

**THE LAW SCHOOL  
OF  
HARVARD COLLEGE**

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The Law School of Harvard College by Joel Parker

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**JOEL PARKER**

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LAW SCHOOL  
OF  
HARVARD COLLEGE.

By JOEL PARKER.

"So fight I, not as one that beateth the air."

NEW YORK:  
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ETHICS OF RESEARCH

# THE LAW SCHOOL

OF

## HARVARD COLLEGE.<sup>1</sup>

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MATTERS of personal privilege are said to be always in order, and personal privilege is often personal explanation.

This paper asks attention to some matters pertaining to the history of the Law School of Harvard College, which must necessarily partake somewhat of that character.

I am impelled to this course by two publications, appearing near the same time in the month of October, — the first a short article in the *American Law Review*, relating to the School, and the other a report of the Committee of the Overseers to the Board, upon the same subject.

I have not inquired who was the author of the article in the *Review*. The responsible parties are the editors of that periodical, which, in its Summary of Events, speaks in this wise:—

“HARVARD UNIVERSITY. LAW SCHOOL.—For a long time the condition of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts. We say ‘almost a disgrace,’ because, undoubtedly, some of its courses of lectures have been good, and no law school of which this can be said is hopelessly bad. Still, a school which undertook to confer degrees without any preliminary examination whatever, was doing something every year to injure the profession throughout the country, and to discourage

<sup>1</sup> “At the instance of the Law Faculty, the Corporation have passed a declaratory vote in order to correct a prevalent error respecting the name by which this department of the University is known.” . . . . “The true and legal name of the School is not, as many will have it, the Dane Law School, but ‘The Law School of Harvard College.’”—*President Walker's Report to the Overseers*, December, 1859.

real students. So long as the possession of a degree signified nothing except a residence for a certain period in Cambridge or Boston, it was without value. The lapse of time insured its acquisition. Just as a certain number of dinners entitled a man in England to a call to the bar, so a certain number of months in Cambridge entitled him to a degree of Bachelor of Laws. So long as this state of things continued, it was evident that the school was not properly performing its function. We were glad to learn, therefore, that the old system has been abandoned, and are glad to find convincing evidence of the fact in a circular just issued by the Faculty. The circular states that 'The degree of LL. B. will be conferred upon students who shall pass satisfactory examinations in all the required subjects, and in at least seven of the elective subjects, after having been in the school not less than one year.' The intention is, that the seven required subjects should occupy the student fully during one year; the seven electives are meant to fill a second year. The required studies are designed to serve as an introduction to the electives. Equivalents will be accepted from students who offer themselves for examination upon subjects which they have studied elsewhere. Students who are not candidates for a degree can avail themselves of the advantages of the school to whatever extent they see fit" . . . . After stating the names of the Instructors the writer adds, "The learning and ability of these gentlemen warrant us in predicting that their labors will make the Harvard Law School what it ought to be."

Had the author of the article been content to commend the new order of things, without disparagement of the old, or had the words of censure appeared to be a mere incidental, careless utterance, without intention to disparage, the matter might be passed without notice. But the declaration, that "or a long time the condition of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts," stands at the head and front of the article; and the phraseology, although not very clear or happy, seems to have been deliberately chosen as particularly expressive of the idea intended to be conveyed; inasmuch as the writer repeats it, in order to show that that was just what he intended to say,—no more, no less. He did not mean to say that the School had been "hopelessly bad." "Still, a school which undertook to confer degrees without any preliminary examination whatever, was doing something every year to injure the profession throughout the country, and to



discourage real students." "So long as this state of things continued, it was evident that the school was not properly performing its function." But "the learning and ability of the present corps of instructors warrant the prediction that their labors will make the school what it ought to be."

These utterances present grave charges against the School generally, against the rules upon which it has been conducted ever since it was established, and, by implication at least, against some of its previous Instructors, who, it must be supposed, did not do what it is predicted the present will perform.

If the writer knew whereof he was discoursing he understood that the learning, ability, labors, or powers of the corps of instruction do not prescribe the rule for conferring degrees. The natural inference, therefore, from all that is said, is, that there has been something beyond the degree to impeach the School.

Whoever may be the author, it is put before that portion of the legal profession who read the Law Review, with the endorsement of the editors of that magazine, — two young men, it is understood, who, about four years since, consented to receive the honors of the School in the shape of a degree of Bachelor of Laws, without insisting upon a preliminary examination to show that they deserved them. The extent of the injury to the Profession, thereby, is, perhaps, not yet ascertained.

It will not do to assume that the plea of the man, who, being sued for slander, set up as a defence, that he was well known, and therefore no injury could arise from anything which he had said, can be applied to this case, and so the matter appears to admit of, if not to require, some notice.

It is difficult, under the circumstances, to say which is most prominent in the article, the conceit which dictated it, or the entire lack of courtesy manifested by it. In fact, the two are so harmoniously blended, that they cannot be separated without impairing the effect derived from both in conjunction.

But the conceit and the ill manners are comparatively unimportant. A question, in regard to the truthfulness of the assertions, throws other considerations entirely into the shade, and it is proposed to examine them, in this respect, at the present time.

Having held the Royall Professorship for twenty years, terminating in 1868, and having been during that time, with the exception of a single term, Senior Professor, and thus, by the statutes, the head of the Department, I may naturally be supposed to have some interest in the reputation of the school, to say nothing of my own. Others have an interest also. The other members of the Corps of Instruction during that time,<sup>1</sup> and the relatives of those who were members previously, and who are now all deceased,<sup>2</sup> may perhaps be supposed to feel some interest in it, unless they deem it utterly beneath their notice. The members of the Corporation, also, from the organization of the school to the close of the academic year of 1869-70, are, so far as appears, all embraced in the "long time" spoken of, and had some interest in the subject. If the School has been for "a long time, almost a disgrace to the Commonwealth," it has been an entire disgrace to the Corporation to permit such a state of things. It may be added, that all the past members of the School — especially those who have received this discreditable degree, conferred without preliminary examination, — cannot take much pride in their membership, if its character has been what is thus represented.

How others may have been affected by this slander, I do not know. For myself, along with a very deep sense of the injustice done to the Institution, I am inclined to mingle a degree of gratitude to the writer, as the language quoted seems to indicate that it may be expedient to say a few words respecting the School and my connection with it, which would otherwise never have been written.

It may be said — it has been said, — "Why take any notice of such an article; it will not harm you or the School. Quite true in reference to those who have any knowledge of the subject. With them, the reputation of the School and of its past Instructors, was settled one way or the other before this ac-

<sup>1</sup> The other Instructors were Hon. Theophilus Parsons, Dane Professor from August 1848, during the residue of the time; Hon. Franklin Dexter, Lecturer 1848-49; Hon. Luther S. Cushing, Lecturer 1848-51; Hon. Frederick A. Jen, University Professor 1849-50; Hon. Edward G. Loring, Lecturer 1852-55; Hon. Emory Washburn, Lecturer 1855-56, University and Bussey Professor from 1858; Hon. Richard H. Dana, Jr., Lecturer 1866-68.

Hon. Henry Wheaton and Hon. Edward Everett, appointed Lecturers on the Law of Nations in 1848 and 1854 respectively, died without taking their seats.

<sup>2</sup> Stearns, Story, Ashman, Greenleaf, and Kent.

cusation came to defame it. But there are others who will see the charge, and who do not know; some of whom may, perhaps, be reached by a refutation, even if others cannot be.

Besides, I have had good occasion to be assured, since I commenced this paper, how few persons are to be found, after the lapse of a single generation, who have personal recollections of Law Schools, or even very definite traditional knowledge; while the few items which have been committed to type and paper, in Town Histories, or brief biographical memoranda, and even newspaper paragraphs, furnish nearly all the accessible information, and must be taken for truth.

If other materials now exist, in this case, for the formation of a correct judgment, this article, if it is now permitted to stand without contradiction, may, in a few years, be regarded as an important allegation, influencing the opinion which is to be formed respecting the state of the School, prior to its publication; and if, perchance, half a century hence, some plodding legal antiquary, raking among the rubbish (which is the appropriate occupation of an antiquary), should unearth the Law Review of October last, and find, among its mouldy pages, this article on the Law School, and an inquiry should in that way be raised, in the Antiquarian College, how it could be possible that such a state of things could be tolerated and continued, and curiosity should thereupon direct an investigation of the College catalogue, to ascertain the names of the Instructors, and the corporate members who suffered it to fall into such apparent disrepute; I prefer, that in the further inquiries which it is to be hoped will result from this pursuit of useful knowledge, the investigators may find, already collected, the facts which will serve to prove the falsity of the charge, and to erase from their minds the memory of this ink-spot. It can hardly be expected that their zeal and perseverance will be sufficient to induce them to collect the scattered materials which furnish the proofs.

The Law School of Harvard College is not the oldest Law School in the United States, but it is probably the first which was connected with a literary institution having authority to confer degrees.

In the catalogue of law schools, in the American Almanac, a Law department in William and Mary College, Virginia, is