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Bar Limitation-Student Quotas Versus Higher Law School Standards

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BAR LIMITATION—STUDENT QUOTAS VERSUS HIGHER LAW SCHOOL STANDARDS

The problem of whether it is desirable or necessary to try to limit the number of those receiving admission to what is frequently said to be an overcrowded bar, has recently been receiving an increasing amount of attention. Certain very definite economic conditions affecting the profession are as a rule either assumed to exist or at least referred to without much question as to their existence, as the justification for an attack on this problem. Many gloomy pictures as to the future of the profession have been drawn.[1] And some are now beginning, as the newest development, to advocate projects for limiting directly, by quotas for the law schools, the number of students who might seek admission to the bar.

Present Practices Tending to Limit Enrollment

For many years of course, there have been at work several important factors tending to limit the number of those applying for admission to the legal profession. Generally, and very briefly it might be stated that the increase in standards applied by the law schools themselves regarding the admission and exclusion of students has tended to limit the numbers admitted to the schools and graduated therefrom. These efforts have been largely voluntary on the part of the schools in their efforts to secure and maintain approval by the American Bar Association, and membership in the Association of American Law Schools. While many schools in the country

1 The House of Delegates of the American Bar Association in January 1937 adopted a resolution requesting the appointment of a Special Committee to study the economic condition of the bar in the United States; and a committee acting under the chairmanship of Dean Lloyd Garrison was appointed pursuant to this resolution. In passing it might be pointed out that the recently published report by this committee on "The Economics of the Legal Profession" is a monument to the painstaking work of Dean Garrison and his committee. Reference might be made also to the symposium by Love, Llewellyn, Fraenkel and Sharp in the article "Economic Security and the Young Lawyer: Four Views", in 32 Illinois Law Review 662, February 1938.

have for many years had requirements as high as, or even higher than the requirements of these two associations, the gaining of such approval or membership in other instances has been a distinct advance on the part of many schools and the adoption of the necessarily higher entrance requirements has resulted in the rejection by such schools of many students formerly considered acceptable. Approximately half of the law schools in the country have the approval of the American Bar Association,[2] and membership in the Association of American Law Schools, and the aggregate rejection of prospective law students by these schools has undoubtedly run into very large numbers.

A second development having the same tendency to limit the number of students in the schools, and consequently the number applying for admission to the profession is that involved in the adoption, by court rule or legislative action in the various states, of the American Bar Association standards—or even higher standards in some of the states—regarding requirements that must be met in order to obtain admission to the bar. The adoption of these requirements has had the indirect effect in the cases of schools with lower requirements of a compulsory limitation in the number of students in that many prospective students have been discouraged by the higher requirements. Approximately three-fourths of the states have now adopted American Bar Association or higher requirements.[3]

A third development has been the adoption voluntarily, by many schools of requirements substantially above those of the American Bar Association, the Association of American Law Schools, the courts and legislatures, the state bars, etc.

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2 Ninety-seven out of one hundred eighty-five law schools in the United States, or 52%, are approved by the American Bar Association. Eighty-seven American law schools have been admitted to membership in the Association of American Law Schools. Annual Review of Legal Education for 1937, page 64.

3 "Thirty-six States now require two years of college education or its equivalent, effective either presently or prospectively as to substantially all candidates for admission to the bar." 7 The Bar Examiner 84 (June, 1938).

A number of schools, for example, require a degree for admission. An increasing number in recent years have come to require three, instead of the more general two years of pre-legal work.[4] Other schools have begun to require in place of an added amount of pre-legal study, or concurrently with it, a certain measure of qualitative accomplishment during the course of the pre-legal work, and reject applicants whose work, although sufficient in quantity, may not have been completed with a sufficiently high scholastic standing.[5] Others have gone even further and have used various law aptitude tests to aid in determining what students they should accept or reject. Still others go more or less thoroughly into the personal history and the whole personality of the applicant. All of these practices have tended to limit, at least in particular institutions, the numbers of those preparing for admission to the profession.

A fourth development has been what is generally considered to be the adoption of more rigorous examination practices by the boards of bar examiners in many of the states. In some states the numbers admitted amount to less than

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[4] The following law schools require four years of college work, most of them require a degree, although under certain circumstances in some of the schools students may be admitted with less than four years of college work; California, Chicago, Duquesne, Georgetown, George Washington, Harvard, Pennsylvania, Pittsburg, Stanford and Yale. The following schools require three years of college work: Catholic University, Cincinnati, Colorado, Columbia, Cornell, Creighton, Denver, Dickinson, Duke, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Loyola (Chicago), Marquette, Michigan, North Carolina, Northwestern, Notre Dame, Ohio, Oklahoma, University of San Francisco (Day), Santa Clara, Southern California, Syracuse, Washburn, Washington, Western Reserve, West Virginia, William and Mary and Wisconsin. Forty-three schools therefore require more than two years of college work, ten require more than three years, and thirty-three require at least three years.

[5] Columbia, Cornell, Fordham, Harvard and Missouri appear from their recent catalogues to have other than quantity requirements, although the requirements as to quality are not always set forth specifically. From recent catalogues it appears that Tulane is requiring students to complete pre-legal work in the upper half of their classes; that Indiana requires a 1.20 average from students with three years of pre-legal work; that Illinois requires a 1.25 average of such students; that Wisconsin requires a 1.30 average of such students; that DePaul requires a C+ average; that in general Stanford and California are requiring a 1.50 average, and that Michigan in some instances is requiring a 1.75 average. Announcement has also been made that a 1.50 average will be required at Southern California in 1940.

fifty percent of those applying, and in many other states the percentages admitted hover only slightly above the fifty percent mark.[6] The percentages of failures, of course, have become widely known, and the result has been in particular states at least, to discourage and thereby reduce substantially the number of those seeking admission to the profession.

Data Regarding Professional Incomes

Notwithstanding all of the foregoing developments, there is still a rather widespread impression that too many persons are seeking admission to the legal profession. Since this impression lies at the root of the whole matter of quotas, the validity of the impression should be checked carefully at the outset. It should be noticed at the beginning and kept in mind throughout the discussion of the matter of quotas that as yet the matter is and must be only in the impressionistic stage for there is no sufficient data to justify conclusions as distinguished from impressions, that the economic condition of the bar requires direct limitation, or further limitation, on admissions to practice.[7] A survey of the actual data available will support this conclusion. Recent studies in New York City it is true, have disclosed what appear to be deplorable conditions. On the other hand, studies in Wisconsin by Dean Lloyd

[6] Only 57% of the first time bar examinees in forty-six states were successful in 1937 on the various bar examinations. Out of the forty-six states, the following states passed less than 50% of the first timers on each of the examinations given during 1937; Alabama, Arkansas, Connecticut, Maryland, Pennsylvania, Rhode Island, South Carolina and Texas; the following additional states passed less than 50% on one or more of the 1937 examinations: California, Delaware, Florida, Idaho, Indiana, Massachusetts, Minnesota, Nebraska, New Mexico, New York and Virginia. 7 The Bar Examiner 68-69 (May, 1938).

[7] The recent publication of "The Economics of the Legal Profession" by the American Bar Association, being the report of the Special Committee on the Economic Condition of the Bar, contains the result of surveys made in New York County, Connecticut, Wisconsin and California. Valuable as this work is, the facts found because of the limited character of the surveys can only be suggestive rather than conclusive as to what the general condition of the bar is, taking the country as a whole. Reference is made to "The Economics of the Legal Profession" as the only publication known to the writer which attempts to correlate the results of the above mentioned surveys. It also contains the materials upon which many of the following statements regarding the legal profession were made prior to the appearance of "The Economics of the Legal Profession".

Garrison have served to show that the economic condition of lawyers in Wisconsin, which is both an agricultural and industrial state, is not worse and is perhaps better than it was years ago. Studies in Connecticut by the Yale Law School have disclosed what appear to be undeveloped opportunities in the way of legal practice; and one inference from those studies, namely, that the profession should develop techniques for getting in touch with many neglected possibilities of professional service and income, seems to be justified rather than the inference that there are too many lawyers now. The recent California survey of lawyers admitted to practice approximately five years ago, revealing an annual net income of $2,606.00 on the average during the fifth year of practice in 1936, is not such as to be entirely discouraging in view of the equally, or even more seriously depressed incomes from business, the professions and the trades generally throughout the somewhat depressed years of 1932 to 1936 inclusive. The majority in the group had incomes in their fifth year of practice between $2,000.00 and $4,000.00. It might also be interesting to notice that the median net income of a comparatively small group, namely, that of the graduates of one of the leading California law schools, ten years after graduation, including the depression years from 1928 to 1937, was the not altogether discouraging one of $3,575.00.

Recent studies by a Columbia University professor indicate that lawyers have been the second best paid group among American professional men during the past sixteen years, and that although the medical profession leads, but by only a small percentage, the legal profession in the matter of income, engineering, dentistry, architecture, college teaching, journalism, library work, ministry, skilled trades, public school teaching, nursing and other occupations trail the legal profession in income, and many of them trail miserably.[8]

8 This statement is substantially borne out by United States Department of Commerce figures for the years 1929 to 1934, except that the income for lawyers

Looking at the matter in the most selfish way, namely from the point of view of professional income alone, and to the exclusion of any consideration of the needs of our time for professional legal services, or of the matters of public welfare involved, the advantage of the medical profession in the way of earnings in spite of the stringent instructional programs in the medical schools of the country—a program of restriction which is often looked upon with envy by those already admitted to practice our own profession—should perhaps give pause to those inclined to conclude hastily that our profession is overcrowded. At any rate, according to the study just referred to, the average earnings of members of the medical profession during the sixteen years covered by the survey exceeded those of lawyers by only $120.00 a year. The medical profession made an average annual income of $4,850.00. Lawyers in the same period averaged $4,730.00.[9] And by way of brief digression the question might be raised as to whether or not the lawyers by too strict a limitation of their numbers wish to encourage the threat of "socialized law" in the way that "socialized medicine" has already come to harass and bedevil our medical brethren—if indeed the developments in the field of administrative law do not already indicate that "socialized law" is already here.

The first point which it is desired to make therefore, on the basis of actually available data is that there is much reason to believe that while the profession at times and in places is faring badly, it is also on the whole faring well.[10] The sec-

from 1929 to 1934 inclusive, exceeded in each year that of physicians and surgeons. The Economics of the Legal Profession, page 42.

9 In 1929, the per capita income of lawyers was $5,534.00, and that of physicians and surgeons was $5,403.00; that in 1934 the per capita income of lawyers was $4,218.00, and that of physicians and surgeons was $3,570.00. Op. cit. supra note 8, page 42.

10 "Perhaps the fairest general conclusion one can draw is that the total quantity of law business has been increasing at least as rapidly as the profession, and perhaps more rapidly". Op cit. supra note 8, page 70. "The earnings of all the other professional groups likewise fell much more sharply than the lawyers; the latter weathered the depression in better average shape than any of the others." As noted above the lawyers and doctors seem to be in a neck and neck race for the position of best compensated professional practitioners. Op cit. supra note 8, page 43.

ond point is that in any case, except in a few instances where surveys have been made in California, New York, Wisconsin and Connecticut, we do not have the factual information upon which to base a definite conclusion that further limitation on bar admissions is necessary. The third point is that some of the data we do have is so inconclusive, due to the fact that it is based on depression conditions that he would be rash indeed who would conclude that we are in fact in need of a quota system which will limit the numbers of those seeking admission to the profession under normal conditions —assuming the "depression," and "recession," as it is hoped we may, to be abnormal. At any rate the available data, when thoughtfully perused, however sympathetic we may be about the worries of our brethren as to how they will pay the rent and the stenographer's salary, buy law books, etc., seems to fall far short of justifying the conclusion that a system of quotas is necessary. Nevertheless the matter of quotas has been advanced with increasing frequency as a solution to the problem of supposed overcrowding of the profession.

Law School Quotas as a Bar Limiting Device

All discussion however, with which the writer is familiar, has so far failed to reach the point where any definite or specific quota project has been advanced so as to meet the approval of any large group. However, the suggestions have been sufficiently numerous in the writer's opinion to make it worth while to consider generally the matter of student quotas in law schools, for no matter what kind of propositions for student quotas might be advanced, there are certain objections which can, and in the writer's opinion, should be made to any or all of them.

With regard to the fundamental principle involved it seems doubtful, to say the least, that the organized practicing branch of the legal profession has yet taken or has indicated a willingness to take, a position which seems to be the indispensable prerequisite to any quota system namely, that

the number, regardless of the fitness of those applying for admission to the bar should be limited. On the contrary, as far as avowed positions are concerned probably no important body of lawyers whether organized in the American Bar Association or in the state bar associations, or otherwise, has taken any such position. And certainly the standards of the American Bar Association with regard to the matter of training for admission to the bar and with regard to approval of law schools contain no trace of such a principle. On the contrary, the principle implicit in those standards is that those students who meet the pre-legal educational requirements may, without limit as to number, be eligible to seek admission to the profession.[11] The underlying principle approved or implied in the action of the American Bar Association at any rate, may be described as a democratic one in that all who can meet the educational requirements are to have an equal opportunity, and there is no suggestion of a quota idea to stifle or limit competition among the fit in securing admission to the profession.

With regard to the schools as distinguished from the practitioners, in so far as they are true to the underlying principle which justifies their existence, namely, that their educational facilities shall be open to all who are qualified to profit therefrom, they will inevitably rebel at the prospect of being obliged to operate under the diametrically opposed principle that they must exclude, out of regard for some quota requirement, those who could with advantage to the schools, to the public and to themselves utilize the facilities for obtaining a legal education which are available at such schools. In other words, a school which, when it has facilities permitting it to do more, deliberately refuses its services to those who, although able to do their work in a satisfactory

11 See for the "Standards of the American Bar Association" the Annual Review of Legal Education for 1937 where among other places such standards are printed in full, together with the Rulings of the Council on Legal Education and Admissions to the Bar of the American Bar Association upon such standards.

manner, are excluded by a quota, violates a fundamental American policy to encourage education, stultifies itself in violating the fundamental principle justifying its own existence, and defeats its own as well as public purposes; it is unlikely that educators, the boards of trustees of our private and public colleges and universities and the legislatures that control the purses of the public schools, will look favorably upon such a self-stultifying program. It should be borne in mind that exclusion because of lack of facilities is one thing; and that exclusion because of incompetence is another thing; but that neither of these matters goes the length of excluding those who might be fit and capable merely out of regard for a quota system which does so much violence to their principles and objectives. It might also be interesting to speculate as to the effect of such a precedent upon our institutions of higher learning, for if law students can be limited by quotas it would just as logically follow that engineers, architects, commerce students, teachers, pharmacists, accountants and others could also be limited by quotas. It does not take much imagination to foresee what the reaction of institutions devoted to the dissemination of knowledge would be to the necessary implication of such a program of restriction, namely, that instead of being dispensers of knowledge they are to become the stiflers of competition in the various professional and commercial fields.

Briefly then it is to be noted that neither the bar associations nor the schools have seriously considered a repudiation of the long familiar and democratic principle under which they have operated in the past, and the advocate of the quota idea for lawyers will have to consider the very practical matter of what the likelihood is of being able to bring about the necessary reversal in policy of the two groups.

The difficulty also involved in providing the details of any quota system, even assuming for a moment that quotas might be acceptable otherwise to the lawyers and to the educators, is a matter so appalling in itself that one is led to wonder how

the advocate of the quota idea can maintain the appearance of seriousness and of practicality in advancing the idea. It needs very little imagination to see the dissension that would arise for example in a state having, as one of them does, as many as nineteen law schools of all kinds and conditions, if they tried to agree on a quota among themselves, or if they were subjected to a quota imposed upon them without their consent. And if this suggestion does not involve trouble enough it is sure to be complicated by the next problem of how the bar and the schools in state A will react when involved in quota relationships with the bars and law schools in states B, C and D, and so on. The practical difficulties about devising any kind of workable quota system, local, regional or national, probably do not need to be dwelt upon further. Only the most pressing economic necessity—the existence of which is not yet established—or the heavy hand of the political dictator, can be conceived of as putting workability into what is so manifestly unworkable.

Further with regard to the matter of practicability, it should not be forgotten that the public generally has its own interest in this matter of limiting admissions to the bar, and that so far at least, it does not seem likely that anyone can demonstrate that it is in the public interest to limit, even though they are qualified, the numbers of those seeking admission to the bar. Unfortunately, our profession is not much loved by the public in general, most of whom are unable even as conditions are now to pay for our services, and the opinion is hazarded that the general public is not likely to look kindly upon an effort which inevitably must appear to be one made solely in the economic interest of those of us who are now members of the bar.

But in any case, regardless of the practicability of any quota plan, a system, which merely for the sake of limiting numbers, limits the freedom and opportunity of individuals to seek to qualify for a profession of their choice, or the freedom of educational institutions to give training to such mem-

bers of the public as are qualified to receive it with profit, is subject to an even more grave objection on the ground of its inherent arbitrariness, and this is especially so in the absence of definite facts that prove the need for the employment of such an arbitrary and revolutionary device.

Alternative Legitimate Devices

It should be borne in mind that, if, as and when a limitation in the numbers of those seeking admission to the profession should become necessary, we already have available legitimate devices which can be used to that end, but fortunately which are free from the objections which inhere in any kind of quota system. Under our present generally prevailing system of examination by the various bar examining bodies, whose tests are conducted independently of those given by the law schools, applicants for admission to the bar must meet the requirements of the examining bodies in regard to their professional fitness. Of course, as everyone knows, this system of independent examination results practically in the rejection of some of those who seek professional status. The advantage of this system over the quota system is that regardless of where the passing line is drawn it serves to separate the more fit from the less fit, and at least makes it possible for the more fit to gain admission to the profession, and at the same time leaves open the opportunity to the less fit to increase their fitness and upon a subsequent examination at which their fitness is demonstrated secure their licenses to practice. This is thoroughly consistent with the only valid principle of limitation of numbers that can exist namely, that in the public interest the bar must take the responsibility for limiting licenses to practice to those who are qualified; whereas by way of contrast a quota system for law schools would preclude those rejected by the schools from even having an opportunity, able and otherwise well qualified as they might be, to prepare themselves to become fit members of the profession; and if in fact a limitation of the numbers ad-

mitted to the bar should be found to be necessary the device of increasing the measure of ability and knowledge to be demonstrated on the bar examinations is not only a device which can be used consistently with the above mentioned object of insuring an adequately trained bar in the public interest, but it is also one which is eminently workable and practicable. There is no reason to doubt that this device is already in extensive use, or that an aroused local bar can bring pressure if necessary upon local bar examiners sufficient to insure a raising of the standards of legal education, and the attendant decrease in numbers of those applying for admission to the bar that such an increase in examination severity will bring about. While it is true that action upon this suggestion will result in the limitation of the numbers of those securing admission to practice at least the principle of licensing the best qualified is preserved. This can not be said of a quota system.

Another legitimate device for reducing the numbers of those applying for admission to the bar is that of increasing the standards prevailing in the unapproved law schools of the country for there is good reason to believe that increasing the content and quality of the course of preparation for admission to the schools and the bar, probably in most of the states will tend to discourage many who are not serious in their purpose of studying law.

It is a fact not sufficiently kept in mind that notwithstanding the adoption nearly twenty years ago of the standards of the American Bar Association as to what constitute adequate minimum pre-legal and legal education, and as to what constitute minimum adequate standards in schools for training lawyers, it is still true that approximately only one-half of the law schools in this country have qualified for approval by the American Bar Association in meeting the minimum standards recommended by it for American law schools. Here, indeed, is a very serious matter, and one well worthy of those

energies of the bar associations and of the schools, which some propose be misdirected toward limitation of students by means of quotas. These standards have been reaffirmed by the American Bar Association each time they have been called in question, and so have stood the test of time as pronouncements of basic principles regarding legal education in this country; these same standards have been approved in state after state by the local bar associations, by the local legislatures and by local rules of court. The actual figures establish the fact not only that approximately one-half of the law schools in the country may be described as sub-standard or at least unstandardized, but that nearly forty percent of the students studying law in the country are attending such unstandardized schools.[12] The unstandardized schools frequently, by accepting students who are not able to meet the more exacting requirements of the standardized schools, put a premium upon under-preparation by prospective law students, take students who are not eligible for admission to the schools operated under approved standards and so increase, perhaps even by the thousands, the numbers of those studying law and ultimately applying for admission to the profession.

If the energies of those interested in the matter of an overcrowded bar were directed toward this end of improving the standards in that half of the American law schools which do not meet the minimum requirements of the American Bar Association, instead of toward the end of restricting by quotas the numbers gaining admission to even the better law schools, there need be no sacrifice of the principle long accepted in this country that while fitness to practice law must be established, everyone is to have an opportunity to secure preparation in law school in order that he may have a chance to become fit. And in view of the fact that nearly twenty

12 Figures given in the Annual Review of Legal Education for 1937, page 64, are as follows: Approved schools 97, unapproved schools 88, total 185; students in approved schools 24,029, students in unapproved schools 15,226, total 39,225.

years after the adoption of the American Bar Association standards nearly half of the schools are still not meeting those standards, there is abundant opportunity for the exercise of all such energies as may be available in the bar associations and in the schools in bringing about a higher percentage of adoptions of the American Bar Association standards throughout the country.

In passing it might also be noticed that in some states at least it is still possible to prepare for admission to the bar without attending law school at all,[13] and the advocates of law school student quotas must necessarily contemplate the inevitable tendency to drive those excluded from the schools under a quota toward an alternative and inferior method of preparation. Reverting to the principal point however, it seems that our energies for many years to come could be better directed at improving the standard of legal education instead of indulging in the absurdity of persuading or forcing the schools already approved, which still number only one-half of the total in the country, to limit their facilities.

It might also be found that by the time this more important job of improving the standards in the eighty-eight unapproved schools was done, the raising and maintenance of higher standards will have resulted in such a decrease in the numbers of those studying law throughout the country as a whole that the problem of overcrowding will be found no longer to exist. Indeed the opinion may be hazarded that there is a substantial possibility that the tendency toward even a shortatge of lawyers may have become apparent by that time. At any rate the situation in the medical profession,

13 For example it is still possible to prepare for admission to the bar in California by four years of correspondence, law office, or even private law study. Only nine jurisdictions do not recognize legal study in law offices. The jurisdictions listed are Alabama, Hawaii, Kentucky, New Mexico, Ohio, Oregon (after 1940), Philippine Islands, Virgin Islands and West Virginia. It appears therefore that only six *States* do not recognize law office study. No data is readily available as to states refusing to recognize private and correspondence law study. It is suggestive, however, that four states namely, Arkansas, Florida, Georgia and Mississippi, require no definite period of legal study at all. Rules for Admission to the Bar, page 1.

since the general adoption of higher standards of education in that profession has been such as to furnish some substantial ground for complaint that the economic condition of the doctors is on the whole so good that they all manage to get along in the larger cities so that countless rural areas throughout the country are left without adequate medical assistance.

At any rate there appear at this time to be unexplored possibilities in the reduction of the number of students and potential lawyers by following the alternative suggestion of improving the standards in the sub-standard schools—and even in some of the standardized schools—and that until such possibilities are exhausted it would seem to be not only undesirable but indeed unnecessary to resort to the practice of limitation by quotas.

Local Treatment of Overcrowding Problems

Finally, it must be noticed that in any case the problem of overcrowding, if and where there is such a problem, calls for purely local treatment. There is nothing in the way of available data to establish the fact that the problem is either a national one or that it is one of equal intensity in all localities. As long as this is so it seems a waste of effort to attempt to give the country as a whole the same prescription that may be indicated in such centers for example, as New York or Chicago. Further in view of the migratory character of law school graduates, who after graduation from a school in one state may apply for admission to the bar in any of the other states, it seems that it will be particularly difficult to work out otherwise than by locally employed devices other than a quota, any system of bar limitation that will take into account the varying conditions in different sections of the country. For example, it is obvious that if a system of quotas designed to meet the situation in New York city were made generally operative throughout the country one could only speculate as to the absurd consequences of such a system in,

let us say, Arizona, Nevada, New Mexico or Washington. Again, just how a quota system operative, let us say in New York law schools, could prevent an influx of graduates from other states does not appear. And further it must not be lost sight of that in case an effective school quota system should become operative in a state; and the desired economic improvement in the bar of that state took place, economic considerations would serve like honey draws a fly, to draw law school graduates, and even practicing lawyers, from other states to share in this new and abundant manna.

The point need not be labored. Uniformity in regard to law school student quotas is inappropriate. Unusual local success in applying quotas will inevitably attract outsiders. Consequently, it seems unlikely that either national or local quotas promise any degree of success. There is however, a means available locally of getting reasonably good results, without having to resort to the device of student quotas in the law schools, and that is a reasonably stringent local bar examination. The indirect, rather than the direct consequences of a rigorous examination can be made to produce the desired result. As the writer pointed out in an article in the American Bar Association Journal some years ago, the work of the bar examiners as generally conducted was practically futile as a means of *directly* preventing applicants from securing admission to the bar. The practical consequences of failure on the bar examinations in most instances was that the applicant improved his qualifications by further study and ultimately secured his license to practice. But if any one doubts the effectiveness of the work of the bar examiners as a means *indirectly* of improving the quality of applicants for admission to the bar and of the standards applied in the law schools, he need only refer to the California experience, concerning which there seems to be no reason to doubt that local pressure by the bar on the examiners has produced a high "flunk rate" on the bar examinations, with attendant mighty striving on the part of many of the law

schools to improve themselves and the quality of their student products. As a practical matter, the schools in self defense against a poor bar examination record by their graduates have had to reject in the first instance, and to eliminate in law school, many of the less fit who in easier days were passed on to the examiners. This kind of local self help is available for use in practically every state, as there are very few which have no local law school or law schools. And this is a relatively unobjectionable means of reducing numbers, for at least it is consistent with the merit principle, namely that the best be allowed to go on with their school work and to the bar examinations. It does not involve that element of the quota system which would exclude even the fit from the schools.

Ultimately it may be necessary to face the fact that the schools are all standardized, that the courses of instruction are all as good as they reasonably could be expected to be, and that all the applicants for admission to the profession are fit and qualified. It is possible that at some time in the future we may have to face such a situation, and that in spite of it, the bar is still overcrowded. It is sufficient to say at this time that we do not have such a situation now, and that we are not likely to have one like it for many years to come. Accordingly, this is not a problem now, or one that has to be solved now. It need only be observed that it will be time enough to try to solve it when it does become a problem. For the present, however, there are certain things that can be done for the improvement of legal education in this country that are justifiable in themselves. They also have the added merit in the eyes of those who are worried about overcrowding of the bar that if they are done, they will tend to limit the numbers of law students in this country. If in fact there is a need for such limitation, this consequence will be a good one. But the case for the need for limitation in general throughout the country as distinguished from certain localities still remains to be proved. If in fact there are localities where it is clear

that limitation is necessary, there are a variety of ways whereby this problem can be handled as a local matter and by local means. And none of these means need involve other than devices for improving the qualifications of those seeking admission to the profession, rather than the indefensible and arbitrary one of depriving students of the opportunity to secure professional preparation by a system of quotas in the law schools. No quota system can be other than arbitrary or other than a violation of the fundamental principles recognized by the bar and the better schools of this country that educational opportunities in the field of law should be open to all those who can profit by them.

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