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A study in Legal Education

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finest traditions of this school and will show that in the construction of the splendid new law building the state and the law school have not forgotten the honor due to those who, as the first teachers, laid the basis for the present law school. These portraits, although splendidly painted, represent a cost of only $500.00, and it was the plan of Dean Jones and the committee to raise by contributions from the alumni and former students of the law school and the members of the Bar of the state, an amount sufficient to pay for these pictures and to use any balance remaining either to secure a suitable bronze tablet in memory of the law students of this school who participated in the World War, or for the purchase of engravings of eminent judges, lawyers and law teachers, or for both purposes, if the fund should be sufficient. One letter has been sent out to all former students of the law school but only a small response has been had to that letter. The expense of continued circularization is considerable and would reduce the amount available for the purpose for which the fund is being raised. The QUARTERLY is therefore glad to call the attention of its subscribers to this project and to recommend it to them. Contributions and suggestions should be sent to the treasurer, Colonel George S. Wallace, of Huntington, West Virginia.

A STUDY IN LEGAL EDUCATION.—A recent publication by The Carnegie Foundation for the Advancement of Teaching, entitled "Training For The Public Profession Of The Law," by Alfred Zantzinger Reed, offers a valuable opportunity for study to those who are seriously interested in legal education or legal reform. Although the treatise is chiefly concerned with a comprehensive historical and analytical review of legal education, much of the discussion deals with contemporary and future problems involving the fundamentals of our legal structure. Without attempting any connected review of this exhaustive work, it is believed that a few topics of more than usual interest to the practititioner may be selected as illustrating the author's attitude, which in many respects may be considered as original.

According to the author's analysis of the situation, the greatest obstacle in the way of advancement of the legal profession in the United States is our persistent clinging to the false idea of a "unitary bar". He claims that our bar has already divided it-

self unconsciously into what may be described as an upper and a lower stratum, an inner and an outer bar, although the line of demarcation is indefinite, owing to the fact that sources of legal education and bar admission machinery have not been adapted to a recognition that such a differentiation exists. The upper stratum includes the scholarly members of the profession and the lower stratum includes those members who perhaps may best be described loosely in the popular phrase as "practical lawyers". Different conditions make the practical lawyer a necessity in our scheme of civic and legal development. Perhaps the most important condition grows out of the fundamental democratic nature of our government. The law is peculiarly a public profession and the lawyer is a *quasi* public official, a predominating dynamic force in our system of polity. Therefore it would be destructive to our democratic institutions to create a scholastic hegemony which would admit only a select class of legal scholars to the bar, and hence to intimacy with public affairs. Furthermore, the practical lawyer is needed to perform the very tasks in practical administration of legal relief which have called his type into existence. Moreover, considering exclusively the practical lawyer's personal rights, it would not be "humane" to exclude him. On the other hand, the educated lawyer is needed as a leader in legal thought and to serve the public in those phases of the law which call upon the practitioner for something more than merely dogmatic or classified knowledge. In this connection, attention is called to the prediction that our system of jurisprudence is facing a state of hopeless dissipation and disintegration unless some means can be devised of counteracting the tendency toward diffusion in the court decisions. The so-called practical lawyer is not equal to this task, which must be accomplished under the leadership of true legal scholars. Law schools should be divided into two classes catering, respectively, to these two different types of lawyers. The case method of instruction is prescribed as peculiarly appropriate to the higher type of education, which should be offered in schools which do not attempt to adjust their methods to a universal standard which would lower their efficiency. The "national" type of school is especially appropriate for this phase of education. On the other hand, part-time schools and even night schools have a legitimate function to perform in the way of preparing practical

lawyers, but these schools should not attempt to use the case method of instruction. The chief objection to the latter class of schools as they now exist is not inherent, but due to the manner in which they are conducted. However, the different types of schools serving the needs of different classes of lawyers will never be able to function properly until the differentiation mentioned is recognized in requirements for admission to the bar. In brief, a different standard of examination should be prescribed for each class. The result of the double differentiation—in law schools and in bar examinations—would be to increase the standards and efficiency of two essentially different types of legal education. The author does not attempt to fix a definite concrete line of demarcation between the two different classes of lawyers in practice, but he can see clearly the important influence which the highly educated portion of the bar would have upon the evolution of the law. For instance, the bench would be recruited from this class, and the courts of last resort would profit by its aid. Judicial opinions would be moulded in conformity with true universal legal principles instead of being based merely upon "cases in point" according to the present tendency. Thus unity would emerge out of diffusion and disintegration.[1]

The author clearly believes that legal reform must come about through a gradual process of directed evolution in the common-law field. While it can not be said that he places himself on record as inimical to codification in general, he has this to say of the New York Code:

> "This highly technical addition to the local law was so bad that since then the profession has devoted much of its energies to abusing it, and the legislature to changing it and mak-

[1] The term "practical lawyer" is selected by the writer of this note as the one likely most effective in describing the lawyers included in the lower stratum. Of course it is not intended to insinuate that lawyers of the higher stratum are not practical. The author uses the terms "inner bar" and "outer bar." Perhaps his own distinction between the two classes is best expressed on page 238 of his treatise:

"This group should include the lawyers of superior attainments, of broader vision, of greater ability to identify themselves with a larger whole than is possible for relatively untrained minds. The highly trained type of lawyer is most interested, as well as best qualified, to undertake the task of making the law of the community better. We need also, outside of this strictly professional group, less highly trained lawyers to administer, in behalf of the people, the law as it is—lawyers who command their confidence more than the inhumanly expert—lawyers whose own training should be carried at least so far that they can intelligently appraise the activities of the expert group, deferring to them when they so deserve, opposing them when opposition seems needful—a class in the community that may help to bridge the chasm of mutual understanding and distrust that is always likely to appear between those who know too little and those who know too much about a subject."

ing it worse. If there ever was a portion of the law that has no place in an ideal system, this was an instance."[2]

In a footnote, he continues:

> "The writer must plead guilty to using this violent language in regard to something that, at first hand, he knows nothing about. He can merely testify that the Code of Civil Procedure was originally forced on the profession over the protest both of the New York City Bar Association and of Professor Dwight, and that if it has any defenders left today he has not happened to run across them. Its evil reputation is such that it is difficult to find a New York practitioner even now who can express himself temperately in regard to any suggestion that an attempt be made to codify any other portion of the common law at any time in the future, however remote. This disastrous failure killed, so far as one entire generation of New York practitioners was concerned, the entire codification movement."

This language would certainly seem sufficient to give pause to those enthusiastic advocates of codification "who may be tempted to apply the torch of Omar, and burn their way through"[3] the impossible accumulation of judge-made law confronting the modern lawyer.

Referring to the modern tendency to base judicial opinions upon adjudicated "cases in point", and the necessity under which the contemporary practitioner labors of using encyclopedias and digests to find all the "cases in point", the author says:

> "It is, however, a curious commentary upon the condition of American law that justice should now so largely depend, for its successful administration, upon the continued enterprise and industry of a private firm." [4]

Admission to the bar upon the so-called "diploma privilege" is condemned. It is worthy of notice that, at the present date, only twenty-two schools in fifteen states, the majority of which are in the South, exercise this privilege.[5] Against this privilege, the author says,

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[2] P. 293.
[3] See p. 373.
[4] P. 376. The reference is to the West Publishing Company.
[5] P. 266.

> "The decisive argument, however, was and is that the absence of responsibility to some external authority is bad for the schools themselves. This fact, which Minor had early recognized, is patent to any one who has visited a large number of law schools. It is apparent even in schools which, because they have virtually a local monopoly of legal education, are under no pressure to reduce their standards. It takes here the form of a certain listlessness. The teachers are tempted to sink into that condition of uninspired placidity which is only too characteristic of many American college professors. That law teachers, as a class, move on a higher plane of efficiency than their colleagues in the colleges of liberal arts is undoubtedly attributable in part to their greater measure of accountability." [6]

He quotes Professor Minor to the effect that it is better for the law schools,

> "As well as the young gentlemen who graduate therein, that they should not enjoy this exclusive privilege; but that their fitness to practise law should be tested in the same way with students in private offices or in private law schools." [7]

—L. C.

THE ASSIGNABILITY OF AN OPTION CONTRACT.—The authorities are in conflict as to the assignability of an unexercised land option contract.[1] Of course, if the option is expressly assignable,[2] or is clearly personal to the offeree,[3] no question arises. The intention of the parties governs. Where the option is silent upon the point, most courts, hold it assignable and permit the assignee of the holder of the option, after acceptance, to have a bill for specific performance against the optionor.[4] West Virginia, however, and a few other

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[6] P. 267.

[7] P. 250. It will be recalled that a bill was introduced at the recent session of the West Virginia Legislature for the purpose of extending the diploma privilege to schools of other states. Instead of attempting this, it would seem well worth consideration whether the privilege ought not utterly to be abolished.

[1] The cases are collected and commented upon in WILLISTON ON CONTRACTS, § 415; in 43 L. R. A. (N. S.) 115, note; and in 27 R. C L.. 345, 346.

[2] Simmons *v.* Zimmerman, 144 Cal. 256, 79 Pac. 451 (1904); Fulton *v.* Messenger, 61 W. Va. 477, 56 S. E. 830 (1907); Wheeling Creek Co., *v.* Elder, 170 Fed. 215 (1909).

[3] Andrew *v.* Meyerdirck, 87 Md. 511, 40 Atl. 173 (1898); Myers *v.* Stone, 128 Ia. 10, 102 N. W. 507 (1905). See also Rice *v.* Gibbs, 40 Neb. 264, 58 N. W. 724 (1894); Snow *v.* Nelson, 113 Fed. 353 (1902).

[4] See note 1, *supra.*