couraged by the peculiar spirit of a frontier democracy which propagated the idea, so popular among pioneers, that every man was as good as any other, and that everyone should find open the gates to material success and self-advancement in any field of his choice. But there were also a goodly number of highly qualified professional men who, particularly after being raised to the bench, did much to bring about an orderly and successful administration of justice by developing and stabilizing the law in these new states or territories. Within a short period of time the legal profession in the frontier states or territories ranked at the top of the frontier gentry. It had achieved, on the whole, respectability, social standing, economic success, and political influence. In professional competence it soon became the keen rival of the old and established bars in the seaboard states.

III

BAR ORGANIZATIONS AND THEIR DECLINE

EVERY CLASS OR GROUP of professionally trained and professionally acting experts has an inherent tendency to organize itself and to form a sort of close-knit association or "guild." This guild, unless interfered with from the outside, sooner or later will compel, or try to compel, all persons practicing the same skills to become members of it and to comply with the policies, rules, and decisions agreed upon by the members of the association. In this it frequently has the full support of the law. The primary concerns of such a guild and, hence, also of these rules and decisions are, first, the training and education preparatory to admission to the practice of the profession; second, the maintenance of high standards as regards professional competence and professional deportment, often through the issuance and enforcement of a detailed "code of professional ethics"; third, the exclusion of incompetent, "immoral," or undesirable people from the practice of the profession; fourth, the establishment of good "public relations" through the diligent enlightenment of the general populace, in order to enhance the standing of the profession in, and its importance for, the community in which it operates; and, fifth, furtherance of continued improvements of knowledge and skills among its members through

the promotion of joint professional libraries, institutes, "clinics," or "seminars."[1]

Already prior to the Revolution the Massachusetts bar seems to have been well organized. Although the *Record-Book of the Suffolk Bar*[2] (Boston) records only the events that took place between 1770 and 1805, we know from the *Diary* of John Adams that as early as 1759, Adams made certain suggestions "to some of the gentlemen [lawyers] in Boston" who "proposed meetings of the bar to deliberate upon [them]. . . . A meeting was called," Adams continues, "and a great number of regulations proposed not only for confining the practice of the law to those who were admitted to it and sworn to fidelity in it, but to introduce more regularity, urbanity, candor and politeness, as well as honor, equity and humanity" among the legal practitioners.[3] It is also known that bar rules concerning educational requirements and admission to practice existed as early as 1761. Judging from the subsequent entries in John Adams's *Diary*, we must assume that bar meetings were a regular and established institution in pre-Revolutionary Massachusetts. These meetings, following perhaps the example of New England town meetings, were held and attended by the whole bar of Suffolk County. John Adams also states that "bar dinners" were held, that is, dinners of the bar as a whole;[4] and Prentiss Mellen, subsequently Chief Justice of the Supreme Court of Maine (1820–34), informs us that on the occasion of his admission to practice he "treated the judges and all the lawyers with about half a pail of punch, which treating aforesaid was commonly called the colt's tail."[5] In 1770 the Suffolk County or Boston bar

[1] Such as the "Sodality" of colonial Massachusetts, "The Moot" of colonial New York, the Institutio Legalis of colonial New Jersey, the "Library Company of Philadelphia" of 1802, the "Society for the Promotion of Legal Knowledge and Forensic Eloquence" of Philadelphia which lost its charter in 1821, "The Law Academy of Philadelphia" of 1821, "The Social Law Library" of Boston in 1804, and the "New York Law Institute" founded in 1828 and incorporated in 1830.

[2] Reprinted in 19 *Proceedings of the Massachusetts Historical Society* 147–79.

[3] 2 Adams, *Works of John Adams* 58n. (1950). The entry is dated January 3, 1759. See also 3 *Adams Papers* 274 (Butterfield ed., 1961).

[4] 2 *Adams Papers* 221 (Butterfield ed., 1961).

[5] Warren, *History of the American Bar* 85 (1911). See also Clark, *Jeremiah Mason* 23 (1917): "Thinking myself very kindly treated by the bar [*scil.*, by the bar of New Hampshire, which had recommended Mason's admission to practice

apparently was reorganized along more efficient lines.[6] Benjamin Kent, Samuel Fitch, Samuel Swift, John Adams, Daniel Leonard, James Otis, William Reed, Samuel Quincy, Andrew Caz(e)neau (all barristers), Francis Dana, Josiah Quincy, and Sampson Salter Blowers (all attorneys) were the charter members.[7] John Adams was elected the first secretary.[8] Apparently, the Suffolk bar or, perhaps better, the Suffolk County "bar meeting" was made up of all the practitioners of Suffolk County;[9] and its rules, regulations, and resolves were binding upon *all* lawyers who practiced in Suffolk County by virtue of their membership in the Suffolk bar.

These bar meetings of the various local or county bars, wherever they existed, survived both the Revolutionary and the post-Revolutionary general outcry against the legal profession and its organizations. In Massachusetts each individual court admitted persons to practice before it. The organized bar, which in this respect acted as a single and determined unit, recommended candidates to the court in accordance with the regulations and qualifications agreed upon by the bar as a whole.[10] By insisting upon the observation and enforcement of certain minimum standards, the bar to a large extent controlled the profession, including the admission to the study of law and to active practice.[11] This control of admission was exercised by means of an examination before a committee of the bar.[12] Every applicant wishing to become a student

in 1791], I in return gave them a brave supper at which no small quantity of wine and some wit were expended."

[6] It held its first meeting on January 3, 1770, at the Bunch of Grapes Tavern situated at the corner of State and Kilby streets.

[7] *Record-Book of the Suffolk Bar, loc. cit.*, 147. See note 2, Chapter III, above.

[8] *Ibid.*

[9] *Ibid.*: "Voted [at the first meeting] . . . [t]hat the barristers and attorneys of the Superior Court belonging to this and neighboring towns will form themselves into a society or club."

[10] See, in general, *ibid.*, *passim.*

[11] *Ibid.*, *passim.*

[12] By a rule of court of 1806 (2 Mass. 72, 75), the following lawyers were appointed as official examiners: for Suffolk County, Theophilus Parsons, Christopher Gore, Samuel Dexter, Harrison Gray Otis (he declined the appointment, 2 Mass. 432), William Sullivan, and Charles Jackson; for Essex County, Nathan Dane, Edward Livermore, William Prescott, Samuel Putnam, and Joseph Story; for Middlesex County, Artemas Ward, Tyler Bigelow, and Samuel Dana; for

in a law office had to undergo such a test. How strict these requirements and how thorough these examinations were may be gathered from the fact that in 1784 two gentlemen by unanimous vote of the bar were refused acceptance as law students in the office of a reputable lawyer because the committee on examinations of the Suffolk bar found that the applicants had not been adequately trained in mathematics, ethics, logic, and metaphysics.[13] In 1798 the committee of the bar[14] appointed to examine a certain Mr. Holder Slocum reported that the candidate had only a fair knowledge of Latin, no knowledge of Greek, and an insufficient knowledge of logic, metaphysics, mathematics, and history. Hence, his status as a law student was made dependent upon further study, under the direction of a tutor, of history, metaphysics, and Latin, concurrent with his legal studies.[15] It appears, therefore, that the popular and widespread efforts to simplify access to the profession by lowering requirements of training and preparation—efforts which were in keeping with the general aversion to the English common law and to the professional lawyer that followed in the wake of the Revolution—only made the Massachusetts bar more determined to insist on high educational standards as a prerequisite of its recommendation for admission to the study and practice of

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Hampshire County, John Hooker, George Bliss, and Eli P. Ashmun; for Worcester County, Daniel Bigelow, Jabez Upham, Edward Bangs, and Joseph Blake; for Plymouth County, Joshua Thomas; for Bristol County, Seth Padelford, Laban Wheaton, and Nathaniel Tillinghast; for Berkshire County, Daniel Dewey, Barnabas Bidwell, and John W. Hulbert; for York County, Dudley Hubbard, Cyrus King, and Nicholas Emory; for Cumberland County, William Symmes, Prentiss Mellen, and Salmon Chase; for Lincoln County, Silas Lee and Samuel Thatcher; and for Kennebeck County, James Bridge and Samuel S. Wilde. In 1807, Joseph Hall and Francis Dana Channing were added to the list of examiners for Suffolk County; J. D. Hopkins and Ezekiel Whitman to that of Cumberland County; and Nathaniel Paine, Seth Hastings, and Eleazar James to that of Worcester County. The examinations were conducted usually by two examiners, but occasionally by three. For examiners appointed prior to 1805, see, in general, *Record-Book of the Suffolk Bar*, *loc. cit*

[13] *Ibid.*, 160, entry under August 12, 1784. Apparently the two candidates made up for their "deficiencies," for on July 12, 1785, the bar voted that both be considered as having been law students since January, 1785. *Ibid.*, 161.

[14] The committee consisted of Thomas Edwards, John Davis, and Edward Gray. *Ibid.*, 170, entry under October 9, 1797. The committee reported on July 9, 1798. *Ibid.*, 170–71.

[15] *Ibid.*, 170–71.

law. Hence, it is not surprising that many of the rules laid down by the bar or bar meetings dealt with persons applying for admission as students in the law offices of practicing lawyers.[16]

In 1800 the bar decided that any candidate seeking the approbation of the organized profession, if he was not a graduate of Harvard College, must study law at least four years with a barrister; only three years' study were required of a Harvard man.[17] The Worcester County Bar Meeting, during the March term of 1784, resolved "that the qualifications for the admission of candidates shall be: a College education, or one equal thereto, a good moral character, three years study in the office of an attorney of the Supreme Judicial Court, or, being well grounded in the languages and studying for five years in the office of an attorney of the Supreme Judicial Court."[18] In 1795 it amended its resolution of 1784, insisting "that in the future seven years study be required instead of five years heretofore required from a person who has not had a Collegiate Education."[19] In 1800 the Suffolk bar voted that "no student be recommended to the Court of Common Pleas for admission without having studied within this county [of Suffolk] one year at least."[20] It also ruled that persons "who have studied law or been admitted to the bar in the courts of other States, and who shall apply for admission to the bar of this county, . . . shall not be recommended without a term of study within this county, to be prescribed by the bar, provided that [this] term be in no case less than one year. This regulation [was] not to apply to those gentlemen who have practised in the supreme court of any State for four years."[21] In 1783 a Mr. Richard Brooke Roberts was admitted as a student to the law office of Mr. Hichborn with a deduction of one year from the usual period of three years of law studies, "provided he produces a certificate from a gentleman of

[16] On October 10, 1780, the Suffolk bar voted unanimously that Sumner take into his law office a Mr. Peter Clarke. *Ibid.*, 154. On April 17, 1781, it consented that William Hunter Torrens of Charleston, South Carolina, "be considered as a law student in Mr. Lowell's office from Jan. 1, 1781." *Ibid.*, 154–55, and *passim.*

[17] *Ibid.*, 174, entry under January 28, 1800.

[18] Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 33 (1907).

[19] *Ibid.*, 34.

[20] *Record-Book of the Suffolk Bar*, *loc. cit.*, 174.

[21] *Ibid.*

the profession in Carolina that he has read law under such gentleman's direction for one year at least."[22] In 1793, Joseph Rowe, by special leave of the Suffolk bar, received full academic credit for the liberal and legal education he had received in Canada;[23] and during the March term of 1804 the Norfolk County bar reported that a certain "Thomas B. Adams from the State of Pennsylvania, who had been admitted to practice in the several courts of that state, applied for permission of this bar to be admitted *ad eundem* here, and under particular references obtained their consent and was admitted accordingly."[24] The following "Note" was attached to this report: "The Bar do not mean to consider this admission as a precedent—being in some regards special."[25]

Thus, it appears that the various rules of the bar agreed upon by all members and dealing with the preparation for the study of law were strictly observed and, wherever necessary, enforced. Failure fully to comply with them deprived a candidate either of the opportunity to be admitted to the study of law in a law office or of the opportunity of being recommended by the whole bar to the court or courts in which he intended to practice. Lacking this unanimous recommendation, he could be denied "the call to the bar" by the courts, which seem to have heeded the recommendations of the bar.[26] And no lawyer would receive into his office any student who, on the recommendation of the examining board, had not been approved by the whole bar. As a matter of fact, *The Rules and Regulations of the Bar of the County of Hampshire* (of 1805) seem to indicate also that it was the custom for law students to register with the local bar at the commencement of their legal studies.[27]

[22] *Ibid.*, 157.

[23] *Ibid.*, 166–67.

[24] Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 35 (1907).

[25] *Ibid.*

[26] A qualified person who had been denied the "approbation" or "recommendation" of the bar could appeal to the Supreme Court of Judicature. See *General Rules of the Supreme Court of Judicature* (Massachusetts) sec. VI, 6 Mass. (Tyng) 383–84 (1810).

[27] Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 37 (1907). "Whenever an attorney has an application for the admission of an apprentice into his office, he shall give notice thereof at the next term of the Court

The Suffolk County bar[28] also passed upon matters other than the training for, and admission to, the practice of law. In 1780 it established the minimum "tuition fee" of one hundred pounds for any student wishing to enter the office of a lawyer;[29] and in 1783 it decreed that no lawyer might receive more than three students in his office at one and the same time.[30] The following year it dealt with "ambulance chasing" by voting that no lawyer might go out of his office and solicit legal business or employ lay persons to transact legal business for him.[31] In addition, it made recommendations concerning rules of practice, etiquette, and professional ethics.[32] Hence, it seems that Massachusetts or at least certain counties in Massachusetts made a determined and effective beginning to establish a professional organization through bar meet-

to the Secretary who shall enter in the Bar Book the time of such apprentice entering such office." *Ibid.*, 36.

[28] *Record-Book of the Suffolk Bar*, *loc. cit.*, 147. At a meeting held on the first Wednesday in October, 1770, it was voted that "Francis Dana, Josiah Quincy, and Sampson Salter Blowers be recommended to the Superior Court to be admitted as barristers, they having studied and practiced the usual time." *Ibid.*, 148. On November 21, 1770, it was voted that Samuel Sewell should be recommended for admission in the Superior Court. *Ibid.* On January 2, 1771, it was voted that "whenever the defendant's counsel shall point out to the plaintiff's any defect in his writ or declaration, he shall have liberty to amend upon payment of six shillings. . . . This rule to extend only to such defects in writs and declarations as shall be owing to mistake or inadvertance, or other fault of the counsel who drew the writ or his clerk." *Ibid.* On February 6, 1771, it was agreed "that we will not take any young gentlemen to study with us, without previously having the consent of the bar of this county; that we will not recommend any persons to be admitted to the Inferior Court, as attorneys, who have not studied with some barrister three years at least, nor as attorneys to the Superior Court, who have not studied as aforesaid, and been admitted at the Inferior Court, two years at the least, nor recommend them as barristers till they have been through the preceding degrees and been attorneys at the Superior Court two years at least." *Ibid.*, 149. On February 6, 1771, it was resolved "[t]hat the consent of the bar of the county shall not be taken but at a general meeting of the bar of the county, and shall not be given to any young gentleman who has not had an education at college, or a liberal education equivalent in the judgment of the bar." *Ibid.*, 150. See also *ibid.*, 159, where the bar voted that a student without a college education must undergo an examination by a committee appointed by the bar.

[29] *Ibid.*, 154, 157.

[30] *Ibid.*, 157.

[31] *Ibid.*, 158.

[32] On May 17, 1790, the Suffolk bar agreed to establish minimum attorneys' fees. *Ibid.*, 167–69.

ings of the whole bar (not merely of the bar of a particular court) with rules applying uniformly to all members. The bar meetings held by the Suffolk County bar—and it would be safe to call them thus rather than the regular "bar association"—apparently were carried on until 1836,[33] when the Suffolk County bar was dissolved and replaced by a sort of voluntary and selective "bar association."

In 1836 a committee of the Massachusetts bar reported "that the revised Statutes [of 1836] . . . making essential changes in the terms of admission and practise require corresponding alterations in the Rules of the Bar."[34] In addition to suggesting the "dissolution" of the present "Bar of Suffolk" and the formation of "an Association of Gentlemen of the legal profession to be called and known by the name of the 'Fraternity of the Suffolk Bar,' "[35] the committee also recommended seven articles of association. Article 2, which provided for membership, stipulated that "[t]he Fraternity shall consist of all such persons as have heretofore signed the Bar Rules and are Attornies or Counsellors at Law usually practising in the courts of this county who may choose to sign these articles." The Fraternity was also to be made up of "such other persons practising law in this county as from time to time shall be elected members of the Fraternity in manner hereinafter prescribed and who shall subscribe these articles." Article 4, dealing with the "objects of this Association," provides that "[t]he object of the Fraternity is to cultivate a spirit of friendship, kindness and good will towards each other—to preserve the purity of the legal profession—to discountenance all abuse of legal process and all such practises as might bring odium or disgrace on the administration of the Law." The remaining articles are concerned with fees, dues payable to the Fraternity, and with expulsion from the Fraternity for "illegal, ungentlemanlike, or unwarrantable practices."[36] This

[33] The last entry in the *Record-Book of the Suffolk Bar* is dated March 18, 1805. *Ibid.*, 178–79.

[34] MS, Record Book of the Fraternity of the Suffolk Bar 1. This report refers to the *Revised Statutes* (Massachusetts) of 1836, chap. 88, secs. 19–24. The Record Book of the Fraternity of the Suffolk Bar is quoted in part by Pound, *The Lawyer* 211–12 (1953). See also Pound, *The Lawyer*, 15.

[35] Record Book of the Fraternity of the Suffolk Bar, *loc. cit.*, 2.

[36] *Ibid.*, 2–14.

Fraternity at one time may have merged with the Social Law Library of Boston,[37] which was founded in 1804 for the purpose of building up and maintaining a law library and of improving legal learning.

The Fraternity of the Boston Bar, which reflected the transition from local bar meetings by the whole of the bar to a "selective association of lawyers," essentially was a voluntary association of attorneys who wished to join or subsequently were elected to this association. While its avowed purposes in the main were those of the old pre-Revolutionary "bar meetings," it apparently no longer exercised any control over prelegal education, legal training, and admission to practice, which by now had become a matter of state legislation.[38] It had no supervision over the professional deportment of nonmembers and only an ineffectual control over the conduct of its members. Being devoid of all practical and effective significance, it is not surprising that it soon went out of existence.

In 1849 an attempt was made to establish a Massachusetts "State Bar Association." At a meeting of Massachusetts lawyers from all parts of the state, held on January 4, 1849, "it was resolved that an association be formed and a committee was appointed to prepare a plan of organization to be reported at an adjourned meeting to be held on January 18 [1849]."[39] On that date the committee, consisting of twenty lawyers, reported nine articles of association. The Preamble to these articles reads as follows: "The undersigned members of the Bar in the Commonwealth of Massachusetts, actuated by a sense of the dignity and honor that should pertain to a profession established for the administration of justice—upon whose fidelity to its high obligations to security, welfare and moral elevation of society must in great measure depend; and believing that an organized system of communion of its members throughout the state, will be productive of equal gratification and advantage and promoting more frequent and extensive social and friendly intercourse, and in the increase of mutual respect and confidence,

[37] Report of the Committee of the Fraternity of the Suffolk Bar, Record Book of the Fraternity of the Suffolk Bar, *loc. cit.*, 21, 23f.

[38] *Revised Statutes* (Massachusetts) of 1836, chap. 88, secs. 19–60.

[39] *The Association of the Bar.* This is a six-page pamphlet, of which a photostatic copy can be found in the Library of the Harvard Law School. Pound, *The Lawyer* 213–15 (1953).

and may be alike beneficial to the public and themselves, as conducive to the maintenance of high standards of professional duty and character, and as distinguishing those who recognize and desire to sustain the true position of members of the Bar, and exonerating them from all communion in reputation with those who disgrace it—thereby declare and assent to the following Articles of Association."[40] The first Article provided: "The purpose of the Association . . . [is] declared to be the cultivation of social and friendly intercourse among its members, and the elevation of the standard of professional duty, education and character."[41] Article 3 provided for a "Solicitor" who was "to receive all complaints in writing signed by any member or members of the Association and report them to the Executive Committee."[42] The original proposal of a "Bar in this State," to be found in Article 3, was amended to read, "persons admitted to practice in the courts of the Commonwealth," thus abandoning the idea of a single organized state bar. A further amendment provided that where a complaint was received of any professional misconduct, the "Solicitor" was to submit it to the court of the county where the suspected lawyer practiced or where he resided in order that the court, if it saw fit to do so, might take appropriate steps. Also, the complaint was to be signed by the complainant himself rather than "by any member or members of the Association." These last two amendments seriously weakened the disciplinary and supervisory functions of the association: the courts only rarely acted upon such complaints; and the requirement that the complainant personally sign the complaint imposed an invidious task which few people wished to perform. What the State Bar Association tried to express was primarily a consciousness of the meaning of a learned profession, a realization of the need of becoming organized in and through a professional association as a vital element of this profession, and the feeling of the need for continuity of purpose in order to maintain and even enhance the profession according to its noble traditions. Incidentally, nothing came of these earnest proposals. An era which markedly tended toward deprofessionalization was not

[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*

favorable to the establishment of a strongly organized State Bar Association.[43]

Probably as far back as 1768 there also existed an organized bar or "bar meeting" in Essex County, Massachusetts. Like other county bars, the Essex bar adopted a number of rules concerning admission of students into law offices, length of legal training, and general requirements for being recommended for admission to practice in the lower courts, in the Superior Court, or to the rank of barrister. In 1806 there was formed an Essex Bar Association,[44] which, however, was actually an "organized bar" comprising all lawyers practicing in Essex County.[45] The first article of the Essex Bar Association declared that "[t]here shall be two stated meetings annually of the members of the bar." In view of the fact that the surviving records are extremely scanty, it can no longer be ascertained how effective this bar organization was. In 1831, and again in 1856, it was reorganized as a bar association with voluntary and selective membership.

On August 3, 1812, the lawyers of Franklin County, Massachusetts, joined into "a meeting of the Gentlemen of the Bar of the County of Franklin." They decided to adopt "the Bar Rules for the County of Hampshire[46] . . . for the government of the bar of this county, until a new code for that purpose shall be accepted by the bar."[47] On December 18, 1812, the bar of Franklin County adopted a set of rules very much like the rules of other Massachusetts bars. These rules dealt with prelegal education, legal training, and admission to practice; they also provided standards of professional conduct: attorneys were not to associate professionally with people not admitted to the bar; form partnerships with sheriffs, brokers, or creditors; purchase securities or debts for the purpose of bringing suits thereon; or advance money to creditors to induce

[43] *Ibid.*, 214–15.
[44] *Memorials of the Essex Bar Association* Preface, iv (1900).
[45] This may also be gathered from the pamphlet *Rules and Regulations of the Bar in the County of Essex* (1806).
[46] This would imply that the county of Hampshire, in Massachusetts, had an earlier organized bar.
[47] MS, Franklin County Bar Rules 1.

them to bring action against their debtors.[48] The organized bar of Franklin County apparently dissolved in 1835.

On March 3, 1842, the Massachusetts legislature passed an act[49] which provided: "The counsellors and attorneys at law . . . resident in the several counties . . . , except Suffolk,[50] are hereby constituted corporations within their respective counties, for the purpose of holding and managing the law libraries belonging to said counties, by the name of Law Library Association of the county in which it is formed." The clerks of the several courts were to call the first meeting of these corporations within sixty days after the act took effect. At the first meeting held under this act in Berkshire County officers were elected and a committee to draft bylaws was appointed by all the counselors and attorneys practicing in the County. These bylaws were adopted on June 30, 1842. However, no local bar organization or bar association ever developed from the Law Library Association of Berkshire County.

New Hampshire had an organized bar which, as early as 1788, and again in 1804, laid down "General Regulations for the Gentlemen of the Bar."[51] At a meeting of all the members of the bar throughout the state of New Hampshire, held on the third Wednesday of June, 1788, it was voted "that the Society will consider themselves as a corporation, and bound by the votes and proceedings at any regular meeting of the Bar."[52] It was also agreed that this new "society" should be called an "Association of the Bar throughout the State of New Hampshire," and "that the Gentlemen of the Bar in their respective counties, at their first meeting after these rules are adopted, form themselves into a

[48] *Ibid.*, 5–8, 11–12. See Pound, *The Lawyer* 197–98 (1953).

[49] *Massachusetts Acts and Resolutions*, 1842, chap. 94, secs. 1, 2.

[50] This exception may be explained by the fact that Suffolk County (Boston) already had a "Social Law Library." See text above and note 37, Chapter III, above.

[51] It will be noted that these "Regulations" applied to the "Gentlemen of the Bar," that is, to all persons admitted to the bar and practicing before it, and not merely to certain members of the profession who had chosen to join in a voluntary and selective bar association, or had been invited to do so.

[52] *Grafton County Bar Records, Proceedings of the Grafton and Coos County Bar Association* for 1891, 2 *Grafton and Coos Counties Bar Association* 185ff. See also Walker, "Rules of the Court," 4 *Southern New Hampshire Bar Association Proceedings*.

county society."[53] But there exists no record that the "Association of the Bar throughout the State of New Hampshire" survived its first meeting. It must be surmised, therefore, that it was not really a state-wide bar association, but rather a state-wide bar convention to stimulate the formation of individual local bar associations in each county. Its recommendations, however, apparently were adopted by the several county bars or, at least, by the bar of Grafton County. This becomes evident from the record which divulges that at a regular bar meeting of the Grafton County bar, held on December 4, 1804, it was voted that the General Regulations for the Gentlemen of the Bar in the State of New Hampshire, "which had been laid before this Bar,"[54] be adopted.

These General Regulations, which followed closely the rules of the Suffolk County bar, contained the following provisions: "The members of the bar in the several counties . . . shall form themselves into societies, and be bound by the rules and votes [made] by them."[55] "Each county society shall appoint a committee for the examination of candidates."[56] "No person shall be admitted as a student, or recommended for admission to practice unless he sustains a good moral character; and in case the candidate for admission as a student in an office has not had a degree in the arts, he shall excepting a knowledge of the Greek language, be duly qualified to be admitted to the first class of students at Dartmouth College. Which qualifications shall be ascertained by the said committee of examination . . . and no county society shall recommend any candidate for admission to practice, until they have ascertained by their said committee of examination, that such candidate has made suitable proficiency in the knowledge of the law."[57] "No candidate who has received a degree in the arts shall be recommended for admission to practice, unless he has, by the previous consent and approbation of a county society, regularly studied three years . . . in the office of some respectable member or members of the bar practising before the Superior Court. And no candidate who has not received a degree in the arts shall be recom-

[53] *Grafton County Bar Records* 185ff.

[54] *Ibid.*, 201–202.

[55] Art. I.

[56] Art. IV.

[57] Art. V.

mended for admission to practice unless he has studied five years as aforesaid."[58] "No member of the bar shall receive for the tuition of a student at law in his office any sum less than two hundred and fifty dollars for the time required by these regulations for admission to practice."[59] "No student at law shall be allowed the benefit of any perquisite or profits arising from the business of the office in which he studies . . . nor shall he engage in or pursue any other employment during any part of the term of his study."[60] "No member of the bar shall have more than three students in his office at any one time, nor shall he keep a student . . . in his office without the consent of the county society."[61] "No student shall be recommended for admission to practice . . . without having been propounded to the county society for such recommendation the term preceeding."[62] "A person having been regularly admitted in a court of Common Pleas and practised two years with reputation in such court, shall be entitled to a recommendation for admission to the bar of the Superior Court."[63] "All admissions to practice shall be in the county where the applicant has last studied."[64] "After the denial of admission . . . as a student or the denial of recommendation to be admitted to practice no subsequent application of the same candidate for either of the said purposes shall be sustained at the same term of the court. And after the refusal of admission to an office by any county society, no application thereof by the same candidate shall be sustained in any other county."[65] "Any person having studied conformably to these regulations a part of his time in any other state, and having completed the residue in this state, or having been duly admitted to the bar in any other state where the rules of admission are in all material points similar to the foregoing and having conformed to the

[58] Art. VI.
[59] Art. VII.
[60] Art. VIII.
[61] Art. IX.
[62] Art. X.
[63] Art. XII. See also Clark, *Jeremiah Mason* 23 (1917): "Admission to that State [*scil.*, New Hampshire] was regulated by the rules adopted by the bar. They required three years' study within the State, but . . . the studying within the State had sometimes been dispensed with."
[64] Art. XIV.
[65] Art. XV.

same may be recommended for admission in this state provided the rules and practices of the bar from which such person comes grant the same privileges to candidates going from this into such state and not otherwise."[66] "[N]o member of the bar shall give aid or countenance to any suit or process commenced by a person not admitted to practice in conformity to these rules except by license of the county society."[67]

Beginning with the year 1805, the bar of Grafton County was called "Grafton County Society,"[68] and its fairly regular meetings, at least after 1820, were officially referred to as "Bar Meetings."[69] In 1838, the year the records end, the Society apparently disbanded.

In 1843 the legislature of Maine passed an act abolishing all educational requirements for the admission to practice: any citizen or resident in the state from then on could practice law.[70] Prior to that year, in Maine, as in Massachusetts,[71] the bar, or, as it also was called, the "Society of the Gentlemen of the Bar Usually Practicing in the District of Maine," exercised a stringent control over prelegal education, legal training, and admission to practice. It also made recommendations concerning professional ethics, professional discipline, and rules of court. Hence, it appears that the bar meetings in Maine were originally made up of all lawyers practicing in the same district or county, and that the rules and regulations adopted by these bar meetings were binding upon all lawyers who practiced in this district or county by virtue of their membership in the same local bar.

The so-called *Old Bar Record Book*,[72] which reports all the

[66] Art. XVI. It will be noted that according to Art. XVI of these General Regulations, New Hampshire established the principle of "reciprocity."
[67] Art. XVII. See also Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 37–39 (1907).
[68] *Grafton County Bar Records* 220.
[69] *Ibid.*, 238–62. See, in general, Pound, *The Lawyer* 201–204 (1953).
[70] *Maine Acts and Resolves of 1843*, chap. 12.
[71] Maine was part of Massachusetts until 1820.
[72] A copy of this *Old Bar Record Book*, which was found among the effects of the late Samuel Titcomb of Augusta, Maine, is in the library of the Harvard Law School. See Pound, *The Lawyer* 188ff. (1953), from which the following quotations are taken. The original is in the custody of the Supreme Judicial Court of Maine.

activities of the early Maine bar, begins with an entry about "a barr meeting of the gentlemen usually practicing in the District of Maine," held in Biddeford on October 15, 1789.[73] Among other matters it was voted that "[t]he gentlemen of the Barr usually practicing in the District of Maine form themselves into a Society for the purpose of conforming their practice in Court & the admission of students to that of the Gentlemen in the other parts of . . .Massachusetts. . . . [T]hat the Secretary be directed to procure from the several Secretaries of the Bar of the Counties of Suffolk and Essex a copy of the rules & proceedings of the Barr in their several counties to be laid before the Barr in the District of Maine. . . . That such rules as shall be adopted by the Barr of the District of Maine, shall be fairly transferred into the said District, & by every attorney hereafter admitted within the same, at the time of their admission . . . " (the remainder of the page is illegible, but presumably the sentence continued to read: "be sworn to").[74]

The *Old Bar Record Book* also contains numerous entries concerning consent given to taking students into law offices, recommendations for admission to practice,[75] refusals to recommend candidates for admission to practice,[76] rules concerning the qualifications for admission as a student,[77] rules concerning the

[73] *Old Bar Record Book* 1.

[74] *Ibid.*, 1–3; Pound, *The Lawyer* 189 (1953). On pages 5–7 of the *Old Bar Record Book* the following interesting entry can be found, dated October 27, 1789: "[It was voted t]hat George Thatcher, Esq. be requested to wait upon Mr. Salmon Chase, a person lately removed from the State of New Hampshire to this place, and opened an office here without having produced a certificate of his regular admission as an attorney . . . and acquaint him of the Rules and Regulations of the Bar of this Commonwealth, and that the Bar expects a strict compliance therewith on his part before they shall consider him as a member of the Bar." Mr. Chase promised to produce the required certificate and added that he would "then request of this Bar an admission according to the rules and regulations thereof & the Laws of the Commonwealth." *Ibid.*, 7. Pound, *The Lawyer* 189–90 (1953). That Mr. Chase was subsequently duly admitted, although with some delay, may be gathered from the fact that in 1795 he attended a bar meeting held in York. *Old Bar Record Book* 32. He is also listed as having been admitted to practice in 1795.

[75] *Ibid.*, 16ff., 29, 31 ff., 36, 42, 44.

[76] *Ibid.*, 11, 13, 40.

[77] *Ibid.*, 13. In order to qualify as a law student, the applicant had to be a college graduate or have the equivalent of a college education.

length of study,[78] and rules concerning the continuity of full-time study.[79] There were also several rules dealing with professional ethics and deportment: no member of the bar was to permit any person not qualified under these "bar rules" to do work as an attorney in his office or in his name.[80] Students were not to be used as "runners" or be permitted to receive or appropriate any part of the lawyer's regular fees.[81] In 1800 it was voted that a secretary should be chosen in every county to communicate with each other concerning all rules and regulations adopted at any local bar meeting.[82] This last entry would indicate that separate bar meetings were held in the several counties or localities. Between 1789 and 1800 the "bar of the District of Maine" convened no less than twenty-seven times: once in Biddeford, New Gloucester, Topsham, and York; twice in Augusta, Hallowell, and Waldoborough; eight times in Pownallborough; and nine times in Portland. After 1800 the bar meetings always convened in Augusta. They were called, at least until 1811, "meetings of the Bar of the County of Kennebec."[83] After that year they were referred to as "meetings of the members of the Kennebec Bar."[84]

Apparently there also existed a bar association or bar meeting in Cumberland County (Portland), Maine, as early as 1790.[85] Its first recorded meeting, in which the association constituted itself, was held in Biddeford, Maine, in 1789. It is quite possible, therefore, that the Cumberland County Bar Association, at least until 1800, was identical with the "Bar of the District of Maine." Around the year 1800 the various county bars of Maine began to

[78] *Ibid.*, 17, 20.

[79] *Ibid.*, 21, 28. Pound, *The Lawyer* 190–91 (1953).

[80] *Old Bar Record Book* 90.

[81] *Ibid.*, 88. But a student might be paid a gross sum, the amount of which was to be independent of the legal work done in the law office. *Ibid.* See also Pound, *The Lawyer* 191–92 (1953).

[82] *Old Bar Record Book* 54.

[83] *Ibid.*

[84] *Ibid.*, 71. Pound, *The Lawyer* 191 (1953). It is presumed that there also existed a Kennebec County Bar Association which dates back to the year 1841. This Association, which was still in existence in 1887, might have been the "successor" of the "meetings of the members of the Kennebec Bar."

[85] Clayton, *History of Cumberland County, Maine* 84 (1880).

act separately. In any event, the formation of a distinct and separate "Association" of the Cumberland County lawyers has been recorded.[86] In 1829, that is, about the time when the "Bar of the District of Maine" apparently dissolved, the Cumberland County bar published "Rules and Regulations of the Bar in the County of Cumberland."[87] Article 8, secs. 1 and 2, are so like Rules 2 and 3 adopted on February 1, 1827, by the convention of delegates of the various county bars and recorded in the *Old Bar Record Book* of the "Bar of the District of Maine,"[88] that it must be presumed that the Cumberland County Bar Association in a way was the "successor" of the old "Bar of the District of Maine."[89] In 1864 the Cumberland Bar claimed "[t]hat it appears by the records that the Association [the bar of Cumberland County] formed in 1805 by the then practitioners in the County of Cumberland was duly preserved and maintained until the year 1835—since which time under the hostile system of legislation that has prevailed in this State . . . the organization . . . [seems] to have fallen into decay, leaving no record even of its dissolution."[90]

In Connecticut, where after the Revolution the number of attorneys increased rapidly and perhaps unreasonably,[91] a "bar association" was founded in 1783 by thirty-two members of the bar of Hartford County. Like the "local bar meetings" in Massachusetts, this Hartford bar association was a meeting of all attorneys practicing in Hartford County, who convened in order to lay down rules and regulations for the admission of law students, minimum requirements of legal training, admission to practice, and general regulations dealing with the practice of law and the professional conduct of lawyers.

Vermont, presumably under the influence of other New Eng-

[86] See note 90, Chapter III, below, and the corresponding text.

[87] Adopted on March 13, 1829. A photostatic reproduction of the "Rules and Regulations of the Bar in Cumberland County," which appear in pamphlet form, can be found in the Library of the Harvard Law School. Pound, *The Lawyer* 193–94 (1953).

[88] *Old Bar Record Book* 113–14.

[89] Here, too, the transition from the original "bar" or "bar meeting" to a voluntary and selective "bar association" can be observed.

[90] *Rules and Regulations of the Cumberland Bar Association* 1 (1864).

[91] Clark, *Jeremiah Mason* 16 (1917). In 1798 there were at least 120 lawyers in the state of Connecticut, and probably many more.

land states, as early as 1787 is said to have had a bar organized in meetings consisting of the whole profession. These meetings met regularly in order to formulate rules dealing with the training for, and admission to, the practice of law: "The practice of the Court was to refer to the members of the bar all applications for admissions to it."[92] When, in 1791, Jeremiah Mason applied for admission to practice in the state of Vermont, "the Chief Justice, at the private suggestion of Mr. Bradley . . . opposed . . . [his] admission."[93] Mason continues: "My reason for believing that Mr. Bradley made this suggestion, was that when I requested him to propose me for admission, he advised me against it, and recommended to me to remain six months longer in his office.[94] He said he would propose me if I persisted in requesting it, but that I should in all probability be refused. I told him the bar would recommend me to the court. . . . I felt confident that he had no doubt that the court would comply with the recommendation of the bar if I had the aid of his influence."[95]

As early as 1744[96] there existed an organized "New York Bar Association." This bar association apparently invited the support of every member of the profession[97] in order to develop collective opinion, encourage concerted action,[98] and prevent inroads upon the practice of law.[99] Although the "New York Bar Association" went out of existence in 1770, the desire for some sort of organization apparently survived. In that year a law club, known as "The Moot," was founded "to encourage a more profound and ample study of the civil law, historical and political jurisprudence,

[92] *Ibid.*, 21.

[93] *Ibid.* Stefan Rowe Bradley was at the time a prominent lawyer in Vermont.

[94] Mason had studied law for more than two years altogether, but for only eighteen months in Vermont. Clark, *Jeremiah Mason* 21 (1917).

[95] *Ibid.*, 21–22n. Incidentally, the two Associate Justices overruled the Chief Justice, and Mason was admitted after all.

[96] The years 1741, 1745, and 1747 have also been suggested.

[97] There were only a handful of lawyers in New York at that time, however.

[98] For instance, in the struggle for an independent judiciary. It also fought some of the measures introduced by Lieutenant Governor Colden, and collectively resisted the Stamp Act of 1765.

[99] See Chroust, "The Legal Profession in Colonial America," Part II, 33 *Notre Dame Lawyer* 350, 358 (1958).

and the law of nature."[100] The Moot was dissolved in 1775.[101]

For some time after the Revolution, New York had no organized bar whatever, except the Law Association of the City of New York. Ogden Hoffman was the first president of this Association, "and a long list of the brightest luminaries composed its members. . . . Chancellor James Kent . . . delivered the organic address, in which he said in part, 'We cannot estimate too highly the work, usefulness and practicability of combination and association formed by the union of members of the bar for the common object of the elevation of their profession, to which they have devoted their lives and their sacred honor. In every sense association and combination are as useful to the legal profession as it is to any other corporation.' "[102] But this Association was a purely selective and voluntary organization and, hence, had no controlling influence on professional qualifications and deportment.[103] The lack of a real bar association in New York is baffling in the light of Chancellor Kent's famous address directed to the Law Association of the City of New York on October 21, 1836: "The responsibilities attached to the profession and practice of the law are of the most momentous character. Its members, by their vocation, ought to be fitted for the great duties of public life, and they may be said to be *ex officio* natural guardians of the laws, and to stand sentinels over the constitutions and liberties of the country. I know of no duty . . . that is more imperative in its requisitions, and more delightful in the performance, than that which the . . . law . . . requires of its various professors. . . . The cultivation and practice of the law is, and ought to be, a sure road to personal prosperity and to political eminence and fame, provided the members of the Bar render themselves worthy of public confidence, by their skill and industry, their knowledge, integrity, and honor, their public spirit and manly deportment, their purity, moderation, and wisdom."[104]

[100] See Blaustein, "New York Bar Associations Prior to 1870," 125 *New York Law Journal* no. 64, April 3, 1951, pp. 1186, 1188.

[101] Chroust, "The Legal Profession in Colonial America," *loc. cit.*, 361.

[102] 20 *Proceedings of the New York Bar Association* 69 (1897).

[103] The Law Association of New York was not in existence when the Association of the Bar of the City of New York was organized in 1869–71.

[104] Kent, *Memoirs and Letters* 235ff. (1898).

In 1826 the New York Law Institute was founded[105] (a membership corporation, it was formally organized in 1828 and incorporated in 1830), "for literary purposes, the cultivation of legal science, the advancement of jurisprudence, the providing of a seminary of learning in the law, and the formation of a law library."[106] It was also hoped that the New York Law Institute would be instrumental in guarding the purity of the profession and in exerting a wholesome restraint upon lawyers through investigations and power of expulsion. Such functions, however, were wholly outside the scope of the Institute. It had never been, and never was meant to be, an active bar association in the sense of a professional organization supervising and controlling its members.[107] Of its five announced purposes, it developed only the last one, namely, "the formation of a law library." This was made amply clear by Albert Matthews when he stated in 1870: "[The Law Institute] is practically nothing more than a consulting library, open during the business hours of the day."[108] Nevertheless, it had a wholesome influence on the New York bar. For many years it served as the sole meeting grounds for the legal profession of New York, and its "Junior Bar Group" was particularly active in providing for instructive forums and lecture programs.[109] In this the New York Law Institute might have followed the example of Philadelphia, where, in 1784 and 1798, some law students founded unofficial societies to conduct moots and promote better legal education.[110] It might also have been inspired by the Law Academy of Philadelphia, founded in 1821, which was intended to provide for law lectures and moots.[111] Since the New York Law Institute could not possibly substitute for an active "bar associa-

[105] In all there were nineteen subscribers to the constitution, as drafted by Chancellor Kent, among them Ogden Hoffman, John Duer, Thomas Addis Emmet, David Ogden, and George Sullivan. Chancellor Kent was chosen as the first president.

[106] *Charter of the New York Law Institute* chap. 48, *Laws of 1830*, sec. 1.

[107] See Pound, *The Lawyer* 215–16 (1953).

[108] "First Meeting of the Association of the Bar of the City of New York," 1 *Association Reports* 21 (1870).

[109] Blaustein, "New York Bar Associations," *loc. cit.*, 1188.

[110] See below.

[111] See below.

tion," or even cope with the many problems confronting the legal profession of New York, an attempt was made in 1835 to establish a "Legal Alliance" in New York City. This attempt, however, met with complete failure.[112]

The Philadelphia bar organization or, as it is called today, the Philadelphia Bar Association, may be considered the oldest continuous bar organization in the United States. In 1802 the lawyers of Philadelphia founded a Law Library Company, an unofficial organization or corporation with stock fixed at twenty dollars a share, to be held by the members of the bar of Pennsylvania. The articles of incorporation, which were signed on March 13, 1802, and enrolled on May 13, 1802,[113] were subscribed by seventy-two lawyers, among them all the prominent members of the profession.[114] This Law Library Company, it should be observed, was started and preserved during a period when organized local bars existed in but a few states and were in many instances soon to flicker out of existence.

In 1784, and again in 1798, some law students and younger practitioners in and around Philadelphia formed unofficial societies to conduct moots and to promote better legal education in general. These societies did not survive, but it seems that they, or at least their underlying ideas, gave impetus to the founding of the Law Academy of Philadelphia in 1821.[115] The purpose of the Law Academy was to supplement the practical training which students received in law offices with lectures and moots—somewhat akin to the Readings and Moots offered at the Inns of Court in London.[116]

112 Wickser, "Bar Associations," *15 Cornell Law Quarterly* 390, 394n. (1930); Blaustein, "New York Bar Associations," *loc. cit.*, 1186.

113 "Historical Address by Hon. James T. Mitchell, Chief Justice of the Supreme Court of Pennsylvania, The Law Association of Philadelphia," *Addresses Delivered March 13, 1902, and Papers Prepared or Republished to Commemorate the Centennial Celebration of the Law Association of Philadelphia, Pennsylvania* 16ff. (1902). See also Hanna, "The Organized Bar in Philadelphia," *25 Temple Law Quarterly* 301 (1952).

114 Mitchell, "Historical Address," *loc. cit.*

115 Peter S. du Ponceau, who as far back as 1784 had been a member of a society of law students, established the Law Academy. See note 199, Chapter IV, below.

116 Reed, "Training for the Public Profession of the Law," *15 Bulletin of the Carnegie Foundation for the Advancement of Teaching* 432 (1921). A Society

Some time before 1821 a "professional society" was established, subsequently known under the name of "The Associated Members of the Bar of Philadelphia Practicing in the Supreme Court of Pennsylvania." This society, which in 1821 published its "Constitution and By-Laws," established a committee of "Censors" to watch over the practice of law and report instances of unprofessional conduct to the association for appropriate disciplinary action. These "Censors" also were to suggest to the association changes in the rules of practice which, if approved by the association, were to be presented in proper form to the courts for possible adoption. One of the primary purposes of this association, it seems, was "generally to aim at maintaining the purity of professional practice."[117] The "Constitution and By-Laws" were subscribed to by sixty-seven lawyers, including the leading members of the Philadelphia bar of the time. In 1821 the Associated Members of the Bar of Philadelphia began to negotiate a merger with the Law Library Company. Since nearly all the principal members of the Law Library Company belonged to the Associated Members of the Bar of Philadelphia,[118] the connection between these two societies must have been a close one from the very beginning. In 1827 the original charter of the Law Library Company was amended and the new charter created "The Law Association of Philadelphia,"[119] which was but the consolidation of the two societies.[120]

In 1835 the "Detroit Bar Association" was founded for the purpose of establishing a law library and in order to supervise and,

for the Promotion of Legal Knowledge and Forensic Eloquence, incorporated in 1821 in Philadelphia, soon lost its charter and dissolved. Mitchell, "Historical Address," *loc. cit.*, 25ff. These "law societies" or "law clubs" founded for the purpose of promoting legal education might have been fashioned after "The Sodality" of Massachusetts (1765–67), or "The Moot" of New York (1770–75). The Sodality was a group of about seven Boston lawyers who studied certain classical texts in order to produce "at the bar . . . a purity and elegance, and a spirit surpassing anything that ever appeared in America." Chroust, "The Legal Profession in Colonial America," Part I, 33 *Notre Dame Lawyer* 51, 86ff. (1957). The Moot of New York was also intended to encourage a more profound and ample study of the law. *Ibid.*, 350, 361 (1958).

117 Mitchell, "Historical Address," *loc. cit.*, 29.

118 *Ibid.*, 31.

119 *Ibid.*, 32.

120 In 1931 this Law Association of Philadelphia became The Philadelphia Bar Association.

whenever necessary, to discipline lawyers guilty of professional misconduct.[121] The *Record Book*[122] of this Association has as its first entry the report of a "Bar Meeting," held on November 19, 1835, when it was voted among other matters to appoint a committee to investigate the professional conduct of a certain member of the bar, to appoint a committee to consider the propriety of "a fee bill for professional services," and to appoint a committee to look into the feasibility of creating a law library for the use of both bench and bar. The next entry, dated December 21, 1837, contained a resolution to the effect that "in the opinion of the members of this Bar the infirm health of the Presiding Judge of the First Circuit of the State of Michigan is such as to disqualify him for the performance of his official duties." It was also voted that a committee be appointed and instructed to notify the chairman of the Select Committee of the Judiciary of this resolution. Additional entries, covering the period from August 5, 1839, to April, 1842, deal with disciplinary problems and minor matters, such as a bar dinner, resolutions on the death of a prominent member of the bar, and notices of the resignation or the death of judges.[123]

A "Bar Association of the State of Mississippi," which might have been the pioneer among the state-wide bar associations within the United States, apparently was organized in 1824.[124] This state bar association, the origin of which is unknown, met at Natchez, Mississippi, on August 21, 1824, Joseph E. Davis presiding, and unanimously resolved on the occasion of the death of Louis Winston, Judge of the Supreme Court of Mississippi and of the Circuit Court, "That the members of this association do wear crepe on the left arm, for the space of thirty days."[125] It met again at

[121] See Pound, *The Lawyer* 208, 216 (1953). The chief promoter of the Detroit Bar Association was William Woodbridge, judge of the Territorial Supreme Court of Michigan from 1828 to 1832. It has been claimed that the present-day Michigan State Bar Association is the direct descendant of the Detroit Bar Association.

[122] The manuscript of this *Record Book* is in the Detroit Public Library. A photostatic copy can be found in the Harvard Law School library. See Pound, *The Lawyer* 208 (1953).

[123] Pound, *The Lawyer* 208–10 (1953).

[124] 1 Rowland, *Courts, Judges, and Lawyers of Mississippi, 1798–1935* 355–56 (1935).

[125] *Mississippi State Gazette* (Natchez), August 21, 1824.

Natchez in December, 1824, to listen to an address by William Griffith, secretary of the association.[126] At a third meeting, again in Natchez (at that time the only town of any consequence in the state of Mississippi), early in January, 1825, the association discussed and filed a memorandum for the state legislature concerning certain problems arising from "the system of the United States courts within the states newly admitted into the Union."[127] This state bar association lasted until 1851,[128] and perhaps longer.

There seems to have existed a "South Carolina Bar Association" during the 1820's and 1830's, which was addressed by Thomas S. Grimké on March 17, 1827;[129] there was also a "bar association" in Arkansas, organized in 1837, when the constitution of this organization was adopted. The records indicate that a meeting of this "bar association" was held on January 15, 1838.[130] Some lawyers in Kentucky, in 1846 or 1847, likewise formed a "bar organization" (of which no permanent records seem to have survived), as did the bar of the City of New Orleans, Louisiana, which in 1847 adopted a constitution under the name of "Association of the Bar of New Orleans." In 1855 a "bar association" was chartered under the name of New Orleans Law Association, and its bylaws were adopted in 1856.[131] In 1828 some lawyers who practiced before the Supreme Court of Alabama organized "The Library Society of the Bench and Bar of the Supreme Court of Alabama" in

[126] *Ibid.*, December 18, 1824.

[127] 1 Rowland, *Courts, Judges, and Lawyers* 355, 356–57 (1935). See also Small, "Check List of Proceedings of Bar and Allied Associations," in Hicks, *Materials and Methods of Legal Research* 440, 467 (2nd ed., 1933).

[128] 1 Rowland, *Courts, Judges, and Lawyers* 409 (1935). On November 15, 1851, the association gave a farewell dinner for William L. Sharkey, Judge (and Chief Justice) of the Supreme Court of Mississippi, Judge of the Circuit Court, and Judge of the High Court of Errors and Appeals. *Vicksburg Tri-Weekly Whig*, November 19, 1851. This event seems to be the last available evidence concerning the activities of the association.

[129] See Grimké, *An Oration on the Practicability and Expedience of Reducing the Whole Body of the Law to the Simplicity of a Code, Delivered to the South Carolina Bar Association, March 17, 1827* (1827), reprinted in part in Miller, *Legal Mind* 148–58 (1962).

[130] Small, "Check List," *loc. cit.*, 444. See also 6 *Proceedings of the Bar Association of Arkansas* 49ff. (1904).

[131] *Louisiana State Bar Association Proceedings (1898–1899)*. See also Small, "Check List," *loc. cit.*, 462.

Tuscaloosa.[132] This Society, which financed the purchase and maintenance of a sorely needed law library through annual membership dues,[133] disbanded in 1838.[134] The Cincinnati Law Library Association, which was incorporated on June 5, 1847, had as its objects "the improvement of its members, the cultivation of the Science of the Law, and the foundation of a law library." Of the 125 members of the Cincinnati bar in 1847, no less than 105 were charter members.[135] Between 1837 and 1839 there existed in Barbourville, Kentucky, a "Debating Society," organized, as it seems, by the local bar "to induce and encourage a more free interchange . . . on all important subjects which are . . . interesting the active mind . . . [and] to form habits of reflection." This Society, which also concerned itself with legislative proposals, legal reforms, and other matters touching upon the activities of the profession, among other issues debated the abolition of capital punishment in Kentucky, the constitutionality of federal financing of internal improvement schemes, and the restriction of the universal suffrage by a property qualification.[136]

Thus, it appears that with a few exceptions none of these organizations was in existence for more than a relatively short period of time. So far as it can be ascertained, no serious efforts were made in other states, territories, or cities at this time to organize the legal profession in some kind of "bar organization" or "bar meeting."

The original American "bar meeting" or "bar organization," which in many instances dates back to pre-Revolutionary days, was formed by and of *all* lawyers practicing in a district, county,

[132] See Brantley, "Our Law Books," 3 *Alabama Lawyer* 361, 367–371 (1942). In *ibid.*, 669, can be found a list of lawyers and judges who became members of this Society. The list contains fifty-four names, among them the leading practitioners of the state.

[133] In its aim this Society was very similar to the announced purpose of the New York Law Institute (see notes 105–12, Chapter III, above, and the corresponding text) which was founded at approximately the same time. Thus it could be maintained that the ever-vexing dearth of lawbooks and other authoritative legal materials in early America led the lawyers to "associate."

[134] It is possible that the Society functioned on a limited scale through 1844 and 1845. Brantley, "Our Law Books," *loc. cit.*, 371.

[135] See 1 *Greater Cincinnati and Its People* 195 (Leonard ed., 1927).

[136] Dishman, "Some Great Lawyers of Kentucky," *Proceedings of the Eighteenth Annual Meeting of the Kentucky State Bar Association* 111–13 (1919).

or state. Its rules and regulations, it will be remembered, were binding upon all members of this district, county, or state bar by virtue of their membership in the bar. The founding of the "bar meeting" was prompted by the realization, keenly felt, especially by the New England lawyers, that a responsible legal profession *as a whole* had problems, responsibilities, and functions which transcended those of individual lawyers. But under the steady pressure which progressively deprived the bar of its previous control over prelegal education, legal training, and admission to practice, the various bars or "bar meetings," especially those of New England, which once had greatly flourished, were dissolved or, in some instances, replaced by voluntary and selective "bar associations" which had no supervisory powers whatever. The Maine legislature, for instance, in 1790 "objected to the association of members of the bar and the formation of bar rules" as "illegal and unwarrantable usurpation."[137] The loss of these supervisory functions removed the prime reasons which once had stimulated the founding and maintenance of these "bar meetings." With the power to control education and admission also went the power to control professional deportment. From then on any member of the bar could become a member of a voluntary association wherever it could be found, provided he wished to do so, and provided he could secure the consent and approval of the association. Since an increasingly enlarged proportion of the lawyers were thus out of reach of any responsible organization, a competent and responsible profession could no longer be guaranteed. As a matter of fact, the irresponsible elements in the profession soon seemed to predominate. Such elements also began to cause the increase of an unfavorable public opinion toward the profession[138]—an opinion which has lingered on in America.

Undoubtedly, the social and political background against which the early American lawyer developed had something to do with the decline of bar organizations during the so-called "middle period." The young American society was predominantly a pioneer or frontier society, agricultural and rural in its main pursuits and

[137] Clayton, *History of Cumberland County* 84 (1880).

[138] See also the many references to the widespread unpopularity of the lawyer after the Revolution and during the 1830's, in Chapter I, above.

interests. A pioneer society, however, does not believe in specialists or in professional organizations which it eyes with suspicion and contempt. "The pioneer," Pound points out, "feels himself equal to anything. . . . He would leave everyone free to change his occupation as he chooses."[139] Also, he did not see why a profession, especially the legal profession which after the Revolution had come under a cloud, should organize, or remain organized, in a manner reminiscent of British or pre-Revolutionary ways. The early attempts to organize the profession were essentially carry-overs from colonial days: they found expression in a few relatively short-lived inclusive "bar organizations" which vainly hoped to speak for the whole bar.[140] The advent of "Jacksonian democracy" probably dealt the death blow to any organization of the legal profession. Statutes throwing the practice of law wide open to all citizens or voters were the common result. Deploring the devastating effects which this new policy had upon the profession as a whole, Samuel Hand, second president of the New York Bar Association, lamented in 1879 that "[d]uring the last thiry years there have poured into the profession . . . large numbers of men, unfit by culture or training or character to become incorporated into any learned profession. Hundreds of men without a tincture of scholarship or letters . . . have found their way into our ranks. Men . . . uncouth in manners and habits, ignorant even of the English language . . . [are] vulgarizing the profession."[141] The same year Moses Strong, first president of the Wisconsin bar, pointed out that now "[t]here are practically no prerequisites, of either knowledge of laws, or knowledge of anything else, as conditions of admission to the bar."[142] Pioneer democracy, in brief, rejected the notion that the specially trained man, the man fitted for his calling by training and experience, should have his proper place in society. It refused to acknowledge the fact that the stability of any free democratic society to a large extent depends on the recognition and incorporation of the trained specialist into the organization of that society, whether as "umpire" between contending interests or as efficient instrument of social control.

139 Pound, "A Task for the University Law School," *Address of Dean Roscoe Pound . . . and Exercises at the Dedication of Richardson Hall*, November 10, 1938, Brooklyn Law School.

140 Wickser, "Bar Associations," *loc. cit.*, 390, 392ff.

141 3 *New York Bar Association Report* 67 (1879).

142 1 *Wisconsin Bar Association Report* 13 (1879–85).

Open hostility rather than fair recognition was accorded to any professional group which sought privileges, even though they were only the privileges and duties springing from a common membership in a learned profession. Hence, it was no mere accident that the New England "bar organizations" and "bar meetings" should come to a sudden end during the era of "Jacksonian democracy." The Suffolk Bar, as has been shown, disbanded in 1836, as did the bar of Cumberland County in Maine. The Fraternity of the Suffolk Bar suffered the same fate soon after 1831, and the Bar of the District of Maine came to an end in 1829, although it continued to linger on as the Bar of Kennebec County until 1841. The Bar of Franklin County in Massachusetts disappeared in 1835, and the Bar of Grafton County in New Hampshire ceased to operate in 1838. The Bar of Essex County in Massachusetts miraculously managed to survive until 1856, but an attempt to start a State Bar Association in Massachusetts in 1849 failed dismally, as did a similar effort to form a Legal Alliance in New York in 1835. The "bar meetings" held in Connecticut (since 1783) and in Vermont (since 1787) simply passed out of history. The laments uttered by the Cumberland Bar in Maine could certainly be echoed by the whole American legal profession: "[U]nder the hostile system of legislation that . . . prevailed [in the several states] . . . the members [of the original bar meetings] . . . have yielded in despair to the spirit of reckless innovation upon old and established principles, and the [bar] organization[s] . . . have fallen into decay."[143]

Strong efforts also were made to drive the lawyers from their profession and to prevent the existence of any distinct bar. To be sure, since colonial days, there had always been legislation empowering every litigant to be represented by an "agent" of his own choice, including a person not "officially" admitted to, or especially qualified for, the practice of law. But now this "privilege" of the parties, which in the course of time had less and less been made use of, was turned into a deliberate policy fostered by legislation and purposely aimed at depriving the lawyer of his

143 *Rules and Regulations of the Cumberland Bar Association* 1 (1864). See also note 85, Chapter III, above.

professional standing in the community at large, no less than in the courts of law. Are not the lawyers, wrote one pamphleteer, "those whose combination cover the land and who have even contrived to invest their combinations with the sanctity of the law? . . . And have they not fortified their unions with alliances . . . with the rich, and thus established a proud, haughty, overbearing, fourfold aristocracy in our country? . . . They know that the secret of their own power and wealth consists in the strictest concert of action. . . . They know from experience that unions among themselves have always enabled the few to rule and ride the people."[144] "[T]his preposterous state of things could only have been brought about by union among lawyers and by their combination"[145]—a "state of things [which] is perpetuated, by means of the quarterly meetings of the bar unions in every county throughout the nations."[146]

Kentucky, in 1846, proposed a constitutional amendment against the legal profession. In New Hampshire, after 1842,[147] in Maine, after 1843,[148] and in Wisconsin, after 1849,[149] every citizen or resident[150] was entitled to be admitted to practice merely on the proof of good moral character. The Michigan Constitutional Convention of 1850 voted repeatedly to extend to every person of good moral character, being twenty-one years of age, the "right to practice in any court."[151] Until 1932, Indiana[152] had a provision in its Constitution which safeguarded the inalienable right of every

[144] Robinson, *Program for Labor* (1834), reprinted in *Social Theories of Jacksonian Democracy* 320–42 (Blau ed., 1947), especially at 330.

[145] *Ibid.*, 331.

[146] *Ibid.*

[147] *New Hampshire Revised Statutes*, 1842, chap. 177, sec. 2.

[148] *Maine, Acts and Resolves of 1843* chap. 12.

[149] *Wisconsin Laws of 1849* chap. 152.

[150] In New Hampshire a person was also required to be twenty-one years of age.

[151] *Report of the Proceedings and Debates of the Convention to Revise the Constitution of the State of Michigan* (1850) 388, 395, 477, 812.

[152] *In re* McDonald, 200 Indiana 424, 428 (1928), 164 N.E. 261, the court held that the practice of law by any voter of good moral character is not an unqualified constitutional right, since the courts may make reasonable rules and regulations for the admission to practice. See *Acts of 1931* chap. 64, par. 1, p. 150; *Burns' Statutes* par. 4–3605: "The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice in all courts of the state under such rules and regulations as it may prescribe." In July, 1931, the Supreme Court of Indiana adopted certain rules regulating the admission to the practice of law.

voter, irrespective of his professional qualifications or training, to be admitted to the practice of law, provided he was a resident of the state and a person of good moral character.[153] In brief, some states simply contended that citizenship and the absence of a criminal record bestowed an inchoate right to practice law.

In 1834, Frederick Robinson, a popular writer, spoke out publicly against the "secret trades union of the lawyers, called the bar, that has always regulated the price of their own labor and by the strictest concert contrived to limit competition by denying to everyone the right of working in their trade, who will not in every respect comply with the rules of the bar."[154] In 1838 the *Southern Literary Messenger*, referring to bar associations or bar organizations, stated: "They are wrong in principle, betray competition, delay professional freedom, degrade the Bar."[155] Robinson also attacked repeatedly the "combinations of lawyers," claiming they were "better organized and more strict and tyrannical in the enforcement of their rules than even masonry itself." If the organized bar should be investigated, Robinson alleged, "[w]e shall discover that by means of the regularly organized combination of lawyers throughout the land the whole government of the nation is in their hands."[156]

When in 1836 the Suffolk County Bar in Massachusetts disbanded on its own accord, the reason given for this drastic step was "the Revised Statutes" which made "essential changes in the admission to the bar."[157] More specifically, chapter 88, section 19 of the *Massachusetts Revised Statutes* of 1836 provided that "[a]ny citizen of the Commonwealth, of the age of twenty-one, and of good moral character, who shall have devoted three years to the study of law, in the office of some attorney, within this state, shall,

[153] *Indiana Constitution of 1851* art 7, sec. 21. Under the authority of *in re* Todd, 208 Indiana 168 (1934), 193 N.E. 865, this section of the Indiana Constitution was abrogated by virtue of its submission to the voters at the general election of November, 1932.

[154] Robinson, *Program for Labor* 329 (1834).

[155] Quoted in Wickser, "Bar Association," *loc. cit.*, 393.

[156] Robinson, *Program for Labor* 329–30 (1834). Robinson's attacks upon the organized bar and the legal profession in general are very similar to those launched by Benjamin Austin, alias Honestus, and William Duane. See Chapter I, above.

[157] *Record-Book of the Fraternity of the Suffolk Bar* 1.

on application to the supreme court, or court of common pleas, be admitted to practice as an attorney in any court of this Commonwealth." Section 20 provided: "Any person, having the other qualifications, required in the preceeding section, but who shall not have studied the term therein prescribed, may, on the recommendation of any attorney within this Commonwealth, petition the supreme court, or court of common pleas, to be examined for admission as an attorney in said courts, whereupon the court shall assign some time and place for the examination, and if they shall thereupon be satisfied with his acquirements and qualifications, he shall be admitted, in like manner as if he had studied three full years." Section 24 provided: "Any person, who shall have been admitted an attorney or counsellor of the highest judicial court of any other state, of which he was an inhabitant, and shall afterwards become an inhabitant of this state, may be admitted to practice here, upon satisfactory evidence of his good moral character, and his professional qualifications." These provisions, it will be noted, radically altered the existing law: three years' study in the office of a lawyer entitled the candidate to be admitted, without examination, either in the Court of Common Pleas or in the Supreme Judicial Court. The old policy of requiring every lawyer to be admitted first in the Court of Common Pleas and to practice there with distinction for a fixed period of years was simply abolished. If an applicant was unwilling to devote three years to the study of law, he could apply to the court for an examination and, if he should pass this examination successfully, be admitted to the practice of law in either the Court of Common Pleas or the Supreme Court without ever having had any formal training for the profession.[158] In this fashion it was assumed for the first time in the history of America that the bar was to be regarded not as a learned profession but as a sort of private occupation or "business."[159]

Hence it could be maintained that during the so-called "middle

[158] See Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 57–58 (1907).

[159] The Supreme Judicial Court of Massachusetts, at the March term, repealed all previous rules of court relating to the admission of attorneys. This repeal took effect on October 1, 1836. 24 Pickering (Mass.) 383 (1836). In 1836 also the distinction between attorneys and counselors was abolished in Massachusetts.

period," not only was the formation of any association or professional organization effectively discouraged, but the early "bar meetings" or "bar associations" were gradually extinguished, with the notable exception of the Law Association of Philadelphia. Wickser summarizes this general situation well when he states:

> It will be observed, therefore, that some of the significant characteristics of the period between the Revolutionary and Civil Wars were: (1) the development of an individualistic bar in an individualistic community; (2) unrelated and fitfull attempts to organize, often unsuccessful, but generally all-inclusive in theory; (3) practically no evidence of selective associations, at least in their purposive aspects; and (4) some claim to control standards of education, admission, and discipline, which melted away before a philosophy of democracy, pure and sovereign. The ablest members of the profession still knew each other's language, and, as a group, talked loudly and definitely about the major political . . . questions before the nation—for which, as a class, they were handsomely paid—but neither they nor the bar as a whole made serious attempts to change the philosophy of the day, nor to object to its application to their own body, no matter what results might ensue.[160]

By 1830 the system of organized local bars had been established only in a relatively few states. Obviously, in the face of growing popular antagonism, adverse legislation, and the general trend toward deprofessionalization which marked the Jacksonian era, these "bar associations" or "bar meetings" could not spread or even maintain themselves. In New England they rapidly declined and soon passed out of existence. The organized bars of Mississippi (1824) and Arkansas (1837) never amounted to very much, and the "bar association" of New York had already disbanded before the Revolution. An attempt by the lawyers in the city of New York in 1835 to form a "Legal Alliance" proved to be abortive.[161] Only the lawyers of Philadelphia, through the Law Academy and the Associated Members of the Bar of Philadelphia Practicing in the Supreme Court of Pennsylvania, somehow managed to preserve elements of the wholesome notion of an organized bar.

[160] Wickser, "Bar Associations," *loc. cit.*, 390, 394–95.

[161] *Ibid.*, 394n.

Hence, the present-day Philadelphia Bar Association, the successor of the old Law Association of Philadelphia, may rightly claim to be the oldest continuous bar association in the United States.[162]

About the middle of the eighteenth century in some colonies, especially Massachusetts and New York, the courts began delegating *de facto* their responsibilities for admission to practice to the local or county bar associations. On the eve of the Revolution, in Massachusetts, New Hampshire, and Rhode Island, the local bars were firmly in control of admission. This unusual phenomenon may be explained by the fact that owing to the absence of special legislation, each court possessed the power to admit as well as the right to regulate the details of such admissions. This made it possible for them to dispense with any formal regulations of their own. In time they acquiesced in "rules" established by those already admitted into the profession. In this manner the local bars of New England in particular acquired control over admissions. This control was so nearly complete that the bar rather than the courts soon appeared to be the decisive authority. In some instances it was exercised in so drastic and thorough a fashion as to create the conviction among the general populace that it was the instrument of a selfish monopoly. Massachusetts in particular had a very strong bar, and its influence was felt in the quality of the prelegal and legal education which it expected from young men desiring to enter the profession. In those colonies which had less influential bars, owing to the legislature's failure to provide for certain rules of admission or to empower the courts to set up such rules, no uniform requirements, especially no strict requirements of uniform periods of preparatory studies, existed. Thus shortly before, and for some time after the Revolution, at least in some parts of the country, either the various "bar organizations" and "bar meetings" or the legislatures—often due to the influence of the organized bar—or the courts established rules fixing minimum educational requirements for the admission to practice. At the same time, the organized bar itself determined minimum educational requirements for the admission to the study of law, and also made recommendations to the proper authorities concerning admission to practice. In Massachusetts, for instance, the recommendation of an applicant by the

[162] Pound, *The Lawyer* 205ff. (1953).

local bar was all that was demanded by the courts, but the bar determined for itself the grounds upon which it would recommend.[163]

In sum, therefore, although local procedures often varied greatly, shortly before the Revolution a relatively significant beginning had been made through the creation of some meaningful standards for the admission to the study of law, and particularly to the practice of law. The Suffolk bar in Massachusetts, for instance, provided in 1771 that prior to his admission to legal training any candidate had to have a college education, a provision which was subsequently adopted by other Massachusetts county bars.[164] In 1768 the Essex bar adopted a rule, likewise followed by other Massachusetts bar organizations, that no person ought to be admitted as an attorney in the Inferior Court unless he had studied law in the office of some lawyer for at least three years, nor as an attorney in the Superior Court unless he had been practicing as an attorney in the Inferior Court for at least two years, nor as a barrister unless he had been practicing as an attorney in the Superior Court for at least two years.[165] Hence, the minimum requirement for admission to practice as a barrister was seven years in Massachusetts.[166] By a rule of court of 1810, this requirement was enforced until 1836. Because Massachusetts, like some of the other Northeastern jurisdictions, recognized a graded profession, the requirements for admission were particularly stringent. This Massachusetts policy of strict but sensible control miraculously survived the Revolution and the trying years immediately following it.

The other New England states generally followed the example set by Massachusetts. New Hampshire, through the initiative of an organized bar, had certain requirements concerning preliminary legal training. College graduates were to study at least three years in the office of a practitioner; nongraduates, five. In order to be admitted to the Superior Court, two years of practice as an at-

[163] For details, see *Record-Book of the Suffolk Bar*, *loc. cit.*, 147–79.

[164] In 1784 a rule was made by the Suffolk Bar to require of any nongraduate an examination by a committee of the bar prior to admission as a law student. See text above.

[165] See also 2 Mass. (Tyng) 72 (1806).

[166] 2 Adams, *Works of John Adams* 197 (1850).

torney in the lower courts were prescribed.[167] Essentially the same requirements obtained in Vermont. Here, too, the local bar established these requirements which were officially recognized by statute in 1787. From 1826 to 1843 a rule of court required three years for college graduates, five years for nongraduates, and somewhat more than three years for those who had a partial college education. For admission to the Supreme Court two years of practice as an attorney, and for admission as solicitor in Chancery three years were required. Connecticut[168] and Rhode Island stipulated that any candidate for admission to practice had to have the consent of the bar. This consent was withheld unless the candidate, if a college graduate, had two years, and if a nongraduate, three years of legal training. These prescriptions likewise had been established by the organized bar. Maine, by an act of the legislature, from 1821 to 1837 required seven years of study, of which three years had to be spent in the study of law under the close supervision of a counselor at law.

New York required a period of seven years' study, four of which could be spent in college or "classical studies."[169] Four years of practice as an attorney, subsequently (in 1804) modified to three years, gave the right, *ipso facto*, to become a counselor.[170] In New Jersey three years of legal studies were prescribed for college graduates, and four for nongraduates. In addition, the candidate had to pass an examination before a committee composed of three out of the twelve serjeants. Pennsylvania required four years of law study in a law office[171] and one year's practice in the Court of Common Pleas; or three years of law study and two years of practice, topped by an examination conducted by two lawyers. But if the candidate had passed his twenty-first birthday, the rule was two years of law study, two years of practice, and an examination.

167 Between 1833 and 1838 the same periods of preparation were required by a rule of court.

168 This rule was first established by custom set up by the bar. Later it was adopted by a rule of the Supreme Court.

169 See 1 New York (Coleman's Cases) 32–33 (1797).

170 See 2 New York (Caines' Reports) 418 (1804); Smith, "Admission to the Bar in New York," 16 *Yale Law Journal* 514f. (1907). Anyone wishing to practice in the Chancery Court had to pass a special examination. *Ibid.*, 516.

171 This period of legal study in a law office was originally called "regular apprenticeship," but in 1788 it was renamed "clerkship."

Since colonial days Delaware had insisted on three years of legal study; and Maryland, which also required three years' study under the supervision of a lawyer or judge (at least until 1832), insisted on an examination of the candidate by two members of the bar. Virginia, on the other hand, demanded only one year of legal study (and this only after the Revolution),[172] as well as an examination by members of the bar. In South Carolina the candidate merely had to pass an examination in order to be admitted to practice. But if he had clerked in a law office for at least four years,[173] he was exempted from submitting to this examination. Georgia, by an act of the legislature, insisted on five years of legal preparation; while Louisiana, by a rule of court from 1813 to 1819, and Michigan, by an act of the legislature from 1827 to 1846, required three years.

During the 1830's, and in some instances even earlier, state legislatures began their relentless attack upon the legal profession as a profession or "class." Some states aimed directly and openly at nothing less than depriving the bar of its professional character by trying simply to suppress it as a whole. Thus, Elbridge G. Gale, a delegate to the Michigan Constitutional Convention of 1850, proposed: "Any man may give either medicine or gospel. . . . I want the lawyers to stand on the same platform."[174] Practically each new state down to the time of the Civil War at one time or another threatened to "make every man his own lawyer" by an act of the legislature or by a decree of the court. In some instances proposals or measures were introduced which, at least outwardly, appeared to be less drastic, although in their ultimate practical effects they were equally harmful and destructive to the legal profession: the abolition or severe curtailment of existing educational and professional requirements for the practice of law.[175] The guiding idea

172 Patrick Henry was admitted to practice in 1760 after three weeks of private study. See Tyler, *Patrick Henry* 22ff. (1898).

173 College graduates had to clerk only three years.

174 *Report of Proceedings and Debates of the Convention to Revise the Constitution of the State of Michigan* (1850) 812.

175 Indiana, for instance, proposed the seemingly harmless prohibition of using "technical terms in Latin or in other than the English language for all legislative acts." 2 *Reports of the Debates of the Convention for the Revision of the Constitution of the State of Indiana* (1850) 1128. See also *ibid.*, 1129ff., 1139, 1196ff. But in effect this was a deliberate effort to reduce the educational and pro-

of the time was simply that every man, or at least every citizen, was as good as every other, and that every one should find open the gates to self-advancement, success, and economic gain in any field of his personal choice. This "philosophy" was poignantly expressed by the Indiana Supreme Court as late as 1893, when it held: "Whatever the objections of the common law of England, there is a law higher in this country, and better suited to the rights and liberties of American citizens, that law which accords to every citizen the natural right to gain a livelihood by intelligence, honesty, and industry in the arts, the sciences, the professions, or other vocations."[176] Motivated by such notions, early nineteenth-century American democracy managed to carry before it almost all previously existing and accepted standards of professional education or requirements for admission to the legal profession.

Around the year 1800, out of nineteen states or territories[177]

fessional qualifications of the lawyer. Some quotations from these debates might be illuminating: "From the use of verbiage, with which the law is encumbered, and technical terms in Latin and other languages, it requires a lawyer to interpret every enactment that is made by the Legislature. . . . I want that kind of language made use of which will put the meaning of those laws within the reach of justices of the peace and private citizens. . . . The laws ought to be so plain that every man can interpret them for himself, without the aid of a law dictionary." *Ibid.*, 1128. ". . . I want language employed that men who are not versed in the law can understand. I know that it will be resisted by the members of the legal profession, for it will steal a little of the trade of those lawyers who hang around the county seats. But we have been long enough governed by lawyers." *Ibid.*, 1130. "We all know that the gentlemen of the bar are supported by these very technicalities . . . those foreign terms which are the very idioms of the bar." *Ibid.* ". . . these jawbreakers are put into our statutes to prevent the honest yeomanry of the country from understanding them. . . . [I]t is reasonable in every direction of the human mind, that we should have our laws written in our own language." *Ibid.*, 1131. ". . . I see no good reason why these Latin law phrases could not be dispensed with, and the English used in their places. A simplification of our common law practice, is loudly called for." *Ibid.*, 1132. "That is the simple question, whether you will let every man set up for himself and understand the laws, or whether you will write your laws, or a portion of them so as to prevent those who are not educated in *Latin and Norman French* from understanding them, and thereby make it the business of a certain class of men to expound these mysterious expressions." *Ibid.*

[176] *In re* Petition of Leach, 134 Indiana 665, 668 (1893); 34 N.E. 641f. (1893).

[177] The Northwest Territory required four years of legal study for attorneys and two additional years of practice as an attorney for counselors. Subsequently the period of legal study for attorneys was reduced to three years.

fifteen insisted upon definite and often detailed standards of admission, including prescribed minimum periods of preparation: Massachusetts, New Hampshire, Vermont, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, Tennessee, the Northwest Territory, and the Indiana Territory.[178] The four jurisdictions where no such requirements existed at that time were Virginia, North Carolina, Kentucky, and the District of Columbia. After the year 1800 these requirements were re-established in Vermont (1817) and introduced, though in a weakened form, in Missouri (1807),[179] North Carolina (1819), Ohio (1819), and Michigan (1827). They were also applied in Louisiana (1813), Mississippi, Arkansas, Wisconsin, and Iowa, only to be promptly abolished. By the year 1840 only eleven out of the thirty jurisdictions retained any provisions concerning minimum periods of legal study preparatory to admission to the practice of law. Aside from the states already mentioned, these provisions were abolished in the old Northwest Territory (Indiana Territory and Ohio) in 1801 and 1802, Georgia in 1807, Tennessee in 1809, South Carolina in 1812, Massachusetts in 1836, Maine in 1837, and New Hampshire in 1838. They were greatly reduced in New Jersey in 1817 and Maryland in 1832.[180] To make matters worse, even in those states where some semblance of requirements were still observed, these requirements were not strictly enforced or competently administered. In Massachusetts, for instance, the act of 1836[181] provided that any person could be admitted to practice in the following manner: Applicants with or without previous training might take their chances with the courts. If, however, they were of good moral character, and had studied law for three years in an attorney's office, then the courts were obliged to admit them.[182] How loosely the terms "legal apprentice-

[178] Vermont, it will be noted, introduced this requirement in 1787, but soon abolished it.

[179] Missouri abolished these requirements in 1830.

[180] Reed, "Training for the Public Profession of the Law," 15 *Bulletin of the Carnegie Foundation for the Advancement of Teaching* 85ff. (1921).

[181] *Revised Statutes* (Massachusetts) of 1836, chap. 88, secs. 19–60. The court rule of 1806, 2 Mass. (Tyng) 72–76 (1806), had already been modified by a court rule of 1810. 6 Mass. (Tyng) 382–85 (1810).

[182] Reed, "Training for the Law," *loc. cit.*, 87.

ship," "clerkship," or "legal studies" were applied may be gathered from the fact that in Ohio, for instance, the applicant had only to produce a certificate signed by an attorney that he had "regularly and attentively studied law." Hence, his studies need not even have been under this particular attorney's direction. Good-natured lawyers only too often certified "regular and attentive study" without inquiring into the facts.[183]

In colonial Virginia a candidate wishing to be admitted to practice before the higher courts had to undergo an examination before a permanent examining board appointed by the General Court and composed of members of the General Court of lawyers practicing before it.[184] This method substantially survived the Revolution, with the modification that admission to practice before all courts was made subject to such an examination, and that the General Court alone was to hold the examination.[185] Since the General Court often had neither the time nor the skills nor the personnel required to conduct these examinations properly and efficiently, these examinations, as a rule, were wholly inadequate.[186] In New England, at least as long as the "bar meetings" exercised the main control, emphasis was placed upon the successful completion of the prescribed period of legal studies. Hence, only the individual preceptor had to be satisfied with the attainments of the student; and his recommendation to the court, especially if supported by the whole bar, was tantamount to admission to practice.[187] Somewhat later the judgment of the whole bar became a necessary prerequisite. This, in turn, led to the appointment of special "examining committees" which reported back to the whole bar together with their recommendations. Thus, in Connecticut (in 1795), in New Hampshire (in 1805), and in Massachusetts (in

[183] Pound, *The Lawyer* 229–30 (1953).

[184] See 6 Hening, *Statutes at Large . . . of Virginia* 140ff. (1819). "Good moral character" had to be proven by a certificate issued by a county court.

[185] This "Virginia system" became influential not only throughout the South but also throughout the Western territories.

[186] The same held true in the states which were under the influence of the "Virginia system."

[187] See 2 Adams, *Works of John Adams* 49ff. (1850), where John Adams tells that Mr. Gridley of the Suffolk bar "recommended him, with the consent of the Bar . . . for the oath [of attorney]."

1806),[188] examining committees were set up by the bar (or by the courts) in every county. These committees frequently determined not only whether a person had acquired a sufficient knowledge of the law and whether he had completed the required apprenticeship in a law office, but also whether he had received an adequate pre-legal education to qualify for admission as an apprentice or clerk in a law office. In some instances it also determined the "moral qualifications" of the candidate.

When, during the early part of the nineteenth century, the New England legislatures gradually ousted the local bar associations from their control over the profession, the principle of holding examinations to determine the qualifications of candidates managed to survive. But from then on these examinations were to be conducted by the court itself,[189] or by a committee of lawyers appointed exclusively by the court.[190] In some instances these were *ad hoc* appointments. New Jersey between 1752 and 1767,[191] and South Carolina between 1785 and 1796, also had an examination system as an alternative to the requirement of several years of apprenticeship.[192] Gradually, however, all candidates were compelled to satisfy both of these requirements. Under the pressure of the new egalitarian ideas, the apprenticeship requirements were gradually abandoned, leaving only the examination system in force. These examinations, whether conducted by the judges[193] or by a committee of lawyers appointed by the courts,[194] had one common significant feature: they were no longer supervised or

[188] See note 12, Chapter III, above.

[189] In Vermont after 1826, in Massachusetts after 1836, and in New Hampshire after 1838.

[190] In Rhode Island after 1857. The Supreme Court of Massachusetts appointed special examination committees for each county between 1806 and 1810. Vermont (from 1817 to 1826) and Maine (from 1837 to 1843) did the same thing. After 1843 these committees were appointed in Vermont by the county courts. In Connecticut, at some earlier date, the local courts in certain counties also appointed examination committees.

[191] The examination was conducted by a "board" composed of some of the serjeants.

[192] Massachusetts introduced this alternative in 1836.

[193] In Virginia, Maryland, South Carolina (until 1796), Georgia, New York (until 1830), and New Jersey (until 1805).

[194] In New Jersey (after 1805), Pennsylvania, Delaware, and New York (after 1830). Concerning Massachusetts, see note 12, Chapter III, above.

conducted by the profession itself but by the "state." The examining machinery was substantially organized and controlled by the state, with the result that the profession itself was no longer in a position to determine its own membership by establishing and applying through its own machinery the standards of admission and of testing applicants as to whether they fully met, in the opinion of the profession, these minimum professional requirements.[195] Even where the examination was held by a committee of lawyers appointed by the court, such appointments were frequently the result of a most casual designation of lawyers who happened to be present in court at the time. The "appointees," aside from being wholly disinterested in this kind of work, as a rule discharged their duties in a most desultory manner.[196]

The causes for the decline of an organized bar were many. The departure of numerous prominent lawyers during the Revo-

[195] See, for instance, Woldman, *Lawyer Lincoln* 153–54 (1936), quoted in note 132, Chapter I, above, and the corresponding text; Smith, "Admission to the Bar in New York," 16 *Yale Law Journal* 514ff. (1906).

[196] "In those long past days . . . examinations for admission to the bar were not the dry affairs they are now. Lawyers were in demand and we 'created' them. . . . [C]ommittees (who practically admitted candidates then) were not very particular—if the courts could stand it the committee could. During an idle afternoon out on the circuit, an old Justice of the Peace lawyer applied for a license. . . . The Court appointed the usual committee to take charge of the victim. We assembled in the applicant's room, where 'Pony' Boyd was at once appointed Master of Ceremonies, Grand Inquisitor and Chairman of the Committee. After the usual preliminaries [to wit, some heavy imbibing], lasting some two hours, 'Pony' called us from refreshment to labor . . . and the 'inquiry' proceeded along about the following lines: Question: What books have you read? Answer: Law books. Q. Then, sir, what is law? A. (Confidentially) Now, 'Pony,' I did not expect to be made fun of. If I did not know what law is, would I be wanting a license? The committee ruled that 'Pony' . . . should answer the applicant's question, but he stood mute and repeated the question. . . . A. (Indignantly) 'Pony,' you ought to know that any one can answer such easy questions as that. If you are going to examine me, stop this trifling and ask me something hard. The committee reported favorably [and] he was admitted." McAfee, "Riding the Circuits in Southwest Missouri," *The Bench and Bar of Missouri* 73–74 (Stewart ed., 1898). See also *ibid.*, 75: ". . . His Honor turned him [*scil.*, the applicant for a lawyer's license] over to the tender mercies of the usual committee, who put him through the usual catechism on 'Old Pike's' table of liquid measure, and . . . we proceeded further as follows: Q. What is the first pleading on part of the plaintiff? A. A petition sometimes called a complaint or declaration. Q. What is the first pleading on the part of the defendant? A. An application for continuance. He was admitted without a dissenting vote."

lution, and the genuine disfavor in which the bar was held during the economically difficult times following the Revolution, gradually began to undermine the prestige and influence of the lawyers as well as of local bar organizations. During the 1830's this animosity against the lawyer and against an organized bar gathered renewed momentum. A new social creed, which Pound has well summarized, made itself felt far and wide: "[F]aith in a natural right of every man to pursue any [lawful] calling of his choice, distrust of specialization and requirements of special training for particular callings, and fear that a recognition of professions might create a privileged class not open equally to all citizens."[197] It goes without saying that all this was the outgrowth of certain basic social and political ideas prevailing during the so-called Jacksonian era which, as a pronounced "frontier democracy," aimed at nothing less than a complete democratization and, hence, deprofessionalization of the bar. This era and its popular ideals in a great measure retarded and, in many instances, even hindered the development of a strong legal profession, as a profession, by fostering a suspicious opposition to, and distrust of, an educated bar and, for that matter, of any "elite" based on special training, high achievement, and impeccable deportment. The unfavorable popular stereotype of the lawyer was reflected, amusingly for us today, in the stock figure of the "lawyer" in nineteenth-century melodrama—the villainous forecloser of the poor widow's mortgage and the lecherous pursuer of virtuous maidens.

It must also be borne in mind that the notion of an organized bar had never been accepted by all of the original thirteen states, and certainly was not accepted in most instances by the new states that were subsequently admitted to the Union. Neither South Carolina nor Virginia, two very important states, ever had a local or state bar. The explanation for this phenomenon is simply that on the eve of the Revolution, in both of these states, the leading members of the profession were primarily barristers trained in the English Inns of Court who had been called to the bar by their respective Inns.[198] These barristers considered themselves mem-

[197] Pound, *The Lawyer* 236 (1953).

[198] Prior to the Revolution any lawyer who had been "called to the bar" of any English Inn of Court was automatically qualified to practice in any of the colonies.

bers not of any local, colonial, or state bar but of the bar of their former Inn of Court. They were averse and perhaps too haughty to establish or join a local bar association consisting of lawyers who had not been trained in England. It was only the widely felt revulsion against low professional standards, and a like revulsion against the general political corruption, especially in state and local politics—a corruption which is frequently the concomitant or the result of an unorganized or corrupt bar—which, after the lapse of nearly half a century, led to the revival of the idea of a strongly organized bar.[199]

[199] Wickser, "Bar Associations," *loc. cit.*, 396.

IV

TRAINING FOR THE PRACTICE OF LAW

IT HAS ALREADY BEEN POINTED OUT that one of the chief concerns of any organized and skilled profession is, and nearly always has been, the supervision and control of the training and education preparatory to admission to the practice of the profession. In colonial America any person desiring to prepare himself for the practice of law had four major avenues open to him, not counting attendance at one of the few colleges then in existence. He might, by his own efforts and through self-directed reading and study, acquire whatever scraps of legal information were available in books, statutes, or reports; he could work in the clerk's office of some court of record; he could serve as an apprentice or clerk in the law office of a reputable lawyer, preferably one with a law library; or he could enter one of the four Inns of Court in London and receive there the "call to the bar."[1] After the Revolution, and for a long time to come, the chief method of legal education was the apprenticeship served in the office of a lawyer, although there were still some isolated instances of self-directed

[1] Chroust, "The Legal Profession in Colonial America," *loc. cit.*, Part I, 51, 59ff. (1957).