The Origins of the English Legal Profession

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I

Shortly after Henry II had succeeded to the English throne, Richard of Anstey commenced litigation against his cousin, Mabel de Francheville.1 His uncle, William de Sackville, had held a sizeable mesne barony, consisting of at least seven Essex manors and the overlordship of ten knights’ fees in Essex and three neighbouring counties. Richard’s aim was to secure this property for himself. Mabel claimed that (as William’s daughter and heiress) she was rightfully in possession. Richard asserted that she was illegitimate, the issue of a marriage that had been annulled by the Church; and that as Williams’s nephew, the eldest son of William’s sister, the lands should pass to him, as William’s heir. The litigation began in 1158 in the king’s court; but once the question of Mabel’s status had been raised it was transferred to the Church courts. Her legitimacy was discussed in turn in the court of the archbishop of Canterbury, before papal judges delegate, and finally before the papal court of audience in Rome. The eventual decision was that Mabel was illegitimate. The case then returned to the king’s court, and, some five years after the proceedings had begun, the king’s court awarded William de Sackville’s lands to Richard of Anstey.

Richard compiled a detailed memorandum giving full particulars of the money he had spent during the course of the litigation, a total of £ 350. The memorandum records the payments made to three canon lawyers who had given Richard professional legal assistance in the English ecclesiastical courts (master Peter of Meleti, master Stephen of Binham, master Ambrose). It also records a total of twelve and a half marks as having been spent by Richard in gifts of money and of horses to the ‘pleaders’ (placitatores) who had regularly come to court with him on the days appointed for the hearing of his case. These ‘pleaders’ were not, however, Paul Brand is an independent scholar, researching and writing on legal history, in London.

Earlier versions of this paper were read to the members of the two medieval seminars in London and to the Medieval Society in Oxford and I would like to thank those who commented on the paper on those occasions. The paper also owes much to the help and encouragement of Dr. Paul Hyams and to the stimulus provided by Dr. Robert Palmer.

in any true sense the counterparts of the professionals which Richard of Anstey had employed in the ecclesiastical courts. The memorandum makes it plain that they were simply neighbours (vicini) who accompanied Richard to court to show solidarity with him, not men employed by Richard for any special skills or knowledge they possessed. Towards the end of the litigation, it is true, Richard sent for Ranulf de Glanvill, the future royal justice and justiciar. It is tempting to see this as the summoning of expert legal assistance. The memorandum suggests, however, that Richard only wanted Ranulf there to swell the numbers of his supporters present at the court and to make them look more impressive. Richard’s memorandum speaks of him going to the court on that day with ‘as many friends and helpers as I could get . . .’. If Ranulf de Glanvill did turn up (and there is no clear evidence that he did) he seems not to have been paid for doing so, for no payment to him is recorded in the memorandum. Richard of Anstey was after a valuable prize, and was willing to spend considerable sums in order to secure it. For his litigation in the church courts he employed professional lawyers and paid them accordingly. If there had been professional lawyers to be employed in the English law courts at this time he would surely have employed them as well. As yet then, in the 1150s, the evidence of the Anstey case suggests that there were no professional lawyers active in the lay courts in England.

Other evidence from the period between the Norman Conquest and the early years of the reign of Henry II confirms this view. The chronicle of Abingdon abbey mentions a number of lawyers (causidici) of English origin who helped in the defence and recovery of the abbey’s rights during the reign of William the Conqueror. Early professional lawyers, we might conclude—but we would be wrong, because the chronicler goes on to say who they were. One was a priest in charge of one of the abbey’s churches, the others monks belonging to the abbey. They may have been legal experts, but they are most unlikely to have been professional lawyers even in the minimal sense of men recognized as having a specific professional expertise in legal matters who were willing to put that expertise at the disposal of clients and who were remunerated for so doing. In any case, the chronicler makes it clear that their main value to the abbey lay in their ability to recall the pre-conquest past and not in any more specifically legal skills.

When Robert of Chilton was summoned to the court of the abbey of Battle in 1102 to render his account of the period he had been in charge of the abbey’s manor of Wye, like Richard of Anstey he came to the court with ‘pleaders’ (placitatores). Again, it is tempting to suppose that we are dealing here with professional lawyers: but it seems clear that we are not. The chronicler names four of them and, as Eleanor Searle’s identifications make plain, three out of the four were simply prominent members of the


local gentry. They were there to give support, not professional advice, as the Battle abbey chronicle itself makes plain—for it goes on at once to mention the many other barons (aliqua barones quamplurimi) who accompanied Robert. The same chronicle also has an account of the land litigation brought by the abbot of Battle against Gilbert de Balliol half a century later. This litigation started in the court of the count of Eu but was eventually determined in the King’s court. For the presentation of his case in the King’s court the abbot relied on one of his monks and a local knight, Peter de Criol, and not on some hired professional lawyer, though his eventual success owed much to the efforts of his brother, Richard de Luci, the king’s justiciar.

This was, indeed, a world in which powerful friends and not expert advisers were of most use to litigants. We know that religious houses, in particular, took good care to ensure that they would have such ‘friends’ when they needed them. The Descriptio Munitum of the abbey of Peterborough, which belongs to the first decade of the twelfth century, mentions a half carucate holding at Riseholme in Lincolnshire which Picot son of Colswain held of the abbey. This land, the survey says, had been given to his father Colswain in return for the service of ‘being at the abbot’s law-suits, and supporting the abbot in his defence of the abbey’s property and the abbey’s tenants both in the county court and elsewhere’.

Colswain and Picot were great men, lords of the Lincolnshire barony of Brattleby, ‘friends’ well worth having. In 1111 the abbey of St. Augustine’s Canterbury granted land to Hamo dapifer in return for Hamo’s ‘advice and assistance’ to the abbey in the county court of Kent and in the king’s court against all barons other than those to whom Hamo was already bound by homage. Hamo was again a powerful man—a royal steward and also at the time the sheriff of Kent, and clearly a ‘friend’ to cultivate. Around this same time, the abbot of Abingdon made an agreement with Nigel d’Oylly, the lord of the Oxfordshire barony of Hook Norton and also a royal constable, that in return for the land he held of the abbey, he would be on the abbot’s side (ipsius abbatis parti . . . adierit) in any litigation the abbot had in the king’s court, provided only that the opponent of the abbot was someone other than the king.

Agreements of this sort have been seen as arrangements

4. Ibid. at 211–19.
intended to secure expert, professional legal advice; but this was a society where it was the ‘friendship’ of powerful men, and not legal expertise, that potential litigants needed; and such agreements were clearly intended to secure such ‘friendships’.

In form, such agreements are not always easy to distinguish from agreements of a somewhat different kind also to be found in twelfth century sources, under which much less prominent and important individuals are granted land in perpetuity in return for the service of representing the grantor and his tenants and defending their interests at a particular court or courts. Such grantees, too, have been seen as early professional lawyers and the grants as providing evidence for the existence of a legal profession in twelfth century England. There is, however, no evidence that the grantees did possess any specialized legal skills, and the permanent nature of such agreements suggests that it was not professional skill that the grantor required from his grantee, since it was impossible to be certain that the grantee’s heirs would inherit any special skill of this sort that he might have had. It seems much more likely that all that the grantor expected from the grantee and his heirs was regular attendance at the court(s) concerned in the place of the grantor; and that at a time when there were no professional lawyers it did not matter that the watching brief for the grantor and his men was held by just another unskilled tenant.

On other type of agreement has, on occasion, led the historian astray, into seeing a professional lawyer where there is none to be found. Between 1166 and 1176 a mill was granted by the abbot of Cirencester to Robert son of William of Blewbury in return for various services. One of these was that of ‘assisting the abbot in the pleas of his church at Cirencester or wherever he was called upon to do so’. The editor of the cartulary comments that ‘the services . . . are of a most unusual character, and seem to suggest that Robert was some kind of lawyer who would plead for the abbot wherever required . . . ’. The key to the understanding of this clause is, however, provided by a subsequent charter in the same cartulary, recording a grant to the same tenant of another mill by the abbot’s successor. This time the charter stipulates that Robert is to ‘assist the abbot in the pleas of his church

in his court, like the other free men of Hagbourne and Easton’. This makes it plain that all that each of the abbots had wanted from their tenant was the common feudal service of acting as a suitor at his court, as one of the non-professional judges who made and gave judgments in seignorial and local courts. The only unusual feature of these charters is that the grantors specifically mention suit of court: most twelfth century enfeoffment do not, though the grantees seem normally to have performed it.

II

By 1300 a legal profession had come into being in England. There existed by that date a sizeable group of men who were recognised as having specific, professional skills in the representation of litigants and who spent much of their time and derived much of their income from putting those skills at the disposal of litigants. They also, by 1300, constituted a profession in another sense, for by that date they were also subject to special rules governing their professional conduct. As we have seen, there was no legal profession in England in the mid-twelfth century. When, how and why did a legal profession come into existence between those two dates?

A.

Lady Stenton’s work on the surviving plea rolls of the king’s courts of the reigns of kings Richard and John uncovered some fifteen men whose names, she thought, occurred on those rolls with sufficient frequency—in the role of attorney, essoiner or surety—to suggest the possibility that they were professional lawyers. About two of these men (Reginald de Argentan and Fulk Bainard) she herself had doubts. A further two of her fifteen (Stephen Boncretien and William of Buckingham) seem to have been clerks serving in the courts; a third (Robert of Rockingham) was an Exchequer clerk; and a fourth (Richard Duket) was a man in the service of the justiciar, Geoffrey FitzPeter. Such men may have done ‘professional’ legal work for clients but were hardly professional lawyers. Another of her putative professional lawyers, Ralph Hareng, is shown by the references to have been the steward of Thomas de St. Valery as well as a royal justice, but not to have offered his services to any other clients. John de Planez, yet another member of the group, is shown by the sources to have been a professional lawyer in and after 1228, but they do not show that he was acting as such in John’s reign.

13. Ibid. at ii: 473 (‘preterea assistet abbati in placitis ecclesie in curia sua sicut alii liberi homines de Hackeburne et Eston’).
14. I will discuss elsewhere in my forthcoming book on the origins and early history of the English legal profession the main features and characteristics of the Edwardian profession.
15. See discussion at 42–44 infra.
This reduces the number of probable professional lawyers to just seven.\textsuperscript{17} About one of these seven, at least, there can be little doubt, for in his case the evidence of the plea rolls receives independent confirmation from another source. John Bucuinte came of a London merchant family, perhaps of Italian origin; and a certain inherited verbal facility may be indicated by the family surname, which probably means ‘oily mouth’. He is known to have acted as the serjeant of the abbot of Crowland in litigation with the prior of Spalding in 1200; and the case of 1201, in which he is recorded to have alleged that the champion of one of the parties had been hired was probably one where he was acting for the other party in the same capacity. In 1220 he was amerced by the justices of the Bench for ‘sitting at [a] judgment, when he was serjeant in the case’ (\textit{eo quod ipse sedit ad judicium et fuit narrator loquele}). This may simply have been a breach of etiquette—an indication of disrespect to the justices who were giving judgment in the case. An alternative interpretation of the passage, however, is to see in it something rather more serious: Bucuinte sitting in at, and participating in, the making of a judgment in a case where he had previously acted as a serjeant\textsuperscript{18}. Most of the references, however, are to him acting or being appointed as an attorney: an indication that, at this early stage in the development of the profession, the professional was still free to act in both capacities—though not necessarily in the same case.\textsuperscript{19}

It is during the long reign of Henry III (1216–72) that we first begin to catch glimpses of what looks like a real group of professional lawyers—and of a group who were already specializing in the work of only one branch of the profession. Matthew Paris, the St. Alban’s chronicler, in his account of the trial of Hubert de Burgh before the king’s council in 1239, speaks of the king having for this trial the assistance of all of the serjeants of the Bench (‘\textit{cum omnibus prolocutoribus banci, quos ‘narratores’ vulgariter appellamus}’) but Hubert having to make do with the services of his own steward, master Laurence of St. Alban’s.\textsuperscript{20} By 1239, then, there was a

17. Ibid. at ccxcv-ccxxix.


20. H. Luard, ed., \textit{Matthaei Parisiensis Chronica Majora}, 7 vols., Rolls Series (1872–84) iii: 618–20. For evidence that Lawrence was Hubert’s steward see ibid at 233. The proceedings as transcribed by Matthew Paris from the plea roll record are edited ibid. at vi: 63–74. This portion of the \textit{Chronica Majora} may not be exactly contemporary
group of presumably professional lawyers able to specialize in the functions of the serjeant and in practice in the Bench, though also perhaps available for employment elsewhere. Unfortunately Matthew Paris gives us no real idea of the size of the group or guidance as to the identity of its members.  

We encounter the group again in Michaelmas term 1267 when one of its members, Robert de Coleville, assaulted Robert of Fulham, one of the justices of the Jews, in Westminster hall. Robert de Coleville was eventually induced to make an appearance before the Treasurer and the barons of the Exchequer and the justices of the Bench with tunic unbelted and head uncovered, in the guise of a humble suppliant, and to make a full and total submission to the victim of his assault, putting life and limb, land and property, at his disposal; then, honour being satisfied, the two men were reconciled with a kiss of peace. The mediators who brought about the submission and subsequent reconciliation were Robert de Coleville’s socii, his fellow-serjeants, acting as a group.  

Again, disappointingly, we are told of the existence of a recognizable group of Bench serjeants, but not how large that group was or who its other members were.  

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21. The names of a number of serjeants or possible serjeants of the first half of the reign of Henry III can be gleaned from the plea rolls. These include: (i) Robert of Sudbury, C.R.R. ix: 41 (amerced in 1220 pro falsiloquio et mendacio); (ii) Stephen of the Strand, C.R.R. ix: 59 (amerced in 1220 pro stultiloquio suo (Stephen also appears frequently on the rolls as an attorney and as a pledge between 1219 and 1233)). (iii) Ralph of Bardfield, C.R.R. x: 203 (amerced in 1221 pro stultiloquio and specifically described as having spoken for the tenant in the case); (iv) Matthew of Bigstrup, C.R.R. xiii: no. 1107 (amerced in 1228 because the defendant’s attorney had disavowed what he had said (‘deadvocat . . . dictum Mathei de Bikestrop’) (Matthew is one of the men whom Lady Stenton suggested might have been professional lawyers, see discussion supra at 35-36 and notes 16, 19); (v) John de Planaz, C.R.R. xiii: no. 1194 (amerced in 1228 because the demandant in the case had disavowed his count (‘deadvocat . . . narracionem Johannis de Planaz advocati sui’—); (vi) Alan of Waxham, C.R.R. xv: no. 1026 (amerced in 1234 in king’s bench because the person for whom he had spoken disavowed what he had said (‘quia . . . . deadvocavit id quod pro eo narravit’); (vii) Richard de Hottot, KB 26/132 m. 6. (client amerced in 1244 for avowing a count made by Richard which did not correspond with his writ).

22. The episode is recorded on both memoranda rolls; E 368/42 m. 3d (Lord Treasurer’s Remembrancer) and E 159/42 m. 3d (King’s Remembrancer), but it is only on the L.T.R. memoranda roll that interlineations in the entry tell us of Robert de Coleville’s status as a serjeant of the Bench (‘narrator de banco’) and that the reconciliation was accomplished through the mediation of his colleagues (‘ad instanciam sociorum suorum narratorum’). The entry is printed from the L.T.R. memoranda roll in T. Madox, The History and Antiquities of the Exchequer (London, 1711) 161 note k.

23. Some names of serjeants, or possible serjeants, of the Bench of the second half of the
Other evidence suggests that by the 1260s it had become the normal practice for litigants to have serjeants to plead for them and not to plead in person or have their attorney plead for them. The author of *Hengham Magna*, written during this period, assumes that when two litigants appear in the Bench for land litigation, they will both have serjeants to speak for them—even where all the defendant intends to do is the simple business of requesting a view of the land concerned. The compiler of *Brevia Placitata*, a collection of specimen counts and defences for litigation in the Bench, also written at about the same time, does not say that these counts and defences are normally delivered by serjeants: but does go on at a number of points to give arguments following up a particular count and defence. These have every appearance of having been drawn from real cases. On almost every occasion that this occurs, the author specifically attributes one or both sides of the argument to the litigant’s serjeants.

It was, however, still possible in the 1260s for a litigant to have his attorney plead on his behalf. Hugh de Bladis, the attorney of the defendant in an action of right heard in the Bench in 1261, is recorded on the plea roll as having lost the land for his client because he had put himself on the grand assize—that is, used the form of words appropriate to the submission of the plaintiff’s claim and his denial of it to the verdict of a grand assize of twelve knights—without having first made the necessary formal denial of the plaintiff’s right. The case illustrates nicely the reason why attorneys did not normally double as serjeants for their clients: the attorney could not disavow

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himself, and so any mistake that he made was final and could be fatal to his client.\textsuperscript{26} The Bench plea-rolls of 1262 also provide us with one example of a litigant apparently having to plead on his own behalf. The case is one brought by Richard of Cornwall, the king's brother, against Hugh Gernegan for various lands that Richard claimed should have escheated to him after Hugh's outlawry for felony. Hugh is recorded as objecting to the form of Richard's writ—as asking, with a sigh (\textit{suspirando}) for judgment of the writ—but as having been told by the king's council as well as by the justices of the court to answer over (because the writ was good). He is then recorded as seeking a view of the land, in tears (\textit{lacrimando}). The sigh and the tears are surely not those of the serjeant and probably not those of an attorney\textsuperscript{27}; they are most likely to have been those of the litigant himself.\textsuperscript{28} Both entries are, however, quite exceptional, and neither can be easily paralleled, if paralleled at all, from Bench records of the next four decades.\textsuperscript{29}

Of professional attorneys practising in the Bench during the reign of Henry III we hear very little. As yet, we find no proceedings brought against them for misconduct; no law-suits between them and their clients; and no attempts to regulate either their numbers or their conduct. All that we do have is the bare record, term by term, of the appointment of attorneys; and it is only from an analysis of these appointments that we can show that there were almost certainly already some professional attorneys practising in the Bench by 1260. As yet, however, their number was still very small—probably fewer than ten—and they only account for a very small proportion of the total number of appointments recorded on the plea rolls.\textsuperscript{30}

26. Pillerton v. Fitz Roger, KB 26/171 m. 35d. The land concerned was only a small holding (one message, an acre and a half of woodland, four acres of arable and two and a half acres of meadow) and the defendant may have been attempting to avoid the expense of employing a serjeant.

27. But note that one of the two attorneys whom Hugh had appointed in Michaelmas term 1261 for this plea was his own son John, KB 26/171 m. 81, and that he appointed another attorney in the plea in Easter term 1262, KB 26/166 m. 40 (his opponent here becomes '\textit{rex am refinale}' not 'alemunie').

28. KB 26/166 m. 35. For earlier and later stages of the same case, KB 26/171 m. 9d; KB 26/172 m. 22; KB 26/173 m. 16d; KB 26/200A m. 26 and for its background, see 2 \textit{Calendar of Patent Rolls}, 1232–47 11, 164.

29. But see the splendid story of the Peterborough chronicler about the earl of Gloucester's litigation against the abbot of Peterborough in the 1285 Northamptonshire eyre in which the earl was seeking the manor of 'Biggin'. On the day the case was to be heard the earl took the abbot by the hand ('\textit{per manum accepit}') and sat with him, but this was just a trick to stop him getting a serjeant ('\textit{et fraudulenter hoc fecit ut abbas non haberet serianciam pro negociis suis expendiendis nec ut aliquis pro causa isius abbatis se apponere seu defendere quomodo auderet}'). The abbot had then to use the services of his sacristan to speak for him, though only after the abbot had asked permission for this from the justices. Fortunately the sacristan was able to find a defect in the earl's writ and so got it quashed. British Library, Additional MS 39758, fol. 99r.

30. There is no whole year around 1260 with a good run of surviving attorney appointment membranes. For the purposes of analysis I have used the attorney membranes of the
professional lawyers practising also in other royal courts by the end of Henry III’s reign: but of them very little is known.31

Outside the royal courts, it is only in London that there seems to be any clear evidence for the existence of the professional lawyer prior to the reign of Edward I. As early as 1244, it was found necessary to prohibit serjeants (advocatus aut placitator) from taking any part in the making or giving of judgments in the city courts in cases where they themselves had acted for one of the litigants.32 Such serjeants may not have been professional lawyers, however. Subsequent legislation, of 1259, was clearly aimed at the professional serjeant. This made it illegal for any serjeant (causidicus) practising in the city courts to agree to act for a litigant in return for a share of the tenement or land which was at stake in the litigation. On conviction, the serjeant was not just to lose the share thereby acquired but also to be ‘suspended from his office’ (et suspendatur ab officio suo . . . ), a punishment only appropriate to a professional serjeant. A further clause of the same legislation, as it is reported by the London chronicler, Arnulf fitz Thedmar, provided that it was not in future to be necessary (non sit necesse) for litigants to have a serjeant in any plea in the city other than pleas of the crown (criminal cases), land pleas, and pleas of replevin. In all other kinds of litigation, the litigants were just to explain their cases themselves and the courts, having thereby discovered the truth, were to give a just and an

rolls for Michaelmas term 1258 (KB 26/160 mm. 60–63), Hilary term 1259 (KB 26/162 mm. 43, 44, 46), Hilary term 1260 (KB 26/164 m. 35 only: the other membranes are lost), and Easter term 1260 (KB 26/165 mm. 36–39). The probable professional attorneys of the Bench found on these rolls are (with totals of appointments in brackets): Richer of Colchester (nine and also one appointment in King’s Bench as an attorney in Michaelmas term 1259); John of Easton (fifteen); John of Harpley (thirteen); Reginald of St. Alban’s (twelve); William of Skutterskelfe (nine, and twice appointed an attorney in the Exchequer in Hilary and Easter terms 1260), John of Wandsworth (seventeen), John son of William (sixteen), and Robert of Wolmerston (ten).

31. The Richard of Glen and Richard Gruys narratores amerced because they were disavowed by John le Paumer and his mother Isabel in the Warwickshire special eyre of 1260, see JUST 1/953 m. 2d, were perhaps professionals: Richard of Glen also appears in the Exchequer of Pleas as an attorney for the abbot of Leicester in 1259–60. E 13/1B mm. 2, 4d. Note also that the Peterborough chronicler, writing about the 1262 Lincolnshire eyre, mentions the great expenses and ‘liberalities’ (‘sumptus ampolos et magnas liberalitates’) of the abbot of Peterborough both to the justices and to the serjeants (‘narratoribus’) as well as to other men of the county: British Library, Additional MS 39758, fol. 90r. The earliest identified Eyre Year-Book reports come from the following Lincolnshire eyre of 1272. One is Cambridge Univ. Library, MS. Dd VII. 14, fols. 370b-371a (report of a case on JUST 1/483 m. 40d). In this report no serjeants are named.

32. The London Eyre of 1244, supra note 18 at 96 no. 236 A similar provision also applied to aldermen of the city who had ‘stood with’, or acted as counsel to, litigants.
equitable judgement. Fitz Thedmar seems here to have conflated the legislation and its intended results. What the legislation probably said was that in all types of litigation other than those specified the formalities of pleading hitherto observed were no longer to be mandatory, the intention being to render the use of serjeants in such cases superfluous. The serjeants of London, however, clearly survived the blow, and continued to find employment in the city courts: in 1264 we find another ordinance prohibiting serjeants from acting as essoiners in the city courts.

Once we reach the reign of Edward I, it begins to make sense to talk about the existence of a legal profession in England. From the 1270s onwards, surviving reports of pleading in cases in the Bench demonstrate the existence of a group of professional serjeants in the Bench and tell us something of their work in that court: they also tell us who these serjeants were. From the late 1270s onwards other reports provide similar information about the serjeants who practised in the general eyre: and already there seems to be a substantial overlap between them and the serjeants practising in the Bench. We now begin to find the king retaining serjeants to act on his behalf in the eyre and in the Bench. Outside the royal courts altogether there are traces

33. T. Stapleton, ed., Liber de Antiquis Legibus: Cronica Maiorum et Vicecomitum Londoniarum Camden Society, original series, xxxiv (1846) 42–43.
34. Ibid. at 70. Note that an account roll of the abbot of Ramsey for 1241–42 includes a payment of thirteen shillings and four pence to two serjeants (narratores) at Norwich, British Library, Additional Roll 34332, m. 4. It is not, however, clear whether they were being paid for services in the city court or some other court.
35. The serjeants active in the Bench during the 1270s include: Adam de Arderne, Hamon de la Barre, John of Bocking, Robert of Bradfield, John Gifford, John of Houghton, Adam of Kinsham, John of Quy, John of Ramsey, William of Stowe, Gilbert of Thornton and Alan of Walkingham. The serjeants active in the Bench during the 1280s include: William of Barford (Bereford), Robert of Bradfield, Alexander of Coventry, Richard of Gosfield, Roger of Higham, John de Lisle, William of Kelloe, Hugh of Lowther, Gilbert of Thornton and Nicholas of Warwick. I will be discussing the evidence on which these lists are based in my forthcoming book on the early history of the English legal profession.
36. Most of the surviving reports come from the ‘Northern’ eyre circuit. The serjeants active on this circuit include: Robert of Bradfield, Richard of Arnesby, Thomas of Fishburn, Richard of Gosfield, William of Kelloe, John de Lisle, John of Ramsey, Roger of Scotter, William of Selby, Gilbert of Thornton. There are a few reports of cases from the ‘Southern’ eyre circuit, see Dunham, ed., Casus Placitorum supra note 23 at 111–12, 114, 130–31, and various manuscripts, but not enough to reach general conclusions about the serjeants active on the circuit. For further details see my forthcoming book on the early history of the English legal profession.
37. G. O. Sayles, ed., Select Cases in the Court of King’s Bench, vol. V Selden Society, lxxvi (London, 1957) xl-xliv. Sayles dates the beginning of the regular retaining of serjeants by the king to 1278. This may well be true, though it should be noted that Alan of Walkingham, one of the king’s serjeants, was paid in 1281 in respect of his services to the king during the previous six years. C 62/57 m. 10. It should also be noted that in 1278 there is a reference to the king’s serjeants (‘narratores regis’) as though to a well-established institution. Rotuli Parliamentorum i: 7. For men described in 1269 and
of professional serjeants in city courts other than London's, and also in fair courts and in county courts.38

We cease now to be wholly reliant on analysis of the appointment of attorneys for evidence of the existence of professional attorneys practising in the Bench. From the late 1280s onwards, the court begins to entertain allegations of misconduct made against them by clients 39; in 1291 we find for the first time a reference to a man 'claiming to be a common attorney of the court' (qui se gerit pro communi attornato curio')40; and in 1292 we find an unsuccessful attempt to limit the number of professional attorneys practising in the Bench, and to restrict admission to their ranks, which, by envisaging a reduction to 140, clearly assumes that there are well over that number of professional attorneys currently practising in the Bench.41 We also now begin to encounter references to professional attorneys practising in other royal courts42 and in the city courts in London.43 More significantly, professional lawyers were now also coming to be seen as men having, or needing, specific, professional skills. Those persons who wanted to become serjeants in the Bench had first, it seems, to have been 'apprentices'—persons learning the skills of the serjeant. One of the reasons given for the making of the ordinance of 1280 which restricted regular practice as a serjeant in the city courts of London to those who had been specially admitted to the office, was that there had been some men hitherto who had held themselves out to be serjeants when they did not know and had not learned the appropriate skills (qi lour mestier ne savoient ne ne eurent apris), and that this had led their clients to lose their cases.44 The professional attorney, too, was recognized as having a special skill appropriate to his functions. In 1294 one of the professional attorneys practising in the Bench, Alan Prat, sued out further mesne process against

1271 as king’s serjeants who are known from other evidence, to have been lawyers see note 23 supra.

38. For full references see my forthcoming book on the early history of the English legal profession.

39. The earliest instance seems to be in 1287, though it is not completely certain that the attorney here is professional. CP 40/67 m. 47d.

40. CP 40/89 m. 26d.

41. Rotuli Parliamentorum, supra note 37 at i: 84 (no. 22). For a full discussion of this episode see my forthcoming book on the early history of the English legal profession.

42. In the eyre: Burne v. Watergate, JUST 1/915 m. 39 (1279 Sussex eyre); Motekan v. Ingoldmells et al., CP 40/102 m. 160 (1282 Lincolnshire eyre); In the court of King's Bench: Brettevil vs. Abbot of Tichfield KB 27/94 m. 42d; Calendar of City of London Letter-Book B, p. 216; Calendar of City of London Letter-Book C, pp. 26, 115–16.

43. Munimenta Gildhalle Londoniensis, ii, part i: 280–82.

44. Ibid. More ambiguous is evidence from the 1278 Hertfordshire eyre. A plaintiff lost his case because of a faulty count by his serjeant. His amercement was pardoned because he was poor and because his serjeant had defrauded him ('. . . et quia narrator ejus defraudavit eum . . .'). But no action seems to have been taken against the serjeant. Chepman v. Seriaunt, JUST 1/323 m. 16d.
the jurors in a case after he had received word from his client that the other party to the plea had died. The jurors concerned complained to the court and got the attorney suspended. The enrollment recording the suspension goes on to give the reason for it. As a professional attorney, Alan 'ought not to have been ignorant of how pleas were to be prosecuted for his clients in accordance with the law and custom of the realm' ('nec ignorare debuit qualiter pro dominis suis secundum legem et consuetudinem regni placita sunt prosequenda . . . '). A litigant suing in person or a non-professional attorney might be excused such an error: the professional attorney could not expect to be, for this was the area of his special knowledge and skills.

It is also early in the reign of Edward I that we find the first general legislation to be concerned with professional misconduct by members of the legal profession: chapter twenty-nine of the statute of Westminster I, enacted in 1275. This provided that any serjeant (seriaunt countour) convicted of deception or collusion or being a party to such—whether the intention was intended to deceive a litigant or the king's justices—was to go to prison for a year and a day, and be disbarred from further practice as serjeant. Anyone else ('autre') convicted of the same offences was simply to suffer the term of imprisonment. This sounds sufficiently general to apply to the non-professional legal representative or even to the litigant himself, as well as to the other type of professional lawyer, the professional attorney: but in practice it seems almost invariably to have been applied only in the case of offences committed by the latter. From the 1290s onward, the latter were also, commonly, though not invariably, debarred from practice as well upon conviction, even though this was not something that the legislation itself warranted. This suggests that by the 1290s the professional attorney had

45. Gernun v. Gernun, CP 40/103 m. 70d.

46. In another case of 1292 a different professional attorney of the Bench, Simon of Stowe, was in trouble for failing to sue the writs required for his client at the proper time. Here it was held that he could not excuse his failure by ignorance, since he had long been a general attorney and knew sufficiently well what he ought to have done (nec . . . per ignoranciam se potest in hoc casu excusare, eo quod generalis attornatus dudum eruditus ubi exequenda si volebat') and that the failure was therefore to be ascribed to deliberate deception. He was therefore sentenced to a year and a day in the Fleet prison. CP 40/95 m. 79d.

47. Statutes of the Realm i: 34.

48. For cases where attorneys were sentenced to a year and a day in the Fleet prison and also disbarred from practising, see CP 40/90 m. 146d (1291–Peter of Luffenham); CP 40/90 m. 57d (1291–Robert of 'Greshope'); CP 40/108 m. 145d (1295–Thomas de la Bere); CP 40/125 m. 236d (1298–Roger de Plat). For cases where only the term of imprisonment is mentioned, see CP 40/91 m. 210 (1291–Gerin le Lyndraper); CP 40/91 m. 191d (1291–John of Upton); CP 40/95 m. 79d (1292–Simon of Stowe). For an apprentice of the court sentenced to a year and a day in the Fleet and also disbarred from representing litigants ('et inhibitum est ei ne se immisceat seu intromittat de aliquibus negotiis in curia domini regis decetero prosequendo seu defendendo . . . ') for deception of the court in a case in which he himself was a party, see CP 40/139 m. 106 (1301–Thomas Torel).
come to be seen as part of the same profession as the professional serjeant and that it had come to seem anomalous that they had not been made subject to the same penalty for the same offence of professional misconduct. But it also suggests that in 1275 the professional attorney was not as yet fully accepted as a member of the legal profession, and that this acceptance took place between 1275 and 1290. It must also be significant that this same legislation of 1275 only applied to the activities of professional lawyers in the king's courts. This suggests that if there were professional lawyers practising outside the king's courts (and outside London) they were not as yet sufficiently numerous to be regarded as a normal feature of those courts.

A subsequent chapter of the same statute (chapter 33) did deal with the perversion of legal process in the county court; but its concern was not with the professional serjeant or attorney, but with 'barrators', members of the local gentry and others who supported litigants in litigation in the county court, and with the stewards of great men and others who gave judgements in the county court without being specially requested to do so by all the suitors. It was misconduct by them, rather than by professional lawyers, that was the obvious cause of concern for the legislator in the county court of 1275. This suggests that the spreading of the professional lawyer into the county court was a development which took place during the reign of Edward I and not before.

The evidence seems to suggest, then, that the first group of professional lawyers to emerge in England were the serjeants of the Bench, and that they already existed as a recognizable group by 1240; but that by 1260 at latest there was also a second recognizable group of professional lawyers in the shape of the professional serjeants practising in the courts of the city of London. By the 1270s professional serjeants were also clearly in evidence at sessions of the general eyre, but they seem largely, if not entirely, to have been drawn from the pool of serjeants who practised in the Bench. When, in the 1290s, we begin to get reports of pleading in the court of King's Bench, the same appears to be true there as well. During the course of the reign of Edward I, professional serjeants seem to have become established in some local courts—particularly city and county courts—as well.

There were also, it seems, a small group of professional attorneys practising in the Bench by 1260, but the real expansion in their numbers came only during the course of the reign of Edward I. There were over one hundred and forty by 1292, and at least two hundred and ten by 1300. By this latter date there were also at least twenty-five professional attorneys in the court of King's Bench and around fourteen professional attorneys in the Exchequer (though many Bench attorneys also represented clients there as well). There is, however, much less evidence of professional attorneys being active in local courts except in London.

49. Statutes of the Realm i:35.

50. For full details see my forthcoming book on the early history of the English legal profession.
The emergence of what is recognizable as a legal profession is a slightly different matter. The raw material, clearly, is these sizeable groups of professional lawyers: but what was also needed were moves to 'professionalize' their members. The imposition of separate and higher standards of conduct for professional serjeants came first in the London city courts, and did not come to the professional serjeants practising in the king's courts until 1275; for the professional attorneys practising in the king's courts, or at least in the Bench, it did not come until the early 1290s. Control of admission into the ranks of professional serjeants was accomplished in the city of London by 1280; and a similar control may well by then have been accomplished for serjeants practising in the Bench; but moves made in 1292 to control admission into the ranks of professional attorneys practising in the Bench seem to have been ineffective. Quality control of professional lawyers through their suspension had come to the Bench for serjeants by 1275; for attorneys only after 1292.

B.

The main institutional prerequisite for the development of a legal profession was that it should be permissible for individuals to represent others in legal proceedings, without there having to be any wider pre-existing or continuing relationship between them. The author of the *Leges Henrici Primi*, an unofficial legal treatise written during the second decade of the twelfth century, and one of our few sources on English legal custom in that period, clearly envisages the possibility that a litigant may not be present in person at litigation and may be represented by a third party. That representative, however, is not—and probably cannot be—someone specially appointed to represent the litigant in that case alone. He is—and probably *has* to be—that litigant's steward (dapifer) or other servant (minister), someone appointed by him to take charge of all his business affairs, managing his lands, presiding over his courts and so one.51 It was, it seems, only during the reign of Henry II, and perhaps as the result of legislation now lost, that it became possible for a litigant to appoint whomever he wished to act for him as his representative in a single piece of litigation.52 It is possible that this innovation was made for the benefit of litigants, and particularly of litigants in the king's courts. No longer would it be essential for litigants either to attend court in person or to send their stewards or bailiffs (whose services would be needed by their lord almost continuously on his own estates). Someone of much less importance could now be sent as the litigant's representative, particularly for these stages of the litigation where only the authorisation of a further stage of mesne process was

52. The institution is described in book XI of G.D.G. Hall, ed., *Glanvill* (London, 1965) 132–36, a treatise written at the very end of the reign of Henry II, but may have come into existence some time before this. The author describes such a representative as a *responsalis*, but in all except name he is the same as the attorney of the later common law.
required. It seems more probable, however, that the change was intended to solve a practical problem for the courts, caused by the major increase during the reign of Henry II in the amount of litigation coming before the royal courts, and the large increase in the number of litigants with business there: that of keeping proper track of whether or not someone claiming to be the representative of a litigant really did possess the authority to act for him. Certainly, in practice it was not a matter of the royal courts just allowing the appointment of attorneys. They insisted that anyone who was to represent a litigant should be appointed as his attorney, and specifically for that piece of litigation, whether or not he was the litigant’s steward or bailiff.53 The older type of more permanent representative, however, did not completely disappear, even in the king’s courts. Throughout the thirteenth century we find references to the stewards and bailiffs of the lords of the greater franchises claiming cases for the hearing of their lords’ courts—and it does not appear that they were specially appointed to do this on each occasion that they did so. The older type of more permanent representative seems also to have survived in the local courts. The legislation of 1234, which allowed the appointment of ‘attorneys’ in county, hundred and seigniorial courts with power to claim for hearing in their principal’s court any cases falling within the jurisdiction of that court, and also to act for them in any litigation brought by or against them that was initiated by plaint (rather than writ), probably preserved an existing institution and did not introduce a new one.54 It may be significant that the legislation speaks of ‘attorneys’ rather than ‘stewards’ or ‘bailiffs’. It might be the lord’s steward who acted as his attorney—but it no longer had to be. It was the new type of representative, the representative appointed to act for his principal in one piece of litigation only, who is of greatest importance for the development of the legal profession. It was the emergence of this new type of representative during the reign of Henry II which ultimately made possible the development of the professional attorney—a representative whose only link with his client was that constituted by the contract made between them.

The serjeant was a representative of a somewhat different kind—one who only spoke on the litigant’s behalf at the stage of formal pleading; one who was not formally appointed to speak for or represent the litigant; and one whose words could be disavowed by the litigant or the litigant’s attorney, if need be. There seems to be a forerunner of the serjeant in the Leges Henrici Primi as well in the shape of the person giving ‘advice’ (consilium) in a plea, subject to a right of a correction. Such a person will be—and perhaps has to be—drawn from the litigant’s friends and relations (amicis et parentibus suis), though his functions appear to be more limited than those of the later serjeant. The making of the count and the making of the formal defence both appear to have been matters for the litigants themselves. It was only when the defendant had asked permission to ‘imparl’, to seek advice, after making

53. Ibid. at 133 (XI,1).
the formal defence that the ‘advisers’ or proto-serjeants on both sides were able to join in.55 The requirement, if such it was, that the serjeant speaking on behalf of a litigant be drawn from among his ‘friends’ and relations might just conceivably have been an enforceable on in the context of a local court, at least in the negative sense that it would be possible to prevent men who specialized in pleading for payment from practising in a particular court. It is much less clear that this would have been an enforceable rule in the case of pleading in the king’s courts, once those courts began to attract a substantial amount of business. It is also much less clear that those courts would have had any interest in enforcing the rule. The extension of the permissible functions of the serjeant—in particular, allowing him to make the count on behalf of the plaintiff—though this cannot, at present, be dated precisely56—may perhaps be connected with the adoption of the writ as the standard form for the initiation of civil proceedings in the king’s court, and the higher premium that this put on the need for accurate and standard counts that corresponded with the writs used in the case.

These institutional changes made it possible for the English legal profession to emerge. The professional serjeant, as we have seen, appeared first in the Bench and in the city of London. There had been no particular need for specialists, professional serjeants, in the older, local law courts of twelfth century England—feudal, county and hundred courts. Knowledge of the rules governing pleading and of the legal customs applied in those courts must have been widespread among those who regularly attended such courts in the role of suitors, but who might also less regularly appear in the courts as litigants or as the friends and advisers of litigants. The Bench, however, from its very beginnings in the reign of Henry II—initially as a part of the Exchequer—was a different kind of court. Its judgments were made not by suitors but by full-time, paid royal officials, and few of its litigants (or their friends) attended the court with sufficient regularity for them to acquire a reliable knowledge of the way in which the court’s procedure worked, or the rules of law which it applied. Treatises like Glanvill and Bracton may have been intended, at least in part, to answer the demand of litigants for such knowledge, but inevitably, given the pace of legal development, they were soon out of date. Indeed, as Professor Thorne has shown, part of the confusion in the text of Bracton is directly caused by attempts to update

55. *Leges Henrici Primi* supra note 51 at 156–58 (46, 4–6; 48, 1-1c), 162 (49,3). It should, however, be noted that Maitland thought that the treatise showed ‘counsel’ able to speak for the litigants at all stages in proceedings: Pollock & Maitland, *History of English Law* supra note 23 at i: 211–12.

56. The earliest clear reference to a serjeant making a *count* for a plaintiff—and then being disavowed—seems to be in 1222 C.R.R. xiii: no. 1194. It may also be significant that when Glanvill gives a specimen count for the demandant in the action of right for land, it is in the first person (‘peto. . .’). *Glanvill*, supra note 52 at 22–23 (II,3). When Bracton gives a similar count it is in the third person, as though spoken for the demandant (‘Hoc ostendit vobis A. . .’). S.E. Thorne, ed., *Bracton*, *De Legibus et Consuetudinibus Angliae* Cambridge, Mass., 1968) iv: 169. Later evidence indicates that third person counts became the standard form.
the text to bring it into line with subsequent changes in the law.\textsuperscript{57} There was, therefore, a demand from litigants with business in the court for assistance and representation by persons in regular attendance at the court, who possessed reliable and up-to-date information on the law and practice of the court. The serjeants met this demand.

The early emergence of the professional serjeant in the Bench must also have been assisted by the fact that the typical litigant in the court during the first half of the thirteenth century was among the wealthier of the litigants with business in the king’s court. For most types of business it cost more to initiate litigation in the Bench (and probably also to prosecute it there) than to wait to initiate it at the next session of the eyre in the appropriate county.\textsuperscript{58} Later in the century, other factors probably came into play to consolidate the hold of the professional serjeant on pleading in the Bench. Some attorneys were not even able to speak, or were not fluent in the language spoken in the court,\textsuperscript{59} and the same was probably true of at least some of the litigants themselves. They needed a serjeant able to speak the language of the court. The professional serjeants were moreover a small group, in regular day to day contact with the justices of the court. The litigant—particularly the poorer and less powerful litigant engaged in litigation with a richer and more powerful opponent—may have seen himself as acquiring the services of a valuable intermediary in the serjeant, someone able to secure a full and fair hearing for his client’s case in a way that the litigant himself would not have been able to do.

The early emergence of professional serjeants in the city courts in London is probably explicable in much the same kind of terms. Few of the inhabitants of London can have been in regular attendance at the city courts, and the court of the mayor and sheriff, in particular, soon came to bear a much closer resemblance to the royal courts than to the local courts in its constitution and ways of doing business.\textsuperscript{60} Moreover, many of the litigants there were wealthy men, well able to pay for professional representation.

The predominance of Bench serjeants in pleading in the Eyre is presumably to be explained by the intermittent nature of the general eyre, which inhibited the growth of a separate group of serjeants specializing solely in work in the eyre. Further, in the earliest years of the professional serjeant in the Bench sessions were suspended while a major eyre visitation was in progress. Had there been groups of professional serjeants practising in the county court prior to the later years of the reign of Edward I, it might have been those serjeants who represented litigants in the eyre in the counties in which they practised, but their emergence was too late to prevent the Bench serjeants establishing a predominance in the eyre. The hegemony

\textsuperscript{57} Ibid. at III: xv-xxix.

\textsuperscript{58} E. de Haas and G.D.G. Hall, eds. Early Registers of Writs, Selden Society, lxxxvii (London, 1970) xxvii-xxix.

\textsuperscript{59} CP 40/110, m. 239.

\textsuperscript{60} Williams, Medieval London, supra note 19 at 83–84.
of the Bench serjeants in the court of King’s Bench is more problematic. The court had been in continuous existence from the mid-1230s onwards, and practice in it was not easily combined with practice in the Bench, since King’s Bench was most of the time an itinerant court, and the Bench normally stationary at Westminster. The comparatively late establishment of the court on a permanent basis may possibly provide the answer. By then it may have been the serjeants of the Bench who were accepted as the legal experts; and as they were willing to work in the Eyre, they may have proved willing to work in King’s Bench as well, as and when clients required this. The eventual emergence of serjeants in the county court as well during the reign of Edward I is probably to be related to wider changes in the nature and constitution of those courts which transformed them into much more ‘professional’ and expert courts.

The later emergence of the professional attorney is probably a reflexion of the fact that the attorney’s function was one which required a much smaller amount of expertise and knowledge. Certainly, there were from the earliest years of the Bench good reasons for litigants to appoint attorneys to represent them there: the journey from many, perhaps most, litigants’ homes to the Bench was normally long and slow, and might often turn out to be dangerous. The litigant would normally need to stay at Westminster for several days when he arrived in order to sue out the next stage of process against his opponent or secure judgment against him on his default; and these journeys and stays would normally need to be repeated several times over two or three years before the litigation was at an end. But, if no special expertise was required, there was at this time probably no great advantage in employing a professional attorney who was unknown to the litigant (and perhaps therefore not to be relied upon) rather than using the services of a reliable friend or relative. The breakthrough to professionalization seems to have occurred as a direct consequence of an as yet unexplained phenomenon: the major increase in the business of the Bench during the second half of the thirteenth century. What seems to have happened is that there came to be enough business from each area of the country to allow professional attorneys to make a living by representing persons from their area of the country (and a few others), charging enough to cover their traveling expenses, but being able to charge less than the non-professional attorney would need to be reimbursed by his one principal to cover his expenses. At this stage it became financially advantageous to appoint a professional and not an amateur attorney. Only when there had come to be a number of professional attorneys, so it seems, did those attorneys come also to be perceived as having the further advantage over the non-professional—possession of a special, detailed knowledge of the procedures of the court,

61. A rather crude indication of the scale of this increase is provided by counting the number of membranes required to record one year’s business in the Bench. In 1200 forty-nine membranes sufficed; this had more than doubled by 1250 (108 membranes) and almost doubled again by 1260 (207); between 1260 and 1280 it more than doubled again (439) and by 1300 more than doubled once more (1056).
and how those could best be manipulated or used to the advantage of their clients. Volume of business, and its increase during the second half of the thirteenth century, may well also account for the emergence of the professional attorney in the court of King's Bench as well by 1300, though again some sort of attorney must normally have been appointed by most litigants from an early date.

Professional lawyers—professional serjeants and professional attorneys—came first: a recognizable legal profession came subsequently. As far as can be seen, the movement in the direction of the transformation of professional lawyers into a legal profession was, at this early stage, as much, if not more, the product of external pressures as of any conscious wish or attempt by professional lawyers to turn themselves into a profession. The setting of special standards of professional conduct was achieved by statute and the maintenance of professional standards seems, as yet, to have been a matter entirely for the courts—and not for other members of the profession. The abortive attempt to limit the numbers of, and to control admission into, the ranks of professional attorneys in the Bench in 1292 seems to have had its origins in the concern of king and council with the low standards of existing attorneys, and not been the product of any attempt by those attorneys or some of their number to create an exclusive monopoly for themselves. The monopoly apparently enjoyed by Bench serjeants by the reign of Edward I may well have had a similar origin. So, too, the monopoly of regular practice in the city courts enjoyed by the London serjeants created by the ordinance of 1280 seems to have been the product of external pressure to raise standards, rather than any campaign by those serjeants to secure such a monopoly. As yet, then, in 1300 the legal profession was still the prisoner, and in some senses also itself the product, of outside forces beyond its own control: not yet the autonomous and powerful body it was later to become.

62. Using the same rather crude indication, in 1260 fifty-six membranes sufficed, by 1280 the roll had more than doubled (to 127) and by 1301 more than doubled again (to 273).