

**THE LEGAL PROFESSION IN ENGLAND
AND WALES; HOW GRAY'S INN FITS INTO
THE LEGAL LANDSCAPE; WHY AND HOW
GRAY'S INN VALUES INTERNATIONAL
COLLABORATION.**

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Relevant Information

This document summarises the key point of one of the round tables held at the [Fide Foundation 2nd International Congress at Oxford, on Nationalism, Populism and Identities: Contemporary Challenges](#). The key topic was the Impact of nationalism and populism at the national level.

The author of the panel was **Sir John Mummery**, formerly a member of the Court of Appeal of England and Wales. Bencher of Gray's Inn (member of the governing council).

About the Fide Foundation

The Fide Foundation is a legal-economic think-tank based in Spain, committed to involving the civil society in all major legal and economic developments in Spain, the EU and abroad.

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P. THE LEGAL PROFESSION IN ENGLAND AND WALES; HOW GRAY'S INN FITS INTO THE LEGAL LANDSCAPE; WHY AND HOW GRAY'S INN VALUES INTERNATIONAL COLLABORATION.

A. INTRODUCTION

The Honourable Society of Gray's Inn (to give it its full formal name) is one of the four self-governing Inns of Court. The other three are the Inner and Middle Temple and Lincoln's Inn.

In order to become a barrister entitled to practise in England and Wales it is necessary to join one of the Inns, to satisfy the qualifying requirements and to be called to the Bar at a formal ceremony (Call Night) in the Inn of choice.

There are no Inns of Court in Scotland. Call to the English Bar does not entitle a barrister to practise in Scotland, which has its own separate legal system preserved on the Union with England 300 years ago. The advocates, as they are called, belong to the Faculty of Advocates.

I will take my own case as an illustration of how the English system works in practice. I became a member of Gray's Inn when I joined it in 1961 while reading for a law degree at Pembroke College, Oxford. I was called to the Bar in 1964 after obtaining my degree and passing the Bar Exams. After spending a year as a pupil to a junior barrister I became a tenant in another set of Chambers in New Square in Lincoln's Inn from which I practised for the next 24 years. I remained a member of Gray's Inn even after I left the chambers and ceased to be a practising barrister on appointment first as a Justice of the High Court in 1989 and then as a Lord Justice of Appeal in 1996. I reached the compulsory retirement age of 75 for judges in 2013, but I am still a member of Gray's Inn and will be so for the rest of my life.

In explaining the organisation and functions of Gray's Inn and its many activities, both in this country and internationally, I will make a few short points on each topic.



Early in my career I had the good fortune to sit next to the former Head of an Oxford College at dinner. He was reputed to be one of the wisest men in Oxford (and therefore in England!) He warned me against the dangers of making fewer than or more than three points in a case: too few and people would think you had not given the subject sufficient thought; too many and people would think that you were trying to be too clever by half and the attention of the audience would soon be lost.

I have followed that wise advice for over 50 years.

First, a summary of how the Inn connects with the three topical themes of this Congress. They all reflect current concerns of common interest and great moment.

1. Nationalism

Gray's Inn is national in its origins, character, and core activities. But that does not make it “nationalist.” Its influence on law, legal thinking, professional practice, and judicial behaviour reaches far beyond its historic origins in 15th century London. The Inn recognises the mutual benefits of good international relations with other legal systems, cultures, and professions. Its members share with lawyers from many countries a wide range of useful knowledge and practical experience in legal affairs.

2. Populism

Members of the Inn take part in professional, educational, charitable, cultural, recreational, and social activities organised and facilitated by the Inn. The Inn is not a political institution either in a populist or party sense. The Ministry of Justice is the Government Department responsible for the national court system. A Legal Services Board oversees the whole legal profession. The Inns of Court are not and never have been run by government. They have also always been independent of organised political parties, of disorganised populist movements and of business and commercial enterprises carried on for the financial and personal benefit of their owners.

The four Inns are best described as independent self-governing communities of lawyers who have been called to the Bar. Their overriding purpose is to promote and preserve for the public good an independent legal profession of barristers who are qualified to supply legal advice and representation to clients. The Inns make a valuable contribution to the impartial administration of justice through



the study of law and the education and training of lawyers in professional skills and ethics, notably in the traditions and art of advocacy practised on behalf of litigants in courts and tribunals.

The four Inns work alongside, while remaining distinct from, other bodies, such as the Bar Council, a body elected by the Bar to serve and protect its members' professional interests; the Bar Standards Board responsible for such matters as qualifications and disciplinary procedures for dealing with complaints of professional misconduct; and the College of Advocacy recently established to maintain and improve standards of advocacy.

3. Identity

The identity of Gray's Inn, like that of the other three Inns, is the creation of accumulated experience of lawyers over many centuries. What Gray's Inn is and what it does are easy to identify, explain and understand. Like the other three Inns it occupies a central place in the distinctive legal culture of English law, its precedents, principles, and traditions and of the English Bar and its high professional standards. It contributes to the everyday working of an adversarial judicial system, both criminal and civil. It is committed to upholding all aspects of the Rule of Law in this country and internationally. The roles of the Inns will continue to evolve as they adapt to the rapidly changing conditions of English society and to new needs in the lives of its people.

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THE ENGLISH LEGAL PROFESSION

The reference in the title to "the legal profession in England and Wales" requires some elaboration.

1. Two professions

In England there are two distinct legal professions: solicitors and barristers. They work closely together in the supply of legal services to the public. Transfer from one of the professions to practise in the other is permitted on complying with certain formal requirements.

There are about 150,000 practising solicitors. The Bar is much smaller, there being about 15,000 barristers in independent practice. When I was called in 1964 the number in practice was around 2000.



The functions and activities of the two professions differ, though there is some overlap. Each profession has its own functions, qualification and training requirements, organisation, and regulatory and disciplinary procedures.

2. Solicitors

Solicitors do not belong to an Inn of Court. Their professional body is called the Law Society. Solicitors work mainly in law firms which, like barristers' chambers, have tended to grow larger, some think too large, in recent years as a result of mergers, the opening of offices overseas and the increase in demand for legal services generally. Most solicitors practise either in partnership or as employees in offices operating in most cities and towns.

Some solicitors, like some barristers, are not in independent practice, but choose to work in full time employment for the government and for other public authorities or in the legal departments of commercial enterprises.

Firms of solicitors offer a wide range of legal services direct to the public, such as general legal advice, the processing of transactions and the drafting of documents, such as wills and property transfers. Some solicitors act as advocates in litigation, usually in the less complicated cases and in the lower courts. More often solicitors instruct a barrister to act for the client, to advise on the conduct of the case and to argue it in court with the benefit of professional assistance and support from the instructing solicitors.

The split between solicitors and barristers resembles that in the medical profession between General Practitioners (GPs) and the more specialised Consultants and Surgeons. This division is reflected in membership of different Royal Colleges for GPs, Physicians, Surgeons, and other specialist practitioners of medicine.

3. Barristers

Barristers are quite like Consultant Physicians and Surgeons in that their professions are referral in character and tend to be more specialised. The normal route followed by a client to professional contact with a barrister is by going initially to see a solicitor about a problem. The solicitor may advise

that it is in the best interests of the client to consult a barrister for advice and to act on behalf of the client in proposed and actual litigation.

Like many solicitors, barristers now practise in larger groupings than they used to when I started practice. My Chambers had 5 members when I joined. It had grown to 12 by the time I left and now it has over 20 members, which is small by modern standards. Opinions differ about the benefits of this change in scale for practitioners and their clients.

An increasing number of those who qualify as barristers choose to be employed in the legal departments of public bodies and companies rather than go into independent practice.

Barristers in independent practice belong to and work from sets of chambers many of which are rented from the Inns. Most of them act as advocates in criminal and civil courts and tribunals, usually for a fee negotiated in each case rather than a salary. The art of persuasion of judges and juries demands special professional skills in the oral and written presentation of cases in court, in the use and testing of oral evidence in court and in the intellectual content of legal argument.

Barristers share the expenses of their chambers, but they do not share their profits of practice. They do not employ one another or enter professional partnerships with one another. As individuals they take full personal responsibility for the conduct of cases undertaken by them.

The individual members of chambers appoint one of their number to be the Head of Chambers. Within the chambers some of the senior barristers have embarked on the official process of applying for appointment as Queen's Counsel (QC) awarded to a small percentage of barristers in recognition of their seniority, ability, experience, reputation, and good standing at the Bar. QCs are instructed to appear, often with another barrister, in the more complicated and difficult cases. Other people in a set of chambers include junior barristers of varying seniority, their recently qualified pupils and support staff headed by a Barristers' Clerk.

4. Fusion

There have been discussions from time to time about fusing the professions as a possible way of improving efficiency, cutting costs, and speeding up delivery of services. That has not yet happened. It probably never will. In the English adversarial criminal and civil judicial system, which has enjoyed a continuous and stable history over many centuries, the public interest in a separate body of independent advocates is still generally accepted as outweighing the perceived advantages of larger fused or multi-disciplinary practices.

GRAY'S INN

How does Gray's Inn fit in to the above professional framework?

1. Origins

History supplies some answers. Originally there were many more Inns than there are now. All that is left of most of them are a few buildings and place names as evidence of their former existence.

The four Inns of Court date from late medieval times, 14th /15th centuries and grew up at about the same time as the colleges of the two Universities of Oxford and Cambridge. They were places where students went to live and learn the Common Law. The system is unique in the legal world. The bodies called Inns of Court in the USA do not perform the same professional role.

In many respects the four Inns of Court are alike, though they make a point of how much they differ from one another. They co-operate closely with one another informally and formally through the Council of the Inns of Court.

2. Location

Their historic buildings are all close to one another north and south of the Royal Courts of Justice in the Strand and close to the boundary with the City of London. Each Inn has a hall which is used for communal eating and other gatherings, a library, a chapel, a garden and extensive accommodation for offices (called chambers) tenanted mostly by barristers for their professional use.



3. Continuity and stability

The Inns have enjoyed an unbroken history as honourable and learned professional societies. They are rather like the guilds of craftsmen that grew up in many parts of Western Europe. The Inns' craft was that of advocacy at the Bar. ("The Bar" derives from a barrier in early court rooms marking the physical separation of the court officials such as the judges, from the parties, their legal representatives, and the public.)

4. Functions

The functions of the Inn include the admission, education, training, well-being and financial assistance of law students. Once admitted they are members for life, even if they later become judges as in the notable recent instances in the Inn of the President of the Supreme Court (Lady Hale), the Lord Chief Justice (Lord Thomas) and the President of the Court of Appeal (called the Master of the Rolls -Lord Etherton).

The path to practice as a barrister follows three stages-academic study, vocational training on approved courses and at Inn qualifying sessions and a year as a pupil of a practising barrister.

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The first step is to study for and obtain a university degree. Students study either on a law degree course for 3 years or, in the case of those with a non-law degree, on a post-graduate course for one year leading to a diploma in law.

The second stage is vocational. It involves being taught various skills required for legal practice. Students must attend a Bar Practical Training Course for one year at an approved institution such as the College of Advocacy in London, or somewhere outside London. The courses cost up to £20,000. Critics, who are not always the best judges of the quality of instruction, complain that some courses are not worth it.

Those courses are coupled with qualifying sessions organised at and by the Inn itself. The Inn helps students with the award of generous scholarships and grants to help meet the cost of the vocational courses.

The 12 qualifying sessions in the Inn concentrate on learning advocacy and litigation skills from barristers and judges by taking part in moots, mock trials, debates, and lectures as well as social activities and events. They replaced the earlier system which applied to me in the 1960s of the compulsory eating of 36 dinners at the Inn spread over 3 years. The programme of dinners also had its critics, though there was more to it than just eating and drinking.

Learning how to talk to and get on with other people over a meal is a valuable exercise in human relations. It should not be under-estimated. Legal practice demands more of its exponents than intellectual ability and the ambition and will to succeed.

The third and final stage is a year's apprenticeship with a practising barrister in a set of chambers. It is called pupillage, a form of mentoring or professional parenting rather than a course of formal instruction. The pupils go to court with their pupil master and sit in on meetings with clients to discuss cases and so on. They learn how to behave as a barrister towards clients, professional opponents, judges, court officials and colleagues.

Advocacy, let us not forget, is a very special sort of human behaviour in a formal setting, for a serious purpose and carrying a burden of professional trust and responsibility. Like it or not, barristers are judged by how well they behave in and out of court, which is part of doing the job, as well as by their intellectual gifts, professional personality, and powers of persuasion.

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The entire educational and training programme takes at least 5 years to complete before starting to practise at the Bar. In order to practise it is then necessary to find and be taken on as a tenant in and become a member of a set of chambers, an important first exercise in making a good impression on fellow professionals.

5. Organisation

The Inns are unincorporated societies, and were not formally created by legislation, charter, or registration. What have been described as the Universities of the Common Law had obscure and informal origins. Their students were taught in practical exercises, such as moots and readings, how to argue points of English common law in the courts, as distinct from learning civil law taught at the universities of Oxford and Cambridge.



Many famous figures in English history have been associated with the Inns of Court. Each Inn has members of the Royal Family as honorary members of its governing body of Benchers-in the case of Gray's Inn they are the Prince of Wales, the Duchess of Cornwall, and the Duke of Gloucester. (This is so even though the prosecuting counsel, John Cooke, and the Presiding Judge at the trial of Charles I, John Bradshaw, leading to his execution in 1649 were both members of Gray's Inn.)

Other members of Gray's Inn included Thomas Cromwell, Secretary of State to Henry VIII, the poet, Sir Philip Sidney who famously died in the wars for the liberation of the Low Countries, William Cecil, Secretary of State to Queen Elizabeth I for most of her reign and Francis Bacon, 17th century Lord Chancellor, writer, and renowned Renaissance philosopher. In more recent times the Honorary Benchers included Winston Churchill.

Shakespeare's play *The Comedy of Errors* was first performed in Gray's Inn and *Twelfth Night* in the Middle Temple Hall, the most beautiful and historic of all the halls.

The Inns are governed by bodies of elected Benchers who work through committees responsible for management of the property, finances and affairs of the Inn, the organisation of education and the award of scholarships, and the social life of the Inn.

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The Benchers elect one of their number each year to become the Treasurer, who chairs meetings and ceremonies, such as Call Night, and represents the Inn at many events and occasions during the year of office.

The day-to-day executive functions in running the Inn are performed by staff headed by a full time Under-Treasurer as chief executive, often a high-ranking ex-military person, who understands the oddities of human behaviour in the young and the old and knows how to run an unusual institution in an orderly, dignified, and efficient way.

Most barristers in independent practice have their chambers in the Inns, but there are flourishing local Bars with chambers in big cities in other parts of the country, such as Manchester, Birmingham, Liverpool, Leeds, Bristol, and Cardiff.

INTERNATIONAL ASPECTS

Gray's Inn and its members have forged strong long-lasting links with legal professions and judiciaries in other countries. Over the last 2 years normal visits to and by the Inn have been curtailed by the covid 19 pandemic. It will take some time for normal levels of hospitality and exchange to recover.

1. Origins

English history explains the early international links. As they explored and settled overseas the English took with them English law, and some of its practices and its institutions - to North America, The Caribbean, India, Sri Lanka, Pakistan, Africa, Australasia, New Zealand, Hong Kong, Singapore and so on. It has been estimated that now about 1/3rd of the world's population is subject to English law in various forms and as developed to suit local conditions. Many countries live with a legacy of English law, not least as a result of continuing expression in its living language. In London the Judicial Committee of the Privy Council still hears appeals from some of the smaller members of the Commonwealth.

Originally most of those who practised law and adjudicated in the courts of other countries had been called to the Bar by Gray's Inn or one of the other Inns. For example, both Gandhi and Nehru, the first Prime Minister of India, were called to the English Bar.

That large- scale reception of English law thus formed and still underpins an international network of informal legal links. As happened in the case of Rome the Law has a way of persisting long after the parental power of politics and government has diminished and disappeared

2. Examples of International contacts

The Treasurer of Gray's Inn this year is Sir Peter Gross, a retired Appeal Judge. He re-iterated recently that the Inn has a role to play internationally. When he was in the Appeal Court, he was the Lead Judge in International Relations. He has made recent overseas visits to Iraq, Jordan, Brunei, and Uzbekistan.

Other important links were established in the UK's 40 years membership of the European Union. When I was Treasurer of the Inn in 2005, I was invited to Paris by the Batonnier of the Paris Bar. I was shown round the Palais de Justice, sat in on a criminal trial and visited the Bar School. That was part



of the annual Paris Bar exchange for young barristers and avocats, the French to London and the English to Paris as an exercise in comparative law, as well as in professional, cultural, and social life.

There were also annual exchanges with mooted teams from Law Schools in the USA, visiting speakers and, with the co-operation of all four Inns, the award of Pegasus Scholarships which financed working visits by young lawyers to overseas law firms and young lawyers coming to England to spend time in chambers, in the offices of city law firms and at law schools.

At other times I met EU judges and other national judges on visits to the court in Luxemburg and attendance at conferences in Stockholm, Krakov, Florence, Milan, and The Hague. Over the years I took part in annual visits to the Inn by members of the Paris Bar, exchanges under the Pegasus Scholarships with many overseas countries, mooted teams from US Law Schools and so on. I went on judicial visits to the US Supreme Court twice and a group of their judges came here to London and to Edinburgh. I also made visits to lawyers and judges in Hong Kong, Trinidad, the Bahamas, China, New Delhi and Mumbai, the Channel Islands, Ghana, Cape Town and Johannesburg, Philadelphia, and Ottawa.

3. International lawyers

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Members of the Inn have developed links with and influence in International Courts and Tribunals. I was taught International Law by Sir Humphrey Waldock, who was a Bencher of Gray's Inn, Professor of Public International Law in Oxford, a judge of the European Court of Human Rights in Strasburg and later President of the International Court at the Hague. Professor Waldock followed in the footsteps of Lord McNair and was in turn followed by Sir Ian Brownlie and Professor James Crawford, who both sadly died at the pinnacle of their careers.

Over the last 40 years other members of the Inn, such as Lord Slynn, have achieved prominence in the study and practice of European Union Law and in appointments to judicial offices in its courts and tribunals.



CONCLUDING REMARKS

1. The ideal and the complacent

An inspirational account of the Inns of Court was that of England's greatest legal historian, FW Maitland, nearly 150 years ago. He described them as places of vigorous intellectual effort peopled by worldly and gregarious people arguing, learning, and teaching as great mediators between life and logic, a reasoning reasonable element in the English nation.

The idea of a body of "great mediators" blessed with the quality of reasonableness is attractive in troubled times. But the Inns, like all human institutions and their members, are flawed. They do not always live up to their ideals. To believe otherwise is complacent, which is the most dangerous flaw in any institution or person.

2. Critics

Many long-established institutions are having a hard time. They are open to attack from nationalists and from populists. They also suffer from neglect and lack of active support in an age increasingly dominated by new and very different forms of organisation generated by communications technology and social media.

The Inns are criticised for being "exclusive" and being run by "out of touch" members of a professional elite for their own benefit. Another charge is inefficiency in failing to keep up with changing times. Like other ancient institutions the Inns are easy targets of ridicule for outworn traditions, outdated customs and ceremonies and pompous sounding offices and titles.

Not all the criticisms have been fair or well informed. Developments in science and technology, in politics and society and their relevance to teaching and training methods certainly need to be kept under regular review, as do the subject matter of courses, professional exercises and lectures and concerns whether the organisation truly reflects and represents relevant interests.

3. Reacting to criticism

Thoughtful and intelligent critics with constructive proposals for improvements of all kinds are always helpful. There is everything to be gained by listening to them patiently and with an open mind. Those who are reluctant to listen have probably stopped thinking or, what is almost the same thing, have lost touch with reality. By far the worst mistakes are made by people who are so complacent that they think that they do not need to take any notice of what other people think.

It is sensible to resist the temptation to change things just for the sake of change. Care should be taken to preserve what is still valuable. It is irresponsible to throw away what has worked reasonably well for centuries without first thinking carefully about what, if anything, to put in its place. That is where constructive criticism can help to improve the work of Gray's Inn in this country and in the nature and extent of its international relations.

AUTHOR: Sir JOHN MUMMERY, formerly a member of the Court of Appeal of England and Wales. Bencher of Gray's Inn (member of the governing council).

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NATIONALISM, POPULISM, AND IDENTITIES:

CONTEMPORARY CHALLENGES

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