"GOWNED VULTURES": ANTI-LEGAL ATTITUDES IN ELIZABETHAN-JACOBEAN LITERATURE

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ABSTRACT

"GOWNED VULTURES": ANTI-LEGAL ATTITUDES
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By

Thomas Francis O'Connor

Elizabethans rued that they lived in the most litigious age ever, and they saw the lawyer as the chief cause and beneficiary of that litigiousness--a man who set people at odds so that he could collect fees from any resulting law cases. Whatever the validity of that charge, the lawyer became the butt of a surprisingly large body of satire and invective. This study is concerned, primarily, with that body of literature and with attacks on the entire legal profession and legal system.

The study covers two major areas: the legal and the literary. The legal section of the thesis does two things. It provides a history of the courts, of their procedures, and of the legal profession in order to put the charges against the lawyer and the judicial system, a system drastically altered by the law reforms of the nineteenth century, in their Elizabethan-Jacobean context. It also provides an introduction to the legal and economic problems of the times which invited, if not encouraged, legal chicanery. Mass land transfers, caused by the dissolution of the monasteries and changing social patterns, occurred at a time when the land law was in chaos and when deeds and boundaries were easily altered. The result was a lawyer's paradise.

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The literary section concerns the reactions of writers to the litigiousness and to the rise of lawyers in numbers, wealth, and prestige. The writers attack the legal tricks and semantic hairsplitting used by the lawyer to win cases. They attack the lawyer's technical education which produces people who are steeped in legal precedent but who are devoid of sophistication, classical learning, and morality. Such attacks are aimed at the actual practices and character of the lawyer.

But writers level more general charges against the lawyer. He is shown to be insatiably avaricious, a characteristic which causes him to think only of himself and not the common good. As such he is a danger to the commonwealth which, supposedly, operates best under a system of mutual social responsibilities; and he is representative of a new way of life, of an individualism which strikes at the heart of that ideal commonwealth. The lawyer is presented as a prostitute willing to sell his talent for his monetary gain and social rise, thereby upsetting the established stratified society. These themes are coupled with another, that of the Golden Age. Elizabeth's coming to the throne was heralded as the dawn of a new Golden Age and she as the new Astraea, goddess of Justice and ruler of harmonious men. However, the very presence of lawyers indicates the Golden Age of ideal justice and harmony no longer exists, and the writers use the lawyer as representative of a degenerate age.

Finally, this study traces many of the Renaissance charges and literary themes associated with the lawyer through the literature of the Middle Ages. Medieval literature does not ignore the lawyer; and Langland, Chaucer, and Gower have similar attitudes toward the lawyer and the English legal system as do Lodge, Dekker, and Shakespeare.

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By

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A DISSERTATION

Submitted to
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I am grateful to Professor Lawrence Babb for his scholarly and critical advice, his close reading of the text, and his encouragement along the way to the completion of the thesis. I also want to thank Professor Harry Hoppe and Professor James Pickering for reading the thesis and for their comments and suggestions, especially on style.

An inexpressible debt of thanks is due my wife, Nancy, for her patience, encouragement, and suggestions.

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VI Henry, II

The reformer and the lawyer are natural antagonists, and it should come as a surprise to no one that the legal profession is and has been for centuries a favorite target for satirists, social protestors, and revolutionaries. In literature, such diverse writers as Petronius, Langland, Shakespeare, Pope, Melville, Dickens, Tolstoy, and Kafka, separated though they were by time, geography, political interests, and social outlook, brought their talents to bear on the shortcomings of the legal profession and legal machinery of their ages. The English took particular relish in heaping abuse on men of the coif; and Dickens, though the most noted of anti-legalists, was but one of a host of English writers, spanning centuries and including the famous and anonymous, who branded the lawyer as an upstart, a social climber bent on amassing a fortune to the detriment of his betters, the poor, and the very structure of society.

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that John Day, in an attempt to raise his latest creation above ordinary hack work, announced that his play, The Isle of Gulls, would contain neither the stock character of a lawyer nor any timeworn attacks on the law.[1] But, in 1612, Thomas Heywood admitted that actors continued to be vituperative and often personal in their attacks on government officials in general and lawyers in particular.[2] Indeed, there was hardly an Elizabethan or Jacobean playwright who did not satirize the law or the legal profession or use both as metaphors for avarice, corruption, and social decay. Preston, Whetstone, Shakespeare, Jonson, Beaumont and Fletcher, Chapman, Webster, Middleton, Dekker, Massinger, and Marston all paraded lawyers across their stages as objects of ridicule. In prose, Dekker, Greene, Gascoigne, Lodge, Nashe, and Barnaby Rich nipped at the heels of wayward lawyers more interested in plundering their clients than balancing the scales of justice. Between 1579 and 1628, there were at least twenty-five character books published containing attacks on such people as "wicked magistrates," "covetous lawyer," "a Janus-headed lawyer," "the hypocritical lawyer," and "a meere pettifogger."[3] In poetry, Donne, himself once a student at an Inn of Court, devoted one of his few satires to a lawyer; and Jonson and Sir John Davies kept up a small but steady volley against legal figures in their epigrams and short poems. Despite Day's aloofness from the fray, most Elizabethan-Jacobean writers sallied after lawyers with a vehemence so great that

it raises the question why so much satire was aimed at a single group.

The purpose of the present study is to answer that question, to show why the Elizabethan-Jacobean lawyer and the entire legal system were regarded with such universal abhorrence. The particular accusations against the lawyer follow him from his birth, through his training and practice, to the grave. He comes from a poor economic and low social background; and his driving passions are for wealth, social prestige, and a country estate, usually bilked from a naive client. No principle stands in the way of achieving his goals. His god is commodity and his patron saint "Lady Pecunia," the direct descendant of Lady Meed and Sir Penny of Middle Ages' notoriety. Far from being the agent of impartial justice, he skillfully manipulates court machinery for his own economic ends. Not only does he engage in "quillets and quiddities," the verbal juggling and legal hair-splitting still feared in lawyers, but he descends to outright bribery, forgery, perjury, and, if need be, physical force to win his case. He is, too, a professional troublemaker, scouring the countryside for legal technicalities in order to pit neighbor against neighbor for his own benefit or devising legal means by which a landlord could rack and break his tenants. In contrast to his Machiavellian cunning, however, the lawyer is often seen as an intellectual lout--the speaker of a crude and esoteric language, law-French; the debaser of Latin, language of

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culture and erudition; and an enemy to all the arts, especially poetry. As if these characteristics were not damning enough, he is also accused of being a usurer and, of all things, a pander. (A peculiar but persistent theme connects the lawyer with sex.) In short, he encompasses the most feared and despised traits of the Elizabethan-Jacobean era. His Machiavellian amorality make him a symbol of a corrupt moral order and a debauched citizenry, while his social and economic rise frighten a people who lament the decay of one social order, the feudal, and fear the anarchic individualism destined to replace it.

The charges directed against lawyers in Elizabethan-Jacobean England are multilevel; and a study of these attacks must, out of practical necessity, arbitrarily isolate and treat them individually; but it must also be kept in mind that they often operate simultaneously, thus causing some overlapping of material. Chapter I will review the legal system (or chaos) of Renaissance England and the education of the lawyer; Chapter II will deal with social and economic circumstances which encouraged legal chicanery; Chapter III with the image of the lawyer in Renaissance English literature as a corrupt character of insatiable greed; Chapter IV with the lawyer as a sower of disharmony in what could and should be an ideal commonwealth and as representative of the fallen nature of man and the degenerate state of the world; and, finally, Chapter V will place Elizabethan-Jacobean anti-legal satire against the

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background of earlier attacks on the legal profession.

This examination of the lawyer in literature will partly fill the vacuum which, as one historian has noted, has been left by modern scholars':

> failure to perceive the close and organic connection between the social, economic, and political malaise of the fifteenth, sixteenth, and seventeenth centuries, and the hoary but sinewy deformities of the English legal system.[4]

There was no "failure to perceive" the "hoary but sinewy deformities" of English law by the writers of those centuries. They saw and attacked the deformities, and it is with those attacks that this study is concerned, attacks that were soon to leave the stage and the printed page for the battlefields of the English Civil War.

To understand the writers' comments on lawyers, a knowledge of the organization, development, and training of the legal profession is first necessary, especially because the profession differs so much from today's. The same is true also of the court system in which the lawyers worked, a system drastically overhauled by the law reforms of the nineteenth century.

CHAPTER I

A LEGAL LABYRINTH: THE GROWTH OF THE COURTS, THE PROCEDURES, AND THE PROFESSION

To speak of an "English legal system" before the nineteenth century is to speak in metaphor, for there was no system, at least not one which could be plotted on an organizational chart showing a hierarchy of courts with interlocking jurisdictions and courts of appeal. Instead, England was pockmarked by countless courts, judicial fiefdoms, competing with each other for cases and each unwilling to admit that any other court had greater power than its own. The result was a vast and complicated configuration of courts, each with its own bureaucracy, its own intricate procedures, and its own system of patronage and sinecures. The wonder is not that the courts worked well but that they worked at all.

In and around Westminster, alone, sat nine different courts, not including the Privy Council: Parliament (which only occasionally functioned as a court), Chancery, King's Bench, Common Pleas, Star Chamber, Requests, Exchequer, Wards and Livery, and the Palatine Court of Lancaster.[1] Elsewhere in London and throughout the realm, sat the courts of Admiralty, Arches, the Council of the North, the Council in the Marches of Wales, the Quarter Sessions, the Assizes,

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and the Palatine Courts of Chester and Durham. The legal historian, Harold Potter, lists a total of twenty-eight "King's Courts" sitting in Elizabethan-Jacobean times.[2] That number does not include a host of "Local Courts" (County, Borough, Hundred, and Sheriff's Tourn), "Seignorial Courts" (Leet, Customary, Baron, and Honour), and "Local Merchant Courts" (Piepoudre, Borough, and Staple).[3] Nor does it include a myriad of ecclesiastical courts. With so many courts dotting the landscape, it is unlikely that any Englishman passed his life without once standing before the bar.

But the complexity of this situation derived not so much from the vast number of courts as from the fact that they were not arranged in a hierarchy of importance or appeal. Rather, they operated as little fiefdoms, actively and openly striving for and maintaining separate jurisdictions.[4] In London, for example, sat the five most prominent courts of the land: Exchequer, Admiralty, King's Bench, Common Pleas, and Chancery. Exchequer was primarily concerned with cases involving royal revenue. Admiralty, which administered Civil or Roman Law, had "jurisdiction in commerical cases, particularly those in which foreign merchants were concerned, and where the cause of action had arisen outside England."[5] King's Bench and Common Pleas both administered Common Law, the former in cases between sovereign and subject and the latter between subject and subject. Chancery, a court of equity, was used mostly to mitigate what James I called "the rigour and extremity of

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There was particular competition between the courts of equity and common law. The Common Law Courts, though not denying Chancery's right to exist, wanted to "restrict it to cases which were not triable at Common Law, and also to make the Common Law Courts immune from injunctions,"[7] which were issued solely out of Chancery. The battle of these courts reached such a ridiculous stage that in 1483 two Common Law judges "agreed that if the Chancellor committed the plaintiffs to prison for failing to obey an injunction to cease their proceedings at Common Law, the Judges would release them on an application by writ of Habeas Corpus."[8] Sir Edward Coke, the champion of the Common Law, continued the argument against Chancery's use of the injunction in 1615, contending that Chancery had no jurisdiction in a case already judged at Common Law. He was overruled by James, who said that the Chancellor could intervene "at any stage of the proceedings,"[9] thus giving Chancery a temporary victory in the battle of the courts.

The rivalry for jurisdiction involved other courts as well. King's Bench and Common Pleas haggled over whether a case was between subject and subject or subject and sovereign. The King's Bench argued that, though a litigation involved an altercation between subject and subject, if that altercation broke the "King's peace" (a protean phrase) the litigation rightfully belonged in its rolls. Exchequer sniffed out all litigation over money in order to bring those cases under its purview on the grounds that a citizen who

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had lost money was "less able" (quominus) to pay the King.[10] Coke, at the head of Common Pleas, challenged the Admiralty Court for cases on the fantastic legal fiction that actions originating outside England, which should have been heard in Admiralty, were described as having happened "in the parish of S. Mary le Bow in the Ward of Cheap"[11] and, thus, came under the jurisdiction of Common Pleas. The struggle even went on within the same court, as was the case when Elizabeth appointed two commissions to replace the deceased Keeper of the Great Seal. But the stream of justice still did not run smoothly, "for there were disputes between the two sets of Commissioners respecting jurisdiction and fees."[12] This competition for cases existed in all courts, with each one vying to expand its own jurisdiction while keeping a sharp eye on attempted encroachments by other courts.

The open hostility and competition among the courts had a variety of causes. The primary reason for the disputes was that court officials were paid from court fees. Also, the judges, among others, held the patronage for court positions; and a drop in a court's business and importance meant a corresponding drop in the value of the patronage. The courts, too, provided sinecures for courtiers, places which brought money to the courtier and also to the sovereign who dealt out the sinecures. The offices themselves were received as land grants with the expectation that each owner would prosper as he tilled his office. There were other than economic reasons, however, for the court contention. Legal theory played a role as did the social and political

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framework in which the courts were set. For all these reasons, the courts battled among themselves for jurisdictions and fees; and, when the situation arose, they took to the field to oppose the sovereign himself.

Law court officials, from judge to "keeper of the wax," were all paid partly, if not entirely, from court fees.[13] For example, Sir Edward Coke, as Chief Justice of Common Pleas, was paid an annual salary of £141 13s. 4d.[14] Yet, he amassed enough wealth to own "upwards of sixty manors" and "land, tenements, and avowdsons" all worth more than £100,000.[15] In the 1580s, the Master of Rolls in Chancery received annual payment of £34 18s. plus £16 14s. for "livery and wine." However, Gerard, Master for most of the 1580s, averaged more than £1,100 per annum, with his highest take of £1,599 5s. 3d. in 1586. Julius Caesar, his successor, estimated his profits, too optimistically it turned out, "at the rosy figure of £2,380 per annum."[16]

Lord Burghley was said, by a "panegyrist" no less, to have grown rich as Master of the Court of Wards, "and ofttimes gratified his friends and servants that depended and waited on him" with gratuities from the same court.[17] His son, Robert Cecil, while still Secretary of State, kept the two legal offices of Chancellor of the Duchy of Lancaster and Master of the Court of Wards, "a unique combination of offices" giving him power, patronage and profit.[18] Nicholas Bacon, while Master of Wards, managed to put £500 a year into land,[19] though his annual salary was only £90.[20] The Lord Keeper of the Great Seal received £919

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per annum in fees and annuities, yet Elizabethans valued the office at over £3,000 a year.[21]

The disparity between salary and gross income was made up partly from court fees. Every step in a lawsuit carried concomitant fees with it, fees that were not poured back into benefits for the community but into the pockets of court officials. Each document to be composed, each signature required, each procedural hurdle had its price. From these fees, judges supplemented their incomes, and "a host of minor officials who received no salary"[22] eked out a living wage. For example, the following is a partial list of the fees paid in the Court of Common Pleas in cases involving apprentices breaking their bonds. (The fees of minor officials are not included.)

Judges' fees--
- Granting of license to compound on a penal law . 2/-
- Assessing King's part of forfeiture on a penal statute after composition with the informer 2/-

To the Judges' Clerk--
- For entering in his book license to compound on a penal law . . . . . 6d.
- For entering King's part . . . . . 6d.

Fees of Protonotaries--
- For declarations in actions of debt [etc.] . . . 2/-
- for every sheet over three . . . . . 8d.
- Entry of information on penal law 2/-
- for every sheet over three . . . . . 8d.
- Entry of license of Court to compound on penal statutes 2/-
- Entry of writs, continuances [etc.] 2/-

Fees of Protonotaries and their Clerks, touching informations only--
- Entry of information and signing of subpoena only 2/8
- Signing of any other process 1/4
- Ingrossing every information, to clerk . . . . . 8d.
- Copy of information if of five sheets of paper or less, to clerk 3/4
- if over five sheets, per sh. . . . . 8d.

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Registering license to compound in office-book, to clerk . . . . . 4d.
Fees to Filazers--
For every copias, alias, [etc.] 1/-
Attorney's fees--
Per cause per term . . . . . 6/8[23]

Each officer of the court was paid for the work he did; consequently, the more cases brought to a court, the more everybody was paid.

Though Common Law Courts often attacked Chancery's use of the injunction (see above p. 8), they willingly used it to protect their courts' fees. Common Pleas could, and did, take out injunctions against King's Bench, staying suits there until the suitors paid fees to Common Pleas, which held that the cases belonged in its court. When the fees were paid, the cases were allowed to continue in King's Bench.[24] Thus the bewildered suitor found himself paying fees to courts in which he had never been, and justice was arrived at by piecework.[25]

For those high in the judiciary, there was another source of income from their offices--namely, patronage. The judges held title to most of the positions in their courts, and anyone seeking a job had to pay for it:

> the jobs held by attorneys and clerks in Tudor-Stuart courts represented a source of income to greater men. A Master of the Rolls would get his cut from the fees taken by Chancery clerks. He would also expect to get a sizable sum for appointing a new clerk, and this sum would be influenced by the amount of fees previously taken and likely to be taken in the future. A Lord Chancellor, a Master of the Rolls, and a great number of dignitaries of law and government, had a very direct interest in the earning capacity of comparatively lowly

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> officials. An awareness of fees permeated the entire administrative structure, and it followed that men were equally aware of the work which produced fees.[26]

The more flourishing the court, the more officials were needed to staff it; and, naturally, more officials meant more patronage and profit for the judges. John Cook, in a letter of 1655, complained that judges had increased "to 20 or 40 [the number of] Offices and Places in Court" for the business which "3 or 4 Honest Clerks might do"; "for where the Judges take fees, the Love of Interest overcomes all other loves," he lamented.[27] An admirer of Burghley, perhaps the same "panegyrist" who spoke of the profit in the Court of Wards, forebore "to mention the great and unusual fees exacted lately by reason of buying and selling offices, both judicial and ministerial. . . ."[28]

Though exact figures for judicial patronage in the Tudor-Stuart era are unavailable, the figures for later periods, which were arrived at by Commissions set up to reform the judiciary, give some idea as to the extent, power, and profit that patronage brought to a judge's office. Between 1740 and 1815, King's Bench had 43 different positions to be filled, though the actual number of jobs was much greater as, for example, there would be more than one clerk occupying the position of clerkship.[29] During the same period, Chancery had 60 positions.[30] In 1825, the chief judges of the land held the following offices in their "gift": Lord Chancellor, 65 offices (not all court offices--some were for commissions); Master of the Rolls, 22; Chief

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Justice King's Bench, 13 plus "Filazers, Exigenters, and Clerks of Outlawries for all the Cities and Counties of England"; Chief Justice Common Pleas, 65; and Lord Chief Baron of the Exchequer, 10.[31] Some offices were considered outright "saleable." In 1810, King's Bench had 11 such offices, plus all the Clerks of Nisi Prius Courts while Common Pleas had 14 offices, plus all the Filacers.[32]

The profits from such offices were substantial. Again in 1810, King's Bench had nine offices whose work was done by deputy, not by the holder of the office. Common Pleas had eleven such offices. The combined salaries for the nine King's Bench positions came to £15,000 19 3, and £4,406 10 5 for the eleven in Common Pleas. But the deputies, who did the actual work of the offices, were paid only £1,356 13 0 in the former and £739 0 1 in the latter.[33] Thus a single office paid an annual salary to a deputy who did its work, plus a salary to the person who owned the office but did no work. Also the office owner had to pay a judge, or whoever held the patronage, for the office in the first place. The deputy, of course, was expected to supplement his income from the fees inherent in his office, fees from which the judges took a slice.[34] Just how much the judges charged for these offices is unknown, but their going price must have been substantial as the profits from the offices amounted to over £17,300 annually according to the above figures.

These figures belong to a time much later than the Tudor-Stuart era and cannot be directly applied to that era since, in all probability, the number of court offices

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increased over the years. Relatively, however, they are applicable, especially when we hear of an Elizabethan giving the formula by which office profits were computed: the ratio of profits was governed by where a man wanted to spend his afterlife, in Heaven, Purgatory, or Hell[35]--the higher the profit the lower the soul's resting place.

But court officials were not the only ones to benefit from the lucrative business of the courts; courtiers and the sovereign himself siphoned off part of the profits. In fact, as Professor Stone says, the law courts were "the last sector of royal revenues to be exploited by the courtiers."[36] The office of Custos Brevium in Common Pleas was, by the end of the fifteenth century, "being granted by the Crown to minor favourites for life and in reversion, and was apparently worth £60 or £70 a year."[37] In 1613, the Earl of Holland "enjoyed the profit of the seal of office in King's Bench and Common Pleas," and Lord Morley attempted to garner "a grant of the Crown share of fines in actions in the Exchequer and King's Bench on penal statutes."[38] Sir George Villiers had a pension of £1,000 a year from the revenues of the Court of Wards.[39]

Courtiers not only reaped profits from law court sinecures, but also demanded and received estates of men accused of but not yet convicted for crimes, the grantee having to arrange for prosecution and to hope for conviction.

A development so obviously open to abuse was soon checked, at any rate in theory, but the grant of felons' goods

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> continued. Lord Knollys obtained the estate of a fence in 1609, the Earl of Holderness of a murderer in 1614, the Earl of Holland the goods of a suicide . . . in 1632. Star Chamber fines, whether of fallen politicians or others, offered similar opportunities of reward. The Earl of Holderness was given £7,000 (out of the Earl of Suffolk's fine) in 1618, the future Earl of Anglesea £2,000 in 1621, the Earl of Suffolk, £4,000 in 1633, and the Earl of Huntingdon £3,000 in 1639.[40]

This practice was odious enough; but there were less reputable, at any rate less acceptable, ways of milking the law courts for courtiers' pocket money. As Ben Jonson cynically puts it:

> Ridway rob'd Duncote of three hundred pound
> Ridway was tane, arraign'd, condemn'd to dye:
> But for this money was a courtier found,
> Beg'd Ridwayes pardon: Duncote, now, doth crye:
> Rob'd both of money, and the lawes relief,
> The courtier is become the greater thiefe.[41]

John Wynn's lawyer echoes the same idea, repeating what had become an aphorism: "Mr. Wynn, I am wearied to see the tumbling and tossing of law and conscience, for both are ended, as the proverb is, as a man is befriended."[42]

Law court fees and profits went into the pockets of clerks, judges, and courtiers. They also proved profitable to the sovereign, both indirectly and directly. If judges controlled offices in their courts, the Crown controlled the judgeships; and it is highly unlikely, given the "civil-service system" of the time, that a judge was appointed on ability alone. Lord Chancellor Ellesmere, for example, "contributed" an annual "New Yeare's Tyde" gift of £40 "unto the offices of his Ma[jesties] household": to the "servants of the skullery," "the locksmith," "the sweeper," etc.[43] Beyond these gifts, the Crown also had its share of law

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court patronage, which proliferated according to the number of creditors to and favorites of the Crown.[44] Mary, Elizabeth, and James were all guilty of trying to create new sinecure offices in the courts.[45]

If these offices brought in revenues, they also brought headaches--some of the great constitutional debates of the sixteenth and seventeenth centuries. Elizabethan and Jacobean courts stood their ground against royal encroachments into their patronage. On learning of the death of a high official in Common Pleas, Elizabeth proposed a replacement at nine the next morning, only to find that Judge Anderson, an early riser when necessary, "had given the place and sworne an officer before eight a clock."[46] In the famous Cavendish Case, Elizabeth had appointed Cavendish to a new post in Common Pleas. But the judges refused to admit him on the grounds that the new post would "disseise existing officers of their freeholds,"[47] and Elizabeth was frustrated again. James fought with Bruce, Master of the Rolls,[48] and Sir Edward Coke over their patronage. James finally removed Coke from King's Bench, after he had earlier been eased out of Common Pleas, partly because Coke refused to relinquish his hold on a choice office, the chief clerkship, valued at £4,000, an office James wished turned over to Somerset.[49] Coke's successor was required to sign a statement giving the profit from the sale of the clerkship to Buckingham--Somerset had fallen by then--before James let the new judge sit on the bench.[50] The debates resulting from the Crown's incursions into judicial preserves gave rise to some

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"high-sounding constitutional doctrines," which, whatever their intrinsic validity, protected the judiciary from royal poachers.[51]

The hostility and competition of the courts, then, stemmed partly from the fact that the courts were sources of revenue, besides being courts of justice. The minor officials of the courts actively strove to bring business into the individual courts because they were paid from the fees arising out of that business. The higher officials not only received a portion of those fees, but they also held the patronage for the lower positions. Thus judges encouraged the industry of their inferiors, an industriousness which increased the judges' pay and the value of their patronage. The more work a court did, the more money a clerk could make, and that, in turn, meant the more money a judge could charge for the clerk's position. Consequently, the courts battled amongst themselves to enlarge their own jurisdictions, which enlargement brought a corresponding rise in their power and profit.

But to say that the profit motive was the only barrier to a smoothly working court system is to underestimate the integrity and intelligence of individuals and to minimize the coercive power of rigid institutions. Had the law courts evolved in Darwinian fashion, many dinosaurian offices and sinecures would have passed into extinction. But Common Law proved more powerful than Nature's, and legal precedent overrode natural selection. Offices, once created, were almost impossible to dissolve, primarily because

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offices were not let out by the modern concept of contract,[52] but by the medieval concept of land,[53] a plot to be tilled and developed by the industry of the tenant. This concept was more than a metaphor; it was a way of life. To oust an officeholder was as difficult as to oust a landholder from his land, as Elizabeth found out in Cavendish's Case. There the judges answered Elizabeth in land-law terms: she could not appoint Cavendish because his appointment would "disseise existing officers of their freeholds."[54]

The result of viewing offices as freeholds was twofold: it created an inefficient and expensive bureaucracy, and it made reform of that bureaucracy almost impossible. Court positions were exempted from a natural cycle of growth and decay as they became ossified in legal procedure and machinery. If a position were established to serve a particular need, that position remained even when the need had passed. Early in the growth of the courts, because few knew the intricacies of legal procedure, the courts hired clerks to expedite and properly channel cases. However, as the volume of court cases grew, the clerks could not adequately handle the work, so deputy clerks were hired. When the volume of work exceeded their abilities, lawyers (more particularly attorneys and solicitors) began to do the work of the clerks. What was needed was a revamping of the court bureaucracy to expedite trials and to lower fees, now collected by the lawyer, the deputy-clerk, and the court clerk. Yet the clerks remained in office partly because legal precedent required that cases go through their hands,

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and also because of the difficulty of ousting them from office, despite the fact that others could and did do their work.

Such a "system," ensnared in its own bureaucracy and rife with fees, patronage, and sinecures, was ripe for satire; but these conditions prevailed for another two centuries, despite the satiric attacks and despite the Puritan Revolution, which had as one of its chief aims the reformation of England's legal morass.[55] However, these conditions were not the only ones raising the satirist's ire. Two other general areas of specific attacks were, to use the title of one historian's book, "The Mysterious Science of the Law" and the long delays in obtaining justice.

There were three major processes in a legal case, all mystifying to a layman: acquiring a particular writ to start a case in motion, bringing the case to a particular court, and the pleading of that case in court. Acquiring a writ was no problem. One simply went to Chancery and paid for the writ or, if poor, received it free. The difficulty arose in knowing what writ to buy, for the writ not only started the case but often determined what court would hear the case, what legal procedure was to be used, how the case was to be pleaded, and what justice the plaintiff would receive. A selection of the wrong writ at the beginning of a case would jeopardize the entire case no matter how just the cause.

To understand the difficulty in selecting the right writ, one must know something of the history of writs. A

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highly telescoped version of what happened is this. Norman kings used their royal courts as a check on the power of their feudal barons.[56] Control of a court meant two things, power and profit; and the Norman kings set out to acquire as much of both as they could. One method of acquiring them was to offer a litigant in a baron's feudal court the option of buying from the king an order requiring the local sheriff to see that that order was carried out.[57] The order was called a "writ." A writ was also available (again, for a price) ordering a feudal lord to do "justice" to a litigant in the lord's court. If the lord failed to do so, the royal court stepped in.[58] The king's courts thus acquired jurisdiction on the grounds that, if the contents of a writ were not carried out, the king's command had been broken and not on the merits of or legal problems involved in the original case.

Two things should be noted about writs. One, they were not a "right"--originally none were offered free, not even to the poor--but a purchasable power. As Maitland puts it: "the litigant does not exactly buy the king's justice, but he buys the king's aid."[59] Thus, early in English legal history, royal court hearings were considered a purchasable commodity, not the absolute right of every citizen. Also, the writs did not contain general legal principles but were specific orders concerning specific cases (see example in n.57, above). The importance of that last fact will be shown shortly.

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The centralization of justice in the king's courts did not go unheeded or unchecked by his feudal vassals and those concerned with making law, and their counterattack centered on the royal writs which were "in fact unobtrusively making new law" and "depriving Seignorial Courts of their jurisdiction."[60] The barons' revolt, which ended in the Magna Carta, was one of a series of thirteenth century attacks on royal prerogatives and writs. A demand of 1244 was incorporated into the Provisions of Oxford of 1258 "that the Chancellor should be sworn to issue no more writs without the consent of the Council;" and, by the end of Edward I's reign, "the series of royal commands came to a premature end."[61] The fledgling courts, by these acts, were asked to function with a series of writs (originally royal commands designed to settle particular issues and not to propound general legal maxims) which had become stereotyped.[62] "Where there was no writ there was no remedy at Common Law until one was provided by statute, which was seldom."[63] This stunting of the new procedures was an important fact in the development of the Common Law and in the subjects' later hostile reaction to it.

The development of Common Law and the centralization of justice would have come to an abrupt end if it had not been for the ingenuity of the judges in creating fictions whereby new cases could be cramped into old writs.

> The vast majority of original writs were concerned with rights in land and the incidents of tenure. As trade increased, almost incredible ingenuity was exercised to make them applicable to other classes of litigation, but the difficulties of adapting a highly developed and

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> intricate, but prematurely fixed, land law to the varied needs of commerce are obvious. It is surprising not that it was done well but that it could be done at all.[64]

Perhaps the best example to show not only the ingenuity but also the competitiveness of the courts is that of Trespass.[65] This was a popular writ because it brought the ensuing case before the king's courts. The writ alleged that the plaintiff's land, body, or goods had been trespassed vi et armis (by force and arms), thus breaking the king's peace (contra pacem Domini Regis) and creating a case for royal justice. The writ, however, was too restrictive; and a plaintiff was eventually allowed (c. 1400) to add an ac etiam ("and also") clause to the writ. This clause set down the real purpose of the litigation. If B owed A money, A would go to Chancery and buy a Writ of Trespass in which it was alleged that B had trespassed upon A's lands. An ac etiam clause would be attached to the writ stating that B also owed A money. B would be brought to trial for Trespass, but that charge was quietly dropped and action on debt would proceed.

Having moved his case under royal jurisdiction, the plaintiff next had to determine which royal Common Law Court would hear the case. On the surface, the case patently belonged to Common Pleas because it concerned a problem between subject and subject. But the plaintiff could shift the case to King's Bench by claiming that the defendant had been arrested and was a king's prisoner, King's Bench having jurisdiction over the affairs of royal prisoners. Exchequer

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was also available if the plaintiff argued that he owed the King money and the refusal of B to pay A made A "less able" (quominus) to pay the King.[66] The defendant, of course, could prolong the litigation by insisting that the court hearing the case did not actually have jurisdiction.

The Common Law and its courts were able to grow through this fictitious use of already existing writs. The growth was bound to be slow, tortuous, and circuitous because of the limited base from which it had to operate; and, like a closely trimmed bush, the legal system grew more in density than in breadth.[67] The density increased the complexity and rigidity of legal proceedings. Confined to such a narrow area, litigants had to pay strict attention to the wording of writs, twisting their case to fit a particular writ. The defendants, with equal syntactic vigor, tried to show certain writs as not valid for their cases. If a writ was finally found to fit a cause, one had also to be sure that that writ would bring the desired result because different writs had different procedures and results. For example, if B "usurped" A's land, A might sue out a Writ of Trespass against B. But Trespass resulted only in damages, which A could collect; he could not regain his land. To regain possession of the land he had to file a Writ of Right. In short, as law and procedure became more refined, if that is the apt word, technique and method became more important than substance; and there emerged a class of people, lawyers knowledgeable (and invaluable to the litigant) in the technique and methods of legal machinery

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After finding the proper writ and court, the plaintiff's troubles were by no means over. He next had to produce the defendant in court.

> "Mesne process"--the act of producing a defendant in court--was excessively dilatory. Every opportunity was given to the reluctant defendant to postpone his appearance, and keep his adversary or his adversary's lawyer hanging about the offices of the court, spending his money on obtaining writs of distraint, or of arrest; awaiting their return, and feeing clerks.[68]

"Essoins," excuses for not appearing in court, were allowed. A minor's case could be adjourned until he came of age; royal protection could cause an adjournment sine die;[69] and pleading sickness, the commonest excuse, could postpone trial for a year and a day if the defendant were found in bed with his shoes off.[70] When the defendant ran out of essoins, the plaintiff, provided the sheriff had not been bribed from serving the writ, had a choice of two processes to bring the defendant to court: distraint of property or arrest-- and outlawry if needed. If the person could not be found to be arrested, outlawry proceedings were instituted, and these "took in the most favorable circumstances at least one and a half years, and much longer if the defendant were determined and influential."[71] Distraint could last as long as the defendant's property held out, and he could then flee and be declared an outlaw. "Several years might elapse" before he was brought to trial.[72]

> Then, when at long last the parties--or their lawyers--confronted each other, the unique law of pleading, which had developed during the fourteenth and fifteenth

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> centuries tended to make the outcome of a case depend more on technical excellence--or the reverse--of its presentation, than on its merits. The aim was to isolate a single issue of law or of fact, on the decision of which judgment would be awarded, by a prolonged and precise logical process.[73]

"Even a trifling verbal slip or omission [in that process] was decisive."[74]

The method of pleading was, no doubt, originally designed to expedite justice, but the means soon overshadowed the ends desired. It was possible to contest a claim _in toto_ and bring a case immediately for judgment, but in most cases

> special pleading was necessary, and the process by which the final single issue was ultimately arrived at was refined and elaborated by the ruthless application of pure dialectical method, and became an exact science of extraordinarily minute and subtle technicality. The defects of this development were obvious enough, but were outweighed by the lawyers' delight in the scope it gave to the elaboration of logical technique. It did not reach full perfection till the sixteenth century, when the system of written pleadings drawn up by the lawyers of each side outside the courts was introduced. Before that the pleadings had been oral and were made in the presence of the judge. Though the extreme elaboration of the later method was not attained, and the number of fatal procedural pitfalls was not so great, a high degree of formal accuracy was always necessary. Each of the forms of action--i.e., the actions which it was possible to bring under an original writ--required strict adherence to the detailed rules of pleading applicable to it. The choice of the wrong writ on which to base a claim, or a mistake in the pleadings--e.g., pleading outside the content of the writ--meant the instant dismissal of the suit. "Duplicity", which means not deceitfulness, but pleading or attempting to plead more than one issue, was at once fatal, even though a clear miscarriage of justice would result.[75]

Sometimes justice prevailed despite the complexity of procedure as in a case heard before Judge Stanton and reported in a fourteenth-century Year Book. An attorney for a widow appeared before Stanton in a case where the defendant

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had defaulted by not appearing in court. The attorney started to put forward a formal plea when the kindly judge "winked at him. The attorney then claimed on default." The crux of the matter was procedural; had the attorney finished his plea he would have waived his right to claim default.[76] In a different case, an attorney answered in court to a wrong name, causing his client to lose his suit. The client, one Ralph de Cully, stood the chance of losing his hands; but the justices, sympathizing with Ralph, did not order his hands to be lopped off. Ralph's adversary, however, must have been vindictive because later the King's Bench ordered that Ralph had to lose his hands. There is no record of whether the sentence was implemented.[77] The intricacies and rigidity of such procedure were bound to result in injustices, especially if all judges were not as compassionate as Stanton and all adversaries were as bloody-minded as Ralph's.

On top of all these problems, the king's writ, strangely, was good only in the shire to which it was issued despite the fact that the king's law supposedly held throughout the realm. Henry Brinklow, as late as the mid-sixteenth century, complains that

> One wrytt may serve but for one shyre; as though the King were lord but of one shyre! But I demand, why may not one wrytt serve in all shyres, yea in all placys under the Kyng's dominion, whersoever he or hys may find his defendant?

He lays the blame squarely on the shoulders of the lawyers who knew legal procedure and maintained it to their own advantage.

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> Surely there is no godly reason why to the contrary, but even the only private welth of sotle lawyers. And, as farre as I can lerne, one wrytt lasteth but for one terme; and the next terme he must be at charge to come up, or at least to send sometime iii or iv hundred myle for another. Agayne, no man may serve it but the Sheryff of the shyre or his man, and so many times it is sure that the sheryff or his man (and sometyme both) playe the false shrewys in geving the party warning to kepe him out of the way, or to go into another shyre. Oh, the unnumerable wyles, craftys, sotyltes and delays that can be in the lawe, which the lawyers will never spye, because of their private lucres sake.[78]

The royal Common Law Courts, which began their career as havens for those seeking impartial justice, eventually became trapped in their own procedure largely because of their being stunted in growth, but also because they became the workhouses of professional people whose knowledge of the intricacies of law and procedure not only made the legal machine work, albeit creakily, but also helped preserve and perpetuate the monstrosity for "their private lucres sake."

Some relief had to be found, especially where sixteenth-century legal problems could not be made to fit into writs penned in the thirteenth century. The relief, which proved only temporary, came from the creation of the Court of Chancery. The King and Council had always been available for equitable proceedings if no remedy could be found at Common Law. (This is still seen in America as executive clemency and pardon.) Gradually, the cases became too many for the Council to hear, and the duty of supplying equity devolved upon the Chancellor who, by the end of the fifteenth century, had a law court "almost entirely distinct" from the Council.[79] No doubt the increased ossification of Common

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Law procedure helped feed the stream of cases into Chancery; but that court, once established, sought its own level and began to encroach upon the jurisdiction of other courts. Its own jurisdiction was not clearly defined; and, following the pattern of earlier courts, it began to compete for cases and fees, garnering "well over a hundred thousand" cases during the reigns of Richard II, Henry IV, Henry V, Henry VI, Edward IV and Richard III.[80] In Elizabeth's reign, Chancery's registry of cases increased from three hundred folios in the 1560s to over eight hundred by the 1590s, averaging one thousand cases a year.[81] In 1653, twenty-three thousand causes were alleged to be depending in Chancery.[82]

This dramatic growth in Chancery cases was aided by the ethical nature and flexible procedure of the Chancellor's court. It "administered 'natural justice' in the name of the King, as the fountain of justice"[83] and, at least early in its career, was not overly concerned with the refinements of procedure and exactness of pleading as were Common Law Courts. However, as the volume of Chancery's cases increased, so did its bureaucracy. Technically, the Court had one judge, the Chancellor; but he could not possibly hear all the cases or handle all the paper work. The Chancellor was assisted by "Masters Extraordinary" who often heard matters relative to suits and made reports to the Chancellor on these. The Chief Master, Master of the Rolls, occasionally even tried cases. Beneath the Masters were the Six Clerks of Chancery who drew up the writs. These six were aided by sixty more clerks.[84] This bureaucratic hierarchy

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> Such an organization could not fail to be subject to abuse and delay in the administration of justice. Its complexity made it very difficult to hear causes with speed and regularity, while at the same time it increased enormously the expense of litigation. . . . all proceedings were written, and often written in a manner calculated to increase expense.[85]

The Chancellor was overworked; and his subordinates, who were paid from court fees, did nothing to lighten his load. In fact, it was to their advantage to have the Chancery procedure as complex, as time-consuming, and as expensive as possible.[86] John Chamberlain remarks that a suit in Chancery "became as it were immortal."[87] He also tells the story of a disappointed Chancery litigant who killed a Master of Chancery for supposedly undoing him by wrongly reporting his case. Sentiment was for the assailant, and a Sir William Walter remarked that "the fellow mistook his mark and should rather have shot hailshot at the whole Court [of Chancery], which indeed grows great and engrosses all manner of cases."[88] In 1653, the Barebones Parliament lamented that

> For dilatories, chargeableness, and a faculty of letting blood [of] the people in the purse veine, even to their utter perishing and undoing . . . that court [Chancery] may compare (if not surpass) any court in the World. It was confidently affirmed, by knowing gentlemen of worth, that there were depending in that court, twenty-three thousand causes: that some of them had been there depending five, some ten, some twenty, some thirty years or more: that there had been spent in causes, many hundred, nay thousands of pounds, to the ruin, nay utter undoing of many families.[89]

In roughly two centuries, Chancery had come from a court

was designed to speed justice and facilitate proceedings, but

> Such an organization could not fail to be subject to abuse and delay in the administration of justice. Its complexity made it very difficult to hear causes with speed and regularity, while at the same time it increased enormously the expense of litigation. . . . all proceedings were written, and often written in a manner calculated to increase expense.[85]

The Chancellor was overworked; and his subordinates, who were paid from court fees, did nothing to lighten his load. In fact, it was to their advantage to have the Chancery procedure as complex, as time-consuming, and as expensive as possible.[86] John Chamberlain remarks that a suit in Chancery "became as it were immortal."[87] He also tells the story of a disappointed Chancery litigant who killed a Master of Chancery for supposedly undoing him by wrongly reporting his case. Sentiment was for the assailant, and a Sir William Walter remarked that "the fellow mistook his mark and should rather have shot hailshot at the whole Court [of Chancery], which indeed grows great and engrosses all manner of cases."[88] In 1653, the Barebones Parliament lamented that

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noted for speedy and equitable justice to a byword for delay and corruption.

No wonder the English layman was mystified by legal procedure. He did not know why he had to sue out a Writ of Trespass in order to collect some money owed him. Indeed, he might not even have any land for somebody to trespass on. He could not understand why his case was shifted from court to court or why he had to pay fees to a court he was never in or why his case and its documents had to go through so many hands. Finally, he must have been bewildered by the exact, technical pleadings in the unintelligible language of the courts, Law-French. In the words of one historian, what passed for an English legal system "presented a pattern calculated to raise at once the uneasiness of lawyers, the despair of laymen, the hostility of intellectuals and the sheer amazement of foreigners."[90] One might also add the fury of satirists who saw the whole system concocted out of a conspiracy among lawyers to guarantee their necessity in legal cases and the wealth they amassed from those cases.

As mechanized as the courts had become, they were not automatons but were staffed and run by a highly, if narrowly, trained group of professionals: the lawyers. The term "lawyer" was a blanket one covering a host of different specialists on all but the higher rungs of the legal hierarchy. At the top of the hierarchy were the Chancellor (not always a lawyer) and the Solicitor and Attorney Generals. Beneath them were the Chief Justices of King's Bench and

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Common Pleas and their associate judges. The Master of the Rolls and the Doctors of Law were their approximate equivalents in the courts of equity and Roman law respectively. The most prominent practicing lawyers were the sergeants at law who had exclusive rights to pleading in Common Pleas and from whom, technically, the judges were chosen. Below these were the barristers, labelled "inner" or "utter," the former if they had been called to the bar. Similar to barristers were advocates who trained at the universities in Canon and Roman Law, who were also Doctors of Law, and who practiced in such courts as Admiralty and Arches. Beneath the pleaders were solicitors, attorneys, and proctors, men who were allowed to plead in out of the way provincial courts but who were, in major courts, limited to preparing a case for the barrister and seeing that the machinery of litigation ran smoothly. The solicitor worked in Chancery, the attorney in Common Law Courts, and the proctor in Roman Law Courts.[91] Finally came the students of law, studying at one of the four Inns of Court or one of the lesser Inns of Chancery. There were a multitude of other legal and quasi-legal figures such as justices of the peace, sheriffs, bailiffs, constables, lieutenants, and deputy lieutenants who might or might not have legal training and whose work consisted both of administering the law and supplying legal counsel. The competition for work among so many legal figures and courts "might have convinced the most enthusiastic exponent of free enterprise that there was a case for some measure of planning in public administration."[92]

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The training of the Renaissance lawyer was determined by the complicated evolution and practices of the courts. Originally, there seems to have been no need for a lawyer, as local courts operated primarily on custom which was known to all in any particular locale. At some early time, "champions" were allowed to substitute for litigants, especially in the "Trial by Battle." In a sense, the champion can be seen as the first attorney. Later, if attendance at court was inconvenient and the litigant wealthy, he could purchase the privilege of using an attorney in the King's Courts. But, as the Common Law spread throughout the realm, and as case law developed with its subsequent stress on precedent, men well-versed in that law became necessary to protect an individual's legal rights. As legal procedure became more complex and rigid, the legal profession became more specialized, eventually splitting into barristers and attorneys, though the distinction was first made in the sixteenth century. The complex procedure of pleading, of narrowing a case down to a specific issue of law, became a science in itself; and its practitioners were the barristers. However, there was still a vast amount of legal work which required no knowledge of pleading but did necessitate a minute acquaintance with the intricacies of writs, wills, contracts, etc. This area of the law eventually became the province of the attorney.[93]

At the same time, another legal figure made his appearance in the Court of Chancery: the solicitor. The

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solicitor, who was later (1873) to merge with the attorney, filled the void left by the Six Clerks' inability to cope with the increased litigation at the end of the sixteenth century. He paid court fees, bought writs, and, in general, maneuvered his client's case through Chancery procedure. Another person, also known as a solicitor, was a manager of legal affairs for land owners and businessmen. As manager, he kept track of legal suits for his client as they progressed through the various courts of the land and advised attorneys and barristers of the progress of suits bearing on the case but being heard in other courts. Modern England's distinction between barrister and solicitor is confusing to Americans, but Renaissance England's distinctions between barrister, attorney, and solicitor would be equally confusing to the modern Englishman. Adding to the confusion was that the term "lawyer" was used generically to refer to all three, even though their functions and training could be quite different.

The Renaissance lawyer's legal education was acquired at one of three places: at the university, at an Inn of Chancery and/or Court, or as an apprentice in the office of an attorney. The university was the training ground for the "civilians," Canon and Roman Law lawyers; and their education, conducted in Latin, followed normal university procedure of admission, examinations, and the granting of degrees, up to Doctor of Law, which entitled the student to practice in non-Common Law courts. The Common Law lawyer's training, however, was different. The Inns of Court, for example,

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though popularly called "the third university," granted no degrees, held no formal examinations, and offered very little formal education. The "curriculum" was so flexible and "wholly practical"[94] that it would have shocked most modern educators, with the possible exception of John Dewey. The training was long (technically twelve years before a barrister could qualify to practice at Westminster)[95] and was devoted to the mechanics of writs and court procedures rather than any abstract theories of law and justice. The education was as much an apprenticeship as it was a university education.[96]

The distinctions between barrister, attorney, and solicitor were first made in the sixteenth century. As court procedure became complex and rigid, specialization crept in, creating the expert in pleading, the barrister, and the expert in court and legal machinery, the attorney and the solicitor. The barrister's legal training typically began in an Inn of Chancery, though he might previously have attended Oxford or Cambridge.[97] The curriculum consisted of an intense training in the Common Law writs, which were issued out of Chancery, and the "course of the courts," training in the various procedures of bringing an action to trial in the appropriate court. In addition, Chancery students received some training in the actual pleading of cases,[98] their major educational exercise if they went on to an Inn of Court. They also listened to "Readings" (interpretations of statutes) and, possibly, learned some Law-French,[99] the anachronistic language of the law courts.

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After two years at an Inn of Chancery,[100] the prospective barrister applied for admission to an Inn of Court as an "inner barrister," so-called because of seating arrangements at meals, the younger student sitting "within" a bar or railing that traversed the dining hall. The senior students, the "utter" (or outer) "barristers," sat without the bar. An Inn was divided into three parts: the "Benchers,"[101] the most senior members, who functioned as the administration and the faculty of the Inn and who were practitioners in courts or even judges; the utter barristers, senior members who had been called to the bar but who had not yet qualified to practice at Westminster, and who also served as faculty members; and the inner barristers, the junior students.[102] Normal procedure meant that a student spent seven years as an inner barrister and five as an utter barrister before he could practice at Westminster.[103]

The school year was divided into three parts: "term-time," the four periods of the year when the courts were in session; "learning vacations," two a year when the courts were not in session, one at the beginning of Lent and the other in the summer; and the "mean" or "dead vacation," during which, despite its name, learning continued. The school day was also divided into three parts, education being conducted in the morning and evening, the afternoons remaining free time.

The "wholly practical" nature of the lawyer's education can best be seen in the learning exercises of term-time. The inner barrister spent the morning, from eight to eleven,

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at the King's Courts, observing actual cases being pleaded and decided in the Westminster courts. He sat in a special section reserved for him called "the cribbe" and, presumably, took notes of the pleading and procedure. There was no formal instruction by the judge or the pleaders, no stopping of cases to discuss or elucidate technicalities. The student simply observed, noted, and, no doubt, memorized the pleading and procedure of actual cases in court. When the courts adjourned at eleven, the first class was over.[104]

The second class convened in the Inns' dining halls after the evening meal, with all members of an Inn, Benchers, inner and utter barristers, in attendance. At these meetings, mock trials, or "moots," were conducted by two utter barristers, one representing the plaintiff and the other the defendant, the trial being presided over by the Benchers. The moot was simply practice for the utter barristers who soon hoped to plead at Westminster. They pleaded the case, as they would in court, in Law-French; and they were fined if they strayed from the single issue to which the case had been narrowed. (In an actual court, the case would be lost by such a slip.) When they finished, two previously selected inner barristers "[did] for their exercise recite by heart the pleading of the same mote-case, in Law-French."[105] Finally, the Benchers commented on the handling of the case and on issues of law brought up. The Benchers' comments brought to an end the second class and education for the day.[106]

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Such a system of learning was bound to produce what Erasmus called "the most unlearned of learned men." Most of the lawyer's early training was the memorization of intricate arguments in a language unspoken outside the law courts of England. Law cases, because they centered on single issues, produced lawyers who were immoderately concerned with minutiae and technicalities, the quirks and quiddities of law that Hamlet derided, and who were more concerned with legal procedure than with abstract justice. The education of the lawyer taught him how the legal machine worked; what the machine produced and how the product affected the rest of society were not his education's concern.[107] Sir Thomas Elyot, himself a former Inn student, protested against students encountering the "fardels and trusses" of the law before they had a philosophic background to put law in perspective.[108]

The most formal and theoretical education of the barrister came during the two "learning vacations" of Lent and summer. Combined, the two vacations totalled seven weeks of instruction, during which were "the greatest conferences and exercises of study that they [had] in all the year."[109] The formal education was supplied by a "Reader" (a high, if sometimes unwanted, honor)[110] chosen from the utter barristers. The Reader presented a detailed analysis of a particular act or statute and declared

> such inconveniences and mischiefs as were unprovided for, . . . and then recite[d] certain doubts, and questions which he ha[d] devised, that may grow upon the said statute, and declare[d] his judgment therein.[111]

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Following his presentation, another utter barrister, playing the devil's advocate, labored to refute the Reader's interpretation. The advocate was followed by other senior members of the Inn who gave their opinions on the statute and on the Reader's interpretation of it. The Reader was then allowed a rebuttal. Finally, judges and serjeants-at-law, if any were present, commented on the whole proceedings. The reading and discussion lasted for about two hours daily. After the evening meal, in place of the regular moots of term-time, the Reader was called upon to debate cases arising from the statute he discussed. This procedure continued for the three weeks and three days of each of the two learning vacations and was the sum total of formal legal instruction supplied by the Inns of Court.

The "mean vacation," the last of the three learning vacations, was devoted to the inner barristers. During this vacation, the Benchers were not required to be at the Inn, and their places were taken by the utter barristers. The inner barristers took the places and responsibilities of the utter barristers, arguing moots as their seniors did during term-time. This concluded the three learning vacations and, unless the young lawyers followed the advice to "talk law" and "put cases" to each other in their spare time, concluded the yearly legal education of Inns of Court students.[112]

Law, however, was not the only subject taught at the Inns. Students were urged but not required to study history, especially English, and foreign languages;[113] they

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were also instructed in music, dancing, and military tactics.[114] The Inns were known for their own revels, masques, and plays as well as for providing stages and audience for the professional Elizabethan playwrights. Sir John Fortescue, in his De Laudibus Legum Angliae, gives a fifteenth century picture of the non-legal curriculum of the Inns:

> In these greater inns [of Court], indeed also in the lesser [of Chancery] there is, besides a school of law, a kind of academy of all the manners that the nobles learn. There they learn to sing and to exercise themselves in every kind of harmonics. They are also taught there to practice dancing and all games proper for nobles, as those brought up in the king's household are accustomed to practice. In the vacations most of them apply themselves to the study of legal science, and at festivals to the reading, after the divine services, of Holy Scripture and of chronicles. This is indeed a cultivation of virtues and a banishment of all vice. So for the sake of acquisition of virtue and the discouragement of vice, knights, barons, and also other magnates, and the nobles of the realm place their sons in these inns, although they do not desire them to be trained in the science of the laws, nor to live by its practice, but only by their patrimonies.[115]

The Inns, then, were not only schools of law, but also finishing schools for the gentry and nobility. It is not clear how much cross-over education occurred; that is, how much law the nobles learned and how many lawyers dabbled in the arts; but it is known that serious students of the law concentrated their time on study of the law. Sir Edward Coke, for example, labored over the law from 3:00 A.M. to 9:00 P.M.; and "it is supposed that in the whole course of his life he never saw a play acted, or read a play, or was in the company with a player."[116]

The dual education for the Inns persisted for well over

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a hundred years and became increasingly popular during the sixteenth century, with the study of the arts and social graces, surprisingly, overshadowing the study of law. In Henry VIII's reign, 40 new students a year were admitted; but, by 1580, 250 new students a year enrolled there.[117] In May 1574, out of 761 members of the Inns present, only 176 were lawyers while 585 were "gentlemen."[118] The increased student load and the emphasis on social affairs were, apparently, too much for the Inns to manage; and, by the end of the century, the quality of the education deteriorated.[119]

Technically, the barrister spent twelve years in such training, seven as an inner barrister attending the courts in the morning and moots in the evening. At the end of that time he could be called to the bar, but that only meant that he was an utter barrister not that he could plead cases at Westminster, though he occasionally did.[120] The utter barrister spent five years practicing pleading and acting as a faculty member for inner barristers before he could become an "Ancient," which title permitted him to practice in the courts,[121] except the Court of Common Pleas which was reserved for serjeants-at-law.[122] It took sixteen to twenty years, depending on one's authority,[123] to become a serjeant. Judges were chosen from the serjeants, though by the end of the sixteenth century that had become a formality. A prospective judge could be appointed serjeant one day and judge the next, as was Sir Edward Coke.[124]

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The barrister's legal training was long, arduous, wholly practical and quite expensive.[125] There were many who, for one reason or another, never completed their training or who were never called to the bar. Some, like Shallow and Falstaff, absorbed a smattering of law, enough to make them minor, country potentates with legal capabilities to harass their neighbors. Others were young men working their way up from the fields to become estate managers, stewards, who needed enough law to keep their charge intact and to run their lords' manorial courts. Still others were students who had no intention of becoming barristers but to be attorneys, and the attorney was often simply a person who had not completed, or had no intention of completing, his barrister's training. The attorney's education, then, was not different from the barrister's, just shorter. Both could very well have attended an Inn of Chancery and Court, though many attorneys went no further than Chancery. However, formal education was not a prerequisite, and one could become an attorney by having served an apprenticeship with a practicing attorney.[126]

The determination of an attorney's qualifications to practice and the control of his conduct resided in the court in which he was enrolled. (The Inns of Court admitted barristers to practice and controlled their conduct.) The attorney, when he thought himself ready, applied to a court for admission. If accepted, he was "enrolled" in the court and could practice only in those courts in which he was enrolled.[127] However, the number of attorneys enrolled in

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a court was limited, especially in prerogative courts: Chancery had six, Exchequer four, and Star Chamber two. The Common Law Courts had more: Common Pleas numbered 313 in 1578 and King's Bench 342 in 1633.[128] The attorneys were, as they still are, considered officers of the court.

The monopolies which attorneys had in courts were, in great measure, responsible for the enmity between the citizen and the legal profession during the Renaissance and also necessitated the rise of another legal figure, the solicitor. In Chancery, for example, the Six Clerks (i.e., the attorneys) found it impossible to cope with the waves of litigation which flooded the court; but, because they were paid from court fees, they were reluctant to have more clerks appointed, which would have speeded litigation but lowered their salaries. Gradually, men learned in the law, either by formal training in an Inn or apprenticeship, began to do the work of the Six Clerks in order to expedite cases. This practice meant that the litigant paid double fees, one to his representative for doing his legal leg-work and another to one of the Six Clerks for supposedly having done that work. (This strange but profitable practice survived the Revolution and was not stopped until the nineteenth century.) Thus there grew up about Chancery a horde of legal figures who filled the gap left by the Six Clerks' inability to handle cases. The members of this horde were known as solicitors, and it was not long before they cropped up in other courts of the land.[129]

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Solicitors, however, were not just leeches sucking the blood of a litigious age ("Caterpillars del commonweale," Lord Keeper Egerton called them.);[130] they served a real function. For example, law suits were apt to proliferate into many courts, but attorneys could not flit from court to court because two courts might be sitting at the same time and because attorneys were restricted by enrollment to the courts in which they could practice. Consequently, a master legal strategist was needed to coordinate all the legal actions a single case could bring. The solicitor became the strategist. He also served the function of a legal middleman between the courts at Westminster and litigants spread throughout the realm who found the travel to London inconvenient, expensive, and dangerous.

The solicitor bore the brunt, but by no means all, of the satire against Renaissance lawyers; and it was he who was generally referred to as the "rascally attorney" and the "pettifogger." The satire was just, as the profession of solicitor attracted the unscrupulous and the untrained.[131] Though the Inns of Court regulated barristers, and Courts their attorneys, there was no regulating body for the solicitors. They simply filled the vacuum created by attorneys and barristers who, ironically, in securing their monopolies also excluded themselves from legal work outside their monopolies. There were no qualifications needed to be a solicitor, though many might have been trained at the Inns. The conscience of the solicitor was often the sole check on his chicanery, and the general corruption of the

age did little to inspire that conscience to be overworked.

Because the solicitors did much of the work of court attorneys, there grew up an unholy alliance between solicitors and the attorneys who were the under-clerks of a court.[132] A bribe to a clerk could produce a writ, move a case up or down on a court's calendar (a practice known as the court's "heraldry"), or cause necessary documents suddenly to appear or disappear from court rolls. The under-clerks also made money by the amount of paper work they did, so they were not overly concerned about whether solicitors sought writs for obviously unfair, false, and vexatious cases. The multiplication and prolongation of cases were to their advantage, and they worked hand in glove with solicitors who supplied them cases.[133]

Things reached such a state that an exponent of Chancery, itself a byword for corruption, lamented that

> in the Courts of Common Law not one judgment in a hundred was pronounced in Court, or considered by the judges, but was entered in the rolls by attorneys without the judge's knowledge, especially in cases where the plaintiff's attorney had collusively retained, or acted in collusion with, the attorney for the defendant, who agreed, presumably for a consideration, to the claim made against the person whom he was supposed to represent.[134]

The court bureaucracies had become so complex that, with a little ingenuity and money, court underlings (the under-clerks, attorneys, and solicitors) could maneuver cases and judgments onto the court records without a judge ever having heard of the case.

Attempts were made, notably by Thomas Egerton, Lord Keeper of the Great Seal, to root out the corruption of his

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court, Chancery. However, his main thrust was not to revamp the intolerable bureaucracy of the court, but to stabilize the fees of that bureaucracy and to eliminate fraudulent practices. In short, he attempted to return Chancery to some pristine state where, supposedly, it worked more efficiently and honestly.[135] Despite his efforts, Egerton's policies failed to make Chancery a model court, so much so that one historian of that court refers to the Keeper as a "tragic hero."[136]

It is small wonder that Elizabethan-Jacobean writers saw the law courts as prime targets for their jibes. The courts themselves did little to inspire confidence in either law or justice. The major courts at Westminster battled each other for jurisdiction and profits; the courts were profit-making institutions. The expense of a trial, caused by the fee-taking of all concerned, brought constant charges that the law favored the rich and that justice was, in effect, bought. The courts also stressed adjectival over substantive law; to them, procedure was more important than justice. The fact that the legal machine clanked cumbrously along was enough to raise the ire of most people; but the fact that the legal profession made money out of that clumsiness made it intolerable for satirists.

The men who staffed the courts were seen as no better than the courts themselves. They were viewed, at best, as defenders of their own entrenched interests, their offices, and fees. Solicitors and attorneys were charged with fostering vexatious legal suits for their own, not their

clients', benefit. Barristers might have been more honest as a class, but it was especially their orations in Law-French and devious maneuverings in the art of special pleading that aroused the suspicions of clients ignorant of the rules of the legal game. Indeed writers often inveighed against the esoteric art and training of barristers as producing narrow-minded, uneducated men with stunted Christian consciences.

We now turn to the study of Elizabethan-Jacobean writers' assaults on the legal profession, the law, and the courts. With the background information presented here, the reader can see more readily not only what the writers were attacking, but why those things existed, whether they were the fees of a law case or the lawyer's education. A study of those attacks will show that writers were familiar with the legal profession and legal procedure, though writers did not fully understand the causes of either. (Indeed, the lawyer might very well not have understood why legal procedure worked the way it did; he was more interested in learning what he had to do in a case than why he had to do it.) What the writers did know, they attacked specifically, but they did not confine their assaults to solely legal issues. They also painted the lawyer against a background of social, moral, and cosmic ideas, a portrait that showed the lawyer as the personification of evil and symbol of the degenerate state of the world.

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CHAPTER II

LAWYERS IN A LITIGIOUS AGE

The Elizabethan law courts served not only as a place to settle the people's innumerable legal squabbles, but also as a source of popular entertainment. The country's three major courts, Chancery, Common Pleas, and King's Bench, were all situated on the ground floor of Westminster Hall, within easy earshot of each other; and a casual stroll brought London's idle from one show to another. To a nation and time unblessed with radio and television, the law courts daily staged live dramas that would have absorbed the devotees of modern soap operas and the gossip-mongers of all eras. Charges and countercharges flew before the courts as family hostilities erupted into the open, as neighbor pitted himself against neighbor, as a local merchant finally cornered his debtor, and as a current bloody or scandal-ridden cause célèbre unfolded itself. Choice gossip was pocketed for more leisurely discussion or literary notoriety as the private lives of the antagonists were laid bare before the court. Prominent on the legal stage were the adversaries' lawyers, verbally jabbing and parrying, looking for a weakness that would tip the scales of justice to their clients' advantage. The scene was a spectacle which contained the conflict necessary to drama plus colorful

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costuming with the judges in bright scarlet robes, the lawyers in dark gowns, and both topped with dusted periwigs. The whole combined a drama of conflict and a pageantry of color with the solemnity of court--fit entertainment for those who could spend their mornings in the halls of Westminster.[1]

For some spectators the law cases were more than just a show; they were sources of income. Pamphleteers and ballad-makers scoured the courts for tidbits to be later hawked in the streets. Sanitonella, a law clerk in Webster's The Devil's Law Case, cautions the court officers to "take speciall care, that you let in/No Brachigraphy men, to take notes." The courts, he continues "cannot have a Cause of any fame" but it is immediately followed with "scurvy pamphlets, and lewd Ballets."[2] But for writers of a more philosophic bent, the courts stood as a symbol of man's post-lapsarian nature, a living tableau of the worst of human nature, its contentiousness, pomp, and greed being constantly if unwittingly exposed on the legal stage. Had man remained innocent, had sin never entered the world, there would have been no reason for law courts in the first place. Not surprising, then, that the writers of an age famed for its litigiousness singled out the most visible members of courts, the lawyers and judges, for special attention. Character writers, pamphleteers, poets, and dramatists, all joined to limn character sketches or full-blown portraits of the greedy, crafty lawyer growing rich

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One historian of the lawyer in literature claims that the lawyer entered "the realm of poesy with a bound" in the person of Theobald, Alexander Pope's "King of Dullness."[3] Had the historian begun his study earlier, in the Elizabethan-Jacobean age, he would have found that many lawyers preceded Theobald into the pages of poetry; and further research would have shown that the writers of that period, conscious as they were of the particular legal problems before them, were just part of an anti-legal sentiment that stretched back to the Middle Ages, a sentiment that saw the lawyer's dullness as the least of his many shortcomings.

Much that seemed wrong with sixteenth-century England, though by no means all, centered on economic problems; and these problems often swirled around one type of land dispute or another which needed a lawyer's expertise to settle. Both tenant and landlord needed a lawyer in cases of rack-renting or enclosure. Both buyer and seller needed a lawyer in the sale of property to ascertain proper deeds and correct boundaries. The dissolution of the monasteries dumped thousands of disputed acres on the market, thereby creating a legal quagmire for buyers and sellers of land but a paradise for lawyers. All this legal activity came at a time when the land law was in a state of chaos and the number of lawyers was increasing, conditions which brought the charge that lawyers were the source of many of the country's ills because they fomented lawsuits for their own and/or

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their landlord-employer's benefit. Deeds and rights of tenantry which had lain undisturbed for centuries were challenged in the courts; and, no matter which side won a case, the lawyer was sure to be paid, hence the only certain beneficiary of a law case. The lawyer's reputation fell also when he defended in court usurers or the usurious practice of merchants, defenses which seemed to make him a mercenary in the army of the rich against the poor. Indeed, the lawyer appeared to be at the center of so many of England's economic problems that limiting the number of lawyers was seen as a practical solution to those problems on the grounds that the fewer the number of troublemakers there were the fewer the number of troubles there would be. However inaccurate the diagnosis, sixteenth-century England often regarded the lawyer as a source rather than a sign of its ills.

Early in the Renaissance, Sir Thomas More, himself a lawyer and Lord Chancellor, voiced the most general charges against lawyers by banning them from his ideal commonwealth, Utopia. A century later, Robert Burton, usually self-controlled in his "anatomy" of people, let fly a tirade of specific indictments against lawyers which for its vehemence and particularity deserves quoting. Lawyers, he says, are

> A general mischief in these our times, an insensible plague, and never so many of them: which are now multiplied (saith Mat. Geraldus, a Lawyer himself,) as so many locusts, not the parents but the plagues of the Country, & for the most part a supercilious, bad, litigious generation of men; a purse-milking nation, a clamorous company, gowned vultures, who live by violence and bloodshed, thieves and seminaries of discord; worse than any pollers by the high-way

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> side, gold hawks, gold-borers, money-fishers, temple thieves, market jinglers, horrible wretches, slave-traders, etc., that take upon them to make peace, but are indeed the very disturbers of our peace, a company of irreligious Harpies, scraping griping catchpoles (I mean our common pettifoggers; I love and honour in the mean time all good laws and worthy lawyers, that are so many oracles and pilots of a well-governed commonwealth), without judgment, that do more harm, as Livy said, than sickness, wars, hunger, diseases; and cause a most incredible destruction of a Commonwealth, saith Sesellius, a famous civilian sometime in Paris.[4]

Burton continues for two more pages in the same vein, accusing lawyers of covetousness, troublemaking, using legal tricks to subvert justice, delaying suits for their own benefit, and generally sowing consternation amongst the people. After praising Switzerland, Fez, and ancient England as places where legal suits were quickly and justly brought to a close, he concludes with "Christ's counsel concerning law-suits": "Agree with thine adversary quickly." The accusations are harsh and the epithets many; yet Burton, and More before him, but echo and summarize their contemporaries' opinions of lawyers.

That these attacks were part of literary convention, as Professor Notestein concludes,[5] is true; that they are directed against a profession sworn to uphold justice but peopled with frail humans is expected. Yet the frequency and particularity of the indictments indicates the writers kept a close eye on the world around them. The modern Englishman may pride himself on living in a nation of laws, but his ancestor took little relief in that fact and saw the vast number of laws and lawyers as too constant and visible reminders that God's wrath hovered dangerously low over

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Not all lawyers, of course, were forced to dodge the satiric shafts of the writers. Most writers, like Burton, pause to admire "all good laws and worthy lawyers." Barnaby Rich respects the "better sort of the learned lawyers."[6] Bishop Stubbes, noting the abuses of his age, admits lawyers are "most necessarie" and that "a man can serve God in no calling better than it," provided he have a "good conscience."[7] Ben Jonson, the scourge of lawyers, jaundiced perhaps by his own bouts with the law, wrote commendatory verses to such famous lawyers and jurists as Egerton, Bacon, Coke, Selden, Hayward, and an honest "Councellour," perhaps Sir Anthony Benn, lawyer and Recorder of London, despite the fact that some of those suffered from the same avaricious disease which Jonson diagnosed in the rest of the legal profession. But, once the amenities were attended to, the writers laid to with all the gusto a a person indiscriminately swatting his way through a swarm of bees. Having once announced the caveat that they had no particular person in mind, they proceeded to pillory anyone remotely attached to the legal profession. Not only the barrister, attorney, and solicitor, but also the notary, scrivener, clerk, justice of the peace, and judge had to endure the lashes of the writers' wit.

If there was one thing the Elizabethan feared more than the plague, the Spanish, and the Pope, it was being drawn into a lawsuit. The litigiousness of the age was proverbial,

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and authors never ceased warning their readers to beware the snares of the law courts where the only sure beneficiary was the lawyer. Bishop Stubbes, admitting the necessity of laws, courts and lawsuits, nevertheless adds "this proviso, that it is better, if the matter may otherwise be apeased at home, not to attempt lawe, than to attempt it."[8]

The "proviso" was so self-evident that Stubbes saw no reason to elaborate on it. Thomas Dekker recommends patience as

> the greatest enemy to law
> That can be, for it doth embrace all wrongs,
> And so chain up lawyers' and women's tongues.[9]

Bishop Hall seconds that advice, saying that the "Patient Man," when trapped into a lawsuit, rejoices in an "unjust sentence" and is "more than heroicall" in refusing to become embroiled in a counter-suit.[10] Even being in the right is no reason to trust to the ambiguities of the law. Witgood, in Middleton's A Trick to Catch the Old One, laments in legal metaphors that he who "sets out upon his conscience ne'er finds his way home again; he is either swallowed in the quicksands of law quillets, or splits upon the piles of praemunire."[11] Best to avoid law altogether was the advice, but to follow that counsel was another thing. As one epigrammatist prophesied, "Thou wilte lerne the lawe, where ever thou bee. Lycolnes In, or Lincolne towne, both one to thee."[12]

The causes of English litigiousness were manifold, but Elizabethan authors preferred to lay the blame at the

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threshold of the lawyer's office, more particularly at the solicitor's or attorney's, for it was they who dealt directly with the clients, not the barristers. If the writers are to be believed, around every London corner stood a solicitor or attorney ready to trip up an unsuspecting citizen on a long forgotten law, on trumped up charges, or to urge him into litigation that he otherwise would not pursue. Sir Thomas Wilson complains of pettifoggers who roam the countryside "seaking meanes to sett their neighbours att variance whereby they may gayne on both sides" and of others who, upon hearing of an inheritance, ransack the documents to find "some pretence or quiddity" that will start a legal suit.[13] Thomas Dekker tells of a poor farmer returning from Westminster with little else than his horse after having gone to law "for certain Acres, about which he would never have ventured his money," except that "his Councell whetted him on, by telling him the matter was clear on his side, and that all the Law in England, could not take it from him; . . ."[14] Lopez, the title character of Beaumont and Fletcher's The Spanish Curate, describes the lawyer Bartolus as one

> that entangles all men's honesties,
> And lives like a spider in a cobweb lurking,
> And catching at all flies that pass his pit-fall
> Puts powder to all states to make 'em caper--[15]

Middleton uses the same image in The Roaring Girl when Sir Alexander asks his attorney, Trapdoor, to "Play thou the subtle spider" in seeking to legally entrap his victim;[16] and, much earlier, John Heywood expanded that image to over

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70,000 lines of ponderous poetry in a work entitled The Spider and the Fly.[17] County fairs were well-stocked ponds for enterprising attorneys fishing for clients. Not only were they filled with rustics waiting to be gulled; but there was also, nearby, a pie-powder court, such as that presided over by Justice Adam Overdo in Jonson's Bartholomew Fair, where the catch was quickly gutted. The fairs provided opportunity for (or at least suspicion of) cheating on either the seller's or buyer's part, and the attorney had only to convince the offended party to go to court to get his fee. The main problem of the lawyer, then, was that of a salesman, to sell a law case; and that charge, an earlier version of that implied by the modern "ambulance-chaser," has plagued the legal profession since its inception.[18]

The lawyer was also feared when he worked in collusion with others, notably a landlord, a usurer, or a merchant. Dealings with any of the three involved a legal contract or a lease and, by implication, a lawyer. Land squabbles were the most frequent subjects of the satirist's pen and, probably, the most popular of legal cases. Though lawyers handled cases from all classes, "most of their work was with the landed families,"[19] and most of that work consisted of straightening out--or making crooked--the titles and boundaries of the land belonging to those families. Often the lawyer was a steward of a manorial court, charged with keeping court rolls and assessing tenants' rents. Underneath him was a solicitor "who had charge of the coils of litigation with tenants and others in which every landlord

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was continually enmeshed."[20] With the lawyers serving more as battering rams than arbitrators in the feuds between tenants and landlords, it is not surprising that the legal profession bore the onus for the innumerable legal suits.

Pennyboy Junior, in Jonson's The Staple of News, epitomizes the landlord-lawyer relationship when he introduces his attorney, Picklock.

> Here is domine Picklock,
> My man of law, solicits all my causes,
> Follows my business, makes and compounds my quarrels
> Between my tenants and me; sows all strifes,
> And reaps them too; troubles the country for me,
> And vexes any neighbor that I please.[21]

Franklin, a sea-captain in Anything for a Quiet Life, curses Knaves-Bee, the lawyer, as he passes by.

> A pox upon him, a very knave and rascal,
> That goes hunting with the penal Statutes;
> And good for naught but to perswade their Lords
> To rack their Rents, and give o're House-keeping;
> Such caterpillars may hang at their Lords ears,
> When better men are neglected.[22]

Franklin echoes tenants' complaints but, also, has some of his own because he is put out of work. Lord Beaufort, his and Knaves-Bee's employer, explains that land, not trade over the waters, is his main concern now:

> Know sir, a late Purchase
> Which cost me a great sum, has diverted me
> From my former course--besides Suits in Law
> Do every Term so trouble me by Land,
> I have forgot going by Water.[23]

Knaves-Bee's machinations upset tenants, sea-captain, and Lord alike.

The specific charges against the landlord-employed lawyer are rarely more detailed than those against Jonson's Picklock or Webster's Knaves-Bee: they hunt with penal

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statutes for their employers, as Franklin says. The charge is general enough, but behind it lies much of the social and economic turmoil of the sixteenth century which made the Picklocks and Knaves-Bees subjects of bitter invective. The sixteenth century saw a "massive transfer of property taking place at a time when the land law was in some confusion, when no central land registry existed, and when it was extremely easy to make secret encumbrances of title. The result was a lawyer's paradise, . . ."[24] The dissolution of the monasteries dumped thousands of contested acres on the market; the enclosure movement brought untold hagglings over property rights and titles; and the buying up of landed estates by London businessmen seeking gentry prestige initiated disputes over boundaries which had been only vaguely delineated centuries before.

The opening of the monastery lands, alone, was enough to keep most lawyers busy through the sixteenth century. The land reverted to the king and was either kept by him, sold for royal revenue, or passed out to his friends or creditors. It was one thing to acquire or sell an abbey and its lands; it was quite another to ascertain just what land was involved. The abbey's original deed was probably drawn up in the Middle Ages, a time of comparative legal naiveté when two or three written pages satisfied the law's requirement for certain ownership. In the centuries that passed, the original deed was amended as new land was acquired and old sold off; and the value of the documents depended on the

knowledge and diligence of the attorney who drew them up. Their value was further qualified by the fact that boundaries were defined by the location of trees, rocks, or monuments that either no longer existed in the sixteenth century or had been moved or possibly destroyed by an unscrupulous neighbor or an act of God. These problems were doubled by the fact that the deeds could be contested. As there was no central land registry to validate ownership, the authenticity of deeds could always be called into question. Adding to the confusion was that the written word, a hallmark of advanced civilization, was also a boon to knavery because that word could also be lost, stolen, or forged; and medieval monastics, let alone laymen, were not averse to the most irreligious practice of forging deeds.[25]

Complicating the issue was the chaos of the land law itself. The issuance of original writs, mostly "concerned with rights in land and the incidents of tenure,"[26] was stopped by the reign of Edward I. Subsequent generations had to adapt their legal dealings to old writs which had not kept pace with the changing methods of land ownership or transference of property.[27] Consequently, the land law became "a mass of commentary, packed with legal learning, refined distinctions, and ingenious reconciliations."[28] "The older English land law," one scholar concludes, "was as intricate and elaborately artificial a body of rules as the world has ever seen."[29] Compounding the confusion was the lack of any clear-cut method of "conveyancing," the transferring of property. Authorities supplied books for the

conduct of litigation, containing specimens and forms necessary to the case. But in non-litigious business, such as conveyancing, models but not forms were supplied. Each piece of property had its own unique subtleties and encumbrances, and they had to be accommodated to the law of the land not the form of the writ.[30] The chances of error were manifold, and they were magnified by incapable attorneys drawing up deeds and by the number of deeds issued on a particular plot over the centuries. The dissolution of the monasteries, with its accompanying legal problems, provided revenue for both the monarch and the lawyers who tried to sort out those problems.

The redistribution of monastery land tested, often too strenuously, the consciences of lawyers and commission members sent out to administer it. Some Church land was stolen amidst the confusion surrounding monastery deeds. That land, known as "concealed land," could be kept "concealed" by bribing the commission members, provided they did not covet the land themselves. A cynical Somerset doggerel, referring to commissioners and lawyers, announced

> Wyndham and Horner, Berkeley and Thynne,
> When the monks went out, they came in.[31]

The process could also be reversed by bribing the officials to declare land "concealed" and then to buy it for a nominal sum or accept it as a gift. The Court of Augmentations, instituted by Cromwell in 1536 partially to oversee the disposal of monastery lands, soon became swamped "by the mass of complaints of tenants and other altercations concerning

crown lands and revenues, . . ."[32] Far from stopping the swindling, the Court only limited the number of swindlers primarily to its members: "the division of monastic spoils presented an obvious opportunity for peculation and graft; more often than not the acquisition of a few coveted manors simply whetted the appetite for more."[33] Though the king and Cromwell received bribes for the spoils, the greatest beneficiaries were the Court members with privy information on desirable tracts; and the fortunes of such legal families as the Sackvilles, Onleys, Southwells, Henleys, and Bacons had their beginnings in Augmentations.[34] The trafficking in concealed lands was still popular at the end of the sixteenth century. Joseph Hall records how Matho, an unscrupulous lawyer in Virgidemiarum, raised his station from "one leane fee" a Term to be lord of many manors. Matho, he says,

> May now in steed of those his simple fees;
> Get the fee-simples of fayre Manneryes.
> What, did he counterfait his Princes hand,
> For some streave Lord-ship of concealed land?
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> Or hath he wonne some wider Interest,
> By hoary charters from his Grandsires chest,
> Which late some bribed Scribe for slender wage,
> Writ in the Characters of another age,
> That Ployden selfe might stammer to rehearse,
> Whose date ore lookes three Centuries of yeares.[35]

Nashe, Dekker, Jonson, and Middleton all make allusions to the corrupt practice.[36]

The area for land disputes spread far beyond monastic acres. Landlords, caught in a period of inflation and burdened with fixed rents negotiated centuries earlier,

hired lawyers to help them squirm out of that legal and economic vise. Rack-renting was a notorious way out of the dilemma, but that was just one of many avenues of escape. Another was to scour ancient laws and "to enforce the payment of every obsolete and obsolescent feudal due for which a legal case could be extracted from medieval records."[37] A third was to exact heavy entry fines from copyholders (persons who held their estates by copy of court roll) taking possession of their land.[38] Still another was to find some pretence to deny copyhold and force the tenant into a lease-hold, whereby rents could be negotiated every few years and kept in line with the vicissitudes of the economy. Richard Sherfield, an attorney for the Earl of Salisbury, thought he was just furthering the Earl's interests by harassing tenants. A commission investigating his actions concluded that "by enforcing such strict penalties and law quirks . . . he hath justly drawn on him the hate and ill opinion of that part of the country" in which he worked.[39] Lawyers resorted to legal and illegal devices to increase their own and their employers' wealth; and, because they were in the forefront of the legal battles and because it was more prudent to attack them rather than their powerful employers, the lowly lawyer received the brunt of the attack. It is no wonder that Lethe, a character in Middleton's Michaelmas Term, searching for a simile to fit Rearage and Salewood who are lecherously ogling his whore, describes them as "like two crafty attorneys, [who] finding a hole in my lease, go about to defeat me of my right."[40] Put in the context of attitudes

towards lawyers, his fears are more than justified. That same context adds bitterness to Timon's cry of

> Crack the lawyer's voice
> That he may never more false title plead,
> Nor sound his quillets shrilly.[41]

The fear of lawyers finding holes in leases was increased by the complexity of the leases themselves and the number of attorneys searching out the defects. The financial and land arrangements involved in arranged marriages, for example, "witnessed an extraordinary growth in their size and complexity" during the late sixteenth and early seventeenth centuries.[42] Lawyers, paid by the sheet, had a natural urge to lengthen the documents and also to close loopholes against further litigation. As a result, documents swelled from one or two pages to the largest, "which cover[ed] about 300 square feet of parchment."[43] John Norden complained at the beginning of the seventeenth century that "in these daies there goe more words to a bargaine of ten pound land a yeare then in former times were used in the grant of an Earledome."[44] The enlarged documentation certainly tried to prepare for any future legal contingencies, but the rub was that the more words, the more chance for error and contention. There was no telling what word or comma, no matter how carefully set down, might prove a future traitor to a crafty attorney. Sir Walter Raleigh, himself a lawyer, lost his estate to the king because of "a flaw in the conveyance," a flaw "so gross that men do merely ascribe it to God's own hand that blinded him and his counsel."[45] The practice of searching out loopholes became

so prevalent that an incredible market of lands having doubtful title was developed. People bought the research done on these titles with the intent of the buyers to pursue lawsuits against them.[46]

Added to the woes of tenantry and to the legal arsenal of lawyers was a small but havoc-wreaking invention of sixteenth century science--the surveyor's rod. Armed with that weapon, the lawyer turned surveyor, trying to establish once and for all the true boundaries of disputed acres. But whether acting honestly or not, the lawyer was sure to arouse new arguments over old titles. Tenants cried out against the "new-fangled technique;" and a farmer in John Norden's The Surveyor's Dialogue complains to the surveyor that "rents are raysed and lands knowne to the uttermost acre, fines inhaunced farre higher than ever before the measuring of land and surveying came in."[47] It was probably the thought of some surveying lawyer in the neighborhood that caused Robert Burton to warn, poetically, that

> Should crafty lawyer trespass on our ground,
> Caitiffs avaunt! disturbing tribe away!
> Unless (white crow) an honest one be found;
> He'll better, wiser go for what we say.[48]

The fact that the surveying rod was in the hand of the already distrusted and despised lawyer only confirmed to tenants that it was an engine of the devil.

Trouble also arose when the lawyer became a landlord himself. Because he was close to the legal and economic problems of his employer the lawyer was in a position to bid on land put up for sale. Also, the employer, often

hard pressed for ready cash, paid his lawyer by granting him long leases for his own use, "and the lawyer knew how to make such leases grow in value."[49] William Smallshanks, the wastrel protagonist of Ram-Alley, laments his dealings with an attorney, aptly named Throat, who has "swallowed at one gob/For less than, half the worth" the land Smallshanks received in patrimony.[50] Shakespeare also comments on the problem. Hamlet, early in the final act of his tragedy, muses on the skull of a lawyer turned land-jobber.

> This fellow might be in his time a great buyer of land with his statutes, his recognizances, his fines, his double vouchers, his recoveries. Is this the fine of fines and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures? The very conveyances of his lands will scarcely lie in this box, and must th' inheritor himself have no more, ha?[51]

By the time Hamlet spoke, the lawyer had become infamous for his land acquisitions, and he was seen as a predator gobbling up estates as investments with no concern for the tenant-landlord reciprocity that supposedly had held from feudal times. However ideal rather than real that reciprocity was, tenants and writers accused the lawyer-landlord of having only mercenary interests, a fault that was hastening the end of the feudal way of life and its system of co-responsibilities. In the favorite metaphor for the state, the stomach of the body politic was gorging itself but not passing on sustenance to the rest of the body.[52]

Hamlet's speech has been analyzed as a memento mori[53] and as a full-scale meditation,[54] but it is also a light-hearted attack on a conventional figure of satire, a moment

of comic relief before the tragedy rushes to its conclusion. Yet it is particulary apt relief for a tragedy, for just beneath the lightheartedness is a serious and tragic tone as the landlord-lawyer symbolized much that was thought wrong with the country and represented the executioner of an old way of life. The lawyer's death and his futile attempt to master his own fate, only to end up in a coffin like everyone else, are fit precursors to Hamlet's own tragic end. But more like Claudius than Hamlet, the lawyer represents much that was rotten in England if not Denmark; and his demise prepares us for Claudius' death. The speech, then, is more than comic relief, more than a digression; it is dramatically and ironically appropriate for a character soon to meet his own treacherous death while ridding the kingdom of its stench. The very existence of so many grasping and crafty lawyers was, it was thought, a national tragedy in itself.

The lawyer's image became even more tarnished when he joined forces with an unscrupulous merchant or usurer. The rustic heir bilked of his estate by the sharp practices of London merchants was a commonplace of Elizabethan and Jacobean literature. That the usurer had both the law and lawyers at his back did more to lower the esteem of the legal profession than raise the prestige of usury. Such literary lawyers as Throat and Lurdo[55] admit to supplementing their income through the vile practice of usury, and Professor Stone has shown that they had their counterparts in real life with lawyers, government officials, and city

magnates leading the list of amateur usurers.[56] Thomas Lodge, writer and lawyer, denounced the practice of using legal machinery and subterfuges to make creditors miss their payments and, thus, lose their bonds and security.[57] One such usurer engages his debtor in conversation until after the hour the money is due. Then, the usurer not only refuses payment in order to collect the larger bond he holds for late payment but bribes the debtor's lawyer and the judge to throw the case.[58] Few lawyers matched the audacity of the real-life Hugh Donvile who, in league with a usurer, persuaded one poor soul to put his house in Donvile's name as security for a loan from the usurer. Donvile than paid the lender, later accepted payment from the householder but refused to return the title, trusting to his legal abilities to keep both house and money. Donvile prevailed.[59]

Merchants, anxious to reap the benefits of usury but to avoid its immoral sting, lent money under the pretext of selling goods. Quomodo, the linen draper of Michaelmas Term, typically and ingeniously, plots the overthrow of a young heir, Master Easy. Through Quomodo's accomplices, Easy is first pushed into debt, forced into usury, and ultimately tricked into co-signing a note for Quomodo on cloth supposedly worth £200. The cloth is to be sold for money; thus, the merchant avoids the charge of actually lending money. The cloth proves worthless; and, when the note comes due, Quomodo is missing, which results in Easy's arrest for debt as the co-signer. The transaction is legal,

having been drawn up by a scrivenor and overseen by Quomodo's lawyer son, Sim. With Easy under lock and key, Quomodo dances with glee in the thought of enjoying Easy's lands.

> The land's mine . . .
> My plot's so firm, I dare it now miss.
> Now I shall be divulg'd a landed man
> Throughout the Livery; . . .
> --Whither is the worshipfull Master Quomodo
> and his fair bed-fellow rid forth?--To his
> land in Essex!--Where grow this pleasant
> fruit? says one citizens wife in the Row.--
> At Master Quomodo's orchard in Essex.
> (III.iv.3-17)

Delirious with his successful knavery, he presents himself as a model for future lawyers: "Admire me all you students at the Inns of Cozenage" (II.iii.441-42).[60] Most merchants' devices were not as elaborate as Quomodo's, but they were similar in that the creditor was to take "commodity," goods, in lieu of money. The goods were to be sold for the actual cash, which never matched their assessed value.[61] The usurers and merchants deserved the censure they received, and the lawyers fell further in popular esteem by their association with and upholding of such nefarious practices. Lodge, who despised usurers, nevertheless blamed lawyers, who handled their cases, and corrupt judges for allowing usury to continue.[62] Without legal enforcement of their contracts, usurers could not prosper.

To sort out the causes of Elizabethan-Jacobean litigiousness is like trying to unscramble eggs; but, to the writers, politicians and even lawyers of the time, the prime cause was said to be the sheer number of lawyers. Sir Thomas

Wilson complains that "one of the greatest inconveniences in the land" is that "the number of Lawyers are so great they undoe the country people. . . ."[63] John Marston describes the revels as crowded and pestered "as the countrie is with Atturnies."[64] Robert Burton sees their number as "an insensible plague, and never so many of them: which are now multiplied . . . as so many locusts . . . the plagues of the Country."[65] George Cressingham, in Anything for a Quiet Life, is advised by his father's steward, Saunders, to seek a fortune by the most popular means, the study of law: "the Law that takes up most a' th' wits i' th kingdom, not for most good, but most gain."[66] Saunders, as a steward, was legally trained and knew whereof he spoke.

Lawyers and politicians agreed. William Hudson, a Star Chamber barrister, charged: "In our age there are stepped up a new sort of people called solicitors . . . who, like the grasshoppers of Egypt, devour the whole land. . . ."[67] Lord Keeper Egerton referred to them as "caterpillars del commonweale."[68] Another judge charged that the increase in lawsuits squarely rested with the "multitude of attorneys . . . who are ready at every market to gratify the spleen, spite or pride of every plaintiff."[69] In 1557, 1574, 1615, and 1631, the Inns of Court barred attorneys from studying there in an effort to reduce their number and preserve the social gulf between barristers and attorneys. Parliament also passed laws to reduce the increasing number of attorneys in 1402, 1411, 1455, and 1616. In 1605, it passed a specific

law entitled "An Act to Reform the Multitudes and Misdeameanors of Attornies."[70] Later in the century Hugh Peters compared England detrimentally to Holland where, because of few lawyers, justice ran quickly and smoothly.[71] However one-sided the view that lawyers caused litigation, that belief persisted.[72]

Writers also acknowledged that the quarrelsome nature of the English spurred as many suits as did lawyers. Some of the passengers on Barclay's Ship of Fools are madmen who "seke the extreme of lawe." But their smiles turn dour when they find that "onely the lawyers catcheth the auantage."[73] A century later, Middleton echoes that same theme: "All that fall out amongst themselves, and go to a Lawyer to be made friends" are fools; and there are about forty such people a day.[74] Nashe tells us that "Lawyers cannot devise which way in the world to begge, they are so troubled with brabblements and sutes everie Tearme, of Yeoman and Gentlemen that fall out for nothing."[75] Throat, Prate, and Crispiano, all disreputable lawyers,[76] have to beat off clients clamoring at their doors. Westminster Hall, according to John Smyth of Nibley, has become "our cockpit of revenge," "the civill warres of my dayes there rageinge, wasting more treasure and time than the disunion of the houses of York and Lancaster ever did the unitinge."[77]

The causes of the litigation were as many as the people. The jealousy of Leonora, in The Devil's Law Case, gives rise to the play's title and much of its action.

Onion and Juniper, in Jonson's The Case is Altered, react to Count Ferenze's calling them "hinds": "Hinds sir," says Onion, "'sblood, an that word will bear an action, it shall cost us a thousand pound a piece, but we'll be revenged." (V.ii.177-78). Middleton's Sam Freedom is ready to avenge a box on the ear by Moneyglove through a lawsuit. "I am not such a coward," he contends,

> to strike again, I warrant. My ear has the law of her side, for it burns horribly. I will teach him to strike a naked face, the longest day of his life. 'Slid, it shall cost me some money, but I'll bring this box into the chancery.[78]

Added to these causes was the timeless, if not time-honored, device of using the law to defeat its own ends. Breton's villain, "Machivil," instructs his son on how to defraud a business partner. First, offer to buy him out at a ridiculously low price.

> When if he will not take what thou wilt give him;
> To course of law, for his best comfort drive him;
> Where whiles he railes on thy ill conscience,
> Thy patience closely will put up his pence.[79]

The law, advises Machivil, because of the length and cost of a suit, will deliver what sharp business practice would not.

To Machivil, law had become part of the game of life and should be freely resorted to in winning that game. Some historians agree in principle if not in practice with Machivil. Professor Stone sees law courts as part of the English civilizing process, transferring "All the pride, obstinancy, and passion that hitherto had found expression in direct physical action . . . to the dusty processes of the law."[80] The Dutch historian, Johan Huizinga, speaking of man

in general, views the law process as a civilized encrustation on man's primitive, playful nature, which, he concludes, should cause man to be labeled homo ludens, man the player, the sportsman.[81] Some Elizabethans concurred. Zuccone, in Marston's The Fawn, suggests going to law; and his companion Hercules replies, "Why that's sport alone. What though it be most exacting?"[82]

But whatever the ultimate cause or combination of causes which sparked Elizabethan lawsuits, the writers of that age concentrated their venom on the most visible and certain beneficiary of those cases, the lawyer. Ariosto, one of the few honest lawyers seen on the Elizabethan-Jacobean stage, recognizes that a woman's jealousy has caused a lawsuit; nevertheless, he also blames the attorney, Sanitonella, for accepting the suit and bringing it to court. Addressing the attorney, Ariosto rages,

> Why you whoreson fogging Rascall,
> Are there not whores enow for Presentations,
> Of Overseers, wrong the will o' th Dead,
> Wicked Divorces, or your vicious cause
> Of Plus quam satis, to content a woman,
> But you must find new stratagems, new pursenets?[83]

"The Devill take . . . such Suits," he concludes. The lawyer's first allegiance, it was held, belonged to justice not his client; and the lawyer's duty was to weed out vexatious cases from the litigious soil of England.[84] Nicholas Bacon, as Keeper of the Great Seal, implored his fellow lawyers to strive for justice and "not to accept causes for profit, lure clients into litigation for their own gain, or take advantage of technical loopholes."[85]

Few lawyers rose to such a noble challenge; and, when they did, they were regarded as a "miracle." Crispiano and Sanitonella, Webster's unscrupulous barrister and attorney, discuss the honest lawyer Ariosto in tones usually reserved for a saint.

> Crisp. There he stands a little piece of flesh,
> But he is the very miracle of a lawyer;
> One that persuades men to peace, and compounds quarrels
> Among his neighbors, without going to law.
>
> San. And is he a lawyer?
>
> Crisp. Yes, and will give counsel
> In honest causes gratis; never in his life
> Took fee but he came and spake for it; is a man
> Of extreme practice; and yet all his longing
> Is to become a judge.
>
> San. Indeed, that's a rare longing with men of his profession. I think he'll prove the miracle of a lawyer indeed.[86]

Ariosto, however, is an exception; and lawyers are usually given more mundane labels than "miracle." Dekker lists lawyers among his "catch-poles," and the Elizabethan term "high-lawyer" refers to highwaymen who robbed while on horseback.[87] The lawyers in drama are often given symbolic names reflecting their shrewd, contentious, and avaricious natures: Knaves-bee (Anything for a Quiet Life), Throat (Ram-Alley), Tangle (The Phoenix), Bramble (Eastward Hoe), Practice (The Magnetic Lady), Picklock (The Staple of News), Pettifog and Dodge (A Cure for a Cuckold), Prate (The Dumb-Knight), and Dampit, "trampler of law" (A Trick to Catch the Old One). The government thought as little of lawyers as did the writers. In 1602, needing men for impressment

into service, the government ordered "refuse sort of people" to be collected from the "plaie howses, Bowling Alleys, and Dycing howses." Lawyers were among the group found and impressed.[88]

The foregoing general discussion of the lawyer in Elizabethan-Jacobean literature has sought to establish certain points. One is the pervasiveness of the lawyer in the literature of the time, both as a character and as a subject for allusions and metaphors. Not only is he a character in plays, almost always a despicable one, but he is also used, as in Hamlet, to represent the degeneracy of the age. Also seen is the bitterness aimed at the lawyer and the low esteem in which the legal profession was held. Those lawyers who receive most of the attacks are, it is true, solicitors and attorneys, not barristers. All the characters listed immediately above, for example, are solicitors and attorneys; and the outcry against the number of lawyers was aimed at them, not barristers. However, Crispiano, in The Devil's Law Case, is a barrister; and Littlewit, in Bartholomew Fair, is a "proctor," the equivalent of a barrister in ecclesiastic courts. The satire against those two indicates that the higher rank of lawyers was also under attack. In fact, the writers rarely distinguish legal figures by their proper titles, instead lumping them all under the general term, lawyer. Whatever distinctions lawyers made among themselves, writers saw them all cut from the same cloth.

The general charges against lawyers were that they were

at the center of the litigiousness of the age, urging people to go to court so that they could reap legal fees. Lawyers also worked with landlords in challenging deeds and seeking out loopholes in leases to the detriment of tenants and the poor. Knowing the chaotic state of English land law, the lawyer was in a position to harass the citizenry with vexatious cases. He also defended cases which writers thought were patently immoral if not illegal, such as those involving usury. In all, the writers see the lawyer as benefiting from the economic and social problems of the time, as reaping a fortune out of the misery of others. Far from using the law as an instrument of justice, it was charged, he used law as rules for a game, a game played for his own profit. No wonder Hall sees as one of his "Wise Man's" outstanding characteristics that "He is his own lawyer."[89]

Nowhere in Elizabethan-Jacobean literature do we find a serious treatment of a lawyer caught in a conflict between what is technically legal and what is just, between serving himself and his family and serving justice. The lawyer had become a stock character awaiting the satirist's thrust, and it is easy to apply to all writers L. C. Knight's estimation of Middleton's views on lawyers: "exciting discovery . . . [we find] that lawyers are concerned more for their profits than for justice."[90] But such an estimation should not blind us to the realization that beneath the cliché-ridden attacks were serious social and economic problems perplexing the Englishman. The lawyer, enmeshed in those problems,

rose above being merely a stock character and became a metaphor and symbol for much that was thought wrong with England. It is no accident that Shakespeare has Hamlet, surrounded by death in "rotten Denmark," ruminate on a grasping lawyer's skull.

The general charges against lawyers dealt with so far were rooted in contemporary problems. Still to be seen are the more specific and personal attacks on lawyers and how those attacks reflect the development of the law and legal profession.

CHAPTER III

SERVANTS OF MAMMON

The sight of a lawyer with surveying rod in hand or of another pouring over a deed raised apprehensions in many Elizabethans, creating that vague angst which has been part of the general fear felt toward professionals and specialists from the medieval cleric to the modern psychiatrist. Laymen have always viewed specialized knowledge with a mixture of awe, scepticism, and, when the knowledge proves fruitless or inaccurate, with superior and sometimes comic contempt, witness the alchemist. The Renaissance lawyer proved no exception to the rule: the bureaucracy in which he worked, the mysterious legal machinery he managed, his specialized learning couched in esoteric language, law-French, all bred an uneasiness in a client certain that the scales of justice were quite enough to favorably settle his case.

But the charges against lawyers run deeper than a vague uneasiness. Like the symbols drawn in an Elizabethan portrait, they are quite precise, though often not explained. That is, for example, lawyers were continually accused of accepting bribes; but the details of the bribes--who got them, how much they were, what the lawyers did with them--were mostly left unexplained. Many of those details, self-evident to the Elizabethan, have been lost to modern eyes

because of the major overhaul of the legal system by nineteenth century law reforms, which eliminated many causes of complaints, and because of the shift in economic, social, and moral values which accompanied the rise of capitalism, on the one hand, and the influence of Puritanism, with its acceptance of worldly success as a virtue, on the other. The lawyer represented modern attitudes toward those values and was attacked by writers who continued to cling to medieval views. To be unaware of those changes is like interpreting a medieval or renaissance painting with no idea of iconography.

In the opening speech of the "Inductio" to Middleton's Michaelmas Term, the title character heralds the beginning of the law year, from a lawyer's viewpoint.

> Lay by my conscience,
> Give me my gown, that weed is for the country;
> We must be civil now, and match our evil;
> Who first made civil black, he pleas'd the devil.
> So, now know I where I am, methinks already
> I grasp best part of the autumnian blessing
> In my contentious fathom; my hands free,
> From wronger and wronged I have fee,
> And what by sweat from rough earth they draw
> Is to enrich this silver harvest, Law;
> And so through wealthy variance and fat brawl,
> The barn is made but steward to the hall.

In this speech, Middleton makes a number of sharp, deft thrusts at the lawyer, thrusts whose basic meanings are quite clear but whose implications need explanation.

The dominant theme concerns the lawyer's greed and his willingness to do anything for money. Love of money causes him to lay by his conscience and enter the service of Satan; and his acceptance of this satanic service is symbolically

represented by his donning a robe of black, the Devil's color and also, appropriately, that of the lawyer's gown. Because he is now conscienceless, he cannot distinguish right from wrong and takes fees, a fault in itself as will be seen, from the "wronger," the "wronged," or from both at the same time. The moral world has become corrupt and the social and political worlds follow suit. The lawyer makes his money from contention and discord, the opposite of what one should strive for in a Christian commonwealth which stresses the brotherhood and interdependence of men.[1]

Michaelmas Term admits his primary motivation is avarice. Professor Johansson has already shown that greed was the primary charge leveled at Elizabethan lawyers;[2] but to stop at that discovery, as Johansson does, is to overlook the deeper meanings of that charge. For moderns, to suffer from greed is to lack a fulfilled, happy life, to omit the fine and beautiful things life has to offer and put in their place the tawdry and transitory baubles of worldly pleasure which never bring true contentment. That attitude lies behind the Babbitts and Willy Lomans of contemporary literature and causes them to live such vacuous lives while searching for success. Their shortcomings are personal, not necessarily moral, failures. They are unhappy, not damned; misguided, not evil. Johansson seems to have that modern view when he discusses the greed of Elizabethan lawyers, but that view does not explain the absolute corruption of Michaelmas Term, its disastrous consequences, or the

pervasive hostility aimed at lawyers in general. To understand those, the charges against lawyers must be put in their Elizabethan context which, in turn, goes far in explaining many of the widespread attacks on the legal profession. For, the Elizabethan argued, if pride caused man's fall, avarice kept him on his knees; and the daily practice of lawyers showed them to be servants of Mammon rather than Justice.

The specific charges against the lawyer fall into three main categories: those against his moral character, his legal practices, and his social irresponsibility, the last two being inextricably bound up with the first. An understanding of attitudes toward moral character is important because Elizabethans, for the most part, placed praise or blame squarely on the shoulders of the individual. Where a modern sociologist or a historian, such as Sir John Neale, might look to "the system" to explain man's actions (see chap. I, note 135), the Elizabethan believed that the individual man made a conscious choice to act rightly or wrongly. The writers, in fact, do not even seem to comprehend the idea of a system--legal, economic, or otherwise--which prevents a man from acting of his own volition. They see lawyers, attorneys, solicitors, clerks, and judges as men who should be judged as men, not as cogs in a machine. The machine is not only not used as an excuse for the lawyer's actions, it is not even offered as an explanation of them.

As has already been shown in the case of Michaelmas Term and attested to by Johansson, avarice was the dominant characteristic of the lawyer's moral, or rather immoral, character. But one not only suffered from avarice, one also was guilty of it, and that guilt had far-reaching implications. Like a cancer, avarice quickly spread and destroyed the individual's moral character; but, unlike cancer, the disease was caused by a conscious, moral decision and could be eradicated by a similar decision. The idea was not new to the Renaissance; in fact, it is better known by that Latin tag so favored by Roman satirists and medieval preachers: Radix malorum est cupiditas.[3]

The tag is often misread to mean that money, rather than the inordinate love of money, is the root of all evil. The misreading shifts the onus from the individual to the thing, an interpretation with which an Elizabethan would not have agreed. Often, the maxim, perhaps because of its popularity, is treated as a fact of life, like the Law of Gravity, which, once learned, is tucked away in the mind's recesses and not dredged up to explain every broken dish or apple that falls to the ground. But Elizabethan satirists and medieval preachers delighted not only in that moral knowledge but in enumerating every branch and leaf which developed from the root. The result was a moral schema more than a moral theory, and it provided writers with a convenient and easily recognized framework upon which to build their characters.

For example, the modern reader winces when he reads in

John Day's Law Tricks that the lawyer, Count Lurdo, delves in almost every corruption known to man because of his avarice. He breaks the social code by rising from a person of "no means" to the peerage by virtue of his wealth not his worth. He divorces his wife on trumped up charges of adultery, corrupts justice by bribery and legal chicanery, and, finally, plots the murder of his former wife. What is the cause? "My Avarice," he says,

> thought she liv'd too long.
> I know one man hath coffind up six wives
> Since she was mine, and, by the poorest, purst
> A brace of thousand pounds: still good in Law!
> Men must be rich, by thrift our treasures rise,
> Give me the man's knave rich, take you poor wise.
> (I.i.245-50)

The same motivation sparks many other legal figures into untold corruptions. Sisamnes, the judge in Cambises, not only loses his own soul to greed, but plunders the poor, extorts from the rich, sells justice and injustice alike, and brings the kingdom to the brink of disaster, all because of his avarice. Voltore resorts to bribery and disinheriting his son in hopes of gaining Volpone's wealth. The list of depravities could be continued; but the point is that, once infected, the avaricious man is apt to do anything. "Covetousnesse," as Barnaby Rich says, "This is the curre that thinkes nothing to be unlawfull, where either gaine is to be gotten, or gold to be gathered."[4]

The wince the reader feels arises because his psychological realism is violated; one sin, he knows, does not beget another as readily as Biblical Hebrews begat one

another; and, though the lawyer may have his faults, they do not necessitate his total depravity. But that is a modern, a scientific view that starts from the fault and then searches out the root; and there may be as many roots as there are faults. However, from the Medieval and Renaissance point of view, the root was known and the only problem was to fill out the foliage. The fullness of the tree was limited by the ingenuity of the writer, not by scientific data or a demonstrable cause and effect relationship.

The practice of listing sins is associated primarily with the medieval preacher; and his sermons are often catalogues of the seven deadly sins with their variations, bound together with a single metaphor and tied with rhetorical flourishes and *exempla* to keep his parishioners awake if not vitally interested. A typical example is the sermon known as *Jacob's Well* which has as its central metaphor a well constructed of rings of stone piled atop one another. Each ring symbolizes a particular sin; each stone within the ring contains variations on that sin; and the thickness of each stone, measured in inches, provides variations on the variation. Within the ring symbolizing "coveytise," for example, are many stones, each representing a kind of greed. Two of the stones are "sacrilege" and "fals chalange," or false litigation. Sacrilege, in turn, "is manye inche depe," containing the sins of destroying or polluting churches or sacred objects, withholding the church's due, laying hands on a priest or asylum seeker,

spending church goods, adultery, breaking the vow of chastity, and profaning holy days. The inches of the next stone are named for those guilty of false litigation, and they include accusers, defendants, witnesses, juries, lawyers, pleaders, procurators, attorneys, solicitors, secretaries, and judges. The adjoining stone, "wyckydnesse," has such inches as apostasy, witchcraft, and dealing with charms.[5] To the modern reader, some of these sins (and the list is by no means complete) seem to have little to do with avarice, but to the medieval preacher there is a close relationship between all the sins, a relationship as tightly knit and joined as the stones of a well. The covetous person is apt to be as guilty of striking a priest, adultery, and apostasy as he is of legal chicanery. The sermon can hardly be classed as profound moral theory; but it does supply a moral schema, a network of sins associated with avarice.[6]

That sermon tradition is usually associated with the allegorical and exegetical frame of mind typical of the Middle Ages and not with the more enlightened minds of the Renaissance; but tradition dies hard, and such Elizabethan writers as Dekker and Lodge turned out works that would have been equally at home in a fourteenth-century pulpit. "Avarice," says Lodge, tracing his ideas back to St. Augustine, "is an insatiable & dishonest desire of enjoying everything." Lodge follows the same pattern as the preacher of Jacob's Well but shifts his metaphor from a well to Satan's progeny. Satan begets Avarice who, in turn, begets other devils who beget still more. Avarice, for

example, sires Usury who takes on as apprentices his four brothers: Hardnesse of Heart, Unmeasurable Care, Violence, and Rapine. Another son is Brocage whose three brothers and apprentices are Craft, Deceit, and Perjury.[7] Still others are Dicing and Plaier, an actor whose vices are "filthy speaking, Scurrility, unfit for chaste eares" and using "Hystoricall Scripture" on the stage.[8]

In the case of the lawyer, Lodge traces his lineage from "CONTENTION"--the lawyer "nourisheth contentions"--whose brothers "PRESUMPTION," "PERTINACITY," and "PRIDE" are, in turn, related to Satan's first, eldest, and most important son, Avarice.[9] Thus the lawyer had a blood relationship with such demons as usury, violence, rapine, hardness of heart, and whatever other sins Lodge's ingenuity could graft on the family tree.

In The Seven Deadly Sins of London, Dekker uses the same metaphor of blood relationships to show the interconnection of sins, though he creates his own version of those sins. One sin, Lying, with a pun on "sleeping with," produces such illegitimate offspring as Vainglory, Curiosity, Disobedience, Opinion, and Disdaine. The mating of Lying and Usury results in the birth of Extortion, Hardness of Heart, and Bad Conscience. Indeed, for Dekker, London is one large brothel with Lying as its madam. In citing particular professions, he includes "a company of scrambling ignorant Petti-foggars," who aid Lying in bedding down with Justice.[10] Lawyers turn up again as lackies to another sin, "Shaving" (cheating).

Elizabethan writers, then, employed the same moral schema, the associating of sins, as their medieval predecessors did, being equally adept at delineating the many evils that sprang from the root of avarice; and, because lawyers and greed were synonymous, the legal profession bore the brunt of Elizabethan venality satire. Avarice was Satan's chief weapon against man ("Avarice house stood the next door to hell"[11]), and writers never tired of showing the close relationship between Satan and lawyers. When Pierce Pennilesse searches England for the Devil, he looks for him first among the lawyers at Westminster Hall. When the Host, in Middleton's A Trick to Catch the Old One, wonders how the lawyer Dampit came by such a fortune, Witgood supplies a ready answer: "How the devil came he not by it? If you put in the devil once, riches come with a vengeance: [he] has been a trampler of the law, sir: and the devil has a care of his footmen" (I.iv.29-32).[12] The theme was also used in the visual arts. One painting portrays devils fishing for lawyers' souls, using money-bags as bait. The lawyers voraciously leap at the lure.[13]

There was, then, nothing unique about Michaelmas Term's donning Satan's black, symbolically entering the world of spiritual darkness. The lawyer was seen typically as a minion of Satan, morally bankrupt and capable of any evil; hence the widespread charges against his moral character, charges that extend far beyond his legal practice. In that sense, the Elizabethan lawyer is more akin to Conrad's Kurtz than to George Babbitt. More than just unhappy and

unfulfilled, the lawyer was spiritually lost, rudderless and without a guiding light to lead him through life. As Lodge puts it, the avaricious man is like the moon in eclipse: "as the interposition of the earth betwixt the Sunne and the Moone, is the cause of the Eclipse of the same; so the interposition of worldly goods betwixt our minds and God, is the cause of our blindness in understanding."[14] Or, as Wyclif more plainly states the case, "children of the fend may not do but harmful thing."[15] Without God's light man stumbled into untold corruptions, and the Elizabethan lawyer was the person in deepest eclipse.

It is, perhaps, impossible to tell today how committed Elizabethans were to the idea that radix malorum est cupiditas. The maxim may have been just a convenient framework on which they could tack characters without having to spend much effort on character motivation. Its use to satirists, dramatists, and character writers is obvious as they were pressed for time and space and needed quickly recognizable villains and fools. Centuries of Sunday sermons had made the framework known to audiences, so the writers only had to fit their characters to it. The results might not be psychologically real by modern standards in that they produced one-sided, stock characters; but, by Elizabethan standards, they were as morally true as sermons could make them.

But even if Elizabethan writers did not know the Latin tag, the lawyers' daily practices would have made them invent it. At a time when there was no Bar Association to oversee

the lawyer's ethics and when procedural technicalities loomed more important than justice, lawyers were tempted if not invited to indulge in legal chicanery; and, if the writers are to be believed, they indulged too much. Unfortunately, no Elizabethan lawyer has bequeathed a correspondence detailing the tricks and ruses he used to tip justice's scales, as did the Norfolk Pastons of the fifteenth century. Many a real-life Dampit or Lurdo took his secrets to the grave. Consequently, one must start with the charges, often only generally stated, made against the lawyers' practices and then ferret out their detailed meanings from other data.

The more persistent charges against lawyers, next to greed, concerned their fees, bribery, delaying tactics, and quibbling, all designed to enrich the lawyer rather than promote justice. The complaints are common enough, especially the first two. There are still grumblings over the high prices asked by lawyers, and the odor of bribery has hung over law courts since their inception. Elizabethans, as well as other people, decried the outright corruption of justice; but their complaints on that score are too obvious to need enumeration. The buying off of judges, juries, and witnesses has not, unfortunately, been confined to sixteenth and seventeenth century England. But there were certain fees and forms of bribery in that period which are no longer familiar.

The subject of legal fees constantly chafed writers. In Romeo and Juliet, when Queen Mab's tiny coach gallops

"O'er lawyers' fingers," they "straight dream on fees." The Fool reminds Lear that "the breath of an unfee'd lawyer" produces "nothing." In Humour out of Breath, Aspero asks his page to be his counsellor in love. The page immediately replies, "Ile look for my Fee, then."[16] Birdlime, a whore in Westward Ho, dismisses another woman by speaking to her "as clients do to lawyers without money, to no purpose."[17] The lawyer's eye, says Bishop Hall, ever squints on his client's fist in hopes of a larger fee.[18] Indeed, Day remarks in the Prologue to The Isle of Guls, "Lawyers fees" had come to be one of the more common vices anatomized upon the stage.[19]

The complaints and satire against fees, however, were not aimed at the lawyer's charge for handling a case. That fee was set by law, 6/8 per case per term in the Court of Common Pleas.[20] That fee was not objected to, except in cases involving the poor who could not afford it. What were objected to were the extra-legal, and sometimes illegal, fees lawyers charged to supplement their income. The established prices of litigation listed for each court turned out to be only the admission fees into the game of lawsuits. The actual cost soared with every turn of the dice.

The additional fees came from two sources, the expanding of paperwork and the padding of expense accounts. Because they were paid by the page for legal documents, attorneys, like schoolboys eking out term papers, wrote large and left wide margins. Sanitonella, having handed

Ariosto an inflated brief of "four-score sheets of paper," whispers that the only necessary information "lies i' the margent."[21] Hercules warns Zuccone that upon entering a lawsuit "you shall pay for every quill, each drop of ink, each minim, letter, title, comma, prick" of the documents, plus every "breath" the barrister expends in pleading.[22] John Donne, knowing the tricks of his former classmates, satirizes a lawyer for writing on parchment "large as his fields,"

> So huge, that men (in our times forwardnesse)
> Are Fathers of the Church for writing lesse.[23]

But, adds Donne, the lawyer does not complain because the client has to pay for the expensive parchment and "bigge" writing. Shakespeare sums up the feeling by saying that England's "shame" is evidenced by "inky blots and rotten parchment bonds."[24]

Actual practices showed that the writers' complaints were not imagined or exaggerated. Walter Carey cried out against the "making of long bills in the English Courts, full of matter impertinent . . . with their large margins, with their great distance between the lines, with the protraction of words, and with many dashes and slashes put in place of words [which] lay their greediness open to the whole world. . . ."[25] He claimed to have seen bills of forty sheets which could have been written in six and ones that cost four nobles which could have been pared to four shillings. Egerton, in Chancery, once made an expansive lawyer cut a hole through and wear around his neck a 120

page replication, full of irrelevant issues, and parade before all the courts in Westminster. Egerton thought the 120 pages could be cut easily to sixteen.[26] Solicitors were known to write papers altogether irrelevant to a case, passing the cost on to their clients.[27] It is such chicanery that makes Dekker conclude, ironically, that the pen, indeed, is mightier than the sword because the former does more damage. "In the handes of badde and unconscionable Lawyers," he says,

> Pens are forkes of yron, upon which poore Clients are tossed from one to another, till they bleede to death: yea the nebs of them are like the Beakes of Vultures, who (so they may glutte their appetite with flesh) care not from whose backes they teare it.[28]

Expanding and multiplying documents were, as Carey said, signs of the lawyers' greed; but they were also part of the lawyers' bag of legal tricks and, in some cases, were even beneficial to their clients. A long replication might be filled with irrelevant issues; but those issues had to be answered and, thus, proved equally expensive to one's adversary.[29] The documents were part of an economic as well as legal battle, the hope being that the adversary would eventually run out of money and have to drop the suit. Also, extra bills were drawn up as a form of bribe for court clerks, who were paid for copying the bills and who controlled the court's machinery. The clerk, in return for the fees from extra paperwork (know as "expedition money"), nursed the lawyer's case through the complicated court procedure, made sure all was ready when the case came to trial, and that the

trial came at a time convenient for the lawyer.[30] Tangle, the lawyer in Middleton's The Phoenix, brags of such a relationship with a court attorney.

> Another special trick I have, no body must know it, which is, to prefer most of those men to one attorney, whom I affect best: to answer which kindness of mine, he will sweat the better in my cause, and do them the less good: take't of my word, I helped my attorney to more clients the last term than he will despatch all his lifetime; I did it.
>
> (I.iv.179-85)

The problem of fees was often tied to the charge of bribery, but not bribery in its ordinary sense of buying a favorable decision, of paying off judge, jury, or witness. Often, the charge meant that one had to bribe one's own lawyer not to tamper with justice but to do his work. Without his fee, as the Fool said, the lawyer did nothing, no doubt on the sound principle that a client's interest in a case and his willingness to pay waned when the case ended, especially if it was lost. But even when fees were paid, there was no guarantee that the lawyer would do much apart from accepting the case. The only thing one receives from a lawyer's fee, says Breton, is a promise of "good speede."[31] The rate of speed depended on further payment: "bribes," to some; "gratuities," to the squeamish.

The bribes thus referred to fall into three categories. The lawyer, nestled on the prosperous side of the law of supply and demand in litigious England, spent most of his time for the client who came with, as Stubbes says, "rubrum unguentum, I dare not say Gold, but red oyntment to grease [lawyers] in the fist withall. . . ."[32] The ointment was an

outright payment above and beyond the required fees. Second, that bribe was also given to quell any ideas of the lawyer becoming an "ambidexter," one who accepted fees from both sides in a case, ensuring victory to the highest payer.[33] Finally, though barred by law from accepting such "gratuities," the lawyer with some conscience left could agree to exchange gifts with a client. But, as Birdlime complains, lawyers "return a woodcock pie" for a "bacon and ewer."[34] That is, they exchanged a cheap for an expensive gift. Without the proper money or gift, the client "may go shooe the goose for any good success he is like to have of his matter. . . ."[35]

Fishing for gratuities supplies much of the satiric humor surrounding Prate, the scoundrel attorney, in The Dumb Knight. As the play progresses, Prate rises from a "country court" attorney to doing the "king's business." Having arrived at such prominence, he conveniently forgets his old and poorer clients. He is the familiar comic figure of one whose success has gone to his head. But there is more humor when one realizes that Prate has not forgotten his clients Drap, Velours, and Mechant but that he is pretending to be so busy that he no longer has time for their cases. He deftly wheedles them for bribes in scenes similar to those in The Alchemist where the gulls strive to be taken. Once offered "unguentum" he quickly finds time to do their bidding. Precedent, Prate's clerk, sums up the humor: "Now methinks my master is like a horseleech, and these suitors so many sick of the gout, that come to him to have him suck

their blood: O 'tis a mad world."[36]

Padding expense accounts, practiced by lawyers long before traveling salesmen and business executives refined the art, was another device for augmenting fees. The Pastons, assiduous bookkeepers as well as lawyers, charged their clients for every glass of wine and leg of mutton they ate while on legal business; and their Elizabethan counterparts followed suit.[37] That practice is satirized in A Cure for a Cuckold where Pettifog and Dodge, two bumbling attorneys, set up shop at the Three Tuns Tavern. After only one half hour of work, Pettifog proudly announces that he has not only been treated to three pints of wine by clients, but has also skimmed off "nine shillings clear" in expenses.[38]

The complaints against fees and bribery, then, were often intertwined; and bribery did not necessarily entail the corruption of justice, but was often just insurance that one's lawyer did his work. Elizabethans did not like being bilked any more than other people, and they chafed under the lawyers' additional fees, despite Professor Neale's assertion that gratuities were an accepted way of Elizabethan life (see above, pp. 10-11). It was accepted by the receivers not the givers.

Though avarice is abhorred even in our acquisitive age, what constitutes avarice, as opposed to just earning a living, is hazy. Elizabethans and their predecessors could not draw the fine line where earning a living crossed over into cupidity any more than we can; yet they tried.

L. C. Knights says the sixteenth and seventeenth centuries advocated "a traditional conception of 'The Mean'", an acceptance of "natural limitations" to the amount of money a person should earn.[39] Though Knights' main position is correct, the idea of a mean is misleading as it implies some happy medium between poverty and riches, that there should be a middle class in its modern, economic sense. But Elizabethans saw the problem as a moral more than economic one.

What Knights referred to as "natural limitations" were defined by preachers. In 1613, William Perkins detailed two kinds of goods and riches necessary to man: those which preserve his life and those which preserve his dignity or station.

> Man may with good conscience, desire and seeke for goods necessarie, whether for nature [life], or for his person [station] . . . but he may not desire and seeke for goods more than necessary, for if he doth, he sinneth.[40]

Man had to make a moral decision as to when he reached his economic limitations. Perkins' distinction comes from the medieval concepts of <u>mercede</u> and <u>meed</u>; the former was payment for work done, and the latter money not earned.[41] In taking bribes, that is excessive money for doing his work, the lawyer sinned by accepting <u>meed</u>, in acquiring far more money than was necessary for his work, his life, and his station. Neither Perkins nor his predecessors ever succeeded in establishing that precise point where a desire for necessities passed into a passion for riches, but they were more specific than a vague "mean." Elizabethan writers did not

know the point any more exactly than sermonists, but they did know who crossed it most often--lawyers.

Excessive fees had social as well as moral implications, for those monies, in effect, deprived the nation's poor of legal redress. The writers were unanimous in attacking the fees of courts and lawyers as being more nails in the club used to beat down the poor. The lawyer Bartolus advises his powerful client, Don Henrique, to

> Be of good cheer, sir;
> You give good fees, and those beget good causes;
> The prerogative of your crowns will carry the matter,
> Carry it sheer:[42]

"Hang the penurious," he adds, "Their causes, like their purses, have poor issues." Stubbes voices the general complaint that in Dnalgne [England] "lawiers have such chaverell consciences, that they can serve the devill better in no kind of calling then in that; for they handle poore mens matters coldly, they execute iustice parcially, & they receive bribes greedily. . . . They respect the persons not the causes; money, not the poore; rewards, and not conscience."[43] William Harrison declines to expatiate on "how little law poore men can have for their small fees" because his treatise would expand "into a farre greater volume than is convenient for my purpose."[44] If horseracing was the sport of kings, the law courts were the playgrounds of the wealthy where they ran roughshod over the poor.

The poor suitor found a law case to be an economic as well as, if not more than, a legal battle. No matter how just his case or honest the judge, the poor client had to

leap financial hurdles before his case came before the judge and justice could be done. It was often those hurdles, the payment of innumerable legal fees, which prevented justice being done him. The high cost of cranking up the legal machinery prevented justice from even starting. In addition, the wealthy person, if he were a peer, judge, or officer of the realm, "received special dispensations in fees sharply contrasting to those exacted from tenants and poor persons with small plots of land."[45] The poor, already battered by enclosure, monopolies, and usury, found their last bastion, the law court, already in the hands of their enemy.[46]

Behind the writers' defense of the poor's legal rights lay a principle, often unexpressed, which Elizabethans inherited from the Middle Ages. In disdaining the poor man's cause, the lawyer not only perpetrated legal and social injustice, he also directly offended God; for, in denying the poor their rights, the lawyer perverted his God-given talent--in medieval terms his donum Dei.[47] The idea, simply stated, was that the learned received their talent as a gift from God; as such, the talent was to be used for the benefit of all within the Christian commonwealth and certainly not for the private benefit of those so blessed by God. The gift entailed responsibility on the part of the grantee and, ideally, was not to be sold. Acceding to economic necessities, however, moralists allowed that fees could be accepted to sustain the individual but, in no case, should they be exacted from the poor. This principle, says Yunck, explains "one of the most significant of medieval social attitudes"[48]

and also many medieval attacks on lawyers, who, as a class, "seemed peculiarly repugnant to these views."[49] "Judged by this ideal," Yunck continues,

> the lawyer who served a guilty party seemed the worst sort of simonist, selling not justice but the service of injustice; and all lawyers, if not clearly simonists, were defective in charity, for they reserved their services for those able to pay. The poor, the widows and the orphans--those special spiritual wards of the Church from its earliest days--suffered for lack of legal counsel.[50]

The idea of donum Dei did not die out with the Middle Ages nor was it obliterated by the Reformation. Thomas Lever, preaching in St. Paul's, advised that "every man by doing his duty must dispose unto other that commodity and benefit which is committed of God unto them to be disposed unto other by the faithful and diligent doing of their duties. . . ."[51] Another preacher, emphasizing his point with italics, says, "A vocation is a calling, is a certaine kind of life, ordained and imposed on man by God, for the common good."[52] A lawyer, Thomas Lodge, warns his fellow Englishmen that "the greater your talent is, the more you have to answere for;"[53] and he goes so far as to call lawyers the instruments of God.[54] The idea of donum Dei is behind Gonzago's advice to his daughter, in Marston's The Fawn: "heaven gives every man his talent; indeed, virtue and wisdom are not fortune's gifts; therefore," he adds, attacking the misuse of God's gift, "those that fortune cannot make virtuous, she commonly makes rich" (IV.i.576-79). Dekker, in a conventional medieval dream vision, hears a heavenly voice call

> To Summon the whole world to stand to th' Barre,
> Both All that ever have beene, and now are,
> To give a strict account how they had spent
> That Tallent of their life, which was but lent.[55]

The medieval idea of donum Dei was still alive in the Renaissance.

When lawyers abandoned poor men's causes, then, they let in a host of troubles: they took part in legal and social injustice; they affronted God by not properly using His gift; and they threatened the stability of the commonwealth by not justly performing their calling which all men were required to do "for the common good." In contrast, when lawyers were praised, they were praised precisely because they did act through charity. Ariosto, in The Devil's Law Case, represents the ideal lawyer correctly using his "gift;" for, in "honest men's causes," he gives advice "gratis." Jonson admits that there are "those good few" lawyers who defend cases "for Charitie, and not for fee."[56] Behind many of the attacks against lawyers for not giving the poor their due was the inherited social attitude accompanying the medieval idea of donum Dei.

It should be noted that the poor found not only lawyers but laws and courts weighted against them. Sir Thomas More characterizes English laws as being made by the rich for the benefit of the rich and says that "the common law has become the happy hunting ground of men rich and powerful . . . and . . . the courts of that law afforded the poor and humble little protection."[57] The Ploughman, in John Heywood's Of Gentleness and Nobility, gives a clear, though biased,

history of the marriage of wealth and law. The nobility, he argues, began from idlers who later extorted from the working people what they "gat by labour and diligence." To protect their ill-gotten goods, the nobility then

> ordained,
> And made laws marvellous strait and hard,
> That their heirs might enjoy it afterward.[58]

Though few people would agree wholly with the Ploughman's history of the alliance between wealth and law, many agreed that there was a strong relationship. William Harrison insists that there is one law for the rich but quite another for the poor.[59] Lear comes to the same sorrowful conclusion:

> Through tatter'd clothes small vices do appear;
> Robes and furr'd hide all. Plate sin with gold,
> And the strong lance of justice hurtless breaks;
> Arm it in rags, a pigmy's straw doth pierce it.
> (IV.v.168-172)

Thomas Dekker agrees with Lear.

> Great men like great Flies, through lawes
> Cobwebs breake,
> But the thin'st frame, the prison of the
> weake.[60]

John Day offers cold consolation to the poor in claiming that, despite all the tricks known to lawyers, the poor will never be thrown out of their one possession, their poverty.[61] The oppression of the poor by lawyers, laws, and courts was a persistent Renaissance theme.

Even when brought to bay, the powerful still had resources to evade the law's punishment. In one instance, every lawyer in the Court of Chancery refused to be employed against a "great man," whereupon the Court had to assign and

compel counsel to act for the other side.[62] Peers were notorious for evading justice, unless their transgression affected the throne. If their power alone did not intimidate judge and jury, a pardon could be purchased from the sovereign.[63] Local courts were particularly susceptible to influence peddling and power plays.[64] In one case the Earl of Devonshire threatened justices and jurors with violence if they found against him.[65] Particularly galling to dramatists was the case of one Vennar of Lincoln's Inn who advertised a play and charged two shillings admittance. Collecting the receipts, he absconded, leaving his audience to contemplate a bare stage. The audience "revenged themselves upon the hangings, curtains, chairs, stools, walls and whatsoever came in their way very outrageously, and made great spoil."[66] When brought to court, the Lord Chief Justice made nothing of it "but a jest and merriment."[67] A crime for one person was only a prank for a member of the profession. Friendship, fear, influence, and money were used to slip the bonds of law.[68] Cacafago, the wealthy usurer in Rule a Wife and Have a Wife, callously sums up the situation. When asked why he had never become a J.P., the usurer answers that it is better "to command a reverend Justice" than to be one.[69]

Though law tricks were particularly useful in cases against the poor, they were equally applicable to all segments of society; and anyone who went to court had to be ready to parry the wiles of an unconscionable lawyer. In most satiric and dramatic writings, vague hints at legal chicanery were enough to satisfy the audience; and writers rarely detailed

the particulars of that generic term either because they did not know them or because they did not want to get bogged down in technicalities. Despite Day's title, Law Tricks, for example, the only tricks actually referred to on stage, though Lurdo threatens many, are the bribing of judges and witnesses in his divorce case. It would be impossible here to enumerate all the lawyers' tricks because the space and legal knowledge of the writer are limited. Even a present-day lawyer would have difficulty in tracing all his predecessors' ruses because law and procedure have changed since then. But some explanation is needed if only to show what "tricks" meant and to expose the audacity of some lawyers.

Fees were the writers' primary target but closely behind and associated with fees were delays. Complaints against delaying tactics were universal in Elizabethan times, and most delays were thought to be caused by lawyers seeking to extend cases in order to gain more fees for themselves and break their opponents under the same burden. Lawyers "coyne delays for their own advantage,"[70] complains Barnaby Rich; and Bishop Stubbes, agreeing with Latimer, laments cases that "hang in sute" for "a quarter of a year, halfe a yeare, yea a twelve month, two or three yeeres togither, yea, seaven or eight yeeres now and then, if either friends or money can be made."[71] The only one to see a virtue in delays is Webster, and that is an ironic one.

> Of all men living,
> You lawyers I account the only men

> To confirm patience in us: your delays
> Would make three parts of this little Christian world
> Run out of their wits else.[72]

Delays proved a powerful legal weapon to litigants trying to outwit justice not only in that they exacted more legal fees, but also in that they put one's opponent to great expense. The defendant had to leave his country home and take up residence in the city during term time, thus adding room and board to his legal expenses. Witnesses also had to make the journey, and the litigant was expected to help defray their expenses. If the case could be put off from term to term, the cost would rise astronomically. No wonder people complained of having "to run 100, 200, yea 300, or 400 miles (as commonly they doe) to seek justice" at Westminster.[73] It was not just the distances but the added expense that wore them down. But being in London did not guarantee that one's opponent would also be there. Henry Brinklow bitterly charges defendants of using the law for evasive and dilatory maneuvers. Because writs were only good for one shire and one term, the defendant need only move to another shire to escape a writ. The plaintiff then had to buy a new writ for the new shire; and if, meanwhile, the term ended, he had to start all over again. Brinklow blames lawyers for keeping this dilatory and expensive process as such for "their private lucres sake."[74]

Lawyers were certainly responsible for some delays. In order to block a suit in one court, they sued out complaints in Chancery to discover new evidence or to recover something

having a bearing on the original suit. Chancery was understaffed and had a long waiting list of cases, so the lawyer could rest confidently while the false complaint inched its way to a hearing. There was no way to tell in advance whether the suit was frivolous or genuine, and the lawyer's adversary was delayed for a time.[75] The delay allowed time for papers to be lost, witnesses to die, the suitor to lose interest in the case, or give in to fatigue and economics.

That there might be other and legitimate reasons for delay did not concern the lawyers' detractors. Illness on the part of anyone involved in a case caused delay, as did missing documents, hard to acquire evidence, omitted legal technicalities, and a lawyer having another case in another court at the same time. In fact, the very concept of "due process," so revered by framers of the American Constitution,[76] had, as its complement, slow process;[77] legal procedure and technicalities, designed to protect the innocent from arbitrary justice, were, in their very nature, dilatory. Such devices, unfortunately easily abused, caused law to defeat its own ends; and, in advocating speed, the detractors were, unwittingly, arguing against legal protections for the innocent. Significantly, Bacon, in castigating abuses of Chancery procedure, never mentions lawyers' delaying tactics as one of those abuses;[78] and one historian, at least, claims the primary cause of delay to be, not lawyers, but sheriffs' failures to return writs.[79] Though there was, no doubt, some justification for the universal attacks on legal

delays, and some of those attacks justly hit the unscrupulous lawyer, they were also, at times, unjustified and weakened the legal protection of the innocent, for whom the writers so often spoke.

Other devices by which lawyers in league with others used the law to defeat its own ends were the crimes of conspiracy, maintenance, barratry, champerty, and embracery.[80] In its original sense, conspiracy was the combination of two or more people to use the law courts for their own ends. That is precisely what Don Jamie accuses his father and the lawyer Bartolus of in The Spanish Curate. Don Jamie is, as he claims to the judge, a victim of a "Confederacy," "A trick, my lord, to cheat me," "A mere imposture, and conspiracy" against his inheritance.[81] His complaint is not just that his father and father's lawyer are against him but that they are using legal process to defraud him.

Maintenance and barratry were related. There were two kinds of maintenance, general and special. General maintenance was simply the stirring up of trouble in the countryside by a person usually in the livery of a powerful, local magnate. Special maintenance involved supporting somebody in court on a specific case, either with money or testimony.[82] Those who gave testimony were more popularly known to Elizabethans as "Knights of the Post," people who hung around the courts ready to hire themselves out as witnesses to whoever paid most.[83] A person accused of being a "maintainer of suits" was not necessarily quarrelsome but

one who involved himself in law cases, not his own, for profit.[84] Barratry was the provoking of lawsuits and quarrels, a common enough practice among Elizabethans to impel Coke to write a Case of Barretry [sic].[85]

Champerty was the deplorable practice of the buying and selling of law cases between lawyers and land speculators, giving rise to the lucrative prospecting by attorneys among deeds and contracts. The design was to ferret out claims of doubtful titles or to spy loopholes in cases which, if enlarged, might allow the plaintiff to acquire the lands. Instead of mining the lode himself, the prospector sold his rights to someone willing enough to hazard the time, money, and energy necessary to bring the suit to judgment. Embracery was the crude but effective crime of influencing juries either with bribes or force. All these abusive devices--conspiracy, maintenance, barratry, champerty, and embracery--were extremely popular among the powerful of the Middle Ages and were used to intimidate lesser men and obstreperous tenants. In Tudor times, when the monarchy was strong enough to curtail baronial depredations, the abuses survived but largely as "a pettifogging means of swindling or annoying a neighbor" rather than as emblems of aristocratic power.[86] The Elizabethans had less to fear from the powerful baron than the cunning lawyer who used the devices to abuse the legal system and the citizenry.

It would be repetitious of the main point to enumerate the many devices open to lawyers who wanted to skirt justice

by manipulating law, but some of the more popular and notorious abuses should not be lost to posterity. The countersuit, still in use, was always available to provide a stalemate as when one solicitor, John Estgate, advised his client to sue a claim for £10 against someone who had brought suit against the client. Estgate added that the court records were in such disarray that the court could search a "fortnight" for the alleged debt and "peradventure never be the nearer" to finding it.[87] Sir Hugh le Despenser made a practice of having a friend buy a false writ against another's lands, and then Sir Hugh terrified the jury into deciding against the owner.[88] Another device was to agree with one's adversary to postpone a case, only to rush back to court before the agreed time and win by default.[89] One attorney toured the countryside with false writs. He entered a person's name on the writ, showed the person the writ, and then offered to defend that person in court for a nominal fee, saying that only the attorney and not the client had to go to court. Not satisfied with his fee for the fictitious case, in court he shifted sides against the falsely accused and won judgments by default against his already fleeced clients.[90] Not even clerics were safe. The Rector of St. Dunstan's intended to hand over a deed of release to an attorney, John Seymour, for twenty gold marks. The attorney showed the cleric the gold; but, when the Rector handed him the deed, Seymour scampered off with the release and the twenty pieces of gold.[91]

James Casen, a notorious attorney, spent three whole days in Star Chamber listening to charges brought against him. The allegations included his altering warrants, illegally bringing actions, refusing money tendered and then bringing actions against the debtor, suing for the same money in two courts at once, and lending money with the usurer's trick of making part of the loan in worthless goods. During his trial a nest of rats or mice broke out from the ceiling plaster and ran about the beams of the courtroom, and three or four actually fell on the Court. That led the Archbishop of York, sitting as a judge, to moralize that God's finger "pointed out to the Court, as it were, that as there was a nest of vermin discovered, soe that this man and such as he were worse than Vermine."[92] The good Archbishop voiced the general feelings of Elizabethans and Jacobeans toward lawyers.[93]

Finally, among the more prominent complaints against the lawyer's practices, was his fondness for quibbling, the "quillets" and "quiddities" satirized by Hamlet which were considered typical of highly technical but small, narrow minds. Nashe delighted in offering lawyers a nonsense riddle or two

> onely to set their wittes a nibbling, and their iobbernowles a working, and so good night to their seigniories, but with this indentment and caution, that, though there be neither rime nor reason in it, (as by my good will there shall not,) they, according to their accustomed gentle favors, whether I wil or no, shall supply it with either, and run over al the peeres of the land in peevish moralizing and anatomizing it.[94]

Lodge advised his fellow lawyers that if they spent more

time studying God they would have less time for their "quidities."[95]

Many of the quiddities were designed to subvert justice, such as the one offered by a woman giving a defendant an alibi by claiming he was in Holland at the time he was supposed to have committed a crime. Pressed further, she admitted that he was not in the country of Holland but, rather, dressed in Holland linen.[96] Justice Gardiner, Shakespeare's foe, offered another example of the crafty, quibbling mind when he brought a charge of perjury against a witness who testified against him in a case involving Gardiner's selling another man's furniture and pocketing the proceeds. The crux of the perjury charge was that the witness said the furniture was "lying and standing in [Gardiner's] house." The Justice quibbled over whether the furniture was actually "standing."[97] The case is interesting not only as an example of to what extremes quibbling could go, but also as an instance of the law being used as an instrument of revenge, for Gardiner had lost the original case on the witness' testimony.

But other quibbles derided were at the heart of law and the legal process. Cases that turned on a technicality, an improperly filled out form, or a vague phrase were as well known to Elizabethans as they are today,[98] except there were more of them then when legal technicalities and procedure were more important than now; "the letter of the law," Elizabethans argued, was a phrase taken far too literally by

lawyers. Elizabethan lawyers, as all lawyers, could haggle over whether a particular action was actually a crime as stated by a general law. If it were decided that a case was possible, then the quibbling began in earnest; for the first action of a suit was to sue out a writ;

> and the choice of writ meant the choice of a remedy which could only be made effectual by following rigidly the procedure appropriate to it. "Each writ," said Bereford C. J. in 1314, "ought to keep its proper place, and be sued according to its nature"; and this meant that the practitioner must consider such questions as the correct court in which to sue, the correct process, the correct mode of pleading, the correct mode of trial, the correct mode of execution.[99]

And right down to the law reforms of the nineteenth century, "the choice of the wrong writ involved the loss of the action, even though all the merits were with the plaintiff."[100]

An added difficulty to rigid legal procedure was the fact that the creation of writs to fit crimes had been halted in the thirteenth century, as has already been shown in Chapter I. Consequently, the Elizabethan lawyer was faced with the challenge of stuffing sixteenth-century crimes into thirteenth-century packages. Borderline cases which might have been sued out under one or another writ presented continual headaches and continual quibbling because the lawyer had to convince the court and his opponent that a particular writ was applicable to the case. The opponent introduced his own quibbles in order to upset the case on a technicality. The matter was so complex that just getting a case from writ to an issue of law or fact became a special and lucrative practice.[101] Far more important to the

Elizabethan lawyer than substantive law was adjectival law, and his quibbling was designed to make sure that his case fit the proper writ, court, process, and mode of execution. The suitor might very well think in terms of justice, but the lawyer had to be concerned with technicalities, especially in borderline cases where his least slip might cost the case. Not surprising that such habits of thought produced people, such as Nashe's lawyers, who could argue into the night anatomizing the words of a riddle without realizing that the riddle itself was nonsense. The trees, implied Nashe, always blotted the forest from the lawyer's sight.[102]

Quibbling joined the long list of legal devices by which justice was either furthered or diverted. The client who could not understand why he had to have a writ of trespass to collect a debt or why he had to maneuver through the ritual of fines and recoveries to sell his land[103] was equally bemused about the constant carping over words by lawyers. The layman saw law, at its best, as a hopeless quagmire of unnecessary technicalities and subtleties and, at its worst, as an instrument of fraud and fictions managed and preserved by a pack of charlatans--lawyers.

The foregoing discussion of outright corruption and the abuse of legal processes which turned the law against itself is not offered with any intention of completeness but to give some idea of the popular chicaneries which came to an audience's mind when a lawyer, such as Lurdo, threatened to employ his "law tricks." With his bag of tricks, the lawyer

was considered a miracle worker, albeit a diabolic one, who could make right wrong, black white, or turn night into day. Winifrede, in furthering Lurdo's suit of Emilia, reminds her of what a credit it would be to have "a skilfull Lawyer" as a husband, one that "can stand out in her case at a dead lift, and one that, if need were, could make a crazy action sound."[104] Mosca, with heavy irony, praises the duped and obtuse Voltore in a similar fashion while also voicing much of the satire against lawyers.

> [Volpone] ever lik'd your course, sir that first took him.
> I, oft, have heard him say, how he admir'd
> Men of your large profession, that could speake
> To every cause, and things mere contraries,
> Till they were hoarse againe, yet all be law;
> That, with most quick agilitie, could turne,
> And re-turne; make knots and undoe them;
> Give forked counsell; take provoking gold
> On either hand, and put it up: these men,
> He knew, would thrive, with their humilitie.
> And (for his part) he thought, he should be blest
> To have his heire of such a suffering spirit,
> So wise, so grave, of so perplex'd a tongue,
> And loud withall, that would not wag, nor scarce
> Lie still, without a fee; when every word
> Your worship but lets fall, is a cecchine![105]

Despite his vast cunning, however, the lawyer in literature, like Voltore, is always defeated in the end. Tangle (The Phoenix) eventually loses all his cases; Throat (Ram-Alley) is finally outwitted; Prate (The Dumb Knight) is relieved of his bribe money; and the tricks of Knaves-Bee (Anything for A Quiet Life) are exposed. Other characters in The Spanish Curate revenge themselves on Bartolus by using one of his own legal tricks. They make him executor of a wealthy will, a position he greedily accepts in hopes of breaking the will. He finds it to be full of large bequests

but little money; and, as executor, he is responsible for paying out the bequests. Poetic justice, it would seem, was far more certain than legal; and the literary lawyer was as doomed as the lawyer John Earle wrote of who took his stratagems to the grave in hopes of tricking God on Judgment Day.[106]

The mere mention of a lawyer was inevitably followed by comments on his greed, fee-taking, corrupt practice, and abuse of legal procedure. It is not surprising that so popular a figure of satire attracted other gibes as well; and the lawyer was further satirized as to his social origin, his social climbing, his sex life, and his legal education. Some of those barbs have wider social and political implications--to be dealt with later--but the prime interest at the moment is to examine what the charges were against the lawyer as an individual.

The Inns of Court were known as "the third university" of England, and a list of their graduates would make any alma mater proud. Of literary note, such names as Sir Thomas More, Ascham, Turberville, Googe, Gascoigne, Sackville, Norton, Lodge, Fraunce, Raleigh, Harington, Campion, Donne, Bacon, Davies, Marston, Beaumont, and Ford were on the student registers of the Inns; also Chaucer and Gower are rumored to have attended the law schools. The schools served as nursery for The Mirror for Magistrates; and Gorboduc, Supposes, and Jocasta were products of the Inns. Lawyers and law students, when not writing themselves, proved to be,

"next to courtiers, the most important patrons and benefactors of contemporary writing."[107] Yet, despite the impressive list of graduates and their literary productions, the Inns, though a nursery for the arts, were accused of offering a poor education, of turning out dull, pedantic antiquarians, on the one hand, more interested in searching for precedents than in establishing justice and, on the other, wastrels and roisterers more interested in attending plays, taverns, and whorehouses than to their studies.

One complaint against legal education was that, though it produced students with exact technical knowledge, it was seriously deficient in giving them a well-rounded education and a broad view of themselves and their profession in society at large. Nashe calls the lawyers he left muddling over his nonsense riddle "Latinlesse dolts, saturnine heavy headed blunderers . . . such as count al Artes puppet-playes, and pretty rattles to please children, in comparison of their confused barbarous lawe, which if it were set downe in any christian language but the Getan tongue, it would never grieve a man to studie it."[108] Knaves-Bee attributes his success as a lawyer to his dullness of mind.

> Now my wit, though it were more dull, yet I went slowly on, and as diverse others, when I could not prove an excellent Scholar by plodding patience, I attain'd to be a Petty Lawyer; and I thank my dulness for 't, you may stamp in Lead any figure, but in Oyl or Quicksilver nothing can be imprinted, for they keep no certain station.[109]

Jonson turns to the same theme in Poetaster where Ovid, as in real life, is advised to study law:

Lupus: Indeed, yong PUBLIUS, he that will now hit the marke, must shoot through the law, we have no other planet raignes, & that spheare, you may sit, and sing with angels. Why the law makes a man happy without respecting any other merit: a simple scholer, or none at all may be a lawyer.

Tucca: He tells thee true, my noble Neophyte; my little Grammaticaster, he do's; It shall never put thee to thy Mathematiques, Metaphysiques, Philosophie, and I know not what suppos'd sufficiencies; If thou canst but have the patience to plod inough, talke, and make noise inough, be impudent inough, and 'tis inough.

Lupus: Three bookes will furnish you.

Tucca: And the lesse arte the better.[110]

The complaints against legal training were as old as Ovid's time, and they followed a similar pattern no matter what the time or place. Legal training was counted as anathema to the arts--a study of legal logic and technicalities supposedly atrophied the imagination. Law was also a world unto itself, having little to do with learning and the world in general. Sir Thomas More, in a letter to Erasmus, expressed his dislike for legal work because it caused him to lose all the learning he ever had, which, he said, was certain to happen "with one constantly engaged in legal disputation so remote from any kind of learning."[111] In a later letter, he wrote that he dreamt of being King in Utopia, but "the break of day dispersed the vision, deposing poor me from my sovereignty, and recalling me to prison, that is, to my legal work."[112] Dante, Boccaccio, and de Bury went so far as to aver that the mere study of law was detrimental to a person's morals if not his imagination;[113] and they were referring to the study of civil law which was taught in

conjunction with regular university subjects. One can only imagine their reaction to the narrow study of the insular Common Law provided by the Inns.

There is some justice to the writers' complaints, and examples of the men and minds they deplored are not hard to find. Sir Edward Coke spent most of his time between 3:00 A.M. and 8:00 P.M. studying law, so much so that "it is supposed that in the whole course of his life he never saw a play, or read a play, or was in the company with a player."[114] Coke denounced the stage, derided poets as "fools" and actors as "vagrants."[115] Sir Thomas Fleming, another Chief Justice, was known as a dullard and legal drudge.[116] Aubrey recalled Coke as playing with a "Case as a Cat would with a mouse and so fulsomely Pedantique that a Schoole boy would nauseate it."[117] Aubrey's great grandfather summarily dismissed Elizabethan lawyers as "ignorant and Clownish."[118]

The type of thinking such a restricted education produced can be seen in the Common Law rule that there was no law unless there was a remedy, "or as expressed in the Latin phrase, ubi remedium ibi jus. That is, no right could be recognised in Common Law unless a writ existed which provided a remedy for its breach."[119] Even the court of equity, which was supposed to mitigate the rigors, deficiencies, and technicalities of the Common Law had become, by the seventeenth century, the home of "such artificial reason, that it . . . would be much easier for a lawyer to preach than for a bishop to be a judge at the court of Chancery."[120]

It was such artificial thinking that led Chief Justice Hale to insist there were witches because there was a law against them, which there would not be if witches did not exist.[121] An Elizabethan Justice of the Peace, William Lambarde, once had his humaneness troubled by a harsh penalty meted out by the Star Chamber. A prisoner had his ears lopped off, was fined, pilloried, and sent to prison for ten years. The severe penalties weighed heavily on Lambarde; but, instead of crying out against the severity of the penalties, he, in lawyer fashion, searched for precedents for them. He was mollified in finding appropriate statutes ranging back to Edward III's reign.[122]

Not only the thinking but the "barbarous language" expressing that thought was a favorite taunt against lawyers who, writers contended, could only mumble in court jargon laced with "false Latin" and Law-French. While still a student at Lincoln's Inn, Donne parodied the inflated and self-conscious speech of a new-made barrister, "Coscus."

> he throwes
> Like nets, or lime-twigs, wheresoever he goes,
> His title of Barrister, on every wench,
> And wooes in language of the Pleas, and Bench:
> A motion Lady. Speake Coscus; I have beene
> In love, every since tricesimo of the Queene,
> Continuall claims I have made, injunctions got
> To stay my rivals suit, that hee should not
> Proceed; spare mee; In Hillary terme I went,
> You said, If I return'd next size in Lent,
> I should be remitter of your grace;
> In th' interim my letters should take place
> Of affidavits.[123]

Jonson's Picklock prides himself in being able to "cant"

> In all the languages of Westminster Hall, Pleas, Bench, or Chancery. Fee-Farme, Fee-Tayle, Tennant in dower, At

> will, For Terme of Life, By Copy of Court Roll, Knights service, Homage, Fealty, Escuage, Soccage, or Frank almoigne, Grand sergeantry, or Burgage.[124]

Both Jonson and Middleton delight in parodying the stilted language typical of legal documents and the titles of forms used in legal proceedings.[125]

Special satire was reserved for the lawyer's pretense to learning in spouting memorized Latin phrases and speaking Law-French which was a conglomeration of ossified Norman French interlarded with Latin phrases and English words. Sir Thomas Overbury, himself an Inns' graduate, describes a law student as one who "will talk ends of Latin, though it all be false, with as great confidence as ever Cicero could pronounce an oration."[126] Count Lurdo thinks Polymetes would make an excellent lawyer because he is not only "parlous," "sharpe," "satyricall," "a quick wit" but especially because he "speakes Latin, too,/Truely; and so few Lawyers use to doe."[127] When Yellowstone, in Middleton's A Chaste Maid of Cheapside, receives a letter in Latin from his son at Cambridge, he is advised to go to the Inns for a translator. "Fie," answers Yellowstone, "they are all for French, they speak no Latin" (I.i.93). The French they did speak was the unintelligible Law-French. In The Alchemist, Kastril, upon hearing Surly speak Spanish, marvels that "It goes like law-French,/And that, they say, is the court-liest language" (IV.iv.61-62). The pun on court language shows how low humor descended when attacking the lawyer's language.

Much of the satire directed at the lawyer's learning and language derived from the superior attitude of writers who

deplored the wholly practical nature of a Common Law education which turned out legal technicians ignorant of the glories of Greece and Rome but capable, alas, of amassing greater fortunes and gaining more prestige than the scholars of Cambridge and Oxford. The satire did not go unanswered, and a minor literary skirmish erupted when Francis Lenton, in The Young Gallant's Whirligig,[128] defended legal education and warned the law student to attend his studies and resist the lure of the muse and the temptations of London. Cambridge entered the fracas by presenting a play before King James entitled Ignoramus. The title character was taken to represent Sir Edward Coke. The Chief Justice took umbrage at the representation, Chamberlain tells us, and was "almost out of all patience" and "hath galled and glanced at scholars with much bitterness."[129] Lawyers and scholars hurled "rhymes and ballads" at each other before the hostilities subsided. Writers and scholars voiced the perennial complaints against a world which valued technical knowledge over genuine wisdom, a world, they lamented, which had abandoned man's nobler aspirations to wisdom and art. Nashe speaks for the classically educated when he bemoans that "now a daies in the opinion of the best lawyers of England there is no wisedome without wealth, alleadge what you can to the contrarie of all the beggarly sages of greece."[130]

It should be noted that lawyers satirized themselves, and much that was said on the public and private stages was

also echoed in the Inns' dining halls when the law schools put on their revels. The law students were quick to parody their teachers, the stilted language of the law, and the shortcomings of their fellow students. How much the revels influenced legal satire is difficult to tell, but Jonson was accused of pilfering lines from them.[131] Jonson's supposed plagiarism, aside, the literary attempts by law students, especially their poetry, usually brought derisive comments from professional and polished writers.[132]

Besides the student who was little more than a legal drudge, his opposite, the dilettante, who attended the Inns for a smattering of law but more as a finishing school where he made influential friends and acquired courtly airs and manners, was also satirized. These students, like Shallow, Silence, and Falstaff, spent their law school days carousing, drinking, attending plays, and chasing whores.[133] They had no intention of becoming practicing lawyers, but only wanted enough law to protect their properties and to serve in the influential and powerful position of Justice of the Peace. They were not serious students of the law or anything else, and it was primarily they who were ridiculed for their poetry, which was derivative if not outright plagiarism. Shallow, according to Falstaff, "sung those tunes to the over-scutched huswives that he heard the carmen whistle, and swore they were his fancies or his goodnights."[134] The "worst" kind of writer-lawyer, however, says Donne, is he

> who (beggarly) doth chaw
> Others wits fruits, and in his ravenous maw

> Rankly digested, doth those things out-spue,
> As his owne things; and they are his owne, 'tis true,
> For if one eate my meate, though it be knowne
> The meate was mine, th' excrement is his owne.[135]

Such students were not fit to be lawyers or poets, and they received the same abuse usually reserved for socializing fraternity men in today's universities.

One of the more persistent and far-reaching themes aimed at the lawyer was the close association between lawyers and prostitutes. Like "lusty Shallow," Inns' students prided themselves on their sexual prowess. Throat recalls the good old days when he was a student.

> Lord! where be those gallant spirits?
> The time has been when scarce an honest woman,
> Much less a wench, could pass an Inn-of-Court,
> But some of the fry would have been doing
> With her: I knew the day when Shreds, a taylor,
> Coming once late by an Inn-of-chancery,
> Was laid along, and muffled in his cloak,
> His wife took in, stich'd up, turn'd out again,
> And he persuaded all was but in jest.[136]

In the same play, William Smallshanks says that every "puny Inn-a-Court" keeps a laundress who is expected to supply more service than just cleaning his clothes.[137] The humor was of the sowing-wild-oats variety, and law students indulged in the same jokes in their revels.

Seeking out prostitutes was not difficult for the students because the Inns were surrounded by brothels catering to the students and suitors who flocked to London for the law terms at nearby Westminster. When Moll, in The Roaring Girl, sets up a rendezvous with Laxtan, she plans to meet him in "Gray's Inn Fields" (II.i.290-312). In Ram-Alley, Constantia, upon seeing her love, Boutcher, in the area of

Holborne, immediately concludes that he must have "some punk" there (I.i.p.271). The suburbs were infamous for their stews, and the brothels were situated near the Inns and the courts in the suburbs. "Westminster, Westminster," Nashe mocks, "much maydenhead hast thou to answere for at the day of Judgement, thou hadst a Sanctuary in thee once, but hast few Saints left in thee now."[138]

Apparently, according to the plays of the time, lawyers even set up brothels. Bellafront, a prostitute in Dekker's The Honest Whore, sets up shop "in an attorney's house;"[139] and Emilia, in Law Tricks, seems not too surprised to learn that the lawyer, Lurdo, "keepes a bawdie house."[140] Knaves-Bee descends to turn pander for his own wife.

Sex charges followed lawyers when they were elevated to the Bench. Again, Emilia recommends a comely maid as an attorney, "for a pretty woman with a smooth tongue and an Angel's voice can do much with Justice in this golden age" (V.i.p.194). Nashe agrees and suggests a prisoner could do no better than send his "wife or some other female to plead for you, she may get you a pardon upon promise of better acquaintance" with the judge.[141] Perhaps the writers felt justified in their charges when Egerton, sitting as judge in Chancery, decided an inheritance case in favor of a young woman--and then promptly married her. Sex, as a form of court bribery, was often charged by writers.[142]

Had the association between lawyers and prostitutes stopped with noting that law students enjoyed sex, that lawyers were occasionally panders, and that judges had

roving eyes, the charges would be hardly worth repeating except as items in the satire against lawyers. But the writers pushed the relationship further, and the lawyer-prostitute association took on deeper meaning. The lawyer-prostitute relationship was representative of the lawyer's misdirected values. Instead of holding to the high ideals of justice and Christian love implied in the medieval term caritas, the lawyer's goals were lowered to more terrestrial levels, as seen in his concern for the worldly, transient pleasure of the flesh--and prostituted flesh, at that--rather than the spiritual and permanent pleasures enjoyed in pursuit of the ideal. The fact that the law schools were nestled among brothels allowed writers to easily cross from the real to the symbolic world, and prostitution became a byword for the suburb of Westminster, the courts residing there, and the practitioners of those courts.

That the lawyer should love, nobody doubted; but he should love, not the harlots of Westminster, but the Justice of Westminster, who in pagan myth and Christian morality plays was personified as female. The morality plays consistently portrayed Justice as not only female but a daughter of God; and, in Greek myth, Justice was a goddess who fled the earth when man became more interested in acquiring gold than living in a golden age. Donne refers to "Faire lawes" as "she,"[143] and the statues of Justice show her as a blindfolded woman. It was to these female personifications of Justice that the lawyer should have directed

his affections not to the strumpets of the suburbs, and the sexual humor directed at lawyers was often symbolic of his misguided love.

The charge of prostitution rubbed off on the lawyer himself. Donne says that lawyers who practice for "meere gaine" are "Worse than imbrothel'd strumpets prostitute;"[144] and, since the Middle Ages, the comparison between the lawyer who sold his talent and the prostitute her body was invited.[145] Professor Yunck cites Alain de Lille's advice to the new lawyer: "Let him not prostitute his tongue, not expose his speech for sale, not sell the gift of God, not set for hire the free favor of the Lord. Let him not lay out for sale what he has received solely as the gift of grace."[146] DeLille is referring to the selling of the lawyer's donum Dei which, as explained earlier, is a God-given talent meant for the benefit of humanity, not for the private gain of the individual. The lawyer's sin is aggravated, as Matheolus argues (chap. III, note 146), because the lawyer also sells his tongue, that body member which should be used only to speak truth and not be hired out to the highest bidder.[147] The lawyer is a prostitute twice over for selling his talent and his tongue.[148]

On a different tack, and with opposite results, the lawyer's false love was connected with an earlier theme, his greed; for, when the lawyer abandoned Astraea and Justice, he came to dote on Lady Pecunia, which resulted, strangely, in his impotence. Jonson says that Pecunia has become "The

Venus of the time and state,"[149] and in another play he claims that money ("Argurion") loves "a lawyer infinitely." Indeed, hold Richard Barnfield, Lady Pecunia is the only one for whom the lawyer will plead.[150] The result of this love affair with money was that lawyers in literature usually either remained bachelors, such as Throat in Ram-Alley, or were married but childless, such as Bartolus (The Spanish Curate), and Prate (The Dumb Knight). The married lawyers guarded their wives and were extremely jealous, probably because the husbands were impotent.

The theory explaining the impotence of the lawyers was the reverse of Freud's. For Freud, libidinous drives for wealth and power were often sublimated and rechanneled sexual drives. For the Elizabethan, the opposite was true; the drive for wealth, at least in the extreme, overrode and supplanted the sexual drive. This is precisely what Michaelmas Term refers to when he says,

> I have no child,
> Yet have I wealth would redeem beggary.
> I think it be a curse both here and foreign,
> Where [money] bags are fruitful'st, there the womb's most barren;
> The poor has all our children, we thirr wealth.
> (Inductio, 19-23)

Later in the play, Shortyard, whose name has obvious sexual connotations, remarks that it is not possible "to get riches and children too, 'tis more than one man can do" (IV.i.33-38). In his Introduction to that play, Professor Richard Levin hesitantly states that, "There would almost seem to be some kind of universal law in operation here . . . a law of

inverse proportion regulating man's money-making and love-making abilities."[151] No hesitation is needed, and Middleton is not alone in demonstrating that law.

An Elizabethan commonplace, raised to proverbial lore, was that one love drove out another, as if man's emotional nature was a closed system with a limited range and that when an emotion was directed at one goal there was a corresponding decrease in interest for other goals to which the emotion might be directed. It was a psychological theorem akin to that in physics where every action has an equal reaction. Shortyard's statement that the love of money precludes physical love is an example of that. The idea that one passion excludes another appears in Romeo and Juliet where Benvolio advises Romeo to seek a new love in order to forget Rosaline.

> Tut man, one fire burns out another's burning,
> One pain is lessen'd by another's anguish;
> Turn giddy and be holp by backward turning,
> One desp'rate grief cures with another's languish.
> Take thou some new infection to thy eye
> And the rank poison of the old will die.[152]
> (I.ii.46-51)

When a person gave in to lust, whether it was for love or money, interest in the slighted goal waned proportionately. The lawyer, or anyone else for that matter, who devoted himself to Lady Pecunia consequently found himself less interested in physical love. This explains the constant fears of being cuckolded by the Bartoluses and Prates of Elizabethan literature.

The distinction between the two loves and the dire

consequences of following the wrong one was a serious issue and is, perhaps, better understood if approached from a medieval point of view, from ideas that preceded rather than followed the Elizabethan Age. As one medieval scholar sums up the distinction,

> The classic Christian definitions of the two loves are those given by St. Augustine in On Christian Doctrine: "I call 'charity' the motion of the soul toward the enjoyment of God for His own sake, and the enjoyment of one's self and of one's neighbor for the sake of God; but 'cupidity' is a motion of the soul toward the enjoyment of one's self, one's neighbor, or any corporal thing for the sake of something other than God." The importance of this distinction for Christianity is clear when St. Augustine informs us that "Scripture teaches nothing but charity, nor condemns anything except cupidity, and in this way shapes the minds of men."[153]

Bernard Silvestris, according to Robertson, made a similar distinction between two Venuses, one a "legitimate goddess" and the other a "goddess of lechery." The former was known to some, added Silvestris, as "Astrea" and others as "natural justice."[154] She was the "Venus" the lawyer, in particular, should have followed, not the Venus of lechery symbolized in Elizabethan writings by the whores about Westminster.

The satire on the lawyer's sex life, then, was rooted in reality--in the law students' sexual escapades and in the close proximity of the Inns, the courts, and the brothels. But behind the common sexual jokes were meanings which showed the lawyer as a wooer of money, Lady Pecunia, but impotent in his sexual life. Not only was his physical love affected but so also was his spiritual love as he mistakenly chased after the wrong Venus, thus endangering his soul in a more fundamental way than the simple charge of philandering would

indicate. His greed, his love for money, was indicative of his turning away from God and from Astrea, abandoning the ideal Christian life embodied in the term caritas.

Finally, to conclude this section on satiric attacks against the lawyer as an individual, Elizabethan writers were almost unanimous in castigating the lawyer's attempts to climb the social ladder, a theme having more ominous overtones which will be developed in the next chapter. The writers were sympathetic to the poor and downtrodden in their bouts with the law and lawyers, but they had little sympathy with the poor man improving his lot in life by becoming a lawyer. The writers were not given to democratic or egalitarian sentiments in their defense of the poor.

CHAPTER IV

LAWYERS: ALCHEMISTS IN A GOLDEN AGE

Elizabethan and Jacobean satire anatomized the lawyer and found him lacking conscience, compassion, and humanistic knowledge but possessed of a demonic drive to amass riches. In acquiring his fortune, claimed the satirists, the lawyer never sought the lofty ideals of universal justice or followed that Renaissance guide to upright behavior, "right reason." Instead, he contented himself with mastering the intricacies of legal forms and procedures, quibbling over commas, words, and legal interpretations, and resorting, when necessary, to outright chicanery, all with the sole desire of winning--or losing--a case, whichever proved more profitable. Poets, dramatists, and character writers--some of whom, such as Donne, Lodge, and Marston, were lawyers or had attended the Inns of Court--agreed with remarkable unanimity on the shortcomings of lawyers. Yet the universality and unanimity of the complaints do not fully explain the sheer volume and far-ranging charges directed at the lawyer. To explain that, the charges must be seen as a reflection of the allegoric and symbolic mind inherited, however imperfectly, from the Middle Ages. Such a mind was all too apt to hear cosmic reverberations from a single

sour note played by man. As an earlier writer, Gower, said, "And whan this litel world [man] mistorneth,/The grete world al overtorneth." This was even more true when the man was a lawyer.

The lawyer, obviously, was not the only person addicted to greed. The parade of gulls which troops before the shrines of gold in Jonson's comedies shows that Voltore was not alone in his misguided pursuit of money. The lawyer stood out from his fellow sinners not so much because he was greedier than they but because his profession was central to the social and political stability of the state. In the body-politic analogy of the Renaissance, law was the skeleton which held the body erect; indeed, sixteenth-century England saw an increased reliance upon law to solve its social ills.[1] If that skeleton proved cancerous the body-politic would crumple on the floor of history.

Merlin prophesies in The Faerie Queene (III.iii.XXIV-XLIX) that the Golden Age of England, to be presided over by Elizabeth, will come as a direct result of the marriage of Britomart (Equity and Chastity) and Artegall (Justice).

> Thenceforth eternall union shall be made
> Betweene the nations different afore,
> And sacred Peace shall lovingly persuade
> The warlike minds to learne her goodly lore,
> And civile armes to exercise no more:
> Then shall a royall Virgin raine.
> (XLIX, 1-6)

Dekker shows how important justice is to the state when he describes a judge who

> is more strong
> In scarlet than in steel: look how the moon

> Between the day, so he twixt right and wrong
> Sits equal umpire: like the orbed moon
> Empires by him swell high, or fall as soon;
> For when Law alights, uproars on foot-cloths ride . . .
> The regal chair would down be thrown: religion
> Take sanctuary: No man durst be good,
> Nor could be safe being bad: confusion
> Would be held order: and (as in the Flood
> The world was covered) so would all in blood
> If Justice eyes were closed: No man sleeps, speaks,
> Nor eats but by her.[2]

Both Spenser and Dekker see justice as the spine of the nation; without it, civil discord will continue, the sovereign's rule will be doubtful, and "sacred Peace" will again be enthralled. To tamper with justice is to threaten the harmony and stability of the state.[3]

Few people would argue with such a truism; yet, there is perhaps no other truism which has generated so much debate throughout history and especially in the English Renaissance. The crux of the debate was not over the truth of the statement but over the definition of "justice." The issue, in its broadest terms, was whether justice was composed entirely of written law and court procedure, the lawyer's view; or whether justice was law in harmony with higher moral and philosophical principles, the writer's view. In short, the debate centered on the eternal issue of whether what was legal was also just. Plato, Aristotle, Cicero, Aquinas, and Augustine, to name a few, preceded the men of the Renaissance into the thorny thicket of that perennial debate.

To the lawyer, justice was what a judge decided in a particular case; and the judge was guided in his decision by

law, by precedent, and by court procedure. Sir John Selden epitomizes that position in his well-known comparison of abstract theories of justice ("equity") to the size of a Chancellor's foot: "One Chancellor has a long foot, another a short foot, a third an indifferent foot. . . . Equity is a roguish thing. For law we have a measure; know what we are to trust to."[4] The lawyer was not willing to trust his case to shifting theories of justice; he wanted hard, fast, and concrete law which remained the same no matter what the time or who sat on the bench. In placing his faith in law, the lawyer was also justifying his long and dulling study of Common Law, a chop-logic which was a world unto itself and had little relationship, aside from a legal one, to the world outside an English courtroom.[5]

Writers, especially those trained in the universities, approached justice from philosophical and moral positions and from their study of law at Oxford and Cambridge. The law they studied, however, was Roman Law not Common Law. Their text was the Corpus Iuris Civilis, compiled under the Emperor Justinian, which one legal scholar estimates is a book second only to the Bible for its influence on the history of mankind.[6] The difference between the two systems of law is most important in their basic assumptions rather than in particular laws.

Basic to the Corpus are its claims to universal rather than insular validity, its regarding law as both a science and an art, its concern for the good and just rather than

for what is simply legal and illegal, and its admission that human law is subject to a higher law, with which it is in harmony. Professor d'Entreves summarizes its major assumptions:

> Law . . . is an art and a science all in one. As a science, it is a knowledge of human and divine things . . . a theory of right and wrong. . . . As an art, it is the furtherance of what is good and equitable. . . . So high is the mission of the jurist that it may rightly be compared with that of a priest. . . . He is indeed a minister of justice, for justice and law are correlative.[7]

The law to which Roman Law is subject is Natural Law. How appealing Roman Law must have been: it claimed a harmony between natural and human law; it offered a system of justice, good at any time and anywhere, and not dependent on the haggling of chop-logic, carping lawyers; and it offered a comprehensive, coherent, and consistent world view. How different was the grandeur of Roman Law from the parochial Common Law taught in the Inns of Court and practiced in English courts, using as its vehicle of communication that barbarous language, Law-French, rather than the educated tongue, Latin. There was the same gulf between the two systems and their students as that which exists between a scientist and a technician, between one who formulates a world view from his experiments and one who is content to jiggle liquids in a test tube as long as he is paid well for his jiggling.

It was the general spirit of Roman Law not its particular laws that captured the interest of students at Cambridge and Oxford. Indeed, some of the particulars were

lost when the students graduated and turned to writing. For example, the Corpus argues there are three kinds of law: the ius civile, the law of a state; ius gentium, the law of nations; and ius naturale, natural law. Christian writers of the Renaissance had no trouble changing the tri-partite division to human law, natural law, and divine law; but they kept the basic spirit in insisting that harmony between the laws still existed and that human law should not violate the higher laws of nature and of nature's God, as Jefferson was to later argue in the Declaration of Independence.

For writers, laws were not man-made but God-given, appendices, as it were, to the Ten Commandments. Laws were not devised by men but were discovered by them, much as Newton did not devise the Law of Gravity but discovered it. (It is significant that theories to explain nature were called "laws.") Fortescue reasons that God created Justice and the Laws of Nature by which the world should be governed and to which civil laws are auxiliary.[8] Lodge upholds the same view when he argues against usury, saying that it violates civil law, natural law, and God's law: in the first place because it is against statute, in the second against nature ("a barren thing [does not] yeeld fruit"), and in the third against the teachings of the Old Testament (Exod. 22; Levit. 25).[9] In this case, the three laws are in harmony; and, if obeyed, the state and the individual would function in God's appointed way. Bishop Hall, perhaps, best sums up that position when he says,

> Who doubts? the lawes fel down from heavens height
> Like to some gliding starre in winters night.
> Themis the Scribe of God did long agone,
> Engrave them deepe in during Marble-stone,
> And cast them down in this unruly clay,
> That men might know to rule and to obey.[10]

Implicit in Hall, Lodge, and Fortescue is that God created a blueprint by which the natural, political, and social worlds could run; and that blueprint was etched by His Sword of Justice. Nature, with no volition of its own, follows God's plan; but man, with free will, is able to chart his own misguided course in defiance of God's suggested plan for an ideal Christian commonwealth. Bishop Stubbes urges Jobean patience on his flock in matters of law so that the Christian commonwealth can be realized. He advises, apparently to deaf ears, "if lawes be wicked and antichristian, then ought not good christians to sue unto them, but rather to sustain all kind of wrong whatsoever."[11]

The hierarchy of human, natural, and divine laws has an obvious kinship to the Great Chain of Being. Legal offices also are arranged along that chain. At the top of the Chain of Justice is God, the supreme judge. At his side, is Christ, the supreme lawyer who serves as both prosecutor and defense attorney for that most momentous trial in which all men will be involved on Judgment Day. Meanwhile, the sovereign serves as God's temporal substitute on earth, meting out His justice. On a lower level, judges substitute for the king in specific cases.[12] The lawyer, the lowest link in the Chain, mediated between client and judge. The Chain runs straight from lawyer to judge to king to God. Jacintha, in Beaumont

and Fletcher's The Spanish Curate, sets out the hierarchy when she addresses a judge.

> you [judge] sit here
> The deputy of the great king, who is
> The substitute of that impartial judge
> [God].
>
> (III.iii.p.262)

Donne has the same hierarchy in mind when he refers to judges as "Gods."[13]

The lawyer's position on the legal chain was an ambiguous but crucial one. As a member of the court, he was the lowest link in the chain of justice; but he also represented a client in the court. The dilemma he faced was: which deserved his allegiance, the court or the client? His solution, according to writers, was as obvious as it was deplorable; the lawyer sided with his pocketbook and his client and became not only the lowest but the weakest link in the system. The result was that the lawyer, instead of upholding his sacred office and interpreting human law in its relationship to natural and divine law, abused his position and mangled the law in an effort to satisfy his client. Hall, who says God's laws were once clearly etched in marble, continues by saying that generations of lawyers tramping over those laws have eroded and made them difficult to read.

> But now their [laws'] Characters depraved bin,
> By them [Lawyers] that would make gaine of others sin.
> And now hath wrong so maistered the right,
> That they live best, that on wrongs offal light,
> And scabby festers inwardly unsound,
> Feedes fatter with that poysonous carrion,
> Then they that haunt the healthy lims alone.[14]

Hall's odious fly image is indicative of his low estimation

of lawyers and their practices.

In Barry's Ram-Alley, the attorney Throat and his clerk Dash give their views on law. Dash states the ideal view in terms very near those of Ulysses' speech on degree (Troilus and Cressida, I.iii.83-134).[15]

> Law is the world's great light, a second sun,
> To this terrestrial globe, by which all things
> Have life and being; and without which
> Confusion and disorder soon would seize
> The general state of men: wars outrages,
> The ulcerous deeds of peace, it curbs and cures,
> It is the kingdom's eye, by which she sees
> The acts and thoughts of men.
>
> (I.i.pp.381-82)

The pettifogger Throat rejects Dash's naive idealism and gives the lawyer's opinion of law.

> The kingdom's eye!
> I tell thee, fool, it is the kingdom's nose,
> By which she smells out all these rich transgressors:
> Nor is 't of flesh, but merely made of wax,
> And 'tis within the power of us lawyers
> To wrest this nose of wax which way we please:
> Or it may be, as thou say'st, an eye indeed;
> But if it be, 'tis sure a woman's eye
> That's ever rolling.
>
> (I.i.p.382)

Content only with what was legal rather than just, the lawyer twisted the written law to fit his client's need, thus ignoring that that law should remain harmonious with nature's and God's and, consequently, defacing God's blueprint for human governance, making the realization, or even approximation, of a Christian commonwealth well-nigh impossible. Bent as he was on his own private gain, the lawyer's action negated the very term "commonwealth," while his unconcern for the divine inspiration of law eliminated the term "Christian." Extreme arguments were that the divine authorship of law had

been lost sight of altogether, as in Wycliff's contention that a dichotomy exists between man's and God's laws[16] and in Fulke Greville's lament, "Oh wearisome condition of humanity!/Born to one law, to another bound."[17]

In giving his allegiance to his client, then, the lawyer committed a grievous error and directly affronted God in both a legal and moral way. He damned himself by violating his office which he held in trust from God. The legal as well as moral chain was broken. But more important than the loss of an individual through his own actions was the fact that the state itself was put in peril because the actions of the individual lawyer helped obfuscate God's "constitution" for the ideal Christian commonwealth. The charge of lawyers fomenting law cases, then, was a far more serious affair than simply showing their greed; for such practices led not just to the harassment of citizens but threatened the very stability of the state as outlined by God. Those practices would produce not a Christian commonwealth but what Nashe calls the "Devil's Commonwealth," a land of misery bereft of God's light and tyrannized over by Satan.[18]

The charge that lawyers, supposed representatives of God and interpreters of His law, were those most guilty of distorting that law was particularly galling to Elizabethans whose age began with the enthronement of a queen heralded as a new Astraea, virgin goddess of Justice and sovereign of the Golden Age.[19] William Camden, George Peele, Sir John Davies,

Spenser, Shakespeare, and Jonson, to name a few, were joined by painters in raising Elizabeth's status from queen to goddess.[20]

The Goddess of Justice, however, was more than just the personification of equity; for Astraea, hence Elizabeth, had affiliations ranging far beyond a legal system. She was identified with Ceres, Venus, Diana, and Fortune,[21] thus with bountiful crops, love, chastity, and the fortune of men. She was best known to the Renaissance through Virgil's Fourth Eclogue, wherein she heralded the glories of the Augustan Age and, from Christian interpretations of that Eclogue, represented the Virgin Mary and the birth of the golden age of Christianity.[22] As justice, the cardinal virtue, subsumed all other virtues, so, too, the goddess of Justice also subsumed them. For example, a portrait of Elizabeth in Dover Town Hall shows her in front of a column listing all her virtues: Faith, Hope, Charity, Fortitude, Temperance, Prudence, and, crowning all, Justice.[23] Politically, she (Astraea-Elizabeth) signified a oneness, a single sovereign and unified people.

To be Goddess of Justice, then, was to be far more than that term implies today; for justice was affiliated with all aspects of man, from politics to religion, virtue, literature, fate, love, and even agriculture. While that goddess reigned, her subjects enjoyed a golden age, an age when men effortlessly gathered their food in an eternal spring and where peace universally reigned, largely because men were

virtuous by nature.[24]

Though the claim that Astraea had returned to Earth in the person of Elizabeth and that a new Golden Age was at hand was accepted coronational hyperbole, the claim still represented a concrete hope on the part of the writers. The political and religious intrigues which surrounded the thrones of Henry VIII's other descendants, the corresponding uneasiness in the populace at large over internal dissention and the threat of domination by Spain and popery, and the anguished cries over rack-renting and enclosures, all called for an end to internal turmoil and a hope for a period of tranquility when the people would be religiously and politically unified and free from the fear of outside intervention. Though no Englishman seriously believed that there could be eternal spring in his country or that harvesting would ever be without its backbreaking labor, nevertheless, he clung to the hope that peace and unity could be attained, and that virtue, through royal example, would become more common, if not universal, among men. The defeat of the Spanish Armada in 1588 removed the threat of Spain and indicated to the English that, perhaps, they had not held their hopes too high in their newborn Astraea, Elizabeth.

The numerous Arcadias which blossomed in Elizabethan literature and the countless shepherds and shepherdesses who peopled its poetry are ample testimony to the prevalence of the Golden Age myth in Elizabethan England.[25] The bucolic, green age of Astraea had returned, if only in the imagination of writers. But, significantly, that ideal country was

fictional, an Arcadia of the past or a Utopia of the future, never an England of the present.[26] England, despite the Armada victory, apparently had not realized the hyperbolic claims or high hopes set before it.

Like the first Golden Age under Astraea, the second, under Elizabeth, was not to be eternal. In fact, it was short-lived. Elizabeth remained revered as Astraea to her end; but the age over which she reigned, in a process of reverse alchemy, quickly changed from one of gold to one of iron--rusty iron, at that, according to Donne. The swelled pride of Englishmen was a bubble inevitably to be punctured, and it was equally inevitable that the Golden Age theme would be parodied to show how England had come up short of its expectations. So, too, it should not be surprising to find lawyers portrayed as the harbingers of the Iron Age, for their very existence indicated that the time of man's virtuous nature, when he lived in harmony and peaceful community with all about him, was at an end; and Justice, once again, had left the Earth.

Some of those writers most responsible for promulgating the myth of a new Golden Age for England under Elizabeth were also the same ones who first punctured the myth. Spenser, for example, whose Fairie Queene predicted peace, tranquility, and unity under Elizabeth, was revising an earlier satire, Mother Hubberd's Tale, at the same time he was completing his long fable. In the satire, Spenser opens with the announcement that the Golden Age has ended and that the earth is left with "plague, pestilence, and death."

A "wicked maladie" reigns over men causing them to die "Depriv'd of sense and ordinarie reason."[27] The animal land of the satire is a far cry from the fairyland of Una. In the former, the two main characters, an ape and a fox, are disreputable, ambitious opportunists who recognize that the Golden Age has turned into an age of gold; and they set out to make the best of the new conditions. The fox describes the new age.

> For now a few have all, and all have nought,
> Yet all be brethren ylike dearly bought.
> There is no right in this partition,
> Ne was it so by institution
> Ordained first, ne by the law of Nature,
> But that she gave like blessing to each creture,
> As well as worldly livelode as of life,
> That there might be no difference nor strife,
> Nor ought cald mine or thine: thrice happie then
> Was the condition of mortall men.
> That was the golden age of Saturn old,
> But this might better be the world of gold:
> For without golde now nothing wilbe got.
> (141-153)

Armed with such a vision, they set out and quickly rise through the three estates to end up as king and prime minister of animal land. At one stage of their ascent the fox became a lawyer, well-schooled in the art of writing "a close conveyance," a tangled legal document for property transferral, and of other lawyer's tricks, such as selling his master's land without permission and selling land to which he had no title (ll.855-868).

Spenser is not the only one to see the Golden Age become a world of gold and to see the close relationship between lawyers and law that change. In the happy, innocent land of Samuel Daniel's The Queen's Arcadia, evil is introduced

through a lawyer and quacksalver who teach the inhabitants the difference between "mine" and "thine," a distinction which did not exist in the Golden Age but one which is at the heart of a lawyer's business.[28] Donne sees his age as the worst ever because of the perversion of justice.

> O Age of rusty iron! Some better wit
> Call it some worse name, if ought equall it;
> The iron Age that was, when justice was sold, now
> Injustice is sold deerer farre.[29]

Nicholas Breton wonders,

> Oh where is now that goodly golden time,
> When gold was counted but a needful drosse.

In that time "iustice gave redress for all abuse," and there were

> No Titles tride about a Timber-logge,
> But rather loose it, then goe to Law
> To spend a Sheafe of Corne about a Straw
> And then was Law the onely rule of Love,
> Where many hartes agreéd all in one.[30]

And Adam, a servant in Day's Law Tricks, longs for the days of his forefathers when "plaine folkes" knew neither laws nor lawyers. He is brought back to reality by the lawyer, Count Lurdo: "Touch no man's functio[n]; there are jerks & tricks:/Spurne not the law, for, if you doe, it kicks."[31]

The ideal age need not be a mythical time ruled by Astraea but simply an age distant in time or space. Nonetheless, the theme of the absent and unnecessary lawyer continued. For Dekker, the ideal life could be lived in the country, away from the "flames of the Court," away from "the busie throngs of the Cittie," and, above all, away from "running up, & downe, in the intricate mazes of the law."[32] In the country, man can sleep "in the greene pillows of the

earth" and enjoy "soft slumbers" with "wakings pleasant as golden dreames." Or the new age can be enjoyed in Heaven where there is a state "whose Title, Law,/Attorneys Wiles, no, nor the Scarlet Awe/Of corrupt Judges, ever can Intangle," and where "No Bawling Pleader at the Barre shall wrangle. . . ."[33] For Lodge, the golden age was a vague earlier time when Truth was honored in England, when "iustice rulde, and shinde in everie stowre" and when "husbandman was free from shiftes of law."[34]

An anonymous author saw the halcyon days in the past when Maypoles were erected and citizens enjoyed summer frolicking.

> Then raign'd plaine honest meaning, and good will,
> And neighbours tooke up points of difference:
> In common lawes the Commons had no skill,
> And publique feasts were Courts of Conscience.
> Then one grave serjant at the Common pleas
> Might well dispatch the motions at his ease,
> And in his own hands though he had the law,
> Yet hardly had a clyent worth a straw.

But the good days when a sergeant took a poor client's case are gone, says the writer, in attacking the "shame" of the new breed of lawyers, their greed.

> Redeeme your fame, you law-full barristers,
> And let the world speake better of your zeale.
> The commons say, which are no flatterers,
> That halfe the riches of the common-weale
> Is in your hands, or will be if you live,
> Because you alwaies take, and nothing give;
> And that your fees, which certaine were of old,
> Are now uncertaine, like a coppi-hold.[35]

But such a hope, he concludes, will "vanish as a dreame,/And which our age shall scarce report as true." In one poem Ben Jonson pines for the Golden Age, a time when no one

worried over "how to get the lawyer fee."[36]

The lawyer's presence was inimical to both the Golden Age and the hope for a Christian commonwealth in that his presence meant that the former had come to an end and that the latter would never be realized. When Astraea reigned, man was virtuous by nature and had no need for law or lawyers. The very existence of lawyers, then, was a sign that evil had crept into the world; and the numerous pronouncements that that Age had ended also mentioned the prominence of lawyers and their greed in the degenerate times that followed. Ideally, if there had to be lawyers, they should have been loyal devotees of Astraea and her virtues and upholders of God's law in the legal Chain of Being; however, as the charges so often state, the lawyer abandoned his classical and Christian roles in favor of striking out for his own advantage, heedless of the harm he was causing his fellow citizens and the state.

The lawyer stood also as a sign of a degenerate commonwealth as well as the times in general. "They say it is an argument of a licentious common-wealth," says Barnaby Rich, "where Physitions and Lawyers have too great commings in."[37] Joseph Hall is more emphatic: "Wo to the weale where many Lawiers bee,/For there is sure much store of maladie."[38] Burton echoes the same theme, "Where they [sic] be generally rioutous and contentions, where there be many discords, many laws, many law-suits, many lawyers, it is a manifest sign of a distempered, melancholy state, as Plato long since

maintained. . . ."[39] Few people would actually have followed a Wat Tyler, Jack Straw, or the preacher John Ball in their advice to kill all lawyers. That was too strong a dose to cure the ills of the state for most Englishmen; nevertheless, the English acknowledged the lawyer to be an indication of a distempered commonwealth.

Not just lawyers but the entire legal system came under attack. If there were too many lawyers, there were also too many laws. Marston argues that

> Since multitude of laws are signs either of much tyrrany in the prince or much rebellious disobedience in the subject, we rather think it fit to study how to have our old laws thoroughly executed, than to have new statutes cumbrously invented.[40]

Hall insists that the "weight" of laws wisely made and justly maintained is more important than their "number."[41] Even so staunch a defender of the law as William Lambarde complains of the number of laws, asking "How many justices (think you) may now suffice (without breaking their backs) to bear so many, not loads, but stacks of statutes? . . ."[42] Complaints against the vast number of laws continued through the Barebones Parliament, which set as one of its main tasks the hewing down of the vast number of laws which it considered unnecessary for the public weal and which only served lawyers with snares to trap litigants.[43]

Judges, who were once lawyers, and their courts fared no better than laws and lawyers. The courts became symbols of the corruption of the age and were often contrasted with that ideal court which would be in session on Judgment Day.

Claudius, in Hamlet, recognizes the difference between terrestrial and heavenly courts.

> May one be pardon'd and retain the offence?
> In the corrupted currents of this world
> Offence's gilded hand may shove by justice,
> And oft 'tis seen the wicked prize itself
> Buys out the law; but 'tis not so above,
> There is no shuffling, there the action lies
> In his true nature, and we ourselves compell'd
> Even to the teeth and forehead of our faults
> To give in evidence.
>
> (III.iii.56-64)

An anonymous poem, sometimes attributed to Sir Walter Raleigh, tells of a man traveling to Doomsday, and makes the contrast between the courts more explicit than did Claudius.

> From thence, to Heaven's bribeless Hall,
> Where no corrupted voices brawl.
> No conscience molten into gold;
> No forged accusers bought and sold.
> No cause deferred, no vain spent journey;
> For there, Christ is the King's Attorney,
> Who pleads for all without degrees;
> And he hath angels, but no fees!
> When the grand twelve million Jury,
> Of our sins and sinful fury,
> 'Gainst our souls, black verdicts give;
> Christ pleads his death, and then we live!
> Be thou my speaker, taintless Pleader!
> Unblotted Lawyer, true Proceeder!
> Thou movest salvation, even for alms!
> Not with a bribed lawyer's palms.[44]

Of special note here is the role played by Christ, the ideal lawyer, who pleads for rich and poor alike and for both without a fee.

Donne wrote a devastating attack on corruption in the courts, probably while he was still working for Egerton in the Court of Chancery;[45] but attacks on court proceedings reached their high point, perhaps, in King Lear. In the hovel scene, Lear's daughters are tried in absentia by the

court officers: including a madman, a disinherited son posing as a lunatic, and a fool. The mock trial is a sardonic thrust at the justice one can expect in an English court; and it also shows the disparity between human and moral law, a disparity which, as has been shown, presages evil times for the kingdom. As Alfred Harbage says, "King Lear is but one of the plays in which a fissure within families, unkindness in blood kin, is equated with universal chaos."[46] Lear, of course, knows that his daughters have not broken a statute; but he does think they have violated moral law in being "unkind," i.e., not filial, unnatural, in their actions toward him; and that "unkindness" ought to be the province of a court.[47]

The English courts, unfortunately, supplied concrete examples of corruption. Sir Roger Manwood, for example, held many judgeships and disgraced them all. He was charged with "deliberate perversion of justice" while on the benches of Chancery, the admiralty courts of Dover, and at the Exchequer. He accepted a bribe of £240 for a pardon in a murder case, and he was also accused of pocketing a gold chain which a goldsmith had given him to inspect.[48] In another murder case, he accepted a bribe to acquit the murderer and then put him in his livery to protect the villain from vengeful relatives of the victim.[49] In defense of one of the charges against him, Manwood cited "more heinous acts of other judges."[50]

Manwood was not alone in his depradations. Sir Lionel

Cranfield was found guilty of taking bribes in the Court of Wards, for "oppressing merchants," and for bilking the King out of £4,000 a year of custom money.[51] The same parliament that censured Bacon for bribery also censured Sir John Bennet, a judge in the Court of High Commission. Yonge recalls that Bennet "was as corrupt a judge as any in England, for he would not only take bribes of both parties, plaintiff and defendant, but many times shamefully begged them."[52]

Corruption in the courts had reached such a state that the Venetian Ambassador could write in 1637 that bribery is a crime

> to which they [the English] are not accustomed to attach much importance. The corruption of the highest judges and magistrates had made it familiar, so much so that one may any day see the judges in the public tribunals, in the act of pronouncing sentence, oppose the arguments of the lawyers, openly interesting themselves for one of the parties.
>
> Although this is a very great scandal, yet it is tolerated and connivance at it has become a custom, so that the practice passes without exciting comment.[53]

That might have been true in 1637, but the literature of a half century before indicates that many Englishmen saw court corruption as the shame of the nation.

The lawyer, as Rich, Hall, and Burton said, indicated a "distempered, melancholy state;" and the fact that his tools, the laws, and his place of work, the courts, were considered oppressive and corrupt only confirmed that opinion toward the lawyer. But the lawyer stood out in another way, for he was accused of subverting the social order as well as the legal system. A constant theme of Renaissance satire and comedy,

if not all satire and comedy, was the scurrying and scrambling for social position and prestige by that army of "new men," as Knights called them. The lawyer was the guidon of that army.

The lawyer was branded a social climber in an age when social climbing was thought to be a threat to the state because concern for one's status or class shifted one's interest from the common good to personal gain. Along with merchants, tradesmen, and goldsmiths, the lawyer hitched his future to the rising star of individual enterprise and, in doing so, upset the established social order and its mores and also violated a guild, if not a national, work ethic. Would a carpenter, came the common complaint, build an unsound house, or a mason construct misaligned walls? Neither would because to do so would violate guild principles and professional pride. But would a lawyer accept an unsound or unjust case? The answer was yes. He was the only workman who would deliberately undermine what were thought to be his profession's principles for personal profit; and that profit was used to purchase land and country estates, to buy his way into the squirearchy, to cross the barrier between commons and gentry, to upset the stratified social order in which, ideally, everyone knew his place and role in society and happily fulfilled them for the common good.

The ideal state for which most Elizabethans longed is familiar to students of the Renaissance as it is described in Ulysses' "degree" speech, in Troilus and Cressida, and Menenius' address to the mob, in Coriolanus. Combined, the

speeches advocate a hierarchical society based upon mutual responsibilities. Though assigning a particular character to be spokesman for a writer is a delicate venture, most literary critics and historians agree that Ulysses and Menenius speak for Shakespeare and that their speeches provide the social backdrop common to most Elizabethan writers. E. M. W. Tillyard cites Elyot, Spenser, Hooker, Donne, and Raleigh as being in essential agreement with Shakespeare.[54] L. C. Knights adds Jonson, Middleton, Brathwait, Dekker, and Greene, to name a few, as concurring.[55] Historians J. H. Hexter and Lawrence Stone and, particularly, such legal historians as William Holdsworth and Harold Potter agree with the literary critics on that interpretation. Hexter, at least on this point, can speak for them all.

> The ideal of Tudor statesmen was organic: society was made up of members performing different functions for the common good. The ideal was also hierarchical: though all parts of the commonwealth were indispensable, they were not equal, but different in degree and excellence as well as in kind. The role of policy was to maintain and support good order as good order had been understood for several centuries--social peace and harmony in a status-based society.[56]

In summarizing the Tudor ideal, Hexter also summarizes the speeches of Ulysses and Menenius.

Such a state was more ideal than real, and the many defenses of the social structure are indicative of the strength of the attacks upon it. Those attacks have been amply studied already by scholars, L. C. Knights being but one of many. I have no need or desire to retrace those studies here; what I shall show is the role the lawyer played

in the assault on the social structure.

Lawrence Stone is correct when he says that those "who pretend that seventeenth-century England was a land of free opportunity, who profess to be unable to distinguish between a gentleman and a baronet, a baronet and an earl, betray their insensitivity to the basic presuppositions of Stuart society."[57] He might easily have added Elizabethan society. In 1600, Sir Thomas Wilson clearly delineated the different status groups in England and who belonged to which group. His three major categories are the nobilitas maior, nobilitas minor, and the commons. In nobilitas minor, but nobility nevertheless, are "knights, esquyers, gentlemen, laweyers, professors and ministers, archdecons, prebends, and vicars."[58] The lawyer is on the more distinguished shore of the gulf that separates the nobility from the commons. One charge against the legal profession was that it was used as a means of transportation to cross that gulf and to proceed upwards to the highlands of nobilitas maior.

Renaissance writers were quick to champion the rights of the poor in law cases, but that defense stemmed from a sense of justice and not from any leanings toward democracy; for, though writers wanted the poor to gain justice from the law, they did not want them to gain status and money from practicing law, from becoming lawyers. Most of the attacks against the aspirants after gentility were directed at solicitors and attorneys, but barristers were not immune from the same charges.

The names of lawyers in literature--Knaves-Bee, Throat, Tangle, Dampit, Practice, Bramble, Picklock, Prate, Pettifog, and Dodge, for example--have a plebeian ring to them as well as indicating their moral character. The swaggering "Atturney," in John Earle's book of characters Microcosmography, began his legal training in "a blue coat;" that is, as an apprentice to a lawyer.[59] Webster, in his addition to the Overbury characters, included "a puny-clarke," a lawyer's apprentice, who, he sarcastically says, "is a Farmers sonne, and his Fathers utmost ambition is to make him an Attorney."[60] Jonson speaks the same disdain in Every Man Out of his Humour when Fastidious Brisk asks about a friend's nephew, Fungoso:

> Fast. What does he studie? the law?
>
> Sog. I sir, he is a gentleman, though his father be but a yeoman.
>
> (II.iii.9-11)

Fungoso adopts the style of his new station and walks about town in his "pinckt yellow doublet." Dekker, as might be expected, joins in, railing against "broken-heeld, gowtie-legd, durty-hamd pettifoggers" and "lack-latine prowling pennurious country Attorneys," thus attacking their humble beginnings, paltry earnings, and meager education.[61]

Joseph Hall expands on the foregoing attacks on people trying to change their estate by becoming lawyers. He writes of "Old driveling Lolio," a farmer who

> drudges all he can,
> To make his eldest sonne a Gentleman.
>
> (1-2)

Himselfe goes patched like some bare Cottyer,
Least he might ought the future stock appeyre.
(9-10)

When Lolio feasteth in his reveling fit,
Some sterved Pullen scoures the rusted spitt.
For else how should his son maintained bee,
At Ins of Court or of the Chauncerie:
There to learn Law, and courtly carriage,
To make amends for his meane parentage,
Where he unknowne and ruffling as he can,
Goes currant each-where for a Gentleman?[62]
(51-58)

Lolio hopes to rise on his son's shoulders to be a distinguished figure in the community. He counterfeits a coat of arms to fit his new station and is happy to see his son finally enter the gentry by marrying a squire's daughter.

Sir Thomas Wilson, ever with his eye on a person's station, laments the fact that yeoman's sons want to leave their father's vocation and use a legal education as a viaduct to the rank of gentleman.[63] Barnaby Rich agrees. He warns that "the study of law" should "especially belong to the better sort of gentleman." "Our Inns of Court now (for the greater part) are stuffed with the offspring of farmers, and with all other sorts of tradesmen, and these, when they have gotten some few scrapings of the law, they do sow the seedes of suites, they doe set men at variance, and do seeke for nothing more than to checke the course of iustice by their delatory pleas."[64]

Whether one agrees with the social views expressed or not, the fact remains that commoners were invading the Inns. The number of students rose from 593 in 1574 to about 720 in the reign of James,[65] this rise coming at the same time that the peerage was abandoning the Inns for tours abroad to

complete their training for government service and social polish.[66] The increase of students did not come from the titled ranks. Just who the new students were can be seen from a remark by Sir Christopher Hatton, Elizabeth's Lord Chancellor, who commented that there were more students in one house than in all the Inns when he was young and then warned, "Let not the dignity of the law be given to men unmeet."[67] Repeated suggestions called for the prohibition of commoners from the Inns which culminated in James ordering, in 1604, that "none be henceforth admitted into the Society of my House of Court that is not a gentleman by descent."[68] The order was to prevent the rise of such as LaWritt, the title character of Beaumont and Fletcher's The Little French Lawyer, who is ridiculed for his humble background, naivete, and pretence to urban sophistication.

Satire followed the commoner up the social scale as he sought to enhance his position through money and marriage into the gentry and nobility. Dekker satirizes "Lawyers" who come "loaden with Leases, and with purchased Lordships."[69] Count Lurdo, in Day's Law Tricks, traces his rise to a title from base beginnings and, in doing so, exposes his character and some lawyer's tricks.

> I was a man
> Borne to no hopes but a few shreds of witt;
> A Grammer Scholler, then a Scrivenor
> Dealing for private use twixt man and man,
> And by close broakage set them at Debate,
> Incenst them to Law; which to maintaine
> I lent them money upon Lands and Plate
> After the rate of seaven score in a hundred.
> Then did I learn to counterfeit mens hands,
> Noble-mens armes; interline Evidences,
> Make false Conveyances, yet with a trick,

> Close and cock-sure, I cony-catch'd the world.
> Having scrap'd prettie wealth, I fell in League
> With my first wife.
>
> (III.i.pp.154-55)

Lurdo's wife is the sister of the Duke of Genoa; and, in the Duke's absence, Lurdo rules the dukedom.[70] Not satisfied, Lurdo divorces his wife by bribing the judges in hopes of landing a wealthier mate. His sole concern for money rather than virtue shows the dangers Elizabethans saw in giving titles to people not bred to nobility and virtue.[71] Indeed, Emilia, the Duke's long lost daughter, immediately sees through to his character, which could not be disguised by a title, clothes, marriage, or money. "Lord," she exclaims after first meeting him,

> what a broaking Advocate is this!
> He was some Squiers Scrivenor, and hath scrapt
> Gentilitie out of Atturneys fees.
> His bastard actions prove him such a one,
> For true worth scornes to turne Camelion.
>
> (II.i.p.145)

Heiress hunting appeared to be part of the lawyer's profession. The lawyer in Jonson's The Magnetic Lady pursues a wealthy heiress; and Throat, in Ram-Alley, pants in pursuit of Constantia, Lady Sommerfield's daughter. Lady Sommerfield recoils from the idea of Throat entering her family.

> Hence, you base knave! you petty-fogging groom!
> Clad in old ends, and piec'd with brokery:
> You wed my daughter!
>
> (IV.i.p.438)

Her brother, Justice Tutchin, equally abuses the upstart lawyer.

> You, sir Ambo-dexter;
> A sumner's son, and learn'd in Norfolk wiles,

> Some common bail, or Counter lawyer,
> Marry my niece! your half sleeves shall not carry her.[72]

The desire for social and economic advancement became so fundamental a part of the lawyer's character that as one playwright claims it could be passed on genetically. Lady Cressingham, the daughter of a lawyer in Webster's Any Thing for a Quiet Life, marries into the gentry and plagues her husband to increase his fortune, a plaguing which led to the play's title. She constantly hounds her husband to sell his lands in order to buy larger estates. How did she come by such a drive?

> How? Why my Father was a lawyer, and died in the Commission, and may not I by a natural instinct, have a reaching that way? There are on mine own knowledge some Divines daughters infinitely affected with reading Controversies, and that, some think, has been a means to bring so many Suits into the Spiritual Court. Pray be advised, sell your Land, and purchase more: I knew a Pedlar by being Merchant this way, is become Lord of many Mannors; we should look to lengthen our Estates as we do our Lives.
>
> (I.i.352-59)

The lawyer and his offspring were driven to seek out money, titles, and country estates, the trappings of the gentry and nobility. Implicit, but more often explicit, was the satire against that drive which was upsetting the status-based society and traditional values, the substitution of money and wealth for virtue and intellect as the primary social values.[73] That substitution lies behind the comedies of Jonson, Middleton, and Massinger and behind the satires of Hall and Marston. It also is implicit in Sir Thomas Wilson's attacks on lawyers and is--more than envy--behind Robert Burton's lament that a lawyer earns "more in a day than a philosopher

in a year, better reward for an hour than a scholar for a twelvemonth's study."[74]

Although most of the attacks centered on attorneys and solicitors, barristers were thought guilty of the same sins. Crispiano, a barrister in The Devil's Law Case, has the same high regard for money and legal chicanery as the attorney Sanitonella of the same play. Most of the attacks on lawyers use that general term rather than specifying an attorney, solicitor, or barrister, indicating that whatever social gulf separated the barrister from the other two, all three were united in their love of wealth and penchant for legal trickery.

That unity may be seen in a 1605 Act of Parliament: "An Act to reform the Multitudes and Misdemeanors of Attornies and Solicitors at Law and to avoid unnecessary Suits and Charges in Law." The Act sought also to defend the "honest Serjeant and Councellor at Law." The preamble to the Act says,

> For as after the coming of the Normans the nobility had the start and after them the clergy so now all the wealth of the land flow unto our common Lawyers of whom some having practised little above thirteen or fourteen years is able to buy a purchase of so many one thousand pounds: which argueth that they wax rich apace, and will be richer if their clients become not the more wise and wary hereafter. It is not long since a sergeant at the law--whom I could name--was arrested upon an extent for three or four hundred pounds, and another standing by did greatly marvel that he could not spare the gains of one term for the satisfaction of that duty.[75]

The Act, though specifically aimed at attorneys and solicitors, also includes attacks on sergeants who, by definition, were barristers. Sir Thomas Wilson, despite

giving lawyers nobilitas minor status, still grieves over the wealth of judges and "the multitude of sergeants, which are most of them counted men of 20,000 or 30,000 [pounds] yearly."[76] Admittedly, most legal satire had pettifoggers in mind; nevertheless, barristers were also charged as beneficiaries, if not outright abettors, of the pettifogger's work.

Indeed, history shows that those lawyers who garnered both wealth and titles were barristers. Though attorneys were beginning to be recognized as "gentlemen" by the fifteenth century,[77] few could hope to be peers. But barristers, such as Bacon, Coventry, Egerton, Finch, and Littleton, reached the peerage through the Lord Chancellorship or Lord Keepership offices. Burghley, Cottington, Greville, and Weston combined legal training and political office to attain titles. Wealth, achieved through legal practice, brought titles a generation later to the families of Robert Brudenell, Edward Denny, Gilbert Gerard, Edward Montagu, and Sir Edward Coke.[78] In 1611, sergeants-at-law complained to James that "mere barristers" were being granted knighthoods, depriving the sergeants "precedence in their profession."[79]

Attorneys, such as Throat and Lurdo, were not the only legal figures trying to increase their wealth and status through marriage. The Bacon family dynasty was founded on the marriage of Sir Nicholas, son of a sheep-reve, into the wealthy Butts family.[80] Sir Thomas Egerton married a wealthy

heiress after he decided in her favor in an inheritance case.[81] Coke married twice to increase his fortune. The second wife, the widow of Sir Christopher Hatton, was carrying an illegitimate child, not Coke's, a stigma obliterated by her having many manors when she married Sir Edward. Walter Yonge observed the rise of Sir James Lee, Lord Chief Justice of England, who, as "an aged man," "married Sir John Butler's daughter, a gentlewoman of seventeen years old, and near allied to the Lord Marquis Buckingham."[82] The alliance with Buckingham overshadowed whatever other virtues the young lady brought to the marriage. Lawyers, from the lowest attorney to the highest judge, were united, so it appeared, in their drive to acquire status and wealth.

If the very existence of lawyers indicated a distempered commonwealth, as Burton charged, then how much worse off is that state where lawyers actively work against the commonwealth. Not only were they symbols of the end of the Golden Age; but, as already shown, their devotion to the common law and its technicalities produced discord not harmony among human, natural, and divine laws, thereby threatening the stability of the state. That stability was further threatened by the legal profession's leading the assault on the status-based society and its values. Lawyers were in the forefront of those Englishmen trying to change their status and having as the basis for that change their money, not their virtue. Barnaby Rich speaks the conventional wisdom on that subject when he says that "Nobilitie is a

most glorious and excellent Image of auncient progenie, most commonly replenished with excellent vertues." However, he adds, now "we rather desire to be rich, then to be wise."[83] Far from the nation being a commonwealth where all work together for the common good, Burton states that now "In a word, every man for his own ends. Our greatest good is commodity, and the goddess we adore Queen Money, to whom we offer daily sacrifice." "It's not worth, virtue . . . wisdom, valour, learning, honesty, religion or any sufficiency for which we are respected, but money, greatness, office, honour, authority. . . ."[84] What Rich, Burton, and others condemn is a growing spirit of laissez-faire individualism which had as its main goal the acquisition of wealth rather than the preservation of traditional social and moral values.

Laissez-faire individualism was a mortal threat to the Tudor ideal of an organic state where each part's duty was to serve the purpose of the whole. It not only introduced but glorified those bugbears of Tudor literature and politics: social and political ambition. Ambition not only encouraged social climbing but it also negated the principle of social responsibility inherent in the body-politic metaphor. As L. C. Knights explains, "the major cause of complaint [against amassing fortunes] was that those who acquired their position through wealth . . . had not a tradition of responsibility that would justify that position."[85] As has already been shown (pp. 64-66) lawyers were in the front rank of those who did not have that tradition and of those who

openly attacked it. They were the ones who, either for themselves or for their landlord employers, used the law to break leases and rack rents--to rend the social fabric.

It was ambition, affirms Thomas Lodge, which broke the "sacrum societatis vinculum, the sacred bond of society" and "perverted lawes, neglected affinity, invented conspiracie, [and] circumvented authority. . . ."[86] With the sacred bond broken, it is not surprising to find writers lamenting the shattered values which once held the society together.

Hospitality and charity, two virtues which knit the rich and poor together and which were part of the "tradition of responsibility," were two values quickest to go in a money-oriented society. Dekker remembers an old, white-haired Lord who maintained a hospitable home and who saw that no day of the year was a fasting day for the hungry; but, he adds, "They that uphold hospitality are in these daies weak, because few."[87] In The Parliament of Bees, Day presents "Eleemozynus/The Hospitable Bee" who keeps an open house and has a strong interest in the welfare of his tenants and the poor.[88] But he is quickly followed by Thraso, "The Plush Bee," who represents the new order of self-centered, covetous bees who have no interest in the poor or hospitality. In The City Madam, when Sir John Frugal, who represents the old way of life, asks Luke, who represents the new, whether Luke would invite the poor to a banquet, Luke answers, "No," for such an invitation would argue "Of too much hospitality, and a virtue/Grown obsolete and useless" (V.i.140-45).

Charity, with all its Christian connotations, was fast becoming an extinct virtue. The author of Pasquils Palinodia specifically identifies lawyers with the atrophy of that virtue. He says the "vulgars" complain of lawyers who grow wealthy but turn no part of their wealth back to the common good.

> Thus do the vulgars talke, and you can tell
> Whether this same be true, or else a lyer;
> But howsoere it may be, you may doe well
> To let poore Charity come neere your fire,
> And warme her selfe, that men no more may hold
> The charity of lawyers to be cold:
> It will mens love and admiration draw,
> To see some Gospell joyn'd with common-law.[89]

Richard Barnfield saw a cause and effect relationship between the love of money and the distaste for charity.[90] The Elizabethan poor laws, themselves, were an admission that charity was no longer a practiced virtue.

Other ties that bind, some more personal, were found to be broken. In Day's Humour out of Breath, the disguised Duke of Genoa laments with his page, Aspero, the degeneracy of their age, when "pollicy" is more esteemed than valor and when a servant is no longer a trusted, family employee but "a compleate knave, a miserable pander, or an absolute beggar."[91] Webster remarks how friendship was a prized virtue "in the former/And therefor better days" but "in these last and worser times,/It may be now with Justice banisht th' earth."[92] And Rich sees the new value system despoiling the marriage bed: "Marriages in these days are rather made for fornication than for continency, not so much in hope of issue as for gain of money, more for lucre than for love. . . ."[93]

Writers believed that they themselves were victims of the change in values, especially toward learning and art. Lodge bemoans the passing of a time when "learning was the Loadstone of the land,"[94] and Richard Barnfield provides an epitaph on the "death" of learning:

> Here lies the Wight that learning did maintaine,
> And at the last by Avarice was slaine.[95]

Day's wandering scholar, Learneing, feels the wrath of the new class's anti-intellectualism when he is inhospitably turned out of a justice of the peace's house. The only learning the justice wants is how to get a case through court. He despises general knowledge because, as he says, "a kinsman of myne" lost a case, despite his gentility, because his opponents had some learning.[96] Writers were also hurt by Avarice's tying up the purse strings of prospective patrons.

> Vile Avaricia, how hast thou inchaunted
> The noble minds of great and mighty men?
> Or what infernall fury late hath haunted
> Their niggard purses? (to the learned pen).
> Was it Augustus wealth, or noble minde,
> That everlasting fame to him asinde?[97]

Jonson complains of people's having more interest in money than poetry. Verse, he writes,

> was once of more esteeme
> Than this, our guilt, nor golden age can deeme,
> When gold was made no weapon to cut throtes
> Or put to flight Astrea, when her ingots
> Were yet unfound, and better placed in earth,
> Then, here, to give pride fame, and peasants birth.[98]

At the same time when writers saw their society crumbling, they were confronted by philistinism rising to take its place.

With the times so out of joint, it was natural that doomsayers rushed into print, castigating society and predicting calamity. Their forebodings took two major lines: that the world was upside down, everything the opposite of what it should be, and that the wrath of God was at hand for such a godless nation. (The theme of the upside-down world is common in morality plays and later drama where the vices often impersonate the virtues[99] and is a theme which extends back to at least the Middle Ages [see below, pp. 175-76]. The juxtaposition of opposites provided a convenient rhetorical and satiric device to show how the present age had fallen and can be seen in such pronouncements as Burton's: "honesty is accounted folly; knavery, policy; men admired out of opinion, not as they are but as they seem to be . . . one must highly offend God, if he be conformable to the world. . . ."[101]

Other writers used the same theme. Rich's Honestie of This Age provides a satiric catalogue of upside-down values. Usury, forgery, and perjury, once considered abominable, now "are honest mens professions."[102] All rich men are wise and charitable; all women, chaste; and all judges, honorable. Dekker contrasts the values of Heaven with their inverted versions on Earth.

> Greatnesse was now, no more cald Fortunes fether,
> Nor Honor held a fruitlesse golden Dreame,
> Nor Riches a bewitching swallowing streame,
> Nor Learning laugh'd at as the Beggars Dower.

In Heaven, as opposed to Earth,

> Honor and Greatnesse wore Immortall cloathing;
> Riches were Subject to no base Consuming,

Learning burnt bright, without Contentious fuming.[103]

Jonson uses the same device in the opening scene of Volpone where Volpone prays not to God but to his shrine of gold. Middleton's title and play, A Mad World, My Masters, is another example of the theme at work.[104] Shakespeare employs the same theme just before Lear goes mad. There the Fool gives an ironic list of the ills of England.

> When priests are more in words than matter;
> When brewers mar their malt with water;
> When nobles are their tailor's tutors;
> No heretics burn'd but wenches' suitors;
> When every case in law is right,
> No squire in debt, nor no poor knight;
> When slanders do not live in tongues;
> Nor cutpurses come not to throngs;
> When usurers tell their gold i' th' field,
> And bawds and whores do churches build:
> Then shall the realm of Albion
> Come to great confusion.
>
> (III.ii.81-92)

The irony involves the upside-down world theme. The realm of which the Fool speaks should be one of harmony not confusion; but man has become so inured to corruption, slander, and injustice that he takes them to be the natural way of the world. Lear echoes the theme later in the play (IV.vi.110 ff.) and makes two specific references to court corruption in such a world.

Such an inverted nation lived under the threat of divine retribution; such a nation was not a Christian commonwealth but what Nashe called a Devil's Commonwealth. The times, says Middleton, indicate the devil is reigning: "'tis an age for cloven creatures."[105] Where the devil reigned, natural calamities were seen as testimonies of God's wrath. John

Stowe accounts the thirty thousand deaths caused by the plague of 1603 to God's judgment on the "gluttony and other sins" of Londoners.[106] A holocaust in Tiverton in 1598 brought both the town clerk and a bishop to the conclusion that the fire represented Digitis Dei against the town's rich who were unmerciful to the poor.[107] Robert Burton warns Englishmen not to "provoke God to anger" by giving in to their lust, anger, ambition, and pride.[108]

An anonymous preacher links God's vengeance with the law:

> And I saye unto you, the parcialyte of judges suppressynge the pore, and aydynge the riche for lucre, and in condeming the innocents, and lettinge the wycked go fre, bryngeth the vengeaunce of God upon all places, as appereth in Esay. iii.[109]

Dekker wrote a pamphlet "Foretelling of a Plague, Famine, and Civill Warre" to be sent by God if the English did not repent their ways.[110] Thomas Lodge and Robert Greene wrote a drama concerned with the sins of ancient Ninivie. A commentator on the action in the play, the prophet Oseas, continually interrupts the action to draw parallels between Nineveh and London and to predict God's vengeance on London. If the English do not restore charity, abandon pride and sumptuousness, and if they do not see that law is upheld and justice done--he specifically attacks lawyers and judges--God will frown on England. His "swoord of iustice drawne alreadie is," warns Lodge, and the plague is near at hand.[111]

The doomsayers did not have to depend on imagination to find portents of disaster and divine judgment. For minds disposed to see a relationship between human, natural, and

divine events, the last decade of Elizabeth's reign provided ample reasons for worry. The last seven harvests of the sixteenth century failed; and "famine joined with plague in 1592 and recurred in 1602 and 1603, reducing the population and aggravating the economic setback in almost every area of trade. . . ."[112] Elizabeth's virginity, so proudly extolled at her coronation, paradoxically brought fear at the end of her reign, fear of the succession problem. The young graduates of the universities and Inns of Court found the old order breaking up and themselves unsure of getting positions in the church and government for which they were trained. Positions had not expanded with the increased educational opportunities, and the graduates found themselves in a glutted market which encouraged if not forced many of them to turn to literature for precarious livelihoods.[113] The editor of Walter Yonge's Diary says that the work "quite destroys the impression of the happiness that prevailed during 'the bonny days of good Queen Bess;'" and he quotes Stowe as saying his age is "the most scoffing, carping, restless, and unthankful that ever was."[114] Indeed, the famed litigiousness of the age proved that, whenever "merrie olde England" was, it was not in the reign of Elizabeth.

Lawyers, of course, did not directly cause plagues and famines, nor were they the only people intent on raising their fortune and status, practices which, in turn, undermined the established social order and its mores. But they were the ones who benefited most in a rapidly changing

society. Every contract drawn up, every will and every deed made required the hand of a lawyer. Without the connivance of lawyers, Lodge argues, usury could not flourish. Lawyers were seen as the moving forces behind the tenant-landlord problems of the times; they found the legal technicalities to rack rents, enclose commons, convert copyholds to leaseholds, and, in general, to turn the economic screw on the poor and tenantry. They were the ones who turned courts into what Burton calls "marts of ambition."

Though lawyers were not the only ones trying to raise themselves, they were in the forefront of those who were. Writers continually expressed astonishment at the wealth garnered by lawyers and at their purchased leases and titles, and they equally expressed resentment that the tradition of social responsibility was not acquired along with the estates. However, little responsibility was expected from a profession seen aligned with the devil and devoted to avarice and self-interest. How could one expect social responsibility from people who made their livelihood out of discontent, who even spurred discontent by means of vexatious cases to accumulate more money? In an age trying desperately to maintain degree and status, the lawyer stood out as a social upstart hacking away the bonds which held the society together and which tied it to an earlier time when, popular belief held, all worked for the common good.

Elizabeth ascended the throne as the reincarnated Astraea wrapped in the myth of the Golden Age; but, by the

end of her reign, her metal had turned base--to rusty iron. In the intervening years, the goddess of Justice had once again fled earth, and her place was taken by the diabolic lawyer, whose very existence indicated the end of the Golden Age. There was no more justice on Earth, and the lawyer's practices accentuated its absence. Mired as he was in common-law technicalities and steeped in bribery and chicanery, the lawyer could not see, even if he wanted to, God's grand plan for a Christian commonwealth. The priest of God's law proved a heretic; the bulwark against social anarchy proved weak; the skeleton upholding the body politic proved cancerous. If the world "overtorneth" because of personal sin as Gower said, how much more dire were the consequences of the collective sin of a profession supposedly designed to support the stability of the state. No wonder, then, there flowed the volume of attacks on lawyers as signs of what was wrong with England and of the degeneracy of the age.

To read in the satire, social comedy, and tragedy of any age is to see the dark side of that era; and it is, perhaps, unfair to generalize overmuch from prophets of gloom and doom. But it is also important to point out that an age had its dark side; and a study of the lawyer in Elizabethan-Jacobean literature persistently leads our attention in that direction; hence the bleak, if one-sided, picture presented in this study.[115] A caution against generalizations is also salutory when we read satirists who view themselves as "rough Satyrs," "Scourges" of villainy,

vanity, and hypocrisy, and "Tamberlaines of Vice" as Alex Kernan describes them in The Cankered Muse. Such writers can hardly be believed as paragons of objectivity. However, when people from all walks--satirists, dramatists, essayists, reformers, preachers, even lawyers, Keepers of the Great Seal and Lord Chancellors--all agree on the reputation of the lawyer if not the state of the world, then one can conclude that the picture of the lawyer presented here is a fairly accurate portrait and does not represent the rantings of a few literary malcontents.

Elizabethans and Jacobeans believed that man's finest hour was in the past, not the future, and that their own society was the worst which God had ever permitted to wallow in its own degeneracies. Their predecessors, they thought, were fortunate in living closer to the Golden Age of the pagans or the Christian Age of Innocence. Yet if one looks at the writings of their medieval English predecessors, he discovers a similar pessimism. In medieval literature, furthermore, he finds that lawyers are similarly held responsible for many social evils. For if the Elizabethan and Jacobean literati were disturbed by the plague of legal grasshoppers they saw about them, so were their forefathers, who also railed against lawyers. Neither legal corruption nor anti-legal satire was new in Elizabethan-Jacobean England.

CHAPTER V

ANTI-LEGAL SATIRE IN THE MIDDLE AGES

However intense the outcry against lawyers was in the Renaissance, that outcry was not new; for the people of the Middle Ages found themselves enmeshed in problems similar to their descendants', and their literary reactions to those problems were also similar. The same themes examined above--both the general complaints against the times and the particular ones against the lawyer--were formulated in the early Middle Ages and had become clichés by the end of the fifteenth century. Whatever the Renaissance was a rebirth of, it was not of legal satire.

The twelfth century saw a "revival of jurisprudence," to use C. H. Haskins' phrase;[1] and, in Italy, the great centers of legal studies, such as Rome, Pavia, Ravenna, and Bologna, attracted students from all over Europe. Law was the leading area of study in most medieval universities, and those students who completed their degrees were mostly lawyers.[2] In England, the legal profession mushroomed. The Inns of Court were founded, and the Common Law took precedence over Roman Law. The fourteenth century saw a leap in the number of attorneys from 140 in 1292 to over 2,000 by the end of the next century.[3] The road to litigious Elizabethan England had begun.

The rise of the legal profession did not go unnoticed; and attacks against lawyers broke out in all genres, from the short lyric to the voluminous Confessio Amantis, from the dry prose of preachers to the urbane Canterbury Tales, and from political songs to the high drama of medieval plays. Fortunately, the study of law and legal figures in medieval literature has already been undertaken. Professors G. R. Owst, Arnold Williams, and John A. Yunck have already produced books and articles partly, if not entirely, concerned with these subjects.[4] With the help of those studies, the themes of legal satire common to the Middle Ages and Renaissance can be quickly traversed.

Some medieval themes, in varying degree, have been dealt with already in this study. One is the concept of donum Dei, the gift of God, a concept which held that a person should not use a particular talent given by God for one's own personal and monetary gain but for the common good.[5] The medieval lawyer and cleric came under strong attack for abusing or selling their talents for much more than what was necessary for a living.[6] Another theme is the lawyer's love of Lady Pecunia rather than Astraea, his motivation by avarice rather than caritas. A third, following from that, involves the absolute corruption of one given over to avarice. Such writers as Lodge and Dekker enumerated sins associated with avarice as easily as did the medieval preacher who composed Jacob's Well, and all three saw the lawyer guilty of that sin. These themes, however, by no means cover the extent of similarities between medieval and

renaissance legal satire. Both bodies of satire saw the lawyer as central to the breakdown of society, both attacked the lawyer's practice and character, and both resorted to similar puns to satirize the lawyer's greed.

The Elizabethan who looked to his ancestors for people living in an ideal age would only see the backs of their heads, for those ancestors were looking for the same thing in an even more distant past because they saw their own age as degenerate as the Elizabethan saw his. Gower is a typical example:

> If I schal drawe in to my mynde
> The tyme passed, than I fynde
> The world stod thanne in al his welthe:
> Tho was the lif of man in helthe,
> Tho was plente, tho was richesse,
> Tho was fortune of prouesse,
> Tho was knyhthood in pris be name,
> Wherof the wyde worldes fame
> Write in Cronique is yet withholde;
> Justice of law tho was holde,
> The privilege of regalie
> Was sauf, and al the baronie
> Worschiped was in astat.[7]

But, adds Gower, that ideal world has been replaced by one which

> In stede of love is hate guided,
> That werre wol no pes purchace,
> And lawe hath take hire double face,
> So that justice out of the weie
> With ryhtwisnesse is gone aweie.
> (ll. 128-32)

Here is the Golden Age theme dealing with the flight of justice from the world and leaving double-faced law behind.

The theme of the Golden Age is more implicit than explicit in the writings of the Middle Ages and is usually seen under the banner of Dies Mali Sunt, the times are evil,

and its accompanying theme of the world being upside down. Both themes are at work in the ironic "Merlin's Prophecy":

> When lordes wille is londes law,
> Prestes wylle trechery, and gyle hold soth saw,
> lechery callyd pryve solace,
> And robbery is hold no trespace--
> Then schal the lond of Albyon
> torne in-to confusioun.[8]

Poets raced to show that the prophecy had come true.

> Ffulfylled ys the profesy for ay
> that merlyn sayd & many on mo.[9]

begins one poet anxious to catalogue the evils of the time. The "Bisson" poem consists of ten stanzas which show that the moral and social worlds of England are the reverse of what they should be: truth is treachery, flatterers are advisors, and knights are "custemerys" (custom collectors). The poet rounds off each stanza with the refrain "ffor now the bysom [purblind] ledys the blynde."

Another poet uses the same ironic device as did the author of "Merlin's Prophecy." He treats the ideal world as a world "vp so dovne" and finds that in that strange world

> Religious pepille leuyn in holynesse,
> Serviabli with-owte transmutacion
> Envy exilid is fro gentylnesse;
> And for ypocrisye ys set deuocion.
> In lawe truthe hathe his dominacion.[10]

Law plays a large role in that world. There is "Law so parfit that woll chaunge for no hire" (l. 27); "Periuri is fled forthe in-to Fraunce" (l. 32); and "Iurrours woll forswere gold forto take" (l. 38). The poet shows his concern for the mutability of his own world when he concludes each stanza with the refrain that in the upside-down world

"stableness [is] founden, and spesialli in a-tire."[11]

(Stability is found, especially in instability.)

Medieval writers also saw much social decay and as many natural calamities as did their descendants, all caused by the degeneracy of the times. One poet, bemoaning the times of Edward II, opens his poem with the questions:

> Whii werre and wrake in lond and manslaught is i-come,
> Whii hungger and derth on eorthe the pore hath under-nome,
> Whii bestes ben thus storve, whii corn hath ben so dere?[12]

His answers are that the three estates no longer work in harmony, that everyone is out for his own good, and that there has been too much social climbing which inevitably thinned the blood of a once hardy knighthood: "thus ben knihtes gadered of unkinde bloode." In fact, he continues, in these days one cannot "knowe a gleman from a kniht." "Thus is ordre of kniht turned up-so-down."[13] He specifically objects to the legal profession's wealth obtained by bribes (p. 336). That poet concludes that pride and avarice are loose in the land and have become visible in men scrambling to improve their social positions and thus destroying the harmonious order of the estates ordained by God. The result is

> Pes and love and charite hien hem out of londe so faste,
> That God wole for-don the world we muwe be sore agaste.
> (p. 344)

Another poet claims God has sent plagues, earthquakes, and the Peasant Revolt of 1381 as warnings that man should "live in treuthe ariht."[14] Addressing Langland's field full of

folk, Reason makes it plain to them that their excessive pride has brought God's judgment on them in the form of pestilence and a destructive gale.[15] Lawyers stand out in that field. The satirists of the Middle Ages saw the same dire consequences from the degeneracy of their age as did the later writers.

The complaints against the times range over the entire spectrum of medieval life. The estates do not work in harmony for the benefit of all; the rich oppress the poor; social climbers upset the ordered society; pride and avarice run rampant; and justice, that virtue and institution which should uphold order, is subverted by the rich, the powerful, and the legal profession to benefit themselves, not society. Justice is central to all the complaints. One scholar, discussing Piers Plowman, sums up the situation.

> Justice, while it may not be man's final need, is the crying need of [Langland's] time. Until man's relations with man and to God are set on a just foundation and each status performs its proper functions, no true reformation of society is possible. Until we get such a reformation, love or grace cannot fully manifest itself. Justice involves the proper ordering of society so that the self may be properly ordered. A true spiritual and social balance has to be re-established.[16]

The centrality of justice to the well-ordered state is the same idea as that expressed in the Renaissance.

Medieval poets often pound home Langland's theme of the lawlessness of the time with the charge that man's "will," his corrupt faculty which should be checked by reason, overrides law. Merlin deplores the time when "lordes wille" becomes the "londes law," and another poet says that "England

May Sing Alas" "Syn lawe for will begynnes to slaken."[17] Another poet asserts that "will is loose" in the land and that where there is no law there is no country.[18] A "Song of the Times" insists that the world is full of woe because law has left the land.[19] "Reste & pes," advises the author of "What Profits A Kingdom," will only come to England when law is kept.[20]

Part of the outcry against will replacing law stemmed from the weakness of the monarchy and the strength of the barons in the Middle Ages. There was little a weak king could do against the depredations of his nobles, especially when he depended upon their support to stay in power. But another part of that outcry was directed against the courts, which the rich and powerful controlled and which put a semblance of legality on their brigandages.

In 1451, for example, the people of Norfolk were being harassed by Sir Thomas Tuddenham and John Heydon. John Paston called for court hearings against the two in Norwich. The presiding judge, however, turned out to be a friend of the villains and shifted the court to Walsingham, a town friendly to the defendants. Just in case the jury was not friendly enough, Tuddenham and Heydon arrived at court with 400 horsemen at their back. Overawed, the jury acquitted the two, who quickly returned to their old ways.[21] In 1411, a judge, Justice Tyrwhit, assembled 500 men in order to ambush Lord Roos over a land squabble. In his defense, the learned judge claimed that he did not realize he had broken a law.[22]

Paston advised a client not to go to law against another person on the simple ground that that person was befriended by the Duke of Norfolk.[23] Paston probably remembered his long legal battle with the powerful Lord Moleyns who once acquired a Paston manor by entering it and throwing Paston's servants and goods out. Moleyns' men remained inside, daring the helpless Paston to do anything about it. The rich and powerful got what they wanted legally if they could and illegally if they had to.

The charge of corrupt courts was as great in medieval England as it was in Elizabeth's if not more so, for medieval satire attacked not only the secular courts but the ecclesiastical courts as well; whereas, the later satire spared church courts. The medieval satirist saw both courts subject to bribery, influence, and outright fear; and he also saw the judges as unconscionable despots themselves when they were not in the pay of someone else. Although many poems and sermons attacked judges and courts, perhaps the clearest satire against them can be seen in drama, especially in those Cycle plays dealing with Christ's trials, which took place in both ecclesiastical and secular courts. The medieval dramatists transferred Christ's trial scenes (one before the pharisees, one before Pilate, and, sometimes, a third before Herod) from the courts of Judea to the Church and lay courts of the English Middle Ages; and, in so doing, they created characters based upon contemporary rather than biblical models. As in The Second Shepherds' Play, where

comments on taxes, the English winter, and oppression of the poor are incorporated into a play celebrating the Nativity, dramatists interwove criticisms of their contemporary legal systems while portraying Christ's trials.

The pageant dramatists adapted the biblical accounts of the trials to their own legal system and made changes in those accounts where necessary. For example, Christ is first tried by the high priests, Caiaphas and Annas, for breaking the Sabbath and undermining the "old law." The same charges would have been brought before medieval ecclesiastical courts. But neither the ecclesiastical or pharisees' courts could pronounce the death penalty. In the Bible, only a secular court, Pilate's, could condemn a person to death; and only the secular court in England could do the same. But in all the Cycles Caiaphas and Annas are given the Christian titles of bishops because Christ's trial would have been heard before bishops in a Church court. In the Ludus Coventriae both are dressed and mitered as "busshops."[24] Also, the scourging of Christ, which biblically was authorized in Pilate's court, takes place in the ecclesiastical courts of the pageants. The change was made because in medieval England torture was allowed in ecclesiastical courts but banned from Common Law courts.[25] In the Chester "Doomsday Play" Herod dresses Christ in white after He has been judged insane. An onlooker comments that Christ is in the "kinges Liverie,"[26] a reference to the medieval law putting insane people under the king's legal jurisdiction.

The satire of the courts centers on the judges who are portrayed as arrogant, pompous, and unscrupulous, willing to resort to any device to protect their own position.[27] Caiaphas is usually presented as arrogant and pompous, proud of his position but ignorant of the law. He opens a York play with a boasting that rivals Pilate's more famous speeches.

> I am a lord learned in your law.
> By cunning of clerkship and casting of wit
> Full wisely my words I wield at my will . . .
> All doomsmen on dais ought for to dread me
> That has them in subjection in bale or in bliss.[28]

In Towneley XXI,[29] Caiaphas reminds Christ of his position:

> Lad, I am a prelate/a lord in degre
> Syttes in myn astate/as thou may se.
> (ll. 154-55)

He continues by commenting on how lucrative the courts are for himself and other judges:

> whoso kepis the lawe, I guess
> he gettis more by purches
> Then bi his fre rent.
> (ll. 160-62)

For Caiaphas, Christ's trial is a showcase in which he can preen and enjoy himself. Speaking first to Annas, who wants a speedy trial, and then to Christ, he says,

> Nay, nay, sir no haste: we shall have game ere we go.
> Boy, be not aghast if we seem gay.
> I conjure thee kindly, and command thee also,
> By great God that is living and last shall aye
> If thou be Christ, God's son, tell it to us two.[30]

However, when Christ answers affirmatively, Caiaphas' demeanour changes, showing his cruel, blood thirsty, and quite unchristian nature. In York XXIX, he is elated with the confession and calls for an immediate hanging. In

Towneley XXI, he screams of Christ,

> Nay, I myself shalt hym kyll,
> And murder with knokys.
> (ll. 206-207)

His cruelty and vengeance are shown in both plays. Also shown is his ignorance of the law, for ecclesiastical courts could not give the death penalty. Besides the character of prelates, the dramatists were satirizing unqualified people who had acquired high Church offices.

There are other examples of highhandedness on Caiaphas' part. In Ludus XXVII, he resorts to treachery and hypocrisy in order to have Christ convicted. He says to his fellow judge, Annas,

> We must nedys put on hym some false dede
> I say for me I had lever he were brent
> than he xuld us alle thus over-lede.
> (ll. 415-17)

Later, in XXIX, he feigns friendship for the accused to dupe Christ into confessing and convicting Himself. He asks Christ,

> What arn thi dysciplys that folwyn the A-boute
> and what is the dottryne that thou dost preche
> telle me now some-whath and bryng us out of doute
> that we may to othere men thi prechyng forth teche.
> (ll. 110-13)

He is willing to resort to a frame-up and hypocrisy in order to secure a conviction and preserve his own position.

Such inept judges as Caiaphas must have knowledgeable underlings to advise them; and that is the role of Annas, who plays the crafty legal expert. Annas reminds Caiaphas to:

> speke soft and styll
> let us do as the law will.

And

> Sir, thynke ye thatt ye ar/a man of holy kyrk,

Ye should be oure techer/mekenes to wyrk.[31]

Annas has to tell Caiaphas that ecclesiastical courts cannot doom a man and that excommunication, which they have passed on Christ, should be medicinal not punitive, should rehabilitate not kill.

Yet Annas' concern for the law is technical not ethical, and he offers no hope for a defendant in his court. It is Annas who suggests hastening to Pilate's court for a quick conviction and death sentence, thereby side-stepping the restrictions put on his own court. It is Annas, in York XXX, who manufactures treason charges against Christ, making Him subject to secular jurisdiction and capital punishment. It is Annas who threatens Pilate with blackmail if he does not find against Christ.

> ya and thou lete jhesu fro us pace
> this we welyn up-holdyn Alle
> thou xalt Answere for his trespas
> and tretour to the emperour we xal the kalle.[32]

And it is Annas, in Ludus XXXV, who suggests bribery to keep quiet at an inquest the soldiers guarding Christ's tomb when He arose.

> I counsel the be my reed
> this wundyrful tale pray hem to hede
> and upon this yeve hem good mede
> bothe golde and sylver also
>
> Ffor mede doth most in every quest
> and mede is mayster both est and west
> now trewly serys I hold this best
> With mede men may bynde berys.
> (ll. 1592-1606)

Annas' legal craftiness skillfully maneuvers Christ's death by both legal and illegal means.

The satire on the medieval ecclesiastical courts was not lost on the audience, who had been bombarded with satire on those courts for centuries. John of Salisbury summed up those courts in saying, "apud curiales omnia . . . venalia."[33] John Yunck has already provided a study of that satire, showing that ecclesiastical courts in England and Rome were considered cesspools of corruption and venality where, as Annas said, "mede doth most in every quest."[34] Annas, apparently, had medieval counterparts, at least if they followed their teachers. One teacher of future ecclesiastical lawyers, William of Drogheda, advised his students on how to outmaneuver justice. Maitland comments on William's methods:

> His object is to trace an action through all of its stages, to solve questions which will beset the practitioner, to supply him with useful formulas or models for the various documents he may have to indite and to offer him sound advice and cautelae. This last word we can hardly translate without condescending to the slang of 'tips' and 'wrinkles' and 'dodges': and in truth some of William's cautelae do not deserve very pretty names, for they are none too honest.[35]

The parents of Chelidonius, in the Chester "Christ's Ministry" play, speak for many in medieval England when, called before an ecclesiastical court, they lament that the priests "never did poor man good" and were likely to "Cursse us and take our good," a reference to the court practice of excommunicating people in order to confiscate their possessions, which devolved to the Church.

English secular courts were as corrupt as the Church's, and they are the butts of social satire through the treatment of Pilate. Arnold Williams states that "Neither the

moralist nor the authors of the Towneley passion group were striking at straw men" and that "almost every shire" could provide models for Pilate.[36] The social satire and government documents which Williams has examined show that Pilate is the embodiment of all the charges leveled against great men and judges who abuse the law. The Towneley Cycle not only presents Pilate as a corrupt judge but also seeks to bring "the whole body of those who pervert the law into the scope of its satire."[37] Pilate welcomes "to [his] sight" all false indictors, questmongers, jurors and outriders.[38] He admits to being "full of sotelty" and treachery, and he acknowledges being an ambidexter begging bribes from both parties and giving judgment to the highest bidder.[39]

The final scene of the York "Judgment" play brings the members of the ecclesiastical and secular courts together for a last satiric thrust at the corruption of both courts. The scene is directed at the medieval courts and shows that its author is well acquainted with English law. In the scene, Judas enters the court and throws his thirty pieces of silver on the floor. Caiaphas provides some slapstick comedy as he, a bishop, drops to the floor and scoops up the money. At that point Pilate reminds him that blood money cannot be put in the treasury and, appearing to turn philanthropic, suggests the money be used to buy a Potter's Field. An esquire then enters who happens to have a piece of land which he wants to use as security ("wedset") for a loan but which he does not want to sell. Pilate questions the squire.

Pilate: What title has thou thereto? Is it thine own free?

Esquire: Lord, free by my freedom befalls it.
This tale is true that I tell you
And Calvary Locus men calls it.
I would it wedset, but not for to sell you.

Pilate: Show us thy deeds, and have here the money.

Esquire: Have here, good lord, but look ye them save.

Pilate takes the deeds, gives the money, and then informs the squire that his land belongs to Pilate. The squire puts too much faith in the justice of the court and forgets to have a contract made out for the loan. Thus Pilate swindles him out of his land.

But he has also swindled Caiaphas and Annas. When Pilate asked whether the land was the squire's "own free," he had the priests in mind; for, if the land were free, then that meant it was not held in term or in villeinage, i.e., the land was owned by the squire not by someone else. Freehold land was considered real property and came under the jurisdiction of the secular court.[40] Had the squire been a villein or termor, his land would have been considered personal property, which came under the ecclesiastical court's jurisdiction, thus involving Caiaphas and Annas in Pilate's transaction. Pilate not only bilked the squire but outmaneuvered the priests. The author of the play knew his law; and, in showing the venality and corruption of all the judges, he also knew the English courts.

The satire against courts jars with the praise for the laws and legal profession of England given by the fifteenth-century judge, Sir John Fortescue. He claims that no judges

were ever corrupted with bribes and that judges are actually the recipients of divine benediction which blesses them with "issue," sons to carry on the family name and fortune, and with intellect and ambition which make judges "leaders and magnates of the realm."[41] That picture does not harmonize with the fact that in 1298 seven judges, including the Chief Justice of King's Bench and the Chief Justice of the Assize, were fined a total of 50,000 marks for selling their judgments.[42] Nor does it account for the fact that every sheriff in England--sheriffs were also judges--was dismissed from office for gross injustices in both 1170 and 1330. Nor, indeed, does it account for the fact that Fortescue, himself, also took bribes.[43] The evidence of court corruption supports the satirists not Fortescue.

Judges were once lawyers; so attacks on them were also indirect attacks on lawyers. However, lawyers were often directly attacked by satirists. Indeed, Professor Williams writes, "Of all the protests voiced by the preachers, the moralists, and the satirists, none exceeds in volume that against the law."[44] The protests range over the same charges we have already seen used against the lawyer in the Renaissance. The general protests include the lawyer's addiction to avarice, his spiritual aridity, his failure as a minister of God, his being inimical to art, and his sexual problems. In particular, they include his delaying tactics, his starting false and vexatious cases, his engaging in bribery, maintenance, barratry, and conspiracy, his esoteric learning, and his social ambition.[45]

Not even the most casual reader of Chaucer and Langland has to reminded of the universality of the sin of avarice. From Pope to prioress, from king to commoner, says one of the popular "Sir Penny" poems, all serve money.[46] Though the charge of avarice is laid on everyone, much of it is directed at the clergy; but much, also, is directed at lawyers. Another Sir Penny poem speaks of the power of money:

> Peny is an hardy knyght
> peny is mekyl of myght,
> peny of wrong he makyt ryght
> In every cuntre gwer he goo.[47]

Both poems insist that the power of money can be seen in the courts where any criminal, no matter how serious his crime, is exonerated with the aid of Sir Penny.

> Thow I have a man I-slawe
> & forfetyd the kynges lawe,
> I xal fynden a man of law
> Wyl taken myn peny & let me goo.[48]

A third poem tells how Sir Penny became a skilled lawyer and is able to outwit all adversaries.

> In kinges court es it no bote,
> orgaines sir peni forto mote,
> so mekill es he of myght;
> he es so witty, and so strang,
> that be it neuer so mekill wrang,
> he will mak it right.[49]

Still another poem is "London Lickpenny," unique because it contains accurate, realistic detail about courts along with the usual clichés concerning avarice and lawyers. The poem tells of a poor, naive rustic gone to Westminster for restitution of goods defrauded him. He stood before King's Bench and saw the judges sitting on high while "Beneth them

sat clarkes a gret Rout,/which fast dyd wryte by one assent."[50] (The picture presented corresponds exactly to surviving paintings of the court.) Confused by the workings of the court and finding no help there, he crossed over to Common Pleas where he met a person wearing "a sylken hoode" (a judge) and a sergeant-of-law.[51] Both turned a deaf ear to his pleas. He then moved on to Chancery, "the Rolls:"

> Unto the Rolls I gat me from thence,
> before the Clarkes of the Chauncerye,
> where many I found earnyng of pence,
> but none at all once regarded mee.
> (11. 29-32)

After pleading "vppon my knee," he gained the attention of one clerk who admitted the justness of the case but refused to help when he found no money was to be gained from it. He learned one thing from his trip to Westminster: "for lack of mony, I myght not spede." He also had the indignity of his hat being stolen at court.

That poem and the Sir Penny poems repeat the charges made in Langland's better-known castigation of lawyers in Piers Plowman,[52] where, as Yunck says, "Venal lawyers are the true bête noires of the poem, attracting attention from almost beginning to end."[53] Piers' "pardon" specifically rejects lawyers for salvation.

> Men of lawe lest pardoun hadde .þat pleteden for Mede,
> For þe sauter saueth hem nouȝte . such as taketh ȝiftes,
> And namelich of innocentz .þat none yuel ne kunneth;
> Super innocentem munera non accipies.[54]

The pardon does cover lawyers who speak for the poor and who do not accept bribes, but Langland's attacks on lawyers make it clear there will be few of those. Another poet thinks no

lawyers will be saved, and he implores Christ to

> Save London, and send trew lawyers there mede!
> for who-so wantes mony, with them shall not spede.[55]

Apparently medieval lawyers were so avaricious that they were beyond the effort to save them.

The themes of these poems were also repeated in the Renaissance. The major theme was the close connection between avarice and the lawyer, and that theme permeated the minor ones. The medieval clerks of Chancery, who were ecclesiastical lawyers, the sergeants-at-law, common lawyers, and the judges do nothing until they are first bribed.[56] However, once bribed, there is no limit to the miracles they can perform: they can make a wrong a right and turn night into day. The need for money to make justice work meant that the poor, who could not afford the law, were oppressed, as was the farmer in "London Lickpenny" who went home minus his defrauded goods and his hat. The insistence upon money to do their work meant that the lawyers violated donum Dei in not dispensing their talents for the good of all. That was especially true in Chancery where the lawyers were ecclesiastics. The lawyer's addiction to avarice brought about his spiritual aridity.[57] All these were themes common to both medieval and Renaissance England.

Common themes do not stop there. Medieval lawyers, just as Renaissance lawyers, were charged with "turning legal technicalities to profit and protracting litigation for the same purpose."[58] The lawyer was linked to usury,[59] and he could not speak without lying. The author of Jacob's Well

tells the story of a lawyer who entered a convent but who lost all the convent's cases because he then felt bound to tell the truth.[60] Other lawyers played the ambidexter, as one Lovekin Semon found out. Semon's lawyer, John Organ, had almost completed a case for him when Organ switched sides, took ten marks from his adversary, forged four pairs of charters, and defeated Semon's case. "And for these ten years past he [Semon] hath never been able to recover his estate but all the while hath been a beggar."[61] What added insult to injury was the fact that Semon had paid for Organ's law schooling for the express purpose of handling his legal affairs.

Medieval lawyers were charged with making the age litigious, just as they were in the Renaissance.

> Attournies in cuntré theih geten silver for noht;
> Theih maken men biginne that they nevere hadden thouht;
> And whan theih comen to the ring, hoppe if hii kunne.
> Al that theih muwen so gete, al thinketh hem i-wonne wid skile.
> Ne triste no man to hem, so false theih beth in bile.[62]

Litigiousness made the law a lucrative profession; for a person in the profession

> come he never so pore,
> He fareth in a while as though he hadde silver ore;
> Theih bien londes and ledes, ne may hem non astonde.
> What sholde pore men [ben] i-piled, when swiche men beth in lond so fele?
> Theih pleien wid the kinges silver, and breden wod for wele.[63]

As in the Renaissance, the medieval lawyer turns his money into land and mansions with enough left over to still be a fortune.[64] Indeed, the legal profession has so much money that the king need only tax them for his revenue "and late

pore men have pes."[65]

The wealth of lawyers brings to mind Chaucer's Man of Law who was, we are told, "So greet a purchasour [as] was nowhere noon."[66] The portrait of the Man of Law is often seen as sympathetic to lawyers; but, if J. M. Manly is correct, that the sergeant was Thomas Pynchbeck, an antagonist of Chaucer,[67] then we might expect some satire in the portrait. The opening praise of the Man of Law might well be tongue in cheek. Chaucer says the sergeant "semed" (not <u>was</u>) wary, wise, "ful riche of excellence," discreet and "of greet reverence" because his words were so wise (ll. 309-13). Yet a lawyer's words were better known for being highly technical and often untruthful. His "wisdom" and language, which befuddled people more than impressed them, were often shown in satire to be not wisdom but narrowly-restricted, technical knowledge couched in unintelligible jargon which would impress only the naive.

But there are other more open satiric barbs. Chaucer says that the sergeant "For his science and for his heigh renoun,/Of fees and robes hadde he many oon" (ll. 316-17). In these lines Chaucer is attacking society's perverted values which reward mundane knowledge and not true wisdom or art, and he is also attacking the Man of Law's acceptance of bribes, the "fees and robes" donated by grateful clients. Chaucer continues that "Nowher so bisy a man as he ther nas,/And yet he semed bisier than he was" (ll. 321-22). This appears to be a reference to the practice of lawyers,

used later by Throat, of seeming so busy that they cannot handle a client's case unless the client makes it worth their while to interrupt their busy schedule and take on his case. In short, a play for a bribe. We also learn that the lawyer's brain is burdened with every case and judgment heard and handed down since the days of William the Conqueror. That is the precise kind of knowledge necessary to a lawyer which Sir Thomas More complained was destroying his intellect.[68] It is the type of knowledge inimical to the creative art of the poet, and Chaucer specifically refers to that fact in the Introduction to the "Man of Law's Tale" where the sergeant says he will have to "speke in prose" and leave the poeticizing of his tale to Chaucer.[69] Though the portrait of the Man of Law is a sympathetic one on the surface, a closer reading of it through the glass of anti-legal satire shows that Chaucer, ambiguous as he often is, actually condemns, not praises the sergeant-at-law. Indeed, the whole <u>contemptu mundi</u> theme of the sergeant's "Prologue" is satirically ironic because lawyers were known to have the least contempt for worldly goods.

All of Chaucer's attacks on the sergeant-at-law were heard again and again in the Renaissance. So, too, were charges that lawyers engaged in conspiracy, barratry, embracery, and champerty, all devices which lawyers, and others, used to turn the law against itself.[70] One "Plough-man" poem complains that priests now give their alms "To mainteynours, and men of law."[71] Another poet objects that

> Now maytenerys be made Iustys,
> And lewde men rewle the law, . . .
> And baratur ys made bayly.[72]

Even puns were common to the anti-legal satire of the two ages. Where Renaissance writers played on the term "angels," their medieval counterparts punned on "lucre" and the monetary term "mark," saying both were more important to their contemporaries than the Gospels Luke and Mark. In medieval courts,

> Sic lucrum Lucam superat,
> Marco marcam praeponderat
> Et librae librum subjicit.[73]

The theme concerning lawyers and love was also common to both ages. The Dominican preacher John Bromyard tells a story, perhaps apocryphal, of a judge who refused to expedite an abbess' case until she brought "the more good-looking nuns of her House" into court.[74] A "Song on the Venality of Judges" shows the relationship of Cupid and cupidity in the courts.

> But if some noble lady, fair and lovely, with horns on her head, and that encircled with gold come for judgment, such a one [a clerk] dispatches her business without saying a word.
>
> If the woman be poor, and has no gifts, neither beauty nor rich relationship, whom Venus does not stimulate, she goes home without effecting her business, sorrowful at heart.[75]

Medieval satirists as well as Renaissance ones played on the same theme of the misdirected love of lawyers who lusted after the flesh and goods of the world instead of loving God.[76] The love of the lawyers for Lady Meed in Piers Plowman is, perhaps, the best known expression of that theme.

The themes of both ages concerning the lawyer, the law,

and the law courts were so similar that the following thirteenth-century complaint could easily have appeared in Burton's Anatomy of Melancholy or in the works of Stubbes or other writers.

> Now nobody is esteemed unless he knows how to litigate; unless he can cavil cunningly in law-suits; unless he can overreach the simple; unless he know how to amass abundance of money.
>
> The State of the world is at the present day constantly changing; it is always becoming miserably worse; for he who spares nobody, and who is bent most on gain, is most beloved and most commended.[77]

Even litigiousness was not a unique theme to the Elizabethans.

However, the people of medieval England were more active than those of the Renaissance in showing their hostility toward lawyers. Medieval guilds urged their members to settle disputes by arbitration rather than going to court and making money for lawyers, and the merchant tailors claimed that the legal profession was antagonistic to them because of the "companies' success 'in pacifying matters that were debateful.'"[78] The Peasant Revolt of 1381 showed special enmity to lawyers. The rebels destroyed the houses of lawyers they came upon in their march; and, upon reaching London, "they assaulted the Temple, sacked the Inns of Court, destroyed charters, muniments, and records."[79]

The main point of this concluding chapter has been to show the similarities between medieval and Renaissance anti-legal satire. The numerous themes covered show that a common bond existed between them in their antipathy toward the lawyer and in the literary themes and devices by which they attacked lawyers. If, as Willard Farnham argues, there is a

medieval heritage in Elizabethan tragedy there is also a medieval heritage in satire.

This study of medieval anti-legal satire qualifies some of the conclusions of two studies of that satire. Owst ends his study on the somewhat optimistic not that Christian pulpit oratory had "specific achievements in the field of practical politics;" that is, that the London Convocation held in 1439 produced "a certain remarkable Avisamentum" which called for the suppression of legal abuses which bore heavily on the poor.[80] Whatever honorable intentions that Avisamentum had, it had little long-term effect; for, two hundred years later, we read the same charges in literature which were once hurled from medieval pulpits. Legal maneuvering, it would seem, won out over Christian oratory in the field of practical politics.

Professor Yunck concludes his study by admitting that anti-venal satire is as timeless as venality but that after the Middle Ages the satire against it relaxed because of "the growing secularization of society, the broad expansion of a money economy, the fading of the personal relationship as the foundation of social organization," the gradual decay of "the sacramental view of the world and the sacerdotal view of learning," and the diminishing importance of the donum Dei concept.[81] Yet this study of Elizabethan-Jacobean anti-legal satire has shown that there was little relaxation in venality satire at least when it was directed against the lawyer. The very themes which Yunck mentions were restated

in the Renaissance. Indeed, though the present study was not intended to be so, it is in many ways a continuation into the Renaissance of Yunck's admirable work.

Finally, though the twentieth-century Englishman might take pride in living in a nation of laws, his ancestors in the Middle Ages and Renaissance were not so certain of the benefits bestowed by laws and lawyers. They saw law as a bewildering but effective tool to suppress the poor; and they viewed lawyers as a visible sign of a degenerate age, a crumbling commonwealth, and the approaching wrath of God. That lawyers and their mysterious craft would one day be considered the mainstays of the country would have seemed incredible to men of earlier England and a sure sign that the end of the world was near at hand, a prospect in which no one could take pride.

NOTES

NOTES TO INTRODUCTION

[1]*The Works of John Day*, ed. A. H. Bullen (1881), reprinted, new introduction, Robin Jeffs (London, 1963), p. 212.

[2]*An Apology for Actors*, Shakespeare Society Publications (London, 1841), III, 62. He says the children's companies deserved most of the blame.

[3]Charles Noyes Greenough, *A Bibliography of the Theophrastan Character in England with Several Portrait Characters*, prepared for publication by J. Milton French (Cambridge, Mass., 1947).

[4]Sir Charles Ogilvie, *The King's Government and the Common Law, 1471-1641* (Oxford, 1958), p. 1.

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A LEGAL LABYRINTH: THE GROWTH OF THE COURTS, THE PROCEDURES, AND THE PROFESSION

[1]Richard Robinson, "Brief Collection of the Queenes Majesties Most High and Most Honourable Courtes of Recordes," ed. R. L. Rickard, Camden Miscellany, XX, Camden Society (1953), 2.

[2]An Historical Introduction to English Law and Its Institutions (London, 1943), p. vi. The actual number was greater because more than one Assize, Quarter Session, and Justice of the Peace Court would sit at a time.

[3]Ibid.

[4]Ogilvie, The King's Government, Chapters XI and XVI.

[5]Ibid., p. 123.

[6]Francis Hargrave, ed., Collectanea Juridica (London, 1791), I, 53.

[7]Ogilvie, The King's Government, p. 119.

[8]Potter, English Law, p. 141.

[9]Ogilvie, The King's Government, pp. 121-122. The idea of equity and justice working in consort is familiar to the reader of morality plays in the figures of "Mercy" and "Justice." Shakespeare dramatizes their opposition in such plays as The Merchant of Venice, Measure for Measure, and The Winter's Tale. See M. MacKay, "The Merchant of Venice: A Reflection of the Early Conflict Between the Courts of Law and Equity," Shakespeare Quarterly, XV, (1964), 371-375; and J. Wilson McCutcheon, "Justice and Equity in the English Morality Play," Journal of the History of Ideas, XIX, (1958), 405-410.

[10]Edward Jenks, A Short History of English Law (Oxford, 1928), pp. 171-172.

[11]Ogilvie, The King's Government, p. 123.

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[12]John Lord Campbell, The Lives of the Lord Chancellors and Keepers of the Great Seal of England (Philadelphia, 1847), II, 155.

[13]Sir William Holdsworth, A History of English Law (Boston, 1926), I, 254.

[14]Ogilvie, The King's Government, p. 79.

[15]Catherine Drinker Bowen, The Lion and the Throne (Boston, 1957), p. 257. Miss Bowen goes on to tell that King James, alarmed at such wealth in the hands of a subject, forbade Coke from acquiring more land. Coke, the story continues, received permission to buy one more acre. He promptly bought an estate called "Castle Acre"--an example of the legal mind at work. Sir Thomas Wilson put Coke's "salary and stipend" at £657 10s. 7d. a year. The State of England (1600), ed. J. F. Fischer, Camden Miscellany, XVI, Camden Society (1936), 31. But even with that increase in pay over Ogilvie's figures, Coke's wealth still amazed Wilson, especially such wealth in a subject whose origin was of "a meaner degre" (p. 25).

[16]William J. Jones, The Elizabethan Court of Chancery (Oxford, 1967), p. 52.

[17]Quoted in Sir John Neale, Essays in Elizabethan History (New York, 1958), p. 63.

[18]Ibid., p. 81.

[19]Alan Simpson, The Rise of the Gentry, 1540-1660 (Chicago, 1961), p. 52.

[20]Ibid., p. 62.

[21]Neale, Essays, p. 60.

[22]Ibid.

[23]An Exact Table of Fees at all of the Courts at Westminster (London, 1694), in Margaret G. Davies, The Enforcement of English Apprenticeship 1563-1642 (Cambridge, Mass., 1956), Appendix III.

[24]Jones, Elizabethan Chancery, p. 453.

[25]The system of court fees remained until the nineteenth century, when law reforms provided that court officials be paid a fixed salary rather than out of court fees. Peter

Archer, The Queen's Courts (London, 1956), p. 52. If the judges seem slighted as to fees (see above, pp. 11-12), it should be noted that they took part of the fees that their underlings earned.

[26]Jones, Elizabethan Chancery, p. 23.

[27]Quoted in Ogilvie, The King's Government, p. 82n.

[28]Quoted in Neale, Essays, p. 78.

[29]Holdsworth, History of English Law, I, Appendix XXV.

[30]Ibid., I, Appendix XXVI.

[31]Ibid., I, Appendix XXIX.

[32]Ibid., I, Appendix XXX.

[33]Ibid.

[34]See above, pp. 11-12.

[35]Neale, Essays, p. 60. (Neale goes on to say that a £2,000 annual profit for the Lord Keeper's office would not exclude him from Paradise.) The office immediately below Lord Keeper, Master of the Rolls, held the patronage of "the Six Clerks, the three clerks of the Petty Bag, the two Examiners, the Usher, and the seven clerks of the Rolls Chapel."--Jones, Court of Chancery, p. 51. Jones adds that Bruce, Master in the reign of James I, sold these offices at a price of £16,000.

[36]The Crisis of the Aristocracy (London, 1965), p. 441.

[37]By 1547, it was worth £240 a year, and its value jumped to about £2,000 by 1646. This sinecure survived the Revolution and was enjoyed as late as 1820. Ibid., pp. 443-444.

[38]The Earl continued to dabble in court revenues, buying the lease of Post Fines in Common Pleas, said to be worth £2,000 per annum, for £21,000 in 1636. Ibid., p. 442.

[39]John Chamberlain, The Chamberlain Letters, ed. Elizabeth Thomson (New York, 1956), p. 134. Chamberlain also remarked that in 1598 Essex turned down the Mastership of the Court of Wards because the Queen was thinking of dissolving or, at least, taking the "profit" out of that Court. Such reform, he added, was "too good to be true" (p. 8). His

prediction was correct. The profits remained intact, so much so that Sir Walter Scope died of a "broken heart" in 1614, unable to bear the dual loss of his brother and the still lucrative position of Master of the Court of Wards at the same time (p. 159). In 1594, Lord Burghley and his son were offered £1,000 for the Receivership in the Court of Wards, which paid 100 marks plus £70 "diet and allowance." Another suitor for the office offered £100 to provide Cecil's wife with four coach horses. A third suitor offered Lady Edmunds £1,000 for the same post. Neale, Essays, p. 65.

[40]Stone, Crisis of the Aristocracy, p. 442.

[41]"Epigramme VIII, 'On a Robbery,'" The Complete Poetry of Ben Jonson, ed. Wm. B. Hunter, Jr. (Garden City, New York, 1963), p. 6.

[42]Quoted in Neale, Essays, p. 65n. (Wynn learned his lesson well and began rigging sheriffs' elections in counties where he had business. [Essays, p. 78]).

[43]Campbell, Lord Chancellors, II, 232.

[44]Holdsworth, History of English Law, I, 250.

[45]Ibid., I, 260.

[46]Cited in Neale, Essays, p. 77. Judge Anderson also held another office whose price was 2,000 marks. Ibid.

[47]Holdsworth, History of English Law, I, 260.

[48]Jones, Court of Chancery, p. 51.

[49]Campbell, The Chief Justices, I, 337-38.

[50]Ibid., I, 338. Stone, Crisis of the Aristocracy, pp. 444-45.

[51]Holdsworth, History of English Law, I, 261. I do not wish to enter the debate over the judges' primary motivations in the constitutional arguments, whether they were incited by economic interest, legal theory, or political principle. Let it suffice to say that they were fortunate that the same arguments satisfied all those considerations.

[52]The concept of contract was just being developed in the sixteenth century. F. W. Maitland, Forms of Action at Common Law (Cambridge, 1965), p. 69.

[53]Kings did not contract with a person to perform certain functions:

> "they granted him a right to perform these functions on certain terms. Thus the office held by such an official was regarded as a piece of property which gave the official certain rights and placed him under certain duties, just as the tenure of land gave the tenant certain rights and placed him under certain duties."--Holdsworth, History of English Law, I, 247.

That concept of office held until the nineteenth century. Ibid., I, 248.

[54]See above, p. 17.

[55]See below, p. 30.

[56]Maitland, The Constitutional History of England, ed. H. A. L. Fisher (New York, 1965), p. 41.

[57]An example of a writ (Praecipe in Capite) is:

> "The King to the sheriff greeting. Command X that justly and without delay he render to A one messuage with the appurtenances in Trumpington which he claims to be his right and inheritance, and to hold of us in chief and whereof he complains that the aforesaid X unjustly deforceth him. And unless he will do this, and (if) the aforesaid A shall give you security to prosecute his claim, then summon by good summoners the afores[aid] X that he be before our justices at Westminster [on such a day] to show wherefore he hath not done it. And have there summoners and this writ."--Cited in Maitland, Forms of Action, p. 82.

[58]Ibid., p. 20. This, however, was not an appeal. Technically, the royal court tried the feudal court for not doing "justice" and did not retry the original case. Potter, English Law, p. 90.

[59]Forms of Action, p. 20.

[60]Ogilvie, The King's Government, p. 12.

[61]Ibid., p. 13. The Chancellor was allowed to issue new writs for cases that were similar to existing writs (in consimili casu). Ibid.

[62]The stereotype can be seen in comparing a writ of Henry VIII's time (see above, n.57) and the one following used by George IV three centuries later:

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"George the Fourth . . . to the sheriff greeting: Command C. D. that justly and without delay he render unto A.B. four messuages, four gardens, and four acres of land, with the appurtenances . . . which he claims to be his right and inheritance, and whereof he complains that the aforesaid C.D. unjustly deforces him. And unless he shall do so, and if the said A.B. shall give you security of prosecuting his claim, then summon by good summoners, the said C.D., that he be before our justices at Westminster . . . to show wherefore he hath not done it; and have you there the summoners and this writ."--Quoted in Henry J. Stephen, A Treatise on the Principles of Pleading in Civil Actions (Washington, D. C., 1908), p. 44.

[63]Ogilvie, The King's Government, p. 13.

[64]Ibid.

[65]"Throughout the Middle Ages there is no such word as misdemeanour--the crimes which do not amount to felony are trespasses (Lat. transgressiones)."--Maitland, Forms of Action, p. 49. The Lord's Prayer still uses the term in its medieval, legal sense.

[66]Jenks, Short History, pp. 171-172.

[67]"There were in all between thirty and forty [original writs], with possibly some hundred of minor variations."--Ogilvie, The King's Government, p. 13.

[68]Ibid., p. 20.

[69]Ibid., p. 21.

[70]Potter, English Law, p. 432.

[71]Ogilvie, The King's Government, p. 21.

[72]Ibid.

[73]Ibid.

[74]Ibid., p. 24.

[75]Ibid., p. 23. In a wartime Admiralty case, a Frenchman defended his capture of "the St. Mary boat" on the grounds that (1) it was an act of war; (2) he was unaware of any truce; (3) a treaty barred claims for war booty. These would seem to be three good reasons in his defense, but

Common Law lawyers tried to have the case thrown out on "duplicity," that the defendant argued three, not one, issues of law. Their effort failed because Admiralty was not bound by Common Law procedures. Ibid., p. 23n.

[76]Quoted in Michael Birks, Gentlemen of the Law (London, 1960), p. 48.

[77]Ibid., pp. 16-17. The number of cases that turned on technicalities could be multiplied, but the main point is that rigidity, almost rigor mortis, had set in in Common Law procedure.

[78]Complaint of Roderyck Mors, ed. J. Meadows Cooper, EETS ES XXII (1874), Cap. VII, p. 20.

[79]Ogilvie, The King's Government, p. 34.

[80]Ibid., p. 36.

[81]William J. Jones, "Due Process and Slow Process in the Elizabethan Chancery," The American Journal of Legal History, VI (1962), 130-131.

[82]Stuart E. Prall, "Chancery Reform and the Puritan Revolution," The American Journal of Legal History, VI (1962), 30.

[83]Potter, English Law, p. 140.

[84]Ibid., p. 145. Some seventeenth century estimates put the figure at 240 subordinate clerks. Jones, Court of Chancery, p. 124n.

[85]Potter, English Law, p. 146.

[86]J. Payne Collier cites Alleyn's payment for a "Patent" in Chancery:

> "The Seale . . . 8. 13. 0./The Dockett and rec . . . 0. 3. 0./The inrowlment . . . 2. 0. 0./The divident . . . 2. 0. 0./The officers fee . . . 2. 13. 0./For drawing, ingrossing and entering the dockett 0. 3. 4./Vellome and Strings . . . 0. 17. 6./The clark . . . 1. 0. 0./For vellome and ingrossing of the first patent . . . 1. 6. 8. for a total of 18 16$^{s.}$ 10$^{d.}$."--Memoirs of Edward Alleyn, Shakespeare Society Publications (London, 1841), I, 139. Cf. Common Pleas' fees, above, pp. 11-12.

[87]The Chamberlain Letters, p. 138.

[88]Ibid., Chamberlain had his own troubles in Chancery a decade later (1625) which "almost wearied my body, my mind, my purse, and my friends" (p. 339). He was happy to escape with £400 out of the £567 owed him.

[89]Quoted in Prall, "Chancery Reform," pp. 29-30. Barebones Parliament charges against royal prerogative courts should not be taken at face value, but an Elizabethan case in Chancery did last twenty-nine years. Jones, "Due Process," p. 131n. In Elizabeth's time, "two to five years was the usual span of time required for a suit to pass through all its formal stages. Three years would seem to be the average." The shortest case took one term and the longest began in the fifteenth century and dragged "well into the seventeenth."--Jones, Court of Chancery, p. 306.

[90]Archer, The Queen's Courts, p. 50.

[91]Potter, English Law, pp. 73-74.

[92]Archer, The Queen's Courts, p. 50.

[93]E. W. Ives, "The Law and the Lawyers," Shakespeare Survey, 17 (1964), 79. The most detailed study of the early legal profession is H. Cohen, A History of the English Bar and Attornatus to 1450 (London, 1929). A more general but more readable study is Michael Birks, Gentlemen of the Law.

[94]Sir William Holdsworth, Sources and Literature of English Law (Oxford, 1928), p. 233.

[95]D. Plunket Barton, Charles Benham, and Francis Watt, The Story of Our Inns of Court (London, 1924), p. 11.

[96]Elizabethan Inns of Court students wore the "'catercap' which was forced upon apprentices and others at this period."--W. N. Hargreaves-Mawdsley, A History of Legal Dress in Europe until the End of the Eighteenth Century (London, 1963), p. 93. E. Williams insists the Inns

> "were not a University but rather they were the fixed Administrative offices, the first Whitehall of Government Departments, the earliest Courts of law as well as the earliest homes of Societies and Companies of students."

He lists thirteen court offices which were situated at the Inns. Early Holborn and the Legal Quarter of London (London, 1927), I, 27. John Chamberlain corroborates this view. He mentions that "the Lord Chief Justice and others" met at Sergeants' Inn to examine a case. The Chamberlain Letters, p. 341.

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[97]At the end of Elizabeth's reign, two in five had attended one of the universities. R. J. Schoeck, "The Study of Law French in the Inns of Court During the Fifteenth and Sixteenth Centuries," Kentucky Foreign Language Quarterly, XI (1964), 229. J. E. Neale notes that of the 197 lawyers who sat in the 1593 Parliament 106 had also attended a university. Thirty years earlier the figures were only 36 out of 108. The Elizabethan House of Commons (London, 1949), pp. 290-91. This might indicate that the literary and intellectual activities, for which the Inns became famous, were due to the fact that the better educated students were admitted rather than to anything the Inns themselves had to offer.

[98]Thomas Denton, Nicholas Bacon, and Robert Cary, "A Report of a Select Commission" (1540), English Historical Documents, ed. C. H. Williams (London, 1967), V, 567. This report is a study, commissioned by Henry VIII, of education at the Inns of Court.

[99]Schoeck, "The Study of Law French," p. 234. This is Schoeck's hypothesis. There is, strangely, no record of Law-French being taught at any Inn of Court or Chancery, even though actual legal pleadings were in Law-French and students were expected to argue mock trials ("moots") in that language. Schoeck's statement that Readings were given in Law-French is contradicted by the Denton-Bacon-Cary "Report," p. 567.

[100]Wallace Notestein, The English People on the Eve of Colonization: 1603-1630 (New York, 1962), p. 88. Schoeck says one year. "The Study of Law French," p. 228.

[101]The Benchers were the senior members and administrative body of Lincoln's Inn. At Gray's Inn they were called "Pensioners," and at the two Temples "Parliament."

[102]Denton, et al., "Report," p. 565.

[103]Barton, et al., Inns of Court, p. 12.

[104]Sir John Fortescue, De Laudibus Legum Angliae, ed. and trans. S. B. Chrimes (Cambridge, 1942), pp. 117, 129.

[105]Denton, et al., "Report," p. 565.

[106]This section is based on the Denton-Bacon-Cary "Report" which seems to be a composite of what occurred in the four Inns. There were minor variations of procedure in each Inn.

NOTES TO CHAPTER I

[107]In general, law schools still do not consider the history of law or the functioning of law in society as part of the curriculum, according to Chief Justice Earl Warren, New York Times, Oct. 19, 1969, Sec. 6, p. 132.

[108]Book Named the Governor, ed. S. E. Lehmberg (New York, 1962), p. 53.

[109]Denton, et al., "Report," p. 565.

[110]The Reader was also expected to give "a series of magnificent feasts, the expense of which sometimes exceeded £1,000, and those who evaded it were heavily fined."--Barton, et al., Inns of Court, p. 13.

[111]Denton, et al., "Report," p. 566.

[112]Ibid., p. 567.

[113]Notestein, English People, p. 89.

[114]A. Wigfall Green, The Inns of Court and Early English Drama (New Haven, 1931), p. 32. This book remains the most detailed study of this subject. Philip J. Finkelpearl's John Marston of the Middle Temple (Cambridge, Mass., 1969) covers the relationship between one Inn and one dramatist.

[115]P. 119.

[116]Campbell, Chief Justices, I, 287. R. J. Schoeck avers (but does not document) that "more translators and poets came out of the Inns than out of either Oxford or Cambridge during the sixteenth century."--"Sir Thomas More, Humanist and Lawyer," University of Toronto Quarterly, XXXIV (1964), 7. See also the following articles for argument that the lawyers were broadly learned and trained: "The Libraries of Common Lawyers in Renaissance England," Manuscripta, VI (1962), 155-167; and "The Elizabethan Society of Antiquaries and Men of Law," Notes and Queries (NS), I (1954), 417-21, both by Schoeck. For comment on Schoeck's hypothesis, see chap. I, note 114.

[117]E. W. Ives, "Law and Lawyers," p. 80.

[118]Ibid.

[119]Ibid., pp. 78-79; Stone, Crisis of the Aristocracy, p. 691; Notestein, English People, p. 90.

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[120]"The Inns were sometimes limited in the number of barristers they could name in a single year, and did not by any means choose all who had spent the required period." Notestein, p. 88. There were no examinations or graduations, the only requirements being that meals and moots were to be attended, so "admission to the bar must have been based upon a general estimate of a man's qualifications."--Ibid. Precocious students could finish in less than twelve years. Sir Edward Coke was called to the bar after seven and a quarter years of study; "Francis Bacon squeezed Cambridge, thirty months abroad and his bar studies into just over nine years to become a barrister at the age of twenty-one."--E. W. Ives, "Law and Lawyers," p. 80.

[121]Barton, et al., Our Inns, p. 11.

[122]Birks, Gentlemen of the Law, p. 6. Serjeant-at-law was the highest ranking lawyer. "Law apprentice" often meant any lawyer below serjeant as well as a student at an Inn.

[123]Ogilvie says sixteen. The King's Government, p. 20; Alan Harding claims twenty years. A Social History of English Law (London, 1966), p. 175.

[124]Catherine Drinker Bowen, The Lion and the Throne, p. 279.

[125]Fortescue said "poor and common people" could not afford to send their sons to the Inns. De Laudibus, p. 119.

[126]The drudgery of apprenticeship is devastatingly shown in Melville's Bartleby the Scrivener. A scrivener was often an apprentice attorney.

[127]Harding, Social History of Law, p. 171. When business was scarce, attorneys did, despite prohibitions, turn to other courts for cases, often assuming the name of an attorney enrolled in that other court. Birks, Gentlemen of the Law, p. 99.

[128]Ibid., pp. 91-99.

[129]Ogilvie, The King's Government, pp. 82-84. Potter, English Law, p. 145.

[130]Ogilvie, The King's Government, p. 83n.

[131]As Chief Justice Hale said, anyone who had "the skill to know what office to send for a process" could become a solicitor. Quoted in Ogilvie, p. 84.

[132]*Ibid.*, pp. 83-85. Potter, *English Law*, pp. 145-146.

[133]Jones, *Court of Chancery*, pp. 101-135.

[134]Ogilvie, *The King's Government*, p. 85.

[135]It cannot be stressed too much that Elizabethans did not live in the twentieth century. A modern jurist might immediately attack the system of fees and the seisin of offices to revamp the courts, but to an Elizabethan jurist such ideas would have been literally unthinkable. First, there was no tax structure to support a judicial civil service; second, to deprive a man of his office, except for gross misconduct, would be like evicting a person from his land; and the ownership of land was the foundation of social, legal, and political life--in short, of English life. To do so would be rending the very fabric of society. Even Lord Burghley, who was against selling offices, was against the selling of them to unqualified people, not the sale itself. Neale, *Essays*, p. 65.

[136]Jones, *Court of Chancery*, see especially Chapter II.

NOTES TO CHAPTER II

LAWYERS IN A LITIGIOUS AGE

[1]Thomas Dekker vividly describes the long line of clients, lawyers, and judges trooping up to Westminster Hall for the start of a court session as an army, bedecked with the pomp and regalia of an army on its way to war. "The Dead Tearme," The Non-Dramatic Works of Thomas Dekker, ed. Alexander B. Grossart (London, 1885), V, 25-27.

[2]The Works of John Webster, ed. F. L. Lucas (London, 1927), IV.II.28-33.

[3]E. B. V. Christian, Leaves of the Lower Branch, The Attorney in Life and Letters (London, 1909), p. 22.

[4]The Anatomy of Melancholy (New York, 1928), eds. Floyd Dell and Paul Jordan Smith, p. 69. The analogy between lawyers and scavengers was commonplace. Ben Jonson calls them "Hook-handed Harpies, gowned Vultures."--The Complete Poetry, p. 170. And the lawyer in Volpone is Voltore, the vulture.

[5]The English People, p. 94.

[6]The Honestie of This Age, Publications of the Percy Society (London, 1844), vol. II, 21.

[7]Phillip Stubbes, Anatomy of Abuses in Shakespeare's England, ed. Frederick J. Furnivall, The New Shakespeare Society (London, 1877-79), Series 6, No. 6., pp. 11-12.

[8]Ibid., p. 11.

[9]The Honest Whore, Part I, V.ii, in The Dramatic Works of Thomas Dekker, ed. Fredson Bowers (Cambridge, 1955), p. 108.

[10]"Of a Patient Man," Heaven upon Earth and Characters of Virtues and Vices, ed. Rudolph Kirk (New Brunswick, New Jersey, 1948), p. 155.

[11]I.i.9-12, in The Works of Thomas Middleton, ed. A. H. Bullen (London, 1885). Praemunire was a writ charging an offense against the king or his government and was a

legal device by which law cases were drummed up for the court of King's Bench. Black's Law Dictionary, 4th Edition, 1951. It also forbade appeal from a lower court to a higher one.

[12]John Heywood's Work and Miscellaneous Short Poems, ed. Burton A. Milligan, Illinois Studies in Language and Literature (Urbana, Illinois, 1956), vol. 41, 232. The reference is to the law school at Lincoln's Inn and the court in Lincoln town.

[13]The State of England, p. 25.

[14]Jests to make you Merie, in The Non-Dramatic Works, II, 295.

[15]IV.v, in The Works of Beaumont and Fletcher, eds. Arnold Glover and A. R. Waller (Cambridge, 1905), p. 122.

[16]I.i.355-56.

[17]The Spider and the Fly, ed. John S. Farmer, Early English Dramatists, Early English Drama Society (London, 1908).

[18]References to lawyers starting trouble were more numerous then than now. See also John Day, Law Tricks, III.i.p. 154; Lodowick Barrey, Ram-Alley, II.iii.185, A Select Collection of Old Plays, ed. Robert Dodsley (London, 1825); Middleton and Webster, Anything for a Quiet Life, I.i.217, Webster, Works; Jonson, The Staple of News (II.i. 9-10), Ben Jonson, ed. C. H. Herford and Percy and Evelyn Simpson (Oxford, 1925-50); Webster, A Cure for a Cuckold, III.ii.108, Works; and Burton, Anatomy of Melancholy, p. 69.

[19]Notestein, The English People, p. 93.

[20]Stone, Crisis of the Aristocracy, p. 287. See also Hubert Hall, Society in the Elizabethan Age (London, 1902), chaps. 1-3.

[21]I.v.209-14.

[22]Webster, Works, I.i.216-221.

[23]Ibid., I.i.193-97. In Middleton's The Roaring Girl, Laxton addresses Moll, who is disguised as a man:

"I thought you mistook me sir, you seem to be some young barrister;
I have no suit in law, all my land's sold;

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I praise Heaven for't; 't has rid me of much trouble." (III.i.148-50)
Land and lawsuits, apparently, went hand in hand.

[24]Stone, *The Crisis of the Aristocracy*, pp. 240-41.

[25]Birks, *Gentlemen of the Law*, p. 35.

[26]Ogilvie, *The King's Government*, p. 13.

[27]See above, pp. 22-24. See also Maitland's *The Forms of Action at Common Law*.

[28]Ogilvie, *The King's Government*, p. 13.

[29]James Bryce, "Development of the Common Law," *Law Quarterly Review*, XXIV, 1908, 17. Other scholars agreed, saying that commentary on the law had become "an occult science, a black art, a labyrinth of which the clue has been lost."--Sir Frederick Pollock and Frederick W. Maitland, *History of English Law* (Cambridge, 1911), I, 225.

[30]Jenks, *A Short History of English Law*, pp. 197-98. Donald Veall, *The Popular Movement for Law Reform, 1640-1660* (Oxford, 1970), pp. 58-64.

[31]J. H. Gleason, *The Justices of the Peace in England, 1558-1640* (Oxford, 1969), p. 188.

[32]Walter C. Richardson, *History of the Court of Augmentations, 1536-1544* (Baton Rouge, Louisiana, 1961), p. 6.

[33]*Ibid.*, p. 11.

[34]*Ibid.*, pp. 8, 11-12, 492-94; Simpson, *The Rise of the Gentry*, chap. 2.

[35]V, i, 35-38, 43-48, *The Poems of Joseph Hall*, ed. Arnold Davenport (Oxford, 1969), p. 76.

[36]*The Works of Thomas Nashe*, ed. R. B. McKerrow (New York, 1910), IV, 29; *Gull's Hornbook*, cap. i, *Works*, II, 213; *Every Man Out of His Humour*, IV.i.126; *The Changeling*, IV.iii.113-14. The references are "to be begged for a concealment." "Begged" was a way of getting legal control over an estate.

[37]Stone, *The Crisis of the Aristocracy*, p. 322.

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[38]Copyholders "embraced four distinct types with widely different capacities to weather the storms of the sixteenth century. The first possessed an estate of inheritance, meaning that his heir had an automatic right to admission, and that his entry fine was a fixed monetary sum; the second possessed an estate of inheritance with arbitrable fines, meaning that the fine was subject to negotiation at each change of tenant; the third held for term of life or lives with fixed fines; and the fourth for life or lives with arbitrable fines."--Ibid., p. 307.

[39]Quoted in Stone, Ibid., p. 306.

[40]III.i.146-47.

[41]Timon of Athens, IV.iii.154-56, ed. Tucker Brooke (New Haven, 1947).

[42]Stone, The Crisis of the Aristocracy, p. 632.

[43]Ibid.

[44]Quoted in Stone, Ibid., p. 241.

[45]John Chamberlain, The Chamberlain Letters, p. 194. Raleigh had tried to transfer his property to his heirs to avoid forfeiture for treason, but the clerk miscopied the deed, making it illegal. Chamberlain's attribution of the error to "God's own hand" might be a hint at royal corruption rather than divine intervention. He was naturally fearful of accusing the king of wrongdoing because the letter might fall into the wrong hands. Chamberlain also mentions that Sir Edward Coke was censured not only for his constitutional bouts with James I but for his "corrupt dealing with Sir Robert Rich and Sir Christopher Hatton in the extent of their lands and installment of the debt due the King."--Ibid., p. 172. Rich and Hatton were both trained at the Inns of Court but were, apparently, no match for Coke's legal subtleties.

[46]Percy H. Winfield, The History of Conspiracy and Abuse of Legal Procedure (Cambridge, 1921), p. 159.

[47]Quoted in Stone, The Crisis of the Aristocracy, p. 311.

[48]Anatomy of Melancholy, p. 6. Robert Crowley exaggerates, no doubt, the effect of surveying when he blames that new practice for many of England's ills.

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"What a sea of mischiefs hath flowed out of this more than Turkish tyrrany! What honest housholders have been made the followers of other not so honest men's tables! What honest matrons have been brought to the needy rock and cards! What menchildren of good hope in the liberal sciences, and other honest qualities (whereof this realm hath great lack) have been compelled to fall, some to handicrafts, and some to day labour, to sustain their parents' decrepit age and miserable poverty! What forward and stubborn children have hereby shaken off the godly chastisement; running headlong into all kinds of wickedness, and finally garnished gallow trees! What modest, chaste, and womanly virgins have, for lack of dowry, been compelled either to pass over the days of their youth in ungrate servitude, or else to marry to perpetual miserable poverty! What immodest and wanton girls have hereby been made sisters of the Bank (the stumbling block of all frail youth) and finally, most miserable creatures, lying and dying in the streets full of all plagues and penury! What universal destruction chanceth to this noble realm by all this outrageous and insatiable desire of the surveyors of lands!"--"An information and Peticion agaynst the oppressors of the pore Commons of this Realme," in English Historical Documents, ed. C. H. Williams (New York, 1967), V, 319-20.

[49]Notestein, The English People, p. 94.

[50]Milanese, in The Spanish Curate, is certain the lawyer Bartolus has "cheated me of the best part/Of my estate," I.i.p. 69.

[51]V.i.105-14. See also Jonson, The Devil is an Ass, II.iv.28-39, and Webster, The Devil's Law Case, II.I.163-67.

[52]For a fuller discussion of this charge and its social implications, see below, pp. 130-31.

[53]Harry Morris, "Hamlet as a memento mori Poem," PMLA (October, 1970), vol. 85, 1035-40.

[54]Louis L. Martz, The Poetry of Meditation (New Haven, 1962), pp. 137-39.

[55]Ram-Alley, IV.i.pp. 420-21; when Lurdo offers to lend money, Emilia's instinctive reaction is that he is "A Lawyer right!" Law Tricks, II.i.p. 144.

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[56]One lawyer, John Hale, had the likes of the Earl of Essex and the Lords Cobham and Compton as his debtors. Lord Keeper Egerton denounced Hale as a "gryping and excessive usurer."--Stone, The Crisis of the Aristocracy, pp. 553-54.

[57]"An Alarum against Usurers," The Complete Works of Thomas Lodge (New York, 1963), I, 35.

[58]"A looking Glasse for London and England," in Lodge, Works, IV, 12, 24.

[59]Birks, Gentlemen of the Law, pp. 34-35.

[60]Quomodo's dealings are similar to an actual case involving a broker, named Howe, and solicitor, named Easte, reported in John Hawarde's Les Reportes, pp. 27ff. See "Introduction" of Michaelmas Term, ed. Richard Levin (London, 1967), pp. xii-xiii.

[61]The needy "Gentleman" in Lodge's A looking Glasse for London and England, receives £10 in cash and lute strings valued at £30 for a £40 note. The lute strings only bring him £5, and he loses £25 on his transaction. Works, IV, 12.

[62]Ibid., Works, IV, 24 and "Wits Miserie," IV, 33-34. See also Hall, Virgidemiarum, IV, v, 9-16. Dekker, "The Dead Tearme," Non-Dramatic Works, IV, 50.

[63]The State of England (1600), p. 25.

[64]The Malcontent, V.ii.4-6.

[65]Anatomy of Melancholy, p. 69.

[66]Webster and Middleton, Webster, Works, V.i.123-24. See also Barnaby Rich, The Honestie of This Age, p. 23; Lodge, "A Nettle for nice noses," Works II, 12; and Bertil Johansson, Law and Lawyers in Elizabethan England (Stockholm, 1967), pp. 53-54.

[67]"A Treatise on the Star Chamber," Collectanea Juridica, II, 94-95. E. B. V. Christian, A Short History of Solicitors, p. 74.

[68]Quoted in Ogilvie, The King's Government, p. 83n.

[69]M. Hale, History of the Common Law (London, 1739), p. 175. See also Veall, The Popular Movement for Law Reform, pp. 44, 50; and Carl Bridenbaugh, Vexed and Troubled Englishmen, 1590-1642 (New York, 1968), p. 258.

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[70]Christian, A Short History of Solicitors, pp. 38, 80, 89. A law passed in 1455 and not repealed until 1843 limited the counties of Norwich, Norfolk, and Suffolk to a grand total of thirteen attorneys. Ibid., p. 28.

[71]Veall, The Popular Movement for Law Reform, p. 206.

[72]Attorneys and solicitors were not the only professions to be burdened by their own numbers. Other legal figures, such as barristers and justices of the peace, were complained against because there were too many of them, hindering rather than speeding justice. The complainers were no less than Lord Chancellor, Sir Christopher Hatton, and his successor, Lord Keeper Egerton. Jones, The Elizabethan Court of Chancery, p. 43. Neale, Essays, p. 213.

[73]Trans. Alexander Barclay (New York, 1874), II, 48-52.

[74]The Changeling, I.ii.166-69. In the same play, Alibius speaks of Bedlam as the "Lawyers Haven" because "madmen and fools" cause the lawyer to thrive (III.iii.291-92).

[75]Pierce Pennilesse (London, 1592; facsimile rpt. Menston, England, 1969), p. 16.

[76]In Ram-Alley, The Dumb-Knight, and The Devil's Law Case.

[77]Quoted in Stone, The Crisis of the Aristocracy, p. 240. Smyth was a lawyer who made a fortune working for the lords of Berkeley. Notestein, The English People, p. 94.

[78]A Trick to Catch the Old One, (I.iii.75-79). Perhaps the most ingenious explanation for the litigiousness came from John Aubrey. Speaking of his Northwiltshire countrymen, he claims,

> "They feed chiefly on Milke meates, which cooles their Braines too much, and hurts their Inventions. These Circumstances make them Melancholy, contemplative, and malicious: by consequence whereof more Lawsuites come out of North Wilts, at least double to the Southern Parts."--Aubrey's Brief Lives, ed. Oliver L. Dick (Ann Arbor, 1962), p. xxxii.

[79]"The Uncasing of Machivils Instructions to His Sonne," Nicholas Breton Poems, ed. Jean Robertson (Liverpool, 1967), p. 177.

[80]The Crisis of the Aristocracy, p. 241.

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[81]*Homo Ludens* (Boston, 1955), chap. IV.

[82]Gerald A. Smith, ed. (Lincoln, Nebraska, 1965), II.i.398-99.

[83]Webster, *The Devil's Law Case*, IV.i.26-31.

[84]In Massachusetts, the lawyer's oath of office still requires him to eschew unjust causes.

[85]Jones, *The Elizabethan Court of Chancery*, p. 32.

[86]*The Devil's Law Case*, II.i.107-118. Aubrey tells us that Jonson was inspired to poetry on seeing a woman weeping over the grave of a peaceful and charitable lawyer. The poem went:

"God works wonders now and then
Behold a Miracle, deny 't who can,
Here lies a Lawyer and an honest man."

--*Brief Lives*, p. 179.

[87]John Day, *The Blind Beggar of "Bednall-Green,"* Works, p. 21. Samuel Rowlands, *Martin Mark-all his Apologie to the Belman of London* (London, 1610), F.4.v.

[88]Alfred Harbage, *Shakespeare's Audience* (New York, 1941), p. 91.

[89]*Characters of Virtues and Vices*, p. 148.

[90]*Drama and Society in the Age of Jonson* (London, 1937), p. 258.

NOTES TO CHAPTER III

SERVANTS OF MAMMON

[1]The lawyer's discordant nature and his "wrangling" were constant themes. They are epitomized in the lovesick musings of Thomas Whythorne, an Elizabethan musician who published the first book of English madrigals. His love's father, a lawyer, nipped the budding romance and Whythorne rationalized in musical imagery that this marriage was doomed anyway because a musician, who "delight[s] in concord" could never abide with a lawyer who lived by "discord."--The Autobiography of Thomas Whythorne, ed. James M. Osborne (London, 1962), p. 68.

[2]Law and Lawyers, pp. 50-53.

[3]To be sure, greed was not limited to lawyers, but this study is. Consequently, it will center on greed's effects on lawyers and their practice, though much of what follows is applicable to other people and professions. Lawyers, however, were said to have a peculiar, if not unique, affinity with avarice. As Polymetes says in Day's Law Tricks:

> "Of all Land-monsters, whose vulture Avarice
> Devours men living: they [lawyers] of all the rest
> Deale most with Angells & yet prove least blest."
> (I.i.p. 104)

The pun on "Angells" refers to the divine origin of law and the counsellor's fee, a gold coin.

[4]Faultes, Faultes And nothing else but Faultes (London, 1606), p. 11.

[5]Part I, ed. Arthur Brandeis, EETS, OS, 115 (London, 1900), 130-31.

[6]For further discussion and more examples of these sermons, their methods, and their effect on literary satire, see John A. Yunck, The Lineage of Lady Meed (Notre Dame, Indiana, 1963), pp. 239-58, and G. R. Owst, "The Preaching of Complaint" in his Literature and the Pulpit in Medieval England (Cambridge, 1933).

[7]Wits Miserie, in Works, IV, 27-31.

[8]*Ibid.*, IV, 40.

[9]*Ibid.*, IV, 9.

[10]*The Non-Dramatic Works*, II, 38. For similar themes and methods, see Day's *Peregrinato Scholastico or Learninges Pillgrimage* and Rich's *Faultes, Faultes*.

[11]*Dekker His Dreame*, in *The Non-Dramatic Works*, III, 34.

[12]See also Beaumont and Fletcher, *The Spanish Curate* (I.i.p. 69), and Webster, *The Devil's Law Case* (II.i.87-92). In the latter, Crispiano's adoration of his gold matches Volpone's for greed if not poetry. A similar speech is given in *The Dumb Knight* as the lawyer Prate prays at the shrine of "Chast Phoebe," his gold (I.i.p. 380).

[13]The unsigned painting is one of many dealing with legal topics which were collected and shown at the Royal Courts of Justice in London, summer 1971. The showing was remarkable for its candor, lawyers often being drawn as corrupt, bribe-taking, hardhearted men who doted on the rich and disdained the poor. The artists painted what writers described.

[14]*Wits Miserie*, in *Works*, IV, 44. In Massinger's *The City Madam* (ed. Cyrus Hoy [Lincoln, Nebraska, 1964]), Luke states the eclipse effect succinctly.

> "Religion, conscience, charity, farewell!
> To me you are but words, and no more;
> All human happiness consists in store."
> (IV.ii.131-33)

[15]Quoted in Helen C. White, *Social Criticism in Popular Religious Literature of the Sixteenth Century* (New York, 1944), p. 19. Miss White's book provides an excellent and convenient survey of sixteenth-century attitudes toward greed and its consequences. For their effects on literature, see Alan M. Dessen, "*Volpone* and the Late Morality Tradition," *MLQ*, XXV, 1964, 383-99.

[16]John Day, *Works*, IV.iii.p. 462.

[17]Dekker, *Dramatic Works*, II.ii.p. 337.

[18]*Virgidemiarum*, II, iii, ll. 30-31.

[19]*Works*, p. 212. When a lawyer does receive rare praise, it usually means he works without fee when necessary. See Jonson, *Underwood*, *The Complete Poetry*, pp. 170-71.

Ariosto is a "miracle of a lawyer" because he gives counsel "In honest causes gratis."--The Devil's Law Case, II.ii.108-09.

[20]An Exact Table of Fees of All Courts of Westminster.

[21]The Devil's Law Case, IV.ii.129.

[22]Marston, The Fawn, II.i.402-04.

[23]Satyre II, ll. 87-90. Legal documents were still transcribed on expensive parchment not cheap paper. See also, Webster, "A meere Pettifogger," for a similar metaphor and charge. Works, IV, 35.

[24]Rich. II, II.i.64-65.

[25]"The Present State of England," Harleian Miscellany (London, 1809), III, 210.

[26]Campbell, Lord Chancellors, II, 172-73.

[27]Christian, A Short History of Solicitors, p. 205.

[28]The Dead Tearme, in The Non-Dramatic Works, IV, 35. One poor soul, the son of a Chief Justice, no less, spent over £200 on legal costs in a dispute amounting to £4. Fees added up. Veall, Law Reform, p. 35.

[29]Campbell, Lord Chancellors, II, 173.

[30]Christian, Solicitors, p. 205. Also, Thomas G. Barnes, The Clerk of the Peace in Caroline Somerset, Leicester University Occasional Papers (Leicester, 1961), No. 14, 29-43. The opportunities for trickery and cheating in this relationship were wide. Clerks altered the rolls and even the written pleadings of other lawyers to benefit their own partners. Birks, Gentlemen of the Law, p. 100. "Expediting" had its dangers, as one Chancery clerk learned. For hastening one solicitor's suit, the clerk was beaten by the opposing solicitor. The clerk's head and face were "very much swelled and bruised."--Ibid., p. 110.

[31]"The Uncasing of Machivils Instructions," Poems, p. 136.

[32]Anatomy of Abuses, p. 117.

[33]Ambidexter is a favorite Vice of the Morality plays. See Cambises. Jonson's lawyer in The Devil Is an Ass is Sir Paul Eitherside, and other writers refer to the nefarious

practice: Day, "The Parliament of Bees," Works, p. 599; Hall, Virgidemiarum, IV, 5, ll. 2-4; Dekker, Jests to make you Merie, The Non-Dramatic Works, II, 290.

[34]Dekker, Northward Ho, Dramatic Works, IV.i.p. 360.

[35]Stubbes, Anatomy of Abuses, p. 117. Rich, The Honestie of This Age, p. 57.

[36]III.i.p. 397. See also, Webster, "A meere Pettifogger," Works, IV, 35. Most bribery charges related to solicitors and attorneys. Barristers, however, were not immune from the disease. "Machivil" advises his son never to plead a case unless his tongue is first tipped with gold. Breton, Poems, p. 155. John Heath, while lamenting the passing of an old, moral order, claims there were too many lawyers like Machivil.

> "The mouth speaks from the abundance of the heart,
> So were we taught: but they have found an art,
> Lately at Westminster, which is far worse:
> Most mouths speak from the abundance of the purse."--
> The House of Correction (1619) Sig. C4,v.

[37]Christian, Solicitors, p. 28.

[38]Webster, Works, IV.i.70.

[39]Drama and Society, pp. 190-92.

[40]The Whole Treatise of the Cases of Conscience, Sig. L3, quoted in White, Social Criticism, pp. 240-41. See White's chapters VI and VII as of especial use here.

[41]Yunck, The Lineage of Lady Meed, p. 9. See also Piers Plowman, C Text (IV, 335-409).

[42]The Spanish Curate, III.i.p. 91.

[43]Anatomy of Abuses, p. 12. Chevril, flexible kid leather, was a favorite taunt at lawyers' malleable consciences. Jonson gives that name to two lawyers. Epigrammes XXXVII and LIV, Complete Poetry.

[44]Description of England in Shakespeare's Youth, ed. F. J. Furnivall, Shakespeare Society Publications (London, 1877-78), Book II, Chapter IX.

[45]Wilbur D. Dunkel, William Lambarde, an Elizabethan Jurist, 1536-1601 (New Brunswick, New Jersey, 1965), p. 124. Lambarde continually championed equal justice forrich and poor alike.

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[46]In 1494, Parliament had enacted that poor people were exempt from court costs and should be provided free legal counsel. But by Elizabethan times, to plead "in forma pauperis" had become a cliché metaphor for an exercise in futility. Tucca, in Satiromastix, warns Horace that continued satirizing by him will bring on lawsuits from "Parcell-Poets" who will "Sue thy wrangling Muse, in the Court of Parnassus, and never leave hunting her, till she pleade in Forma Pauperis."--Dekker, Dramatic Works, IV.ii.102-104. Dekker is alluding to the practice of breaking people by the expense of suits. When Horace is driven to poverty he gets no further legal aid despite the Act of 1494.

[47]G. Post, K. Giocarnis, and R. Kay, "The Medieval Heritage of a Humanistic Idea: 'Scientia Donum Dei Est, Unde Vendi non Potest,'" Traditio, XI (1955), 195-234. For a useful summary of that idea, especially as it applies to legists, see Yunck, Lady Meed, pp. 154-59.

[48]Yunck, Lady Meed, p. 156.

[49]Ibid., p. 157. The Christian concept was coupled with the Ciceronian ideal of a lawyer as a man of wealth "who pleaded causes without thought of fees, as part of the obligation owed the state by one who had entered on the steps of public office."--Ibid., p. 158.

[50]Ibid., p. 159.

[51]The Sermons of Thomas Lever, ed. E. Arber (n.p., n.d.), p. 106.

[52]William Perkins, "A Treatise on Vocations," in White, Social Criticism, p. 242.

[53]An Alarum against Usurers, Works, I, 50. Donne makes an analogy between the "Symonie" of churchmen and the practice of lawyers. Satyre II, 75-76. The Complete Poetry of John Donne, ed. John T. Shawcross (Garden City, New York, 1967), p. 21.

[54]A Nettle for nice noses, Works, II, 26. In Wits Miserie, he complains against people who think "graces from God" come from the peoples' own industry. Works, IV, 21.

[55]Dekker His Dreame, in The Non-Dramatic Works, III, 17.

[56]Complete Poetry, p. 170.

[57]J. H. Hexter, More's Utopia: The Biography of an Idea (New York, 1956), p. 148.

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[58]*Early English Dramatists*, ed. John S. Farmer (New York, 1908), p. 453.

[59]*Description of England*, II, 14.

[60]*Sir Thomas Wyatt*, in *Dramatic Works*, V.i.99-100. Cf. *Ram-Alley*:

> "All great men's sins must still be humoured,
> And poor men's vices largely punished.
> The privilege that great men have in evil,
> Is this, they go unpunish'd to the devil."
> (V.i.pp. 359-60)

See also, Claudius' soliloquy, *Ham.* III.iii.56-64.

[61]*Parliament of Bees*, in *Works*, p. 550.

[62]Campbell, *Lord Chancellors*, II, 194.

[63]Stone, *Crisis of the Aristocracy*, p. 236. See Jonson's poem, above p. 16.

[64]*The Paston Letters* (ed. John Warrington [New York, 1956]) record numerous instances where court decisions went to the side with the most armed retainers waiting outside: #31, 32, 58-61. Brute force was often the court of last resort. A Judge Tyrwhit, with 500 men, ambushed Lord Roos over a dispute involving common pasturage. He pleaded ignorance of the law in his defense. Birks, *Gentlemen of the Law*, p. 43.

[65]Winfield, *History of Conspiracy*, pp. 165-66.

[66]*Chamberlain Letters*, p. 32.

[67]*Ibid.*

[68]Elizabethans cited "fear, favor, hatred or malice, covetousness, perturbation of mind (anger or passion), ignorance, presumption, delay, or rashness" as common reasons for perverting justice. Bridenbaugh, *Vexéd and Troubled Englishmen*, p. 256. The Middle Ages had a shorter list: *Munera, Amor, Favor, et Odium*. Owst, *Literature and Pulpit*, p. 341.

[69]Beaumont and Fletcher, *Works*, III.i.p. 199.

[70]*Faultes, Faultes*, p. 45.

[71]*Anatomy of Abuses*, p. 9. Stubbes does not exaggerate.

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The "ideal case" in Chancery lasted three years, two to five years being the usual span of a case. The longest carried from the fifteenth to the seventeenth century. William J. Jones, "Due Process," p. 131.

[72]The Devil's Law Case, II.ii.12-16.

[73]Stubbes, Anatomy of Abuses, p. 9. Stubbes fails to note that the reason cases went to London in the first place was that local courts were notoriously susceptible to influence and threats.

[74]Complaint of Roderyck Mors, Cap. VII, p. 20. See above, pp. 27-28.

[75]Jones, "Due Process," p. 134.

[76]The framers appear to have been unaware that their guarantees of due process and speedy trials were often contradictory. Due process itself slowed trials.

[77]Christian, Solicitors, pp. 46-47.

[78]Ibid.

[79]W. H. Dunham, cited in Ogilvie, The King's Government, pp. 20-21n.

[80]Percy H. Winfield's The History of Conspiracy is an excellent study of the abuses of legal procedure in early times. The present comments are derived from that source.

[81]Beaumont and Fletcher, III.iii.pp. 102-3. See also, Wits Miserie, Lodge, Works, IV, 23-24. In James I's reign two conspirators, Basset and an attorney named Reignolds, were both condemned to "lose their ears, bé marked with a C in the face for conspirators, should stand upon the pillory with papers of their offenses, should be whipped, and each of them fined £500." In addition they lost "lands, goods, and chattels to the King," and Reignolds was "degraded and cast over the Common Pleas Bar."--Winfield, History of Conspiracy, p. 102.

[82]Winfield, History of Conspiracy, pp. 131ff. By the sixteenth century, maintenance "seems to have ranked almost as a recognized profession."--Holdsworth, History of English Law, I, 334.

[83]In his edition of Middleton's A Mad World, My Masters (Lincoln, Nebraska, 1965), Standish Henning wonders why

"blue coats" were so numerous near Westminster (p. 5n.). The reference is to maintainers, who, as Follywit says in the play, are those "soonest believed" in courts. Maintainers appeared as "liveried servants in many baronial households." --Winfield, History of Conspiracy, p. 156.

[84]A prominent Norfolk legal family, the Wyndhams, received their start when their ancestor, John Wyndham, teamed with two notorious Norfolk troublemakers, Sir Thomas Tuddenham and John Heydon, a lawyer.

> "Their chief weapon was the illegal practice of "maintenance," that is to say supporting litigants in whom they had no personal interest in order to damage others whom they desired to embarrass. Their secondary armament was to corrupt and overawe jurors and judges, threatening them with reprisals and attending court settings with armed escorts of sometimes as many as four hundred men."--H. A. Wyndham, The Wyndhams of Norfolk and Somerset (London, 1924), p. 4.

Jonson's lawyer Picklock has a "worming braine/And wrigling ingine-head of maintenance."--The Staple of News, V.ii.86-87.

[85]Bishop Hall, with a touch of irony, complains that when Conscience exclaims against avarice, he is "condemned for a common Barretor."--Heaven upon Earth, p. 186.

[86]Winfield, History of Conspiracy, p. 158.

[87]Birks, Gentlemen of the Law, p. 90.

[88]Winfield, History of Conspiracy, p. 104.

[89]The adversary had no remedy in such a case because "the forms of law" had not been violated. Ibid., pp. 55-56.

[90]Christian, History of Solicitors, p. 78.

[91]Birks, Gentlemen of the Law, p. 51.

[92]Christian, History of Solicitors, pp. 62-63.

[93]The reputation of lawyers was not enhanced by Sir John Popham sitting as Lord Chief Justice of England. As a youth in law school, he was rumored to have taken up robbery to keep him in his profligacy and was supposed to have continued in that line after being called to the bar. Wags said he served his Sergeant's banquet with wine stolen on its way from Southampton to a London alderman. Campbell, Lord Chief Justices, I, 250-51; Aubrey, Brief Lives, p. 245. Early in his legal career, Popham, representing a man who owed £1000,

threatened the creditors with blackmail, claiming they "were not very sound in questions of religion." Fearing charges of atheism, they agreed to cancel the debt and made a bond of £600 to Popham as surety. Popham also threatened their lives, and the creditors eventually lost the £1000, plus the £600 bond. No wonder the creditors prayed before a court to be protected from such "subtle and crafty" men as Popham and his client. Hall, Society in the Elizabethan Age, pp. 142-43.

[94]"The Praise of the Red Herring," in Works, III, 216.

[95]Euphues Shadow, Works, II, 89.

[96]Veall, Law Reform, p. 73.

[97]Leslie Hotson, Shakespeare versus Shallow (London, 1931), pp. 36-37. Hotson's book supplies a catalogue of legal tricks open to lawyers and too often used by Gardiner himself.

[98]To show how far quibbling can go, one scholar has spent 295 pages studying only how articles, conjunctions, and prepositions function in legal decisions. Margaret M. Bryant, English in the Law Courts (New York, 1930).

[99]Holdsworth, Sources of English Law, p. 114.

[100]Holdsworth, History of English Law, IX, 248.

[101]Chancellor Egerton considered one lawyer "too subtle" in drawing up bills and refused to accept any signed by that lawyer. Campbell, Lord Chancellors, II, 194. Aubrey recalls one lawyer, Walter Ramsey, as being so ingenious that he was called "The Pick-lock of the Law." Brief Lives, p. 264. It is not known whether Ramsey served as Jonson's model for Picklock in The Staple of News.

[102]A Harvard law professor, Thomas Reed Howell, defined lawyers' thinking: "If you think that you can think about a thing inextricably attached to something else without thinking of the thing which it is attached to, then you have a legal mind." Quoted in Martin Mayer, The Lawyers (New York, 1967), p. 91. A study of Donne's preaching asserts that his concern for the exact use of words stemmed from his ecclesiastic studies. Gale H. Carruthers, Jr., "John Donne Preaching: Rhetorical Art at Lincoln's Inn." unpublished dissertation, Yale University, 1960. However, Donne's legal training would have made him equally, if not more, conscious of precise wording.

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[103]Fines and recoveries, ridiculed by Hamlet (V.i.106-114), were elaborate and entirely fictitious means for disentailing land.

> "A fine was first of all levied in favor of a person who thereby obtained a sufficient estate to become 'tenant to the praecipe,' and he in turn allowed a collusive real action to be brought against him and vouched to warranty a man of straw, usually the crier of the court. Judgment then went against him, and the demandant recovered against the tenant, and the tenant acquired a nominal judgment against the common vouchee."--Theodore F. T. Plucknett, A Concise History of Common Law (Rochester, N. Y., 1929), p. 388.

In short, the plaintiff became involved in a completely fictitious lawsuit in order to gain clear title to his land.

[104]Law Tricks, III.i.p. 155.

[105]Volpone, I.iii.51-66.

[106]Microcosmography, p. 77.

[107]Philip J. Finkelpearl, John Marston of the Middle Temple (Cambridge, Mass., 1969), p. 26. See also, Franklin Williams, Index of Dedications and Commendatory Verses in English Books before 1641 (London, 1962).

[108]"The Praise of Red Herring," Works, III, 216.

[109]Middleton, Anything for A Quiet Life, I.i.268-74.

[110]I.ii.117-32.

[111]Quoted in J. H. Hexter, More's Utopia, p. 109.

[112]Ibid. Professor R. J. Schoeck has single-handedly tried to rescue the Inns' education from the writers' accusations. See his "Sir Thomas More," 1-14; and "Early Anglo-Saxon Studies and Legal Scholarship," Studies in the Renaissance, V (1958), 102-110.

[113]D. W. Robertson, Jr., A Preface to Chaucer (Princeton, N. J., 1963), p. 313.

[114]Campbell, Chief Justices, I, 287. Campbell has a similar view of Lord Keeper Puckering who, he claims, "was a mere lawyer, having no intercourse with scholars or men of fashion."--Lord Chancellors, II, 162.

[115]Sir Dunbar Plunket Barton, Shakespeare and the Law (New York, 1929), p. 61.

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[116]Campbell, Chief Justices, I, 272.

[117]Brief Lives, p. 68.

[118]Ibid., lxxx.

[119]Potter, English Law, p. 18.

[120]Holdsworth, Sources of English Law, p. 77.

[121]Aubrey, Brief Lives, p. lvii.

[122]Dunkel, William Lambarde, p. 77.

[123]Satire II, ll. 45-57.

[124]The Staple of News, IV.iv.102-108.

[125]Epicoene, IV.vii.12-19; A Trick to Catch the Old One, IV.iv.252-69. See Johansson, Law and Lawyers, 32-33. In Scotland, Sir David Lindsay lampooned the same subjects in The Satire of Three Estates, ed. Matthew P. McDiarmid (London, 1967), p. 147, ll. 2082-97.

[126]"An Innes of Court man," in A Cabinet of Characters, ed. Gwendolen Murphy (London, 1925), p. 100.

[127]John Day, Law Tricks, I.i.p. 125.

[128]Shakespeare Society Publications (London, 1846), pp. 120-39.

[129]Letters, p. 132.

[130]"Red Herring," Works, III, 213-14. The complaints were numerous: Hall, Poems, p. 26; Breton, Poems, p. 10. Burton laments that "a lawyer get[s] more in a day than a philosopher in a year, better reward for an hour than a scholar for a twelvemonth's study."--Anatomy, p. 55. Jonson, never one to mince words over the lawyer's reputation, betrays a less noble motive for attacking lawyers--envy. Drummond recalls that Jonson "dissuaded me from Poetrie, for that she had beggered him, when he might have been a rich lawer, Physitian, or Marchant."--Jonson, Ben Jonson, I, 149.

[131]Dekker, Satiromastix, V.ii.93.

[132]Donne, Satire II, ll. 23-33.

[133]This fashion of Inns of Court men, says Nashe,

"do wholy bestow themselves upon pleasure, and that pleasure they devide (howe vertuously it skils not) either into gameing, following of harlots, drinking, or seeing a Playe."--Works, I, 212.

[134]IV Henry, II, III.ii.343-45.

[135]Satire II, ll. 25-30.

[136]Ram-Alley, III.i.p. 317.

[137]See also, A Mad World My Masters, III.iii.135-62; and Pierce Pennilesse, p. 28.

[138]Pierce Pennilesse, p. 28.

[139]Part I, II.ii.55.

[140]Day, Works, II.i.p. 145.

[141]Pierce Pennilesse, p. 15.

[142]The charge was not new. A medieval "Song on the Venality of Judges" asserts that a "noble lady, fair and lovely" had nothing to fear in court; whereas, one "whom Venus does not stimulate" goes home with a sorrowful heart. Thomas Wright, ed., Political Songs of England, Camden Society (London, 1839), pp. 226-27. Alexander Barclay denounces judges who suffer from "carnall lust."--Ship of Fools, I, 116. The story of Appius and Virginia appealed to both Chaucer and Webster; and, of course, the Biblical tale of Susanna and the Judges was known to all.

[143]Satire V, l. 69.

[144]Satire II, l. 64. See also his Satire IV, ll. 188-195 and Satire V, ll. 68-70.

[145]John A. Yunck, "The Venal Tongue: Lawyers and Medieval Satirists," American Bar Association Journal, XLVI (1960), 268.

[146]Ibid. Yunck also quotes an indelicate poem by Matheolus which argued that the lawyer was worse than the prostitute.

"What shall I say of lawyers?
I will not lie about them for fear:
They have more disgrace among them
Than has a shameful, foolish woman.
Each of them trades on his instruments:

The woman rents her cul for pennies,
And the advocate sells his tongue.
The tongue is a more precious member
Than is the cul; of that I'm sure;
And the sale is thus the more shameful
As the tongue is the more precious."

--Ibid., p. 269.

[147]"Death and life are in the power of the tongue,"--Proverbs, XVIII:21. In the third chapter of his Epistle, St. James warns that a tongue abused "is a fire, a world of iniquity . . . it defileth the whole body, and setteth on fire the course of nature."

[148]For Medieval and Renaissance ideas on sins of the tongue, see John W. Spargo, Juridical Folklore in England (Durham, North Carolina, 1944), especially chap. V.

[149]The Staple of News, II.v.34.

[150]Lady Pecunia or The Praise of Money, in Illustrations of Old English Literature, ed. John Payne Collier (London, 1866), I, 9.

[151]P. xxi. Levin sees Middleton using the same theme in A Mad World, My Masters and again in A Chaste Maid in Cheapside (p. xxii).

[152]Also, 2 Gent of V. II.iv.192; KJ III.i.277; Jul. Cea. III.i.171; Cor. IV.vii.54.

[153]Robertson, A Preface to Chaucer, p. 25.

[154]Ibid.

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LAWYERS: ALCHEMISTS IN A GOLDEN AGE

[1]Ruth Mohl, The Three Estates in Medieval and Renaissance Literature (New York, 1923), pp. 376-380.

[2]The Double PP, in Non-Dramatic Works, II, 185.

[3]One scholar sums up the importance of Justice in Faery Land in this way:

> "The great theme of [Book V] is justice, the queen of the four cardinal virtues, without which civilized society as we know it would perish and Faery Land itself would disappear. In Book V Artegall and Britomart . . . bring nearer the day when their marriage will make possible the continuation of the British nation--a nation of felicitous people whose common ancestors bequeathed them an uncommon tradition of justice and equity."--T. K. Dunseath, Spenser's Allegory of Justice in Book V of "The Faerie Queene" (Princeton, N. J., 1968), p. 8.

[4]Quoted in Sir Gerald Hurst, A Short History of Lincoln's Inn (London, 1948), p. 67. Lodge argued the same position when he satirized people who alter the shape of a justice's nose to suit their own ends. A Margarite of America, XIII, Works, IV, 40.

[5]For a fuller and slightly different interpretation of the lawyer's position, see John D. Eusden, Puritans, Lawyers and Politics in Early Seventeenth Century England (New Haven, 1958), pp. 114-148.

[6]A. P. d'Entreves, Natural Law An Historical Survey (New York, 1951), p. 17.

[7]Ibid., p. 19.

[8]G. P. Gooch, English Democratic Ideas of the Seventeenth Century (Boston, 1959), pp. 28-29. Thomas Paine, in Common Sense, argues from the same position when he says it is "unnatural" for a smaller area (England) to control a larger one (the colonies). That control is against Natural Law, hence also against human law.

[9]Wits Miserie, in Works, IV, 30-31.

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[10]*Virgidemiarum*, II, iii, 1-6. For numerous others concurring with Hall, see the citations in Charles G. and Katherine George, *The Protestant Mind of the English Restoration 1570-1640* (Princeton, N. J. 1961), pp. 224-35. *The Faerie Queene* (V, VII, i-ii) echoes Hall, Lodge and Fortescue.

[11]*Anatomy of Abuses* (Part II), p. 11.

[12]On the Scabbard of the Lent Sword of the City of Bristol, made in 1594 and still carried before the judges at the Assizes, is an inscription containing the first four verses of Romans 13. The inscription states that all power derives from God and that the judge "IS THE MINISTER OF GOD." Cited in Philip Styles, "The Commonwealth," *Shakespeare Survey*, 17 (Cambridge, 1964), 103.

[13]*Satire* V, l. 57. Donne satirizes the corruption of the human section of the chain with the usual pun on "Angels."

> "Judges are Gods: he who made and said them so,
> Meant not that men should be'forc'd to them to goe,
> By meanes of Angels: When supplications
> We send to God, to Dominations,
> Powers, Cherubins, and all heavens Courts, if wee
> Should pay fees as here, Daily bread would be
> Scarce to Kings: so 'tis."
>
> (57-63)

[14]*Virgidemiarum*, II, iii, 7-14.

[15]When "degree" is "vizarded," says Ulysses,

> "Strength should be lord of imbecility
> And the rude son should strike his father dead.
> Force should be right; or rather, right and
> wrong,
> Between whose endless jars justice resides,
> Should lose her names, and so should justice too.
> Then everything includes itself in power,
> Power into will, will into appetitie,
> And appetitè, an universal wolf,
> So doubly seconded with will and power
> Must make perforce an universal prey
> And last eat up himself."
>
> (I.iii.114-24)

[16]White, *Social Criticism*, p. 21.

[17]*Mustapha*, Chorus V. A history of "Justice" as a character in the English morality play, in its trend towards

realism, dramatizes the disparity between what writers saw as ideal justice and its practice in England at the turn of the seventeenth century. In The Castle of Perseverance (c. 1405) Justice is a theological concept bringing the soul of man, Animus, to trial. In A Warning for Faire Women, acted in 1599 and based on an actual case, Justice has degenerated into a human judge who falls asleep during a case. J. Wilson McCutcheon, "Justice and Equity," pp. 405-10.

[18]Pierce Pennilesse, p. 36.

[19]This section is heavily indebted to Frances A. Yates' "Queen Elizabeth as Astraea," Journal of the Warburg and Courtauld Institutes, X (1947), 27-82. See also, Marjorie Nicolson, The Breaking of the Circle (New York, 1960), pp. 92-97, and Elkin C. Wilson, England's Eliza (Cambridge, Mass., 1939).

[20]Yates, "Queen Elizabeth," pp. 55-73.

[21]Ibid., p. 31. Also, Lovejoy and Boas, Primitivism, pp. 37-38.

[22]Yates, "Queen Elizabeth," pp. 30-32.

[23]Ibid., p. 62.

[24]For a full account of the Golden Age myth in both England and Europe, see Harry Levin, The Myth of the Golden Age in the Renaissance (Bloomington, Ind., 1969).

[25]Levin, ibid., 95-99.

[26]The New World was a subject of the myth as Seagull's description of Virginia in Eastward Ho shows. It is as pleasant a country, he says,

> "As ever the Sunne shinde on: temperate and full of all sorts of excellent viands; wilde Boare is as common there, as our tamest Bacon is here: Venison, as Mutton. And then you shall liue freely there, without Sergeants, or Courtiers, or Lawyers."
>
> (III.iii.36-41)

Lawyers, significantly, are missing.

[27]Complete Poetical Works, p. 90, ll. 8-11.

[28]III, i, 991-92, Complete Works, ed. A. B. Grossart (London, 1885), III, 249. In Respublica, when Peace says she has come to Earth to "make perfect union" among men

squabbling for each other's goods, Avarice, the Vice, retorts, "Than goode night the lawiers gaine, by saincte Tronnion:/Westminster hall might goo plaie, if that came to pass" (V.v).--In Illustrations of Old English Literature, I, 71. The division of the world's treasures into "mine" and "thine" indicated the loss of harmony among men and sure proof of the degeneracy of man and his times. See above quote from Spenser and Chapman's Bussy D'Ambois, III.ii.95-107. See also, Levin, The Golden Age, pp. 118-20 for literary allusions to that theme and White, Social Criticism, chaps. 4-5, for religious comments on the same.

[29]Satire V, 11. 35-38.

[30]Olde Mad-cappes new Gally-mawfrey, in Poems, p. 120, 11. 1-2; p. 123, l. 116; and p. 128, 11. 306-10.

[31]II.i.p. 139.

[32]The Belman of London, in Non-Dramatic Works, III, 71.

[33]Dekker His Dreame, ibid., III, 28.

[34]Truths Complaint over England, Works, I, 37, 38.

[35]Pasquils Palinodia, in Illustrations of Old English Literature, I, 15, 19.

[36]"To Sir Robert Wroth," The Forrest, in Complete Poetry, p. 83, 11. 62-64. See also, "Epistle to Countesse of Rutland," ibid., p. 103, 11. 17-26.

[37]Faultes, p. 49. Also, Rich's The Honestie of This Age, p. 21.

[38]Virgidemiarum, II, iii, 15-16.

[39]Anatomy of Melancholy, p. 69. One way to set the state aright, says Burton, is to "root out likewise those causes of wrangling, a multitude of lawyers" who urge people to court over "every toy and trifle" (p. 52). In France, the existence of lawyers was seen as indicative of an advanced stage of degeneracy. Gooch, English Democratic Ideas, p. 11.

[40]The Fawn, V.i.171-76.

[41]"The Kings Prophecie," Poems, p. 116, 11. 211-12.

[42]Quoted in Dunkel, William Lambarde, p. 116.

NOTES TO CHAPTER IV

[43]The Parliament wanted to make human law "'easy, plain and short', more in line with 'the word of God and right reason.'"--Veall, Law Reform, pp. 87-88.

[44]"The Passionate Man's Pilgrimage," in An English Garner, ed. Edward Arber (London, 1909), vol. X, 404.

[45]Satire V, ll. 43-91.

[46]Shakespeare and the Rival Traditions (New York, 1952), p. 255.

[47]For a fuller statement of Shakespeare's view on "kind," see Reese, Cease of Majesty, pp. 113-15. See also, G. Wilson Knight, "The Lear Universe," in The Wheel of Fire (London, 1930).

[48]DNB, XXXVI, 107.

[49]Stone, Crisis of the Aristocracy, p. 210.

[50]Sir John Neale, Essays, p. 70. Burton says, "Judges give judgement according to their own advantage, doing manifest wrong to poor innocents to please others."--Anatomy of Melancholy, p. 41.

[51]Walter Yonge, The Diary of Walter Yonge, ed. George Roberts, Camden Society (London, 1848), XLI, 73-74. Yonge was a lawyer and keenly aware of judicial corruption.

[52]Ibid., 37. Of passing note to English scholars is the fact that Bennet was once awarded an M.A. by Oxford for his help in some litigation. Apparently he did not think the honorary degree payment enough, for he swindled £1,000 given to Oxford in the will of Sir Thomas Bodley which was supposed to go to the Bodleian Library. DNB, IV, 233-35.

[53]Calendar of State Papers, Venetian, 1636-9, pp. 165-6. Quoted in Veall, Law Reform, p. 43.

[54]The Elizabethan World Picture (New York, 1959), pp. 9-17.

[55]Drama and Society, pp. 140-68, passim. See also, Reese, Cease of Majesty, pp. 109-11.

[56]Reappraisals in History (New York, 1961), p. 108. For competing theories of the state, see White, Social Criticism, chaps. 4 and 5.

[57]Crisis of the Aristocracy, p. 56.

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[58]The State of England, p. 23. Stone's analysis of Elizabethan society agrees with Wilson's on the status of lawyers. Crisis of the Aristocracy, pp. 51-52.

[59]p. 76. Attorneys could achieve their position through apprenticeship and did not have to attend an Inn of Court. See above, p. 42.

[60]In Works, IV, 28.

[61]Worke for Armorours, in The Non-Dramatic Works, IV, p. 122. See also his Seven Deadly Sins, ibid., II, 38, 62.

[62]Virgidemiarum, IV, ii. In a later satire, Hall wonders:

> "I wote not how the world's degenerate,
> That men or know, or like not their estate:
> Out from the Gades up to the Easterne morne,
> Not one but holds his native state forlorn."
> (IV, vi, 1-4)

[63]The State of England, p. 19. Wilson's editor writes that he, Wilson, viewed the yeoman's son who aped his betters as "an object of hatred and contempt" (p. v). Envy might also have influenced Wilson's ideas on common lawyers. He spent fifteen years studying the Civil Law just as its importance and profitability were on the wane, being replaced by the Common Law. As his income plummeted, that of the yeoman's son, the common lawyer, rose astronomically.

[64]The Honestie of This Age, p. 21. That the lawyers Rich refers to have "some few scrapings of the law" indicates they are attorneys who did not finish the expensive education to become barristers. Wilson expresses the same view. The State of England, pp. 24-25.

[65]Harbage, Shakespeare's Audience, p. 80.

[66]Stone, Crisis of the Aristocracy, p. 702.

[67]Quoted in Jones, Elizabethan Chancery, p. 43.

[68]Cited in Stone, Crisis of the Aristocracy, p. 33. But, Stone adds, the order was honored as much in the breach as in the observance of it due to "the inexorable process of social change."

[69]Newes From Hell, in The Non-Dramatic Works, II, 118.

[70]There is almost a sub-genre in drama where the plot revolves around a ruler leaving his country and putting a

secondary, often a lawyer, in charge. The lawyer then fleeces the populace or worse. Besides Law Tricks, see Cambises, The Fawn, The City Madam, Measure for Measure, and Humour out of Breath.

[71]In speaking to his servant, Lurdo professes his money-based morality:

> "Abuse? away, away!
> They know me rich, Horatio,--chinke, chinke!
> Whilst this holds out, my cause shall never sincke."
> (I.i.pp. 122-23)

[72]IV.i.p. 439. Norfolk was proverbial for its litigiousness and crafty lawyers.

[73]A typical example of satire on that theme occurs in Massinger's The City Madam where Lord Lacy remarks that he once held Luke as an "upright Honest man." Luke, who has acquired his brother's fortune, answers, "I am honester now/ By a hundred thousand pound" (V.ii.23-26).

[74]Anatomy of Melancholy, p. 55.

[75]Quoted in Christian, History of Solicitors, p. 45.

[76]The State of England, p. 25.

[77]Sylvia L. Thrupp, The Merchant Class of Medieval England (Ann Arbor, Mich., 1962), p. 242.

[78]Stone, Crisis of the Aristocracy, p. 191.

[79]Ibid., p. 78.

[80]Simpson, Wealth of the Gentry, pp. 91-92. Ironically, William Butts (court physician c. 1560) intended to gain his own fortune by acquiring the wardship of Henry de Bure's four daughters. He married his three sons to the daughters while a Thomas Barrow married the fourth. Bacon married Butts' only daughter, Ann. Butts' sons produced only one daughter; whereas Barrow had five sons. The result was Bacon inherited the entire Butts' estate and split, with Barrow, the de Bure estate.

[81]Williams, Early Holborn, I, 690.

[82]Yonge, Diary, pp. 40-41.

[83]Faultes, p. 56. Also, Rich's Honestie of This Age, p. 2.

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[84]*Anatomy*, p. 53.

[85]*Drama and Society*, p. 117. See also, pp. 152ff. Also, Stone, *Crisis of the Aristocracy*, pp. 8-9.

[86]*Wits Miserie*, in *Works*, IV, 5.

[87]*A Strange Horse-Race*, in *Non-Dramatic Works*, III, 336-37.

[88]*Works*, p. 550.

[89]In *Illustrations of Old English Literature*, I, 20.

[90]*Lady Pecunia*, in *ibid.*, I, 6. See Heywood, *Of Gentleness and Nobility*, p. 455.

[91]*Works*, II.i.pp. 425-26.

[92]*A Cure for a Cuckold*, I.ii.21-24.

[93]*Faultes*, p. 26.

[94]*Truths Complaint over England*, in *Works*, I, 38.

[95]*The Complaint of Poetry for the death of Liberality*, in *Illustrations of Old English Literature*, I, 33.

[96]*Peregrinato Scholastico or Learneings Pillgrimage*, in *Works*, pp. 517-18.

[97]Richard Barnfield, *The Complaint of Poetry*, in *Illustrations of Old English Literature*, I, 27. See also, Bernard Harris, "Dissent and Satire," *Shakespeare Survey*, 17 (1964), 129-30.

[98]"Epistle to the Countesse of Rutland," *The Forrest*, in *Poetry*, p. 103.

[99]Luke, in *The City Madam*, and Sisamnes, in *Cambises*, are typical examples of vices masquerading in virtue's clothing.

[100]A recent work has traced the theme of the upside-down world, but the writer starts with Jonson: James Sutherland, *The Upside Down World* (New York, 1972). The theme was centuries old by Jonson's time.

[101]*Anatomy*, p. 53.

[102]p. 12.

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[103]*Dekker His Dreame*, in *Non-Dramatic Works*, III, 22.

[104]See especially, I.ii.125-35.

[105]*Michaelmas Term*, I.ii.8.

[106]Quoted in Marchette Chute, *Ben Jonson of Westminster* (New York, 1953), p. 124.

[107]Bridenbaugh, *Troubled Englishmen*, p. 145n.

[108]*Anatomy*, p. 119.

[109]"The lamentation of a Christen against the Citye of London," in *Illustrations of Old English Literature*, I, 16.

[110]*The Ravens Almanacke*, in *Non-Dramatic Works*, IV.

[111]*A looking Glasse, for London and England*, in *Works*, IV, 11, *passim*.

[112]Harris, "Dissent and Satire," p. 129.

[113]Paul N. Siegel, *Shakespearian Tragedy and the Elizabethan Compromise* (New York, 1957), p. 62. See also, Harris, "Dissent and Satire," p. 129 and Reese, *Cease of Majesty*, p. 106.

[114]George Roberts, ed., p. xxv.

[115]Critics have varying estimates on how closely English satire squared with Tudor life. J. B. Leishman (*The Three Parnassus Plays* [London, 1949], p. 49) and C. R. Baskerville (*English Elements in Jonson's Early Comedy*, Chicago, 1911) argue "that the standard targets of satire are conventional and derivative;" whereas, Hallet Smith (*Elizabethan Poetry* [Cambridge, Mass., 1952], chap. 4) and L. C. Knights (*Drama and Society*) argue that the satire was directed at contemporary people and problems. See also, Alvin Kernan, *The Cankered Muse* (New Haven, 1959), chap. 3.

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ANTI-LEGAL SATIRE IN THE MIDDLE AGES

[1]The Renaissance of the Twelfth Century (New York, 1962). See especially, chap. VII.

[2]G. G. Coulton, Medieval Panorama (New York, 1944), p. 409.

[3]Christian, Solicitors, p. 17.

[4]Their books are, respectively: Literature and the Pulpit in Medieval England; The Characterization of Pilate in the Towneley Plays (East Lansing, Mich., 1950); and The Lineage of Lady Meed. This chapter is heavily indebted to their studies.

[5]See above, pp. 128-30; Yunck, Lady Meed, pp. 154-59; and Owst, Medieval Pulpit, p. 562.

[6]Yunck, Lady Meed, p. 157.

[7]"Prologus," Confessio Amantis, in The Works of John Gower, ed. G. C. Macauley (Oxford, 1901), II, 7, ll. 93-105.

[8]In Rossell H. Robbins, ed., Historical Poems of the XIVth and XVth Centuries (New York, 1959), p. 121. See also, "Abuses of the Age, II," ibid., pp. 144-45.

[9]"The Bisson Leads the Blind," ibid., p. 127.

[10]"The World Upside Down," ibid., p. 150.

[11]For other examples of the Dies Mali Sunt and world upside down themes, see: Owst, Literature and the Pulpit, pp. 226, 231, 307, and 319; Robbins, Historical Poems, pp. 57ff.; Thomas Wright, Political Poems and Songs, Rolls Series (London, 1859), I, 323ff.; Thomas Wright, The Political Songs of England, Camden Society Publications (London, 1834), pp. 252, 270-71. Piers Plowman, as Owst and Yunck have pointed out, is a compendium of current moralizing on the evils of the time.

[12]Wright, Political Poems, p. 323.

[13]Ibid., p. 335.

[14]Robbins, Historical Poems, p. 56.

[15]Passus, V, ll. 13-15, ed. W. W. Skeat, EETS OS 38, London, 1869.

[16]Morton W. Bloomfield, Piers Plowman as a Fourteenth-Century Apocalypse (New Brunswick, N. J., 1961), p. 132. See also, Gervase Mathew, "Justice and Charity in The Vision of Piers Plowman," Dominican Studies, I (1948), 363-72. Langland's Vision and Spenser's Fairie Queene are similar in that the ideal states of both works are preceded by the establishment of justice in each.

[17]Robbins, Historical Poems, p. 145.

[18]"The Taking of Lincoln," in Wright, Political Songs, pp. 19-27.

[19]Ibid., pp. 251-52.

[20]Robbins, Historical Poems, p. 39.

[21]H. S. Bennett, The Pastons and Their England (Cambridge, 1968), p. 167.

[22]Birks, Gentlemen of the Law, p. 43.

[23]Bennett, The Pastons, p. 171.

[24]Ludus XXVI, ed. K. S. Block, EETS ES 120 (London, 1922). Owst claims that "Caiaphas and Annas stand for the evil Ecclesiastical Lawyer."--Literature and the Pulpit, pp. 495-96.

[25]Bryce Lyon, A Constitutional and Legal History of Medieval England (New York, 1960), p. 456.

[26]Chester Plays, Part II, ed. J. Matthews, EETS ES 115 (London, 1916), l. 211.

[27]With the plays being written and rewritten by various authors, consistent characterization from play to play, let alone Cycle to Cycle, was not realized. An exception is Towneley's Pilate. See Williams, The Characterization of Pilate.

[28]XXIX, The York Cycle of Mystery Plays, ed. J. S. Purvis (London, 1957).

[29]The Towneley Plays, ed. George England and Alfred W. Pollard, EETS ES 71 (London, 1897).

[30]York, XXIX.

[31]Towneley, XXI, ll. 204-205, 208-209.

[32]Ludus, XXVII.

[33]Quoted in Herman Cohen, History of the Bar and Attornatus, p. 372.

[34]Lady Meed, especially chaps. III-IV. See Wright, Political Songs, pp. 15-16, 30-31.

[35]Quoted in Cohen, History of Bar and Attornatus, pp. 101-102. See also, Appendix XII in the same work.

[36]The Characterization of Pilate, p. 37.

[37]Ibid., p. 45.

[38]Towneley, XX, 24-27.

[39]Ibid., XX, 22-23 and again XXII, 14-19.

[40]Maitland, Constitutional History, p. 37; Clarkson and Warren, The Law of Property, p. 38.

[41]De Laudibus, pp. 130-31.

[42]E. Williams, Early Holborn, I, 110. Sir Adam de Stratton, the most heavily fined at 32,000 marks, was back on the bench a few years after his "disgrace." Ibid., I, 110.

[43]J. R. Lander, Conflict and Stability in Fifteenth-Century England (London, 1969), p. 167. The Paston Letters abound with open references to bribery. See I, 55-56, 69, 76, 171, and 219 for some references.

[44]Characterization of Pilate, pp. 40-41.

[45]For other discussions of charges against lawyers, see Owst, Literature and the Pulpit, pp. 338-49; Yunck, Lady Meed, pp. 143-70; and Yunck, "The Venal Tongue: Lawyers and Medieval Satirists," American Bar Association Journal, XLVI (1960), 267-70.

[46]Rossell H. Robbins, ed., Secular Lyrics of the XIVth and XVth Centuries (Oxford, 1952), p. 51.

[47]*Ibid.*, p. 50.

[48]*Ibid.*

[49]*Ibid.*, p. 52.

[50]Robbins, *Historical Poems*, p. 131, ll. 15-16.

[51]Robbins, following Skeat, says "the sylken hood" refers to a sergeant-of-law. But the reference is probably to a judge's coif or to his black silk stole which had become the fixed dress of judges in the fifteenth century. The poet refers to the sergeant by his far more distinct dress of a "long gown of Raye" (striped cloth). The sergeants wore gowns of green and blue stripes. Hargreaves-Mawdsley, *A History of Legal Dress*, p. 50; and Birks, *Gentlemen of the Law*, p. 37.

[52]Passus II-IV.

[53]*Lady Meed*, p. 286.

[54]VII, ll. 39-42. See also, V, 53-56.

[55]"London Lickpenny," in Robbins, *Historical Poems*, p. 134, ll. 111-12.

[56]The medieval use of "bribe" is not always clear. Pilate uses it in the sense of buying judgment. But the objections to the need for money to have legal work done might not mean gross bribery but be a complaint against the necessity for paying fees for justice, which should be available to all. It might also refer to the need for "expedition money" to have overworked clerks speedily handle one's case, which was what bribery often meant in the Renaissance.

[57]"Avarice, then, makes the lawyer venal, and venality completely destroys his honor and his responsibility."--Yunck, "The Venal Tongue," p. 268.

[58]*Ibid.* See also, Owst, *Literature and the Pulpit*, p. 63.

[59]Yunck, *Lady Meed*, p. 146n.

[60]*Part I*, p. 152.

[61]*Select Bills in Eyre*, Selden Society (London, 1911), XXX, 52. See also, Owst, *Literature and the Pulpit*, p. 343.

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[62]In Wright, Political Songs, p. 339, ll. 349-53.

[63]Ibid., p. 338, ll. 325-30.

[64]Owst, Literature and the Pulpit, p. 346.

[65]In Wright, Political Songs, p. 338, ll. 319-24.

[66]The Poetical Works of Chaucer, ed. F. N. Robinson (Cambridge, Mass., 1933), p. 22, l. 318.

[67]Some New Light on Chaucer (New York, 1926), pp. 131ff.

[68]Similarly, former Attorney-General Ramsey Clark has recently quit his law practice on the same grounds.

[69]Boccaccio claimed that lawyers were enemies to poetry. D. W. Robinson, Jr., A Preface to Chaucer, p. 313. For other poets, unhappy over competing with lawyers for their due, see Yunck, Lady Meed, pp. 145-46.

[70]These crimes were even more rampant in the Middle Ages than in the Renaissance. See Winfield, History of Conspiracy and Abuse, throughout.

[71]Wright, Political Poems and Songs, I, 312.

[72]Robbins, Historical Poems, p. 128.

[73]Wright, Political Songs, p. 11. See also, Yunck, Lady Meed, p. 94.

[74]Quoted in Owst, Literature and the Pulpit, p. 346. Also, pp. 95, 252.

[75]Wright, Political Songs, pp. 226-27. The prose translation of the Latin song is Wright's.

[76]See Mohl, The Three Estates, pp. 369-375 for the importance of love for the stability of the commonwealth and for man's relationship to God ("God is love").

[77]Wright, Political Songs, p. 47. The prose translation of the Latin song is Wright's.

[78]Thrupp, The Merchant Class, p. 22.

[79]Williams, Characterization of Pilate, pp. 39-40.

[80]Literature and the Pulpit, p. 349.

[81]Lady Meed, p. 310.

BIBLIOGRAPHY

BIBLIOGRAPHY

TEXTS

Alleyn, Edward. Memoirs of Edward Alleyn. Ed. John Payne Collier. Shakespeare Society Publications. London, 1841.

Aubrey, John. Aubrey's Brief Lives. Ed. Oliver L. Dick. Ann Arbor, Mich., 1962.

Barclay, Alexander. Ship of Fools. 2 vols. New York, 1874.

Barrey, Lodowick. Ram-Alley. In A Select Collection of Old Plays. Ed. Robert Dodsley. X, 1744; rpt. London, 1825.

Breton, Nicholas. Nicholas Breton Poems. Ed. Jean Robertson. Liverpool, 1967.

Brinklow, Henry. Complaint of Roderyck Mors. Ed. J. Meadows Cooper. EETS, ES 22. London, 1874.

Burton, Robert. The Anatomy of Melancholy. Ed. Floyd Dell and Paul Jordan Smith. New York, 1927.

Carey, Walter. "The Present State of England." In Harleian Miscellany. London, 1809. III, 195-244.

Chamberlain, John. The Chamberlain Letters. Ed. Elizabeth Thomson. New York, 1956.

Chapman, George. The Plays of George Chapman. Ed. Thomas M. Parrott. 4 vols. New York, 1961.

Chaucer, Geoffrey. The Poetrical Works of Chaucer. Ed. F. N. Robinson. Cambridge, Mass., 1933.

Chester Plays, Part II. Ed. J. Matthews. EETS, ES 115. London, 1916.

Collecteana Juridica; Consisting of Tracts Relative to the Law and Constitution of England. Ed. Francis Hargrave. 2 vols. London, 1791.

Collier, John Payne, ed. Illustrations of Old English Literature. 2 vols. London, 1866.

Crowley, Robert. "An information and Peticion agaynst the oppressors of the pore Commons of this Realme." In English Historical Documents. Ed. C. H. Williams. New York, 1967. V, 313-24.

Daniel, Samuel. The Complete Works of Samuel Daniel. Ed. A. B. Grossart. 5 vols. London, 1885-96.

Day, John. The Works of John Day. Ed. A. H. Bullen. 1881; rpt., new introduction by Robin Jeffs. London, 1963.

Dekker, Thomas. The Dramatic Works of Thomas Dekker. Ed. Fredson Bowers. 4 vols. Cambridge, 1955.

_____. The Non-Dramatic Works of Thomas Dekker. Ed. Alexander B. Grossart. 5 vols. London, 1885.

Denton, Thomas, Nicholas Bacon, and Robert Carey. "A Report of a Select Commission." In English Historical Documents. Ed. C. H. Williams. London, 1967. V, 563-73.

Donne, John. The Complete Poetry of John Donne. Ed. John T. Shawcross. Garden City, N. Y., 1967.

Earle, John. Microcosmography. Ed. Harold Osborne. London, n.d.

Elyot, Sir Thomas. Book Named the Governor. Ed. S. E. Lehmberg. New York, 1962.

An Exact Table of Fees at all of the Courts at Westminster. In The Enforcement of English Apprenticeship 1563-1642 by Margaret G. Davies. Cambridge, Mass., 1956. Appendix III.

Fortescue, Sir John. De Laudibus Legum Angliae. Ed. and trans. S. B. Chrimes. Cambridge, 1942.

Gower, John. The Works of John Gower. Ed. G. C. Macauley. 4 vols. Oxford, 1899-1902.

Hall, Joseph. Heaven upon Earth and Characters of Virtues and Vices. Ed. Rudolph Kirk. New Brunswick, N. J., 1948.

_____. The Poems of Joseph Hall. Ed. Arnold Davenport. Oxford, 1969.

Harrison, William. Description of England in Shakespeare's Youth. Ed. Frederick J. Furnivall. Shakespeare Society Publications. London, 1877-78.

Heath, John. The House of Correction. London, 1619.

Heywood, John. John Heywood's Work and Miscellaneous Short Poems. Ed. Burton A. Milligan. Illinois Studies in Language and Literature, vol. 41. Urbana, Ill., 1956.

_____. The Spider and the Fly and Gentleness and Nobility. Ed. John S. Farmer. London, 1908.

Heywood, Thomas. An Apology for Actors. Shakespeare Society Publications. London, 1841. III, 61-66.

Jacob's Well, Part I. Ed. Arthur Brandeis. EETS, OS 115. London, 1900.

Jonson, Ben. Ben Jonson. Ed. C. H. Herford and Percy and Evelyn Simpson. II vols. Oxford, 1938.

_____. The Complete Poetry of Ben Jonson. Ed. William B. Hunter. Garden City, N. Y., 1963.

Langland, William. The Vision of William Concerning Piers the Plowman. Ed. W. W. Skeat. EETS, OS 38. London, 1869.

Lenton, Francis. The Young Gallant's Whirligig. Shakespeare Society Publications. London, 1846.

Lindsay, Sir David. The Satire of Three Estates. Ed. Matthew P. McDiarmid. London, 1967.

Lodge, Thomas. The Complete Works of Thomas Lodge. 4 vols. 1883; rpt. New York, 1963.

Ludus Coventriae. Ed. K. S. Block. EETS, ES 120. London, 1922.

Markham, Gervase. The Dumb Knight. In A Select Collection of Old English Plays. Ed. Robert Dodsley. X, 1774; rpt. London, 1825.

Marston, John. The Fawn. Ed. Gerald A. Smith. Lincoln, Neb., 1965.

Massinger, Philip. The City Madam. Ed. Cyrus Hoy. Lincoln, Neb., 1964.

_____. The Plays of Philip Massinger. Ed. W. Gifford. 4 vols. 1813; rpt. New York, 1963.

Middleton, Thomas. A Mad World, My Masters. Ed. Standish Henning. Lincoln, Neb., 1965.

_____. The Works of Thomas Middleton. Ed. A. H. Bullen. 8 vols. London, 1885.

Murphy, Gwendolen, ed. A Cabinet of Characters. London, 1925.

Nashe, Thomas. Pierce Pennilesse. 1592; facsimile rpt. Menston, England, 1969.

_____. The Works of Thomas Nashe. Ed. R. B. McKerrow. 5 vols. New York, 1910.

"The Passionate Man's Pilgrimage." In An English Garner. Ed. Edward Arber. London, 1909. X, 404.

The Paston Letters. Ed. John Warrington. 2 vols. New York, 1956.

Preston, Thomas. Cambises. In Chief Pre-Shakespearean Dramas. Ed. Joseph Quincy Adams. Cambridge, Mass., 1924.

Rich, Barnaby. Faultes, Faultes And nothing else but Faultes. London, 1606.

_____. The Honestie of This Age. Percy Society, II. London, 1844. 1-24.

Robbins, Rossell H., ed. Historical Poems of the XIVth and XVth Centuries. New York, 1959.

_____, ed. Secular Lyrics of the XIVth and XVth Centuries. Oxford, 1952.

Robinson, Richard. "Brief Collection of the Queenes Majesties Most High and Most Honourable Courtes of Recordes." Ed. R. L. Rickard. Camden Miscellany, XX. Camden Society. London, 1953. 1-34.

Rowlands, Samuel. Martin Marke-all his Apologie to the Belman of London. London, 1610.

Select Bills in Eyre. Selden Society, XXX. London, 1911.

Shakespeare, William. The Complete Works of Shakespeare. The Yale Shakespeare, ed. Tucker Brooke. 40 vols. 1917; rev. ed. New Haven, 1956.

Stubbes, Phillip. Anatomy of Abuses in Shakespeare's England, Parts I and II. Ed. Frederick J. Furnivall. New Shakespeare Society. Series 6, Nos. 4 and 6. London, 1877-79, 1882.

The Towneley Plays. Ed. George England and Alfred W. Pollard. EETS, ES 71. London, 1897.

Webster, John. The Works of John Webster. Ed. F. L. Lucas. 4 vols. London, 1927.

Whythorne, Thomas. The Autobiography of Thomas Whythorne. Ed. James M. Osborne. London, 1962.

Wilson, Sir Thomas. The State of England (1600). Ed. F. J. Fischer. Camden Miscellany, XVI. Camden Society. London, 1936. 1-47.

Wright, Thomas, ed. Political Poems and Songs. 2 vols. Rolls Series. London, 1859-61.

_____, ed. The Political Songs of England. Camden Society. London, 1839.

Yonge, Walter. The Diary of Walter Yonge. Ed. George Roberts. Camden Society, XLI. London, 1848.

The York Cycle of Mystery Plays. Ed. J. S. Purvis. London, 1957.

SCHOLARSHIP

Archer, Peter. The Queen's Courts. London, 1956.

Barnes, Thomas G. The Clerk of the Peace in Caroline Somerset. Leicester University Occasional Papers. Leicester, 1961.

Barton, Sir Dunbar P. Shakespeare and the Law. New York, 1929.

Barton, Sir Dunbar P., Charles Benham, and Francis Watt. The Story of Our Inns of Court. London, 1924.

Baskerville, C. R. English Elements in Jonson's Early Comedy. Chicago, 1911.

Bennett, H. S. The Pastons and Their England. Cambridge, 1968.

Birks, Michael. Gentlemen of the Law. London, 1960.

Black's Law Dictionary. 4th ed. St. Paul, Minn., 1951.

Bloomfield, Morton W. Piers Plowman as a Fourteenth-Century Apocalypse. New Brunswick, N. J., 1961.

Bowen, Catherine Drinker. The Lion and the Throne. Boston, 1957.

Bridenbaugh, Carl. Vexed and Troubled Englishmen, 1590-1642. New York, 1968.

Bryant, Margaret M. English in the Law Courts. New York, 1930.

Bryce, James. "Development of the Common Law." Law Quarterly Review, XXIV (1908), 1-23.

Campbell, Lord John. The Lives of the Lord Chancellors and Keepers of the Great Seal of England. 3 vols. Philadelphia, 1847.

_____. The Lives of the Lord Chief Justices of England. 4 vols. London, 1874.

Carruthers, Gale H. Jr. "John Donne Preaching: Rhetorical Art at Lincoln's Inn." Diss. Yale, 1960.

Christian, E. B. V. Leaves of the Lower Branch, The Attorney in Life and Letters. London, 1909.

_____. A Short History of Solicitors. London, 1898.

Chute, Marchette. Ben Jonson of Westminster. New York, 1953.

Clarkson, P. and C. Warren. The Law of Property in Shakespeare and the Elizabethan Drama. Baltimore, 1942.

Cohen, H. A History of the English Bar and Attornatus to 1450. London, 1929.

Coulton, G. G. Medieval Panorama. New York, 1944.

Danby, John F. Shakespeare's Doctrine of Nature. London, 1949.

d'Entreves, A. P. Natural Law, An Historical Survey. New York, 1951.

Dessen, Alan M. "Volpone and the Late Morality Tradition." Modern Language Quarterly, XXV (1964), 383-99.

Dictionary of National Biography. Ed. Sir Leslie Stephen and Sir Sidney Lee. 22 vols. Oxford, 1959-60.

Dunkel, Wilbur D. William Lambarde, an Elizabethan Jurist, 1536-1601. New Brunswick, N. J., 1965.

Dunseath, T. K. Spenser's Allegory of Justice in Book V of "The Faerie Queene." Princeton, N. J., 1968.

Eusden, John D. Puritans, Lawyers and Politics in Early Seventeenth Century England. New Haven, 1958.

Finkelpearl, Philip J. John Marston of the Middle Temple. Cambridge, Mass., 1969.

George, Charles G. and Katherine. The Protestant Mind of the English Restoration 1570-1640. Princeton, N. J., 1961.

Gleason, J. H. The Justices of the Peace in England, 1558-1640. Oxford, 1969.

Gooch, G. P. English Democratic Ideas of the Seventeenth Century. Boston, 1959.

Green, A. Wigfall. The Inns of Court and Early English Drama. New Haven, 1931.

Greenough, Charles Noyes. A Bibliography of the Theophrastan Character in England with Several Portrait Characters. Prepared for publication by J. Milton French. Cambridge, Mass., 1947.

Hale, M. History of the Common Law. London, 1739.

Hall, Hubert. Society in the Elizabethan Age. London, 1902.

Harbage, Alfred. Shakespeare and the Rival Traditions. New York, 1952.

_____. Shakespeare's Audience. New York, 1941.

Harding, Alan. A Social History of English Law. London, 1966.

Hargreaves-Mawdsley, W. N. A History of Legal Dress in Europe until the End of the Eighteenth Century. London, 1963.

Harris, Bernard. "Dissent and Satire." Shakespeare Survey, 17 (1964), 120-37.

Haskins, C. H. The Renaissance of the Twelfth Century. New York, 1962.

Hawarde, John. Les Reportes del Cases in Camera Stellata, 1593-1609. Ed. W. P. Baildon. London, 1894.

Hexter, J. H. More's Utopia: The Biography of an Idea. New York, 1956.

_____. Reappraisals in History. New York, 1961.

Holdsworth, Sir William. A History of English Law. 16 vols. London, 1912-63.

_____. Sources and Literature of English Law. Oxford, 1928.

Hotson, Leslie. Shakespeare versus Shallow. London, 1931.

Huizinga, Johan. Homo Ludens. Boston, 1955.

Hurst, Sir Gerald. A Short History of Lincoln's Inn. London, 1948.

Ives, E. W. "The Law and the Lawyers." Shakespeare Survey, 17 (1964), 73-86.

Jenks, Edward. A Short History of English Law. Oxford, 1928.

Johansson, Bertil. Law and Lawyers in Elizabethan England. Stockholm, 1967.

Jones, William J. "Due Process and Slow Process in the Elizabethan Chancery." The American Journal of Legal History, VI (1962), 123-50.

_____. The Elizabethan Court of Chancery. Oxford, 1967.

Kernan, Alvin. The Cankered Muse. New Haven, 1959.

Knight, G. Wilson. The Wheel of Fire. London, 1930.

Knights, L. C. Drama and Society in the Age of Jonson. London, 1937.

Lander, J. R. Conflict and Stability in Fifteenth-Century England. London, 1969.

Leishman, J. B. The Three Parnassus Plays. London, 1949.

Levin, Harry. The Myth of the Golden Age in the Renaissance. Bloomington, Ind., 1969.

Levin, Richard, ed. Introduction to Michaelmas Term. London, 1967.

Lovejoy, A. O. and George Boas. A Documentary History of Primitivism and Related Ideas. 2 vols. Baltimore, 1935.

Lyon, Bryce. A Constitutional and Legal History of Medieval England. New York, 1960.

McCutcheon, J. Wilson. "Justice and Equity in The English Morality Play." Journal of the History of Ideas, XIX (1958), 405-10.

MacKay, Maxine. "The Merchant of Venice: A Reflection of the Early Conflict Between the Courts of Law and the Courts of Equity." Shakespeare Quarterly, XV (1964), 371-75.

Maitland, Frederick W. The Constitutional History of England. Ed. H. A. L. Fisher. New York, 1965.

_____. Forms of Action at Common Law. Cambridge, 1965.

Manly, J. M. Some New Light on Chaucer. New York, 1926.

Martz, Louis L. The Poetry of Meditation. New Haven, 1962.

Mathew, Gervase. "Justice and Charity in The Vision of Piers Plowman." Dominican Studies, I (1948), 363-72.

Mayer, Martin. The Lawyers. New York, 1967.

Mohl, Ruth. The Three Estates in Medieval and Renaissance Literature. New York, 1923.

Morris, Harry. "Hamlet as a memento mori Poem." PMLA, LXXXV (October, 1970), 1035-40.

Neale, Sir John E. The Elizabethan House of Commons. London, 1949.

_____. Essays in Elizabethan History. New York, 1958.

Nicolson, Marjorie. The Breaking of the Circle. New York, 1960.

Notestein, Wallace. The English People on the Eve of Colonization: 1603-30. New York, 1962.

Ogilvie, Sir Charles. The King's Government and the Common Law, 1471-1641. Oxford, 1958.

Owst, G. R. Literature and the Pulpit in Medieval England. Cambridge, 1933.

Phillips, O. Hood. Shakespeare and the Lawyers. London, 1972.

Plucknett, Theodore F. T. A Concise History of Common Law. Rochester, New York, 1929.

Pollock, Sir Frederick and Frederick W. Maitland. History of English Law. 2 vols. Cambridge, 1911.

Post, G., K. Giocarnis, and R. Kay. "The Medieval Heritage of a Humanistic Idea: 'Scienta Donum Dei Est, Unde Vendi non Potest.'" Traditio, XI (1955), 195-234.

Potter, Harold. An Historical Introduction to English Law and Its Institutions. London, 1943.

Prall, Stuart E. "Chancery Reform and the Puritan Revolution." The American Journal of Legal History, VI (1962), 28-44.

Reese, M. M. The Cease of Majesty. New York, 1961.

Richardson, Walter C. History of the Court of Augmentations, 1536-1544. Baton Rouge, La., 1961.

Robertson, D. W. Jr. A Preface to Chaucer. Princeton, N. J., 1963.

Schoeck, R. J. "Early Anglo-Saxon Studies and Legal Scholarship." Studies in the Renaissance, V (1958), 102-10.

_____. "The Elizabethan Society of Antiquaries and Men of Law." Notes and Queries, NS I (1954), 417-21.

_____. "The Libraries of Common Lawyers in Renaissance England." Manuscripta, VI (1962), 155-67.

_____. "Sir Thomas More, Humanist and Lawyer." University of Toronto Quarterly, XXXIV (1964), 1-14.

_____. "The Study of Law French in the Inns of Court During the Fifteenth and Sixteenth Centuries." Kentucky Foreign Language Quarterly, XI (1964), 226-34.

Siegel, Paul N. Shakespearian Tragedy and the Elizabethan Compromise. New York, 1957.

Simpson, Alan. The Rise of the Gentry. Chicago, 1961.

Smith, Hallet. Elizabethan Poetry. Cambridge, Mass., 1952.

Spargo, John W. Juridical Folklore in England. Durham, N. C., 1944.

Stephen, Henry J. A Treatise on the Principles of Pleading in Civil Actions. Washington, D. C., 1908.

Stone, Lawrence. The Crisis of the Aristocracy. London, 1965.

Styles, Philip. "The Commonwealth." Shakespeare Survey, 17 (1964), 103-19.

Sutherland, James. The Upside Down World. New York, 1972.

Tayler, Edward M. Nature and Art in Renaissance Literature. New York, 1964.

Thrupp, Sylvia L. The Merchant Class of Medieval England. Ann Arbor, Mich., 1962.

Tillyard, E. M. W. The Elizabethan World Picture. New York, 1959.

Veall, Donald. The Popular Movement for Law Reform, 1640-1660. Oxford, 1970.

Warren, Earl. "The State of Our Law Schools." New York Times, 19 October 1969, sec. 6, pp. 24-25, 131-34.

White, Helen C. Social Criticism in Popular Religious Literature of the Sixteenth Century. New York, 1944.

Williams, Arnold. The Characterization of Pilate in the Towneley Plays. East Lansing, Mich., 1950.

Williams, E. Early Holborn and the Legal Quarter of London. 2 vols. London, 1927.

Williams, Franklin. Index of Dedications and Commendatory Verses in English Books before 1641. London, 1962.

Wilson, Elkin C. England's Eliza. Cambridge, Mass., 1939.

Winfield, Percy H. The History of Conspiracy and Abuse of Legal Procedure. Cambridge, 1921.

Wyndham, H. A. The Wyndhams of Norfolk and Somerset. London, 1924.

Yates, Frances A. "Queen Elizabeth as Astraea." Journal of the Warburg and Courtauld Institutes, X (1947), 27-82.

Yunck, John A. The Lineage of Lady Meed. Notre Dame, Ind., 1963.

_____. "The Venal Tongue: Lawyers and Medieval Satirists." American Bar Association Journal, XLVI (1960), 267-70.