The Roots of a Professional Renaissance: Lawyers in Nova Scotia 1850-1910

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THE LAST QUARTER OF THE NINETEENTH CENTURY witnessed several attempts to create a national bar association in Canada. One of these was spearheaded by John Thomas Bulmer, a Halifax lawyer and social reformer, who was given *carte blanche* by the Nova Scotia Barristers' Society in his efforts in this regard. The campaign was going rather well until some unguarded remarks by Bulmer were reported in the press. He had cited as justification for the creation of a national organization the fact that Nova Scotia had done as much as could possibly be done within her own frontiers to raise the standards of legal education and enhance the position of the legal profession. The time had come to proselytize: "there was not much use trying to raise the standard in Nova Scotia", he lamented, "with the low averages all about us of New Brunswick, Prince Edward Island, Quebec and Ontario". Predictably, his remarks were less than well received in the rest of the Dominion, and attendance "from the other provinces, and especially from Ontario, was noticeably weak" at the 1896 inaugural meeting of the "Canadian Bar Association" in Montreal.[1]

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[1] (1896) 19 Legal N. 290-91; (1896) 32 Can. L.J. 533. See also P. Girard, "'His whole life was one of continual warfare': John Thomas Bulmer, Lawyer, Librarian and Social Reformer" (1990) 13 Dalhousie L.J. 376 at 396. It is not clear upon what evidence the bâtonnier of Quebec has recently been identified as the moving spirit behind this event: C.I. Kyer & J. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers and Legal Education in Ontario 1923-1957* (Toronto: Osgoode Society, 1987) 61, note 3. Quebec's fear of juridical assimilation was one of the principal reasons for the late emergence of a national bar association in Canada.

Bluenose chauvinism or historical fact? Bulmer's remarks were delivered with his characteristic extravagance, but the bar of Nova Scotia was arguably on its way to becoming a national leader in the last quarter of the nineteenth century. Certainly in the field of legal education it had succeeded where many other bars in the English-speaking world had failed. With the establishment of the Dalhousie Law School in 1883, the Nova Scotia bar had agreed on an adjunct to the traditional period of service in articles. It had ensured that professional legal education would be provided within the prestigious halls of a university, and that it would combine the best elements of a liberal education with the particular requisites of professional education. At a time when the impetus behind the initially creative educational efforts of the Law Society of Upper Canada seemed to be fading, the bar of Nova Scotia moved quickly and purposefully into the breach. On occasion this was noticed even in Ontario itself. The editor of the *Canada Law Times* had occasion to remark in 1888, apropos of yet another scheme to reform professional education in Ontario, that "the Province of Nova Scotia with its well-regulated and well-officered Law School is as far ahead of Ontario in the practical education of lawyers, as the Province of Ontario is ahead of Nova Scotia in vanity and self-adulation".[2]

It was not only in the field of legal education, and not only on the provincial stage, that one can discern a new sense of confidence and purpose in the Nova Scotia bar. The enactment of the *Criminal Code* of 1892, the crowning achievement of *fin de siècle* law reform in Canada, was due to the efforts of a Nova Scotian Minister of Justice, Sir John Thompson, his Nova Scotian deputy minister, Robert Sedgewick, and George Wheelock Burbidge, a Nova Scotian who made his career in New Brunswick before moving to Ottawa.[3] And in the field of international finance and corporate promotion, a group of Halifax lawyers played key roles in the creation and management of large multinational business enterprises in the frenzied quarter-century between 1890 and the Great War, including the Mexican

[2] (1888) 8 Can. L.T. 69 at 71. *Plus ça change, plus c'est la même chose?*

[3] D. Brown, *The Genesis of the Criminal Code of 1892* (Toronto: Osgoode Society, 1989) c. 6.

Light and Power Company, the Nova Scotia Steel & Coal Company, the Steel Company of Canada and the Canada Cement Company.[4]

All these developments are illustrative of a broader phenomenon: the modernization of the legal profession in Nova Scotia in the last quarter of the nineteenth century. The period witnessed the creation of a university law school, the transformation of the Barristers' Society from social club to organ of professional self-government, the inauguration of the modern law firm, the re-emergence of a significant legal literature, and the beginnings of ethical debates. None of these events could have been predicted with any confidence in 1870, but all were firmly in place by 1900.

These changes in the legal profession may usefully be placed in a number of contexts. Most obviously, the emergence of the modern legal profession presents a number of interesting parallels with other professional groups in the Maritimes.[5] More generally, this story may shed light on the history of the middle class, a theme which can only be adumbrated in this paper.[6] In a related vein, the changing social composition of the bar and its elite provides a case study of the dynamics of leadership in later Victorian Nova Scotia. Finally, the Nova Scotia example may be able to shed light on recent debates about the changing nature of legal professionalism in nineteenth century Anglo-American society.[7]

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[4] G. Marchildon, "International Corporate Law from A Maritime Base: The Halifax Firm of Harris, Henry and Cahan" in C. Wilton, ed., *Essays in the History of Canadian Law*, vol. 4 (Toronto: Osgoode Society, 1990).

[5] See, *e.g.*, C. Howell, "Reform and the Monopolistic Impulse: The Professionalization of Medicine in the Maritimes" (1981) 11 Acadiensis 3; S. Penney, "'Marked For Slaughter': The Halifax Medical College and the Wrong Kind of Reform, 1868-1910" (1989) 19 Acadiensis 30.

[6] See, *e.g.*, B. Bledstein, *The Culture of Professionalism* (New York: Norton, 1976). For a recent example in the Maritime context, see J. Guildford, Public School Reform and the Halifax Middle Class 1850-70 (Ph.D. thesis, Dalhousie University, 1990).

[7] The best starting points for study of the nineteenth century profession in Nova Scotia are P.B. Waite, *The Man From Halifax: Sir John Thompson, Prime Minister* (Toronto: University of Toronto Press, 1985) and J. Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979). For the most recent overview of Anglo-American developments, see R.L. Abel, *The Legal Profession in England and Wales* (Oxford: Blackwell, 1988) and his *American Lawyers* (New York: Oxford University Press, 1989). For a useful summary and critique of the existing scholarship, see W.W. Pue, "'Trajectories of Professionalism?': Legal Professionalism after Abel" (1990) 19 Man. L.J. 383. I am grateful to Professor Pue for allowing me to consult this article in

This paper thus addresses the roots of the "professional renaissance" which characterized the legal profession in the last quarter of the nineteenth century. I use the word "renaissance" to indicate both a period of past glory (c. 1825-45) and of more recent decline (c. 1850-70). The period prior to the achievement of responsible government had marked a certain flowering in the province's legal culture, signalled by the publication of three significant works of legal literature: Beamish Murdoch's 4-volume *Epitome of the Laws of Nova-Scotia* (1832-33); two editions of John George Marshall's *Justice of the Peace and County and Township Officer* (1837, 1846); and Daniel Dickson's *A Guide to Town Officers* (1837). Yet the 1850s and 1860s saw not a syllable added to these promising beginnings, paralleling a similar (though less dramatic) decline in other areas of cultural endeavour. Not until the last quarter of the century would the Maritime bar again make any contribution to legal literature.[8] Recruitment also became a problem: the 1850s mark a definite trough in admissions, reaching bottom in 1857 when only 2 lawyers were admitted to the bar, a figure not seen since 1824 (see Table I).

Economic and political factors combined to render the 1850s and 1860s the nadir of public perceptions of the lawyer in Nova Scotia. While one cannot point to a verifiable "increase" in anti-lawyer

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manuscript form.

[8] A partial listing of these works includes J.H. Gray, *Extracts from the Honourable J.H. Gray's Preliminary Report on the Statutory Laws: Ontario, New Brunswick, and Nova Scotia* (Ottawa, 1871); B. Russell, *Manual of the Laws and Regulations relating to the Public Schools of Nova Scotia* (Halifax: Citizen Publishing, 1874), and his *Commentary on the Bills of Exchange Act, chapter 119 of the Revised Statutes of Canada* (Halifax: McAlpine Publishing, 1909); J. Travis, *A Law Treatise on the Constitutional Powers of Parliament, and of the Local Legislatures, under the British North America Act, 1867* (Saint John: Sun Publishing, 1884); G.W. Burbidge, *Digest of the Nova Scotia Common Law, Equity, Vice-Admiralty and Election Reports, ...* (Toronto: Carswell, 1890) and the large corpus of work by J.G. Bourinot on federalism and Canadian government. Russell also edited the first Canadian edition of three English works: S.M. Leake, *The Law of Contracts* (London: Stevens & Sons, 1912), C. Blackburn, *Treatise on the effect of the contract of sale on the legal rights of property and possession in goods, wares and merchandise* (London: Stevens & Sons, 1910) and W.B. Odgers, *Principles and Practice of the Law of Evidence* (London, 1911).

It would be unfair not to note that the 1850s did at least see the beginnings of organized law reporting in Nova Scotia; J. Nedelsky & D. Long, *Law Reporting in the Maritime Provinces: History and Development* (Ottawa: CLIC, 1981). The production of the first Revised Statutes of Nova Scotia in 1851, a thoughtful and elegant effort which spurred imitators throughout the British empire, should also be mentioned in this context.

sentiment, which traditionally associated lawyers with office-holding and parasitism, one can discern a greater willingness to voice such sentiments publicly after 1850; this in turn enhanced the legitimacy and the spread of such attitudes.[9] When the admittedly well-respected lawyer Samuel Cunard West died prematurely in 1858, the orator at his funeral nonetheless felt compelled to observe that the law was a dignified and noble profession only "when not perverted by selfish and unprincipled practitioners".[10] Nor did the Maritimes provide any real or fictional lawyer-folk heroes, such as Abraham Lincoln or Mrs. Southworth's Ishmael, to offset popular prejudices.[11] The populist and levelling tone of much of the criticism of the justice system which was unleashed by the shift to responsible government also did nothing to improve the image of the legal profession. I have analysed elsewhere the demand for law reform in these decades, which tended to come from the literate, commercially-oriented middle classes, who assumed that once the law was "simplified" and "reformed", lawyers would become virtually unnecessary in most civil matters.[12]

In short, the entrepreneurial 1850s and 1860s viewed the lawyer as at best a necessary evil and at worst an unnecessary transaction cost. Similar attitudes existed to some degree in England and the United States at mid-century,[13] but in Nova Scotia additional reasons existed to entrench such stereotypes. As has often been noted, Nova Scotia's age of wood, wind and sail was set afloat on old, familiar forms of business organization, the sole proprietorship and the

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[9] G. Marquis, "Anti-Lawyer Sentiment in Mid-Victorian New Brunswick" (1987) 36 U.N.B.L.J. 163 at 166-68; D.G. Bell, "A Perspective on Legal Pluralism in 19th Century New Brunswick"(1988) 37 U.N.B.L.J. 86, 90, 93.

[10] Rev. N. Gunnison, *A Sermon upon the Life and Death of Samuel C. West, Esq. preached in the Universalist Church, Halifax, N.S. Nov. 21, 1858* (Halifax: James Bowes & Sons 1858) 7.

[11] E.D.E.N. Southworth's *Ishmael*, an "apotheosis of the dedicated practitioner", appeared in 1864 and become one of the top ten best-sellers of the nineteenth century in the United States: Bloomfield, *American Lawyers*, c. 5, esp. 186-89. The extent to which these American stereotypes may have penetrated and influenced British North America remains an open question.

[12] "Married Women's Property, Chancery Abolition and Insolvency Law: Law Reform in Nova Scotia 1820-1867" in P. Girard & J. Phillips, eds., *Essays in the History of Canadian Law* vol. 3 (Toronto: Osgoode Society, 1990). For similar views on American anti-lawyer sentiment, see Bloomfield, *American Lawyers*, chap. 5.

[13] Pue, *supra*, note 7.

partnership. These relationships required a minimum of legal intervention and ingenuity to create and maintain, while the normal route for those few seeking incorporation in the days of legislative charters was through the office of the MLA rather than the lawyer.[14] Yarmouth, home to the third-largest shipping fleet in Atlantic Canada, had four lawyers in 1840 and did not acquire a fifth until 1867. Not until the emergence of a burgeoning corporate sector in the 1880s and 1890s would lawyers once again be able to portray themselves as performing a useful, indeed indispensable, function in the economy. The bar did little at the level of collective action to combat the ill will which it encountered. What could have been its main institutional tool for self-advancement, the Barristers' Society of Nova Scotia, was all but inactive in the middle decades of the century. So feeble was the society that it could not fend off the attack of Joseph Howe on the very notion of a professional monopoly in 1850. A statute of that year gave the right to any citizen who had voted or paid poor rates to "Plead and Reason in Her Majesty's Courts..., enjoying all rights and privileges therein, in as full and ample a manner as there are now enjoyed by Barristers, Proctors and Advocates". The provision remained on the books until the 1864 revision, when it was quietly dropped.[15] The society was incorporated in 1858, but the statute conferring this privilege did not endow the new entity with any additional powers.[16] One should be wary of a presentist bias that assumes modern professional organizations to be the only effective way to maintain status and competence.[17] Nonetheless, any corporatist sentiment

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[14] B. Patton, "From State Action to Private Profit: The Business Corporation in Nova Scotia, 1796-1883" (on file with author, 1987) [unpublished].

[15] S.N.S. 1850, c. 13; R.S.N.S. 1864, c. 130. The preamble to the 1850 act is vintage Howe and incidentally provides a legislative expression of anti-lawyer sentiment: "Whereas the monopoly now enjoyed by a limited number of Persons of Privileged Seats in Her Majesty's Courts, and of the right to Plead and Reason therein, is injurious to that privileged class, by withdrawing them from the free competition of their fellow-subjects, is unjust to the Judges, who could often be instructed by men of genius and learning, reared in other pursuits, and deprives the great body of the people on the one hand of the privilege of selecting Advocates, and on the other of all inducements to study and comprehend the Laws...."

[16] S.N.S. 1858, c. 85.

[17] See in particular the illuminating discussion of the customary etiquette of the English bar in D. Duman, *The English and Colonial Bars in the Nineteenth Century* (London: Croom Helm, 1983) 40-50.

which might have reinforced solidarity across the entire provincial bar seems to have been rather attenuated by mid-century, and probably even earlier.[18]

TABLE I
Lawyers Called to the Bar, 1826-1899 Nova Scotia*

	Total Called	Average Number Called Annually
1826-29	28	7.0
1830-39	71	7.1
1840-49	62	6.2
1850-59	56	5.6
1860-69	84	8.4
1870-79	114	11.4
1880-89	123	12.3
1890-99	156	15.6
	694	**9.5**

Source: P.A.N.S., RG 39, ser. M.

The Barristers' Society was, quite literally, an old boys' club. Very few of the society's nineteenth-century records survive, but the rules which were adopted at its foundation in 1825 strongly suggest that the criteria for admission were related to gentlemanly status, not to professional credentials or "competence". Admission to the bar did not automatically entail membership in the society, which was governed by procedures for admission and expulsion similar to those found in men's social clubs of the day. The rules of 1825 specified that one-third of the members present at any meeting could exclude any barrister proposed for admission. The Society also purported to

[18] D.G. Bell, "The Transformation of the New Brunswick Bar 1785-1830: From Family Connexion to Peer Control" in *Papers presented at the 1987 Canadian Law in History Conference held at Carleton University, Ottawa, June 8-10, 1987* vol. 1 (Ottawa, 1987) 240 argues that this corporatist spirit had begun to decline as early as the 1820s with the admission to the bar of men drawn from circles beyond the social elite, and that the Barristers' Society of New Brunswick was founded in 1825 precisely to distinguish the gentlemanly elite from the new breed of "incipient pettifogger".

* The pre-1826 barristers' rolls are incomplete.

exercise a screening function regarding the acceptance by members of students in articles. The "father's name, quality and residence" of each proposed student had to be supplied, and upon examination of the student's "education, moral character &c" the Society's governing committee could prohibit a member from receiving him into articles if the student were found to be "deficient in these qualifications". New rules adopted in 1860 dropped the screening provision but retained the power to exclude any barrister from admission.[19]

Only one membership list has survived from this period and it shows a mere 29 members in 1860, out of some 155 lawyers resident in the province. All but one, Silas L. Morse of Bridgetown, resided in Halifax and most were older men, with only a half-dozen members under 40.[20] The roster of the executive can be traced from 1834 and confirms this impression of a self-appointed urban elite. In the 1850s through 1870s executive members tended to be old, Tory and disproportionately Anglican. John W. Ritchie remained president from 1852 through 1871, while Samuel Leonard Shannon doubled his record and then some, serving as treasurer from 1847 until his death in 1894. The same half-dozen names recur on the council with deadening regularity. Ritchie was unquestionably able and well deserved his later promotion to judge in equity, but his elite background inspired a certain complacency which made him an unlikely innovator. During his long tenure as president only a few modest reforms instituted in 1864 anticipated the more sweeping changes which would occur in the ensuing two decades. The Barristers' Society, like Miss Havisham, remained frozen in time for the first half-century of its existence, unable or unwilling to adapt to the changing world outside.[21]

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[19] *Rules of the Society of Nova Scotia Barristers* (Halifax: Edmund Ward, 1825), Public Archives of Nova Scotia (hereinafter P.A.N.S.) V/F vol. 16, no. 14. *Bye-laws of the Nova Scotia Barristers Society* (Halifax: James Bowes, 1861), P.A.N.S. V/F vol. 131, no. 21.

[20] The figure of 29 does not include the five judges of the supreme court, who were ex officio members. The list is found at the beginning of the by-laws. As there were some 64 lawyers practising in Halifax at this time, the Society represented about 45% of the Halifax bar.

[21] Membership on the executive can be traced through *Belchers' Farmers' Almanac*, 1834-1930, and the members of the executive for 1826 are given in the 1825 *Rules*, *supra*, note 19. On John W. Ritchie, see the entry by N. MacKinnon in XI *Dictionary of Canadian Biography* (hereinafter, DCB); on Shannon, D. Stanley's contribution to XII DCB. Anglicans comprised about half the members of the Society (exclusive of ex officio members) in 1860, more than twice their proportion of the Halifax population.

Indeed, the statutory regime which governed the profession in 1870 varied little from that created in the organic statutes of 1811 and 1836. Much of the important regulatory authority over the profession still rested with the judges rather than the lawyers. Until 1872 a judge and two barristers appointed by the court decided whether a student-at-law was ready to be called to the bar after his apprenticeship. When preliminary examinations prior to entering articles were finally required in 1864, it was the judges who were given the power to make rules regarding their content and administration.[22]

The requirements for service under articles had changed only in details over the years. In 1836 the normal articling period had been set by statute at five years, or four if one were a graduate of "any College or University within His Majesty's Dominions". After articling, one spent a further year as an "attorney" before being called to the bar, although university graduates were spared this probationary period. Thus graduates could become barristers in four years, non-graduates in six. Those who graduated from Harvard or other university law schools outside the pale of 'His Majesty's Dominions' without a prior 'British' university degree would have been disadvantaged relative to graduates of local universities, and this seems to have caused some disquiet.[23]

In the 1860s one can discern the tentative beginnings of a movement to reform professional education. In February 1864 members of the "Nova Scotia Law Students' Society" petitioned the Barristers' Society to allow "time spent in studying Law in Harvard, McGill College, the University of Toronto or such other place as may be decided upon by the Barristers' Society ... to count in the same manner as time spent at the Inns of Court in England and Ireland."[24] The Society's response to this petition does not survive, but it was probably positive as subsequent applications for admission to the bar make it clear that time spent at Harvard must have been deducted from the normal art-

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[22] S.N.S. 1811, c. 3; S.N.S. 1818, c. 19; S.N.S. 1836, c. 89; R.S.N.S. 1851, c. 132; R.S.N.S. 1864, c. 130; S.N.S. 1872, c. 19.

[23] B. Cahill has found one example of a Harvard A.B., Nathaniel Whitworth White, who was only required to article for four years but the precedent seems never to have been followed: "The Origin and Evolution of the Attorney and Solicitor in the Legal Profession of Nova Scotia" Dalhousie L.J. (forthcoming, 1991). It may be that an 1818 statute which expired in 1823 justified his admission: S.N.S. 1818, c. 19.

[24] P.A.N.S., MG 20, vol. 1015, no. 346.

icling period.[25] The arrival of three Haligonians at Harvard in 1864, when earlier attendance had been so sporadic, also suggests a positive response (see Table IV). In any case, the reform movement ended as quickly as it had begun. The Law Students' Society was heard from no more, and the only other modifications to the traditional articling regime were the abolition of the probationary year as "attorney", and of any distinction between "British" and "non-British" university degrees.[26] For these losses the old guard was compensated by an increase in the number of clerks permitted at any given time, from two to three. In the short term the effects of these reforms were minimal, although in the longer term they would have consequences as profound as they were unintended.

If this sobering portrait of the bar circa 1867 is even partly accurate, then the year 1883-84 is indeed an *annus mirabilis*. That year saw not only the establishment of the Dalhousie Law School but the adoption of legislation which greatly enhanced the autonomy of the legal profession from the courts. A statute of the next year in effect transformed the Barristers' Society from an elite social club into its modern form, as an organization which all lawyers are entitled to join on being called to the bar.[27] I return to my original question: how and why did the bar succeed in reforming itself?

In my opinion, there were at least three factors having little to do with 'urbanization' or 'industrialization' as such which explain much about the transformation of the bar in the last quarter of the

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[25] See, *e.g.*, applications for admission to the bar of Lawrence Power, P.A.N.S., RG 39, ser. M, vol. 2, no. 47 (began articling October 1862, attended Harvard 1864-66, called to bar December 1866); Thomas Ritchie, vol. 2, no. 48 (began articling January 1861, attended Harvard 1864-65, called to bar May 1866); William A. Henry Jr., vol. 14, no. 11 (began articling September 1882, attended Harvard 1883-4, Dalhousie Law School 1885-6, called to the bar March 1887. In all cases the principal swore that the student had been present for the full period except for "absences for a limited time" with consent. The statute of 1864 did not itself authorise this procedure; if anything, it implicitly prohibited it by mandating a four-year articling period for all university graduates. A similar campaign in New Brunswick also resulted in abolition of the barrier to studies at Harvard: S.N.B. 1867, c. 7; *Ex Parte Travis* (1867), 12 N.B.R. 30. I am grateful to David Bell for providing these references.

[26] The Law Students' Society appears only for the year 1864 in *Belchers' Farmers' Almanac*.

[27] S.N.S. 1885, c. 20, s.8.

century.[28] The first and most important factor was changing attitudes about education in general and legal education in particular, which I will explore more fully below. The second was the impact of Confederation, and the third was the changed aspirations which accompanied the achievement of responsible government and the relative prosperity of the 1850s and 1860s.

Confederation did not directly alter the structure of the legal profession, which remained under provincial jurisdiction, but it did create a new state structure at Ottawa which would need to be serviced by a certain number of lawyers both there and at the local level. Many Maritimers clearly feared the direct interprovincial competition which would arise for offices and legal patronage within the federal state. A Charlottetown lawyer observed in 1884 (in a much-quoted phrase) that "Confederation and the Supreme Court of Canada bring our Maritime Bars in contact with the lawyers of the Upper Provinces, & to hold their own, our young men require better legal training than can be got [picked up] in an attorney's office".[29] Maritimers were aware before 1867 of the different traditions in legal education in the Canadas and the United States, but felt no need to alter their own pattern until spurred on by Confederation.

Feelings of insecurity abounded vis-à-vis the Ontario bar in particular, and it is no coincidence that one of the prime movers behind much of the professional self-improvement of the 1870s was Robert Sedgewick, a Dalhousie graduate ('67) who was called to the bar of Ontario in 1872 and then returned to his native province the next year. Sedgewick, son of an immigrant Scots Presbyterian minister who settled at Musquodoboit Harbour, had articled in Cornwall in the private practice of John Sandfield Macdonald, the first post-Confederation premier and attorney-general of Ontario. Many years later Benjamin Russell recalled that his friend had articled in a "very intense juridical atmosphere", suggesting that Sedgewick returned impressed by the nature of the professional enterprise in Ontario. Immediately after his return he became a leader in the movement to reform professional education. He took part in the unsuccessful attempt to create a Halifax Law School in 1874, served as a law examiner in the ill-fated University of Halifax, and finally

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[28] Duman, *supra*, note 17 at 206 also suggests with regard to the history of the English bar that it is "incorrect to see the industrial revolution as a watershed".

[29] N.A.C., Sir John Thompson Papers, MG 26 D, vol 30 (15 February 1884).

saw his efforts crowned with success with the establishment of the Dalhousie Law School.[30]

The political and economic climate of the 1850s and 1860s also had its effect on those young men who chose the law. On the material level, a greater percentage of the population could contemplate investing a certain amount of family capital in university education for their sons, and a number of provincial universities beyond King's now existed to satisfy that demand. But the decision by many Maritimers to seek a formal legal education, and to seek it in the United States rather than at the inns of court, must be understood in the context of the new political and intellectual climate rather than in purely economic terms. Increased prosperity alone would only have broadened the path to the inns of court, not sent Maritimers packing to Harvard, as they did with increasing frequency after mid-century. With the improvements in communications and the dismantling of imperial trade preferences in the 1840s, and the advent of Reciprocity in 1855, Maritimers came to associate their prosperity with that of the United States, and in many areas of life from temperance agitation to law reform began to follow American trends more closely than they had done before. Phillip Buckner has recently suggested that the Maritimes were being increasingly anglicized after 1850, and indeed one does see signs of this process within the bar and the judiciary; but at the same time the Maritimes were also being americanized.[31] We should not think in terms of exclusive loyalty to a particular cultural metropolis, but rather of shifting and overlapping patterns of cultural influence from various sources.

For lawyers, the advent of responsible government meant that ingratiating oneself in the imperial patronage network was no longer necessary, or even desirable, for advancement at home. Thus the inns

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[30] On Sedgewick's life, see his obituary in (1904) 26 Can. L.T. 664 and my contribution to 13 DCB (forthcoming). Russell's remark is contained in an obituary tribute in the *Halifax Herald* (6 August 1906).

[31] P. Buckner, "The Maritimes and Confederation: A Reassessment" (1990) 71:1 Can. Hist. Rev. 1 at 13. In its etiquette and terminology, the bar and judiciary gravitated to English models in the post-Confederation period: "your Lordship" replaced "your Honour" as a form of address, the old title "assistant judge" yielded to the English "puisne judge", the title "attorney", with one and a half centuries' standing in the province, was replaced by "solicitor" in the 1899 legislation governing the profession (*The Barristers and Solicitors Act, 1899*, S.N.S. 1899, c. 27), and so on. It remains to be seen whether some of this terminology filtered in to Nova Scotia via Ontario, although the greatly increased presence of Nova Scotia lawyers arguing Privy Council appeals in the 1880s and 1890s provided a clear avenue of importation.

of court proved markedly less popular with Maritimers after responsible government than in the decade after the Battle of Waterloo, when David Bell has identified ten Maritimers in the precincts of Chancery Lane.[32] From Nova Scotia, only William Almon Johnston can be identified there in the 1850s, and William Garvie, a Scot born and bred in the West Indies, in the 1860s.[33] American law schools clearly picked up the slack, as the trickle of Maritimers attending them in the 1840s and 1850s became a flood in the 1860s and 1870s. Equally clearly, this decision reflected not only a negative motivation (the decreased utility of attendance at the inns of court) but also a positive one: the perception that attendance at Harvard would be a useful thing for a would-be lawyer. It is the nature of this perception which leads us into a discussion of the third theme which I have identified in Nova Scotia's professional renaissance.

Even more important for the evolution of the bar than the two factors just discussed were changing attitudes towards education. Change within the profession came about as a result of the accretion of myriad individual decisions about the proper means of obtaining a legal education. These decisions were in turn made in a social context which increasingly emphasized the importance of education in general and university education in particular. As Janet Guildford has noted in the context of mid-century public school reform, "[f]aith in public education was a key element in the cluster of ideas that comprised bourgeois progress".[34] The spread of universities in Nova Scotia in the 1840s through 1860s both reflected and fostered the idea that socially recognized expertise was best acquired in a university setting. The lesson was not lost on the young Turks of the legal profession of the 1870s, who saw in a university affiliation the best way to prepare young lawyers for the competitive struggle which lay ahead. Whether consciously or not, they were also involved in a public relations effort

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[32] D.G. Bell, "Paths to Law in the Maritimes, 1810-1825: The Bliss Brothers and their Circle" (1988) 8:2 N.S. Hist. Rev. 6.

[33] On Johnston, a son of Premier J.W. Johnston, see W. Kirkconnell, *The Acadia Record 1838-1953* (Wolfville: Acadia University, 1953), who records him as admitted to the Inner Temple in 1853. On Garvie, see P. Waite's entry in DCB 10. Thomas Dickson Archibald of Truro studied at the inns of court in the 1830s but as the prelude to a career at the English bar which was eventually crowned by appointment to the English Court of Queen's Bench in 1872.

[34] J. Guildford, *supra*, note 6 at 9.

aimed at improving the attitudes towards lawyers held by a jaundiced public.

The enhanced importance of a university education was reflected in a significant, though not dramatic, increase in the number of university graduates among those called to the bar.[35] In fact, these figures rather underestimate the popularity of pre-law university education, because many aspirant lawyers studied at university for anywhere from one to five years before commencing articles, but without graduating. Only two of the available alumni directories (Dalhousie and St. Francis Xavier) include students as well as graduates, making it impossible to obtain precise data on this phenomenon. A perusal of those sources, however, convinces me that as many again of those men called to the bar in the 1860s and 1870s had some university education as had formally graduated. Thus perhaps half of all lawyers had had some exposure to university education by the end of the period, as opposed to about a quarter at the beginning.

TABLE II
Percentage of University Graduates of Those Called to the Bar, By Decade of Call to the Bar, 1850-1879, Nova Scotia*

	Total Called to Bar	University Graduates	Percentage
1850-59	56	8	14.3
1860-69	84	18	21.4
1870-79	114	32	28.0

What did change spectacularly was the number of students seeking university training *in law* prior to being called to the bar. Before 1846, no Maritimer is known to have attended the Harvard Law School,

[35] Table II shows an apparent doubling of the proportion of university graduates from the 1850s to the 1870s, but caution is in order here. I cannot guarantee to have traced every single university graduate over this period, and the small numbers of the 1850s would result in greatly swelled percentages if even two or three graduates were missed from this decade. I would argue that the general pattern of steady increase holds.

* University graduates who went on to Harvard are included in this calculation, provided they were subsequently called to the bar in Nova Scotia. Those who had academic degrees in law, but no undergraduate degree, are not.

founded in 1817. Yet of those men called to the Nova Scotia bar between 1849 and 1885 no fewer than 42 had attended Harvard, and an indiscernible (though much smaller) number had attended other American law schools. This important development in legal education was a distinctly regional phenomenon which has as yet received virtually no attention.[36] Indeed, recent scholarship emanating from Ontario has suggested that "prior to the 1920s ... developments in the United States had little discernible effect on Canadian legal education".[37] This observation may be appropriate to the Ontario experience, but is quite wrong when applied to the Maritimes. Closer study of the careers of this Maritime Harvard contingent will provide us with a unique vehicle for examining changing attitudes to legal education and "professionalization".

TABLE III
University Providing First Degree for Lawyers Called to the Bar 1849-85, Nova Scotia*

Acadia	24
Dalhousie	12
King's	20
Mount Allison	4
St. Frances Xavier	8
St. Mary's	5
University of Toronto	2
unknown	4
	79

My biographical research has involved following two groups of law students, most of whom who were called to the bar of Nova Scotia between 1849 and 1885. The first group comprises some 45 Nova Sco-

[36] The usual accounts of the creation of the Dalhousie Law School, including J. Willis, *supra*, note 7, do not mention it at all. I wish to thank David Bell for drawing this Maritime presence at Harvard to my attention.

[37] Kyer & Bickenbach, *supra*, note 1 at 22. It is then rather difficult to square this assertion with the statement at p. 28 that the Dalhousie Law School was founded by "Richard Weldon, a man who was clearly inspired by Harvard Law School".

* For those not attending Harvard, the terminal year is 1884. Source: see note 38.

tians who attended the Harvard Law School during this period, and includes three men who did not proceed to the Nova Scotia bar but became lawyers elsewhere. The second group comprises those men called to the bar during this period who were university graduates, but had not attended a law school.[38] Of the 385 men who were called to the bar in Nova Scotia in these years, 12.6% had attended Harvard, while a minimum of 79, or 24.4%, held undergraduate degrees, including 13 of the Harvard men. In New Brunswick the Harvard presence was even more impressive: with a smaller population and fewer lawyers, the province sent 40% more students to Harvard in the period 1845-1929 than did Nova Scotia (see Table IV). Once I had established the relative popularity of these varieties of pre-law training, I went on to compare the two groups in terms of types of practice, patterns of

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[38] For biographical information I have relied on the usual biographical encyclopedias, as well as the *Quinquennial Catalogue of the Law School of Harvard University 1817-1929* (Cambridge: Harvard University Press, 1930), the P.A.N.S. Biographical File, P.A.N.S., RG 39, ser. M (petitions to the Supreme Court for admission as barrister), J.K. Johnson, ed., *The Canadian Directory of Parliament 1867-1967* (Ottawa: Queen's Printer, 1968); *Belcher's Farmers' Almanac, McAlpine's City and Provincial Directory* and the following published alumni lists: *The Acadia Record*; Dalhousie University, *Directory of Graduates and Former Students of the University. Corrected to September 1937* (Halifax, 1937); *Calendar of the University of King's College, 1915* (Halifax, 1915); Rev. T. O'R. Boyle, ed., *Directory of the Alumni Association May 1927* (Antigonish: University of Saint Francis Xavier College, 1927); Mount Allison University, *Calendar for 1948-49* (Sackville, NB, 1949), 162-65; Mount Allison University Archives, Raymond Clare Archibald Papers, 5501/14. I am grateful to J.G. Reid for volunteering the latter reference. The *Matricula* of King's College, a manuscript volume containing valuable biographical information on all matriculants for 1802-1906, was also useful and I wish to thank Patricia Chalmers of the King's College Library for alerting me to this source. In addition, barristers signing the roll sometimes add their degrees. I have only uncovered one fraud: there is no evidence that "William Miller BA", admitted 31 May 1860, was a university graduate, and I have excluded him from the cohort; see B. Miller, "The Legal Profession in Late Victorian Nova Scotia" (1991) 11:1 N.S. Hist. Rev.

The number of university graduates is inevitably an underestimate because of the absence of comprehensive alumni lists for St. Mary's University for the years in question. However, I am confident that few have been missed because a number of St Mary's graduates have been identified through other sources, and I suspect that a number of "unknowns" were also alumni of St. Mary's. I have terminated the university graduate cohort at 1884 rather than 1885 in order to avoid overlap with the Dalhousie Law School, which began graduating students in 1885, some of whom were also university graduates. Note that I have excluded from the university graduate cohort those who obtained their first degrees after admission to the bar, and all graduates born outside Nova Scotia who did not make their career in the province even though called to the bar in Nova Scotia. The total number of men called to the bar 1849-1885 was 334, 1849-1884, 323, and all percentages have been calculated using these slightly different totals.

emigration, promotion and exit from the profession, and roles played in the Barristers' Society. Implicit in this methodology is an assumption that these groups will be shown to have contributed substantially to the "professional renaissance" which I described earlier.

Nova Scotians attended law schools other than Harvard, including those at Boston University, the University of Michigan and Columbia. But it seems likely that Harvard possessed the law school of choice: of the 14 men who signed "LL.B." after their names on the barristers' roll between 1849 and 1885, 11 were Harvard LL.B.s.[39] A number of sources assist in tracing this cohort. A list published by the Canadian Club of Harvard University in 1890, which purports to show those Canadians at Harvard, "with departments in which they have studied and year of graduation, or last year of study", provides a useful overview of the Canadian presence at Harvard. It contains many inaccuracies and omissions, however, and must be supplemented by the alumni lists published by Harvard Law School.[40] These sources provide a unique window on the popularity of university legal education in British North America after mid-century (see Table IV). The early interest manifested in Harvard in all the British North American provinces in the 1840s was maintained only in the Maritimes in subsequent decades. This lack of interest is not so surprising in Quebec, which developed its own university law schools after 1850, or in Ontario, where the Law Society of Upper Canada had early on created its own type of "university" legal education.[41] The trend which demands explanation and interpretation is the evident

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[39] The other three were Edmund Newcombe, one of the handful of LL.B.'s to graduate from the University of Halifax; Frederick Congdon, a graduate of the University of Toronto; and W.E. McLellan, whose alma mater I have been unable to trace. I have included in my definition of Nova Scotian those who were not native-born but made their careers in the province. Thus Frederick Clarence Rand of Saint John is included in the cohort because he passed his entire career in Kentville.

[40] I have constituted the cohort from the *Quinquennial Catalogue, supra*, note 38. This volume provides an alphabetical list of all graduates to 1929, with the month of their entry to the law school and their home town as of that time; in most cases it also gives date and place of death for deceased graduates and current addresses for extant alumni. I have cross-checked the data with Nova Scotian sources in many cases and have found very few inaccuracies.

[41] On Osgoode Hall as a university, see G.B. Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator" in D.H. Flaherty, ed., *Essays in the History of Canadian Law* vol. II (Toronto: Osgoode Society, 1983).

popularity of the Harvard Law School with Maritimers, a trend I shall explore with particular reference to Nova Scotia.

TABLE IV
Canadians Attending Harvard Law School, 1840-1929

	NS	NB	PEI	Nfld	Ont	Que	Man	Sask	Alta	BC
1840-49	3	3	1	0	1	1	0	0	0	0
1850-59	3	0	0	0	0	0	0	0	0	0
1860-69	13	24	0	0	0	0	0	0	0	0
1870-79	19	23	1	0	1	0	0	0	0	0
1880-89	9	11	1	0	0	0	0	0	0	0
1890-99	9	13	3	0	1	3	0	0	0	0
1900-09	9	12	2	1	0	0	1	0	0	0
1910-19	5	7	0	0	0	2	1	2	3	1*
1920-29	15	20	0	0	8	1	3	2	3	0
	85	**113**	**8**	**1**	**11**	**7**	**5**	**4**	**6**	**1**

The periodicity of attendance at Harvard follows a definite pattern. After a few exploratory forays in the late 1840s and the 1850s, the number of Nova Scotians jumped to 13 in the 1860s (all in fact after 1863), increased significantly in the 1870s, and then remained constant in proportional terms in the first half of the 1880s. With the establishment of the Dalhousie Law School in 1883, the local appetite for university legal education was redirected homeward, at least temporarily. No Nova Scotians are listed at the Harvard Law School between 1885 and 1890, but the trek to Cambridge regained some of its popularity in the subsequent decade. Only in the 1920s were the student numbers of the 1870s reproduced and by that point the demand was for *graduate* level education.[42]

The five men who attended Harvard before 1864 do not present any uniform profile. The first two, James Thomson and Samuel Cunard

* British Columbia's sole candidate at Harvard was in fact an emigrant New Brunswicker, J. Wilfred Estey, later Attorney General of Saskatchewan and puisne judge of the Supreme Court of Canada. It has not been verified whether other "westerners" in this table might have been erstwhile Maritimers.

[42] None of the 1849-1885 cohort studied at the graduate level. By the 1920s probably half the Nova Scotians at Harvard were there for graduate study: of the 10 who left with degrees in that decade, 7 left with graduate degrees (4 of which were doctorates) and only 3 with the LL.B., although one of the doctoral recipients had also done his LL.B. at Harvard. It is not clear whether the other 8 Nova Scotians who left without degrees in that decade were studying at the graduate level.

West, were definitely associated with the reform cause in politics, and their families were intimately linked with that of Joseph Howe. Thomson was also a cousin to the reform politician and later chief justice, William Young, who gave West the character reference required for admission to Harvard. Both Thomson and West practised law in Halifax until their deaths, in 1897 and 1858 respectively. Of Thomas P. Ryan little is known except that he returned to practise law in Halifax until he died in 1863. Andrew Belcher Almon and H.A.N. Kaulbach were associated with conservative rather than reform politics. Almon was called to the bar in 1851 but married the daughter of a prominent Bostonian in the same year and disappeared from the province, presumably to a legal career in New England; he died in Providence, Rhode Island in 1904. Kaulbach, scion of an old German family from Lunenburg, represented that constituency in the House of Assembly from 1863 to 1867, and was elevated to the Senate in 1872.

The larger group who attended Harvard after 1863 remained a diverse lot in some respects: Catholics, Anglicans and Dissenters in religion, reformers and conservatives in politics, rural and urban in residence, some went with one university degree, others straight from the local academy. They shared one important characteristic, however: most were from the gentry class, with loyalist or pre-loyalist roots and a comfortable family capital.[43] Their names were those associated with the professional-political-office-holding-mercantile elite: Almon, Archibald, Blanchard, Chipman, Cogswell, Kaulbach, Parker, Rand, Ritchie and Tupper. There were some representatives from newer families, but they remained exceptional. Byron Weston, for example, was born in Maine and became a naturalized Canadian citizen before returning south for his legal education; he then came back to Halifax where he practised for several decades until his death. Lawrence Power was the son of one of the upwardly mobile generation of Irish emigrants who arrived in Nova Scotia after the close of the Napoleonic wars. Power père, who became a wealthy merchant, sat in the first Canadian Parliament, Power fils was named to the Senate in 1877.

It is not surprising that these law students tended to come from comparatively wealthy families. The living expenses for a year or two in Cambridge could be high, especially if one did not have relatives

[43] By "gentry" I mean a high status social class united by ties of kinship, occupation, world-view and wealth, although not necessarily all four simultaneously. Broadly speaking, it would represent the descendants of the pre-responsible government oligarchy, including the wealthier merchants and local officials such as the justices of the peace.

with whom one could lodge. Then there was the matter of tuition: $100 (US) per year until 1871, when it jumped to $150 for the first year of instruction, and there were no scholarships available, at least to foreigners.[44]

By contrast, the main expense for aspiring lawyers who stayed in Nova Scotia was simply the cost of personal subsistence, which could be kept to a minimum by boarding with parents or relatives. Lawyers tended to delay marriage and children until after being called to the bar, and they could thus survive for a few years on a very modest capital. The "normal" fee which a nineteenth-century Nova Scotian articled clerk was expected to pay to his principal for his five years of "instruction" was 100 guineas (105 pounds), but in practice clerks were usually accepted on a gratuitous basis.[45] Thomas Chandler Haliburton paid Lewis Morris Wilkins the official 100 guineas on behalf of his son Robert Grant in 1849, but he has little company in the surviving records.[46] Lawrence Power paid J.N. Ritchie $400 for the privilege of articling, presumably because his Catholicism made him an outsider to the legal establishment.[47] Some clerks were even paid a very small salary, although it remains unclear when this practice began or how widespread it was. The 1825 *Rules* had forbidden the payment of remuneration, but this provision was not reproduced in 1860. Robert Laird Borden at any rate received "a trifling remuneration for keeping the account books" in the 1870s.[48]

If lack of money was a possible obstacle to attendance at Harvard, lack of intellect was not, at least until 1871; prior to that date, any applicant was accepted, even without previous undergraduate work.[49] The law school was for much of the nineteenth century not so different

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[44] A.E. Sutherland, *The Law at Harvard: A History of Ideas and Men, 1817-1967* (Cambridge: Belknap Press, 1967) 180.

[45] 1825 *Rules* (100 guineas); 1860 *By-Laws* (100 pounds); Bell, *supra*, note 32 at 13 notes that the standard eighteenth century fee was 50 guineas.

[46] P.A.N.S., RG 39, ser. M, vol. 1, no. 35.

[47] P.A.N.S., RG 39, Ser. M., vol. 2, no. 47. The only other example among the Harvard group is John Harvey Frith, whose father paid John W. Ritchie £100 in 1866: RG 39, ser. M., vol. 2, no. 44.

[48] H. Macquarrie, ed., *Robert Laird Borden: His Memoirs* vol. I (Toronto: McClelland & Stewart, 1969) 7.

[49] Sutherland, *supra*, note 44 at 168.

from Nova Scotia's own struggling universities -- it simply could not forgo the tuition fees which the motivated but less talented students could supply. Some Nova Scotians clearly found the liberal pre-1871 admissions policy advantageous: most were not university graduates when admitted to the law school, and some appear to have had no university experience at all. But the stricter admissions policies instituted by Dean Christopher Columbus Langdell in the early 1870s seem only to have encouraged students, as shown in Table IV. Langdell barred from degree candidacy those applicants not possessing undergraduate degrees, unless they could pass a "somewhat formidable qualifying examination"; at least a half-dozen of the candidates of the 1870s must have overcome this hurdle to obtain their degrees.[50] Clearly neither intellectual nor financial obstacles could stem the demand for university legal education.

Why did these men go to Harvard? There is little direct evidence on their motivation, as the subjects have left regrettably little in the way of personal papers. One might hypothesize that Nova Scotians migrated to Harvard in order to prepare themselves for entering the legal profession outside their home province. I have assumed that anyone planning to do so would have emigrated immediately after leaving Harvard or within ten years of returning to Nova Scotia. Applying this test, relatively few seem to have done so. Nearly 85% of the candidates (38/45) were called to the bar of Nova Scotia and were still practising in the province within ten years of admission.[51] Some of these did eventually leave the province, but usually much later. Charles H. Tupper, W.B. Almon Ritchie and John Burpee Mills all moved to Vancouver after twenty years or more of practice in Nova Scotia. Archibald J. Sinclair moved to Hamilton, Ontario in 1890 and John Frith to Omaha, Nebraska, both after twelve years in Halifax,

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[50] *Ibid.*

[51] There were two other Nova Scotians who studied at Harvard during the period under review and who left the province, but they were excluded from the cohort because they changed careers before finishing their legal studies. Henry Crawley studied at the Harvard law school briefly in 1855, then turned to theology. According to *The Acadia Record*, he became a professor at Mount Auburn Seminary in Cincinnati and died there in 1860 "at the hand of an assassin... while protecting ladies from the insults of toughs". Arthur Williams McCurdy of Baddeck articled for three years in Windsor (with Harvard graduate Aubrey Blanchard), and spent some time at Harvard in 1880 but then abandoned the law. He pursued a varied career as businessman, inventor and secretary to Alexander Graham Bell before moving to Victoria, BC in 1902; H.P. Blanchard, ed., *The McCurdys of Nova Scotia* (London: Covenant Publishing, 1930) 160-61.

while entry into federal politics provided the reason for Thomas Flint's eventual removal to Ottawa.

Only seven of the Harvard men can definitely be shown to have quit Nova Scotia within ten years of their university education. Two besides Almon remained in New England, and both had unusual careers. Arthur J. McLeod was a sometime teacher and longtime resident of the Liverpool area. When he entered the law school he had a wife and five daughters, who ranged in age from 3 to 14 when he graduated in 1870, aged 41. Although he remained in Boston for his second career, he returned to Nova Scotia for his third: retiring to Clementsport, he produced a novel, *The Notary of Grand Pré* (1900), after a thirty-year stint at the Suffolk County bar. Where McLeod could presumably rely on family money, Clarence Eaton Griffin could not. Aged 29 when he graduated with a BA from Acadia in 1880, he taught school for a year in Massachusetts, spent 1881-82 at Harvard, taught school again for a year in Massachusetts, and was called to the bar there in 1886. After more than a decade in practice there he moved to Tacoma, Washington in 1900, where he served as a judge of the police court until his death in 1905. He was quite possibly the only one of the cohort who made it to Harvard "on his own".

Of the others who left, most did not continue in the traditional private practice of law: James Johnson became an accountant with Union Pacific in Denver, Colorado, where he died; J.M. Oxley first joined the civil service in Ottawa, and later the insurance business, although he was best known as a writer of adventure books for boys; James Noble Shannon moved to Montreal and later Toronto, also following the insurance business. William Johnston Tupper, however, joined his brother's law firm in Winnipeg fairly soon after being called to the Nova Scotia bar, his appetite for life in the West having perhaps been whetted by militia service in the Northwest rebellion while a student-at-law.[52] Overall, only for Almon, McLeod and Griffin does Harvard seem to have functioned as a passport to a world which might otherwise have been denied them.

Members of the Harvard group do not seem especially mobile in absolute terms, but they were positively nomadic when compared to the university graduate population, who remained in Nova Scotia almost to a man once they had been called to the bar. Only one man of 66 failed the ten-year test, and his was not an encouraging precedent. Robert Robertson had practised in Yarmouth for less than

[52] There is no adequate study of the Tupper family's legal connections. The progeny of Sir Charles effectively constituted the first interprovincial law firm in Canada.

two years when he emigrated to South Dakota in search of a more healthful climate. He died of consumption in 1881, within months of his call to the bar there. What is more striking than the difference in mobility patterns between the Harvard and university graduate groups is the overall low rate of outward mobility, and the relatively late ages at which migrants tended to move.

The mobility patterns of post-1885 graduates were beyond the compass of this study, but my impression is that the 1880s were a decade of transition for lawyers and would-be lawyers, after which rates of out-migration steadily increased. The career patterns of graduates of Acadia University who entered law are instructive in this regard. During the four decades of the university's existence before 1883, only three alumni can be identified who emigrated soon after graduation and were admitted to the bars of other jurisdictions, and they graduated in 1879, 1880 and 1882. The class of 1883 alone contained three emigrants among four graduates who eventually became lawyers, and the pace of emigration picked up briskly until we reach individuals such as Charles Milton Woodsworth (class of 1890), who eventually belonged to the bars of Nova Scotia, Alberta, Saskatchewan, British Columbia and the Yukon. The fact that opportunities for lawyers in Nova Scotia were steadily increasing from the 1880s suggests that any study of this phenomenon should pay at least as much attention to the "pull" as the "push" factor.[53]

To return to the question of motivation: if these men did not, by and large, treat Harvard as a prep school for emigrants, why did they go? Certainly the economic shift after mid-century from the transatlantic to the cisatlantic sphere of influence played a part in their decisions. Even Philip Carteret Hill, Jr., son of an Anglican priest and theology professor, and eponymous nephew of the wealthy and notoriously anglophile Premier P.C. Hill, went to Harvard to study law. Certainly the prevailing anti-lawyer sentiment suggested the need for professional image enhancement, to use the modern jargon. But why

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[53] Although whether opportunities were increasing fast enough to cope with a population of lawyers which was growing faster than the rate of population growth must remain an open question for now. On out-migration from the Maritimes generally, see A. Brookes, "Out-Migration from the Maritime Provinces, 1860-1900: Some Preliminary Consideration" (1976) 5 Acadiensis 26; P. Thornton, "The Problem of Out-Migration from Atlantic Canada, 1871-1921: A New Look" (1985) 15 Acadiensis 3. J. Fingard, "College, Career and Community: Dalhousie Coeds, 1881-1921" in P. Axelrod & J.G. Reid, eds., *Youth, University and Canadian Society: Essays in the Social History of Higher Education* (Kingston: McGill-Queen's University Press, 1989) has noted a high degree of out-migration, perhaps as much as 60%, among her cohort (at 31).

choose the education route to achieve this goal, rather than other strategies, such as rejuvenating the Barristers' Society or getting involved in politics?[54]

Education was increasingly coming to be seen by the middle class as the key to social mobility and class differentiation. The highly advantaged men who went to Harvard were not especially concerned about upward social mobility as such, but they were presumably concerned about preserving their status within their communities and differentiating themselves at the occupational level from other lawyers. What better way to differentiate oneself from the common horde than by attending a prestigious American law school? Responsible government had moved provincial society away from the days of ascribed status and toward, however haltingly, the era of acquired status. Forbidden from inheriting the offices of their fathers, the sons of the gentry would have to rely to a greater extent on their own devices, and again education seemed to provide a panacea. It is surely significant that no fewer than six scions of the Ritchie dynasty (four Nova Scotians and two New Brunswickers) can be found at the Harvard Law School in the two decades after 1865.

That the motivation of the Harvard men was largely related to their individual personal goals is confirmed by their behaviour upon their return. Collectively, what distinguishes them is their lack of distinction. When compared to the pool of university graduates, or to the larger group of non-graduates who were called to the bar during these years, it cannot be said that the Harvard men contributed to the formal leadership of their profession in any significant way. None was connected in any important way with the founding of the Dalhousie Law School, for example, nor were Harvard men prominent among the lecturers at the school during the first two decades of its existence.[55] The very first of the Harvard contingent, James Thomson, lectured in conveyancing from 1883-1887, but he must have seemed a dinosaur to the early students at the school. Hugh Henry lectured in shipping for three years and George Ritchie took over real property when the

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[54] The involvement of both the Harvard men and the university graduates in politics was rather modest, at least at the level of election to office. Only three of the Harvard men and five of the university graduates became members of the House of Assembly, while five Harvard men and twelve of the university graduates found success in federal politics.

[55] Dean Richard Chapman Weldon was a graduate of Yale University, but in political science rather than law. On his career see D. Stanley, "Richard Chapman Weldon 1849-1925: Fact, Fiction and Enigma" (1989) 12 Dalhousie L.J. 539.

venerable Samuel Leonard Shannon finally stepped down in 1892. Alfred Silver, the last graduate in my cohort, lectured on Equity in the 1890s. These were traditional, practitioner-type subjects, however, rather than the public law subjects which were to be Dalhousie's particular forte, or the important commercial law courses which were taking on an increasingly national dimension. University graduates, such as Robert Sedgewick, Benjamin Russell, and Wallace Graham (and non-graduates like John S.D. Thompson) were much more prominent than law graduates in the shaping of the Dalhousie curriculum which in any case bore no strong Harvard influence.[56]

Nor, in terms of promotion to judgeships, leadership within the Barristers' Society, and type of practice undertaken, do the Harvard men stand out as a group. One should not be astonished to find, at a time when political affiliation and activity determined judicial appointments, that a Harvard degree was no guarantor of promotion to the bench.[57] Yet it is still somewhat surprising to find that only two of the group (4.4%) ever reached the Supreme Court of Nova Scotia: Hugh Henry, appointed to the bench in 1893, and James Johnston Ritchie, Jr. in 1912. Two also became county court judges, John Pryor Chipman in 1890 and Barclay Webster in 1917. Compared to the nine superior court judges (13.6% - including two Supreme Court of Canada judges and three chief justices of Nova Scotia), and two county court judges among the university graduate population, the members of the Harvard group seem either distinctly unambitious or terribly unlucky.

One could not say that the Harvard men were disproportionately at the cutting edge of their profession, either in the way they practised law or in their institutional contributions. They did not create any of the larger corporate-commercial firms which mushroomed under the protective umbrella of the National Policy during the 1880s and 1890s. William A. Henry, Jr. (brother of Hugh), practised with the firm of Harris, Henry and Cahan, which served as counsel to the varied enterprises of Max Aitken (later Lord Beaverbrook), but Harris and Cahan were the prime movers in establishing this corporate-financial niche. Henry provided a rather different expertise, given his reputation as one of the best all-round athletes in Canada. William Bruce

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[56] Willis, *supra*, note 7 at 26-31. Willis finds the more "cultural" curriculum at Columbia similar to Dalhousie's in the early years, although no direct influence is suggested.

[57] See generally C. Greco, "The Superior Court Judiciary of Nova Scotia, 1754-1900: A Collective Biography" in Girard & Phillips, *supra*, note 12.

Almon Ritchie and William F. Parker made important contributions to the firm known as Graham, Borden, Tupper and Ritchie, but it was really Graham and Borden who had turned the sod.[58]

Most of the Harvard men who came to Halifax practised as solo practitioners or in a two-man partnership, often with a fellow Harvardian.[59] Only slightly more than half (20) of the 38 lawyers who remained in the province for at least 10 years after their stint at Harvard, spent all or most of their careers in Halifax. The university graduates, by contrast, showed much greater metropolitan propensities. Significantly more had Halifax careers than non-Halifax careers (37:26), at a time when slightly over one-third of all Nova Scotian lawyers practised in Halifax.[60]

Many of the Harvard men returned to the small towns whence they had come, living out quiet lives as staid, respectable pillars of the community. Aubrey Blanchard returned to Windsor, where he articled with his father, who later became a county court judge. He married his cousin Alice and practised with his uncle William Blanchard, with occasional stints on his own, for thirty years until his death in 1899. Thomas Flint practised for thirty years in his native Yarmouth before moving to Ottawa, while Charles Muir tried his hand in Halifax for a while but moved on to Shelburne and eventually to Parrsboro.

Samuel David McLellan (1852-1943) perhaps best epitomizes this pattern. Son of a local justice of the peace, he was born in Great Village, Colchester County. He articled with the lawyer/historian Israel Longworth in Truro and returned there after his year at Harvard in 1875-76. After several unsuccessful attempts at elected office, he was named judge of probate for Colchester county in 1889 and practised in Truro for the rest of his life. His son, the product of a late second marriage, joined him in the 1930s. Upon the son's appointment as a county court judge in 1966 the old pre-responsible

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[58] R.C. Brown, *Robert Laird Borden: A Biography* vol. I, (Toronto: MacMillan, 1975) 21-23.

[59] This fact alone does not mean that the Harvard men were "behind" their peers, as the vast majority of lawyers still practised in this way until well into the twentieth century. It merely means that they were not disproportionately represented in the vanguard of four-and five-man firms which emerged in the 1880s and 1890s.

[60] Some 36% of all lawyers practised in Halifax in 1890, a drop from 1860, when about 45% were located in the capital. The number of university graduates does not add up to 66 because I have excluded two lawyers who died young (both practised outside Halifax) and one who spent roughly equal periods of his career in Halifax and Antigonish.

government pattern had returned. McLellan was the oldest practising lawyer in the province when he died, aged 91, in 1943. Solid professional achievement, devotion to community and family, combined with a certain narrowness of imagination and aspiration: such would read the typical profile of this group of men. For many, their years at Harvard stood out in their lives like freakish meteors blazing briefly across an otherwise imperturbable firmament.

The Harvard men are a little more visible in the Barristers' Society, but only one played any important role in the crucial twenty-year period following John W. Ritchie's tenure as president. After many years of quietude, some younger members had begun to move on to the executive of the society in the 1870s. In 1881 the younger lawyers mounted a successful coup d'état and swept the executive, with Thompson as president. Within a few years they had transformed the society into a modern professional organization, with sole power to regulate admission to the profession and most of the necessary disciplinary powers to control members after admission. Membership would be open to all lawyers after 1884 upon payment of the required fees, not restricted to the self-appointed social elite. University graduates were prominent among the reformers, but Harvard men were not, with the sole exception of Hugh Henry.[61] Henry served on the council or executive of the Society from 1881 until his elevation to the bench in 1893, including five terms as president, in 1885 and from 1889 to 1893. The only other Harvard men to occupy leadership positions were two of the Ritchies, William Bruce Almon Ritchie and James Johnston Ritchie, but they came to prominence only in the decade after 1900, when the major reforms had already begun.

Taking into account these indicia of professional leadership as a whole, one would be precluded from advancing any thesis which associated professional modernization with a vanguard party from Harvard. Yet the very presence of these men throughout the province served as a catalyst to change. By the 1870s Harvard men could be found practising throughout the province, in Sydney, Windsor, Kentville, Wolfville, Shelburne, Annapolis, Yarmouth and Parrsboro as well as the metropolis. The ubiquity of Harvard-trained lawyers by the 1870s popularized the idea that a specifically legal university

[61] The university graduates were not themselves a homogenous group, as this paper has sometimes implied. They spanned the social spectrum from the gentry's sons who attended King's to the sons of impecunious farmers from Antigonish county who went to St. Francis Xavier University. Those who were active in the reform of professional governance and education tended to come from neither extreme.

education was a desirable adjunct to the traditional articling process. The roles which these men adopted as community leaders would only have enhanced this impression, even more than any actual proselytising which they might have done. Nova Scotia and New Brunswick would probably have been unique in the common law jurisdictions of the *fin-de-siècle* British Empire in having relatively large numbers of practising lawyers who had been exposed to a university legal education. This fact helps to explain why the demand for a law school at Dalhousie, and a little later in New Brunswick, could seem to be "common sense" to its many supporters, when similar movements petered out in so many other jurisdictions.[62]

In fact, Nova Scotia's professional reform movement seems to have achieved its goals with remarkably little struggle, compared to the experience of other jurisdictions. Sheila Penney has noted a similar phenomenon with regard to the contemporaneous reform of the medical profession in Nova Scotia. She attributes the ease of the transition to the essential identity in Nova Scotia between medical educators and professional leaders, two groups who tended to come into conflict in larger jurisdictions; she notes too that the existence of a single medical school in the province precluded disunity. One can discern the same pattern with lawyers. Those active in the reform of the Barristers' Society were the same group involved in the creation of the Dalhousie Law School. While Dalhousie's panoply of professional schools no doubt inspired resentment in some quarters, no one seriously advocated more than one medical school or law school for the province. In Ontario, the debate over university legal education became embroiled in a debilitating controversy over decentralisation. If the University of Toronto was to have a law school, why not Western? and Queen's? and MacMaster? Given the size of Ontario, there was some merit to the decentralist position. In the end, however, reform of professional education was blocked entirely for over half a century.[63] One other advantage which the Nova Scotia reformers

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[62] For an English example, see W.W. Pue, "Guild Training vs. Professional Education: The Department of Law at Queen's College, Birmingham in the 1850's" (1989) 33 Am. J. Legal Hist. 241; on the failure of the movement to establish university legal education in Ontario, see Kyer & Bickenbach, *supra*, note 1.

[63] The decentralist debate was not entirely absent in Nova Scotia. It raised its head with regard to the intermediate examinations administered by the Barristers' Society: should they be written only in Halifax? A sensible compromise was reached whereby "county" students could arrange for local sittings upon request: S.N.S. 1884, c. 16; *Debates of the House of Assembly of the Province of Nova Scotia, 1884*, 97-8.

possessed was good relations with the legislature. A steady stream of legislation initiated by the Barristers' Society was passed in the 1880s and 1890s, not without debate but almost always without acrimony. In Ontario, by contrast, the bar and the legislature were often at loggerheads, notably over the right of the legislature to admit members to the bar by private act.[64]

If there was to be friction within the changing legal profession of the later nineteenth century, it was likely to come from more traditional sources of conflict in Nova Scotian society: religion, ethnicity, class, partisan affiliation, or rural/urban tensions.[65] Once the Barristers' Society was open to all lawyers, rather than the social elite, the profession had to admit its diversity openly. This fact seems to have been faced with equanimity and lawyers coalesced rather quickly around a new professional paradigm which emphasized the usefulness of the lawyer in addition to his gentlemanly status. I have not investigated the exact mechanisms by which this consensus was achieved, and can only point to a virtual absence of overt conflict on any of the suggested grounds. It is not terribly surprising that Catholics and Protestants managed to accommodate each other in this regard, as they has a fairly good record of doing so, in Halifax at least. Certainly one should not ignore the critical role played by the Methodist-turned-Roman-Catholic John S.D. Thompson in mediating between the two communities, but he was not alone. A number of Roman Catholic lawyers had articled with Protestant principals in the 1860s and there had been isolated earlier examples such as Lawrence

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[64] S.N.S. 1884, c. 16; R.S.N.S. 1884, c. 108; R.S.N.S. 1886, c. 35; R.S.N.S. 1887, c. 24; R.S.N.S. 1888, c. 34; R.S.N.S. 1891, c. 22; R.S.N.S. 1892, c. 14; R.S.N.S. 1893, c. 26; R.S.N.S. 1895, c. 30; R.S.N.S. 1899, c. 27; R.S.N.S. 1901, c. 50. Admission to the bar by private act happened only once in Nova Scotia in the nineteenth century. Robert Sedgewick was admitted by private act in 1873 over the objections of the local bar, after having been called to the bar of Ontario in 1872.

[65] I have not included gender here because, by definition, there could be no gender conflict within an all-male profession. The conflict, if such existed, would have been over admission. Dalhousie first admitted women students in 1881, but no women studied law until 1915. Willis suggests that the problem lay with the refusal of the Barristers' Society to admit women to the bar, making legal study irrelevant; *supra*, note 7 at 76-8. The Saint John law school had female students almost from the beginning in 1892, however, even though admission to the bar of New Brunswick was only obtained more than a decade later. The subject merits further study; in particular, we do not know whether any Nova Scotian women sought legal education in the United States when it was effectively denied them at home, as they sought out medical education. They could not have done so at Harvard law school, which did not admit women until 1950.

O'Connor Doyle. We do not yet know enough about ethnicity and the legal profession to generalize, but the fact that Nova Scotia's first black lawyer was admitted to the bar in 1900 without a major row suggests other conflicts may have been similarly handled.[66]

As for social class, there was a remarkably easy commingling of the older social elite with the new middle class men in the executive of the Barristers' Society from the 1870s on. James MacDonald, the son of a Pictou county farmer of modest means, became president of the Society in 1877, assisted by vice-president J.N. Ritchie, scion of Nova Scotia's most prominent legal dynasty. John Thompson, president from 1880-82, was the son of an Irish immigrant journalist, while Wallace Graham (1887), often said to be the ablest lawyer in the Maritimes, was the son of a farmer-shipbuilder. The new professional ideology seems to have provided an arena where men of varying social strata could mingle amicably. Indeed, from the perspective of the 1880s, the *mentalité* permeating the Barristers' Society's 1860 by-laws seems as remote as the Jurassic era. It may well be that the marked increase in non-elite entrants to the profession after 1860 suggested to the old guard that the established patterns simply could not be maintained.

A more significant cause of discord among lawyers in the last quarter of the nineteenth century was political affiliation. In terms of status and money, much turned on whether an individual lawyer belonged to the party currently in power, and lawyers' correspondence is replete with requests for favours in the form of appointments or government legal business. A large segment of the Halifax bar petitioned Sir John A. Macdonald in 1883, for example, to protest the granting of government patronage to Wallace Graham, an alleged Liberal.[67] There is no doubt that the principal parties to the professional reform movement of the 1880s were mainly Conservatives, a fact which went not unnoticed by contemporaries: a letter writer to

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[66] James Robinson Johnston graduated from Dalhousie with a B.L. (1896), LL.B. (1898), articled with Frank Russell from 1897 to 1900, and was called to the bar on July 18 1900; P.A.N.S., RG 39, ser. M, vol. 23, no. 6. He seems to have taken over the practice of John Thomas Bulmer, who had often acted as advocate for the black community, after Bulmer's death in February 1901. See generally J. Fingard, "Race and Respectability in Victorian Halifax" (Paper presented to the Canadian Historical Association, Victoria, B.C., May 1990). The first black lawyer in Ontario had to be admitted by private act because he could not find a lawyer with whom to article: *An Act to authorize the Law Society to admit Delos Rogest Davis as a Barrister-at-Law*, S.O. 1886, c. 3; S.O. 1884, c. 94 (admission as solicitor).

[67] National Archives of Canada, Sir John A. Macdonald Papers, MG 26 A, 142997, M.B. Daly to J.S. Macdonald, 29 June 1883.

the Liberal *Acadian Recorder* denounced the Barristers' Society council as a "red hot Tory combination" in 1882.[68] How then did the Barristers' Society deal with these tensions?

The simple answer is that we do not yet know, but in the end unity triumphed. A "parallel" Barristers' Society, the Provincial Barristers' Association, did exist from 1887-1893 under the presidency of political maverick Nathaniel Whitworth White, but its origins and mandate remain obscure. An educated guess would be that it represented a rump of disaffected rural Liberals: a strong majority of its executive were Liberals although White himself was a Liberal-Conservative. Otherwise, the common denominator of executive members is their non-Halifax residence, an obvious contrast to the Barristers' Society. It is premature to speculate on the organization's goals at this point, but the fact remains that it disappeared after a few years. A decade later the Barristers' Society may be presumed to have responded to any lingering sense of grievance by enlarging its executive to include substantial non-Halifax representation. In 1904-05 the executive suddenly expanded from ten members, in practice almost always Haligonians, to twenty-three, with the new members coming almost to a man from outside Halifax. In fact, most of the executive of the defunct Provincial Barristers' Association, including N.W. White, found their way on to the enlarged executive in the next few years. The authority of the Barristers' Society was henceforth unchallenged. On the whole, one would be hard pressed to find a professional group which successfully overcame so many potential divisions within its membership within such a short time, while undertaking a comprehensive program of professional reform.[69]

In surveying the condition of the Nova Scotia bar circa 1860, one is struck by its lack of cohesiveness and incapacity for corporate action. Its elite, largely drawn from the pre-responsible government oligarchy, could rest on its collective laurels; it had little incentive to draw the entire profession under its imperium. Nor, apparently, did the progeny of this elite group, who adopted individually to a changing world by seeking out a formal legal education in the United States, but made

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[68] Letter to the Editor, *Acadian Recorder* (28 April 1882) 3d. The Liberal Benjamin Russell was a notable exception to the Conservative dominance of the profession in the 1880s, although not the only one.

[69] The development of the Society presents a textbook example of the type of intra-class organization which J. Guildford discusses in "Public School Reform", *supra*, note 6, and would benefit from further analysis from this perspective.

little contribution to the organization of the profession.[70] These men already possessed status in their communities as a result of their kinship ties and relative wealth; their profession confirmed rather than created their status.

Not so the sons of farmers, lesser merchants, and dissenting clergymen, who sought in the legal profession a means of creating a better status for themselves. Their incentives to contribute to the "public goods" of professional organization and improvement were, relatively speaking, much higher; a better-respected profession would assist them greatly in their individual careers. It was their leadership, not that of any Halifax Brahmin, which transformed the legal profession into a cohesive body so confident that it presumed to preach to the entire Dominion bar by the century's close.

Another striking feature of these developments in Nova Scotia is the relative absence of concern over market control. The existing Anglo-American literature tends to stress this fact as the key element in the nineteenth-century professionalization process, but it does not appear to have played a significant role locally. Nor does one see the erection of effective barriers to entry, if the steady increase in recruitment - far above the rate of population increase - is any indication. In fact, quite the reverse happened: the profession was enriched by recruitment from a wider social spectrum than had normally been the case in the days prior to responsible government.

When the Nova Scotian reformers chose to organize their movement around the issue of professional education, rather than restricting admission or achieving a formal monopoly over the market for legal services, they chose well. Talk of monopoly always makes the lay public nervous, while education was the motherhood issue of the later nineteenth century. And the reformers could legitimately claim to be democratic in their orientation: they wished to make a type of professional education accessible to all [male] Nova Scotians which had been available only to the privileged few able to seek it abroad.[71] It remains to be investigated whether the reform movement resulted in

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[70] One would have to make a partial exception here for the Ritchie family, whose members did contribute significantly to the Barristers' Society in the period of 1875-1910 (three Ritchies served as president during this period). They did not, however, make any substantial contribution to the Dalhousie Law School.

[71] Thus providing an example, via the Scottish Robert Sedgewick, of the Scottish "democratic intellect" in Nova Scotia: J. Reid, "Beyond the Democratic Intellect: The Scottish Example and University Reform in Canada's Maritime Provinces 1870-1933" in Axelrod & Reid, *supra*, note 53.

the ultimate irony: in offering university training in law "at home", did the Dalhousie Law School provide an impeccable emigration ticket for those upwardly mobile young lawyers whose dreams were increasingly frustrated at home in the difficult years which lay ahead?