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## A Random Stroll Amongst Anthony Trollope's Lawyers

James J. Fishman

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## A RANDOM STROLL AMONGST ANTHONY TROLLOPE'S LAWYERS

James J. Fishman\*

### ABSTRACT

*Anthony Trollope (1815-1882) resides in the pantheon of nineteenth century English literature. While working full time in his postal position until 1867, he still managed to publish 47 novels, travel books, biographies, short stories, collections of essays, and articles on various topics. Trollope has been described as the novelist of the ordinary for his realistic description of English society.*

*Law and legal issues flow through Trollope's fiction. The legal system held a special importance to him as the skeleton upholding the social and political framework of the country. Over one hundred lawyers appear in his work and eleven of his novels feature trials or hearings. The law intrigued and exasperated him. Along with the lawyers and legal issues he depicts are ideas of the law and legal system that are part of elaborate philosophical and jurisprudential traditions, which he recognized.*

*This article examines Trollope's changing attitude toward lawyers. It describes the structure of the Bar in terms of class, status and reputation. Trollope believed the legal system should ensure justice, and those who labored in the law should be the vehicle of that pursuit. Justice for Trollope was the meting out of rewards and punishments as the consequence of a right or wrong decision. However, the law, as he depicted it, was often an impediment to this process, and lawyers were unreliable guides.*

*Initially Trollope portrayed lawyers critically as caricatures as evinced by such names as Alwinde, O'Blather, Slow & Bideawhile, Haphazard, and Chaffanbrass. He was outraged that barristers (lawyers who appear in court) put loyalty to their clients ahead of the search for truth and justice. The adversary system was flawed as the enactment of laws in accord with the laws of nature assumes an inbuilt moral compass in humans that contains self-evident truths of right and wrong. Trollope felt there was no reason why a right-minded person could not intuitively recognize the truth, so criminal law's adversary system was unnecessary. The legal system sought not the discovery of the truth but was more interested in aiding the guilty defendant to escape punishment.*

*As he matured as a writer and achieved success, Trollope's understanding and appreciation of the legal profession changed. He met and become friends with leaders of the Bar, and they influenced his descriptions of lawyers, who became realistic and often admirable human beings. Beyond the legal problems of its characters, Trollope's later novels incorporated the social, political, and jurisprudential issues of the times and engaged the Victorian legal culture in a broader sense of history, traditions, continuity and change.*

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*Natural law principles were challenged during the Victorian era by positivist notions that law is what the statute books say. These divisions lurk in the background of his later portraits of lawyers and the legal system. In his later period Trollope created a realistic characterization of the legal profession at the time that offered universal insights into human nature.*

## KEYWORDS

*Anthony Trollope, Law, Lawyers and Society, Nineteenth Century Fiction, Law & Literature*

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*"Wills' contests and inheritance law are staples of Victorian fiction ... plus it seems, almost every novel by Trollope."* --Richard Posner<sup>1</sup>

Anthony Trollope (1815-1882) resides in the pantheon of nineteenth century fiction writers and was perhaps second only to Charles Dickens in contemporary popular appeal. Today, he may be the most widely read novelist of that period. After a miserable childhood, he became an official with the Post Office and is credited with introducing the familiar red mailbox. While working full time in his postal position until 1867, he began to write and managed to publish 47 novels plus travel books, biographies, short stories, collections of essays, and articles on various topics.

Though Judge Posner's comment is an exaggeration, lawyers, legal issues relating to land, estates, wills, inheritance, and trials on these topics abound in Trollope's fiction. The law and the legal system fascinated him. Trollope believed that the legal system should ensure justice, and those who labor in the law should be the vehicle of that pursuit. That lawyers' primary allegiance was to their clients rankled him.

Trollope initially was extremely hostile to lawyers. The London Review in an essay reviewing *Orley Farm* stated: "[Trollope] cannot bear a lawyer. They are all rogues, not by nature, but by profession."<sup>2</sup> While this view seems appropriate for his early career, he changed his attitude over time. This essay discusses Trollope's conception of what the law should strive for; suggests how that vision affected his view of lawyers; examines his changing attitudes toward them; and speculates why he altered some of his harsher opinions of the legal profession. It also notes the changes occurring in the legal profession and the law during the mid-nineteenth century and how Trollope incorporated them into his work.

Trollope's career and attitudes toward lawyers can be divided into three periods. The first was pre-London, when he worked for the Post Office in Ireland and where his description of members of the bar were often caricatures. A second period commenced in 1861, after he moved to London and wrote *Orley Farm*. In the third, the London period, when he met and became friends with some of the good and great of the English bar, his lawyers became more sympathetic, realistic, able, and as with his other characters, reflections of real people.<sup>3</sup>

## I. TROLLOPE AND THE LAW

Trollope's father was an unsuccessful barrister, an intelligent man whose temperament and personality offended colleagues and drove away clients. These failings led to the family's penury and to a wretched childhood for Trollope. His

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<sup>1</sup> RICHARD POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 6 (1988).

<sup>2</sup> *Mr. Trollope and the Lawyers*, LONDON REVIEW 405 (Nov. 8, 1862) (quoted in ANTHONY TROLLOPE : THE CRITICAL HERITAGE 156 (Donald Smalley ed. 1969). Trollope has little to say about judges.

<sup>3</sup> This division originated with Henry S. Drinker (1880-1965), an attorney and avid Trollopean, in an address before the Grolier Club on November 15, 1949. In 1950. The Grolier Club published the address in *Two Addresses Delivered to Members of the Grolier Club*. The addresses were reprinted as Henry S. Drinker, *The Lawyers of Anthony Trollope*, FED. LAW., Jan., 2008, (Magazine), at 50.

older son, Henry, was a paper barrister, i.e. one qualified to advocate in court on behalf of clients, but who did not practice law.

The law intrigued and exasperated Trollope. Eleven of his novels have trials or hearings.<sup>4</sup> Over one hundred lawyers appear throughout his works. The legal system held a special importance to him as the skeleton upholding the social and political framework of the country, as important as the church and the body politic. Trollope has been described as the novelist of the ordinary for his realistic descriptions of society. Along with the society he depicts are ideas of the law and legal system that are part of elaborate philosophical traditions, particularly ideas of truth that accompany concepts of natural law. For Trollope law was an integral part of the forces that make a functioning society.<sup>5</sup> In the law, Trollope found also an expression of spiritual principles integral to English customs.<sup>6</sup> He perceived that the role of law in English society was changing, becoming more commercial and urban, and thrusting up new classes at the expense of the landed gentry. Could a legal system that was originally framed to support a feudal structure accommodate the claims of the burgeoning commercial and middle classes?<sup>7</sup> His novels reflect these tensions.

In some sense Trollope's plots and the mediating role of the law between the individual and society resemble contemporary American disputes as to whether the Constitution is to be strictly interpreted according to its original words and meaning or is it to be a more flexible vehicle that changes with the times. The tensions between the law and English society were used brilliantly by Trollope. He believed that justice was the meting out of rewards and punishments as the consequence of a right or wrong decision. The law, as he depicted it, was often an impediment to this process, and lawyers were unreliable guides. Trollope provided the way through his creations of characters, who seem real persons.<sup>8</sup>

Trollope criticized the legal system because of the way it allowed the deprivation of women's property by her spouse, in the rigidity of the land law and the system of entail, and in the absurd distinctions allowed there, such as between heirlooms and paraphernalia exemplified in *The Eustace Diamonds*. Nevertheless, he favored the land and inheritance laws for their stabilizing role in English society and culture.

Throughout much of his career Trollope was critical of the bar and lawyers' work. He admired lawyers who were unswerving in their quest for the truth and carried forth the cause of justice.<sup>9</sup> From Mr. O'Malley, who defends Myles Usher in *The Macdermots of Ballycloran*, his first novel, to Nicholas Apjohn, the attorney in *Cousin Henry*, one of his last, lawyers who seek justice and take an interest in the client receive Trollope's approval. O'Malley, sitting in the courtroom "probably thinking it unprofessional to take more than a lawyer's interest in any case" was

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<sup>4</sup> In order of publication they are: *THE MACDERMOTS OF BALLYCLORAN* (1847); *THE KELLYS AND THE O'KELLYS* (1848); *THE THREE CLERKS* (1858); *ORLEY FARM* (1862); *THE LAST CHRONICLE OF BARSET* (1867); *THE VICAR OF BULLHAMPTON* (1870); *THE EUSTACE DIAMONDS* (1872); *LADY ANNA* (1873); *PHINEAS REDUX* (1874); *JOHN CALDIGATE* (1879) & *THE LAND-LEAGUERS* (1883).

<sup>5</sup> R.D. McMASTER, *TROLLOPE AND THE LAW* 31 (1986).

<sup>6</sup> *Id.* at x.

<sup>7</sup> Geoffrey Harvey, *Introduction*, *MR. SCARBOROUGH'S FAMILY* viii (Oxford Univ. Press 1989) (1883).

<sup>8</sup> CORAL LANSBURY, *THE REASONABLE MAN: TROLLOPE'S LEGAL FICTION* 95 (1981).

<sup>9</sup> *Id.* at 157.

so anxious about the result he could not wait to hear the verdict.<sup>10</sup> Mr. Apjohn seeks the truth about a will even though it will go against his client's interest.<sup>11</sup> In contrast, Trollope despised those lawyers who knew their clients were guilty and used their legal skills to plead for their innocence.

#### *A. THE DISTINCTION BETWEEN SOLICITORS AND BARRISTERS*

In discussing Trollope's attitude toward lawyers, one should be aware of the structure of the English Bar and the distinction between solicitors and barristers. While both are members of the legal profession, their functions differ, as did Trollope's attitude toward them. A solicitor deals directly with his client on such matters as conveyancing real property, drawing up of wills and estate planning, negotiating and drafting agreements and other papers and documents, and offers general legal advice. The solicitor is often the family attorney.<sup>12</sup> In Trollope's novels, a firm of solicitors may represent a family for generations. Solicitors can represent their clients in private disputes, but the barrister is a client's advocate in court and is retained by the solicitor when such advocacy is needed.

Barristers are independent of one another and self-employed, and usually work in chambers, rather than firms. Two self-employed barristers in the same chamber can advocate on the other side of a dispute against each other, as they are independent of one another. Members of a solicitors' firm cannot represent two sides of a legal dispute.

#### *B. TROLLOPE'S SOLICITORS*

Trollope's treatment of solicitors is often benign. They are professionals and respected members of the legal profession and the community:

There is no form of belief stronger than that which the ordinary English gentleman has in the discretion and honesty of his own family lawyer. What his lawyer tells him to do, he does. What his lawyer tells him to sign, he signs. He buys and sells in obedience to the same direction and feels perfectly comfortable in the possession of a guide who is responsible and all but divine.<sup>13</sup>

Solicitors are the protectors in the present and future of a family's estate and wealth who assure future generations of their status and inheritance according to the laws of inheritance and customs of English society. They guard a family's personal and

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<sup>10</sup> THE MACDERMOTS OF BALLYCLORAN 606 (Oxford Univ. Press 1989) (1847). Trollope's novels come in a variety of editions. Where possible the Oxford University Press novels, which reprint the original format and pagination are used. As per The Bluebook: A Uniform System of Citation, used for legal citations, the original date of publication is listed after the date of the particular edition cited.

<sup>11</sup> Trollope ignored the legal ethical issue involved in Apjohn's pursuit of the truth. An attorney cannot act against his/her client while continuing representation.

<sup>12</sup> The word "attorney" applies only to solicitors. A barrister would be insulted to be referred to by that name. McMASTER, *supra* note 5, at xi. This essay uses the term generically to apply to both solicitors and barristers.

<sup>13</sup> THE EUSTACE DIAMONDS 91 (Oxford Univ. Press 1973) (1872).

financial interests against the outside world and sometimes from those within the family who would undermine it.<sup>14</sup>

Samuel Camperdown is such a solicitor.<sup>15</sup> In the *Eustace Diamonds* he zealously protects the interests of the Eustace estate even beyond the desires of his clients. For generations Camperdowns had been solicitors for the Eustace family. Lizzie Greystock, though well born, beautiful, and charming is a compulsive liar and thief. She marries the dying Sir Florian Eustace and soon becomes a widow. His death leaves Lizzie in possession of a priceless diamond necklace, which she claims Sir Florian gave to her.

Mr. Camperdown doesn't believe her and maintains she had no right to the necklace as it was an heirloom and would stay with the Eustace family. He insists the estate keep the diamonds until the dispute is settled. Lizzie refuses to turn them over, then says they have been stolen and lies to the police. Later, the jewels really are stolen. The solicitor consults a learned barrister, Thomas Dove, who writes an opinion that pearls and jewels are paraphernalia, which can be given before death and become the property of the widow.<sup>16</sup> Ignoring the bad news, Camperdown presses on believing that there are limits to paraphernalia and the diamonds are too valuable to be so categorized. He files a bill in Chancery in which the court will examine the equity of the transfer. Despite the reluctance of the Eustace family to pursue Lizzie, the solicitor considers himself the guardian of the estate, whose interest exceeds that of the family.

Often Trollope uses lawyers' names to highlight a personality trait. In *The Macdermots of Ballycloran*, the barristers are named Allewinde and O'Blather. Other times, the names are merely for purposes of humor. In *Dr. Thorne* he writes:

"[Mr. Gazebee] was the junior partner of Gumption, Gazebee & Gazebee, of Mount Street ... The firm had been going on for a hundred and fifty years, and the designation had often been altered; but it always consisted of Gumpions and Gazebees differently arranged, and no less hallowed names had been permitted to appear. It had been Gazebee, Gazebee & Gumption; then Gazebee & Gumption; then Gazebee, Gumption & Gumption; then Gumption, Gumption & Gazebee; and now it was Gumption, Gazebee & Gazebee."<sup>17</sup>

Trollope's solicitors reflect a substantial range in social status, respectability, integrity, and ability. A firm's or solicitor's name often frames character, class, reputation

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<sup>14</sup> R. D. McMaster elaborates that a solicitor "[has] the personal and transient pecuniary interests of members of the family at heart, but also the inherited dignity and welfare of the estate in general, and he must exercise reason, scholarship and the law's machinery to protect both. He has to contend with the wickedness, passion, and perversity of his client's enemies, but also with the indifference of the people he represents." McMASTER, *supra* note 5, at 76.

<sup>15</sup> "A better attorney to which his life was devoted, did not exist in London than Mr. Camperdown. To say that he was honest is nothing. To describe him simply as zealous, would be to fall short of his merits. The interests of his clients were his own interests, and legal rights of the properties of which he had charge, were as dear to him as his own blood." THE EUSTACE DIAMONDS, *supra* note 13, at 253.

<sup>16</sup> *Id.* at 226-28.

<sup>17</sup> DR. THORNE 442-43 (Oxford Univ. Press 1989) (1858).

or competence. The firm Slow and Bideawhile appears in six novels.<sup>18</sup> They are respectable senior solicitors with a reputation for unimpeachable probity. Sir Peregrine Orme, a character in *Orley Farm*, suggests to his barrister, Thomas Furnival, that Slow and Bideawhile be employed to defend Lady Mason on a perjury charge:

There were no more respectable men in the whole profession. But Mr. Furnival feared they were too respectable. They might look at the matter in so straightforward a light as to fancy their client was really guilty; and what might happen then? Mr. Furnival, therefore was obliged to say that on Slow and Bideawhile did not undertake that kind of business.<sup>19</sup>

Mr. Furnival reluctantly then goes to speak with Slow and Bideawhile, who refuse to take on the matter.

As their names suggest, they are neither efficient nor necessarily able. In *Orley Farm*, Mr. Slow is 'Old Slow'.<sup>20</sup> In *Miss Mackenzie*, he is a gray-haired old man, nearer 80 than 70, and Mr. Bideawhile is almost as old himself.<sup>21</sup> By the time of *The Way We Live Now*, Mr. Slow has died. Nor are Slow and Bideawhile considered clever or even competent.<sup>22</sup> They were solicitors with a particular style. With age, Trollope suggests, comes a decline in solicitors' faculties. In *Miss Mackenzie*, Slow and Bideawhile seem to give Miss Mackenzie her property by mistake and allow her to lend a large sum of money without checking on the supposed security, which is already mortgaged elsewhere. Round and Crook, a firm that appears in *Orley Farm*, is respectable, but Trollope notes that "Mr. Round Sr. had enjoyed the reputation of being a sound, honorable man, but was now considered by some to be not quite sharp enough for the practice of the present day."<sup>23</sup>

A theme raised in several novels is the decline in solicitors' ethics, a generational shift that reflects a conflict between traditional mores and sharper practices by younger solicitors. More senior respectable solicitors, Slow and Bideawhile, Round and Crook, Mr. Camperdown & Son represent a past where professional standards were higher than the present, which rewards shifty practices. In *Mr. Scarborough's Family* this new environment is recognized by John Grey, Mr. Scarborough's solicitor. He notes the tendency of his partner, Mr. Barry, to sharp practices as reflecting the age.<sup>24</sup> Mr. Squercum in *The Way We Live Now* exemplifies the modern 'sharp' solicitor. Despised by Slow and Bideawhile as "so clever and so pestilential" and damned with faint praise as "fairly honest,"<sup>25</sup> Squercum nevertheless gets results.

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<sup>18</sup> DOCTOR THORNE (1858); FRAMLEY PARSONAGE (1861); HE KNEW HE WAS RIGHT (1869); MISS MACKENZIE (1865); ORLEY FARM (1861) & THE WAY WE LIVE NOW (1875).

<sup>19</sup> ORLEY FARM 263 (Oxford Univ. Press 1970) (1862).

<sup>20</sup> *Id.* at 263-64.

<sup>21</sup> MISS MACKENZIE 221 (Dover 1986) (1865). The Dover citations are unabridged republications of the work originally published by Chapman and Hall.

<sup>22</sup> "The Bideawhiles piqued themselves on the decorous and orderly transaction of their business. It had grown to be a rule in the house that anything done quickly must be done badly. They never were in a hurry for money, and they expected their clients never to be in a hurry for work." THE WAY WE LIVE NOW 69-70 (Oxford Univ. Press 1951) (1875).

<sup>23</sup> ORLEY FARM, *supra* note 19, at 157-58.

<sup>24</sup> MR. SCARBOROUGH'S FAMILY, *supra* note 7, at 600.

<sup>25</sup> "Squercum was the very opposite to [Slow and Bideawhile]. He had established himself, without predecessors and without a partner, and we may add without capital, at a little



As one would expect, Trollope's discussions of attorneys are infused with differentiations based on status, class and wealth. The nineteenth century legal profession was highly stratified as it is today. Not surprisingly Trollope made much use of those differences in his descriptions of lawyers, particularly in his later novels. To return to the firm of Gumption, Gazebee & Gazebee:

Mr Gazebee was a very different sort of gentleman; he was the junior partner in the firm of Mount Street, a house that never defiled itself with any other business than the agency business, and that in the very highest line. They drew out leases, and managed property both for the Duke of Omnium and Lord de Courcy; and ever since her marriage, it had been one of the objects dearest to Lady Arabella's heart, that the Greshamsbury acres should be superintended by the polite skill and polished legal ability of that all but elegant firm in Mount Street.

It must not be supposed that Messrs. Gumption, Gazebee & Gazebee were in the least like the ordinary run of attorneys. They wrote no letters for six-and-eightpence each: they collected no debts, filed no bills, made no charge per folio for "whereases" and "as aforesaid;" they did no dirty work, and probably were as ignorant of the interior of a court of law as any young lady living in their Mayfair vicinity. No; their business was to manage the property of great people, draw up leases, make legal assignments, get the family marriage settlements made, and look after wills. Occasionally, also, they had to raise money; but it was generally understood that this was done by proxy.<sup>26</sup>

### C. UNGENTLEMANLY SOLICITORS

On the other hand, some of Trollope's solicitors were not gentlemen. Of Squercum he writes: "it must be owned, though an attorney, he would hardly have been taken for a gentleman from his personal appearance."<sup>27</sup> In *Mr. Scarborough's Family*, Squire Prosper is engaged to Matilda Thoroughbung, the daughter of a brewer, who will bring to the marriage £25,000 but is negotiating to control her own fortune. She uses the firm of Soames and Simpson. The Squire doubts they are gentlemen as their work consisted of the recovery of local debts. He believes they are crass local

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office in Fetter Lane, and had there made a character for getting things done after a marvelous and new fashion. And it was said of him that he was fairly honest, though it must be owned that among the Bideawhiles of the profession this was not the character which he bore. He did sharp things no doubt and had no hesitation in supporting the interests of sons against those of their fathers." 2THE WAY WE LIVE NOW, *supra* note 22, at 70-71.

<sup>26</sup> DOCTOR THORNE, *supra* note 17, at 442-43.

<sup>27</sup> 2 THE WAY WE LIVE NOW, *supra* note 22, at 70. "He was a mean-looking little man, not yet above forty, who always wore a stiff light-coloured cotton cravat, an old dress coat, a coloured dingy waistcoat, and light trousers of some hue different from his waistcoat. He generally had on dirty shoes and gaiters. He was light-haired, with light whiskers, with putty-formed features, a squat nose, a large mouth, and very bright blue eyes. He looked as unlike the normal Bideawhile of the profession as a man could be;" *Id.*

lawyers and is wounded when Miss Thoroughbung compares him unfavorably to Soames and Simpson, whom she considers gentlemen. "They were gentlemen! The vulgarest men in all Buntingford! He declared to himself, and always ready for any sharp practice."<sup>28</sup> The Squire recalls his lineage and compares it to his fiancée's solicitors: "Soames was the son of a tax-gatherer; and Simpson had come down from London, as a clerk from a solicitor's office in the City."<sup>29</sup>

Toward the bottom of the legal profession rests Samuel Dockwrath, a sleazy solicitor, who has taken over his father-in-law's legal practice, and in going through his papers, discovers evidence that indicates a witness in a case involving a disputed will may have perjured herself.<sup>30</sup> Dockwrath calls on Round and Crook, respectable solicitors, with the information he has discovered and attempts to worm his way into the litigation as a co-counsel.

Trollope informs us that in normal circumstances Round & Crook had no personal or business dealings with someone of Dockwrath's ilk. If some intercourse between them became necessary, Round and Crook's confidential clerk would have seen him, "but even then the clerk would have looked down on him from a great moral height and Dockwrath knew it."<sup>31</sup> Old Mr. Round remarks to Mr. Furnival that Dockwrath was "a low fellow whom you would be ashamed to see in your office."<sup>32</sup> Dockwrath is condescended to when meeting young Mr. Round, rather than the senior partner and namesake of the firm, and his effort to become part of the team representing Joseph Mason's interests is rejected.

#### D. SOLICITORS AS KNAVES OR CRIMINALS

A few of Trollope's solicitors are knaves. In *The Macdermots of Ballycloran*,<sup>33</sup> Trollope narrates the demise of a small Catholic landowning family in mid-nineteenth century Protestant-dominated Ireland. The property, a run-down mansion, is mortgaged to its builder, Joe Flannelly, whose ambition is to dispossess the Macdermots from their land. Thady Macdermot lives there with his father Larry, but they cannot keep up the mortgage payments. To further undermine their situation, Thady has declined to marry Flannelly's daughter.

Hyacinth Keegan, the agent and son-in-law of Joe Flannelly, is an attorney who aspired to become a country gentleman by acquiring the property. He threatened to evict the Macdermots and swore to make beggars of the whole family and developed a plan to do so. As Trollope described him:

He was a hardworking man ... he was a plausible man, a good flatterer, not deficient in that sort of sharpness which made him a successful attorney in a small provincial town. ... Principle had never stood much in his way.

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<sup>28</sup> MR. SCARBOROUGH'S FAMILY, *supra* note 7, at 258, 483-84.

<sup>29</sup> *Id.* at 484.

<sup>30</sup> This is the subject of ORLEY FARM, *supra* note 19, at 17-23.

<sup>31</sup> DR. THORNE, *supra* note 17, at 157.

<sup>32</sup> *Id.* at 168. While Dockwrath is an unsavory individual, Trollope, as is his wont, makes his characters more complicated than mere villains. He notes that Dockwrath used the leased land for a few cows to provide milk for his sixteen children. Revenge has been instigated for far less. 1, ORLEY FARM, *supra* note 17 at 6-7.

<sup>33</sup> THE MACDERMOTS OF BALLYCLORAN, *supra* note 10.

... In appearance he was a large, burly man, gradually growing corpulent, with a soft, oily face ... it concealed the malice, treachery and selfishness which his face so plainly bore without it. His eyes were light, large and bright...his mouth was very large, and his lip heavy, and he carried a huge pair of brick coloured whiskers. His dress was somewhat dandified.<sup>34</sup>

Thady's sister, Feemy, considered herself engaged to Captain Ussher, a police officer charged with the detection and destruction of the illegal poteen stills scattered throughout the neighboring mountains, and who was, quite naturally, hated by the local peasants.<sup>35</sup> Joe Reynolds, leader of a gang of poteen distillers, plotted to kill Ussher and tried in vain to persuade Thady to join them, but Thady's confidential, servant Pat Brady had become Keegan's spy and stool pigeon and succeeded in involving Thady in the conspiracy.<sup>36</sup>

Another corrupt solicitor is Mr. Moylan, who appears in Trollope's second novel, *The Kellys and the O'Kellys*.<sup>37</sup> Trollope used the device of a double plot.<sup>38</sup> Francis O'Kelly, Lord Ballindine, had as near neighbors, distant relations, and tenants Mrs. Kelly and her son Martin. Another neighbor was Barry Lynch, whose father had stolen from the Ballindine estate a considerable fortune, which he left in equal portions to his worthless son, Barry, and to his ill-educated daughter Anastasia or Anty. Barry attempted to force Anty into an asylum, declaring her to be mentally unfit to manage her fortune, and, failing this, tried to murder her. She fled to the Kellys, where Martin, not unmindful of her £400 dowry, planned to woo and marry her.<sup>39</sup>

Moylan, the solicitor and Anty Lynch's agent, is bribed by Barry to perjure himself by charging the Kellys with conspiracy to obtain Anty's fortune. Trollope describes Moylan as "an ill-made, ugly, stumpy man, about fifty; with a blotched face, straggling sandy hair, and grey shaggy whiskers. He wore a long, brown greatcoat, buttoned up to his chin, and this was the only article of wearing apparel

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<sup>34</sup> *Id.* at 10, 147-49.

<sup>35</sup> Poteen or potheen (pronounced puhcheen) is Irish moonshine. It was traditionally distilled in a small pot still, and the term is a diminutive of the Irish word "pota", meaning pot. See *Poitin / Poteen*, DIFFORD'S GUIDE, <https://www.diffordsguide.com/beer-wine-spirits/category/538/poteens-poitins> (last visited April 24, 2021).

<sup>36</sup> Feemy becomes pregnant and when Captain Ussher was given a promotion that would take him out of the county, Feemy confessed that she was bearing his child and begged him to marry her. He claimed that was impossible but arranged to take her with him. By chance Thady surprised them as they were departing and, believing that Feemy was being abducted against her will, struck Ussher and killed him. Thady was tried, convicted of murder, and hanged. During the trial Feemy died and their father became completely insane. Some have suggested that if Trollope was alive today, he would be writing for soap operas or Netflix series. The plot seems out of that genre, but this was his first literary effort.

<sup>37</sup> *THE KELLYS AND THE O'KELLYS* (Oxford Univ. Press 1978) (1848).

<sup>38</sup> The first plot concerns the aristocratic Fanny Wyndham, the ward of Lord Cashel, who, upon discovering that Fanny is heiress to her brother's fortune, attempts to marry her off to his dissolute and debt-ridden son. However, Fanny is already engaged to (and in love with) Francis O'Kelly, Lord Ballindine. The conflict really begins when Lord Cashel demands that Fanny breaks this engagement.

<sup>39</sup> Before he made his sordid proposal, Martin fell in love with Anty--and she with him.

visible upon him.” Moylan and Barry are foiled.<sup>40</sup> Both Keegan and Moylan are scheming and disreputable, but their flaws are of character. Trollope’s objections to barristers are based on the tools and ideals of their legal practice. Despite these examples, solicitors did not draw the distain Trollope had for barristers in his earlier novels.

### E. THE PROBLEM WITH BARRISTERS

Initially, Trollope detested nearly all barristers:

A barrister can find it consistent with his dignity to turn wrong into right and right into wrong, to abet a lie, nay to disseminate, and with all the play of his wit, give strength to the basest of lies, on behalf of the basest of scoundrels.<sup>41</sup>

A useful source to examine Trollope’s early antagonism to barristers is *The New Zealander*, his nonfiction ruminations on the condition of England, its morals and the social institutions of the time.<sup>42</sup> In a chapter “Law and Psychic” Trollope criticizes the legal profession through a fictional situation where a murderer is enabled by his barrister and the law to escape just punishment.

His scenario demonstrates that the legal system seeks not the discovery of the truth but is more interested in aiding the guilty defendant to escape punishment. Trollope assumes the apprehended criminal may be willing to confess through a guilty conscience, but the arresting constable, and later the magistrate won’t ask a question without warning the accused that he answers at his peril. According to Trollope the magistrate should urge the accused to cleanse his guilty breast, speak the truth and make peace with God.<sup>43</sup> Instead the accused remains silent. Trollope then suggests that a barrister would be struck with horror that a prisoner is lured into giving evidence against himself.<sup>44</sup>

Trollope acknowledges that barristers retain a high position in the community and are gifted at what they do but censures the legal profession for making the

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<sup>40</sup> THE KELLYS AND THE O’KELLYS, *supra* note 37, at 228-29. In what became a common theme in Trollope’s novels: true feelings of love triumph over the pursuit of someone for the financial bounty the betrothal would bring.

<sup>41</sup> THE NEW ZEALANDER 63 (Trollope Society 1995) 1972.

<sup>42</sup> The New Zealander was written in 1855-56 after publication of *The Warden*. Trollope submitted the manuscript to his publisher at the time, William Longman, who rejected it. Though Trollope substantially rewrote the manuscript, it remained unpublished until 1972. N. John Hall, *Editor’s Introduction to THE NEW ZEALANDER*, *supra* note 41, at xiv. The title, *The New Zealander*, has nothing to do with New Zealand. According to N. John Hall, it derives from a prophecy made in 1840 by the historian and Whig politician, Thomas Babington Macaulay, that England would eventually decay, that one day a visitor from New Zealand would sketch the ruins of St’ Paul’s Cathedral. *Id.* at vi. Trollope recycled material from several chapters in *The New Zealander* into his novels, notably in *The Three Clerks* and *Doctor Thorne*. *Id.* at xx-xxii. Some of the themes of *The New Zealander*, particularly relating to his view of lawyers, appear throughout his work.

<sup>43</sup> THE NEW ZEALANDER, *supra* note 41, at 55.

<sup>44</sup> *Id.* at 56.

object of the law not facilitation of the discovery of the truth, but rather the escape of the criminal from justice.<sup>45</sup> Mr. Allewinde, a barrister, is a foil for the legal system's faults.<sup>46</sup> According to Trollope, all lawyers would be struck with horror at the idea that any man would be lured into giving evidence against himself. Allewinde undermines the cause of justice by delaying tactics, pushing trivial points, browbeating witnesses, playing loose with the truth, and even though the jury finds the criminal guilty, makes appeals which delay the imposition of justice. The criminal's penalty of doom is eventually commuted to transportation, and after a few years the murderer will reappear with a ticket of leave to commit more crime.<sup>47</sup>

Trollope believed the legal system should reach just results. Social justice concerned the meting out of rewards and punishments as the consequence of right or wrong decisions. The law as he depicted it was often an impediment in this process.<sup>48</sup> Barristers assisted in the frustration of justice.

Trollope's objections to barristers were twofold. First, the law and the lawyers upholding it should seek the truth from which justice results. He was outraged that barristers put loyalty to their clients ahead of the search for truth and justice. The adversary system was all wrong as the enactment of laws in accord with the law of nature assumes an inbuilt moral compass in humans that contains self-evident truths of right and wrong.<sup>49</sup> There was no reason why a right-minded person could not intuitively recognize the truth, so that the adversary system of criminal law was unnecessary. His second grievance was that cross-examination in a trial submitted honest witnesses to torture and distracted them from testifying to the truth.

Many non-lawyers question how a defense attorney can represent a particularly heinous scoundrel, who seems obviously guilty of the pending charges. The answer is that every defendant, no matter how repugnant, has the right to an attorney zealously arguing on his or her behalf. Every defendant is entitled to a presumption of innocence until proven guilty. Representing an accused person of an evil act doesn't make a lawyer an evil person. There is a divergence between legal ethics and the ethics of the general community. The lawyer has a duty of utmost loyalty to the client.

#### F. TROLLOPE IN THE WITNESS BOX

From 1844 to 1860 Trollope was a supervisor and inspector in the postal service in Ireland with excursions to England and foreign jurisdictions. His familiarity with Irish trials, which were more frequent and cross-examination supposedly more vicious than in England, was largely gleaned from newspapers where cases and transcripts of testimony were reported.<sup>50</sup> Excepting two experiences with cross-

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<sup>45</sup> HALL, *supra* note 42 at xxxi.

<sup>46</sup> Mr. Allewinde appeared in *THE MACDERMOTS OF BALLYCLORAN*, *supra* note 10, as the Crown prosecutor at Thady Macdermot's trial for the murder of Myles Ussher, *see supra* note 36.

<sup>47</sup> *THE NEW ZEALANDER*, *supra* note 41 at 57-61.

<sup>48</sup> LANSBURY, *supra* note 8, at 95.

<sup>49</sup> R.D. McMaster, *Law and Society*, in *OXFORD READER'S COMPANION TO TROLLOPE* 314 (R.C. Terry ed. 1999).

<sup>50</sup> Drinker, *supra* note 3, at 51.

examination as a witness, he knew no barristers in early career save his father, who had no practice.

One of his postal responsibilities was to investigate and prosecute thefts from rural post offices in Ireland. In 1848 complaints were made about letters and cash lost from the mails that passed through the town of Tralee. He wrote a letter from a fictitious father in Newcastle to an equally fictitious daughter in Ardfert and enclosed a marked coin. The letter was sent in a bag of mail to its destination. The letter bag had to be opened in Tralee, a distributing center where letters were consigned to other bags for delivery. When the proper bag reached Ardfert, Trollope's letter was missing. Trollope and a constable with a search warrant rushed to Tralee and found the marked sovereign in the purse of Mary O'Reilly, assistant to the postmaster.<sup>51</sup> Ms. O'Reilly was committed to jail. The first trial ended in a mistrial when a juror became ill.

As a witness at a second trial in July 1849, Trollope was subject to cross-examination by defense counsel Isaac Butt, later leader of the Home Rule Party in the House of Commons. Trollope was affronted when it was suggested that he had placed the marked coin in Ms. O'Reilly's pocket, for both in private and in his public character as the supervisor and inspector, he was of impeccable probity. Trollope joked and jostled with Butt and seemed to get the better of the skirmish with the barrister, but the case resulted in a hung jury.<sup>52</sup> It has been suggested that Butt was the model for Mr. Chaffanbrass, the Old Bailey barrister, and that Trollope's experience under cross-examination colored his view of barristers.<sup>53</sup>

In *The Macdermotts of Ballycloran*, a barrister, Mr. Allewinde, engages in courtroom bullying, chicanery and obfuscation. He is not just a criminal attorney, but a lawyer for the Crown and thus a representative of the legal profession generally.<sup>54</sup> Trollope mentions that the legal profession runs the country, and lawyers fill the House of Commons.<sup>55</sup> Beyond the abuses of cross-examination one of the reasons lawyers are disliked is that in an increasingly complex and changing society as mid-nineteenth century England had become, they held the key to navigating through it. As is the case today, one needed a lawyer to accomplish many of life's important transactions.

### G. THE OLD BAILEY BARRISTER--MR. CHAFFANBRASS

Trollope's most famous barrister is Mr. Chaffanbrass, who practices in the Central Criminal Court, the famous "Old Bailey", and is described as the "cock of this dunghill"<sup>56</sup> and "whom no barrister living or dead ever rescued more culprits from the fangs of the law."<sup>57</sup> The Chaffanbrass name is a combination of unattractive

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<sup>51</sup> R.H. SUPER, *TROLLOPE IN THE POST OFFICE* 19 (1981).

<sup>52</sup> Some of the transcript of the cross-examination appears in N. JOHN HALL, *TROLLOPE* 109 (1991). The most complete transcript is reproduced in McMASTER, *supra* note 5, at 57-58.

<sup>53</sup> Henry S. Drinker, *Introduction to ORLEY FARM*, at xi (Knopf ed. 1950). Professor Hall suggests Mr. Allewinde effloresced into Chaffanbrass, Hall, *supra* note 52, at 156.

<sup>54</sup> McMASTER, *supra* note 5, at 55.

<sup>55</sup> NEW ZEALANDER, *supra* note 41, at 62.

<sup>56</sup> *THE THREE CLERKS* 424 (Dover 1981) (1857).

<sup>57</sup> PHINEAS REDUX (Oxford Univ. Press 1973) (1874).

traits. “Chaff” means rubbish or garbage. It also is a derogatory synonym for lower class. “Brass” implies hardness or effrontery. Mr. Chaffanbrass appears in three novels: first in *The Three Clerks* at the trial of Alaric Tudor for embezzlement; then in *Orley Farm* defending Lady Mason accused of forging a will; and finally, in *Phineas Redux* defending Phineas Finn charged with murder. Tudor’s case is hopeless, and he is found guilty. Lady Mason fares better, and in the third case the jury is instructed to acquit.

Chaffanbrass is a master of cross-examination, the weapon of choice in criminal cases:

He confined his practice almost entirely to one class of work, the defence namely of criminals arraigned for heavy crimes. . . . To such a perfection had he carried his skill and power of fence, so certain was he in attack, so invulnerable when attacked, that few men cared to come within reach of his forensic flair ...To apply the thumbscrew, the boot, and the rack to the victim before him was the work of Mr. Chaffanbrass’s life, a little man, and a very dirty, little man. He has all manner of nasty tricks about him, which make him a disagreeable neighbour to barristers sitting near to him. He is profuse with snuff, and very generous with his handkerchief. He is always at work upon his teeth, which do not do much credit to his industry. His wig is never at ease upon his head, but is poked about by him, sometimes over one ear, sometimes over the other, now on the back of his head, and then on his nose; and it is impossible to say in which guise he looks most cruel, most sharp, and most intolerable. His linen is never clean, his hands never washed, and his clothes apparently never new.”<sup>58</sup>

Felix Graham, the idealistic junior lawyer in *Orley Farm* is horrified at the prospect of assisting Chaffanbrass “as though he had been asked to league himself with all that was most disgraceful in the profession” – as indeed perhaps he had been.”<sup>59</sup>

Trollope considered cross-examination a weapon of witness torture without regard to the witness’s social status. In *Orley Farm* John Kenneby, an honest but mentally limited clerk who witnessed the will signed by Sir Joseph Mason but became confused in his testimony, concludes: “I ain’t fit to live with anybody else but myself.”<sup>60</sup> In *Phineas Redux*, Lord Fawn, a dull and timid nobleman is terrified to find himself ‘in the clutches of the odious, dirty, little man [Chaffanbrass], hating the little man, despising him because he was dirty and nothing better than an Old Bailey barrister,—and yet fearing him with so intense a fear!’<sup>61</sup> Fawn gives such unconvincing and inaccurate testimony at the murder trial of Phineas Finn that the defendant is acquitted. He is so affected by the possibility that he might have condemned an innocent man that “his mind gave way; -- and he disappeared.”<sup>62</sup> For Trollope, Chaffanbrass initially reflects the evils of cross-examination. He subverts justice, torments witnesses, and represents those accused of the most heinous crimes. His satisfaction is to thwart justice through the skills of advocacy.

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<sup>58</sup> THE THREE CLERKS, *supra* note 56, at 482, 420-22.

<sup>59</sup> 2 ORLEY FARM, *supra* note 19, at 73.

<sup>60</sup> *Id.* at 375.

<sup>61</sup> 2 PHINEAS REDUX, *supra* note 57, at 236-37.

<sup>62</sup> *Id.* at 358.

Another unattractive barrister in the first period of Trollope's treatment of lawyers is Sir Abraham Haphazard, the Attorney-General<sup>63</sup>, who appears in *The Warden*:

He might be fifty years old, and would have looked young for his age, had not constant work hardened his features, and given him the appearance of a machine with a mind. His face was full of intellect, but devoid of natural expression. You would say he was a man to use, and then have done with; a man to be sought for on great emergencies, but ill adapted for ordinary services; a man whom you would ask to defend your property, but to whom you would be sorry to confide your love. He was bright as a diamond, and as cutting, and also as unimpressible. He knew everyone whom to know was an honour, but he was without a friend; he wanted none, however, and knew not the meaning of the word in other than its parliamentary sense ...

With him success alone was praiseworthy, and he knew none so successful as himself. No one had thrust him forward; no powerful friends had pushed him along on his road to power. No; he was attorney-general, and would, in all human probability, be lord chancellor by sheer dint of his own industry and his own talent. And so he glitters along through the world, the brightest among the bright; and when his glitter is gone, and he is gathered to his fathers, no eye will be dim with a tear, no heart will mourn for its lost friend.<sup>64</sup>

Haphazard is called upon to advise Reverend Septimus Harding as to whether Harding is entitled to keep the sinecure of Warden of Hiram's Hospital. The income has appreciated greatly, and Harding's prospective son-in-law no less, John Bold, has written in the local newspaper about what appears to be mismanagement by the Church. Harding is a man of conscience and seeks out his son-in-law, Archdeacon Grantly, his friend the aged Bishop, and Sir Abraham. Harding is more interested in being just and easing his conscience than being right.<sup>65</sup>

Sir Abraham bases his opinion not on grounds of justice and right, but procedure. Through his knowledge of process and technicality, he can take advantage of the weaknesses in his opponent's case. Since Mr. Harding is only a paid servant, he is not technically the correct defendant, and so long as the plaintiffs don't notice this and alter the technical defect in their papers, their case will be lost.<sup>66</sup>

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<sup>63</sup> The Attorney-General, an officer of the Crown, is the titular head of the English Bar. His assistant and deputy is the Solicitor-General. They give advice to the sovereign and government, give opinions on international and constitutional law, and advise departments of government. Until 1895 they could have private practices in addition to their governmental responsibilities, which is how they came to represent certain characters in Trollope's novels. See McMASTER, *supra* note 5, at 108-9.

<sup>64</sup> THE WARDEN 251-253 (Dent Everyman's Library 1977) (1855). Haphazard's primary appearance is in THE WARDEN, though he has a minor role in Dr. Thorne where he examines the legality of Sir Roger Scatcherd's will.

<sup>65</sup> "He was not so anxious to prove himself right as to be so." *Id.* at 35.

<sup>66</sup> *Id.* at 255-57.



The Warden then meets with Sir Abraham. Harding asks if he is legally and distinctly entitled to the proceeds of the property. Haphazard evades an answer, offering qualifications. The barrister informs him that the attorneys for the plaintiff have withdrawn the suit. Harding still inquires whether he is legally entitled to the sinecure. Haphazard doesn't respond directly. Harding declares he can resign the Wardenship. Haphazard thinks he's crazy. The contrast between the clergyman of conscience and Sir Abraham seeking a victory in a legal case without regard to the issues of morals, conscience or pride is enormous. Haphazard has a similar attitude towards justice as displayed by Chaffanbrass.

In *The Bertrams* (1859) Trollope summed up his views of barristers performing their professional obligations:

George Bertram: "I doubt whether a practicing barrister can ever be an honest man... They have such dirty work to do. They spend their days in making out that black is white; or, worse still, that white is black . . . . When two clear headed men take money to advocate the different sides of a case, each cannot think his side is true."<sup>67</sup>

## II. LONDON—SUCCESS, RECOGNITION AND A NEW VIEW OF THE BAR

In 1860 Trollope left Ireland and returned to England to assume the surveyorship of the eastern district of the Post Office, which allowed him to live near London.<sup>68</sup> From this time on his profiles of lawyers moved beyond mere caricature and criticism. They became real people, some estimable; others not.

*Orley Farm*, published in monthly serial parts in 1861-1862, marked a shift in his treatment of barristers. The heart of the novel is the perjury trial of Lady Mason, who is accused of forging a codicil to her late husband's will. When in her twenties, Mary Johnson married Sir Joseph Mason, forty-five years her senior. They had a child, Lucius. Sir Joseph had an older son from a former marriage, Joseph Mason of Groby Park, who according to a duly executed will, would inherit Groby Park and Orley Farm. Sir Joseph died when Lucius was two.

After Sir Joseph's death, a codicil was discovered that had been executed with due formalities. The codicil granted Orley Farm to Lucius and gave £2000 to the daughter of Jonathan Usbech, the attorney who drafted the original will. Joseph, the older son, contested the document's validity. The codicil was in Lady Mason's handwriting because Usbech was ill with gout. It was signed in the presence of two witnesses. Lady Mason testified the language of the codicil was dictated to her by Usbech in the presence of Sir Joseph. The codicil was confirmed, and Lady Mason remained undisturbed at Orley Farm for twenty years.

Upon coming of age, Lucius wanted to try new intensive farming methods. He evicted from two fields a tenant, Samuel Dockwrath, a local attorney who had taken over Usbech's practice. Dockwrath investigated Usbech's old papers and found that

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<sup>67</sup> THE BERTRAMS 56 (Alan Sutton 1956) (1859).

<sup>68</sup> HALL, *supra* note 52, at 187-8.

there was a second deed signed by the same witnesses on the same date, though the signatories could remember signing only one. Dockwrath convinces Joseph Mason to reopen the case.

Orley Farm shows a mastery of plot, which Trollope thought his best.<sup>69</sup> It is rich with wonderfully drawn characters and various subplots. Throughout flow lawyers and legal issues. There is introduced a change in attitude toward barristers. They are not now usually given names that reflect their style of advocacy such as Messieurs Allewinde and O'Blather of the *MacDermotts* and Mr. Neversaydie of *Castle Richmond*.

Thomas Furnival, Lady Mason's barrister, is presented as hardworking and competent, a man who had labored long and hard before achieving success:

He was a constant, hard, patient man, and at last came the full reward of his constant industry. . . . Gradually, it came to be understood he was a safe man, understanding his trade, true to his clients, and very damaging to an opponent . . . .He had been no Old Bailey lawyer, devoting himself to the manumission of murderers or the security of the swindling world in general. . . .Indeed there is no branch of the Common Law in which he was not regarded as great and powerful . . . .Mr. Furnival's reputation has spread itself wherever stuff gowns and horsehair wigs are held in estimation.<sup>70</sup>

The positive view of Furnival rests on his success, rather than his personal qualities, save for his ability to work hard. He is sympathetic to, and attracted by Lady Mason, who plays with his emotions as if they were strings on a violin.

Mr. Chaffanbrass returns but becomes more human.<sup>71</sup> He mentions to Mr. Furnival, that he understands Lady Mason is a pretty woman, and in contrast to his previous attitude to clients evinced in *The Three Clerks*, he admits that he can do better in a case when his heart is in it.<sup>72</sup> Trollope brings Chaffanbrass off the dung hill and places him within the legal profession and beyond as a competent and famous advocate.<sup>73</sup> Mr. Furnival whose success has led to a seat in Parliament, had

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<sup>69</sup> In his autobiography Trollope writes his friends competent to form an opinion on the subject say Orley Farm is the best he has written, but he doesn't agree as the highest merit a novel can have to him "consists in the perfect delineation of character, rather than in plot." AN AUTOBIOGRAPHY 106 (Oxford Univ. Press 2014) (1883). But he adds "the plot of Orley Farm is probably the best I have ever made, but it has the fault of declaring itself and thus coming to an end too early in the book" when Lady Mason tells Sir Peregrine Orme she forged the will. *Id.*

<sup>70</sup> *Id.* at 95-97. A stuff gown is a woolen gown worn by a barrister, who is not a Queen's Counsel. See, footnote 106 for a description of a Q. C.

<sup>71</sup> Even in *THE THREE CLERKS*, Trollope as is his custom, shows all sides of his characters, strengths as well as flaws. In his private life: "[Mr. Chaffanbrass] is one of the most easy, good-tempered, amiable old gentlemen that ever was pooh-poohed by his grown-up daughters, and occasionally told to keep himself quiet in a corner. . . . He is so placid he chooses to be ruled by his own children. He delights in his books, in his three or four live pet dogs, and birds, and squirrels, whom morning and night he feeds with his own hands. He is charitable too". *THE THREE CLERKS*, *supra* note 56, at 414.

<sup>72</sup> 1 ORLEY FARM, *supra* note at 343-4.

<sup>73</sup> "All the world knows Mr. Chaffanbrass—either by sight or reputation. Those who have been happy enough to see the face and gait of the man as, in years now gone, he used to lord it at the Old Bailey, may not have thought much of the privilege which was theirs.

been friends with Chaffanbrass for thirty years. The Old Bailey barrister though cannot escape his class:

Mr. Chaffanbrass and Mr. Furnival were very old friends...but any results of their friendship were scanty. They might meet each other in the streets perhaps, once in a year; As to a meeting in each other's houses, or coming or coming together for the sake of friendship which existed,—the idea of doing so never entered the head of either of them.<sup>74</sup>

A. FURNIVAL AND CHAFFANBRASS AS JURISPRUDENTIAL ANTIPODES

Mr. Furnival's romantic fumbling with Lady Mason, combined with Mrs. Furnival's jealousy, and the Birmingham Congress on law reform seem to be comic sidebars to the plot, but as often occurs in Trollope, there are deeper meanings. Trollope's novels are not only about legal events and the actors involved but engage in the Victorian legal culture in a broader sense of history, traditions, community, change, and the meaning of "Englishness".<sup>75</sup> These subplots reflect jurisprudential, political, and social changes occurring in nineteenth century England.

Trollope's criticism of an adversary system that allows attorneys to defend a client he knows or should reasonably know is guilty plays out in the trial of Lady Mason in *Orley Farm*. Despite his dogmatic view Trollope offers a fair presentation of the subtleties and ambiguities of actual representation of clients. He creates a legal team of four, only one of which, the idealistic Felix Graham, truly believes Lady Mason innocent, and if he thought she was guilty would immediately withdraw from the case.<sup>76</sup> The other attorneys have initially reasonable and then increasingly dubious beliefs in Lady Mason's innocence of forgery charges.

Lady Mason directly approaches her barrister, Mr. Furnival. This was contrary to normal practice as barristers did not meet with a private client because of the concern they might lose their objectivity in the handling of a case.<sup>77</sup> The solicitor is a screen between the client and advocate. Initially, Furnival does not know whether Lady Mason is guilty. If he thought she was, he should decline the case and refer her to a solicitor, who would find another barrister to represent her. Furnival goes out of his way to maintain in his view her innocence. He is conflicted, hoping and ever more tentatively believing that Lady Mason is innocent. Furnival seeks

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But to those who have only read of him, and know of his deeds simply by their triumphs, he was a man very famous and worth to be seen. 'Look; that's Chaffanbrass. It was he who cross-examined—at the Old Bailey, and sent him howling out of London, banished forever into the wilderness.' *Id.* at 342.

<sup>74</sup> *Id.*

<sup>75</sup> Ayelet Ben-Yishai, *Trollope and the Law*, in *THE CAMBRIDGE COMPANION TO ANTHONY TROLLOPE* 156-157 (Carolyn Dever & Lisa Niles eds. 2012).

<sup>76</sup> For an interesting discussion of this issue, see Marc M. Arkin, *Trollope and the Law: On the Victorian Novelist and the Moral Question of Defending the Guilty*, 26 *NEW CRITERION* 23 (2007).

<sup>77</sup> Usually, the solicitor is the barrister's client. The solicitor manages the general conduct of the case and engages whichever barrister seems likely under the circumstances to plead the case most effectively in court. McMASTER, *supra* note 5, at 34. When Furnival seeks out Chaffanbrass, in a sense he is acting as a solicitor for Lady Mason.

to resile from direct representation. He discourages the use of solicitors Slow and Bidewhile on the ground that they don't handle this sort of matter, where the truth is that they have their own suspicions and decline to take the case. He then seeks out Chaffanbrass, the kind of attorney that Trollope criticizes, to assess the case against her. Chaffanbrass and his assistant Aram, view their task to convince the jury of their client's innocence regardless of actual guilt. They provide a cover for Furnival, who remains on the team, even though he knows the truth.

In meeting Chaffanbrass, Mr. Furnival emphasizes Lady Mason's status in society as proof of her innocence. He hoped that the accusation against her would be of forgery:

The stronger and more venomous the charge made, the stronger would be public opinion in favour of the accused, and the greater the chance of an acquittal. But if she were to be found guilty on any charge, it would matter little on what. Any such verdict of guilty would be utter ruin and obliteration of her existence.<sup>78</sup>

Upon hearing Mr. Furnival's story, Chaffanbrass responds, "Ah...a clever woman! An uncommonly sweet creature too," said Mr. Furnival.<sup>79</sup> Furnival goes on to tell him all the prominent people she's friends with, including Judge Staveley, and assumes it will have great influence on the outcome of a trial. Their dialogue proceeds:

Chaffanbrass: She is a pretty woman...

Yes, and she has done her duty admirably since her husband's death. You will find too that she has the sympathies of all the best people in her neighbourhood. She is staying now at the house of Sir Peregrine Orme, who would do anything for her.

Anything, would he?

And the Staveleys know her. The judge is convinced of her innocence.

Is he? He'll probably have the Home Circuit in the summer. His conviction expressed from the bench would be more useful to her. You can make Staveley believe everything in a drawing-room or over a glass of wine; but I'll be hanged if I can ever get him to believe anything when he's on the bench.

But, Chaffanbrass, the countenance of such people will be of great use to her down there. Everybody will know she's been staying with Sir Peregrine.<sup>80</sup>

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<sup>78</sup> 1 ORLEY FARM, *supra* note 19, at 341.

<sup>79</sup> *Id.* at 268.

<sup>80</sup> *Id.* at 268-9.

Lady Mason still needs a solicitor. Chaffanbrass, suggests Solomon Aram. “Isn’t he a Jew?” says Furnival. Chaffanbrass responds: “Upon my word I don’t know. ... He’s an attorney, and that’s good enough for me.”<sup>81</sup>

This interchange between Furnival and Chaffanbrass represents more than the status differences between an esteemed barrister and member of Parliament and the Old Bailey practitioner, described as a “dirty little man.”<sup>82</sup> The characters represent alternative visions of the relationship of the law and legal principles to English notions of community and the status of those involved in the legal process.

Furnival, a gentleman himself, describes Lady Mason in terms of her good character, social status and connections. She knows the best people, visits and stays with them and has standing in the community. In Furnival’s view, the graver the charge against Lady Mason, the more likely an acquittal, as she is a member of good standing in the community and therefore adheres to the moral norms of society. People of her rank and position follow the law.

Chaffanbrass has a different world view as to the law and legal norms. Status and friends are immaterial. What matters is what can be proved against those accused. One’s place in society and whether one holds the shared values of the community are irrelevant. Chaffanbrass’s concern is what is posited by the law and whether the client’s case be proven before a jury.

### B. THE INTERNATIONAL CONGRESS IN BIRMINGHAM

Seemingly all of the lawyers in *Orley Farm* are attending an International Conference in Birmingham at which the advantages of the European civil law system over English common law are presented by European lawyers, most prominently by Von Bauhr, who gives a three-hour speech in German, a language many of the attendees don’t understand!<sup>83</sup>

English law was common law, based on decisions by judges and ruled by the precedent of past judicial decisions.<sup>84</sup> It reflected the norms, customs and communal values of English society including deference and respect of the class structure. Traditionally, common law values reflected “natural law”—universal immutable principles of right and wrong. Natural law refers to the idea that principles of morals and rights are inherent in nature.

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<sup>81</sup> *Id.* at 269.

<sup>82</sup> *Id.* at 268.

<sup>83</sup> A very perceptive recognition by Trollope is the role that bar associations play in the profession in bringing together at least temporarily, lawyers of differing status in the profession, so the Chaffanbrass’s and Dockwraths of the profession can mingle with the good and great of the bar.

<sup>84</sup> The common law is a body of law based on judicial decisions of courts and other bodies. It was “common” in that it applied in all of the Sovereign’s courts. Its defining characteristic is *stare decisis*, the principle that previous judicial decisions serve as precedent for future cases. If a matter before a common law court has similar basic facts to a prior decision, a court is bound to follow the prior decision. If the parties disagree on the precedent or prior case law, a common law court will look at prior decisions on similar facts and synthesize them to apply to the facts before the court. If the facts in the current case are substantially different from a past decision, and statutes are silent or ambiguous on the issue, the court will issue a decision as a matter of first impression, which is based on past decisions that are relevant but will include the judge’s opinion as how this new set of facts should apply.

A contrasting view of the law, emergent in the nineteenth century, was positivism. Positive law refers to those laws written as statutes or court decisions and enforced by society. Thus, positive law is man-made law, rather than based on inherent moral codes and rights. While common law is based upon published judicial decisions, in civil law systems codified statutes predominate.<sup>85</sup> The judge in a civil law system is more of an investigator, who brings charges, establishes facts through witness testimony, and applies appropriate remedies found in legal codes. Lawyers in civil systems have a less central role than those in common law trials. They advise their clients, prepare legal pleadings, and submit them to the court, but oral argument is of diminished importance compared to in common law systems.

Trollope's criticisms of cross-examination and the responsibility of attorneys to their clients as opposed to the pursuit of truth in seeking guilt or innocence would seem to be met by the civil law systems, where the judge makes the objective decision based on legal codes. Common law lawyers in Trollope's novels such as John Grey, Samuel Camperdown, and Thomas Dove believe the laws of inheritance and the passage of land and property represent natural law ideals of the fundamental truth and honesty of abstract justice, a reflection of divine will and absolute moral principles. This view contrasts with the positivist position that considers law merely the result of human preferences. Trollope's criticism of the adversary system is that it does not seek inalienable truths.

When Trollope refers to Felix Graham as the "English Von Bauhr" he means the young lawyer approaches his clients as if he was a civil law judge, pursuing right and refusing to represent wrong.<sup>86</sup> Trollope as the impartial narrator demonstrates that Graham's integrity does not necessarily lead to wisdom or a successful legal career.

What Trollope raises in the exchanges between Furnival and Chaffanbrass and in the description of the international congress in Birmingham are jurisprudential questions of natural law versus positive law and the future of the common law system in an English society that was undergoing demands for change in political participation and to the common law system. During the nineteenth century the English common law system was becoming more based upon statutory legislation and adopting positive approaches, a trend that has continued.

*Orley Farm* generally received good reviews, but critics commented upon Trollope's hostility to lawyers. As with some of his other novels, contemporary and subsequent commentators criticized his errors of legal procedure and the law.<sup>87</sup> Sometimes the twisting of legal rules and norms result from the necessities of the plot. In other cases, Trollope's ignorance of the law, legal procedure and ethics led to careless errors.<sup>88</sup>

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<sup>85</sup> Legal codes can be traced back to the sixth century Emperor Justinian (527-565), whose code ruled the Byzantine empire for nine hundred years.

<sup>86</sup> I *Orley Farm*, *supra* note 19, at 177-180.

<sup>87</sup> See Todd Shields, *Trollope's Legal Mistakes 'The Great Orley Farm Case'—Can You Forgive Him*, 107 *Trollopiana* 8-19 (Summer 2017); *Mr. Trollope and the Lawyers*, LONDON REV. 405 (Nov. 8, 1862) reprinted in DONALD SMALLEY, TROLLOPE: THE CRITICAL HERITAGE 156 (1969) "...Mr. Trollope ought to get his law right. As it is he always gets it wrong."

<sup>88</sup> For a description of some of the more serious lapses of legal, evidentiary, and ethical rules in *ORLEY FARM*, see Henry S. Drinker, *Introduction*, *ORLEY FARM* x (1950). Drinker,

In some sense, criticism of his mistakes resembles going to a circus sideshow to see a dancing bear and then quibbling about the beast's technique. The accuracy of the discussion of legal issues is usually subordinate to the novelist's plot or in Trollope's case the characterization of the leading participants in the story. Still, some of his legal errors are jaw-dropping to an attorney: Mr. Furnival sends his clerk, Crabwitz in disguise, to offer a bribe to Dockwrath to drop the matter concerning Lady Mason's perjury;<sup>89</sup> or at the trial of Phineas Finn in *Phineas Redux*, where a telegram arrives in the middle of the trial from Madame Max Goesler, and the judge allows it to be read to the jury;<sup>90</sup> or again in *Phineas Redux*, where after the attorney general's submission that Finn be acquitted, Mr. Chaffanbrass addresses the jury for the greatest part of an hour and the judge goes on for four hours.<sup>91</sup>

Trollope addressed the problems of accuracy for a novelist in *Phineas Finn*<sup>92</sup> and humorously suggested in *Dr. Thorne*:

It has been suggested that the modern English writers of fiction should among themselves keep a barrister, in order that they may be set right on such legal points as will arise in their little narratives, and thus avoid that exposure of their own ignorance of the laws, which now, alas! they too often make. The idea is worthy of consideration, and I shall be happy to subscribe my quota.<sup>93</sup>

Responding to reviewers' criticism of *Orley Farm*'s legal errors, Trollope thereafter referred legal issues to his friend Charles Merewether, who vetted them for accuracy, and actually drafted Mr. Dove's analysis of heirlooms and paraphernalia in *The Eustace Diamonds*.<sup>94</sup>

Trollope informs the reader early on that Lady Mason has forged the codicil. Though the plot turns from a "who done it" to a "why'd she do it," the ending still presents a surprise. The outcome depends not so much on the law, but the fact

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a prominent American lawyer and Trollopean, engaged in a transatlantic dispute with Sir Frances Newbolt over Trollope's knowledge of the law in *ORLEY FARM*. See LANSBURY, *supra* note 8, at 82-3. In fact, the law played little part in the ultimate resolution of the case.

<sup>89</sup> 1 *ORLEY FARM*, *supra* note 19, at 317-20.

<sup>90</sup> 2 *PHINEAS REDUX*, *supra* note 58, at 214-5.

<sup>91</sup> *Id.* at 237-8.

<sup>92</sup> "The poor fictionist very frequently finds himself to have been wrong in his description of things in general, and is told so, roughly by the critics, and tenderly by the friends of his bosom. He is moved to tell of things of which he omits to learn the nature before he tells of them—as should be done by a strictly honest fictionist. He catches salmon in October; or shoots his partridges in March... And then those terrible meshes of the Law! How is a fictionist, in these excited days, to create the needed biting interest without legal difficulties; and how again is he to steer his little bark clear of so many rocks,—when the rocks and the shoals have been purposely arranged to make the taking of a pilot on board a necessity? As to those law meshes, a benevolent pilot will, indeed, now and again give a poor fictionist a helping hand,—not used, however, generally, with much discretion." 1 *PHINEAS FINN* 267-8 (Oxford Univ. Press 1973) (1869).

<sup>93</sup> *DR. THORNE*, *supra* note 17, at 480-1 (1967).

<sup>94</sup> Surprisingly, Merewether's analysis was criticized over a century later by a third year Stanford law student. See Alan Roth, *He Thought He Was Right (But Wasn't): Property Law in Anthony Trollope's The Eustace Diamonds*, 44 *STAN. L. REV.* 879 (1992).

that the contending barristers failed to ask the witnesses the proper questions.<sup>95</sup> Lawyers can only provide partial truths while the novelist can reveal the whole truth to the reader.<sup>96</sup>

The success of *Orley Farm* marked a significant development in Trollope's writing career and status in life. He had come a long way from his beginnings. His move to London and later resignation from the Post Office reflected that. In *An Autobiography* he says of *Orley Farm* after its publication, he felt he had created a position among literary men and secured an income on which he could live in ease and comfort.<sup>97</sup> The move to London commenced a new period in his career and a reshaping of his views and presentation of lawyers. His readers would meet barristers who reflected real people of distinction and gravitas and were a credit to the bar and society.

### III. A NEW PERSPECTIVE ON LAWYERS

Trollope's move to London was more than a change in venue. It also constituted a cultural and upwardly mobile shift in status. In 1862, he was elected to the Garrick Club, known for its hospitality to writers and those in the theater.<sup>98</sup> The admission to the Garrick Club not only signified Trollope's recognition as an author, but also fulfilled a psychological need for acceptance that lay in his rejection by contemporaries when he was young. Joining the Garrick was the first time in his life that he felt he belonged.<sup>99</sup> He was now accepted as an English gentleman by English gentlemen.<sup>100</sup>

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<sup>95</sup> SPOILER ALERT: DO NOT READ IF YOU ARE UNFAMILIAR WITH THE OUTCOME OF THE ORLEY FARM CASE! Lady Mason, as the reader knows is admittedly guilty but is acquitted because the plaintiff's attorneys failed to ask a specific question of Bridget Bolster, a witness to the signing of the document at issue in the lawsuit. After the lawsuit, Bolster is dining with Moulder, a commercial traveler and a minor character, who questions her and the second witness, John Kenneby. "'But the paper as we signed' said Bridget, 'wasn't the old gentleman's will—no more than this is;. And she lifted up her apron. 'I'm rightly sure of that.'...Moulder became angry with his guest...'Wasn't the old gentleman's will!' said Moulder. 'You never dared say as much as that in court.' 'I wasn't asked,' said Bridget.'" 2 *ORLEY FARM*, *supra* note 19, at 377-78.

<sup>96</sup> LANSBURY, *supra* note 8, at 83.

<sup>97</sup> *AN AUTOBIOGRAPHY*, *supra* note 69, at 106.

<sup>98</sup> The Garrick Club, named after the eighteenth-century actor David Garrick, was founded in 1831. Many of the good and great literary persons of the nineteenth century such as Dickens and Thackeray were members.

<sup>99</sup> As he wrote in *AN AUTOBIOGRAPHY*, *supra* note 69, at 100-1: "Having up to that time lived but very little among men, having known hitherto nothing of clubs, having even as a boy been banished from social gatherings, I enjoyed infinitely at first the gaiety of the Garrick.... I have long been aware of a certain weakness in my own character, which I may call a craving for love. I have ever had a wish to be liked by those around me—a wish that during the first half of my life was never gratified. In my schooldays no small part of my misery came from the envy with which I regarded the popularity of popular boys.... And afterwards, when I was in London as a young man, I had but few friends. Among the clerks in the Post Office I held my own fairly after the first two or three years; but even then I regarded myself as something of a Pariah.... The Garrick Club was the first assemblage of men at which I felt myself to be popular."

<sup>100</sup> Though Trollope's family would be considered gentry by lineage, because of its desperate financial situation, his experiences at school where he was an outcast and



To his surprise, in 1864 the even more elite Athenaeum Club, home of prominent people in the arts, sciences, politics and the law, welcomed him to membership. His admittance came under a special rule that allowed particularly prominent candidates to bypass the years' long wait list.<sup>101</sup> The Athenaeum may have been the most prestigious club in London.

As an active clubman Trollope met leading members of the bar, many of whom had risen to the highest ranks of the legal profession.<sup>102</sup> He had arrived and was to socialize and befriend many of them. Their reputation, influence and friendship changed his view toward barristers. In this third period the change is present that first displayed itself in the evolution of Chaffanbrass's character in *Orley Farm* but applied to others as well.

Descriptions of barristers moved from caricatures (remember Allewinde and O'Blather) to individuals, who were realistic, competent, professional, ethical, and positive protagonists. One of Trollope's many gifts was his ability to show his characters' many sides and complexities that real people possess. His attitude towards solicitors did not change much, save for his recognition that ethical standards were declining among the younger practitioners, an age-old generational complaint.<sup>103</sup>

#### A. CHAFFANBRASS REDUX

Mr. Chaffanbrass's third appearance occurs in *Phineas Redux*.<sup>104</sup> The evolution of his character continues. The erstwhile "cock of the dunghill" in *The Three Clerks*<sup>105</sup> is now an older, more reflective and insightful barrister with a definite moral code and standards. He has risen in professional esteem and deigned to "take silk" and become a Q.C., a badge of eminence at the bar.<sup>106</sup> Though Trollope offers a backhand compliment: "No barrister living or dead ever rescued more culprits from the fangs of the law,"<sup>107</sup> Chaffanbrass is now portrayed as a sympathetic, skilled and principled advocate.

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publicly shamed by his family's inability to pay his tuition, his status was anything but. After leaving school he described himself as an idle, desolate hanger on with no idea of a career. He obtained a position at the Post Office through connections, but initially did not fit in there and was in debt. He described his first twenty-six years as "years of suffering, disgrace and inward remorse. AUTOBIOGRAPHY, *supra* note 69, at 51. The emotional scars of his early experiences lasted with him for much of his life. He states that he always wanted to be more than a clerk in the Post Office. *Id.* at 92. Becoming a clubman, and a popular one mitigated his pain and restored him to a status as a gentleman, where he belonged.

<sup>101</sup> HALL, *supra* note 52, at 263.

<sup>102</sup> A listing of the prominent lawyers Trollope met and befriended after his election to the Garrick and Athenaeum Clubs can be found in McMASTER, *supra* note 5, at 10-11.

<sup>103</sup> In MR. SCARBOROUGH'S FAMILY, Trollope's last novel, the solicitor Mr. Grey, is an upholder of traditional professional standards and believes that his approach to law practice has changed for the worse, and he retires. *See infra*.

<sup>104</sup> PHINEAS REDUX, *supra* note 57.

<sup>105</sup> *Supra* note 56, at 418.

<sup>106</sup> Q.C. stands for Queen's Counsel (or King's Counsel when the sovereign is male). It is an honorific title conferred by the Crown. Members get to wear a silk gown, thus the taking of silk, and are recognized as senior members of the bar.

<sup>107</sup> 2 PHINEAS REDUX, *supra* note 57, at 152.

He defends Phineas Finn, who is charged with the murder of a political opponent, Mr. Bonteen. Chaffanbrass mistakenly believes Finn is guilty, but he develops a personal interest in him and in obtaining an acquittal.<sup>108</sup> This differs from the previous portrait of winning a case only for the sake of victory. Professor Hall describes Chaffanbrass at this point as “older now tempered somewhat, considerably more human and placed as he is [in defending Finn], he has the reader’s complete sympathy.”<sup>109</sup> At the trial, he destroys the hapless, bumbling Lord Fawn in cross-examination to gain an acquittal.

Chaffanbrass demonstrates the quality of introspection and his view of justice when Wickerby, Finn’s solicitor, informs Chaffanbrass on the eve of the trial that Finn is anxious to speak with him.

What’s the use of it Wickerby? I hate seeing a client—what comes of it?  
What’s the use of it? Of course he wants to tell his own story.

But I don’t want to hear his own story. What good will his own story do me? He’ll tell me either one of two things. He’ll swear he didn’t murder the man.

That’s what he’ll say.

Which can have no effect upon me now one way or the other; or else he’ll say that he did—which would cripple me altogether. . . .

In such a case as this I do not in the least want to know the truth about the murder.

What we should all wish to get at is the truth of the evidence about the murder. The man is to be hung not because he committed the murder,—as to which no positive knowledge is attainable; but because he has been proved to have committed the murder,—as to which proof, though it be enough for hanging, there must always be attached some shadow of doubt. . . .

I will neither believe or disbelieve anything that a client says to me—unless he confesses his guilt, in which case my services can be of little avail.<sup>110</sup>

The evolution of Chaffanbrass indicates that Trollope has come to understand and even respect barristers and has learned more about the workings of the law. This change is reflected in his other novels in this period.

#### B. THE BARRISTER AS PROBLEM SOLVER

The parish of Bullhampton, near Salisbury, was largely the property of the Marquis of Trowbridge. The Vicar of Bullhampton and Marquis were in a dispute, and

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<sup>108</sup> *Id.* at 183.

<sup>109</sup> HALL, *supra* note 52, at 396.

<sup>110</sup> 2 PHINEAS REDUX, *supra* note at 57, 177-80.

to annoy the clergyman his lordship gave dissenters—primitive Methodists—land for a chapel just outside the vicarage gates. The unattractive chapel was in the process of construction when Richard Quickenham Q.C, a London barrister and the brother-in-law to the vicar came for a visit to enjoy himself for four days, if he could find enjoyment without his law practice.<sup>111</sup>

Trollope portrays the barrister as a workaholic and striver, a lawyer type all too familiar today. Quickenham sets goals, and once they are attained, receives no satisfaction but sets another.<sup>112</sup> The barrister's diligence reminds one of Trollope himself:

He's at it every night, sheet after sheet...He was a man who allowed himself time for nothing but his law practice, eating all his meals as though the saving of a few minutes in that operation were rather of vital importance, dressing and undressing at railroad speed, moving even with a quick impetuous step, as though the whole world around him went too slowly.<sup>113</sup>

Mr. Quickenham is untidy; he could be difficult to deal with; and people were afraid of him. Trollope also makes fun of him:

a tall, thin, man, with eager grey eyes, and a long projecting nose, on which, his enemies in the courts of law were wont to say, that his wife could hang a kettle, in order that the unnecessary heat coming from his mouth might not be wasted. His hair was already grizzled, and, in the matter of whiskers, his heavy impatient hand had nearly altogether cut away the only intended ornament to his face.<sup>114</sup>

Though on holiday, he is unable to ignore his brother-in-law's feud. Mr. Quickenham enables the vicar to triumph in his dispute. He notes that the Marquis has been in such a hurry to punish the vicar that he allowed the Methodists to build on the property based on a mere verbal assurance the land was his. The barrister discovers that the plot of land on which the building was situated was glebe land and finds the terrier of the parish to prove that the land belongs to the vicar's church.<sup>115</sup> The Marquis orders the chapel to be removed to another site. In this novel the barrister uses his legal skills to achieve the proper result and for all his foibles becomes a hero.

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<sup>111</sup> VICAR OF BULLHAMPTON 265 (Dover 1979) (1870).

<sup>112</sup> "He was at the Chancery bar, and after the usual years of hard and almost profitless struggling, had worked himself into a position in which his income was very large and his labours never-ending. *Id.* at 266.

<sup>113</sup> *Id.* at 267.

<sup>114</sup> *Id.* at 266.

<sup>115</sup> A glebe terrier is a detailed list describing the church's property in the parish—its rectory or vicarage, its fields and the church itself. Originally, every church was entitled to a house and glebe. Glebe terriers form a survey of the sources of the benefice income and give details of landholdings (including glebe houses), tithing rights, customs and modus (compositions for tithe), and surplice fees.

C. THE LAWYER AS FOUNTAIN OF WISDOM BUT IS HE A GENTLEMAN?

"Mr. Thomas Dove, familiarly known among club-men, attorneys, clerks, and perhaps even among judges when very far from their seats of judgment, as "Turtle Dove" was a counsel learned in the law."<sup>116</sup> He was so learned in the law that there was no opinion within the limits of an attorney's capability of putting to him, that he could not answer with the aid of his books. He was hermetic in that he rarely went out and spent much of his life in Lincoln's Inn among his law books. To be absent from them was to be wretched.<sup>117</sup>

Mr. Camperdown, on behalf or perhaps in spite of the wishes of the Eustace family for whom he was their solicitor, sought an opinion from Mr. Dove on whether the diamond necklace is an heirloom, and therefore remains with the Eustace family or paraphernalia, which can be readily given away, in this case to Lizzie Eustace. Mr. Dove concludes that it was not an heirloom but suggests that a bill in equity might be suitable to prevent Lizzie from keeping the necklace.

Dove is described as learned but also possessed of great gifts. He, like Mr. Camperdown, is honest and unwilling to sell his services to dishonest clients. Dove is a person, who once he has reached a conclusion on something, cannot change his mind. "When he was positive, no one on earth was more positive. It behoved him to be right if positive, and even though wrong or right, he was equally stubborn."<sup>118</sup> In fact, he was seldom wrong, and this helped his legal practice.

Mr. Dove was arrogant, "full of scorn and wrath, impatient of a fool, and thinking most men to be fools; eaten up by conceit, fond of law...but fonder perhaps of dominion; soft as milk to those who acknowledged his power [such as Mr. Camperdown], but a tyrant to all who contested it; conscientious, thoughtful, sarcastic, bright-witted and laborious."<sup>119</sup> He wanted to dominate and never to be beaten.

Mr. Dove was good at what he did, but was he a gentleman? Shirley Robin Letwin compares Dove to Chaffanbrass, in that he exhibits a good craftsmanship, but it is not an expression of the man's personality, rather a substitute for it. He never took on any matter where there was a chance of failure. Dove considered himself a great lawyer not a gentleman.<sup>120</sup> Trollope shows that while intelligence and scholarship are ideals of professional achievement, such competencies do not of themselves overcome basic flaws of personality and character.

D. THE LAW, THE LAND, AND INHERITANCE

Trollope was fascinated by the relationships between law and morality and law and justice. The rules relating to inheritance assured that the power of landed gentry remained secured by the backing of the law, so that large estates remained intact. Property had a spiritual dimension for him as a symbol or acknowledgement of the English way of life and the practices and traditions that constitute English culture and society.<sup>121</sup>

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<sup>116</sup> THE EUSTACE DIAMONDS, *supra* note 13, at 225.

<sup>117</sup> *Id.* at 256.

<sup>118</sup> *Id.* at 226.

<sup>119</sup> *Id.*

<sup>120</sup> SHIRLEY ROBIN LETWIN, THE GENTLEMAN IN TROLLOPE 119 (1982).

<sup>121</sup> MCMASTER, *Law and Society*, *supra* note 49, at 312-13.

The land law as it related to inheritance, primogeniture,<sup>122</sup> entail,<sup>123</sup> and fixed rules of descent of estates and their possible injustice between those in possession of property and their heirs was a frequent subject in Trollope's novels. As the following discussion demonstrates, where these issues arose, lawyers played an important positive role in resolving such conflicts.

*E. COUSIN HENRY--AN IDEAL ATTORNEY: NICHOLAS APJOHN*<sup>124</sup>

Indefer Jones is the aged squire of a large manor in Carmarthen Wales. His niece Isabel Brodrick has lived with him for years. Though he loves his niece, Squire Jones believes that the estate must be passed down to a male heir. His sole male blood relative is his nephew Henry, who charitably can best be described as a loser. He is disliked by most people who know him; his debts have been paid by the squire; and he was sent down from Oxford. The squire attempts to solve the inheritance problem by suggesting Isabel and Henry marry, but she finds Henry detestable and refuses.

The squire feels the same about Henry. In the presence of two of his tenants he changes his will one final time in favor of Isabel but dies before anyone is told about the new will. Henry finds the will in a book of sermons but lacks the courage to break the law by destroying the document. He considers revealing its location but rationalizes that if he does nothing, he will not commit a crime. Instead, Henry hides the will and inherits the estate, but raises suspicions by acting in a guilty manner and locking himself in the library where the will is hidden. The local newspaper accuses him of destroying the will and stealing the estate from Isabel, who is known in the community. Isabel is no innocent heroine, and rather unlikeable herself, but Henry is not a villain. Trollope turns the guilt-ridden Henry into a sympathetic character.

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<sup>122</sup> Primogeniture is the right of inheritance of a first-born child among several children of the same parents to succeed to the estate of an ancestor to the exclusion of younger male and female siblings as well as other relatives. The effect of English male preference primogeniture was to keep estates undivided wherever possible and to prevent inheritance of real property by female relatives unless only daughters survived in which case the estate normally resulted in division. The principle has also applied to inheritance of titles and offices.

<sup>123</sup> An entail or fee tail is an interest in land that regulates the inheritance of an estate of real property, usually to ensure that the estate will remain intact and will descend in the male line. The tenant in tail of an entailed estate possesses only a limited interest in the property subject to the entail which will devolve to the heir at law on his death. The law permitted the tenant in tail to bar the entail in his lifetime but this required the consent of the heir at law, usually the eldest son. This would usually be accomplished by means of a resettlement, often on the occasion of the eldest son's marriage, thus enabling the entail to continue despite the existence of the rules against perpetuity. The Administration of Estates Act 1925 abolished the entail as a legal estate. Today existing entails are equitable interests behind a trust and can be overreached by a purchaser of the legal title on payment of the purchase price to the trustees. The equitable interests under the entail then attach to the purchase price. Following the Trusts of Land and Appointment of Trustees Act 1996, no new entails can be created. The problems associated with entails feature in Trollope's *The Belton Estate*, *Ralph the Heir* and *Mr. Scarborough's Family* and indirectly in *Sir Harry Hotspur of Humblethwaite*.

<sup>124</sup> *COUSIN HENRY* (Oxford Univ. Press 1987) (1879).

Nicholas Apjohn, the solicitor for the old squire and drafter of all his wills, and now counsel to the new squire, suspects Henry knows more than he lets on about the will. He asks Henry about the newspaper articles and pressures him into taking legal action against the editor. For Henry, this makes things worse. He is terrified by the prospect of being cross-examined by John Cheekey, reputedly one of Great Britain's cruelest barristers, nicknamed "Supercilious Jack". Mr Apjohn and Isabel's father, Mr Brodrick, visit Henry at his home and hound Henry to disclose the will's whereabouts. Despite Henry's efforts to stop them, they find the document. Because he did not destroy the will, Henry is permitted to return to his job in London with his reputation intact and £4000, the amount Isabel was bequeathed in the earlier will.

Mr. Apjohn is Trollope's ideal of what an attorney should be, for he places the pursuit of truth above the interests of his client. He acts a detective rather than counsel to his client. In Coral Lansbury's words

Mr. Apjohn is the lawyer that Trollope would like us all to admire, charging down on quaking rogues, shaking the truth from them with a fusillade of questions, and bypassing the finer points of the law to grapple with the truth. He personifies justice and speaks for the secular ethic that sustains Trollope's world. In a well-ordered society there is a measure of predictability that allows people to regulate their lives with some sense of security. Chance, coincidence, and providential events must be eliminated wherever possible and every action should seem the result of social, rather than of personal intention. Thus Mr. Apjohn sees to it that Llanfeare is entailed in order that there may no longer be any doubts as to future disposition.<sup>125</sup>

However, Apjohn clearly violates the attorney-client relationship by forcing Henry to disclose the truth.<sup>126</sup> Contrast the breach of legal ethics by Mr. Apjohn with the scene in *Orley Farm*, where before Lady Mason's trial, Sir Peregrine visits old Mr. Round of Round & Crook and suggests that she will give up the property if they will dismiss the criminal charges, whereupon Mr. Round voluntarily assures him that the disclosure will be kept confidential, and it was.

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<sup>125</sup> LANSBURY, *supra* note 8, at 155.

<sup>126</sup> For example, New York law provides "[A] lawyer, as one in a confidential relationship and as any fiduciary, is charged with a high degree of undivided loyalty to his client." *Matter of Kelly*, 23 N.Y.2d 368, 376, 244 N.E.2d 456, 296 N.Y.S.2d 937 (1968). Accordingly, the attorney-client relationship is a "unique relationship . . . founded in principle upon the elements of trust and confidence on the part of the client and of undivided loyalty on the part of the attorney[.]" and, as such, "remains one of the most sensitive and confidential relationships in our society." *Demov, Morris, Levin & Shein v. Glantz*, 53 N.Y.2d 553, 556, 428 N.E.2d 387, 444 N.Y.S.2d 55 (1981). Given the special nature of that relationship, "[i]t follows . . . that an attorney cannot represent a client effectively and to the full extent of his or her professional capability unless the client maintains the utmost trust and confidence in the attorney." *Id.* For that reason, attorney-client retainer agreements are not treated like conventional commercial agreements. *John T. Walsh Enters., LLC v. Grace Christian Church*, 2019 N.Y. Misc. LEXIS 815 \*; 2019 NY Slip Op 50247(U).

F. LADY ANNA—THE LAWYER AS MEDIATOR

*Lady Anna* involves story elements that frequently appear in Trollope's novels: inheritance, status, class, issues of law and justice and law and morality, trials, and barristers.<sup>127</sup> Yet, the outcome differs from readers' expectations, and a barrister plays an unfamiliar role compared to those in most of his other works.

With neither fortune nor settlement, Josephine Murray married Earl Lovel and became Countess Lovel. Six months later the Earl informs her that their marriage is illegitimate as he has previously wed an Italian woman. The Earl returns to Italy, and Josephine gives birth to their daughter Anna. It becomes the sole aim of Josephine's life to reclaim her title and prove Anna is the legitimate heir of the Earl. She brings a suit for bigamy, but the Earl is acquitted as the Italian marriage was not proven. Josephine hoped the acquittal would establish her status, right and recognition to be called Lady Lovel. This did not happen in society's mind, and she was considered a *soi-disant* or self-styled wife.<sup>128</sup> With neither money nor lodging, she receives support and is taken in by a tailor, Thomas Thwaite, a widower with a son, Daniel.

Twenty years pass and Lovel returns with a new Italian woman, a Signorina Spondi, but he is aged, reputedly mad, and soon dies. His will bequeaths substantial personal property to the Signorina but the entailed land goes with the title to a distant heir, Frederic Lovel.<sup>129</sup> If the Earl was mad, his will would be invalid, and his personal property would not go to the Signorina. The male heir would have all should the Earl's first marriage to Josephine be invalid. If that marriage could be made good, then Lady Anna as legitimate heir would have all the personal property, except such portion as could be claimed by her mother as widow.

*Lady Anna's* complicated plot contains many legal and moral issues. Is Anna the legitimate daughter of Earl Lovel? If so, she can be called "Lady" Anna. The Italian woman and the young lord (Frederic Lovel) were allied against the mother and daughter as regarded the first marriage. Lovel and the mother and daughter joined forces against the Signorina as regarded the will. The young lord had to act alone against the Italian woman to set aside the will and against the mother and daughter whom he and his friends considered swindlers. Additionally, he had to bear their assault on him.<sup>130</sup>

Into this legal morass came Sir William Patterson, the Solicitor General, who represented Frederic Lovel. Sergeant Bluestone was counsel to Lady Anna and Josephine. Patterson in his first appearance seems a typical Trollopean barrister. Initially, the idea of a convenient marriage between Anna and Frederic seemed abhorrent:

Sir William Patterson stood aghast and was dismayed. Sir William intended to make mincemeat of the Countess. It was said of him that he intended to cross-examine the Countess off her legs, right out of her claim, and almost into her grave.<sup>131</sup>

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<sup>127</sup> LADY ANNA (Oxford Univ. Press 1984) (1871).

<sup>128</sup> *Id.* at 8-9.

<sup>129</sup> The title but not the personal property went with the entail.

<sup>130</sup> LADY ANNA, *supra* note 127, at 17-18.

<sup>131</sup> LADY ANNA, *supra* note 127, at 23.

However, he quickly changed his attitude and became in the words of R.D. McMaster “a sort of benign legal deity ruling over the novel, a role similar to that of Prospero in *The Tempest*.”<sup>132</sup> Sir William turns into a mediator, if not manipulator, attempting to bring the parties together and working out a compromise that is favorable to all, a role that has raised questions.

For Henry Drinker, a prominent lawyer from Philadelphia and an avid Trollopean, Sir William represents the ideal of what a lawyer should be.<sup>133</sup> Drinker finds Patterson great, because he can make people do what the barrister correctly seems to think is the best for all around. His strong personality gets others to compromise their positions to reach a fair solution. Yet lawyers in the novel come to somewhat different conclusions about Sir William. His opponent Sergeant Bluestone, who represents Anna and her mother says: “He always thinks he can make laws according to the light of his own reason.”<sup>134</sup> The Attorney-General opined: “he might be a clever philosopher, but certainly no lawyer.”<sup>135</sup>

Patterson's actions seem more appropriate to a mediation than a trial in a courtroom.<sup>136</sup> In his opening statement at the trial, Sir William indicates he intends “to state a case as much in the interest of my opponents as of my clients.”<sup>137</sup> An attorney has an absolute duty to his/her client.<sup>138</sup> Sir William though gives away the claim of his client that the Countess's marital status is invalid. He hopes to join forces with Sgt. Bluestone to fight the Signorini's claim.<sup>139</sup> This is contrary to the belief of the general practice of the bar. The Reverend Charles Lovel calls Sir William “This apostate barrister.” Patterson is accused of thinking of himself, instead of bolstering the case of his client.<sup>140</sup>

Patterson sends Mr. Flick, a solicitor employed to substantiate the position of the new Earl Lovel, to Sicily to inquire whether the Italian countess was deceased before Josephine's marriage to the old earl. Mr. Flick concluded she had died. Therefore, the estate would go to Josephine and Anna. It would not be in the interest of Patterson's clients to admit this, so Sir William suggested a compromise

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<sup>132</sup> McMASTER, *supra* note 5, at 128.

<sup>133</sup> “Sir William is preeminently a *great* lawyer as well as an eminently *successful* one, great and successful not merely in court—in this novel he has no real court battle—but in a way that every lawyer would like to be—able, by farsighted wisdom, suavity, and force of character, to make people do what he correctly senses to be best for all concerned. The others come to realize this only after they have all, against their will, but under the influence of his strong personality, done what they ultimately recognized was much the best thing for them.” DRINKER, *supra* note 3, at 56.

<sup>134</sup> LADY ANNA, *supra* note 127, at 57.

<sup>135</sup> *Id.* at 58.

<sup>136</sup> Mediation is a method of alternative dispute resolution available to parties in a lawsuit. It is a negotiation between the parties facilitated by a neutral third party, the mediator. Unlike the litigation process, where a neutral third party (usually a judge) imposes a decision over the matter, the parties and their mediator ordinarily control the mediation process. The mediator does not make the decision but encourages the parties to reach a mutually satisfactory solution. This is what Sir William did.

<sup>137</sup> LADY ANNA, *supra* note 127, at 292.

<sup>138</sup> *See supra* note 126.

<sup>139</sup> “There is no reason why my learned friend and I shall not sit together, having our briefs and our evidence in common.” LADY ANNA, *supra* note 127, at 296. Well, yes there are reasons, but Sir William gave up his client's claims.

<sup>140</sup> *Id.* at 203.



whereby the new Earl would marry Anna and there would be no further effort to challenge Anna's legitimacy.

In the trial of *Lovel v. Murray*, Patterson offers an opinion that Josephine and Anna were entitled to legitimate status. That seems to be a breach of his legal responsibility, as Frederic might have won the trial and the estate. In the end, Anna's claim is recognized, but she refuses to marry Frederic and instead weds the tailor's son with whom she grew up and fell in love.<sup>141</sup> Though Anna is entitled now to the whole estate, she gives half to the Earl. Patterson has brokered the settlement. Unlike most of Trollope's barristers, Patterson seeks the truth and compromise though at the expense of legal niceties.

*G. MR. SCARBOROUGH'S FAMILY—JOHN GREY, THE LAWYER AS AN  
HONORABLE GENTLEMAN*

*Mr. Scarborough's Family* was posthumously published in 1883.<sup>142</sup> It is a remarkable achievement not only for its ingenious multiple plots, interesting characters and keen insight into human behavior, but also for Trollope's recognition of how England has changed from the idyllic rural setting of the Barsetshire novels in the 1840s.

The England of the late 1870s and early 1880s had suffered a sudden and dramatic collapse of the agricultural base because of the massive influx of cheap foreign goods from North America, Australia and New Zealand. A rural depression led to a collapse in agricultural rents and the price of land. This affected the often heavily indebted agrarian elite severely and led to discontent among agrarian workers.<sup>143</sup> The politics of deference gave way to the politics of demos, an increasing movement toward democracy and challenge to the traditional order.<sup>144</sup>

The role of law in a changing society was also altered as the balance of power moved from the landed gentry to the middle classes.<sup>145</sup> Mr. Scarborough, the novel's leading character, is the owner of Tretton Park, over whose grounds a town had been built and instead of being put to agricultural use, mining activity and pottery works had been established, which have greatly increased its value.

In most of Trollope's novels gentlemen stabilize society, and it is essential that a gentleman shares society's values and conforms to its ways.<sup>146</sup> . . . Though a squire and gentleman, Mr. Scarborough acts contrary to those expected standards. He believes in justice but has a moral hatred of the laws of entail and primogeniture, which he considers the "gross injustice[s] of the world."<sup>147</sup> Throughout the novel Mr. Scarborough is on his deathbed. His goal is to manipulate facts to avoid the entail on his estate through an ingenuous, if fiendish plot and to give the land to the

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<sup>141</sup> Trollope's readers were aghast that Lady Anna would marry beneath her station to a tailor instead of the earl. He defended his ending in the *AUTOBIOGRAPHY*, *supra* note 69, at 347.

<sup>142</sup> *MR. SCARBOROUGH'S FAMILY*, *supra* note 7. It was written between March and October 1881 and appeared in serial form from May 1882 to June 1883.

<sup>143</sup> DAVID CANNADINE, *THE DECLINE AND FALL OF THE BRITISH ARISTOCRACY* 26-28 (1990).

<sup>144</sup> *Id.* at 38.

<sup>145</sup> HARVEY, *supra* note 7, at viii.

<sup>146</sup> ROBERT TRACY, *TROLLOPE'S LATER NOVELS* 92 (1976).

<sup>147</sup> *MR. SCARBOROUGH'S FAMILY*, *supra* note 7, at 73.

heir of his choice. He has two sons: Mountjoy, a compulsive gambler, who as the eldest will inherit the estate under the entail, and Augustus, a barrister.

To execute his plan, Mr. Scarborough married his late wife twice, one ceremony before the birth of Mountjoy and the second, after it. He therefore can select his heir by claiming that either the first or second wedding ceremony was valid. If Mr. Scarborough says the second ceremony was the legitimate one, Mountjoy is illegitimate, and the entail goes to Augustus, who becomes the legitimate heir.

As often occurs in Trollope's novels, there are multiple story lines.<sup>148</sup> They are interrelated and sometimes difficult to follow, but all are driven by Mr. Scarborough. In one subplot Squire Prosper is a bachelor, whose estate Buston Hall is entailed on his sister's son, Harry Annesley, who loves Florence Mountjoy, Mr. Scarborough's niece. Mr. Prosper becomes annoyed with Harry, because he believes he shows disrespect while listening to the squire's sermons. Prosper determines to embark on a late marriage and produce an heir, thereby foiling Harry's succession to the estate.<sup>149</sup> The insulted squire proposes to marry Miss Thororoughbung, a brewer's daughter. In a humorous scene, the bride to be, who has an income of her own, tries to negotiate for her rights and privileges including disposal of her income, protection of inheritances for offspring and household expenses for champagne, ponies and a carriage as a condition of the marriage.<sup>150</sup> Squire Prosper is scared off and restores Harry as the heir.

Initially, Mr. Scarborough intended Mountjoy as the elder son should inherit the estate. Because of Mountjoy's incurable gambling habit and the debts generated therefrom, the estate would go to satisfy Mountjoy's creditors. To avoid this result, Mr. Scarborough produces the second marriage certificate showing that his second son, Augustus, who is debt-free, is the legitimate heir. Augustus is no angel either. He plots to steal Harry's girl, Florence, and treats his father with increasing disrespect. However, Augustus, using his own funds, settles with Mountjoy's creditors, leaving them with no claim on the estate. Then, Scarborough reverses his position and once again leaves his estate to Mountjoy.

Another subplot involves Mr. Scarborough and John Grey, his foil, counsel, and opposite in character. Mr. Grey seeks the truth in any matter, is honest and does his duty: "he certainly was an honest man and had taken up the matter [Scarborough's inheritance] simply with a view of learning the truth."<sup>151</sup> To Mr. Grey, Scarborough's manipulations are the acts of an immoral individual. Grey believes in fixed rules, morality, and the law.

Mr. Grey is scandalized by Scarborough's attitude toward the law. However, the attorney "did not regard him as an honest man regards a rascal and was angry with himself in consequence. He knew that there remained with him some spark of love

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<sup>148</sup> This is a device that occurs in Elizabethan and Jacobean drama, of which Trollope was very knowledgeable and had a large collection of plays from that era. TRACY, *supra* note 148, at 39-41, 44-46.

<sup>149</sup> This scenario actually happened to Trollope's father with calamitous financial consequences to the family. An expected estate from an unmarried uncle never came to him because late in life the uncle married and had a family. See AUTOBIOGRAPHY, *supra* note 69, at 10.

<sup>150</sup> MR. SCARBOROUGH'S FAMILY, *supra* note 7, at 249-50.

<sup>151</sup> *Id.* at 145.

for Mr. Scarborough which to himself was inexplicable.”<sup>152</sup> Mr. Scarborough has mixed emotions too about his attorney. “Thinking Mr. Grey to be in some respects idiotic, nevertheless he respected him, and almost loved him. He thoroughly believed Mr. Grey to be an ass for telling so much truth unnecessarily.”<sup>153</sup>

Scarborough and Grey resemble an old married couple who disagree on everything but are bound together through a kind of love as well as habit. The two differ over the nature and dignity of the law and the relationship of law to justice. Mr. Scarborough’s cynicism contrasts with his counsel’s belief in the law. Scarborough considers himself a moral man merely in pursuit of justice. “Justice” to him means getting what he wants. The law be damned. “If a man has property, he should be able to leave it as he pleases; or else he doesn’t have it.”<sup>154</sup> Scarborough, feels the law in reference to his property is unjust, and scorns and laughs at it.<sup>155</sup> He is unfazed by the opinion of Mr. Grey or of the public and obtains whatever he wishes.

Mr. Grey has the greatest respect for the law, which to him is a holy writ.<sup>156</sup> He also believes in the rules of society and the existing legal system.<sup>157</sup> Whereas Grey believes in the stability of facts, Scarborough—to use modern jargon—uses alternative facts to serve his purposes without regard to the facts or the law. Mr. Grey loses all his disputes and differences with his client. Scarborough outwits him time and again.

Trollope uses Grey as a metaphor for the changes affecting English society through the lens of the legal profession. He now recognized that lawyers could be gentlemen, and Mr. Grey was such an example. He treated his clients as children or members of the family. The fees earned were secondary. He sees a case not just for his clients but also for their ancestors and descendants and perhaps others. Grey is not just observing the letter of the law but upholding it, while searching for a just outcome.<sup>158</sup>

Mr. Grey also symbolizes the passing of an older attitude towards a lawyer’s work and professionalism. While he thinks Scarborough is a cad for his manipulations, his partner Mr. Barry admires Mr. Scarborough as the best lawyer he ever knew.<sup>159</sup> Grey feels he is losing his place in the legal profession as the mores of legal practice have changed. He noticed that Barry was ‘tending towards sharp practice’ and beginning to love his clients not with a proper attorney’s affection, as his children, but as sheep to be shorn.<sup>160</sup>

By the end of the novel, the decent Mr. Grey is full of self-doubt and feels his style of law practice is superannuated as compared with that of his law partner, who

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<sup>152</sup> MR. SCARBOROUGH’S FAMILY, *supra* note 7, at 373.

<sup>153</sup> *Id.* at 195.

<sup>154</sup> *Id.* at 389.

<sup>155</sup> Of Scarborough, Mr. Grey says: “He hasn’t got a God. He believes only in his own reason--and is content to do so, lying there on the very brink of eternity. He is quite content with himself...He has no reference for property and the laws which govern it... It is his utter disregard for law--for what the law has decided, which makes me declare him to have been the wickedest man the world ever produced.” MR. SCARBOROUGH’S FAMILY, *supra* note 7, at 157.

<sup>156</sup> MR. SCARBOROUGH’S FAMILY, *supra* note 7, at 526.

<sup>157</sup> McMASTER, *supra* note 5, at 136.

<sup>158</sup> LETWIN, *supra* note 120, at 120.

<sup>159</sup> MR. SCARBOROUGH’S FAMILY, *supra* note 7, at 599.

<sup>160</sup> *Id.* at 559.

reflects values closer to Mr. Scarborough. Grey concludes this is a symbol of the disintegrating standards of practice, and his time has passed, "I have been at my business long enough. Another system has grown up which does not suit me . . . . It may be that I am a fool, and that my idea of honesty is a mistake".<sup>161</sup> He decides to retire.

#### IV. CONCLUSION

This random stroll through Trollope's gallery of lawyers has attempted to show that as he matured as a writer his understanding and appreciation of the legal profession evolved. From the beginning of his London period, Trollope's descriptions of lawyers became more realistic. Instead of caricatures, lawyers were in many cases men of ability and honor. They generally reflect accurate portraits of real people. From the variety of solicitors and barristers introduced one finds in his later period, lawyers with a professionalism that one might encounter today.

Trollope's novels are not only about the legal problems of the actors in the plots but engage the Victorian legal culture in a broader sense of history, traditions, continuity and change. There is a backdrop of philosophical and jurisprudential issues that the legal system and members of the bench and bar were dealing with during the nineteenth century. Trollope's attention to the faults of the adversary system had its source in principles of natural law, which posited that God-given universal axioms of right and wrong gave individual guidance or a map for reaching the right result in a legal controversy. Natural law principles were challenged during the Victorian era by positivist notions that law is what the statute books and court decisions say.

These issues are in the background of what seem at first glance to be merely interesting plot developments. The rigidity of primogeniture, entail, and the lack of women's rights also were concerns during the nineteenth century. Essentially a conservative, Trollope favored the land laws for their stabilizing role in English society and culture but recognized their unfairness. His "good" lawyers strive to uphold this system.

In his later portrayals of lawyers, Trollope created a realistic characterization of the legal profession of the time that offers universal insights into human nature, a perspective that is relevant today. Trollope's great accomplishment is the creation of believable human beings who challenge his readers to evaluate them as one judges one's friends.<sup>162</sup> Among his lawyers, we feel we are with some familiar acquaintances, who could be in practice today and attending a contemporary equivalent of the International Congress at Birmingham.

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<sup>161</sup> *Id.* at 600.

<sup>162</sup> TRACY, *supra* note 147, at 330.

