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OF AMBIDEXTERS AND DAFFIDOWNLILIES: DEFAMATION OF LAWYERS, LEGAL ETHICS, AND PROFESSIONAL REPUTATION

JONATHAN ROSE†

As if one saith to a lawyer, “he is an ambodexter,” there cannot be a greater slander.¹

The Action will lie: as if one say of an Apothecary he had poisoned with his Medicines for the relief of diverse persons, or that a Physician through his practice had killed many of his Patients or of a Lawyer that he had disclosed to the Adversary of his client his counsel or matters of the Client.²

I. INTRODUCTION: DEFAMATION AND LEGAL ETHICS

The medieval and early modern term for engaging in a conflict of interest was “ambidexterity,” from the Latin ambidexter. Ambidexterity was a common form of lawyer misconduct for which medieval lawyers were disciplined.³ Early modern defamation suits brought by lawyers often involved accusations of ambidexterity. Such suits reflected the ethical norms that developed with the legal

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1. King v Shore, 78 Eng Rep 1135 (QB Hilary Term 1603).
2. Case CCLXXII, 123 Eng Rep 466 (CP Michaelmas Term 1591).
profession’s emergence and initial regulation, which also occurred during this period. The Impartial Lawyer, perhaps the first treatise on the legal profession “setting forth such Special Adjudged Cases as immediately concern such persons exercis’d in the Laws of England,” includes defamation actions brought by lawyers. Thus, lawyer defamation should be included in the early modern law of lawyering. In contrast, most current commentators do not consider defamation part of today’s law of lawyering, although slandering a lawyer’s professional reputation or wrongfully accusing him of a conflict of interest are in all likelihood actionable per se.

As the subsequent discussion will show, accusing a lawyer of being an ambidexter was a very serious charge. Nothing was more defamatory than charging a lawyer with disloyalty to a client. Moreover, the word “ambidexter” signified substantial opprobrium in the evolving doctrine of actionable defamation as well as in a broader societal context, as evidenced in religious and literary works conveying public images of disloyal lawyers. Thus, it seems probable that both the concept of disloyalty and the word commonly used to express it account for the


5. The Impartial Lawyer title page (1709). This book further defines its contents as “wherein is Demonstrated, what Remedy Lawyers and Lawful Officers may have, against such as would defame and defraud them. As also, such Relief as others may have against them, for their unjust or irregular proceedings.” Id.

6. Id at 12-18, 69-78, 204-06.

7. Conflict-based defamation suits seem less frequent in United States tort law than in the initial era of secular defamation. With regard to U.S. tort law, less than 5 percent of the identified lawyer defamation suits involved actions based on accusations of conflict of interest. However, the forty-five early modern defamation cases discussing ambidexterity constitute about 35 percent of all the lawyer defamation cases during that period. Although making judgments about the extent of litigation is difficult, the following statistics may provide some rough estimates in comparing current U.S. and early modern English defamation. I have identified 233 lawyer defamation cases in the U.S. since the mid-nineteenth century. Of those, only ten involved lawyers suing because they were accused of a conflict of interest. Although lawyers are not generally treated as public figures, many actions alleging conflict-based defamation involved lawyers who may have been public figures simply because they were accused of a conflict of interest. Although lawyers are not generally treated as public figures, many actions alleging conflict-based defamation involved lawyers who may have been public figures because they were accused of a conflict of interest. Although lawyers are not generally treated as public figures, many actions alleging conflict-based defamation involved lawyers who may have been public figures even if they were not public figures. In that case, trial counsel filed a libel suit against appellate counsel after the latter argued the former’s ineffective assistance of counsel. United States v Hurt, 543 F2d 162 (DC Cir 1976). I am grateful to Marianne Alcom of Arizona State University College of Law Library for her assistance in identifying these cases.

slanderous nature of accusations of ambidexterity and that the frequency of
associated defamation suits was linked to the impact of such imputations on
professional reputation and livelihood. Such suits by lawyers should be viewed
in the broader context of the large volume of defamation litigation and its social
implications. C.W. Brooks suggested that the large number of defamation suits
was a product of a “face to face society” and that defamation was “one of the
most interesting categories of cases in the pre-modern canon of litigation.”
The volume and nature of ambidexterity-based defamation suits evidence the
significant impact of defamation on professional reputation in the early modern
period. The purpose of this Article is to study defamation suits and their interre-
lation with legal ethics, the public and professional images of lawyers, and
professional reputation.

In 1585, Edward Coke, the famous early modern lawyer and judge, brought a defamation suit against Thomas Baxter, who had accused him of being an ambidexter. Baxter had said, “Master Coke . . . at the last assizes in Norfolk . . . was of counsel with both the plaintiff and defendant, and took fees and was retained by them both, whereby one party’s cause was lost; and so did play on both hands.” Coke’s declaration contained the allegations commonly found in early modern defamation cases. He declared that he had “been of good name,

9. The leading chronicler of such matters in the early modern period concluded that slander, nuisance, and misfeasance accounted for the majority of actions on the case between 1560 and 1640. C.W. Brooks, Pettyfoggers and Vipers of the Commonwealth: The ‘Lower Branch’ of the Legal Profession in Early Modern England 68 (Cambridge 1986). This period experienced an enormous litigation explosion on an unanticipated scale. The majority of litigation consisted of debt, trespass, and actions on the case, with debt accounting for a disproportionate share of the increase. See id at 48-74; Christopher W. Brooks, Lawyers, Litigation and English Society Since 1450 9-25 (Hambledon 1998) (“Lawyers Since 1450”). One study found that defamation suits were relatively common in the nineteenth century, leading Brooks to cast some doubt on the accepted notion of its unusual volume in the early modern era. Lawyers Since 1450 at 111.


11. Id at 128. Brooks stated that the attraction of defamation suits involving an imputation that could lead to criminal prosecution was that the plaintiff could collect substantial damages. Id at 90. He also opined that early modern legal thought used slander suits to protect against individual oppression. Id at 195. The rise of secular defamation did not lead to the demise of the ecclesiastical cause of action, which not only continued but expanded. See R.H. Helmholz, ed, Select Cases on Defamation to 1600 alx-xlvi (101 Selden Soc’y 1985) (“Select Cases”). By the early seventeenth century, defamation cases constituted “an increasingly significant proportion of the total number of church court cases, between 25 and 50 per cent.” Lawyers Since 1450 at 71 (cited in note 9).


13. Coke v Baxter, KB 27/1293 m 322 (Easter Term 1585), reprinted in Helmholz, Select Cases at 66-

14. Coke, KB 27/1293 m 322. The defendant pleaded not guilty. Although the court ordered a jury impaneled the following week, there is no record of a verdict or judgment.
fame, condition, conversation, reputation and esteem . . . among divers vener-
able, honourable and eminent men and all other subjects whatsoever of the said
lady the present queen” and that defendant was “scheming wholly to deprive
[him] of his credit, good name, fame and reputation . . . in order to bring [him]
into the hatred of all venerable and other subjects of [Queen Elizabeth].”
He pleaded his nonprofessional social stature in the typical way—that he was an
esquire and “good, true and faithful liegeman” of the queen—and declared his
professional status and expertise, that he had been and still was “learned and
expert in the laws of this realm of England.”

Coke’s case is typical of those by lawyers accused of ambidexterity in many
ways, although also different in a few. Like some other plaintiffs, Coke used the
Latin word ambidexter in his declaration although it was not one of the English
defamatory words. Further, in addition to using language traditional to occupa-
tional defamation, he specifically alleged twice in his declaration that he had
been accused of a “false crime,” an atypical inclusion in professional defamation
cases. Additionally noteworthy is Coke’s status as a famous personage. Coke’s

15. Coke, KB 27/1293 m 322.
16. Id. He did not plead his affiliation or training in the Inner Temple, which had begun in 1572,
nor his formal title as a barrister. He was called to the bar in 1578, but only became a bencher of the Inner
Temple in 1590. See 4 Natl Biography at 685 (cited in note 12). Not until 1591 did a barrister formally plead
his office in a defamation case. This barrister explicitly declared his training, Inn membership, and title,
though further stating that he was “erudite en le ley.” See Hole v Giddy, Case XXVI, 123 Eng Rep 535
(1591); Case CCLXXVII, 123 Eng Rep 466 (1591); Giddy v Heale 72 Eng Rep 846 (KB Trinity Term 1591);
17. Coke, KB 27/1293 m 322.
18. Id. The defendant could not specially traverse these damage declarations. See John H. Baker, ed,
2 Spelman’s Reports 245 (94 Selden Soc’y 1978); Helmholz, Select Cases at lxxx (cited in note 11).
19. Coke said the imputation caused him “to be known and proclaimed . . . as an ambidexter.”
Coke, KB 27/1293 m 322.
20. Coke noted the income lost due to utterance of the “false crime and slanderous words” and the
huge expenditures spent “for clearing and purging himself of this false crime.” Coke, KB 27/1293 m 322.
Coke was not alone in alleging a crime in an ambidexterity defamation case. See, for example, Norton v
Sharlowe, KB 27/1220 (Michaelmas Term 1565). Although Coke was represented by an attorney in this
matter, he may have played a role in the drafting since he may have considered himself to have a special
expertise and interest in defamation. Coke had represented Lord Cromwell in a well known scandalum
magnatum case, Lord Cromwell v Denny, 2 Coke’s Reports, Part III 282 (1579); 4 Nat’l Biography at 685 (cited in
note 12). In the same year as his own defamation case, Coke represented a plaintiff in a defamation case
who was accused of falsifying a record and seeking the defendant’s death. In arguing for the actionability of
the words, Coke stated that they should be taken in malam partem as they were spoken in “heat and anger,”
just as it is actionable “when a man who is angry with his counsellor says that he is an ambidexter.” Adam’s
Case, BL MS Lansd 1057, ff 51r-51v (KB 1585), reprinted in Helmholz, Select Cases at 79-80 (cited in note
declaration emphasized his view of his exceptional reputation and professional competence, exemplified by the high amount of his £1000 claim for damages.

In bringing his case, Coke used the evolving law of defamation. Although the ecclesiastical and local courts had recognized defamation as a cause of action since the thirteenth century, it did not become actionable in the royal courts until the early sixteenth century. As the secular cause of action for defamation developed, lawyers instituted a number of actions. In fact, the first judgment in a defamation suit in 1517 involved a counsel accused of murder and treason.


21. Coke was not alone in using a lengthy and colorful declaration. See, for example, Parker v Meller, KB 27/1250 m 250 (Trinity Term 1574), reprinted in Helmholz, Select Cases at 57-59 (cited in note 11); Blunt v Roberts, KB 27/1317 m 56 (Easter Term 1591), reprinted in Helmholz, Select Cases at 68-71 (cited in note 11).


23. There was one distinctive form of statutory defamation known as scandalum magnatum that was actionable in the royal courts. Two statutes authorized this action, with the latter being more important: Statute of Westminster I, ch 29 (3 Edward I, 1275) and 2 Rich II, st 1, ch 5 (1378). See Fifoot, History and Sources of the Common Law at 128 (cited in note 22); Holdsworth, 3 English Law at 409 (cited in note 12); Kiralfy, Action on the Case at 115-17 (cited in note 22); Milsom, Historical Foundations at 388-89 & n 5 (cited in note 22). The latter statute was reenacted in 1388, 1554, and 1559. Plucknett, Concise History at 486 (cited in note 22). Both statutes were meant to protect the reputations of high-ranking individuals and to prevent discord among the social classes. Although they were criminal statutes, magnates who were defamed obtained civil remedies. See Baker, Introduction at 496-97 (cited in note 22); Holdsworth, 3 English Law at 409-10 (cited in note 12); Helmholz, Select Cases at lxviii (cited in note 11); Plucknett, Concise History at 485-86 (cited in note 22). Holdsworth stated that, as was the case with other medieval statutes, the civil aspect became more significant than the criminal one. Holdsworth, 5 English Law at 207 n 8 (cited in note 12).

24. I am in the process of a larger study of defamation suits by lawyers and their influence on the development of professional and occupational defamation. I have identified approximately 150 defamation suits by lawyers in the initial era of secular defamation, the sixteenth and seventeenth centuries. Helmholz's collection of local court defamation cases contains none brought by lawyers. See Helmholz, Select Cases at xiii-xiv, 27-39 (cited in note 11).

25. Wood v Frogge, KB 27/1022 m 67 (Hilary Term 1517). Woode won by default, and the jury awarded him £42 13s 4d in damages and costs. Woode voluntarily gave up £22 13s 4d. Scholars have generally treated this case as the first defamation judgment. See, for example, Baker, Introduction at 497-98 (cited in note 22); Helmholz, Select Cases at lxxii (cited in note 11); Baker, 2 Spelman's Reports at 238 (cited in
Moreover, a large number of defamation suits by lawyers involved accusations of ambidexterity, like Coke’s.  

II. THE ACCUSATIONS OF AMBIDEXTERTY AND THEIR ACTIONABILITY

This section will start by examining the initial cases in the first few decades of the sixteenth century. These early cases give a good flavor of defamation suits brought by lawyers accused of ambidexterity and the general nature of the pleadings. The cases discussed subsequently illustrate the changing nature of the defamatory words and provide greater insight into the details of pleading and the essential elements of actionable defamation.

A. THE INITIAL CASES

In the first years, common law courts recognized actionable defamation in a group of ambidexterity cases involving lawyers. In 1513, Richard Elyot, a king’s serjeant, sued over an accusation that he had accepted retainers against the Crown. In 1516, John Waller brought a defamation suit against Walter Hobart for calling him “a false attorney and ambidexter and not true.” In 1519, Robert Damet brought a defamation suit against John Hawyn for the same words.
Two other cases, Southworth v Bady and Arscott v Escott, may also have involved ambidexterity, but the plaintiffs' declarations are more general and do not explicitly allege such an imputation.30

All five lawyers pleaded their office, their good reputation, and the impact of the defamation on their clients and fees. Elyot alleged that he was "serviens domini Regis ad legem et eruditus in lege regni Anglie."31 Waller and Damet alleged that they were common attorneys of the bench,32 and Oliver Southworth that he was a court clerk and also an attorney.33 John Arscott alleged that he was a counsel "in lege regni domini Regis Angliae edoctus et eruditus."34 In alleging their good character, the plaintiffs used phrases such as "faithful and true" attorneys, "without stain of falsehood," and "in good faith with [their] clients." In alleging injury, they stated that they acquired great profits for their living and had suffered economic and reputational injury because of the defamation. These standard allegations regarding the plaintiff's reputation are very similar to allegations in ecclesiastical defamation and early defamation cases involving imputation of a crime.35

Perhaps most interesting are the nature of the defamatory words and the manner of pleading them. Because of strict pleading requirements, particularly limitations on the plaintiff's ability to use an innuendo (a supplemental explanatory clause in the declaration) to explain the defamatory nature of the words and on the defendant's right to traverse certain of the plaintiff's allegations, actionability depended critically on the declaration being properly pleaded.36 In the three clear ambidexterity cases, the declaration recounting the defendant's words either used the word "ambidexter" (Waller v Hobart and Damet v Hawyn) or specifically described the conflict of interest (Elyot v Tofte). In the instances specifically using "ambidexter," no explanation of the word was provided, suggesting that judges knew its pejorative meaning. Ambidexterity was a serious form of lawyer misconduct for which lawyers were disciplined as well as punished criminally under the Statute of Westminster I, chapter 29.37

The imputation of disloyalty in Elyot is noteworthy for an additional reason.

30. In Southworth v Bady, KB 27/1017 m 103 (Michaelmas Term 1515), an attorney was accused of being the "falsest harlot that is in London and is a buyer and seller of messy matters and falsly hath desseyved me and bought me and sold me." In Arscott v Escott, CP 40/1059 m 277 (Michaelmas Term 1529), a lawyer sued his client for saying, "I warrant that John Arscott der not come noo more to London for he is clerely discharged of pledyng in my mater and all other materes in the lawe for he hath bought and sold me in my mater." The plaintiff won judgment and damages.

31. Elyot, KB 27/1006 m 62. Defamation suits by serjeants were uncommon. It is possible to treat this case as impugning Elyot's office as king's serjeant and not more generally as one injuring professional reputation, or perhaps as a combination of the two.

32. Waller, CP 40/1016 m 417; Damet, CP 40/1046 m 46d.

33. Southworth, KB 27/1017 m 103.

34. Arscott, CP 40/1059 m 277.


36. See generally id at lxxii-lxxv, lxxvii-cvi.

The declaration alleged that the defendant said:

[T]he same Richard, while the sworn serjeant at law of the same lord King and of counsel to the same lord King ... took from various persons various sums of money to be of their counsel against the same lord King and that the same Richard, while the serjeant of the same lord King and of counsel to him, gave counsel to various persons against the same lord King, his Crown and dignity.\(^{38}\)

A serjeant's acceptance of retainers against the Crown must have been regarded as sufficiently disloyal for a false accusation of such to amount to slander. But such conduct was not classic ambidexterity and was probably not punishable under the Statute of Westminster I. There is some doubt as to the duty of the Crown's legal officers during the medieval period,\(^{39}\) but such conduct may have impinged on a broader loyalty norm imposed on the king's legal representatives. The declaration in \textit{Eylot} said that such conduct was contrary to Richard's duty, his oath to the king, and the law of the king.\(^{40}\) Considering such an accusation defamatory suggested that such conduct, if it involved merely being adverse to the Crown as opposed to being on both sides of the same litigation, was treated as an expanded form of ambidexterity by the beginning of the sixteenth century.\(^{41}\)

In all five cases, the nature of the pleading makes it difficult to ascertain whether the words attributed to the defendant were the actual words spoken by the defendant or simply the plaintiff's paraphrasing. Language, such as allegations in \textit{Waller} and \textit{Damet} that the defamatory words were spoken publicly in front of the plaintiff's neighbors, suggest that the declarations contained the defendants' actual words.\(^{42}\) However, none of the three cases recites the defamatory words in English, which later became the routine practice. At this early point in the evolution of defamation, and with likely experimentation in pleading by lawyers, the practice was more variable in this respect.\(^{43}\) Plaintiffs in other cases used the word "ambidexter," although not as one of the actual defamatory words.\(^{44}\) Thus, it is possible that the word "ambidexter" in \textit{Waller} and \textit{Damet}\n
\begin{itemize}
  \item \(^{38}\) \textit{Eylot}, KB 27/1006 m 62.
  \item \(^{39}\) Rose, 7 U Chi L Sch Roundtable at 168-70 (cited in note 3).
  \item \(^{40}\) \textit{Eylot}, KB 27/1006 m 62 ("falso et contra sacramentum suum prefato domino regi primitum et contra debitem ipsius Ricardi et contra legem ipsius domini regis").
  \item \(^{41}\) Baker, \textit{The Order of Serjeants at Law} at 61 n 7 (cited in note 27). The pleadings are ambiguous with regard to whether Elyot was acting as counsel on both sides of the same case or merely represented a party adverse to the Crown.
  \item \(^{42}\) Both cases contain the words "in publica audiencia proximorum et vicinorum ipsius [Johannis/Roberi] falsus et malitioso palam publice et expresse nominavit vociferavit et pronunciavit." CP 40/1016 m 417; CP 40/1046 m 46d.
  \item \(^{43}\) Helmholz, \textit{Select Cases} at 42-51 (cited in note 11). In both \textit{Southworth} and \textit{Arscott}, the plaintiff included the actual defamatory English words in the declaration. KB 27/1017 m 103; CP 40/1059 m 277.
  \item \(^{44}\) See, for example, \textit{Coke}, KB 27/1293 m 322; KB 27/1238 m 114 (Trinity Term 1571), reprinted in Edward Coke, \textit{A Book of Entries} 22, PL 19 (1671); \textit{Ryvett v Markes}, KB 27/1223 m 237 (Trinity Term 1567). In \textit{Coke}, the plaintiff's declaration stated that the defendant's English words, which did not include
originated with the plaintiff. *Eloot* contains no language about speaking the slander in public. Likewise, the grammatical construction of the defamatory words in the declaration suggests that the plaintiff added them. Whether originating with the plaintiff or defendant, the use of the word "ambidexter" and description of the specific conflict of interest suggest that the plaintiffs believed they had pleaded actionable defamation. The defendant's plea of not guilty and request for a jury in *Damet* may suggest that he concurred.

**B. THE MID-SIXTEENTH CENTURY**

During the next several decades, both the defamatory words and pleadings evince some important changes. For instance, it became routine to plead the actual English defamatory words in the declaration. Most often the defamatory words specifically described the plaintiff's conflict of interest. For example, in *Nasshe v Chance*, the declaration stated that the plaintiff's client had said, "Master Nasshe you be a false man for you have taken money fyrst of me and nowe you be ageynst me in the same matter and thus you have used many menne whiche in case it wer known your heles wolde be turned uppe in Westminster Hall."45 In *Kellett v Watson*, the defamatory words, again by a client, were: "Edward Kellet is a false man for he hathe receyvyd of me and Robert Frauncys and all for one matter of varyance betwene us."46 *Norton v Sharlowe* showed a somewhat different form of disloyalty, alleging that the defendant said, "William Norton was Backis attorney agaynst Bettes and he dyd take twenty shyllynges of Bettes to stay Backis nisi prius."47 That the accusations detailed the particulars of the plaintiff's alleged disloyalty is not surprising. Detailed accusations were the easiest and clearest manner of impugning, and medieval disciplinary cases invariably described the particulars of the miscreant lawyer's conflict of interest48 and

"ambidexter," caused the plaintiff "to be known and proclaimed . . . as an ambidexter." But this is somewhat different than the declarations in *Walter and Damet*, which recited that the defendant called the plaintiff an ambidexter.

45. CP 40/1129 m 124 (Trinity Term 1546). Nasshe pleaded that he was "unus attornatorum cuius . . . de banco." The procedure in this case was interesting as the defendant was attached on a writ of privilege, making the procedure more like that for a bill than for a writ. The defendant's lawyer confessed, pleading non est informatus. The court entered judgment for the plaintiff for £5 6s 8d.

46. CP 40/1170 m 1132 (Easter Term 1557). Kellett pleaded that he was "unus attornatorum cuius . . . de Banco . . . ac purus et immaculatus attornatus." Again the defendant was attached on a writ of privilege. The defendant pleaded not guilty and asked for a jury trial. No result is indicated.

47. KB 27/1220, 8 & 9 Eliz I (Michaelmas Term 1565). Norton v Sharlowe is interesting as the defendant did not plead guilty, as was true in many cases, or enter a plea in the nature of a confession and avoidance, such as admitting to speaking the words but offering to verify their truth. Instead, the plea was a special traverse (abaque bos) in which the defendant attempted to give his version of what he said and explain why he said it. The special traverse was an interesting pleading development used by the defendant to deny actionability that complicated pleading. Helmholz, *Select Cases* at cvii-cxvii (cited in note 11). The plaintiff reasserted what he had said in the declaration, as was typical in these cases. No result is indicated.

48. Rose, 7 U Chi L Sch Roundtable at 151-63 (cited in note 3).
rarely used the word "ambidexter." \footnote{In my study of seventy-six cases concerning the discipline and civil liability of lawyers for conflict of interest, not one of the cases actually used the words "ambidexter" or "ambidexterity" even though those were the common contemporary terms for conflict of interest. See id.}

Another interesting change in the defamatory words was that they sometimes included imputations of a lawyer's breach of the duty of confidentiality in addition to or instead of a breach of the loyalty norm. In \textit{Spary v Huband}, the plaintiff alleged that the defendant said, "[B]y god's body Sparry thowe art a false harlot and hast reseveyed of my father twenty marks for his matter and nowe that thowe hast falsely dysceyved my father and sold his matter to his adversary and shewed hym all my fathers counsell." \footnote{CP 40/1095 m 447 (Michaelmas Term 1537). Sparry alleged that he was "bonus et fideis attornatus et in officio attornatu ad communem legem." The defendant pleaded not guilty and asked for a jury trial. No result is indicated. The defendant's lawyer was Michael Nasshe, the plaintiff in \textit{Nasshe v Chance}, CP 40/1129 m 124.} Similarly in \textit{Snagg v Grey}, the declaration stated, "[G]e ye to him to be of your counsell he will deceythe yowe he was of counsell with me and reveled the secrets of my cause." \footnote{KB 27/1238 m 114 (Trinity Term 1571), in Coke, \textit{A Book of Entries} 22, pl 19 (cited in note 44).} Again, it is not surprising that clients would accuse disloyal lawyers of violating the duty of confidentiality. Medieval discipline cases often contained similar charges; confidentiality and loyalty have always been linked in regulation of lawyer misconduct, from medieval to current times.

Similarities between the medieval discipline cases and the early modern defamation cases demonstrate the relationship between defamation and legal ethics. Notably, the defamatory words in \textit{Nasshe} included the disciplinary consequences of ambidexterity: "in case it wer knowen your heles wolde be turned uppe in Westminster Hall." \footnote{The phrase is colloquial for disbarment. According to Baker, in the sixteenth century "[m]iscreant attorneys were physically tossed over the bar." 2 \textit{Spelman's Reports} at 85 n 1 (cited in note 18).} There seems to be little doubt that words detailing a lawyer's particular disloyalty or breach of confidentiality were actionable defamation.

\textbf{C. THE END OF THE SIXTEENTH CENTURY}

As the end of the sixteenth century approached, the nature of the defamatory words took more forms. The regular actual use of the word "ambidexter" began, with the word first clearly appearing as an English word perhaps in 1578. In \textit{Kyghley v Jeffreys}, the plaintiff received judgment for having been called "an evil
man” and “an ambidexter for you played on both handis you took money of bothe parties of one Bugden and Balies and I wyll stande to hytt and justyfye the same.” Judges also considered it actionable to accuse a lawyer of being a “daffidowndilly,” a colloquial term for ambidexter in the north of England. Judicial discussion of daffidowndillies involved the important task of ascertaining an imputation’s common meaning to determine actionability.

An interesting development was the variance of the words describing ambidexterity, which were sometimes metaphorical, using images of ambidexterity rather than specifically describing the particular instance of disloyalty. The cases recount imputations of “playing on both hands” or “taking money from both parties” both in conjunction with ambidexterity, as occurred in Kygley, and without that specific word as occurred in Coke v Baxter. In Ryvett v Markes, the plaintiff prevailed, alleging that the defendant said, “[H]e hathe played one on bothe parties and hathe two faces in one hoode and he shall well know within

53. CP 40/1360 m 1057 (Trinity Term 1578). The plaintiff said he was “unus attornatorum... de banco per diversos annos iam elapos.” The defendant attempted to justify the words by describing the plaintiff’s double-dealing in Chancery, which the plaintiff denied, pleading de injuria. The amount of the verdict was not indicated although the plaintiff had alleged £300 in damages, a relatively high amount. Interestingly, the plaintiff voluntarily remitted all damages.

54. Although no actual suit by a lawyer accused of being a daffidowndilly was found, a number of opinions used the term as an example of how some words implied a reference to an attorney and, therefore, “touched” the plaintiff in his profession. In Litman v West, the first such case, the actionability of the word “daffidowndilly” is attributed to Hutton, which may refer to Common Pleas justice Richard Hutton. The imputation was: “He is a cozener, and hath cozened me of 20s.” The court found for the plaintiff, rejecting the defendant’s argument that the words were too general and did not touch the plaintiff’s profession as a lawyer. 124 Eng Rep 392, 393 (1629). Subsequent “daffidowndilly” cases included: Peare’s Case, 10 Car 1 (Michaelmas Term 1634), discussed in Henry Rolle, Un Abridgment of Pluribus Cases et Resolutions del Common Ley 55, pl 17 (1668) (this may be a mistaken reference to the lawyer defamation case, Peard v Jones, 79 Eng Rep 1064 (1656); Asbton v Blgrave, 88 Eng Rep 192 (Trinity Term 1724); Annison v Blofield, 124 Eng Rep 924 (1682). In his treatise, Sheppard included “daffidowndilly” among a number of examples of actionable colloquial words in a section titled “Words actionable in some Countries only.” Sheppard, Action Upon the Case for Slander at 5-6 (cited in note 22). In particular, he stated, “So to say of a man in some places, as in the North Country, He is a Daffidowndilly, where it is taken for this, He is an Ambidexter: These, and such like words, spoken in the places where they are known, will be actionable.” Sheppard also suggested that the words might be actionable if spoken to someone who did not understand their meaning, as that person might ask those who did know. Id at 6. The meaning of “daffidowndilly” seems to have persisted into the twentieth century as evidenced by its use in fiction. In Unnatural Death, a character explaining that apparently meaningless words may have a legal meaning says, “For example, the word ‘daffy-down-dilly.’ It is a criminal libel to call your lawyer a daffy-down-dilly. Hal Yes, I advise you never to do such a thing. No, I certainly advise you never to do it.” Dorothy L. Sayers, Unnatural Death 151-52 (Harper 1995) (first published 1955).

55. Some of the cases, such as Litman, 124 Eng Rep 392, found the accusation clearly actionable, while others required explanation in pleadings and suggested using the innuendo clause to do so. Such a use of the innuendo was more expansive than its conventional use to specify an individual identified only by a personal pronoun in the imputation. Helmholz, Select Cases at lxxxvii, xcvii (cited in note 11). In Preston’s Case, the court said, “[A]jn action lies for saying, Thou art a daffidowndilly (innuendo) ambidexter.” 74 Eng Rep 1064. In Annison, the court said, “To say of a lawyer, He is a daffidowndilly, hath been adjudged actionable; and to say of a merchant, He hath eaten a spider, Mr. Justice Wild said was actionable: but all these must be with averments what the meaning is.” 124 Eng Rep 924.
these two dayes.”56 The declaration included the word “ambidexter,” which may have strengthened Ryvett’s case even though it was still not one of the English defamatory words.57 In Shire v King, the plaintiff alleged that the defendant said of him, “Thou art a paltry fellow, thy credit is fallen, thou dealst on both sides, and dost deceive many that trust thee.”58 The defendant argued that the words were not actionable. The court unanimously disagreed, stating that “he doth deal on both sides” touched him in his profession and were slanderous: “[If one saith to a lawyer, ‘he is an ambidexter,’ there cannot be a greater slander.”59 In other cases, the defamatory words suggested disloyalty, such as “overthrowing” the client’s cause, although there is insufficient information to determine whether ambidexterity was involved.60 During this period, the law generally treated all of these different forms of defamatory words as actionable.

The newer and different imputations prompted some judicial reluctance, which cast doubt on their clear actionability and foreshadowed the difficulties that emerged in the seventeenth century. John March’s discussion of Snagg v Grey in his 1647 treatise Actions for Slander suggests that the actionability of the expanded imputations of disloyalty prompted a need for judicial interpretation. Attempting to explain the court’s holding that an accusation that an attorney “reveal[ed] the secrets of my cause” was actionable, March states that “the words are to be taken as they were spoken,” “not of lawful revealing to the judge” but as “revealed to those from whom they ought to be concealed.”61 In the determination of the ordinary meaning of “revealing the secrets of my cause,” the court emphasized the words “he will deceive you” spoken “jointly” and “in the same breath.” The words were slanderous because they “touch the Plaintiff in his art and science, which require men of great trust and confidence,”

56. KB 27/1223, m 237 (Trinity Term 1567). The plaintiff alleged that he was “homo eruditus in legibus huius regni Angliae reputatus.” The defendant pleaded not guilty and asked for a jury trial.
57. Ryvett alleged that the plaintiff “was brought into infamy as an ambidexter and false dissimulator.” KB 27/1223 m 237.
58. Shire v King, 80 Eng Rep 24 (1603); Shore, 78 Eng Rep at 1135. Sir Henry Yelverton, later a Common Pleas judge, represented the plaintiff. His report of the case contains an interesting comment that it was permissible for an attorney to “deal on both sides” as an arbitrator.
59. Shore, 78 Eng Rep at 1135, discussed in John Comyns, 1 A Digest of the Laws of England 381 (A. Strahan 5th ed 1822) (Anthony Hammond, ed); Sheppard, Action Upon the Case for Slander at 85, 88, 143 (cited in note 22); Charles Viner, 1 A General Abridgement of Law and Equity 457-58 (2d ed 1791). Similar words were found actionable in Anderson’s case, where the defendant said of the plaintiff, “John Thompson is a paltry fellow, for he doth deal on both sides, and deceives them which put him in trust.” 74 Eng Rep 982 (1604-05).
60. For example, in Martyn v Burlings, 78 Eng Rep 832 (Michaelmas Term 1597), 75 Eng Rep 1042 (1597), the plaintiff alleged that the defendant said, “[Martyn] is the foolishest and simplest attorney towards the law; and if he doth not overthrow your cause, I will give you my ears. He is a fool and an ass.” The court upheld a verdict for the plaintiff, stating, “[T]o say that, ‘an attorney will overthrow his client’s cause,’ is a great slander, and toucheth him in his place.”
61. The treatise also noted that the defendant imputed deceit and that the declaration alleged that the words were malicious. March, Actions for Slander at 85 (cited in note 22).
and thus were in "derogation of the confidence and fidelity of the Plaintiff." 62
Although in this instance the court interpreted the words according to their
common and contextual meaning, later courts subjected words to more rigorous
inquiry.

D. THE SEVENTEENTH CENTURY

Although the actionability of accusing a lawyer of ambidexterity continued
into the seventeenth century, recovery became more difficult. 63 In the seve-
teenth-century ambidexterity cases, as in lawyer defamation cases generally,
some judges hesitated to find imputations actionable. Courts often attributed
to words their common meaning in light of the intent of the speaker under the
circumstances. 64 Seventeenth-century imputations of disloyalty, like those of the
prior century, commonly accused the lawyer of playing on both hands. How-
ever, the results of the seventeenth century cases are less predictable than those
of the earlier cases. If the imputation contained words that shed additional light
on the meaning of "both hands," "both sides," or "both parties," then it was
usually actionable. 65 In Shire v King, the court noted the importance of the addi-
tional words regarding deception, stating "all the words being coupled
ought to have reference to his calling, and cannot be taken but in malam par-
tem." 66 The court equated the coupling to calling the lawyer "an ambodexter." 67

Without additional words in the imputation or declaration, actionability was
more doubtful. Stating that the plaintiff was "a good attorney, but that he will
play on both sides" 68 was held actionable in some cases, but not in all. In Dawtry
v Miles, where a client accused his lawyer of taking "fees of both hands ... being

62. Id at 86.
63. See Baker, Introduction at 369-70 (cited in note 22); Holdsworth, 8 English Law at 335, 353 (cited
in note 12); Plucknett, Concise History at 495 (cited in note 22).
64. As one court said, "Words shall be taken in such sense as they are spoken." Peard, 79 Eng Rep
at 934. The defendant said of the plaintiff, a barrister, "He is a dunce, and will get little by the law." Id at
933. In moving for arrest of judgment, the defendant argued, "[A]n action lies not for calling one a 'dunce';
for Dunce was a great learned man, and he was thereby compared to him, and then no discredit." Id. The
defendant was referring to the medieval philosopher, Duns Scotus. F.W. Maitland, English Law and the
Renaissance 18 n 41 (Cambridge 1901). In rejecting the argument, the court said, "[W]ords are to be in-
tended according to the common speech; and dunce, in common intendment and speech, is taken for one
of dull capacity and apprehension, and not fit for a lawyer." Peard, 79 Eng Rep at 934.
65. "Playing on both hands" was used broadly, perhaps connoting deception without reference to
disloyalty in the representation of a client. In Rich v Holt, the defendant accused the plaintiff, inter alia, of
being "a paltry lawyer, and use to play on both hands," because the plaintiff actively provided information
leading to the indictment of a person after stating a contrary intention to that person. 79 Eng Rep 230 (KB
1610). These words were held not actionable, although other words spoken by the defendant were held
actionable.
67. Shire, 78 Eng Rep at 1135.
68. Brown v Hook, 123 Eng Rep 628 (1615); 1 Brownl & Golds 5 (1616) (holding the words action-
able but judging against the plaintiff for not declaring that the words were spoken of himself).
Attorney for me," the court saw the question as "whether this would amount to as much as if he had said the Plaintiff was an ambidexter." Two justices thought the words "may have a double intendment, for it may be intended that hee took fees with both hands lawfully." But they added, "[I]f he had said that he was an ambidexter, an action would lie, for this is vo[c] oris, and cannot be otherwise intended." Two other justices disagreed, saying "the action would lie, for that the words amount to as much as ambicidester, and are the english of it, and a direct affirmation and no Metaphor." The record did not reveal a judgment in the case.

Two contemporary commentators, March and Sheppard, thought that the words should be actionable, with the former agreeing that the words meant ambidexterity and that to interpret them otherwise "would be to make a construction against the express meaning of the words." The views of March, Sheppard, and the latter two judges seem correct. In the context of all the words and the express reference by the defendant to the plaintiff as his attorney, the common meaning of the words would be an imputation of classic ambidexterity. Moreover, many of the medieval discipline and civil liability cases expressly referred to taking money from both parties. The doubt of the former two judges can only be explained by their hostility toward defamation actions; their interpretation may illustrate an application of the rule of mitior sensus.

69. Dawtrey v Miles, 2 Jam 1 (KB Michaelmas Term 1605), discussed in March, Actions for Slander at 78-79 (cited in note 22). The client also said, "Dawtrey is a knave, a cozening knave . . . and by knavery suffered me to be condemned at Ipswich at Green suit wilfully, being Attorney for me." Perhaps reflecting skepticism toward defamation cases, the court held only the words quoted in the text as "considerable in this Case." March seems to be discussing and quoting an unpublished report of the case.

70. March, Actions for Slander at 78-79 (cited in note 22). It is not clear how it would have been lawful to take fees with both hands unless the phrase is given absolute literal meaning. The original says vo cartis, which may be a misprint. R.H. Helmholz has concluded that it should have been written voc artis, an abbreviation for vocabulum artis, meaning a term of art. E-mail from Helmholz to Jonathan Rose (April 7, 1999) (on file with author). Yelverton, one of the judges, may have had a conservative attitude toward these cases, even though he had represented slandered lawyers. In another case that might have involved ambidexterity, the other judges thought it was defamatory to call a lawyer a Judas. Starker v Taylor, 124 Eng Rep 406 (1629). This was so because calling someone a Judas commonly referred to a betrayer "[a]nd what can be more scandalous to an attorney, than to be a betrayer of his clients?" Id at 407. Yelverton disagreed, saying, "Judas was a traytor to Heaven, and therefore this reason should not be drawn to earth, to cause actions between men." Id at 409.


72. Id at 79-80.

73. Id at 79; Sheppard, Action Upon the Case for Slander at 91 (cited in note 22) (stating that although "it hath been doubted whether an Action would lie for these words . . . this Case seems to others to be out of doubt Actionable.")

74. A notable judicial means of restricting actionability was the rule of mitior sensus, which construed words "mildly" and was sometimes applied in an extreme fashion that led to absurd results. See Baker, Introduction at 501-02 (cited in note 22); Holdsworth, 8 English Law at 335-36, 353-56 (cited in note 12); Milsom, Historical Foundations at 386-87 (cited in note 22); Plucknett, Concise History at 495 (cited in note 22). John H. Baker and S.F.C. Milsom have collected a number of cases illustrating this rule, including Stanhope v Bith, 76 Eng Rep 891 (KB 1585). Baker and Milsom, Sources of English Legal History at 637-44 (cited in note 20). C.W. Brooks has viewed mitior sensus as a response to the early modern period's enormous increase in litigation. See Brooks, Lawyers, Litigation and English Society at 110 (cited in note 22). Helmholz...
Imputations of breaches of confidentiality also met with some resistance, again with ambiguous results. Sheppard noted a case supporting the principle that it was defamatory to say “Thou didst disclose thy Clients Counsel to his Adversary.” He also said that it was actionable to say “Hee revealed the secrets of my Cause” or “Hee did disclose my counsel.”75 Other cases drew finer distinctions. One court said, “If one says of a lawyer, he did reveal the secrets of my case; that is not actionable, for he might reveal it to a Judge: but if he said, Goe not to such a one, he did reveal the secrets of my case, that is actionable.”76 It seems unlikely that a client would publicly accuse his lawyer of wrongdoing by revelation to a judge. Such a strained interpretation manifests the judicial skepticism toward defamation. In context, the common meaning of the words seems defamatory. Moreover, the courts had been disciplining lawyers for such breaches of confidentiality since the end of the thirteenth century.77 A 1655 indictment of a lawyer for ambidexterity made several references to client confidences and their improper revelation.78 The indictment used language similar to

downplayed the rule of mitior sensus as a reaction to the flood of litigation. He saw the rule as a legitimate affirmation of the requirement that the defamation subject the plaintiff to criminal penalties. He concluded that during much of the sixteenth century plaintiffs commonly won cases and words were interpreted as commonly understood and that the rule was not strictly applied until the later Elizabethan period. Helmholz, Select Cases at xcii-xcv (cited in note 11). “In 1600 the days in which the doctrine of mitior sensus was to reach the heights of sublety and of perversity still lay in the future.” Id at xcv. Baker stated that this rule ceased to be applied in 1714 and after then words were always interpreted “in their most natural and obvious sense.” See Baker, Introdufion at 370 (cited in note 22). Helmholz said that the cases in the reports, as contrasted with those in the plea rolls, may contain a disproportionate number of mitior sensus cases because of the reporters’ interest in such cases. See Helmholz, Select Cases at lxvii (cited in note 11). He also implied that the ecclesiastical courts did not use the mitior sensus rule in any strict sense but may have “toyed” with it.


76. Hitcham v Cason, 124 Eng Rep 428, 432 (1632). An undated case even said that delivering copies of a client’s evidence to his adversary might not be actionable if done with good intent. Stone v Mountford, discussed in Broke’s Case, 72 Eng Rep 661 (Trinity Term 1595). As was true earlier, a court could exclude lawful revelation to a judge if there was also an accusation of deception.

77. Well into the seventeenth century, lawyers emphasized their duty of confidentiality. In one case, a lawyer sued for being accused of suborning perjury and pleaded his office by alleging his expertise and his retention by important clients in important matters in which the clients revealed their secrets to him. Causa pro Conciliatore de subornandone Pedudi, Liber Pladtandi 53, pl 76 (1674) (“homo eruditus in legibus huius regni Angliae... eundem querentem ad essendum de consilio suo in lege per magnum tempus retinuerit et ei secreta su ut fideli Conciliario suo in rebus magni momenti revelaverunt”).

78. Rex v Walker (1655), reprinted in John Tremaine, Placita Coronae 261 (1723). The indictment of John Walker, legis apprenticus, says William Walker, after retaining and paying John Walker, made known “dicto Johanni Walker omnia et singula secret a materias et circunstancia tangencia et concernencia,” and that John Walker took money from the adverse parties, Jocosa Langrish and Robert May, for giving them counsel, and that he “narravit et patefecit eisdem Jocose Langrish et Roberto May secretas materias et circunstancia cause predicte per prefatum Willelmum Walker ex parte ipsius prefato Willelmi Walker... et secreta et materias ipsius W. Walker in causa predica fidelite concelaret et minime detegaret prefatris Jocose Langrish et Roberto May in maximum scandalum et abusum.” The Star Chamber also charged lawyers for being ambidexters. See, for example, Ralph Bradwell’s Case, 124 Eng Rep 110, 113 (Hilary Term 1627).
defamation declarations when describing the lawyer's misconduct. Although this indictment, like medieval criminal charges, did not use the word "ambidexter," another case did.

In addition to more careful scrutiny of defamatory words, the manner of pleading the lawyer's office, a well established requirement, changed. Although it was often sufficient for the plaintiff to declare that he was a lawyer and that the words touched his profession, some cases seemed to be more demanding. Some courts required an explicit allegation that the plaintiff was a practicing lawyer when the defamatory words were spoken. In one case, where an attorney was accused of taking money from his client's opponent for not acting in his client's case, the court arrested a judgment in favor of the attorney, because he failed to allege that he was an attorney at the time the words were spoken. A later court raised a question about a slander suit by a barrister whose client accused him of dealing falsely and joining with the other side. The court stated that "the plaintiff ought to aver he is a practiser, for he may be a barrister and not practise." The court-imposed requirements seem particularly harsh in the former two instances, since the accusations clearly imply that the words were spoken of the plaintiff in his professional capacity. In both cases, the courts said the words were otherwise actionable.

It would not be fair to conclude that the law changed significantly from the prior century. More often than not, imputations were actionable; only some judges evinced doubts. Throughout the seventeenth century, explicit accusations of ambidexterity continued to be clearly actionable. A problem only arose when different words were used to impute disloyalty, since courts did not give a standard type of words that was actionable.

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79. For example, it says that in taking money from the second client and revealing the secrets of the first client, John Walker acted "falso secrete clandestine corrupte subdole deceptive injuste sinistre et ex iniqui luci causa" and "falso callide et deceptive . . . in maximum scandalum et abusum." Rex v Walker, in Tremaine, Placita Coronae at 261 (cited in note 78).

80. Simon Mason was jailed and disbarred after it was proved that "he had been an ambidexter." Simon Mason's Case, 89 Eng Rep 55 (Trinity Term 1673) (emphasis in the original).

81. See Baker, The Legal Profession at 111 (cited in note 16); Helmholz, Select Cases at lxxi-lxxxii, xcvi-xcvi (cited in note 11).

82. See, for example, Smayles v Smith, 123 Eng Rep 626 (1614-17).

83. In, for example, Moore v Synne, the King's Bench reversed a judgment in favor of an attorney, who was accused of being a "forging knife" and had declared that "he [had] been an attorney for several years now passed." 81 Eng Rep 675 (1619). The grounds for reversal were that the attorney had failed to allege that he was an attorney when the words were said: even if he had been an attorney for the "30 or 40 past years" that did not show that he was one "at the instant time when the words were spoken." Id. The court indicated that the defamatory words themselves, such as calling a lawyer an ambidexter, would satisfy this requirement. The court also stated that the result might have been different if he had declared that he had been an attorney in the years just passed.

84. Smayles v Smith, 123 Eng Rep 626 (1616). Smayles alleged that he "had been an attorney." The defamatory words alleged were: "He . . . took corruptly five marks of Brian Turner, being against his own client, for putting off and delaying an assise against him."

85. Gibs v Price, 82 Eng Rep 670 (Trinity Term 1650).

86. See, for example, Anonymous, 78 Eng Rep 130 (Michaelmas Term 1613); Starkey, 124 Eng Rep 406 (1629); Gibs v Price, 82 Eng Rep 670 (1650).
clear indication of when such accusations were actionable. It is not clear that ambidexterity-based lawyer defamation suits faced the same opposition or skepticism that characterized seventeenth century general judicial attitudes toward defamation.

E. THE INFLUENCE OF THE AMBIDEXTERITY CASES ON OTHER DEFAMATION CASES

Ambidexterity defamation cases, having established the actionability of accusations of lawyer disloyalty, influenced court determinations of what constituted slander in other contexts. In fact, the ambidexterity cases may have set the stage for the more general recognition of occupational and professional defamation. Use of ambidexterity cases arose in at least three types of situations. First, courts cited accusations of ambidexterity to contrast other cases involving lawyers where the words were not actionable, e.g., because the words were too general or otherwise did not touch the plaintiff in his profession.

Second, the court used the ambidexterity cases to determine the actionability of accusations directed at persons in other occupations. In finding against a merchant accused of falsity and keeping a false debt-book because the merchant failed to declare that customers or others would not deal with him or did not trust him, the court illustrated actionability by analogy to statements that a lawyer was an ambidexter or unfaithful. In another case involving a clerk accused of dishonesty in keeping accounts and "set[ting] the town together by the ears; and so... they were never in quiet," the court said the words were actionable as they "touch him in his office and credit; for his office is an office of trust" and compared them to saying of a lawyer, "Thou didst disclose my counsel" or "Thus didst deliver my evidence to my adversary."

The courts also used the ambidexterity cases with imputations against doctors. In holding for a surgeon accused of "poisoning the wound of A.B. for gain of money," because the words touched him with "falsity or wicked dealing in his Art or Science," the

87. In *Roe v Clarges*, a justice of the peace who held several other governmental offices was accused of being "a Papist." 90 Eng Rep 42 (Hilary Term 1694). The King's Bench affirmed the verdict for the plaintiff, relying on the argument that such words meant the plaintiff could not carry out his office of high trust and honor. The plaintiff cited, *inter alia*, "the cases of ambidexter... to shew that words ought not to be taken in their radical sense, but according to such a sense as they are usually accepted in, and understood by the hearers."


89. See, for example, *Eaton v Allen*, 78 Eng Rep 920 (Trinity Term 1599) (plaintiff accused of being "a brabler, and a quarreller"); *Roe*, 90 Eng Rep 42; *Moore*, 81 Eng Rep 675.

90. *Brooke's Case*, 72 Eng Rep 661 (Trinity Term 1595).

91. *Wright v Moorhouse*, 78 Eng Rep 607 (Michaelmas Term 1593-94). In another case, the King's Bench upheld a verdict for a general receiver of the Court of Wards and Liveries accused of deceit, cozening, and falsity, as the words showed malice concerning his office, "like to say of a lawyer, he is an ambidexter." *Fleetwood v Care*, 81 Eng Rep 716 (Michaelmas Term 1619). Shortly thereafter, the defendant, an auditor, brought his own suit for defamation. *Care's Case*, 124 Eng Rep 33 (Michaelmas Term 1622).
court compared the imputation to accusing a lawyer of disclosing his client's counsel or evidence to his adversary.  

Finally, the courts used accusations of ambidexterity in a variety of defamation cases to denote clearly actionable imputations. One court referred to actionable ambidexterity in determining whether an action would lie for an imputation of a crime using metaphoric words. In holding against a plaintiff who claimed that defamatory words had impaired his ability to sell his land, the court demanded allegations and proof of particular loss; the court contrasted words slandering a profession such as, *inter alia*, "to say of a lawyer that he was an ambidexter, where there was no need to allege any particular cause of damage nor prove it with evidence." Although the courts did not rely exclusively on the ambidexterity cases in judging whether words were slanderous of other occupations or persons, they often used them to illustrate actionability.

### III. Public and Professional Images of Disloyal Lawyers

A lawyer-plaintiff wrongfully accused of disloyalty generally prevailed. When the specific conflict of interest was described or the word "ambidexter" used, the plaintiff had no trouble recovering, and the pleading and proof requirements were modest. That plaintiffs succeeded in these cases is not surprising. Disloyalty was considered a serious moral failing that was inconsistent with a lawyer's duty and function. As will be shown, "ambidexter" was a recognized term, commonly and distinctly used about lawyers. To call a lawyer an ambidexter adversely affected the lawyer's reputation, client relationships, and fees and, thus, was clearly defamatory.

When these defamation cases arose in the sixteenth century, courts had been disciplining lawyers for ambidexterity for over two hundred years. Ambidexterity was a crime; and defamation suits for imputations of a crime were the most successful initial secular defamation cases, as they were in ecclesiastical defamation. However, from a societal perspective, ambidexterity was not on par with theft, murder, or villainy—all common imputations in defamation cases, with theft being the most common. Conflict of interest does not seem to in-
volve the same moral turpitude as more common crimes do. Nevertheless, courts made statements such as: To say of “a lawyer, 'he is an ambodexter,' there cannot be a greater slander” \(^9\) and “[W]hat can be more scandalous to an attorney, than to be a betrayer of his clients?” \(^9\) Courts equated calling a lawyer an ambidexter with accusing an apothecary of poisoning his customers or a doctor of killing his patients.\(^9\)

The interesting question is why, in early modern defamation cases, the charge of disloyalty and the specific word “ambidexter” carried such opprobrium. To impute such misconduct to a lawyer was to accuse him of the highest professional sin. As the subsequent discussion will show, several factors may account for the stigma. The shame associated with disloyalty and the word “ambidexter” reflects notions within the legal system and, perhaps more significantly, the general society, evidenced in literary images of lawyers and religious discourse.

A. THE CONCEPT OF DISLOYALTY

1. The “Common Learning” and “Inherited Wisdom” of the Legal Profession

An examination of legal attitudes toward the disloyalty of lawyers should not focus unduly on doctrine. From the inception of the regulation of lawyers in the thirteenth century, judges developed loyalty norms that contributed to the actionability of accusations of ambidexterity. However, it seems possible that the significant stigma attached to disloyalty was the product of a nondoctrinal legal culture, and that the judicial treatment of these imputations reflected the profession’s “common learning” and “inherited wisdom” concerning a lawyer’s duty of loyalty. As John H. Baker has explained, the “common learning” embodied “the shared assumptions of a learned profession” and “the collective and growing wisdom of the profession.” \(^9\) Baker discussed these notions in terms of an “extra judicial legal world” \(^1\) of ideas about substantive law, but

96. Shore, 78 Eng Rep at 1135.
an “extra judicial legal world” of ideas about substantive law, but they would have influenced judicial attitudes in the courtroom. It seems plausible that beliefs about the obligations of the legal profession that ultimately impacted the world of law inside the courtroom had their origins in the broader legal culture.

The common erudition regarding the professional taint of disloyalty is reflected in several ways. First and foremost, as illustrated in the previous discussion of the cases, judges made numerous strong statements about the heinous nature of accusations of ambidexterity. In doing so, it seems likely that as members of the legal profession they had views on the importance of loyalty norms that were developed outside the courtroom and expressed within it. Other important occasions on which judges reflected the “inherited wisdom” were serjeant creation ceremonies. The lord chief justice would deliver an address “explaining the ethics of the profession and the standards of conduct expected of serjeants.” These grandiloquent speeches emphasized lawyers’ duties to justice, the importance of honesty and obligations of trust, and the need to avoid “subtle imagination and craft” and “deceipre and duplicite.”

Loyalty and confidentiality are implicit in these exhortations. Occasionally, the chief justice referred specifically to the duty of confidentiality and to the prohibition on deceit and collusion in the Statute of Westminster I, chapter 29. It is likely that the judges had a special interest and competence in judging on the degree of taint associated with violations of professional norms. This seems particularly true with disloyalty since such behavior undermines the functioning of the justice system, the operation of which was the duty of judges.

Contemporary treatises also reflected harsh attitudes toward disloyalty that evidence the legal profession’s “common learning.” In Actions for Slander, March discussed the accusation of revealing client confidences in Snagg v Grey and said the plaintiff’s profession required “great Trust and Confidence so the words being spoken before in derogation of the confidence and fidelity of Plaintiff, are


101. Baker has reproduced a number of these speeches. Baker, The Order of Serjeants at Law at 280-304 (cited in note 27).

102. Id at 298, 378-79.

103. Helmholz advanced such a reason to explain the earlier actionability of defamation of lawyers as contrasted with other occupations. Helmholz, Select Cases at xcviii-xcxix (cited in note 11). A subsequent broader article on defamation suits by lawyers will explore this notion as well as the influence of lawyers’ access to the legal system.

104. KB 27/1238 m 114.
a great slander to him." Similarly, Thomas Powell's *The Attorney's Academy*, which offered practical advice in pleading, concluded by noting the "crying, reigning evil amongst Lawyers" of failing to appear on behalf of a client and stating that if "hee absented himselfe in favour of the adverse party," he should be expelled from practice and punished. Further evidence of "common learning" might be found in the attorneys' oath of office and the use of juries of practicing attorneys to establish rules of conduct and to investigate and try particular instances of misconduct.

Much of Baker's writing on the "common learning" involves the Inns of Court and their role in legal education. The learning exercises of the Inns seemed to focus exclusively on substantive law and the development of lawyering skills such as rhetoric, logic, and advocacy. Some of them refer explicitly to the "common learning." However, none of the learning in the Inns appears to deal with the importance of loyalty or more general instruction in legal ethics. On the other hand, given the socialization and professionalization process that occurred in the Inns, it seems plausible that professional behavioral norms, specific instances of lawyer misconduct, and breaches of confidentiality and loyalty duties would have been topics of discussion even if not part of the formal instructional program. John Dawson believed that the senior lawyers in the Inns influenced the attitudes and values of the legal profession. Although


108. Brooks, *Pettifoggers and Vipers of the Commonwealth* at 119-20 (cited in note 9). The oath stated "You shall do no falsehood nor cause any to be done in the Court and if you know of any to be done you shall give knowledge thereof to my Lord Chief Justice.... You shall delay no man for lucre nor malice." Powell, *The Attorneys Academy* end of book (cited in note 107). Although the oath did not specifically mention ambidexterity, it probably would have been included within prohibitions on falsehood and delay for lucre or malice.


110. See, for example, 2 *Readings and Moots at the Inns of Court* at lxxii, 155, 237, 239, 248, 272, 273, 292, 298 (cited in note 109).

111. Thorne's collection of readings on statutes does not include anything on the Statute of Westminster I, chapter 29, the primary statutory regulation of lawyers. Though the readings discuss several instances of the writ of deceit, the primary vehicle for initiating an action against a lawyer for misconduct, none involve lawyers. Nor do any of the moots collected by Baker involve instruction in legal ethics. Also, the works discussing the Inns and the education of barristers do not make any reference to instruction in legal ethics. See David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* 107-48 (Oxford 2000); Wilfrid R. Prest, *The Rise of the Barristers: A Social History of the English Bar, 1590-1640* 49-127 (Clarendon 1980); David Lemmings, *Gentlemen and Barristers: The Inns of Court & the English Bar, 1650-1720* 75-143 (Clarendon 1990); Wilfrid R. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts, 1590-1640* 115-73 (Rowman and Littlefield 1972). Baker, Prest, and Brooks have told me that in their research they have never come across any evidence that instruction in the Inns included professional ethics.

substantial evidence does not explicitly support this broader view, it seems logical.

Other considerations may shed light on the lack of instruction in ethics. Since ethics relate to personal honor and morality, ethical instruction may not have been perceived as a proper part of professional education. Lawyers and judges may have felt that desirable professional norms were more a product of inherent aspects of human nature than of formal education. Books of advice for students and practitioners of law provide some support for this view. William Fulbecke’s *A Direction or Preparative to the Study of the Lawe* identified “the good qualities wherewith the Student of the Lawe ought to be furnished” as love of God, humility, temperance, diligence, wisdom, and courtesy or mildness. William Lambarde’s morally, ethically, and religiously based attack on lawyers, judges, and the legal system may reflect similar views. Anthony Benn’s *Of The Lawyers* stressed a lawyer’s duty to provide “good counsel” to his country, to consider “the higher interests of the commonwealth,” to credit “the honor of his calling,” and always to be “improving on the knowledge of his profession.” As Wilfrid Prest noted, this work and others of the same period are “suffused with the neoclassical ideal of the noble counsellor.”

Also it may have been thought that instruction in matters related to morality ought to be external to professional training rather than part of it. A long tradition in religious education dating from the Carolingian era and revived in medieval humanism sought to produce the perfect man through the study of virtue as a means of producing ethical behavior; such education merged intellectual and ethical learning. Early modern humanism reflected similar sentiments. Thomas Elyot proposed that lawyers study “morall philosophie, whiche teacheth both vertues, maners, and ciuile policie.” Such instruction might

113. 10a-17a (Da Capo 1980) (reprint of 1600 edition).
115. See Anthony Benn, *Of The Lawyers*, discussed and quoted in Prest, *The Rise of the Barristers* at 318-19 (cited in note 111). This unpublished work comes the closest to setting out ethical “do’s and don’ts” and aspirational goals.
116. Id at 318.
118. Elyot said:
I think verily if children were brought up as I have written, and continually retained in the right study of very philosophy until they passed the age of 21 years, and then set to the laws of this realm . . . undoubtedly they should become men of so excellent wisdom that throughout all the world should be found in no common weal more noble counsellors. . . . Moreover when young men have read laws, expounded in the orations of Tully, and also in the histories of the beginning of laws, and in the works of Plato, Xenophon, and Aristotle . . . they shall be thereto more incensed, and come into it the better prepared and furnished. . . . And they whom nature thereto nothing moveth, have not only all that time, which many now a days do consume in idleness, but also have won such a treasure, whereby they shall always be able to serve honora-
have provided a foundation for professional ethics and the importance of loyalty. John Cooke infused his 1645 proposals to reform law and legal education with both humanistic notions of the lawyer's duty to justice and the religious character of law and a lawyer's necessary traits. The speeches of the chief justices at sixteenth century serjeant creation ceremonies also echoed religious and humanistic notions. More generally, given that professional ethics are related to moral qualities, the social and religious life of an early modern lawyer might have been considered a significant determinant of proper professional behavior. Along those lines, an early modern religious writer stated that "euery man must joyne the practise of his personall calling, with practise of the general calling of Christianitie.” Further, as role models, senior lawyers and judges may have influenced the development of ethical sensitivities. Thus, several factors may explain the absence of formal instruction in professional ethics.

In sum, there is some evidence in the “common learning” and “inherited wisdom” of the legal profession for the opprobrium resulting from accusations of disloyalty. The “legal mind” of the profession most likely included a negative view of professional disloyalty, emerging from “that intimate brotherhood of judges and serjeants [as] they lived and ate and traveled together and devoted themselves increasingly to refining and perfecting their ‘common erudition.’” After all, in most cases, betraying a client or revealing confidences to an adverse party is directly inconsistent with a lawyer’s function.

bly their prince, and the public weal of their country, principally if they confer all their doctrines to the most noble study of moral philosophy which teacheth both virtues, manners, and civil policy: whereby at the last we should have in this realm sufficiency of worshipful lawyers, and also a public weale equivalent to the Greeks or Romans.

Thomas Elyot, 1 The Boke Named the Gouemour 141-43, 161-62 (Burt Franklin 1967) (reprint of 1531 edition). Elyot was the son of Richard Elyot, the plaintiff in the first defamation suit by a lawyer. See Elyot v Toft, KB 27/1006 m 62; Elyot, The Boke Named the Gouernour at xxvi-l.

119. John Cooke, The Vindication of the Professors and Profession of Law (1645). For example, in stressing humanistic ideals, Cooke noted the belief that lawyers should not maintain an unjust cause on behalf of a client or be on the opposite side of the truth: “For truly to speak well in a bad cause is but to goe to Hell with a little better grace without repentance.” Id at 8-9. He said that a lawyer is a soldier whose sword “is but a servant to justice consecrated by God, to maintain and defend the law.” Id at 37. With reference to the spiritual and moral nature of the law and lawyers, he noted the importance of “Scripture being the Touchstone of all humane actions.... [L]aw is the science of things humane and Divine.” He saw religion as “a necessary study for a lawyer” and believed that students should first study divinity for three years and then “4 [years] in the study of the moral and rational part of the Common Law which is the rule of speedy justice to give every man his due with expedition.” Id at 25, 56. Cooke was a barrister in Gray’s Inn. He served as a primary prosecutor of Charles I and was executed as a regicide in 1660. Simpson, Biographical Dictionary of the Common Law at 124-25 (cited in note 12).


121. William Perkins, 1 A Treatise of the Vocations or the Callings of Men, with the sorts and kinds of them, and the rights thereof 733 (1609).


2. Religious Ideas and Discourse

The canon law system is the logical starting place for a discussion of the impact that the importance of loyalty in religious discourse had in stigmatizing a lawyer accused of ambidexterity. The ecclesiastical courts treated both ambidexterity and disclosure of a client's confidential information as serious forms of lawyer misconduct. In his scholarship on canon law, James Brundage found that the duties of loyalty and confidentiality were well entrenched in the *ius commune*, the principles combining canon and Roman law, long before the end of the thirteenth century, when these duties appeared in the English common law. Violations of these obligations were treated as “treachery,” “particularly reprehensible,” and subject to harsh penalties.\(^{124}\) Relying on Justinian and Gratian, Brundage noted that betraying a client could cause a lawyer to be declared *infamis*, a disgraced person who was not only disbarred but also lost most of the rights and privileges of citizenship.\(^{125}\) A lawyer who divulged a client’s confidential information to his adversary could also be charged with *falsum*, which could result in forfeiture of property and exile.\(^{126}\) The works of canonists such as Hostiensis, Durant, and Baldus also reflect antipathy toward disloyalty and the improper disclosure of confidential information.\(^{127}\) The papal constitution of Pope Martin V prohibited such conduct in the papal curia, and a violation by a lawyer resulted in excommunication.\(^{128}\) Likewise, the twelfth-century intellectual John of Salisbury stated in *Policraticus*, “[A] lawyer who knows the secrets of one of the litigants will not be allowed to serve as advocate for his opponent.”\(^{129}\)

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\(^{126}\) *Infamia* referred to a person suffering public ill repute and a criminal reputation. Being adjudged *infamis* meant that the individual could not sue or defend suits, inherit or alienate property, or make a will. Brundage, *Keeping The Client's Secrets* at 14.

\(^{127}\) See id at 15-17 & n 37; Brundage, *Keeping The Client's Secrets* at 17-18 (cited in note 125). Such a person was known in canon law as a *praeviator*.

\(^{128}\) The Constitution provided:

> We ordain that, as the general laws require, no advocate or proctor who has once given counsel or representation to one party in a case may thereafter advise or represent the opposing party in that same case or pursue or defend his cause, unless he be required to do so by a judicial order for the distribution of advocates or proctors. In that case he shall never reveal to his new client anything that he learned from the first party, unless he is instructed to do so by that party. And if he shall contravene the aforesaid, he shall incur the sentence of excommunication and the other penalties prescribed by law, shall be deprived of his office, and shall nevertheless be liable to the offended party.


Clearly, canon law not only prohibited professional disloyalty but, as its harsh penalties evidence, also viewed such misconduct as particularly shameful.

Loyalty was also an important topic in broader religious discourse. Religious attacks tended to focus on the "hired gun" who injured society and the justice system, but scorn for the deceitful lawyer embraced disloyalty as well. The well known biblical injunction "No man can serve two masters,"\textsuperscript{130} still mentioned in modern discussions of conflict of interest,\textsuperscript{131} reflected the fundamental religious antipathy toward disloyalty. Moreover, many medieval and early modern religious writings were anti-lawyer.\textsuperscript{132} One theme was the deceitful or false lawyer. John Wyclif strongly attacked lawyers and legal procedure.\textsuperscript{133} He denounced lawyers as "false men of lawe [who] desceyuen moche this world," and as one of "three things [that] destroy the world."\textsuperscript{134} Occasionally, a writer made the charge of disloyalty explicit. The medieval \textit{Book of Vices and Virtues} includes among forms of avarice false men of law who "schendeth [ruin] the right of good men bi giftes, and take bothe on the right side and on the left side."\textsuperscript{135} Medieval preachers attacked ambidextrous conduct by lawyers and judges from the pulpit. One said, "[M]any pledours and advocats . . . settith alle her hertes on wynynge so fer forth, that some of them taketh other-while of both sides."\textsuperscript{136} Both the treatment of ambidexterity in the canon law system and the attacks on lawyers in broader religious discourse reveal that professional disloyalty was considered highly immoral and dishonorable.

denote secrets is interesting as the most common word used for client confidences was \textit{consilium}, although \textit{secreta} was also used occasionally. The precise nature of the confidential information divulged is often unclear, although it is possible that \textit{consilium} was a broader term that included the litigation strategy and other advice to the client as well as confidential matters communicated by the client to the lawyer. See Rose, \textit{7 U Chi L Sch Roundtable} at 154-55, 162 \& n 125 (cited in note 3).

\textsuperscript{130} Matthew 6:24.

\textsuperscript{131} See, for example, Thomas Morgan and Ronald Rotunda, \textit{Professional Responsibility} 168 (West 7th ed 2000); \textit{Cinema 5, Ltd v Cinerama, Inc}, 528 F2d 1384, 1386 (2d Cir 1976).

\textsuperscript{132} See, for example, Prest, \textit{The Rise of the Barristers} at 284 \& nn 2-3 (cited in note 111) (referring to many of the religious writers, including Wyclif, Erasmus, Latimer, and Luther); Eric Ives, \textit{The Reputation of the Common Lawyers in English Society, 1450-1550, 7 U Birmingham Hist J} 130, 130-46 (1960).

\textsuperscript{133} See George Trevelyan, \textit{England in the Age of Wycliffe} 113 (Longmans, Green 4th ed 1946).

\textsuperscript{134} Wyclif stated that greed is what motivates lawyers in this sinful and harmful conduct. John Wyclif, \textit{The English Works of Wyclif} 182-85, 234, 237-38 (Trübner 1880) (F.D. Matthew, ed). Although some of Wyclif's language is hyperbolic his central theme was a common one. More generally, he was concerned about the church's land ownership, believed that legally the state should be sovereign over clerical affairs and that the existing legal system provided remedies for making the church accountable to the king. See William Farr, \textit{John Wyclif as Legal Reformer} 98-211 (1971) (PhD thesis, University of Washington).

\textsuperscript{135} W. Nelson Francis, ed, \textit{The Book of Vices and Virtues} 35-36 (Oxford 1942) (a fourteenth-century English translation of Llorens D'Orlans' \textit{Somme Le Roy}). The work also uses "fals men of lawe, as pleouters and advocates" to illustrate the sin of covetousness and shrewdness. Id at 39-40.

3. Literary Images

E.F. Tucker has demonstrated that there was a well established medieval and early modern canon of anti-lawyer literature, mostly satirical.\(^\text{137}\) He noted that the “common lawyer” was really “a set of public images” that included literary ones, and he identified at least five distinct literary images of lawyers.\(^\text{138}\) The one that is most relevant to this study is the pettifogger, an image associated with abusive litigation that “provide[d] a convenient rubric under which to discuss the more generalized conventions of law satire, and to mention those historical individuals who have brought dishonor and disrepute to the legal profession.”\(^\text{139}\) According to Tucker, the main identifiers of the pettifogger were negative professional qualities and misconduct, including “ambidexterity (the crime of exacting fees from both parties to a lawsuit).”\(^\text{140}\)

By the end of the sixteenth century, the image of the ambidextrous lawyer began to appear in plays and poems. For example, in the Elizabethan historical play *Woodstock*, the character Robert Tresilian is told that Richard II will appoint him lord chief justice and ponders how, in the meantime, to stay in the good graces of the king and his enemies. Illustrating another way in which a lawyer was two-faced, he says:

> But yet until mine office be put on  
> By kingly Richard, I'll conceal myself;  
> Framing such subtle laws that Janus-like  
> May with a double face salute them both.\(^\text{141}\)

This image of the disloyal lawyer appears vividly in the works of Ben Jonson.

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\(^\text{138}\) They are the pettifogger, the honest lawyer, the devil’s advocate, the lover, and the fool. Tucker, *Intruder in Eden* at xi, 31-114 (cited at 137).

\(^\text{139}\) Id at xi.

\(^\text{140}\) Id.

\(^\text{141}\) Anonymous, *Woodstock* (1591-95), reprinted in *Elizabeth History Plays* 167, 177 (1965) (William Armstrong, ed). Nimble, described as “a lawyer-devil,” id at 168, says to Tresilian, “you were ever so crafty in your childhood, that I knew your worship would prove a good lawyer.” Id at 178. Tresilian was, in fact, appointed to the King’s Bench in 1378 and became chief justice in 1381. Saintry, *The Judges of England* at 26 (cited in note 27). He was a serjeant in 1376, a king’s serjeant from 1377-78, and hanged at Tyburn in 1388. Baker, *The Order of Serjeants at Law* at 541 (cited in note 27). He was loyal to Richard II and ended up on the losing side in political and legal difficulties at the end of the fourteenth century. The fall of Robert Tresilian, chief Justice of Englands, and other his felowe, for misconstruing the lawes, and expounding them to serve the Prince’s affections, in *The Mirror of the Magistrates* 73-80 (1938) (reprint of 1559 original) (Lily Campbell, ed). Tucker has described Tresilian as illustrating the “lawyer-devil” type in English literature that originated in fifteenth-century morality plays. He has characterized ambidexterity as “the Janus-like sin of Vice characters.” Tucker, *Intruder into England* at 72 (cited in note 137). *Woodstock* was apparently well known to Shakespeare, and some considered it a sequel to his *Richard II*. 
The poem "On Cheverel the Lawyer" recites:

No cause nor client fat will Cheverel lease. But as they come on both sides he takes fees,
And pleaseth both: for while he melts his grease
For this, that wins, for whom he holds his peace.  

In other words, so that he never loses clients nor fees, the lawyer engages in ambidexterity, and by a trick keeps both clients happy. Similarly, in the satirical play Volpone, as part of a plan to produce gifts for Volpone by tricking greedy men hoping to become his heir, Volpone's servant tells Voltore, a greedy lawyer, that he deserves to be Volpone's heir and that Volpone admired:

Men of your large profession, that could speake
To euery cause, and things mere contraries
Till they were hoarse againe, yet all be law;
That, with most quick agility, could turne
and re-turne; make knots, and undoe them;
Give forked counsell; take provoking gold
On either hand, and put it up.  

In biting satire, Jonson creates an image embodying all the common forms of lawyer misconduct, including ambidexterity.

Perhaps even more trenchant, although in the early eighteenth century, is Jonathan Swift's description of the plight of Gulliver, who must hire a lawyer when his neighbor wrongly claims his cow. Gulliver proclaims to suffer two disadvantages: since his lawyer has been trained to defend falsehood, being an advocate for justice will be "unnatural" and attempted "with great awkwardness, if not with ill-will"; and he must proceed with caution "or else he will be reprimanded by judges and abhorred by his brethren, as one that would lessen the practice of law." Thus, Gulliver says that to keep his cow he must "gain over

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143. I am grateful to Curtis Perry of the English Department at Arizona State University for his assistance in understanding this poem. Perry explained that "Chev'rill (meaning soft pliable leather) acts in such a way as to never turn down a client or a fee. In a given case he takes fees from both sides and gets away with it ('pleaseth both') by a clever trick: he argues vehemently ('melts his grease') for the side he knows will lose. That way, both clients feel they've had their money's worth, the one because of the lawyer's efforts and the other because of the victory." E-mail from Curtis Perry to Jonathan Rose (September 26, 2000) (on file with author).
144. Ben Jonson, *Volpone*, Act I, Sc III, ll 53-59 (1605). Voltore had brought an expensive plate for Volpone. Later in Act IV, Voltore slanderously and falsely convinces judges that a merchant is vicious and his wife lewd. In Act V, when Volpone extends the deception by having news spread that he is dead and that his servant Mosca is his heir, Voltore relents and begins to tell the truth about the merchant and his wife. But when Voltore learns that Volpone is actually alive, he changes his testimony again, claiming he had been possessed by the devil when he had told the truth. For his shameful conduct, Voltore received severe punishment.
[his] adversary's lawyer with a double-fee; who will then betray his client, by insinuating that he hath justice on his side.” The words, “double-fee” and “betray” tersely capture disloyalty and its taint.

An interesting example of transactional ambidexterity appears in The Honest Lawyer. Griffin, a miscreant attorney and foil to the virtuous protagonist of the title, represents Bromley and Sager, two characters on opposite sides of a lease dispute. Griffin tries to persuade Bromley and Sager to reach an agreement in order “to be fleeced both, so [Griffin] might be kept warme in [their] wool.” Thus, he says to Bromley, “[W]hat will you judge me worthy of, if I perswade him to relinquish his right?” Bromley gives him “twenty angels” and tells him if he is successful, he will be Bromley's “everlasting Attourney.” Griffin then asks Sager, “What will you give mee to draw Bromley to a good hansome composition?” Sager, on the other hand, refuses to pay until Griffin is successful, saying he will “give no bribe.” At one point, Griffin meets men who voice hostility toward corrupt lawyers and foreshadow his undoing.

Bromley later complains that “Theeves, Lawyers, Rogues, Harlots, and Inne-Keepers, are mens purgations. Griffin has cheated mee: he tooke twenty angels from mee. Theeves tooke 'hem from him. He promis'd to draw Sager to compound; now the day's gone against me.” After numerous complicated plot turns, Griffin and the other evil characters are punished.

Judgments concerning the impact of these literary images on the opprobrium associated with accusations of disloyalty must take into account the intentionally overdrawn, even caricatured, satirical nature of the portraits. Some claim that the contemporary criticism of lawyers presented an exaggerated image by ignoring those whose conduct was exemplary. Regardless, the literature shows that ambidexterity was seen as a common form of lawyer misconduct. The satirical portraits of lawyers had roots in real life misconduct. Tucker has noted

146. Id. Perhaps “double-fee” had become a recognized term of art. An eighteenth-century cartoon portrayed a well known lawyer engaging in ambidexterity as “Councillor Double-Fee.” James Oldham, The Mansfied Manuscripts and the Growth of English Law in the Eighteenth Century 72 (North Carolina 1992). The cartoon depicted Fletcher Norton, a prominent barrister and Crown lawyer, whose nickname was “Sir Bull Face Doublefee.” Id at 68, 73. For another reproduction of this cartoon, see Rose, 7 U Chi L Sch Roundtable at 136 (cited in note 3).

147. S.S., The Honest Lawyer sig C4v (AMS reprint of 1914 edition) (originally published in 1616) (Griffin says he loves peace and “respects my conscience above my purse—when t'has no-money in't.”).

148. Id at sig Dr.

149. Id at sig E2r.

150. Bromley appears to have murdered Sager. Griffin helps conceal the crime and shares Sager's land with Bromley. At a trial for all the greedy, dishonest characters, Bromley is ordered to give his lease for three lives to the wife and children of Sager, who turns out to be alive. Griffin's punishment is not indicated. Id at sigs F3v, H1r & v, I3r-K2v.


152. See Tucker, Intruder in Eden at 13, 72 (cited in note 137); Prest, The Rise of the Barristers at 287
the literature’s association of “legal abuses and deadly sins.” This observation suggests a congruence, if not an interrelationship, between contemporary religious discourse and literary images. Like the former, publicly recognized literary images of the disloyal lawyer help understand the high degree of professional taint resulting from a slanderous accusation of ambidexterity.

4. More General Social and Political Norms

Loyalty is woven deeply in longstanding social and political norms. Many values, conventions, and rules identify “unbreakable loyalty as an ideal moral quality.” General discussions of morality extend to notions of the loyalty of lawyers and link confidentiality with loyalty. Some contemporary views held betrayal as the most heinous form of disloyalty and not betraying as the “minimal loyalty.” As stated by George Fletcher, “[T]he worst epithets are reserved for the sin of betrayal. . . . The specific forms of betrayal—adultery, treason, and idolatry—all reek with evil.” William Blackstone said that “treason . . . imports a betraying, treachery, or breach of faith [and] is the highest civil crime, which (considered as a member of the community) any man can possibly commit.”

Treason, a form of betrayal, was an important political topic in early modern England. During the later middle ages, the word traitor meant one who betrayed a personal trust, such as the attorney-client relationship, especially when an oath was violated. In the medieval and early modern eras, oaths were a means of demonstrating loyalty and other obligations; breaking them was considered most serious. David Ibbetson has noted that “oath-breaking ranked along side murder in the hierarchy of wrong doing.” Of course, no one would contend that lawyer disloyalty should be treated as equivalent to treason. On the other hand, lawyer disloyalty is a form of betrayal and a breach of trust; thus,

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155. See, for example, Fletcher, *Loyalty* at 23, 80 (cited in note 154); Jacobs, *Systems of Survival* at 113-15 (cited in note 154).

156. Fletcher, *Loyalty* at 8-11, 41-60 (cited in note 154).

157. Id at 41.


159. See Fletcher, *Loyalty* at 44-46 (cited in note 154).


161. See Ibbetson, *A Historical Introduction* at 4 (cited in note 22) (explaining that an oath created a relationship between God and the oath swearer and that no temporal sanction was available as God would punish the miscreant). Oaths had long played an important legal role in assuring trustworthiness, perhaps dating back to Roman law. See Green, *A Crisis of Truth* at 59-64 (cited in note 160).

162. Dante reserved a special place in hell for individuals who betrayed trust by committing fraud or
fundamental loyalty norms and attitudes toward treason may have influenced social attitudes toward lawyers accused of ambidexterity.

Rampant public attacks on the legal profession in the late medieval and early modern eras accentuated the negative image of disloyal lawyers. Complaints against barristers for taking money from both sides and for disclosing a client's confidential information were common in the sixteenth century. During the civil strife and associated reform of the seventeenth century, "there was a widespread distrust and hatred of the lawyers in the popular movement." Reformer Henry Robinson characterized lawyers as "the most vaine, not only unnecessary but mischievous, destructive [and] law-cheating, jugling, and pocket-picking." He called English lawyers the most "cunning famous pickpockets, cheaters, thieves, in any part of the World [who] have not onely been as mischevous and destructive as Canker-worms or Pharohs . . . but have ever been those Mercuriall spirits and instruments, civil tormentors and executioners." Ambidexterity was fairly common in this period, and charges of colluding with clients' opponents were part of the attack on lawyers. A 1645 tract opposing lawyers as members of Parliament stated that it was not unusual "for a Lawyer to bee of Counsell with one party, and to prevaricate, and bee of confederacy under hand with the adverse party." Contemporary almanacs also complained of ambidextrous lawyers. A 1654 Coventry almanac published an oft-repeated verse:

Goose goes to law for Cousin Gander's land,
And Fox the lawyer takes the cause in hand:

embezzlement. Fletcher, Loyalty at 10 & n 21 (cited in note 154).
166. Robinson was a wealthy anti-lawyer merchant who believed the legal profession had no ethical basis. Id at xviii, 98, 119-20, 229-30.
167. See Henry Robinson, Certaine Proposals in Order to a New Modeling of the Lawes and Law-Proceedings for a More Speedy, Cheap, and Equall Distribution of Justice Throughout the Common-Wealth folio at 7, folio b at 1-2 (1653). His reform included the simplification of the courts, reducing the role of the jury, and the right of anyone to act as an attorney. See id; Veall, The Popular Movement at 119-20, 175-76, 229-30 (cited in note 165).
169. See Some Advertisements for the New Election of Bourgesse for the House of Commons, reprinted in Cooke, The Vindication of the Professors and Profession of Law at Alv (cited in note 119). Cooke wrote Vindication in response to this advertisement, though he was sympathetic to some of the criticisms and the need for reform. One of his concerns, the large number of lawyers, inspired an oft-quoted comment comparing lawyers to "the Grasshoppers of Aegypt that devoured the whole land, many of them being growne rich." Id at 25. The advertisement made the same point, likening lawyers to "locusts," another common critical metaphor. Id at A4r.
Of Ambidexters and Daffidowndillies

Who (for his counsel) takes fees of either,
And in the end leaves neither a feather . . .
Fools they fell out, and beggars they agreed.\textsuperscript{170}

A 1617 almanac said that the corruption of lawyers would lead to “terrible abuse of the laws by some double-feeing attorneys.”\textsuperscript{171}

The severe political attitudes toward corruption in the seventeenth century may have intensified the already hostile reaction to lawyer deceit and misconduct.\textsuperscript{172} Attacks on lawyers and reform proposals\textsuperscript{173} increased further the dishonor connected with disloyalty. In sum, the opprobrium attached to accusations of ambidexterity was grounded in attitudes within the legal profession, canon law, and wider religious discourse, as well as in contemporary literary images and more general social and political norms and debate.

B. THE WORD “AMBIDEXTER”

Understanding the stigma ascribed to the commonly used defamatory word “ambidexter” involves an inquiry into its use in legal circles, contemporary literature, and religious discourse. Before doing so here, some philological exploration into the word’s history is useful.

1. The History of the Word “Ambidexter” and Its Legal Use

The Oxford English Dictionary (OED) states that the first use of the word “ambidexter” was as a legal term meaning “[o]ne who takes bribes from both sides” and that it is an anglicized version of a medieval Latin word\textsuperscript{174} The OED entries for ambidexter (ambodexter), ambidexterity, and ambidextrous all list double-dealing as a definition, with an evident negative connotation.\textsuperscript{175} The en-
tries make the legal context clear by comparing double-dealing with "practising on both sides" and citing a number of legal, literary, religious, political, and philosophical works generally from the early seventeenth century.

"Ambidexter" and its variants receive similar treatment in law dictionaries. The word's inclusion in The Interpreter of Words and Terms in the early seventeenth century may mark its first appearance in a legal dictionary. The Interpreter defines "ambidexter" as a juror who takes bribes from both sides, an action for which statutory punishment is imposed. A 1762 dictionary repeated the same definition. Black's Law Dictionary defines "ambidexter" as a term "applied anciently" to a lawyer or juror who took fees from both sides. "Daffidowndilly," a term for daffodil, was a synonym for "ambidexter" in northern England. As evidenced by its reference in Litman v West, in context, "daffidowndilly" means "party colored," that is, "having divers colours." The pejorative sense of the word derives from the fact that some daffodils have multiple colors in the same flower, a visual image of disloyalty and floral metaphor used by Shakespeare.

The actual use of "ambidexter" in the legal system is generally consistent with the dictionary definitions, but appears earlier than indicated. Its probable first legal appearance, outside of an official document, is in Henry de Bracton's...
De Legibus et Consuetudinibus Angliae: “sheriffs and ambidextrous bailiffs who take bribes from both sides.” 184 The text merely repeats an Article of the Eyre, this particular article probably having been in use from 1246 onwards. 185 The word appears occasionally in fourteenth-century cases to refer to attorneys and others who took fees from both sides in exchange for representation or support. 186 As discussed earlier, medieval cases disciplining and imposing civil liability on ambidextrous lawyers did not regularly use the word, although it began to appear in early sixteenth-century defamation cases. A 1343 order directing justices to inquire into all felonies and trespasses against the peace used the word “ambidexterity.” 187 Treatise writers, such as Anthony Fitzherbert and Henry Finch, continued to use this term during the sixteenth and seventeenth centuries to refer both to jurors and attorneys. 188 Thus, since the medieval era, “ambidexter” was

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185. See C.A.F. Meekings, 16 Crown Pleas of the Wiltshire Eyre 1249 nos 27, 32, 44 (Wiltshire Archaeological and Natural History Society 1960). The Statutes of the Realm reprints the original Latin text of the Articles of Eyre generally used from 1176 through 1278. See 1 Statutes of the Realm 233, 234 (Hein 1993) (vol pp 1810-28). The English translation of “ambidextrous” in this work is “double handed.” See id. I am grateful to Paul Brand for pointing out this connection between Bracton and the Articles of the Wiltshire Eyre.

186. See, for example, Eyre of Northamptonshire, 3-4 Edw III (1329-30), reprinted in Donald Sutherland, ed, 1 Pleas of the Crown 97 (237 Selden Soc’y 1981); Coron Rege Rolls, no 337 m 111 (Trinity Term 1344), no 383 m 25 (Easter Term 1356), reprinted in G.O. Sayles, ed, 6 Select Cases in the King’s Bench 33-36, 103-04 (82 Selden Soc’y 1965); Robert of Kelsey, JUST 1/547A m 52d, reprinted in Martin Weinbaum, 2 London under Edward I and III 171 (1933). In the first case cited, a sheriff, William Seymour, was convicted of ambidexterity because he took money from both sides, promising to assist both in the same plea. The jury found Seymour guilty and “accustomed to doing such things.” He was sent to prison without bail. In the second case, the King’s Bench indicted local lawyers John Lovel, Nicholas Shoreditch, Thomas of Frodick, and John Butterwick as “common ambidextors,” who gave some of the money paid for legal services to jurors. The third case is a jury presentment against Robert of Kelsey for first taking money from Henry Polet to maintain and support him against Peter St. Vincent, and then taking money from Peter to support him in the same complaint.

187. 2 Rot Parl 137, no 12, 17 Edw III (1343) (including “Ambidexters” in the types of “falsities made in deceit of the law” into which justices ought to inquire). Ambidexterity was used similarly in articles of the 1354 Trailbaston Session. Register of Daniel Rought, Common Clerk of Romney, reprinted in Elisabeth Murray, ed, 16 Kent Archaeological Society Records 290, 293 (1945). The word was also used to indicate some form of legal wrongdoing, perhaps champerty rather than disloyalty, in the 1451 Oyer et Terminer Session. Norman Davis, ed, 2 Paxton Letters 525-28 (1976); E-mail from Richard Green to Jonathan Rose (January 23, 2001) (on file with author).

188. See Anthony Fitzherbert, New Natura Bravium 171H at 397-98 (1793) (reprint of 1534 edition) (“An ambidexter is that juror or embracer, who taketh of one part and the other.”); Henry Finch, Law or A Discovere Thereof Book III, 188 (A.M. Kelley 1969) (reprint of 1759 edition) (first published in 1636) (stating that among trepasses on the case punishable by the king is calling “an attorney ambidexter, or to say he dealeth corruptly.”). The Oxford English Dictionary cites this use—actually the 1613 law French version, Nomotechnia—as the first use in the sense of an attorney or other individual taking fees from both parties. As the discussion has shown, it had been used that way for over 200 years.
the legal system’s term for a lawyer who engaged in a conflict of interest, a meaning well established by the sixteenth century and the inception of secular defamation.

2. Religious Use of Ambidexter

"Us thinkith that hermofodrita or ambidexter were a god name to sich manere of mene of duble astate" stated the sixth of the twelve conclusions posted on doors of Westminster Hall in 1395 by the Lollards, religious reformers descended from the Oxford theologian and philosopher John Wyclif. The introduction to the conclusions read: "We poor men, treasurers of Christ and his apostles, denounced to the lords and commons of the parliament certain conclusions and truths for the reformation of the holy church of England." In the sixth conclusion, the Lollards were attacking the simultaneous holding of religious and secular offices. This polemic began:

[That a king and a bishop all in one person, a prelate and a justice in a temporal cause, a curate and an officer in worldly service, make every realm out of good rule. This conclusion is openly shown, for temporality and spirituality be two parts of the holy Church, and therefore he that has taken himself to the one should not meddle with the other, because no one can serve two masters.

The Lollards asked that Parliament remove religious officers from temporal office and said that they should spend all their time on pastoral duties. Anne Hudson, a leading commentator on Wyclif and the Lollards, stated that "complaints about ambidexterity were not new." Ambidexterity had long been an

189. Twelve Conclusions of the Lollards, reprinted in Anne Hudson, ed, English Wycliffite Writings 26 (Cambridge 1978). They were posted from January 27 to February 15, 1395, while Parliament was in session. See Introduction, in Margaret Aston and Colin Richmond, eds, Lollardy and the Gentry in the Later Middle Ages 1 (St. Martin’s 1997).
192. Twelve Conclusions at 26 (cited in note 189). The use of the biblical injunction from Matthew 6:24 is clear. Anne Hudson has pointed out that the state had become the biblical second master, Mammon. Anne Hudson, Hermofodrita or Ambidexter: Wycliffite Attacks on Clerks in Secular Office, in Lollardy and the Gentry in the Later Middle Ages 41-42 (cited in note 189).
193. Twelve Conclusions at 26 (cited in note 189). Wyclif and the Lollards’ main concern, based on the Bible and canon law, was the natural incompatibility of God’s work and worldly affairs. They believed that the time demands of the former left no time for the latter and that clerks engaged in secular affairs to curry favor with the powerful. I am grateful to Fiona Somerset, at the University of Western Ontario, for directing my attention to John Wyclif and the Lollards.
194. See Hudson, Hermofodrita or Ambidexter at 43 (cited in note 192).
issue for Wyclif and his followers. Wyclif (d. 1384) attacked it in his own writings.\textsuperscript{195} Nor was this concern limited to the reformers, being also voiced by Edward III.\textsuperscript{196}

Roger Dymmok's answer to the \textit{Twelve Conclusions} characterized the Lollards as "enemies of truth" and criticized their efforts as reflecting ingratitude and ignorance.\textsuperscript{197} His reply to the sixth conclusion focused on a defense of holding religious and secular office concurrently, but he also tried to explain a positive use of the word "ambidexter."\textsuperscript{198} Dymmok asserted that service in both offices would enable clerics to carry out their pastoral duties more effectively; therefore, he advocated this "ambidextrous ideal" as an "ethical ideal."\textsuperscript{199} In terms of Dymmok's specific efforts to rehabilitate the word "ambidexter," he stated that it was appropriate for "virtuous men" and "just men" to be called "ambidexters," as well as the man who defended himself with both hands.\textsuperscript{200} He characterized the Apostles of Jesus as "ambidexters" and Joseph as "the exalted ambidexter in the kingdom of Egypt."\textsuperscript{201} The targets of Lollards were not serving

\textsuperscript{195} "What on earth is an archbishop doing as a king's chancellor, an office which is the most secular in the kingdom?" \textit{De blasphemia}, reprinted in Hudson, \textit{Hermododtia or Ambidexter} at 41 (cited in note 192). Hudson noted, "Wycliffe himself commented at length on the monstrosity of the link between ordained status and secular office, and also on its contemporary frequency." She quotes many of his works echoing this complaint.

\textsuperscript{196} Edward III reportedly said, "[N]ever again in his time should a man of holy church be his treasurer or chancellor, nor the holder of any major office belonging to the king; but that such persons, who should they be convicted of corruption, could be tortured, hung, and beheaded." Id at 44-45.

\textsuperscript{197} See Roger Dymmok, \textit{Liber Contra XII errores et Heresies Lollardorum} (1921) (H.S. Cronin, ed); Fiona Somerset, \textit{Answering the Twelve Conclusions: Dymmok's Half-Hearted Gestures Toward Publication, in Lollardy and the Gentry in the Later Middle Ages} at 52-53, 55 (cited in note 189). Dymmok's reply was probably in 1396 or 1397. See H.S. Cronin, \textit{The Twelve Conclusions of the Lollards}, 22 Eng Hist Rev 292, 293 (1907).

\textsuperscript{198} See Dymmok, \textit{Liber Contra XII} at 145-59 (cited in note 197).

\textsuperscript{199} See Somerset, \textit{Answering the Twelve Conclusions} at 60-61 (cited in note 197). Somerset focuses on the audience to which Dymmok directed his answer and the ability of different groups in society to understand and sympathize with his views and reasoning. She believes that his answer to conclusion six best illustrates his appeal to knights and other gentry on the basis of common interest. She also believed that this response, like the Lollard's attack, reflected a sensitivity to the significant mutual interpenetration of the secular and spiritual worlds and a "nuanced approach" to this relationship and its implications. In the end, she felt that he lost in his dispute with Wyclif. Id at 59-61, 71. Anne Hudson believed that Dymmok's reply to the sixth conclusion "was not one of his most persuasive." Hudson, \textit{Hermododtia or Ambidexter} at 42 (cited in note 192).

\textsuperscript{200} "Not only is it well appropriate for church prelates but for virtuous men whomsoever to be called ambidexters. For he is called an ambidexter, who makes use of each hand just as if it were the right for his defense. . . . From which things it follows in vigorous conclusion because not only for church prelates but also for whatever just men, it is well appropriate to be called ambidexters." Dymmok, \textit{Liber Contra XII} at 155-56 (cited in note 197).

\textsuperscript{201} "Of this sort of ambidexter the apostle has been, when he knew abundance and to suffer want. So the apostles have been ambidexters, when rejoicing they were going to the admiration of the plan, because they are of a worthy character to suffer insult for the name Jesus. . . . Joseph has been the exalted ambidexter in the kingdom of Egypt without elation, and depressed by squalid prisoners without dejection." Id at 156. Hudson suggests that Dymmok's argument may reflect "a slight air of desperation." Hudson, \textit{Hermododtia or Ambidexter} at 43 (cited in note 192).
two contrary masters, but one, namely God.\textsuperscript{202} The notion of ambidexterity had other positive religious uses.\textsuperscript{203}

Despite these positive uses, “ambidexter” was well recognized in religious usage as an epithet.\textsuperscript{204} The Lollard coupling of the term with “hermofodrita,” a term largely ignored by Dymmok and the commentators,\textsuperscript{205} underscores its negative connotation in the sixth conclusion. This metaphor for holding dual offices may suggest unnaturalness and perhaps a note of scorn. Both Wyclif and Edward III associated this ambidexterity with troubled political and social events,\textsuperscript{206} adding further evidence for the argument that the negative connotation of the word in late medieval religious discourse contributed to the opprobrium attached to it in the lawyer defamation cases.

3. Literary Use of “Ambidexter”

The term “ambidexter” was also established in literary usage. The term was associated with the law-devil figure, which E.F. Tucker identified in many early modern English works.\textsuperscript{207} The law-devil figure, which may have roots in the classical advocatus character of Latin and Italian comedies, emerged in the early modern period as an English common lawyer figure. Tucker believes the image is not rooted in comedy, but that its origins “stem from morality drama of the fifteenth century, in which the legal profession is always on the side of vice.”\textsuperscript{208}

\textsuperscript{202} “Not so making that they are devoted to two contrary masters, so they nod to that, but rather to one master, namely to God, in different duties, one namely from the obligation of their position and the other from their commission and the other from chance cause.” Dymmok, Liber Contra XII at 157 (cited in note 197).

\textsuperscript{203} A religious letter describing a holy man said, “[W]hile some use one hand in administering the discipline, he, like a true son of Benjamin, untiringly fights against the rebellious desires with both hands.” Moreover, the editor notes “the ambidexterity of Benjamin.” Peter Damian, Letter 44, reprinted in 2 Fathers of the Church: Mediaeval Continuation 232 & n 32 (Catholic 1990) (Owen Blum, trans). I am grateful to R.H. Helmholz for bringing this usage to my attention.

\textsuperscript{204} See Hudson, Hermofodrita or Ambidexter (cited in note 192); Somerset, Answering the Twelve Conclusions (cited in note 197).

\textsuperscript{205} Fiona Somerset noted his neglect of hermofodita. Somerset, Answering the Twelve Conclusions at 60 (cited in note 197). Dymmok only says, “[H]owever such persons consistently well to be called ambidexters on account of the cause expressed in the third conclusion, nevertheless they cannot in any way be called ‘hermaphrodite’ when that name may be indifferent to vice or virtue.” Dymmok, Liber Contra XII at 157-58 (cited in note 197). Unlike “ambidexter,” it would have seemed quite difficult to conceive of a positive use for this term.

\textsuperscript{206} Wyclif connected religious officers holding simultaneous secular positions with the 1381 Peasant’s Revolt. Edward III made his comments in the context of an administrative and financial crisis in 1340 and 1341. See Hudson, Hermofodrita or Ambidexter at 41, 43-44 (cited in note 192).


\textsuperscript{208} See Tucker, Intruder in Eden at 72 (cited in note 137); Tucker, Parkhurst’s Ignoramus at xxix-xxxvi (cited in note 207); Tucker, Ignoramus and Eighteenth Century Satire at 314-21 (cited in note 207). The early fifteenth-century religious poem The Assembly of the Gods, which seems related to the morality plays and allegories of vice and virtue, includes soyll ambidextres in a long list of vice figures to denote double-dealing.
Citing Tresilian’s “Janus-like” image in Woodstock, Tucker notes that ambidexterity was a “Janus-like sin of the Vice characters,” corresponding to common misconduct of contemporary lawyers. He ties the lawyer’s sin of ambidexterity to “the famous vice character of Ambidexter” in Thomas Preston’s Cambyses, The King of Persia.

Cambyses is a story about the life and death of a king and his “many wicked deeds and tyrannous murders.” Although subtitled “A lamentable Tragie,” the play is in the tradition of morality literature. Character names include Murder, Commons cry, Commons complaint, Diligence, Crueltie, Meretrix, Shame, Otian, and Ambidexter (the latter not being a lawyer). The words “Enter the Vice” announce Ambidexter’s first appearance in the play. He identifies himself, “My name is Ambidexter, and signifies one, that with both hands can play.” He goes on to outline the wide destruction that he will cause. In the end, Ambidexter runs away after being beaten physically, pleading “no more, no more, I beseech you hartily: Even now I yield, and give you the maistry.” Throughout the play, the repeated metaphor of playing on both hands, associated with the vice character Ambidexter, has a clear negative connotation.

In the later play Ignoramus by George Ruggles, the main character, Ambidexter Ignoramus, is a lawyer. The last name, Ignoramus, suggests a foolish character, though the portrait of ignorance is negative and abusive rather than comical. Scholars have identified the first name, Ambidexter, spoken several times

211. Thomas Preston, Cambyses, King of Persia (1910) (first published 1569). Cambyses has been characterized as a humanistic form of literature, known as speculum principis, comparing a good and tyrannical king. It may have had relevance to contemporary moral and political issues of obedience and retribution in Anglican doctrine. See William Armstrong, The Authorship and Political Meaning of Cambises, 36 Eng Studies 289, 292-99 (1955). Chief Justice Mountague’s speech at the 1540 Call to Serjeants specifically referred to Cambyses, Baker, The Order of Serjeants at Law at 298, 300 (cited in note 28).
212. See Baker, The Order of Serjeants at Law at sig A4v (cited in note 28).
213. See id at sig B1r.
214. See id at sigs G1v, G2r.
215. See id at sigs B2r, B4r, D1v-D2r, D3r, D3v.
216. See George Ruggles, Ignoramus, Comedia (1787) (first published 1615); Tucker, Parkhurst’s Ignoramus (cited in note 207). Parkhurst translated this work from Latin into English in about 1660. Tucker includes several seventeenth-century manuscripts of this work. An early study traced the origins of Ignoramus to Giambatista Della Porta’s La Trappolaria, influenced by the Latin play Pedantius and in turn influencing Samuel Butler’s seventeenth-century Hudibras. J.L. Van Gundy, Ignoramus 23-97 (1906) (PhD thesis, University of Gena).
217. Over time, ignoramus became “almost synonymous with legal abuses, particularly those of bribing, packing and intimidating juries.” Tucker, Intruder in Eden at 99-100 (cited in note 137). Tucker has pointed out that the character Ignoramus “successfully amalgamates” many of the satirical images of lawyers: “the ambidextrous vice, a lecher, a comical Zepherian poet, an enemy to civil peace, of course, the quintessentiel ignoramus.” Id at 101-02. The term “ignoramus” was a common term of opprobrium for an ignorable person, appearing in other literary works and derived from a legal Latin term. Tucker, Intruder in Eden at 99-114 (cited in note 137); Tucker, Parkhurst’s Ignoramus at 63, 229-30 (cited in note 207); Van Gundy, Ignoramus at 61-62 (cited in note 216).
throughout the play,\(^{218}\) as revealing the character’s true nature, linked to taking money with both hands.\(^{219}\) The play conveyed a clear image of a deceitful lawyer to the theater audience. One character refers to Ambidexter as a “fornicator of the law.” Another mentions \textit{The Snake of Equivocation}, a contemporary treatise “against lying and fraudulent dissemulation” that discusses the failure of lawyers to respect the “sacredness of oaths.”\(^{220}\)

Another contemporary play, \textit{Ram-Alley}, includes a venal and despicable lawyer, Throte,\(^{221}\) who “professeth law, but indeed has neither law nor conscience.”\(^{222}\) Although some characters revere law, Throte mocks it.\(^{223}\) His numerous disreputable qualities are revealed throughout the play. His study has “booke and bags of money on a Table” and he is cunning, deceptive, and greedy.\(^{224}\) Moreover, he is often associated with lechery and sexual escapades.\(^{225}\) Nevertheless, Throte believes that he is worthy to marry Francis, Lady Sommerton’s heir and Justice Tutchin’s niece, as he does “all by statute law and reason.” The justice emphatically disagrees and, among all of Throte’s despicable qualities, singles out his ambidexterity as the basis of disqualification:

\begin{quote}
You sir Ambodexter,  
A Summers sonne and learnt in Norfolk wiles,  
Some common baile, or Counter Lawyer,
\end{quote}


\(^{219}\) Tucker states that “his given name, Ambidexter, provides a sufficient clue to his true identity, and his first entrance on stage betrays his genealogy to the vice figures of morality drama.” Tucker, \textit{Intreader in Eden} at 14 (cited in note 137). J.S. Hawkins, the 1787 editor of the primary original Latin text of the play, said that in order “that the reason for terming \textit{Ignoramus Ambidexter} may be thoroughly understood, it is necessary to observe” that it signified a juror that took bribes from both parties. Van Gundy, \textit{Ignoramus} at 62 n a (cited in note 216).


\(^{221}\) Lording Barrey, \textit{Ram-Alley or Merrie Tricker} sig G4v (1953) (reprint of 1913 facsimile reprint) (first published in 1611). The lawyer is apparently named Throte because he is “open throted.” Id at sigs A4v, C1r. Ram-Alley was a small lane between Fleet street and the Temple; it had a bad reputation as a place for prostitutes and other aspects of coarse and low life. “Many a worthy lawyer’s chamber buts upon Ram-alley.” Id at sig C1r. Virgins and honest women did not dare to go near the Inns or in Ram-Alley. Id at sig D4v, E4r.

\(^{222}\) See id at sig A4v. He never saw the bar except when he was disciplined for cosinage.

\(^{223}\) See id at sig A4v. He never saw the bar except when he was disciplined for cosinage.

\(^{224}\) Dash, when asked by Throte what he thinks of law, says, “Most reverently, Law is the worlds great light, a second sunne, to this terrestial Globe, by which all things have life and being and without which Confusion and disorder soon would seaze the general state of men. . . . It is the kingdom’s eye, by which she sees the acts and thoughts of men.” Throte replied, “The kingdomes eye, I tell thee fool, is it the kingdomes nose by which she smels out all these rich transgressors, Norist of flesh, but meerely made of wax, and ‘tis, within the power of us Lawyers to wrest this nose of waxe which way we please.” Id at sig B4r.

\(^{225}\) See id at sigs A4r, A4v, B4v, C4v, G4r-H1r, H1v. He procures William Smallshankes’ land for half its value and keeps William’s “forfeit mortgage . . . to let him know what it is to live in want.” Id at sigs A3v, C1r. In the play, lawyers in general share these traits. Id at sigs C4v, G1r, H1v.
Marry my niece?226

Throte, who has already married Francis, is accused of stealing the heir for his wife, but he claims that she is his lawful wife, citing numerous statutes. In the end, Throte gets his just deserts, as his wife is not the heir but a prostitute. He protests that he has been gulled, cosined, and abused. His status as a lawyer merits him a final insult: "But why shouldst thinke much to dye a Cuckold, Being borne a Knave: as good Lawyers as you Scorne not hornes." Throte responds, "I am guld, aye me accurst!"227

Among other contemporary popular literature using the word "ambidexter" in a negative sense is A Manifest Detection of the Most Vyle and Destestable Use of Dice Play (1532), written on behalf of "all younge Gentilmen and others sodeny enabled by wordly abundance." The interlocutor, discussing the deceit associated with dice play, says that dishonest individuals are known as "cheetors" and "dice cheators, borrowing a term from lawyers." The other speaker responds, "Trow ye, then, that they have any affinity with our men of law?" The first replies, "Never with those that be honest. Marry! with such as be ambidexters, and use to play on both the hands, they have a great league."229 Similarly, a 1624 work said, "These ambidexter Gibionites are like Sea-Calles, Crocodiles, Otters & Sea-colt; Aristotle & Plinie speak of, which are one while in water, other-while a loand for their greater bootie."228 These literary examples illustrate the negative connotation of the word "ambidexter," especially as it was used in connection with lawyers.

In summary, the concept of disloyalty and the word "ambidexter" appeared often in the legal system, religious discourse, and literary images of lawyers. Such usage likely created a pejorative image of the disloyal lawyer and the ambidexter in the social and political milieu. The connection between the law and social, religious, and political commentary helps explain the association between accusations of ambidexterity and serious professional opprobrium and, therefore, the

226. See id at sig G4v.
227. Throte is sent to the Fleet prison and all these facts come out in a humorous mock trial at the end of the play where he is beaten by William Smallschanke, who had been tricked by Throte into parting with his land for half its value. Id at sigs A3v, I2r-I3v. Some scholars believe that Ben Jonson's work, particularly Volpone and The Alchemist, influenced Ram-Ally. See, for example, R.V. Holdsworth, Ben Jonson and the Date of Ram-Ally, 32 Notes & Queries 482, 483-86 (Dec 1985).
228. A Manifest Dection of the Most Vyle and Destestable Use of Diceplay, and other practises lyke the same; a Myrour very necessary for all younge Gentilmen and others sodeny enabled by wordly abundance, to loke in. Newly set forth for their behoufe 17 (1850) (first published 1532). Apparently, several versions of this mirror existed, with the earliest appearing, perhaps, in 1532. Id preface. The notes, which were added sometime after the late sixteenth century, contain a lengthy explanation of "cheator" and a briefer one of "ambidexter." The latter explanation uses a statement from a 1592 work: "[T]hey say the lawyers have the divel and all, and it is like enough he is playing ambidexter amongst them." Id at iii-iv.
229. See B.S. (B. of D.) (1624), reprinted in C.M. Ingleby, Shakespeare's Centuries of Prayse 159 (De La More 2d ed 1965) (reprint of 1879 edition) (Lucy Smith, ed). The Gibeonites were people who deceived Joshua in the Bible into making a peace treaty by their garments, shoes, food, and wine. As a result, Joshua condemned them to be hewers of wood and drawers of water. Joshua 9-10.
clear defamatory nature of these imputations of disloyalty.

IV. PROFESSIONAL REPUTATION, CULTURE, AND DEFAMATION

According to early modern scholars, cultural changes and legal developments in the sixteenth and seventeenth centuries made professional reputation especially vulnerable to attack. In particular, attitudes toward honor, the increasing importance of reputation, and changes within the legal profession combined to create a climate conducive to defamation suits brought by lawyers. The professional reputation of lawyers was “peculiarly vulnerable to defamation,” since the era stressed personal honor and relationships. A man’s honor, in this period, was the essence of his reputation in the eyes of his social equals: it gave him his sense of worth and his claim to pride in his own community and it contributed to his sense of identity with that community. John Cooke tied the need to make defamation actionable with preservation of honor and reputation, “the very life blood of a Gentleman and the sweetest flower in every man’s Garden.” Defamatory accusations directed at lawyers were adjudged in the community “court of reputation”; if not defended and corrected, the resulting negative public opinion would permanently tarnish the lawyer’s reputation. Contemporary lawyers were sensitive to the need to guard their reputations. John Davies said “no men of any other calling or profession, whatsoever, are more careful to preserve their good name and reputation” than common law law-

230. Anthony Fletcher, Honour, Reputation and Local Officeholding in Elizabethan and Stuart England, in Anthony Fletcher and John Stevenson, eds, Order and Disorder in Early Modern England 92-93 (Cambridge 1985). Fletcher’s discussion focuses on local officeholders, particularly justices of the peace, but the forces that made justices of the peace vulnerable would have similarly affected lawyers.

231. Id at 93. Fletcher quotes a letter stating, “To traduce my actions, stain my blood and dishonour my father, which is long since dead, are three mortal wounds to my soul which can never be cured.” Id. Fletcher notes that although “[h]onor was only at stake between equals; reputation was at stake with everyone.” Id at 110. Honor played a role in the evolution of trespass in the thirteenth century, when it was considered compensable in damages. John Beckerman, Affronts to Honor and Origins to Trespass, in Morris Arnold, et al, eds, On the Law and Customs of England: Essays in Honor of Samuel E. Thorne 159, 161-76 (North Carolina 1981). Beckerman believed that the disappearance of honor and shame and the primacy of economic loss in delictual liability impacted the sixteenth century’s recognition of defamation concerning the latter and disregard of the former. Id at 175-76, 180-81. He also pointed out that the actionability of defamation in Spanish, French, Italian, and Scottish law did focus, as a result of the influence of Roman law, on “contumelious insult,” in contrast to the English focus on economic loss. Id at 160. As was true in the English medieval local courts, German courts in the fourteenth century required an accuser to compensate a victim of defamation for injury to honor. Id at 173-76; Dawson, Oracles of the Law at 164-65 (cited in note 99).

232. See Cooke, The Vindication of the Professors and Profession of Law at 85 (cited in note 119) (seeing actionable defamation as necessary, otherwise “the parties provoked fall to striking to rescue their ravished honour and to take the sword out of the hands of Justice.”).

233. See J. Pitt-Rivers, Honour and Social Status, in J.G. Péristiany, ed, Honour and Shame: The Values of Mediterranean Society 21-35 (Chicago 1966) (exploring the nature of honor in terms of reputation in the eyes of others and self and surveying the various methods of vindicating assaults on honor, seeing a conflict between honor and legality that undermines the efficacy of legal compensation to redress injury to honor).
Of Ambidexters and Daffidowndillies

yrs. As a result, he concluded that “the dignitie of the Profession do accordingly dignifie all Professors thereof which are qualified with learning and vertue fit for so worthy a calling.” Moreover, the “face to face” nature of contemporary society underscored lawyers’ need for the remedies defamation suits offered.

Another cultural change was the increased importance of careers and occupations, and their pursuit as a means of social and economic mobility. During the middle ages, universities provided a foundation for “a golden age of careerism” in the “lucrative sciences,” including canon and civil law. Subsequently, careerism broadened substantially into commercial life. During the sixteenth century, the growth of the guilds evidenced further occupational expansion and the economic and political impact of increased participatory citizenship. An early seventeenth-century religious tract viewed the pursuit of a calling or vocation as “ordained and imposed on man by God for the common good” and stated that everyone “without exception must have some personal and particular calling to walk in.” The early modern era strengthened the tie between an individual’s identity and his profession and the ability of a profession to advance one’s social status. An uncountered slanderous attack on a professional threatened his social advancement and undercut the investments in a culture that was conducive to this mobility.

Another important development involved the impact of law on culture. During the later middle ages, law made important contributions to intellectual

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235. See id at 281.
236. See id at 281.
237. See id at 281.
238. See id at 281.
239. See Alexander Murray, Reason and Society in the Middle Ages 218-24 (Clarendon 1985).
240. See id at 281.
241. See id at 281.
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301. See id at 281.
302. See id at 281.
and cultural life through humanist learning and political ideas. This “permeation of law into the wider culture” continued throughout the early modern era. Eric Ives has emphasized the cultural impact of the institutionalization of legal education through the Inns of Court. The rise of the Inns contributed to the growth of the profession and to the pursuit of a legal career as a means of social mobility. Membership in an Inn provided a vehicle for shaping both the profession’s self-image and the perception non-lawyers had of it, views which impacted the development of professional reputation. Thus, defamation threatened an individual’s pursuit of a legal career, social advancement, and professional reputation.

During the early modern era, important developments in the profession accompanied the cultural changes that affected lawyers. Commentators have suggested that public recognition of the actual practice of law as an occupation and as an honorable status apart from its social significance established a different professional identity for lawyers. “The inherent social importance and moral worthiness of the functions associated with the lawyer’s calling” conferred honor on practitioners. A contemporary religious treatise on vocations stated that law was one of the best callings. This general view coincided with the profession’s self-image. In 1615, Sir John Davies said that “the profession of the Law is to be preferred before all other human professions and sciences as being the most noble ... the most necessary ... and the most meritorious.”

244. See Nigel Ramsey, What Was the Legal Profession?, in Profit, Piety and the Professions in Later Medieval England 62-65 (Alan Sutton 1990) (Michael Hicks, ed). Ramsey noted that the use of lawyers as feoffees in enfeoffments to uses, beginning in the fourteenth century, was an important source of income that depended on the lawyer’s strong reputation for trust. See id at 65.
246. Prest, Why the History of the Profession Is Not Written at 316 (cited in note 245). Prest stated that the humanist concept of the good lawyer “justified and legitimated the rising numbers, wealth and influence of common lawyers in general and barristers in particular.” Id at 315.
247. See Perkins, A Treatise of Vocations at 736 (cited in note 121).
248. See Davies, A Discourse on Law and Lawyers at 272, 281 (cited in note 234). He said that without
characterized “a worthy professor of law” as “a star in the firmament of the Commonwealth” and as “lux in tenebris wheresoever he dwelleth.” 249 Scholars have further noted that, during this period, the modern legal profession began to take shape and exhibit a more institutional nature. Wilfrid Prest and David Lemmings have detailed this process in connection to the upper branch of the profession, the emergence of barristers, and the role of the Inns.250 The lower branch of the profession, those more commonly plaintiffs in defamation suits, manifested similar development.251 Christopher Brooks has documented in detail the rise of attorneys during the early modern period, noting their increased numbers and cohesion, as well as aspects of professional organization such as admission oaths and rules of practice.252 Moreover, provincial lawyers increased in importance and influence.253 These changes in the legal profession and its image help explain the frequency of defamation suits by lawyers, particularly those accused of ambidexterity and the beneficial effect of such litigation.

V. CONCLUSION

The preceding discussion explains the significance of defamation suits by lawyers accused of ambidexterity, which constituted a large portion of lawyer-brought defamation suits.254 The cases demonstrate that an imputation of disloyalty was clearly defamatory and that the particular word “ambidexter” carried strong stigma and opprobrium. The public and professional images of lawyers go a long way in explaining why such accusations were the most slanderous defamations of a lawyer, the imputation of the highest professional sin. The norm of loyalty was part of the professional culture and the word “ambidexter” had a long history in law, and other contexts, as a pejorative term. The profession’s articulation of loyalty obligations, as seen in judicial decisions and speeches and the works of legal writers, had a rhetorical as well as a normative quality. These manifestations reflected the profession’s self-image, which it wanted to project to those outside the profession. Perhaps more importantly,
the images of disloyal lawyers and usage of the word “ambidexter” in religious discourse and literary works reflected a public understanding reinforcing the dishonor resulting from such accusations. Cultural changes involving the importance of honor, reputation, and the pursuit of a profession and legal developments regarding the identity and organization of the profession in the sixteenth and seventeenth centuries enhanced the likelihood and beneficial nature of defamation suits by lawyers accused of disloyalty.

More generally, one might see these accusations and the resulting defamation suits as a juxtaposition of the legal profession’s private nature and public image. Ambidexterity occurred as lawyers carried out their private function of representing clients, most often in litigation. The misconduct arose with sufficient frequency that, when coupled with generally hostile attitudes toward the legal profession, a public image of the disloyal lawyer emerged. Religious, political, and literary usages made this image recognizable to many outside the legal profession. Members of the public were important as they were the accused lawyer’s current and future clients. Public opinion was important in the collective sense as it was the foundation of professional reputation. Broader social and political notions of loyalty and the heinous quality of disloyalty underscored the ignominy of the disloyal lawyer.

The defamatory nature of accusations of ambidexterity draws initially on ethical norms developed within the legal profession to govern practitioners’ private roles, but acquires more significant substance from public images of the disloyal lawyer. Certainly, it would seem to be the latter that caused accusations to produce substantial injury to professional reputation. The interrelationship between early modern defamation suits, legal ethics, professional and public images of lawyers, and professional reputation is a manifestation of the profession’s distinctive and ambivalent nature. Unlike other professions, the courts have regulated the admission and conduct of lawyers through both statutory authority and inherent judicial power;255 the Ordinance of 1292 made attorneys “officers of the court.”256 Moreover, the civil liability of lawyers had a different origin and evolution from that imposed on other professionals.257 Some defamatory words were actionable when directed at lawyers, but not when used to accuse others.258 Although satire and political criticism also targeted other professions, attacks on lawyers were qualitatively and quantitatively more substantial, resulting in public images unique to lawyers. These distinctive characteristics reflect the profession’s ambivalent nature by exemplifying the public nature of the profession, whose role in representing clients is a private one. The profession’s dual dimension may help explain its longstanding internal struggles and

255. See Brand, The Origins of the English Legal Profession at 120-42 (cited in note 4); Rose, 48 Syracuse L Rev at 49-85 (cited in note 4).
256. See Rose, 48 Syracuse L Rev at 79 (cited in note 4).
257. See Rose, 7 U Chi L Sch Roundtable at 183-92 (cited in note 3).
258. See Helmholz, Select Cases at lxxxi, xcviii (cited in note 11).
external difficulties.