

lawyers; namely, "B. Nicoll, W<sup>m</sup>. Smith Jun., John McEvers, Rich<sup>d</sup>. Morris, Jn<sup>o</sup> Morin Scott, Whitehead Hicks, Benj. Kissam, Jn<sup>o</sup> Alsop, Ja<sup>s</sup> Duane, W<sup>m</sup> Livingston, John Burnet, Ebenezer Bryant"; (7) twenty-six pages of various legal forms, orders and instructions; (8) five pages devoted to "Some Directions Relating to the Study of the Law"; (9) twelve pages of rules of the Supreme Court following 1699, the last of which is one regarding "Struck Juries."

<sup>28</sup>The skillful penmanship of these clerks in a number of cases was highly artistic. Extant file papers show that printed forms covered generally such matters as mortgages, recognizances, notes of issues, and certain kinds of contracts. Law students even in the eighteenth century found it necessary to burn the midnight oil. In answer to a curt note from his father wherein complaint was made that he was wasting his time in riotous living in New York City, William Livingston made a detailed reply explaining how the hours of the day were spent, saying among other things that he had frequently studied until 2 A.M. Theodore Sedgwick, Jr., *Life of William Livingston*, 56-7.

<sup>29</sup>See issue of August 19, 1745, first page. For copy, see Appendix VI, pp. 167-170. Elisha Parker, nephew of James Parker, editor-owner of *The New-York Weekly Post-Boy*, had been a clerk in Alexander's office when Livingston entered upon his duties there, and he subsequently married Catherine, one of Alexander's daughters. For another article by William Livingston on this same subject, see *Ibid.*, issue of 3 March, 1746.

<sup>30</sup>H. C. Van Schaack, *Life of Peter Van Schaack*, 9. For a brief account of the experiences in 1781-1782 of James Kent, clerk to Egbert Benson, attorney general of the new state, in his office in Poughkeepsie, see William Kent, *Memoirs and Letters of James Kent*, 32-7.

<sup>31</sup>William Jay, *Life of John Jay*, I, 16-23. See especially Jay's letter, written in a somewhat facetious spirit, to Kissam, and the reply to it of which the above quotation forms a part. See also Frank Monaghan, *op. cit.*, 44.

<sup>32</sup>*Diary of John Quincy Adams* (November 27, 1787), in Proceedings of the Massachusetts Historical Society, 2d ser., Vol. XVI, 351.

The writer of the following letter shows that the life of a clerk in England was just as disappointing as that of one in New York. He writes:

"The Artided clerks of attornies were still worse off. [Worse than students in the Inns of Court.] A friend has lent me a most interesting little book: 'A Letter from a Grandfather to his Grandson, an Artided Clerk, pointing out the right course of his studies and conduct during his clerkship, in order to his successful establishment in his profession. By Jacob Phillips, of the Inner Temple, Esq., formerly an artided clerk. London: Printed for George Wilson, successor to R. Bickerstaff, corner of Essex Street, Strand, 1818.' On pages 37-40 of this book is found the following extract from the letter.

"The difficulty that now meets you is, how to obtain satisfactory information in answer to this question, and here there is considerable difficulty; your tutor is probably always engaged in the hurry of practice, your brother clerk may not be competent to answer you, there is no applicable junior law-book to assist you, and you must make the best use you can of the books that

are procurable. This is the general unaided state of a youth entering an attorney's office. No wonder that so many exclaim, *Fateor, animus meus amisit me*. It is impossible to conceive a more lamentable case, than a youth, just taken from school, glowing with admiration of the beauties of Grecian and Roman literature, set down to an attorney's desk to copy declarations and pleas, of all things the most contrary to his former pursuits. What then is he to do? Why, he must unlearn what he has learnt, he must lower his feelings and taste, and submit to grope on his way in darkness and ignorance, till nearly at the end of his clerkship he begins to catch some glimmering view of legal principles and science. But how much time is lost this while! How many, too, are left their whole lives in this career of ignorance, and though at first they entered their new pursuit full of ardour and eagerness to succeed, yet the constant drudgery of doing what they did not understand, turned the edge of their pursuit, and lost them to their profession. This has been the fate of many who will possibly read this work. What then is the remedy?

"The remedy is happily clear and certain, if it could but be adopted.

"Let there be a professional law school to take boys, from twelve to sixteen, eighteen, or twenty years old, and let them be taught the rudiments of law; and, indeed, let the older scholars go deeper into the subject. Let there be two courses of study—one for those intended to be attornies, and which would stop at sixteen; and the other for those intended for conveyancers, and which should go on to eighteen or twenty.'" (W. B. Odgers in *A Century of Law Reform*, I, 34-6.)

<sup>33</sup>The popular treatise dealing with such matters at the time of the Revolutionary War was a volume by J. Coote entitled: *The Law of Attornies and Solicitors; Containing all the Statutes, Adjudged Cases, Resolutions, and Judgments concerning them Under the following Headss . . .* (London, 1764). John Jay's copy of this book which he purchased in 1772 is in the Law Library of Columbia University.

The Acts of Parliament regulating attornies and solicitors as listed by Coote were: 3 James I Ch. 7; 2 George II, Ch. 23; 6 George II, Ch. 27; 12 George II, Chs. 13 & 46; 23 George II, Ch. 26; and 26 George II, Ch. 46.

<sup>34</sup>For the Statutes of Parliament regulating the education of attornies and solicitors see J. Coote, *op. cit.*, *passim*, but especially pp. 1-60.

## CHAPTER IV

## THE LAW STUDENT'S CURRICULUM

According to Roger North,<sup>1</sup> the earliest treatise "on the Study of the Law of England" was William Fulbeck's *Direction or Preparative to the Study of the Law*, a book first published in 1600.<sup>2</sup> In its nine chapters, that range from the "Worthiness and Excellency of the Law" to "What Method is to be used in Handling and Disposing Matters of Law," North says that "Many valuable hints" were to be learned. He also accords the volume a quality of "much acuteness and good sense." But apparently a law student of that day was not to be overburdened with work; at least, not if this course of study may be taken as typical of the effort expected of him, for, according to the treatise, a lawyer's library contained only "The Year Books, Dyer and Plowden."

The question immediately arises, what, specifically, did the law courses of colonial days include?<sup>3</sup> The answer cannot be clear-cut, since the outlines of most of the curriculums which appeared from time to time, both in New York and in England, were rather inconclusive.<sup>4</sup> But, whether they were consequential or imperfect, students of law doubtless followed the courses of study listed in them. The more important of these courses will be summarized.

At approximately the same time that Fulbeck's *Direction* made its appearance, Edward Coke in the third part of his *Reports* (1601-1616) was outlining a course of study that called for a knowledge of the contents of some thirty or forty books. This advice included the following observations: "Right profitable also are the antient Books of the Common Laws yet extant, as *Glanville, Bracton, Britton, Fleta, Ingham* and *Novae Narrationes*; and those also of later

Times, as the *Old Tenures, Old Natura Brevium Littleton, Doctor and Student, Perkins, Fitzh., Nat. Br. & Stamford*, are most necessary and of greatest Authority and Excellency; and yet the other also are not without their Fruit. In reading of the Cases in the Books at large, which sometimes are obscure and misprinted, if the Reader, after the diligent reading of the Case shall observe how the Case is abridged in those two great Abridgements of Justice Fitzherbert, and Sir Robert Brooke, it will both illustrate the Case and delight the Reader; and yet neither that of Statham, nor that of the Book of Assizes is to be rejected: And for Pleading, the great Book of Entries is of singular Use and Utility. To the former Reports you may add the exquisite and elaborate Commentaries at large of Master Plowden, a grave Man, and singularly well learned, and the summary and fruitful Observations of that famous and most Reverend Judge and Sage of the Law Sir James Dyer, Kt. Late Chief Justice of the Court of Common Pleas, and mine own simple Labours: Then have you 15 Books or Treatises, and as many Volumes of the Reports, besides the Abridgements of the Common Laws."<sup>5</sup>

This advice by Coke, although somewhat more practical than Fulbeck's, nevertheless, did not constitute a satisfactory law curriculum. To supply such a course William Phillips published in 1662 a small volume, with an Introduction directed "To the Students of the Common Lawes of England,"<sup>6</sup> which he called, *Studii Legalis Ratio: or Directions for the Study of the Law Under these Heads: The Qualifications for Nature Means Method Time Place of the Study.*<sup>7</sup> This book, which is written in an optimistic, encouraging tone, is much more detailed in content than anything published up to that time. Although it gives an impression of being somewhat reluctant to come to grips with funda-



mentals, it does offer the best analysis made prior to 1662 of the materials available to students. According to the author, the number of law books necessary to form a lawyer's library at the time amounted to some fifty volumes, having grown very considerable since the time of Fulbeck.<sup>8</sup>

Coinciding in point of time with Phillips' *Studii Legalis Ratio* came Sir Matthew Hale's Preface to Rolle's *Abridgement* (1668), in which the author suggested a course of study that he thought would be profitable. He directed his suggestions to the "Young Students of the Common Law," and gave much more detailed advice than the recommendations offered two generations earlier by Sir Edward Coke. Hale wrote:

"A method, therefore, is necessary, but various, according to every man's particular fancy. I shall therefore propound that which, by some experience, hath been found to be very useful in this kind, which is this: First, it is convenient for a student to spend about two or three years in the diligent reading of Littleton, Perkins, Doctor and Student, Fitzherbert's *Natura Brevium*, and especially my Lord Coke's Commentaries and possibly his Reports; . . . After two or three years so spent, let him get him a large common-place-book, divide it into alphabetical titles, which he may easily gather up, by observing the titles of Brook's *Abridgement*, and some tables of law books, and possibly (as shall be shewn) this book now published may be the basis of his common-place-book. Afterwards it might be fit to begin to read the Year-Books; and because many of the elder Year-Books are filled with law not so much now in use, he may single out for his ordinary constant reading such as are most useful; as the last part of E. 3. the Book of Assizes, the second part of H. 6. E. 4. H. 7. and so come down in order and succession of time to the latter law, viz. Plowden, Dyer,

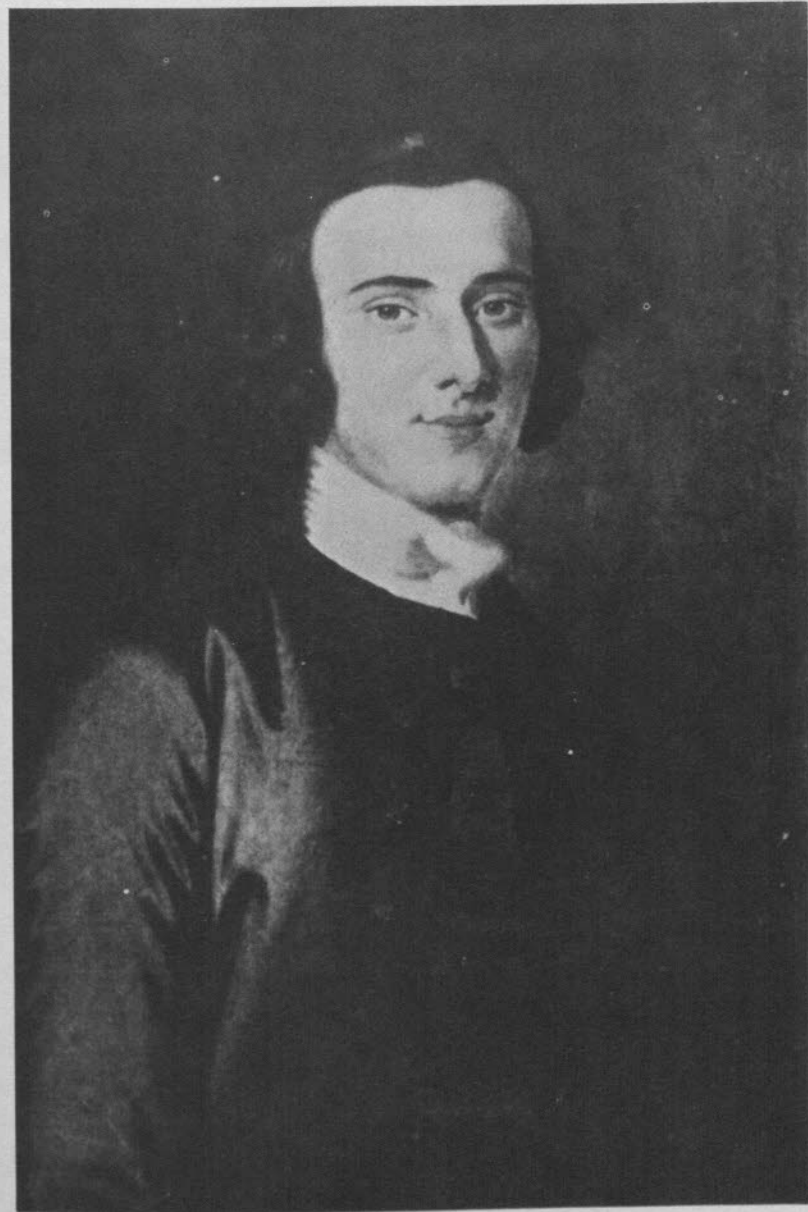
Coke's Reports the second time, and those other reports lately printed. As he reads, it is fit to compare case with case, and to compare the pleadings of cases with the Books of Entries, especially Rastal's which is the best, especially in relation to the Year-Books."<sup>9</sup>

Around 1736 Sir Thomas Reeve, Lord Chief Justice of the Common Pleas, wrote "Instructions for the Study of Law." Although addressed to his nephew, the course of study he outlined, and the advice accompanying it, were known in the American colonies. Unquestionably it was the best curriculum which had appeared so far, and, therefore, will be quoted in full. He advised:

"First read *Wood's Institute* in a cursory manner with an intent to understand only the general divisions of the law, and obtain the precise ideas used in it: for such terms as *Wood* does not explain as he goes along, *Les Termes de la Ley* should be consulted, and, for the more full and modern explanation of the same, *Jacob's Dictionary*; but the authority of this latter must not be too implicitly relied on. The only reason why I mention *Wood* for the present purpose, is, because the terms will be much better understood by observing with what latitude or restriction they are used in the course of his work, than by consulting any dictionary whatsoever; and in order to understand his Chapter of Conveyances, it will be necessary to call in the aid of some old practitioner who is your friend. If that advantage cannot be acquired, you must be contented with such light as you can strike out of the modern books of practice, *Bohun's Institutio Legalis*, *Jacob's Attorney's Companion*, last edition: of all these I can give no other character than Martial of books in general, *sunt bona quaedam, Ec.*; nor any other direction concerning the using of them, but that you must, by the help of indexes, take what is to your present purpose.

This done, read *Littleton's Tenures*, without notes; consider it well, abridge such part of it as the other books inform you is law at this day. Thus armed, venture upon *Coke's Comment or Institute upon Littleton's Tenures*, which being well understood the whole is conquered, and without which a common sound lawyer can never be made. To this, all the faculties of the mind must be applied; with hearty attention it will not be found very difficult, with the preparation already prescribed. After the first reading of it (for it will require many more than one), either abridge it throughout, or commonplace or compare it with some authentic Abridgement, sentence by sentence; and, by your own additions and corrections, make it your own. To this purpose I recommend *Sergeant Hawkin's Abridgement*, which will afford much light to my Lord Coke. This finished, I would recommend a second careful review of *Wood's Institutes*, with an intent to digest the general heads of the law, for the use of memory; and now it will be proper to read the more useful statutes at large, in the order in which he quotes them, and to examine the several books of Reports for the proof of his opinion, which alone is not authority, though he generally quotes very fair: and remember, if you read any edition of *Wood* wherein *Salkeld's Reports* are not cited, to consult them under their proper titles, which may easily be done, he having put them into a form of a commonplace.

"During the second stage of study, many books may be brought in for variety, which will be very useful, and not interrupt the main scheme, as *Doctor and Student*, *Noy's Maxims*, *Curson's Office of Executor's*, *Hale's History of the Common Law*, principally; with *Finch's Law*, and *Rolle's Abridgement*, in the preface; in which last you will find the best scheme for studying the law now extant. It will about this time, and not much sooner, be proper to give diligent



William Smith, Jr., 1728-1793; Yale College 1746. Legal and classical scholar; author of a history of New York; writer of numerous essays and articles on government and politics; zealous advocate of high educational and ethical standards for members of the legal profession; author of a comprehensive curriculum for law students; member of New York's Executive Council; chief justice of New York, 1781-1783; chief justice of Canada, 1786-1793. Courtesy of the New York Public Library, New York City.

*Although positive identification of this picture as that of William Smith, Jr., has never been made, it has long been considered his portrait as painted by Wollaston in 1751.*



attendance on the courts at Westminster, and to begin orderly reading the several reports, which must be read and commonplac'd in such manner as (by the experience which by this time you will have of the nature of the study) you will be best able to advise yourself.

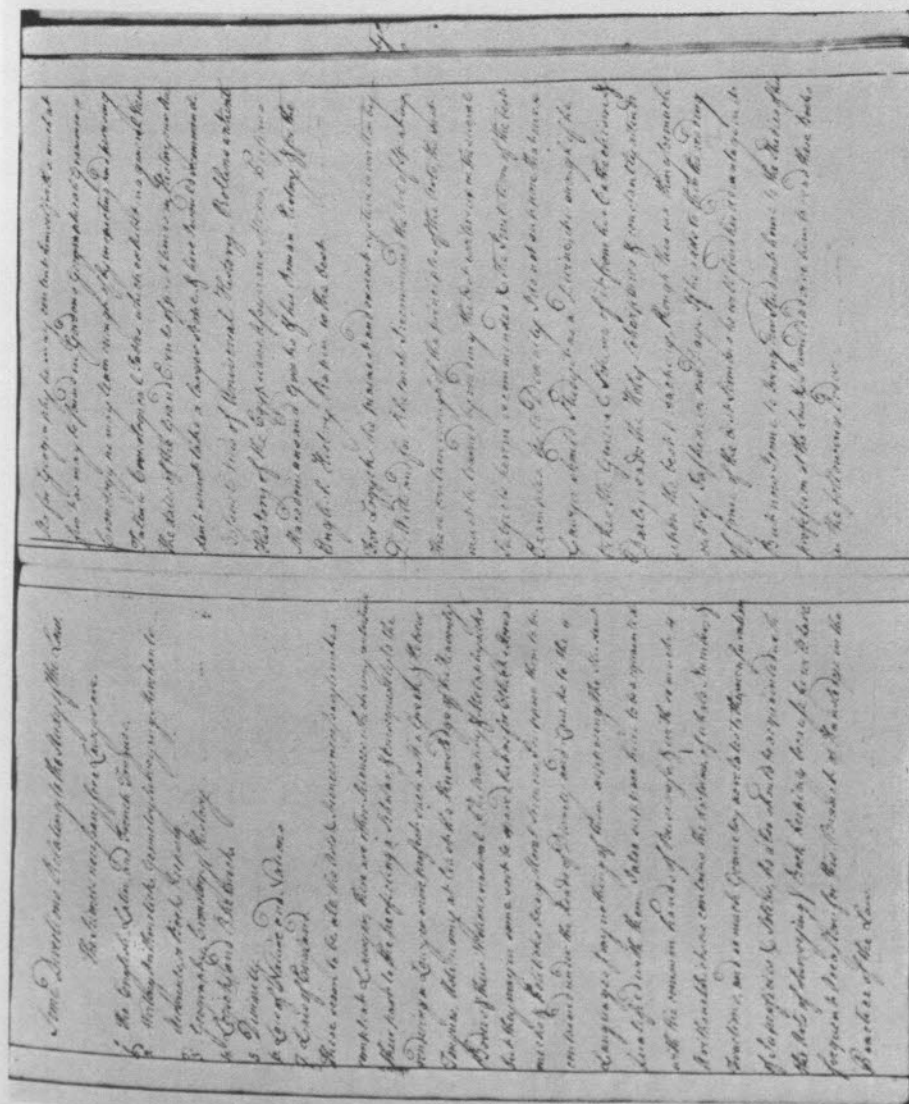
"My whole scheme, without naming many books, is no more than this: First, Obtain precise ideas of the terms and general meaning of the law. Secondly learn the general reason whereupon the law is founded. Thirdly, From some authentic system collect the great leading points of the law in their natural order, as the first heads and division of your future enquiry. Fourthly, Collect the several particular points, and range them under their generals, as they occur, and as you find you can best digest them. And whereas law must be considered in a twofold respect: I. As a rule of action, II. As the art of procuring redress: when this rule is violated, the study in each of them may be easily regulated by the foregoing method; and the books so recommended will so carry on the joint work, that with this course, so finished, the student may pursue each branch of either to its utmost extent, or return to his centre of general knowledge without confusion, which is the only way of rendering things easy for the memory."<sup>9a</sup>

How many lawyers at this time realized the inadequacy of the advice offered in most of these early treatises of Fulbeck, Doddridge, Phillips, Coke, Rolle, and Reeve is a question, but probably in every generation there were a few. At all events, about 1756 William Smith, Jr., of New York outlined for students a much more complete course of study than had theretofore appeared. Recommending a broad preliminary education, this course represents the highest ideal yet advocated in the colony of what a law curriculum should contain. It also undoubtedly reflected

the hope of the leaders of the bar of that day that the legal profession in the province should achieve a place inferior to none in intellectual attainment.<sup>10</sup> It begins with the general advice: "The Sciences necessary for a Lawyer are. 1<sup>st</sup> The English, Latin, and French Tongues. 2<sup>d</sup>. Writing Arithmetick, Geometry, Surveying, Merchants Accounts, or Book keeping. 3<sup>d</sup>. Geography, Cronology, History. 4. Logic and Rhetorick. 5. Divinity. 6. Law of Nature and Nations 7. Law of England," and, after discussing each of these subjects in some detail, it enumerates with critical comments the books to be read for a knowledge of each.<sup>11</sup>

From this detailed and extensive course of study which Smith outlined it can be seen that in New York a lawyer was expected to be a scholar of the first rank. He was to have a well-rounded education in several fields of learning,—not simply a familiarity with the principles and practice of the law. To secure a knowledge of the latter, his efforts especially should be directed to gaining an understanding of the material in Wood's *Institutes* and Bacon's *Abridgement of the Law*, for around these two treatises, Smith believed, all legal study should revolve. Also in accordance with the emphasis then being placed upon "Natural Law," Smith thought that a thorough grounding in what had been written concerning that subject should be acquired. These studies, buttressed with the practical knowledge acquired while a clerkship was being served, would, he believed, give "such a comprehension of learning" as few in and near the colony of New York possessed.

If this were accomplished, an old prejudice would have been overcome for it is curious how for centuries lawyers suffered because of their learning in fields other than legal. Lawyers, it was thought, must stick to their law books and not dabble with other subjects. They must especially not be



WILLIAM SMITH'S "SOME DIRECTIONS RELATING TO THE STUDY OF THE LAW"

William Smith, Jr., 1728-1793, Yale 1746, was for over thirty years a leader in movements to raise the educational standards of the New York bar. A lawyer's education, he believed, should include both professional and cultural subjects. Around 1756 he outlined the extensive course of study which is here reproduced. Shown also are two rules of the Supreme Court of Judicature of the Province of New York ordered in 1699 and 1702. Found in "Miscellanea A", *William Smith Papers*, Manuscripts Room, New York Public Library. Courtesy of the New York Public Library, New York City.





men of letters. Although this does not appear to have been the attitude in New York, it is said that a lack of a rounded education diminished the reputations of such men as Francis Bacon, Edward Coke, William Blackstone, and Lord Mansfield. A lawyer's and a law student's pastimes and interests, aside from the time devoted to his vocation, were supposed to include "shooting, leaping, riding, bowling, and the like." Wrestling and dancing were considered to be much too violent, while angling was highly recommended. Music especially was frowned upon, although encouraged in the Inns of Court. Moreover, nearly all advisers told students when to study, and the place to study.<sup>12</sup>

What the young New York legal scholar, Peter Van Schaack, thought might constitute an introductory law course may be learned from a letter written in response to an inquiry concerning the preliminary subjects to be studied by a youth headed for the legal profession. Van Schaack wrote:

"As to your brother-in-law, believe me, my dear Harry, I will give him my instruction with the greatest pleasure. I wish his genius may be adapted to the law. Mention to Mr. Blackbourn to have his turn of mind consulted. Does he write to you? Get him to tell you the favorite parts of his studies. Beg that he may read history, that grand fountain of instruction. I do not recollect his age, and therefore cannot guess at the stage he is advanced to in his learning; but if he is designed for the law, I would recommend to him as soon as he is fit to read them, *Cicero de officiis*, and *Puffendorf de jure hominis et civis*. These are books that treat of the moral and civil duties, and are excellent foundation to begin the study of law upon.

"I think I could chalk out a path for a prompt lad that would furnish him with great instruction, and show a pretty direct road to an acquaintance with the laws of England.



... I could better convey and illustrate my ideas on this subject to one of the profession than to you, who must be unacquainted even with the necessary terms to clothe them in."<sup>13</sup>

Although Blackstone's *Commentaries* had not yet been printed at the time William Smith drew up his curriculum, Blackstone's lectures were known and appreciated in New York shortly after he began to deliver them.<sup>14</sup> This is learned from a letter written in 1762 by the influential merchant and councillor, John Watts, in which he observed: "We have a high Character of a Professor at Oxford, who they say has brought that Mysterious Business [the study of law] to some System, besides the System of Confounding other People & picking their Pockets, which most of the Profession understand pretty well. . . ." <sup>15</sup> If a busy merchant knew of Blackstone, it may be assumed that the lawyers of the colony were aware of his work.

The first volume of Blackstone's *Commentaries* appeared in 1765, and the fourth in 1769. The earliest American edition was published in four volumes by Robert Bell, Philadelphia printer and bookseller, in 1771-1772.<sup>16</sup> It was a subscription edition, Bell seeking purchasers in Canada, Nova Scotia, among the thirteen colonies on the mainland, throughout the West Indies, in East Florida and in New Orleans. The cost as advertised was four dollars a volume or sixteen dollars for the complete set.<sup>17</sup> To Bell's advertisements the response was generous, for more than 840 subscribers ordered 1557 sets. In the fourth volume<sup>18</sup> the names, addresses and occupations of the subscribers were given, and from this tabulation it is learned that governors, judges, lawyers, merchants, farmers, government officials, army officers, printers and book-sellers were interested in this first colonial-printed treatise on the laws of England.<sup>19</sup>

Although by themselves the lists of names and the wide interest taken in such a work are impressive, a study of the subscribers according to geographical area is particularly instructive. An analysis of representative colonies, for instance, shows that: 131 sets were ordered by 51 residents of Massachusetts;<sup>20</sup> New York with 114 subscribers took 342 sets;<sup>21</sup> 184 Pennsylvanians ordered 308 sets;<sup>22</sup> Virginia's 75 subscribers took 138 sets;<sup>23</sup> 50 South Carolinians contracted for 70 sets, 21 of which went to the Charleston printer, Charles Cranch,<sup>24</sup> and in New Hampshire 53 sets were taken by 25 subscribers, six of whom were members of the bench while five others were lawyers.<sup>25</sup> Consequently, if this subscription to Robert Bell's edition of Blackstone's *Commentaries* may be taken as indicative of the interest shown by colonials generally in books and legal knowledge, the lawyers and other residents of New York should be especially commended.<sup>26</sup> A second edition in four volumes quarto was advertised in 1774 as being in press.<sup>27</sup>

A recent commentator—in writing of the legal treatises and materials relied upon by the average law student before Blackstone's day—has submitted a curriculum which is not very comprehensive in scope.<sup>28</sup> He found the following books were in rather general use: *Of Law, or a Discourse Thereof*, by Sir Henry Finch;<sup>29</sup> *Wood's Institutes of the Laws of England*;<sup>30</sup> *Sir Matthew Hale's History of the Pleas of the Crown*;<sup>31</sup> *Bohun's Institutio Legalis, or Introduction to the Study and Practice of the Laws of England*;<sup>32</sup> *Jacob's Law Dictionary*;<sup>33</sup> *Law Grammar*, and *Practicing Attorney's Companion*;<sup>34</sup> and *Coke on Littleton*.<sup>35</sup> And in speaking of the books used by the practicing attorney at the close of the colonial period, it has been said that "the office of the average country lawyer, even towards the end of the eighteenth cen-

ture, contained little more than *Coke on Littleton*, Comyn's *Digest*, Bacon's *Abridgement*, Hale's or Hawkins' *Pleas of the Crown*, Blackstone, Lilly's *Entries*, Saunder's *Reports*, and some brief book on pleadings and on practice.<sup>36</sup> Still another student believes that the published list of reprints advertised in 1774 by Robert Bell of Philadelphia "probably contains the text books thought to be essential to every lawyer's working library at that time." According to this writer they were: "(1) Coke's Commentaries upon Littleton in one large folio, page for page with the last London edition, at sixteen Dollars to subscribers, although the London edition is sold at 32 Dollars; (2) Bacon's New Abridgement of the Law in five volumes 4—to [sic], page for page with the last London Edition at 20 Dollars to subscribers, although the London edition is sold at 40 Dollars; the second edition of Blackstone's *Commentaries*, at 3 Dollars per volume."<sup>37</sup> Such libraries, however, would have been considered most inadequate by the profession in New York from a time as early as 1730.

From the foregoing suggestions, therefore, it is apparent that the books and materials advised for law students were almost exclusively of English origin. Indeed, prior to the first American edition of Blackstone in 1771-1772, no reprint of any standard law book was published on this side of the Atlantic.<sup>38</sup> The law as stated in books printed in England, supplemented by whatever manuscripts and legal lore one counsellor handed down to another, constituted the chief sources available to students in the colonies. To the effectiveness of the mastery of these books by New Yorkers, the records of the province's superior and inferior courts—as well as the excellence of the jurisprudence of both the colony and the state—offer ample testimony.

<sup>36</sup>Roger North, *A Discourse on the Study of the Laws* (1733), 47. See also introductory pages in William Phillips', *Studii Legalis Ratio, or Directions for the Study of Law*.

See Bibliography herein for books, manuscripts, and papers mentioned in this study.

<sup>37</sup>The second printing of this volume was made in 1620, and a third in 1808. From its Preface it appears to have been written in 1599. Its full title was: *Direction or Preparative to the Study of the Law; Wherein is showed, what things ought to be observed and Used of them that are addicted to the Study of the Law, and what on the Contrary part ought to be Eschewed and Avoided*.

<sup>38</sup>Fulbeck classified his study under the following headings: (a) Of the Worthiness and Excellency of the Law. (b) Of the good Qualities Where-with the Student of the Law Ought to be Furnished. (c) Of the Choice which the Student of the Law ought to make in his Study. (d) Certain Rules to be Observed of the Student in the Reading of his Books. (e) Of the Exercise and Conference which the Student ought to use. (f) That the Understanding of the Student Ought to be Proportionable to the Intendment of the Law. (g) That the Student ought Well to conceive the Reason and Justice of the Law in Distinguishing and Establishing the Property and Community of Things. (h) That the Words or Terms Used in Books of Law Ought to be Understood and Applied as the Law Doth Expound and Conceive them. Whereunto is annexed a Table of Certain Words, in the Interpretation Whereof, the Common Law of this Realm, and the Civil Law do seem to Agree. (i) What Method is to be used in Handling and Disposing Matters of Law.

<sup>39</sup>All the courses of study mentioned were based upon the Common Law.

<sup>40</sup>"The Third Part of the Reports of Edward Coke her Majesty's Attorney General, . . ." (London, 1727). See section "To the Reader" in the Introduction.

<sup>41</sup>The second edition of this volume appeared in 1667. It contained few changes. Both volumes, bound in leather, have 204 pages, 3" x 4" in size, plus an Introduction. They were printed in London. In the Introduction Phillips says that only Sir John Doddridge and Mr. William Fulbeck had ever given law students advice regarding studying law. The former, he says, collected only "Principles and Maximes," while the latter leaned "too much upon the Civil Law; and where he touches the Common, he shews rather the matter than [sic] method of Study: but neither wants its worth."

<sup>42</sup>Some concept of the value placed upon each of these five subjects may be gained from the space allocated to each. The "Qualifications for" covered 60 pages; "Nature," 33; "Means," 35; "Method," 64; and "Time" and "Place," 13 pages, respectively.

<sup>43</sup>"And here our Student hath a catalogue of all or most of the Books requisite for the Study, which are about fifty in number, not very many nor great, most of them being but of small bulk or Volume; therefore not so great labour to read over, as may not be compassed in a considerable time."



(William Phillips, *op. cit.*, 121.) In 1733 Roger North wrote of this book: "There is not much original matter in this volume, the most useful parts of which are compiled from Lord Coke, Sir John Doddridge, and other writers. . . . This tract, which is in many respects valuable, has now become rather scarce." (Roger North, *op. cit.*, 48-9.)

Doddridge's work, mentioned by Fulbeck and North, was entitled: *The English Lawyer Describing A Method for the managing of the Lawes of this Land. And expressing the best qualities requisite in the Student Practiser Judges and Fathers of the same.* Pages 1-271 deal with "The English Lawyer." Of this volume Roger North writes: "As a manual of advice to the student, little is to be gathered from this work, which is chiefly occupied with an attempt to reduce certain portions of the laws into a logical arrangement. The first and second sections treat of the natural faculties and acquired qualities necessary for the student of the law." (*Ibid.*, 48.)

It was North himself who provided one of the most thoughtful courses of study, and possibly the most useful one, which was designed for law students during the seventeenth and eighteenth centuries. North was one time Queen's Attorney-General. He was a brother of Francis North, Baron of Guilford, Lord Keeper of the Great Seal under Kings Charles II and James II. His advice was written sometime prior to 1733, but it was first printed from the original manuscript in 1824, and thus, unfortunately, it probably influenced but little the law studies prior to that day. Entitled *A Discourse on the Study of the Laws*, it covers 105 pages exclusive of introductory biographical material. It lists the legal books in print at the time and estimates their worth. It gives advice as to the use of students' time; what recreation they should take, etc. The author says that "The profession of the law, comprehending the whole in due order, refers to 1. Reading; 2. Common-placing; 3. Conversing; 4. Reporting; 5. Practising."

"1. The first is reading or study, and that is referred to the books of law, which are, 1. Institutions; 2. Reports; 3. Repertories; 4. Formularies." (*Op. cit.*, 10). North expresses the opinion that seven years must be spent in study.

<sup>18</sup>See Sir Matthew Hale's Preface to Rolle's *Abridgement* as printed in *Collectanea Juridica*, I, 263-82, especially 276-79.

<sup>19</sup>*Ibid.*, I, 79-81. In 1760 John Adams mentions the necessity of following the advice given by Judge Reeve. C. F. Adams, *Works of John Adams*, 103-4.

<sup>20</sup>*William Smith Papers: "Miscellanea A."* Mss. Rm. N. Y. Pub. Library.

<sup>21</sup>For this course in full see Appendix VIII, pp. 197-200.

<sup>22</sup>See Roger North, *A Discourse on the Study of Laws*, 55-8. For Francis North's practice in this regard see *Ibid.*, 59-60, and especially Roger North, *Life of Francis North . . .*, I, 18-28. Students were advised to "study all the morning, and talk all the afternoon; because a ready speech (if it be not nature's gift) is acquirable only by practice, and is very necessary to a bar practiser." (*Ibid.*, 25.) Also see John Fortescue, *De Laudibus*, 112-3.

<sup>23</sup>Henry C. Van Schaack, *Life of Peter Van Schaack*, 9. In this statement as in the course of study outlined by William Smith, an emphasis upon the

necessity for the inculcation of moral and ethical values is distinctly noticeable. Peter Van Schaack served part of his clerkship in the office of the younger William Smith, and undoubtedly was familiar with his preceptor's suggestions of 1756. He was graduated from King's College in 1767, and was considered a scholar of the first rank. In revising the laws of New York in 1771-72, Van Schaack strained his eyes to such an extent that he subsequently became blind, a condition which, together with his reticence for public office, has obscured his name to posterity. This is the Peter Van Schaack who in 1786, shortly after his return from an exile made necessary by his eyes and also by his political attitude toward the war, opened a law school in his spacious home at Kinderhook, New York, where for the next forty years he taught the sons of prominent New York citizens. In 1826 Columbia College awarded him an LL.D. degree. At the time he wrote the above letter, he had just completed his clerkship and was awaiting admission to the bar, an event which took place on January 20, 1769, when he was not quite twenty-two years of age.

<sup>24</sup>Lord Mansfield is said to have discovered William Blackstone. The young legal scholar is said to have been promised the vacancy in the Professorship of Civil Law at Oxford by the Duke of Newcastle, but another man was appointed. Mansfield then urged Blackstone to locate in Oxford and read lectures to students who cared to attend. This he did in 1753. Attracted by these lectures, Charles Viner in 1756 bequeathed £200 a year for sixty lectures at Oxford "On the Law of England in the English Language." Blackstone was chosen to fill this position. Charles Warren, *History of the American Bar*, 177-9.

<sup>25</sup>Letter to Sir William Baker, January 23, 1762, introducing young Peter DeLancey upon his departure for London to study at one of the Inns. *Letter Book of John Watts*, pp. 12-13.

<sup>26</sup>Commentaries on the Laws of England by Sir William Blackstone, Knt. Re-printed from the British copy. Page for page with the Last Edition, Philadelphia, 1771-1772."

<sup>27</sup>All the subscribers ordered complete sets. In 1774 a second printing of Blackstone's *Commentaries* by Bell sold for three dollars a volume.

<sup>28</sup>In the front of the 4th volume are twenty-two pages on which are listed alphabetically the names of the subscribers with their social, economic, political and professional status.

<sup>29</sup>Among those subscribing were: the comedian, Richard Goodman, of Philadelphia, and the Superintendent of the Silk Culture of Georgia, Joseph Ottolenghe. Each ordered one set.

<sup>30</sup>Two of these were listed as judges and seven as barristers at law. The Boston bookseller, Edes and Gill, took 60 sets, and the Salem merchant, Joshua Orne, ordered 23 sets.

<sup>31</sup>Fifty-one lawyers throughout the province, one of whom was a judge of the supreme court, ordered 52 sets, John Morin Scott subscribing for two sets. The subscriptions of the New York booksellers, all in New York City, were: James Rivington, 200 sets; Hugh Gaine, 28 sets; Samuel Loudon, 2 sets; Noel and Hazard, 11 sets.

<sup>22</sup>Although the publisher Robert Bell had his offices in Philadelphia, nine booksellers of Pennsylvania ordered sets. Among these were: John Creigh of Carlisle, 45 sets; Joseph Cruikshank, Philadelphia, 14 sets; John Dunlap, Philadelphia, 23 sets; John Hall, Wilmington, 4 sets; John Murdoch, Carlisle, 3 sets; William Woodhouse, Philadelphia, 3 sets. Miers Fisher, attorney at law of Philadelphia, ordered 28 sets, and Jabez Maud Fisher, merchant of Philadelphia, took 14 sets. Thirty of the Pennsylvania subscribers were lawyers.

<sup>23</sup>Eleven of these were lawyers. The Williamsburgh booksellers, Purdie and Dixon, and William Rind, took 24 and 12 sets, respectively. The merchant, John Schaw of Norfolk, ordered 30 sets, while "John Magill, Esq., Attorney at Law, Winchester," subscribed for 31 sets. Possibly Magill rode the circuit, and expected to resell to country practitioners.

<sup>24</sup>None of the subscribers from South Carolina are listed as lawyers or members of the bench.

<sup>25</sup>The Portsmouth booksellers, William Appleton and John Sparhawk, each took 14 sets.

<sup>26</sup>This becomes all the more evident when it is remembered that in 1771 the population of the Province of New York was much smaller than that of either Massachusetts, Pennsylvania and Virginia.

<sup>27</sup>David McAdam, *History of the Bench and Bar of New York*, I, 92. (Article by Amasa Redfield.)

<sup>28</sup>Charles Warren, *op. cit.*, 178.

<sup>29</sup>This was a manual and a principal guide for a beginner. Originally it was written in French (1613), and later in English (1627).

<sup>30</sup>This work, first published in 1722, went through ten editions, the last of which Blackstone claimed amounted to little more than Finch's *Discourse* modernized. It was usually published in two volumes.

<sup>31</sup>Published 1736-9 in two volumes.

<sup>32</sup>Published in 1708. The author of this work, William Bohun, was the author of *The Practicing Attorney; or Lawyer's Office: containing the business of an Attorney in all its branches* (2nd ed. 1726), and other law books. Upon the death of Sampson S. Broughton, Bohun petitioned the Commissioners of Trade and Plantations, July 6, 1705, to be appointed Attorney-General of New York. He was not selected. *Journal of the Commissioners for Trade and Plantations, 1704/1708/9*, p. 153.

<sup>33</sup>After John Jay decided to study law, the first law book of a serious nature he purchased was Giles Jacob's *New Law Dictionary*, for which he paid fifty shillings. His father remarked, "It's paying very dear for them," and suggested that he use some of the books in the library of the college, or borrow books from his uncle, John Chambers. Frank Monaghan, *John Jay . . .*, 29.

<sup>34</sup>First published in 1729.

<sup>35</sup>This is stated to have constituted the main reliance of all students. Although complete familiarity with its contents was deemed indispensable, probably every generation of lawyers inveighed against the obscurity of its passages and the complexity of its arrangement.

In 1777 [Armand Gaston] Camus (1740-1804) at Paris published *Lettres sur la profession d'avocat, sur les études relatives à cette profession, & sur la maniere de l'exercer; avec un catalogue raisonné des livres de droit qu'il est le plus utile d'acquérir & de connoître [sic]. . . .*" (2 Vols. in 1.) Part 2 has the title: *Bibliothèque choisie des livres de droit; un Catalogue raisonné des livres de droit qu'il est le plus utile d'acquérir & de connoître [sic]*. This volume was known and used in America. For instance, James Kent's copy containing his manuscript notes may be found on the files of the Law Library of Columbia University. For James Kent's statement of the course of study he followed and the books read while serving his clerkship in Poughkeepsie (1781-1784) in the office of Egbert Benson, Attorney-General of New York, see William Kent, *op. cit.*, 18-28, especially 19. He wrote: "I read, the following winter, Grotius and Puffendorf, in huge folios, and made copious extracts. My fellow students, who were more gay and gallant, thought me very odd and dull in my taste, but out of five of them, four died in middle life, drunkards. I was free from all dissipations; I had never danced, played cards, or sported with a gun, or drunk anything but water. In 1782 I read Smollett's *History of England*, and procured at a farmer's house where I boarded, Rapin's *History* (a huge folio) and read it through; and I found during the course of the last summer, among my papers, my Ms. abridgement of Rapin's dissertation on the laws and customs of the Anglo-Saxons. I abridged Hale's 'History of the Common Laws,' and the old Books of Practice, and read parts of Blackstone again and again. The same year I procured Hume's *History*, and his profound reflections and admirable eloquence struck most deeply on my youthful mind. I extracted the most admired parts, and made several volumes of MSS."

<sup>36</sup>Charles Warren, *op. cit.*, 172.

<sup>37</sup>David McAdam, *op. cit.*, 92 n.

<sup>38</sup>A few volumes intended primarily for the use of minor governmental officials had been printed in America. These included the Laws of New York, and the Session Laws (for instance, those of 1694, 1752-62, 1772-3) as well as those of the several colonial assemblies. In addition, reports of a few outstanding trials had appeared. Among the most important of these in New York were the prosecutions of Nicholas Bayard (1702) for high treason, and of John Peter Zenger (1735) for libel. Also there were printed certain *Opinions and Arguments* advanced during the controversy over the judicial establishment of the colony, 1729-35. Otherwise, there was complete reliance upon England for books. This reliance is not to be wondered at when it is remembered how close was the contact between the homeland and New York, how limited must have been the demand for such publications, and with what respect the decisions and reports of the English courts were regarded generally in New York.

An example of books sold in the colonies may be seen from the following advertisement: "There is to be sold by Jacob Decow at his House, in Mans [sic] in the County of Burlington, an *Institute of the Laws of England*, by Thomas Wood. In folio, the 3d Edition, neatly printed, and well bound. . . ."