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RECENT PROGRESS IN LEGAL EDUCATION

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FOR THE ADVANCEMENT OF TEACHING

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RECENT PROGRESS IN LEGAL EDUCATION[1]

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For nearly half a century there have been organized efforts to effect a nation-wide improvement in the American system of legal education. The strictly modern phase of this movement may be said to have started—in so far as it is possible to assign a definite date—in 1910. It was in this year that similar long-continued efforts by the American Medical Association to improve medical education first impinged upon the public consciousness, and suggested to lawyers that methods which had proved successful with physicians might be applicable also to the legal profession.

In many respects the task of legal reformers was far more difficult than that of their medical colleagues. Before recounting some of the particular obstacles and the progress which has since been made in surmounting them, a general explanation may be hazarded as to why the legal profession was then, and is still, in a relatively backward stage of development. The science of law, or at least that particular portion of this science (if it be a science) which primarily concerns American law schools and bar admission authorities, is not international in the sense that medical science is. In the development of medical schools physicians can draw immediately upon the experience of the whole world. The task of the American law schools, on the other hand, is severely conditioned by the fact that these schools exist primarily for the purpose of preparing students to practice American law. This is now so different from that of other countries—even from the English common law, of which it is historically an outgrowth and, in a certain sense, still a part—that foreign models of legal education and organization, though often suggestive, are rarely closely parallel. Far less than physicians can lawyers profit by the intellectual resources of other countries. America is virtually obliged to work out its

[1] The last similar discussions published by the Bureau of Education were contributed by Dean Henry M. Bates, of the University of Michigan Law School, to the Reports for 1914 (Vol. I, Ch. X) and 1916 (Vol. I, Ch. XI).

peculiar experiment in government and law by itself, guided only by its own relatively brief and narrow experience.

It will be convenient to consider briefly what the situation was in 1910; then what has been accomplished to improve conditions in 16 years; and, finally, what are the most important problems that still await a satisfactory solution.

I. THE PAST

First, then, as to some of the ways in which the status of legal education compared unfavorably with that of medical education in 1910.

DEFECTIVE ORGANIZATION OF THE LEGAL PROFESSION IN 1910

One conspicuous difference between the two professions was the relative lack of effective organization among lawyers. Among their many weaknesses in this respect perhaps the most fundamental was this: The medical profession proper constituted only one of several groups which were engaged in practicing the healing arts or "health service" as a whole. The legal profession, on the other hand, assumed to include everyone who was in any way practicing law, though the actual occupations might be as diverse as those of a physician or surgeon, a trained nurse, a dentist, a pharmacist, or a veterinarian. This inclusion of many different kinds of lawyers and pseudolawyers under the common head of general practitioner made it difficult to plan an effective preparation for any one kind and tended to weaken the esprit de corps of a fictitiously united profession.

Another weakness was that State lines split up the lawyers, far more than the physicians, into mutually independent local units. This weakness is in part due to the nature of the profession. Just as American law, in a general sense, differs from the law of any other country, so that particular blend of legislation and judicial decision which is actually in force in any one State is never precisely identical with the law in force in any other State of the Union. None the less, the general principles are so similar that a comprehensive nation-wide organization of lawyers is indicated as not merely practicable, but also as peculiarly desirable, for the very purpose of counteracting the centrifugal tendencies of our Federal system. This comprehensive organization did not exist. Whereas the American Medical Association, since its origin in 1847, had been an integration of State and local medical societies, the American Bar Association, organized in 1878, still competed for membership with independent State and with independent city bar associations. Under these conditions, it contained in 1910 only 3,690 members, or

3 per cent of all lawyers in the United States. The attendance at the annual meeting was 326, or 9 per cent of the membership.

Again, the American Medical Association, largely because of its advantageous situation in the two respects above noted, had already developed an effective system of professional supervision over medical schools and medical licensing authorities. Its extensive membership made possible the publication of a weekly Journal, through which the facts could be published to the profession at large. It also made possible the establishment of a Council on Medical Education, with compensated executive officers, for the ascertainment of these facts. In 1910 the work of this council had culminated, for the time being, in the publication of a classified list of schools, and of a registry containing the educational record of all practicing physicians. Nothing of this sort existed in the American Bar Association. Its only periodical publication was the report of proceedings at its annual meetings. Here were recorded the unhappy rivalries of a mutually independent "Committee on Legal Education and Admissions to the Bar" and "Section of Legal Education"; the more or less permanent but uncompensated members of the committee or officers of the section made recommendations which occasionally resulted in the passage of relatively fruitless resolutions by the association.

Still another factor of great importance in its bearing upon the capacity for united effort possessed by either profession was the different position occupied by the professional school. In the medical profession the medical school was accepted, both inside and outside of the profession, as a sine qua non in the process of preparation. In an overwhelming majority of States graduation from a medical college was compulsory. "Practicing physician" and "M. D.", the degree of doctor of medicine, were, and long had been, virtually interconvertible terms. Legal education, however, was still in the process of emerging from the apprenticeship phase. The relatively modern law school had everywhere won its first victory over the conservative supporters of the older system of office preparation; in all States study at a law school was possible under the rules for admission to the bar. In no State, however, was law school study obligatory; and many influential older practitioners had not yet grasped the truth that a system of legal preparation which had worked well in their cases could not, simply because of the greatly increased volume and complexity of the law, be expected to yield equally good results to-day.

Accordingly, alongside of the American Bar Association, with its committee and section, the Association of American Law Schools made its own independent decisions as to the standards that were appropriate for admission to membership in its body. This organi-

zation of law teachers was, on the whole, a more effective agency for the improvement of legal education than the practitioners' association, but was not taken very seriously by the profession at large.

DIVISION OF THE LAW SCHOOLS AMONG THEMSELVES

These comparative weaknesses in the organization of the legal profession were the more regrettable because of a much more evenly balanced division of forces in the law school world. Although the development of a proper system of medical licensing tests has undeniably been complicated by the existence of medical sects, there could be no question as to the dominance, both in the associations of medical practitioners and in the Association of American Medical Colleges, of the orthodox thought already represented in the leading schools. In legal education, on the contrary, there was nothing like general agreement as to what was orthodoxy and what was heresy.

The Harvard school was the strongest of the law schools. Its famous case method of instruction, with certain resultant conclusions as to the end and aim of legal education, had long lived down its early reputation as a Boston fad. Harvard had been accepted as a leader and a model by a considerable number of institutions, including most of the larger universities. This point of view was certainly already in the ascendant in the Association of American Law Schools. Even here, however, sentiment was by no means united, and the members of this association numbered, all told, less than one-third of the total number of law schools in the country.

Excluded institutions attacked the Harvard system and philosophy on various grounds and commended themselves to many practitioners of standing by themselves departing less widely from the original ideals of the law office. Entirely apart from attacks based upon ignorance and misunderstanding, there was certainly at least some plausibility in the charge that Harvard's adherents were a little too uncompromising in proclaiming as the sole purpose of a legal education the development of a "legal mind." Practical training and detailed information in regard to the law of the local jurisdiction were among those aspects of a complete education to which these schools seemed to be paying too little attention.

Thus the easily explicable feeling that good law schools were not so important as their theoretically-minded professors thought they were was reinforced by a suspicion that the theory of education exemplified in the leading schools was itself unsound. It can hardly be said that there was a rabid partisan discussion over a matter in which most practitioners took no interest at all; but prominent practitioners at least thought, and sometimes said, that the case

method was a "fetish," thereby running the risk of being themselves dubbed "old fogies."

INADEQUATE BAR ADMISSION REQUIREMENTS

The lack of harmony between legal practitioners and schoolmen, and the further divisions within the ranks both of organized bar associations and of law schools, militated against any rapid advance of standards in at least two ways.

First, and most obviously, in contrast with the powerful educational machine headed by the Council on Medical Education and supported by the great majority both of practicing physicians and of medical schools, different groups of reformers in the disorganized legal profession each cherished separate ends. Instead of traveling together upon a broad highway of progress, each regarded the other's avenue of reform as at best an unimportant by-path—too often as one that led in a positively wrong direction. If they united upon anything, it was in their tendency to ascribe to practitioners at large a cynical apathy, for which the feebleness and confusing variety of their own leadership was primarily to blame.

In the second place, and more concretely, it was impossible under these conditions to build up an adequate system of bar admission requirements.

In medical education, however much remained to be done in the way of toning up the licensing system, its general principles and its objectives were clear. Already the great majority of States positively required applicants for admission to medical practice to have graduated from a medical school. The State boards of medical examiners were designed to supplement this system and to fortify the dominant type of sound medical education. In the case of a good school their examinations constituted a precaution, additional to the tests provided by the school's own faculty, against failure on the part of individual students to take advantage of their opportunities. They constituted an even more important weapon of defense against low-grade medical schools. The boards had it in their power to improve or even to destroy such schools by failing to pass their graduates or even by denying to their graduates the right to take the examination. Even in 1910 it was probably broadly true that good graduates of good medical schools had little anxiety as to their ability to pass the medical licensing tests; and although the existence of medical sects complicated the task of weeding out inferior schools, the united profession has been successful in achieving the following ends: Schools that profess to be orthodox have been assisted to maintain proper standards; if products of an unorthodox type of medical education can often secure permission to practice

the healing art, at least they are usually prevented from holding themselves out as "regular" physicians.

By contrast, in the legal profession no single State required applicants for admission to practice to have graduated from or even to have attended a law school. And in the case of applicants who attended law schools not the slightest distinction was made, either in professional or in popular usage, between "regular" lawyers and others. Products of the case-method law school, of the textbook or dogmatic law school, and of no law school at all, stood upon a footing of precise equality as regards both the process of admission and the legal privileges that would be thereby attained.

The effect of this undiscriminating uniformity was at once to exaggerate the importance of the bar examination and—as will be shown later—to destroy the conditions under which it can be used profitably to measure educational attainments. The examination could not be attached to a proper system of preparation as a useful supplement because no one knew what a proper system of education was. It had come, therefore, to occupy the position of an independent educational test; as such it was more seriously regarded both by students and by practitioners than the supplementary medical licensing examination. Having this factitious importance, it distracted attention from other devices that are much better calculated to promote competence and character among lawyers. Requirements of preliminary general education and of a specific period of law study were largely ignored because of deluded reliance upon an unsupported bar examination.

DIVERSIFIED LAW SCHOOL REQUIREMENTS

Another complication in legal education, from which medical education is relatively free, had its origin partly in the conditions above described and partly in the inherent difference between law and medicine. The time that students are required or expected to devote tc their preparation is only one of many aspects of professional education. It is a highly important aspect, however, and because it lends itself to measurement by figures it has always been specially emphasized both by reformers and by fact-collecting agencies. The diversity in this respect among law schools in 1910 was far greater than that among the medical schools and imposed a correspondingly heavier burden upon those who wished not necessarily to improve, but even to understand, legal education.

Three elements are involved in any attempt to estimate the time that a student devotes to his professional preparation. Of these, the first and most obvious is the duration of his course in the professional school. In this respect the medical course had already become definitely standardized at its present figure of four academic years,

and the path was cleared for a movement to add a supplementary clinical year. In 1910 every medical school conducted, at least ostensibly, either a complete four-year course or the first half of such a course, designed to be completed in another school. In legal education, however, the orthodox period was only three years, and it was not until as recently as 1905 that the Association of American Law Schools had required its members to comply even with this standard. No less than 40 law schools outside of the association, or nearly one-third of the total, still announced courses of two years, or even of a single year, leading to a law degree. The situation resembled that which had existed in medical education immediately after the Civil War, before the inauguration of their modern era of standardization.

A second element of equal importance is the time that a student devotes to his studies while in the school. Year for year, a school which holds its sessions during the regular working hours of the day, for the benefit of students who are not engaged in any outside occupation, is, of course, in a position to demand much more than an evening school run for the benefit of self-supporting students. Just how great the difference is can hardly be expressed in precise mathematical terms. It is possible, however, to state with precision the number of medical schools which operated under this very substantial handicap. The number in 1910 was only 4 out of a total of 140.[3]

Very different was the situation in law. As truly here as in medicine, institutions that held their sessions during the evening or during the late afternoon operated under a serious handicap as regards their maximum possibility of accomplishment, year by year. On the other hand, an argument of some cogency can be made that it is of the utmost importance that students of modest means shall not be denied access to the politically privileged bar, and that the only practicable avenue of preparation for the overwhelming majority of such persons is the evening or part-time law school. Whether this argument, which is based upon a recognition of the peculiarly intimate connection between law and politics, is or is not sound, is a question which will be discussed later. The point of immediate interest is that, whether sound or not, it provides a basis for the part-time law school that is lacking in the part-time medical school. Incidentally, artificial light does not impair the efficiency of instruction in law as much as it does in a subject where laboratory work in the natural sciences is required. Again, the amount of capital needed to equip something that can pass muster as a "school" is vastly smaller in law than in medicine; a considerable

[3] For the figures relating to medical education which are used in this paper the writer is indebted to Dr. N. P. Colwell, secretary of the Council on Medical Education, who has also kindly read the manuscript prior to publication.

section of the public is ready to believe that a few chairs, a few books, and a printed announcement convert an attorney's office into an educational institution.

These differences between the nature of medicine and of law explain why schools which appeal particularly to self-supporting students are so much more numerous in the field of legal education. Under bar admission rules which give credit for study either in a law office or in a law school, offices develop into "schools" so insensibly that the precise number of these latter can never, in the nature of things, be ascertained. If the count be confined, however, to institutions sufficiently pretentious to confer a law degree, we find that in 1910 no fewer than 60 out of 124 law schools, or almost one-half, were either purely part-time institutions or were "mixed" schools holding sessions for independent divisions of full-time and of part-time students.

The third element that must be taken into account in estimating the time that law-school graduates devote to their preparation is the admission requirement of the school—that part of the student's total preparation which he secures before he begins the study of law proper. Here there was less difference between the two professions. Of the 136 full-time medical schools the great majority—112, or 82 per cent—had an entrance requirement, at this date, of a high-school education or less. Of the remainder, 8 required one college year prior to the four-year medical course, a total of five years after the high school; and 16 required at least two college years, a total of at least six years after the high school. Corresponding to these were 43 full-time, three-year law schools, of which again the great majority—31, or 72 per cent—had an entrance requirement of a high-school education or less, while 4 required one year, 3 required two years, and 5 required at least three years of college. Except that the law course was one year shorter than the medical course, this particular group of law schools conformed fairly closely to the full-time medical schools as regards the time that students devoted to their preparation. In both groups there was a feeling that the time had arrived for increasing entrance requirements among the schools generally to the level already attained by some. This common ideal was reinforced by the circumstance that it was in the larger universities that the schools with the highest entrance requirements were usually found.[3] To this extent medical schools and law schools resembled one another in 1910 both in their actual condition and in their aims.

[3] Six universities—Harvard, Yale, Chicago, Wisconsin, Stanford, and the University of California—announced, in 1910, an entrance requirement of two college years, or over, for both medical and law departments. No independent medical school or independent law school required any college work, and many had no entrance requirement at all, at least in actual administration. No attempt has been made to distinguish between these cases and a genuine high-school requirement.

But only to this extent. For whereas the 136 full-time, four-year medical schools included, as has already been pointed out, virtually all the medical schools then in existence, the 43 corresponding law schools constituted only one-third of the total. The following table attempts to make clear how many features besides entrance requirements had to be considered if the nation-wide standardization of medical schools was to be duplicated in legal education. The numerals with asterisks include all medical schools and all law schools that from the point of view of the medical standardizers could already be regarded as "orthodox," on the ground that students were expected to devote to their studies their entire time during a period of four years in medicine and of three years in law. Such schools are shown to be divided into groups that required periods of three years, of four years, of five years, and of six years to elapse between the date when the student leaves the high school and the date when he secures his professional degree. Finally, the number of schools that departed from orthodoxy, as regards either the duration of their professional course or the time of day at which their class-room sessions were held, is indicated by the figures without asterisks. There are 10 such categories, comprising a total of 81 law schools, as compared with one similar medical category comprising 4 medical schools in all. If sweet simplicity and standardized uniformity are indispensable elements in human institutions, in 1910 an Augean stable awaited the legal reformer.

Medical schools and law schools classified according to the time required, after completion of the high school, to obtain the degree, 1909-10

Years required	Medical schools (110)		Law schools (124)		
	Full time	Part time	Full time	Mixed	Part time
At least six years:					
At least two years in college, followed by four years in medicine	*16				
At least three years in college, followed by three years in law			*5		
Five years:					
One year in college, followed by four years in medicine	*8				
Two years in college followed by three years in law			*3		
Four years:					
Four years in medicine, after high-school education or less	*112	4			
Four years in law, after high-school education or less					3
One year in college, followed by three years in law			*4	1	
Two years in college, followed by two years in law			2		
Three-year course in law, after high-school education or less			*21	8	20
Two-year course in law, after high-school education or less			18	2	16
One-year course in law, after high school education or less			1		1
Total	136	4	64	11	40

* In these schools the students devote to their studies their entire time during four years in medicine or three in law.

II. THE PRESENT

Legal education has made great advances during the past 16 years in all four of the features discussed in the preceding pages.

IMPROVED ORGANIZATION OF THE LEGAL PROFESSION

The improvement has been especially marked in the field of professional organization. The American Bar Association has increased in membership more than sixfold—from 3,690, or 3 per cent of the total number of lawyers, to 23,559, or 17 per cent. The gain, having been stimulated by an active "drive," is not all good: the percentage of the total membership who attended the annual meeting fell from 9 per cent in 1910 to less than 7 per cent in 1925; but even so the actual number of members in attendance rose from 326 to the imposing figure of nearly 1,700.

Of more importance than mere size were (1) the establishment, in 1915, of a quarterly periodical, which developed in 1920 into the present ably edited monthly Journal of the American Bar Association; (2) the beginnings of cooperation with State and local bar associations through the establishment, in 1916, of an active Conference of Bar Association Delegates; and (3) the adoption, in 1919, of constitutional changes by virtue of which the former system of mutually independent committees and sections has been remodeled. Each "section," including that devoted to "Legal Education and Admissions to the Bar," now chooses that particular "Council of the American Bar Association" which is concerned with the same subject matter.

Meanwhile, the Association of American Law Schools has likewise grown from an organization of 37 to one of 61 law schools in continental United States, or 63, counting schools in the Philippine Islands and Canada. Expressed in percentages, it now includes, not 29 per cent, but 37 per cent of the total number of schools. Since 1914 the regular annual meeting of this association, instead of being submerged, as previously, in the large summer gathering of the American Bar Association, has been held independently during the Christmas vacation. This official severance of the two organizations has made for much more successful meetings on the part of the schoolmen than was possible when their sessions had to be fitted into the interstices of the bar association's program. An anticipated loss of influence with the practitioners was averted by the scheduling of a special meeting in the summer of 1920, in conjunction with the bar association. Through this maneuver control of the machinery of the reorganized Section and Council on Legal Education was placed in hands sympathetic with the Association of Ameri-

can Law Schools. A special committee was appointed to make recommendations looking to the improvement of those admitted to the bar. The following year the recommendations of this committee were adopted by the section and by the American Bar Association, and in 1922 were indorsed, with certain modifying interpretations and explanations, by the Conference of Bar Association Delegates at a special meeting held in Washington, D. C. During these same years, 1921 and 1922, the Association of American Law Schools specifically indorsed the action of the American Bar Association, and brought its own membership requirements into conformity with these now orthodox standards; the requisite amendments to its articles of association became fully effective in the autumn of 1925.

It is significant that in this important movement, as in the still more notable organization of the American Law Institute, mentioned in the following section, the lead was taken by schoolmen. That they should now be so highly regarded as to make this possible is a measure of the progress that has been made toward unifying the forces of reform.

Another instance of cooperative effort that may properly be mentioned in this connection was even more directly stimulated by developments in the field of medical education. The year 1910 had witnessed the publication of the Carnegie bulletin, Medical Education in the United States and Canada.[4] Although not written by a physician, the data used in its preparation had been secured in cooperation with the Council on Medical Education. The volume had been warmly welcomed by the medical profession as an aid in its successful campaign against inferior medical schools; in addition, because of the wide publicity which it gave to this campaign, it suggested to lawyers that they might profitably learn from physicians how to improve their own system of education. The first manifestation of this new inclination to follow the lead of a sister profession was, naturally enough, an attempt to induce the Carnegie Foundation to perform for legal education a service similar to that which it had already rendered in the medical field. During the winter of 1912–13 formal requests to this effect were made both by the American Bar Association, through its committee on legal education, and by the Association of American Law Schools through its executive committee. The inquiry was promptly organized under the general direction of one whose previous training had been acquired in the field of politics or government, rather than in that of its technical subdivision, professional law. Practicing lawyers and law teachers have contributed generously of their time to give

[4] Carnegie Foundation for the Advancement of Teaching, Bulletin No. 4, by Abraham Flexner.

to the successive volumes published by the Foundation whatever merit they possess.[5] The facts that have been accumulated, and the conclusions which have been drawn from these facts, have aroused general interest in the legal profession. The Carnegie Foundation is not engaged in propaganda in support of the views expressed by the individual authors of these volumes, or in support of any other views. Its studies must, however, be fairly included in any enumeration of organized efforts to assist the progress of legal education.

METHOD AND AIM OF LEGAL EDUCATION

A considerable advance has been made also toward reaching a general agreement as to the merits and limitations of the case method. The publication, as part of the Carnegie inquiry, of Redlich's study of the case method did a good deal to clear up misunderstandings in regard to its nature, and largely dispelled lingering doubts as to its essential value. It has now without question displaced lectures and textbooks as the orthodox method of legal education in this country.

On the other hand, the primary justification for the method was shown by Professor Redlich to lie in the peculiar nature of Anglo-American law. Building on this foundation, the view was expressed in a subsequent volume of the same series, Training for the Public Profession of the Law, that the method was peculiarly appropriate to the United States for the reason that here the law was peculiarly confused. The multiplicity of our jurisdictions, each with its court of last resort, produces a tangle of legal principles, the reduction of which to systematic form has hitherto defied the efforts of textbook writers. Undoubtedly, therefore, the case method of preparing law students for their professional responsibilities is at present the method that is best adapted to this country. For, as its advocates rightly claim, it is the method which best develops that power of legal reasoning which is essential, both to practitioners and to scholars, in dealing with the refractory material of American law. For its full success, however, certain conditions must exist in the law schools themselves. Furthermore, even when these conditions are present, attention was called to the fact that the necessity of employing this valuable but cumbersome method has squeezed out

[5] The following three bulletins have been already published for gratuitous distribution: No. 8, *The Common Law and the Case Method in American University Law Schools*, by Josef Redlich, 1915; No. 13, *Justice and the Poor*, by Reginald Heber Smith, 1919; No. 15, *Training for the Public Profession of the Law*, by Alfred Z. Reed, 1921. A fourth bulletin, bearing the title *Present-Day Law Schools*, is announced as now passing through the press. In addition, the Foundation issues an annual pamphlet which reviews recent progress and gives certain details as to bar admission requirements and law schools.

of the student's preparation many elements that it would be desirable, if possible, to restore. It was suggested that case method scholars might profitably turn their attention to the task of making our law simpler, and, to this end, engage in the production of good textbooks.

Since the publication of these views, the American Law Institute has been organized, in 1923, primarily for the purpose of reducing the present chaos of legal precedents to something like intelligible form. Should this body accomplish as much as the character of its membership and scheme of operation give reasonable ground to hope,[6] it may be that at some date in the far future the case method will be valued principally for its service in training legal scholars to perform a monumental task. Meanwhile, the suggestion that, for training present-day practitioners, the method possesses, along with its paramount advantages, likewise certain drawbacks, may have had some slight influence both in the schools that employ it and in those that do not. The orthodox schools, feeling that an old partisan discussion has finally resulted in their triumph, may be a trifle more ready to recognize the defects of their qualities, and to consider what remedies, if any, can be presently supplied. Schools where conditions are unfavorable are perhaps less inclined to make pretensions inconsistent with the instructional methods which their teachers are, and ought to be, actually employing.

STRENGTHENED BAR ADMISSION REQUIREMENTS

The basis of the present standard requirements for admission to the bar is to be found in certain resolutions that were drafted by a committee of prominent practitioners, headed by the Hon. Elihu Root, in 1921. As already stated, these resolutions were formally adopted the same year both by the Section on Legal Education of the American Bar Association and by the association itself. They read as follows:

(1) The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

(*a*) It shall require as a condition of admission at least two years of study in a college.

[6] The institute is composed of higher judges and the heads of bar associations, learned societies, and association law schools, ex officio, together with a limited list of elective members. Its stated aims are "to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific work." At present it is devoting a portion of its energies to the preparation of a draft code of criminal procedure. Its principal immediate objective, however, is to restate successive branches of the law in such form as to relieve the courts from the burden which is now frequently imposed upon them of attempting to reconcile conflicting judicial decisions in a large number of coordinate jurisdictions.

(*b*) It shall require its students to pursue a course of three years' duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

(*c*) It shall provide an adequate library available for the use of the students.

(*d*) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

(2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

Since then these original standards have been somewhat relaxed through qualifying interpretations placed upon them by the Council on Legal Education. The proposed admission requirement of two college years must be read in the light of the following official statement:

A school which admits certain students who do not fully meet the requirements will not be considered as failing to comply with standard (*a*), provided the number of such students does not exceed 10 per cent of its enrollment.

Again, for the purpose of applying standard (*b*), the council has been compelled to face the question, "How long must a part-time course be in order to be equivalent in the number of working hours to a three-year full-time course?" The following ruling establishes an extraordinarily low official figure:

A part-time course of at least 160 weeks, covering four school years, is the equivalent of a three-year full-time course. This action is the same as that taken by the Association of American Law Schools on the same problem.

Finally, although the original standards were in general indorsed at a special session of the Conference of Bar Association Delegates held in Washington, D. C., in February, 1922, considerable opposition was expressed. In order to meet some of the objections the proponents of the ratifying resolutions included in them the following:

We indorse, with the following explanations, the standards with respect to admission to the bar adopted by the American Bar Association on September 1, 1921: * * *

Since the legal profession has to do with the administration of the law, and since public officials are chosen from its ranks more frequently than from the ranks of any other profession or business, it is essential that the legal profession should not become the monopoly of any economic class. We indorse the American Bar Association's standards for admission to the bar because we are convinced that no such monopoly will result from adopting them. In almost every part of the country a young man of small means can, by energy and perseverance, obtain the college and law-school education which the standards require. And we understand that in applying the rule requiring two

years of study in a college, educational experience other than that acquired in an American college may in proper cases be accepted as satisfying the requirement of the rule, if equivalent to two years of college work. We believe that the adoption of these standards will increase the efficiency and strengthen the character of those coming to the practice of law, and will therefore tend to improve greatly the administration of justice. We therefore urge the bar associations of the several States to draft rules of admission to the bar carrying the standards into effect and to take such action as they may deem advisable to procure their adoption.

Whenever any State does not at present afford such educational opportunities to young men of small means as to warrant the immediate adoption of the standards, we urge the bar associations of the State to encourage and help the establishment and maintenance of good law schools and colleges, so that the standards may become practicable as soon as possible.

The concluding declaration that these standards are not everywhere practicable has proved to have greater weight than the optimistic assertion that "in almost every part of the country" they are. The concession has done more to dampen the ardor of bar admission reformers than the initial hortatory passages have accomplished in inflaming their zeal. Over four years have elapsed since the passage of the original resolutions by the American Bar Association, and still not a single State conforms to all of these standards, even in their later modified form. Only one State has followed the fundamental recommendation that all applicants for admission to the bar must graduate from a law school.[7] Only four States require, before the period of law study begins, even the equivalent of two years of college training.[8]

This outcome of recent professional activities has been a disappointment to some of the participants. If the existing situation be compared, however, with that which existed a few years ago, it will be found that there are at least three grounds for encouragement.

In the first place, it is a great gain to have secured even temporary harmony among so many professional organizations and factions. Hitherto, practitioners and schoolmen, committees and sections, national associations and local associations have pressed forward on divergent paths toward their common goal. It is not so important that they should be surely headed and rapidly moving in the right direction as it is that they should now at last be united in their search for the true avenue of reform. Whether it be the road they are now traveling or another one, they are more apt to find it if they search for it together.

In the second place, false starts should not be regarded as wasted efforts. Rather are they an inevitable part of the process of spying

[7] West Virginia (beginning 1926).

[8] Kansas, Illinois (beginning 1926), West Virginia (beginning 1926), Ohio (beginning 1927).

out the land. The present orthodox plan of reforming the conditions under which applicants are admitted to the practice of the law calls for the imposition of certain uniform requirements. It is only on the basis of knowledge gained through this movement that it can be determined what are the defects of the plan, whether in the details of the requirements or in the attempt to impose them upon all applicants uniformly.

Finally, even though the precise aims of the standardizing organization seem now not likely to be realized, their formulation has stimulated general interest in the problem among legislators, judges, and examining boards. About 20 States have done at least something to improve their primitive admission systems.

PROGRESS IN LAW-SCHOOL REQUIREMENTS

Among law schools there has been much greater progress, notably as respects the aspect of legal education emphasized in standards (*a*) and (*b*) of the American Bar Association—the time that students are required to devote to their studies. The activities of the new Council on Legal Education in drawing up an approved list of law schools have been reinforced by the increased membership requirements of the Association of American Law Schools, with the result that in two of the three elements involved in this time computation there has been a positively spectacular advance. The number of law schools announcing a course of less than three academic years has been reduced from 40 to 8. The number of schools announcing an entrance requirement supposed to be the equivalent of two college years or over has been increased from 10 to 81, or eightfold. The combined effect of lengthening two-year professional courses and requiring also preliminary college work has been to increase the number of full-time three-year law schools, with entrance requirements of two college years or more, from 8 to 65, or, again, eightfold. This betters even the record of progress made in building up medical schools of a roughly corresponding type. During the same period the number of full-time four-year medical schools with similar entrance requirements increased from 16 to 74, or less than fivefold.

Unfortunately for the comparison, this is only part of the story. It is true that the legal profession, like the medical profession, has recently been signally successful in building up schools that demand the full time of their students during five or six years. What proportion, however, do these constitute of the total number of schools?

In medical education such schools constitute 92 per cent of the total number. The explanation of this high figure is that the number of full-time schools has dwindled from 136 to 79, of which all except 5 maintain the standard entrance requirement; and that, of

the original group of 4 part-time medical schools, only a single survivor remains. In a word, the favored type has succeeded in driving virtually all competitors from the field, with a resultant great decrease in the number of medical schools in general. During the past few years a similar development has occurred in dental education.

In legal education, on the other hand, the total number of full-time schools has increased since 1910 from 64 to 76, or 19 per cent. The total number of part-time and mixed schools has increased much more rapidly from 60 to 91, or over 50 per cent. These schools, which in 1909–10 already constituted nearly one-half of the total number of law schools, comprise now 54 per cent of the total. By contrast, full-time three-year law schools, with entrance requirements of two college years or more, in spite of their recent great increase, to-day number only 39 per cent of the total number of law schools.

The following table, constructed on the same plan as that on page 26, shows how successful standardizing efforts have been in converting nearly all surviving medical schools into a single improved type. It also shows how the result of corresponding activities in legal education has been an even greater diversification of types than existed when this movement began.

Medical schools and law schools classified according to the time required, after completion of the high school, to obtain the degree, 1925–26

Years required for degree	Medical schools (80)		Law schools (167)		
	Full time	Part time	Full time	Mixed	Part time
At least six years:					
At least two years in college, followed by at least four years in medicine	*76				
At least two years in college, followed by four years in law					5
At least three years in college, followed by three years in law			*11		
Five years:					
Five years in law, after the high school or less					1
Two years in college, followed by three years in law			*54	*8	3
Four years:					
Four years in medicine, after high school or less	5	1			
Four years in law, after high school or less				1	34
One year in college, followed by three years in law			5	4	9
Three-year course in law, after high-school education or less			5	4	15
Two-year course in law, after high-school education or less					7
One-year course in law, after high-school education or less			1		
Total	79	1	76	17	74

* These schools conform to the now orthodox medical standard of at least two years in college, followed by full-time professional study.

This comparison provides food for thought, rather than an occasion for lamentation. The primary reason for the great variety which the table shows to exist among law schools (16 separate groups of schools, classified according to student time, as compared

with 3 groups of medical schools) is that part-time work has not only firmly established itself in legal education, but has been affected, like full-time work, by the movement to lengthen the law course and to increase entrance requirements. This is certainly a salutary development, so far as it goes. Furthermore, although most lawyers and law teachers will probably regret that, whereas in 1910 there were fewer law schools than medical schools, there are now twice as many schools of law, it is difficult to demonstrate convincingly that our present machinery for providing legal education exceeds our social need. Finally, even the circumstance that a favored type of institution, superior to all others as respects the demands it makes upon the time of its students, includes only a minority of law schools, while the majority all differ widely among themselves, may provoke two very different emotional reactions. To those who are unqualifiedly committed to the present standardizing movement, it must, as above intimated, seem unfortunate that so many law schools decline to be standardized. On the other hand, it is possible that here, as in the field of bar admission requirements, the trouble may lie, not in inadequate response to reformatory efforts, but in the program of reform itself. If this be true, we should welcome the experience gained during this period of partial success as a basis for making an enlightened revision of plans for the future.

III. THE FUTURE

In comparison with the situation in which they found themselves 16 years ago, it is clear that the lawyers have made great progress. Judged, however, by their needs or by the record of other professions, they still have a long distance to go. Whether because of their backwardness, or because of inherent and ineradicable differences between law and medicine, they have not been anything like so successful as the physicians in building up an effective system of professional preparation and supervision.

In the section immediately following, several of the still unsolved problems or unsatisfied needs of legal education will be briefly noted, in the same order as in the previous discussion. These will be followed by a more extended treatment of that topic which in its immediate importance transcends all others—evening or part-time instruction and its influence upon the organization of the legal profession.

MISCELLANEOUS PROBLEMS AWAITING SOLUTION

The American Bar Association, thanks to its successful membership drive, enjoys increased financial resources. As an offset to this undoubted gain, it has become too large to be regarded as a select or a

compactly efficient body, and yet is not large enough to include, among its own members, more than a small minority of the American legal profession. Its vigorous but highly anomalous section, or conference, of delegates from State and local bar associations hardly does more than point the way to that more thorough-going adoption of the representative principle which has proved such a source of strength to the American Medical Association. The Council on Legal Education and Admissions to the Bar is a great improvement upon the former mutually independent committee and section dealing with the same topics; but it still needs a compensated official staff to enable it to exert an influence comparable to that of its model, the Council on Medical Education. The ably edited American Bar Association Journal, with its 60 or 70 monthly pages, constitutes perhaps as heavy a dose of periodical literature concerned with matters of general professional interest as the average American lawyer can at present digest; it compares with the 70 or 80 pages every *week* that makes up the Journal of the American Medical Association. The lawyers can show nothing resembling the elaborate studies of medical schools and licensing tests that appear annually in the educational and State board numbers of this periodical; nor have they anything analogous to the official American Medical Directory, the latest (1925) edition of which lists 161,358 physicians, with information as to the education of each and the date at which he secured his license to practice.

The establishment of the American Law Institute is an event of the greatest importance in the development of legal research. It marks the fruition of 50 years of scholarly labor under the case method. It provides a definite objective for hitherto rather purposeless post-graduate schools of law. Yet, the aggregate of time and of money that is now devoted to legal research of every sort is positively trivial to what is spent in medical institutes and medical schools.

Bar admission requirements, though improving, are still, in almost every State, less severe than the requirements for a license to practice medicine. The following table reveals the extent to which the States conform to certain standards that have been regarded as essential both by the American Bar Association and by the American Medical Association.

Comparison between bar admission and medical licensing requirements in 48 States and the District of Columbia, 1925

Number of jurisdictions requiring—	Medicine	Law
Graduation from a professional school	48	1
At least 2 years of preliminary college education	38	3
At least a preliminary high-school education	44	17
At least 5 years of professional training	11	------
At least 4 years of professional training	49	------
At least 3 years of professional training	49	31
Examination of all applicants by public authority	49	35

The contrast between the two columns raises a question to which allusion has already been made, namely, whether the American Bar Association, in its efforts to improve professional standards, may not have followed a little too closely the model set by its sister profession. But, entirely apart from this question, the situation revealed by the last column of the table, taken by itself, can not be justified. To take only a single illustration: There may or may not be inherent differences between law and medicine which make it undesirable for the legal profession to enforce, for every lawyer and in every State, the standard of two years of preliminary college work made essential for "Class A rating" by the Council on Medical Education in 1918, and enforced by 38 medical licensing boards in 1925. Consideration of this question ought not to delay remedies for an evil that is scandalous from every point of view. This is that no less than 32 jurisdictions do not require prospective lawyers to have even a high-school education before they begin their law studies.

Finally, let us once more turn from the conditions which surround the law schools to the schools themselves. Even though the effect of the part-time movement upon legal education were entirely ignored, it is already evident from the table printed on page 17 that law schools tend to lag behind medical schools as regards their entrance requirements and the length of their professional course. As a matter of fact, the disparity in both these respects is decidedly greater than there shown, for the reason that more exacting standards have been applied in medicine than in law. In computing the number of institutions that require at least two college years for admission, law schools have been included whose entrance requirements would not be recognized by the Council on Medical Education as complying with their rule. Similarly as to the duration of the respective professional courses, a movement for requiring a year's service in a hospital as an interne has resulted in lengthening the period of professional training for virtually all physicians from four academic years to five. This additional year figures, as shown above, in the medical licensing requirements of several States. It is also a specific requirement for the degree in several medical schools. On the other hand, not only is the legal profession all at sea as to the general problem of whether, after preliminary general education and after theoretical work in the law school, an additional probationary period of practice can or can not profitably be required. Quite apart from this complication, some existing law schools which are credited in the table as maintaining three-year or four-year courses do so only in a somewhat fictitious sense. It is true that this much time must be spent in the school before a student may receive the degree. Not infrequently, however, the great ma-

jority of students who are actually in the school come with the intention of remaining only during that much shorter period which will suffice to satisfy low bar-admission requirements.

THE PROBLEM OF THE EVENING LAW SCHOOL

Interesting and important as are the considerations sketched in the preceding section, the fundamental unsolved problem of legal education is now, as it has been for many years: What is to be done with that sturdy plant (or, as some would have it, weed), the evening or "part-time" law school?

Since evening schools first began to be sufficiently numerous to attract attention, four attitudes in regard to them may be distinguished: The attitude of ignorance, of condemnation, of negative tolerance, and of positive and reasoned approval of the type, if not of its existing representatives.

The first attitude, which is still embodied in the bar admission rules of a great majority of States and accounts in large part for the rapid multiplication of these schools, may be briefly summarized as follows: As between a law course that is conducted during the regular working hours of the day and one that resembles it in all respects except that its sessions are held during evening hours, there is no substantial difference. Indeed, the advantage, if any, is probably with the evening school, for the reason that it is frequented by relatively mature and earnest students who are supporting themselves, instead of by boys who devote much of their time at their father's expense to fraternity, athletic, or other outside activities.

This argument would seek to justify evening law schools by comparing them with poor day schools. It secured no indorsement from the Carnegie bulletin, Training for the Public Profession of the Law. This volume, although revealing quite unexpected sympathy with evening law schools, stated the fairly obvious fact that a student who is devoting part of his time and energies to the task of supporting himself can not give as much time to his studies as one who is not, and that therefore the work of an evening law school year by year must, of course, be quantitatively inferior to that of a good day law school. It was also pointed out that a similar, though less marked, inferiority exists in the case of schools that schedule their classroom sessions during the late afternoon or at other irregular hours of the day, and that the essential distinction is accordingly not between "night" and "day," but between "part-time" and "full-time" law schools. These two truths and this not very happy terminology are now generally accepted by all factions in legal education.

A second attitude is that of condemnation. For the reason indicated above, and for other reasons, legal instruction conducted

during evening hours is regarded, from this point of view, as so irredeemably inferior that it should be discountenanced in one or all of the following ways: Directly, through changes in the bar admission requirements, or through exclusion of institutions offering such work from educational associations; or, indirectly, through insistence upon increased entrance requirements calculated greatly to reduce the number of possible students. It is an expression of this attitude, rather than merely a desire to secure a homogeneous organization, that has led certain regional standardizing associations to refuse membership to colleges or universities that conduct evening law work. The same motive was responsible for the adoption by the Association of American Law Schools of two now obsolete resolutions:

> Whereas the maintenance of regular courses of instruction in law at night, parallel to courses in the day, tends inevitably to lower educational standards: Be it
>
> *Resolved*, That the policy of the association shall be not to admit to membership hereafter any law school pursuing this course. (1912.)
>
> Hereafter no law schools shall be admitted except upon the condition that neither they nor the universities with which they are connected shall hereafter conduct night classes in law for students preparing for the bar. (1919.)

The third attitude, tolerance of evening or part-time law work as a necessary evil, is not sharply distinguished from the second. It is manifested in proportion as those who condemn this type of work lose some of their original crusading zeal in the face of the opposition they encounter.

The difficulties that beset those who seek actively to discourage part-time instruction have recently been appreciably augmented by the promulgation of an educational doctrine that denies their fundamental assumptions. According to this doctrine, there are sound social and political reasons, entirely apart from humanitarian or "sentimental" considerations, so called, why part-time preparation for the law should be positively encouraged. A reasoned argument to this effect appeared simultaneously in 1921 in the Carnegie bulletin, Training for the Public Profession of the Law, and in the Root committee report which served as the basis for the current standardizing movement. As formulated in this latter document, the argument runs as follows:

> If the analogy between the medical and legal professions were perfect, we should recommend that a three years' full-time course should be required, just as the American Medical Association has recommended a four years' requirement for intending physicians. But the analogy is not perfect.
>
> In the profession of medicine it is necessary to consider only one question with respect to technical education—How can men best be educated to be highly skilled physicians? Nothing need be considered unless it relates to the technical efficiency of the graduate.

With us, however, the situation is different. The law is a public profession by which, more than by any other profession, the economic life and the government of the country are molded. The proportion of lawyers in legislative bodies greatly exceeds the proportion of lawyers in the whole population. In executive office they are more numerous than are the followers of any other profession or occupation. Of course, all men in judicial office are lawyers. And last, but of great importance, is the influence of lawyers as practicing attorneys in helping to shape the course of judicial decisions and to draft statutory and constitutional provisions which vitally affect the law.

The principle of opportunity for all applies peculiarly to admission to the legal profession. The physicians may properly exclude all who do not measure up to the strictest requirements of a technical standard. If this results in practically confining the right to practice medicine to men in comfortable circumstances, the public will not complain, for the public must at all costs have highly skilled physicians. But to confine the right to practice law to one economic group would be to deny to other economic groups their just participation in the making and declaring of law. Such a restriction would properly be resented by the public.

It follows that opportunities must be given to those who are obliged to support themselves during their legal studies. If a man has completed two years, or, better still, four years of a college course, he will do best if he attends a law school which commands substantially all of his working time. But if he has come to the point where he finds it necessary to support himself, and perhaps his family, he should not be denied admission to the public profession of the law. For such a man the afternoon or evening school is the only resource.

But in recognizing the necessity for afternoon and evening schools we do not recognize the propriety of permitting such schools to operate with low educational standards. We should not license a badly educated man to practice law simply because he has been too poor to get a good education. On the contrary, the democratic necessity for afternoon and evening schools compels a lifting of these schools to the highest standards which they can be expected to reach.

This reasoning underlies what has been referred to above as the last of the four attitudes which have been adopted in regard to evening or part-time law schools. On this basis was erected the committee's recommendation that part-time law schools should be made to conform to the orthodox type, by requiring their students to possess identical entrance qualifications and to pursue a longer course, "equivalent in the number of working hours." Agreement or disagreement as to the merits of this recommendation must not, however, be confused with agreement or disagreement as to the value of the educational doctrine or political philosophy upon which it ostensibly rests. On the one hand, the committee's concrete recommendations have been supported by many who have not been convinced by its line of reasoning. Many motives contributed to secure favorable action in the American Bar Association, in the Conference of Bar Association Delegates, and in the Association of American Law Schools. Some members of these organizations were simply overawed by the individual distinction of the committee; some saw

no incongruity between these proposals and their own unchanged convictions in regard to the inherent evil of part-time legal instruction. On the other hand, among those who sincerely accepted the doctrine of the social value and the educational perfectibility of part-time law schools there have been some who from the beginning have expressed doubt whether the particular measures recommended by the committee are really measures of perfection.

Their doubts are grounded in the following considerations: The great majority of high-school graduates who are not able to attend a full-time law school are obliged to support themselves, not merely while they are securing their strictly professional training, but also during their preliminary college years. It is somewhat open to question whether, if such students were to attempt to offset the time and energy devoted to earning their livelihood by taking a course of preparation, both academic and legal, twice as long as that prescribed for their more fortunate brethren, they would secure equivalent educational results. It is quite certain that except in rare instances, or under peculiar local conditions, a part-time course that is any shorter than this would not suffice. The typical student in such a course would certainly not have the opportunity to devote to his studies, both inside and outside the classroom, as much time as the student in a good orthodox institution commands. Yet it is so obviously impracticable to expect self-supporting students to devote 10 years to their professional preparation after leaving the high school that the Association of American Law Schools and the Council on Legal Education have united in recognizing a much briefer period as "equivalent in the number of working hours." The concession means that such schools, so long as they profess to cover the same field as good full-time law schools, are simply crystallized, as it were, on an inferior level. Educational reformers who deprecate all part-time work may balk at the pedagogical mathematics, but they will not dispute this conclusion.

To practical minds the extent to which an innovation falls short of perfection is of less importance than the extent to which it is an improvement upon what existed before. From this point of view the policy of condoning and covering up an assured inferiority in part-time education might be justified if it clearly conduced to the development of a type of institution superior to the common run of evening law schools to-day. Part-time or mixed schools that comply with the requirements of the American Bar Association, whatever their limitations, should at least be superior to these get-wise-quick organizations.

There is little present indication, however, that these will be replaced by representatives of the new "orthodox" type as the result either of altered bar admission requirements or of the moral pressure

exerted by standardizing agencies. Only two States (Kansas and Ohio) have attempted to regulate part-time law schools in anything like the manner recommended. The few other States that require a preliminary education of two college years (always subject to the demoralizing "equivalent") do not require four years of study in an evening law school. The few other States which insist upon applicants remaining in an evening law school this long do not demand two years of college. The moral pressure of the standardizing agencies is the only influence at work. This has resulted in increasing the number of part-time or mixed law schools which comply, at least nominally, with the new standard requirements of preliminary education and length of course from one institution in the year when these standards were adopted, 1921–22, to 13 in the year 1925–26. Application of the other two standards affecting the library and the faculty has reduced to 6 the number of such schools that in the autumn of 1925 were officially indorsed either by the Association of American Law Schools or by the Council on Legal Education. Even this small increase was to only a slight extent at the expense of an inferior type of education. During the same four years the number of part-time or mixed schools which do not even pretend to comply with the time standards has decreased indeed, but only from 80 to 78. In several cases where admission requirements have been so strengthened as to exclude a considerable number of applicants these have been promptly taken care of by the organization of a new school in the same city.

The total number of part-time and mixed schools (excluding, for convenience of computation, those offering a law course of less than three years), and the attendance at these schools, have varied recently as follows:

Part-time and mixed law schools offering a law course of at least three years

[Compared with other types of law school]

Schools	1909–10		1921–22		1925–26		1909–10		1921–22		1924 (Nov.)	
	Number of schools	Per cent of total	Number of schools	Per cent of total	Number of schools	Per cent of total	Number of students	Per cent of total	Number of students	Per cent of total	Number of students	Per cent of total
Part-time	32	26	62	41	67	40	4,787	25	11,702	37	14,402	35
Mixed	9	7	12	8	17	10	1,903	10	7,082	22	11,162	27
	41	33	74	49	84	50	6,750	35	18,784	59	25,564	62
Other	83	67	76	51	83	50	12,678	65	13,269	41	15,318	38
Total	124	100	150	100	167	100	19,428	100	32,053	100	40,882	100

In interpreting these figures showing a progressive increase, both actual and proportionate, in part-time or mixed instruction, it should be borne in mind not only that the figures for "other"

schools include those offering a two-year degree course during evening or late afternoon hours, but also that professional law courses not leading to a professional degree do not appear anywhere in the table. In the autumn of 1925 seven part-time short-course degree schools and at least nine evening schools which did not as yet confer the degree were in active operation.

THE INFLUENCE OF PART-TIME INSTRUCTION UPON THE ORGANIZATION OF THE LEGAL PROFESSION

Whether or not one more or less standardized type of part-time law school will eventually drive all others from the field, the present régime of competition between part-time and full-time institutions, as recruiting agencies for the legal profession, has many unfortunate consequences. The most obvious are (1) the flooding of the bar by students whose training must in the nature of things be inferior to the none too adequate preparation provided even by the best of the orthodox full-time schools and (2) the hesitancy on the part of some of these schools to raise their present standards, lest the principal effect of such action should be to drive students away from themselves into inferior institutions. Although it is too soon yet to profit by the full lesson of experience in this respect, there is already some evidence that the current standardizing movement is producing this precise result.

There are several reasons why this situation does not excite more apprehension than it does. One is a distinct tendency on the part of well-trained lawyers—a tendency probably grounded in the very merits of their training and subsequent professional career—to take life and its evils unemotionally. Another explanation is that, while this element has been attending chiefly to its own business, numerous graduates of part-time law schools have become established in positions of influence in the profession, on the bench, and in legislative halls. Some of these gentlemen have actually remedied the defects of their early training. Doubtless all of them think that they have done so. With that loyalty to their own past that most of us possess, they close their eyes to any changes that may have occurred in the law or in the conditions of legal practice since they prepared themselves for the bar. Modestly disclaiming any exceptional force or ability in their own characters, they take the position that a course of preparation which was good enough for them ought to be good enough for anybody. They are particularly apt to oppose reforms which they suspect, often with some justice, are dictated by a fundamental lack of sympathy with part-time education.

Perhaps the most important influence, however, that is at work perpetuating an inherently indefensible system is a naive faith in

the efficacy of final bar examinations to stem the torrent. Lawyers of every description, and to an even greater extent the public at large, conceive of the flood of ill-trained applicants as breaking, so to speak, at the gates of the bar. These gates are manned by examiners who are supposed to have power both to exclude untrained applicants from the profession, and in so doing to put an end to any type of preparation whose products do not measure up to requisite standards. Even the bar examiners themselves sometimes seem to believe that the only real evil in the present situation lies in the fact that they are obliged to read too many hopelessly bad examination papers.

As a matter of fact, exclusion of the hopelessly incompetent is all that can be accomplished under the present system. Any attempt to subject applicants to really rigorous bar-examination tests falls afoul of the different methods of preparation that are necessarily pursued in the two types of law schools. The full-time schools usually avail themselves of the opportunity they enjoy to instruct their students by the valuable but time-taking Langdell case method. The part-time schools, because of the relatively small amount of time that their students can spare for study outside the classroom, can use the method, if at all, only in a form so modified as to rob it of much of the effectiveness which it possesses when pursued under appropriate conditions. Such schools are apt to attempt to make up for their deficiencies in this respect by greater emphasis upon what their rivals slightingly refer to as detailed "information" with regard to local law and practice. Both types of schools exert pressure upon the bar examiners—pressure that must be regarded as justified so long as the law permits both types to exist and to attract students. So evenly balanced is this institutional pressure that—as experience has shown repeatedly—examiners can not prudently discriminate, in their questions or in their system of marking, against either type. Yet it ought to be obvious that a bar examination that is not keyed to a particular course of study or instruction simply can not be made an effective test of competency to practice law. No one has expressed this truth better than the inventor of the case method, Christopher Langdell. Nearly 50 years ago, combating an early disposition on the part of Suffolk County bar examiners to reject his Harvard law graduates, Langdell attacked the entire system of examination, "without reference to any particular course of study or instruction," in a passage concluding with the following words:

> It is impossible that such examinations should be at once rigorous and just. They must admit the undeserving or reject the deserving, and in the long run they will be sure to do the former.

In a word, so far from our being able to rely upon bar examiners to insure that the products of our various types of legal instruction measure up to a common standard of competency, a powerful influence is exerted in the reverse direction. The fact that several dissimilar types of law schools compete with one another, as agencies for recruiting the legal profession, possesses, in addition to the unfortunate consequences which lie upon the surface, this additional one: Institutional rivalry demoralizes the bar examinations. It diminishes the likelihood that even for any particular type will there be a desirable safeguard on the industry of the students and the informed conscientiousness of their teachers.

It is for this reason that the problem of the part-time law school is not merely perplexing in itself, but is of fundamental importance in its relation to the future development of legal education in any sort of school. The part-time institution, so long as it is constrained to be nothing more than a poor copy of the full-time model, is a much more subversive influence than the law office. This latter has no powerful friends to fight its battles for it. Bar examiners can therefore hold its products up to any standard, even to an inappropriate one. In sparsely populated sections of the country this antiquated avenue of preparation can still be justified. In urban centers law offices already develop into evening law schools speedily enough. It is a question whether it is worth while to expedite a natural transformation by the adoption of a bar-admission rule definitely refusing credit for time spent in an office.

The first step toward a proper solution of the problem would seem to be to abandon the pretense that evening law schools and good full-time schools can be made mutually equivalent, either in the amount of time that students devote to their education, or in the precise educational benefits they derive. It would be much better to formulate, as an objective, that of making part-time schools as good in their way as the best full-time schools now are in theirs. The graduate of a part-time school can not be expected to have received as large an amount of training, measured simply by its aggregate quantity, as the graduate of an equally good full-time institution. This does not mean, however, that the training may not have been as profitable, in its different way, nor even that the curriculum may not include valuable elements which the other educational type, in the pursuit of its objectives, is obliged to exclude. The authorities of our leading orthodox law schools, who are doing so much to improve our law, already realize how seriously its present condition strains their teaching facilities. Until the law that has to be taught is simpler than for many years even they can make it, they know how far they must continue to fall short of turning out ade-

quately trained general practitioners. To contend, under these circumstances, that part-time law schools should be tolerated only to the extent that they are cheapened editions of their own schools, is to ascribe extraordinary virtue to a diluted case method. It would be wiser to cooperate with the many earnest graduates of all types of law schools who are now teaching law during the evening and late afternoon, in an endeavor to answer the following question: What methods and what curriculum are actually best adapted to part-time conditions?

An inquiry prosecuted in this spirit should go far to produce the type of part-time law school that the situation demands—not an institution which everybody, even its own faculty and student body, realizes is a makeshift, an inferior imitation of a really good school, but something that stands preeminent in its own educational field, at once gives its own students benefits that they could secure nowhere else, and frees the full-time law school from some of the responsibilities under which this type of institution now staggers. An attitude of this sort would probably find expression among other developments in an alternative system of bar-admission examinations. One set of questions, intended for full-time law students, could not be answered satisfactorily by anyone else; another set of questions would be of such a nature that only well-prepared applicants from part-time schools could pass the examination. In the course of years this might or might not result in a clearly defined division of the legal profession along functional lines. Should this development occur, it would mean not merely that the profession had split under economic pressure into two fairly distinct divisions, recruited respectively by the activities of full-time and of part-time schools. This it has already begun to do to-day. It would mean that, instead of attempting by a process of artificial standardization to arrest what philosophers have long recognized to be a mark of social progress—a tendency to proceed from uniformity to diversity—legal reformers had regularized this tendency and turned it to good account. It would not mean that the legal profession was weakened because of not being formally united to the extent that physicians and surgeons, general medical practitioners and consulting specialists and research workers, are united in a single profession to-day. The practice of the law includes a much greater variety of occupations than those in which graduates of medical schools engage. American lawyers find a closer analogy, not in the relatively restricted medical profession, but in a broadly inclusive "health service," which group comprises practitioners of all the many healing arts. If the argument by analogy is to be invoked, it is as unreasonable to standardize the education and the professional affiliations of every

lawyer in one and the same mold as it would be to impose identical educational and licensing requirements upon physicians, dentists, health officers, pharmacists, nurses, and veterinary surgeons.

As a matter of fact, all analogies limp. The analogy of health service is defective in so far as it suggests that graduates of part-time law schools are likely to remain stratified on a plane of lower financial or political rewards. Similarly, the existence in France and England of two or more virtually exclusive professional groups of practicing lawyers is evidence merely that division of the legal profession is possible; it is not evidence that the dividing lines in this country will ever run as they do there. The problem of the American lawyer is unlike that of lawyers elsewhere or of other professions at home. Illustrations drawn from other fields are stimulating, but in the past there has perhaps been too much superficial reliance upon outside models and too little probing of legal fictions and conventional assumptions. No one—least of all the present writer—can forecast with any confidence how American lawyers will be educated and organized in the years to come. But it is at least fairly clear that the form and effectiveness of the professional organization will be vitally influenced by the existence of differing types of educational preparation and that part-time law schools will continue to abound and to turn out large numbers of lawyers who differ markedly from the product of orthodox full-time schools. This conclusion can be rationally derived from our fundamental political principles, and such experience as we have tends to confirm the validity of the reasoning.