

Dressing for Success: Lawyers & Clothing in Nineteenth Century America

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When I arrived at the Cravath law firm as a new associate in the autumn of 1979, I was surprised to discover at orientation that the firm would provide each new associate with a fairly sizeable credit at Brooks Brothers to assist us in purchasing a suitable professional wardrobe.¹ We did not have great discretion in our choices; the firm had instructed Brooks Brothers that we were to purchase clothing from an approved list that set out what we should buy. For male associates there was a set number of suits of particular colors and material—a blue sport coat, a leather briefcase, etc. Female associates had a similar list with gender-appropriate differences. Thus, we were all to dress in the appropriate Cravath manner.²

Today, very few firms explicitly dictate the type or style of clothing their lawyers should wear. Many firms, particularly those outside the East Coast, even permit their lawyers a degree of flexibility in their dress so long as it is respectable (I would imagine that no firm, even today, would be happy if one of their lawyers appeared in a speedo, even on the hottest day). Indeed, this flexibility in expectations about dress may increase in the wake of the extensive telework that has been embraced in the midst of the current pandemic. However, many law firms still expect their lawyers to look “professional,” but the origins of what is considered appropriate dress for lawyers has been lost in the mists of time and very little is written about the subject today.³ Certainly, no lawyer or law professor would

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1. My recollection is that each associate received a credit of \$3,000, a rather substantial sum at the time and equal to 10% of our starting salary of \$30,000 per year.

2. When I began as a full-time associate in June 1979, one of Cravath's largest clients was IBM. At that time, IBM had a strict dress code for its employees, far stricter than Cravath's. Those of us who worked on IBM matters were told about this dress code and it was suggested that when we were scheduled to meet with IBM employees, we should attempt to dress in accordance with their dress code as a courtesy to the client's sensitivities.

3. There remains one area in which a focus on appropriate dress remains in the literature: the dress of female lawyers. Many women in the legal profession today are—quite rightly—unwilling to be told how to dress, particularly when that advice seems to be to dress as much like a man as possible.

dream of incorporating advice about proper professional dress in a class or textbook on legal ethics or professional responsibility.⁴ Yet, in the nineteenth century, proper dress was considered to be extremely important for businessmen and lawyers. There are numerous comments on appearance and dress in nineteenth century literature⁵ and advice on the subject was included in books and articles about professional deportment, a subject not quite coextensive with our modern notion of professional responsibility.⁶

To begin this brief exploration of proper dress and professional deportment at the American Bar in the nineteenth century, it is first

See, e.g., Karen Thornton, *Parsing the Visual Rhetoric of Office Dress Codes: A Two-Step Process to Increase Inclusivity and Professionalism in Legal-Workplace Fashion*, 12 LEGAL COMM'N & RHETORIC: JALWD 173, 179–80 (2015); Elizabeth B. Cooper, *The Appearance of Professionalism*, 71 FLA. L. REV. 1, 3–4 (2019); Kathleen A. Bergin, *Sexualized Advocacy: The Ascendant Backlash Against Female Lawyers*, 18 YALE J.L. & FEMINISM 191, 209–11 (2006). In addition, there still exists one bastion of the belief that lawyers need to wear appropriate “professional clothing”: career services offices in law schools. Virtually all law schools now provide advice to both male and female students on what clothing they should wear to law firm interviews. At my own law school, the advice given seems to be very similar to the choices I was given by Cravath when purchasing my work clothes at Brooks Brothers. *See, e.g.,* KU Law, *Dress For Success: How to Tailor Your Professional Identity*, YOUTUBE (Oct. 30, 2020), https://www.youtube.com/watch?v=kK25zuwITK8&feature=emb_title&ab_channel=KULaw [<https://perma.cc/YQD2-6ZBH>]. Traditional advice on proper professional attire for lawyers is also found on the Internet. *See, e.g.,* Bryan Mixon, *Dress Code for Lawyers*, AMAZELAW (Jan. 13, 2021), <https://amazelaw.com/dress-code-lawyers/> [<https://perma.cc/2G5Y-CK4C>]. Douglas Hand, a fashion lawyer, authored a leading printed book on the subject published by the American Bar Association. *See generally*, DOUGLAS HAND, THE LAWS OF STYLE: SARTORIAL EXCELLENCE FOR THE PROFESSIONAL GENTLEMAN (2018). Finally, for an intriguing discussion of the constitutional limits on dress requirements in courtrooms see Jona Goldschmidt, “Order in the Court!”: Constitutional Issues in the Law of Courtroom Decorum, 31 HAMLINE L. REV. 1 (2008); and Lynda K. Hopewell, Note: *Appropriate Attire and Conduct for an Attorney in the Court Room*, 12 J. LEGAL PRO. 177 (1987).

4. It is useful to distinguish between the nineteenth century idea of professional deportment and the twenty-first century concept of legal ethics or professional responsibility. Deportment has a broader meaning than ethics in the professional context. Deportment refers to an individual’s behavior, such as their manners, in a general sense. *Deportment*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/deportment> [<https://perma.cc/3CGD-AEKS>] (last visited Jan. 22, 2021). Ethics and professional responsibility, as we use the terms today, refer to specific professional behaviors at the core of professional activity, relations with clients, the judiciary, and the public as a whole.

5. For a discussion on the importance of proper attire to businesspeople and the concomitant growth of the men’s clothing industry, see MICHAEL ZAKIM, READY-MADE DEMOCRACY 96 (2003). It is particularly interesting that Zakim’s research makes clear that while the men’s clothing industry moved to a model of mass producing “ready-made,” “off the rack” business clothing for men, generally women had to produce their own clothing or purchase clothing designed not for business use, but for fashion. *Id.* Here again, we see how seemingly unrelated social restraints made it more difficult for women to enter the legal profession. For a discussion of the difficulties women faced in becoming lawyers in the post-Civil War period, see M.H. Hoeflich, *From Scriveners to Typewriters*, 16 GREEN BAG 2D 395, 406–07 (2013).

6. Of course, even in the nineteenth and early twentieth centuries there were lawyers who refused to conform to the dictates of professional deportment. For example, Polk Cline—an eccentric Kansas lawyer—was famous for appearing before the Kansas Supreme Court barefoot. *See* M.H. Hoeflich, *The Old Sage of the Arkansaw: Polk Cline*, 77 J. KAN. B. ASS’N 24, 24 (2008).

necessary to recognize that after the American Revolution, most American jurisdictions abandoned many of the most notable characteristics of the English Bar, including the requirement that lawyers wear robes in court.⁷ While this freed American lawyers from the sartorial restraints of the English Bar, it also left a void as to exactly how lawyers should dress.

The work generally recognized to be the first American attempt at formulating a code of legal ethics is David Hoffman's *Course of Legal Study*, the second edition of which includes his fifty "Resolutions on Professional Deportment" as well as a commentary thereupon.⁸ Hoffman's text deals with professional deportment as it was broadly understood in his time. His appended Fifty Resolutions deals primarily with what we would today call legal ethics.⁹ However, in his accompanying commentary on deportment, Hoffman discusses the need for lawyers to read broadly in polite literature and, generally, encourages law students and lawyers to seek to attain broad cultural literacy.¹⁰ While Hoffman does not mention lawyers' dress specifically, he does emphasize the need for lawyers to be of good character and display good manners.¹¹ In George Sharswood's 1854 *An Essay on Professional Ethics*, there is no explicit discussion of appropriate dress for lawyers.¹² In fact, specific discussions of appropriate dress for lawyers are not to be found in antebellum U.S. discussions of professional deportment for lawyers at all. The reason for this absence is quite simple: men like Hoffman and Sharswood assumed that lawyers would deport themselves as gentlemen and that gentlemen knew how to dress in an appropriate fashion.¹³

The antebellum American Bar was, to a large extent, a split profession

7. For more information on the debates over wearing robes, see ROBERT DAVIDSON COXE, *LEGAL PHILADELPHIA: COMMENTS AND MEMORIES 182–83* (William J. Campbell ed., 1908); and Charles M. Yablon, *Judicial Drag: An Essay on Wigs, Robes and Legal Change*, 1995 WIS. L. REV. 1129, 1135–38 (1995); HERBERT PARKER, *COURTS AND LAWYERS OF NEW ENGLAND* 384 (1931).

8. DAVID HOFFMAN, *A COURSE OF LEGAL STUDY, ADDRESSED TO STUDENTS AND THE PROFESSION GENERALLY* 752–75 (2d ed. 1836). The first 1817 edition of Hoffman's *Course* did not contain this material. It first appeared in the 1836 edition and in the following 1846 reprinted edition.

9. *Id.*

10. *Id.* at 724 (encouraging lawyers to embrace the "richness and solidarity of learning, the profundity of wisdom, the purity of morals, the soundness of integrity, the ornaments of literature").

11. *Id.* at 748.

12. GEORGE SHARSWOOD, *AN ESSAY ON PROFESSIONAL ETHICS* (2d ed. 1860). Note, this essay was first published under the title "A Compend of Lectures on the Aims and Duties of the Profession of the Law, Delivered Before the Law Class of the University of Pennsylvania" but all subsequent editions feature the title referenced in text.

13. See Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternate Sources of Virtue*, 14 NOTRE DAME J.L., ETHICS & PUB. POL'Y 305, 307–09 (2014) (asserting that "[p]rofessional ethics were the ethics of gentlemen . . . embodied in statements of professional aspiration" by men like Hoffman and Sharswood, and it was only the later "newcomers" to the profession who needed to be "re-educate[d] . . . to wear coats and ties . . . —the dress of the upper class").

comprised of an educated elite, often from the rising upper-middle class, and other lawyers from working class backgrounds who had less, if any, professional education, and those who were not, generally, members of the social or economic elite.¹⁴ The elite members of the Bar dismissed their more plebian colleagues as pettifoggers or tavern lawyers; men who did not possess offices, education, or good manners and were primarily pursuing the law only to obtain wealth.¹⁵ The elite members of the Bar believed that their pettifogging colleagues brought disrepute on the Bar because of their sharp practices, avarice, and willingness to take any lawsuit that could generate a fee.¹⁶ To distinguish themselves from these pettifoggers, elite lawyers identified with the higher social class of gentlemen.¹⁷ Manuals such as Hoffman's and Sharswood's were closely intertwined with the movement for university-based legal education—the

14. See MAXWELL BLOOMFIELD, *AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776–1876* 38–45, 302–03 (1976); see also Daniel R. Coquillette, *Justinian in Braintree: John Adams, Civilian Learning, and Legal Elitism, 1758–1775* in *62 LAW IN COLONIAL MASSACHUSETTS: 1630–1800* 359, 376–82 (Daniel R. Coquillette, Robert J. Brink, Catherine S. Menand & Frederick S. Allis, Jr., eds., 1984).

15. Coquillette, *supra* note 14 at 376–77.

16. On the origins of “pettifogging,” see generally C.W. BROOKS, *PETTYFOGGERS AND VIPERS OF THE COMMONWEALTH: THE ‘LOWER BRANCH’ OF THE LEGAL PROFESSION IN EARLY MODERN ENGLAND* (D.E.C. Yale ed., 1986). Indeed, one of the central ethical debates that split the legal profession in the antebellum period and for years thereafter was whether a lawyer should represent a client whom the lawyer felt to be undeserving of legal assistance. One of the primary accusations leveled against those who believed that lawyers should take all cases, was that they in fact supported this position because they were solely interested in earning fees, not doing what was right.

17. However, by no means were all lawyers in the immediate two post-Revolutionary generations from wealthy families. Many of these men came from solidly middle-class backgrounds, often the sons of ministers, prosperous farmers, or merchants. For examples of lawyers from such backgrounds, see, e.g., Parker, *supra* note 7, at 409 (discussing Benjamin Orr, a prominent Maine lawyer). Note also the frequent references in these biographies to lawyers’ “lineage.” Benjamin Orr, “who began his active life as apprentice to a carpenter, for the family finances at the time did not admit of a more academic education” is also characterized as being “of a notable and respectable lineage.” *Id.* The concern for lineage and breeding was not limited to the legal profession; it was a very general concern in the post-Revolutionary period. See ALDEN BRADFORD, *BIOGRAPHICAL NOTICES OF DISTINGUISHED MEN IN NEW ENGLAND: STATESMEN, PATRIOTS, PHYSICIANS, LAWYERS, CLERGYMEN, AND MECHANICS* 2 (1842) (“It is a natural and laudable desire to know the principles, character and services of our ancestors.”). For a valuable contemporary definition of the term “gentleman,” see CHARLES BUTLER, *THE AMERICAN GENTLEMAN* vi (1839). Butler states:

The term cannot be defined in a few words, or the characters described in a few sentences. It comprises many and various merits; much that is noble after the fashion of nature’s nobility; much that is manly, in the masculine sense of the word; much that is worthy, even according to the highest standard of worth. To develop fully the beau ideal of an American gentleman, one should write whole volumes of sound morality, and whole treatises of that genuine politeness which has its foundation in kindness of heart and purpose. To present a model for our countrymen, we have only to refer to our own Washington, who united the dignity and the polish with the genuine excellence and elevation of soul which mark the true gentleman.

idea that law should be taught as a science, and the strong belief that lawyers were, by breeding and professional association, gentlemen.¹⁸ These texts were aimed not at those they would have considered to be pettifoggers, who did not attend such schools or have apprenticeships with prominent lawyers and judges or come from wealthy families, but at the elite of the Bar who did.¹⁹ Therefore, the authors assumed that detailed discussions of manners and how to dress were unnecessary for their readers.²⁰ Hoffman puts all of this quite simply:

Character, therefore, and the best of manners are to the lawyer invaluable; the former essential, the latter worthy of all cultivation. . . . In no career is the great importance of courteous, correct, and honourable deportment more strikingly manifest. . . . Eminent success . . . depends not solely on learning, eloquence, and sound morals; manners are also of the highest necessity.²¹

One caveat to the above discussion must be given. For the most part, the customs and manners described were characteristics of the Bar's elite. With very few exceptions, these professional elite were an urban and coastal elite, confined to cities in the longer-established parts of the United States. Lawyers in more rural areas, especially on what was then the Western frontier, behaved quite differently from their brethren back East.²² While the frontier Bar did have its customs, they were much more informal and relaxed. Few lawyers who emigrated to the West had personal or substantial family wealth and connections—if they did, there was simply no need to go West. Certainly, the notion of “professional deportment,” including dress, was far more relaxed on the frontier. Henry C. Whitney provides a picture of the customs of the antebellum rural and frontier Bar in the autobiographical account of his years practicing on Illinois' Eighth Judicial Circuit (extending from Champaign to Springfield).²³

18. See M.H. HOEFlich, *THE GLADSOME LIGHT OF JURISPRUDENCE* 1–8 (1988).

19. For a discussion of the apprenticeship system, see generally Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124, 124–36 (1976).

20. An interesting contrast is found in the manuals written for young men who aspired to move away from farms and manual labor and become clerks in offices and retail establishments. These manuals and related writings often stressed the importance of appropriate dress and gave detailed instructions as to how to achieve this. Of course, these young men were not from elite social and economic situations and would have needed instruction in manners, dress, and social etiquette.

21. HOFFMAN, *supra* note 8, at 747–48.

22. See generally W.U. Hensel, *The Country Lawyer*, 58 U. PA. L. REV. 521 (1910) (providing a sense of the differences between urban and rural practice in the nineteenth century); R.B. Chandler, Jr. & M.H. Hoeflich, *Law for Farmers in Nineteenth-Century America*, 109 LAW LIB. J. 673 (2017) (describing some of the unique issues rural lawyers faced).

23. See generally HENRY CLAY WHITNEY, *LIFE ON THE CIRCUIT WITH LINCOLN* (1892) (containing early pictures of local attorneys and judges, including then-judge Abraham Lincoln).

Whitney describes how Abraham Lincoln, one of the most prominent lawyers who rode this Circuit, dressed:

[H]is eccentricities, his *outré* appearance and propensity to tell stories, gave him his chief distinction. . . . When I first knew him his attire and physical habits were on a plane with those of an ordinary farmer:—his hat was innocent of a nap:—his boots had no acquaintance with blacking:—his clothes had not been introduced to the whisk broom²⁴

Edwin M. Stanton, a prominent Ohio lawyer who was to become Lincoln's Secretary of War,²⁵ described him as “[a] long, lank creature from Illinois, wearing a dirty linen duster for a coat, on the back of which the perspiration had splotched wide stains that resembled a map of the continent.”²⁶

Even given the relaxed ideas about professional attire on the Western frontier, Lincoln stood out as particularly slovenly. However, quite clearly his appearance did not stop him from becoming a leader at the Bar on Illinois' Eighth Judicial Circuit. Indeed, it seems quite likely that his “folksy” approach to the practice of the law, including the similarity of his dress to that of a farmer, may well have pleased many of his clients and actually increased his practice.²⁷

Back East, however, David Paul Brown, a wealthy Philadelphia lawyer known best for his two-volume memoir, *Forum; or, Forty Years Full Practice at the Philadelphia Bar*,²⁸ felt lawyers' and judges' appearances worth noting in his descriptions of the leading lights of the Philadelphia Bar. For instance, in describing Judge Yeates of the Pennsylvania Supreme Court, he observed with favor that “Judge Yeates was a tall and portly personage, . . . dressing with considerable neatness, with hair perfectly white, and in short, a *fine representative of a gentleman of the old school*.”²⁹ On the other hand, he criticized Judge Breckenridge for his dress:

24. *Id.* at 19, 32.

25. Edwin M. Stanton, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Edwin-M-Stanton> [<https://perma.cc/R9VZ-JCBK>] (last visited Jan. 22, 2021).

26. WHITNEY, *supra* note 23, at 24.

27. There are many accounts of Lincoln's career as a lawyer in Illinois. See, e.g., DAVID HERBERT DONALD, LINCOLN 142–61 (1995). See generally JOHN P. FRANK, LINCOLN AS A LAWYER (1961).

28. DAVID PAUL BROWN, FORUM; OR, FORTY YEARS FULL PRACTICE AT THE PHILADELPHIA BAR (1856).

29. *Id.* at 399 (emphasis added); see also 2 ALANSON BORDEN, OUR COUNTY AND ITS PEOPLE: A DESCRIPTIVE AND BIOGRAPHICAL RECORD OF BRISTOL COUNTY MASSACHUSETTS 658 (1899) (quoting an 1821 Maine statute requiring that appointees to the Court of Common Pleas “be men of *sobriety of manners* and learned in the law” (emphasis added)).

His dress, if it might be so called, was the most careless that could be conceived; and his *address*, if possible, worse than his *dress*. Wearing a rusty, unbrushed black coat, and vest, and with very little difference in color between them and his shirt. . . his small clothes without suspenders, and neither exactly on, nor off; his beard unshaven, and his hair undressed; with large, ungainly boots; cravat twisted like a rope, and his whole demeanour apparently anything but attentive, to the business of the court.³⁰

Interestingly, Brown points out that Judge Yeates was a man of “great wealth” while Judge Breckenridge was of “moderate means.”³¹ In short, Judge Yeates was a lawyer and a gentleman. Judge Breckenridge, though a noted legal scholar and distinguished judge, was not what Brown would consider a proper Philadelphia gentleman.

In this light, it is not without interest that Brown himself came from a wealthy family and, through his law practice, added significantly to his wealth.³² Indeed, Brown recognized that demanding a certain level of manners and dress brought unity to the Bar—a unity and agreement on standards of behavior that helped to keep those without money or the necessary social background out of the Bar’s elite group.³³

The closed nature of the Bar elite becomes very explicit in comments Brown makes about Jared Ingersoll, a member of the Philadelphia Bar who died in 1822:

His dress was neat, and, as was the fashion of the day, consisted of a drab body coat and small clothes, with silk stockings, and shoes with buckles. Brown, drab, and gray, were the prevailing colors worn by the members of the bar until the year 1815. We do not remember, among the elder lawyers, any eminent men at the bar, of that time, who ever adopted any other color of dress.³⁴

To be a member of the Philadelphia Bar elite in the first generation after the Revolution, one had to dress like a member of a select group, the same way children who attend private schools often wear uniforms. Dress was a sign of membership in a small, closed, elite group.³⁵ Robert D. Coxe

30. BROWN, *supra* note 28, at 399 (emphasis in original).

31. *Id.* at 401.

32. *Id.* at xxviii, liv–lv (discussing the increase of business during his time of legal practice).

33. The closed social circle of the antebellum Bar elite is illustrated in Robert D. Coxe’s description of the post-revolutionary Philadelphia Bar. See COXE, *supra* note 7, at 15–16.

34. BROWN, *supra* note 28, at 488. A number of texts of that time period which discuss legal dress disapprove of lawyers being flamboyant in their attire. Ironically, one lawyer signaled out as being too flamboyant in his dress and manners was, in fact, David Paul Brown. See COXE, *supra* note 7, at 105–06 (discussing the “elaborate costume with which he clothed his bejewelled person”).

35. Of course, this standardized form of attire not only marked one as a member of the elite, but

observes in his book, *Legal Philadelphia*, that “[i]n the last analysis, it may with confidence, be urged, that after all, uniforms serve but the common purpose of enforcing discipline.”³⁶ Indeed, what are rules of deportment but rules designed to foster group uniformity and discipline?³⁷

Of course, wearing what was deemed to be professionally appropriate clothing, thereby damaging the professional fortunes of those who qualified as lawyers but were not of the appropriate social background, was not the only means by which the elite attempted to limit membership in the Bar. Mechanisms to limit the number of lawyers ranged from the formation of bar associations, which began life as social clubs,³⁸ to mandatory minimum fee schedules, the imposition of bar examinations, and “character” tests for admission to the Bar.³⁹ Maintenance of a small elite group of lawyers not only provided members of the elite with greater social standing, it also provided oligopolistic profits to that group.

Discussions of gentlemanly manners and deportment were not central either to Hoffman’s or Sharswood’s works on professional ethics because they assumed that those studying for the Bar would be men of a certain social class and would not need advice on such matters (even though dress and deportment did play an important role in contemporary descriptions of lawyers and judges). Some historians of American legal ethics have tended to ignore the importance of the “gentlemanly” aspect of the Bar and its role in then-contemporary notions of proper professional behavior. Further, because Hoffman’s “Fifty Resolutions” and Sharswood’s *Professional Ethics* did not include specific instructions as to what constituted proper lawyerly manners and dress, and because these two works were the principal templates for both the first state legal ethics codes and the 1908 code promulgated by the American Bar Association, questions of manners and dress did not appear in these and other codes adopted at that time, nor have they appeared in subsequent formal codes

also excluded all those who were not members. Women, immigrants, and those from the working class need not apply.

36. COXE, *supra* note 7, at 187.

37. There were exceptions to the notion of professionally appropriate legal dress, even in conservative post-Revolutionary Philadelphia. For example, Quaker lawyers dressed in the manner they thought appropriate for Quakers rather than what non-Quaker lawyers wore, although, apparently, it was not terribly different. Coxe refers to one lawyer who wore “plain gray Quaker garb.” *Id.* at 213.

38. One of the first American Bar groups was the ‘Sodalitas’ in Boston. See Timothy G. Kearley, *From Rome to the Restatement: S.P. Scott, Fred Blume, Clyde Pharr, and Roman Law in Early Twentieth-Century America*, 108 LAW LIB. J. 55, 59 (2016) (citing Coquillette, *supra* note 14) (noting that the “Sodalitas law club, [was] an association of gentlemanly Bostonian lawyers who read Cicero, the *Corpus Juris Civilis*, and other classics, together.”). “Sodalitas” is the Latin term for a social drinking group.

39. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 637–40 (4th ed. 2019).

and rules.⁴⁰ Then, as now, for the most part, matters of manners and dress were left to individual lawyers and law firms to determine. Of course, we must also recognize that tradition and custom may be as effective at controlling behavior as are actual formal rules.⁴¹

Beginning in the 1830s, American society began to “open up.” Jacksonian democracy had as one of its central tenets that young men (women, alas, did not benefit from this political and social revolution) of any background should have opportunities to advance economically and socially.⁴² Many young men from the country chose to abandon their family farms and move to the growing cities to pursue careers in business as “clerks.”⁴³ These young men needed to adapt to the more sophisticated urban life and magazines and self-help manuals began to proliferate to tell them precisely how to do this.⁴⁴ The legal profession was not immune to this social movement. After the Civil War, especially, the legal profession underwent a transformation in almost every respect. It is in the postwar period where not only did young men who possessed neither wealth or family connections begin to seek admission to the Bar, but, also, waves of immigrants from Europe came to the United States and sought to enter the profession in large numbers.⁴⁵ So, too, did increasing numbers of African Americans who, for the first time, had expanded educational opportunities and were finally given access to Bar membership, at least in theory.⁴⁶ Women, too, were demanding their rightful place at the Bar and gaining

40. See *supra* notes 8–12 and accompanying text.

41. See H.L.A HART, *THE CONCEPT OF LAW* 172–73 (1961) (comparing the lasting power of social tradition, morals, and rules).

42. See Colin Croft, Note, *Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community*, 67 N.Y.U. L. REV. 1256, 1284–85 (1992) (“Beginning in the Jacksonian era, strong undercurrents of egalitarianism and democracy further accelerated the erosion of the elitist tenets of republican-era noblesse oblige lawyering, hampering efforts at organized professionalism.”).

43. M.H. Hoeflich, *Ethics and the “Root of All Evil” in Nineteenth Century American Law Practice*, 7 ST. MARY’S J. LEGAL MALPRACTICE & ETHICS 160, 171–72 (2017).

44. *Id.* (“These guides provided advice on everything from how a young businessperson should dress, to the types of entertainment in which they should indulge, to how they should comport themselves in both their professional and private lives. These guides sought to produce a class of young clerks and business entrepreneurs who would . . . achieve financial success . . .”) (citing THOMAS AUGST, *THE CLERK’S TALE: YOUNG MEN AND MORAL LIFE IN NINETEENTH-CENTURY AMERICA*, 4 (2003)).

45. *Id.* at 170.

46. MAXWELL BLOOMFIELD, *AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776–1976* 302–03 (1976); Emily Mermell, *5 Revolutionary Black Lawyers that Changed America*, BARBRI L. PREVIEW (Feb. 5, 2020), <https://lawpreview.barbri.com/revolutionary-black-lawyers/> [<https://perma.cc/4NJV-SM5E>] (discussing some of the first African American members of the Bar, post-Civil War).

these rights through litigation when gentler persuasion failed.⁴⁷

The increasing diversity and availability of legal education in the post-Civil War period meant that many young men and women not born into the social and economic elite could now become lawyers. Even if the elite law schools and the most prestigious apprenticeships remained closed to them,⁴⁸ these men and women could attend a variety of non-elite law schools designed to enable working men and women to have access to the Bar. Schools such as those were operated by the YMCA or by individual judges and lawyers, that held classes at night or on Saturday.⁴⁹ They could take advantage of the increasing availability of legal apprenticeships that came with the postwar increase in the number of lawyers.⁵⁰ These new socially and professionally ambitious young people sought to become lawyers to serve their communities, to better themselves financially and socially, and to have a voice in the new post-Civil War American political structure. These new entrants to the Bar were not pettifoggers in the pre-Civil War sense, but many members of the elite Bar saw them as threats to their prestige and wealth and were as dismissive of them as the earlier generation was of the pettifoggers due to their lack of breeding and education.⁵¹

Many of the elite law firms, particularly those that constituted the first wave of the newly invented “corporate law firms,” tended still to recruit students from elite law schools—graduates who fit the traditional male, gentlemanly, upper-middle-class model.⁵² The opening of the Bar to non-elite members, however, meant that increasing numbers of lawyers did not share the same standards of deportment and manners that the elite members of the Bar cherished. Indeed, the absence of wealth and breeding became a barrier to entry into the elite law firms and corporate law

47. See Audrey Wolfson Latourette, *Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives*, 39 VAL. U.L. REV. 859, 863–74 (2005) (detailing the obstacles nineteenth century women faced in obtaining admission to the Bar, and describing several “extraordinary efforts of the nineteenth century trailblazers to defeat sex discrimination in the legal profession”).

48. See Croft, *supra* note 42, at 1285 (“Republican-influenced practitioners . . . sought to revive the noblesse oblige ideal by calling for the establishment of national law schools with curricula based on the republican legal tradition, and by encouraging the promotion of professional standards.”).

49. On such working men’s law schools, see M.H. Hoeflich, *The Bloomington Law School*, in PROPERTY LAW AND LEGAL EDUCATION: ESSAYS IN HONOR OF JOHN E. CRIBBET 203, 203–17 (M.H. Hoeflich & Peter Hay, eds., 1988).

50. See *id.* at 203–04.

51. See Norman W. Spaulding, *The Discourse of Law in Time of War: Politics and Professionalism During the Civil War and Reconstruction*, 46 WM. & MARY L. REV. 2001, 2019–21 (2005).

52. See *The System’s History*, CRAVATH, SWAINE & MOORE, <https://www.cravath.com/the-cravath-system/the-system-s-history.html> [<https://perma.cc/3F8D-QPYM>] (last visited Jan. 11, 2021) (noting on the firm’s website a focus on “hiring top graduates directly out of the best law schools”).

departments. Lawyers who sought a chance at joining the Bar's elite or who simply wished to emulate their elite brethren needed guidance on how to accomplish this. Among those subjects of which these new, non-elite lawyers required guidance was on how to dress in an appropriate "professional" manner. These new, working class, immigrant, female, and minority lawyers were generally not brought up to understand implicitly the rules of the gentlemanly culture cherished by the elite members of the Bar. If these "new lawyers"⁵³ were to be integrated into the Bar at all levels, then they would have to be taught how to "behave."

This led to a bifurcated response from the elite. As noted, many of these new lawyers wanted to dress "professionally" and emulate their elite brethren and the more liberal members of the elite could assist them to do so by instructing them how to behave and dress (hence the Cravath willingness not only to train their associates to be Wall Street lawyers, but also to actually purchase appropriate professional clothing for new associates).⁵⁴ On the other hand, there were also many members of the Bar elite who saw these new lawyers as upstarts and strivers and greeted their ambition to acquire gentlemanly manners and dress professionally as a source of merriment and derision.

Two examples of post-Civil War texts which discuss "appropriate" professional attire for lawyers that stand out among the many sources are Samuel H. Wandell, *You Should Not*, published in 1896,⁵⁵ and Valmaer's (Michael Ream) *A Lawyer's Code of Ethics* published in 1887.⁵⁶ The first of these texts was written by a young New York lawyer and was designed to address issues of importance to new lawyers in a semiserious manner.⁵⁷ When one reads this text, it becomes quite clear that the book is not simply

53. I use the term "new lawyers" as Cicero used the term *novus homo* to indicate a man who did not come from a traditional elite class. See *Novus Homo*, OXFORD DICTIONARY OF THE CLASSICAL WORLD (John Roberts ed., 2007) (contrasting the *novus homo* with the *nobiles*, asserting that the *novus homo* "has to win his own connections" while the *nobiles* merely inherited his).

54. Cravath was one of the first firms to pay associates and to hire associates without wealth or family networks. See Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803, 1808 (2008) (describing the merit-based system of Cravath, which deemed "considerations such as religious affiliation, cultural and socioeconomic background, ethnic identity, and social status irrelevant in assessing professional qualifications."). When I was a 2L at Yale and began looking for legal jobs, I learned very quickly the diversity among firms as to expectations. I very much remember one Wall Street firm whose interview information document asked which clubs applicants belonged to. As soon as I saw that question, I politely excused myself and left. Cravath, on the other hand, prided itself on its long tradition, since the time of Paul Cravath, to be uninterested in associates' wealth or social connections and to focus solely on merit. See *The System's History*, *supra* note 52.

55. SAMUEL HENRY WANDELL, "YOU SHOULD NOT:" A BOOK FOR LAWYERS, OLD AND YOUNG, CONTAINING THE ELEMENTS OF LEGAL ETHICS (1896) (reprinted with introduction by M.H. Hoeflich in 2014).

56. VALMAER, LAWYER'S CODE OF ETHICS: A SATIRE (1887).

57. See generally WANDELL, *supra* note 55.

designed for young lawyers from the upper stratum of society. Rather, it is written in a style and covers topics of interest for many “new lawyers” who were joining the Bar every year. The second volume is a satire, a thinly disguised attempt to make the Bar recognize how its true practices did not comport with the version of professional practice the elite preached.⁵⁸ Both texts devote a significant amount of space to the question of appropriate professional attire, and thus, merit attention in this essay.

Samuel Wandell’s advice manual, *You Should Not*, begins with a chapter entitled “Yourself in General.”⁵⁹ The first paragraph concerns how a lawyer should dress:

You should not be careless or negligent about your personal appearance. A soiled shirt bosom, dirty collar and greasy or frayed garments bespeak a mind that has grown rusty, and habits which need reforming. Dress neatly, and keep yourself looking respectable. You can do this without being a dude. The seedy looking attorney can usually be counted upon to turn out to be a “briefless barrister.”⁶⁰

The fact that Wandell put advice on dress as the first topic in his book is quite significant. Clearly, he believed that advice on the topic was both important and necessary, and that lawyers who did not dress appropriately would not succeed. They would be “briefless barristers.”⁶¹ Second, it is noticeable that the articles of clothing that Wandell discusses are all part of a man’s dress.⁶² Clearly, Wandell was not addressing the rising number of women lawyers. His reference to greasy garments⁶³ may well be a somewhat subtle contrast between lawyers and other office workers and their socially inferior counterparts, mechanics, who work with machinery and get greasy. The reference to frayed garments,⁶⁴ again, may be a not-so-subtle way of distinguishing between working class and poor individuals who could not afford clean, well-maintained shirts and

58. See generally VALMAER, *supra* note 56.

59. WANDELL, *supra* note 55, at 1.

60. *Id.*

61. *Id.* The phrase “briefless barrister” was in common use in the nineteenth century to refer to failed lawyers. *Briefless*, COLLINS ENGLISH DICTIONARY (12th ed. 2014) (describing a lawyer with no clients). It was so popular that it is even the title of a poem by John Godfrey Saxe, a noted lawyer-poet. See John Godfrey Saxe, *The Briefless Barrister: A Ballad*, in ANTHOLOGY OF NINETEENTH CENTURY AMERICAN LEGAL POETRY 234, 234–35 (M.H. Hoeflich ed., 2018). A Google NGram search reveals that use of the phrase “briefless barrister” peaked between 1860 and 1900. *Briefless Barrister*, GOOGLE BOOKS NGRAM VIEWER, https://books.google.com/ngrams/graph?content=briefless+barrister&year_start=1800&year_end=2019&corpus=26&smoothing=3&direct_url=t1%3B%2Cbrieless%20barrister%3B%2C0#t1%3B%2Cbrieless%20barrister%3B%2C0 [https://perma.cc/34RK-WZC6] (last visited Jan. 23, 2021).

62. See WANDELL, *supra* note 55, at 1.

63. *Id.*

64. *Id.*

wealthier professionals who could.⁶⁵ The advice not to dress like a “dude”⁶⁶ was grounded in the notion that lawyers should not dress in a flashy manner. During the latter half of the nineteenth century, many younger clerks (office and retail workers) often had a set of fancy clothing, more highly-styled and of more expensive cloth that they would wear to social events. This was generally frowned upon by their elders and by the professional classes as a sign of needless frivolity.⁶⁷ Finally, it is important also to note the connection Wandell makes between appropriate, neat clothing and mental habits. This echoes both the generally held notion at the time that outward appearances indicated inward capabilities, as well as the insistence that a lawyer required higher mental abilities than the common laborer.

Wandell includes a discussion of what a lawyer’s office should look like just a few pages after his discussion of dress and appearance. The two are obviously related since both deal with the image of professionalism a lawyer presents to the world at large. Wandell writes:

You should not suffer your office to become disorderly, nor should you let the dust of ages accumulate on books, shelves, desks and chairs, or in unused corners. Some lawyers keep their offices looking more like a dingy den or a forgotten crypt than like a place of business. The enterprising attorney who keeps up with the times will always have his office looking neat and orderly. Fossils are generally found imbedded in dirt. . . .

65. Interestingly, at this time, most men’s dress shirts came with detachable collars and cuffs. They were usually made of cloth and celluloid, which required frequent cleaning and often could be reversed to prolong wearability, producing cheaper and longer lasting garments. See Maria Dorfman, *Advertising the 19th Century Detachable Collar*, WASH. U. ST. LOUIS (Jan. 3, 2017), <https://library.wustl.edu/advertising-19th-century-detachable-collar/> [https://perma.cc/7SZ5-FSLC].

66. WANDELL, *supra* note 55, at 1.

67. For a fascinating history of the term “dude,” see generally, Scott F. Kiesling, *Dude*, 79 AM. SPEECH 281 (2004). Suspicion of slavish dress and an adherence to fashion was a staple of American thought as far back as the 1830s. See Butler, *supra* note 17, at 46. Butler states:

THEY who are exempted by their elevated condition from the confinement of commercial and professional life, involve themselves in voluntary slavery by engaging in the service of the tyrant, Fashion. They are compelled to abstain from actions in themselves pleasing and innocent, however strong their inclination to them, because the caprice of some distinguished character has prohibited them by his example. Like the dullest of animals, they are driven round the same circle, from which once to deviate would subject them to an appellation of all others the most formidable. To be called profligate, extravagant, intemperate, or even wicked, might be tolerated with patience; but who could bear to live with the epithet of ungentee!

Id. Note, however, that Butler assumed that those who pursued a profession, such as law, would not be slaves to fashion.

Don't keep open house for idlers or gossips in a law office. . . .

You should not keep your office blue with tobacco smoke; you should not smoke continually during business hours at the office. . . .⁶⁸

Here we see echoes of Wandell's advice on attire. Law offices, like lawyers, should be neat and tidy. Just as a lawyer should not dress like a dude, his office should be maintained as a business, not a social club, including not smoking in the office as though it were such a club.

The *Lawyer's Code of Ethics* by Valmaer, the pseudonym for Michael Ream, is a satire of legal behavior published at a time when the first serious ethics codes were being drafted by American state Bar groups.⁶⁹ At its best, satire can not only reveal hypocrisy, but can also reveal true reality in a way that is often more effective than exposé. The *Lawyer's Code of Ethics* is good satire. By satirizing how lawyers behaved at the time, it pointed out the contradictions, self-satisfaction, and self-delusion of the Bar in the light of the Bar elites' efforts to publish ethical codes that supposedly represented the way lawyers should behave, but rarely did so. Although the actual ethics codes promulgated over the next several decades after the publication of Valmaer's satire did not, in fact, incorporate specific rules on dress and appearance, "pseudo rules" on these subjects appear throughout the *Lawyer's Code of Ethics*. This demonstrates how important the issue of professional dress and deportment actually were to the Bar at that time.

Valmaer devotes a substantial amount of space to the question of proper legal attire:

Many professions and trades compel those who are members of them to wear clothes of peculiar style, while lawyers dress each one as he pleases, and follows no particular style. They think they are mighty lucky to have clothes to wear at all. Clergymen affect black broad-cloth; coat long, vest high, white tie, and solemn expression of countenance; and the effect is to make the beholder think he has struck a funeral procession, and the parson is about to say "Let us pray." Physicians dress much like preachers, only the goods used are of a more fashionable texture; the coat frequently a cut-away, and the vest cut to show a broad expanse of shirt front, necktie bright colors, and the whole outfit rather flashy for a man engaged in so melancholy an avocation as "doctoring symptoms;" while lawyers, the jolliest, the best natured, most charitable class of men in the world, dress how? Like other men. Wears clothes; a coat, vest, pantaloons, shoes, hat (and underclothes, too, I hope), like the balance of humanity. But as to style; bless you, the most that can be said as to that is, that the style is cosmopolitan. That is, they wear what they can secure

68. WANDELL, *supra* note 55, at 7-8.

69. VALMAER, *supra* note 56.

for the purpose. There are some who dress in the latest style and pay the highest prices for their clothes, and look like the well bred, elegant gentlemen that they are. But as a rule they leave the whole matter to their tailor, so far as the class of goods and style of cut is concerned . . .

Tailors and ready-made clothing men are perhaps the only class of men, unless it is hatters, who can completely out-pettifog a lawyer. They can make him believe that he looks best in any kind of wearing apparel which happens to be on hand, and which they are anxious to sell. Old styles, shop-worn, faded, soiled, moth-eaten, short or long, tight or loose, all wool or all cotton, half-and-half, striped or plain, barred or diagonal; anything, everything, only so the tailor says it is all right; they take it. I do believe they could be persuaded to buy, and made to think they looked well in a pair of overalls and a hickory shirt. A preacher as a rule pays more attention to his clothes than he does to his sermons, and spends more time “dressing up” than he does at his prayers. And physicians can tell you more about the covering of the man than they can of his anatomy. Clergymen and doctors can be picked out by their dress in any crowd. A lawyer looks as though he was disguised, and was trying to hide himself in a suit of misfit clothing—a living example of the saying “that you cannot tell the man by the kind of clothes he wears.” While a judge should not remark about the clothes that lawyers wear, he ought to set them a pattern as to cut of garments, hair and beard. It is a duty he owes to them. They are quick to catch on, and know a good thing when they see it; and a judge who has the welfare of the profession at heart, will do all he can by example to correct all and any faults the boys may have. They have a few. Therefore, I lay down the rule that it is the sacred duty of the judge to wear clothes, especially while court is in session; as to shaving or not, or wearing his hair long or short, let him consult his wife. If he is unmarried, let him consult his best girl. . . .

Lawyers should cultivate eccentricities. Talk to yourself as you walk along the street. Select a particular color for your clothes and always wear it. Never change the cut of your clothes. Wear a slouch hat or a dilapidated plug. Never brush your hat or clothes. If you do, brush them the wrong way. . . .⁷⁰

There is a great deal of information presented in these paragraphs, information that reveals much about the Bar’s approach to professional attire and deportment. The most noticeable aspect of the text, when read in the context of the strong tradition favoring a large degree of uniformity in lawyer dress, is the statement that legal style is “cosmopolitan, . . . that is, they wear what they can secure for the purpose.”⁷¹ One suspects that for many members of the Bar this is an accurate statement. Indeed, elsewhere in the text he speaks of the young lawyer, the briefless barrister, whose “coat was thread-bare and sadly needed binding and buttons . . .

70. *Id.* at 64–66.

71. *Id.* at 64–65.

[with] patched places in the gable end of [his] pantaloons,” whose hands “protruded from cuffless sleeves,” and whose head was “covered with a hat so old that the very style was lost with other good things of the middle ages.”⁷² He also speaks of the older, successful lawyer, “of culture and renown—men ‘to the manner born . . . [whose clothes are] fashionably cut.’”⁷³

The situation Valmaer describes certainly is consistent with what we know about the Bar at the time. Young lawyers without personal wealth or extensive business and social connections would struggle to build a practice and acquire paying clients and thus, would have been hard pressed to purchase appropriate clothing.⁷⁴ These younger lawyers without means or clients would not have been able to follow the advice to “dress for success” until their circumstances changed.

Here we see how the satirical genre permits Valmaer to inform his audience not only of the reality of the situation as opposed to the vision that the elite portrays, but also permits the reader to understand how divided the Bar is between the “haves” and the “have-nots.” It is also noticeable that these young, struggling lawyers are not objects of derision nor criticized as pettifoggers, but, rather, they are portrayed simply as young and poor, some of whom, at least, will succeed in gaining a practice and the wealth and status that goes with it. Indeed, there exists a theme of generational divide in the profession and its economic consequences. This is quite significant since the Bar elite tended to portray the Bar as divided between those lawyers who were gentlemen who had education and breeding and those who did not, ignoring the impact of economic circumstances, gender, and ethnic origins.

Valmaer’s statement that lawyers choose clothes that “disguise[]” them and permit them to hide in a “suit of misfit clothing” seems to cut against the argument that lawyers, as gentlemen, dress “fashionably” in clothing of good cut, fabric, and fit.⁷⁵ There are two possible explanations for this observation. First, as we have seen in a number of the sources already quoted, lawyers are generally described as dressing well but conservatively. They wore “drab” clothing, albeit of good quality.⁷⁶ Wandell counseled his readers not to be “dudes.”⁷⁷

72. *Id.* at 34.

73. *Id.* at 29.

74. See ZAKIM, *supra* note 5, at 111–13 (noting “[c]lerks required a fine appearance and the least costly way of achieving it” and certain businesses specifically marketed their professional clothes for “men of moderate income”).

75. VALMAER, *supra* note 56, at 65, 29.

76. See *supra* notes 34–37 and accompanying text.

77. WANDELL, *supra* note 55, at 1.

The sources make it clear that the question of proper “professional attire” has had—and continues to have—multiple layers and reveals much about the social and economic nature of the American Bar. Clothing can be a means by which an organized profession like the law can create solidarity among its members. Clothing can, at the same time, be used to exclude various individuals and groups from membership because setting high standards with concomitant high costs can make group membership impossible. Clothing, primarily styled for one gender—males—can also create barriers for women to enter the profession and may require women who want to fit in to dress like men in an effort to minimize their gender differences. All in all, studying how a profession dresses and how it uses clothing for various purposes, tells us much about the profession that goes far beyond simple fashion.