other occupational goals, such as serving the Roman Catholic Church as priests. From 1190 to 1230, however, there was a crucial shift in which some men began to practice canon law as a lifelong profession in itself.

The legal profession’s return was marked by the renewed efforts of church and state to regulate it. In 1231 two French councils mandated that lawyers had to swear an oath of admission before practicing before the bishop’s courts in their regions, and a similar oath was promulgated by the

papal legate in London in 1237. During the same decade, Frederick II, the emperor of the Kingdom of Sicily, imposed a similar oath in his civil courts. By 1250 the nucleus of a new legal profession had clearly formed. The new trend towards professionalization culminated in a controversial proposal at the Second Council of Lyon in 1275 that all ecclesiastical courts should require an oath of admission. Although not adopted by the council, it was highly influential in many such courts throughout Europe. The civil courts in England also joined the trend towards professionalization; in 1275 a statute was enacted that prescribed punishment for professional lawyers guilty of deceit, and in 1280 the mayor's court of the city of London promulgated regulations concerning admission procedures, including the administering of an oath.

LEGAL PROFESSION IN ENGLAND

In England, the admission of lawyers has been regulated since the middle of the 13th century. In the late 13th century, three critical regulations were adopted[xli] – (a) the Statute of Westminster I, chapter 29 (1275); (b) The London Ordinance of 1280; and (c) the Ordinance of 1292, de Attornatis et Apprenticiis. During the medieval period, further regulations were enacted, called the Statute, 4 Henry IV, chapter 18 (1402) and the Ordinance, 33 Henry VI, chapter 7 (1455). In addition, judges have always used their inherent power to control the admission of lawyers and check their misconduct.

SELF-TEST QUESTIONS

S.N	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Who wrote The Origins of the English Legal Profession (1992)	Paul Brand	J.H. Baker	Roscoe Pound	Claudius
2	Who wrote The Legal Profession and The Common Law – Historical Essays (1986)	Roscoe Pound	J.H. Baker	Paul Brand	Claudius
3	The Lawyer from Antiquity to Modern Times (1953)	Paul Brand	J.H. Baker	Roscoe Pound	Claudius
4	In Rome ban on fees was abolished by Emperor	Claudius	Hadrian	J.H. Baker	Paul Brand
5	The centralization and bureaucratization of the profession was apparently gradual at first but accelerated during the reign of which Emperor	Claudius	Hadrian	J.H. Baker	Paul Brand

Answers: 1-(a),2-(b), 3-(c),4-(a),5-(b)