Embarrassments to Legal Education

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EMBARRASSMENTS TO LEGAL EDUCATION.

Prof. Jerome C. Knowlton.

In European countries a student is not allowed to undertake the study of law until he has received a degree equivalent to the A. B. degree in American colleges, and the minimum term of study is three years, and in some cases four or even five years are required. With some mortification, we recognize that the profession of law in this country has not approximated this high standard.

Many able minds are giving much of their best thought to a solution of the questions involved in raising the standard of legal education. The records of the American Bar Association for the past ten years should be read by every person interested in the subject. It is clear that the ideal must come through progression. It can’t be reached at one bound. There are certain existing conditions which stand in the way of radical changes.

At this institution, where the graduating classes in the department of law are so large, it is often said: “Law schools are making too many lawyers. Raise the requirements for admission and lengthen the term of study. Make fewer lawyers and better ones.” Law schools do not directly or indirectly swell the numbers of those engaged in the practice of the law. They simply offer an education to those who have chosen their profession and are certain of admission to practice, even if excluded from the law schools. Moreover, in point of numbers, law schools are not doing their share in educational work. It is estimated that the two professions of law and medicine are nearly equal in numbers, and that about the same number apply for admission to practice in each; but, as appears by the last report of the United States Commissioner of Education, there were, in 1889, fifty-two schools of law with 3,906 students and 115 schools of medicine with 14,066 students. About 8,000 are annually admitted to the bar, and seventy per cent. of those admitted have not studied in any law school or elsewhere where law is taught as a science; whereas nearly all who are admitted to the practice of medicine have graduated from some school of medicine. One thing is certainly needed, more well-equipped law schools, more largely attended. If there were 1,000 students studying law at this University, it would not indicate that the profession was being overcrowded, but rather that more of those about to enter the profession were seeking the advantages of a legal education.

Only during the past few years has the necessity of making any requirements whatever for admission to law schools been recognized. At
present, schools of the first class generally require a high school education or its equivalent, with special reference to English and United States History. Many do not require this. Of the fifty two law schools in the country, only twenty-one have any entrance examination. One or two announce that applicants for admission shall possess the degree of Bachelor of Arts, or at least a good knowledge of Latin, which has practically the effect of excluding from the study of law all except college-bred men.

There is no better preliminary training for legal study than that which comes from a liberal education, and the time is close at hand when he who rises to eminence at the bar, even in the West, must be a man of great learning and generous culture. But, as against raising the standard too high, it is urged that those who cannot afford a liberal education ought, nevertheless, to be allowed to give to the world the best use of their natural gifts; that requirements should not be above the needs; that one who has not received a college training may study law profitably. There is an education out of colleges which may qualify one for legal study. An intellect sharpened by experience in practical life often comprehends a principal of law very readily. There is present the legal instinct primarily requisite to professional success. The development of law as a science may call for the highest literary culture, but the practice of the law calls for much less and much more. There must be a greater comprehension of the science by intuition and there may be less scholastic discipline.

An amply endowed institution may arbitrarily fix requirements for legal study. It may admit to its department of law only those who have received an A. B. degree. But an institution supported by the public, and returning for such support the greatest good to the greatest number, must adopt a standard with reference to the end in view. In the law department of the University of Michigan over 650 students have registered this year. The youngest is eighteen years of age, the oldest forty-five. Many have received college degrees. More have followed various business pursuits or taught from one to ten years in district schools, high schools and academies. Many have read law from one to three years before coming here. Others have been admitted to practice in their own State. Of the class that graduated in June, '91, over sixty had been engaged in teaching, and of the students present this year over thirty are attorneys at law. A majority of the students are men of mature judgment and old enough to be in earnest. They are making great sacrifices to obtain a legal education. To deny to them the opportunity of doing so, because they are not college graduates, would be very doubtful policy. "To close the doors of the law-school against all but college graduates would turn away the very class who need its benefits most, without preventing or even delaying their admission to the Bar." *

Notwithstanding these considerations, the requirements for admission

*Report of Committee on Legal Education, American Bar Association, 1891.
and the term of study in most of the leading law schools ought to be increased. In only two or three schools does the term exceed two years, and in many one year's study is all that is required for a degree. A course of three years is none too long for the average student who would prepare himself, not simply for admission to the bar, but for success in his profession. There are however some practical difficulties in the way which may be considered.

1. **Attitude of the Profession.** Many leading men of the profession have spoken discouragingly. Recently the chief justices of the courts of last resort in the several states were officially asked whether a period of study should be fixed by law. Seventeen answers were received and ten of these were in the negative. It is said that time is not of the essence, and that all that is required is knowledge of the law. It is difficult to demonstrate why a definite minimum period of study, which is generally regarded as important to a mastery of all other sciences, is not essential to a knowledge of the science of law.

2. **Requirements for Admission to the Bar.** The practice of the states generally with regard to admission to the bar does not advance the cause of legal education. But little is done to render practicabel the following of that advice so freely given to law schools. The course of two years' study already provided is far in advance of the requirements for admission to the bar in nearly all the states. Three states require three years study previous to admission; sixteen require only two years, and sixteen have no requirement whatsoever on the subject. In most states the examination for admission is a mere farce. One year's study in a lawyer's office is more than is required to pass it. Against this the profession has protested, but with feeble results. The opponents to raising the standard of admission say: "Give every man a chance. He will soon find his level." He does it, however, at the expense of litigants. An ignorant lawyer is an extravagant luxury. The chance should be given under the most favorable conditions, or the level may fall too low financially and morally. A young practitioner unlearned in the law is at great disadvantage. He may possess many natural gifts which attract attention, but if he wins his cause in court, it must be through cunning and not through an intelligent presentation of his client's legal rights, for he does not know them. Here the saying that ignorance breeds vice is too often illustrated. On the other hand, the young man of average ability who comes to the bar with a mind well versed in the elementary principles of the law is always a formidable adversary. Knowledge of the law is the first prerequisite to success, and often that knowledge which the older practitioners have for the moment forgotten.

Again there is a popular sentiment against the legal profession becoming too exclusive. The state of New Hampshire furnishes an excellent illustration. Under the rules in force in that state in 1833, three years' study was necessary for admission to the bar if the candidate was a college graduate, but if otherwise a period of five years' study was
required. These rules worked well for many years. The bar of the state became distinguished, too much so perhaps. In 1842 a popular clamor arose that the lawyers were aristocrats and didn’t represent the people, and the legislature passed what is known as the “Moral Character” statute, which provided “that any citizen of the age of twenty-one years, of good moral character, on application to the superior court, shall be admitted to practice as an attorney.” The most outrageous results followed. The questionable conduct of incompetent practitioners was repeatedly before the courts. The celebrated Bryant’s case is an illustration. In this case, Gilchrist, J., said: “The statute requires no knowledge of the law, no acquaintance with the practice and no education whatever. The applicant may be destitute of even the rudiments of an education. He may be unable to read or write. He may subscribe to the oaths of the constitution and of office by making his mark. But if he come within the statute he must be admitted.”

It is said that Bryant, wholly ignorant of the law, made himself famous as a practitioner by convincing a poor debtor that he was not entitled to the benefit of the statute exempting six sheep from execution because he had only five; that he should have had six, no more and no less. Bryant took the sheep on his writ and afterwards his ignorance or his cunning brought him riches.* Later, the legislature unwittingly passed a statute which enabled the courts to right this wrong by excluding such men from practice. The same feeling against the profession has arisen in many other states. There is a fear that lawyers may become dangerously learned. In Indiana the people have engrafted in their constitution a provision that every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice. In the western states generally, the doors to the profession are thrown wide open and every one is invited to try his hand without any previous preparation worth mentioning. One is induced to learn the rules of practice and the “tricks of the trade,” and thereby become an attractive trial lawyer on questions of fact before a jury. Jurisprudence, as a science, is overlooked. There is a consensus of opinion among leading men in the profession that this is all wrong, but reason is slow to prevail against sentiment. What answer will satisfy those who say, “Give every man a chance”? 

While the advance of legal education is so retarded by legislation, there is no wonder that seventy per cent. enter the practice of the law through the lawyer’s office. The remedy so often suggested is not the only one. Upon all subjects, the common judgment of those directly interested is a greater force than legislation. The desire of the profession to raise the standard, and the widespread impression that a thorough legal education is essential to success, is having potent influence upon all aspirants to the bar. Of the law students in the University of Michigan, seventy-five per cent. come from states in which there are practically no

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*24 N. H., 149.
*Report American Bar Association 1881, p. 244.
requirements for admission to practice. Some forty students come from
the state of Indiana, which has the generous constitutional provision
above quoted. However important it may be to the profession, to the stu-
dent the question of admission to practice is secondary, if not trivial. A
legal education is the desideratum; something with which, when he is
admitted within the bar, he may win his laurels. The problem before law
schools is what is the best course of instruction in view of the conditions.
What will answer for our country will not for another; nor for different
parts of the same country.

3. The time required for a college degree. To professional students,
a liberal education is of more importance than to any other class of per-
sons, and every opportunity ought to be given which will enable them to
secure it. Three years devoted to the study of jurisprudence is none too
long; but it is said that seven years—four in college and three in a pro-
fessional department—in view of the length of time required for admis-
sion to college, is exceedingly severe, especially in the West, where so
many are compelled to obtain an education with their own hands; and
that the present practice excludes most college men from schools of law,
Their time and resources for educational purposes having been exhausted,
they seek the bar through the open door. The problem is squarely
before those interested in university education. It has been suggested
that the student be permitted to take studies in the professional schools
while pursuing a regular undergraduate course. We understand that
at Columbia and Cornell this plan is adopted, and that undergraduate
students in the literary department may elect studies in the law depart-
ment and have them credited to both degrees. There is no cheapen-
ing of degrees, which are given, not as representing time, but knowl-
dge and culture. Culture may come from the study of jurisprudence
as well as from the study of natural science. There is nothing vulgar in
technical knowledge. Moreover, a contingent remainder is no more tech-
nical than a table of logarithms. Neither is of any value except to the
specialist. To the majority of students they are useless, and for that
reason alone, according to some educators, the study of both should be
included in the college curriculum. Being useless knowledge, they repre-
sent culture. In many colleges municipal law, involving the law of
personal and property rights, constitutional law, international law, public
and private, are given as a part of the course of instruction leading to the
A. B. degree. It is difficult to see why professional studies should not be
given some value in college work. Upon this subject Dr. Butler, of
Columbia college, has well said: "The grafting of certain professional
studies on the undergraduate course will (1) still further enrich the course
leading to the A. B. degree; (2) stimulate professional education and
render it more liberal and less formal and pragmatic; (3) meet the demand
for a shorter period of study in college and professional school combined,
without sacrificing the interests of either."*

*Educational Review, January 1892, p. 54.