Vultures, Whores, and Hypocrites: Images of Lawyers in Medieval Literature

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Criticism of the legal profession in American society in recent years has become so common, and at times so virulent and mean–spirited, that lawyers sometimes feel uneasy about their deteriorating public image. The American Bar Association has expressed alarm about the disparagement of the profession that has become common currency in political[1] and journalistic discourse.[2] The dean of the Yale Law School deplores the miserable state of lawyerly ethics.[3] A former chief justice of the U.S. Supreme Court complains about the decline of lawyers' professional standards.[4] Jokes about lawyers, ranging from the merely snide to the seriously nasty, form a staple of recent American humor.[5] Even the courts have gotten into the act, sending lawyers who were also public officials to jail for illegal

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[1] E.g., Dan Quayle, speech to the American Bar Association, reported on the front page of the *New York Times* 8/14/91..

[2] E.g., a random selection of stories from the *New York Times* over the past decade: "Lawyers: Villains for an Election Year," 2/7/92; "Bashing the Bar: A Treasured and Still Thriving Tradition," 1/18/91; "Cracking Down on Sex with Clients," 3/15/91; "The Lawyers' Race to the Bottom," 8/6/93; "Milbank, Tweed is Accused of a Conflict," 2/28/97; "Military Court Reviews Case in Which Lawyer Switched," 10/15/97; "Plaintiffs Win Right to Sue Lawyer in Malpractice Case," 9/11/97; "Lawyerly Disbelief at Huge Civil Award," 9/10/97; "A Client Asks: 'Weren't You My Lawyer?'" 2/17/98; "Case Study in Tobacco Law: How a Fee Multiplied in Days," 12/15/98; "Contingency Fee Windfalls Are under Attack," 2/11/94; "The New Letdown: Making Partner," 4/1/92; "And Let the Lawyers Sing: 'Glory to the Salary King," 2/4/2000; "New Trial is Sought for Inmate Whose Lawyer Slept in Court," 1/23/2001; etc., etc..

[3] Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession*.

[4] Warren E. Burger, "The Decline of Professionalism."

[5] E.g., Sid Behrman, *The Lawyer Joke Book*; Andrew and Jonathan Roth, *Devil's Advocates: The Unnatural History of Lawyers*; *The New Yorker Book of Lawyer Cartoons;* Jess M. Brallier, *Lawyers and Other Reptiles*. See also Marc Galanter, "The Faces of Mistrust."

activities in the Watergate affair,[6] while major law firms are fined for assisting fraud in the savings and loan scandals.[7]

Although it may not greatly comfort members of the beleaguered profession, it seems useful to point out that this state of affairs is hardly a novelty. Criticism of lawyers is neither peculiarly American nor particularly new. It is in fact very old and very widespread. Resentment of lawyers has a long history both in popular discourse and in literature. It is, in Karl Llewellyn's words, "as natural as whiskers on a cat."[8]

In point of fact, in every society that has had an identifiable legal profession people have routinely uttered and written hostile, often ugly, remarks about the profession's members. Indeed, the more prominent and more successful lawyers become, the more bitter the resentment they attract. Since this sort of thing does not seem to happen to anything like the same degree with members of other successful occupational groups — baseball and football players, musicians, actors, and entertainers come to mind, to say nothing of Harvard M.B.A.s — the ill–feeling that lawyers inspire merits investigation and at least some attempt at explanation.

I propose to examine in this paper the faults that medieval writers found with the lawyers they encountered during the high Middle Ages (by which I mean the two centuries between about 1150 and 1350) and to venture some suggestions about the reasons for them.

Before I do that, however, I shall lay the foundation for my remarks by saying something about the treatment of the legal profession in classical Roman literature. This seems appropriate for two reasons: first, medieval lawyers drew much of their law from Roman sources. In the process they modeled many (but by no means all) of their ideas about the ways in which lawyers ought to behave upon the prescriptions for professional conduct that they found in those sources. Second,

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[6] E.g. *U.S. v. Haldeman*; *U.S. v. Liddy*; *U.S. v. Mitchell*, among others.

[7] *In re American Continental Corporation/Lincoln Savings and Loan Securities Litigation*; see also the comments in Susan Beck and Michael Orey, "They Got What They Deserved."

[8] Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study*, p. 174.

medieval writers adopted many (but again not all) of the criticisms of the legal profession that they found in classical Latin literary sources, to which they added new ones of their own.

I have a third, even more basic, reason for looking at literary treatments of Roman lawyers. Roman orators and advocates created the earliest legal profession in any recognizable sense of that term. Other societies in the ancient Mediterranean world, to be sure, had produced groups of men skilled in their law and familiar with the workings of their courts. But nowhere else — certainly not in classical Athens, nor in ancient Mesopotamia or Egypt[9] — has anyone discovered evidence of an organized occupational group whose members received formal instruction in law schools that assured their technical knowledge of legal matters, whose members were formally admitted to practice before the courts, and who were expected, at least in principle, to conform to explicit ethical standards in their legal work, and who were, again in principle, subject to disciplinary sanctions if they fell short of those standards. A legal profession in this sense first began to take shape during the closing generations of Roman Republic and reached maturity under the Empire, certainly by about 200 CE, and arguably well before that time.

The Roman legal profession had aristocratic roots, which continued to inspire its ideals, if not necessarily its practices, throughout its history. In the early generations of the Republic (founded, according to tradition, as a consequence of a revolt against Etruscan kings in 509 BCE) knowledge of Roman law and legal procedure was a monopoly held by the tiny group of wealthy and powerful aristocratic priests who formed the College of Pontiffs. While this was remarkably handy for those in the know, it left ordinary citizens, and even other aristocrats who were not members of the pontifical club, at a serious disadvantage. This led, among other things, to a further civic crisis (the traditional date is 451 BCE, which is probably not far off) at the end of which a Commission of Ten (the *decemviri*) formulated a set of statements about the substance and procedure of Roman law and had them inscribed on twelve

[9] R. Taubenschlag, "The Legal Profession in Graeco–Roman Egypt," p. 188.

bronze plaques, which were then set up in the forum, the principal marketplace in the city of Rome.

The publication of the Law of the XII Tables marked beginning of the end of the pontifical monopoly on knowledge of the law and procedure. In the aftermath of the XII Tables further secrets about the law began to leak from the pontifical archives. A member of the College of Pontiffs commenced to teach law publicly to outsiders. Legal texts and treatises became available from the booksellers. Laymen who were not members of the College of Pontiffs began to offer legal advice to clients. Litigants started to employ orators to present their cases before the courts.[10]

By the beginning of the first century BCE (and arguably somewhat earlier than that) two distinct occupational groups that we would recognize as lawyers— jurists, that is expert legal advisers (*iurisperiti, iurisconsulti*), and forensic advocates (variously known as orators, *patroni causarum, advocati*, or *causidici*) — had become accepted, indeed often prestigious, constituents of Roman society.[11] Jurists advised clients about their legal rights and obligations and might suggest how their clients could most safely and effectively pursue their objectives within the constraints that the law imposed. Jurists did not as a rule appear in court on behalf of their clients.[12] They gave advice, not forensic representation. Presenting the client's case in court was the specialty of orators or advocates. Orators seldom boasted any deep technical knowledge of the law. Their expertise lay in the arts of persuasion: tugging on heartstrings and appealing to prejudices was their stock in trade, not legal analysis. Clients relied on their advocate's eloquence and powers to charm, dazzle, cajole, entice, or bamboozle a judge or jury. The advocate's job was to present the client's deeds and

[10] Our principal source for most of this is the traditional account presented in the *Enchiridion* of Pomponius, a fragment of which survives in Dig. 1.2.2. For a critical appraisal of the tradition see Fritz Schulz, *History of Roman Legal Science*, pp. 6–22, 49–59.

[11] Tony Honoré, *Tribonian*, pp. 31–32; John A. Crook, *Legal Advocacy in the Roman World*, pp. 37–41.

[12] Bruce Frier, *The Rise of the Roman Jurists*, pp. 134–35.

motives in the most attractive way possible, not to argue about legal minutiae.[13]

Acting either as a jurist or an advocate remained what we would describe as a part–time job for most practitioners until late in the first century BCE. Providing legal advice was traditionally a service that members of the patrician elite performed for their dependents and political supporters. Orators, too, were often prominent men of independent wealth who viewed forensic advocacy both as a public service and as a way of building up political support when they ran for public office. By the time of Augustus (r. 31 BCE–14 CE), however, this was beginning to change, as increasing numbers of advocates and jurists hailed from less prestigious backgrounds and made a significant part of their living from legal work.

Whether Roman advocates and jurists as early as the beginning of the first century BCE can properly be described as professionals in the strict sense of the term set forth above may be questioned, but they had certainly become professionals according to any definition of the term by the beginning of the third century CE.[14] Even at the earlier stage, however, they were already visible enough to have attracted the attention of the censorious.

Legal expertise, as noted earlier, had long been associated with aristocratic status in Roman society. That association probably goes far to explain the persistent Roman view that experts in the law and forensic persuasion had an obligation to make their knowledge freely available and should neither charge fees nor accept gifts from those who sought advice or legal representation from them. That view took statutory form at the beginning of the third century BCE in the *Lex Cincia* (204 BCE), which, among other things, prohibited payments to orators for pleading cases in the courts.[15] This provision of the statute was, predictably, ignored. It is clear that in practice lawyers of both kinds, orators and jurists alike, normally

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[13] Cicero, *De oratore* 1.56.241; Frier, *Rise of the Roman Jurists*, pp. 140–41. By the fourth century CE the two branches of the profession, jurists and advocates, had fused into a single unified group that formed part of the Roman imperial bureaucracy; Crook, *Legal Advocacy*, pp. 188–92, discusses some of the problems in reconstructing this process.

[14] Crook, *Legal Advocacy*, pp. 41–45.

[15] *Roman Statutes*, ed. M. H. Crawford 2:741.

expected to be rewarded for their services and that clients usually did in fact pay them. A few lawyers — Cicero (106–43 BCE) is the best–known, since he bragged openly about the opulence of his fees,[16] but he was scarcely the only example — acquired vast wealth from their earnings in the courts. The *Lex Cincia*, in other words, did not prevent lawyers from charging for their services. What it did accomplish was to deprive them of a legal basis for suing to recover fees from clients who failed to pay.[17]

Generations of Roman moralists found it disconcerting, even slightly embarrassing, that lawyers continued to be paid despite the law against the practice.[18] Finally, after two–and–a–half centuries, the *Lex Cincia* was replaced by the *Senatusconsultum Claudianum* (47 CE), which established a maximum fee of 10,000 sesterces for advocates.[19] Those who took more could be prosecuted for extortion (*crimen repetundarum*).[20]

Given the attitudes expressed in the laws, it is not surprising that Roman writers found the greed of lawyers an obvious target for attacks upon these "vultures in a toga," and their "forensic piracy."[21] Advocates, charged Ammianus Marcellinus (ca 330–395), conspired to rob ordinary people of justice by selling their services to army officers and rich men, thus gaining wealth and high positions for themselves.[22]

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[16] Cicero, *Pro Murena* 4.8; Crook, *Legal Advocacy*, pp. 129–31, and *Law and Life of Rome*, pp. 90–91.

[17] In this respect, the ideal that underlay the *Lex Cincia* continued to influence legal practice in the United Kingdom until very recently indeed. Barristers in England and Wales had no legal recourse for recovering unpaid fees until last year, when the judgment of the House of Lords in *Hall v. Simons* finally overturned *Rondel v. Worsley*.

[18] Livy (59BCE–17 CE), *Ab urbe condita* 34.4.9; Pliny the Younger, *Epistolae* 5.13.9; Tacitus, *Annales* 11.5, 15.20; Th. Grellet–Dumazeau, *Le barreau Romain*, pp. 101–105.

[19] This amount was later raised to 100 *aurei*; Dig. 50.13.2 (Ulpian, *De omnibus tribunalibus*)

[20] *Fontes iuris Romani antiqui*, ed. Bruns, 1:195–200.

[21] Apuleius (ca. 125–after 170), *Metamorphoseon* 10.33; Henriot, *Les moeurs juridiques et judiciaires* 3:182.

[22] Ammianus Marcellinus, *Rerum gestarum* 30.4.2.

> If no one paid a fee for lawsuits, [according to Tacitus (ca. 56–after 140)] there would be fewer of them. Now, however, hatred, strife, malice, and slander are fostered. Just as bodily sickness gives fees to doctors, so also a diseased legal system enriches lawyers.[23]

Even lawyers could be scathing about the lust for lucre among members of their profession. Advocates, reported the younger Pliny (61/62–113), were accused of "boasting about the large regular incomes that they made by robbery of their fellow–citizens," and congratulated himself on "having kept clear of any contracts, presents, remunerations, or even small gifts for my conduct of cases."[24]

Critics complained that not only were lawyers greedy, they were also untrustworthy. They would accept your case, take your money, and then betray all your confidential information to your opponent. Tacitus claimed that "Nothing was more readily available on the market than the treachery of an advocate." He cited in support of his statement the case of a litigant named Samius who discovered that his advocate, Suillius, after accepting a fee of 400,000 sesterces from him was in collusion with the other side. Samius, in despair, went to the perfidious lawyer's house, where he committed suicide by falling on his sword. Despite the ensuing scandal, Suillius apparently continued to carry on business as usual[25] Virgil (70–19 BCE) might consign men who betrayed their clients to the depths of Hades in the afterlife,[26] but in this world the problem continued to recur.

Even a successful practitioner might concede — at least in a bad moment — that advocacy itself bordered uncomfortably close upon corruption. In a passage that survives only in a quotation by Ammianus Marcellinus, Cicero reflected, "It seems to me that he who corrupts a judge by oratory does more evil than he who corrupts a judge by money; for no one can corrupt a prudent man by money, but one can by speech."[27] The art of the

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[23] Tacitus *Annales* 11.6.

[24] Pliny the Younger, *Epistolae* 5.13.6–8.

[25] Tacitus, *Annales* 11.5–6.

[26] Virgil, *Aeneid* 6.609.

[27] Ammianus Marcellinus, *Rerum gestarum* 30.4.20; John T. Noonan, Jr., *Bribes*, p. 45.

advocate, after all, not infrequently involved turning black into white, as Juvenal (ca. 60–100) among others observed.[28]

Almost as bad as the treacherous lawyer was the careless, unprepared, or incompetent one. A bad advocate can destroy his client's case just by arguing for it, Quintilian (ca. 35–95) declared.[29] Many practitioners, he added, were so eager for business that they took more clients than they could handle and got up their cases while sitting in court.[30] Successful Roman advocates, to be sure, led busy, hectic lives. Arguing in the courts demanded physical stamina and a penetrating voice.[31] Suetonius (75–ca. 140) describes how the outcries of noisy advocates interrupted the emperor Claudius from much–needed slumbers,[32] and a constitution of the emperor Julian complained about the excessive clamor of advocates in the courts.[33]

A jurist's clients, too, could be fearfully demanding. They required attention, for one thing, at all hours. Ovid (43 BCE–18 CE) pictures the jurist roused from bed at daybreak by clients pounding on his door.[34] Horace (65–8 BCE), too, felt that an advocate had ample reason to envy the calm, easy life of the farmer.[35] The advocate's life, he maintained, was unhealthy: the stress it entailed brought on fevers and could lead to an early death.[36] Roman litigants, as well, were all too familiar with the law's delay, endemic to court systems everywhere and

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[28] Juvenal, *Saturae* 3.29; Henriot, *Les moeurs juridiques et judiciaires* 3:197.

[29] Quintilian, *Institutio oratoria* 12.1.13.

[30] Quintilian, *Institutio oratoria* 12.7.8.

[31] Crook, *Legal Advocacy*, pp. 135–36.

[32] Suetonius, *De vita caesarum*, Claudius 33.

[33] *Constitutio Juliani de postulando*, p. 7.

[34] Ovid, *Amores* 1.13.10.

[35] Horace, *Satires* 1.1.9–10. Half a millennium later Cassiodorus (485~90–580), *Historia ecclesiastica tripartita* 10.3.10, describing the life of St. John Chrysostom, remarked on the same thing: "Cumque se ad advocationem praepararet, considerans molestias litigantium iniustumque vitae propositum potius elegit quietem. Et hoc fecit aemulatus Euagrium [ca. 537–600], quoniam et ipse, dum iisdem studiis esset usus, quietam magis secutus est vitam."

[36] Horace, *Epist.* 1.7.8–9.

at all times. This, too, made clients irascible, and they in turn vented their frustrations on advocates and legal advisers.[37] Even worse, if the case was lost, no matter what the cause, blame invariably fell on the lawyers.[38]

Something startling began to happen — or rather not to happen — from early in the fifth century onward: criticism of lawyers vanished almost completely from Latin literature. It remained in abeyance for more than half a millennium, throughout the early Middle Ages. To simplify matters only slightly, criticism of lawyers vanished because there were no lawyers to criticize.

The events that brought aboutthis state of affairs are complex, but for my purposes here it may be sufficient to sketch in a few main events. From the late fourth century onward government in the West Roman Empire was increasingly in a state of chaos in consequence of incursions into the Empire by peoples conventionally described as Germanic barbarians. Both "Germanic" and "barbarian" present problems, but so far as the disappearance of the legal profession is concerned we can safely ignore them.[39] The essential point is that as "Germanic" rulers gradually took over effective control of government in the West Roman Empire the existing legal system soon fell into serious disrepair. Law schools apparently ceased to function early on in the process and within a generation or two systematically trained jurists were no longer to be found in the regions that comprise modern Italy, Spain, France, and Great Britain.[40]

The invasions and the subsequent settlement of the "Germanic" invaders effectively ended Roman government and dispossessed numerous wealthy landholders in the Western Empire. These events did not, however, devastate the Roman

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[37] Martial (ca. 40–before 105), *Epigrammaton* 7.65; Juvenal, *Satires* 16.42–47.

[38] Ammianus Marcellinus, *Rerum gestarum* 30.4.22.

[39] See inter alia, Walter Goffart, *Barbarians and Romans* and *Rome's Fall and After*; Reinhard Wenskus, *Stammesbildung und Verfassung: Das Werden der frühmittelalterlichen Gentes*.

[40] Ireland, as so often happens, was an exception. But Ireland had never been part of the Roman Empire and in any case the Brehon laws studied and taught there owed little or nothing to Roman law; see Fergus Kelly, *A Guide to Early Irish Law*.

(or Romanized) population. Most people in the Western Empire survived the invasions and their aftermath intact and continued to settle disputes and resolve conflicts within their communities in much the same ways as they had before. Roman–style courts using Roman law, in other words, continued to function in numerous places during and for quite some time after the invasions. What quickly came to be lacking were lawyers and judges with formal training in the complexities of the Roman legal system.[41]

The invaders themselves, however, did not take their quarrels and crimes to the courts used by the "Roman" population. The invaders had brought with them their own customary laws and practices and were not inclined to abandon them once they had settled on formerly Roman soil. Instead, they had their own courts and their own laws, which functioned side by side with the remnants of the Roman legal system. Law under the new regime became a personal matter, largely a function of ethnic heritage.[42]

The rulers of the new "Germanic" kingdoms in the West attempted to maintain the legal system of their "Roman" subjects as best they could, despite the lack of law schools. They accordingly had their clerks draw up short summaries in Latin of some basic elements of Roman law, probably for the guidance of untrained judges.[43]

The "Germanic" laws were not systematic and had never been taught in schools. Originally transmitted orally from one generation to the next, they first began to be written down early in the period of settlement.[44] Men exceptionally well–versed in

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[41] Charles Radding has maintained in a controversial book, *The Origins of Medieval Jurisprudence*, that functioning law schools did survive, especially at Pavia, prior to the beginning of the twelfth century. Radding's arguments are seriously flawed, however, by faulty dating of relevant documents and an inadequate understanding of the sources, as numerous reviewers have shown in detail.

[42] These developments are briefly summarized in Olivia F. Robinson, T. D. Fergus, and William M. Gordon, *European Legal History*, pp. 6–20.

[43] Two of these survive, the *Lex Romana Burgundionum* and the *Lex Romana Visigothorum*; for details see Rudolf Buchner, *Die Rechtsquellen*, pp. 9–10, 12–13.

[44] Buchner, *Die Rechtsquellen*, provides a detailed account of these..

those laws and skilled in the practice of the "Germanic" law courts undoubtedly existed in early medieval society — notices of them appear from time to time in the surviving accounts of litigation — but nothing resembling a lawyer class appeared in the early medieval kingdoms. We do from time to time run across mentions of men — and they were all men — who represented others before the courts and they are sometimes even described as *advocati* or *causidici*. Detailed examination of the case records, however, shows that those individuals were usually friends, relatives, or close associates of those on whose behalf they acted.[45] These men may even have studied a few elementary legal texts as part of their schooling in the liberal arts, for this was a common practice.[46] While they were no doubt learned, their academic training focused on abstract notions of justice and virtue, not on technical matters of law and their thought was theological and philosophical, not legal.[47] They were certainly not lawyers in any of the usual senses of that term.

Literary treatments of men who were recognizable as lawyers reappeared rather suddenly in Western literature, both Latin and vernacular, around the middle of the twelfth century and became increasingly common over the two succeeding centuries. Their reappearance in literature came almost simultaneously with the revival of the serious teaching of Roman law and the beginning of the systematic study of canon law. Both of these can be securely documented from roughly the 1140s onward.[48] The Roman law revival as well as the

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[45] E.g., *I Placiti del Regnum Italiae*, ed. Manaresi, No. 6, 38, 76, 82, 110, 112, 119, 144, 152, etc., etc. See also Giovanni Santini, "'Legis doctores,'" pp. 126–130; Lucas F. Brunyng, "Lawcourt Proceedings in the Lombard Kingdom before and after the Frankish Conquest, pp. 193–214.

[46] Francesco Calasso, *Medio evo del diritto*, pp. 279–79.

[47] Manlio Bellomo, "Una nuova figura di intellecttuale: Il giurista," pp. 237–256.

[48] Many details in the standard accounts of the legal revival, which puts its beginning in the closing decades of the eleventh century, have been challenged in recent years. Straightforward accounts of conventional views can conveniently be found, for example, in *Renaissance and Renewal in the Twelfth Century*, ed. Robert L. Benson and Giles Constable, pp. 299–338, and the literature cited therein.

reshaping of canon law commenced at Bologna at approximately the same time and spread quickly into other regions of Europe, notably to Paris, where both of the learned laws were being taught by the 1160s, and slightly later to England, where evidence for systematic law teaching at Oxford survives from the 1180s onward.[49]

In its early stages the revival of law teaching took place in the schools of individual masters, who set up in business independently, supported by the fees that their students paid. That soon began to change. The appearance of the earliest universities within an astonishingly short time around 1200, first at Bologna and Paris, then later at Oxford and Cambridge,[50] gave the formal study of law an enduring institutional structure that it had not enjoyed since late antiquity. Historians conventionally describe the medieval universities primarily in terms of the study of the liberal arts and theology.[51] It needs pointing out, however, that only a handful of medieval universities ever had theological faculties and at least a few lacked liberal arts faculties until comparatively late in their history, while every medieval university that we know anything about had at least a canon law faculty and many of them had Roman law faculties as well.[52] In many universities, moreover, law students outnumbered those in any other faculty. In France, for example,

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Anders Winroth, *The Making of Gratian's Decretum*, pp. 122–174 reviews more recent views of the matter.

[49] Helmut Coing, "Die juristische Fakultät und ihr Lehrprogramm;" Stephan Kuttner, "Les débuts de l'école canoniste française;" Leonard E. Boyle, "The Beginnings of Legal Studies at Oxford."

[50] James A. Brundage, "The Cambridge Faculty of Canon Law and the Ecclesiastical Courts of Ely."

[51] E.g., C. H. Haskins, *The Renaissance of the Twelfth Century*, pp. 371–72, 375–77, 384–86; M. David Knowles, *The Evolution of Medieval Thought*, pp. 163– 71; F. B. Artz, *The Mind of the Middle Ages*, pp. 315–16.

[52] Louis John Paetow first pointed this out in *Two Medieval Satires on the University of Paris*, p. 19; on the few universities that lacked arts faculties see Jacques Verger, "Patterns" p. 59.

Paris was the only university where the jurists comprised a minority of students and masters.[53]

"Law schools," as Frederick William Maitland told us a hundred years ago, "make tough law."[54] And the law schools of medieval Europe quickly set loose upon the world hundreds, and ultimately thousands, of tough–minded lawyers[55] year after year. Those with whom they competed for position, power, and money in church and state alike soon sent up anguished howls about the flood of cunning lawyers who were grabbing all the goodies in sight.

St. Bernard of Clairvaux (1090–1153), ever alert to dangerous novelties, was on to them straight away. Around 1148 he complained indignantly to one of his old pupils, who had recently become Pope Eugene III (r. 1145–1153), about the lawyers who thronged the halls of the papal palace. "These men," he thundered, "have taught their tongues to speak lies. They are fluent against justice. They are schooled in falsehood." He admonished the pope to put an end to lawyerly babble in the papal consistory: "Cut out their lying tongues," he demanded, "and shut their deceitful mouths." "The church," he added, "is filled with ambitious men," many of them trained in the law schools.[56]

This, need I remind you, is a saint writing to the pope. Other critics were if anything even more brutal. Jacques de Vitry (ca. 1169~70–1240), for example, related the story of a deceased lawyer whose body was discovered with its tongue hanging out. A bystander wanted to shove the tongue back in the corpse's mouth, but was persuaded not to do so by a

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[53] André Gouron, "Le recrutement des juristes dans les universités méridionales à la fin du XIV^e^ siècle: Pays des canonistes et pays des civilistes?" p. 527; Jacques Verger, *Les universités françaises au Moyen Age*, pp. 129, 138–40.

[54] Frederic William Maitland, "English Law and the Renaissance," p. 198.

[55] By "lawyers" in this part of the discussion I mean men who had studied Roman or canon law, or both, either under an established teacher or at a university and who either regularly represented clients as advocates or proctors in the courts, taught law in the schools, or who held positions that demanded legal expertise.

[56] St. Bernard of Clairvaux, *De consideratione* 1.10.13, in his *Opera*, 3:408–409.

companion, who informed him that everyone knew that the tongues of venal lawyers always dropped off when they died. This man, the companion said, was flaunting his tongue so that everyone would know that it remained in his mouth.[57]

Medieval writers apparently found lawyers' tongues fascinating. They were hugely versatile instruments. They were readily available for sale or rent,[58] so sharp they could even cut purses, according to John Bromyard (fl. ca. 1390),[59] and venomous into the bargain.

The venomous tongue was a common metaphor for an advocate in medieval literature as was legal jargon. The tale of the devil's marriage combined the two themes:

> Advocates do a lot of harm
> Whereby they put their souls at risk;
> Their tongues are full of venom:
> Whereby inheritances are lost,
> They have poisoned many a good marriage,
> And done evil just for a jar of wine.
>
> They fraternize with the *mesnie Hellekin*[60]
> . . . . .
> To work their foul designs,

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[57] Jacques de Vitry, *Exempla*, No. 9, ed. Greven, p. 12: "Audiui de quodam aduocato, qui lingua venali multos iniuste afflixerat: Cum in morte linguam proiceret, quidam volens tantum obprobrium velare dixit circumstantibus: 'Propter hoc linguam extraxit, quia dici solet quod aduocati in morte linguam consueuerunt amittere; et ideo linguam ostendit, vt sciatis quod linguam non amisit.'" Cf. No. 83, p. 50.

[58] "Le dit des mais," in Jubinal, *Nouveau recueil*, p. 190: "Mais lor langues si chier veulent loer sans vendre / Que à paine à leur gré leur puet–on loier rendre." See also the anonymous verse quoted by Marcel Fournier, "L'église et le droit domain au XIIIe siècle," p. 98.

[59] John Bromyard, *Summa predicantium*, s.v. "Advocatus" § 10, fol. 15vb: "Ita lingua illorum bursam scindit multorum, dum eorum defectu vel actu sua amittunt." See also Philippe Mézières, *Le songe du vieil pelerin* 3.315, ed. Coopland 2:499.

[60] A group of evil spirits believed to appear in cemeteries during storms.

Latin or French? No problem,
They'll sell their words either way.[61]

It was commonplace to compare lawyers unfavorably to whores, and here the tongue metaphor also appears. A lawyer is like a prostitute, according to Abbot Adam of Perisegne (ca. 1145–1221) because he will serve any paying client, no matter how unjust his cause.[62] Matheolus (fl. ca. 1290) put it bluntly:

What can I tell you about a lawyer?
He ought be called something like a filthy whore;
Really, he's even nastier: a whore just rents out her ass,
But he sells his tongue, which is even more demeaning,
Because the tongue is a member more exquisite than
the ass.[63]

Critics were scathing about the willingness of advocates to represent any paying client. "They love the evil just as much as the righteous," according to Guiot de Provins (late twelfth/early thirteenth century), "they don't care which side they take." "This," he added, "is not law, but unlaw."[64] Boniface Ferrier (1355–1417) asked rhetorically: "Tell me if you've ever seen or

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[61] "C'est li mariages des filles au diable," in Jubinal, *Nouveau recueil*, pp. 284–85: "Avocat portent grant domage / Pourquoi metent lor âme en gage; / Lor langue est pleine de venin: / Par aus sont perdu héritage, / Et deffait maint bon mariage, / Et mal fait pour .i. pot-de-vin. / C'est la mesnie Hellekin; / ….. Quand vienent à lor pute fin / Ne sevent romans ne latins, / Car il vendirent lor langage."

[62] Adam of Perisegne, *Epist.* 24, PL. 211:667: "Omnes, si dederint, etiam in inuistis causis multos advocatos inveniunt: solus Christus, licet dator omnium, cum sit causa ejus justissima, habere aliquem non meretur."

[63] *Les Lamentations de Matheolus et le livre de leesce*, ll. 4579–4584, ed. Van Hamel, 1:283: "Quid de causidico possum tibi dicere? dici / Debet enim similis vel par vili meretrici, / Immo vilior est, quia, si meretrix locat anum, / Hic vendit linguam, quod plus reor est prophanum, / Cum sit enim lingua membrum preciosius ano." See also Peter the Chanter, *Verbum abbreviatum*, c. 52, in PL 205:161; J. A. Yunck, "The Venal Tongue," p. 286; Manlio Bellomo, "I giuristi e la giustizia," p. 159..

[64] Guiot de Provins, *Le Bible Guiot*: "Autant aiment tort comme droit; / maisque il facent lor exploit, / ne lor chaut de quel part il pendent / …. ce n'est pas lois, ainz est deslois, / ce ne truevent il pas es lois."

heard that any litigant, plaintiff or defendant, couldn't find grave and worthy advocates to champion his case, no matter how awful it was, right down to the final decision? They're men of great compassion: they never desert cases — unless the money dries up."[65] Even lawyers admitted, however reluctantly, that strictures such as these might have a basis in fact. Thus, for example, a prominent late medieval canon lawyer, Nicholas de Tudeschis (1386–1453), commonly known as Panormitanus,[66] declared:

> I have heard from very able advocates that, swayed by the urgent pleas of friends, they have often accepted unjust cases knowingly and I believe they were conscience–bound to get involved; because through false and unjust arguments they secured decisions for their client.[67]

Above all the proverbial greed of lawyers furnished grist to the critic's mill.[68] Their lust for fees denied poor men access to justice.[69] Advocates who work without reward are nowadays

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[65] Boniface Ferrier, *Tractatus pro defensione Benedicti XIV*, c. 47, in Martène–Durand 2:1468–69: "Rogo te, dic mihi si umquam vidisti vel audisti quod aliquis litigans actor vel reus non invenit etiam usque ad tres sententias definitivas advocatos solemnes et magnos, quantumcumque malam causam foveat? Videntur homines magnas compassionis, quia numquam deserunt lites, nisi deserantur a pecuniis."

[66] See now Kenneth Pennington, "Nicolaus de Tudeschis (Panormitanus)."

[67] Nicholas de Tudeschis [Panormitanus], *Commentaria* to X 2.7.1 §5, fol. 155vb: "Nam audiui a ualentissimis aduocatis quod saepe per importunas preces amicorum assumunt causas iniustas scienter et crederem ipsos teneri in foro animae ad interesse; quia per iniustas et falsas allegationes obtinent sententias pro eorum clientulo.".

[68] Donald F. Bond, "The Law and Lawyers in English Proverbs," p. 724; Bernard Guenée, *Tribunaux et gens de justice*, p. 4; Max Manitius, *Geschichte der lateinischen Literatur des Mittelalters* 3:394–95; Erich Genzmer, "Kleriker als Berufsjuristen," p. 1235; Jacques de Vitry, *Exempla*, ed. Crane, p. 14; Peter the Chanter, *Verbum abbreviatum*, c. 51, PL 205:160–61; Peter of Blois, *Epist.* 25, PL 207:89.

[69] Peter the Chanter, *Verbum abbreviatum*, c. 52, PL 205:162; Johannes Faventinus, *Summa* on Gratian, C. 4 1. 4 c. 2 v. *personaliter*, in London, British Library, MS Royal 9.E.VII, fol. 75ra.

grown rare, said Peter the Chanter (d. 1197),[70] and unabashed lawyers acknowledged that, unlike philosophers, they valued money and didn't believe in throwing it away.[71] "Clerks go to Bologna to learn law and duplicity, observed Gautier de Coinci (ca. 1177–1236), and thereby they get rich and lose their souls.[72] Lawyers, according to the preacher Hilduin, were worldly men who valued temporal matters above spiritual ones.[73]

For such people, law and medicine were the only subjects fit to study, for these were the lucrative sciences, that rewarded successful students with money, riches, and power. As an anonymous English poet put it around 1200:

> Galen makes you rich, Justinian makes you mighty,
> The rest yield straw, but these yield grain.
> . . . . .
> What will Plato and Socrates give you? A beggar's pointless life.
> I prefer to be wealthy: I will earn my leisure at the cost of toil.

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[70] Peter the Chanter, *Verbum abbreviatum*, c. 52, PL 205:161–62. See also John W. Baldwin, "Critics of the Legal Profession: Peter the Chanter and His Circle," as well as his *Masters, Princes and Merchants: The Social Views of Peter the Chanter and His Circle*, 1:192–98 and passim.

[71] Odofredus, *Lectura* to Dig. 1.1.1: "Recte philosophantes spernunt pecuniam, non tamen doctores legum;" this is an allusion to Dig. 50.5.8.4 (Papinian, *Responsa*). Similarly, Accursius, *Glos. ord.* to Dig. 1.1. v. *nisi fallor*: "[L]icet pecuniam non abiiciamus;" Johannes Fried, "Vermögensbildung der bolognese Juristen im 12. und 13. Jahrhundert," p. 36. John Bromyard agreed: *Summa predicantium*, s.v. "Scientia" § 2, fol. 346rb.

[72] Gautier de Coinci, "Vie de Seinte Léocad," ll. 1107–1116, in Barbazan 1:306.

[73] Hilduin, Sermo "Christi oris nostri," in Cambridge University Library, MS Ii.1.24, fol. 161rb–va: "Quando uocati ad capitulum uenimus primo de spiritualibus, deinde de temporalibus deliberare debemus. Pretermissis spiritualibus, de temporalibus litigamus et fere omnes que nostra sunt, non que iesu christi queremus. Cum sedemus iudices in auditorio, uideamus si pupillo iudicemus; si causa uidue ad non ingrediatur; si ab illicits muneribus et exactionibus manus et corda nostra cohibeamus."

> Plow a fertile field and you can expect a bountiful harvest.[74]

Dante (1265–1321) agreed: "Lawyers and physicians, and," he added tartly, "for that matter most religious, study not in order to acquire knowledge, but rather to secure money or high position."[75] On this account they desert the wholesome study of the Gospels and the Fathers of the Church and get up just enough knowledge of the decretals to pass for learned men.[76]

Even worse, lawyers had the gall to sell skills that God had freely given them.[77] This, Alain de Lille (1117–1203) declared, defiled God's generosity, for it amounted to selling the patrimony of the poor. Lawyers were thus guilty of nothing less than simony, one of the blackest of sins.[78] Peter the Chanter, along with Dante and many others, agreed. Peter reiterated the ancient Roman belief that advocates ought to represent their clients free of charge with a medieval twist: those who held paid appointments in the church were bound to act for clients

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[74] Stephan Kuttner, "Dat Galienus opes et sanctio Justiniana," p. 243: "Dat Galienus opes et sanctio Justiniana, / Ex aliis paleas, ex ista collige grana. / … Quid Plato, quid Sortes, quid friuola gentis egene? / Preferrem uberes: luo sumptibus otia pene. Pinguis aratur ager, spem messis concipe plene." Cf. Karl Strecker, "Quid dant artes nisi luctum?"

[75] Dante Alighieri, *Convivio* 3.11.10, ed. Chiapelli, p. 569: "Né si dee chiamare vero filosofo colui che è amico di sapienza per utilidade, sì come sono li legisti, [li] medici e quasi tutti li religiosi, chi non per sapere studiano ma per acquistare moneta o dignitade; e chi desse loro quello che acquistare intendono, non sovrastarebbero a lo studio."

[76] Dante, *Paradiso* 9.133–35 and 12.82–85, ed. Chiapelli, pp. 276, 285. Likewise, *Monarchia* 3.9, ed. Richard Kay, pp. 210–12.

[77] Gaines Post, Kimon Giocarinis, and Richard Kay, "The Medieval Heritage of a Humanistic Ideal: 'Scientia donum Dei est, unde vendi non potest.'"

[78] Alain de Lille, *Summa de arte praedicatoria*, c. 41, PL 210:187: "Non prostituat linguam, non venalem exponat loquelam, non vendat Dei donum, non locat gratuitum Dei beneficium. Quod accepit de solo munere gratiae, non prosternat venditione. O quam execrabilis simonia est, vendere patrimonium pauperis, locare subsidium inopis." The same charge appears in the *Bible* of Guiot de Provins and in verse 10 of the Alemannian poem *Memento mori*, quoted in Rudolf Schützeichel, "Justitiam vendere, p. 12.

without fee; those who had no such appointments ought do so as well, at least if they could afford it.[79]

Advocates grow fat by defending wicked men, declared Philippe de Mézières (1327–1405) — provided that they were rich as well as wicked.[80] Lawyers had no time, however, for the poor, no matter how virtuous they might be. "It would be easier to blow the mist off Malvern Hills than to get a word out lawyer until he's seen his fee," lamented William Langland (ca. 1330–ca. 1400).[81] The English *Romaunt of the Rose* agreed:

> Phisiciens and advocates
> Gon right by the same yates;
> . . . . .
> They wole not worchen, in no wise,
> But for lucre and coveitise.[82]

Like their Roman predecessors, medieval critics lamented the inordinate delays and interminable length of legal proceedings and blamed this, too, on the lawyers. Lawsuits took so long because of the clamorous subterfuges of the legists, according to Laurentius of Aquileia (fl. mid–thirteenth century).[83] They snare simple men in nets of impenetrable

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[79] Peter the Chanter, *Verbum abbreviatum*, c. 51, PL 205:159–60: "[A]dvocatus gratis talentum naturae, talentum scientiae et gratiae a Deo accepit, et nullum gratis solvit, sed linguam venalem facit, licet sit modium membrum in udo situm, et de facili labile…. Si patronus es, et salarium habes ab ecclesia, ecclesiae stipendiis milites; vel si non eges, non licet tibi vendere patrocinium, quod gratis tunc est conferendum." See also Dante, *Convivio* 4.27.9, ed. Chiapelli, pp. 643–44.

[80] Philippe de Mézières, *Le songe du vieil pelerin* 1.51, ed. Coopland 1:330¨ "Dame royne,' dist la vielle Avarice, 'es cours des grans seigneurs a mes gaiges je tiens mes advocaz, qui soustiennent mes causes et souvent faulses, don't ilz deviennent gras.'"

[81] William Langland, *Piers Plowman*, A–Text, prologue, ll. 84–89: "Ther houeth an hundred · in houues of selk, / Seriauns hit semeth · to seruen atte barre; / Pleden for pons · and poundes the lawe, / Not for loue of vr lord · vn–loseth heore lippes ones. / Thow mihtest beter meten the myst · on Maluerne hulles, / Then geten a mom of heore mouth · til moneye weore schewed."

[82] Geoffrey Chaucer, *Romaunt of the Rose*, ll. 5721–22, 5737–38.

[83] "Clamosis tergiversationibus legistarum, quoted by Charles Homer Haskins, *Studies in Medieval Culture*, p. 25, n. 1; see also the comments of Peter the Venerable, abbot of Cluny (ca. 1092–1156) in his

jargon, complained John of Salisbury (ca. 1115–1180). "Woe unto those who know not how to syllabificate," he added sarcastically.[84] Gerhoch of Reichersberg (1093–1169) was also appalled by the intricate reasoning and technicalities of legal argument, as well as its stultifying verbiage. What is wanted, according to Gerhoch, is not all this gibberish, but simple, straightforward presentation of the facts, followed by an honest judgment based on them.[85] Kings and popes, too, complained about the prolixity of advocates and demanded that they should be brief and to the point, under pain of severe penalties.[86] It was bad enough that they were verbose; they were also loud and disruptive. Walter of Châtillon (ca. 1135–1202/1203) likened their tumult in court to the barking of dogs.[87] And to top it all off, they were just intolerably dull.[88]

Among the numerous other sins and shortcomings of lawyers, medieval authors characterized them as bloodsuckers,[89] hypocrites,[90] sacrilegious,[91] foul–mouthed,[92]

Epist. 8, ed. Constable 1:14, and Idung of Prüfening, "Dialogue between Two Monks," 1.17, trans. Jeremiah F. O'Sullivan, pp. 33–34.

[84] John of Salisbury, *Policraticus* 5.16, ed. Webb 1:350–52: "Sed et leges ipsae et consuetudines, quibus nun uiuitur, insidiae sunt et laquei calumpniantium. Verborum tendiculae proponuntur et aucupationes sillabarum; uae simplici qui sillabizare non nouit!" See also E. K. Rand, "Ioannes Saresberiensis Sillabizat."

[85] Gerhoch of Reichersberg, *Letter to Pope Hadrian about the Novelties of the Day* § 45, ed. Nikolaus M Haring, pp. 113–14. Even some lawyers agreed with him; see Hostiensis, *Commentaria* to X 3.30.12 § 1 v. *prava quidam*, part 3, fol. 98vb: "Forsan advocati perversi qui non permittunt iura in sua natura manere … et faciunt versutias et callidas interpretationes ad suam intentionem ex studio introducentes obscuritatem…."

[86] Pope Clement V (r. 1305–1314), const. *Saepe* in Clem. 5.11.2; Pope Gregory XI (r. 1370–1378), in Michael Tangl, *Die päpslichen Kanzleiordnungen von 1200–1500*, p. 128; A. B. Kerr, "Legal Practice in Fifteenth–Century France," p. 383.

[87] Laurence Eldredge, "Walter of Châtillon and the Decretum of Gratian: An Analysis of 'Propter Sion non tacebo," p. 64.

[88] Placentinus (ca. 1135–1192), *Sermo de legibus* § 4, ed. Hermann Kantorowicz, "The Poetical Sermon of a Medieval Jurist," in his *Rechtshistorische Schriften*, pp. 130–31.

[89] Peter of Blois (ca. 1135–1211), *Epist.* 25, PL 207:89.

devious and deceitful,[93] proud and arrogant.[94] Not content with that, they also suborned perjury,[95] oppressed the poor,[96] and lived on the misfortunes of others.[97] In short, Peter the Chanter concluded, advocates are despicable and, he added, people have always known this. Nobody would take on this job, save as a way out of poverty, so as to get enough to eat.[98] Success as a lawyer, according to John Bromyard, made men into monkeys. When they were young, and even during their early years in law school, they might be winning, gracious, pleasant members of society. But when they grew older and especially when they went into practice, they turned vicious and became cruel as

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[90] John Wyclif (ca. 1320–1384), "Three Things Destroy This World," in his *English Works*, ed. F. O. Matthew, p. 184.

[91] Adam of Perisegne, *Epist.* 24, PL 211:667; Philippe de Mézières, *Le songe du vieil pelerin* 3.197, ed. Coopland 2:146.

[92] Hostiensis, *Commentaria* to 1 Lyons (1245) c. 3 [= VI 1.3.3] § 3, fol. 3vb: "[A]duocati, quorum os maledictione plenum est, potissime delinquunt." Similarly, Antonio de Butrio, *In Sextum decretalium volumen commentaria* to VI 2.2.1 § 2, fol. 116ra.

[93] John of Salisbury, *Policraticus* 5.16, ed. C.C.J. Webb 1:352–53; Jacques de Vitry, *Exempla*, ed. Crane, p. 20; Guibert of Tournai, *Sermones ad status: Ad iudices et aduocatos*, 1, fol. 106va; Philippe de Mézières, *Le songe du vieil pelerin* 3.215, ed. Coopland 2:179.

[94] Philippe de Mézières, *Le songe du vieil pelerin* 3.311, ed. Coopland 2:292–93; Jacques de Vitry, *Exempla*, ed. Crane, pp. 15, 149–50.

[95] Gautier de Coinci, "Vie de Seinte Léocad," ll. 1117–22, ed. Barbazan 1:307.

[96] Guibert of Tournai, *Sermones ad omnes status: Ad iudices et aduocatos*, 1, fol. 106ra; Eustache Deschamps (d. 1406), *Oeuvres*, No. 1454, ed. Raynaud 8:145; John Gower (ca. 1325–1408), *Vox clamantis* 6.2, ll. 105–152, ed. Macaulay 4:233–34.; Jason de Mayno (1435–1519), *Commentaria super titulo de actionibus* to Inst. 4.6.24 § 57, fol. 200ra.

[97] Eustache Deschamps, *Oeuvres*, No. 1454, ed. Raynaud 8:144.

[98] Peter the Chanter, *Verbum abbreviatum*, c. 51, PL 205:160: "Hoc genus hominum non solum pro cupiditate sui, verum etiam pro vilitate officii sui antiquitas redarguit. Sicut enim pugiles, cursores, praecones et hujusmodi alii officiales viles erant et abjecti, ita et advocati; nec fiebat aliquis advocatus, nisi in paupertatis suae remedium, ut officio cibum quaeritaret."

lions, infernal demons — in short, lawyers. Then even their own mothers would curse them.[99]

Do advocates really harm their clients and rob them of their rights?" Bernard of Montemirato (d. 1296), a professor of law, asked rhetorically. "No," he averred, "but people believe they do."[100] Bernard was being disingenuous. He knew — how could he help it? — that incompetent lawyers could do a great deal of harm. Like every other professor of canon law, Bernard lectured regularly on texts that dealt with the injuries that incompetent or inattentive advocates and proctors could cause to their clients, for example by carelessly making damaging admissions in court, by improper allegations, or by irritating judges though arguing at excessive length.[101]

In view of all these beliefs about lawyers' behavior, Hugo von Trimberg (ca. 1230–ca. 1313) drew the obvious conclusion that the study of law books fails to teach righteous living.[102] They came out of law school more interested in adding weight to their purses than in seeing justice done.[103] "It's clear," said

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[99] Bromyard, *Summa predicantium*, s.v. "Advocatus" § 19, fol. 15vb: "Assimilantur ergo simie, que est animal in iuuentute sociale et aliqualiter placidum. Sed in senectute est animal odiosum et damnosum, res asportando, domos discooperiendo, et mordendo. Sic iuuenes scolares in iure ciuili vel in banco primo vel secundo anno de scola redeuntes sunt omnibus graciosi, sociales, curiose ornati. Ab omnibus vicinis benedicuntur, benedictuntur etiam mater que ipsum portauit. Sed cum sciuerit modicum placitare et nocere uicinis suis, et esse attornatus et aduocatus et huiusmodi, accipit propinas a magnatibus … fiunt crudeles leones, infernales diabolici, nemini parcentes, nisi quem inuadere non audent. Et sic illi qui in iuuentute ab omnibus benedicuntur, in senectute simul cum matre que eos genuit ab omnibus maledicuntur."

[100] Bernardus de Montemirato, *Lectura* to X 1.37.3, fol. 70ra.

[101] E.g., X 1.5.1, 2.27.21, 3.39.20, etc.; William Durand (1231–1296), *Speculum iudiciale* 1.4 *De aduocato* §4.6–7 and §5..2–6.

[102] Hugo von Trimberg, *Der Renner*, ll. 8477–80, 8677–80, ed. Ehrismann 1:353–54, 361–62: "Swer rehtbuoch lernet durch gerehtikeit, / Des arbeit is wol angeleit: / Swer aber si lernet durch gîtikeit, / Des sêle wirt ez hin nâch vil leit. / …. Swer valsch und boese kündikeit / In rehtbuoch stoezet, daz wirt im leit / Sô sîn klaffen ein ende nimmt: Wenne valsch bî wâhrheit übel zimt."

[103] John Bromyard, *Summa predicantium*, s. v. "Iusticia" § 5, fol. 179va: "Ita potestas inquirendi vel iudicandi iusticiam aduocatorum, iudicum, et iuratorum et omnium similium, ut communiter plus

Guibert of Tournai (ca. 1210–1284), "they're worse than Saracens."[104]

So what good did lawyers do? Not much, in the opinion of many. "The more lawyers there are, the less they obey the laws," according to Adam of Periseigne." "They're good at quibbling," he added, "skilled in subverting judgments, justifying evildoers, and unjustly convicting the innocent." [105] In the words of the Dominican preacher, Bromyard, "Bad advocates are like erratic stars, pulled in two different directions."[106] And, as a leading legal scholar put it: "Bad cases breed worse lawyers."[107]

No theological faculty, so far as I know, ever debated the question, "Can a lawyer be saved?" although in view of the prevailing opinion about their morals one might have thought this a reasonable subject for expert inquiry.[108] A Catalan

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inclinatur ad bursam ponderosiorem, in tantum quod si iusticia nulla clare ex parte illa videatur, clientem tamen confortant, bonum ei promittentes cause exitum, plus in defectu testium et probationis vel aliis defectibus alterius partis, quam in iusticia proprie partis de bono, id est optato exitu confidentiam habentes, qui veritatem dei in iusticia detinent."

[104] Guibert of Tournai, *Sermones ad status: Ad iudices et aduocatos* 1, fol. 107vb: "[P]atet eos esse deteriores quam sarracenos."

[105] Adam of Periseigne, *Epist.* 24, PL 211:667: "[Q]anto in jure peritiores existerint, tanto inveniuntur ad juris injuriam promptiores. Verborum cavillationibus potentibus sunt, et docti ad subersionem judicii, aut impium justificare pro muneribus, aut de injustitia convincere innocentem."

[106] Bromyard, *Summa predicantium*, s.v. "Advocatus" §4, fol. 14vb: "Sed falsi aduocati sunt sicut stelle erratice, que habent duplicem motum in factis suis, scilicet pro et contra."

[107] William Durand, *Speculum iuris* 1.4 De aduocato §9.11, 1:281 (quoting Seneca).

[108] The question concerning the salvation of archdeacons, many of whom were trained in the law, was apparently disputed in the theological schools; Charles Homer Haskins, *The Renaissance of the Twelfth Century*, p. 51. Their widespread reputation for rapacity was summed up by the anonymous *Apocalypsis Goliae episcopi*, ll. 109–12, in *The Latin Poems Commonly Attributed to Walter Mapes*, ed. Thomas Wright, p. 7: "Est aquila, quae sic aliis innititur, / archidiaconus, qui praedo dicitur; / qui vidit a longe praedam quam sequitur, / et cum circumvolat ex rapto vivitur."

proverb held that lawyers, together with merchants, burned in hell[109] and the "Dit des Patenostres" exhorted the faithful to pray for lawyers and other legal professionals, that God might pardon their sins.[110]

Cardinal Hostiensis (d. 1271), one of the most eminent lawyers of the thirteenth century, suggested seven sins upon which law professors and jurists regularly needed to examine their consciences:

1. Had they sought or secured their degrees without adequate knowledge or preparation?

2. Had they been arrogant toward other, lesser, jurists or teachers?

3. Had they scorned simple people, especially for their verbal ineptitude?

4. Were they guilty of showing off by making subtle but useless points?

5. Had they taught untruths in their lectures?

6. Had they kept silent about the truth, lest it shame them?

7. Had they given false, worthless, or unfounded advice? If so they must pay compensation before they could receive absolution.[111]

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[109] Quoted by Paul Freedman, *The Origins of Peasant Servitude in Medieval Catalonia*, p. 220, n. 39: "Pagès i ramader tots van al cel; advocat i comerciant a l'infern a cremar."

[110] "Le dit des Patenostres," in Jubinal, *Nouveau recueil*, p. 240: "Pour tous officiaus, por gens d'avocatie, / Pour tous procurateurs, pour clers de notairrie, / Et pour prestres curez qui ne se faignent mie / De leurs parrochianes par jour et par nuitie / Visiter, si qu'il aient ouverte la crevace, / Dites vos patenostres que Diex pardon li face." A similar prayer beseeching God to have mercy on sinful jurists occurs in a poem by Peire Cardenal (1180–ca. 1278), "Jhesus Cristz nostre Salvaire;" Paul Ourliac, "Troubadours et juristes," p. 174.

[111] Hostiensis, *Summa aurea* 5.54 *De penitentia et remissione* § 31, fol. 274vb–275ra.

Manuals for confessors from the late thirteenth century onward likewise included similar lists of questions to be put to legal practitioners. Thus the *Memoriale presbiterorum*, an early fourteenth–century century handbook (probably written by Master William Doune, an English canonist),[112] suggested an even longer list of sins that a confessor ought to put to professional lawyers:

1. "Did you ever give false counsel to your client for money and did you thus injure the opposing party unjustly?"

2. "Did you ever foster a cause duplicitously, betraying and deceiving your own client?"

3. "Did you ever foster a desperate cause, against your conscience?"

4. "Did you ever pressurise a judge in order to obtain unnecessary postponements, for the purpose only that the cause in which your were pleading should be protracted more than was right, and did you obtain them to the detriment of the opposing side?"

5. "Did you ever make a pact with the party on whose behalf your were litigating over [your receiving] a certain part of the matter at issue, to the grave damage of the litigant in question?"

6. "Did you ever in contending or litigating employ abusive language?"

7. "Were you ever content with a paltry salary … with the result that you deprived good advocates or proctors, better than yourself, of profit in the case?"

8. "Did you ever receive too great a salary, beyond what you ought by right to have received … thus fraudulently oppressing your client?

[112] On William Doune see A. B. Emden, *Biographical Register of the University of Oxford to A.D. 1500*, 1:587–88.

9. "Did you ever enter caviling points, for the purpose of deceiving the opposing party?"

10. "Did you ever induce your client to commit perjury?"

11. "Did you ever brief or instruct witnesses falsely as to deposing falsehoods in any cases?"

12. "Did you ever propound in matrimonial cases any frivolous points of order or any other such maliciously?"

13. "Did you apply yourself diligently as regards your client's case and keep watch over it?"[113]

Doune's list in fact covers virtually all of the common literary complaints about members of the legal profession previously noted. Doune's language, to be sure, is sober and less vituperative that that employed by the poets and preachers examined earlier — no mention here of bloodsuckers, monkeys, whores, or hypocrites here — but for all that, the issues are nearly identical.

This suggests that, for all their hyperbole, medieval critics of the legal profession may have had a lot to be critical about and that their faultfinding may have had considerable basis in fact.

Did medieval lawyers often fall as far short of the ideals of their profession as their critics suggested? The question is not easy to answer.[114] Disciplinary cases that got into the records of

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[113] Adapted and abridged from the translation by Michael Haren, "Interrogatories for Officials, Lawyers and Secular Estates of the *Memoriale presbiterorum*," pp. 132–35. A similar list appears in John of Fribourg's *Summa confessorum* 2.6; Jacques Le Goff, "Métier et profession, p. 57..

[114] The development of explicit standards of ethical conduct for advocates and proctors was a central feature in the process of professionalization. I have dealt elsewhere with the content of those standards and their development. See Brundage, "The Calumny Oath and Ethical Ideals of Canonical Advocates;" "Entry to the Ecclesiastical Bar at Ely in the Fourteenth Century: The Oath of Admission;" "The Ethics of Advocacy: Confidentiality and Conflict of Interest in Medieval Canon Law;" "The Ethics of the Legal Profession: Medieval Canonists

medieval courts show occasional examples of unethical conduct that were prosecuted — almost always as a result of complaints by dissatisfied clients — but it seems unlikely that many unhappy clients would have either the resources or the courage to bring charges against their lawyers to the courts.[115] The generally acknowledged ineffectiveness of modern disciplinary measures against unethical behavior by lawyers surely gives little reason to be sanguine that medieval courts were much more effective in enforcing the profession's ethical standards.[116]

Although many lawyers during the high Middle Ages doubtless fell short, sometimes far short, of the ethical standards that the profession set for itself,[117] and that preachers, theologians, and moralists demanded that they meet, this does not adequately account for the passion with which contemporaries excoriated their moral shortcomings. Further elements were almost certainly involved.

One fundamental component in the mixture must surely have been the change in social values that the emergence of lawyers exemplified. Lawyers often struck established members the social, religious, and intellectual elite, as new men, upstarts, people who lacked either the social rank or the religious credentials that had traditionally been prerequisites for membership in the ruling classes of earlier medieval society.

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and Their Clients;" "The Lawyer as His Client's Judge: The Medieval Advocate's Duty to the Court;" "Legal Aid for the Poor and the Professionalization of Law in the Middle Ages;" "Professional Discipline in the Medieval Courts Christian: The Candlesby Case;" "The Profits of the Law: Legal Fees of University–Trained Advocates;" "The Rise of Professional Canonists and Development of the Ius Commune;"

[115] Richard Helmholz has reported the results of his investigation of such cases in the records of medieval English ecclesiastical courts in "Ethical Standards for Advocates and Proctors in Theory and Practice," but this remains the only such study known to me.

[116] The literature on this subject is vast. Jerome Carlin, *Lawyers' Ethics: A Survey of the New York City Bar* remains a classic study; see also, e.g., Richard L. Abel, *American Lawyers*, pp. 142–57; John P. Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar*, pp. 80–84, 89, 159–60; Derek Morgan, "Doctoring Legal Ethics: Studies in Irony;" Andrew Boon and Jennifer Levin, *The Ethics and Conduct of Lawyers in England and Wales*, pp. 118–141.

[117] For a striking example see Brundage, "Professional Discipline in the Medieval Courts Christian: The Candlesby Case."

Lawyers were not infrequently men who came from families of middling or lower social status. They often made their way upward in the social hierarchy through education and much striving, rather than by inherited wealth, rank, and family connections.[118] They might well seem to pose a threat to members of the established elite and it is noteworthy that as the influence of lawyers in government increased, attacks upon became more widespread and more venomous. [119]

The intrusion of lawyers into the ranks of the influential and the powerful was, in addition, emblematic of the rising importance of a mercantile class, people who made money (occasionally vast amounts of it) out of trade, commerce, and finance. The association between merchants, financiers, and lawyers clearly troubled many critics of the emerging legal profession. Significant numbers of lawyers, including those who practiced in the ecclesiastical courts, were laymen, not clerics.[120] This was especially true of lawyers trained in Italian law faculties, as Panormitanus noted.[121] Members of the clergy may well have disliked, or even feared, their intrusion into domains previously dominated by clerics.

The continuity between medieval literary vilification of lawyers and subsequent complaints about the profession is

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[118] On the social origins of medieval lawyers see Gouron, "Le recrutement des juristes;" p. 544; and "L'enseignement," p. 187; Walter Steffen, *Studentische Autonomie*, p. 83; Jean Dunbabin, "Meeting the Costs of Education," p. 2; Antonio Ivan Pini, "Discere turba volens," pp. 69–70.

[119] John A. Yunck, *The Lineage of Lady Meed*, p. 147.

[120] Sven Stelling–Michaud, *L'université de Bologne et la pénétration des droits Romains et canonique en Suisse*, p. 130.

[121] Nicolaus de Tudeschis, *Quaestiones*, No. 5 § 4, fol. 160rb. "Quarto arguitur de c. quia in causes, de procur [X 1.38.8] ubi aperte colligitur quod scholares faciunt universitatem, licet sint clerici et laici. Loquitur enim ibi ut patet ex suprascriptis de scholaribus videlicet parisienses, quo pro maiori parte sunt clerici. Ad idem text. in proemio Sexti et Cle. ubi scribitur, ' universi scholaribus bononie commorantibus' [Boniface VIII, *Sacrosanctae Romanae ecclesiae*; John XXII, *Quoniam nulla*] et comprehendit eos postmodum sub nomine universitatis. Est tamen certum quod bononie studentes sunt clerici et laici et credo plures laicos quam clericos." Laymen also predominated, although to a lesser extent, in southern French universities; Verger, *Les universités françaises*, p. 132.

remarkable. Markedly similar themes recur, in only slightly altered garb, in writers of one generation after another. Consider (to take just a small series of examples among early modern English writers) John Skelton (ca. 1450–1529),[122] Thomas More (1478–1535),[123] Shakespeare (1564–1616),[124] Jonathan Swift (1667–1745),[125] Joseph Addison (1672–1719),[126] Henry Fielding (1707–1754),[127] or Jeremy Bentham (1748–1832).[128]

Why has the stereotype of the greedy, grasping, wily, mercenary, ill–mannered, rude, uncultured, intemperate, treacherous, unreliable, dishonest lawyer proved so extraordinarily long–lived? Why have utopian writers (at least the few that I am familiar with) apparently been unanimous in excluding lawyers from their ideal societies? Rabelais (ca. 1490–1553) certainly wanted none of them in the Abbey of Thélème,[129] and he elaborated on his low opinion of them in several episodes of *Pantagruel*.[130] Thomas More (himself a lawyer of note and one of their numerous patron saints into the

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[122] "Ware the Hawk," in his *Complete Poems*, ed. Philip Henderson, p. 105; Richard J. Schoeck, "Canon Law in England on the Eve of the Reformation," pp. 137–38.

[123] *Utopia* 2.7, ed. Collins, p. 107.

[124] *Measure for Measure*, Act 2, scene 2, line 90; *The Merchant of Venice*, Act 3, scene 2, ll. 75–77; *Henry IV, Part 1*, Act 1, scene 2; *Timon of Athens*, Act 4, scene 3, line 60; among others.

[125] *Gulliver's Travels*, pt. 2, ch. 7; pt. 4, ch. 4, in his *Prose Works*, ed. Davis, pp. 136, 248–50.

[126] *The Spectator*, No. 13 (15 March 1711).

[127] *Pasquin*, quoted in Robert Robson, *The Attorney in Eighteenth Century England*, p. 134.

[128] "The Elements of the Art of Packing, as Applied to Special Juries," pt. 1, ch. 5, in his *Works* 5:86. For further English examples see E. F. J. Tucker, *Intruder into Eden: Representations of the Common Lawyer in English Literature, 1350–1750* and Yunck, *Lineage of Lady Meed*..

[129] François Rabelais, *Gargantua* ch. 52–57, in his *Oeuvres complètes*, ed. Hugon and Moreau, pp. 136–50.

[130] Notably in *Pantagruel* 3.39–44, in *Oeuvres complètes*, pp. 474–87; see also Derek van der Merwe, "Making Light of Heavy Weather: François Rabelais's 'Deconstruction' of Scholastic Legal Science."

bargain),[131] "utterly excluded and banished" them from his Utopia,[132] while Swift described it as a capital crime among the Brobdingnagians to write a commentary on any law.[133] The Houyhnhnms, he tells us later on, were likewise unacquainted with lawyers and appalled to learn what such creatures were like.[134]

It is worth noting, as well, that when modern revolutionary movements have attempted to establish more equitable societies, they have promptly banished lawyers and the prevailing legal system early on. Thus in the French Revolution's radical early stages the whole legal establishment — the judges, the Parlements, the law faculties, and advocates — was abolished root and branch straightway.[135] The Soviet revolution in Russia did much the same,[136] as did the Chinese Communists in 1949.[137]

Revolutionary leaders commonly do this under the naïve misapprehension that it will be possible to replace complex, intricate, cumbersome, and expensive legal systems with one sort or another of new model, and that they will be able to fashion a short, simple new law code that everyone can understand. Of course in practice this never works out the way it was supposed to. Transactions, and disagreements about them, among members of human societies (even supposedly "simple" or "primitive" ones) are far too various and complicated for any legislator, no matter how gifted, to foresee all, or even a large fraction, of the contingencies that may arise, much less to provide simple rules for dealing with them. And so the French

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[131] In addition to More, I am aware of St. Ivo of Chartres, St. Ivo of Brittany, and St. Raymond of Penyafort.

[132] Thomas More, *Utopia* 2.7, ed. Collins, p. 107.

[133] Jonathan Swift, *Gulliver's Travels* 2.7, in *The Writings of Jonathan Swift*, ed. Greenberg and Piper, p. 111.

[134] *Gulliver's Travels* 4.4, ed. Greenberg and Piper, pp. 217–17.

[135] Raoul Van Caenegem,, *Judges, Legislators and Professors: Chapters in European Legal History*, p. 11.

[136] René David and John E. C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, pp. 166–70.

[137] David and Brierley, *Major Legal Systems*, pp. 484–85; Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law*, pp. 321–22..

Revolution ended up with the Napoleonic Code (which, as such things go, was more than usually successful),[138] while the Russian and Chinese Revolutions spawned numerous convoluted and baffling versions of Socialist Law (which by and large were spectacularly unsuccessful in achieving their nominal goals).[139]

Reasons for widespread and long–enduring disenchantment with the legal profession are numerous. No single cause lies at its root. Let me suggest a few common elements that, taken together, may at least partially explain the phenomena examined in this paper.[140]

Myths die hard, and none die harder than the belief in a past golden age where humans composed their differences simply, quickly, and equitably under the guidance of natural reason, together with the hope that in some future millennial state the same will hold true once more. Compared with such idealized visions — however subliminally entertained — any experience with a real legal system in action is bound to be disappointing.

Lawyers and their clients typically belong to disparate subcultures with radically different expectations. Ordinary human annoyance at being subjected to seemingly arbitrary and inconvenient rules that one may not understand, administered by people who employ an arcane technical language for reasons that are far from clear or self–evident, can easily produce resentment. This is likely to become even more acute when one is required to pay substantial sums of money for their services. If the client has lost his case, presentation with a bill for services rendered is not likely to improve matters. Even the client who has won may well feel vexed at having to pay for securing what he considers his rights and blame the situation on his opponent's lawyer.

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[138] Franz Wieacker, *A History of Private Law in Europe*, p. 271.

[139] Wieacker, *History of Private Law*, pp. 401–403.

[140] In so doing I have drawn freely upon the insights of others, among them Dietrich Rüschemeyer, in *Lawyers and Their Society*, esp. pp. 10–11; Robert Robson, *The Attorney in Eighteenth–Century England*, p. 136; Roscoe Pound, *The Lawyer from Antiquity to Modern Times*, pp. xxiii–xxviii and passim; Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition*, pp. 14–18, 43–45, 85–86, and passim.

Lawyers, moreover, are commonly in a position of power when dealing with clients. Being one down in a relationship is always disagreeable and clients naturally find it distressing. In addition, lawyers did and do have numerous opportunities to exploit their clients and it is not unheard–of for some to take advantage of that fact. At the same time clients sometimes put considerable pressure on lawyers to deviate from the profession's official behavioral norms. This tends to be particularly true when a lawyer depends on one or two major clients — say, large corporations in the modern world, or perhaps a monastery or monarch in the Middle Ages — for a great share of his practice. Such situations can readily lead to distrust, dislike, and rancor on both sides of the relationship. Beyond that, clients often come to realize that their lawyer has more in common with judges, court officials, and other lawyers than with the person on whose behalf they are supposedly acting. This may be perfectly natural, but the client is apt to find it disquieting, which may lead them to question the lawyer's devotion, or even loyalty, to their own cause.[141]

Complications inherent in the lawyer–client relationship certainly underlie many of the complaints about the profession surveyed in this paper. Legitimate social and political issues surrounding the nature and extent of lawyerly influence in society help to account for some others. American politicians are fond of saying that the rule of law governs our society — indeed we have been exposed to an uncommon amount of that sort of rhetoric just recently. The kinds of criticisms of the legal profession that I have dealt with here seem to reflect an uneasy feeling that the rule of law may in practice come to mean the reign of lawyers.[142]

ABBREVIATIONS

Barbazan	*Fabliaux et contes des poètes françois des XI^e^, XII^e^, XIV^e^ et XV^e^ siècles*. 4 vols. Ed. Ètienne Barbazan; rev.

[141] Abraham Blumberg, "The Practice of Law as a Confidence Game: Organizational Co–optation of a Profession."

[142] I gratefully acknowledge my debt to the late Christopher R. Cheney, not only for this felicitous turn of phrase, but also for innumerable other kindnesses.

	Dominique Martin. 2nd ed. Paris: B. Warée, 1808.
Corpus iuris canonici	Ed. Emil Friedberg. 2 vols. Leipzig: B. Tauchnitz, 1879; repr. Graz: Akademische Druck– u. Verlagsanstalt, 1959.
Gratian	Decretum Gratiani
X	Decretales Gregorii IX [Liber Extra]
VI	Liber sextus decretalium
Clem.	Constitutiones Clementinae
Corpus iuris civilis	Ed. Paul Krueger, Theodor Mommsen, Rudolf Schoell, and Wilhelm Kroll. 3 vols. Berlin: Weidmann, 1872–1895.
Cod.	Codex Iustiniani
Dig.	Digesta
Inst.	Institutiones
Nov.	Novellae leges
Jubinal	*Nouveau recueil de contes, dits, fabliaux et autres pièces inédits des XIIIe, XIVe, et XVe siècles*. 2 vols. Ed. Achille Jubinal. Paris: E. Pannier, 1839–1842.
Martène–Durand	*Thesaurus novus anecdotorum*. Ed. Edmond Martène and Ursmer Durand. 5 vols. Paris: Florentius Delaulne, 1717; repr. Farnborough: Gregg, 1968–1969.
MGH	*Monumenta Germaniae Historica*
SSRG	Scriptores rerum Germanicarum
PL	*Patrologiae cursus completus … series Latina*. 221 vols. Ed. J.–P. Migne. Paris: J.–P. Migne, 1844–1864.

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