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The Founders of the Boston Bar Association:

A Collective Analysis

Alan Rogers

The Boston bar had been organized formally and informally for more than one hundred years when thirty-seven lawyers met in the Superior Court on February 26, 1876, and made plans to launch the Bar Association of the City of Boston.¹ The founders were successful lawyers, jurists, and politicians. Their names may be found scattered throughout the *Massachusetts Reports*, and on the mastheads of existing law firms. The portraits of several of the founders are displayed in the hallways of the Statehouse and the courtrooms of the Commonwealth, and the Bar Association they formed 118 years ago thrives. Yet, there is no systematic analysis of the thirty-seven founders, who together with six elected officers who were not at the initial meeting, established the Bar Association in June of 1876.

The surviving records are too sparse to write full biographies of these forty-three lawyers, but a collective analysis will tell us a great deal about them, and about the Boston bar in the 1870s. The data will help chart the degree of distance between the founders and other lawyers, and clarify the extent to which the founders were a socially homogeneous group. Finally, a collective portrait will improve our understanding of the emergence of the legal profession.²

1. For the history of the Boston bar from 1630 to 1980, see Douglas L. Jones, Alan Rogers, Cynthia Brown, and James Connolly, Discovering the Public Interest: A History of the Boston Bar Association (Chatsworth, California, 1993).

2. The thirty-seven founders, plus the six other lawyers who were elected officers in 1876, are listed in Table One. Data has been gathered from printed sources, biographical dictionaries, memoirs, and studies of the profession.

In 1870, there were 1,270 lawyers in Massachusetts, of whom nearly half practiced in Suffolk County, a burgeoning manufacturing and financial center. The men who led the bar in the 1870s came of age in the decades before the Civil War, but they were no strangers to urban, industrial society. During the formative years of their careers, thousands of manufacturing companies were established, hundreds of miles of turnpikes and railroads were built, and private corporations became the dominant business form. These economic developments transformed the bar.³

By the 1870s, the bar was divided into three parts. At the top of the pyramid was a handful of lawyers who shaped the law, either by formulating new legal principles in the appellate courts, or by drafting new laws in the legislature; next, in descending order, were those lawyers whose practice was concerned primarily with private disputes — contracts, mortgages, bankruptcy, inheritances — and with the management of the day-to-day affairs of businesses and corporations; and, at the bottom, were those lawyers, — perhaps as many as half of the members of the Suffolk County bar — who appeared frequently in the municipal and police courts, where in the 1870s nearly 15,000 criminal cases were heard each year.⁴

The existence of this informal hierarchy made the Boston bar more stratified in the 1870s than it was before the Civil War, when there was far less specialization. A lawyer's place within the hierarchy tended to reflect his relative wealth. The expansion of commerce and business created more litigation, and greater opportunities for lawyers at the top of the hierarchy. In 1870, for example, the wealthiest ten percent of the lawyers in Suffolk County had a considerably higher average income than the top ten percent of lawyers in any other county in the state. At the same time, the percentage of property-holding lawyers was lowest in Suffolk County, chiefly because lawyers who worked primarily in the municipal and police courts earned relatively little income.⁵

3. Gerald W. Gawalt, "The Impact of Industrialization on the Legal Profession in Massachusetts, 1870-1900," in Gawalt, ed., The New High Priests: Lawyers in Post-Civil War America (Westport, Connecticut, 1984), p. 98.

4. Attorney General's Report (Boston, 1876).

5. Gawalt, "Impact of Industrialization," pp. 98-100 and 116.

These lawyers increasingly tended to be foreign-born, or first-generation Americans, serving clients who were also recent immigrants. When the Bar Association was founded, the population of Massachusetts was more heterogeneous than the bar. Nearly twenty-five percent of the people living in Massachusetts were foreign-born, of whom three-quarters were Irish. But only a handful of the lawyers practicing in Boston in 1870 were Irish, and fewer still were southern Europeans or Jews. There were three African-American lawyers in Massachusetts, according to the 1870 census. Women were not permitted to practice until 1882.⁶ Although the bar was slow to assimilate these new groups, and the issue would remain in doubt throughout the 1890s, in the end the immigrants' ambition and numbers would force the profession to change.

Urbanization and industrialization also changed the recruiting patterns of the legal profession. Before the Civil War, most lawyers in Massachusetts were drawn from families in which the fathers were professionals — physicians, ministers, judges, and lawyers. From 1870 to 1890, however, less than half of the college-educated lawyers, and less than one-third of the non-college-educated lawyers who were admitted to practice in Massachusetts, were the children of professionals. At the same time, the children of businessmen who practiced law rose from ten percent before 1840 to about thirty-five percent during the last quarter of the nineteenth century.⁷

The economic, ethnic, and social changes that took place within the bar were made possible by changes in the requirements for admission to the practice of law. From 1810 to 1836, county bar associations were empowered to recommend to the courts the

6. Richard W. Wilkie and Jack Tager, eds., Historical Atlas of Massachusetts (Amherst, 1991), pp. 32 and 35; Gawalt, "Impact of Industrialization," pp. 103-104. Robert Morris, the first African-American to practice law in Massachusetts, was admitted to the bar in 1847. He was co-counsel in Roberts v City of Boston (1850), the nation's first school desegregation case. Robert Morris, Jr., joined his father's firm in 1874. John S. Rock was educated in the office of Charles Sumner, and admitted to the bar on September 14, 1867. The third African-American lawyer practicing in Suffolk County in 1870 was George Ruffin. Brief sketches of these men may be found in William T. Davis, History of the Bench and Bar, in Professional and Industrial History of Suffolk County, Massachusetts (Boston, 1894), I: 250, 527, and 631. See also Bar Association of the City of Boston, Annual Report, 1912, pp. 72-73.

7. Kermit Hall, The Magic Mirror: Law in American Society (New York, 1989), p. 216.

admission of candidates to the practice of the law. During this time, the Suffolk County bar held to a high standard. College graduates were required to study in the office of an attorney for three years, or for one year if they had attended law school. People without a college degree faced five years of study in a law office.⁸

In the winter of 1835-1836, Democrats in the Massachusetts legislature abolished the bar associations' control over admission to the legal profession. The new law gave control to the legislature and the courts. Any candidate who had studied law in a college, or in a lawyer's office for three years, was admitted to the bar simply by applying to the Supreme Judicial Court or the Court of Common Pleas. If a candidate believed he was ready to practice before completing three years of study, he could ask the court to administer an exam. Everyone admitted to the bar was eligible immediately to practice in every court in the Commonwealth.⁹

A candidate typically read the law in an attorney's office, and presented himself to a judge for examination. The rigor and content of the exam depended on the mood or the dedication of the judge. In 1860, following a brief experiment with a written exam, the courts gave applicants the option of three years of legal study (in a school, an office, or some combination of the two), or an examination. But in 1876, the legislature raised the standard by requiring that every applicant pass an examination regardless of how many years of study he had completed. The new law also called for Bar Examiners for each county, appointed by the Supreme Judicial Court.¹⁰

The bar's tougher requirements did little to slow the number of new lawyers entering the profession. Rather, the opposite occurred. Boston's bustling urban and industrial economy created so many opportunities that the number of lawyers practicing in Suffolk County more than tripled from 1870 to 1900. To meet the demand for more lawyers, and to keep pace with the rapid changes in the law, the Harvard Law School was enlarged and its curriculum was transformed, and the Boston University Law School was established in 1872. Until the end of the century,

8. Jones, Rogers, Brown, and Connolly, Discovering the Public Interest, chapter two.

9. Ibid.

10. Ibid.

however, students usually supplemented their law school education by studying in an attorney's office, a practice that may have prevented the bar's hierarchical structure from becoming rigid.

The rapid growth and increasing diversity of the Boston bar in the decades after the Civil War meant that there were competing perceptions of the profession. In 1870, the *American Law Review*, which had been established four years earlier by John Ropes and John Gray to provide practicing lawyers with useful information, but which also affected an air of determined intellectualism, attacked the Harvard Law School for failing to train lawyers properly. "The possession of a degree signified nothing except a residence for a certain period in Cambridge," claimed the *Review*. Graduates of the Harvard Law School were not truly educated people, but, at best, competent practitioners. To ensure that lawyers could claim elite status within an increasingly democratic society, the *Review* argued that law students also should receive a full liberal education. The object of a law school should not be "only to educate young men to be practicing lawyers," the *Review* continued. Lawyers also should "investigate the science of human law, theoretically and historically," as well as "mathematics and the natural sciences."¹¹

The *Review's* assessment of the legal profession as under-educated and functioning chiefly as the hand-maiden for economic development led its editors to worry about the bar's diminishing prestige. "None of us desire to see our beloved profession degraded to a brokerage business," the *Review* asserted, "and yet we fear, and cannot conceal our fear, that such is the tendency of the age." The *Review* also was concerned about lawyers' status relative to other professionals. "It is the subject of constant remark at the bar," the editors contended, "that we need some kind of organization or association similar to those which exist in the medical profession." The *Review* called for the formation of a bar association that would demand higher educational standards.¹²

A bar association would serve the profession in other ways. An association would police the bar. "It is time," the *Review* argued as early as 1867, "that some measures were taken to expose and punish the malpractice of some unworthy members in

11. *American Law Review*, V (1870): 177.

12. *American Law Review*, V (1870): 177.

our profession, who bring the law and lawyers into contempt." An association also would allow lawyers to influence appointments to the bench, and to help shape laws made by the legislature.¹³

Lawyers in New York City created a bar association in 1870, for reasons similar to those expressed by the *American Law Review*. Specifically, attorneys in the city were worried that corrupt politics would taint the legal process and undermine New York's prosperous business climate. "It is impossible for New York to remain the center of commerce and capital on this continent," said Samuel Tilden, "unless it has an independent Bar and an honest judiciary." But because most lawyers were unwilling to "afford the business sacrifice of serving in the General Assembly," they formed an association so that it might make "recommendations for reform of the law," root out corruption among judges, lawyers, and legislators, and enhance lawyers' social status at the same time. If an association "were for nothing more than . . . to protect their class interests," wrote the editor of the *Albany Law Journal*, "it would be proper for lawyers to formally unite."¹⁴

In the winter of 1875, a private letter calling for the formation of a bar association was circulated among a group of Boston lawyers. The origins of the letter are unclear, although Joseph A. Willard, clerk of the Suffolk County Superior Court since 1859, later claimed that he had initiated the circular letter. He recalled that "for some time" he had believed that a bar association would "elevate the tone of the bar and look after cases of malfeasance." Prompted by Willard's letter and by the calls for reform made by the *American Law Review*, thirty-seven lawyers met in the Superior Court on February 26, 1876, to discuss forming the Bar Association of the City of Boston.¹⁵

Sidney Bartlett, the acknowledged leader of the Boston bar, presided over the meeting. Born in 1799 in Plymouth, a descendant of one of the *Mayflower* passengers, Bartlett graduated

13. *Ibid.*, I (1867): 395.

14. As quoted in Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (New York, 1977), p. 352; *Albany Law Journal*, XIII (1876), p. 423.

15. Joseph Willard, *Half a Century with Judges and Lawyers* (Boston, 1895), pp. 78-79. For an affectionate portrait of Willard that lends some general credence to his role in creating the Bar Association, see Samuel L. Powers, *Portraits of a Half Century* (Boston, 1925), pp. 93-101.

from Harvard College at the age of fourteen. He studied law with Nathaniel Morton Davis, and in 1820 he entered the office of Lemuel Shaw. The two men formed a partnership that lasted until Shaw was elevated to the Supreme Judicial Court in 1830. Because he represented clients — railroads and manufacturers — whose cases were redefining the law, Bartlett earned a reputation as a brilliant appellate lawyer, "a shrewd, wise legal advisor . . . whose arguments before the courts were instructive to even the judges to whom they were addressed." He rose to a position of leadership within the profession, which he held until his death in 1889, earning by his longevity the title "the Nestor of the Bar."¹⁶

In addition to Bartlett, who was the oldest lawyer in attendance, the meeting chose as secretary Albert Pillsbury, the youngest and least experienced of the group. A Committee of Five "to consider and report a plan for the organization of the Bar Association" also was appointed on that day. The committee included three politicians: William Gaston, who had just completed a term as the first Democratic governor to be elected in Massachusetts in twenty-three years; John D. Long, the Speaker of the Massachusetts House of Representatives; and Walbridge Field, who had served two years as attorney general of the United States under President Ulysses S. Grant.¹⁷

A sample of the other lawyers attending this initial meeting suggests that the social backgrounds of the founders were more varied than the Committee's political differences. The most distinguished legal family in the Commonwealth was the Dana family. Members of the family had been practicing law in Suffolk County for more than 150 years, when Richard Henry Dana, Jr., joined with his "brothers at the bar" in 1876. Although he worked hard at his practice, Dana's legal career never achieved the acclaim that he won for his book, *Two Years Before the Mast*, which was published when he was just twenty-five years old. He still wore his hair long, in sailor-fashion, when he began practicing law in 1840, and his friends said that when Dana approached the bench, his gait had a roll. In the first two years of his practice, most of his clients were sailors, whose cause Dana pursued relentlessly. But after a few years, he specialized in corporate, maritime, and international law. Although he "loathed

16. Davis, History of the Bench and Bar, I: 188-189.

17. Bar Association of the City of Boston, Minutes, February 26, 1876.

the business things of the world,' he wanted the luxuries and leisure that money could buy. "If independent," Dana told a friend in 1843, "I could lead a more satisfactory life, be more open to nature and art, and have my soul . . . more alive." Dana's practice did prosper, and in 1871 he moved his family from Cambridge to a splendid house on Beacon Hill. Just seven years later, he turned over his law practice to his son, and he left the United States to live in Paris and Rome, where he died in 1882.¹⁸

Edward D. Sohier was sixty-six years old in 1876, and he was widely recognized as a "profound lawyer, full of resources, forcible in argument and sharp in repartee." Born in Boston, educated at Harvard College and admitted to the Suffolk County bar in 1832, Sohier formed a partnership with Charles A. Welch (a founder) in 1838 that lasted until Sohier's death in 1888. Sohier was an eminently successful commercial lawyer, and a fiduciary, who with one major exception — he defended Professor John White Webster, who was executed in 1850 for the murder of Dr. George Parkman — quietly and courteously built a reputation as one of the leaders of the bar.¹⁹

Founders Augustus Russ and Nathan Morse were self-made men. Born in a poor section of Boston in 1827, to a shoemaker and his wife, Russ left school before the age of twelve. For more than ten years, he worked as a clerk in a hardware store located near Russia Wharf. In 1851 he joined the rush to California, selling tools and supplies to the miners. When his business in San Francisco tailed off, Russ sailed to Hawaii, where he worked until returning to Boston in 1854. Remarkably, at the age of twenty-seven, with little formal education, Russ decided to pursue a legal career. Driven by his knowledge of what might be accomplished with hard work, Russ studied so intensely that in just one year he gained admission to the Suffolk County bar. The bulk of his practice was concerned with real estate titles, but Russ also was counsel for Faneuil Hall, the National Bank, the American Express Company, and the Globe Theatre, during his long professional career.²⁰

18. Charles Francis Adams, Richard Henry Dana, A Biography (Boston, 1890), I: 46-62; Samuel Shapiro, Richard Henry Dana, Jr., 1815-1882 (East Lansing, Michigan, 1961), p. 21.

19. Davis, History of the Bench and Bar, pp. 211-212.

20. *Ibid.*, p. 368.

Like Russ, Nathan Morse worked hard to become a lawyer. Oddly enough, Morse's professional life began with a political appointment. In 1842, the eighteen year old Morse was appointed assistant postmaster of Moultonborough, New Hampshire. But three years later, he determined to study law in Boston. In order to pay the costs of his legal education — one year at Harvard Law School and another year in a law office — Morse worked at a variety of menial jobs. Following his admission to the Suffolk County bar in 1847, Morse practiced alone until 1852, when he and Ambrose Ranney established what became a well-known and prosperous partnership.²¹

At least one of the founders was judged to have been a failure by William T. Davis, a nineteenth century chronicler of the Suffolk County bar. Charles Goodrich graduated from Dartmouth in 1822, read the law with Levi Woodbury in Portsmouth, New Hampshire, and moved in 1837 to Boston, where he practiced law for forty-one years. "With all his ability," wrote Davis about a decade after Goodrich died, "his career was not a successful one. His honest bluntness and want of tact were annoying to clients, his addresses to the jury, thorough and lucid as they were, failed to convince, and his arguments to the court, sound, instructive and logical, wanted the winsome tone which carries conviction even with judges on the bench."²²

Despite the social differences suggested by this sample, the thirty-seven lawyers who participated in launching the Boston Bar Association, together with the six who were added as officers a few months later, were a loosely-knit cultural elite. They were highly-educated. At least thirty-eight of the forty-three founders (88 percent) had attended college, whereas only 63 percent of lawyers admitted to the practice in Boston between 1870 and 1890 were college graduates. Thirty-six founders had some connection to Harvard, seventeen as undergraduates, and nineteen as students at the Law School; nine attended both the College and the Law School. Seven others graduated from Dartmouth College, and the remainder were educated at Brown, Colby, Middlebury, and

21. *Ibid.*, p. 496.

22. *Ibid.*, p. 551.

Bowdoin. Thirty-one of the forty-three founders received part of their legal training in a law office.²³

There were other bonds that tied the founders together. Among the forty-three original members of the Association were seven lawyers who had prepared for the bar in the office of another founding member. And eight of the founders were partners with other founders. Henry C. Hutchins and Alexander S. Wheeler, for example, formed a partnership in 1844, ten years after they had become boyhood friends and the same year they were admitted to the Suffolk County bar. Two of the founders — James M. Keith and Josiah G. Abbott — created partnerships with their sons. Samuel A. B. Abbott was elected to the Bar's Judiciary Committee in 1876.²⁴

The most important link joining the founders was their work. Nearly all of the founders represented a large number of business clients. More than half of the founding members were appellate lawyers who appeared at least once before the Supreme Judicial Court in Suffolk County during the 1875-1876 term. They argued a variety of cases, but included among their clients were railroads, telegraph and insurance companies, banks, and manufacturers — the sinews of industrialization. Gustavus A. Somerby was the only founder who made a reputation as a criminal lawyer. Somerby's practice exacted a heavy toll, according to William T. Davis. After successfully defending an accused murderer in 1873, Somerby was exhausted, "his vigor of nerve and brain was never again what it had been before."²⁵

While some of the founders were from old Massachusetts families, nearly twice as many had been born outside the Commonwealth, and came to Boston either to attend college or law school, or after practicing law for a short time in their home state. The average age of the founders when they were admitted to the bar and began their careers was 24.5 years, considerably older than non-professional workers. The founders also postponed their marriages, just as John Adams, who was counseled more than a

23. This data was compiled from Davis, History of the Bench and Bar; the figure for the percentage of lawyers with a college education who were admitted to practice in Boston is from Gawalt, "Impact of Industrialization," in New High Priests, p. 105.

24. Compiled from Davis, History of the Bench and Bar.

25. Massachusetts Reports, 1875-1876; Davis, History of the Bench and Bar, p. 562.

century before "not to marry early." The average age at first marriage for the Bar's founders was 27.7 years, nearly three years older than the national average.²⁶

The degree to which the founders of the Bar Association were distinct from other lawyers and from the general population may be inferred from other milestones. The founders were older than the average Suffolk County practitioner by almost thirteen years. Thirty-five of the forty-three founders had been admitted to practice before the Civil War, but just three of this group were veterans. The founders were set off from the general population by their longevity; their average age at death was 72.7 years, well above the average American male's life expectancy of 56.²⁷

The deaths of the founders occurred over a half century, from 1877 to 1929. When Oliver Wendell Holmes, Jr., was appointed to the Supreme Judicial Court in 1883, more than half of the founders were still alive. But there were only seven survivors when Holmes was elevated to the United States Supreme Court in 1902. Morefield Storey was the last survivor; he died the year Herbert Hoover took office as president.²⁸

The demise of the founders did not signal any dramatic change. Alike in their educational backgrounds and in their links to an emerging industrial economy, the founders were easily distinguished from the majority of Boston's lawyers, and from the public. During the half-century spanned by the lives of the founders, the Boston Bar Association became more heterogeneous. It opened its ranks to ethnic and racial groups and to women, and more closely resembled the entire legal community. At the same time, the practice of the law became increasingly professionalized, widening the gap between lawyers and the public, and between lawyers and members of the Bar Association who shared a commitment to the public interest.

26. Compiled from Davis, History of the Bench and Bar; the average age at first marriage for the Founding Fathers, the men who signed the Declaration of Independence or attended the Constitutional Convention, was 29.4, according to Richard D. Brown, "The Founding Fathers of 1776 and 1787: A Collective View," William and Mary Quarterly, 3d series, XXXIII (1976), 469. Nine of the Bar's founders did not marry, and four married more than once.

27. Compiled from Davis, History of the Bench and Bar; the figure for the average age of all Suffolk County lawyers in 1870 is from Gawalt, "Impact of Industrialization," New High Priests, p. 117.

28. Compiled from Davis, History of the Bench and Bar.

The Founders

NAME	BIRTH	BAR ADMISSION	DEATH
1. Josiah G. Abbott	1815	1835	1891
2. Samuel A.B. Abbott	1846	1868	----
3. Sumner Albee	1825	1846	1893
4. Sidney Bartlet	1799	1820	1889
5. Alphonso W Boardman	----	1853	----
6. Napoleon B. Bryant	1825	1849	1902
7. Richard H. Dana, Jr	1815	1855	1882
8. John C. Dodge	1810	1842	1890
9. Walbridge A. Field	1833	1860	1899
10. Willian Gaston	1820	1844	----
11. Charles B. Goodrich	1804	1823	1878
12. George S. Hale	1825	1850	----
13. John H. Hardy	1847	1872	----
14. Ebenezer R. Hoar	1816	1839	1895
15. Lewis W. Howes	----	1867	----
16. Henry C. Hutchins	1820	1843	1894
17. Horace G. Hutchins	1811	1839	1877
18. James M. Keith	1819	1848	----
19. Daniel C. Linscott	1828	1860	----
20. Thomas L. Livermore	1844	1868	----
21. John D. Long	1838	1861	1915
22. Nathan Morse	1824	1847	1894
23. Richard Olney	1836	1859	1917
24. Henry W. Paine	1810	1834	1893
25. Baxter E. Perry	1826	1855	----
26. Albert E. Pillsbury	1849	1870	----
27. James B. Richardson	1832	1850	----
28. Augustus Russ	1827	1855	1892
29. Charles T. Russell	1815	1839	1895
30. William G. Russell	1821	1845	1896
31. George O. Shattuck	1829	1855	1897
32. Lemuel Shaw, Jr.	1829	1852	1884
33. Robert D. Smith	1838	1860	1888
34. Edward D. Sohier	1810	1832	1888
35. Gustavus A. Somerby	1821	1879	----
36. J. Lewis Stackpole	1838	1860	1904
37. Moorfield Storey	1845	1864	1929
38. Hales W. Suter	1828	1852	1914

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39. David Thaxter	1824	1848	1878
40. Seth J. Thomas	1807	1849	----
41. Charles R. Train	1817	1841	1885
42. Charles A. Welch	1815	1837	----
43. Armstrong S Wheeler	1820	1844	1907