



Three Lawyer-Poets of the Nineteenth Century

M.H. Hoeflich & Lawrence Jenab

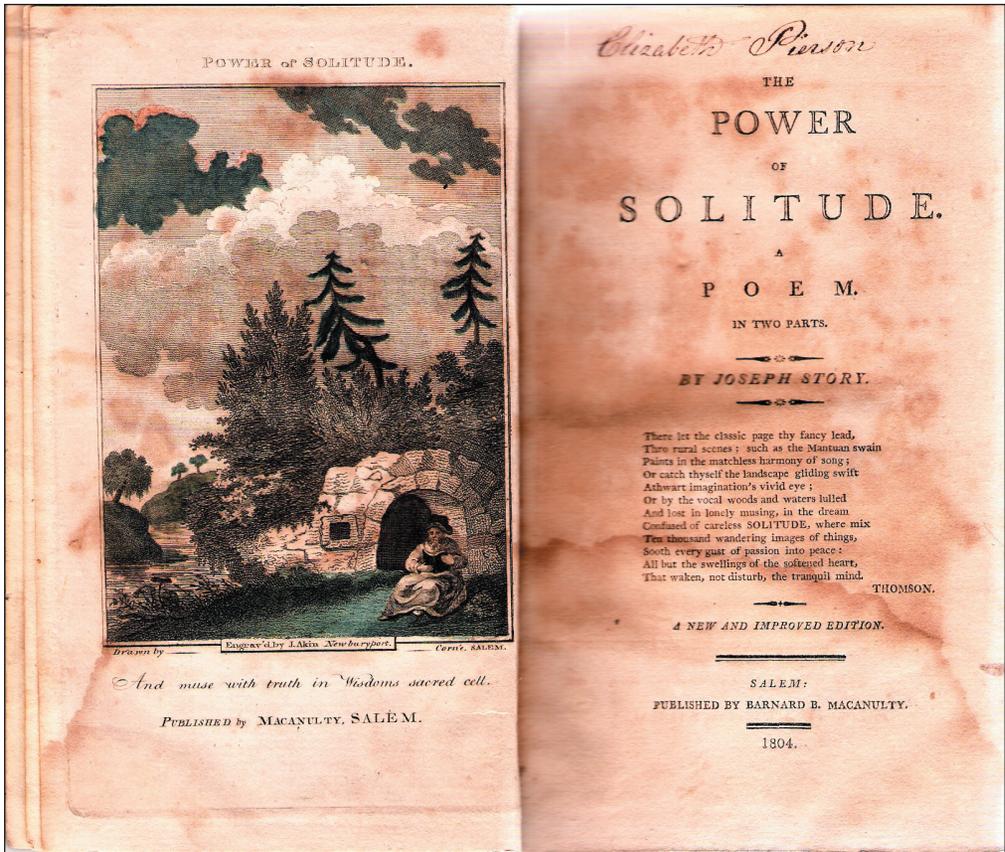
IN TODAY'S POPULAR IMAGINATION, lawyers are a stolid group, with little imagination or love of literature. Poets, on the other hand, must all be like Dylan Thomas or Sylvia Plath, colorful and often tortured souls, living life to the fullest in the bohemian quarters of Paris or New York City, not the drab canyons of Wall Street. When we think of nineteenth-century poets, we tend to think of the omnivorous Walt Whitman, the romantic Lord Byron, or the sentimental Emily Dickinson. When we think of nineteenth-century lawyers, however, we think of staid Rufus Choate or rustic Abe Lincoln. Few of us can imagine a time or place in which lawyers were poets and poets lawyers, let alone when men could achieve fame as both. Indeed, one commentator has titled his web page on American lawyer-poets "Strangers to Us All."¹ But in the period stretching roughly from the Revolution to the Civil War,

many of the most prominent American lawyers also practiced the art of versification.

That many antebellum American lawyers fancied themselves poets is not at all surprising. Indeed, when one considers the history of the legal profession in England, Europe, and the United States, one quickly discovers that lawyers were often of a poetic turn. Petrarch, one of the first Italian Renaissance poets, was trained as a lawyer. In the early eighteenth century, young lawyers used a collection of Coke's Reports set in two-line couplets as an *aide-memoire*.² Later, some of eighteenth-century England's best-known lawyers and jurists were also famed as poets. Sir William Blackstone's first calling was not to the law but to poetry; his most famous poem, written when he realized that as a jurist he must turn his back on poetic life, is titled "Farewell to his Muse."³ John Anstey, another prominent London barrister of the

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- 1 This website was established and is maintained by Professor James Elkins of the University of West Virginia Law School.
- 2 EDWARD COKE, *THE REPORTS OF SIR EDWARD COKE, KNT. IN VERSE* (John Worrell ed., reprint 1999) (1742).
- 3 Reprinted in INA RUSSELLE WARREN, *THE LAWYER'S ALCOVE* 263–65 (1900).



"Story, chastened by the book's reception, purchased as many copies as he could find and burned them."

period, is best known today for his satirical poetry about the law, including *The Pleader's Guide*, his long-winded metrical analysis of English law.⁴

Poetry for these lawyers performed several functions beyond the purely literary. Often lawyers wrote for their own amusement or for that of others. George Rochfort Clarke, an English barrister well-known in nineteenth-century London, provides a perfect example. A staunch Anglican who

wrote several tracts against Catholicism, Rochfort Clarke was also a proto-environmentalist and the author of *The Reform of Sewers. Where Shall We Bathe? What Shall We Drink? Or, Manure Wasted and Land Starved* – an interesting, if eccentric, legal work.⁵ He fancied himself something of a poet as well. One of his more obscure poems, penned at the request of his Mess mates at the Maidstone Assizes, was *The Banishment of Venus and Adonis from the Great Exhibition*,⁶ an

4 JOHN ANSTAY, *THE PLEADER'S GUIDE, A DIDACTIC POEM IN TWO PARTS: MR. SURREBUTTER'S POETICAL LECTURES ON THE CONDUCT OF A SUIT OF LAW* (6th ed., 1810).

5 GEORGE ROCHFORT CLARKE, *THE REFORM OF SEWERS. WHERE SHALL WE BATHE? WHAT SHALL WE DRINK? OR, MANURE WASTED AND LAND STARVED* (1860).

6 GEORGE ROCHFORT CLARKE, *THE BANISHMENT OF VENUS AND ADONIS FROM THE GREAT EXHIBITION* (1863). No copy of this poem appears in an institutional catalog. We are indebted to Mr. Garrett Scott, bookseller of Ann Arbor, Michigan, for this reference. See GARRETT SCOTT, *CATALOGUE TWELVE, ECCENTRICS, ENTHUSIASTS, AND MARGINAL POETS* (2003).

eleven-page verse attack on the decision to include nude statues in the Great Exhibition of 1862. A few lines proves Clarke's talent (or lack thereof):

Avaunt, thou Venus! With thy marble stare,
With my one wife thou never shalt compare;
Nor think to make her beauty seem the less,
By standing thus without a lady's dress!⁷

In antebellum America, lawyers often occupied a place, albeit a sometimes insecure one, in the highest levels of society. Along with the clergy and the wealthy merchants whom they served, lawyers tended to be among the best-educated and most prosperous members of the American middle class. For decades, they were the dominant force in American politics. In cities like Boston, New York, Philadelphia, and Charleston, lawyers were not merely men of business and political power; like their English counterparts, they were also patrons of the arts and letters. They were among the founders of educational and literary societies like the Athenaeum in Boston, the American Antiquarian Society in Worcester, and the American Philosophical Society in Philadelphia. They formed Bar Associations, such as the Law Academy of Philadelphia, to improve their own professional skills through lectures and moots.⁸ They were bookish men, often amassing great libraries, containing not only works on law, but on literature, art, history, and theology.⁹ They commissioned their portraits from

the leading artists of the day and were always available to give an oration celebrating a national holiday or civic event. Many wrote not only prose works, both legal and literary, but also tried their hand at verse. Of the more than ninety American poets listed in Rufus Griswold's *The Poets & Poetry of America*, one of the first great anthologies of American poetry and an attempt to highlight the literary progress made by Americans, more than twenty were either lawyers or had legal training.¹⁰

Much of antebellum American poetry has been forgotten or relegated to the cabinet of literary curiosities, perhaps because American verse of this period was almost entirely derivative of English models. Americans were enamored of the late eighteenth century English poets, especially Pope; just as America's prose had to find its own voice before it would achieve eminence, so too did its verse.¹¹ The earliest post-Revolutionary poets, such as Joel Barlow and the Hartford Wits and Philip Freneau, wrote poetry of lasting value, but its derivative nature becomes all too apparent when contrasted with the later works of Longfellow, Hawthorne, or Poe. Thus, when literary scholars discuss antebellum American poetry they tend to concentrate on the few truly original voices and forget the rest.¹² For purposes of literary criticism, this may be acceptable, but for purposes of social and professional history,

7 *Id.*

8 These, of course, were of a more serious nature. See, e.g., *The Argument List of the Law Academy of Philadelphia, Sessions of 1852–53* (1853).

9 Joseph Story is a perfect example. See *THE AUCTION CATALOGUE OF JOSEPH STORY'S LIBRARY* (2004) (introduction by M.H. Hoeflich and index by Karen S. Book).

10 RUFUS GRISWOLD, *THE POETS AND POETRY OF AMERICA* (6th ed. 1845).

11 See *Selections from the American Poets*, in *EDINBURGH REVIEW*, April 1835, at 12–21; *id.* at 15 (“[I]t is wonderful how much of the result [of American poets’ efforts] has been influenced by the study of English models; and how little there is to remind us that the Atlantic rolls between us . . .”).

12 See Emory Elliot, *Poetry*, in 1 *THE CAMBRIDGE HISTORY OF AMERICAN LITERATURE 1590–1820* at 226–54 (Sacvan Bercovitch ed., 1994); Michael T. Gilmore, *Poetry*, in 1 *THE CAMBRIDGE HISTORY OF AMERICAN LITERATURE, supra*, at 591–619; JAMES L. ONDERDONK, *HISTORY OF AMERICAN VERSE* (1901).

it is not. Many Americans wrote, read, and listened to home-grown poetry during the antebellum period, and if most of it was not of lasting literary worth, it nevertheless provides an important perspective on the social and cultural history of the times.

American poetry of this period can be divided roughly into three categories: First, of course, was poetry on patriotic and civic themes. These were poems composed for and presented at great occasions: on the death of George Washington or the annual Fourth of July celebration. They were often presented, too, at other formal occasions, such as the dedication of a courthouse or a college graduation, where they comprised part of the program and were duly recited along with orations on the same subjects. Such poetry was most often published in newspapers or literary magazines and, occasionally, as broadsides, which, if enough subscribers could be found, might be collected into a book and sold.

A second form of poetry popular in this period was satire, usually modeled on Pope's works. In antebellum America satire was, for many, the political weapon of choice. Following English practice, verse satire, often accompanied by a satirical drawing and published under a pseudonym, was the norm. Many of the political battles of the early Republic were fought in broadsides and pamphlets, in which each side used meter and rhyme as their fathers had used ball and shot.

The third form of popular verse in the antebellum United States was sentimental poetry. Antebellum American culture was marked by an exuberant sentimentality. This was the period in which Supreme Court justices could shed a tear upon hearing an eloquent argument,¹³ and in which the new women's magazines interspersed les-

sons on needlework with sentimental tales in both prose and verse. Much of the poetry of this period is a sentimental celebration of love, death, and nature. And, again, one hears strong echoes of English poets, such as Dryden and Churchill. Like civic and patriotic poetry, these poems were performed at funerals or other public occasions and were published in newspapers and magazines.

Although antebellum America was virtually awash in poetry, in popular belief there were only two kinds of poets: beggars, on the one hand and, on the other, rich men (and their children), who had the leisure to indulge themselves in a less-than-lucrative activity. Few poets could make their way in the world by verse alone. Thus, since the public believed poetry to be the product of either tortured poverty or monied indolence, versification carried wonderfully ambiguous social connotations. In a time when poets were considered either rich and educated or, in the occasional case, e.g., Poe, dissolute and mad, a lawyer's versification might indicate that he was cultured beyond the norm; it might also indicate, however, that he was not to be trusted. Both sentiments expressed at the time.

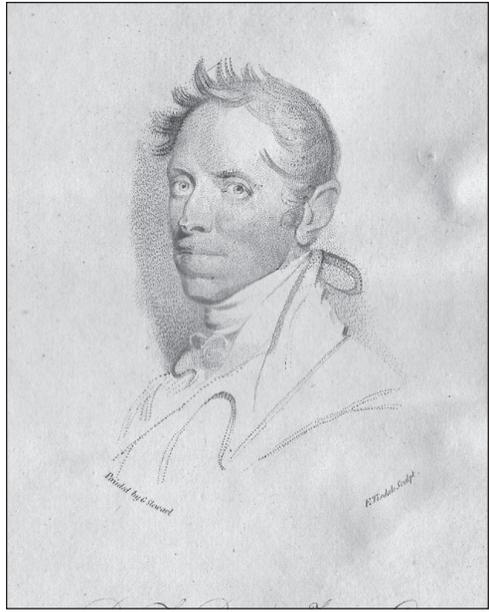
In this context, it is not at all surprising that many lawyers tried their hand at verse. Like others of their class and time, they lived in a world of sentiment. They fell in love; they appreciated nature; they suffered grievously when they lost their loves, often to untimely death. As we have noted, lawyers thrived in politics, so lawyers might also use satirical verse as a political weapon. Finally, and perhaps most importantly, lawyers were professional orators during this period and assiduous students of rhetoric and eloquence. Their communities often depended upon them for public presentations. Is it at

13 We refer, of course, to Chief Justice Marshall's reputed reaction to Daniel Webster's peroration in *Dartmouth College*.

all strange, then, that some might choose to do so in verse rather than prose?

The other factor in the development of this class of antebellum lawyer-poets was contemporary legal education. Antebellum legal education was a mixed bag.¹⁴ Most lawyers trained as apprentices, spending a few years in an established lawyer's or judge's office doing clerical tasks, attending court, and reading.¹⁵ This reading was seldom confined to law books, but it ranged far and wide. Nor was the life of many of these apprentices very busy.¹⁶ Many had time for theater, games of whist, or the occasional book of verse. Those who attended college or a collegiate law school had similar opportunities for general cultural study, which, if taken in moderation, was approved. Thus, the process of legal education generally afforded the apprentice (or student) both the time and the requisite breadth of reading to develop a poetic inclination.

No place in antebellum America had a greater number of lawyer-poets than Cambridge, Massachusetts and its neighbor, Boston. It is impossible to say with certainty why this was so, but there are some suggestive possibilities: First, Cambridge was home to Harvard College, a center of literary culture and teaching, which had Longfellow on its faculty. Many of the lawyers of Cambridge and Boston trained as undergraduates at Harvard or in the Dane Law College. Second, Cambridge and Boston were publishing centers, home to Little & Brown and Hilliard & Gray, among other houses. Finally, Cambridge and Boston were wealthy urban



Robert Treat Paine, Jr.

centers, and wealth can provide both leisure to those who possess it and patronage to those who don't – both of which make poetry possible. They were also cities with a long heritage of culture and pride in their cultural accomplishments, as well as a willingness to accommodate some degree of eccentricity in those who might contribute to it.

Many lawyer-poets walked the streets of Cambridge and Boston in the antebellum period, but three are of particular interest – for their lives and achievements, if not the enduring attractions of their verse: Robert Treat Paine, Jr., Joseph Story, and William Wetmore Story. All three achieved fame or notoriety during their lifetimes, and all three were practicing lawyers as well as ambitious poets.

14 Above all, see ROBERT A. FERGUSON, *LAW & LETTERS IN AMERICAN CULTURE* (1984). Especially note his discussion of Daniel Webster's views on the relationship between poetry and oratory. *Id.* at 236.

15 See ROBERT STEVENS, *LAW SCHOOL 3–19* (M.H. Hoeflich ed., 1983); M.H. HOEFLICH, *THE GLAD-SOME LIGHT OF JURISPRUDENCE 1–14* (1988); see also Ann Fidler, *Young Limbs of the Law* (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with the author).

16 An excellent account of an apprentice's experience may be found in John Quincy Adams' diary of his time serving as apprentice to Theophilus Parson, Sr. See *LIFE IN A NEW ENGLAND TOWN: 1787–1788* (1903).

The least well-known of this trio today is Robert Treat Paine, Jr.¹⁷ Indeed, in 1845 when Rufus Griswold published his *Poets @ Poetry of America* he began his section of extracts on Paine by noting that the poet was then “rarely mentioned.” Paine’s father was one of the most respected lawyers in the young republic and had signed the Declaration of Independence. From an early age, however, his son preferred the artistic life. Indeed, one literary historian has suggested that Paine might have been the first American poet to choose a bohemian existence, thereby foreshadowing Poe’s lifestyle by several decades.¹⁸ But Paine was not merely dissolute: even in his school days he showed a strong and original talent for verse.

As a young man, Paine broke from his family and married an actress, an act that scandalized proper Boston society. Perhaps through his wife’s connections, Paine became the first “master of ceremonies” in an American theater and used his considerable poetic skills to entertain Boston theatergoers. Unfortunately, the theatrical life also permitted him to indulge his inclination towards idleness and alcoholism. After a *rapprochement* with his family, Paine was convinced to pursue a legal career. He was sent to apprentice in the office of Theophilus Parsons, Sr., who achieved fame as Chief Justice of the Massachusetts Supreme Judicial Court, and who trained such other legal luminaries as John Quincy Adams.¹⁹ Paine’s intelligence and

writing skills served him well in the study of law. He soon opened his own practice, which rapidly became successful. After several years, however, Paine fell into his old ways. After losing both his practice and his house, he and his family returned to his father’s home. Soon thereafter, ill and penniless, Paine died at the age of thirty-eight.

Paine’s life as a poet and lawyer is instructive in several ways. Of greatest interest, perhaps, is the fact that Boston and Cambridge society embraced him as a poet – until his dissolution proceeded too far. Paine was the first American poet who lived, and lived well, by his poetry. Area institutions, including Harvard, paid him large sums of money to compose and deliver poems for special occasions.²⁰ He derived virtually no income from printed versions of his poetry; his considerable income during his sober years came, instead, from public performances.²¹ Here we see an important link between poetic composition and the law: poetry, for men like Paine, was primarily *performance*, and public verse performances were much like the oratorical presentations lawyers regularly delivered in court and other public fora.²² Paine’s biographer comments that when Paine completed his law studies in 1802 and was admitted to the Suffolk County Bar, “he received an uncommon share of patronage.”²³ Although many contemporary commentators warned would-be lawyers that literary pursuits might damage their law practices because cli-

17 See Samuel M. Tucker, *The Beginnings of Verse, 1610–1801*, in I THE CAMBRIDGE HISTORY OF AMERICAN LITERATURE, *supra* note 12, at 591–619; Charles Prentiss, *Sketches of the Life, Character, and Writings of the Late Robert Treat Paine, Jun., Esq.*, in THE WORKS IN VERSE AND PROSE OF THE LATE ROBERT TREAT PAINE, JUN., ESQ. (1812).

18 On this aspect of Paine’s life, see Tucker, *supra* note 17, at 599–600.

19 Prentiss, *supra* note 17, at 51–53. There is something charming, if naïve, in the notion that the study of law might serve as a cure for alcoholism.

20 *Id.* at 45–46. Paine was paid \$750 to produce a poem for the Massachusetts Charitable Fire Society.

21 *Id.* at 53.

22 On the similarities between jury trials and theater, see Lawrence Friedman, *Lexitainment: Legal Process as Theater*, 50 DE PAUL L. REV. 539 (2000).

23 Elliot, *supra* note 12, at 245.

ents would view them as frivolous, it appears that Paine's reputation as a poet and man of letters actually helped him in his early days. This makes good sense. Those who knew Paine from his poetic performances might have decided that a lawyer of such great literary talents could perform as well before a jury as a theater audience.

It will come as no surprise that the bulk of Paine's mature poetry, as contained in the volume of collected works published after his death, is of the patriotic and celebratory genre. His poetry, unlike that of his contemporaries like Freneau or Barlow, tends not to be as highly derivative of English models in meter or imagery, although, by modern standards, it still suffers from the excesses of florid language.²⁴ One of his best poems, perhaps, is his ode on "Adams and Liberty," commissioned by the Massachusetts Fire Society in 1798. The first stanza of this ode gives us a taste of the whole:

Ye sons of Columbia, who bravely have fought,
For those rights, which unstained from your
Sires had descended,
May you long taste the blessings your valor has
bought,
And your sons reap the soil which their fathers
defended.
'Mid the reign of Mild Peace,
May your nation increase,
With the glory of Rome, and the wisdom of
Greece;
And ne'er shall the sons of Columbia be slaves,
While the earth bears a plant, or the sea rolls its
waves.²⁵

In this paragraph we have all the elements that would have appealed to his contemporaries. He adopts the form of the ode, so

popular in both classical poetry and in eighteenth-century English imitations thereof,²⁶ but Paine employs American terms and imagery, playing upon the Revolutionary ideas of rights as well as images that evoke the rural richness of the new Republic's lands. And, of course, he credits the new Republic with the martial strength and glory of Rome and the wisdom of Greece, praise very much in tune with the classically minded writings of the Founding Fathers.

In the poem commissioned for the Harvard College graduation of 1795, "The Invention of Letters," Paine turned his talents to an epic work on the history of letters and literature. The stanzas reveal both his talent as a poet and his faith in the inherent power of poetry:

But when the Press, with fertile womb supplies
The useful sheet, on thousand wings it flies;
Bound to no climate, to no age confined,
The pinioned volume spreads to all mankind.²⁷

Paine was also not above flattering his patrons:

From Harvard's fount, by native springs supplied,
Presiding Science rolls her copious tide.
Blest seat of letters, to thy sacred walls
This festive day my fond remembrance calls!²⁸

It is striking that in Paine's corpus of work there is barely a hint of his legal heritage or training. One finds an occasional line, such as "trapped in criminal conversation the tripping queen of love" (from "The Invention of Letters"),²⁹ but such references are rare. For the most part, Paine does not mix his law with his poetry. It may be that Paine was never very interested in the law as an intellectual

24 This was, apparently, unusual in the poetry of his contemporaries. See *Selections from the American Poets*, *supra* note 11, at n.111.

25 THE WORKS IN VERSE AND PROSE OF THE LATE ROBERT TREAT PAINE, *supra* note 17, at 245.

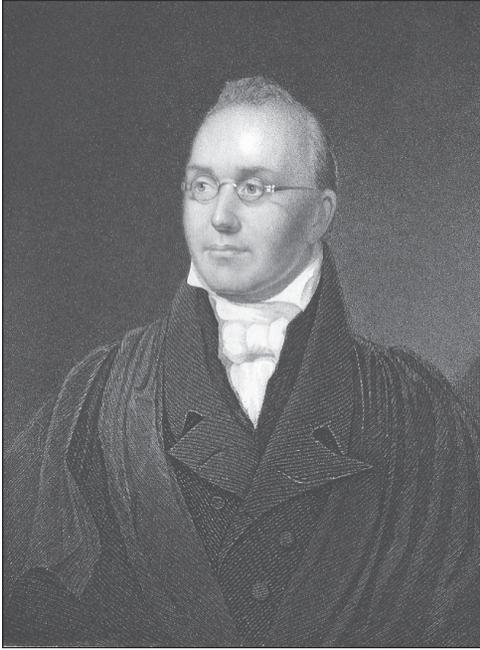
26 See CAROLINE WINTERER, ANCIENT GREECE AND ROME IN AMERICAN INTELLECTUAL LIFE 1789–1919 (2002).

27 Tucker, *supra* note 17, at 165. This stanza also echoes Catullus' poem "Adeste Heudecasyllabe."

28 *Id.* at 170.

29 *Id.* at 167.

discipline or mode of discourse. It is just as likely, however, since Paine wrote not for his own amusement but on his patrons' order, that unless a patron had asked for a poem on a legal subject, he saw no need to write one.



Joseph Story

If Robert Treat Paine is hardly remembered today, as either lawyer or poet, the fame of few American lawyers continues to shine as brightly as Joseph Story's. Born in 1779, Joseph Story was, in many respects, the father of American law.³⁰ He was the true founder of Harvard Law School, the first great legal scholar of the new Republic, the virtual inventor of the modern legal treatise, and sat as an Associate Justice on Marshall's Court,

authoring many of that tribunal's greatest opinions.³¹ His published works fill several bookshelves and cover a remarkable scope of American jurisprudence. Yet, among all the tomes of law, resides a not inconsiderable body of poetry.³² This aspect of his life has drawn little attention from his biographers. But whatever one may think of Story's poetic efforts, they are important, for they reveal an aspect of the great jurist otherwise forgotten.

According to his son and first biographer, William Wetmore Story, Joseph Story loved poetry from youth. In his letters, Story revealed that his poetic taste was that of his contemporaries; he favored the works of Pope, Dryden, Gray, Goldsmith, and Johnson.³³ In 1832, in a letter to a friend, he referred to his poetic tastes as being of the "old school," a sign, perhaps, that he realized his verses were derivative of his English models and did not possess the original power of Emerson or Longfellow. Like so many of the poets of his time, Story first began to write poetry as a schoolboy and learned his trade by translating classical texts, such as Horace's *Odes*. And, like many of his contemporaries, he gained his first "fame" as a schoolboy poet writing celebratory verse, to be presented at graduation and other events and printed in newspapers.

But Story, unlike Paine, never attempted to become a civic poet or to write for profit, in either money or prestige. Nor was the majority of the poetry he produced of the patriotic or eulogistic turn. Instead, Story's most serious efforts in verse were decidedly senti-

30 The best modern biographies of Justice Story are KENT NEWMYER, *SUPREME COURT JUSTICE JOSEPH STORY, STATESMAN OF THE OLD REPUBLIC* (1895), and GERALD T. DUNNE, *JUSTICE JOSEPH STORY AND THE RISE OF THE SUPREME COURT* (1970).

31 DUNNE, *supra* note 30, at 31.

32 WILLIAM WETMORE STORY, 2 *THE LIFE AND LETTERS OF JOSEPH STORY* 421 (1851). Justice Story clearly saw his verse efforts as a hobby and an aid. See *id.* at 84 (In a letter to Mrs. Story, he wrote, "When I have nothing else to do, in order to get rid of my own sad thoughts, I sometimes turn to poetry.")

33 WILLIAM WETMORE STORY, 1 *THE LIFE AND LETTERS OF JOSEPH STORY* 109 (1851).

mental, and his only book of verse, *The Power of Solitude*, is nearly overpowering in its lugubrious sentimentality. Even a small sample of its one hundred pages demonstrates this:

Sweet, trembling ecstasies, which swiftly rise,
Melt the full soul, and press the rich surprise!
What kindling verse shall dare those charms
express,
Now bathed in bliss, now steeped in tenderness,
When the rapt thought, by sacred fancy led,
Paints to the living, what embalms the dead.

Story's son was brutally frank in his appraisal of this poem:

The defects of his poem on the "Power of Solitude" are exaggeration of feeling, confusion of imagery, and a want of simplicity of expression. The style is stilted and artificial ... [and it is] dull as a poem ... ³⁴

The critics seem to have agreed: Story, chastened by the book's reception, purchased as many copies as he could find and burned them. By 1851, the date of his son's biography, the work had become "exceedingly rare."

Although the critical failure of *The Power of Solitude* convinced Story that he had no future as a poet, it did not prevent him from continuing to write poetry – privately – throughout his life. He gave frequent prose orations in public and published countless books and prose essays; his poetic efforts transpired, however, in leisure hours and for his own amusement and consolation, or for that of those close to him. If anything, these later poems are better, if not as serious, and it may well be that, spared the risk of a critical savaging, Story was able to write halfway-decent verse.

Perhaps the best of these later works is his short poem, "Advice to a Young Lawyer," which earned great popularity and was often anthologized after his death. In this non-

sentimental poem, intended for a young lawyer (presumably his son William Wetmore), Story's style is sharp, just as he advises his reader to be; there is neither false sentiment nor stilted imagery. This was a subject about which Story knew a great deal, and Story is not afraid to show a playful as well as a serious side. It is certainly not great verse, but it is pleasant to read and instructive. While his sentimental verses are now forgotten, these law-related lines have lived on long after him.

From the historical perspective, what is most interesting about Joseph Story's verse is that it exists at all. Though his life was a whirl of legal and pedagogical duties, he found it worth taking time to write poetry, and did so until his death. He wrote when he had spare time, and he wrote in times of emotional distress, as he did on the occasion of his daughter Caroline's death. Although many of his contemporaries regarded versification as frivolous and antithetical to the serious pursuit of a profession, Story's persistent return to verse evidences a strong conviction to a very different perspective. Poetry was both his hobby and his consolation, and its value did not decrease in his eyes even when its purpose was entirely private. Story saw himself not only as a lawyer and judge, but as a cultured member of the republic of letters; his devotion to poetry signified his citizenship in that republic.

William Wetmore Story, Justice Story's son, was born in 1819, at a time when his father had already achieved eminence as a lawyer and judge.³⁵ He was born into the elite of Boston and Cambridge, as well as of the American legal profession. Although he showed talent for both poetry and the arts as a young man, his future career had been chosen for him at birth. Accordingly, he at-

34 *Id.* at 109.

35 *Id.*

tended Harvard College and Harvard Law School, then began a promising career at the Bar and as a legal writer. Very soon after entering practice he was a success, and began to publish a series of books on commercial law.³⁶ Like his father, Story had written verse, for his own amusement and for the occasional event, but, unlike his father, he did not risk the critics' wrath with a published volume of poetry. His legal treatises, however, including his text on contracts not under seal, quickly established him as one of the most promising legal scholars of his generation. All of this changed, however, with his father's death in 1846.

Because he was a towering figure in the law, in education, and in Massachusetts, upon Justice Story's death the authorities at Harvard commissioned a memorial statue. William Wetmore was known to have an interest in sculpture, and he was approached. He agreed to undertake this task, although it meant at least some time off from his legal work, but only on the condition that he be sent to Italy to study the art of sculpture so that he could do his father's memorial justice.³⁷

Over the next several years, William Wetmore lived a rather schizophrenic existence, alternating trips to Europe with sculpting, writing poetry, and writing law treatises. In his European travels, he moved between art museums and lecture halls – meeting Goethe, the father of German romanticism, and Friedrich Carl von Savigny, the father of modern German legal science.³⁸ Indeed, the pattern of these early years seems to have set a model for the next decade. During this period William Wetmore was unwilling to give

up his legal writing (which must have been lucrative), but, at the same time, he was increasingly drawn to the arts and poetry and spent much of his time immersed in these creative pursuits.

By the time William Wetmore and his family settled in Italy permanently, joining the small circle of Anglo-American literary expatriates there, he had established himself as a sculptor of note, as well as a popular author of verse and prose essays and reviews. He was, in this sense, the paradigm of the artistic American, much on the model of the earlier Bostonian, William Allston, who had distinguished himself as both artist and poet.³⁹ Unlike his father, William Wetmore was able to live the artistic life completely; unlike Treat Paine, he was also able, for quite some time, to retain ties to the legal world, never sinking entirely into the bohemian lifestyle.

William Wetmore Story's poetry itself has not stood the test of time. Indeed, some of the criticisms he leveled at his father's verse apply equally to his own. His style is often stilted and his imagery florid, as were the Victorian settings in which he displayed his sculpture. On the other hand, his metric schemes are a good deal simpler than those in his father's early works, and his poems avoid the cloying sentimentality that dogged his father's. William Wetmore designed his verses for a Victorian upper class readership, adorning them with classical allusions. He rarely wrote on legal topics; indeed, the one poem which might appear to be such by its title, "A Roman Lawyer in Jerusalem," is not.⁴⁰

36 See WARREN, *supra* note 3, at 101.

37 There is no good modern biography of William Wetmore Story. The best source for his life is HENRY JAMES, *WILLIAM WETMORE STORY AND HIS FRIENDS* (reprint 1969).

38 *Id.* at 81. On Story's sculpture, see LORADO TAFT, *THE HISTORY OF AMERICAN SCULPTURE 150–70* (1925).

39 JAMES, *supra* note 37, at 93–230.

40 *WILLIAM WETMORE STORY, A ROMAN LAWYER IN JERUSALEM* (1875).

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Nor did William Wetmore write public poetry, destined for recitation at civic and other events. On the contrary, most of his poetry is intimate – more suited to the parlor or the boudoir than the theater or a political rally.

A good example of William Wetmore Story's verse is "In the Rain," the first stanza of which reads:

I stand in the cold gray weather,
In the white and silvery rain;
The great trees huddle together,
And sway with the windy strain.
I dream of the purple glory
Of the roseate mountain-height
And the sweet-to-remember story
Of a distant and clear delight.⁴¹

Certainly, this stanza is no rival for Whitman, but it is at least pleasant and easy on the eye. One can imagine a proper Victorian lady reading it in a small octavo and being moved by its description of a stormy nature. On the other hand, Story was well-advised not to quit his day job.

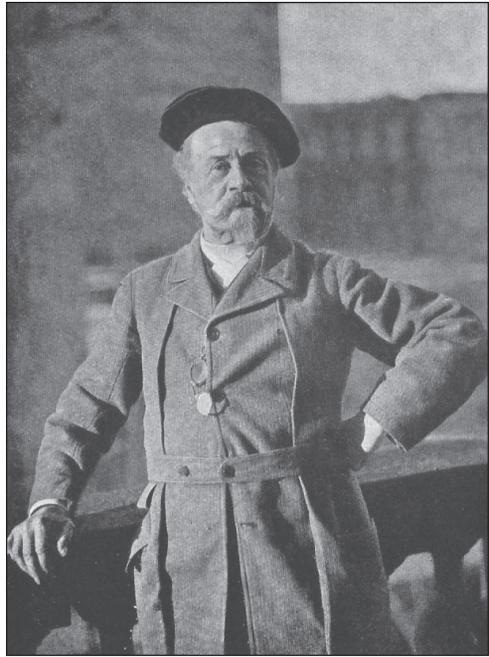
In "Praxiteles and Phryne," William Wetmore reveals more about himself, since the subject of this poem was a sculptor:

A Thousand silent years ago,
The twilight faint and pale
Was drawing o'er the sunset glow
Its soft and shadowy veil;

When from his work the Sculptor stayed
His hand, and turned to one
Who stood beside him half in shade,
Said with a sigh, T'is done.

Thus much is saved from chance and change,
That waits for me and thee;
Thus much – how little! – from the range
Of Death and Destiny.⁴²

It is difficult today to understand just



William Wetmore Story

how popular William Wetmore's works were during his lifetime. His monumental sculptures have become part of the Boston and Cambridge urban landscape. His poems often find their way into anthologies of nineteenth-century American verse, although they are little read or studied today. In his day, however, William Wetmore Story was enough of a figure to merit a biography and a two volume history/biography by Henry James.

In considering these three lawyer-poets of Boston and Cambridge of the nineteenth century, one forms an impression of legal culture not usually highlighted by the standard histories of the profession. Lawyers – even the flinty New England variety who, in Perry Miller's words, worshiped at the altar of "practical virtue"⁴³ – also valued culture, and not simply as passive recipients, but as active practitioners.

41 William Wetmore Story, *In the Rain*, in *GRAFFITI ITALIA* 55 (2d ed. 1875).

42 *Id.* at 201.

43 PERRY MILLER, *THE LIFE OF THE MIND IN AMERICA* (1965).

It is difficult to picture modern Justices of the United States Supreme Court writing sentimental poetry in their spare time; nor is it likely that the authors of bestselling legal treatises will give up their practices and move to Rome to sculpt and write verse. And yet our nineteenth-century predeces-

sors did not find such things unthinkable, or even particularly odd. Indeed, Robert Treat Paine, Jr.'s poetry seems to have helped him build his practice – it was only his neglect of clients, brought on by his dissolute lifestyle, that turned his contemporaries against him. *JH*