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THE NORTH CAROLINA BAR, 1746-1776

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A Thesis

Presented to

The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment

Of the Requirements for the Degree of
Master of Arts

by

William David Martin

August 1982

APPROVAL SHEET

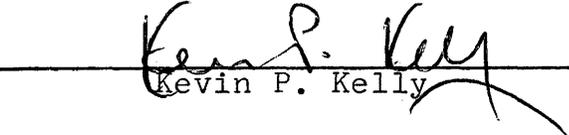
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Author

Approved, August 1982


James P. Whittenburg


Kevin P. Kelly


Charles F. Hobson

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ABSTRACT

The overriding purpose of this investigation is to trace the origins of a professional bar in North Carolina and to identify what role this critical new element played in the rapidly changing colonial society.

A broad-based, collective biography of North Carolina lawyers from 1746-1776 was undertaken with specific questions in mind. How did settlement patterns relate to the emergence of the bar? What effect did trade and the court system have on the bar? What were the popular perceptions of lawyers? How did attorneys view their own social circle and ordinary North Carolinians? What influence, if any, did ethnicity or religion have on how lawyers were viewed? What offices and business interests did lawyers pursue? What role did attorneys have in provincial politics? How did the bar respond to the approaching Revolution? In fine, what were the ties that bound lawyers to North Carolina society?

From roughly 1746 to 1776, a steady influx of settlers, an expanding and complex trade, and a crystallized court structure provided professional lawyers with the clientele and vehicle for practicing their craft in heretofore backward North Carolina. Newcomers and a small number of native sons grasped the opportunity to join the ranks of the Carolina gentry, where the lawyers' training, bearing, initiative, and success overcame most lingering anti-professional bias. Guided by the same world view, attorneys reached the pinnacle of this tight-knit, gradually constricting social pyramid.

The evidence suggests that self-interest, frequently deduced from fear or ignorance, and past experience with the courts were the principle factors in determining the individual's relationship with the bar. Attorneys equated with dissension, with abusing clients, with obstructing justice, or with consuming greed, were anathema to North Carolinians, particularly to the vulnerable settlers in the backcountry. Conversely, lawyers perceived as promoters of order, as intelligent, articulate spokesmen, or as just, victorious counsels, were welcomed by the community.

By 1776 attorneys were indivisible from the economic and political leadership of North Carolina. From this vantage of power, lawyers exercised a considerable influence over the course of the Revolution in Carolina.

THE NORTH CAROLINA BAR, 1746-1776

Lawyers "are plants that will grow in any soil that is cultivated by the hands of others; and when once they have taken root they will extinguish every other vegetable that grows around them. . . . The most ignorant, the most bungling member of that profession, will if placed in the most obscure parts of the country, promote its litigiousness and amass more wealth without labour, than the most opulent farmer, with all his toils."

----J. Hector St. John de Crevecoeur

CHAPTER I

THE TRANSFORMATION OF NORTH CAROLINA LEGAL CULTURE, 1746-1776

The professionalization and growth of the North Carolina bar was a logical extension of the colony's burgeoning population in the third quarter of the eighteenth century. Seemingly overnight, sedate coastal towns became thriving transshipment centers and in the process opened a "fair field" for the legal arbiters who served as agents in place for European merchants. Developing the backcountry required that the colony's court system be extended into the interior to promote order among the pugnacious frontier settlers. This too presented lawyers with unbounded opportunity. Enterprising attorneys harnessed the available political and economic power to propel themselves to the top of the social order by 1776. Such an event was hardly conceived in the colony's founding.

"We aim not at the profits of merchants" in Carolina, wrote Lord Shaftesbury, "but the encouragement of landlords."¹ Any doubts that lawyers were unwelcome in the semi-feudal plantation were removed with John Locke's "The Fundamental Constitutions of Carolina" in 1669. Locke's "Grand Model" dictated that "It shall be a base and vile thing to plead for money or reward; nor shall anyone . . . be permitted to plead another man's cause till . . . he hath taken an oath that he does not plead for money or reward."² Unlike most of Locke's designs for Carolina, this one proved successful until the "Fundamental

Constitutions" were withdrawn in 1693.

By 1700 planter-lawyers controlled the rustic courts, leading one caustic observer to remark that "most who profess themselves doctors and attorneys are scandels to their profession."³ Such comments compelled the assembly to regulate "Attorney's Fees" in 1715, and to strengthen the measure in 1743 after complaints of widespread abuse. An attempt to license attorneys only upon approval of a board of examiners-- similar to Virginia's practice--failed in 1746 when all acts governing the profession were repealed as part of the larger court struggles between the factional assembly and royal governor. From 1746 to 1771, the bar stood unregulated except for a license issued by the governor, a factor destined to cause trouble as the number of lawyers increased.⁴

Geography retarded the bar's growth in North Carolina, as it did settlement in general. Sandbars blocked the ports of Wilmington and Edenton, shallow and narrow channels restricted tonnage at Bath and New Brunswick, and interior rivers that traversed Northwest to Southeast hindered the normal East-West trade that would have encouraged immigrants and fostered a legal guild.⁵ Evolving in this sparsely populated setting were county courts governed by planters who both heard and pleaded cases, and often decided the merits of the arguments on the basis of obscure precedents in lieu of codified laws. With few professionals in their midsts until the 1750s, the North Carolina gentry who combined planting and trade with an ancillary legal practice conducted oral proceedings.⁶

Handicapped until the first laws were published in 1751, attorneys relied on the legal precepts gleaned from their private libraries, many of which were doubtlessly inadequate. Richard Lovett's estate, for example, included only twenty-one books after a moderately successful fourteen-year practice in New Hanover County.⁷ More fortunate (and certainly better trained) was Edward Mosley, a wealthy Cape Fear planter and assembly Speaker, who left his "Law Books, being upwards of 200 Volumes," to his son "best Qualified" to "be bred to the Law."⁸ Whether Lovett or Mosley was the exception is perhaps less important than the use they made of their resources. The planter-lawyers who dominated the county courts as justices and attorneys may, in fact, have possessed a "common sense" perception of the law that belied their lack of formal training. However adequate this parochial legal system may have been, it was inadequate to meet with the sweeping demographic changes North Carolina experienced after mid-century.

Land-hungry settlers flocked to the Carolina backcountry at the prospect of fee-simple grants and nominal quitrents on the enormous tracts of John Lord Carteret, the Earl of Granville, and Henry McCulloh, an acquisitive London merchant and royal adviser. Granville, the only Lords Proprietor to retain title to his land when North Carolina became a royal colony in 1729, received confirmation of his 26,000-square-mile patent from the Privy Council in 1744. Between 1751 and 1762, he sold nearly two million acres in lots averaging 400 to 500 acres. McCulloh, a personal and economic rival of Granville, sold 525,000 acres in the late 1740s and 1750s and undetermined

thousands of acres in the 1760s when transactions became confounded. These lands, combined with the increasingly available crown lands, beckoned disaffected Scots and opportunistic Americans in a rarely breaking wave that, if the conflicting census figures are averaged, tripled the population between 1750 and 1770.⁹ Swept along in this diaspora were lawyers, men determined to make their fortunes.

Transplanted attorneys became an indivisible part of the expanding, increasingly complex society produced by the rapid settlement. These men knew how to manipulate the new court tentacles in the backcountry for their own benefit, and in the eighteen counties created between 1750 and 1775 (only seventeen had been organized in the eighty years prior to 1750), the circuits and judicial offices provided them with unique opportunities.¹⁰ Towns like Hillsborough, Salisbury, and Halifax which evolved to meet the demands of a "business society" housed new law offices. The ports of Wilmington, New Bern, and Edenton developed a profitable mixed economy that compensated for the difficulties of getting past the barriers to the docks. Now population and commercial centers, they, too, required the legal sophistication of a professional bar, particularly after all six towns were designated superior court sites.¹¹ With these fundamental changes in North Carolina, a law practice became a means to considerable wealth.

As Jackson Turner Main has concluded throughout the colonies, law in North Carolina was the "most profitable of professions." While North Carolinians could not match the wealth of the Virginia and South Carolina lawyers, it was

easier in Carolina for aspiring attorneys to advance their station in life.¹² Francis Nash, a "young lawyer seeking his career," acquired a substantial income from pleading and several appointive offices in Orange County. Thomas Burke, who abandoned his medical practice, explained "that in this Country [doctoring] was not a Field in which the most plentiful Harvest might be reaped. I therefore determined to study Law which promised much more profit and less Anxiety." Even Henry Eustace McCulloh, son of the land patentee, hoped to practice law while serving as his father's agent, thereby "design[ing] . . . to secure to myself the favorable opinion of the public . . . and at the same time with prosperity to myself."¹³ Understandably, most young lawyers gravitated to the legal vacuum in the "bruising, Goughing, Biting and balloching" backcountry courts to begin their careers.

Life among the intolerant, irreverent, hard-drinking pioneers in the West tested the fortitude of every circuit lawyer. Banditry commonly threatened attorneys, though not, as a French traveller claimed, because the province was "the azilum of the Convicts that have served their time in Virginia and Maryland."¹⁴ Rather, social and political instability, heterogeneous nationalities and religions, and the lack of civil police and an established order all contributed to the chaos of the backcountry. Yet the inherent disorder of the piedmont was constantly, albeit slowly, moving toward equilibrium, toward a system where relationships were well-defined and understood by the community. A first step was the emergence of ambitious, semi-educated leaders who "supplied an initial

overlay of culture to a nascent, bucolic society," men who by training, performance, or connections obtained the mechanisms of power.¹⁵ Lawyers, by virtue of their practical, legal, and classical education, filled this cultural void, and, in turn, augmented the coastal elite who governed North Carolina. One vehicle for fostering this assimilation were the court clerkships.

As court clerks, aspirant practitioners were exposed to the technical mechanics of the bench and the learned discourse of licensed attorneys that facilitated their own admittance to the bar. As the volume of litigation increased in the wake of population growth, practicing lawyers competed for the coveted office in light of the fees from recording court business. With a royal and civil clerk in each court who were free to appoint deputies to handle routine matters, the patronage gems were distributed among men with court connections.¹⁶ One indication that lawyers usually hired deputies comes from the journal of James Auld, who noted in late 1770 that he "contracted with Colo. Sam'l Spencer," an eminent Anson County attorney, "for the Clkship of that County." A year later, Auld recorded that his son was "also Depty Clk for Mr. Wm Hooper" in Chatham County.¹⁷ Thus lawyers claimed the title and part of the fees while remaining free to attend the circuit courts where they contended with "ignorant Harpies," their self-taught colleagues.

Attorneys distinguished between the gentleman of standing who practiced law without formal training, the "haughty and vain" Robert Howe for one, and the parvenu who understood law

only as a means to wealth. An often cited example is John Dunn, a former cobbler, who signed his name with an "X" after three years of practice.¹⁸ Dunn and his semi-literate contemporaries were congregated in the West, where in the 1750s rank was secondary to initiative in securing positions. How many lawyers were self-taught is undetermined, but the evidence for the 1750s and early 1760s suggests a fairly high number. John Saunders, an articulate Virginian, found Granville attorneys to be "like Gladiators . . . Ready for fighting," whose debates were "rather Obscene than Learned." William Cumming, trained in either Virginia or Maryland, lamented the "strange infatuation possessing the Courts of Rowan & Anson" in 1759.¹⁹ There was, however, a discernible change in the caliber of backcountry counsels in the 1760s, when law apprentices and university graduates appeared as part of the "mixt Multitude" who settled the countryside.

The colony's law apprentices were aided immeasurably in 1751 when Samuel Swann and Edward Mosley published A Collection of All the Public Acts of Assembly, of the Province of North Carolina: Now in Force and Use, the first set of codified laws.²⁰ Even more important was a core of established attorneys who offered instruction and libraries to eager young students. One such connection spanned four generations. The link began in 1732 when nineteen year-old Thomas Barker arrived in Edenton from Massachusetts to study law under his uncle, Chief Justice William Little.²¹ Barker obviously profited from this experience, if the size of his practice and his influence in government

are an adequate measure. He in turn welcomed young Samuel Johnston "to the use of my books and to my advice in reading them" in May 1753. Fifteen years later, seventeen year-old James Iredell, the future Supreme Court Justice, was advised to "by no means omit informing yourself at the Bar" under Johnston, now Edenton's leading attorney.²² The "Edenton Connection" was North Carolina's most celebrated indigenous apprenticeship, but other equally important tutorials warrant attention.

Richard Caswell, later a member of the Continental Congress and the state's first governor, moved to Orange County from Maryland in 1746. He was appointed clerk six years later when the courts were established, where he met William Herritage, the clerk of the assembly. Apparently reading law under his future father-in-law, Caswell also found a political patron.²³ Edmund Fanning, the recipient of the Regulators' wrath for his multiple offices and tactless behavior, studied under Attorney General Robert Jones, Jr. And Richard Henderson, whose "oratory and eloquence . . . [was] as brilliant and powerful as in Westminsterhall," served his apprenticeship under his kinsman, John Williams, whom he joined as a junior partner. As a lawyer, Associate Court Justice, and entrepreneur, Henderson became a dynamic force in shaping the piedmont.²⁴ An even greater number of attorneys who contributed to the bar's coming of age were trained outside of North Carolina.

Virginia emigrants dominated the ranks of learned newcomers. Francis and Abner Nash, the latter a burgess from

Prince Edward County, received a classical education at "Templeton Manor," their father's 5000-acre plantation. Both were exposed to law as part of the expected "country" education of a Virginia gentleman described by A. G. Roeber.²⁵ Stephen Dewey, who practiced before the Williamsburg General Court and county hustings courts as early as 1739, was selected as an examiner of prospective lawyers on the basis of his superior legal knowledge, a post generally held by English-trained barristers. Dewey's "long proficient" background preceded him, for he was appointed an Associate Justice in early 1761.²⁶ John Dawson, the son of William Dawson, President of the College of William and Mary, had access to the best legal minds in Williamsburg, as did Burke, the ex-physician.²⁷ John Penn, a signer of the Declaration of Independence from North Carolina, "reaped the merits in his profession" after studying under his uncle, the renowned Edmund Pendleton.²⁸ Outside of Virginia, Waightstill Avery read law under Littleton Dennis in Maryland, and William Hooper, after an apprenticeship with the mercurial James Otis in Boston, found "the bar . . . so overflowing that there was no encouragement for juvenile practitioners," hence "determined . . . to try the experiment of making his fortune in North Carolina."²⁹ Aided by letters of introduction, these newly arrived lawyers joined the "first rank of men."

If Hooper's association with Otis had not assured his acceptance by Wilmington society, the patronage of James Murray, a former Cape Fear merchant and councilor living in

Boston, removed all obstacles. After thanking Governor and Mrs. William Tryon for their "tenderness to my pupil Mr. Hooper," Murray later wrote with the "hope [that] this Connection will recommend him a little and his own behavior a great deal."³⁰ Avery also had little difficulty making a start. Bearing letters from his mentor, he journeyed to Williamsburg, where the barrister Peyton Randolph penned another introduction. In Edenton, he met and dined with Johnston and Joseph Hewes, a leading merchant, who added their endorsement. Such backing was hardly ignored, and on April 4, 1769, Avery recorded in his journal that he "Dined with the Governor and his Lady; Got my business done (viz. a License to practice Law)."³¹ European lawyers who bore the carriage of a gentleman could expect the same treatment.

It is difficult to recount the European education of North Carolina attorneys not at the Inns of Court because of vaguely worded references. While five lawyers are known to have studied in Europe, only Richard Neale can be connected with the King's Bench in London.³² The other four--Alexander Elmsley, Patrick Duff Gordon, Marmaduke Jones, Thomas Jones--certainly possessed the means to serve the five-year apprenticeship established by an act of Parliament in 1729, but proof is lacking. Except for Neale, who disappeared from the records after being licensed to practice, all four converted their backgrounds into prominent legal and political careers.³³ Legal antiquarians from the Inns of Court, never a significant group in North Carolina, were less well received.

The Inns of Court were never a legal training ground for North Carolinians. There was little reason for the native gentry, poor in any case by eighteenth-century standards, to send their sons abroad, nor inducements before the 1760s for European attorneys to immigrate. Moreover, of the five Inns graduates residing in North Carolina between 1754 and 1776, only Thomas McGuire's principal occupation was the law; none of the five appears to have been called to the bar in England. Except for Gabriel Cathcart, the only native and a member of the Albermarle elite, the Inns graduates were English placemen who variously rose and fell from favor with the Carolina elite in the wake of land speculation and political machinations.³⁴ Lawyers trained at the Inns of Court, then, were significant for the legal mark they did not imprint on North Carolina.

Of greater consequence for the maturing legal culture were the men who attended northern colleges. Hooper, later to sign the Declaration of Independence, was a Latin scholar at Harvard before entering Otis' law office. Edenton attorney John Hodgson and his son, Thomas, also studied in Cambridge, though the younger Hodgson was asked to leave after having a "lewd Woman" in his room and other "great and Scandalous Crimes."³⁵ Fanning, one of the "new" breed of lawyers in the backcountry, held a Berkelian Scholarship at Yale. Johnston, who became a conservative articulator of "country thought" and a leading advocate of judicial reform, also enrolled at Yale, where he was encouraged by his uncle, Governor Gabriel Johnston, to "read Lock[e] upon understanding" as soon as he

could understand it, and thereafter to pursue an "apprenticeship of five years to serve the Law."³⁶ Four Princeton graduates--Avery, Alexander Martin, Adlai Osborne, Spencer--provided the nexus of the western court system, serving as justices, king's attorneys, and county clerks. Their superior education set them apart from the pretentious western gentry, whose support they soon garnered for Queen's College, the colony's first short-lived university.³⁷ The Tory Chief Justice Martin Howard, leader of the Newport junto "who sold his Country sometime ago," apparently studied in New England. Maurice Moore, Jr., a member of the Cape Fear squirearchy criticized as "a zealous votary of the bubble popularity" by Governor Martin, also attended northern schools.³⁸ As might be expected, it was among Moore's leisure class plantation neighbors where the first deep appreciation of a university education was found.

One of the earliest indications of the ideal training for a North Carolina lawyer comes from the will of John Baptista Ashe, a former speaker of the assembly. Determined that his sons have the best liberal education available, he bound his executors to

Let them be taught to read and write, and be introduced into the practical part of Arithmetic, not too hastily hurrying them to Latin or Grammar, but after they are pretty well versed in them let them be taught Latin & Greek. I propose this may be done in Virginia; After which let them learn French, . . . [and] when they are arrived to years of discretion Let them Study the Mathematicks. To my Sons when they arrive at age I recommend the pursuit & Study of Some profession or business (I would wish one to ye Law, the other to Merchandize).

Ashe's sons followed his guidelines; John assumed his father's mercantile and political careers, while Samuel, choosing instead

to complete "his education in the North," returned to study law under his uncle, Samuel Swann.³⁹ Whether they studied in law offices, Europe, or northern universities, these "new" attorneys transformed the nature of the bar in the course of two decades.

This new sense of professionalism was reflected in the language and heated discussions held in every court town, usually at an inn conveniently adjacent the courthouse. Edenton's legal circle met at Horniblow's Tavern on King Street to debate the merits of a case, argue politics, consider public affairs, or socialize over a few glasses of madeira. The process was repeated at Martin's Ordinary in Halifax, and in every borough where public houses were an essential place of social intercourse. Attorneys also gathered in law offices to analyze the nuances of jurisprudence or dissect the vaguely understood semantics of the Latin legal argot.⁴⁰ Johnston's correspondence indicates the bar's increased stature when English attorneys began to question him about points of law. In one case relating to an estate settlement, I. W. Holliday, a Lincoln's Inn graduate, requested Johnston's interpretation of the colony's intestate laws regarding the division of slaves.⁴¹ The importance of these strands of information is that they collectively indicate that by the time of the Revolution, the North Carolina bar was a professional body, more so in the East, certainly, but also in the West.

The professionalization is clear from the increasing number of legal opinions that reflected a familiarity with

English law books. Attorneys' briefs began to quote Sir Edward Coke's Institutes of the Laws of England, Lord Kame's Principles of Equity, Mathew Bacon's A New Abridgement of the Laws, and, by 1770, Sir William Blackstone's Commentaries on the Laws of England, the first standard legal text reprinted in North America.⁴² Iredell, with reservations, found the Commentaries "admirably calculated for a young student" because the "principles are deduced from their source, and . . . not only brought in the clearest manner the general rules of law, but the reasons upon which they are founded."⁴³ Other attorneys (Jasper Charlton, for one) were less infatuated with Blackstone, but they certainly added the Commentaries to their libraries. Works less frequently cited, yet critical for practicing in North Carolina, were John Cay's two volume Abridgement of the Publick Statutes, Swann's and Mosley's statute book, the Laws of North Carolina to 1765, Richard Burns' two volume Justice of the Peace and Parish Officer, and a variety of law dictionaries, the common one being Giles Jacobs'. Assuming, not unreasonably, that these works were the standard fare of most "new" lawyers in North Carolina and could be found in the libraries of the planter elite who dominated the county benches, Edmund Burke's observation in 1775 that "in no country perhaps in the world is the law so generally a Study" holds true even for "backward" Carolina.⁴⁴

Attorneys' literary interests beyond legal treatises also contributed to their education. The exaggerated claim that every leading family in the lawyers' social circle owned a

"collection of the best English authors" can be dismissed as hyperbole, but even among the backcountry towns where "there was a great scarcity of books" lawyers maintained extensive libraries. The collections of the Princetonians Martin and Osborne provide insight into the breadth of the lawyers' interests. Martin's volumes included the complete works of Plato, Watts, and Locke; Osborne's impressive library can be deduced from his "exercise book" at Princeton, which "queried and answered" such fields as metaphysics, ontology, natural theology, and moral philosophy. His mother and father, a leading Rowan County justice of the peace, encouraged their son's education, and might well have contributed volumes to his collection.⁴⁵

In Halifax, the former Virginian James Milner owned an array of over 600 books and scientific instruments that placed him on a par with any enlightened contemporary. Beside the melange of traditional and specialized legal volumes, he enjoyed the works of Shakespeare, Milton, Pope, Swift, Newton, Voltaire, Burke, and Rousseau. His expanded will also listed plays, poetry, histories, medical treatises, and a wide range of classical scholars. Rather oddly for rural North Carolina, he owned spy glasses, microscopes, a "camera obscura" solar telescopes, and a "diagonal machine."⁴⁶ Johnston's 500-volume library, without "superior in the province," was the only rival to Milner's. Johnston began his collection at Yale, augmented it with works inherited from his uncle, Governor Gabriel Johnston, and continually purchased books throughout his

half-century of practice.⁴⁷ A less recognized source for the lawyers' edification were the library societies in New Bern and Wilmington, both in operation by the mid-1760s. And a final professional fount for the attorneys was "the Purchasing of Law Books" by the respective county courts.⁴⁸

How much of this printed material had been read is, of course, problematic; and since wills, letters, and diaries are not available for the majority of practicing attorneys, to reconstruct the "typical" lawyer runs the risk of inflating his intellectual development on the basis of what amounted to an elite within an elite. Despite this qualification, lawyers were surely the most learned, articulate element of North Carolina society. There were obviously practitioners who by all accounts remained semi-literate; but from the evidence gathered to date, they were the exception. By the technical nature of the law, the continual exposure to better-trained colleagues, and simple experience gained over time, even the most inept, illiterate attorney had to profit from the new legal climate. To accept this conclusion, however, the lawyer needs to be discussed in his institutional and professional setting, first by detailing the court structure, and then by treating the actual practice.

The best contemporary source for understanding the amorphous web of courts and royal offices is A View of the Polity of the Province of North Carolina in the year 1767, probably written by Gordon (see above), a Scot lawyer hounded from his homeland for dubious legal ethics.⁴⁹ Written for Governor Tryon, who

evidently took credit for its authorship, the tract illustrates what lawyers stood to gain from the judiciary system crystallized by the six Court Bills before 1776. Under these acts, six variously titled superior court districts were established at Edenton, Halifax, New Bern, Wilmington, Salisbury, and Hillsboro. Each court met biannually, and was presided over by the Chief Justice and one Associate Justice (two after 1767) who heard cases on appeal from the district's county courts. The superior court's original jurisdiction was limited to civil suits that carried fines above £20 and to serious crimes calling for corporal punishment.⁵⁰ Only the Chief Justice and Salisbury Assistant Judge were required to have legal training, but the royal governors wisely sought to prevent the attendant troubles of an ignorant bench by nominating practicing attorneys, or in the few exceptions, members of the planter elite who had a "country" knowledge of the law. An Associate could expect to receive a maximum of £500 provincial money for his services, while the Chief Justice's income included £70 sterling in salary, a fee for each case tried, and a modest travel allowance. Although the Chief Justice remained a placeman appointed by the crown, Associates' positions were used by the governor to cement relations with the colony's lawyers who actively sought the part-time judgeships because it allowed them to continue in private practice. More important for the entire profession was the settlers' recourse to law as the means of resolving disputes. With greater numbers of people resorting to the appellate process, the obvious outcome was a "fair field" for attorneys licensed to plead in the superior courts.⁵¹

Lawyers tried the bulk of their cases in the county inferior courts of pleas and quarter sessions which settled most petty disputes. A quorum of three justices of the peace, appointed upon good behavior by the governor and council, were required to hold court. Some justices woefully ignorant of the law presided over trials in the West. A. G. Roeber has documented hostility between these county justices and professionally-trained attorneys in Virginia. Unlike Virginia, however, there is little evidence of similar tensions in North Carolina.⁵² Possibly the documented hostility is irretrievably lost. Whereas Roeber used the well-preserved Virginia Gazette to support many of his conclusions, the few extant copies of the North Carolina Gazette and Cape Fear Mercury provide nothing to replicate his findings. Still, with the permeable bounds of the North Carolina gentry, it does not seem likely that "new" lawyers were the threat to the justices' social and political position that they were in Virginia. Bench and bar remained harmonious elements within the "courthouse rings" that dominated the colony's legal system.⁵³

Consistent with the eighteenth-century scramble for offices, attorneys even sought to be appointed to the ineffectual vice-admiralty courts. Compared with the other colonies, North Carolina's experience with these tribunals was limited since its courts were never fully integrated into the American Board of Customs Commissioners system. Paralleling the situation in other colonies, McGuire and William Brimmage, two of the few Tory lawyers in North Carolina, held these posts.⁵⁴ Not-

withstanding the ineffectiveness of these courts, they remained a symbol of presumed British tyranny, hence a prominent part of the Whig rhetoric.

A major patronage prize that lured practitioners was the office of attorney general. When the incumbent, Robert Jones, Jr., contracted gangrene after his leg was amputated, Johnston uncharitably commented that there would "no doubt be a great number of Candidates for the office" since he was "on his last leggs or rather none at all."⁵⁵ Johnston's and the other leading advocates' efforts were frustrated when the post went to the Englishman McGuire. A less prestigious though still profitable post was the king's deputy in each county and superior court. Nearly every "new" lawyer served a term as prosecutor for the crown. "Younger Practisers" in the backcountry regarded this alternating between prosecuting for the king and defending private clients as an integral stage in their professional development, a perhaps overlooked factor in the professionalization of the bar.⁵⁶

Holding center stage in the courtroom drama was the practicing attorney. Theoretically, the governor issued licenses only upon the recommendation of the Chief Justice after an oral examination "as to his knowledge in matters of law and the practice of court by some of the judges of the superior court."⁵⁷ Generally, this seems to have been the case, though Governor Dobbs, on his own initiative, licensed two non-resident Virginians, and Governor Tryon apparently

excepted several with the right entree. English attorneys with certificates from the king's bench might also have been exempted from the Chief Justice's approval. Occasionally, licensing became an issue in the recurring conflicts between the governor and assembly. In May 1760 the assembly accused Governor Dobbs of "granting Licenses to persons to practise the Law who . . . [were] ignorant even of the rudiments of that science," and of extorting four pistoles in fees. Dobbs' denied receiving more than one pistole in accordance with the "constant usage" of his office, and countered by charging the "Junto" with proposing men of "mean education" for the bar. Dobbs' secretary was indeed exacting money from prospective lawyers, but the attacks bore a political mark rather than an actual grievance.⁵⁸

Since North Carolina lacked an examining board of solicitors or the hierarchy of the English bar, issuing separate licenses for the inferior and superior courts may have been an attempt to promote some crude ranking within the profession. An admittedly hazy pattern finds junior attorneys initially pleading in the inferior courts where the rewards and notoriety were considerably less. Before graduating to the superior courts, Governor Tryon noted that the lawyer "must obtain new recommendation and license . . . without limitation, and [then] the party obtaining it may act as attorney and counsel in all the courts of law . . . [and] equity in the province."⁵⁹ There is little evidence that senior practitioners used this as a means of restricting access to the superior courts, but

it is not inconceivable because those qualified in both courts served their own interests by limiting the field. The impossible task of compiling a detailed biography for every practicing attorney prevents a definitive answer.

Unfortunately, the only record for the number of lawyers at any given time between 1754 and 1776 is Governor Tryon's estimate of forty-five in 1767, a conservative figure.⁶⁰ To judge from a cross section of court records, colonial records, letters, and state histories, seventy might be nearer the mark for 1770. Inasmuch as each county court met only quarterly, nearly all advocates rode circuit out of economic necessity. Iredell's remark that he "always hitherto lost money" from his peripatetic practice was an exaggeration founded on an element of truth. Primitive roads, unreliable ferries, impassable streams, and the elements all reduced the attorney's livelihood.⁶¹ Boarding for the horse and rider were an unavoidable expense, one that must have been sizable, to judge from the rates of one Rowan County inn:

Dinner Roast or boild Flesh - 1 shilling
 supper & breakfast - 6 pence each
 overnight Lodging - good bed - two pence
 For stabling 24 hrs with hay/fodder - 6 pence
 pasturing - first 24 hours - 4 pence, 2 pence any other
 24 hours
 Indian Corn or other grain - 2 pence per qt.⁶²

These rapidly multiplied costs diminished the lawyer's income, yet not enough to deny him a "modest but comfortable" living, one considerably better than his backcountry clients.

Circuit lawyers, distinct from office attorneys who specialized in debt collections, handled a panorama of litigation.

Typical cases drawn from the New Hanover, Cumberland, and Rowan courts show attorneys representing clients in land disputes, estate settlements, indebtedness, and petitions for mills and taverns.⁶³ Assault trials were less frequent but quite common among the vindictive settlers. In one example that captures the flavor of the rough hewn frontier life, Richard Hilliar, the deputy king's attorney for Rowan County, prosecuted an unnamed defendant who, "in A Late Affray" with John Baker, "Through his Malliese Bit the under Part of his Lef[t] Ear of[f]." Less violent actions that filled the dockets dealt with counterfeiting, horse stealing, Sabbath breaking, and "bonding out" bastards.⁶⁴ One of the few sources for recreating the courtroom scenario is the journal of Waightstill Avery.

After successfully defending his first client in a "Cause against a Hog thief" in Anson County Court, Avery proceeded to Rowan County, only to lose a petty larceny case that cost his client twenty-five lashes. Three months later, Avery prosecuted a case in Tryon County where he "got judgment and Execution of the Law of Moses upon" the defendant for "forty lashes save one."⁶⁵ An August 1769 trial illustrates the long, tedious orations involved in proceedings. The larceny trial began when Spencer, the king's attorney, "spoke an Hour and 11 minutes," followed by Avery as defense counsel who "answered him and spoke to all the Law and evidence that anyway affected the Cause at Bar in an Hour and 5 minutes," only to have Dunn, Spencer's co-counsel, close "with a Plea

or rather loose Declamation [for] 3 hours and 17 minutes." When the defendant was acquitted, Avery boasted of being "surrounded with a Flood of Clients and employed . . . in no less than 30 actions."⁶⁶ While spending five and a half hours on a petty crime might have been atypical, it partially explains the backlogged dockets and extended court days required to conduct business. Coastal attorneys handled the same type of cases, but generally involving higher sums and in a more refined atmosphere.

In Wilmington, New Bern, and Edenton, the brick courthouses were matters of civic pride and the center of the towns' social activities. Edenton's Chowan County Courthouse was (and is) one of the finest examples of Georgian architecture in North America. These auspicious settings stood in marked contrast to the western courts held in private residences until public funds could finance modest, usually wooden, structures.⁶⁷ North Carolina's leading attorneys practiced within these meticulously built eastern courthouses. Wilmington hosted Ashe, Hooper, Marmaduke Jones, Archibald Maclaine, Moore and Swann. New Bern, the capital after 1766, entertained Elmsley and Gordon. Edenton claimed the top of the legal pyramid, where by 1770 Charles Bondfield, Jasper Charlton, Cumming, Thomas Hodgson, Iredell, and Thomas Jones represented the town's elite. The key figure, however, was Johnston, the standard for measuring the other North Carolina practices.⁶⁸

Clothed in silk hose, silk laces, kid gloves, breeches, waistcoat, powdered wig, and lawyer's gown, Johnston epitomized

the successful eighteenth-century attorney. The legal fees alone from his approximately two hundred cases a year made him a wealthy man, but he supplemented his income by investing in real estate and overseas trade. By 1776 he was easily one of the wealthiest and most influential men in North Carolina. His letters indicate a sharp, business-like mind with an eye for every opportunity to enhance his standing or fortune. In the assembly, he promoted judicial reform, for "contemptible pettifoggers" were an injustice to the people and demeaning to the profession. In private practice, he conducted most of his affairs from his law office, though on occasion he rode circuit with Iredell. And his fee books indicate a principled man who remained within the limits of the law.⁶⁹ Indeed, Johnston's success was unrivaled in colonial North Carolina.

For the purpose of analyzing the bar's professionalism within a confined setting, three imprecise "types" of counties can be identified: the thirteen eastern "established" counties before 1750, the "peripheral" counties organized in the 1750s yet readily accessible to eastern attorneys, and "backcountry" counties organized in the 1750s removed from the eastern lawyers' sphere by distance and poor roads. Using New Hanover, Cumberland, and Rowan as the respective "types" of counties, distinct, evolving patterns appear.

At mid-century and continuing throughout the 1750s and early 1760s, the New Hanover bar remained the preserve of an elite whose roots were in the plantation economy of South Carolina. Combining planting, commerce, and law, men like

Ashe, John Burgwin, Marmaduke Jones, Moore, William Mouatt, and Swann monopolized court business. Wilmington, ideally situated along the navigable Northwest Cape Fear River, located at a major road network leading West, and the point of entry for Scotch Highlanders, experienced unforeseen prosperity in the mid-century boom. "New" lawyers who took advantage of this opportunity in the 1760s, the Cape Fear natives Arthur and Robert Howe, and the immigrants Maclaine and Hooper, followed the lead of the "established" attorneys. That is, they pursued diversified business interests, and with the exception of Hooper, confined their practices to a circle around Wilmington that included Brunswick, Bladen, Duplin, Onslow, and Cumberland counties. Cross Creek, the Cumberland County seat and an important transshipment center, attracted the lawyers because of its easy access and newly acquired wealth.⁷⁰ Beyond Cumberland, the eastern lawyers' furthest movement into the interior, an indigenous and recently-arrived legal guild held sway.

Organized in 1754, Cumberland County's legal affairs were handled by peripatetic eastern attorneys until the early 1760s. Besides the Wilmington lawyers Ashe, Burgwin, and Swann, others who traveled the New Hanover-Cumberland circuit included Plunkett Ballard, Henry Bull, Alernon Furnell, and David Gordon. Accounts indicate several resident lawyers in Cross Creek, but the only one tentatively identified is William Kennedy. Two perceptible changes occurred after 1763. On the one hand, the market attracted western attorneys from the recently organized

backcountry, thus ending the eastern bars' monopoly of the field. And as a direct result of this increased competition, the lawyers' average caseload declined, accompanied by the partial withdrawal from the court of New Hanover attorneys. Significantly, the western lawyers Fanning, Henderson, Martin, Spencer, and Williams did not or could not move beyond Cross Creek to challenge the entrenched coastal hierarchy.⁷¹ Quite possibly, then, Cross Creek and other "peripheral" courts were an artificial barrier or "mixing zone" between recognized spheres of practice.

The Rowan County Court, formed in 1753, provides a unique opportunity for detailing the bar's transformation from one of "pettifoggers" to one dominated by professionally-trained attorneys. Rowan, like Orange, Granville, Mecklenburg, and Anson counties, lacked "an indigenous aristocracy with a deeply ingrained sense of public responsibility" who by deferential custom were rewarded with court offices.⁷² It is almost certain that Rowan's first attorneys--Dunn, William Harrison, Hilliar, Edward Underhill, John Verrell--came from the ranks of "Middlin planters" who obtained influence in the absence of a recognized elite. Dunn, a cobbler or indentured servant before arriving in Rowan, has been treated above. Harrison and Verrell combined tavern keeping with their rural practices. Hilliar and Underhill, a Pennsylvanian "of Quaker persuasion," may have come West from Wilmington after failing to dent the entrenched coastal bar. Only when Cumming produced a license to practice in 1757 did a degree of professionalism come to

Rowan.⁷³ Quick behind Cumming were the law apprentices and college-educated entrepreneurs. Fanning arrived in 1759, Williams and Abner Nash in 1762, Henderson in 1763, Spencer and Martin in 1764, Hooper in 1768, and Avery in 1769. By 1770 these aggressive young men in their late twenties and early thirties controlled the bar and, with the exception of Fanning, became ardent Whigs among the largely disaffected backcountry.⁷⁴ Two decades of evolutionary change radically altered the configuration of the bar.

Clearly, by 1776 the North Carolina bar was a professional body, though less so than in Virginia and South Carolina. The colony's "new" lawyers, many from humble origins, gained entry into the still-permeable gentry class on the basis of their education, bearing, and initiative. Yet this was not a simple process, nor one that can be understood by looking only at the lawyers' professional training and court offices. Comprehending the lawyers' place in the social milieu demands that their interaction with the people be thoroughly recounted.

CHAPTER II

THE WORLD OF THE CAROLINA LAWYERS, 1746-1776

The gradual professionalization of the North Carolina bar from 1746 to 1776 encapsulates one aspect of the legal culture fostered by the colony's unprecedented growth, but it ignores equally important factors that determined where lawyers fit into the resulting social mosaic. Foremost to be considered are attitudes and values. That is, what were the lawyers' self-perceptions and, conversely, why ordinary citizens perceived attorneys in a given light. This interplay of frequently conflicting viewpoints often hinged on matters seemingly unrelated to the practice of law--personality, social standing, nationality, religion, business dealings, or politics. Confounding the problem is that what estranged one group of people from lawyers invariably attracted support from another segment of society whose interests were served by attorneys. It is necessary, therefore, to extract from a broad study of lawyers what alternately bonded or alienated them from the society that often unwillingly nurtured their success.

As in Virginia and South Carolina, court days in North Carolina were extremely important multipurpose events that allowed "all the inhabitants of the adjacent Country . . .

to Decide their lawsuits and other Differences" in an atmosphere that reaffirmed the social and economic bonds of the community.⁷⁵ Court proceedings were obviously intended to enforce law and order, but they also held another function. Ritualistic hearings, particularly in the early Albemarle and Cape Fear settlements, were designed to reinforce and confirm the existing social hierarchy. Deference was conveyed in the courtroom to the proven leaders of the community who served as justices and advocates, while outside the court the common folk seized upon the well-advertised holidays to socialize, relieve boredom, and perhaps to temporarily forget their isolated existence.

The quarterly celebration was, as the itinerent Anglican minister Charles Woodmason found in South Carolina, "a sort of Fair," where market "sales days" and land transactions combined with festivities and sporting events.⁷⁶ Apart from business and revelry, William Few recalled that as an impressionable youth he anxiously awaited court days for he "had no other way or means of learning but by attending the courts and hearing the principles of law discussed and settled" by attorneys who (often vainly) attempted to wax eloquent.⁷⁷ Although court days remained important throughout the colonial period of North Carolina, they took on a new guise in the wake of immigration and expansion.

The rapidity with which immigrants filled the backcountry, the heterogeneity of the western settlements, as well as the colony's changing economic structure, fundamentally altered

court days. Whereas law and bench had been governed by an entrenched, overwhelmingly English gentry who served from a sense of noblesse oblige, courts in "peripheral" and "back-country" counties attracted acquisitive men of diverse stock with pointedly pecuniary interests. They were power- and status-seeking individuals only faintly committed to public service and who could not by virtue of rank automatically secure deference from their neighbors.⁷⁸

The same three afflictions that "permanently reshaped" Virginia court days after 1750--"a dissolute gentry culture," "an unscrupulous legal profession" with alien tongue, "a rapacious merchant-creditor class"--besieged the new western North Carolina courts and to a lesser extent infiltrated the court bastions of the eastern elite.⁷⁹ Far from remaining "a sort of Fair," court days took on an increasingly serious, hostile air where litigation threatened rather than promoted social harmony. This new "Passion for Law Suits and Prosecutions," wrote Woodmason, did "not arise so much from a Love to Justice--Regard to the Laws--or the Good of Society--but from a Corruption of the Human Heart--not from Principle, but motives of Vexation."⁸⁰ Simply put, there was no consensus defining the community's interest, and the astute individual who grasped the awesome power of the courts could manipulate the medium for personal gain. Those woefully ignorant or semi-professional lawyers who fed on this "Spirit of Litigiousness" found a chilly reception on the part of the established planter-lawyers who discerned in them mere pretenders to

wealth and power.

The ruling families of North Carolina, the Swanns, Moseleys, Pollocks, Harveys, Dawsons, and Blounts in the Albemarle (steeped in Virginia culture), and the Moores, Ashes, Howes, Harnetts, and Drys in the Cape Fear (enamored with the aristocratic pretensions of Charleston), controlled every facet of the judicial process until settlers flocked to the piedmont.⁸¹ These pseudo-aristocrats were first and foremost planters, whose interest in law stemmed from an obligation to public service and an ability beyond their cruder neighbors. They were decidedly not professional lawyers. Landon Carter's indictment of the Virginia bar also reflects the dearth of professionalism among North Carolina lawyers: "Attorneys were always lookt upon as so many Copyers and their Knowledge only lay in knowing from whom to copy properly."⁸² Most of the planters who dabbled in law, however, probably agreed with the West Indian planter Thomas Iredell, uncle of James Iredell. Despite law being "a Profession dangerous to Virtue," attorneys were unavoidable in a "free country where the Laws are generally intricate." The colony should, therefore, avoid those "Vulgarly called petty Foggars" and license only those eminently qualified. Ideally, this would only include men of standing, but the exigencies of settlement forced the gentry to adjust.⁸³ Confronted with the need for professionals to interpret "intricate" laws and the social fluidity accompanying the colony's growth, the

small inner circle opened its ranks to the new lawyers.

By the early 1770s planters, "surgeons, lawyers, . . . [and] persons in the commercial line" formed the pinnacle of the "very few classes" the Englishman Smyth found in his travels across North Carolina.⁸⁴ Many of these new men used their experience, education, or letters of introduction to gain entree to genteel society; others relied upon relatives or European connections to gain a foothold in the province. Iredell, for one, gained his customs post through the influence of George Macartney, later son-in-law of Lord Bute, and his uncle, Henry McCulloh, the scheming land speculator. His cousin, Henry Eustace McCulloh, offered perhaps the best advice when he told his young relative to "cultivate Mr. [Samuel] Johnston's friendship and good opinion by every means in your power." Not only did Iredell find a mentor and friend in Johnston, but he later married his sister, the surest way for a young lawyer to be accepted by the first families.⁸⁵

Carolina's planter-lawyer gentry carefully selected mates from among distant relations or within their own class. Blood and common interest united the old guard long before the influx of new lawyers after 1760. Samuel Bridgen, a wealthy New Hanover County planter, merchant, town official, and part-time attorney, betrothed his daughter to Dr. Armand J. DeRosset, scion of an influential Wilmington family. John Dawson, a Williamsburg-trained attorney, married Penelope Johnston, daughter of Governor Gabriel Johnston. Ashe, Barker, Moore, and Swann also carefully married within their own class.⁸⁶

New lawyers also envisioned quick fortunes through opportunistic marriages. Caswell wed the daughter of William Herritage, his law teacher and clerk of the assembly. Hooper's estate came through marriage to Ann Clark, sister of General Thomas Clark. Maclaine inherited Wilmington property from his wife, Elizabeth Rowan, daughter of planter-merchant Jerome Rowan. Abner Nash acquired land and notoriety by marrying Justina Dobbs, the young widow of Governor Arthur Dobbs. Orange County lawyer Francis Nash united western and eastern gentry by exchanging vows with Sally Moore, daughter of Cape Fear patriarch Maurice Moore, Sr. and sister of New Brunswick justice-politician Maurice Moore, Jr.⁸⁷ Integrated into the highest social circles, lawyers reveled in the ambiance of the cultural hearths of Edenton and Wilmington, towns "so inconsiderable," wrote an unimpressed visitor, "that in England they would scarcely acquire the appellation of villages."⁸⁸

Established by an act of assembly in 1712, Edenton was North Carolina's principal town by mid-century. Assured of its identity and role in provincial matters, it was home to the colony's most refined, articulate elements. Cumming recalled that the hospitable townspeople received him with "humanity, friendship, promotion, perhaps more than my merit." After "dining and conversing with the most celebrated lawyers of Edenton," the fiery Boston lawyer Josiah Quincy, Jr. remarked that he, too, was impressed by the town's cordiality.⁸⁹ Men of stature who moved among the inner circle of prosperous lawyers and planters included George Brownrigg, the amateur scientist who presented his essay on peanut oil to the Royal

Society in 1769, Drs. William Cathcart and Robert Lenox, both trained at the University of Edinburgh, and merchant Joseph Hewes, a Princeton graduate soon to wield political power.⁹⁰ Business, religion, and fellowship bonded this select group to Edenton's lawyers--Barker, Charles Bondfield, Jasper Charlton, Cumming, Dawson, Thomas Hodgson, Arthur Howe, Iredell, Johnston, Robert Jones, Jr. and Thomas Jones.⁹¹

A profile of the Edenton bar's diversified economic interests clearly reveals where lawyers stood in the town's social hierarchy. Several attorneys made their initial fortunes in real estate, serving as land agents, collector of quitrents, or involved in private speculation. Those who, like Robert Jones, Jr. and Thomas Child, grew too rapacious or openly corrupt found themselves censored by their peers, but a healthy regard for land and a quick eye for profit generally brought approbation from the local gentry. In keeping with men of their rank, attorneys purchased or built handsome plantations around Edenton, held tracts of land in surrounding counties, possessed an office and town lots in Edenton and elsewhere, and invariably owned slaves. Attorneys were also an indivisible part of Edenton's commerce. Beside representing local and foreign firms in court, lawyers held partnerships in North Carolina businesses and invested in continental, West Indian, and European trade.⁹²

Samuel Johnston, once again, is the prime example of a lawyer with mercantile ties. Along with New Bern attorney Alexander Elmsley and South Carolinian Henry Laurens, Johnston financed several trading voyages, and after Elmsley returned

to England, the two garnered a share of the London trade. Peter DuBois handled Johnston's other business concerns in Wilmington, while relatives did the same in Dublin.⁹³ Few of Edenton's lawyers rivaled Johnston's active trading, but virtually every attorney depended upon commerce's uninhibited flow for a significant portion of his livelihood.

With two notable exceptions, Edenton's bar apparently staunchly supported the established Anglican Church. Johnston, for example, was a vestryman at St. Paul's Parish, while Barker, Bondfield, Dawson, Hodgson, Howe, Iredell, Robert Jones, Jr., and Thomas Jones were probably church members. Unlike their colleagues, deists Charlton and Cumming reflected "the intellectual rather than the moral nature" that was "exalted and worshipped" after the Great Awakening, which caused Iredell to lament the temporal pursuits of man. As a "counterpoise to the Libertine Writings of professed Deists,--whose Immoral Lives made them dread an Account hereafter--," Iredell preferred "the Writings of . . . great, learned & good Men" who stressed one's duty to serve mankind and "Principles of Sense & Reason." Iredell remained friends with his two deist colleagues, but his correspondence over the years indicated displeasure at many aspects of their personal lives. Nonetheless, Iredell and most of the Edenton gentry attended St. Paul's, and in a sense isolated themselves from the poorer townspeople who occasionally chastized that "damned set of people."⁹⁴

Recreational pursuits also distinguished lawyers and the Edenton gentry from the rest of the townspeople, partic-

ularly in their musical tastes. While the sophisticates prided themselves on the elegant balls that graced the Chowan Courthouse with chamber music and a fine orchestra, the lesser sorts, according to a visiting Irish doctor, contented themselves with "a Fiddle or a Bag-pipe . . . [or] if they can not produce Musick they will sing for themselves."⁹⁵ Likewise, if attorneys and their peers attended some of the same gaming houses, cockfights, or public events that attracted a cross section of the town, they remained aloof from the masses out of a sense of rank and refinement. When Iredell watched a man "exhibit Specimens of his Dexterity in Ballancing," he pointedly wrote in his diary that "the people . . . [in attendance] were the dregs of the town,--except a very few." Most reprehensible to Iredell, Johnston, and their staid associates were the "Scenes of Debauchery & Intemperance" encountered in taverns and "the innumerable Harpies to be met . . . in all disguises . . . at a Gaming house."⁹⁶ Drinking and gambling were "two very dangerous vices," warned Iredell, and he and temperate friends reprovngly noted immoderate indulgence. Backgammon, billiards, and a polite game of cards were more in vogue among genteel lawyers, though Iredell, for one, preferred contemplating "Natural and Moral Philosophy . . . Themes calculated to ennoble the soul" to such "idle" pastimes.⁹⁷ Outside of Edenton, the cultural veneer suffered a noticeable decline.

Despite the early presence of ostentatious South Carolina planters in the 1720s and 1730s, the Cape Fear and town of

Wilmington lacked the refinement of its northern rival until at least the 1770s. DuBois, a transplanted Edentonian, wrote Johnston in 1757 of his dismay at the "want of a Social Set" and the intolerable absence of "Lovers of Society" in Wilmington.⁹⁸ A professional bar, too, was inhibited since the "manner and customs of the people of Cape Fear, at that period, were not . . . favorable to a proficiency in legal science." The frustrated DuBois described one unscrupulous lawyer as being "Drunk as a Beast for two Entire days," rendering him "Incapable to attend his Business at Court. By which the Interest of his clients must undoubtedly have Suffered." In contrast to the drunken Edward Underhill, DuBois found a refined exception in the erudite Marmaduke Jones, whom he reluctantly praised for his "Chicaneries & Quirks of the Law and his Practise . . . of Confounding and Puzzling his adversaries['] witnesses."⁹⁹ DuBois' cultural isolation was soon resolved, however, for trade and immigration brought wealth and a cultured audience to the town.

Wilmington's flourishing trans-Atlantic trade had the obvious effect of attracting professional lawyers to the town. Attorneys again found clients among the merchants, and perhaps even more than the Edenton bar they combined business with law to secure a comfortable living. Hooper and Maclaine operated Wilmington businesses obtained through marriage, while John Burgwin was part-owner in the Burgwyn, Humphrey, & Co. trading firm and owner of the ten-ton sloop Philadelphia Packet, twelve-ton sloop Experiment, thirty-ton schooner Lark, and sixty-ton brig William. Wilmington's lawyers also invested

in backcountry trade and partially financed settlement schemes like Richard Henderson's Transylvania Company. In keeping with the traditional symbols of the Cape Fear gentry, a successful lawyer probably owned two or more impressive plantations, was a substantial slaveholder, possessed several town lots, and invariably attended St. James Anglican Church where rank entitled leading attorneys to a bench. In personal and private interests, lawyers were again inseparable from the ruling elite, and like their Edenton counterparts they reveled in socializing.¹⁰⁰

"Being the biggest [town] in the province and frequented by the greatest no. of merchants" by 1769, Wilmington had bypassed those DuBois had found content to "Drink Claret & Smoke Tobacco tile four in the morning" in 1757.¹⁰¹ Billiards, cards, gaming, and racing still thrived but with a new-found sense of restraint and propriety among the urban leaders. Town officials, including the lawyer immigrants Hooper and Maclaine, joined the dispersed plantation owners to give the port a tenuous claim to refinement, one more in line with Wilmington's aspirations. The Cape Fear Library Society, possibly headed by Maclaine, indicated a new literary interest within the town. Travelling companies of actors made irregular stops, and pretentious balls began to rival Edenton's for their provincial splendor. Janet Schaw, an arrogant Scot visitor, ridiculed the "laughable" dresses, dancing, and ceremonies she encountered, and found the music to "resembl[e] a Dutch picture, where the injudicious choice of the subject destroys the merit of the painting." Miss Schaw may have

accurately described the shortcomings by European standards, but her intemperate, snobbish remarks ignored the humble gains made by the town in little more than two decades of growth.¹⁰² Apart from Edenton and Wilmington, towns remained culturally underdeveloped into the Revolution yet not without recourse to boundless hospitality at the homes of the tight-knit gentry.

Three days after Avery arrived in Halifax from Williamsburg in March 1769 he only "narrowly escaped being intoxicated" at a "splendid ball" in the company of "a great Crowd of Lawyers." In Tarboro, the scholarly Milner repaid his neighbors with "very genteel entertainment [,] an elegant Supper, and a Ball . . . greatly embellished by a very numerous and brilliant Appearance of most charming Ladies" after his election to the assembly in 1772. Across the piedmont, where "Society . . . [was] but in her infancy," leading planters and attorneys like John Penn, John Williams, Francis Nash, and Henderson provided isolated havens for gentlemen travellers in the West upon letters of "recommendation and civility," thereby fostering personal ties traversing the colony.¹⁰³ Another province-wide outlet for comradeship existed in Masonic organizations.

The Grand Lodge's records are handicapped by critical gaps and shrouded in the vagaries of oral tradition. Nevertheless, the extant sources reveal that several prominent attorneys held membership and leadership positions before the Revolution, and that an even greater number joined after independence, when the order became synonymous with patriotism.

Of the six indentified pre-Revolutionary members of Wilmington's St. John's No. 213,--the colony's first lodge, founded in 1754--three were lawyers.¹⁰⁴ Near the same time, Caswell, then starting his legal career in Orange County and later a Grand Master of Masons, may have founded a second lodge at Hillsborough but the evidence is inconclusive. At New Bern, the colony's second lodge elected Chief Justice Martin Howard Grand Master and attorney-justice William Brimpage Grand Secretary. Halifax' Royal White Hart Lodge organized "a cross-section of . . . planting, business, and professional men" into the colony's most active chapter, among whom the "handsomely educated" Milner served as Deputy Master and Duputy Grand Master.¹⁰⁵ Unlike the other orders, Edenton's Unanimity Lodge only attracted Charlton from the lawyer elite before the Revolution. As the Freemasons' historian suggests, the lesser merchants and innkeepers who founded the chapter possibly alienated the proper attorneys because of their penchant for "no limitation to good moral songs and toasts." Meeting "with white Stockings, white Aprons & Gloves" in taverns until a "regular Constituted Lodge" was built, drunkenness was a constant concern and conceivably repelled many lawyers (especially in Edenton) who might otherwise have joined. Self-regulation, support for the rebellion, and a commitment to public service brought new members from the bar, including nearly every attorney that held an important governmental office from 1776 to 1800.¹⁰⁶ Thereafter the bar and the Masons remained exclusive groups,

mutually supportive and always conscious of the social landscape.

If there is little doubt that the Carolina gentry widely accepted lawyers, it is intriguing to explore how non-elite North Carolinians responded to attorneys. Were lawyers, for example, considered promoters of the public good? Or, at the other extreme, were they viewed as disruptive elements feeding on human frailties? Answers must be inductive because few expressed sentiments have survived. The available evidence indicates, however, that professional lawyers, acting strictly in a legal capacity, often appeared as self-serving, corrupt, and potentially dangerous to property. At the same time, many saw attorneys as an inherent part of the English common law system. Like taxes, attorneys were endured, avoided if possible, and best encountered infrequently. Given the human tendency toward self-interest, attorneys were also effective tools (or scapegoats) for individuals who profited (or suffered) from their services. In short, despite a lingering sense of anti-professionalism, how any one person viewed lawyers probably depended upon whether the individual hoped to benefit from the bar, or whether past experiences with the courts had been favorable.

Charges of corruption, real or imagined, and the attendant loss of virtue haunted the bar throughout North Carolina. Pointedly, the "ancient English prejudice against lawyers" and the persisting effects of the Great Awakening constituted a part of the hostility. George Whitefield's Journal had, after all, preached that "the Business of an Attorney" was

"unlawful for a Christian, at least exceeding dangerous,
Avoid it therefore, and glorify God in Some other Station." ¹⁰⁷

Far more important to understanding the complaints of corruption was that, to the public, lawyers' unethical practices were demonstrably true--the people saw lawyers in numerous guises perpetrate multiple injustices. George Sims, a schoolmaster and moderately successful planter, expressed what became the core of the Regulators' grievances in a June 1765 "Address to the People of Granville County." Sims condemned the courthouse rings that seized property "Not to satisfy the just debts which you have contracted," he told his audience, "but to satisfy the cursed exorbitant demands of the Clerks, Lawyers, and Sheriffs." ¹⁰⁸ Sims' language and symbols touched receptive nerve endings, especially when the Regulators later reinforced the same images again and again. Defendants and plaintiffs alike saw lawyers divide services easily handled by one practitioner and then charge several fees. Rumors abounded of lawyers prolonging litigation, conspiring to prevent justice, and even counterfeiting. "The practice of law . . . in this province," concluded the Englishman Smyth, was "peculiarly lucrative, and extremely oppressive," a point not lost on the humble citizens who measured the distance between their own and lawyers' standard of living. ¹⁰⁹ It is easy to exaggerate the anti-lawyer sentiment, however, simply because it was recorded. It is more difficult, yet equally important, to identify the people within North Carolina who welcomed the lawyers' presence.

Whatever their European sentiments, Scotch Highlanders

(and conceivably Lowlanders) possessed of a "spirit of emigration" in the 1760s and 1770s who sought opportunity in North Carolina had good reason to favor lawyers.¹¹⁰ Upon arriving, the Highlanders moved inland to recreate clannish, Gaelic, farm communities in the Upper Cape Fear counties of Cumberland and Anson, or they remained in Brunswick and Wilmington, the points of entry and key commercial links to the interior, to become merchants, "skilled mechanics," or professionals. The propagandist "Scotus Americanus" enticed his countrymen with the lure that "lawyers and physicians are here respected," and he could point to several Scotsmen who owned lucrative practices.¹¹¹ For the majority of Highlanders, trade and religion are the best arguments for concluding that the immigrants accepted lawyers.

Quite simply, interior Highlanders relied upon merchant clansmen like Robert Hogg and Samuel Campbell to export their cattle and lesser amounts of naval stores from Wilmington. They, in turn, utilized lawyers to prosecute their claims in court and to handle European bills of credit. Prosecuting debts obviously endeared attorneys to the merchants, yet it less obviously benefitted Scotch commercial farmers who prospered in a sound, unhindered market. It is reasonable to assume, therefore, that as long as this economic arrangement remained mutually beneficial that coastal merchants and interior producers-consumers welcomed an alliance with the principally English lawyers.¹¹² A second motive was religion. While most coastal lawyers were Anglicans, not all opposed the

Highlanders' Presbyterianism and several supported the rights of its clergymen to perform marriages and civil services outside of the established church. Backcountry lawyers Avery, Fanning, Spencer, and Martin were Presbyterians who strongly pushed the church's interests and rather easily convinced Governor Tryon to endorse their plans, one being the short-lived Queens College at Charlotte. In part, this might explain the Highlanders' readiness to volunteer when Tryon moved against the rebels.¹¹³

The devout German Moravians also numbered lawyers among their "various friends," despite the brethren's displeasure at courtroom oaths and having to "hold trials in criminal causes according to the law as it . . . exists, . . . not, as in Germany, according to Justice and right."¹¹⁴ Periodically resented by English and Scotch-Irish neighbors for the unrivaled success of their communal farming, their shrewd business practices, their support for Governor Tryon against the insurgents, and finally for refusing to renounce their "true and loyal spirit" toward King George, the Moravians in each case found protectors in lawyer "friends" Caswell, Dunn, Henderson, Martin, and Abner Nash.

When petitioning for local government in 1770, the brethren enlisted the aid of lawyers who lobbied for the creation of Surry County, which incorporated the Moravian settlements of Bethabara, Salem, and most of the Wachovia tract. During the superior court battles between the governor and lower house three years later, the Moravians carefully sidestepped the constitutional issues at stake and

instead supported the faction that brought order to the lawless backcountry. They readily welcomed Caswell's Court of Oyer and Terminer convened by order of Governor Martin in 1773, but they also acknowledged the propaganda of lawyer "friends" in the "Presbyterian Party" who blamed the governor for closing the courts. Unable to convert the Moravians from their allegiance to King George, Patriot attorneys like William Kennon, the "walking delegate for the Whigs in the backcountry," still guaranteed the brethren's pacific neutrality during the Revolution.¹¹⁵ Just as lawyers used the political forum to help the Moravians, they used the same mechanism in the thirty years before the Revolution to promote their own personal and professional interests.

Jack P. Greene's observation that "a knowledge of the law seems to have been a quick and easy avenue to political power" in North Carolina is indeed correct.¹¹⁶ Election to the assembly or appointment to the council brought status and influence, a limited source of income, inside information about the inner workings and direction of colonial government, and association with powerful men who could reward favored candidates with a host of lucrative offices. Legislative power spilled over into the judicial realm, where the lower house consistently defended its right to pass inferior and superior court bills that favored the interests of its members who invariably served as justices of the peace. Legislation regulating the bar, quitrents, land speculation, currency, trade, internal improvements, townships, and new counties--all matters relative to the multiple concerns of lawyers--

emanated from the political forum. Of necessity, therefore, attorneys concerned themselves with the infighting among North Carolina politicians and the struggles with royal officials.¹¹⁷

Governor Dobbs highlighted attorneys' involvement in politics when he complained to London in 1760 that Attorney General Thomas Child and his "Junto of Lawyers" intended to "procur[e] the Government . . . for themselves and their friends." Dobbs' frustration resulted from nearly seven years of wrangling with the lawyer-led assembly over appointments, corruption, court bills, and finance.¹¹⁸ The governor's final confrontation with the lower house and the first leading up to the Revolution came four years later on October 29, 1764, over the Sugar Act. A committee of seven assemblymen, three of whom were lawyers, informed Dobbs that the "new Taxes and Impositions laid on us without our Privy and Consent [are] . . . against what we esteem our Inherent right and exclusive privilege of Imposing our own Taxes." North Carolina thus joined New York as the only two colonies to denounce the act as a revenue tax. William Tryon, recently appointed lieutenant governor, succeeded Dobbs in March and inherited a recalcitrant assembly on the eve of the Stamp Act's passage.¹¹⁹

Perceptively, Governor Tryon tempered the colony's response to the Stamp Act by his refusal to convene the assembly from May 1765 until October 1766, hence denying the North Carolinians a vehicle for united action. Freed from the obstreperous assembly, Tryon effectively isolated resistance to the Lower Cape Fear, where trade through Port Brunswick

had virtually halted while awaiting stamps.¹²⁰ In protest against the "impolitic" Stamp Act and the principle of virtual representation, Maurice Moore of Brunswick County published The Justice and Policy of Taxing the American Colonies in Great Britain. Tryon removed Moore from the superior court bench for his intemperate work, only to reinstate him in 1768 for "His proper Conduct and Behavior since that period."¹²¹

A more serious challenge to Tryon's authority came in November 1765 when fifty leading "Gentlemen" from Bladen, New Hanover, and Brunswick counties refused to support the Stamp Act, even after the governor offered to pay the duties, because it was "destructive of these Liberties which, as British subjects, we have a Right to enjoy in common with Great Britain." Given the composition and location of the meeting, several of the unidentified "Gentlemen" were probably lawyers. Pressured by the local leaders who warned of continued rioting in Wilmington and a possible march on the town, Tryon left the despised stamps aboard ship and opened the ports.¹²² One unforeseen result of Tryon's good faith was the harmony between governor and lawyers.

Blessed with a backlog of cases, attorneys heartily welcomed the reopened courts and the removal of a tax on court registered documents. Besides a return to normal court business after the repeal of the Stamp Act, lawyers benefitted from Tryon's shrewd appointments. Tryon clearly recognized the politics involved in selecting judges. In

naming a replacement for Moore, whom Tryon correctly concluded had "no great sphere of popularity in other parts," the governor chose the less qualified yet widely connected Robert Howe. The flamboyant Howe, wrote a laudatory biographer, was a man "whose imagination fascinated, whose repartee overpowered, and whose conversation was enlivened by strains of exquisite raillery." Bluster and deceit might better describe Howe, though for Tryon's immediate purposes it was a wise appointment. Impressive legal qualifications underscored Tryon's nomination of Dewey as an associate justice in 1768, but politics was co-determinant in Henderson's case. Tryon calculated, erroneously as it turned out, that the disgruntled backcountry settlers would "be happy at having such a Distinction paid to one who resides among them, and for whom they entertain an Esteem."¹²³ Unfortunately for Tryon, Henderson's presence did little to relieve the fundamental problems that inspired the Regulation.

It is far beyond the scope or intent of this thesis to extensively discuss the multiple "causes" of the Regulation or to rehash the historiographical debate revolving around the works of A. Roger Ekirch, Marvin L. Michael Kay, and James P. Whittenburg.¹²⁴ To conclude, however, that the Regulation represented class conflict (Kay) or, the antithesis, that "social tensions of the sort depicted by an increasing number of historians played no role in the backcountry," (Ekirch) is unwarranted given the materials on Regulators and non-Regulators alike. More to the point here is how lawyers responded to, or were indicted by, the "Savage

Disturbers of the public Tranquility" who threatened both their person and, so it seemed, their social position.¹²⁵

Regardless of the various explanations for the Regulation, lawyers figure prominently among the culprits, if not as practicing attorneys then as judges, court or local officials, land agents, or elected representatives. Corruption among the courthouse rings, the most often cited grievance, invariably tainted lawyers. Along with clerks, merchants, and sheriffs, attorneys were accused of exploiting the inequitable tax system, crop failures, currency shortages, and unsettled land titles by bringing suit or seizing property for public auction in indebtedness. Beset with rapid settlement, cultural diversity, and religious intolerance, the backcountry struggled for cohesion amidst the chaos of the 1750s and 1760s. In this process, lawyers were not, at least to many Regulators, responsible, "public-spirited, independent proprietors" who promoted the common weal. Rather, the bar was self-serving, avaricious, and usually transient. In a time of fear and frustration, lawyers were an affliction, a visible source of impending trouble, perhaps even someone to blame for the unsolvable troubles confronting the individual.¹²⁶

While the overwhelming majority of westerners supported the Regulators, not all sympathizers hated lawyers. None other than the caustic Regulator leader Herman Husband admitted as late as 1770 that "such Men as have studied the Law from a Motive purely for the Good of their Country" helped "preserve our Liberties as they ought to be Preserved."¹²⁷

Yet this was precisely what Husband found sadly lacking in the West. Whereas a certain unity among eastern Carolina's lawyers, judges, and politicians promoted the common interest, the backcountry's triumvirate promoted a narrow faction. "Mark any clerk, lawyer or Scotch merchant," advised Husband, for their "interests jar with the interest of the public good." As if to parry Husband's thrust Spencer, then court clerk in Anson County, insisted that it was the "Rabble," "transient Persons, New Comers, [and] Desperadoes" in the Regulators' ranks who refused to pay taxes that threatened order.¹²⁸

Such rejoinders from attorneys like Spencer carried little weight, however, for the opulence and imperious manner of men like Fanning lent credence to Husband's rhetoric. Rednap Howell's famous rhyme captures the resentment against Fanning and his acquisitive breed:

When Fanning first to Orange came
 He looked both pale and wearworn
 An old patched coat upon his back
 An old mare he rode on

Both man and horse won't worth five pounds
 As I've often been told
 But by his civil robberies
 He's laced his coat with gold.¹²⁹

Undoubtedly, Regulators like Howell and Husband felt a sliver of truth in their claim that "Lawyers . . . [had] become the greatest Burden and Bane of Society that we have to struggle under." Nevertheless, these men were propagandists waging a polemical war against backcountry adversaries and the eastern power structure. The prize was

broad-based support from the countryside and the sympathetic colonial press which, by convoluted logic, projected the Regulators as victims of a royal plot against their liberties. Moreover, the anti-lawyer rhetoric was symbolic, designed to play upon latent fear of a little understood yet conceivably dangerous profession. When Husband and the Regulator polemicists preached that "lawyers use us as we do our flocks, they kill one here and there, or pluck us well," they aroused images of corruption and conspiracy, the twin evils denounced in Country thought.¹³⁰ For Husband, then, and probably most colonial spokesmen, Country ideas were as much propaganda as a long-held-ideology. But lawyers' success and often galling lack of tact provided the substance to transform propaganda into gospel.

Although it is impossible to exonerate lawyers of corruption or, more particularly, of charging exorbitant fees, the account books of Waightstill Avery, (probably) John Dunn, and an as yet unidentified third lawyer do not substantiate the Regulators' claims. Like Johnston's in the East, the fee books approximate the 1s. 5d. for inferior court cases and 3s. 10d. for "legacies" in superior court charged by custom and after 1771 by statute. Francis Nash even offered to refund excess fees in 1766 and 1768 to those who felt he had overcharged them as clerk of the Orange County Court. Surprisingly, no one seems to have accepted his offer.¹³¹ Questionable ethics, insensitivity, and pretentiousness were just indictments against lawyers, and

they collectively suggested illegality during hard times. By the fall of 1770, four years of frustration had convinced the Regulators that the governor and assembly had forever shunned judicial and tax reform. The result was the Hillsborough Riot on September 24 and 25.

Aside from anti-lawyer riots in Monmouth County, New Jersey in 1769 and 1770, the assault upon Hillsboro's attorneys was unique in colonial America. On the morning of the twenty-fourth, James Hunter and perhaps 150 "Insurgents" disrupted Henderson's court, and after a temporary lull vented "their Rage and Madness" on lawyers and court officers. They "cruelly abused" John Williams, a "Gentleman of the Law," with "Clubs and sticks of enormous Size." "Dragged and paraded through the streets," king's deputy Hooper received "every mark of contempt and insults." Quickly reaching mass frenzy, Fanning was "dragged . . . down the steps, his head striking violently on every step, . . . spit and spurned" upon, kicked, whipped, and hit with brickbats, and clubs until "one of His Eyes was almost beaten out."¹³² While four other lawyers and officials were being whipped, the rest of the bar "Timorously made their escape." After having "fully glutted their revenge on the lawyers," reported the Virginia Gazette, the Regulators seized the body of a "negro that had been executed some time, and placed him at the lawyers' bar, and filled the Judge's seat with human excrement" in "contempt of the characters that fill those respectable places." Still not satiated, the rioters "broke

and entered" Fanning's "Mansion House, destroyed every Article of Furniture, . . . laid the Fabrick level with its Foundation," and ravaged his papers.¹³³ The riot finally ran its course and the Regulators left town the next day after only random "Mischief."

Understandably outraged at the attacks, Governor Tryon alerted militia commanders for possible action and called for a special session of the assembly to meet two months later in New Bern of December 5. Lawyers held a key place in the deliberations and events thereafter. In the meantime, Tryon requested Attorney General McGuire's legal opinion of the Hillsborough Riot, who surprised the governor by finding the disruption "only a misdemeanour . . . of the highest Nature," certainly not "sufficient to Convict a man of High Treason."¹³⁴ Restrained by McGuire's advice and petitions from the Regulators eschewing violence, Tryon patiently awaited the assemblymen whom he hoped would pass desperately needed reforms yet also punish the rioters. Tensions heightened on the eve of the session when Regulator "general" James Hunter wrote Moore that it was the "exactions" of "Lawyers, clerks, register, sheriffs &c." that caused "so much irregularity in the province" and further accused attorneys Milner and Francis Nash of being among the "banditti" who had imprisoned Husband two years earlier when serving as his defense counsel. The assembly convened amidst increasingly slanderous attacks and rumors of an impending march on the capital.¹³⁵

Several North Carolina scholars have rightly noted that

Tryon exhorted the assembly to redress the Regulators' just grievances. Somewhat overlooked by these historians is that Tryon, faced with little alternative, simultaneously asked the assembly to "surpress" the "Insurgents" whose "brutal licentiousness" threatened "Social Liberty."¹³⁶ Lawyers in the assembly helped draft both strands of legislation. A seven man committee (five lawyers) prepared the assembly's response to the governor's opening address. The report, presented by Moore on December 10, promised among other things to limit the fees of attorneys and public officials and to enact "spirited and decisive" measures against the Regulators. As practical committeemen, Caswell, Dunn, Fanning, Howe, Johnson, Moore, and Abner Nash supported the governor's reforms.¹³⁷ Having a greater effect was the lawyers' role in the two acts that Ekirch convincingly argues confirmed the Regulators' fears "that a despotic tyranny truly ruled in the highest echelons of provincial government."¹³⁸

On December 20, 1770, a committee of the whole expelled Husband from the house for "Malicious and Seditious Libel" of Moore in a December 14 issue of the New Bern Gazette. Now without immunity from arrest, Husband was jailed in New Bern, more to prevent him from inciting the Regulators than from an indictable offense. Two days later, Howe's motion granting emergency powers to Tryon should the Regulators attempt to free Husband passed with little or no opposition.¹³⁹ Acting upon rumors of Regulator gatherings, the assembly adopted Johnston's infamous riot act on January 15, 1771, a month

after its introduction and the second event to exacerbate the situation. Harsher than its English counterpart, it called for ex post Facto prosecutions of Regulators who had interrupted the courts since March 1, 1770, it denied defendants the right to a trial in the district of the alleged crime, it refused clergy to "unlawfully, tumultuously and riotously assembled" felons apprehended under the new act, and it effectively outlawed those who refused to surrender within sixty days. Even Iredell admitted that it was a "severe" measure, but concluded that "desperate diseases must have desperate Remedies." The Board of Trade ultimately overturned the bill, but after it had served its intended purpose in suppressing the rebels.¹⁴⁰

Husbands' release on February 8 only temporarily placated the Regulators, whose leaders still faced charges under the Johnston Riot Act for Hillsborough. Denouncing Tryon as a "Friend to the Lawyers," a group of Regulators seized Avery on March 6, whereupon one ominously implied that "We shall be forced to kill all the Clerks and Lawyers, and We will kill them and I'll be damned if they are not put to Death." Avery was freed, but not before hearing Fanning declared an outlaw and Moore a "Rascal, Rogue, Villian, and Scoundrel." Avery's fate might have been different a week later after a New Bern Court of Oyer and Terminer (March 11-15) had arraigned sixty-two Regulators for their participation in the Hillsborough riots. When the court adjourned, Tryon concluded that only armed force would "compel the Insurgents to Obedience to

the Laws."¹⁴¹

Iredell's "desperate" remedy proved to be Governor Tryon's rout of the Regulators at Alamance Creek on May 14, aided in part by militia officers cum lawyers Caswell, Dunn, Fanning, Howe, Martin, Abner and Francis Nash, and Spencer. Nine militiamen and nine Regulators were killed, followed by the illustrative execution of a captured rebel. Twelve Regulators were brought to trial on May 30 before the superior court justices at Hillsborough, and six subsequently hanged for treason.¹⁴² Ostensibly the victors, the government and bar reaped criticism in some surprising quarters.

Newspapers from South Carolina to New Hampshire hailed the Regulators as victims of an oppressive English governor in league with corrupt local officials. Men normally aligned with provincial elites found the contaminated political and judicial systems repulsive. Virginian Richard Henry Lee found Tryon's "dirty work" at Alamance Creek contrary to the "common cause of Mankind," but identified the source of the trouble as "the Lawyers, bad everywhere, . . . but in Carolina worse than bad, having long abused the people in the most infamous manner. . . ." In the Massachusetts Spy, "Leonidas" charged Tryon with being a "Patron of Pettifoggers" who perpetrated "enormous Villanies" against the people. Writing in the Virginia Gazette, "Atticus," almost certainly the inconsistent Maurice Moore, accused Tryon of gross interference in the Hillsborough trials. Even Robert Schaw, an elitist Cape Fear merchant who commanded a militia regiment

at Alamance Creek, insisted two years later that the "rapacity" and "oppression of pettyfogging attorneys . . . had been the original cause of the rebellion."¹⁴³ Still, North Carolina's lawyers supported the government's action and the bar itself even found an occasional defender.

Tredell's colleagues certainly agreed with him that the "horrid . . . miseries of civil war" resulted from the Regulators' threat to life and property, hence justified the use of force. "Procion" in the Virginia Gazette hinted that it was clerks, not lawyers and justices, who had taken "great and unwarrantable fees." After all, he continued, "The Reputation of a Judge, any more than the Chastity of a Woman, should not even be suspected." The tone of "Procion's" letter implied that a lawyer's reputation was equally sacrosanct.¹⁴⁴ Such support outside of North Carolina was rare, however, but within eighteen months the colony's lawyers and politicians had been welcomed back into the Whig fold.

The expiration of the Court Bill on January 1, 1773, drove the final wedge between the assembly and the governor, backed by the council. Josiah Martin, Tryon's unfortunate successor since August 1771, had already struggled with the assembly over £60,000 in arrears remaining from Tryon's expedition.¹⁴⁵ The immediate issues in 1773 were economic and constitutional, both of which held serious consequences for lawyers.

The crown provoked the deadlock when it refused to accept a new law containing the right of attachment, the

legal mechanism whereby North Carolinians seized the property of non-resident English debtors and claimed the right to try the case in colonial courts. Previous court bills stating the right of attachment and had been confirmed without comment. Pressure from English merchants and attachment's novelty in English Common Law forced the Board of Trade to revise its position. All Carolina creditors resented the crown's decision, none more so than Johnston and Chief Justice Howard who had resorted to attachment. If attachment alone was not enough to open an irreparable breach, the lingering resentment over judge's tenure and the crown's undisguised attempt at limiting the power of the county courts dashed hopes of any compromise. The lower house responded by passing the same bill it had in 1767. Knowing that London would disallow the act, Martin agreed to the bill but added a suspending clause that closed the superior and inferior courts until the crown responded.¹⁴⁶

Faced with a backlog of criminal and civil cases in the spring of 1773, Martin used the power authorized in his instructions to convene courts of oyer and terminer without consulting the assembly, a procedure alien to provincial custom and sure to anger the representatives. Virtually all lawyers erringly agreed with Hooper that the courts were "unconstitutionally framed," but they had little recourse since the assembly was prorogued until December and the absence of courts invited anarchy. The prerogative courts were essential, wrote Chief Justice Howard, "to keep the People in

some Bound and the convince them that a power of Punishment remains altho the Court Law is expired." Governor Martin, conscious of the rights of law-abiding citizens, insisted that the "interiour Parts" supported him because "the only Means, during the present Suspensions of Courts of Justice, to protect them from that Licentiousness and Outrage which but too soon appeared" were the courts of oyer and terminer.¹⁴⁷

Fragmentary evidence indicates that many people, particularly in the West, did, in fact, support the governor. It was the elites--lawyers, wealthy planters, merchants--who utilized the courts as debt collection agencies that pressed the constitutional arguments in the assembly. Lawyers found themselves in a discomfoting no-win situation: if attorneys supported the assembly, they were denied an income from the closed courts; if creditors relinquished the right of attachment, lawyers lost clients and hurt their own business interests.¹⁴⁸

When the assembly reconvened in December, lawyers, with the notable exception of Moore, backed Speaker John Harvey's position that criminal courts were illegal without the assembly's approval, therefore no funds should be appropriated for the courts of oyer and terminer. Now without any courts, seven representatives (including lawyers Caswell, Hooper, Johnston, Martin, Moore) were tasked with drafting new court bills. The only concession recommended by the committee was to establish salaries for county justices independent of fees, otherwise the same inferior and superior court bills were presented to the whole house. Martin immediately vetoed the bills

and prorogued the assembly until March. Undoubtedly, the governor relished in the fact that the lawyers who had framed the assembly's arguments suffered a loss of income in the judicial hiatus.¹⁴⁹

During the court interregnum, visitors and North Carolina lawyers alike commented on the effects of the deadlock. Boston's Josiah Quincy, Jr. found it "really curious; there are but five provincial laws in force through the colony, and no courts at all in being. No one can recover a debt, except before a single magistrate where the sums are within his jurisdiction, and offenders escape with impunity." Johnston echoed the same sentiments. "Without something is done speedily," he wrote Barker, "God knows what will become of us (I mean the Lawyers), . . . and the Merchants are not in a much more desirable situation. Some of the debtors going off daly [sic] to the Settlements to the Westward." Hooper also claimed privation. He pleaded with his mother not to send his younger brother to North Carolina because "We have no Courts God knows when we shall have them. I have difficulty enough to support my family. . . ." As the Hillsboro Recorder slightly exaggerated a half-century later, "law practitioners sacrificed their dependency for subsistence, and the other classes suffered greatly" during 1773 and 1774 until a partial settlement was reached.¹⁵⁰

Being a pragmatic man, Martin recognized that some concessions were unavoidable if the courts were to reopen. Grudgingly, he acknowledged the assembly's right to approve court

bills, and in return the assembly voted funds for courts of oyer and terminer and passed the crown's version of the inferior court bill. On the superior courts and the right of attachment, however, the governor adhered to his instructions even after the council had joined with the assembly in passing the same measure for the third time. A final veto signaled an impasse, and only the Revolution finally resolved the constitutional and economic principles at stake. "The issue of the courts," one scholar accurately concluded, "remained the single greatest source of discord between . . . [Martin] and local leaders" until the governor fled the colony.¹⁵¹

Assuredly, the recurring court interruptions influenced to some extent the Revolutionary politics of the bar. Unlike the legal fraternities in other colonies, North Carolina's lawyers were overwhelmingly Patriots and leading figures in the committees of correspondence, councils of safety, provincial congresses, and every facet of Revolutionary government. Indeed, Richard B. Morris' somewhat discredited maxim that independence resulted from "a revolution made and directed by a lawyer elite" retains a particular applicability in North Carolina.¹⁵² As lawyers had opportunistically sought power for over twenty years in the matrix of upheaval transforming the colony after mid-century, they readily filled the leadership void created by the departing royal government. The courtship of law and politics gave way to unbreakable marriage bonds, and together they determined the contours of the new state.

CHAPTER III

CONCLUSION

The professional bar evolved in North Carolina in the third quarter of the eighteenth century as one part of the economic and social complexity associated with early modernization. Whereas prior to 1750 the colony had been commercially underdeveloped and the European population spatially confined to the Atlantic seaboard, the ensuing twenty-five years witnessed the introduction of a profitable mixed economy and expansion westward into the Tennessee territory. Interior towns like Hillsborough and Salisbury matured as trade, governmental, and judicial centers, hence functioned as centripetal magnets to the merchants, politicians, and lawyers who benefitted from the changed Carolina landscape. For the same reasons, invigorated coastal towns like Edenton and Wilmington attracted aggressive, acquisitive men who recognized the manifold opportunities.

Lawyers, arguably more than any other group, understood this climate of change. Population growth and county organization dictated that the court system had to be expanded and reformed to meet with the demands of a litigious society. A market economy highly dependent on exports required a legal sophistication unlike that provided by local planter-attorneys only superficially versed in law. Enlightenment ideas about

man, government, and law stimulated intellectual debate among the bar, conducted in the heated atmosphere of the approaching break with Great Britain. All of these signal changes demanded professionalism from an intelligent group of men who by 1776 comprised a disproportionate number of North Carolina's military and political leaders. Revolution and statehood merely confirmed what was clear by 1776: the North Carolina bar had come of age, and it was a strapping youth destined to wield power.

APPENDIX A

A SELECT LIST OF NORTH CAROLINA LAWYERS, 1746-1776

Samuel Ashe	Alexander Gray	Thomas McGuire
Waightstill Avery	William Gray	Frederick Marshall
Winkett Ballard	Enoch Hall	Alexander Martin
Thomas Barker	Archibald Hamilton	James Milner
Charles Berry	William Harrison	Maurice Moore, Jr.
Charles Bondfield	Richard Henderson	William Mouatt
Benjamin Booth Boote	James Hepburn	Abner Nash
Henry Bowman	William Herritage	Francis Nash
Samuel Bridgen	Richard Hilliar	Richard Neale
William Brimmage	John Hodgson	Adlai Osborne
Henry Bull	Thomas Hodgson	John Pearson
John Burgwin	William Hooper	Henry Pendleton
Thomas Burke	Martin Howard	John Penn
Richard Caswell	Arthur Howe	Benjamin Prime
Asper Charlton	Robert Howe	John Quinn
William Charlton	James Iredell	Francis Ramsay
Thomas Child	Samuel Johnston, Jr.	Brumfield Redley
John Cooke	Marmaduke Jones	James (?) Reed
William Cumming	Robert Jones, Jr.	Lemuel Riddick
John Dawson	Thomas Jones	William Sharpe
Stephen Dewey	William Kennedy	James Smallwood
John Dunn	William Kennon	Samuel Spencer
Charles Elliot	John Kinchon	Samuel Swann
Alexander Elmsley	James Lockhart	Joseph Taylor
Edmund Fanning	Robert Lovett	Edmund Underhill
James Forsyth	? Lucas	John Verrell
Arcey Fowler	John Lutrell	James Williams
Nicholas Fox	Spruce Macay	John Williams
Algernon Furnell	Archibald Maclaine	Nathaniel Williams
Joshua Gabourel	Jerome Maclaine	
Henry Gifford	James McClure	
Patrick Duff Gordon	Henry E. McCulloh	

APPENDIX B

EUROPEAN-TRAINED LAWYERS

Apprenticeships/Universities

Alexander Elmsley - England
 Patrick Duff Gordon - Scotland
 Armaduke Jones - England
 Thomas Jones - England
 Richard Neale - King's Bench, London

Inns of Court

Gabriel Cathcart - Middle, 1763
 Thomas Child - Middle, 1746
 Henry Eustace McCulloh - Middle, 1757
 Thomas McGuire - Gray's, 1754
 Josiah Martin - Inner, 1756

APPENDIX C

UNIVERSITY-TRAINED LAWYERS

Harvard

John Hodgson
 Thomas Hodgson
 William Hooper

Yale

Edmund Fanning
 Samuel Johnston

Princeton

Waightstill Avery
 Alexander Martin
 Adlai Osborne
 Samuel Spencer

"Northern Schools"

Samuel Ashe
 Martin Howard
 Maurice Moore, Jr.

NOTES

¹ Quoted in David Hawke, The Colonial Experience (Indianapolis, 1976), p. 213; Hugh Talmadge Lefler and Albert Ray Newsome, North Carolina: The History of a Southern State, 3rd ed. (Chapel Hill, 1973), pp. 32-33.

² Ernest H. Alderman, "The North Carolina Colonial Bar," in The James Sprunt Studies in History and Political Science, XIII (1913), p. 5. Locke's guidelines also prohibited the lawyer from bargaining "directly or indirectly . . . with the party whose cause he is going to plead, for money, or any other reward for pleading his cause."

³ Ibid., p. 7.

⁴ Ibid., pp. 12, 15-17; Daniel J. Boorstin, The Americans: The Colonial Experience (New York, 1958), p. 197; A. G. Roeber, Faithful Magistrates and Republican Lawyers, Creators of Virginia Legal Culture, 1680-1810 (Chapel Hill, 1981), pp. 109, 121; Charles Warren, History of the American Bar, (Boston, 1913), pp. 3-5, 112-115. Boorstin notes that "The ancient English prejudice against lawyers secured new strength in America." A common complaint of small planters was that lawyers were "venal instruments of tyranny, bandits hired by gold to despoil them [husbandmen] of the fruits of their honest industry." Warren, History of the American Bar, pp. 113-114.

⁵ Don Higginbotham, ed., The Papers of James Iredell, 2 vols. (Raleigh, 1976), I: xxxix, hereafter cited as Iredell Papers; "Journal of a French Traveller in the Colonies, 1765," American Historical Review 26 (July 1921), p. 738; Harry Roy Merrens, Colonial North Carolina in the Eighteenth Century: A Study in Historical Geography (Chapel Hill, 1964), p. 91. The unknown French diarist noted that "the bar hurts this place much" in promoting trade.

⁶ Alderman, "The North Carolina Colonial Bar," p. 7; Ruth Blackwelder, The Age of Orange: Political and Intellectual Leadership in North Carolina, 1752-1861 (Charlotte, 1961), p. 17. Blackwelder quotes Julian P. Boyd's M. A. Thesis, "The County Court in Colonial North Carolina," to support her conclusions for Orange County. According to Boyd, the "judicial organ . . . was under the domination of the upper class and . . . its justices were primarily planters and not men of necessary legal training."

⁷ J. Bryan Grimes, ed., North Carolina Wills and Inventories (Raleigh, 1912), p. 508.

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⁸ Ibid., p. 317. A survey of the wills listed for the leading planters indicates that men of the "first rank" owned respectable libraries. See, for example, Frederick Jones, p. 275; John Lovick, p. 292; and Thomas Pollock, Sr., p. 345.

⁹ A. Roger Ekirch, "Poor Carolina," Politics and Society in Colonial North Carolina, 1729-1776 (Chapel Hill, 1981), pp. 127-133; Lefler and Newsome, History of a Southern State, pp. 77-78; Merrens, Study in Historical Geography, pp. 24, 53; Charles Grier Sellers, Jr., "Private Profits and British Colonial Policy: The Speculations of Henry McCulloh" William and Mary Quarterly, 3rd series, VIII (October 1951), pp. 538-547. Extrapolating backward from the 1790 Census, Merrens estimates that the population rose from between 65,000 to 75,000 in 1750, to between 175,000 and 185,000 in 1770. Lefler and Newsome suggest an increase from 50,000 in 1752 to 345,000 in 1775. David T. Morgan and William J. Schmidt offer a third figure of 260,000 in 1774. See, David T. Morgan and William J. Schmidt, North Carolinians in the Continental Congress (Winston-Salem, 1976), p. 47. Reconciling these figures is not necessary in dealing with the growth of a professional bar. Accepting either set of figures indicates at least a three-fold increase in a twenty year period.

¹⁰ David L. Corbitt, The Formation of North Carolina Counties, 1663-1943 (Raleigh, 1950), p. 295.

¹¹ Lucille Esther Brown, Lawyers and the Promotion of Justice (New York, 1938), p. 14; Iredell Papers, I: 238-239; "Journal of A French Traveller," p. 734; Merrens, Study in Historical Geography, pp. 89, 120, 142-172; Richard B. Morris, "The Legal Profession on the Eve of the Revolution," in Political Separation and Legal Continuity, ed. Harry W. Jones (Privately Printed, 1976), p. 8. John F. D. Smyth, an English traveller, remarked in 1775 that Hillsborough was "in a very promising state of improvement" and that "Halifax enjoys a tolerable share of commerce." See, John F. D. Smyth, A Tour in the United States of America, 2 vols. (London, 1784), I: 84, 160-161.

¹² Jackson Turner Main, The Social Structure of Revolutionary America (Princeton, 1965), pp. 101-113. In South Carolina, for example, out of 5000 probated estates before 1800, 3% were valued above £2000 sterling, whereas every lawyer's estate was above £2000.

¹³ Clement Eaton, "A Mirror of the Southern Lawyer: The Fee Books of Patrick Henry, Thomas Jefferson, and Waightstill Avery," William and Mary Quarterly, 3rd series, VIII (October 1951), pp. 526-527; Henry Eustace McCulloh to Edmund Fanning, in the McCulloh-Fanning Papers, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill; Main, Social Structure, p. 101; A. M.

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Wadell, "General Francis Nash," North Carolina Booklet XIV (October 1914), p. 78.

¹⁴ Carl Bridenbaugh, Myths and Realities, Societies of the Colonial South (Baton Rouge, 1952; reprint ed., New York, 1980), p. 133; "Journal of a French Traveller," pp. 737-738; Smyth, A Tour in the United States, I: 103.

¹⁵ Bridenbaugh, Myths and Realities, p. 136; Ekirch, "Poor Carolina," pp. 121, 157, 169-170; Richard J. Hooker, ed., The Carolina Backcountry on the Eve of the Revolution, The Journal and Other Writings of Charles Woodmason, Anglican Itinerant (Chapel Hill, 1953), pp. 80-81.

¹⁶ C. B. Alexander, "The Training of Richard Caswell," North Carolina Historical Review XXVI (January 1946), p. 13; Samuel A. Ashe, History of North Carolina, 2 vols. (Greensboro, 1908, reprint ed., Spartanburg, South Carolina, 1971), I: 328; Samuel Johnston, Sr. to Samuel Johnston, Jr., undated, 1754; Robert Palmer to ? January 1755; Thomas Barker to Samuel Johnston, Jr., October 1, 1755, in The Hayes Collection, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill, microfilm edition, reel 3, hereafter cited as Hayes Collection; Lefler and Newsome, History of a Southern State, p. 179.

¹⁷ "The Journal of James Auld, 1765-1770," Publications of the Southern Historical Association VIII (July 1904), p. 263. Other lawyers known to have been clerks were Charles Bondfield, John Burgwin, Richard Caswell, John Cooke, John Dunn, Edmund Fanning, Samuel Johnston, Jr., Thomas Jones, Francis Nash, and Adlai Osborne. I suspect this is a much abbreviated list.

¹⁸ Archibald Maclaine Hooper, "Memoir of Major General Robert Howe," unfinished manuscript, pp. 1-5, in the Archibald Maclaine Hooper Papers, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill; "Marriage Bonds of Rowan County," North Carolina Booklet XIII (January 1914), p. 192; Smyth, A Tour in the United States, II: 88.

¹⁹ Quoted in A. Roger Ekirch "The North Carolina Regulators on Liberty and Corruption, 1766-1771," Perspectives in American History, XI (1977-1978), p. 212.

²⁰ William S. Powell, ed., The Correspondence of William Tryon and Other Selected Papers, 2 vols. (Raleigh, 1980-1981), I: 115, 116n, hereafter cited as Tryon Papers.

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- 21 Iredell Papers, I: 103, 104n; Tryon Papers, I: 111n.
- 22 Thomas Barker to Samuel Johnston, Jr.; May 26, 1753, Hayes Collection, reel 2; Iredell Papers, I: 15-19.
- 23 Alexander, "Training of Richard Caswell," p. 14; Allen Johnson and Dumas Malone, eds., Dictionary of American Biography, 11 vols. (New York, 1965), III: 571, hereafter cited as DAB.
- 24 Walter C. Clark, "The Colony of Transylvania," North Carolina Booklet, III (January 1904), pp. 5-39; DAB, VIII: 530-531; John Langdon Sibley and Clifford K. Shipton, eds., Sibley's Harvard Graduates 17 vols. (Cambridge and Boston, 1873-1975), XIV: 160-161, hereafter cited as Sibley's; Smyth, A Tour in the United States, I; 124-125. Governor Arthur Dobbs slanderously attacked Jones as having been "bred a Weaver." See, William L. Saunders, Walter Clark, and Steven B. Weeks, eds., The Colonial and State Records of North Carolina, 30 vols. (Raleigh, 1886-1914; reprint ed., New York, 1968-1970), VI: 246, hereafter cited as Colonial Records.
- 25 DAB, VII: 383-384, 386-387; Roeber, Faithful Magistrates, pp. 112-159; Wadell, "General Francis Nash," p. 76.
- 26 Colonial Records, VI: 280; Roeber, Faithful Magistrates, pp. 101, 124.
- 27 Thomas Burke Papers, The Southern Historical Society Collection of the University of North Carolina Library, Chapel Hill, microfilm edition in possession of Colonial Williamsburg Research Department, reel 1, frame 8; Iredell Papers, I: 88n.
- 28 DAB, VII: 431; Lawrence F. Kennedy, comp., Biographical Dictionary of the American Congress, 1774-1971 (Washington, D. C., 1971), p. 1528; "Life of John Penn," attributed to John Taylor of Caroline, p. 3, in The Southern Historical Collection of the University of North Carolina Library, Chapel Hill.
- 29 Hillsboro Recorder, November 20, 1822, in the Archibald Maclaine Hooper Papers; Iredell Papers, I: xl, xlvi; James McLachlan, ed., Princetonians: A Biographical Dictionary, 1748-1768 (Princeton, 1976), p. 543, hereafter cited as Princetonians; Sibley's, XIV: 625.
- 30 Donald R. Lennon and Ida Brooks Kellam, eds., The Wilmington Town Book, 1743-1778 (Raleigh, 1973), p. 5n; Tryon Papers, I: 156, 574-575.
- 31 Tryon Papers, II: 319; James P. Whittenburg, "The North Carolina Regulators," (unpublished manuscript), p. 180. I am extremely grateful to Professor Whittenburg for allowing me to cite his work and for assistance in locating sources.

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32 Colonial Records, V:30-31.

33 Boorstin, The Colonial Experience, p. 197; J. G. de Roulhac Hamilton, "Southern Members of the Inns of Court," North Carolina Historical Review X (October 1933), p. 279; Lennon and Kellam eds., Wilmington Town Book, p. 64n; Tryon Papers, I: 53n, 100n, 329n, 407n, 530-531n; II: 15; Charles Warren, History of the Harvard Law School and of Early Legal Conditions in America, 3 vols. (New York, 1908), I:113. Hamilton should be used with care. I am omitting from his list Sir Richard Everhard, Enoch Hall, Sir Walter Raleigh, Benjamin Smith, and Alexander White because they had little to do with the time frame of this essay or because their practice was elsewhere. William Brimmage graduated from Gray's Inn in 1786 after fleeing North Carolina during the Revolution.

34 Colonial Records, IX: 607; X: 98; Robert O. Demond, The Loyalists in North Carolina During the Revolution (Durham, 1940), pp. 56, 104, 109; Eaton, "Mirror of the Southern Lawyer," p. 521; Iredell Papers, I: xlv, 248n. For a recent treatment of the political in-fighting and controversy over land patents, see Ekirch, "Poor Carolina," pp.112-147.

35 Sibley's, XIV: 625; XVI: 484.

36 Penelope Johnston to Samuel Johnston, Jr., February 16, 1752; Samuel Johnston, Sr. to Samuel Johnston, Jr., May 28, 1752, Hayes Collection, reel 2; Sibley's, XIV: 160. By "new" lawyers, I am referring to professionally-trained attorneys who transformed the nature of the bar c. 1746-1776.

37 Princetonians, pp. 157-160, 289-292, 543-545, 648-649. One nineteenth-century reviewer referred to Spencer as "an astute thinker" who "had the 'sap' and smell of the country in him." "Journal of James Auld," p. 253.

38 Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, Massachusetts, 1967), p. 100; William K. Boyd, ed., Some Eighteenth Century Tracts concerning North Carolina (Raleigh, 1927), pp. 159-161, hereafter cited as Eighteenth Century Tracts; DAB, VII: 133-134; Samuel Johnston, Jr. to Thomas Barker, August 20, 1766, Hayes Collection; Tryon Papers, I: 304n.

39 DAB, I: 386-387; Grimes, ed., North Carolina Wills, p. 16; Tryon Papers, I: 92n.

40 Iredell Papers, I: 173-206, passim; Thomas C. Parramore, Cradle of the Colony, The History of Chowan County and Edenton, North Carolina (Edenton, 1967), p. 29; Smyth, A Tour in the United States, I: 84-85.

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- 41 I. W. Holliday to Samuel Johnston, Jr., November 21, 1769; Joshua Bodley to Samuel Johnston, Jr., September 16, 1772, Hayes Collection, reels 2 and 3.
- 42 Eaton, "Mirror of the Southern Lawyer," p. 522; Morris, "Legal Profession on the Eve of the Revolution," pp. 15, 31n.
- 43 Iredell Papers, I: 74.
- 44 Alonzo Thomas Dill, Governor Tryon and His Palace (Chapel Hill, 1955), p. 58; Iredell Papers, I: 56n; Tryon Papers, I: 116n.
- 45 "The Autobiography of Col. William Few of Georgia, from the Original MS in possession of William Few Christi," Magazine of American History VII (July-December 1881), p.345; Hillsboro Recorder, November 27, 1822; Princetonians, pp. 157-160, 648. James Hassell and Sir Nathaniel Duckinfield were but two of the planter elite possessing "unusually fine" libraries.
- 46 Grimes, ed., North Carolina Wills, pp. 514-522; Thomas C. Parramore, Launching the Craft, The First Half-Century of Freemasonry in North Carolina (Raleigh, 1975), p. 29.
- 47 Inventory of Gabriel Johnston's Estate, February 20, 1756; Robert Thurston to Mr. Peter Elmsley, September 6, 1769, Hayes Collection, reel 2; Iredell Papers, I: xlv-xlvi; Parramore, Cradle of the Colony, p. 29.
- 48 Dill, Governor Tryon and His Palace, p. 58; Jo White Linn, ed., Abstracts of The Minutes of the Court of Pleas and Quarter Sessions Rowan County, North Carolina, 2 vols. (Salisbury, 1977), I: 102. A copy of Shakespeare's Works owned by the Cape Fear Library Society before the Revolution is in the North Carolina Collections of the University of North Carolina Library, Chapel Hill. The Cape Fear Library Society was founded in c. 1760. See, Lawrence Lee, New Hanover County . . . a brief history (Raleigh, 1971), p. 22. John Burgwin apparently purchased law books for Cumberland County in 1763, for which he was reimbursed. See, William C. Fields, ed., Abstracts of Minutes of the Court of Pleas and Quarter Sessions of Cumberland County, October 1755- January 1779, vol. 1 (Fayetteville, 1978), p. 140.
- 49 Tryon Papers, I: 514-531. Gordon, who changed his name from Patrick Gordon Duff, was accused of squandering the inheritance of his wards.
- 50 D. L. Corbitt, "Judicial Districts in North Carolina, 1746-1934," North Carolina Historical Review XII (January 1935), pp. 46-49; Charles Lee Raper, North Carolina: A Study in English

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Colonial Government, pp. 153-159.

51 Ashe, History of North Carolina, I: 288; Colonial Records, V: 259-260; Iredell Papers, I: 6-7; Raper, Colonial Government, pp. 153-159. The Assistant Judge was allowed to conduct trials in the absence of the Chief Justice due to the remoteness of Salisbury. Associate Judges included Stephen Dewey, Edmund Fanning, Patrick Duff Gordon, Richard Henderson, Marmaduke Jones, and Maurice Moore, Jr.

52 Corbitt, "Judicial Districts," pp. 47-49; Raper, Colonial Government, pp. 162-164; Roeber, Faithful Magistrates, pp. 73-113. Roeber describes this friction as "Court"- "Country" conflict.

53 Not until the Federalist and Anti-Federalist campaigns of the 1790s did the same anti-lawyer rhetoric appear in North Carolina newspapers.

54 Iredell Papers, I: 52n; William S. Powell, James K. Huhta, and Thomas J. Farnham, eds., The Regulators in North Carolina: A Documentary History, 1759-1776 (Raleigh, 1971), p. 587, hereafter cited as Regulator Documentary; Raper, Colonial Government, p. 150.

55 Quoted in Ekirch, "Poor Carolina," p. 117.

56 Ashe, History of North Carolina, I: 327; Colonial Records, VII: 485-487; Raper, Colonial Government, pp. 152-153; Tryon Papers, I: 525-526. Lawyers William Cumming, John Dunn, Alexander Elmsley, Marmaduke Jones, Abner Nash, Lemuel Riddick, Samuel Swann, Edward Underhill, and John Williams made a substantial income from serving as deputy ding's attorney. See the account book of June 2, 1761, in Hayes Collection, reel 2, and Tryon Papers, II: 437.

57 Quoted in Iredell Papers, I: 55ed. n.

58 Alderman, "Colonial Bar," p. 6; Colonial Records, VI: 289-291, 411.

59 Quoted in Iredell Papers, I: 55-56ed. n.

60 Ibid., 56ed. n.

61 Ibid., I: li, 106; Eaton, "Mirror of the Southern Lawyer," pp. 526-527; Merrens, Study in Historical Geography, pp. 144-145.

62 Jethro Rumble, A History of Rowan County, North Carolina (Salisbury, North Carolina, 1881; reprint ed., Baltimore, 1978), p. 57.

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63 Fields, ed., Cumberland County Court Abstracts, vol. 1; Linn, ed., Rowan County Court Abstracts, 2 vols.; Alexander M. Walker, ed., New Hanover County Court Minutes, 2 vols. (Bethesda, Maryland, 1958).

64 Eaton, "Mirror of the Southern Lawyer," p. 525; Linn, ed., Rowan County Court Abstracts, I: 1-2. A Richard Hellier (d. 1756) held substantial property in Wilmington but it is unknown if he was the same Richard Hilliar cited in Rowan County. See, Lennon and Kellam, eds., Wilmington Town Book, p. 2n.

65 Quoted in Eaton, "Mirror of the Southern Lawyer," p. 525; Linn, ed., Rowan County Court Abstracts, II: 91, 103-104.

66 Quoted in Eaton, "Mirror of the Southern Lawyer," p. 525.

67 Dill, Governor Tryon and His Palace, p. 58; Adelaide F. Fries, ed., Records of the Moravians in North Carolina, 9 vols. (Raleigh, 1922-1958), II: 634-645, hereafter cited as Records of the Moravians; Iredell Papers, I: xli-xlii; Lennon and Kellam, eds., Wilmington Town Book, pp. xxv-xxvi, xxviii.

68 These men, though still concerned with minor cases, represented the leading interests within North Carolina and those outside who utilized the courts. One particularly interesting piece of litigation involved Archibald Maclaine, the attorney for the Joseph Morris family of Philadelphia. For an account of this long, drawn out court case, see the Morris Family Papers in the North Carolina Collections of the University of North Carolina Library, Chapel Hill.

69 Samuel Johnston, Jr. to [?], February 17, 1759; Samuel Johnston, Jr.'s Fee Book for 1760; John Pearson to Samuel Johnston, Jr., July 2, 1773, Hayes Collection, reels 2 and 3; Iredell Papers, I: li, 56n.

70 Merrens, Study in Historical Geography, pp. 20, 144, 150-153, 159-160; Walker, ed., New Hanover County Court Minutes, I and II: passim.

71 Fields, ed., Cumberland County Extracts, vol. 1, passim; Merrens, Study in Historical Geography, pp. 27, 157-160. Wilmington lawyer William Hooper may have practiced in Cross Creek, though the records are blank. "Peripheral" lawyers included Henry Bowman, Henry Gifford, Darcy Fowler, James Hepburn, and Jerome Maclaine, possibly a relation of Archibald Maclaine.

72 Ekirch, "North Carolina Regulators," p. 209; Merrens, Study in Historical Geography, p. 27.

73 Ekirch, "North Carolina Regulators," p. 210; Linn, ed., Rowan County Court Extracts, I: 1-2, 41, 43, 45, 56, 74, 81, 89.

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74 Linn, ed., Rowan County Court Extracts, I: 107-144 passim, II: 14-104 passim.

75 "Journal of a French Traveller," pp. 738-739.

76 Hooker, ed., Writings of Charles Woodmason, p. 127; Roeber, Faithful Magistrates, pp. 74-75, 77-81; Charles S. Sydnor, American Revolutionaries in the Making (Chape Hill, 1952; reprint ed., New York, 1965), pp. 79-80. Many of my conclusions for North Carolina court days are drawn from evidence of Virginia and South Carolina court days. Until the extensive settlement of the backcountry and the introduction of a truly professional bar, I do not perceive of any significant differences in the patterns or importance of court days to North Carolinians.

77 "Autobiography of Col. William Few," p. 345. Few added that it "was to me the highest gratification to attend the courts and hear their [lawyers'] pleadings, and my ambition was excited to acquire the knowledge and ascendancy they seemed to possess."

78 Ekirch, "Poor Carolina," p. 173; James P. Whittenburg, "Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulation," William and Mary Quarterly, 3rd series, XXXIV (April 1977), pp. 228-229, 232.

79 Roeber, Faithful Magistrates, pp. 111, 113.

80 Hooker, ed., Writings of Charles Woodmason, pp. 127, 130-131. One example of trivial litigation can be found in Edward Holland, Jr. to Alexander McAllister, February 15, 1769, Hayes Collection, reel 2.

81 Iredell Papers, I: xxxix; Lefler and Newsome, History of a Southern State, pp. 114-116.

82 Quoted in Roeber, Faithful Magistrates, p. 77.

83 Iredell Papers, I: 76-77. Arthur Iredell, James' younger brother, also wrote him that "I shall be unfit for a Lawyer. Cheating being reputed a great Qualification in that Profession." Iredell Papers, I: 113.

84 Smyth, A Tour in the United States, I: 98.

85 Iredell Papers, I: xxxvii-xxxviii, xlvii, lix. Proclaiming that he had "formed an Attachment that nothing but my Life can end," Iredell asked Johnston for his sister's hand in marriage. See, James Iredell to Samuel Johnston, Jr., April 7, 1772, Hayes Collection, reel 3.

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86 DAB, I: 386, VII: 133-134; Iredell Papers, I: 88n, 103-104n; Lennon and Kellam, eds., Wilmington Town Book, p. 121n.

87 Alexander, "Training of Richard Caswell," p. 14; DAB, VII: 383; Lennon and Kellam, eds., Wilmington Town Book, pp. 125n, 174-175n; Waddell, "General Francis Nash," pp. 84-85. Johnston likewise enhanced his estate in 1770 when at thirty-seven he married the eighteen year-old daughter of Dr. William Cathcart. See, Samuel Johnston, Jr. to Thomas Barker, February 8, 1770, Hayes Collection, reel 2.

88 Smyth, A Tour in the United States, I: 98.

89 Quoted in Iredell Papers, I: xlvi.

90 Ibid., I: xlii-xlv.

91 The Hayes Collection is the best single source for re-creating the social and economic ties of Edenton's lawyers before the Revolution. See, for example, the will of William Cathcart, December 20, 1768; William Cathcart to Samuel Johnston, Jr., February 29, 1770; and an unidentified receipt dated May 28, 1770, Hayes Collection, reel 2. The Iredell Papers are equally valuable for the Revolutionary and Confederation periods.

92 Will of Thomas Jones, August 2, 1775, in the Blanche Baker Papers, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill; Record of John Hodgson's estate (1751), in the Edenton Papers, folder 2, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill; Ekirch, "Poor Carolina," pp. 134-144; Memorandum of Agreement, December 15, 1764; Bill of Sale, January, 1771; Letter of Indenture, March 19, 1772, Hayes Collection, reels 2 and 3; Margaret M. Hofman, ed., Northampton County, North Carolina 1759-1808, Geneological Abstract of Wills (Weldon, North Carolina, 1975), pp. 22-23; Iredell Papers, I: xliii; Linn, ed., Rowan County Court Extracts, I: 110; Henry Eustace McCulloh to Edmund Fanning, July 20, 1765; undated (1765?) letter, McCulloh-Fanning Papers; Purdie and Dixon's Virginia Gazette, October 17, 1766; August 10, 1769.

93 Edenton Papers, folder 3; Peter DuBois to Samuel Johnston, Jr., February 8, 1757; Bill of Receipt, May 26, 1764; Bill of Exchange, June 1767; Bill of Exchange, October 26, 1767; Francis Lott to Samuel Johnston, Jr., September 5, 1768; Henry Laurens to Samuel Johnston, Jr., April 3, 1769; May 24, 1769; June 16, 1769; April 13, 1771; Letter of Attorney, December 19, 1770; Alexander Elmsley to Samuel Johnston, Jr., April 5, 1772, Hayes Collection, reels 2 and 3. Other lawyers actively involved in trade included Barker, Dawson, John and Thomas Hodgson, and Robert Jones, Jr. Undoubtedly, there were others.

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94 Cameron Family Papers, folder 2, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill; Iredell Papers, I: xli, xlv, 173-174, 194; II: 58; Parramore, Cradle of the Colony, p.25.

95 Iredell Papers, I: 179; Parramore, Cradle of the Colony, p. 18.

96 Iredell Papers, I: 68, 176, 195.

97 Ibid., I: 68, 195, 210.

98 Peter DuBois to Samuel Johnston, Jr., February 8, 1757 and March 5, 1757, Hayes Collection, reel 2; Lennon and Kellam, eds., Wilmington Town Book, p. xv.

99 Peter DuBois to Samuel Johnston, Jr., March 5, 1757, Hayes Collection; Hillsboro Recorder, November 27, 1822.

100 Clark, "The Colony of Transylvania," p. 8; Lennon and Kellam, eds., Wilmington Town Book, pp. xxiv, 124-125n, 157-158, 174-175n; May Wilson McBee, comp., Anson County, North Carolina, Abstracts of Early Records (Baltimore, 1978), p. 50; Leora H. McEachern and Isabel M. Williams, eds., Wilmington-New Hanover Safety Committee Minutes, 1774-1776 (Wilmington, 1974), p. 122; Sibley's, XIV: 624-637; Tryon Papers, II: 55n.

101 Peter DuBois to Samuel Johnston, Jr., February 8, 1757, Hayes Collection, reel 2; Tryon Papers, II: 319.

102 Evangeline Walker Andrews and Charles Mclean Andrews, eds., Journal of A Lady of Quality; Being the Narrative of a Journey from Scotland to the West Indies, North Carolina and Portugal, in the years 1774-1776 (New Haven, 1923), pp. 153-154; Lennon and Kellam, eds., Wilmington Town Book, pp. 31-32n. Janet Schaw, the snobbish diarist, found "the most disgusting equality" in America. Journal of a Lady of Quality, p. 153.

103 Quoted in Eaton, "Mirror of the Southern Lawyer," p. 527; Smyth, A Tour in the United States, I: 122-123; Purdie and Dixon's Virginia Gazette, October 15, 1772. The newspaper also contained the following verse:

May Milner's Name in future Annals shine,
And Edgumbe's grateful sons approach each live;
May future Patriots aim, like him to be
Renown'd for Honour and Integrity;
And may the Nine, in the harmonious Lays,
Attest his Merit and Record his Praise.

104 Parramore, Launching the Craft, pp. 5, 214. William Hooper, Robert Howe, and Archibald Maclaine were the three lawyer members of St. John's No. 213.

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- 105 Ibid., pp. 5, 29, 31, 34.
- 106 Ibid., pp. 34, 36-38, 61-62; Dill, Governor Tryon and His Palace, p. 236. Well-known lawyers who joined after 1776 included Waightstill Avery, Charles Bondfield, William Cumming, William Davie, William Gray, Richard Henderson, Adlai Osborne, Brumfield Redley, and John Williams. Although Samuel Johnston did not formally join a lodge, he was a Freemason and Grand Master of Masons in 1787-1788. See, Parramore, Launching the Craft, pp. 95, 214-238.
- 107 Boorstin, The Colonial Experience, p. 197. For a sound study of the effects of the Great Awakening on ideology and, tangentially, lawyers, see Alan Heimert, Religion and the American Mind from the Great Awakening to the Revolution (Cambridge, Massachusetts, 1966), p. 180. For a similar approach to North Carolina, see Whittenburg, "The North Carolina Regulators," pp. 193-217.
- 108 Eighteenth Century Tracts, pp. 187-188.
- 109 Smyth, A Tour in the United States, I: 162-163; Tryon Papers, I: xxiii; Purdie and Dixon's Virginia Gazette, March 11, 1772. In this instance, James Milner was accused of counterfeiting.
- 110 Merrens, Study in Historical Geography, pp. 56-57; Duane Meyer, The Highland Scots of North Carolina, 1732-1776 (Chapel Hill, 1957), p. 91. I hope to avoid the ecological fallacy of arguing that all Scotch Highlanders, or any cultural or religious group for that matter, were unanimously pro- or anti-lawyer. My interpretation is simply that certain aggregate groups did have common interests with lawyers which probably overrode any initial prejudices.
- 111 Eighteenth Century Tracts, p. 450; Lefler and Newsome, History of A Southern State, pp. 79-81; Merrens, Study in Historical Geography, pp. 56-57. Scots who practiced law in Wilmington included Archibald and Jerome Maclaine and Thomas McGuire. Patrick Duff Gordon also had a successful career in New Bern.
- 112 Merrens, Study in Historical Geography, pp. 139-140; Meyer, Highland Scots, pp. 71-101.
- 113 Princetonians, pp. 157-160, 289-291, 543-545; Sibley's, XIV: 160-167.
- 114 Records of the Moravians, II: 527, 628.
- 115 Ibid., II: 639, 642-643, 678, 684, 731, 737, 762, 808, 815, 824, 832; Merrens, Study in Historical Geography, p. 27;

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Princetonians, p. 158; Charles Grier Sellers, Jr., "Making a Revolution: The North Carolina Whigs, 1765-1775," in Studies in Southern History, ed, J. C. Sitterson (Chapel Hill, 1957), p. 39.

116 Jack P. Greene, The Quest For Power, The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776 (Chapel Hill, 1963), p. 41.

117 Colonial Records, V: 244, 259-260, 262, 264. For two complementary studies of the North Carolina lower house, see Ekirch, "Poor Carolina," pp. 93-119; Greene, Quest For Power, passim.

118 Colonial Records, VI: 13, 15, 252-256, 367; Ekirch, "Poor Carolina," pp. 93-119; Greene, Quest For Power, pp. 182-184, 238-241, 338-341.

119 Colonial Records, VI: 1259, 1261; Edmund S. and Helen M. Morgan, The Stamp Act Crisis: Prologue to Revolution (Chapel Hill, 1953), p. 38. Cumming, McGuire, and Moore were the lawyers on the committee.

120 Colonial Records, VII: 291-292, 347; Morgans, Stamp Act Crisis, pp. 103, 164; Donna J. Spindel, "Law and Disorder: The North Carolina Stamp Act Crisis," North Carolina Historical Review LVII (January 1980), p. 15.

121 Tryon Papers, I: 283-284; II: 56.

122 Colonial Records, VII: 129; Morgans, Stamp Act Crisis, p. 129; Spindel, "Law and Disorder," pp. 6-7.

123 Colonial Records, VII: 160; Ekirch, "Poor Carolina," p. 163; Hillsboro Recorder, November 27, 1822; Tryon Papers, I: 394-395, 396n; II: 32-33, 56.

124 Ekirch, "North Carolina Regulators," pp. 199-256; Marvin L. Michael Kay, "The North Carolina Regulation: A Class Conflict," in The American Revolution: Explorations in the History of American Radicalism, ed. Alfred F. Young (De Kalb, Illinois, 1976), pp. 73-123; Whittenburg, "Planters, Merchants, and Lawyers," pp. 215-238; Whittenburg, "The North Carolina Regulators," pp. 162-192.

125 Ekirch, "North Carolina Regulators," p. 256; Regulator Documentary, p. 346.

126 Robert A. Becker, "Revolution and Reform: An Interpretation of Southern Taxation, 1763 to 1783," William and Mary Quarterly, 3rd series, XXXII (July 1975), pp. 419-421; Ekirch, "North Carolina Regulators," pp. 230-241; Ekirch, "Poor Carolina," pp. 169, 216-220; Whittenburg, "Planters, Merchants,

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and Lawyers," pp. 222, 231-238; Whittenburg, "The North Carolina Regulators," pp. 163-166, 199.

127 Quoted in Ekirch, "North Carolina Regulators," p. 235. Even Fanning, the bete noir of Regulators, received support from several freeholders in Orange County who regretted the "baseness of the hearts of those" who "attempt[ed] to injure that gentleman's Character." In Miscellaneous Papers, Box 517, Folder 1, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill.

128 Eighteenth Century Tracts, p.323; Tryon Papers, II: 90-93.

129 Quoted in Ekirch, "North Carolina Regulators," pp. 217-218; Ruple, History of Rowan, p. 91.

130 Eighteenth Century Tracts, pp. 291, 319.

131 Colonial Records, VIII: 367-368, 370-371; Eaton, "Mirror of the Southern Lawyer," p. 529; Ekirch, "North Carolina Regulators," pp. 228-228n; Unidentified Fee Book, 1759-1774, in the Macay and McNeely Family Papers, vol. 1, The Southern Historical Collection of the University of North Carolina Library, Chapel Hill. Ekirch attributes "John Penn's Own Account Book, 1769-1770" in the North Carolina Archives to the "probable authorship" of John Dunn. It is conceivable that the unidentified fee book at Chapel Hill is also Dunn's, though several other candidates exist. There have been confusing accounts in the secondary literature as to the lawyers' fees established in 1771. Ashe, History of North Carolina, I: 394 and Eaton, "Mirror of the Southern Lawyer," p. 528 list £1.5s and £3.10s as fees for the inferior and superior courts. The Colonial Records, VIII: 367-368 list 1s. 5d and 3s. 10d, a far more likely scale given the time frame and account books.

132 Richard Maxwell Brown, "Violence and the American Revolution," in Essays on the American Revolution, eds. Stephen D. Kurtz and James H. Hudson (Chapel Hill, 1973), p. 120; Tryon Papers, II: 506-507; Purdie and Dixon's Virginia Gazette, October 25, 1770.

133 Tryon Papers, II: 506-508; Purdie and Dixon's Virginia Gazette, October 25, 1770.

134 Regulator Documentary, pp. xxi, 267.

135 Ibid., pp. xxi, 268-278; Colonial Records, VIII: 257-258; Rind's Virginia Gazette, January 10, 1771.

136 Don Higginbotham and William S. Powell agree that the assembly turned to "punitive measures" only after the reported assembly of Regulators near Cross Creek in late December. See, Iredell Papers, I: 59n; and Regulator Documentary, p. xxi. I

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would suggest, however, that Tryon and the assemblymen had decided to "punish the Regulators" before the gathering in Cumberland County. See, Colonial Records, VIII: 284, 319-320, 330-331, 333.

137 Colonial Records, VIII: 306, 308-309, 320, 337, 367-368, 370-371.

138 Ekirch, "North Carolina Regulators," p. 243.

139 Colonial Records, VIII: 333, 345-346; Ekirch, "North Carolina Regulators," pp. 243-244; Iredell Papers, I:57; Regulator Documentary, pp. 295-296.

140 Colonial Records, VIII: 516; Ekirch, "North Carolina Regulators," pp. 244-245; Iredell Papers, I: 57, 59n; Regulator Documentary, pp. xxi, 305, 327-332.

141 Regulator Documentary, pp. 360-361, 365-370; Tryon Papers, II: 619-620, 623, 636-638, 657-658. Caswell, Gordon, and Hooper were counsels for the crown. Attorney General McGuire avoided the court, possibly by feigning illness.

142 Regulator Documentary, pp. xxii-xxv, 452-453, 459-460, 578-579, 583, 587-588.

143 Ekirch, "North Carolina Regulators," pp. 246, 253-254, 254n; Regulator Documentary, pp. 482-483, 491-492, 517-526; Tryon Papers, II: 707-709. A partial list of the newspapers publishing articles sympathetic to the Regulators includes the Massachusetts Spy, New Hampshire Gazette, Newport Mercury, Pennsylvania Journal, South Carolina Gazette, and Virginia Gazette.

144 Iredell Papers, I: 71; Purdie and Dixon's Virginia Gazette, December 5, 1771.

145 Greene, Quest For Power, pp. 242-243; Regulator Documentary, p. 588; Tryon Papers, II: 827.

146 Ekirch "Poor Carolina," pp. 206-207; Greene, Quest For Power, pp. 420-421; Joshua Bodley to Samuel Johnston, Jr., March 8, 1773, Hayes Collection, reel 3; Jackson Turner Main, The Upper House in Revolutionary America, 1763-1788 (Madison, 1967), p. 24. North Americans most often cited a 1701 act of Parliament granting life tenure to judges as having equal validity in the colonies. See, Bailyn, The Ideological Origins of the American Revolution, pp. 105-106.

147 Greene, Quest For Power, pp. 421-422; Iredell Papers, I: lxi, 156-157; Purdie and Dixon's Virginia Gazette, August 12, 1773.

148 See, for example, Fields, ed., Cumberland County

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Extracts, I: xiii, 329-334; Records of the Moravians, II: 758-759, 808.

149 Colonial Records, IX: 742-744; Greene, Quest For Power, pp. 424-425. Although Iredell was not a member of the assembly, he expressed the constitutional arguments of the body in an "Essay on the Court Law Controversy," which appeared under the pen name of "Planter" in the New Bern Gazette on September 10, 1773. See, Iredell Papers, I: 163-165.

150 Hillsboro Recorder, December 4, 1822; Iredell Papers, I: lx; Sibley's, XIV: 627-628. Sir Nathaniel Duckinfield tried to console Iredell with the thought that there would "be a good deal [of litigation] brewing against the time when the courts shall be established." See, Iredell Papers, I: 160-161.

151 Ekirch, "Poor Carolina," p. 208; Greene, Quest For Power, pp. 423-424.

152 Colonial Records, IX: 741, 1041-1049, 1188-1189; X: 164-167, 173-174, 214, 499-501, 581-582, 913-921; Heimert, Religion and the American Mind, pp. 450-452; Morris, "Legal Profession on the Eve of the Revolution," p. 28; Sellers, "Making a Revolution," pp. 23, 29-40.

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VITA

WILLIAM DAVID MARTIN

Born in Morrilton, Arkansas, 8 August 1953. Graduated from Greeley Central High School, Greeley, Colorado, 1971. Served as a Staff Sergeant in the United States Army, 1972-1979. Awarded a B.A. degree in History from the University of Northern Colorado, June 1981. Entered the History M.A. program at the College of William and Mary in Virginia as a teaching assistant, August 1981. Presently an instructor in American History and Government at the Cheshire Academy, Cheshire, Connecticut.