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Legal Careers in Eighteenth Century America

Jay F. Alexander*

I. INTRODUCTION

History discloses that the colonial bar supplied a disproportionately large number of eminent statesmen who shaped America's severance from British rule.¹ Throughout the prolonged and frequently tumultuous opposition to British colonial policies, lawyers were conspicuous for their influential involvement.² Writing from New York in the midst of the uproar following the enactment of the Stamp Act in 1765, Governor Colden labeled resistance to the Stamp Act "sedition" and complained to London that "the Lawyers of this Place are the Authors, Promoters and Leaders of it."³ Perhaps Patrick Henry's immortal "give me liberty" speech⁴ best exemplifies the success of the patriot lawyers in popularizing resistance to England's colonial policies.

Furthermore, the influence of the 18th century lawyer did not fade with American independence but continued into the period of nation-building. In fact, "[a]lthough no more than a dozen were

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This article incorporates quotations from approximately one hundred primary sources, the various editors of which exhibit diverse opinions concerning their orthographic responsibilities. This author has accepted all sources as edited without attempting uniformity, an exercise which would necessitate access to the original writings.

1. "We are told that 25 of the 56 signatures on the Declaration of Independence are those of lawyers." Resh, The Bicentennial and the Lawyer: John Adams, 49 Wis. B.M. at 8 (1976).

2. Fifty years ago Professor Richard B. Morris postulated that "[i]t would be difficult to find a parallel in contemporary life to the role which the provincial legal community, complacently intrenched amid the forces of reaction in eighteenth-century laws, played in instigating revolution." Morris, Legalism versus Revolutionary Doctrine in New England, 4 New Eng. Q. 195, 196 (1931).

3. Letter from Cadwaller Colden to H. S. Conway (Nov. 9, 1765), reprinted in 7 Documents Relative to the Colonial History of the State of New York 773 (E. O'Callaghan ed. 1856). Curiously, only one of New York's five delegates to the Stamp Act Congress was a lawyer. See C. Weslager, The Stamp Act Congress 80-83 (1976).

active-members of the bar,” almost three dozen of the delegates to the Constitutional Convention in 1787 had received some legal training. It is also important to recognize that even during the most turbulent moments of the 18th century the role of the American lawyer was not limited to political haranguing and constitution-making. Insight into the complete spectrum of their legal careers is facilitated by the fact that this was an era of avid diarists and fervent correspondents who maintained careful records. Consequently, two hundred years later, we can examine their writings and gain insight into the legal careers in 18th century America.

Because contemporary observers were susceptible to errors of misunderstanding, exaggeration, and prejudice, reliance upon their recorded observations entails a vulnerability to those frailties. In the case of 18th century travel journals, the vulnerability is intensified by the recognized willingness of some authors to employ “deception for the sake of money, pride, or a point of view.” However, the vigilant reader will easily distinguish statements of questionable validity while appreciating the flavor of the 18th century which is thus preserved.

II. LEGAL TRAINING

The impetus to study law was not always self-initiated. In 1757 James Murray wrote his sister-in-law concerning his plans for her son’s education. “It is my Settled Intention . . .,” he said, “to carry on Tom’s education . . . and to make a Lawyer of him, if he has not an aversion to it.” Other families were less imbued with the law. Samuel Johnson, a prominent Connecticut clergyman, evidenced some ambivalence when advising his son William on career choices. Writing his son in 1747, Samuel informed him that although he was “by genius and ability equally qualified to shine either in the pulpit, at the bar, or at arms,” he would “prefer” that his son consider the ministry.

Those who settled upon the law as a career did not have to ob-

7. Letter from James Murray to Barbra Clark (Feb. 8, 1751), reprinted in Letters of James Murray 82 (N. Tiffany ed. 1901) (emphasis added). Tom became a watchmaker but abandoned the trade to manage Mr. Murray’s estate in Cape Fear, North Carolina. Id. at 156 n.1. See also letter from John Watts to Sir William Baker Knight (Jan. 22, 1762), reprinted in Letter Book of John Watts 12, 13 (1928)(Pefer DeLancey’s father “designs him for the Study of the Law.”).
tain the formalized education required today, and except for those able to attend the Inns of Court of London or study at European universities, legal training was acquired by an apprenticeship during which students read the law under the supervision of a practicing attorney. In fact, classroom instruction in the law was unavailable until George Wythe began offering courses at the College of William and Mary in 1779. Knowledge of Wythe’s professorship spread quickly, and within six months Richard Henry Lee informed his brother that “[o]ur worthy & learned friend, Geo. Wythe esquire is now Professor of Law in Wm. & Mary College . . . .” Adding that Wythe’s lectures were “greatly admired,” Lee suggested that “it deserves your consideration whether your nephew Ludwell would not be greatly benefitted by attending his lectures whilst he is reading the laws of Virginia . . . .”

Regardless of the route taken, it was recognized that preparation for a successful career necessitated “[a] tolerable share of learning.” The selection of a lawyer under whom to study therefore represented a crucial decision, and the decision could be confusing. “I am determined,” said Rufus King, “to study Law—where, how, and with whom—uncertain.” Robert Troup, writing to his friend Aaron Burr in 1780, explained why he had declined to study under the same attorney chosen by Burr. “[He] is immersed in such an

9. For a biographical listing of 18th century attendees, see E. Jones, American Members of the Inns of Courts (1924). Benjamin Chew, thirty years after he attended the Middle Temple, said that acquiring the “manner of speaking gracefully, and with proper elocution” should be a major consideration in evaluating the merit of pursuing legal studies in London. Letter to Edward Tilgham (Mar. 18, 1773), reprinted in B. Konkle, Benjamin Chew 38, 39 (1932). Chew’s contemporary appraisal is in accord with a more recent evaluation wherein it is concluded that “[a]t the beginning of the eighteenth century the Inns had ceased to be educational institutions.” W. Holdsworth 12 A History of English Law 16 (1938). Chew was admitted to the bar in 1746, Tilgham in 1774. 2 DAB, supra note 4, pt. 2, at 64, 64; 9 DAB, supra note 4, pt. 2, at 542, 542.

10. Journal of the President and Masters or Professors of William and Mary College (Dec. 29, 1779), reprinted in 16 Wm. & Mary Coll. Q. 22, 28 (1907). The designation of William and Mary as America’s first law school has not gone uncontested. See, e.g., Flahive, The Origins of the American Law School, 64 A.B.A. J. 1868, 1870 (1978). See also Swindler, America’s First Law Schools: Significance or Chauvinism?, 41 Conn. B.J. at 1 (1967).


12. Id. R.H. Lee “is said to have made a thorough study of the law.” In 1757 he became justice of the peace, Westmoreland County, Va. 6 DAB, supra note 4, pt. 1, at 117-18.


14. Letter from Rufus King to Robert Southgate (Nov. 17, 1776), reprinted in 1 The Life and Correspondence of Rufus King 24 (C. King ed. 1894). King was admitted to the bar in 1780. 5 DAB, supra note 4, pt. 2, at 398, 398.
ocean of business,” said Troup, “that I imagined it would be out of his power to bestow all the time and pains on our improvement we would wish.”

Perhaps just as important, it was feared by Troup that he would be “more confined to the drudgery of copying in his office than I ought.” The fear of “copying” duties expressed by prospective students reflects the conclusion of some contemporaries “[t]hat Attorneys were always lookt upon as so many Copyers and their knowledge only lay in knowing from whom to Copy Properly.” Under the date of October 2, 1787, John Quincy Adams recorded his appraisal of this task. “I began to copy off, not a small volume, of forms for declarations. This is a piece of drudgery,” he said, “which certainly does not carry its reward with it.”

However, if in 1789 one’s father were vice-president, influence would be exerted to eliminate mundane office chores. In negotiating for his son Charles to serve a clerkship under Alexander Hamilton, John Adams explained to Hamilton that family obligations would only allow Charles to “attend your office, from between ten and Eleven, to between three and four.” Although Adams conceded that when “[b]usiness presses” Charles “may attend earlier or latter as you shall direct,” the schedule suggested by Adams would obviously have left Hamilton with a greatly diminished opportunity to burden Charles with copying chores.

Despite the fact that those serving clerkships assisted with office drudgery, they were charged for the opportunity to work with, and receive instructions from, a practicing attorney. “A Lawyer must

15. Letter from Robert Troup to Aaron Burr (Feb. 29, 1780), reprinted in 1 Memoirs of Aaron Burr 194, 195 (L. Davis ed. 1837).
16. Id. Troup completed legal studies under William Paterson and in 1796 was appointed judge of the U.S. District Court of New York. 9 DAB, supra note 4, pt. 2, at 651, 651.
18. 2 Diary of John Quincy Adams 298 (R. Taylor ed. 1981). Adams was admitted to the bar in 1790. 2 DAB, supra note 4, pt. 1, at 84, 84.
19. Letter from John Adams to Alexander Hamilton (July 21, 1789), reprinted in 5 The Papers of Alexander Hamilton 363, 364 (H. Syrett ed. 1962). Adams was admitted to the Boston bar in 1758. 2 DAB, supra note 4, pt. 1, at 72, 73. Hamilton was admitted to the bar in 1782. 3 The Papers of Alexander Hamilton 122 (H. Syrett ed. 1962). Hamilton’s admission “after less than five months study” is normally cited with implications of intellectual prowess. See, e.g., 4 DAB, supra note 4, pt. 2, at 171, 173. But see R. Hendrickson, Hamilton I 353 (1976) (stating that bar exams “were as much tests of whom one knew as what one knew.”). See also D. Loth, Alexander Hamilton iii (1939).
have a Fee," lamented one student, "for taking me into his Of-
fice." For this student, it was arranged that a fee of one hundred
dollars be paid when "convenient." Following the payment of the
instructional fee, the costs of room and board had to be con-
fronted. Rufus King, while serving as law clerk in 1777, complained
that his total expenses were "exceeding high."

For Robert Troup, the payment of such fees was looked upon as
an investment for financial solvency. Complaining that his salary
at the Treasury Department was so inadequate that his "little Fort-
tune was melting away" Troup expressed unwillingness to continue
an unprofitable occupation and believed that he had "no other Re-
source left but the study of the Law." Troup emphasized that
embarking upon a new career was not a whim. "I mean," he said,
"to be eminent and am determined to be indefatigable."

Students who placed themselves under the direction of promi-
nent attorneys sometimes found themselves forced into indepen-
dent study. Charles Phelps, who served an apprenticeship with
Theophilus Parsons between 1792 and 1795, estimated that his
teacher was gone "three fourths of the time" attending courts in
Massachusetts, New Hampshire, and Rhode Island. Joseph Story,
who studied under the eminent Samuel Sewall, recalled being "left
very much alone." Story understandably considered Sewall's "ab-
sence in Congress for about half the year . . . a serious disadvan-
tage . . . ." Story lamented that because of those absences he
was provided "no opportunity to ask for any explanation of diffi-
culties, and no cheering encouragement to light up the dark and
intricate paths of the law."

Students who confronted such periodic abandonment were
forced to study independently, a perhaps frustrating but survivable
situation. In fact, Thomas Jefferson, somewhat pessimistic con-

22. Id. at 264.
25. Id. Duane was admitted to the bar in 1754. 3 DAB, supra note 4, pt. 1, at 465, 465.
28. Id.
29. Id. Story was admitted to the bar in 1801. 9 DAB, supra note 4, pt. 2, at 102, 103.
cerning the student-lawyer relationship, was of the opinion that "[a]ll that is necessary for a student is access to a library, and directions in what order the books are to be read." Although Peter Van Schaack, like Jefferson, harshly condemned practicing lawyers as teachers, Van Schaack reached the conclusion that it was "in vain to put a law book into the hands of a lad without explaining difficulties to him as he goes along." Van Schaack supported his opinion with a brief reminiscence. "For my part," he said, "how many hours have I hunted, how many books turned up for what three minutes of explanation from any tolerable lawyer would have made evident to me!" Whatever the hardships of independent study, the success of the venture was correlated to the quality of an accessible library. John Adams began his studies with Mr. Putnam, whose library although "not large" included "all the most essential Law Books." Opinions as to what books were essential varied, but suggested reading lists appear today almost diminutive. Ezra Stiles seems almost boastful that his son "[i]n the 2 1/2 years Course of the jural Studies . . . [read] 40 Volumes, of which ten [were] Folios." Perhaps the greatest boon to independent study was the publication of Blackstone's *Commentaries* in 1765. John Adams referred to his pre-Blackstone studies as a "dreary Ramble." In similar

32. *Id.* at 9.
35. See *16 THE PAPERS OF THOMAS JEFFERSON*, supra note 30, at 481; G. Groce, Jr., *WILLIAM SAMUEL JOHNSON* 18-19 (1937); 2 *THE LITERARY DIARY OF EZRA STILES* 420 (F. Dexter, ed. 1901).
37. This is the date *Commentaries* was first published. D. Lockmiller, *SIR WILLIAM BLACKSTONE* 133 (1938). *Commentaries* was first printed in America in 1771-72. Parrish, *Law Books and Legal Publishing in America, 1760-1840* in 72 LAW LB. J. 355, 359 (1979). See also McKnight, *Blackstone, Quasi-Jurisprudent*, 13 SW. L.J. 399, 401 (1959) ("The work had an enormous effect in America . . . because it was the only general treatise available in a land where well-trained lawyers were almost non-existent.").
manner James Wilson complained that before Blackstone “[i]n expression, as well as in arrangement, the compositions of the law have been glaringly imperfect; and have had an injurious tendency to deter those, whose attachment they should have been fitted to attract.”39 Concerning Lord Coke’s work, Wilson asked “are not those jewels strewed about in endless and bewildering confusion?”40 However, both Adams and Wilson paid tribute to Blackstone, a work which Wilson praised as “elegant and pure,”41 and Adams praised for having “smoothed the path of the Student.”42

In general, it appears that the study of law was considered a very demanding venture. “I shall always lament,” James Otis told his father, “that I did not take a year or two further for more general inquiries in the arts and sciences, before I sat down to the laborious study of the laws of my country.”43 Because of this experience, Otis suggested to his father that his younger brother be permitted to pursue general studies for a couple of years following college graduation. Otis predicted that “if he should stay a year or two from the time of his degree, before he begins with the law, he will be able to make a better progress in one week, that he could now, without a miracle, in six.”44

After informing his father that he had decided to study law, John Jay received a reply warning him that it would be necessary to “attend to it with a firm resolution,” and only “if possible” was he to take “a delight in it.”45 If the experience of James Monroe was typical, that possibility was slight. When describing his studies under Thomas Jefferson, Monroe forsook the opportunity to cite pleasant memories and instead commented somewhat tersely that he “persevered in it” until he was able to enter the bar.46 Dirck Ten Broeck, studying under Alexander Hamilton, with “unremitting application,” complained that his apprenticeship necessitated “the sacrifice of every pleasure.”47 William Livingston, after being

40. Id.
41. Id. at 413. Wilson was admitted to the bar in 1767. 10 DAB, supra note 4, pt. 2, at 326, 326.
42. Autobiography of John Adams, supra note 21, at 274-75.
43. Letter from James Otis to his father (1760), reprinted in W. Tudor, The Life of James Otis 10, 11 (Boston 1823).
44. Id. Otis was admitted to the bar in 1748. 7 DAB, supra note 4, pt. 2, at 101, 101.
45. Letter from Peter Jay to John Jay (Aug. 23, 1763), reprinted in 1 The Correspondence and Public Papers of John Jay 1 (H. Johnston ed. 1890). John Jay was admitted to the bar in 1768. 5 DAB, supra note 4, pt. 2, at 5, 5.
47. Letter from Dirck Ten Broeck to Simeon Baldwin (Aug. 15, 1784), quoted in 1 The
admonished by his father for the alleged "neglect" of his studies, responded by informing his father that in pursuit of his studies he had "read the greatest part of this winter till 12 and 2 o'clock at night, and . . . frequently rose at five in the morning, and read by candle-light." John Adams portrayed the seriousness with which he approached his legal studies by equating his room to "the cell of an Hermit." He was, however, not without friends. "Old Roman Lawyers, and dutch Commentators," he said, "are my constant Companions."

Although Gurdon Saltonstall equated the study of law to "any other branch of Literature," the switch from liberal arts to law was an unsettling transformation for most students. One lawyer, whose previous "pursuits had been wholly of literary and classical character" recalled that upon commencing legal studies he "was surprised and startled on opening works where nothing was presented but dry and technical principles, the dark and mysterious elements of the feudal system, the subtle refinements and intricacies of the middle ages of the Common Law, and the repulsive and almost unintelligible forms of processes and pleadings." William Paterson, having been informed that his friend John Macpherson had determined to study law, expressed his apprehension that their "literary chit-tat" would be pre-empted by Macpherson's absorption "in the dulness of the law." Paterson opinioned that "[t]o be a complete lawyer, is to be versed in the feudal system" and that as for himself, he was "not very fond of being entangled in the cobwebs of antiquity." In an effort to prove his prejudices were based upon experienced readings, Paterson analyzed his own acquaintance with the law. "But of all the sages of the law," he implored, "preserve me from the pedantic, rambling,

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50. Id.

51. Letter from Gurdon Saltonstall to Jared Ingersoll (Nov. 3, 1755), reprinted in 9 Papers of the New Haven Colony Historical Society 229, 230 (1918).

52. Autobiography of Joseph Story, supra note 27, at 19.


54. Id. at 28. Paterson was admitted to the bar in 1769. 7 DAB, supra note 4, pt. 2, at 293, 293.
helter-skelter Master Coke. Such eternal egotism and dictatorial pomp breathe through his works, that I lose all patience in reading them.”

Although no one studied law for relaxation, some found it underserving of its harrowing reputation. In December of 1787, John Q. Adams wrote home expressing his pleasant surprise concerning the study of law. “The study itself,” he said, “is far from being so destitute of entertainment as I had been led to expect.” After some initial readings he boasted that “the imaginary terrors of tediousness and disgust, have disappeared.” For James Madison, an informal study of law was a not intolerable means to better understand politics and government. In pursuit of reading material he penned a request to Thomas Jefferson for assistance in purchasing “rare and valuable books,” particularly those “on the general constitution & droit public of the several confederacies which have existed.” Although he soon found himself devoting the “chief” of his reading to law, these efforts were symptomatic of Madison’s far-ranging intellectual curiosity. Concerning the law as a career, however, he stated that he was “far from being determined ever to make a professional use of it.”

III. THE PRACTICE OF LAW

For those students who did persevere in their studies, the next challenge was to locate employment. “Upon my admission to the bar,” said Joseph Story, “I was at a loss where to open an office, and indeed sat down in Salem, rather because I knew not where to go, than because I thought there was any real prospect of success.”

The experience of 18th century lawyers indicates that the job

55. Id.
57. Id.
59. Letter from James Madison to Marquis De Lafayette (Mar. 20, 1785), reprinted in 2 THE WRITINGS OF JAMES MADISON, supra note 58, at 120, 126.
60. Letter from James Madison to Edmund Randolph (July 26, 1785), reprinted in 2 THE WRITINGS OF JAMES MADISON, supra note 58, at 152, 154. The fact that Madison never became an attorney was cited by President Franklin Delano Roosevelt in support of his contention that the Constitution was a “layman’s document.” S. PADOVER, THE COMPLETE MADISON 4 & n.2 (1953). But cf. C. BOWEN, MIRACLE AT PHILADELPHIA 4 (1966) (stating that Madison was a “careful legal scholar.”).
market for attorneys was very cyclical, dependent largely upon relations with England. Pre-war estrangements with Great Britain resulted in a series of agreements among the colonies to boycott British imports. Consequently, Benjamin Franklin in 1771 found an old acquaintance, a lawyer by trade, explaining that "[t]he great Number of our Profession at present in Philadelphia, and the Scarcity of Business, arising from the Non-Importation Agreement," necessitated his soliciting Franklin for aid in obtaining an appointment as "Attorney General of Bermudas." 62

The fluctuating need for lawyers during the 18th century may have created a discernible despondency among many who had chosen the law as their occupation, 63 but an observation made by William Eddis in 1772 probably presents a fair appraisal of the legal job market. Eddis, who came to America to assume the post of surveyor and searcher of His Majesty's customs in Annapolis, Maryland, concluded that "those who are possessed of superior abilities have full employment for the exertion of their talents, and are paid in due proportions by their respective clients." 64 In 1780 Arthur Lee of Virginia was advised that "[t]here is now a fine opening for Able Lawyers at the Gen. Court Bar . . . ." 65 However, this information was accompanied with an opinion that "Boston or Philadelphia will be the best Theatres for the display of your Law powers." 66 John Adams was of the same belief, contending that a trip to Boston had afforded him the opportunity "to sit and hear . . . the greatest men, in America, harranging at the Bar, and on the Bench." 67

One hindrance to securing employment was state residency requirement for the practice of law. A petition in Tennessee asserted that such a requirement "casts a reflection on the gentlemen of the bar, of this State . . . as tho' they ungenerously wished to monopolize the whole of the business . . . or that they felt a consciousness of their inability to maintain their ground if attorneys from other States should be admitted on an equal footing." 68

63. Id.
64. W. EDDIS, LETTERS FROM AMERICA 64-65 (A. Land ed. 1969).
65. Letter from Richard Henry Lee to Arthur Lee, supra note 11, at 177.
66. Id.
68. Petition to the Tennessee General Assembly (Dec. 12, 1798), reprinted in 1 THE PAPERS OF ANDREW JACKSON 214 (S. Smith & H. Ousley eds. 1980). Jackson was "admitted
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Even though efforts were made to insure the employability of lawyers, there was no way of assuring that the resultant employment would be of sufficient interest to afford self-satisfaction. An indication of one lawyer’s caseload is provided in a letter written by Benjamin Kissam in 1769. Kissam was temporarily unable to attend court and asked a colleague to substitute for him. In describing the cases for which he sought replacement, Kissam wrote that “[o]ne is about a horse-race, in which I suppose there is some cheat; another is about an eloped wife, another of them also appertains unto horse-flesh.”\(^9\) Cognizant of the mundane chores he was attempting to delegate, Kissam joked that his description of the cases “may serve for briefs.”\(^7\) “If you admire conciseness,” he said, “here you have it.”\(^7\) In fact, some lawyers practiced only briefly before pursuing alternate careers. Timothy Pickering, a few years after admission to the bar, explained to a would-be client why he would not represent him “in a matter which may be involved in the intricacies of the law.”\(^72\) “I should be unworthy of that confidence,” he said, “if I did not confess to you, that I do not pretend to an accurate knowledge of the law, and that several years are elapsed since I applied myself to it . . . .”\(^73\)

Many 18th century observers were of the opinion that Americans were quick to seek judicial settlement of their differences. For example, St. John de Crèvecoeur, a visitor from France, noted in his journal that one locality in particular was “famous for the litigious spirit of its inhabitants.”\(^74\) From this de Crèvecoeur somewhat cynically predicted the “the lawyers will have all.”\(^75\) Writing a description of the northern colonies in 1755, John Barrell expressed the opinion that there were “too many Law Suits!”\(^76\) By way of remedy, he suggested “[t]hat the Number of Lawyers may be limited.”\(^77\) However, the fact that America was a young society, ex-

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69. Letter from Benjamin Kissam to John Jay (Nov. 6, 1779), reprinted in 1 CORRESPONDENCE AND PUBLIC PAPERS OF JOHN JAY, supra note 45, at 9.
70. Id.
71. Id.
72. Letter from Timothy Pickering to ___ (Nov. 19, 1773), reprinted in 1 O. PICKERING, THE LIFE OF TIMOTHY PICKERING 31 (Boston 1867).
73. Id. Pickering was admitted to the bar in 1768. 7 DAB, pt. 2, at 565, 565.
74. ST. JOHN DE CRÈVECOEUR, SKETCHES OF EIGHTEENTH CENTURY AMERICA 94 (H. Bourdin, R. Gabriel, W. Williams eds. 1925).
75. Id.
76. John Barrell, An Account of the Northern Colonies (Mar. 6, 1755), in MILITARY AFFAIRS IN NORTH AMERICA 68, 76 (S. Pargellis ed. 1936).
77. Id.
panding at a phenomenal rate but often in an unorderly manner, offers another explanation for what de Crèvecoeur considered a litigious spirit. A doctor traveling through New Jersey in mid-century made a note in his journal which supports this contention. It was his belief that there were “so many doubtfull titles and rights that it creates an inexhaustible and profitable pool for the lawyers.”

Whatever the source of litigation, the trials themselves were considered a source of entertainment. Gottlieb Mittelberger, following his arrival from Germany in 1750, observed that “[o]n court days young and old may enter the chamber and may listen to the cross-examinations and to the judgments, which often cause the listeners to burst into uproarious laughter.” Thus the trials became a popular source of diversion for the community. Joseph Hadfield, an Englishman traveling in America in 1785, was a witness to this popularity. Upon reaching Worcester, Massachusetts, Hadfield saw that “in the town were assembled a great number of people, it being court day.” In addition to explaining the custom of attending court day, Mittelberger related a case the spectators found particularly amusing. Mittelberger explained that an unmarried woman “who had gotten herself pregnant, wanted the man who was responsible for a husband.” The woman accused the man of rape but was questioned why at the time of the alleged attack she failed to alarm other people in the house as to her plight. To this “she answered that if she had thought that this time she would become pregnant, then she would certainly have cried for help.” Her reply found a responsive audience. “At this,” Mittleberger reports, “young and old broke into great laughter; and the man was at once acquitted and set free.”

If the account of Benjamin Chew is not exaggerated, the trials themselves could be marathon events, taxing an attorney’s physical as well as mental stamina. Chew described a trial which “began on Thursday morning, and the proofs were not gone through till midnight.” Although it was then agreed that “but two counsel should

81. G. MITTLEBERGER, supra note 79, at 38.
82. Id. at 39.
83. Id.
84. Letter from Benjamin Chew to Edward Tilghman (Apr. 30, 1773), reprinted in
speak on each side,” the move toward brevity was wasted when Chew’s partner (John Dickinson) “butchered the cause most horribly” for three and one half hours.85 “It was after sunrise on Friday,” said Chew, “before the plaintiff’s counsel began, but before they had proceeded ¼ of an hour two of the jurymen were taken so ill that we were obliged to adjourn over to Saturday morning . . . .”86 Chew did not minimize the effect such trials had upon his constitution: “I am,” he complained, “absolutely worn down by hard service . . . .”87

John Rowe, a prominent merchant living in Boston, attended court frequently, often related to business88 but also as convenient entertainment.89 For others, attending court could necessitate considerable hardship. A traveler in New Hampshire in 1765 mentioned “an inconvenience which this infant province labours under in judicial matters, namely, that there is but one place in the province at which the courts of justice are held, viz. at Portsmouth . . . .”90 Because of the court’s location it was necessary for “many of the inhabitants . . . . to travel 150 or 200 miles on very trifling occasions.”91 A similar situation existed in South Carolina, where the holding of court in Charleston was “greatly complained of, as greatly increasing the expence of law-suits to the parties, and often rendering the attendance of jurymen and witnesses very difficult.”92

As populations grew, state legislatures were pressured to alleviate such situations. In 1776 residents of Westmoreland, Connecticut complained that the 180 miles to the court in Litchfield created “almost intolerable difficulties . . . in executing the laws against Criminals.”93 Petitioning the Connecticut General Assembly for relief, the signators suggested either the establishment of a local court or inclusion in a judicial circuit.94 In a similar manner,
in 1789, almost six hundred residents of Fairfax County, Virginia petitioned the General Assembly to consider “their Interest and convenience” when determining the location of a new courthouse.\(^9\)

Alleging that the present courthouse was “extremely inconvenient to the bulk of the Inhabitants,” the petitioners complained that they were “obliged to attend Court, at more than double the distance they would have occasion to do, if the Court house was fixed . . . near the Center of the County.”\(^9\) The petition asserted that such relocation would allow “the greater part of the Inhabitants, when obliged to Attend Court,” to return home “and thereby Save the charge of putting up in Taverns and publick houses.”\(^9\)

Attorneys whose regular offices were distant from the court were confronted with the expense of establishing and publicizing the location of temporary offices. Thus Edmund Pendleton announced in the *Virginia Gazette* of March 27, 1746, “that all Persons who have Occasion, may apply to him at his Lodgings at Mrs. Packe’s, next Door to the Printing-Office, in Williamsburg, during the Time of the Court, and a few days before and after.”\(^9\)

Mrs. Packe and neighboring merchants monetarily benefitted from their proximity to the courthouse, and such entrepreneurs would be expected to oppose efforts to relocate the fount of their businesses. Such was the case in Lewes Town, Delaware where in 1770 John Rodney concluded that if the courthouse were moved the inhabitants would find “their Lands & Improvements . . . Reduced to less than half their present Value.”\(^9\)

Rodney questioned whether such hardships should be imposed to satisfy what he considered “party Schemes of a few Men . . . to save them a few miles riding at most not above Eight miles once or twice a year?”\(^10\)

The practice of law was recognized as a very lucrative undertaking. “One of the professions, which, unfortunately, is quite lucrative in this state,” said J.P. Brissott de Warville in reference to Massachusetts, “is that of the law.”\(^10\)


\(^96\). *Id.* at 1182-83.

\(^97\). *Id.* at 1183.


\(^99\). Letter from John Rodney to Caesar Rodney (Mar. 3, 1770), reprinted in *LETTERS TO AND FROM CAESAR RODNEY* 32, 33 (G. Ryden ed. 1933).

\(^100\). *Id.*

\(^101\). J.P. BRISSOIT DE WARVILLE, *NEW TRAVELS IN THE UNITED STATES OF AMERICA* 100
tion. "American lawyers," he said, "have also adopted from their English forefathers the habit of demanding very high fees." In the estimation of some observers, the American lawyer bettered his British counterpart. A visitor to Philadelphia claimed that the law was "even more lucrative than in England." In his opinion, the practice of law was lucrative because "[t]heir salaries are excessive." In 1770 Benjamin Franklin expressed an awareness "that the Fees of Practising Attorneys . . . had long been complainid of as a grievous Oppression on the People." The lifestyle of successful attorneys did not go unnoticed. "The Lawyers have an excellent Time here," said a visitor to Maryland in 1746, "and if a Man is a clever Fellow, that Way, 'tis sure Step to an Estate . . . ." It wasn't the fact that an individual was "making moderate bread as a Lawyer . . ." that impressed James Murray of North Carolina, but rather the fact that it was done "in spite of great Modesty, Integrity & disinterestness, Qualities for which the Gentlemen of that Profession in this Province are not in General very remarkable."

George Washington was of the opinion that although large fees were an inevitable expense in obtaining competent counsel, the client could negotiate a contingency arrangement. "I am of opinion," he said, "that good policy dictates the propriety of assuring them a handsome fee or rather a certain percentage if they succeed, and nothing if they do not." Washington had a reason for suggesting an arrangement whereby a large fee could be made affordable. "Trifling fees," he explained, "are thrown away upon Lawyers of any eminence for they excite no exertion . . . ." In many instances it was easier to charge high fees than to collect them. William Byrd recorded in his diary under date of December 4, 1710 a

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102. Id.
104. Id.
105. Letter from Benjamin Franklin to the New Jersey Assembly Committee of Correspondence (June 11, 1770), reprinted in 17 The Papers of Benjamin Franklin, 172, 173 (W.B. Willcox, ed. 1973).
106. Observations In Several Voyages and Travels in America (From The London Magazine, July, 1756), reprinted in 16 Wm. & Mary Coll. Q. 1, 5 (1907).
107. Letter from James Murray to John Rutherford (Mar. 3, 1755), reprinted in Letters of James Murray, supra note 7, at 83, 84.
109. Id.
meeting with his lawyer. "[I] went to see Mr. Holloway and to settle accounts with him," he said, "but was much disturbed to find how much he had charged me for fees."[10] A couple of days later Byrd met again with Mr. Holloway. "[I] met Mr. Holloway and reasoned with him about his accounts," said Byrd, "but he was on the high rope and gave me back my papers and would have nothing to do with my business which he had but half done."[11]

The inability to collect fees prompted several prominent lawyers to place a notice in the May 20, 1773 edition of the Virginia Gazette. "The Fees allowed by law, if regularly paid," said the authors, "would barely compensate our incessant labours, reimburse our expenses and the losses incurred by neglect of our private affairs; yet even these rewards, confessedly moderate, are withheld from us in a great proportion, by the unworthy part of our clients."[12] To remedy the situation, six of the colony's most prominent lawyers agreed that they would no longer "give an opinion on any case stated to us but on payment of the whole fee, nor prosecute or defend any suit or motion, unless the tax, and one half of the fee, be previously advanced; excepting those cases where we chuse to act gratis.'"[13] Joining in the publication of this notice were John Randolph, Edmund Pendleton, James Mercer, Thomas Jefferson, Patrick Henry, Jr., Gustavus Scott, and (under an addendum) Thomson Mason.[14]

IV. CONTEMPORARY APPRAISAL OF THE JUDICIARY

The bench was the subject of widespread criticism among contemporary observers. Thomas Pownall, who served the crown in several capacities as a colonial administrator, including Governor of Massachusetts 1757-59, considered the "ignorance of the judges" to be the most serious defect of the provincial courts.[15] To a large extent the problem seems to have stemmed from the fact that judges did not have to meet the same qualifications as lawyers. Very tactful in his phraseology, Pownall wrote that "it will be no dishonour to many gentlemen sitting on the benches of the courts

111. Id. at 269.
113. Id.
114. Id. at 77.
of law in the colonies, to say, that they are not, and cannot be expected to be lawyers, or learned in the law.” 116 Less tactful in his evaluation was Robert Hunter, who was of the opinion that in general American judges were “very ignorant men.” 117

One of the most eminent of the colonial judges who lacked legal training, and perhaps one of the “gentlemen” to whom Pownall referred, was Thomas Hutchinson. After having served as Lieutenant Governor of Massachusetts since 1758, he was appointed chief justice for the colony in 1760. Although admitting that “it was an eyesore to some of the Bar to have a person at the head of the law who had not been bred to it,” Hutchinson added that he “had reason to think the lawyers in general at no time desired his removal.” 118

Governor Sharpe of Maryland addressed the issue of judicial competency. “Upon the whole,” he said, “I cannot say that I think our Provincial Justices equal to their Office . . . .” 119 Ascribing the problem to “their Want of a Regular Education,” Sharpe displayed a tolerant resignation to the problem and suggested that “if such Men are not to be got as one could wish we must be contented with such as we can get . . . .” 120 While conducting his famous lectures on the law in the winter of 1790-1791, James Wilson touched upon the problem of a semi-professional judiciary. “In many courts—in many respectable courts within the United States,” he said, “the judges are not, and, for a long time, cannot be gentlemen of professional acquirements.” 121 However, Wilson added his opinion that even those judges who lacked proper training could “fill their offices usefully and honourably, the want of professional acquirements notwithstanding.” 122

Timothy Pickering also recognized the need for patience in establishing a uniformly competent judiciary, and explained his views when Major Thomas Cogswell, who was untrained in the law, solicited his opinion on the advisability of accepting a combined

116. Id. at 110.
117. R. Hunter, Quebec to Carolina in 1785-1786 49 (L. Wright & M. Tinling eds. 1943). J. Hadfield, supra note 80, accompanied R. Hunter. Id. at vii.
118. T. Hutchinson, 1 Diary and Letters of Thomas Hutchinson 66 (P. Hutchinson ed. 1884).
119. Letter from Horatio Sharpe to [Cecilius] Calvert (July 7, 1760), reprinted in 2 Correspondence of Governor Horatio Sharpe, 9 Archives of Maryland 423, 433 (W. Browne ed. 1896).
120. Id.
121. Wilson, supra note 39, at 13.
122. Id.
position of judge and justice of the peace. Pickering prefaced his advice with the caution that “knowledge of the law is doubtless requisite to enable a gentleman to act as a judge or justice most acceptably to his fellow-citizens . . . .” However, Pickering emphasized that “in a new country an extensive or accurate knowledge of the law is not looked for . . . .” Because the only attributes that could be expected were “integrity and good understanding,” Pickering advised Cogswell to accept the position. “As you are disposed to read,” he told Cogswell, “you will very soon acquire more law knowledge than most of your brethren in office possess.”

Several observers were of the opinion that the judiciary would remain unimproved until compensation was increased. “The Establishment for . . . Officers of Justice,” said Adam Gordon in reference to New Jersey, “is here very trifling, and consequently they will never, whilst on the present footing, be filled by men of great Character or reputation . . . .” In 1755 John Barrell made the suggestion that “[t]he Sallerys of Judges, as well as the Judges” be made “equal to their Dignity and Importance!” “In some of the States,” said the Marquis de Barbé-Marbois, “the chief justice, who is a really important person, receives very modest pay . . . .” Referring to the New Hampshire courts, William Plumer in 1797 believed that they were “more respectable than the salaries of the judges would warrant us to expect.” However, Plumer followed this guarded optimism with the warning that “if the Legislature do not, at the next session, raise the salaries, the judges will resign.”

When James Iredell was elected state judge in North Carolina, he was advised to consider the long term financial benefits because such a position “would give you a weight and importance in those parts of the State where you had not had an opportunity to make

123. Letter from Timothy Pickering to Major Thomas Cogswell (Feb. 1, 1785), reprinted in 1 PICKERING, supra note 72, at 502.
124. Id.
125. Id.
126. Id.
128. Barrell, supra note 76, at 76.
129. BARBÉ-MARBOIS, OUR REVOLUTIONARY FOREFATHERS 76 (E. Chase ed. 1929).
130. Letter from William Plumer to Jeremiah Smith (Mar. 13, 1797), reprinted in W. PLUMER JR., LIFE OF WILLIAM PLUMER 180 (Boston 1857).
131. Id. at 180-81.
yourself generally known, and prepare you for a more extensive and profitable practice, when you should think fit to descend again to the bar.”

While serving as the mayor of New York in 1789, James Duane was offered the position of United States District Judge. In determining whether to accept President Washington’s offer, Duane considered the relative remuneration and found the two positions “equally profitable.”

In 1785 James Madison predicted that unless “liberal” salaries were provided for the judiciary “the bar will be superior to the bench which destroys all security for a systematic administration of Justice.” There is evidence that the bar was already better qualified than the judiciary. William Owen, a captain in the Royal Navy, passed through Rhode Island in 1767 and recorded his dissatisfaction with the courts. Concerning the judges, Owen said, “they are incapable in general of determining the merits of a suit, for they are exceedingly illiterate.” Because of the disparity in legal training between the judges and attorneys, Owen claimed the judges accepted a subservient role vis-a-vis the lawyers. In fact, it was Owen’s conclusion that the courts were “managed almost entirely by the Lawyers.”

Those attorneys who found themselves able to manage the courts were content with such a self-serving situation and sought to preserve it. John Marshall, as a member of the Virginia Assembly in 1784, wrote a friend concerning the opposition to proposals to replace magistrates with more fully qualified judges in a circuit court system. One of the sources cited by Marshall was lawyers who were “suspicious that they do not possess abilities or knowledge sufficient to enable them to stand before judges of law.” Thus Marshall expressed displeasure that attorneys would be “opposed from motives of interest to any plan which may put the distribution of justice into the hands of judges.” Virginia’s George

132. Letter from William Hooper to James Iredell (Dec. 23, 1777), reprinted in 1 The Papers of James Iredell 468, 469 (D. Higginbotham ed. 1976). Iredell was licensed in 1771. 5 DAB, supra note 4, pt. 1, at 492, 492.


134. Letter from James Madison to Caleb Wallace (Aug. 23, 1785), reprinted in 2 The Writings of James Madison, supra note 58, at 166, 170.


136. Id.


138. Id. Marshall was admitted to the bar in 1780. 6 DAB, supra note 4, pt. 2, at 315,
Mason had no opposition to upgrading the judiciary. Upset over a decree issued by the Fairfax County court, he lamented that the ruling was “the Consequence of making Merchants & Men totally unacquainted with the Laws & Constitution of the Country Judges of our Courts.”

A visitor to Rhode Island in 1785 was given a description of “the court of judges” in Newport which supports the reality of Mason’s allegation. According to his informant, the court was comprised of “a tailor by profession, another baker, and the third . . . a shoemaker.” In 1760 Andrew Burnaby classified the Rhode Island judges as “exceedingly illiterate . . . .” Robert Hunter, Jr., writing with an equally venomous pen, alleged that “[o]ne of the judges will perhaps get up, scratch his head like a country clown, and ask you the most nonsensical questions upon the face of the earth.” Sometimes, action was taken. Only a year after his appointment to the bench, John Jinkins in 1778 was the subject of a petition for removal. The petition alleged that “he is a man of no Religion” who “[a]ppears when on the Judgement Seat to be a Party in Causes Depending in the Court before him.”

Not everyone was critical of the judiciary, and some observers were very favorably impressed. A visitor to Virginia in 1736 was very favorably impressed with Williamsburg. “Here the Courts of Justice are held,” he said, adding that the proceedings were conducted “with Dignity and Decorum, that would become them even in Europe.”

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139. Letter from George Mason to Martin Cockburn (Dec. 1, 1788), reprinted in 3 THE PAPERS OF GEORGE MASON 1134 (R. Rutland ed. 1970). Mason is said to have done considerable reading in the law and although “never licensed as an attorney he was called in as a notably competent counsel on questions of public law throughout his later life.” 6 DAB, supra note 4, pt. 2, at 361, 361.

140. R. HUNTER, supra note 117, at 122.

141. Id.

142. A. BURNABY, BURNABY’S TRAVELS THROUGH NORTH AMERICA 128 (1904).

143. R. HUNTER, supra note 117, at 49.

144. Petition of the Inhabitants of Westmoreland to the Connecticut General Assembly (Apr. 29, 1778), reprinted in 7 THE SUSQUEHANNA COMPANY PAPERS supra note 93, at 39, 40. See Complaint of the people of Brunswick against members of the Co Court (Apr. 28, 1764), reprinted in 1 CALENDAR OF VIRGINIA STATE PAPERS 258 (W. Palmer ed. 1875).

145. Observations In Several Voyages and Travels In America In The Year 1736 (From The London Magazine, July 1746), reprinted in 15 WM. & MARY COLL. Q. 215, 223 (1907).
V. LAWYERS AS LEGISLATORS

The propensity of 18th century lawyers to achieve positions of political leadership was widely recognized, but there was a concomitant skepticism that perhaps the legislatures were too heavily populated with self-serving attorneys. Early in the century William Byrd of Virginia complained that “[s]ome Lawyers are call’d to the upper house for prostituteing the Laws to the Will of their Soveraign, for which they deserve a scaffold rather than a Patent.”146 In North Carolina the residents of Orange and Rowan Counties petitioned Governor William Tryon, alleging “[t]hat we your poor Petitioners . . . have laboured under many and heavy Exactions, Oppressions and Enormity, committed . . . by Court Officers . . . the Source of which . . . we impute to the Countenance and Protection they receive from such of our Lawyers and Clerks, as have obtained seats in the House of Representatives.”147 Believing that too many lawyer-lawmakers were “intent on making their own fortune” and “regardless of their Country’s Interest,” the petitioners implored the governor “to consider of, and pass an Act to prevent and effectually restrain every Lawyer and Clerk whatsoever, from offering themselves as Candidates, at any future Election of Delegates.”148

A reputation for vexatiousness also haunted the lawyer-lawmaker. J. P. Brissott de Warville of France, touring the United States in 1778, was of the opinion that at least in Massachusetts the lawyers “worm their way in the houses of the legislature and into the administration, which they infiltrate with their vexing disputatiousness.”149 At about this same time Senator William Maclay complained to Dr. Benjamin Rush of Philadelphia that one-half of the United States Senate was lawyers. Like de Warville, it was Maclay’s opinion that attorneys possessed an argumentative personality unsuited to orderly legislative processes. In his conversation with Rush the Senator stated that “he never knew one of them [to] retract or alter an opinion after the fullest discussion of it.”150 The obstinancy of which Maclay accused lawyers he “ascribed to their habits of contending for victory instead of truth

148. Id.
149. J. P. BRISSOIT DE WARVILLE, supra note 101, at 100.
at the Bar.”

When selecting representatives to Congress in 1786, the Massachusetts legislature was accused of avoiding the selection of one potential delegate simply because of his profession, *viz.* law. As Christopher Gore explained, King Sedgwick was unacceptable because “the clamor against lawyers was so great.”

However, others were quick to argue the merits of a legal background for legislative duty. In the opinion of Abigail Adams, the law was a subject “without a competent knowledge of which no Man is fit for a Legislator or a Statesman.” To support her contention, Abigail noted that “[s]carcely a man there makes any figure in debate, who has not been Bred to the Law.” A legal background does appear to have been an influential credential. In 1789 Senator Maclay was told that “[t]he people who were not lawyers, on a supposition that lawyers knew best, would follow the lawyers . . . .”

The lawyer-lawmakers sometimes voiced their own complaints. Writing from Philadelphia in 1774, James Duane concluded that “[t]his Trade of Patriotism but ill agrees with the profession of a practising Lawyer.” Duane’s concern appears to have been real. “I have lost my Clients the Benefit of a Circuit,” he said, “and now despair of doing any thing the ensuing Term; and I shou’d be most unhappy did I not rely securely on the Delicacy and Candour of my Brethren who I flatter myself will take no Advantage of an absence unavoidable and occasion’d I hope by virtuous Motives.”

After experiencing life as a legislator, and confronting the uncertainty of reelection, one lawyer evaluated his role as a lawmaker *vis-a-vis* lawyer. “Ah, politics!,” he said, “how have they spoiled me for my profession.” The manner in which he described his alternative discloses his preference. “Either I must become a mere politician, and think of my profession as a secondary matter,” he

151. *Id.*

152. Letter from Christopher Gore to Rufus King (June 25, 1786), *reprinted in 1 The Life and Correspondence of Rufus King*, supra note 14, at 138.


154. *Id.*

155. W. Macray, *The Journal of William Maclay* (entry of July 1, 1798), 95 (1927). Maclay was admitted to the bar in 1760. 5 *DAB*, supra note 4, pt. 2, at 123, 123.


157. *Id.*

said, “or renounce politics, and devote myself to the humble drudgery of earning bread.” Edmund Randolph, following service in Congress, lamented that he was “obliged to exchange a pursuit liberal and extensive like politicks for reports and entries.” To James Madison, Randolph confided that he would “return to the law with a species of sorrow.”

VI. THE REVOLUTION

In his History of Virginia, Edmund Randolph wrote “that until the era of the Stamp Act almost every political sentiment, every fashion in Virginia appeared to be imperfect unless it bore a resemblance to some precedent in England.” In Randolph’s estimation, the Stamp Act signaled a deteriorating relationship with England, and in the opinion of many it was the American lawyer who championed opposition to this encroachment upon American liberties and accelerated the deterioration. General Thomas Gage, stationed in New York during the Stamp Act crisis, was of such opinion. “The Lawyers,” he said, “are the Source from whence the Clamors have flowed in every province.”

At the height of the Stamp Act controversy the New York Gazette published a letter extolling lawyers “as the most determinative Opposers of the late Acts of the British Parliament.” Although the writer was primarily interested in defending the lawyers of New Jersey for “having declined Business, since the memorable First of November,” it was also noted that lawyers wielded a powerful pen. “And it is well known,” continued the letter, “that some of the Lawyers in the several Provinces have been and still continue, the principal Writers on the Side of American Liberty.”

One of Parliament’s considerations in support of subjecting legal

159. Id.
161. Id.
165. Id. See also Chroust, The Lawyers of New Jersey and the Stamp Act, 6 AM. J. of LEGAL HIST. 286, 297 (1962).
166. Letter to the Printer, supra note 164, at 542.
proceedings to the Stamp Act was America’s reputation as a litigious society. “Its produce,” said a member of Parliament, “would be great as is generally supposed here, from y[e] great Number of Law Suits in most of y[e] Colonies . . . .” The decision to acquiesce, ignore, or circumvent the Stamp Act was politically complex. On the 21st of December, 1765, the Boston City Council confronted the issue of “[w]hether the Officers of the Courts of Law can be justified in proceeding in their respective Offices with unstamp’d Papers.” In an adroit maneuver to avoid accountability, the council resolved “that it is the Business of the Courts of Law to determine [such] Points of Law.” Having removed themselves from responsibility, the council felt free to “recommend it to the Justices of the Inferior Court of Common Pleas for the County of Suffolk to determine the aforesaid Point of Law as soon as may be.”

In his appearance before the Committee of the Whole of the House of Commons on February 13, 1766, Benjamin Franklin was asked if the Colonies would “live without the administration of justice in civil matters, and suffer all the inconveniences of such a situation for any considerable time, rather than take the stamps.” Franklin explained that he believed it “impractical to protect the stamps” but was immediately asked whether “in places where they could be protected, would not the people use them rather than remain in such a situation, unable to obtain any right, or recover, by law, any debt?” Franklin’s first response was personal in approach. “I have a great many debts due to me in America,” he said, adding “and I had rather they should remain unrecoverable by any law, than submit to the stamp-act.” Concerning others, Franklin surmised that “the people will either continue in that situation, or find some way to extricate themselves, perhaps by generally agreeing to proceed in the courts without

170. Id.
171. Id.
173. Id.
174. Id.
Eighteenth Century Legal Careers

Writing from New Haven on February 1, 1776, Jared Ingersoll expressed his opinion “that it is best for the common Law Courts to proceed in Business as usual, & hope y[e] Courts & others who may expose themselves to penalties for so doing will be saved from blame as well as harm under all the circumstances & situation of Affairs.”

Ingersoll premised his opinion upon the belief that “y[e] Emergences of Goverment absolutely require the Administration of Justice to & among y[e] People.” However, in Virginia, Richard Henry Lee was convinced “that sound policy will direct us to shut up the Courts of Justice for a time” but wished for a method “to inform the Northern Colonys, that our not following their example, proceeds from no regard for the Stamp Act, but the very different situation of our affairs from theirs with respect to Great Britain.” It was Lee’s opinion that the same end would be achieved. “[O]ur shutting here,” he said, “whilst they open there the Courts of Justice, both contribute to the same end (defeating the S. Act) although by different means.”

“If this should, as I imagine it will, occasion less Law, and less Printing,” said Ben Franklin, “‘twill fall particularly hard on us Lawyers and Printers.” Concerning the effect of the Stamp Act upon lawyers, James Murray predicted that it would “abridge the practice of Law” to such an extent that it would “leave bread only for a few of the profession.” In just such a circumstance an under-employed attorney in 1766 wrote a companion concerning his conviction that “upon the Repeal of the Stamp Act, we shall doubtless have a Luxuriant Harvest of Law . . . .” Not surprisingly, he was determined to participate in the “harvest.” Thus he continued to explain to his friend that he “would not willingly, af-

175. Id.
176. Letter from Jared Ingersoll to an unknown Correspondent (Feb. 1, 1766), reprinted in 9 PAPERS OF THE NEW HAVEN COLONY HISTORICAL SOCIETY, supra note 51, at 375, 376.
177. Id.
179. Id.
181. Letter from James Murray to William Hooper (July 6, 1765), reprinted in LETTERS OF JAMES MURRAY, supra note 7, at 115. See also Surrency, The Lawyer and the Revolution, 8 AM. J. LEGAL HIST. 125, 131 (1964) (“[I]ncome fell by nearly one half.”).
ter the long Famine we have had, miss reaping my part of the crop."183 Despite the promising climate for lawyers predicted to follow the repeal of the Stamp Act, it was suspected that some attorneys would lack the tenacity to maintain a career based upon such a contingency. Under date of July 6, William Hooper was chided that "you will be scared by sickness or impelled by passion to come off, and leave your Harvest in the Field."184

The economic fate of businessmen impacted many lawyers. Samuel Rhoads of Philadelphia is an example of a businessman forced to extend certain payments. "I was in hopes," he wrote a creditor, "of Remitting you something handsome, but such is the Confusion of the Times owing to the Stamp Act, & other Restrictions, as to render it impossible, must therefore beg Indulgence for a little longer time, hoping a Repeal or Suspension of the Stamp Act will give a more favourable turn to our affairs . . . ."185 Rhoads' finances were strained by his inability to collect from debtors. "[W]e can recover no outstanding Debts by course of a Law," he said, adding "neither can we obtain any satisfactory Security . . . ."186 Although the Stamp Act was repealed, it proved to be a prelude to a series of other acts detrimental to American commerce. "To say they will never attempt it again is idle and visionary," said Thomas Paine in Common Sense, adding that "we thought so at the repeal of the Stamp Act, yet a year or two undecedied us . . . ."187

The deteriorating commerce may have seriously impaired the typical law practice, but sometimes pre-war events provided an opportunity for legal stardom. Such an event was the Boston Massacre in 1770.188 Captain Thomas Preston, despite the public furor accompanying his indictment for the murder of five civilians, managed to secure the services of two important Boston lawyers,189

183. Id.
184. Letter from James Murray to William Hooper (July 6, 1765), reprinted in Letters of James Murray, supra note 7, at 115.
186. Id.
189. Letter from W. Dalrymple to General Thomas Gage (Aug. 12, 1770), reprinted in R. Adams, New Light on the Boston Massacre 66, 67 (1938) ("The best lawyers to be obtained here are engaged . . . .").
both of whom were prominent patriots. Josiah Quincy, Sr., upon receiving news that his son was one of those intending to serve as defense counsel, wrote a cautionary letter which evidences the unpopularity surrounding anyone suspected of sympathizing with the defendants. "[I]t has filled the bosom of your aged and infirm parent with anxiety and distress," said the father, "lest it should not only prove true, but destructive of your reputation and interest."

The reply penned by his son reflects credit upon both himself and the 18th century bar. Although an ardent patriot distraught over the shooting of fellow Bostonians, Josiah Quincy, Jr. explained to his father that Preston and his co-defendants were "not yet legally proved guilty, and therefore, however criminal, are entitled, by the laws of God and man, to all legal counsel and aid."

John Adams, who along with Quincy assumed charge of Preston's defense, left a record of his reaction when asked to assume such an unpopular role. Adams recalled that he "had no hesitation in answering that Council [sic] ought to be the very last thing that an accused Person should want in a free Country." Never one to miss an opportunity to indulge in self-praise, Adams included his lack of concern over remuneration as further testimony of his unselfish participation in Preston's defense. When offered a paltry "single Guinea as a retaining fee," Adams claimed he "readily accepted it." "From first to last," he said, "I never said a Word about fees . . . ."

Of course the actual outbreak of hostilities with England in 1775 began a long period during which attorneys found the normal demands for their skills greatly diminished. One observer, taken prisoner by the Americans at the Battle of Saratoga in 1777, wrote that because of the war "all lawsuits are taking a long after-dinner nap."

After the cessation of hostilities, lingering animosity toward Great Britain, combined with a natural desire to preserve and maximize opportunities for American lawyers, resulted in several states passing legislation designed to deter the immigration of for-

191. Letter from Josiah Quincy Jr. to Josiah Quincy (Mar. 26, 1770), reprinted in Quincy, supra note 190, at 36.
192. J. Adams, 3 Diary and Autobiography of John Adams, supra note 21, at 293.
193. Id.
194. Id.
eign attorneys to America. Because of this, George Washington in 1785 found himself forced to inform his friend and former comrade, the Marquis de Lafayette, that he was unable to successfully assist him in locating a position in the United States for one of the Marquis’ countrymen. In explanation Washington wrote Lafayette that many of the states “to prevent an inundation of British Attorneys of which they were apprehensive, and of whose political principles they entertained not the most favorable sentiments,” had enacted “qualifying Acts.” Unfortunately for Lafayette’s friend, those states required “residence and study in them for a specific time.” Washington concluded by explaining that compliance with those requirements was “essential to entitle a Lawyer to become a practitioner in our Courts of justice.”

 VII. CONCLUSION

Although the 18th century American bar was often the object of valid criticisms, the legal profession in general maintained a most favorable image and was accorded a high level of respect. For example, Moreau de St. Méry of France made a journey to this country in the latter part of the century and gained the impression that in America “[t]heir outstanding men are lawyers.” Marquis de Chastellux, also of France, visited Virginia and left with the conviction that lawyers were “certainly the most enlightened part of the community.” “Lawyers,” said Henry Laurens, “when they declare themselves honestly, as I hope they always do, are plain spoken Men & like good Pilots point out to the Less Skillful Mariner every distant Rock & Shelf from which the least danger may be forseen or apprehended . . ..”

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197. Id. at 133.
198. Id.
199. Moréau de St. Mery, supra note 103, at 335.