Law in the Republican Classroom

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Increasingly, historians are coming to realize that the American Revolution was a revolution fought not only on the battlefield, but also in the hearts and the minds of the citizenry. The Founding Fathers recognized that to secure the liberties and republican form of government proclaimed in the Declaration of Independence and institutionalized in the Constitution and Bill of Rights would require a widespread reorientation of public attitudes and beliefs. They, and the generations after them, used every tool available, from public spectacle and symbolism to propagandistic literature, to achieve this end.

Within this revolutionary *zeitgeist*, law enjoyed a prominent place of honor. The new government was a government of law and it was through law that each individual citizen was secure in his legally guaranteed liberties. There was no longer a monarch above the law. Instead, the members of the new republic’s government were regulated by the law and the government itself was so constructed as to provide internal checks and balances created by law and which would guarantee the maintenance of law. Law was, in short, the framework within which the new republic functioned. Each individual citizen was both protected by the laws but also subject to the laws for the protection of others. In this context, knowledge of the law and obedience to the law were two of the highest virtues attainable by any citizen.

Given this paramount importance of the law in the new republic, it is not at all surprising that legal education was not seen, as it is today,

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as a field of specialized postgraduate study. Instead, legal education was conceptualized as part of the educational process from the very beginning. The children of the republic, even as they learned the first rudiments of reading and writing, were also expected to learn the first rudiments of law. As they grew in age and sophistication, this legal training grew more sophisticated so that those who attended secondary schools were imbibing not only literature, mathematics, history, and other skills, but were also learning the law in some detail. It is my purpose in this Essay to examine the role of law in the primary and secondary educational programs of antebellum America and through such an examination come to understand better how the typical individual viewed the law, lawyers, and the legal system during this period.

**Education in the Early Republic**

In order to understand the role which law played in antebellum primary and secondary education, it is first necessary to understand the general structure of the educational system during this period. During the colonial and early republican era there were basically three types of instruction available to children. First, there were private academies, often church-related. Second, there were, in some communities, public schools, often known as common schools. Third, many families chose to educate their children at home.

Obviously, the scope and extent of instruction received by any child during this period depended upon the method chosen and the diligence with which it was followed. The most educated citizens (and normally the wealthiest) would send their children either to a private academy or common school, then on to secondary school, and, finally, if they were destined for a career in the ministry, law, or medicine, on to one of the colleges, such as Harvard. Those for whom formal education was of little importance would educate their children at home in the rudiments

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3. CREMIN, supra note 2, at 148.

of reading, writing, and arithmetic and then apprentice them to a useful craft.

Such a wide diversity of instructional method and level was problematic to the Founding Fathers and the generation of leaders succeeding them, for it did not guarantee that the children of the republic would be indoctrinated into republican values. These men and women recognized that the survival of the republic depended upon the development of a uniquely American and republican culture and the transmission of this culture to the youth of the new nation. They understood thoroughly that the time to shape attitudes and opinions is youth.

Thus, during the early years of the republic several important things began to happen. First, the leaders of the Revolution and the immediate next generation of leaders called for the creation of a new system of universal education, one which would provide the means by which all American children could be indoctrinated into the new republican ideas. Second, a group of cultural patriots began to produce American books incorporating a new American and republican culture. Men like Noah Webster, Samuel Goodrich, Lindley Murray, and others, began to produce books for both primary and secondary school which evangelized republican virtues and the value of liberty. Many of these same men, including Noah Webster, began to affirm the notion that the survival of the republic depended upon the development and spread of free schools for all citizens coupled with a requirement that children attend such schools. The combination of the rise of the common school in the antebellum period with the remarkable production of schoolbooks designed to be used in these schools made it possible to indoctrinate generation after generation of antebellum Americans in the principles of American republicanism, christian virtue, and the importance of law. It is through an examination of these schoolbooks particularly, which the educational historian Michael Belok has characterized as “magic looking-glasses,” that we can obtain a detailed impression of how law was taught.

Ralph Ketcham, an acute historian of this period in American history, has suggested that the origins of this postrevolutionary drive toward universal education lie in the transformation of the notion of the necessity to train children to be leaders of government. Ketcham draws attention to the genre of literature common in the Middle Ages

5. CREMIN, supra note 2, at 103.
6. See ELSON, supra note 2, and the old, but still useful JOHN A. NIETZ, OLD TEXTBOOKS, supra note 2.
7. CREMIN, supra note 2, at 103-04.
8. BELOK, supra note 2, at 1.
and the early modern period, exemplified by such works as Erasmus’ *Institutio Principis Christiani* and Sir Thomas Elyot’s *The Book Named the Governor*, as well as to such ancient tracts as Cicero’s *De Officiis* and his *Letters*. ¹⁰ This traditional literary genre reflected the best thoughts of noted scholars and diplomats throughout the centuries on how best to raise a prince so as to assure that the prince would be a successful ruler. The books were well known to Americans of the revolutionary period. Ketcham points out that for men like Jefferson and Franklin, who first sounded the call for universal education and for such education to be oriented towards the indoctrination of republican principles, these books were the perfect intellectual sources.¹¹ For men like Jefferson and Franklin, the need for such education had not changed, only the definition of the future rulers. Jefferson and Franklin, according to Ketcham, believed that in the new republic, all children who would someday take their place amongst the citizenry were the would-be rulers. In effect, they believed that in a republic, all children were princes. Thus, all must be educated to rule wisely:

their minds were to be informed by education, what is right and what wrong, to be encouraged in habits of virtue, and deferred from those of vice by the dread of punishments, proportioned indeed, but irremissible.¹²

Franklin argued for the institution of a school in his home city of Philadelphia:

as might supply the succeeding Age with Men qualified to serve the Publick with Honour to themselves, and to their Country . . . [and who would learn] the Advantages of Civil Orders and Constitutions . . . the Advantages of Liberty, Mischiefs of Licentiousness, Benefits arising from good Laws and a due Execution of Justice. . . .¹³

Placing this impulse towards universal education within the genre of Erasmus and Elyot is extremely important because one of the key ideas permeating these and other works is that it is the ruler’s duty to preserve and expand the legal system. Throughout the Middle Ages and the early modern period, one of the principal attributes of the king or prince was that it was he who preserved old law and made new law when necessary.¹⁴ This required that the ruler be “law literate.” He did not need to be a trained lawyer, but he did need to have an understand-

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¹⁰. *Id.* at 6-7.
¹¹. *Id.* at 13-15.
¹². *Id.* at 4 (quoting Jefferson).
¹³. *Id.* at 23 (quoting BENJAMIN FRANKLIN, *Proposals Relating to the Education of Youth in Pennsylvania*, in 3 THE PAPERS OF BENJAMIN FRANKLIN 392-413 (Leonard W. Labaree et al. eds., 1961)).
ing of the law and legal system sufficient for him to carry out his obligations. This is precisely the notion that Jefferson and Franklin transferred to the new “princes” (i.e., the children) of the new republic.

These pedagogical inspirations of Jefferson and Franklin found their clearest expression in the writings of the most important educational pioneer of the new republic, Noah Webster. Webster was both a theoretician of pedagogy as well as the author of the best selling postrevolutionary primers. His most important essay on pedagogical theory, *On the Education of Youth in America*, was published in 1790 and set the groundwork not only for the movement for universal education but also for the curricular content of primary and secondary education before 1860.\(^{15}\) A key idea contained in Webster’s essay is that of the central place of law in the curriculum. Even more interesting, he justifies this position through citation to Cicero, much as Jefferson did:

> When I speak of a diffusion of knowledge, I do not mean merely a knowledge of spelling books and the New Testament. An acquaintance with ethics and with the general principles of law, commerce, money, and government is necessary for the yeomanry of a republican state. This acquaintance they might obtain by means of books calculated for schools and read by the children during the winter months and by the circulation of public papers.

> In Rome it was the common exercise of boys at school to learn the laws of the twelve tables by heart, as did their poets and classic authors. What an excellent practice this in a free government.\(^{16}\)

Samuel Knox, another early educational theorist, agreed with Webster that every student needed an exposure to law as part of his “moral education.” In his *An Essay on the Best System of Liberal Education*,\(^ {17}\) Knox suggested that every student be required to learn a moral catechism, just as they would a religious catechism. He suggested that the third part of this moral catechism teach law and the principles of government:

> The third and last part should inculcate, concisely, the principles of jurisprudence; the nature of civil government, containing a short historical view of the rise and progress of its various species, and particularly that of the Federal government of these states.\(^ {18}\)

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\(^{15}\) Noah Webster, *On the Education of Youth in America*, in *ESSAYS ON EDUCATION IN THE EARLY REPUBLIC* 43 (Frederick Rudolph ed., 1965). On Webster, see *Belok*, supra note 2, at 95.

\(^{16}\) Webster, *supra* note 15, at 66-67 (footnote omitted).


\(^{18}\) *Id.*
Knox also went beyond the Jeffersonian-Websterian notion of the importance of primary legal education for the future citizenry. He also believed that law should be taught at an early age, especially for those children bound for a career in which knowledge of the law, particularly private law, would be useful:

The course of education instituted in the public seminaries should be adopted to youth in general, whether they be intended for civil or commercial life or for the learned professions, that of theology alone excepted, at least after a certain degree of preparation for that study.

Under this view it would comprehend a classical knowledge of the English, French, Latin, and Greek languages, Greek and Roman antiquities, ancient and modern Geography, universal Grammar, Belles-Lettres, Rhetoric and Composition, Chronology and History, the principles of Ethics, Law, and Government. . . .

Knox's view is particularly important for it includes not just the principles of public law necessary for a citizen to perform his political duties, but also expressly recognizes that law which is useful for trade and commerce, i.e., private law, ought also to have a part in the school curriculum.

Indeed, it is important to recognize that the exposure of young children to the law, in its principles and in its practice, extended even beyond the classroom in the first decades of the new republic. Law was literally everywhere. It was in the readers and spelling books as well as in the specialized educational publications we shall examine below. It was at celebrations, such as the annual Fourth of July festivities held throughout the country. Every town and village as well as city held a celebration on the anniversary of Independence and at each and every one the celebrants were treated to hours of oratory. From the youngest children to the elders who lived through the revolution, all were reminded of the patriots and heroes, of the evils of monarchical government, and of the importance of law in maintaining the new republic. Not just on the Fourth of July, but throughout the year, the importance of law was stressed in oratory, in writing, and in visual symbolism. Thus, the children who entered the classrooms of this period were ready to learn about law, to "inculcate" the principles of a republican legal system and form of government which Jefferson, Franklin, Webster, and Knox, among others, knew to be the key to the survival of the United States as a republic of law.

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19. Id. at 77.

20. See, e.g., E. Everett, The Seven Years War and the School of the Revolution, in ORATIONS AND SPEECHES ON VARIOUS OCCASIONS 377 (Edward Everett ed., 1856). Literally hundreds of these speeches were given and published.
First Readers

One of the most surprising aspects of the role of law in the antebellum school curriculum is the point at which material about law and lawyers was introduced. Although there were a substantial number of elementary textbooks devoted to law circulating in the antebellum period, school children began to learn about law and lawyers before they encountered these specialized texts. The books designed to teach children the basic rudiments of reading and writing were also designed to be vehicles to inculcate the basic principles of law and republican government. Here, again, Noah Webster, lawyer, educational reformer, and best selling textbook author, best enunciated the theory:

But every child in America should be acquainted with his own country. He should read books that furnish him with ideas that will be useful to him in life and practice. As soon as he opens his lips, he should rehearse the history of his own country; he should lips the praise of liberty and of those illustrious heroes and statesmen who have wrought a revolution in her favor.21

True to his theories, Webster included legal and political material in his books designed for the youngest school children. In his American Spelling Book, there are two passages dealing with the law. Both are quite significant both in form and content.22 In both cases the passages deal with a fundamental concept: justice. In both cases, as well, the tone is cynical and the content supports the rule of law and justice but is highly critical of the legal profession and its abuses. The first fragment is a retelling of the biblical story of the gored ox and comes within the reading exercises as a “fable”:

A Farmer came to a neighboring Lawyer, expressing great concern for an accident which he said had just happened. One of your Oxen, continued he, has been gored by an unlucky Bull of mine, and I should be glad to know how I am to make you reparation. Thou art a very honest fellow replied the Lawyer, and wilt not think it unreasonable that I expect one of thy Oxen in return. It is no more than justice, quoth the Farmer, to be sure; but what did I say? - I mistake - It is your Bull that has killed one of my Oxen. Indeed says the Lawyer, that alters the case: I must inquire into the affair; and if - And if said the Farmer, the business I find would have been concluded without an if, had you been as ready to do justice to others as to exact it from them.23

22. NOAH WEBSTER, THE AMERICAN SPELLING BOOK CONTAINING THE RUDIMENTS OF THE ENGLISH LANGUAGE (Boston 1811). The volume was first printed in 1788 and its last edition was 1843.
23. Id. at 98. The fable is accompanied by a woodblock print vignette of a lawyer in robes and wig with books spread about and a farmer dressed in country clothes.
The second passage is reminiscent of a fragment of a catechism:

Q. What are the ill effects of injustice?
A. If a man does injustice, or rather, if he refuses to do justice, he must be compelled. Then follows a lawsuit, with a series of expenses, and what is worse ill-blood and enmity between the parties. Somebody is always the worse for lawsuits, and, of course society is less happy.  

Although Webster was himself a lawyer and believed in the importance of law in the new republic, he taught his young readers that there was a difference between law which incorporated justice and the legal profession and the complex and expensive system upon which lawyers depended. In these views, Webster was not idiosyncratic. Instead, he was part of a reformist tradition that had its roots in eighteenth century England and which was transferred to the early republic and flourished in the works of the pseudonymous Publicola in New Hampshire and P.W. Grayson in New York. This movement was one of great importance, particularly later during the Jacksonian era. It is important to recognize that the movement was not antilaw but rather antilawyer. In its most extreme forms it advocated the abolition of common law courts and the legal profession as a whole. This branch of the movement spawned that genre of literature in the United States which may be called the "everyman his own lawyer" literature, common during the nineteenth century and best illustrated by such texts as John G. Wells' Everyman His Own Lawyer and Business Form Book, published simultaneously in New York, Boston, and Cincinnati in 1867. Another result of this movement was the push towards codification, endorsed in the writings of men such as Robert Rantoul. Indeed, many of the young men who were trained as lawyers but gave up practice for literary endeavors, like Noah Webster, found themselves continuing to believe in the importance of law but also convinced of the disreputability of the legal profession.

24. Id. at 161.
27. John G. Wells, Every Man His Own Lawyer and Business Form Book (N.Y. 1867). Other examples of this genre are: How To Be Your Own Lawyer (N.Y., M.T. Richardson 1885); Delos W. Beadle, The American Lawyer and Business-Man's Form-Book (N.Y., Phelps & Fanning 1851); Frank F. Crosley, Everybody's Lawyer and Counsellor in Business (Phila., John E. Potter 1860).
28. See Perry Miller, The Life of the Mind in America 239, 246-47 (1965). The most important of Rantoul's writings on codification was his Oration at Scituate, in Memoirs, Speeches and Writings of Robert Rantoul, Jr. 251 (Luther Hamilton ed., Boston, John P. Jewett & Co. 1854).
Not only not idiosyncratic amongst legal reformers during the antebellum period, Webster's rather cynical views of the legal profession as they were expressed in his schoolbooks such as the American Spelling Book were also shared by many other schoolbook authors. By and large, the authors of these other schoolbooks, some of whom were also lawyers, agreed with Webster's basic notion that law and the principles of republican government should be introduced to schoolchildren as early as possible in their careers. Their offerings about law and justice tended to be quite pious and positive. However, their views about lawyers and the legal system as it was then administered tended to be as negative as Noah Webster's. Some of the legal materials found in other authors' primers tend to highlight the role of lawyers in the protection of individual liberties and justice. Many of the other texts present a strongly cynical view of the legal profession. Thus, it would seem that the strategy of these authors was not only to inculcate the importance of law and justice in the minds of their young readers, but also to assure that they, too, would be of a reformist inclination when it came to the state of the legal profession.

One of the most popular school readers next to Webster's productions was the Columbian Reader published by Elihu and Horace Phinney. 29 These two authors were explicit in their desire not simply to teach their young readers how to read and spell, but also to inculcate the proper notions about government and virtue:

In making selections for the following pages, an uniform preference has been given to such pieces as were calculated to instil into the minds of youth the principles of virtue and morality; and which would at the same time, give a proper direction to their ambition, by exhibiting some of the best specimens of composition, and most eminent examples of Oratory.

The art of reading and speaking with propriety and elegance, is so desirable an attainment, that no pain or expense ought to be spared to inculcate in the minds of youth its elementary principles. Too much attention, therefore, cannot be bestowed by parents, and others to whom the education of youth is confided, in procuring good and useful books for their improvement and instruction. An excellent writer has very truly remarked, that "a virtuous education is a better inheritance for children than a great estate." 30

As their part of helping to provide such instruction in virtue, the Phinneys included in their reader a number of legal materials for their young readers. The first explicitly law-related piece in the Columbian Reader is one that is also found in other readers of the period, including Lindley Murray's popular English Reader. 31 This is Lord Mansfield's

30. Id. at preface.
Speech in the House of Peers on the Bills for Preventing the Delays of Justice, by Claiming the Privilege of Parliament, delivered by Mansfield in 1770. The inclusion of this text in these readers is significant on a number of grounds. First, of course, it introduced the young reader to one of the most important legal personalities of the eighteenth century, Lord Mansfield, Chief Justice of the Court of King's Bench, whose opinions in such cases as Somerset's Case would be so important in shaping the law of the new republic. Second, the inclusion of this particular speech by Mansfield is significant because its whole tone and ideology were such as to perfectly support the republican ideal of a government of laws before which all men would be treated equally. It was in this speech that Mansfield commented:

True liberty, in my opinion, can only exist when justice is equally distributed to all: to the king and to the beggar.

Finally, the inclusion of this particular speech is also significant because this speech is a speech in which Mansfield decries the technicalities and slowness of the common law and calls for reform, again sentiments perfectly in keeping with the reformist sentiments of men like Webster and the Phinneys.

The second text related to law is a fictional law case, that of Daniel versus Dishclout. It is a satirical piece recounting a suit by a groom against a cookmaid over some spoiled clothing. Not surprisingly, the target of the case is the legal profession:

The essence of the law is altercation, for the law can altercation, fulminate, depurate, irritate, and go on at any rate.

One of the lawyers in the case, Mr. Sargent Snuffle, represents all that is bad in the legal profession:

Now, my Lord, my client being a servant in the same family with Dishclout, and not being at board-wages, imagined he had a right to the fee simple of the dripping pan, therefore he made an attachment on the sop with his right hand, which the defendant reprieved with her left, tripped us up, and tumbled us into the dripping pan. Now in Broughton's Reports, Slack versus Smallwood, it is said that primus strokus sine jokus, absolutus est provocus.

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32. PHINNEY & PHINNEY, supra note 29, at 70-71.
34. PHINNEY & PHINNEY, supra note 29, at 73.
35. Id. at 162-65.
36. Id. at 163.
37. Id.
Thus the young student who worked his way through the *Columbian Reader* would have been exposed both to the nobility of Mansfield's view of law as well as the satirical view of the legal profession in Daniel versus Dishclout.

Lindley Murray, another lawyer and best selling schoolbook author left out the satirical material found in Webster's and the Phinney's productions. In his *English Reader* he did include, however, Mansfield's 1770 speech. This less critical attitude to the Bar is found in a number of other schoolbooks of the period that were widely used. Moses Severance, in his *The American Manual; or, New English Reader*, used a different legal text from Murray and the Phinneys. He included an extract from the defense offered by Curran in the famous King's Bench case against Rowan, on grounds of seditious libel. One can speculate that his choice of this text was influenced, at least in part, by the interest in seditious libel in the United States during the early Republic. Severance also included the entirety of two texts he felt were important: the Constitution of the United States and the Constitution of the State of New York (where Severance lived). As we shall see, the inclusion of constitutional texts in legal schoolbooks became quite common.

There are two readers from this period, both designed for somewhat older children, that provide the most sophisticated introductions to law, lawyers, and the legal system. These are Increase Cooke's *The American Orator; or, Elegant Extracts in Prose and Poetry*, first published at New Haven in 1811, and Lyman Cobb's *The North American Reader*, first published at Philadelphia in 1836. Cooke's work was designed to instruct students in oratory particularly and, thus, he included a whole section on the eloquence of the Bar. His choice of pieces is both interesting and significant. He included three legal pieces attributed to the ancients: Paul's defense before Agrippa from the Bible, Aeschines' *Oration Against Demosthenes*, and Cicero's *Oration Against Verres*. The other modern pieces were obviously

38. *See Belok, supra* note 2, at 189.
41. *Id.* at 119-25.
42. *Id.* at 261-96.
46. *Id.* at 263-66.
47. *Id.* at 278-82.
carefully chosen for their subject matter. He included the speech of Judge Wilds given in 1806 against a master who had murdered his slave.\textsuperscript{48} He included a speech by Dr. Johnson in a case involving the dignity of a schoolmaster and his right to use corporal punishment on his students,\textsuperscript{49} and he included extracts from the trials of Aaron Burr and Chief Justice Chase.\textsuperscript{50} Finally, he included several extracts from libel cases.\textsuperscript{51} These choices reflect Cooke’s and his contemporaries’ ideas of legal texts that would be both instructive to children in their quest for moral and civic virtue as well as of strong interest because of their immediacy.

Cobb’s selection of legal materials parallels that of Cooke’s. He, too, includes an extract from William Wirt’s speech in the trial of Aaron Burr.\textsuperscript{52} He also includes an extract from Wayland on the difference between a government of will and one of law, or, the contrast between a monarchy and a republic.\textsuperscript{53} His characterization of the government of law is ideologically significant:

\begin{quote}
The government of law . . . supposes that there is but one class of society, and that this class is the people; that all men are created equal, and, therefore, that civil institutions are voluntary associations, of which the sole object should be to promote the happiness of the whole. It supposes the people to have a perfect right to select that form of government under which they shall live, and to modify it, at any subsequent time, as they shall think desirable.\textsuperscript{54}
\end{quote}

Not surprisingly, Cobb also included in his reader the texts of Patrick Henry’s speech in the Virginia legislature\textsuperscript{55} as well as the texts of the Declaration of Independence and the Constitution of the United States.\textsuperscript{56}

It must, by now, be plain, that virtually all of the early American readers included legal materials and did so for a purpose beyond that of exhibiting specimens of legal prose. The authors of these books, many of them lawyers, used their texts as vehicles by which they could indoctrinate various ideas about the law into the minds and hearts of young Americans so that when they reached adulthood they would have already internalized these ideas. This indoctrination was really quite sophisticated. The materials were not openly presented as indoctrination but rather as simple prose extracts for reading practice. Teachers

\begin{footnotes}
49. \textit{Id.} at 251-53.
50. \textit{Id.} at 257-62.
51. \textit{Id.} at 269-78.
52. \textsc{Cobb, supra} note 44, at 114.
53. \textit{Id.} at 94-96.
54. \textit{Id.} at 95.
55. \textit{Id.} at 444-45.
56. \textit{Id.} at 450-71.
\end{footnotes}
using these books would not have treated the substance as subjects for debate. Rather, the substance was a given and to be accepted without debate. Thus, these early schoolbook authors were able to indoctrinate a generation of young Americans with the idea that law and a government under law were crucially important to the maintenance of liberty. Several were able to plant the seeds for professional reform. Several inculcated the notion that slavery and the laws supporting it were wrong. Indeed, each author, as we have seen, could put a slightly different spin on the material he included, tailored to his own beliefs.

It is difficult almost two centuries later to judge the success this indoctrination enjoyed. One may speculate, however, that the messages about law, lawyers, and the legal profession contained in these early American readers did have an effect upon the generations which were exposed to them and did help to shape that generation’s views on these subjects. Of course, all of these legal texts were but a fraction of the materials contained in these readers. The indoctrination about law and lawyers was part of the greater strategy to inculcate christian virtue in the young children who used these books. It was as these children grew older, however, that many of them came into contact with the schoolbooks dealing exclusively with law. These books were far more sophisticated, contained only legal and constitutional materials, and were designed to be used in more advanced study, after the students had already mastered the fundamentals taught by the readers and spelling books. It is to these texts that we now turn.

**Advanced Legal Texts**

Once a student had mastered the basic skills of reading, writing, and arithmetic, the legal curriculum became both more intensive and more specialized. A number of books were published in the antebellum United States designed to provide this more advanced legal instruction to young citizens. These volumes can be roughly divided into three categories. The first category consists of volumes which are primarily compendia of legal documents, primarily public law documents. The second category consists of books which provide a narrative exposition of American constitutional law and the political context thereto, what we might today categorize as civics texts. Finally, the third category consists of books which provide detailed explanations not only of American public law, but private law as well.

The different categories into which these antebellum school texts fall begin to reveal the ideological and pragmatic purposes behind their authorship and use. First and foremost is the desire to inculcate republican ideas and ideals into the minds of American youth. This is a natural outgrowth of the mentality behind the inclusion of the legal
and constitutional passages in the readers discussed above. What better source could there be for the inculcation of such ideas in detail than the founding documents of the republic? An excellent example of this genre of book is the volume published in Philadelphia in 1804 entitled: *The Constitutions of the United States According to the Latest Amendments To which are Prefixed, the Declaration of Independence, and the Federal Constitution.* The volume was designed not only for the instruction of young Americans but, indeed, to be possessed by every patriotic household. It is in design and content a paean to the republic. The volume contains complete texts of the United States Constitution as well as the constitutions of the various states and the text of the Declaration of Independence and the Bill of Rights. Indeed, even the graphic content of the book furthers this cause. For instance, the front free endpaper contains an engraving of the Seal of the United States. Most important, however, is the physical format of the book. It is a small octavo, printed on cheap paper. It is clear that it was produced to be inexpensive enough for every household to own a copy.

The difficulty with these compilations of important public law texts is that the documents which they contain are not self-explanatory. The Constitution is a complex document with various levels of meaning. Simply providing a copy of the Constitution and related documents would not have solved the problems many individuals, particularly schoolchildren, would have had with gaining a deep understanding of these texts. Just as each household would own a Bible with one or more Bible commentaries, it rapidly became clear that the same thing would be necessary for the fundamental documents of America’s civil religion. Thus, there evolved a second genre of school and household book, volumes which not only contained the texts of fundamental public law documents but also included explanations, summaries, and simplifications of these texts. These volumes were the true predecessors of modern school civics textbooks.

Interestingly, the first prototype of this second genre of text was authored by Noah Webster and appended to certain editions of his readers. This compendium was hardly exhaustive; it amounted to only nine pages. The first serious text of this type was entitled *Sketches of the Principles of Government* by the Vermont jurist, Nathaniel Chipman. Chipman sat as the Chief Justice of the Vermont Supreme

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58. Webster's text was titled *The Federal Catechism.* It was appended to his *Rudiments of English Grammar.* See Belok, supra note 2, at 110.

Court and was the author not only of *Principles* but also of the first printed Vermont case reports as well as several *Dissertations* on various points of law. Chipman's text was important not only for being the first true exemplar of its type, but also because of the identity and profession of the author. Not only was Chipman a lawyer, like Webster, Murray, and others, but his was a household name intimately associated with the law and the American legal system. Forty years later, another distinguished jurist, Joseph Story, published a similar volume for the use of schoolchildren, his *A Familiar Exposition of the Constitution of the United States: Containing a Brief Commentary on Every Clause, Explaining the True Nature, Reasons, and Objects Thereof; Designed for the Use of Schools, Libraries, and General Readers*. The volume was drawn from his great work of jurisprudence, his *Commentaries on the Constitution*, and they were formatted to serve the needs of schoolchildren through radical simplification of the text of the more sophisticated volume as well as the inclusion of a glossary of terms. The purpose of the book and the ideology underlying it is explicitly contained in Story's preface:

This present work is designed, not only for private reading, but as a text book for the highest classes in our Common Schools and Academies. . . . If it shall tend to awaken in the bosoms of American Youth, a more warm and devoted attachment to the National Union, and a more deep and firm love of the National Constitution, it will afford me very sincere gratification. . . .

The desire of Jefferson and Webster's generation to inculcate republican principles into the hearts and minds of American youth through early and thorough instruction in public law particularly took on a wholly new complexion for the lawyer-authors of Story's generation. By the 1830s, the period which began to see the flowering of this genre of legal school literature, the ominous signs of political disruption and the possibility of the breakup of the Union over the slavery issue were already clear to most intelligent Americans. Story saw that one possible means of holding the Union together was to create in the minds of the nation's youth not only a veneration for the republican ideals taught by Webster and his generation of authors, but

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60. **NATHANIEL CHIPMAN, REPORTS AND DISSERTATIONS IN TWO PARTS** (Rutland, Vt., Anthony Haswell 1793).
61. **See DANIEL CHIPMAN, LIFE OF THE HON. NATHANIEL CHIPMAN 69-74** (1846).
64. **STORY, FAMILIAR EXPOSITION**, *supra* note 62, at 1-2.
also a veneration for the very idea of a national Union, predicated upon an adherence to the national constitution. Thus, Story’s book, and others of the post-1830 period had a new purpose in teaching public law: preservation of the Union.

Perhaps the most popular and best known of the antebellum schoolbooks of this type (and which were used long after the Civil War as well) were those written by Andrew Young. Andrew Young was the author of five different schooltexts, all of which may be loosely classified as civics texts. These were his First Lessons in Civil Government, The Government Class Book, The Science of Government, The Citizen’s Manual of Government and Law, and The American Statesman.65 Young’s books were of two types: (1) those that focused on the federal government and national law exclusively, and (2) those which focused upon the public law of New York State as well as upon national topics. The theoretical and ideological underpinnings of Young’s work is clearly set out in the preface to his First Lessons in Civil Government, first published in 1843:

To secure the blessings of liberty to themselves and their posterity, was the leading object of the people of the United States in ordaining and establishing the constitution. . . . In a few years, the destinies of this great and growing republic will be committed to those who are now receiving instruction in our public schools. . . . A thorough knowledge of our constitutional and civil jurisprudence cannot well be too highly appreciated. Without it, we may hope in vain to perpetuate our free institutions. . . . Children should grow up in the knowledge of our political institutions. . . . If ever the great body of the people are to be qualified for the business of a self-government, our common schools must be relied on as the principal means. . . . Not the least important object of the author has been, to inspire our youth with a love of their country and its free institutions. . . . An intelligent patriotism is deemed indispensable to the health and vigor of the body politic.66

Indeed, so important did Young believe the diffusion of knowledge about the public law and political institutions of the republic to be that he proposed the rather radical step that even women be instructed in classes devoted to these subjects, since they, too, albeit indirectly, would affect the fate of the nation:

65. Andrew W. Young, The Government Class Book (N.Y. 1859); Andrew W. Young, The American Statesman (N.Y., J.C. Derby 1855); Andrew W. Young, The Citizen’s Manual of Government and Law (Cleveland, J. B. Cobb & Co. 1853); Andrew W. Young, First Lessons in Civil Government (Auburn, N.Y., H. & J.C. Ivison, 5th ed. 1845); Andrew W. Young, Introduction to the Science of Government (Warsaw, N.Y., Spencer & Lewis 1835). On Young’s textbooks, see Nietzsche, supra note 6, at 272. Nietzsche points out that Young’s texts were widely used. Between 1835 and 1854, for instance, his Introduction to the Science of Government sold 24,000 copies. Id.
66. Young, First Lessons, supra note 65, at 3.
The author would earnestly recommend, that the female scholars also study the work. Although they are to take no part, directly, they may exert a political influence which, though silent, shall not be the less powerful and salutary.\textsuperscript{67}

The structure and content of his \textit{First Lessons} illustrate how Young put his ideological premises into practice in the classroom. The work consists of fifty-one short chapters and, in an appendix, reprints the Declaration of Independence, the Constitution of the State of New York, the Constitution of the United States, and Washington’s Farewell Address.

The first chapter provides an introduction to the concepts of civil government and law. The definition of law is remarkably close to that then being propounded across the Atlantic by the jurist John Austin:

The rules by which the conduct of men in civil society is to be regulated are called \textit{laws}; as the commands of the parent or householder are the laws of the family, or as the rules of the teacher are the laws of the school. A \textit{law} is therefore a rule prescribing what men are to do, and what they are not to do. A law implies two things; first the right and authority of those who govern to make the law; secondly, the duty of the governed to obey the law. . . . To give force to a law, it must have a penalty. \textit{Penalty} is the pain or suffering to be inflicted upon a person for breaking a law. . . . Civil government and laws . . . are necessary to preserve the peace and order of a community, and to secure to its members the free enjoyment of their rights.\textsuperscript{68}

This first jurisprudential chapter is followed by chapters on the history of the founding of the republic and state and then by a long series of chapters on the structure and functioning of the state government, including the various courts of New York. This exposition fills roughly half the book. The second half of the volume, however, begins with an exposition of the technicalities of court procedure, various aspects of real estate law (titles, recording of deeds, mortgages, leases) then moves on to a discussion of the law of wills and trusts, family law, contracts and fraudulent conveyances, agency, liens, partnership, bailment, bills and notes, banking law, and criminal law. The level of discussion is quite high, indeed parallel to what might be found in today’s law school hornbooks. For instance, Young discusses the Statute of Frauds and the doctrine of consideration as follows:

A contract for leasing land for a longer period than one year, or for the sale of land, or of any interest in land, is declared void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party making the lease or sale, or by his lawfully authorized agent. By \textit{consideration} is here meant the price, or anything that is the cause or reason for which a person enters into an

\textsuperscript{67} \textit{Id.} at vi.

\textsuperscript{68} \textit{Id.} §§ 8-10, at 14.
agreement. Thus the money paid or to be paid for a farm, is the consideration for which the seller grants it to the purchaser . . . there must be some valuable consideration upon which a promise to do a thing is made; and there must be a mutual promise of both parties, to make a bargain binding; but the consideration may be something else than money or property; it is sufficient if it is any thing that is either a benefit to the party promising, or some loss or trouble to the party to whom the promise is made. 69

This definition of consideration is both sophisticated and orthodox and undoubtedly derives from the standard legal texts of the day such as Kent's and Blackstone's Commentaries. It is equally interesting, however, that Young, like many of the primer authors, indulged his reformist tendencies and intermixed his own opinions about the law and its direction with the standard exposition of substantive rules:

There is much written in the books concerning contracts; but it is not easy to find a law to apply to every contract that is made. A large portion of the lawsuits are caused by the failure of the person to fulfill their engagements. If all would practice and encourage honest dealing, and endeavor to be faithful in discharging their obligations, there would be little need of studying the law of contracts; and much money spent in lawsuits, and many unkind feelings between man and man, would be prevented. 70

Young's volume concludes with a series of chapters describing the structure and functioning of the federal government, followed by the documentary appendices.

Two other volumes of this genre are particularly noteworthy. 71 The first is John Phelps' The Legal Classic, or Young American's First Book of Rights and Duties Designed for Schools and Private Students published at Amherst, Massachusetts in 1835. 72 This slim volume is a severe abridgement of Blackstone's Commentaries in Tucker's American edition. 73 Phelps' introduction states the reasons for the production of the work:

The object of the little compilation which follows is, to place within the reach of, and to render familiar to the young, a well-arranged compendium of the elementary principles of law and government. Principles which are the

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69. Id. § 6, at 125-26.
70. Id. § 14, at 127.
71. It is important to note that I am not discussing every school textbook with a legal section in this Essay. Nietzsche estimates that there were 70 such textbooks, of which 71 contained sections on private law topics. Nietzsche, supra note 6, at 285. Instead, I have chosen to focus on representative texts. I do not discuss, for instance, William Sullivan's The Political Class Book (Boston, Richardson, Lord & Holbrook 1831) or S.G. Goodrich's The Young American or Book of Government and Law (N.Y. 1844). For other titles, see Nietzsche, supra note 6, at 272-86.
72. JOHN PHLEPS, THE LEGAL CLASSIC, OR YOUNG AMERICAN'S FIRST BOOK OF RIGHTS AND DUTIES DESIGNED FOR SCHOOLS AND PRIVATE STUDENTS (Amherst 1835).
73. "This treatise . . . is abridged principally from the eloquent lectures of Mr. Justice Blackstone, and from Judge Tucker's notes to that valuable work." Id. at iv.
birthright of every American citizen; and which ought to be as familiar to all as "household words." 

Past experience has shown that most young gentlemen, of suitable learning and talents, may expect at some period, to be called upon to execute an honorable public trust, either as legislators, civil officers, or magistrates. All have seen how indispensably necessary a technical knowledge of those duties is, to a successful and honorable performance of them. In relation to these subjects the man of knowledge, is supereminently the man of power. Now, the period allotted to boys at school is the proper time, and the school-room, with the aid of a faithful and intelligent Instructor, is the most suitable place and occasion for acquiring the rudiments of such knowledge.74

Phelps’ framework for teaching his readers such knowledge is somewhat different from Young’s. Phelps’ introductory chapters, like Young’s, are jurisprudential, but unlike Young’s account of law which is both Austinian and very pragmatic, Phelps’ is Blackstonian and far more abstract. Phelps begins with a long discussion of the origins and application of natural law as derived from divinity and moves on to a contractarian discussion of the origins of earthly governments, into which context he places the United States constitution. There follows a number of chapters on the theory of law and legal relations. Even in some of the early chapters on substantive law, such as the one on property, Phelps’ account draws primarily from the more abstract sections of Blackstone and discusses not the intricacies of mortgage law, as does Young, but rather the opposing theories for the origins of private property.

Nonetheless, Phelps’ book does cover much of the same ground as Young’s, albeit sometimes at a higher level of abstraction. The volume contains chapters on property law, family law, criminal law, contracts, and a fairly detailed discussion of court procedure, including pleading, issue and demurrer, trial by jury, and the basic rules of evidence. To provide some comparison to Young’s approach, one can look at Phelps’ treatment of consideration:

A contract is an agreement upon sufficient consideration. In all contracts either express or implied, there must be some thing given in exchange, something that is mutual or reciprocal. The thing, which is the price, or motive of the contract, we call the consideration; and it must be a thing lawful in itself, or else the contract is void. 

Thus, Phelps, like Young, gives an entirely orthodox view of substantive contract law and one with which any present-day first-year law

74. Id. at iii-iv.
75. Id. at 77-78.
student would feel comfortable. What Phelps does not do, however, is interject his own opinions in this area of substantive law. Where Phelps could not keep his own opinions out of his text is in the sections on procedure and trial. In these sections Phelps acknowledges the criticisms made of the then present system of justice and of the legal profession and attempts to rebut them. He admits that legal proceedings are uncertain and that the system of laws appears to be overly complex. He responds:

[All] such complaints may justly be referred for an answer to the high state of freedom and independence we enjoy; and to the innumerable interests and regulations that a rapidly progressive state of civilization is perpetually introducing. . . . The causes therefore of the multiplicity of our laws are, the extent of the country which they govern the commerce and refinement of its inhabitants; but above all the liberty and prosperity of the people. These will naturally produce an infinite fund of disputes. . . .

The young reader of this diatribe must have come to believe, indeed, that the complaints of men like Webster or Publicola should, in fact, be taken as evidence of the health and vigoroussness of the new republic's legal system. Phelps was, without doubt, the most positive of all the textbook writers about the legal system. Indeed, Phelps even had kind words for the legal profession itself and relieves it of blame for the multiplicity of lawsuits and the obscurity of doctrine:

But is not, it will be asked, the multitude of lawsuits, which we daily see and experience, an argument against the clearness and certainty of the law itself? By no means; for among the various disputes and controversies which are daily to be met with in the course of legal proceedings, it is obvious to observe how few arise from obscurity in the rules or maxims of law. But the dubious points, which are usually agitated in our courts, arise chiefly from the difficulty there is of ascertaining the intentions of the individuals, in their dispositions of property; in their contracts, conveyances, and testaments. The law rarely hesitates in declaring its own meaning; but the judges are frequently puzzled to find out the meaning of others.

The final volume which needs to be examined was published by S.C. Atkinson at Philadelphia in 1832 under the title A Catechism of American Law, Adapted to Popular Use. It is a small format book and is printed on cheap paper. It was intended not simply for classroom use, but rather for popular instruction in the home as well as the school. It is most interesting for its format: a catechism. The catechism, a question and answer format for teaching the basic principles of the

76. Id. at 106.
77. Id. at 106-07.
78. A CATECHISM OF AMERICAN LAW, ADAPTED TO POPULAR USE (Phila., S.C. Atkinson 1832).
Christian religion, was one of the most common texts known in colonial America and was to be found in virtually every home. As early as 1679, Increase Mather said of them:

These last ages have abounded in labors of this kind; one speaketh of no less than five hundred catechisms extant.\(^79\)

Perhaps the best known of the American catechisms was that found in the seemingly innumerable editions of the *New England Primer*.\(^80\) The use of catechisms and the catechismatical format for nonreligious purposes was not entirely new; the *New England Primer* published at Boston in 1777, for instance, prefaced the catechism with a portrait of John Hancock, captioned "President of the American Congress."\(^81\) And, of course, Webster had published his *Federal Catechism*, which had adapted the catechetical format for instruction.\(^82\)

Atkinson's use of the catechismatical format to teach both public and private law, however, was unprecedented, but it was also brilliant. First of all, it took complex and unfamiliar material and it put it into a familiar form. Second, it associated the study of the first principles of law directly with the study of the first principles of religion, thus symbolically affirming the law as the new civil religion of the American republic. It was, in short, both a superb marketing device as well as an incorporation of powerful symbolism.

Atkinson, like the other authors discussed in this Essay, believed that the study of law was the obligation of every American. His focus, however, reflected in the coverage of the volume, was not primarily upon public and constitutional law, but rather upon those areas of the law protective of property rights and useful to business:

A knowledge of the law is of direct utility to everyone, it equally concerns the pursuits of business and the occasional necessities of retirement, it addresses itself to our interest and duty, for without that knowledge, it is difficult to act with safety to ourselves, or bear well with safety to ourselves, or bear well our part in the community. It becomes us to be familiar with its provisions, for it is the guardian of our persons—the protector of our property—the enforcer of our rights, and the avenger of our wrongs—and in a free country is the only authority in the State, which has the power to command and punish.\(^83\)

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81. The *New England Primer* (Boston 1777) (anonymous).
82. See text accompanying note 24.
83. **Catechism,** supra note 78, at iv.
The coverage of this book clearly reflects this purpose. As in other volumes, the first chapter provides a definition of law. Atkinson’s definition is extremely pragmatic; it is a discussion of American statutes and common law and its authority. There is no discussion of natural law or the origins of law. The volume contains no such abstract arguments. After this introductory chapter, the discussion moves on to consider specific personal rights against libel, slander, and the right to habeas corpus, citizenship, and then to the law of personal status (family law, guardianship, master-servant). From here, the text moves onto detailed discussions of various aspects of business law including property, contracts, partnership, copyright and patents. All of this is, of course, in the question and answer form of a catechism. The book concludes with a series of chapters on admiralty law and insurance, thus betraying its obvious business focus. Again, to provide a basis for comparison among the various books discussed in this Essay, it is useful to examine the section of Atkinson on consideration:

Q. What is essential to the validity of a contract?
A. That it be made by parties competent to contract, and be founded on a sufficient consideration. There must be something given in exchange, something that is mutual, or something which is the inducement to the contract.

Q. Will not a formal contract without a consideration be binding?
A. A contract without a consideration is a nudum pactum, and not binding: and it makes no difference whether the agreement be verbal or in writing, it will not support an action if a consideration be wanting.

Q. What is a valuable consideration?
A. A valuable consideration is one that is either a benefit to the party promising, or some trouble or prejudice to the party to whom the promise is made. A mutual promise amounts to a sufficient consideration, provided the mutual promises be concurrent in point of time, and in that case, the one promise is a good consideration for the other. 84

This description of the law of consideration in contracts is both absolutely orthodox for the time and no nonsense in style. Indeed, the whole of Atkinson’s Catechism is no nonsense in style. Unlike Young and Phelps, Atkinson never interjects his own opinions into the text. The volume is intended to be impartial and accurate. Indeed, the volume contains an endorsement from Chancellor Kent of New York to the extent that he had examined it and compared its passages to his own Commentaries and found it to be wholly accurate. 85

84. Id. at 96-98.
85. Id. at viii.
Law in the Republican Classroom

The ideals of the Founding Fathers of the republic, Jefferson, Franklin, and others, as well as the founding fathers of American education, Webster, Knox, and others, found implementation during the period prior to the Civil War. In the common schools, in the private academies, and in the home instruction for those who could not attend school, law played a central role early on in the educational process. The proliferation of legal texts and guidebooks as well as the inclusion of legal material in the readers and primers assured this. Undoubtedly, the fact that so many of the schoolbook authors of the republic were lawyers helped. But this alone cannot be the primary cause. To understand the primary causes for the phenomenon which we have examined in this Essay, it is necessary to go back to Jefferson's notion of the role of an educated citizenry in a free republic. Jefferson's view of the importance of a citizenry educated in the laws which establish and maintain those rights which make republics free became the underlying and generally accepted pedagogical view in the antebellum period. It was education which had, in this view, made the republic possible in the first place and which would assure its continuance. Typical of this view is the writing of Alonzo Potter, a professor at Union College in upstate New York and the author of The School and Schoolmaster: A Manual For the Use of Teachers, Employers, Trustees, Inspectors, and of Common Schools, published at New York City in 1842:

Did our fathers assert successfully and triumphantly our national independence, it was chiefly because they had been fitted for the arduous and high task by the nurturing influence of schools and churches. Did they and their successors lay deep and broad the foundations of our freedom and prosperity, and rear with surpassing skill and prudence the structure of constitutional law, it must be attributed, in great part, to the same causes. An uneducated, undisciplined people, leave no such monuments behind them.\(^6\)

Edward Mansfield, the author of another schooltext on public and constitutional law, The Political Grammar, elaborated upon Jefferson and Potter's theme in his American Education, Its Principles and Elements, published at New York and Cincinnati in 1851.\(^7\) This text is an eloquent explanation and defense of the antebellum school curriculum and includes chapters on the utility of instruction in mathematics, astronomy, history, language, rhetoric, the Bible, and the

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\(^7\) EDWARD D. MANSFIELD, AMERICAN EDUCATION, ITS PRINCIPLES AND ELEMENTS (N.Y., A.S. Barnes & Co. 1851). On Mansfield, see NIETZ, supra note 6, at 275.
Constitution. Mansfield explains that in the American republic every citizen is a sovereign as well as a subject and, therefore, must be prepared both to serve as a legislator as well as be bound by the laws that are legislated. In order to do either, let alone both, each citizen must possess at least a rudimentary knowledge of law, both public and private. The echoes of the Jeffersonian ideas are loud.

We may close this history of the role of law in the antebellum American classroom with several observations. First, it is clear that from the Founding Fathers down at least until the Civil War there was a widespread belief in the United States that law should be the preserve not simply of a professional class of lawyers but of all citizens. The was reflected as much in the curricula of the primary and secondary schools as it was in the lectures of George Wythe at William & Mary or James Wilson at Pennsylvania. Second, it was by and large lawyers who produced the schoolbooks that made this possible. These books not only provided a means by which the general population could acquire a practical knowledge of the principles of public and private law but also often carried specific political or reformist messages. Third, it is possible that we might reflect upon this tradition of primary and secondary school education in the law, a tradition that has now been almost wholly abandoned and wonder whether in its purposes and in its effects it might be worth reviving.

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88. See PANGLE & PANGLE, supra note 2.
89. See ROBSON, supra note 4, at 157-59.
90. It is interesting to speculate how widely these books were distributed. As noted above, see supra note 65, Young’s work went through at least 24,000 copies. Evidence of the widespread distribution of this work, for example, is provided by a manuscript now in the author’s possession. This manuscript, entitled Catalogue of the Library of District No. 1 in Towns Marcellus and Onondaga, January 1st, 1839, contains amongst its book listings a reference to “Young’s First Lessons.” The fact that a small, upstate New York library held a copy of this work is testimony to how far its distribution extended in the antebellum period.