

# MEDIEVAL ATTITUDES TOWARD THE LEGAL PROFESSION: THE PAST AS PROLOGUE

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Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.

*Luke 11:46*<sup>1</sup>

What craft is your father of? . . .  
Marry, he is a crafty man of law!

*Medieval Joke*<sup>2</sup>

## I. INTRODUCTION

In recent years, the legal profession has been quite concerned, perhaps almost preoccupied, with its public image. To some extent, this concern has prompted a crisis of self-confidence. Several well-publicized books have explored this professional self-doubt and recounted the profession's troubled public image.<sup>3</sup> In part, this professional concern is a response to external events. The rampant, sometime virulent, criticism of the legal profession in the last several years is legend. These repeated attacks on lawyers, which appear almost daily in the popular and professional press, in federal and

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1. *Luke 11:46* (King James). I am grateful to Professor Charles Alan Wright for reminding me of this biblical reference. See Letter from Charles Alan Wright, Professor of Law, University of Texas School of Law, to Jonathan Rose, Professor of Law, Arizona State University College of Law (June 3, 1998) (on file with author).

2. E.W. Ives, *The Common Lawyers*, in PROFESSION, VOCATION, AND CULTURE IN LATER MEDIEVAL ENGLAND 181, 208 (Cecil H. Clough ed., 1982) (alteration from original).

3. See, e.g., MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993); SOL M. LINOWITZ, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994).

state legislatures, and in political arenas, are sufficiently well known that specific illustrations are unnecessary. Hostility towards lawyers is a public issue and a matter of major professional concern.

The professional responses to this matter might lead one to believe that these attitudes are a new problem. That conclusion would be inaccurate or at least significantly overstated. Interestingly, these current complaints bear a strong resemblance to the medieval hostility directed at the legal profession. Although these attitudes may have ebbed and flowed, a sufficient number of examples occurred during the medieval period and over time to establish that these current attitudes are not new, but longstanding. The fundamental point is that since the profession emerged in the thirteenth century, there has been a persistent hostility toward lawyers. The image problem has existed as long as there has been a profession. The purpose of this Essay is to explore these medieval attitudes and their persistence over time.

## II. *THE MEDIEVAL ATTITUDES TOWARD THE LEGAL PROFESSION*

Throughout the medieval period, complaints about lawyers were common. A familiar litany emerged: there was excessive litigation caused by an excessive number of lawyers who either created a demand for their services or produced litigation through their misconduct or incompetence. In fact, these medieval hostile attitudes were some of the best evidence that a legal profession existed and they played a role in producing the initial regulation of the legal profession in medieval England. Commentators generally agree that a legal profession emerged during the reign of Edward I, probably at the end of the thirteenth century; and that this group of professionals included two primary types of lawyers: serjeants, who functioned as pleaders, and attorneys, who appeared on behalf of litigants and managed litigation for their clients.<sup>4</sup> At this time, the regulation of

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4. The development of the legal profession in medieval England has been the subject of a significant amount of scholarly attention. This development and the scholarship are summarized in Jonathan Rose, *The Legal Profession in Medieval England: A History of Regulation*, 48 SYRACUSE L. REV. 1 (1998). Dr. Paul Brand's recent book is the most significant and comprehensive. See PAUL BRAND, *THE ORIGINS OF THE ENGLISH LEGAL PROFESSION* (1992) [hereinafter BRAND, *ORIGINS*]. Other books and articles include the following: J.H. BAKER, *THE LEGAL PROFESSION AND THE COMMON LAW — HISTORICAL ESSAYS* (1986); J.H. BAKER, *THE ORDER OF SERJEANTS AT LAW* (Selden Soc'y 1984); MICHAEL

lawyers also began. In this initial period, three critical regulations were adopted: the Statute of Westminster I, Chapter 29; the London Ordinance of 1280; and the Ordinance of 1292, *de Attornatis et Apprenticiis*. Later in the medieval period, further regulations were enacted, including: the 1402 Statute, 4 Henry IV, Chapter 18; and the 1455 Ordinance, 33 Henry VI, Chapter 7. In addition, judges used their inherent power to control the admission of lawyers and to sanction their misconduct.<sup>5</sup>

#### A. The Climate of Opinion at the Inception of Regulation

Numerous scholars consider the reign of Edward I (1272–1307) to be one of the most important eras of law reform in English legal history. During this period, a number of statutes were passed that significantly affected property law, criminal law, constitutional law, procedure, the judicial and feudal systems, law of new territories, and the judicial power to expand remedies.<sup>6</sup> These reforms “touched

BIRKS, GENTLEMEN OF THE LAW (1960); BREHONS, SERJEANTS AND ATTORNEYS (Daire Hogan & W.N. Osborough eds., 1990); C.W. BROOKS, PETTYFOGGERS AND VIPERS OF THE COMMON WEALTH (D.E.C. Yale ed., 1986); EDMUND B.V. CHRISTIAN, A SHORT HISTORY OF THE SOLICITORS (London, Reeves & Turner 1896); HERMAN COHEN, A HISTORY OF THE ENGLISH BAR AND *ATTORNATUS* TO 1450 (Wildy & Sons Ltd. 1967) (1929); TIMOTHY TYNDALE DANIELL, *THE LAWYERS* (2d ed. 1976); F.A. Inderwick, *THE KING'S PEACE* (Kenelm D. Cotes ed., London, Swan Sonnenschein & Co. 1895); E.W. IVES, *THE COMMON LAWYERS OF PRE-REFORMATION ENGLAND* (1983); HARRY KIRK, *PORTRAIT OF A PROFESSION: A HISTORY OF THE SOLICITOR'S PROFESSION, 1100 TO THE PRESENT DAY* (1976); *LAWYERS IN EARLY MODERN EUROPE AND AMERICA* (Wilfrid Prest ed., 1981); ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* (1953); WILFRID R. PREST, *THE RISE OF THE BARRISTERS* (1986); ROBERT ROBSON, *THE ATTORNEY IN EIGHTEENTH-CENTURY ENGLAND* (Wm. W. Gaunt & Sons, Inc. 1986) (1959); W.C. Bolland, *Two Problems in Legal History*, 24 *LAW Q. REV.* 392 (1908); Paul A. Brand, *The Origins of the English Legal Profession*, 5 *LAW & HIST. REV.* 31 (1987); Heinrich Brunner, *The Early History of the Attorney in English Law*, 3 *ILL. L. REV.* 257 (1905); Herman Cohen, *The Origins of the English Bar*, 31 *LAW Q. REV.* 56 (1915); F.A. Inderwick, *Art. IV — The Etiquette of the Bar*, 3 *LAW MAG. & L. REV.* 236 (London, Butterworths 1857). Robert C. Palmer, *The Origins of the Legal Profession in England*, 11 *IRISH JURIST* 126 (1976).

5. The history, objectives, effect, and significance of this regulation is discussed comprehensively and in detail in Rose, *supra* note 4, at 49–85, 95–105.

6. See, e.g., 2 SIR WILLIAM HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 299–304 (Methuen & Co. and Sweet & Maxwell 1966) (1903); THEODORE F.T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 27–31 (5th ed., Little, Brown & Co. 1956) (1929) (declaring it to be “one of the greatest outbursts of reforming legislation in English history”). The important statutes included: the Statute of Westminster I (1275), considered a supplement to the Magna Carta; the Statute of Gloucester (1278); the Statute of Mortmain (1279); the Statute of Merchants (1283) (Statute Acton Burnell); the Statute of Wales (1284); the Statute of Westminster II (1285), which included *De Donis* and impor-

upon almost every point of law, both public and private”<sup>7</sup> and created a foundation for the civil and criminal law that was not significantly altered until the nineteenth century.<sup>8</sup> Holdsworth said that these reforms, whose impact is still “visible to-day,” “foreshadowed the main lines of the future historical development of our law.”<sup>9</sup> The animus toward lawyers should be viewed in the context of this reform era.

At the end of the thirteenth century, there was dissatisfaction with the justice system and its officials such as judges, sheriffs, and clerks.<sup>10</sup> Perhaps, the most celebrated occurrence was the judicial scandal of 1289. This scandal provoked a major inquest, resulting in accusations of bribery and similar crimes<sup>11</sup> and the removal of all the King's Bench justices and all but one of the Court of Common

tant sections dealing with judicial power, bills of exceptions, and the justice system; the Statute of Winchester (1285); the Statute of Merchants (1285); the Statute of Quo Warranto (1290); Statute Quia Emptores (1290); the reenactment, the fifth and first public enrolling of the Magna Carta (1297); Articuli Super Carti (1300); and the Statute of Carlisle (1307). In total, between 30 and 35 statutes and ordinances were enacted during the reign of Edward I. See CHRONOLOGICAL TABLE OF THE STATUTES: COVERING THE PERIOD FROM 1235 TO THE END OF 1965, at 10–15 (1966).

7. BRYCE LYON, A CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND 431 (2d ed. 1980). In Winston Churchill's view, “[f]ew of these [statutes] were original, most were conservative in tone, but their cumulative effect was revolutionary.” 1 WINSTON S. CHURCHILL, A HISTORY OF THE ENGLISH-SPEAKING PEOPLES 288 (1958).

8. See 2 HOLDSWORTH, *supra* note 6, at 299; LYON, *supra* note 7, at 431; *The Place of the Legal Profession in the History of English Law*, in T.F.T. PLUCKNETT, STUDIES IN ENGLISH LEGAL HISTORY XIX (1983).

9. 2 HOLDSWORTH, *supra* note 6, at 291. See generally T.F.T. PLUCKNETT, LEGISLATION OF EDWARD I (1949) (rendering a comprehensive account of the legislative reforms under Edward I in a manner attempting to appeal to both lawyers and historians alike). Tout felt that this reform spirit was not limited to England. See T.F. TOUT, EDWARD THE FIRST 120 (London, MacMillan & Co. 1893). “The thirteenth century was above all things the age of the lawyer and the legislator. . . . From Bologna there flowed all over Europe a great impulse towards the systematic and scientific study of the Civil Law of Rome.” *Id.*

10. See, e.g., 2 HOLDSWORTH, *supra* note 6, at 293–99.

11. This scandal has prompted a substantial amount of scholarly comment. See, e.g., *id.* at 295–99; Paul A. Brand, *Edward I and the Judges: The ‘State Trials’ of 1289–93*, reprinted in THIRTEENTH CENTURY ENGLAND 31 (P.R. Coss & S.D. Lloyd eds., 1986). Maitland said that the judicial abuses alleged in the 1289 scandal, “our one great judicial scandal,” may have influenced the writing of *The Mirror of Justices* and “its main and ever-recurring theme [of] a denunciation of ‘false judges.’” Frederic William Maitland, *Introduction to THE MIRROR OF JUSTICES* at xxiv–xxv, xliii–xliv, xlix (William Joseph Whittaker ed., Selden Soc’y vol. 7, 1895). Maitland and others have questioned the accuracy of this controversial book.

Pleas.<sup>12</sup>

The legal profession was not immune to this unpopular sentiment. Religious writers had criticized ecclesiastical and common law lawyers and court officials for some time.<sup>13</sup> In the early thirteenth century, Matthew Paris' *Chronicles* recounted "complaints against the [king's] pack of bellowing legists."<sup>14</sup> Moreover, political songs ridiculed and satirized lawyers and judges. A fourteenth century poem said that pleaders "will beguile you in your hand unless you beware" and "speak for you a word or two and do you little good," and attorneys would "get silver for naught," "make men begin what they never had thought," and the poem warned "no man should trust them, so false they are in the bile."<sup>15</sup> *The Mirror of Justices*

12. See 5 SELECT CASES IN THE COURT OF KING'S BENCH UNDER EDWARD III, at lxii (G.O. Sayles ed., Selden Soc'y vol. 76, 1958). Apparently due to the shortage of individuals with legal training, Edward I reinstated many of the judges, being satisfied with exaction of enormous fines. See 7 THE CAMBRIDGE MEDIEVAL HISTORY: DECLINE OF EMPIRE AND PAPACY 397 (J.R. Tanner et al. eds., 1932). Robert Burnell, one of Edward I's most influential advisors, headed the inquest, and another important associate, Chief Justice Ralph de Hengham, was one of the accused judges although his culpability has engendered much discussion. See 2 HOLDSWORTH, *supra* note 6, at 295, 298 & n.8.

13. See COHEN, *supra* note 4, at 116–21, 160–62.

14. 1 SIR FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW 214 (Cambridge Univ. Press 1968) (2d ed. 1898). A "legist" was a lawyer trained in Roman law. See *id.*

15. *Poem on the Evil Times of Edward II*, in THOMAS WRIGHT'S POLITICAL SONGS OF ENGLAND 323, 339 (Cambridge Univ. Press 1996) (1839) (translated by Robert Bjork). Judges were accused of corruption (*Song on the Venality of the Judges*, in THOMAS WRIGHT'S POLITICAL SONGS OF ENGLAND, *supra*, at 224, 224–26) and of being able "to turn the fair day into dark night" (*Poem on the Evil Times of Edward II*, *supra*, at 336). I am grateful to Dr. Robert Bjork, Director, Arizona Center for Medieval and Renaissance Studies, for the following translation.

And counters on the bench that stand by the bar,  
They will beguile you in your hand unless you beware.  
He will take 40 pence to take down his hood,  
And speak for you a word or two and do you little good,

I warrant.

Attorneys in country, they get silver for naught;  
They make men begin what they never had thought;  
And when they come to the ring, they hop if they can.  
All they can get that way, they think all is won for them

With skill.

No man should trust them, so false they are in the bile.

See *Poem on the Evil Times of Edward II*, *supra*, at 339. Dr. Bjork believes that "bile" may mean "bille" or legal document, which would make more sense than "beak" as a metaphor for "face." It may also mean "bile," as in yellow or black bile, but that might be too complicated an allusion. Thus, he thinks it is a misspelling of "bille." The portion

was another public manifestation of these sentiments.<sup>16</sup> This hostility, however, was not limited to public expressions, as there were official actions reflecting concern with lawyers. For example, the expanding use of lawyers led to attempts to restrict their use<sup>17</sup> or exclude them from appearing in some courts.<sup>18</sup> In addition, in 1259, Henry III reaffirmed the right of the citizens of London to plead on their own without using lawyers.<sup>19</sup>

The climate of opinion was hostile to the legal profession. A general belief existed that there was too much litigation that resulted from there being too many lawyers, and that some lawyers engaged in harmful conduct and were poorly trained. Sayles stated that “[s]o rapid was the growth of the profession of attorney that some attempt had to be made to overhaul and regulate it,” that “[i]t was inevitable that vicarious representation should bring in its train much bribery and corruption,” and that attorneys and pleaders “came under the lash of public scorn and indignation” with “a monotonous outcry” against their misconduct.<sup>20</sup> Regardless of whether

dealing with judges is as follows:

And justices, sheriffs, mayors, bailiffs, if I shall judge rightly,  
They can of the fair day make the dark night;  
They go out of their way and don't stop because of any slander,  
And make the justice-hall at home in their chamber,

With wrong;

For by the whitened hand, it shall go good enough.

*See id.* at 336. Dr. Bjork says that the last two lines mean that they wrongly use their homes as justice-halls (it is not a disinterested place) and use slight of hand (whitened = deceitful) to their advantage. *See* Letter from Dr. Robert Bjork, Director, Arizona Center for Medieval and Renaissance Studies, to Jonathan Rose, Professor of Law, Arizona State University College of Law (on file with author).

16. *See supra* note 11 and accompanying text. The judicial scandal of 1289 may have prompted the writing of this book. *See id.*

17. *See* BRAND, ORIGINS, *supra* note 4, at 67, 90.

18. The lords of the manor tried to exclude pleaders from appearing in the manorial courts. *See* 1 SELECT PLEAS IN MANORIAL AND OTHER SEIGNORIAL COURTS 135-36 (F.W. Maitland ed., Selden Soc'y vol. 2, 1889). In 1240, the Abbott of Ramsey prohibited his tenants “on pain of twenty shillings to introduce pleaders into his court to impede or delay his justice.” 1 *id.* at 136.

19. *See* 1 POLLOCK & MAITLAND, *supra* note 14, at 215.

20. G.O. Sayles, *Introduction* to 1 SELECT CASES IN THE COURT OF KING'S BENCH UNDER EDWARD I, at ci, cviii (G.O. Sayles ed., Selden Soc'y vol. 55, 1972) (1936). Harding said, “there was a natural prejudice against the commercial exploitation of plaintiffs' necessity.” ALAN HARDING, A SOCIAL HISTORY OF ENGLISH LAW 170 (1966). The ill feeling against lawyers may have been because they were middlemen, profiting on the problems of others. *See id.* at 178. Such attitudes exemplified the longstanding antipathy toward middlemen, evidenced by the medieval prohibitions on forestalling, regrating, and

the climate warranted the sentiment expressed by Dick the Butcher's infamous quote during Jack Cade's rebellion, "The first thing we do, let's kill all the lawyers,"<sup>21</sup> public attitudes created a climate conducive to regulation.

### B. The Attitudes Influencing the Individual Regulations

Several sections of the 1275 Statute of Westminster I were directed at problems with the justice system, particularly official misconduct and excessive litigation.<sup>22</sup> Commentators contemporary with the statute's adoption, a product of the royal Inquest of 1274, and later ones confirmed these concerns. Fleta spoke of the need to punish officials who "delay or impede the course of justice" and the excessive judicial officials who caused "manifest oppression of the people," and said that royal officials should take no rewards nor bribes for exercising their office and should "be content with their fees" and that those who "foment or maintain suits . . . [are] despisers of the law."<sup>23</sup> Britton and *The Mirror of Justices* reflected the same sentiments.<sup>24</sup> Several centuries later, Coke and Reeves echoed these con-

engrossing. See PHILLIP AREEDA & LOUIS KAPLOW, *ANTITRUST ANALYSIS* 39 (5th ed., Aspen Law & Bus. 1997).

21. The famous quotation is from WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH* act 4, sc. 2, l. 78. Shakespeare has based Cade and his mob, perhaps inaccurately, on the 1381 Peasants' Revolt. See PETER SACCIO, *SHAKESPEARE'S ENGLISH KINGS* 124–25, 127–28 (1977). Kermode noted the hostility to lawyers reflected by Cade and the gravedigger's scene in *Hamlet*. See Sir Frank Kermode, *Justice and Mercy in Shakespeare*, 33 HOUS. L. REV. 1155, 1161–64 (1996). He concluded that their use of "jargon unintelligible to nonlawyers" and their ability to "exercise dreadful powers as the representatives of the great judge, God himself" inspired this feeling. *Id.* at 1164. While Cade's statement is usually seen as critical of lawyers, some have provided alternative, including complimentary, interpretations. See, e.g., DANIEL J. KORNSTEIN, *KILL ALL THE LAWYERS?* 22–34 (1994) (providing three interpretations of the famous quote).

22. See Rose, *supra* note 4, at 49–57.

23. 2 FLETA 138–40, 153, 225 (H.G. Richardson & G.O. Sayles eds. & trans., Selden Soc'y vol. 72, 1955) (1647). Fleta was written "about 1290" and is characterized as an epitome of Bracton; the common speculation has been that the title derives from the fact that the author wrote it while in the Fleet prison. See PERCY H. WINFIELD, *THE CHIEF SOURCES OF ENGLISH LEGAL HISTORY* 262–63 (1925).

24. Britton spoke of this conduct "hindering justice" and causing "damage or grievance" to the people and referred to those "who through malice have procured suits to be stirred up," causing oppression and wrongful litigation. 1 BRITTON 91–95 (Wm. W. Gaunt & Sons, Inc. 1983) (Francis Morgan Nichols ed. 1865). Britton, like Fleta, was written about 1290 and is also characterized as an epitome of Bracton, although it contains additional material. See 1 *id.* at xviii–xxii. *The Mirror of Justices* characterized the conduct prohibited by these sections as "reprehensible." See *THE MIRROR OF JUSTICES*, *supra* note

cerns.<sup>25</sup> More recently, Holdsworth and Plucknett noted that these portions of the Statute of Westminster I were necessary reforms to the justice system.<sup>26</sup>

Although Chapter 29's prohibition on deceit and collusion by pleaders and others was among these sections,<sup>27</sup> none of the Inquest Articles was directed at lawyer misconduct nor did Professor Cam's extensive study uncover evidence of such misconduct in the resulting Hundred Rolls.<sup>28</sup> Nevertheless, medieval and later commentators confirmed the public hostility toward lawyers, thus providing an explanation for this prohibition's inclusion. In discussing the prohibited deceit and collusion, Fleta stated that it was "recklessly foolhardy as to contrive [such conduct] . . . to delude the court or any of the parties."<sup>29</sup> Britton referred to the "secret malice" of violators and the need for replacement by a "better serjeant."<sup>30</sup> Coke stated that lawyers engaged in "unlawful shifts and devises so cunningly contrived . . . in deceit of the King's Courts, as oftentimes the Judges of the same were by such crafty and sinister shifts and practices

11, at 186–87.

25. Coke discussed these chapters extensively, referring to "mischief," "vexation," and "delay." See 1 EDUARDO COKE, THE SECOND PART OF THE INSTITUTES OF THE LAWS OF ENGLAND 205–18, 224–25 (William S. Hein Co. 1986) (1642). He explained the derivation of champerty and said that it did substantial "mischief therein to the subverting of justice and truth." 1 *id.* at 207–08. He said that maintenance "stir[s] up and maintain[s] quarrels" and "is punished with great severity" and that barratry was not adequately remedied by the Statute of Merton and caused mischief that required further remedy. 1 *id.* at 212, 224–25. Reeves stated that the Statute was needed for the "correction of many irregularities . . . and for the better administration of justice, both civil and criminal," noting that the prohibited conduct caused such interference. 2 JOHN REEVES, HISTORY OF THE ENGLISH LAW 107–08, 126–39 (Augustus M. Kelley Publishers 1969) (2d ed. 1787).

26. Holdsworth spoke of the "urgent need" to reform "the machinery of government" and that these sections exemplified Edward I's attempt to raise his officials' standard of conduct. 2 HOLDSWORTH, *supra* note 6, at 293 & n.9. Plucknett said that the Statute was necessary to protect the king's subjects against the substantial oppression by his officials, revealed by the 1274 Inquest. See PLUCKNETT, *supra* note 6, at 27.

27. See Statute of Westminster I, 1275, 3 Edw. I, ch. 29, reprinted in 1 STATUTES OF THE REALM 34 (William S. Hein & Co. 1993) (1810). For a contemporary summary, see 2 FLETA, *supra* note 23, at 139. For a more recent summary, see Rose, *supra* note 4, at 49–50, 57–62, 122.

28. See HELEN M. CAM, THE HUNDRED AND THE HUNDRED ROLLS: AN OUTLINE OF LOCAL GOVERNMENT IN MEDIEVAL ENGLAND 242 (1930).

29. 2 FLETA, *supra* note 23, at 139.

30. 1 BRITTON, *supra* note 24, at 101–02. *The Mirror of Justices* labeled this conduct "reprehensible." See THE MIRROR OF JUSTICES, *supra* note 11, at 186.



invigled and beguiled.”<sup>31</sup> Sayles felt that Chapter 29 was necessary “to control [lawyers],” because “so wide were the openings for chicanery on their part.”<sup>32</sup> Pollock and Maitland said that it was “necessary to threaten [pleaders] with imprisonment” to prevent this collusive and deceitful conduct.<sup>33</sup> The eyre justices follow-up on the 1274 Inquest confirmed this concern with lawyer misconduct.<sup>34</sup> Whether related to the Inquest or to a traditional eyre procedure,<sup>35</sup> the eyres of 1292 and 1293 produced numerous local citizen complaints

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31. 1 COKE, *supra* note 25, at 212. A shift is a fraudulent scheme, artifice, trick, or evasion. See WEBSTER'S COLLEGIATE DICTIONARY 1080 (10th ed. 1996). Reeves spoke of “malpractice” that was equivalent to the bribery and extortion prohibited by the other sections of the Statute. See 2 REEVES, *supra* note 25, at 127–28. Blackstone said that it was directed at pleaders’ “gross misdemeanors in practice.” 3 SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 29 (Garland Publishing, Inc. 1978) (9th ed. 1783).

32. Sayles, *supra* note 20, at civ. He also referred to the “dark problem of the fees that were paid to attorneys.” *Id.* at ci–cii.

33. 1 POLLOCK & MAITLAND, *supra* note 14, at 216. There may have been a particular concern with conflict of interest. See CHRISTIAN, *supra* note 4, at 14. Cohen stated that “the unprotected public suffered from the dishonesty of the legal practitioner.” COHEN, *supra* note 4, at 194. One commentator even felt that it was the first step in the necessary restoration of order in the legal system. See KIRK, *supra* note 4, at 6. He stated that the need arose from changes in the judicial system and “the general confusion caused by the political unrest of the period.” *Id.*

34. After the Inquest, the Statute of Ragman authorized justices traveling in the eyre to hear complaints regarding any offences over the prior 25 years and determine appropriate charges. See CAM, *supra* note 28, at 229. Traveling through England, the eyre justices carried the Hundred Rolls so they could hear the complaints enumerated by the hundreds juries. See *id.* at 230. In 1278, they carried with them 140 questions for a new Inquest, some of which were repeats of 1274 questions. See *id.* at 229–30. Annotations on the Hundred Rolls indicated that answers in 1278 were checked against the previous answers. See *id.* at 51, 230. Also, on three occasions between 1279 and 1307, the king conducted inquiries that solicited complaints to Parliament regarding misconduct by his servants. See J.R. Maddicott, *Parliament and the Constituencies, 1272–1377*, in THE ENGLISH PARLIAMENT IN THE MIDDLE AGES 61, 66 (R.G. Davies & J.H. Denton eds., 1981). The king’s purposes were to demonstrate care for his subjects, to gather evidence for the punishment of wrongdoers, and to use the proceedings as a warning to corrupt officials. See *id.*

35. The bills in eyre involved informal complaints on numerous subjects, frequently by poor people asking the king to do justice. See 2 HOLDSWORTH, *supra* note 6, at 336–47; W.C. Bolland, *Introduction* to 2 THE EYRE OF KENT, 6 & 7 Edw. II, at xxi–xxx (William C. Bolland et al. eds., Selden Soc’y vol. 27, 1912). Although Bolland did not connect these bills to the 1274 Inquest, they encompassed some of the same types of complaints by similar citizens in local areas. See *id.* Holdsworth, however, said that these later bills in eyre originated with the 1274 Inquest mandate to hear informal complaints (*quarelae*), the resulting Hundred Rolls, and the subsequent instructions to the eyre justices from 1278 and thereafter, see *supra* note 34, to hear informal complaints at a general eyre by bill. See 2 HOLDSWORTH, *supra* note 6, at 336–37.

against lawyers.<sup>36</sup>

The London Ordinance of 1280's adoption also reflected this concern with excessive lawyers, their incompetence, and misconduct.<sup>37</sup> The Ordinance, a product of longstanding unhappiness with lawyers in the London courts,<sup>38</sup> stated that anyone could decide to be a pleader (becoming "a countor at his own will") by self-evaluation of competence ("each of them the judge of others").<sup>39</sup> Incompetent pleaders were practicing ("some who made themselves countors, who did not understand their profession, nor had they learned it," "did not know how to speak in proper language"), who injured their clients and whose incompetence was "to the great scandal of the Courts aforesaid which allowed them so to be, as also pleaders, and attorneys, and essoiners."<sup>40</sup> The Ordinance also indicated that the objective of insuring competence required regulation of conduct as well as admission ("through [the lawyers'] ignorance the [plaintiffs and defendants] lost their pleas and their suits").<sup>41</sup> Regarding the prohibitions on the specified misconduct, these regulations were necessary as few were being penalized for "their foolish conduct."<sup>42</sup> Over the years, commentators have confirmed these concerns.<sup>43</sup>

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36. See SELECT BILLS IN EYRE: A.D. 1292-1333, at xliii-xlvi, 3-4 (No. 6: sham prosecution, conflict of interest, fraudulent withdrawal), 27-28 (No. 43: corruption, conflict of interest), 52-53 (No. 79: forgery, failure to act after taking fee), 59-60 (No. 88: conflict of interest), 68-69 (No. 99: collusion, wrongful pleading intentionally to lose) (William Craddock Bolland ed., Selden Soc'y vol. 30, 1914). In some of the cases, it is not clear whether a professional lawyer is the target of the complaint. See BRAND, ORIGINS, *supra* note 4, at 138-41.

37. See Rose, *supra* note 4, at 63-70, 131-32.

38. In commenting on 1259 legislation, Pollock and Maitland said "the king was compelled to concede" the right of self-representation as "lawyers . . . [had] rapidly taken possession of the civic courts in London." 1 POLLOCK & MAITLAND, *supra* note 14, at 215. They also suggested that in London, "there had been an unusually rapid development of a professional caste." 1 *id.*

39. 2 MUNIMENTA GILDHALLAE LONDONIENSIS: LIBER CUSTUMARUM 280 (Kraus Reprint Ltd. 1967) (Henry Thomas Riley ed., 1860). An English translation of this ordinance appears at 2 MUNIMENTA GILDHALLAE LONDONIENSIS: LIBER CUSTUMARUM, *supra*, at 595, and Rose, *supra* note 4, at 131.

40. 2 MUNIMENTA GILDHALLAE LONDONIENSIS: LIBER CUSTUMARUM, *supra* note 39, at 595.

41. 2 *id.*

42. 2 *id.*

43. See Rose, *supra* note 4, at 63-66, 131-32. Brand stated that the various prohibitions reflected the concerns with "unnecessary stirring up of litigation," with the "corruption and the betrayal of clients," with the "undue influence" of lawyers on the courts as well as the desire for due decorum in the courtroom and "to uphold the pres-

Hostility toward lawyers also seemed to have influenced the 1292 Ordinance's adoption.<sup>44</sup> Although the 1289 scandal and Inquest focused on the judicial misconduct, lawyer involvement was probable, likely influencing the Ordinance's enactment.<sup>45</sup> Closely related was the impact of substantial lawyer misconduct uncovered during years preceding enactment. Sayles said that its enactment was "in answer to a particular deterioration of conduct at a particular time, and it cannot be understood in isolation but must be related to the whole series of judicial inquiries during 1290–92."<sup>46</sup> Holdsworth felt that complaints against lawyers in the eyres, following up on the 1274 Inquest, revealed the need for the Ordinance.<sup>47</sup> Edward I's subsequent writ confirmed this hostility toward lawyers, reciting concern with the great number of attorneys and their very great fraud and malice, because of which, many of the people have often been vexed.<sup>48</sup> Legal historians have empha

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tige and dignity of the city and its courts." BRAND, ORIGINS, *supra* note 4, at 122. Sayles believed the Ordinance was necessary because "so wide were the openings for chicanery" by lawyers and because of the "monotonous outcry against the practice whereby the pleader insinuated himself into the confidence of one party and afterwards transferred his services to the other." Sayles, *supra* note 20, at civ & n.10, cv & n.1, cviii & n.2. Pollock and Maitland noted that in enacting the Ordinance, the city officials were "compelled to lament the ignorance and ill manners of the pleaders and attorneys" practicing in the London courts. 1 POLLOCK & MAITLAND, *supra* note 14, at 216. Cohen stated that the Ordinance's objective was to remedy "the evils of their legal system." Cohen, *supra* note 4, at 68.

44. See 1 ROTULI PARLIAMENTORUM 84, no. 22, 20 Edw. I (1292); see also Rose, *supra* note 4, at 73–76, 133.

45. In Edward I's investigation due to the 1289 scandal, Sayles stated that the "record does not contain accusations of misconduct against attorneys and pleaders, though it can be said without hesitation that bribery and chicanery must have been at least as rife among them." G.O. Sayles, *Introduction* to 5 SELECT CASES IN THE COURT OF KING'S BENCH UNDER EDWARD III, *supra* note 12, at lxii. He believed that a separate investigation into lawyer misconduct, whose records no longer existed, was commenced and led to the enactment of the Ordinance of 1292. See 5 *id.* at lxii–lxiv. Kirk also believed that, like the investigation of judicial misconduct, the enactment of the Ordinance of 1292 was part of the "general cleaning-up process" commenced by Edward I after his 1289 return to England. KIRK, *supra* note 4, at 6.

46. G.O. Sayles, *Introduction* to 5 SELECT CASES IN THE COURT OF KING'S BENCH UNDER EDWARD III, *supra* note 12, at lxiv.

47. See 2 HOLDSWORTH, *supra* note 6, at 314–15; see also *supra* notes 34–36 and accompanying text.

48. See Rose, *supra* note 4, at 75 & nn.329–30, 134. The king ordered Chief Justice Mettingham to provide the names of those appearing in violation of it, so that the king could impose an appropriate remedy. See *id.* at 76 & n.331. Robert Palmer discovered the mandate. See Palmer, *supra* note 4, at 139 n.71. It recited that it was issued on June 2, 1292, which was apparently in the parliamentary session subsequent to that in

sized this antipathy toward excessive lawyers. Sayles suggested that rapid growth of professional attorneys necessitated the adoption of the Ordinance, as "some attempt had to be made to overhaul and regulate" the professional Common Bench attorneys.<sup>49</sup> The writ was also directed at apprentices, ordering the justices to admit only those who were most capable and "willing to learn."<sup>50</sup> Plucknett said that this restriction of apprentices was necessary to control the "superabundance of law students."<sup>51</sup>

Strong anti-lawyer attitudes were influential in the adoption of both the 1402 and 1455 regulations. Several parliamentary petitions reflected this hostility.<sup>52</sup> Perhaps the best known connection between lawyers and these petitions was the charge that lawyers were abusing the petitioning process to aid their private clients.<sup>53</sup> A 1372

which the Ordinance was adopted. See BRAND, ORIGINS, *supra* note 4, at 209 n.68. In noting the Ordinance, Reeves stated that Edward I was "extremely careful" to insure that only qualified persons could practice in his courts. See 2 REEVES, *supra* note 25, at 284.

49. Sayles, *supra* note 20, at ci. He felt that practice in the King's Bench presented few problems due to the smaller amount of litigation and its mobile nature. See *id.* As a result, there was not "much scope for the hanger-on and the tyro." *Id.* The county quotas reflected the fact that much of the business of many attorneys came from a single county. See BRAND, ORIGINS, *supra* note 4, at 75.

50. Rose, *supra* note 4, at 76 & nn.333-34.

51. Theodore F.T. Plucknett, *The Place of the Legal Profession in the History of English Law*, 48 LAW Q. REV. 328, 338 (1932).

52. Parliamentary petitions have produced substantial scholarship. See, e.g., THE ENGLISH PARLIAMENT IN THE MIDDLE AGES, *supra* note 34 (containing essays published by various authors); HOWARD L. GRAY, THE INFLUENCE OF THE COMMONS ON EARLY LEGISLATION: A STUDY OF THE FOURTEENTH AND FIFTEENTH CENTURIES (1932); H.G. RICHARDSON & G.O. SAYLES, THE ENGLISH PARLIAMENT IN THE MIDDLE AGES (1981) (containing articles published by authors); A.R. Myers, *Parliamentary Petitions in the Fifteenth Century: Part I, Petitions from Individuals or Groups*, 52 ENG. HIST. REV. 385 (1937); A.R. Myers, *Parliamentary Petitions in the Fifteenth Century: Part II, Petitions of the Commons and Common Petitions*, 52 ENG. HIST. REV. 590 (1937); Doris Rayner, *The Forms and Machinery of the 'Commune Petition' in the Fourteenth Century: Part I*, 56 ENG. HIST. REV. 198 (1941) [hereinafter Rayner I]; Doris Rayner, *The Forms and Machinery of the 'Commune Petition' in the Fourteenth Century: Part II*, 56 ENG. HIST. REV. 549 (1941) [hereinafter Rayner II].

53. See GRAY, *supra* note 52, at 348; RICHARDSON & SAYLES, *supra* note 52, at XXI 12, XXIV 34-35; 2 WILLIAM STUBBS, THE CONSTITUTIONAL HISTORY OF ENGLAND 445 (William S. Hein & Co. 1987) (3d ed. 1887); A.L. Brown, *Parliament, c. 1377-1422*, in THE ENGLISH PARLIAMENT IN THE MIDDLE AGES, *supra* note 34, at 109, 126-27; Rayner I, *supra* note 52, at 206; Rayner II, *supra* note 52, at 569. Many scholars believed that this abuse occurred as Commons had not adopted procedures to insure the regularity and integrity of commons petitions. See Maddicott, *supra* note 34, at 76-77. Although lawyer members might have manipulated "commons' petitions for their own advantage and did

Commons Petition and resulting Ordinance reflected the dissatisfaction with this lawyer abuse (“do procure and cause to be brought into Parliament many Petitions in the Name of the Commons, which in no wise relate to them, but only the private Persons with whom they are engaged”); and the Ordinance prohibited practicing lawyers from being a knight of the shire, and, therefore, a member of Parliament.<sup>54</sup>

Lawyers' activities in the courts were also the subject of several commons petitions. Many, although not all, were critical.<sup>55</sup> The 1402 Commons Petition repeated the familiar complaint about the number of attorneys and their inadequate training and misconduct.<sup>56</sup> It recounted the “falsifications, deceits, and nullifications . . . for some time . . . still being made day to day . . . more than were ever made in the past, by a large number of attorneys.”<sup>57</sup> It noted that “several have learned little or nothing of the law,” that some were “of very tender age,” and that their “negligence and ignorance” have prevented accurate record keeping.<sup>58</sup> It complained about “falsehoods” regarding litigation documents, “erasure of briefs and rolls.”<sup>59</sup> The Petition asked the king “to oust such persons disinherited, fallacious, and deceitful” and to empower the justices “to call the most loyal, best apprised of the law, and of good fame . . . four, five, or six attorneys or more [in each county] . . . as the Counties shall have need.”<sup>60</sup> The king's response and some further aspects of the re-

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not always represent the common interest,” they were not the only members who had clients. *Id.* at 76. Others included “persistent litigants . . . or maintainers of plaints or those who live by such gains. . . . paid supporters of other men's quarrels, rogues . . . whose practice of maintenance was coming to threaten parliament just as it already threatened the king's other courts.” *Id.* at 77.

54. See 2 ROTULI PARLIAMENTORUM 310, no. 13 (petition), 46 Edw. III (1372); Ordinance, 46 Edw. III (1372), reprinted in 1 STATUTES OF THE REALM, *supra* note 27, at 394. The prohibition also extended to sheriffs. See 1 STATUTES OF THE REALM, *supra* note 27, at 394. This prohibition was not very effective, as in the early fifteenth century numerous commons members were lawyers. See A.R. Myers, *Parliament, 1422-1509*, in THE ENGLISH PARLIAMENT IN THE MIDDLE AGES, *supra* note 34, at 141, 166. Myers determined that in the 1422 Parliament, 20 of 74 knights of the shire were lawyers and 37 burgesses were lawyers. See *id.* “[L]awyers could not be kept out; and in at least one important respect they may have contributed to the growing prestige of the commons.” *Id.*

55. See Rose, *supra* note 4, at 95.

56. See 3 ROTULI PARLIAMENTORUM 504, no. 71, 4 Hen. IV (1402).

57. 3 *id.*

58. 3 *id.*

59. 3 *id.*

60. 3 *id.*

quested relief were similar to the 1402 Statute, whose preamble language confirmed these concerns. It noted the “Damages and Mischiefs . . . to divers Persons of the Realm by a great Number of Attornies, ignorant and not learned in the Law.”<sup>61</sup> The Petition and resulting Statute reflected the view that during the fourteenth century excessive attorneys had been appointed,<sup>62</sup> many of whom were ignorant and engaged in misconduct.<sup>63</sup> Coke saw the Statute as a solution to these problems, particularly the excessive attorneys who caused an undesirable increase in litigation.<sup>64</sup> Others saw the Petition and Statute manifesting broader deficiencies in the justice system.<sup>65</sup>

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61. Statute, 4 Hen. IV, ch. 18 (1402), *reprinted in* 2 STATUTES OF THE REALM, *supra* note 27, at 138–39. See Rose, *supra* note 4, at 95–99, 135, for a detailed discussion on the 1402 Statute. Chief Justice Gascoigne, a law reformer, apparently drafted this Statute to remedy the “want of regulations to prevent the admission of improper persons into the profession, and to punish those who acted discredibly.” 1 LORD CAMPBELL, THE LIVES OF THE CHIEF JUSTICES OF ENGLAND 138 (Jersey City, Fred D. Linn & Co. 1881). Shakespeare memorialized Gascoigne in the second part of *King Henry IV*. See 1 *id.* at 134–35.

62. Some historians believed that a substantial increase in attorneys had occurred in the century after the 1292 Ordinance. See 1 CAMPBELL, *supra* note 61, at 138; CHRISTIAN, *supra* note 4, at 16–17. Campbell said that the growth was “a proof of increasing population, wealth, and civilization; but a general cry arose that the people were pilled by barrators and pettifoggers.” 1 CAMPBELL, *supra* note 61, at 138. “[M]any thousand general attorneys were annually appointed” and “the Rolls of Parliament are full of petitions directed against the multiplicity and evil practices of the attorneys,” of which the 1402 Commons Petition was one, all of which produced this Statute. Inderwick, *supra* note 4, at 243, 247–48.

63. Holdsworth stated that this Statute resulted from the pressing need to regulate lawyers, given the increase in the number of professional attorneys and “ignorant attorneys.” 2 HOLDSWORTH, *supra* note 6, at 505–06. Reeves noted that attorneys “had now become a very considerable body of men,” whose “ignorance and want of knowledge” caused “mischiefs.” 3 REEVES, *supra* note 25, at 233–34. Another said that many of those appointed were “ignorant persons, who often abused the trust reposed in them.” Inderwick, *supra* note 4, at 248.

64. See SIR EDWARD COKE, THE FOURTH PART OF THE INSTITUTES ON THE LAWS OF ENGLAND 76 (Garland Publ'g, Inc. 1979) (1644). This 1402 Statute was among several that prompted Coke's comment that “the multitude of Attornies, more then is limited by law, is a great cause of increase of suits.” *Id.* He saw these statutes as “made for avoiding and decreasing of vexatious suits.” *Id.* Recent commentators have agreed. See CHRISTIAN, *supra* note 4, at 18. The number of attorneys was a “chronic complaint” and the 1402 Statute was a product of “such grumbling.” ROBSON, *supra* note 4, at 2. “[U]ntrained attorneys multiplied in proportion to the numbers of middle-class litigants.” HARDING, *supra* note 20, at 171.

65. Birks believed that “[t]he dwindling power of the monarchy was having a disastrous effect on the administration of justice,” citing a judge who collected 500 men to ambush a person to settle a dispute over a common pasture as epitomizing “the appall-

The 1455 Ordinance was the culmination of several statutes and petitions directed at lawyers; it again reflected the familiar complaints about lawyers. Only a few years after the 1402 Statute, the 1410 Commons Petition had complained about lawyers.<sup>66</sup> It stated that Commons was aware of “large and grievous complaints,” from a variety of people from all around England, that “due to the large number of attorneys in your courts, diverse errors, deceits, and injuries” occurred daily with “extortions, expenditures, and great losses” to the citizens, and “great damage and slander of your courts, and impoverishment and ruination” of the citizens.<sup>67</sup> Since the present Parliament had failed to order a “sufficient remedy,” the Petition requested the king to order the justices and each bench to examine all attorneys practicing before them and if any “be found guilty” of previously described misconduct, the justices should “oust them from your said courts forever.”<sup>68</sup> In addition, the justices should call “the most sufficient and loyal attorneys . . . [six, eight, ten, or twelve per county,] according to the size of the county.”<sup>69</sup> The Petition requested that admitted attorneys swear annually and in each term to be “faithful and loyal” to the king and “just and loyal” to the citizens, and finally that the attorneys be imprisoned for a year if guilty.<sup>70</sup> The king, in response, acquiesced in the Petition and the requested penalty.<sup>71</sup> Commons again petitioned in 1411, complaining again about all the problems and injury caused by “the great multitude of attorneys.”<sup>72</sup>

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ing state of affairs.” BIRKS, *supra* note 4, at 43. Kirk believed that judges had not discharged their duties under the 1292 Ordinance to control admission and that “these were troublesome times in which the discipline of attorneys was completely unimportant. . . . [The] judges were too much concerned with greater problems to trouble themselves about this one [(meaning attorney discipline)].” KIRK, *supra* note 4, at 69.

66. “The Act of 1402 could not have been seriously expected to be immediately effective, but the Commons were not satisfied to wait.” KIRK, *supra* note 4, at 12. Another commentator stated the Commons petitioned again because it was “not satisfied” with the 1402 Statute. See Inderwick, *supra* note 4, at 248.

67. 3 ROTULI PARLIAMENTORUM 642–43, no. 63, 11 Hen. IV (1410).

68. 3 *id.*

69. 3 *id.*

70. 3 *id.*

71. The penalty is not clear either in the petition or the king's response. It may have applied to attorneys who practiced without being called by the justices as well as to admitted attorneys who violated their oath. The penalty also included being “ransomed according to the wishes of the king.” 3 *id.*

72. 3 ROTULI PARLIAMENTORUM 666, no. 49, 13 Hen. IV (1411). This petition by “the clerks and attorneys from one Bench to the other” was almost identical to the 1410

The 1455 Commons Petition repeated these complaints vividly as to Suffolk and Norfolk,<sup>73</sup> thought to be especially litigious,<sup>74</sup> and to Norwich.<sup>75</sup> It complained about the large number of attorneys and their dramatic increase, that many earned their living as attorneys and had no other income, their misconduct and incompetence, and their aggressive conduct producing excessive, unfounded litigation.<sup>76</sup> The Ordinance's preamble incorporated the Petition almost verbatim. It stated:

Whereas of Time not long past within the City of Norwich, and the Counties of Norfolk and Suffolk, there were no more but six or eight Attornies at the most, [coming] to the King's Courts, in which Time great Tranquillity reigned in the said City and Counties, and little Trouble or Vexation was made by untrue or foreign Suits; And now so it is, that in the said City and Counties there be Fourscore Attornies, or more, the more Part of them having no other Thing to live upon, but only his Gain by [the Practice of] Attorneyship, and also the more Part of them not being of sufficient Knowledge to be an Attorney, which [come] to every Fair, Market, and other Places, where is any Assembly of People, exhorting, procuring, moving, and inciting the People to attempt untrue [and] foreign Suits, for small Trespasses, little Offences, and small Sums of Debt, whose Actions be triable and determinable in Court Barons; whereby proceed many Suits, more of evil Will and Malice, than of the Truth of the Thing, to the manifold Vexation and no little Damage of the Inhabitants of the said City and Counties, and also to the perpetual [Diminution] of all the Court Barons in the said Counties, unless convenient Remedy be provided in this Behalf.<sup>77</sup>

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Petition. 3 *id.* This language was stronger than the 1410 Petition ("may it please your Royal Majesty to order your justices") and reflected a sense of urgency ("we cry to the Royal Majesty to command his justices"). 3 ROTULI PARLIAMENTORUM 642–43, no. 63, 11 Hen. IV (1410); 3 ROTULI PARLIAMENTORUM 666, no. 49, 13 Hen. IV (1411).

73. 5 ROTULI PARLIAMENTORUM 326–27, no. 57, 33 Hen. VI (1455).

74. See CHRISTIAN, *supra* note 4, at 30–32. Proverbs and literature reflected this aspect of the Norfolk's nature. See *id.* Birks stated that the increase in these counties was "probably exceptional" and was an unsurprising consequence of those counties "great prosperity." BIRKS, *supra* note 4, at 44.

75. 5 ROTULI PARLIAMENTORUM 326–27, no. 57, 33 Hen. VI (1455).

76. See 5 *id.*

77. Ordinance, 33 Hen. VI, ch. 7 (1455), reprinted in 2 STATUTES OF THE REALM, *supra* note 27, at 377–78. For a more detailed discussion of the 1455 Ordinance, see Rose, *supra* note 4, at 99–104, 136–37.



Thus, throughout the medieval period, recurrent themes link the primary regulations. These themes reflected a common perception about lawyers. The refrain was that there was excessive litigation; that it was caused by excessive lawyers because they either created a demand for their services or produced litigation through their misconduct and incompetence.<sup>78</sup> Ives stated that a common medieval theme focused on lawyers' pursuit of wealth and that it evidenced "a simple lack of charity, and . . . a conspiracy to fleece the layman."<sup>79</sup> Numerous and diverse sources including official documents, medieval commentators, subsequent scholars over three centuries, and literary works echoed these hostile attitudes. There were even medieval anti-lawyer jokes.<sup>80</sup>

Although the evidence leaves little doubt regarding the public animus towards lawyers, some questions remain. It would be interesting to know whether there was hostility toward all litigation, which seems unlikely, or only some of it, and, if so, what types. Also, a greater understanding of the broader social context for these attitudes would be useful. Ives said during this period, that law, "the ligaments of the body politic," had a fundamental, broad role, noting a "[f]renzied preoccupation with the law" and a "law-minded" society.<sup>81</sup> It would be productive also to explore these attitudes in the context of changes in the volume of litigation. One study demonstrated that the most substantial increases in litigation occurred later, after 1550.<sup>82</sup> During the medieval period, however, there was a significant increase until the early fifteenth century when the litiga-

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78. That lawyers create a demand for their services is not an uncommon assertion. Richard Abel has discussed it with reference to twentieth century America. See RICHARD L. ABEL, *AMERICAN LAWYERS* 126–41 (1989).

79. IVES, *supra* note 4, at 285. He cited as evidence Chaucer's description of the serjeant, his "Man of Law" and a late fifteenth century poem and play. See *id.* at 285–86.

80. According to Eric Ives, "[t]he archetypal anti-lawyer joke of medieval England has the son of the lawyer replying to the question 'what craft is your father of' with the quip, 'Marry, he is a crafty man of law!'" Ives, *supra* note 2, at 208.

81. IVES, *supra* note 4, at 8–10, 22. He suggested that these attitudes were related to the structure of property ownership, the broader role of law, as foundational to English pre-reformation society, and the importance and wide spread diffusion of legal knowledge as a result of its universal relevance. See *id.*

82. See BROOKS, *supra* note 4, at 79–81. He discussed the increase in litigation, its causes, and the various reactions in detail. See *id.* at 48–131. He characterized 1560–1640 as "one of the most litigious periods in English history." *Id.* at 79.

tion leveled off and then declined until 1550.<sup>83</sup>

Similarly, the claim that there were excessive lawyers needs further evaluation. Preliminary evidence from an earlier study regarding the number of lawyers and the lawyer population ratios provides some support for the hostile attitudes toward lawyers although some seems inconsistent.<sup>84</sup> Moreover, there is some doubt whether the increase in lawyers caused excessive litigation. One commentator believed that the opposite was true, that the increase in litigation led to increase in the number of lawyers.<sup>85</sup> Some have even claimed that, until the mid-fifteenth century, there were insufficient lawyers to meet client needs.<sup>86</sup> Moreover, some have suggested that these extremely negative views of lawyers were exaggerated and the product of unwarranted prejudice, or even "a cliché" and "vulgar error" that was a "symptom" of the dominant role of lawyers and law in English life.<sup>87</sup> Later, the English hostility subsided and now differs from the current American animus.<sup>88</sup>

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83. Brand documented a substantial increase in Common Bench litigation from 1195–1306. See BRAND, ORIGINS, *supra* note 4, at 21–24. Brooks found a similar increase from 1358–1414. See BROOKS, *supra* note 4, at 79–81.

84. See Rose, *supra* note 4, at 110–14.

85. See BROOKS, *supra* note 4, at 115–16.

86. See G.R. ELTON, THE PARLIAMENT OF ENGLAND: 1559–1581, at 283 & n.28 (1986).

87. IVES, *supra* note 4, at 8–10, 22. Ives attributed the poor reputation of the legal profession to the fact that it was "ubiquitous and cohesive." *Id.* at 22. In discussing the latter half of the fifteenth and early sixteenth century, he opined that "on the evidence, the case against the [legal] profession is at worst not proven." *Id.* at 318. He believed that there were both honest and dishonest lawyers and that their values and standards were comparable to society at large. See *id.* He felt that there was sufficient evidence for some of the criticism, but insufficient for other, and that the charges of widespread corruptions were unwarranted. See E. W. Ives, *The Reputation of the Common Lawyers in English Society, 1450–1550*, 7 U. BIRMINGHAM HIST. J. 130, 146–61 (1960) [hereinafter Ives, *Common Lawyers*].

88. See NORMAN F. CANTOR, INVENTING THE MIDDLE AGES 68–69 (1991). Cantor's belief that Maitland's views have had a greater impact in America than in England may offer some insight into the difference in modern attitudes toward lawyers in the two countries. See *id.* He stated that the need for lawyers in England and their national visibility had diminished and he viewed the English legal profession as "declining," "constricted," and "quiescent." *Id.* at 69. In contrast, he saw the American profession as much larger, "self-confident," and as having an overwhelming impact on American society, its ideas and culture. See *id.* Robert Stevens has also noted that today, and since the mid-nineteenth century, the role of lawyers in England and America has differed, and since the Civil War, the American lawyer "bore little resemblance to his English counterparts." Robert Stevens, *Democracy and the Legal Profession*, LEARNING & LAW, Fall 1976, at 12, 14.

### III. THE POST-MEDIEVAL ATTITUDES: A BRIEF SKETCH

These hostile attitudes, which are strikingly similar to the current complaints about American lawyers, were not confined to the medieval period and continued over time in both England and the United States. They persisted in England at least into the eighteenth century. Eric Ives's study revealed the antipathy toward lawyers in the fifteenth and sixteenth centuries.<sup>89</sup> In 1509, *Ship of Fools*, another poem, complained about excessive litigation resulting from "se[eking] the extreme of lawe" due to "greed," "falshode," and "gyle."<sup>90</sup> Sir Thomas More excluded lawyers from Utopia as they were "a sort of people, whose profession it is to disguise matters."<sup>91</sup> Some lawyers even had provisions in their wills for restitution to people that they had wronged.<sup>92</sup> In 1581, "contemporary convictions about the multiplicity of lawyers and their evil doings" led to an unsuccessful legislative effort to restrict Common Bench attorneys and to increase admissions qualifications.<sup>93</sup>

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89. See IVES, *supra* note 4, at 312–18; Ives, *Common Lawyers*, *supra* note 87, at 130–46. He felt that the charges were exaggerated. See Ives, *Common Lawyers*, *supra* note 87, at 146–61. He felt that the Yorkist and Tudor criticism differed from the earlier medieval period. See *id.* at 133.

90. IVES, *supra* note 4, at 8. The *Ship of Fools* poem is as follows:

For small occasion, for lytell greed and weakness,  
Unwyse men stryue, deuysynge falshode and gyle;  
Nowe every fole hath set his mynde and thought  
To seke the extreme of lawe.

*Id.*

In 1509, Alexander Barclay translated Brant's *Ship of Fools* while serving as chaplain of a college near Exeter. See A LITERARY HISTORY OF ENGLAND 351 (Albert C. Baugh ed., 1948); IVES, *supra* note 4, at 308 & n.2. Subsequent historians may have undermined the credibility of these allegations of excessive litigation; and "[f]renzied preoccupation with the law" may be another explanation. IVES, *supra* note 4, at 7–9. *Ship of Fools* also attacked bribery by serjeants. See *id.* at 308 & n.2. Ives noted instances of bribery and religious attacks on lawyers. See *id.* at 308–13.

91. Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CAL. L. REV. 379, 379 (1987) (quoting T. MORE, UTOPIA 128 (G. Burnet trans., 1821) (1516)).

92. See IVES, *supra* note 4, at 317. Brand attaches less significance to such provisions. See Letter from Dr. Paul Brand to Jonathan Rose, Professor of Law, Arizona State University College of Law (Mar. 29, 1997) (on file with author).

93. ELTON, *supra* note 86, at 283. Elton attributed the bill's failure to a "House full of lawyers" although he stated that recent research revealed that "mistaken prejudices" caused the hostile attitudes. *Id.* He also recounted an unsuccessful 1571 attempt to limit lawyers' fees, which failed as "the profession rallied its ranks and scared off the Coun-

Nor was the seventeenth century immune from attacks on lawyers' conduct and their excessive number.<sup>94</sup> In 1605, legislation was enacted "to reform the multitudes and misdemeanours of attornies and solicitors at law," whose conduct, had caused "disrepute" to the legal profession.<sup>95</sup> One barrister complained that solicitors "like the grasshoppers in Egypt, devour the whole land."<sup>96</sup> Coke commented vividly on "multiplication of suits" and "the multitude of attorneys" as one cause of excessive litigation as well as general changes in the social conditions such as the displacement of war with "peace and plenty," noting that plenty was "the nurse of suits."<sup>97</sup> The seven-

cil." *Id.* at 283–84. Others have noted this era's concern with the large number of attorneys. See J.S. COCKBURN, A HISTORY OF ENGLISH ASSIZES 1558–1714, at 146 (D.E.C. Yale ed., 1972); 1 REPORTS FROM THE LOST NOTEBOOKS OF SIR JAMES DYER xxxi (J.H. Baker ed., Selden Soc'y vol. 109, 1994); 2 REPORTS FROM THE LOST NOTEBOOKS OF SIR JAMES DYER 325 (J.H. Baker ed., Selden Soc'y vol. 110, 1994). The legal system's cost may have been a cause of attacks on lawyers. See IVES, *supra* note 4, at 321. Popular pamphlets saw lawyers' wealth as proof that they were the cause and beneficiaries of this cost. See *id.* Ives discussed lawyer income to evaluate these complaints. See *id.* at 321–29.

94. See PREST, *supra* note 4, at 283–96; ROBSON, *supra* note 4, at 5–6; Wilfrid Prest, *The English Bar, 1550–1700*, in LAWYERS IN EARLY MODERN EUROPE AND AMERICA, *supra* note 4, at 65, 73–77.

95. ROBSON, *supra* note 4, at 4 & n.1.

96. DANIEL J. BOORSTIN, THE AMERICANS: THE COLONIAL EXPERIENCE 196 (1958).

97. COKE, *supra* note 64, at 75.

Now that we may here say somewhat to a vulgar objection of the multiplication of suits in law . . . more then hath been in the reigns of E.3. R.2. H.4. H.5. H.6. E.4 and R.3. It is to be observed, that there be six causes of the increase of them, whereof two be generall, and the other four particular. The generall be Peace, and Plenty: The particular, 1.The dissolution of so many Monasteries, Chanteries, &c. and the dispersing of them into so many severall hands. 2.The swarm of Informers. 3.The number of Concealors. 4.The multitude of Attornies.

For the first generall: In the reigns of E.3. R.2. H.4. H.5. and part of the reign of H.6. in respect of the wars in France, &c. and in the residue of the reign of H.6. and in the reign of E.4. in respect of the bloody and intestine wars, and in almost continuall alarums within the bowels of this kingdome, between the houses of Lancaster and York, there could not be so many suits in law, as since this kingdome hath enjoyed peace, which is the first generall cause. Peace is the mother of plenty, (which is the second generall cause) and Plenty the Nurse of suits. In particular, by the dissolution of Monasteries, Chanteries, &c. and dispersing of them, &c. Upon the statutes made concerning the same . . . there arose many questions and doubts, whereupon suits were greatly increased. 2. Informers and Relators raised many suits, by informations, writs, &c. in the Kings Courts at Westm' upon penall statutes, many whereof were obsolete, inconvenient, and not fit for those days, and yet remained as snares upon the subject . . . Lastly, the multitude of Attornies, more then is limited by law, is a great cause of increase of suits.

*Id.* at 76.

teenth century civil strife produced attacks on lawyers, who were targets of the associated law reform efforts; again, there were proposals to eliminate lawyers from parliament as well as proposals to regulate them more strictly and to authorize nonlawyer representation.<sup>98</sup> Criticism of lawyers was evident in the eighteenth century as well.<sup>99</sup> An early eighteenth century diary noted that the "House of Commons had voted that the exorbitant number of attorneys be lessened, (now indeed swarming and . . . eating out the estates of people, provoking them to go to law)."<sup>100</sup> Continued dissatisfaction with attorneys led to 1729 legislation regulating the admission and conduct of attorneys and solicitors.<sup>101</sup> However, the complaints did not stop. Hale's seventeenth century work discussed the causes of the substantial increase in litigation, including "[m]ultitudes of attorneys . . . who are ready at every market to gratify spleen, spite, or pride of every plaintiff" and the 1794 editor noted the "almost incredible" number of London attorneys.<sup>102</sup> Attorneys were apparently the subject of more regulatory statutes than any other profession.<sup>103</sup>

Similar antipathy toward lawyers has been evident in America since colonial times, reflecting a widespread belief in the low repute of lawyers.<sup>104</sup> Daniel Boorstin said that "[t]he ancient English preju-

98. See DONALD VEALL, *THE POPULAR MOVEMENT FOR LAW REFORM 1640-1660*, at 34, 74, 77, 85-86, 97-98, 102-03, 105-06, 108-09, 121, 200-03 (1970). Veall discussed the regulatory measures at pages 84, 114, 118, 203-08. One lawyer defender of the profession considered some of the attacks untrue, libelous, and "the inventions of discontented clients." *Id.* at 210. Interestingly, some lawyers were strong opponents of law reform. See *id.* at 85-86, 93, 96, 122-26, 228-32.

99. See, e.g., David Lemmings, *Blackstone and Law Reform by Education: Preparation for the Bar and Lawyerly Culture in Eighteenth-Century England*, 16 *LAW & HIST. REV.* 211, 217-23 (1998).

100. ROBSON, *supra* note 4, at 7.

101. See *id.* at 8-13.

102. SIR MATTHEW HALE, *THE HISTORY OF THE COMMON LAW OF ENGLAND* 214, 215 & n.(a) (6th ed., London, Henry Butterworth 1820) (1713). In 1649, Hale chaired a committee to investigate legal system abuse and to recommend reforms. See BROOKS, *supra* note 4, at 129-31. Robson stated that, despite the passage of the 1729 Act, "the malpractices of attorneys did not cease overnight, nor were the critics of the profession silenced." ROBSON, *supra* note 4, at 13.

103. See BROOKS, *supra* note 4, at 19; ROBSON, *supra* note 4, at 18-19. "There had been, throughout their [(attorneys)] history, a good deal of royal and public concern about such practitioners." BROOKS, *supra* note 4, at 19.

104. See, e.g., BIRKS, *supra* note 4, at 251-69; 1 ANTON-HERMANN CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 16-34, 149, 267-68 (1965); CHARLES WARREN, *A HISTORY OF THE AMERICAN BAR* 39-145 (1911); Richard B. Morris, *The Legal Profession*

dice against lawyers secured new strength in America. . . . [D]istrust of lawyers became an institution."<sup>105</sup> A leading Puritan characterized lawyers as "unconscionable advocates who `bolster out a bad case by quirks of writ and tricks and quilllets of law."<sup>106</sup> Another spoke of "a darkness among the lawyers, selfishness, wilfulness, and earthliness and unreasonableness."<sup>107</sup> As a result, regulations were enacted restricting the admission of attorneys.<sup>108</sup> Despite the leading role of lawyers in the American revolution, anti-lawyer bias and concern with excessive litigation continued throughout the eighteenth and into the nineteenth century.<sup>109</sup> In *Letters of an American Farmer*, Crèvecoeur said: "Lawyers are plants that will grow in any soil that is cultivated by the hands of others, and when once they have taken root they will extinguish every vegetable that grows around them."<sup>110</sup> He complained that they acquired surprising "fortunes" from the "misfortunes of their fellow citizens," and "promote[d] litigiousness and amass[ed] more wealth than the most opulent farmer," lamenting that "our forefathers . . . did not also prevent the introduction of a set of men so dangerous."<sup>111</sup> Shay's Rebellion, a popular 1786 revolt that seized court houses to prevent mortgage foreclosures, also attacked lawyers.<sup>112</sup> Lawyers were characterized as "beasts of prey who moved in swarms" and as "pests of society."<sup>113</sup>

As the nineteenth century unfolded, the frontier lawyer was viewed with "deep-rooted unpopularity" and "considered a meddling fellow, a fomentor of quarrels, and the cause of all sorts of troubles, to be classed with land speculators, swindlers, and other

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*In America on the Eve of the Revolution*, in POLITICAL SEPARATION AND LEGAL CONTINUITY 3, 4-11 (Harry W. Jones ed., 1976).

105. BOORSTIN, *supra* note 96, at 197.

106. MORRIS, *supra* note 104, at 5.

107. BIRKS, *supra* note 4, at 252.

108. See 1 CHROUST, *supra* note 104, at 55-329; WARREN, *supra* note 104, at 39-145; MORRIS, *supra* note 104, at 8-11.

109. See WARREN, *supra* note 104, at 212-39.

110. *Id.* at 217 (quoting H. ST. JOHN CREVECOEUR, LETTERS OF AN AMERICAN FARMER (1787)).

111. *Id.*

112. See KORNSTEIN, *supra* note 21, at 27; WARREN, *supra* note 104, at 217-18.

113. KORNSTEIN, *supra* note 21, at 27. A 1786 newspaper stated that farmers viewed lawyers "with disgust and aversion," having "great appearances of wealth by their splendid tables, rich furniture, sitting up chariots, and the like," blaming them for the ruin of "many good worthy families." *Id.*

evildoers.”<sup>114</sup> Not surprisingly, further regulatory efforts occurred.<sup>115</sup> Throughout this period, particular concerns arose with lawyers' fees and statutes limiting maximum fees were common.<sup>116</sup> Although the social status and public opinion of lawyers improved at the end of the nineteenth century,<sup>117</sup> anti-lawyer attitudes remained embedded in the social fabric. It is interesting to compare the fourteenth century poem with a twentieth century Carl Sandburg poem, *The Lawyers Know Too Much*, asking:

Why is there always a secret singing  
When a lawyer cashes in?  
Why does a hearse horse snicker  
Hauling a lawyer away?<sup>118</sup>

#### IV. CONCLUSION

These longstanding hostile attitudes toward lawyers raise a fundamental issue: why since the profession's inception have lawyers and their basic social function engendered so much antagonism and controversy. The adversary system and the advocacy function of lawyers or the relation of law to politics and public issues may cause these attitudes. Karl Llewellyn said, “this profession of the law lacks popular appeal; and I suspect it always will.”<sup>119</sup> He identified the fact that lawyers specialized in human conflict and that in most instances there were losers, noting that lawyers “trample[d] others down” and engaged in the “invidious business” of “checkerplay with

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114. 2 CHROUST, *supra* note 104, at 99–100. According to one popular story: “Lawyers were never buried in the city where they lived. They were simply laid out at night in a room with the window open and the door locked, and the next morning they were always gone . . . [and] there was always a strong smell of brimstone in the room.” *Id.* at 100 (quoting JEFFERSON CITY INQUIRER (Jefferson City, Missouri), June 12, 1847, at 3). Post noted a nineteenth century schoolchildren game, “the Colonists,” that described a person becoming a lawyer “[t]o pluck and to pillage” a village. Post, *supra* note 91, at 379–80.

115. See 2 CHROUST, *supra* note 104, at 224–80. Friedman has summarized these public attitudes and regulatory developments. See LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 94–102 (1973).

116. See 1 CHROUST, *supra* note 104, at 55–329; 2 *id.* at 224–80.

117. See 2 *id.* at 122–28.

118. THE COMPLETE POEMS OF CARL SANDBURG 189 (1970).

119. K.N. LLEWELLYN, THE BRAMBLE BUSH 142 (Oceana Publications, Inc. 1975).

human rights.”<sup>120</sup> Mary Ann Glendon attributed the problem to the dominant role of law and lawyers in America.<sup>121</sup> She noted “the legalism that has long been a hallmark of our national identity.”<sup>122</sup> Robert Post reviewed various expressions of hostility to lawyers from biblical to modern times and suggested a broader explanation.<sup>123</sup> He opined that lawyer hostility reflected “our own dark reflection” and concluded that “the special hatred that popular culture holds for the lawyer can be an illuminating resource for understanding cultural contradictions of the deepest and most profound kind.”<sup>124</sup> The public has never viewed the lawyer's professional functions as it has the doctor's healing function. Llewellyn recognized this difference, noting that “the lawyer's case is far worse than the doctor's.”<sup>125</sup> Barbara Tuchman noted the same differential attitudes in the fourteenth century, stating that “[d]octors were admired, lawyers universally hated and mistrusted.”<sup>126</sup>

For the legal profession, answering this fundamental question requires further thought and careful inquiry. Although some have

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120. *Id.* at 142–51. He concluded by identifying three reasons for this unpopularity: a lawyer “practices black art,” “is a trickster,” and half the clients lose. *Id.* at 144. See generally FLEMING JAMES, JR. ET AL., *CIVIL PROCEDURE* 293–312 (4th ed. 1992) (discussing social and economic aspects of civil litigation); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85 (1994) (discussing the role attorneys have in the administration of justice, how society perceives them, and the causes of dissatisfaction).

121. See GLENDON, *supra* note 3, at 257–94. Her views are reminiscent of Eric Ives' explanation regarding fifteenth and sixteenth century England. See *supra* note 81 and accompanying text.

122. GLENDON, *supra* note 3, at 258.

123. See Post, *supra* note 91, at 386–89.

124. *Id.* at 386, 389. Post said that “[w]e use lawyers both to express our longing for a common good, and to express our distaste for collective discipline.” *Id.* at 386. He believed public attitudes towards lawyers reflected conflicting admiration for lawyers' service to their clients, but concern that such efforts were at odds with “common, universal values of right and wrong.” *Id.* With regard to “cultural contradictions,” he identified the tension between the desire for both “common community” and “individual independence” and between the “need for a stable, coherent, and sincerely presented self” and our everyday “fragmented and disassociated roles.” *Id.* at 389. He said that “[i]n popular imagery the lawyer is held to strict account for the discrepancy between our aspirations and our realities.” *Id.*

125. LLEWELLYN, *supra* note 119, at 142. He attributed this difference to his view of the lawyering function and the fact that a “doctor's secret craft consists in fighting nature. . . . [who] with [an] increase of knowledge and a touch of luck, can gradually strengthen the percentage of his cures.” *Id.* at 142–43.

126. BARBARA W. TUCHMAN, *A DISTANT MIRROR: THE CALAMITOUS FOURTEENTH CENTURY* 53–54 (1978).



advocated and undertaken public relations efforts as a solution, such efforts miss the mark. The answers are not clear and no easy solution is available. Moreover, maybe the profession should quit worrying so much about its image and focus more on how to make the daily work of a lawyer more satisfying and how to deliver legal services more effectively.