

## FOREWORD

The common interest of jurists and historians in the study of American legal history has long been neglected; but during the past few years there has come a fuller appreciation of what may and should be accomplished through the coöperation of these two groups of scholars. Even from a practical point of view, there is much to be learned in a study of the processes through which American legal institutions developed out of, and were gradually differentiated from, the English law.

The early colonial assemblies and courts were in theory bound to follow, so far as local conditions permitted, the legal tradition of the mother country. Actually, however, the seventeenth-century colonists, faced with many problems quite different from those of an older society, departed widely and at many points from the English law, gradually developing a common law of their own, which varied more or less from one colony to another. In the second century of the colonial era, British control of colonial practice became more effective — through royal instructions to the governors, the appointment of professionally trained judges and attorneys-general, the royal disallowance of provincial legislation, and the judicial review of American decisions by the Privy Council. There was also an increasing number of colonial lawyers who, whether in the English Inns of Court or under the guidance of older practitioners, were brought under similar conservative influence. The resultant of these forces — the transplanted English law and the practical requirements of a new society — was the development even before the Revolution, of an American legal tradition, which, with many local variations, departed significantly from the system of the English common-law courts.

Unfortunately the judicial records and collateral material, without which this evolution cannot be accurately traced, have for the most part remained inaccessible and the decisions of our nineteenth-century courts often show serious misunderstanding of early American practice. The first step to the correction of such misunderstanding must be to rescue from the obscurity of state archives and other depositories the manuscript records of the more important colonial courts, especially those of last resort. Some of this material has already been lost, but much of it can still be saved and permanently insured against future loss by publication. In recent years, local agencies have done something to supply this deficiency through the publication of provincial and county court records, more particularly for the