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ABSTRACT

Hierarchy among Boston's law schools (tracking between schools of different prestige levels) is assessed using a social history. Implications for stratification within the contemporary legal profession are also considered. Law graduates are channeled toward those branches of the profession that match their law school's standing in the hierarchy. High-status law firms choose new associates from the most prestigious schools, while low-status schools tend to channel their students into local law practice because of their lower prestige and power within the profession. As unfair as hierarchical ranking of schools might seem today, the profession is far more meritocratic than it was in the early days of the republic. Attention is directed to: early American legal education, class conflict in legal education, the battle over the shape of legal education in Boston, Boston law schools in the 1920's, Harvard Law School vs. Suffolk Law School and confrontations about day and night law school programs, the background of Suffolk students, the status of Suffolk graduates in 1928, the contemporary hierarchy, and implications for the future. A six-page list of references is included. (SW)

THE CHALLENGE TO HIERARCHY IN LEGAL EDUCATION: SUFFOLK AND THE NIGHT LAW SCHOOL MOVEMENT

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I. INTRODUCTION

Legal education is a booming indu. In 1960 there were 43,695 students enrolled in American law schools. Today there are more than 126,000 law students preparing to enter a profession that already employs 650,000 Americans. At the current rate of increase there will be more than one million American lawyers by the year 2000. Despite a recent downturn in law school applications, the lowest status Boston law school, New England School of Law,[1] rejected 3 out of every 5 applicants in 1983 (Epstein et al.: 1984:174), suggesting that the pool of those wishing to enter this increasingly crowded profession is far from exhausted.

The rapid expansion in the yearly production of lawyers is creating a highly stratified profession in which top lawyers earn huge salaries while many others, especially among the alumni of the low-status, proprietary law schools, struggle for relatively small rewards (Kilmer: 1976:18). Some observers charge that the growing demand for legal education is also detrimental to the profession because it is leading to the expansion of profit-oriented schools which dilute standards. Jaroslaw Pelikan typifies such fears:

> My nightmare is that what will go into effect in graduate education will not be Darwin's Law that the fittest survive but Gresham's Law that bad money drives good money out of circulation. (quoted in Scully:1983:18)

Concern about an oversupply of lawyers caused by the rapid growth of low-quality, proprietary law school enrollments is not new. The theme

chosen for the 1932 meetings of the Section on Legal Education of the American Bar Association was "Overcrowding of the Bar and What Should Be Done About It?" (Smith and Rogers:1932:515). This session came amidst a lengthy struggle to "purify" the profession through the elimination of the weaker law schools. The battles between the high-status, university-affiliated law schools and those which were run for profit in the evenings was front-page news during the 1920's. This paper uses a social history of these struggles to explicate today's hierarchy among Boston's law schools and its implications for stratification within the contemporary legal profession.

The status differentials among contemporary law schools result in law graduates being divided into ranked groups despite having completed quite similar legal training. Duncan Kennedy argues that

> legal education is one of the causes of legal hierarchy. Legal education supports it by analogy, provides it a general legitimating ideology by justifying the rules that underlie it and provides it a particular ideology by mystifying legal reasoning. (Kennedy:1982:59)

This tracking takes place both among students within the same law school and between schools of different prestige levels. This study will focus on the latter type of stratification.

Law graduates are channeled toward those branches of the profession which match their law school's standing in the hierarchy. High-status law firms choose new associates from the most prestigious schools, while low-status schools tend to channel their students into local law practice because of their lower prestige and power within the profession. In Boston, students from Suffolk Law School tend to end up in the State

House rather than in the prestigious State Street firms while a graduate of Harvard Law School has very favorable economic prospects because of the intrinsic superior worth of a Harvard degree.[2]

It is true that the elite schools tend to enroll the more academically talented students, but it is hard to explain Smigel's (1964:36) finding that 71.8% of the partners of the 20 largest New York law firms in 1962 had graduated from Harvard, Yale, or Columbia Law Schools purely in terms of concentration of talent or as a simple result of superior training. Even in today's more open climate, the prestige of the law school attended plays a major role in tracking students of comparable quality (Alstyne:1982). But as unfair as this hierarchical ranking of schools might seem today, the profession is far more meritocratic than it was in the early days of the Republic.

II. EARLY AMERICAN LEGAL EDUCATION

Law schools appeared relatively late in the United States. Before the American Revolution, legal education consisted of either apprenticeship in private law offices or individual study. Most lawyers at the beginning of the nineteenth century were college-bred men chosen through a system of sponsored mobility. They were generally recommended to the bar by the established elite on the basis of such criterion as family lineage or school tie. For example, 90% of the lawyers admitted to practice in Boston from 1780 to 1817 were Harvard College men (Warren:1913:194-195). Lawyers had very high prestige both because of their class background and because, as De Tocqueville (1973:184) observed:

> In America there are no nobles or literary men and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated position in society.

He described the lawyers of the 1840's as the natural aristocracy of the American republic.

Maxwell Bloomfield (1976:136-137) notes that commentators from Charles Warren and Roscoe Pound to W. Raymond Blackard and Anton-Hermann Chrout have argued that there was a decline in the legal profession after 1830:

> The standard picture of professional development in the United States thus provides a study of dramatic contrasts. We begin with a golden age of jurisprudence in the early Republic fostered by a self-regulating fraternity of educated judges and lawyers. Then come the barbarian invasions, as the semi-literate masses force their way into legal practice, aided by subservient state legislatures.

During this period of "decline' the bar was opened to self-taught men of poor families such as Abraham Lincoln, as well as many of far more modest intellectual attainments.

The modern law school did not appear until the second stage of the development of the legal profession, a period which Roscoe Pound (1920: 266) has labeled the "era of the railroad lawyer." Formal legal training was needed after the Civil War as America underwent what Morton Horwitz (1977) has described as a "fundamental transformation" from a relatively static agrarian society to a dynamic, developing economy. New technologies, the growth of giant corporations, large-scale immigration, and the expansion of the role of government created complicated struggles which were frequently mediated by attorneys. The old apprenticeship system

could not supply enough sophisticated lawyers to apply the increasingly complex legal concepts that were being created.

It seemed natural for Americans to turn to the legal profession in order to deal with social conflict. In the words of Domhoff (1983:128) lawyers "are the supreme 'pragmatists' in a nation where pragmatism is a central element in the self-deceiving ideology that the country has no ideology." The involvement of attorneys in the political sphere has been pervasive indeed. For example, 46% of all state governors between 1870 and 1950 were lawyers, as were 25 of the first 40 U.S. Presidents (Zweigenhaft:1964:11-12). Precisely because of their political role in American society, the issue of who can train lawyers has been and continues to be of great social significance.

As the legal profession opened to all those with the knowledge necessary to pass the bar examination, there was a rapid increase in the number of lawyers. In 1880 there were only 3,000 law students; by 1900 there were more than 12,000 Americans studying law. From 1880 to 1915, the number of law schools increased from 43 to 150 (Cook:1917:339). Night law schools were responsible for much of this growth.

In Boston the rise of the part-time and evening law schools accounted for most of a 90% increase in the number of lawyers between 1900 and 1930 (Smith and Rogers:1932:565). By 1925, 65% of the law students in Massachusetts were enrolled in evening schools. The production of large numbers of low-status lawyers by the proprietary night law schools was widely viewed by elite attorneys as a threat to the prestige of their profession. A class struggle developed between the day and evening law

schools which has had profound implications for the social organization of contemporary legal education.

III. CLASS CONFLICT IN LEGAL EDUCATION

From the beginning, the legal establishment despised the typical night law school. In the words of the Dean of Yale Law School, it was a "rank weed" to be "dried out," if not destroyed (quoted in Tinnelly: 1957:63). William Howard Taft (1926) argued that evening law students learned the law as "a dodge and not as a science or art." Dean Richards of Wisconsin Law School believed that the night law school produced a "shrewd young man, crammed so that they could pass the bar examination, all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes" (Richards:1915:63).

The elite law schools attempted to use state licensing power to eliminate this bottom rung of the legal profession. James Hurst (1950:272) argues that the crusade against night law schools began at the very inception of the American Bar Association (ABA). At its first meeting in 1878, the ABA recommended higher standards in legal education. In 1892, the Legal Education Section of the ABA voted that a high school education should be required for admission to the bar (Ames:1904). However, it wasn't until 1929 that this became a nationwide requirement. Despite the hard work of the elite law school's organization, the American Association of Law Schools (AALS), the evening schools were more than able to hold their own in pre-Depression America.

The elite law schools were inspired in their effort to "upgrade" by the victory of the medical establishment's campaign for "fewer and

better" doctors. Between 1900 and 1920 one half of all medical schools in the United States were forced out of business because they could not meet increasingly stringent licensing standards (Larson:1977:19-39). In sharp contrast, the number of law students increased 75 percent between 1900 and 1915 (Tinnelly:1957:62). Walter Cook (1917:339) of Yale Law School speculated that poorly prepared students who were prevented from studying medicine because of the toughening of standards in that profession were transferring their allegiance to the law. At the point when 60 medical schools went out of business, reported Cook, fifty new law schools arose to take their place. Momentum was on the side of the evening institutions. From 1910 to 1925, attendance at the day schools dropped twenty-nine percent while enrollments at the night law schools increased almost four-fold (Aigler:1926:66-67). This flood had to be stopped if lawyers were to maintain the high status and dignity of their profession.

Like the proprietary medical schools, the low-status law schools were vulnerable to attack. Before the final two decades of the 19th century, both types of school had been able to operate with few restrictions because attempts to control entry into the professions had been widely viewed as narrow, antidemocratic, and monopolistic. Those who tried to develop "standards" found that they were "exceptionally hard to establish and enforce in a fluid, rapidly expanding society with little centralized government and no effective gatekeepers of status, such as an aristocratic elite" (Starr:1982:37). However, advances in transportation and communication made it easier for professional elites

to agree on educational requirements and to coordinate their activities. The increasing power of the state made it easier to enforce their regulations. At the same time, Progressivism had made claims to professional dignity and privilege more acceptable.

By the 1920's the Progressive Era had ended, but parts of its ideology had become widely held:

> In the Jacksonian era, professional monopolies were assailed in the same spirit as business monopolies. In the Progressive period reformers and muckrakers crusading against business interests held up professional authority as a model of public disinterestedness (Starr:1982:140).

The "urban, upper-middle-class, Anglo-Saxon Protestant and highly educated" (Larson:1977:139) leaders of the Progressive movement could, because of the popular appeal of their perspective, increase their dominance in the legal arena by defining the evening law school question as an issue of competence and ethics rather than of political and economic power.

IV. THE SETTING OF THE STRUGGLE

The resulting struggle was most pronounced in Boston during the 1920's when the nation's most prestigious day law school, Harvard, lay literally within sight of a large neon sign on the roof of the world's largest law school, Suffolk. At stake lay control of the legal profession's gatekeepers: the bar associations.

The battle over the shape of legal education in Boston was a reflection of the class and ethnic conflicts within the city. Here, as in much of urban America, wealthy conservative Protestant elites confronted

disgruntled ethnic populations. The post-World War I Boston political scene featured such polar opposites as Governor Calvin Coolidge, Senator Henry Cabot Lodge, and Mayor James Curley. Incidents such as the rioting following the Boston police strike of 1919, the exposure of Charles Ponzi's classic swindle (1921), the banning of over 60 books (1927-1928), and the execution of anarchists Sacco and Venzetti for bank robbery (1927) (Lankevich:1974) were merely the most notorious examples of social conflict in a city torn by serious tensions.

As Trout (1977:16) observed, ethnic consciousness in Boston permeated day-to-day behavior:

> Bostonians appeared to solve intergroup feelings by retreating into segregated enclaves where they eyed outsiders with suspicion. As the Beacon Hill elite made their way to the steeple-chases at the Country Club in Brookline or to the Harvard-Yale game ("The Game") in November, the Sons of Italy played boccie in East Boston's back alleys. As the Ancient Order of Hibernians waved their signs in South Boston on St. Patricks' Day proclaiming "Erin Go Bragh," Yankee matrons chatted over tea at the venerable Vincent Club, or sat primly while Serge Koussevitzky majestically raised his baton over the Boston Symphony Orchestra. Virtual apartheid characterized the Boston Chamber of Commerce: by 1929 not a single important officeship had been captured by a person with Irish blood. Moreover, few Irish names adorned the letterhead of the Boston Council of Social Agencies, the central body to which the city's charitable organizations belonged, and a number of firms excluded the largely Irish graduates of Suffolk Law, the city's night school, whose standards the Massachusetts Bar Association regularly deplored.

Since Suffolk produced many of the spokesmen for the underprivileged, the future of the evening law school movement was a political issue, however much the Progressives tried to define it in terms of pedagogy.

V. BOSTON LAW SCHOOLS IN THE 1920'S

While the evening schools catered to the relatively disadvantaged, Harvard required that its students acquire a bachelor's degree before admission. Its administration wanted a school which would foster the development of a "responsible social elite." Boston University Law School, founded by a breakaway Harvard Law School faculty group, challenged both the elitism and the educational methods of Harvard's "high citadel" but was still beyond the reach of the bulk of the working and lower middle classes. Boston College Law School, founded in 1929, attempted to place prosperous, second-generation Irish-Catholic youth on an equal footing with their Yankee rivals.

In contrast to these relatively expensive day schools, evening law school was a great leveler which allowed individual upward mobility for the ambitious. Boston contained one "respectable" evening school which enjoyed the patronage of the legal establishment, the YMCA law school (part of Northeastern University) (Stevens:1983:80-81). Dean Ames of Harvard and Dean Bennett of Boston University served on the school's advisory board. Harvard professors such as Louis Brandeis lectured in the evenings to the male Protestant student body. Schools like this were viewed by at least some of the legal elite as co-optive mechanisms. In the words of Elihu Root, Harvard Law professor and statesman,

> the stability of American institutions depends upon leaving the road open, however difficult it may be, for men of genuine ability to satisfy their ambitions either in the profession of law or in public service (quoted in Corbin:1921:733).

Many YMCA graduates had preliminary educations from such reputable institutions as Brown, M.I.T., and Amherst College, in contrast to most

evening students who were fortunate to hold a high school degree. Despite these advantages, Suffolk graduates regularly outscored the YMCA alumni on the bar examination (Archer:1924b:1). Competition from Suffolk crippled Northeastern's law school, which finally closed in 1953. The outrage engendered by the undermining of this and other elite sponsored night schools by the proprietary institutions can be illustrated by the complaint of the AALS's president that:

> These factory-type law schools, sometimes called "sausage mills," are immensely profitable... Without idea or purpose of doing more than cram their students for the Bar examination, these schools have made very difficult, if not almost impossible, the development of a better type of part-time school. (Horack :1929:4)

Unfortunately, we lack the space to trace the history of this interesting institution. In the remainder of this paper, we will focus on the key opponents in this class struggle: Harvard and Suffolk law schools.

VI. HARVARD VS. SUFFOLK

Suffolk Law School described itself as "opportunity's open door" for males who had to work for a living, lacked educational credentials, or who could not afford the higher tuition of the day schools. The reminiscence of George Fingold (1956), former Attorney General of Massachusetts, illustrates the flavor of this era:

> At the end of a day's work, I'd hop on one of the trains and ride to North Station. I'd run up Beacon Hill in my overalls with greasy hands. I'd change clothes in the men's locker room in the basement of the Archer Building. I'd wash and change into clean clothes and then run to class. For me, Suffolk Law School was my last hope to make something of myself.

No evening law school was more hated by those trying to upgrade the bar than Suffolk. The rebellious vehemence of its dean, Gleason Archer, exacerbated interschool rivalries based on class, ethnicity, and religious divisions. Through his nationally broadcast weekly radio program, a steady stream of books and speeches, planted news stories, the contruction of a neon sign on the roof so large it could be seen in Cambridge, outrageous publicity gimmicks (he once enrolled Rudy Vallee), and paid advertisements, Archer carried out a relentless attack against what he termed the "educational octopus." He founded and led the National Association of Day and Evening Law Schools, an organization dedicated to countering the "college clique" in the American Bar Association. In Archer the low-status law schools found the dynamic leader that their medical equivalents had lacked.

Archer viewed himself as a character out of an Horatio Alger novel:

> I was an undersized lad of fourteen at the time--a little runt weighing 76 pounds and consequently was appointed cook for my father's crew of lumber jacks...But an ambition for [illegible]tion possessed me and du ing those five years [illegible] lumber camps. without a teacher, I learn[illegible]tudy, to analyze and to master the printed page. English grammar, arithmetic, history, algebra, and even Latin were subjects that I labored over at odd moments in the lumber camps (Archer:1956,

Through luck, pluck and the sponsorship of a wealthy corset manufacturer whom he met on his way home after being injured in an industrial accident, Archer obtained a law degree from Boston University. Even before he received his own LLB, Archer set out to help others achieve the American dream of upward mobility. In 1906 he opened Suffolk in his

Roxbury parlor. The following year he had to move to larger quarters, and in 1921 the exponential growth of the student body required the construction of a new building. Through such gimmicks as the showing of first-run movies during the day, tuition was kept low. By 1924 Suffolk had become the world's largest law school, enrolling over 2,000 students. Its sister institution, Portia, grew to be the world's largest women's law school. It was run by Archer's law partner.

Perhaps the most unforgiveable aspect of Suffolk Law School--at least to its elite opponents--was the amazing ability of its graduates to pass the bar examination. Suffolk alumni occasionally even beat their Harvard counterparts on this test despite their inferior educational backgrounds and the fact that most studied the law after working at exacting day jobs. In July of 1925, 99% of the Suffolk graduates passed the bar examination compared to 62% of the Harvard Law graduates. The Suffolk graduates were accused of cheating, and all 833 previously successful candidates were forced to retake the test. Less than one percent of the Suffolk students failed the second time, demonstrating, contrary to the belief of many from the day schools, that Suffolk's record was not based on fraud (Archer:1926). The fact that Archer bought advertisements in the Boston newspapers to brag about this victory is typical of his publicity campaign against Harvard.

Suffolk's success was due to the schools' straightforward teaching methods combined with a policy of failing about two thirds of the students before they could take the bar examination. As Archer (1961) noted with his characteristic lack of modesty:

> One of the reasons my school has succeeded is that I have modeled it on no other school. We

> have devised a system in Suffolk Law School under which, if a man does not do intelligent and conscientious review work and give the best that is in him to his studies, he is overtaken by speedy disaster at the hands of our ever-vigilant correcting department.

While Harvard classes employed questions and answers designed to teach the student to "think like a lawyer," Suffolk students were not permitted to ask more than two questions per night of their lecturers. The survivors of Suffolk's program could outscore many of Harvard's college men because their courses had been explicitly designed to get them through the bar examination.

Harvard--like almost all law schools today--used the case method in which students analyze appellate court opinions and derive legal principles on their own. Gleason Archer, in contrast, wrote simple and direct textbooks. He developed practical guides to over twenty law subjects including torts, contracts, and legal history. Each text was illustrated with many examples drawn from actual practice. Archer (1956:1) justified his method with the claim that:

> Under our system a student could learn more law in ten minutes than other students could dig out for themselves in a full day of case reading. This alarmed the people across the Charles and a learned Harvard Overseer once upbraided me for trying to turn "cart horses into trotters." Of course, he was alarmed for two reasons, we didn't use the case system and we were doing the revolutionary thing of educating boys who were working for a living in the day and studied law at night.

It was rumored that Harvard students purchased Archer's books in order to study for the bar examination.

Archer (1924a:1) openly attacked the case study method as archaic:

> In other lines of educational training we believe in taking advantage of the accumulated wisdom of past generations. To do otherwise would be a waste of precious time and energy.
>
> How great a waste is involved in the case method may be illustrated thus: A student spends his day and evening in earnest study of cases assigned, and at the end of that time has not gleaned as much law as a professor could give him in five minutes.

The failure of Northeastern's law school, which used the case method, to match Suffolk's bar pass rate, added weight to Archer's charges.

The evening "degree mills" were lowering the status of the legal profession because they made no pretention that their pedagogy had the countenance of ancient tradition. They were training practitioners rather than jurists, legal philosophers, or representatives of a governing class. This was truly rubbing salt into patrician wounds because it gave ammunition to those who were arguing that law was a mere technical skill which did not deserve a place in the university. Thorstein Veblen (1918:155), for example, maintained that law was a "pseudo-science" which obscured the fact that "the law school belongs in the modern university no more than a school of fencing or dancing."

Animosity toward ethnic lawyers increased the vehemence of the attacks on the evening schools. Suffolk permitted blacks, Indians, Jews, and Orientals, as well as poor Catholics and Protestants, to join the bar.[3] Auerbach (1971:50) notes that:

> Jewish and Catholic new immigrant lawyers of lower-class origin were concentrated among the urban solo practitioners whose behavior was unethical because established Protestant lawyers said it was.

Suffolk graduates were frequently accused of low ethical standards despite the fact that only 6 of the 105 lawyers disbarred in Massachusetts between 1900 and 1930 were night school graduates (Tinnelly:1957:13).

In many cities the campaign against the night schools had openly racist elements, especially in the form of anti-Semitism. Fordham warned:

> The Jewish population of New York is steadily on the increase, and the proportion of Jewish young men and women bent on entering the legal profession is very much greater than among the Gentile population (Zalowitz:1927:1).

Harry Drinker claimed that most of the lawyers brought before the Philadelphia Bar Association's grievance board were "Russian Jew boys" who required more schooling to help them "absorb American values." (quoted by First:1978:36). In Boston attacks on ethnic and women lawyers were more oblique. Rather than attack these groups directly, the Massachusetts legal establishment tried to close the doors into the profession that had been opened by Suffolk and Portia.

The night schools were able to use their political influence at the state level to stave off the elite practitioners' attempts to increase the educational requirements for the bar exam. The political "machines" which dominated most large American cities had close ties to the low-status law schools. Archer's "haven of opportunity" flourished next to the Massachusetts State House. Suffolk was also located in the West End of Boston where,

> West End ward boss Martin Lomasney evinced, until his death in 1933, a paternal solicitude for the institution's well-being. In a ward run by Irish politicians, who depended on a population of Jewish and Italian immigrants for election, Suffolk Law School constituted an almost universal

> source of hope. The schools' sociology mirrored that of the ward, and West End Democratic leaders worked diligently to protect such an institution from outside 'quality control' which might destroy it or alter its symbiosis with the West End community (Robbins:1981:11).

There were an average of approximately twenty-five Suffolk Law alumni in the Massachusetts State Legislature throughout the 1920's. During the first half of that decade requirements for admission to the bar in Massachusetts and several other states were actually made less stringent due to the lobbying of evening graduates and the ward bosses.

Until the Depression, the elite law schools had little success in halting the spread of their evening counterparts. The struggle was complex and filled with minor victories and defeats, but as late as 1927 Archer and his allies were able to forestall an attempt by the elite schools to pack an ABA section meeting and then to force the passage of a motion sympathetic to an open bar:

> Resolved that in compliance with the policy announced by the American Bar Association in 1921, we recommend the establishment in each State, where none now exists, of opportunities for a collegiate training, free or at moderate cost, so that all deserving young men and women seeking admission to the Bar may obtain an adequate preliminary education (Buffalo News:1927).

In the fall of 1929, the battle lines were drawn for another major confrontation between the day and night schools. Six months before the American Bar Association meeting, Archer launched a nationwide campaign against the AALS and its leader, Harvard, which he labeled the "crimson octopus."

In a paper entitled "Facts and Implications of College Monopoly of Legal Education," which was read on the opening day of the convention,

Archer accused the elite law schools of fostering business for themselves by restricting legal education. He thundered:

> Now how long are we going to stand for it, gentlemen? How long will we continue to be the dupes of the Association of American Law Schools ... Only about 30 per cent of the law students of America are being trained in those university schools. Why not give the evening law schools of the country, that are bearing the same burden of this thing, some aid and assistance?
>
> My recommendation to you gentlemen is this, that we should clean house in this Section; that we throw out the officials of the Association of Law Schools that have been running this Section ever since they captured it (Archer:1929:738).

However, Archer never succeeded in undoing the alliance between the ABA and the AALS. As the economic depression set in, Archer's power declined rapidly.

The Depression hurt all law schools. Enrollments had increased each year between 1918 and 1928, growing from 24,000 in 1919 to nearly 49,000 in 1928. But by 1931 attendance nationwide had dropped 15% (First:1978:370). The Depression's disproportionate impact upon urban wage earners and the law schools they patronized can be inferred from the fact that attendance in New York dropped by almost half and in Boston by one third (Review of Legal Education:1932:370). Suffolk enrollments fell 46% between 1928 and 1932.

According to one study (Friedman and Kuznets:1945:387), between 1929 and 1933 the incomes of lawyers in firms fell 30 per cent. Solo practitioners saw their incomes fall by more than half. Many of the marginal lawyers left the profession; others remained but let their ABA membership lapse. Given the prevailing economic conditions, it

became easier to convince the survivors that the profession was overcrowded and that limiting the production of new lawyers was a good idea. Men such as Stanley Wallbank (1931:29), a member of the executive committee of the National Conference of Bar Examiners, wrote openly of the desireability of eliminating "the unneeded 5,200 lawyers being admitted annually."

As Archer's power base evaporated, his enemies pressed the offensive on all fronts. In 1930, the American Judicature Society accused Archer of siphoning off $300,000 a year in tuition. At the 1931 ABA Meetings, Archer's resolution to require law professors to have practical training was soundly thrashed by a vote of 67 to 23. In Massachusetts, graduates of Harvard and Boston University Law Schools took over bar examination grading. Combined with new "fitness requirements," this change lowered Suffolk's bar pass rate to 16% in 1932.[4] In 1935, the State Board of Tax Appeals filed suit against Suffolk, questioning its eligibility to enjoy a tax exemption. Archer was able to beat off this challenge, but Suffolk enrollments dropped during each year of the Depression. Suffolk almost went bankrupt during World War II. Many of the other evening schools collapsed. Others upgraded in order to obtain support from the wealthy.

In 1948, a Board of Trustees composed largely of his former students fired Archer and banned his texts from the library and bookstore (Clark:1981). Archer was fired principally because Suffolk needed ABA accreditation if it was to attract students from among the returning veterans. GI benefits were only paid to students attending approved schools and accrediting power was by now firmly in the hands of Archer's

elite opponents. With Archer removed from power, Suffolk stopped bucking the trend and began a rapid process of "Harvardization." Archer's portrait was draped in black. The lecture method was replaced by the Harvard case method. Harvard graduates displaced many Suffolk faculty who were chiefly local practitioners in the Archer mold. A day division was added. The undergraduate college was improved. The library was enlarged and other facilities were upgraded. These new practices were rewarded by ABA accreditation in 1958 and AALS certification in 1977. Suffolk had accepted Harvard's ideology as had almost all of the surviving law schools. What difference had the night school movement made? How much social mobility had schools like Suffolk produced? To explore these questions we examined more than 600 newspaper articles dealing with Suffolk Law School and its graduates from 1926 through 1930. The extensiveness of this media coverage, collected by Archer's clipping service, testifies to the social impact of this school.

VII. THE BACKGROUND OF SUFFOLK STUDENTS

Archer and his allies did much to open the legal profession. There is no question that Suffolk did admit a large number of nontraditional students. A black graduated in the class of 1915. A Pequot Indian Chief from Mashpee on Cape Cod graduated in the class of 1925. Throughout the 1920's, articles about the dramatic upward mobility of evening law school graduates appeared in Boston newspapers. The first Chinese-American admitted to the Massachusetts Bar was a Suffolk graduate:

> When Harry was 13 his father died, and soon afterward the boy, although remaining in school, began to work at the various odd jobs a boy can do. After three years at the English High School, he left school to help his mother with the laundry she was managing at the H. S.

> Dow Laundry Company...In 1924 he entered Suffolk Law School, attending class in the evening and working days...This was rather strenuous for a young man who was studying law, but he was accustomed to hard work. Even when he was in the Dwight Grammar School he was putting in time. 'It probably kept me out of trouble.' Last summer he was graduated from the Suffolk Law School and took the bar examination, which he passed. Although he does not plan to specialize, it is probable that much of his law work will be immigration cases. 'I hope to champion the cause of the Chinese in this country,' he said, speaking of his plan, adding that he felt that they suffered from lack of understanding on the part of Americans rather than intentional unfairness. (Boston Globe:1929)

Another well publicized success story was that of Isidore Gillman:

> They laughed at Isidore Gillman, Chelsea junkman, but Gillman waited until the last and had a real good laugh--in a full-humored, brand-new lawyer way.
>
> 'The more they jeered and laughed at me, the more determined I was to make good,' said Gillman today. ...Gillman, who is thirty-five and who lives at No. 136 Highland Street, Chelsea, was graduated from Suffolk Law School last June after five years of the toughest grind...At the bar examination he passed with flying colors and all that remains undone now to make him a full-fledged standard bearer of Blackstone is to be sworn in. Ye who are lame in ambition--or just lazy, listen to Isidore Gillman's story. (Boston Evening American:1930).

Suffolk enrolled students like Eli Levin, who arrived in the United States from Russia pennyless and not knowing a word of English. While attending grammar school, Levin washed dishes in a Brookline restaurant on the midnight shift. Later, he was able to obtain a bookkeeping job to sustain him through Suffolk Law School from which he graduated in 1930. (Record:1930). The media celebrated these bright, hard working,

ambitious young men (rarely Portia's women), who had sacrificed so much to attend evening law school. Like Archer, they were personifications of the American dream of success.

Archer created the impression that Suffolk produced large numbers of men who moved from the bottom of the class structure to the heights of the legal profession:

> Since 1906 more than 11,000 young men have studied law in Suffolk Law School, coming to us from all over the world. More than 3,100 of them hold law degrees from our institution. Among these graduates are men of outstanding ability--lawyers, judges, educators, public officials, leaders of their fellow men. One of them is the Regional Director of the Securities and Exchange Commission for Wall Street; another is National Director of the Organization for the American Federation of Labor; others are prominent in the Federal Bureau of Investigation.. A recent graduate, a native born Arab, is a professor of law at the University of Iraq in Baghdad. And so it goes--our graduate who sacrified so much in student days, now winning honors and responsibilities in the affairs of the world.
>
> Now ladies and gentlemen, none of these men could have been distinguished in student days by an infallible test. It so happens that every one of them wrote upon his application blank that he had been obliged to go to work as a wage earner at an early age, but this was true of the great majority of our students and continues to be true at the present time (Archer:1940:8).

However, the climb into the legal profession was rarely quite as steep as described by Archer. From our examination of newspaper accounts from 1926 to 1930, Suffolk Law School appears to have been principally a means of mobility for the lower middle class rather than the working or lower classes as commonly portrayed and believed. The Suffolk graduates described had typically been lower-level managers, insurance adjustors or small businessmen before beginning law school. Most had used their law degrees to upgrade their jobs rather than to escape from poverty.

There was often a ceiling on how high the night graduate rose. While graduates of high-status schools such as Harvard counseled the inner circles of commercial concerns and the federal government, the successful Suffolk Law School graduates generally found work in Massachusetts small business or local government. Other Suffolk graduates made comfortable livings as plaintiff's attorneys, representing workmen injured in unsafe work environments, victims of railroad accidents, and consumers injured by defective products.

Unfortunately, many night school graduates could only find jobs in the dark penumbra of the profession:

> Beyond this narrow fringe lies the realm of outer darkness. It is peopled by a very large number of lawyers who are barely making a living. They haunt the courts in hopes of picking up crumbs from the judicial tables, such as small receivorships, guardianships, and so forth (Gifford:1949; quoted in Ladinsky:1963:128).

Since the newspapers rarely published stories about the unsuccessful, we cannot tell how many graduates occupied this marginal status or were unable to pursue any type of legal career. Did the junkman, the impoverished Jew, or the Chinese graduate prosper after receiving their degrees? The newspapers do not tell us. We must turn to the Suffolk Law Alumni Directory for more systematic data.

VIII. WHERE WERE THE SUFFOLK GRADUATES IN 1928?

The 1928 Suffolk Law Alumni Director surveyed 1,516 graduates. 450 alumni responded. Not a single one of these men had found work in the State Street firms of Boston's legal elite. Several reported that they had found jobs in local politics. Others worked for the state in the

Massachusetts Parole Board, Tax Appeals, and Fiscal Agencies. Still others found federal employment in Boston, working for the Postal Service, Immigration, the Prohibition Agency, and Internal Revenue.

The ascendant insurance and banking industries offered opportunities for Suffolk evening law graduates. Three reported that they had found employment as appraisers in the insurance business. Five other Suffolk lawyers sold life and general insurance policies for Massachusetts firms. Banking jobs held by Suffolk graduates included: a) bank examiner (1); b) savings/loan officers (4); c) tellers (2); d) credit managers (2); e) trust officers (3); assistant trust officers (3); f) special trust officers (3); and g) special investments (1).

A number of Suffolk Law graduates continued in their former professions outside of formal law practice. Typically these men were certified public accountants, clerks, or civil engineers. Many alumni served as middle level managers in Massachusetts companies such as New England Telephone Company, U. S. Worsted, Machine Design, Peabody Master Printers and United Shoe Company. Unfortunately, it is not possible to determine whether they found these jobs as a result of their legal training or had held the positions before starting law school. Forty graduates found employment as Suffolk Law School instructors on either a full-time or part-time basis. 95% of Suffolk's faculty were drawn from among its alumni.

However, by far the largest number of respondents had opened general solo practices or joined with fellow Suffolk Law graduates in small specialized partnerships. They listed the following specialties: a) collection agency work (4); b) conveyancing of real estate (2); c) probate (8); d) patent law (2); e) special trusts and estate practice (1);

f) corporate tax practice (1); g) commercial law and interstate commerce (3); h) taxes (5); i) workmen's compensation (3); j) manufacturer's claims (1); k) titles (1); domestic and family law (4); and insurance (10). Fifty-eight reported that they were general practitioners without a listed specialty. Another 88 graduates did not reveal the nature of their legal work but listed only office addresses.

Unlike their Harvard counterparts very few, if any, pre-1928 Suffolk graduates landed lucrative positions in national firms. There was a very clear economic hierarchy between the schools. The differential may have been greater than it appears. The 1,066 nonrespondents probably included a disproportionate number of the least prosperous. Further research, perhaps through interviews, is needed to determine what percentage of the lower- and working-class alumni were able to make a career in the legal profession.

IX. THE CONTEMPORARY HIERARCHY

Today the class struggle in legal education has been replaced by friendly rivalry within a largely unexamined consensus about the nature of legal education and the role of the lawyer. The evening law schools have abandoned their former social bases and have become increasingly similar to the elite schools. Portia is now 60% male and has changed its name to the New England School of Law, partially in an attempt to remove the stigma of having been a woman's school. It runs most of its courses during the day. Boston College has eliminated its night division and even at Suffolk some of the faculty favor the abolition of the evening program in order to bury the memory of the insitution's "unprofessional" past. Northeastern University has reopened its law school as a day institution. No longer do any of these schools claim to be "opportunity's open

door" or deny the superiority of the antivocational case method of legal education.

Despite these changes, the former evening schools still occupy the bottom rungs of the hierarchy of Boston law schools. On one level this hierarchy is more oppressive than open class conflict because it disguises the tracking in legal education. It is more subtle and manipulative than open exclusion along class lines. Pierre Bourdieu and Jean Calude Passeron (1977:207) argue that the

> educational system objectively tends by concealing the objective truth of its functioning, to produce ideological justification of the order it reproduces by its functioning.

They suggest that the appearance of openness causes students to blame themselves rather than the system when they fail to be chosen for top-ranked positions. The fact that this ranking system is less than absolute reinforces its ideological effectiveness. In our research (Rustad and Koenig, forthcoming) we have found some evidence that students not only believe that their own failings placed them in Suffolk or New England, but also that they failed a second time by not being one of the top few who achieve a prestigious placement in spite of the low ranking of their alma mater.

On the other hand, the night school movement succeeded in many of its goals. Archer and his ilk never wanted to found a counterhegemonic movement.[5] Very few evening school leaders were interested in using the law to critique the legal system or to overturn it. They were attempting to win a place in it for outsiders; and to make a profit for themselves.

Archer, for example, refused to connect the individual mobility he championed with organized social change. He denounced the New Deal as socialistic:

> ...we should go back to the American way of life. We should foresake the false gods to which we are now bowing down. One hundred and fifty years of phenomenal progress as a nation should not be discarded in favor of unsound Utopian efforts that in seven years have failed to relieve unemployment or to restore industry in America. (Archer:1940:8)

Ironically, the decline of the evening school movement appears to have been partially a result of its successes. The upward mobility of educated ethnics weakened the urban political machines which had promoted the evening schools. Archer was fired by a group largely composed of prominent graduates of his own institution. Perhaps having become relatively prosperous lawyers, they were anxious to forget the past and to make their alma mater more acceptable in the "higher" circles they now inhabited. Most successful Catholics had already abandoned Suffolk, sending their sons to Boston College instead.

The high status conferred by a law degree makes it an excellent cooptive mechanism, as does the implicit legal assumption that problems are best solved within the system rather than through radical movements. Suffolk students might have become the leaders of the "dangerous classes" had they embraced socialist or anarchist alternatives instead of attempting to rise from the ranks through the study of law. Massachusetts Attorney General Thomas Boynton (1919:1-2) expressed this notion clearly when he asked potential Suffolk evening school donors:

> Did you ever stop to think that the ignorant leader is a grave menace to this and to every other community? Did you ever think that to endow schools for the favored few and utterly to neglect the multitude is to prevent the masses from having sound leaders, therefore, delivering them over to designing agitators?

However, now that the profession, despite the exclusionary policies of the later 1920's and 1930's, is again losing its status and vocational guarantees, strains may reappear. And it is precisely in these strains that the greatest pressures toward the development of professional hierarchies seem to reside.

IV. IMPLICATIONS FOR THE FUTURE

The contrasting experiences of upgrades in law and medicine warn us against mechanistic predictions regarding the future of the professions. The relative success of the low-status law schools was partially due to structural factors such as their alliance with ethnic political machines and their lack of a need for expensive laboratory equipment. However, the organizational talents of Archer also played a significant role in holding off the reformers. In some fields, such as real estate, the elites have never managed to monopolize entry. Still, the similar outcomes of the legal and medical struggles suggest that similar social and economic conditions will yield similar results. This allows us to speculate about the future.

The contemporary hierarchy may not be stable much longer. Just as in the 1920's, an increase in the number of lawyers is threatening the prestige and incomes of those in the legal profession. Almost a decade ago, James Kilmer (1976:20) was already warning:

> How today's excess of lawyers has affected the job market can be illustrated by the hiring practices of many United States attorneys' offices. In the past, these offices hired the best person, regardless of class rank. Today the same agencies will only hire graduates in the top ten percent of their class.

Lawyers have responded to this threat by making law school accreditation more difficult. The bar exam has become tougher in highly competitive

jurisdictions such as California, New York, and the District of Columbia (Berreby:1983:1). Other professions are considering adopting similar mechanisms to deal with the growing surplus of educated labor. For example, both the American Federation of Teachers and the National Education Association recently "called for more rigorous screening and testing of teacher-education students" (Evangelauf:1984:19). The American Sociological Association plans to inaugurate a certification program (Huber:1984:3).

Making entry into the professions more difficult creates a dynami reminiscent of the earlier struggles among the law schools and in the medical profession. The prestigious universities can be expected to be more willing than the second-rank institutions to cut back their graduate admissions to match the declining job market. Weaker schools are more likely to attempt to enhance their status and incomes by increasing their output of graduate degrees as long as there are students available (c.f. Engelyau:1984:23). If the current decline in law school applications continues, the proprietary schools can be expected to begin accepting students with inferior qualifications, creating further conflicts with those trying to maintain the high status and economic privileges of the legal profession. Thus, this review of the battles in the legal field may give us insights into future strains between the low-ranked colleges and those attempting to maintain the status of increasingly overcrowded professions.

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NOTES

1. The low status of New England School of Law is due principally to its lowly origin as Portia, a women's evening law school (Chester:1984), rather than to any lack of quality in the education it provides. Duncan Kennedy of Harvard Law School who is currently serving as a visiting professor at New England School of Law told us: "Whether one is talking about the students or faculty, the supposed differences between Harvard and New England are either nonexistent or exaggerated."

2. 55% of the partners in the top thirteen Boston law firms are products of Harvard Law School (Martindale:1984). In the decade from 1972 to 1982, these firms drew their associates disproportionately from the more prestigous Boston law schools:

   (1) Harvard (303 associates)
   (2) Boston University (47 associates)
   (3) Boston College (44 associates)
   (4) Northeastern University (22 associates)
   (5) Suffolk University (17 associates)
   (6) New England School of Law (2 associates)

3. Dean Archer (1925) surveyed the ethnic origins of the Sufolk student body in 1925. He reported the following breakdown:

"Irish	48 1/2%
Jewish	18 1/3%
English and Scotch	16 1/2%
Italian	6%
French	3 3/4%
Dutch and German	1 1/4%
Negro	1 1/3%
Polish	1 1/4%
Portuguese	1%
Swedish	1%

while Swiss, Spanish, Armenians, Albanians, Lithuanians, Austrians, Indians, Hindus and Japanese in varying proportions compose the balance of the student body."

4. It wasn't only Suffolk graduates who suffered from desires to lessen competition. 79% of all applicants failed the Massachusetts bar examination in January 1932. In July 1932 only 220 out of 697 passed. Still, Archer filed suit arguing that although the tests were graded anonymously, the Harvard and Boston University graduates who evaluated the examinations were biased against Suffolk and Portia alumni:

"But here were the graduates of those two universities in a position to control the fate, not only of those with the same background and training as themselves, but of those who had been trained under a different system and many of whom were lacking in college education" (Boston Record:1932). He lost the case. Of course, he had not complained in earlier years when the questions were graded by practitioners sympathetic to his school.

5. Gramsci (1971) argued that the main task of a socialist movement should be to raise ideological challenges to the hegemonic control of the leading ideas by the ruling class. Suffolk's challenge could be seen as counterhegemonic because it demystified the case method and created skepticism about the superior wisdom of the most prominent members of the legal profession. It made clear the contradiction involved in excluding people from the law making and interpreting profession along class lines in a "democracy."

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