# SOME PHASES OF AMERICAN LEGAL EDUCATION.[1]

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It is within the limit of conservative statement to say that the development of systematic law study in the United States is one of the most interesting and remarkable chapters in the entire history of education.

Roman law has been for so many hundreds of years traditionally a university study, especially in England and on the European continent, that one finds himself at the outset under the necessity of accounting for the fact that our English common law and equity did not in any proper sense become the subject of university study until the latter part of the 19th century, and that then the first step was taken in an American university. It is true that James Kent, following the example of Blackstone, at Oxford, began in 1823, at Columbia College, the remarkable series of lectures which ultimately ripened into his Commentaries on American Law, but his lectures, as were Blackstone's, were soon discontinued. It was not until 1858 that Columbia organized a school of law for the training of lawyers under the leadership of Theodore Dwight.

In the meantime Harvard College had established a law school under the leadership of Story, which was continued as the Dane Law School under the direction of Parker and Parsons. In the case of both the Columbia and Harvard schools in these early days, with all due respect to the great service they rendered in their time and generation, they were rather loosely related to the University; and, judged by present-day standards, they resembled trade schools rather more than our present-day university law schools, in which

[1] This paper was read by Dean Stone before the Ontario Bar Association in 1922.

emphasis is placed on the study of law as a science by the methods of scholarship and research applied generally in university studies.

The reason for this tardiness in occupying a field so worthy of the enterprise of scholarship in contrast with the treatment of Roman law by the universities, is easily accounted for. The Roman law was transmitted to Western Europe through the mediæval universities. From the chaos which followed the fall of the Roman Empire, the universities gathered up and preserved for Western civilization the learning of the Roman law system, and when, with the revival of trade and the stimulation of every form of commercial activity, the peoples of western Europe found their own customary local law too crude and imperfect for their purposes, they turned to the universities as the repositories of knowledge of a legal system suited to their needs.

Hence it is that the civil law system of the European continent is directly a re-creation, organized, developed and expounded by the universities. But in England the development proceeded along different lines and for reasons readily understood. There the trade revival came more tardily and progressed more slowly. Hence the need for a developed system of law did not outstrip the resources of the local common law. But what was more important, the operation of those mysterious forces which originate and give direction to the development of the great races of the earth, guided the evolution of a people who had a genius for law equal to that of the Romans; and their genius found expression in law which has been forged between the hammer and anvil of opposing counsel in the course of the trial of actual controversies in court.

It is this process of generating law from facts proven in litigation which has given the common law its adaptability and vitality, and its capacity when brought into contact with other systems of law to supplant them; and it is the emphasis on this process

which has made us so tenacious of the tradition of the apprentice-trained lawyer.

Hence it is that in England for some six centuries the universities went on teaching Roman law as one of the great branches of human knowledge, while the courts went on building up and elaborating an even greater system of the common law without any very direct assistance from the universities. And during all this time the lawyer acquired his knowledge of the principles of his art mainly in the workshop of the courts, just as during the same period the votary of the mechanical arts acquired his knowledge and his technical skill in the forge and in the factory.

This is the tradition which the English colonists brought with them to your country and to mine, a tradition which has been singularly persistent in both, but perhaps even more so in Canada than in the United States, and which in both countries has coloured all our thinking on the subject of legal education.

But just as the science of Engineering can no longer be taught in field and workshop, but must be subjected to the processes of scholarship in order that the student may acquire a mastery of it, so more and more we are finding that the great body of law which our common law and equity systems have developed, can be adequately mastered and understood only by means of academic study, aided by the services of a highly trained and specially skilled pedagogy. This change in educational procedure is to be attributed mainly to two factors. First, inherent in the law itself, is the tendency of case-law to beget law and to increase in volume and complexity as our social organization becomes more complex. And then there is the tendency of all law when applied in a wide territorial area to develop local variations and special doctrines in order to adapt itself to local situations.

Kent, in the United States, first turned our attention toward the treatment of law as a science, when by his lectures and his commentaries he made it clear that our law was something more than a conglomeration

of empiricism and that it could be classified and reduced to orderly statement with reference to its underlying principles and doctrines. But it was our rapid social and economic development during the latter half of the nineteenth century and the stimulating effect of the establishment of forty-eight jurisdictions independent of each other so far as the application of the great body of the law is concerned, which have expanded our law and added to its complexity, and which have finally brought it into the universities as a legitimate and necessary subject of university study.

It has been brought there because of the practical need of better professional training; hence law study in our law schools has hitherto had as its main objective the more thorough and more scientific training of students who expect to become lawyers, but one can now begin to discern in the better American law schools a tendency toward the development of another important function, that of systematically contributing to the movement toward law simplification which has been made inevitable by the growing complexity of law and the enormous growth in the mere mass of material from which we must draw our knowledge of precedent.

The same causes will, I believe, develop the same tendencies in your country, if indeed, they are not already doing so. You have in Canada a number of jurisdictions not independent in the matter of law making and administration in the same sense that our States are, yet with sufficient autonomy, especially in matters of legislation, to produce the development of local variations of law grafted upon the common stock of law inherited from the mother-country. You are destined, too, to have here a social and economic development on a large scale, bringing with it a corresponding amplification and complexity of your law.

It is because I believe you are to have an experience in many respects similar to ours, that I was eager to avail of this opportunity to tell you what our experi-

ence has been, in order that you may gain some acquaintance with those features of our system of legal education which we believe to be a contribution to progress; and, on the other hand, that you may profit by our experience in avoiding some of the errors into which we have fallen.

It is only human nature for one to prefer to speak of his successes rather than his failures, and hence it is that I shall comment first on some features of our educational system in which I feel that we may take a justifiable pride before I refer to those mistakes which you will do well to avoid.

The step which I think most of those familiar with legal education in the United States would regard as most important in the direction of progress is the organization of the full time university law schools with university ideals of scholarship, as affording the best means for training for the bar and making an important contribution to future law improvement.

The noteworthy features of these schools are; first that their faculties are made up for the most part of men who devote their whole time to their duties as university teachers of law and who have deliberately chosen this work as their vocation in life. Most, although not all, of them have had experience in active practice. Many of them on occasion write opinions and argue cases in the Appellate Courts. A large number of them aid in the work of drafting legislation and in the activities of bar associations and contribute to the current discussion of law published in the law journals, but all of them regard these activities as merely incidental to their chosen careers as university teachers of law. Second, the work of these schools is so organized and conducted as to absorb the students' full working time. Lectures are distributed throughout the day and class-room work and examinations are of such a character that the students find it necessary to work in the Library during the intervals between lectures. At our own school, for example, we have lectures during every working hour of every working

day of the week, except Saturday afternoons and one hour on Tuesday, which is reserved for general university meetings. During the present term we offer 74 different lectures to our students in each week. The students in attendance at the schools have had in varying degrees some liberal training in educational institutions of the college grade. The students at Columbia, Harvard, and Pennsylvania, for example, are practically all college graduates. During the present year, 125 colleges and universities in the United States and foreign countries including Canada, are represented in the student body of our own law school. Third, all students of these schools are required to pass written examinations in the subjects in which they are registered before receiving their degrees. It is settled practice that the questions on these examinations are to be made up of problems such as may actually arise in practice. They do not call for or admit of answers stating formal legal rules in general terms. The student in writing his answers is required to make his decision as to how each case should be decided and then to support his decision by the kind of legal reasoning which would be of weight in court, in a brief or argument. Of course a decision not thus supported by the reasoning is given no credit in marking the paper. Fourth, these schools are equipped with very complete libraries, some of them embracing substantially all the legal material of the English speaking world, and in addition very considerable collections of foreign law. In our own library we now have about 100,000 volumes, all law books, in addition to works on history, political science and related subjects. Fully 25,000 of these volumes are directly accessible to stuents. Our main reading room affords accommodation for 400 students working at once. The Harvard Law School has an even more extensive library. Fifth, an important feature of the educational work of these schools is the publication of journals or magazines devoted to the exposition of legal science. These are usually made up of leading articles contributed by jur-

ists who are often not connected with the school publishing the journal, and by notes or comments on current judicial decisions and legislation of a critical and scholarly character, prepared in the school itself. This part of the Columbia and Harvard law reviews is the work of a board of student editors, and I think those schools may very justly point to this feature of their law reviews with some pride as indicating the character of their educational work.

The notes and leading articles of the law reviews published in these schools are frequently cited in judicial opinions, and are more and more resorted to by lawyers as aids in the preparation of briefs on difficult or unusual questions.

A second great step was taken in the development of American legal education when first the leading law schools, and later practically all of the university law schools, discarded the lecture and text-book method of instruction. If we could once place ourselves in the mental attitude of discarding those beliefs which come from long and habitual practice of this method in our educational institutions, I think we would frankly admit that the formal lecture, as a leading method of imparting knowledge or stimulating thought, should have become obsolete with the invention of the printing press. What can be formally stated in lectures can be placed in the hands of the student in printed form for intensive study and comparison. At its best the formal lecture as a medium of imparting knowledge is inferior to the printed page, and as a method of assisting the student to organize and master the results of an investigation requiring close and accurate thinking it is a weak and inefficient instrument too often, as Mr. Justice Holmes has said, "sending forth students with nothing but a rag-bag full of general principles, a throng of glittering generalities, like a swarm of little bodiless cherubs floating at the top of one of Correggio's pictures."

The aim of instruction in any social science must go beyond the mere imparting of information; it must

stimulate the student's intellectual powers by developing his capacity to grasp and analyze its complex problems and his facility in applying his knowledge to new and varied situations as they arise. To this statement law certainly constitutes no exception.

As satisfying these requirements practically all American law schools following the lead of the Harvard Law school, have adopted the so-called case method of instruction. Time will not permit of any detailed exposition of this method on this occasion. Those who are interested in the subject will find a most enlightening discussion of it in a bulletin of the Carnegie Foundation, prepared by Dr. Joseph Redlich, the eminent publicist of the University of Vienna. Dr. Redlich visited the United States in 1913 at the request of the Foundation and made here an exhaustive historical and practical study of this system which he embodied in a very remarkable educational document entitled: "The Case Method in American Law Schools." I can also commend very highly a recent article dealing with this subject, by Professor J. T. Hébert, entitled, "An Unsolicited Report on Legal Education in Canada," and published in the *Canadian Law Times*, Vol. 41, p. 593, ff.

Suffice it to say at this time that the case method is not, as some of its critics appear to believe, a method of "learning law" by the memorization of the facts and doctrines of leading precedents. It is a method of law study in which emphasis is placed on the student's gaining his knowledge of legal principles by his own efforts from the original sources in judicial opinions and in which the mere acquisition of knowledge is subordinated to the development of the student's capacity to deal with the material with which the lawyer deals when he prepares an opinion or briefs a case. In short, it is the capacity to analyze facts and to assign to them their proper value in applying legal rules to them, and to extract from judicial opinions those underlying principles which give to the law its dynamic force.

The steps in the application of the case method are

three. The student, before attending a lecture is required to read and digest a group of judicial opinions, especially selected with the purpose of developing some phase of legal doctrine. In class the students are called upon to "state" the cases which they have read, that is, to state the essential facts of the case, the actual decision of the court and the reasoning of the court in support of its decision. The students are then expected to participate in an active discussion of the cases previously stated, guided and stimulated by the instructor by the Socratic method of question and answer. In the course of the discussion the legal doctrine of each case is subjected to criticism and comparison, and finally the student is expected after the class to systematize his class-room notes, to read cases cited in the lecture room discussion and to organize in systematic fashion the knowledge which he has acquired by the combination of extra class-room reading and class-room discussion. The result of this process is that the student acquires an exceptional knowledge of the origin and development of legal doctrine and, what is perhaps even more important, whatever thoughts he may have on the subject of his study are his own intellectual children and not the adopted progeny of another. Study and class-room work of this type develop independence of thought and extraordinary powers of analysis and facility in the application of legal rules to cases as they arise. The very intensity of the study and the constant comparison of cases, actual and supposititious, suggested by the instructor in the application of this method, stir the interest and enthusiasm of the student beyond the possibility of the necessarily more superficial lecture or instruction from text-books.

The weaknesses of the system are that ground cannot be covered as rapidly by it as by the use of the formal lecture or text-book, and the actual handling of the method requires a special skill and higher order of ability on the part of the instructor than does the formal lecture where the instructor's dogmatic state-

ments are not subjected to critical examination and discussion in the lecture-room. The universal testimony of those who have studied the actual working of the system is that its very obvious advantages outweigh its disadvantages. If the proof of the pudding is in the eating, it is significant not only that the method has been very generally adopted in American law schools, but that the important law offices, without exception in New York City, and so far as I know elsewhere, in the United States, insist upon having apprentices and clerks who have been trained by this method.

The product of this type of university school constitutes in increasing measure the intellectual leadership of the Bar of the United States, and the growing influence of these schools through their teaching and by the contributions of their individual instructors to legislation and to current discussion of legal science are recognized factors which make for law improvement.

But when one turns to some other phases of our system of legal education in the United States, he will not find them in all respects sources of satisfaction. A generation or more ago practically all candidates for admission to the bar received their training in the traditional way, by serving an apprenticeship in a law office. After serving the necessary period of apprenticeship they were required to pass bar examinations supervised by the courts or official boards of Bar examiners. In the latter part of the 18th century, the requirements for preliminary, pre-legal education and the period of legal study were more exacting in Massachusetts and New York, for example, than they are to-day, but the sweep of Jeffersonian democracy over the country in the latter part of the first half of the 19th century brought a reaction against the Bar, as an aristocratic institution, a reaction which found expression in the lowering or abolition of the Bar admission requirements and the establishment of the system of selecting judges by popular elections.

Consequently until about 35 years ago, admission to the Bar in the United States was perfunctory, requiring little or no preparation beyond the service of a comparatively short apprenticeship in a lawyer's office. Under the most favorable conditions, the attainments of the office apprentice, other things being equal, were inferior to those of the average graduate of a modern law school. Nevertheless, the office apprenticeship contributed some elements to the training of the lawyer which no other experience could adequately supply. It required persistence and stability of character to travel to the Bar by that road and intimate contact with older lawyers brought to the apprentice an acquaintance with the traditions of the Bar and the ideals of the lawyer which were of distinct educational value. It was a kind of experience which stimulated the corporate spirit of the Bar and tended to uphold its best traditions.

But whatever its merits, this method of training for the Bar in the United States has passed, probably never to return. This is partly due to the general recognition of the superior advantages of the law school, on its scholarly and intellectual side, over office training as a preparation for the bar, but mainly, I believe, to changes in the character of law office organization. Stenography and the typewriter have deprived the apprentice of the experience which he once gained in the preparation and copying of pleadings and other legal documents. Our enormous business and economic expansion since the Civil War has changed the character of professional practice in many ways. Especially has it changed office organization, giving to it many of the aspects of a business organization, and the high pressure of modern business and professional life have left little leisure or opportunity for the partner in a busy law firm to act as preceptor to his juniors. The result is that in urban communities the office trained lawyer is a rarity. Among the young men at the Bar that method of preparation is much less frequent in country districts than it was even a few years ago.

In 1919, for example, which is the latest available record I have, out of 716 applications for admission to the Bar of the State of New York, all but twenty-three applicants had attended law school. According to the Board of Bar Examiners some of the twenty-three may have had such attendance but filed no proof of it, relying on their office apprenticeship as sufficient to qualify them for admission to the Bar examinations.

Concurrently with this change in method of preparation for the Bar has come a revival of interest in more exacting standards for admission to the Bar. But hampered by the democratic tradition that the Bar must be kept within reach of the great mass of the people, this revival has not been carried in any State beyond the requirement of a bare high school training and a Bar examination, which judged by the standards of university law schools are mere tests of a memorized knowledge of formal rules and the minutiæ of statutes, rather than of knowledge and capacity to apply legal principles. Members of boards of Bar examiners in many States, until recently, have often not had the benefit of thorough legal education, and their experience at the Bar has not been of such a character as to fit them for the important work of judging the qualifications of prospective members of the Bar.

These two important changes coming as they have almost concurrently, have had certain evil consequences from which the American Bar is suffering and will continue to suffer for generations to come. The decadence of the law office as a training school for lawyers, accompanied by the establishment of the low grade Bar examinations, created a real opportunity for the low grade law schools. Following 1890 schools of this type sprang up like mushrooms in every part of the country. Many of them are purely private commercial enterprises organized for profit. They usually have no entrance requirements beyond a meagre high school training and often less; their educational stan-

dard rarely rises above the level of the Bar examinations; their library and equipment are usually inferior; and they are without recognizable professional or educational ideals. Their instruction is usually given at night or late afternoon, so as to enable their students to engage in other occupations during the business hours of the day. Formerly this arrangement was justified as affording opportunity to their students to gain practical experience in a law office while studying in a law school, but the recently published report of the Carnegie Foundation on legal education discloses the fact that this freedom during the day time is not availed of for that purpose, the greater number of their students using their time for occupations wholly unrelated to law study or preparation for the bar.

A recent survey of the administration of criminal justice in Cleveland revealed the fact that students in the night law schools in that city were attending high school by day and law school at night, blossoming out at the conclusion of their studies as full fledged attorneys and counsellors-at-law. Incidentally, it may be mentioned that the scandalous condition of the administration of criminal justice in the inferior criminal courts in Cleveland disclosed by that survey seems to be in part, and a very important part, attributable to the inferior quality of the lower strata of the bar practicing in those courts, and recruited from the students of this type of school. The aim of the low grade school has been to make admission to the Bar so easy and expeditious as to attract to them large numbers of students who, in consequence, have neither the capacity nor the educational background to meet the requirements of a thorough professional training. It is, I believe, common observation that many young men find their way into these schools, and through them into the Bar, whose mental and moral qualifications would not have been sufficient under the old system to have gained them admittance to any reputable law office as an apprentice.

Between the period from 1890 to 1916 the number of law schools in the United States increased from 53 to 125 or at at the rate of three new schools a year. Of these 125 schools only 48 comply with the comparatively low educational standards required of members of the Association of American Law Schools. During the period from 1901 to 1916 the number of students in Association schools increased from 7,540 to 9,523 or 24 per cent. Students in non-association schools, many of which were established in this period, increased from 6,705 to 13,630 or more than 100 per cent.; in other words, the increase in number of students in the distinctly low grade schools had been more than four times as rapid as the growth in number of those of relatively higher grade, although not necessarily of exacting educational standards. As a result of the tendencies indicated by these statistics we have been actively diverting large numbers of young men from trade and business into the law for which they have neither the natural aptitude nor adequate training. We have been depriving the world of the services of mechanics, tradesmen, and salesmen for which it had some need, in order to create an over-supply of inferior lawyers. This is an economic waste and an injury to the individual and to the public, which is entitled to the services of a well-trained Bar, whose members are worthy of public confidence and respect.

In this process of inundating the Bar by the unfit, immigration in the twenty years preceding the last war has played a conspicuous part. Immigration during that period brought to our shores hundreds of thousands of young men coming from southern and eastern Europe, most of them hard working and ambitious, but with no acquaintance and often little sympathy with Anglo-American institutions, and sometimes with moral standards differing from those which have prevailed in Anglo-American communities. They find that membership in the Bar, a position of dignity and importance, difficult of attainment in the countries of their origin, may be secured in this

country with comparatively little effort by a brief period of study in a part time law school. It is not surprising therefore that they eagerly grasp at a prize so easily won. According to the census before the last, out of a total of 10,563 male lawyers in New York City more than 15 per cent. were of foreign birth and more than 50 per cent. were either foreign born or of foreign parentage.

I have no later statistics than those quoted, but we know that the number of lawyers in the Greater City of New York has nearly doubled during the past ten years, and my own observations would lead me to believe that the percentage of lawyers who are either foreign born or of foreign parentage has increased rather than diminished, and that the great majority of them have come to the Bar by the easiest and most expeditious route. Members of Character Committees from urban districts are unanimous in their testimony that large numbers of these men who appear before them as candidates have had neither the educational experience nor the associations which would enable such Committees to form any affirmative opinion that they are morally or intellectually qualified to become lawyers. The presence of these men at our Bar is not objectionable merely because of their foreign origin. They are citizens and entitled to the privileges of citizenship. It has been the policy of the United States to welcome the foreigner to its shores. That doubtless will continue to be its policy so far as our foreign population can be assimilated, but that is no reason why we should not require of the foreigner, as well as of the native born, standards of education and an understanding of the spirit of our institutions such as will qualify him to make and administer our laws, if he seeks admission to the Bar.

The result of this pernicious combination of low grade law schools and low grade bar examinations is that the Bar in the United States is in danger of being submerged by a steadily increasing number of men of inadequate preliminary training and technical educa-

tion, who have neither the training nor the traditions which are essential to the maintenance of a Bar which is both competent and dominated by a sense of responsibility to the profession and to the public.

If there is any part of our experience in the United States which should serve as a warning, it is the indifferent attitude of our Bar and our public authorities which has permitted to develop unchecked a system of cram schools for low grade Bar examinations responsible for the condition of affairs which I have described.

And so, my friends of the Canadian Bar, in formulating plans for the development and stimulation of legal training in law schools, as you surely will, I adjure you to beware of creating any educational system under which it can be made profitable to any school or group of schools to prepare men of inferior education, both preliminary and professional, to pass their Bar examinations. With your closely organized bar exercising, through your law society, control of the right to practice, unhampered by our extreme democratic tradition, what is difficult for us ought to be comparatively easy for you. You are in a position to aid and encourage the law schools in your universities which are endeavoring to raise their educational standards; and in this connection an important step will be for you so to modify your requirements for Bar admission so as to permit a candidate for the Bar in any province to qualify in part at least by study at an approved university law school, even though it be located outside the province where he applies for admission. You are in a position to maintain reasonably high standards of admission to the Bar, either by public examinations for admission of high grade, or by the requirement of an apprenticeship or both; although I think in the future your experience will be not unlike ours and doubtless lead to the conclusion that uninterrupted study in a law school is more profitable than a divided allegiance to the law school and to an office at the same time. It is, therefore, quite possible that you may find the requirement of an

apprenticeship or a junior clerkship following law school a desirable feature of your programme for admission to the Bar, and finally it would seem that you are in a position to exercise a controlling influence over the establishment and regulation of all schools offering instruction in law and aspiring to award a degree for law study. If this cannot be done directly, it can be done through the requirement of a Bar examination of such character as to exact thorough and scholarly training of all those who seek to pass it.

The Bar ought to take an active interest in the education of lawyers, and one of the most important steps toward establishing a well-ordered educational system for admission to the Bar is a close alliance between Bar organizations and those schools which are working for the advancement of legal education.

In the United States we are now paying the penalty for our indifference with respect to these matters. The attitude of our Bar and of the public until recently has been that the individual has a right to practice law which cannot be unduly limited in the public interest. Our Bar until the past year has even neglected to say what in its opinion constituted a satisfactory preparation for the Bar and what schools were actually providing such training. The attitude of the organized Bar toward the great university schools until recently has been one of polite aloofness, although the great majority of members of the Bar send their sons to these schools and the large offices prefer to secure their junior clerks from them. In one State there is a constitutional right in every citizen to become a member of the Bar without examination or training for it. In many States the control over Bar admission is vested in the legislature. In others it is vested in the courts, but always with the menace that it may be withdrawn from them by the legislature or the Constitutional Convention if too exacting requirements are insisted upon. At Bar meetings, proposals looking toward higher standards are always met with the argument, apparently regarded in some quarters as

conclusive, that such standards would have excluded Abraham Lincoln from the Bar. Such an argument, of course, ignores the fact that Abraham Lincoln was the best educated man in his community and that no Bar examination ever proposed would at the time it was proposed have kept a man of the qualities of Abraham Lincoln, or any other man really worthy to be a lawyer, from the Bar. The fundamental thesis of the recently published report on Legal Education by the Carnegie Foundation is that the Bar, because of the political function which it performs, "must be kept within the reach of the great bulk of the people."

That the Bar ought not to become a monopoly of a social or economic class may be conceded, but it is quite another matter to say that we ought not to set up barriers to admission to it sufficient to insure to its members the training and character necessary to the performance of that function. The notion that the Bar in the United States or elsewhere will become an undemocratic institution because of reasonably increased educational standards, is a mistaken one. There is no more democratic force in America to-day and none more potent for the preservation of free institutions than our schools and colleges. The members of the student bodies of our great law schools are drawn from every section of society. They meet far more exacting requirements in these schools than any bar requirements. A standard, therefore, which will not exclude competent representatives of all classes of society cannot be rejected on the plea that it is undemocratic.

In the past two years there have been unmistakable signs that there is a growing recognition of the evils which I have referred to and some disposition to correct them. Members of Character Committees and those actively engaged in the work of legal education were the first to point out the unfortunate tendencies of our present system and to urge upon our Bar organizations that they have a responsibility in the premises not lightly to be disregarded. In 1920 the American

Bar Association appointed a Committee to make a study of the matter of legal education and requirements for admission to the Bar. Many similar committees have been appointed by that organization only to make reports that were perfunctory or reports which, if not perfunctory, were destined to be scrapped at the meeting of the Association. The Committee of 1920, however, was headed by Elihu Root, and made up of a representative group of lawyers of distinction, who not only took the duties seriously, but were of sufficient influence to secure a respectful hearing by the entire country. After a thorough study of the situation the committee made to the Association the recommendation that all Candidates for the Bar be required to graduate from a law school complying with the following requirements:—

a. It shall require for admission at least two years of study in a college.

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

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

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

The committee also recommend that the Bar Association through its Council on Legal Education, make a classification of all law schools, "indicating those which do and those which do not comply" with the foregoing standards, and that the American Bar Association call a conference of delegates of all Bar Associations, State, County and City, to consider and act upon the standards of admission to the Bar proposed by the report.

This report was adopted by a large majority at

the meeting of the American Bar Association held at Cincinnati in 1921.

The conference of Bar Association delegates called under the auspices of the American Bar Association was held in Washington, February 24th and 25th of the present year, and was attended by the most representative group of lawyers probably ever brought together in the United States. The meetings were presided over by Mr. Taft, the Chief Justice of the United States, Mr. Root and other distinguished lawyers. The debates were the most interesting and capable discussions of the subject that it has ever been my privilege to hear. In the course of it the name and memory of Abraham Lincoln were made to do service in the interests of low standards of admission to the Bar and low grade type of legal education. An interesting episode was the reading by Mr. William G. McAdoo, who presided at one of the meetings, of an extract from the writings of Jefferson, the High Priest of American Democracy, in which he advocated the adoption of a course of study as a preparation for the Bar far more exacting than the standards proposed by the Root Committee. The conference approved the recommendation of the Root Committee by an overwhelming majority, and the American Bar now stands committed so far as it is possible to commit it under our system to standards of preparation for and admission to the Bar far beyond any requirements that have hitherto existed in any State. No action which the organized Bar can take, however, can actually establish these standards. The power and authority to do this, as I have already pointed out, rests with the legislature or the courts subject to legislative control in some States, and it will require continuous effort and a long campaign of education before the recommendations of the Root Committee will actually find expression in statutes or in rules of court in the majority of the States.

One recommendation of the Committee, however, already made effective by the action of the American Bar Association, will not depend on the action of legislatures for its efficacy and that is the recommendation for the classification of law schools by the council on legal education of the American Bar Association. This procedure was suggested by the experience of the American Medical Association, which about twenty years ago was confronted by a situation in our system of medical education not unlike that which confronts us now in our system of legal education.

The programme of the Medical Association for the improvement of medical education embraced the classification of medical schools according to their equipment, their educational standards and the character of their instruction, as well as a campaign for the raising of statutory standards for admission to practice. Especially noteworthy was the effect of classification of the medical schools on attendance at high standard medical schools in the United States. Between 1904 and 1915 the percentage of all medical students in the United States in attendance at high standard medical schools increased from 6.3 per cent. to 80 per cent. This record presents a startling contrast with the experience of our profession at the very time when, as I have already shown, the increase in attendance at low grade law schools was four times as rapid as that of schools of somewhat higher, although by no means of exacting standards. So that while the medical profession has been raising its standards and elevating the educational attainments of those admitted to the practice of medicine, we have been maintaining lower standards of admission to our profession and we have in fact been going in the opposite direction from the medical profession by actually increasing the percentage of inadequately educated members of the Bar. No doubt the higher standards required of applicants in a considerable number of States for applying for license to practice as physicians and in some cases as dentists and horse doctors, have actively diverted men

from those professions to the more easily attained profession of the law.

The legal profession has now for the first time undertaken to say to the young men of the country what is the minimum required training for a candidate for the Bar who is adequately prepared for his profession and where that training can be obtained. If nothing else were accomplished this step is certain to have an educational influence which would justify all the efforts which have been made to secure some improvement in our present situation.

The experience of the medical profession has been that the inferior medical school could not long survive the public and authoritative statement of the profession that it was inferior. The alternatives open to it were either to improve or to discontinue its activities. Moreover when a profession draws to itself large numbers of students who are without any previous association with the profession their choice of an inferior school is often due to ignorance, quite as much as to their slender financial resources. This has undoubtedly been the case with many students making a choice of a law school. In the United States until the past year the prospective law student, ignorant of the nature of law study and of the requirements of the profession, would have been justified in view of the silence of all our Bar organizations on this important subject in assuming that one law school was about as good as another; that the law school which interfered least with other activities and whose course could be pursued most expeditiously was the school to be preferred. As indicating what might be accomplished by Bar organizations by way of aiding prospective law students, I would especially invite your attention to a pamphlet published under the auspices of the American Medical Association giving advice to prospective medical students. This pamphlet indicates the kind and extent of education, both preliminary and professional, which the student should receive in order to qualify him for his profession. It points out those

features of medical schools which should be specially considered in making the choice of a school and it prints a list of medical schools classified with reference to the presence or absence of these features in each institution. Is it too much to hope that our own profession may some day assume a like responsibility with reference to young men of the country seeking to enter it?

The next few years will, I believe, determine whether in the United States the cult of incompetence masquerading in the guise of a spurious democracy will triump over these well considered efforts to hold our Bar to its best traditions of honorable and efficient service. If we cannot succeed in these efforts and at the same time preserve the democratic tradition of our Bar, then democracy itself is on trial and in the trial will be found wanting. True democracy does not insist on the performance of every public function by every one of its members. Democracy is compatible with division of labor based on fitness for the function to be performed, provided only that each function shall remain open to those who are fitted to perform it regardless of their social or economic status. I have already indicated my belief that the standards of admission to the Bar proposed by the American Bar Association meet this test; that with higher standards in force our university law schools are drawing their students from all classes of society. But if my belief should prove not to be well founded the remedy is to be found not in the abject surrender to the forces that are degrading our Bar, but in a genuine effort to provide such educational facilities both liberal and professional, as will keep the path open to the Bar for the competent poor boy as well as the rich, and impose such educational requirements as will close it to the incompetent rich as well as the poor.

Even should this effort fail the work of the university schools will go on and their graduates will as a class contribute the real intellectual leadership of the Bar. There ought in any event to come out of

the present discussion a closer cooperation between the bar organizations and the better schools. Especially should they make the effort, acting together to solve the problem of bringing law students into closer contact with the Bar during the period of law school study and thus in some measure fill the gap in our education for the Bar left by the disappearance of the office apprenticeship. With our loosely organized Bar this is one of the most difficult of our unsolved problems. With a closely organized Bar like your own the way would seem to be open to solve this problem, possibly by requiring law students entering law schools to become members of a junior Bar organization with activities and interests controlled and directed by your law society.

What we are compelled to do by indirect methods because of the lack of any control over admission by the organized Bar, you may do directly through the statutory control by your incorporated law society.

I have read with the greatest interest the report of your Committee on Legal Education, published in February last year. I am also familiar with the recent development in the programme for law study at McGill University, and with the progress which is being made by Dean MacRae at Dalhousie. These are events which promise much for the advance of legal education in Canada. If I mistake not the signs, Canada is about to enter into a distinct period in the history of its legal education, with a very clear understanding of what its problems are and how they are to be solved. It will be a comforting thought to some of us in the United States that the control of your Bar organizations over legal education is such that you are in a position to avoid the pitfalls into which we have stumbled.

Our experience carries its own lesson. The successes that we have had in the United States have been due to the enterprise of individuals and particular educational institutions, with little aid from the organized Bar; indeed the impetus for a better Bar in the

United States through raising educational standards has come from the University Law Schools and not the Bar, in the first instance. Our failures are due to the weakness of our Bar organizations, which cannot speak with authority on matters of legal education. You are in a position to use your organized strength in close alliance with your universities in the effort to provide a thorough and comprehensive legal education of the modern type for prospective members of the Bar. Because you are in this favorable position we may expect that the impetus toward improving your system of legal education in Canada will come from your Bar organizations and that your universities may count on your aid and cooperation in the creation of a strong and scholarly system of training for the Bar, to an extent which has not been possible in the United States. In such an alliance the universities can contribute their facilities for organizing and conducting, teaching and research in law, which constitute a distinctly educational enterprise, the Bar organizations can contribute their control over Bar admission requirements, and their ideals of what the ultimate aim and purpose of law study should be, which are indispensable to the preservation of the Bar as an essential instrument for the administration of justice. With this thought in mind, one does not need to be endowed with prophetic vision in order to visualize the possibilities of Toronto becoming one of the centres, perhaps the centre, of legal education in Canada, and I beg to assure you that in going forward with the enterprise of legal education in this country, both your Bar organizations and your law schools may rely on the hearty cooperation and sympathy of both the schools and Bar organizations in the United States and on such assistance as we may at any time be able to give.