Legal Profession in Colonial America

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"The laws of Virginia, during its colonial state," Story observed, "do not exhibit as many marked deviations... from those of the parent country, as those in the northern colonies. The Common Law was recognized as the general basis of its jurisprudence... and was... in its leading features very acceptable to the colonists." The same idea already had been expressed in the preamble to the revision of the Virginia statutes of 1660-1661: "We have endeavored... to adhere to these excellent and often refined laws of England to which we profess and acknowledge all our obedience and reverence." Thus it came about that, in the words of Hugh Jones, from its inception Virginia was "ruled by the Laws... of Great Britain which it strictly observes." Only "where the circumstance and occasion" require it, may the law of Virginia deviate from English law. But such "small alteration... must not be contrary (though different from and subservient) to the Laws of England." This fact may also explain the ready acceptance of the English common law in Virginia.

1 STORY, COMMENTARIES ON THE CONSTITUTION 22 (1858). See also H. JONES, THE PRESENT STATE OF VIRGINIA 48 (1724):

If New England be called the receptacle of dissenters, and an Amsterdam of religion, Pennsylvania the nursery of Quakers, Maryland the retirement of Roman Catholics, North Carolina the refuge of run-aways, and South Carolina the delight of buccaneers and pyrates, Virginia may be justly esteemed the happy retreat of true Britons. . . .

This quotation from Jones cannot be found in Jones' book. The nearest approach to it is probably H. Jones, op. cit. supra at 63-64:

All the laws and statutes of England before Queen Elizabeth are there in force, but none made since; except those that mention the plantations. . . . The General Assembly has power to make laws, provided they are not contradictory to the laws of England, nor interfering with the interests of Great Britain. . . . All laws that the king dislikes on first perusal are immediately abrogated.

WARREN, HISTORY OF THE HARVARD LAW SCHOOL (1908), like WARREN, HISTORY OF THE AMERICAN BAR (1911) is an invaluable fountain of information. But it contains so many errors of detail and reference that it would be unwise to accept any of its statements without verification.

4 Ibid. See also the Second Charter of Virginia of 1609, 1 Laws of Va. 96 (Hening 1819) (hereinafter cited as HENING): "... the said Statutes, Ordinances and Proceedings [of Virginia] as near as conveniently may be, be agreeable to the Laws, Statutes, Government, and Policy of Our Realm of England." Thomas Jefferson, in JEFFERSON, NOTES ON VIRGINIA Query XIV (1781) wrote:

The laws of England seem to have been adopted by consent of the settlers... Of such adoption, however, we have no other proof than their practice till the year 1661, when they were expressly adopted by an act of the assembly, except so far as a 'difference of condition' rendered them inapplicable. Under this adoption, the rule... was, that the common law of England... [was] in force here.
LEGAL PROFESSION IN COLONIAL AMERICA

During the first three years of the Colony, which was founded in 1607 under the Proprietary Charter of 1606, the Governor, and he alone, was the sole “court of justice.” In 1618, however, two judicial bodies were established, namely, the Governor and Council, and the General Assembly (or House of Burgesses) which consisted of twenty-two elected burgesses together with the Governor and Council. This provision took effect in 1619. In 1643 Virginia introduced the County Courts, or courts of first instance. These County Courts were composed of the wealthy local land owners who had been commissioned by the Governor and Council. There was an appeal to the Quarter Courts, subsequently called General Courts, which sat four times a year and consisted of the Governor and Council. In some instances there was also an appeal to the General Assembly. All these courts were required by statute (of 1661-1662) to follow the English tradition and observe a strict procedure as well as keep regular records. Obviously, the earlier Virginia courts, which yet could not be distinguished fully from the legislature or the executive, in most cases were staffed by laymen.

Despite the fact that from its very beginning Virginia had adopted the common law of England and that its judicial system was in many respects superior to that of other early colonies, Virginia displayed a violent and prolonged aversion to the lawyer. As a result of this hostile attitude, the Colony, which was both wealthy and influential, failed to develop a distinct class of professional and professionally-trained lawyers during the first one hundred years of its existence. This curious and perhaps disturbing phenomenon, as Judge Minor puts it so aptly, was primarily the result of the fact that “the landed gentry ... [prompted by jealousy of any other influence on the community] waged against the lawyers, through the ‘grand assembly,’ a relentless war for more than a century. ...” But, in the words of Roscoe Pound, this hostility towards the lawyer in early Virginia, as elsewhere, may also have been a general phenomenon common to all utopias, including the imaginative Utopia of St. Thomas More, namely, to administer justice without law, and, especially, without lawyers. Hence it is not altogether surprising that the early American colonies, which to some degree were affected by utopian ideas, should reject the lawyer, especially the professional common-law lawyer.

It must also be borne in mind that much of the litigation which went on in Virginia during this period was confined to commercial matters, and that, on the contrary, the common-law lawyers of the seventeenth century as well

The act expressly adopting the common law of England was passed in 1661. 2 HENING 43.
5 "The general assembly was both a legislative and judicial body. ... From sweeping principles of constitutional law down to the pettiest sumptuary edicts, there was nothing which this little parliament did not superintend and direct." 1 FISKE, OLD VIRGINIA AND HER NEIGHBORS 287 (1902). See also BEVERLY, THE HISTORY OF THE PRESENT STATE OF VIRGINIA 237 (Wright ed. 1705).
6 4 MINOR, INSTITUTES OF COMMON AND STATUTORY LAW 199 (1893) (hereinafter cited as MINOR).
7 Id. at 200.
8 POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 136 (1953).
as the first half of the eighteenth century were predominantly interested in the law as Coke had understood it. In addition, the courts themselves, especially the County Courts, were manned by planters and merchants who, as Thomas Jefferson observes, were “chosen from among the gentlemen of the country for their wealth and standing, without any regard to legal knowledge.” Hence practice before these courts was not too attractive for the trained common-law lawyer: it was neither a lucrative business, nor was expert legal knowledge to much avail.

The animadversion against the lawyer as a class during the seventeenth and far into the eighteenth century in Virginia manifested itself in a nearly uninterrupted series of legislative acts hostile to the lawyer. In 1642, an act was passed, “For the better Regulating Attorneys, and the great Fees exacted by them.” This act, which did not apply to “such who shall be made speciall attorneys within the Colony or to such who shall have letters of procuration out of England [scil., men who had been called to the bar by one of the Inns of Court].” prohibited any one to practice law without special license from the court in which the cause was pending; to plead in more than the “Quarter Court, and one County Court”; to refuse retainer unless already retained by the adversary; and to demand a fee of more than twenty pounds of tobacco in the County Court and fifty pounds in the Quarter Court — a ridiculously small fee, indeed, in a prosperous colony. In 1645 a further act provided that, “whereas, many troublesome suits are multiplied by the unskilfulness and covetousness of attorneys, who have more intended their own profit, and their inordinate lucre, than the good of their clients; Be it, therefore, enacted, that all mercenary attorneys [attorneys practicing for a fee, note by the author] be wholly expelled from such office,” except in cases pending before a court. This act, too, was indicative of the strong aversion to the professional lawyer.

It seems, however, that this peremptory prohibition of “mercenary attorneys” in 1645 caused some serious confusion in the orderly administration of justice. Hence, two years later, in 1647, another act was passed which, in a way, contains a grudging recognition of the mischief created by the act of 1645, and a vain attempt to remedy it:

It is thought fitt that unto the act forbidding mercenary attorneys, it bee added that they shall not take any recompense, either directly or indirectly. And that it be further enacted, That in case the courts shall perceive that in any case either plaintiff or defendant by his weakness shall be like to loose his cause, that they themselves may either open the cause in such case of weakness or shall appoint some fitt man out of the people to plead the cause, and allow him satisfaction requisite, and not to allow any other attorneys in private causes betwixt man and man, in the country.

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9 Act LXI of 1642-43, 1 Hening 275.
10 See also Act of 1656, 1 Hening 418; Act of 1732, ch. 13, 4 Hening 357, 362.
11 See 4 Minor 200.
12 Act VII of 1645, 1 Hening 302; 4 Minor 201.
13 Act XVI of 1647, 1 Hening 349; 4 Minor 201.
The totally unsatisfactory results of this short-sighted policy soon became apparent. Difficulties and inconvenience arose, and in 1656 the acts of 1645 and 1647 were repealed when it was provided that “the Governor and the Councill shall appoint . . . attorneys in the quarter courts, and the commissioners . . . [shall nominate] attorneys for the county courts, provided that . . . [the] attorney . . . hath taken [an] oath . . .”. Matters related to fees were to be determined by the court, and “those only be called counsellors at law who have been all readie qualified thereunto by the lawes of England, and those so qualified to enjoy all privileges those laws give them.”14 In other words, only barristers called to the bar by one of the Inns of Court were to be barristers in the courts of Virginia.

This partial return to common sense which envisioned the re-admission of lawyers to practice, was, indeed, a short-lived trumph for the legal profession in Virginia. In 1658, the Colony completely reversed its policy and reverted to its original intransigent hostility towards the professional lawyer. In that year the House of Burgesses seriously considered the question of whether there should be “a regulation or total ejection of lawyers” from the Colony, and, by a first vote, recommended “An ejection.” The Governor and Council approved this recommendation “so far as it shall be agreeable to Magna Charta.”15 A statute was subsequently enacted which, as Judge Minor puts it, “is a marvel as well as for bad temper as for its stupid policy”:16 “. . . [N]oe person or persons whatsoever, within this collony, either lawyers or any other, shall pleade in any courte of judicature within this collony, or give council in any cause, or controvercie whatsoever, for any kind of reward or profit whatsoever, either directly or indirectly, upon the penalty of five thousand pounds of tobacco upon every breach . . . .”17 Also, every lawyer had to take an oath that he had not violated the provisions of this act.18 One may say that in the year 1658 the fortunes of the Virginia lawyers probably had reached their nadir.

The status of the Virginia lawyer remained in this highly unsatisfactory condition until 1680, when a new act was passed19 which, however, did not extend to persons managing or pleading their “owne cause or business”:

Whereas, All courts in this country are many tymes hindred, and troubled . . . by the impertinent discourses of many busy and ignorant men, who will pretend to assist their friend in his busines; and to cleare the matter more plainly to the court, although never desired nor requested there unto by the person whome they pretend to assist, and many tymes to the distraction of his cause, and to the great hindrance and trouble of the courte; for prevention thereof to the future, Bee it enacted . . . that noe person shall practice as an attorney or appeare to plead in the generall court [Quarter Court] or any country court . . . [unless licensed by the governor]. . . “noe attorney or attorneys so lycensed . . . [shall] take, demand, or receive . . . more from any

14 Act VI of 1656, 1 HENING 418, 4 MINOR 201.
15 4 MINOR 202.
16 Ibid.
17 Act CXII of 1657-58, 1 HENING 482; 4 MINOR 202.
18 Ibid.
19 Act VI of 1680, 2 HENING 479; 4 MINOR 203.
cause in the generall court . . . than five hundred pounds of tobacco and caske, and for any cause in the country courts . . . more than hundred and fifty pounds of tobacco and caske, which he may lawfully claim without any preagreement made with the partyes for the same.

In addition, all attorneys "that shall refuse to plead any cause in the generall court for the aforesaid ascertained fee . . . shall pay to the person grieved five hundred pounds of tobacco and caske" in a case pending before a county court.20 This act of 1680, at least for a brief span, permitted the struggling profession to get its head above water once more.21

The act of 1680, which was "found inconvenient" by the powerful planters and merchants, was repealed in 1682,22 but no provision was made for attorneys appearing in court without compensation. The act of 1682, however, was itself nullified by royal proclamation. After this royal rebuff no further legislation was passed directly aiming at the extinction of the profession, though legislative efforts aimed against the professional lawyer did not cease until 1748. The result of this short-sighted policy was, in the words of a contemporary observer who wrote in 1705, that in Virginia "[e]very one that pleases, may plead his own Cause, or else his Friends for him, there being no restraint in that case, nor any licensed Practitioners in the Law."23 "[T]he necessities of society," Minor remarks, however, "provided more than a match for the stolidity of the Grand Assembly."24 The legislature, abandoning at length the vain design of outright abolishing the profession, settled upon the not less futile course of trying to regulate the charges of the profession and thus, at least indirectly, control it.25 In 1718, by a new act, attorneys' fees in the General Court were fixed at fifty shillings, or five hundred pounds of tobacco; and in the County Courts at fifteen shillings, or one hundred pounds of tobacco.26 In other words, professional attorneys were again permitted to plead in the courts and charge fees to be taxed in the bill of costs. The persistent, though apparently always frustrated attempt to regulate and limit the fees of counsel, was not completely abandoned until 1849.27

Between 1718 and 1732 a number of statutes were enacted regulating in detail the office of attorney and, among other matters, commanding the attorneys, under penalty, to appear when engaged by a party. The act of 1680 had required the licensing of attorneys for practice. This act, including the provision for a license, was repealed in 1682. In 1732 the provision that all practicing attorneys had to be licensed was re-enacted. No one was permitted to practice in the County Courts unless licensed by the Governor and Council, who were directed to require applicants to be examined by persons learned

20 Ibid.
21 4 MINOR 202.
22 2 HENING 498; 4 MINOR 203.
23 BEVERLEY, op. cit supra note 5, at 259.
24 4 MINOR 203.
25 Ibid.
26 4 HENING 59; 4 MINOR 203.
27 4 MINOR 203.
in the law.28 Also, the act of 1732 required that lawyers take the following oath, which apparently was copied from the oath prescribed by New Hampshire in 1680 and by Massachusetts in 1701:

You shall do no falsehood, nor consent to any to be done in the court; and if you know of any to be done you shall give notice thereof to the justices of the court that it may be reformed: You shall delay no man for lucre or malice or take any unreasonable fees: You shall not wittingly or willingly sue or procure to be sued any false suit, nor give any aid nor consent to the same, upon pain of being disabled to practice as an attorney for ever. And furthermore, you shall use yourself in the office of an attorney within the court, according to your learning and discretion.29

The statute of 1732, however, contained additional provisions aimed at "the number of unskilled attorneys practicing in the county courts" — presumably spellbinders, sharpers and pettifoggers — who have "become a great grievance to the country in their neglect and mismanagement of their clients' causes and other foul practices."30 The reference to "attorneys practicing in the county courts" also seems to distinguish between a class of practitioners who appeared solely before the lower courts and those lawyers who were practicing before the General (or Quarter) Court.31 The statute also points to a distinction between attorneys and barristers. Such a distinction is implied by the remark that the statute should not be construed to extend "to any attorney who at the time of passing thereof is a practitioner in the General Court, or to any counsellor or barrister at law whatsoever."32 This last distinction which, incidentally, did not survive the American Revolution, is one of the earliest of its kind known in colonial legislation and colonial court rulings. It comes somewhat as a surprise because, in view of the relatively small number of practicing lawyers, the English bifurcation of the legal profession into attorneys and barristers could not possibly be maintained in the New World. It was this scarcity which in America accounted for the natural fusion of the two branches of the profession, a fusion, that is, which was to become a permanent feature in the United States. Hence it must be surmised that the reference to barristers in the statute of 1732 aimed at persons who had been called to the bar in one of the English Inns of Court.33

The act of 1732 at first seems to have met with considerable opposition. It was repealed in 1742,34 but revived again in 1745,35 "the great number of ignorant and unskilful attorneys" having become once more a great grievance.36

These constant efforts on the part of the Virginia legislature to interfere with, and even prevent, the emergence and growth of a class of professional

28 4 Henning 360.
29 4 Henning 361.
30 Ibid.
31 The act of 1732 by its terms did not extend to attorneys practicing in the General Court, nor to any counsellor or barrister.
32 4 Henning 361; 4 Minor 203.
33 4 Henning 357; 362.
34 5 Henning 171; 4 Minor 203.
35 5 Henning 345; 4 Minor 203.
36 Ibid.
lawyers are but manifestations of the jealousy with which the governing class of Virginia planters and merchants through the House of Burgesses tried to maintain their exclusive control over the community by preventing the rise of another class of people — the lawyers — who might challenge this exclusive control. In their practical effects these efforts were also instances of the utopian attempt of Virginia, also made in other colonies, to get along without a professional bar. This attempt, which in the case of Virginia amounted to a veritable policy, came to an end with the statute of 1748. It should be noted, however, that the long string of legislative acts which impeded the normal development of a professional bar from 1642 to 1748, was also directed against the sharper, spellbinder and pettifogger. Many persons who offered their “legal services” during that period were mere impostors or worse. Virginia, in particular, seems to have been plagued by a host of such people, among them persons, as John Fiske observes, “whose career or rascality as attorneys in England had suddenly ended in penal servitude,” and who had been sentenced to transportation to Virginia. It is perhaps interesting to observe here that Virginia, which displayed a more acrimonious enmity against the professional and trained lawyer than any other colony, also was plagued by the activities of the pettifogger more than any other colony. Wherever the professional is suppressed, the charlatan apparently flourishes.

By the end of the seventeenth century or in the beginning of the eighteenth century, most colonies, in order properly to administer justice according to law, began to establish a more regular system of courts. Virginia did this in the year 1705 with the result that the need for qualified and experienced lawyers rose sharply. This, in turn, required a methodical policy of selecting and admitting responsible as well as qualified persons to the bar. While some colonies (Massachusetts, Pennsylvania, Maryland and New Hampshire) followed the English tradition where each court of record admitted attorneys to the exclusive practice before it, other colonies (Connecticut, Delaware and Rhode Island) empowered each court of general jurisdiction to admit attorneys to practice in all courts on the principle of centralized control over the qualification and admission to practice. Persons who had been called to the bar by one of the four Inns of Court in England were automatically admitted to practice in Virginia as counsellors, barristers or general practitioners by the act of 1732. The act of 1732 essentially was repeated by the act of 1748, also called an Act for Regulating the Practice of Attorneys, which, in a way, also marks the final and official recognition of the legal profession in Virginia. The act of 1748 also provided for the appointment of an examining committee consisting of members of the highest court (general court) which, after having examined the candidate, licensed him.

37 1 HENING 302.
38 2 FISKE, op cit. supra note 5, at 311.
39 Ch. 47, Laws of 1748, 6 HENING 140.
40 Under the act of 1748 the examiners were to take an oath to “truly examine into the capacity, ability, and fitness of all such persons as shall make application to them for a license,” and to refuse
The candidate, upon passing the examination successfully, had to take the following oath: "I, John Doe, do solemnly promise and swear, that I will truly and honestly demean myself in the practice of an attorney according to the best of my knowledge and ability." Under the act of 1748 the General Court also had the power to suspend and disbar any person guilty of professional misconduct. From 1748 down to the Revolution, several more acts were passed regulating in detail the conduct and the rights of lawyers.

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It is estimated that around the year 1680 there were about thirty-three lawyers of one kind or another in Virginia. Undoubtedly this figure also includes sharpers and pettifoggers who always abounded in the Colony. Hence it is fair to assume that with the exception of William Fitzhugh, who received his legal training in England, and came to Virginia about 1670, and Benjamin Harrison (and probably the Royal Attorneys-General), these early lawyers were men of little or no professional standing.

During the early part of the eighteenth century the quality of the Virginia bar improved considerably. Many of the men who practiced at that time had been educated at the Inns of Court: John Clayton (Inner Temple); William Byrd (Middle Temple 1692); Sir John Randolph (Gray's Inn 1717); John Ambler (Middle Temple); and Stevens Thomson (Middle Temple). In addition, Edward Barradall (Inner Temple), William Hopkins and John Holloway, the latter an English attorney, were considered outstanding practitioners. William Byrd, a lawyer of great renown, played a leading role in the controversy between the Council and Spotswood, the Lieutenant-Governor, over who should yield the supreme judicial power in Virginia. Sir John Randolph, also a graduate of William and Mary, became one of the foremost lawyers in colonial America. He was known and respected for his wide learning, fidelity in office, impartiality, justice and impeccable character. In his writings he revealed the high standards of learning and character that he deemed desirable in members of his profession. The professional reputation of John Holloway, "an eminent lawyer . . . zealous and careful of the Privileges of the House of Burgesses," with a "great Reputation for Diligence and Learning," was such that his legal opinions for a long time were regarded as authoritative in Virginia.

Between the years 1750 and 1776, the Virginia bar rose to real eminence in professional accomplishment and prominence in social as well as political standing. Most of the outstanding lawyers of that period had been educated at William and Mary, Princeton, in the law offices of some famous Virginia

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41 William Byrd possessed what was probably the most remarkable library in colonial America. Among the 3,625 volumes were about 350 law books. 2 FISKE, op. cit. supra note 5, at 285.
43 PALMER, CALENDAR OR VIRGINIA STATE PAPERS 242 (1875).
44 RANDOLPH, VIRGINIA HISTORICAL REGISTER 120 (1848).
practitioners, or in the Inns of Court and English universities. It was through this education and training that the Virginia bar, on the whole, attained the exceptional political and legal ability which placed the Colony not only in the forefront of the American colonies, but also enabled Virginia to play a leading role in the American Revolution. To mention only a few of these outstanding lawyers: Peyton Randolph, the older son of Sir John Randolph, educated at William and Mary, Oxford, and the Inner Temple, where he was called to the bar in 1744, undoubtedly the most beloved popular leader in the decade before the Revolution, who became president of the First Continental Congress in 1774 and, again, in 1775; John Randolph, the younger son of Sir John Randolph, who was educated at William and Mary and the Middle Temple where he was called to the bar in 1750, "one of the most splendid monuments of the Bar . . . [and] a profound lawyer"; John Blair, educated at William and Mary and the Middle Temple (1755), who helped to frame the Virginia Declaration of Rights, became Chief Justice of the Superior Court of Virginia in 1779 and Associate Justice of the Supreme Court of the United States in 1789; Edmund Pendleton, one of the foremost Virginia leaders in the Revolution, a member of the First and Second Continental Congress, who trained as a law clerk and became Chief Justice of the Virginia Court of Appeals in 1779; John Lewis, the preceptor of George Wythe; and George Wythe, himself, a signer of the Declaration of Independence and the legal preceptor of Jefferson, Madison, Marshall and Monroe. Wythe, a scholar possessed of a broad education and culture, a lawyer magnificently ethical in his professional conduct and one who viewed the legal profession as an instrument of justice, became the first law professor at William and Mary in 1780, and judge of the Virginia High Court of Chancery. Further, notice must be taken of Robert Carter Nicholas, a graduate of William and Mary, a Revolutionary patriot and the recognized head of the Provincial bar in his time, who in 1779 became judge of the Virginia High Court of Chancery and the Court of Appeals; John Tyler, a revolutionary patriot who studied at William and Mary as well as under Robert Carter Nicholas and subsequently became an associate justice in the General Court of Virginia (in 1788), Governor of Virginia (1808) and, finally, a judge of the United States District Court in 1811; George Mason, the revolutionary statesman and constitutionalist, who was trained for the law by his uncle John Mercer, an exceptionally able lawyer, became co-author of the Virginia Constitution and Declaration of Rights, whom Madison called the ablest man in debate on account of his brilliant performance in the debates on the Federal Constitution; Richard Henry Lee, a signer of the Declaration of Independence, who studied in England, according to John Adams "a masterly man" and a great revolutionary statesman who urged the independence of Virginia; Patrick Henry, the self-taught lawyer, orator and radical revolutionary whose most famous saying, "Give me liberty, or give me death," electrified the Virginia Convention in 1775; Dabney Carr;
Paul Carrington who studied law under Clement Read and played a large part in uniting the colonies and in inaugurating the movement for independence — Chief Justice of the General Court in 1780 and Associate Justice of the Court of Appeals in 1789; Peter Lyons, who in Hanover County, where he practiced, acquired "an unrivalled reputation for legal learning" — Associate Justice of the General Court in 1779 and Associate Justice in the Court of Appeals in 1789; and finally, George Johnson.

Undoubtedly the most prominent Virginia lawyer and, at the same time, the most conspicuous of American apostles of democracy was Thomas Jefferson, one of the great liberals of all times. At William and Mary he acquired a good knowledge of Latin, Greek and French, as well as a working familiarity with higher mathematics, and throughout his life he remained an enthusiastic student of nearly every branch of human knowledge. Some of the great scholars of the time numbered among his friends and correspondents. Soon after leaving William and Mary he entered the law office of George Wythe, the leader of the Virginia bar, and in 1776, after five years of close study, he was admitted to the bar. It must be conceded that industry and scholarship, rather than advocacy, were the secret of his success. Most of his life he had a rather poor opinion of lawyers, "whose trade it is to question everything, yield nothing, and talk by the hour." His activities in the colonial cause compelled him to withdraw from the practice of law in 1774.

Starting his public career as a justice of the peace, in 1769 he was chosen as a member of the Virginia House of Burgesses and, in 1775, as a member of the Continental Congress. He was prominent in whatever he undertook and, as John Adams said of him, he was so "prompt, frank, explicit and decisive upon committees and in conversation (not even Samuel Adams was more so)," that he was soon acknowledged as one of the leading political personalities of his time. In 1774 he submitted to the first Virginia Convention certain radical resolutions which attacked the supremacy of the British Parliament and the many errors of the Crown. Although these resolutions were not adopted, they were subsequently published as a *Summary View of the Rights of America*. This work, which influenced the Declaration of Independence, placed Jefferson among the foremost leaders of the American Revolution, and procured for him the honor of later drafting the Declaration itself. He also played a decisive role in the formulation of the Virginia Constitution and in the revision of the Virginia laws. Among his most important suggestions were the guarantee of freedom of conscience and relief of the people from supporting, by taxation, an established church; and a system of general education. He was the first American statesman to make public education a fundamental article of democratic faith. Also, with the years, his anti-slavery views grew in strength. He was Governor of Virginia, member of Congress, Minister to France, Secretary of State under George Washington, Vice-President under John Adams and, finally in 1800, he was elected third President of the United States, in which office he served two terms.

46 WIRT, SKETCHES OF THE LIFE AND CHARACTER OF PATRICK HENRY 16 (1817).
St. George Tucker, in a letter addressed to William Wirt in 1813, has the following to say about the pre-revolutionary bar of Virginia:

I very much doubt if a single speech of Richard H. Lee's can be produced at this day . . . [H]e was the most mellifluous orator that ever I listened to. Who knows anything of Payton Randolph, once the most popular man in Virginia, Speaker of the House of Burgesses, and President of Congress, from its first assembling to the day of his death? Who remembers Thompson Mason, esteemed the first lawyer at the bar? — or his brother, George Mason, of whom I have heard Mr. Madison (the present President) say, that he possessed the greatest talents for debate of any man he had ever seen, or heard speak. What is known of Dabney Carr, but that he made the motion for appointing committees of correspondence in 1773? Virginia has produced few men of finer talents, as I have repeatedly heard. I might name a number of others, highly respected and influential men in their day. The delegates to the first Congress, in 1774, were Peyton Randolph, Edmund Pendleton, Patrick Henry, George Washington, Richard H. Lee, Richard Bland and Benjamin Harrison. Jefferson, Wythe and Madison did not come in till afterwards. This alone may show what estimation the former were held in: yet how little is known of one-half of them at this day? . . . Socrates himself would pass unnoticed and forgotten in Virginia. . . .

XII. SOUTH CAROLINA

- 1 -

Under its charter of 1663, South Carolina established a unique form of government, including a peculiar system of laws and a highly complicated system of courts. The whole administration of the Colony, on the request of the proprietors, was based upon the *Fundamental Constitutions* of John Locke and Lord Ashley. These *Fundamental Constitutions*, which were introduced in 1669, stood for an elaborate feudal system of government which would have been obsolete even in Europe. Being wholly impracticable, they were modified in 1682 and in essence abrogated in 1698. From the beginning little effort was made to enforce the more impractical rules which, nevertheless, were an element in rousing a feeling of discontentment among the colonists, a feeling which culminated in the termination of the proprietary rule in 1719, when South Carolina became a Royal Province. Such was the fate of a government devised by a doctrinaire philosopher.

- 2 -

For some time there was much uncertainty as to what extent, if at all, the common law of England should be considered applicable in the Colony. This uncertainty is reflected in a complaint, made by the General Assembly, that the courts had "assumed to put in force such English laws as they deemed adapted to the Province; but the Assembly conceived that either such laws were valid of their own force, or could only be made so by an act of the

47 1 KENNEDY, *op. cit. supra* note 45, at 315, 317.
49 The Concessions and Agreements of the Lord Proprietors of the Province of Carolina (1665) provided: "... Lawes Acts ... shalbe ... as near as they may be conveniently agreeable to the Lawes and Customs of his Majesties Kingdom of England ..." 1 COLONIAL RECORDS OF NORTH CAROLINA 82 (SAUNDERS ed. 1886).
To end this confusion, the common law of England, by the act of 1712, was adopted as the law of the Province, together with those one hundred and twenty-six English statutes which had been selected by Chief Justice Nicholas Trott as being applicable to the special conditions prevailing in South Carolina.

Prior to 1683, the Governor and Council were the sole court of judicature, so that the executive power and the judiciary were joined in one and the same governmental body. In 1683, a separate Provincial Court was established with a chief justice, appointed by the Proprietor, and in 1720, "associate" judges also appointed by the Proprietor, were added to the Provincial Court. At the same time, the Governor and Council became the Court of Appeals. In order to relieve the extreme pressure of business upon the Provincial Court, in 1769 the Circuit Courts were introduced in the various counties. There were also a number of lower courts of which, however, little is known.

With the notable exception of Chief Justice Nicholas Trott, an English barrister of great distinction and learning who was appointed to his judicial position in 1702 or 1703, the first chief justices were men of no legal training or experience. Trott, however, was removed from the bench in 1719 by the joint appeal of several lawyers, the Governor, the Council and the General Assembly to the Proprietor. He was charged with giving legal advice in cases pending before his court, and with acting as counsel for one of the parties in order to "increase and multiply his fees." Such conduct had especially grave consequences in view of the fact that as the sole judge of the Court of Common Pleas, King's Bench, Vice-Admiralty and Court of Chancery, Trott represented the whole higher judiciary of the Province.

In 1719 South Carolina became a royal province. A Supreme Court was established with a chief justice and four associate judges. While the majority of the chief justices between 1719 and 1776 were trained lawyers, nearly all of the associate judges were laymen, although it must be conceded that towards the end of the colonial period some of these associate judges, through self-study, had acquired a remarkable proficiency in the law. But since after 1719 the chief justices and the associate judges were appointed by the Royal Governor at the pleasure of the Crown, they were to a large extent dependent on and frequently subservient to the Crown and the colonial government rather than an independent judiciary.

The Fundamental Constitutions of 1669, which on the whole were the work of an impractical and utopian doctrinaire, provided that "it be a base and vile thing to plead for money or reward; nor shall anyone (except he be a near kinsman ...) be permitted to plead another man's cause, till . . . he

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51 1 O'Neall, Biographical Sketches of the Bench and Bar of South Carolina 3 (1859).
52 Ibid.
hath taken an oath, that he doth not plead for money or reward..."\textsuperscript{53} That under such conditions, which are reminiscent of the attitude of primitive societies towards the lawyer, no true legal profession could possibly develop, needs no special comment. But facts and circumstances in time always prove stronger than philosophical theory, be it ever so lofty. Not only was it impossible to enforce the provision forbidding the charging or taking of fees, but as the immediate result of this stupid provision the work which ought to have been done by responsible and competent men fell into the hands of irresponsible and incompetent charlatans. In this South Carolina went through the same painful experiences as most of the other colonies. In 1694 a statute was enacted which, among other matters, also regulated attorneys fees, conceding thus that the taking of fees was no longer considered "a base and vile thing" in principle.\textsuperscript{54} Little, however, is known about the earliest attorneys or lawyers in South Carolina.\textsuperscript{55}

In 1712, South Carolina, on the recommendation of Chief Justice Nicholas Trott, adopted literally chapter 18 of 4 Henry IV of 1402 as the basis of its policy regarding the admission and regulation of attorneys: "... it is ordained ... That all the attorneys shall be examined by the justices, and by their discretions their names be put in the roll, and they that be good and virtuous, and of good fame, shall be received and sworn well and truly to serve in their offices ... and the other attorneys shall be put out by the discretion of the said justices ...."\textsuperscript{56} In this manner South Carolina instituted the principle of centralized control over the admission to practice, and this control was directly exercised by the highest court. In 1721 the admission of attorneys was further regulated by certain provisions contained in \textit{An Act for Establishing County and Precinct Courts}. These provisions apparently were directed against the growing number of spellbinders and pettifoggers:

\textit{Whereas divers unskilful persons do often undertake to manage and solicit business in the courts of law and equity, to the unspeakable damage of the clients, occasioned by the ignorance of such solicitors, who are in no ways qualified for that purpose, tending to the promoting litigiousness, and encouraging of vexatious suits: Be it therefore enacted, that no person whatsoever shall practice or solicit the cause of any other person ... unless he hath been heretofore admitted and sworn as an attorney, by the Chief Justice and Judges of the General and Supreme Court ... under penalty of pounds 100 for every cause he shall so solicit ...}.\textsuperscript{57}

The act of 1721, in the long run, must have had a very wholesome effect since it apparently drove out the pettifoggers and sharpers, and ultimately brought it about that, on the eve of the American Revolution, South Carolina could boast of perhaps the best trained and most highly educated bar in

\begin{itemize}
\item \textsuperscript{53} \textit{The Fundamental Constitutions of Carolina}, § 70. 2 Poore, \textit{op. cit. supra} note 48, at 1404.
\item \textsuperscript{54} \textit{Ibid.}
\item \textsuperscript{55} See, in general, O'\textit{Neall}, \textit{op. cit. supra} note 51.
\item \textsuperscript{56} 2 \textit{Cooper, South Carolina Statutes at Large} 401, 402, 447; \textit{Public Laws of South Carolina} 28 (1790).
\item \textsuperscript{57} 7 \textit{Cooper, South Carolina Statutes at Large} 167; \textit{Public Laws of South Carolina} 116 (1790).
\end{itemize}
America. Forty years after the passing of the act of 1721, the whole South Carolina bar consisted of approximately twenty lawyers who had been duly admitted; and at the outbreak of the American Revolution only a total of fifty-eight lawyers had been found duly qualified for the practice of law and, hence, were admitted to the bar. Of the thirty lawyers who were still practicing law in Charleston at the time of the Revolution, no less than twenty-four had been trained in the Inns of Court, mostly at the Inner Temple; one had come from Princeton and one had studied in France; others were graduates of English universities. The high professional qualifications of the South Carolina bar during the eighteenth century is perhaps best illustrated by the fact that out of a total of fifty-eight lawyers admitted to practice prior to the Revolution at least forty-seven had studied in the Inns of Court.

The only intelligent explanation for this unusual phenomenon is that all the aristocratic and wealthy planters around Charleston simply sent their sons to England for their education. For prior to the American Revolution no educational institution worthy of the name could be found in South Carolina, and it never occurred to the Carolinians that quite a number of fairly good colleges existed in other colonies. Indeed, there was so little communication with the other colonies that John Rutledge, for example, seems to have been completely unaware of the existence of a college in America prior to his attendance at the Stamp Act Congress in 1765.

Probably the greatest, and certainly the ablest lawyer in colonial South Carolina during the latter part of the eighteenth century was John Rutledge, a barrister of the Middle Temple (admitted to the bar in 1760), who after his return to South Carolina in 1761 headed the opposition to the Stamp Act in 1765, became a member of the first and second Continental Congress, and belonged to the committee which in 1776 wrote the South Carolina Constitution. It may be interesting to note that no less than six members of this committee had been called to the bar of one of the Inns of Court. Rutledge was President of the Provincial Congress in 1776, judge of the newly established High Court of Chancery for South Carolina in 1784, Associate Justice of the Supreme Court of the United States from 1789 to 1791, chief justice of South Carolina from 1791 to 1795 and finally, in 1795, he was nominated Chief Justice of the Supreme Court of the United States, but his nomination was not confirmed.

During the fourteen years between Rutledge's return to America and the outbreak of the Revolution, he became the undisputed leader of the South Carolina bar. But the competition, it must be admitted, was relatively small for a barrister from the Middle Temple and the scion of one of the truly influential and aristocratic families of the Colony. Also, the prevailing class system in South Carolina kept down the number of lawyers. Justice was administered on the same incredibly expensive scale as in eighteenth century England; and, in spite of the small population, Rutledge's annual earnings through the practice of law is said to have been around twenty thousand dollars — for that time a fabulous sum of money. This financial success can only be explained by the fact that he practiced in Charleston where nearly all the wealth of prosperous South Carolina was concentrated.
But there were numerous other lawyers of high repute: William Drayton, who was called to the bar of the Middle Temple in 1755, the first judge of the United States Court for the district of South Carolina; William Henry Drayton, who was educated at Westminster and Oxford in England, an aggressive radical in his opposition to Great Britain and who, in 1774, denounced the right of Parliament to legislate for the colonies — president of the Provincial Congress in 1775, chief justice of South Carolina in 1776 and a member of the Second Continental Congress in 1778; Thomas Lynch, Jr., a signer of the Declaration of Independence, who was educated at Eton and Cambridge in England and called to the bar of the Middle Temple in 1754; Thomas Heyward, a signer of the Declaration of Independence, who was called to the bar of the Middle Temple in 1765, served on the committee which wrote the South Carolina Constitution in 1776 and became a member of the Second Continental Congress; William Wragg, one of the earliest trained lawyers, called to the bar of the Middle Temple in 1733, who, in the words of a contemporary, “would have been a real ornament to Sparta or Rome in their most virtuous days”; Edward Rutledge, the younger brother of John Rutledge, who was called to the bar of the Middle Temple in 1774 and became one of the signers of the Declaration of Independence — a member of the First and Second Provincial Congress in 1775 and 1776, and of the First Continental Congress in 1774; John Julius Pringle, who studied law in the office of John Rutledge in 1772, and in 1773 entered the Middle Temple; William Hasell Gibbes, who read law under John Rutledge and entered the Inner Temple in 1774; Hugh Rutledge, who studied law at the Middle Temple; John Laurens, who studied in Geneva, Switzerland, and in 1772 entered the Middle Temple, envoy extraordinary to France in 1780; Charles Cotesworth Pinckney, who studied at Westminster, Oxford, and the Middle Temple, where he was called to the bar in 1769 — a member of the Provincial Congress in 1775 and one of the ablest defenders of the new Federal Constitution, who was offered an associate justiceship in the Supreme Court of the United States (in 1791) and the office of Secretary of War (in 1794) by George Washington; Arthur Middleton, a signer of the Declaration of Independence who studied in English schools in 1757 and was admitted to the Middle Temple, a member of the committee to write the South Carolina Constitution in 1776 and a member of the Second Continental Congress in 1776-77; John Grimke, who received his A.B. from Cambridge University and became a member of the Middle Temple; and Richard Hutson (Princeton 1765), a member of the Second Continental Congress in 1778-79, who together with John Rutledge and John Mathews was appointed to the High Court of Chancery in 1789.

With the exception of the joint action of some lawyers in connection with the Trott affair of 1719, nothing, however, is known about a "bar association" in South Carolina, and this, despite the fact that the bar of South Carolina was an illustrious and, one would assume, nearly homogeneous bar

58 Jones, American Members of the Inns of Court 221 (1924).
since so many of its members had been trained in the Inns of Court. Perhaps the fact that admission to practice in South Carolina was centralized prevented the growth of a feeling of solidarity which is present wherever each court of record admits its own bar and thus creates a sense of cohesiveness within this particular "local bar." Also the fact that the "Carolina Templars," who were mostly the scions of the exclusive and aristocratic planters, had a low opinion of the legal and social qualifications of their colonially trained brethren and, hence, probably refused to consort with them, may have prevented the formation of a sense of professional solidarity among the South Carolina lawyers.

XIII. NORTH CAROLINA AND GEORGIA

1

The history of the legal profession in North Carolina for some time runs parallel to that of South Carolina. Theoretically, South Carolina and North Carolina constituted a single province; but, as the settlements were far apart, their governments were always separate. Until 1691 each had its own governor. From 1691 to 1712 there was usually a governor in Charleston, South Carolina, and a deputy for the northern settlements. After 1712 there were again separate governors. The proprietary rule ended in 1729, when North Carolina became a royal colony.

2

As in South Carolina, Locke's *Fundamental Constitutions* provided the foundations of law and government for awhile in North Carolina. But following the example of South Carolina, in 1715 the North Carolina Legislature adopted the common law of England as well as certain English statutes, but only "so far as shall be compatible with our way of living . . . ."

3

The first compilation of laws was made in 1732.

4

County Courts existed as early as 1693, but prior to the year 1702, the Royal Governor (or his deputy) and Council acted as the court of last resort. In 1702, however, a separate General Court of Judicature was constituted with a chief justice and two associate judges. Prior to 1746, the year in which some important legal reforms were carried through, none of the associate judges and only a few of the chief justices were trained lawyers, mostly barristers who had been sent from England. In 1746, a Superior Court was created. Among other matters, it was also provided by statute that the judges of the Superior Court had to be trained lawyers.

5

Due to its general social and economic backwardness, which was caused partially by the obsoleteness of the *Fundamental Constitutions*, North Carolina was extremely slow in developing a distinct legal profession. Of the earliest lawyers practically nothing is known, except that there were some people — presumably ill qualified — who acted as attorneys for others. These

59 2 Poore, *op. cit. supra* note 48, at 1397.

60 As regards the applicability of the English common law, the same rule prevailed in both North and South Carolina: the laws of these two colonies shall be as near as possible to the laws of England.
conditions were aptly described in *The Life and Correspondence of James Iredell*:

At this period too, in what was then called the 'back country,' . . . the gentlemen of the Bar were objects of obloquy and denunciation to a generally poor and illiterate people, and frequently experienced at their hands the grossest outrages . . . . The people justly complained of the burden of their taxes — a burden augmented by the extortion of illegal fees by the officers of the Courts; but with a blind prejudice, many of them only saw in the profession, those who defended their oppressors . . . . Uncultivated settlers . . . are apt to look with suspicion upon the proprietor of the soil . . . and [upon] the attorneys employed to bring ejectments or sue for use, as the venial instruments of tyranny, bandits, hired by gold to dispoil them of the fruits of their honest industry.61

Subsequently, these practices brought about popular uprisings, known as Regulations, which were put down in 1768 and, again, in 1771 when the Regulators were crushed by punitive military expeditions to the "back country."

After the year 1702, the practice of law was officially recognized in North Carolina, provided the practitioner had been licensed by the chief justice and the two associate judges who constituted the General Court of Judicature. The admission to practice was to be controlled by two English statutes, namely, the Statute of Westminster the First, c. 29 (of 1275) and 3 James I, c. 7 (of 1605), which were considered to be in force in North Carolina.62 The latter statute provided:

For that through the abuse of sundry Attornies and Solicitors by charging their clients with excessive fees, and unnecessary demands . . . , And for that to work the private gain of such Attornies and Solicitors, the client is often times extraordinarily delayed: Be it enacted . . . that no Attorney, Solicitor . . . shall be allowed from his client . . . of or for any fee . . . unless he have a ticket subscribed . . . testifying how much he hath received for his fee; And that all Attornies and Solicitors shall give a true bill unto their . . . clients . . . of all other charges . . .: And that if the Attorney or Solicitor do or shall willingly delay his clients' suits to work his own gain, or demand by his bill any other sums of money . . . the party grieved, shall have his action against such Attorney or Solicitor, and recover therein costs and treble damages, and the said Attorney or Solicitor shall be discharged from henceforth from being an Attorney or Solicitor any more . . . . And to avoid the infinite number of Solicitors and Attornies, be it enacted . . . that none shall from henceforth be admitted Attornies in any of the King's courts of record . . . but such as have been brought up in the same courts, or otherwise well practised in soliciting of causes, and have been found by their dealings to be skilful and of honest disposition . . . . And that no Attorney shall admit any other to follow any suit in his name, upon pain that both the Attorney and he that followeth any such suit in his name, shall each of them forfeit for such offence, twenty pounds . . . . And that the Attorney in such case shall be excluded from being an Attorney for ever thereafter.63

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61 McRae, *Life and Correspondence of James Iredell* 96 (1856).
63 An Act to Reform the Multitudes and Misdemeanors of Attorneys and Solicitors at Law, and to Avoid Unnecessary Suits and Charges at Law, 1605, 3 James I, c. 7.
After the revision of the laws of North Carolina had been carried out in the year 1746, attorneys were admitted (or appointed) by the Royal Governor, usually upon the recommendation of the court. This was done in order to retain a more efficient control over the gradually emerging legal profession. There existed, however, nothing resembling an organized bar.

The first known English barrister in North Carolina was William Smith who arrived from England in 1731. But only during the last years prior to the American Revolution did the North Carolina bar attain any prominence. The majority of the more outstanding lawyers were either English or Scotch practitioners (Thomas Jones, Alexander Elmsly, Samuel Johnston), English barristers (Henry Eustace McCulloch), or men who came from more progressive colonies, such as William Avery (Connecticut), John Dawson (Virginia), William Hooper (Massachusetts), and John Penn (Virginia), who was one of the signers of the Declaration of Independence from North Carolina. Samuel Johnston, who also had a most notable political career, became president of the Third and Fourth Provincial Congress, a member of the Second Continental Congress in 1781, and Governor of North Carolina in 1789. William Hooper, a graduate from Harvard in 1760, had studied law under James Otis in Massachusetts. He was the other signer of the Declaration of Independence from North Carolina. John Adams classed him as an orator with Richard Henry Lee and Patrick Henry. The most renowned lawyer in North Carolina during the colonial period undoubtedly was James Iredell, who came to America from England in 1768 and studied law under Samuel Johnston. He was admitted to practice in the lower courts in 1770 and to the Superior Court in 1771; and in 1790 he became Associate Justice of the Supreme Court of the United States. He was a strong supporter of the new Federal Constitution. His most famous opinions are found in *Chisholm v. Georgia* and *Calder v. Bull*.

From its foundation down to the year 1752, Georgia, a “frontier colony,” was under the arbitrary rule of the Proprietor. In 1755, the first laws were passed by the General Assembly of Georgia. Apparently there were no trained lawyers in Georgia until 1752, when it became a royal colony. In that year it was also provided that the chief justice had to be an English barrister, although the three associate judges could be native laymen. A Superior Court was created only after the American Revolution (in 1789).

The common law of England, in the main, became the law of the Colony. In the year 1731, An Act for the Better Regulation of Attorneys and Solicitors, was given the force of law in Georgia: “... every person who shall, pursuant to this act, be admitted and enrolled to be an attorney ... shall ... take and subscribe the oath following ...: 'I, A.B., do swear, that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability. ...'” The same oath was

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64 2 U.S. (2 Dall.) 363, 371 (1793).
65 3 U.S. (3 Dall.) 305, 314 (1798).
66 1729, 2 George II, c. 23.
67 Schley, Digest of the English Statutes in Force in the State of Georgia 353 (1826).
prescribed for solicitors. Thus it seems that Georgia made a distinction between attorneys and solicitors, although this by no means is certain.

It is presumed that, following the English practice, in Georgia each individual court admitted its own attorneys. But this, too, is uncertain. After 1712 a small and rather insignificant bar developed in Georgia, especially in Savannah where a few English-born barristers had settled. Of the American-born colonial lawyers only one name stands out, George Walton, one of the signers of the Declaration of Independence, who in 1769 came to Georgia from Virginia. He was admitted to the bar in 1774, became a member of the Second Continental Congress in 1776, governor of the State in 1779, and chief justice in 1783. It appears that colonial Georgia, like North Carolina, owing to its rather primitive “frontier” conditions, was unable to develop a prominent bar of its own.

XIV. CONCLUSION

The history of the legal profession in colonial America shows that on the eve of the American Revolution some colonies had a very advanced and competent bar, and others an undeveloped and inadequate one. The reasons for these differences were many: The early reception or temporary rejection of the common law of England and the organization of the judicature as well as the qualifications of the judiciary had a decisive influence on the emergence and development of a legal profession in the various colonies. Also, of great importance were the differences in the control over admission to practice and, hence, at least indirectly, over the training and qualification for the practice of law. Where each court of general jurisdiction admitted persons to its bar there developed a strong feeling of solidarity among the members of this particular bar. And this solidarity, in turn, soon brought about noticeable improvements in the quality of this bar. But where admission by one court was tantamount to an admission in all courts, or where a central authority (either the supreme court or the governor) admitted people to practice in all courts, there was, as a rule, no such feeling of solidarity; and only some special event of a pressing nature, such as the struggle of the profession against the high-handedness of royal governors in Maryland, New York and New Jersey, could consolidate the bar into concerted action.

But there were still other factors which account for the slowness or rapidity with which a professional bar emerged and developed in the various colonies. In such colonies as Massachusetts or Pennsylvania, religious opposition for some time held down the growth of a legal profession. In New York and Virginia, for instance, the dominant class of citizens (in New York also the governor) did not wish to see the rise to prominence of a class of lawyers with which it would ultimately have to share the control over the community. Some colonies, such as South Carolina, Virginia and Pennsylvania, at least during the last decades before the Revolution, were especially favored by the strong influx and decisive personal influence of a large number of men who had been trained professionally in the English Inns of Court. On the other hand, there were some colonies, such as Georgia, North Carolina
and, to some extent, New Hampshire, all of which until the Revolution managed to preserve much of their fairly primitive "pioneer spirit" and, hence, did little to develop their own professional bar.

The following general development in the attitude towards the lawyer and the legal profession may, on the whole, be observed in the American colonies: In the beginning the majority of the colonies, for a variety of reasons among which certain utopian notions were not the least, made a determined effort to administer justice without lawyers and, in consequence, frequently without law. In some colonies this trend, which lasted until the last decade of the seventeenth century, produced legislation hostile to the professional lawyer. As the inevitable result of this organized prejudice against the trained lawyer, men with little or no competence and certainly without scruples or decorum offered their dubious services as "attorneys" or agents for litigation wherever the occasion arose or whenever the situation simply demanded such "agencies." Through painful and costly experiences the colonists gradually came to realize not only the futility of forbidding representation in litigation, but also the wastefulness of the maxim that every man ought to be his own lawyer. But in some colonies this basic lesson was learned only slowly and reluctantly with the result that the work which ought to have been done by trained and responsible men fell into the eager hands of incompetent and irresponsible persons. In consequence of all this, the majority of the colonies were for a long time plagued with a host of pettifoggers, sharpers and spellbinders; and frequently clerks, sheriffs, constables and even petty judges acted as attorneys in their own courts.

By the end of the seventeenth or beginning of the eighteenth century most of the colonies had established regular and independent courts of law, and in the course of the eighteenth century most of these courts began to be manned by trained lawyers, doing business according to law and the strict rules of procedure. This new situation simply demanded an expert and responsible bar. Soon also certain qualifications were set up for the admission to practice, and the admission itself was subject to control. In some colonies (Virginia, South Carolina, New York, New Jersey and North Carolina) the principle of centralized admission was observed, where either the highest court or the governor, usually upon recommendation by the bench, admitted the candidate to practice in any and all courts of the colony. In other colonies (Massachusetts, Pennsylvania, Maryland, New Hampshire, Maine and probably Georgia), following the English tradition, each court of record admitted its own attorneys to practice before the admitting court and this court only. In other colonies (Connecticut, Rhode Island and Delaware), again, the admission to practice by any one court of general jurisdiction entitled the person so admitted to practice in all courts, either by custom or by a principle of comity.

On the eve of the American Revolution each of the colonies, with the exception perhaps of Georgia, North Carolina, and New Hampshire, had substantially developed a trained and capable native bar which, however,
varied in size and importance from colony to colony. By the middle of the eighteenth century the stature of the legal profession had drastically improved in most colonies; and the popular prejudice against lawyers, which in certain colonies had seriously hampered the growth of the profession, gradually subsided and, in some instances, even turned into sympathy and admiration. This change of attitude, which obviously was not shared by all people — for when was there ever a time the lawyer did not feel the animadversion of the ignorant and the slanderer — clearly became manifest in the fact that of the fifty-six signers of the Declaration of Independence no less than twenty-five were trained lawyers, and of the fifty-five members of the Constitutional Convention, thirty-one. It seems that the many services which these lawyers had rendered the colonies and the colonists during their early struggles against the arbitrary actions of the British Crown were fully recognized by the people who apparently realized that it was, and always is, foremost the trained lawyer who again and again has sprung to the defense of the people's rights and liberties. No wonder that these champions of the rights and liberties of the people, champions who also played a leading role in the opposition to the much despised Stamp Act, should be chosen by the same people as their representatives in the great task of formulating the legal and constitutional foundation of the United States.