THE SHAPING OF NINETEENTH-CENTURY LAW

John Appleton and Responsible Individualism

DAVID M. GOLD

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Foreword by Michael Les Benedict

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Foreword

Over the past thirty years scholars have revolutionized their approach to American legal history. As the field developed in the nineteenth and early twentieth centuries and for decades thereafter, legal historians chronicled primarily the development of legal doctrine, rules, procedures, and institutions, viewing that development as quite autonomous from change in the rest of society. Even as Roscoe Pound, Oliver Wendell Holmes, and other great jurisprudents at the turn of the century charged lawyers to go beyond the formalistic analysis of the law, legal historians held back. With a very few exceptions, they remained among the most conservative of legal scholars well into the twentieth century.

At the same time legal history displayed a tendency towards advocacy, resulting in what other historians often derided as "law-office history." At best, this approach finds legal historians honestly seeking truth, but, having arrived at what they believe to be a correct interpretation, marshalling evidence in its support much as an advocate marshals evidence in court—rejecting ambiguities and citing contrary evidence only to denigrate its value. At worst, "law-office history" refers to the culling of historical evidence to support a present legal position, leaving it to the opposition to counter with the results of its own "research."

But since the 1950s a new generation of legal historians has radically changed the nature of the field. Many younger scholars have both law degrees and graduate degrees in history. They have brought the insights and approaches of both fields to their work and have profoundly influenced their colleagues. Legal scholars are now much more sensitive to the dangers of presentism and to the need for historical objectivity. More important, the old insularity has been shattered. In the 1940s and 1950s James Willard Hurst began his path-breaking analyses of the functions law and legal doctrines had served in American society. The titles of two of his best-known works illustrate the changed focus: *Law and the Conditions of Freedom in the*

Nineteenth Century United States (1956) and *Law and Social Process in United States History* (1960). The number of sophisticated books on American legal history that have appeared in the past thirty years is impressive, and their information and insights have been synthesized in the last decade in important texts: Lawrence M. Friedman, *A History of American Law* (1973, rev. ed. 1985); Melvin I. Urofsky, *A March of Liberty* (1988); and Kermit L. Hall, *The Magic Mirror* (1989).

This new scholarship has led to a great revision of our understanding of nineteenth-century American legal history. No longer do legal historians treat legal developments in isolation from other social institutions. No longer are nineteenth-century legal doctrines perceived to be solely the product of legal reasoning and legal authority. Legal scholars now accept fully what Holmes and Pound knew—that law is a tool by which people order their relationships. Armed by that insight, such legal scholars as Hurst, Friedman, Harold Hyman, Morton J. Horwitz, William E. Nelson, Harry N. Scheiber, Paul Finkelman, William Wiecek, Mark Tushnet, and a host of others have described how social and interest-group conflict have shaped legal doctrine. The dominant notion has been that the law reflects the interests, especially the economic interests, of those with the power to influence its development.

For a time, legal scholars were so excited by their new insight into how law interacts with other institutions that they appeared to have forgotten that law also develops in the context of widely-held ideas. Law is not only a reflection of the interests of those who shape it. Of course, Americans have used law to order and rationalize their society, but they have used it to order society in a way consistent with their ideas of right and wrong as well as their ideas of expediency and self-interest.

If legal historians forget this there is a danger of falling into a *post hoc ergo propter hoc* fallacy. One may look at legal doctrines and their consequences, evaluate who practically benefited, and then presume that jurisprudents were motivated by the desire to secure them those benefits. Thus in *Law and the Conditions of Freedom,* Hurst found that early nineteenth-century legal doctrines released American entrepreneurial energy; without direct evidence, he concluded that was why those doctrines were adopted. Likewise, in *The Transformation of American Law* (1977) Morton J. Horwitz found that early nineteenth-century legal "instrumentalism" served similar interests, while late-nineteenth-century "formalism" preserved the economic advantages entrepreneurs had secured in the "instrumental" years. Thus, he concluded, both "instrumentalism" and "formalism" were designed to promote particular economic interests.

But jurisprudents did not necessarily know what the consequences of their doctrines would be. Even if they did, that does not necessarily mean that their decisions were motivated by the desire to secure those results. In the past decade legal historians have become more attentive to the way in which the worldview and moral universe of legal actors have shaped their use of the

law. Hurst, Scheiber, Hall and others have drawn attention to the limits that general commitment to basic principles of constitutional procedures and rights have imposed on how law can be manipulated. The influential group of legal scholars known as the "critical legal studies" school has been particularly concerned to recover the deeper patterns of understanding that underlie law at different times and in different places. They do so with a radical purpose – to undermine the legitimacy imparted to law by the belief that it applies neutral principles of ordered justice to all claimants. Rather, "crits" insist, it embodies the class interests of the elites that establish and administer it.

But one can identify the deeper values at work in shaping law without concluding that this makes law the servant of class interests. In this book, David Gold demonstrates how the worldview common to most Americans in the nineteenth century affected the law, helping to create the constellation of legal principles we identify with that era. That worldview can be called "Victorian individualism."

Historians have paid surprisingly little attention to the nature of American individualism. For the most part, they have associated it with "self-reliance" in the nineteenth century and with "non-conformity" in the twentieth. They have stressed the individual-liberty aspect of individualism.

Yet nineteenth-century Americans did live in society – that is, in association with one another. Their relations with others had to be ordered. Nineteenth-century Americans did believe that freedom of action ought to be the rule. But Professor Gold's work suggests another side to Victorian individualism. Freedom of action had to be accompanied by responsibility for the consequences of one's actions, he finds. To nineteenth-century Americans, individual liberty implied individual responsibility. Professor Gold's purpose in this book is to show, through a study of the life and thought of an important but little-studied American jurist, how this commitment to individual liberty and personal responsibility shaped nineteenth-century law.

Of course, one cannot generalize with certainty about all American jurists on the basis of one man's thought and career. Professor Gold cites other studies of nineteenth-century law and lawyers to bolster his conclusions. But it will take more work by other legal historians to confirm or reject them. Unfortunately we have not attended much to the biographies of jurisprudents other than Supreme Court justices. Gold's work joins Leonard Levy's seminal study of Massachusetts Chief Justice Lemuel Shaw, John P. Reid's biographies of New Hampshire Chief Justice Charles Doe and West Virginias's Marmaduke Dent, and a few others. We must hope that the treasure they have found will inspire others to join them in mining the rewarding vein of state-level jurisprudence.

Michael Les Benedict
The Ohio State University

Preface

This book is about a man, John Appleton, and an idea, responsible individualism in nineteenth-century law. One scholar, upon reading the manuscript, commented that although the man figured prominently in parts of the work, he appeared chiefly as a vehicle for the idea. The observation was well-taken, for the available sources did not permit a full-fledged biography. However, it was only through my attempt to track Appleton down that I encountered the concept of responsible individualism, and I learned enough about him to assess the impact of his family heritage and sociocultural environment on his legal thought. As Professor Benedict observes in the Foreword, surprisingly few historians have given serious thought to the nature of American individualism and its legal ramifications. (One, Lawrence Frederick Kohl, published his thought-provoking *The Politics of Individualism* as I was completing this volume.) If my book stimulates discussion of the subject among legal historians, it will have been worth the writing.

The bibliography includes a list of Appleton's published works and all the manuscript collections I could find that contain his correspondence. There is also a chapter-by-chapter guide to the chief secondary studies on which I relied. The notes include additional references. Each source in the notes is cited in full the first time it is used in a chapter, even if it has been cited earlier in the book. For the most part, I consolidated references into one note per paragraph.

Such merit as this book possesses is due largely to the advice and encouragement of Michael Les Benedict, my graduate school adviser at The Ohio State University, whose incisiveness and breadth of knowledge are matched only by his determination. Without benefit of his sound judgment and steady pressure, this book would not have been published. I am also indebted to Professor Benedict's academic adviser, Harold M. Hyman, William P. Hobby Professor of History at Rice University. Professor Hyman read the manuscript and made many valuable suggestions, but the depth of my obliga-

tion to him only became clear when I attended a symposium held in his honor at New York University in 1989. In speaking of Professor Hyman as a scholar, mentor, and ultimately friend, his former students could as well have been describing Les Benedict, and I realized how much in the way of teaching and learning had been passed down through the academic generations.

Many others helped in ways large and small. Bradley Chapin, now Professor Emeritus at Ohio State, was both teacher and friend. Librarians, archivists, and historical society staffers, professional and volunteer, at institutions from Ohio to Maine, from the New Ipswich (New Hampshire) Historical Society to the National Archives, proved unfailingly courteous and efficient. During my peregrinations as a graduate student, friends, friends of friends, and total strangers put me up and put up with me, convincing me that the hospitality for which the South is famous could not be greater than that of New England. In the final preparation of the manuscript for publication, I incurred debts to Robyn Gold for last-minute research assistance; to Ed Washington and Mary Lu Drobysh, computer mavens at Sullivan County Community College in Loch Sheldrake, New York; to Paul Goldstein, Associate Dean of Faculty at Sullivan, who is not a computer maven but who tries; and to Mildred Vasan and Patricia Meyers of Greenwood Press, who would have been incorrect but not unjustified in thinking I was a curmudgeon. Last but not least, I am grateful to my wife Pat and my children Marc and Gabrielle, whom I have not known as long as I've known John Appleton and who allowed my old friendship with the judge to take up so much of my time.

David M. Gold
South Fallsburg, New York
May 1990

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A Self-Made Man

The Reverend Nathaniel Rogers once remarked that God had endowed John Appleton "with a good stock of talents and lengthened out his time for using them to an uncommon period, about 87." Appleton's life, said Rogers, "was a steady uniform practice of all piety and Christian virtue." Devoted to the "Lord's day and institutions," he was no less virtuous outside the church; as counselor and judge, husband and father, neighbor and friend, he was "strictly just, righteous, faithful, obliging, kind." And so, when John Appleton of Ipswich, Massachusetts passed away in 1739, Reverend Rogers congratulated him upon "the distinguishing honors and rewards he will inherit forever."[1]

In 1891 another John Appleton died in Bangor, Maine. The century and a half between the deaths of these two worthy men had seen Congregationalist piety give way to Unitarian rationalism among the leaders of New England society; otherwise, Rogers's eulogy might have served equally well on both occasions, even down to the allotted span of life. John Appleton of Bangor, like his kinsman and namesake from Ipswich, was a safe counselor, righteous judge, devoted father, and faithful friend.

Appleton's first American ancestor, Samuel Appleton, journeyed to the New World from England during the great Puritan migration of the 1630s and, through characteristically Puritan industriousness and devotion to public duty, became a prominent citizen of Ipswich, Massachusetts. A little more than a century later, Samuel's descendant Isaac helped settle New Ipswich, New Hampshire. Isaac's younger brother Francis, grandfather of John Appleton of Bangor, followed him there around 1770.[2]

Although Francis Appleton was among the most heavily assessed taxpayers of New Ipswich in 1774, he was not a wealthy man. On the contrary, according to an acquaintance of his son Jesse, "Mr. Francis Appleton was a farmer in the ordinary circumstances of that class of our community. So contracted indeed were his means, that [Jesse] was designed to a mechanic's trade." New Ipswich historians of the nineteenth century described Francis as

"an amiable, industrious and pious man" who "never took much interest in town affairs."[3]

The family farm devolved upon Francis's son John, about whom almost nothing is known. He lived from 1763 to 1849 and married Elizabeth Peabody of Wilton, New Hampshire, on March 10, 1803. The daughter of a blacksmith who could trace his American roots back to 1635, Elizabeth died in 1809 at the age of thirty-two, leaving behind two small children, John and Elvira.[4]

The younger John Appleton entered the world on July 7, 1804. There is little evidence as to how he spent his boyhood days. In a brief autobiographical letter in 1858, Appleton covered the period of his youth in one sentence, and the published accounts of his life add few details. However, we do know that Appleton received his early education at the New Ipswich Academy, organized in 1787 by a group of thirty-two men from New Ipswich and neighboring towns who were probably dissatisfied with the limited education then offered in their public schools. The founders included John Appleton's great uncle, Isaac, and grandfather, Francis. The Academy was chartered in 1789 "for the purpose of promoting piety and virtue, and for the education of youth in the English, Latin and Greek languages, in Writing, Arithmetic, Music and the Art of Speaking, practical Geometry, Logic, Geography, and such other of the liberal arts and sciences or languages, as opportunity may hereafter permit, or as the trustees hereinafter provided shall direct."[5]

When John Appleton attended the coeducational New Ipswich Academy, it had approximately eighty pupils, and tuition was about twenty-five cents per week. The typical curriculum at the New England academies of the time included English grammar, geography, philosophy and religion, and sometimes foreign languages. Mathematics generally received little emphasis. Latin was commonly offered and rarely taken, but at New Ipswich 40 percent of the pupils pursued classical studies. Appleton must have been among them; years later, when his first newspaper article appeared with a grammatical error in a Latin phrase, he wrote a letter to the editor correcting the mistake, and his legal writings included many Latin references. Examinations were usually oral and public; together with the debating societies and weekly declamation programs, they surely provided excellent training for future lawyers. Most academies also offered opportunities for physical recreation, and some had regular exercise periods—also good conditioning for budding attorneys, who in those days often spent long hours riding the circuit.[6]

At the age of fourteen, Appleton left home for Brunswick, Maine, where his uncle Jesse was president of Bowdoin College. The admission requirements at Bowdoin included familiarity with Greek and Latin, and the curriculum stressed the classics along with mathematics and religion. According to Charles Hamlin, son of Appleton's neighbor Hannibal Hamlin, Appleton "was a diligent student and became proficient in his knowledge of the classics." If so, he may well have learned them on his own, for the teaching was erratic. Jesse Appleton gained a reputation as a fine instructor, but Alpheus

Spring Packard, who graduated from Bowdoin in 1816 and taught there for sixty-five years, recalled, "Classical teaching in my day was altogether inefficient. The first instructor was more skillful in exploring the wild lands of the college on the Piscataquis, and in introducing choice fruits in this and neighboring towns, than in inspiring students with love for Greek."[7]

For other reasons too the college could hardly have commended itself to vigorous and lively young men. Located in a small, unattractive town and consisting of just two buildings, its rooms were cramped and spare, its course work rigidly prescribed, and its required hours of study long. Nevertheless, the students managed to find diversion. When Jesse Appleton became president of Bowdoin in 1807, according to one old account, "it was a time when there was throughout the community a tendency to looseness of sentiment and character. At no period in the history of our colleges, has there been more recklessness on the part of youth." President Appleton gradually mastered the situation and periodic religious revivals occurred on campus after 1816; but drunkenness, gambling, and pranks never entirely disappeared. Student offenders remained subject to fines, suspensions, and, perhaps worst of all, the requirement that they live for a time with a clergyman selected by the faculty.[8]

There were also amusements of a more enlightening nature in the form of literary and debating clubs. Among these was the Peucinian Society, formed "in order to cherish the love of literature, . . . cultivate among the members a spirit of affection for the parent institution . . . [and] promote and preserve a feeling of fellowship." The club's constitution called for fortnightly meetings to discuss moral and intellectual themes and to develop forensic abilities. During his years of membership John Appleton was supposed to have presented "forensics" on the following questions: Did the first settler of New England use justifiable means of obtaining possession of the country? Does climate influence genius? In a Christian republic, ought the laws to oblige every man to contribute to the support of the Christian religion? However, the society's records reveal that it was not uncommon for members, Appleton included, to neglect their assigned tasks altogether, despite the fines for such omissions provided for in the organization's bylaws.[9]

President Appleton died in 1819, but sixteen years later a Bowdoin College officer observed that many of his former students were "still conscious, in their mental operations, of his forming hand." Jesse was "peculiarly addicted to analytical investigations and thorough, profound research"; in his sermons he appealed "to the understanding and conscience, rather than to the feelings." However, he also possessed a "moral sense . . . which could not brook the idea of wrongdoing." He preached the immutability of right and wrong and rejected utilitarian arguments for morality, explicitly denying the principle that whatever promoted the general happiness was necessarily moral. "The fact is," he wrote, "that [the punishment of innocence or the dereliction of truth], even could such a concurrence of circumstances be supposed, as

would render them conducive to the highest good of the whole, would be essentially wrong." John Appleton would later exhibit these same intellectual and moral traits. His arguments for legal reform would be painstakingly logical, and although John rejected his uncle's conservative theological views, he would broadcast Jesse's moral position through the secular medium of the law.[10]

John Appleton graduated from Bowdoin in 1822, then followed the path of many young men who could not yet pay for legal training and became a schoolteacher. He taught first at the Dummer Academy in Byfield, Massachusetts, where the principal was Nehemiah Cleaveland, Appleton's former instructor at Brunswick. A Bowdoin alumnus, class of 1813, Cleaveland won his appointment at the academy over several competitors, including John S. Tenney, who would precede Appleton as chief justice of Maine. Appleton came to Dummer as Cleaveland's assistant in December, 1822. "It was pleasant indeed," Cleaveland remembered years later, "to have thus with me in the school, and in my family, a youth of fine attainments and much promise, whom I had already learned to value." Cleaveland also had in his "family" as many pupils as his home could accommodate. "With a house full of lively boys to restrain and regulate," he recalled, "I had as you will readily believe, but little time for play. Always confining, often inconvenient, sometimes annoying, the arrangement certainly was." The preceptor nevertheless concluded that the advantages of a close relationship with his boys outweighed the troubles, but his assistant apparently felt otherwise. "After several months of good service in the school and of voracious reading when out of it," Cleaveland continued, "he left me to become a lawyer."[11]

In fact, before turning to the study of law, Appleton went first to another academy, Oliver Wellington's institution in the Boston suburb of Watertown. One of his pupils there was future U.S. Supreme Court justice Benjamin R. Curtis, whose brother remembered Appleton as a flower among the thorns that came and went as instructors at Wellington. "I think my brother gained more from Mr. Appleton," wrote George Ticknor Curtis, "than he did from all the previous masters whom he had attended. He was a good teacher and a person of superior mind."[12]

After about a year of teaching Appleton took up the study of law. In the 1820s that generally meant clerking in the office of an established attorney—copying legal documents, running errands, studying a few classics (such as Blackstone's *Commentaries*) and whatever other law books might be around, and observing the business of the office. The apprentice paid a fee for the privilege of assisting his tutor, perhaps $150 in Maine, much more in Massachusetts. The effectiveness of the training depended upon the interest of the attorney quite as much as the diligence of the student. Some lawyers sincerely tried to teach their clerks; others merely took advantage of them. Appleton's mentors were probably of the former variety. They were certainly excellent models. The first, George F. Farley, was a native of Massachusetts

who had graduated from Harvard in 1816 and worked at the bar in New Ipswich for a decade after 1821. Elected to the New Hampshire General Court in 1831, he returned to Massachusetts that same year and practiced with great success in Groton and Boston. Appleton's second law teacher was his father's cousin Nathan Dane Appleton of Alfred, Maine. Displaying "ripe scholarship and gentlemanly deportment," he too attained prominence as an attorney and politician; he was elected to the Maine Senate once and the House of Representatives twice and was appointed attorney general by the legislature three times.[13]

Besides imparting legal knowledge to his young relative, Nathan Dane Appleton no doubt reinforced the teachings of his cousin Jesse. A hard worker and a kindly if somewhat reticent man, Nathan had a nervous temperament, which a professional associate attributed to a long-standing physical infirmity. "But all his excitements," wrote fellow lawyer E. E. Bourne, "were stimulated by a sense of wrong in some quarter. He had no patience with any dishonesty, trickery, or any departure from the strict rule of right. Upright, open, candid in all his intentions, he expected the same manifestation in others."[14]

John Appleton was admitted to the bar at Amherst, New Hampshire, shire town of Hillsborough County, in 1826. Very soon thereafter he began to practice law in Dixmont, Maine, southwest of Bangor. After a few months he moved again, this time to Sebec, a small town at the east end of Sebec Lake, about thirty-five miles northwest of Bangor. Young men seeking admission to the Maine bar in 1826 had to give evidence of good moral character, take the prescribed oath, and meet the educational requirements: seven years devoted to "scientific and legal attainments," including three years' apprenticeship with a qualified attorney, two of which had to have been in Maine.[15]

While these requirements were stringent by the standards of the day, Appleton had no difficulty meeting them. It remains a matter of conjecture why, when there is no evidence that Appleton ever attempted to practice in New Hampshire, he first secured admission to the bar there rather than in Maine. He may have been impelled to leave by the same circumstances that drove many new attorneys west: long-settled eastern towns often had enough experienced lawyers to monopolize the local trade, and many young members of the bar were forced to seek out county seats or trading centers near the frontier to make a living, moving to larger towns only as their professional reputations grew. This was certainly the path of Appleton's career. Sebec was the business center of newly settled country. When Appleton acquired experience and a name, he moved to the boom town of Bangor.[16]

Sebec was virgin territory until the nineteenth century; the town's first dam and mill were built in 1804. By 1821, when the first store opened, the population had mushroomed to over 400 and Sebec soon became a commercial and mill town of some importance. Local entrepreneurs sawed a great deal of lumber and floated it downriver to Bangor. In this promising outpost,

Appleton secured a second-story office above a store and laid the foundations of a noteworthy career as a lawyer and legal reformer.[17]

The practice of law in Maine in the first half of the nineteenth century resembled in some ways the rough-and-ready practice along the western frontier. Even Portland lacked the urbanity of the great eastern cities. John Neal, who "had been accustomed to light, airy, well-furnished offices" in Baltimore before moving to Portland in 1827, wrote that "[m]ost of our leading practitioners, at this time, had for their offices mere kennels, or dog's-holes, without carpets or furniture worth having, dark, dirty, and slovenly." North of Portland the state was still sparsely settled, and most of the territory beyond Bangor was wilderness. Maine's country lawyers worked hard for slight remuneration, traveling rough roads on horseback, often sharing hotel beds with fellow attorneys. Appleton was riding the circuit when Abraham Sanborn, later a politician and president of the Penobscot bar, met him for the first time. Sanborn was home at Charleston for the college summer vacation, he recalled, when

> a young gentleman on horseback rode up to the house, and alighting, asked for dinner for himself and provender for his horse. While we were at dinner, we ascertained that he had lately opened an office of Attorney at Law in Sebec, and was then on his way to fulfill an engagement to defend a client who had been sued in an action brought by G. G. Cushman, Esq., before a Justice of the Peace in Dexter. To do this he had to travel over sixty miles, and spend more than two days.[18]

At the centennial celebration of the Maine bar in 1921, an old-timer's remarks on the generation that preceded him captured some of the frontier flavor. "There was no 54 hour law invoked by the lawyers of the past," he said. "They worked from early morning until late at night." Although Maine had been a leader in the drive toward prohibition, "they had other means of being cheerful and convivial than we have at the present time." They were an "ambitious lot": "Wherever the lawyer was found in a community he aspired to do something for his town; to hold the office of tax collector if he could not get anything else, and to go on to the Legislature if possible." The old-time lawyers were also "an all-around lot. Some of them engaged in agriculture with great success. . . . Some of them engaged in the land business and in milling, and made fortunes on the side."[19]

Court sessions in small-town America in the nineteenth century were social as well as legal occasions. Lawyers and laymen alike took the opportunity to get reacquainted with old friends from other villages, and the community found diversion in the courtroom proceedings. A participant in the festivities in a small Maine seacoast town around 1850 later described the scene:

> During the session of the Courts there, the shores and harbor exhibited the appearance of an Indian encampment. The Judge and jurors, parties and witnesses, the lawyers, sheriff, and subordinate officers, loafers and idlers, besides not an inconsiderable number of gentlemen spectators, all arrived in open row or sail boats. This great collection was from the scattered settlements of the islands in Frenchman's Bay, Penobscot River and its Bay. Now you must not suppose that there was anything like fatigue or gloom or despondency in all this. Quite otherwise. It was a happy, hearty and merry meeting. Each had his story of disasters, hairbreadth escapes and ludicrous incidents. It was a hearty laugh, a good dinner and then to business. New countries have no old men. We were all young men, healthy, hearty and in the full flow of joyous anticipation.[20]

Appleton became Sebec's second lawyer, probably succeeding rather than competing with the first, Henry Parsons. Attorneys freshly admitted to the bar sometimes sought out vacancies in small towns left by practitioners who had moved or retired. Hannibal Hamlin, for instance, gratefully recalled Appleton's suggestion that he fill an opening in Hampden left by the appointment of the attorney there to judicial office. When Appleton moved to Bangor, he bequeathed his Sebec practice to his relative and student, Moses Appleton.[21]

How financially successful Appleton was in Sebec is a matter of guesswork. Charles Hamlin wrote that Appleton's "practice was lucrative for a border town, and he soon obtained his share of the business then in the hands of the three other lawyers of the county." The qualifier—"for a border town"—is probably significant. One lawyer in upstate New York, in his first year of practice (also 1826), received 50¢ for drawing a deed, $1 for giving advice, $3-$5 for assisting in cases before the justice of the peace, and occasional higher fees ranging up to $20. His aggregate for the year: $217. A few lawyers made fortunes—Lemuel Shaw collected more than $15,000 a year in legal fees around 1830—but at a time when $2,000 to $3,000 was considered a "gentlemanly income," the typical lawyer earned $1,000 or less annually.[22]

Appleton undoubtedly handled many cases of little consequence while in Sebec. A student of law on the western frontier has written that the "greater part of civil suits dealt with debts, accounts, notes, contracts, titles, foreclosures, ejectments, and bankruptcies," and this no doubt describes Appleton's practice as well. He once said of his early career (although he might have been referring to his first years in Bangor), "In those days the main business of the law consisted in vain efforts to collect uncollectable debts, and with about as promising results as those attained by a venerable prosecuting officer of this county, who procured from the grand jury an indictment against a town for not repairing an irreparable road."[23]

The western analogy must not be carried too far. Many western frontier judges and lawyers were uncouth, uneducated, and unconcerned with the niceties of legal procedure. The Maine bench and bar, on the other hand, inherited the venerable legal tradition of the mother state, Massachusetts, and drew most of their members from the New England academies and colleges. During his residency in Sebec, Appleton often visited the home of Josiah Crosby in Dexter, three miles away, where he made the acquaintance of such respectable citizens as Sanborn, Edward Kent, and other future social leaders of what are now Piscataquis and Penobscot counties.[24]

In this mixed milieu of the frontier and the traditional, Appleton took the first steps of both his private and public professional careers. He was quickly admitted to practice before both the court of common pleas and the supreme judicial court. He held his first judicial office, justice of the peace, in 1828 and 1829. He served for at least one year, his last in Sebec, as town treasurer, receiving in that capacity state bounties for the destruction of harmful animals: $2.43 for thirty-one crows, $69 for twenty-three bears, and $2 for two loupcerviers (Canada lynx).[25]

Appleton also composed his first articles, four essays for a weekly newspaper called *The Yankee,* while in Sebec. Perhaps Appleton turned to writing for the newspaper because he simply did not have enough legal business to occupy all his time.[26] In light of the long hours put in by successful practitioners, however, it seems more likely that Appleton made time for intellectual pursuits; despite his accomplishments on the practical side of the law, he always remained theoretically inclined, interested as much in what the law ought to be as in what it was.

The Yankee was a short-lived paper published first in Portland and then in Boston and edited by the writer and fervent Benthamite John Neal. Neal claimed credit for introducing Edgar Allen Poe and John Greenleaf Whittier to the public through the pages of *The Yankee*. Appleton's four articles for that paper in 1828 and 1829 covered a wide variety of topics: lotteries, usury laws, the balance of trade, and the competency of atheists as witnesses in courts of law. Despite their seeming diversity, they revealed a coherent outlook on the world that Appleton retained throughout his life and wove into his decisions as the head of Maine's highest court.[27]

Appleton's article on lotteries set the pattern for all his future work.[28] It was clearly written, logically argued, and, in language dispassionate but tinged with sarcasm, it addressed rather than avoided opposing positions. Noting the public outcry in the North at the licensing of gambling houses in New Orleans, Appleton asked whether the citizens of Maine had a right to be so indignant in light of their fondness for the state lottery:

> [T]he truth is, it is not gambling in itself, that so raises the ire of our worthy and consistent Solons—but merely a heterodox variety. . . . As long as the state treasury receives a paltry sum, the people may