

Washington University Law Review

Volume 5 | Issue 2

1920

Andrew Jackson, Lawyer

Isaac H. Lionberger
Esq.

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Legal Biography Commons](#)

Recommended Citation

Isaac H. Lionberger, *Andrew Jackson, Lawyer*, 5 ST. LOUIS L. REV. 072 (1920).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol5/iss2/2

This Article is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

ANDREW JACKSON, LAWYER

This REVIEW contains sketches of three lawyers, each of whom achieved distinction at a crisis in English history. More was the lawyer of the Reformation, Coke of the Renaissance and Selden of the Revolution. In judging of them we are compelled to consider the influences by which they were fashioned. I propose now to consider an American lawyer, fashioned by quite other influences, who yet achieved a greater distinction than any of the three. The contrasts between them are interesting. More, Coke and Selden were graduates of an English university; each had an intimate knowledge of the ancient literatures, and each was saturated with those traditions of the past which former generations deemed indispensable to the education of a lawyer. Jackson knew how to read and write, but his education stopped when he was fourteen. He knew no language but his own, and that imperfectly. He was ignorant of history. He was born and lived in a wilderness. He knew little law and was absolutely ignorant of jurisprudence. Yet he too became a great lawyer, as influential perhaps as either of the great Englishmen whom I have mentioned—not of course in the same way, yet as useful to his generation of men under the circumstances of their lives as either of them. It may perhaps be worth while to attempt to understand so remarkable a fact.

Jackson in spite of his name was an Irishman, for his parents came from near Belfast. He always called himself an Irishman. We know very little about his parents. They settled in South Carolina about 1740. His mother is, however, known to have been a good and brave woman. Rather than take the oath of allegiance to King George, she moved her home to the frontier. After the battle of King's Mountain, she became a nurse and carefully attended the wounded. She taught her son to read and write, and was ever anxious for his welfare.

Andrew Jackson was born March 15, 1767, in South Carolina, near the North Carolina border, at a quiet settlement called Waxhaws. Little is known of his youth, save that he was a roving, rollicking, cock-fighting, card-playing, michievous boy, the worst in town. In other words, he shared with his fellows those vices which characterized his time and birthplace. He went to school for several years, but stopped immediately after the death of his mother. The school house was a log cabin with a door hung on a wooden hinge and one window. He learned to read and write and some arithmetic, but never knew how to spell. When thirteen, he volunteered for service in the American Army and became orderly to Major Dovic. He and his brother were captured

in their first engagement with the enemy. Each in turn was ordered to clean an English officer's boots, and both refused. Andrew was struck with a sword and severely wounded. He escaped, and after his escape returned to Waxhaws, where he became apprenticed to a saddler. Tiring of his trade, he tried school teaching. Later he became a jockey and attended the races at Charleston, where he mingled with the quality folk of a gay capital. It is reported that he picked up among them those distinguished manners which ever afterwards characterized him. Tiring at last of vagrancy, he decided to become a lawyer, and at the age of seventeen entered the law office of Spruce Macey at Salisbury, North Carolina. I cannot discover that he made good use of his opportunity. One of his fellow students said he was the most quarrelsome and mischievous fellow in town, and Bassett says that he gave a note for a card debt. He was admitted to practice after a perfunctory examination, in 1787, and in the same year was appointed constable and deputy sheriff. In the following year he was appointed public prosecutor for the western district of North Carolina. He fought his first duel in 1788 with one Colonel Avery.

About this time the government opened a road from North Carolina to Tennessee, and John McNairy, a fellow-law student, having been appointed judge of the Cumberland district of Tennessee, persuaded Jackson to go west with him. They arrived in Nashville in 1788. As there was only one other "lawyer" in the town at that time and that lawyer had been retained by an association of lawless debtors, Jackson found employment immediately. Within one month after his arrival it appears by the court records that he procured to be issued seventy writs against these delinquents, and that he brought all of his cases to trial. Of the 192 cases on the docket of the Quarter Sessions at the April Term 1790, Jackson was attorney in 42. In one day of 1793, thirteen suits were entered and Jackson was attorney for the plaintiff in all of them. At the same term he appeared as attorney in 75 of the 175 cases docketed, and at a subsequent term, in 60 out of 132. Of the cases tried in 1794, he conducted 228 out of a total of 392. (Brady's Life, p. 40.) On the Court Record of Sumner County there is entered the following minute:

"The Court thanks Andrew Jackson for his brave conduct."

The minute commemorates the following incident. A crowd of bullies who dominated the county, refused to be tried upon charges preferred and resisted the sheriff. Jackson, then attorney general of the district, rode up, dismounted, entered the court, called the first case pending, was informed of the situation and thereupon pulled his saddle

bags from under the table, took out two pistols and laid them before him. The bully accused made a dash for the guns. Jackson resisted. The crowd rushed in. A free fight followed. The good citizens helped Jackson, who clung to his culprit, and the bully was tried and convicted.

Later, while on his way to court at Jonesboro, Jackson was told that a conspiracy had been formed to mob him. He was quite ill at the time, but rode on, arrived at the inn and went to bed. His landlord hurried up and said that a regiment of men headed by Col. Harrison had assembled in front of the inn to tar and feather him. Jackson replied: "Give my compliments to Col. Harrison and tell him my door is open to receive him and that I hope his chivalry will induce him to lead and not to follow his men." The mob dissolved. Later when Jackson was on the bench and engaged in the trial of cases, the sheriff announced that a criminal resisted arrest. Jackson descended from the bench, requested the sheriff to summon him as a posse comitatus, was sworn in, walked out and brought in his man at the point of a pistol. He then tried him and convicted him. (Brady, p. 44.)

In 1796 Jackson was elected a member of the Constitutional Convention of Tennessee and was sent to congress as its first representative. He spoke once, introduced a bill to pay the force under General Sevier, which had been engaged in Indian warfare, and carried it. It is interesting to note here that he voted against the farewell address to General Washington. In 1797, perhaps, in acknowledgment of his service, Gov. Sevier appointed Jackson United States senator for the State of Tennessee. He resigned, however, in 1798, and was thereupon elected Chief Justice of the Supreme Court of Tennessee. After five years of service he resigned this office and went to live at the Hermitage near Nashville. None of his decisions have been published. Parton says his judgments were "short, untechnical, unlearned, ungrammatical and generally right." The people were satisfied with him. When his resignation was announced a petition was presented by all the prominent men of Nashville urging him to remain, and his associate threatened to resign at the same time.

These are the salient facts of his history in so far as he was a lawyer. He was more—far more. But with his military and political career I am not concerned. Major of militia, Major General of the United States Army, Indian fighter, queller of mutinies, hero of the battle of New Orleans, governor of Florida, President of the United States—he filled many offices and in all of them won a deserved and remarkable distinction.

His private character however I should not pass over. His cour-

age was intrepid. He fought four duels, was wounded twice and once killed his man. Valiant in war, he was always magnanimous to his defeated enemies. Imperious by nature, he would brook no interference with his authority. When a federal judge commanded him to release a person arrested for sedition, Jackson issued the following military order:

“Having received proof that D. A. Hall (the judge) has been aiding, abetting and exciting mutiny in my camp, you will forthwith order a detachment to arrest him and report to me. You will be vigilant. The agents of our enemies are more numerous than was expected.—A. Jackson, Maj. Gen. Com.”

After peace was proclaimed, Judge Hall summoned Jackson before him for contempt and fined him \$1000, which Jackson promptly paid. It is refreshing to know that Congress subsequently reimbursed Jackson.

While governor of Florida a negro woman told Jackson that Cavalla, the retiring Spanish governor, had certain papers of hers and refused to surrender them. Jackson demanded the papers, Cavalla declined to surrender them and thereupon Jackson put him in jail. Cavalla sued out of the federal court a writ of habeas corpus, which Jackson declined to obey. On appeal it was decided that as the Spanish law did not allow of such a writ and the federal law had not been extended to the territory of Florida by an act of congress, the writ must be dismissed (Brady, p. 499). The lawless attack of General Jackson on the Bank of the United States is too well known to invite discussion.

These incidents reveal the impetuous, stern and yet kindly character of the man. He never could resist the pleading of a woman, and none ever treated women with greater deference. His bearing was lofty and at the same time charming. Daniel Webster said of him, “General Jackson’s manners are more presidential than those of the other candidates. He is grave, mild and reserved: My wife is for him decidedly.” In the preparation of his addresses to his troops, he chose Napoleon as his model and none who read them can avoid the conviction that there was some similarity between the two men. Jackson, however, in pity adopted an Indian boy made fatherless by a bullet, and in sheer chivalry quarreled with Calhoun over a woman’s reputation. It is doubtful whether Napoleon would have been guilty of these indiscretions.

Jackson was not a common man, common as was his origin and degrading as were the influences by which he was surrounded. I have used the word “degrading” inadvertently. The frontier settlements of

the United States during the 18th century were by no means degrading. They bred men—fine men, men of highest character, greatest force and considerable refinement. The father of John C. Calhoun; General Pickens; William Davie and William H. Crawford all lived for a while at Waxhaws. Benton was a native of North Carolina and the product of like influences. A tradition which formed such men and Jackson and Gov. Sevier and many a warrior and statesman besides, cannot be called degrading.

These men were gentlemen. How they became so none who have not lived a life of danger and self-reliance and mutual service can know. Their characters were fashioned by the wilderness and by each other. Each was a free creature—as free as the deer of the forest. No law restrained and none protected them. Each depended upon himself. The least offense was an occasion for relentless conflict. Men were polite because rudeness was resented to the death; and apology or duel, a retraction or a bullet followed every insult. Self-restraint was compelled, for among brave men bad manners involved instant difficulty. So they were taught and fashioned into that manly character which became the type and symbol of the frontiersman. Their treatment of women was the homage of the strong to the weak. Her danger and helplessness made men chivalrous. To hurt her was to imperil what they most cherished. To frown upon her was cause of anger; to touch her was death. She deserved their adoration: brave, gentle, patient and useful, she more deserved the homage of men than the painted Jezebel of Charles' court or the maid-of-honor who waited upon Elizabeth, or the ladies who surrounded Anne Boleyn.

Women were few and men were many along the western frontier. To guard her was their privilege. Her smile was their reward. To her they were carried when wounds afflicted them. Her merit and need were the authors of their chivalry. Jackson's mother was a good woman. He married a good woman.

That a life of sturdy self-dependence made a strong man none can doubt who know the history of that generation which explored the great West, conquered it and made it fit for human habitation. Lincoln was of this stock and many another strong man. Such influences cannot be called degrading.

They tended to make men even just. Where property depended less upon law than upon right, a rude, justice in mutual dealing was inevitable. Each respected the claim of another, and cases were decided rather according to that natural instinct which makes for justice than those nicer considerations of refined and technical law which so often

obscure it. Therefore Jackson became an excellent judge, not by learning, not by any deliberate culture of the mind, but rather by reason of the discipline of his life and his surroundings. He was a better judge than Lord Coke, and as good a chancellor I have no doubt as Thomas More. I do not mean that he would have been able to preside over the court of King's Bench or sit upon the Chancellor's Throne and do equity as did Thomas More, but I do mean that as judge of the supreme Court of Tennessee Jackson was as competent for the responsibility of his office as either of those great lawyers could have been. Lord Coke could not have presided over Jackson's court. His learning would have been his undoing; his manner and bearing would have been resented; his life would have been in constant peril. I think More might have made an even better judge than Jackson, for he was clever, perceptive, kind and humorous and could not have failed to understand the simple folk of that new country.

To tell the truth, Jackson did not need much law to be an admirable judge at that time and under those circumstances. The questions involved were simple. The cases depended rather upon facts than upon principles. It was easy for a just man to do justice, and learning was more apt to confuse than to help. If, however, we recall the number of judges, senators and presidents produced by the rude practice of the frontier, we cannot think with disparagement of them or of the influences which formed them, or of their attainments. The West was a great school and a good school for all those brave spirits who dared venture into it. It compelled hardihood, induced mutual service and tended to mutual influence by affording that opportunity for intimacy which is so fruitful to strong men. They, too, were "traders in learning, and each brought his acquists into the common stock and became the participant and common possessor of others' learning." They learned to understand the men who composed the juries. There was then time for argument and discussion. All of them aspired to be orators, and many of them became orators. They were politicians first perhaps, but then statesmen. They made the constitutions and laws by which they were governed, and understood them and observed their operation. Being free, they loved freedom. Depending upon justice, they compelled it. Hating lawlessness, they put it down even where the laws failed. If a wrong was not otherwise rightable, they resorted to the jurisdiction of Judge Lynch.

I cannot help thinking that such a training was fitter for the formation of western lawyers and judges than Oxford or Cambridge and the inns of court. We can imagine with what contempt the rule in

Shelly's case would have been regarded by the vigorous and unperverted minds of Tennessee in the year 1790. To them law was good or bad as it seemed so to honest men desiring righteousness, and not as *summa ratio*—remote, refined, traditional, relentless and perhaps incomprehensible.

The life of this Republic has been brief but I think it has been glorious. Men of good stock came here for liberty and opportunity, bringing with them the traditions, laws and conventions of their ancestors, and the race sprung from that winnowed grain flourished and multiplied. The wilderness was a bracing and stimulating step-mother. It put to the test every man and every prejudice. In its large atmosphere little opinions evaporated and great ones were fortified. Freed by circumstances, men were compelled to understand freedom, to guard it, to fortify it, to enforce it; and so they came to love it and deserve it. Lacking traditions and institutions, they created them. Having themselves formed fundamental laws and derivative rules of private conduct, they learned to value them, and so among lawless men there was gradually built up that respect for law which has become instinctive to us. Yet the law was never venerated. Men did not bow down to it and worship it. A hard case prevailed over bad law. The juries might be trusted where the law was doubtful; but even where it was evident, if it did not seem right in the case on trial, a way was found to avoid it. You could not in the 18th century induce thirteen men to hang another for a manly act. There were large and generous notions of crime then and some crimes—righteous crimes, manly crimes—were rather applauded than punished.

Jackson had a certain contempt for any law which forbade him to do what he thought he ought to do. He would have no judge interfere with his military responsibilities. International boundary lines were not suffered to shelter a fleeing enemy. When a woman complained of a wrong, he thrust aside all laws and tried to right her. He removed the deposits from the United States Bank because he thought that institution had made an unfair and partisan use of its financial power, and let the lawyers fight it out afterwards. He quelled rebellion by a toast, and cared not at all about the right of secession. He was a strong man, an impetuous man, a tough man, and deserved to be called "Old Hickory." When he swore by the Eternal, men knew he meant something. His character was as influential as a show of force to all wrongdoers. When he said the Union must be preserved, it was preserved without bloodshed. He stopped a mutiny single-handed. There are people who sneer at him, but they are meticulous people who cannot see

things in a large way. Jackson was a great man. Western men should understand him. And he was an excellent lawyer, whatever men may think of his spelling. Who of his time excelled him in those qualities requisite for his time? He had courage where others quailed; his judgments stuck; on the bench he did justice; men lamented his resignation. He became President of the United States; was the best-mannered of the candidates; used his office courageously and retired stronger than when he was elected—stronger in reputation, more loved by his followers, more respected by his adversaries. Neither More nor Coke nor Selden achieved equal distinction, and neither was more useful to his generation.

There are those who insist that he was an illiterate boor, but I cannot think so. No one can read his private letters to his wife, or his speeches to his troops, or his messages to Congress without the conviction that he had learned somehow to think clearly and to say his meaning. If he was not altogether great as a statesman, he was great at times; and if his political philosophy lacked coherency, it was yet a philosophy within the comprehension of a vast majority of the inhabitants of this country. His example was a good one. No man can say that he ever did a mean thing, or a weak thing, or an unmanly thing in the whole course of his life. None accuse him of injustice, either on or off the bench. He was admired by many and feared by many of his fellow-citizens, and that those who admired him were the best judges of his character is the verdict of posterity.

We who live in cities under governments of politicians for politicians and by politicians, will find it hard to understand the sturdy independence of our ancestors. The problems which they confronted are not ours: their discipline we lack. We are not used to self-government and do not value it and cannot deserve it. We wish money and the right to spend it as we please. Social wrongs are of no importance to us. We cannot conceive of what others mean by inalienable rights. A wrong done to another does not concern us. We are too numerous to know each other's grievances and will not help to cure them.

Jackson and his generation understood each other. A wrong done to one, a danger threatened, was the concern of all. Safety depended upon mutual help; and from the constant practice of the social virtues sprang that sturdy regard for social rights which we so much admire. Jackson was a man of his time. Under other circumstances his fine virtues might have been undiscovered.

I. H. LIONBERGER.