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Newbery-Jones, C orcid.org/0000-0002-3039-0519 (2018) *Judging the Judges: The Image of the Judge in the Popular Illustrated Press*. In: *Judgment in the Victorian Age*. Routledge , London , pp. 161-181. ISBN 9781138302075

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<https://www.routledge.com/Judgment-in-the-Victorian-Age-1st-Edition/Gregory-Grey-Bautz/p/book/9781138302075>

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Judging the Judges: The Image of the Judge in the Popular Illustrated Press

Craig John Newbery-Jones

In recent years, the relationship between law and popular culture has been extensively examined through legal scholarship, and particular attention has been given to how popular sources represent the lawyer.¹ A principal aim of ‘law in popular culture’ research is to explore how texts depict the profession – and their ethics, regulation, educative processes and practices – while examining how this has shaped societal perceptions of the lawyer. Work has been undertaken on the depiction of crime and punishment, the law and legal process, in nineteenth-century texts including the mainstream and popular press.² Yet judges deserve a more substantial analysis, particularly given their status as figureheads for the law (transcending the adversarial role and combativeness of the barrister), as founts of justice and representatives of the Crown and State. This chapter therefore studies their public image in this time of public judgement when mass legal culture was being formed.

The visualisation of law, lawyers and the legal process forming during the Victorian epoch, created a legal visual culture for the masses. Technological developments and innovations in printing reproduced text and images quickly and with greater ease, leading to their mass production.³ The press was the great commentator on social, economic and cultural changes, quick to highlight the numerous problems that emerged. While much work has been done into governmental responses to these problems, the judge’s role as a moral arbiter is under-researched. This chapter also examines this aspect of judges’ public reputations through representations in popular culture which permitted the public to critique judges and their legal judgment.

The 'Lawyer' and Nineteenth-Century Popular Culture

Scholars have argued that the public engage with the law and lawyers predominantly through popular culture.⁴ For Travis, 'individuals do not, for the most part, have very much direct contact with the legal system ... knowledge and experience of the law is mediated by and filtered through the lens of popular culture.'⁵ For Shewin, popular culture through the visual mass media 'contributes to law by helping to shape the very processes of thought and perception by which jurors judge and voters vote.'⁶ Cultural texts lead and reflect public opinion on law, lawyers and legal issues. This was certainly the case with the nineteenth-century press due to its popular characteristics. The press experienced technological and industrial revolutions. At the same time, transport developments and cost reduction with the removal of stamp duties and paper duties ensured a proliferation of material such as newspapers and periodicals, more widely and efficiently distributed from the metropolis and provincial centres. With the expansion of a regional press came reports not simply of national, but also regional legal intelligence.⁷ Most regional newspapers reported legal issues from the central London courts, alongside news from local courts including assize or quarter sessions and the lesser courts of the petty sessions and police court.

The press's expansion and permeation of all classes of society created a 'press culture' involving widespread exposure to, and extensive public interaction with, the press.⁸

Newspapers developed from a medium for the elite to one for all classes, making it truly a source of popular culture. A shift from an elite readership (as for *The Times* in the 1830s), to a more widespread cross-class distribution occurred with the success of the cheaper daily press. Thus the *Daily Telegraph*, a penny paper launched in 1855 had, by 1861 a circulation of 141,000, more than double *The Times*'s daily circulation.⁹ Coupled with increased literacy, this cheap press allowed the poor to follow current affairs and engage with ideas and opinions

expressed in these publications.¹⁰ The popular press may be studied as an expression of popular attitudes towards the law, and officers of the law such as judges.

[Insert Figure 7.1 here]

'Law Intelligence', *Illustrated London News*, 18 February 1843, p.118. Image courtesy of the University of Plymouth.

The law was an important aspect of reportage in the nineteenth century, indeed 'law stories have consistently made up a significant portion of the popular culture.'¹¹ Early in the period, these articles regularly appeared in the national and regional press, in daily and weekly papers, and across papers with a wide range of readerships demonstrating a cultural reach across all classes (see Figure 7.1 above).¹² These case reports, a source of general and professional interest, differed greatly from the sensationalist and investigative approach in modern legal intelligence and crime reporting.¹³ This was because in the mid-nineteenth century 'briefless' barristers compiled accurate and often legally-nuanced reports of cases for the press to supplement their sporadic and meagre incomes, although this relationship between barrister and press declined by the 1860s as reports began to be compiled by a growing class of professional journalists.¹⁴ The verbatim style of reporting often listed many facts, points of evidence and legal questions raised by barristers in court, along with the testimony of suitors, defendants and witnesses, and the opinions of presiding judges.¹⁵ This legal accuracy, combined with precise and regular reporting, gave the public intimate details of cases.

Unlike modern legal culture, these reports and accompanying legal intelligence were not just confined to professional periodicals, but featured regularly in popular newspapers and

periodicals. This was mass reportage of legal affairs, not just cause célèbres, but many criminal and civil cases. It allowed the public to engage with legal affairs and procedure and inevitably there emerged legal heroes and villains in the celebrity that surrounded these important characters in the courtroom.¹⁶ The public image of the barrister varied, and a comparison between their public reputation and press depiction of judges is instructive. Some barristers, such as Sir Edward Clarke and Edward Marshall Hall, were regarded as heroes by the public, whereas some, like Edwin James, Charles Phillips, and Dr Kenealy (a divisive figure through his role in the Tichborne Claimant movement), might be perceived as villains. This was influenced by representation in legal press reportage. For example, Clarke was praised as one of the finest forensic orators of the late-Victorian period and his professional conduct was widely exalted.¹⁷ This esteem is also evidenced through other forms of legal literature such as biographies, autobiographies, case compendiums and collected speeches.¹⁸ Conversely, barristers guilty of professional misconduct such as Edwin James (in his case, just plain illegal behaviour) were publicly vilified. When James's conduct became news, and he was subsequently disbarred, the press depicted this disgrace extensively and encouraged a wider discussion around the ethics and conduct of the bar.¹⁹

If barristers were the principal legal actors in Victorian court procedure, judges held the starring role in the public mind, and a fundamental part of mainstream legal reporting in the press. Often their judgments, judicial opinion, and comments to juries are reported verbatim. This is true for lower-ranking judges such as assize judges and judges in the new county courts.²⁰ There was more detailed exposure of higher-ranking judges in London, occupying positions of state such as the Lord Chief Justice.²¹ Widespread reporting ensured the public was as aware of judges as it was of barristers. Mainstream press sources seem to have represented judges far more positively than barristers, perhaps due to their elite status as legal

officers and their historical legacy as the guardians or keepers of justice. Judges were the apex of the profession, rising through the ranks of the bar to receive silk (become KCs/QCs) before elevation to the bench. The press allowed the public to follow the individual careers of judges, read reports of their oratory as barristers and their subsequent judgments as judges. There was also long standing cultural fascination with judges particularly based around the opposing motifs of the merciful and hanging judge.²²

The representation of judges and the judiciary is more complex in the periodical press, particularly the satirical press.²³ These included much more editorial and opinion pieces in reference to individual judges and the judiciary that, by their very nature, were more diverse. These pieces were quick to highlight personal shortcomings and professional faults. That being said, the satirical press was less critical than it was towards other aspects of the 'law' and represented judges less negatively than barristers. Inevitably publications such as *The Age* and *The Satirist* in the 1820s and 1830s were critical of the judiciary due to their radical mission, but the popular periodicals held judges in higher esteem.²⁴ Judges were often praised for their legal discourse and represented through positive motifs.

Judges such Sir William Bovill, Baron Tenterden, Baron Denham, Baron Campbell, Baron Coleridge, Sir Robert Lush, and Sir Alexander Cockburn, whether through extensive reporting in legal procedure or in their legal public offices via regular law intelligence, became publicly recognisable.²⁵ Judges were judged for their legal decisions in individual cases.²⁶ Law intelligence was not just a feature of newspapers destined for the burgeoning professional middle class, but permeated the cheap, working-class weeklies.²⁷ Coupled with an extensive public knowledge of legal affairs, this meant that judges were an important part of a popular culture of the law, a time of 'public judgment', when an engagement with legal

subject matter unparalleled in earlier periods led to substantial public participation in the process of judgment. This included the legal judgment of those involved in such hearings and the judgment of those in the 'court' of public opinion. The press was the nineteenth-century equivalent of the television in its function as a vehicle for popular participation.²⁸ It allowed the public to engage with politicians and others, allowed them to reflect upon key issues, form or affirm opinions and even contribute to ongoing debates through editorials and correspondence.

It was not just through words that the judge was represented through the press, since reports were increasingly accompanied by illustrations and pictorial representations of news, including sketches of key figures and events. As a result, visual images of legal professionals including the judge and the barrister permeated this popular medium. The following section focuses on the image of the judge.

Visualising the Judge in the Press

Despite increasing literacy Victorians were hungry for images and the mass press gradually incorporated visual images, increasingly available through technological improvements. The public appetite for more elaborate and in-depth reporting encouraged newspaper and periodical publishers to include illustrations and sketches in their publications, and illustrated newspapers appeared as the Victorian press became the first to convey to a mass public a visual culture in which crime and the legal process (and legal institutions, sites and individuals) were far from marginal, due to public appetite. The most famous illustrated newspaper with a legal focus was the Illustrated Police News, with a peak readership of 600,000 and average weekly readership of up to 200,000 (but we must remember that newspapers were shared, for instance in pubs, reading rooms and among friends). This paper

fed the public desire for illustrated crime stories and was famed for its depictions of gory crimes and macabre murders on its cover.

Images of judges appear throughout the visual press, generally accompanying a case report or supplementing a factual piece about a judge.²⁹ These included articles that profiled judges as celebrities or public figures, acted as detailed obituaries upon their passing, and highlighted their careers at points of advancement and elevation. This was particularly true when concerning a high-ranking judge.³⁰ There are also examples of holders of high judicial office being included as an in-text illustration, even where there is no direct relevance to the surrounding text.³¹ This ensured that individual judges could be visualised by the public and that the public became familiar with these lawyers.

The celebrity status of senior judges can be seen in newspapers and periodicals. Late-Victorian middle-class periodicals such as the Strand Magazine had regular pictorial features on celebrities including judges. Judges were included in single-page features such as 'Portraits of Celebrities at Different Times of their Lives,' in 1898 this included Lord Justice Smith with various sketch and photographic images recording different stages of his life from his youth, including portraits in barrister's robes, in judicial wig, and out of costume.³² This treatment of judges as celebrities affirmed their status in popular culture. Judges also featured in illustrated biographies running to four or five pages such as the Strand's nine-page biography of Henry Hawkins (triggered by his elevation to the peerage) which explained his early life, notable cases, famous decisions, and collected speeches (see Figure 7.2 below).³³ Numerous illustrations presented him at different stages in his career. Such pieces created an intimate relationship between the public and these lawyers. Hawkins' life also demonstrates how, via the press representation of legal cases, the public could follow lawyers from their

early appearances at the bar through to their elevation to the superior courts and into retirement. The legal literacy of the public and the widespread reporting of legal cases meant that this celebrity status was continuously affirmed within popular legal culture. It also provided a means through which the public would pass judgment on such individuals and their suitability for promotion.

Insert Figure 7.2 here

Figure 7.2. Sir Harry Hawkins, *Strand Magazine* vol.4, July to December 1892, p.262. Image courtesy of James Gregory.

The celebrity of judges is also exemplified by the various illustrated announcements of judges being elevated to the superior courts and judicial offices of state. The press was the principle medium through which such information was publicly communicated; while such announcements were made in professional papers such as the *Law Times* these were inaccessible to the public. The inclusion of such promotions in the popular press demonstrates how there was a public appetite for such information and how such judges became publicly recognisable. These promotions were announced through an illustrated biography that often outlined background, career and incorporated information of relevance to the public. For example, in the elevation of Mr Justice Lush to the Court of Queen's Bench in 1847, he was described as coming from 'humble beginnings' as an attorney's clerk before being admitted as a student at Gray's Inn.³⁴ Such narratives ensured that some judges exemplified the Victorian ideals of hard work and self-improvement. Such details also allowed the public to pass judgment on these individuals beyond the courtroom. Senior judicial figures who had risen from humble beginnings and were visually represented in the press, gave the readers public figures they could emulate. Other representations of these preminent figures of

judgment showed them taking up their seats – literally seats of judgment – at the bench. The Sphere depicted Lord Alverstone taking his seat at the Law Courts in his new role as the Lord Chief Justice in 1900.³⁵ Representation of these moments of pageantry and tradition demonstrated to the public the status of senior judges in society, the vigour of the legal culture and the significance of these legal traditions.

The centrality of legal affairs to Victorian life can also be viewed in the visual representation of judges undertaking various state and law-court activities. This included their portrayal in ceremonial roles such as the opening day of the assizes (often known as Legal Sunday) and the termly opening of the Royal Courts of Justice.³⁶ Legal Sunday in the assize towns and the opening of the courts were often public spectacles, and the public would have at least been familiar with these displays of pageantry. Assize time in the provincial towns was a great communal moment for regional political leaders, lawyers, judicial officers and jurors. The public would come to town on business, visit fairs and markets, attend court, and perhaps witness displays of capital punishment until public executions were abolished in 1868. The termly opening of the Royal Courts was an even more important and impressive display of legal culture, which presented to the public all the judges of this superior court. This central display of legal culture mirrored assize rituals but included all justices of the superior courts. Press illustrations allowed the public to engage with such events at a distance while also demonstrating legal tradition and custom. The judge's role in these public events raised the profile of senior judges in the press and presented them undertaking their legal duties outside the courtroom.

It was not just domestic judges that featured in the press, but European and colonial judges were also depicted in illustrated pieces.³⁷ The latter were as much a part of legal culture as

judges in domestic courts, but it can be argued that their press appearance was even more important due to their colonial roles and remoteness to Britain. In an Indian murder case that concerned a gang murder in a 'very public street' in Bombay supposedly by eighteen 'Parsees' upon one of their own members, reported in the Illustrated London News in September 1844, the judge was the only white officer of the law.³⁸ The barrister was represented as Indian, as were all the witnesses, the Omlah (the Indian courtroom staff), and police officers. The accused was represented in Parsi costume. The paper discusses how this was an excellent opportunity to show English readers the functioning of English justice in the empire. The judge was represented in a white suit (deemed more suitable to the climate than the usual wig and gown), reclining on a chair and smoking a pipe: very different to the formality of the judge in English courts. The roles of the Omlah are also included in great detail. The judge being a European with native Indians taking the other positions in administration of justice, the case as reported was a display of colonial power, British judicial authority, and an assumption of the superiority of English law. The press also reported on legal cases across the British Isles, reporting on the elevation of Irish and Scottish judges to their superior courts and printing their obituaries. These were often accompanied by illustrations and stories from these courts.³⁹

Judges were also visually depicted in cartoons and caricatures in the mainstream and satirical press. The most enduring caricatures of judges appeared in *Vanity Fair* (1868 – 1914), a 'society' magazine best remembered for its caricatures of public figures which included judges and officers of state such as the Lord Chancellor, in the robes of their office or in their daily attire.⁴⁰ As these were caricatures, they involved some exaggerated features but were less grotesque and offensive than eighteenth-century caricatures.⁴¹ In fact, these were generally without malice and were a pictorial record of the celebrities of the day, often

accompanied by a short explanation of the individual, his role and personality. The fact that judges featured in these caricatures further demonstrates the celebrity of the judge and the recognition by the press of their important position within popular culture. Judicial caricatures and cartoons also appeared in periodicals such as *Punch*, *Judy*, *Fun*, *Tomahawk* and *Ally Sloper's Half-Holiday* (see Figure 7.3 below). Generally, the judicial office is represented through positive imagery and visual metaphors. This may involve, as in *Punch* in 1858, representing judges through anthropomorphism as owls and pelicans (symbols of wisdom and truth).⁴² Such symbols might have been understood by many, and certainly the public were able to judge the accuracy of such visualisations when compared to the representation of judicial behaviour in mainstream press reporting.

[Insert Figure 7.3 here]

Figure 7.3. Illustration from 'Papers from Pump-Handle Court. A Recollection of the Long Vacation', *Punch Magazine*, 26 November 1887, p.241. Image courtesy of Judith Rowbotham.

The ability of the public to 'read' such images and understand the symbolism is fundamental to allowing them to affirm or challenge the judgments in the press.⁴³ Satirists held the judicial office in relative esteem but willingly attacked individual judges' integrity or character if they thought it appropriate. When the satirical press represented flaws in a judge's character, they were represented in robes and their supposed or alleged discretions were discussed.⁴⁴

Generally the manner of visual representation of the judge in satirical or non-news publication was far less critical than that of other lawyers who were members of the bar.⁴⁵ This was largely due to their superior status and less adversarial and contentious role in court procedure, and to their roles as founts of royal justice.

Judges also featured in visual advertisements in the late-Victorian press. There are numerous examples of their use to market numerous products, including cocoa, tobacco and soap.⁴⁶ They figured because of their widespread association with truth and honesty, in order to evoke similar ideas in the products advertised. But the associations might also be played with. Employing the image of three judges to sell Pears' soap in 1886 is suggestive.⁴⁷ Perhaps judges have unimpeachable moral characters, but the advertiser's line, 'used by all the best judges,' here implied otherwise by a need to cleanse themselves. The judge's robes and white wigs also signified wisdom and sobriety. While these advertisements did not generally represent specific judges when they did this can be seen to affirm their celebrity status since a company would only seek an endorsement from an individual judge who might be thought to have influence. The image of the long-bottom wig and robes of the judiciary had become symbolic of high status and cultural authority.

Across these illustrations in the press, individual judges were often represented in their robes in court or in specific public situations. This highlighted these traditions and legal roles to the public and made these individuals publicly recognisable. The robes were synonymous with the office that these individuals held, be it Lord Chancellor, Master of the Rolls, or Lord Chief Justice. This also allowed the public to recognise and participate in national legal affairs. Judges were also represented in barristers' robes which acted more generally as a metaphor for the law. However, the judiciary was more generally represented through motifs or visual metaphors that symbolised the profession, the law, knowledge, wisdom and authority, notably in the popular satirical press. Lawyers, including judges, became visual metaphors for truth, justice and legal power.

Judges as Moral Arbiters in the Press

Legal judgment was an important facet of popular culture since the press judged those that facilitated and passed legal judgment, encouraged public engagement with this sphere of judgment, and invited the public to witness it and participate in the legal process. Interaction between public, press and legal process placed the judiciary and their responses to social and legal problems directly in the public gaze. A period of great change, immense progress, and widely discussed social injustice, the nineteenth century debated these transformations and the judicial response through the press. For example, displays of mercy by judges in cases of infanticide by those women fallen on hard times, and sorrow for those poor souls injured in railway accidents or boiler explosions were not common, but could be witnessed.⁴⁸ Two opposing examples can be observed in *Lloyd's Weekly Newspaper* and the *Morning Chronicle*. In *Lloyd's* a judge was reported as admonishing a woman who had dismembered her dead child and hidden the remains in a trunk, as being unnatural in her brutal conduct. In another case, the *Chronicle* reported the presiding judge encouraging mercy for the prisoner.⁴⁹ It was conflicting cases such as these that encouraged public expectation for judicial mercy and judges to act as moral arbiters. However, public expectation for such intervention may have been misplaced, due to constraints placed on these lawyers by precedent and procedure.

While law and morality are commonly considered to be intertwined, this relationship is much more complex. Legal positivists (such as H.L.A. Hart) have theorised that law exists as a practice independent from morals, governed by its own language, rules and conventions, whereas natural law theorists (such as Thomas Aquinas) view law as intricately linked to morals.⁵⁰ Judges are generally considered to adjudicate disputes or interpret the law that is circumscribed by rules and conventions because of the institutional setting, constraints, formalities and consequences.⁵¹ Tension between the judge as moral arbiter and technician

has caused conflict within modern popular legal culture and this may be true of the nineteenth century too, due to judges' perceived role as exemplars of morality in a society formally shaped by Christian values. One such example is Mr Justice Bayley, who exalted the virtues of efficient justice and mercy for those not yet hardened in crime, and was regarded as both a Christian judge and a humane man.⁵² Arguably the public perceived the judge as a moral figure who embodied contemporary Christian values, who ought to respond to socio-legal problems with some compassion rather than be a mere mechanic of the law. This morality and humane nature is especially true when contrasted with the anathema held by society for those judges who were seen as corrupt.⁵³

In the nineteenth-century press, there are numerous examples of judges speaking strongly against individuals and their illicit conduct, but being conscious of being bound by the law, both in procedure and precedent. In 1854, a particularly controversial case concerned a hearing in the Worship Street Police court regarding violent spousal abuse. Louis Charles Tennyson D'Eyncourt was reported in the press as declaring to the court, the public and the reporters that the injuries inflicted on an elderly wife were by her husband, the accused, but with insufficient evidence to allow the full force of the law the man was sentenced to three months' hard labour.⁵⁴ Based upon the evidence of the attending constable, it was clear to the court that the man had beaten his wife but the victim claimed she had no recollection of the incident. D'Eyncourt was only able to sentence the prisoner for an assault (and at half the suggested sentence of sixth month's imprisonment with hard labour), rather than arraign this as an indictable offence. An example of a police magistrate acting within the law and the evidence presented, while refusing to interfere in a moral capacity, his decision was criticised in the press. Punch referred to this as a conviction of 'half guilty' and claimed that they had little taste for this 'judicial half-and-half' currently being offered.⁵⁵

Other publications in the satirical press presented judicial mercy. In *Ally Sloper's Half-Holiday*, juryman Sloper is fined £10 for coming into court late a real issue outlined in the regional press.⁵⁶ But the fine is later remitted when the juryman explains that he thought the court sat at 11. Sloper doffs his cap in respect or thanks to the judge, illustrating the respect directed at the judiciary. However, this item also demonstrates judicial mercy, compassion, and the discretion they exercised in court procedure and application of the law.⁵⁷

There are numerous press descriptions of judges recounting evidence in a cool and dispassionate manner and instructing the jury to divest themselves of feelings and assess the evidence on its value.⁵⁸ However, a dispassionate attitude in press reporting might have been at odds with a public desire for judicial moralising, especially when popular movements for social and moral improvements permeated society. Judges were also reported as condemning witnesses, parties, and other court officers with censoriousness and occasionally anger. When judges behaved in this manner, they were criticised.⁵⁹ Sir John Stewart was described as ‘the most ridiculous thing, an angry judge’ during a case in Chancery after ‘breaking forth fiercely’ in denunciation of a ‘vile and scurrilous press.’⁶⁰ Sir Alexander Cockburn was described as an angry judge following his return to the bench after lunch on the Lewes Assize in 1868, when he found the sheriff and seven jury members still eating, viewing it as disrespectful to the court and the office.⁶¹ The same wrath was shown to a disrespectful counsel when he accused Lord Newton of being asleep.⁶² Judges were also reported speaking with censure to prisoners and parties in the assize courts: Coleridge severely reprimanding parties in a rape case where the victim and prisoner had both continually changed their stories in 1839, for example.⁶³ Sir James Shaw Willes was widely reported as weeping upon hearing evidence and passing sentences especially in cases concerning child murder. Dixon has seen

these displays of emotion as an embodied attitude and intellectual, social and religious performance.⁶⁴ Willes's tears dramatise the friction between the judge as an officer constrained by law and procedure and as a feeling individual interested in the moral good while seeking a measure of justice.

There are also examples of judges drawing upon their own morality but under the guise of the law and procedure. For example, Mr Justice Cresswell, examined in Gail Savage's chapter in this collection, was widely criticized for recommending a defendant withdraw his guilty plea for manslaughter, plead non-guilty instead, and so 'take a chance' on justice in 1842.⁶⁵ This case concerned the trial of a man who, alarmed following an attack on his house, fired a shot at random and killed a servant. However, the prisoner persisted with his plea and was sentenced to three months' imprisonment, which was deemed to be harsh. Cresswell's actions were criticised as immoral in the popular press.⁶⁶ While this could be seen as attempting to extend mercy through judicial discretion Cresswell was criticised for action that was seen as an affront to truth and justice. Baron Parke was criticised in the press in a celebrated murder case in 1849. Charles Phillips was representing Courvoisier, the Swiss valet accused of murdering his master Lord William Russell. On the beginning of the third day, the prisoner confessed his guilt to Phillips. Phillips insisted that he could not continue and that he should plead guilty. However, Courvoisier insisted on continuing his defence. Unsure how to proceed, Phillips approached the bench and Parke instructed him to adhere to his client's wishes. Phillips and Parke were criticised in the press, which argued that this showed the immorality of the legal profession and undermined due process.⁶⁷

Insert Figure 7.4 here

Figure 7.4 'Lord Abinger', Illustrated London News, 4 March 1843, p.151. Image courtesy of the University of Plymouth

Yet the desire for judges to act as moral arbiters and to engage in moral judgment alongside legal judgment was desired by the public and, when it was lacking, the press criticised the judge. Lord Abinger's inconsistent censure of immorality was highlighted and criticised in *The Examiner* and the provincial press.⁶⁸ In the reporting of the trial of valet Nicholas Suisse for theft from the late Marquis of Hereford, Abinger was condemned for failing to censure the accused and instead referring to his 'excellence of character.' This was contrasted to his condemnation a few days earlier of some 'gentlemen of the turf.' Abinger (see Figure 7.4) was also criticised for inconsistent application of legal procedure.⁶⁹

This tension between public expectation and the judge's role as moral arbiters was also echoed in judicial thinking. Fifoot refers to the 'contemporary itch to moralise' in Victorian jurists and judiciary, but suggested that judges and lawmakers did not feel impelled 'at all hazards to equate moral and legal obligation' and were not alarmed 'if the two seemed at times to diverge.'⁷⁰ Conversely, Wiener describes this morality as structuring 'much of the discourse of those making and administering' the law.⁷¹ In an 'age of improvement' inevitably judicial thinking was influenced by public moral concerns yet this was carefully balanced by the desire to remain objective in operating the law.

The judge could also be witnessed in other cultural representations including the theatrical stage. The musical satire of work of Gilbert and Sullivan is replete with references to justice and the representation of judges. The judge's decision to marry the plaintiff (Angelina) at the

end of Trial by Jury (1875) could be viewed as a moral solution to an immoral dilemma, even though the judge's morality has been critiqued. The Lord Chancellor in Iolanthe (1882) is also morally questionable, particularly his desire to marry his ward. However, his decision to assist Iolanthe at the end of the play, demonstrates his sharp legal mind, desire for a just outcome, and his role as a moral arbiter. Much like the press representation of judges, these operettas satirised the judge's immorality in personal life but often showed them acting with morality and ingenuity in their professional capacity. These popular sources displayed a clear tension between the desire of judges and the public for the judiciary to act as moral arbiters and the constraints of the law and legal process.

Conclusion

The nineteenth century was a time of public judgment. Legal judgement was an important thread in the fabric of popular culture and the widespread reportage of law and legal procedure positioned the 'lawyer', including the judge, within visual culture and in the eye of public judgment. Judges featured extensively in the press and like barristers at times they became household names. Celebrities within the profession and within a popular legal culture due to extensive reporting and visual representation, a complex portrayal of judges was transmitted to the public. Individual judges were often represented due to their conduct and professional behaviour, be it good or ill, whereas the judicial office often appeared more favourably. The judge's role as a moral arbiter was an aspect for consideration. Tensions between the law's function in the context of social and legal problems and the remedial role of the judge created uncertainty and criticism. This chapter is merely the beginning of the study needed into the relationship between the public, press and legal actors in the nineteenth century.

Notes

- ¹ For cinema and film see M.R. Asimow, 'Bad Lawyers in the Movies', *Nova Law Review* 24 (2000), pp.533-592; M. Asimow, 'When Lawyers were Heroes', *University of San Francisco Law Review* 30 (1995-1996), pp. 1131-1138; and F.M. Nevins, 'When Celluloid Lawyers Started to Speak: Exploring Juriscinema's First Golden Age' in M.D.A. Freeman, ed., *Law and Popular Culture* (Oxford: Oxford University Press, 2005), pp. 109-129. For television, see J. Denvir, 'Law, Lawyers, Film and Television', *Legal Studies Forum*. 24 (2000), pp. 279-721 and S. Machura, and S. Ulbrich, 'Law in Film: Globalizing the Courtroom Drama', *Journal of Law and Society* 28 (2001), pp. 117-132. For literature, see C. Menkel-Meadow, 'The Sense and Sensibilities of Lawyers: Lawyering in Literature, Narratives, Film and Television, and Ethical Choices Regarding Career and Craft', *McGeorge Law Review* 31 (1999-2000), pp. 1-129 and R.A. Posner, *Law and Literature*, 3rd ed. (Boston: Harvard University Press, 2009).
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- ²⁰ For assize courts, e.g., *Woolmer's Exeter and Plymouth Gazette*, 11 August 1827 on judicial intervention and response to question from prisoner at the Devon assizes; also the arrival of Judge Burrough to Exeter, outlines the members of the grand jury and the swearing in of the magistrates. On new county court judges, e.g., *Woolmer's Exeter and Plymouth Gazette*, 17 April 1847 explains Judge Tyrell's opening address at the establishment of the county court for debt in Exeter; settlement of the Bristol court in *Bristol Mercury*, 27 March 1847, and *Liverpool Court* in *Liverpool Mercury*, 27 April 1847.
- ²¹ See Lord Coleridge in the 'Baccarat Scandal' in *Sheffield Daily Telegraph*, 10 June 1891; *Pall Mall Gazette*, 15 June 1891; *Western Mail*, 17 June 1891. See *Morning Post*, 11 February 1869 for the Lord Chief Justice's criticism of press reporting of legal procedure prejudicing the trial, or his comments in the Tichborne claimant trial in, e.g., *Lancaster Gazette*, 2 August 1873 and *Reynolds's Newspaper*, 17 August 1873, and in the case of *Head v. Markham and Another* in *Morning Post*, and *Daily News* 20 December 1877.
- ²² See H. M. Hyde, *Judge Jeffries*, 2nd ed. (London: Butterworths, 1948) on the hanging judge and K. J. Kesselring, *Mercy and Authority in the Tudor State* (Cambridge: Cambridge University Press, 2003), p.79.
- ²³ See criticism of Lord Coleridge's attitudes to American Law in *Punch*, 17 November 1883, criticism of his professional practice in *Punch*, 2 June 1883, criticism of Sir Alexander Cockburn's adherence to legal process in *Fun*, 25 November 1891, and an attack on Lord Campbell's popularity, *Judy*, 12 January 1870.
- ²⁴ See criticism of Lord Eldon and Court of Chancery in *The Age*, 12 June 1825 and *The Age*, 24 August 1828; criticism of pace of justice and role of justices of King's Bench, *The Satirist*, 23 October 1831 and on role of the judge in setting bail bonds, *The Satirist*, 17 June 1832.

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- ²⁵ An example of such extensive reporting can be seen in one of the cause célèbres of the century, the trial of the Tichborne Claimant, Arthur Orton, in *R. v. Castro* (1873-74) QB. See *Sheffield Daily Telegraph*, 11 January 1873; *The Graphic*, 14 June 1873; *Daily News*, 14 June 1873; *Birmingham Daily Post*, 7 October 1873. While these generally presented a formal representation of judges in this case (Mellor, Cockburn and Lush), the extent of such reporting ensured these judges were at the forefront of popular culture and in common public knowledge, see R. McWilliams, *The Tichborne Claimant* (London: Bloomsbury, 2007). ‘Law Intelligence’ regularly appeared in many newspapers and periodicals, with summaries of cases from superior courts, appointment of judges, and other legal news. Intelligence in the national dailies often reappeared in regional papers.
- ²⁶ For example, see criticism of Coleridge’s decision not to award costs in a poaching case, *Pall Mall Gazette*, 6 March 1877. This paper also included quotations of criticism from other daily papers (including *The Standard* and the *Daily Post*).
- ²⁷ See coverage such as *Morning Post*, a conservative-leaning publication with a predominantly middle-class readership, and *Lloyd’s Weekly Newspaper* and *Reynolds’s Newspaper* with lower to lower-middle class readerships and the most widely read newspapers of the Victorian epoch.
- ²⁸ M. Gurevitch, S. Coleman, and J.G. Bulmer, ‘Political Communication – Old and New Media Relationships’ in E. Katz and P. Scannell, eds., ‘The End of Television? Its Impact on the World (So Far?)’, *The Annals of the American Academy of Political and Social Science Series* (2009), pp.164-181 (p.168).
- ²⁹ Accompanying case reports, see Esher in *Penny Illustrated Paper*, 7 February 1891; Laurence in *Penny Illustrated Paper*, 10 May 1902; Pollock in *Penny Illustrated Paper*, 5 December 1891 and *Illustrated Police News*, 24 November 1877; Coleridge in *Penny Illustrated Paper*, 17 November 1877 and Coleridge in *Penny Illustrated Paper*, 13 June

1891. For illustrations to judge-focused pieces that include obituaries, appointments to office, or even the termly opening of the superior courts, see Lush in Penny Illustrated Paper, 7 January 1882; Manisty in Penny Illustrated Paper, 8 February 1890; Herschell in Penny Illustrated Paper, 29 October 1892; Coleridge in Penny Illustrated Paper, 14 April 1894.

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³⁷ Illustrated London News, 21 September 1844.

³⁸ See M. Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (Cambridge: Cambridge University Press, 2014): Parsi legal culture followed very particular lines and occupied a special place in the colonial legal imagination.

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⁴⁰ Vanity Fair, 31 July 1869 and Vanity Fair, 20 March 1869.

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- ⁴⁶ *Illustrated London News*, 16 June 1886; *Illustrated London News*, 21 July 1894.
- ⁴⁷ *Illustrated London News*, 6 June 1886.
- ⁴⁸ *Durham County Advertiser*, 25 March 1853; *Morning Chronicle*, 13 December 1859; *Lloyd's Weekly Newspaper*, 3 August 1879; *Daily News*, 14 March 1899.
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- ⁵⁸ For coolness, see *The Standard*, 17 June 1842. For jury instruction, *Trewman's Exeter Flying Post*, 24 August 1820; *Northampton Mercury*, 7 April 1827; *Essex Standard*, 31 May 1839.
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- ⁷⁰ C. H. S. Fifoot, *Judge and Jurist in the Reign of Victoria* (London: Stevens, 1959), pp.55-56.
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