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SOME RESPONSIBILITIES OF LEGAL EDUCATION

By William G. Hale

The law school is today essentially the only avenue to the legal profession. At an early date the inadequacy of the apprentice system was recognized and that inadequacy has become more and more apparent to both practitioner and student as the years have passed. Comparatively few seek admission to practice at the present time by way of the law office. The position of the law school is thus a strategic and responsible one. Lawyers are largely responsible for law and its administration. And since the law schools are supplying the lawyers, the responsibility for this important work in human society rests very largely in the final analysis upon the schools.

In the whole scheme of things legal the importance of the personal equation cannot be over-emphasized. Not only is law largely made by lawyers, but in the main it reaches the people only through the lawyers. The personal equation is the conduit pipe, as it were, through which law reaches the human need. The law the people receive is the law that the lawyers give them. Beneficent laws are really beneficent only as they are wisely interpreted and wisely administered. It is not alone the purity of water in the reservoirs with which the inhabitants of a city are concerned, but also its condition as it flows from the faucets in their several homes. Between the reservoir and the faucets lie mains and laterals. It is finally upon their adequacy and freedom from contamination that the well-being of the consumers depends. It is obviously then a matter of supreme importance what manner of men, morally and intellectually, are they who transmit from legal reservoirs the laws of the land to the human need.

In order to get the full significance of these generalities let us ex-

amine the situation briefly more in detail. The place of the judge, his power for good or ill, is apparent to all. Does he know little law, or much; does he expedite business or retard it; does his work too often have to be done over because of mistakes, which a reasonable knowledge would have prevented; as a student of the law is he profound or superficial; does he grasp law as a science, or conceive of it only as a set of narrow technical rules; does he realize that the great function of the law is to contribute to the social and economic progress of the people and is he a student of the social sciences so that he can help to make law serve those larger ends; does he face to the fore or to the rear; is he really equipped in mind and heart to be an efficient judge, and thus to create respect for the office and to be a constructive and not a destructive force in the administration of justice?

The place of the practicing lawyer is scarcely less significant. As an attorney in court he aids or retards the administration of law. Judges, in rendering court decisions, must depend largely on the learning, fairness and industry of counsel. Lawyers expedite the trial or retard it. Their skill and sense of public responsibility are determining factors. It is not alone the efficiency of our rules of practice and procedure that determines the efficiency of our courts. The best machine ever made can be ruined by a poor operator. And a relatively poor machine may function fairly well in the hands of a skilful operator. Mistakes lay the foundations for reversals and the necessity for doing the work over. The time of courts, of officials, of clients, of witnesses, of jurors, is needlessly consumed. Inefficiency in the administration of law not only involves substantial economic waste, but defeats the very ends of the law, viz., justice.

But it is not alone on the bench and as barristers that lawyers are participating in the administration of justice. Even more vital and far-reaching, if anything, is their service in advising clients and, indeed, in every phase of their office practice. They advise their clients wisely or unwisely. They draw papers correctly or incorrectly. They lay the foundation for future trouble and litigation or they preclude it. Every lawyer who, in the privacy of his own office, organizes a company, gets out a bond issue, draws a contract, a lease or a will, is engaged in the operation of our machinery of justice. The lawyer's knowledge of the law, his ability to apply it, and in a very marked way, his point of view, are crucial factors in determining the social and economic value of his services. Directly he serves or defeats the ends of the law. In short he may function as a splendid servant of human society or he may be one of its worst menaces. The lawyer's power, wielded often

behind the scenes, away from the glare of the court room, is a far-reaching power for good or ill. Which it will be depends upon the man and his training.

Furthermore, the lawyer, even as the judge, may contribute to the improvement of law and the machinery for its administration. The responsibility for such contribution rests upon the legal profession. Lawyers and judges should be inspired by the nature of their training to assume, and equipped by its breadth and thoroughness to discharge, such responsibility.

There is another respect in which judges and practicing lawyers alike occupy a vital place in the body politic. They wear the robes of the law. They can never lay them off. Through their habits of mind and their ethical conduct, they help to create respect, or conversely contribute to disrespect for law. Contempt for the lawyer or the judge is readily translated into contempt for law. Regard for the lawyer or the judge develops into respect for the law. The super-technical lawyer or judge, the selfish lawyer who views the practice of the law as a means to serve his own ends, the ignoble lawyer who disregards the ethics of the profession, are a menace to law and order and thereby a menace to government, for law lies at the heart of government.

An improved personal equation is a *sine qua non* of better things in the administration of justice. The important question is, how can it be secured?

One approach to the problem of securing an improved legal profession must always be through the avenue of requirements for admission to the bar and their administration. The minimum education required for admission to the bar, together with the minimum performance demanded in the state bar examination, fixes the minimum standards of the profession and determines the lowest levels of legal education. Today these requirements and demands are unspeakably low in all but a few of the states. One of the remarkable and outstanding achievements of America in this age has been its success in rendering higher education both popular and widely available. Young people from every walk of life are streaming into the colleges and universities of the land in ever increasing numbers. Coincident with this advance in general education, marked educational progress has been made in the professional field at large. Medicine has left the legal profession far behind in point of its educational demands. The professional idea and ideal have expanded. New professions have entered the field. Architecture, engineering, journalism, business have presented themselves as learned professions and are winning increasing recognition as such,

because they are stressing the advantages and even the necessity of broad culture, as well as of technical training of a thorough and exacting kind. It is one of the strange, and one might say well nigh inexplicable, phenomena of modern life, that the educational requirements for admission to the legal profession, which has always boasted of the fact that it is a learned profession, should have lagged so far behind the rapid march of events educationally. Hope abides in the fact, however, that the American Bar Association and many of the state bar associations are thoroughly alive to the various evils that inhere in this situation and are taking active steps to remove them. Interest in a widespread way was first vigorously and intelligently focused upon the problem at a National Conference of Bar Association Delegates, sponsored by the American Bar Association, and held in Washington, D. C., February 23 and 24, 1922. This Conference brought together leaders of the bench, bar, and legal education, from every section of the United States. There were present both friends and enemies of the proposal to advance our educational requirements for admission to the bar. After a debate of two days, in which no considerations pro or con, were overlooked, the Conference overwhelmingly endorsed, among others, the following resolution:

> Every candidate for admission to the Bar should give evidence of graduation from a law school complying with the following standards:
>
> (a) It shall require as a condition of 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. (A. B. A. Reports, Vol. 17, p. 482.)

Since that time, many state bar associations have approved the resolution and some three or four states have incorporated it, with a few qualifications, in their bar admission requirements. More encouragement still is drawn from the fact that at the Annual Meeting of the American Bar Association held in Buffalo in September, 1927, steps were taken to push this movement for higher standards for admission

to the bar more systematically and rapidly in the rest of the American states. To this end the Council of the American Bar Association on Legal Education and Admissions to the Bar has appointed an adviser who will give his full time to the undertaking. State associations should be stimulated to renewed endeavor by this business-like and systematic procedure adopted by the American Bar Association. The responsibility within the state must without doubt rest both theoretically and practically with the bar of the state, but the aid that the nationally directed campaign can give will be of inestimable value.

But higher bar admission requirements do not tell the whole story of an improved bar. They do not attempt and could not be expected at this time to safeguard all comers against legal training that is essentially inferior. It is not their function to lay out a system of legal education adequate to all the demands that may be made upon it. They leave a great need for the continuous study of legal education to the leaders of the profession and to the law schools, as well as a need for the evolving of practical educational plans that will better serve all the various demands of the profession.

A few of the problems that we face in the field of legal education will be briefly stated and some suggestions made toward their solution. Preliminary to a discussion of the problems, however, it is desirable to indicate the different classes of students that are seeking legal educational services, the grist as it were, to which the legal educational mills must be adjusted. Divided on the basis of their preliminary education, they fall roughly into three groups. 1. Students who meet minimum educational requirements, prescribed for admission to the bar. 2. Those who have pursued their general education one or two steps in advance of what is thus required. 3. Students who have gone substantially beyond the second group. Put in a more definite way, group 1 at present includes those with high school training or less; group 2, those with one or two years of college work; and group 3, those with the college degree or who are in process of obtaining such degree in a combined six year course. Another grouping, that cuts across these three groups, is: (a) students who can give or wish to give only a part of the working day to the study of law, and (b) those who can give the full working day to their studies.

The first large problem in legal education is to bring to each of these groups a thoroughly reputable educational service that will not only go as far as the capacities of the student and the circumstances under which he works will permit in imparting legal knowledge and developing legal capacities, but will also render that service in a truly professional spirit

and with a view to building a four-square professional character. This need is especially pronounced in the case of those students who meet minimum bar admission requirements and those who can give only part time to their studies. These two groups, which have always bulked large in the profession, have received the shabbiest educational consideration. Almost entirely they have been abandoned as a prey to the commercialized night school, thrown in with a miscellaneous hodge podge of those seeking a smattering of law for business purposes, encouraged by easy regulations to keep on, regardless of their aptitudes, and subjected to teaching which crams for a state bar examination as an end in itself. These men, who are officially invited by our rules to enter the profession, deserve better at the hands of the profession. The purely commercialized school is the one big evil in our system of legal education. Its elimination will bring rich returns in a better legal profession.

The second educational problem is to bring each one, who aspires to the bar, up to the maximum attainments of which he is intellectually and financially capable. In the very nature of things, the bar admission requirements apply only to minimum educational standards. They leave untouched the equally important task of recruiting lawyers with a still better training than that actually demanded, to the end, not only that the general level of the profession may be lifted above that secured by minimum standards alone, but also, and this is even more important, that there may be furnished a legal personnel and leadership equal to the most exacting demands laid upon the profession by the exigencies of modern social and economic life. To these larger accomplishments, leaders in legal education, operating independently of bar admission requirements, must in the future as they have in the past direct their energies and, guided by such objectives, evolve their law school policies. This is not said for the purpose of minimizing in any degree the importance of the movement to set increasingly higher standards for admission to the lowest rung of the legal ladder; but only to emphasize the fact that there remains a large field for active, carefully planned leadership on the part of legal educators, looking to larger objectives of professional efficiency and constructive service in the administration of justice. This service is not new to the law schools. They have performed it with marked courage from early times in the history of legal education. The desire to provide for the higher needs of the profession has at all times dictated the policies of the Association of American Law Schools. A continuous and persistent urge forward on the part of the leading law schools has not only been a strong factor in pre-

serving the general tone of the profession against the retarding force of low formal bar admission requirements, but it generated and made fairly possible of success the present movement of the American Bar Association toward a substantial advance in such requirements. Moreover, the wide appeal of the better law schools has demonstrated the fact that many men can be beckoned to higher attainments than those which are set by rule.

To bring all seekers for admission to the bar up to their own highest development means two things. First, it means rescuing part time students from the inevitable handicaps that arise from a dividing of their interests and dissipation of their energies. While a marked extension of the period of study improves their lot, it does not go the whole way. I venture to assert that no scheme of part time study can be the full equivalent of full time study. The psychology of it, if nothing more, is bad. Law is too big a thing to be made a side issue. One will be not only a better student, a more profound student, but he will feel a deeper respect for the profession, if he has been obliged from the outset to give his whole heart and soul and energy to its contemplation. In so far as the particular individual is a man really worth salvaging, he should be reached by competent advice and aided by scholarships and thus brought into a group of full time students. Second, it means inducing every student to carry his preliminary education to the farthest possible point which his resources will permit; through two years of college training, if he be tempted to stop before he reaches that point; to three or four years of college work if he be inclined to stop short of that goal. This influence can be brought to bear and made effective in three ways: (1) by a general campaign of education issuing from the American Bar Association and from local bar associations; (2) by a continuous campaign within each institution of higher learning, conducted by the law school among its prelegal group; and (3) by and through the Association of American Law Schools.

1. The recent practice of the Section on Legal Education of the American Bar Association in classifying law schools on the basis of their admission requirements and library and teaching facilities, has doubtless done much to influence students to carry their education through at least two years of college and to attend the relatively higher standard schools. This service of the American Bar Association would reach further if state and local bar associations would add their support and if it were broadcast from time to time through the press and relayed by lawyers to those who ask their advice. The campaign would be especially effective in the press, if it included a brief statement of

the reasons which moved the American Bar Association to recommend collegiate training and better law schools. Young people, looking to the law, are too apt to take the requirements for admission to the bar as constituting official advice to the effect that such preparation is wholly adequate. It is bad advice and it needs to be counteracted. Bar associations, by publicity alone, can accomplish much.

2. Influence can easily and effectively be brought to bear upon prelegal students to induce them to prolong their education preliminary to law. I found by actual experience in one institution with which I was connected, in which two years of college work were required for admission to the Law School, that by getting in touch with freshmen entering the University as their adviser and continuing as such adviser, I was able to change the character of the registration in the first year class in the Law School from 90 per cent of two year college men and 10 per cent of three year college men, to the exact reverse. And in some instances, in the case of students involved in student activities, I was able to get them to complete their college course before entering the Law School. This shift was brought about in a period of seven years. This experience, I believe, can be duplicated in any University, if a similar policy is adopted. It will result in a few lean years in the Law School, but one is repaid by the feeling of a real service rendered to the student and by a return of the former enrollment in two or three years.

3. The policy of the Association of American Law Schools has had the effect of persuading many students to carry their preparatory work from high school graduation to the acquisition of two years of college work. The Association has forced the local schools to move forward, and while some students have thereby been turned away, such forward movement has in the main had the effect of carrying the local group of students on to the further accomplishment. They wished to stay in their own University or their own state, and accordingly put forth the effort to meet the higher requirements. The students were benefited and, in the end, the school was likewise benefited.

A third problem in legal education is to strengthen our teaching and to provide more adequately for reasearch. The stream that replenishes the legal profession can rise no higher than its source. The teacher is the source. He sets the pace. He creates the atmosphere. He stimulates the thinking, or deadens it; he kindles zeal or kills it; he broadens the view of the student or narrows it; he brings out the latent talents of the students or buries them still deeper; he teaches law as a craft or a profession. We need more real teachers.

The demand for research is equally urgent. After all, an institution without this element of productive scholarship in strong proportions is largely sounding brass and a tinkling cymbal. Research breathes into the educational enterprise the breath of life. It makes atmosphere for the students and keys the whole organization to the pitch of intellectual alertness. A school whose faculty is content largely to rehash is in a state of decadence. But more than this, a school that is not alive to the necessities of research and organized to carry it on is failing to attain its largest usefulness. Research is a prerequisite to improvement in law. Leaders of the legal profession who are interested in law reform realize that they need the information which careful research will alone produce on which to base changes that are born of wisdom and not of conjecture. But lawyers in practice do not have the time or inclination for necessary investigational work. They should be able to turn to the law schools for this assistance.

In the field of research a great change is taking place. The research that is engaging the attention of the law schools and the bar no longer lies wholly in the field of the books. The most significant recent development in legal education and law reform has been the tendency to turn attention to the functional aspects of the law. If the proof of the pudding is in the eating thereof, it is equally true that the test of a law is how it works. We are beginning to realize that, if we wish to proceed with wisdom and care to legal change, we need to know not only what the rules of the common law are, and why they have become such, not only what the statutory developments in a given field have been, but also how the various rules or statutes are actually fitting themselves into the great, busy, throbbing commercial world; if it be procedure with which we are concerned, we wish to know not only what the various rules are but how they actually work. Research activities are thus being expanded rapidly beyond the old boundaries, beyond the laboratories of books into the laboratories furnished by the marts of trade and court and institutional records. Such researches can well emanate from and be organized by and directed by our institutions of higher learning. The field has scarcely been touched and it is full of promise.

In so far as law faculties are manned by strong, aggressive scholars, they will not stop, and are not stopping, in their research activities with the mere dignified publication of results, but they will cooperate with leaders of the profession in the effort to carry them through to the concrete practical ends. This new type of research and practical service on the part of law schools, this new drawing together of the teaching and practicing branches of the legal profession, this emergence, as it

were, from the cloister by the law schools, will, I believe, not only rejuvenate the schools but will prove a substantial aid in the difficult task the law schools face of attracting to and keeping in the law teaching profession a larger number of virile, alert, active minds and vigorous personalities. Teachers for our better schools are all too scarce. We need every aid possible in recruiting strong men for a work so important as that which the law schools are called upon to undertake.

Law schools as never before are face to face with larger opportunities for usefulness. The opportunities have outrun their capacity. Modern political, social and economic life is laying strong and insistent demands upon the legal profession for an improvement in law and its administration. Such demands are not new or striking. Doubtless, they followed the very first attempt to administer justice in human affairs, for human devices must always fall short of the establishment of that justice which humanity craves. Moreover, vigorous criticism of the law is inevitable so long as human nature is as it is. Therefore in any appraisal of our system, that criticism which springs from irrational expectations and from the inevitable disappointment of the losers in contentious litigation must not be mistaken for legitimate demands for remedial change. But after allowance is fully made for such upbraidings of the legal system, we are obliged to grant the fact that there is substantial basis for a widespread, legitimate dissatisfaction with our legal machinery, and to give due significance to the fact that among the severest critics are to be found not alone substantial representatives of the business world, but also outstanding leaders of the American bar and bench.

A cursory survey of even a few of the demands for improvement in law and its administration will reveal the seriousness of the task that they present. The first demand is to clarify the law, to eliminate in some measure its uncertainties and complexities. One of the fundamental purposes of the law is to bring order into human relationships. Uncertainty in law inevitably defeats such purpose. Let us suppose, for example, that the rule of the road were uncertain and that it were utterly incapable of determination in advance whether one person upon meeting another should turn to the right or to the left. In primitive times, when the population was sparse and travel was slow, uncertainty in such a case would have its disadvantages and lead to some delays and personal encounters, but in modern days, with their congestion and rapid transit, disaster and chaos would ensue. Vary this simple illustration to fit the innumerable activities and contacts of modern social and economic life, and one can readily appreciate the justification for and the outstanding significance of urgings to make our rules of law more

certain and readily understandable. Bitter indeed is the feeling of the modern business man who makes every honest and reasonable effort to determine in advance whether a contemplated action on his part is lawful or unlawful, who employs the most able counsel that money can secure, and who is told by that counsel after diligent search, that it is impossible to determine whether the action is according to law or not. The complexity in the law is developing with staggering rapidity through the mounting accumulation of statutes and court decisions in our various jurisdictions. Not long ago Mr. Elihu Root said in a public address that an actual count in the Library of Congress revealed that in a recent five year period there had been over 62,000 statutes enacted in the United States and printed in the volumes of laws of the different legislatures of the country, and in the same time there had been over 65,000 decisions of courts of last resort delivered and printed in 630 volumes of reports. New laws, often hastily drawn, bring new uncertainties; these new uncertainties provoke new confusion and additional litigation; and so the plot thickens in a manner calculated to bring dismay to lawyer and layman alike. Heroic indeed must be the effort to extricate humanity from the perils and perplexities incident to these developments. One is tempted to echo the cry of Job: "Oh, who will deliver me from the body of this death?" The law schools and leaders of the American bench and bar through the American Law Institute are making a strenuous attempt.

A second demand is to change the substantive law to meet new economic and social conditions. This will call for intensive study and for the careful and comprehensive accumulation of data from court decisions, from statutes, from court and other records, and from studies conducted in all the practical laboratories of our complex social and economic life. We need facts as a basis of intelligent change.

A third demand is to improve the administration of law. This demand runs the gamut of court organization, practice and procedure, and indeed the functioning of all law enforcement agencies, and it includes the personnel. It is a large order in itself.

I stated above that these far-reaching demands are laid upon the legal profession. But they do not abide there. They carry over to the law schools and our legal educators. This task of meeting these demands, together with others less complex but none the less vital, heretofore considered, calls specifically for a new attack upon the problem of legal education and law school administration, and in general for an aggressive forward movement in the legal profession as a whole. To each school comes the practical question, where will it fit itself into the

general scheme? What service will it choose to render? It must be apparent that to such schools as are strategically located, and can be properly financed, there is the urgent call to prepare to meet the profession's largest responsibilities. The schools that are able to meet such responsibilities now are too few. To render this advanced service, these schools must, in the nature of things, operate on a graduate basis, for one of their functions is to stand at the farthest outposts in legal education, beckoning students to the utmost preparation for the widest constructive service, and thus widening the influence of an advanced educational leadership. Such a school will stress exceptional scholarship on the part of its students and particularly broaden that scholarship in the field of the social sciences; for it will realize fully, as some such schools already realize, the truth of what Mr. Robert S. Brookings, President of the Corporation of Washington University, in an address at the 1927 Commencement Exercises of the University, so well said:

> Government functions through law, and a large proportion of our legislators are drawn from the legal profession. The underlying principles of law are embodied in the social, economic and political sciences. It is unthinkable that the law schools of the country have both in their matriculation requirements and their curricula paid little attention to those sciences.

Such a school will be manned and equipped for the widest and most effective types of research and, withal, will be both able and anxious to cooperate with the constructive leadership in the legal profession in its efforts to discharge its far-reaching public responsibilities.

If in my attempt to stress some of the larger objectives of legal education I may, in the opinion of some, be thought indifferent to the more immediate requirements of sound law school administration, I can only say that I am not and that my policy includes attention to those matters that are both far and near, but not alone attention to the obvious. "These things ought ye to have done, and not to have left the other undone."

And if I were to attempt to epitomize briefly the obligations of legal educators as I have developed them in detail, I do not know how I could do better than to quote:

> Go through, go through the gates, prepare ye the way of the people, cast up the highway, gather out the stones, lift up a standard for the people.

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