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American Independence and the Law: A Study of Post-Revolutionary South Carolina Legislation

*James W. Ely, Jr.**

Joseph Brevard, a South Carolina judge, observed in 1814 that “the laws of a country form the most instructive portion of its history.”¹ Certainly the successive printed collections of state statutes are among the most reliable and readily available sources for early American legal history.² While statutes on their face do not reveal

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1. 1 J. BREVARD, *AN ALPHABETICAL DIGEST OF THE PUBLIC STATUTE LAW OF SOUTH CAROLINA* ix (1814). Brevard (1766-1821) served as a circuit court judge from 1801 to 1815 and thereafter spent 4 years as a member of Congress.

2. The story of the various compilations of early South Carolina statutes is an interesting one which reflects the continuing concern that the laws of the colony and state should be widely known. The first collection of statutes was made by Chief Justice Nicholas Trott, originally for his own use. On January 11, 1710/1711, the assembly directed that Trott be given funds to prepare his copy of the acts for printing. Resolving that “the Laws of this Province, by which the people thereof are to be regulated and governed, should be made publick and open to the ready view of all persons,” the assembly on December 12, 1712, formally adopted the Trott collection as “a good lawful Statute Book of the Province, in all Courts, and upon all occasions whatsoever . . .” However, the money required for the printing of the compilation was not provided until 1736, a delay partly explained by the confusion in the colony following the overthrow of the proprietary government in 1719. The Trott collection, of which apparently 300 copies were printed, included all statutes then deemed in force. See N. TROTT, *THE LAWS OF THE PROVINCE OF SOUTH CAROLINA* (1736). Trott’s codification was superseded in 1790 when Judge John Faucheraud Grimké (1752-1819) published his collection of statutes, *THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA* (1790) [hereinafter cited as GRIMKÉ, *LAWS*]. In 1785 Grimké was elected to a 3-man commission created to digest the laws of the state. The commission’s 1789 report was never adopted by the legislature, but doubtless Grimké utilized the agency’s work in his compilation. In his preface Grimké returned to the theme of making the laws generally available: “The obscurity in which the laws of South-Carolina were involved, and the impossibility of obtaining a collection thereof to assist the citizen who was desirous of becoming acquainted with the legal rules prescribed for his conduct, or to facilitate the improvements of young practitioners at the bar, suggested to me the propriety of forming such a compilation.” Highly selective, Grimké included all acts which he regarded as being in force and excluded statutes that had been repealed or, in his view, had become obsolete. His collection commences with statutes of 1694, omitting all previous acts, and ends with the constitution of 1790. Five hundred copies of Grimké’s volume were printed. The need for a new and more complete compilation of the statutes was felt in the mid-19th century, and in December of 1834 the South Carolina legislature passed a resolution calling for the publication of “the Statute Law of this State,

the extent to which they proved effective, the fact remains that to a unique degree statute law, as the product of the legislative process, mirrors the considered values and ideals of a society. Yet the legal history of South Carolina, and indeed that of most southern states, remains largely unexplored.³ This study attempts to fill part of the gap with an analysis of South Carolina statutory law in the immediate post-Revolutionary era, between the British evacuation of Charleston in December of 1782 and the ratification of the Constitution of the United States in 1788. An investigation of the statutes governing the state during these years should furnish some insight into the impact of the Revolution upon the status of the law as well as the functioning of South Carolina society in the Critical Period. These crucial and unsettled years would see Carolinians follow their victory in the Revolution with the restoration of civil government.

The American Revolution "raised as many questions of government as it answered."⁴ Certainly one of the most sharply debated topics was whether English law should continue to furnish the basis for the American legal system. Nationalists and radicals argued that American law ought to disassociate itself entirely from the British model. In 1786 an influential Boston pamphleteer thundered:

One reason of the pernicious practice of the law, and what gives great influence to the 'order' is, that we have introduced the whole body of English laws into our Courts; why should these States be governed by British laws? Can we

now in force." In 1835 the governor gave this assignment to the fiery and controversial Thomas Cooper (1759-1839), who began editing a monumental, 10-volume collection of every law enacted in South Carolina from its founding through 1838. Critical of omissions by Trott and Grimké, Cooper saw it as his duty to assemble the complete set of statutes since he did not feel authorized to decide what acts were obsolete or invalid. See T. COOPER & D. McCORD, *THE STATUTES AT LARGE OF SOUTH CAROLINA* (1836-1841) [hereinafter cited as COOPER]. Cooper was responsible for the first 5 volumes. After his death in 1839, the work was completed by his associate David J. McCord. For an account of Cooper's career as agitator, lawyer, and teacher, see D. MALONE, *THE PUBLIC LIFE OF THOMAS COOPER, 1783-1839* (1926). The movement for codification in South Carolina is briefly treated in F. AUMANN, *THE CHANGING AMERICAN LEGAL SYSTEM: SOME SELECTED PHASES* 121-22 (1940).

3. Much of the sporadic attention paid to South Carolina legal history has taken the form of editing selected court records for publication. *JOURNALS OF THE PRIVY COUNCIL, 1783-1789* (A. Edwards ed. 1971); *SOUTH CAROLINA CHANCERY COURT RECORDS, 1671-1779* (A. Gregorie ed. 1950) (6 American Legal Records Series). M. Leigh Harrison has recently examined Carolina law court decisions during the post-Revolutionary period in *A Study of the Earliest Reported Decisions of the South Carolina Courts of Law*, 16 AM. J. LEGAL HIST. 51 (1972). The attitudes of the legal profession in 19th century South Carolina also have attracted scholarly attention. See D. Senese, *Legal Thought in South Carolina, 1800-1860*, 1971 (Ph.D. dissertation, University of South Carolina). Senese treated the court structure of 19th century Carolina in *Building the Pyramid: The Growth and Development of the State Court System in Antebellum South Carolina, 1800-1860*, 24 S.C.L. REV. 357 (1972).

4. L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 93 (1973).

suppose them applicable to the circumstances of this country? Can the monarchical and aristocratical institutions of England, be consistent with the republican principles of our constitution?⁵

Such critics saw the persistent deference to English law as an undemocratic and potentially dangerous survival of the conservative legal system of Britain in the new republic. Indeed, historians generally have regarded the post-Revolutionary period as one characterized by hostility toward English legal institutions and common law.⁶ Roscoe Pound has observed that "[W]e must not forget that reception of English law as the law of post-Revolutionary America was not a foregone conclusion, nor did it take place without a struggle."⁷ In marked contrast to this frequently expressed interpretation, the Carolina experience indicates that despite the Revolutionary upheaval the place of English law in America was never seriously threatened. Continuity and stability were the hallmarks of South Carolina lawmaking in the Critical Period.

I. THE POLITICAL BACKGROUND

Any meaningful analysis of statutory law must consider the political and economic setting in which those measures were enacted or operated. Hence, in order to place the statutes in their proper perspective, it is necessary to review the history of South Carolina during the 1780's. The history of the Palmetto State in the Critical Period was primarily a story of recovery from the Revolutionary War. The Revolutionary struggle in South Carolina was particularly savage and destructive, leaving "the state impoverished with its treasury empty, its commerce nearly destroyed, and many of its citizens heavily in debt."⁸ When the British quit Charleston late in 1782, Carolinians faced a bleak scene of ruined plantations and a disorganized slave labor force. The departing British stole some 25,000 slaves, about one fourth of the state's work force.⁹ Agriculture was crippled, and the traditional foreign markets were closed. The loss of the trade with the British West Indies was an important factor in the decline of the port of Charleston. The currency was debased, credit virtually extinct, and manufactured

5. Honestus, *Observations on the Pernicious Practice of the Law* (1786), reprinted in 13 *AM. J. LEGAL HIST.* 244, 257 (1969).

6. 2 A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 5-30 (1965).

7. R. POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 107 (1950).

8. C. SINGER, *SOUTH CAROLINA IN THE CONFEDERATION* 18 (1941).

9. II L. GRAY, *HISTORY OF AGRICULTURE IN THE SOUTHERN UNITED STATES TO 1860* at 595-96 (1933).

products scarce. Crop failures in 1784 and 1785 severely aggravated the depressed economic picture and the export of rice, the state's principal staple crop, fell off dramatically.¹⁰ South Carolina thus began its independence with many members of the dominant planter class under a tremendous burden of debt.

The war and the depressed economic conditions gave rise to the principal political controversies in the state during the 1780's. Treatment of the loyalists was a major concern, and in 1782 the legislature passed a series of confiscation, amercement, and banishment acts. The confiscation of Tory property, however, encountered strong opposition, and over the next few years conservatives gradually were able to modify the acts and secure a mild course of action.¹¹ As the decade progressed, economic problems grew more acute and increasingly overshadowed the loyalist question. With money scarce, people were unable to recover from the destruction of the war or pay for goods ordered on credit. Since planters and legislators were prominent among the debtor class, they displayed no reluctance in employing the government for their protection. Throughout the 1780's the assembly repeatedly intervened in creditor-debtor relations with a host of stay laws, installment payment acts, and measures regulating attachments and sheriffs' sales. In 1785, when the hard times were most acute, the legislature responded with the famous property tender law—termed the Pine Barren Act by critics—and the paper money loan.

The Pine Barren Act—described by one historian as an “utterly indefensible measure”—permitted debtors to tender land in payment of their obligations.¹² Ostensibly intended to regulate sales under executions, the act declared that “many citizens of this State are threatened with total ruin, by having their property seized for debt, and sold very considerably below its real value.”¹³ The controversial section authorized the debtor against whom an action was commenced to offer real property to his creditor, provided that three-fourths of the appraised value of such land, as determined by three appraisers, would be sufficient to discharge the obligation. Abetted by inflated appraisals, unscrupulous individuals tendered worthless pine land, distant property, or land lying in Indian coun-

10. F. McDONALD, *E PLURIBUS UNUM* 99-105 (1965).

11. C. SINGER, *supra* note 8, at 102-25.

12. A. NEVINS, *THE AMERICAN STATES DURING AND AFTER THE REVOLUTION, 1775-1789*, at 525-26 (1924).

13. 4 COOPER, *supra* note 2, at 710-12.

try—all lands which upon sale would yield only a fraction of the appraised value. Thus, the creditor ran the risk of having property of little value forced upon him to satisfy outstanding obligations. The Pine Barren Act, which expired in the spring of 1786, was a temporary measure intended not to prevent eventual payment of debts but to forestall the imminent financial ruin of Carolina landowners. It furnishes striking testimony to the economic plight of even leading Carolina planters in the 1780's.¹⁴

The paper money loan, on the other hand, generally has been regarded as a moderate and successful response to the hard times. Noting the scarcity of money in the state, the legislature directed the issuance of 100,000 pounds in paper bills. This paper money, bearing interest of seven per cent per annum to the state, was placed in circulation through individual loans of up to 250 pounds a person. Since the loans were secured by a mortgage upon the land of the borrower, or by a deposit of gold or silver, the act essentially created a land bank. The bills were declared legal tender only in the payment of debts, duties, and taxes to the state, but a circulating medium was welcome to everyone and the money was widely accepted. More than 400 individuals, many of them politically influential planters, received loans under the statute.¹⁵

Despite the depressed conditions, the colonial upper class of low country planters and Charleston merchants continued their political dominance of the state government.¹⁶ Under the constitution of 1778 the assembly retained extensive powers of appointment and named the governor, the privy council, the judges, and the sheriffs. A malapportionment of legislative seats gave the low country districts more than proportionate representation, to the detriment of the upland, western population. The suffrage was extended to free white males with a freehold of fifty acres, and the constitution required that both executive and legislative officeholders own substantial freehold property.¹⁷ Although the planter-merchant oligarchy was often pressed by the democratic faction composed of

14. C. SINGER, *supra* note 8, at 119-20.

15. 4 COOPER, *supra* note 2, at 712-16.

16. For the political problems of post-Revolutionary South Carolina, see 2 D. RAMSAY, *HISTORY OF SOUTH CAROLINA* 121-30 (1809); R. Starr, *The Conservative Revolution: South Carolina Public Affairs, 1775-1790, 1964* (Ph.D. dissertation, University of Texas); 2 D. WALLACE, *THE HISTORY OF SOUTH CAROLINA* 292-351 (1934); Phillips, *The South Carolina Federalists*, 14 *AM. HIST. REV.* 529-43 (1909).

17. The South Carolina Constitution of 1778 and the various other constitutions of the state are conveniently assembled in 6 *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND ORGANIC LAWS* 3251-65 (F. Thorpe ed. 1909).

Charleston artisans and upland small farmers, it was not overturned, and the conservatives remained in power during the decade.¹⁸ Nevertheless, the turbulent times were extremely upsetting to Carolina conservatives. The wealthy planter Ralph Izard was moved to complain: "Dissentions and factions still exist, and like the Hydra, when one head is destroyed, another arises."¹⁹ Conditions in Carolina were certainly ripe for the appearance of whatever dissatisfaction existed toward the legal system.

II. THE LEGAL BACKGROUND

During the colonial period the laws and legal institutions of South Carolina were modeled closely on those of England. The first charter of March 1663 from Charles II to the Carolina proprietors permitted the proprietors to make laws for the province, subject to the assent of the freemen of the colony and the customary proviso that "the said laws be consonant to Reason, and as near as may be conveniently, agreeable to the laws and customs of this our Kingdom of England." The second Carolina charter of June 1665 contained an identical restriction.²⁰ English law was early accepted as the basis of judicial administration in South Carolina. John Drayton, a lawyer and governor of the state, stressed in 1802:

From the first establishment of Carolina, the common law of Great Britain, as declared in law books and reports of cases, was respected by the courts established: and as far as they suited the situation of the country, served as a rule for their conduct.²¹

Unfortunately, the status of English law in colonial America cannot be so easily clarified as Drayton seemed to suggest. It was difficult to determine the extent to which English common law or statutes were in effect in the colonies before the Revolution, and the haphazard and piecemeal introduction of English law contributed to what

18. For a treatment of the artisans and the militant Marine Anti-Britannic Society, see R. WALSH, *CHARLESTON'S SONS OF LIBERTY: A STUDY OF THE ARTISANS, 1763-1789*, at 107-24 (1959). D. Huger Bacot has considered the upland farmers in *The South Carolina Up Country at the End of the Eighteenth Century*, 28 AM. HIST. REV. 682-98 (1923).

19. Letter from Ralph Izard to Thomas Jefferson, April 27, 1784, in *The Letters of Ralph Izard*, 2 SOUTH CAROLINA HISTORICAL AND GENEALOGICAL MAGAZINE 194-204 (1901).

20. The Carolina Charters of 1663 and 1665 are reprinted in 5 *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS AND ORGANIC LAWS* 2743-71 (F. Thorpe ed. 1909).

21. J. DRAYTON, *A VIEW OF SOUTH CAROLINA AS RESPECTS HER NATURAL AND CIVIL CONCERNS* 186 (1802). Drayton (1766-1822), who studied law at the Inner Temple in London, was a member of both houses in the Carolina assembly and served a term as governor. In 1812, President James Madison appointed Drayton federal district judge for South Carolina, a post he held until his death.

has been described as "the confusion and disorder of colonial law."²² In fact, the colonial years saw a selective reception of English law that in turn was mingled with local law in the colonial courts.²³

From an early date South Carolina was aware of the problems created by the uncertain status of English law, and in 1712 the colony sought to solidify the English base of Carolina law with the passage of a uniquely comprehensive reception statute.²⁴ This act, largely the work of Chief Justice Nicholas Trott,²⁵ was passed by the assembly on December 12, 1712, and declared that 167 statutes of Parliament chosen by Trott were in force in the colony. The English statutes so received began with the reissue of the Magna Carta in 1225 and covered a wide variety of enactments on crime, criminal procedure, inheritance, real property, estate administration, fraud, and creditor-debtor relations. Moreover, the reception statute also declared in force the acts of Parliament from 1710 to 1712, all acts for allegiance to the British crown, all acts securing the rights and liberties of the subject, and all laws on customs, trade, and navigation. All other English statutes were "hereby declared impracticable in this Province." In addition, the 1712 reception statute provided that

all and every part of the Common Law of England, where the same is not altered by the above enumerated acts, or inconsistent with the particular constitutions, customs and laws of this Province . . . be and hereby is made and declared to be in as full force and virtue within this Province, as the same is or ought to be within the said Kingdom of England²⁶

Although an important step in the legal development of the

22. G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787*, at 299 (1969).

23. For helpful studies of the reception of English law see Howe, *The Process of Outlawry in New York: A Study of the Selective Reception of English Law*, 23 *CORNELL L.Q.* 559 (1938) and Stoebuck, *Reception of English Common Law in the American Colonies*, 10 *WM. & MARY L. REV.* 393 (1968).

24. David Duncan Wallace characterized this act as "the most notable legislation in our legal history." 1 D. WALLACE, *HISTORY OF SOUTH CAROLINA* 198 (1934).

25. Nicholas Trott (1663-1740) was born in England and received his legal education at the Inner Temple. Appointed attorney general of South Carolina, he arrived at Charleston in 1699. A man of learning and energy, Trott rose to the post of Chief Justice and also held a seat on the council. The pre-eminent jurist of his day, Trott made important contributions to the development of South Carolina law. There is no adequate account of his career. See 1 J. O'NEALL, *BIOGRAPHICAL SKETCHES OF THE BENCH AND BAR OF SOUTH CAROLINA* 3-12 (1859).

26. For the reception statute see 2 CGOPER, *supra* note 2, at 401-580. A 1694 act, the text of which has been lost, had previously put in force several English measures. *Id.* at 81. Also in 1712, the assembly passed a separate measure putting the English Habeas Corpus Act of 1679 into effect in the colony. *Id.* at 399-401. The 1712 act superseded and repealed a 1692 statute putting the Habeas Corpus Act in force in the colony. The fact that the legislature repealed the 1692 act indicates that it had remained in effect.

colony, the Carolina reception statute failed to address the full range of ambiguities inherent in colonial law. What did the English common law include? What portion of the common law was "inconsistent" with "the particular constitutions, customs and laws" of South Carolina? Who was to decide these issues? With respect to the statutes, however, the reception measure was more conclusive.²⁷ Other than the acts listed in the reception law, the only English statutes in force in South Carolina were acts of Parliament specifically mentioning the colonies and a few English statutes subsequently adopted by the assembly.²⁸

Along with the substantive law, the judicial system of South Carolina reflected the English influence. In 1721 the assembly empowered the governor and a majority of the council to hold a Court of Chancery. The enabling statute further provided that

the said court shall proceed, adjudge and determine in all causes brought into said court, as near as may be according to the known laws, customs, statutes and usages of the Kingdom of Great Britain, and also, as near as may be according to the known and established rules of his Majesty's high court of chancery in South Britain.

Dissatisfied litigants could appeal to the king in privy council, provided that security was given and the execution of the decree not suspended by reason of the appeal.²⁹ As late as 1769 the Circuit Court Act provided that justices on circuit were to exercise jurisdiction "in the same manner, as nearly as may be, as the justices of assize and nisi prius do in Great Britain."³⁰

For nearly a hundred years after the settlement of South Carolina, the court system of the colony was centered exclusively in Charleston. Except for small causes, litigants and witnesses were obliged to travel from widely diverse parts of the colony to the courts

27. The most satisfactory examination of the reception of English statutes is contained in E. BROWN, *BRITISH STATUTES IN AMERICAN LAW, 1776-1836* (1964).

28. For example, in 1743 the assembly declared 2 Parliamentary acts from the reign of Edward VI dealing with stolen horses "to be in full force in this Province." 3 COOPER, *supra* note 2, at 603-06.

29. See the Chancery Court Act of 1721 in 7 COOPER, *supra* note 2, at 163-65. A Court of Chancery, composed of the proprietary governor and the council, existed in Carolina from the time of settlement. The 1721 act was designed to restore the former structure of the court following the overthrow of the proprietors in 1719. The sustained opposition to chancery courts in much of colonial America is detailed in Katz, *The Politics of Law in Colonial America: Controversies Over Chancery Courts and Equity Law in the Eighteenth Century*, in 5 PERSPECTIVES IN AMERICAN HISTORY 257-84 (1971).

30. See the Circuit Court Act of 1769 in GRIMKÉ, *LAWS, supra* note 2, at 268. Cooper and McCord inexplicably included the 1768 Circuit Court Act, which was disallowed by the King, and omitted the effective 1769 act. 7 COOPER, *supra* note 2, at 197-205.

at Charleston for the trial of all cases, civil and criminal. Just prior to the Revolution, litigation was handled in a criminal court, the Court of General Sessions of the Peace, Oyer and Terminer, Assize and General Goal Delivery, and a civil court, the Court of Common Pleas. After 1765 four assistant judges and a chief justice sat concurrently on these courts. While this highly centralized arrangement facilitated the reception of English law, it left the expanding interior regions of South Carolina without an adequate court system. The expense and inconvenience of traveling to Charleston for trials contributed to the Regulator movement in the 1760's. The Regulators primarily sought order and stability in the back country and resorted to vigilante methods in the absence of an effective judiciary.³¹

The Circuit Court Act of 1769 represented an effort by the assembly to redress the principal Regulator complaint. Supplementing the existing courts at Charleston with a scheme of circuit courts in which the justices held joint sessions of the Courts of Common Pleas and General Sessions, the act divided the colony into seven districts, one of which included Charleston and the surrounding territory. Twice a year the judges were required to ride circuit and preside at court sessions in the six districts outside Charleston, and a sheriff was appointed for each district. All writs in civil actions, however, still issued from and were returnable at Charleston, and legal proceedings were conducted there until the trial stage.³² There was no regular custom concerning the number of judges who should sit for the trial of a case. Appeals from decisions on circuit took the form of a motion for a new trial or a motion in arrest of judgment before the entire bench.³³ The crown named five British placemen as the first judges under the Circuit Court Act, and the courts did not conduct business until November of 1772. Timothy Ford, a New York lawyer who moved to Charleston in 1785, described the operation of the circuit courts in his diary:

The State is divided into two districts the Northern & Southern, each of which is subdivided into circuits; where circuit courts are held twice a year including sessions common pleas goal delivery & presided over by one of the associate judges of whom there are four. For these courts all the business is prepared & causes brought to issue in Charleston; & then the lawyers & judges set off

31. The best account of the Regulator movement and the passage of the Circuit Court Act is in R. BROWN, *THE SOUTH CAROLINA REGULATORS* (1963).

32. GRIMKÉ, *LAWS*, *supra* note 2, at 268-73. It was not until 1789 that the circuit courts outside Charleston were given complete original and final jurisdiction over cases. 7 COOPER, *supra* note 2, at 253-57.

33. Harrison, *A Study of the Earliest Reported Decisions of the South Carolina Courts of Law*, 16 AM. J. LEGAL HIST. 51, 56 (1972).

together taking the requisite papers with them & are generally absent about 5 weeks.³⁴

As Ford indicated, because the upcountry did not need a resident bar, lawyers in colonial South Carolina lived in Charleston, the economic and legal center of the colony. Carolina's colonial bar was small, but well educated.³⁵ Indeed, before the Revolution South Carolina sent more men to the Inns of Court in England than any other mainland colony.³⁶

The high level of the bar was reflected on the bench. While lay judges were still common on American courts of the late 18th century, the highest courts in Carolina boasted a judiciary well trained in the law. During the post-Revolutionary period a large number of the judges sitting on the principal courts had acquired at least part of their education in England.³⁷ Thomas Heyward and John Faucheraud Grimké, two of the five judges of the Courts of Common Pleas and General Sessions, had studied law at the Middle Temple. Moreover, since there was no prohibition against judges acting in a political capacity, Grimké and Heyward sat in the state legislature while holding judicial posts. John Rutledge (Middle Temple) and John Mathews (Middle Temple), two of the three chancellors on the reconstituted Court of Chancery created in 1784, likewise received their legal education in England. Other lawyers trained in England held high positions in the post-war decade: Hugh Rutledge (Middle Temple) was a judge of the admiralty court; William Drayton (Middle Temple) served as a judge in admiralty and on the circuit court before becoming the first federal district judge for South Carolina; Alexander Moultrie (Middle Temple) was attorney general; and William Hasell Gibbes (Inner Temple) was both master in chancery and the Recorder for the Court of Wardens in Charleston. These individuals represented a direct link between the traditions of Eng-

34. *Diary of Timothy Ford, 1785-1786*, 13 SOUTH CAROLINA HISTORICAL AND GENEALOGICAL MAGAZINE 199 (1912). For the post-Revolutionary era the circuit court calendars and the names of the presiding judges may be found in J. TOBER, THE CAROLINA AND GEORGIA ALMANAC (1783 and succeeding issues) (microprint, Virginia State Library).

35. Charles Warren has observed that Carolina's colonial bar "was more highly educated than any Bar in America, for a considerable proportion of its members had received their legal training in England." C. WARREN, A HISTORY OF THE AMERICAN BAR 121 (1911).

36. Bedwell, *American Middle Templars*, 25 AM. HIST. REV. 680-89 (1920); Hamilton, *Southern Members of the Inns of Court*, 10 N.C. HIST. REV. 273-86 (1933).

37. For brief and not always complete biographical data about the Carolina jurists see O'Neill, *Biographical Sketches of the Bench and Bar of South Carolina*. For a discussion of Charleston lawyers in the immediate post-Revolutionary period see G. SMITH, JR., EVOLUTION OF A FEDERALIST: WILLIAM LOUGHTON SMITH OF CHARLESTON (1758-1812), at 112-23 (1962). Smith, later a congressman, was educated at the Middle Temple.

lish law and the administration of justice in South Carolina once independence was secured.

With the coming of independence it was natural that there would be attempts to define and limit English law in America. Post-Revolutionary America debated the extent to which common law was still binding, and a determined effort was made to introduce civil law as a supplement to, if not a substitute for, English law.³⁸ A few states attempted to limit the use of English common law in their courts, and some radicals even sought to eliminate English law altogether.³⁹

The general economic dislocations following the Revolution heightened debtor-creditor tensions and accentuated the popular dissatisfaction with law and lawyers.⁴⁰ Attorneys played a highly visible role in the numerous bankruptcies, foreclosures, and collection suits during the 1780's and inevitably received the brunt of the resulting public clamor. There were allegations that lawyers benefited from litigation and needlessly created it. This distrust of law and lawyers took violent form in Massachusetts where Shays' Rebellion was prompted in part by the drive to close local courts forcibly and thereby halt suits for debt.

The unhappy condition of the bar following the Revolution also contributed to the antipathy against English common law and lawyers as a class. Many leading colonial lawyers had been loyalists and either left the country or retired from active practice. Unqualified and poorly educated men sometimes entered the practice of law. Some states continued the colonial practice of appointing nonlawyers to act as judges. Moreover, state legislatures directly infringed upon court functions and reversed judicial judgments in specific cases.⁴¹ This prevailing climate of judicial uncertainty was com-

38. Peter Stein has noted that "[i]mmediately after the Revolution, there was a widespread feeling that efforts should be made to develop a particular American jurisprudence, which would not be just a slavish imitator of the English common law, but would be eclectic—selecting the best principles and methods from whatever system they might be found in." Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 VA. L. REV. 403, 407 (1966).

39. F. AUMANN, *THE CHANGING AMERICAN LEGAL SYSTEM* 67-71 (1969); 2 A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 5-30 (1965); A. HOWARD, *THE ROAD FROM RUNNYMEDE: MAGNA CARTA AND CONSTITUTIONALISM IN AMERICA* 256-65 (1968); R. POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 6-8 (1950); C. WARREN, *A HISTORY OF THE AMERICAN BAR* 225 (1911).

40. R. ELLIS, *THE JEFFERSONIAN CRISIS: COURTS AND POLITICS IN THE YOUNG REPUBLIC* 111-16 (1971).

41. 2 A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA*, ch. 1 (1965); P. MILLER, *THE LIFE OF THE MIND IN AMERICA* 105-16 (1965).

pounded by the lack of American law reports and legal books, which grievously hampered the study of emerging American law.⁴² Nonetheless, this hostility to English law and the legal profession should not be exaggerated, and the popular resentment likely had only limited effect in determining legislative action.⁴³

III. THE SOUTH CAROLINA STATUTES, 1783-1788

Considered in broad perspective, the South Carolina statutes of the post-Revolutionary era express a strong sense of legal conservatism. Radical attacks on inherited legal institutions found no reflection in the law code of the state, and continuity with the past rather than innovation delineates the enactments of the period. The Revolutionary constitution of 1776 simply retained all the laws previously in force, providing

[t]hat the resolutions of this or any former congress of this colony, and all the laws now of force here, (and not hereby altered,) shall so continue until altered or repealed by the legislature of this colony

Virtually identical provisions were inserted into the constitutions of 1778 and 1790.⁴⁴ By this single step the statutes of colonial South Carolina, which included substantial portions of English law, were retained into the post-Revolutionary decade. Unlike Virginia, New York, and other states, Carolina did not feel compelled to deal with the thorny reception question following the Revolution. The reception statute of 1712 already had defined the extent to which English law was applicable in the state, and the legislature evidently saw no reason to disturb the legal balance therein established.

Continuity was also the hallmark of the South Carolina judicial

42. The first volume of American law reports was published in 1789 by Ephraim Kirby (1757-1804) of Connecticut. See Briceland, *Ephraim Kirby: Pioneer of American Law Reporting, 1789*, 16 AM. J. LEGAL HIST. 297-319 (1972).

The earliest volume of South Carolina law cases was published by Judge Elihu Hall Bay (1754-1838) in 1809. 1 BAY'S REPORTS includes cases decided between 1783 and 1795. The first volume of South Carolina chancery cases was published by Chancellor Henry William Desaussure (1763-1839) in 1817. 1 DESAUSSURE'S REPORTS includes equity cases decided between 1784 and 1800.

43. Elizabeth G. Brown has aptly observed that, "[t]his is not to suggest that antagonism toward English law did not exist, for there is considerable contemporary evidence as to its existence. Its influence, in terms of determining legislative action, is more questionable. It is easy to overestimate the impact of choleric pamphlets and vitriolic letters to newspaper editors." E. BROWN, *BRITISH STATUTES IN AMERICAN LAW 1776-1836*, at 38 (1964).

44. See S.C. CONST. art. 29 (1776); S.C. CONST. art. 24 (1778); S.C. CONST. art. 7 (1790) [appearing in 6 THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND ORGANIC LAWS 3241-65 (J. Thorpe ed. 1909)].

system. The constitutions of 1776 and 1778 made no important changes in the court structure existing under the royal government. The circuit court system of 1769 continued in operation under Carolina judges named by the legislature. In 1783 the legislature directed a continuance of process and judicial proceedings for those lawsuits disrupted by the war. The act also vested the state courts with full power, jurisdiction, and authority "as such courts have at any time or times heretofore held, used, or exercised."⁴⁵ When the Court of Chancery was reorganized the following year and separated from the privy council, the statute stated that such court enjoy "[a]ll the powers and authorities which have been at any time vested in, or exercised by a court of chancery in this State . . . either before or since the revolution"⁴⁶ Post-Revolutionary court rules for the Courts of Common Pleas and General Sessions were amended only in minor respects and remained largely in the same form as when they were adopted in July of 1758. The court rules stated in part:

In all other cases wherein no particular rules are herein before set down, the same method and practice as in the Court of Common Pleas at Westminster, shall be used and practiced here, so far as the same be not repugnant or contrary to the above rules.⁴⁷

Hence, the very jurisdiction and procedures of the various South Carolina courts were determined with reference to the pre-Revolutionary legal pattern.⁴⁸

The content of the substantive law supports this impression of legal conservatism and stability. In 1783 the legislature passed a comprehensive measure reviving earlier acts which had expired.⁴⁹ The statute covered such diverse topics as tavern regulation, inspection and exportation of tobacco, the protection of deer, insurrections, fraud, and relations between masters and apprentices. This tendency to revive earlier statutes and utilize British and colonial law was partly responsible for a certain confusion as to which laws were actually in effect. Timothy Ford complained: "[T]he laws are

45. GRIMKÉ, *LAWS*, *supra* note 2, at 318.

46. 7 COOPER, *supra* note 2, at 208-11.

47. *The Rules and Orders of the Courts of Sessions and Common Pleas, of the Court of Equity, and the Federal Court in South Carolina* (1796) (microprint, Virginia State Library).

48. The English character of South Carolina law did not escape the notice of foreign visitors. Francisco de Miranda, the Spanish revolutionist, visited the courts at Charleston in 1783 and noted in his diary: "During this time I often attended the courts of justice and I cannot exaggerate the contentment and pleasure I received from seeing the admirable method of the British constitution in action." *THE NEW DEMOCRACY IN AMERICA: TRAVELS OF FRANCISCO DE MIRANDA IN THE UNITED STATES, 1783-84* (J. Ezell ed. 1963).

49. 4 COOPER, *supra* note 2, at 540-42.

in a very confused & uncertain state—the best lawyer does not really know what is law at present.” He added that “[t]he practice is of consequence as slovenly & unsettled as the laws themselves.”⁵⁰ This obscurity of South Carolina law moved Judge John Faucheraud Grimké, the most significant figure behind Carolina’s legal achievements of the period, to publish in 1790 his selective collection of the public statutes which he deemed to be in force. His volume presents as valid law a substantial amount of legislation dating from the colonial period.⁵¹ Far from changing its legal codes under the stress of the Revolution, South Carolina affirmed previous practices.

The statutes are keenly property-conscious, another sure indication of their conservative nature. English land law, including primogeniture, remained in force throughout the 1780’s.⁵² Recording statutes protected the owners and purchasers of real property. Likewise, the colonial slavery code of 1740 remained effective with only minor amendments during the decade.⁵³

Although the statutes are conservative in the sense that they preserve and build upon the existing legal framework, they contain no hint of a laissez faire attitude. On the contrary, the statutes suggest that South Carolina was strongly mercantilist in philosophy. Immediately upon independence the state began to promote numerous internal improvement projects that would increase indirectly the value of private property. The legislature ordered the construction of bridges, the maintenance of public ferries, the hiring of port pilots, the opening of river navigation, the cutting of water passages in swamps, and the construction of roads.⁵⁴ One act halted the damming of rivers to obstruct the passage of fish.⁵⁵ Commissioners appointed by the legislature were authorized to assess charges upon lands within defined areas and to call out the inhabitants for

50. *Diary of Timothy Ford, 1785-1786, supra note 34, at 199.*

51. *See note 2 supra.*

52. The constitution of 1790, article X, directed the legislature to pass laws for the abolition of primogeniture; this was carried out in 1791. The British statute of entails had been declared not of force in South Carolina in 1731. 3 COOPER, *supra note 2, at 341-43.* For the movement to eliminate primogeniture and entails from American law toward the end of the colonial era see R. MORRIS, *STUDIES IN THE HISTORY OF AMERICAN LAW* 76-92 (1930).

53. The slave laws are collected in 7 COOPER, *supra note 2.* The development of the slave codes is traced in Sirmans, *The Legal Status of the Slave in South Carolina, 1670-1740*, 28 J. SOUTH. HIST. 462-73 (1962).

54. The various river navigation, ferry, and bridge measures are assembled in 8 & 9 COOPER, *supra note 2.*

55. 5 *id.* at 82.

work on the projects.⁵⁶ Such activities, common in the colonial period, continued as the traditional practice in South Carolina for securing public improvements.

In other areas, the legislature was prepared to render even more positive assistance to the economic development of the state. As early as 1691 Carolina had granted its first patent for an invention by a private act applicable to a single inventor,⁵⁷ and by the late colonial period South Carolina had experimented repeatedly with statutory protection for inventive property. In 1784 the state resumed its patent-granting activities by enacting a copyright and patent statute "for the Encouragement of Arts and Sciences,"⁵⁸ termed by one historian "the first general patent provision in America."⁵⁹ Concerned primarily with the protection of literary property, the act did contain a clause extending its coverage to inventions.⁶⁰ Upon registration of his book or invention with the secretary of state, the owner would enjoy fourteen years of monopoly protection with automatic renewal privileges. There was no specific penalty set for infringement upon a patent, but a violator of the copyright provision was to lose such illegally printed books and forfeit a statutory penalty of "one shilling for every sheet" published contrary to the act. Although eager to promote literary and mechanical advance, the lawmakers also acted to protect the public interest. The statute afforded a judicial remedy if an author or inventor failed to furnish "sufficient editions thereof" or sold his work "at a price unreasonable." Upon complaint, the circuit court could direct the author or inventor to furnish a sufficient number of items at a price fixed by the court. If the author or inventor refused, the court was authorized to extend "a full and ample license" to the complainant. In short, there was a close connection between statutory encouragement of enterprise and economic regulation.

Despite the general statute, and perhaps in recognition of its limitations concerning patents, the Carolina legislature continued to issue special patents in the form of private acts. For example, in

56. For example, in 1784 the designated commissioners were permitted to call upon all male inhabitants between the ages of 16 and 60 within 4 miles of the Black River to clear obstructions from the river. Such compulsory service was limited to 6 days a year. 7 COOPER, *supra* note 2, at 535-36.

57. 2 *id.* at 63.

58. 4 *id.* at 618-20.

59. B. BUGBEE, *GENESIS OF AMERICAN PATENT AND COPYRIGHT LAW* 92 (1967).

60. In 1783 Congress recommended that the states pass acts securing copyright protection. R. BOWKER, *COPYRIGHT: ITS HISTORY AND ITS LAW* 35 (1912).

1786 the legislature specifically vested in one Peter Belin the exclusive right to construct and sell "water works" in the state for a term of fourteen years, with no mention of renewability.⁶¹ Belin's machines apparently could flood and drain farm land and hence might prove highly useful to the Carolina rice culture. In granting this privilege the lawmakers resolved that "it may tend much to the improvement of agriculture, and otherwise advance the prosperity of the citizens of the State, if proper encouragement was given to the discoverers, improvers and constructors of such most advantageous principles and beneficial water works."⁶² The statute required that Belin deposit certified models or plans of his machines with the secretary of state, build his water machines upon the request of any purchasers, and sell his machines for "a just and reasonable price or compensation." The circuit court was directed to enforce this provision by granting what amounted to a compulsory license for the construction of such machinery to a complainant. Persons infringing upon Belin's patent were to forfeit a statutory penalty of one hundred pounds.

Another manifestation of the legislative desire to advance the economy was reflected in the series of acts, built upon colonial precedent and inaugurated in 1783, establishing markets and fairs at various towns within the state.⁶³ Upon the petition of a group of individuals, the legislature authorized that "public and open markets" be held twice a week, "without payment of any toll," in the designated communities.⁶⁴ Further, the statutes directed that two annual fairs covering a four-day period in May and October be conducted "with all liberties and free customs to such fairs appertaining, or which ought or may appertain, according to the usage and custom of fairs." The "majority of the inhabitants of the said

61. 4 COOPER, *supra* note 2, at 755-56.

62. A 1788 private patent for a steam engine advanced an interesting natural justice concept as an additional reason for the protection of inventors. The preamble asserted that "the principles of natural equity and justice require that authors and inventors should be secured in receiving the profits that may arise from the sale or disposal of their respective writings and discoveries. . . ." 5 COOPER, *supra* note 2, at 71-72.

63. In 1723 the colonial assembly granted the privilege of fairs and markets to Childsberry and Dorchester. 3 COOPER, *supra* note 2, at 204-06, 214-16. The statutes creating the fairs of the 1780's closely followed the colonial pattern, except that the 1723 measures empowered the governor to appoint the directors of the fairs and the clerks of the markets. For a brief treatment of colonial fairs see H. FARNAM, *CHAPTERS IN THE HISTORY OF SOCIAL LEGISLATION IN THE UNITED STATES TO 1860*, at 79-80 (1938).

64. During the decade markets and fairs were instituted at Belleville (1783), 4 COOPER, *supra* note 2, at 557-59; at Greeneville (1785), *id.* at 649-51; and at Winnsborough (1785), *id.* at 652-54.

town" were empowered to elect the directors of the fair and a clerk of the market.⁶⁵ The directors were authorized to sit as a court of piepowder "upon all occasions, complaints and pleas of a court of piepowders, together with all summons, attachments, arrests, issues, fines, redemptions and commodities, and other rights whatsoever to the said court of piepowders appertaining" The court of piepowder was a traditional English court of record incident to fairs and markets and was charged with the administration of justice for all commercial injuries and minor offenses done at the fair. The appearance of this court in the post-Revolutionary period illustrates anew Carolina's adherence to the British legal tradition.⁶⁶ In addition to their judicial duties, the fair directors were permitted to charge a toll for every horse, other animal, or slave sold at the fair, but were required to register such sales in a market book. Evidently to encourage wide participation at the fairs, the statutes further provide that no person should be liable to arrest during the fairs except for treason, felony, or breach of the peace. The statutes, of course, do not reveal whether the markets and fairs actually were established or whether they achieved any commercial importance. But for the legal historian the fair regulations at least indicate a goal which the legislature endeavored to achieve.

The most striking evidence of the mercantilist spirit during the post-Revolutionary years was the legislature's novel use of the corporation. During the colonial period the legislature often had created corporations by special act, but these early corporations invariably had been organized for charitable, religious, cultural, or fraternal purposes. The Carolina lawmakers were slow to employ the corporation for business ventures. Indeed, South Carolina granted only ten charters for business corporations in the 18th century and was among those states issuing the fewest such grants.⁶⁷ In the

65. The use of the ambiguous term "inhabitants" in the acts establishing town fairs poses an interesting question. Under the constitution of 1778 the suffrage was restricted to free white males owning a freehold. Was it the intention of the legislators to broaden popular participation in the selection of fair directors? Most likely they simply assumed that the general suffrage requirements would govern such town elections.

66. In Medieval and Renaissance England the judges of the courts of piepowder were the merchants attending the fair. The procedures of the court were summary and its sessions continuous during the fair. As might be expected, cases involving breach of contract were the most frequent type of litigation before these courts, but they also heard cases on partnership, trespass, use of false weights, forestalling, selling out of the fair, and other minor offenses. When English fairs began to decline in the 15th and 16th centuries, the courts of piepowder gradually merged into the ordinary courts of the towns or decayed. 1 W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 535-38 (7th ed. rev. 1956); 5 *id.* 106-17 (2d ed. 1937).

67. 2 J. DAVIS, *ESSAYS IN THE EARLIER HISTORY OF AMERICAN CORPORATIONS* 22-28 (1917).

1780's, however, the legislature first used its power of incorporation for commercial activities with the creation by special acts of four canal and river navigation companies: The Company for the Inland Navigation from Santee to Cooper River (1786); The Company for Opening the Navigation of the Catawba and Wateree Rivers (1787); The Company for Improving the Navigation of the Edisto and Ashley Rivers (1787); and The Company for Opening the Navigation of Broad and Pacolet Rivers (1788).⁶⁸

The acts of incorporation contained nearly identical provisions.⁶⁹ Apparently the canal companies were to have perpetual existence, and there was no provision for revocation of the privileges of incorporation.⁷⁰ Each corporation was authorized to sue or be sued and to adopt by-laws. They were expressly allowed to charge as canal tolls "such sums or rates as the said company shall think proper to impose, not exceeding at any time, twenty-five pounds per cent per annum, on the money which they shall have expended in making and keeping in repair the said canal and locks."⁷¹ Moreover, the companies were permitted to restrict passage on the canals until the toll was paid. In addition, the lawmakers conferred the right of eminent domain upon the companies for the purpose of obtaining land for the canals, and the corporations were empowered "to use any materials in the vicinity of the works." If a sale price could not

68. The acts creating the canal corporations discussed in the text can be found in 7 COOPER, *supra* note 2, at 541 *et seq.* The Santee Canal was completed in 1800 and abandoned in 1858 in the face of competition from railroads. The other improvements seem never to have been seriously undertaken. U. PHILLIPS, A HISTORY OF TRANSPORTATION IN THE EASTERN COTTON BELT TO 1860, at 36-43 (1908); 2 J. DAVIS, *supra* note 67, at 142-48.

69. The Catawba and Wateree Company was granted a special privilege, the authority to import "any number of negroes not exceeding three hundred" and a credit for the duty on such slaves. 7 COOPER, *supra* note 2, at 550. The Santee Company was given the power to operate a ferry and lay out a road adjacent to its canal. *Id.* at 542.

70. The Santee Charter mentioned that certain land grants from the state "be vested in the said company for ever." The preamble to the Edisto grant referred to tolls "in perpetuity" and the act recited that the company "from time to time, forever," was capable of purchasing and selling slaves, goods, and land.

In 1801 the legislature repealed the act incorporating the Broad and Pacolet Company. The repealing statute noted that "a large majority of the persons composing the said company, have relinquished to the State all their right, interest and claim" in the company, and further recited that "the said company have altogether failed and neglected to carry into execution" the object for which it was created. Although this would indicate that non-use was grounds for revocation of a corporate charter, the legislature did establish a commission to determine whether any compensation should be paid to persons who had not relinquished their shares. *Id.* at 576-77.

71. The basis for computing the tolls varied slightly in the different grants. For instance, the Edisto Company could include funds spent in clearing rivers for navigation as well as in constructing a canal. 7 COOPER, *supra* note 2, at 546.

be agreed upon, the Chancery Court or circuit court was to appoint five appraisers to evaluate the land or materials to be taken, such valuation to bind both the companies and the property owners. Since juries tended to return generous awards to property owners in eminent domain proceedings, this statutory appraisal procedure was more advantageous to the companies than reliance upon jury verdicts. The shares in the companies were "forever exempted" from any tax and could be assigned, sold, or bequeathed. Persons who willfully damaged canal banks or works were guilty of a felony and subject to severe penalties.⁷²

Perhaps surprisingly, the various statutes creating canal companies failed to address the question of stockholder liability. The acts contain no suggestion of limited liability, now regarded as one of the principal reasons for incorporation, nor could such protection be implied by resort to a general corporation statute or a common law of corporations—neither existed in the 1780's. This significant omission tends to buttress the conclusion "that we must doubt the inducement of limited liability as the prime explanation for the growing popularity of the corporate form of business."⁷³ After 1810, to be sure, judicial decisions clarified the liability question by holding that a corporate charter, absent a specific provision to the contrary, conferred limited liability. The historian, however, must be alert against reading this development backwards into the thinking of the Critical Period. Most likely, neither Carolina lawmakers nor incorporators fully considered the liability problem and in any event treated it as distinctly secondary to the other advantages contained in the corporate charters.

Regulatory features were included in these incorporation statutes as well. The legislature retained the right to inspect the books of the corporations at any time. Moreover, the canal companies were

obliged to keep the said canal and locks, at all times, in good and sufficient order, condition and repair, on pain of being answerable for any damages occasioned by their willful fault or neglect.⁷⁴

In keeping with this mercantilist spirit, the legislature established a comprehensive scheme for the regulation of other economic activities. Ferry rates were set by law. Fixing a forfeit for ferry

72. The Santee Charter of 1786 prescribed the death penalty for such offense. *Id.* at 542. Subsequent measures required the offender "to work in chains upon the said navigation, for any term of time not exceeding seven years." *Id.* at 547.

73. J. HURST, *THE LEGITIMACY OF THE BUSINESS CORPORATION* 28 (1970).

74. 7 COOPER, *supra* note 2, at 542.

owners charging more than the legal rate, a 1783 statute asserted: "[M]any of the keepers of ferries in this State have lately exacted exorbitant rates of ferriage from persons passing and repassing over the said ferries" ⁷⁵ Rates for ferries could be altered by statute, and in 1785 one operator received an increase on the ground that his present rates "[were] not adequate to the expense." ⁷⁶ The exportation of tobacco was regulated "in order to prevent its being brought into discredit by the fraud or negligence of those who shall cultivate or export the same." ⁷⁷ In 1785 the legislature specified the toll for grinding grain and subjected the violator to a fine of ten times the amount of the improper rate. ⁷⁸ Although of uncertain practical effect, attempts to protect the public from the abuses of bakers were widespread in the colonial period, and even the price and size of bread were governed by statute. A 1749 act of the assembly placing bread under such regulation was revived by the legislature in 1783 and declared in force until repealed. ⁷⁹ Further, in 1784 the legislature authorized the newly formed city council of Charleston to regulate the price and size of bread in that locality. ⁸⁰

Taverns had been placed under regulation in the colonial period. In 1785 jurisdiction over taverns was vested in the newly created county courts. Justices of that court were authorized to grant annual tavern licenses upon security "that such persons shall keep clean and wholesome meat and drink, and lodging for travellers, and the usual provender for horses." The justices were to require that the tavern keeper provide "a fair rate of meat, drink and lodging, and provender for horses," and were to allow the keeper "a just and reasonable profit." ⁸¹

The tangled affairs of creditor and debtor prompted the legislature to interfere directly with private contractual rights in order to effectuate the equitable settlement of unpaid debts. In 1783, for instance, the legislature enacted a statutory depreciation table for paper money and declared that the statutory table "shall be the rule

75. 9 *id.* at 274.

76. *Id.* at 291.

77. South Carolina had long regulated and inspected tobacco exports and several tobacco inspection statutes were enacted during the 1780's. For a typical example, see the 1784 act. 4 COOPER, *supra* note 2, at 604-07.

78. *Id.* at 652.

79. *Id.* at 541; F. FARNAM, HISTORY OF SOCIAL LEGISLATION IN THE UNITED STATES, 107-09 (1938).

80. 7 COOPER, *supra* note 2, at 101.

81. See County Court Act of 1785, in 7 COOPER, *supra* note 2, at 211-42. Peddlers and auctioneers also were subject to licensing requirements.

for the determination of all differences which may arise on any contracts which have been made in this State" The statute further required that, upon the settlement of contracts, the value of money be fixed at the time of execution and not at the time of fulfillment.⁸² This statutory table was largely of benefit to creditors and hence curiously out of step with the quantity of debtor oriented legislation produced during the decade.

Although South Carolina retained its highly centralized form of government throughout the Critical Period, the statutes indicate some cautious movement toward increased local responsibility. Most important was the 1783 act incorporating the City of Charleston.⁸³ The city was divided into thirteen wards, and "all the free white persons" paying taxes of three shillings a year were entitled to vote yearly for a warden. An intendant of the city was to be elected annually at a general election from among the wardens. The intendant and wardens constituted the city council, which was empowered to make ordinances respecting the harbor, streets, markets, public houses, care of the poor, the regulation of "disorderly people," and other ordinances "that shall appear to them requisite and necessary for the security, welfare and conveniency of the said city, or for preserving peace, order and good government within the same." The council could levy taxes, own land, recover penalties and fines, and conduct lotteries, and it was particularly enjoined to take action for "preventing and suppressing" riots.⁸⁴ In addition, the city council named a Recorder, a city clerk, a city treasurer, and constables.

The legislature also invested the wardens with limited judicial powers. Each warden was required "to keep peace and good order" in his ward. He could issue warrants and cause offenders to be brought before him for an examination, and then release, admit to bail, or commit the accused pending trial. The wardens were given "all the powers and authorities that Justices of the Peace" possessed. The act created a Court of Wardens, composed of not less than three wardens, to "determine all small and mean causes."

82. 4 COOPER, *supra* note 2, at 563-64.

83. 7 COOPER, *supra* note 2, at 97-101. Charleston was only the first of several American cities incorporated in the 1780's. M. JENSEN, *THE NEW NATION: A HISTORY OF THE UNITED STATES DURING THE CONFEDERATION, 1781-1789*, at 118-22 (1950).

84. A conservative desire to curtail mob violence and extra-legal town meetings was one factor behind the legislative incorporation of Charleston. Maier, *The Charleston Mob and the Evolution of Popular Politics in Revolutionary South Carolina, 1765-1784*, in 4 *PERSPECTIVES IN AMERICAN HISTORY* 173-96 (1970).

Subsequent legislation in 1784 authorized the Court of Wardens to imprison persons for violation of municipal laws.⁸⁵ Civil jurisdiction was enlarged to cover nonpayment of wages to seamen, recovery of debts, and "any damage," under twenty pounds, except where title to land might come into question. The Court of Wardens was established as a court of record and given the same powers, within the limits of its jurisdiction, "as the Judges of the Court of Common Pleas or Admiralty have, hold, or do exercise in their several jurisdictions."⁸⁶

Despite this advance toward local government, the state legislature continued to exercise control over numerous matters of essentially local concern. For example, statutes frequently directed the extension of municipal streets. In 1785 the legislature found it necessary to prohibit the raising and keeping of hogs in the towns of Beaufort and Georgetown.⁸⁷ This statute declared it lawful for persons to kill hogs "that may be found going at large in any street" and the justices of the peace were authorized to fine persons convicted of allowing their hogs to run loose about the towns.

Both the judicial institutions of the state and the practice of law received special attention from the legislature during the Critical Period. The desire to extend local government and improve the level of judicial performance culminated with the County Court Act of 1785. Henry Pendleton, a judge of the circuit court and a native of Virginia, promoted this measure to institute in South Carolina a replica of the Old Dominion's county court system. The County Court Act created "courts of inferior jurisdiction for the most expeditious determination of suits and controversies."⁸⁸ Under the act, the seven districts created in 1769 continued to serve for the circuit courts, but were subdivided into 34 counties. For each county the legislature appointed seven justices of the peace who were to convene quarterly as a county court. Such courts were to determine "all causes at the common law" in any amount on bonds or notes and

85. 7 COOPER, *supra* note 2, at 101-02. In 1791 the legislature again clarified the jurisdiction of the Court of Wardens. *Id.* at 107-08.

86. Pursuant to the statute of 1784, civil process in the Court of Wardens was initiated by a petition filed on behalf of the complainant. The court, or a warden (or in practice the city clerk) then directed a constable to serve on the defendant, and any witnesses, an order to appear before the tribunal and show cause why judgment should not be given for the plaintiff. The act required that notice be given 10 days before the defendant need appear in court. The court relied primarily on summary procedures. *See* ORDINANCES OF THE CITY COUNCIL OF CHARLESTON 31-34 (1784) (microprint, Virginia State Library).

87. 4 COOPER, *supra* note 2, at 673.

88. County Court Act of 1785, in 7 COOPER, *supra* note 2, at 211-42.

within monetary limitations on other civil proceedings. Appeals could be carried to "the circuit courts of common pleas." The county court also exercised criminal jurisdiction over lesser offenses. The County Court Act set forth forms of writs for actions in debt, account, trover, trespass, assault and battery, false imprisonment, slander, and criminal conversation, suggesting that these actions were expected to be the most common types of proceedings. All other writs were to be in the forms established by the circuit court. In addition to their judicial duties, the county courts were given certain administrative responsibilities as well, including supervising taverns and the sale of liquor, providing for the poor, appointing overseers of roads, and regulating weights and measures. Pursuant to the statute, county court justices elected a sheriff, a clerk, and a coroner for their county. Of particular note was the appearance of a public prosecutor at the local level. The county court was directed to appoint "a proper person to attend and prosecute offences on the part of the State, in the several county courts, who shall be known by the name of the county attorney."

This ambitious county court program, however, suffered a strange stillbirth. The County Court Act was repeatedly amended in the late 1780's, a sure indication that the courts were not functioning as expected and required further attention. Moreover, it is apparent that the county courts were not, in fact, established in every county, a circumstance which compounded the judicial confusion. In 1788 the powers of a single justice of the peace were broadened in those localities "where county courts are not established."⁸⁹ The next year a statute prescribed the duties of courts of ordinary in "the several districts where there are no county courts."⁹⁰ In 1791 the county courts were formally abolished in Orangeburg and Beaufort districts, and finally in 1799 the entire experiment was abandoned.⁹¹ This promising reform was discontinued, Judge Brevard explained, because "the administration of justice in these courts was irregular, and in many instances unequal, owing chiefly to the want of legal information in those who were appointed to preside therein"⁹²

Judge Grimké also was aware of the difficulties attendant upon the new county court system. With the introduction of the county

89. J. GRIMKÉ, *LAWS supra* note 2, at 441.

90. 7 COOPER, *supra* note 2, at 294-50.

91. 7 COOPER, *supra* note 2, at 266-70; 290-93.

92. 1 BREVARD, *AN ALPHABETICAL DIGEST OF THE PUBLIC STATUTE LAW OF SOUTH CAROLINA* xvii (1814).

courts and the consequent enlargement of the jurisdiction of the justices of the peace, Grimké believed that a new handbook was needed to replace one dated and long out of print.⁹³ Noting that he had "frequently observed the strange and illegal irregularities" committed by justices of the peace, he prepared a justice's handbook for South Carolina in 1788. Designed for lay judges and perhaps fledgling attorneys, Grimké's handbook included an alphabetical discussion of the powers and duties of the justices of the peace, a collection of legal forms for licenses, warrants, and orders, and excerpts from statutes. While the Grimké handbook described the jurisdiction and duties of the county court, it was evident that the state was experiencing serious problems in implementing the new system. In his preface Grimké explained:

Indeed the present situation of the judicial department of this State, was another great source of confusion; the maritime districts adhering to the old method of conducting their legal proceedings, and of administering justice, and the interior districts revolting therefrom, and embracing the new measure of dividing the country into counties, and establishing an inferior court of justice in each of them, has created in some measure two sorts of magistrates and two species of law: Than which nothing tends more to entrap the individual, and to perplex the magistrate.⁹⁴

A more successful reform move was the legislation governing the admission of attorneys to the practice of law in South Carolina. During the colonial period the admission of attorneys depended upon a rule of court, which, the law makers pointed out, "hath shewn to be productive of great uncertainty and confusion."⁹⁵ To raise and standardize the requirements for legal practice, the legislature in 1785 provided as follows:⁹⁶

1. Candidates serving clerkship of four years to a practicing attorney of the circuit court were admitted to the bar without an examination.

2. Other candidates were to petition the circuit court request-

93. Grimké's handbook replaced W. SIMPSON, *THE PRACTICAL JUSTICE OF THE PEACE* (1761).

94. J. GRIMKÉ, *THE SOUTH CAROLINA JUSTICE OF THE PEACE* (1788) (microprint, Virginia State Library). A second edition of the Grimké handbook appeared in 1796 and a third in 1810.

95. 4 COOPER, *supra* note 2, at 668-69.

96. The tightened bar requirements in Carolina were part of a national effort in the post-Revolutionary period to upgrade the professional standards for admission to practice. R. ELLIS, *THE JEFFERSONIAN CRISIS: COURTS AND POLITICS IN THE YOUNG REPUBLIC* 117 (1971). For a sketchy and incomplete study of admission practices during these years see Blackard, *Requirements for Admission to the Bar in Revolutionary America*, 15 *TENN. L. REV.* 116-27 (1938).

ing an examination. A panel of three judges or chancellors was directed "to examine such person touching his capacity, ability and fitness to plead and practice . . ." Such candidate was also required to produce "satisfactory testimonials of his probity, honesty and good demeanor." If the candidate passed these hurdles, he was licensed by the judges to practice law.

3. A candidate already admitted to practice in another state, upon becoming a resident of South Carolina, could gain admission by petition to the circuit court. Every person so admitted had to take both an oath of allegiance to the state and an oath of attorney. Persons who practiced law without having taken these oaths were subject to a fine of one hundred pounds. The act specifically provided, however, that individuals could plead in their own cases. Attorneys' fees were at least partially regulated by the state: the ill-fated County Court Act specified attorneys' fees for actions in that court and established a fine for lawyers who demanded a higher fee than that set by law.⁹⁷

In the Critical Period Carolina relied extensively upon private initiative to disclose and prosecute violations of law. Since the state lacked an adequate professional means of prosecution, numerous statutes attempted to harness private zeal to law enforcement objectives by providing that half of whatever fine or forfeiture was obtained would be paid to the informer or prosecutor. For example, the acts creating fairs stated that one half of any recovery arising under the statutes should be disposed of "to him or them that will prosecute for the same."⁹⁸ Likewise, legislative measures for public health and the quarantine of foreign vessels declared that violators pay a fine of one thousand pounds, "the other half to the use of the person informing or suing for the same."⁹⁹ The fine for practicing law without a license was entirely collectible "by any informer [who] shall sue for the same by action of debt, in any court of record having jurisdiction."¹⁰⁰ The balance of the statutory fine was usually made payable to the state, town, or county, or to the poor of the parish.¹⁰¹

97. 7 COOPER, *supra* note 2, at 211-42.

98. 4 *id.* at 559.

99. 4 *id.* at 617.

100. 4 *id.* at 669. Until the Civil War South Carolina relied heavily upon a system of rewards and shares in fines to prompt informers to turn in wrongdoers. J. WILLIAMS, VOGUES IN VILLAINY: CRIME AND RETRIBUTION IN ANTE-BELLUM SOUTH CAROLINA 61-62 (1959).

101. For other acts of the 1780's which encourage private prosecution see the statutes regulating the toll for grist mills, 4 COOPER, *supra* note 2, at 652; regulating the opening of dams, *id.* at 722-25; and outlawing vagrancy, 5 *id.* at 41-44.

Along with economic and judicial activities, Carolinians also took a lively interest in cultural and educational projects. The legislature was liberal with acts of incorporation for religious and charitable organizations.¹⁰² In 1784 the St. Cecilia Society was incorporated for the "laudable intention of encouraging the liberal science of music . . ."¹⁰³ Several statutes were passed in the 1780's to incorporate societies for the creation of schools in such towns as Beaufort, Ninety-Six, and Camden. Occasionally the legislature furnished more tangible assistance to the cause of education. A 1783 statute vested 180 acres of confiscated land in trustees for sale, with the direction that the proceeds be applied for "erecting and supporting a public school or seminary" at Ninety-Six and "for laying out a common for the use of the said town."¹⁰⁴

The most important step in the field of education was the granting of charters to establish Mount Sion College, the College of Charleston, and the College of Cambridge. Asserting that "the proper education of youth is essential to the happiness and prosperity of every community," the act detailed the authority of the college boards of trustees.¹⁰⁵ For the College of Charleston and the College of Cambridge, the statute actually named the trustees. Many of the most prominent individuals in South Carolina, including the governor and lieutenant governor *ex officio*, Chancellor John Rutledge, Chancellor Richard Huston, David Ramsay, Ralph Izard, and Charles Cotesworth Pinckney, were enumerated as trustees for the College of Charleston, thus enlisting their prestige behind the fledgling institution. Although the College of Charleston did receive under the statute certain land previously given "for a free school" in that city, the legislature made no appropriation of funds for any of the colleges. Private subscriptions apparently were to furnish the capital for the colleges, and, with respect to the College of Charleston, the statute expressly declared: ". . . it is not doubted but that many persons will contribute largely toward the same." South Carolina in the 1780's was prepared to aid education by any means short of direct financial support.

102. For example, the Calvinistic Church of French Protestants (1783), the Master Taylor's Society (1785), Society for the Relief of the Widows and Orphans of the Clergy of the Protestant Episcopal Church (1785), and the Camden Orphan Society (1788). 8 *id.* at 122 *et seq.*

103. *Id.* at 124.

104. 4 *id.* at 574.

105. *Id.* at 674-78. The best account of the founding of the College of Charleston is J. EASTERBY, A HISTORY OF THE COLLEGE OF CHARLESTON (1935).

English and colonial law had long sought to enforce standards of personal moral conduct. Although the New England Puritans are well known for this practice, such efforts in fact appear to have been common throughout British America.¹⁰⁶ The Revolution brought no abrupt change in this attitude. Certainly in South Carolina the acts of the legislature manifest a formal wish to uphold the moral tone of society, and, according to Grimké, considerable colonial legislation pertaining to moral offenses remained effective.¹⁰⁷ The English statutes adopted in 1712 classed "the most horrible and detestable vice" of buggery as a felony punishable by death, outlawed cursing and swearing and subjected violators to fines, and provided imprisonment for those who should "deflower" any woman under the age of sixteen.¹⁰⁸ Blasphemy was proscribed and violators were subjected to various civil disabilities.¹⁰⁹ A 1712 Carolina statute enjoined religious observance on Sunday and prohibited labor, business, travel, and public sports or plays on that day.¹¹⁰ In 1783 the Charleston city council enacted an ordinance which repeated the prohibitions against labor or pastimes on Sunday and authorized city constables to insist, upon payment of a fine for refusal, that persons in the streets during the hours of church service go to a place of worship.¹¹¹ Additionally, private lotteries were banned.

South Carolina, along with other states, gave particular attention to the problem of illegitimacy.¹¹² Economic considerations clearly came into play since an illegitimate child proved a drain on the poor fund. In fact, Carolina authorities seemed less concerned with sexual offenses than with the support of illegitimate offspring.¹¹³ Although a woman giving birth to an illegitimate child was

106. For a useful introduction to the problems of law and sexual morality in the colonial period see Flaherty, *Law and the Enforcement of Morals in Early America*, in 5 *PERSPECTIVES IN AMERICAN HISTORY* 203-53 (1971).

107. The Grimké collection, it should be repeated, consisted of only those statutes Judge Grimké deemed effective in 1790. Hence, given Grimké's important judicial post, his compilation is particularly helpful in assessing the actual state of the law in the post-Revolutionary period.

108. See the reception statute, 2 COOPER, *supra* note 2, at 401-580.

109. *Id.* at 196-97. O'Neill lamented in 1859 that the punishment for blasphemy had lapsed. 1 J. O'NEALL, *supra* note 25, at 4.

110. 2 COOPER, *supra* note 2, at 396-99. This act repealed a 1692 Sunday law, the text of which Cooper could not locate. Of course, other moral offenses were prohibited by English common law which was effective in Carolina. Keeping a "bawdy house" constituted a common nuisance, and, in general, "all open lewdness" was indictable at common law. J. GRIMKÉ, *supra* note 94, at 322.

111. Charleston S. C. Ordinance.

112. 2 COOPER, *supra* note 2, at 224-27.

113. This interpretation of the South Carolina illegitimacy statute closely parallels the

fined and, upon nonpayment of her fine, publicly whipped, the statutory emphasis was directed toward locating a source of support for the child. The justice of the peace was required to interrogate the woman in order to ascertain the name of the reputed father. If a woman refused to disclose the father's identity, she was subject to confinement in prison and an additional fine. The statute was not definite regarding the evidence necessary to prove a man the father of an illegitimate child, but if the woman were constant in her accusations, the act mandated that the man be adjudged the father unless he produced evidence for acquittal. Once judicial determination of the father was made by the Court of General Sessions, the statute provided that he should suffer penalties identical to those imposed on the woman. Furthermore, the General Sessions could order the father to pay to the commissioners of the poor a sum "sufficient for the maintenance of the said bastard child" until the infant reached the age of ten, and the mother was placed under an obligation to care for the child until such age. Moreover, illegitimate children were "liable to all those disabilities that by the law of England bastards are liable to." The economic motive which underlay the statute was also evident in the special provisions dealing with servant women. If a free man should impregnate a female servant, he was required to pay, in addition to the other penalties of the act, a forfeiture to the master of such servant, presumably to compensate him for the inconvenience and loss of labor. If a male servant should cause a female servant to become pregnant, the responsible male, after completing his term of service, had to serve the master of the female servant for double her term at the time of the offense, not to exceed one year.

The most ambitious attempt in the post-Revolutionary period to employ legislation to promote socially desirable conduct was the Vagrancy Act of 1787. Idleness, especially among the poor, has never been well regarded in the course of American history, and South Carolina was no exception.¹¹⁴ The preamble of the act recited that "the great increase of idle and disorderly persons has become such a grievance to the industrious and honest part of the community as

law prevailing in other jurisdictions. A student of Virginia's legal history has concluded that "the relentlessness of the prosecutions for bastardy indicates that it was the birth of the child rather than the breach of the moral code involved which was the real offense in the eyes of the ruling class." A. SCOTT, *CRIMINAL LAW IN COLONIAL VIRGINIA* 280 (1930).

114. Concern that vagrancy would injure industrious citizens had appeared in colonial Carolina. In 1758 the assembly empowered judges to forcibly enlist vagrants in the British Army. 4 COOPER, *supra* note 2, at 51-52.

to require an immediate remedy."¹¹⁵ The statute defined as vagrants the following classes of persons: those "wandering from place to place without any known residence" and "who have no visible means of gaining a fair, honest, and reputable livelihood," "all suspicious persons" selling slaves or horses without a judicial certificate of good character, those who acquire a living by gambling and horse racing, "all persons who lead idle and disorderly lives," those who knowingly harbor thieves and felons, those able to work and in possession of land but who do not cultivate it, persons "representing publicly for gain or reward, any play, comedy, tragedy, interlude, or farce," "all fortune tellers for free or reward," "all sturdy beggars," and unlicensed peddlers.

Those accused of vagrancy were liable to arrest and a hearing before a special court of two justices of the peace and three "disinterested freeholders." This special court was charged to determine by what means the accused gained his livelihood. If adjudged a vagrant, the defendant was obligated to post security for his good behavior or, upon his refusal or inability to post such security, was jailed until the next meeting of the county or circuit court. The county or circuit court was authorized to offer the services of the vagrant for one year for sale at public auction. If no one purchased his services, the vagrant was to be whipped and ordered out of the district.

This statute obviously indicates a troublesome degree of social disorganization in the South Carolina of the 1780's. Acting to maintain order, the lawmakers tried to force people either to perform honest work or to give security for their conduct. If this failed, the penalties of the act were so unpleasant as, it was hoped, to drive vagrants from the state. The inclusion of theater actors among the class of vagrants is particularly interesting because it hints that Carolinians were hardening in their attitude toward moral questions. Before the Revolution Charleston had been very hospitable to dramatic productions, and British touring companies frequently stopped there.¹¹⁶ The terms of the Vagrancy Act appear to contradict the observation that "South Carolina never legislated against the

115. 5 COOPER, *supra* note 2, at 41-44. In a similar vein, the legislature in 1788 prohibited the transportation of convicts from foreign countries into Carolina. GRIMKÉ, *LAWS*, *supra* note 2, at 464.

116. L. WRIGHT, *THE CULTURAL LIFE OF THE AMERICAN COLONIES* 185 (1957). The history of Charleston theater before 1800 is described in J. DORMON, JR., *THEATER IN THE ANTE BELLUM SOUTH, 1815-1861*, ch. 1 (1967).

theatre"¹¹⁷ Presumably, however, reputable actors could post the necessary security for good conduct and resume their profession.¹¹⁸

Interstate relations within the context of the Articles of Confederation also claimed the attention of the legislature. Contrary to the ante-bellum image of South Carolina as the extreme champion of states' rights, the statutes of the 1780's establish that full cooperation constituted the basis of South Carolina's dealing with the Confederation Congress and other states. South Carolina invariably acted with favor upon congressional requests for increased powers. The imposts of 1781 and 1783, for example, as well as the requests by Congress for authority to regulate foreign trade, received approval. Agents of the Congress were granted authority to sue in the state courts for the recovery of debts owed the United States.¹¹⁹ The statutes of the decade ring with such phrases as "the safety, honour and interest of the United States of America, require . . ." and "as shall appear most for the general interest and welfare of the said States."¹²⁰

In 1787 the legislature instructed its delegates to Congress to convey to that body the state's entire claim to western land. The statute observed that "this State is willing to adopt every measure which can tend to promote the honor and dignity of the United States, and strengthen their federal union."¹²¹ South Carolina's position favoring union was clearly expressed in the act appointing delegates to the Philadelphia convention in 1787. After asserting that the powers of Congress were "greatly inadequate" and that the Articles of Confederation needed revision, the statute noted:

[T]his state is, and ever hath been, ready and willing to co-operate with the other States in union, in devising and adopting such measures as will most effectually insure the peace and general welfare of the confederacy.¹²²

As if to prove their commitment to this statement, the lawmakers

117. E. WILLIS, *THE CHARLESTON STAGE IN THE XVIII CENTURY* 103 (1924).

118. Concern about the theater following the Revolution was by no means restricted to state government. Consider the Charleston ordinance of 1783 which recited "forasmuch as the exhibition of theatrical entertainments within the city, without permission, or under proper regulations, may prove of injurious consequence, by corrupting the morals of youth, apprentices and servants, and encouraging idleness, riot, and disorder." The ordinance levied a fine of 10 pounds for a theatrical performance without the permission of city council. *ORDINANCES OF THE CITY COUNCIL OF CHARLESTON* 2 (1784) (microprint, Virginia State Library).

119. 4 COOPER, *supra* note 2, at 667-68.

120. *Id.* at 594, 720.

121. 5 *id.* at 5.

122. *Id.* at 4.

in 1788 ratified a compact with the State of Georgia settling the long-standing dispute over their common boundary.¹²³ Thus, these statutes accurately foreshadowed the strongly federalist position of South Carolina's political leadership during the battle over the ratification of the federal constitution.

The topics discussed herein by no means exhaust the full range of South Carolina's legislative concerns during the post-Revolutionary period. Statutes were enacted on such diverse subjects as naturalization, public health guaranties for incoming vessels, game and bounty systems, escheats, prisons, collection of taxes, the militia and defense, customs, the administration of estates, land surveys, elections, and Indian relations. The statutes appear comprehensive and relatively sophisticated and lead to the conclusion that the Carolina of the 1780's was a rather fully developed society with multiple interests and concerns.

IV. CONCLUSION

This survey of South Carolina legislation between 1783 and 1788 suggests some general conclusions about law and society in post-Revolutionary Carolina. First, the statutes reveal a striking continuity between colonial and newly independent South Carolina. The Carolinians broke from England without experiencing a revolution at home, which indicates that the colony had already obtained a large degree of self-government before the Revolution. Indeed, the Carolina acts buttress the argument that the Revolution in the Palmetto State "was merely a demand for home rule, with few appeals to theory of any sort."¹²⁴

Secondly, a study of the Carolina statutes calls into serious question the standard interpretation of the post-Revolutionary years as a period of legal upheaval and adjustment. Perhaps South Carolina was atypical in this regard, but the laws lend no support whatever to the view that English law was placed on the defensive in the wake of independence. Indeed, it is apparent that Carolinians were entirely content with their English legal heritage and felt no compulsion to alter their inherited legal institutions. In 1788 Judge Grimké wrote that "the respectable names of Coke, Hawkins, Hale, Bacon, and many others, who have written on the laws of England, must ever be revered in this State, for their sound doctrine and

123. 1 *id.* at 411-14.

124. U. PHILLIPS, *THE SOUTH CAROLINA FEDERALISTS* 531 (1909).

liberal philanthropic sentiments, in softening down the severity of the law, wherever reason and humanity could interpose."¹²⁵ Indeed, Grimké went on to express the hope that English law would be Americanized and furnish the basis for American jurisprudence. "The time perhaps will hereafter arrive," he declared, "when the principles inculcated by the English law writers, and quoted by us as their authorities as present, will be adopted by the authors of America as our own national tenets, instead of being cited as of English extraction." Similarly, the 1783 statute reviving expired acts neatly captured this fundamentally conservative philosophy:

That all fines and penalties inflicted, or made payable by any of the Acts herein before mentioned to the use of the King of Great Britain, are hereby directed to be paid into the public treasury of this State for the use of the same. . . .¹²⁶

With the royal establishment removed, no other changes appeared in order.¹²⁷

Lastly, the statutes show that the post-Revolutionary era was one of considerable innovation in public service fields. Within the framework of existing social and legal structures, the lawmakers manifested sustained concern for economic enterprise, judicial reform, and improved educational opportunities. They were fully prepared to adopt the legal forms of an earlier day—corporations, patents, grants of fairs—to broader and more frankly commercial uses. Carolinians had no hesitation in utilizing the legal order affirmatively to encourage "the release of individual creative energy."¹²⁸ At the same time, they were insistent upon the regulation of rates and services to protect the public interest.

Any comparison of Carolina's experience with that of other states is a hazardous enterprise. The development of law during the post-Revolutionary decade has not been so carefully researched as one would like.¹²⁹ As a consequence, the historian must hesitate

125. J. GRIMKÉ, *supra* note 94, at viii.

126. 4 COOPER, *supra* note 2, at 542.

127. This conclusion is fortified by the research of Leigh Harrison. He found that South Carolina judges and lawyers commonly resorted to English cases and treatises in the post-Revolutionary era. Harrison, *supra* note 33, at 70.

128. J. HURST, *LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES* 6 (1956).

129. For studies of legal developments in other states during the post-Revolutionary period see R. DAVIS, *INTELLECTUAL LIFE IN JEFFERSON'S VIRGINIA, 1790-1830*, at 353-63 (1964); W. Nelson, *The Americanization of the Common Law during the Revolutionary Era: A Study of Legal Change in Massachusetts, 1760-1830*, 1971 (Ph.D. dissertation, Harvard University); Meehan, *Courts, Cases, and Counselors in Revolutionary and Post-Revolutionary Pennsylvania*, 91 *PENN. MAG. HIST. & BIOG.* 3 (1967).

before generalizing from the experience of one jurisdiction. It is entirely probable, for instance, that the radical anti-English currents ran more strongly in some other states than was the case in South Carolina. On the other hand, Carolina's various experiments with upgrading public services and her willingness to foster private commercial opportunity were clearly not unique. Additional investigation is necessary if we are to understand fully the growth of American law in the turbulent and important years following the Revolution.

