BOOK REVIEW

LAW SCHOOL: LEGAL EDUCATION IN AMERICA
FROM THE 1850S TO THE 1980S; by Robert Stevens.†
334 pp. $19.95

Reviewed by Paul D. Carrington††

The author closes this brief book with the just complaint that those governing law schools know too little of the history of their institutions. He warns that:

the debates about the unitary nature of the legal profession, the law schools, and the law . . . will take place between those who . . . know little of the recent history of legal education. The fights over curriculum and the balance between the scholarly and professional (or the academic and the practical) will take place between those who know nothing of the battles at Columbia in the 1920s and 1930s and misperceive what the . . . alleged innovations of the 1950s were. The future requirements for admission to practice . . . will be discussed on the assumption that the structure of American legal education dates from time immemorial . . . . (Pp. 278-79).

He has now deprived us of one excuse for continuing this perverse ignorance by making the story easily accessible. As the title indicates, Stevens traces the development of legal education in this country from the first tentative steps away from legal apprenticeship in the middle of the nineteenth century to the selective three-year graduate professional programs of today.

It is questionable whether legal education in America should have chosen a path followed in no other country. Elsewhere, the relationship between the legal profession and higher education loosely adheres to a different pattern: law is treated by universities like any other academic discipline and is open to study by undergraduates, while the organized profession, if there is one, retains a role in imparting re-

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†† Dean and Professor of Law, Duke University. B.A. 1952, University of Texas; L.L.B. 1955, Harvard University.
1. The book contains only 156 pages of text and 132 pages of footnotes.
2. See INTERNATIONAL LEGAL CENTER, COMMITTEE ON LEGAL EDUCATION IN THE DEVELOPING COUNTRIES, LEGAL EDUCATION IN A CHANGING WORLD 19-24 (1975) (International Legal Center pamphlet summarizing legal education in Asia, Africa, and South America); S. LOWENSTEIN, LAWYERS, LEGAL EDUCATION, AND DEVELOPMENT 121-36 (1970) (discussing legal education in Chile); Griess, Legal Education in the Federal Republic of Germany, 14 J. Soc'y

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quired technocratic skills to novitiates. In the 1850's, this system was well on its way to being established in the United States. The professionalism of many nineteenth-century American lawyers was based on their familiarity with the work of William Blackstone, who worked within the general cloister of Oxford University, lecturing to undergraduates. George Wythe, the first American professor of law, held such an appointment at William and Mary. This was also the model for the law professorship at Thomas Jefferson's University of Virginia, and for other professorships in law at other institutions, most of these in the South. Apprenticeship was a familiar method of acquiring lawyers' skills; university study was not perceived as a substitute for such practical experience (pp. 24-25).

In the later decades of the nineteenth century, the American alternative emerged. Graduate professional education was first advanced by Christopher Columbus Langdell at Harvard, for the very limited purpose of elevating the Harvard program from mediocrity to distinction (pp. 35-37). In a relatively short time, his model was imposed on virtually all persons entering the legal profession. The radicalism of this development is hard for us to appreciate; it helps to keep in mind that the median number of years of higher education for American lawyers went from zero to seven in about half a century. The political, social, and economic implications of this radical change are remarkably ineffable.

It does not appear that anyone involved in the story told by Stevens had a substantial appreciation of these implications. The few exponents of reform, and their fewer adversaries, were generally attentive to only one or two dimensions of a complex puzzle. Although many proclaimed a concern for the public interest, none were accountable for


5. See generally L. Warden, The Life of Blackstone (1938). Blackstone himself regarded his lectures as being in part training for law practice, and this was indeed a stated function of the professorship as created in the Viner will, but this view of university law study seems to have declined at Oxford by the end of the eighteenth century. The story is fully told in Currie, The Materials of Law Study, 3 J. Legal Educ. 331, 346-59 (1951).


7. This is not to say that Jefferson held Blackstone's views concerning the role of university education in law. Jefferson's views are explored in A. Reed, Training for the Public Profession of the Law 116-17 (1921) and Currie, supra note 5, at 352-56.

8. The requirement of an undergraduate degree prior to admission was not imposed at Harvard until 1906, thirty years after Langdell became dean, but movement in this direction became apparent from the first years of his deanship (p. 36).
such a concern. Most of the impetus for change came from the organized bar and the law schools—each with its own constituent interest—such that no public body systematically monitored the proffered reforms. Moreover, as Stevens points out, while the economic pressures of the Great Depression played an important role in shaping the structure of legal education (pp. 178-79, 279), there was a strong nonrational force responsible for these radical developments. This force was a powerful mutual attraction between the organized bar and the entrepreneurs of higher education. The sources of that mutual attraction are no mystery.

De Tocqueville was only the first to remark on the political and social vacuum existing in nineteenth century America which came to be filled by the legal profession.\(^9\) Observation of contemporary revolutionary societies suggests that classlessness is an inherently unstable condition: if there is no elite, one seems to create itself.\(^10\) Because of the crucial role its members were destined to play in this country's growth, the legal profession seemed particularly well suited to filling this void (p. 7). As the legal profession organized, its associations manifested the normal impulses of work gilds,\(^11\) seeking to shelter members from competition and to elevate their shared status. To the leaders of the organized bar, whose careers were linked to the advancement of the collective interest of the profession, the profession's path to power, wealth, and status clearly led to higher learning. Along these lines, the leaders of the profession, through the American Bar Association, were instrumental in urging states to raise educational requirements for entry into the profession (pp. 172-80):

Meanwhile, universities evolved in a congenial direction, responding to the same needs broadly felt by other Americans. Sincere as the desire was to advance learning for its own sake, the vitality of institutions of higher learning depended on the perception in the market of their relative capacities to create and confer status, wealth and power. A sensible entrepreneur responsible for such an institution had to seek ways to associate it with those persons likely to enjoy the status, wealth and power which could be shared directly and indirectly with the institution and alumni. For the reasons perceived by de Tocqueville, it was clear that the American legal profession was predestined to grow in these crucial respects. Hence, it was inevitable that educational entrepreneurs would bond strongly to the rising profession.\(^12\) Many univer-

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sities scrambled to establish law schools of their own or absorbed independent institutions under their auspices (pp. 73-84). The major law schools, through the American Association of Law Schools, led the movement to eradicate the proprietary, nonaffiliated institutions by raising the requirements for membership or accreditation (pp. 191-99).

While Stevens performs a thorough job of tracing the development of the relationship between the profession and the university, the brevity of the book is in this respect limiting; Stevens gives us only glimpses of the evolutions of the legal profession and higher education, the two systems of which law schools are a common part. Moreover, an explanation of the operation of these nonrational forces does not necessarily explain why the inevitable union of the profession and the universities took the form that it did instead of the conventional form that developed elsewhere. Most important, an awareness of these forces does not help the reader to assess the public costs and benefits of what has happened. As a result, the reader seeking to form an opinion on the merits of the issues the book raises is not offered strong guidance. Stevens seems to view his contribution to the debate primarily as enhancing an awareness of the historical perspective of the evolution of legal education in this country rather than an analysis of the consequences of such developments (pp. 278-79). While he occasionally provides some insights into the forces responsible for these changes, he is never comprehensively judgmental, and fails to explore the implications underlying the story he documents. A normally speculative reader may be inclined to make his own assessment of the costs and benefits associated with our system of legal education; in any case, an appreciation of them may help to illuminate why the three-year graduate professional school emerged as the principal avenue of entry to the legal profession.

13. The book only alludes to issues such as the developing elitism of the profession and the debate over the unitary character of the bar in relating the impact of professional developments on legal education (pp. 5-10, 115-17). For those interested in the history of the American legal profession, Stevens provides a useful bibliography (pp. 289-314). A sound beginning for study is M. Bloomfield, supra note 4. There is no comparable account of the more recent century.

14. Stevens' treatment of higher education is limited to the context of law schools (pp. 35, 73-74). For a general discussion of the history of higher education in this country, see F. Rudolph, The American College and University, A History (1962); L.R. Veysey, The Emergence of the American University (1965).

15. Stevens hints on occasion that the forces shaping the structure of legal education can be traced to a combination of the public interest, economic opportunism, and racism (p. 101), but never shapes these suggestions into a comprehensive analysis.
I

LAW STUDY AS GRADUATE STUDY

A. Investment in Human Capital

The most obvious and direct effect of the American tradition of law study as graduate study is to increase the years of residency of students in academic institutions. The simple economic cost of this consists of two and one-half years of foregone income,\footnote{The median income for males with four years of college was $22,173 in 1980. 1982-83 STATISTICAL ABSTRACT OF THE UNITED STATES 146.} plus the cost of legal instruction.\footnote{See P. Swords & F. Walwer, THE COSTS AND RESOURCES OF LEGAL EDUCATION (1974).} At the present time, this amounts to an average cost of about seventy-five thousand dollars,\footnote{This is based on an average tuition of between $20,000 and $25,000. The figure may also vary for women, and for persons with more than four years of college, who may have different income expectations upon graduation.} the bulk of which is borne directly by the students, who may receive variable subventions from financial aid sources that include state treasuries and federally insured loans. This calculation applies only to full-time study; the investment is much less for part-time students, especially those in low-tuition schools.

The effects of this mandatory investment in human capital radiate, if uncertainly. The income expectations of practicing professionals are elevated by a need to recover on their investments; assuming a six or seven year pay out, the expected average income enhancement may be as high as ten or eleven thousand dollars a year, but will be much less for students in less elite programs. Perhaps some compensation may take a noneconomic form as psychic gratification associated with higher professional status; the American public does seem to accord respect to professions in part on the basis of their years in higher education.

Some of the increase in expected real income for lawyers is likely to be reflected in higher prices for legal services. Higher prices for legal services may, in turn, be passed on by some consumers as increased costs of their own production. To some extent, higher prices for legal services are ultimately borne by the public fisc. And inevitably, higher prices operate to foreclose access to legal services to some persons who would otherwise purchase them.\footnote{The problem of availability and affordability of legal services is described forcefully in E. Johnson, JUSTICE AND REFORM (1974), and B. Christensen, LAWYERS FOR PEOPLE OF MODERATE MEANS 1-63 (1970).} It seems likely that the development of graduate professional school as the norm for the profession has contributed significantly to the limited availability of professional services for middle and lower income citizens. On the other hand, to the extent
that the more remunerative work performed by lawyers is accurately valued by the market (that is, if there is no "market failure"), there is a possible public benefit in the reallocation of professional legal services away from low-priority service for low-income families to those more highly valued activities.

A less direct consequence of the investment in human capital required to enter the profession and of the elevation of professional legal incomes and status results from a shift in the self-selection process: different people become lawyers (p.100). Those who can afford to invest the necessary capital, who are willing to postpone the benefits of work, and who are attracted by high incomes enter the profession in large numbers; those who are less willing to make the required capital expenditures and postpone enjoyment of benefits but who would perform legal work at lower income and status levels are effectively excluded from the profession. This selection system has a number of ramifications. As Stevens points out, many of the bar leaders advocating mandatory graduate professional school were animated by a desire to prevent immigrants, notably Jews, from entering the profession (pp. 99-103, 178). 20 Many of the part-time and night law schools which disappeared as state legislatures and bar examiners elevated educational requirements served significantly black and immigrant populations (pp. 191-99). Insofar as they expected Jewish entrants to be deterred by higher educational requirements, this proved to be a striking miscalculation. However, the general shortage of minority lawyers is probably linked to the requirement of graduate professional school. Individuals without strong family or cultural support are not likely to make the necessary investments of time and sustained effort required by such lengthy programs.

The absence of minority representation in the bar has an adverse effect on the members of minority groups who prefer to receive legal services from one of their own. It also adversely affects the public interest: insofar as the legal profession is a part of the political system, the government is made less representative, hence less legitimate and less stable than it would be if the profession were more diverse. 21 In the bargain, it seems likely that the high investment level required for entry into the profession has also had a differential effect on women, who again have been less frequently encouraged to make the necessary investments in their own human capital or to postpone the benefits of work. The consequences of masculinity in the profession may be substantial, if subtle. 22 Finally, even the attraction of abler persons by as-

21. See A. Reed, supra note 7, at 116-17.
22. For a general discussion of the differences between male and female values, see C.
suring higher professional incomes and status may itself be seen as a public detriment. Derek Bok has recently argued that the persons attracted to law might perform more socially productive work in other fields. 23 If this is true, he describes a public cost associated with the income and status elevations of the bar resulting from the emergence of the graduate professional school.

On the other hand, there may be some public benefits associated with higher incomes and status for the bar. If more qualified persons are attracted to the profession, we can expect better performance of its mission. If the public interest requires that public esteem for the law be advanced, then it may be desirable to elevate public esteem for the legal profession which administers that law; 24 elevated income levels may better enable the profession to command esteem. It is also possible that entry requirements which select professionals who are able to postpone gratification have the effect of elevating professional standards of conduct; this would be so if, as seems plausible, ethical conduct does not generally carry its own immediate rewards (p. 184 n.41). 25 If the legal profession were selected by means that imposed no costs on entrants, it is imaginable that the conduct of its members would be less constrained, and that the public regard for the law itself would be diminished.

Whether one strikes a positive or a negative balance on the basis of the public costs and benefits so far identified, the merits of the graduate professional school in law must ultimately hang on the content of the extended program. If the additional time spent in training is not perceived to have a positive effect on the quality of the professional work performed and the services delivered, then the other benefits are a deceitful illusion. But if graduate professional school does materially enhance the professional capacity of the novitiate, then the ineffable public costs may be justified.

23. Bok, A Flawed System of Law Practice and Training, 33 J. LEGAL EDUC. 570, 573 (1983) ("[I]t is too many of these rare individuals are becoming lawyers at a time when the country cries out for more talented business executives, more enlightened public servants, more inventive engineers, more able high school principals and teachers.").

24. This is the premise of the preamble to the MODEL CODE OF PROFESSIONAL RESPONSIBILITY AND CODE OF JUDICIAL CONDUCT (1979) ("But in the last analysis it is the desire for the respect and confidence of . . . the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct . . . . So long as its practitioners are guided by these principles, the law will continue to be a noble profession."). The idea is a bit submerged, but not lost in the new MODEL RULES OF PROFESSIONAL CONDUCT. See, e.g., Rule 8.1-8.5 & comment (1983) (maintaining integrity of profession).

B. Isolation

Speculation on the value of the contents of graduate-level law school is, however, linked to its other signal characteristic, isolation. The graduate professional program isolates the study of law from both the legal profession and higher education, the two larger systems of which law schools are a part. The extent of this isolation is so familiar that it is often unnoticed. For example, even when located on the university campus, law schools are likely to be found nearest the playing fields, distant from university libraries and art facilities. Indeed, the idea of a building devoted exclusively to law study seems to be primarily a North American idea.

Isolation is itself a characteristic of independent significance, affecting both the university and the law school in several ways. Scholars in law-related disciplines have diminished colleagueship with legal scholars. Undergraduate students have diminished access to learning about the law, itself a significant liberal art, thus substantially closing an important window on the human experience to the nonprofessional student. In short, the unity which was the historic justification for the university\(^{26}\) is impeded.

Isolation similarly restricts the intellectual dimensions of study within the law school. The law scholar is programmed by isolation to take a narrow view of his subject and to attempt less ambitious scholarship. He is deprived of the interdisciplinary contact that would integrate the study of law with other academic disciplines and encourage an examination of broad issues of law and social policy. Professional students, removed from contact with other disciplines, are also encouraged to take a narrow view of their subject, perhaps even abandoning as unprofessional and hence unworthy what they already know of history, economics, literature, and philosophy. Their narrowness can in turn be imposed on the scholar-teacher who may find little interest among students in liberal speculations about the law. This effect may be intensified by the length of professional training; students in their sixth and seventh years of study may be even less tolerant of general intellectual rigor. They seek and demand practical training or bar examination preparation which can be turned to coin in the marketplace to pay for the high cost of professional training.

The isolation of the graduate professional program also has a questionable effect on the level of technocratic skills training made available to the law student. Isolation from other academic disciplines may make it more appropriate to pay salaries to law professors that are adequate to attract professionally competent lawyers, thus enhancing

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the quality of practical training provided by the law school. On the other hand, it is likely that many top practitioners will choose not to teach at law schools, irrespective of the compensation offered. In this respect, isolation from the general practice of law makes law school an ineffective forum for teaching the legal skills many students demand. Law professors tend to select themselves because they are attracted to academic values and get less satisfaction from professional work in law. They may not be the appropriate supervisors of legal training; they are not necessarily themselves skilled at the interpersonal activities of legal professionals. In fact, they may be predisposed to channel legal education toward exercises in intellectual rigor and away from the development of technocratic skills, further isolating the study of law from the legal profession. Persons who do possess the requisite skills and interests for effective training are often intellectually underqualified or lack the requisite interests to be productive of the scholarship that would maintain respect within the academic profession. These deficiencies in skill training may be intensified by the length of legal education, which has the effect of reinforcing the expectation of both the profession and the novitiates that substantial training will occur within the professional school, whether or not it is most appropriately conducted there. By replacing legal apprenticeship as the main avenue of entry into the profession, law schools have largely preempted the training functions performed in other countries under the auspices of the organized bar. However, because they remain essentially isolated from the expediencies of the profession, law schools may have seriously oversold themselves in this respect, promising what they cannot effectively deliver.

The isolation of the law school experience also has the effect of intensifying the ambience of the professional school. Whatever socialization occurs in law school is substantially magnified because the student is saturated with it. If the law school is a positive environment from which the student receives benign effects, this intensification is desirable. Thus, strenuous work habits are often reinforced more effectively than they would be in a less intense environment. Students are more actively encouraged to engage in rigorous academic dialogue with both other students and faculty. It is, however, not always so. Some law school environments have been, and are, competitive to the point of reinforcing antisocial tendencies of students. Hostility levels

27. The dilemma is posed by Bergin, The Law Teacher: A Man Divided Against Himself, 54 Va. L. Rev. 637 (1968) (arguing that it is inefficient to force both the nonscholar to publish and the scholar to teach).

can run very high; alienation and passivity can become dominant patterns of behavior.\textsuperscript{29} This phenomenon may be most marked in the best schools: very high admission standards which exclude all students having any but the highest expectations for themselves can contribute to such an adverse environment. So can a successful placement program which concentrates the minds of students on a varied offering of opportunities for which they must compete with fellow students. If law students were less isolated than they are in graduate professional school, they would be much less affected than they are by the environment in which they study, especially by the pressures of placement and academic competition.

Thus, isolation has its own independent consequences, but these are largely interrelated with the consequences of the enlargement in the time investment required of those entering the profession. The issue remains whether these interrelated consequences can be explained and justified by the content of what happens to students and teachers when they are locked in this extended and isolated embrace.

\section*{II}
\textbf{The Case Method}

An assessment of the value of legal education depends on an evaluation of its dominant pedagogical tool, the case method. The case method was, of course, Dean Langdell's other contribution (pp. 51-64).\textsuperscript{30} It is not unlikely that the innovation of the case method was linked in Dean Langdell's mind to the creation of the graduate professional school in law. Linked they may still be. Without the case method, law school tradition would still be a play without a hero. There is not even one competing pedagogical concept which pretends to explain and justify the isolated, graduate professional school in law; the tradition must in the end stand or fall on the worth of Langdell's second idea.

Case method instruction generated substantially stronger opposition than did the idea of the graduate professional school. From the time of its introduction, it has been attacked as an inefficient and impractical method for teaching legal principles (pp. 57-59).\textsuperscript{31} Its critics argued that the method's failure to impart established doctrine led to

\begin{itemize}
\item\textsuperscript{30} Although the case method did not originate with Langdell, it became known as his by virtue of his determined and systematic application of the approach (p. 52).
\item\textsuperscript{31} Early arguments as to the inefficiency and impracticability of the method were echoed by Reed and Redlich in their reports published in the early part of this century (pp. 119-22), and by Karl Llewellyn in the 1940's, who argued that "it is obvious that man could hardly devise a more wasteful method of imparting information about subject matter than the case-class" (p. 223 n.47) (emphasis in original).
\end{itemize}
the presenting of law in "isolated, detached fragments," (p. 59) and ultimately to "a class of graduates admirably calculated to argue any side of any controversy . . . but quite unable to advise a client when he is safe from litigation" (p. 59). It was also rejected as being too difficult for all but the most talented students and teachers, for severely limiting the boundaries of legal scholarship and thinking (pp. 118, 120-21), and for its tendency to produce graduates who were "analytic giants but moral pygmies" (p. 121). From earliest times, students have protested that the method produced teaching that is unhelpful and even harmful to them. Only rarely has anyone attempted to proclaim its virtues.

Langdell's own defense of the case method was weak. It depended upon his adaptation of German scientism which declared cases to be the raw material from which the scientist could discern and distill the law (pp. 53-55). As a rationalization for the separation of law from other disciplines in a graduate professional school, the adaptation was remarkably apt. It rested, however, on a false premise. Law, as it has developed in this country, is regrettably not a science; there are no generally unifying principles to be discerned by scientific inquiry (pp. 131-33).

The deficiencies of Langdell's theory were quickly discerned, yet the case method marched on, finding a new intellectual foundation in a narrower doctrine which viewed the law as an aggregation of atomized rules, each the product of a court sitting in final authority over that body of the law. The study of appellate decisions was considered to be the ideal mechanism for discerning and testing the boundaries of these rules (pp. 131-33). This conception of the law gave impetus to the case method in the local law school, where special emphasis could be given to local decisions embodying local law. It is also the intellectual premise upon which the American Law Institute proceeded with its Restatements, by which it hoped to harmonize and synthesize the enormous corpus of the fragmented law (p. 133).

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33. Stevens quotes id. at 340-41.
34. This view was expressed on behalf of the A.B.A. in 1892 (p. 57), and by Reed and Redlich in their respective reports (pp. 118, 121).
35. The Harvard students of 1935 were an early example (p. 137).
37. The flaw was related to that which underlay the false and unmourned doctrine of Swift v. Tyson, 41 U.S. 1 (1842); see generally J. Gray, The Nature and Sources of Law 251-56 (1909).
38. This rationale also proved highly congenial to judges because it treats their utterances very seriously. It also creates a market in which the West Publishing Company can enshrine
There are, however, some significant difficulties with this atomistic view of the law, which were soon made apparent by Legal Realism (pp. 155-57, 264-66). Students are told that the law is not what judges say, but what they do, transferring the power of synthesis from judge to student and teacher. Outcomes can be explained at least in part by who decides; who decides may sometimes be seen to be as important as the legal principle he or she happens to apply. Realism cuts deeply into the traditional justification for studying cases as the embodiment of the law. Weakening confidence in the case method led to a continuing search for alternative materials to enrich the law school experience (pp. 132-41). Social science has been mined; efforts have been made to enlarge the use of economics, history, and philosophy, but none have succeeded in making a convincing demonstration that such materials could substantially displace cases as the heart of the law school curriculum. Yet, as Stevens implies, the intellectual underpinnings of the case method remain exposed and vulnerable (p. xiv).

Since the first rumblings of Realism, there has been great concern over threats to the legitimacy of the common law. If the public fully appreciates that cases do not embody the law, but only articulate the momentary political impulses of persons not commissioned to exercise political power, then the moral authority of the law may be destroyed. There are, of course, many reasons why the public might get the idea that law is merely the expression of judges' tastes. Reportage of so many cases may in itself sow doubt; it is hard to take so much material seriously or to believe what one reads in the reporters. The Supreme Court, and the lower courts, have attracted notice in recent decades by the frequency of decisions which seem to some observers to rest wholly on a political instinct of the judges. Some legal scholars have declared the absence of legitimacy; such declarations seem to serve a neo-Marxist agenda by unraveling the fabric of the society so that it can be remade into the vision of the authors.

It is possible that the case method belongs on the list of contributors to any present crisis of legitimacy that may exist. The method itself sharpens the tools of legal analysis and focuses inquiry upon how the judge has deviated from neutral principles of law. Under its scrutiny, some precedents are reduced in authority to insignificance; others are enlarged, according to the tastes or instincts of the beholder, again facilitating an arbitrary and inconsistent view of the law. In justifica-

tion of their teaching materials, generations of law professors have probably overblown the significance of judges and their opinions, leaving many students to discover in practice that the law is less than it seemed in law school, and stimulating many others to engage in professional advocacy and official decisionmaking that overextend the authority of decisionmakers holding no legitimating political commissions. This emphasis on judicial opinions would seem both to expand the boundaries of the judicial role in the political process and to intensify any concern over the legitimacy of judicial decisions. It merits note that the concern for legitimacy seems to be chiefly an American concern; the English, for example, are careful to proclaim a more modest role for judges and there is accordingly little anxiety about the legitimacy of their works. Is it not more than likely that the differences between the materials on which English and American lawyers are trained are a partial cause of this substantial difference in their systems?

On the other hand, it is plausible that the case method makes a sizable contribution to the legitimacy of the legal system on another level. One may believe that the most effective teaching is indirect, that students learn most from the agenda of study. Students who read and discuss thousands of cases over years of their lives may generally acquire a sense that judges are striving to conform their decisions to signs and to values not their own. To the extent that judges are successful, they persuade us that law is being observed, that they are not corrupt, and that knowing the law to which the judges refer is useful knowledge. To the reader of cases, the law is, in short, real, even if Realism teaches that it is subject to nondoctrinal influences that may sometimes overwhelm. It is not unlikely that many students carry this jurisprudence away from case study even if their case method teachers profess profound cynicism about law. The materials afford a base with which many students can neutralize cynical acid. Thus, at the same time that the case method may contribute to a problem of legitimacy, it may also mitigate that problem by broadcasting a sense of confidence among the professionals in the integrity of the system.

Indeed, it is sometimes complained that students are made more litigious in law school. If so, such a condition may reflect in part enhanced rights consciousness of American lawyers that may derive

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43. As elsewhere in these speculations, cause and effect may move in both directions. It is not unlikely that the primacy of Parliament in the United Kingdom deterred the interest of English law scholars and teachers in cases as a source of law and as material for law teaching (pp. 131-32).

44. See Bok, supra note 23, at 582-83.
from their extended observation that law matters, and that rights can be enforced in litigation. This is, of course, not a necessary relationship; cynical lawyers can be as litigious as any.

However these consequences may be appraised, it is not these effects of the case method that are responsible for its success. It has survived despite its jurisprudential implications and not because of them. It has survived because it has been widely esteemed as an efficient and effective means of inculcating intellectual skills, or habits of thinking, which are deemed valuable in the practice of law. People who have studied cases are changed by the experience; the change is often substantial, and may be more profound than that usually wrought by any other experience provided in higher education.

Case method instruction develops several types of important legal intellectual skills. Such instruction gives a practical bent to the student's thinking; cases are problems, and students reading cases are also trying to solve problems. The activity hones the student's sense of relevance as he acquires the habit of distinguishing between ideas that are useful and those that are not. Sometimes, it must be granted, an overdeveloped sense of relevance can appear as small- or narrow-mindedness. Cosmology becomes an art perhaps too alien to the legal mind. Additionally, such study helps develop greater balance in thinking. Discussion and analysis of cases require the student to consider both sides of issues. A student who has considered both sides of several thousand cases is less likely to engage in self-deception about the strength and righteousness of his position. The student's capacity for ideological rigidity and zealotry is reduced. Finally, it is common for students' autonomy in thinking to be enhanced by case method dialogue. Students often improve substantially both their professional judgment about the worth and force of legal ideas and their courage to advance legal ideas even while uncertain of the reception they may receive.45 Tolerance for ambiguity also improves; professional instinct is heightened.

Case study is also important as a means of elevating such basic skills as reading, speaking, and listening. This results from the extensive dialogue between teacher and students, and among students, which is greatly facilitated by the framework for discussion provided by the cases being read together by the group. Cases contain some features which are readily accessible to all readers; but generally careful reading is rewarded by greater discernment which can be revealed and tested in daily discussions. Active students can also practice and develop speaking and listening skills in the context of such extensive discussion.

Students who acquire these intellective traits and habits in adequate supply have also acquired the capacity to become their own professional teachers. To the extent that a person has achieved competence in case method instruction, he is capable of mastering large amounts of new legal material with little or no help. There is a negative aspect to this feature of the case method: it may be the source of the "myth of omnicompetence" which allows trained lawyers to believe that they can do any legal work in reasonable time. Such mastery also permits the case method student to acquire extensive knowledge of the legal principles and other values and impulses which influence the making of official decisions. While bare doctrine can be simplified and confined in study outlines and thus assimilated more efficiently than by the case method, understanding of doctrine and underlying policy is enhanced and deepened if the understanding is acquired as a result of the student's own synthesis in the course of problem solving. A student who has read and discussed a hundred antitrust cases, for example, will generally have a much firmer grip on that field, and its difficulties and ambiguities, than one who has invested equal time in passive submission to lecture, outline, and text.

The products of case method learning then, are extremely valuable. They can be crudely measured, and can be sold in the marketplace or used in a variety of endeavors, including public service. Moreover, these products bear relatively modest cost; case method instruction is no more costly than lectures, and is far less expensive than the techniques of personal supervision customarily used in graduate education or in clinical training. It is for these reasons, which Stevens may not fully appreciate or reveal, that the case method was and remains a winner.

Of course, as Stevens notes (pp. 137, 161, 234, 247, 268, 269, 276-77), student complaints about the case method are endemic. Often students do not appreciate its subtle consequences. Effective case method instruction may increase levels of hostility and alienation, but these states are often temporary, or aimed at a particular course or teacher, and may be an unavoidable symptom of the growth that occurs. Because students are who they are, it may require more than the ordinary level of intellectual and emotional courage on the part of the effective case method teacher, who must confront and resolve more than his share of hostility and alienation. In the contemporary age of con-

46. *See B. Christensen, supra* note 19, at 92-97.
47. Stevens cites its economy as a reason for the vitality of the case method (pp. 268-69). However, economy is not a reason for preferring the case method to the lecture, which is the alternative employed elsewhere.
sumerism, it may be even more difficult for the teacher to be fully effective.

It may not be readily apparent that the case method depends for its success on the availability of a graduate professional school. If it is a winner as a technique of professional training, why not apply it to undergraduates? It may be that the efficacy of the method requires both time and isolation, as well as reasonably mature students, all of which are supplied by the graduate professional program. Isolation seems to be particularly important in assuring the intensity needed to effect the positive results of case instruction. In any event, the case method seems to lose its savor when applied to nonprofessional audiences.

III
THE CASE FOR THE THREE-YEAR REQUIREMENT:
BAR UNITY

If it is acknowledged that the case method makes a plausible pedagogical rationale for law school, and that such a rationale is maximized in the graduate professional setting, there remains the unsettling question of how long law school should be. Many of the consequences of law school that may be adverse to the public interest are associated with its length; if it were to be abbreviated, its benefits would seem so much more clearly to outweigh those costs.

Why three years? Perhaps Langdell preferred three years because he thought the whole corpus of the law could be scientifically examined in that time. The organized bar imposed a three-year requirement for equally irrational reasons: three years is almost as many as four, and suggests that lawyers are three-fourths as learned as doctors and entitled to three-fourths as much status and income; three years also looked like long enough to keep immigrant Jews out of the profession (pp. 99-102, 178).

As Stevens notes, the issue of the three-year requirement was raised again a decade ago, by the undersigned and others (pp. 241-43), and the support for the continuation of the requirement was very strong, if not always reasoned. Most of the discussion assumed that a lowering of the accreditation requirements would cause a flight of students away from law schools (p. 242),\(^{48}\) a result that could occur only if sophisticated consumers deemed the marginal cost of continuing education to outweigh its marginal benefits.

In fact, for many students at many institutions, three years of law

school may be a good buy. While the price of legal education has risen markedly in recent decades, so has its quality, and perhaps its utility. Good law schools afford students an opportunity to study with other professional students a range of subjects spanning much of American public life, all of which is interlaced with law. It is certainly no trivial use of time for students to attend to many of these subjects.

Moreover, other educational benefits potentially provided by law schools may be obtainable only through a greater investment in student time. Good law schools now do fairly well at rebuilding intellectual bridges to other bodies of learning, repairing some of the damage done by their isolation. In addition, it is becoming increasingly feasible for law schools to make a real contribution to development of professional skills other than those associated with case method instruction. Moreover, there may be some impulse for students to remain in school for three full years to acquire the affect that accompanies the longer stay in a graduate professional school, which might even have a direct economic value of its own. For all these reasons, good law schools could risk the loss of the legal compulsion which requires their students to remain for three years.

The justification for the mandatory three years must be found, if at all, in the concept of a unitary bar (pp. 116-17, 199, 206, 266, 278). There is democratic appeal and positive political benefit stemming from the cosmetic uniformity of the American bar. All lawyers, whether they plan joint ventures for the construction of oil refineries or prosecute petty misdemeanors wear the same academic jewelry and hold the same professional license. The bond that three years of law school establishes is sometimes very weak, but it is a bond that unites very different people working in distant segments of the culture, and may therefore serve to reduce the levels of mistrust and inequality of status between members of the profession.

The idea of a unitary bar is not favored by all. The specialization movement within the organized bar is but one effort to escape its leveling effect. Recent efforts to challenge the adequacy of trial advocacy in the United States represent a thinly veiled attempt to bifurcate the bar, to elevate some to a rank similar to that of the English barrister. If such movements do succeed in fragmenting the bar and establishing a formal hierarchy among lawyers, the case for the mandatory three years is surely lost, and the public interest would seem to require that novitiates be permitted to quit their formal training when they have learned enough to do the particular jobs for which they would pretend

to qualify, even if that period is less than three years.\textsuperscript{50} In the meantime, accreditors are perhaps justified in preserving the form of the mandatory three-year attendance requirement.

An element of luck underlies the skill and judgment of regulators in comprehending and controlling the complex network of causes and effects which this review has attempted to suggest. It is not a slight to the many able and well-intentioned persons who have served on the Council of the Section on Legal Education and Admissions to the Bar of the American Bar Association to say that the comprehension is often dim and control ineffective. The accreditation standards developed by that regulatory agency, which serves as delegate of most state supreme courts having control over the licensing of lawyers, often seem to be merely a collection of special interest enactments having little to do with the public interest, however that interest might be perceived.\textsuperscript{51} While the Section and its staff have sometimes been confrontational in dealing with noncompliance with the standards, and while some universities have responded to threats of disaccreditation in various ways, some of which might be thought to improve professional education, it is fair to say that compliance has been halting and uneven, in part because the positions taken by the Section are often difficult to defend against vigorous objection.

Perhaps uncertainty in the accreditation process is the best we can hope for. If a group capable of comprehending the issues and acting on policy were to be formed, what would its policy wisely be? The reader will have his or her own views, but I will close this review with the speculation that such an imaginary authority filled with benign purpose would have difficulty in maintaining a constant view of how the myriad of competing values should be weighed. In such circumstances, a sound approach would be to exercise power lightly, to interfere in private arrangements and the market only when consensus is very strong, leaving affected individuals as free as possible to pursue their own interests, to advance their own values, and to serve their own ends. In economic terms, many of the efficiency incentives for deregulation in


\textsuperscript{51} Illustratively, the most effective lobby over the years has been the librarians, who have, among other things, established the right to autonomy for university libraries. A.B.A. Standards for the Approval of Law Schools § 604. Other successful lobbies include those interested in affirmative action, id. § 212, placement, id. § 213 and admissions testing, id. § 503; clinical studies advocates are presently exploring the possible uses of the standards to advance their interests. Special interests sometimes conflict; thus, the autonomy of the library is impaired to the extent that librarians are required to buy subscriptions to the American Bar Association Journal and the American Bar Foundation Research Journal. Id. Library Schedule A, Annex II. It should be borne in mind that these standards are not merely hortatory; a school not in compliance is in jeopardy of having its graduates excluded from admission to the bar in many states.
such areas as aviation may apply as well to professional education, an industry marketing an even more complex product. Nonintervention by officialdom is especially apt policy in the universe of affairs involving the expression of ideas and the exercise of political rights. As Stevens recounts, this sound policy has not, alas, been the usual preference of those regulating law schools.
