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THE ORIGIN OF LEGAL EDUCATIONAL INSTITUTIONS AND THEIR FOUNDERS

As you may know, St. Thomas More is now considered the lawyers' patron saint. For long St. Ives had this distinction, but the members of the bar never enthused over him because

1. He was primarily an ecclesiastical lawyer.
2. Tradition has it that he also practiced civil law extensively, but without charging fees.
3. When he died he was buried in a cathedral in Brittany and on the window above his tomb someone inscribed a legend which read: "Here lies Ives of Brittany. He was a lawyer and not a robber, at which the people wondered."

On the other hand, Thomas More was one of the most distinguished lawyers of his time and became Lord Chancellor of England. His father and grandfather were lawyers. He amassed a fortune out of the earnings of his practice and maintained a regal residence in London. He could afford to support Erasmus as a house guest for several years. It was in More's home that Erasmus wrote "In Praise of Folly," the only one of his many writings that is now remembered. It was dedicated to his host. Holbein, the Younger, the great portrait painter, also lived with More while he did some of his famous portraits. More went to Parliament as a representative of the merchants of London and he wrote "Utopia" while he was in the Low Countries on a legal mission for his commercial clients. The first sketch of his life was written by his son-in-law, William Roper. According to Roper, More's father saw to it that he was "brought up in the Latin tongue at St. Anthony's in London." This was a Latin grammar school. Next he was placed in the residence of Cardinal Morton so he could perfect himself "in polite discourse and in the social graces." Then,
according to Roper, his father "placed him at Oxford, where when he was both in the Greek and Latin tongue sufficiently instructed, he was then ready for the study of the law of the Realm put to an Inn of the Chancery, called New Inn, where for his time, he very well prospered. And from thence was committed to Lincoln's Inn, with very small allowance, continuing there his study until he was made and accounted a worthy utter barrister." He entered Oxford in 1492 and after finishing his courses there he studied at the Inns of Court four years before he was called to the bar. Oxford had then been in existence for more than two hundred years. Daniel Sargent of Harvard, in his biography of More, describes Oxford of that time as follows: "Oxford University was then, as it is now, an English school of learning on an English countryside, two days' walking distance west from London, but it was also a metropolis in a realm which cut across the national boundaries of Europe, and which was composed of some eighty universities scattered throughout Christendom. The citizens of this land, whatever their race, were fellow-citizens in a great commonwealth, and what they learned in their land, and what they taught in their land was never to their boast — local, but universal. They were clear-headed men, practised in disputation, and merciless in their logic. In such a land — I still call it a land, so real was it — mists that existed in adjoining regions disappeared. Fairy-tales could not enter it. Enthusiasms found themselves there sorely chastened. Precipitancy was rebuked.

"As the great free country of the intellect was to the medieval mind a real country, so the scheme of studies in that country were real, founded on reality, real as a landscape. It was so fixed and so logical that it existed as the scheme of a tennis court exists to a tennis player, who knows that a tennis court will be the same, no matter where it will be, no matter whether it is planted round with lilacs or forsythia, or is made of this or that-colored clay. So clear
was the scheme that it lent itself to be depicted even in design. It was a castle, outside of which stood shacks and pavilions, invitations to idleness. Inside its walls were seven noble flights of steps, up which a man who had grown ashamed of his ignorance, and who had resisted allurements could climb. Those flights of stairs were the Seven Liberal Arts: Grammar, Rhetoric, Dialectic, and then Arithmetic, Geometry, Music, Astronomy. They led him to become a Bachelor of Arts. Then he could proceed even farther, climbing to a higher terrace, becoming a philosopher, and then to a still higher terrace becoming a theologian. To him as a theologian belonged a turret at the castle’s summit into which he could climb, and under the open sky, God’s very sunlight, play the contemplative. Nothing in that castle was purposeless.

"Merely to enter such a scheme of studies was a discipline. The plan of the castle reminded its inhabitant that he was more than an individual, more than an Englishman or a Frenchman; he was an intellectual man, whose personal or national peculiarities were not the measure of all things, and whose place of final halting had not the temporary marks of the villages to which he was used. Its divisions taught a man to be respectful not only of men of other nations, and other temperaments, but to do honor to those who were studying on other terraces. Its insistence on a scale of studies kept the beginner from thinking that he knew everything, or that he was expected to know everything. The logic of the castle preached humility, and advised a certain reserve to every man in the credence which he was always ready to give to the suggestions of his fantasy."

More was canonized in 1935, four hundred years after he was beheaded. Ives was canonized in 1347, forty-three years after his death. More’s canonization was not deferred so long entirely because he was a lawyer. Utopia was the great hurdle in his case. It is reliably said that it bordered
on heresy. During the same year that More was canonized, a commission of Russian scholars searched the archives of Britain to learn everything that could be discovered about More and because of Utopia he was ranked by Soviet Russia among the immortals of all time. (This statement rests on memory.) It is interesting to note that Utopia contains the first recorded argument in favor of a six-hour workday.

When John Jay, our first Chief Justice, was admitted to the bar of New York in 1768, the standards for admission then were practically the same as More met in England in 1501. He attended a private Latin school at New Rochelle and entered Kings (now Columbia) College in 1760. For admission he was required to read "the first three of Tully's orations, and the first six books of Virgil's Æneid into English, and the ten first chapters of St. John's Gospel into Latin." In 1764, after delivering a dissertation on "The Blessings of Peace," he received his bachelor's degree "in the presence of General Gage, his majesty's council, and other notables." Two weeks later he entered the law office of Benjamin Kissam, an eminent lawyer of that time, for which privilege he paid two hundred pounds, and bound himself as an apprentice for five years. At that time in New York City ordinary law clerks were obliged to obligate themselves not to enter the profession. This rule was imposed by the bar "to impede the lower class of people from creeping in." The standards for admission to the bar, which then obtained in New York, prevailed throughout all the Colonies. This was true even in Massachusetts where originally both the Pilgrims and Puritans forbade the practice of law for fees. The famous General Court of "Plymouth Colony" was made up of laymen. The same was true of the General Court of Providence. An ornery Pilgrim named Groton who was haled before the General Court of Plymouth because, among other things, his maid was given to smiling in church, was jailed and fined for contempt of court and he met the same fate after he was driven out of the colony and found
refuge in Providence. There he was punished for contempt because he said in open court that the Chief Justice was a lawyer and his associates were "just-asses."

None of the colonial colleges: Harvard, Yale, Columbia, Pennsylvania, William and Mary, gave courses in law. For centuries members of the English bar have been trained at the Inns of Court. Lincoln's Inn, Gray's Inn, the Middle Temple, and the Inner Temple have been the common law colleges of England for more than seven hundred years. (New Inn was dissolved long since.) No one was ever called to the British bar because of a degree conferred by Oxford or Cambridge. Before the Revolution, more than one hundred fifty colonial lawyers attended the Inns of Court. Sr. William Blackstone commenced to lecture on the common law at Oxford in 1758. However, the students who attended his lectures were not preparing to practice law. They were preparing for life as gentlemen of station and wealth and for the public service. Blackstone's Oxford lectures prepared primarily for non-professional college students, were the basis of his Commentaries, the greatest classic of the common law and one of the great masterpieces of English literature. Blackstone's Commentaries brought him enduring fame and great wealth for his time. In 1924 the American Bar presented a marble statue of Blackstone to the English Bar. More than one thousand sets of Commentaries were sold in the Colonies at Fifty Dollars a set before the first American edition was published. His royalties were approximately One Hundred Thousand Dollars. He became wealthy enough to purchase the advowson of St. Peter's Parish at Wallingford, which was held by his descendants until it was bought by the Bishop of Oxford.

In 1779 George Wythe became the first professor of law in the United States. He was on the faculty of William and Mary. When he became Professor of Law at William and Mary he was giving graduate courses in Latin and Greek.
He assumed the law professorship as an additional teaching burden. In addition to his courses in Latin and Greek he gave all the courses in law, conducted a moot court and a moot legislature, carried on a considerable law practice and managed a large, self-contained estate. Besides doing all these things, he mastered Italian and Spanish during his professorship. Among his distinguished students were Thomas Jefferson, John Marshall, James Monroe and numerous Randolphs. He signed the Declaration of Independence which one of his favorite students had written. Later he was a delegate to the Constitutional Convention. When he was well along in years he left Williamsburg and went to Richmond to assume the office of sole Chancellor of the State of Virginia. Although the duties of this judicial office were very heavy, his fondness for teaching led him to organize law classes, which were attended by a considerable number of students. His instruction was given gratis and among the students who attended was Henry Clay. During this period of his life he mastered Hebrew. His death was tragic. From time to time he had emancipated all of his slaves but three. One of these was a negro boy whom he tutored to the extent of teaching him Latin and Greek. His will provided for the emancipation of this boy, together with a substantial legacy. The will provided that if the boy predeceased him, the bequest would go to a profligate nephew. Somehow the nephew learned of this provision of the will and in order to make certain that he would receive the legacy, he poisoned the negro boy’s coffee, but the coffee was also drunk by his uncle and both the boy and the uncle died. On his death, Thomas Jefferson paid this tribute to his memory: "No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible, and his justice exact; of warm patriotism, and, devoted as he was to liberty, and the natural and equal rights of man, he might truly be called the Cato of his country, without the avarice of the Roman;
for a more disinterested person never lived. Temperance and regularity in all his habits gave him general good health, and his unaffected modesty and suavity of manners, endeared him to everyone. His was of easy elocution, his language chaste, methodical in the arrangement of his matter, learned and logical in the use of it, and of great urbanity in debate; not quick of apprehension, but, with a little time, profound in penetration, and sound in conclusion. In his philosophy he was firm, and neither troubling, nor perhaps trusting any one with his religious creed, he left the world to the conclusion, that that religion must be good which could produce a life of such exemplary virtue.

"His stature was of the middle size, well formed and proportioned, and the features of his face were manly, comely, and engaging. Such was George Wythe, the honor of his own time and the model of future times."

The first law school in the United States was founded by Tapping Reeve, brother-in-law of Aaron Burr, at Litchfield, Connecticut, in 1784. He graduated from Princeton under its great president, John Witherspoon, and after studying law for several years he was admitted to the bar of Connecticut where he became a distinguished lawyer, judge and legal author. In addition to carrying on an extensive practice he conducted his law school without assistance and instructed approximately one thousand young men. There was no law school in New York City until 1854 and many of its early lawyers were trained by Reeve.

Harvard Law School was founded in 1817. Its first twelve years were marked by complete failure. In 1829 it only had one student. Then Joseph Story, a justice of the U. S. Supreme Court appointed by James Madison in 1811, when he was thirty-one, accepted the Dane professorship at the Harvard Law School. He moved from Washington to Cambridge but remained a member of the Supreme Court until his death. From 1829 until he died in 1845 he taught
law at Harvard, traveled a far-flung circuit, attended all sessions of the Supreme Court and wrote many of its great opinions. In 1833 Simon Greenleaf, author of "Greenleaf on Evidence" was also called to the law faculty at Harvard. These two men gave to the Harvard Law School a preeminence which it has never lost. When Story became a professor of law there was a complete deficiency of legal textbooks. He immediately set to work to remedy this situation and with incredible rapidity produced textbooks upon the following subjects, viz: "In 1832, on Bailments; in 1833, on the Constitution, three volumes, and an abridgment of the same in one volume; in 1834, on Conflict of Laws; in 1836, on Equity Jurisprudence, two volumes; in 1838, on Equity Pleading; in 1839, on Agency; in 1841, on Partnership; in 1843, on Bills of Exchange; in 1845, on Promissory Notes. The dates given are of the first editions."

There were many subsequent editions. Several of these books went through as many as ten editions. They were published and widely used in England and some of them were translated into French and German. Six years after his death, one of his distinguished students, Richard H. Dana, paid this tribute to him in a letter written to a friend: "Of the character of Judge Story as a teacher, it is needless for me to speak. His pupils in all parts of America, whatever may be their occupation or residence, or whatever the lapse of time, will rise up as one man and call him blessed. He combined in a remarkable manner, as has been said by everybody, the two great faculties of creating enthusiasm in study, and creating relations of confidence and affection with his pupils. Do you remember the scene that was always enacted on his return from his winter session at Washington? The school was the first place he visited after his own fireside. His return, always looked for and known, filled the library. His reception was that of a returned father. He shook all by the hand even the most obscure and indifferent;
and an hour or two was spent in the most exciting, instructive, and entertaining descriptions of the events of the term."

The prerevolutionary standard for admission to the bar was generally maintained in all of the eastern states until democracy came into its own during the Jackson era. The low point of this flight from tradition and discipline is found in the constitution of Indiana adopted in 1851, which guaranteed every male citizen of that state the absolute right to practice law, providing he was twenty-one years of age and possessed of good moral character. Senator Tom Corwin of Ohio said that if this test was honestly applied, Indiana would have to import its bar in its entirety. It took one hundred years to raise the standards of the bar from this low level to the standard that prevailed at the beginning of the Revolution. It often happens that so-called progress is nothing more than an effort to regain something that has been lost.

Edward J. Dempsey.