UNITED STATES DEPARTMENT OF THE INTERIOR
RAY LYMAN WILBUR, Secretary
OFFICE OF EDUCATION
WILLIAM JOHN COOPER, Commissioner

BULLETIN, 1929, No. 31

LEGAL EDUCATION 1925–1928

By

ALFRED Z. REED
STAFF MEMBER OF THE CARNEGIE FOUNDATION
FOR THE ADVANCEMENT OF TEACHING

[Advance sheets from the Biennial Survey of Education in the United States, 1926–1928]

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1930

...le by the Superintendent of Documents, Washington, D. C. - - - - - - - - Price 5 cents

LEGAL EDUCATION, 1925–1928

By ALFRED Z. REED
Staff Member of the Carnegie Foundation for the Advancement of Teaching

CONTENTS.—Organization of the legal profession—Aims and methods of law schools—Bar admission requirements—Progress in law school requirements

In the last discussion of legal education that was published by the bureau, covering the period 1909–1925,[1] four different aspects of the topic were distinguished. These were, first, the organization of the legal profession considered as an influence in the formulation and enforcement of proper standards by the law schools and by the bar admission authorities; second, the divergent aims and methods of different groups or factions of law schools; third, the varying requirements established by the bar admission authorities of 48 States and of the District of Columbia; and, fourth—as a result of all the preceding and of still other factors—the extraordinary diversity among the schools as respects the value of their law degrees, when measured by the amount of time which students devote to their studies. It was shown that, while the standardizing activities of the medical profession were rapidly killing off substandard medical schools, similar efforts by the legal profession had no apparent effect in reducing the number of law schools and served merely to make these schools more and more unlike one another. It was suggested that it might some day be advisable to reconsider the present orthodox program of reform on the basis of experience and a broad view of the many educational and political factors involved. It is as important to recognize the points of essential dissimilarity as it is the points of resemblance between the problems of medical and of legal education.

In the present survey the developments of the past three years will be discussed in the same order as for the preceding period.

ORGANIZATION OF THE LEGAL PROFESSION

Voluntary and more or less selective associations of lawyers and law teachers clearly constitute the mechanism through which what

[1] Recent Progress in Legal Education, by Alfred Z. Reed. Biennial Survey of Education, 1922–1924, pp. 123–152. (U. S. Office of Education Bulletin, 1926, No. 8.)

is at present a rather hit-and-miss occupation is being slowly restored to the dignity of a genuine profession or group of professions. The precise manner in which these associations are to operate and to cooperate has still to be determined. For the moment, their very abundance breeds confusion. Local bar associations, State bar associations, and the American Bar Association exist side by side with numerous organizations dedicated to particular reform activities or to specialized branches of practice. Competing membership drives reduce the prestige of any one of these associations before the body of lawyers as a whole. Divergent policies impair their authority with the public at large. Lawyers and the community alike suffer from this excess of uncoordinated organization.

STATE AND LOCAL BAR ASSOCIATIONS

Efforts to improve the organization of lawyers have taken two broadly distinguishable forms: Attempts to bring existing bar associations into some sort of organic relationship with one another; and attempts to set up more inclusive organizations, with greater legal powers. The first method, commonly referred to as that of "affiliation," has proved signally successful in the case of the medical profession; and when it is combined, as it is there, with the representative principle, is clearly in harmony with the general spirit of our institutions. Much remains to be done in extending this movement, but, viewing the country as a whole, it shows a steady advance. Some 15 States have already been affected by it, in greater or less degree. The following types of organic connection may be distinguished:

I. *Membership connection only.*—(A) The State association continues to elect its own members, but restricts its choice, in general, to those who are already members of local associations (New Jersey, Maryland, West Virginia). (B) The entire membership of affiliated local associations may become members of the State association by paying its dues, which in such cases are sometimes reduced, especially if responsibility for collecting them is assumed by the local association (Washington, South Dakota, Wisconsin, Mississippi).

II. *Representative connection only.*—(A) Representatives of local associations participate in the meetings of the State association on the same terms as its regular members (Colorado). (B) One or more "conferences" or "federations" of local associations provide an opportunity for discussion and possible cooperation with the State association (New York, Ohio, Florida). (C) Combination of (A) and (B) (Illinois). (D) The body of delegates of the local associations is accorded a measure of real control over the activities of the State association (Pennsylvania).

III. *Both membership connection and representative connection.*—I (A) and II (D) (Minnesota). I (B) and II (A) (Oregon).

These different types of affiliation reflect the difficulty of adjusting the relative interests and rights, not only of the State association versus the local bodies, but also of large urban as against small county associations.

The second method of improving the organization of lawyers is through the device variously described as the self-governing, the inclusive, the incorporated, the official, or the statutory State bar. Action by the State legislature is needed to introduce this reform. As in the case of the first method, the movement antedates the 3-year period now immediately under review, but the event which has brought it to the fore as a topic of discussion throughout the country is the success achieved by its sponsors, in March, 1927, in the State of California. The five other States which—with much variation of detail—now possess an official, inclusive bar are North Dakota, (in rudimentary form), Idaho, Nevada, New Mexico, and Alabama.[2] The device has its origin in the incorporated law societies or self-perpetuating lawyers' guilds of Canada and Great Britain, and in its original form would have been a challenge to the well-established American principle that as a matter of policy, if not of constitutional law, the courts should exercise a certain amount of direct control over the admission of lawyers into practice. The legislation that has actually been enacted, however, has preserved this principle in one or more of several ways. If the court does not continue to appoint the examining board, or if it does not retain the power of excluding applicants recommended to it by this board, it at least is specifically authorized to disallow such rules or regulations with regard to these matters as the lawyers may adopt. At present, accordingly, the principal obstacle to the spread of this reform is the suspicion that it may imperil the standing and opportunities for usefulness of existing voluntary associations. Although it need not necessarily have this effect, it is significant that the movement has made no headway in the Eastern States, where the oldest bar associations are found. There is no inherent incompatibility between the establishment of closer contacts among existing voluntary associations and the creation, side by side with them, of an official organization comprising all lawyers practicing in the State, but as a practical matter it is difficult to push both reforms simultaneously.

NATIONAL ASSOCIATIONS

Turning now to the national organizations, the American Bar Association's subordinate section or Conference of Bar Association

[2] Add by legislation enacted in June, 1929, Oklahoma.

Delegates continues to function as a useful, even though anomalous, liaison with State and local bodies. For the most part, however, cooperation between the various organizations is fostered, not by organic affiliation, but by cumulative individual holdings of offices or memberships. Thus the American Law Institute, in addition to a limited list of elective members, includes, ex officio, not only higher judges but also the heads of bar associations, of law schools, members of the Association of American Law Schools, and of such special societies as the American Institute of Criminal Law and Criminology, the American Branch of the International Law Association, the American Society of International Law, the National Conference of Commissioners on Uniform State Laws, and the American Judicature Society. The same individual functions as secretary of the American Judicature Society and of the Conference of Bar Association Delegates; at a recent meeting of the Judicature Society, members of the Law Institute attended in large numbers and were addressed by representatives of both organizations and of the American Bar Association. The director of the American Law Institute became, in 1927, the chairman of the American Bar Association's Council on Legal Education and Admissions to the Bar. Finally, an outstanding development of the past three years was the appointment, by this council, of a salaried official, comparable with the professional secretary who has made the American Medical Association Council the power that it is. This professional "adviser," as he was termed—really inspector of law schools—during 1927–28 was the honorary secretary, and during 1928–29 the president of the Association of American Law Schools.

Although an engineering expert would doubtless observe that, as a device for securing greater operating efficiency, this interlocking of the many cogs in the machinery of professional supervision leaves much to be desired, it is at least better than to have each wheel spin independently on its own axis. Notably, the continuing labors of the American Law Institute have been a powerful influence in fostering mutual understanding and respect between the more scholarly law schools on the one side and judges and practitioners on the other. The two points of view of the academic theorist and of the hard-headed practitioner have constantly confronted one another in friendly discussion both by correspondence and on the floor. The initial attitude of many practitioners was that some of the scholarly specialists were in danger of restating the law in unusual language that would hardly be serviceable for actual use in the court room. The initial attitude of some of the scholars was that many practitioners were too ignorant of fundamentals to make their criticisms worth while. This difference in attitude is inevitable and beneficial. It has not disappeared, but it has been greatly tempered on the one

side by realization of the enormous amount of labor that the specialists have put into their work, and on the other side by the discovery that even the most careful closet production benefits to a greater extent than the producer might anticipate by the acute criticism of able minds. The law school men have shown the humility that is the mark of the genuine seeker after truth and have thus themselves earned the respect of practitioners and judges.

The intimate relations between the American Bar Association and the Association of American Law Schools have not worked out so happily. Within the first-named organization, there has been considerable criticism of the apparent abdication of its control over legal education in favor of an independent organization comprising only a minority of law schools. Representatives of institutions that have not been approved by either association constitute one element of discord; they are reinforced by reformers who are disappointed that the movement for higher standards that was launched in both associations in 1921 has not produced even greater results than it has, or who do not regard the associated program itself as in all respects ideal. Any constructive proposal is vulnerable, but dissatisfaction with the outcome of cooperative activities is no valid ground for demanding that cooperation cease. The American Bar Association and the Association of American Law Schools are certainly not to be blamed for trying to work in harmony. It would be a great misfortune if they were not. Nor could a better choice have been made for "adviser" of the council than one who had shown his competency for the task of inspecting law schools by practical experience as secretary of the Association of American Law Schools. The real weakness of the present machinery of cooperation has lain in the fact that the council has been controlled by schoolmen, rather than by practitioners. It has thus presented the appearance of being committed to a predetermined program, instead of having been won over on the basis of arguments in the committee room. There is abundant evidence, in State and local bar associations, that the superficially logical device of turning the committee on legal education over to law school men does not work out well. Such a committee should, of course, listen to law teachers, and listen in a somewhat humble frame of mind, with the respect due to experts in legal education. But if it is to plead its cause effectively before an association of practicing lawyers, and secure their sincere and enthusiastic support, it must itself represent the point of view of informed practitioners. The experience of the past three years has demonstrated that the same is true of the American Bar Association. Fortunately, this weakness is by way of being remedied. Recent additions to the council are all either bar examiners or practitioners who have no official connection with any law school.

THE CARNEGIE FOUNDATION STUDY OF LEGAL EDUCATION

The Carnegie Foundation for the Advancement of Teaching must be mentioned in this connection, because, although it has no member of the legal profession on its staff, its work would be quite impossible without the cooperation of lawyers, especially law teachers and bar examiners. It represents the point of view of no group or faction of the legal profession, but rather of the public at large, with perhaps this distinction, that it is somewhat more sympathetic toward lawyers and their problems than laymen are apt to be. Its recent publications include a volume of 600 pages, *Present-Day Law Schools*, of interest to specialists in legal education.[3] In addition, the briefer pamphlet which, under various titles, it had published annually since 1913, has appeared, beginning 1927, under the caption *Annual Review of Legal Education*. The scope of this periodical has been gradually expanded. The issue for 1928, numbering 50 pages, included a 6-page summary of *Present-Day Law Schools*, a comparative digest of the bar admission requirements now in force in each of the 60 American States or Canadian Provinces, a discussion of the essentials of a sound bar admission system, a complete list of degree-conferring law schools in the United States and Canada, and other information of interest both to those who administer and to those who seek to improve our present system of legal education. The principal merit claimed for the Carnegie publications by those who are finally responsible for them is that their presentation of basic facts is not colored by desire to prove a point or to push a reform to the extent that almost necessarily occurs in discussions of professional problems by lawyers.

AIMS AND METHODS OF LAW SCHOOLS

In the survey for the period 1909–1925, it was pointed out that the originally acrimonious controversy between the partisans and the opponents of the case method was tending to give way to agreement that the conditions under which law is taught determine the method that can be profitably used. Schools where conditions are appropriate for the case method are coming more and more to utilize it, while other schools, which do not and should not use it, are ceasing to pretend that they do. Even its loyal adherents are coming to

[3] Published as Bulletin No. 21, 1928. Three other bulletins (extended discussions) of legal education and cognate matters have been published by the Carnegie Foundation: No. 8, The common law and the case method in American university law schools, by Josef Redlich, 1914; No. 13, Justice and the poor, by Reginald Heber Smith, 1919, 3d edition, 1924; No. 15, Training for the public profession of the law, by Alfred Z. Reed, 1921. Copies of all publications of the foundation not out of print may be had without charge upon application to its office, 522 Fifth Avenue, New York City.

realize that it does not contain within itself all the elements needed to give students adequate preparation for the practice of the law. Finally, the establishment of the American Law Institute is evidence of a different kind of service that the faculties of case-method law schools are peculiarly qualified to render, namely, legal research having as its immediate objective not the training of students but scholarly production.

THE CASE METHOD AND SCHOLARLY RESEARCH

During the past three years, these general tendencies have been accentuated. The extent to which the once-derided innovation of the Harvard Law School has established itself as orthodox appears from the following figures. Of 60 law schools, situated in continental United States, that were members of the Association of American Law Schools at the beginning of the academic year 1928–29, 47 (78 per cent) were certainly genuine case-method schools. An additional 6 claimed in their catalogues to be using this method, although the composition of their faculties suggests that they may depart from it to a greater extent than they are themselves aware. In all but 1 of the remaining 7 schools, at least a minority of the faculty had been trained in this method. Out of the entire group of 60 schools, only 2 explicitly claimed in their printed announcements to be using, as the basis of their system of instruction, something other than the case method.

These case-method schools are those that have been mobilized, through the machinery of the Association of American Law Schools and of the American Law Institute, for the purpose of restating our at present chaotic common law, in such form as will make this law easier both to practice and to teach.[4]

On the other hand, in addition to the schools, usually of the part-time and mixed type, where conditions are not favorable, an increasing number of Harvard's followers are beginning to differentiate themselves by adding something to the original formula. Under the stimulus provided by the American Law Institute, there is also occasionally observable a tendency to elevate research from a subordinate, even though highly important, activity of the faculty, to the main purpose for which the school exists. From this point of view, law schools may now be roughly divided into four groups. Precision of figures is impossible when the ideas of the faculties are

[4] This is the principal immediate objective of the institute. Under its broad stated aims "to promote the classification 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," a draft code of criminal procedure is also being prepared.

still not fully crystallized, but their underlying attitudes toward legal education are beginning to assume shape somewhat as follows:

SCHOOLS CONCERNED ONLY WITH TRAINING PRACTITIONERS

First are the schools—most of those that hold sessions in the evening or late afternoon, and a few full-time schools as well—that do not pretend to be doing anything more than to prepare students to practice law. In their aims, and on the whole, also—though less obviously—in their methods, these stand nearest to the early law office from which all American law schools are descended.

RESEARCH SUBORDINATED TO TRAINING OF PRACTITIONERS

Second comes the important group of full-time schools that have followed the leadership of Harvard in regarding legal research and scholarly production as an important, and yet still a subordinate, function of the American law school. Cultivation of the science of law is to proceed *pari passu* with preparation for its practice, not only because scholarly research leads to results of value to the profession and to the community, but also because scholarly researchers are desirable agents to carry out what is still the main purpose of the school, namely, to train future practitioners. No American law school has so proud a record as Harvard, either in scholarly production or in the preparation of law teachers who have carried its gospel into other universities,[5] yet Harvard in its current announcement[6] unequivocally proclaims itself as, above all things, a professional school:

> The school seeks as its primary purpose to prepare for the practice of the legal profession wherever the common law prevails. It seeks to train lawyers

[5] In 1928 the 60 law schools, members of the Association of American Law Schools, situated in continental United States, contained 681 teachers, of which 166, or nearly one-fourth, had received their professional training, in whole or in part, at the Harvard Law School. The number of law faculties, other than its own, which included at least one Harvard-trained man was 50, as against a corresponding figure of 34 for its nearest competitor, the law school of the University of Chicago (originally organized under Harvard auspices), 27 for Columbia, 24 for the University of Michigan, and 23 for Yale (all of which have adopted the Harvard case method). The total number of teachers thus sent out into other law schools by Harvard, and still in service, was 139, a number nearly as large as the combined figures for Chicago (56), Yale (46), and Columbia (43). Michigan had trained 30 such teachers.

The total number of law faculties containing at least two members trained at the Harvard Law School was 40, or more than the combined figures for Chicago (14), Yale (10), Columbia (10), and Michigan (5). The total number of law faculties containing at least three members trained at Harvard was 26, as against corresponding figures of 7 for Yale, 5 for Chicago, 4 for Columbia, and 1 each for Michigan, George Washington, Georgetown, and Catholic University of America—the number teaching in the school of origin being in all cases excluded. Of 60 deans, 13 had received their professional training wholly and 5 partly at Harvard, 7 wholly and 1 partly at Columbia, 4 wholly and 3 partly at Yale, 2 wholly and 2 partly at Chicago and at Michigan; no other single school trained more than 2 deans, in whole or in part.

[6] March, 1928, p. 7.

in the spirit of the common legal heritage of English-speaking peoples. Along with and inseparably connected with this purpose are two others, namely, the training of teachers of law, and the investigation of the problems of legal adjustment of human relations and how to meet them effectively.

With possibly some difference in phrasing, this may be taken to represent the ideals of many other law schools.[7]

Not all of these schools have followed Harvard blindly. Under the original formula certain acquisitions or accomplishments, that are undeniably of the greatest value to the future practitioner, are regarded as none the less outside the proper province of the law school itself. Such are, for instance, familiarity with the leading cases and the principal legal rules in all the important divisions of the general or common law; knowledge of peculiarities of the supplementary local law in force in the particular jurisdictions where the individual student intends to practice; and practical expertness of the sort that can be gained only from experience in meeting actual clients. If, even at Harvard, many students go far in such matters, this is because they are stimulated to take advantage of their incidental opportunities; as regards formal requirements for the degree, this kind of training is largely ignored in favor of "provision only for those things which a law school can do best," namely, "to direct study to the authoritative materials, so that the student may learn to use them with the traditional technique of the common-law lawyer and in view of the received ideals of the law."[8] Some law schools take the position that, without sacrificing this as the main end of a professional law curriculum, it still is possible to render certain incidental services to the student more systematically than Harvard thinks worth while. Thus, they may prescribe for their student body a greater number of the standard titles into which the common law is divided. Or, especially when the bulk of their students intend to practice in a single jurisdiction, they may pay greater attention to local decisions and statutes, both in substantive law and in procedure. Or, finally, following the analogy of the medical clinic and hospital interneship, they may require the student to participate in the work of a legal-aid society. These divergencies from the origi-

[7] Compare, for instance, the statements of the University of Michigan: "While the primary function of law schools is to train men to practice law, nevertheless, in order that there may be opportunity for the training of law teachers, scholars, and writers, the time has undoubtedly come when instruction of an advanced nature should be offered in some of the university law schools" (Announcement, 1928, p. 10); and of the University of Chicago: "The course of study offered, requiring three academic years for completion, is not local in its scope, but constitutes a thorough preparation for the practice of law in any English-speaking jurisdiction. * * * Graduates * * * who give promise of ability to make a creditable contribution to legal scholarship, will * * * be admitted as candidates for the degree of J. S. D." (Announcement, 1928, pp. 2, 6.)

[8] Report of the dean of the law school in Reports of the President and the Treasurer of Harvard College, 1927–28, pp. 200, 203.

nal model, however, are slight. The disagreement is merely as to whether or not these innovations are calculated to make the school a better training ground for future practitioners. The great bulk of the faculties that make up the Association of American Law Schools have this in view as their primary aim, even while their members are cooperating in the work of the American Law Institute, or in other forms of scholarly activity.

RESEARCH AND PROFESSIONAL TRAINING AS JOINT OBJECTIVES

The overwhelming majority of the law schools in the United States belong to one or the other of the two preceding types: Those that are not pretending to do more than train practitioners of that curious jumble which in this country constitutes the law; and those which, either as schools, or through individual members of their faculties, are doing something—in some instances are doing a great deal—to make our law better than it now is, but—largely for this very reason—still regard the training of practitioners as their primary objective. They can train these practitioners the better for being themselves interested in the improvement of the law; they are the more likely to succeed in their projected law reform for the reason that they send out into practice graduates imbued with their own ideals. The increased respect which is accorded to law school men by practitioners and judges, and makes possible their cooperation in such activities as that of the American Law Institute, is largely attributable to the fact that the ranks of practitioners and of future judges have been recruited in increasing measure from the graduates of these institutions.

What, however, is to be done for the future preparation of these same professional law teachers, this special group of lawyers who combine the two functions of training others for practice and prosecuting research themselves? How are the existing scholarly law faculties to secure their own successors? In the answers given by different law schools to this question, there is a distinction that is perhaps more one of degree than of kind, but that is much more important than the relatively trivial departures from the Harvard formula which we have thus far noted. Harvard, the University of Michigan, Columbia, and Yale are among the law schools that list separately a group of subjects that are primarily useful for future teachers and research workers. At all four of these institutions this work qualifies for higher or postgraduate degrees. But whereas at Harvard and at Michigan candidates for the lower degree, conferred in the regular 3-year practitioners' curriculum, can take little, if any, of this work, even by special permission, at Columbia all of these "graduate courses" are open to a restricted number of spe-

cially qualified second-year and third-year students, by permission of the dean and of the instructor in charge; and at Yale these "honors and graduate courses" are announced as "open to all students in the third year and to a limited number of students of high standing in the second year."

The opening of systematic studies of this sort to candidates for the regular practitioners' degree is more significant than the fact that what Harvard terms "investigation of the problems of legal adjustment of human relations and how to meet them effectively" Columbia describes as "an understanding of the economic, social, and political problems with which the law deals,"[9] and Yale as "shaping the law to meet the demands of a changing society."[10] It means that at these two latter schools the regular law degree no longer stands unreservedly for strict training in the principles of the common law; that time may be taken from these for additional studies which, under the Harvard formula, should come either before or after the regular practitioners' course—before, if they are of value to all lawyers, and after, if they are of value chiefly to teachers. It means that it is more than a coincidence that neither Columbia nor Yale proclaims, as do Harvard and Michigan, that the training of practitioners is the primary purpose or function of the school.[11] We have here at least the origins of a third type of law school—one in which research in law, although still conducted in conjunction with a professional law school, gives the impression, whether intended or not, of being the activity in which the faculty is principally interested.

RESEARCH DIVORCED FROM TRAINING OF PRACTITIONERS

Finally, an "Institute for the Study of Law," recently established at Johns Hopkins University, represents the opposite pole from the first group of law schools described above—those that have no aspirations to enter the field of scholarly research, but are content solely to prepare future lawyers for practice. Its faculty are frankly interested in law not as an art or a profession to be practiced by themselves or by their students, but as one of the social sciences—something to be studied and made better by themselves and by those

[9] Announcement, June, 1928, p. 7.

[10] Address of the retiring dean before the New Jersey Bar Association, June 8, 1929.

[11] Columbia's aim is stated to be "not only to fit its students as completely as possible for the actual practice of law and the conduct of public affairs but also, by the encouragement of scholarship and research, to lay a substantial foundation for legal authorship, and furnish preliminary training for the profession of the law teacher." (Announcement, 1928, p. 6.) Yale states that "It is the aim of the school to give all students in the regular professional curriculum preparation for the practice of law in any State, and also, by the encouragement of scholarship and research, to lay a foundation for the profession of law teaching and for legal authorship." (Announcement, 1928, p. 13.)

whom they train up to pursue similar activities and to inculcate similar ideals, both in their own institution and in other law schools or research associations. Although in a broad sense a law school, it does not propose to maintain an orthodox course for the training of practitioners. While the second and the third types of institution, despite their varying emphasis, agree that a "gain, both to research and to professional training, [results] from conducting research in law in conjunction with a professional law school," [12] the promoters of the Johns Hopkins Institute believe that this connection tends to perpetuate the present unfortunate division in the American university scheme between professional law schools, professional schools of business, and college departments of social sciences.

BAR ADMISSION REQUIREMENTS

The immediate purpose of the campaign, already referred to, that has been recently prosecuted under the joint auspices of the American Bar Association and of the Association of American Law Schools, was to strengthen requirements for admission to the bar. In 1921 the practitioners' organization adopted, and the schoolmen indorsed, a platform which may be summarized as follows:

PROGRAM OF REFORM

1. Admission to the bar should be restricted to graduates of law schools; and, further, of law schools possessing the following characteristics: (*a*) The law school itself should admit only those who have studied at least two years in a college. (*b*) The course of professional studies pursued by students who devote to it substantially their full time should cover three years. Other students must continue their studies as much longer as is requisite in order to produce an equivalent number of working hours. (*c*) Law schools must have adequate library facilities. (*d*) They must have a sufficient number of teachers who are giving their entire time to the school.

2. The qualifications of these law school graduates must be tested by official bar examinations.

It became the responsibility of the newly established Council on Legal Education to interpret these purposely general principles. This task has been continued during the past three years. Only one change has been made, however, by the American Bar Association itself. In 1922, at a special conference on legal education held in Washington, D. C., under the auspices of the Conference of Bar Association Delegates, the original resolutions had been indorsed with certain qualifying explanations. These were that equivalents might

[12] Report of the dean of the Columbia School of Law, for 1928, p. 19.

properly be accepted for two years of study actually pursued in a college; and that law schools should not be operated as commercial enterprises. In September, 1927, the American Bar Association adopted the first of these suggestions, in the form of a resolution calling for prelegal examinations to be conducted by State universities or boards of bar examiners, for applicants obliged to make up their preliminary qualifications outside of accredited institutions of learning. The second recommendation, stigmatizing commercialism in legal education, was immediately adopted by the Association of American Law Schools, but not by the American Bar Association. Some question has arisen as to the adequacy of its phrasing in its original form.[13]

PROGRESS TOWARD REQUIREMENT OF GRADUATION FROM A LAW SCHOOL

The first recommendation—that the applicant must have graduated from a law school—has not been followed by any State, though West Virginia has approximated it by requiring three years of study in a law school. Recently one other State has come to require at least two years of law school study[14] and two other States require one year.[15] In the main, however, the States have refused to abolish the traditional method of admission to legal practice, on the basis of office study alone. Several have made it more difficult to qualify for the bar examination by this route; between 1925 and 1928 the number of jurisdictions that require 4 years of law study, under such conditions, as against the 3 years that suffice in the case of a full-time law school, rose from 5 to 6.[16]

In the face of this repudiation of the first and most fundamental recommendation of the American Bar Association, the prescribed set of law school standards could influence the development of bar admission rules only in two ways. In the first place, whatever part law schools play in the admission system, the bar admission authorities might be persuaded to recognize only schools that comply with these standards; and, in the second place, such of these standards as are applicable might be transferred from the law school to the applicant's course of law study, wherever pursued.

ACCEPTANCE OF AMERICAN BAR ASSOCIATION STANDARDS FOR LAW SCHOOLS

Under the first head, up to the beginning of the year 1928–29, only two States had accepted the entire group of law-school standards.[17]

---

[13] Since this was written, the recommendation was adopted by the American Bar Association, at its meeting in Memphis, October, 1929.

[14] Colorado.

[15] Kentucky, Wyoming.

[16] To Illinois, Michigan, Minnesota, Ohio, and Washington, add Wisconsin.

[17] Wisconsin and Wyoming recognize only law schools approved by the Council on Legal Education. On Jan. 12, 1929, Connecticut adopted the same rule for applicants beginning their law studies after this date.

Another has accepted standards (*b*), (*c*), and (*d*).[18] Finally, standard (*b*) by itself, or something similar, has been accepted by an increasing number of jurisdictions. The council has ruled that a part-time course of 4 years of at least 40 weeks each shall be regarded as the quantitative equivalent of a full-time course of 3 years of at least 30 weeks each. The number of States that, without accepting the other standards, at least require an evening or part-time course to cover 4 years as against the period of 3 years deemed sufficient in the case of a day or full-time course, increased from 9 in 1925 to 10 in 1928.[19]

APPLICATION OF STANDARDS TO LAW STUDY IN GENERAL

Under the second head, the law school standard that is most readily applicable to the course of law study, wherever pursued, is standard (*a*), calling for preliminary education equivalent to two college years. The number of jurisdictions that, presently or prospectively, announce this requirement grew from two in 1925 to five in 1928.[20] The number requiring 2 years of college, or their equivalent, prior to the bar examination, but not necessarily prior to the beginning of the period of law study, increased from 2 to 3.[21] The number (including the above) that require at least a 4-year high-school course or its equivalent increased as follows: Preliminary, 14 to 15; nonpreliminary, 13 to 15.[22]

Standard (*b*) has had even less influence here; the number of jurisdictions that require law study during at least three years has remained unchanged at 31.[23] The important changes that have recently occurred with respect to the period of law study have to do with a matter as to which the American Bar Association made no recommendation, namely, insistence, even in the case of law-school graduates, upon supplementary office work. Pennsylvania has recently joined New Jersey and Rhode Island in requiring an office clerkship to be served at least during law-school vacations. New York has long had a rule under which all applicants, other than college graduates, are obliged to serve a continuous year of clerkship

[18] West Virginia.

[19] To California, Connecticut, Idaho, Kansas, Maine, Massachusetts, Minnesota, Ohio, and Washington, add Pennsylvania. By legislation, however, effective Aug. 14, 1929, California has abolished this requirement.

[20] To Kansas and Illinois, add Ohio, Colorado, and (not fully effective until October 15, 1929) New York. Subsequently, the requirement has been adopted by Minnesota (fully effective Mar. 1, 1931), and, subject to exceptions in favor of a limited number of special students in local law schools, by Michigan (effective Mar. 1, 1930).

[21] To West Virginia (erroneously classified in the preceding survey as a "preliminary" jurisdiction) and Montana, add Wisconsin. So also, since the above was written, by a requirement fully effective in 1933, Idaho.

[22] South Carolina, formerly nonpreliminary, became preliminary. District of Columbia, Kentucky, and Maine were added to the nonpreliminary group.

[23] Since the above was written, Oklahoma has advanced to this level.

subsequent to the regular 3-year course of study, either in office or in school, that leads to the bar examination; after July 1, 1929, even college graduates must serve such a clerkship for six months.

RESPONSE TO CONDEMNATION OF DIPLOMA PRIVILEGE

Since 1925 there has been no change in the number of jurisdictions (13) in which, under the so-called "diploma privilege," graduates of certain law schools are admitted to the bar without examination as to their educational qualifications. In Florida and in Oklahoma [24] the privilege has been extended to schools that have recently been opened, or have recently acquired power to confer degrees, and in Texas to all law schools recognized by the Council on Legal Education. In addition to these States, Indiana continues to be handicapped by its well-known constitutional provision, under which it is possible to develop only optional bar examinations in certain counties.

The foregoing sketch shows that while there has recently been undoubted improvement in bar admission requirements throughout the country, in the general direction blazed by the American Bar Association, this progress has been slow. The following table shows how seldom are lawyers now obliged to possess certain qualifications that are commonly insisted upon in the case of physicians and surgeons, and how few changes have occurred in this respect during the past three years. The enumeration of bar admission requirements includes all that had actually been adopted in the autumn of the years in question, whether or not they were yet in force.

TABLE 1.—*Comparison between bar admission and medical licensing requirements in 48 States and the District of Columbia, 1925 and 1928*

Number of jurisdictions requiring—	Medicine		Law	
	1925	1928	1925	1928
Graduation from a professional school	48	48	.....	.....
At least 3 years of study in a professional school	48	48	1	1
At least 2 years of preliminary college education	38	38	2	5
At least a preliminary high-school education	44	47	14	15
At least 5 years of professional training	11	12	.....	.....
More than 3 years of professional training	49	49	1	1
At least 3 years of professional training	49	49	31	31
Examination of all applicants by public authority	49	49	35	35

PROGRESS IN LAW SCHOOL REQUIREMENTS

Much greater changes have been effected in the law schools. An increase in the bar admission requirements of any State affects every school that aspires to prepare for practice there—not merely those

[24] Since the above was written, the privilege has been abolished in Oklahoma.

that are physically located within its boundaries. This influence has been supplemented by a nation-wide incentive to secure approval by the Council on Legal Education and admission to the Association of American Law Schools. Pressure of this latter sort has been particularly strong in the case of law schools that are connected with a college or university, because it is here reinforced by the respect which regional associations or other standardizing organizations naturally pay to professional standards promulgated by representatives of the professions themselves. That aspect of the general development which most readily lends itself to tabular presentation—namely, the amount of time needed to secure the degree—is set forth in Tables 2 and 3, which compare medical schools with law schools.[25]

FULL-TIME SCHOOLS OF LAW AND MEDICINE

Study of these tables reveals certain resemblances, but also certain dissimilarities, in the extension of medical and of law courses. Table 2 shows that, in 1909–10, 112 full-time medical schools and 50 full-time law schools did not require for admission any work in a college of liberal arts and sciences; each figure represented approximately 80 per cent of the total number of full-time institutions. In each profession there were a few schools that required a single year of college for admission and a few more that required at least two college years. To-day only six full-time schools of medicine and only three of law fail to require college work. No full-time school either of medicine or of law now requires only one college year; the number that demand two college years or more has increased as follows: In medicine, from 16 in 1909–10 to 74 in 1925–26, and to 75 in 1928–29; in law, from 8 in 1909–10 to 65 in 1925–26, and to 75 in 1928–29, the same figure as for full-time medical schools. To this extent recent developments in legal education compare closely, and even favorably, with the progress that has been achieved in medical education.

In addition to entrance requirements, however, two other elements must be considered in computing the total amount of time that is represented by the professional degree. These are the duration of the professional course, measured in academic years, and the amount of time that the student devotes to his studies during this period. In both of these respects there has been a marked difference between the two professions. In medicine the professional course had long been standardized at 4 years, so that the prefixing of 2 years of college work makes a total of 6 years after the high school; 20 schools have come to require either additional college work, or a

[25] 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.

year of hospital interneship, making a total of 7 years; and 3 schools have made both additions, with the result that their students must spend the equivalent of 8 academic years in earning their degree. Quite otherwise is the situation in legal education. The traditional duration of the law-school course is 3 years, making a total, when added to a preliminary 2 years in college, of only 5 years after the high school. The current standards of the American Bar Association do not contemplate either any lengthening of the law-school course proper, or any addition of obligatory office work; nor, in spite of the now sadly congested law-school curriculum and frequent complaints as to the law-school graduate's lack of practical experience, has more than one full-time law school lengthened its residential requirements, and this by no more than a 10-week summer course. An extension of the preliminary college work beyond the required minimum of two years finds greater favor; but at the beginning of the academic year 1928–29 only 14 full-time law schools had already adopted this method of advancing beyond the 5-year level (which no less than 75 medical schools had passed), and only 4 more had announced their intention shortly to do so.

CONTRAST AS REGARDS TOTAL NUMBER OF SCHOOLS, ESPECIALLY OF THOSE OFFERING PART-TIME WORK

The third element that must be considered in computing the time value of a degree—namely, the amount of time that the student devotes to his studies while in the professional school—is intimately related to the change that has recently occurred in the total number of schools. Here there is an even greater contrast between the medical and the legal professions. Table 2 shows that since 1909–10 the supply of full-time medical schools has diminished by 55 (a loss of more than 40 per cent), while the number of full-time law schools has increased by 14 (a gain of more than 20 per cent). Table 3, which covers schools that offer work intended for self-supporting students, either exclusively or in connection with full-time divisions, shows an even more striking discrepancy. In 1909–10 there were only 4 such medical schools, all of which subsequently either died or changed their classroom sessions to the regular working hours of the day. At this date, there were already, however, 60 part-time or "mixed" law schools, and the number has increased since then by 35 (a gain of 58 per cent). If the figures in the two tables be added, it will be found that the total number of medical schools, either full-time or part-time, has shrunk from 140 to 81, while the total number of law schools has increased from 124 to 173.

The reason for the diametrically opposite trends in the two professions lies in the nature of their activities. Medical science in-

volves laboratory work of a sort that can not conveniently be prosecuted in the evening, and there is relatively little reason why "poor boys" (other than those exceptional individuals who can surmount all obstacles) should become physicians. Hence institutions that schedule their classroom instruction during evening hours, in the special interest of self-supporting students, never became a real complication in medical education. The low-grade medical schools were for the most part already of the full-time type. Progress has naturally taken the form of improving some of these, of abolishing the rest, and of either transforming into full-time schools or abolishing the few anomalous part-time institutions. Legal education, however, as currently conceived, involves nothing that can not be taught during the evening, and social and political considerations make it imperative that the diverse economic strata of our population shall be not unequally represented in the governing class of lawyers. Hence for many years evening or part-time law schools or divisions have abounded, and because of their very abundance had come to include, in 1909–10, the greater number of irremediably low-grade institutions. The full-time law schools of that date were in many cases very primitive, and sadly in need of improvement, but as a group they did not call for the drastic weeding that was required in the case of full-time medical schools. The group of part-time law schools contained a much larger number that should have been, if not uprooted, at least radically transformed. The reason why this has not occurred is the inadequacy of the remedy proposed by the supervising agencies—the attempt to offset the smaller amount of time that self-supporting students can devote to their studies while in the school by making them stay in the school longer.

RESULTS OF THE CURRENT POLICY WITH RESPECT TO PART-TIME EDUCATION

Undeniably the attempted application of this remedy has greatly improved part-time law schools. The comparative classification of quantitative requirements that is presented in Table 3 reveals this at a glance, and may be further summarized as follows:

In 1909–10, 53 out of 60 part-time law schools or divisions of "mixed" law schools, or a trifle over seven-eighths, required for the degree 3 years after the high school, or less.

In 1925–26, 67 out of 92, or nearly three-quarters, required 4 years or more.

In 1928–29, 79 out of 95, or 83 per cent, required as long a period as this, and no less than 51 schools, or well over half the total, required at least 5 academic years.

If the time element has any bearing upon the value of the degree, this general lengthening of the part-time law course must be counted as clear gain.

On the other hand, the present standards of the Council on Legal Education call for at least 2 college years, or their equivalent, followed by at least 4 years of professional work, or a total, after the high school, of not less than 6 academic years. The same table shows that only 28 part-time or "mixed" institutions, or less than 30 per cent of the total, even pretend to fulfill this requirement. These 28 schools reported, for 1927–1928, 6,232 students, or less than one-fifth of the total of 32,517 enrolled in such institutions, shown by Table 4. As late as December 31, 1928, none of the 74 exclusively part-time schools, and only 6 of the 21 "mixed" schools, with a total enrollment of fewer than 2,400, had been approved by the Council on Legal Education as complying with the full set of standards. These figures compare with 60 full-time law schools (77 per cent) and 72 full-time medical schools (90 per cent) that have been fully approved by their respective councils.

With sustained effort on the part of the American Bar Association and its council, a much better showing will soon doubtless be made; and this development is salutary, so far as it goes. The requirements of part-time law schools, both for admission and for graduation, were in 1909–10 entirely too low; it is well that there should be a gradual increase in both respects. But there is not the slightest prospect that the continuance of this movement will establish evening or late afternoon law schools on a parity with good full-time schools. Instead, the tendency of the movement is to relegate to a definitely lower educational plane these politically indispensable institutions.

The chain of reasoning by which the present policy of the American Bar Association toward evening or part-time law schools could be supported would run as follows:[28]

First, so long as students devote to their studies approximately the same total of working hours, it makes no difference how long or how short is the course of instruction leading to the degree, or how much or how little is demanded of students during any particular week or year. The handicap under which self-supporting students labor, of being able to devote to their law studies only a relatively small number of hours during any one week or year, can be overcome by the simple device of increasing the number of weeks or years.

[28] The council of the section of legal education and admissions to the bar of the American Bar Association, to whom proofs of this chapter were communicated, passed a motion, at their meeting of Jan. 4, 1930, expressing "disapproval of the expressions therein contained so far as they relate to the actions and positions of the section of legal education of the American Bar Association."

Second, it is assumed to be practicable to lengthen the course of study pursued by self-supporting students sufficiently to produce the quantitative equivalence desired. The total number of working hours that such students devote to their studies can by this means actually be made to equal those that a good full-time student devotes to his studies during not less than five academic years after the high school.

Third, an extension of the present standardized 3-year full-time law course to four years, or a little more, for part-time students, with uniform entrance requirements, is deemed sufficient to produce the desired result.

This chain of reasoning is weak in every link, and in its practical application can have no other effect than to confirm the present reputation of evening law schools as inherently second rate. However greatly they or other part-time law schools may be improved by this policy, they are placed in a position of permanent inferiority to good full-time institutions. Condemned to aspire to a standard that in the nature of things they can never reach, they are then appraised on the basis of their assured shortcomings. Indeed, it is doubtful whether this method of attack will even lessen the gap that to-day exists between the education provided by the best full-time and by the best part-time law schools. For the leading full-time schools themselves stand in need of improvement, and notably, if they can not abandon part of their burden to other institutions, may be obliged to lengthen their own law course. One of the considerations which makes them unwilling thus to relieve the present congestion of their curriculum is that any such step would tend to divert students into night law schools. Thus each type of school hurts the other.

The tacit assumption, which underlies the whole contemporary movement to raise the standards of legal education and injures the interests and the reputation of all law schools, of all law school students, and of the entire profession into which they feed, is that an organization of the legal profession which was appropriate to a pioneer agricultural community should be carried over unchanged into our present highly specialized commercial age. The notion persists that the vast responsibilities of legal practice, in our present complex civilization and under our present confused system of law, can still be adequately discharged by general practitioners, possessing uniform privileges and admitted to practice after passing uniform tests. A natural outgrowth of this traditional attitude is the setting up of a uniform set of standardized requirements to which all law schools are expected to conform. An inevitable consequence is the classification of law schools on the lines of better

or worse, rather than of the functions for which they and their graduates might be specially qualified.

TABLE 2.—*Full-time medical schools and full-time law schools, classified according to the minimum time required, after completion of a high-school course, to secure the degree*

Academic years required	Medical schools			Law schools		
	1909–10	1925–26	1928–29	1909–10	1925–26	1928–29
8 years:						
3 or more years in college, followed by 4 years in medical school, followed by 1 year in hospital	-------	3	3	-------	-------	-------
7 years:						
2 years in college, followed by 4 years in medical school, followed by 1 year in hospital	-------	9	8	-------	-------	-------
3 or more years in college, followed by 4 years in medical school	4	11	12	-------	-------	-------
6 years:						
2 years in college, followed by 4 years in medical school	12	51	52	-------	-------	-------
3 or more years in college, followed by 3 years in law school	-------	-------	-------	5	11	14
5 years, or a little over 5 years:						
1 year in college, followed by 4 years in medical school	8	-------	-------	-------	-------	-------
2 years in college, followed by 3 years or (in one case) 3 years and 10 weeks in law school	-------	-------	-------	3	54	61
4 years:						
No college work, followed by 4 years in medical school	112	5	6	-------	-------	-------
1 year in college, followed by 3 years in law school	-------	-------	-------	4	5	-------
2 years in college, followed by 2 years in law school	-------	-------	-------	2	-------	-------
3 years	-------	-------	-------	31	5	2
2 years	-------	-------	-------	18	-------	-------
1 year	-------	-------	-------	1	1	1
Total	136	79	81	64	76	78

TABLE 3.—*Part-time medical schools and part-time law schools or divisions, classified according to the minimum time required, after completion of a high-school course, to secure the degree*

Academic years required	Medical schools			Law schools		
	1909–10	1925–26	1928–29	1909–10	1925–26	1928–29
8 years:						
3 years in college, followed by 5 years in professional school	-------	-------	-------	-------	-------	1
7 years:						
2 years in college, followed by 5 years in professional school	-------	-------	-------	-------	1	1
6 years:						
2 years in college, followed by 4 years in professional school	-------	-------	-------	-------	12	26
5 years:						
No college work, followed by 5 years in professional school	-------	-------	-------	-------	1	5
1 year in college, followed by 4 years in professional school	-------	-------	-------	2	1	5
2 years in college, followed by 3 years in professional school	-------	-------	-------	-------	3	13
4 or 4½ years:						
No college work, followed by 4 or (in 1 case) 4½ years in professional school	4	1	-------	5	37	24
1 year in college, followed by 3 years in professional school	-------	-------	-------	-------	12	4
3 years	-------	-------	-------	34	18	11
2 years	-------	-------	-------	18	7	5
1 year	-------	-------	-------	1	-------	-------
Total	4	1	-------	60	92	95

TABLE 4.—*Number of law schools, and attendance at law schools, classified as full-time, part-time, or mixed*

Schools	1909–10		1925–26		1928–29		1909–10		1925–26		1927–28	
	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 only	49	39	75	45	74	43	6,036	31	16,818	38	17,253	33½
Mixed	11	9	17	10	21	12	3,444	18	12,365	28	15,284	31½
Total offering part-time work	60	48	92	55	95	55	9,480	49	29,183	66	32,537	65
Full-time only	64	52	76	45	78	45	10,018	51	15,157	34	16,068	33
Grand total	124	100	168	100	173	100	19,498	100	44,340	100	48,605	100