



SAMUEL SEWALL

Defender of the Rule of Law?

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IT IS BOTH APPROPRIATE AND ironic to describe Samuel Sewall as a defender of the rule of law. It is appropriate because Sewall embodied many of the qualities of a good judge for more than thirty years. He was an early advocate of equal rights for African Americans and Native Americans and a defender of the view that women, like men, had souls and would share heavenly joys. Moreover, Sewall represents the culture of Puritanism, which laid important foundations for American law by distinguishing between liberty and license and by valuing, though not always extending to others, liberty of conscience. To describe Sewall as a defender of the rule of law is ironic because although he was neither a lawyer nor formally trained in the law, he served as a judge in the notorious Salem witch trials, which led to the death of twenty innocent victims.

Sewall was a man of faith at a time when fellow citizens considered knowledge of the Bible, and especially the Old Testament, more important than knowledge of contemporary books of law. Had Sewall been more skeptical of the wide-eyed claims of the young witnesses in the Salem witch trials or had he been trained in cross-examination and other trial techniques, he would have served the cause of justice better.

However, his belief in being accountable to God prodded him—alone among his fellow judges—to apologize publicly for his role in the trials.

Fortunately, Sewall documented his life in diaries that cover the years from 1673 to 1729 (except for a gap from 1677 to 1684). The diaries reveal much about Sewall's private and public life, and they reflect his considerable literary skills. Although Sewall devoted much commentary to spiritual matters, scholars have likened his diary to that of Samuel Pepys, the prominent politician whose writings provide the most important historical record of England in the 1660s. Sewall's story is a tale of law and life in Puritan Massachusetts and of the Salem trials, spawned by hysteria, which have become a watchword for unjust proceedings.

Sewall was born in Bishop Stoke, Hampshire, England, in 1652 to a family of relatively comfortable means. His father, Henry Sewall Jr., who served for a time as a minister, first arrived in Massachusetts at the age of twenty to set up a cattle farm. There he married Jane Dummer and, after returning to England, the family resettled in Massachusetts when Samuel was nine years old.

In England and America, Sewall received a classical education, including instruction in Greek and Latin. He entered Harvard at the age of fifteen and studied there for seven years, earning both undergraduate and master's degrees. He served as a teaching fellow as he pursued the latter degree, at a time when Harvard enrollments had decreased and the school was in decline. His primary training at the graduate level was theological—he wrote his thesis on original sin—and he graduated with the apparent intention of becoming a pastor. Yet he turned down an offer of a ministerial position in Woodridge, New Jersey.

Soon after getting his master's degree, Sewall married eighteen-year-old Hannah Hull, daughter of wealthy Boston merchant John Hull, who had established the colony's first mint. Hull invited his son-in-law to join in his mercantile activities, and Sewall did so for about a decade. In 1679, Sewall was accepted as a freeman, a full citizen qualified to hold office, and he became a member in his father-in-law's Third, or Old South, Church in Boston.

In time Sewall assumed many of the public service positions that his father-in-law had occupied, serving in charge of the night watch in Boston and of the colony's printing press, and later becoming one of

Boston's seven assessors, a deputy for Westfield, and one of eighteen men on the court of assistants, which combined legislative, executive, and judicial functions. Although he never fought in a battle, Sewall was also a longtime captain of the local militia, and his diary is replete with reports of Indian massacres and ambushes and other military threats, or perceived threats, that weighed so heavily on the colony.

During the 1680s, Sewall and his fellow citizens faced difficult challenges in addition to the continuing Indian conflicts. Though the colonists had enjoyed relative autonomy since settling in the New World, Massachusetts lost its royal charter in 1684. England then created the Dominion of New England, which included several colonies, and land titles were threatened. Sewall traveled to England in 1688 along with Increase Mather largely to protect property interests, including his own. In many respects, the charter revocation created a legal limbo in Massachusetts.

The colonies also were experiencing what has been described as the dark ages of American law. Early colonial codes contained many provisions that were hostile to lawyers and legal practice, and as a result untrained laymen filled the courts. At the same time, the justice system was in flux, continually seeking to adapt English law and procedure to colonial circumstances.

Moreover, in the colonies there was more of a blending than a separation of church and state. Particularly in Puritan New England, legal codes were an important means for enforcing morality, as reflected by harsh laws prohibiting idolatry, adultery, and drunkenness, as well as special provisions such as Sunday blue laws. Of course, there were also laws against witchcraft, for Puritans believed in the devil and his devious ways, including his use of agents to wreak evil. Indeed, scores of men and women had been arrested and imprisoned on charges of witchcraft since 1648, and no less a light than England's Sir Matthew Hale, chief justice of the King's Bench, had sentenced an individual to death for that offense.

In 1692 the seeds of the Salem witch trials were sown. Betty Parris, the six-year-old daughter of Samuel Parris—the new minister in Salem village, who had arrived with a West Indian slave, Tituba, whom he had brought with his family from Barbados—began to experience a number of physical and psychological symptoms, including severe contortions. These frightening symptoms soon spread to six additional playmates,

including seventeen-year-old Mercy Lewis, who had come to the village as a result of the Indian wars and who proved to be a particularly creative accuser.

Cotton Mather had recently published a book called *Memorable Providences*, which discussed witchcraft, and this seemed to be a logical explanation for what was happening. The children appeared to confirm such fears when they reported that devil-driven neighbors were appearing to them in the form of apparitions and torturing them. As few in Puritan New England doubted either the existence of the devil or witches, these charges were taken very seriously. Sewall was one of the nine men whom the governor appointed to a special court of oyer and terminer to look into the matter.

Old Testament scriptures had declared that no witch should live, and the dramatic testimony of the accusing girls seemed to show that witchcraft was afoot. The court was willing to hold blameless those who accused others and to acquit those, like Tituba, who confessed that they had fallen under the spells of others. But what about those who professed their innocence? A court led by more worldly men might have interpreted such reticence, and their outright denials, as a sign that the charges were fabricated and the accused were innocent. But the court allowed the use of spectral evidence—allegations that the accused had appeared to their accusers in the shape of other humans or animals to torture them. And absent legal representation for the prosecution or defense, or effective cross-examination by the court, the judges interpreted refusals to confess as hard-heartedness. Of two hundred people accused during the witchcraft trials, twenty-nine were found guilty and nineteen of those received death sentences.

The execution of George Burroughs, a former minister at Salem village, proved particularly unnerving. Although accused of having bewitched soldiers during a failed Indian campaign, he not only refused to admit guilt on his execution day—which would have invited eternal damnation if he were guilty—but he also recited the Lord's Prayer without error, something then thought impossible for someone possessed by the devil. Eventually, the juvenile accusers began widening their nets to include so many respected persons that their claims were recognized as fabrications and illusions, but that could not revive the dead. (Some

observers also believe the witchcraft trials were used as a means of transferring blame from judges who had leadership roles in the failing Indian wars to others.) In late October 1692, Governor William Phipps disbanded the court and put an end to the trials.

In late 1696, Sewall wrote a proclamation that called for a day of prayer and fasting for the sins of the trials and for government reparations to its victims. Sewall's diary demonstrates that he may have feared that God had taken some of his own children as punishment for his role in the trials—of his fourteen children, only six survived to adulthood. Sewall was the only one of the trial's nine presiding judges (one appointee had quit after the first trial and was replaced) who then, or ever, publicly confessed his transgressions, although some jurors also did so. The event took place on January 14, 1697, a day of fasting and prayer, when Sewall stood and handed the pastor of the Old South Church the following statement, which, in accord with the custom of the time, the pastor read aloud as Sewall stood:

Sensible of the reiterated strokes of God upon himself and family; and being sensible, that as to the Guilt contracted upon the opening of the late Commission of Oyer and Terminer at Salem (to which the order for this Day relates) he is, upon many accounts, more concerned than any that he Knows of, Desires to take the Blame and shame of it [the Salem trials], Asking pardon of men, And especially desiring prayers that God, who has an Unlimited Authority, would pardon that sin and all other his sins; personal and Relative: And according to his infinite Benignity, and Sovereignty, Not Visit the sin of him, or of any other, upon himself or any of his, nor upon the Land: But that He would powerfully defend him against all Temptations to Sin, for the future; and vouchsafe him the efficacious, saving Conduct of his Word and Spirit.

An apology might seem small recompense to the memory of those who had been executed, but there are indications that Sewall's apology was sincere and that he took the lessons from the witchcraft trials to

heart. Sewall also set aside a day in each subsequent year to fast and pray for forgiveness for his role in the trials.

Following the witchcraft trials, Sewall was appointed to the superior court, where he served for twenty-five years as an associate justice and eleven years as chief justice. The position, like the colony it represented, often combined functions of church and state, and it was not uncommon for Sewall to begin sessions with a prayer on occasions when pastors were not present for such duty. It was not his only pastoral activity. Sewall's diary indicates that he attended the funerals of almost everyone of consequence in Boston, held regular devotional exercises with his family, frequently visited and prayed with the sick, regularly attended church, and often recorded notes of sermons in his diary.

Scripture also played a prominent role in Sewall's tenure on the bench, as he based his judicial code of conduct on biblical norms. After his appointment as chief justice, he wrote to the governor, asking, "Whose Ox have I taken?" and observing "that Partiality or Bribery cannot be laid to my Charge." In one case, Sewall declared the suit "contrary to our Law, the Law of Nature and the Law of god." But Sewall recognized the distinction between legal and moral guilt. In one case, when the superior court declared a man not guilty, Sewall told the acquitted defendant, "The providence of God in clearing you, will I hope melt your heart: for what you did, was notoriously Criminal." Reflecting a biblical admonition, Sewall's diary recorded his wish that he "could once become wise as a Serpent and harmless as a Dove!"

Apart from the Salem witchcraft trials, Sewall's work as a magistrate involved judging matters from petty misdemeanors to capital offenses. Although he and other judges were responsible for fining persons for swearing, Sabbath breaking, and a variety of sexual offenses that today are beyond the scope of the law, his Puritan background gave him sympathy for those who asserted that, whatever their status, they were equal under the law. Sewall thus helped two farmers secure bail in a contentious case that appears to have started when they refused to yield their place on a road to the carriage of a man simply because he was a governor. Sewall demonstrated his knowledge of English law on the occasion by citing a case against the Crown involving the esteemed English jurist Edward Coke.

In Sewall's day murder was one of many capital offenses, and he hardly seemed to blink when attending executions, which he sometimes likened to turning someone off, as one would a faucet. However, Sewall does not appear to have been particularly bloodthirsty by the standards of his day. Following English precedents, for example, Sewall opposed inflicting the death penalty on those who had counterfeited bills of credit.

In 1713, after completion of a new court chamber, Sewall addressed a grand jury about his philosophy of judging. "You ought to be quickened to your Duty," he said, "in that you have so Convenient, and August a Chamber prepared for you to doe it in." He explained:

Let never any Judge debauch this Bench, by abiding on it when his own Cause comes under Trial; May the Judges always discern the Right, and dispense Justice with a most stable, permanent Impartiality; Let this large, transparent, costly Glass serve to oblige the Attornys always to set Things in a True Light. . . . Let them Remember they are to advise the Court, as well as plead for their clients.

Sewall continued by expressing the hope that witnesses would testify truthfully, that the court would decide "righteously," and that the people would continue to flourish like a tree.

Although his contemporaries valued Sewall's knowledge of scripture, he recognized the importance of English law, of purchasing law books from England, and of attempting to align colonial practice more closely to that of the common law. Sewall's diary also indicates that he enjoyed the pomp and circumstance of his position and the respect citizens accorded him as a judge.

A distinctive feature of Sewall's career was his advocacy of positions that are today politically correct but were hardly popular in his day. One genesis of his advocacy for African Americans was a case involving John Saffin, who attempted to keep a slave beyond the agreed-upon term, Saffin alleging that the slave had not fully fulfilled his duties during the time he served. Sewall crafted a pamphlet, *The Selling of Joseph*, in which he used the biblical story to argue against slavery at a time when

fellow merchants were enriching themselves from the slave trade. The publication, which appeared in 1700, was the first antislavery tract in the colonies.

In the publication, Sewall attempted to answer the claim that Africans were descended from Ham, the son of Noah, whom Noah had cursed and who therefore deserved slavery. Sewall responded that it was “Uncall’d for, to be an Executioner of the Vindictive Wrath of God; the extent and duration of which is to us uncertain.” The curse might be out of date, he observed, adding, “Many have found it to their Cost, that a Prophetical Denunciation of Judgment against a Person or People, would not warrant them to inflict that evil.” Given Sewall’s judicial experiences in the witch trials, this comment certainly appears autobiographical. Other entries in Sewall’s diary suggest that such experiences led him to take a more skeptical view of unsubstantiated accusations.

When a slaveholder named Thomas Jefferson proclaimed at the dawn of American independence that “all men are created equal,” he relied on the doctrine of natural rights, but he also referred to the fact that all humans had the same creator. Sewall used similar logic in *The Selling of Joseph*, but with arguments more firmly grounded in scripture. Sewall’s opening salvo sounds Lockean: “Forasmuch as Liberty is in real value next unto Life: None ought to part with it themselves, or deprive others of it, but upon most mature Consideration.” Nevertheless his subsequent arguments were more theological. He observed, “It is most certain that all Men, as they are the Sons of Adam, are Coheirs; and have equal Right unto Liberty, and all other outward Comforts of Life.” Just as Joseph’s brothers had no authority to sell him to traders traveling to Egypt, so modern slave traders had no right to buy or sell African Americans.

Like Jefferson, Sewall feared that former slaves could not live at peace with their former masters. He proposed substituting a system of indentures for slavery and, somewhat less politically correctly, opined that “there is such a disparity in their Conditions, Colour & Hair, that they can never embody with us, and grow up into orderly Families, to the Peopling of the Land: but still remain in our Body Politick as a kind of extravasat Blood.” And like some later abolitionists, Sewall apparently favored sending slaves back to Africa.

However tempting it might have seemed, Sewall did not accept the argument that slavery was justified because it exposed Africans to Christianity. He observed, “Evil must not be done, that good may come of it.” He further observed that the good that Joseph did in Egypt did not exonerate his brothers for their wrongdoing.

Sewall also opposed the law forbidding interracial marriage, observing that he tried to prevent African Americans and Native Americans from being “rated with Horses and Hogs, but could not prevail.” His arguments resonate from one century to another. At the 1787 Constitutional Convention, Connecticut’s Roger Sherman objected to the fugitive slave clause on the basis that he “saw no more propriety in the public seizing and surrendering [of] a slave or servant, than a horse.”

Saffin responded in print to Sewall, and soon after the Sewall-Saffin debate over slavery, Cotton Mather let it be known that Christian masters were not obligated to free slaves who converted to Christianity. Sewall thus did not convince his fellow contemporaries, but he appropriately is credited with trying.

Although Sewall opposed slavery on the basis that God had created all races, his concern for Native Americans stemmed at least in part from a somewhat quainter idea he had learned at Harvard. Reflecting a view shared by many Puritans, he saw America as having a unique prophetic destiny and he believed Native Americans had descended from the lost tribes of Israel.

At a time when Puritans were often warring with Indians, Sewall had a long-standing interest in their conversion. He served for more than twenty years as treasurer and then secretary of the Society for the Propagation of the Gospel in New England. He donated land to provide funds for Indian meeting houses and for Native Americans to attend Harvard. Sewall also argued for boundary lines between Puritans and Native Americans as a way to foreclose conflict and tried to dissuade his countrymen from sending military expeditions against the Indians in his tract *A Memorial Relating to the Kennebunk Indians*. In 1705 Sewall unsuccessfully opposed a bill that would have prohibited whites from marrying Native Americans or African Americans, but he was able to mitigate the harshness of the latter restriction by prohibiting masters from forbidding their slaves to marry.

In 1724, Sewall was reading *The British Apollo*, which questioned whether there would be any females in heaven. The book's author reasoned that since Jesus had said there would be no marriage there, women would not be needed! Perhaps stirred to action in part because he was distraught over the plight of his invalid and terminally ill daughter, Hannah, Sewall penned an essay entitled *Talitha Cumi*, a title taken from words Jesus had used in raising a girl to life. Sewall countered *Apollo* by arguing that God's "Sons and Daughters" would be equally at home there and that God would resurrect males and females complete with their existing body parts, all of which God would redeem.

On the personal side, Sewall was a lively figure whose personality emerges with force in his diary from his succinct, yet colorful, observations of daily life. A short man who weighed as much as 230 pounds, Sewall's girth reflected his love of good food, good beer, and good wine (although they abhorred drunkenness, Puritans were not the authors of later pietistic views on alcohol). Sewall also enjoyed good sermons, good books, and good music—for twenty-four years he led the congregation in singing the psalms at the Old South Church. Although he joined in public fast days and held private fasts of his own, he often carried chocolates, nuts, and fruit to share with others, and after his wife died, he often favored the women he was courting with such treats and with books of sermons.

A man of strong Puritan faith and conviction, Sewall sometimes impressed even his contemporaries as straining at the gnat while swallowing the camel. Sewall disdained observances of "holy days," including Easter and Christmas, which he associated with Roman Catholicism, and he delighted in recording in his diary regular commercial activities on such days. Despite his role in leading the choir, he opposed the use of musical instruments in church. Following older biblical usage, he believed that fellow citizens should refer to days of the week by number rather than by name. And he took offense when British troops carried banners with the symbol of the cross and opposed their worshipping in Puritan gathering places according to the forms practiced by the Church of England.

Sewall also had a lifelong aversion to periwigs, which he associated with vanity, and he covered his own bald spot with a cap. He found that

his failure to adapt to changing mores on the subject impeded his union with a potential wife. His substantial concerns about leaving money to her children also contributed to a failed courtship of the widow Katherine Winthrop, of which Sewall gives a lively account in his diaries.

A lifelong member of the board of trustees at Harvard, Sewall believed that the president of the college, who was primarily committed to serving his own congregation, should give weekly sermons to the undergraduates. Although he continued to support his alma mater, Sewall had a hand in creating Yale, in part to counter the spiritual decline he had observed at Harvard.

Sewall's diary also reveals that he could judge others somewhat harshly. He thus justified staying away from a funeral of a man he described as "very debauched" and "atheistical." Playing tricks on people on April 1 was another of Sewall's pet peeves, about which he was likely to admonish the young.

Sewall and his wife, Hannah, had fourteen children; only six survived to adulthood. Though Sewall's diary says almost nothing about his wife of more than forty-five years, it reveals constant concern for the physical and spiritual health of his children, whom he regularly led in family devotions and for whom he requested the prayers of others. After Hannah died, in 1717, Sewall married Abigail Tilley in 1719, but she died the following year. Then, after fruitlessly courting Katherine Winthrop, the widow of Wait Still Winthrop, whom he had succeeded as chief justice, Sewall married Mary Gibbs, who survived him. Sewall's best-known child, and the one in whom he took the most pride, was Joseph, who became pastor of the Old South Church and president of Harvard.

Sewall died in 1730 after a period of declining health. The day after he was interred, his pastor chose a passage from I Samuel, the prophet for whom Sewall had been named and who "judged Israel all the days of his life." Like this prophet, Sewall's primary qualifications were theological rather than legal, and his responsibilities mixed functions that would today be separate and divided among three branches of government. With the glaring exception of his work in the Salem witch trials, Sewall had shown himself to be worthy of the trust that others had placed in him.

FURTHER READING

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