THE ORGANIZATION OF LEGAL EDUCATION IN ONTARIO.

The only error of fact which I have been able to find in the Report of the Special Committee on Legal Education in Ontario, is a minor rectification of figures, which in no way affects the argument. On the basis of information published two years ago in the Carnegie Foundation's Annual Review of Legal Education, it is stated (on page 5) that the standard of two years in Arts for admission had apparently been adopted by only 11 of the 48 American states. Since then, five additional states have established this standard, in terms (including Massachusetts, where the requirement does not take effect until 1938). Moreover, two other states—Pennsylvania and Connecticut—have a requirement which, in its practical operation, is at least equally rigorous. The present total, accordingly, of states which, presently or prospectively, have committed themselves to a standard as high as this, is 18, out of 48.

Since the Report, as a whole, involves matters of opinion rather than of fact, it would seem in good taste for one who is not himself a native of Ontario to refrain from expressing his own views. It will be more helpful to reveal, as objectively as possible, the extent to which the concept of legal education held by the Benchers differs from that which prevails in other Canadian provinces, in the United States, and in England. The most convenient method of presenting the information will be to arrange the jurisdictions in something like serial order, beginning with one extreme and ending with the other. This plan will be followed merely in the interest of clear exposition. It is not an attempt to prejudge the case, by suggesting that extremes are always bad, and a middle-of-the-road policy always preferable.

In four American states there are no educational requirements for admission to the Bar, other than ability to pass a bar examination; and in two of the four even this requirement is waived in favour of students who graduate from one or more specially favoured local law schools.

In two states, there is a requirement of general education, but no attempt to restrict the manner in which the applicant pursues his law studies. In one of these, graduates of the local law school are favoured as before.

In thirty-one states and in the District of Columbia the student's preparation is controlled to this extent, that at least

he must produce evidence of having studied law during a certain number of years—usually three—before he takes his Bar examination. In nearly half of these cases (14 out of 31) law school study is encouraged, at the expense of office study, by requirements that office students must devote a longer period of years to their preparation, or a greater number of hours per week, or in both these ways; and as before in particular states graduates of particular law schools are exempted from the Bar examination. In most cases, however, it is a matter of indifference to the authorities whether the applicant has secured his preparation in a law school, in a law office, or partly in one and partly in the other. Vermont, on the Canadian border, is peculiar in establishing a slight differential in favour of students who have both school and office training.

To summarize the requirements up to this point, in 38 out of 49 American jurisdictions there is no positive requirement as to where the applicant shall receive his legal preparation. If in a law office, he is never under articles. Under these conditions, the superiority of a law school course to unsystematic and unsupervised work in a law office seems manifest, and Bar examiners frame their examination papers under the influence of law school curricula. A libertarian attitude makes, accordingly, for a multiplication of law schools, sometimes of doubtful merit, even when this type of education is not actually encouraged.

We now come to a group of sixteen American or Canadian jurisdictions in which the rules for admission to legal practice are somewhat more restrictive in that every applicant is required to spend a certain amount of time in a particular *type* of institution. In six American states, it is law school work which is thus favoured (in two instances, with additional exemption from examination for graduates of particular schools). In five American states (Rhode Island, New Jersey, Pennsylvania, Delaware, and Texas) and in four Canadian provinces (the three Maritime provinces and British Columbia outside of Vancouver) it is office work which is thus favoured. Saskatchewan insists upon a combination—three years in a law school followed by one or two years in a law office. Still, it will be noted, there is no attempt to compel the future lawyer to attend any particular law school.

Proceeding in as nearly systematic order as is practicable in describing widely variant systems, we come now to the requirement that for admission to the English Bar a certain

number of dinners must be eaten, during successive terms, at the Inns of Court. This means that the student is loosely attached to a particular institution which once was a law school. It is not now a law school, however; and for those who can afford to pay for transportation back and forth, the requirement does not prevent attendance at any law school in England. But the student is under no obligation either to attend any law school, or to "read in chambers" under a practising barrister. Despite mediæval survivals, including occupational and social disqualifications, in its purely educational aspects the system approximates the extreme libertarianism which characterizes most American states.

Three additional instances of what might be termed "loose moorings to particular posts" appear in Canada. All applicants in Quebec, Manitoba (outside of Winnipeg), and Alberta must serve some time under articles. They are not required to attend any law school, but if they wish to do so (as of course most of them, subject to financial considerations, do), it must be a law school located in the province. There are three law schools in the Province of Quebec, and one each in Manitoba and Alberta.

Now, finally, we come to what, continuing the metaphor, may be described as "tight moorings".

English solicitors must not only serve under articles, but must attend a law school for at least one year. There are now twenty-one law schools in England, for the most part connected with universities, but it is clear from Lord Atkins' Report on Legal Education (July, 1934) that there is no intention to give the prospective solicitor any corresponding freedom of choice. The Report declares that "practical study of the profession in the ordinary work of the office" is the obvious and primary object of an articled clerkship; that "no substantial interference could reasonably be requested", that "it would be unreasonable to allow absence from the office for residential qualification at a university away from the office town, and that the final discretion in such matters must rest with the clerk's principal" (page 18). In a word, anyone who wishes to become an English solicitor must serve his articles in or near some one of the twenty towns or cities (London has two) in which law schools exist; and his law school tasks must not be so exacting as to interfere with the work of his office principal.

Manitoba and British Columbia have adjusted this same theory of legal education to the needs of a thinly settled province in which only a single law school has been organized. Students

who reside in Winnipeg or in Vancouver—but, as indicated above, only such students—are obliged to attend the local law school. This is conducted, in Winnipeg, as in certain English provincial towns (Birmingham, Liverpool) jointly by the Law Society and the local University. In Vancouver it is conducted (as, again, sometimes in England) by the Law Society alone.

Ontario goes even farther when it insists that, in addition to serving an articled clerkship, all applicants, no matter where they reside, must during three years attend the lectures of the law school conducted by the Law Society in Toronto.

The foregoing comparative survey should help to explain certain features of the Special Committee's Report which would otherwise be inexplicable to those who have a different fundamental conception of legal education. Such critics experience some initial difficulty in understanding the lack of sympathy with general education revealed in the recommendation (page 5) that Ontario should continue to have lower requirements for admission to the status of student-at-law than any other Canadian province. They wonder at the recommendation (pages 7-8) that, through a shift and reduction of the hours of classroom instruction, the work of the law school should be subordinated, even more than it now is, to the work of the law office. Influenced by traditions of academic freedom, they are likely to become positively emotional when they read (page 10) that even the details of school administration and teaching methods are to be conducted under the close supervision of the Benchers.

Yet a moment's thought should show that such criticisms, even if valid, are misdirected. The conception of legal Education which is formulated in the existing statutes and Law Society regulations of Ontario may or may not be sound. On this question I entertain views which I do not here express. I go no farther than to point out that the recommendations of the Special Committee on Legal Education impress me as being in entire harmony with the spirit of the rules. They are a logical outgrowth of convictions which have been implanted and nurtured for many years in Ontario soil. I think that all who discuss these recommendations should begin by agreeing upon this truth. Then they can decide, as they will, what, if anything, should be done about it.

ALFRED Z. REED,
Staff member in charge of the study of legal Education, for The Carnegie Foundation for the advancement of Teaching.

New York.