

# THE AMERICAN LAW SCHOOL REVIEW

AN INTERCOLLEGIATE LAW JOURNAL

S. E. TURNER, Editor

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Vol. 9 No. 12

PUBLISHED BY THE  
WEST PUBLISHING COMPANY  
ST. PAUL, MINN.

April, 1942

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## Remarks by the President of the Association of American Law Schools

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[Address of the President of the Association of American Law Schools delivered at the Thirty-Ninth Annual Meeting in Chicago, December 29, 1941.]

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THE speech which I had planned to make this morning was bombed out of existence on December 7. In its place I would like to discuss with you the activities of your Association during the past year in connection with the emergency and some of the problems which, in view of the events of the past month, are now before us for practical solution.

Before doing that, however, may I extend to all of you a most cordial welcome to these meetings. In these troubled and anxious days, a renewal of our friendships and associations may have added significance.

To delegates who are attending for the first time, I extend a special welcome, urge them to become acquainted with their brethren and freely to participate in our activities. To our special guests, the representatives of non-member schools, I likewise extend a welcome and, under our rules, extend to them

all the privileges of the floor, except the right to vote.

### *Continuity in the Law*

Twenty-five years ago many of us, then law students saw two worlds torn apart: the physical world in which we lived and acted and the world of plans, ideals and ambitions which we had fashioned for ourselves. We felt the full impact of a world of force on the world of reason in which we had lived. We sought the advice of our teachers even as our students now seek our help and in the soul searching which followed decisions were made then as they are being made today. We saw the law schools emptied then and many of them close their doors, for some of our classmates never to re-open.

Worlds are being torn apart again. Individual plans, careers and ambitions

are again blocked by swiftly moving currents of military events of new political and economic philosophies and the threat of an all powerful, dominating liberty crushing state.

Have we in these twenty-five years gained the wisdom and perspective to be wise counsellors to our students and to each other? For in perspective we now see the events of those years as but the initial phases of a now more fully matured world revolution.

Individual and personal sacrifices will be many. For the most part they will be made quietly and heroically. We can but do them honor, for they must remain matters of the individual spirit conscience and patriotism.

But there is a larger problem than the mere interruption or destruction of individual careers. It is whether our democratic institutions and our traditions of individual liberty and freedom given birth by law and nourished by law shall survive. On that issue there can be but one response: should it ever become necessary to close all the law schools in this land to defend and protect that heritage, *they will be closed*. We could do and would want to do no less.

This conflict, however, presents for us an outstanding paradox. We wage this fight to preserve our way of life, our freedom and an ideal of dignity of the human soul. We wage it against powers that by denying them have gained in solidarity and military efficiency. To fight them we must imitate if not adopt in part some of the very things we detest, for we fight not with man power on the field alone but with all the resources, energies and emotions of our civilian life. In such a conflict, whether imposed from without or from supposed necessity built up from within, there is a very real danger of losing that for which we fight. That which we *must not lose*, that which we must preserve at any cost is an "adequate recognition of the function and importance of continuity in the law."

The *risk* we are prepared to take and have taken, but let us do so with a realization of our power and our responsibility to minimize it.

In the past twenty-five years the membership of this Association has practically doubled, and of the 20,039 students enrolled in American law schools this year, 13,448 (67plus%) are enrolled in member schools. The percentage of increase in schools approved by the American Bar Association has been even greater, and this is a record significant not on paper alone but in terms of actual achievement in improving standards and developing a professional consciousness. This same period has seen through the cooperative efforts of these organizations and the National Conference of Bar Examiners a sensible and more perfect meshing of the processes of legal education and admission to practice. It has witnessed a greater reliance upon the law schools for recruitment of the profession and a corresponding development of law school responsibility.

Out of the law schools has come in this period, a sensible reiteration of the very simple but often lost sight of fact that the law is, after all simply a method of social control; that it should not be perpetuated as a craft or a trade mysterious and apart from our practical or everyday life or beyond the comprehension of intelligent laymen. Significant steps to coordinate and integrate it with our other social institutions and keep it responsive to change are clearly apparent in the literature, scholarship, and activities of our law schools in recent years.

The activities of members of our faculties have gone, and I think appropriately, beyond the walls of the classroom in the preparation of authoritative treatises, drafting of restatements and rules of procedure, serving on law revision commissions, conducting legal institutes, acting in governmental advisory capacities, serving on administrative boards or commissions, and even occupying with distinction places on the federal bench.

The expanding functions of government have produced a corresponding demand on our graduates. Exclusive of F.B.I., I have seen recent figures indicating that legal positions in government have increased by almost five hundred per cent in the past five years. The recent creation of a national Board of Le-

gal Examiners and the institution of a legal civil service in government, which will be discussed in detail at our session this afternoon, discloses, I think, but another link in the chain of dependence upon the law schools.

All in all, I think there has been no period in our history comparable to the past quarter of a century in terms of progress in the training of the legal profession, admission to practice, and practical dependence by the profession and government on the law schools of this country. In the period that is to follow the war the demands for men trained in administration and the techniques of adjusting social conflict will be even greater. Dean Harno has said in an able address before the National Conference of Bar Examiners: ". . . it is . . . imperative in the interests of human welfare that we contemplate a program which looks beyond the perils of war to the perils of peace. . . . No man who seriously views the catastrophic events of our day can, I believe, escape the conviction that the issues that will arise after peace is once more established will be as critical as, and definitely more subtle than, those now confronting a world submerged in war."

Historical perspective and any long-range view suggest, however, that our job will not be simply (important as it is) to furnish the leadership for governmental activity. In direct proportion as these positions increase and we train able men for them, there is the responsibility of preparing able, courageous and fearless men who can champion the causes of individuals *against* government. It is not unlikely that as we develop curricula and techniques to deal with the increasing complexities of government control, we shall have to add emphasis to civil liberties and bills of rights. In a very real sense will the law schools become the guardians of those institutions and principles for which we fight. In the language of The Chief Justice which I read to you this morning, "You have important work to do. Perhaps not the least of it in a time of change and unsettlement is to insure ade-

quate recognition of the function and importance of continuity in the law."

May I now trace for you briefly the activities of your Association in connection with the Selective Service Act. Only a year ago (but it seems like ancient history now) it appeared that its primary purpose was to build an organized reserve over a period of time based on one year's active service. The statute and regulations issued under it conferred wide discretion on local boards to grant temporary deferments for registrants found to be "a necessary man in any industry, business employment, agricultural pursuit, governmental service, or any other service or endeavor or in training or preparation therefor, the maintenance of which is necessary to the national health, safety, or interest." Even at this stage, we had no idea of seeking exemptions for law students nor even wholesale temporary deferments. We did, however, present to the proper authorities facts about the legal profession and the law schools which, in our opinion, warranted the conclusion that the law schools were performing a function essential to the continuity of the legal profession and that the *continuity of the profession* was necessary to "the national . . . interest." We sought a formula to cover a long-range program of insuring this objective. Various plans were discussed including numerical quotas and qualitative selection. All had to be abandoned, for our position was necessarily based on an over-all group generalization; but there was no authority under the statute for dealing with groups as such, and it was peculiarly difficult in dealing with local boards to establish that any particular individual was essential to the continuity of the profession. The net result was that we were limited to the rulings of individual local boards, and with their lack of uniformity you are as familiar as I.

We were successful, however, in securing in the form of national advice to local boards temporary deferment for our graduates of last year in order to permit them to take state qualifying ex-

aminations required by law for admission to practice.

Then another difficulty appeared. Certain types of skilled workers became immediately essential in industry, and bulletins were issued to local boards enumerating classes of workers essential. Many local boards erroneously assumed that these enumerations (which did not, of course, include law students) were exclusive and that all not mentioned were automatically excluded from their discretion. There followed as a result many cases where law students were denied temporary deferments simply because they were law students, a result obviously not warranted by the statute. This situation was called to the attention of national headquarters, and it was promptly corrected by a second directive.

Then came the extension of the period of service and with lightning like rapidity a series of national and international events culminating on that fateful Sunday of December 7 throwing so many uncertainties into the picture that now we can no more guess what the effect on registration in the next few years will be. It seems certain that the experiences of 1917 will be equalled or surpassed.

Should we emerge from the present crisis with a permanent peacetime system of military service, as many think quite likely, it is of paramount importance and entirely consistent with such a plan that provision be made for some synchronization of professional training and military service. This will require carefully considered legislation, but it is not too early now to begin a thorough study of it. I hope the incoming Executive Committee will appoint a special group for this purpose.

During the past year we have faced not only the problems of decreased enrollments, uncertainties of student programs and resulting impairment of student morale, but there have been many pressures from within our organization for special dispensations and relaxation of standards. This is something over which we do have a control and in view of developments of the past three weeks it has ceased to be an academic ques-

tion and is now before us for practical solution.

Even before the declarations of war requests had come to the Executive Committee to grant dispensations on library expenditures, minimum number of full-time instructors, shortening the three year period of resident law study and in one case to lower the minimum pre-legal requirement. In one state petitions have been addressed to the Supreme Court to permit law students to take bar examinations at the end of two years. The Executive Committee, of course, had no power to grant such requests, and at its meeting held October the first unanimously agreed that blanket dispensations would be unwise even if it had the power. The committee further agreed not to ask the Association for that power at that time.

Since the declarations of war all of these requests have been repeated with the additional one that schools be permitted to grant degrees at any time in the second half of the third year when a man is called into the military service. This, I suppose, would dispense with the credit hour requirement as well as the residence rule. About the only requirement in the Articles which we have not been specifically requested to abandon is that pertaining to final written examinations.

Some answer must be made to these requests and we have arranged for an open forum general session tonight for discussion of these problems in order that appropriate action may be taken at the business session on Wednesday.

Let us consider the problem in broad outline so that whatever detailed action may later be taken will not be ill-considered or short-sighted. There are really two phases. First, what concessions can in the light of experience and with intellectual honesty be made; second, what procedures can best be followed in making them?

By whatever action we take we shall set a standard not only for those schools which far exceed our minimum requirements and have a margin on which to operate, but we shall also set a standard for those schools which now bare-

ly comply. Moreover, whatever action we take will be carefully watched by other groups that have looked to us for leadership, and it will very quickly be reflected in the actions of bar examiners throughout the country. To the extent that we dispense with safeguards in the schools we may expect accelerating relaxations throughout the entire structure of the profession. We cannot occupy a position of leadership in an articulated profession and shirk responsibility for what happens to the machine if we throw it into reverse.

In April 1917 the Executive Committee in dealing with their emergency adopted the following resolution:

"Resolved, that the granting by any member of this Association of dispensations as to residence requirements and examinations with respect to students who enlist in the military or naval service of the United States, during the present war, shall not thereby be deemed to violate subsections 2 and 3 of Article VI of the Articles of Association."

In my opinion this is precisely what we ought *not* to do again. Five days after the Armistice another resolution was adopted which recited the "abnormal lowering of educational standards" that had taken place and the "loss and impairment of standards achieved in recent years" and called on the schools immediately to reinstate the standards and in no event to dispense with the safeguard of written examinations. It does not take much reading between the lines of that resolution to find an admission of error.

We are all acutely aware of the fact that in wartime a law school is in a class almost by itself among professional schools. The training which we give is peculiarly geared to the life of a country at peace when disputes are settled by reason and not the sword. Our situation, therefore, is totally unlike a naval academy or most scientific schools whose students can be put to immediate use in the military service and who can at once utilize their training even though incomplete. Whatever shortcuts, therefore, we may take in granting credits or de-

grees will not aid directly the military efficiency of the country, and I am inclined to think that even the supposed *indirect aid* by bolstering student morale is greatly over-estimated. A series of friendly, newsy letters from the law school or the activities of Professor Hall's special committee on professional contacts with students may actually accomplish more for morale.

Nor can we think of concession in terms of rewards. As a means of honoring the patriotism of our students it is cheap, superficial and entirely inadequate and in the long run would be so regarded by any professional group. If we must do academic honor to devotion to country, let us seek more intellectually honest means. We might reserve our honorary degrees until after the war is over for that purpose.

The simple truth is that the significant contribution of our training can be made only when peace comes again and in the period of reconstruction that must follow. Is not our problem, therefore, one of ameliorating individual hardships and facilitating the resumption and ultimate completion of the training which we offer? If so, many of the dispensations will not be "concessions" at all but rather additional work and effort on our part to aid students whose work is interrupted during their difficult period of readjustment when they come back.

A large part of our problem is prospective, and immediate only in the sense that we now give assurances that uncompleted work may be taken up where it is left off and that extra assistance on our part will be given in review or concentrated schedules arranged to cut down calendar time.

There are many things a school which is able to continue at all may do without sacrificing the spirit of our present standards. Certainly calendar time may be shortened by concentrated or continuous sessions without loss of minimum classroom hours or the safeguard of written examinations. Special examinations may be given in individual cases where a matter of days or a few weeks are all-important. We are sufficiently fa-

miliar with the doctrine of substantial performance and the maxim *De Minimus* not to be unduly embarrassed or handicapped.

Many schools may be faced with the alternative of closing entirely or operating in a greatly restricted way, by forces beyond its control. Library funds may be cut off. Salaries may be cut or a decreased university budget derived from tuition may make it impossible to comply with quantitative requirements. For the present I can only suggest this general formula: Let us preserve the qualitative standards for the few students or the few teachers we have no matter how restricted the scope of our operations may be for a time. Let us keep always in mind that the standards which we have built up in the past twenty-five years have been won slowly and painstakingly. They have involved the cooperative action of other organizations with which we must not break faith. What we could easily abandon in one year might take another twenty-five years to build again to say nothing of the internal problems of convincing university administrations that we could not continue to operate on the emergency scale. Let us keep in mind that by sacrificing our standards we help neither the military efficiency of the country nor in any true sense the professional morale of the student. Let us keep prominently before us the thought that the real contribution of our training will be in the period of reconstruction that is to follow and that we ought not to do anything causing irreparable harm to the cause of legal education. The danger from turning out too few graduates is far less than turning out great numbers of men poorly prepared. If we are really sincere in the position that our course ought to be charted by considerations of the welfare of the profession, its continuity and integrity, then retreat from the positions we have won should be a measure only of last resort.

These comments have been general; necessarily because the speech I had planned to make was torn up just a week

ago; purposely because of the detailed discussion we shall have tonight.

May I suggest just one more thought about procedures. The problems of schools will be largely individual problems and can best be dealt with that way and as they arise. We cannot anticipate them all in advance, and I think it would be unwise to make blanket changes in our Articles. Let us instruct our Executive Committee tonight by resolution, or otherwise authorize only adjustments that are consistent with the preservation of intellectual honesty.

In the days that lie ahead the service that we can best render to our country may not be dramatic or spectacular, but it can be real and significant. Our foremost obligation is the same as that of any other department of a university, the discovery of truth wherever it may lead us, and its transmittal to our students. Though our science is not an exact one and we deal not with test tubes or electrons, we are dealing with something infinitely more variable and valuable, human beings. We are perpetuating more than a craft or a trade. We are dealing with the very forces that hold us together in society and with the institutions of government that can insure the democratic ideal as a practical reality. Ours is the task of keeping abreast of the facts and forces that should shape judicial and governmental action and keeping the machinery and procedures of society responsive to those demands. Ours is peculiarly the task of keeping alive and vigorous the ideals of human liberty and freedom, and to us in no small part is committed the responsibility of preserving the fabric of human relationships in an age when technological advancement threatens to outstrip a sense of moral values and social perspective.

Should these be our last meetings for a time, let us be glad that we have had this opportunity to renew our friendships, to plan a bit for the day when peace shall come again, to reaffirm our belief in liberty under law and to pledge our loyalty and allegiance to our country.