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LEGAL EDUCATION: ITS RELATION TO THE PEOPLE AND THE STATE.*

H. B. HUTCHINS.

All callings are to a greater or less extent interdependent. One should not be fostered at the expense of another, yet any improvement along a given line is more than local and immediate in its influence. It reaches more than those who are directly concerned. The building up and perfecting of a single industry may add to the wealth and importance of its promoters, but to argue that they are the only beneficiaries, would be to leave out of the case all of the indirect results that naturally and inevitably flow from a very successful undertaking. The fostering of an enterprise by the shutting out of foreign competition, can only be justified upon the theory that the people as a whole are benefited thereby. Reference to specific example would hardly be necessary to emphasize this idea, if we were to confine our inquiries to the business world or to the industries, for here the fact is constantly recognized and of necessity must be made an element in every important problem. But I am not so sure that laymen, or any considerable portion of them, realize that the principle applies with equal force to the learned professions, so called. That every man, whatever his calling or walk in life, is interested, for example, in sound legal education, because thereby professional standards are raised and greater professional excellence secured, would not, I fear, receive a ready assent in many quarters. But I venture the assertion that it is not only the duty of every citizen but that it is for his interest to do all that lies in his power to forward any well considered movement that has in view the raising of the

*Read by Professor Hutchins, Dean-Elect of the University of Michigan Law School, at the last meeting of the Michigan Political Science Association.
standards for admission to the legal profession. It is a duty that he owes to the State and to himself, a duty that springs from his citizenship, but it is one that he can well perform if we consider it solely from a selfish and pecuniary point of view.

In the discussion of this question, it is not necessary that I should make extended reference to the close and intimate relation that of necessity exists between lawyer and client, and to the fact that the confidences imposed demand in all cases a high sense of professional responsibility and in many the best intellectual and professional training. To the trusted legal adviser as to none other, unless to the father confessor, are opened the gateways of the innermost recesses of the human heart; to him are revealed the motives and purposes of men. Family secrets and business confidences are freely committed to his keeping. Upon his learning and judgment the success or failure of great enterprises may depend. And to his skill and industry the client may owe his rights, his freedom or even his life. Every intelligent man, of course, understands the intimacy of the relation and appreciates the importance of intellectual and well-trained counsel when he himself is immediately concerned. "But," he may argue, "sound legal education and high professional standards are matters of indifference to me, for whatever be the state of legal learning, men will be found who by force of industry and high intellectual gifts and acquirements have lifted themselves above the common level and are fitted for the most important professional engagements. Every business center has them, and in numbers sufficiently large to supply the ordinary demand." This argument fails to recognize the uplifting of the profession generally that must necessarily come with the raising of the professional standards. It assumes that the lawyer of learning and ability will be equally learned and equally capable whatever his professional surroundings. The weakness of the assumption is, of course, apparent. Further, it fails to take into account the fact that matters of detail and preparation must be delegated very largely to subordinates, and that the skill and dispatch with which such work is accomplished must depend upon the training of the men to whose hands it is committed. It can be truly said that the progress of the law should mean "the progress of the lawyer, not of a few talented men who are on the outposts of legal thought, but the great army of the commonplace who constitute the majority in every occupation."

But extended argument along this line cannot be necessary. That the man of affairs, who must frequently seek the profession and
the courts for the protection or enforcement of his rights, is immediately interested in the raising of legal standards, goes without saying. The majority of the people, however, are not litigants. Many, a large number indeed, never have occasion for legal aid. The discussion, therefore, must be upon a broader basis than that which has to do with individual cases merely, if we are to prove our thesis that the raising of the standards of legal learning should appeal directly to every citizen.

The American system is emphatically a government by the people. Subject only to written constitutions, all political power rests with the people; they are the arbiters. The citizen is not interested in results alone; he is an active factor. To what extent this is so he often fails to realize. In the first place, he enjoys a practically unqualified and unrestricted elective franchise. Freedom of speech and of publication are accorded to him as in no other country. Members of the state legislatures and of the popular branch of Congress are elected by the people directly, as are the governors and the more important executive officers of the different states. It is practically correct to say that the legislative and executive departments in state and nation, are immediately in the hands of the people. The national executive, to be sure, is in form selected by the electoral college, but in reality he is chosen by the popular vote of the states. And the membership of the United States Senate is but a single step removed from immediate popular influence. With few exceptions the judicial offices, both high and low, of the different states are elective. The tenure of the elective office, moreover, in all departments is such as to give frequent opportunity for the expression of the popular will. That a government so thoroughly subject to the practically uncontrolled power of the people has passed the experimental stage, that it has shown itself equal to foreign complications and to the shock and discord of civil strife, that it has been able to grapple with the problems incident to our enormous increase in population, problems made the more difficult by the diverse foreign element that has so largely contributed to that increase, that the many and complicated questions growing out of our marvellous material growth and development and the consequent inequality of pecuniary and social condition have not brought disaster, that contrary to prediction, we have never been wrecked by "a distressed and discontented majority," indicate the presence not only of creative but also of conservative energy to a marked degree. And where is this conservative energy? Not wholly, I am sure, in the checks and balances that our written constitution pro-
vides. That instrument has been described by Macaulay as “all sail and no anchor,” and if we consider it simply as an isolated document, leaving out of the case judicial and practical interpretation and the national character that has been developed under it, the representation is not, perhaps, inapt. But in his gloomy prophecy as to the future of our institutions, this distinguished Englishman fails to recognize in the American people an underlying stratum of conservative good sense that surely exists and that has thus far proved to be an anchor sure and steadfast. That this stable element is the sole contribution of any single calling or profession, I would not for a moment claim; but that its presence is due in a very large degree to the influence of the American bench and bar, must be at once apparent to the careful student of our history and current events.

The inevitable tendency of the practice of the law or of service upon the bench is in the direction of a cautious conservatism. All of the traditions of the profession inculcate it. Nowhere is the respect for precedent and for a well ordered stability more sacred. The lawyer lives in an environment of conservatism. He takes it in with the principals of the common-law, and it becomes a part of his very being. He realizes as does no other person that an established order of things is essential to the highest rights of the individual, and further, that the primary function of a free government is the protection of the individual. That in some cases and under some circumstances this tendency operates unfavorably, is undoubted, but that its effect as a whole is to contribute an element of stability that has thus far proved a safeguard to the individual and to the state can be shown beyond question. De Tocqueville, a most intelligent student of our institutions, says: “I cannot believe that a republic could subsist at the present time, if the influence of lawyers in public business did not increase in proportion to the power of the people,” and again he observes that the legal profession in the United States is “qualified by its powers, and even by its defects, to neutralize the vices which are inherent in popular government.”

Few persons probably realize the extent of the influence upon public questions exerted by this body of conservative men. The influence is, of course, most apparent in the judicial department. The judges as a rule are lawyers, and it is not too much to say that their selection and continuance in office are practically in the hands of the bar. No man can hope for a judicial career who lacks the confidence and respect of the profession. And, further the reciprocal influence of bench and bar are productive of the most important
results. Whatever is decided by a court of last resort, after a full hearing and consideration, is accepted and acted upon by the bar as law; and this is so even where long cherished political theories are swept away and political purposes thwarted. It is to the bar on the other hand that the bench looks for instruction and support. It has been truthfully said that "no decision which the profession as a whole does not accept as sound can hold a permanent place in our law." Indeed what the lawyers pronounce against generally, has little chance of receiving even temporary recognition in the courts. The influence of which I speak is at once apparent to the intelligent student of our institutions. Among the causes which have sustained the authority of the judiciary, Mr. Bryce in his masterly work on "The American Commonwealth," mentions the strength of professional feeling among American lawyers, the relation of the bench to the bar and the power of the legal profession in the country. "The keen interest," he says, "which the profession takes in the law secures an unusually large number of acute and competent critics of the interpretation put upon the law by the judges. Such men form a tribunal to whose opinion the judges are sensitive, and all the more sensitive because the judges, like those of England, but unlike those of continental Europe, have been themselves practicing counsel. The better lawyers of the United States do not sink their professional sentiment and opinion in their party sympathies. They know good law even when it goes against themselves, and privately condemn as bad law a decision none the less because it benefits their party or their client . . . . . As the respect of the bench for the bar tends to keep the judges in the straight path, so the respect and regard of the bar for the bench, a regard grounded on the sense of professional brotherhood, ensure the moral influence of the court in the country."

The simple fact that we have in our midst this army of men, which a conservative estimate places at more than eighty thousand, whose business it is to deal with the rights of the individual under the law, and who are peculiarly fitted for leadership in public affairs, is itself a matter of prime importance in any attempt to account for the conservative force of our people; but the full significance of the influence of the bar upon the bench and of the bench upon the bar and of both upon the whole country is only apparent when we consider the controlling power which under our system may be exercised by the judiciary over legislative and executive action. The duty to pass upon the validity of legislative acts may devolve upon
any court of any grade. Federal legislation may be questioned in a state court and state legislation in a federal court. I need not suggest that this power is unique and peculiar to our system. Without it, however, the government as formed must have been a signal failure. While this authority has always been exercised with caution and never unless manifestly necessary, it has often interposed to correct the mistakes of an excited and unreasoning majority. It is this which has kept us within the limits marked out by the organic law. This it is which has proved a bulwark for the protection of private rights. Between the years 1790 and 1893, the Federal Supreme Court held twenty acts of Congress and one hundred and eighty-two acts of state and territorial legislatures to be unconstitutional. (a).

As to the number of state acts that have been held unconstitutional by state courts of last resort, I am not prepared to give definite information. Considering the wide range of state legislation, however, particularly in recent years, and the growing tendency to foreclose individual rights by legislative action, it is safe to assume that they have been numerous. But the influence of which I speak is by no means confined to the striking from our statute books of unconstitutional enactments. It is even more effective when applied to the construction of the organic law and of valid legislation. In a single volume of the Federal Supreme Court Reports, which I take up at random, twenty-five of the one hundred and forty cases reported are upon the construction of statutes. Fifteen statutes of the United States are here construed and nine statutes of as many different states. In another volume, also taken at random, of the one hundred and twenty-two cases reported, the subject matter of twenty-three is the construction of statutes either state or national. In a single volume of the reports of the Court of Appeals of the state of New York, taken in the same way, of the two hundred and eighty-five cases reported, twenty-eight are upon statutory construction. And in a volume of the Michigan Supreme Court Reports, which I take at random, thirty cases involve statutory questions. And so I might go on. Every lawyer understands, and even a cursory examination will convince the layman, that a very large part of the time of the profession and the courts is given to explaining, qualifying and

(a) For this information as well as for all statistical data contained in this paper, bearing upon the influence of the profession in public affairs, I am indebted to the published address of Mr. J. H. Benton, Jr., delivered before the Southern New Hampshire Bar Association, Feb. 23, 1894. The statistics in regard to the profession and its influence which Mr. Benton has gathered and published in the form of appendices to this address, cover a wide range. They are, so far as I know, the most complete and accurate contribution yet made upon the subject.
limiting legislative enactments. But it is in the construction of the organic law that the people as a whole are most immediately interested, and I need not suggest that the performance of this duty calls for the exercise of the highest functions conferred upon the American judiciary. The Federal Supreme Court has been described as "the living voice of the Constitution," and the description is not exaggerated. Indeed, it is hardly extravagant to say that the fundamental law, as it exists today, is practically as much the work of that tribunal as of the convention which gave the Constitution form. Take the work of Marshall and his colleagues and successors out of the Constitution, and you take from it that which has made it a vital organism. It is the judiciary aided and guided and supported by the learning and constant conservatism of the bar that has adapted that instrument to the changing necessities of our changing civilization. It is this force that has developed the Constitution and at the same time kept the fierce struggles engendered by selfish interests within constitutional limitations. If the experience of the century has taught one lesson more thoroughly than another, it is that without the molding and restraining influence of a learned and conservative judiciary, government under written constitutions must in the end prove a most dismal failure.

If we turn to the legislative and executive departments of the government, we find that the influence of the profession has from the first been an important factor. Of the fifty-six signers of the Declaration of Independence, twenty-five were lawyers. The convention which framed the Federal Constitution contained fifty-five members, and of these thirty were lawyers. And notwithstanding the unpopularity of the profession during the years immediately after the war for independence, an unpopularity due to the practical suspension of the administration of justice during the conflict, the general indebtedness of the people, the consequent activity of the courts and the hardship that almost invariably followed any attempt to enforce any claim by legal process, ten of the twenty-nine senators and seventeen of the sixty-five representatives in the first Congress of the United States were lawyers. From that time to the present, almost without exception, the proportion of lawyers to the total number has increased in each Congress. In the present Congress, of the eighty-four senators, sixty-seven are lawyers, while two hundred and twenty-two of the three hundred and sixty-two representatives in the House of Representatives were lawyers. From that time to the present, almost without exception, the proportion of lawyers to the total number has increased in each Congress. In the present Congress, of the eighty-four senators, sixty-seven are lawyers, while two hundred and twenty-two of the three hundred and sixty-two representatives are from the legal profession. The entire membership of the Senate has been three thousand one hundred and twenty-two, and of these two thousand and sixty-eight have been lawyers. The entire membership of the House has been eleven thousand eight hundred and
eighty-nine, of whom five thousand eight hundred and thirty-two have been lawyers. According to Mr. Benton, the average membership of lawyers in both branches of Congress from the beginning has been fifty-three per cent., and the average membership in the Senate during the past thirty-five years has been from seventy-five to eighty per cent.

(a). An examination of Mr. Benton's tables will show that the membership of the profession in the state legislatures has been conspicuously large when compared with the proportion of lawyers to the male population. I cannot go into this matter in detail, but will simply call attention to the membership of last year in a few of the larger states. In California the proportion of lawyers to the male population was one in two hundred and seventy-three, and the proportion in the legislature was one in four. In Illinois, one in three hundred and ninety-four of the male population and one in four of the legislature were lawyers; in Massachusetts one in four hundred and sixty of the male population and one in six of the legislature; in Michigan, one in four hundred and eleven of the male population and one in six of the legislature; in Missouri, one in three hundred and eighty-eight of the male population and one in five of the legislature; in New York, one in two hundred and sixty-five of the male population and one in four of the legislature; Pennsylvania, one in four hundred and twenty-eight of the male population and one in five of the legislature; in Texas, one in three hundred and ninety-seven of the male population, and one in two of of the legislature.

But in estimating the influence of the profession through our legislative bodies, we should not forget that it cannot be measured by reference to a numerical basis simply. By his training and his life the lawyer is fitted for leadership. More frequently than men from other callings he is found at the head of important committees. The membership of judiciary committees is very largely confined to the profession. As a rule the lawyer is a man of affairs and a ready debater. His associates who are drawn from other walks of life expect him to take the initiative, and naturally look to him for guidance. Even when not a member, he frequently appears in a semi-public capacity to advocate or oppose pending measures. Indeed it is hardly an exaggeration to say that his influence is predominant in matters of general legislation both state and national.

And the impress of the profession is not less marked upon the organic law of the states. It is a well known fact that the member-

(a). See Appendix III. to Mr. Benton's Address.
ship of constitutional conventions from the first has been made up largely of lawyers, and that their influence has been to a large extent controlling. I will not burden you with details in this connection, but will simply suggest that in the constitutional convention recently held in the state of New York, out of a membership of one hundred and seventy-five, one hundred and thirty-three were lawyers, and that many leaders of the bar from different parts of the state gave their individual energies to the work.

The history of the personnel of the executive department of the government, both state and national, shows a large representation from the bar. Nineteen of the twenty-four presidents have been lawyers. Seventeen of the vice-presidents have been lawyers. Two hundred and eighteen of the two hundred and thirty-two cabinet officers have been lawyers. And considerably more than half of the governors of all the states have come from the legal profession. I have neither the time, nor is it necessary, to refer to the powers and privileges of the executive department. Suffice it to say that they are such as to give a large degree of liberty and a broad field for the exercise of individual discretion in official action. That the conservatism of the profession has borne its legitimate fruit here as elsewhere, cannot admit of doubt.

But we must look beyond the court, the legislative hall and the executive chamber, if we are to measure the full influence of the American lawyer on political affairs. His great field, after all, is at the very source of political power; it is among the people. His influence here is direct and all the more effective because scarcely perceived and rarely counteracted. It is constantly at work in connection with the every-day affairs of life. It reaches all classes and grades of society. It tempers and restrains because it inculcates a respect for law and for an established order of things. It is the greatest of our conservative forces and a continuing safeguard.

If further argument were necessary to show that the question of legal training is one of vital importance to the state and one that should appeal directly to every citizen, it is to be found in the fact that a poorly equipped bar or judiciary entails a great and needless expense not only upon litigants but upon the public as well. Every attempt at reform in this direction deserves active encouragement, even when considered solely from an economic point of view. The half-educated and superficial lawyer is a public burden; the unscrupulous one is a public curse. Such men obstruct legitimate business and flood our tribunals with profitless and vicious litigation. Every
good lawyer understands that no inconsiderable part of the time of our courts is taken up with contests that ought never to have taken form and that are traceable directly either to professional incapacity or to a low standard of professional integrity. The evil is demoralizing, far-reaching, expensive; the remedy is apparent.

I have attempted thus far to show that the functions of the American lawyer cannot properly be measured by the duties which spring from the merely personal relation of attorney and client. He is more than a hired advocate. He is an essential part of the machinery of government. His influence upon the jurisprudence and legislation of the country is practically omnipotent. He is the natural leader of the people. If I have succeeded in making out my case, it follows logically that his education is a matter of public concern. That this is so in regard to his professional training, is recognized by the state when it provides for fixing requirements for admission to the bar. A further recognition is found in the fact that in many of the states, facilities for legal training constitute a part of the public educational system. But has the public, through the instrumentality of the state, done its full duty in this regard? An answer to this question necessitates an examination not only of the present opportunities for legal training, but, also, of the education required as a preparation for legal study.

As preliminary to that inquiry, however, it is proper, I think, to anticipate an objection that might possibly be urged against any change in the present methods. "Why," it may be asked, "if the profession has served so useful a purpose in our political life, furnishing, as it has, a constant safeguard to constitutional liberty, should present educational methods be criticized and changes suggested? Have you not by your own showing advanced the strongest possible argument against any change?" Certainly not. The legitimate deduction from the facts is that the profession, under our system of government, is an essential part of our public life, that it must mould public opinion, that it must shape legislation, that it must be the controlling factor in the decision of constitutional questions and in the construction and application of the law. That being the case, the best possible preparation for these important public functions should be the first requisite. That they have been fulfilled in the past by an indifferently educated profession, and on the whole fulfilled creditably, is certainly no indication that better results would not have been realized under higher standards. We must remember too, that the past century has been with us to a very
large extent a formative period. Many of the public questions have been novel and of vital importance, and have been such as to stimulate thorough and extended investigation. Private demands upon the profession, moreover, have not been so great or so varied as at present, and it has been possible, therefore, for the lawyer to supplement defective training by a special study of political and economic questions. And then, too, it must be remembered that what was a sufficient preparation for the past is not necessarily sufficient for the present or for the future. The complicated questions growing out of our modern civilization and our modern political and business methods call for the highest general and professional training. If the American lawyer is to meet in future the full measure of responsibility that his position as a leader among the people casts upon him, it will only be through the raising of preparatory standards and the development of the higher jurisprudence.

Coming now to the question of the duty of the state in regard to the matter of preliminary training for the bar, I beg to call your attention first to the fact that probably in no civilized country on the globe, certainly in no European country, are the requirements for the admission to the study of law so low as in our own. In no European country is the required preliminary training of the lawyer for his public functions so utterly neglected as in our own. In Continental Europe what is the equivalent of our collegiate education is a necessary prerequisite to professional study, and the only road to the bar is through the university, which is a professional school for the four learned professions—law, medicine, theology and philosophy. In England, while a college or university education need not necessarily precede professional study, yet if the candidate is not a university graduate or has not, by examination, brought himself within certain excepted classes, he must show his fitness for legal study by passing a satisfactory examination in the “English language, the Latin language and English history.” Such examination is conducted by a joint board appointed by the four Inns of Court. Although it is possible in England for a man of very moderate acquirements to enter the lower grade of the profession, and although such a man occasionally attains the rank of barrister, yet there is an unwritten law recognized by the public and the bar, that the barrister should be a university man. For the highest success at the English bar, a university education is regarded as an essential. A lesson may, indeed, be learned from the English dependencies on this side of the Atlantic, where at least an academic education must precede legal study. Understand that I am no advocate of servile
imitation, that no method would have my support simply because it is foreign. We have a work to do, and I believe most thoroughly in doing it in our own way. But I believe in doing it intelligently. In my judgment it would be an act of supreme folly for us to shut our eye to a lesson of mature experience simply because it is foreign.

It is practically correct to say that admission to the study of law in this country is not limited by educational restrictions. Here where the public functions of the lawyer make him an essential part of the machinery of government, he need not of necessity lay a foundation for his public duties by any general acquirements. I am sorry to say that this is emphatically true in the State of Michigan and in most of the western states. That the bar has among its membership many men of wide general learning and that perhaps the majority have at least the basis for a general education, I, of course, recognize. It is to its credit that this is so. But the inconsistent fact remains that preliminary training is not a requisite. I think I appreciate the difficulty of the situation. I need not be reminded that some of the brightest lights at the American bar have had as a basis for their life work only the merest rudiments of a preparatory education. Nature makes some men for lawyers, and with such, defects in training apparently count for little. It may even be admitted that the learning of the schools may occasionally prove a positive detriment. A native ruggedness that gives strength may be lost in the refining process. But exceptional cases should not control. And besides a reasonable educational requirement at the present time and in a state like Michigan, where the opportunity is at the door of the rich and poor alike, could rarely work a hardship. The time has not yet come, although I trust it is not far distant, when a college education can be made a requirement for professional study. But, in my judgment, the time has come when every state should take upon itself the duty of fixing and systematically testing the qualifications that the candidate for legal study must possess. In a few states this has already been done. In the state of New York, for example, the whole matter of admission is under the control of the court of last resort. Every law student is required to pass prescribed preliminary examinations that are held under the direction of the Regents of the State University. It should be explained that the University of New York is not a university in the commonly accepted sense of that term, but rather an organization for the supervision and control to a certain extent of the educational system of the state, one of its functions being the conducting of examinations and the grant-
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ing of certificates and diplomas. These examinations are held in different parts of the state, and those for law students embrace at the present time the following subjects: English composition, advanced English, first year Latin, arithmetic, algebra, geometry, United States and English history, civics and economics. Substantial equivalents, as fixed by the regents, may be offered. The successful candidate receives from the board what is known as the "law student' certificate," which he must forward to the clerk of the Court of Appeals, who files it and returns a certified copy. This copy is used by the candidate, when he applies for admission, as proof that he has complied with the rule as to preliminary requirements. Every law student, unless he be a graduate of a college or university of recognized standing, or unless he has completed a full year's course in such college or university, or unless he has completed a three years' course in some educational institution recognized by the Regents as maintaining a satisfactory academic standard, or unless he has a Regents' diploma, must pass these examinations either before, or within one year after, he begins the study of law. That the student comes within some one of the exceptions must be shown by a properly authenticated certificate. This plan with some changes and some additions to the subjects required has been in operation in the state named since 1882. The rule has been strictly enforced, and the results have been most satisfactory. The profession and the public have been in a measure protected. The credentials of an admitted attorney may now in that state be taken as representing some preliminary training and preparation for professional work. The plan, however, is still subject to criticism. There is no good reason, in my judgment, for giving the student a grace of one year after beginning the study of law, in which to pass these examinations. The period of legal study preparatory to the bar examination is fixed at three years, all of which time should be given to that work. The preliminary study and examinations should be preliminary in fact as well as in name.

In one or two other states there are regulations more or less stringent in regard to the preparatory training, but in none, I think, is the scheme on the whole so well devised and so thoroughly enforced as in the state of New York. I do not refer to the New York plan for the purpose of urging its adoption in the state of Michigan, but rather to show that the matter of preparatory training for legal study has received serious consideration in the former state and that practical results of great value have been realized. I do, however, urge the
adoption in this state of some plan. The time is ripe for it, and the necessary conditions are not wanting. With her unrivalled educational facilities, Michigan is prepared to take a marked step in advance. I have not time to formulate details, nor is this the occasion for it. I will simply suggest that a preliminary training equal to that required for entrance to one of the under-graduate courses of the university should, in my judgment, be fixed as a necessary prerequisite to the study of law. The examinations should be under the direction and control of the educational department of the state, and could easily be conducted in connection with the high school system of the state.

"But," it may be said in reply, "this is a matter for the law schools of the country and not for public action." There would certainly be force in this suggestion, if legal education were exclusively in the hands of the schools. Under such circumstances, there would be no hesitation on the part of the law school authorities. As it is, the preliminary requirements of the schools, the country over, are much in advance of those of the state. It must be perfectly apparent that the schools are seriously handicapped so long as a short cut to legal study through the offices is possible.

As introductory to a few suggestions upon the excellencies and defects of our system of legal education, separately considered, I beg to call the attention of the Association to the fact that in this and many other states no period of preparatory legal study is fixed by law, and further to the lack of uniformity in examinations for admission to the bar. The law teachers of the country, who through their experience are probably better fitted than others to give an intelligent opinion upon the subject, very generally agree that a period of three years in the schools for the average student is none too long. If they are right in this, an equal period, at least, should be exacted of the student in an office, where the opportunities for thorough and systematic study are necessarily inferior to those furnished by the schools. A want of uniformity in the period of study is certainly a defect, but not so serious a one, as the other to which I refer. Under the system now in force in this state, the student may be admitted by the Supreme Court or by a Circuit Court. In either case he must show his qualifications by an examination in open court. This examination is usually conducted by a committee of lawyers appointed by the court. Unless the practice has changed during my absence from the state, this committee is not generally appointed for a definite time, but is made up as occasion may de-
mand. This, however, may not be the case in all of the circuits. The members perform this enforced duty without special preparation and without compensation. That the system is a lax one and bad in almost every particular, cannot admit of doubt. Even if there were a pecuniary inducement to make special preparation for the work, the temporary character of the committee would as a rule render such preparation impossible. Those who have not given attention to the matter, may perhaps be of the opinion that every lawyer of average ability is prepared to conduct an examination for admission to the bar without previous thought or preparation. He can certainly go through the forms, but the result in the majority of cases is anything but satisfactory. An examination so conducted rarely serves the purpose of testing fairly the applicant's knowledge. The busy practitioner is from force of circumstance in a sense a specialist. As a rule his investigations are defined by the demands of his cases. His ordinary studies are of necessity from the practical side. His legal investigations are for an immediate purpose, and that purpose rarely calls for a scientific study and review of the different departments of the law. Such being the case, his examination, if he enters upon it without thought or preparation, as he ordinarily must under the present system, naturally runs at once into the field of his most recent investigations. The almost inevitable tendency is for him to measure the acquirements of the student by his ability to respond along this particular line of inquiry. I do not mean to say that this is always the case, but that the tendency is in this direction. The result of such an examination may be an injustice to the student or the admission of one not entitled to the privilege. The entire want of uniformity in the examinations in the different courts is equally unfortunate. Under the present system, indeed, there is not only a want of uniformity in the different courts, but in the same court, for with a change of examiners a change in the character of the examination almost inevitably follows. The result of all this is that different standards exist in different parts of the state and at different times in the same locality. The examination may be little more that a form in one court, while in another it may be unreasonably severe. The law teacher probably realizes more keenly than the practitioner the disadvantages, to say nothing of the positive injustice, that result from the present plan. The remedy that I beg to suggest is that the examinations for the whole state be committed to a single board of paid examiners, say three in number, the term of office to be three years, to be selected from practitioners of experience and standing, and the appointments to be so regulated that there may be always upon the board men
of experience in the work. The board should be appointed by, and be under the immediate direction and control of the supreme court. They should hold examinations at stated times in different parts of the state, and admission to the bar by the Supreme Court or by a Circuit Court should be only upon their recommendation. The expense incurred could be largely and, perhaps, entirely met by the fixing of an examination fee to be paid by each applicant. Among the minor advantages of this scheme would be this, that in time it would furnish in one place a complete list of the membership of the bar, which, I believe, is not secured under the present system. It would, moreover, serve to center and fix responsibility for the learning and character of the profession of the state. I beg to call your attention to the fact that the suggestions that I make contemplate that the control and direction of bar examinations should continue to be in the hands of the court and the profession. I do not urge that they be made academic.

A plan somewhat similar to the one outlined has stood the test of experience in England, and through the efforts of the State Bar Association and the law teachers of the state of New York, a like scheme was last year adopted there.

So far as opportunities for the purely technical and professional training for legal practice are concerned, but little need be said in the way of criticism or suggestion. Although the student is not obliged here as in continental Europe to seek that training in the university, the work of fitting young men for the profession is now very largely carried on by the schools. The first law school in the United States was established in Litchfield, Conn., by the Honorable Tapping Reeve, in 1782, and for several years it was the only one in the country. The total number of the law schools in the United States at the present time is seventy-two. Fifty-one have been organized since the close of the civil war, and of these fifteen have been organized since 1890. In 1889 there were in attendance upon the schools three thousand nine hundred and six students, while the attendance in 1894 was seven thousand eight hundred and sixty-three. These figures are significant. They show the growing tendency of our young men to seek the regular and systematic instruction of the schools. The law schools of the country are as a rule in good hands. Their work is a quiet one, exciting little public attention, but it is productive of great results. "I do not know," says Mr. Bryce, in speaking of our law schools, "if there is anything in which America has advanced more beyond the mother country than in the provision
she makes for legal education. Twenty-five years ago, when there was nothing that could be called a scientific school of law in England, the Inns of Court having practically ceased to teach law, and the universities having allowed their two or three old chairs to fall into neglect and provided scarce any new ones, many American universities possessed well equipped law departments, giving highly efficient instruction. Even now, when England has bestirred herself to make a more adequate provision for the professional training of both barristers and solicitors, this provision seems insignificant beside that which we find in the United States, where, not to speak of minor institutions, all the leading universities possess law schools, in each of which every branch of Anglo-American law, i.e., common law and equity as modified by Federal and State constitutions and statutes, is taught by a strong staff of able men, sometimes including the most eminent lawyers of the state. . . . . . No one is obliged to attend these courses in order to obtain admission to practice . . . . . But the instruction is found so valuable, so helpful for professional success, that young men throng the lecture halls, willingly spending two or three years in the scientific study of law which they might have spent in the chambers of a practicing lawyer as pupils or as junior partners." He refers to the indirect results of this theoretic study as of great value "in maintaining a philosophical interest in the law among the higher class of practitioners and a higher sense of the dignity of their profession." (a).

In regard to our system of legal instruction, I have but a single suggestion to make. We should seek to teach more than simply the mechanical trade of the lawyer. It has been truthfully said that "a danger to the standing of the profession lies in the tendency of our law schools to frame their courses of study with a view to the mechanism rather than the science of the law." Practical instruction, of course, we must have and in amount sufficient for the practical demands that are sure to come. But we should not forget in the development of our courses that the historical and scientific element is quite as important. The practical work of our schools should rest upon a historical basis. It has been said that it is history which teaches us what the law is. This may not be strictly true, but it certainly is true that without a knowledge of what the law has been, we cannot know thoroughly what the law is. The tendency of many of our schools to devote attention simply to the present and the

practical, has undoubtedly come very largely from the crowding of the work into too short a period of time. With the lengthening of courses we may hope for a change. But this is a problem that the profession and the schools must solve, and let us hope that the solution will be such as to place the study of law in the United States upon a thoroughly scientific basis. If this and the other reforms suggested can be accomplished, much will have been done in the way of lifting the profession above the grade of a mere calling and fitting it for the grave public duties that it must, of necessity, assume.