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The Country Attorney in Late Eighteenth-Century England: Benjamin Smith of Horbling

ALBERT J. SCHMIDT

Three themes crucial to understanding eighteenth-century British history converge when one writes about the country attorney: the professions, which had a remarkable development in Georgian England; the rural practitioner as distinct from his urban, principally London, counterpart about whom much more has been written; and the local economy in which attorneys performed as conveyancers, money lenders, managers of landed properties, copyhold court holders, and clerks—for justices of the peace, at the assizes, on turnpike, enclosure, and drainage commissions, for charities, and for law and order associations. Popular literature notwithstanding, country attorneys were not so often knaves using their skills to cheat unwitting clients as indispensable cogs in the rural economy where they served the interests of the landholding classes.

Attorneys had been on the English legal scene since Bracton's day in the thirteenth century, when their pleadings in court were considered binding on the litigant. From then until the eighteenth century, their evolution within the profession was a complicated one, a matter discussed in detail elsewhere.¹ In any case, by the eighteenth century what had hitherto been separate branches of the profession, attorneys and solicitors, were brought together. Their convergence affected function as well as form. Legislation in 1729 permitted sworn attorneys to practice as solicitors; similarly, in 1750 sworn solicitors were allowed to practice as attorneys.² As attorneys broadened their range of local services during the first half of the eighteenth century, earning incomes

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sufficient to avoid attending the courts at Westminster, they increasingly identified with their provincial setting rather than Westminster.

The key to understanding Georgian country attorneys lay in their acquisition of the conveyancing business and withdrawal from litigation. An expertise in drawing up wills, trusts, and family settlements, in facilitating land purchases and sales, and, especially, money-lending—these rather than litigation made the attorney a confidante of well-to-do families rather than a scornful pettifogger prolonging lawsuits.³ Although such notions persisted as literary stereotypes after 1750, attorneys were simply too crucial to the local economy for such bias to deter those who required their services.

The Professions and the Eighteenth-Century Attorney

Eighteenth-century professionals everywhere were making their mark whether in the government, law, university, church, or military. Prosperous and comfortable post-Restoration generations, increasingly concerned with status and amenities, required the services of trained and able persons. Observing that English society between 1680 and 1730 was characterized both by an unprecedented demand and the capacity to pay for new services, Geoffrey Holmes has concluded that this was notably true of those who “were able to foot the bills for a widening range of legal services as well as financing the mounting volume of litigation in the courts, and at the same time they managed to absorb the higher fees which many lawyers were now demanding.”⁴

That mere clerkships rather than the university provided access to law invites the assumption that it was invaded by the poor. Studies indicate the contrary: the new professions—especially, that of attorney—became a refuge for the younger sons of the privileged or attracted the so-called “middling sort.”⁵ This increase in attorneys in provincial England after the ties with Westminster were loosened contributed to the clamor for regulation of the profession.

The formal rules for apprenticeship and regulation were set forth in An Act for the Better Regulation of Attorneys, passed in 1729. This act was intended to control the entry of the poorly qualified into the profession: no person could practice as attorney or solicitor without serving a five-year clerkship to an attorney and “unless such person, after the expiration of the said term of five years, shall be examined, sworn, admitted and enrolled.”⁶ Learning the essentials of land trans-

actions—drafting deeds, wills, mortgages, bonds, notes, and family settlements—these were the conveyancing matters that consumed a clerk's time. Textbooks there were, but generally the attorney's apprentice used standard forms as a guide in preparing proper documents. Despite the 1729 legislation, the rules for clerkship were frequently ignored. Michael Miles has suggested that "great numbers of bankrupt merchants, dealers and tradesmen . . . set themselves up as attorneys or solicitors. Attorneyship was being used as a safety net for hard times in business which could be conveniently folded up when their principal vocation again proved financially viable."⁷ Benjamin Smith appears not to have been of this sort.

Benjamin Smith: His Career in the Law

Benjamin Smith of Horbling, a village some thirty miles south of Lincoln, is interesting for several reasons: First, he was founder of a solicitor's firm, Benjamin Smith and Company, which flourishes to this day.⁸ Second, Smith, unlike most attorneys, operated from a village rather than an urban center. While his catchment area included Donington and a market town, Folkingham (Falkingham), it did not extend, as it does today, to Bourne and Spalding, and certainly not to Grantham, Sleaford, and Lincoln. He was truly a village solicitor, concerned with country matters. Third, he was involved in community matters. Fully committed to serving gentry interests, he became a reliable and able professional, not a "pettyfogger."

Details are lacking concerning Benjamin Smith's entry into the law. Because his bill books show him to have practiced as an attorney in 1761, he should have fulfilled the required five-year clerkship immediately before that year.⁹ He may have clerked for one Matthias Brown, a Walcot (Lincolnshire) attorney and agent for the Brown estates.¹⁰ Because recruitment of clerks generally occurred in the village or parish where the attorney practiced, Smith probably clerked for Brown in addition to assisting him in the management of the Brown estates. It is the absence of details of Benjamin Smith's clerkship combined with his serving the Browns in the late 1750s and practicing as attorney in the early 1760s, which suggest that his performance as clerk and lesser steward in the late 1750s were indistinguishable.¹¹

Although the record is generally silent about Smith's early life, he was most likely the Benjamin Smith from St. Peter's Eastgate Parish in Lincoln, hard by the cathedral.¹² Possibly, he was a tradesman's son,

benefitting from the patronage of the influential Brown family. Even without such financial assistance, however, a successful tradesman could pay the premiums for an apprenticeship. Although a London attorney might charge £200 to £250 for this clerking privilege, a country attorney might charge as little as £50. The average in 1750 was about £100 per year.¹³ If Smith, in clerking for Brown, helped manage the estates as well, the premium may have been cancelled or of little consequence.

The clerking undertaken by Ben Smith would not have differed greatly from the conveyancing work of other clerks or from much of the work that consumed his time during his four-decade career. As a clerk, he probably travelled with his mentor to wait upon clients, perhaps to the assizes in Lincoln, surely to the quarter sessions in Folkingham, and to manor courts. By 1758, he was listed as deputy steward to Edward Brown of the manor of Meres, near Donington.¹⁴ As an attorney, Ben Smith was on horseback much of the time; presumably, his clerkship would have been much the same: delivering and receiving legal documents and communications with clients, entering or copying materials in the office books, and drawing and ingrossing formal documents. By the time Ben Smith had completed his clerkship, he was competent in preparing the diverse forms of conveyance. He may well have been performing as, what we would call today, a “managing clerk,” one who did the work of the attorney but not in his own name.¹⁵

Another aspect of Benjamin Smith’s clerkship and early career appears to link him to Brown patronage. Often those who clerked never practiced because of the glut of attorneys. A young attorney’s best prospect was to buy into a partnership. There was no dearth of such advertisements; presumably, this process required less capital and risk than starting one’s own practice without reputation or clients.¹⁶ That Ben Smith began practicing (as his bill books indicate) in 1761 suggests that he took over Matthias Brown’s business and merely went through the formalities of admission and enrollment as attorney at a later time. Such slip-slop practice for the 1760s is surprising considering the regulations for controlling the profession; on the other hand, Horbling was not mainstream. Smith may have been in demand to perform needed services as had Attorney Brown. If this description accurately depicts Benjamin Smith’s clerkship and early career, it is unusual. Whatever the details, the ease with which Smith entered the profession was undoubtedly traceable to the Brown connection.

If not born a gentleman, Benjamin Smith acquired that status by entering the legal profession. It was reaffirmed by the figure he cut in

local Lincolnshire society: In a career extending from 1761 until 1798, he rarely undertook litigation; his work consisted of preparing mortgages, wills, and settlements; besides conveyancing, he collected rents, prepared leases, managed properties, and held manorial courts, serving always the affluent families in the region. Ben Smith also brought legal expertise to the various commissions on which he clerked; most important, he was a money scrivener, like so many other attorneys in this day before provincial banks. His accounts show that he spent much time drafting notes and bonds and collecting the principal and interest accruing from them. His principal earnings probably derived from making or facilitating loans, rather than strictly legal fees.

The routine of Attorney Smith in the 1760s is evident from his earliest accounts:¹⁷ “Mr. Holt on Mortgaging 2 Houses in Grantham to Mrs. Toller for £150,” “Mr. Thomas Houlderness on purchasing a Cottage & Land at Stanfield of Mr. Green,” “Mrs Hutchinson on conveying 50 a. of Land, 3 Cow Com’ons & 50 Sheep Com’ons to John Welbourn of which with other Lands, the late mrs Wilkinson made a mort[age] in Fee to the late Thos Brown Esq.,” and “Mr Adcock on borrowing £160 of Brown off Mrs Eastland.”

In settling the estate of the late John Newton, Smith required “Counsel’s opinion.” He sent a copy of the will with the case for an opinion to a Mr. Barsham, presumably nearby. After attending Mr. Barsham several times, it was decided that he make additional copies of the case “to lay before Counsellor Cust, Mr. Barsham’s opinion not being satisfactory.” So he attended Cust several times, prepared deeds, attended the execution of the will, travelled to Folkingham to pay the legacies, wrote some eighty receipts from the Donington legatees of John Newton, and journeyed to Donington to pay the same; drew up numerous documents such as particulars of the goods sold to be given to legatees, drew release from the residuary legatees to the executors and, finally, attended the executors a number of times. For all this and more he received £9 6s. 6d. This scrupulous attention to detail is characteristic of all Ben Smith’s professional work in the law.¹⁸

These early accounts show that Smith had strong attachments to the Browns, Edward and Thomas Brown, principally, and that he was from the outset in touch with “Mr. Kelham my agent” in London.¹⁹ Kelham was more than merely Smith’s agent. A Lincolnshire native and son of the late rector of Billingborough, Walcot, and Threckingham, he was an important solicitor in his own right and accommodated those of Smith’s clients who required services in London.²⁰ Having such an agent in London was not unusual for a country attorney in Georgial England.

Benjamin Smith: Money-Scrivener

Ben Smith and his son made their fortunes principally through moneylending.²¹ The local money market, crucial to Britain's agricultural and commercial expansion during this period, was the source of credit for farmers, graziers, and gentry landowners.

Before banks had established themselves on the local scene, the role of financial intermediary in this market was performed by those having access to collateral, a knowledge of or acquaintance with potential buyers, sellers, and lenders, and an understanding of the law. Attorneys or attorney-land agents uniquely filled this bill; those possessing intelligence, trust, strong will, and an entrepreneurial spirit confronted unprecedented opportunities.²²

The country attorney in late eighteenth century England has been described as one engaged in "the drawing of Deeds, Mortgages and Conveyances of Estates. This is the most profitable Branch of the Law; for to that of Drawing Deeds they commonly add the Trade of a Money-Scrivener; that is, they are employed to find out Estates to purchase, or have Money to lay out for some, and borrow for others, and receive Fees from Borrower and lender; and of course are employed to draw the Securities."²³

Mortgages, which proved especially lucrative to Smith, were perceived as "one of the most efficacious forms of investment in the eighteenth century." This was true despite a decline in interest rates from six percent in the late seventeenth century to five or even four in the eighteenth.²⁴ The mortgage was an important financial instrument in a burgeoning economy because it met specific societal needs. In a situation where the strict settlement and the long-term mortgage lessened the possibilities of paying off debts by selling land, it was comparatively easy to borrow to pay off old or inherited debts, make improvements on or enlarge property, finance elections, provide portions for younger sons, and, using modern economic parlance, to "finance industrial capital formation."²⁵

Three additional factors in eighteenth-century England favored mortgage financing: Mortgages no longer engendered risk at law. The equity of redemption had become a secure property right the previous century, making the mortgagor the owner; mortgagees and brokers increased their volume of business as falling interest rates proved irresistible to mortgagors; finally, mortgage borrowing greatly facilitated growth of the economy as a whole.²⁶

The range of investors, if not infinite, was considerable. Just as landowners needed credit for improvements so were there those who

had funds to invest—widows, retired officers, business men, lawyers themselves, and other professionals. Attorneys not only brokered investments but in accepting sums on deposit, drew upon them when good mortgage opportunities appeared.

Ben Smith managed the finances of local notables as the Brownlow Tollers of Billingborough, the Daniel Douglasses of Folkingham, Edward Brown of Stamford, and many others.²⁷ Having long served both the Reverend Brownlow Toller and Daniel Douglas, a prominent enclosure and drainage commissioner, the Ben Smiths, father and son, continued counseling their widows. Daniel Douglas bequeathed to Ben Smith, Sr. eight hundred pounds when he died in 1793.²⁸ Years later, in appreciation for a lifetime of service, Edward Brown gave to Benjamin Smith, Jr. a gift of five thousand pounds.²⁹ A trusted business relationship, moreover, was cemented by bonds of friendship, as evidenced by the frequency that the Smiths took tea or meals with the Widows Toller and Douglas in the 1790s.³⁰

Ben Smith's separate account book for the Douglasses, first for Daniel and then Jane Douglas, dated from January 17, 1788 to October 23, 1805.³¹ Its form is interesting in that it designates "Benjamin Smith Debtor" on the left page and "Benjamin Smith Creditor" on the right. The left side represented a record of monies Smith received in behalf of Douglas; the right, monies paid out (bills and investments) for Douglas. Demand for short-term loans not requiring a mortgage was easily satisfied by a promissory note or personal bond. Again, monies left on deposit with banker-attorney Ben Smith were used accordingly. Although this account is a grand mix of personal and business entries, no particular tribute to Ben Smith's bookkeeping accomplishments, it reveals the extent to which Smith acted as banker and investment counselor for the Douglasses long after he had retired from lawyering. What he did for the Douglasses on a grand scale, he did undoubtedly for others on a lesser.

Benjamin Smith's Work Environment

If Benjamin Smith's conveyancing and banking skills proved indispensable to his propertied clients, his involvement in diverse local matters further endeared him to them and, at the same time, typified the attorney's crucial role in the economy. As R. Porter has recently stated, "The Georgian century formed a distinctive movement in the making of modern England. It was a society which was capitalist, materialist, market-oriented, worldly, pragmatic, responsive to economic

pressures. Yet, its political institutions and its distribution of social power, unlike those of modern times, were unashamedly hierarchical, hereditary, and privileged.³² This was the world in which Benjamin Smith flourished: He earned his worldly fortune in the first and committed his loyalties to the second.

Lincolnshire in the mid-eighteenth century was, as now, isolated, the Great North Road having passed it by. South Lincolnshire, where Ben Smith settled, had greater fame for its pastures — “the glory of Lincolnshire” — than for arable farmland. The grasslands of the fen were the best in England and fetched the highest rents in the county while those in the neighboring Kesteven were only slightly inferior.³³

The demands of industrial England changed this pastoral image of Lincolnshire: farmers and graziers responded to the prospects of higher profits by enclosing their land, reclaiming the waste and fens, and building roads and canals. Increasingly, this landscape of surveyed fields and roads and new farm buildings replaced one of heaths and wolds, transforming sheep pasture and rabbit warrens into glistening fields of wheat.³⁴

Change of this kind does not necessarily signify a fluid market in land. The conventional belief is that land during the eighteenth century was entangled in the conveyancer’s web, or the strict family settlement. What Frederick Pollock called the propensity for “fettering inheritances and suspending absolute ownership” appears to have reached a logical conclusion in H. J. Habakkuk’s argument that “the general drift of property in the sixty years after 1690 was in favor of the large estate and the great lord.”³⁵

Habakkuk’s thesis, having generated a spate of responses over the past generation, now appears something less than absolute. F. M. L. Thompson cautioned nearly twenty years ago that “we must at least regard very skeptically the view that the volume of land sales was actually declining in the second half of the eighteenth century.”³⁶ More recently, B. A. Holderness has noted that “the eighteenth century in Lincolnshire offered little by way of hiatus in the general pattern of continuity from medieval times . . . the passage of wealthy natives of the country from grazing, tannery, commerce, law, estate stewardship, or money-lending to modest affluence and the trappings of gentility, including a landed estate, seems scarcely to have been more limited in the eighteenth century than any other period.”³⁷

Attorneys were the most important of this group with respect to the land market: they arranged sales and purchases for others and themselves; they held court on the manors and imposed fines; they collected the rents; they aided landlords in improving their holdings by enclosing,

draining, and reclaiming. The Smith papers reveal that Ben Smith in doing all these things made himself quite indispensable to the landowners in and around Horbling.

Benjamin Smith acquired numerous manorial stewardships and lordships and held court, supposedly to enforce the customs of the manor.³⁸ In the late eighteenth century, such a court invariably was a court baron but could include a court leet. The former was a private jurisdiction on the estate of the lord; the latter, a franchise held of the crown with public jurisdiction. While this ancient distinction was usually maintained in the formalities of the session, it amounted to little more than that by Ben Smith's day.³⁹ Manorial records in the Smith papers do show that Smith, adhering scrupulously to the old forms of court-holding, personified a phenomenon increasingly commonplace in the late eighteenth century—the attorney as courtholder.⁴⁰

The complexity of legal problems concerning copyhold that arose in the manorial court required an attorney's expertise: copyhold tenancies, virtually as secure as freehold, could be purchased, sold, mortgaged, inherited, and entailed. They no longer carried the onerous labor service as they had in ages past.⁴¹ The residue of litigation consisted of small disputes generally having to do with nuisance.

Ben Smith's purpose in acquiring the manorial offices was for the income accruing from them. Roger North's comment at the beginning of the century about "sharper that now are commonly court keepers pinch the poor copy holders in their fees," if unfair to Ben Smith personally, at least describes the lucrateness of court business.⁴² This source of income was inevitably linked to rent collecting, surveying, and money lending.

Smith's first self-reference in his business papers occurs with his appointment as deputy steward of the manor of Meres, near Donington, in 1758.⁴³ This was important, once again because of the Brown connection: Edward Brown of Walcot was steward and Adlard Squire Stukeley, who had married into the Brown family, was lord of the manor.⁴⁴ After the Meres appointment, Smith assumed the same position at Monk's Hall in Gosberton in late 1760. The next year he succeeded to Newton manor and by 1769, he was steward of Monk's Hall and deputy steward of Baston Manor, south of Bourne. Smith acquired other stewardships and eventually a number of lordships.⁴⁵

Acquisition of lucrative manorial stewardships and lordships would have been a normal ambition for a young attorney and estate agent. As for Ben Smith in his fledgling role for the Browns, he would have seen that the land was well tended, leases and agreements respected, and the tenants' wishes conveyed to the landlord. Moreover, he would

have known the land as well as the law. Realizing profits from sales of livestock and timber off his own properties, Smith may have possessed some of the qualities associated with estate management:

a knowledge of every type of rural undertaking—including the culture of wastes and timber, methods of irrigation, drainage, embanking, building of canals, laying-out and repair of roads, construction of bridges, mills and engines, rural architecture, and so forth—as well as a command of economics, statistics, accounting, banking, and many other desirable branches of knowledge. Such omni-competent paragons never existed, and landlords had to make do with less-accomplished mortals.⁴⁶

Sir Charles Anderson's remark that "I have long been of the opinion that the county of Lincoln is ruled by agents and attorneys, and that in no other county have they such power,"⁴⁷ described Ben Smith drawing up agreements, enforcing their conditions, and lending on or obtaining money for mortgages.

In his diary, Benjamin Smith, Jr., described a routine that his father still followed in the 1790s: "Father and I went Falkham adjourned [manor] Court" [Nov. 3, 1794]; "Swaton Rent Day" [Nov. 4]; "Father went Donington. Mr. Hudson, Surveyor, came home with him & stayed all night." [Nov. 6]; "Father & I went Dunsby in morn to receive Rents." [Nov. 12].⁴⁸

At the time of these entries, old Ben could depend not only on his son but his clerk William Worth to assume much of the work relating to the collection of rents and holding court.⁴⁹ Generally, the younger Ben followed his father as steward or lord, and Worth became deputy steward. On April 30, 1798, Ben Senior held his last court at Langtoft and Baston; the next two days his son took over at nearby Thurlby and Hacconby Kirkby manors. By October of the same year Worth, who was never formally enrolled as an attorney, and young Ben assumed fully Benjamin Smith's court-holding tasks.⁵⁰

As English society in the late eighteenth century grew more sophisticated, it exhibited an increased need for professionals, especially attorneys, to administer parish business. Attorneys frequently assisted the justice of the peace by clerking at the Quarter Sessions. While there is no record that Benjamin Smith undertook this, he did clerk for enclosure, turnpike, and drainage commissions, for the Association for the Prosecution of Felons, and for several charities.

Enclosures were intended to improve land use and thus increase productivity. So-called "improving landlords" took to enclosures readily, using attorneys like Ben Smith to achieve their ends. The process for enclosure, similar in most localities, required a diligent and dependable

clerk to arrange meetings of the principal parish landholders to determine the advisability of enclosure.⁵¹ If agreement were reached, he prepared a petition to Parliament for an enclosure act, which started the enclosure process: First, there was an Enclosure Bill for the locality, introduced in Commons and passed through the usual process before becoming law; second, an Act containing details for enclosure of the lands and names of the enclosure commissioners; third, a detailed survey and plan of the parish or area to be enclosed, as completed by the commissioners and surveyor; fourth, written claims to the commissioners were made by those claiming to hold land or having grazing rights. (These were submitted to the commissioners for their acceptance, modification, or rejection.)

After the commissioners evaluated the existing landholding and common rights, they reordered the area to be enclosed: They designated new roads, watercourses, new plots of land in lieu of manorial rights, tithes, strip-holdings, rights of common, and so on. These new holdings had to be fenced and hedged; fifth, enclosing costs were computed and “rates” laid to meet them. These rates were apportioned among those awarded land, based on the value of the land; finally, the commissioners drew up the Enclosure Award, a summary of results and the permanent legal record of the local enclosure.

As early as 1764, Benjamin Smith became clerk of the Horbling Enclosure Commission and, perhaps, Bicker as well, facilitating the enclosure process.⁵² Three years later he served similarly the Newton Enclosure Commission and in 1769, the parishes of Thurlby and threckingham. He clerked for the Helpringham Enclosure Commission in 1772 and for Wilsford and Surfleet in about 1775. Two years later, he was appointed to the Quadring Commission, in 1779 to the one for Baston and Langtoft, in 1786 for Stow, and in 1789 for Pointon.

Smith’s handling of the Pointon enclosure (1789–1791), as recorded in his bill books, suggests his routine: drawing up an application to Parliament, placing the notices on the church door, returning to make sure that these notices were read, journeying for consents and signatures for petitions, attending the commissioners, writing innumerable notices and letters and “perusing” those received, explaining rival claims to claimants, publicizing meetings in the Cambridge and Stamford newspapers, and attending countless meetings.⁵³

These enclosure pursuits tell us, not surprisingly, that Smith worked energetically in the interest of the south Lincolnshire landholders. The Horbling and Pointon enclosures were particularly beneficial to the proprietors and correspondingly detrimental to the poor farmers, denying them their ancient common rights of entering land for purposes

of grazing, gathering herbs, or timber without committing trespass.⁵⁴ What are we to conclude about those who profited in this kind of venture? A recent evaluation of the Horbling and Pointon commissioners, which could have included the clerk as well, is that

they appear to have been honest men—careful, conscientious, and even considerate. If they could come back to life to-day they would probably repudiate with indignation any suggestion that they had been the instruments of injustice or oppression. They would assert that they had made every effort to obtain a true record of all the rights that would be extinguished by the enclosure, and due compensation had been made for all such rights that were recognized in law.⁵⁵

Such an assessment is consistent with what we know of Benjamin Smith—legalistic, basically fair, and faithful to men of property. This third attribute was confirmed in a letter Smith wrote to Lord Willoughby de Broke in 1773. Thanking Willoughby for supporting him for solicitor of the Helpringham Enclosure Commission, the attorney promised that he would “use my utmost endeavours to prove to your Lordship you have not made an improper Choice. I will have an Eye to y[ou]r Lordship’s Int[erest] & hope by my *Impartiality* [author’s italics] to please not only your Lordship but the rest of the proprietors, too.”⁵⁶

Beyond managing copyholds and facilitating enclosures, Ben Smith, and presumably other country attorneys like him, found employment and preferment in still other developments affecting rural England at the end of the eighteenth century. In the professional lifetime of the Smiths, father and son, transport underwent profound change: The coaching network was established during the lifetime of the former and rail service during that of the latter. That coaches spurred an effort to get beyond the poorly maintained parish roads was only part of the story. Internal improvements—roads, canals, ports, fen drainage, and markets—were a necessary concomitant to agricultural and industrial expansion. Although parish roads were significantly improved when linked with enclosure projects, they improved most dramatically with the introduction of turnpikes.⁵⁷

Such road construction was fostered by turnpike trusts, executing a parliamentary act that the trustees—the local landholders—had initiated in the first place. The establishment of a trust allowed a locale to dispense with the inadequacies of a road system based on a parish rate assessment or labor obligations imposed on the local inhabitants.⁵⁸ Because creation of a turnpike trust required capital, the large sums forthcoming in Lincolnshire as elsewhere required the enterprise of the same proprietors who promoted enclosures. The trust had responsibility

for maintaining a section of road and levying user tolls to pay for its upkeep. More important, improvements could be financed and loans serviced by future tolls. The trusts usually focused on roads under constant use for both local and long-distance travelling or those that best served the interests of the trustees.

Although turnpikes appeared in Lincolnshire late in the seventeenth century, the late 1750s marked the beginning of their greatest progress in that county.⁵⁹ Efforts to build turnpikes in the so-called Southeast District, principally the road from Peterborough and to the east side of Lincoln Heath and certain adjacent roads, began as early as 1756.⁶⁰ Although there is no evidence that Smith was initially involved in this venture, his patrons Daniel Douglas and the Browns were.⁶¹

When Smith did enter the scene—marginal notes in his hand appear on documents as early as 1767—he performed essentially as he did with enclosures. He may have been clerk to the Bridgend Pike as early as 1770, having been charged to obtain parliamentary approval for that section from Horbling to Donington in 1770.⁶² In 1784, he was appointed clerk to the “Trustees for repair of the Roads from Donington High Bridge to Hacconby Way Post” at a stipend of five guineas per annum.⁶³ In 1794, he succeeded the deceased Daniel Douglas as treasurer to both the Bridgend and Southeast District Trusts.⁶⁴ Smith appears to have convened turnpike trust meetings, at least those for the Southeast District, every third week at the George in Billingborough or the Bull in Bourne, from the mid-1780s until 1800.⁶⁵

Although trust meetings often failed for lack of quorum, matters of trustee concern were preserved in Ben Smith’s hand in the minutes of May 22, 1786: “The House that was erected at Point Fen Bar for the purpose of preventing Cattle & Carriages passing through Pointon Fen & Cow pasture to evade the Tolls at Bridge End Bar not answering the end for which it was intended & the Parishioners of Pointon being desirous that the same might be removed—Ordered that the said house be taken down.”⁶⁶

Turnpikes, like enclosures, if beneficial to some caused popular outcry by others. As one historian noted: “The turnpikes were by the lower classes, universally regarded as an obnoxious regulation—more adapted for the convenience of the wealthy portion of the community whose carriages could hardly pass on the old roads. . . .”⁶⁷ Mob action, such as it was, was commonly directed against the symbols of outrage, the toll gates and houses. The years of service on the Turnpike Commission by the Smiths, father and son, must be seen for what it was:

They [turnpikes] did make a valuable contribution to economic devel-

opment, but it must be remembered that they were promoted by a relatively few economically and politically powerful people in their own interests and at the immediate expense of the great majority of the population. Both enclosures and turnpike trusts were helpful to transform the face of the English countryside during the eighteenth century, as common lands increasingly gave way to fenced fields and the once open roads were closed off by toll gates. In most cases the men standing behind the fences and the gates were the same—the improvement minded gentry. This is not unexpected, for enclosure and road improvement were highly complementary investments.⁶⁸

Drainage schemes also proved crucial to the economic resurgence of rural England late in the eighteenth century.⁶⁹ Benjamin Smith's appointment in 1782 as clerk of the Black Sluice Drainage Trust was consistent with the other roles he played in serving the improver gentry. Black Sluice had to do with fen drainage in Skirbeck Quarter, intended to drain the Holland and Kesteven fens between Kyme and Bourne.⁷⁰ That nineteenth-century Lincolnshire's prosperity was in part the consequence of increased fenland productivity indicates the importance of this venture.

Lincolnshire drainage projects were rarely realized before the great burst of energy of the 1760s; only that of Deeping Fen after the Restoration amounted to anything.⁷¹ Otherwise, the old channels were merely patched as necessary. The great flood of 1763, which spared hardly an acre of the 22,000 in Holland Fen, precipitated action. Fenland proprietors met at the White Hart Inn in Boston at the end of April, 1764, and there decided to improve regional drainage by repairing the old Black Sluice, which had lain in ruins for a century. The landholders and corporation of Boston obtained a parliamentary act for this purpose⁷² Responsibility for undertaking this scheme rested with a commission consisting of a single representative from each of the numerous parishes involved.

The act stipulated qualifications for those landholders having a voice in Black Sluice matters and those acting as commissioners. The latter were elected for three years, but could be continued in office. Each commissioner was empowered to appoint a deputy and allowed five shillings a day for expenses while executing the act. This amount was to be paid by the parish represented. The act limited the taxes incurred by the various parishes and authorized the commissioners to appoint a receiver of taxes and a treasurer, clerk, surveyor, and such other officers as needed.

Finance and security were two basic considerations. The Black Sluice was to be financed from rates collected by a vestry of two persons

selected from those living in each parish or township. If the funding proved inadequate, the commissioners were empowered by a later amendment to double the former taxes. They had also to be concerned about the lawlessness of fenmen who might vandalize the banks or works. In 1768, just two years after the passage of the Drainage Act and with Holland fen enclosed and divided, some rioting did ensue. Black Sluice, like enclosures and turnpikes, was perceived as a local landholder enterprise that oppressed the poor, in this case the fenmen.

Benjamin Smith was clerk to the Black Sluice commissioners for many years—probably, as with his other clerkships, until the end of the 1790s. Once again, he owed the appointment to Daniel Douglas who was a Black Sluice as well as turnpike commissioner. Douglas paid Smith's stipend, as he had for his turnpike duties, directly from his personal account, which Smith administered.⁷³ In 1793, Smith was even nominated by his good friend Thomas Forsyth to be treasurer, but evidently was ineligible because of his clerkship.⁷⁴ Benjamin, Jr., succeeded his father as clerk on the commission, serving for half a century after his father's retirement.⁷⁵

The gentry of south Lincolnshire as elsewhere in England were usually God-fearing and concerned for the moral well-being of their fellows. They created charities designed to improve the character and intellect of the less fortunate in much the same spirit as they "improved" agriculture to enhance their own and the region's prosperity.

The most notable of these local charities was founded by Thomas Cowley of Wikes in Donington parish early in the eighteenth century. Its purpose was to assist the poor, the aged, and, especially, to hire a schoolmaster "for teaching 20 poor children in Donington to read English and write."⁷⁶ As the years passed, virtually all the proceeds from the Cowley bequest supported two boys' and two girls' schools.⁷⁷ The Anthony Barnes testament of 1727 undertook to provide for impoverished clergymen's widows, the education of clergymen's sons, and "chaldrons of coals" and shoes for the poor.⁷⁸ In Billingborough, a Toller bequest established a school late in the seventeenth century; Robert Kelham, Smith's agent in London, similarly endowed his native Billingborough with monies and six New Testaments for poor students. Additionally, there were charities established by Thomas Buckberry, Mary Gould, and a school in Horbling by an earlier Edward Brown in 1691.⁷⁹

As he had for enclosure, turnpike, and drainage commissions, Ben Smith served as clerk or secretary for some or most of these charities. His professional association and close personal ties with the Browns, Tollers, Robert Kelham, the Buckberrys, and Goulds, of course, facil-

itated such a role.⁸⁰ Both Benjamin Smiths, but the son especially, devoted much time and effort to the Cowley charity.⁸¹

Lawlessness in eighteenth-century England is a theme that has attracted the interest of scholars in the last few years, and it bears on the present narrative of the Smiths of Horbling.⁸² Those who won their worldly goods by “improving” their land had every intention of safeguarding it. Douglas Hay has suggested that the criminal law in eighteenth-century England was intended to terrorize those who coveted the property of the wealthy.⁸³

Benjamin Smith’s perceptions of contemporary criminal law are unknown; however, his actions against lawlessness are consistent with those on enclosures, drainage, and turnpiking. In 1788, he and other landowners reacted to a rash of horse, cattle, and sheep thefts by organizing The Folkingham (Falkingham) Association for Prosecuting Felons and other robbers. Such self-help was a usual response at that time to uneven law enforcement and to provincial courts manned by amateurs.

At the first meeting of the Falkingham Association, Ben Smith was named clerk and treasurer.⁸⁴ In such a role it may be assumed that he participated prominently in drafting the articles of intent.⁸⁵ These stated that anyone committing felonies against the subscribers or their property within a ten-mile radius of the town of Folkingham would be brought to justice and punished. If the victim were unable to prosecute, “the Clerk of this Association shall immediately call a Committee . . . for the Purpose of considering whether such Person ought to be allowed the Assistance of the Society.” The document also contained a scheme of rewards, based on the seriousness of the offence, from which constables, peace officers, and subscribers were generally excluded.

The articles of incorporation were signed by the principal landholders of the area, most of them clients of Ben Smith and many of them personal friends, as evidenced by his son’s diary. As clerk and treasurer, Ben Smith recorded the dues paid or owed by the subscribers and oversaw procedures for informing the Association of a felony. The dues for those subscribing as tallied on February 5, 1789 were £10 5s. 0d. Benjamin Smith’s report as clerk/treasurer, prepared for each annual meeting, recorded this income and such expenses as advertising the meeting and thefts and copying the rule book. Smith received no compensation for his work. The annual meeting usually convened at the Five Bells in Folkingham, although occasionally it assembled at the Greyhound in the same market square. That this organization endured into the second half of the next century testifies to the cohesiveness of the landholder community to which Ben Smith belonged.

Wealth and Status

Attorneys in late eighteenth-century England appear to have averaged about two hundred to three hundred pounds per annum from their practice.⁸⁶ It is difficult to be precise about Smith's income from the practice of law, for his books simply do not indicate annual profits. One ledger, an "Account of Money Received, 1771–1794," lists "money received" for certain periods and the portions of this which were "neat profit." His receipts from April 6, 1771 to the same date a year later were £368 8s. 11 $\frac{1}{2}$ d.; of this amount £263 3s. 9 $\frac{1}{2}$ d., or 71 percent, was recorded as profit. Unfortunately, Smith rarely recorded in this ledger both income and profit. In two other instances he did: for the three-month period April 6, 1776, to July 7, 1776, he received £116 2s. 4 $\frac{1}{2}$ d. of which £97 7s. 5d. was designated as profit. From April 10, 1778, to October 11, 1778, his receipts totaled £105 18s. 11 $\frac{1}{2}$ d.; £76 5s. 11 $\frac{1}{2}$ d., or 72 percent, was profit. That the quarterly profits for 1776 exceeded the semi-annual ones for 1778 suggests the risks of using these three- and six-month figures.⁸⁷

Such information for Benjamin Smith, Jr., from 1807 (the year of his father's death) may provide a clue, but little more, to the elder Ben Smith's profits from lawyering in the 1780s and 1790s. Smith, in partnership with the elder and subsequently the younger William Worth, took three-quarters of the profits. In 1807, this meant £834 2s. 6 $\frac{3}{4}$ d. for Smith and £278 10 1 $\frac{1}{4}$ d. for Worth; for the next year Smith received £1,657 4s. 2 $\frac{1}{2}$ d. and Worth £552 8s. 3 $\frac{1}{4}$ d. The best year between 1807 and 1820 was 1814 when Benjamin Smith, Jr., netted £2,069 and the younger Worth, nearly £670. Other years nearly equalled this profitability.⁸⁸

Even if the elder Ben Smith's income from legal fees was modest by comparison, other sources provided him a comfortable annual income. His manorial stewardships and lordships allowed him to gather rents, charge fees for court holding, and collect for the fines levied in court. These offices were in every case passed on to his son. Beyond these stewardships and lordships, Smith took commissions for collecting rents and charged for estate management and banking, or investment counselling.

Clerking stipends were not considerable. The records show that he received the following for serving as clerk to the Turnpike trustees: in 1789, £5 13s. 0d.; in 1790, the sums of £5 15s. 8d. and £7 9s. 6d.; in 1791, £5 13s. 6d.; in 1792, £6 5s. 6d. His clerkship for the Black Sluice commissioners during the same years was more lucrative: in 1788, £16;

in 1789, £30 7s. 0d.; in 1790, £25 0s. 7d., but he may have received an additional £130; in 1791, £21 12s. 11d.; and in 1792, £30 0s. 3d.⁸⁹

Material accumulation was by no means the only measurement of status. Benjamin Smith possessed valuable London contacts in Thomas Forsyth, a Folkingham landholder who had a house in Wimpole Street in London; Robert Kelham, the notable antiquarian and legal scholar, who had holdings in Lincolnshire and served as Smith's agent in London; Gaskell and Johnson, staunch friends and benefactors to young Benjamin Smith, Jr., were also Benjamin Smith's London agents; the banker Marmaduke Langdale, whose daughter married Smith's younger son, Edward, was still another conduit for Smith's business in London.⁹⁰ These contacts surely signaled greater status and presumably more earning power for Benjamin Smith in his later years. When Benjamin Smith, Jr., made his way to London in the mid-1790s, he sought out these people who, indeed, assisted him then and continued as his contacts in ensuing years.⁹¹

In addition to land-managing income and the rewards accruing from investing, one may assume that Smith engaged in some of these activities for his own profit. He seems not to have amassed a huge estate in land, although he bequeathed lands to Benjamin, Jr., Francis, and daughter Elizabeth.⁹² That his nephew amassed some three thousand acres a generation later suggests that it may have come from his or his father's (Francis') efforts rather than those of the elder Benjamin.⁹³ The younger Benjamin left an estate in 1857 valued at some £140,000, but this testifies as much to the business acumen of the son as to the bequests of the father.

Benjamin Smith's estate in 1807 was modest in comparison with that of his son a half-century later. The senior Smith left his wife an annual annuity of one hundred pounds to be paid twice yearly. He bequeathed his sister twenty-four pounds annually with a similar prescription for payment. His daughter Elizabeth received seven thousand pounds, his son Edward, eight thousand pounds, and his son Francis, twenty-five hundred pounds. The lands left to Benjamin and Francis greatly exceeded these amounts.⁹⁴ The firm passed to Benjamin, Jr., but its value in terms of good will appears not to have been a consideration at this date.

Benjamin Smith: Personal

Jane Austen and Anthony Trollope, among others, recorded the preoccupation with status and money in England early in the last

century. This theme impinges on attorney Ben Smith in the context of his material acquisitions.⁹⁵ Neither his obscure origins nor his marriage suggest initial advantages. Clearly, he profited from his patrons and the lesser gentry—his clients and friends—with whom he surrounded himself. He saw to the well-being of his children: one son entered the law, another the church, the third became a grazier, and the daughter married a physician.

The personal facts about Ben Smith are these: He was born in 1731 in St. Peter's Eastgate, Lincoln, to Benjamin and Elizabeth Smith.⁹⁶ In 1767, he married Elizabeth Fryer, nearly ten years his junior, from neighboring Spanby.⁹⁷ Of their seven children, four survived. The eldest was Elizabeth, who, marrying late in life a Dr. Bloomfield, resided in Folkingham.⁹⁸ The eldest surviving son was Benjamin, born on January 21, 1776.⁹⁹ Because Benjamin, Jr., was childless, the line of descent passed through Francis the grazier, who resided at Monk's Hall in Gosberton.¹⁰⁰ The youngest son, Edward, or "Ned", schooled at Uppingham and Cambridge, became a clergyman. Ned's marriage to Sarah Langdale produced two children, neither of whom lived to maturity.¹⁰¹

The records indicate the elder Ben Smith's professional dedication, riding from village to village, but usually no farther north than Lincoln for the Assizes or south to Stamford and Grantham. Unlike his contemporaries—the attorneys Charles Tennyson of Great Grimsby, David Atkinson of Louth, and those solicitors' firms in Sleaford and Lincoln—Smith was an anomaly, operating as he did from the village of Horbling. Serving his catchment area necessarily required being on the road a good deal of the time. Occasionally, he went to London, generally to consult with his agents but once for the satisfaction of showing young Ben around legal London and making important introductions.¹⁰² His travels also included occasional visits to Walsingham in Norfolk and annual trips, presumably for August-September holidays, to the High Peak district of Derbyshire.¹⁰³

We have few insights on the amusements and pastimes of Benjamin Smith, Sr. His cash books reveal that he occasionally won or lost at cards, enjoyed attending court dinners, and often took tea with or entertained friends in and around Horbling, Billingborough, and Folkingham. Upon retiring as attorney late in 1798, Smith proceeded to relinquish his stewardships and lordships of manors and various clerkships in favor of his son, Ben. His travelling had diminished, although he continued to maintain his accounts, especially crucial ones such as those of the Widow Douglas. In early October, Ben Smith, Sr., and his wife moved their household to the market town of Folkingham, leaving the Horbling house and law office for their son Benjamin.¹⁰⁴ Benjamin

Smith died in Folkingham in 1807 and his wife Elizabeth in May, 1820.¹⁰⁵

The records of business reveal little about the personality of Benjamin Smith. His son's diary suggests that he was a firm father who had his son's respect and the trust of his clients. Benjamin, Sr., was undoubtedly an intelligent, shrewd fellow. He cultivated important contacts, served them well, and used them to place his heir advantageously. His records show that he planned well for his family, especially Benjamin, whom he groomed to continue his work in the law, business ventures, and community service.

Conclusion

Benjamin Smith, Jr., carried on the business with even greater material success than his father. For some years, he continued using the small building behind his residence, Red Hall, as the firm's office. In 1814, he built an office in the Donington marketplace, and in 1825, he built what became and remains today the main office, that in Spring Lane in Horbling.¹⁰⁶

The firm of Benjamin Smith had a succession of partners during its first century: The elder William Worth, whose articles of clerkship were dated 1793, became a partner probably after the elder Benjamin Smith's death; Worth himself died in 1811. The name of the firm, Smith and Worth, continued as he was succeeded in the partnership by his son, also William, who had apprenticed in the firm. This arrangement with the Worths, three-quarters of the firm's profits for Smith and one-quarter for Worth, lasted until 1817 when it was dissolved by Smith who charged Worth with drunkenness.¹⁰⁷ After Worth's departure, Smith invited the firm's clerk, William Wilkinson, to join him in the partnership of Smith and Wilkinson. Wilkinson's tenure in the firm lasted until 1846 when he had a seizure, becoming "violent and quite mad." When Wilkinson died in Lincoln two years later, Benjamin Smith took George Wiles as partner. In 1854, after suffering a stroke, Smith himself retired from the partnership.¹⁰⁸

This account of the elder Benjamin Smith is but half the story of the early Attorney Smiths of Horbling; that of the son remains to be told. The narrative of the father is remarkable in large measure because it was unremarkable: He was but one of a breed of country attorneys whose professionalism, range of services, country loyalties, and involvement in the local economy contributed significantly to England's economic resurgence at the end of the eighteenth century.

NOTES

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1. See, for example, J. H. Baker, "Solicitors and the Law of Maintenance 1590–1640," *Cambridge Law Journal* 32 (1973): 56–80 and C. W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986) passim. The Baker and Brooks bibliographies are very useful.

2. On February 13, 1739, attorneys, solicitors, and proctors from the church courts united to form the Society of Gentlemen Practisers in the Courts of Law and Equity. This society in 1831 became the Law Society, which has continued to the present as the accrediting body for solicitors. Remaining distinctions, such as they were, between attorney and solicitor were finally eliminated by the Judicature Acts of 1873.

3. See Michael Miles, "'Eminent Attorneys': Some Aspects of West Riding Attorneyship c. 1750–1800" (Ph.D. diss., University of Birmingham, 1982), 100. This work also contains an excellent chapter on eighteenth-century "attorney" literature. For an excellent work on the attorney before the eighteenth century and popular perceptions of him, see Brooks, *Pettyfoggers and Vipers*. Philip Aylett, "Attorneys and Clients in Eighteenth-Century Cheshire: A Study in Relationships, 1740–1785," *Bulletin of John Rylands Library* 69 (1987): 326–58 discusses the attorney-client relationship which surely pertains in other counties. See also W. S. Holdsworth, "The Solicitors" In *History of English Law* 17 vols. (London, 1956), 6:448–57; E. B. V. Christian, *A Short History of Solicitors* (1896); idem, *Solicitors: An Outline of their History* (1925); and Henry Kirk, *Portrait of a Profession: A History of the Solicitor's Profession 1100 to the Present Day* (London: Oyez Publishing, 1976).

4. G. S. Holmes, *Augustan England: Professions, State and Society, 1680–1730* (London: George Allen & Unwin, 1983), 13. See idem, "Gregory King and the Social Structure of Pre-Industrial England," *Transactions of the Royal Historical Society*, 5th ser., 27 (1977): 41–68.

Several older studies of the attorney for this period are Robert Robson, *The Attorney in Eighteenth-Century England* (Cambridge: Cambridge University Press, 1959); Michael Birks, *Gentlemen of the Law* (London: Stevens & Sons, 1960); P. Lucas, "Blackstone and the Reform of the Legal Profession," *English Historical Review* 77 (1962); and Barbara Kerr, "Country Professions," in *The Victorian Countryside*, ed. G. E. Mingay, 2 vols. (London: Routledge & Kegan Paul), 1: 288–99. More recently, see Philip Aylett, "A Profession in the Marketplace: The Distribution of Attorneys in England and Wales 1730–1800," *Law and History Review* 5 (1987): 1–30. This article is derived from "The Distribution and Function of Attorneys in the Eighteenth Century, with Special Reference to North-West England" (M. Phil. thesis University of Manchester, 1984).

For other professions, see Noel and Jose Parry, *The Rise of the Medical Profession*

(1976); Rosemary O'Day, "The Professions in Early Modern England," *History Today* 36 (June, 1986); idem, *The English Clergy: the Emergence and Consolidation of a Profession 1558–1642* (Leicester, 1979); and Eric Robinson, "The Profession of Civil Engineer in the Eighteenth Century: A Portrait of Thomas Yeoman, F.R.S., 1704(?)–1781," *Annals of Science* 4 (1962): 195–215.

For the professions as part of the eighteenth-century consumer revolution, see below, note 95.

5. Michael Miles is skeptical about upward mobility of eighteenth-century attorneys. He believed that most who entered the professions were sons of gentry and "well-endowed" middling people. "'Eminent Attorneys,'" 374. "Middling" he describes as merchants, tradesmen, retailers, yeomen freeholders and professional men. *Ibid.*, 55. He explores this theme again in "'A Haven for the Privileged': Recruitment into the Profession of Attorney in England, 1709–1792," *Social History* 2 (1986): 197–210.

6. 2 Geo. II, ch. 23, secs. 1–3, 5 (1728).

7. Miles, "'Eminent Attorneys,'" 31. Geoffrey Holmes also discusses the hardying assumptions that attorneys could make it without much formal instruction, merely a short clerkship. See Holmes, *Augustan England*, 154–55.

8. The Benjamin Smiths, father and son, whose careers spanned a century from the 1750s to the 1850s, emerge principally from the Smith of Horbling Papers in the Lincolnshire Archives Office (LAO). After the death in 1959 of Francis G. Smith, Esq., the founder's last descendant active in the firm, the bulk of the business records were removed to the LAO, located in what was once the county prison. These two centuries of records required a van to transport and several sturdy prison cells to house them. (*LAO Archivist's Report* 12 (1961): 38–41; *ibid.* 13 (1962): 32–48.)

Papers in the LAO pertaining to the affairs of Attorney Benjamin Smith:

Cash Books. This record of income and disbursements provides insight on personal matters—wife's pin money, losses at cards, livestock sales, clothing, wig and book purchases, and much more—as well as the firm's business. The entries are terse and therefore insufficiently informative were it not for the bill and debt books.

Bill and Debt Books. These, in effect, are business diaries that record in each client's account the details of the service performed, the fee charged, and the date (most often) of payment. Comparing this source with the cash books enables one to determine the details behind those cash receipts and payments associated with the firm's business.

Money Received. These detail the monies received from each client with a brief description of the services rendered and allows the possibility of computing professional income. When used in conjunction with the two above, one can ascertain annual income from legal fees and the nature of the services performed. One volume, entitled Receipts and Payments, itemizes payments as well.

Precedent Books. Prepared by William Worth, Sr., Smith's clerk and eventual partner, these books narrate intriguing legal problems that Smith resolved by obtaining expertize opinion from Lincoln's Inn.

Diverse papers. These relate to Ben Smith's manorial stewardships and lordships, his clerking for the numerous enclosure, turnpike, and fen drainage commissions, charities, and a law and order association and explain this country attorney's regional role outside the strict confines of his profession.

Letters. Of the few letters remaining, most are inconsequential.

Privately owned papers presently in the possession of Harry Bowden, Esquire, of Spalding, Lincolnshire:

The diaries of Benjamin Smith, Jr., 1794–1799; 1817–1854. Although daily entries

are generally brief, they often explain matters alluded to in the business papers. The diaries also permit a reconstruction of the work habits as well as personal life of Benjamin Smith during the 1790s, the last decade during which he was professionally active. There is no satisfactory explanation of the gap between 1799 and 1817. One theory is that the second Mrs. Smith (Benjamin Smith, Jr., married Frances Graves in 1821) wished to destroy references to the first (Harriet Martin, who died 1808). H. H. Cooper, managing clerk of the firm for most of the first half of the present century, compiled a chronology of the first Benjamin Smiths. Noting that "the diaries from 1798 to 1811 were destroyed," he did include references to the years between 1811 and 1817.

Benjamin Smith, Jr.'s, *Commonplace Book*, 1793. This is an important source for the younger Smith's legal learning.

Douglas Account Book. This most important surviving account of the elder Benjamin Smith shows the volume and nature of work done by Smith for Daniel Douglas and his widow Jane.

Miscellaneous.

Two portraits of Benjamin Smith, Jr., owned by Mr. Bowden.

Public Record Office and Law Society, both in Chancery Lane, London.

Benjamin Smith's will is available at the Public Record Office in Chancery Lane. (PRO, Probate 11/1460, Benjamin Smith). His enrollment as an attorney is also documented there as in the records of the Law Society, also in Chancery Lane. (PRO, K.B. 105, Rolls of Attorneys, 1729-1788, at 261 and Law Society, Chancery Rolls, 1729-1791.)

9. Curiously, PRO (Chancery Lane) Affidavits of Due Execution, King's Bench Articles of Clerkship, and PRO (Kew) Stamp Office Registers of Apprentices both list a Benjamin Smith registered as an apprentice to one Thomas Thoresby in Lincoln's Inn, 1756-1761. This Benjamin Smith was, however, from Deale in Kent.

10. The source for this is a memo, dated 1940, by George Smith, Esq., a descendant of Smith and partner in the firm. There is no evidence why Smith so speculated. Flimsy as this evidence is, it possesses plausibility. This memo also stated that Benjamin Smith succeeded Matthias Brown as agent for the Brown estates.

11. Miles believes that such blurring of the lines would have been more typical of the late seventeenth and early eighteenth centuries than of the 1760s. [Letter of July 31, 1986] Smith did serve as deputy steward of the manor of Meres to Edward Brown as early as 1758. The long service to the Browns by the Smiths, father and son, is discussed at greater length below.

12. LAO, Mormon, Births C0072: "Benj Smith born 13 June 1731 to Benj and Eliz of Lincoln, St. Peter East Gate." Harry Bowden's genealogical notes confirm the validity of this reference. Smith in his will gave "to John Hardill of the parish of Saint Peter in Eastgate in the city of Lincoln gentlemen the sum of thirty pounds" to be held in trust for his niece and also left monies to the poor of that parish. (Cf. PRO, Will of Benj. Smith.)

Harry Bowden's Smith genealogy lists Benjamin Smith's grandfather, also Benjamin, as a weaver who died in 1729. The same genealogy provides no occupational label for the father, who may have lived until 1778. Apprenticeship records at the Public Record Office in Chancery Lane generally omit parents' names after 1752.

13. Miles, "Eminent Attorneys," 56.

14. LAO, Smith 4, Manorial, Meres.

15. See Miles, "Eminent Attorneys," 95-97 for a full description of the law clerk's duties. I am indebted to John Baker for the "managing clerk" suggestion.

16. There were unavoidable costs in setting up a law practice: acquisition of chambers, library, furniture, and an adequate supply of parchment, paper, ink, and quills. Most important, capital was required to tide one over until monies started to come in for services rendered. One could expect no such payments until the services were fully performed. See Miles, "Eminent Attorneys," 72–73.

17. What he did professionally during the 1760s is recorded in two sources, LAO, Smith 11, Firm's business, Bill and Debt Book, 1761–1766 and *ibid.*, Bills, 1765–1789.

18. References to the above services performed by Smith are in LAO, Smith 11, Firm's Business, Bill and Debt Book 1761–1766, at 1–9. Smith's professionalism is further evidenced in the numerous precedent books (LAO, Smith 11, Firm's Business) drafted by his clerk William Worth. These cases are Smith's own and those of his Lincolnshire clients with the opinions rendered by others, generally from Lincoln's Inn. A letter addressed to Benjamin Smith, Jr., in 1797 illustrates the network of scholarly assistance developed by the elder Smith:

[Queen Square, September 11]

We have seen Mr. Ainge [of Lincoln's Inn] on this business and underneath you receive copies of his answers & remain y[ou]r able s[ervan]t.

Johnson & Gaskell [Smith's London agent]

The assignm[en]t of the term will substantially bar the Dower & the Circumstance of the Seal being broken off will not alter the case not at all—affecting the Legal Est[ate] which remains in the Mort[gage]. . . .

The property of each partner is certainly liable to the joint debts which must be [unclear] paid & the residue if any of the separte [sic] Est[ate] of either party will be applicable to the paym[en]t of his own private debts.

(letter stuck in LAO, Smith 11, Firm's Business, Cases 1797)

19. LAO, Smith 11, Firm's Business, Bill and Debt Book, 1761–66, at 12.

20. See "Kelham" in *LAO Archivist's Report* 18 (1966–67): 29–30. Holdsworth believes that Kelham, whom he designates "attorney, antiquarian, and student of Domesday Book," was responsible for a concordance of abridgements in 1758, "chiefly calculated to facilitate the references to the General Abridgement of law and equity by Charles Viner Esqre." Holdsworth, *History of English Law* 12: 167, 403.

21. For background on attorneys, scribes, and conveyancing see Birks, *Gentlemen of the Law*, 68–86, and D. C. Coleman, "London Scribes and the Estate market in the Later Seventeenth Century," *Economic History Review*, 2d ser., 4 (1951–52): 221–30.

The best general work on credit is P. G. M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Credit, 1688–1756* (London, 1967). See further, Peter Mathias, "Capital, Credit, and Enterprise in the Industrial Revolution," *Journal of European Economic History* 4 (1973); Jacob M. Price, *Capital and Credit in British Overseas Trade: The View from the Chesapeake 1700–1776* (Cambridge, Mass.: Harvard University Press, 1980), 44–123; B. L. Anderson, "Law, Finance and Economic Growth in England: Some Long-term Influences," in *Britain and Her World, 1750–1914*, ed. B. M. Ratcliffe (Manchester: Manchester University Press, 1975); and John Brewer, "Commercialization and Politics: Credit, Clubs, and Independence," in *The Birth of a Consumer Society: The Commercialization of Eighteenth-Century England*, ed. Neil McKendrick, John Brewer, and J. H. Plumb (Bloomington: Indiana University Press, 1985), 203–30.

On rural credit and attorneys, see B. L. Anderson, "Provincial Aspects of the Financial Revolution of the Eighteenth Century," *Business History* 11 (1969); *idem*,

"The Attorney in the Early Capital Market in Lancashire," in *Capital Formation in the Industrial Revolution*, ed. Francois Crouzet (London: Methuen, 1972), 223–24; and idem, "Money and the Structure of Credit in the Eighteenth Century," *Business History* 12 (1970): 85–101; Peter Mathias, "The Lawyer as Business Man in Eighteenth-Century England," in *Enterprise and History*, ed. D. C. Coleman and Peter Mathias (Cambridge: Cambridge University Press, 1984); Michael Miles, "The Money Market in the Early Industrial Revolution: the Evidence from West Riding Attorneys c. 1750–1800," *Business History* 23 (1982): 127–46; and E. Spring, "Landowners, Lawyers and Land Law Reform in Nineteenth-Century England," *American Journal of Legal History* 21 (1977): 40–59.

See also L. S. Pressnell, "Money, Finance, and Industrialization," *Business History* 9 (1969): 128–33; S. Pollard, "Fixed Capital in the Industrial Revolution in Britain," *Journal of Economic History* 24 (1964); B. A. Holderness, "Credit in English Rural Society before the Nineteenth Century, with Special Reference to the Period 1650–1720," *Agricultural History Review* 24 (1976): 97–109; "Credit in a Rural Community, 1660–1800: Some Neglected Aspects of Probate Inventories," *Midland History*, 1975; "Landlord's Capital Formation in East Anglia, 1750–1870," *Economic History Review* 25 (1972): 434–47; and Holderness's critique of Anderson in "Elizabeth Parkin and her Investments, 1733–66, Aspects of Sheffield Money Market in the Eighteenth Century," *Transactions of the Hunter Archaeological Society* 10, no. 2 (1973).

22. In the mid-eighteenth century there were only a dozen country banks throughout England; by 1797 this number had increased to 230; by 1810, to 721. David Grigg, *The Agricultural Revolution in South Lincolnshire* (Cambridge: Cambridge University Press, 1966), 39–40. In 1800, south Lincolnshire had four in Stamford and one each in Bourne, Sleaford, Grantham, Boston, and Lincoln. H. Porter, "Old Private Banks of Southern Lincolnshire," *Lincolnshire Magazine* 3, no. 2 (1935) and idem, "Lincolnshire Private Bankers," *ibid.* 5, no. 3 (1937).

Even where banks existed in the smaller towns they did not seriously inhibit the work of the country attorney and his credit lines. Michael Miles has noted that "The quantity of such business conducted by the attorneys here [West Riding of Yorkshire] was, if anything, increasing at the end of the eighteenth century rather than showing any signs of dwindling. There was so much money-lending business available that the attorneys were unlikely to have their position usurped." Miles, "The Money Market." The same conclusions are applicable to Lincolnshire. See also Michael Miles, "Eminent Practitioners: The New Visage of Country Attorneys c. 1750–1800" in *Law, Economy and Society, 1750–1914: Essays in the History of English Law*, ed. G. R. Rubin and David Sugarman (London: Professional Books, 1984); L. S. Pressnell, *Country Banking in the Industrial Revolution* (Oxford, 1956), 41–44, 265, and *passim*; and Rondo Cameron, "England, 1750–1844," in *Banking in the Early Stages of Industrialization*, ed. R. Cameron et al. (Oxford, 1967), 15–59.

23. R. Campbell, *The London Tradesman, being a compendious view of all the trades, professions, arts, both liberal and mechanical, now practised in the cities of London and Westminster. Calculated for the information of parents, and instruction of youth in their choice of business* (London, 1747), 79–80. As cited in Miles, "Eminent Practitioners," 475.

24. The quotation is from B. L. Anderson, "Provincial Aspects of the Financial Revolution of the Eighteenth Century," *Business History* 11 (1969): 12. For interest rates, see L. S. Pressnell, "The Rate of Interest in the Eighteenth Century," in *Studies in the Industrial Revolution: Essays to T. S. Ashton* (London: University of London, 1960), 178–214; T. S. Ashton, *Economic Fluctuations in England, 1700–1800* (Oxford, 1959); Carol Heim and Philip Mirowski, "Interest Rates and Crowding-Out During

Britain's Industrial Revolution," *Journal of Economic History* 47 (1987): 117–39; H. J. Habakkuk, "The Long-term Rate of Interest and the Price of Land in the Seventeenth Century," *Economic History Review*, 2d ser., 5 (1952–53): 26–45; C. Clay, "The Price of Freehold Land in the Later Seventeenth and Eighteenth Centuries," *ibid.*, 2d ser. 27 (1974): 173–89; and, more recently, Robert C. Allen, "The Price of Freehold Land and the Interest Rate in the Seventeenth and Eighteenth Centuries," *ibid.*, 2d ser., 41 (1988): 33–50. The last contains a useful bibliography.

25. B. L. Anderson, "Provincial Aspects of the Financial Revolution," 18. This amalgam of attorneys, land agents, and bankers as it pertained to Lincolnshire is discussed briefly in R. J. Olney, *Rural Society and County Government in Nineteenth-Century Lincolnshire* (Lincoln: History of Lincolnshire Committee, 1979), 46–51, and T. W. Beastall, *The Agricultural Revolution in Lincolnshire* (Lincoln: History of Lincolnshire Committee, 1978), 90–91. See also B. A. Holderness, "Rural Society in S. E. Lindsey, Lincolnshire, 1660–1840," (Ph.D. diss., Nottingham University, 1968).

26. Julian Hoppit has recently argued the ambiguous consequences of credit:

Crises of public and private credit were, in large part, a function of their novelty, most likely where speculation and dependence on confidence were greatest. Crises of private credit were the product of growth, the increasing use of credit to enable growth, and the nature of credit itself. The fundamental cause of crises of private finance was the increasing use of working capital, more specifically trade credit, associated with growth, while the proximate cause which determined their precise appearance was the occurrence of sudden changes in economic conditions, or the over-expansion of the particular mechanisms being employed.

Julian Hoppit, "Financial Crises in Eighteenth-Century England," *Economic History Review*, 2d ser., 39 (1986): 57. For a fuller discussion on credit, creditors, and bankruptcy, see *idem*, *Risk and Failure in English Business 1700–1800* (Cambridge: Cambridge University Press, 1987).

27. For widows and investments, see B. A. Holderness, "Widows in Pre-Industrial Society: An Essay Upon their Economic Functions" in *Land, Kinship and Life-cycle*, ed. Richard Smith (Cambridge: Cambridge University Press, 1984), 423–42, and *idem*, "Elizabeth Parkin and Her Investments, 1733–66: Some Aspects of the Sheffield Money Market in the mid-Eighteenth Century," in *ibid.*

28. LAO, Daniel Douglas Will, 1793. Because Jane Douglas lived until 1821, her affairs were long attended by Ben Smith, Jr.

29. Bowden, Diary, Benj. Smith, Jr., no. 4 (Jan. 14, 15, 16, 1823). Edward Brown (1748–1841) of Stamford was son of Edward Brown of Walcot and Frances Toller of Billingborough. For reasons unclear, Benjamin Smith, Jr., expressed disappointment that he had received no legacy when Brown died in 1841. *Ibid.*, no. 9 (May 6–13, 1841).

30. *Ibid.*, no. 1 (1794–99), and Bowden, Douglas Accounts.

31. Bowden, Douglas Accounts.

32. Roy Porter, *English Society in the Eighteenth Century* (Harmondsworth: Penguin Books, 1982), 16. The best survey of agrarian England for this period, with extensive bibliography, is G. E. Mingay, ed., *The Agrarian History of England and Wales*, (Cambridge: Cambridge University Press, 1989), vol. 6.

33. See Grigg, *The Agricultural Revolution*, 66. See also *idem* "The 1801 Crop Returns for South Lincolnshire," *East Midland Geographer*, no. 16 (Nottingham, 1961).

34. The best survey of the English countryside, slightly after Benjamin Smith's time, is Mingay, *The Victorian Countryside*.

35. Frederick Pollock, *The Land Laws*, 2d ed. (London, 1887), 114–15. H. J. Habakkuk's thesis is stated in "English Landownership, 1680–1740," *Economic History Review*, 1st ser., 10 (1940): 2–17. For a fuller discussion of his thesis, including bibliographies, see Lloyd Bonfield, *Marriage Settlements, 1601–1740: The Adoption of the Strict Family Settlement* (Cambridge: Cambridge University Press, 1983) and Barbara English and John Saville, *Strict Settlement: A Guide for Historians* (Hull: The University of Hull, 1983). The debate has continued since the English and Saville publication. See, for example, Bonfield's review of Miriam Slater, *Family Life in the Seventeenth Century: The Verneys of Claydon House* (London: Routledge and Kegan Paul, 1984) in *Continuity and Change: A Journal of Social Structure, Law and Demography in Past Societies* 1, pt. i (1986): 131–34. The most recent piece on this theme is Eileen Spring, "The Strict Settlement: Its Role in Family History," *Economic History Review*, 2d ser., 41 (1988): 454–60.

36. Eric Lionel, "Landownership and Economic Growth in England in the Eighteenth Century," in *Agrarian Change and Economic Development*, ed. E. L. Jones and S. J. Woolf (London: Methuen, 1969), 51.

37. B. A. Holderness, "The English Land Market in the Eighteenth Century: The Case of Lincolnshire," *Economic History Review*, 2d ser., 27 (1974): 558.

38. Landed property did not necessarily contain a manor, but correlation certainly existed between Ben Smith's stewardships and lordships and lands which he owned. For example, he bequeathed to his son Francis his tenement of Monk's Hall consisting of 153 acres and to Benjamin, Jr., he devised the remainder of the manor of Monk's Hall not given to Francis. PRO, Probate 11/1460, Benjamin Smith's will.

The court's business consisted of escheats, admissions and surrenders, matters of dower, lord and tenant right pertaining to the common fields and wastes, minor appointments, and suits—all recorded on the court rolls. Originally the homage or jury contained freeholders as well as copyholders, but with the decline of the court baron, copyhold tenants prevailed. For a variation of the above, see R. W. Hoyle, "An Ancient and Laudable Custom: The Definition and Development of Tenant Right in North-Western England in the Sixteenth Century," *Past and Present* 116 (August 1987): 24–55.

39. Edward Coke, *The Compleat Copy-Holder, Wherein is contained a Learned Discourse of the Antiquity and nature of manors and Copy-holds; Being a Guide and Direction for Surrenders, Presentments, Admittances, Forfeitures, Customes &c.*, in its various early seventeenth-century editions, was both indicative of, and in part responsible for, the decline of seignorial jurisdiction. The increasing involvement of attorneys and the imposing of order and authority by the central judiciary meant, except in form, a retreat from feudal antecedents.

40. LAO, Smith contains manuals on holding copyhold court and background works on the court leet and baron (see booklets "Court Keeping," two copies describing the courts with oaths and sample documents and "Charge to Jurors" in Smith 11, Firm's Business). Cf., among others, Smith 4, Manorial for a foreman's oath (Wikes, Draft Min. Bk. 1760–1773); court rolls (Monks Hall, 1734–1779; Folkingham) and draft court rolls (Wikes, 1773–1830; Thurlby, 1791–1806; Langtoft), draft court minutes (Wikes, Draft Min. Bk. 1774–1799; Threckingham, 1784–1850; Baston; Monks Hall), Admissions and Surrenders (i.e., Wikes, Misc. Papers Conditional Surrenders 1733–1835 and 1750–1888; Langtoft; Baston, Admissions 1706–1878; Monks Hall Verdicts, 1751–1804; Monks Hall Register of Conditional Surrenders, 1718–1813; Wikes Absolute Surrenders 1723–1769 and 1793–1821), particulars of copyhold rents (Wikes, Monks Hall, Threckingham Accounts, 1818–1841; Baston), accounts of the fees taken for

admissions and surrenders (Wikes, Msc. Papers, Condit. Surrenders 1733–1835; Langtoft, Admissions, 1729–1823), and fees charged by Benjamin Smith for both Langtoft and Baston admissions and surrenders), an account of the copyhold estates held, for example, of the manor of Monks Hall in Quadring and Gosberton. Where Smith was steward, these documents were sometimes in his hand or, at the very least, “examined by Ben Smith.”

41. A. A. Dibben, *Title Deeds Thirteenth to Nineteenth Centuries* (London: The Historical Association, 1971), 23–24. In the eighteenth century, changes in ownership, if undertaken outside the manor court, had to be reported, that is “presented,” at the next session of the court. Change could simply be accomplished in the court and entered on the court rolls. The new owner was “admitted” by the manorial lord after the former owner had “surrendered” his title. A new owner, whose title was entered on the court rolls, was given a certified copy of the entry. Thus, he became a copyholder, possessed of copyhold land.

42. As quoted in Birks, *Gentlemen of the Law*, 116. North further noted that a battle of wits often ensued between steward and tenant: “They seldom came forward without some formed strategem to be too hard for Mr. Steward. Some would insist to know their fine, which he could not tell till they were admitted; and then he insisted for his fees: no, they would know the fine and some cunning fellow would jog and advise them to pay the fees and not dispute that.”

43. See LAO, Smith 4, Manorial, Meres (on microfilm), *passim*. The Meres Manorial papers have been withdrawn from the LAO.

44. The Brown genealogy is found in A. R. Maddison, *Lincolnshire Pedigrees*, 4 vols. (Harleian Soc., 1902–04).

45. The following, compiled from LAO, Smith 4, Manorial is a chronological listing of Ben Smith’s manorial acquisitions:

1761: Steward of Newton, succeeding Thomas Brown.

1769: Steward of Monks Hall, Gosberton, succeeding Adlard Squire Stukeley. John Calcraft, lord until 1797.

1769: Listed as deputy steward of Baston Manor to Thomas White, steward, and Sir Gilbert Heathcote, lord.

1774: Steward of the courts of Wikes Manor.

1779: Deputy Steward to Thomas White of Langtoft Manor.

1784: Steward of Threckingham West Hall to Richard Wynne and then Sir Gilbert Heathcote, lords.

1786: Steward of Langtoft Manors (by 1798 Benj. Smith Jr. was deputy steward to him) and Baston (by 1799 Benj. Smith, Jr., succeeded him as steward), and of Threckingham.

1787: Lord of Monks Hall.

1791: Steward of Thurby Manor. Sir Gilbert Heathcote, Lord. (Benj. Smith, Jr., steward in 1799).

1796: Lord of Wikes Manor. “One of the lords of the said manor and steward to the other lords there.” As a result of this affiliation with Wikes, Smith became a clerk of the Cowley Charity. The lordship was owned half by Cowley and half by the lord. Ben Smith, as first steward and then lord of the manor, became clerk to the Charity. (Benj. Smith, Jr., was a deputy steward in 1798 and steward in 1799.)

46. Quoted from G. E. Mingay, “The Eighteenth-Century Land Steward,” in *Land, Labour and Population in the Industrial Revolution*, ed. E. L. Jones and G. E. Mingay

(New York: Barnes and Noble, 1967), 3–4. See also Edward Hughes, “The Eighteenth-Century Estate Agent,” in *Essays in British and Irish History in Honour of James Eadie Todd*, ed. H. A. Cronne, T. W. Moody, and D. B. Quinn (London: Frederick Muller, 1949); Eric Richards, “The Land Agent,” in Mingay, *The Victorian Countryside* 2:439–56; F. M. L. Thompson, *English Landed Society in the Nineteenth Century*, 2 vols. (London: Routledge & Kegan Paul, 1963), 151–83, especially pp. 161–62; Beastall, *Agricultural Revolution*, 94–99; and Olney, *Rural Society*, 46–51. Local surveyors often concentrated on estate management. See R. A. Skelton, “The Land Surveyor in English History,” an address before the Conference on British Studies, New York University, October 27, 1962.

47. Olney, *Rural Society*, 46.

48. Bowden, *Diary*, Benjamin Smith, Jr., no. 1, (November 1794).

49. Cf. LAO, Smith 11, Firm’s Business, Articles of Clerkship, William Worth, 1793. Some idea of the legal education of Benjamin Smith, Jr., can be gleaned from his *Diary* no. 1, which covers his admission to the rolls as solicitor. See also Bowden, *Commonplace Book*, Benjamin Smith, Jr., for more on the same.

50. Benjamin Smith, Jr., held court during the autumn of 1798 at Bosom Hall [?] (Oct. 1), Falkingham and Threckingham (Oct. 5), Langtoft and Baston (Oct. 9), Wikes (Oct. 11), Monk’s Hall (Oct. 12), Thurlby (Oct. 16), Aslacksby (Oct. 23), Conisby (Oct. 25), Bicker (Oct. 26) and Falkingham (Oct. 31). It is not known when the Smiths acquired courtholding rights for some of these manors.

51. “An enclosure act may be thought of as a detailed book of rules for enclosing the parish; rules which must be kept by the Commissioners themselves and which must be enforced by them whilst enclosure is in progress.” As quoted from Eleanor and Rex C. Russell, *Making New Landscapes in Lincolnshire: The Enclosures of Thirty-four Parishes* (London: Robert Hale, 1983), 5. The procedure for enclosure, as noted in the text, is from the Russell’s book as well.

The Russells have written extensively on Lincolnshire enclosures. See also Beastall, *Agricultural Revolution*, 22–60; Michael Lloyd, *Portrait of Lincolnshire* (Lincoln: History of Lincolnshire Committee, 1983), *passim*; and Neil R. Wright, *Lincolnshire Towns and Industry 1700–1914* (Lincoln: History of Lincolnshire Committee, 1982), *passim*.

52. For Smith’s work on enclosures see LAO, Smith 5, Enclosures, *passim*. His work in the Bicker enclosure is recorded in detail in LAO, Smith 11, Firm’s Business, Bills, 1765–1789, at 5–11, 77–78.

53. LAO, Smith 11, Firm’s Business, Bills, 1789–1804, Pointon Enclosure (pp. 1–6) and Smith 5, Enclosures, Pointon, for essentially the same details to substantiate the charges. Both are in Smith’s hand. He noted in a letter to a Mr. Clementson, dated January 23, 1790, that “I set off last Thursday Morning to wait of you at Melton to ask your consent to the Bill for dividing & inclosing the Cow Pasture & Fen at Pointon. But after going 2 or 3 miles, the Frost was so hard & the Roads being so deep & full of Ice, I could not go forward & was obliged to return.” LAO, Smith 5, Enclosures, Pointon, no. 22.

A similar narrative of Smith’s industrious pursuit of enclosures, Bicker in this instance, is cited above, LAO, Smith 11, Firm’s Business, 1765–1789, Bills, 1765–1789, at 5–11, 77–78.

54. See W. H. Hosford’s detailed study of the Pointon and Horbling enclosures, “Some Lincolnshire Enclosure Documents,” *Economic History Review*, 2d ser., 2 (1949–50): 78–79.

55. *Ibid.*, 78. J. D. Chambers appears to dissent from this view. While admitting that “cottage labourers with customary usage of the common” lost out because they

had no proprietary rights, "it does not seem that this was necessarily true even of the smallest owner of copyholder who could substantiate a legal claim to the satisfaction of the enclosure commissioners; and in the light of recent research it would seem that the commissioners were not too difficult to satisfy. . . . Whatever may be said of the method of enclosure by act of parliament, it represents a milestone in the recognition of the *legal* rights of humble men." J. D. Chambers, "Enclosure and Labour Supply in the Industrial Revolution," *Economic History Review*, 2d ser., 5 (1953): 319–43.

Hosford supports this view when he states that the Commissioners accepted verbal claims although written ones were required. T. H. Swales, "Parliamentary Enclosures in Lindsey," *Lincolnshire Archeological Society Reports and Papers* (1936) and Arthur Young, *General View of Lincolnshire* (1799), 85 also cite advantages gained by small landholders over the larger in the allotments. For an appraisal of commissioners of enclosures, see M. W. Beresford, "Commissioners of Enclosures," *Economic History Review* 16 (1946): 130–42.

56. Smith to Willoughby, 16 June 1773, LAO, Smith 5, Enclosures, Helpringham.

57. For a general discussion of the administration of local affairs—including turnpikes, health, the poor, law and order—see Norman Chester, *The English Administrative System 1780–1870* (Oxford: Oxford University Press, 1981), 52–57, 322–61, 371–73. Reordering England's transportation system between 1780 and 1860 posed an unprecedented problem in capital formation. Whereas buildings could be financed on a smaller scale and even by individuals, transport relied on, to use development economics parlance, "social overhead capital."

See G. R. Hawke and J. P. Higgins, "Transport and Social Overhead Capital," in *The Economic History of Britain since 1700*, ed. Roderick Floud and Donald McCloskey, 2 vols. (Cambridge: Cambridge University Press, 1981), 1:227–30. See also Francois Crouzet, "Capital Formation in Great Britain during the Industrial Revolution," in *Capital Formation in the Industrial Revolution* (London: Methuen, 1972), 162–222; Phyllis Deane, "Capital Formation in Britain before the Railway Age," *ibid.*, 94–118; and Charles H. Feinstein and Sidney Pollard, eds., *Studies in Capital Formation in the United Kingdom 1750–1920* (Oxford: Oxford University Press, 1988). See also J. R. Ward, *The Finance of Canal Building in Eighteenth-Century England* (1974).

58. See William Albert, *The Turnpike Road System in England 1663–1840* (Cambridge, 1972); E. Pawson, *Transport and Economy: The Turnpike Roads of Eighteenth-Century Britain* (1977); and B. J. Buchanan, "The Evolution of the English Turnpike Trusts: Lessons from a Case Study," *The Economic History Review*, 2d ser., 34, no. 2 (1986): 165–243.

59. Before 1750, the turnpike traversed only fifty miles of south Lincolnshire. In the decade after 1755, the passage of Parliamentary Acts assured another 180 miles. After 1765 the focus was mainly on the fens where road-building proved exceptionally difficult. Grigg, *Agricultural Revolution*, 41–43. See also Beastall, *Agricultural Revolution*, 99–105.

60. See LAO, Smith 6, Turnpike, 4.1, Indenture of Shares.

61. Daniel Douglas of Folkingham, Thomas Brown of Horbling, and Edward Brown of Walcott were initially involved in executing an act of Parliament entitled "An Act for repairing & widening the Roads leading from the East Side of Lincoln Heath to the City of Peterborough & from the East End of Marham Lane to the Town of Walton in the County of Northampton & from the East end of a Lane called Hale Drove to & through the Town of Old Sleaford to the End of Long Hedge in the Parish of Quarrington in the County of Lincoln." LAO, Smith 6, Turnpike, 4.3, Turnpike Assignments.

62. This was part of the Grantham-Bridge End Turnpike, which eventually extended to Boston.

63. LAO, Smith 6, Turnpike, 1.3, Southeast District Minute Book of the Road from Donington High Bridge to Hacconby Cross Post, 6 February 1784. Smith collected his stipend from Daniel Douglas whose accounts he managed. Cf. Bowden, Douglas Account, July 28, 1789, £5 13s.; Feb. 27, 1790, £5 15s. 8d.; Feb. 26, 1791, £5 13s. 6d.

64. LAO, Smith 6, Turnpike, 2.9, Treasurer's Account Book 1757-1815; Accounts for the Bridge End Turnpike Road. Daniel Douglas was treasurer until May 30, 1793; Benjamin Smith was treasurer of the Bridge End Turnpike by May 23, 1794. His designation as treasurer of the Southeast District (by May 29, 1794) may have pertained only to that trust for the Donington-Hacconby Road. Even after these elections as treasurer, Smith continued as clerk, drawing a stipend of £6 6s. 6d. for 1794 and £5 7s. for each of the next two years. Although Benjamin Smith, Jr., appears to have succeeded him as clerk by May 30, 1799 and was treasurer by May 28, 1801, Benjamin Smith continued to sign as a trustee as late as May 30, 1804.

65. Southeast District Minute Book Donington to Hacconby. See also Diary, Benjamin Smith, Jr., no. 1, passim. Benjamin Smith, Jr., succeeded his father as clerk by September 30, 1800. LAO, Smith 6, Turnpike 1.4.

66. Southeast District Minute Book, Donington to Hacconby.

67. From John James, *The History and Topography of Bradford* (1841), 155, as quoted in William Albert, "Popular Opposition to Turnpike Trusts in Early Eighteenth-Century England," *The Journal of Transportation History*, n.s., 5 (1979): 1.

68. *Ibid.*, 13.

69. See Joan Thirsk, *English Peasant Farming: The Agrarian History of Lincolnshire from Tudor to Recent Times* (London: Routledge & Kegan Paul, 1957). Chapters 1, 5, and 10 deal, respectively, with "Fenland Farming in the Sixteenth Century," "The Fenland, 1600-1870," and "The Fenland, 1740-1870." See also W. H. Wheeler, *History of the Fens of South Lincolnshire* (Boston [Lincolnshire], 1896), an enlarged edition of that published in 1868.

70. This undertaking, achieved by allowing the passage of waters through the South Forty-foot Drain into the Witham River at the Black Sluice, was overseen by the Black Sluice District Commission of 1765. Flooding had long been a way of life for the villagers of Holland Fen, inundations of which frequently made the Boston-Swinhead turnpike and other roads impassable and forced country people to bring their produce to Boston by boat.

71. The present narrative is based on Wheeler, *History of the Fens*, 244-89.

72. *The Act for draining and improving certain low marsh and fen lands lying between Boston Haven and Bourn, in parts of Kesteven and Holland, in the county of Lincoln.*

73. His stipends from Douglas, as listed in the Douglas Accounts, are detailed below. After Douglas's death in 1793, Smith was no longer paid from the above account.

74. LAO, 2 BNL, 7.3, Forsyth to Lord Brownlow, September 18, 1793; *ibid.*, 7.4, September 21, 1793.

75. Unquestionably, the younger Benjamin Smith's service excelled that of his father. A glass window in Horbling parish church was paid for by monies "raised by subscriptions among Black Sluice Commissioners and other friends of Benjamin Smith esq. . . . as a testimonial to that gentleman in acknowledgement of the assiduity and fidelity with which he discharged his duties as clerk . . . and as a token of their esteem for his public and private character."

76. *Report of the Commissioners Appointed in Pursuance of an Act of Parliament*

5 and 6 William IV. c. 71. intitled "An Act for Appointing Commissioners to Continue the Inquiries Concerning Charities in England and Wales, until the First Day of March One Thousand Eight Hundred and Thirty-seven"; June 10, 1837 (London: W. Clowes & Sons, 1839), 23–29, hereafter cited as *Report of Charity Commissioners*. The general information about Lincolnshire charities is from this source.

77. The Smith papers in the LAO shed very little light on the Barnes Charity, and what they contain about the Cowley largely pertains to the role played by Benjamin Smith, Jr. The fact is that most of the papers relating to the charities are still in Harry Bowden's office in Horbling and are properly part of the Barnes and Cowley papers rather than those of Benjamin Smith and Company. Christopher Mew, Esq., a present partner in the Smith firm, is presently clerk to the Anthony Barnes Charity; Harry Bowden, Esq., has been clerk to the Cowley Charity for many years.

See Archivist Joan Varley's description of the Smith of Horbling deposit in the LAO and in particular her comments on the Barnes and Cowley Charities. She has provided a good account of the younger Benjamin Smith's role as secretary. *LAO Archivist's Report* 13 (1961–62): 39–42.

78. LAO, Smith 8, Barnes Charity, 1, Will of Anthony Barnes, 1727.

79. *Report of the Charity Commissioners*, 198–203.

80. Benjamin Smith, Jr., is listed as managing the Buckberry and Gould charities. *Ibid.*, 199.

81. See Joan Varley's narrative in *LAO Archivist's Report*, 40–41.

82. The reader is referred especially to Douglas Hay et al., eds. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975) and the responses that it has evoked, most notably John Langbein, "Albion's Fatal Flaw," *Past and Present* 98 (1976): 96–120. The most recent survey is Clive Emsley, *Crime and Society in England 1750–1900* (London and N.Y.: Longman, 1987). See also Andrew Charlesworth, ed., *An Atlas of Rural Protest in Britain 1548–1900* (Philadelphia: University of Pennsylvania, 1983) with its excellent bibliography; Roger Wells, *Insurrection: The British Experience 1795–1803* (Gloucester: Alan Sutton, 1986); George Rude, *The Crowd in History, 1730–1848* (New York: John Wiley, 1964); and John Brewer and John Styles, eds., *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (New Brunswick, N.J.: Rutgers, 1983).

Benjamin Smith, Jr., frequently mentioned his exercising with the Heathcote troop in Falkingham. Presumably, this troop existed quite as much to quell local disturbances as to repel foreign invasion. See Diary, Benjamin Smith, Jr., no. 1 (1794–1799), *passim*.

83. "Once property had been officially deified, it became the measure of all things. Even human life was weighed in the scales of wealth and status." Douglas Hay, "Property, Authority, and the Criminal," in Hay et al., *Albion's Fatal Tree*, 19.

84. LAO, Smith 11, Firm's Business, Falkingham Association for Prosecuting Felons. Benjamin Smith, Jr., succeeded his father as treasurer and clerk of the association on March 28, 1799. A printed booklet of the *Rules and Articles of the Association*, as revised in 1850 and 1884, but undated, lists still another Ben Smith of Horbling as clerk and treasurer. Thus, this solicitor's firm remained a fixture for administering this group for at least a century. For a recent study of such associations, see David Phillips, "Good Men to Associate, Bad Men to Conspire: Associations for the Prosecutions of Felons in England, 1760–1860," in *Policing and Prosecution in Britain, 1750–1850*, ed. Douglas Hay and Francis Snyder (Oxford: Oxford University Press, 1989), 113–70.

85. LAO, Smith 11, Firm's Business, Falkingham Association, February 6, 1788.

86. See Alan Harding, *A Social History of English Law* (Gloucester, Mass.: Peter Smith, 1973), 351 and Miles, "'Eminent Attorneys,'" 116 ff.

W. A. Speck, *Stability and Strife: England, 1714–1760* (Cambridge, Mass.: Harvard University Press, 1977) compares the substance of Gregory King's "Scheme of the income and expense of the several families of England . . . for 1688" to Joseph Massie's "Estimate of the social structure and income, 1759–60." King figured the average lawyer's salary to be £154; Massie put it at £100. Speck distinguishes between attorneys and the more affluent barristers, noting, however, that some London attorneys earned £1,000 per year and employed several clerks. Speck, *Stability and Strife*, 31–61, 297–98. See also G. Holmes, "Gregory King and the Social Structure of Pre-Industrial England," *Transactions of the Royal Historical Society* 27 (1977), and P. Mathias, "The Social Structure in the Eighteenth Century: A Calculation by Joseph Massie," *Economic History Review*, 2d ser., 10 (1957–58).

The most recent general study, which includes lawyers, is John A. James, "Personal Wealth distribution in Late Eighteenth-Century Britain," *Economic History Review*, 2d ser., 41, no. 4 (1988): 543–65, with extensive bibliography.

87. LAO, Smith 11, Firm's Business, An Account of Money Received by B. Smith, 1771–1794; *ibid.*, Bill and Debt Book 1761–1766. This is an account book, which depicts charges for services rendered but may be of limited value in assessing annual income. A tally for 1762, early in Ben Smith's professional career, shows that he collected £67 7s. 3d. principally for conveyancing work. That other years covered in this bill book produced significantly less income suggests that it does not include all accounts or receipts. Income for specific legal services may be ascertained by comparing Smith's billing with his cash receipts recorded in Smith's cash books. Because these cash books include personal as well as business receipts and payments, they require meticulous analysis, which this author has not as yet undertaken.

88. *Ibid.*, Receipts/Payments 1807–1819. The division of annual profits in the decade or so following the elder Benjamin Smith's death were recorded at the conclusion of each year's business as follows:

- 1809: Of £1,110.0.10, Smith £832.10; Worth £277.10.
- 1810: Of £2,652.15.1, Smith £1,989.11.3; Worth £663.3.9.
- 1811: Of £1,922.1.11, Smith £1,441.11.53/4; Worth £480.10.53/4
- 1812: Of £1,836.6.0, Smith £1,377.4.6; Worth £459.1.6.
- 1813: Of £2,475.5.6, Smith £1,856.9.41/2; Worth £618.16.41/2.
- 1815: Of £2,196.14.8, Smith £1,647.11.0; Worth £549.3.8.
- 1816: Of £1,973.7.4, Smith £1,480.0.6; Worth £493.6.10.
- 1817: Of £2,440.7.91/2, Smith £1,830.5.93/4; Worth £610.1.111/4.
- 1818: Of £2,306.19.0, Smith £1,730.4.3; Worth £576.14.9.

89. These clerkship stipends are in the Daniel Douglas Account Book. Recorded in Smith's hand, these accounts show Smith as banker for Douglas. They are hardly a tribute to Smith's accounting finesse, for Douglas's personal funds are fused with Black Sluice and turnpike monies.

90. Marmaduke Langdale and Edward Brown of Stamford were both charged with certain tasks in the administration of Ben Smith's will. PRO, Probate 11/1460, Benjamin Smith.

91. In 1795, Ben took his son to London to see the sights and introduce him to his London business associates. See Diary, Benjamin Smith, Jr. (June, 1795). In late 1796, young Ben returned to London, where he remained until May, 1797, when he was admitted to the Court of King's Bench and solicitor in Chancery. See *ibid.*, May 3 and 30, 1797. Young Ben's diary reveals that during these months in London he frequently followed up on his father's contacts.

92. By his will Ben Smith bequeathed to his son Francis a portion of the Monk's Hall tenement and some 150 acres in Gosberton and Quadring, north of the turnpike road leading from Spalding to Donington. Elizabeth received properties in Folkingham, forthcoming after her mother's death. The largest share of the holdings went to Benjamin, Jr., who took what appears to have been the larger part of the Monk's Hall lands, holdings in Gosberton, Quadring, and Donington, the Donington manor of Meres, and properties in Folkingham not designated to sister Elizabeth. With these properties, young Ben procured rights to the profits from their manorial courts as well as the rents. The same was true with lands and tenements inherited in Morton and Bourne.

The elder Ben Smith's will is less than definite about these properties, but it does appear that manorial courts did include land holdings.

93. Olney, *Rural Society*, 43.

94. Smith stated in his will that four certificates of government life annuities in 1789 were for each of his children. The values of these are not indicated. He also left in trust for his niece Audrey Wood in St. Peter's Eastgate, Lincoln, the sum of £30 and the same amount for another niece, Sarah Webb. Besides these amounts he left £5 each for the poor of Folkingham, Horbling, and St. Peter's Eastgate. Son Benjamin received all his chattel property and personal effects.

95. The matter of consumption by an affluent middle class, a theme that bears significantly on the legal profession, has generated considerable interest among historians at this time. See Lorna Weatherill, "Consumer Behaviour and Social Status in England, 1660-1750," *Continuity and Change* 1 (1986): 191-213; idem, *Consumer Behaviour and Material Culture in Britain, 1660-1760* (London: Routledge, 1988); T. H. Breen, "'Baubles of Britain': The American and Consumer Revolutions of the Eighteenth Century," *Past and Present* 119 (May, 1988): 73-104; Peter Borsay, "The English Urban Renaissance: The Development of Provincial Urban Culture c. 1680-c. 1760," *Social History* 5 (1977): 581-603; idem, *The English Urban Renaissance: Culture and Society in the Provincial Town 1660-170* (Cambridge: Cambridge University Press, 1989); Angus McInnes, "The Emergence of a Leisure Town: Shrewsbury 1660-1760," *Past and Present* 120 (August 1988): 53-87. See also the pioneering works of A. Everitt and others cited in these works. The Center for Seventeenth- and Eighteenth-Century Studies and the Clark Library of University of California Los Angeles have developed a three year (1988-1991) program on seventeenth- and eighteenth-century consumerism.

96. Smith's origins are mentioned above. His brother Daniel predeceased him and a sister Elizabeth apparently survived him. Daniel appears in the Smith accounts. Cf. LAO, Smith 11, Firm's Business, Bills, 1765-1789, 1767-1780, at 99; Elizabeth appears in Ben junior's diary and Ben senior's will. Elizabeth married a Henry Waters. Two nieces, Audrey Wood and Sarah Webb, were mentioned in his will.

97. LAO, Marriage Bonds, 1760-68, September 26, 1767, at 29.

98. Elizabeth was born October 24, 1769, married Bloomfield in 1821, and died with no issue in 1854.

99. He married Harriet Martin January 20, 1806; she died August 15, 1808. He subsequently married Frances Graves January 3, 1821; she died March 21, 1859. Benjamin Smith, Jr., died January 6, 1858.

100. Francis Smith of Monk's Hall was born February 23, 1778, married Ann (?), fathered eight children, and died in 1844.

101. Edward was born January 18, 1788, and died February 17, 1813.

102. Ben directed his son to Forsyth, Kelham, Gatskill, and Johnson, and others. When in London, Smith usually took lodgings at Will's Coffee House. So it was in

early June, 1795, when father and son stayed there and sister Elizabeth at a guest house on Serle Street. It was on this occasion that the father took the son to Westminster Hall where they “saw all the judges sitting in the sev[era]l differ[en]t C[our]ts & the Chan[cery]” Benjamin Smith, Jr., Diary, June 15, 1795. The next day they spent four hours at the House of Commons.

103. This journey to Buxton by way of Nottingham, Matlock, and Dove Dale was undertaken at virtually the same time each year, August 13 or 14 in the years 1795, 1796, 1797, and 1798. Only Mrs. Smith appears not to have joined the rest of the family on these trips. See Benjamin Smith, Jr., Diary.

104. In his diary Benjamin Smith, Jr., noted that on October 2, 1798, “Fa[the]r and Ned went to Falk[ingha]m to new house to stay—rem[nan]t Goods go tomorrow.” The next day’s entry read: “A load of goods went Falk[ingha]m & Sister went to stay.”

105. A tablet on the wall in the rear of the church reads: This marble is erected as a token of filial respect to perpetuate the memory of Benjamin Smith Esq[ui]r[e] who died 27th January 1807, Aged 75. Also sacred to the Memory of Elizabeth Relict of the above who was released from suffering (bourne with exemplary patience) the 6th of May 1820, Aged 78 years. [As copied by the author] this inscription is to be found also in *Monson’s Church Notes*, (Lincoln Record Society), 31:128. There exists in the Folkingham parish church still another tablet to a Smith, to Edward, the youngest son. “A Tribute to the memory of the Revd. Edward Smith, who died the 17th of February 1813, Aged 33.”

106. The offices in Donington and Horbling are still very much in use. The original office building remains, although Red Hall disappeared in the 1960s. The author inspected the former, noting its fully plastered walls, tiled floors, and cast iron bins, which might well have served for the storage of legal documents. That this building was, indeed, the law office of both Benjamin Smiths is ultimately based on circumstantial rather than verifiable evidence. At present, the firm of Benjamin Smith and Company has additional offices in Spalding and Bourne.

107. Cf. Diary, Benjamin Smith, Jr., (October 5 and 7, 1817).

108. Benjamin Smith, Jr., died January 6, 1858. A hand-written agreement, presently in the possession of Harry Bowden Esq., stated that “Benjamin Smith having relinquished business in favor of Geo. Wiles from first January last . . . for which Geo. Wiles agrees to pay £1200 in three installments of £400 each. . . . Benj Smith places £3000 in the hands of Geo Wiles for the purpose of meeting any claims of clients or deficient securities.” Smith’s will merely stated that the business had passed to Wiles. The same year that Benjamin Smith died, Wiles accepted William Emerson Chapman into the partnership, and the firm became Wiles and Chapman. When Charles Smyth Wiles, a nephew of George, became the third partner, the firm name changed to Wiles, Chapman, and Wiles. Both Chapman and the elder Wiles died in 1879, and the younger Wiles invited Benjamin Smith III, a son of Francis and nephew of Benjamin Smith, Jr., into the partnership.

When in 1883 Charles Wiles retired, Benjamin Smith III took his brother George into the partnership, and the firm reverted to “Benjamin Smith and Company,” which it remains to this day. Benjamin Smith III died in 1914; however, George lived until 1945; George’s son, Francis Gould Smith, became a partner in 1925. When he died in 1959 the firm once again was without a Smith. The firm’s principal link with the past is Harry Bowden, who joined the firm in 1939, managed the firm’s business alone after Francis’ death in 1959, and since retiring as senior partner in 1979 continues as consultant.