The English Roots of American Legal Regulation: An Examination of Early Legal Regulation in Virginia, Massachusetts, and New York

Mark Lipnickey*

Introduction

It becomes clear to many first-year law students in contracts and torts classes across the United States that English law left a distinct and indelible imprint on the law of the United States.[1] To be sure, precedents set by the English legal system influenced the foundation of the American system. However, the influence of the "mother jurisdiction" goes beyond common law doctrines and statutes, reaching the legal profession itself and exerting an influence over the structure and regulation of the profession. This Note will explore how the legal profession in pre-revolutionary England influenced the development and regulation of the legal profession in three North American colonies from each colony's founding to the eve of the American Revolution. A close comparison of the regulation of the English legal system and a set of representative colonies on the verge of statehood reveals that popular perception of lawyers as well as the market-based needs of the profession led to the development of distinct cultures surrounding the regulation of the legal profession on both sides of the Atlantic.

This Note will first examine the state of the legal profession in England during the pre-revolutionary period: examining the structure of the profession, the training and licensure process, popular opinion of the profession, issues within the profession, and attempts at professional regulation.[2] The following sections will examine the state of the legal profession in the North American colonies, with a special emphasis on the regulation of the legal profession.[3] Instead of attempting to cover all thirteen colonies, this Note will focus on three colonies, each with a distinct relationship with England: Virginia,[4] Massachusetts,[5] and New York.[6] To conclude, this Note will compare practices in England with those in the colonies

* J.D., Georgetown University Law Center (expected May 2022); B.S., Vanderbilt University (2016).

1. *See, e.g.*, Robert W. Gordon, *The Geologic Strata of the Law School Curriculum*, 60 Vand. L. Rev. 339, 341 (2007) (describing the early adoption and continued use of English cases in American casebooks).

2. *See infra* Part II.

3. *See infra* Part III.

4. *See infra* Section III.A.

5. *See infra* Section III.B.

6. *See infra* Section III.C.

and attempt to draw connections between the regulatory regimes in the different jurisdictions.[7]

I. THE LEGAL PROFESSION IN PRE-REVOLUTIONARY ENGLAND

The legal profession in pre-revolutionary England developed organically over centuries to meet the changing needs of a developing legal system. Central to understanding the regulatory landscape of the English legal system is the division between different classes of legal professionals in early modern English history. Indeed, distinct classes of legal professionals, with different titles and traditions, provided specific services to their clients. Over time, class functions continued to evolve, sometimes declining or disappearing entirely.[8] The most salient division in terms of regulation in pre-revolutionary England was between barristers and the "lower branches," or attorneys and solicitors.

The numerous professional differences between barristers and the lower branches stemmed from the different work each class performed.[9] Attorneys were responsible for all client contact and conducting litigation.[10] This involved tasks such as conducting investigations, drafting the required pleadings, and briefing the retained barristers before trial or arguments on motions.[11] While the lower branches were primarily occupied with litigation,[12] they also played a growing role in business affairs, with solicitors eventually gaining a statutory monopoly over handling land conveyances.[13]

While attorneys and solicitors offered a wide range of legal services, barristers had a relatively limited purview.[14] Barristers were primarily responsible for oral advocacy in court and providing advice to attorneys on points of law.[15] By the eighteenth century, barristers were hired by attorneys rather than directly by clients.[16] In fact, it had become custom for barristers to have no contact with clients.[17] Instead, when a barrister was needed, an attorney would retain one and either ask for guidance on a legal question or brief them to prepare for trial.[18]

---

7. *See infra* Part VI.

8. *See* ANDY BOON, THE ETHICS AND CONDUCT OF LAWYERS IN ENGLAND AND WALES 48 (Hart Publishing, 4th ed. 2014).

9. ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES: WITH PARTICULAR REFERENCE TO THE DEVELOPMENT OF BAR ASSOCIATIONS IN THE UNITED STATES 97 (West Publishing Co., 1953).

10. BOON, *supra* note 8, at 41.

11. *Id.* at 40–41, 50.

12. *See* C.W. BROOKS, PETTYFOGGERS AND VIPERS OF THE COMMONWEALTH: THE 'LOWER BRANCH' OF THE LEGAL PROFESSION IN EARLY MODERN ENGLAND 48 (Cambridge University Press 1986) (noting that the "primary function" of the lower branches "within the legal world had to do with the conduct of litigation").

13. BOON, *supra* note 8, at 50.

14. *Id.* at 40, 50–51.

15. *See Id.* at 40–41.

16. *See Id.*

17. *Id.*

18. *Id.* at 50; *see also* POUND, *supra* note 9, at 104.

The distinct roles occupied by barristers, attorneys, and solicitors had their roots in pre-English legal systems and were defined in England from at least the reign of Henry VI.[19] While still distinct classes of legal professionals, a 1605 act of Parliament subjected attorneys and solicitors to the same rules[20] and a further act in 1749 allowed for solicitors to be admitted as attorneys.[21] Although the two classes were not formally merged until 1873,[22] the result of the 1605 and 1749 acts were to fuse the two branches for the purposes of regulation.[23] Because of the shared regulatory burden and notwithstanding the different types of legal work handled by attorneys and solicitors during the pre-revolutionary period,[24] this Note will use either "attorney" or "lower branches" to refer to non-barrister legal professionals in England generally and, where a distinction is necessary, refer to both "attorneys" and "solicitors."

The distinction between barristers and the lower branches naturally extended from the purpose of their work to the nature of their regulation. The earliest regulation of the legal profession was by the monarch and courts, but by the period of North American colonization, practical regulatory authority was split along the now familiar dividing line between barristers and the lower branches.[25] A study of the specific regulations of barristers and the lower branches reveals a divide between the self-regulatory organizations that governed barristers and the legislative regulation, primarily through Parliament, that addressed the lower branches. Roscoe Pound describes the division of regulatory authority in the following way:

> In the seventeenth century [the differentiation between the two branches] was still further developed, so that the judges, the Inns of Court, and Parliament began to make distinct regulations for attorneys and barristers.
>
> As to barristers, the judges had long before delegated to or perhaps more truly acquiesced in leaving to the Inns of Court their power of admitting [barristers] to practice in the courts. . . . [T]he barrister was directly under the control of the Inn which had called him to the bar. He could be disbarred by either the Benchers of his Inn or by the judges. But the judges seldom acted, and Parliament made no attempt to supersede or supplement the control by the Inns of Court.

---

19. POUND, *supra* note 9, at 79, 82.

20. An Act to reform the Multitudes and Misdemeanors of Attornies and Solicitors at Law, and to avoid unnecessary Suits and Charges in Law 1605, 3 Ja. 1 c. 7 (Eng.) [hereinafter Act of 1605].

21. Continuance of Acts 1749, 23 Geo. 2 c. 26, § 1 (Eng.).

22. *See* Supreme Court of Judicature Act 1873, 36 & 37 Vict. c. 66, § 87 (Eng.) (reclassifying all non-barristers as solicitors); *see also* Rachel Ellenberger, Note, *"Doubly Damned Attornies": Lessons on Professional Regulation from Eighteenth-Century England*, 32 GEO. J. LEGAL ETHICS 577, 580 (2019).

23. *See* POUND, *supra* note 9, at 109 (arguing that, by 1750, the distinct classes of attorney and solicitor had been merged into one).

24. *See id.*

25. BOON, *supra* note 8, at 42, 44–45 (contrasting the barristers early move towards self-regulation by the Inns of Court and independence from the courts with the tight control exercised by over attorneys by the courts and legislature).

> In contrast, the attorneys were strictly regulated both by Parliament and by the judges. Medieval statutes gave the courts power both to control and to admit them. All through the sixteenth and seventeenth centuries this control became increasingly strict.[26]

This section expands on Pound's comments to explore the extent to which different regulatory mechanisms shaped the development of these two legal professional classes in England.

A. REGULATION OF BARRISTERS

Indeed, the influence of the Inns of Court over a barrister's professional career began at its inception. Barristers were primarily educated at the four Inns of Court,[27] while attorneys were educated through statutorily mandated clerkships.[28] The educational focus for barristers was on developing the oral advocacy skills necessary to succeed in court. While some barristers may have attended university, their primary legal education was at the one of the four Inns of Court: Inner Temple, Middle Temple, Gray's Inn, and Lincoln's Inn.[29] At its peak, the educational program at the Inns required prospective barristers to live at their Inn and attend lectures, observe trials, participate in moots, study books on law,[30] and learn drafting skills in order to advise on pleadings.[31] The Inns of Court provided a formal structure by which they ensured, at least in theory, that the standards of the profession were maintained.

Despite the well-established and formalized system for barrister education at the Inns of Court, though, there remained considerable variation in the quality of legal education. The quality of the education at the Inns appears to have declined over the course of the eighteenth century.[32] One general cause for the decline was the failure of the Inns to enforce programmatic requirements such as actually living in the Inn or participating in moots.[33] The lack of enforcement is a possible result of lecturers'

---

26. POUND, *supra* note 9, at 99–100.

27. *Id*. at 85.

28. *Id*. at 103.

29. The four Inns of Court retain their roll of "calling" a barrister to the bar to this day – membership in an Inn is a prerequisite for joining the Bar of England and Wales. *About the Bar: Other Organisations*, THE GEN. COUNCIL OF THE BAR, https://www.barcouncil.org.uk/about/about-the-bar.html [https://perma.cc/5KAW-6GLR] (last visited Apr. 2, 2021).

30. MICHAEL BIRKS, GENTLEMEN OF THE LAW 41 (Stevens & Sons Ltd., 2d ed. 1960).

31. POUND, *supra* note 9, at 103.

32. *See* Ellenberger, *supra* note 22, at 585–86 (discussing the decline of the educational standards at the Inns over the course of the eighteenth century). In addition to arguing that education at the Inns declined in quality during the eighteenth century, Roscoe Pound points out the temporal overlap with the period of American colonization. Pound argues that because the decline coincided with American colonization, the lax educational standards at the Inns are partially responsible for the colonies not inheriting a well-organized legal profession or educational system from England. POUND, *supra* note 9, at 109–11.

33. *See* Ellenberger, *supra* note 22, at 586 (describing the growing laxity of instruction at the Inns); POUND, *supra* note 9, at 109–10 (describing the failure of lecturers to enforce programmatic requirements and allowing students to make payments to avoid requirements). See also TIMOTHY CUNNINGHAM, THE HISTORY AND

increasing focus on their own practices as litigation increased.[34] Though the institution persisted, this Note will explore further the significance of its arguable decline in later sections.

After the formal education of barristers, the Inns of Court levied further regulation regarding admittance to practice. For barristers, the hurtle to practice was being called to the Bar—a process controlled exclusively by the Inns of Court. Once a prospective barrister had joined an Inn and completed any requirements, including having a required number of meals at the Inn,[35] and was deemed ready, the benchers, or senior barristers of the Inn, would examine the candidate to determine if he was ready to be called to the bar.[36] As the volume of litigation increased and demand for barristers grew, admission to the Bar was the only barrier to practice for a barrister and "[t]hose whom the Benchers had called to the bar of the Inn were received by the courts as qualified practitioners" and permitted to practice immediately.[37]

Once called to the Bar, the barrister's respective Inn was responsible for conduct and discipline.[38] A barrister could, in theory, be disbarred by either his Inn or by a judge, but judges rarely acted.[39] Regardless, Parliament left the regulation of barristers to the Inns, which retain much of their regulatory authority over barristers to this day.[40] Indeed, the Inns of Court continued to develop their role as self-regulatory organizations for barristers throughout the seventeenth and eighteenth centuries, providing a structure for education and training, admittance to practice, and discipline. Notably, the Inns of Court also actively worked to exclude the lower branches from membership,[41] going so far as to ignore a 1704 order from the judges of common law courts requiring the Inns to admit attorneys and solicitors.[42]

Antiquities of the Four Inns of Court vi (London, printed for G. Kearsly 1780) for a narrative perspective on the declining standards at the Inns. Cunningham observes:

> But at this day what are the qualifications necessary for a gentleman who is a candidate for the bar? Is he examined every term or vacation? No. Are any instructions given him by the benchers, or any other by their order relative to what he should read? No. Is he obliged to give any evidence of his having read a single page of any law book? No. Does it appear that he can even read and write his name? Yes. Before he is permitted to dine in the hall, he is obliged to execute a bond . . . this is the only proof he is *obliged* to give of his learning.

34. POUND, *supra* note 9, at 111. *See generally* BROOKS, *supra* note 12, at 48–111 (describing the increase in litigation in England and its possible causes).

35. POUND, *supra* note 9, at 111.

36. BOON, *supra* note 8, at 44.

37. POUND, *supra* note 9, at 99.

38. *See* BOON, *supra* note 8, at 43, 50; *see also* POUND, *supra* note 9, at 86.

39. POUND, *supra* note 9, at 99–100.

40. *Id*. at 100; *see also*, THE GEN. COUNCIL OF THE BAR, *supra* note 29 (describing the Inns' modern regulatory and disciplinary role).

41. BOON, *supra* note 8, at 43.

42. ROBERT ROBSON, THE ATTORNEY IN EIGHTEENTH-CENTURY ENGLAND 7 (Cambridge University Press, 1959).

B. REGULATION OF ATTORNEYS

In stark contrast to the self-regulatory Inns of Court, Parliament proved to be an active regulator of the legal profession, seeking to remediate perceived malpractice both in England and in the colonies. To better understand the motivations behind parliamentary regulations in England and, subsequently, early colonial regulations in Virginia, Massachusetts, and New York, it is helpful to consider public perceptions of the legal profession and, specifically, the perceived malpractices of the profession. In many ways, public perception of attorneys in England would be recognizable to a modern listener familiar with stereotypes about the legal profession. Public perception of attorneys in seventeenth- and eighteenth-century England was, in the words of a previous publication,

> so low that laymen lost even the expectation of professionalism from attorneys; they were seen as "quacks and pettifoggers; they exploited the mysteries of their craft for their own ends. . . . They were expected to be hypocritical, selfish, and cunning, and were liberally abused for doing what was expected of them."[43]

This low perception of attorneys was formed in part over the still-common complaint about the cost of legal services[44]—specifically that barristers and attorneys charged exorbitant fees for their services.[45] Rising prices for barristers were likely a result of the market forces of supply and demand adjusting price to account for increasing litigation with a limited pool of barristers.[46] Rising prices for attorneys, who generally charged by the page for documents such as pleadings, on the other hand, may have been a result of "padding the pleadings," where the attorney created excessively long pleadings to generate more income.[47]

Public concern over high fees and dishonest billing practices were enhanced by concerns that attorneys would enrich themselves by practicing on both sides of an issue, a practice called "ambidexterity."[48] C.W. Brooks argues that a deeper root of the disdain directed towards attorneys stemmed from the attorney's role in initiating and advancing litigation. In Brooks's view, lawsuits were a "breach of the social order" and attorneys, responsible for a growing number of suits, "were a cancer in the body of the commonwealth."[49]

Regardless of the most salient factor in creating the public's low opinion of attorneys, this low opinion and the concern it engendered was a motivating factor

---

43. Ellenberger, *supra* note 22, at 577–78 (quoting ROBSON, *supra* note 42, at 134).

44. See BROOKS, *supra* note 12, at 101, for a description of typical billing practices for litigation.

45. *Id*. at 132.

46. *See* Ellenberger, *supra* note 22, at 581.

47. *Id*.; *see also, e.g*., THE PUBLICATIONS OF THE SELDEN SOCIETY liii–liv (James Oldham ed., 2013) (describing judicial reactions to padded pleadings).

48. *See* Jonathan Rose, *The Ambidextrous Lawyer: Conflict of Interest and the Medieval and Early Modern Legal Profession*, 7 U. CHI. L. SCH. ROUNDTABLE 137, 139 (2000).

49. BROOKS, *supra* note 12, at 133.

in the regulation of attorneys in England and in the colonies. Indeed, the legislatures and courts filled the void of a self-regulatory organization for the lower branches, implementing strict regulations of their own.

It is worth noting that, earlier in the history of the English legal system, the lower branches attempted to create mechanisms for self-regulation in the model of the Inns of Court. While the Inns of Chancery, which were subordinate to the Inns of Court, attempted self-regulatory measures, as the Inns of Court did for barristers, the Inns of Chancery were ineffective at regulating the lower branches and were eventually disbanded.[50] Additionally, following the barristers' repeated refusal to admit attorney and solicitors, a group of attorneys formed the "Society of Gentleman Practisers" in 1739. The Society committed to raising the standards of their profession by enforcing the Attorneys and Solicitors Act of 1729, discussed in greater detail below.[51] The Society attempted to assume a self-regulatory role by prosecuting those attorneys who violated the act, but this early attempt at a proto-bar association was of limited effectiveness.[52] Thus, Parliament remained the primary regulator of the lower branches in the seventeenth and eighteenth centuries.

Just as the Inns of Court regulated the barristers' practice as early as their legal training, so too did Parliament regulate the education of attorneys. Perhaps the most sweeping and notable piece of legislation addressing the regulation of attorneys was the Attorneys and Solicitors Act of 1729, in which Parliament exercised its power over the lower branches and instituted numerous new requirements and restated some existing requirements.[53] This act formalized the courts' power to regulate attorneys and required aspiring attorneys to serve a five-year apprenticeship, called an articled clerkship, with a qualified attorney. Supervising attorneys were permitted to keep two such clerks at a time.[54] A prospective attorney would sign articles of clerkship committing to the five-year term.[55] The goal of the clerkship was for the clerk to "learn the use of the common forms of procedure and the practical processes of obtaining legal results" through direct exposure to legal practice.[56] In other words, the focus was for the clerk to learn the administrative and ministerial tasks that would dominate their practice. Of particular concern for attorneys was developing the drafting skills necessary to comply with the requirements of complex and technically demanding written pleadings.[57] The clerkship was complete when five years elapsed and the supervisor was satisfied with the pupil's legal proficiency.[58]

---

50. *See* BOON, *supra* note 8, at 44; *see also*, POUND, *supra* note 9, at 105 (noting the "decay" of the Inns of Chancery).

51. POUND, *supra* note 9, at 105–06.

52. *Id*. at 106.

53. *See* An Act for the better Regulation of Attornies and Solicitors 1729, 2 Geo. 2 c. 23 (Eng.) [hereinafter Attorneys and Solicitors Act of 1729].

54. *Id*. at § V.

55. *Id*.

56. POUND, *supra* note 9, at 103.

57. *Id*. at 102.

58. Attorneys and Solicitors Act of 1729, c. 23, § V.

The clerkship system was probably inadequate from the start and likely rarely followed as closely as intended. To start, the effectiveness of the clerkship varied based on the attentiveness of the supervising attorney and quality of the work assigned. More sinisterly, some clerks attempted to finish their clerkship early, or to skip it entirely, by bribing their supervising attorney to sign the articles before the five years were up. [59] Two of the most common bribes were money and menial labor.[60]

The process of being admitted to practice differed for barristers and the lower branches as well. While barristers were admitted to practice as soon as they were called to the bar, attorneys faced a statutorily prescribed admission process. The regulations around admittance predated Parliament's sweeping 1729 reform by several centuries. In fact, of those statutes relevant to the regulation of the lower branches, the earliest was a 1402 act requiring all attorneys to swear an oath of admission before practicing.[61] Prior to 1402, local courts often used local oaths of admission, but the 1402 act adopted a single oath of admission for all attorneys.[62] Brooks, in his discussion of the process for swearing in a new attorney, notes that, by the seventeenth century, the form of the oath of admission was "certainly well known."[63]

Regulation around admittance to practice was further formalized in the Attorneys and Solicitors Act of 1729, which standardized the process for applying to practice in a court[64] and reauthorized the oath of admission.[65] Once the requisite five-year clerkship period lapsed—or the dates provided on the article suggested it had lapsed, as backdating was another common practice[66]—the supervising attorney signed an affidavit affirming the clerk was ready for practice.[67] Once the clerk presented the signed affidavit, he was then examined by a judge to determine if his legal knowledge was sufficient.[68] If the young attorney satisfied the judge, he would be admitted to the common law court he was evaluated in.[69] Each common law court maintained its own rolls of attorneys and attorneys were permitted to practice only in the jurisdictions where they were on the rolls.[70]

---

59. Ellenberger, *supra* note 22, 586–87 (detailing the general disregard for the clerkship requirement).

60. ROBSON, *supra* note 42, at 54, 58 (describing prospective attorneys' attempts to secure signed articles of clerkship from their supervising attorneys early offering bribes or the exchange of menial labor).

61. *See* Leonard S. Goodman, *The Historic Role of the Oath of Admission*, 11 AM. J. LEGAL HIST. 404, 405–406 (1967) (discussing a 1402 statute, 4 Hen. 4 c. 18 (Eng.), adopting the oath requirement).

62. *Id.*

63. BROOKS, *supra* note 12, at 119 & 318 n.20 (discussing the process for swearing in an attorney).

64. *See id.*; *see also* POUND, *supra* note 9, at 100.

65. *See supra* p. 9 and notes 61–63.

66. *See* Ellenberger, *supra* note 22, at 587.

67. Attorneys and Solicitors Act of 1729, 2 Geo. 2 c. 23, § V (Eng.).

68. *Id.* at § VI.

69. *See* POUND, *supra* note 9, at 101.

70. Attorneys and Solicitors Act of 1729, c. 23, § II.

In addition to regulating the education and admittance of new attorneys, the 1729 act reauthorized courts to exercise control over attorney conduct and administer discipline.[71] Of particular interest in the context of this study is parliamentary regulation with regard to the fees charged by attorneys. Although the public expressed suspicion regarding fees charged by the lower branches, as documented above, Parliament did not place a cap on or bar attorneys' fees. Instead, it required in a 1605 statute that attorneys provide clients with a detailed bill of the services provided.[72] The 1605 act also "provided penalties for fraud and negligence[] and sought to eliminate unqualified practitioners."[73] An additional act of Parliament in 1629 provided that while attorneys could sue for unpaid fees, barristers could not.[74] In other words, while Parliament seemed interested in adding transparency to the legal system with regard to fees charged and fraudulent services, it nonetheless maintained an interest in protecting attorneys from losing payment.

On the whole, the regulatory system of legal practitioners in England, while stratified between barristers and attorneys and solicitors of the lower branches, seemed primarily interested in the education, licensure, and admittance of new practitioners to the bar. Though flaws in the education and clerkships of new barristers and attorneys, respectively, are clearly identifiable, increased demand for litigation in the seventeenth and eighteenth century seemed to spur interest in admitting practitioners to the bar, flaws in the legal training system notwithstanding. Moreover, regulators of the English legal profession seemed less interested in regulating practicing attorneys themselves. On the contrary, once a practitioner was admitted to the bar, the Inns of Court and Parliament alike seemed interested in ensuring that barristers and attorneys, respectively, could practice with ease, rarely enforcing disciplinary measures with regard to barristers, and affirming attorneys' rights to collect fees.

As England's colonial reaches expanded and settler colonies in the New World grew, the English legal system followed colonists across the Atlantic. Further sections of this Note explore the extent to which the practices and customs regarding regulation of the legal profession evolved in the American colonies in the pre-Revolutionary period.

II. THE LEGAL PROFESSION IN THE THIRTEEN COLONIES

The status of the legal profession in the pre-revolutionary colonies and early republic varied greatly depending on the jurisdiction. Each colony had unique approaches towards the regulation of the legal profession influenced by public attitudes towards the profession particular to the colony. However, common concerns around the supply of lawyers in the colonies, resulting high fees, and the likelihood of fraud or irresponsible practice in various colonies led to regulatory

71. *See id.*; *see also* POUND, *supra* note 9, at 100.
72. Act of 1605, 3 Ja. 1 c. 7, § I (Eng.).
73. POUND, *supra* note 9, at 100.
74. *Id.* at 104.

regimes across the colonies that shared marked similarities. In fact, despite varied attitudes towards the legal profession across the American colonies, different states within the nascent United States ended up constructing their regulations of the legal professions in the model of the English parliamentary regulation of the lower branches, rather than in that of the Inns of Court. As such, the new regulations of the American colonies represent a broadly uniform evolution of the English legal system across the Atlantic, making for an interesting examination of the persistence of the English legal system—or at least core parts of it—in a place that would soon go on to disavow England itself.

This section first examines this argument as it applies to the American colonies generally. Subsequent sections more closely investigate the specific natures of three colonies' legal professional regulations to better understand the extent to which English regulatory standards extended to the colonies. In particular, this Note examines Virginia, Massachusetts, and New York because together they provide a broad look at how different perceptions of the legal profession coalesced into surprisingly similar regulatory approaches to the profession.

A. THE LEGAL PROFESSION IN THE AMERICAN COLONIES

By the time the first permanent North American colony in Virginia was established at Jamestown in 1607, England already had a highly developed judicial and legal system with numerous classes of legal professionals serving different functions within the system. The English had specific ideas about their system of law and strong opinions about English law and lawyers, as evidenced by Parliament's regulations.

When the colonies were founded and populated by Englishmen and women, these opinions came with them and informed the development of the early legal profession in the colonies. However, the colonies were not trapped in stasis or insulated from legal developments in England. Some colonies imported new developments in legal regulation, while others attempted to pave new paths to create law and regulate lawyers. This carryover from England was especially prevalent in the years before the development of an American legal education system. The wealthiest American lawyers were trained in England at the Inns of Court, but many others were educated at home relying on copies of prominent English legal texts.[75] Approximately two hundred American lawyers were educated at the Inns of Court prior to the Revolution and, though small in number, this group would have a lasting legacy on the development of the profession in the colonies.[76] Even after the Revolution, when Americans generally stopped

75. *Id.* at 128. It is worth recognizing that, despite the bifurcation of the English legal profession into the distinct barrister and non-barrister classes, the American system never developed this division of labor. For clarity, I will refer to members of the American legal profession as lawyers.

76. Anton-Hermann Chroust, *Legal Profession in Colonial America*, 33 NOTRE DAME L. REV. 51, 61–63 (1957) [hereinafter Chroust Part I].

attending the Inns, there was continued legal interchange, especially as many of the new states gradually adopted the English common law.

Indeed, the early colonies soon developed an extreme shortage of trained lawyers. By the 1770s, a significant portion of the judiciary of many colonies had little to no formal legal training.[77] This was amplified by a dearth of written legal materials in the early colonies. While there were copies of Coke's *Institutes*, legal texts or case reports were generally scare at best.[78] This was further exacerbated by the late printing of colonial statutes, resulting in the delayed receipt of new statutes by colonial lawyers and thus a consistent, periodic lack of parity between English law and colonial law.[79]

The shortage of American lawyers proved to be difficult to remedy domestically. "[T]here were no collegiate lectures on law before 1780, and no law schools before 1784."[80] Unlike in England, which had recognized routes towards admission for both barristers and attorneys, detailed in earlier sections, there was no clear route available for prospective American lawyers. One could attempt to self-educate by reading what texts were available or serve as an assistant to a clerk at a court, although neither of these options would expose the prospective lawyer to the practice of law.[81] Another option would be to seek an apprenticeship with an experienced lawyer, although this was an expensive option and the quality of the education varied greatly with the approach of the master.[82] An even more expensive, but more prestigious option, was to travel to England and seek to join one of the Inns of Court.[83] Finally, an prospective lawyer could attend one of the newly opened American colleges.[84]

Exacerbating this scarcity of training, lawyers were unpopular throughout the colonies.[85] Some viewed lawyers as a tool of the Crown—precisely what a recent North American settler might have been trying to escape by traveling to the colonies.[86] The profession's reputation was further damaged by lawyers, or those posing as lawyers, stirring up spurious litigation to generate business for themselves.[87] To combat this practice, known in England as barratry, in the early years of the American colonies, a majority of colonies adopted laws barring men from being represented by others in litigation.[88]

---

77. *Id.* at 58 (noting a 1764 New Jersey holding that judges need not be lawyers and that "[b]etween 1691 and 1778 only four of the eleven Chief Justices of New York had any degree of legal training, while in Massachusetts only nine of the thirty-six judges who sat on the highest bench between 1692 and 1775 were lawyers of a sort").
78. *Id.* at 55–56.
79. *Id.* at 56.
80. *Id.* at 59.
81. *Id.* at 60.
82. *Id.* at 60–61.
83. *Id.* at 61–62.
84. *Id.* at 63.
85. *Id.* at 58.
86. *Id.* at 59.
87. *Id.*
88. *Id.*

These fundamental tensions—a lack of properly trained lawyers and widespread unpopularity of the legal profession—significantly shaped the colonies' approaches to regulation of the legal profession in the pre- and post-Revolutionary periods. An examination of Virginia, Massachusetts, and New York reveal how the shortage of lawyers allowed legitimate and fraudulent practitioners alike to charge higher and higher fees due to high demand and low supply. However, such practices only fed greater distrust of legal professionals. The lack of lawyers and distrust in the profession together led to strong regulation of the legal profession by colonial governments that used the parliamentary regulations of the lower branches—by far the less popular class of lawyers in England—as a model and creating a set of institutions through which fundamental characteristics of the English legal regulatory system persisted even in a place that shed other English institutions to create an independent nation.

B. VIRGINIA

As the first English colony in the New World, colonial Virginia adhered closely to the common law of England, recognizing English common law as the basis of its jurisprudence.[89] Virginia followed in the footsteps of England in establishing courts that followed English tradition, observed strict procedures, and kept regular records.[90] Early colonial Virginia was a frequent and robust regulator, with many of its regulations displaying outright hostility towards the profession.

Much of the early colonial legislative action regulating lawyers was focused on the practice of charging fees to represent a client. The Virginia legislature spent more than two centuries, from 1642 to 1849, attempting to regulate or outright ban the practice. Starting in 1642, the legislature passed an act "for the better regulating of attorneys, and the great fees exacted by them," that severely limited those who could practice law by prohibiting anyone from practicing without special license from the court they were to appear before, with an exception for those lawyers called to the bar by one of the English Inns of Court.[91] This act also limited the fees that lawyers could charge to up to twenty pounds of tobacco for representation in local County Courts and fifty pounds for Quarter Courts—a paltry sum.[92]

In two acts in 1645[93] and 1647,[94] the legislature attempted to prohibit attorneys from practicing for fees entirely. In 1656, evidently due to issues arising from the

89. Anton-Hermann Chroust, *Legal Profession in Colonial America*, 34 NOTRE DAME L. REV. 44, 44 (1958) [hereinafter Chroust Part III].

90. *Id.* at 45.

91. Act LXI of 1642–43, *in* 1 WILLIAM WALLER HENING, LAWS OF VA. 275 (Hening 1823) [hereinafter 1 LAWS OF VA.].

92. *Id.*; *see also* Chroust Part III, *supra* note 89, at 46.

93. Act VII of 1645, *in* 1 LAWS OF VA., *supra* note 91, at 302.

94. Act XVI of 1647, *in* 1 LAWS OF VA., *supra* note 91, at 349.

fee ban, the 1645 and 1647 acts were repealed.[95] The 1656 act limited those able to practice law to those called to bar by one of the Inns of Court.[96] Any respite the legal profession received due to the 1656 law was quickly lost when the legislature switched course, enacting a complete ban on attorneys practicing for fees in 1658.[97] Violations of this ban would entail a fine of five thousand pounds of tobacco.[98]

The situation started to improve for Virginia's lawyers in 1680, when a new act was passed allowing attorneys licensed with the governor to charge fees of up to five hundred pounds of tobacco for representing a client in the Quarter Court.[99] Unfortunately for the lawyers, the 1680 act was repealed by a 1682 act, again eliminating the ability of lawyers to charge fees.[100] The 1682 act was, in turn, repealed by royal proclamation.[101] The next attempt to regulate fees was in 1718, which capped fees at five hundred pounds of tobacco for the Quarter Court and one hundred and fifty pounds in the County Courts.[102]

In addition to regulating fees, the legislature also created licensing requirements for attorneys. The 1680 act, repealed in 1682, had required that attorneys be licensed to practice.[103] A licensing requirement was reenacted in 1732, requiring that all those wishing to practice in Virginia courts be licensed by the Governor after an examination and taking an oath.[104] This act was repealed in 1742,[105] but reinstated in 1745.[106] A 1748 act, "An Act for regulating the practice of Attorneys," secured the legal professions place in Virginia, providing for examination, licensure, and an oath.[107]

Clearly, many of Virginia's regulations reached beyond similar regulations in England and seemed to manifest a hostility to the profession. Particularly with regard to the regulation of fees in the colony, Virginia's statutory regulatory regime severely limited the legal profession in the early colonial period. Ironically, the bar of Virginia would eventually grow to include prominent Revolutionaries, including a number that debated, framed, and signed both the Declaration of Independence and United States Constitution, including Patrick Henry, George Mason, and Thomas Jefferson.[108] In its colonial period and early years of

95. Act VI of 1656, *in* 1 LAWS OF VA., *supra* note 91, at 419.

96. *Id.*; *see also* Chroust Part III, *supra* note 89, at 47.

97. Act CXII of 1657–8, *in* 1 LAWS OF VA., *supra* note 91, at 482.

98. *Id.*

99. Act VI of 1680, *in* 2 WILLIAM WALLER HENING, LAWS OF VA. 479 (1823) [hereinafter 2 LAWS OF VA.].

100. Act VI of 1682, *in* 2 LAWS OF VA., *supra* note 99, at 498.

101. Chroust Part III, *supra* note 89, at 48.

102. Ch. I, Laws of 1718, *in* 4 WILLIAM WALLER HENING, LAWS OF VA. 59 (1820) [hereinafter 4 LAWS OF VA.].

103. Act VI of 1680, *in* 2 LAWS OF VA., *supra* note 99, at 478.

104. Ch. XIII, § VIII Laws of 1732, *in* 4 LAWS OF VA., *supra* note 102, at 360.

105. Ch. VII, § II Laws of 1742, *in* 5 WILLIAM WALLER HENING, LAWS OF VA. 171 (1819) [hereinafter 5 LAWS OF VA.].

106. Ch. VII, Laws of 1745, *in* 5 LAWS OF VA., *supra* note 105, at 345.

107. Ch. XLVII, Laws of 1748, *in* 6 WILLIAM WALLER HENING, LAWS OF VA. 140–43 (Hening 1819).

108. Chroust Part III, *supra* note 89, at 52–53.

statehood, though, Virginians relied more heavily on an English-influenced regulatory infrastructure to curb the legal profession to protect its people.

C. MASSACHUSETTS

Massachusetts was first colonized by English settlers—the now-famous Pilgrims—in 1620. In contrast with Virginia, which was established in line with English laws, some of the settlers establishing the Plymouth Colony had faced persecution under the English legal system and now largely rejected the common law of England as *de facto* binding.[109] The early colony was best described as a theocracy: the leading men were ministers and based their decisions on the "word of God."[110] When a legal question arose, the General Court ("a body which acted both as legislature and court") applied the laws of the colony; the laws of God; and, when they suited the colony, the laws of England.[111]

Prior to the publication of the first code of laws, courts were to decide cases based on the law of God.[112] The first code, the *Body of Liberties*, was written by Nathaniel Ward, a former barrister, and published in 1641.[113] The code provides that when addressing matters not included in the code, courts should still look to the word of God or the laws of England, if expressing the law of God.[114] Notable for this discussion, the 1641 Body of Liberties allowed for the assistance of counsel in court, provided that no fees were charged.[115] The next iteration of the code, called the Code of 1648 removed the prohibition on fees, clearing the way for the recognition of the paid attorney.[116]

Though there was never any legislation as openly hostile to attorneys as in Virginia,[117] there is little evidence of a fully professional class of lawyers in the Massachusetts colony from 1630 to 1684.[118] Anton-Hermann Chroust observes:

---

109. Chroust Part I, *supra* note 76, at 65.

110. *See* Thomas Lechford, *Plaine Dealing: or, Newes from New-England*, *in* 3 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY 81 (3d Series 1833).

111. Chroust Part I, *supra* note 76, at 65.

112. 1 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 175 (Shurtleff ed. 1853).

113. Chroust Part I, *supra* note 76, at 66–67.

114. BODY OF LIBERTIES 261 (Old S. Leaflets ed. c. 1900 (1641) (article 1).

115. *Id.* at 265 ("Every man that findeth himselfe unfit to plead his owne cause in any Court shall have Libertie to imploy any man against whom the Court doth not except, to helpe him, Provided he give him noe fee or reward for his paines.").

116. *See* THE BOOK OF THE GENERAL LAWES AND LIBERTYES CONCERNING THE INHABITANTS OF THE MASSACHUSETS (Harvard Univ. Press rev. ed. 1929) (1648) (note the omission of the prohibition on charging attorney's fees); *see also* Chroust Part I, *supra* note 76, at 72.

117. *See supra* Section III.B.

118. EMORY WASHBURN, SKETCHES OF THE JUDICIAL HISTORY OF MASSACHUSETTS 53 (1840) ("[T]here does not appear to have been a class either of learned lawyers or men exclusively devoted to that profession at any time during the colony charter." The original royal charter for the Plymouth Colony was granted in 1630 and was revoked in 1684.).

> [T]he period between 1630 and 1684, and even beyond, was in Massachusetts, as elsewhere, a time in which the Colony attempted to carry on its affairs without a stable body of laws — a period, moreover, which saw the administration of justice without professional lawyers, either on the bench or at the bar. It might be interesting to observe here that justice without law and justice without lawyers, of necessity seem to go hand in hand.[119]

Unsurprisingly, the lack of legal experience and training on the bench led to a judicial system lacking the procedural formality characteristic of English courts and to a bar that was similarly lacking in both quantity and quality of attorneys.[120] Once the Code of 1658 permitted attorneys to represent clients for a fee, untrained and unscrupulous individuals—known, as in England, as pettifoggers—took advantage of the opportunity and lack of regulation, offering their "legal" services to those in need.[121]

The colony attempted to remedy the profiteering off the legal system with a patchwork approach, promulgating rules that addressed symptoms without eliminating the problem or its causes.[122] Targeting long-winded and ill-prepared pettifoggers, a 1656 statute limited oral pleadings to an hour, with a twenty schilling fine for going long.[123] In 1663, attorneys were prohibited from representing a client in a lower court and then later hearing the case as a judge on appeal.[124] On a separate front, possibly arising from the principle that every man was his own lawyer, the colony faced such growth in litigiousness that, in 1673, the legislature permitted a person to sue through their attorney.[125]

The state of the legal profession in Massachusetts began to improve towards the end of the seventeenth century. In 1686, as a continuation of the efforts to eliminate pettifoggers, the colony adopted the same attorney's oath that had been administered in England since 1402.[126] In 1691, the Plymouth Colony was absorbed by the Massachusetts Bay Colony and was granted a new charter.[127] In the years immediately following the combination, the colony made several attempts to regulate the practice of law only to be rebuffed by London. Specifically, the colony would face opposition from the Privy Council, a body of royal advisors with authority over the colonies. First, the colony passed the Judicature Act of 1692, empowering courts to ensure each plaintiff and defendant

---

119. Chroust Part I, *supra* note 76, at 68–69.

120. *Id*. at 70–71.

121. *Id*. at 75–76.

122. *Compare Id*. at 74 (noting that General Court records from as early as 1649 reference such untrained attorneys) *with* 2 JOHN ADAMS, THE WORKS OF JOHN ADAMS 62 (Charles Francis Adams ed.,1850) (detailing Adams' encounter with a pettifogger in 1760).

123. Chroust Part I, *supra* note 76, at 74–75.

124. *Id*. at 75.

125. *Id*.

126. *See* Chroust Part I, *supra* note 76, at 78; *see also* discussion *supra* p. 9 and notes 61–63.

127. Chroust Part I, *supra* note 76, at 70. The original charter for the Plymouth Colony had been revoked in 1684. *Id*.

could plead their own case and, if not, had necessary assistance; this act was overturned by the Privy Council in 1695.[128] Next, the colony passed the Judicature Act of 1697, placing a cap on the fees charged by attorneys; this too was overturned by the Privy Council in 1698.[129] Finally, in 1699, the King approved an act that allowed for a more formal judiciary distinct from the legislature and permitted the courts to regulate the legal profession.[130]

The end of the seventeenth century also saw the colony adopt the English method for admitting attorneys to practice: each court would admit those attorneys permitted to practice and administer the oath.[131] The colony also followed the English practice for barristers called to the bar by an English Inn of Court—these men were automatically admitted to practice. The practice of admitting attorneys by court was formalized by statute in 1701.[132] The same statute also saw the return of the caps on attorney's fee, originally established in 1697.[133] In 1785, the Commonwealth of Massachusetts would go a step further by requiring prospective attorneys to be of "good moral character."[134]

Over the course of the eighteenth century, colonial legal professionals followed the example of their English peers and began to organize into loosely affiliated bar organizations, forerunners to the modern bar associations.[135] Though not initially required by the 1701 statute, the bar would recommend prospective attorneys for admittance and, over time, no attorney was admitted without recommendation.[136] By the latter half of the eighteenth century, local bars began to establish educational standards, eventually requiring that no candidate be recommended for admittance without receiving a college education.[137] These actions would eventually improve the quality of the Massachusetts bar, filling the ranks with highly educated professionals.

Like other colonies, well-trained legal professionals remained scarce, even after the profession was recognized as important, as the slowly growing supply of attorneys attempted to keep up with the growing population's expanding demand for legal service. Massachusetts generally handled this scarce resource problem by limiting the number of attorneys one party in a conflict could employ and by continuing to allow individuals to plead their own cases.[138] A 1715 Act provide that if one party to a lawsuit hired two attorneys that the opposing party might have been otherwise able to hire, the opposing party could ask to hire one away

128. *Id.* at 77.
129. *Id.* at 77–78.
130. *Id.* at 70.
131. *Id.* at 78.
132. *Id.* at 79.
133. *Id.*
134. *Id.* at 79–80.
135. *Id.* at 85.
136. *Id.* at 79, 80, 87.
137. *Id.* at 80.
138. *Id.* at 81.

and the attorney could not refuse.[139] In 1785, following the depletion of the colonial bar as loyalist attorneys fled to England, the legislature passed an act providing that plaintiffs and defendants could not hire more than two attorneys. The authorization for *pro se* representation, established in the colony's earliest law code,[140] was reiterated in the 1785 act.[141]

D. NEW YORK

Unique amongst the thirteen colonies that eventually became the United States, the colony that became New York was settled by the Dutch starting in 1624 under the name New Netherlands. New York's uniqueness amongst its peer colonies continues in that it was conquered, not settled. New Netherlands was captured by the English in 1664 during the Second Anglo-Dutch War and renamed New York. In 1674, during the Third Anglo-Dutch War, the Dutch recaptured New York, only to lose it to the English permanently later the same year.[142]

The newly anglicized colony adopted a new law code, the *Duke's Laws*, in 1665, quickly incorporating much of the English common law early in its existence.[143] When the English recaptured the colony in 1674, they reintroduced the *Duke's Laws*.[144] In addition to adopting English law, the *Duke's Laws* also created an elaborate system of courts that included the governor, council, and judges the Court of Assizes.[145] In 1691, New York established a recognizably modern judiciary separate from the governor and council.[146]

Like many colonies, New York had a shortage of lawyers, though the situation was not as severe as in some other colonies. As a result of this shortage, the majority of the colony's early judges were laymen.[147] Unlike Massachusetts or Virginia, New York had a number of trained barristers living and practicing in the colony.[148] While the presence of trained lawyers certainly aided the colony, it did not promote the development of a mature legal profession. Instead, interference from the governor and distrust from the powerful merchant class suppressed the growth and development of the profession.[149]

---

139. *Id*.

140. BODY OF LIBERTIES, *supra* note 114, at 265.

141. Chroust Part I, *supra* note 76, at 81.

142. Anton-Hermann Chroust, Legal Profession in Colonial America, 33 Notre Dame L. Rev. 350, 350 (1958) [hereinafter Chroust Part II].

143. *See Duke's Laws, in* 1 N.Y. HISTORICAL SOC'Y, COLLECTIONS OF THE NEW YORK HISTORICAL SOCIETY FOR THE YEAR 1809, at 307–97 (1811) [hereinafter *Duke's Laws*].

144. Chroust Part II, *supra* note 142, at 350.

145. *See, e.g.*, *Duke's Laws*, *supra* note 143, at 321 (structure of the Court of Assizes); *id*. at 336–37 (structure of the Court of Sessions); *id*. at 337 (court procedure); *id*. at 343–47 (court fees).

146. Chroust Part II, *supra* note 142, at 351.

147. *Id*.

148. *Id*.

149. *Id*. at 351–52.

While some early New York laws were hostile to lawyers, overall, the profession was not viewed with hostility in the colony. The *Duke's Laws* contained a provision addressing barratry, or the practice of bringing repeated, unjustified lawsuits.[150] Chroust proposes that this may have been targeted at legal professionals generally, as opposed to just those who stirred up lawsuits.[151] In 1677, when asked if attorneys were useful in court, the Council of New York determined they were not and banned all attorneys from appearing in court.[152] This order was soon replaced with a new rule that stated: "[n]o one be admitted to plead for any other person or as attorney in the court without he first have his admittance of the court or have a warrant of attorney for his so doing from his client."[153] Once an attorney was admitted, he took an oath not to charge excessive fees and was charged a licensing fee of either 12 guilders or half a beaver.[154]

By 1695, there were still only a small number of lawyers in New York. To remedy issues arising from one party hiring all available lawyers, the colony adopted a similar statute to Massachusetts', limiting the total number of attorneys an individual could hire to two:

> "Whereas the number of attorneys at law that practice at the Barr in this Province are [sic] but few and . . . many persons retain most of them on one side to the great prejudice and discouragement of others that have or may have suits at law," it is provided that no person may retain more than two lawyers.[155]

By 1709, the governor had taken over the exclusive authority to issue licenses to attorneys.[156] A benefit of a centralized system was that admitted attorneys could practice anywhere in the state. The major drawback was that, with no bar organization and centralized control, there were no professional standards for admittance to practice and, as the governor could admit almost anyone, there was not professional solidarity.

Despite the slow start, by the late sixteenth century a collection of trained lawyers had started practicing in New York. Around 1744, many of these lawyers organized themselves into the New York Bar Association for political purposes, seeking to exert influence over the governor's appointment of judges.[157] While that political goal occupied most of the Association's focus, the Association succeeding in beginning to set "standards of admission to practice, legal etiquette, and professional ethics."[158] Prior to disbanding in 1770, the Association also set

---

150. *Duke's Laws*, *supra* note 143, at 322.
151. Chroust Part II, *supra* note 142, at 353.
152. *Id.*
153. *Id.* at 354.
154. *Id.*
155. *Id.* at 356 (quoting An Act Regulating the Retaining Attorneys at Law, Oct. 22, 1695, 1 COLONIAL LAWS OF NEW YORK 351).
156. *Id.* at 354–55.
157. *Id.* at 358.
158. *Id.* at 360.

limits on the number of students that could be trained in one law office and set the wages for clerks.[159]

CONCLUSION

Each of the jurisdictions examined featured distinct populations, legal cultures, and regulatory questions. Despite these differences, there were clear continuities in the approaches taken by the colonies, demonstrating the impact and lasting influence England had on the legal profession in the colonies. The differences in approaches between each colony and between each colony and England is, in some ways, equally enlightening. The distinct choices and priorities of each colony revealed much about the values of the settlers.

In England, the popular view of lawyers as greedy, unqualified pettifoggers dominated the consciousness, spawning concerns that these unscrupulous individuals would take advantage of their innocent clients—taking their money and damaging society in the process. The legislative response to these concerns was control: control over qualifications and training, admission to practice, and billing practices of the lower branches. The barristers, on the other hand were mostly left alone, allowing their older, self-sustaining system to continue forward.

In the colonies, similar concerns over unscrupulous attorneys occupied the minds of the colonists. In addition, each of the colonies had unique cultural differentiators that colored their interactions with the legal profession. For example, Virginians had a deep skepticism of the need for attorneys in the perfect system they sought to build, whereas the clergy in Massachusetts were skeptical of legal practice in general as it was too divorced from the word of God.

To tackle these challenges, colonial legislatures reached for the same mechanism as Parliament: legislative control. Unlike in England, however, the importance of the legal profession was not yet recognized in Virginia and Massachusetts and the first instinct was to try to eliminate the profession. The eventual change in policy of both colonies to allow the legal profession is a clear statement about the important role of the attorney. The regulations these colonies selected resemble the regulatory methods England first adopted.

The line is perhaps most direct and obvious in the way attorneys were admitted. The process of examination, licensure, and swearing an oath—the same oath as in England in some cases, including Massachusetts[160]—was fully lifted by the colonies from English practice.[161] The English process was followed in Massachusetts and Virginia, while in New York, admittance was decided exclusively by the governor. Without a remedy available through the legislature, New

159. *Id.*

160. *Compare* discussion *supra* p. 9 and notes 62–63 (discussing adoption and standardization of 1402 oath) *with* discussion *supra* p. 16 (discussing the adoption of the 1402 oath by Massachusetts).

161. *Compare* discussion *supra* p. 8–9 (discussing admittance procedure for attorneys in England) *with* discussion *supra* p. 14 (discussing Virginia admittance procedure) and discussion *supra* p. 17 (discussing Massachusetts admittance procedure).

York attorneys made one of the earliest attempts at a coordinated self-regulation for the legal profession in the soon-to-be United States. Although the political element of the New York Bar Association was novel, the concept that the legal profession could organize and coordinate was demonstrated by the Society of Gentleman Practisers. The self-regulatory activity in New York and Massachusetts gives a strong indication of the self-regulatory future of the American legal profession.

Perhaps the aspect of legal practice and regulation in the colonies that most distinguishes the colonial legal profession from the English one is scarcity. The English legal market had certainly experienced times of increased demand and scarce legal resources, but it would be extremely unlikely for a situation to arise in which one party to a suit retained all the available attorneys. London and the English legal market were just too big. Yet scarcity was the reality in Massachusetts and New York, prompting the legislatures of each to set out guidelines, which included the forced reallocation of an attorney from one client to the other. Scarcity manifested in other ways as well: the lack of materials meant it was more challenging for new attorneys to be trained with the most up to date materials.

In short, the American legal system has a rich inheritance from the English system. This inheritance includes common law precedents and statutes, an adversarial trial system, a professional legal class, negative public perceptions of the legal class, and societal expectations around how this legal class will be regulated. Many of the same tools in use in England at the time of the revolution—courts, the legislature, self-regulatory bodies—remain in use in the regulation of American lawyers today.

When English settlers began to establish the colonies and recognize the need for lawyers, the tools from England were the ones readily available. As the legal profession slowly developed in the colonies, each colony responded to its own needs, shaping a distinctive but recognizable approach to the regulation of American attorneys.