

Lawyers, Fees & Anti-Lawyer Sentiment in Popular Art, 1800–1925

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AT THE BEGINNING of the twenty-first century there is no profession less loved than the legal profession. Walk down the street in balmy weather and you are sure to see someone wearing a t-shirt with the Shakespearean motto – taken out of context, of course – “First thing we do, let’s kill all the lawyers.” Turn on late-night television and it’s likely that the opening monologue by your favorite late-night host will contain at least one lawyer joke. Do a popular survey of the most despised occupations and law will certainly be among the top three. So intense has contempt for lawyers and the legal profession become that bar associations across the United States have appointed committees to focus on improving the public image of the legal profession. Several years ago, one misguided bar association official went so far as to

suggest that lawyer jokes should be made illegal.

Until the time when lawyers are designated a protected class under federal civil rights legislation (an unlikely occurrence given Congress’s current disdain for the profession), it is likely that anti-lawyer sentiment will remain popular. While focus groups and detailed public polling may provide some insight into the root causes of this widespread dislike of lawyers, a study of the history of anti-lawyer sentiment might also be revealing. The first thing that becomes clear is that dislike of the legal profession is not a new phenomenon. As long as there have been lawyers, there has been popular sentiment opposed to the legal profession. A detailed study of such anti-lawyer feeling would fill a substantial scholarly volume.¹

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¹ See, M. Bloomfield, *American Lawyers in a Changing Society* (Cambridge, Mass.: Harvard University Pr., 1976).

One of the tasks which those concerned with the negative image of lawyers and the legal profession must undertake is to identify the causes of this image. Here, history, particularly the history of popular culture, can be most enlightening. In this brief essay it is my intention to open one such window on popular culture and by so doing shed light upon one of the sources of popular dissatisfaction with lawyers. The target of my investigation is popular art. Within this category, I include art designed and sold to the masses: such things as inexpensive engravings, book illustrations, postcards, and advertising materials. My focus is the period that runs from the beginning of the nineteenth century to the end of the first quarter of the twentieth century.

I have picked popular art – also called commercial art or illustration art by art historians – because it was art not intended solely for consumption by wealthy patrons or museums. It was art to be bought and enjoyed by the masses. Its themes were chosen to appeal to a mass audience. Thus, its prejudices, its sentimentality, its cruel humor on occasion, all reflected popular taste. Since it was produced in order to sell and make a profit or to help market a product, it is an excellent witness to the taste, the prejudices, the sentiment, and the humor of the mass population that consumed it.

I have picked the period from roughly 1800 until 1925 because this was the period that saw the spread of literacy to even the working classes, and that saw the progress in printing technology that made popular art and literature possible from an economic

standpoint. It was during this period that book illustration and satirical engravings reached their peak. This was the age of Hogarth and Rowlandson, of John Leech, Thomas Nast, and others.² This was the age of the illustrated daily and weekly newspapers like *Harper's* and *The Illustrated London News*. It was the age of humor magazines such as *Punch* and *Judge*. It was also a period of rapid progress in the technology of printing, particularly in regard to the development of chromolithography, the process which made inexpensive printed illustrations in color possible.³ This too was the age before radio, television, and the Internet, before cheap air travel, when books, periodicals, and popular art and photography were the entertainment for the growing middle classes.

The long nineteenth century was also the period in which popular art became one of the primary media for social commentary. This century saw the highpoint in the development of political satire in visual form. The pages of the various weeklies and monthlies were devoted not only to art illustrating current events, but also to the current controversies of the day. Thus, it is not at all surprising that lawyers and the legal profession were the subject of a number of both serious and satirical artistic endeavors. When one examines a broad selection of the popular art of this period devoted to lawyers one finds several recurring themes. First, much, but not all, of the art is anti-lawyer in sentiment.⁴ Second, one of the aspects of the legal profession most disdained and, thus, most often satirized, was the matter of lawyers' fees and the greed which was supposed

2 See, for instance, M. Wood, *Radical Satire and Print Culture 1790-1822* (Oxford: Clarendon Pr., 1994); L. James, *Print and the People 1819-1851* (London: Allen Lane, 1976); J.A. Sharpe, *Crime and Law in English Satirical Prints 1600-1832* (Cambridge: Chadwyck-Healy, 1986).

3 See, Peter C. Marzio, *The Democratic Art* (Boston: Godine, 1979).

4 Illustrations in biographical texts about lawyers are generally positive. These are primarily portraits and adhere to certain conventions.

to underlie them.⁵

Criticism of lawyers' fees is as old as the legal profession itself. For instance, one finds such fees attacked as excessive in classical Roman literature.⁶ Indeed, public concern about fees led to passage of the *Lex Cincia* in 204 B.C., a law which prohibited Roman lawyers from charging a fee altogether. The inefficacy of this law is proved by later laws setting limits on the amounts which could be charged.⁷ In the Middle Ages, lawyers were – again, in theory – prohibited from charging clients a fee on the basis that their knowledge of law was a gift of God and to charge for its use would be a sin.⁸ In spite of this, lawyers continued to charge fees. And in so doing continued to provide a strong source from which anti-lawyer feelings could grow. Thus, during the first thousand or so years of Western legal history, lawyers, even though often prohibited from charging fees, did so anyway. This habit of demanding fees for services, though justifiable in that even lawyers must earn a living, opened not only the possibility that such fees might be considered excessive, but also that such feelings would contribute to a general disdain for the legal profession. In order to

combat this growing anti-lawyer sentiment, one medieval commentator suggested the use of an early form of contingency fee, but this, too, seems not to have caught on. Indeed, given later popular views of contingent fees, this may have been fortunate. Instead, from a very early date, lawyers, though holding themselves out as an elite profession rather than a trade or business, made it a point to be compensated for their labors.⁹ And this, in turn, led to lawyers becoming the objects of scorn and dislike.

During the early modern period, from roughly the beginning of the fifteenth century until the beginning of the eighteenth century, lawyers were commonly satirized both in literature and in art as being greedy money grubbers.¹⁰ By the end of the eighteenth century and the beginning of the nineteenth, this image of lawyers as venal creatures had become a commonplace.

One of the best-known legal engravings was produced in London at the end of the eighteenth century. Entitled *The First Day of Term*, it was apparently produced for sale as a single sheet, i.e., designed to be displayed on its own rather than incorporated in a book as

5 One of the classic expositions of this is by Fielding, the English essayist and dramatist:
 Religion, law, and physic were designed
 By Heaven, the greatest blessings on mankind
 But priests, and lawyers, and physicians made
 These general goods to each a private trade
 With each they rob, with each they fill their purses,
 And turn our benefits into curses.

Quoted in J.A. Sharpe, *op. cit.*, n.2, at p. 25.

6 See, for instance, Juvenal, *Satires*, 7:106-149.

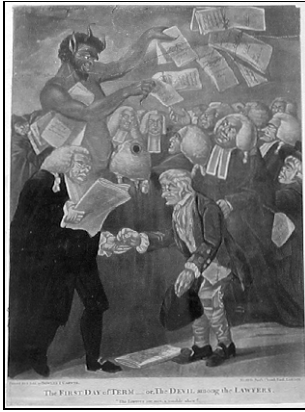
7 See, e.g., the SC Claudianum of A.D. 47.

8 See, J. Brundage, *The Profits of the Law: Legal Fees of University-Trained Advocates*, *American Journal of Legal History*, v.32, n.1 (1988), pp. 1-15.

9 Interestingly, in England, barristers were prohibited from suing clients for non-payment of fees owed on the grounds that such a suit would be ungentlemanly. See, W. Blackstone, *Commentaries on English Law*, bk. III, p. 28 (Oxford, 1778, rptd. Birmingham: Legal Classics Library, 1983).

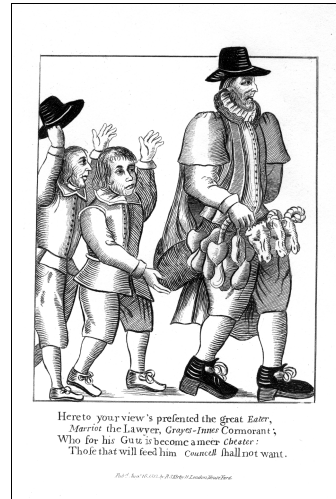
10 See, above all, E.F.J. Tucker, *Intruder into Eden: Representations of the Common Lawyer in English Literature 1350-1750* (Columbia, S.C.: Camden House, 1984). This is a marvelous book and ought to be better known. See, also, on the earlier part of the period, J.A. Yunck, *The Lineage of Lady Meed: The Development of Medieval Venality Satire* (Notre Dame, Ind.: Notre Dame Univ. Pr., 1963).

an illustration.¹¹



The lawyer is both gross in appearance – the product of too much rich food – and is shown counseled by his principal advisor, Lucifer, who perches over his shoulder. He is surrounded by plaintive clients and briefs scattered everywhere. The briefs are labeled with various clients' complaints, including excessively long cases and, over and over, excessive fees. The implications of this satirical print are quite plain: lawyers are colleagues of the Devil and one of the ways in which they torture their clients is by charging excessive fees.¹² The connection of lawyers with the Devil is one of long standing, but it is particularly interesting that legal fees are here visually associated with the Devil's work.

A second example of satirical treatment of legal fees in a single sheet engraving was published by R.S. Kirby at London on 16 August 1813. The image here uses many of the same themes as the earlier print. Here, the lawyer is followed by two men, presumably his clients. The figure of the lawyer is far larger than the



other two, a disparity apparently intended to show his wealth compared to theirs. Both men are shown attempting to attract the lawyer's notice. The lawyer himself is portrayed carrying a large bag, very possibly intended to represent his purse.¹³ One of the two clients is touching the bag. The lawyer is also carrying what appear to be sheep or goat heads – perhaps a vague reference to the connection between lawyers and the Devil, for goat heads are traditionally associated with Satan.

Unlike the earlier print, Kirby's bears a four-line inscription, doggerel intended to make the theme of the picture plain even to those who might not understand the subtle imagery:

*Hereto your view's presented the great Eater,
Marriot the Lawyer, Grayes-Innes Cormorant;
Who for his Gutt is become a meer Cheater:
Those that will feed him Council shall not want.*

Thus, the lawyer portrayed is a glutton, who

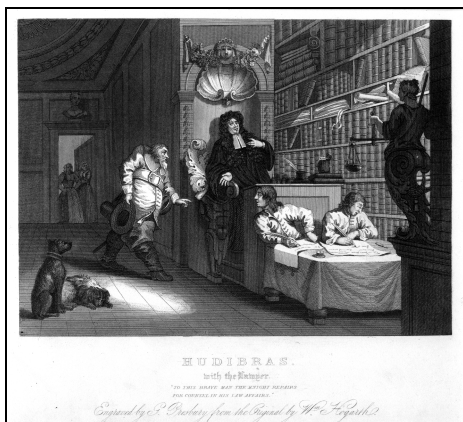
¹¹ In fact, there are two engravings by this title. The one not discussed in the text is a very detailed, non-satirical engraving of Westminster Hall on the first day of term. See, J.A. Sharpe, *op. cit.*, n.2, at p. 148 [plate 50] (dating the illustration to ca. 1760). Sharpe reproduces a second related print at p. 150 [plate 51], entitled "Lawyer and his Agent," which shows the Devil and a lawyer sitting together at work. The Devil holds a bill for services. Sharpe includes later illustrations by other artists on this same theme.

¹² See, Tucker, *op. cit.*, n.10.

¹³ Indeed, this may be a visual pun with the bag intended to be both the lawyer's traditional *green bag* and his purse.

eats all that is available to him. This, of course, is but a metaphor for greed, a metaphor made explicit in the last line of the stanza when we are told that any who is prepared to feed the lawyer's greed and gluttony shall have all of his counsel.

William Hogarth was one of the greatest English artists of the eighteenth century.¹⁴ During his life he created some of the best satirical prints of the period – book illustrations, single sheet engravings, and series of engravings – including a number portraying lawyers. The work most relevant to this inquiry is one in the *Hudibras* series¹⁵ entitled: *To this brave man the Knight repairs for counsel in his law affairs.*



Here we see the lawyer in an elevated chair, almost a throne, surrounded by his library and assisted by two scriveners. A statue of Lady Justice is across from him. To his side is obviously the Knight of the inscription come to seek his counsel. On the table in front of him is a pen, an ink pot, two heavy folio volumes, and a bag with a label marked “100 Pounds.” The lawyer’s gestures are also of some interest. With one hand he clutches his gown; the

other is stretched out towards his client with palm open ... to take a fee, perhaps? Here, again, in Hogarth’s print, the lawyer is not far from his fee.

We may now move ahead several decades to examine the illustration adorning the front page of *The Daily Graphic*, an illustrated newspaper published in New York, on 23 February 1877. The title of the illustration is *A Hint to the Bar Association Proposed Escutcheon for the Legal Fraternity.*



The idea that lawyers might deserve a coat of arms, of course, derives in the United States from de Tocqueville’s comments suggesting that the legal profession was the closest thing to an aristocracy in the United States.¹⁶ Traditionally, when a man took a coat of arms, he went to the College of Heralds who would then create an appropriate design.¹⁷ Almost always, the design would incorporate elements which gave information about the owner, such as his place of origin, his trade, or

14 On Hogarth, see, esp. R. Paulson, *Hogarth: His Life, Art & Times* (New Haven: Yale Univ. Pr., 1971).

J.A. Sharpe, *op. cit.*, n.2, reproduces a good selection of Hogarth’s works concerning lawyers.

15 See, *ibid.*, p. 135ff.

16 A. de Tocqueville, *De la Démocratie en Amérique* (Paris: Gosselin, 1835-40).

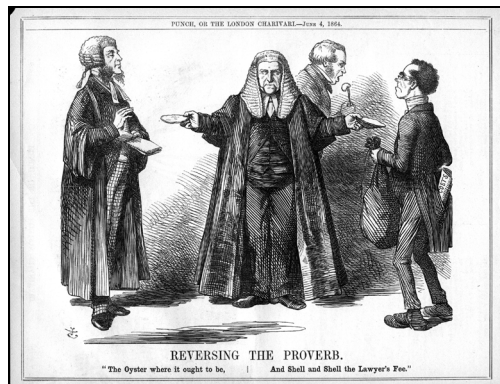
17 The College of Heralds is that institution in England which has the authority to create arms for the nobility.

his family status.¹⁸ The artist, Gray Parker, who drew the arms that appear in *The Daily Graphic*, obviously attempted to do the same thing, but with a satiric purpose.¹⁹ The arms are framed by a fox, a traditional symbol of slyness, and a vulture, known to all the world as a scavenger. The artist's view of the legal character is clear. The arms are crowned by a tiara of skulls and bones, supported by a base of checks in the amount of \$10,000 each and stuffed with bills of large amount. Each of the bones bears an inscription of an area of practice, such as divorce, libel, or real estate. Once again the message is clear: lawyers charge large fees which cause damage – if not death – to their clients. Indeed, a banner springs from the base of the tiara: "Laws I Make and Destroy" – testifying to the power of lawyers and the legal profession.

The coat of arms itself is quartered. The top left quarter portrays three birds: the vulture for greed and scavenging, the owl for wisdom, and what is clearly a predatory bird (a falcon, perhaps), to illustrate lawyers' predatory nature. The top right quarter shows three foxes, for slyness and craftiness. The bottom right quarter shows a lawyer (in costume after Daumier) holding a bag marked \$10,000 and a child hiding beneath his robe. The inscription reads: "Don't fear Madam, you, your little one, and your money are under the almighty protection of the law." Here, the message is two-fold. One, justice is for sale to those who can afford it and, correlatively, lawyers are interested in fees above all else. The lower left quar-

ter is a picture of the same lawyer speaking to two obviously unhappy litigants and saying: "You take the shell, I'll take the oyster." Again, it is clear that the artist is accusing lawyers of taking the greatest profits from the law, rather than the litigants.

This last quarter is quite interesting, because it is closely related to a cartoon that appeared in the English humor magazine, *Punch*, a decade before. In the 4 June 1864 issue, *Punch* ran a cartoon called "Reversing the Proverb."



Here, a judge is holding out two empty shells to a lawyer and to a litigant. The litigant is carrying a bag of money he is about to hand over to the judge and in his back pocket is a document labeled "costs." The lawyer stands by smugly holding his brief. Behind the judge, a ghostly figure (the judge without his robes?) stands eating the oyster taken from the empty shells. The inscription under the title reads: "The oyster where it ought to be, And shell and shell the lawyer's fee." Here, as in the later

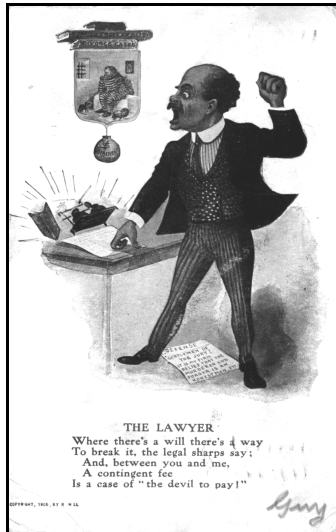
18 As a graduate of the Yale Law School I have always been intrigued that the coat of arms of this venerable institution includes the image of a reptile. Is it possible that Yale has a sense of humor?

19 In fact, the use of a satiric coat of arms to parody the legal profession goes back at least as far as 1692 to a print published in London (see, J.A. Sharpe, *op. cit.*, n.2, at p.82, plate 17). In this print, the arms are surrounded by portraits of the greedy lawyer and the impoverished client. At the top of the crest is a bust of a fox in lawyers' robes surrounded by legal documents. The top half of the arms portrays a lawyer in his office surrounded by clients offering him their purses. The bottom left quarter shows a copy of *Coke Upon Littleton* and the bottom right quarter three coins. The motto attached to the arms is *Noverint Universi Dum Vivo Thrivo*. The illustration is also accompanied by a satiric poem, which begins: "Clients precarious titles may debate/The Lawyer only thrives, grows rich and great:/ The golden fee alone is his delight/Gold makes the dubious cause go wrong or right."

illustration in New York, it is the lawyers and judges who are fat and greedy and the litigant who pays and pays.

All of these examples of popular renderings of the legal profession focus to a large extent upon the greed of lawyers and judges and the high costs for litigants of using the legal system, and translate these concerns into a view of the legal profession as a whole as gluttonous and venal. The fact that such caricatures were

quarter of the nineteenth century because of changes in U.S. and British postal regulations.²⁰ Very rapidly, however, the simple, plain postcard was replaced by a card carrying an illustration on one side. Harrison Fisher and other great commercial artists of the period designed numerous postcards.²¹ The range of illustrations popular with the public was quite large. One very popular genre of postcard was the comic postcard which car-



sold to the masses in the form of prints and as illustrations to popular periodicals is strong evidence as to both how widespread these sentiments were and how traditional they had become by the last quarter of the nineteenth century.

This traditional view of the legal profession appeared in a new form of popular art during the last quarter of the nineteenth century and the beginning of the twentieth century: the postcard. Postcards, inexpensive single sheets of card stock that could be mailed inexpensively, became possible during the fourth

ried either a picture or inscription or both. One sub-genre of the comic card was the occupational card. One finds humorous illustrations about a number of professions and occupations, ranging from "typewriters" to "ragpickers."²² Within this sub-genre are to be found a number of examples which deal with lawyers. Not at all surprisingly, many of the motifs found in the earlier prints and illustrations continue to be used in this new form of popular art. Related to the postcard was the valentine. Valentines were often sentimental, but one genre, the "vinegar valentine," intro-

20 See, D. Allmen, *The Official Identification and Price Guide to Postcards* (N.Y.: House of Collectibles, 1990), pp. 3-5.

21 See, J.L. Mashburn, *The Postcard Price Guide* (Enka, N.C.: Colonial House, 2d ed., 1995), pp. 65-76.

22 During my time as a law school dean, I have often drawn solace from a postcard I keep on my desk. It is a picture of a ragpicker rooting in a barrel of garbage. The card carries the following lines: "Jobs that are worse than your own. Moral: be satisfied. The Ragpicker."

duced a comic element. Valentines, like postcards, on occasion portrayed lawyers and in doing so echoed traditional themes as well.

In examining postcard and valentine treatments of lawyers and legal fees we can begin with three cards which all share the same format.

Each has an illustration of a lawyer accompanied by a short piece of verse. All are labeled simply "the lawyer" and date from the period 1905 to 1907.²³ The first card shows a prosperous-looking lawyer carrying a will and a bag filled with dollar bills marked "my share." There is also a distant figure wearing nothing but a barrel marked "the heir." He has his hand out and an imploring look on his face. The message seems clear: the lawyer, not the heir, has benefited most from the probate. The verse accompanying the illustration makes this clear:

*He has a profound, learned air,
But wills and fees are his care,
In money he trusts
Till his client he busts,
And one hundred percent is his share.*

The second card bears a portrait of a lawyer vigorously arguing a case. At his feet is a plea for the defense. His right hand rests on a table which he has just disturbed by his emphasis and knocked over an inkwell. On the wall is a picture of his client in prison with shackles and ball and chain. One of the balls he bears is actually a money bag labeled "retainer." On top of this picture are two books whose spines are marked "how to prove an alibi" and "divorce cases." Once again the implications are clear. The lawyer is just a bit "shady" and his client suffers at his hands financially. The verse accompanying is less connected to the illustration, for it again

deals with a will:

*Where there's a will there's a way
To break it, the legal sharps say:
And between you and me,
A contingent fee
Is a case of "the devil to pay."*

The third card again bears a portrait of a dapperly dressed lawyer arguing a case. The verse is as follows:

*Your attempts to show your grasp on law
Are well intended, but very raw;
The most you accomplish, that we can see,
Is in collecting your retaining fee.*

The message of all these cards is clear and the same: lawyers are shysters who steal money from the rightful owners, their clients. The fact that two of the cards refer to wills and probate particularly would seem to indicate that, in the popular mind at least, lawyers' fees in testamentary matters were particularly problematic. One might suppose that the origin of this is that heirs generally would expect to receive the whole estate and not have deductions for lawyers' fees. The mention on the second card of contingent fees is also quite significant. The ethics of charging contingent fees in this period were by no means settled.²⁴ The negative mention of such fees on these cards would strongly suggest that such fees were ill thought of by the mass of people.

Another postcard of 1906, while it does not mention fees specifically, does help to explain the growing dislike of lawyers – a dislike connected to the belief that they were dishonest, itself a sentiment connected to fees.

This card bears an unusual illustration of two baby angels, holding a placard which reads: "Here's to the LAWYER," followed by four lines of verse:

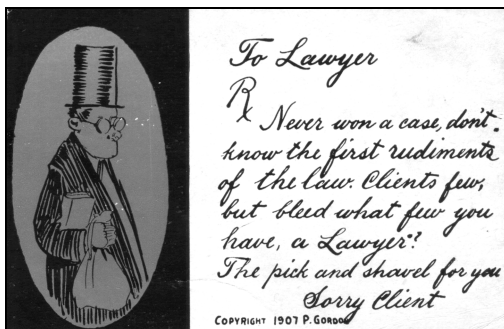
23 The first bears a copyright date of 1905. The second has a copyright date of 1906. The third bears a copyright date of 1907. This was the golden age of comic postcards.

24 See, E. Countryman, *The Ethics of Compensation for Professional Services: An Address Before the Albany Law School and an Answer to Hostile Critiques* (Albany: W.C. Little, 1882), cited in Ross, *The Honest Hour: The Ethics of Time-Based Billing by Attorneys* (Durham, N.C.: Carolina Acad. Pr., 1996).



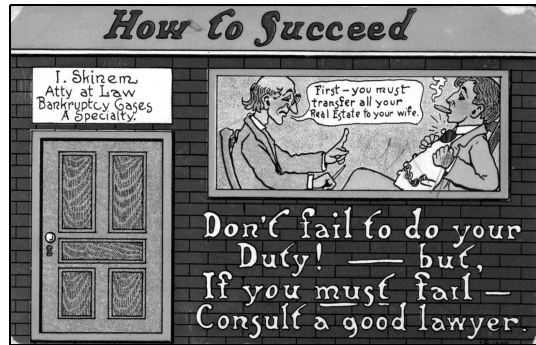
*Virtue in the Middle
Said the Devil as
He seated Himself Between
Two Lawyers.*²⁵

Another card, produced in the United States in 1907, has a horizontal format.



To the left is a sketch of a lawyer in a top hat carrying a book and a money bag. At the right is the following:

*To Lawyer
Rx
Never won a case, don't
Know the first rudiments
Of the law. Clients few,
But bleed what few you
Have, a Lawyer!
The pick and shovel for you
Sorry client.*



The last card we will examine is also the most elaborate.

It too is printed in a horizontal format and shows the outside of a lawyer's office. At the top is a legend which reads: "How to Succeed." On the left is a door over which hangs a sign: "I. Skinnem, Atty at Law, Bankruptcy Cases A Specialty." Next to the door is an open window through which we see a lawyer talking to a client. The lawyer says to his client: "First-you must transfer all your Real Estate to your wife." Below the window, the following is written on the wall:

*Don't fail to do your
Duty! but,
If you must fail
Consult a good lawyer.*

If one leaves aside the comic value of all of these examples of popular art from the nineteenth and twentieth centuries, there are some valuable things to be learned. First, it is clear that in the popular mind, lawyers were viewed in an extremely negative light. Over and over, the theme of the client impoverished by his lawyer is played out in these illustrations and engravings. Furthermore, the belief that lawyers' fees were excessive and wrongfully obtained led to the more general criticism that lawyers were dishonest. The simple syllogism in the popular mind was that lawyers charge

²⁵ The association of the Devil with lawyers is of longstanding literary tradition. See, Tucker, *op. cit.*, n.10; J.A. Sharpe, *op. cit.*, n.2. I discuss this tradition also in my forthcoming book, *The Spirit of the Legal Profession: Lawyers & Character, 1780-1920*, to be published by the University of Georgia Press.

too much for their services, thus depriving their clients of their rightful wealth. Therefore, lawyers are thieves.

It is abundantly clear that the theme of lawyer cupidity is pervasive throughout popular art. While in this article, I have concentrated upon the visual arts, the same theme runs through the rest of popular art, sculpture, literature, drama, etc. For instance, one popular cast-iron mechanical bank produced at the turn of the century in the United States was the "lawyer bank." It consists of a figure of a corpulent lawyer sitting in a chair. You put a penny in his hand to activate the bank's mechanism. As soon as the penny is in his hand, his arm rises and the penny is deposited into his mouth. The message, of course, is that lawyers eat money.

As important as it is to recognize the pervasiveness of popular dissatisfaction with lawyer fees and venality, it is also quite interesting to note that certain aspects of law practice and legal charges seemed to attract greater criticism than others. The probate bar was certainly one major focus for criticism. Of course, the problems of testamentary succession, and the delays and the expenses attendant thereto, were problems which attracted a great deal of attention in the nineteenth century in both Britain and the United States and feature prominently, for instance, in the works of Charles Dickens.²⁶ There is also implicit in

several of the art works analyzed in this article the notion that lawyers profit even if their clients end up poorly off, perhaps bankrupt or even in prison. There is also clear criticism of the use of contingent fees by lawyers. Altogether, one is forced to conclude that in the popular mind, legal fees, no matter their form or amount, were simply thought to be too high and that the lawyers who charged them were scoundrels and thieves.

One other aspect of the examples of popular art which we have examined stands out. It is significant that the popular dislike of legal fees and the artistic conventions for attacking them continued unabated throughout the nineteenth century and equally in England and in the United States. Neither time nor distance seems to have had much effect in creating differences. This would seem to indicate that this popular dissatisfaction with legal fees was deep-rooted in Anglo-American popular thought and must be understood as one of the underlying components of the general anti-lawyer sentiment which has for so long pervaded our society. Thus, to those who believe that anti-lawyer sentiment today is a novel problem, the answer must be "No, lawyers have been disliked for centuries." Further, we must realize that one of the fundamental sources for this popular dissatisfaction, fees, is one most of us would be loathe to eliminate. *GH*

²⁶ See, for instance, Dickens's *Bleak House*.