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I am submitting herewith a dissertation written by Hoyt Paul Canady, Jr., entitled "Gentlemen of the Bar: Lawyers in Colonial South Carolina." I recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in History.

Milton M. Klein

Milton M. Klein, Major Professor

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L. Evans Roth

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GENTLEMEN OF THE BAR: LAWYERS IN COLONIAL SOUTH CAROLINA

A Dissertation

Presented for the

Doctor of Philosophy

Degree

The University of Tennessee, Knoxville

Hoyt Paul Canady, Jr.

August 1979

1398037

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for Marilyn

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ABSTRACT

Lawyers in South Carolina--like those in other provinces of British North America--experienced a transformation in the colonial period which brought them from the fringes of society to positions of social, economic, and political prominence by the eve of the American Revolution. Originally banned in the Fundamental Constitutions of Carolina in 1669, attorneys began to appear in court for themselves and for others before the close of the seventeenth century. As provincial society moved away from the utopian ideal of a "lawyerless" community to a more complex economic structure by the early eighteenth century, South Carolinians accepted, out of necessity if not choice, the arrival of professionally trained men of the law.

This study of the early South Carolina bar examines several elements which shaped the development of the legal profession: the court system, patterns of legal education, provincial politics, legal practice, and the social structure. The first four chapters analyze the court system in provincial South Carolina as the formal environment in which lawyers practiced their profession. Lawyers involved themselves in the political process early by engaging in several--often bitter--conflicts over control of the judicial system. A central source of conflict throughout the period was the absence of permanent county courts in the interior of the colony. This limited the expansion of justice and worked to keep the legal profession small and centered in Charleston for the entire colonial period. The chief justices of the colony provided another source of conflict. Unlike other colonies, many of the Carolina chief

justices were trained lawyers--a tradition which began with Nicholas Trott in 1703. Their legal training made them less compliant with House encroachments on royal control of the judiciary and at times enabled them to raise questions about the constitutional relationship of the legislative and judicial branches of government and about the proper constitutional ties between the mother country and its colonies.

An analysis of legal education occupies the next two chapters. Historians and other writers have long acknowledged the contribution of South Carolina to the English Inns of Court, but the central feature of legal training in the colony was a diversity of routes to the bar. As in other American provinces, apprenticeships with practicing attorneys either at home or abroad were widely used and proved more valuable to practitioners than did their attendance at the Inns. Education in England, on the other hand, represented the Carolinians' efforts to Anglicize the colony by emulating the best features of English life and by providing their sons with a classical British education.

The variety of educational paths to the bar indicates that the profession was relatively easy to enter. Court records (examined in Chapter VII), however, show that professional success was at best difficult to attain; only one-third of the colony's lawyers engaged in their practice long enough and steadily enough to earn a comfortable living. Economically and socially, most lawyers were the sons of merchants, planters and professional men and married the daughters or widows of their social equals (Chapter VIII). Thus, the law remained a profession which provided some horizontal but little vertical social mobility.

In the quarter-century before the American Revolution, lawyers became an established class which competed and shared power with planters and merchants. Lawyers did not join the revolutionary movement belatedly but participated on both sides of the controversy from the start. Chapter IX examines the South Carolina lawyers and the coming of the Revolution. Lawyers were motivated to become Whigs largely in reaction to the British policy of using placemen to fill numerous colonial administrative and judicial positions. While lawyers did not necessarily seek these governmental positions for themselves, increasingly they came to see the British appointees as one of the central issues in the revolutionary crisis--as portentous as Parliament's claim to legislate for the colonies. In power, the patriot lawyers helped to keep the revolutionary movement in South Carolina within the narrow bounds of political change, seeking to prevent any accompanying social upheaval. The bar's political leadership during and after the Revolution was motivated by the growing belief of its leading members that public service and knowledge of the law were the best means of preserving the virtues of the republicanism which had triumphed in the war with England.

TABLE OF CONTENTS

CHAPTER		PAGE
INTRODUCTION		1
I.	ADMINISTERING THE LAW: COURTS UNDER EXECUTIVE CONTROL	27
II.	LIMITING THE LAW: THE COMMON LAW COURTS	68
III.	EXPANDING THE LAW: THE EXTENSION OF THE JUDICIAL SYSTEM	110
IV.	INTERPRETING THE LAW: CHIEF JUSTICES AND COLONIAL POLITICS.	137
V.	EDUCATING PROVINCIAL LAWYERS IN SOUTH CAROLINA	169
VI.	EDUCATING PROVINCIAL LAWYERS IN GREAT BRITAIN.	206
VII.	LAWYERS AND THEIR PRACTICE	251
VIII.	LAWYERS AND THEIR SOCIETY.	302
IX.	RULING AT HOME: SOUTH CAROLINA LAWYERS AND THE COMING OF THE AMERICAN REVOLUTION	347
CONCLUSION.		405
BIBLIOGRAPHY.		415
APPENDICES.		436
APPENDIX A.	SOUTH CAROLINA LAWYERS ENROLLED AT THE INNS OF COURT TO 1780	437
APPENDIX B.	ATTORNEYS WHO PRACTICED BEFORE THE COURT OF COMMON PLEAS, 1703-1780	439
APPENDIX C.	LAWYERS WHO PRACTICED BEFORE THE COURT OF GENERAL SESSIONS, 1769-1776	442
APPENDIX D.	LAWYERS WHO PRACTICED BEFORE THE COURT OF CHANCERY, 1697-1779	443
APPENDIX E.	LAWYERS WHO PRACTICED BEFORE THE COURT OF VICE-ADMIRALTY, 1716-1763.	444

CHAPTER PAGE

APPENDIX F. VALUE OF LAWYERS' ESTATES IN COLONIAL SOUTH CAROLINA. 445

APPENDIX G. SLAVEHOLDING AMONG SOUTH CAROLINA LAWYERS. 446

VITA. 447

LIST OF TABLES

TABLE		PAGE
I.	South Carolina Vice-Admiralty Court, 1716-1763	50
II.	Cases in the South Carolina Court of Common Pleas, 1703-1780	96
III.	Amounts Awarded in Civil Actions	97
IV.	Circuit Court Cases, 1774-1780	132
V.	Chief Justices of Colonial South Carolina, 1698-1780	144
VI.	Apprentices and Teachers in Colonial South Carolina	180
VII.	Value of Lawyers' Libraries	191
VIII.	Native South Carolina Lawyers Educated Abroad	226
IX.	British Natives Who Emigrated to South Carolina	227
X.	Growth of the Legal Profession (Practicing Attorneys), 1703-1780	260
XI.	Lawyers and the Colonial Population	263
XII.	Years of Practice, 1703-1780	269
XIII.	Lawyers With 100 or More Cases, 1703-1750	271
XIV.	Lawyers With 100 or More Cases, 1750-1780	272
XV.	Lawyers With Highest Case Loads Before the Chancery Court, 1697-1779	276
XVI.	Lawyers With Highest Case Loads Before the Vice-Admiralty Court, 1716-1763	277
XVII.	Lawyers With Highest Case Loads Before the Court of General Sessions, 1769-1776	278

TABLE		PAGE
XVIII.	Parental Ties of Native Carolina Lawyers, 1703-1780. . . .	315
XIX.	Distribution of Wealth Among South Carolina Lawyers, 1703-1780.	323
XX.	Slave Ownership Among Lawyers in Colonial South Carolina, 1703-1780.	323

INTRODUCTION

> It shall be a base and vile thing, to plead for money or reward; nor shall any one, (except he be a near kinsman, nor farther off than cousin german to the party concerned) be permitted to plead another man's cause, till before the Judge in open court, he hath taken an oath that he doth not plead for money or reward, nor hath, nor will receive, nor directly, nor indirectly, bargained with the party whose cause he is going to plead, for money, or any other reward for pleading his cause.[1]

Within one year of each other at the middle of the eighteenth century Benjamin Whitaker and Peter Manigault sailed for England. The voyages of the aging Whitaker and the young Manigault were entirely coincidental, but they contain a certain historical significance for the development of the legal profession in colonial South Carolina. For Whitaker, the trip marked the end of a long, illustrious career in provincial politics. Suffering from the effects of a paralytic stroke, Whitaker as chief justice had been granted a year's leave of absence to recover his health, but he never returned to Charleston.

At the time the chief justice left the province, a change was taking place within the ranks of the bar. The days of the immigrant lawyers such as Whitaker were ending as native merchants, planters, and professional men encouraged their sons to enter the field of law. Thus, if Whitaker's final visit to England in 1749 symbolically represents the closing years of the early generations of Carolina lawyers, Manigault's voyage to the metropolis in 1750 to embark on his legal studies

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[1] Fundamental Constitutions of Carolina, 1669, Thomas Cooper and David J. McCord, eds., Statutes of South Carolina, 10 vols. (Columbia, S.C., 1836-1841), I, 51.

represents the new trend, since the young, confident son of the colony's wealthiest merchant was the first of the pre-Revolutionary generation to seek an English legal education at the Inns of Court.

During the Atlantic crossing, Whitaker probably reflected on his long years in the colony. He had begun practice in 1717 and used the opportunities it provided to move with relative ease into judicial offices: attorney general, judge of the Vice-Admiralty Court, and in 1740 chief justice of the province. There was also a less illustrious side to Whitaker's activity. His involvement in a land speculating scheme in the early 1730s had ended with his public embarrassment before the Commons House of Assembly, and he had to use the platform of a grand jury charge to exonerate himself from suspicion of involvement in illegal banking activities. Were it not for Whitaker's public career, little would be known about the man. His education and training for the bar were apparently modest, for he told the grand jurors in 1741

> No great Matters are to be expected from a Man who boasts of no considerable Pretensions to Learning, who has passed his Time near Five and Twenty Years in the Woods of America, far from the Fountains of Science, and who has had but very rare Opportunities of conversing with learned Men.[2]

By the time the ailing chief justice departed the colony, only forty-four men had practiced law since the beginning of the century.

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[2] At a Court of General Sessions of the Peace, Oyer, and Terminer, Assize and General Gaol Delivery, Holden at Charles-Town, in the Province of South Carolina, on the first day of October, 1741. The Chief Justice's charge to the Grand Jury for the Body of this Province (Charleston, 1741), 10, 28-30 (Evans no. 4812); Miscellaneous Records, HH, 13-15, South Carolina Department of Archives and History (hereinafter cited as SCDAH). For a biographical sketch of Whitaker, see Walter B. Edgar and N. Louise Bailey, eds., Biographical Directory of the South Carolina House of Representatives, 2 vols. to date (Columbia, S.C., 1974-), II, 705-707.

Yet, Whitaker and his generation, which included such attorneys as Charles Pinckney, James Wright, James Michie, James Graeme, Andrew Rutledge, and Robert Hume, had succeeded in making the practice of law both lucrative and respectable. The overwhelming majority of this group were immigrants from the British Isles and British West Indies (Pinckney being the most notable exception), and their legal education--like Whitaker's--is largely unknown.

Much more can be discerned about Manigault and his contemporaries than about Whitaker and the early lawyers, and a comparison of the two groups reveals both contrast and continuity. The native sons inherited a stratified bar in which case loads were dominated by a small group, and others had only limited opportunity for successful practices. Manigault's generation did not alter this situation but merely perpetuated the existing structure of legal practice--a system that Manigault, notwithstanding many advantages, was unable to penetrate. While early lawyers had emigrated from the mother country, many of the Carolinians after 1750 returned there for their formal education and legal training. This practice reflected the attraction of the English cultural scene more than the quality of instruction in the metropolis.

The Anglicization of the colony which emerges as a theme of the pre-Revolutionary period acted more as a source of tension than of transformation. While Carolina's youth were attracted to many aspects of English culture--its institutions, lifestyle, and traditions--most were fiercely loyal to their American homeland and objected strongly when Parliament began to impose revenue measures on the colonies in 1764. Manigault's career offers the best example of these contrapuntal

tendencies. During the course of his education, he remained homesick for Charleston; but his letters reveal a deep appreciation for English life. Although his legal practice was unsuccessful, he became a political leader of the colony, opposing the Stamp Act and, as House speaker, presenting the non-importation resolutions of Massachusetts even though he knew this action would bring a dissolution of the Assembly. The attraction of English life followed Manigault literally until his death. He stipulated that his sons should be educated in England, and like Whitaker he returned there for his health in the spring of 1773, once more to patronize the theatre and absorb London life. He died quietly in the metropolis on November 12 of that year.[3]

This experience of the South Carolina bar mirrors that of other colonies, for the general pattern of development of the American bars followed similar lines. Lawyers everywhere in colonial America experienced a remarkable rise in status during the eighteenth century. Banned or restricted in most colonies in the seventeenth century, they emerged in the early eighteenth as a necessary element in a provincial society that was becoming increasingly more complex. By the eve of the American Revolution, they were part of an educated, political, and social elite which provided leadership during the crisis with England, helped establish

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[3]Henry Laurens, who shipped Manigault's body back to Charleston became annoyed at his failure to take proper care of himself. Writing to his son, John Laurens, he said that Manigault "thinks he knows his own Case & as long as he is Able will do as he pleases." He added: "A Man may call this Spirit! Bravery!--but it appears so only to the Actor." Henry Laurens to John Laurens, October 8, 1773, "Letters from Hon. Henry Laurens to His Son John, 1773-1776," South Carolina Historical and Genealogical Magazine, III (1902), 86 (hereinafter cited as SCHGM); Maurice A. Crouse, "The Manigault Family of South Carolina, 1685-1783" (Ph.D. diss., Northwestern University, 1964), 242-249.

the new national and state governments, and participated widely in the political process. While this general outline of the development of the American bar is familiar to students of early American history, there have been few attempts until recently to illuminate and explain it.[4]

Analyzing the development of any profession in the colonial era presents difficulties, and no doubt the breadth of the subject has discouraged many from offering a thorough, systematic treatment. There is the problem of determining at what point an occupation should be accorded the status of "profession." Although the law was thought of as a professional activity by many eighteenth-century observers, other modern professions such as teaching, for example, might be hard pressed to qualify. A thornier problem exists in trying to identify members of a professional group. The colonial period was not a time when individuals pursued a single career for their entire lives. The blurring of occupational lines as well as the scarcity of specialized skills enabled people to move easily from one field to another or forced many--at least before 1750--to hold more than one kind of job. The ancient notion of a "calling" was replaced by opportunity, and as Daniel Boorstin points out: "No prudent man dared to be too certain of exactly who he was or what he was about; everyone had to be prepared to become someone else."[5]

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[4]David H. Flaherty, "An Introduction to Early American Legal History," David H. Flaherty, ed., Essays in the History of Early American Law (Chapel Hill, N.C., 1969), 3-4.

[5]Daniel J. Boorstin, The Americans: The Colonial Experience (New York, 1958), 194-195. This problem of identification also existed for other traditionally non-professional groups such as merchants. Jackson Turner Main, The Social Structure of Revolutionary America (Princeton, N.J., 1965), 85-86.

With regard to lawyers, historians have encountered the obstacle of the professionalization of the law itself: a specialized, often mysterious vocabulary and a knowledge of the law which is believed best left to the understanding of other attorneys. Even biographers of leading lawyers and justices shy away from a complete analysis of the subject's legal education and legal practice. The result has been an array of filiopietistic studies of the bench and bar, many of which were written by retired practitioners or judges tracing the origins and glorifying the development of the profession. While these are useful anecdotal and factual sources, they scarcely suffice as histories of the legal fraternity. Thus, while writers have examined the lives of numerous individual men of the law, few have ventured on the more uncertain path of assessing the role of the American bar or its practitioners in the early period.

Traditional works do not go too far beyond the self-serving, lawyer-oriented studies of the profession. Charles Warren's History of the American Bar (1911)--the first serious scholarly history of the profession--was written to show "the influences which produced the great American lawyers." Warren traces in outline the history of the colonial bar from hostility to lawyers in the earliest years, an era he refers to as "law without lawyers," to their popular reception by the eighteenth century. As the American colonies increased in wealth and influence, the position of provincial attorneys improved. The proliferation of colonial colleges at mid-century also attracted aspiring practitioners and improved the quality of the bar. It was during this time as well that colonies began to replace imported English barristers with native lawyers and formed bar associations to curtail the influence of pettifoggers and other

untrained practitioners. Adding to the prestige, if not the quality, of the colonial bar was the increasing number of Americans trained at the English Inns of Court. Commenting on British-trained attorneys and those educated in the provincial colleges, Warren noted:

> it was this superior education and training which fitted the lawyer of the Eighteenth Century to become the spokesman, the writer and the orator of the people when the people were forced to look for champions against the pretensions of the Royal Governors and judges and of the British Parliament.[6]

Warren's study provided at best a skeletal profile of the development of the colonial legal profession, and his general outline has served as a starting point for subsequent writings on the early bar. Although a pathfinding work, Warren's institutional-biographical study extols the virtues of bar associations, higher education, and training at the Inns of Court while ignoring the self-serving ends of these institutions; it ignores as well the social, economic, and political influences on the bar. Likewise, Warren's biographical bent inevitably focuses on those lawyers who became famous as jurists and politicians and who left written records; it does not reveal whether all practitioners aspired to emulate the elite of the profession.[7]

Nevertheless, Warren identified areas such as education, professional associations, and participation in politics which affected the development of the early bar, and he suggested avenues for further

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[6]Charles Warren, A History of the American Bar (New York, 1911), 16-18.

[7]For criticism of the institutional and biographical approach, see Herbert Alan Johnson, "American Colonial Legal History," Alden T. Vaughan and George Athan Billias, eds., Perspectives on Early American History: Essays in Honor of Richard B. Morris (New York, 1973), 264-265.

inquiry.[8] In the Progressive Era--the period in which Warren published his work--jurists such as Louis Brandeis came to rely on "non-legal" sociological and economic data to support their judicial opinions. Yet, legal historians writing in the same period and later did not reflect this change in their studies and continued the pattern of "self-encapsulated" scholarship. Others declined to probe Warren's many generalizations about the early bar, and Roscoe Pound dismissed the provincial fraternity altogether in concentrating on the "formative era" of American law in the nineteenth century. Indeed, the colonial heritage, he asserted, was little more than "Coke's Second Institute and Blackstone."[9]

The most formidable--and possibly the most criticized--representation of the institutional and biographical "school" is Anton-Hermann Chroust's two-volume work, The Rise of the Legal Profession in America (1965). In many ways Chroust follows the path cut earlier by Warren, expanding the latter's information but offering no fresh insights into the history of lawyers. His first volume, "The Colonial Experience," provides a lengthy introduction before breaking into a description of the bars of each colony, much as Warren's study had done. There is little comparison of the colonial bars and few efforts to analyze characteristics common to all the provinces. This, of course, was not the author's purpose. As

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[8]Paul M. Hamlin, Legal Education in Colonial New York (New York, 1939). Hamlin emphasizes the importance of education in the development of the New York bar.

[9]Roscoe Pound, The Formative Era of American Law (New York, 1938), 6-9; David J. Rothman, "The Promise of American Legal History," Reviews in American History, II (1974), 17.

Chroust explained in his foreword, his was an attempt to present a general, narrative history of the profession, a reference work for the reading pleasure and instruction of law students and practicing attorneys, not a work for the critical scrutiny of professional historians. He also conceded that the two volumes lacked a large measure of original research and that much of his factual information as well as his ideas could be challenged.[10]

Such challenges were not long in coming. Chroust's early disclaimer did not spare him either praise or biting criticism from reviewers, one of whom suggested that parts of his first volume should not have been printed.[11] Chroust's publication appeared at a time when the traditional institutional-biographical approach was on the wane. Meeting a better reception were the works of James Willard Hurst, whose studies of legal history in the nineteenth century portrayed an anonymous bar more influenced by than influencing social and legal developments. Law and lawmakers were the creation, not the creators, of change. Factors outside the law such as geography, an ideology favoring the release of individual and collective energy, and the rapid pattern of American growth affected the law and shaped its course. The importance of the bar, in

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[10] Anton-Hermann Chroust, The Rise of the Legal Profession in America, 2 vols. (Norman, Okla., 1965), I, vii-viii.

[11] Flaherty, "Introduction to Early American Legal History," Flaherty, ed., Essays in the History of Early American Law, 15-16. Reviewers who wrote favorably about Chroust's study include: Thomas L. Schaffer, Notre Dame Lawyer, XLI (1965), 126-130; James F. Dreher, South Carolina Law Review, XVIII (1966), 568; William Wirt Blume, Michigan Law Review, LXIV (1965-1966), 954-955; and Thomas Cutshaw, Kentucky Law Review, LV (1967), 730-731.

this respect, was its role in organizing, channeling, legitimizing, and redirecting these changes.[12]

Backhandedly, perhaps, Chroust's volumes might have had a positive impact on scholarship in this field, for they served as the catalyst in an attack on what Morton J. Horwitz called the "conservative tradition" in American legal history. Chroust came under fire--as one critic charged--for expressing more interest in praising the legal profession than in examining the conditions of its growth, for failing to discuss the ideological background of the bar, and for being unnecessarily critical of those forces (early colonial conditions in the seventeenth century), individuals (pettifoggers and utopians), and institutions (the Puritan Church) which inhibited the growth of early bars without assessing the effect these forces exercised on the development of the profession.[13]

Other reviewers, such as Stanley N. Katz, called for a stronger emphasis on the legal history of the colonial and early national periods and a reassessment of the notion of the nineteenth century as a "formative era" in American law.[14] Horwitz held up the works of Chroust and

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[12]James Willard Hurst, The Growth of American Law (Boston, 1950), 18-19; see also Hurst, Law and the Conditions of Freedom in the Nineteenth Century United States (Madison, Wisc., 1956).

[13]Donald P. Kommers, "Reflections on Professor Chroust's The Rise of the Legal Profession in America," American Journal of Legal History, X (1966), 211-213 (hereinafter cited as AJLH); Morton J. Horwitz, "The Conservative Tradition in the Writing of American Legal History," AJLH, XVII (1973), 277-281.

[14]Stanley N. Katz, "Looking Backward: The Early History of American Law," University of Chicago Law Review, XXXIII (1965-1966), 867-869; on this theme, see also Lawrence M. Friedman, "Heart Against Head: Perry Miller and the Legal Mind," Yale Law Journal, LXXVII (1968), 1256-1257.

Pound as examples of lawyer's legal history, the main thrust of which, he said, "is to pervert the real function of history . . . in order to sing hosannas to all the existing pieties of professionalization."[15]

Chroust's critics called for a legal history which would reflect social, economic, and political influences on the bar and attacked the traditional approach for following narrowly circumscribed paths instead of posing broadly conceived questions about the ideological roots of the profession. In some cases the influence of Hurst's works were offered as models for a new colonial legal history, but only a few provided any insights as to how the legal profession should be treated.[16] Nevertheless, one feature was universal: "internal" lawyer-oriented legal history based predominantly on legal sources and addressing itself to strictly legal matters such as rules of pleading in courts, jurisdiction, and law doctrines should give way to an "external" approach which would move the subject out of what Robert Gordon called its "narrow box" and treat it as an element of the wider society of which it is a part--in effect to return legal history, as one authority asserted, to "the mainstream of history and humanistic scholarship."[17]

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[15]Horwitz, "The Conservative Tradition," AJLH, XVII (1973), 277-281.

[16]David H. Flaherty, "An Approach to American History: Willard Hurst as Legal Historian," AJLH, XIV (1970), 222-226.

[17]Ibid., 224-225; Robert W. Gordon, "J. Willard Hurst and the Common Law Tradition in American Legal Historiography," Law and Society Review, X (1975), 11; Milton M. Klein, "Prelude to Revolution in New York: Jury Trials and Judicial Tenure," William and Mary Quarterly, XVII (1960), 439-462 (hereinafter cited as WMQ); Klein, "Clio and the Law: The Uncertain Promise of American Legal History," American Society for Legal History Newsletter, VII (1978), 7-14; Stephen Botein, "Professional History Reconsidered," AJLH, XXI (1977), 60-63; Horwitz, "The Conservative Tradition," AJLH, XVII (1973), 277-281.

A review of the recent literature suggests that the latest studies of the legal profession in colonial America comply with this call for an escape from Gordon's box, and they assess the "external" influences on the early bench and bar. John Murrin's work on lawyers in provincial Massachusetts places the development of the bar within the context of a society-wide process of Anglicization. Using the Bay Colony's bar as a point of reference, Murrin argues that American society after the middle of the eighteenth century became more self-consciously English, rejecting the most simplistic lifestyle which had characterized the early years of settlement. Illustrating the change, the legal fraternity became more professional, adopting more rigorous educational standards, rankings within the bar, and other trappings of the mother country. It was, ironically, the Anglicization of Massachusetts and American lawyers generally which acted as a unifying force for those who became delegates to the Continental Congresses. Thus, the imitation of English norms made revolutionaries out of colonial barristers.[18]

Two other studies of the Massachusetts bar devote most of their analysis to the post-Revolutionary era but begin with the colonial period. Both illustrate further the writing of "external" legal history. Gerard W. Gawalt examines the profession during the eighty-year span from 1760 to 1840. At the outset, he warns that one cannot view the legal fraternity as a unified occupational group but must recognize the

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[18]John M. Murrin, "Anglicizing an American Colony: The Transformation of Provincial Massachusetts" (Ph.D. diss., Yale University, 1966); Murrin, "The Legal Transformation: The Bench and Bar of Eighteenth Century Massachusetts," Stanley N. Katz, ed., Colonial America: Essays in Politics and Social Development (Boston, 1971), 415-449.

internal divisions within the profession on matters affecting its status. He also breaks from tradition in going beyond the institutional setting of the profession and examining the interaction of lawyers with other groups which affected them. Gawalt finds that the Bay Colony's lawyers changed by 1840 from a weak, corporate guild into a powerful, individualistic profession. Beginning with the voluntary self-help efforts of the bar association, lawyers patterned themselves after the English "Gentlemen Practisers of the Law," emphasizing the need for a liberal education, training as legal experts, internal control, and external recognition of their status. In their quest for professionalization, lawyers were little different from other groups such as doctors, scientists, and college instructors, who also sought occupational specialization and placed heavy emphasis on education during this same period.[19]

By the Jacksonian Era a dramatic change had occurred in Massachusetts society. Law replaced religion as the dominant force, and lawyers displaced ministers as the elite social group. Attorneys, however, were far from united and clashed over many aspects of their profession: legal education, the system of the law, purposes of the bar associations, and the nature of the profession itself. Lawyers were also divided geographically, economically, and by occupational specialization. While these divisions within the bar contributed to new professional

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[19]Gerard W. Gawalt, "Massachusetts Lawyers: A Historical Analysis of the Process of Professionalization, 1760-1840" (Ph.D. diss., Clark University, 1969), 1-6; Gawalt, The Promise of Power: The Emergence of the Legal Profession in Massachusetts, 1760-1840 (Westport, Conn., 1979), 4-6, 8-9, 11.

developments, the attorneys' ability to wield power as a corporate group no longer existed.[20]

While individual lawyers carved out brilliant legal and judicial careers after the Revolution, the bar itself--Charles R. McKirdy argues--was in serious trouble. Compared with the vitality of the profession on the eve of independence, lawyers after 1775 were the objects of mounting hostility which found its most violent expression in Shays's Rebellion of 1786 and in the writings of Benjamin Austin, Jr., who employed the pseudonym, "Honestus." Thus, the era from 1760 to 1790 was a period of crisis for the Massachusetts bar--a period in which it lost professional unity and popular respect only to recover both in its support for the Federal Constitution.[21]

Studies of other colonial legal professions have followed similar lines in emphasizing the "external" history of the local bars. John Robert Aiken's examination of early New York lawyers shows how the emergence of the profession in the first decade of the eighteenth century coincided with the decline of utopian thought. Utopian sentiment in Europe and America was basically anti-professional and designed to enable every man to be his own lawyer and handle his own cases before local tribunals in a "lawyerless" society. By the early 1700s utopian thought had declined, and the rise of "Common Law Man" brought with it a need for the reception of technical common law into the colony and the existence of trained

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[20]Gawalt, Promise of Power, 4-6.

[21]Charles Robert McKirdy, "Lawyers in Crisis: The Massachusetts Legal Profession, 1760-1790" (Ph.D. diss., Northwestern University, 1969), 1-3.

professionals to manage and administer it. This dealt a fatal blow to the use of attorneys-in-fact, inquisitorial court procedures, and absolute moral standards of justice.[22]

Less thematic is Alan McKinley Smith's study of lawyers in colonial Virginia. Smith traces the rise of what is certainly one of the largest bars in America to the attainment of professional status on the eve of independence. He finds that although lawyers faced the customary anti-professional sentiment of the seventeenth century, they became a vital element in the growth of the province in the next century. Land expansion, population growth, the needs of rising planter and merchant classes, and the increasing amount of litigation in the courts made the trained lawyer not only necessary but welcome. Smith also concentrates on lawyers' education and reviews statute laws which attempted to identify the attorneys' professional standing in the community. Education for the bar, he claims, was chiefly by the apprenticeship method. Although some Virginians studied at William and Mary and at the Inns of Court, a collegiate education and English legal training were not prerequisites for admission to the bar. Curiously, Smith omits a discussion of legal practice and the lawyers' place in society, both of which might have further testified to the Virginia bar's birth as a profession before the war with England.[23]

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[22]John Robert Aiken, "Utopianism and the Emergence of the Colonial Legal Profession: New York, 1664-1710, A Test Case" (Ph.D. diss., University of Rochester, 1967), 6-7, 10-11, 34-43; see also, Milton M. Klein, "From Community to Status: The Development of the Legal Profession in Colonial New York," New York History, LX (1979), 133-156.

[23]Alan McKinley Smith, "Virginia Lawyers, 1680-1776: The Birth of an American Profession" (Ph.D. diss., The Johns Hopkins University, 1967), ii-v, 140ff.

Alan F. Day's analysis of the bar in early Maryland (1660-1715) focuses attention on the types, backgrounds, education, and careers of the lawyers in order to give a "preliminary assessment" of the process of professionalization. Day's examination of court records centers on the emergence of the first lawyers. These were not professionally trained men of the law but others who conducted their own business in the courts. The largest group was the planter class which alleviated the scarcity of trained attorneys while also supplementing plantation incomes.[24] Following the planters to the courtroom were the clerks, merchant-planters, and entrepreneurs. Only in the years following the Glorious Revolution of 1689 did the professionals emerge to take a preeminent position in the practice of law. By the end of the second decade of the eighteenth century, these trained practitioners began to monopolize the docket and gradually snuffed out the amateur attorneys. What encouraged this process of professionalization, Day concludes, was the upward mobility and economic opportunity offered by legal practice, the tightening of regulations concerning admissions to the bar, the emerging hierarchy of lawyers, and the staple economy of the province which operated on a network of credit arrangements and kept the courts preoccupied with litigation.[25]

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[24]Alan F. Day, "Lawyers in Colonial Maryland, 1660-1715," AJLH, XVII (1973), 145-148. An earlier work which documents the role of planters acting as lawyers in their own behalf in early Maryland is Aubrey Land, "Economic Base and Social Structure: The Northern Chesapeake in the Eighteenth Century," Journal of Economic History, XXV (1965), 639-654.

[25]Day, "Lawyers in Colonial Maryland," AJLH, XVII (1973), 148-165.

These recent explorations in the history of the American legal profession share some common characteristics. While few examine such broad concepts as Anglicization or Utopianism, all deal with the theme of professionalization of the lawyers. While Day and Aiken see the professionals emerging in Maryland and New York within the first two decades of the eighteenth century, Smith, Murrin, McKirdy, and Gawalt do not concede the arrival of a "lawyer class" until shortly before independence, and Milton Klein places the process in the mid-eighteenth century. All of these works analyze such "external" factors as geographical setting, provincial economy, local politics, education, anti-lawyer attitudes, and the lawyers' place in society as part of the process by which colonial lawyers moved from the status of occupation to profession, from the periphery of society in the early eighteenth century to near the center by the eve of the Revolution, if not earlier.[26] All reflect the impact of the writings of Hurst and criticism of the traditional "school." The lawyers in these studies are less the shapers of events and social changes than the benefactors of such conditions. They were men who were responsive to change and who could unite to protect their occupational interests.

The present examination of the legal profession in colonial South Carolina follows these recent historiographical efforts to write "external"

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[26]An alternative approach to the study of the legal profession is offered by Dietrich Rueschemeyer, who emphasizes the sociology of the law and employs a comparative method to trace the development, early system, and modernization of the bars of Germany and the United States. Dietrich Rueschemeyer, Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and in the United States (Cambridge, Mass., 1973), vii-ix, 1-27.

legal history, focusing on those characteristics which influenced lawyers and their work during the late seventeenth and eighteenth centuries. An analysis of the bar in this important British province is long overdue, as is the legal history of the southern colonies.[27] Lawyers in South Carolina constituted a particularly important social class; from it sprang some of the colony's best educated individuals and also its political leaders. The Palmetto colony led all other American mainland provinces in its English-educated attorneys trained in London's Inns of Court. These talented men included Nicholas Trott, James Wright, Peter Manigault, John, Edward, and Hugh Rutledge, Charles Cotesworth, and Thomas Pinckney. Also trained at the Inns were the state's four signers of the Declaration of Independence and three of the state's five signers of the Federal Constitution.

These, however, are the most obvious and not necessarily the most important features of the Carolina bar. To understand the individual attorneys and their celebrated education abroad, one must examine the profession they represented. Otherwise, it may be difficult to fully comprehend the role of education in shaping the careers of the members of the bar and to properly understand their contributions as lawyers in the new nation.

The South Carolina bar developed slowly and remained small throughout the colonial period. Lawyers were banned in the Fundamental

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[27] James W. Ely, Herbert A. Johnson, and Richard Beale Davis, among others, have called for such works. James W. Ely, "American Independence and the Law: A Study of Post-Revolutionary South Carolina Legislation," Vanderbilt Law Review, XXVI (1973), 939-940; Johnson, "American Colonial Legal History," Vaughan and Billias, eds., Perspectives on Early American History, 264-265; Richard Beale Davis, Intellectual Life in the Colonial South, 1585-1763, 3 vols. (Knoxville, Tenn., 1978), III, 1510.

Constitutions of 1669 which stated: "It shall be a base and vile thing, to plead for money, or reward."[28] Nevertheless, attorneys began appearing in court for themselves and for others less than thirty years after the founding of the colony; and a statute of 1694 recognized the existence in the province of those who pleaded on behalf of clients for money. These early attorneys-in-fact--men who represented others in court but who were not necessarily trained lawyers--are largely unknown and were replaced near the beginning of the century by the arrival of men who made the practice of law their primary occupation.

The attorneys who began their practice between 1700 and mid-century were mostly men who came to the province from England, Ireland, Scotland, and the British West Indies. Although little can be discovered about their personal lives or educational backgrounds, many combined law practice with other occupations and local politics and withstood some of the most severe crises of the colony including the Yemassee War of 1715, the overthrow of the proprietorship in 1719 and its chaotic aftermath in the 1720s, and the dislocation caused by King George's War, 1744-1748. These events kept the population small and rendered uncertain the opportunities for extensive profits from any venture. Those who maintained steady practices in this uncertain era made the profession both promising and respectable, for after mid-century Carolina merchants, planters, and professional men channeled their sons into the law using apprenticeships at home as well as sending them to the mother country to study.

The lawyers who began their careers after 1750 were predominantly natives of South Carolina who enhanced the social status of the profession

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[28]Cooper and McCord, Statutes of South Carolina, I, 51.

by their marriages into the merchant, planter, and professional classes from which they had come. The commercial expansion of the colony and the growth of the native population after mid-century firmly established the lawyers' place in Carolina society, and the increase in litigation in the 1750s and 1760s--an indication of the colony's commercial success--made the profession attractive to those who might have shunned it earlier.

By the eve of the Revolution, lawyers had attained a professional status within the community and economically, socially, and politically were able to compete with planters and merchants. Their acceptance after mid-century, their legal expertise, and their knowledge of English laws provided them with the ideological background to shape colonial protests against Parliament in the years preceding independence. In these leadership roles, the attorneys quickly replaced crown-appointed officeholders, but they worked to keep the revolutionary movement within strict legal and constitutional limits. Following the war, they remained in key political and judicial positions, and as statesmen in the new country, they hoped to bequeath to their sons their own identification with law and public service which they believed would best preserve republican principles.

This study examines several elements in colonial society which shaped the development of the legal profession: the court system, the patterns of legal education, provincial politics, and the social structure. The courts were for the attorneys what the churches were for the clergy--their arena, theater, and stage. It was in the courtroom that lawyers earned their reputations or lost the business of potential clients. Some lawyers also held judicial positions in the province, and in the courts occurred some of the most significant political contests of

the colonial era. Chapters I-IV analyze the provincial court system in South Carolina as the environment in which lawyers practiced their profession. What emerges is a series of multi-faceted conflicts into which the lawyers were increasingly drawn. The conflicts were at times between the executive (Governor and Council) and the Assembly for control of the judicial system; at other times, they involved struggles for control of the courts between the chief justices and the House; and in the case of Trott, conflicts arose between the chief justice and the lower house, on the one hand, and between the chief justice and the bar on the other. Although these conflicts were important in shaping the environment in which lawyers conducted their day-to-day affairs, they were essentially elements in the larger struggle by the Assembly for power in the eighteenth century. The emergence of an Assembly in 1692 coincided with the Council's loss of control of the common law courts and its retention only of equity and vice-admiralty jurisdiction. The first chapter traces this development and focuses on executive control of the judicial system in the province.

Chapter II examines the role of the common law courts in both civil and criminal functions. The Carolina court system differed from that of other colonies in the absence of a workable, permanent county court network and the establishment of a tightly centralized legal profession in the provincial capital. In criminal matters, the courts in Charleston differed from their counterparts in England and other provinces in the widespread use of appointed counsel for defendants, the high rate of violent crimes in the metropolis, and the use of the grand jury as an agency for social control, especially over blacks who had no

recourse to the General Sessions Court. In civil actions, court records reveal that the Court of Common Pleas resembled the local courts of the mother country more than the tribunals at Westminster. The overwhelming majority of cases were for debt, and many were settled out of court. Moreover, the incompetence of local magistrates in resolving small debt causes and the failure of the Assembly to print copies of provincial laws worked to keep the judicial system and the bar located in Charleston for most of the period and hindered efforts to extend the law to the back-country.

The growth of the backcountry in the 1760s produced another source of tension within the colony. Citizens of the interior sought political representation, education, and an extension of the judicial system. Chapter III explains the efforts to expand justice to the backcountry, the impact of the Regulator Movement of the late 1760s, and the working of the circuit courts established in 1772. Of the three Regulator demands, only courts was honored before the Revolution. While this did not end conflict between the two sections of the province, it went a long way toward providing a common bond on the eve of the crisis with the mother country.

Unlike other colonies, most of South Carolina's chief justices were trained lawyers who were not as deferential to the Commons House of Assembly as others might have been. Their struggle to control the bench represents another area of conflict and is discussed in Chapter IV. More significant for the role of the chief justices, perhaps, were the constitutional questions raised by several jurists about the proper relationship between the legislative and judicial branches and the

constitutionality of laws passed by the House. These questions precipitated a bitter exchange between one chief justice and the Assembly, and they were not really resolved until 1759 when James Michie ruled that the local courts had no power to decide the validity of colonial statutes.

Chapters V and VI analyze the legal education of the South Carolina bar. The expansion of the economy after the beginning of royal control in 1730, growing litigation, and the need for men trained in the law, made legal practice appealing to many native Carolinians. Although historians have long held that education at the Inns of Court was the chief aspect of legal training for Carolina natives after 1750, the colony's attorneys were, in fact, trained in a variety of ways. Chapter V concentrates on legal education in the colony and demonstrates that apprenticeships with practicing attorneys proved to be more useful to those who engaged in routine courtroom business than residence at the Inns. The wide availability of law books in Charleston after mid-century also made it easier to obtain legal knowledge without leaving home.

Education abroad, examined in Chapter VI, reveals the Carolinians' desire to emulate the best features of English society and to provide their sons with classical British and continental educations. Although many students took their studies seriously, their legal training abroad proved to be less useful than the "gentlemanly" experience of living in the metropolis, visiting the English countryside, and touring Europe. Education abroad was an attempt to Anglicize the colony that had only limited success.

If a diversity of educational backgrounds reveals that the bar was open at one end, court records, inventories of estate, and other

sources indicate that opportunities were limited at the other during most of the eighteenth century. Chapters VII and VIII explore the world of the South Carolina lawyers. Chapter VII relies heavily on court records to illustrate the degree of stratification within the bar. It was relatively easy to enter the profession but difficult to attain a notable degree of success. Many lawyers practiced for only a short time and participated in only a limited number of cases. Yet, unlike other colonies, no rules of court or legislative statutes in South Carolina regulated the number of new attorneys, and some lawyers built moderate practices which enabled them to live in comfort, if not luxury. Although the bar was stratified, it was not static. It represented a fluid elite into which new members might gain entrance through hard work and the right contacts.

The next chapter shows the economic stratification of the bar. Most lawyers after mid-century came from the planter, merchant, and professional classes--those with established wealth--and married into these classes. Few sons of artisans or other economic groups penetrated the ranks of the bar. Law remained a profession which provided much horizontal but little vertical social mobility. Lawyers also became part of the colony's political elite through their membership in the Commons House of Assembly. They also spread their influence and increased their incomes by filling many legal and administrative positions for which their general education and knowledge of the law proved indispensable.

By the eve of the American Revolution, lawyers were an established class along with the planters and merchants with whom they shared power. They possessed the additional advantage of being able to translate the grievances of the colony into legal and constitutional terms. Chapter IX

analyzes the role of South Carolina lawyers in the coming of the Revolution. The crown's increasing use of placemen to fill administrative and judicial positions, to execute court business, administer justice, and carry out the law motivated many conservative lawyers to become Whigs. While Charleston lawyers did not seek these positions for themselves, they came to resent the imported officials and by 1775 saw them as part of a sinister conspiracy to abridge their liberties. These placemen--only a minor annoyance at the time of the Stamp Act troubles--were for Carolinians one of the central issues in the revolutionary crisis; they represented evils as great and as ominous as the Boston Port Bill, the Quebec Act, and Parliament's claim to legislate for the provinces.

Lawyers did not join the revolutionary movement belatedly but participated on both sides of the argument from the start. Three-fourths of the colony's attorneys became Whigs and used their political positions to keep the struggle within the limited constitutional paths their years of education and their attachments to England had taught them to tread. No mass democratic movement occurred, and among men of the law only John Laurens advocated the extension of the principles of the Declaration of Independence to slaves. The chief contributions of the bar were the political leadership it provided during and after the crisis and the recognition by many in the profession that law and public service were the most effective means of preserving the virtues of republicanism forged during the war for independence.

The story of the legal profession in colonial South Carolina adds another dimension to both the history of the colonies and the history of law in early America. Additionally, it can add to the knowledge which

is so urgently required for an understanding of the rise of professional classes in colonial America and their importance in early national life. Given the aspirations of many modern American students for professional careers, it is remarkable how little is known about the historical development of these occupations. As British sociologists Alexander M. Carr-Saunders and P. A. Wilson remarked almost two generations ago:

> This is all the more astonishing inasmuch as the greater skill and responsibility of professional men as compared with members of trade unions render their associations far more interesting and important. Within the ranks of the professions are to be found most of those upon whose special skill the functioning of modern society depends.[29]

Therefore, the main contribution of this work and of others examining the early legal profession, it is hoped, will be to provide the basis of that comprehensive history of the legal profession which Charles Warren attempted over sixty years ago with far fewer resources.

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[29]Alexander M. Carr-Saunders and P. A. Wilson, The Professions (Oxford, 1933), iii.

CHAPTER I

ADMINISTERING THE LAW: COURTS UNDER EXECUTIVE CONTROL

> although the power of Erecting Co[urts] be in their Lordships yett those Courts ought to be bounded and Regulated by Laws made by the assent of the people.[1]

When Governor James Glen, a lawyer by training, told South Carolinians in 1744 that the law was "the very Bond and Cement of Society," he was merely reiterating a belief held from the time of the founding of the colony.[2] The Lords Proprietors who organized the first settlements in the province had stressed an orderly system of courts and justice in their Fundamental Constitutions. Until this "grand model" could be fully established, however, the founders relied on their hand-picked governor and Council to act as a judicial arm of the community and to administer justice to its growing number of inhabitants. The governor and Council maintained executive control of the court system for most of the first three decades of Carolina history, but they soon saw their authority challenged by an increasingly powerful lower house of assembly which tried to place all courts on a statutory basis and undermine institutions established without local assent.

By the end of the seventeenth century, two of the four major courts had freed themselves from Council control, but they did not immediately come under Assembly direction. The Council retained its chancery

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[1] Alexander S. Salley, ed., Journals of the Commons House of Assembly of South Carolina, 1693 (Columbia, C.S., 1907), 16-17.

[2] S.C. Gaz., January 23, 1744.

duties and limited control over the Vice-Admiralty Court, but its supervision over the common law courts was restricted to the appointment of justices. As Carolina society grew, these courts under executive influence faced two conflicts--the struggle for control between the House and the executive and the crossing of jurisdictional lines with the common law courts. Thus, the controversies involving the provincial courts emerge as part of the drama of the House's quest for power in the eighteenth century; and they play an important part in the Assembly's attempt to encroach on the power of the crown on the one hand and the authority of the royal governors and the Council on the other.[3]

Control of the judicial system and the disputes between the chief justices and the lower house raised persistent and, at times, volatile issues in early Carolina politics. The problems were never resolved in favor of either the executive or the Assembly. Each strongly maintained its own authority--the Council to enforce the crown's prerogative, the House to sanction nothing without local approval. With the Chancery and Vice-Admiralty Courts the real conflicts came early in the eighteenth century and were followed by decades of suspicious coexistence. By the time an Exchequer Court was proposed by the governor and an Ecclesiastical Court began operation, however, it was clear that neither could become a permanent part of the judicial system unless laws creating them were enacted by the Commons House of Assembly.

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[3]Jack P. Greene, The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776 (Chapel Hill, N.C., 1963), 330-332, 335-337.

If the Lords Proprietors emphasized any rule of government it was the belief in a well-ordered network of courts and justice controlled by those who had an economic stake in the colony. The Fundamental Constitutions, written by the young philosopher John Locke, secretary to Anthony Ashley Cooper, Lord Shaftesbury, called for the creation of eight supreme courts (many of which did not separate administrative and judicial functions), precinct courts, and county courts with their jurisdictions clearly outlined. One striking feature of the system was the deliberate omission of any mention of a bench and bar trained in the law. Each of the supreme courts, for example, would be composed of one proprietor and six other councilors chosen from among the landed gentry. County courts were to be manned by a sheriff and four justices, precinct courts by a steward and four justices. Article seventy of the document banned lawyers from practicing in the colony and prohibited anyone from arguing another's case unless he took an oath refusing remuneration. Since legal commentaries, the Constitutions continued, "serve only to obscure and perplex," judicial opinions and expositions on any part of the document or laws of the colony were also forbidden.[4]

While these prohibitions were probably lifted verbatim from the Virginia statutes of 1658 and not from James Harrington's Oceana (as once believed), they clearly reflected the utopian political views of the proprietors and their leader, Lord Ashley.[5] He believed--with Locke and Harrington--that stability would return to England when the institutions of government truly reflected the voices of men of property. Shaftesbury

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[4]Cooper and McCord, eds., Statutes of South Carolina, I, 45-51, 52.

[5]Charles MacLean Andrews, The Colonial Period in American History, 4 vols. (New Haven, Conn., 1934-1938), III, 216, 216n.

himself had been a victim of chancery litigation during his childhood and developed an impatience with legal technicalities.[6] Locke expressed his hostility toward the legal profession early in his Second Treatise of Government, stressing that the law of nature was more easily understandable than legal arguments or judicial opinions. Locke said:

> Yet, it is certain ther[e] is such a Law [of nature], and that too, as intelligible and plain to a rational Creature, and a Studier of that Law, as the positive Laws of Common-wealths, nay, possibly plainer; As much as Reason is easier to be understood, than the Phansies an[d] intricate Contrivances of Men, following contrary and hidden interests put into Words.[7]

As a basis for government, the Fundamental Constitutions were never accepted by the settlers, and its provisions never took effect. The proprietors obviously did not intend to impose their program immediately but throughout the seventeenth century referred to the Constitutions as the "grand model"--a long range goal to be achieved later. However, their plan attempted to bind the settlers to a system which would run counter to the economic independence that appealed to most newcomers. Since the colonists considered the Carolina Charters of 1663 and 1665 the basis for their government and believed that all laws must be passed with their consent, they tended to view the Fundamental

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[6]George C. Rogers, Jr., "The First Earl of Shaftesbury," South Carolina Historical Magazine, LXVIII (1967), 77 (hereinafter cited as SCHM); Anne King Gregorie and J. Nelson Frierson, eds., Records of the Court of Chancery of South Carolina, 1671-1779 (Washington, 1950), 3-4.

[7]John Locke, Two Treatises of Government, ed., Peter Laslett, Second Edition (Cambridge, 1967), 292-293. For an interesting comparison of Locke's political philosophy with that of Chief Justice Nicholas Trott, see L. Lynn Hogue, "An Edition of 'Eight Charges Delivered, At So Many Several General Sessions, & Gaol Deliveries: Held at Charles Town . . . In the Years 1703. 1704. 1705. 1706. 1707 . . . By Nicholas Trott, Esq: Chief Justice of the Province of South Carolina'" (Ph.D. diss., University of Tennessee, 1972), 68-71.

Constitutions as unilaterally imposed, detrimental to self-government, and unacceptable. In short, the American experience provided the most formidable stumbling block to the proprietors' grandiose scheme.[8]

The Constitutions were revised in 1682 and again in 1698 in the hope of attracting more settlers, but they never received colonial consent. By contrast the inhabitants of Albemarle in the area that eventually became North Carolina accepted the document with only minor changes as their governmental charter. This included the provision for the establishment of precinct and local courts which never took root in South Carolina. Nor did North Carolina experience the struggles against proprietary control which took place in Charleston. The two Carolinas, then, embarked on separate paths early and were never really united. By the late seventeenth century, the proprietorship had changed drastically. The planners were all deceased except for the Earl of Craven, and proprietary rule might have disappeared altogether had the crown not been preoccupied with both foreign and domestic problems resulting from the Glorious Revolution and had South Carolina's internal affairs been settled.[9]

Despite their failure to win acceptance of the Fundamental Constitutions, the proprietors--through the governor and Council--ordered the establishment of the court system in the colony in the seventeenth century.

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[8]M. Eugene Sirmans, Colonial South Carolina: A Political History, 1663-1763 (Chapel Hill, N.C., 1966), 9-10; Converse D. Clowse, Economic Beginnings in Colonial South Carolina, 1670-1730 (Columbia, S.C., 1971), 18, 22; Clarence L. Ver Steeg, Origins of A Southern Mosaic: Studies of Early Carolina and Georgia (Athens, Ga., 1975), 12-13, 16-17.

[9]Ver Steeg, Origins of A Southern Mosaic, 27-28, 66-67; Sirmans, Colonial South Carolina, 37.

In their executive capacity, the governor and Council acted as sole judicial authority, controlling the courts and administering justice during the first thirty years of the colony's life. Eventually, the Assembly undercut their judicial strength, and they were left with only chancery jurisdiction and appointing powers in the other tribunals. More importantly, the executive officers of South Carolina administered justice in keeping with the proprietors' restrictions against a trained bench and bar. Of the early Council members, only Stephen Bull, an aide to Shaftesbury, was a lawyer by profession. In the new colony, his duties were primarily executive and administrative. There is no evidence that he ever practiced law in the South Carolina courts.[10]

Claiming along with the crown the sole right to establish and regulate courts of justice, the colony's aristocratic founders in 1692 officially appointed the Governor and Council to sit as a court to hear and determine "all the Crimes Disorders trespases and irregularities that have Happened that Justice may be Done according to Law."[11] This, however, was merely a confirmation of an established practice. Actually, the Governor and Council had been functioning as the judicial arm of the province in law, equity, and admiralty as early as 1671. That councilors were to perform court business may be inferred from their oath of office which Council members in 1671 and after were required to take:

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[10]"The English Ancestors of the Bull Family of South Carolina," SCHGM, XXXVI (1935), 36-37.

[11]Alexander S. Salley, ed., Journal of the Grand Council of South Carolina, 1692 (Columbia, 1907), 13-14; W. Roy Smith, South Carolina as a Royal Province, 1719-1776 (New York, 1903), 118-120.

> You shall do equall right to the rich and to the poore, you shall not give or be of Council for favor or affection in any difference or quarrell depending before you, but in all things demeane and behave yourselfe as to equity and justice appertaines.[12]

Councilors were also to observe "from time to time" the rules and directions of the Lords Proprietors, the laws of England, and the laws of the province. The proprietors did not demand absolute conformity to either their own rules or to the laws of the mother country; and the Council's role as a judicial body was similar to that of the Governor and Council of Virginia which also handled cases of both law and equity during the colonial period. Their Lordships never forgot their "grand model" and undoubtedly saw this aspect of the Council's work as temporary until a larger population would require a full-scale system of county and precinct courts.[13]

During the first thirty years of the province's history, the Council acquired a variety of functions in the government of South Carolina. As the governor's Council, it aided him in handling the executive matters of the colony by giving advice and making administrative decisions; as an Upper House of Assembly, it proposed laws to and acted on legislation from the lower house; and in a judicial capacity as law, equity, and admiralty courts, the governor's appointees determined cases in Common Pleas, General Sessions (criminal court), Chancery, and Vice-Admiralty. The Grand Council's multiplicity of functions, however, was not always

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[12]Alexander S. Salley, ed., Journal of the Grand Council of South Carolina, 1671-1680 (Columbia, S.C., 1907), 3.

[13]Ibid.; Smith, "Virginia Lawyers," 10-18; Smith, South Carolina as a Royal Province, 118-120.

made clear in the Council records, and the separation of duties may not have been entirely clear to the councilors themselves. Records reveal that the words "Council" and "Court" were used interchangeably. During the royal periods, 1720-1776, records show that the body retained some of the same functions--as a Council, Upper House, and Chancery Court--but its members were more aware of changing from one role to another than their counterparts in the proprietary era.[14]

As a criminal court, the Council attempted not only to punish crime in the fledgling province but to curb disloyalty as well. Thomas Hart, a yeoman, was convicted of slandering the government and endeavoring to "seduce and evilly to advise" several servants to run away with him. He was ordered to receive thirty-nine lashes "upon his naked back" and to be Common Executioner for a year and a day and to attend all sittings of the Council.[15]

Death sentences were imposed but rarely carried out. Capital punishment would have reduced the small population and certainly the work force in the young country. The Council explained in the case of Richard Nicklin and John Rivers, sentenced to death in 1672 for contriving to run away from the settlement, that it accepted the condemned men's plea of mercy because "the death of the said Prisoners may not only lessen the strength of this Province but [per]haps may not altogether be a matter soe well approved on abroad as mercy in that respect."[16] In its judicial

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[14]Charles E. Lee and Ruth S. Green, eds., "A Guide to South Carolina's Council Journals, 1671-1775," SCHM, LXVIII (1967), 1.

[15]Salley, ed., Journal of the Grand Council, 1671-1680, p. 28.

[16]Ibid., 47.

work, the Council also handled a few cases of support for poor children. In October 1672 the court ordered Peter Argent, the four-year-old son of William Argent, bound to John Coming as an apprentice until age twenty-one because his father could not support him.[17]

The Council's function as a judicial body was not an easy one. An uncertain economy and a small population for the first twenty years made survival--not grand schemes devised abroad--the primary goal. The population did not reach the 1,000 mark until a decade had passed, and although between 3,500 and 4,000 people had settled by 1690, the achievement of some measure of security might have been offset by the sprawling, haphazard pattern of settlement. The colonists had not yet found important staple crops or naval stores to export to England, and the most significant aspect of the economy was the Indian trade in deer skins and furs for European manufactured goods.[18]

The early development of the courts under the Council reflected this. Responding to settlers' complaints in June 1673, the councilors stated that "Since the [pre]sent Necessities of this Countrey are soe great," it would dispense with formal proceedings in cases of small misdemeanors and ordered that any two councilors (where one was a deputy of the Lords Proprietors) could join two or more freeholders to hear cases for killing of livestock, petty larceny, and other minor crimes not involving life, liberty, or property.[19] The Council also tried to ease the

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[17]Ibid., 49.

[18]Clowse, Economic Beginnings in Colonial South Carolina, 63, 67-68, 93-94, 251-252.

[19]Salley, ed., Journal of the Grand Council, 1671-1680, p. 58.

burden on jurors who had to attend the court proceedings in Charleston by requiring that both parties to a complaint appear before the councilor-judges who would decide if the case merited a court trial. That body stated:

> the attendance of Juries for the tryall of accons between party and party seeme to be very burthensome to the people as well as impeding the progress of their husbandry as occasioning other great losses by Indians and Vermine during absence which have moved them to desire an easier and speedier administration of Justice.[20]

In carrying out its judicial function, the Grand Council did not lack advice from the proprietors in England. True to their belief that a government should mirror the views of its leading property holders, their Lordships instructed the governor and Council "to take special care that justice be duly administered, and that it be neither tedious, troublesome, nor troublesome to attain it, for men of prudence and estates have no reason to venture themselves in any place where liberty and property are not well secured."[21] The founders urged their representatives in Charleston to organize the county courts as soon as possible, to dismiss courts in the summer because of the unhealthy climate, and to work toward implementing the "grand model." The founders in London also reviewed the judicial action of the Council, occasionally overturning a provincial decision. In 1689 the proprietors nullified a verdict fining a minister £100 for preaching a seditious sermon and imprisoning him until payment. Their Lordships explained: "As we are told that the sum is more than he is

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[20] Ibid., 67.

[21] Calendar of State Papers, Colonial Series, 44 vols. (London, 1860-1969), IX, 496.

worth and that he has acknowledged his error, we would have you remit all fines beyond the power of men to pay. The law does not allow for it, and Parliament has voted it a grievance here."[22]

The proprietors'--and the Council's--hold on the judicial apparatus of the province did not go unchallenged, however. The Commons House of Assembly complained in 1693 that the offices of sheriff and judge of the court of common pleas were held by one person. While this was consistent with the proprietors' plan in the Fundamental Constitutions, the assemblymen protested further: "That although the power of Erecting Co[urts] be in their Lordships yett those Courts ought to be bounded and Regulated by Laws made by the assent of the people."[23] Here was a challenge not merely to the Council and the proprietors but to the crown's prerogative as well. In a mood to assert itself, the lower house in the same year presented as a grievance to the Lords Proprietors the Council's multiplicity of functions which had caused it acting in one capacity to veto an Assembly measure it had already accepted in another; and the House complained about the founders' nullification of its Jury Act of 1693.[24]

The lower house's challenge also came only three years before an order in council created the Board of Trade, giving the crown additional supervisory powers over the American colonies. The Board demonstrated a decided suspicion of colonial legislative efforts to establish and regulate

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[22]Lords Proprietors to Governor James Colleton, December 2, 1689, ibid., XII, 3, 187, 446-447; For a case involving the nullification of a Vice-Admiralty Court decision, see Sirmans, Colonial South Carolina, 62.

[23]Salley, ed., Journals of the Commons House of Assembly, 1693, pp. 16-17.

[24]The House's measure would have limited the sheriff's power to provide the names for jury selection. Ibid., 17, 29-30.

provincial courts, and it tried to preserve those judicial powers (mostly chancery and ordinary) already exercised by the Governor and Council.[25]

It was also during this period that the Governor and Council relinquished most of their judicial power. Unfortunately, fragmentary Council and court records for the 1690s and early 1700s make it difficult to know exactly when and how the transformation took place. Council Journals end in 1692 and do not resume until 1717 followed by another gap until 1725. For the following half-century the Journals for the most part are complete. During the twenty-five year hiatus between 1692 and 1717 the Council lost control of the Court of Common Pleas, the Court of General Sessions, and to a lesser extent the Vice-Admiralty Court. The group meeting in 1717 exercised no judicial authority other than its chancery responsibilities.[26]

The lower house's complaint in 1693 that the sheriff and judge of the Court of Common Pleas in Berkeley County (Charleston) were one and the same and its assertion that courts should be created by consent of the inhabitants indicate that a civil court separate from the Governor and

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[25]Clowse, Economic Beginnings in Colonial South Carolina, 114-116; Joseph Smith, "Administrative Control of the Courts of the American Plantations," Flaherty, ed., Essays in the History of Early American Law, 285. The Court of Ordinary originated in England in the thirteenth century and operated as an Ecclesiastical Court handling many cases which were later handled by civil authorities. When the office was officially transplanted to South Carolina in 1685 no ecclesiastical duties were listed. The governor was vested with the title and authority of ordinary and in that capacity controlled the probate and administrative records of the colony. J. W. Guest, "The Ordinary Court in South Carolina," Selden Society, VI, 40-42; Alexander S. Salley, comp., "Records of the Court of Ordinary," SCHGM, VIII (1907), 164.

[26]Lee and Green, eds., "Guide to South Carolina's Council Journals," SCHM, LXVIII (1967), 1-13.

Council existed by that time, although there was no statutory provision for it. The House continued to complain against multiple office-holding practices, and in 1698 the proprietors appointed the first chief justice, Edmund Bohun, at a salary of £60 per year.[27] Thus, although the records of the Court of Common Pleas do not begin until 1703, it is likely that the court began operating outside Council a full decade earlier. What no doubt occurred is the creation of a separate court by the Council around 1693 with the appointment of Thomas Smith as sheriff and chief judge of the court in Berkeley County, followed four years later by the appointment of Jonathan Amory as attorney general to prosecute cases on behalf of the crown and the proprietors.[28] This conformed to the founders' desire as expressed in the Fundamental Constitutions and reiterated in 1685.[29] The court required no statutory basis--although the House took issue with this--because the Governor and Council, acting as representatives of the Lords Proprietors, assumed the authority to establish and regulate courts of justice. The importance of the Council's exclusion of the Assembly from establishing this court was not lost on the latter body, and in 1700 and 1701 it attempted to place the Vice-Admiralty Court on a statutory footing and, under the leadership of Nicholas Trott, reform its structure.[30]

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[27] Smith, South Carolina as a Royal Province, 121.

[28] Calendar of State Papers, Col. Ser., XIV, 72, XV, 112.

[29] Lords Proprietors to Governor Joseph West, March 13, 1685, ibid., XII, 13.

[30] Alexander S. Salley, ed., Journals of the Commons House of Assembly of South Carolina, 1700 (Columbia, S.C., 1924), 6, 9; Smith, South Carolina as a Royal Province, 121-122.

When the eighteenth century opened, then, four major courts existed in colonial South Carolina. In addition to the two common law courts, a Court of Vice-Admiralty (separate from the Council) opened in 1697 with the appointment of Joseph Morton as judge, and the Court of Chancery still consisted of the Governor and Council. A Court of Exchequer was proposed but never established, and an Ecclesiastical Court under the jurisdiction of Commissary Alexander Garden held only limited authority. Except for the power of appointing chief justices and assistant justices, executive control of the courts was restricted almost entirely to equity jurisdiction. To a lesser degree, the governors retained some control of the maritime court inasmuch as their commissions included the title of Vice-Admiral for the colony. This power, nevertheless, was mostly theoretical; directives and legislation affecting vice-admiralty jurisdiction came less from the Council and Assembly than from Whitehall and Parliament. Both courts under executive control shared two common problems: In the exercise of their authority they frequently blurred the distinctions between their power and that of the common law courts, and they occasionally incurred the displeasure of the Assembly which attempted to bring them under its control.

Of the four courts in provincial South Carolina, the Court of Chancery remained exclusively under the auspices of the governor and Council throughout the entire colonial period. Its establishment in America was an effort to transplant the basic features of the English High Court of Chancery which had its origins in the medieval era. The functions of the chancery and common law courts in the mother country were not clearly separated until the fourteenth and fifteenth centuries

when the High Court emerged as an independent judicial unit. This court exercised the equitable jurisdiction of the chancellor who--in theory at at least--derived his powers from the King as the fount of all justice. To some extent the creation of the equity court was a response to the rigidity of the common law which during the thirteenth century focused only on a narrow range of problems and would not expand. Chancery jurisdiction developed primarily for three main purposes: (1) to remedy defects in the common law; (2) to supply omissions in the jurisdiction of the common law; and (3) to afford procedures not available at law such as writs of subpoena, interrogatory process, discovery of evidence, written pleadings, judgment without a jury trial, injunctions, specific performance, leeway for errors in pleading, imprisonment for contempt, ability to act in persona rather than ad rem, powers of account, and administration of estates.[31]

Records of the South Carolina Chancery Court reveal that its operation was limited to the third category. Among those many procedures, the Carolina tribunal most often provided for administration of estates, writs of subpoena, injunctions, and the taking of oaths. Cases providing guardians for infants, involving the determination of sanity for those believed mentally ill, and specifying terms of separation between husband and wife were rare but not uncommon. Like other courts in the province, the chancery judges appointed attorneys for indigent persons who entered a plea in forma pauperis. The court also held that free blacks could

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[31]Stanley N. Katz, "The Politics of Law in Colonial America: Controversies over Chancery Courts and Equity Law in the Eighteenth Century," Perspectives in American History, V (1971), 258-260.

bring suits in the equity branch and that they could testify under oath.[32]

This executive tribunal never expanded these limited functions. Chief Justice Benjamin Whitaker complained that although the local court had been modelled on the High Court of Chancery in England, it proceeded "on the equity side, not on the plea side"--or in ordinary jurisdiction which would entitle crown officers to inquire and enter into escheated lands (the reversion of property to the sovereign as the ultimate proprietor of realty when there was no legitimate heir).[33]

A key factor contributing to the limited role of the court was the uncertainty and confusion about its actual function in a frontier environment. Councilors often failed to differentiate between chancery and common law jurisdiction. This drew criticism from John Rutledge, who warned his younger brother, Edward, when the latter entered the Inns of Court in 1769: "Distinguish between your readings of law and equity, and don't confound the two matters--they are kept very distinct in the Courts in England, though here blended together very often and very ridiculously."[34] Lieutenant Governor William Bull II echoed this sentiment a year later when he told the Earl of Hillsborough, president of the Board of Trade and Secretary of State for the colonies, that since most of the

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[32]Donnan v. Carne, Mayrant v. Williams, 1764, Gregorie and Frierson, eds., South Carolina Chancery Court Records, 522, 526.

[33]Benjamin Whitaker to Henry McCulloch, February 3, 1743, Records in the British Public Record Office Relating to South Carolina, 1663-1782 (transcripts), 36 vols. (microfilm), XXI, 133-134 (hereinafter cited as BPRO/SC).

[34]John Rutledge to Edward Rutledge, June 30, 1769, quoted in John Belton O'Neall, Bench and Bar of South Carolina, 2 vols. (Charleston, S.C., 1859), II, 125.

councilors were untrained in the law, relief in equity could not be obtained as easily as he wished.[35] Even lawyers, however, did not escape the element of confusion over the role of the Chancery Court as this ambiguous description by an unknown lawyer at mid-century attests:

> This Court does and acts in many Cases (in Equity) where no relief is to be had at Law, that is to say, in cases where the Law has no Cognizance, as in the case of trusts. And this Court is of great use to discover frauds & c. by obliging persons to answer on Oath which the Law does not do. It also abates the rigour of Laws in Cases where particular persons are injur'd, for tho' it be a true maxim that the Law doth no injury Yet as Laws can't comprehend all Cases, so it may and often does happen that the particular Circumstances of Cases makes it so that the Law which was fram'd upon a General good Intent proves of ill Consequence to some particular Case that is yet Included within the Letter of the Law--the business thereof of Equity is to abate this rigour of law as it may justly Enough be call'd with respect to such particular Cases.[36]

Suspicion and hostility from the Stuart era also followed the Chancery Court across the Atlantic. By the late sixteenth century the court in the mother country became the target of opposition to the Stuarts because it was too closely tied to the crown's prerogative. Opponents attacked the use of chancery positions as royal patronage, the delay and expense of proceedings, and the increasing formalism of equity litigation. Puritan legal reformers tried to make changes in the court during the Interregnum, and some hoped to abolish it altogether. The court survived these attacks largely because most people--as their descendants in America would discover later--objected only to the administration of the

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[35]Bull to Hillsborough, November 30, 1770, BPRO/SC, XXXII, 376.

[36]Anne Simons Deas Notebook, South Carolina Historical Society, Charleston, S.C. (Hereinafter cited as SCHS.)

court rather than to the character of equity which the common law courts were not capable of incorporating.[37]

The Carolina court faced a similar test shortly after the fall of the proprietorship when the House tried to gain control of the equity functions from the executive. Earlier, the Assembly had challenged the court's authority when it refused to permit a legislator subpoenaed by the councilors to attend a session of the court while the House was sitting.[38] The lower house more clearly reflected Stuart biases toward the tribunal when it drafted the abortive Court Act of 1720 which not only tried to place the court on a statutory basis but attempted to remove the equity function from the Governor and Council as well. As the English critics of chancery had done earlier, the South Carolinians exalted the common law "as the support and Bulwark of the Peoples Liberties" over equity. The measure attacked the Governor and Council for permitting appeals from the Court of Common Pleas after a fair trial at law and for questioning, determining and disposing of lands, buildings, and property of the inhabitants "under small & frivolous Pretence of Error in the proceedings and Moderating the Rigour of the Common Law."[39]

Angered by the overlapping functions of chancery and common pleas, the assemblymen in the act of 1720 provided that the governor appoint a

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[37]Katz, "Politics of Law in Colonial America," Perspectives in American History, V (1971), 260-261.

[38]Alexander S. Salley, ed., Journal of the Commons House of Assembly of South Carolina, 1707 (Columbia, S.C., 1940), 28-29.

[39]Engrossed Acts, 1720, SCDAH.

chancellor to hold office at the crown's pleasure to determine all suits in equity except in appeals and writs of error. The act declared illegal all such writs, appeals, injunctions, and orders of restraint from the Governor and Council. If one had a matter to settle in equity, he should appear before the chancellor and not before the governor, and his appearance in Chancery Court should come before a decision at law and not after except in rare cases "for which the partys so seeking relief shall produce like examples from good reports of Books allowed for Law in Great Britain and no Injunction for Staying of Suits or Executions shall hereafter be granted out of the Court of Chancery in Course or by surprise as heretofore hath been used." Expressing displeasure at the delays in equity proceedings, legislators required the chancellor to keep his court open in order to finish business and to hold his court the first Tuesday six months out of the year. The act made appeals to the Governor and Council difficult at best. One could appeal a case only in amounts exceeding £100 sterling (between £500 and £700 Carolina money). The appellant had to act within two weeks of the meeting of the Assembly and had to post security for double the amount contested. If the decision was upheld the loser had to pay the victorious party £20 sterling "for such unjust Vexation." Appeals to the King and Privy Council could be made only in amounts of more than £500 sterling, thus rendering appeals across the sea virtually unthinkable.[40]

By attacking the Governor and Council but not abolishing the Chancery Court itself, the Assembly in passing the Court Act of 1720

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[40]Ibid.

illustrates the point made by Stanley N. Katz that the controversy over these courts in eighteenth century America stemmed from a hostility toward the way they were administered by governors and councilors and not from a mistrust of equity itself which colonists believed necessary as a complement to the common law.[41] The act of 1720 was passed by rebellious assemblymen meeting in a tavern after the governor had dismissed them and was never approved in London, although it was not officially overturned until 1750. In 1721 the House restored equity jurisdiction to the Governor and Council along with their power to grant original and remedial writs. This act was amended several times, but it remained the statutory basis for the court throughout the colonial period.[42]

For the remainder of the era, the court was plagued by no greater problem than the lack of a quorum among the Council members. Since some councilors spent a large amount of time in London, a Court Act of 1746 stipulated that a majority of councilors actually living in the province could decide equity matters.[43] Quorum problems in 1770 forced the court

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[41]Katz, "Politics of Law in Colonial America," Perspectives in American History, V (1971), 260-261.

[42]A provision of the 1720 legislation denied the governor power to remove assistant justices. This was challenged by Governor James Glen in 1749 when he suspended an assistant justice from office. The judge, however, refused to vacate his seat on the bench "aledging that no Instructions from the Crown, could give a Governor power to suspend him as there was a Law of the Province against it." Glen explained the circumstances of the enactment of the measure to the Board of Trade and asked for a repeal of the act. The Board's attorney, Mathew Lamb, recommended nullifying the law, and the Board informed Glen in November 1750 that the act was no longer in force. Glen to Board of Trade, November 23, 1749, BPRO/SC, XXIII, 432-434; Lamb to Board of Trade, May 30, 1750, Board of Trade to Glen, November 15, 1750, ibid., XXIV, 4-5, 34-35, 169; Cooper and McCord, eds., Statutes of South Carolina, VII, 192.

[43]Cooper and McCord, eds., Statutes of South Carolina, VII, 192.

to adopt a rule prohibiting attorneys who were members of the Council from practicing in chancery because "the Court hath commonly not only lost the Benefit of their Assistance as Members; but Causes have also been frequently postponed and putt off for want of a sufficient Number to form a Court."[44] After the Revolution, the House removed equity jurisdiction from the Governor and Council and placed it in the hands of three appointed chancellors who were trained in the law.[45]

The Vice-Admiralty Court in the province faced similar problems. It came into conflict with the Assembly on several occasions, and its jurisdiction in some matters overlapped that of the common law courts. The operation of the court as a unit independent of the Grand Council began in 1697--shortly after the Board of Trade created such courts in all the provinces. Technically, governors as Vice Admirals had the power to supervise the crown's interest in maritime matters. The most important of their duties was making appointments to the courts. Having commissioned a Vice-Admiralty Court judge and his assistants, governors rarely interfered with the normal functions of the tribunals. These salt-water courts were guided by civil instead of common law, which gave them power to determine cases without juries. However, although the use of juries conflicted with admiralty practice, the Carolina court employed both grand and petit juries in piracy cases during the judgeship of Nicholas Trott.[46]

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[44]Gregorie and Frierson, eds., South Carolina Chancery Court Records, 579

[45]Ibid., 7-9; Cooper and McCord, eds., Statutes of South Carolina, VII, 208.

[46]Carl Ubbelohde, Vice-Admiralty Courts and the American Revolution (Chapel Hill, N.C., 1960), 6-7, 12-15; Smith, South Carolina as a Royal Province, 147-148; Calendar of State Papers, Col. Ser., XVI, 112; Records of the Vice Admiralty Court of South Carolina, 1716-1763, 3 vols., I (1716-1718), 28, Federal Records Center, East Point, Ga.

Jurisdiction extended to a variety of areas chief among which were settling disputes between merchants and seamen, prosecuting offenders of the trade and navigation laws, acting as prize courts in wartime to condemn enemy vessels and their cargoes, and deciding a multiplicity of mercantile litigation including relations between seamen and their officers, seaworthiness of damaged ships and cargo, and judging crimes on the high seas.[47]

In South Carolina, the maritime cases fell into four separate categories: mercantile affairs, violations of the navigation acts, prize cases during King George's War (1744-1748) and the French and Indian War (1754-1763), and criminal actions involving piracy and crimes on the high seas. Prize cases were easily the most numerous, representing more than one-third of the 149 recorded in the court's journals. Most of these occurred during the last two colonial wars, but they were certainly not uncommon throughout the period which no doubt illustrates the continuing hostility between the southernmost British province (until 1732) and the other European powers with colonies to the south (Spanish Florida) and west (French Louisiana). At least eight of the cases in this category involved the recovery of British ships which had been captured previously by Spain or France. The colony's geographical location was probably one reason for the high number of prize cases, and its close ties and frequent travel between Charleston and the British West Indies might well have been another. By contrast, in its sister plantation to the north, prize cases ranked third behind violations of the navigation acts and ordinary

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[47]Ubbelohde, Vice-Admiralty Courts and the Revolution, 6-7, 12-15.

mercantile matters. Although the North Carolina Vice-Admiralty Court records cover a shorter period (1729-1759) and fewer cases (60), the maritime court at Albemarle tried only six prize cases and eight recovery cases. During King George's War alone, the tribunal at Charleston heard eighteen prize and six recovery cases.[48]

Less exciting were the routine mercantile actions which constituted almost one-third of the total. These involved the assessment by court appointed panels of the seaworthiness of ships and cargoes damaged at sea, wage disputes between seamen and their officers, and other conflicts between merchants and ship owners or captains. Violations of the trade laws and crimes on the high seas each represented about one-seventh of the total. Broken down, the court's work between 1716 and 1763 may be summarized statistically in the fashion shown on the following page (Table I).

Cases arousing the most controversy and provoking the greatest challenges to the court's authority were those involving alleged violations of the navigation acts. The provincial maritime courts were created to curb smuggling and ensure the proper enforcement of the trade laws. Customs collectors and crown officials frequently complained that law judges would not provide the necessary assistance to fully prosecute violators and that local juries in common law courts were reluctant to condemn the property of their peers who were accused of engaging in the illicit traffic. Such problems influenced the Board of Trade in 1696 to

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[48]South Carolina Vice-Admiralty Court Records, 1716-1763, Fed. Recs. Cent. For North Carolina, see Carl Ubbelohde, "The North Carolina Vice-Admiralty Court, 1729-1759," North Carolina Historical Review, XXXI (1954), 524.

TABLE I

SOUTH CAROLINA VICE-ADMIRALTY COURT, 1716-1763

Types of Cases		Number		Percent of Total	
I.	Mercantile Affairs		48		32
	Damaged ships	21		14	
	Seamen's wages	18		12	
	Merchant-owner disputes	6		4	
	Unclaimed goods at sea	3		2	
II.	Navigation Acts		24		16
III.	Prize/Recovery Cases		53		36
IV.	Crimes at Sea		24		16
	Piracy	14		9	
	Assault	5		4	
	Murder	2		1	
	Theft at sea	2		1	
	Mutiny	1		1	
TOTALS			149		100

Source: South Carolina Vice-Admiralty Records, 1716-1763, Federal Records Center, East Point, Georgia.

grant the salt-water courts (which used no juries) equal jurisdiction with the common law courts in trade and revenue cases.[49]

Nevertheless, the enforcement of the trade laws presented opportunities for corruption. Nicholas Trott's attempt to limit the tribunal's powers was in part a response to Judge Joseph Morton's involvement with Governor Joseph Blake, Customs Collector Edmund Bellinger, and a clique of merchants who tried to use the navigation laws to their personal advantage. Seizures would take place because of violations of the most trivial procedures. Ship and cargo would be condemned, and the plaintiffs would receive their share for informing and aiding in the prosecution of the case. Merchants selected by the courts to value the cargo might deliberately underestimate it so friends could purchase goods cheaply and sell them at a profit. Appeals were expensive, time-consuming, and a scattered, undervalued cargo always protected the profits of the clique.[50]

Such a situation occurred when the Cole and Bean Galley sailed into Charleston harbor in December 1699. As one of the illustrious maritime cases in the colonial period, it involved not only the administrative appointees of the proprietorship but the province's leading lawyer and literary figure of the early eighteenth century, Nicholas Trott. The story affords an insight into the workings of the court and the possibilities for corruption that enforcing the trade laws encouraged. Trott apparently had promised to prosecute the case for the crown but withdrew

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[49] Ubbelohde, Vice-Admiralty Courts and the Revolution, 15; Smith, South Carolina as a Royal Province, 147-148.

[50] Clowse, Economic Beginnings in Colonial South Carolina, 93; Stuart O. Stumpf, "The Merchants of Colonial Charleston, 1680-1756" (Ph.D. diss., Michigan State University, 1971), 55-57.

when he discovered that the ship had been seized because of a technical error. Its certificate of registration from customs in London did not specifically mention the laws which made the certificate valid. Trott--a proprietary appointee--also claimed he could not prosecute in the maritime tribunal without a commission from the king, and he told Bellinger, collector of customs and a deputy judge of the court, that "All that they could justly doe was but to Oblige them to give Security to produce a Register in better form." The ship was worth several thousand pounds and to insure the appropriate verdict Blake and Bellinger promised Morton (who was Blake's brother-in-law) £136.15.6 in fees. This was a much greater sum than the amount prescribed by the Assembly which he would have received had the ship's master been acquitted. When the trial began Trott sat in the audience and, disagreeing with Morton's procedure, suggested some motions in favor of the owners. Morton ignored him, and when the judge condemned the vessel, Trott urged the owners to appeal the decision. Morton tried to block the appeal, but it was granted by an Order in Council on October 22, 1700. Nine months later, the Privy Council reversed Morton's decision.[51]

Blake, Morton, and the Council continued to irritate Trott. The attorney had been retained in the Court of Common Pleas by the widow of Jonathan Amory, late attorney general, in an action by Blake, Morton, and James Moore, whom Blake had recently appointed as acting chief justice. Trott asked for an arrest of judgment stating that Moore could not decide a case in which he was one of the plaintiffs, and he argued that since

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[51]Trott to Board of Trade, April 7, 1702, BPRO/SC, IV, 153, V, 48-51.

Blake had not been officially commissioned governor, he could not maintain an action which named him as governor of the colony. For this, Trott was accused of sedition and "A Notorious breach of His Majesty's peace." He was jailed and disbarred by Moore and suspended as attorney general and naval officer by Blake. His appeal to the Board of Trade in April 1702 was rewarded four months later when that body ordered Trott reinstated to all his official positions.[52]

Trott retaliated through the political process. As Speaker of the House in 1700 and 1701, he led a campaign to reform the maritime tribunal. Smarting from his encounter with the court, Trott tried to pattern the colonial body after its English counterpart. Had he been successful, Trott would have removed violations of the trade and navigation acts from Admiralty and placed them within the jurisdiction of a Court of Exchequer. His plan would have required informers to give security and pay damages if their information proved false and would have provided jury trials in the same manner as in the common law courts.[53]

The Assembly challenged the court's powers in other ways. Former Governor Robert Quary told the Admiralty in London that even though Morton had been an excellent choice as judge, the House held his authority in check while an illegal trade between Carolina and Curacao and St. Thomas

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[52]Ironically, Trott was later accused of sitting in judgment of cases in which he had provided legal advice. Ibid., 51, 61-62; Alexander S. Salley, ed., Journals of the Commons House of Assembly, 1702 (Columbia, S.C., 1932), 21.

[53]Randall Bridwell, "Mr. Nicholas Trott and the South Carolina Vice Admiralty Court: An Essay on Procedural Reform and Colonial Politics," South Carolina Law Review, XXVIII (1976), 202-213.

flourished "which nothing can prevent but ye care and diligence." Quary further protested that the lower house had passed measures to regulate activities of the court and limit the powers of the judge and that some members of the Assembly had intercepted Morton's letters to England exposing their actions.[54]

Despite Trott's work, the Assembly's efforts to control the Vice-Admiralty Court never succeeded. Although the House in 1748 deplored "the exorbitant Fees" of the tribunal, it could not agree on a new fee schedule.[55] Twenty years later a grand jury found the court's charges still too high and presented as a grievance "the want of a law to prevent the exorbitant expenses that owners and masters of vessels are frequently run to in this Court of vice-admiralty, for trivial causes, to the great detriment of trade and navigation of this province."[56]

Bribery by customs officials provided another avenue for diverting the trade acts to personal advantage. Although few cases were actually reported, they did exist. In 1767, merchants Gabriel Manigault and Charles Neufville sued Daniel Moore, the collector of customs in Charleston, for having demanded sums of forty shillings from several merchants as fees, gratuities, or rewards for signing indigo certificates. The merchants asked that Moore be suspended from office. In his defense,

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[54]Robert Quary to the Lords of Admiralty, August 28, 1701, January 22, 1702, BPRO/SC, V, 27-28; Alexander S. Salley, ed., Journals of the Commons House of Assembly of South Carolina, 1701 (Columbia, S.C., 1925), 18, 21.

[55]J. Harold Easterby, ed., Journal of the Commons House of Assembly, 1748 (Columbia, S.C., 1961), 24, 37, 41, 59, 73.

[56]S.C. Gaz., May 9, 1768.

Moore contended that the payment of such fees had been required by his predecessors in office and also by the naval officer and comptroller for signing such certificates. Judge Egerton Leigh found for Moore, and the plaintiff's attorneys, Charles Pinckney II and James Parsons, appealed the decision. Two years later Moore was suspended because of additional complaints, but the outcome of the appeal is not known.[57]

In prosecuting violations of the navigation acts, the Vice-Admiralty Court inevitably crossed jurisdictional boundaries with the Court of Common Pleas. What might be surprising is that this did not occur very often, and the few cases which brought the authority of the two courts into conflict took place during periods of turmoil within the province. That more maritime cases did not find their way to the common law courts could be attributed to the fact that the vice-admiralty courts in America held exclusive jurisdiction in only a limited area--cases involving the forest preserves of the Royal Navy which were to be tried in the courts of New York and Boston. In customs cases, officers could choose the tribunal most compatible with their needs. Unlike the mother country, however, where revenue matters were tried before juries in the common law Court of Exchequer, in America the law courts never gained a complete mastery over judging revenue and trade matters, and Courts of Exchequer rarely existed.[58]

In South Carolina, the conflicts over jurisdiction occurred before and shortly after the overthrow of the proprietorship, the last

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[57] South Carolina and American General Gazette, September 18, 1767.

[58] Ubbelohde, Vice-Admiralty Courts and the Revolution, 16-19.

case of this kind appearing in 1723. The first such incident occurred in 1698 when Chief Justice Bohun granted writs of habeas corpus to two seamen being held for trial in the newly established maritime court. Although no charges were formally made and the seamen were later released, Bohun used the episode to try to assert his authority over the Vice-Admiralty Court.[59]

Fifteen years later in the Court of Common Pleas, Richard Wigg, who held the titles of surveyor and searcher, informed on Joseph Swaddle, master of the ship Batchelor Adventure, for illegally importing twenty tons of logwood valued at £400 without going through customs. Attorneys John Robinson and George Rodd represented Swaddle and in separate statements argued that the case was outside the jurisdiction of the Court of Common Pleas and within the proper sphere of the Vice-Admiralty Court. While it is somewhat strange that the defendant would seek to forego the possibility of eliciting the sympathy of a twelve-man jury, it is even more ironic that Attorney General George Evans fought to keep the case from being removed to the salt-water tribunal and argued that the petitions by the defense attorneys were "insufficient in the law to oust the Court here of its Jurisdiction." Justice Robert Daniell, who acted in the absence of Chief Justice Trott, agreed with Evans. To further compound the irony, however, the jury acquitted Swaddle in December 1714; and for all their protests the attorney general and surveyor might have fared better before the maritime judge and his deputies.[60]

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[59]Bridwell, "Mr. Nicholas Trott and the South Carolina Vice-Admiralty Court," South Carolina Law Review, XXVIII (1976), 188-189.

[60]Wigg v. Swaddle, 1714-1715, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

Others accused of transgressing against the trade laws preferred a jury trial. This is illustrated by two cases in 1723. The defendants in both actions steadfastly argued to have their trials removed from the Vice-Admiralty Court when there was little question of which tribunal had proper jurisdiction. Nathaniel Montgomery, commander of the brigantine Happy Return, petitioned Chief Justice Charles Hill to have his case--an information that he had illegally traded with the East Indies--tried in the common law court stating simply that it was not a proper maritime matter. Hill issued a stay of jurisdiction which Judge William Blakeway and Advocate General Benjamin Whitaker ignored. Montgomery promptly filed another petition charging Blakeway and Whitaker with contempt for pressing the case after Hill's order.[61] At the same time Charles Walker, master of the sloop Two Brothers, petitioned Hill through his attorney Robert Hume to keep his case out of the Vice-Admiralty Court. Walker had found wreckage of a ship in the Grand Bahama Bank and had salvaged much of the cargo and equipment. Walker carried his salvage to Charleston to sell without going through customs or without giving an account to the provincial naval officer. Whitaker brought a libel against him in the maritime court, but Walker claimed that since he sold the salvaged goods on land the common law court should have jurisdiction.[62] Unfortunately, the fragmented court records of this period provide no verdict in either case. Both incidents were clearly maritime matters which warranted trial in the Vice-Admiralty Court. Both as clearly, however,

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[61] Whitaker v. Montgomery, 1723, ibid.

[62] Whitaker v. Walker, ibid. Hume's petition is the only surviving document.

reflect the distrust by mariners, merchants, and ship owners of a trial without jury in the maritime bodies and a strong preference for the safety and sympathy of twelve peers in the common law court.

While the Vice-Admiralty Court was accepted in South Carolina, it was never really trusted and never placed on a par with the common law courts. Like the provincial Chancery Court, its members owed their appointments to the governor who represented the royal prerogative. Attempts to strengthen the power of the court following the French and Indian War rendered the salt-water tribunals even more suspect to the colonists who were increasingly fearful of the potential power this court might wield even though these anticipated fears might have been exaggerated.[63] The central crisis facing the court during this period, then, was one of credibility; and despite the fact that it was administered by the capable attorney Egerton Leigh, the court's reputation in the pre-Revolutionary years sank beyond recovery. The primary blow to the tribunal's esteem came during the conflict which occurred with the seizure of three ships owned by the merchant Henry Laurens on technical grounds and the ensuing feud between Laurens and Judge Leigh. The entire episode has been ably described in several other sources, but what is significant for purposes of this study is the impact of the case on the Vice-Admiralty Court of South Carolina.[64] As a result of the various

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[63]Carl Ubbelohde claims that colonists generally assumed that widespread seizures would take place. Merchants would be hauled to the new Vice-Admiralty Court at Halifax, Nova Scotia, for trial without jury; but by the spring of 1765 the new arrangement proved much less dangerous than colonists had believed. Ubbelohde, Vice-Admiralty Courts and the Revolution, 46, 60, 64-66.

[64]For full accounts of the trial and its impact on the lives of the participants, see ibid., 105-114; Robert M. Calhoon and Robert M. Weir, "The Scandalous History of Sir Egerton Leigh," William and Mary Quarterly,

judicial positions Leigh held in the colony--judge, attorney general, and a lawyer giving advice in the case--he was forced to choose between his judgeship of the court and his post of attorney general.[65] Since Leigh well understood that the judgeship brought little profit and a load of opprobrium, his choice was simple; however, he could never undo the damage to his reputation and that of the court. Thereafter, the Vice-Admiralty Court--never popular in the first place--became the target of ostracism by the legal profession. The printer of the South Carolina Gazette remarked in May 1769 that since Leigh's resignation on September 19, 1768, the position of judge of the maritime court had been unfilled, "no Gentlemen of the Law having been found that would accept it." Finally, Governor Charles Greville Montagu persuaded attorney James Simpson to take the appointment.[66] At the same time another printer lamented: "The want of a Judge in this Court, we have been told, occasioned a Schooner, seized in February last to be given up without being brought to Trial."[67]

Although Simpson--like Leigh--became a loyalist, he never had the opportunity to bring the court into direct conflict with the revolutionary

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3rd Ser., XXVI (1969), 47-74; Robert M. Calhoon, The Loyalists in Revolutionary America (New York, 1965), 76-84; H. Hale Bellot, "The Leighs in South Carolina," Transactions of the Royal Historical Society, 5th Ser., VI (1956), 178-179; David Duncan Wallace, The Life of Henry Laurens with a Sketch of the Life of Colonel John Laurens (New York, 1915). The public exchange between Laurens and Leigh and its impact on the coming of the Revolution will be considered in the final chapter.

[65] Bellot, "The Leighs in South Carolina," Trans. of the Royal Hist. Soc., 5th Ser., VI (1956), 178-179.

[66] S.C. Gaz., May 11, 1769.

[67] S.C. & Am. Gen. Gaz., May 15, 1769.

faction in the colony. He proved only too willing to serve as a deputy to Augustus Johnston, a Rhode Island lawyer who was appointed judge of the regional Vice-Admiralty Court at Charleston when Parliament revamped the maritime court system in late 1767. Simpson actually ran the court for much of the time since Johnston never established himself as a resident of Charleston.[68]

With the Revolution and the formation of state governments, the British Vice-Admiralty Courts were replaced by American maritime tribunals. Massachusetts was the first state to act in 1775, and it was quickly followed by others within the next year. South Carolina established its Vice-Admiralty Court under the new government in April 1776.[69] The South Carolina laws contained provision for trial by jury in all cases of captured British ships or subjects. The court remained in operation until the British victory in Charleston in 1780. Three years earlier the marshall of the court proudly advertised at public vendue the brigantine Appalachicola of ninety tons captured by Edward Allen, commander of an American warship.[70] Thus, while colonists mistrusted the salt-water courts in operation, they clearly saw the usefulness of these bodies in times of war and moved quickly to remedy what they had objected to as the chief defect of the provincial courts--the absence of trial by jury.[71]

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[68]Ubbelohde, Vice-Admiralty Courts and the Revolution, 131, 134, 150-151, 191-192.

[69]Ibid., 193, 197.

[70]Gazette of the State of South Carolina, June 9, 1777.

[71]Ubbelohde, Vice-Admiralty Courts and the Revolution, 193-194, 209.

The alternative to the maritime courts in the mother country was the Court of Exchequer, a common law tribunal that guaranteed jury trial and decided matters of revenue. In South Carolina, a Court of Exchequer was directed to prosecute those who violated the crown's revenue laws, but unlike England, land--and not water--was the source of contention. Governor Francis Nicholson, who came from Virginia in 1720 as the colony's first royal governor, suggested a revenue court for the province; but Nicholson's bill of 1721 never became law.[72]

More than a decade later the issue emerged again. Governor Robert Johnson sought to establish an exchequer court to decide land claims, particularly those of colonists who had settled near Port Royal after the Yamassee War. The governor also hoped to end land frauds in the colony which had resulted in part from the closing of the land office after the fall of the proprietorship. Johnson received approval from the Board of Trade and commissioned Chief Justice Robert Wright as chief baron and four assistants for holding the Court of Exchequer. This court never received statutory sanction and never functioned. The establishment of the Court of Exchequer had royal approval, and the governor continually reaffirmed the crown's right to create such courts in the colonies with all the powers of their counterparts in England. As a common law tribunal, however, it required a jury to function, and the House simply refused to pass a jury act for the exchequer court. Thus, people could legally avoid jury duty because the last existing word on the subject, the Jury Act of 1731, did not mention duty for a Court of Exchequer.[73]

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[72]South Carolina Council Journals, 1721, pp. 51, 83-85, SCDAH.

[73]Smith, South Carolina as a Royal Province, 156-157.

Few attempts were made after 1738 to revive the court. As chief justice in 1742, Benjamin Whitaker complained of the need for a Court of Exchequer to better protect the crown's revenue.[74] Lieutenant Governor Bull, writing to Lord Hillsborough almost thirty years later, believed the court had been defeated because of a suspicion over the powers of the crown. "People in America are very jealous of this Court," Bull wrote, "and I believe the only branch of its power that would readily be admitted, would be the ingrafting in one of our Courts a Power to find office for the King upon escheats." Bull added that since many foreign immigrants settled in the province and died without heirs, their lands often escheated; and the governor's power to grant escheated lands was limited.[75]

An Ecclesiastical Court, established by the Reverend Alexander Garden, commissary of the Society for the Propagation of the Gospel in Foreign Parts, also had only brief authority in the colony. Garden was appointed commissary in 1726 and was directly responsible to Edmund Gibson, Bishop of London from 1723-1748.[76] A stickler for formality, Garden apparently did not exercise the power to hold courts until his commission was received in 1726. Three years earlier, while still a minister, he asked Gibson for instructions in a request to have a marriage annulled. Martha Wigfall, a widow, had married one William Dowdy only to discover that he had a wife and three children alive in England. Martha sought the annullment in order to marry another man. Garden was at a loss to

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[74]Whitaker to McCulloch, February 3, 1743, BPRO/SC, XXI, 132-133.

[75]Bull to Hillsborough, November 30, 1770, ibid., XXXII, 379-380.

[76]Arthur Lyon Cross, The Anglican Episcopate and the American Colonies (Cambridge, Mass., 1902), 80.

exercise ecclesiastical authority in the matter. How can a marriage be annulled he asked Gibson, "without Sentence of the Ecclesiastical Court pronouncing " it so? "And as there's no Ecclesiastical Court in these parts where such Sentence may be had, what in such a case may be done?"[77] There is no evidence that Garden found his answer, but he exercised his authority a decade later in the case of John Fulton, clerk and curate of Christ Church Parish, for drunkeness and intemperance. The trial lasted from March 26 to April 26, 1734. Fulton was found guilty and suspended from his post as curator for two years.[78]

The most significant test for the Ecclesiastical Court and for Garden's authority came when the commissary tried to ban the evangelist George Whitefield from preaching in the colony during the Great Awakening of the 1740s. The clash occurred on Whitefield's second visit to Charleston in March 1740. Following a cool reception by Garden, the evangelist was prohibited from preaching. When Whitefield continued to preach, Garden brought him to trial in July on charges of preaching in dissenting meeting houses and conducting services without the forms prescribed in the Anglican Book of Common Prayer. The charges are probably less important than the minister's response. Whitefield refused to be brought to trial, denying that either the Bishop of London or Commissary Garden had any jurisdiction over his case unless supported by acts of the Commons House of Assembly. Whitefield also claimed that as a resident of Georgia he was

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[77]Garden to Gibson, January 22, 1723, Fulham Papers [in the Lambeth Palace Library]. Microfilm copy at South Caroliniana Library, University of South Carolina, Columbia, S.C. (Hereinafter cited as SCL.)

[78]Ibid., March 26, May 15, 1734, ibid.

not within Garden's scope of authority, and that Bishop Gibson had no legal jurisdiction in the colonies whatsoever. The evangelist offered to place his case before a panel of six arbitrators (three from each side), but Garden pushed for a trial. Whitefield then began a bit of legal maneuvering that finally sent the case to England on appeal.[79] The printer of the Gazette summed up the minister's legerdemain:

> On Tuesday the first Day of his appearing, he scrupled the Authority of the Court. On Wednesday he enter'd a Recusatio Judieis. On Thursday that being repell'd, he appeal'd Apad Acta to his Majesty on the High Court of Chancery. So that all further Proceedings on the Affair are entirely put a Stop to.[80]

Whitefield's appeal was never decided. Apparently lost in the civil and ecclesiastical bureaucracy in London, his case remained unsettled. Garden later proceeded with a trial and in the evangelist's absence found him guilty of the charges and suspended him as an Anglican minister. Whitefield, a leading figure of the Great Awakening, continued to preach, and Garden was powerless to stop him.[81] That Whitefield was brought to trial at all reflected the strength of the Anglican Church in Charleston, for despite his large and dedicated following there, in no other place did he meet with so vigorous an opposition.[82]

Yet, if Whitefield did not achieve a clear legal victory, Garden certainly met with defeat. The aging commissary had witnessed his

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[79]Cross, Anglican Episcopate and the American Colonies, 80-85; Frederick Bowes, The Culture of Early Charleston (Chapel Hill, 1942), 22-24; S.C. Gaz., July 18, 1740.

[80]S.C. Gaz., July 18, 1740.

[81]Cross, Anglican Episcopate and the American Colonies, 83-85.

[82]Bowes, Early Charleston Culture, 24.

authority first challenged and then undermined, and later his decision openly disobeyed, neither he nor his Ecclesiastical Court able to prevent it. Moreover, Whitefield's charge that no Ecclesiastical Court could operate without laws passed by the Assembly went to the heart of all matters relating to the provincial courts.

An Ecclesiastical Court might have been able to function without a statutory basis since it did not require juries, but it would have inevitably clashed with the lower house had it displayed any signs of genuine authority. Another reason for the failure of the Ecclesiastical Court was the fact that in South Carolina--unlike New England--there was no rich blending of civil and church laws, and neither canon law nor common law courts operated to reinforce the authority of the other. The Palmetto society was a secular one, and while cases of debt owed to churches--both Anglican and dissenting--came before the Court of Common Pleas, these were debt cases first and church related matters only incidentally. Finally, the colony's lawyers probably lacked training in canon law equal to their knowledge of the maritime and common law; and they would not support an Ecclesiastical Court. In his letter to Gibson, Garden complained about the bar:

> We have here no professed Civilians & the gentlemen of the common Law are so professed Enemies of Eccles. Courts, name & thing, that if they at all vouchsafe to practice in them, they will not only have the same Fees as in the Courts of Common Law, but moreover have it looked upon as a particular Favor.[83]

While the activities of these courts were often controversial and while the courts occasionally found themselves caught in the cross fire

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[83]Garden to Gibson, May 15, 1735, Fulham Papers.

between the House's bid for power and the executive's traditional authority over courts and judges, the tribunals were of lesser importance to the lawyers than the Court of Common Pleas. Neither the Chancery nor the Vice-Admiralty Courts attracted as many practitioners as did their counterpart in civil jurisdiction. The additional training in maritime and equity litigation no doubt worked to keep the number of those who practiced before these judicial bodies small. Forty-four attorneys, or 40 percent of those practicing in the common law court, appeared before the equity judges; and only twenty-nine advocates, or 26 percent of the practicing attorneys in the province, conducted business before the Vice-Admiralty Court.[84]

The Chancery, Vice-Admiralty, Exchequer, and Ecclesiastical Courts represent the administration of justice by executive officers of the colony who struggled with the Assembly to maintain their authority over those judicial bodies. The executives (governor and councilors) fulfilled the proprietors' goal of dispensing justice without a trained bench and bar in a wilderness community for the first thirty years after the founding of the colony. When courts began operating outside the Council, they undoubtedly intended to maintain control of the judicial apparatus by exercising the crown's prerogative to establish and regulate courts, but their authority was soon limited primarily to the appointment of the court's officers.

Conflicts over control of the Chancery and Vice-Admiralty courts came early in the eighteenth century. The most significant was obviously

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[84]The names of those who practiced before the Chancery and Vice-Admiralty Courts appear in the Appendices.

the House's attempt in 1720 to remove equity jurisdiction from the hands of the Governor and Council and place it under the direction of an appointed chancellor. The fact that the Assembly in 1721 restored chancery powers to the executives the following year might well reflect the influence of the first royal governor, Francis Nicholson, who tried to create a court system in Carolina similar to that of Virginia. Although the measure was later vetoed by the Board of Trade, the Court Act of 1720 served as a warning to the executives to administer justice even handedly or surrender the responsibility.

Attempts by the lower house to control the activities of the Vice-Admiralty Court were not as dramatic, but the dispute over authority was less with the Governor and Council than with the Board of Trade. Serious conflicts over the judicial power of these two courts did not persist to a great extent after the 1720s, but neither court completely earned the trust of the South Carolinians. That no serious challenges were hurled at the courts and the fact that both courts were established by the state government during the Revolution reflect the importance of their functions in the Carolina judicial system of the eighteenth century. While they viewed the administration of justice in the Chancery and Vice-Admiralty Courts with suspicion, the inhabitants of the province clearly recognized the need for equity and maritime law in the creation of the new republican government.

CHAPTER II

LIMITING THE LAW: THE COMMON LAW COURTS

> it is of little use to us, to sit here and spend our time to pass laws, and at the same time no one can tell what is contained in them, and of consequence cannot put them into execution. Neither indeed is it just to have a penalty of the law inflicted upon persons who cannot reasonably be supposed to know them.[1]

Among Governor William Henry Lyttleton's instructions in early 1755 was a recommendation from the Board of Trade to bring the South Carolina laws establishing courts of justice and regulating the procedures of the Commons House of Assembly under closer imperial scrutiny. Believing that such legislation, for the most part, had been "defective, improper, and inconsistent with the rights and prerogatives of the Crown," the Board urged the new royal governor to present its objections to the Council and the lower house to remedy the problems. Lyttleton was also directed to take care "that the rules and methods of proceeding in the courts of law and equity be as near as may be agreeable to the rules and methods of proceeding in the courts of law and equity in Great Britain."[2]

This was undoubtedly an effort by the imperial authorities to strengthen British control over the colonies in North America, to bring to an end--as Jack Greene has put it--the "uneasy connection" which had existed between the plantations and the mother country. The Board's

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[1]Governor Robert Johnson to the Assembly, 1717, South Carolina Commons House Journal, 1716-1721, pp. 240-241, 281-282, SCDAH.

[2]Board of Trade to William Henry Lyttleton, February 20, 1755, Journal of the Commissioners for Trade and Plantations, 14 vols. (London, 1920-1938), X, 114.

campaign ran aground even before the Seven Years' War (French and Indian War) brought its reform efforts to a halt. Governor Lyttleton himself was too concerned with building fortifications, developing an Indian policy, and improving the economy to raise an issue which would have surely posed a threat to the Assembly in Charleston.[3]

The Board's recommendation to the governor, however, illustrates how far removed the political reformers in London were from the realities of colonial self-government and how little they understood the path along which it had developed. By the middle of the eighteenth century, most of the American colonies had displayed a remarkable capacity for handling their internal problems and with only minor exceptions had become "pockets of approximate independence." The conditions which contributed to this position were largely the rise of stable economic and political elites and the ability of the lower houses of assembly to solve local problems and represent diverse interests. Where factionalism existed in these bodies, it usually served to strengthen rather than weaken the effectiveness of the assemblies as institutions of local government.[4] In South Carolina, even the healthy degree of factionalism had been overcome, and the legislators who began to seriously challenge crown prerogatives and parliamentary laws in the 1760s represented an elite,

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[3]Jack P. Greene, "An Uneasy Connection: An Analysis of the Preconditions of the American Revolution," Stephen G. Kurtz and James H. Hutson, eds., Essays on the American Revolution (Chapel Hill, N.C., 1973), 70-71; Clarence John Attig, "William Henry Lyttleton: A Study in Colonial Administration" (Ph.D. diss., University of Nebraska-Lincoln, 1958), 22, 58-60.

[4]Greene, "An Uneasy Connection," Kurtz and Hutson, eds., Essays on the American Revolution, 35-39; Bernard Bailyn, The Origins of American Politics (New York, 1968), 124-133.

harmonious "country ideology."[5] The Assembly had achieved this lofty position after more than three-quarters of a century of struggle to preserve its right of self-government, first against proprietary rule and later against the royal prerogative. Few houses guarded their privileges as jealously as the group which sat in Charleston.

Similarly, the judicial system in colonial South Carolina had also diverged from the British model before the end of the proprietary period and, if the suggestion to Lyttleton was naive in hinting that the gap between crown and colony could be narrowed easily, at least it recognized that such a gulf existed. The most important feature of the colony's judiciary was that--like its economy and politics--it differed not only from the mother country but also from other American colonies, North and South, enriching by another dimension Clarence L. Ver Steeg's "Southern Mosaic."[6]

In England the establishment of courts and the appointment of justices had always been an exclusive crown prerogative. With the exception of the Restoration, Parliament never tried to establish courts or appoint judges, although it did alter conditions for holding office. With the Act of Settlement in 1701, Parliament stipulated that judges should hold office during good behavior instead of during the crown's pleasure (a practice begun under William and Mary), that judges should be removed only upon the request of both houses, and that their salaries

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[5]Robert M. Weir, "'The Harmony We Were Famous For': An Interpretation of Pre-Revolutionary South Carolina Politics," WMQ, 3rd Ser., XXVI (1969), 473-501.

[6]Clarence L. Ver Steeg, Origins of A Southern Mosaic: Studies of Early Carolina and Georgia (Athens, Ga., 1975), xi-xiii.

should be fixed permanently. The crown never extended this tenure provision tc the colonies, and from an early stage in their development, the provincial lower houses exercised authority to establish and regulate courts. Virginia's House of Burgesses established courts and legal jurisdictions as early as 1624, and South Carolina tried to put the common law courts on a statutory footing as early as 1700.[7] Colonial courts differed from those in England in other ways as well. For the most part, they were kept as simple as possible, avoiding the enormous complexity, duplication of functions, and vast clerical apparatus of the mother country's judiciary. In the colonies there were also problems of procuring paper and parchment; there were obstacles to travel; and in the earlier years there was an absence of technical legal knowledge by a trained bench and bar.[8]

The South Carolina judicial system differed from that of other colonies in the absence of a workable, permanent county court network and the establishment of a heavily centralized legal profession in one city. County courts had served colonists in Maryland, Virginia, and North Carolina, but attempts to establish them in South Carolina before the Revolution met with failure. What finally succeeded in the colony was not a county court system but the creation of seven circuit courts on the eve of the Revolution and under no small degree of pressure from the Regulator movement in the Carolina backcountry.

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[7]Greene, Quest for Power, 330-335.

[8]Smith, "Administrative Control of the Courts of the American Plantations," Flaherty, ed., Essays in the History of Early American Law, 284-285, 311-312.

What emerges from the development of the South Carolina common law courts in the eighteenth century, then, is neither a clear attempt at Anglicization nor a steady process of Americanization but a system which exhibited features of both the New World realities and the mother country's traditions. These contradictory tendencies in the early period, as Michael Kammen has pointed out, mark the "compelling fascination" with colonial America.[9] In the end, the absence of county courts and the concentration of the bench and bar in Charleston until shortly before independence set South Carolina apart from other colonies in North America, limited the administration of justice, and gave it a certain uniqueness among the British provinces.

In the criminal court, differences between the South Carolina judiciary and that of the mother country and other colonies may be observed more closely in three areas: the use of appointed counsel in criminal cases, the patterns of crime and punishment in the province, and the use of the grand jury (and thus the criminal court) as an agency for social control.

The Court of General Sessions was not established by law until 1731, but a criminal court had existed since the proprietary era, and efforts to put it on a legal basis began in 1700. The famous act of 1712 which incorporated all English laws applying to the province, as well as a bill written the same year by Chief Justice Nicholas Trott, gave the court some statutory footing. However, it was not until the Jury Act of

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[9]For a deeper analysis of the simultaneous processes of Anglicization and Americanization in the colonial period, see Michael Kammen, People of Paradox: An Inquiry Concerning the Origins of American Civilization (New York, 1972), 117-148.

1731 that the court was officially vested with powers equal to the Court of King's Bench in England. The act of 1731 also contained the novel provision granting the accused the right to request counsel in criminal actions involving treason, murder, felonies, and other capital crimes--a feature that was not a part of English statutory law for another century.[10] Article forty-three explained the reason for the difference in criminal procedure between the two countries:

> And whereas many innocent persons under criminal prosecutions may suffer from want of knowledge in the laws how to make a just defense, and whereas the judges and justices of the several Courts here, who ought to assist the prisoner in matters of law, cannot be presumed to have so great knowledge and experience as the great judges and sages of law, sitting in his Majesty's Courts at Westminster, for which reasons persons under criminal prosecutions ought to have a proper assistance and all just and equal means allowed them to defend their innocencys.[11]

Perhaps the shortage of a professional bench and bar earlier had prompted Rhode Island in 1660 and Pennsylvania and Delaware in 1701 to make similar improvisations in the law. Virginia followed South Carolina in providing counsel three years later. Despite the absence of a statutory provision, courts in the mother country by the middle of the eighteenth century had expanded the practice of permitting defense counsel to

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[10]Cooper and McCord, eds., Statutes of South Carolina, III, 274-286; Smith, South Carolina as a Royal Province, 127-128; William M. Beany, The Right to Counsel in American Courts (Ann Arbor, 1955), 17.

[11]Cooper and McCord, eds., Statutes of South Carolina, III, 286; In 1770 Lieutenant Governor William Bull II explained to Lord Hillsborough: "Counsel are allowed to defend the cause of criminals not only in matters of law but generally. For tho' the Judges are considered as Counsel for the Prisoners, our Judges are not so skill'd in Law as to [render] them full justice therein." Bull to Hillsborough, November 30, 1770, BPRO/SC XXXII, 377-378.

argue points of law until by 1800 the defense lawyer could do everything necessary for his client except address the jury at the conclusion of the evidence, a privilege reserved for the king's attorney. However, this practice depended heavily on judicial discretion and remained inconsistent from judge to judge and from case to case. Even in the colonies this law was not exercised as fully as it might have been. In New York and Virginia, for example, the right to counsel was no greater in practice than in England.[12]

In South Carolina, assigning counsel immediately became a part of the court's practice, but there is little to suggest that appointed attorneys did more than argue points of law.[13] Since records of the criminal court are non-existent except for the eight years preceding the American Revolution, it is difficult to measure the extent of this practice. During the eight years for which court records have survived, clearly one-third of those accused of committing felonies were actually represented by counsel.[14] This figure was probably greater than that of Virginia and New York, the latter lacking a statutory provision for the right to counsel until the Revolution. More than likely, South Carolina's practice was widespread for the entire period, but insufficient information on a colony-by-colony basis precludes a comparison with Rhode Island,

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[12]For a more detailed discussion of the right to counsel in England and America during the eighteenth and nineteenth centuries, see Beany, Right to Counsel, 8-26.

[13]S.C. Gaz., March 15, 1732.

[14]These figures are based on a total of 460 cases brought before judge and jury between 1769 and 1776. In the 235 of these cases which were felonies, lawyers represented the accused in only 77. South Carolina, Court of General Sessions Journal, 1769-1776, SCDAH.

Pennsylvania, or Delaware--colonies which also contained specific statutory guides for appointing defense counsel.

The paucity of criminal court records in colonial South Carolina poses other problems for the historian. It is almost impossible, for example, to duplicate the study of the extent of crime and law enforcement for the Palmetto colony that has been so thoroughly done for New York by Douglas Greenberg.[15] Yet, some of the problems are surmountable. Using the court records that exist, newspapers, and the correspondence between provincial officials in Charleston and those who shaped American policy in London, a general picture emerges of the criminal court's operation in eighteenth century society.

Michael S. Hindus has demonstrated that the records of the Court of General Sessions can be used to illustrate crime patterns in the immediate pre-Revolutionary period. A clear majority (53.6 percent) of the crimes reported between 1769 and 1776 were crimes of violence such as murder, assault, and rape. Crimes against property (larceny, arson among others) represented slightly more than one-third, and crimes against order and morals remained relatively low (3.2 percent). This pattern was in direct contrast to that of Massachusetts where crimes against order and morals represented almost two-thirds of the crimes committed (63 percent) from 1760-1774 in Middlesex County. Similarly, as Hindus points out, the percentage of violent crimes in South Carolina increased during the next century while the number of crimes against property declined slightly,

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[15]Douglas Greenberg, Crime and Law Enforcement in the Colony of New York, 1691-1776 (Ithaca, N.Y., 1974).

showing that the pattern of crime changed very little in the southern colony and state from the eighteenth to the nineteenth century.[16]

In cases actually brought before judge and petit jury between 1769 and 1776, slightly fewer than one-half (48 percent) reached a verdict. Of these 224 cases, half resulted in convictions, and about one-fourth each in discharges (27 percent) or formal acquittals (23 percent). Of those convicted, sentences might range from death and imprisonment to corporal punishment such as branding and whipping, the levying of fines, or a combination of those punishments. Sixteen persons during this eight-year span received the death sentence, but at least ten of them were pardoned by the governor or lieutenant governor.[17]

These figures, of course, are based on crimes and criminal actions in Charleston. By contrast, cases from the six circuit courts established in 1769 and operating in 1772 reveal that crimes against property, particularly the theft and killing of livestock, represented four-fifths of all criminal actions reported during 1772. Only three violent crimes and two cases of counterfeiting were listed. Unfortunately, newspaper accounts

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[16]Professor Hindus apparently examined the total number of crimes reported (597 cases) in the court records which would include those listed by the grand jury but not necessarily followed by indictment and trial. My own review of the records--for different purposes--included some 460 cases which were actually brought to trial before a judge and petit jury. The totals, however, follow the same pattern. For example, crimes against persons totaled 49.2 percent; crimes against property, 32 percent; crimes against order and morals, 3.6 percent; and others, 15 percent. See Michael Stephen Hindus, "The Contours of Crime and Justice in Massachusetts and South Carolina, 1767-1878," AJLH, XXI (1977), 212-219. See also, L. Knivin Wroth and Hiller B. Zobel, eds., The Legal Papers of John Adams, 3 vols. (Cambridge, Mass., 1965), I, li and note.

[17]South Carolina, Court of General Sessions Journal, 1769-1776, SCDAH.

of criminal court actions in these new tribunals did not appear consistently enough to suggest any permanent pattern. After the initial sessions in 1772, few judgments from the circuits were reported in the provincial press.[18]

As an alternative to criminal trials, some victims of crimes--against both their person and property--sought satisfaction by suing for damages in the Court of Common Pleas instead of bringing charges in the Court of General Sessions. Through this route, if the plaintiff was successful, he would have the pleasure of some monetary reward for his pain as well as having the defendant pay court costs. A fine, whipping, or imprisonment might quench the victim's thirst for vengeance, but it did not dent his adversary's pocketbook. Verdicts of guilt, however, were not automatic, and an acquittal might prove as embarrassing for the plaintiff as he hoped a guilty verdict would be for his opponent. An example of this is the 1758 case in which Charles Mayne sued William Byrd for damages resulting from the latter's alleged rape of his wife and the subsequent loss of her affection and companionship. Mayne sought £35,000 in damages and hired David Graeme as his attorney, but Byrd was acquitted by a jury and Mayne had to pay court costs.[19]

Cases involving assaults and the killing of slaves could be tried in either court. The difference was that in the criminal court, masters of battered or murdered slaves received a set value of £350 compensation.

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[18] S.C. Gaz., November 26, December 10, 1772; April 12, December 27, 1773.

[19] Mayne v. Byrd, 1758, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

In the Court of Common Pleas, the owners could seek--but not always receive--more for the value of their chattel. An example of this kind of action is represented in the case brought by former Chief Justice Nicholas Trott against one James Juno (alias Jouneau) who was charged in the murder of Trott's slave. Trott, through his attorney Robert Hume, argued that Juno did "so violent, barbarous & [outrageous] a manner beat, kick, wound & bruise that the said Negro Man dyed thereof." The former chief justice asked for £1,000 in damages; and while the jury found Juno guilty, it awarded Trott only £230 in damages and £84.5.8 in court costs and charges.[20] In another case at about the same time, Francis Le Brasseur, whose treatment of his slaves was less than humane, sued Jonas Nutting for £1,000 in damages for an assault on his slave, Bristol. Hume, appearing for the defendant, argued that the slave had attacked first and that Nutting's action was merely self-defense. The jury agreed with Hume, stating that "if any Damage or evil to the said Negro man did then and there happen it was of his own Proper Assault and in defense of him the said Jonas." Nutting was awarded £21.11.10 against Le Brasseur for his costs and charges.[21] These cases represent on the one hand the blurred distinctions between civil and criminal actions in the colonial period. On the other hand, they suggest that violent crimes in the eighteenth century might well be more extensive than the criminal court records alone would indicate. Such records indeed represent only a partial

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[20] Trott v. Juno, 1719, ibid.

[21] Le Brasseur v. Nutting, 1720, ibid. For a description of Le Brasseur as a slave master, see Peter H. Wood, Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion (New York, 1974), 245-246.

picture of the crimes committed in the province, and any study of crime in colonial South Carolina would have to include those cases taken before the Court of Common Pleas and those scattered cases reported from the district tribunals after 1772.

The third feature of the Court of General Sessions which set it apart from the courts of the mother country and those of other colonies was its use of grand jury presentments in the exercise of social control over the community--especially the black community which had no recourse to the criminal court. In fulfilling their responsibilities to the province, the grand juries depended heavily on the chief justices to explain the law to them. Nicholas Trott exhorted a group in 1703 to be "very careful to perform conscientiously that great Trust the Law hath reposed in You." The duty of this body was primarily to inquire into possible criminal acts ranging from felonies to defaults by commissioners on the upkeep of highways and bridges and to antisocial behavior involving "Leud & disorderly practices, as keeping of Bawdy Houses, which is against the Law of God." Trott provided the panel with even broader scope when he urged it "to Inquire & Present all other things that you know to be within the Compass of your Enquiry & ye Jurisdiction of this Court."[22]

Almost four decades later Chief Justice Benjamin Whitaker used the grand jury charge to expound his personal views on politics and paper money. Whitaker, unlike Trott, presided over the court in a time of increasing prosperity, but the chief justice saw this as evil and, warning of its dire consequences, he yearned for more tranquil times.

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[22]Hogue, "An Edition of 'Eight Charges,'" 102, 191-215.

The panel, Whitaker charged, should discourage all vice, immorality, licentiousness and

> abstain from that Luxury and Excess, which within a few Years last past, has pour'd in upon us like a Torrent; if we unite our Endeavors, by the most salutary Measures that can be devised, to stop the further Progress of an Evil, which has so greatly contributed to enervate and soften our Minds, and to sink us, into Indolence and Inactivity; if we were to return to our former Frugality, Temperence and moderate Enjoyments, the Remains of which I have lived long enough in this Country to remember.[23]

The grand jury took the role of social watchdog seriously. Frequently it complained about the growing number of inept justices of the peace and lamented the dearth of qualified magistrates. Too many of these officers, the jury found, held their commissions merely to exempt them from other public duties; they neglected or performed poorly their examination of witnesses and the forwarding of cases to Charleston, thus delaying the business of the courts; and they used the powers of their office to make money by encouraging litigation. Some individual justices were hauled before the court on charges of malpractice in office, but such cases represented only about one percent of the total number brought before a judge and petit jury, thus having only marginal effect.[24]

This "People's Panel"--as one author has called the grand jury in America--extended its investigations into the enforcement of laws requiring bakers to stamp their names on their loaves of bread and authorizing magistrates to inspect the final product. It presented (and thereby

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[23] At a Court of General Sessions, October, 1741. The Chief Justice's Charge to the Grand Jury, 10, 28-30.

[24] South Carolina, Court of General Sessions Journal, 1769-1776, pp. 126-128, 169, 188-189, 191, 241-242, SCDAH.

publicly exposed) some tavern keepers for running disorderly houses "and secreting and entertaining youth to the corruption of their Morals, and loss to their Masters"; it complained of such frivolities as shooting firecrackers and firing guns on Christmas Eve and New Year's because it was impossible to determine whether such shots were signals for an alarm or "to proclaim the Illegal mirth of a few inconsiderable People." The practice of horse racing on the Sabbath and the performances at the Charleston Playhouse also incurred the panel's resentment because such amusements were too expensive and tended to corrupt the city's youth.[25] At the outbreak of the Revolution, the grand jury preached conformity to the state. The new government, it said:

> being founded on the strictest principles of Justice and Humanity we cannot but declare we think every opposition to its operation or disregard to its authority, the foulest criminality a mortal can be guilty of, highly offensive in the eyes of God, and of all just men, and deserving the most exemplary punishment.[26]

Most of the grand jury's efforts at social control, however, were directed against blacks, and the panel's continuous presentments in this area illustrate--as Peter Wood has pointed out--the pervasiveness of the community's concern that blacks must be controlled on the one hand and the frustration of never accomplishing this task on the other.[27] Before

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[25]Ibid., 63, 203, 224, 240, 270-271. Richard D. Younger, The People's Panel: The Grand Jury in the United States, 1634-1861 (Providence, R.I., 1963), 5-26.

[26]South Carolina, Court of General Sessions Journal, 1769-1776, p. 341, SCDAH.

[27]Peter H. Wood, "'Taking Care of Business' in Revolutionary Charleston," Jack R. Censer and N. Steven Steinert, eds., South Atlantic Urban Studies, 2 vols. (Columbia, S.C., 1978), II, 54-57; Wood, Black Majority, 210, 272.

the end of the first decade of the eighteenth century, the black population in the colony had passed the white, and for the next quarter-century this gap between the number of slaves and their masters widened instead of diminished. As South Carolina moved toward a more stable economy, first in naval stores in the 1710s and later in the production of rice and indigo, control of such a large number of blacks needed as a labor force became an overriding concern of the white populace. Gone was the earlier, more uncertain time of blacks and whites working closely together as ranch farmers, hunters, and fishermen--a time when blacks (most of whom were slaves) enjoyed some rare privileges though they can hardly be called freedoms. As the restrictions on blacks grew tighter, and as white masters separated themselves and their work from their black slaves, tensions mounted, and blacks consciously sought freedom and a better life by running away. The culmination of these efforts was the famous Stono Rebellion of 1739. The blacks' drive for liberty in Spanish Florida met a violent end near the Stono River below Charleston, and the finality of slavery remained until the Civil War.[28]

Grand juries aimed their charges at blacks throughout most of the eighteenth century, but their grievances became more frequent and reflected deeper concern on the eve of the Revolution. In 1768, for example, the panel complained of the "evil custom of giving Negroes their freedom," and six years later recommended that free blacks wear badges on their

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[28]Wood, Black Majority, 35-62, 195-217, 285-326. On slavery in early South Carolina, see also, Ver Steeg, Origins of a Southern Mosaic, 104-108, 123, 129; A. Leon Higginbotham, In the Matter of Color: Race and the American Legal Process, The Colonial Period (New York, 1978), 162-215.

outer garments to distinguish them from slaves.[29] Slaves in Charleston were the special target, particularly those who made their livings selling dry goods, fruit, and food in the streets and around the markets of the city. The panel charged that many blacks had stolen their goods which they were now selling at inflated prices and claimed that some of the stolen food was used as a means of subsistence for runaways. Assemblymen and magistrates were urged to put an end to this (as Wood has aptly named it) "Black Market" because--the jury being unaware of the inherent contradiction--it was "preventing many poor and industrious families from obtaining an honest livelihood."[30]

At times, the jury's alarms were heeded. Leander, a free black butcher, was convicted in 1777 of extortion in the market for selling veal at 40 shillings a leg while holding a ticket from the owner of the meat to sell it for 30 shillings. Leander was fined £50 for the use of the poor, had to pay the costs of prosecution, and was sentenced to one month's imprisonment. The printer of the Gazette could not restrain his pleasure at the verdict:

> Thus, by the spirited Exertions of the present Commissioners, we see a Beginning made, to remedy the Abuses that have been too long practiced with Impunity in the Markets.[31]

Although free blacks could sue and be sued in the Court of Common Pleas, they had no access to the criminal court and trial by jury.

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[29] South Carolina Gazette and Country Journal, February 9, 1768; South Carolina, Court of General Sessions Journal, 1769-1776, p. 271, SCDAH.

[30] Wood, "'Taking Care of Business' in Revolutionary South Carolina," Censer and Steinert, eds., South Atlantic Urban Studies, II, 56; South Carolina Court of General Sessions Journal, 1769-1776, pp. 223, 240, 256, 325-326, SCDAH.

[31] Gaz. of the State of S.C., May 12, 1777.

Throughout the colonial period and after, a combination of justices of the peace and freeholders presided over the trials of slaves and free Negroes accused of criminal offenses. The Negro Act of 1740 which remained in effect until after the Revolution provided that no fewer than three magistrates and five freeholders would determine all cases in which capital punishment might be inflicted on a black. One justice of the peace and two freeholders would suffice in non-capital actions. An earlier law had provided that blacks should not be convicted except by their own voluntary confession, by oath of "Christian evidence," or by the positive evidence of two other blacks whose truth could not be doubted.[32]

The black rebels who were captured at Stono and elsewhere in September 1739 were not provided with even these skeletal elements of justice. Slaves who were taken alive were immediately put to death, and the act of 1740 which spelled out the duties of white masters to their slaves and their obligation to the safety of the white population not only legalized the summary executions but it also undercut any hopes masters might have of gaining compensation for the loss of their chattels. The fifty-sixth clause of the law stated:

> and as the exigence and danger the inhabitants at that time were in and exposed to, would not admit of the formality of a legal trial of such rebellious negroes, but for their own security, the said inhabitants were obliged to put such negroes to immediate death; to prevent, therefore, any person or persons being questioned for any matter or thing done in the suppression or execution of the said rebellious negroes, as also any litigous suit, action or prosecution that may be brought, sued or prosecuted or commenced against any such person or

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[32]Cooper and McCord, eds., Statutes of South Carolina, VII, 346, 347, 354-357.

> persons for or concerning the same . . . [the executions were declared lawful] . . . as fully and amply as if such rebellious negroes had undergone a formal trial and condemnation.[33]

Slave laws during the next decade bolstered the act of 1740. A measure of 1743 provided for the better security of the province against insurrections. During that same year, the Gazette reported the executions of one slave named Sampson and the severe flogging of another named Harry for inciting others to try to leave the province.[34] Another act of 1751 provided for punishments in the "detestable crime of poisoning [which] hath of late been frequently committed by many slaves in this Province" despite several executions for the offense. The act required the death penalty for blacks who taught other slaves the knowledge of poisons, roots, herbs, and plants; barred any physician, apothecary, or druggist from employing slaves; and prohibited chattels from practicing or administering medicines.[35]

When Chief Justice Whitaker delivered his charge to the grand jury in 1741, the memory of the Stono Rebellion, its consequences, and the haunting possibility that it might have been different or might reoccur was in the front of his mind. Whitaker usually simply read acts concerning slaves to the grand jurors, but this time he chose to elaborate on

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[33]Ibid., 416-417. The act of 1740 also prohibited the teaching of writing to slaves since this "may be attended with great inconveniences." Those found guilty of teaching slaves to write would be fined £1,000. For an account of the Stono Rebellion and its aftermath, see Wood, Black Majority, 308-326.

[34]Cooper and McCord, eds., Statutes of South Carolina, VII, 417; S.C. Gaz., January 10, 1743.

[35]Cooper and McCord, eds., Statutes of South Carolina, VII, 420-423. No slave laws were passed between 1754 and 1776 despite the complaints of the grand juries.

the meaning of the law. In doing so the chief justice went a step beyond the Assembly by placing the ultimate responsibility for mistreatment of slaves on the safer ground of higher law. Whitaker said:

> that all Masters and Owners of Slaves may know, that although they are the subjects of Property, and are laid under many political Restraints, yet that it is their Duty as Men and Christians, to treat them as rational Creatures, by the Laws of Humanity, and that they should endeavour to make their Condition as easy and comfortable as possible, considering, that how small Redress soever Injuries done to them may receive from human Laws, God will punish all Cruelty, Injustice and Oppression.[36]

Thirty years later, Lieutenant Governor William Bull II pronounced the condition of slavery "as Comfortable in this Province as such a state can be," thanks to the law of 1740, its subsequent supporting measures, and the patrols. Further removing himself from Whitaker's appeal that whites refrain from cruelty to their slaves lest they be punished in the final judgment, Bull boasted to Lord Hillsborough that the colony had had no slave insurrection since 1739 and that uprising, he said, was caused "from the wantonness and not oppression of our Slaves." The Lieutenant Governor also rejected a British request to consider sentencing whites to death for killing blacks, a penalty which several northern colonies had enacted. Such a "footing of equality," he suggested, would tempt slaves to resist their masters and might prevent owners from properly disciplining their chattels when it was absolutely necessary.[37]

Josiah Quincy, visiting Charleston from Massachusetts in 1773, was not so comfortable with the issue and reality of slavery. Shocked

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[36] *At a Court of General Sessions, October, 1741. The Chief Justice's Charge to the Grand Jury*, 38.

[37] Bull to Hillsborough, November 30, 1770, BPRO/SC, XXXII, 381-382.

by Charles Cotesworth Pinckney's explanation that stealing a black would be punished by death while killing him resulted only in a fine, Quincy confided to his journal: "Curious laws and policy! I exclaimed. Very true, cried the company, but this is the case." Later the visitor recorded: "There is much among this people of what the world call hospitality and politeness, it may be questioned what proportion there is of true humanity, Christian charity and love."[38]

By the turn of the century, the apologies and explanations for the existence of slavery had hardened into positive principles both justifying and supporting the peculiar institution as necessary for whites and beneficial for blacks. This was largely in response to the attack on slavery which came from northern colonies in the post-Revolutionary era; Southerners attempted to justify slavery in America on the basis of a prior condition of slavery for blacks in Africa.[39] Slaves, wrote John Drayton in 1802, were property and property rights were sanctioned by the Constitution. Blacks were found in a condition of slavery in Africa, and thus they were merely exchanging one form of servitude for another--the latter with many advantages. Drayton added:

> while we lament the iniquitous passions which originally introduced slavery into this state, it is with satisfaction we can assert, that their condition is far ameliorated to what it formerly was. They have their houses, their gardens, their fields, their dances, their holydays, and their feasts. And, as far as is consistent with our government, they enjoy

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[38]Mark Antony DeWolfe Howe, ed., "Journal of Josiah Quincy, Junior, 1773," Massachusetts Historical Society Proceedings, XLXIX (1915-1916), 446, 455-457.

[39]Peter H. Wood, "'I Did the Best I Could for My Day': The Study of Early Black History During the Second Reconstruction, 1960 to 1976," WMQ, 3rd. Ser., XXXV (1978), 186-225.

> privileges and protections, in some cases, superior to the poor whites of many nations; and in others equal to the mildest slavery in any part of the world.[40]

It represents no small paradox that the grand juries complained longest and loudest about those who had no recourse to the judicial system of the province. For most of the period, blacks remained tightly controlled by the legal system, feeling the severity of the extent of the laws but never tasting its privileges, and certainly never even approaching what the lieutenant governor mentioned to Hillsborough as a "footing of equality."

Although the Court of General Sessions differed from the Court of King's Bench in the mother country, the Jury Act of 1731 gave it power equal to the English tribunal; and undoubtedly those who practiced, adjudicated, or had business there believed the functions of the court were essentially the same as those of its English counterpart. The South Carolinians held the same view of the civil court, but in practice it too diverged from both the High Court at Westminister and the common pleas courts in other colonies.

A Court of Common Pleas separate from the Council may have been active as early as 1693; however, the absence of records prevents us from knowing exactly when the court began operation. The merchant, Edmund Bohun, was appointed the first chief justice in 1698, but he soon fell out of grace with the proprietors. When court records begin in 1703, Nicholas Trott is listed as chief justice.[41] Although the Assembly passed several

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[40] John Drayton, A View of South-Carolina as Respects Her Natural and Civil Concerns (Charleston, 1802), 144-148.

[41] Lords Proprietors to Nicholas Trott, October 19, 1699, BPRO/SC, IV, 115; Stumpf, "Merchants of Colonial Charleston, 1680-1756," p. 48.

laws which recognized the existence and functions of the civil court, it was not until 1737 when the lower house required the court to be held on a quarterly basis that it was actually placed on a statutory footing.[42] The opening of the sessions every February, May, August, and November was a popular occasion usually attended with a degree of pomp and ceremony as described by one of the colony's printers in 1771:

> This Day, the Court of Common Pleas begins to be holden here, when, we hear, his Honour the Chief Justice, their Honours the Assistant Justices, the Gentlemen of the Law, & C. will walk in Procession from his Honour's House in Queen Street to the Court House.[43]

If the statutes gave the South Carolina Court of Common Pleas the same authority as its counterparts at Westminster, the exercise of its power and the kinds of actions it adjudicated rendered it closer to--but not exactly like--the local courts in the mother country. The theory that English common law existed in substantial force at the time of the earliest North American settlements and its antithesis that until the Revolution the colonists possessed a unique frontier legal structure without transplantation of the common law have been overshadowed for some time now by the argument of Julius Goebel that colonial law more closely resembled the law of England's local and county courts.[44] One might easily find variations of this thesis. Certainly the "unwritten

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[42] Cooper and McCord, eds., Statutes of South Carolina, VII, 167-177.

[43] S.C. Gaz. & C. Jl., August 13, 1771.

[44] Zechariah Chafee, "Colonial Courts and the Common Law," Flaherty, ed., Essays in the History of Early American Law, 61-65; Julius Goebel, "King's Law and Local Customs in Seventeenth Century New England," ibid., 88-89.

law" embodied in court decisions in the colonies as well as in the colonists' perceptions of a proper, viable legal structure had to be based on the knowledge of the common law administered by the local and county courts and of the High Court at Westminster. The twin factors of time and experience also served to provide a wide gulf between court practices in the two countries, and at the time of separation from England colonial jurists and legislators believed they had been adhering to the common law all the while.[45] Examinations of the Palmetto colony's civil court records indicates that most of its civil actions bore a close similarity to the judicial experiences of Plymouth Colony which Goebel investigated a half century ago. Other actions, such as ejectment, differed markedly from New England practice.[46]

In the mother country the action of ejectment evolved because the technicalities of real actions led to injustice and the oppression of ejected leaseholders, and the remedies provided by law were generally inadequate. By the reign of Elizabeth I, ejectment had replaced real actions but it too accumulated its own technicalities, one aspect of which was an elaborate fiction. This included a fictitious lease to a fictitious plaintiff by the person who was the real claimant and a fictitious

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[45] Chafee, "Colonial Courts and the Common Law," ibid., 71-72, 76; Richard B. Morris, Studies in the History of American Law (Philadelphia, 1959), 12-13. The most recent supporter of this theme is Joseph H. Smith, "The English Criminal Law in Early America," The English Legal System: Carryover to the Colonies (Los Angeles, 1975), 21-22, 39-40. See also Herbert Alan Johnson, "Civil Procedure in John Jay's New York," AJLH, XI (1967), 79-80.

[46] Goebel, "King's Law and Local Custom," Flaherty, ed., Essays in the History of Early American Law, 88-89, 108, 104-105; Morris, Studies in the History of American Law, 57.

entry and fictitious ouster by a fictitious wrongdoer. Largely because of this technicality, and perhaps owing in part to a bench and bar which was not technically trained, ejectment was not a popular action in most colonies. Massachusetts courts decided only two cases involving fictitious action of ejectment and these were brought during the administration of Sir Edmund Andros. Pennsylvania in 1701 tried to ban all fictions and color in pleadings. Although New England and the Middle Colonies for the most part rejected the fictions of ejectment, southern colonies did not. The 114 cases of ejectment in South Carolina constituted only about one percent of all civil actions, but the fictional aspects of the cases were maintained. Plaintiffs, for example, were identified in the court records by such titles as "John Right" and "Gilbert Goodtitle" while defendants were given such villainous sounding names as "Thomas Thrustout," "Richard Wrong," or "Ambition Headstrong." Nearer the Revolution the court used fictitious names as well as real ones, and in 1791 the state abandoned ejectment altogether for a more simple action for the recovery of real property.[47]

Like ejectment, the application of trespass by the Carolina Court differed from that of courts in New England. In the northern colonies it was used for a variety of remedies. County courts, for example, employed the phrase "trespass upon replevin" for the recovery of goods taken in distress--a practice which diverged from the basic idea of trespass as an action designed to recover damages and not possession.[48] In South

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[47]Morris, Studies in the History of American Law, 55-59.

[48]Ibid., 48.

Carolina, the action of trespass--with possible rare exceptions--involved only the recovery of damages for injury to property, land or goods and never the property, land or goods themselves. Yet, trespass also constituted only about 1 percent of the total number of civil cases, and while it serves as a point of comparison, its effect might be limited.

More than nine-tenths of the actions brought before the Carolina court were cases of debt. These were either in the form of a simple suit of debt for a specific sum (47 percent) or in the form of trespass on the case (49 percent)--an action which developed, as Richard B. Morris has put it, "with little regard for orthodox limitations." This action, also identified sometimes as "case," developed as an offshoot to trespass near the end of the thirteenth century. In theory, it was a personal action to recover damages, but in the colonies it was invoked to retrieve specific sums of money plus damages and in some cases chattels in debt or detinue. By the sixteenth century in England, the action of assumpsit for a breach of contract became distinct from case. In the colonies, however, assumpsit never took firm hold, and courts used trespass upon the case to recover damages on express executory contracts and on contracts implied in fact. Thus, in South Carolina writs in actions of case contained such statements as "and also for a promise made and not performed" by the defendant to the plaintiff or "for Sundry promises and assumptions made and not performed."[49]

Trespass on the case in colonial South Carolina became the chief route for a multiplicity of actions. Merchants, tavernkeepers, school

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[49]Ibid., 49-50; LaRoche v. Bennett, 1733-1736, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

masters, lawyers, and physicians sued their customers, patrons, clients, and patients to recover debts and professional fees. Artisans such as Lewis Duvall, a carpenter, and Richard Gladman, a joyner, sued a merchant for failing to pay them for labor performed on the merchant's home.[50] Suits for damages resulting from slander and libel were not uncommon. Hugh and Eleanor Lowry sued John Cox and two other men for £10,000 alleging that Cox had publicly bragged about his past sexual exploits with Mrs. Lowry. The Lowrys lost their case, and even those who won such causes received far less than they had sought. Samuel Ramsey was found guilty of falsely accusing John Savage of being a horse thief, but Savage's court award was a mere £21 with costs--well below the £5,000 he wanted.[51]

Contrary to procedure in the criminal court, free blacks had access to the Court of Common Pleas. Free blacks could sue and be sued and were permitted to hire attorneys to represent them. In a sample of twenty cases involving free blacks, two were actions of one free Negro against another, two were actions taken by free blacks against whites, and the remaining sixteen were cases where white merchants, storekeepers, or tavernkeepers sued their black customers for debts. Another case, not mentioned in the Judgment Rolls, was a slave's suit for freedom. Clarinda, formerly the property of one Stephen Miller, claimed her freedom because she had been sold to the Spanish and had escaped from them in 1765. The

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[50] Duvall and Gladman v. Wallace, 1719, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

[51] Lowry v. McFarrin, Crawford, and Cox, 1773, Savage v. Ramsey, 1768, ibid., SCDAH.

court ordered her to remain in the workhouse until the first Tuesday in October when it would decide her fate, but Clarinda's case was interrupted by the controversy over the Stamp Act, and there is no record of a decision on her request.[52]

More unique perhaps were two cases involving medical malpractice and an extraordinary one of a spurned fiancée. In the first case, occurring in 1723, Michael Stuckey sued Daniel Gibson, a "chirurgeon," for £3,000. Stuckey claimed that while he was sick and "afflicted with Ringworms," he consulted Gibson, who declared he was a learned and skillful physician. The doctor applied several "Plaisters, Oyntments, and other Medicines" which instead of healing the patient made him much worse so that "his Speech hath [become] so inarticulate that it is hardly intelligible, and also his Cheeks . . . are so contracted to His Jaws that he can hardly eat." Stuckey then accused Gibson:

> [of] being altogether illiterate and in the Art of Chyrurgery and Physic unskillful but covetous of Gain out of a depraved and ill Mind and Intention designing him the said Michael to defraud of him Mony and him in the Cure of the Infirmities aforesaid to deceive and to detain long with vain Persuasions and Assertions.[53]

Whether Stuckey, who hired Benjamin Whitaker to represent him, received satisfaction is not known. Thomas Spencer, who sued Robert Gibb for prematurely amputating his left hand when his only injury was a badly bruised thumb, lost his £4,000 damage suit and had to render £63.18.11 1/2

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[52]South Carolina, Court of Common Pleas Journals, 1763-1769, p. 170, SCDAH.

[53]Stuckey v. Gibson, 1723, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH. Medical malpractice suits were not unusual in other colonies. Wroth and Zobel, eds., Legal Papers of John Adams, I, li.

in court costs.[54] The most unusual item in the contract sphere under the general heading of trespass on the case was a suit in 1761 by Mary Cooke, spinster, against William Lennox, merchant, for £7,000 for failing to marry her as promised. John Rutledge, representing the spurned Miss Cooke, alleged that Lennox had promised to wed her as early as October 1755 and the promise was renewed two and three years later as soon as Lennox could establish himself as a merchant. Once self-sufficient by July 1760, Lennox and his trustingly faithful fiancée agreed to exchange vows within six months, but on September 13, 1761, the merchant married another woman "contrary to the Promises and Assumptions" he had given Mary Cooke. The jury was sympathetic to the amount of £2,500 in damages, and Rutledge--in the view of one writer--earned a lasting reputation.[55]

Cases such as those of Stuckey, Spencer, and Cooke differed from the majority of trespass on the case actions which were primarily for the recovery of debts plus damages for long detentions of the debts. The amounts these three sought (all more than £1,000) were higher than most suits in the province. As Table II and Table III illustrate, suits involving more than £1,000 comprised only one-fourth of the total number of suits for the entire colonial period. Despite the colony's burgeoning

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[54] Spencer v. Gibson, 1769, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

[55] Cooke v. Lennox, 1761, ibid. That this case launched Rutledge's legal career, as his biographer attests, is questionable since his case load increased only gradually during the first four years of practice. When he began in 1761, Rutledge was involved in twenty-three cases; in 1762, thirty-nine; in 1763, forty-one; and in 1764, fifty. His case load doubled the following year and remained high until he left practice for politics in the early 1770s. Richard Barry, Mr. Rutledge of South Carolina (New York, 1942), 58-62.

TABLE II

CASES IN THE SOUTH CAROLINA COURT OF COMMON PLEAS, 1703-1780

Action	Number of Cases	Percent of Total
Debt	4,924	47
Trespass on the case	5,174	49
Trespass	111	1
Ejectment	114	1
Assault	131	1
Other	65	1
Totals	10,519	100
Amounts Sought in Civil Actions		
Below £100	1,796	17
£100-£499	4,452	42
£500-£999	1,646	16
£1,000-£9,999	2,429	23
Over £10,000	190	2
Totals	10,513*	100

*Six cases listed no amount.

TABLE III

AMOUNTS AWARDED IN CIVIL ACTIONS

Amount	Number of Cases	Percent of Total	Percent of Cases Decided
Below £100	1,527	14.5	28
£100-£499	1,834	17.4	33
£500-£999	751	7.1	14
£1,000-£9,999	1,091	10.4	20
Over £10,000	106	1.0	2
Defendant	172	1.6	3
Totals	5,481	52.0	100
Cases Undecided			
No Verdict	3,913	37.2	
Settled/Ended	888	8.4	
Abated by Death	70	0.7	
Discontinued	167	1.6	
Totals	5,038	47.9	

economy, well over half of the civil actions involved sums of less than £500, and three-quarters of all suits were for less than £1,000. Amounts awarded to plaintiffs followed the same pattern. Awards of more than £1,000 constituted slightly less than one-fourth of all awards and of all cases decided, defendants won only about three percent. Perhaps the most interesting aspect of the court records is the fact that slightly more than one half of all cases were fully adjudicated, and no verdict at all was recorded for more than a third. Although many South Carolinians no doubt used the Court of Common Pleas to settle disputes over debts, an almost equal number chose to conclude their business out of court, thus avoiding expensive court costs, attorneys' fees, and the price of one or more trips to Charleston, the seat of justice. The threat of a court suit, then, was sufficient warning to a good many colonists to square their accounts with their creditors.

For successful plaintiff-creditors a satisfactory verdict did not always mean payment would be prompt. It is virtually impossible to measure the time lapses between verdict and satisfaction of a debt, but the case of Brewton and Smith, Charleston merchants, is probably an exaggerated one. Miles Brewton and Thomas Loughton Smith sued one William Flud of St. John's Berkeley in an action of debt for £621. The writ was filed in August 1768, and the merchants were awarded the full debt plus damages of £38.4.4-1/2 the following February. The attorney for the merchants was Brewton's son-in-law, Charles Pinckney, who was the nephew of the late chief justice. It was forty years later (April 1808) when the younger Pinckney's son and namesake "came here into Court and acknowledged in his own proper person, that full satisfaction of the debt, damages, Costs and Charges hath been

received; therefore be the said William Flud and his executors thereof discharged."[56]

In spite of the court's successful role in resolving large numbers of debt cases and of the willingness of a broad segment of the population to use this institution of justice, three impediments operated to hinder the tribunal's overall effectiveness: the ineptness of magistrates in handling small claims, the inefficiency of summoning jurors and defendants to attend the court, and in the later colonial period the failure to print a compilation of the province's laws equal to Nicholas Trott's volume in 1736.

Justices of the peace held authority by acts of 1720 and 1747 to decide cases where the value of the debt or damages did not exceed £20 Carolina money or £3 sterling. During the proprietary period the fees of courts and court officers often exceeded the debt to be recovered, and the act of 1720 was designed to remedy this.[57] These magistrates, however, seldom won favor from the judicial hierarchy in Charleston. Chief Justice Robert Wright threatened in 1733 to fine those who failed to perform their duty properly.[58] A grand jury four years later lamented the modest requirements for one to become a magistrate and protested that some sought the appointment merely to avoid militia duty. "On the whole," the panel

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[56] Brewton and Smith v. Flud, 1769, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

[57] Cooper and McCord, eds., Statutes of South Carolina, III, 99-100; Alexander Hewatt, An Historical Account of the Rise and Progress of the Colonies of South Carolina and Georgia, 2 vols. (London, 1779), I, 117; Bull to Hillsborough, November 30, 1770, BPRO/SC, XXXII, 381.

[58] S.C. Gaz., February 10, 1733.

concluded, "we can't forbear adding that the Office is almost become contemptible."[59] Charles Woodmason, Anglican itinerant to the backcountry and a severe critic of the legal system, blamed the justices of the peace for contributing to the immorality of the area by holding their proceedings in taverns and retailing liquors without a license in their own houses. He described one such scene of backcountry justice involving a cause of 30 shillings:

> 17 Witnesses on both Sides were examined on Oath; and at the conclusion of Things (I will be bold to affirm) that he [magistrate] could recollect but very little of what was sworn too on either Side--for while they were telling their Tales, he was filling up Precepts. He never sum'd up the Arguments, or cross-examined the Witnesses, or enter'd into the Nature of Things--but at once decided by Noses--giving Judgment in favor of Him that had a Majority of Swearers When, alas! the Truth laid quite the other Way; And the Right Claimant lost his Debt, and had a Load of Costs for to pay into the Bargain.[60]

Taking matters into his own hands, Woodmason appointed himself a justice of the peace and in 1765 submitted to the House an account for £90 for his services. The Assembly's committee on petitions and accounts--not known for its generosity where the public debt was concerned--refused to recognize Woodmason's title as well as his claim.[61] Meanwhile, the low quality of justice meted out by magistrates persisted at least until the district courts were organized in the backcountry in 1772.

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[59] Ibid., November 5, 1737.

[60] Richard James Hooker, ed., The Carolina Backcountry on the Eve of the Revolution: The Journal and Other Writings of Charles Woodmason, Anglican Itinerant (Chapel Hill, N.C., 1953), 123, 128.

[61] South Carolina Commons House Journals, 1765, p. 43, SCDAH.

Bringing defendants and jurors into the court at Charleston posed a more serious problem, especially in the turbulent years before and after the overthrow of the Lords Proprietors. Until 1713 writs were served by capias only, which was the same as in the mother country and meant simply that the writ calling the defendant into court was handed to him personally. The act of 1713 was passed in order to aid merchants and shopkeepers in the recovery of large sums of money owed to them by planters. The debtors, it was found, "have advantaged themselves by keeping out of the way of the Marshal, and sheltering themselves in remote and obscure parts of this Province, to the extraordinary charge and disappointment of the creditors, and the obstruction and delay of justice." The act then provided that the marshal could issue to the defendant a writ of capias personally or a summons left at his house.[62]

The summons left at the doorstep, however, brought troubles of its own and proved no solution to the court's problem. Those who opposed the summons, such as Governor Robert Johnson, complained that the practice of leaving a writ at someone's door was abused too frequently. Many had been judged guilty in court without knowing they had been summoned because the summons was left while they were away for extended periods. The courts returned to the capias two years later, tried the summons again from

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[62]Cooper and McCord, eds., Statutes of South Carolina, II, 611-612; South Carolina Commons House Journal, 1712-1715, pp. 189-190, SCDAH; Robert Johnson to Board of Trade, August 13, 1731, BPRO/SC, XV, 29-30. Thomas Lowndes, provost marshal in 1731, also charged that planters who were indebted to merchants often turned their slaves on the marshal or his deputies when they entered their plantations to prevent them from serving the writs. Lowndes to Board of Trade, December 14, 1731, Calendar of State Papers, Col. Ser., XXXVIII, 369-370.

1720-1726, and then renewed the capias, which after 1731 remained in force until the Revolution.[63]

The courts faced a similar problem in bringing jurors to Charleston to serve in the common law courts. A grand jury complained that some jurymen had been hauled before the court and faced with stiff fines for not serving when they had never been summoned properly. The panel also questioned the faithfulness of deputy marshals "whose general Characters are pretty well known" in actually delivering the notification of jury duty.[64] Johnson complained--somewhat inaccurately--that courts of justice could not be held from 1727 to 1731 because of a shortage of jurors.[65] The lengthy Jury Act of 1731 attempted to solve these problems by spelling out who would be required to serve on grand and petit juries and who might be exempt. However, problems remained. The Board of Trade in 1738 vetoed a section of the act which compelled all persons in the province to serve in Charleston; and the Assembly of 1739-41 again took up the problem of absent jurors.[66]

The most perplexing problem facing South Carolinians who had business before the courts must have been the absence of a printed edition of

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[63]Johnson to Board of Trade, August 13, 1731, BPRO/SC, XV, 29.

[64]S.C. Gaz., March 30, 1734.

[65]Johnson was probably referring to the county courts which functioned only intermittently in the 1720s. By the end of the decade, they had all but ceased to operate. The Court of Common Pleas in Charleston met only on a limited basis during those years. Johnson to Board of Trade, November 14, 1731, BPRO/SC, XV, 37.

[66]Smith, South Carolina as a Royal Province, 126-127; J. Harold Easterby, ed., Journal of the Commons House of Assembly, 1739-1741 (Columbia, S.C., 1952), 215; Smith, "Administrative Control of Colonial Courts," Flaherty, ed., Essays in the History of Early American Law, 326.

the colony's laws. The need for such a digest was felt before 1712 when the Assembly incorporated all English statutes which applied to the province as part of its law code. Chief Justice Trott undoubtedly aided in the drafting of this legislation since he was the only practicing jurist with a broad legal and formal education, which included study at the Inner Temple (1695) and a mastery of Latin, Greek, and Hebrew. Trott had also compiled for his own use an accurate collection of the provincial laws. In 1711 the Assembly feared that the copies might be destroyed by fire or accident and authorized money and secretarial help for the chief justice to prepare a double transcript of the acts for printing. Numerous delays prevented publication for more than two decades. Trott apparently revised his plans and resubmitted them to the House in 1717. The lower house--by this time locked into a nasty feud with Trott over the chief justice's powers--could not agree on adequate compensation. Governor Johnson, whose first term as governor of the colony coincided with the stormy, final years of the proprietorship, tried to prod the House to act. In disgust he told that body in December 1717:

> it is a matter of so great concern, that it ought no longer to be deferred, for we think it is of little use to us, to sit here and spend our time to pass laws, and at the same time no one can tell what is contained in them, and of consequence cannot put them into execution. Neither indeed is it just to have a penalty of the law inflicted upon persons who cannot reasonably be supposed to know them.[67]

The overthrow of the proprietorship in 1719, Trott's subsequent

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[67]South Carolina Commons House Journal, 1716-1721, pp. 240-241, 291-292, 299, 384, SCDAH; Hogue, "An Edition of 'Eight Charges,'" 8; David Duncan Wallace, History of South Carolina, 4 vols. (New York, 1934), I, 199-200.

dismissal from office, and the absence of a printer in Charleston until 1732 caused further delays.[68] Trott finally received £250 for his work and £50 for certain revisions which were ordered. Subscriptions were advertised by the Gazette two years before publication and the printer had to urge subscribers to make good on their debts because he had had to use his own money to continue printing copies of the laws.[69]

Although Trott's Laws of the Province of South Carolina which appeared in 1736 was a major contribution to the legal literature of the colonial period and quickly became a collector's item in provincial libraries, much of the work was dated before publication. The edition did not include any laws passed after 1719, and in 1751 the House ordered another digest of the laws to be printed as a guide for magistrates and other officers. Nevertheless, it was not until a decade later that Chief Justice William Simpson, who served a brief stint before moving to Georgia, published a one-volume digest of South Carolina laws under the title, The Practical Justice of the Peace and Parish Officer . . . .[70]

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[68]Francis Nicholson, the first royal governor of the province, detested Trott and threatened to prosecute him if he tried to have his copy of the laws published in the colony. When the House agreed in 1723 to pay Trott for his work, Nicholson retorted: "I never yet could know how the said Trott deserved Such a Sum for his good Services to this His Majesty's Province. But rather Punishment for acts to the Contrary." South Carolina Commons House Journal, 1722-1724, pp. 47, 51, 191, 195, SCDAH.

[69]Wallace, History of South Carolina, I, 200; S.C. Gaz., April 27, July 6, 13, 1734; August 10, September 11, 1736; January 1, 1737.

[70]Hogue, "An Edition of 'Eight Charges,'" 35-36; Walter B. Edgar, "Some Popular Books in Colonial South Carolina," SCHM, LXXII (1971), 176; Bull to Hillsborough, November 30, 1770, BPRO/SC, XXXII, 382; William Simpson, The Practical Justice of the Peace and Parish-Officer of His Majesty's Province of South Carolina (Charleston, 1761).

John Rutledge planned a publication similar to Trott's. In 1768 he proposed to publish all the laws of South Carolina with an index, marginal notes, and references in three volumes and the laws of Great Britain applying especially to the colony in another volume. Rutledge asked for subscriptions of £40 for all four volumes. He promised to print no more copies than the number of subscriptions and warned that an insufficient total would keep the compendium from going to press.[71] Subscribers were too few, and Rutledge's volumes never appeared. Charles Woodmason, a bitter opponent of the attorney, charged that "it was not the Interest of the Lawyers, for the Laws ever to be publish'd." He also complained that despite a liberal allowance from the Assembly, Rutledge had priced the volumes out of the range of most Carolinians. In a fiery letter to the famed Charleston lawyer, Woodmason asked:

> Is it not Slavery to be oblig'd to travel 200 Miles to [Charleston] there to give 2 or 3 Guineas to a Lawyer, for to know the Contents of such or such a Law, when the Laws say that ev'ry Act of Assembly shall be Printed and sent to ev'ry Parish Church? Are not our Laws locked up from us, as the Gospel is in Popish Countries?[72]

Less vitriolic but equally critical were several grand jury presentments in the late 1760s and early 1770s urging that provincial and British statutes be printed as soon as possible.[73] That no digests of

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[71] S.C. Gaz., May 9, 16, 1768; S.C. & Am. Gen. Gaz., May 13, 20, 27, 1768; S.C. Gaz. & C. Jl., May 17, 24, 31, June 7, 28, July 12, August 9, 16, 1768.

[72] Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 244-245, 278.

[73] For an example, see S.C. Gaz., October 29, December 17, 1772; South Carolina, Court of General Sessions Journal, 1769-1776, SCDAH. The complaints of the grand juries were for the most part justified. In the twenty-five year period beginning in 1751 and ending in 1775, complete acts of the Assembly were printed only four times--in the years

the laws had been printed since 1761 was a feature of South Carolina legal life so shocking to Josiah Quincy that he asserted in his journal in 1773: "No wonder their Lawyers make from £2,000 to £3,000 sterling a year! The rule of action altogether unknown to the people."[74]

Woodmason's criticism might have been too strong, although having to consult a lawyer merely to discover the contents of a certain law (much less its meaning) worked--as Quincy pointed out--to the advantage of the attorneys in Charleston. Nevertheless, Woodmason most certainly underestimated the task. The printing of the colonial and British statutes in four volumes was a herculean effort even for a competent lawyer like John Rutledge. Trott had enjoyed the vantage point of the chief justiceship and to some extent had been the official custodian of the laws at a time when the colony and the legal profession were small. Perhaps the laws might have been printed in the early 1770s since the court system had been extended into the interior of the colony and the Assembly was under some pressure to have the statutes published; but the political events of that period diverted the attention of the best trained attorneys. Publication of the provincial laws had to wait, then, until the printing of Judge John F. Grimke's work after the American Revolution.[75]

1760, 1764, 1765, and 1768. Single acts such as tax laws were printed in 1764, 1765, and 1766. At the outbreak of fighting in the colonies in 1775, the Provincial Congress ordered extracts from its proceedings printed in 1775 and 1776. Charles Evans, American Bibliography, 14 vols. (Chicago, 1903-1959), III, 270, 406; IV, 36-37, 79, 153; V, 192, 280-281.

[74]Howe, ed., "Journal of Josiah Quincy, Junior, 1773," Massachusetts Historical Society Proceedings, XLXIX (1915-1916), 446-447.

[75]John Faucheraud Grimke, The South Carolina Justice of the Peace (Philadelphia, 1796).

By the eve of that great conflict, the Carolina courts were little closer to their English counterparts than they had been at the outset of royal control. While the common law courts in Charleston might have resembled to some extent the courts of other colonies and the local courts of the mother country, they still differed in several respects in the use of such actions as trespass, trepass on the case, and ejectment. Criminal actions in the Carolina court differed from those in its colonial and British counterparts in the wide use of appointed counsel, the patterns of crime and punishment, and the use of the grand jury as an agent of social and racial control. Moreover, in spite of the growing trend to educate provincial lawyers at the Inns of Court and in spite of the increase in the number of legal volumes for sale and in private libraries, the Carolina judicial and legal system still lacked the organization and sophistication of the mother country. Lawyers rarely argued from precedent and rarely cited statute law; and justices--despite their legal training--rarely rendered judicial opinions.[76]

The problem of irresponsible magistrates, apathetic jurors, the scarcity of printed laws, and the absence of county or circuit courts also illustrate the limits of justice in colonial South Carolina. The most substantial problems were the failure of the judicial system to extend itself beyond the confines of Charleston until shortly before

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[76] An exception to this is the case of Watson v. Williams in 1759. Chief Justice James Michie read a thirteen-page opinion in the case which had great significance in defining the limits of judicial review by a provincial court. This episode is explained in more detail in Chapter IV. South Carolina, Court of Common Pleas Journals, 1754-1763, pp. 224-238, SCDAH. That lawyers and justices were capable of solid legal reasoning using precedent and citing statute law was evident in the judicial and legal debates over the legality of the Stamp Act.

the Revolution and the absence of a printed digest of the laws. Although it is doubtful that lawyers conspired to prevent publication of a legal compendium as Woodmason charged, the want of such a volume worked to keep the legal profession in Charleston. This remained the case even after the Revolution. At least one newcomer to the city after the war was critical of Charleston's complete legal control of the colony. Timothy Ford, a New York lawyer who moved to South Carolina after the war, recorded in his diary that

> the consequence of this mode is that all the attorneys centre in Charleston, are acquainted with one another & practice upon so liberal a footing as only to adopt so much of the english practice as suits their case & convenience & compound for the rest--so that no errors or omissions of that kind are taken advantage of--& the judges do not make it their business to scrutinize into these niceties. The practice is of consequence as slovenly & unsettled as the laws themselves.[77]

There was little of what might be called a legal system--courts, justices, sheriffs (or marshals), lawyers, and court officers--in any area other than Charleston. Thus, it is not too surprising that groups of men would eventually enforce their own law in their own way without seeking Charleston's help. What is surprising is that something akin to the Regulator Movement did not occur earlier and that when it did occur it was moderate in its goals and in its treatment of lawbreakers. Yet, the movement to extend the judicial system was a significant event in Carolina history. It did more than merely expand the legal system beyond the narrow borders of the Ashley and Cooper Rivers; it provided the backcountry, middle country, and growing areas of the coastal region with

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[77] Joseph W. Barnwell, ed., "Diary of Timothy Ford," SCHGM, XIII (1912), 199.

a common identity with the port city that preserved some semblance of unity during the approaching revolutionary crisis.

Finally, the Revolution itself did not drastically alter the court system in South Carolina. If legislators in the post-Revolutionary period enacted statute laws resembling those of the mother country, this was a practice little different from the colonial era.[78] A Precedent Book owned by George Bowie, an attorney in the 1790s under whom John C. Calhoun studied law, is filled with examples of writs, declarations, petitions, oaths, and judgments, all of which were substantially the same as those used in the colonial period. Thus, the Court of Common Pleas conducted its business in 1796 much as it had during pre-Revolutionary days.[79] While the courts in the new nation demonstrated features which may have resembled those of the English legal system, they were essentially provincial carryovers and not the result of deliberate efforts to transplant major aspects of the common law. The court system itself was in the long run less British than American and less American than uniquely Carolinian.

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[78] Ely, "American Independence and the Law," Vanderbilt Law Review, XXVI (1973), 939-971.

[79] George Bowie, Precedent Book, 1790, SCL. George Bowie was born in 1771 in Abbeville, South Carolina, and studied law in the office of two attorneys in Ninety-Six. He was admitted to the bar in the late 1790s, and was one of the first lawyers who made a permanent residence in that backcountry judicial district. After retiring from the legal profession near the middle of the nineteenth century, Bowie moved first to Florida and later to Alabama. O'Neall, Bench and Bar of South Carolina, II, 207-208.

CHAPTER III

EXPANDING THE LAW: THE EXTENSION OF THE JUDICIAL SYSTEM

> That it is the want of the due operations of government that we deplore: that it is the denial of that protection which British subjects and honest men have a right to, that we with bleeding hearts regret: that our dissatisfaction is founded in a deprivation of some of our dearest birthrights: and which have not been extended to us, even upon your Honour's just recommendation, as well as our most humble petitions.[1]

The feature of South Carolina's legal system which set it apart from other colonies, both north and south, was the absence throughout most of the colonial period of courts outside of Charleston. The non-existence of these county, circuit, or district tribunals has also been viewed as a precipitant of the internal disorder of the late 1760s known as the Regulator Movement, just as the eventual establishment of circuit courts in 1769 was seen as a panacea for the backcountry's problems.[2] This, however, is only partially accurate. Certainly the lack of judicial or legal authority in the backcountry contributed to the rise of the Regulators, and the creation of courts there solved some of the problems faced by the respectable elements of that region. However, concentration only on the Regulator period misses an important aspect of the attempt to expand justice in the colony: namely, that the drive for

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[1] Memorial of the South Carolina Regulators, S.C. & Am. Gen. Gaz., December 12, 1768.

[2] The standard work on the Regulator Movement in South Carolina is Richard Maxwell Brown, The South Carolina Regulators (Cambridge, Mass., 1963), 1-3; Smith, South Carolina as a Royal Province, 133; Wallace, History of South Carolina, I, 278; David Ramsay, History of South Carolina, 2 vols. (Charleston, 1858), I, 122-123.

courts outside of Charleston was a persistent issue throughout the colonial era which involved not only the extension of justice to the back-country but to the middle of the province and to other coastal districts such as Georgetown and Beaufort as well.

The Lords Proprietors provided for county and precinct courts in the Fundamental Constitutions and encouraged their establishment throughout the seventeenth century. County courts were to retain vestiges of the old English system in that sheriffs would preside over the judicial functions. It is possible--although uncertain--that county courts existed on a limited basis during those early years since the Assembly was quick to complain in 1692 that the offices of sheriff and judge were lodged in the same person, thereby confounding the role of prosecutor and justice.[3] If county courts existed, however, they did not last very long, certainly not into the eighteenth century. Although their Lordships continually urged adherence to the Fundamental Constitutions as the "grand model," by the 1690s the colony's political direction was more in the hands of the lower house than of the Governor and Council who were the direct representatives of the proprietary leadership in London. This, as Clarence L. Ver Steeg has pointed out, was a crucial factor in the political development of South Carolina and separated it from its sister colony to the north. North Carolina accepted the Fundamental Constitutions and established county courts and other forms of local government early in the proprietary era. South Carolina, by contrast, never accepted the

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[3]Cooper and McCord, eds., Statutes of South Carolina, I, 46-51; BPRO/SC, II, 129; Wallace, History of South Carolina, I, 270; Salley, ed., Journals of the Commons House of Assembly, 1693, pp. 16-17.

Lockean document as a basis for government, and an increasingly powerful Assembly regarded any form of judicial authority in the Constitutions as outside intervention imposed without the consent of the people, the lower house.[4]

With counties as no more than geographical entities, the only agencies of local control were the parishes. An act of 1706 created ten parishes, and others were added later in the century as the population shifted. Anglican freeholders of each parish met every Easter Monday and elected seven vestrymen and two churchwardens. The vestry recorded births, marriages, deaths, and supervised parish finances and church repairs. Although they did not enjoy the political influence of parishes in England and Barbados, these South Carolina units of local authority exercised control over poor relief, education, and elections to the Commons House of Assembly. As agencies of local government, these Anglican-sponsored parishes often had support from dissenters who were occasionally elected as church wardens and vestrymen, albeit contrary to law.[5]

The most serious effort to launch a system of county and precinct courts came shortly after the overthrow of the proprietorship in 1719. Governor Francis Nicholson, who came to South Carolina from Virginia, tried to encourage his new subjects to copy the court system of his former colony. Nicholson's plan faced opposition from Charleston merchants who--through their lawyer Benjamin Whitaker--complained that the provision

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[4]Ver Steeg, Origins of a Southern Mosaic, 12-13, 16-17.

[5]Sirmans, Colonial South Carolina, 97-98.

ordering the trial at the defendant's county of residence would make it difficult for them to collect debts. Their petition was dismissed, and the County Court Act of 1721 passed the Assembly.[6]

The preamble to the act stated that the great distances to Charleston were burdensome and resulted in delays in the administration of justice, discouraging people from seeking their rights at law. The act provided for courts in Wassamsaw, the parishes of St. James Goose Creek, St George's Dorchester, and St. John's Berkeley, St. James Santee in Craven County, at Willtown in Colleton County, and in Beaufort in Granville County. A precinct court was created at Wando, north of Charleston, for the parishes of St. Thomas, St. Dennis, and Christ Church. Courts were given criminal jurisdiction in all matters except life and limb and civil authority in actions which did not exceed £100 sterling (at that time about £500-£600 Carolina money). The common law courts in Charleston would handle all other cases including appeals from these petty courts.[7]

From the outset, instability plagued the newly created courts. In 1722, the House reduced from four to two the number of yearly sittings. Holding courts quarterly, the amending act stated, "hath been deemed too great a fatigue, both to justices, magistrates, and jurors." During the next three years the House heard complaints about the location of some of the courts and looked into the possibility of reducing their number. The

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[6]Journals of the Council of South Carolina, 1721, pp. 78, 104, 119, SCDAH.

[7]Cooper and McCord, eds., Statutes of South Carolina, VII, 166-176.

Assembly also complained that it could not find qualified persons to serve as marshals in the counties and precincts.[8] Arthur Middleton, president of the Council and acting governor, added his voice to those who complained about the county court system. Middleton was particularly critical of the assistant judges, who were in reality justices of the peace and planters rather than trained attorneys. The justices, he told the Board of Trade, were "bred up only in planting affairs and knowing neither law nor practise became a ridicule to the lawyers, subjected themselves to prosecutions by their unskillfulness and committed so many errors, that there would have been no end of rectifying them." He also reported that when the law was changed in 1726 reinstating the capias (a writ which had to be left with the defendant) and eliminating the summons (which could be left at one's home but did not have to be delivered personally), several justices resigned their commissions "for nothing would satisfye them, but bringing all causes to their own doors," and courts were not held at the county or precinct level for two years, 1727-1729. Middleton asked the Privy Council to repeal the three acts on which the county and precinct court system was based, arguing that the backcountry was too sparsely populated and that the powers of the justices were too broad.[9]

Notwithstanding these problems, the fledgling county court system might have survived had the colony itself been in better shape

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[8] Ibid., 179-182; South Carolina Commons House of Assembly Journals, 1722-1724, pp. 12, 32, 158, 166-167, 169-170, 180, 243, 388, 440, 468; ibid., 1725, p. 39, SCDAH.

[9] Arthur Middleton to Board of Trade, July 30, 1729, Calendar of State Papers, Col. Ser., XXXVI, 455, 459-460.

economically. In a larger sense, the turmoil surrounding the expansion of the court system during these years reflected the economic and political instability of the province during the first decade of royal control. Although the proprietors had been forced out in 1719, they held tenaciously to certain rights of the soil and surrendered these only after exhaustive legal maneuvers. Thus, the first decade of royal control also witnessed a residual element of proprietary influence. By the mid-1720s the colony was in the grip of a depression, and crown control was proving little more effective in aiding the province than had been the proprietary arrangement. The Board of Trade made the decision to assume control of South Carolina on the basis of its imperial needs and strategic location and not on its desire to solve the colonists' economic woes. Britain's decision, for example, to end the colony's naval stores bounties after twenty years and its refusal to remove rice from the list of ennumerated goods and thereby open continental markets had calamitous effects on the provincial economy.[10]

The newly created county courts of the 1720s were also caught in the struggle for power between planters of the interior and merchants in Charleston. Most planters had favored the county court system which eliminated the inconvenience of traveling to Charleston to handle their legal matters. Merchants, on the other hand,--especially those who had no large plantations away from the port city--wanted to retain centralization of legal power in the provincial capital. Their chief concern was the problem of collecting debts in the petty courts, and they disliked

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[10]The best account of South Carolina's economic development during this period is Clowse, Economic Beginnings in Colonial South Carolina, 185-186, 226-227.

having to follow the defendants with their witnesses fifty or a hundred miles. The instability of the court system and the provision for trying cases involving larger sums in Charleston no doubt prevented the expansion of the bar outside Charleston. As a result of these problems, the courts by the late 1720s had ceased to function and were not revived for another four decades.[11]

The improvement of the economy after 1730--particularly the policy of making Carolina rice available to continental markets--coincided with the opening of the backcountry for settlement. The push of settlers into Governor Robert Johnson's large townships beginning approximately fifty miles from Charleston was not accompanied by the institutions of local government. Towns in the middle section of the colony and along the coast were also growing and in the next two decades sought political recognition. Among all of these areas, the backcountry was perhaps the most unique because its population differed so markedly from that of the low country. Natives of the colony remained a minority, their number decreasing proportionately with each mile from Charleston. The white population contained an ethnic mixture of Germans and Swiss who were in a majority in the townships of Amelia, Orangeburg, New Windsor, Saxe-Gotha, and Dutch Fork; in other areas, the Scotch-Irish dominated; Virginians, Irish Quakers, French Huguenots and natives of northern colonies were also among the settlers. By 1759, a year before the outbreak of the Cherokee War and less than a decade before the Regulator Movement, a

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[11]Middleton to Board of Trade, July 30, 1729, Calendar of State Papers, Col. Ser., XXXVI, 460; Stumpf, "Merchants of Colonial Charleston," 137-138; Wallace, History of South Carolina, I, 278.

total of 20,000 people--mostly white frontiersmen--had settled in the backcountry.[12]

Courts did not come to the backcountry or anywhere outside of Charleston until the Regulators fully dramatized the need for them. However, the expansion of the court system was considered only a few years after Governor Nicholson's plan failed. In 1737 a House committee, consisting of four lawyers among its nine members, approved a measure to establish courts at Beaufort and Georgetown, but the bill never passed beyond a first reading.[13] Four years later a grand jury called for the creation of county courts, citing as a reason the distance from Charleston and the hardship of traveling so far to settle trifling disputes that could be remedied easily with county courts and circuit judges such as those employed in neighboring colonies. An Assembly panel investigated the grand jury's complaint and unanimously reported that the creation of courts in Georgetown and Beaufort (Craven and Granville Counties, respectively)

> is yet too early in this Province, and that the necessary Attendance of several Officers and others on such Courts, and the building of Prisons, and appointing sufficient and responsible Persons to keep them, will (at present) be more chargeable and burthensome to the Inhabitants of those Counties than the Attendance they are now obliged to give.[14]

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[12]Brown, South Carolina Regulators, 1-3; Robert W. Barnwell, "Loyalism in South Carolina, 1765-1785" (Ph.D. diss., Duke University, 1941), 6-9. The standard work on the settlement of the Carolina backcountry is Robert L. Meriwether, The Expansion of South Carolina, 1729-1765 (Kingsport, Tenn., 1940), 183.

[13]The lawyers were Maurice Lewis, William Trewin, Benjamin Whitaker, and Andrew Rutledge. J. Harold Easterby, ed., Journal of the Commons House of Assembly, 1736-1739 (Columbia, S.C., 1951), 207, 512.

[14]Ibid., 1741-1742 (Columbia, S.C., 1953), 283, 295.

Wracked by the economic losses and indebtedness created by King George's War (1744-1748), several low country areas petitioned the House for the creation of county courts in the 1740s. Inhabitants of St. Helena's and Prince William's Parishes in Granville County, Edisto Island and St. Bartholomew's Parish in Colleton, and Craven County all submitted separate memorials, but their requests and grievances bore striking similarities. Each complained of the distance of traveling to the provincial metropolis and the charges of staying in town for the court sessions to secure settlement of debts which were at times less than the costs involved in their recovery. The petitioners' request was modest. They did not ask for an expansion of the common law courts but for increased authority for justices of the peace and freeholders to try cases involving sums between £20 to £100 Carolina money. The Assembly responded with an act for the recovery of small debts in 1747. The measure empowered two magistrates and three freeholders to determine cases involving between £20 and £75. Courts were to function as county courts and followed the same design as the defunct local judicial bodies of the 1720s. In spite of the efforts of the Assemblymen and the province's agent in London, Peregrine Fury, the Board of Trade recommended repeal of the act without explanation, and the courts were never established. In this instance, at least, the House demonstrated sympathy with the needs of the outlying parishes, and it reacted angrily to news of the act's disallowance. The Assembly informed Governor James Glen that:

> we humbly conceive that the Reasons for passing the said Act were that the Fees and Charges in the Court of Common Pleas did often surmount the Debt, not only oftentimes to the utter Ruin of the Defendant, but also sometimes to the great Damage and Prejudice of the Plaintiff which are contained in the

> Preamble thereof and were founded on the Equity of the Thing which is always the same whether our Circumstances are flourishing or unfortunate.[15]

During the next decade, the House heard the first rumblings of discontent from the middle section and backcountry of the colony. The middle country near the fall line called for courts at the townships of Amelia, Orangeburg, and Williamsburg, and in 1752 sixty inhabitants of the Cheraws District in the upper portion of the province near the North Carolina border urged the establishment of criminal courts. The petitioners complained:

> We find the frontier here to be a place of refuge for many evil disposed people and those of the meanest principles, crowding in amongst us--such as Horse Stealers and other Felons, having made their escape from North Carolina, and other parts--others cohabiting with their neighbor's wives, and living in a most lascivious manner, while we have no way or means to suppress them.[16]

On the eve of the Regulator Movement, the House was fully aware of the problems of civil and criminal justice in the backcountry and promised to deal with the issue. In 1765--two years before the Regulation--the Assembly acted on a grand jury grievance and drafted a bill to establish circuit courts "in the remote parts of this province."[17] The printer of the Gazette hailed the coming of judicial institutions to the backcountry

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[15]Ibid., 1742-1744 (Columbia, S.C., 1954), 216-217; ibid., 1746-1747 (Columbia, S.C., 1958), 63-68, 81-82, 276-277, 315, 395; ibid., 1748, p. 306; ibid., 1749-1750 (Columbia, S.C., 1962), 135-137, 139; Board of Trade Journals, VIII, 256, 271, 273-274.

[16]Meriwether, Expansion of South Carolina, 183; Alexander Gregg, A History of the Old Cheraws (New York, 1867), 131-132.

[17]South Carolina Commons House Journal, 1765, p. 7, SCDAH; S.C. Gaz., November 12, 1764, February 16, 1765.

as the means of wielding law and order now while villains in those parts were not as numerous as they might be in a few years. He added:

> the very appearance of a judge, surrounded with his lawyers and officers, will demand attention. The solemnities attendant upon a Court, will awe the people into respect--the cause of their meeting will create a secret satisfaction in the honester part, and terrify the lurking villain.[18]

It is therefore likely that an extension of the court system to the backcountry would have taken place in the mid-1760s. While the House was considering a suitable form of justice for the interior, however, the Stamp Act crisis intervened; and the Assembly gave its full attention and energy to the defense of colonial rights over Parliamentary power. The Regulator Movement itself also interfered with legislative plans, and many assemblymen probably awaited the outcome of the disturbances in the backcountry before committing themselves to an expansion of the judicial apparatus. As it turned out, neither judges, lawyers, nor court officials terrified lurking villains as readily as the indignant, respectable element of leading men in the backcountry who reacted swiftly to the outbreak of crime in the summer of 1767. This vigilante band hunted down horse thieves and other criminals, applying the lash liberally to their backs and the torch to their houses and hideouts. The extremism to which this extralegal body inevitably resorted in its pursuit of order in the interior was eventually curtailed by a counter-vigilante group known as the Moderators in 1769.[19]

As a law and order uprising, the Regulation in South Carolina differed markedly from a similar movement occurring at the same time in

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[18] S.C. Gaz., June 15, 1765.

[19] Brown, South Carolina Regulators; for details of the Regulator episode itself, see his chapters III-VI, 38-95.

North Carolina. Both used the term "Regulator," participants in the two groups sympathized with each other, and both involved backcountry planters, ranging from middle class to wealthy. However, the similarities end there. North Carolina's struggle was largely between planters in the west and the lawyers and merchants who opposed them, and it emerged when the planters came to believe that they no longer exercised control over their own society and that those who were in control did not work the land. North Carolina, it will be remembered, had since the seventeenth century organized a system of county courts and local government which extended to the backcountry. The fight in that colony which ended in the Battle of Alamance in 1771 was for control of the judicial system and was finally won in bloodshed by the colonial militia from the eastern part of the state.[20]

In South Carolina, the movement resulted from an absence of the institutions of government and the desire of property holders to establish order within their own region. Yet, the Regulators were equally determined that the legal system of the capital would not be used against them. While they permitted the provost marshal to serve writs of debt and vowed to keep the backcountry safe from fleeing debtors, they steadfastly refused to honor writs in criminal actions and whipped or threatened to whip those who tried to serve them.[21] The backcountry force also made

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[20]Ibid., 39-40, 136-142; James P. Whittenburg, "Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulation," WMQ, 3rd Ser., XXXIV (1977), 220-221.

[21]Charles Woodmason recorded in his journal that the Regulators "have actually whipped all the Constables and Sheriffs officers, took and tore the King's Writs--and Judges Writs. Silenced the Constables--Stopp'd payment of all public Taxes--and We are now without Law, Gospel, Trade, or Money." Hooker, ed., Carolina Backcountry on the Eve of the

no attempt to disrupt the process of government in Charleston and the low country. There was never any design to march on the capital, and in return the Regulators wanted no interference from the colonial authorities in their handling of outlaws and miscreants. What the men in the interior sought was an extension of the judicial and political process to their area of the province, especially criminal courts, judges, and sheriffs. This is evident from both the Regulator Remonstrance of November 1767 and a memorial to the lieutenant governor in December 1768. The latter document stated clearly:

> That it is the want of the due operations of government that we deplore: that it is the denial of that protection which British subjects and honest men have a right to, that we with bleeding hearts regret: that our dissatisfaction is founded in a deprivation of some of our dearest birthrights: and which have not been extended to us, even upon your Honour's just recommendation, as well as our most humble petitions.[22]

While some of the inhabitants of Charleston and the surrounding low country might have joined John Rutledge in wishing the backcountry were at the bottom of the sea, others sought more practical solutions to the problems of that region. The fiery merchant Christopher Gadsden did not disagree with Regulator goals, but he believed their movement "altogether premature and impudent." The aims of the interior freeholders could serve little purpose except to divide the population and distract the province from the constitutional controversies with the mother country, "to divert us from the grand Common Concern, at this momentous Crisis."

Revolution, 55; Brown, South Carolina Regulators, 39-40, 51; S.C. & Am. Gen. Gaz., March 20, 1769.

[22]The Remonstrance is printed in Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 213-233; The memorial is printed in S.C. & Am. Gen. Gaz., December 12, 1768.

At the same time, Charles Woodmason, who had recovered from his political misfortune of supporting the Stamp Act in Charleston and the several civil suits directed at him while he was a storekeeper in Prince William's Parish, emerged as the self-proclaimed champion of justice for the backcountry. Woodmason, who had been ordained as an Anglican minister, went to the backcountry as an itinerant. Although he remained critical of the morals, manners, and customs of the people of that region, the Regulator crisis provided him with the opportunity to vent his undying hostility toward the politicians who had forced him to resign his commission as stamp distributor and the lawyers who had represented merchants bringing suits against him. The antipathy he bore clouded whatever objectivity he might have sought, and although his writings provide an insight into backcountry grievances, his views are often exaggerated. He never overcame his penchant for seeing merchants and lawyers involved in a diabolical conspiracy not only to subvert the interests of the backcountry but to make his own life miserable as well. Woodmason replied to Gadsden's comments:

> Have Patience--Have Patience! has for many Years been the Prescription of our Political Quacks, to the Country People. Their Patients have apply'd this Anodyne, till they are become Paralytic, and require more sovereign Remedies--Which if their own Doctors will not administer, they are determined to seek Relief elsewhere.[23]

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[23]Woodmason's answer to Rutledge was: "If any Peasants in Russia, Poland, or Germany are in a worse State of Servitude than this, then Sir we will join You in that pious wish You made in the House That the Back Country was at the Bottom of the Sea." For background on Woodmason, see Hooker, ed., Carolina Backcountry on the Eve of the Revolution, xii-xxxii, 193, 264-265, 267, 278. Woodmason particularly disliked Rutledge because the famous attorney had prosecuted two of the six civil suits against him in 1762 and 1763 for a total of £5,316.6. Yet, the storekeeper-turned-Anglican minister knew a good lawyer when he saw one in action and hired Rutledge to prosecute a suit of his own. Middleton and Brailsford v. Woodmason, 1762, Adam and Milford v. Baxter and Woodmason, Woodmason v. Godfrey, 1763, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

Most low country inhabitants, however, probably agreed with several grand juries and assemblymen who postulated the three basic needs of the backcountry as (1) a system of courts and justices, (2) a system of "public and well-regulated Schools," and (3) increased political representation in the lower house. Of the three, only circuit courts were realized before the American Revolution.[24] The establishment of the courts was perhaps less of a problem than the establishment of schools or the creation of new parishes, since petty courts had been tried before, and the Assembly at least had some guideline for its action. Unfortunately for the backcountry, however, the House in drafting the Circuit Court Act of 1768 chose to take a stand in favor of judicial tenure for American justices during good behavior, and this provision in the law sealed its fate with the Board of Trade. Although the "good behavior" clause was only one of the reasons the Board's attorney, Matthew Lamb, recommended disallowance of the act, it was the major irritant, and the issue of judicial tenure in the colonies deserves more than passing mention here.

The question of tenure for life instead of good behavior for English judges had been settled with the Glorious Revolution of 1688-1689, but this settlement was not extended to the American colonies. The Board of Trade believed that while judges at home rarely warranted removal, many in the colonial judiciary were incompetent and had to be replaced regularly with better men. Most judicial appointments in the provinces had been during the crown's pleasure, a policy which the Board after its reorganization

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[24]South Carolina, Court of General Sessions Journal, 1769-1776, pp. 26, 42, SCDAH; Barnwell, "Loyalism in South Carolina," 84-86.

in the mid-1690s decided would best promote the interests of the crown in the colonies.[25] Legislators in South Carolina had often become infuriated with the colony's judicial officers, especially the chief justices, and had demanded the removal of some. But unlike assemblymen in other colonies, they never raised the tenure issue to a volatile level. That they did so in 1768 was due to two main reasons. First of all, South Carolina no doubt wished to join other colonies such as New York, New Jersey, and North Carolina in protesting the practice of granting judicial office during pleasure. The House recommended to its London Agent, Charles Garth, that he join with other colonial representatives to change the current policy. Secondly, and perhaps more influential, was the fear that the crown office holders might be highly incompetent and not at all amenable to the interests of the colonists in contests over the royal prerogative. The Assembly, in fact, had only just emerged from a long-standing bout with Chief Justice Charles Shinner in which it finally persuaded the governor to dismiss him from office on the grounds of his incompetence in the law. The prospect of another appointee like Shinner gave the representatives some pause and reason to take a stand for tenure during good behavior.[26]

The Board greeted the tenure clause with incredulity. Attorney Lamb found the provision derogatory of the King's dignity, and the members

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[25]Klein, "Prelude to Revolution in New York," WMQ, 3rd Ser., XVII (1960), 448-453; Greene, Quest for Power, 337; Smith, "Administrative Control of the Courts of the American Plantations," Flaherty, ed., Essays in the History of Early American Law, 282-283, 308-309.

[26]Klein, "Prelude to Revolution in New York," WMQ, 3rd Ser., XVII (1960), 448-453; Brown, South Carolina Regulators, 65-68.

passed on to the crown the view that the provision was both "unnecessary and improper," adding that "it does not appear that in the present situation and circumstances of the said Colonies it would be for their interest or advantage that the Judges should hold their Offices during good Behaviour."[27] To its credit, the Assembly did not wage a pitched ideological contest over its power, and judicial tenure never became the explosive issue in South Carolina that it was in New York. Visiting the colony in 1773, Josiah Quincy of Massachusetts may well have misread the sentiment in favor of a tenure provision when he claimed that the Carolinians resented omitting such a clause in the Circuit Court Act of 1769. "May heaven forgive," he wrote in his journal, "but the people never forget them! Think you, that they who eyed the fleece have got it? No! As in like cases, American fools thirsting for honour and riches beat the bush: British harpies seize the poor bird. Righteous is the measure of God!"[28]

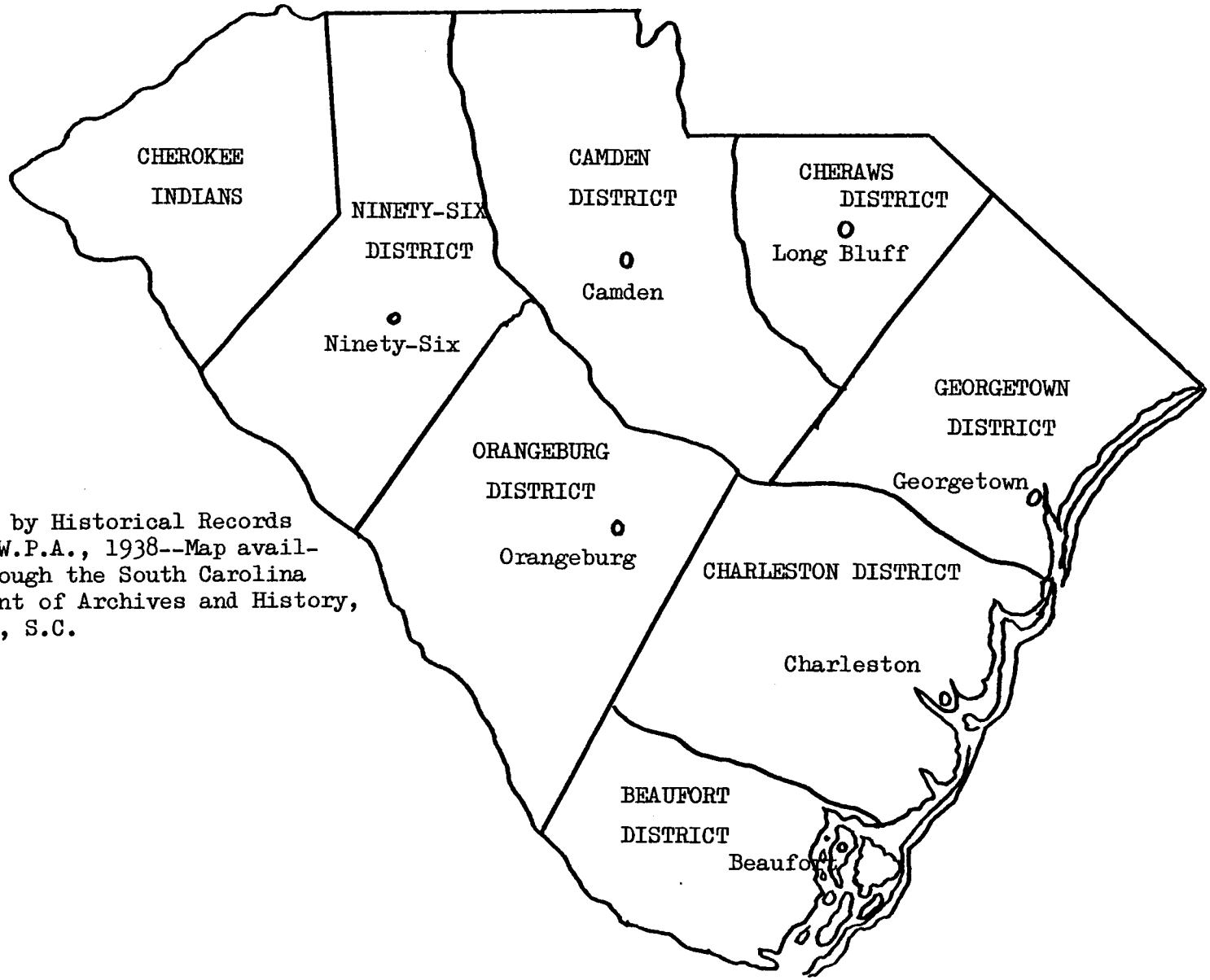
Most assemblymen, however, believed the need for courts in the interior outweighed the argument for tenure during good behavior. Had they taken a stand similar to the one they would take in 1770 during the Wilkes Fund Controversy, the court act would still have lacked approval, the issue of tenure would not have been resolved, and, like education,

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[27]Board of Trade to the King, September 15, 1768, BPRO/SC, XXXII, 43-50.

[28]For the struggle over judicial tenure in the colonies, see Joseph H. Smith, "An Independent Judiciary: The Colonial Background," University of Pennsylvania Law Review, CXXIV (1976), 1104-1156; for New York, see Klein, "Prelude to Revolution in New York," WMQ, 3rd Ser., XVII (1960), 448-453; Howe, ed., "Journal of Josiah Quincy, Junior, 1773," Massachusetts Historical Society Proceedings, XLXIX (1915-1916), 448-449.

justice would not have reached the backcountry until after the Revolution. Instead, the House acted swiftly to replace the nullified measure, and the Circuit Court Act of 1769 at long last spread the judicial system throughout the province. The act established seven judicial districts (see map, Figure 1): one in the capital; one each in Orangeburg, Camden, Ninety-six, and Long Bluff (The Cheraws) in the interior; and one each at Georgetown and Beaufort in the coastal area. The law extended common law jurisdiction to each, and provided that all courts except the one in the metropolis would meet biennially in April and November. The Charleston courts would continue to meet quarterly. As in the 1768 act, judges retained summary (non-jury) power to decide cases involving £20 sterling or less. The act curiously permitted men to represent themselves in the summary trials but in others explicitly stated that no person could practice in or solicit in the courts "unless he has been or shall be admitted Barrister at Law, or an Attorney thereof, by the Court of Common Pleas in Charles-Town, or an Attorney of that Court, and an Inhabitant of this Province." This would undeniably keep the bar centered in the capital city and prevent the development of an exclusively backcountry legal profession. Instead of a tenure clause, the measure enumerated salaries for the judicial officers: the chief justice would earn £500 sterling per year; each assistant justice, £300 sterling; the attorney general, £500 sterling; and the present clerk of the Court of Common Pleas, £300 sterling. The act was to become effective upon completion of the building of jails and court houses in the districts, which involved a three year delay in the opening of the courts. Instead of a provost marshal and deputies, the act called for a sheriff for each district. This meant that the Assembly



Compiled by Historical Records Survey, W.P.A., 1938--Map available through the South Carolina Department of Archives and History, Columbia, S.C.

Figure 1. South Carolina circuit court districts, 1769.

had to go through the complicated procedure of purchasing the royal patent from the British playwright and placeman Richard Cumberland, who held the position of provost marshal and merely farmed out the office to those who paid him a fee. The House with considerable help from Garth bought the patent for £5,000 in 1767.[29]

Another feature that remained unchanged from previous court acts was the provision that all writs in civil actions would originate and be returnable to the Charleston Court of Common Pleas. This, as Richard Maxwell Brown points out, was less a favor to Charleston lawyers and merchants than a recognntion of the need for proper record keeping facilities which the backcountry districts did not possess.[30]

The circuit court law generally enacted most of what the Regulators had advocated in their Remonstrance of 1767. County courts were not completely omitted but merely postponed until the activities of the circuit courts and the growth of the population warranted them. By the time the courts opened in 1772, Governor Charles Greville Montagu had pardoned seventy-five Regulators, and the backcountry and coastal region co-existed in some degree of harmony. Neither schools nor representation in the lower house reached the interior until after the war with England, but people

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[29]Acts of the General Assembly of South Carolina, Passed in the Year, 1769 (Charleston, S.C., 1769). This act is printed in its entirety in Brown, South Carolina Regulators, 148-158.

[30]Brown, South Carolina Regulators, 99-100, 149. Of the necessity of handling all legal business in Charleston, Woodmason acerbically remarked: "Ev'ryone must trudge to C.T. So that a Witty Planter once said that He Hop'd that the Assembly would lay a Tax on Urine and Ordure as Augustus did--And then ev'ry one when he needed, would go to C.T. to evacuate." Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 240.

of both regions were optimistic when the justices and lawyers embarked on their first circuit ride in the fall.[31] Writing at the turn of the century, Governor John Drayton remembered:

> These courts, thus established, have produced much benefits to the people at large; by them distributive justice is brought as near the doors of individuals, as the public service and local circumstances, renders necessary. By them civilization is promoted; a due respect to government is produced; and riotous passions, which county courts were not able to control, are obliged to acknowledge obedience to the dictates, flowing from these tribunals, founded on learning and experience.[32]

The Gazette printed the activities of the circuit courts, including the decisions in the earliest criminal trials, presentments of district grand juries, and the assignments of the justices and their meeting dates.[33] Camden, the prosperous trading settlement with strong economic links to Charleston and the low country, held its biennial fairs to coincide with the sitting of the courts. Thus, the inhabitants who were attracted to the area to witness the legal proceedings might also sample the wares of local merchants and shopkeepers.[34] At Long Bluff, site of the Cheraws circuit court, the initial session of the tribunal was opened with a sermon preached by the Reverend Nicholas Bedgegood of that area.[35] The theme of provincial harmony between the coastal area and the interior

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[31]Brown, South Carolina Regulators, 101, 114; William Bull II to Lord Hillsborough, November 30, 1770, BPRO/SC, XXXII, 379.

[32]Drayton, A View of South Carolina, 184.

[33]For example, see S.C. Gaz., May 28, November 26, 1772, March 27, May 29, 1775, April 12, 1777.

[34]JoAnne McCormick, "The Camden Backcountry Judicial Precinct 1769-1790" (M.A. Thesis, University of South Carolina, 1975), 19-20, 52-54.

[35]Gregg, History of Old Cheraws, 196.

was driven home most clearly by the printer of the Gazette after the initial journey to the backcountry by the justices and lawyers. Thomas Powell wrote:

> The Hon. Chief Justice [Thomas Knox] Gordon and Justice [John] Murray are returned from the Northern Circuit; the Hon. Justices [William] Savage and [Charles Mathews] Coslett from the Southern; and the Gentlemen of the Law, and others, that attended the several Courts, all in perfect Health--astonished with a View of a fine Country, of whose Value and Importance they before had very inadequate Ideas; and highly satisfied with the Reception they every where met, as well as the general Conduct of the Inhabitants--who, in those Parts where they were termed in a great Measure uncivilized, only want good Schools and School-Masters, Churches and Ministers, and fit Magistrates, to render them as valuable a People as any upon Earth.[36]

The actual operation of the courts also gave the backcountry some common features with Charleston. No single circuit tribunal ever seriously rivaled Charleston's hold on legal activity; nor did the six other districts combined equal the case load of the capital city's Court of Common Pleas prior to and during the Revolution. As Table IV on the following page illustrates, in the six-year period before the British occupation of the province, the Charleston Court handled more than two-thirds of all civil cases, while the two busiest circuit courts, Georgetown and Camden, handled slightly fewer than one-tenth of the total cases each. Combined, the circuit courts outside of Charleston decided fewer than one-third of the legal actions during the entire period, 1774-1780. The significance of this is somewhat unclear. On the one hand, the removal of one-third of Charleston's legal business affected more than merely the courts. It meant that those who had prosecutions to pursue

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[36] S.C. Gaz., December 10, 1772.

TABLE IV

CIRCUIT COURT CASES, 1774-1780

Year	Total Cases	Number of Cases/Percent						
		Charleston	Beaufort	George-town	Ninety-Six	Cheraws	Camden	Orange-burg
1774	229	183/80%	3/1%	17/7%	4/2%	5/2%	16/7%	1/.5%
1775	198	153/77	10/5	16/8	5/3	1/.5	8/4	5/3
1776	23	12/52	0/0	4/17	3/13	2/9	2/9	0/0
1777	171	110/64	9/5	19/11	9/5	6/4	15/9	3/2
1778	245	151/62	8/3	27/11	12/5	14/6	26/11	7/3
1779	101	72/71	2/2	6/6	2/2	10/10	8/8	1/1
1780	22	16/73	0/0	0/0	5/23	0/0	0/0	1/4
Total 1774-80	989	697/70%	32/3%	89/9%	40/4%	38/4%	75/8%	18/2%

Source: Figures compiled from Judgment Rolls, South Carolina Court of Common Pleas, 1774-1780, South Carolina Department of Archives and History, Columbia, S.C.

would not have to shoulder the expenses of travel to and from the capital, lodging in Charleston inns, dining and drinking at the city's taverns, and general shopping among the port city's many fine merchant houses. The only services they would need from Charleston would be those of a lawyer and for this they could await the opening of court in their own districts and employ men such as Thomas Phepoe, who earned his reputation in part by riding the northern circuit (Georgetown, Camden, and Cheraws) and handling civil actions.[37] Instead, those who had to travel at all to press their cases would spend money at the sites of the circuit courts as would the attorneys, justices, and their clerks from Charleston, thereby enhancing the economy of these communities. Yet, it is also probable that a good proportion of both the civil and criminal cases tried in the circuit courts would never have been adjudicated if plaintiffs and magistrates had to rely solely on the tribunal at Charleston. The inconvenience of the trip to the city and the prospect of an unsatisfactory verdict had always acted as a strong deterrent to justice. Thus, the successful functioning of these judicial bodies undoubtedly operated to strengthen the economy of the outlying communities more than it did to weaken the economy of Charleston.

The grand jury presentments from the circuits revealed other areas of concern common to both the capital and the interior. Except for the

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[37]Phepoe, a Loyalist in 1780, actually handled more cases in the Charleston Court, but he is one of the few lawyers who consistently followed the justices to the interior. John Colcock, to a lesser extent, was Phepoe's counterpart for the Southern District (Beaufort, Orangeburg, and Ninety-Six).

Charleston court's strong language against blacks in the city, the presentments varied little from coast to backcountry. The grand jury at Camden complained about high prices at the local public houses and the practice of gouging strangers "by making them pay exorbitantly for what they stand in Need of--To the great Detriment of the poor."[38] Several circuit juries joined the panel in Charleston in lamenting the lack of printed copies of the colonial statutes "for Want of which Magistrates are at a Loss how to act."[39] All presented as a grievance "of the most dangerous and alarming Nature" the authority claimed by Parliament to tax the American colonies. In Georgetown in 1774 the grand jurors, the Gazette reported, "gave an elegant Entertainment to Mr. Justice [William Henry] Drayton, and to the Gentlemen of the Bar," drinking some twenty toasts to American liberty and its champions."[40] The picture of such harmony was occasionally punctured by complaints from the circuit panels that their grievances had received no attention from the Assembly. The grand jury at Ninety-Six called for the establishment of additional institutions of government such as county courts, courts of ordinary, and registers of Mesne Conveyances; and the jurors protested the issuing and returning of writs and summonses to and from Charleston which--because of the necessity of travel--"renders the Property of Plaintiffs in this remote Part of the Province, as precarious as before that Law was passed."[41]

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[38] S.C. Gaz., December 12, 1774.

[39] Ibid., December 19, 1774; S.C. Gaz. & C. Jl., May 18, 1773.

[40] S.C. Gaz., December 12, 1774.

[41] Ibid., December 10, 1772, December 12, 19, 1774; William Edwin Hemphill, Wylma Anne Wates, and R. Nicholas Olsberg, eds., Journals of the House of Representatives of the State of South Carolina, 1776-1780

Despite these irritating holdovers from the pre-circuit court era, the new tribunals served as the principal unifying force between the interior of the colony and the low country. Their creation in 1769 had been long overdue, there were still defects in providing justice; schools and political representation would not come until later. Other problems such as the need for a printed volume of the laws, were issues which bothered Charleston officials as much as those in the outlying regions. Litigation in the local courts never challenged Charleston's preeminent position as the judicial center of the province, and would remain limited until the legal profession itself took up residence in the areas. Prior to the Revolution, only two trained lawyers lived in the interior, and neither made the law his chief occupation. One was Joseph Robinson, a loyalist who fled to Prince Edward Island after the war and left a valuable library upon his death.[42] The other was Edward Musgrove, who built a prosperous mill on the Enoree River. He was described by a contemporary thus:

> He had been bred to the law; was a man of education and fine abilities; was famous for his hospitality and benevolence. He was the surveyor and counsellor of law to all the surrounding country before the war, and in these departments was exceedingly useful.[43]

(Columbia, S.C., 1970), 256. A measure permitting the issuing of writs in the circuit courts was not enacted until 1785. Cooper and McCord, eds., Statutes of South Carolina, VII, 253.

[42]Barnwell, "Loyalism in South Carolina," 95-97.

[43]"Logan Manuscript," Historical Collections of the Joseph Habersham Chapter, Daughters of the American Revolution (Atlanta, Ga., 1910), 3 vols., III, 73.

County lawyers, like the backcountry's other needs, arrived in the interior after the war with England. Nevertheless, a system of justice for the interior of the province--however limited--had been established and proved workable. The courts remained open and conducted business during the early years of the Revolution and did not close until the British captured Charleston in 1780. The circuit judiciaries had done more than bring justice "near the doors of individuals," as Governor Drayton had put it. They had provided a sense of unity between the two sections of the province which held it together during the transition from a colony within an empire to a state within a new nation.[44]

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[44]The County Court Act of 1785 gave to county attorneys the authority to prosecute actions on the part of the state in the county courts. This is the first evidence of county lawyers attending courts within their own residence. Cooper and McCord, eds., Statutes of South Carolina, VII, 235.

CHAPTER IV

INTERPRETING THE LAW: CHIEF JUSTICES AND COLONIAL POLITICS

> But whatsoever dissonance [a colonial law] may have to the Laws and Customs of England or how Repugnant soever it may be to them, It is Apprehended that this Court can give no relief.[1]

The chief justices of colonial South Carolina were men bred to the law who--next to the governors--were most responsible for upholding the crown's prerogative.[2] Their defense of royal authority often brought them into direct conflict with the increasingly powerful Commons House of Assembly and on more than one occasion put their commissions in jeopardy. In many ways, these professional jurists (and through them the courts) constituted the only obstacle to the political rapaciousness of the lower house in the eighteenth century. Assistant justices, by contrast, were rarely trained lawyers but, as Lieutenant Governor William Bull II once explained, men recommended solely because of their integrity and common sense.[3] They were also as often selected because they were amenable to

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[1]South Carolina, Journals of the Court of Common Pleas, 1754-1763, pp. 233-237, SCDAH.

[2]David Duncan Wallace's claim that "The chief justice was nearly always an imported Englishman" is not accurate. Only three chief justices--all lawyers--were actually placemen: Peter Leigh (1753-1759), Charles Shinner (1762-1767), and Thomas Knox Gordon (1771-1776). The appointments of Nicholas Trott (1703-1718) and Robert Wright (1730-1739) were influenced more by the Lords Proprietors than by the crown. David Duncan Wallace, Constitutional History of South Carolina (Abbeville, S.C., 1800), 22.

[3]Ibid. Bull to Hillsborough, March 7, 1770, BPRO/SC, XXXII, 206-207. An exception was Rawlins Lowndes, a locally trained lawyer who chose the life of a planter over his law practice. Lowndes was appointed to the court in 1766 during the furor over the Stamp Act, and he remained on the

the interests of the lower house, and that body possessed enough influence to force governors to appoint assistants either to overrule the chief justice or to inhibit the exercise of his powers.

The chief justices were major participants in the power struggle between the legislative and judicial branches of government--a drama which was enacted against the backdrop of the lower house's drive for power in the eighteenth century at the expense of royal influence in provincial affairs. Assistant justices were also a part of this contest, and their appointments to the bench were never based on education or legal training but on loyalty--first to the Assembly and nearer the Revolution to the crown.

Several chief justices, beginning with Nicholas Trott, aroused the hostility of the Commons House, and constitutional crises ensued. In Trott's time, the Assembly fought him because it believed he wielded too much power, which it was the duty of the people's representatives to curtail. In the cases of Trott's successors, the chief justices held too little authority, but the House viewed any agency that questioned its laws as a threat not only to its power but to the government of the province as well. In his decision of 1759 Chief Justice James Michie denied the court the possibility of judicial review and acquiesced in recognizing the Assembly's dominant position. Yet, in the unpopular stands they often assumed, the chief justices practiced a form of judicial review,

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bench until his commission was revoked in favor of Charles Mathews Coslett in 1771. Hays Baker-Crothers, "Rawlins Lowndes," Dumas Malone and William Johnson, eds., Dictionary of American Biography, 20 vols. (New York, 1928-1936), XI, 472; Miscellaneous Records, PP, part I, 171-172, SCDAH.

questioning the legality of the House's measures and exhibiting a sophisticated sense of constitutionalism necessary for the operation of an independent judiciary. In doing so, they provided a theoretical background not only for the use of judicial review but as well for the concept of separation of powers and its corollary, a system of checks and balances.

The dependence of assistant justices on the House is illustrated by Chief Justice Richard Allein's request in 1720 that his assistants be excused from Assembly business to attend court.[4] A more blatant example is the lower house's measure of 1734 striking back at Robert Wright for challenging the House's authority to hold persons in custody during its sessions. The innocuous sounding "Act for the Better Regulating the Courts of Justice in this Province" was in reality a veneer requiring Governor Robert Johnson to appoint two judges with powers equal to those of Wright. Wright protested to the Board of Trade, describing his new colleagues as "persons entirely ignorant of the law" who nevertheless overruled the chief justice.[5] The Board's decision could not have pleased Wright too much. It agreed with the chief justice that the Assembly's law violated the crown's prerogative to appoint justices and recommended the act be vetoed. Nevertheless, it also stated that the court should have

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[4]South Carolina Commons House Journals, 1715-1721, p. 443, SCDAH.

[5]Cooper and McCord, eds., Statutes of South Carolina, VII, 184-185; Robert Wright to Board of Trade, March 22, 1734, Calendar of State Papers, Col. Ser., XLI, 60.

assistant judges and authorized their appointment by the governor instead of the House.[6]

Benjamin Whitaker was one of the first chief justices to call for the appointment of legally trained assistant judges. Like his predecessor, he complained that laymen on the bench too often retarded the court's work. He said:

> I have but a single voice in the Courts, where I have the honour to preside, and therefore the opinions of the Assistant Judges may often prevail against mine, and although they may be men of worth and integrity, and the fittest persons that can be found in this Province to fill the Stations they are in, Yet as they have not been educated in the learning of the Law, greater pains must be taken to render things obvious to their Understandings, than if they were more conversant with that service.[7]

Despite Whitaker's appeal, education and legal training were not considered requirements for assistant justices in South Carolina as they were in other colonies, particularly Massachusetts and New York.[8] Assistant justices proved as malleable in the interests of the House as ever when the Assembly during the Stamp Act crisis in 1766 persuaded Bull to appoint three additional judges to the bench. Planter-attorney Rawlins Lowndes and merchants Daniel Doyley and Benjamin Smith then joined

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[6]Board of Trade to Thomas Broughton, August 14, 1735, BPRO/SC, XVII, 364-365.

[7]Benjamin Whitaker to Board of Trade, December 15, 1751, ibid., XX, 502. Whitaker had tried to secure the appointment of lawyers to the bench during the 1720s when precinct courts were in operation. South Carolina Commons House Journals, 1722-1724, p. 389, SCDAH.

[8]Murrin, "The Legal Transformation," Katz, ed., Colonial America, 424-425. In New York the move for a professional bench began about 1735 and applied only to the Supreme Court of Judicature. Justices of the inferior courts of that colony were still laymen whose general education was modest at best. Hamlin, Legal Education in Colonial New York, 108-110.

merchant Robert Pringle, who had been named to the court some years earlier. These four men voted to open the courts over the objection of Chief Justice Charles Shinner, who had kept them closed during the turmoil because no stamped paper was available. Bull declared later that although he had not supported the opening of the courts, he had no choice but to appoint the assistant judges. He explained to the Earl of Hillsborough: "I thought they might be permitted to keep the Juridical wheels in motion until fitter men could be sent from England or prevailed upon here."[9] The House's motives and its success in influencing judicial appointments for political reasons, however, were not lost on the able lieutenant governor; and if the assemblymen could find persons amenable to their views, royal authorities could do likewise.

In March 1770 with the political crisis of the Stamp Act and Townshend Duties fresh in his memory, Bull revealed to Hillsborough his desire for a politically loyal bench. Bull especially wanted legally trained assistants because the brevity of the circuit court sessions would put too much of a burden on laymen particularly when "the life and property of the subject are in the hand of one Judge." Most provincial lawyers, he wrote, earned more in their private practices than could be made up by the £300 sterling salary provided for the circuit riding justices. While promising to propose the names of four capable lawyers, Bull suggested that the judicial posts be filled with mediocre talent from England:

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[9]The role of the lawyers and the chief justice during the Stamp Act controversy will be more thoroughly presented in Chapter IX. For a full account of the court proceedings during the crisis, see South Carolina, Journals of the Court of Common Pleas, 1763-1773, pp. 173-196, SCDAH. Bull to Hillsborough, December 5, 1770, BPRO/SC, XXXII, 407-409.

namely, those whose hopes for success in the mother country had been dashed. As Bull explained it:

> from among the many Gentlemen in London regularly bred to the Law who are arrived at a time of life, when the sanguine hopes of rising to eminence or a comfortable share of practice in the profession are extinguished by a very moderate employment therein, some could be prevailed upon to accept of such commission in this Province where their advancing age would be cherished by our mild climate, give dignity to their office and authority to their decisions.[10]

Bull rejected retaining those already on the bench largely because of their decision to open court in defiance of the Stamp Act and the chief justice. He believed that men such as Pringle and Lowndes were moderates, "yet [Lowndes] maintains those arguments which deny the supreme legislative authority of Taxation in the Parliament of Great Britain over the British Colonies."[11] Bull's suggestion for a legally trained, loyal bench must have been warmly received because in 1771 an entirely new bench was installed in Carolina.[12] The Assembly made a futile effort to force the new justices to resign by encouraging the commissioners for building the new circuit courthouses to delay completion of the projects, thereby leaving the judges without means of a salary since the courts would not open until all work was finished. The delay brought a complaint from the four assistants that "the leading men here take every method to gratify their Spleen by distressing the Servants of the Crown." Hillsborough countered by authorizing Governor Charles Greville Montagu

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[10]Bull to Hillsborough, March 7, 1770, BPRO/SC, XXXII, 206-208.

[11]Ibid., December 5, 1770, pp. 407-408.

[12]Ibid., S.C. Gaz., January 31, 1774. Only John Murray, a local physician, was not an imported justice.

to begin the salaries of the new justices since the construction delays were not their fault.[13]

Neither the royal authorities nor the Assembly took steps to prevent assistant judges from becoming political pawns during the eighteenth century, and as the crisis between mother country and colonies mounted, the position of the assistants became more insecure. While other colonies were beginning to emphasize educational requirements and legal training as qualifications for the bench, one side in the political conflict in Carolina ignored those prerequisites altogether while the other sought to use them for political purposes. While this practice served the immediate interests of both groups, in the long run it weakened the opportunities of the judiciary to function as an independent unit, and it failed to take advantage of legal talent within the colony which would have strengthened both bench and bar.

The chief justices stood in stark contrast to their subordinates on the bench. Of the seventeen chief justices appointed for South Carolina between 1698 and 1776 (see Table V on the following page), eleven were trained in the law and served for sixty-eight of the seventy-eight years from near the turn of the century to the outbreak of the American Revolution. Six had worked their way up through the ranks of the bar from courtroom lawyer to minor leadership positions to head the judiciary;

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[13]Assistant Justices to the Lords of Trade, January 23, 1772, Hillsborough to Charles Greville Montagu, April 1, 1772, BPRO/SC, XXXIII, 113-115, 137. On meeting two of the newly appointed justices in 1773, Josiah Quincy, Jr., remarked: "Their behaviour by no means abated my zeal against British appointments: one of them appeared, in aspect phiz, conversation, etc., very near an ____." Howe, ed., "Journal of Josiah Quincy, Junior, 1773," Massachusetts Historical Society Proceedings, XLXIX (1915-1916), 448.

TABLE V

CHIEF JUSTICES OF COLONIAL SOUTH CAROLINA, 1698-1780

Chief Justice	Term	Occupation
Edmund Bohun	1698-1700	Merchant
James Moore	1700-1703	Unknown
Nicholas Trott	1703-1719	Attorney
Richard Allein	1719-1720	Attorney
Francis Yonge	1721-1722	Merchant
Charles Hill	1722-1724	Merchant
Thomas Hepworth	1725-1727	Attorney
Richard Allein	1727-1730	Attorney
Robert Wright	1730-1739	Attorney
Benjamin Whitaker	1740-1749	Attorney
James Graeme	1749-1752	Attorney
Charles Pinckney	1753	Attorney
Peter Leigh	1753-1759	Attorney
James Michie	1759-1760	Attorney
William Simpson	1761-1762	Unknown
Charles Shinner	1762-1767	Attorney
Thomas Knox Gordon	1771-1775	Attorney
William Henry Drayton	1776-1780	Planter

five had attended the Inns of Court although only one--Charles Pinckney I--was a native of the colony.[14] It was inevitable, then, that these professionally trained jurists would clash with other governmental bodies when it came to interpreting justice and the meaning of the law.

The most learned and most powerful of the chief justices was Nicholas Trott. Educated at the Merchant Taylor's School and legally trained at the Inner Temple, Trott used family ties to acquire positions in Bermuda as secretary to the company and as attorney general and naval officer in South Carolina where he arrived in 1699. Trott was a religious scholar as well as a lawyer, but for all his theological learning in practice he was a zealous Anglican who remained intolerant of dissenters and believed them unqualified to hold public office. He complained to the Archbishop of Canterbury in 1703 that the colony has become "Very Much infested with the Sect of Anabaptists" and asked for literature bolstering the Anglican position on religious matters, especially on the issue of infant baptism.[15]

Trott came to Charleston in 1699 vested with broad powers by the Lords Proprietors. Although they disapproved of the practice of the law, the colony's aristocratic founders installed professional attorneys such as Trott and Stephen Bull before him in important administrative and legal positions in the colony. This was done in the somewhat futile attempt to

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[14]Of the chief justices who were not lawyers, four were merchants and one--William Henry Drayton--was a planter.

[15]Hogue, "An Edition of 'Eight Charges,'" 28; Sirmans, Colonial South Carolina, 79; Trott to Thomas Lord, Archbishop of Canterbury, February 17, 1703, Fulham Papers, SCL.

make the statute law as clear and explicit as possible and to make it conform to the laws of England and the interests of the proprietors, thereby obviating the need for trained attorneys to argue points of law before courts or for legally trained judges to interpret the law. The founders empowered Trott to review and approve all land grants, deeds, mortgages and conveyances, and to check on customs agents and investigate the Indian trade. He had access to all public records, was free from Prosecutions and arrests during the Assembly sessions, and served as legal advisor to the Council. The most sweeping authority, however, was contained in the following instructions:

> Our will is that before Any Acts of Assembly be confirmed by ye Governor that they be perused by you Least Acts be past repugnant to ye Laws of England, and that in case you do Signify to ye Governor your Remarks on ye sd Acts, wherein they are contrary to ye Laws of England and notwithstanding that ye Assembly pass, and ye Governor confirme ye sd Acts that you doe transmitt such your Remarks to Us ye Lords Prop'tors in England.[16]

Armed with these powers and blessed with the approval of the founders, Trott--it was hoped--would strengthen the faltering proprietorship against encroachments of the Assembly. However, by the turn of the century the lower house was already too powerful, and no amount of authority from London could arrest its development. Trott attempted to use his position as House speaker to reorganize the Vice-Admiralty Court, but he later found himself at odds with the assemblymen. In 1707 the House charged that the chief justice had misused his power and held entirely

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[16]Chief Justice Edmund Bohun did not live up to the expectations of the proprietors, and Trott had to straighten out some of his affairs upon his arrival in the colony. Lords Proprietors to Trott, March 8, 1698, October 19, 1699, BPRO/SC, IV, 11, 115; Lawrence M. Friedman, A History of American Law (New York, 1973), 85-86.

too many offices. The legislators were especially upset by Trott's exercise of ecclesiastical authority and by his arbitrary proceedings in the common law courts, and it urged the governor and Council to suspend him.[17]

The chief justice remained in the good graces of the proprietorship, and in 1714 the proprietors increased Trott's authority by (1) requiring his presence before any Council business could be conducted and (2) giving him the power to veto any legislation he deemed contrary to the laws of the mother country or the interest of the founders. The fledgling legal profession clashed with Trott because he was providing legal advice to parties in cases on which he would later rule. When the House tried to put a stop to this, the chief justice exercised his veto. The Assembly complained that Trott had deliberately misrepresented that body and Governor Charles Craven to the proprietors in order to obtain a veto over a recent banking measure. The proprietorship, no doubt realizing by this time that its control over the colony was in serious trouble, tried to appease the House by revoking Trott's veto power and ordering him not to participate in chancery proceedings when his decisions in the common law courts were being appealed. This, however, was little more than a last ditch effort to preserve their hold on the province; it helped neither Trott nor the proprietors.[18]

Richard Allein and Benjamin Whitaker, both of whom would become chief justices during the period of royal control of the province,

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[17]Salley, ed., Journals of the Commons House of Assembly of South Carolina, 1700, pp. 9-10; ibid., 1707 (Columbia, S.C., 1940), 86-87; Hogue, "An Edition of 'Eight Charges,'" 18-19.

[18]Lords Proprietors to Trott, September 8, 1714, Calendar of State Papers, Col. Ser., XXVIII, 20-21; South Carolina Commons House Journals, 1712-1715, pp. 347-348, 351-352, 364, 375, 382, SCDAH; BPRO/SC, VI, 152-153.

obtained the signatures of every lawyer in South Carolina to a remonstrance against Trott and dispatched it to the proprietors. For the attorneys, the struggle with Trott was one for control of the legal system over which the chief justice held a monopoly. In addition to charging Trott with advising clients who would later come before his court, the lawyers complained that the jurist held the offices of chief justice of the two common law courts, judge of the Vice-Admiralty Court, and as a member of the Council served as a judge in the Chancery Court, thus making it impossible to escape his verdicts and rendering him the sole judicial authority in the colony. The attorneys also charged that he had unnecessarily continued cases from one term to the next and had contrived in other ways to increase his fees.[19]

Not surprisingly, when the proprietorship was overthrown in 1719, Trott lost his judicial positions. The chief justiceship went to Allein for a brief time, and the vice-admiralty judgeship was awarded to the merchant-attorney William Blakeway.[20] The venerable legal and biblical scholar did not depart in peace, however; and in 1721 he began what was to be a long and futile campaign to regain his judicial power. He petitioned the Council in that year, but Governor Francis Nicholson, who suspected Trott of intriguing to undermine his administration, gave him no

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[19]BPRO/SC, VI, 196-200; LXX, 132-133; Calendar of State Papers, Col. Ser. XXXI, 162; Hewatt, An Account of the Rise and Progress of the Colonies of South Carolina and Georgia, I, 241-242.

[20]Allein resigned the position in 1721 but was reappointed in 1727. In the interim, merchants Francis Yonge and Charles Hill and attorney Thomas Hepworth held the post.

sympathy at all.[21] In 1728 and again in 1730 he asked his two friends, Bishop of London Edmund Gibson and the Duke of Newcastle, to intercede with the crown on his behalf. Trott's claim of "an indisputable right" to the chief justiceship, however, rested on the precarious foundation of tenure during good behavior instead of on the crown's pleasure. For all of Trott's legal knowledge and for his association with authorities in London, he apparently had overlooked the fact that the tenure during good behavior provision for English judges had never been extended to the colonies. Colonial officers in England no doubt realized--as Trott did not--that since he had been removed from office by force and threats of violence he might have a just claim to the position, but his reinstatement on the grounds of tenure during good behavior might set an unhealthy precedent from the mother country's point of view--a precedent the colonists could use against the crown later.[22]

The crown's failure to issue instructions concerning Trott's petition, and its appointment of Robert Wright as chief justice in 1730 were taken by the Council as signs that Trott was not to be reinstated. His final petition in 1733 was rejected, and the jurist-scholar spent his remaining years in the colony preparing his Laws of the Province of South Carolina for publication in 1736. His contributions to law and scholarship have only recently overshadowed his more infamous political and

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[21]Journals of the Council of South Carolina, 1721, p. 75, SCDAH; Nicholson to Council of Trade and Plantations, June 18, 1724, Calendar of State Papers, Col. Ser., XXXIV, 124.

[22]Trott to Gibson, September 6, 1728, March 28, 1730, Fulham Papers, SCL; Trott to Duke of Newcastle, September 6, 1728, Calendar of State Papers, Col. Ser., XXXVII, 192.

and judicial exploits.[23] Yet, no other chief justice exercised such a total control of the judicial apparatus, and no other chief justice manipulated the docket as Trott did. Nevertheless, he was by no means the last jurist whose exercise of his powers conflicted sharply with the interests of the lower house.

Richard Allein, in the forefront of the anti-Trott faction in 1719, also proved to be an inflexible defender of the prerogative during his feud with the House in 1728. Thomas Smith, one of the original landgraves of the colony, had been arrested in 1727 on a charge of high treason but was never prosecuted. Smith complained to the lower house the next year that Chief Justice Allein took longer than two months before granting him a writ of habeas corpus and instead of trying his case at the October Sessions bound him over until March 1728 while refusing to discharge him. The House committee investigating Smith's grievance declared that "if these proceedings are not arbitrary and illegal yet they apprehend them to be unprecedented in this country." The Assembly served Allein with a copy of the panel's report and ordered him to appear "at the Barr of this House with his answer in writing" to Smith's petition. Allein replied that his actions as chief justice were--in effect--none of the House's business:

> it seems to me that I may not answer the same to your House without derogating from the power and authority which I am entrusted with and giving just occasion of offense to a power superior to your[s] whose commission I bear.[24]

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[23]BPRO/SC, XV, 45-47, 48-49; L. Lynn Hogue, "Nicholas Trott: A Man of Law and Letters," SCHM, LXXVI (1975), 33; Bridwell, "Mr. Nicholas Trott and the South Carolina Vice Admiralty Court," South Carolina Law Review, XXVIII (1976), 181-218.

[24]South Carolina Commons House Journals, 1727-1729, pp. 519-520, SCDAH.

The Assembly found Allein's reply an affront and ordered him taken into custody. When John Brown, the House messenger, tried to execute the order, Allein was in the Council chamber. Arthur Middleton, president of the Council and acting governor, stopped Brown, told him he had no business there "and turn'd [him] out of the room with some violence." The Assembly used the incident to reaffirm its equal footing with the House of Commons in London and protested to Middleton: "But if we once part with the just rights of the English Parliament then farewell all English liberty." Middleton dissolved the Assembly and although the lower house agreed to discipline Allein at later sessions, Indian affairs and money bills occupied the bulk of the legislators' time.[25]

The House's dispute with Allein pales into insignificance when considered alongside its conflict with Chief Justice Wright which lasted through most of the 1730s, divided the legal profession, and posed the greatest challenge to the power of the Assembly since the days of Trott. The struggle grew out of the lower house's investigation of an illegal land scheme, and while the controversy between Wright and the House has been portrayed within this setting and within the contest for control of revenue bills between Council and the lower house, the episode contained serious implications for the constitutional development of the colony which have only lately been understood.[26]

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[25]Ibid., 521-523, 548, 550-551.

[26]Sirmans, Colonial South Carolina, 179-182; Greene, The Quest for Power, 55, 57, 59; Robert Cook, "Judicial Review and Legislative Power," a paper presented at the Reynolds Conference IV, South Carolina Legal History, December 2-3, 1977, Columbia, S.C.

Robert Wright was the son of Sir Robert Wright, Lord Chief Justice of Common Pleas and King's Bench who in 1688 presided at the trial of the seven bishops. He was also the father of Sir James Wright, who maintained a lucrative law practice in the colony and served as attorney and advocate general and as colonial agent before becoming governor of Georgia in 1760.[27] Little is known about the chief justice's formal or legal training. Arch Hutcheson, who recommended Wright to the Duke of Newcastle, claimed that he had been a barrister at law for more than thirty years; and in appointing him chief justice, the Lords Proprietors cited his "knowledge, skill, and experience in the Laws Customs and Constitutions of His Majesties Kingdom of Great Britain."[28] Since the proprietors had lost their hold on South Carolina but had not yet surrendered their charter to the crown, it was necessary to find a chief justice who would be satisfactory to both groups, and Wright apparently fulfilled this requirement. His appointment was delayed from 1725 to 1730, however, because the proprietors gave him a lifetime commission instead of tenure during the crown's pleasure.[29]

From the outset there were problems. The House in 1731 rejected a recommendation of Governor Robert Johnson and the Council to provide the new chief justice with an annual salary of £1,000 per year. Instead,

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[27]Edward Irving Carlyle, "Sir Robert Wright," "Sir James Wright," Sir Leslie Stephen and Sir Sidney Lee, eds., Dictionary of National Biography, 21 vols. (London, 1917-1938), XXI, 1022-1024, 1040-1042.

[28]Lords Proprietors to Robert Wright, May 27, 1725, BPRO/SC, XI, 316; Arch Hutcheson to Duke of Newcastle, June 16, 1730, ibid., XIV, 216-217.

[29]Lords Proprietors to Wright, May 27, 1725, ibid., XI, 316-317; Thomas Lowndes to [Board of Trade], December 23, 1729, ibid., XIII, 428.

it voted to allow him only £700 for the first year and apparently would renew salary requests on a yearly basis. This prompted Johnson to respond caustically: "the Addition you have made to the Chief Justice's Sallery convinces me of the Regard you have to my Recommendations."[30]

The issue which embroiled Wright and the House for the rest of the decade stemmed from the lower house's probe of illegal land surveys in the Port Royal area by a company controlled by Dr. Thomas Cooper and the merchant Job Rothmahler, with attorneys Benjamin Whitaker and Robert Hume as silent partners and with Surveyor-General James St. John's cooperation. The scheme ended when all five men and four deputy surveyors were taken into custody by the House in March 1733.[31] While in custody Cooper consulted attorney James Graeme, Wright's son-in-law, who secured a writ of habeas corpus for his release and a capias ad respondendum requiring the House messenger to show cause. When the Assembly reconvened it immediately placed Graeme in custody for "an open and notorious contempt of the authority of this House and a violation of the privileges thereof." First John Lewis and later Rowland Vaughan, also members of the bar, were in turn arrested for securing writs of habeas corpus for Graeme's release; and another attorney, William Trewin, was later taken into custody for trying to obtain Vaughan's freedom. Of the province's leading lawyers, only Charles Pinckney I and Andrew Rutledge stood

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[30]South Carolina Commons House Journals, 1731, pp. 127, 131, 134, SCDAH.

[31]Petition of Cooper, Graeme, and Vaughan, January 9, 1734, BPRO/SC, XVI, 203-209; South Carolina Commons House Journals, 1732-1733, pp. 909, 921, SCDAH; ibid., 1733, pp. 921-922, 926-928, 942-943; Sirmans, Colonial South Carolina, 181.

squarely with the House. Others were either neutral or sided with the chief justice.[32]

After almost a month the attorneys, Cooper and St. John, were released upon payment of fees for their detention. All had to issue what amounted to apologies for their actions and a promise not to affront the House in the future. Cooper, upon his release, qualified to take his seat in the Assembly as a representative of St. Helena's Parish. The House's quarrel, after all, was with the chief justice who had issued two writs against the House messenger on behalf of the jailed attorneys and had taken his battle against the legislators to the public.[33] The Assembly passed a series of resolutions it later enacted into law (1) affirming its right to take into custody anyone it desired, (2) affirming that freedom of speech and debates in the Assembly should not be questioned in any courts or place outside the House, (3) stipulating that any person questioning its proceedings was in contempt and that no writ of habeas corpus could be granted in favor of anyone in the House's custody, and finally (4) holding that any person detained by the Assembly could not be made to appear anywhere else by a writ of habeas corpus during a session of the lower house, and the messenger should make no return on such writs.[34]

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[32]William Trewin to Board of Trade, May 12, 1733, BPRO/SC, XVI, 116-117; South Carolina Commons House Journals, 1731-1733, pp. 998-999, 1001-1002, SCDAH.

[33]Graeme added to his troubles when he affronted an assemblyman by declaring: "Damn you, do you know that you are all guilty of High Treason?" The House promptly reprimanded Graeme for his conduct and placed him in isolation until his release. South Carolina Commons House Journals, 1733, pp. 1010, 1013, 1027, 1033-1034, 1036-1037, 1040-1044, 1071, SCDAH; S.C. Gaz., May 19, 1733.

[34]South Carolina Commons House Journals, 1733, pp. 1001-1003, SCDAH; S.C. Gaz., April 4, 1733.

These resolutions were presented personally to Wright, who denounced them in Thomas Whitmarsh's South Carolina Gazette as well as in the Council chambers. Wright's position was doubtless hindered by the Council's acceptance of the Assembly's act limiting writs of habeas corpus and a measure authorizing the governor to appoint several assistant judges with power equal to the chief justice. This might have encouraged Wright to take his attack to the press.

In his essays the chief justice acknowledged the known privileges of the Commons House but regarded them as having been granted by the executive and not as hard earned fundamental principles of government. He also consistently denied that he threatened that body's exercise of its legitimate authority. However, its resolutions, he argued, were so extraordinary that they undermined all government, subverted the crown's prerogative, and gave the Assembly the arbitrary power to void ancient English law. Wright added:

> for my part, I must declare that these Resolves are no Laws, and therefore shall little Regard them, being sworn to the contrary, and to the due Observance of the Laws of the Land, and to maintain and support his Majesty's Prerogative, so audaciously attacked by these Resolves.[35]

The chief justice's attack on the Assembly elicited responses from former Chief Justice Francis Yonge of the Council and John Lloyd of the House. Yonge cited several English cases to show that the House's denial of the writ of habeas corpus during its session was consistent with actions of the House of Commons in London. "Mr. Graeme's is a Case that happens every Sessions in England," Yonge said, "I believe, I may say,

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[35] S.C. Gaz., April 18, May 19, 1733.

scarce one passes, without attornies and Bailiffs being taken into Custody for Arrests, either of Members or their Servants, or Officers." The Council, while supporting the position of the Assembly, was satisfied that Wright had not intentionally affronted the lower House.[36] Lloyd's remarks were more acerbic. He repeated Yonge's constitutional argument and stated that no one confined by the House should ever expect to be released on a writ of habeas corpus until the session was dissolved. "I am satisfied," he said, "this would be the Advice of a good Lawyer, unless he depended on the Ignorance or Favour of the Judges at the Hearing." Attached to his response was a set of six resolutions written by Lloyd which charged that Wright had maliciously affronted the House, accused him of scheming "to break the happy Agreement and Harmony" between upper and lower houses, and called for his suspension by the governor and Council.[37]

In his answer, Wright skirted the legal argument by stating simply that neither Yonge nor Lloyd understood the cases they cited. Instead, he concentrated on refuting the House's resolutions and accused that body of threatening "to shut up the Courts of Justice, that they might sin unpunished, and do what seemed Right in their own Eyes." He also urged the governor to dissolve the Assembly

> as unworthy of the Countenance and Protection of a Prince whose just Commands they refuse to Obey; and as unworthy of

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[36]Yonge cited Vide's English Liberties compiled by Henry Case in 1719, Echard's History of England, and the Annals of Queen Anne. Lloyd cited the same authorities and when challenged by Wright said the books could be examined at the library of William Pinckney, brother of attorney Charles Pinckney I. S.C. Gaz., April 21, 28, May 12, June 30, 1733.

[37]Ibid., May 12, 1733.

> the Benefit of those Laws, they refuse to observe, and would abrogate; and lastly, as unworthy to represent the good people of Carolina, whose Liberties they have so basely betray'd.[38]

The arguments continued through June 1733 without resolution. In July an unidentified writer, weary of the constitutional polemics, observed that the debate "how tiresome soever its Length may make it, is like to remain unchanged, unless some publick spirited Person endeavour to divert the Auditory with new Matter." The writer then provided no small measure of comic relief in his two-and-a-half column essay on "the properest Method of absterging the Posteriors, or the most apt Materials for that necessary Use."[39]

In dealing with the land scheme, the House achieved a clear victory. Cooper, St. John, and their attorneys were forced to apologize to the Assembly and promise no further misbehavior before their release. Hume, whose representation of the land affair the House found scandalous, conveniently resigned as Assembly speaker and fled to England to discuss the case with the Board of Trade. Whitaker re-entered politics but maintained a low profile until his appointment succeeding Wright as chief justice in 1740.[40] On the constitutional issues the results offered no decisive victory to either side. Wright's petition and William Trewin's letter to the Board of Trade were successful in persuading the Board's attorney, Francis Fane, to recommend that the House's act limiting writs of habeas

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[38]Ibid., June 16, 23, 1733.

[39]Ibid., July 14, 1733; Sirmans, Colonial South Carolina, 182.

[40]South Carolina Commons House Journals, 1734-1736, p. 5, SCDAH; Sirmans, Colonial South Carolina, 182.

corpus and authorizing the appointment of assistant justices be nullified. Trewin, judge of the Vice-Admiralty Court, denounced Governor Johnson and warned of the unlimited power of the Assembly. He told the Board:

> The Gentlemen in power here both by their Speeches and Actions seem to have entirely forgot that they are Subjects or dependents. The Commons House of Assembly look upon themselves as the Supreme Court of Judicature. And nobody here that has the power offered to dissent to their Jurisdiction. Their Interests are one and the same which is the occasion of the perfect harmony and understanding between them.[41]

Fane took a position that vindicated the arguments of the chief justice. The Board's attorney observed that the Habeas Corpus Act had been suspended in England only in times of open rebellion or when the government was in imminent danger. He found particularly extraordinary the statement in the preamble to the South Carolina measure "That persons demand this Writt, altho' they are not legally Entitled thereto." In urging its repeal, Fane said: "I apprehend the design of the suspension is to oppress and Injure his Majesties Subjects without any Just Cause And to Skreen themselves from the Resentments of the Injured who Feel the Weight of their Power."[42]

Additionally, the governor ignored the House's demands to fire the chief justice and retained him as a member of the Council as well as head of the judiciary until his death in 1739. Yet, Wright's victory was a partial one. He still had to contend with the assistant judges who shared the House's views while occupying his bench. He also had to

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[41]Wright to Board of Trade, October 23, 1733, Trewin to Board of Trade, May 12, 1733, BPRO/SC, XVI, 112-119, 308-310.

[42]Francis Fane to Board of Trade, January 19, 1734, ibid., 249-250.

face the hostility of assemblymen who retaliated against Wright by refusing to grant him a salary despite the entreaties of three governors and an emotional appeal by Wright's widow five years after his death. The salary question, in fact, evolved into a constitutional issue over control of monetary bills when in 1735 the Council inserted a £100 item (unidentified but presumably a partial stipend for Wright) into a tax measure. This action brought a stinging rebuke from House speaker Paul Jenys, and the Assembly a few days later denied that the Council had any authority "to frame, alter, or amend a Tax Bill."[43]

Moreover, the House argued--largely on the opinion of Andrew Rutledge--that (1) it had never paid a regular salary to any chief justice; (2) no other colony in North America paid its chief justice by an annual tax on the inhabitants; (3) that instead of yearly salaries, the House had merely paid gratuities for particular services, such as £1,000 to Richard Allein for riding circuit and attending the now defunct county courts in the 1720s.[44]

Wright received little help from authorities in England. The Board of Trade urged the governor to direct the Assembly again to pay the chief justice what he deserved, a directive the House easily ignored. The Board also agreed that for the future it would be more fitting to the

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[43]South Carolina Commons House Journals, 1734-1736, pp. 194, 220-221, 391, SCDAH. The memorial of Isabella Wright is found in Easterby, ed., Journal of the Commons House of Assembly, 1742-1744, pp. 541-543; ibid., 1744-1745 (Columbia, S.C., 1955), 87, 93; S.C. Gaz., June 2, 1733.

[44]South Carolina Commons House Journals, 1734-1736, part II, 651-655, SCDAH; Easterby, ed., Journals of the Commons House of Assembly, 1736-1739, pp. 181-182.

dignity of the office if Wright and his successors did not have to depend on the lower house and were paid from quitrents or some other source.[45] Meanwhile, the Assembly carefully watched the public accounts of the chief justice and his son, the attorney general. Both men had petitioned the legislative body for the payment of expenses in the normal function of their duties, and the House Committee on Petitions and Accounts accused the Wrights of overcharging the public for their services. "We will not pretend to say to what Height this yearly Expence may arise if not prevented in Time," the panel's chairman reported. "Upon the whole your Committee observe that the Publick never was burthened with charges of this kind before the year 1731."[46]

The feud between Wright and the Assembly also raised--but did not resolve--what would turn out to be one of the fundamental questions in the relationship between the mother country and her colonies in America: How independent was the provincial lower house, and could any other government institution check its expanding power? Unlike the controversy with Nicholas Trott in which the House sought to curb the extension of a chief justice's authority, the encounter with Wright was one in which the House worked to prevent the judicial leader of the colony from halting the spread of its own political influence. When Wright came to South Carolina in 1730 there were few restraints on the authority of the Commons

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[45]Board of Trade to Governor Robert Johnson, Calendar of State Papers, Col. Ser., XLI, 460.

[46]Easterby, ed., Journal of the Commons House of Assembly, 1736-1737, pp. 450; the committee chairman referred to the year the Wrights came to the colony. Chief justices were not provided with a regular yearly salary until the Circuit Court Act of 1769.

House. Neither the governor nor the crown-appointed Council proved a formidable barrier to the Assembly's hold on the political life of the province. When the chief justice invoked the crown prerogative against actions of the House and declared he could give "little regard" to measures which violated the laws of the land, he established himself--and through him the judiciary--as the only obstacle in the way of the lower house's dominance. Wright, nevertheless, had to fend for himself. Both the governor and the Board of Trade chose a middle path and declined to join the chief justice in a showdown with the House over its constitutional authority. The governor refused to dismiss or censure Wright, but he sided with the Assembly against him; Whitehall, likewise, vetoed the two measures which had inflamed Wright, but it never settled the salary issue for him. Instead, it offered the somewhat hollow prospect that he look elsewhere for his pay and remain less dependent on the legislators.

This critical constitutional question did not die when the furor between Wright and the representatives ended, but it did assume a different character. Benjamin Whitaker emerged from the shadows and used his influence in England to gain an appointment as chief justice after Wright's death in 1739.[47] As an assemblyman and jurist at the same time, Whitaker was more compliant with the interests of the House than Wright had been, and he avoided any direct confrontation with the Assembly over potentially

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[47] In appointing Whitaker, a proven ministerial supporter, the Duke of Newcastle ignored the nomination by General James Edward Oglethorpe of the Irish attorney Andrew Rutledge. James A. Henretta, "Salutary Neglect": Colonial Administration under the Duke of Newcastle (Princeton, N.J., 1972), 132, 196.

argumentative constitutional issues. Nevertheless, Whitaker recognized the problem which Wright had faced. Instead of precipitating a crisis with the Assembly, the chief justice posed several questions about the proper constitutional arrangement to Henry McCulloch, the crown's superintendent of quitrents. Whitaker complained about the imbalance of power among the branches of the provincial government and saw the potential of the court as a brake on the House's influence. But where to apply the brake when the Assembly's measures were inconsistent with the laws of the mother country? Whitaker inquired:

> The Question is whether these laws are void when they are first made, or only voidable by his Majesty's Disallowance & may be put in practice till his Majesty's Pleasure shall be signified that the same are repealed? And whether the Judges of the Courts when they are given in Evidence or pleaded in Cases depending before them ought to adjudge them ipso facto, void or only voidable, and so to be put in practice 'till they are repealed by his Majesty?[48]

Whitaker did not answer his own questions, and his record as chief justice provided no test cases for him to further explain his constitutional questions to McCulloch. The man who answered Whitaker was James Michie, who began law practice the year Whitaker received his appointment to the bench. Michie became chief justice in 1759, succeeding the deceased Peter Leigh. The case in which he expounded his interpretation of the constitutional relationship between the Assembly and the court is perhaps one of the few in the colonial period which includes a

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[48] Whitaker to McCulloch, February 3, 1743, BPRO/SC, XXI, 137-138. As a legislator, Whitaker had to ask the House for permission to be absent in order to preside over the Court of General Sessions. J. Harold Easterby, ed., Journal of the Commons House of Assembly, 1739-1741 (Columbia, S.C., 1952), 263, 407.

thirteen-page ruling by the chief justice--a long opinion, Michie stated, because the attorneys on both sides "took so much pains in doing Justice to their Clients." The case was a suit brought by Ann Watson, executrix of the estate of James Wright, deceased (apparently no relation to the former chief justice), against Robert Williams, Jr., administrator de Bonis non of Wright's goods and chattels. John Rattray, as counsel for the defendant, opposed his former law pupil, James Grindlay, who represented Watson.[49]

Rattray argued that a section of an Assembly act concerning administrators of estates was void because it was repugnant to the laws of England and thus the plaintiff had no ground to file suit. Rattray further insisted that the American lower houses did not have powers equivalent to those of the House of Commons and "could by no means exercise with any sort of propriety such Authority." Since Rattray's entire defense turned on the constitutional argument, Michie gave it considerable attention, stating that the question of whether an act of the Assembly is void "is a point I must acknowledge of no less moment and importance to this province than of Delicacy and Difficulty to the Court." Ruling in favor of the plaintiff, Michie held that the general legislative practice of colonial assemblies had approval in England, that the provincial Assembly's act of 1745 which Rattray attacked was not contrary to English law, and that the legislature did not exceed the powers granted to it by the crown nor did it pass a law in violation of the royal

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[49]South Carolina, Journals of the Court of Common Pleas, 1754-1763, pp. 207, 224-228, SCDAH.

instructions. Then Michie answered Whitaker: "And that if it was contrary to the King's Instructions the Law is not Void but voidable only."[50]

The chief justice next outlined the relationship between the laws of England and the laws of the colony. English law, he said, was not automatically extended to the plantations but had to be selectively incorporated by provincial statute, such as South Carolina's act of incorporation in 1712. He ruled that the measure in question was not in direct opposition to the laws of the mother country because the charter of Charles II stipulated that the Assembly should pass laws as near as may be agreeable to the laws of England. They did not have to be exactly the same. Michie then came to the heart of the issue that had troubled Whitaker and Wright before him. As a legislator in 1745, Michie had opposed passage of the law in question, but once the bill was enacted it was the duty of everyone to obey it. He added:

> But whatsoever dissonance it may have to the laws and Customs of England or how Repugnant soever it may be to them, It is Apprehended that this Court can give no relief.
> For if this Court has a power of Judging wither the Laws which the General Assembly make are Void or not, they [sic] have a Power Superior to the General Assembly. But this is a power which I conceive this court has not.[51]

Michie went on to explain that the colonies were limited, dependent governments. They had the power to make laws, but the crown with the advice of the Privy Council had the power to declare them void. If American courts wielded a similar veto power, the colonial justices would be anticipating the king's judgment and the additional negative would be

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[50]Ibid., 233.

[51]Ibid., 233-237.

inconsistent with the British Constitution. Thus, if an Assembly law violated English laws, it might be voided by the crown--and no one else--but it must continue in force until so repealed.[52]

The chief justice's ruling merely confirmed and gave legal sanction to what many in South Carolina believed was the proper constitutional relationship between legislature and judiciary on the one hand and between the mother country and the colony on the other. By removing the possibility of judicial review from the provincial court, Michie left the Assembly in a clearly dominant political position with respect to the other branches of government.

In the colonial history of judicial review, Michie's opinion in the case of Watson v. Williams stands in a category by itself. Although Michie had no doubt read the Reports of Sir Edward Coke, the chief justice's ruling in 1759 differed significantly from the British jurist's opinion concerning the famous Dr. Bonham's Case in 1610. In his Reports, Coke, referring to Bonham's Case, stated: "When an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such acts to be void."[53]

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[52]Ibid., 237-238.

[53]Although Americans later invoked this quotation in their struggles with Parliamentary legislation and even later as a basis for an American doctrine of judicial review, Coke's comment went virtually unnoticed in England and was regarded there as nothing more than political rhetoric. More important, it did not strike down a law of Parliament, and it did not serve as a precedent for ruling on the validity of Parliamentary legislation. S. E. Thorne, "Dr. Bonham's Case," Law Quarterly Review, LIV (1938), 552; Louis R. Boudin, "Lord Coke and the American Doctrine of Judicial Power," New York University Law Review, VI (1929), 236, 242-246; Theodore F. T. Plucknett, "Bonham's Case and Judicial Review," Harvard Law Review, XL (1926-1927), 63; Edward S. Corwin, "The 'Higher Law' Background of American Constitutional Law," Harvard Law Review, XLII (1928-1929),

Michie's holding was perhaps a more consistent precedent for the American concept of judicial review since it did not fall back on natural law or the common law to nullify an Assembly measure but instead recognized the British Constitution as the ultimate authority for an interpretation of the law. In its implications for judicial review, Michie's decision more closely resembled those legal opinions of the post-Revolutionary period such as attorney James Varnum's argument in Trevett v. Wheeden, a Rhode Island case, and James Iredell's comments in Bayard v. Singleton, a North Carolina decision. In both of these, however, the attorneys supported the authority of their state's judiciaries to overturn laws of the general assemblies which violated the constitutions of those states. Michie's opinion, by contrast, had denied this power to the colonial judiciary as contrary to the British Constitution. Yet, times had changed since 1759. In America of the 1780s, the unwritten British Constitution was no longer the ultimate source of sovereignty. Indeed, when the state courts were deciding these two American cases in 1787 the country's leaders were quickly moving to the position that sovereignty rested with the people, and the people--through the judiciary--could impose a restraint on the power of the legislatures. This new role for the courts was an idea not too far removed from the thinking of Wright, Whitaker, and Michie.[54]

379-380; Julius Goebel, Antecedents to 1801, in Paul A. Freund, ed., History of the Supreme Court of the United States, I (New York, 1971), 92-94.

[54]Gordon S. Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, N.C., 1969), 459-463.

Neither Michie nor his colleagues on the bench in the eighteenth century seriously considered the possibilities of an independent judiciary administered by professional lawyers. These gentlemen of the bench and bar might be dependent on the executive for appointment and the Assembly for laws establishing and regulating the courts, but they would be ultimately controlled by neither element. Only Lieutenant Governor William Bull II recognized the potential for a professionally trained bench, but he preferred one chosen from among those whose loyalty to the crown was above suspicion rather than one selected from among the colony's bar. The jurists of provincial Carolina certainly had no intention or thought of establishing a prototype for the system of checks and balances that the Founding Fathers wrote into the Constitution of 1787. What is important is that by their questioning the constitutional relationship of judicial to legislative branches of government and that of the British laws to colonial statutes they provided a theoretical background for such a system and may have anticipated the later development of such a doctrine. This was the primary contribution of the legally trained chief justices in colonial South Carolina.

Significantly, Michie's decision in 1759 had eliminated the judiciary as a threat to legislative power less than a decade before a far more serious threat would force the assemblymen to redouble their defense of lower house supremacy and reconsider the constitutional bond between the mother country and the colonies. When this issue arose, the character of the bench and bar in South Carolina had changed. Instead of the immigrant lawyers who participated in the animated discussions during the chief justiceships of Trott, Allein, Wright, and Michie, the legal

profession was composed of native Carolinians who were educated both at home and in England, whose education and social background rendered them new members along with native merchants and planters of the colony's social and political elite. This new ruling class was committed to following English customs and adhering to the British Constitution on the one hand, but they were more fiercely loyal to what they regarded as the political sovereignty of their Commons House of Assembly on the other. For this group, the constitutional issues of the 1760s and 1770s would emerge in a different context than those debated by their predecessors. The problems would go beyond the contest between legislative and judicial power and would raise the question of survival.[55]

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[55]Greene, Quest for Power, 438-442.

CHAPTER V

EDUCATING PROVINCIAL LAWYERS IN SOUTH CAROLINA

> We need not be without Hope of seeing the Bar, the Bench, and the Pulpit honourably filled with the Produce of this our own Province.[1]

The large number of young men sent from South Carolina to England and the continent for their formal and professional education best reflects the colony's rising commercial prosperity after 1750. Men such as John and Edward Rutledge, Charles Cotesworth and Thomas Pinckney, John Laurens, John Julius Pringle, Thomas Heyward, and many others obtained their legal training at the Inns of Court prior to leading their colony through the Revolution of 1776. That the Palmetto province sent more students to the English Inns than any other North American colony is a fact long emphasized by historians and other writers who have recognized South Carolina's valuable economic and social ties with the mother country and its desire to imitate London lifestyles in the eighteenth century.[2]

Yet, the emphasis on the English training of these well-to-do Carolinians obscures the fact that many of the colony's lawyers received

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[1] S.C. Gaz., April 1, 1732.

[2] Ramsay, History of South Carolina, I, 69; William Lewis Sachse, The Colonial American in Britain (Madison, Wisc., 1956), 3, 64; Edward McCrady, The History of South Carolina under the Royal Government, 1719-1776 (New York, 1899), 475-477; Greene, "An Uneasy Connection," Kurtz and Hutson, eds., Essays on the American Revolution, 49-52; Edward Alfred Jones, American Members of the Inns of Court (London, 1924), ix-x; Warren, A History of the American Bar, 121; Chroust, Rise of the Legal Profession in America, I, 304-309; J. G. de Roulhac Hamilton, "Southern Members of the Inns of Court," North Carolina Historical Review, X (1933), 276-286.

their education within the province, being either unable or unwilling to make the long voyage to London. There were several routes and combinations of routes to the profession in colonial South Carolina; and while those who studied at the Inns may have received the state's plaudits, they did not dominate its politics or its legal practice. Locally trained attorneys entered the profession by the traditional method of apprenticeship to a South Carolina lawyer. Some found this sufficient to begin practice in Charleston; others sought to embellish their local training with enrollment at the English Inns.[3]

Although they lacked the advantages of a local college, resources within the colony were sufficient for the potential lawyer. Good grammar schools, both public and private, met the general educational needs of most South Carolinians after the expansion of the colony began in 1730. After obtaining a basic education, an aspiring practitioner could apprentice himself to one of the province's leading attorneys for about five years and then seek admission to the Carolina bar. Those who continued their legal studies at the Inns of Court no doubt found their apprentice training of more practical value in their work than their terms at Westminster. To aid their legal training at home, law books could be easily sent from England, purchased from the several booksellers in Charleston, or borrowed from the Charleston Library Society. Thus, those who sought legal careers in colonial South Carolina had everything they needed

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[3]Murrin makes the comment that South Carolinians were so tied to the Inns that they were unable to develop a local system of legal education before and after the Revolution. Murrin, "The Legal Transformation," Katz, ed., Colonial America, 446 and note.

without leaving home, and the apprenticeship method--long overshadowed in this colony by the prestige of attending the English Inns--was capable of training attorneys who could reach the highest ranks of the profession.

South Carolina, like its Virginia and North Carolina neighbors, had no clearly defined policy with regard to public education. In the late seventeenth century, a few wealthy planters could hire private tutors, but soon the proximity and superiority of facilities at Charleston rendered the employment of tutors unnecessary except in rare cases. By the eighteenth century, the colony's role was primarily to provide some financial support for education, establish rules for the operation of public schools, and procure the services of schoolmasters. For the most part, however, public education in the southern colonies was a hit and miss affair. Only Maryland committed itself to the systematic establishment of public schools.[4]

The distinction between public and private schools in the colonial era is not always clear. These schools hardly meet modern standards of public education. South Carolinians preferred the term "free school" to designate those which might be publicly funded. Such institutions charged tuition, but the schoolmasters always admitted a few pupils free of charge while deriving their support from the paying students and--at times--from the Commons House of Assembly. The practice was retained in the public

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[4]Alice Elaine Mathews, "Pre-College Education in the Southern Colonies" (Ph.D. diss., University of California, Berkeley, 1968), 63-64, 91, 133-134; Wallace, History of South Carolina, I, 193; Frederick P. Bowes, The Culture of Early Charleston (Chapel Hill, N.C., 1942), 40.

school laws passed after the American Revolution.[5]

The most active public academy in the colony was the free school in St. Philip's Parish, Charleston. It also provided a suitable education for those who wanted to continue their studies abroad. William Hasell Gibbes, who later studied law with John Rutledge before entering the Inner Temple, attended the Charleston Free School operated by the Reverend James Craelan, whom he described as "an excellent teacher of languages and [a] Disciplinarian." Gibbes's training was sufficient to enable him to continue his education in the school of the Reverend John Hockley at Fulham, three miles from London.[6]

Private schools in South Carolina owed their success to the advent of printing in the colony after 1732. One historian has identified no fewer than seventy-seven schoolmasters and forty-three schoolmistresses who advertised their schools and the subjects they taught in the colony's newspapers.[7] Although these schools offered a wide variety of subjects, both academic and practical, South Carolinians looked to their academies to answer three purposes. Believing that there was a direct connection between spiritual values and an individual's usefulness to the community,

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[5]Mathews, "Pre-College Education in the Southern Colonies," 56; Wallace, History of South Carolina, I, 193-194; J. Perrin Anderson, "Public Education in Ante-Bellum South Carolina," South Carolina Historical Society Proceedings, 1933, pp. 4-5.

[6]Mathews, "Pre-College Education in the Southern Colonies," 108; Arney R. Childs, ed., "William Hasell Gibbes' Story of His Life," SCHGM, L (1949), 60.

[7]Bowes, Early Charleston Culture, 131-136.

many thought that education should instill principles of piety and virtue.[8] Additionally, some believed that education should emphasize only those subjects in which students excelled and should avoid forcing on them subjects which they were incapable of grasping. Thomas Whitmarsh, first editor of the South Carolina Gazette, voiced the latter sentiment as early as 1732. Responding to criticism from a reader who complained that Whitmarsh's emphasis on learning would deprive him of an apprentice, the editor clarified his position. He said his interest was not "the Cramming of Learning down the throats of every Boy alike whether he can digest it or not, but rightly to consider the respective Genius of each and apply it accordingly." Nothing but nature, Whitmarsh said, could qualify a man for learning. He added:

> In like Manner many a Lawyer, who makes but an indifferent Figure at the Bar, might have made a very elegant Waterman, and have shined at the Temple Stairs, tho' he can get no Business in the House.[9]

Lastly, Carolinians believed that local education should provide their sons with a sufficient academic background to permit them to continue at an English university or at a northern college.

Governor John Drayton, who was instrumental in the establishment of the South Carolina College in 1805, wrote after the turn of the century that the local schools had generally met their purposes. However, as a supporter of a college for the state, he could not help recognizing the limitations of these schools:

> And whatever have been the attempts to place these sources on a better footing; as yet they deserve no higher appellation

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[8] Mathews, "Pre-College Education in the Southern Colonies," 48.

[9] S.C. Gaz., April 22, 1732.

> than grammar schools. In Charleston there is no want of them; and it is supposed, as far as the objects which they have in view extend, they are suited to the education of boys, until that time when they ought to receive a collegiate education.[10]

Efforts to establish a college in South Carolina before the Revolution proved unsuccessful despite the fact that attempts to bring higher education to the province began as early as 1707 and received strong support from the colony's newspapers throughout the eighteenth century. A subscriber to the Gazette in 1732 suggested that the creation of a college would be "a Legacy more worth inheriting than Lands and Tenements." The writer raised two issues which became focal points of future debate on higher education in the colony. First, he encouraged Carolinians to emulate their northern neighbors (mainly Virginia) by providing a college; second, he expressed the view that a college would make it unnecessary for parents to send their sons away to complete their education. He added:

> we need not be without Hopes of seeing the Bar, the Bench and the Pulpit honourably filled with the Produce of this our own Province; nor the rest of the liberal Arts and Sciences less obliged for accurate Proficients in their several Kinds to Natives of the same Clime.[11]

Newspaper support and the interest of the Charleston Library Society yielded little result. Attempts in 1765 and 1770 by the Commons House of Assembly to establish a college with public funds became lost in the furor between the colonies and mother country. In 1765 the Stamp Act

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[10] Drayton, A View of South Carolina, 218. For background on the founding of South Carolina College, see Edwin L. Green, A History of the University of South Carolina (Columbia, S.C., 1916), 10-11, 23; Daniel Walker Hollis, University of South Carolina, 2 vols. (Columbia, 1951), I, 14-15.

[11] J. Harold Easterby, A History of the College of Charleston (Charleston, 1935), 2-3; S.C. Gaz., April 1, 22, 1732.

crisis took precedence, and in 1770 the lieutenant governor's refusal to approve the Assembly's donation of a large sum of money to aid John Wilkes brought a deadlock to all fiscal measures in the legislature.[12]

It is curious that South Carolinians should maintain throughout the colonial period an interest in education while never establishing a college. For explanations contemporaries pointed to the unhealthy climate and the debilitating influence of slavery on the white population's attitude toward business or study. Later writers found that there was little need for a college since few Carolinians became clergymen or teachers, and some claimed that the Anglican Church in South Carolina was never strong enough to support an institution of higher education.[13]

Yet, it is more likely that Charleston's close cultural and commercial ties with the mother country and the desire to imitate English life best explain the colony's failure to establish a college until after the Revolution. The ties with England also reflect a certain dependence on the mother country for the colony's cultural standards and behavioral norms; and it was only when this dependence was threatened, as it was in 1765 and 1770, that Carolinians began to call for the building of a local

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[12]The Charleston Library Society seriously considered sponsoring the establishment of a college in 1762. However, a committee of the organization reported that the anticipated cost of such a project would be approximately £28,000 per year, and the society simply did not have that much money. Charleston Library Society Journals, 1759, p. 13; 1762, p. 17; Charleston Library Society, Charleston; J. Harold Easterby, ed., "The South Carolina Education Bill of 1770," SCHGM, XLVIII (1947), 95-101; Hollis, University of South Carolina, I, 10.

[13]Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 63-64; Barnwell, ed., "Diary of Timothy Ford, 1785-1786," SCHGM, XIII (1912), 191-192; Bowes, Early Charleston Culture, 38 and note; Hollis, University of South Carolina, I, 8; Davis, Intellectual Life in the Colonial South, I, 349-352.

college in stronger and more serious tones. The attitude is reflected best in John Drayton's account of the period:

> Before the American War, the citizens of Carolina were too prejudiced in favour of British manners, customs, and knowledge, to imagine that elsewhere, than in England, anything of advantage could be obtained. For reasons also, of state, perhaps, this prejudice was encouraged by the mother country; and hence the children of opulent persons were sent there for education, while attempts for supporting suitable seminaries of learning in this state, were not sufficiently encouraged and promoted. It was enough, perhaps, with that government, if the leading men in this state, were well-informed, and were attached to European manners and customs, by pleasures enjoyed, and by friendship commenced, during the period of a collegiate education.[14]

Yet, unlike other colonies such as New York and Massachusetts, which by mid-century and after were emphasizing collegiate training for aspiring attorneys, South Carolina never made college education a prerequisite either for an apprenticeship or for admission to the bar. The value in the kinds of secondary education the province offered lay in preparing students for a variety of alternatives, whether they pursued additional study abroad in medicine and law, apprenticeships in the colony, or immediate embarkation in business or planting. This approach to education was reflected in the training of the Carolina bar, for there were numerous routes to the legal profession in the colony. Those who wished to combine study and travel could move to England and establish residence there. In England, the prospective lawyers had two main alternatives. If financial resources permitted, those who wished to follow the traditional course of English gentlemen could join one of the four Inns of Court, keep the required number of terms, receive the degree of Barrister-at-Law, and practice in the common law courts. On the other

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[14]Drayton, View of South Carolina, 217.

hand, if resources were more limited, the budding lawyers could serve an apprenticeship with a practicing attorney in London, Bristol, or Southhampton.[15]

For those whose circumstances or preferences forced them to remain in the colony, the course of legal education was less attractive. In the absence of law schools or professorships of law in the colonial colleges, men who wished to engage in legal studies were limited to two principal courses: clerkship as a copyist or assistant in a clerk's office in some inferior or higher court, reading such books as they could borrow; or apprenticeship to established lawyers with good practices and adequate libraries. Fees for such legal apprenticeship might range from £100 to £300.[16]

In South Carolina the apprenticeship method--often referred to as a clerkship--served as legal training, totally or in part, for twenty-seven of the colony's lawyers between 1752 and 1780. Six others who were admitted to the bar during this period served apprenticeships in England or Ireland.[17] There is no evidence that anyone prepared himself for the law in colonial South Carolina by serving as a clerk in one of the courts, although a young man in 1769 advertised his interest in working as a scriviner in such a position.[18]

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[15]Murrin, "The Legal Transformation," Katz, ed., Colonial America, 438-439; McKirdy, "Lawyers in Crisis," 29-30; Gawalt, Promise of Power, 18; Hamlin, Legal Education in Colonial New York, 12, 115-117.

[16]Warren, History of the American Bar, 121, 164-166.

[17]This information is obtained from South Carolina, Records of the Chancery Court, SCDAH.

[18]S.C. & Am. Gen. Gaz., February 19, 1769. The advertisement read: "Any Gentleman of the Law, or in a publick Office, or others who have

These apprentice-trained lawyers represent 75 percent of those admitted to practice before the Court of Chancery in the quarter-century prior to the American Revolution and slightly less than 50 percent of the attorneys admitted to practice before the Court of Common Pleas during roughly the same period.[19] The difference is explained by the fact that lawyers admitted to practice in one court were not automatically admitted to practice in the others, and most lawyers who petitioned the equity tribunal had already been admitted to practice in the common law courts. As an example of the autonomy of each court, Egerton Leigh was not admitted to practice before the Vice-Admiralty Court until December 14, 1757, more than four years after his admission to the equity and common law courts. In admitting Leigh, Judge James Michie declared:

> It appearing to me that Egerton Leigh, Esq., one of the attornies of the Court of Common Pleas hath been regularly bred to the Law & Served a Clerkship agreeable to the Statute & he having Before me taken the usual Oath of a proctor He is hereby admitted to practise as Such in any Court within the said province wherein I have Jurisdiction.[20]

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occasion for a person to copy, engross, or make out accounts, & C. may hear of a young Man well recommended, and very capable, by applying to" the printer, Robert Wells.

[19]Of nine others who petitioned to practice before the Chancery Court and were admitted, two--Charles Cotesworth and Thomas Pinckney--were trained exclusively at the Inns of Court. Another lawyer, Henry Pendleton emigrated to South Carolina from Virginia. The petitions of the remaining six--John Dering, Daniel Dwight, William Mason, Thomas Phepoe, Jacob Read, and George Vair--provide no information about their legal training. Petitions to Practice Law, 1752-1778, South Carolina, Records of the Chancery Court, SCDAH. For Pendleton, see O'Neall, Bench and Bar of South Carolina, I, 31; for the names of those admitted to practice before the Court of Common Pleas after 1750, see Wells's Register, 1769, 1774, 1775 (Evans nos. 11111, 13072, and 13761, respectively).

[20]South Carolina, Records of the Vice-Admiralty Court, E, 1757, Fed. Recs. Center.

However, the combinations by which the lawyers listed on the following pages (Table VI) received their legal education were much more varied than even those standard routes to the profession. Some supplemented apprenticeships in the province with further reading in the English Inns. Others were apprenticed to English attorneys after serving apprenticeships at home, and still others were trained by the apprenticeship method in their native countries before emigrating to South Carolina. In short, legal practice remained open to qualified gentlemen, and there was no single route to the profession of law in South Carolina.

An analysis of legal training in the colony is significant for what it reveals about the composition of the South Carolina bar in the period before the Revolution. Of all the thirty-three lawyers who were trained by the apprenticeship method, about one-third received legal training later at the Inns of Court.[21] Two lawyers, Charles Pinckney II (1732-1782) and James Simpson, supplemented their legal training in Carolina with apprenticeships in England. Simpson, the last royal attorney general before the Revolution, served an apprenticeship with James Michie of Charleston from 1752 to 1755. Simpson claimed he had been advised to go to England to finish his studies because of the great advantage of "haveing

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[21]They were Egerton Leigh, Benjamin Guerard, John Mathews, Joshua Ward, James Simpson, Edward, Hugh, and John Rutledge, Alexander Harvey, Thomas Heyward, John Julius Pringle, Alexander Moultrie, William Hasell Gibbes, Benjamin Smith, and Robert Williams, Jr. Charles Pinckney III (1757-1824) was entered on the rolls of the Middle Temple in 1773 but apparently never went to England to study. Jones, American Members of the Inns of Court, provides biographical sketches of those whose names were entered on the rolls of the Inns. The information on Charles Pinckney's education is found in George C. Rogers, Jr., Charleston in the Age of the Pinckneys (Norman, Okla., 1969), 127; see also J. Harold Easterby, "Charles Pinckney," Dumas Malone and Allen Johnson, eds., Dictionary of American Biography, 20 vols. (New York, 1928-1936), XIV, 611.

TABLE VI

APPRENTICES AND TEACHERS IN COLONIAL SOUTH CAROLINA

Apprentice	Admitted to Practice in Chancery Court	Teacher
Thomas Bee[a]	January 17, 1765	James Michie, James Parsons
William Burrows	July 8, 1752	Benjamin Whitaker, William George Freeman
William Hasell Gibbes	June 16, 1778	John Rutledge
William Graeme	May 10, 1764	David Graeme
Thomas Grimball	October 30, 1765	William Burrows
James Grindlay	April 28, 1752	John Rattray
Benjamin Guerard	December 20, 1763	John Rattray
Alexander Harvey	October 10, 1771	John Rutledge
Thomas Heyward[b]	April 7, 1771	James Parsons
Rawlins Lowndes[b]		Robert Hall
John Mathews	_____, 1769	Charles Pinckney II
Alexander Moultrie	April 10, 1772	James Moultrie, James Parsons
Charles Pinckney II	April 5, 1753	Charles Pinckney
Charles Pinckney III[c]		Charles Pinckney II
John Julius Pringle[d]		John Rutledge
Edward Rutledge[e]	March 29, 1773	John Rutledge
Hugh Rutledge[f]	June 24, 1768	John Rutledge
John Rutledge[f]	_____, 1762	Andrew Rutledge, James Parsons
James Simpson	December 20, 1764	James Michie
Joshua Ward	January 5, 1761	William Burrows
Thomas Yeomans	April 1, 1767	William H. Henderson, David Graeme
Benjamin Smith[g]		Edward Rutledge
Robert Williams, Jr.[h]		Robert Williams
John Bremar	August 9, 1773	unidentified
John Colcock	July 23, 1773	unidentified
Egerton Leigh	November 1, 1753	unidentified
John Scott	July 28, 1772	unidentified
Apprenticeship--England		
Thomas Bromley	June 10, 1760	unidentified
Thomas Burrington	July 8, 1752	unidentified
Bennet Oldham	September 2, 1764	unidentified
Charles Pinckney II	April 5, 1753	John Marshall
James Simpson	December 20, 1764	William Green

TABLE VI (Continued)

Apprentice	Admitted to Practice in Chancery Court	Teacher
Apprenticeship--Ireland		
John Nevin	October 30, 1765	unidentified
James O'Brien	October 30, 1765	unidentified
James Parsons	April 29, 1752	unidentified

[a]All names were taken from Petitions to Practice Law, 1752-1778, South Carolina, Records of the Chancery Court, South Carolina Department of Archives and History, Columbia, S.C., unless otherwise cited.

[b]Hayes Baker-Crothers, "Rawlins Lowndes," Dumas Malone and Allen Johnson, eds., Dictionary of American Biography, 20 vols. (New York, 1928-1936), XI, 472; Carl J. Vipperman, The Rise of Rawlins Lowndes, 1721-1800 (Columbia, S.C., 1978), 41-42 and note.

[c]Alexander S. Salley, "Col. Miles Brewton and Some of His Descendants," South Carolina Historical and Genealogical Magazine, II (1903), 144.

[d]Edward Alfred Jones, American Members of the Inns of Court (London, 1924), 175; J. Harold Easterby, "John Julius Pringle," Malone and Johnson, eds., D.A.B., XV, 237-238; John Julius Pringle to William Tilghman, July 30, 1774, Preston Davie Collection, Southern Historical Collection, University of North Carolina, Chapel Hill, N.C.

[e]David Ramsay, History of South Carolina, 2 vols. (Charleston, S.C., 1858), II, 272; Richard Brent Clow, "Edward Rutledge of South Carolina, 1749-1800: Unproclaimed Statesman" (Ph.D. diss., University of Georgia, 1976), 8.

[f]Richard Barry, Mr. Rutledge of South Carolina (New York, 1942), 12-14.

[g]Pringle to Tilghman, July 30, 1774, Preston Davie Coll., So. Hist. Coll.

[h]Loyalist Commission, Audit Office Records, 1783-1790, LV (1784), 418, 422-423, 425-526, microfilm in South Carolina Department of Archives and History.

opportunities of attending the Several Courts of Law and Equity there." Upon his arrival in London, Simpson entered into written articles with a William Green and served an apprenticeship for two years, 1761-1763. While there, he complained of the "very considerable expense [of] constantly attending on the several Courts of Law and Equity and without any other View or intention than to become a Practitioner in the several Courts in this Province." Pinckney served an apprenticeship with John Marshall, an attorney and solicitor in England, as well as another with his uncle Charles Pinckney (1699-1758), chief justice of the colony.[22]

The courts in South Carolina were also receptive to lawyers who emigrated directly from other countries. This is demonstrated by the admission of three lawyers from Ireland and three from England during the colonial period. James Parsons, who became one of the colony's leading attorneys and politicians by the eve of the Revolution, served an apprenticeship of five years to one of the attorneys of the Court of King's Bench who was also an agent and chancellor in the equity court in Ireland. After his apprenticeship, Parsons was admitted to the Court of King's Bench and also practiced in the Irish Court of Chancery for several years. Parsons supported his petition with an affidavit testifying that he had practiced for fifteen years in Dublin and in the common law courts in Charleston. Although Irish law required that no one be admitted to the bar who had not kept at least six terms in one of the Inns of Court in London, a statute of the Irish Parliament in 1733 granted admission to

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[22]Petitions to Practice Law, 1752-1778, South Carolina, Records of the Chancery Court, SCDAH.

an applicant who could prove by an affidavit that he had served an apprenticeship for five years.[23]

Foreign petitioners for admission to practice in the colony at times supported their requests with affidavits from those who could vouch for their overseas experience, but whether a rule of court actually required such information is not known. The petitions of Irish natives John Nevin and James O'Brien, who were admitted to Chancery Court practice in 1765, contained no supporting affidavits, noting only that they had served apprenticeships to attorneys in Ireland and had been admitted to practice there. Nor did the courts require supporting evidence for the admission of Thomas Bromley, Thomas Burrington, and Bennet Oldham, who came from England. Burrington and Bromley did not mention the terms of their apprenticeships but stated that they had practiced before the Court of King's Bench and Chancery Court. Oldham, who left a modest law library when he died in 1768, served an apprenticeship for several years to an eminent attorney and solicitor in London and practiced actively in England until he left for Carolina in May 1762.[24]

Rawlins Lowndes (1721-1800), who later became speaker of the House and an assistant justice of the Court of Common Pleas, was the only lawyer known to have received his legal training from one who was not a lawyer. Lowndes, who was born in the British West Indies, was left in the care of Robert Hall, the colony's provost marshall. Lowndes read law

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[23]Petitions to Practice Law, 1752-1778, South Carolina, Records of the Chancery Court, SCDAH; V. T. H. Delany, "The History of Legal Education in Ireland," Journal of Legal Education, XII (1960), 397-398, 405.

[24]Petitions to Practice Law, 1752-1778, South Carolina, Records of the Chancery Court, SCDAH.

with Hall, and upon the latter's death in 1740 became temporary and then permanent provost marshall. In 1754 he resigned his position to devote more time to his law practice. However, the fact that his name does not appear in the court records for that period indicates that he confined his legal business to land transactions and other non-court-related matters. Lowndes's success as a planter, politician, and justice prompted a sarcastic description from his adversary, Charles Woodmason, who wrote:

> Vers'd in the Laws, He was originally a Parish Orphan Boy, nor knows his own Origin--Taken from the Dunghill by our late Provost Marshal--Made his Valet--then learn'd to read and write--Then became Goaler--Then Provost Marshal--Got Money--Married Well--Settled Plantations--became a Planter--A Magistrate--A Senator--Speaker of the House and now Cheif [sic] Judge.[25]

Another illustrative case is that of Robert Williams, Jr., the son of a prominent Charleston attorney. Williams completed an apprenticeship to his father during the Revolution following study at the Inns of Court. Young Williams was sent to London in 1770 to complete his schooling. After a classical education at Westminster, he was entered in Lincoln's Inn in 1773 where he kept commons until 1778 when his father, a Loyalist in Carolina, could no longer support him. He returned to Charleston in 1780 during the British occupation and completed an apprenticeship with his father. Because civil authority had not been re-established, Williams could not practice law and joined a Loyalist militia unit instead. He might have had a promising career in Charleston had the Revolution not intervened. Dr. Alexander Garden, the famous botanist, testified for

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[25]Baker-Crothers, "Rawlins Lowndes," Malone and Johnson, eds., D.A.B., XI, 472; S.C. Gaz. & C. Jl., August 16, 1768; S.C. Gaz., January 1, March 30, 1752; Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 269.

Williams before the Loyalist Commission in 1784 and stated that the elder Williams's influence would have guaranteed success for his son "as no Man had a better Opportunity than he had of setting off a Young Man in Business."[26]

Admission to the bar depended on a rule of court until after the Revolution, and this too reflected the diversity of routes to the legal profession. For training at the Inns, five years and eight terms at commons were required to practice law in South Carolina. A five-year apprenticeship in the colony or elsewhere was the most popular alternative, but the court also accepted those who had fewer years as an apprentice if their studies were combined with an education at the English law colleges.[27]

Laws regarding admission, on the other hand, were general and never specified an educational requirement. Early statutes regarding attorneys were aimed at pettifoggery, and they gave justices of the several courts the power to examine and admit attorneys to practice. The first law of this kind was included in the 1712 act that incorporated selected English statutes as laws of the colony. Eight years later, following the overthrow of the proprietorship, the ill-fated Court Act of 1720 specified that a governor could not remove a judge from office once appointed and that "no Governor shall have power to License or Silence any Lawyer or Attorney whatsoever." Only judges could grant attorneys the right to practice or strike their names from the rolls. This act was voided by

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[26]Loyalist Commission, Audit Office Records, 1783-1790, LV (1784), 418, 422-423, 425-426.

[27]Pringle to Tilghman, November 1, 1774, Preston Davie Coll., So. Hist. Coll.

the Privy Council, but not until 1750.[28]

A Court Act of 1721 again turned its attention to pettifoggers with the following preamble:

> And 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 no ways qualified for that purpose, tending to the promoting litigiousness, and encouraging vexations suits.

The act then stipulated that no person should practice in any court of law or equity unless he had been admitted as an attorney by the chief justice and other justices of the colony. The statute also provided that no one should be prevented from pleading his own case or pleading in behalf of another without fee.[29] These laws were not opposed to either professionally trained attorneys or to attorneys-in-fact who appeared for others without renumeration but only to those who might abuse the privilege of practicing before the provincial courts. Like the court acts, a law of 1740 regarding the regulation of apprenticeships offers little assistance in identifying standards for aspiring lawyers. The law was concerned exclusively with indentured servants and artisan apprentices.[30]

Although the required length of an apprenticeship to a practicing attorney was usually five years, some served longer, others for a shorter

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[28]Cooper and McCord, eds., Statutes of South Carolina, II, 420, 447; The Court Act of 1720 may be found among the Engrossed Acts, SCDAH; see also, Smith, South Carolina as a Royal Province, 122, 125.

[29]Cooper and McCord, eds., Statutes of South Carolina, VII, 173-174, 177-178.

[30]Ibid., III, 544-546; Richard Walsh, "The Charleston Mechanics: A Brief Study, 1760-1776," SCHM, LX (1959), 135.

time. Only six lawyers mentioned the terms of their apprenticeships. Four stated that they had served five years each. Alexander Moultrie, attorney general of South Carolina after the Revolution, served seven years--five with his brother, James, and after his brother's death, two more with James Parsons. James Simpson's apprenticeship was slightly less than five years, consisting of two-and-a-half with James Michie in Charleston and two more with William Green in London. More typical, however, were the statements of petitioners that they had served a "regular clerkship" for "several years."[31]

In the Court Act of 1785, the Assembly made the requirements for admitting attorneys more specific, explaining that qualifications would no longer depend on rules of court "which experience hath shewn to be productive of great uncertainty and confusion." The act required an apprenticeship of four years to an attorney who had been in active practice for at least seven years, or attendance for three years in a foreign university or law college. Lawyers moving to South Carolina from other states could qualify for admission to the bar by proof of a license and two years of residence.[32]

Like knowledge of educational requirements for apprentices, little is known about the duties and responsibilities they performed during their clerkships. John Rutledge began studying law with his uncle Andrew in the early 1750s, under whom he read Coke Upon Littleton, several

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[31]Petitions to Practice Law, 1752-1778, South Carolina, Records of the Chancery Court, SCDAH. The five year apprenticeship was also the most common term in England. Robert Robson, The Attorney in Eighteenth Century England (Cambridge, 1959), 56.

[32]Cooper and McCord, eds., Statutes of South Carolina, IV, 668-669.

other law books, and the Acts of the South Carolina Assembly. Young Rutledge also attended the Assembly sessions with regularity, especially after Andrew was elected House Speaker. After his uncle's death in 1755, Rutledge continued his study of law in the office of James Parsons before enrolling in the Middle Temple. Under Parsons's direction Rutledge and Thomas Bee ran various legal errands for the Irish attorney including delivering plea notices and other Messages to the apprentices of other Charleston lawyers.[33]

William Hasell Gibbes, who was born while John Rutledge was studying law with his uncle, entered Rutledge's law office as an apprentice in 1770. His description of his duties as an apprentice is probably the only one extant for a colonial South Carolina lawyer. Gibbes wrote that in Rutledge's law office

> I fagged as a Clerk and was required to bring large books under my arm to and from the State House, [blur] was subservient to my Master who exacted a more strict attention to duty than the young Gentleman in that capacity will now submit to. Our office was on the Ground floor, under the large stone steps at the Brick House in Broad Street opposite to Orange Street . . . and my breakfast on a waiter was sent me consisting of 2 large slices of bread thinly buttered and a bowl of tea (often cold).[34]

Among those who used their law offices to train young attorneys, Rutledge and his master, Parsons, stand out. Rutledge supervised the training of five apprentices, Parsons four. The latter's ability to train young lawyers was recalled by the printer of the South Carolina

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[33]Barry, Mr. Rutledge of South Carolina, 12-14; Beswicke, McQueen, and Harvey v. Bell and Beswicke, McQueen, and Harvey v. Barker, 1758, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

[34]Childs, ed., "Gibbes' Story of His Life," SCHM, L, 60.

Gazette when Parsons died in 1779: he was "a gentleman whose eminent talents in the profession of the law (to which he had the honour of raising some of the most distinguished personages amongst us) are well-known."[35]

John Julius Pringle, recalling his study with Rutledge, wrote to William Tilghman of Philadelphia in 1774: "It is now three Years since I have been studying the Law, under John Rutledge, Esq., deservedly esteem'd the most eminent of his Profession in this Province." Elsewhere in the letter he described Rutledge as "a Man of quick Apprehension, sound Judgment much sagacity, and ready Eloquence; tho' he may not perhaps have had that extensive Education & Reading requisite to compleat the Orator."[36]

Little information is available on the reading program pursued by young apprentices because few inventories of the libraries of South Carolina colonial lawyers survive. Only five masters--James Michie, James Parsons, Andrew Rutledge, John Rattray, and Robert Williams--left inventories of estate or other sources which mention their libraries; and their books were not listed separately. However, while Charleston's attorneys lacked bar associations, moots, and other formal lawyer-instituted means to promote legal education, they did not suffer any shortage of access to law books through which they could help train the aspiring practitioners as well as further their own self-education.

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[35] Gaz. of the State of S.C., October 13, 1779.

[36] Pringle to Tilghman, July 30, 1774, Preston Davie Coll., So. Hist. Coll.

The leading authority on colonial libraries in South Carolina has estimated that from 1736 to 1776 approximately 4,700 inventories were recorded. Of these, some 2,051, or 43.6 percent, mention books or libraries. Additionally, the miscellaneous records of the provincial secretary revealed 263 library inventories of the seventeenth and early eighteenth centuries. The value of these holdings varied, but only a few were worth more than £500. Although some collections were extensive, the most common library contained fewer than twenty-five titles and was appraised at less than £50.[37]

Lawyers' libraries ranged in value from the modest collection of John St. Leger worth £20 to the impressive £4,700 library of James Parsons and the £3,000 collection of Peter Manigault. The list of twenty-two lawyers on the following page (Table VII) whose libraries were officially appraised suggests an average collection worth about £823. Law books were separately valued for only six of the twenty-two. They included the law books of James Parsons, worth £3,500; James Michie, £1,120; Peter Leigh, £348.10; Maurice Lewis, £320; James Simmons, £135.10; and John St. Leger, £20. Inventories of books survive for only eight of the twenty-two. In addition, the library of attorney James Rigby which included about seventy law books was inventoried--but not appraised--as part of the court records after he fled the province in 1760 owing a debt of £66 to fellow lawyer Parsons. The books of John MacKenzie--appraised but not enumerated in the Inventories of Estate--were printed in a catalog of

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[37]Walter B. Edgar, "The Libraries of Colonial South Carolina" (Ph.D. diss., University of South Carolina, 1969), 14, 18-19, 21.

TABLE VII

VALUE OF LAWYERS' LIBRARIES

Lawyer	Value	Year Inventories	Source
James Parsons	£4,700	1779	Inventories BB, 191
Peter Manigault	£3,000	1774	Inventories &, 409
John MacKenzie	£2,350	1771	Inventories Z, 64-66, 72
James Michie	£1,750	1760	Inventories T, 446
John Rattray	£1,200	1761	Inventories V, 102
Sarah Trott (widow of Nicholas Trott)	£1,000	1745	Inventories LL, 170
James Grindlay	£844.7.6 (estimate)	1765	Inventories V, 279-284
Peter Leigh	£558.12.6	1759	Inventories T, 256-257
Andrew Rutledge	£340	1755	Inventories R2, 412
Maurice Lewis	£323.15	1741	Inventories, 1740-43, 53
William Mazyck	£250	1775	Inventories &, 587
Charles Shinner	£217.12.6	1768	Inventories X, 340-341
Peter DeLancey	£170	1772	Inventories Z, 119-121
James Simmons	£151.10	1775	Inventories &, 571
Bennet Oldham	£146.10	1768	Inventories X, 407
William Blakeway	£116.3.9	1727	Records of the Secretary of the Province, F, 28-29
Robert Williams	£107.18.6	1784	Audit Office Loyalist Claims, LIV, 36-41
Thomas Hepworth	£65 (estimate)	1728	Records of the Secretary of the Province, G, 81-85
William Wragg	£60	1779	Inventories BB, 87-89
Thomas Phepoe	£30	1784	Audit Office Loyalist Claims, LIII, 17
Thomas Bromley	£26.12.6	1769	Inventories X, 47
John St. Leger	£20	1769	Inventories Y, 127

the Charleston Library Society in 1772.[38]

Although the size and value of these libraries varied, they reflected some common titles. Sir Edward Coke's Reports and Commentary Upon Littleton (Institutes) were as popular in South Carolina as they were in Virginia. Thomas Wood's Institutes of the Laws of England, Knightley D'Anvers' General Abridgement of the Common Law, William Nelson's Office and Authority of a Justice of the Peace, Matthew Hale's Pleas of the Crown, and William Hawkins's Treatise of the Pleas of the Crown were also among the most popular works. These case reports formed the nucleus of colonial law libraries and remained in demand after the Revolution. Statutory compilations of the English laws were usually supplemented by provincial volumes such as Trott's Laws of the Province of South Carolina. Attorneys also liked to acquire the statutes of other colonies. Two (Grindlay and Shinner) owned copies of the Laws of Jamaica; Thomas Hepworth kept copies of the Laws of New York and Laws of Barbados. Like their counterparts in other colonies, the South Carolina lawyers concentrated most of their holdings in the common law and possessed fewer legal treatises on equity or admiralty law and fewer still on ecclesiastical law and the workings of the Court of the Exchequer. This is not surprising since the bulk of a colonial attorney's practice was devoted to actions in the two common law courts and since only a small percentage of

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[38]Books were listed in the Inventories for Grindlay, Oldham, Leigh, Simmons, Shinner, Hepworth, and DeLancey. Parsons v. Rigby, 1760, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH. A Catalog of Books, Given and Devised by John MacKenzie, Esquire, to the Charleston Library Society for the Use of the College when Erected (Charleston, 1772). This valuable collection was destroyed when fire swept the Library Society in 1778.

the bar practiced in the Chancery and Vice-Admiralty Courts.[39]

Another kind of library inventory is in the Anne Simons Deas Notebook in the South Carolina Historical Society. The notebook contains not only an inventory of books owned by an unidentified attorney at mid-eighteenth century, but it also provides insight into legal education in the colony. The notebook is actually a type of commonplace book with information on British courts, gardening, agriculture, and medicine including cures for cholic, toothache, corns, consumption, and pleurisy. More than a dozen books by Thomas Wood, author of the Institutes of the Laws of England, are recommended for the study of civil law, canon law, and equity. The writer of the notebook also suggests The Tryal of John Peter Zenger at New York for Libelling the Government with the comment: "This last I thought worthy to take notice of because it is not to be found in the Law Catalogue, and it Contains Excellent Argument." The notebook also lists a catalog of eighty-seven books valued at £368.18. Sixty-five--or three-fourths--were on law, valued at £341.18. In a column to the left of the law titles the author of the notebook inscribed the names of local attorneys who apparently borrowed from his collection.[40]

Law books were also of value to a number of non-lawyers in the province including crown officials, merchants, and planters. Dougal

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[39]For comparisons with other law libraries, see William Hamilton Bryson, Census of Law Books in Colonial Virginia (Charlottesville, Va., 1978), xii-xx; Wroth and Zobel, eds., Legal Papers of John Adams, I, lxxv-lxxvi; see also, Herbert Alan Johnson, Imported Eighteenth-Century Law Treatises in American Libraries, 1700-1799 (Knoxville, Tenn., 1978), xi-xii, xvii-xix, xxiii; and Edgar, "Some Popular Books in Colonial South Carolina," SCHM, LXXII (1971), 174-178.

[40]Anne Simons Deas Notebook, SCHS.

Campbell, clerk of the Court of Common Pleas during the Stamp Act crisis, owned some twenty law books valued at £164.5. Paul Jenys, a planter and speaker of the House from 1733 to 1736, included copies of Dalton's Justice, Wood's Institutes, Jacob's Law Dictionary, the Attorney's Pocketbook, and numerous volumes of Debates in Parliament among his library of seventy-five books. Other planters such as Noah Serre and Culcheth Golightly and merchants such as Joseph Wragg and William Dunston also possessed law books.[41]

Law books were not numerous in the backcountry, but they did exist. Edward Musgrove, one of the few lawyers who lived in the region prior to the Revolution, left six books in his estate, but the titles were not separately listed in his inventory.[42] Joseph Robinson, an influential Loyalist in the backcountry, served as a major in the regimental militia. He came to South Carolina from Virginia and after the Revolution fled to Prince Edward Island where he held several government positions. His library was valued at £100 sterling and contained sixty volumes on law as well as works on mathematics and divinity. The extent of his library while he lived in South Carolina is not known.[43]

In addition to private collections, the Charleston Library Society included numerous law books among its holdings. The Society obtained its books in two ways. First, individual members of the Society could

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[41]Inventories of Estate, Y, 386-391; R1, 402-408, SCDAH; Edgar, "Libraries of Colonial South Carolina," 99, 103, 133, 154.

[42]Edgar, "Libraries of Colonial South Carolina," 165-168; Laurens County Estate Records, A1 (1788, 1802), 28-29, SCDAH.

[43]Barnwell, "Loyalism in South Carolina," 95-97.

propose books to be purchased at any meeting. If these books received the approval of the members at the next meeting the Correspondent would forward the list to the Society's bookseller in London. This was the most common method of obtaining books prior to the Revolution.[44] Secondly, the Society's Committee--a group of twelve men who conducted most of the club's business--authorized certain members to purchase books at private auctions in the province.[45]

The Committee frequently ordered the printing of catalogs of the Society's books, but only two appeared during this period despite efforts to provide an adequate compensation for the printer. The first was printed in 1750, and it listed 367 titles. Legal holdings were small, numbering only about thirteen, or 3.5 percent. They included Domat's Civil Law, Bacon's Discourse on the Laws and Government of England, Puffendorf's Law of Nature and Nations, Malyne's Lex Mercatoria, Trial of the Seven Bishops, and Molloy's de jure Maritimo. Among other works, however, the catalog reflected an effort to achieve a degree of balance in literature, science, philosophy, history, religion, biography, and government.[46]

The second catalog was printed twenty years later and illustrates the growth of the legal profession in the two decades and that body's influence on the cultural life of the province. The total number of titles had doubled, but those on law had increased threefold. Of the 816 titles in the 1770 catalog, works on religion, philosophy, history,

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[44]Library Society Journals, 1759, pp. 8, 10-15; 1761, p. 20.

[45]Library Society Committee Journals, 1760, p. 15.

[46]Ibid., 11; 1767, p. 46; A Catalogue of Books Belonging to the Charles Town Library Society (Charleston, 1750).

science, and biography still dominated; however, the forty-three law titles represented civil and criminal law, equity, ecclesiastical law, international law, local statutes, and accounts of famous trials. The law books would have provided sufficient reading for anyone aspiring to become a lawyer and whose master did not have an adequate library.[47]

Obtaining law books was difficult during the late seventeenth and early eighteenth centuries, and men such as Thomas Hepworth and Nicholas Trott brought their entire libraries with them from England, Bermuda, or Barbados. In the quarter-century prior to the American Revolution, one could obtain law books in several ways: one could rely on friends visiting or studying in London, purchase books from local booksellers whose number and stock increased during this period, acquire them at auction sales, or inherit them from a fellow attorney.

The Carolinians who relied on their friends in London to purchase law books might be assured that their requests would receive personal attention and that their friends would take some care to safely pack and ship the books to Charleston. Several letters of Peter Manigault, while a student at the Inner Temple, offer evidence of these personal business dealings.[48] During his stay in London, Manigault also took advantage of book sales and discounts to build his own library. He told his father he could purchase second-hand law books still in good condition 39

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[47] Catalogue of Books Belonging to the Incorporated Charles Town Library Society (Charleston, 1770) (Evans No., 11596).

[48] Robert Williams to Peter Manigault, August 28, 1752. Thomas Corbett to Peter Manigault, May 30, 1755, William Drayton to Peter Manigault, May 31, 1755, Manigault Family Papers, SCL.

percent cheaper than new books.[49] Writing his father in 1752, he commented:

> As to the Purchase of Law Books, there are every Week Sales of them about Temple Bar; which I shall attend in order to pick up Bargains of that Sort. Mr. Freeman [William George Freeman] t'other day sold all his Unkles [sic] Books, as well Law, as others, for the value of £45. If I had known his intentions, & had given him £5 more than he got for them, I should have had them for Less than half the prime Cost. though they were very little the worse for Use.[50]

Fifteen years later he ended his law practice and tried to sell his law books at an even greater discount. Manigault wrote

> Being determined never to practise the Law again, you [sic] rightly judge that I would be glad to part with my Books. My inclination is so strong, that I will sell them all to you, or any one else, at 10 per cent lower than they were bought, & you may remember they were purchased cheap.[51]

Although printers and booksellers arrived in the colony in the early 1730s, few law books were offered for public sale until after Robert Wells opened his stationery and book store in the early 1750s. Wells, who also published the South Carolina and American General Gazette, imported much of his stock and purchased entire libraries in the colony which he sold at auction.[52] From 1765 to 1775 law books were an

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[49]Peter Manigault to Gabriel Manigault, July 23, 1753, Mabel Webber, ed., "Letters of Peter Manigault," SCHGM, XXXII (1931), 181.

[50]Peter Manigault to Gabriel Manigault, October 18, 1752, ibid., 56-57.

[51]Peter Manigault to _____, July 25-October 21, 1768, Maurice A. Crouse, ed., "Letterbook of Peter Manigault," SCHM, LXX (1969), 177.

[52]Bowes, Early Charleston Culture, 66-67; Edgar, "Libraries of Colonial South Carolina," 58-59. Few sellers offered law books for sale prior to the arrival of Wells. For an example, see the advertisement by Isaac da Costa in S.C. Gaz., February 5, 1753. Da Costa offered twenty-six works, but only two might be considered legal treatises--Salmon's State Trials and nine volumes of Parliamentary Debates.

important part of his sales, and during that decade the Scots printer advertised no fewer than 200 law titles for sale. Although Wells imported some of these books, it is not known whether he imported all or was selling part of the libraries he had purchased.[53]

Charles Crouch, rival publisher of the South Carolina Gazette and Country Journal, advertised two large sales of law books. Wells' law books comprised only a portion of the total number of books on sale, but Crouch's sales involved law books exclusively. On June 14, 1768, Crouch advertised a collection of law books "comprehending almost all the Reports and other valuable Articles; many of which, are now rarely to be found."[54] In his next edition, Crouch devoted two-thirds of the front page to listing the 159 titles on sale. Those books which he could not sell at the auction he promised to sell privately. Three years later he advertised another huge sale of "Upwards of ONE Hundred volumes of Law Books, of the best Editions, and in very good Condition." Other booksellers such as George Wood and Nicholas Langford occasionally advertised law books for sale but never on a scale comparable to either Wells or Crouch.[55]

At least five well-known Carolina lawyers owned libraries which were sold at auction after their deaths. These were the libraries of Trott, Michie, Grindlay, Peter Leigh, and Peter Manigault. Another attorney, Egerton Leigh, sold his library and other parts of his estate during

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[53] S.C. & Am. Gen. Gaz., October 16, 1767; April 8, 1768; June 12, 1769.

[54] S.C. Gaz. & C. Jl., June 14, 1768.

[55] Ibid., June 21, 28, July 5, 1768, July 23, 1771; for Wood, see October 18, 1768, October 15, 1771; for Langford, see November 28, 1769, December 18, 1769.

his lifetime in order to meet his obligations. Many of Trott's works on history, divinity, and law were advertised for sale by his widow, Sarah, who earlier had asked for the return of all books the former chief justice had loaned to his friends.[56] Apparently Sarah Trott retained a large portion of the library because it received a high appraisal in the Inventories of Estate and because Trott's "large Library of Books" was again auctioned in 1745 after Sarah Trott's death.[57]

Michie's library, worth about £1,750, was advertised thus: "A very complete collection of Law, Civil, statute, and common. Most of the Classics notis variorum, and others the best editions. And a very Large collection of the best English Poets, Historians. . . . The Books are in general in very good condition, many of them in elegant bindings."[58] Christian Grindlay, widow of James Grindlay, sold her husband's library in 1766 along with three slaves and some household furniture prior to returning to England in 1767.[59]

The advertisement offering Peter Manigault's library for sale was the only one which actually listed titles. Nicholas Langford handled the sale of Manigault's library and advertised the following:

> Reports: by Atkyns, Bridgman, Sir J. and Sir O. Barnarditton, Benloe, Carter, Comberback, Chancey, Croke, Dyer, Davis, Davison, Farresly, Fitzgibbons, Hutton, Hetley, Jenkins, Sir W. and Sir T. Jones, Keelway, Kelying, Ley, Lane, Littleton,

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[56] S.C. Gaz., February 23, March 22, 1740.

[57] Inventories of Estate, LL, 170, SCDAH; S.C. Gaz., December 23, 1745, January 11, 1746.

[58] S.C. Gaz., October 24, 1761.

[59] S.C. & Am. Gen. Gaz., May 30, June 6, 1766; May 15, 29, 1767.

> Liewych, Levings, Leonard, Moore, Popham, Polexsen, Palmer, Rolles, Salkeld, Strange, Styles, Saville, Vernon, P. Williams, Wynche, and Yelverston; Abridgements and Comments: by Danvers, Plowden, Rolais; Cases by Alleyn; In Equity, Latch, Modern; Entries by Brownlow, Browne, Cliffe, Coke, Hansard, Leving, Lilly, Rastall, Robinson; Pleas of the Crown by Hawkins and Tremaine; Pleaders by Vidian, Horne, Townshend, also Domat's Civil Law, Lilly's P. Register, Horseman's Conveyancing, and many other Law.[60]

Thus, although Manigault may have sold portions of his library years before his death, his collection remained substantial. His oldest son, Gabriel Manigault II, purchased some of his father's books at auction no doubt in preparation for his own anticipated career in the law.[61]

Upon his father's death in 1759, Egerton Leigh announced the sale of Peter Leigh's estate including his library which was described as "a curious collection of BOOKS, as well in law as in divers other branches of polite learning."[62] The younger Leigh sold portions of his own estate including his library only five years later. Announcing that he intended to return to England for his health for a period of not less than eighteen months, Leigh advertised "my Plate, China, and Furniture, with about 800 volumes of valuable BOOKS, in divers branches of useful learning."[63] Health and political troubles forced him to depart the province again in 1771, and he left his friend, John Bremar, in charge of his estate.

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[60] S.C. Gaz. & C. Jl., June 14, 1774; S.C. & Am. Gen. Gaz., April 29, May 6, June 17, 1774.

[61] S.C. Gaz. & C. Jl., June 14, 1774; Crouse, "Manigault Family," 398.

[62] S.C. Gaz., September 29, 1759.

[63] Ibid., March 10, 1764.

Bremar advertised Leigh's law library for sale at 10 percent less than the original cost. Although a catalog of the contents of the library was printed, it has not survived.[64]

Only a few lawyers specified in their wills the disposition of their law books. Parsons bequeathed to Thomas Winstanley his twenty-one volumes of Viner's Abridgement of the Laws.[65] William Bull II, who was trained as a physician but remained an important political figure through the era of the Revolution, left his law books to his Loyalist friend, Robert Williams "for many good services."[66] Charles Pinckney I willed to his nephew and namesake "£25 sterling cost of my Law Books."[67] Rowland Vaughan's last testament carried a negative note concerning the disposal of his books, declaring "my Intention is that Maurice Lewis, Esq., shall not be intituled to any of my Books or any other Thing which late Articles of Copartnership intituled him."[68]

William Drayton, after an illustrious career as Chief Justice of British East Florida, judge of the Admiralty Court of South Carolina, and United States District Court judge for the state, left his law books to his son with this curious remark:

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[64] S.C. & Am. Gen. Gaz., June 10, 17, July 1, August 12, September 17, 1771; S.C. Gaz., May 30, June 6, 1771.

[65] Charleston County Wills, XVIII, 1776-1784, p. 345, W.P.A. Typescript, SCDAH.

[66] "South Carolina Gleanings in England," SCHGM, VII (1906), 149.

[67] Mabel Webber, comp., "The Thomas Pinckney Family of South Carolina," SCHGM, XXXIX (1940), 20-21.

[68] Charleston County Wills, III, 1731-1737, p. 311, W.P.A. Typescript, SCDAH.

> As Law-Books are of but very little Value but to a professional Man, and they may be the only Means to promote my Sons future Advantage--I give and bequeath all my Law-Books to my son Jacob Drayton. I hope I have not done too much in this.[69]

Despite the limited sources concerning legal education in colonial South Carolina, some conclusions may be offered. An aspiring lawyer could receive an adequate grammar school education in the colony. Although he would have to leave home to attend college, higher education was not an absolute requirement for his admission to the bar. Those who remained in the province could prepare themselves for practice by serving an apprenticeship with a practicing attorney for a period of five years. That twenty-seven of the province's lawyers received part, if not all, of their legal training as apprentices demonstrates how extensively the system was used in South Carolina, as in other colonies, although not as much so as in New York and Massachusetts, for example, where apprenticeship was the chief route to the profession during the eighteenth century. Additionally, the Inns of Court--popular in South Carolina even during the Revolution--seemed too costly for aspiring lawyers in New York and Massachusetts as indicated by the experience of Philip Livingston, Jr., in 1762. Livingston estimated that he could not live in London for less than £450 sterling per year and said that expenses there were so great "that it is absolutely impossible for an American, who has never lived in London, to have an Idea of it."[70]

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[69]Ibid., B, 1786-1793, p. 652.

[70]Charles R. McKirdy, "The Lawyer as Apprentice: Legal Education in Eighteenth-Century Massachusetts," Journal of Legal Education, XXVIII (1976), 125-127; Livingston is quoted in Hamlin, Legal Education in Colonial New York, 20-21.

Apprenticeship at home may have seemed second best to those who went abroad to the English Inns for their education, but this difference is not apparent when one examines the practice of South Carolina lawyers. Those educated in the province, in fact, were more successful in their profession than those trained in the mother country. Five of the six leading practitioners in the colony (those with more than 500 cases) were products of the apprenticeship method. John Rutledge, Charles Pinckney II, William Burrows, and Joshua Ward studied in Charleston while James Parsons came to Carolina after a term with an Irish attorney. Rutledge and Ward later supplemented their training by enrolling in the Middle Temple, but their practical knowledge of the law undoubtedly came from their apprenticeships. Moreover, of the top third of the bar between 1750 and 1780--those appearing in more than 100 cases each--well over half (62 percent) were apprentice trained.[71] Clearly, South Carolina had developed a system of educating its lawyers at home that was equal to the methods used in other provinces.

The apprenticeship method also functioned in the colony without the supervision of a bar association or without tight control by the Commons House of Assembly. The wide availability of law books in the province in the pre-Revolutionary Era indicates not only the popularity and influence of the profession, but it also illustrates the usefulness of these collections as reading material for aspiring practitioners. The greatest value of the apprenticeship was in enabling a large segment of the legal profession to be trained without leaving the colony.

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[71] Lawyers' case loads and legal practice are analyzed in Chapter VII.

Apprenticeships might well have constituted the chief method of legal education in the province, but it never managed to equal the importance in the minds of South Carolinians of training in the Inns of Court. The apprenticeship method remained at best a necessary alternative but never a real substitute for attendance at the Inns. Despite the appeals to economy and patriotism in the calls to establish a college in South Carolina on the eve of the Revolution, the English universities and the Inns of Court held an attraction for Carolinians that transcended the political disputes between the colonists and the mother country. John Julius Pringle, whose letters on the eve of the Revolution bristle with hostility toward England and resound with a defense of colonial rights, chose nevertheless to enroll and study law at the Middle Temple as late as 1774.[72] Lawyers such as William Burrows and Thomas Bee, who were trained exclusively by the apprenticeship method in the colony, chose to send their sons to the Inns before and after the Revolution.[73]

Finally, the diversity of routes to the bar might have made South Carolina somewhat unique among the American colonies in the development of its legal profession. Both the apprenticeship and training at the Inns proved valuable after the Revolution when Charles Cotesworth Pinckney, trained exclusively at the Inns, and Edward Rutledge, educated at home in his brother's law office and later abroad, became not only the leading practitioners in the early national period but the most influential masters as well. It was in Pinckney's office that William Johnson

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[72]Pringle to Tilghman, September 15, 1774, May 1, August 7, September 11, 1775, Preston Davie Coll., So. Hist. Coll.

[73]Jones, American Members of the Inns of Court, 15, 34.

embarked on a legal education that would eventually qualify him as an associate justice of the Supreme Court during the Marshall Era and a leading Jeffersonian jurist.[74] An apprenticeship during the same period in the Charleston law office of Henry W. DeSaussure and in the Abbeville office of George Bowie provided three-quarters of John C. Calhoun's legal training and proved at least as valuable as his eighteen months at the Litchfield Law School in Connecticut.[75]

Legal education in colonial and post-Revolutionary South Carolina, then, had in many respects fulfilled the hope of physician and historian David Ramsay when he expressed to Benjamin Rush in 1779 his "ardent wish that Law, Physic and Divinity may be administered to my country by its own sons."[76]

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[74] O'Neall, Bench and Bar of South Carolina, I, 72-73; Donald G. Morgan, Justice William Johnson: The First Dissenter (Columbia, S.C., 1954), 21-22; for additional information on Pinckney's reputation as a law teacher, see Marvin R. Zahniser, ed., "Letter of Edward Rutledge to His Son, August 2, 1796," SCHM, LXIV (1963), 65-72; on Rutledge's ability to train young men in the law, see Ralph Izard to Edward Rutledge, March 16, 1791, Ralph Izard Papers, SCL.

[75] O'Neall, Bench and Bar of South Carolina, II, 283-284.

[76] Ramsay to Rush, April 8, 1779, quoted in Joseph Ioor Waring, A History of Medicine in South Carolina, 1670-1825 (Columbia, S.C., 1964), 283-284.

CHAPTER VI

EDUCATING PROVINCIAL LAWYERS IN GREAT BRITAIN

> By attendance on the Courts for four Terms, reading a great deal, conversing with Lawyers, and being a member of a Law Society, I have in the space of a twelve month cleared away all the rubbish which stood in my way and made me stumble at every step: but all I have learnt only serves to convince me that I know but very little, particularly for a person who intends to make it a Profession and not a matter of curiousity.[1]

Legal training at the Inns of Court has long been considered the most important element in the education of South Carolina's bench and bar, especially in the twenty-five years preceding the outbreak of the American Revolution. For many young Carolinians, study at the Inns was the crown in a legal education that was beyond the hopes of not only many fellow Charlestonians but indeed of colonists anywhere in North America. Historians of South Carolina and of the legal profession in America have long been aware of the role of the Inns in the training of the province's lawyers. Alexander Hewatt, a contemporary observer, noted on the eve of the Revolution that Carolina students who were educated abroad "have distinguished themselves by their knowledge in the laws and constitution of their country" while those with only a provincial education "have as yet made little figure as men of genius or learning."[2]

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[1][William Loughton Smith] to Gabriel Manigault II, September 30, 1780, Manigault Family Papers, SCL.

[2]Hewatt, An Account of the Rise and Progress of the Colonies of South Carolina and Georgia, II, 293.

Edward McCrady, writing near the end of the nineteenth century, believed that the large number of South Carolinians at the Inns was indicative of the colony's prosperity and the closeness of all southern colonies to England. Apparently unaware of the number of apprentice-trained attorneys in the colony, McCrady asserted that admission to the bar "was rarely conferred on any other than regularly bred lawyers who had attended their terms at Westminster." Without these lawyers, he stated, there could have been no American Revolution in South Carolina, "Notwithstanding all the efforts of Christopher Gadsden."

> The return of these young gentlemen to the province had much to do with the encouragement of the spirit of revolution which had already arisen in other classes in the community. Scattered amidst the various seminaries of England as they had been before entering the Inns of Court, they imbibed at these vigorous fountains of knowledge the invincible spirit which afterward enabled them both in the Council and in the field to combat with success her attempt at their subjugation.[3]

Historians after McCrady have echoed these sentiments. Edward Alfred Jones in his American Members of the Inns of Court pointed out that the Palmetto province was more strongly represented at the Middle Temple than any other American colony. This was not surprising, he explained:

> in view of the double fact that few of the prosperous inhabitants of the charming town of Charlestown had not crossed the Atlantic before the American Revolution and that the sons of successful planters, merchants, and professional men were sent to England for their education and general culture.[4]

Among legal historians, Charles Warren was one of the first to draw attention to the English education of the South Carolina lawyers.

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[3]McCrady, The History of South Carolina under the Royal Government, 475, 477.

[4]Jones, American Members of the Inns of Court, ix; Sachse, The Colonial American in Britain, 3, 64.

Warren wrote of the Carolina bar: "though small in numbers, it was more highly educated than any Bar in America, for a considerable proportion of its members had received their legal training in England." More recently, Richard Beale Davis attributed the high quality of judicial practice in the South during the late colonial and early national periods to the British-educated barristers. He also noted:

> There can be little doubt that the London-educated lawyers brought back to the colonies not only a considerable knowledge of English law but much of English court procedures, including forms of debate and a sense of decorum.[5]

Nevertheless, few historians of early South Carolina or of the early American bar have fully explored the English education of the colony's youth.[6] Thus, several questions arise: Who were the English-trained lawyers and what were their experiences abroad? Since many historians agree that the English law colleges had declined as academic legal training centers, how valuable was the education of the Charlestonians who studied there? How successful were these lawyers in their practices once they returned to America, and how did their British education affect the attitudes of colonial students toward the mother country on the eve of the Revolution?

In one sense, the quest for an English education may be viewed as part of the colonials' search for identity, so perceptively described

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[5]Warren, History of the American Bar, 121; Chroust, Rise of the Legal Profession in America, I, 302 and note; Davis, Intellectual Life in the Colonial South, I, 371, III, 1608; Murrin, "Anglicizing an American Colony," 253; Murrin, "The Legal Transformation," Katz, ed., Colonial America, 446.

[6]An exception is George C. Rogers, Evolution of a Federalist: William Loughton Smith of Charleston, 1758-1812 (Columbia, S.C., 1962), 56-96. For a description of South Carolina students pursuing medical education abroad, see Waring, History of Medicine in South Carolina, 336-337.

by historian Jack P. Greene. Greene concluded that during much of the eighteenth century the mood of optimism and the rhetoric of success with which the colonists were associated were counterbalanced by a deep, pervasive, and growing sense of failure. Instead of having developed any explicit "American" identity, colonists continued even as late as the 1760s and 1770s to be extremely dependent for their normative values--their conceptions of what they would like themselves and their societies to be--upon two social models. These models supplied the colonists with common images of good and evil and served as prototypes against which success and failure were measured. The first model was an idealized vision of the character and achievements of the colonial societies during their early years of settlement. The compelling need of the inhabitants to compare themselves with this idealized concept of their earlier culture only accentuated their sense of failure and prevented them from fully adjusting to conditions of life in America by developing their own identity. The second model was an idealized image of English society and culture, and the widespread colonial fascination with this model was an example of the provincial societies looking toward the metropolis for preferred values and approved standards of behavior. In the second model, the identity crisis could be resolved only by constant reference to the values of the metropolitan center as the one certain measure of achievement. This led the colonists to cultivate idealized English values and to seek idealized versions of English institutions and patterns of behavior.[7]

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[7]Jack P. Greene, "Search for Identity: An Interpretation of the Meaning of Selected Patterns of Social Response in Eighteenth-Century America," Journal of Social History, III (1970), 190-191, 205-216.

South Carolina does not fit Greene's first model. Although Chief Justice Benjamin Whitaker could caution Carolinians in 1741 to "abstain from that Luxury and Excess, which within a few Years last past, has pour'd in upon us like a Torrent," the economic expansion of the colony after 1730 was so pervasive that it allayed any fears Carolinians may have had of failing to measure up to their earlier expectations.[8] Carolina rather reflects the second model better than most of its neighbors in the new World. As the province came closer to the mother country through commerce, prosperity, and the last two intercolonial wars, the colonial elites became unhappily aware of the social gulf between themselves and the metropolitan center. This awareness produced mimetic impulses which led many colonies to redouble their efforts to Anglicize society. In the North, this was reflected in the establishment of colleges after 1745 in an effort to stamp out what the colonists referred to as "ignorance" and "barbarity of manners" and in written histories such as William Smith's History of the Province of New York (1757), designed to affirm that colony's constitutional legitimacy and to establish a provincial identity.[9]

In the southern colonies, where the effort to establish colleges was less successful, the attempt to Anglicize society was reflected best

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[8]Ibid., 200; At a Court of General Sessions, October, 1741. The Chief Justice's Charge to the Grand Jury, 38.

[9]Greene, "Search for Identity," Jl. Soc. Hist., III (1970), 205-206, 212-213; see also Michael Kammen's introduction to William Smith, Jr., The History of the Province of New York, 2 vols. (Cambridge, Mass., 1972), I, xlvii; Hewatt, An Account of the Rise and Progress of the Colonies of South Carolina and Georgia, II, 292-293; Michael Birks, Gentlemen of the Law (London, 1960), 257.

in the sending of large numbers of colonial youths to England to receive their formal education and legal training. The numerical increase of students abroad in the 1750s was out of all proportion to enrollments in previous decades. Almost three times as many Americans matriculated at Oxford and Cambridge and at the Inns of Court between 1750 and 1760 as in the 1740s. Most of these American students were southerners whose ties to the mother country were closer--economically and socially--than their northern neighbors. At the four law colleges, South Carolina led all other colonies, with Virginia a close second and New York and Maryland a distant third.[10]

That a large number of South Carolina's lawyers received some legal training at the Inns reflects not merely the prosperity of the merchants, planters, and professional men who could afford to provide their sons with the best in a classical English education but also discloses the extent to which the colonists sought to Anglicize their own society. Seen in this light, the large numbers of Carolina students who were enrolled in the English Inns is more of a commentary on what the colonists in

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[10]Although figures vary, the order is essentially correct. Sachse, The Colonial American in Britain, 47-48; Hamilton, "Southern Members of the Inns of Court," North Carolina Historical Review, X (1933), 274. Hamilton's figures are generally larger than those of Sachse, but the former includes those admitted to the Inns after the Revolution as well as before. Following New York and Maryland in the number of students admitted to the Inns were Pennsylvania, 35; Massachusetts, 30; Georgia, 17; North Carolina, 11; and New Hampshire, 5. Rhode Island, New Jersey, and Connecticut each had fewer than 5. For a more accurate listing of English-trained lawyers from Virginia, see Smith, "Virginia Lawyers," 371. Smith counted 61 Virginians trained at the Inns prior to the Revolution in contrast to the 46 counted by Sachse and the 76 by Hamilton. For New York, see Hamlin, Legal Education in Colonial New York, 135-155. Hamlin listed 54 New York lawyers with an English legal education in contrast to the 20 reported by Sachse and 40 by Hamilton.

Charleston were trying to achieve than on the quality or value of an English legal education in the eighteenth century. The contribution of the Inns and of English education for these young men, then, lay in providing a generation of students with a set of values which they recognized as binding on both the colonies and the mother country, in helping them to realize when those values were misplaced, and in providing the colony with a sizeable educated, political elite whose leadership and values would be needed and put to the most severe test.

From the founding of the colony until 1780, seventy-two South Carolinians received some legal training at the Inns of Court. This number comprises 43 percent of the colony's bench and bar which numbered 166 during the colonial period. The bar itself was small compared with other colonies, but it was larger than most historians have recognized.[11] Fifty-six of those trained at the Inns, or roughly four-fifths, were native Americans who embarked for England to complete their formal education. Fifteen were natives of Britain, Ireland, and Scotland who received legal training prior to emigrating to the colony. Only one--Peter DeLancey of New York--was a native of another American province.[12] Prior

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[11] New York, for example, had a colonial bar of more than 385 members, and Virginia's bar numbered 367. No one has actually tallied the total number of South Carolina attorneys for the entire colonial period. Historian David Ramsay claimed there were 58 lawyers in the province between 1750 and the outbreak of war with England; Robert Wells's Register listed only 42 who were practicing before the Court of Common Pleas from 1769-1775. For New York, see Hamlin, Legal Education in Colonial New York, 135-155; for Virginia, see Smith, "Virginia Lawyers," 371, 373; for South Carolina, see Ramsay, History of South Carolina, II, 89; Wells's Register, 1769, 1774, 1775.

[12] For DeLancey's background in New York, see Hamlin, Legal Education in Colonial New York, 20, 27n, 136, 138, 148.

to the middle of the eighteenth century, only sixteen Carolinians had received training at the Inns. This included five natives of the colony and eleven from the British Isles. Between 1750 and 1780, fifty-six members of the colony's bench and bar entered the mother country's law colleges, fifty-one of them natives of the province.

Those who studied at the Inns prior to 1750 were in many ways a diverse lot. They included only two lawyers who developed an extensive practice in the colony, four chief justices (although only two held the office for an extended period), two assistant justices, two governors, a Scottish attorney who came to study the Cherokees, and several men who were prominent in the political life of the colony although they practiced little or no law.

Of the sixteen, only Charles Pinckney (1699-1758) and James Wright had extensive legal practices in the colony. Nicholas Trott and Peter Leigh were the two permanently appointed chief justices. William Gregory and John Fewtrell, both banished as Loyalists during the Revolution, were the two assistant justices; James Colleton and William Henry Lyttleton were the two governors.[13]

Sir Alexander Cumming is listed among South Carolina lawyers trained at the Inns despite the fact that he never resided in the colony but merely visited to tour the Cherokee country. Cumming was admitted to the Middle Temple in 1716, two years after being called to the Scottish bar. He came to Carolina in 1729, joined the St. Andrew's Society, visited the Cherokees, and returned to England the following year with

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[13]For biographical sketches of these early lawyers, see Jones, American Members of the Inns of Court.

several Indian friends. In great debt later in life, Cumming died in a poor house in 1775.[14]

Of six others trained at the Inns during this period, only one practiced law in the province. Thomas Kimberly, a native of England, was admitted to the Middle Temple in 1713. He received a commission as chief justice of South Carolina in 1725, but he never held that position. His legal practice was limited to only a few cases before the Chancery and common law courts. Abel Ketelby, another native of England, came to the colony at the turn of the century as a Landgrave. He was an agent for the province after 1715, served as a member of Parliament, and was also a bencher, reader, and treasurer of the Middle Temple. Four natives of Carolina--William Wragg, Robert Johnston, Stephen Fox Drayton, and John Garden--returned to the colony as planters and politicians but never practiced law.[15]

Two factors separate the group which attended the Inns after 1750 from the students who entered earlier. The first and most obvious is the overwhelming number of Americans who matriculated during the later period. Of the fifty-six who received English legal training, fifty-two (including Peter DeLancey of New York) were colonial natives, and only four were natives of the British Isles. Secondly, while little more than the

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[14]Ibid., 55-56; for details concerning Cumming's exploits among the Cherokees, see Verner Crane, The Southern Frontier, 1670-1732 (Durham, N.C., 1928), 276-280, 298.

[15]Jones, American Members of the Inns of Court, 64, 85, 107, 114, 116, 220; Judgment Rolls, 1724-1728, South Carolina Court of Common Pleas, SCDAH. Since the court records for this period are so fragmented, it is possible that Kimberly's law practice was more extensive than the records indicate.

barest facts are known about the educational experiences of those who enrolled before 1750, letters, diaries, journals, and other evidence provide much greater insight into the thoughts, travels, and experiences of the second group.

For sixteen of this category, education at the Inns complemented the legal training they received through apprenticeship programs in either the colony or in England.[16] Only twenty--slightly more than one-third of the post-1750 class--practiced prior to the American Revolution; seven others who did not practice before 1776 made use of their legal knowledge following the war. Thus, only about one-half of those who studied law abroad after 1750 ever practiced their profession, indicating that many in the colony saw education at the Inns in the same way as did many Englishmen--as a form of social and political training if not as a prerequisite to a career in law.[17]

The Carolina students no doubt saw their terms at Westminster as the highlight of their formal education. And the stature of the Inns explains the attraction which a residence there had for so many from that province. The Inns had been established probably in the thirteenth century, when the enforcement of a clause in Magna Carta led to the creation of a Court of Common Pleas and the accompanying concentration of judges and lawyers at Westminster Hall. Since a Papal Bull had prohibited the teaching of the common law by the clergy and a decree of

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[16]The sixteen were James Simpson, Robert Williams, Jr., Benjamin Smith, William Hasell Gibbes, Charles Pinckney III, John Julius Pringle, Alexander Moultrie, Edward Rutledge, Alexander Harvey, Thomas Heyward, Jr., Hugh Rutledge, John Mathews, Joshua Ward, Egerton Leigh, Benjamin Guerard, and John Rutledge.

[17]Sachse, The Colonial American in Britain, 47-48.

Henry III forbade the holding of law schools within the city, education in the common law developed about 1330 outside the city walls. The Inns themselves served as hostels for the reception and education of law students. These students occupied the building of the Knights Templar, whose order had been suppressed in 1312. Their quarters included the Inner Temple and later, the Middle Temple. That part of the Temple outside the control of the corporation of the city of London was never occupied; thus, there was never an "Outer" Temple. Another group of students and lawyers settled in the palace of Chichester and in the domain of the Earl of Lincoln, taking from the latter family the name Lincoln's Inn. A third society became tenants of the manor house of the Barons Grey de Wilton and adopted the name Gray's Inn.[18]

In each of the Inns the senior and most famous barristers became benchers, so named because at dinner they sat on a bench behind the high table at one end of the hall. A committee of benchers governed the Inns, concerned themselves with administration, education, and discipline. They also held absolute power to change a student from an "inner" to an "outer" barrister, or formally calling the student to the bar, thereby conferring full membership in the Inn and the title "Barrister-at-Law," the one qualification necessary to practice law in England.[19]

To each of the four Inns of Court were annexed Inns of Chancery which were inhabited by junior students who intended in time to join the

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[18]William Searle Holdsworth, A History of English Law, 16 vols. (London, 1922-1966), XII, 16.

[19]D. Plunket Barton, Charles Benham, and Francis Watt, The Story of the Inns of Court (London, 1924), 3-7.

Inns of Court. At the beginning of the eighteenth century, there were eight of these Inns whose legal education was controlled by the Inn of Court to which it was attached. There was some hope that the Chancery Inns would become for attorneys and solicitors what the senior Inns were for the barristers, but they continued to be small, closed bodies dependent on the larger, more prestigious Inns of Court.[20] When the senior law schools declined as educational institutions, the Chancery Inns declined too. The system of moots and readings in the junior Inns--furnished by the Temples--had almost disappeared, and the smaller Inns were never a substitute for the apprenticeship method of training attorneys.[21]

The Inns of Court flourished for more than two centuries, teaching both the practical and theoretical aspects of the common law. They reached their zenith in the first half of the sixteenth century. As Sir William Holdsworth has observed of the education at the Inns:

> It was a system eminently well-suited to the needs of a youthful system of the law, the literature of which was as yet of a manageable size. It was perhaps the only system possible for an age in which there were no printed books.[22]

Exactly when the Inns began to change is a subject that is much debated, but it is probably more accurate to speak of a transition in their character than of their decline, as Holdsworth has claimed.[23]

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[20]For a description of the English legal profession, see Birks, Gentlemen of the Law, 2-3; Holdsworth History of English Law, XII, 40-43.

[21]Robson, The Attorney in Eighteenth Century England, 8. Godfrey Pole, a Virginia lawyer from Northampton County, is the only American known to have received his legal education at an Inn of Chancery. Smith, "Virginia Lawyers," 76.

[22]Holdsworth, History of English Law, IV, 270; V, 346, VI, 481.

[23]Kenneth Charlton, Education in Renaissance England (London, 1965), 169-195; Wilfred Prest, "Legal Education of the Gentry at the

The change involved a reduced emphasis on learning law by listening to readings and a gradual increase in importance of the use of law books. The advent of printing was the catalyst for this change, but there is ample evidence to suggest that hand-written copies of the statutes, year books, and manuals of various kinds were in wide circulation before the introduction of printing. Thus, three methods of learning the law were available--private reading, court attendance, and participation in the aural learning exercises. Of the three, private reading was perhaps the most important--even before printing.[24] Private reading allowed students such as Sir Thomas Egerton (Lincoln's Inn, 1560) to use their law books to best advantage by making notes in the margins and filling in the blank pages at the end with important cases and annotations. Thus, students might acquire sound legal knowledge through texts and not necessarily from the reading exercises.[25]

The shift in emphasis from aural learning to private reading no doubt changed the character of the Inns. They became educationally moribund, but as humanistic academies for young English gentlemen, they offered many informal, extra-curricular educational opportunities such as the freedom to study law, see plays, hear sermons or political gossip,

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Inns of Court, 1560-1640," Past and Present, XXXVIII (1967), 19-40; Louis A. Knafla, "The Law Studies of an Elizabethan Student," Huntington Library Quarterly, XXXII (1968/69), 221-240; Holdsworth, History of English Law, VI, 482-484.

[24]Prest, "Legal Education of the Gentry," Past and Present, XXXVIII (1967), 24-25.

[25]Knafla, "Law Studies of an Elizabethan Student," Hunt. Lib. Qtly., XXXII (1968/69), 222, 239-240. See also Alexander Moultrie's Commonplace Book, SCL.

attend courts, and learn dancing, fencing, and music.[26]

Those in charge of the Inns, however, failed to take advantage of this change, just as they failed to adequately adjust to the new emphasis on private study through law books. The judges and governing bodies of the Inns instead continued to issue orders which were chiefly concerned with maintaining the old system and complained of the decline of reading exercises.[27] Yet, the role of the four law colleges as humanistic academies held a renewed importance to ambitious gentlemen from the American colonies and served essentially the same purpose for this group that they had for their English counterparts in the seventeenth century.

The effect of the transition in legal education was most noticeable in the obligations of student residence. These requirements could now be evaded without difficulty. At the Middle Temple--the choice of most Carolinians--it was possible for the student to meet all obligations, including that of residence for the sum of £38.6.2. And the system of calling students to the bar, practiced rigidly through the seventeenth century, came to depend more on the favor of the bench and less on residence, keeping terms, or performance of exercises. Gray's Inn, for example, also permitted students to escape some or all obligations normally imposed on aspiring lawyers and allowed them to receive the call to the bar ex gratia. Gentlemen who wanted to actually study the law found they might learn more in a lawyer's manor house or in his office than in one of the Inns of Court.[28]

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[26]Prest, "Legal Education of the Gentry," Past and Present, XXXVIII (1967), 38-39.

[27]Ibid.; Holdsworth, History of English Law, VI, 484-487.

[28]Holdsworth, History of English Law, VI, 489-493, XII, 22-24. Sir

It is impossible to know exactly how many South Carolinians took advantage of these relaxed standards to claim credit for having attended one of the Inns, but some undoubtedly exploited these loopholes. Charles Pinckney I returned to Charleston only six months after enrolling in the Inner Temple in 1734. His descendant Charles Pinckney III was entered on the rolls of the Middle Temple in 1773, but never attended. Court records also indicate that prominent attorneys such as James Wright (Gray's Inn, 1741), James Michie (Middle Temple, 1753), and Egerton Leigh (Inner Temple, 1757) were engaged in steady office practices during the time they were supposed to have been absorbing their legal education at the Inns of Court.[29]

The new, relaxed atmosphere of the Inns was also reflected in the correspondence of the Carolina youths who studied there. Andrew Rutledge, who served as an intermediary between Peter Manigault and his father, the merchant Gabriel Manigault, wrote to young Peter in 1750:

> I was agreeably entertained with an account of your attending the Courts of Wes[tminster and] your dining in Commons at the Temple, where tho' there is nothing like an Academical

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William Blackstone disliked both apprenticeships and education at the Inns as the proper method of training lawyers and barristers. He sought to locate the study of law in the universities. Blackstone was more concerned about the social and intellectual quality of the English bar and believed that gentlemen would not submit to the drudgery of law studies. Thus, he provided in his famous Commentaries on the Laws of England a general overview of the law instead of a detailed narrative. Recent evidence suggests that Blackstone's fears about the quality of the profession were justified. Paul Lucas, "Blackstone and the Reform of the Legal Profession," English Historical Review, LXXVII (1962), 456-457, 460-461, 463, 466-467.

[29]Rogers, Charleston in the Age of the Pinckneys, 127; Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 520-521.

> strictness in a Temple Life, yet it might be allowed, there are Some becoming characteristics peculiar to the orderly (well-bred) Templars, to which the Students of other professions are wholly strangers.[30]

By 1762 the four Inns had agreed on a common policy of residence, the keeping of terms, and admission to the bar. No person could be called to the bar before the end of five years from the time of admission or under the age of twenty-one, or without keeping Commons for twelve terms. Holders of the Master of Arts and Bachelor of Law degrees from Oxford and Cambridge (where Civil and Canon Law were taught) might be called to the bar at the end of three years but would still have to keep the required number of terms. Finally, the policy stipulated "no person be called to the Bar before the time prescribed on account or pretence of his practising the law in Ireland or the Plantations."[31]

Gabriel Manigault II, oldest son of Peter Manigault, acknowledged this policy in a letter to his grandmother in 1777:

> I must not forget to inform you that I am entered at Lincoln's Inn, and have already kept one Term, which is done by meeting five times in a large Hall, intended for that purpose, and making a certain number of what they call Exercises, which is no more than reading a few Lines of Law. When I shall have kept 12 Terms and gone through 13 Exercises I shall then be a Barrister. But this cannot be done under three Years, for there are only 4 Terms in a Year.[32]

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[30]Andrew Rutledge to Peter Manigault, December 16, 1750, Manigault Family Papers, SCL.

[31]Holdsworth, History of English Law, XII, 23-24. William Wragg had been permitted to enroll in the Middle Temple at age eleven in 1725 and was called to the bar at age nineteen. Sachse, The Colonial American in Britain, 64.

[32]Gabriel Manigault II to Anne Manigault, December 15, 1777, Manigault Family Papers, SCL.

Gabriel Manigault kept only eight terms, but this would have been sufficient to enable him to practice law in South Carolina.[33]

While South Carolinians rarely complained about the informal atmosphere of the Inns, they were more critical of the grammar school and university education in England. In fact, the movement in South Carolina and other colonies to establish local colleges reflected dissatisfaction with the relaxed state of education in the mother country and the snares of London life as much as an attempt to imitate what the colonists believed were the most important features of a metropolitan education. In New York, John Watts, whose mercantile contacts in London enabled Peter DeLancey to attend Lincoln's Inn in the mid-1760s, complained more than once of London's vices. "I wish our young Folks who go Home for their Studys may not attend the dirty Coffee Houses and idle expensive Vaux Halls," he wrote to William Baker. It was "too much to accomplish what they are sent for. Most of them that I see have furnished there Eyes pretty well, but the poor Brain is as naked as ever."[34]

While some Americans may have preferred the educational climate of Oxford and Cambridge, a number of Carolina fathers, such as the merchant

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[33]Rogers, Evolution of a Federalist, 91; for the rule of court concerning education abroad, see Gibbes, eds., Documentary History of the American Revolution, I, 44; for information on the rule of court concerning apprenticeships, see John Julius Pringle to William Tilghman, November 1, 1774, Preston Davie Coll., So. Hist. Coll.

[34]John Watts to Sir William Baker, August 11, 1764, October 4, 1765, Letterbook of John Watts, Merchant and Councillor of New York, January 1, 1762-December 22, 1765, New York Historical Society Collections, LXI (1928), 282, 390. Thomas Jefferson, who believed training in the colonies was far superior to study abroad, said that an entire volume would be necessary to ennumerate all the disadvantages of a foreign education. Dumas Malone, Jefferson The Virginian (Boston, 1948), 66.

Henry Laurens, did not. Laurens travelled through England in the fall of 1771 looking for a proper school in which to register his sons. Writing to Benjamin Elliott, Laurens complained:

> Since my arrival in England I have been as diligent an Enquirer as time and Circumstances would admit of into the State of Schools in this Kingdom and upon my Word, I have received so little Satisfaction--that I have sometimes wished myself and all my children safe at Ansonburg again. The two Universities are generally--I might say universally censured--Oxford in particular is spoken of as a School for Licentiousness and Debauchery in the most aggravated heights--I have visited a few private Academies and taking all Things--none of them quite please me--if we believe the Writer of a little Tract called the Academy Keeper--the more we know of those Nurseries . . . the less we shall like them.[35]

Dr. Alexander Garden trembled at the thought of enrolling his son in either Oxford or Cambridge. Although Garden complained of the practice of having students memorize "grinding verses at Westminster," he nevertheless sent his son there before enrolling him later in the University of Glasgow and in Lincoln's Inn in 1779.[36] Many Carolinians contributed money to the College of Philadelphia, but this American school did not serve as an acceptable alternative to the universities in England. John Julius Pringle believed the Pennsylvania college's reputation had suffered since its opening in 1755, and in 1774 he told his Philadelphia friend, William Tilghman, that the school

> I am sorry to say has sunk considerably in the Esteem of the People here [in Charleston] as you may have seen from the

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[35]Henry Laurens to Benjamin Elliott, November 4, 1771, Laurens Letterbook, Roll 5.

[36]Henry Laurens to John Laurens, February 21, 1774, "Letters from Hon. Henry Laurens to His Son John, 1773-1776," SCHGM, III (1902), 141-143.

> Carolinians leaving it [and] the few if any who now go thither. Since when has there been a Commencement at the College?[37]

The two English universities, Oxford and Cambridge, like the Inns of Court, suffered a decline in academic standards as well as prestige during the Hanoverian years. At Oxford the examination system degenerated to the point where exercises for a Bachelor of Arts degree became mere formalities. This slump was reflected in the decreasing number of students who matriculated throughout the eighteenth century; enrollments did not recover until the beginning of the nineteenth.[38] Similar problems affected Cambridge, although the author of the standard history of that university in the eighteenth century left room for optimism when he wrote:

> The lamp of learning was not burning with startling brightness but it was still burning; jobbery was rampant but honest merit came sometimes to its own; scandals were unpleasantly frequent but probably not as frequent as is popularly supposed.[39]

Many South Carolina fathers swallowed their criticism--if not their pride--and enrolled their sons in the English schools. Of the fifty-six South Carolina natives who entered the Inns of Court, one-third received some formal secondary schooling in the mother country or on the continent in addition to their legal education, and about one-fourth (24 percent) received a collegiate education in England or on the continent. Of the

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[37] "South Carolina Contributors to the College of Philadelphia," SCHGM, XLV (1944), 189-192; Pringle to Tilghman, September 15, 1774, Preston Davie Coll., So. Hist. Coll.

[38] V. H. H. Green, A History of Oxford University (London, 1974), 85-87, 109; Charles Edward Mallett, A History of the University of Oxford, 3 vols. (London, 1924-1927), III, 123-124.

[39] D. A. Winstanley, Cambridge in the Eighteenth Century (Cambridge, 1922), 2, 6-7, 16-17.

fourteen British, Irish, and Scot natives who attended the Inns and emigrated to the colony, more than half received a collegiate education. Thus, nearly one-third (30.5 percent) of all the colony's lawyers who attended the Inns had an English or European university education. They constituted 13 percent of all the attorneys in the colony.

By comparison, New York's 387 lawyers included 54 who had attended the Inns. Almost half of those enrolled in the Temples also attended Oxford or Cambridge, but since the number of lawyers in colonial New York was greater than that of South Carolina, this figure represented only about 6 percent of the entire bar. In Virginia, with 367 attorneys during the colonial period, one-fifth (21 percent) of those who attended the Inns acquired an English university education, but this constituted only about 3.5 percent of the colony's bar for the period, 1680-1776. However, while South Carolina had a higher representation at the English and European universities than the other provinces, Virginians and New Yorkers had their own colleges which served their needs probably as well as--if not better than--the English schools. For example, thirty-five of Virginia's colonial lawyers attended the College of William and Mary; and aspiring attorneys in New York could choose from among King's College (Columbia) in New York City, Yale, the College of Philadelphia, the College of New Jersey (Princeton), and the College of Rhode Island (Brown). Carolinians had not even a close equivalent to these.[40]

Despite the reputation of the English schools, the students identified on the following pages (Tables VIII and IX) apparently took their

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[40]For New York, see Hamlin, Legal Education in Colonial New York, 135-155; for Virginia, see Smith, "Virginia Lawyers," 360, 364-371.

TABLE VIII

NATIVE SOUTH CAROLINA LAWYERS EDUCATED ABROAD

Lawyer	School	University
Alexander Garden	Westminster	Glasgow
William Hasell Gibbes	Fulham	
John F. Grimke		Cambridge
William Heyward		Oxford
Francis Kinloch	Eton	Geneva
John Laurens	Islington	Geneva
Thomas Lynch, Jr.	Eton	Cambridge
Gabriel Manigault II		Geneva
Arthur Middleton	Hackney, Westminster	Cambridge
Philip Neyle	public schools	Cambridge
Charles C. Pinckney	Westminster	Oxford
Thomas Pinckney	Westminster	Oxford
Richard Shubrick	Eton	Cambridge
Thomas Shubrick	Eton	
John Stuart	Westminster	
William Loughton Smith	Hackney	Geneva
Paul Trapier	Eton	Cambridge
Robert Williams	Westminster	
William Wragg	public schools	Oxford

TABLE IX

BRITISH NATIVES WHO EMIGRATED TO SOUTH CAROLINA

Lawyer	School	University
James Colleton		Oxford
John Colleton		Oxford
Abel Ketelby		Oxford
Thomas Kimberly		Oxford
William Henry Lyttleton	Eton	Oxford
Egerton Leigh	Westminster	
Nicholas Trott	Aberdeen	Oxford
James Wright	Eton	Cambridge

studies seriously enough while abroad, even if they demonstrated only the superficial aspects of their education--clothes, styles, manners, and accent--when they returned to Charleston.[41] By the eve of the Revolution, the Calvinist school at Geneva joined the universities of Oxford and Cambridge as a proper school for Carolina youths. The Geneva school, opened in 1559 under John Calvin's direction, began as neither a college nor a university since it had no charter and held no authority to confer degrees. Calvin's intention was to educate Christian ministers and magistrates, but by 1700 the faculty of the academy was overwhelmingly secular. Geneva eventually assumed university status, but while still an academy it offered subjects comparable to the English universities such as divinity, medicine, Greek, Hebrew, philosophy, modern history, and civil law.[42]

That the reputation of Geneva was highly regarded in Charleston is demonstrated by the remarks of John Farquharson, a physician and close friend of the Manigault family. Writing to young Gabriel Manigault in 1776, the doctor observed:

> you are now in the best Seminary of learning in Europe and will have the advantage of the Conversation of learned men from all parts. I would have [you] endeavour to see Voltaire, who is in the neighborhood of Geneva.[43]

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[41]Rogers, Charleston in the Age of the Pinckneys, 99.

[42]John Laurens's course of study in Geneva included these subjects. Henry Laurens to John Laurens, February 21, 1774, "Letters from Hon. Henry Laurens to His Son John, 1773-1776," SCHGM, III (1902), 142; Jurgen Herbst, "The First Three American Colleges: Schools of the Reformation," Perspectives in American History, VII (1974), 32-35, 45; see also Rogers, Evolution of a Federalist, 66-67.

[43]John Farquharson to Gabriel Manigault II, June 16, 1776, Maurice Crouse, ed., "Papers of Gabriel Manigault, 1771-1784," SCHM, LXIV (1963), 3.

Education on the continent was not without its ironic side. Both John Laurens and Gabriel Manigault II--third generation descendants of French Huguenot immigrants--had to acquire a knowledge of French while studying in Geneva. The fact that neither knew any French reflects the ease with which the Huguenots were assimilated into Charleston's predominantly English society. Henry Laurens, John's father, knew only a little French and had to rely on friends to translate letters in that language.[44] Manigault often confessed that he had trouble learning the language of his ancestors: "I can scarcely speak French enough to make myself understood." Two years of study improved his ability, but his instructor still found flaws in his writing.[45]

From the universities in London, Glasgow, and Geneva Carolina youth entered the Inns of Court. More than two-thirds (forty-eight) selected the Middle Temple. Only twelve enrolled in the Inner Temple, eight in Lincoln's Inn, and four in Gray's Inn. South Carolinians were not the only ones partial to the Middle Temple. It was the overwhelming favorite of Virginians who attended the Inns as it was with most colonial Americans who chose to study law in the mother country.[46]

The students' decision to study law was in some cases their own choice; in others, the product of parental influence. The elder Charles Pinckney provided in his will that

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[44]Wallace, Life of Laurens, 15, 190.

[45]Gabriel Manigault II to Benjamin Stead, October 24, 1775, L de Vegobre to Gabriel Manigault II, August 30, 1777, Manigault Family Papers, SCL.

[46]Sachse, The Colonial American in Britain, 64; Smith, "Virginia Lawyers," 142.

> My son Charles [Cotesworth] . . . be virtuously, religiously, and liberally brought up and educated in the study and practice of the Laws of England, to serve his God and his country, to employ his abilities in support of private Right and Justice between Man and Man.[47]

His younger son, Thomas, on the other hand, apparently rejected his parents' wishes that he become a physician and instead embarked on a legal education. His outstanding scholarship in Greek while at Oxford prompted his sister to remind him of his calling. Greek, she told him, was "a language I know you will have particular use for, if your inclination agrees with Mamas in regard to the Profession you are to be brought up to. Galen and Hipocrates must be your study." The final choice of a career, his father had made clear, was left to young Pinckney and not his parents.[48]

Peter Manigault chose the study of law for himself, and he may have incurred his father's displeasure thereby. His choice undoubtedly reflected the influence of lawyers Thomas Corbett, under whom he had received a general education in Charleston and in London, and of Andrew Rutledge, in whom he confided in his letters home. Peter was always careful to justify his actions to his parents and prove that he could live up to his father's high expectations. Not long after his arrival in London, he wrote to his mother:

> When I come from the Country, I am to go into the Temple, which is the only place in London that I should like to live in. As I am a judge of the Conveniences and Inconveniences of every Manner of Life & have pitched upon this as the most

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[47] "South Carolina Gleanings in England," SCHGM, VIII (1907), 217-218.

[48] Harriott Pinckney to Thomas Pinckney, March 1763, Pinckney Papers, 1744-1859, SCHS.

> suitable to my Age and Inclinations, I am sure neither you nor my Father, will be against it, especially as I have Mr. Corbett at my side.[49]

As the father of Gabriel II and Joseph Manigault, Peter provided that his sons receive the most liberal education the province could furnish them until age eighteen, whereupon they should be sent to England to complete their formal schooling. Although he did not specify that his sons study law, both entered the Inns of Court--Gabriel, Lincoln's Inn in 1777, and Joseph, the Middle Temple in 1781. Neither, however, pursued a legal career after returning to South Carolina.[50] James Parsons also intended that his son have the benefits of an English formal education, but young James O'Brien Parsons died while he was a student at Westminster in 1769.[51]

Parental concern did not end with the decision for a legal career. London and its vices were far removed from the watchful eyes of parents in Charleston. Letters from home often revealed an overriding concern with the morals and manners of the Carolina students. Peter Manigault had to reassure his mother that rumors branding the Temple as "a very wild place" were not true.[52] Typical of the warnings parents urged on their children was the letter Eliza Lucas Pinckney wrote to her son, Charles Cotesworth, in 1761:

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[49]Andrew Rutledge to Peter Manigault, December 16, 1750, Manigault Family Papers, SCL; Peter Manigault to Anne Manigault, July 4, 1750, Manigault Papers, 1685-1847, SCHS; Crouse, "Manigault Family," 111, 120.

[50]Charleston County Wills, XVI, Book A, 1774-1779, pp. 27-28, W.P.A. Typescript, SCDAH.

[51]S.C. & Am. Gen. Gaz., June 20, 1769.

[52]Peter Manigault to Anne Manigault, July 20, 1752, Manigault Papers, 1685-1847, SCHS.

> Consider, my dear Child, you will be in a City surrounded with temptations with every youthful passion about you. It will therefore require your utmost vigilance to watch over your passions, as well as your constant attention at the Throne of Grace. Be particularly watchful against heat of temper; it makes constant work for repentence and chagrine and is often productive of the greatest mischiefs and misfortunes.[53]

Pinckney and Manigault actually caused their parents little worry. Manigault preferred entertainment like the installation ceremony of the Knights of the Garter, which he described as "the finest Thing, I have seen, since I have been in England." He frequently dined out and became an avid patron of the theatre. He reported confidently after his first year abroad: "I have seen most of the Places of Diversion about London, and find none of them come up to my expectation or the Character I heard of them."[54]

The social lives of other Carolina young men, however, were less decorous. William Drayton, Peter's close friend in London, once admitted to having more than his share of "Sublunary Enjoyments."[55] James Moultrie, who later preceded Drayton as Chief Justice of East Florida, shocked his parents by marrying the daughter of an English attorney who Moultrie hoped would establish him in business there.[56] For William Hasell Gibbes and

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[53]Eliza Lucas Pinckney to Charles Cotesworth Pinckney, February 7, 1761, Elise Pinckney, ed., Letterbook of Eliza Lucas Pinckney, 1739-1762 (Chapel Hill, 1972), 159.

[54]Peter Manigault to Anne Manigault, April 2, November 1, 1750, Mabel L. Webber, ed., "Peter Manigault's Letters," SCHGM, XXXI (1930), 174, 181-182.

[55]William Drayton to Peter Manigault, May 31, 1755, April 4, 1753, Thomas Corbett to Manigault, April 2, 1755, Manigault Family Papers, SCL.

[56]Peter Manigault to Anne Manigault, July 12, 1754, Webber, ed., "Peter Manigault's Letters," SCHGM, XXXIII (1932), 149-150.

John Peronneau, night life in the metropolis was more exciting. In his autobiography, written with the hindsight of the early nineteenth century, Gibbes remembered that the students liked to visit the theatre when the second act ended so they could enter the box seats at half price. "At other times," he wrote, "we would amuse ourselves with the drollery of Sailors and low company in the 2 shilling . . . Gallery and saw and heard blackguardism in perfection." He added:

> The evenings were generally devoted to rambles and sometimes getting into scrapes and trouble from the Vanity and folly of Youth and an open and unsuspicious character, which the Young Men of our Country were remarked for. I had frequently opportunity of observing, however, the dignified superiority of Virtue over Vice and that the former under many disadvantages had its reward.[57]

Two sources in the metropolitan center acted as stabilizing forces for the social lives of the students. The first was the Carolina Coffee House, located in Birchen Lane until 1772 when it moved two doors away to Ballacourt. The coffee house once served as the official rendezvous for the proprietors, agent promoters, and prospective emigrants to the colony. French Huguenots as well as Englishmen planning to embark for South Carolina could here obtain promotional literature and helpful advice about the colony. For the eighteenth century students, the coffee house served not only as a place for nightly dining, drinking, and fellowship but also as an address at which students could receive letters, newspapers, packages, and money from Charleston.[58]

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[57] Childs, ed., "Gibbes' Story of His Life," SCHGM, L (1949), 62-63.

[58] Hugh D. Lefler, "Promotional Literature of the Southern Colonies," Journal of Southern History, XXXIII (1967), 16; S.C. & Am. Gen. Gaz., October 12, 1772; Pringle to Tilghman, December 13, 1774, Preston Davie Coll., So. Hist. Coll.; Joseph Manigault to Gabriel Manigault II, October 1, 1781, Louis Manigault Papers, Duke University Library, Durham, N.C. Crouse, "Manigault Family," 114-115.

The second source of stability was the numerous friends in England on whom the students--and their parents--could rely for moral support and encouragement. Peter Manigault, for example, sailed from Charleston in the company of his mentor Corbett and two other prominent attorneys in the 1740s, John Rattray and William George Freeman. In London he dined with former colonial agents Peregrine Fury and James Abercromby and with the current agent, Carolina merchant James Crokatt.[59] He also spent time at the home of an earlier chief justice, Charles Pinckney I, whom he greatly admired; and Pinckney often visited the Carolina students at the Inns during his stay in London. Manigault, Freeman, Corbett, Drayton, and Daniel Blake (another Carolina student) formed a "club" and met at each other's homes once a week to dine, play cards, and discuss current affairs. "This prevents going to Taverns," Manigault assured his mother, "& gives us the Opportunity of a mutual Intercourse, which can not but be agreeable at a very easy Expence."[60]

His son, Gabriel Manigault II, who studied in Geneva in the company of John Laurens, Francis Kinloch, and William Loughton Smith, cultivated friendships with several Loyalists such as Lieutenant Governor William Bull II, Attorney General James Simpson, and lawyer Robert Williams, all of whom departed Charleston during the early stages of the Revolution.

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[59] Crouse, "Manigault Family," 113-115.

[60] Peter Manigault to Anne Manigault, February 19, June 24, 1753, July 12, August 30, 1754, Webber, ed., "Peter Manigault's Letters," SCHGM, XXXIII (1932), 118-119. It was through Charles Pinckney that Peter became acquainted with Judith Wragg, widow of the Charleston merchant Joseph Wragg, who brought her daughters to London in 1754. One year later in South Carolina, Peter married her daughter, Elizabeth, although apparently no courtship developed in London.

Manigault's grandfather also introduced him to London merchants William Manning and John Savage, both of whom had extensive dealings with the Carolina merchant.[61]

Companionship was also important when the students travelled through England and Europe. While travel was an opportunity to get together with friends and a relief from the tedium of law studies, many young men saw it as vital to their larger education. These tours reminded the Carolinians of what was lacking in the colonies, and the students took special pains to visit the great cities of the Old World.[62] Peter Manigault's travels took him to France and Holland as well as through parts of England. His son, Gabriel, toured the American colonies first, visiting Harvard College and the city of Boston in 1774 before embarking for England. He then travelled extensively in the mother country and on the continent, explaining to his grandfather: "As I am on this side of the Atlantic, I would willingly see as much as possible before I return to Carolina."[63]

John Laurens's hopes for extensive travel were dimmed by the strictness of his father. Henry Laurens discouraged his son from

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[61]Peter Manigault died in 1773, leaving the responsibility for educating his sons, Joseph and Gabriel II, to his father. Crouse, "Manigault Family," 275, 279; Gabriel Manigault to Gabriel Manigault II, March 10, 1777, Crouse, ed., "Papers of Gabriel Manigault, 1771-1784," SCHM, LXIV (1963), 4-5. In 1804, Smith decided to add as his middle name his mother's maiden name, Loughton. Prior to this time he was known only as William Smith. Rogers, Evolution of a Federalist, 1-2.

[62]Peter Manigault to Anne Manigault, July 20, 1752, Manigualt Papers, 1685-1847, SCHS; Rogers, Evolution of a Federalist, 80.

[63]Peter Manigault to Gabriel Manigault, March 13, 1752, Manigault Papers, 1685-1847, SCHS; Gabriel Manigault to Anne Manigualt, July 15, 1774, December 21, 1777, June 2, 1778, Manigault Family Papers, SCL.

travelling until he completed his education, but he held open the prospect of a complete tour when John finished his terms at the Middle Temple:

> I look upon Travelling as an essential in a Gentlemen's Education, but not of equal Importance, with an application to the business or profession, upon which he is probably to depend for bettering his fortune & the Establishment of a family, which I take for granted every good Man has, or ought to have in view.[64]

Companionship and contacts also proved useful when the Carolina students entered the Inns. From friends experienced in the law and from anxious family members there was no lack of advice on how to obtain a thorough legal education. "Much is expected from you," Andrew Rutledge told Peter Manigault when he first began the study of law. Rutledge advised him to attend the Courts of Chancery, Exchequer, the bar of the House of Lords, and King's Bench. "The Pleadings of Some of the Civil Law Doctors of the Commons, Court of Admiralty [and] Sometimes of Serjeants Inn before the Delegates are highly worth your Notice," he added.[65]

The New York merchant John Watts tried to have his brother-in-law Peter DeLancey placed under the tutelage of Sir William Blackstone. Writing to Sir William Baker of London, who sponsored DeLancey and handled his finances while he was a student, Watts noted:

> His father designs him for the Study of the Law & recommends him to your kind advise to be fixt in the most beneficial Way for that End. We have a high Character of a Professor at Oxford who they say has brought that Mysterious Business to some System, besides the System of Confounding

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[64]Henry Laurens to John Laurens, October 26, 1773, "Letters from Hon. Henry Laurens to His Son John, 1773-1776," SCHGM, III (1902), 92-96.

[65]Andrew Rutledge to Peter Manigault, December 16, 1750, Manigault Family Papers, SCL.

> other People & picking their Pockets, which most of the Profession understand pretty well.[66]

Gabriel Manigault advised his grandson not to confine himself solely to the study of law, "but to improve your Self in any other Useful improvement."[67] Henry Laurens tried to help his son pursue his law studies by making all the necessary arrangements for him in London. The elder Laurens sought the opinion of Thomas Corbett on reading material for him, began his library, and entered his name on the rolls of the Middle Temple in 1773. Laurens advised:

> You have Entered the Study of the Law, & you justly observe that the most essential part is yet to come--'the Study of the English Law, which will require Time and great application.'--You judge extremely right in this respect, & the more so, as there are but few of your contemporaries who seem to be of your Classical acquirements & improvements in Mathematics, you come to England, take the benefit of Residing with Gentlemen, who can make you acquainted with the Attorney's practice, direct & assist your Studies in the Common Law, while at the same time you attend all the Courts at Westminster & . . . also keep your Terms regularly at the Temple, in order that you may be called to the Bar in due Course.[68]

The most extensive advice came from John Rutledge to his younger brother. Edward Rutledge had trained for a brief period in John's Charleston office, and shortly after he entered the Middle Temple, he received the benefit of his older brother's years in London. First, John told Edward to learn shorthand and take copious notes at Court,

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[66] Watts to Baker, January 22, 1762, Letterbook of John Watts, 12-13, 12n. DeLancey's sister, Ann, was the wife of John Watts.

[67] Gabriel Manigault to Gabriel Manigault II, March 10, 1777, Crouse, ed., "Papers of Gabriel Manigault, 1771-1784," SCHM, LXIV (1963), 5.

[68] Henry Laurens to John Laurens, October 26, 1773, "Letters from Hon. Henry Laurens to His Son John, 1773-1776," SCHGM, III (1902), 93.

whether the cases were trivial or important. Secondly, he should agree with fellow students to alternately attend the different Courts and exchange notes every evening "by which means . . . you will have the same advantage as if you attended all the Courts in person." Thirdly, he advised his brother to regularly attend the House of Commons and House of Lords even when no visitors (strangers) were admitted, make friends with the speakers, and observe the oratory. He also urged Edward to master French, the classics, the history of England, and surveying.[69]

With regard to law books, John suggested that Edward begin with Coke's Institutes of the Laws of England which he called "the foundation of our law." He said: "These you must read over and over with the greatest attention and not quit him till you understand him thoroughly, and have made your own everything in him which is worth taking out." A thorough reading of the Statute Laws would enrich the younger Rutledge's common-place book "which I hope to find very copious and well-stored." He also advised reading Termes de le Ley, several works on the crown law and Matthew Bacon--John's favorite as the best to reconcile disputes among other authorities. Edward was to distinguish between readings in the common law and equity and to supply himself with a good collection of legal maxims, both Latin and English. Lastly, Rutledge bid his younger brother to always dress plainly, let his behavior be "rather grave," and think twice before speaking once.[70]

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[69]John Rutledge to Edward Rutledge, July 30, 1769, O'Neall, Bench and Bar of South Carolina, II, 120-127.

[70]Ibid.

This advice reflects more than the concern of one man for his younger brother's education. The emphasis on attendance at the Courts and Parliament and on private reading and note-taking from statute books suggests how ineffective the aural learning exercises of the Inns of Court had become. Rutledge's reminder of the value of close attention to the politics of the Lords and Commons indicates, too, how much more a London sojourn could mean for an aspiring politician in the colonies, as the careers of both John and Edward Rutledge during and after the Revolution would attest.

Those who received such advice from friends and family usually took it seriously. The experience of South Carolinians belies the view that law students idled away their time while in London. Peter Manigault wasted no time attending the courts when he began his legal studies. He later declined an offer from his father to return home early because he needed to complete his requirements. As the only child of Gabriel and Anne Ashby Manigault, Peter admitted rejecting the offer "with great Difficulty, & much against the Dictates of Affection," but he had to finish his terms

> as it would be impossible to pursue that Study in Carolina, with half the Success as in London, where the Courts are almost constantly sitting, by a close Attendance on which, I shall increase my Stock of Law, at the same time I am acquiring a proper manner of Address.[71]

Manigault feared there would be too many distractions at home to permit him to complete his legal education. Even in London he did not

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[71]Peter Manigault to Gabriel Manigault, June 25, 1750, August 18, 1753, Webber, ed., "Peter Manigault's Letters," SCHGM, XXXI (1930), 171-172, XXXII (1931), 183-184.

like his studies disturbed. When William Drayton's father came to visit the boys once, Peter complained that Thomas Drayton "comes & plagues me to play at Back Gammon with him which is at least as disagreeable as reading Lord Coke."[72]

While he was a student at the Middle Temple in the mid-1760s, Charles Cotesworth Pinckney audited Blackstone's lectures at Oxford and caused his mother to worry that he might be applying himself too seriously for his health. William Hasell Gibbes remembered when writing his life's story that "We studied diligently," and with John Peronneau regularly attended the Law and Equity Courts at Westminster Hall "and endeavored to get Improvement and pleasure from every source." John Laurens, bragging to his father that he had worn his black gown twice at the Temple, declined an opportunity to visit Bristol because it would interrupt his studies.[73]

Serious attention to the law, however, did not mean that it could be easily understood. Studying the law and trying to acquire knowledge from seventeenth and eighteenth century legal treatises posed monumental difficulties for English students in an earlier period, and most would probably have agreed with William Loughton Smith's description. Writing during the Revolution, Smith told Gabriel Manigault II, with whom he had

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[72]Peter Manigault to Gabriel Manigault, August 18, 1753, ibid., XXXII (1931), 183-184; Peter Manigault to Anne Manigault, July 12, 1754, ibid., XXXIII (1932), 148-149.

[73]Marvin R. Zahniser, Charles Cotesworth Pinckney: Founding Father (Chapel Hill, 1967), 17-18; Childs, ed., "Gibbes' Story of His Life," SCHGM, L (1949), 62-63; John Laurens to Henry Laurens, November 15, 1774, "Letters from John Laurens to His Father, Hon. Henry Laurens, 1774-1776," SCHGM, V (1904), 197.

studied at Geneva, that his fortune was "frittered away to nothing" and that for his future security he had to rely "upon a small pittance of Law, that I have with much difficulty picked up from Books I could Scarcely understand and from a constant attendance of the Courts, where I took notes for two Terms without knowing the subject of them." Smith explained his difficulties with a touch of humor:

> I commenced my Law Campaign last Nov[ember]--as ignorant of the technical part of the Law as any country clown, and provided with a most insignificant quantity of the theoretical part of it. I launched forth, resolved to seize upon all I could, but must say (with truth) that for the first Term I understood almost as little of what was going on, as the gaping crowd, who go to West[minster] Hall for the sake of seeing two men in great wigs and black gowns abuse one another; not discouraged by my little success, and attributing it, not to the thickness of my head (as I should have done) but to the nature of the thing, I undertook a second Cource, in which I perceived that attention was but of little service to me, and that I learnt as much by thinking of Something else as by listening with all my ears. The third Term, the divine light of the Law began to shine upon me with its benign rays, I thanked myself for having persevered long enough to get over the most perplexing part of it. By the attendance on the Courts for four Terms, reading a great deal, conversing with Lawyers, and being a member of a Law Society, I have in the space of a twelve month cleared away all the rubbish which stood in my way and made me stumble at every step: but all that I have learnt only serves to convince me that I know but very little, particularly for a person who intends to make it a Profession and not a matter of curiousity.[74]

For John Garden, son of the Reverend Alexander Garden, the experience of the law schools was entirely unrewarding. Young Garden ran up debts on his father's account as he ran afoul of the law. Earlier he had left the Inns of Court letting stand the rumor, as Peter Manigault

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[74][William Loughton Smith] to Gabriel Manigault II, September 30, 1780, Manigault Family Papers, SCL; for an explanation of the difficulty of comprehending the law in an earlier period, see Prest, "Legal Education of the Gentry," Past and Present, XXXVIII (1967), 31-39.

expressed it, "that he does not like the Law, because he has at last found out that a person can not be a good Lawyer and an honest Man at the same Time." Manigault suspected, however, that Garden dropped out of Gray's Inn because "he found he was losing Time, and that instead of improving himself in the Law, he was nothing more nor less than a Hackney writer."[75]

The reward for keeping terms and residence at the Inns was the "call to the bar." Slightly fewer than one-fourth of the seventy-two South Carolinians who attended the Inns of Court were actually called to the bar.[76] A few, such as Peter Manigault, who was called in 1754, decided to remain in England for a while to begin practice. To his father, Manigault related his first experience as a barrister in an English courtroom:

> I have already got two Guineas & a half by my Profession, which lucky Beginning seems to be a presage of greater Acquisitions. But I did not get this Money for nothing, for with

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[75]Peter Manigault to Anne Manigault, December 8, 1753, Webber, ed., "Peter Manigault's Letters," SCHGM, XXXII (1931), 270-271.

[76]The seventeen lawyers and the dates they were called to the bar were: William Drayton (June 13, 1755), John Fewtrell (June 24, 1748), Thomas Heyward, Jr. (May 25, 1770), Daniel Horry (June 29, 1759), James Johnston (May 30, 1783), Robert Johnston (May 15, 1724), John MacKenzie (June 29, 1759), Peter Manigault (February 8, 1754), Philip Neyle (November 26, 1773), Charles Cotesworth Pinckney (January 27, 1769), Thomas Pinckney (November 25, 1774), Edward Rutledge (July 3, 1772), John Rutledge (February 9, 1760), James Simpson (July 4, 1783), William Simpson (May 26, 1786), William Wragg (November 27, 1733), and James Wright (date unknown). Fewtrell, James Johnston, and Wright were all natives of England; all others were natives of South Carolina. James Johnston, James Simpson, and his son, William, were Loyalists who entered the Inns of Court after their exile from South Carolina. Jones, American Members of the Inns of Court; C. E. A. Bedwell, "American Middle Templars," American Historical Review, XXV (1919/20), 680-689.

all Effronterie I could muster, I hardly knew where I was when I first opened my Lips before the Lord Chancellor.[77]

Charles Cotesworth Pinckney, whom Josiah Quincy later described as "a man of bright natural powers, and improved by a British education at the Temple," also embarked on a limited practice in the mother country but--like Manigault--soon decided to return to Charleston.[78]

Although there is little evidence to show exactly how much the colonial students spent for their English education, it did not come cheaply. Peter Manigault calculated his spending from October 1752 through April 1754 at £923.10 with about £15 left to be spent on law books to complete his library.[79] After his call to the bar, he told his father that he believed the money provided for his education had been well spent and added: "I think I can shew something (either Knowledge or Effects) for the whole Money I have expended."[80]

Letters of other students reveal more parental restriction of finances and show that the young men were living on a tighter budget than young Manigault. William Gibbes, father of William Hasell Gibbes, could allow his son no more than £150 sterling (about £1050 Carolina

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[77]Peter Manigault to Andrew Rutledge, February 26, 1754, Manigault Family Papers, SCL; Peter Manigault to Gabriel Manigault, February 26, 1754, Webber, ed., "Peter Manigault's Letters," SCHGM, XXXII (1931), 277; ibid., March 29, 1754, ibid., XXXIII (1932), 56.

[78]Howe, ed., "Journal of Josiah Quincy, Junior, 1773," Massachusetts Historical Society Proceedings, XLIX (1915-1916), 446-447; Zahniser, Charles Cotesworth Pinckney, 19.

[79]Peter Manigault to Gabriel Manigault, March 29, 1754, Webber, ed., "Peter Manigault's Letters," SCHGM, XXXIII (1932), 55-56.

[80]Peter Manigault to Gabriel Manigault, March 29, 1754, ibid., XXXIII (1932), 56.

money) per year. This small sum, according to the younger Gibbes, prevented him from the excesses "of my more wealthy Carolina Countrymen" because he could not "enter on all the fashionable dissipation which their Parents mistaken Indulgences, suggested and encouraged by allowing them more money than was Prudent and made them averse to study."[81]

As the conflict between Britain and her colonies became more serious, students were urged to hold the line on spending abroad. Henry Laurens never censured his son in this respect and reaffirmed that he would honor all draughts on his account, but in March 1774 the elder Laurens had to ask his son to avoid all "superfluous expense."[82] After fighting had begun in the colonies, Laurens lamented that a "Virtuous liberal Education to my Children" might be the only inheritance he could bequeath.[83]

Even the merchant Gabriel Manigault, one of the wealthiest men in colonial America, could not be as generous with his grandson and namesake as he had been with his son, Peter. After the war had begun, he wrote to young Gabriel in London:

> You know I cheerfully allow you every proper expense, yet I must Again recommend frugality to you, which I have now more Cause to do than when you left me, for the distress of this unnatural War with the people of Great Britain, renders every person's fortune in America very precarious and subject to be greatly reduced.[84]

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[81]Childs, ed., "Gibbes' Story of His Life," SCHGM, L (1949), 60.

[82]Henry Laurens to John Laurens, March 8, 1774, "Letters from Hon. Henry Laurens to His Son John, 1773-1776," SCHGM, III (1902), 214; ibid., March 25, 1774, ibid., IV (1903), 31.

[83]Ibid., May 30, 1775, ibid., V (1904), 8-9.

[84]Gabriel Manigault to Gabriel Manigault II, March 10, 1777, Crouse, ed., "Papers of Gabriel Manigault, 1771-1784," SCHM, LXIV (1963), 6.

Edward and Hugh Rutledge were unable to meet the expenses of their legal education, and in 1801 Hugh, the only surviving brother, was sued by the London firm of William Greenwood and William Higginson for £6,000 sterling, a good part of which was incurred during their studies abroad. In August 1800 the Rutledge estate was not sufficient to pay this debt, and the London merchants could only request that Hugh try to pay the amount "within a reasonable space of time."[85]

Clearly, many well-to-do Carolinians saw the education and culture of London as the ideal atmosphere which might be imitated but never equalled in their small part of the empire. As the colony prospered and grew closer to the mother country commercially after 1750, many of its leading families believed that formal and legal education in England would establish a closer social and political connection as well. As the economic connection grew stronger it appeared more logical for the wealthy and well-to-do in the province to send their sons to the British schools than to establish a college in Charleston. Although some critics complained about the expense of an English education, most Carolinians recognized that whatever the savings, a colonial college would never rival living and learning in the metropolitan center of the empire. Why else would half of those who enrolled at the Inns prepare themselves for a profession they did not intend to pursue in America? Based on the case loads in the Court of Common Pleas, only seven lawyers who enrolled after mid-century built respectable practices (more than 100 cases) before the

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[85] Hugh Rutledge v. William Greenwood, Jr., 1801, Charleston Equity Bills, SCDAH. I am indebted to Miss Wylma Wates of the South Carolina Department of Archives and History for bringing this case to my attention.

Revolution. Six of these men had been trained through the apprenticeship method prior to their registration at the Inns of Court.[86] Why else would Carolina youth risk a long, uncertain ocean crossing to spend as many as four or five years away from parents and friends at home? John Julius Pringle's attitude was no doubt typical of many students from the colony. Sailing for London in late December 1774, he remarked that the time of the year was "a disagreeable Season to be sure, but a good stove in a fine vessel . . . with the thought of soon seeing London, will I hope make the passage tolerable."[87]

The attraction of the metropolis, however, was also accompanied by a rejection of what was seen as the worst features of a London experience: the temptations of a strange city, the acquisition of a taste for luxury, and the prospect of squandering hard-earned colonial fortunes. It was these doubts that led Henry Laurens and Dr. Alexander Garden to enroll their sons in universities in Geneva and Glasgow in preference to Oxford and Cambridge, although they still planned a legal education for their sons at the Inns of Court. The same suspicions of the metropolis were reflected in the homesickness of some Carolina students and their preference for a permanent life in the colony instead of the mother country. "If I do what I pleased," Peter Manigault wrote to his mother after his first year in London, "I would return to Carolina the insuing Fall, so

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[86]The seven were John and Hugh Rutledge, Joshua Ward, Egerton Leigh, David Graeme, James Simpson, and James Moultrie. Prior to mid-century, only James Wright, Charles Pinckney I, and James Michie handled more than 100 cases each. For an analysis of lawyers' practice, see Chapter VII.

[87]Pringle to Tilghman, November 1, 1774, Preston Davie Coll., So. Hist. Coll.

great is my Desire of seeing my native Country & Friends." His feelings had not changed after his elevation to "Barrister-at-Law."[88] William Drayton, who was even more homesick than Manigault, told his friend, "I am d---bly tired of England. It is too late now for me [to make] new Intimacies, & my Acquaintance is daily decreasing too."[89]

The preference for home over England might well have been more than a mere longing for one's native land. Both the students and their parents undoubtedly realized that even gentlemen from Charleston could not attain a position in English society equal to what they could in the New World. Their London education would rather enhance and preserve their economic and social standing in their native province as lawyers, planters, judges, and political leaders. When this advantage was ended in the 1760s and 1770s, as the British government began to make wider use of placemen to fill colonial administrative and judicial positions, Carolinians--believing they were the true guardians of English culture and political freedom in America--reluctantly accepted independence.[90]

The Revolution that came to Carolina in 1776 was led to a very large extent by those who had attended the Inns of Court after 1750. Of the fifty-three South Carolinians who had studied at the English law schools and who were living at the outbreak of the war, roughly two-thirds became

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[88]Peter Manigault to Anne Manigault, February 20, 1751, Webber, ed., "Peter Manigault's Letters," SCHGM, XXXI (1930), 271; April 26, 1754, XXXII (1931), 59.

[89]Ibid., February 20, 1751, ibid., XXXI (1930), 271; William Drayton to Peter Manigault, May 31, 1755, Manigault Family Papers, SCL.

[90]This theme is emphasized in Chapter IX. See also Robert M. Weir, "Who Shall Rule at Home: The American Revolution as a Crisis of Legitimacy for the Colonial Elite," Journal of Interdisciplinary History, VI (1976), 679-700.

patriots and served the American cause politically if not militarily. Included in this figure are the state's four signers of the Declaration of Independence and three of the five signers of the Constitution of 1787.[91] Fifteen--or slightly fewer than one-third--remained loyal, including Chief Justice Charles Shinner, who died in 1768 but was nonetheless a staunch defender of the Stamp Act, and William Wragg, who declined the opportunity to succeed Shinner as chief justice and drowned in a shipwreck while fleeing to London in 1777. The loyalties of four men are not known; and five of those who attended the Inns after 1750 were dead when the Revolution began.

Finally, despite the pursuit of English forms and culture, South Carolina lawyers did not try to directly transplant features of the British legal profession. Unlike Massachusetts Bay, Carolina practitioners never made a professional distinction between barristers and attorneys and solicitors.[92] All lawyers who practiced before the provincial courts were called attorneys whether they received their legal education at the Inns of Court, by an apprenticeship at home, by a combination of both, or some other method. Although Edward Rutledge and Peter Manigault used the term "Barrister-at-law," this denoted more of a title they had earned by their call to the English bar than a distinct rank they held within the legal community. The reason for this

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[91]The signers of the Declaration from South Carolina were Edward Rutledge, Arthur Middleton, Thomas Lynch, and Thomas Heyward, Jr.--all Middle Templars. The signers of the Federal Constitution were the lawyers John Rutledge, Charles Pinckney III, and Charles Cotesworth Pinckney, the merchant Henry Laurens, and the planter Pierce Butler.

[92]Murrin, "The Legal Transformation," Katz, ed., Colonial America, 438-441.

difference between South Carolina and Massachusetts is explained by the difference in the development of the two bars. While the Bay Colony's bar tightened educational requirements and admission standards after mid-century in order to curb the influence of pettifoggers, South Carolina had no similar problems, having dealt effectively with untrained practitioners in the Court Act of 1721.[93] The Anglicization of the Massachusetts legal profession was reflected in a more evenly divided bar at the time of the Revolution.[94] Paradoxically, in the Palmetto province--where so many had sought college and legal education in the mother country--the patriot lawyers outnumbered Loyalists four to one among all lawyers and three to one among those educated in London; and at least half of those loyal to Britain were crown officeholders and their sons who had much to lose in a colonial victory.

Although some Carolinians enrolled their sons in the Inns of Court after 1783, the apprenticeship method became a much more frequent route to the bar. Some British influence remained in the new state--in the statute law, in methods of pleading in court, and in the general operation of the judiciary; but these were largely holdovers from the colonial experience and illustrated the unwillingness of Charleston lawyers to change their system. However, there was no attempt to establish ranks within the legal profession.[95] The bar itself more properly

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[93]Cooper and McCord, eds., Statutes of South Carolina, VII, 173-174, 177-178.

[94]Murrin, "The Legal Transformation," Katz, ed., Colonial America, 442-443; see also McKirdy, "Lawyers in Crisis," 89.

[95]Hamilton, "Southern Members of the Inns of Court," NCHR, X (1933), 279-280; Ely, "American Independence and the Law," Vanderbilt Law Review,

fit the description provided by historian Daniel Boorstin when he wrote:

> Before the end of the colonial era each colony possessed something like a legal profession. Nobody planned the result, but each colony had provided for its needs in its own way. Each by a separate path had arrived at a common New World destination, which was as remote intellectually as it was geographically from the port-scented halls of London's Inns of Court.[96]

XXVI (1973), 939-971; Harrison, "Study of the Earliest South Carolina Decisions," AJLH, XVI (1972), 51.

[96]Boorstin, The Americans, 197.

CHAPTER VII

LAWYERS AND THEIR PRACTICE

> You know as well as I do that the profession of the Law opens the way in America, to the most important Offices in the Union.[1]

The legal profession in the colony of South Carolina was something of a paradox. Outlawed in the Fundamental Constitutions, lawyers were required by some of the first settlers in 1670. Captain Florence O'Sullivan who arrived in that year as surveyor general, reported to Lord Shaftesbury that the fledgling province needed additional inhabitants, an Anglican minister, "and an able Counsellor to end controversies amongst us and putt us in the right way of the management of your Colony."[2] Although the proprietors never officially lifted their prohibition, practicing attorneys were present before the end of the seventeenth century. By the time the proprietorship fell in 1719, a small, stable legal profession had emerged and had successfully attained a position of unity and political strength. The best evidence of the bar's strength was its success in forcing Chief Justice Nicholas Trott from the bench.

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[1] Zahniser, ed., "Edward Rutledge to His Son, August 2, 1796," SCHM, LXIV (1973), 65-72.

[2] O'Sullivan's request might have been self-serving since he quickly ran into trouble with constituted authority in the new land. Stephen Bull, an aide to Lord Shaftesbury and a lawyer by training, called O'Sullivan "a very dissencious, troublesome Man," who overcharged for surveys and certificates to land. In 1673 O'Sullivan spoke out against the local government and was arrested. O'Sullivan to Lord Ashley, September 10, 1670, Bull to Lord Ashley, September 12, 1670, Shaftesbury Papers, South Carolina Historical Society Collections, V, 130-131, 188-189, 195-196; Salley, ed., Journal of the Grand Council of South Carolina, 1671-1680, p. 56.

More paradoxical than this, however, was the nature of the profession itself. Throughout the eighteenth century legal practice was abundant, luring to the bar those trained in other countries as well as native Carolinians. Educational requirements--by no means sub-standard--were flexible enough to enable aspiring young gentlemen to enter the profession. Yet, while it was open at one end, the bar was tightly closed at the other. An examination of attorney's practice reveals that South Carolina possessed throughout most of the century a highly stratified profession with a handful of men dominating the civil court docket and only one-third of the entire bar having a practice substantial enough to earn a respectable living. Despite the traditional reliance on family ties and social contacts for professional success in the colonial era, however, the leading lawyers represented new opportunity as well as established wealth. At the same time, some lawyers with important family connections and influential friends never succeeded in establishing lucrative practices.

Although legal professions emerged in different ways in each of the colonies, the arrival and predominance of the professional attorney--one who earned the greater part of his livelihood from or devoted most of his time to the practice of the law--occurred roughly at the same time in all of the provinces. Some semblance of a colonial bar began to appear between the Glorious Revolution of 1689 and the first two decades of the eighteenth century. In many cases the growth of the profession ran parallel to the rise of the merchant class which by this time had extended commerce, the export trade, shipbuilding, and the slave trade. In

addition, increases in land values, and the problems of determining ownership and land rights posed sophisticated questions beyond the purview of laymen or crown officials. Society in colonial America moved from the simple to the complex, from little to greater attachment to government, from the utopian ideal of an autonomous people to the arrival of what one scholar has called "common law man," the realistic, practical man of affairs. With the advent of a more sophisticated environment came the need for men specifically trained to manage the business of others before the various organs of government--men who understood the workings of courts, legal procedure, and the judicial system, men who could get things done.[3] As early as 1681 a law society was proposed in Virginia. By the end of that decade, Massachusetts Bay was grudgingly accepting the presence of lawyers; in 1710, New York attorneys formed the first bar association in British North America; and by 1715 professional men of the bar had squeezed out clerks, planters, and other amateur practitioners in Maryland.[4]

South Carolina historians have dated the beginning of a professional bar by the arrival of Nicholas Trott as naval officer and attorney general in 1699. Trott, however, was not the first attorney in the colony. Stephen Bull, who arrived with the first settlers, was trained as a lawyer;

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[3]Warren, History of the American Bar, 16-17; Aiken, "Utopianism and the Emergence of the Colonial Legal Profession," 6-7, 10-11.

[4]Davis, Intellectual Life in the Colonial South, III, 1602; Aiken, "Utopianism and the Emergence of the Colonial Legal Profession," 10-11; Hamlin, Legal Education in Colonial New York, 96; McKirdy, "Lawyers in Crisis," 1-4; Gawalt, Promise of Power, 8-9; Day, "Lawyers in Colonial Maryland," AJLH, XVII (1973), 145-150; Land, "Economic Base and Social Structure," Jl. Econ. Hist., XXV (1965), 639-654.

Abel Ketleby, who attended the Middle Temple, emigrated to Carolina about the same time as Trott, although neither he nor Bull practiced law there.[5] The first attorneys appeared as attorneys-in-fact before the Governor's Council, which sat as a court of Vice Admiralty, Chancery, and Common Law during the first three decades of the province's existence. Although Council records for this period are fragmentary, none of the men named as attorneys in these early cases appear consistently enough to merit any description other than attorney-in-fact or "next friend."[6]

Shortly after Trott came to South Carolina, he reported that only one other lawyer lived in the province.[7] Nevertheless, the presence of trained attorneys in the colony at an earlier date is evidenced by a 1694 law establishing attorneys' fees. "An Act for Ascertaining Publique Officers Fees" listed the prescribed amounts attorneys could charge their clients in appearances before both the Court of Common Pleas and the Chancery Court (Governor and Council). Such a law clearly indicates that men were representing others in the colonial tribunals for monetary reward--a step quite beyond the use of attorneys-in-fact. The passage of this measure also coincided with the opening of the Court of Common Pleas in

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[5]McCrady, History of South Carolina under the Royal Government, 459 and note; "The English Ancestors of the Bull Family of South Carolina," SCHGM, XXXVI (1935), 36-37; Jones, American Members of the Inns of Court, 114.

[6]Salley, ed., Journal of the Grand Council of South Carolina, 1671-1680, pp. 80-81; Gregorie and Frierson, eds., South Carolina Chancery Court Records, 61, 64. Attorneys-in-fact continued to appear before the courts on a limited basis long after the emergence of professional lawyers. For an example, see Stocks v. Jones, 1723, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

[7]The other lawyer was undoubtedly Henry Wigington. BPRO/SC, IV, 153.

Berkeley County (Charleston) in 1693 and marks the birth of the legal profession as well as the beginnings of a common law judiciary separate from Council control. However, since court records for most of the 1690s do not exist, the names of these first attorneys at law and any details of their practice are lost to posterity.[8]

By the time the proprietorship ended in 1719, fewer than twenty lawyers had practiced in South Carolina, and only nine were working during that fateful year. Perhaps because he held a multiplicity of judicial positions (Chief Justice, Judge of the Vice-Admiralty Court, and Councilor), Trott might have believed he could easily dominate the small profession. However, he succeeded only in alienating the bar which called for his dismissal from office when the Lords Proprietors were overthrown. The attorneys were particularly upset with Trott's unprofessional conduct and his excessive powers over the courts; and all signed a formal complaint against him. Thus, even the small number of lawyers then in the colony could exercise a large degree of independence on an issue important to their interests. This, more than any other incident, bound the legal profession into a cohesive organization to handle its own problems.[9]

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[8]Many official documents of the colonial and later periods were destroyed during the siege of Charleston in the Civil War. One set of court records, the Journal of the Court of Common Pleas, 1713-1714, was recovered from the debris in the streets of Charleston by a Union soldier who was also a lawyer. John E. Parsons, "A Souvenir of Charleston," New York Historical Society Quarterly, XLIII (1959), 385-399; Cooper and McCord, eds. Statutes of South Carolina, II, 86-92; Lee and Green, eds., "A Guide to South Carolina's Council Journals," SCHM, LXVIII (1967), 1. The origin and development of the early South Carolina court system is discussed in Chapters I and II.

[9]Details of the chief justice's controversy with the bar are presented in Chapter IV.

The bar remained relatively small throughout the colonial period. Although there are yawning gaps in the court records for the decades following the fall of the proprietorship, there is little evidence to suggest that more than a dozen lawyers practiced in a single year between 1703 and 1750. Still, legal practice in South Carolina was apparently lucrative enough to attract a number of immigrants with some legal training and high expectations. Of the forty-four lawyers who began their careers in the provincial courts prior to 1750, only one--Charles Pinckney--was known to be a native of the colony.[10] Many others came from England, Ireland, and Scotland to begin legal practice. Thomas Ellery, Maurice Lewis, and George Rodd were immigrants from England; John Rattray and James Grindlay, who married sisters, came from Scotland; and Andrew Rutledge emigrated from Ireland in the 1730s.[11]

Some lawyers, such as Henry Hargrave, who identified himself as "now of Charleston in South Carolina, but late One of the Attorneys for Sheriffs Court, London," might have been less attracted to the province than repelled from his home by heavy financial burdens. Coming to Charleston in the 1720s, Hargrave practiced before the Courts of Common Pleas and Chancery and held administrative posts such as naval officer and deputy secretary of the province. His will in 1732 explains his purpose for coming to America:

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[10]This information is based on the author's survey of 110 lawyers who practiced in the provincial courts between 1703-1780. William Wragg, son of the merchant Samuel Wragg, enrolled in the Middle Temple in 1725 and was called to the English bar in 1733. However, he never practiced law in the Carolina courts. Jones, American Members of the Inns of Court, 220.

[11]Gregorie and Frierson, eds., South Carolina Chancery Court Records, 522n; Barry, Mr. Rutledge of South Carolina, 1-2.

> I Doe (with all Sincerety) acknowledge I am justly Indebted to Severall persons in Great Britain & by their Impatience have been Obliged to come to this province, to procure Livelyhood for my Selfe & Dear Wife, who allways has been & Still is my Partner, in my Good or Ill fortune. I have Done my best Endeavours, to retrieve my Misfortunes, but if it please God I cannot Lay up money to pay Every one to whom I am Indebted, their whole Demand, I hope they will Accept a Composition and that they will not Oppress my Widow in Whose Justice I place that Confidence.[12]

Hargrave's reasons for emigrating to Carolina might well have been shared by other lawyers who found themselves with only limited access to legal practice and professional growth in the mother country.[13]

Yet, if Hargrave were pushed out of England, he undoubtedly recognized the potential for success in his profession in the American colonies, and especially in South Carolina. St. George Tucker, who eventually settled in Virginia and studied law under George Wythe, had been encouraged in 1772 by his two brothers to take up practice in South Carolina because "Many of that Profession have amassed great wealth here."[14] John Murray of Murraythwaite, Scotland, saw both the professional and economic advantages of an attorneyship in Carolina. Although he complained that no one starting a career without a number of friends could expect to make a fortune unless he used methods obnoxious to every gentleman, he conceded: "I like

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[12]Records of the Secretary of the Province, I, 390-391, SCDAH; Wills, Inventories, and Miscellaneous Records, LXIII (1729-1731), 218 255, W.P.A. Typescript, SCDAH.

[13]Lieutenant Governor William Bull II wanted to attract lawyers whose hopes for promising careers at home had been thwarted to fill the positions on the South Carolina bench on the eve of the Revolution. Bull to Lord Hillsborough, March 7, 1770, BPRO/SC, XXXII, 206-208.

[14]Smith, "Virginia Lawyers," 49-50.

my Business and would still chuse it." He added that whatever his opportunities might be in Scotland, "I would willingly give them up in case I saw any hope of being provided better Elsewhere, and I don't know where that Elsewhere would be with greater Satisfaction to myself than in Carolina."[15] Even after the Revolution, South Carolinians saw legal training as the gateway to opportunity. Edward Rutledge encouraged his son, Henry to accept a position as secretary to his uncle Charles Cotesworth Pinckney, who had been appointed ambassador to France. Rutledge urged Henry to seriously consider a career in law and public service. "You know as well as I do," he told his son, "that the profession of the Law opens the way in America, to the most important Offices in the Union."[16]

These prospects--both professional and economic--continued to lure immigrants from the British Isles to South Carolina for careers in the law. After mid-century it also attracted natives of the province. Half of the sixty-six lawyers who began practicing before the Charleston courts after 1750 were sons of Carolinians and either served apprenticeships in the colony or travelled to London to enroll in one of the four Inns of Court.

The legal profession experienced a steady, consistent growth throughout the first half of the eighteenth century. The names of lawyers appearing in the court records disclose the number of new attorneys in the

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[15]John Murray of Murraythwaite to Dr. John Murray of Charleston, July 5, 1750, Scottish Record Office, Edinburgh. I am indebted to Professor Milton M. Klein for bringing this letter to my attention and for obtaining a copy of it for my use.

[16]Zahniser, ed., "Edward Rutledge to his Son, August 2, 1796," SCHM, LXIV (1963), 65-72.

province during the colonial period, and Table X indicates the pattern of growth between 1703 and 1780. By mid-century no fewer than forty-four lawyers had practiced before the provincial courts in South Carolina, giving the Charleston community a small, but stable bar. By contrast, its sister colony to the north had fewer attorneys, so that Vice-Admiralty Court Judge Joseph Anderson had to complain to the High Court of Admiralty in London that the dearth of lawyers in the colony prevented appeals being presented in their proper form.[17]

The two decades following 1750 witnessed an accelerated growth of the bar, enlisting more lawyers during that twenty-year span than had practiced during the fifty previous years. The decline in the 1770s was doubtless caused by the coming of the Revolution and the uncertainty of the American economy during that period. The fact that some increase in the number of lawyers occurred at all during that decade was due in no small part to the distraction of politics which brought to an end the long legal careers of men such as John Rutledge, James Parsons, Thomas Bee, and Charles Pinckney II. This opened the profession to younger members such as Edward Rutledge, Charles Cotesworth Pinckney, Thomas Phepoe, and Alexander Moultrie.

Despite the increase in numbers, however, the legal profession--like the capital city in which it thrived--remained relatively small. Late in 1771 the Gazette reported that the province had only thirty-four attorneys. Five no longer resided in the colony, another five had quit

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[17] Ubbelohde, "The North Carolina Vice-Admiralty Court, 1728-1759," North Carolina Historical Review, XXXI (1954), 522.

TABLE X

GROWTH OF THE LEGAL PROFESSION (PRACTICING ATTORNEYS), 1703-1780

Dates	Number of New Lawyers
1703-1720	16
1721-1728	9
1728-1739	10
1740-1750	9
1751-1760	23
1761-1770	25
1771-1780	18
Total	110

Source: Judgment Rolls, Court of Common Pleas, South Carolina Department of Archives and History.

practice, and of the remaining twenty-four, two-thirds were native Carolinians.[18] The printer's figures were probably accurate. Judgment Rolls of the Court of Common Pleas for that year show only eighteen lawyers arguing cases before it; but the following year twenty-five lawyers were practicing. The number of active courtroom lawyers reached a peak in 1773 with twenty-nine practitioners; the yearly figures taper off from then until the occupation of Charleston during the Revolution.

For the period from 1751 to 1780, an average of eighteen lawyers per year argued cases in the Court of Common Pleas in Charleston. During the 1750s this average was slightly lower (fifteen) and for the next two decades slightly higher (twenty-one and twenty, respectively). Curiously, the growth of the profession during these decades did not run parallel to the extent of litigation in the court. Although the number of cases nearly doubled from the 1750s to the 1760s, the number of lawyers increased only slightly. In 1767--a peak year for the litigious Carolina society--only twenty-three lawyers argued a total of 740 cases (one lawyer for every thirty-two cases). By contrast, six years later when the number of lawyers was at its highest, only 349 cases came before the bench (one lawyer for every twelve cases). Thus, although the colony was a litigious one, averaging about 254 cases per year between 1751 and 1780, the activity in the court was probably not a major factor in the growth of the profession.

The number of lawyers also did not keep steady pace with the increase in the colony's population. When court records begin in 1703, two lawyers represented a total white population of 3,800. The lowest ratio

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[18] Bowes, Early Charleston Culture, 8; S.C. Gaz., November 7, 1771.

of lawyers to potential clients occurred in 1715 when nine attorneys represented 6,250 people, a ratio of 1 to 694. After this date, however, the ratio of practitioners to population expanded instead of diminished. In 1773 when the number of lawyers in the province was at its height, the colony had only one attorney for every 2,241 white inhabitants (see Table XI). When the colony's total population is added, the ratio becomes even greater. Thus, the expanding population had only a minor impact on the growth of the bar.[19]

The chief catalyst for the growth of the bar after 1750 was the establishment of a stable, resident merchant class which would employ lawyers to prosecute actions for debt as well as execute non-court business such as the drafting of contracts and articles of co-partnership. Although many Carolina merchants had been badly disappointed when King George's War failed to bring the rich profits they had sought, they hailed the end of the conflict and quickly recovered their economic losses. Prior to the war, the colony's merchant class was composed largely of Englishmen who made fortunes of £10,000 to £20,000 sterling and returned to the mother country. During the war and afterward, younger merchants such as Gabriel Manigault, Benjamin Smith, and Henry Laurens identified themselves more closely with the province and remained in South Carolina while still maintaining close ties with the mother country and with other colonies.[20] The establishment of these and many other merchants in Charleston provided

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[19]Evarts B. Greene and Virginia D. Harrington, American Population Before the Federal Census of 1790 (New York, 1932), 172-174.

[20]Rogers, Charleston in the Age of the Pinckneys, 14-15; Stumpf, "The Merchants of Colonial Charleston," 162, 171-172, 183-184, 268-269.

TABLE XI

LAWYERS AND THE COLONIAL POPULATION

Year	Practicing Lawyers	White Population	Ratio	Total Population	Ratio
1703	2	3,800	1:1,900	7,150	1:3,575
1715	9	6,250	1:694	16,750	1:1,861
1720	9	9,000	1:1,000	21,000	1:2,333
1769	26	45,000	1:1,731	125,000	1:4,808
1773	29	65,000	1:2,241	175,000	1:6,034

a steady, reliable clientele for the lawyers; and the rising number of attorneys must have given the merchants the satisfaction of knowing that they had the means to rally the law on their side when pursuing delinquent debtors.

Suing for debts, however, did not make lawyers immediately popular. Charles Woodmason, the Anglican itinerant who rarely missed an opportunity to castigate the gentlemen of the bar, had been sued and had taken others to court when he was a storekeeper in Prince Frederick's Parish in the 1760s. Woodmason complained to an English friend:

> this Passion for Law Suits and Prosecutions, does not arise so much from a Love to Justice--Regard to the Laws--or the Good of Society--but from a Corruption of the Human Heart--not from Principle, but Motives of Vexation--Too many taking Delight to vex, oppress, distress their Neighbors thro' meer Wantoness of Disposition--We should not hear else of Persons being put to 8 or 10 ₤ Expence, for the recovery of 40 [shillings]. And altho' the Law gives the Creditor this Advantage over the Debtor it ought not to be exacted on ev'ry frivolous Occasion--ev'ry petty Affront--As we too commonly see.[21]

Some merchants agreed with Woodmason. Henry Laurens considered the hiring of a lawyer to collect a debt as a last resort instead of an initial step.[22] Another merchant of a like temper explained to attorney Robert Williams:

> People have different views of things and therefore [I] am unwilling to think, when a Gentleman is sole Arbiter, between

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[21]Hooker, ed., The Carolina Backcountry on the Eve of the Revolution, 130-131.

[22]Henry Laurens to Henry Ravenel, September 3, 1766, George C. Rogers, Jr., and David Chesnutt, eds., The Papers of Henry Laurens, 6 vols. to date (Columbia, S.C., 1968-), V, 186. Laurens, reminding Ravenel that he was overdue in the payment of bond, asked: "is it the common way for Merchants especially those who do not stand in need of the favours of your Custom to expostulate & write again & again to their Debtors, or to send their Bonds after one or two disappointments into the hands of a Lawyer? I do not Care to affront you by a Writ, nor to put you to the expence of one & therefore you seem to rest secure."

> two parties, who put an equal confidence in him, that he will wrong his own honour or Conscience; but decide to the best of his Judgment & Discernment: therefore Mr. Parsons has my thanks. Litigation and Strife I abhor and would rather abate claims, than carry on an odious War.[23]

Nevertheless, Carolinians--whether merchants, professionals, or mechanics--showed little reluctance to take their neighbors to court when outstanding sums of money were involved. The most common procedure for debt collection was to first advertise in one of the provincial newspapers calling in all debts within a specified time. Accounts not settled by the deadline, the author warned, would be placed in the hands of an attorney who would take the debtor to court without further notice. Throughout the eighteenth century countless legal announcements of this kind appeared in the Charleston papers. Typical of the advertisements was the following:

> All persons who are indebted to the Estate of Robert Buchanan, late of Charlestown, shopkeeper, deceased [should pay their debts to the subscriber] who is empowered by the Executor to receive and discharge the same on or before the 20th Day of May next; Or Actions at Law will be commenced against them without further Notice by Charles Pinckney.[24]

Printers also had to use space in their own newspapers to call in their accounts. Robert Wells tried to avoid legal actions against subscribers, but found himself forced to place his accounts in the hands of a lawyer in order to satisfy the needs of his family and his creditors.[25] The next step was for the lawyer to secure a writ naming the defendant,

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[23]Charles Lorimer to Robert Williams, November 8, 1774, William Moultrie Papers, SCL.

[24]S.C. Gaz., April 8, 1732.

[25]S.C. Gaz. & C. Jl., September 16, 1766, December 22, 29, 1767; June 28, 1768.

stating the amount involved in the suit, and authorizing the provost marshall or his deputies to bring the debtor to Charleston or to attach his goods and chattels to insure his appearance in the Court of Common Pleas. The Judgment Rolls of the Court clearly indicate that the colony's attorneys kept busy and thrived on this kind of activity.

Examinations of lawyers' practice in the colonial period has been adequately done for individual attorneys, but it has not been attempted for the entire bar of any colony.[26] South Carolina court records consistently identify the colony's lawyers throughout the eighteenth century and reveal the size of the profession, the number of attorneys who practiced before the courts, and the extent of their practice, i.e., the number of cases in which they appeared.[27]

While this information is vital to a proper understanding of the provincial bar, it also permits us to pose some questions about the nature of the profession in early America. How many years could a colonial barrister expect to practice and what might be the extent of his business? Were attorneys with the longest practices and the largest number of cases the most prominent figures of their day (such as John Rutledge and

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[26]Wroth and Zobel, eds., Legal Papers of John Adams, I, lvii-lxxiv; Milton M. Klein, "Rise of the New York Bar: The Legal Career of William Livingston," WMQ, 3rd Ser., XV (1958), 334-358; Herbert Alan Johnson, "John Jay: Lawyer in a Time of Transition, 1764-1775," University of Pennsylvania Law Review, CXXIV (1976), 1260-1292; Robert E. Rector, "Thomas Bee and the Revolution in South Carolina, 1760-1790" (M.A. Thesis, University of South Carolina, 1971), 6-14, 84-85.

[27]Robert Wells's Register in the years 1769, 1774, 1775 list the names of lawyers practicing in those years and the dates they were admitted to the bar. Although helpful, Wells's publication identifies only those attorneys who were still active in the provincial bar and does not include those who died or left the colony prior to 1769. Robert Wells's Register, 1769, 1774, 1775.

Charles Pinckney II in South Carolina, William Smith, Jr., in New York, or John Adams in Massachusetts), or were they lesser-known individuals who simply did not leave as many private papers or who were not as politically inclined as their counterparts? How stratified was the profession? Was opportunity and business sufficient for anyone who desired to practice, or did a select few handle most of the court actions? Finally, what was the nature of an individual lawyer's practice? Whom did he represent and can any patterns of practice be established?

Court records cannot fully answer these question; there is no way to assess the extent of legal business outside of the courts. A lawyer like Rawlins Lowndes, for example, was recognized as an attorney in the province, but his name never appears in the records of any of the four courts.[28] Likewise, Robert Williams, who began a successful career in the law in 1753, left the courtroom in 1770 to devote the remainder of his work to being a "Counsellor at Law" and by the time of the Revolution "had for some time declined practice as an attorney." Another successful practitioner, Thomas Bee, once confided to Josiah Quincy, Jr., that he reaped several hundred guineas a year as an executor of wills. Court records cannot identify such business as rendering legal advice, drafting wills, deeds, conveyances, or settling outstanding debts before going to court.[29] Nevertheless, of the 166 attorneys in colonial South Carolina,

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[28]Baker-Crothers, "Rawlins Lowndes," Malone and Johnson, eds., D.A.B., XI, 472; Vipperman, Rise of Rawlins Lowndes, 41-42.

[29]Loyalist Commission, Audit Office Records, 1783-1790, LIV (1784), 47. Like other colonists, South Carolinians recognized a distinction between the attorney's practice of arguing cases before a court and non-court related activity identified under the title of "counseling." New Yorker James Duane, one of the most active and wealthiest lawyers in that

fully two-thirds (110) practiced before the Court of Common Pleas between 1703 and 1780. Therefore, a study of these court records can explain much about the nature of the profession and its chief members.

The average lawyer in eighteenth century South Carolina could expect to practice a little more than eight years and participate in 131 cases, or an average of slightly more than sixteen cases per year. However, averages are deceptive. Of the 110 attorneys who appeared in cases before the civil court, only one-third (thirty-seven members or 33.6 percent) actively practiced for ten or more years. Of this number thirteen expanded their careers in the law to twenty years or longer, and twenty-four men practiced between ten and twenty years. Only five practiced for more than a quarter of a century. This means that two-thirds of the profession (seventy-three lawyers, or 66.4 percent) maintained their legal careers for fewer than ten years. More striking perhaps is the fact that almost half of the practicing bar (fifty lawyers or 45 percent) engaged in their profession for five years or less (see Table XII). Moreover, this pattern remained consistent throughout the eighteenth century, reflecting no difference between those who began their careers before 1750 and those who started practice after that date. For example, the same number of men in each period appeared in the courtroom for only one year. Likewise, of the thirty-seven lawyers who practiced for ten years or longer, eighteen

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colony, lamented to Robert Livingston in 1773 that he would like to quit his attorney's practice and simply work as counsel but was forced to continue his courtroom activity because of the unprofitability of his estate. Edward P. Alexander, A Revolutionary Conservative: James Duane of New York (New York, 1938), 38; Gawalt, "Massachusetts Lawyers," 221; Gregorie and Frierson, eds., South Carolina Chancery Court Records, 579.

TABLE XII

YEARS OF PRACTICE, 1703-1780

Number of Years Practicing	Number of Lawyers	Percentage of Bar
More than 20	13	12
10-19	24	22
6- 9	23	21
1- 5	50	45
Totals	110	100

launched their careers before 1750, and nineteen began them afterward.[30]

Thus, a study of the years of attorneys' practice reveals one paradoxical feature about the Carolina legal profession. The bar remained open to many who emigrated from the British Isles and to native sons as reflected in the increasing number of practitioners after 1750. In fact, there was no known attempt in this southern province to limit access to the profession by restricting the number of new attorneys, as there was in New York, or in deliberately tightening educational requirements as in Massachusetts.[31] However, only a minority was able to make the law a lifetime occupation. These patterns of openness on the one hand and stratification on the other emerge as well from a study of lawyers' case loads.

Throughout the period from 1703 to 1780 only one-third of the practicing bar (thirty-six lawyers) participated in more than 100 cases each (see Tables XIII and XIV). Twenty-nine of these attorneys practiced for ten years or longer. The Charleston bar, however, was even more stratified. In both the periods before and after 1750, only six lawyers appeared in roughly two-thirds of the cases which came before the Court of Common Pleas.

In the earlier period, men such as Benjamin Whitaker, Robert Hume, Richard Allein, George Evans, George Rodd, and Thomas Hepworth dominated

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[30]Six men who began their careers prior to 1750 continued their legal practice into that decade. They were Charles Pinckney, Charles Pryce, James Wright, John Rattray, James Michie, and Andrew Rutledge.

[31]Johnson, "John Jay: Lawyer in Time of Transition," University of Pennsylvania Law Review, CXXIV (1976), 1273-1274; Murrin, "The Legal Transformation," Katz, ed., Colonial America, 431-432.

TABLE XIII

LAWYERS WITH 100 OR MORE CASES, 1703-1750

Lawyer	Number of Cases
James Wright	471
Robert Hume	454
Benjamin Whitaker	347
John Rattray	343
Richard Allein	319
George Evans	294
James Michie	281
George Rodd	259
Thomas Hepworth	236
Charles Pinckney	224
William Billing	170
Henry Wigington	158
Thomas Ellery	146
William Blakeway	144
Andrew Rutledge	124

Totals--Lawyers' Case Loads, 1703-1750

Number of Cases	Number of Lawyers	Percentage of Bar
More than 100	15	34
51-99	5	11
1-50	24	55
Totals	44	100

TABLE XIV

LAWYERS WITH 100 OR MORE CASES, 1750-1780

Lawyer	Number of Cases	Lawyer	Number of Cases
James Parsons	1,073	Egerton Leigh	337
John Rutledge	985	Hugh Rutledge	247
Charles Pinckney II	960	David Graeme	222
William Burrows	957	James Simpson	186
Joshua Ward	580	William Mason	167
Robert Williams	515	John Dart	136
James Grindlay	421	Thomas Grimball	135
John Troup	378	James Moultrie	131
Thomas Phepoe	371	Alexander Gordon	115
Thomas Bee	367	John Nevin	102
John Colcock	346		

Totals--Lawyers' Case Loads, 1750-1780

Number of Cases	Number of Lawyers	Percentage of Bar
More than 500	6	9
100-499	15	23
51- 99	8	12
1- 50	37	56
Totals	66	100

the profession in the last two decades of proprietary rule and during the first years of royal control. All made careers of the law and public service. Whitaker, Allein, and Hepworth were all commissioned later in their lives as chief justice. Whitaker, Rodd, and Evans served at various times as advocate and attorney general. Robert Hume was elected speaker of the Commons House in the 1730s. Later, however, his part in a shady land scheme became publicly known, and he fled to London to appeal his case to the Board of Trade.[32]

In addition to these leaders, men such as James Wright, John Rattray, James Michie, and Charles Pinckney built up respectable practices both before and after mid-century. Wright later became the colonial agent for South Carolina and later still royal governor of Georgia. Pinckney and Michie closed their long careers as chief justices of the province, and Rattray emerged as a prominent political leader in the House during the 1740s and 1750s.

In the pre-Revolutionary period both the prominent and improbable developed successful law practices. One should not be at all surprised to find the names of James Parsons, John Rutledge, and Charles Pinckney II at the top of the legal profession on the eve of the conflict with England. However, lesser-known but equally hard working attorneys such as William Burrows, Joshua Ward, and Robert Williams joined them in dominating activity before the civil court. Burrows, who had studied law with Whitaker and William George Freeman, practiced for a longer time than

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[32]At the height of his career, Evans was drowned in a boating accident near Charleston harbor on April 23, 1716. The tragedy also claimed the life of Commissary Gideon Johnston. Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 247.

any other lawyer in the colonial period. Ward, who entered the profession by serving an apprenticeship and by attending the Middle Temple, was the only member of this elite group to continue his practice after the Revolution. Williams, a native of England, had come to Carolina in 1742 and was the only member of this group to remain loyal to the Crown when fighting erupted in the colonies.

A second, much larger, group in each period--about one-fourth of the practicing bar--appeared in more than one hundred cases each but did not approach the level of practice enjoyed by the top attorneys of the time. Still, only one-third of the colony's lawyers participated as plaintiffs' and defendants' representatives in more than one hundred cases each. The remaining two-thirds of the profession had to scramble for actions that the leading lawyers rejected or could not handle.

In the other courts case loads were much smaller and records are less reliable, but most of the leading attorneys from the Court of Common Pleas dominated practice in the other tribunals as well. John Rutledge and James Parsons participated in the most cases in both the Chancery Court and the Court of General Sessions. Parsons and Rattray had the highest number of appearances before the Court of Vice-Admiralty. Rutledge handled only two cases before the salt-water tribunal, but it should be noted that the court's records end in 1763, only two years after Rutledge began his law career. The records of the other three courts also indicate that none of the colony's lawyers specialized in any single court activity above others. Attorneys who particpated in maritime, criminal, and equity cases also practiced before the Court of Common Pleas.

The stratification of the bar which prevailed in the civil court existed in the other judicial bodies as well. Actions in the Vice-Admiralty

Court were more evenly distributed among the twenty-nine lawyers who proctored there, but even so a mere third of the proctors handled the bulk of the cases. Case loads in the criminal court followed a similar pattern, only one-fifth of the fifteen attorneys practicing there appearing in the largest number of cases while two-thirds appeared in the fewest. Participation in the equity court was even more stratified with scarcely more than one-eighth of the forty-four attorneys appearing in more than twenty cases each while three-quarters of their colleagues were involved in fewer than ten cases each (see Tables XV-XVII).

Thus, in the number of years of practice and in case loads, it is clear that a few lawyers dominated the courtroom activity of their profession. A better picture of the business of the leading attorneys is provided by studying the practice of three in greater detail. The careers of Robert Hume, James Wright, and James Parsons span most of the period for which court records are available and illustrate the importance of the professional attorney in eighteenth century South Carolina society.

Hume came to Charleston a few years before the fall of the proprietorship and began law practice in 1717 at age twenty-three when only seven other lawyers were working in the colony. His career no doubt received a boost when he married Sophia Wigington, daughter of one of the first attorneys to practice in the colony.[33] Business was slow for the first couple of years, but in 1719 he appeared in sixty-six cases. His case load before the civil court fluctuated for the next few years: he had seventy-two cases in 1720, thirty-six in 1721, and fifty-six in 1722.

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[33]Ibid., 347.

TABLE XV

LAWYERS WITH HIGHEST CASE LOADS BEFORE THE CHANCERY COURT, 1697-1779

Lawyer	Number of Cases
John Rutledge	55
James Parsons	45
Benjamin Whitaker	41
Richard Allein	24
Robert Hume	22
James Wright	20
Andrew Rutledge	14
Hugh Rutledge	14
Egerton Leigh	14
James Graeme	13
Charles Pinckney II	11

Totals--Lawyers' Case Loads Before the Chancery Court

Number of Cases	Number of Lawyers	Percentage of Lawyers Practicing in Chancery
20 or more	6	14
10-19	5	11
5- 9	10	23
1- 4	23	52
Totals	44	100

TABLE XVI

LAWYERS WITH HIGHEST CASE LOADS BEFORE THE VICE-ADMIRALTY COURT, 1716-1763

Lawyer	Number of Cases
John Rattray	22
James Parsons	18
Richard Allein	16
Benjamin Whitaker	16
James Wright	15
George Evans	12
William Burrows	11
James Graeme	10
Thomas Hepworth	10
James Michie	10

Totals--Lawyers' Case Loads Before the Vice-Admiralty Court

Number of Cases	Number of Lawyers	Percentage of Lawyers in Vice-Admiralty Practice
10 or more	10	35
5-9	7	24
1 -4	12	41
Totals	29	100

TABLE XVII

LAWYERS WITH HIGHEST CASE LOADS BEFORE THE COURT OF GENERAL SESSIONS, 1769-1776

Lawyer	Number of Cases
John Rutledge	32
James Parsons	28
Thomas Phepoe	24
Charles Cotesworth Pinckney	17
John Colcock	11
Charles Pinckney II	6

Totals--Lawyers' Case Loads Before the Court of General Sessions

Number of Cases	Number of Lawyers	Percentage of Lawyers in General Sessions
20 or more	3	20
10-19	2	13
5- 9	1	7
1- 4	9	60
Totals	15	100

In 1723 he participated in 127 actions, 105 as a plaintiff's attorney and 22 for defendants. This involved him in more than half of the 217 cases which came before the Court of Common Pleas that year. Although nine other lawyers competed with Hume, only two--Benjamin Whitaker and Thomas Ellery--had comparable case loads. More prominent figures in the courtroom such as Richard Allein, William Blakeway, and Thomas Hepworth, all of whom had enjoyed extensive practices during the previous decades, were gradually leaving the courtroom for positions on the bench and membership in the Commons House of Assembly during the province's slow transition from a proprietary to a royal colony. Hume launched his own political career in 1725 but the impact of his Assembly duties on his law business is unknown since the court records of the late 1720s through the 1730s are so fragmentary. Although Hume kept his legal practice active until his death in 1737, the few Judgment Rolls available after 1725 document his participation in only twenty-five cases during that twelve year span.[34]

A comparison of Hume's court practice with that of Ellery and Whitaker between 1720-1724 attests to Hume's place at the head of the bar:

Lawyer	1720	1721	1722	1723	1724	Average
Hume	72	36	56	127	43	67
Whitaker	49	21	35	77	33	43
Ellery	--	16	31	60	24	33

[34]Ibid., for Allein, 30-31; Blakeway, 83-84; Hepworth, 313-314; Hume, 346-347. Ellery moved to St. John's Parish (Berkeley County) and became a neighborhood attorney, devoting much of his business to representing those in his community. See George David Terry, "A Social and Economic Study of a South Carolina Low Country Parish: St. John's Berkeley, 1690-1793" (Ph.D. diss., University of South Carolina, in progress).

Hume's practice in the other tribunals was not as extensive as Whitaker's, but it exceeded that of Ellery. In Chancery Court cases Whitaker appeared forty-one times, Hume twenty-two, and Ellery only five. Before the Vice-Admiralty Court, Whitaker participated in sixteen cases, Hume nine, and Ellery only one.

In the Court of Common Pleas the overwhelming majority of cases in which Hume was involved (86 percent) were for amounts of less than £500 Carolina money. Actions involving amounts of from £500 to £999 and from £1,000 to £9,999 were less than one-tenth of his total case load, and Hume participated in only one suit which asked for more than £10,000. About two-thirds of Hume's clients can be identified by occupational group. Merchants comprised the largest single category (about one-third). Although Hume handled cases for many of the mercantile community he appeared most consistently on behalf of such well-known merchants and commercial firms as Samuel and Joseph Wragg and Job Rothmahler, Thomas Dymes and Roger Saunders, William Dry and Robert Tradd (and later Samuel Pickering), Richard Splatt, and Samuel Eveleigh. Planters made up one-eighth of the clientele, and artisans one-tenth. Professional men (lawyers, clergymen, and doctors), mariners, executors, and administrators rounded out those who employed Hume's services. The attorney appeared in his own behalf several times, but the most notable case in which he was personally involved was his action in 1722 against Timothy Bellamy, a merchant, for £200 damages for assault and battery. Hume won his case, but a jury awarded only £6 in damages along with £26.8.10 in court costs.[35]

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[35]Information on Hume's legal career is based on a study of the Judgment Rolls, 1717-1737, South Carolina Court of Common Pleas, SCDAH.

When Hume died in 1737 another generation of Carolina lawyers had already begun to practice. Men such as Charles Pinckney, James Graeme, and James Wright opened their law offices in the late 1720s and early 1730s. Others of their era such as James Michie, Thomas Corbett, and John Rattray embarked on their legal careers in the 1740s.[36] Of this group, James Wright had the most successful business, practicing a total of twenty-two years and participating in no fewer than 471 cases. Wright, better known as the last royal governor of Georgia (1762-1776), came to Carolina with his father, Chief Justice Robert Wright, in 1731. How he obtained his technical legal education is unknown. He entered Gray's Inn in 1741 and was called to the English bar later, but it is doubtful that young Wright ever attended the Inn at Westminster since court records show that he had a steady, though moderate, case load from 1736 through 1757.[37] In addition, he held the positions of advocate and attorney general of the province.

When Wright assumed his legal duties in 1736 and for most of his twenty-two professional years, only a dozen lawyers actively practiced before the colonial courts. By the time he departed in 1757 the number had increased to only sixteen. A comparison of case loads for a portion

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[36]Because of incomplete records it is difficult to ascertain precisely when each man began law practice. Charles Pinckney I began appearing before the Courts of Common Pleas and Chancery in 1728; Graeme first appeared before the Vice-Admiralty Court in 1729, although his name does not emerge in the civil court's judgment rolls until 1736; Wright began in 1736; Michie and Rattray opened practice in 1740. Grindlay's name does not appear in the records of the Court of Common Pleas until 1751, but his practice in the Vice-Admiralty Court in the late 1740s indicates that he might have been admitted to the bar before the middle of the century.

[37]Jones, American Members of the Inns of Court, 221-223.

of the 1740s and 1750s demonstrates that Wright was clearly at the head of his profession even though he faced stiff competition from his peers such as Rattray and Michie. Both Pinckney and Graeme had virtually retired from practice by the late 1740s to seek political and judicial appointments. Both were chief justices of the colony, and Pinckney was named to the Governor's Council. Corbett had returned to London in 1749. Wright's standing among lawyers practicing in the Court of Common Pleas is shown below:

Lawyer	1752	1753	1754	1755	1756	Average
Wright	44	54	52	34	19	41
Rattray	--	15	33	34	44	32
Grindlay	17	33	19	23	37	26
Michie	28	38	26	24	6	24

Wright also maintained a lucrative practice before the Vice-Admiralty and Chancery Courts. Rattray and James Parsons participated in more maritime cases, but Wright clearly led his other colleagues in appearances before both courts.

Like many other lawyers, Wright drew a majority of his clients from the merchant and planter classes (40 percent and 15 percent, respectively). Executors of estates and administrators of wills made up about one-eighth of his clientele; slightly more than one-third of those he represented remain unidentified. The number of merchants who employed Wright's services was somewhat higher than that of his contemporaries. For Michie and Rattray, merchants comprised about one-third of the case load, and for Grindlay, about a fourth. Wright's merchant contacts were obviously

good. Throughout his career he consistently handled the accounts of such merchants and firms as James Crokatt; Ebenezer Simmons, Benjamin Smith, and James Crokatt; John Watsone and John MacKenzie; Joseph Wragg and Richard Lambton; Paul Trapier, Robert Stoll and John Hume; and John Barksdale and John Ayston (Barksdale and Company). Nevertheless, few merchants entrusted all of their business to a single attorney. William George Freeman also represented Wragg and Lambton; Michie also handled cases for Barksdale and Company, Richard Lambton, and Joseph Shute; and Michie, James Graeme, and David Graeme also went to court on behalf of Crokatt. The higher percentage of Wright's merchant clients may be attributed more to his favorable reputation generally than to his ability to secure the business of a few leading firms.

Contrary to the pattern of Robert Hume's day, nine-tenths of Wright's civil cases involved amounts of from £100 to £10,000. Of these, almost half were for amounts of less than £500. On the other hand, Wright handled only eight suits in which the debts or damages asked were higher than £10,000; and cases of less than £100 comprised less than one-tenth of his case load.[38]

In 1757 Wright ended his illustrious legal career and sailed for his native England to serve the province as its London agent. Even before his departure, Wright's generation was giving way to the men who would guide South Carolina through its constitutional and legal crisis with the mother country. James Graeme died in 1752; Charles Pinckney

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[38]All of the information in the section on Wright and his colleagues is based on the Judgment Rolls, 1736-1757, South Carolina Court of Common Pleas, SCDAH.

succumbed one year after Wright returned to England; Michie, elevated to the chief justiceship in 1759, died one year later; Rattray was gone in 1761; and Grindlay followed his mentor to the grave four years later. Meanwhile, the bar remained in capable hands. William Burrows and James Parsons began practicing in 1751; Charles Pinckney II, nephew of the chief justice, joined them in 1753; John Troup added his name and talents in 1754; and Peter Manigault returned from riding circuit in England in 1755. John Rutledge and Thomas Bee, both of whom studied with Parsons, were admitted to the bar in 1761. Men such as Robert Williams and Egerton Leigh who would eventually remain loyal to the crown in 1776 also began practicing in the 1750s.

Of the revolutionary generation, Parsons, Rutledge, Pinckney, and Burrows stand out. These four men participated as plaintiffs' and defendants' attorneys in more than one-half of the civil actions between 1751 and 1780, and they pursued their careers for an average of almost twenty-five years each. Parsons, largely because of the length of his practice and the extent of his case load, deserves special attention in this group of lawyers. However, the careers of any of these four illustrate the nature of legal practice in the pre-Revolutionary period.

Parsons came to South Carolina at mid-century having been trained through an apprenticeship in Ireland where he had practiced before embarking for America. He quickly immersed himself in the legal and political affairs of his adopted country, practicing before the common law and equity courts in 1751 and before the Vice-Admiralty Court a year later. He was also elected to the Assembly as a representative from St. Paul's Parish from 1752-1754 and later from St. Bartholomew's Parish

in 1760, a position he held until his death in 1779.[39]

In his twenty-six years as a lawyer, Parsons appeared in 1,073 cases before the Court of Common Pleas--more than any other attorney in the province. His yearly case load averaged forty-one per year which was second only to that of Rutledge, who participated in 985 cases during his fifteen years of active practice and had an annual average case load of sixty-six. The comparison below focuses on the practice of the three leading lawyers during the five busiest years of the litigious 1760s, a decade that accounted for well over half of Parsons's appearances before the civil judiciary:

Lawyer	1765	1766	1767	1768	1769	Average
Parsons	70	60	130	99	79	88
Rutledge	97	88	192	90	95	112
Pinckney	73	42	117	91	73	79

Although Rutledge handled more cases during the 1760s, he practiced law a full decade less than Parsons. Pinckney, whose career span equalled the Irish attorney's, handled fewer total cases and had a total yearly average of only thirty-seven. Before the Chancery Court, Parsons's case load was second only to Rutledge's and before the Vice-Admiralty Court second only to John Rattray's in total cases.

Merchants (34 percent) and planters (18 percent) comprised slightly more than one-half of Parsons's clients before the civil judiciary.

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[39]For Parsons's political career, see Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 508-509.

Executors and Administrators constituted a little more than a tenth; a small number of artisans were represented; and fewer than one-third of his clients cannot be identified. Actually, the number of merchant accounts handled by Parsons, Rutledge, and Pinckney (about one-third of each man's cases) is somewhat smaller than that of their colleagues. For Burrows, Williams, and Joshua Ward, merchants accounted for half of the clients represented. Parsons acted on behalf of no fewer than forty-five different members of the mercantile community, and he appeared for only a few consistently throughout his career. Those who used his services most often included William Logan, John Ward (a merchant-tailor), Darby Pendergrass, Daniel Legare, Elias Vanderhorst, and the firm of John Torrans, John Greg, and John Poag. Thus, Parsons, Pinckney, and Rutledge attracted their business from several quarters after establishing their reputations in the community. Like others in the profession, their clients included a sizeable number of merchants, but they did not depend entirely on the mercantile sector for their business.

The courtroom practice of South Carolina's leading lawyers in the pre-Revolutionary era compares favorably with members of other colonial bars, particularly with the legal careers of John Adams of Massachusetts and of the famous New York triumvirate of William Livingston, William Smith, Jr., and John Morin Scott. In sheer numbers, however, the Charleston barristers handled fewer cases during the turbulent 1760s than their counterparts in New York who averaged well over one hundred cases per year before that province's law courts.[40] Like that of John Adams--their

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[40]Klein, "Rise of the New York Bar: The Legal Career of William Livingston," WMQ, 3rd Ser., XV (1958), 352-353; Wroth and Zobel, eds., Legal Papers of John Adams, I, lix.

compatriot in the coming Revolutionary crisis--the long, brilliant legal careers of Parsons, Pinckney, and Rutledge gave way to political circumstances in America, and none enjoyed extensive law practices after 1773. Parsons continued to practice until war broke out, but his case load dropped from fifty-one in 1773 to fourteen in 1774, and to only seven in 1775. Rutledge's fell during the same years from sixty-one to seventeen to seven, while Pinckney's declined from twenty-seven in 1772 to fifteen in 1773, ten in 1774, and only four the next year.[41]

In the number of years of practice and in the case loads of the Carolina bar, it is clear that a few lawyers dominated the courtroom activity of the profession. Nevertheless, their control of this phase of judicial business did not prevent a number of other lawyers from developing lucrative careers both before and after 1750. Attorneys such as Andrew Rutledge, James Graeme, Thomas Bee, John Troup, Thomas Phepoe, and Hugh Rutledge built extensive practices and enjoyed a large degree of respect within the profession and the community even though their case loads did not approximate those of the leading attorneys of their day. For a majority of those who embarked on a life in the law, however, courtroom practice did not meet the expectations of a promising and financially rewarding occupation.

Even some of the more prominent Carolinians were not immune to disappointment and disillusionment with the profession. Peter Manigault, son of a wealthy, influential merchant, was never a successful practitioner in

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[41]Information on the case loads of Parsons and his colleagues was derived from an analysis of the Judgment Rolls, 1751-1780, South Carolina Court of Common Pleas, SCDAH; Wroth and Zobel, eds., Legal Papers of John Adams, I, lix.

Charleston despite numerous advantages. Manigault was among the first of his generation to travel to England to attend one of the Inns of Court, and he enjoyed the encouragement and friendship of such important attorneys as his mentor, Thomas Corbett, John Rattray, Andrew Rutledge, William George Freeman, and Charles Pinckney. After his call to the English bar and a brief trip on the British circuit, he returned to South Carolina; but he found little business awaiting him. The paucity of cases which came before him prompted his perceptive and rambunctious friend William Drayton to write from England: "You mention so little of the Law to me that I imagine you either have a vast deal, or no Practice at all. Which is it?" Drayton--who was winding up his own legal studies at the Middle Temple--added: "Don't get too deep before I come, for it won't then look well in me to lounge a Month or two, race a horse, or go to a Cock-Match."[42]

Manigault's early law practice consisted mostly of office work in handling his father's mercantile accounts, and some of his first cases were those involving debts owed to Gabriel Manigault.[43] Young Peter appeared in only thirteen cases during his first two years of practice and participated in only sixty-two actions over a fifteen-year period. He had only two cases before the Chancery Court and none before the Vice-Admiralty Court despite the sponsorship of Rattray in Peter's admission there in

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[42]Drayton to Manigault, May 31, 1755, Manigault Family Papers, SCL.

[43]"The Manigault Family of South Carolina from 1685 to 1886," Huguenot Society of South Carolina Transactions, 1887, p. 70; Manigault v. Lambton, Manigault v. Ward, 1755, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

1755.[44] His friend and former teacher, Corbett, tried to encourage him:

> I am not sorry, for your Sake, for the present Scarcity of Attorney's Practice. The able and the diligent in your Profession can never long want Employment in so flourishing a Country as yours and during this temporary Slackness you will have more Leisure to read & to make yourself Master of the cases before you & the Causes you have in hand. You will go to Court more fully prepared than would be practicable if you were distracted with a multiplicity of Business. Consider therefore this incident as an advantage to you at your setting out & avail yourself of it accordingly.[45]

Manigault's practice never improved, and in 1763 he began a new occupation with the management of several estates and plantations of prominent figures such as Ralph Izard who had frequent contacts and correspondence with British firms. So complete was his disillusionment with his legal career that he tried--unsuccessfully--to sell all of his law books.[46] Drayton's early legal career was even more disastrous than his friend's as he participated in only five cases from 1756 to 1761. Unlike Manigault, however, he remained professionally active by securing an appointment in 1765 as chief justice of East Florida, replacing fellow Carolinian James Moultrie, who had died.[47]

Charles Cotesworth Pinckney, eldest son of Chief Justice Charles Pinckney, also had some difficulty breaking into the profession when he began his career in 1768. Sensing his disappointment, his sister,

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[44]Records of the Vice-Admiralty Court of South Carolina (January 7, 1755), Fed. Rec. Cent.

[45]Corbett to Manigault, April 2, 1755, Manigault Family Papers, 1685-1847, SCHS.

[46]"Manigault Family," Huguenot Society of South Carolina Transactions, 1887, pp. 70-71; Manigault to ---------, July 25-October 21, 1768, Crouse, ed., "Letterbook of Peter Manigault," SCHM, LXX (1969), 177.

[47]Jones, American Members of the Inns of Court, 64-65.

Harriott Pinckney Horry, warned their younger brother, Thomas, who was still in London, to be doubly certain of his ambitions. She advised him to interrupt his studies, visit the colony and gain firsthand insight into the everyday working of courtroom practice "the want of which your Brother has found of very great disadvantage."[48] Although he handled only a small number of cases before the Revolution, Charles Cotesworth Pinckney's career as a lawyer soared in the years following the conflict with England. Pinckney and his brother-in-law, Edward Rutledge, became the leading members of the bar in the state in the 1780s, earning as much as £3,500-£4,500 sterling annually.[49]

Whether wealth actually followed from practice is difficult to determine. None of the provincial lawyers left behind fee books or any detailed records of their legal activity. The account book of John Rutledge--one of the few surviving documents of its kind for a South Carolina attorney--offers little help. Pages are badly torn, and Rutledge did not distinguish between accounts which were legal fees, bonds, promissory notes, and money borrowed from others.[50] Contemporaries, however, recognized differentiations among lawyers, both in the extent of practice and in income. In 1770 Lieutenant Governor William Bull II told Lord Hillsborough: "There are near thirty Lawyers who practice both as attornies and Counsellors, about five of six carry the chief of the

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[48]Harriott Pinckney Horry to Thomas Pinckney (undated), 1769-1770, Pinckney Papers, 1744-1859, SCHS.

[49]Zahniser, Charles Cotesworth Pinckney, 79-80.

[50]Account Book of John Rutledge, 1761-1779, SCHS.

business, and several make from one thousand to twelve hundred pounds sterling per annum."[51] The only leading lawyer for whom a salary figure is available is Robert Williams, who came from England and returned there in 1777 as a Loyalist. Williams testified before the Loyalist Commission in 1784 that his courtroom practice and counseling brought him £1,050 sterling per year (about £7,350 Carolina money). Dr. Alexander Garden, who substantiated Williams's claims, added that he earned more from his profession than any other attorney except for John Rutledge who was believed to have received between £1,600 and £2,000 sterling per year.[52]

The income of other Loyalist attorneys generally indicated their standing within the legal profession. Thomas Phepoe, who came from Ireland with Chief Justice Thomas Knox Gordon in 1771, estimated his annual income at between £900 and £1,000 sterling. Probably because of his friendship with the chief justice, Phepoe's law practice was active to begin with and remained that way for most of his nine years in the province. He participated in a total of 371 cases for a yearly average of forty-one appearances before the Court of Common Pleas. Many of Phepoe's actions resulted from his willingness to leave the confines of Charleston and ride the northern circuit with Gordon following the establishment of district tribunals in 1772. Phepoe, then, ranks favorably with the second group of lawyers such as Grindlay, Bee, John Colcock, Troup, Hugh Rutledge, and Egerton Leigh, all of whom had prosperous businesses but

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[51]Bull to Hillsborough, November 30, 1770, BPRO/SC, XXXII, 378-379. The amounts quoted by Bull would equal £7,000 to £8,400 Carolina money.

[52]Loyalist Commission, Audit Office Records, 1783-1790, LIV (1784), 41, 47, 69, 84.

distinctly below the level of Williams or John Rutledge.[53]

Leigh, Phepoe's contemporary and a fellow Loyalist, claimed a higher income (£1,000-£1,200 sterling per year). Since Leigh practiced for twice as long as Phepoe and handled fewer total cases, he undoubtedly derived a sizeable portion of his money from non-court activities. Leigh also carried on moderate practices before the equity and maritime tribunals, and his ability to acquire political offices in the province more than doubled the yearly earnings from his legal practice.[54] Like Leigh, James Simpson's largest source of income was his official positions, especially that of attorney general which he held from 1771 until he fled the colony in 1777. In ten years of practice, Simpson appeared in only 186 cases before the civil court, but he claimed that his private practice netted him £700 sterling a year which supplemented the £1,300 sterling he received yearly as emoluments of his office.[55]

James Johnston, who participated in only ninety-three cases during his seven years of practice, may have exaggerated his annual professional income when he claimed it exceeded £750 sterling. Elsewhere in his petition he admitted that in 1772 money from his legal business was not more than £350-£400 sterling but his practice "was increasing and likely to become more lucrative." Johnston's position as clerk of the crown also brought him £350 annually. This combined with his law income would have afforded him a comfortable living although not nearly at the level of

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[53]Ibid., 5-6, 17, 19-20, 31.

[54]Calhoon and Weir, "The Scandalous History of Sir Egerton Leigh," WMQ, 3rd Ser., XXVI (1969), 49.

[55]Loyalist Commission, Audit Office Records, 1783-1790, LIV, 205-207.

Leigh or Simpson.[56] John Bremar, a native Carolinian who chose to remain loyal, estimated his income from legal practice at £500 sterling per year. However, Bremar involved himself in only eighteen cases between 1768 and 1773 indicating that much of his practice was devoted to counseling and non-court related business. Phepoe and Simpson, who testified before the commission on Bremar's behalf, were probably closer to the mark in estimating his professional salary at £200-£400 sterling. Like most other Loyalist attorneys, Bremar had a second source of income. He served the province for thirteen years as deputy to the surveyor general and claimed an annual stipend from that office of £600 sterling.[57]

Generally speaking, courtroom activity alone accounted for only a portion of a lawyer's income unless, like Rutledge, Phepoe, Parsons, and a few others, he had a large number of cases per year. Attorneys' fees in South Carolina were prescribed and regulated by the Assembly, and cases seldom brought more than two or three pounds at the most. The standard guide for attorneys' fees was the statute of 1743. It was never officially approved by the Privy Council and no new law was passed; however, judges and lawyers tacitly agreed to abide by the fees set by this legislation. The list of charges numbered thirty-one in the civil court and fifteen in the equity tribunal. The highest single charges in the common law court were a retaining fee and a pleading fee, ten shilling each. The same functions cost one pound each in the Chancery Court. The lowest

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[56] Ibid., LII, 600-601, 607-608.

[57] Ibid., LVII, 450, 458, 460, 466-467.

charge was for a copy of the proceedings--six pence in each court.[58]

Occasionally, lawyers' fees were enumerated in the court records, and they indicate that the attorneys rarely received high income from court appearances and that their charges were consistent with the Assembly's laws. Charles Pinckney, for example, received only £3.18 as plaintiff's attorney in a 1741 action of debt for £227. In the same case, the judge's fee was 18 shillings, 4 pence; the clerk earned £1.1.1-1/2; and the fee for the marshall was £8.2.6.[59]

The experience of the Charleston bar demonstrates that legal charges were not always easy to collect, and several lawyers--like the famous John Adams of Massachusetts--often became their own best clients and went to court to recover delinquent fees.[60] In this respect, the attorneys were acting no differently than their contemporaries in the medical profession and mercantile business; and debtors showed no greater willingness to pay what they owed to lawyers than they did to doctors or merchants.[61] John Rutledge's account book illustrates the difficulty in collecting debts of any kind. He marked individual bad debts as "Risk,"

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[58]Easterby, ed., Journal of the Commons House of Assembly, 1742-1744, pp. 141-155.

[59]Benjamin Godin v. Daniel Daley, 1741, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

[60]Wroth and Zobel, eds., Legal Papers of John Adams, I, lxxiv; Thomas Jefferson, according to one authority, collected only about half of his legal fees during his career as a Virginia lawyer. Clement Eaton, "A Mirror of the Southern Colonial Lawyer: The Fee Books of Patrick Henry, Thomas Jefferson, and Waightstill Avery," WMQ, 3rd Ser., VII (1951), 533.

[61]For examples of doctors suing for their fees, see Philip Ayton v. George Nicholas, 1740, Patrick Tailson v. John Cordall, 1741, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

"Given Up," "Run Away," "Insolvent," or "In Georgia."[62] No fewer than eight of the colony's lawyers or their widows took clients to court to recover legal charges. Catherine Robinson, widow of attorney John Robinson, sued the executors of the will of George Crichton in 1716 for £40.17.10 in legal fees accruing from Robinson's work on their behalf from 1712 to 1714. The court found in her favor for the sum of £23.[63] Christian Grindlay, widow of James Grindlay, employed Robert Williams to recover legal fees of £55.16 which were owed to her husband by William Hull, a Craven County planter.[64] Benjamin Whitaker, Bennet Oldham, and William Blakeway sued for their fees in at least three separate cases. Money owed to Whitaker continued to pile up after his death near mid-century. William George Freeman, administrator of his estate, had to sue the executors of the estate of James Wedderburn, clerk of the civil court, for £1,056.9.1 in back fees owed to Whitaker as chief justice from 1740-1749.[65]

Even for those who practiced long and had a respectable share of the business, there were disappointments and losses of income. Henry Wigington, one of the first lawyers in the province, left Carolina shortly

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[62] Account Book of John Rutledge, SCHS.

[63] Robinson v. Executors of Crichton, 1716, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH. The eight were Robinson, James Grindley, Benjamin Whitaker, William Blakeway, Robert Hume, John Rattray, Bennet Oldham, and John Nevin.

[64] Executrix of Grindlay v. Hull, 1767, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

[65] The fees were owed by several attorneys who were indebted for taking out writs and other official papers which they had to purchase from the clerk of the court. Executor of Whitaker v. Executors of Wedderburn, 1757, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

before the end of proprietary rule and returned to England. Wigington had practiced for more than a decade and participated in 158 cases. Yet, his will in 1722 indicated that he had little to show for his years of hard work in America. Leaving all that he owned to his daughter, Sophia, and her husband, Robert Hume, Wigington said he hoped it would be sufficient "for I have had considerable losses, all not known to any but myself."[66] Others such as David Graeme made bad choices in legal business and suffered financially. Graeme's actions were described by Peter Manigault, who told his father that Graeme was returning to the colony without being able to conclude his business in London. Manigault wrote:

> He is much to be pitied, as he left no inconsiderable Share of Business, to prosecute a Suit which he could not obtain: and has spent a good deal of Money, without the least Prospect of any advantage from it.[67]

Even lawyers of the calibre of John Rutledge were unable to avoid financial difficulties. Rutledge's eldest son and namesake had to borrow money to pay his father's debts and transact business at his saw mill. After the deaths of John and Edward Rutledge, Hugh Rutledge was pressed by a London mercantile firm for payment of expenses incurred during the Rutledges' education in England.[68]

The legal profession which emerged in South Carolina in the eighteenth century remained an important part of the province's life

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[66] "South Carolina Gleanings in England," SCHGM, V (1904), 163-164.

[67] Peter Manigault to Gabriel Manigault, May/June, 1753, Mabel Webber, ed., "Peter Manigault's Letters," SCHGM, XXXII (1931), 177, 177n.

[68] John Rutledge, Jr., to Henry Laurens, September 3, 1795, John Rutledge, Jr., to Robert Smith, November 28, 1798, John Rutledge, Jr., Papers, So. Hist. Coll. Hugh Rutledge v. Greenwood and Higginson, Charleston Equity Bills, Number 60, 1801, SCDAH.

throughout the colonial period in spite of the initial prohibition against trained lawyers. The emergence of the profession by the 1690s coincides with the rise of the Commons House of Assembly as the primary political unit in the colony and the loss of control over the common law courts by the governor and Council.

In 1703 when records of the Court of Common Pleas begin, only two men--George Evans and Wigington--were practicing law. By the time the proprietorship fell in 1719, sixteen attorneys had been admitted before the civil court. By mid-century, forty-four had practiced. More striking, however, is the fact that by 1750 the pattern of legal practice had been established. Before mid-century only a handful of men participated in more than half of all civil actions; one-third of the profession handled the largest number of cases and practiced for the longest number of years; two-thirds of the practicing bar appeared in only a small number of cases and practiced for only a brief period of time.

The rapid growth of the profession after 1750 did not alter this trend at all but merely affirmed the paradoxical nature of the Charleston bar. On the one hand, as the preceding chapters on education suggest, educational requirements were flexible enough to make the profession open to a number of aspirants, both immigrants and natives of the province, the locally trained and the European educated. On the other hand, professional success was severely restricted, and many lawyers had to settle for respectable but moderate practices or seek their fortunes in some other calling. In this profession, as in Carolina society, education and family connections proved unquestionably useful for some gentlemen, but there are enough exceptions to suggest that these were not major factors in shaping

an attorney's career. What probably accounted as much as education and training for success at the bar was the lawyer's competence and persistence in a society that judged men more on how well they performed than on how much they knew. The top six lawyers after 1750 reflect this standard; and the diversity of their educational background attests to the premise that training and social rank counted for less than hard work and drive.[69] Of the six, two had come to the colony with apprenticeships abroad, two had been trained exclusively in the province, and two had combined local clerkships with schooling at the Inns of Court.

Yet, lawyers of both moderate and extensive practices had earned some respect from most of the Charleston community. Long before 1750 the stigma attached to the profession in the Fundamental Constitutions had been partially removed and the bar at least grudgingly accepted, so that Andrew Rutledge was identified in 1732 as "a lawyer of very good repute in this place," and Governor James Glen twenty years later could recommend David Graeme for a colonial office as "a young Gentleman of great expectation in this part of the world, of known zeal for his Majesty's Service, and who had practiced at the Bar for some Years, whose regular education and application to business render him very capable to discharge these trusts."[70]

In courtroom appearances lawyers were occasionally applauded for their exhortations before the bar, and in some special cases colonists

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[69]On this theme, see Boorstin, The Americans, 188.

[70]Robert Johnson to Peter Leheup, October 29, 1732, Robert Johnson Manuscripts, June-November, 1732, SCL; Graeme was recommended for the position of clerk of the common law courts. James Glen to Lords of Trade, July 27, 1752, BPRO/SC, XXV, 67.

packed the galleries to witness the proceedings. One such notable case was the trial of Dr. John Haly, physician, for murder in the slaying of Peter DeLancey. DeLancey had come to Charleston in 1766 from New York where he had been on the wrong side politically of the Stamp Act controversy. Educated at King's College and the College of Pennsylvania and trained in the law at Lincoln's Inn (1762), DeLancey returned to New York as a stamp collector but apparently never practiced law there.[71]

After the crisis over stamped paper he moved south where he was appointed Postmaster General for the Southern District of North America and married the daughter of Richard Beresford, one of the leading planters in the province. On August 15, 1771, DeLancey was killed in a duel by Haly in Holliday's Tavern. Following a spontaneous argument between the two, both men went to the second floor of the building and fired at each other in a dark room. DeLancey fired first and missed; Haly returned the shots more accurately, lodging a pistol ball in the New Yorker's left side. A coroner's jury decided the next day that the doctor had feloniously killed DeLancey, and Haly later surrendered himself to stand trial. The proceedings began at eight in the morning on the first Saturday in November "before the most crowded Audience that ever assembled there upon any Occasion," and ended later that evening. The four attorneys defending Haly persuaded the jury to return a much less severe verdict of manslaughter (no malice aforethought) instead of murder. The printer of the Gazette had only praise for the four lawyers--James Parsons, Charles

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[71]For DeLancey's education and early career, see Hamlin, Legal Education in Colonial New York, 20, 27n, 30n.

Cotesworth Pinckney, Thomas Heyward, and Alexander Harvey--"the three last Natives of this Province, and lately from the Temple, who acquired no small Degree of Applause by their Pleading upon this Occasion."[72]

Members of the bar were also closely scrutinized by visitors to the city of Charleston--an indication of their standing in the community. While Timothy Ford had been critical of the profession, others such as Francisco de Miranda from South America, were more generous. Of Thomas Heyward, Miranda concluded: "Austerity of habits and manner, just ideas, and unalterable fortitude comprise the principal part of his character." Of Edward Rutledge, Charles Cotesworth Pinckney, Alexander Moultrie, and Thomas Pinckney, he wrote:

> The first possesses an average knowledge of the law and brilliant facile exposition, together with a very pleasant manner and a commendable person. The second is a man of good judgment, profound knowledge in his profession and force in his argument; his eloquence, however, is neither as brilliant nor as sonorous as that of the first. Moultrie has firmness, judgment and a very good elocution. The last is finished in nothing as yet, though many think him a prodigy in everything. He has received a good education in Europe, is still young, and gives very good hopes, without his progress showing as yet anything out of the ordinary.[73]

The younger Pinckney, a Greek scholar and student of military science in Caen, France, redeemed himself and received praise from his cousin, Charles Pinckney II, who observed some of his appearances before the bar. Although he believed Thomas was too modest a speaker he thought this deficiency could be improved in a short time. Otherwise, he reported

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[72] S.C. Gaz., November 17, 1766; October 4, 1770; August 22, October 10, November 7, 1771.

[73] Ezell, ed., The New Democracy in America: Travels of Francisco de Miranda in the United States, 31-32; Barnwell, ed., "Diary of Timothy Ford," SCHGM, XIII (1912), 199.

to his wife that Thomas "acquitted himself extraordinarily well, with great calmness and good sense, not at all confused or fluttered."[74]

The attention given to lawyers during this period was more than merely passing interest. It was an indication that the legal profession and the men who guided it had long been accepted by Carolina society and had firmly established themselves as one of its most important elements. In little more than a century the Charleston bar had emerged and matured, and in the years immediately preceding the revolutionary crisis with the mother country, it moved from the community's periphery to nearer its center.

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[74]Reverend Charles Cotesworth Pinckney, Life of General Thomas Pinckney (Boston, 1895), 23-25.

CHAPTER VIII

LAWYERS AND THEIR SOCIETY

> I have been a Jack of All Trades in this Country--Lawyer, Judge, Anti-Courtier, Assembly Man itorum itorung, Country Justice, Country Planter.[1]

In the quarter-century preceding the outbreak of the American Revolution, the legal profession in most of the colonies came of age. Lawyers not only overcame the anti-professional prejudice of earlier times, but they had also achieved a position of social and economic prominence. In politics they shared prestige with merchants and planters without displacing those two groups.[2] By the eve of the break with the mother country, colonial attorneys were at the top of the professional class in America in terms of income and the value of their estates. Although they constituted fewer than one percent of those gainfully employed, they comprised more than two-thirds of the professional class in leadership positions, clearly outdistancing physicians, ministers, and teachers. In South Carolina lawyers generally fell into this pre-revolutionary social pattern. While few were numbered among the province's elite which had emerged by 1740, social mobility was high enough and law practice lucrative enough to enable members of the bar to join the ranks of the local

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[1] Attorney William Trewin, Joshua Sharpe Collection, 1736-1806, SCL.

[2] Maxwell Bloomfield, American Lawyers in a Changing Society, 1760-1870 (Cambridge, Mass., 1976), 33; Warren, History of the American Bar, 4; Chroust, Rise of the Legal Profession in America, I, 330; McCrady, History of South Carolina under the Royal Government, 477; for individual colonial bars, see Murrin, "The Legal Transformation," Katz, ed., Colonial America, 429; Klein, "The Rise of the New York Bar: The Legal Career of William Livingston," WMQ, 3rd Ser., XV (1958), 334.

elite in the last years of the colonial era.[3]

But what exactly was the legal profession in eighteenth century America, and who were its members? Earlier studies of the American bar, unfortunately, provide little guidance. Charles Warren's History of the American Bar (1911) and Anton Hermann-Chroust's more recent work, The Rise of the Legal Profession in America (1965), are useful but are of more value to the professional attorney than to the professional historian. Local histories such as John Belton O'Neall's two-volume Bench and Bar of South Carolina (1859) and Joseph I. Waring's A History of Medicine in South Carolina, 1670-1825 (1963) contain good biographical sketches of the more prominent figures in each profession, but pay little attention to the qualifications for professional growth among lawyers and doctors. Daniel J. Boorstin's classic study of colonial America offers some interpretation of the role of the professions in eighteenth century society, but few historians have emulated Boorstin's general descriptions by specialized studies. Sociologists, in fact, are undoubtedly ahead of historians in analyzing the impact of the professions on American life. Some, such as Everett C. Hughes, have devoted their scholarly careers to the study of professional lives, and Dietrich Rueschemeyer of Harvard is among the pioneers in examining the preconditions necessary for the development of the bar in America and other countries. Yet, most

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[3]For analyses of American society on the eve of the Revolution, see Main, The Social Structure of Revolutionary America, 275; James Kirby Martin, Men in Rebellion: Higher Government Leaders and the Coming of the American Revolution (New Brunswick, N.J., 1973), 66. An analysis of the elite in colonial South Carolina has been ably presented in Richard Waterhouse, "South Carolina's Colonial Elite: A Study in the Social Structure and Political Culture of a Southern Colony, 1670-1760" (Ph.D. Diss., The Johns Hopkins University, 1973), 192.

sociological studies of the professions focus on the modern lawyer, doctor, minister, and teacher and not on their colonial ancestors.[4]

On the other hand, five recent studies of colonial legal professions offer encouragement that our knowledge of early American lawyers as a professional class can be better understood by analyzing some common characteristics, such as wealth, education, professional associations, and political influence. Still, these five valuable works examine only three of the thirteen colonial bars, and we are probably years away from a new synthesis of the entire colonial legal profession.[5]

Studying the lawyers of the pre-Revolutionary years, one is struck first of all by the rich diversity of the profession. Certainly it is difficult to discuss the early bar in monolithic terms. Like the clergy, the medical profession, and the merchant class, attorneys had differing aims, incomes, professional attachments, levels of competition, and interests. The range of men who called themselves lawyers at one time or another varied as widely as those who called themselves merchants but were in fact traders, shopkeepers, victuallers, and innkeepers as well as wealthy importers.[6]

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[4]Everett C. Hughes, Men and Their Work (Glencoe, 1958); Kenneth S. Lynn, ed., The Professions in America (Boston, 1965), ix-x. Rueschemeyer, Lawyers and Their Society, 3-27; Elliott A. Krause, The Sociology of Occupations (Boston, 1971), 147-150.

[5]Gawalt, "Massachusetts Lawyers"; McKirdy, "Lawyers in Crisis"; Murrin, "Anglicizing an American Colony"; Smith, "Virginia Lawyers"; Day, "Lawyers in Colonial Maryland," AJLH, XVII (1973), 145-165; Boorstin, The Americans, 185-205.

[6]Gawalt, "Massachusetts Lawyers," 188; Main, Social Structure of Revolutionary America, 85-89; see also Jacob M. Price's comments on Land, "Economic Base and Social Structure," Jl. Econ. Hist., XXV (1965), 655-656, which illustrate the elusiveness of the title of merchant in colonial America. Clowse, Economic Beginnings in Colonial South Carolina, 153-155, discusses the different categories among merchants in the early eighteenth century.

Other parts of this study have identified the diversity of the South Carolina lawyers in their educational backgrounds and the extent of their legal practice.[7] An analysis of lawyers as a professional social class extends this pattern further. Diversity characterizes the occupations, family backgrounds, marital ties, wealth, and political and community involvement of the profession. Nevertheless, there are enough common characteristics to support the generalization that by the eve of the Revolution lawyers in colonial South Carolina belonged to a healthy, stable profession which was clearly in a position to vie with planters and merchants for political, social, and economic leadership of the province. In fact, it was the lawyers--as much as the other two groups--who took the lead in bringing to a head the conflict with Britain.

Few of the 166 lawyers in provincial South Carolina identified themselves as such. Studies focusing on wealth distribution, elites, and the political contributions of the colony's social classes have turned up only a small number of men in the state's probate records who called themselves lawyers. Conversely, there appears to have been a disproportionately large number of planters and a somewhat smaller number of merchants, suggesting that many of the men who at one time or another practiced law or obtained a legal education were better known in other occupations.[8]

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[7]For education of the South Carolina bar, see Chapters V and VI; for legal practice, see the preceding chapter.

[8]William George Bentley, "Wealth Distribution in Colonial South Carolina, 1721-1762" (Ph.D. diss., Georgia State University, 1977), 163; Waterhouse, "South Carolina's Colonial Elite," 161; Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 5. Bentley found only two lawyers among the probate records, and Waterhouse discovered only

This is not surprising; the availability of land and the expansion of the provincial economy encouraged men seeking their fortunes to move from one occupation to another or to engage in more than one at the same time. This was true in other colonies as well. In Maryland, for example, planters, merchants, clergymen, and other laymen constituted that colony's first attorneys, as the developing economy and anti-lawyer sentiment encouraged private citizens to handle their own legal business prior to the arrival of professionals around 1720.[9] The use of attorneys-in-fact (non-professionals representing others) during the first thirty years of South Carolina's history suggests that it might have followed the pattern set by Maryland.[10]

Lawyers' involvement in other occupations was widespread, especially in the first half of the eighteenth century. Some of the better educated Carolina attorneys--like their Puritan counterparts in Massachusetts--shunned practice altogether in favor of planting or government service.[11] William Wragg, the first native Carolinian to receive an English education (Westminster, Oxford, and the Middle Temple) practiced law in England but

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three whose estates were valued at more than £1,000 sterling, therefore qualifying for the colony's elite. Edgar and Bailey are probably closer to the mark in identifying twenty lawyers who were members of the Commons House of Assembly. The other nineteen who at one time or another served in the House are no doubt included in their findings of sixty-one members who combined their legal occupations with planting and two who combined them with trade.

[9] Land, "Economic Base and Social Structure: The Northern Chesapeake," Jl. Econ. Hist., XXV (1965), 651; Day, "Lawyers in Colonial Maryland," AJLH, XVII (1973), 145-150.

[10] Salley, ed., Journals of the Grand Council of South Carolina, 1671-1680, pp. 80-81.

[11] Murrin, "The Legal Transformation," Katz, ed., Colonial America, 420.

after returning to America settled for the life of a planter and politician. Arthur Middleton and Thomas Lynch, Jr., signers of the Declaration of Independence, also became planters despite their legal training at the Middle Temple.[12]

Stephen Bull, Abel Ketelby, and Nicholas Trott were three lawyers who came to the New World to hold administrative and judicial positions with the proprietary government. Bull, an apprentice-trained attorney in England, was among the first settlers of the province. He was a deputy for Lord Ashley and other proprietors, which entitled him to a seat on the Grand Council. He also acquired other offices such as judge for Berkeley County (1693), Surveyor General (1685), and judge of the proprietary Vice-Admiralty Court (1695).[13] Ketelby, one of the Landgraves of the province, received about 5,000 acres of land in 1708-1709 from the proprietors and served as their legal adviser and as agent of the provincial assembly. In 1712 he was appointed agent in the hope that he could persuade Parliament to continue the bounty on naval stores and obtain permission for South Carolinians to export rice and naval stores directly to Southern Europe, Africa, and the West Indies.[14] Trott, the best known jurist of all, came to Charleston as naval officer and attorney general, and within a decade held a clear monopoly of judicial authority

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[12]Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 456-457, 731-733; Jones, American Members of the Inns of Court, 139-140.

[13]Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 115-116.

[14]Henry A. M. Smith, "Baronies of South Carolina," SCHGM, XV (1914), 149-152.

in the colony, serving as a councilor (Chancery Court), judge of the Vice-Admiralty Court, and chief justice of the two common law courts. Like Bull and Ketelby, Trott was brought to the province to serve the interests of the proprietorship in England.[15] Lawyers who were commissioned to serve the needs of the royal authorities after 1730 included two governors, James Glen and William Henry Lyttleton, and four chief justices, Robert Wright, Peter Leigh, Charles Shinner, and Thomas Knox Gordon. None practiced law in South Carolina.

Other men trained in the law and practicing in Charleston supplemented their income by other activities or simply changed occupations. Thomas Kimberley, who came to the province in 1724 hoping to be named chief justice, practiced for a brief time and served as attorney general. In his will, however, he was identified as a merchant and chairmaker.[16] William Blakeway, Thomas Hepworth, James Michie, and William Trewin--all prominent attorneys and judges--were also merchants.[17]

Planting was an even greater attraction than commerce. Lawyers such as Thomas Clifford and Archibald Hamilton, who practiced briefly in the turbulent 1720s, abandoned their prospects of a legal career to cultivate their plantations. Land ownership records, however, indicate that

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[15] Sirmans, Colonial South Carolina, 105-107.

[16] Caroline T. Moore, ed., Abstracts of Wills of the State of South Carolina, 1670-1740 (Columbia, S.C., 1960), 236; Jones, American Members of the Inns of Court, 116.

[17] Blakeway and Wragg v. Tookes, 1719, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH; Waterhouse, "South Carolina's Colonial Elite," 305; Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 680-681.

even many full-time professional lawyers owned sizeable portions of land; they could use their numerous legal contacts to gain knowledge of land sales and possibly engage in land speculation. Charles Pinckney and Peter Manigault were lawyers with extensive land holdings, and their plantations no doubt brought in more than their professional practice in the local courts.[18]

Planting and mercantile trade were not the only secondary lines of work in which attorneys participated. Blakeway, a merchant-lawyer, and Henry Wigington engaged in the Indian trade. Wigington was once cited for employing unlicensed traders, but he escaped without penalty and was later appointed a commissioner of the Indian trade.[19] James Graeme's scheme was more creative. In 1743 he joined a group of merchants to form a company to mine silver in the Carolina backcountry. The firm consisted of about forty persons who distributed among themselves seventy shares of the company's stock worth £500 in Carolina money. When their secret dealings were discovered by the Assembly, some members of that body feared the mine could have a negative impact on the agricultural development of the province and might also antagonize the Indians on the frontier. The company soon abandoned its scheme when it became obvious that the costs of operating a mine outweighed the slim possibility of striking it rich.[20]

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[18]Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 155-156.

[19]Ibid., 83; Philip M. Brown, "Early Indian Trade in the Development of South Carolina: Politics, Economics, and Social Mobility During the Proprietary Period, 1670-1719," SCHM, LXXVI (1975), 126.

[20]Stuart O. Stumpf, "Implications of King George's War for the Charleston Mercantile Community," SCHM, LXXVII (1976), 174-175.

At least three lawyers operated private schools. Thomas Corbett taught before changing his profession to the law. His most noteworthy pupil in Charleston was young Peter Manigault, whom he accompanied to London in 1749 and sponsored while Manigault studied law at the Inner Temple.[21] Archibald Hamilton, who had a modest practice in the 1720s and later became a full-time planter, offered to teach "the three R's" plus a variety of mathematics courses, Italian Bookkeeping, and grammar.[22] Bennet Oldham, who emigrated from England and possessed one of the few law libraries in the colony, proposed in 1762 to open a boarding school on Ashley Ferry where he would teach reading, writing, arithmetic, mathematics, geography, history, and Latin "as taught in the great Schools in England." Oldham also promised parents he would not neglect the moral upbringing of the children in his charge.[23]

Although Manigault later abandoned his law practice in disgust--if not despair--he kept his legal talents and training alive by acting as an attorney-in-fact for wealthy merchants and planters like Ralph Izard, who had to spend much of his time travelling between the colony and the mother country and employed Manigault to manage his estate. The English-trained barrister also represented the interests of British merchants Sarah Nicholson and Isaac King. Manigault was so successful at his new enterprise that he could hire another Charleston attorney to appear in court in two suits brought by these English merchants against the Carolina

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[21]Crouse, "Manigault Family," 111-112.

[22]S.C. Gaz., February 19, 1737.

[23]Ibid., October 9, 1762.

tradesman, Richard Park Stobo, for £7,000 sterling. Manigault was also an administrator for the estates of Samuel Peronneau, Daniel Huger, and Daniel and William Blake; and he sold land for others. Like many English attorneys of his day, he also supplemented his various sources of income by loaning money at interest.[24]

It is impossible to know exactly how many lawyers participated in other occupations, but a favorable economy and the availability of land--especially before 1750---no doubt made the proportion of those with more than one source of income high. Despite the fact that something of an aristocracy existed in the province and might have worked to limit upward mobility, professional men in colonial America possessed a good deal of what Daniel Boorstin calls "fluidity." In this era the professions were loosely organized. While planters, merchants, and others might have become lawyers to protect their interests in court, the gentlemen of the bar also underwent a diffusion of roles either engaging in multiple occupations or moving easily from one to another.[25]

Many professional men shared attorney William Trewin's sentiment when he said:

> I have been a Jack of All Trades in this Country--Lawyer, Judge, Anti-Courtier, Assembly Man itorum itorung, Country Justice, Country Planter. The last Trade had like to have demolished me quite. About two years ago I quitted the

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[24]Manigault hired John Dart to represent him in these suits. Stobo employed John Rutledge. Manigault v. Stobo, 1773, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH; Crouse, "Manigault Family," 370-371; S.C. Gaz., August 25, December 1, 1758, December 30, 1760; January 7, 1764; S.C. Gaz. & C. Jl., November 8, 1768; Peter Manigault to Ralph Izard, October 20, 1763, Crouse, ed., "The Letterbook of Peter Manigault, 1763-1773," SCHM, LXX (1969), 80-82.

[25]Boorstin, The Americans, 185-202.

> publick the better to follow my Own Business as an Attorney and soon after I received a commission to be Judge of the Vice-Admiralty which office I have held ever since.[26]

Family background and marital ties provide another index of the diversity of the Carolina bar and its social standing within the community. Most of this knowledge is confined to native sons of the province. As in provincial Massachusetts, the law became a respectable career after the middle of the century, and prominent, established families encouraged their sons to join the ranks of the bar even when it involved an expensive education in the mother country.[27]

Little evidence is available for most of the lawyers who emigrated to Charleston from England, Scotland, Ireland, and the West Indies before 1750. Some of these men, such as William Henry Lyttleton and James Wright, came from illustrious and well-to-do families. Lyttleton's father held a minor nobility at Frankley--a position which aided Lyttleton in serving as a member of Parliament and securing for him governorships in South Carolina and Jamaica, and an ambassadorship to Portugal. Wright, like Egerton Leigh two decades later, came over when his father was commissioned chief justice of the colony. By contrast, Andrew Rutledge, who arrived in America in 1733 and with his physician brother John Rutledge helped to build a political dynasty, was the son of an Irish tavernkeeper.[28]

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[26]Joshua Sharpe Collection, 1736-1806, SCL.

[27]Murrin, "Legal Transformation," 431-432.

[28]James McMullen Rigg, "William Henry Lyttleton," Stephen and Lee, eds., Dictionary of National Biography, XII, 378; Carlyle, "James Wright," ibid., XXI, 1022-1023; Barry, Mr. Rutledge of South Carolina, 1-2; Bellot, "The Leighs in South Carolina," Transactions of the Royal Hist. Soc., 5th Ser., VI (1956), 175.

The parental backgrounds of fifty-nine of the sixty-eight native Carolinians can be ascertained. While this number comprises only a little more than one-third (37 percent) of the entire profession, it is close to nine-tenths (87 percent) of the Carolina-born members of the bar. Few of these men could trace their heritage to the earliest provincial elite which one authority contends was firmly entrenched by the dawn of the eighteenth century.[29] This was because of the ban on lawyers which was expressed in the Fundamental Constitutions and remained in force--although unofficially--until the early 1700s. The emergence of a bar during the next half century was made possible largely by men with legal training abroad who emigrated to Charleston to unfold their careers. The legal training provided to natives Charles Pinckney, William Wragg, and Robert Johnston proved to be exceptions to the rule. Only Richard Beresford (Middle Temple--1773) and William Drayton (Middle Temple--1755) could trace their ancestry to the original elite in the colony. Beresford's maternal great-grandfather was Robert Daniell, a landgrave and one of the early assistant justices of the Court of Common Pleas. Drayton's maternal grandfather was Stephen Bull.[30]

Among the native Carolina lawyers, most of whom appeared in the profession after 1750, more than half (56 percent) came from the merchant and planter classes. Slightly more than one-fifth (22 percent) were sons of professional men--physicians, lawyers, and ministers. Only two

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[29]Waterhouse, "South Carolina's Colonial Elite," 192.

[30]Beresford's maternal grandfather was the lawyer-merchant and Vice-Admiralty Court Judge, William Blakeway. Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 78-79, 83, 205-206.

attorneys came from artisan backgrounds, and the fathers of four were government officials. Table XVIII on the following page provides the full breakdown.[31]

How much influence merchant, planter, and professional fathers exerted on their sons is open to question. The three lawyer sons of Dr. John Rutledge, for example, were less influenced by their father than by others. The doctor died in 1750 when his oldest son and namesake was only eleven. Young Rutledge's choice of the law as a profession came from the gentle prodding of his uncle Andrew who introduced him to legal works through an apprenticeship and as House Speaker in the 1750s kindled his interest in provincial politics. Returning from the Middle Temple and his "call to the bar" in 1761, John Rutledge--now the titular head of the family--unquestionably played a significant part in shaping the careers of his younger brothers Hugh and Edward.[32] Andrew Rutledge and Thomas Corbett also figured heavily in Peter Manigault's decision to study law. A long-time and faithful friend of the Manigault family, Rutledge held high expectations for Peter when he embarked on his legal career in 1750. Corbett, Peter's tutor and mentor, continued to encourage his legal studies and acted as Manigault's father-figure while he attended readings in law at the Inner Temple.[33] At the same time, the planter backgrounds of

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[31]Information concerning the parentage of the lawyers was gathered primarily from Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, and Jones, American Members of the Inns of Court.

[32]Barry, Mr. Rutledge of South Carolina, 12-14.

[33]Andrew Rutledge to Peter Manigault, December 16, 1750, Manigault Family Papers, SCL; Crouse, "Manigault Family," 111, 120.

TABLE XVIII

PARENTAL TIES OF NATIVE CAROLINA LAWYERS, 1703-1780

Occupation of Father	Number of Native Lawyers	Percentage of Native Lawyers
Planters	18	27
Merchants	20	29
Lawyers	5	7
Doctors	8	12
Ministers	2	3
Government Officials	4	6
Artisans	2	3
Unknown	9	13
Totals	68	100

lawyers such as William Wragg, Rawlins Lowndes, and Thomas Lynch, Jr., may have contributed to the early retirement of these three men from the law and into the planter aristocracy where they would probably find their knowledge of the law from time to time useful but not really necessary.[34]

The marital ties of the colony's lawyers further illustrate the close kinship with the merchants and planters. The marriages of only a little more than one-third (37 percent) of the profession can be determined. From the evidence available, however, it is clear that a majority of the provincial attorneys married into their own classes. Most (55 percent) married the daughters of planters and merchants. Only one-tenth married daughters or widows of other lawyers. The occupation of more than one-quarter of the fathers-in-law cannot be determined.[35] These marriage connections indicate that lawyers were part of the most respectable ranks of society. In colonial South Carolina, marriage was the cement of the provincial elite and was as important by the middle of the eighteenth century as it had been during the first thirty years of the colony's life. Wealthy and older families were cautious about who their children married. Families encouraged their offspring to marry into families who were at least their social and economic peers--a custom that yielded some noteworthy examples of inbreeding and the control of the provincial Council by only a few families, most notably the Bull family of Ashley Hall.[36]

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[34]Baker-Crothers, "Rawlins Lowndes," Malone and Johnson, eds., D.A.B., XI, 472; Jones, American Members of the Inns of Court, 139-140, 220-211.

[35]Most of this information was gathered from Jones, American Members of the Inns of Court; Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II; and the South Carolina Gazette.

[36]Rogers, Charleston in the Age of the Pinckneys, 23; M. Eugene Sirmans, "Politicians and Planters: The Bull Family of Colonial South

In the quarter-century preceding the American Revolution, lawyers could marry the daughters of well-known and well-to-do merchants and planters because they came increasingly to exist on equal terms with them economically and socially. Thus, the law provided the means for horizontal but little vertical social mobility. The Rutledges and Pinckneys married daughters of planter Henry Middleton and merchants Frederick Grimke, Thomas Smith (1720-1790), and Jacob Motte, Jr.; Thomas Lynch, Jr., and William Heyward married into the family of merchant Thomas Shubrick; Peter Manigault and John Mathews connected their names to the planter-elite Wragg family.

Prior to mid-century opportunity played a major part in the accumulation of a fortune, and the Rutledge name in South Carolina achieved prominence this way. Andrew Rutledge came to the colony in the early 1730s and with the aid of Nicholas Trott accepted a land grant and began practicing law in Charleston. Rutledge cultivated the friendship of the elderly and wealthy Colonel Hugh Hext, whom he had represented in court, and his young wife, Sarah Boone Hext. The Colonel died in 1732, and the lawyer married his widow the following year. He quickly learned, however, that Hext's will left the estate to his wife only during her lifetime. After her death it was to pass to the couple's daughter, Sarah Hext, who was only nine years old when her mother married Rutledge. Andrew persuaded his younger brother, Dr. John Rutledge, who was employed in the East India merchant service as a ship's surgeon, to join him in South Carolina; and he successfully engineered the marriage of young Sarah to

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Carolina," South Carolina Historical Society Proceedings, 1962, pp. 36-37.

the physician on Christmas Day, 1738. A year later at the age of fifteen, she gave birth to John Rutledge; and Colonel Hugh Hext's vast estate had been carefully transferred to Rutledge hands.[37]

Not every family attained prominence by expropriating an heiress's fortune as did the first Rutledge. Nevertheless, lawyers married well. James Parsons, only three years after emigrating from Ireland, married Susannah Miles, whom the Gazette described as "a handsome young lady, with a genteel Fortune and other accomplishments." Anne Mathews, the wife of Attorney General David Graeme, was identified as "an Heiress of great Fortune and fine accomplishments."[38]

All of Dr. John Rutledge's lawyer sons married well, but the most significant union was Edward Rutledge's bethrothal to Henrietta Middleton, daughter of the wealthy planter Henry Middleton and brother of fellow attorney Arthur Middleton. This relationship was enhanced by Charles Cotesworth Pinckney's marriage to Middleton's other daughter, Sarah, thus binding the Middleton, Pinckney, and Rutledge families. This bond and Edward Rutledge's second marriage to Mary Shubrick in 1792 eventually linked fifteen of the province's pre-Revolutionary attorneys, including all four of the state's signers of the Declaration of Independence and three of the state's five signers of the federal Constitution. The arrival of the lawyers in Charleston society was complete.[39]

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[37]Barry, Mr. Rutledge of South Carolina, 1-7.

[38]S.C. Gaz., June 4, 1753, January 27, 1759.

[39]Hugh Rutledge married Ann Smith, daughter of Thomas Smith and sister of Benjamin Smith (Middle Temple, 1774), who later moved to North Carolina; Sarah Rutledge (sister of John, Hugh, and Edward) married John Mathews (Middle Temple, 1764) whose sister Elizabeth had wed Thomas

The wealth of lawyers represents yet another aspect of their social status and can be determined in part by an examination of inventories of estate. Inventories exist for the estates of about one-sixth of the colonial bar, and while an analysis of these records attests to the diversity of the profession, they tell much more.[40] Only a few of the twenty-six lawyers whose estates were inventoried would fill the highest categories of the model of wealth in pre-Revolutionary America established by James Kirby Martin. Those listed as wealthy possessed estates worth more than £5,000 sterling; those who were well-to-do, £2,000 to £5,000; the estates of average citizens were worth £200 to £2,000; and those whose possessions were below £200 sterling were considered below average in wealth.[41] Using this model as a guide, the inventories show that a small

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Heyward (Middle Temple, 1765), John Rutledge's daughter married Francis Kinloch (Lincoln's Inn, 1774). Among the Pinckney family, Harriott married planter Daniel Horry (Inner Temple, 1758), and Thomas Pinckney (Middle Temple, 1768) married Frances Motte, daughter of merchant Jacob Motte, Jr. Edward Rutledge's second marriage to Mary Shubrick connected the family to four other lawyers--Thomas Shubrick, Jr. (Middle Temple, 1773), Richard Shubrick (Middle Temple, 1768), who was killed in the Revolution, and Thomas Lynch, Jr., who married Betsy Shubrick; it also made the tie closer between the Rutledges and the Heywards because William (brother of Thomas Heyward) married Hannah Shubrick, sister of Edward Rutledge's second wife. Edward Rutledge, Arthur Middleton, Thomas Heyward, and Thomas Lynch, Jr., signed the Declaration of Independence. John Rutledge, Charles Cotesworth Pinckney, and Charles Pinckney III (a second cousin of Charles Cotesworth and Thomas Pinckney) signed the Constitution.

[40] Provincial law did not require inventories of estate until the Act of 1712 which incorporated selected English statutes into the South Carolina legal structure. Subsequent acts were designed to make certain that executors and administrators performed their duties according to the law. Cooper and McCord, eds., Statutes of South Carolina, II, 523-525, III, 666-668.

[41] Martin, Men in Rebellion, 75-77, 85. In South Carolina, the ratio of local currency to sterling was seven to one, i.e., £7,000 Carolina money was equal to only £1,000 sterling.

but important number of attorneys were among the colony's wealthy elite. The vast majority, on the other hand, may have lived comfortably but occupied a more modest position on the social scale.

While inventories exist for only a small portion of the legal profession, they reveal that the wealthy lawyers in the provincial society near the time of the Revolution were the economic rivals of the merchant and planter classes. The estates of four of the five wealthiest lawyers, for example, were inventoried or otherwise appraised after 1770, and all of these were worth more than £10,000 sterling.[42]

These wealthy lawyers, like their merchant and physician counterparts, did not confine themselves to one source of income but were planters and slaveowners as well. The richest attorney, James Parsons, was also one of the most successful in his business, and when he died in 1779 he left no fewer than eight plantations and a dwelling house in Charleston worth £1,801,331.10 Carolina money.[43] Robert Williams, another successful practitioner, claimed a total estate worth £184,681.2.6 (£26,383.0.6 sterling) before the Loyalist Commission in 1784. This

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[42]This finding verifies the point made in Richard Waterhouse's study of elites in colonial South Carolina that during the eighteenth century all economic classes improved their positions; while planters and tradesmen grew modestly wealthier, the large planters, merchants, and some professionals became richer more rapidly. Waterhouse, "South Carolina's Colonial Elite," 176-177.

[43]Ibid., 165; Inventories of Estate, BB, 190-200, SCDAH. Parsons's inventory, taken at the height of the war with Britain, may have been inflated since the figures appear to be extraordinarily high. However, his holdings were considerable and consisted of five plantations in St. Bartholomew's Parish, two in St. Paul's, and one in the backcountry in the district of Ninety-Six. For a biographical sketch of Parsons, see Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 508-509.

included three houses in Charleston, sixty acres in Beaufort, a plantation on Charleston Neck which served as headquarters for General Henry Clinton during the British occupation of Charleston, and debts owed to Williams from bonds and notes.[44]

Peter Manigault, who retained his title of "Barrister at Law" long after he ceased to practice, left an estate worth £105,061.15.6 which included four plantations and some 31,823 acres of land. Although he had a fortune independent from his merchant father, Gabriel Manigault, Peter borrowed much of his wealth from him.[45] John MacKenzie, the only non-practicing lawyer of this group, died in 1771, leaving an estate worth £78,532.10 Carolina money. MacKenzie, a member of the Commons House who sided with the colonial cause during the controversy over the Townshend duties, owned three plantations and an estate in Charleston. These lawyers joined the top thirty planters and merchants in Carolina society whose estates exceeded £10,000 sterling.[46]

These four lawyers compare favorably with the wealthy classes from other colonies whose property was greater than £5,000 sterling. It was this group, Martin has suggested, which comprised more than one-half of the colonial executive leadership at the outbreak of the American Revolution. Three more fall into the "well-to-do" category (estates valued

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[44]Loyalist Commission, Audit Office Records, 1783-1790, LIV (1784), 34-41.

[45]Inventories of Estate, &, 402-409, SCDAH; Crouse, "Manigault Family," 362, 364-365. Many of Manigault's household goods including his law library, a coach, and a quantity of Madiera were sold at public auction after his death. S.C. Gaz. & C. Jl., April 26, 1774.

[46]Inventories of Estate, Z, 64-72, SCDAH; Waterhouse, "South Carolina's Colonial Elite," 163.

between £2,000 and £5,000 sterling), and thirteen of the Charleston attorneys were men of moderate or average means (£200 to £2,000 sterling). Only five were in economic positions considered below average (below £200 sterling).

An examination of the distribution of wealth (Table XIX) and slave ownership (Table XX) among members of the South Carolina bar more clearly illustrate the stratification of the profession. The five wealthiest lawyers in the colony constituted only one-fifth of the profession for whom inventories are available, yet they possessed more than 94 percent of the group's wealth. More striking, perhaps, is that the estates of more than two-thirds of the lawyers represented only a small fraction (2.5 percent) of the profession's wealth. On the other hand, several Carolina lawyers with average wealth distinguished themselves in earlier periods. Three--Charles Shinner, Peter Leigh, and Thomas Hepworth--were chief justices; Maurice Lewis held several committee memberships in the Assembly; and Peter DeLancey and Henry Hargrave held secondary government positions in the colony.[47]

With regard to other professions, the law proved to be more profitable than the clergy or medicine throughout the American colonies, and most lawyers earned more than ministers and doctors. In South Carolina these two groups could certainly live as well as some lawyers although none approached the level of wealth attained by the leading attorneys. One

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[47] Jackson T. Main states that all known lawyers' estates in South Carolina exceeded £2,000 sterling in value, and that the majority of lawyers were well-to-do. Although this is not consistent with the actual figures, the number of lawyers who were identified as such in their inventories of estate was small, and those who did call themselves lawyers in their inventories--such as Peter Manigault--were quite wealthy. Main, Social Structure of Revolutionary America, 103.

TABLE XIX

DISTRIBUTION OF WEALTH AMONG SOUTH CAROLINA LAWYERS, 1703-1780

Amounts (Sterling)	Number of Lawyers	Percent of Lawyers	Percent of Wealth
More than £5,000	5	19	94.1
£2,000-£5,000	3	12	3.4
£ 200-£2,000	13	50	2.3
Below £200	5	19	0.2
Totals	26	100	100.0

TABLE XX

SLAVE OWNERSHIP AMONG LAWYERS IN COLONIAL SOUTH CAROLINA, 1703-1780

Number of Slaves	Number of Lawyers	Percent of Lawyers	Percent of Ownership
More than 100	5	17	77
51-99	2	7	11
11-50	6	21	8
1-10	13	45	4
No slaves	3	10	0
Totals	29	100	100

South Carolina minister possessed an estate worth more than £5,000 sterling and another valued at £3,500 sterling. Doctors also lived well with a median wealth of approximately £280 sterling.[48] One of the wealthiest physicians was Lionel Chalmers, who was born in Campbelltown, Scotland, in 1715 and emigrated to Charleston in 1737 when only four or five competent doctors lived in the province. Chalmers died forty years later highly respected and prosperous. His estate was valued at £24,000 Carolina money and included nine slaves and 230 books which were sold to fellow doctors.[49]

With the exception of Robert Williams, the wealthiest attorneys in the colony were also the largest slaveholders among the profession. Since slaves were carefully inventoried with the appraisal of each estate, their ownership provides another index of wealth in the colonial era. Slaveowning was widespread in the province but certainly not universal. The extent of slaveholding also varied. While some owned hundreds of chattels, others possessed only one or two. The extensive ownership of slaves was undoubtedly due to the fact that from about 1720 on the black population exceeded the white by a ratio of almost two to one.[50]

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[48] Main, Social Structure of Revolutionary America, 99, 101.

[49] Waring, History of Medicine in South Carolina, 188-197.

[50] Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 4; Bentley, "Distribution of Wealth in Colonial South Carolina," 81-83; Waterhouse, "South Carolina's Colonial Elite," 178, 185-186. Waterhouse claims that despite the general widespread distribution of slaveholding there existed a sizeable group of small planters who owned no slaves while large planters were increasing their possessions and strengthening their economic standing.

As property, slaves were used to settle debts, willed to relatives and friends, and at times manumitted. Benjamin Whitaker acquired at least ten slaves in the payment of debts. In 1727 he received two men and two women and two iron pans "for boyling of salt" in payment of a debt of £400 from William Mellichamp. Four years later Benjamin Godfrey satisfied a debt of £10,500 to Whitaker by granting him four men and one woman with her child.[51] James Simmons willed three of his ninety-four slaves to his daughter, Elizabeth; and at least three lawyers manumitted slaves in their wills. David Graeme, who once served the province as attorney general, freed two slaves and provided that each be given £70 annually for the rest of their lives. Peter Manigault freed two of his 260 chattels, and William Burrows manumitted his faithful servant Marcus, "my waiting man," and willed that he receive £5 sterling at the end of each calendar year.[52]

Among lawyers, slave ownership constituted on the average about half (49.95 percent) of the total value of the attorneys' estates. This ranged from more than 80 percent of the estates of lawyers such as Manigault, MacKenzie, and Parsons to less than one percent of Thomas Phepoe's estate (see Appendix G). Much like the distribution of wealth among the profession, about one-fourth of the bar owned almost nine-tenths of the chattels possessed by lawyers. Almost two-thirds of the bar owned only

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[51] Wills, Inventories, and Miscellaneous Records, B, 1726-1727, p. 450; 62B, 1729-1721, p. 814, W.P.A. Typescript, SCDAH.

[52] For Simmons, see South Carolina Wills, XVIII, 1776-1784, pp. 129-131; for Graeme, XVII, 1774-1779, B, 726; for Burrows, XIX, 1780-1783, pp. 183-184, SCDAH; for Manigault, see Inventories of Estate, &, 409-410, SCDAH.

about one-eighth of the total number of lawyer-owned slaves (Table XX, page 323), while three men--James O'Brien, Bennet Oldham, and John St. Leger--owned no slaves at the time of their deaths. Additionally, prior to 1750 three lawyers owned at least one Indian slave each.[53]

In South Carolina, as in other colonies, a wealthy and well-to-do lawyer class by the eve of the Revolution could vie with merchants and planters for economic and political power. Although men such as Parsons, Williams, and James Michie made careers of the law, they also owned plantations requiring more than one hundred slaves to maintain. Lawyers whose inventories show modest or no slave ownership were the majority in the profession and no doubt lived comfortably with only a few slaves since a large number of chattels were not necessary to maintain a house in the metropolis. More typical of this moderately successful group was James Grindlay, a colonial trained attorney who practiced from 1750 until his death in 1765. Grindlay's estate was probably one of the most carefully inventoried and lists seven pages of law books worth £810.4.6 Carolina money. Grindlay, who never held political office like his mentor John Rattray, left an estate worth £4,717.17.6 which included nine slaves valued at £2,000, silver plate worth £284.5, and some cash on hand and defective bills amounting to £2,139.6.1-1/2. Grindlay owned no property outside of Charleston although he had received a grant of 600 acres in Colleton County in 1757.[54] Few attorneys like Grindlay could rival the

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[53]William Robert Snell, "Indian Slavery in Colonial South Carolina, 1671-1795" (Ph.D. diss., University of Alabama, 1972), 201, 211, 218. The lawyers who owned Indian slaves were James Michie, George Evans, and Robert Hume.

[54]Inventories of Estate, V, 279-284, SCDAH; Index to Grants, 2A, 1731-1765, p. 55, SCDAH. All figures are Carolina money unless otherwise indicated.

legal business or the wealth of Parsons and Williams, but most applied their legal knowledge to attain a respectable living.

Although the lawyers did not achieve economic parity with merchants and planters until close to the break with the mother country, they always played a prominent role in the political life of the colony, especially through membership in the Commons House of Assembly. Yet, their contributions were usually disproportionate to their numbers, for it was not until late in the colonial era that the number of lawyers serving as assemblymen increased significantly. Throughout the period, planters dominated House membership, constituting almost two-thirds (65.9 percent) of the legislature; merchants were a distant second (15 percent); and lawyers, doctors, and miscellaneous occupations followed with relatively small percentages of representation.[55]

During the proprietary period, planters exercised almost exclusive control of the Assembly. With the beginnings of royal authority in the early 1720s, however, lawyers and merchants began to play a more influential role in provincial politics.[56] In the Proprietary Assembly, 1692-1719, only five lawyers were ever elected to the House. The profession reached a high point in 1729 when it constituted more than one-tenth of the membership, but this was a departure from the traditional pattern. Until the twenty-first Assembly which sat from 1754-1757, lawyers comprised less than one-tenth of the total House members. Beginning with that sitting, however, until the final Royal Assembly in 1775, the

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[55]Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 5.

[56]Sirmans, Colonial South Carolina, 70-71, 139-140.

gentlemen of the bar comprised from one-eighth to one-fifth of the members, a figure largely consistent throughout the colonies on the eve of the Revolution.[57]

Members of the bar who entered politics in colonial America were more influential than their relatively small numbers indicate. The South Carolina profession proved no exception. Of the thirty-nine lawyers who sat in the Commons House, thirty-one--or well over three-fourths--held leadership positions in that body by their appointments to standing and interim committees. Nine of the twenty-three House Speakers (more than one-third of the Royal Assembly, 1720-1776) were men trained in the law.[58] Lawyers' contributions were not limited to membership and service on key committees. Some represented clients who had business before the Assembly. James Graeme, for example, appeared before the House in 1747 on behalf of the inhabitants of St. Thomas's Parish to oppose the construction of an additional chapel in a section of the parish.[59]

Many other lawyers--assemblymen as well as non-members--were paid by the House for their aid in drafting legislation and copying laws. Thomas Hepworth, as clerk, was ordered to copy all Assembly laws "that this House may have a complete collection of the laws of this Province, to have at

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[57]Main, Social Structure of Revolutionary America, 205; these figures were drawn from an analysis of Edgar and Bailey, eds., Biographical Directory of the South Carolina House, I, II. My count turned up the names of thirty-nine men trained in the law (some had other occupations to be sure) who served in the Commons House. For the entire colonial period, these lawyers constituted about 5 percent of the total membership.

[58]Greene, The Quest for Power, 463, 475-488; Edgar and Bailey, eds., Biographical Directory of the South Carolina House, I, 14.

[59]Easterby, ed., Journals of the Commons House of Assembly, 1746-1747, pp. 311-312.

all times recourse to." In 1724 William Blakeway received £203.8 from the House for a similar assignment.[60] No fewer than a dozen lawyers of the province were paid by the Assembly for writing bills. Thomas Corbett supplemented his legal income from 1747 through 1750 by earning £175 for writing legislation for the lower house; Andrew Rutledge earned £123.12 from his efforts during three different sessions; James Graeme drew £140 from the public coffers for drafting several laws in the early 1740s; John Rattray was paid £173.5 for his work between 1744-1747; and William Trewin received more than his fellow practitioners who worked with the House, earning a total of £192.10 for several measures he drafted shortly before his death in 1743.[61]

Although service in the Commons House provided many lawyers an entree into the politics of the colony, other able attorneys rejected participation in this public forum. Among lawyers themselves, only about one-quarter of the profession actually held membership in the Assembly. Some highly capable practitioners such as James Wright, Thomas Ellery, James Grindlay, and Hugh Rutledge either never sought election seriously enough to win or never became interested in the political life of the colony. Other long-time assemblymen such as William Wragg, who had

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[60] Journals of the Commons House of Assembly, 1722-1724, p. 4, SCDAH; Salley, ed., Journal of the Commons House of Assembly, 1724, pp. 46, 53, 54.

[61] For Corbett, see Easterby, ed., Journals of the Commons House, 1746-1747, pp. 128, 142, 368; ibid., 1748, p. 67; ibid., 1749-1750, p. 360; for Rutledge, see Journals of the Commons House of Assembly, 1734-1736, p. 479, SCDAH; Easterby, ed., Journals of the Commons House, 1736-1739, pp. 734-735; ibid., 1749-1750, p. 482; ibid., 1750-1751, pp. 73-75; for Graeme, see ibid., 1739-1741, pp. 479, 492; ibid., 1742-1744, pp. 259, 374, 401; 1744-1745, pp. 279, 393; for Rattray, see ibid., 1746-1747, pp. 143, 173; ibid., 1744-1745, pp. 113, 409; ibid., 1746-1747, p. 60; for Trewin, see ibid., 1739-1741, pp. 107, 228, 285-286; ibid., 1742-1744, pp. 115, 256.

served consistently from 1758 to 1768, declined membership in the House after that date, opposing what they considered the capture of the Assembly by the more radically inclined legislators. Wragg also refused an appointment as chief justice, succeeding Charles Shinner, and expressed the hope that he could remove himself altogether from public life.[62]

The same spirit prevailed after the Revolution. Francis Kinloch complained to former governor Thomas Boone that he was disgusted with political affairs in the state. Writing in 1783, Kinloch, who tried in vain to save Boone's estate from confiscation, noted:

> the violent spirit of injustice which prevails in councils has effectually discouraged me from being ever a member of Assembly, as I should only have the misfortune of resisting it in vain.[63]

Roughly the same proportion of lawyers--about one-sixth of the total membership--held seats on the Governor's Council during the colonial era. Men trained in the law counted for eight of the forty-nine councilors. As with the Assembly, planters and merchants predominated on the Council, but the Board of Trade's insistence on wealth and loyalty to British policy limited access to that select group after 1760. Egerton Leigh was the only attorney who was named to the Council after 1765. Most lawyers, in fact, shunned such positions rather than have themselves identified with placemen and Tories. Most of the legal practitioners who earned appointments to the Council brought a large degree of political experience. Seven of

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[62] Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 731-732.

[63] Kinloch to Boone, June 27, September 1, 1783, Felix Gilbert, ed., "Letters of Francis Kinloch to Thomas Boone, 1782-1788," Journal of Southern History, VIII (1942), 94-95. Kinloch later returned to state politics.

the eight had served in the lower house for several years before joining the upper chamber, and two--Charles Pinckney and James Michie--had been House speakers.[64]

In addition to their membership in the two governmental branches of the province, lawyers extended their political influence to a number of important and lucrative administrative and judicial offices as well. Most of the men who were chief justices had been trained in the law, and all of the judges of the Vice-Admiralty Court were members of the bar from the time of Nicholas Trott through the deputy judgeship of James Simpson on the eve of the Revolution. All of the attorneys general and advocates general were also gentlemen of the law. Two of the colony's agents in London--Abel Ketelby and James Wright--were lawyers.

In South Carolina, as in other parts of colonial America, the possibility of holding several high offices simultaneously attracted some men who had legal skills and a degree of influence with the Board of Trade or the royal governor. Trott was the most blatant multiple office-holder during the proprietorship. Unlike those who used this practice in the late colonial period, however, Trott was concerned less with acquiring a fortune than in maintaining the political power of the Lords Proprietors over their southern colony. The proprietors had provided Trott with the ultimate authority to determine the validity of Assembly

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[64] M. Eugene Sirmans, "The South Carolina Royal Council, 1720-1763," WMQ, 3rd Ser., XVIII (1961), 373-381, 389-390. Lawyers who sat as councilors were Robert Wright, Daniel Blake, Charles Pinckney, James Graeme, James Michie, John Rattray, William Wragg, and Egerton Leigh. Nicholas Trott was a councilor during the proprietary era.

measures and specified that the Council could not conduct its business unless Trott was present.[65]

Trott's counterpart for the Revolutionary period was Egerton Leigh--one of the most notorious examples of a placeman and multiple officeholder in the American colonies. His career and its tragic consequences deserve more than passing mention here. Leigh came to the province with his father, the newly appointed chief justice, in 1753. He was admitted to practice before the Chancery Court and the common law courts on November 1 of that year and the Vice-Admiralty Court on December 14, 1757. In part owing to his father's position, Leigh began a long legal and administrative career. His twenty-year law practice before the Court of Common Pleas and the equity and maritime tribunals always remained modest in terms of case loads and never challenged the work of attorneys such as Parsons, Charles Pinckney II, John Rutledge, William Burrows, and Robert Williams. At the height of his legal career in the late 1750s and early 1760s Leigh appeared in only thirty-four cases in the common law court while the top lawyers were averaging better than forty or fifty cases per year.[66]

Yet, what Leigh failed to gain by his law practice he easily made up by extensive office-holding. Within two years of his arrival in the colony he was appointed clerk of the Court of Common Pleas, won election

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[65]Lords Proprietors to Nicholas Trott, September 8, 1714, Calendar of State Papers, Col. Ser.

[66]Calhoon and Weir, "The Scandalous History of Sir Egerton Leigh," WMQ, 3rd Ser., XXVI (1969), 48. A more sympathetic account of Peter and Egerton Leigh is Bellot, "The Leighs in South Carolina," Trans. of the Royal Hist. Soc., 5th Ser., VI (1954), 161-187.

to the Assembly from St. Peter's Parish, and was named surveyor general of the province. In 1761 Leigh received a commission as judge of the Vice-Admiralty Court; and four years later the Crown named him attorney general of the colony, displacing John Rutledge, who held a temporary appointment. The income from his official positions easily doubled the £1,200 sterling he claimed to have earned from his private practice. Moreover, prior to 1763 he acquired grants of land totalling 1,800 acres, purchased a 500-acre plantation on the Santee River, and bought more than two acres in Ansonboro, a growing suburb north of Charleston. He also married well, wedding Martha Bremar, daughter of the merchant Francis Bremar and Martha Laurens, a sister of merchant Henry Laurens. This connection enabled the capable attorney to handle a substantial volume of Laurens's legal activity, although Leigh's appearances before the court declined after 1762, and except for some substantial business in 1769, amounted to an average of only thirteen cases per year.[67]

Had the constitutional crisis between the colonies and England not intervened, Leigh might have been regarded as one of the most successful and spirited public servants of the colonial era. His multiple office-holding--like that of John Tabor Kempe of New York and Lieutenant Governor Thomas Hutchinson of Massachusetts--was well within the bounds of the British aristocracy's custom of accumulating offices and landed estates. Such a custom recognized that British officials in the plantations would use their positions to pad their fortunes. Colonial society did not

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[67] Calhoon and Weir, "Scandalous History of Sir Egerton Leigh," WMQ, 3rd Ser., XXVI (1969), 47-49; Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 95, 396-399.

rigidly define conflict of interest and was vague in differentiating public and private profit. Neither Leigh's multiple positions nor his integrity was seriously questioned prior to 1765. Quite the contrary, Governor William Henry Lyttleton praised him as an able crown servant in 1759, and when Leigh returned from a year's leave of absence in October 1773, the Masonic Lodge in Charleston (of which Leigh was provincial Grand Master from 1767 to 1775) greeted him with an elegant dinner at Holliday's Tavern--only one year earlier the scene of the nasty shoot-out between Peter DeLancey and Dr. John Haley.[68]

Beginning in 1765 Leigh's personal and public empire began to crumble. During the Stamp Act crisis, Leigh was the only provincial lawyer to side with Chief Justice Charles Shinner in a futile effort to keep the common law courts closed until the stamps could be used. A year later his unpopular decisions in the Vice-Admiralty Court concerning the confiscation of two ships owned by Laurens catapulted Leigh to the center of the controversy between the Carolinians and British policy makers and made the maritime court so suspect that it was several months before another attorney would accept the judgeship. Leigh's multiple office holding for the first time came under fire, and he eventually had to relinquish his judgeship, practice before the Chancery Court (because he was a member of the Council), and in 1774 his seat in the upper chamber. Leigh suffered financially as well. Before he left the colony in the

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[68] Lyttleton to Board of Trade, April 14, 1759, BPRO/SC, XXVIII, 188; S.C. Gaz., October 22, 1722; Calhoon and Weir, "Scandalous History of Sir Egerton Leigh," WMQ, 3rd Ser., XXVI (1969), 47-49; Catherine Snell Crary, "The American Dream: John Tabor Kempe's Rise from Poverty to Riches," WMQ, 3rd Ser., XIV (1957), 176-177, 194.

spring of 1771 to recover his health, he advertised for sale 1,000 acres on the Altamaha River in a portion of Georgia where many Carolinians had huge landholdings and his 500-acre plantation on the Santee. He also tried to dispose of part of his library, furniture, post-chaise, and his coach. In London Leigh sought a peerage for himself but obtained only a baronetcy. He further complicated his life by seducing his wife's younger sister who had been left in his charge, and when news of her pregnancy followed Leigh back to Charleston in 1772, Sir Egerton quickly became a social pariah. His efforts to leave South Carolina and obtain a position in the Middle Colonies met with failure. In 1780 he returned to the province during the British occupation, but his attempts to secure an appointment as governor were unsuccessful. Leigh died in Charleston the following year.[69]

As a placeman and multiple office holder among South Carolinians, Leigh was largely in a class by himself. Most of the other attorneys who occupied administrative positions held only one office at a time or floated from post to post as the opportunities presented themselves. In addition to the major colonial offices such as that of judge and attorney general, many lawyers held minor positions from which they also derived modest but adequate fees. The most attractive were clerk of the common law courts and clerk of the Assembly or Council. Other influential offices included coroner, deputy secretary of the province, deputy receiver of

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[69]Edgar and Bailey, eds., Biographical Directory of the South Carolina House, II, 396-399; Calhoon and Weir, "Scandalous History of Sir Egerton Leigh," WMQ, 3rd Ser., XXVI (1969), 49-74; S.C. Gaz., February 21, 1771. Leigh's impact on the Vice-Admiralty Court is illustrated in Chapter I; his controversy with Laurens is presented in Chapter IX.

quitrents, deputy surveyor general, notary public, comptroller, master in Chancery, and register and deputy register in Chancery. Lawyers flocked to these positions because the jobs could be handled with ease by people with some legal knowledge and general education. These offices, in turn, rewarded attorneys because they presented opportunities to learn of important land for sale or grant and because one post easily could be used as a stepping stone to another more economically attractive or influential.

None of these jobs paid a direct yearly salary. Instead, the office holder would be required to submit an account of expenses for which he would be reimbursed by the House for his public duties according to an established fee schedule. Once a request as submitted, the watchdog Committee on Petitions and Accounts scrutinized each item before recommending payment to the full Assembly. More often than not, the panel paid the office holders but rarely the full amount requested.[70]

Fees were not always attractive. Some minor positions netted only about £50 Carolina money per year. Even major office holders such as Chief Justices Benjamin Whitaker and Charles Shinner expressed displeasure at the meager financial rewards from their posts. Shinner claimed that the "smallness of the Chief Justice's salary is so insufficient for the support of his Station" that he hoped royal officials could be persuaded to agree on a permanently attractive stipend for the job. Whitaker complained to Henry McCulloch in 1743:

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[70]As an example, Attorney General James Wright's request for £208.15 in fees and expenses in 1743 was whittled to £166.17.6 by the committee. Easterby, ed., Journals of the Commons House of Assembly, 1742-1744, pp. 109, 375, 401.

> The common business of my Office engages the greatest part of my time, the fees and profits which arise here would not support me with common decency. If I was not assisted by my own private fortune. I have desired nothing more than my Predecessors enjoy'd tho' they commonly resided in the Country, and made the office almost a sinecure.[71]

Yet, the acquisition by lawyers of many minor colonial offices extended even further the influence of the bar. With its near monopoly of the important judicial offices and with its numerous key minor posts, the legal profession firmly entrenched itself in the political and administrative life of the colony before the American Revolution.

In addition to political involvement and office holding, a number of attorneys held membership in local social organizations. Several societies were founded as early as the 1730s to aid immigrants when they arrived in South Carolina or to provide education for orphans. After the Revolution when the flow of immigrants dwindled, many of these groups became social clubs. One of the most popular was the Masons--a group which could count two lawyers, Peter Leigh and his son, Egerton, as Provincial Grand Masters. The Friendly Brotherhood of St. Patrick (forerunner of the Hibernian Society) attracted most of the attorneys of Irish ancestry to its ranks. This group met every St. Patrick's Day at Holliday's Tavern to elect officers. In 1773, four of its five executive positions were filled by lawyers.[72] The favorite and perhaps most

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[71]Whitaker to McCulloch, January 21, 1743, BPRO/SC, XXI, 326; XXXI, 229-230.

[72]Rogers, Charleston in the Age of the Pinckneys, 6; S.C. Gaz., January 9, 1755, January 1, 1740, March 22, 1773; S.C. Gaz. & C. Jl., December 24, 1767. The officers of the Irish organization were Thomas Knox Gordon, president; James Parsons, vice-president; Thomas Phepoe, secretary-treasurer; and Edward Rutledge, steward.

prestigious group of all was the Charleston Library Society. Two lawyers--James Grindlay and William Burrows--helped to found the Society in 1748, and the bar figured prominently in the membership rolls throughout the colonial era. Burrows was one of the most active members of this important organization until gout compelled his absence from meetings too often after 1772. Before the Revolution, the Library Society attracted more than two dozen lawyers, and in 1780 the three highest ranking officers of the Society were attorneys.[73]

The conspicuousness of the lawyers in so many positions, social and political, major and minor, brought some measure of grudging respect for the profession. Nevertheless, the ubiquity of the bar did not eradicate the anti-professional hostility which had been present since the founding of the colony. Lawyers had been the target of ostracism in nearly all of the colonies as well as in the mother country during the seventeenth century. Attorneys, of course, were not the only professionals to arouse popular antagonism. Physicians, apothecaries, and clergymen were subjected to much of the same abuse because of the belief that they were exploiting the mysteries of their craft for their own selfish ends. The New York merchant John Watts, a brother-in-law of Peter DeLancey and no friend to any attorney, conceded once to Isaac Barre that among the professions medicine does "more Mischief than them all."[74]

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[73]The officers were Charles Pinckney II, president; Thomas Bee, Vice-president; and Joshua Ward, treasurer. Charleston Library Society Journals, 1759-1783, Charleston Library Society; Anne King Gregorie, "The First Decade of the Charleston Library Society," South Carolina Historical Society Proceedings, 1935, p. 5.

[74]Robson, Attorney in Eighteenth Century England, 82, 134; John Watts to Col. Isaac Barre, November 15, 1763, The Letter Book of John Watts, 198.

Anti-professional sentiment existed for a variety of reasons. At the top, however, were two overriding concerns which placed lawyers in what was at best an ambivalent relationship with the population they were sworn to serve. First of all, contrary to the simplistic society of seventeenth century America, life in the middle of the eighteenth century was more complex. This complexity, in turn, created a demand for the services of those whose occupations were peripheral, if not unnecessary, a hundred years earlier. In the 1600s lawyers were despised as parasites who were not involved in productive work but who were merely making their living from the misfortunes of others. By the mid-1700s, English and colonial society had become more complicated, and middlemen and agents were a necessary part of that society. It was still possible for a man to be a jack-of-all trades, as lawyer William Trewin had described himself in the 1730s, but the trend was otherwise. Lawyers such as James Parsons and Robert Williams might become large planters, but land ownership in these cases was the product of professional success at the bar rather than a necessary supplement to an inadequate legal income.[75]

Secondly, adding to the confusion about the lawyers' position was the almost total dependence of the client on the skill and authority of the attorney. The arrival of the professional lawyer by the mid-eighteenth century and the seemingly arcane language he used in his trade meant that the client was forced to trust the judgment and integrity of the man who represented him. Thus, as Robert Robson points out, a client might think the attorney who lost his case something of a fool while accusing his

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[75]Robson, Attorney in Eighteenth Century England, 82; Main, Social Structure of Revolutionary America, 200-201.

opponent's lawyer of chicanery and deceit. Even a successful client might well resent his own lawyer for charging him for what he believed to be rightfully his in the first place and harbor resentment at the opposing lawyer for trying to deprive him of it.[76]

Popular antipathy toward lawyers in colonial South Carolina increased during crises such as King George's War in the 1740s and the rise of the backcountry in the 1760s. The classic embodiment of the anti-lawyer feeling which prevailed in the seventeenth century was the utopian expression in the Fundamental Constitutions of a society where the legal profession would not be necessary. As in England and the other provinces, much of this feeling persisted well into the next century and made the position of the attorney in colonial society difficult and for a time uncertain. In the mid-1720s Arthur Middleton, president of the Council and grandfather of the lawyer who signed the Declaration of Independence, complained to the Board of Trade about the "griping lawyers" whom he compared with extortioners--charging three and four times as much as was due them.[77] More to the point was "Spanger," who used the newspaper to contemplate a

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[76]Everett C. Hughes, "Professions," Lynn, ed., The Professions in America, 2-3; Robson, Attorney in Eighteenth Century England, 136.

[77]Arthur Middleton to Board of Trade, 1726, Calendar of State Papers, Col. Ser., XXXVI, 275. Printers were also subjected to criticism from authorities. Middleton's predecessor, Governor Francis Nicholson, objected to an outlay by the Commons House of £1,000 for a printer to come to the colony. Nicholson told the House: "Such an officer is not Proper to have at this Juncture and you can't be Insensible of what Trouble those people put his Majesty's Government in Great Britain to and I suppose it will be very Difficult to get an Honest one hither and as far as those that have been already Convicted of crimes against the Government, I hope you would not have Such fellows here[. A]s for the honest ones I suppose they have Enough work there." Commons House Journals, 1722-1724, p. 458, SCDAH.

course of action after he had received several insults at a local tavern. "Spanger" wrote:

> I had thoughts of applying to a Lawyer on this important Occasion, but I heard that they have too great an Aversion to the Word Gratis, that they have banished it out of all their Law Books, and I as heartily hate to part with my Money.[78]

In the turbulent 1720s between the overthrow of the proprietorship and the assumption of royal authority, the House made at least two efforts to regulate the practice of the law, but neither passed the full Assembly. The introduction in that body during the next two decades of bills to ascertain and regulate attorneys' fees were also attempts to bring legal practice under some control.[79] Controversy over lawyers' fees continued after the beginning of royal authority. During the costly King George's War, a writer to the Gazette called on the Assembly to bolster the debt-ridden economy. Among his proposals were two which applied to lawyers. One asked that the expense of lawsuits be lessened, and the other urged a civil court holiday stopping all suits for a reasonable time until planters and others could meet their debts.[80] In requesting the establishment of backcountry courts during the same decade, the inhabitants of Prince William's Parish in Granville County complained that lawyers took fees without regard to the limitations set by the Assembly.

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[78] S.C. Gaz., July 8, 1732.

[79] Commons House Journals, 1722-1724, pp. 447, 459, SCDAH; Salley, ed., Journals of the Commons House of Assembly, 1724, p. 28; Easterby, ed., Journals of the Commons House of Assembly, 1742-1744, pp. 181-182, 196-197, 339-343, 441-442, 566; Cooper and McCord, eds., Statutes of South Carolina, III, 414-423.

[80] S.C. Gaz., August 23, 1746.

Two decades later the Remonstrance of the Regulators in 1767 demanded that the "enormous Expence of Law Suits be Moderated. This Province being harder rode at present by Lawyers than Spain or Italy by Priests." The backcountry men also asked that no lawyer be appointed a justice of the peace and that copies of all laws be published and distributed throughout the province.[81]

The problem of high lawyers' fees as well as the absence of a digest of the provincial laws occupied the attention of grand juries in the 1770s and was not settled by the outbreak of the Revolution. The popular resentment of the bench and bar which prevailed during the Regulator Movement of the 1760s was poignantly expressed by an unknown writer to the Gazette in 1765 who explained:

> Justices have been abused, and lawyers, or those who have called themselves such, have been affronted--but when this happens, it is owing to the ignorance of the one and to the knavery of the other; and certainly, to a man born under a free constitution, who has laws enacted to protect his person and property, it is infinitely more provoking to be injured in either, whether from those who are appointed to defend him, or from those who he pays for his service, than if he were robbed by a common highwayman.[82]

It is difficult to determine whether the resentment of the bar was justified or whether it was merely the expression of an anachronistic attitude produced by an increasingly complex society and by colonial tensions such as the hardships of King George's War and the political awakening of the Carolina backcountry. Few attorneys actually got into

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[81] Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 231-233; Easterby, ed., Journals of the Commons House of Assembly, 1748, pp. 200-202.

[82] S.C. Gaz., June 15, 1765.

trouble with the law. Charles Wainwright Carrington, who practiced for a brief span in the 1720s, had a tendency to run up high tavern bills and was twice hauled into court because his drinking habit exceeded his ability to pay for it. James Graeme found himself the object of a grand jury presentment in 1734 because he acted as a justice of the peace in a case in which he represented one of the parties. Daniel Dwight, who over-extended himself on his modest income in the 1750s, was disbarred by Chief Justice James Michie for failing to appear in court when he was sued for £708.8.10.[83]

By the eve of the Revolution, lawyers in colonial South Carolina were more than merely an important element in provincial society. With planters and merchants they formed a social, political, and economic elite which rivalled the wealthy and well-to-do gentlemen of other colonies. The generation of attorneys which emerged after 1750 bound themselves even closer to merchants and planters through marriages, the most significant of which united the Rutledge, Middleton, and Pinckney families. Their wealth and slave ownership enabled them to live on a par with the merchants and planters whom they represented in the courts. While some members of the profession lived well, a secondary group was able to attain a degree of respectability in a society that was becoming increasingly more stratified but still permitted the entrance of newcomers.[84] Lawyers of both

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[83]Ibid., March 30, 1734; Lloyd v. Carrington, Monk v. Carrington, 1723, Jones v. Dwight, 1759, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH. Michie said: "Whereupon the said Daniel Dwight being solemnly called, came not; Therefore, he stands Forejudged from Exercising the office of an attorney of this court for his Contumacy." Dwight later restored his good name before the court and resumed practice in 1766.

[84]Waterhouse, "South Carolina's Colonial Elite," 199, 317.

groups found the political and administrative apparatus of the colony to their liking and served in the Commons House, on the governor's Council, and in a wide variety of judicial and administrative positions proportionately far in excess of their numbers.

Of equal importance for the bar was the acquisition of certain characteristics which gave the lawyers professional status and set them apart from other occupational groups: (1) a general, systematic knowledge; (2) authority over clients; (3) community ideals instead of self-interest; (4) self-control through associations or schools; (5) recognition by the public; and (6) a distinctive culture.[85]

Before 1775 the South Carolina bar possessed these characteristics. Intellectually, lawyers differed from their merchant and planter peers because they possessed a general body of knowledge acquired through training in a school or through a five-year apprenticeship. Increasingly by the eve of Independence, lawyers' knowledge about their specialty made it almost impossible for those outside the profession to enter without similar education. While lawyers prior to 1750 might have come from other occupations and possessed only rudimentary technical knowledge, after mid-century this pattern had changed. Lawyers might become planters or merchants; but the latter two rarely became lawyers without going through rigorous training or terms at the Inns of Court. Attorneys also dominated the lawyer-client relationship in which the client became incapable of judging the attorney's expertise or evaluating the quality of

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[85] George Ritzer, Man and His Work: Conflict and Change (New York, 1972), 54-67; another example of a model of this type is Ronald M. Pavalko, Sociology of Occupations and Professions (Itasca, Ill., 1971).

his services. This domination was less the result of the lawyer's superior knowledge or his special language than the growing dependence on the professional in an increasingly complex society.

That lawyers reflected community-wide interest over self-interest is as questionable for late colonial America as it is for today. What occurred in the late colonial period in South Carolina was a blending of self-interest with community interest. The large number of lawyers holding political, judicial, and administrative posts enhanced their self-interest through office holding, but they also filled a definite community need in which their legal expertise and general education were valuable. The lawyers' membership in social and educational organizations, particularly the Charleston Library Society, might have also furthered their self-interest by making their names known to a wider range of people; but this also gave them civic responsibilities which called on their resources as educated, professionally trained members of the community.

The bar held almost exclusive control over its own membership. Legislative attempts to regulate the legal profession or legal practice were to no avail. The Assembly established fees but this it did for all public officers. Lawyers were trained by other attorneys--either within the province or abroad; and they were admitted to practice and disbarred by other attorneys--the chief justices who sat on the bench. Thus, the community gave the bar a monopoly in controlling and regulating its own activities. In doing so, the community clearly recognized the law as a profession. Even the anti-lawyer sentiment focused on the way attorneys handled their activities; it was not necessarily a denial of their professional status within the community. Finally, the South Carolina

lawyers were able to attain professional recognition without the development of a formal bar association. Prior to the break with the mother country, the profession in Charleston always remained small, with a total of fewer than thirty-five members at a given time; and the needs of the practitioners--opportunities to practice, self-regulation, the absence of legislative restraints, political office holding--could be met adequately without the formation of a legal organization. It is doubtful that a bar association was actually needed or that it could have created advantages for lawyers which did not already exist.

The legal profession in colonial South Carolina, then, reached professional standing and social, economic, and political prestige between the middle of the eighteenth century and the outbreak of fighting with England. It was, however, a bar of many personalities, levels of training, and varieties of experience. Its unifying factors were the law itself and the serious belief by many of its practitioners that all the affairs of men--whether questions of debt or questions of national existence--could be settled by the proper application of the law. It was this larger question of the law manifesting itself first in the defense of colonial rights and later in a justification of independence that eventually engulfed the profession and commanded its undivided attention and strongest efforts after 1765.

CHAPTER IX

RULING AT HOME: SOUTH CAROLINA LAWYERS AND THE COMING OF THE AMERICAN REVOLUTION

> This study [of the law] renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources. In other countries the people, more simple and of a less mercurial cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze.[1]

While historians have long acknowledged the importance of lawyers in the coming of the American Revolution, few have seriously attempted to analyze their role in the crisis with the mother country. The legal profession received much praise from the British statesman Edmund Burke, a critic of his country's policies toward America. Burke believed that popular knowledge of the law on the one hand and the leading role of lawyers on this side of the Atlantic on the other generated a quick response to anticipated hardships from misguided policymakers and led Americans to invoke the rule of law before actual oppression could be measured. The South Carolina doctor and historian, David Ramsay, a contemporary of the Revolution, also credited the country's attorneys with "exerting their abilities and influences in the cause of their country" and being "rewarded with its confidence."[2] More modern works, including those using

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[1] William J. Crane, ed., Edmund Burke's Speech on Conciliation with the American Colonies (New York, 1905), 76-77.

[2] In his speech on conciliation with the colonies, delivered in the House of Commons, March 22, 1775, Burke said: "In no country perhaps in

quantitative techniques, have affirmed the profession's preeminent position along with merchants and planters on the eve of separation. They also regularly point to the well-known fact that lawyers comprised twenty-five of the fifty-six signers of the Declaration of Independence and thirty-one of the fifty-five delegates to the Constitutional Convention of 1787.[3]

Yet, these studies have identified the legal fraternity's place without assessing its role in the succession of events and issues leading to 1776. About two decades ago, Milton M. Klein called attention to the dearth of publications on the role of lawyers in the coming of independence, particularly when compared to works on the attorneys' counterparts in religion and commerce. He followed this later by an examination of New York lawyers and the Revolution. Others have also begun to analyze the part played by lawyers in the coming of the Revolution.[4] Yet, in view

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the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of deputies sent to the Congress were lawyers. But all who read (and most do read) endeavor to obtain some smattering in that science." Ibid.; David Ramsay, The History of the American Revolution, 2 vols. (Philadelphia, 1789), I, 134.

[3]Boorstin, The Americans, 205; Main, The Social Structure of Revolutionary America, 275; Martin, Men in Rebellion, 66.

[4]Milton M. Klein, "New York Lawyers and the Coming of the American Revolution," New York History, LV (1974), 383-407; Klein, "Prelude to Revolution in New York: Jury Trials and Judicial Tenure," WMQ, 3rd Ser., XVII (1960), 439-441; Charles Robert McKirdy, "A Bar Divided: The Lawyers of Massachusetts and the American Revolution," AJLH, XVI (1972), 205-214; McKirdy, "Lawyers in Crisis"; Gawalt, Promise of Power; Gawalt, "Massachusetts Lawyers"; Murrin, "Anglicizing an American Colony"; Murrin, "The Legal Transformation," Katz, ed., Colonial America, 415-449; Beverly Zweiben Rowsome, "How Blackstone Lost the Colonies: English Law, Colonial Lawyers, and the American Revolution" (Ph.D. diss., Indiana University, 1971).

of the nation's recent bicentennial, surprisingly little has been written on the role of early American men of the law. Volumes devoted to explaining leadership during this crisis and the development of a revolutionary mentality missed opportunities to evaluate Ramsay's general assessment of lawyers as leaders and Burke's view of Americans as a legal minded, enlightened people.[5] Although contemporaries such as Ramsay and later historians like Edward McCrady recognized the role played by South Carolina's lawyers and praised their efforts, they provided little explanation as to why three-quarters of the provincial bar became rebels and what they contributed to the revolutionary cause.[6]

The decisions of the colony's attorneys to become Whigs or Tories, in fact, stemmed from two considerations, one general and obvious, the other more specific and subtle. From 1762 through the break with England, some members of the bar entered the brewing crisis through their participation in the Commons House of Assembly and that body's handling of the larger issues affecting the colony and the entire country. In addition to--and part of--the major continental crises such as those presented by the Stamp Act and the Townshend duties, several local issues arose which affected lawyers more than any other single group and forced them to think seriously about their relationship with the legal and judicial

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[5] An exception might be Richard B. Morris, "The Legal Profession in America on the Eve of the Revolution," Harry W. Jones, ed., Political Separation and Legal Continuity ([Chicago], 1976), 3-34; see also Library of Congress Symposia on the American Revolution, The Development of a Revolutionary Mentality (Washington, 1972) and Leadership in the American Revolution (Washington, 1974).

[6] Ramsay, The History of the American Revolution, I, 134; McCrady, History of South Carolina under the Royal Government, 480-481.

system within the colony as well as the broader problem of the constitutional arrangement with the mother country. None of these issues singly turned conservative attorneys into staunch Whigs but taken together they forced the members of the bar to choose between fighting for local control of the system in which they operated daily or accepting control by crown-appointed placemen whom the lawyers believed were not their professional equals and who were manipulating the judiciary for their own corrupt ends and, as William Henry Drayton charged, "without public approbation." In a broader sense, the placemen became a central issue in the revolutionary debate as lawyers and others saw them not as minor threats or stumbling blocks to colonial ambitions but as part of a general conspiracy by the British government to exercise complete control over the lives of South Carolinians.

To some extent, perhaps, the experience of the Carolina attorneys in the coming of the Revolution is a variation of the contest for "home rule" which Carl L. Becker identified long ago, although not the struggle between a nascent democracy and an entrenched aristocracy that he postulated. In other ways, however, the lawyers were working to enforce what John Philip Reid has called "Whig Law," the control of the institutions of local government by Whigs and the use of those institutions to halt the efforts of the men who tried to execute the policies of the crown.[7]

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[7]Carl L. Becker, The History of Political Parties in the Province of New York, 1760-1776 (Cambridge, Mass., 1909), 22. One variation on Becker's thesis is Weir, "Who Shall Rule at Home: The American Revolution as a Crisis of Legitimacy for the Colonial Elite," Journal of Interdisciplinary History, VI (1976), 679-700; John Philip Reid, In a Defiant Stance: The Conditions of Law in Massachusetts Bay, The Irish Comparison, and the Coming of the American Revolution (University Park, Pa., 1977), 66-67, 72.

Three major crises in the colony between 1765 and 1775 captured the attention of the bar: The Stamp Act troubles in 1765-1766, the feud between Henry Laurens and Egerton Leigh in 1767-1768, and the controversy between William Henry Drayton and the Council in 1774-1775. Of the three, the Stamp Act was the only issue which involved all American colonies, but it also had local implications which were important to the provincial bar. On the other hand, the Laurens-Leigh feud mirrored the broader continental fear of the potential power of vice-admiralty courts, and the Drayton-Council argument had its roots in the restrictive British measures which led to the meeting of the First Continental Congress in 1774. As the colony-wide and provincial issues became intertwined, the lofty constitutional arguments against Parliamentary taxation rising from the floor of the House and appearing in the press and the local rhetoric villifying crown officeholders also came to be connected.

Once in the ascendancy and leading the revolutionary cause, lawyers worked to keep the contest within the constitutional bounds which they understood so well from their widespread knowledge of the law and from their years of study in the metropolis. Ruling at home in South Carolina, then, meant that those "levelling principles" about which Edward Rutledge complained at Philadelphia would not infect the local body politic. It also meant that the egalitarian notions to which John Laurens was so devoted would not be given a serious public hearing in his native state. Yet, for the Whig lawyers, the revolutionary crisis thrust them into public service at a time when their legal expertise and their knowledge of British law would prove invaluable in the creation of a new government. Moreover, the sense of public responsibility which they brought with them

from the colonial period and their experience during the Revolutionary Era constituted an important tradition to bequeath to the generation of South Carolina lawyers who followed.

Perhaps more so than other Americans, South Carolinians were reluctant rebels. Situated near the southern frontier, the colony was protected from the Spanish only by the fledgling province of Georgia and the growing might of the British Navy. Nevertheless, of all the North American possessions, the Palmetto province was probably the most prosperous by the eve of independence. It thrived under the mercantile system with its primary products of rice and indigo and its internal trade which fanned out into parts of eastern Tennessee, northern Georgia, and as far west as Mobile Bay. The provincial capital reflected this prosperity in expanded streets, new public buildings, and an increased number of private wharves. Its growth attracted the attention of a New England visitor who commented in 1764:

> The City is twice as big as when I was here in the year 1742. It has increased with sumptuous brick houses in very great number. One cannot go anywhere where one does not see new buildings and large and small houses started, half finished, and almost finished. To me who comes from poor, humble Rhode Island, it seems to me a new world.[8]

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[8]Moses Lopez to Aaron Lopez, May 3, 1764, Thomas J. Tobias, ed., "A View of Charleston, 1764," SCHM, LXVII (1966), 63, 67-68. Moses Lopez and his half-brother, Aaron, fled Portugal in the 1730s because of anti-Semetic pogroms. In Rhode Island, the two refuges became important merchant shippers of New England. For other examples of South Carolina's pre-war prosperity see, Bowes, Early Charleston Culture, 129-130; Rogers, Charleston in the Age of the Pinckneys, 153-156; Robert M. Weir, "A Most Important Epocha": The Coming of the Revolution in South Carolina (Columbia, S.C., 1970), 3-11.

Politically, South Carolinians in the low country had overcome decades of bitter factionalism and by the middle of the eighteenth century attained a degree of harmony which allowed the local political process to function smoothly. This sense of unity was undercut by the Regulator Movement in 1765-1767, but while the House did not fully meet the backcountry's demands--especially those for additional representation and schools--they did not neglect them either, establishing a system of circuit courts which began operating in 1772.

The political harmony which existed in the low country was exemplified in the Commons House of Assembly, a legislature which had long carefully guarded its privileges against encroachments from the Council and from chief justices who attempted to weaken the lower house's control over the courts. Its members were from the ranks of the colony's elite, who saw membership in the Assembly as one of the few guarantees of public recognition and social position, and they quickly and easily identified themselves with their public offices.[9]

The House was therefore equal to the challenge of Governor Thomas Boone, who in the spring of 1762 would not acknowledge the election of the popular merchant Christopher Gadsden because of an electoral technicality: the wardens from St. Paul's Parish from which Gadsden was elected had not taken the proper oath the law required. Because Gadsden had won decisively, the Assembly dismissed the technical mistake and declared him duly elected. At this, Boone dissolved the House. When the lower house

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[9]Robert M. Weir, "'Liberty and Property, and No Stamps': The Stamp Act Crisis in South Carolina" (Ph.D. diss., Western Reserve University, 1966), 33, 80.

reconvened in the fall it issued a remonstrance expressing no desire to encroach on the crown's authority but lecturing the governor on its own powers. The House claimed it had the right to determine the legality of all elections to that body, the governor could do nothing constitutionally about it, Gadsden's election was valid, and the dissolution of the previous Assembly was "a most dangerous consequence." Later, the House refused to conduct any business with the governor until he apologized.[10]

This standoff continued into the next year. In the spring Boone departed for England, leaving Lieutenant Governor William Bull II to govern the colony. The former governor received little sympathy from the Board of Trade which felt that he had acted too hastily. The Assembly refused to pay any portion of Boone's salary until June 1766. At that time, the euphoria accompanying repeal of the Stamp Act put the House in a good mood. If Parliament and the crown could be generous, so too could the Carolina Assembly. In reimbursing Boone, a lower house committee headed by Thomas Lynch reported:

> By this the House will clearly Manifest to his Majesty, and to all the World, that the Assembly did by no means intend to oppose his Sacred authority, impede his Government or over awe his Governour, but only to preserve the Rights and Liberties of the People, and of their Representatives, by the steps they took on that occasion.[11]

During the Gadsden election controversy the House reasserted rights it had claimed since the 1690s. By forcing Boone to retire to the mother

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[10]The most thorough account of this episode is Jack P. Greene, "The Gadsden Election Controversy and the Revolutionary Movement in South Carolina," Mississippi Valley Historical Review, XLVI (1959), 469-492; S.C. Gaz., December 11, 1762, January 31, 1763.

[11]Greene, "Gadsden Election Controversy," Mississippi Valley Historical Review, XLVI (1959), 491-492; Journals of the Commons House of Assembly, 1765-1768, p. 165, SCDAH.

country, assemblymen gained a degree of self-confidence which enabled them to more clearly define the colony's relationship with England. The experience with Boone proved useful political training, for the crisis had barely subsided when the House called on eleven of its members to draft a response to a British proposal for a Stamp Act for the colonies. Of the eleven panel members, five were lawyers--Rawlins Lowndes, James Parsons, Thomas Bee, Charles Pinckney II, and John Rutledge. These men no doubt influenced the writing of the House report to the colony's agent, Charles Garth, because the first objection to the proposed tax was a legal one. The Stamp Act, the report argued, was inconsistent "with that inherent right of every British subject, not to be taxed but by his own consent, or that of his representative." The act also threatened to "deprive us of our birthright, and thereby reduce us to the condition of vassals and tributaries."[12]

Several practical considerations also guided the response. Carolinians claimed they were already burdened by taxes to meet the needs of the colony, in particular the balance of debt from the long, expensive war with the Cherokees. Trade laws, the report argued, affected South Carolina more heavily than other colonies since most of its products were enumerated. The constant danger from the closeness of Indians also required from Britain a generous policy of taxation to enable the provincials to counter a sudden attack. The response was guarded, cautious, and hopeful that Parliament would reconsider its position on the measure. Despite the more immediate pressing problems of the Charleston government,

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[12]Weir, "A Most Important Epocha," 14; Gibbes, ed., Documentary History of the American Revolution, I, 1-6.

the principal objection to the proposal was a constitutional and legal one. The committee promised that it would "submit most dutifully at all times" to Parliamentary legislation and claimed that its only reaction would be to stop the importation of slaves beginning January 1, 1776--a long delay which would provide those heavily involved in the trade time to adjust. The legal and constitutional nature of this protest was to characterize the response of the lawyers in subsequent crises.[13]

When the Stamp Act became law, the Assembly moved quickly in the summer of 1765 to appoint Rutledge, Gadsden, and Lynch as delegates to attend the Congress meeting in New York. The selection of a lawyer, merchant, and planter signified the arrival of the attorneys to a position of prominence equal to the other two classes and the concern in the House for balancing the interests among them. When the delegates returned in November, the lower house adopted the resolutions of the Congress. The gathering in New York had voiced the cry of "no taxation without representation," but its fourth and fifth resolutions were more specific should Parliament offer the unlikely prospect of colonial participation in its business. These two stated that because of local circumstances the colonists could not be represented in the House of Commons. The Americans could be represented only by those chosen from their number and "no Taxes ever have been, or can be, constitutionally imposed on them, but by their Respective Legislatures."[14]

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[13]Weir, "'Liberty and Property, and No Stamps,'" 139-140; Gibbes, ed., Documentary History of the American Revolution, I, 2-6.

[14]At age twenty-six, Rutledge was the youngest of the three; Lynch was thirty-eight, and Gadsden was forty-one. Journals of the Commons House of Assembly, 1765, pp. 94, 98; 1765-1768, pp. 15-17, 13-24, SCDAH; Weir, "'Liberty and Property, and No Stamps,'" 200-201.

Meanwhile, events in Charleston moved swiftly. In mid-October the Sons of Liberty greeted the arrival of stamps in the harbor with protests, the hanging of effigies, and the ransacking of the houses of George Saxby, inspector, and Caleb Lloyd, distributor. Anticipating more disorders, Bull secretly transferred the stamps from the ship that brought them from England to Fort Johnson. Later he had them moved from the fort to the H.M.S. Speedwell resting in the harbor. The Liberty Boys persuaded Saxby and Lloyd to resign their posts until the crown had received the colonial protests and "till it may be known whether the parliament will either determine to inforce or repeal it." The Stamp Act was also responsible for the founding of Charleston's third newspaper, The South Carolina Gazette and Country Journal, which proclaimed: "The United Voice of all His Majesty's free and loyal Subjects in America--Liberty and Property, and No Stamps."[15]

By November 1, the date the law was to go into effect, the stamps remained aboard the Speedwell, and all agencies for enforcing the act in Charleston were clearly paralyzed. Governmental bodies such as the customs house and the courts, which depended heavily on the use of stamps, closed in order to avoid openly violating the law. Only the Court of General Sessions--criminal proceedings required no stamped paper--continued to function. At this point, no one had advocated flagrant defiance of the act by keeping the port and courts open without stamps. Colonists were

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[15] S.C. and Am. Gen. Gaz., October 31, 1765; S.C. Gaz. & C. Jl., December 17, 1765; Weir, "A Most Important Epocha," 17-18; on the restraining but terrifying influence of the Sons of Liberty, see Pauline Maier, "The Charleston Mobs and the Evolution of Popular Politics, 1765-1784," Perspectives in American History, IV (1970), 173-174, 177; Wallace, Life of Henry Laurens, 116-122.

optimistic that their constitutional protests and popular opposition would convince Parliament to repeal the measure. Even the fiery Gadsden was satisfied with progress. Writing to William Samuel Johnson and Garth, the merchant reported:

> Our people have behaved as firmly in the Common cause as any upon the Continent, without having done the least mischief, and I make little doubt of their continuing so to do, though we have a number of cunning, Jacobitical, Butean rascals to encounter with, that leave nothing untried to counterwork the firmness and loyalty of the true sons of liberty amongst us.[16]

Nevertheless, the closing of the port and the judiciary in a bustling commercial community such as Charleston posed serious economic and social problems. The winter months were usually the busiest season for exporting rice. By the latter part of the decade, the port was clearing more than 400 ships per year, and the value of its exports was close to £500,000 sterling. Additionally, the lack of activity in the harbor placed some 1,400 idle sailors--a number which exceeded the white population of the capital--on the city's streets, and some had participated in the Stamp Act protests of October. Therefore, when the new year dawned, the Commons House sought legal measures to make the port active again. The Assembly first tried to test the validity of the act by determining if the lieutenant governor possessed an authentic copy. Bull replied that his copy of the law was genuine, and the House demanded to know by what authority he had received the act. Bull informed the legislature that Attorney General Leigh had brought a copy from England the previous

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[16]Gadsden to Johnson and Garth, December 2, 1765, Richard Walsh, ed., The Writings of Christopher Gadsden, 1746-1805 (Columbia, S.C., 1966), 64-68; Weir, "'Liberty and Property, and No Stamps,'" 245.

June and two months later he had received a copy of the law from former governor Boone "from both which authorities I have no room to doubt of its authenticity."[17]

Gadsden, for a committee of seven, charged that neither Leigh's nor Boone's communication of the act was official and therefore Bull was not obligated to enforce it. Bull placed the matter before the Council, and a few days later the upper house ruled that the lieutenant governor's copy of the law was valid and that he could not comply with the Assembly's demand.[18] This legal maneuver having failed, attorney Parsons presented a petition from merchants, owners, and masters of vessels in the harbor complaining that they could not load or clear their ships because they could not obtain permission. Parsons added that he and John Remington, notary public, visited Hector B. DeBeaufin, collector of the port, and demanded the necessary papers to sail. As this test case wound its way from DeBeaufin to the naval officer and to the Surveyor General Peter Randolph, Bull faced mounting pressure to open the port and permit ships to clear. He finally conceded on February 3, agreeing to give merchants and ships' masters a certificate that stated "under the present circumstances of the Distributor's having signified to me that he is Determined to adhere to his Declaration, that he will not issue any Stamp Papers, no Stamp Papers are to be had in this Province."[19]

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[17]Weir, "'Liberty and Property, and No Stamps,'" 280-284, 290-295; Journals of the Commons House of Assembly, 1765-1768, pp. 46-48, SCDAH.

[18]Journals of the Commons House of Assembly, 1765-1768, pp. 48-53, SCDAH.

[19]Ibid., 58-66.

The port opened, and ships sailed before the Stamp Act had any noticeable effect on the provincial economy. Moreover, the action had been taken within the law, and legal means were used to convince Bull and Randolph that the harbor should once again become active. Bull had also stayed within the law. Earlier he had permitted ships with supplies for the royal navy to clear without stamped paper. For this step, he had relied on the opinion of his attorney general who told him that human law must give way to emergencies. In opening the port for all vessels to clear, Bull was taking Leigh's advice one notch further, staving off the potential emergency posed by the presence of so many idle sailors and possible calamitous economic results if the port remained closed much longer. Nevertheless, Bull's rationale provided the bar with a precedent. If the absence of stamped paper could justify opening the port before repeal of the law, it might also be used to open the courts. In attempting this, however, the colony's attorneys found in Chief Justice Charles Shinner a much more inflexible and implacable opponent than the mild-mannered lieutenant governor.[20]

Shinner met with the bar on the night of November 12, 1765, to read the act and determine to what extent it was binding on the lawyers and the courts. Having not seen the act, Shinner asked Charles Pinckney II to bring his copy; and after a careful reading, the lawyers agreed that the courts could conduct no business without stamps. They saw no loophole or any pretence to skirt the requirements of the measure, and Parsons said he saw no other way to gain relief than by an address to the lieutenant

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[20]Weir, "'Liberty and Property, and No Stamps,'" 283-284, 303, 308.

governor urging the inspector and distributor to perform their duties so that the court could convene until Parliament should repeal or alter the law.[21] This restrained position of the legal profession stood in stark contrast to the stance it adopted only a few months later. Reasons for the changed attitude, however, are not difficult to understand. In the 1760s South Carolina was a litigious society, and the Court of Common Pleas--long an active element in the community--had an annual case load of more than 350 actions during that decade. To interrupt its functioning for very long could easily affect other aspects of the economy. With the port open, litigation could pile up and delay the wheels of justice and provincial commerce. That the operation of the civil court was vital to the community was driven home in a petition to the Assembly which claimed

> that many transitory persons in Debt here have departed the Province against the Will and without paying their Creditors, others who want to go and have debts due to them are Grievously delayed and detained, being unable to enforce payment, and numbers who had and others who have legal and just demands will be forever barred of recovering the same by the Act of Limitation.[22]

With the mercantile sector back to normal, the lawyers could not be outdone. Although Bull's opening of the harbor gave them a precedent with which to justify resuming judicial business, the lieutenant governor later expressed disappointment that the attorneys were so impatient. He believed restoring court activity was not as important as opening the port because of the large number of vessels in the harbor and the

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[21]Governor Charles Greville Montagu's account of the Stamp Act crisis is in BPRO/SC, XXXI, 87-182.

[22]Journals of the Commons House of Assembly, 1765-1768, p. 79, SCDAH.

quantities of perishable crops on hand. The bar must have believed that legal arguments and persistence reflected the popular mood which favored the resumption of all business and took advantage of the relative weakness of local royal authority.[23]

In late January, 1766, lawyers made their first efforts to test the closing of the courts. Seven attorneys demanded that the clerk of the court, Dougal Campbell, give them a process. Campbell refused, stating that he could not affix his seal to any papers without the permission of the chief justice. Robert Williams then produced a 40 shilling note and demanded a writ; other attorneys present did likewise; and Campbell said he had no writs in his office. The lawyers then approached Shinner to request that he open the court for business. The chief justice informed his visitors that their request was contrary to the agreement of their November meeting but if they would put their comments in writing he would give them a public answer. Here Shinner's first signs of inflexibility and vindictiveness became apparent. Informing Bull of the profession's scheme, the jurist said his reason for having them present a petition was "that the court having the evidence of their handwriting to such Memorial, it might Justify the Court in such Measures as it might think proper to take with regard to them."[24]

From the beginning, Shinner had no intention of opening the courts. Instead, he took steps to prevent other court officers from assisting the bar. He ordered the clerk to return all blank writs and to collect those

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[23]BPRO/SC, XXXI, 93-94.

[24]Ibid., 93-95.

presently in the hands of attorneys, and he forbade him to put the seal to any processes. He also prohibited Roger Pinckney, provost marshall, from executing any writs without stamped paper. The lawyers, on the other hand, abandoned their petition and instead persuaded Bull to appoint three assistant justices in order to fill the bench. On March 3, the three new judges, Rawlins Lowndes, Benjamin Smith, and Daniel Doyley, took their oaths before a local magistrate and joined Shinner and assistant Robert Pringle. Expressing surprise at this turn of events, the chief justice removed the seal of the court to prevent its use on any writ or other legal papers. To keep matters fully within the law, Thomas Bee and John Rutledge as plaintiff's and defendant's attorneys, respectively, moved for judgment in the case of James Jordan v. Joseph Law. Other members of the legal profession supported the motion, but Shinner and Leigh overruled it because no stamped paper could be used. At the same time, Parsons, presented to the chief justice the petition signed by sixty-seven merchants, traders, and freeholders requesting that the courts resume business.[25]

The next day Shinner answered that he could not open the courts contrary to the law. Although the stamps were unavailable, it was common knowledge that they were aboard a vessel in the harbor. Their use in the courts was prevented by the pressure and harrassment of those who opposed the measure and not because of any physical impossibility. In closing, he said: "I am an utter Enemy to innovations and if there be a doubt it is most advisable to err on the safe side as it is more prudent

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[25]South Carolina, Court of Common Pleas Journals, 1763-1769, pp. 173-176, SCDAH; BPRO/SC, XXXI, 95-97.

to bear a temporary evil than to transgress in any instance against a Fundamental Rule of Law." In countering Shinner, the assistant justices presented a cogent, legal argument--written by Lowndes--citing authorities and employing English law. The assistants did not question the validity of the Stamp Act or its binding effect on the lawyers and judges. Instead, invoking Sir Edward Coke, they argued that the law does not demand the impossible and will make allowances where there is no way to do what is required. Since the stamp distributor renounced his office, since no stamped paper was available, and since the law made no provision for such a contingency, it was unreasonable to expect judicial business to remain at a standstill. Reasoning from the act itself, the judges asserted:

> Nothing can be clearer than that the Parliament never entertained the least Idea of making all Transactions that required Stamp paper void for want of Stamp paper, or of prohibiting absolutely in any Situation the use of unstamped Paper.[26]

Answering the specific criticism of Shinner and Leigh that the stamps were not distributed because of popular pressure, the assistant justices held that the cause of the impossibility of doing business with stamped paper was irrelevant and might even be attributed to an "Act of God, as if the ship which brought them into the Province had been cast away in a storm." As a revenue measure the Stamp Act depended on the courts remaining open. To keep them closed would be to subvert the purpose of the law, turn the act against itself, and invite anarchy and chaos. Without Shinner's cooperation and without the seal, however, the

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[26]South Carolina, Court of Common Pleas Journals, 1763-1769, pp. 177-187, SCDAH.

court could conduct little business. The assistants fined clerk Campbell £100 proclamation money for his conduct, heard only five cases, and adjourned until late in May.[27]

The opinion of the four law judges was essentially a cautious, conservative appeal for the opening of the common law tribunal. It was a ruling with which all could live without being accused of disloyalty. By their sometimes tortured logic in declaring irrelevant the causes of non-enforcement of the act and their superficial reasoning that the resignation of the distributor rendered the act ineffective, the judges undeniably hoped the courts could open and judicial affairs could resume without further trouble until Parliament either repealed the act or determined to enforce it. Either course would produce a new set of circumstances. By not questioning the validity of the Stamp Act but merely claiming it was unenforceable, the jurists marked themselves as adhering to the law of the land while gambling that neither British authorities across the sea nor royal officials in Charleston would make any further attempts to enforce the law. In the spring of 1766, this was a safe bet. The judges' opinion made no suggestion that the courts open in defiance of the act, nor did it assess the constitutionality of the measure. Gadsden expressed his disappointment that Lowndes did not discuss this issue, but he was satisfied with the action of the judges:

> I differed from him in the principle He went upon, that is, I should have built chiefly on the constitutionalness of the Act and asserted it so, roundly; he, I know, thinks it as unconstitutional as I do, but imagined it more prudent and advantageous in our present circumstances not to touch

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[27]Ibid., 188-196.

upon that string. He and neither of his brethren are of the Law so that you must make allowances.[28]

Nevertheless, the court-packing plan, like the petition of the merchants and freeholders, failed to open the tribunal. The assistant justices were also unsuccessful in their effort to have Campbell suspended as clerk; and the lawyers could not budge Shinner with two additional test cases. News of repeal arrived from Barbados on May 3, and two days later Campbell, under pressure to keep his job, asked Shinner to open the court. Shinner checked with Bull, who said he regarded accounts of the repeal as valid and planned to open his courts of ordinary and chancery. Likewise, Egerton Leigh reopened the Vice-Admiralty Court. The chief justice, however, urged Campbell to "be consistent a little longer," but the clerk went to his post and began issuing writs in the usual way. Protected by the safety of repeal, the assistant judges conducted business without the chief justice's seal and used the seal of the senior assistant, Robert Pringle. As late as August, Shinner refused to return to the bench. Campbell, meanwhile, ingratiated himself with the assistants. Pleading that he acted strictly out of conscience and with no intention of disrespect, he persuaded them to reduce his fine to only £10 proclamation money. Later the Privy Council suspended payment altogether.[29]

South Carolinians greeted repeal of the Stamp Act with the same exultation Americans later reserved for the signing of the Declaration of Independence. The House quickly ordered the painting at public expense

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[28]Gadsden to Johnson, April 16, 1766, Walsh, ed., Writings of Gadsden, 71; for another assessment of Lowndes's opinion, see Wallace, Constitutional History of South Carolina, 42.

[29]BPRO/SC, XXXI, 119-136; S.C. Gaz. & C. Jl., May 6, 13, June 3, 1766.

of the colony's three delegates to the New York Congress. The public was also made to pay for a statue of William Pitt honoring him for his role in obtaining repeal. Some time later, the Assembly dispatched a message to George III thanking him for hearing the petitions of his American subjects.[30] Only William Wragg, who proposed a statue of the king instead of one of the Great Commoner, and Charles Woodmason of the backcountry dissented from the House proceedings. Woodmason complained later that

> The building of the Exchange--Setting up Mr. Pitt's Statue, Voting Money to Wilkes--Congress to New York, and other Charges the Public has sustain'd thro' these Sons of Liberty has not stood the Province in less than £20 sterling, just to humour a few Noisey Bell Weathers and Swaggers, who bellow for Liberty, while they have already more than they make good use off.[31]

For the lawyers of South Carolina, the Stamp Act crisis yielded mixed results. Like their counterparts in Massachusetts and New York, they remained largely conservative, not wishing to openly violate the act. New York attorneys halted commercial litigation between November 1765 and April 1766 while those in the Bay Colony reluctantly endorsed opening the courts without stamped paper but gladly accepted a continuation of all cases while awaiting word of repeal. Still, as in Massachusetts, the Stamp Act controversy marked the bar's emergence as a strong force in South Carolina politics.[32]

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[30] Journals of the Commons House of Assembly, 1765-1768, pp. 120, 122, 164, SCDAH. The statue of Pitt was raised on July 5, 1770, amid much celebration in Charleston. After toasting Pitt's health, many of the city's leading inhabitants made their rounds of local taverns drinking forty-five toasts after the initial one to Lord Chatham. S.C. Gaz., July 5, 1770.

[31] Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 211.

[32] For comparisons, see Klein, "New York Lawyers and the Coming of the American Revolution," New York History, LV (1974), 399-401; Gawalt, "Massachusetts Lawyers," 233; McKirdy, "Lawyers in Crisis," 64-68, 71.

The profession proved its solidarity and willingness to keep its actions within constitutional limits. The political careers of men like Peter Manigault, speaker of the House; John Rutledge, a delegate to the Stamp Act Congress; Rawlins Lowndes, assistant justice of the Court of Common Pleas; and Thomas Bee, whom Shinner described as "a person he did not desire to have private conference with" were enhanced. Yet, their moderation and easy success kept them from recognizing the problems that lay just ahead. Believing that repeal of the act ended the crisis between the mother country and her colonies, they--like many other Americans--contradicted Burke's estimate of sniffing "the approach of tyranny in every tainted breeze" and ignored the Declaratory Act which reaffirmed Parliament's authority to make laws for America. No one from the bar, for example, attended Gadsden's harangue of the ministry at the Liberty Tree for passing the measure.[33]

Of more serious consequence was Lieutenant Governor Bull's action in rewarding loyalty and punishing dissent in considering lawyers for official positions. Bull had unquestionably exerted a calming, moderating influence on developments during the crisis. When the stamp distributor and collector resigned, he did not antagonize those who opposed the measure by making additional appointments, and he permitted ships to clear the port without stamped paper. While he did not agree with the assistant justices' request to suspend the clerk, he had not blocked the appointment of the three additional judges he knew would try to override the chief justice.[34]

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[33]Gibbes, ed., Documentary History of the American Revolution, I, 10-11.

[34]Gadsden to Johnson, April 16, 1766, Walsh, ed., Writings of Gadsden, 71.

Afterward, however, Bull took deliberate steps to fulfill the Board of Trade's request since 1756 that local appointments be made on the basis of wealth and loyalty. The lieutenant governor turned against those who opposed the act. His new policy eventually led to the unseating of Lowndes as an assistant justice, an attempt to remove attorney William Burrows as master in chancery, and denial of offices to others whose views ran contrary to his own. Bull also attempted to elevate those who supported Parliamentary legislation, requesting that John Bremar replace Burrows, recommending Wragg as chief justice in 1768, and later nominating William Henry Drayton to the Council in 1770. When loyal local talent was unavailable, Bull turned to attorneys from the mother country to fill the assistant judgships after the establishment of circuit courts. Thus, lawyers would soon find their professional structure dominated by what Drayton called "troops of hungry placemen." The bar had won the battle of the Stamp Act, but a longer war lay ahead.[35]

For the chief justice, the Stamp Act crisis and its aftermath had particularly tragic consequences. Shinner, a native of Ireland, had come to South Carolina as chief justice in 1761. Little is known about his formal legal training. His close friend, Woodmason, claimed that he had studied law in Dublin "under some eminent Gentleman in that faculty," and Shinner later revealed he had attended Gray's Inn although this occurred soon after his appointment and could not have given him much legal training.

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[35]Wallace, Constitutional History of South Carolina, 44-45; Weir, "'Liberty and Property, and No Stamps,'" 338-339; Maurice A. Crouse, "Cautious Rebellion: South Carolina's Opposition to the Stamp Act," SCHM, LXXIII (1972), 71; Bull to Hillsborough, December 5, 1770, BPRO/SC, XXXII, 413-414.

Hard working and assiduous, Shinner apparently enjoyed a modest law practice which often carried him between Dublin and London. During one of these suits he impressed Lord Halifax, who commissioned him to head the Carolina bench, and Shinner accepted, in the words of Woodmason, "well knowing, that He had neither Genius or Talents adequate to this Employ." For a while, James O'Brien and Bennet Oldham, two other imported attorneys, assisted him on points of law and might have even written portions of his opinion in the Stamp Act case. However, his law library, inventoried upon his death, suggests that he at least had many references available to him and that he might have known more law than contemporaries acknowledged. According to Woodmason, Shinner was

> A Gentleman not of bright Parts, but of tried Integrity. Not of Shining Abilities but valuable Qualities. The Upright Judge--The sincere Friend--The Honest Lawyer, The Worthy Man, and humble Christian. He had his Weaknesses and Infirmities--But the Vertues of His Heart far outweighed the defects of his Head.[36]

Shinner's limited legal education and talents were probably factors in his suspicions of the Charleston bar and his stubbornness in defending his position at all costs. On more than one occasion, the chief justice sought to disbar attorneys who tried to open the courts without using stamped paper. He asked Governor Montagu in 1766 for power "without being obliged to give any Reason for it" to suspend any lawyer "whom he shall think misbehaves either within or without Doors to the Chief, or shall enter in Cabals or parties to inflame the minds of the People against the government."[37]

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[36] Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 289, 291-293; BPRO/SC, XXIX, 50, 56, 77, 100; Inventories of Estate, X, 340-341, SCDAH. An unflattering description of Shinner appeared in S.C. Gaz. & C. Jl., May 6, 1766.

[37] BPRO/SC, XXXI, 225, 229-230.

The bar and the Charleston mobs soon gave Shinner reasons to feel persecuted and vindictive. He charged that crowds preying on his house at night demanding the seal of the court caused his pregnant wife to enter labor prematurely, leading to her death three days later after giving birth to a son. A short time afterward his two older children died one week apart, leaving him a grief stricken and bitter man. Meanwhile, the Assembly in June 1766 slashed his request for the expenses of his office from £765.5 to £325.2.6. Later, it appointed Gadsden to head a committee to examine the colony's courts of justice. The following April, Gadsden's committee recommended that Shinner be removed from office:

> It is Evident from the Testimony of very competent Witnesses, common Observation, and the Notoreity of the Fact, obvious indeed to every one who goes into Court, that the said Chief Justice is a person wholly unacquainted with and ignorant of the Common Law, such Acts of Parliament as are of force here, and the Acts of Assembly of the Province, and that the General Tenor of his Conduct in that Station manifests such Ignorance and shews him to be intirely unfit for a place of so much Consequence.[38]

The House filed several charges against Shinner, none of which was serious enough alone to compel his removal from the bench. Most alleged his high-handedness in interfering with the course of justice such as inflicting corporal punishment on a lawbreaker because he believed the executioner was passing sentence too lightly. Shinner's lengthy defense of his judicial administration was in part able and astute; otherwise it was self-indulgent, rambling and confusing, and defensive. On the central question of the chief justice's knowledge of the law, however, Shinner's

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[38]Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 291-295; BPRO/SC, XXXI, 130, 132; Journals of the Commons House of Assembly, 1765-1768, pp. 152, 153, 191, 351-352, SCDAH.

answer was all too revealing. He argued that an adequate knowledge of the law was impossible since no one could be expected to have such broad training in the English laws. Equating adequate knowledge with total knowledge of the law, he added that a provincial chief justice needed only a very superficial knowledge of civil and canon law; he did not have to be well read in the codes and digests and did not need to know admiralty law and equity:

> and if an adequate or even a competent knowledge of the Acts of Assembly of this province, which surely are part of the Laws of this Land, be essentially and absolutely necessary for the Chief, then it may be averred, that there never will be a Chief Justice of this Province endowed with such a knowledge.[39]

To the colony's lawyers, many of whom had studied law at the Inns of Court or through an apprenticeship of five years, such words coming from one of the highest ranking officers in the colony could not have been taken lightly. For the chief justice himself, such an expression proved self-incriminating. Almost one month after receiving the House's request to remove Shinner from office, Governor Montagu suspended him, stating that after he made his own inquiries into the matter "that Gentleman's deficiency in knowledge of the Laws of the Land appeared plain to me."[40]

Shinner planned a trip to London to persuade royal officials to reinstate him and asked that all persons who owed him money pay their debts, but he never left the province. To compound his problem, his only

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[39]Journals of the Commons House of Assembly, 1765-1768, pp. 299, 429-448, SCDAH. Of the nine committee members who recommended Shinner's removal from office, three--John Rutledge, Thomas Bee, and Benjamin Guerard--were lawyers.

[40]Ibid., 391, 396, 402; Shelbourne to Montagu, October 8, 1767, BPRO/SC, XXXI, 418-419.

remaining child--the son born at the time his wife died--became fatally ill early in 1768. The former chief justice, as Woodmason described him, "sunk under the Griefs and Troubles that lay Heavy on Him" and passed away on February 26, 1768. Shinner's house in Ansonborough and his personal estate were sold at auction. Thomas Adam, the administrator, was sued twice by local doctors to recover medical fees of more than £2,000. Adam was ably defended by John Rutledge, long one of the chief justice's leading antagonists, who won one case outright and reduced the award in the second from a requested figure of £1,500 to only £458. Rutledge was paid £175 for his services from the chief justice's estate. Shinner would probably never have understood the irony of this situation.[41]

Shinner's rapid demise and his tragic final years did not mitigate the growing antipathy toward placemen felt by many in the Charleston bar. Shinner represented some of the worst aspects of the British appointee--less learned in the law than its practitioners, and possessing an inflexible, uncompromising spirit which manifested itself in insensitivity to local needs and provincial politics. The experience with Shinner was undoubtedly one reason why the House included a provision in the ill-fated Circuit Court Act of 1768 that American judges be appointed during good behavior instead of during the crown's pleasure. The chief justiceship, like the judgeship of the Vice-Admiralty Court, was shunned by the bar after Shinner's death. Wragg declined the position, preferring to retire from politics altogether, and few of the other attorneys actually believed they

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[41] S.C. and Am. Gen. Gaz., May 15, 1767, March 4, 1768; S.C. Gaz. & C. Jl., March 1, April 19, 1768; Hooker, ed., Carolina Backcountry on the Eve of the Revolution, 295-296; Mottet v. Adam, 1769, Chalmers v. Adam, 1770, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

might be "promoted" to head the local judiciary. Most understood the imperial system well enough to realize that the next chief justice would--like Shinner--bear a commission from the crown. Nevertheless the bar did expect their colony's jurists to be competent and to administer the law with an even hand. Shinner had been a tragic disappointment on the first count. Egerton Leigh was to antagonize the colonists on the second.

The controversy between the bar and the chief justice had not ended when the famous feud between Leigh and the merchant Henry Laurens occurred in 1767. Although it has been fully treated in other works, some elements of the controversy require emphasis.[42] The bitter exchange which erupted between the leading merchant of Charleston and his nephew by marriage, the judge of the Vice-Admiralty Court, grew out of the questionable seizures of three of Laurens's ships and the still more questionable decisions in these cases by Leigh.

In the spring of 1767 Laurens sent his schooner Wambaw from Charleston to his plantation on the Altamaha River in Georgia. The vessel contained some tools and provisions for the merchant's slaves. Under the laws, masters or owners of the ships would be required to post bond, have the cargo inventoried, and fulfill other requirements of the navigation acts. However, these coasting vessels were usually permitted to clear the Charleston port without strict adherence to the trade laws because there were no customs officials or a customs house in that section of Georgia.

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[42] Ubbelohde, Vice-Admiralty Courts and the Revolution, 105-114; Calhoon and Weir, "The Scandalous History of Sir Egerton Leigh," WMQ, 3rd Ser., XXVI (1969), 47-74; Calhoon, The Loyalists in Revolutionary America, 76-84; Bellot, "The Leighs in South Carolina," Trans. of the Royal Hist. Soc., 5th Ser., VI (1956), 178-179; Rogers and Chesnutt, eds., The Papers of Laurens, VI, 287-380, 450-567.

The Wambaw sailed to Laurens's plantation, unloaded its cargo, and took on some 50,000 cypress shingles as ballast, although Laurens later admitted he intended to sell them. Since the merchant had recently incurred the anger of the customs officials by supporting the case of coasting vessels against a rigorous enforcement of the navigation laws, he did not take any chance of having his own ship seized. The nearest customs house, however, was at Sunbury, forty miles from his plantation, and the roads there were dangerous and impassable. Since he could not have his schooner legally cleared before leaving, he gave bond before two magistrates as required by law.[43]

Notwithstanding these precautions, when the Wambaw returned to Charleston a few days later, the aging customs collector, Daniel Moore, refused to clear the ship. After several days, Moore sent word to Laurens through fellow merchant Gabriel Manigault and his brother James Laurens "That if they would go to the Custom-House and ask the collector as a great favor to admit the vessel to entry, he would grant it." They refused, and George Roupell, searcher, seized the ship and libelled it in the Vice-Admiralty Court. From Leigh's standpoint, no decision could satisfy all parties. The customs service in Charleston was already under attack for racketeering, and merchants Manigault and Charles Neufville had entered a suit against Moore for taking bribes. Customs officials had criticized the multiple office holding practices of Leigh, who also

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[43]Henry Laurens, Extracts from the Proceedings of the High Court of Vice-Admiralty, in Charlestown, South Carolina, Upon six several informations adjudged by the Honourable Egerton Leigh, Esq., Sole Judge of that Court, and His Majesty's Attorney General in the Said Province, in the Years 1767 and 1768 (Charleston, 1769), 1-4 (Evans No. 11307).

doubled as attorney general for the colony. Some authorities charged that this hindered not only the customs service but the administration of the maritime court as well. Leigh might have believed that he had an obligation to support the customs personnel and condemned the Wambaw. Leigh was later reported as thinking the verdict just, since the collector had proposed to release the ship "upon very easy Terms" and Manigault and James Laurens had been "a great deal too squeamish." In reaching a decision, Leigh adhered to the letter of the law, believing it would be dangerous to admit any papers except those specifically required by the trade acts and that to forego the necessity of proper forms might lead to additional violations. Laurens's case the judge said, was simply one of inconvenience, not of absolute impossibility "though no fraud has been intended or committed." Laurens protested that the whole lot of shingles was worth only about £50 local money and that no ordinary ballast had been available. Later, the merchant repurchased his vessel at auction.[44]

Laurens's second schooner, the Broughton Island Packet, cleared Charleston on a similar mission and returned with a vast quantity of wood scraps which the merchant testified he intended neither for his own use nor for sale. This vessel was seized before Leigh rendered a verdict on the Wambaw, and the judge declared that "like the two Dromios--they came in together and they must stand or fall together." Leigh, however, quickly abandoned this as a legal maxim, and ruled that although the Broughton Island Packet's case transgressed the letter of the navigation acts, its owner had every reason to expect that the ship would not be seized.

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[44]Ibid., 4-5; S.C. & Am. Gen. Gaz., September 18, 1767.

Whether Leigh was simply trying to make amends to Laurens or whether he actually perceived a fine legal distinction between the two cases, he made matters more complicated for himself, his court, and the customs service.[45]

Shortly after the verdict, Moore, no doubt feeling betrayed, revealed that he had paid Leigh a fee of £50 and that the schooner had been seized upon Leigh's advice as attorney general. In his own justification, Leigh replied that he had taken the collector's fee only as a general retainer and that his advice had applied only to a hypothetical situation. Moreover, after acquitting the vessel, Leigh ordered Laurens to pay two-thirds of the court costs. By not admitting any probable cause for seizure of the Packet, he left Roupell vulnerable to a suit at common law for a false seizure. Roupell later claimed that he tried to bring this inconsistency to the judge's attention through Advocate General John Dering, but Dering--inexperienced and deferential to Leigh--did not convey the message. Laurens wasted no time striking back and, with John Rutledge representing him, sued Roupell for £5,000 in the Court of Common Pleas. A sympathetic jury awarded him £1,400 and assessed Roupell £112.3.1-1/2 in court costs.[46]

Several months later the customs officials retaliated against Laurens by seizing the Ann, a ship owned by the Carolina merchant and four friends in England, shortly before its departure for Bristol. Roupell seized the vessel on the grounds that it contained several items for which no bond had been posted. However, since Charleston customs officials had

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[45]Laurens, Extracts, 6-9.

[46]Ibid.; Laurens v. Roupell, 1769, Judgment Rolls, South Carolina Court of Common Pleas, SCDAH.

long permitted merchants to load their ships prior to obtaining clearance papers, Roupell was treading in an area of questionable validity. To complicate his problem he offered to release the Ann if Laurens would drop his civil suit in the Broughton Island Packet case, but Laurens saw this as blackmail and refused. The searcher's libelling of the Ann put the politically minded Leigh in a strange position. He did not believe he could place an additional strain on his relationship with Laurens, yet he could not publicly expose the customs agents as malicious and vindictive. The judge again tried to strike a balance. He acquitted the Ann, ruling that its master had done all in his power to comply with customs regulations and displayed no suspicion of fraud. Yet, he required Laurens to pay court costs and certified a probable cause which left the merchant without a means of redress through the common law courts.[47]

The three cases destroyed the relationship between Leigh and Laurens and led both men to uncharacteristic behavior. At one point, Leigh threatened to ruin Roupell for swearing in an affidavit that he was totally confused by the judge's decisions in the first two cases and that he had tried to steer Leigh to more consistent verdicts. Laurens, during one of the trials, became so annoyed at the sixty-year-old customs collector he tweaked Moore's nose in open court before a number of witnesses. After the decision in the Ann, Laurens took the offensive, consulted with lawyer friends in Charleston and Philadelphia, and published his Extracts from the Proceedings of the Vice-Admiralty Court. The purpose of the pamphlet was twofold: it was an attack on the practices of the customs service and Vice-Admiralty Court by pointing out the inconsistencies in the three

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[47]Laurens, Extracts, 44.

decisions affecting Laurens's ships; and it called for a reassessment of these institutions if the colony's merchant trade was to remain prosperous. In a broader context, Laurens's charges, Leigh's counterattack, and Laurens's final reply illustrated that in pre-Revolutionary South Carolina there existed two divergent philosophies of the law and between them was a gulf that could not be bridged.[48]

Laurens claimed that the power of customs commissioners and other officers of the Vice-Admiralty Court in America had increased to alarming heights. These officers were amassing fortunes at the expense of their honor, conscience, and countrymen. In a section of the pamphlet entitled "A Few General Observations on American Custom-House Officers and Courts of Vice-Admiralty," he reaffirmed the need for trade laws and for strong merchant support of navigation acts. The laws were sound and equitable, Laurens maintained, but the wrong men had been employed to execute them--men "who are avaricious, revengeful, and make their private Gain the Rule and Measure of their Conduct." He argued that historically Englishmen had been cautious in granting powers to the maritime tribunals and that matters concerning revenue were not tried in these courts in England or in Ireland. In America, this judicial body posed a serious threat to liberty by depriving the accused of trial by jury and by placing the entire disposition of the case in the hands of a single judge. While Laurens's pamphlet was in many ways a reasoned commentary on the low state of justice in the salt

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[48] Ibid.; Egerton Leigh, The Man Unmasked: or, the World Undeceived, in the author of a Late Pamphlet intitled, "Extracts from the Proceedings of the High Court of Vice-Admiralty in Charlestown, South Carolina, & C." With Suitable Remarks on that Masterly Performance (Charleston, 1769), 34-37 (Evans No. 11308).

water courts, his advertisements for the Extracts contained personal attacks on the customs agents and especially on Leigh, whom he described as follows:

> As a Man he is contemptible--as a Judge--as an Attorney--as a Grasper of Retainers from both Sides, his Right Hand not knowing what his Left Hand doth--he shall be taken proper Notice of and duly attended to until he shews the Sincerity of his Repentence by an Amendment to his manners.[49]

Throughout the work Laurens assailed the inconsistencies of Leigh's decisions in the three actions and charged the judge with "fickleness" and "duplicity." If the Wambaw and Broughton Island Packet cases were alike, why were the two decisions so different? If the ship's master in the second case violated the letter of the act, which act was in question? If the master of the Ann had done all in his power to comply with customs regulations and the vessel was acquitted, why did Leigh block Laurens from recovering damages at common law, and why did he require the merchant to pay court costs?[50]

Leigh countered with a lengthy pamphlet entitled The Man Unmasked, or The World Undeceived, which purported to explain his position in the cases and answer Laurens's charges. The work, however, was a patronizing attack on Laurens, accusing the merchant of personal vindictiveness in the publication of his Extracts and of seeking to restore his good name in the community--weakened because of his neutrality during the Stamp Act crisis--at the expense of Leigh and the customs officers. Leigh also charged that Laurens was attempting to sit in judgment of his own case by appealing to

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[49]Laurens, Extracts, 46; S.C. Gaz. & C. Jl., February 21, May 23, 1769.

[50]Laurens, Extracts, 9-10, 44.

the public an issue that had already been determined in the court. The judge chided Laurens for his lack of legal training, referring to him as "our little dabler in law" and to his "unlettered judgment." He affirmed that the verdicts in the first two cases were consistent, but he did not elaborate. Laurens, after all, would not be expected to understand the distinction in the two actions because he was out of his element in discussing points of law. "To argue the law with Mr. Laurens," Leigh wrote, "would be like a physician disputing with a quack." Using an analogy that a good merchant does not necessarily become a good soldier, he added:

> There is little reason to expect that a better fate will attend the man who adventures, at a late time of life too, into researches which puzzle and perplex the most eminent professors of the law. A merchant transformed into a soldier, makes the same ridiculous figure in the study of jurisprudence.[51]

Leigh's pamphlet did not serve him well. Instead of clarifying his decisions, he refused to discuss points of law; and his vindication contained numerous other contradictions. He raised a more serious problem by his arrogant assumption that only those trained in the law were capable of understanding the decisions of his tribunal. This was a point Laurens exploited in his rejoinder, An Appendix to the Extracts, published in 1769. Laurens charged that Leigh had failed to answer the questions raised earlier and that the judge would even "decry Truth because it is written by a Person who does not understand Greek." He added that Leigh

> has not been able, with all his Knowledge and Powers of Law, to give an explicit and satisfactory answer to any of the several points to which I had rigidly confined myself in that Publication;--but instead of replying--has flown from the Eye of Reason and Common Sense--broke through all

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[51]Leigh, The Man Unmasked, 5, 7-9, 11-13, 40, 65-67, 77.

> Bounds of Candour, Decency, and good Manners, and vainly strove to escape under a torrent of Ribaldry, or to shelter himself behind the Quackery of Profession.[52]

With Leigh's decisions and his attempted defense, the Vice-Admiralty Court--never popular in the first place--lost all credibility among the merchants and lawyers of the city. When Leigh was forced to resign as judge in September 1768, nine months elapsed before another lawyer would accept the position. Thus, for a brief time in 1768 both the common law and maritime tribunals stood without leadership. The stormy episodes involving Shinner and Leigh are related in ways other than their timing. Both were placemen and were dependent on the crown for their authority in a society which increasingly valued public support as the basis of political power. Shinner claimed that because one could never attain total knowledge of the law, judges needed only a rudimentary background to administer justice. A colony which had witnessed a long line of trained lawyers occupying the bench, dating back to Nicholas Trott, justifiably expected more from its chief judicial officer. Leigh, on the other hand, viewed the law as a mysterious force beyond the understanding of those who were untrained in its intricacies and who did not make it part of their daily affairs. This might have been the expected response of a crown appointee who presided over a court which did not use trial by jury. Nevertheless, it merely confirmed the suspicions of South Carolinians toward both the Vice-Admiralty Court and the men who presided over

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[52]Henry Laurens, An Appendix to the Extracts from the Proceedings of the High Court of Vice-Admiralty in Charlestown, South Carolina & C. (Charleston, 1769), 1-7 (Evans No. 11307).

it. By 1768 the views of both Shinner and Leigh were obnoxious in Carolina society.[53]

If one of Laurens's purposes in writing the Extracts had been to restore his good name, as Leigh charged, the merchant acquitted himself well. The legal profession and much of the mercantile community rallied to his side. The position of the lawyers, in fact, was evident from the testimony of George Roupell, the customs searcher Laurens sued in civil court. Leigh had served as Roupell's attorney in the case because no other member of the bar was willing to serve. In contrast to present professional norms which dictate that the accused must have a lawyer, colonial barristers were more selective, declining to defend what they might have regarded an "unjust cause." Leigh castigated the legal fraternity for letting the agent stand trial without counsel while usually rushing to the aid of paupers who could not afford their services. Roupell confirmed that he sought Leigh's help in desperation:

> I have waited upon the principal gentlemen of the law, and have found them either employed against me, refusing, or disinclined to act for me, in the same manner as they have done thro'out the whole admiralty business.[54]

Shinner, Leigh, and the customs officers had provided a glimpse of how placemen would administer and enforce the law. Laurens had expressed grave concern that crown appointees would impede the smooth flow of business by their corrupt practices and arbitrary judicial verdicts. Lawyers

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[53] S.C. Gaz., September 19, 1768, March 20, April 27, 1769; Calhoon and Weir, "The Scandalous History of Sir Egerton Leigh," WMQ, 3rd Ser., XXVI (1969), 72-74.

[54] Roupell to Leigh, September 24, 1767, quoted in Appendix of Leigh, The Man Unmasked, 60, 66-67.

undoubtedly came to fear the improper administration of the law as a threat not only to their legal activities but also to their control of the profession. The concerns which Laurens had articulated in 1769 were driven home five years later when William Henry Drayton became embroiled in a controversy with the Council. By Drayton's time, threats presented by the placemen had become worse.

Crown appointees were not entirely new to the South Carolina judiciary. Nicholas Trott had been installed as chief justice by the proprietors, and Robert Wright and Peter Leigh had been sent over directly by the British government. In between the terms of these appointees, however, local talent had been recognized and rewarded by the royal authorities in Charleston and London. Men such as Richard Allein, Benjamin Whitaker, James Graeme, Charles Pinckney, and James Michie rose through the ranks of the bar to preside over the common law courts. The same pattern prevailed in the local Council until 1756. In that year the Board of Trade, embracing a new colonial policy, made loyalty as well as wealth a requirement for membership. Following the Stamp Act crisis, lieutenant governor Bull extended the prerequisite of loyalty to the judiciary. In doing so, he conveyed the impression that men with limited careers and abilities from the British Isles were superior to the best in the colony. The impression was not entirely accurate. Despite his obsession with political loyalty, Bull was probably correct when he reported to Lord Hillsborough in 1770 that Carolina's best lawyers were unwilling to leave their practices for only £300 sterling per year to ride circuit in the backcountry as assistant justices. Nevertheless, the reliance on fidelity enabled Bull to rule out an appointment for

lawyer-planter John MacKenzie, who had published letters in the Gazette supporting non-importation. MacKenzie, Bull said:

> whose education at Cambridge ought to have inspired him with more dutiful sentiments of the Mother Country, and a more liberal interpretation of constitutional liberty, furnishes arguments which spurn at both.[55]

When the circuit courts began operating in 1772 the chief justice and three of the four assistants were placemen. John Murray, a physician, was the only appointee from South Carolina. Particularly galling for the bar was the removal of the popular Lowndes to make room for Charles Mathews Coslett. The South Carolina Gazette and Country Journal's account of the incident clearly reveals the attitude of the colonists toward Bull's policy:

> Last Thursday, Rawlins Lowndes, Esquire, who was appointed in February, 1766, without any Application from himself, and even without his Knowledge, one of the Assistant Judges of this Province, was dismissed from the said Office without any Cause assigned, but that, 'We have thought proper' so to do--Americans, look to yourselves:--for, while our Judges hold their Commissions on such a precarious Tenure as necessarily make them subservient to the Will and Pleasure of the Ministry--the People can have but a slender Security for either Liberty, Property, or even Life.[56]

South Carolina had a more serious problem with placemen than perhaps any other colony. By contrast, Massachusetts had fewer imported office holders than other provinces. In Thomas Hutchinson, the Bay Colony had the prime example of plural office holding, but within that colony, he

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[55] Bull to Hillsborough, December 5, 1770, BPRO/SC, XXXII, 416; S.C. Gaz., September 28, October 18, 1769.

[56] S.C. Gaz. & C. Jl., April 28, 1772; Miscellaneous Records, PP, Part I, 171-172, SCDAH. Writing of the coming of placemen to colonial South Carolina, historian W. Roy Smith in 1903 could not resist an analogy. "South Carolina," he said, "had some experience in carpetbag government a century before the days of Reconstruction." Smith, South Carolina as a Royal Province, p. 139.

was an exception, and even Hutchinson was a native son. The judges, magistrates, attorney general, advocate general, and other law officers of Massachusetts were Whigs as well as natives of the province who easily used the law to frustrate the plans of royal authorities in Boston. Thus, Massachusetts rebels could implement what Reid has termed "Whig law" by their control of the legal and political machinery.[57] In South Carolina, Whigs controlled only the Commons House. The Council and the bench were in royal hands, and the increase in the number of crown appointees heightened fears that a plot existed to subvert colonial freedom.

The person who best expressed these fears was William Henry Drayton. A member of the colony's aristocracy and an early defender of the royal prerogative, he nevertheless became one of the province's most ardent defenders of American rights. The first cousin of attorney William Drayton and a nephew of the lieutenant governor, Drayton received his education at Westminster and Oxford. Returning to Carolina at the age of twenty-three in 1765, Drayton became a strong supporter of crown policies. He defended the Stamp Act and Townshend duties and attacked the non-importation association in 1769 as "Popish" conformity.[58]

Carolinians retaliated against Drayton, author of the "Freeman" letters, by boycotting goods from his plantation. At one point in late

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[57]Reid, In a Defiant Stance, 19; Martin, Men in Rebellion, 26-28, 162-163.

[58]For background on Drayton, see Marion Dargan, "William Henry Drayton," Johnson and Malone, eds. D.A.B., V, 448-449; William M. Dabney, "Drayton and Laurens in the Continental Congress," SCHM, LX (1959), 74-77; William M. Dabney and Marion Dargan, William Henry Drayton and the American Revolution (Albuquerque, N.M., 1962), 32-39; S.C. Gaz., August 3, September 21, 1769.

1769, he unsuccessfully petitioned the Assembly for relief. Two years later his loyalty was rewarded. His letters were published in book form in London, and Bull nominated him for a seat on the Council. Some of his other ambitions, nevertheless, were thwarted. He had also sought an assistant judgeship, and he received only an interim appointment as Postmaster General for the Southern District of North America after the death of Peter DeLancey. In private matters, he failed in an attempt to obtain a large grant of land in the friendly Catawba Indian territory. This move was blocked by John Stuart, the superintendent of Indian Affairs, whom Drayton later came to detest. Drayton's unrealized goals and his encounters with so many placemen on the Council forced him to reassess his stand on the question of colonial rights, and in September 1773, Carolinians received their first glimpse of the new "Freeman."[59]

Drayton and his father, John, as two of the five local appointees to the Council had clashed on several occasions with the five placemen in the upper chamber. In the summer of 1773, a conflict arose over a measure to make counterfeiting of local money a felony. When the House passed the bill and sent it to the Council, the Carolinians and the English appointees divided on the issue, and the legislation was delayed. The Draytons objected to the delay and on August 30 published a copy of their protest in the South Carolina Gazette. Egerton Leigh and other councilmen reacted swiftly and ordered printer Thomas Powell jailed on a warrant by the upper house for a high breach of privilege and contempt. Drayton strongly dissented, claiming that in the past extracts of both houses had been printed

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[59] S.C. Gaz., August 30, September 2, September 13, 15, 1773; Dabney and Dargan, William Henry Drayton, 35-39, 40-43, 47.

in the local press without the printers being called to account. Powell said he meant no contempt and would not have printed the material had he known it would violate the privileges of the Council. He petitioned Lowndes and George Gabriel Powell, as magistrates, for a writ of habeas corpus, and they granted it.[60]

Powell employed Edward Rutledge, recently returned from the Inns of Court, to represent him. On September 2 before "a numerous Concourse of Gentlemen attending" in the Courtroom, Rutledge argued that the Council was not a branch of the legislature and therefore did not have rights and privileges equivalent to the House of Lords in Britain. The Council, in effect, was not a true upper house of Assembly. It might gain legislative powers, Rutledge said, from known and established laws of the land or from long usage, but in this case neither qualification applied. Both magistrates agreed with the young barrister and ordered the printer released. The Council showed its disdain for the Gazette by ordering its proceedings in the case to be printed in the newspapers of Robert Wells and Charles Crouch, Powell's rivals. It also charged the two magistrates with contempt, but this accusation received no sympathy in the House where Lowndes was speaker. The Assembly, in fact, dispatched a message to the lieutenant governor praising the outcome of the case and urging the removal of all councilors who supported the arrest of the printer.[61]

Although Drayton's allegiance had undergone a change, Bull awarded him a seat on the bench early in 1774 after the death of John Murray.

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[60] S.C. Gaz., August 30, September 2, September 13, 51, 1773; Dabney and Dargan, William Henry Drayton, 48-49.

[61] Clow, "Edward Rutledge of South Carolina," 21-24; S.C. Gaz., September 13, 15, 1773.

Bull might have hoped that the new position would either appease the fiery councilor or at least divert his attention, but Drayton merely used it as a more exalted plateau from which to argue his cause. The following August he publicly announced his stand in favor of American rights.[62]

Writing to the delegates of the First Continental Congress, Drayton admitted to having changed only his position, not his basic beliefs in the powers of the British Constitution. He still regarded the non-importation measures as a violation of the rights of British subjects, but now a greater threat was posed by the coercive acts of Parliament toward the city of Boston and the Quebec Act which "violates all the rules of the political drama, and incapacitates me from saying one word in favor of administration." Drayton reserved much of his fury for placemen. His experience as a member of the Council, he complained, had shown him that English appointees were ignorant of provincial interests and colonial laws "and too often unexpectedly so of English law." The situation on the Carolina bench, he said, had also deteriorated:

> A few years ago, the bench of justice in this colony was filled with men of property; and if all of them were not learned in the law, there were some among them who taught their brethren to administer justice with public approbation.[63]

The worst that could have been expected a few years ago, he continued, was to pay heavier taxes and "to be over-run by troops of hungry placemen." Now "Freeman" realized that the imported office holders were

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[62] S.C. Gaz., January 31, 1774; Dabney and Dargan, William Henry Drayton and the American Revolution, 54-55.

[63] Gibbes, ed., Documentary History of the American Revolution, I, 15-38.

themselves agents in a more sinister scenario which included the enlarged powers of Vice-Admiralty Courts, parliamentary laws binding the colonies, billeting soldiers in America, and the dependence of justices upon the crown. All of these, he warned the delegates, were presently threatening "to compel America to bow the neck to slavery."[64]

Drayton's letters to the members of the Philadelphia convention elicited an angry protest from Chief Justice Thomas Knox Gordon and Assistant Justice Coslett, who demanded that Bull remove Drayton from the bench. The justices appeared particularly upset about the comments on placemen and saw "Freeman's" remarks as weakening public confidence in their decisions. Drayton responded quickly and charged that the justices from England did not know the law and had not exercised it knowledgeably in the courts. Moreover, he accused Gordon and Coslett of trying to control the legal profession by admitting their friends at the same time refusing to admit several newcomers from northern colonies. Richard Howly, an Irish native like Gordon and Coslett, had been permitted to practice despite the fact that he had kept fewer than the required number of terms at the Inns of Court. In response to Gordon's claim that he understood Howly to have fulfilled the spirit of the rule of court governing admission of attorneys, Drayton's reply was angry and predictable:

> Thus, sir, I stand instructed--that the spirit and meaning of a law is preserved when the Judges accept less than that which the law expressly and clearly says, shall be accepted "at the least"; and also that in law, a person has really done as much as the law requires, whenever he shall be pleased to be "under a full persuasion that he had done enough." I may observe to your Honor that, there is not

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[64]Ibid.

> wanting instances to shew this doctrine is not construed to extend to Americans.[65]

Howly, either in support of the chief justice or to demonstrate his own knowledge of the law, might have been the author of a pamphlet attacking Drayton's earlier letter to the delegates in Philadelphia. Some Fugitive Thoughts on a Letter Signed Freeman by a Back Settler (1774) argued the right of Parliament to tax the colonies, supported the use of writs of assistance, and asserted that the British legislature possessed the historical as well as legal right to make laws for the American provinces.[66]

Like Leigh and other placemen, Howly refused to believe that anyone "unlettered" in the law such as Rawlins Lowndes could be the equal of any trained attorney on the bench and criticized Drayton's praise of Lowndes. These comments and his jibes at the peculiar institution earned for Howly only the undying antipathy of many Carolinians. "He would no doubt have been roughly handled before this," John Julius Pringle wrote, "but his being a Cripple seems to screen him from manual Chastisement."[67]

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[65] Ibid., 39-41, 41-49; John Julius Pringle to William Tilghman, November 1, 1774, Preston Davie Coll., So. Hist. Coll. The rule of court specified that to be admitted to the Charleston bar, a lawyer must keep eight terms at one of the Inns, five years apprenticeship in the colony, or a combination of three years as an apprentice and two years at one of the Inns.

[66] [Richard Howly], Some Fugitive Thoughts on a Letter Signed Freeman . . . by a Back Settler (Charleston, 1774), 3-6, 15, 25-32; Pringle is certain the author is Howly. Pringle to Tilghman, November 1, 1774, Preston Davie Coll., So. Hist. Coll.

[67] [Howly], Some Fugitive Thoughts, 26, 35; Pringle to Tilghman, November 1, 1774, Preston Davie Coll., So. Hist. Coll.; Gibbes, ed., Documentary History of the American Revolution, I, 21.

Howly practiced only briefly before the common law and equity courts prior to the outbreak of the Revolution. Drayton, for his infidelity to the British position, soon lost his seats on the bench and the Council. In November 1774 William Gregory arrived from London with a commission as an assistant justice, and the following March, Bull suspended Drayton from the Council. Two years later he became the new state's first chief justice, but a fatal typhus infection cut his career short in 1779 at the age of thirty-seven.[68]

During the decade from the Stamp Act crisis through Drayton's conflict with the Council, South Carolinians altered their views toward placemen. Considering them in 1765 to be merely troublesome, an unavoidable evil within the imperial structure, they were soon regarded suspiciously as agents of a broader design to undermine colonial freedoms, enforce unconstitutional acts of Parliament, and subvert the law. By the early 1770s the appearance of these imported authorities created resentment, anger, and perhaps a sense of frustration. Some Whig lawyers might have resented the English officeholders as barriers to their own aspirations for office, but it is doubtful that ambition alone influenced most of the Carolina bar. Few sought the judicial positions for themselves. The bar, in fact, boycotted the judgeship of the Vice-Admiralty Court after Leigh resigned in 1768. No colonial lawyer actively sought the chief justiceship after Shinner was forced out; nor did local lawyers attempt to fill the bench as assistant justices. The salary, as Bull and others

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[68] Dabney and Dargan, William Henry Drayton, 61-62; S.C. Gaz., February 13, 27, March 6, 1775; Gaz. of the State of S.C., October 13, 1779.

pointed out, was not attractive enough to lure them from their private practices, but neither the lieutenant governor nor the Board of Trade suggested that the stipend be raised to accommodate local talent. There was always the danger of removal in favor of some crown appointee. When Drayton was named an assistant judge, the Gazette's printer remarked that the office was not "worth the Acceptance of any Gentleman of the bar, who would be under a necessity of quitting his Practice and subject to be superceded from England."[69]

Yet, if the Carolina lawyers did not seek the judicial jobs themselves, they had certain expectations about the administration of the law by those in positions of authority. Chief Justice Shinner violated those expectations, but Shinner might be considered an aberration--an incompetent who could be easily replaced. The issue involving Egerton Leigh was far more serious and, coming on the heels of the feud with Shinner, greatly weakened the credibility of the crown appointees. The filling of the entire bench with placemen only heightened Carolinians' sense of outrage. By the time William Henry Drayton converted to the American cause and attacked placemen on the Council and the bench, the colonists and the royal appointees were no longer speaking the same language. Defending the rights of Parliament and the British Constitution, the placemen never attempted to justify their own positions in the colonial government. They did not realize that it was they who were now one of the central issues in the revolutionary crisis.

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[69] S.C. Gaz., January 31, 1774; Martin, Men in Rebellion, 26-28; Pauline Maier, "Why Revolution? Why Democracy?" Journal of Interdisciplinary History, VI (1976), 718-722.

As the role of imported office holders motivated South Carolina's conservative lawyers to adopt revolutionary arguments, their training in public service prepared them adequately for leadership in the crisis with England. Members of the Charleston bar did not join the conflict belatedly. They played an integral part in the political challenge to the mother country from the time of the Gadsden election controversy in 1762 through separation and statehood in 1776. Lawyers helped draft the protest to the anticipated Stamp Act in 1764; John Rutledge served as a delegate to the Stamp Act Congress the following year; and many in the profession worked to open courts without stamped paper. John MacKenzie and William Wragg, two lawyers turned planter, argued the American and British positions, respectively, toward the Townshend Acts; three lawyers in 1770 served on the House committee to transmit public money to John Wilkes in England; Edward Rutledge defended Thomas Powell against an angry Council controlled by placemen; and both Rutledges were prominent in the meeting of the First Continental Congress in 1774--an assembly in which lawyers comprised nearly half of the delegates.[70] The bar thus worked to control the tempo of resistance to British measures, keeping it well within the legal and constitutional framework which their years of study at home and abroad had taught them.

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[70] Wroth and Zobel, eds., Legal Papers of John Adams, I, xc-xci; of John Rutledge, Joseph Galloway remarked: "He is a Gentleman of an amiable Character, has look'd into the Arguments on both Sides more fully than any I have met with, and seems to be aware of all the Consequences which may attend rash and imprudent Measures." Galloway to the Governor of New Jersey (William Franklin), September 3, 1774, Edmund Cody Burnett, ed., Letters of Members of the Continental Congress, 8 vols. (Washington, 1921-1936), I, 5-6.

While the lawyers assumed their leadership roles in the Revolutionary cause, non-lawyers with whom they shared political power showed that they were equally capable of using constitutional and legal arguments to explain the American position, thereby justifying Burke's claim that "all who read (and most do read) endeavor to obtain some smattering in that science."[71] It was Christopher Gadsden, the merchant, and not Rawlins Lowndes, the self-trained lawyer and judge, who attacked the constitutionality of the Stamp Act. Gadsden was also the delegate selected by the House to chair the committee examining the provincial courts and the competency of the chief justice. In his feud with Egerton Leigh, the merchant Henry Laurens proved more adept at arguing the law than the Vice-Admiralty Court judge, who retreated to the safety of his technical knowledge of the law rather than debate its points with a non-lawyer. William Henry Drayton's "Freeman" letters, both before and after his conversion to the American cause, reflected a sound knowledge of the British Constitution. His letter to the delegates in 1774 was in many respects a legal treatise. Drayton cited statute law, parliamentary history, John Locke On Civil Government, William Hawkins's Pleas of the Crown, and Coke's Institutes; throughout the letter he relied heavily on William Blackstone's Commentaries, which he cited no fewer than fourteen times.[72]

The percentage of attorneys in South Carolina who became Whigs was greater than in the other American colonies. Of the thirty-nine lawyers practicing in the 1770s, the allegiance of thirty-one (79.4 percent) can

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[71]Crane, ed., Burke's Speech on Conciliation, 76.

[72]Gibbes, ed., Documentary History of the American Revolution, I, 14-30.

be determined. Of this number, almost three-quarters (twenty-three or 74 percent) were patriots, and eight were loyalists. Patriotism was stronger in South Carolina than in Massachusetts, where half of the practicing bar turned rebel and slightly more than one-third remained loyal. In New York, the ranks of the bar were also more evenly divided with twelve of the practitioners before the New York Supreme Court becoming loyalists and thirteen patriots.[73]

When the non-practicing lawyers, members of the judiciary, and South Carolina students at the Inns of Court are added, the percentage of loyalists increases, but the Whigs are still in the majority. Of a total of seventy men trained or being trained for the bar, forty-one (59 percent) were patriots, eighteen (28 percent) were loyalists, two (3 percent) changed sides during the war, and the political position of nine is unknown.

Students at the Inns of Court decidedly favored the American cause. Of eighteen Carolinians studying there at the outbreak of the conflict, twelve (two-thirds) eventually supported the path to independence. Seven were among the thirty Americans in England in 1774 who signed a petition to the king protesting the Boston Port Bill.[74] Three students eventually

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[73]McKirdy, "Lawyers in Crisis," 89; Richard B. Morris, "Legalism versus Revolutionary Doctrine in Massachusetts," New England Quarterly, IV (1931), 207, 209; Klein, "New York Lawyers and the Coming of the American Revolution," New York History, LV (1974), 405; on South Carolina loyalists, see Barnwell, "Loyalism in South Carolina," 65; Ralph Louis Andreano and Herbert D. Werner, "Charleston Loyalists: A Statistical Note," SCHM, LX (1959), 165-168.

[74]The seven were William Blake, William Hasell Gibbes, John F. Grimke, John Peronneau, Thomas Pinckney, Philip Neyle, and William Heyward. Of these students, all took the American side except Blake. Jones, American Members of the Inns of Court, 22-23.

became loyalists; two--Gabriel Manigault II and William Oliphant--changed sides during the war with the former ending up with the Americans while the latter eventually served with the British forces. William Loughton Smith sat out the conflict in the Middle Temple, never putting his loyalty to the test of combat. However, his entrance into politics almost immediately upon his return in 1784 demonstrated that he had remained in the good graces of the state's leadership.[75]

Most of these students never completed their terms at Westminster. Some such as William Hasell Gibbes, John Julius Pringle, and John Laurens were itching to return to America and join the fight. Gibbes defied his father's advice to remain until he had taken the degree of barrister-at-law and departed England shortly after independence was declared in America.[76] Pringle, younger than Gibbes, dreamed of grand battles and romantic notions of war but persevered at the Middle Temple until 1779. Shortly after his arrival in 1775 he reacted to news of the skirmishes at Lexington and Concord. Writing to his friend, William Tilghman, in Philadelphia, Pringle said: "I confess I cannot refrain from envying those whose happy lot it is to be called forth to act distinguished parts in that Theatre of Glory."[77]

It was for John Laurens, oldest son of the famous merchant, to realize Pringle's "Theatre of Glory" in America. Young Laurens, who believed it the duty of every American abroad to return home when fighting

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[75]Ibid., 202-203; Rogers, Evolution of a Federalist, 97.

[76]Childs, ed., "Gibbes' Story of His Life," SCHM, L (1949), 63-64.

[77]Pringle to Tilghman, May 1, August 7, 1775, Pringle to Arthur Lee, June 20, 1779, Preston Davie Coll., So. Hist. Coll.

began, grew impatient with his father's instructions to remain in London. "Reserve your Life for your Country's call," Henry Laurens told him, "but wait the Call." Meanwhile, John spent his time awaiting permission to return, married the daughter of his sponsor in London, and asserted himself as the patriotic conscience of his friends. To Gabriel Manigault II, he wrote:

> You have a fine opportunity My Dear Young Friend and Countryman, of advancing in all Branches of useful Knowledge[;] if I said it before, I don't think it too much to repeat it, Americans are particularly call'd upon now to improve themselves, you will upon Reflection be convinced of this and will I hope in consequence act a part which will do you Honour, by making you useful to your Country.[78]

The merchant continued to plead with his son to remain in London urging him to "be not ambitious of being half a Soldier half a Lawyer & good for nothing--aim at Character, which you could not expect in any high style if you were to commence Soldier tomorrow." Later in 1776, Henry Laurens yielded, and John returned to Charleston the next spring. Distinguishing himself in battle, Laurens was killed in an obscure mopping up campaign in the Carolina backcountry in 1782.[79]

Young Laurens is significant in another way. He provided the only challenge to the conservative direction of the Revolution in South

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[78]John Laurens to Henry Laurens, September 4, 1775, ibid.; Henry Laurens to John Laurens, December 15, 1774, "Letters from Hon. Henry Laurens to His Son, John, 1773-1776," SCHGM, IV (1903), 267-274; John Laurens to Gabriel Manigault II, June 16, 1776, Manigault Family Papers, SCL.

[79]Henry Laurens to John Laurens, January 8, 1776, "Letters from Hon. Henry Laurens to His Son, John, 1773-1776," SCHGM, V (1904), 135-136; John Laurens to James Laurens, October 24, 1776, "A Letter from John Laurens to His Uncle James Laurens," SCHGM, X (1909), 53; Robert M. Weir, "Portrait of a Hero," American Heritage, XXVII (1976), 18-19; Wallace, Life of Henry Laurens, 489. Philip Neyle and Richard Shubrick, contemporaries of Laurens at the Inns of Court, also died fighting in the war. Jones, American Members of the Inns of Court, 163-164.

Carolina; and his egalitarian views deserve mention if for no other reason than to further illustrate the limited nature of the Revolution in Carolina. John, whose one major fault George Washington once described as "intrepidity bordering on rashness," agreed with his father's opposition to slavery and expressed the wish that the burdens of society could be more evenly distributed. In order to enable slaves to earn their freedom, he proposed to raise a regiment of black soldiers in South Carolina. "For my part," he told his father, "it will be my duty and pride to transform the timid Slave into a firm defender of Liberty and render him worthy to enjoy it himself."[80]

Although Henry Laurens did not share his son's enthusiasm for the plan and cautioned him to expect much resentment, he nevertheless proposed to Washington that he arm 3,000 blacks in Carolina to drive the British out of Georgia and subdue East Florida. John Laurens's scheme, meanwhile, met overwhelming opposition in the Assembly in 1779 and fared only slightly better when reintroduced a second time. Reassuring his son that his efforts were not in vain, Henry wrote: "The work will at a future day be efficaciously taken up & then it will be remembered who began it in South Carolina."[81]

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[80]Wallace, Life of Henry Laurens, 475, 489; John Laurens to James Laurens, October 24, 1776, "A Letter from John Laurens to His Uncle James Laurens," SCHGM, X (1909), 49-50; John Laurens to Henry Laurens, February 17, March 10, 1779, "Correspondence Between Hon. Henry Laurens and His Son, John, 1777-1780," ibid., VI (1905), 137-139.

[81]Henry Laurens to John Laurens, February 6, 1778, September 21, 1779, "Correspondence Between Hon. Henry Laurens and His Son, John, 1777-1780," SCHGM, VI (1905), 50-51, 149-150; Henry Laurens to George Washington, March 16, 1779, Burnett, ed., Letters of Members of the Continental Congress, IV, 107; Wallace, Life of Henry Laurens, 475, 488; Weir, "Portrait of a Hero," American Heritage, XXVII (1976), 18, 88.

The defeat of Laurens's plan to enlist black troops alone might properly testify to the limits Carolinians imposed on the revolutionary spirit, for few people in the state--loyalist minister Alexander Hewatt being a rare exception--publicly opposed the institution of slavery. As Peter Wood has pointed out, however, the presence of slavery in the American Revolution was more than simply a lofty contradiction in political theory. If the inhabitants of South Carolina feared anything more than placemen dominating them from above it was the ever present threat of blacks rising against them from below; and--despite the views of the Laurenses and Hewatt--they easily moved beyond mere conservatism toward greater repression of slaves during this age of republicansim.[82]

Between the fears of domination by placemen on the one hand and assaults by slaves on the other, South Carolina's lawyers carved out the narrow constitutional and political limits of the Revolution. For many of the provincial bar, independence and separation were beyond the acceptable boundaries of the crisis. In the First Continental Congress, John and Edward Rutledge remained optimistic about reconciliation and a peaceful settlement with England. Both men favored the moderate plan of fellow lawyer Joseph Galloway of Pennsylvania, who advocated a permanent continental assembly equal in power to Parliament but within the British Empire. At the same time, Edward Rutledge expressed confidence that his profession

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[82]Hewatt, An Account of Early South Carolina and Georgia, I, 20, 24, 120-121; Wood, "'Taking Care of Business' in Revolutionary South Carolina," Censer and Steinert, eds., South Atlantic Urban Studies, II, 51; on the issue of slavery during the era of the American Revolution, see Duncan J. MacLeod, Slavery, Race and the American Revolution (Cambridge, 1974), 8, 10, 183; Winthrop D. Jordan, White Over Black: American Attitudes Toward the Negro, 1550-1812 (Chapel Hill, N.C., 1978), 269-311.

could control the tempo of the conflict with England. Reassuring Thomas Bee in the fall of 1774, he wrote:

> Don't be alarmed; we have done no mischief, though I am sure, if Mr. [Gadsden] had his way, we should. But you may thank your stars you sent prudent men, and I trust that the youngest is not the least so.[83]

When he finally became a champion of independence, Rutledge hoped that he and other conservatives could prevent total control of the new government by New Englanders whose "low cunning" and "levelling principles" he feared "are so captivating to the lower class of Mankind, and which will occasion such a fluctuation of Property as to introduce the greatest disorder." Rutledge was not alone in his elitist political views. John Julius Pringle called the appeal to popular sentiments "gross Incense, to be offer'd at the shrine of merit, and no man would value himself solely upon the Opinion and Applauses of the stupid, ignorant profane populace but he who is not better than one of them himself." The mercurial Drayton observed that while mechanics were useful elements in the community, they would cut a poor figure as statesmen. The older Rutledge brother believed in reconciliation so strongly that he resigned as President (Governor) of the state when the constitution of 1778 endorsed American independence, created a popularly elected upper house, and disestablished the Anglican Church.[84]

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[83] Edward Rutledge to Thomas Bee, October 1774, Burnett, ed., Letters of Members of the Continental Congress, I, 84, 84n.

[84] Edward Rutledge to John Jay, June 29, 1776, ibid., 517-518; Clow, "Edward Rutledge of South Carolina," 64, 65; Pringle to Tilghman, September 15, 1774, Preston Davie Coll., So. Hist. Coll.; Walsh, "The Charleston Mechanics," SCHM, LX (1959), 140; Robert L. Meriwether, "John Rutledge," Malone and Johnson, eds., D.A.B., XVI, 259.

Not surprisingly, the Revolution produced little noticeable change in either the statute law or in lawyers' arguments in the Court of Common Pleas. In South Carolina, there was no serious struggle over the reception of the common law, no radical attacks on inherited legal institutions, and no significant changes in the court structure. Continuity and stability, rather than innovations and change, guided the state's lawmakers in the 1780s. A study of court cases during the Critical Period reveals that judges and lawyers relied heavily on English case law and treatises. There were no references to opinions delivered by other American courts, and there was no indication that the Carolina profession was aware of the earliest printed reports of tribunals in Connecticut, Pennsylvania, and Vermont.[85]

Just as independence produced little change in South Carolina's legal system, so did the political leadership of the bar remain undiminished after separation from the mother country. Lawyers occupied the governor's chair for nine out of twelve terms between 1776 and 1800. Eight of the eleven House speakers during the same period were members of the bar, and two lawyers were elected lieutenant governor. Unlike those who sat on the bench in the colonial period, men trained in the law now had exclusive control of the judiciary in equity, common law, and vice-admiralty. Thomas Bee was elevated to the federal bench; John Julius Pringle was commissioned a federal district attorney; and John Rutledge became the second chief justice of the United States Supreme Court,

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[85]Ely, "American Independence and the Law," Vanderbilt Law Review, XXVI (1973), 941, 950-956, 060; Harrison, "Earliest Reported Decisions of the South Carolina Courts of Law," AJLH, XVI (1972), 51-70.

although because of his opposition to the Jay Treaty, the predominantly Federalist Senate refused to confirm him.[86] The Pinckneys--all able lawyers--are more remembered for the diplomatic careers. Charles Pinckney III was appointed by Jefferson in 1802 as ambassador to Spain; Charles Cotesworth Pinckney was named minister to France in 1796 by Washington and served there during the XYZ Affair; his younger brother Thomas Pinckney, minister to England, negotiated the famous treaty with Spain in 1795 which bears his name.

The law, as Edward Rutledge would tell his son, became--more so than in the colonial era--the best route to public service and public responsibility in the new state. Yet, South Carolina's lawyers sought--or accepted--those political positions less to gratify ambition than to vindicate the legal principles won in the years, 1776-1783. Often they accepted their public roles at the expense of their private affairs and fortunes.[87] They assumed their new positions because they not only believed they were the best qualified as part of the state's socio-economic elite to hold them, but they were determined to make public service the embodiment of republican law. In this vein Edward Rutledge bequeathed the idea of statesmanship to his son, Henry, when he wrote:

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[86] George S. McCowan, "Chief Justice John Rutledge and the Jay Treaty," SCHM, LXII (1961), 10-23.

[87] For an example, see O'Neall, Bench and Bar of South Carolina, II, 130-131. Donald Kommers argues that more important than their political contributions, lawyers in the New Republic were largely responsible for the successful practical day-to-day operation of American society. "Here," Kommers says, "is where his real genius lay. For the lawyer developed legal instruments which seemed adequate to the dynamic growth of American society in trade, in finance, in shipping, in mercantile enterprise, setting the basis for a powerful and vigorous economy." Kommers, "Reflections on Chroust's Rise of the Legal Profession in America," AJLH, X (1966), 211-212.

> altho' I am fully convinced you are neither anxious, or desirous of entering on public duties, yet at certain times, and in certain seasons it is so absolutely incumbent on Men of talents, and independence, and virtue, to participate in the affairs of the Republic, that I consider your chance for retirement to be small indeed.[88]

This was a heritage for which Rutledge and his generation had fought and a duty they clearly understood.

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[88]Zahniser, "Edward Rutledge to His Son," August 2, 1796," SCHM, LXIV (1963), 67-71.

CONCLUSION

> Professionally taught the rights of the people, [the lawyers] were among the foremost to decry every attack made on their liberties: Bred in the habits of public speaking, they made a distinguished figure in the meetings of the people, and were particularly able to explain to them the tendency of the late acts of Parliament. Exerting their abilities and influence in the cause of their country, they were rewarded with its confidence.[1]

Within the space of a century the South Carolina lawyers emerged from obscurity, overcame the stigma of having originally been outlawed, and achieved a position of social and economic prominence. During the Revolution, the bar's political leadership thrust its members into many key positions of government in the new nation as well as the new state. No single condition produced this transition from the anathema of the founders to the acclaim of contemporaries of the Revolution like David Ramsay, but several factors marked the ascendancy of the professional lawyers in South Carolina.

Despite the prohibition in the Fundamental Constitutions, early South Carolina accepted the necessity for lawyers, especially after the beginning of the eighteenth century. A favorable economy, an active--and increasingly complicated--court system, an expanding population, and the availability of land provided a need for the expertise of men who understood the everyday workings of courts, local government agencies, and society. The rising prosperity of the colony after 1730 encouraged the growth of a stable, native merchant class by mid-century. This in turn accentuated the need for native legal talent as well, and the

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[1] Ramsay, The History of the American Revolution, I, 134.

prosperity of the legal profession after 1750 enabled many of its members to include themselves in the socio-economic elite of the Carolina society.

The political climate also favored attorneys. With the emergence of the Commons House of Assembly in the 1690s, disputes over the control of the provincial judicial system invited professional lawyers to take an active role in shaping the colonial judiciary as well as the jurisdiction of the four courts: Common Pleas, General Sessions, Vice-Admiralty, and Chancery.

Lawyers in the early eighteenth century did not shun politics but sought to influence political decisions that affected the profession. The nine lawyers comprising the bar in 1719 were able to unite to force Chief Justice Nicholas Trott from his office when proprietary control ended. They also attempted in the Court Act of 1720 to remove responsibility for the Chancery Court from the hands of the governor and place it under the direction of an appointed chancellor who might be more sympathetic to the profession's interests. Lawyers risked arrest and detention when they sided with Chief Justice Robert Wright against the House during the constitutional controversy over Wright's use of the writ of habeas corpus in the 1730s.

During the crisis with the mother country, lawyers reacted strongly to British policies which threatened local control of the legal profession and the judicial system. Some worked in the Assembly to challenge the legislation of Parliament in a legal and constitutional manner. Most of the lawyers who later became Whigs saw the threats to their world reflected on the one hand in the incompetence of Chief Justice Charles Shinner, who tried to disbar practitioners who disagreed with him, and

on the other in the political machinations of Vice-Admiralty Court Judge Egerton Leigh. Lawyers and assemblymen forced Shinner from office in 1767 and worked to ostracize Leigh and the customs officials who were implicated with him in weakening the credibility of the maritime tribunal. The profession's clearest expression of its political involvement was the acceptance by lawyers of a wide range of public offices during and after the Revolution and the new meaning they sought to give to public service.

The experience of South Carolina's lawyers may not have been that of every American colony, nor does the Carolina legal profession serve as a model for a comprehensive study of the early American bar. Yet, there are similarities between developments in the Palmetto province and those in other regions and also events in South Carolina which better explain the development of the legal fraternity in America than those in other colonies. As in New York, utopianism appears in early Carolina history and was a driving force in the ban against trained lawyers in the Fundamental Constitutions.[2] Even though this document was never officially adopted, the strains of utopian sentiment for a "lawyerless" society ran strong throughout the seventeenth century and delayed the acceptance of professional attorneys.

Court records do not identify the earliest practitioners in the province, but attorneys were present in South Carolina and in other colonies before the end of the seventeenth century. Like the first practitioners in Maryland, these men were probably planters, entrepreneurs,

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[2]Aiken, "Utopianism and the Emergence of the Colonial Legal Profession," 30-33, 34-43.

and other amateur advocates who attended the quarterly sessions of the courts to conduct their own business as well as the business of others.[3] The appearance of these early attorneys in the Carolina courts marks the beginning of legal practice in the province. As early as 1694 the Assembly recognized the existence of men who were paid to represent clients.

A principal difference between South Carolina and other colonies--North and South--was its court system. Throughout most of the colonial period the province had no county or precinct courts, despite several attempts to establish them in the eighteenth century. The centralization of the judiciary in Charleston severely limited the expansion of justice to the interior and was a precipitant of the Regulator Movement of the middle 1760s. Most court activity remained concentrated in the capital even after the establishment of circuit courts in 1772 and rendered the bar smaller than that of most colonies until after the American Revolution.

Another significant difference between South Carolina's court system and that of other colonies was the tradition in this southern colony of appointing trained lawyers as chief justices. Beginning with the commission to Trott in 1703, professional attorneys--whether placemen from England or immigrants and natives who rose through the ranks of the local bar--were selected more often than non-lawyers to head the judiciary. Chief justices trained in the law were able to challenge encroachments

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[3]Day, "Lawyers in Colonial Maryland," AJLH, XVII (1973), 145-150. In the practice of their occupation, these men may have also been like the early lawyers of New York whose involvement in more than one trade gave them a shared sense of community unlike the later professionals whose standards of professionalization--in New York at least--moved them away from the public's confidence. Klein, "From Community to Status," New York History, LX (1979), 138-145.

by the House on the constitutional relationship between the two branches of government and to pose the broader questions involving the constitutional bond between the mother country and the colonies.

The education of the provincial bar also set the Palmetto colony apart from many of its neighbors in British North America. No other colony--not even more populous Virginia--sent so many native sons to England for formal education at the universities and legal training at the Inns of Court.[4] Yet, Virginia, the middle colonies, and New England possessed colleges within easy travelling distance of aspiring lawyers from those regions. For South Carolinians, the reliance on the mother country's institutions was part of the process of Anglicization which emerges as a theme in American colonial history after 1750. Anglicization, however, was not a totally transforming phenomenon. While Carolinians accepted many features of English life, they rejected others: they were attracted to the English law schools, but they were highly suspicious of the quality of education in the country's universities; they copied English lifestyles and toured the continent, but they saw their futures and hoped to realize their goals in their native land; they admired the British system of government, but they were deeply mistrustful of its politics.[5]

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[4]Smith, "Virginia Lawyers," 180. Smith claims that Virginians developed the clerkship in reaction to the poor quality of legal training provided by the Inns of Court. South Carolinians apparently chose to ignore the decline of educational standards at the English law colleges. While they complained about education at the universities, they continued to hold the Inns of Court in esteem as late as 1776 and used the apprenticeship at home as a substitute for an English legal education.

[5]Murrin, "Anglicizing an American Colony"; Murrin, "The Legal Transformation," Katz, ed., Colonial America, 415-449; Greene, "An Uneasy Connection," Kurtz and Hutson, eds., Essays on the American Revolution, 63-64; Greene, "Search for Identity," Journal of Social History, III (1970), 190-191.

Training at the Inns, moreover, was only one feature which differentiated legal education in South Carolina from other colonies. Of equal importance was the combination of routes to the bar which a potential lawyer could take: apprenticeship within the colony, apprenticeship abroad, apprenticeship combined with study at the Inns of Court, or an exclusive legal education at the Inns. Thus, while the apprenticeship became the standard method for training lawyers in most colonies, South Carolina--like Virginia--chose its attorneys from a variety of educational backgrounds and experiences.[6]

Perhaps a close inspection of the court records of other colonies will lead to the discovery of a pattern of stratification similar to that of South Carolina. Legal practice was dominated by a small group who appeared in the majority of court cases. Nevertheless, there were no legal restrictions on professional aspirants as there were in other colonies for brief periods in the eighteenth century.[7] The bar was open to all who could meet the educational requirements, and the leading practitioners included both the important and the lesser known of the colonists. In addition, a much larger secondary group enjoyed a steady, lucrative practice and attained a modest degree of professional success. Still, a majority practiced for only a short period and could not eke out a comfortable living. This group--almost two-thirds of the bar--had to combine

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[6]For comparisons, see Smith, "Virginia Lawyers," 2-3; Gawalt, "Massachusetts Lawyers," 130-131; McKirdy, "The Lawyer as Apprentice," Journal of Legal Education, XXVIII (1976), 125-127; Hamlin, Legal Education in Colonial New York, 20-21.

[7]Johnson, "John Jay: Lawyer in Time of Transition," University of Pennsylvania Law Review, CXXIV (1976), 1273-1274; Murrin, "The Legal Transformation," Katz, ed., Colonial America, 431-432.

the law with other trades or venture into new occupations, such as planting and commerce. Thus, while South Carolina's bar remained open, lawyers who entered the profession found it difficult to reach the top. On the other hand, colonies such as New York which limited access to legal education and practice throughout much of the eighteenth century produced larger bars, provided greater opportunity for practitioners, and a wider distribution of the case load among them.[8]

The social and economic stratification of other colonial bars may be quite different from that of South Carolina. In Virginia, professional standards were sufficiently loose to enable men from families of modest wealth and social background to improve their status, although most of those who dominated the Commonwealth's bar were the sons of socially prestigious parents.[9] In the Massachusetts bar, the vast majority of lawyers in the late eighteenth century were sons of professional men (doctors, ministers, lawyers, and judges) and married the daughters of their professional peers.[10] The South Carolina bar was dominated by the planter, merchant, and professional triad, but while it remained stratified, it was not static. The newly arrived consistently vied with established wealth, and the leading attorneys in the eighteenth century came from both groups.

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[8]Johnson, "John Jay: Lawyer in Time of Transition," University of Pennsylvania Law Review, CXXIV (1976), 1273-1274; Klein, "Rise of the New York Bar: The Legal Career of William Livingston," WMQ, 3rd Ser., XV (1958), 334-358.

[9]Smith, "Virginia Lawyers," 353.

[10]Gawalt, Promise of Power, 172-174.

The professional characteristics of the South Carolina bar were no doubt similar to those of other colonies. Although the profession accepted a variety of educational backgrounds for admission to the bar, some form of education was necessary whether it was self instruction through reading law books, the superficiality of readings at the Inns, or the drudgery of an apprenticeship. This, as much as any other feature, set lawyers apart from their social and economic counterparts, the planters and merchants. Yet, while legal training was required to become a practitioner, general legal knowledge was hardly the preserve of the profession as the performance of non-lawyers Christopher Gadsden, Henry Laurens, and William Henry Drayton during the revolutionary crisis strongly attests.

The Carolina bar also became competent in exercising self-regulation of its affairs. There were, in fact, only token efforts by the House to regulate legal practice. Lawyers as justices established their own educational requirements in rules of court; and the chief justices--most of whom were attorneys--admitted and disbarred practitioners without help from the Assembly or Council. In this respect, then, the bar obtained tacit approval from the public to regulate its own membership, and the populace regarded the legal fraternity as a professional organization.

South Carolina differed from other colonies in the absence of a formal professional organization, such as a bar association or moot. Unlike their contemporaries in Massachusetts and New York, South Carolina lawyers never recognized the need for such a collective body.[11] Nor did Carolinians, despite their desire to imitate English lifestyles, attempt

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[11]Ibid., 4-6; see also Klein, "New York Lawyers and the Coming of the American Revolution," New York History, LV (1974), 405.

to pattern the provincial profession after its British counterpart. The Charleston bar initiated no system of rank, such as the Massachusetts profession, or stratified program of training, as in the mother country; upon admission to the bar, all attorneys held the same privileges regardless of their educational, social, or economic background.[12]

The encouragement of native sons of merchants, planters, and professional men to enter the legal profession after mid-century was a strong factor in the emergence of the bar as part of the province's social and economic elite. The attainment of this status as well as their knowledge of the law prepared the members of the bar for the leadership roles they played during and after the American Revolution.

The perceived threat posed by the increasing use of British placemen to fill colonial administrative and judicial positions in South Carolina may have been a special factor in producing more patriots among lawyers of that colony than in the others. While three-fourths of the practicing attorneys in Charleston joined the American cause, the bars in other colonies such as Massachusetts and New York were more evenly divided. Yet, despite the stronger professional unity in Charleston, attorneys accepted independence more reluctantly than did lawyers in other provinces. In their new leadership roles, the attorneys adhered to a limited, conservative path, protective of colonial rights within the British Empire but designed to preserve the important economic and social connection with the mother country. Thus, lawyers like John Rutledge were active in the

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[12] For a description of the structure of the English bar, see Birks, Gentlemen of the Law, 2-3; Holdsworth, History of English Law, XII, 40-43. See also, Murrin, "The Legal Transformation," Katz, ed., Colonial America, 431-432.

crisis with England from before the Stamp Act but nevertheless hoped to avoid a final separation.

During and after the war, lawyers moved quickly to assume the important public offices vacated by departing crown appointees. However, they accepted these positions less from ambition than in the belief that they were the best qualified to guide the new state in the era of republicanism and to preserve the meaning and spirit of the recent Revolution. The Revolution in which South Carolina lawyers served as leaders was, however, a narrow one which avoided any tampering with the underpinnings of the provincial social structure. The changes that occurred as a result of the war with England were political rather than social or economic. Carolinians remained safe from the "levelling principles" espoused by leaders in New England, and the system of chattel slavery--upon which the entire economy depended--remained as firmly entrenched in the fabric of Carolina life as ever. It was the preservation of this colonial heritage as well as that of republican virtue which the revolutionary generation hoped to bequeath to its sons; and it was in this respect that the "confidence" of the people--which historian David Ramsay believed the lawyers had earned--proved in the years ahead to be as burdensome as it was rewarding.

BIBLIOGRAPHY

BIBLIOGRAPHY

I. PRIMARY SOURCES

A. Manuscripts

Charleston Library Society, Charleston, S.C.

Charleston Library Society Committee Journals, 1759-1790.

Journal of the Proceedings of the Charleston Library Society, 1759-1790.

Duke University Library, Durham, N.C.

Louis Manigault Papers, 1776-1844.

Federal Records Center, East Point, Ga.

Records of the Vice-Admiralty Court of South Carolina, 1716-1763.

Scottish Record Office, Edinburgh.

John Murray of Murraythwaite Letters.

South Carolina Department of Archives and History, Columbia, S.C.

Charleston County Wills, 1732-1776, W.P.A. Typescript.

Charleston Equity Bills, Records of the Chancery Court, 1801.

Engrossed Acts of the General Assembly, 1720.

Inventories of Estate, 1736-1776.

Journals of the Commons House of Assembly, 1692-1775.

Journals of the South Carolina Council, 1721-1774.

Journals of the South Carolina Court of Common Pleas, 1713-1769.

Journals of the South Carolina Court of General Sessions, 1769-1776.

Judgment Dockets, South Carolina Court of Common Pleas, 1739-1773.

Judgment Rolls, South Carolina Court of Common Pleas, 1703-1790.

Laurens County Estate Records, 1788, 1802.

Loyalist Commission, Audit Office Records, 1783-1790 (microfilm).

Miscellaneous Records, Main Series, 1671-1973.

Petitions to Practice Law, 1752-1778, Records of the Chancery Court.

Records of the Secretary of the Province, 1671-1736.

Wills, Inventories, and Miscellaneous Records, Charleston County, S.C., 1687-1746, W.P.A. Typescript.

Writ Books, South Carolina Court of Common Pleas, 1752-1755.

South Carolina Historical Society, Charleston, S.C.

Anne Simons Deas Notebook.

Henry Laurens Letterbook (microfilm).

Manigault Family Papers, 1685-1873.

Pinckney Papers, 1708-1878.

John Rutledge Account Book, 1761-1779.

South Caroliniana Library, University of South Carolina, Columbia, S.C.

George Bowie Precedent Book, 1790.

Fulham Papers in the Lambeth Palace Library (microfilm).

Ralph Izard Papers.

Robert Johnson Manuscripts, 1732.

Manigault Family Papers.

Alexander Moultrie Commonplace Book.

William Moultrie Papers.

Joshua Sharpe Collection.

Southern Historical Collection, University of North Carolina, Chapel Hill, N.C.

Preston Davie Collection.

John Rutledge, Jr., Papers (microfilm).

B. Printed

Barck, Dorothy, ed., Letterbook of John Watts, Merchant and Councillor of New York, January 1, 1762-December 22, 1765, New York Historical Society Collections, LXI (1928).

Barnwell, Joseph W., ed., "Diary of Timothy Ford, 1785-1786," South Carolina Historical and Genealogical Magazine, XIII (1912), 132-147, 181-204.

"The Bull Family of South Carolina," South Carolina Historical and Genealogical Magazine, I (1900), 76-90.

Burnett, Edmund Cody, ed., Letters of Members of the Continental Congress, 8 vols. Washington, D.C., 1921-1936.

Childs, Arney R., ed., "William Hasell Gibbes' Story of His Life," South Carolina Historical Magazine, L (1949), 59-67.

Collections of the South Carolina Historical Society, 5 vols. Charleston, S.C., 1897.

Cooper, Thomas and David J. McCord, eds., Statutes of South Carolina, 10 vols. Columbia, S.C., 1836-1841.

"Correspondence Between Hon. Henry Laurens and His Son, 1777-1780," South Carolina Historical and Genealogical Magazine, VI (1905), 3-12, 47-52, 103-110, 137-160.

Crouse, Maurice A., ed., "The Letterbook of Peter Manigault, 1763-1773," South Carolina Historical Magazine, LXX (1969), 79-96, 177-195.

_____, ed., "Papers of Gabriel Manigault, 1771-1784," South Carolina Historical Magazine, LXIV (1963), 1-12.

Easterby, J. Harold, ed., The Journals of the Commons House of Assembly, 1736-1750, 9 vols. Columbia, S.C., 1951-1962.

_____, ed., "The South Carolina Education Bill of 1770," South Carolina Historical and Genealogical Magazine, XLVIII (1947), 95-111.

"The English Ancestors of the Bull Family of South Carolina," South Carolina Historical and Genealogical Magazine, XXXVI (1935), 36-41.

Ezell, John S., ed., The New Democracy in America: Travels of Francisco de Miranda in the United States, 1783-1784. Norman, Okla., 1963.

Gibbes, R. W., ed., Documentary History of the American Revolution. 3 vols. Columbia, S.C., 1855.

Gilbert, Felix, ed., "Letters of Francis Kinloch to Thomas Boone, 1782-1788," Journal of Southern History, VIII (1942), 87-105.

Great Britain, Calendar of State Papers, Colonial Series, 44 vols. London, 1860-1969.

_____, Records in the British Public Record Office Relating to South Carolina, 1663-1782 (transcripts), 36 vols. (microfilm).

Gregorie, Anne King, and J. Nelson Frierson, eds., Records of the Court of Chancery of South Carolina, 1671-1779. Washington, D.C., 1950.

Grimke, John Faucheraud, The South Carolina Justice of the Peace. Philadelphia, 1789.

Hamer, Philip M., George C. Rogers, and David Chesnutt, eds., The Papers of Henry Laurens, 8 vols. to date. Columbia, S.C., 1968- .

Hemphill, William Edwin, Wylma Anne Wates, and R. Nicholas Olsberg, eds., Journals of the General Assembly and House of Representatives of the State of South Carolina, 1776-1780. Columbia, S.C., 1970.

Heyward, James B., comp., "The Heyward Family of South Carolina," South Carolina Historical Magazine, LIX (1958), 143-158.

Hooker, Richard James, ed., The Carolina Backcountry on the Eve of the Revolution: The Journal and Other Writings of Charles Woodmason, Anglican Itinerant. Chapel Hill, N.C., 1953.

Howe, Mark Antony DeWolfe, ed., "Journal of Josiah Quincy, Junior, 1773," Massachusetts Historical Society Proceedings, XLIX (1915-1916), 424-448.

Journal of the Commissioners for Trade and Plantations, 14 vols. London, 1920-1938.

"A Letter from John Laurens to His Uncle James Laurens," South Carolina Historical and Genealogical Magazine, X (1909), 49-53.

"Letters from John Laurens to His Father, Hon. Henry Laurens, 1774-1776," South Carolina Historical and Genealogical Magazine, V (1904), 197-208.

"Letters from Hon. Henry Laurens to His Son John, 1773-1776," South Carolina Historical and Genealogical Magazine, III (1902), 86-96, 139-149, 207-215, IV (1903), 26-35, 99-107, 215-220, 263-277, V (1904), 3-14, 69-81, 125-143.

"Logan Manuscript," Historical Collections of the Joseph Habersham Chapter, Daughters of the American Revolution, 3 vols. Atlanta, Ga., 1910.

Moore, Caroline T., ed., Abstracts of Wills of the State of South Carolina, 1670-1740. Columbia, S.C., 1960.

Olsberg, R. Nicholas, ed., The Journal of the Commons House of Assembly, 1750-1751. Columbia, S.C., 1974.

_____, and Terry W. Lipscomb, eds., The Journal of the Commons House of Assembly, 1751-1752. Columbia, S.C., 1977.

Pinckney, Elise, ed., The Letterbook of Eliza Lucas Pinckney, 1739-1762. Chapel Hill, N.C., 1972.

Salley, Alexander S., ed., "Abstracts from the Records of the Court of Ordinary of the Province of South Carolina, 1692-1700," South Carolina Historical and Genealogical Magazine, VIII (1907), 164-172, 195-210, IX (1908), 73-77, 118-121, 187-188, X (1909), 10-19, 83-91, 136-144, 236-244, XI (1910), 50-56, 123-128, XII (1911), 70-77, 146-152, 207-214, XIII (1912), 56-63, 84-88.

_____, ed., Journals of the Commons House of Assembly of South Carolina, 1692-1725, 17 vols. Columbia, S.C., 1907-1945.

Simpson, William, The Practical Justice of the Peace and Parish-Officer of South Carolina. Charleston, S.C., 1761.

"Six Letters of Peter Manigault," South Carolina Historical and Genealogical Magazine, XV (1914), 113-123.

"South Carolina Gleanings in England," South Carolina Historical and Genealogical Magazine, IV (1903), 231-238, 286-295, V (1904), 100-107, 161-167, 218-228, VI (1905), 20-28, 117-125, 169-173, VII (1906), 27-30, 143-152, VIII (1907), 211-219, IX (1908), 78-84, 122-126, XI (1910), 129-132, XV (1914), 91-96.

Tobias, Thomas J., ed., "Charles Town in 1764," South Carolina Historical Magazine, LXVII (1966), 63-74.

Walsh, Richard, ed., The Writings of Christopher Gadsden. Columbia, S.C., 1966.

Webber, Mabel L., comp., "Dr. John Rutledge and His Descendants," South Carolina Historical and Genealogical Magazine, XXXI (1930), 7-25, 93-106.

_____, comp., "The Thomas Pinckney Family of South Carolina," South Carolina Historical and Genealogical Magazine, XXXIX (1938), 15-35.

_____, ed., "Peter Manigault's Letters," South Carolina Historical and Genealogical Magazine, XXXI (1930), 171-183, 269-282, XXXII (1931), 46-60, 115-130, 175-192, 270-280, XXXIII (1932), 55-62, 148-153, 247-250.

Wroth, L. Kinvin, and Hiller B. Zobel, eds., The Legal Papers of John Adams. 3 vols. Cambridge, Mass., 1965.

Zahniser, Marvin R., ed., "Edward Rutledge to His Son, August 2, 1796," South Carolina Historical Magazine, LXIV (1963), 65-72.

C. Newspapers and Pamphlets

Newspapers

Gazette of the State of South Carolina, 1777-1780.

South Carolina and American General Gazette, 1764-1781.

South Carolina Gazette, 1732-1775.

South Carolina Gazette and Country Journal, 1765-1775.

Pamphlets

A Catalogue of Books Given and Devised by John MacKenzie, Esquire, to the Charlestown Library Society for the Use of the College When Erected. Charleston, 1772.

A Catalogue of the Books Belonging to the Charles-Town Library Society in Charles-Town, South Carolina. London, 1750.

At a Court of General Sessions of the Peace, Oyer and Terminer, Assize and General Gaol Delivery, Holden at Charles-Town in the Province of South-Carolina, on the First Day of October, 1741. The Chief Justice's Charge to the Grand Jury for the Body of this Province. Charleston, 1741. (Evans no. 4812.)

Catalogue of Books Belonging to the Incorporated Charles Town Library Society. Charleston, 1770.

[Howly, Richard], Some Fugitive Thoughts on a Letter Signed Freeman Addressed to the Deputies Assembled at the High Court of Congress in Philadelphia by a Back Settler. Charleston, 1774.

Laurens, Henry, An Appendix to the Extracts from the Proceedings of the High Court of Vice-Admiralty in Charlestown, South Carolina & C. Charleston, 1769. (Evans no. 11307.)

_____, Extracts from the Proceedings of the High Court of Vice-Admiralty, in Charlestown, South Carolina, Upon Six several Informations adjudged by the Honourable Egerton Leigh, Esq.; Sole Judge of that Court, and His Majesty's Attorney General in the Said Province, in the years 1767 and 1768. Charleston, 1769. (Evans no. 11307.)

Leigh, Egerton, The Man Unmasked: or, the World Undeceived, in the author of a Late Pamphlet intitled, "Extracts from the Proceedings of the High Court of Vice-Admiralty in Charles-Town, South Carolina, & C." With Suitable Remarks on that Masterly Performance. Charleston, 1769. (Evans no. 11308.)

Rules of the Society for Erecting a Library and Raising a Fund for an Academy at Charles Town in South Carolina. Charleston, 1750. (Evans no. 6476.)

Trott, Nicholas, comp., The Laws of the Province of South Carolina, in two parts. Charleston, 1736.

Wells, Robert, Register of the Southern British American Colonies, for the Year 1769. Charleston, 1768. (Evans no. 11111.)

_____, Register of the Southern British American Colonies, for the Year 1774. Charleston, 1773. (Evans no. 13072.)

_____, Register of the Southern British American Colonies, for the Year 1775. Charleston, 1774. (Evans no. 13761.)

II. BIBLIOGRAPHIES AND GUIDES

Calendars of Manuscript Collections in the South Caroliniana Library. 3 vols. Columbia, 1975.

Chandler, Marion C., and Earl W. Wade, The South Carolina Archives: A Temporary Summary Guide, 2nd ed. Columbia, 1976.

Evans, Charles, American Bibliography, 14 vols. Chicago, 1903-1959.

Easterby, J. Harold, Guide to the Study and Reading of South Carolina History. Columbia, 1949-1950.

Greene, Jack P., "The Publication of the Official Records of the Southern Colonies," William and Mary Quarterly, 3rd Ser., XIV (1957), 268-280.

Index to Wills of Charleston County, South Carolina, 1671-1868. Charleston, 1950.

Lee, Charles E., and Ruth S. Green, "A Guide to South Carolina Council Journals, 1671-1775," South Carolina Historical Magazine, LXVIII (1967), 1-13.

_____, "A Guide to the Commons House Journals of the South Carolina General Assembly, 1692-1721," South Carolina Historical Magazine, LXVIII (1967), 85-96.

_____, "A Guide to the Commons House Journals of the South Carolina General Assembly, 1721-1775," South Carolina Historical Magazine, LXVIII (1967), 165-183.

_____, "A Guide to the Upper House Journals of the South Carolina General Assembly, 1721-1775," South Carolina Historical Magazine, LXVII (1966), 187-202.

McCormack, Helen G., comp., "A Provisional Guide to Manuscripts in the South Carolina Historical Society," South Carolina Historical and Genealogical Magazine, XLV (1944), 111-115, 172-176, XLVI (1945), 49-53, 104-109, 171-175, 214-217, XLVII (1946), 53-57, 171-178, XLVIII (1947), 48-52, 177-180.

Moore, John Hammond, Research Materials in South Carolina: A Guide. Columbia, 1967.

Turnbull, Robert James, Bibliography of South Carolina, 1563-1950. 5 vols. Charlottesville, Va., 1956.

III. SECONDARY SOURCES

A. Books

Alexander, Edward P., A Revolutionary Conservative: James Duane of New York. New York, 1938.

Andrews, Charles MacLean, The Colonial Period in American History, 4 vols. New Haven, Conn., 1934-1938.

Bailyn, Bernard, The Origins of American Politics. New York, 1968.

Barry, Richard, Mr. Rutledge of South Carolina. New York, 1942.

Barton, D. Plunket, Charles Benham, and Francis Watt, The Story of the Inns of Court. London, 1924.

Beany, William M., The Right to Counsel in American Courts. Ann Arbor, Mich., 1955.

Becker, Carl L., The History of Political Parties in the Province of New York, 1760-1776. Madison, Wisc., 1909.

Birks, Michael, Gentlemen of the Law. London, 1960.

Bloomfield, Maxwell, American Lawyers in a Changing Society, 1776-1876. Cambridge, Mass., 1976.

Boorstin, Daniel J., The Americans: The Colonial Experience. New York, 1958.

Bowes, Frederick, P., The Culture of Early Charleston. Chapel Hill, N.C., 1942.

Brown, Richard Maxwell, The South Carolina Regulators. Cambridge, Mass., 1963.

Bryson, William Hamilton, Census of Law Books in Colonial Virginia. Charlottesville, Va., 1978.

Bull, Henry DeSaussure, The Family of Stephen Bull of Kinghurst, County Warwick, England and Ashley Hall, South Carolina, 1600-1960. Georgetown, S.C., 1961.

Carr-Saunders, A. M., and P. A. Wilson, The Professions. Oxford, 1933.

Chroust, Anton-Hermann, The Rise of the Legal Profession in America. 2 vols. Norman, Okla., 1965.

Clowse, Converse D., Economic Beginnings in Colonial South Carolina, 1690-1730. Columbia, S.C., 1971.

Colbourn, H. Trevor, The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution. Chapel Hill, N.C., 1965.

Crane, Verner W., The Southern Frontier, 1670-1732. Durham, N.C., 1928.

Cross, Arthur Lyon, The Anglican Episcopate and the American Colonies. Cambridge, Mass., 1902.

Dabney, William M., and Marion Dargan, William Henry Drayton and the American Revolution. Albuquerque, N.M., 1962.

Davis, Richard Beale, Intellectual Life of the Colonial South, 1585-1763. 3 vols. Knoxville, Tenn., 1978.

Drayton, John, A View of South Carolina as Respects Her Natural and Civil Concerns. Charleston, 1802.

Easterby, J. Harold, History of the College of Charleston. Charleston, 1935.

Edgar, Walter B., and N. Louise Bailey, eds., Biographical Directory of the South Carolina House of Representatives, 2 vols. to date. Columbia, S.C., 1974- .

Friedman, Lawrence M., A History of American Law. New York, 1973.

Gawalt, Gerard W., The Promise of Power: The Emergence of the Legal Profession in Massachusetts, 1760-1840. Westport, Conn., 1979.

Goebel, Julius, History of the Supreme Court of the United States, Vol. I: Antecedents to 1801. New York, 1971.

Green, Edwin L., A History of the University of South Carolina. Columbia, S.C., 1916.

Green, V. H. H., A History of Oxford University. London, 1974.

Greenberg, Douglas, Crime and Law Enforcement in the Colony of New York, 1691-1776. Ithaca, N.Y., 1974.

Greene, Evarts B., and Virginia D. Harrington, American Population Before the Federal Census of 1790. New York, 1932.

Greene, Jack P., The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776. Chapel Hill, N.C., 1963.

Gregg, Alexander, History of the Old Cheraws. New York, 1867.

Hamlin, Paul M., Legal Education in Colonial New York. New York, 1939.

Henretta, James A., "Salutary Neglect": Colonial Administration under the Duke of Newcastle. Princeton, N.J., 1972.

Hewatt, Alexander, An Historical Account of the Rise and Progress of the Colonies of South Carolina and Georgia. 2 vols. London, 1779.

Higginbotham, A. Leon, In the Matter of Color: Race and the American Legal Process, the Colonial Period. New York, 1978.

Holdsworth, Sir William Searle, A History of English Law, 16 vols. London, 1922-1966.

Hollis, Daniel Walker, University of South Carolina, 2 vols. Columbia, S.C., 1951.

Hughes, Everett C., Men and Their Work. Glencoe, Ill., 1958.

Hurst, James Willard, The Growth of American Law: The Lawmakers. Boston, 1950.

_____, Law and the Conditions of Freedom in the Nineteenth Century United States. Madison, Wisc., 1956.

Johnson, Herbert A., Imported Eighteenth-Century Law Treatises in American Libraries, 1700-1799. Knoxville, Tenn., 1978.

Jones, Edward Alfred, American Members of the Inns of Court. London, 1924.

Jordan, Winthrop, White Over Black: American Attitudes toward the Negro, 1550-1812. Chapel Hill, N.C., 1968.

Kammen, Michael, People of Paradox: An Inquiry Concerning the Origins of American Civilization. New York, 1972.

Krause, Elliott A., The Sociology of Occupations. Boston, 1971.

Library of Congress Symposia on the American Revolution, The Development of a Revolutionary Mentality. Washington, 1972.

_____, Leadership in the American Revolution. Washington, 1974.

Locke, John, Two Treatises of Government, edited by Peter Laslett, 2nd ed. Cambridge, 1967.

Lynn, Kenneth, ed., The Professions in America. Boston, 1963.

MacLeod, Duncan J., Slavery, Race and the American Revolution. Cambridge, 1974.

Malone, Dumas, and Allen Johnson, eds., Dictionary of American Biography, 20 vols. New York, 1928-1936.

Malone, Dumas, Jefferson the Virginian. Boston, 1948.

McCrady, Edward, The History of South Carolina Under the Royal Government, 1719-1776. New York, 1899.

Mallet, Charles Edward, A History of the University of Oxford. 3 vols. London, 1924.

Main, Jackson Turner, The Social Structure of Revolutionary America. Princeton, N.J., 1965.

Martin, James Kirby, Men in Rebellion: Higher Government Leaders and the Coming of the American Revolution. New Brunswick, N.J., 1973.

Meriwether, Robert L., The Expansion of South Carolina, 1729-1765. Kingsport, Tenn., 1940.

Morgan, Donald G., Justice William Johnson: The First Dissenter. Columbia, S.C., 1954.

Morris, Richard B., Studies in the History of American Law, 1930 reprint. Philadelphia, 1959.

O'Neall, John Belton, Bench and Bar of South Carolina, 2 vols. Charleston, 1859.

Pavalko, Ronald M., Sociology of Occupations and Professions. Itasca, Ill., 1971.

Pinckney, Reverend Charles Cotesworth, Life of General Thomas Pinckney. Boston, 1895.

Pound, Roscoe, The Formative Era of American Law. Boston, 1938.

Ramsay, David, History of South Carolina, 2 vols. Newberry, S.C., 1858.

_____, The History of the American Revolution, 2 vols. Philadelphia, 1789.

Reid, John Phillip, In a Defiant Stance: The Conditions of Law in Massachusetts Bay, the Irish Comparison, and the Coming of the American Revolution. University Park, Pa., 1977.

Ritzer, George, Man and His Work: Conflict and Change. New York, 1972.

Robson, Robert, The Attorney in Eighteenth Century England. Cambridge, 1959.

Rogers, George C., Charleston in the Age of the Pinckneys. Norman, Okla., 1969.

_____, Evolution of a Federalist: William Loughton Smith of Charleston, 1758-1812. Columbia, S.C., 1962.

Rueschemeyer, Dietrich, Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and in the United States. Cambridge, Mass., 1974.

Sachse, William L., The Colonial American in Britain. Madison, Wisc., 1956.

Sherman, Richard P., Robert Johnson: Proprietary and Royal Governor of South Carolina. Columbia, S.C., 1966.

Sirmans, M. Eugene, Colonial South Carolina: A Political History, 1663-1763. Chapel Hill, N.C., 1966.

Smith, William, Jr., The History of the Province of New York from the First Discovery to the Year 1732, 2 vols., edited by Michael Kammen. Cambridge, Mass., 1972.

Smith, William Roy, South Carolina as a Royal Province, 1719-1776. New York, 1903.

Stephen, Sir Leslie, and Sir Sidney Lee, eds., Dictionary of National Biography, 22 vols. London, 1921-1933, 1937-1938.

Ubbelohde, Carl, The Vice Admiralty Courts and the American Revolution. Chapel Hill, N.C., 1960.

Ver Steeg, Clarence L., Origins of a Southern Mosaic: Studies of Early Carolina and Georgia. Athens, Ga., 1975.

Vipperman, Carl J., The Rise of Rawlins Lowndes, 1721-1800. Columbia, S.C., 1978.

Wallace, David Duncan, Constitutional History of South Carolina from 1725 to 1775. Abbeville, S.C., 1899.

_____, The History of South Carolina, 4 vols. New York, 1934.

_____, The Life of Henry Laurens with a Sketch of the Life of Lieutenant Colonel John Laurens. New York, 1915.

Waring, Joseph Ioor, A History of Medicine in South Carolina, 1670-1825. Columbia, S.C., 1964.

Warren, Charles, A History of the American Bar. New York, 1911.

Weir, Robert M., "A Most Important Epocha": The Coming of the Revolution in South Carolina. Columbia, S.C., 1970.

Winstanley, D. A., The University of Cambridge in the Eighteenth Century. Cambridge, 1922.

Wood, Gordon S., The Creation of the American Republic, 1776-1787. Chapel Hill, N.C. 1969.

Wood, Peter H., Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion. New York, 1974.

Younger, Richard D., The People's Panel: The Grand Jury in the United States, 1634-1861. Providence, R.I., 1963.

Zahniser, Marvin R., Charles Cotesworth Pinckney: Founding Father. Chapel Hill, N.C., 1967.

B. Articles

Anderson, J. Perrin, "Public Education in Ante-Bellum South Carolina," South Carolina Historical Association Proceedings, 1933, pp. 3-11.

Andreano, Ralph Louis, and Herbert D. Werner, "Charleston Loyalists: A Statistical Note," South Carolina Historical Magazine, LX (1959), 164-168.

Bedwell, C. E. A., "American Middle Templars," American Historical Review, XXV (1920), 680-689.

Bellot, H. Hale, "The Leighs of South Carolina," Transactions of the Royal Historical Society, 5th Ser., VI (1956), 161-187.

Botein, Stephen, "Professional History Reconsidered," American Journal of Legal History, XXI (1977), 60-79.

Boudin, Louis R., "Lord Coke and the American Doctrine of Judicial Power," New York University Law Review, VI (1929), 223-246.

Bridwell, Randall, "Mr. Nicholas Trott and the South Carolina Vice Admiralty Court: An Essay on Procedural Reform and Colonial Politics," South Carolina Law Review, XXVIII (1976), 181-218.

Brown, Philip M., "Early Indian Trade in the Development of South Carolina: Politics, Economics, and Social Mobility During the Proprietary Period, 1670-1719," South Carolina Historical Magazine, LXXVI (1975), 118-128.

Calhoon, Robert M., and Robert M. Weir, "The Scandalous History of Sir Egerton Leigh," William and Mary Quarterly, 3rd ser., XXVI (1969), 47-74.

Chafee, Zechariah, "Colonial Courts and the Common Law," in David H. Flaherty, ed., Essays in the History of Early American Law. Chapel Hill, N.C., 1969, pp. 53-82.

Corwin, Edward S., "The 'Higher Law' Background of American Constitutional Law," Harvard Law Review, XLII (1928-1929), 365-409.

Crary, Catherine Snell, "The American Dream: John Tabor Kempe's Rise from Poverty to Riches," William and Mary Quarterly, 3rd Ser., XIV (1957), 176-195.

Crouse, Maurice A., "Cautious Rebellion: South Carolina's Opposition to the Stamp Act," South Carolina Historical Magazine, LXXIII (1972), 59-71.

_____, "Gabriel Manigault: Charleston Merchant," South Carolina Historical Magazine, LXVIII (1967), 220-231.

Dabney, William M., "Drayton and Laurens in the Continental Congress," South Carolina Historical Magazine, LX (1959), 74-82.

Day, Alan F., "Lawyers in Colonial Maryland, 1660-1715," American Journal of Legal History, XVII (1973), 145-165.

DeLany, V. T. H., "The History of Legal Education in Ireland," Journal of Legal Education, XII (1960), 396-405.

Eaton, Clement, "A Mirror of the Southern Colonial Lawyer: The Fee Books of Patrick Henry, Thomas Jefferson, and Waightstill Avery," William and Mary Quarterly, 3rd Ser., VII (1951), 520-534.

Edgar, Walter B., "Notable Libraries of Colonial South Carolina," South Carolina Historical Magazine, LXXII (1971), 105-110.

_____, "Robert Pringle and His World," South Carolina Historical Magazine, LXXVI (1975), 1-11.

_____, "Some Popular Books in Colonial South Carolina," South Carolina Historical Magazine, LXXII (1971), 174-178.

Ely, James W., "American Independence and the Law: A Study of Post-Revolutionary South Carolina Legislation," Vanderbilt Law Review, XXVI (1973), 939-971.

Flaherty, David H., "An Approach to American History: Willard Hurst as Legal Historian," American Journal of Legal History, XIV (1970), 222-234.

_____, "An Introduction to Early American Legal History," in David H. Flaherty, ed., Essays in the History of Early American Law. Chapel Hill, N.C., 1969, pp. 3-38.

Freund, Paul A., "The Legal Profession," in Kenneth Lynn, ed., The Professions in America. Boston, 1963, pp. 35-46.

Friedman, Lawrence M., "Heart Against Head: Perry Miller and the Legal Mind," Yale Law Journal, LXXVII (1968), 1244-1269.

Goebel, Julius, "King's Law and Local Custom in Seventeenth Century New England," in David H. Flaherty, ed., Essays in the History of Early American Law. Chapel Hill, N.C., 1969, pp. 83-120.

Gordon, Robert W., "J. Willard Hurst and the Common Law Tradition in American Legal Historiography," Law and Society Review, X (1975), 7-55.

Greene, Jack P., "An Uneasy Connection: An Analysis of the Preconditions of the American Revolution," in Stephen G. Kurtz and James H. Hutson, eds., Essays on the American Revolution. Chapel Hill, N.C., 1973, pp. 32-80.

_____, "Bridge to Revolution: The Wilkes Fund Controversy in South Carolina, 1769-1775," Journal of Southern History, XXIX (1963), 19-52.

_____, "The Gadsden Election Controversy and the Revolutionary Movement in South Carolina," Mississippi Valley Historical Review, XLVI (1959), 469-492.

_____, "Search for Identity: An Interpretation of the Meaning of Selected Patterns of Social Response in Eighteenth-Century America," Journal of Social History, III (1970), 189-220.

Gregorie, Anne King, "The First Decade of the Charleston Library Society," South Carolina Historical Association Proceedings, 1935, pp. 3-10.

Guest, J. W. "The Court of Ordinary in South Carolina," Selden Society Yearbook, VI (1942), 40-46.

Hamilton, J. G. de Roulhac, "Southern Members of the Inns of Court," North Carolina Historical Review, X (1933), 273-286.

Harrison, M. L., "Study of the Earliest Reported Decisions of the South Carolina Courts of Law," American Journal of Legal History, XVI (1972), 51-70.

Herbst, Jurgen, "The First Three American Colleges: Schools of the Reformation," Perspectives in American History, VIII (1941), 7-52.

Hindus, Michael Stephen, "The Contours of Crime and Justice in Massachusetts and South Carolina, 1767-1878," American Journal of Legal History, XXI (1977), 212-237.

Hogue, L. Lynn, "Nicholas Trott: Man of Law and Letters," South Carolina Historical Magazine, LXXVI (1975), 25-34.

Horwitz, Morton J., "The Conservative Tradition in the Writing of American Legal History," American Journal of Legal History, XVII (1973), 275-294.

Johnson, Herbert A., "American Colonial Legal History: A Historiographical Interpretation," in Alden T. Vaughan and George Athan Billias, eds., Perspectives on Early American History: Essays in Honor of Richard B. Morris. New York, 1973, pp. 250-281.

_____, "Civil Procedure in John Jay's New York," American Journal of Legal History, XI (1967), 69-80.

_____, "John Jay: Lawyer in a Time of Transition, 1764-1775," University of Pennsylvania Law Review, CXXIV (1976), 1260-1292.

Katz, Stanley N., "Looking Backward: The Early History of American Law," University of Chicago Law Review, XXXIII (1965-1966), 867-884.

_____, "The Politics of Law in Colonial America: Controversies Over Chancery Courts and Equity Law in the Eighteenth Century," Perspectives in American History, V (1971), 257-284.

Klein, Milton M., "Clio and the Law: The Uncertain Promise of American Legal History," American Society for Legal History Newsletter, VIII (1978), 7-14.

_____, "From Community to Status: The Development of the Legal Profession in Colonial New York," New York History, LX (1979), 133-156.

_____, "New York Lawyers and the Coming of the American Revolution," New York History, LV (1974), 383-407.

_____, "Prelude to Revolution in New York: Jury Trials and Judicial Tenure," William and Mary Quarterly, 3rd Ser., XVII (1960), 439-462.

_____, "The Rise of the New York Bar: The Legal Career of William Livingston," William and Mary Quarterly, 3rd Ser., XV (1958), 334-358.

Knafla, Louis A., "The Law Studies of an Elizabethan Student," Huntington Library Quarterly, XXXII (1968-1969), 221-239.

Kommers, Donald P., "Reflections on Professor Chroust's The Rise of the Legal Profession in America," American Journal of Legal History, X (1966), 201-213.

Land, Aubrey C., "Economic Base and Social Structure: The Northern Chesapeake in the Eighteenth Century," Journal of Economic History, XXV (1965), 639-654.

Lefler, Hugh T., "Promotional Literature of the Southern Colonies," Journal of Southern History, XXXIII (1967), 3-25.

Lucas, Paul, "Blackstone and the Reform of the Legal Profession," English Historical Review, LXXVII (1962), 456-489.

Maier, Pauline, "The Charleston Mob and the Evolution of Popular Politics in Revolutionary South Carolina, 1765-1784," Perspectives in American History, IV (1970), 173-196.

_____, "Why Revolution? Why Democracy?" Journal of Interdisciplinary History, VI (1976), 711-732.

"The Manigault Family of South Carolina from 1685 to 1886," Huguenot Society of South Carolina Transactions, 1897, pp. 48-84.

McCowan, George S., "Chief Justice John Rutledge and the Jay Treaty," South Carolina Historical Magazine, LXII (1961), 10-23.

McKirdy, Charles R., "The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts," Journal of Legal Education, XXVIII (1976), 124-136.

_____, "A Bar Divided: The Lawyers of Massachusetts and the American Revolution," American Journal of Legal History, XVI (1972), 205-214.

Morris, Richard B., "The Legal Profession in America on the Eve of the Revolution," in Harry W. Jones, ed., Political Separation and Legal Continuity. [Chicago] 1976, pp. 3-34.

Murrin, John M., "The Legal Transformation: The Bench and Bar of Eighteenth-Century Massachusetts," in Stanley N. Katz, ed., Colonial America: Essays in Politics and Social Development. Boston, 1971, pp. 415-449.

Parsons, John E., "A Souvenir of Charleston," New York-Historical Society Quarterly, XLIII (1959), 385-399.

Plucknett, Theodore F. T., "Bonham's Case and Judicial Review," Harvard Law Review, XL (1926-1927), 30-70.

Prest, Wilfred, "Legal Education of the Gentry, 1560-1640," Past and Present, XXXVIII (1967), 20-39.

Rogers, George C., "The First Earl of Shaftesbury," South Carolina Historical Magazine, LXVIII (1967), 74-78.

Rothman, David J., "The Promise of American Legal History," Reviews in American History, II (1974), 16-22.

Salley, Alexander S., "Col. Miles Brewton and Some of His Descendants," South Carolina Historical and Genealogical Magazine, II (1901), 128-152.

Sirmans, M. Eugene, "Politicians and Planters: The Bull Family of Colonial South Carolina," South Carolina Historical Association Proceedings, 1962, pp. 32-41.

_____, "The South Carolina Royal Council, 1720-1763," William and Mary Quarterly, 3rd Ser., XVIII (1961), 373-392.

Smith, Henry A. M., "The Baronies of South Carolina," South Carolina Historical and Genealogical Magazine, XV (1914), 63-72, 149-165.

Smith, Joseph H., "Administrative Control of the Courts of the American Plantations," in David H. Flaherty, ed., Essays in the History of Early American Law. Chapel Hill, N.C., 1969, pp. 281-335.

_____, "An Independent Judiciary: The Colonial Background," University of Pennsylvania Law Review, CXXIV (1976), 1104-1156.

_____, "The English Criminal Law in Early America," in Joseph H. Smith and Thomas G. Barnes, The English Legal System: Carryover to the Colonies [William Andrews Clark Memorial Lectures, University of California at Los Angeles] (Los Angeles, 1975), pp. 3-60.

"South Carolina Contributors to the College of Philadelphia," South Carolina Historical and Genealogical Magazine, XLV (1944), 189-192.

Stumpf, Stuart O., "Implications of King George's War for the Charleston Mercantile Community," South Carolina Historical Magazine, LXXVII (1976), 161-188.

Thorne, S. E., "Dr. Bonham's Case," Law Quarterly Review, LIV (1938), 543-552.

Ubbelohde, Carl, "The Vice-Admiralty Court of Royal North Carolina, 1729-1759," North Carolina Historical Review, XXXI (1954), 517-528.

Walsh, Richard, "The Charleston Mechanics: A Brief Study, 1760-1776," South Carolina Historical Magazine, LX (1959), 123-144.

Weir, Robert M., "'The Harmony We Were Famous For': An interpretation of Pre-Revolutionary South Carolina Politics," William and Mary Quarterly, 3rd Ser., XXVI (1969), 473-501.

_____, "Portrait of a Hero [John Laurens]," American Heritage, XXVII (1976), 17-19, 86-88.

_____, "Who Shall Rule at Home: The American Revolution as a Crisis of Legitimacy for the Colonial Elite," Journal of Interdisciplinary History, VI (1976), 679-700.

Whittenburg, James P., "Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulation," William and Mary Quarterly, 3rd Ser., XXXIV (1977), 215-238.

Wood, Peter H., "'I Did the Best I Could for My Day': The Study of Early Black History during the Second Reconstruction, 1960 to 1976," William and Mary Quarterly, 3rd Ser., XXXV (1978), 186-225.

_____, "'Taking Care of Business' in Revolutionary South Carolina: Republicanism and the Slave Society," in Jack R. Censer and N. Steven Steinert, eds., South Atlantic Urban Studies, II (1978), 49-72.

C. Dissertations and Theses

Aiken, John Robert, "Utopianism and the Emergence of the Colonial Legal Profession: New York, 1664-1710, a Test Case." Ph.D. dissertation, University of Rochester, 1967.

Attig, Clarence J., "William Henry Lyttleton: A Study in Colonial Administration." Ph.D. dissertation, University of Nebraska-Lincoln, 1958.

Barnwell, Robert W., "Loyalism in South Carolina, 1765-1785." Ph.D. dissertation, Duke University, 1941.

Bentley, William George, "Wealth Distribution in Colonial South Carolina, 1721-1762." Ph.D. dissertation, Georgia State University, 1977.

Clow, Richard Brent, "Edward Rutledge of South Carolina, 1749-1800: Unproclaimed Statesman." Ph.D. dissertation, University of Georgia, 1976.

Crouse, Maurice A., "The Manigault Family of South Carolina, 1685-1783." Ph.D. dissertation, Northwestern University, 1964.

Edgar, Walter B., "The Libraries of Colonial South Carolina." Ph.D. dissertation, University of South Carolina, 1969.

Gawalt, Gerard W., "Massachusetts Lawyers: A Historical Analysis of the Process of Professionalization, 1760-1840." Ph.D. dissertation, Clark University, 1969.

Hogue, L. Lynn, "An Edition of 'Eight Charges Delivered, At So Many Several General Sessions, & Gaol Deliveries: Held at Charles Town . . . In the Years 1703. 1704. 1705. 1706. 1707. By Nicholas Trott, Esq: Chief Justice of the Province of South Carolina.'" Ph.D. dissertation, University of Tennessee, 1972.

Mathews, Alice E., "Pre-College Education in the Southern Colonies." Ph.D. dissertation, University of California, Berkeley, 1968.

McCormick, JoAnne, "The Camden Backcountry Judicial Precinct 1769-1790." M.A. Thesis, University of South Carolina, 1975.

McKirdy, Charles Robert, "Lawyers in Crisis: The Massachusetts Legal Profession, 1760-1790." Ph.D. dissertation, Northwestern University, 1969.

Murrin, John M., "Anglicizing an American Colony: The Transformation of Provincial Massachusetts." Ph.D. dissertation, Yale University, 1966.

Porcher, Frances Haskell, "Royal Review of South Carolina Law, 1719-1776." M.A. Thesis, University of South Carolina, 1962.

Rector, Robert E., "Thomas Bee and the Revolution in South Carolina, 1760-1790." M.A. Thesis, University of South Carolina, 1971.

Rowsome, Beverly Zweiben, "How Blackstone Lost the Colonies: English Law, Colonial Lawyers, and the American Revolution." Ph.D. dissertation, Indiana University, 1971.

Smith, Alan McKinley, "Virginia Lawyers, 1680-1776: The Birth of an American Profession." Ph.D. dissertation, The Johns Hopkins University, 1967.

Snell, William Robert, "Indian Slavery in Colonial South Carolina, 1671-1795." Ph.D. dissertation, University of Alabama, 1972.

Terry, George David, "A Social and Economic Study of a South Carolina Low Country Parish: St. John's Berkeley, 1690-1793." Ph.D. dissertation, University of South Carolina, in progress.

Waterhouse, Richard, "South Carolina's Colonial Elite: A Study in the Social Structure and Political Culture of a Southern Colony, 1670-1760." Ph.D. dissertation, The Johns Hopkins University, 1973.

Weir, Robert M., "'Liberty and Property, and No Stamps': South Carolina and the Stamp Act Crisis." Ph.D. dissertation, Western Reserve University, 1964.

APPENDICES

APPENDIX A

SOUTH CAROLINA LAWYERS ENROLLED AT THE INNS OF COURT TO 1780

Lawyer	Inn	Date Entered
Richard Beresford	Middle Temple	1773
Daniel Blake	Middle Temple	1750
William Blake	Inner Temple	1758
William Ward Burrows	Middle Temple	1772
James Colleton	Inner Temple	1666
John Colleton	Middle Temple	1700
Alexander Cumming	Middle Temple	1716
Peter DeLancey	Lincoln's Inn	1762
Stephen Fox Drayton	Inner Temple	1733
William Drayton	Middle Temple	1750
John Fewtrell	Inner Temple	1746
Alexander Garden	Lincoln's Inn	1779
John Garden	Gray's Inn	1748
William Hasell Gibbes	Inner Temple	1773
David Graeme	Middle Temple	1753
William Gregory	Middle Temple	1739
John F. Grimke	Middle Temple	1769
Benjamin Guerard	Lincoln's Inn	1756
Alexander Harvey	Middle Temple	1765
Thomas Heyward, Jr.	Middle Temple	1765
William Heyward	Middle Temple	1772
Daniel Horry	Inner Temple	1758
Richard Howly	Middle Temple	(unknown)
James Johnston	Middle Temple	1777
Robert Johnston	Middle Temple	1717
Abel Ketelby	Middle Temple	1693
Thomas Kimberly	Middle Temple	1713
Francis Kinloch	Lincoln's Inn	1774
John Laurens	Middle Temple	1772
Egerton Leigh	Inner Temple	1757
Peter Leigh	Middle Temple	1732
Thomas Lynch	Middle Temple	1767
William Henry Lyttleton	Middle Temple	1743
Hext McCall	Middle Temple	1775
John MacKenzie	Middle Temple	1754
Gabriel Manigault II	Lincoln's Inn	1777
Peter Manigault	Inner Temple	1751
John Mathews	Middle Temple	1764
James Michie	Middle Temple	1753
Arthur Middleton	Middle Temple	1757
Alexander Moultrie	Middle Temple	1768
James Moultrie	Inner Temple	1752

Lawyer	Inn	Date Entered
Philip Neyle	Middle Temple	1768
Henry Nichols	Middle Temple	1773
William Oliphant	Middle Temple	1769
John Parker	Middle Temple	1775
James Peronneau	Middle Temple	1768
John Peronneau	Inner Temple	1772
Charles Pinckney	Inner Temple	1734
Charles Pinckney III	Middle Temple	1773
Charles Cotesworth Pinckney	Middle Temple	1764
Thomas Pinckney	Middle Temple	1768
John Julius Pringle	Middle Temple	1773
Jacob Read	Gray's Inn	1773
Edward Rutledge	Middle Temple	1767
Hugh Rutledge	Middle Temple	1765
John Rutledge	Middle Temple	1754
Richard Shubrick	Middle Temple	1768
Thomas Shubrick	Middle Temple	1773
Charles Shinner	Gray's Inn	(unknown)
James Simpson	Middle Temple	1777
William Simpson	Middle Temple	1775
Benjamin Smith	Middle Temple	1774
William Loughton Smith	Middle Temple	1774
John Stuart	Lincoln's Inn	1775
Paul Trapier	Middle Temple	1767
Nicholas Trott	Inner Temple	1695
William Walton	Lincoln's Inn	1775
Joshua Ward	Middle Temple	1759
Robert Williams, Jr.	Lincoln's Inn	1777
William Wragg	Middle Temple	1725
James Wright	Gray's Inn	1741

Sources: Edward Alfred Jones, American Members of the Inns of Court (London, 1924); J. G. DeRoulhac Hamilton, "Southern Members of the Inns of Court," North Carolina Historical Review, X (1933), 276-286; C. E. A. Bedwell, "American Middle Templars," American Historical Review, XXV (1919/20), 680-689; for Peter Leigh, see H. Hale Bellot, "The Leighs in South Carolina," Transactions of the Royal Historical Society, 5th Ser., VI, 170-172; for Charles Shinner, see Journals of the Commons House of Assembly, 1765-1768, manuscript located in South Carolina Department of Archives and History.

APPENDIX B

ATTORNEYS WHO PRACTICED BEFORE THE COURT OF COMMON PLEAS, 1703-1780

Lawyer	Years of Practice
James Abercromby	1738-40
Richard Allein	1714-37
Thomas Bee	1761-75
John Beeke	1714-16
William Billing	1719-28
William Blakeway	1717-24
John Bremar	1768-73
Thomas Bromley	1760-62
John Bucknall	1724
Thomas Burrington	1751-54
William Burrows	1751-79
Charles Wainwright Carrington	1723-24
Thomas Clifford	1723
John Colcock	1767-80
Thomas Corbett	1744-50
Lawrence Coulliette	1727-41
Thomas Courtney	1733
John Dart	1772-80
John Dering	1766-70
Edward Doyley	1736
William Drayton	1756-71
Daniel Dwight	1757-60, 1766-70
Benjamin Edwards	1714-15
Thomas Ellery	1721-37
George Evans	1706-17
Charles Dobson Fell	1754-55
Alexander Fornenbergh	1715-16
William George Freeman	1738-46
Charles Frewen	1767
William Hasell Gibbes	1778-80
John Glen	1766-67
Alexander Gordon	1756-61
David Graeme	1751-63
James Graeme	1736-47
William Graeme	1764-67
Thomas Grimball	1765-73
James Grindlay	1751-65
Benjamin Guerard	1761
Archibald Hamilton	1723-25
Henry Hargrave	1725
Alexander Harvey	1772-74
William Harcourt Henderson	1751-52
Thomas Hepworth	1706-23

Lawyer	Years of Practice
Thomas Heyward	1772-75
Richard Howly	1775
Robert Hume	1717-37
James Johnston	1772-78
Robert Johnston	1778-80
Thomas Juckes	1750-51
Thomas Kimberly	1727
Robert Ladson	1773-74
Egerton Leigh	1754-73
John Lewis	1734
Maurice Lewis	1728-38
Charles Lining	1769
Peter Manigault	1755-69
William Mason	1766-76
John Mathews	1767-73
William Mazyck	1762-68
James Menzies	1752
James Michie	1740-59
Charles Motte	1767-74
Alexander Moultrie	1773-80
James Moultrie	1756-65
John Nevin	1765-72
George Nicholas	1741-45
James O'Brien	1766-68
Bennet Oldham	1765-69
James Parsons	1751-76
Henry Pendleton	1772-77
John Peronneau	1778-80
Thomas Phepoe	1772-80
Charles Pinckney	1728-54
Charles Pinckney II	1752-77
Charles Cotesworth Pinckney	1772-80
Thomas Pinckney	1775-80
William Print	1774-80
Charles Pryce	1745-54
John Rattray	1740-61
Jacob Read	1773-80
John Remington	1758, 1760, 1765, 1768
James Rigby	1760
John Robinson	1706-16
George Rodd	1706-19
William Roper	1772-73
Andrew Rutledge	1733-55
Edward Rutledge	1773-80
Hugh Rutledge	1768-80
John Rutledge	1761-75
John Scott	1769-75
James Simmons	1760-73, 1769
James Simpson	1766-75
Benjamin Smith	1779-80

Lawyer	Years of Practice
John St. Leger	1768-69
Arthur Strahan	1738-39
John Thorpe	1741
William Trewin	1733-42
John Troup	1754-79
George Vair	1764-66
Rowland Vaughan	1736-37
Joshua Ward	1761-80
Robert Wayne	1717-19
Benjamin Whitaker	1717-38
Benjamin Whitrow	1706-12
Henry Wigington	1706-15
Robert Williams	1753-70
William Williamson	1740
James Wright	1736-57
Thomas Yeomans	1756-63

APPENDIX C

LAWYERS WHO PRACTICED BEFORE THE COURT OF GENERAL SESSIONS, 1769-1776

John Bremar

John Colcock

Richard Howly

Alexander Moultrie

James Parsons

Henry Pendleton

Thomas Phepoe

Charles Pinckney II

Charles Cotesworth Pinckney

Edward Rutledge

Hugh Rutledge

John Rutledge

John Scott

James Simpson

John Troup

APPENDIX D

LAWYERS WHO PRACTICED BEFORE THE COURT OF CHANCERY, 1697-1779

Lawyer	Years of Practice
Richard Allein	1714-26
Thomas Barrow	1704
Thomas Bee	1767-75
William Blakeway	1717-22
Charles Wainwright Carrington	1722-23
Thomas Corbett	1749-50
Thomas Ellery	1721-28
George Evans	1713
Alexander Fornenbergh	1716
William George Freeman	1747
David Graeme	1755-61
James Graeme	1731-47
William Graeme	1764
James Grindlay	1762-65
Benjamin Guerard	1764
Archibald Hamilton	1726
Henry Hargrave	1722-26
Thomas Hepworth	1717-22
Robert Hume	1721-32
Thomas Kimberly	1726
Egerton Leigh	1755-70
John Lewis	1729-33
James Michie	1747-53
Peter Manigault	1759-64
James Moultrie	1761-64
James Parsons	1751-74
Thomas Phepoe	1774
Charles Pinckney	1728-49
Charles Pinckney II	1753-73
Charles Cotesworth Pinckney	1771-73
John Rattray	1757-59
John Robinson	1713-14
George Rodd	1713-16
Andrew Rutledge	1733-53
Edward Rutledge	1773-79
Hugh Rutledge	1768-79
John Rutledge	1762-74
John Scott	1773
James Simpson	1770-74
Nicholas Trott	1700-01
Benjamin Whitaker	1716-36
Henry Wigington	1701-04
Robert Williams	1779
James Wright	1736-52

APPENDIX E

LAWYERS WHO PRACTICED BEFORE THE COURT OF VICE-ADMIRALTY, 1716-1763

Lawyer	Years of Practice
James Abercromby	1739-40
Richard Allein	1716-25
William Billing	1725
William Blakeway	1717-19
William Burrows	1749-63
Thomas Corbett	1748
Thomas Ellery	1729
George Evans	1717-18
David Graeme	1757-58
James Graeme	1729-38
James Grindlay	1749
Thomas Hepworth	1716-19
Robert Hume	1718-29
Egerton Leigh	1758-61
James Michie	1746-49
James Moultrie	1762
James Parsons	1752-63
Charles Pinckney	1729-48
Charles Pinckney II	1752-63
John Rattray	1747-59
James Rigby	1760
Andrew Rutledge	1746-47
John Rutledge	1763
John Troup	1760
Rowland Vaughan	1731-36
Robert Wayne	1716
Benjamin Whitaker	1717-38
Robert Williams	1757
James Wright	1746-54

APPENDIX F

VALUE OF LAWYERS' ESTATES IN COLONIAL SOUTH CAROLINA

Lawyer	Value (Carolina Money)	Source
Thomas Bromely	£1,326.8.6	Inventories, X, 48
Peter DeLancey	£2,569	Inventories, Z, 121
Alexander Gordon	£2,170.9.3	Inventories, V, 120
William Graeme	£2,859	Inventories, &, 184
James Grindlay	£4,717.17.6	Inventories, V, 284
Henry Hargrave	£1,861.15	Records of the Secretary of the Province, I, 390-391
Thomas Hepworth	£1,679.17.6	Records of the Secretary of the Province, G, 81-85
Peter Leigh	£3,106.13.9	Inventories, T, 259
John Lewis	£1,188.15	Inventories, R2, 66-67
Maurice Lewis	£3,725	Inventories, 1740-43,55
John MacKenzie	£78,532.10	Inventories, Z, 64-72
Peter Manigault	£105,061.15.5	Inventories, &, 402-413
William Mazyck	£8,514.5	Inventories, &, 587
James Michie	£58,173.17.3	Inventories, T, 445-453
James O'Brien	£3,218	Inventories, Y, 440-443
Bennet Oldham	£444.17	Inventories, X, 407-408
James Parsons	£1,801,331.10	Inventories, BB, 190-200
Thomas Phepoe	£5,887.18.4	Audit Office Recs. LIII, 10
John Rattray	£21,452.9.10-1/2	Inventories, V, 101-105
Andrew Rutledge	£11,979	Inventories, R2, 409-412
Charles Shinner	£2,715	Inventories, X, 340-341
James Simmons	£34,174.10	Inventories, &, 567-569
John St. Leger	£118.2.0	Inventories, Y, 127
Rowland Vaughan	£925.5	Inventories, 1736-39, 160-162
Robert Williams	£184,681.2.6	Audit Office Recs., LIV, 36-41
William Wragg	£25,825	Inventories, BB, 90

APPENDIX G

SLAVEHOLDING AMONG SOUTH CAROLINA LAWYERS

Lawyers	Number of Slaves Owned	Value of Chattels (Carolina Money)
Richard Allein	13	£ 2,270
William Blakeway	10	£ 1,060
Thomas Bromley	1	£ 300
William Burrows	25	£ 1,580
Peter DeLancey	3	£ 550
Alexander Gordon	6	£ 1,025
William Graeme	7	£ 1,790
James Grindlay	9	£ 2,000
Henry Hargrave	4	(unknown)
Thomas Hepworth	8	£ 850
Peter Leigh	8	£ 1,550
John Lewis	7	£ 760
Maurice Lewis	13	£ 2,235
John MacKenzie	202	£ 68,985
Peter Manigault	260	£ 84,992
William Mazyck	15	£ 5,700
James Michie	116	£ 26,495
James Parsons	394	£1,501,700
Thomas Phepoe	1	£ 50
John Rattray	73	£ 14,228
Andrew Rutledge	41	£ 7,745
Charles Shinner	7	(unknown)
James Simmons	94	£ 27,500
Rowland Vaughan	2	£ 480
Robert Williams	17	£ 7,980
William Wragg	226	£ 7,379

VITA

Hoyt Paul Canady, Jr., was born in Savannah, Georgia, October 29, 1943. He attended the public schools of that city and received his undergraduate education at Georgia Southern College, Statesboro, Georgia, where he was awarded the Bachelor of Arts Degree in 1965 and the Master of Arts Degree in 1970. He enrolled in the doctoral program in History at the University of Tennessee, Knoxville, in the fall of 1973 and was awarded the Ph.D. Degree in August 1979.

In the History Department at the University of Tennessee, he held a teaching assistantship from 1974 through 1978. He also taught at the rank of instructor in the summers of 1975 and 1976. Since fall 1978 he has been an instructor in American History in the University Evening School. His other work experience includes a tour of duty with the United States Army Security Agency, 1967-1971, and employment as a reporter and copy editor for the Macon Telegraph, Macon, Georgia.