

Anti-Lawyer Sentiment in Mid-Victorian New Brunswick

Within the relatively new field of Canadian legal historiography the legal profession is being studied through two basic methods. One is biography, the study of influential lawyers, legal thinkers, educators and legislators, incorporating a 'life-and-times' approach. Despite its inherent limitations, biography has the potential to reach a broad audience.¹ A second approach is institutional, incorporating the growth of professional associations, the development of law schools and the bar's internal politics. The concern here is often the profession's ideology or internal perceptions; thus the methodology of intellectual history is of special appeal.² Although biography and institutional history promise to add significantly to the growing body of Canadian legal history, the challenge remains to link legal history's internal focus with the broader culture of the society in question. The present study employs a third approach: analysis of popular perceptions of the law, focusing on anti-lawyer feeling in mid-Victorian New Brunswick. The main source is a serialized short story, ostensibly penned by an anonymous lawyer, which appeared in a Saint John newspaper in 1867. As the discussion reaches beyond legal culture into social history, purists may not accept this research note as legal historiography in the conventional sense. One critic has warned that social historians' "conjunctural search for social and political explanations of developments which have their true context in the internal life of the legal system" produces a skewed version of the legal past.³ Yet the argument for inward-looking legal history can be used to perpetuate the unfortunate assumption that such research should be conducted exclusively by and for law school professors. A more balanced and useful historiography requires not only studies of the 'legal culture' of lawyers, judges, legislators and legal literature but also the popular response to and demands on the law.⁴

Evidence of hostility toward the legal profession is found in the history of most Western European nations. Although more persistent in rural areas and among the poor, suspicion of lawyers was found at all levels of society.

¹For example see St. G. Stubbs, *A Majority of One: The Life and Times of Lewis St. George Stubbs* (Winnipeg: Queenston Press, 1983); P. Brode, *Sir John Beverley Robinson: Bone and Sinew of the Compact* (Toronto: University of Toronto Press, 1984); D.R. Williams, *Duff: A Life in the Law* (Vancouver: University of British Columbia, 1984); G. Marquis, "'A Hard Disciple of Blackstone': David S. Kerr, 1809-1886" (1986) 35 *UNB LJ* 182.

²A recent Canadian example is G.B. Baker, "The Reconstitution of Upper Canadian Legal Thought in the Late-Victorian Empire" (1985) 3 *Law and History Rev.* 219. An influential interpretation of the 19th-century American bar is found in the work of M. Horwitz which portrays lawyers and the courts as instruments of business interests: *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977). For reservations towards uncritically grafting American legal historiography onto the Canadian experience see D.G. Bell, "The Birth of Canadian Legal History" (1984) 33 *UNB LJ* 312.

³J.S. Cockburn, Book Review of *A History of the English Assizes, 1558-1714* by J. Langbein (1974) 18 *Amer. Journal of Legal Hist.* 90. For criticism of legal history written by lawyers see S. Botein, "Professional History Reconsidered" (1977) 21 *Amer. Journal of Legal Hist.* 60.

⁴For a defence of the internal focus of legal history see G. Parker, "Canadian Legal Culture" in L. Knafla, ed., *Law and Justice in a New Land: Essays in Western Canadian Legal History* (Toronto: Carswell, 1986) 3.

English utopian literature of the 16th and 17th centuries, which influenced the legal systems of the early American colonies, portrayed lawyers as an immoral force benefiting from and encouraging social conflict. This hostility, reinforced by populist millenarian religious impulses, peaked during the English Civil War when lawyers were popularly portrayed as allies of a corrupt and tyrannical monarch.⁵ In the 18th-century American colonies, anti-lawyer feeling was often associated with evangelical religious enthusiasms such as the Great Awakening of the 1740s. The religious component of anti-lawyer sentiment is important in light of the role of evangelicalism in 19th-century social criticism. Despite their central involvement as apologists for the Revolution, American lawyers continued to be regarded in an ambivalent manner by the lower classes and many merchants. The bar was blamed, often with good reason, for the shortcomings of the legal system and inequities in the social order.⁶

In the period of adjustment following the War of Independence republican rhetoric continued to reflect popular suspicion of the political involvement and professional monopoly of the bar. In the era of Jacksonian democracy attorneys, whose principal business was land transfers and debt collection, were pictured by a vocal debtors' interest as the servants of creditors and monopoly. Such rhetoric was by no means confined to the frontier or rural areas. Support for legislative restrictions on the bar and codification of the common law to minimize the power of lawyers was strong in urban centres.⁷ Another powerful image in American culture was that of the country lawyer, the small-town practitioner who "served all comers, not the favoured few". The country lawyer myth, epitomized in Abraham Lincoln, provided an otherwise unpopular profession with a democratic gloss.⁸

The strength of anti-lawyer feeling in 19th-century British North America is difficult to gauge. Such sentiments were most visible during periods of economic dislocation and political unrest. The tenant farmers of mid-century Prince Edward Island, for example, were suspicious of lawyers as well as landlords' agents, bailiffs and the sheriff.⁹ One problem faced by historians is that most recorded criticism of the bar came not from the lower classes but from political speeches and newspapers. Joseph Howe, on one of his "rambles" through Nova Scotia, wrote of the "predatory inclinations" of

⁵W. Prest, "The English Bar, 1550-1700", in W. Prest, ed., *Lawyers in Early Modern Europe and America* (New York: Holmes and Meier Publishers Inc., 1981) 65; J.R. Aiken, *Utopianism and the Emergence of the Colonial Legal Profession: New York as a Test Case, 1664-1710* (PhD Thesis, University of Rochester, 1967) [unpublished].

⁶S. Botein, "The Legal Profession in Colonial North America", *Lawyers in Early Modern Europe and America*, *supra*, note 5 at 129; *The Transformation of American Law*, *supra*, note 2 at 145-46; E.C. Goodwin, *The Magistracy Rediscovered: Connecticut, 1636-1818* (Ann Arbor: University Microfilms International Research Press, 1981) at 63-76.

⁷A.H. Chroust, *The Rise of the Legal Profession in America: Vol. II: The Revolution and the Post-Revolutionary Era* (Norman: University of Oklahoma Press, 1965); R. Couver, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1976) at 131-41.

⁸J.S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976) at 15.

⁹For the land question on P.E.I. see I.R. Robertson, "Political Realignment in Pre-Confederation Prince Edward Island" (1986) XV (#1) *Acadiensis* 35.

lawyers, but this did not necessarily reflect popular opinion.¹⁰ A parallel can be found in contemporary demands for legal reform, which Whig historians interpreted as being in the interests of 'the people'. Much of the impetus for law reform, however, came from the emerging middling class and was aimed at somewhat popular 'anachronistic' institutions such as the small-town and rural justice of the peace.¹¹ This presents difficulties for political and social historians who seek to expose the law as an instrument of the dominant classes. Thus, although Paul Romney's recent historical study of the Office of Attorney-General in Ontario redresses the lack of social context in works such as Patrick Brode's *Sir John Beverley Robinson*, Romney does not 'prove' his assertion that "the law itself and the administration of justice were seen by the ordinary Upper Canadian to be unduly favourable to the rich".¹² Political or social criticism of the legal profession, however, although emanating from other sections of the educated and propertied classes, did strike a popular chord, particularly in rural areas.

Criticism of the bar in 19th-century New Brunswick hinged on two related arguments, that lawyers' political involvement threatened to corrupt public life and that their professional monopoly perpetuated an outdated, cumbersome, expensive and sometimes oppressive justice system. A more radical source of criticism came from temperance supporters, discouraged by the courts' protection of illegal liquor dealers. Much like abolitionists who indicted the American judicial system for its defence of slavery, temperance activists blamed lawyers for upholding the liquor traffic.¹³ In the 1820s, according to the W.S. MacNutt, lawyers were "a special target for representatives of the rural communities" who encouraged antipathy to wealth and learning for electoral purposes. The anti-lawyer cry, tied to attacks on the office-holding class and members of the executive branch of government, had been raised as early as 1785 in a Saint John election.¹⁴ This tradition continued. At nomination day in 1870, for example, John Fawcett of Sackville exhorted the 3000 farmers of his county to elect one of their own, not a lawyer, to the

¹⁰M.G. Parks, ed., *Joseph Howe, Western and Eastern Rambles: Travel Sketches of Nova Scotia* (Toronto: University of Toronto Press, 1973) at 61. Howe's rambles were first published in his journal the [Halifax] *Novascotian* in the late 1820s and early 1830s.

¹¹For example see [Fredericton] *New Brunswick Reporter* (11 March 1850); [Saint John] *Morning Freeman* (1 March 1859, 7 July 1860); [Sackville] *Borderer* (7 July 1870); [Saint John] *Daily News* (21 February, 12 May 1877). For the paternalism of 19th-century urban magistrates see G. Marquis, "The Contours of Canadian Urban Justice, 1830-1875" *Urban History Rev.* [forthcoming].

¹²P. Romney, *Mr. Attorney: The Attorney General for Ontario in Court, Cabinet and Legislature, 1791-1899* (Toronto: University of Toronto Press, 1986) at 75. An important theme in Quebec historiography has been the role of the French Canadian professional class, including lawyers and notaries, in championing the nationalist cause. See F. Ouellet, *Lower Canada, 1791-1840: Social Change and Nationalism* (Toronto: McClelland and Stewart Ltd., 1980). It is curious that A. Greer, *Peasant, Lord and Merchant: Rural Society in Three Quebec Parishes, 1740-1840* (Toronto: University of Toronto Press, 1985) does not raise the question of popular attitudes toward the law, particularly as most habitant farmers lived in debt. Although Greer relies partly on the records of notaries who performed many legal services relating to land, especially for seigneurs, notaries appear only fleetingly in his discussion.

¹³G. Marquis, "'A Machine of Oppression Under the Guise of the Law': The Saint John Police Establishment, 1860-1890" (1986) XVI (#2) *Acadiensis* at 76-77; *Justice Accused*, *supra*, note 7.

¹⁴W.S. MacNutt, *The Atlantic Provinces: The Emergence of Colonial Society, 1712-1857* (Toronto: McClelland and Stewart Ltd., 1965) at 186; D.G. Bell, *Early Loyalist Saint John: The Origin of New Brunswick Politics, 1783-1786* (Fredericton: New Ireland Press, 1983) at 121-22.

legislature. Barristers constituted one-fifth of both the provincial Legislative Council and Legislative Assembly of 1870.¹⁵ Another critical depiction of the profession was through the use of humour, a favourite method of urban journalists for satirizing rural magistrates and grand juries. Prominent Saint John barrister David Kerr was described by the *True Humorist* in 1865 as “the most remarkable lawyer in the city...for he always succeeds in wearing an honest face; the effort of doing so may be very laborious, nevertheless he accomplishes the feat daily”. In 1878 the Saint John *Freeman* described proceedings at an assault trial before a justice of the peace at the Fairville Police Court on the outskirts of Saint John. While one lawyer presented his case before the magistrate his opponent “found more satisfaction in smoking cigars and quaffing ale in the ante-room than in listening to Mr. Gregory’s quotation of authorities, in which he was engaged over an hour and a half”.¹⁶

Anti-lawyer rhetoric typically appeared during discussions of law reform. The legal profession was charged with either resisting or promoting law reform principally for purposes of self-interest. In 1844 Charlotte County barrister and Legislative Councillor Harris Hatch implied that his profession had a direct interest in complicated and protracted litigation and opposed reform of bankruptcy law and the abolition of imprisonment for debt. Several years later a businessman Assemblyman urged that registry offices be administered by “honest men” instead of lawyers.¹⁷ There was occasional criticism in the House of Assembly, the Legislative Council and the press of the bar’s excessive reliance on confusing technical terms and obscure precedents. These feelings contributed to the appointment of the 1851-1853 law reform commission and the consolidation of provincial statutes in 1854. In 1853 James Hogg, publisher of the *New Brunswick Reporter*, expressed the hope that the government’s law reform commission would condense and simplify the colony’s statute law, leaving “no room for the lawyers to drive their coach and six through the open doors” of the revised edition:

The Law of the land is, or at least ought to be founded upon the principle of common sense, but unhappily owing to the prejudice of lawyers in favour of musty usage, the language of most of our provincial enactments is not only tedious in detail, but ambiguous in composition. When the mere business letter of one man to another is produced in Court, the plainest man in the Jury-box never finds the least difficulty to comprehend its meaning: - but when the *law itself*, which should involve the very perfection of unsophisticated reason, is brought under discussion the parties concerned can scarcely arrive at the same conclusions. There, a “fair and fertile” field is laid open, where gentlemen of the Long Robe may for months, and even years, puzzle each other as well as their respective clients with an endless round of intricacies and absurdities, until at last some *outrageously* industrious practitioner fishes up - perhaps by accident - some “great legal authority” which probably

¹⁵[Sackville] *Borderer* (7 July 1870); H. Morgan, ed., *The Canadian Parliamentary Companion, 1873* (Montreal, 1873).

¹⁶[Saint John] *True Humorist* (19 August 1865); [Saint John] *Freeman* (21 August 1878).

¹⁷[Saint John] *Loyalist* (30 March 1844), [Fredericton] *New Brunswick Reporter* (21 March 1851).

had lain for half a century in some musty pile on the top shelf of some public office.¹⁸

In 1865 the Sackville *Borderer* endorsed William J. Gilbert's bill to simplify and cheapen civil litigation, agreeing with correspondent 'Justice' of Dorchester that lawyers had "more regard for their own pockets than for the interests of their clients". The same year an Assemblyman argued on similar grounds against a proposal to establish county courts.¹⁹ The Chatham *Gleaner* observed in 1867 that a plan to restore the Court of Equity to its original position independent from the Supreme Court promised lawyers "good pickings".²⁰

Businessmen, the most important clients of the legal profession, were responsible for some of the strongest anti-lawyer statements. This was attributable in part to the influence of producer ideology which portrayed artisans, tradesmen, farmers and men of commerce as moral creators of wealth and in part to the difficulties lawyers created for businessmen and magistrates. A prominent lawyer-baiter was wealthy Saint John businessman, magistrate and Legislative Councillor Charles Simonds, who according to T. W. Acheson entertained "an envy for those considered to be his social superiors and a contempt for lawyers and others who lived off the body politic".²¹ In 1850, during a Legislative Council debate on the jurisdiction of inferior courts of common pleas, Simonds suggested that meddlesome lawyers be prohibited from pleading:

[Simonds] enquired whether there was any method proposed to prevent Attorneys pleading in Magistrates' Courts. At present Magistrates could not refuse the interference of those legal gentlemen, and the consequence was that much injury had followed. He knew of a case upon which he had sat as one of three Magistrates which would have been decided in ten minutes from the conclusive nature of the evidence; but a lawyer had been called in at this stage and the whole case got immediately into the most admirable confusion. The Magistrate who presided declared that he could not prevent the interference; and he (Hon. Mr. Simonds), withdrew, well knowing that under such circumstances the court could arrive at no conclusions. ... Magistrates ought to be permitted to stop this mode of proceeding; their

¹⁸[Fredericton] *New Brunswick Reporter* (21 January 1853). The law reform commissioners, appointed in 1851, consisted of chairman Solicitor-General William B. Kinnear, secretary William H. Needham, and advisors James W. Chandler and Charles Fisher. See *New Brunswick, Law Commissioners' Report* (Fredericton: Queen's Printer, 1853); J. W. Lawrence, *Judges of New Brunswick and Their Times* (Fredericton: Acadiensis Press, 1985) at 386-87; P. M. Toner, "William Boyd Kinnear" IX *Dict. Can. Biog.* at 430-31. The three reports of the law commissioners were printed in the *Revised Statutes of New Brunswick* (Fredericton: Queen's Printer, 1854). The third report, which appeared in January 1854, explained that the commissioners "were of the opinion that whilst every thing social, industrial and political in the Province is rapidly improving according to the requirements of modern civilization, the practice of our Courts, and administration of justice generally, retain too many features of a barbarous age, and too much of its ancient gothic character, and we think nothing but a series of radical reforms will adapt them to our age and country".

¹⁹[Sackville] *Borderer* (12 May, 18 May, 2 June 1865). In 1864 Gilbert, a Shediac lawyer, had introduced a "Bill to Cheapen and Simplify the Practice of Law and Abolish Special Bail". See *Journals of the House of Assembly of New Brunswick* (2 April 1864).

²⁰[Chatham] *Gleaner* (1 June 1867). A number of lawyers and magistrates attempted to profit from these popular suspicions by producing laymen's guides to legal matters. These manuals were part of the self-improvement literature of the 19th century. Examples include B. Murdoch, *Epiome of the Law of Nova-Scotia*, 4 vols. (Halifax, 1832-33); P. Stubs, *The New Brunswick Manual: A Compilation of Forms and Information Designed for the Use of Justices of the Peace, Merchants, Mechanics, etc.* (Saint John, 1841); J. Whitely, *Domestic Lawyer, With Plain and Simple Instructions for the Merchant, Farmer and Mechanic* (Stratford, CW, 1865).

²¹T. W. Acheson, "Charles Simonds" VIII *Dict. Can. Biog.* (1985) at 807. See also, [Fredericton] *New Brunswick Reporter* (1 March 1850).

court was, properly speaking, a court of equity, and could in no way be benefited by the introduction of those legal technicalities which puzzle the heads of more assuming practitioners. In the case to which he had alluded, there was a whole crowd of plain witnesses, but the Lawyer had succeeded in raising legal objections, and the Magistrate got confused, and could not come to a decision.²²

A similar complaint was made in 1859 by a correspondent to the *New Brunswick Reporter* who identified lawyers as impediments to the collection of debts and the enforcement of bastardy laws by magistrates.²³

The most elaborate public indictment of the mid-Victorian New Brunswick bar was "The Confessions of a Penitent Lawyer of One of the British Maritime Provinces", a short story in eleven chapters published in the Saint John *True Humorist*. This journal, which grew into the *The New Dominion and True Humorist Extra*, was edited by the outspoken George Day, a promoter of reformist principles, British institutions, temperance and honest and efficient local government. Day also supported Confederation, which is important for the context of the "Confessions". Although Day admired individual lawyers, he expressed profound suspicion of the professional, social and political pretensions of the bar, a group which allegedly saw itself as a local aristocracy.

The Lawyer will "take in" as many clients as may give him "a call". He will quote Chitty and Blackstone and other standard authorities to the ignorant and uninitiated until his poor dupes believe that the law is the only specific for evils and injuries. Every lawyer's office we regard as a huge trap, into which many an unconscious man is lured to certain ruin. He enters with a pocket full of gold and a suit of good clothes but, if he is fortunate enough to come forth alive, it is with not a penny to jingle upon a tombstone, nor a rag to cover his nakedness.²⁴

In an exaggerated but populist fashion, Day editorialized on "legalized robbery" as the "grand characteristic" of the profession:

We have before our mind's eye just now as many as twenty wealthy lawyers who, but a few years ago, when they hung out their shingle for the first time, had not the most remote idea of how two guineas looked when placed side by side upon the human palm. They are rich now; how did they become so? It wasn't the ability of some nor yet the honesty of any — the mystery belongs solely to the profession, and we fear were men to pry too deep into it we should smell brimstone. Talk about the rum traffic ye cold water men! Why there have been as many saw mills, teams of horses, family residences and fortunes swallowed up at the Bar of Justice (?) as ever disappeared at the Bar of the liquor dealer. We are obliged to speak thus boldly in consequence of the fearful deluge that is sweeping over our land of lawyers.²⁵

²²[Fredericton] *New Brunswick Reporter* (22 March 1850). In the same period Saint John businessmen were complaining that the lack of speedy trials was detrimental to trade. See: Presentment of the Saint John County Grand Jury, November Term, 1855, MG9 New Brunswick Executive Council Records, vol. 93, Public Archives of Canada; [Saint John] *New Brunswick Courier* (22 May 1858).

²³[Fredericton] *New Brunswick Reporter* (20 September 1859). In 1859 Saint John businessman, magistrate and Legislative Councillor John Robertson argued that probate matters should be taken "out of the hands of the Lawyers as much as possible". See [Fredericton] *New Brunswick Reporter* (1 March 1859). The theme of lawyers as antagonists of justices of the peace is prominent in A.G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture 1680-1810* (Chapel Hill: University of North Carolina Press, 1981).

²⁴[Saint John] *True Humorist*, "Lawyers" (8 June 1867). Day was also critical of the medical profession. See also J.R. Harper, *Historical Directory of New Brunswick Newspapers and Periodicals* (Fredericton, 1961) at 77.

²⁵*True Humorist* (8 June 1867).

Day went on to describe how lawyers monopolized public meetings, claimed the best seats at assemblies and entertainments and "ate all the delicacies at Society meetings". Moreover, ambitious barristers were accused of investing all available cash in real estate and stocks, ignoring their own obligations to mechanics, tradesmen and merchants and expecting to be treated at taverns. The *True Humorist* editor, expressing admiration for productive labour, urged young men to aspire to the more honourable occupations of sawyer, railway engineer or hod carrier rather than follow the "indolent" life of a lawyer.²⁶ In 1831 the same sentiments had been recorded by Joseph Howe, who was amazed to see an attorney ploughing his own field in rural Nova Scotia. Howe wished that this noble example would be followed by others in the profession. "Perhaps if they learn from experience how hard the pittance of the poor is earned", he wrote, "the information may be more serviceable to their clients than all the law in their Libraries".²⁷

"The Confessions of a Penitent Lawyer" was satire with a reformist bent in the tradition of Fielding, Dickens and, locally, McCulloch and Haliburton. Its overtones of pastoralism and utopianism tapped into a long line of anti-lawyer literature. The story also offers a rare glimpse of Confederation-era Maritime rural society. The confessions capitalized on popular suspicions, but the degree to which the piece reflected existing public opinion cannot be measured. It is reasonable to speculate, however, that farmers, artisans, labourers and many businessmen found the character of the story's protagonist all too familiar. Although the work shared the social purpose and moralism of contemporary evangelical and temperance propaganda, it also contained genuine humour. The detailed discussion of the technicalities of litigation suggests that the anonymous author was indeed a practitioner. Day described the author as "one of the cleverest writers in the Province, a scholar of high attainment and a man of large experience".²⁸ The repentant narrator expressed the hope that his confessions would help lawyers and would-be lawyers "turn from their ways, before it becomes too late".²⁹

The narrative begins with the lawyer's humble origins in a rural parish of the County of "Blindland", his education in a small log school house and the awakening of his ambitions by an Itinerant Preacher. Later the narrator blames the Preacher for setting him on the road from blissful "plebeianism" towards a life of pretension, avarice and deceit. The protagonist's father, a native of the State of Maine, is described as a lazy man whose thoughts rarely extended beyond "pulling sheep skins and trading horses" until he opened a

²⁶*Ibid.*

²⁷*Western and Eastern Rambles, supra*, note 10 at 187-88.

²⁸[Saint John] *True Humorist* (18 May 1867). The author may have been William B. Kinnear, who having revised the provincial statutes in 1854 had returned to Saint John, where he had once been Recorder, to serve as Clerk of the Peace and Judge of Probate. The reformist tone of the story echoed the sentiments of the 1850s law reform commissioners. Kinnear was also a public lecturer and leading Baptist, which may explain the temperance leanings of the *True Humorist* piece. Kinnear's earlier views on law reform are found in his charge to the Saint John County Grand Jury in 1830 and his comments during debate on a Bill relating to the courts of common pleas in 1832. See [Saint John] *New Brunswick Courier* (22 March 1830, 4 February 1832).

²⁹For the sake of simplicity, quotations from the text will not be footnoted. The story appeared in the *True Humorist* in eight installments: 18 May, 25 May, 1 June, 8 June, 15 June, 22 June, 29 June and 6 July 1867.

rural tavern, the notorious "Figure Four". This institution exerts a negative influence on the surrounding parish and the young protagonist:

He trafficked in rum, and taught his children at their earliest stage in life, to traffic in the same vicious commodity, until he laid waste the district for mile around; took people from their property without giving them the smallest remuneration in return; and drove many mad and prematurely into their graves; through which he accumulated considerable, and was considered in the neighbourhood well off.

Thus the tavern, important in rural social and economic life, is early established a key to the future lawyer's successes. When the narrator reaches the age of sixteen, the family is once again visited by the Itinerant Preacher who, on examining the bumps on the boy's cranium, urges the parents to send their son briefly to grammar school and then to a practising barrister for training in the law. The writer at this point notes that family experience had encouraged "an early prejudice in my mind adverse to marriage and union".

The young student-at-law next takes up residence in the Blindland County Shiretown, lodging at the "Swearing Tavern". The time is circa 1828, when much of the colony remains a frontier. His master, an active Barrister affiliated with the Conservative party, is most likely an original Loyalist. To ease his son's path, the father presents the Barrister with an outstanding bill run up at the Figure Four by a political enemy: "I took the hint, and had the extreme pleasure of making out my first writ, in my master's office, against one of the foremost Liberals of the County". The lad is instructed by his father to not "utter a syllable favorable to liberalism". This establishes one of the central themes of the tale, the unsavoury links between politics and the legal profession. The none-too-difficult legal apprenticeship lasts five years. During this period the father, now dubbed the "Old Gaffer" because of his unscrupulous business practices, the Drover, his prosperous son-in-law and the Barrister groom the protagonist for political life. Most of his training occurs at the Swearing Tavern:

The time passed by rather quickly. I attended to the routine business of the office, such as making out writs, copying declarations, Nisi Prius Records, Judgement Rolls, Bills of Costs, Executions, Judgement Bonds and Mortgages; and upon an average of about one hour a day I devoted to studying Law. I read Blackstone, Bacon, Chitty, Starkey, Tidd and a few Nisi Prius Works. When not in my office, my time was taken up with playing cards.

During the apprenticeship an embarrassing social engagement in female company reaffirms the narrator's inclinations towards bachelorhood. In the Victorian era such a denial of the humanizing presence of "an accomplished and educated woman" lessened the individual's chance for genuine respectability. This development enhances the protagonist's deviant character and helps explain his later ruthlessness:

From thenceforth I decided to bully society generally, upon each and every opportunity which might arise. I accordingly with every patience waited the expiration of my term of study, so that when I became an Attorney, and my own master, I could with freedom pursue this very natural inclination.

Once established as an Attorney, the narrator settles permanently in the Shiretown where he earns his reputation by collecting debts owed to his increasingly wealthy father. Another important theme is established — the

enrichment of lawyers through the ignorance and helplessness of the common people. Through technicalities such as issuing writs out of the Supreme Court and inflating his expenses, the Attorney reaps a windfall in fees and costs. His next step is to lend money to prominent Shiretowners in return for the understanding that they will do legal business solely with the creditor. As part of his "preconcerted plan of bullying, ruling and governing the county in opposition to all that was honourable, manly and gentlemanly", he also encourages needless litigation. A libel action is described where the scheming attorney produces an old-fashioned parchment *nisi prius* record that when unrolled by the judge extends "nearly the length of the court house". The client wins a shilling in damages, the narrator pockets costs of £120. Soon the Attorney inherits the business of the retired Barrister and is able to derive a small fortune from "the hard earnings of the people".³⁰

The narrative next describes how the young Attorney gains the trust of a farmer only to instigate his financial ruin. The farmer is symbolic of the simple, industrious, decent inhabitants of the province. His troubles begin when he is sued before a justice of the peace for a small debt incurred at the Figure Four inn. Lacking the cash to meet the demand, the farmer agrees in the meantime to pay all costs and treat, at the Old Gaffer's discretion, the regular clients of the Figure Four. Naturally this increases his debts. The Attorney issues a writ and asks the farmer to report for an interview. Unsure of his legal rights, the terrified farmer fears that he will be forced into an expensive suit in the Supreme Court in the provincial capital. Assuring the debtor that he will be given sufficient time to pay, the lawyer plots an unethical strategy.

I took good care to sign judgement against him by default, assess the debt, tax the costs, and to add to the costs as much as possible, I put on record a memorial of judgment, to bind his real estate. I then placed in the Sheriff's hands an execution, with instructions to make a levy, and to direct the farmer to come and see me without loss of time. ... I assured him that no man could be more worried about the way he had been used than myself; but the difficulty was that the Old Gaffer could not be persuaded to wait an hour, but that under all the circumstances, if he had not the money conveniently to pay the levy, I would borrow it and pay it myself, upon him giving me his bond and warrant of attorney for the amount. Again he was fairly impressed with my honour and magnanimity, and to get himself relieved from the hands of the Sheriff, he gladly accepted my offer. I charged him for the judgement bond five dollars and the hardy tiller of the soil returned to the bosom of his family, proclaiming his admiration of the young lawyer's disinterestedness and fair dealings.

A month passes and the lawyer writes the farmer, claiming to be financially embarrassed, at the same time issuing an execution against his goods and chattels, land and tenements. Assuming a bullying style, the Attorney advises the farmer to borrow money from one of the Shiretowners. Following negotiations, the narrator receives from the new creditor the farmer's security, a bond and mortgage upon the farm.

The gallon of rum debt had, like the rolling of a snowball, grown to such high proportions that by this time it reached about three hundred dollars, and upon the day the mortgage became due, while, I supposed, the husbandman was following his plough, having confidence in my honour and fair dealing, little heeding that I was

³⁰New Brunswick legal critics of the 1860s often pointed to outdated court methods such as parchment *nisi prius* rolls as contributing to the expense and delay of civil litigation. See [Sackville] *Borderer* (7 July 1865).

waiting, like a beast of prey in ambush, to spring upon him and devour him. I opened upon him the whole battery of the law, in accordance with the most approved practices tolerated by a most iniquitous system which then was, and still is, allowed to remain in existence. I filed a bill of foreclosure in the Court of Chancery; I bought an action of debt in the Supreme Court, on the bond and I commenced in the same court an action of ejectment to dispossess him of his farm.

As a result of the future penitent's actions, the farm, a product of forty years of hard labour, is "brought under the hand of the Sheriff, sold and delivered to strangers". The aged son of the soil, homeless, penniless and heartbroken sickens and dies, forcing his large family to emigrate to Canada.

Another example of the rising Attorney's bending of the law is an action against five persons who had endorsed an overdue promissory note in the possession of the Drover. The amount of the note is £22, but because of the peculiarities of provincial law the Attorney is able to initiate five suits in the Supreme Court, winning costs of £95. Four other individuals become involved on the debtors' side, which escalates costs to ten times the amount of the original debt. The penitent narrator describes such action as "laying waste to the country, like the ravages of a plague", suggesting that civil litigation amounted to a legalized right to despoil and pillage.

After engaging in such sharp practices for three years as an attorney, the protagonist is admitted to the bar of the province and begins to contemplate political life. Fearful of liberal principles and the spread of reform, he decides to offer himself as a candidate in the next by-election. Although promised the support of his former master, the Shiretowners and the clientele of the Figure Four, the new Barrister vows, if all else fails, to purchase his Legislative Assembly seat. Building his war chest on the backs of his father's debtors ("he dealt writs out in like manner as sugar plums are given to children") the ambitious lawyer launches his campaign by opening the Swearing Tavern to his political supporters, buying votes with drinks.

On nomination day the Barrister and the incumbent Assemblyman, the latter up to this point an important client, reveal their respective political platforms to the freeholders of the riding. The Barrister tells the electors that he had been born of Godly parents and was early initiated into the Church, but was opposed to Church and State union, and to all religious monopolies and Church rights, a popular stance in most mid-century rural New Brunswick constituencies. But other than self-preservation, which in this case involves blocking law reform, the lawyer has no actual political philosophy. At a more important political 'rally' that evening in the Swearing Tavern, the narrator wins a valuable music box in a poker game. The music box is presented to the "Blind Institution" (an euphemism for a private academy or perhaps the provincial university) in return for political support. Winning his seat by a slim majority, the new representative for Blindland proceeds to the provincial capital where by giving champagne suppers he becomes influential in the Assembly. Soon he is considered enough of a threat to be asked to enter the government. Instead of sitting with his fellow cabinet members, the Barrister, bored with the details of administration, finds a more comfortable position, reclining on the table. By bullying his colleagues and frequently threatening to resign, he staves off for "Session after Session, the consideration of measures

which might otherwise have led to wholesale reforms and changes in the practice of the Law”.

After a few sessions pass the Barrister breaks with the government over its legislative proposals and hoists the standard of opposition in order to protect the corrupt system under which he has prospered. The government's new policy, which the narrator admits would “introduce and bring into the Province capital, increase our population and remunerative employment to our people”, is an euphemism for Confederation, a cause endorsed by the *True Humorist*. Returning to the County of Blindland to canvass for the upcoming election, the Barrister fills the electorate with stories of “desolation, ruination and woe”.

They took the bait, swallowed and gulped it down readily, expressing their convictions that I was a man of extraordinary foresight and precaution, in fact they idolized me as the saviour of the country. I had also an interview with the Professors of the Blind Institution, and represented to them that their Establishment would tumble about their heads should the Government carry their project; they caught the alarm and promised to give me their best support.

Although the voters of Blindland re-elect their representative, the Government is sustained and proceeds to enact its legislation. The Barrister, his self-interestedness finally revealed to the Shiretowners, falls into “contemptible obscurity”, withdrawing from society. He is wracked by guilt and remorse, experiencing something akin to an evangelical conversion:

I imagined that the curtain of my mind had become unhung; strange phantoms appeared before my vision; night after night I imagined that the itinerant Preacher appeared before my bedside calling upon me to repent; and I actually saw in my dreams the poor old farmer, whom I had despoiled by taking from him his farm, gazing upon me with large drops of sweat standing upon his brow, as he appeared before me as the last time I saw him, seeking for mercy. These occurrences appeared to effect me so that sometimes I thought I really was going mad.

The confession ends with a call for reform of abuses of the legal profession and the provision of equitable justice machinery. In contrast to legal historians, who often approach the class biases of the law by concentrating on criminal justice matters, the penitent lawyer focused exclusively on injustice wrought through civil litigation. In the mid-Victorian period one visible sign of this injustice were debtors confined to county gaols. The temperance overtones of much of the story are important for situating it in the context of contemporary social criticism. The Figure Four and the Swearing Tavern are portrayed as founts of political corruption and human suffering. The prominence of liquor in the story suggests the author's concern with the anti-social connection of the credit system, unethical barristers and private law.³¹ Advocates of the abolition of imprisonment for debt resorted to similar rhetoric. In 1859, for example, Francis Rice, introducing a bill to exempt the homestead and certain property from sales under execution, spoke of the destitution wrought by liquor amongst the farm families of York, Carleton and Victoria counties.³²

³¹T.W. Acheson notes that Saint John merchants, who controlled much of the province's economy, supported imprisonment for debt in order to maintain the confidence of British creditors. See *Saint John: The Making of a Colonial Urban Community* (Toronto: University of Toronto Press, 1985) at 42, 59.

³²[Fredericton] *New Brunswick Reporter* (25 March 1859). The law reform commissioners had recommended eventual abolition of imprisonment for debt: “In our opinion imprisonment for debt must finally be abolished, but we do not think the country prepared for so great a change, and if it were, it could not be safely adopted without a series of important amendments in the whole Law of debtor and creditor”. See “Third Report of the Commissioners” R.S.N.B. 1854 at *xxiii*.

The penitent lawyer cites, in addition the social costs of vexatious litigation, the ill effects on the economy of heavy legal fees. Less litigation, it is implied, would bring less oppression of the weak and, in accordance with the traditions of the British constitution, greater respect for individual rights. The author concludes by praying that "the day is not far distant when the electors will arise in their might and throw off this law scourge which is yet stalking rampant throughout the country." Despite its strong language and gloomy assessment of the legal profession, the 1867 confession did not constitute a demand for a lawyerless society or a rejection of the inviolability of contract. Indeed it hoped that procedural reforms and compassionate lawyers would contribute to a more equitable justice system — and by implication safeguard the prestige of the profession. Thus despite its sensational style, the confession was a plea for ethical standards of public service, an important component of the emerging doctrine of the legal professionalism.

The parable of the penitent lawyer suggests that a critical, balanced and sophisticated legal historiography of the Maritime provinces will not consist solely of studies of 'great men', famous trials and the institutional life of the bar, but must examine the relationship between law, economy and society, a challenging but essential undertaking.³³ Civil litigation, for example, reflected the intricacies of the regional economy and the workings of the credit system. The fact that most Maritime barristers resided in the principal port cities suggests important links between commerce and law. The public image of the bar, the magistracy and judiciary should also be examined. Legal culture, in the words of Douglas Hay, "is the focus of emotional currents in most societies".³⁴ If 19th-century lawyers, as the new legal history suggests, were viewed by the masses as agents of the dominant classes, this had important consequences for political culture and popular perceptions of the law. At the same time many magistrates, businessmen and creditors appear to have viewed lawyers as an annoyance. The internal focus of mainstream legal historiography which characterizes Ontario studies should not be abandoned. Legal history, however, should be sensitive to social, economic and political contexts. The contents of law libraries and the changing nature of legal literature may have been less important for 19th-century practice than lawyers' interactions with merchants, landlords, bankers, city councils, police departments, religious institutions, farmers, tradesmen, shipowners, mariners, lumbermen, government officials, temperance reformers and trade unions. Until historians address such themes, the emerging legal history of the Maritimes will not achieve its deserved maturity.

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³³D. Sugarman, "Law, Economy and the State in England, 1750-1914" in G.R. Rubin & D. Sugarman, eds., *Legality, Ideology and the State* (Toronto: Academic Press, 1983) at 213-66. For a recent Marxist critique of Canadian legal historiography, see B. Young, "Law 'in the round' " (1986) XVI (#1) *Acadiensis* at 155.

³⁴D. Hay, "The Meanings of Criminal Law in Quebec, 1764-1774" in L. Knafla, ed., *Crime and Criminal Justice in Europe and Canada* (Waterloo: Wilfred Laurier University Press, 1981) at 80.

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