

English Court of Law and Judges and their Robes

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Introduction

'In Chancery

LONDON. Michaelmas Term lately over, and the Lord Chancellor sitting in Lincolns Inn Hall. Implacable November weather. As much mud in the streets as if the waters had but newly retired from the face of the earth. Smoke lowering down from chimney-pots, making a soft black drizzle, with flakes of soot in it as big as full-grown snow-flakes gone into mourning, one might imagine, for the death of the sun. Horses, splashed to their very blinkers. Foot passengers, jostling one another's umbrellas in a general infection of ill-temper, and losing their foot-hold at street-corners.

Fog everywhere. Fog up the river, where it flows among green aits and meadows; fog down the river, where it rolls defiled among the tiers of shipping and the waterside pollutions of a great (and dirty) city. Fog on the Essex marshes, fog on the Kentish heights. Fog creeping into the cabooses of collier-brigs; fog lying out on the yards, and hovering in the rigging of great ships; fog drooping on the gunwales of barges and small boats. Fog in the eyes and throats of ancient Greenwich pensioners, wheezing by the firesides of their wards; fog in the stem and bowl of the afternoon pipe of the wrathful skipper, down in his close cabin; fog cruelly pinching the toes and fingers of his shivering little prentice boy on deck. Chance people on the bridges peeping over the parapets into a nether sky of fog, with fog all round them, as if they were up in a balloon, and hanging in the misty clouds.

*Gas looming through the fog in divers places in the streets, much as the sun may, from the spongey fields, be seen to loom by husbandman and ploughboy. Most of the shops lighted two hours before their time as the gas seems to know, for it has a haggard and unwilling look. The raw afternoon is rawest, and the dense fog is densest, and the muddy streets are muddiest near that leaden-headed old obstruction, appropriate ornament for the threshold of a leaden-headed old corporation, **Temple Bar**. And hard by Temple Bar, in **Lincolns Inn Hall**, at the very heart of the fog, sits the **Lord High Chancellor** in his High Court of Chancery.*

*Never can there come fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition which this **High Court of Chancery**, most pestilent of hoary sinners, holds this day in the sight of heaven and earth'.*

I make no apology for quoting the opening paragraphs of Charles Dickens' Bleak House. In his fine book he conjures up a sense of London in the middle of the 19th century. Today with the Clean Air legislation the fogs have gone but we still have lots of rain and the over Thames at low tide is still very muddy. We still have the Temple Bar, Lincolns Inn Hall and the High Court of Chancery and there still is a Lord High Chancellor. This talk is about this and other courts and the ancient robes and wigs worn by the judges and their importance.

I do not propose to cover the English Legal system, nor its history nor the structure of the courts in any detail. Each of these areas merits a talk on its own. However, I will provide an outline of key aspects of these areas so that you can best understand the context of the main subject of my talk.

I will cover, in some detail, the three of the main courts buildings in England - all in London: The High Court in the Strand, The Old Bailey on the Western edge of the City of London and the UK Supreme Court on Parliament Square opposite the Houses of Parliament. I will also look at the structure of a typical criminal court room. How the court is constructed has meaning and its design is deliberate and has historic and contemporary meaning.

I will briefly look at the four ancient Inns of Court. These are all in central London all close to UCL and open like the courts to the public on week-days.

I will also look at the colourful, historic robes and wigs of the judges and the lawyers appearing in court. The help single out the wearer and ascribe them with a certain authority.

Background

To provide some context here is a brief introduction to some key elements. I will only cover these areas for England and Wales ('known as 'English Law'). Scotland has its own very separate legal system and traditions and history.

The Common Law

There are two main sources of law in England:

- from Statute (eg Acts of Parliament) and
- judge-made law based on deciding law cases and the reasons given by judges which may form legal precedent.

It is a peculiar arrangement the origins of which are lost in the midst of time and probably go back to Anglo-Saxon times more than a thousand years ago.

Common Law stands in contrast to Civil Law used by most other countries with its origins in Roman Law.

I said most countries but there are many important nations that use Common Law (eg Singapore, Hong Kong, India, Australia, Canada, USA etc).

No one system is better than the other - they are just different.

As I said Common Law is based on what judges say in their judgements and this in turn is based on legal precedent - more on this later. The importance and relevance of these judgements can last several centuries. My law students will spend hours examining the judgements from the 19th Century and a few back to Queen Elizabeth in the 16th Century.

Judges will examine the facts of each case based on evidence presented by two lawyers (known as barristers) representing the parties in conflict arguing the case before the judge in open court - a highly adversarial system. They will present documentary evidence and examine and cross-examine witnesses giving oral evidence to the court. They will mention ('cite') past legal judgements which support their respective cases.

At the end of the hearings the judge will go away to consider their judgement. The judge (in some courts sitting with fellow judges) will later (sometimes months later) present their written judgement with a final decision. A judgement may be a hundred pages or more. It is a legal public document which the judge will first read out in court.

Criminal law cases are similar but there may be a jury as well.

The losing party may seek to appeal the case to a higher court on a matter of how the judge interpreted the law - not on an issue of fact. The courts need to grant leave to appeal - with most cases it is not automatic.

History of the Law in England

Broadly English law is divided into criminal and civil law (not to be confused with Civil Law systems). Criminal law cases are prosecuted by the state (known as the 'Crown' for these purposes) and can result in fines, imprisonment or some other restriction on an individuals liberty.

Civil Law covers everything else and largely involves a dispute between two parties adjudicated upon by the courts.

As I said I am not going to spend too long on the history of the English legal system. In summary England has had a number of legal systems operating largely in parallel with, for example, the Court of Chancery (administering a separate set of laws based on principles of Equity and originally based on royal prerogative), the Ecclesiastical courts (applying church law), and the Admiralty court (dealing with shipping and trade matters).

Criminal law was generally administered locally by non-lawyers known as Justices of the Peace and later as magistrates. The most serious crimes were considered by the Courts of Assize which hear both criminal and civil cases (ie those cases which did not involve criminal law). The Old Bailey court is the most famous of the Assize Courts. It only heard criminal law cases.

Magistrates still hear the vast majority of criminal law cases. The most serious cases are considered by Crown courts.

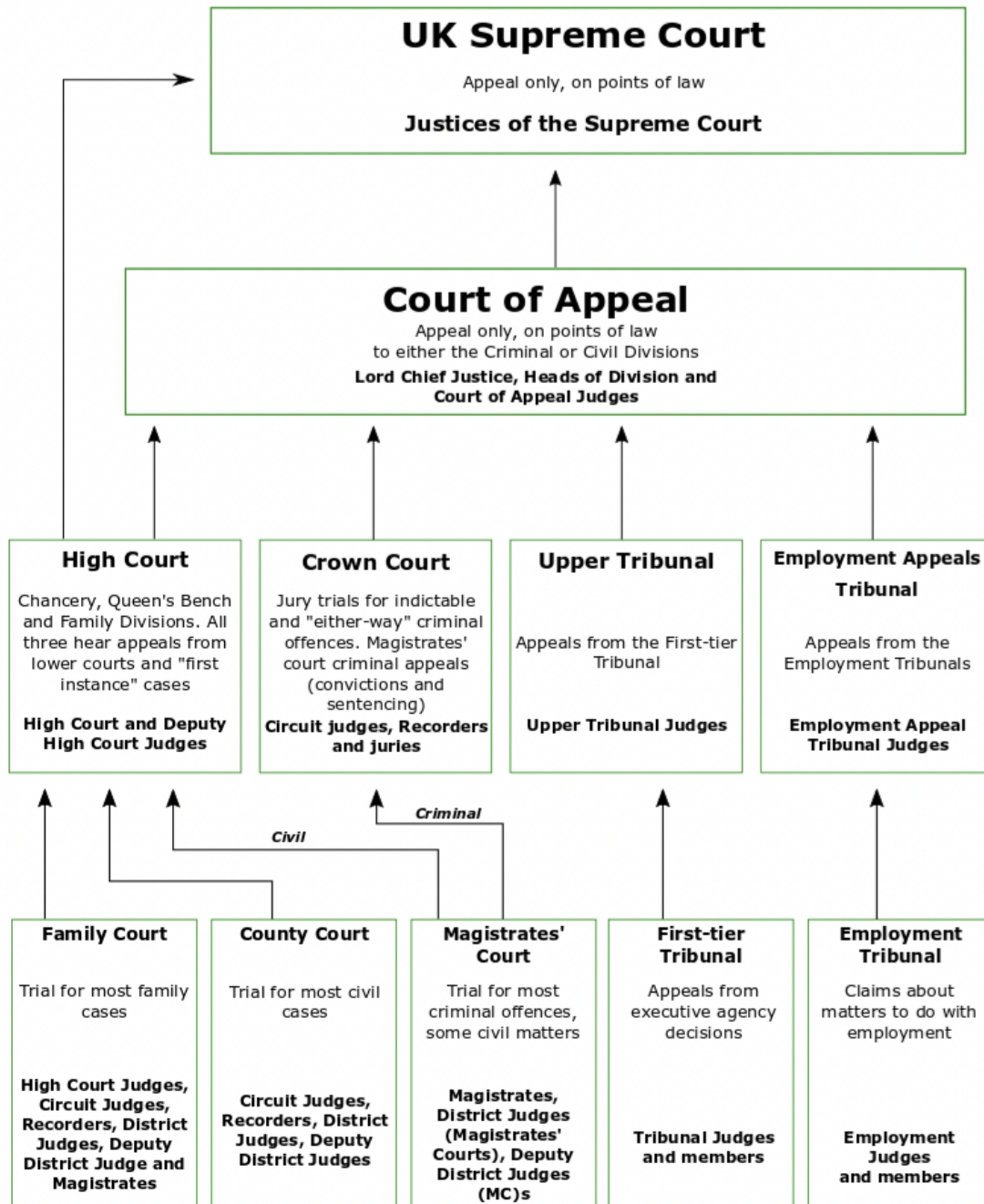
Juries used to decide the outcome of most civil and criminal cases and their history goes back to Anglo-Saxon times. In criminal law cases it is based on the concept of the accused being tried by their peers. Almost no civil law cases are considered by juries. However, juries are still very common in the more serious criminal law cases heard by Crown courts.



AN INTER-WAR JURY BEING SHOWN EVIDENCE

Outline of Court Structures

Here is a chart of the court structure in England. I am not going to discuss the tribunal system on the right-hand portion of the chart.



County courts have replaced the old Assizes for civil law cases. Cases involving large claims will go straight to the High Court. The most famous of these High courts is the one in the Strand - more on this later. Family courts specialise in family matters such as inheritance and matrimonial property and child disputes.

There is a system of appeals to courts further up the hierarchy on matters of law and only if leave to appeal is granted. Ultimately a few cases involving the most difficult issues of law will be considered by the Court of Appeal and possibly the Supreme Court.

Legal precedent

Central to legal precedent is the concept of 'political legitimacy'. Lord Bingham described it as a "cornerstone of the legal system". That there exists a corpus of law - that the past will determine the future is central, in England, to our understanding of the law.

In the Anglo-Saxon kingdoms the 'various kings drew on the laws of other kingdoms to legitimate their own' law making. For example Alfred the Great said that his laws were drawn from the most just that he found looking back at the past to Offa, King of Mercia and others.

This reference to the precedent of past law acted as a constraint on monarchs. As cited by Bodin in his 16th century book on Sovereignty the kings of France would not be bound in law by the decisions of their predecessors. Nor is the king bound by the common law of his people since he gains his legitimacy from God and by necessity his laws are divinely inspired and take precedence over man-made common law.

At the risk of presenting too 'Whiggish' view of English history the so-called "Glorious Revolution" of 1688 was as much a conflict between the courts and the king as between the latter and Parliament. The corpus of the nation's law included not just legislation but also custom and precedent. Included in the coronation oath of William and Mary was the requirement to govern according to the nation's laws and customs. In parallel there was an increased separation of the courts and judges from the executive through the 17th century. While Montesquieu overstates the separation of powers in England the political legitimacy of the judges and the courts rested on the reception of them applying a body of judge-made law seen as part of the national 'inheritance'.

The judge does not simply interpret statute but is also a parallel law-maker in their own right. There was a similar system in place in Roman Law for the incoming Praetor Urbanus to make Edicts. But around 125 AD these were codified and could not be amended without the formal approval of the emperor.

However, the modern form of judicial precedent only emerges in the mid-18th century and becomes firmly established from the early 19th century with the rise of 'star' judges such as Lords Mansfield, Eldon, etc and an organised system of high-calibre court reporters.

In parallel, we see the development of contract and commercial law driven by the needs of an increasingly trading nation - applied at a distance as the empire expands. Those that intermediate the law - legal advisers. The latter need to know how a contract to apply to parties in, say the Indies, which may need to subsist for many years will work in legal terms. This together with a growing network of local judges all need legal reference points to ensure certainty and consistency between parties.

At the same time the role of judges changes through the 16th century onwards as they took on and appreciated their law making role. Rising to this new position the best of the new era judges took many more factors into account including the fact that their words were now being taken down verbatim in the newly invented Pitman short-hand. What they said would reflect on their reputation among their peers and lawyers and lawmakers generally. It could be a factor in their advancement up the new formal hierarchy of courts.

Richard Posner says that while the judiciary in England are independent their ability to use their discretion is reigned-in the perceived openness of the court system to public scrutiny, the small homogenous pool from which senior judges are drawn and the important role of judicial precedent.

In addition, the process of judging could be more efficient as precedent became a form of 'shorthand' with an understanding between advocates and the bench - there was little point in arguing matters where the law had been clearly stated in previous authorities.

Court architecture

In part the law is legitimated by both the external and internal the architecture of its buildings.

Prior to the 1960s court buildings were very imposing; designed to impart the power of the law to the observer. Many of the existing buildings date from the 19th century. There was a move in the 1960s to make them more demotic, modern and approachable. The result was functional buildings but designed without a clear understanding of the law and its power. They often look like municipal government offices. There has been a move back to constructing imposing building buildings such as the UK's Supreme Court and the Westminster Magistrates Court.

For example let's look at the Royal Courts of Justice in the Strand, the Central Criminal court ('The Old Bailey'), and the UK Supreme Court.

Royal Courts of Justice in the Strand



History

In the early C19 the London Law Courts were grouped alongside the Palace of Westminster. However, these buildings were not suitable for a modern global nation. Consequently, a Parliamentary Select Committee was set up in 1841 to build a new High Court and cheap slum property was bought on the Strand close to the Temple and Lincoln's Inn.

A competition was mounted in 1866-1867 and eleven architects were invited to compete, including some of the most respected members of the profession at that time, with a guaranteed fee for those who participated. The competition entries were shown in a public exhibition at Lincoln's Inn. All but one alternative scheme were in a Gothic style, although this had not been a stipulation. Press comment favoured the designs of William Burges in a French Gothic style, reminiscent of Carcassonne, and Alfred Waterhouse. However the joint winners were declared as EM Barry, for the quality of his planning, and GE Street for his elevations. The two could not agree and in 1868

Street became the sole architect subject to a radical revision of his initial plan. The foundation stone was laid in 1874 and opened by Queen Victoria in 1882.

In many ways this imposing building looks like a medieval castle or cathedral with its towers and turrets.

You enter through a grand doorway into a great central hall. Off this is the Judge's Hall or 'Bear Garden'. It is a lofty room with a colonnade to one side, above which is a gallery. It was intended as a waiting room for those visiting the offices of the judges or legal departments.

Court rooms were all designed to have an individual appearance. The largest is that of the Lord Chief Justice. The majority have windows to one side and are also top-lit.



The central entrance

Court room No. 4

The Central Criminal Court



Justice on the top of the court

The original court was attached to Newgate prison. The latter was closed in 1902. The court was an Assize court for the City of London. The medieval building was destroyed by the Great Fire of London in 1666. The building was rebuilt several times in the 18th and 19th century.

The main purpose of the court from the mid-19th century was to hear high-profile cases.

Public hangings were carried out in the street outside until 1868 and feature in Charles Dickens' book 'Great Expectations'.

The condemned would be led along Dead Man's Walk between the buildings, and many were buried in the walk itself. Large, rowdy crowds sometimes gathered and pelted the condemned with rotten fruit and vegetables and stones.

The present building dates from 1902 and was officially opened by King Edward VII in 1907. It was designed by E. W. Mountford who started work at an architectural firm in Bloomsbury.

Above the main entrance is inscribed "Defend the Children of the Poor & Punish the Wrongdoer".

On the dome above the court stands the court's symbolic gilt bronze statue of Lady Justice by sculptor F. W. Pomeroy. She holds a sword in her right hand and the scales of justice in her left. The statue is popularly supposed to show blind Justice, but the figure is not blindfolded.

The building was badly damaged by German bombers in 1941 and subsequently repaired.

In 1973, the Provisional IRA exploded a car bomb in the street outside, killing one and injuring 200 people. A shard of glass is preserved as a reminder, embedded in the wall at the top of the main stairs.

UK Supreme Court

The UK Supreme Court is relatively new. It began in 2009 replacing the old Appellate Committee of the House of Lords.

The Court is based the former Middlesex Guildhall. The building may look old but it was constructed in the early years of the 20th century. It was designed by J. S. Gibson in an "art nouveau gothic" style, and built between 1906 and 1913.

The Supreme Court is the country's highest court (it also covers Scotland and Northern Ireland) and address lot of publicity and protest.



Exterior of the UK Supreme Court

Hearings are on points of law and are largely based on submitted papers with informal hearings with no gowns or wigs.

The most famous case was the Courts unanimous striking down of the government's attempt at suspending Parliament ('proroguing') in 2019. Lady Hale was President of the Court at the time and read out the judgement wearing a large spider brooch. Lady Hale has since retired from the court and is now an academic at UCL Laws Faculty.



Interior of the UK Supreme Court - note lack of robes and wigs



Lady Hale, President of the UK's Supreme Court giving the Court's judgement on the attempted suspension of Parliament.

Judicial Robes

Judicial robes indicate the judge's court each with their own colours and styles.

Criminal courts have retained the traditional 17th/18th century dress.

Other courts have a working-style version of the more elaborate ceremonial dress. This is a robe worn over a business suit or dress, and a short 'bench wig'. The long wig is kept for ceremonial functions. Since 2008 worn a new design of working robe with no wig, collar or bands; this plain, dark, zipped gown (of 'midnight blue gabardine with facings in navy blue velvet').

The status of the wearer is indicated by a pair of different coloured tabs below the collar: Appeal Court judges wear gold tabs, High Court judges wear red tabs, Masters and Insolvency and Companies Court Judges of the High Court wear pink, and District judges wear blue.

The Lord Chief Justice

The lord Chief Justice is head of the criminal court of appeal and also head of the judiciary.

The Lord Chief Justice, dresses like a High Court Judge with the distinction of a train to his scarlet robe. On ceremonial occasions he wears the scarlet and fur hood and mantle, and in addition a gold chain of office in the form of a collar of esses.



Lords Justices of Appeal

Judges in the Court of Appeal, Criminal Division, wear the same black silk gown and court coat as QCs, together with the short bench wig. Judges of the Civil Division did likewise until 2008, but they now wear the new-style robe.



The use of plain black gowns in the Court of Appeal dates from the origin of the Court in the 1870s, when it was populated by Chancery judges who were accustomed to this form of dress. On ceremonial occasions, all Judges of the Court of Appeal wear the full-bottomed wig, together with a black silk damask gown, trained and heavily embellished with gold embroidery, over court coat, lace cuffs and jabot, black breeches, stockings and buckled shoes.

High Court Judges

On ceremonial occasions, all High Court judges wear the traditional full-bottom wig, the furred scarlet robe (as described below, with scarf, girdle and tippet), with a matching hood and mantle in addition. Underneath, breeches are worn with stockings and buckled shoes. The judicial black cap is carried.

Queen's Bench Division: When dealing with first-instance criminal business a High Court judge of the Queen's Bench Division wears a scarlet robe with fur facings, a black scarf and girdle (waistband), and a scarlet 'casting-hood' (tippet) worn over the shoulder. In addition, the judge wears a wing collar, bands, and a short wig.

In civil cases, High Court judges wear the new-style robe with red tabs at the collar, and no wig, collar or bands. Before 2008, these judges wore: in winter a black robe faced with fur, a black scarf and girdle and a scarlet tippet, and in summer a violet robe faced with silk, with the black scarf and girdle and scarlet tippet.

On red letter days (which include the Sovereign's birthday and certain saints' days), all judges of the Queen's Bench Division wear their scarlet robes.

Chancery and Family Divisions: Until 2008, when working in court, judges in the Family and Chancery divisions of the courts wore the same black silk gown and court coat or bar jacket as QCs. Since 2008 they too have worn the new design of robe in court.

High Court Masters and Insolvency and Companies Court Judges: Masters (in both the Queen's Bench Division and Chancery Division) and Insolvency and Companies Court Judges (in the Chancery Division) formerly wore black gowns, white collar and bands, with short wigs, when sitting in open court. Since 2008 they wear the new design of civil robe with pink tabs at the neck and no longer wear wigs. Ceremonially, they wear a black court coat, waistcoat and gown, with black breeches, stockings, buckled shoes, white lace jabot and cuffs, and a long wig, similar to the ceremonial costume of Queen's Counsel.

Circuit judges

Circuit judges (in the County Courts or the Crown Court) wear a violet robe with lilac facings, introduced in 1919. As well as a girdle, the judges wear a tippet (sash) over the left shoulder - lilac when dealing with civil business and red when dealing with crime. Since autumn 2008, circuit judges in the County Court have not worn wigs, wing collars or bands; however, circuit judges in the Crown Court retain the wig, wing collars and bands.

Prior to introduction of the violet robe, Circuit judges usually wore a plain black gown and short wig; this older tradition has been retained by the Central Criminal Court.

On ceremonial occasions, circuit judges in addition to their violet robes wear a matching hood, long wig, black breeches, stockings and buckled shoes, and a lace 'jabot' instead of bands.





The Lord Chancellor

The Lord Chancellor is a political appointment and is placed in charge of the Ministry of Justice. There also Speaker in the House of Lords. They have elaborate formal robes worn on state occasions such in this picture where the Queen with her late husband , The Duke of Edinburgh is opening the new session of Parliament . In front of her is the former Lord Chancellor, Lord Clarke. Incidentally, the boys on the left of the picture of choristers of the Chapel Royal. They are part of the Royal Household and provide the music for the monarch. The institution dates back to the 12th century.



Here is another picture of the same Lord Chancellor visiting the Guildhall in the City of London with the Lord Mayor's ceremonial guard of the Honourable Artillery Company's troop of Pikemen and Musketeers. The HAC is a modern an active military unit dating back to 16th century and is part of the British army reserve. The ceremonial uniforms date back to the early 17th century. They can be seen each November guarding the Lord Mayor's coach when the new lord Mayor takes office each year and holds a pageant through the City of London.



Part of the HAC ceremonial guard with the new Lord Mayor's coach in front of the Royal Courts of Justice



The HAC and Lord Mayor's coach in the City of London in front of the Bank of England and the Royal Exchange

Barristers' Robes



Helena Normanton (1882 – 1957) was the first woman to practise as a barrister in England.

Barrister's still wear wig, gown, and bands in court.



Conclusion

The court architecture and the robes are deeply symbolic and imbued with a long history. Everything covered in this note is in London and open to the public. You can watch the Queen's procession to open the new Parliament, visit the various courts to view justice in action and see the colourful judicial robes especially during ceremonial events and be entertained in November by the Lord Mayor's procession.

