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College Graduation as an Entrance Requirement to Law Schools*

W. Harrison Hitchler

In a recent contribution to the literature of the law, a very learned lawyer, speaking of John Marshall, the greatest of American judges, declared that “his experiences at college had probably little effect upon his mental development.” This remark, coming from one who was then dean of a well known law school, just previous to the announcement by the authorities of that school that in the future graduation from college would be a prerequisite to admission, might well be cited as justifying a doubt as to the purpose which those who insist upon a college education desire to accomplish. But Marshall’s college experiences were of short duration and we cite the remarks of the learned lawyer solely for the purpose of introducing a discussion of the question whether a college education should be made a prerequisite for admission to a law school.

The history of the American bench and bar furnishes no justification for such a requirement. From the early colonial times, when Andrew Hamilton was “the most eminent practitioner in Pennsylvania and the adjoining colonies,” until the present, when John G. Johnson is the acknowledged leader of the bar of Pennsylvania, a large percentage of the most eminent lawyers and judges have been men who were not college graduates.

It has been truly said that the career of George Wythe of Virginia was eminent along many lines, but that “in three respects at least—as statesman, as teacher, and as jurist,—he had few equals in the galaxy of great men that adorn the annals of Virginia.” Wythe was not a college graduate. Nevertheless he became famous for his knowledge of science, of philosophy, of the ancient and modern languages, and, in addition, had the honor of being elected the first university law professor in the United States and the second in the English speaking world—Sir William Blackstone being the first.

Overwhelming proof of Patrick Henry’s standing in his profession as a great and profound lawyer, is furnished by the fact that

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Washington asked him to become chief justice of the United States. Henry never attended college, and it is certain that he gave no sign at the time of his leaving school, nor for many years afterward, of the possession of those intellectual powers which were subsequently to make him a leader in his profession and a supreme power in the stirring events of the early history of our country. Indeed, at the time of his admission to the bar at the age of twenty-four, Henry was a man who had failed in every enterprise he had undertaken and had given no evidence to anyone of those extraordinary gifts which were to make him, in the words of Marshall, "a great orator, a learned lawyer, a most accurate thinker, and a profound reasoner."

Chief Justice Marshall, speaking of a certain American lawyer, said that he was the greatest man he had ever seen in a court of justice. Justice Story attributed to the same lawyer "a great superiority over every man whom he had known." Chief Justice Taney, speaking of the same lawyer, said, "I have heard almost all of the great advocates of the United States, both of the past and present generation, but I have seen none equal to him." The name of this lawyer was William Pinkney. Pinkney was not a college graduate.

The history of William Wirt of Virginia is one of gradual, steady and notable achievement. Without a college education, he became successively Chancellor of Virginia, United States District Attorney and Attorney General of the United States. At the time of his admission to the bar he had not given evidence of talents or industry from which a great career at the bar could reasonably be prophesied, and, it is said that during his early years at the bar he was "held up as a horrible example from one end of the country to the other." Nothing, however, could be more consistent than the rise and progress of Wirt in his profession. From briefless barrister he became the acknowledged leader of the Virginia and the Baltimore bars and his ability as a lawyer is specifically attested by the prominent part he played in the trials of Callender, Burr, and Jefferson, in *Gibbons v. Odgen*, and the Dartmouth College case, and by the fact that he was elected Professor of Law and President of the University of Virginia.

John Bannister Gibson attended Dickinson College but was not graduated and the tradition is that he made little mark as a student. Few, however, will deny that Pennsylvania, prolific as she has been of great lawyers and judges, has produced few, if any, equal to Gibson. For thirty-seven years he was a member of the Supreme Court of Pennsylvania and it would be difficult to overstate the value of his influence in this great constructive period of

the law of Pennsylvania. At the time of his death, his successor, Chief Justice Black, said, "In the various knowledge which forms the perfect scholar, he had no superior. Independent, upright and able, he had all the highest qualities of a great judge. In the difficult science of jurisprudence he mastered every department, discussed almost every question and touched no subject which he did not adorn."

Charles O'Connor, of New York, received almost no education, as the word is understood to-day. The whole time spent by him at school was incredibly short—certainly not more than six months altogether. Furthermore at the time of his admission to the bar the profession of law was aristocratic and "a line was drawn between those who had had a college education and those who had not." In spite of these facts and of the prejudice which existed against him as the son of an Irish immigrant, by earnestness and diligence, he early became one of the leaders, and later the acknowledged leader of the New York bar, and continued in that position for almost forty years. O'Connor's greatness as a lawyer is attested by those who are themselves regarded as great lawyers. His contemporaries, men who were opposed to him in litigation, who were acquainted with his skill as a draughtsman and pleader, and with his ability in argument, have testified to his greatness. William M. Evarts said that O'Connor was, in his judgment "the most accomplished, in the learning of our profession, of our bar," and that "he was entitled to pre-eminence in this province of learning among his contemporaries in this country, and among the most learned lawyers of any country under our system of jurisprudence." James C. Carter said that "he was, all things considered, the profoundest and best equipped lawyer that has ever appeared at this (the New York) bar" and that "he would not suffer in a comparison with the great lawyers of any nation or any time."

The fame which Lincoln acquired as President is apt to cause us to forget that he won distinction as a lawyer. Justice David Davis of the Supreme Court of the United States once said, "In all the elements that constitute a great lawyer he had few equals." Lincoln said of himself that he had never attended school more than six months in his life and certified in the Congressional Directory that his education had been defective. Those who insist that a college education is a necessary prerequisite to the study of law are prone to argue that the achievements of Lincoln would have been even greater had he received a college education. It is, however, more probable that any other education than that which Lincoln had, might have dwarfed his rugged strength and impaired those solid

and resolute qualities, those practical and homely virtues, which were the source of his success.

Stephen Arnold Douglas was a lawyer of eminence and distinction before he became a prominent figure in our national and political history. Douglas was not a college graduate yet when less than twenty eight years old, and within less than seven years from the time when as a penniless adventurer from the East he had been admitted to the bar of Illinois, he became a leader of the bar of Illinois and a member of its court of last resort at an age when most men are just beginning to practice.

Mercer Beasley served as Chief Justice of New Jersey for thirty-three years and is generally considered to have been New Jersey's greatest judge. Tho his father had been Provost of the University of Pennsylvania, Beasley, who entered Princeton, left college before graduation. During his career upon the bench his fame extended beyond the borders of the State. His complete knowledge of the law was a marvel to all who came in contact with him and his opinions were famous for their learning and strength in jurisdictions where he was personally unknown.

It is related that Jeremiah Sullivan Black hated school. He left it finally at the age of seventeen to begin the study of law. His own predilection had been for the study of medicine and he felt no drawing toward the law. Nevertheless by patient labor, by earnest effort and by the help of his own remarkable mentality he acquired such knowledge as enabled him later to serve with distinction as Judge of the Court of Common Pleas, Chief Justice of the Supreme Court of Pennsylvania, Attorney General of the United States and Secretary of State. His career was one of distinguished service to his country. "As most men fight for wealth, for position, and for life, he fought for honor, for justice and for civil liberty. For him there was but one thought—the welfare of his country."

Few treaties upon legal topics have achieved a more immediate and lasting success than Benjamin on Sales. It became a classic on both sides of the Atlantic and deservedly takes high rank among great juridicial productions. The writer of the book, Judah P. Benjamin, who became famous as a leader of the bar in both England and the United States left college at the beginning of his sophomore year and there was a rumor to the effect that he had been expelled. The esteem in which he was held by his contemporaries at the bar is shown by the fact that upon his retirement in 1883 a great banquet attended by all the leading lawyers of England was held in his honor at which Sir Henry James, the Attorney General, in proposing the health of Benjamin, said, "Who is the man save this one of

whom it can be said that he held conspicuous leadership at the bar of two countries.”

Thomas McIntire Cooley “made for himself a name and place in our jurisprudence that entitles him to be ranked with the most distinguished jurists of his time.” “Probably no judge upon a State Supreme Court left a record, that, all things considered, is superior to his.” Certainly as a lawyer, writer and teacher he had few equals. He never attended college yet in the words of one of his colleagues upon the law faculty of the University of Michigan, “somehow he attained a better education than nine-tenths of the college graduates. He learned from reading and the great school of life where most of us get the discipline which is most useful.” And as said by a late dean of the same school, “it may have been fortunate for him and the world that necessity made him his own instructor.”

These instances sufficiently demonstrate that it is possible for one without a college education to achieve success and render distinguished public service. They are typical and not exceptional. The history of the American bar is replete with cases of similar import and equal persuasiveness. Indeed, in reading this history one experiences a feeling of thankfulness that worthy men have not been prevented by artificial requirements from rendering service to their country at times when their country sorely needed their aid.

From the experiences of the past we should gain wisdom to guide us in the future. Especially is this true when the lessons which the past seems to teach are confirmed and strengthened by the experiences of the present. A present service to the nation, equal to that of the past, is being rendered by men who are lawyers but who are not college graduates. That the nation needs this service will hardly be denied. To decree that the nation shall not have it would be a dereliction of public duty.

The requirement is not justified by the experiences of those who have attempted to enforce it. In mediaeval France admission to the medical profession was sedulously restricted to men of university training and, as a consequence, the medical profession became notorious for its backwardness and inefficiency. In Germany, centuries ago, an effort was made to exclude from the law schools all who did not have an arts degree. It was found, however, that the length of residence at the university necessitated by this requirement “produced, idleness, dissipation and waste of time” and that the really successful institutions were those who accepted graduates of the secondary schools as candidates for degrees in law “just as freely and rapidly as circumstances would permit.”

Harvard was the pathfinder in requiring a college degree for admission to its law school and it is now the common belief that the doors of its law school are closed to all but college graduates. This impression is erroneous. Men who are not college graduates may have, as special students, all the privileges of the school in the way of instruction. "The future Abraham Lincoln and Daniel Webster," said the late Dean Ames of Harvard, "ought not to be excluded from any law school for want of a college degree."

The requirement is not justified by the experiences of American law schools. During the last fourteen years the law school of the University of Pennsylvania has classified its students under these heads: college graduates; men who spent one or more years in college but were not graduated; high school graduates. The general averages of all the men is as follows:

College graduates, 77.7.

Men who attended college but were not graduated, 73.1.

High School graduates, 75.5.

The difference between the general averages of the college graduates and the high school graduates is too slight to be used as the basis of any inference except the conclusion that if four years at college, with the consequent expense and postponement of one's admission to the bar, increases one's efficiency only two per cent. it is not worthwhile. By four years' experience at the bar after admission one's efficiency is increased much more than two per cent.

The experiences of other institutions has been similar to that of Pennsylvania. "We cannot exclude non-graduates from our medical school," said the president of a leading western university, "because so many of our best students are non-graduates." At a meeting of the Association of American Law Schools, Chester E. Cole, Dean of the Iowa College of Law, declared in effect that he had taught the law as a professor in a law school for thirty-nine years and that he had a long retrospect of graduates, numbering thousands, and that those who had made their mark, and advanced the profession, and aided in the establishment of a jurisprudence both wise and beneficent, were not college graduates. President Hadley of Yale, has declared that "the non-college men in our professional schools are as a class industrious, and not a few among them are exceptionally able."

The requirement is not justified by the experiences of the State boards of law examiners. W. R. Fisher, who has served with great distinction as a member of the State Board of Law Examiners of Pennsylvania, speaking of the preliminary examination in Penn-

sylvania, has said, "A great many college graduates have been turned down in that preliminary examination. I may say that graduates of many prominent universities have failed to pass that preliminary examination."

In the ten years preceding 1911, the percentage of rejections by the State Board of Law Examiners of New York increased from 30 to 57 per cent. At the beginning of this period there were 14 per cent. fewer failures among college graduates than among non-college graduates but in 1911 this difference had diminished to 2.3 per cent.

Judge Franklin M. Danaher, who was for fifteen years a member of the New York State Board of Law Examiners, and assisted during that time in the examination of twenty thousand applicants, said in a paper which he read before the Legal Education Section of the American Bar Association in 1909, "Our experience is that a high school education requirement is high enough and practically sufficient. * * * An examination of our records shows that there is little, if any difference in the percentage of high school graduates and collegiates," and in the same year the State Board said, "The proposition to exclude from the bar all the bright and ambitious young men whose environment will not permit them to get beyond high school or to go to college may be idealistic; but, if it is, it is also impracticable. A high school education is practically sufficient and sufficiently prohibitory."

The requirement is inherently vicious. The standard which it purports to create is entirely inappropriate. It is not that before beginning the study of law, one's mind shall have reached a certain degree of development, nor that one shall have acquired a certain amount of knowledge, nor that one shall have studied certain subjects, nor that one shall have studied certain subjects, for a certain time. It is that one shall have studied certain subjects, for a certain time in a certain place, to wit, a college.

It eliminates the possibility that by the study of subjects other than those included in the curriculum of the average college, one may acquire the knowledge and mental development essential to the successful study of the law. The field of human inquiry, and study, and knowledge, is large and constantly extending. In the average college the attention of the students is directed to only a few of the subjects included therein. There is no evidence to prove that by the study of these few subjects one's mind is especially attuned for the perception and assimilation of legal principles and the solution of legal problems. That there are many other subjects, the study of which may furnish the "liberal education" regarded as a

prerequisite to the study of law cannot be denied. Indeed the fact that within the last few years a large number of colleges have revised their curricula and eliminated therefrom subjects, a knowledge of which has been for many centuries considered essential to a liberal education, and the further fact that the curricula of the various colleges differ greatly, seem to furnish cogent evidence of this proposition. It is not fair, therefore, to exclude from the law schools men who have not studied particular subjects but who have studied other subjects of greater difficulty with equal earnestness and, in many cases, greater profit.

There has been much vague talk of culture studies and an effort has been made to create the impression that a college education is essential to culture. This is not true. Culture results whenever a serious student enters any field of inquiry. There is nothing quite so productive of culture as the study of law itself. "The study of law is of great value as an educational factor." said the Hon. W. Blake Odgers in the addressing the Law School of the University of Wales, "It supplies all the fundamental requisites of a good education, for it tends to develop and enlarge the mind, and to quicken and invigorate its powers." From it one acquires a knowledge of ethics, of logic, of philosophy, of psychology, an appreciation of literature, and above all a knowledge of life. If greater culture is desired we can obtain it, and at the same time serve important utilitarian purposes, by increasing the time required to be spent in the study of law.

Assuming, however, that the training and knowledge gained from the study of subjects embraced in the curriculum of the average college is necessary, it by no means follows that these subjects must be studied at college. They may be studied elsewhere with equal advantage and, frequently, with greater profit. "I recognize the ability," said Nicholas Murray Butler, President of Columbia University, "of the best secondary schools to do not only as well as, but even better than, the colleges have been in the habit of doing the work of many of the studies of the freshmen and sophomore years. I believe it to be indisputable that many secondary schools provide better equipment and better instruction in English history, physics and chemistry than do any but very few colleges. College teaching has at this point, failed to keep pace with the tremendous educational advances of the last generation; while the secondary schools have availed themselves of the new tendencies and opportunities to the utmost."

At a meeting of the American Bar Association in 1905, Horace L. Wilgus said, "I have been connected with university work sub-

stantially all of my life, and I desire to say that my observation leads me to believe that the universities do not contain all the knowledge that there is. * * * I sometimes think that there are men in the university faculties who are not really doing the work they might do and that there are people outside who can learn things that are as valuable to them as sitting at the feet of some of the members of faculties." At the same meeting W. R. Fisher said, "I believe in the best education a man can possibly attain, but I believe in his seeking whatever source of information is at his command." Speaking of the preliminary examination in Pennsylvania which is designed to *test the candidates' fitness for the study of law*, Mr. Fisher said, "A great many college graduates have been turned down in that examination. I may say that graduates of many prominent universities have failed to pass that preliminary examination."

The beneficialness of a "college education" is not universally conceded. Dr. William Trickett who is a graduate of a well known college and who served with great distinction as its professor of psychology and later as its professor of the modern languages, has recently said, "There is often much mistraining of youths in colleges. Much time and thought are bestowed by collegians on other than things of the mind. Some colleges are seminaries for propagating pernicious social and economical notions. In many independence, originality, divagation from accepted notions, political religious, philosophical, are frowned on as serious intellectual vices. We think that the proposition that a college course is a good thing, is entirely too broad. *Some* courses in *some* colleges, are good for *some* men. Anything stronger than this is erroneous and mischievous. At least as true would be the assertion that some courses in many colleges are for many students pernicious." William L. Curtis, Dean of the St. Louis Law School, has said that it is not an uncommon thing for a college course to make a man a poorer student than he was when he finished high school.

A somewhat similar question was presented to the Section of Legal Education of the American Bar Association in 1909, when a rule was proposed which provided that no candidate should be registered as a student of law until he had passed the entrance examination of the collegiate department of the State university or of such other colleges as might be approved by the state board of law examiners. On the suggestion of Simon E. Baldwin of Yale University that there should be an equivalent examination not under college auspices, the rule was amended by adding the words "or any examination equivalent thereto, conducted by the authority of the State." And as said by the chairman of the section, "The proposi-

tion in its present form probably represents, as far as may be possible, the present consensus of opinion at the bar.”

“The great concern after all,” said Dean Richards of the University of Wisconsin School of Law, “is not whether a student has an A. B. degree but whether he has sufficient training to carry on the work required.” This training may be acquired elsewhere, and frequently is not acquired at college. It follows, therefore, that by excluding other reasonable tests of a candidate’s fitness we will, instead of excluding incompetent men, simply compel many men who are competent to devote their time to something which is for them unnecessary and which may not be to their ultimate benefit.

The requirement does not create a uniform standard. “College graduation” does not stand for definite attainments. The standards of colleges, even in the same jurisdiction, vary greatly and the significance of college graduation is entirely dependent upon the standard of the college. Indeed, owing to the prevalence of the elective system, and the variety of courses which colleges now offer, diplomas of the same college may stand for very different attainments. If the purpose is to adopt a general standard, that purpose is defeated rather than subserved by the requirement. Harvard soon discovered this fact and, as a consequence, it has been compelled in administering its entrance requirements, to classify colleges as follows: “Colleges of high grade;” “colleges of approved standing;” “colleges.” This is surely a unique classification and one of which a just application is hardly possible.

The requirement would exclude from the profession many very desirable men. “It is doubtless true,” said President Hadley, “that the requirement of a college degree would keep out a large number of unfit men from the rank of advocates. But the indications are that this gain would be offset by the loss of new blood and of the appreciation of public needs which such exclusiveness carries with it.” “Require from the student of law whatever degree of professional training you may deem necessary for the fullest public service; but do not burden him with the additional requirement that he shall spend in his secondary education that amount of time which, as many of us know to our cost, only the rich can easily afford.”

“What our profession needs,” said Dean Cole of the Iowa School of Law, “is moral stamina, integrity and manhood.” “We need those as much as we need higher education and I submit to you that the higher education and the extension of this preliminary education will shut out from us the sons of farmers and mechanics, occupying that position in society from which come the moral sentiments and principles which preserve our profession. I say, there-

fore, to extend the time and require a measure of culture beyond that which the people in that stratum of society can give, is to shut them out and deprive our profession of the advantages which would come from that ruggedness of character and that sturdy integrity which is certainly found there more than in any other stratum of society." The late Chief Justice Williams of the Supreme Court of Pennsylvania once said that he could not have become a lawyer if a college education had been required.

The possible extent of this exclusion is indicated by the fact that statistics show that fewer than twenty-five per cent. of the students in the law schools in the United States have taken a full college course.

The requirement unduly postpones one's entrance upon a career of actual service to the world. A student who enters college at the age of eighteen and spends four years there, and then spends three years in a law school, does not enter the bar until he is twenty-five, and if he adds a year in a law office, as is commonly done, he is twenty-six before he enters upon an active career at the bar, and, "unless his career is exceptional he will be at least thirty before his earnings will enable him to establish a home and assume the responsibilities regarded as essential to his well being and that of the state."

A leading medical journal has declared that this postponement of entrance to an active career is right, and that the young men who enter the professions must recognize the fact that they cannot, in many cases, afford to be both educated and married, but the feeling entertained by the general public and by the leading educators of the day is that it is bad for both the community and its young men to have its young men so long kept out of the active work of life; that the doors of the professions should not be closed to young men of worth of small means, who could not sustain themselves for so long a period, and that it is bad for a young man who can afford it, to lead for so long a period a life to at variance with the life of the ordinary citizen. The feeling everywhere prevails that men who desire to enter the profession of law should be permitted to begin their life's work in time to reap some of its rewards before the flush and joy of youth are past and that there should be some chance for a man, "altho devoted to a learned profession to have a wife and home."

The requirement will increase the cost of administering the law, for lawyers will demand fees proportionate to the cost of their preparation. The great majority of questions which are addressed to a lawyer require for their solution neither great learning nor ex-

ceptional training. To require all lawyers to have exceptional training is to require clients to pay for exceptional training in a multitude of cases in which exceptional training is unnecessary. It would be as sensible to provide that no one might be a physician unless he were able to perform the most difficult surgical operations.

The requirement will tend to introduce a caste system of the worst sort. During the past generation the traditional distinction between the learned and the unlearned professions has been obliterated, and the fact that the work of the manufacturers and the financier, the farmer and the engineer, the journalist and the teacher, involves the same ability and character, and carries with it the same social privileges and responsibilities, that are involved in that of the minister, physician or lawyer, has forced itself upon the consciousness of the nation. "The gain from this source has been so great that it has been sufficient to counteract many of the other dangers by which the democracy of the nation has been menaced." It will, indeed, be a serious misfortune if the colleges and universities undo this work by singling out by artificial restrictions the profession of law as "the peculiar property of those who have inherited wealth and collegiate education." Such a course will arouse antagonisms to the profession of law rather than admiration for it, and, surely, further antagonisms to the profession ought not to be generated.

Influenced by the foregoing, and many other, considerations, the Dickinson School of Law has decided that it will not require college graduation as a condition for entrance. It is not willing to sacrifice its usefulness and influence in the community for the sake of gaining a prestige which would be both fictitious and elusive.

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