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# THE STORY OF THE LAW SCHOOL AT THE UNIVERSITY OF NORTH CAROLINA†

ALBERT COATES\*

## I

### BEGINNINGS OF LEGAL EDUCATION IN NORTH CAROLINA

*Inns of Court.* Some of the lawyers in Colonial North Carolina received their legal training at the English Inns of Court, including: Sir Richard Everard, Gray's, 1731; Thomas Child, Middle, 1746; Enoch Hall, Gray's, 1749; Thomas McGuire, Gray's, 1754; Josiah Martin, Inner, 1756; Henry Eustace McCulloh, Middle, 1757; Gabriel Cathcart, Middle, 1763; Benjamin Smith, Middle, 1774; William Brimage, Gray's, 1786.

*The private home.* Others acquired their knowledge of the law by the unaided private study at home of such books as they could buy or borrow. John Penn, born in Virginia in 1741, had full use of Edmund Pendleton's library, studied law "without teacher or other aid than his own industry," was admitted to the bar in 1762, and was one of the signers of the Declaration of Independence. John Louis Taylor, born in England in 1769, came to America in 1781, and went to William and Mary College. He read law "without preceptor or guide," and was admitted to the bar in 1788, serving as Superior Court Judge for twenty years and as Chief Justice of the Court of Conference for ten years. Edwin G. Reade, born in Person County in 1812, studied at the academy of the Reverend Alexander Wilson, read law in 1833 "under himself at home," was licensed to practice in 1835, and served as Justice of the Supreme Court.

The difficulties as well as the determination of the student who studied law without instructors are illustrated in the following letter from a student who read law at home with the aid of instructive hints by mail from a distinguished lawyer: "Since reading the few excellent hints with which I was favoured from you last fall I have been exclusively employed in

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reading Coke upon Litt. I have succeeded in *wading* through it now almost for the second time. I cannot say however that I have *touched bottom* in all places. I feel discouraged at the very small proficiency I have made. Indeed I find that the three volumes of Coke and his commentators contain such a *mass* of curious and cunning and I might add valuable learning that I find it as yet utterly impossible to keep up anything like a connected view of the whole—yet doubtless the exercise through which I have passed in reading these volumes will be very profitable to me—particularly in perusing them the third time.”

*The private office.* Still others fitted themselves for the practice by studying and schooling directly under lawyers in private law offices. Samuel Johnston, born in 1733, read law in the office and under the direction of Thomas Barker of Chowan; William Hooper, born in 1742, read in the office of James Otis; Alfred Moore, born in 1755, read in the office of his father, Judge Maurice Moore; Leonard Henderson, born in 1772, read in the office of Judge Williams; William Gaston, born in 1778, read in the office of Francis Xavier Martin; Thomas Ruffin, born in 1787, read in the offices of Daniel Robertson and Archibald Murphey.

James Iredell's experience is illustrative of the more fortunately placed law students of the early years. He came from England to become Commissioner of Customs at Edenton in 1768 at the age of 17. “As soon as his familiarity with the business gave him sufficient command of time,” wrote his biographer, “he commenced the study of law under Mr. Sam Johnston's direction.” His diary contains numerous entries such as the following on Saturday, August 25, 1770: “This morning up between 6 and 7—was writing a little, and reading in Littleton's Tenures till breakfast. . . .” Again: “I have not done as much as I ought to have done; read a little in Littleton's Tenures, and stopt in the middle of his Chapter on Rents; whereas if I had gone throught it, it would have been better and more agreeable than losing three or four games at Billiards. N.B.—If you do play at Billiards, make it a rule not to lengthen.”

According to his biographer, Iredell “was a diligent student; he copied Mr. Johnston's arguments and pleas in interesting cases. He read carefully and attentively the text-books, referring to the authorities quoted, and collating and digesting kindred passages from all the writers within his reach; he attended the courts, returned to his chamber and wrote out arguments of his own applicable to the cases he had heard stated.” If unemployed in the courthouse, “he peopled his chamber with Judge, Jury,

and spectators; he argued causes before his imaginary court, and reported his own arguments."

On July 31, 1771, he wrote to his father in England: "I am too often troubling you, but I will hope for your excuse of this last request, as it will be of particular, perhaps necessary, service to me. It is that you will be so obliging as to procure Dr. Blackstone's Commentaries on the Laws of England for me, and send them by the first opportunity. I have indeed read them through by the favor of Mr. Johnston who lent them to me; but it is proper I should read them frequently, and with great attention. They are books admirably calculated for a young student, and indeed, may interest the most learned. The Law there is not merely considered as a profession, but as a science. The principles are deduced from their source, and we are not only taught in the clearest manner the general rules of law, but the reasons upon which they are founded. By this means we can more satisfactorily study, and more easily remember them, than when they are only laid down in a dictatorial, often an obscure manner. Pleasure and instruction go hand in hand, and we apply to a science, difficult indeed at best, with less reluctance, when by a well-directed application we may hope to understand it with method and satisfaction."

It was impossible to purchase books in the southern colonies, but Iredell had correspondents in England who sent him books, pamphlets, and papers relating to literature as well as politics and law. "I have a great desire," he wrote, "to see a good collection of the late Parliamentary debates, provided there be any honest account of them than is contained in that partial trash, the Political Magazine. You must know I am a great admirer of Mr. Burke, and I wish you could include in my little packet everything of his that has been published, which he has wrote or spoke, since his two celebrated speeches of April, 1774, and March, 1775, which I have in good manuscripts of my own. Let me have, if you please, a Court Calendar, a Bibliotheca Legum, a Peerage, and a general catalogue of books with their prices." He had correspondents in the state of North Carolina, writes Stephen B. Weeks, who loaned or presented him with books and who received similar favors from him, while the members of the Continental and of the Federal Congress sent newspapers and public documents to their constituents in North Carolina or acted as agents for them in the purchase of books.

Samuel Johnston possessed one of the leading libraries of the colony. It was classified in eleven divisions: "(1) Law. All of the early owners

were lawyers, and there are in all some 34 volumes of law books. Besides books devoted to the theory and practice of law there are various collections of colonial laws. The list includes acts and revisals of New York for 1752 and 1768; New Jersey (Burlington, 1776); Pennsylvania (Philadelphia, 1762, 1775); Virginia (Williamsburg, 1733, 1759, 1769); North Carolina (1764, 1791). (2) Science and medicine, 20 volumes. (3) Domestic affairs and agriculture, 7 volumes. (4) Theology and sermons, 6 volumes. (5) Social matters and novels, 27 volumes. . . . (6) Essays, letters, general and miscellaneous literature, 129 volumes. . . . (7) Encyclopaedias, grammars, and language, 30 volumes. . . . (8) Biography and travels, 37 volumes. . . . (9) History and politics, 153 volumes, [including] . . . The Federalist, in 2 volumes (1788); with various pamphlets and newspapers relating to North Carolina affairs. (10) Classics, 36 volumes. . . ."

Edward Moseley was "the foremost man in North Carolina for nearly half a century. He first appears in Albemarle in 1705 as a member of the council and the vestry." His private library "was one of the largest in the province. . . . From his will we estimate that he had about 400 volumes; most of them treated of law, many were folios and were bound in sheep."

Of Moseley's library, George Davis, of Wilmington, who examined it before it had gone to pieces, said: "Many years ago I had the opportunity to examine the wreck of his library after more than 100 years of accident, neglect, and plunder had preyed upon it. Its mutilation was painfully apparent; but enough was left to excite my wonder and my admiration for the man, who, in the wilds of a new country, not shunning the activity incident to its life, but always and everywhere a leader among men, had yet the generous taste to gather around him a library which would do credit to any gentleman of our day; and every volume of which had to be brought from England with great expense and trouble."

*Pre-law study at the University of North Carolina.* Stephen B. Weeks writes: "I think it accurate to say that the political leaders of the colony of North Carolina at the time of the Revolution were better acquainted with the literature of their time than the leaders of political North Carolina are today with either contemporary English or American literature."

But these advantages were limited to the few—to those with relatives or friends in England who could help to keep open the lifelines of English culture, to those with parents wealthy enough to send them

out of the province or to the better schools for their education: Willie and Allen Jones went to Eton and Benjamin Smith, Gabriel Cathcart, and Henry McCulloch to other English schools; Samuel Johnston to New England; William Hooper to Harvard; George E. Badger and William N. H. Smith to Yale; A. J. DeRossett, Hugh Williamson, and John Rust Eaton to the University of Pennsylvania; Alexander Martin, Waightstill Avery, Ephriam Brevard, Nathaniel Alexander, David Stone, William R. Davie, Frederick Nash, William Gaston, and Thomas Ruffin to Princeton.

There were no public schools in North Carolina, the private schools were few and far between, and there was no institution of higher learning, public or private. "We cannot account for the general inattention to learning in the province, for such a length of time," wrote Hugh Williamson in 1812. "Many of the inhabitants had been well educated, and were men of respectable talents. They calculated badly, if they presumed, that by sending some of their children to England for instruction, the intellects of the community would be sufficiently cultivated." In an effort to spread the advantages of education the North Carolina Constitution, adopted in convention at Halifax in November, 1776, provided: "That a school or schools be established by the Legislature, for the convenient Instruction of youth, with such Salaries to the Masters, paid by the Public as may enable them to instruct at low prices; and all useful Learning shall be duly encouraged and promoted in one or more Universities." In 1784 Governor Alexander Martin called on the General Assembly to encourage ". . . seminaries of learning . . . where the State may draw forth men of abilities to direct her Councils and support her Government." In 1789 the General Assembly chartered the University of North Carolina, on the theory stated in the preamble: "Whereas, in all well regulated governments it is the indispensable duty of every Legislature to consult the happiness of a rising generation, and endeavor to fit them for an honourable discharge of the social duties of life, by paying the strictest attention to their education: And whereas, an university supported by permanent funds and well endowed, would have the most direct tendency to answer the above purpose: I. Be it therefore enacted. . . ."

This theory was stated in a more pointed fashion by William R. Davie in an article published in the *North Carolina Journal* in 1796. He began by quoting from the French Convention, "That as in every free Government, the *Law* emanates from the *People*, it is necessary that the People should receive an education to enable them to direct the Law,

and the political part of this education should be consonant to the principles of the Constitution under which they live." He proceeds: "The plan of education established by the Board of Trustees appears to be predicated upon this principle, and designed to form useful and respectable members of society—citizens capable of comprehending, improving and defending the principles of our Government; citizens, who from the highest impulse, a just sense of their own and the general happiness, would be induced to practice the duties of social morality. A deep and fixed conviction that it is degrading to be tributary to other states or countries for our literary and public characters, a general and strong desire to promote education and exhalt and improve our national character have given a tone to the public sentiment, and bestowed a degree of emulation upon individuals from which the most happy effects may be expected."

This plan of the Board of Trustees was approved in the sermon of the Reverend Eusebius McCorkle at the laying of the cornerstone of the first building on the campus (Old East) on the 12th day of October in 1793: "Liberty and laws call for general knowledge in the people and extensive knowledge in the ministers of state." Governor Alexander Martin expressed the hope that from this University may be "drawn men of ability to fill the different departments of government with reputation."

The first students of the University of North Carolina at Chapel Hill received a background of classical and scientific studies in general, and governmental studies in particular—background which students of earlier days had sought in old England, later in New England, and still later in the middle colonies. Some of these students then went from the University to private law offices to begin the professional study of law: Archibald D. Murphey (class of 1799) to the office of William Duffy; John Branch (class of 1801) to the office of John Haywood; Joseph J. Daniel (class of 1805) to the office of William R. Davie; William R. King (class of 1805) to the office of William Duffy; John M. Morehead (class of 1817) to the office of Archibald D. Murphey; James K. Polk (class of 1818) to the office of Felix Grundy, of Nashville, Tennessee; John L. Bailey (class of 1819) to the office of James Iredell; William H. Battle (class of 1820) to the office of Leonard Henderson; Bartholomew F. Moore (class of 1820) to the office of Thomas N. Mann; Richmond M. Pearson (class of 1823) to the office of Leonard Henderson; James C. Dobbin (class of 1832) to the office of Robert Strange; William B. Rodman (class of 1836) to the office of William Gaston; Thomas Ruffin, Jr. (class of 1844)

to the office of his father; Thomas Settle (class of 1850) to the office of Richmond Pearson.

*Founders of private law schools.* These men carried the University of North Carolina into the bloodstream of the legal profession in North Carolina, fertilized and invigorated it, and generated the next forward impulse of legal education in North Carolina—the transition from the private office to the private school. This transition from instruction of law students as an incidental purpose to instruction of law students as a parallel profession was illustrated in the experience of Archibald D. Murphey of the class of 1799. “Among the men who studied in his office,” wrote his biographer, “were Chief Justice Thomas Ruffin, Bartlett Yancey, Governors Morehead and Worth, James T. Morehead and John A. Gilmer, who were eminent lawyers and representatives in Congress, William J. Bingham, headmaster of the famous Bingham School, Judge Henry Y. Webb of Alabama, Charles Pendleton Gordon, of Georgia, and Judge Jesse Turner, of Arkansas. Murphey’s influence on these men was profound and far-reaching. Yancey, Governor Morehead, Worth, Gilmer, and Gordon became conspicuous advocates of his measures for public schools and internal improvements. ‘He took a deep interest in young men,’ said Paul C. Cameron, ‘sought their society to advise and instruct them. He was kind enough to address to myself a letter at the very threshold of life; a most affectionate one of advice and friendly suggestions. Such a letter should go a long way to correct the foibles and follies of young men entering life ambitious of notoriety and the promptings of vanity. Some opinion may be formed of the point and spirit of the composition and his kind interest in his young friend, when I tell you that he closed it with an earnest entreaty never to be seen wearing a ring, or walking with a gold-headed cane, or riding a pony.’ To many young men he gave a start in life.”

John L. Bailey of the University class of 1819 instructed a number of students in his law office in Elizabeth City. He later expanded this office instruction into a school operated in connection with his office in Hillsboro and continued this schooling at Black Mountain in connection with his duties as Superior Court Judge. This law school tradition was continued by his son, William H. Bailey, in Asheville. “Among those who studied law under Judge Bailey,” writes Archibald Henderson, “are now recalled the following names: General Theodore F. Davidson, one time Attorney General of North Carolina, William B. Martin, afterwards for many years Judge in Norfolk, Va., Captain W. E. Weaver, Alden

Howell, Emory H. Merriman, Captain John Gudger, Captain W. P. Welch, Captain M. E. Carter, Captain C. M. McCloud, Jarvis Buxton, J. S. Adams, S. H. Reed, C. A. Moore, S. V. Pickens, Judge W. Norwood of Waynesville, James Robertson of Franklin, and the Hon. Kope Elias. Among Judge Bailey's students at his law school on the North Fork of Swannanoa River were William H. Bailey, J. K. Connally, Washington M. Hardy, and H. G. Halliburton."

One of the law students, who knew Judge Bailey intimately, has left this record of his experience: "The lessons were a delight, and we looked forward to the *Conversazione*, as the lecture really was, as the pleasantest experience of the day. Nothing could equal the graciousness of the Judge's manner, nor the clearness with which the principles of law were enunciated. His method was Socratic to an extent, but interspersed with a whimsical humor at times, when he would deal with specific cases that had come before him in the judicial capacity. He had almost a reverence for the law and a supreme contempt for the pettifogging lawyer. To him the law meant Justice; and he could not tolerate sharp practice from lawyers.

"The highest ideals were inculcated in his students, the utmost courtesy in handling a case, and a thorough study of the principles of law from the time of Coke and Littleton to the modern times, when statute law has materially modified the old English common law of Blackstone."

Richmond M. Pearson of the University class of 1823 opened a law school at Mocksville and later removed it to Richmond Hill where it continued into 1870-1875. "I have heard him say," writes Judge Dick, "that he had instructed more than a thousand law students, who are scattered throughout the State and nation. He had great skill in the act of communicating knowledge, and by his cheerful and paternal manner he won the respect, confidence and affection of 'his boys.' He had no strictly scientific arrangement or definite scholastic system of education, but he communicated instruction by frequent examination on the text-books, accompanied by familiar conversational lectures, and, like the great philosopher of Athens, he never reduced any of his lectures to writing. He was fond and proud of 'his boys' and did not confine his instruction to the class-room. He would talk to them on legal subjects whenever an opportunity was presented—at the table, on the path in the woods as they went to a neighbor's house, at the fishing place on the river, and in the Summer afternoons as they sat beneath the shades of the old oaks on the hill or down by the spring."

One of his students wrote the following sketch of Pearson and his school: "After his elevation to the bench he removed to Yadkin county and settled on the Yadkin river a few miles from Rockford, and established a law school. This was a quiet, secluded spot, and the nearest point to the railroad was High Point, a distance of about forty miles. He told me he selected this place so he could get away from the whirl and excitement of society, so that his students could be quiet and have nothing to withdraw their minds from their books. He would jokingly say to his boys that it was a good place to wear their old clothes. It was an ideal place for a school. The climate was delightful, the air invigorating, imparting the glow of health to the cheeks. To the west was the Blue Ridge, which in the winter was covered with snow and ice, and which looked beautiful, glistening in the clear sunlight, while the Yadkin, a clear pure, limpid mountainous stream, as it meandered through the wooded hills and the blooming meadows, looked like a stream of liquid silver. In the woods there was an abundance of hickory nuts, chinquepins and chestnuts, and after the frost had touched the forest the leaves of the trees presented a variegated hue, some green, some a russet color, some yellow, or as the poet would say, 'distained with dusty gold.' Judge John Kerr was his first law student. He was for years the leader of the Whig party, was candidate for governor, and was one of the most brilliant orators in the State. Hon. Jacob Thompson, of Mississippi, Secretary of the Interior in Mr. Buchanan's cabinet, read law with Judge Pearson. Governor Ellis was one of his students. At one time he sat upon the Supreme Court bench with three of his old students: Judges Bynum, Settle and Faircloth. Judges Avery and Furches, two of his students, were on the Supreme Court bench after he died. A number of Superior Court judges and the most prominent lawyers of the State were his students. No man in the State was ever on the bench for a longer time, for he was on the Superior Court bench for twelve years and on the Supreme Court bench for thirty-one years, twenty years of which he was Chief Justice. . . .

"In teaching law he adopted the methods of Socrates, Plato and Aristotle, by asking the student questions. He did not give lessons, but he told his students what books they must read, and then about twice a week the students would come to his office and he would examine them upon what they had read by asking them questions. When I first went to him to read law and learn his methods, I saw at once that it was the true way to teach and that it made a deeper impression upon

the mind, and I wondered why everybody did not adopt the Socratic method of teaching. Judge Pearson said his system was like manuring broadcast, while the other was like manuring in the hill. That was a very apt illustration. His office was at the bottom of a hill, and before he would come in to lecture, he would walk around the hillside and he would break off a little twig from some favorite tree and come in chewing it and then he would take his seat and begin to ask questions. His lectures were about two hours in length. He had a regular system in his lectures for he would take up some subject and exhaust it, and when he concluded the student was master of the subject. He taught his students how to think and reason. I consider myself fortunate in having read law under him. He was the greatest teacher that ever lived on the earth, and I don't believe that there will ever be such another."

John H. Dillard of the University class of 1841 and Robert B. Dick of the class of 1843 opened the Greensboro Law School—popularly known as the "Dick and Dillard Law School," in 1878. Archibald Henderson records the following data concerning this school: "The sessions will commence on the second Mondays in January and August. Tuition \$100, and the student may remain as long as he may desire to do so. There will be three examinations and lectures each week. Board can be obtained in private families at from \$12 to \$15 per month."

"For the first session of 1880 there were published the names of 50 students, for the second session of 1880, 62 students, first session 1881, 87 students. There are names of students who at one time or another attended the school. No data are available for other years. Judge Robert M. Douglas attended the Greensboro Law School in 1885, and in the class with him were Thomas Settle and Thomas Dixon, Jr., according to Mr. R. D. Douglas.

"'Sometime before his death,' says R. D. Douglas in a recent letter to me, 'Judge Dick told me that during the life of the school it had sent to the Supreme Court more than 300 applicants for licenses, not one of whom had failed to pass; that a few others from the school had failed to pass the bar examination, but all who failed had applied against his advice.'"