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William F. Swindler

William & Mary Law School

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BOOK REVIEW

LEGAL PAPERS OF JOHN ADAMS

Edited by L. KINVIN WROTH and HILLER B. ZOBEL
The Belknap Press of Harvard University Press: 1965, 3 Vol.

It has long been a paradox of the legal profession that while its own processes have depended upon precedent and a reliance upon historical corroboration of present rules of law, the average practitioner himself has been singularly disinterested in legal history. Where the professional lawyer shows no real zeal for the documentation of his field, the professional historian may be excused for not having done more, for the source materials of legal history demand the attention of a legal specialist if their significance is to be fully discerned and distilled. As a result, only the notable and exceptional professional experiences in the career of historical figures who happened also to be lawyers have been given any degree of thorough study by historians or the rare lawyer who is interested in legal history. Until very recent years, we have been able to learn very little about the careers at the bar of men like John Adams, Henry Clay, Alexander Hamilton, Thomas Jefferson, Abraham Lincoln or John Marshall. The list could be extended to considerable length, even if limited to men who spent an important part of their lives in the practice of law before or while entering the arena of public affairs which in turn brought them into the spotlight.

In the case of Adams and Hamilton, to mention two from the brief list of names in the preceding paragraph, a major effort has been made to correct this chronic deficiency. These men, like Clay and Jefferson, have been the subjects of some of the most important editorial projects of the century, involving the collecting, editing and publishing of virtually all of the papers by (and sometimes to or about) these men that diligent research can turn up.¹ In the case of Adams and Hamilton, as explained in the following paragraph, the editors of the general documentary collections recognized the importance of having the legal papers of these men assigned to an independent editorial series, under specialists in legal history. It is perhaps not too late to hope that the projects on the Clay and Jefferson papers may yet develop a subseries

1. Cf. *THE ADAMS FAMILY PAPERS* (Butterfield, ed., 1961-); *THE PAPERS OF HENRY CLAY* (Hopkins, ed., 1959-); *THE PAPERS OF ALEXANDER HAMILTON* (Syrett, ed., 1961-); *THE PAPERS OF THOMAS JEFFERSON* (Boyd, ed., 1950-).

on the legal documents of these two men. Lincoln may be another matter, considering the perishable quality of frontier court records, although this would be an important addendum to our slowly growing body of material on law practice in the Eastern states.² As for Marshall, that luminous figure in the formative period of American law, it would seem to go without saying that his documentary record as an attorney needs to be subjected to the scrutiny of the specialist in legal history.³

In 1964 came the first volume of the Hamilton legal papers, edited by Julius Goebel, Jr. of Columbia Law School.⁴ So excellent was this publication in editorial craftsmanship and printing that it was obvious, in the language of show business, that it would be a hard act to follow. Comes now, in three superlative volumes, the collection of the legal papers of John Adams—and if anything, this will be an even harder act to follow. Put more positively, the editorial projects involving the legal papers of both of these men have been carried out at the highest level of scholarship, fully vindicating the decisions to have these papers handled in this manner and establishing standards of excellence for all future efforts at documentation in legal history. The current publication is also an interesting example of collaboration between a law teacher and practitioner, Professor Wroth being a member of the University of Maine law faculty and Mr. Zobel being an associate in the admiralty division of a Boston law firm.

By no means all of the legal papers of John Adams have been included in these three volumes; those that have been found in the course of the massive inventory of Adams family documents and grouped into a subseries known as John Adams Miscellany may be consulted on five rolls of microfilm (Reels 182-186) in the exhaustive microfilm publication of the Adams family materials which launched the editorial project.⁵ What the editors have selected for the present three volumes have been specific legal materials which, as they describe it, have been subjected to the following criteria:

- (1) Did the case in question illuminate a particular legal point?
- (2) Did it contain an unusual document?
- (3) Did it (when considered with other cases) give balance to the general picture of Adams' prac-

2. Cf. Frank, *LINCOLN AS A LAWYER* (1961).

3. Cf. Swindler, *John Marshall's Preparation for the Bar: Some Observations on his Law Notes*, to be published in 10 *AM. J. LEG. HIST.*—(1966).

4. Goebel, *THE LAW PRACTICE OF ALEXANDER HAMILTON, VOL. I* (1965).

5. Wroth and Zobel, ed., 1 *LEGAL PAPERS OF JOHN ADAMS*, xxxi.

- tion? (4) Was it interesting, historically or socially if not legally?
 (5) Was there any real reason for not including it?⁶

The criteria themselves suggest the general editorial objectives of the resulting volumes: to set out, in the sixty-four annotated cases that have been used, the state of the law in pre-Revolutionary Massachusetts Bay Colony as it was understood and used by a man who for sixteen years devoted himself zealously to his profession.

For those who seek a complete picture of Adams the lawyer, the editors have compiled, in Volume III, a chronology for the years from 1756 when he signed a contract to read law under James Putnam of Worcester to the end of 1777 when he was notified, while trying a case in the New Hampshire Court Maritime, of his appointment by the Continental Congress as Joint Commissioner to France.⁷ The reader who wishes—as is entirely logical—to develop a view of Adams in his practice from these volumes, may well follow the one hundred and forty-four pages of introductory matter in Volume I with this chronology, in which the sixty-four cases incorporated into the intervening pages are identified but may be found in the context of the many other cases and court proceedings which involved Adams during this period.

The documentary record of John Adams' legal practice, like that of Alexander Hamilton, has been substantially enhanced by the meticulous and fortuitously preserved records of the principal courts in New York and Boston in which they practiced.⁸ "The largest source of information about John Adams' legal career exists strangely enough, not in the Legal Papers themselves, but in that legal and historical treasure which, largely unexplored by lawyers and historians alike, rests in the office of the Clerk of the Massachusetts Supreme Judicial Court for Suffolk County, Pemberton Square, Boston," the editors acknowledge.⁹ Here are more than 300,000 legal items, serially numbered and preserved in 1,289 folio volumes, for the period from 1629 to 1800. From this wealth of material, for the years in which they were searching, the editors derived substantial quantities of documents to illustrate the career of the attorney with whom they were dealing.

Having oriented the reader in the court organization and personnel of the bench and bar of this period, the editors have grouped the selected cases under familiar legal headings: torts, contracts, commercial law,

6. *Id.*, at xxxviii.

7. 3 LEGAL PAPERS OF JOHN ADAMS, 325-49.

8. Cf. Goebel, *loc cit.*, xiii *et seq.*

9. Wroth and Zobel, *loc. cit. supra*, note 5, xxxiii.

property, domestic relations, town government, conservation, religion (a basic element of law in the theocracy of eighteenth-century Massachusetts), slavery, admiralty and criminal law. This last category culminates, in two cases taken out of chronological sequence, in the papers relating to the famous Boston Massacre trials in which Adams appeared as defense counsel.

Prefacing the various cases, with their editorial annotations, are documents from Adams' student period—including his "commonplace book" and a form book of common law pleading, neither of them as detailed as Hamilton's "practice book"¹⁰ nor, rather disappointingly, annotated in comparable detail. But the editorial notes and annotations of the cases themselves often become the most informative part of these documents and definitely establish, among other things, that the colonists of Massachusetts were fully as litigious as their counterparts in Virginia.

Adams was his own trial reporter—as were his contemporaries at the bar—making a rapid longhand transcript of the progress of a case while it was going on. Sometimes his minutes of the actual trial constitute the whole of the documentary material for the particular case (cf. the cases numbered 4, 5, 11, 16, etc.). At other times, the editors have been able to reconstruct virtually the entire *corpus* of the case papers, as in Case No. 27 which includes Adams' list of questions presented, his note on legal authorities, the record of the case, the ensuing writ of certiorari and the accompanying notification. Occasionally (cf. Case No. 41) the documentation is from the papers of another lawyer, William Wetmore, or (cf. Cases 45 and 51) is complemented by the written finding and opinion of the commissioner or judge.

Inevitably, although they have striven to keep them in perspective, the editors will find the greatest interest centering in the two famous trials growing out of the so-called Boston Massacre; and indeed it must be admitted that these cases are treated far more exhaustively than any of the others, occupying most of Volume III. The cases are introduced with a 45-page background note, and consist of fourteen and twenty-two documents, respectively, for two trials. Throughout his life, Adams himself considered that his defense of the accused soldiers in these cases, amid the riotous hostility of his own countrymen, was one of his most enduring contributions to the rule of law. Reviewing the dramatic material, much of it published in this collection for the first time, concern-

10. Goebel, *loc. cit.*, 37 *et seq.*

ing trials which themselves have been so often described in histories of this period, one can readily agree.

John Adams as a lawyer, and the law as it was known to the American colonies on the eve of the Revolution, now have been effectively documented and may be placed beside the legal papers of Alexander Hamilton as companions on a basic reference shelf of American legal history. The hope is that they will periodically be joined by studies of comparable merit.

WILLIAM F. SWINDLER
Professor of Law
Marshall-Wythe School of Law
College of William and Mary