

LEGAL EDUCATION IN THE ERA OF CHANGE: LAW SCHOOL AUTONOMY

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In addressing law school autonomy, one must first define the concept. One may speak of autonomy from the following entities: the bar admitting authorities (the judiciary), the bar licensing authorities (the bar examining board), the organized bar (the state and local bar associations), the law school approval agencies (the American Bar Association and the Association of American Law Schools), or the central university administration. All of the above entities have an impact on the American law school, and one may argue that all impinge in some degree on a law school's autonomy. The challenge for American law schools is to make the best of what these other institutions offer while preserving the autonomy that is necessary in the educational sphere.

Until the end of the nineteenth century, legal education in the United States essentially took place by apprenticeship and self-directed reading. We are all familiar with the story of Thomas Jefferson, who obtained his legal education by reading law and by being articulated to a practicing lawyer. In the early years of the Republic, there were essentially three kinds of law schools. First, there were those that followed the continental model: the law school was a department or chair within the college or university, and legal education was considered part of the general liberal arts education. Among the earliest of such chairs or departments were those established at the College of William and Mary in 1779, the College of Philadelphia in 1790, Columbia College in 1793,¹ Transylvania University in 1799, and the University of Virginia in 1826.²

The second kind of law school that developed in the United States was what we would now call a proprietary law school, that is, an independent law school without connection to any university or college. These schools were self-supporting and any income in excess of their actual expenses benefited the proprietors of the school, who were usually the faculty. Connecticut's Litchfield School of Law, the precursor of the Yale University Law School, exemplified the proprietary law school.

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1. J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 257-58 (1950).
2. 2 A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 186-87 (1965).

The third kind of law school, and the kind that became the benchmark for the development of all American legal education, was the university law school. Harvard established a university law school in 1817, and Yale followed in 1824. These law schools were a part of the universities but conducted an education program similar to the Litchfield model.

Until the 1870's, lawyer qualifications consisted essentially of apprentice training and education in proprietary law schools, and legal education in America's colleges and universities was a small factor. The continental-model law schools and the proprietary law schools, however, had ceased to exist in any significant way by the beginning of the last third of the nineteenth century. Generally speaking, American law schools in the middle to latter part of the nineteenth century began to develop according to a professional and university approach. Thus, in the latter part of the nineteenth century, and in the first several decades of the twentieth century, a number of new university law schools were created.

I. THE ROLE OF THE AMERICAN BAR ASSOCIATION

In discussing the autonomy of American law schools today, it is appropriate to review the role of the American Bar Association in the development of legal education. The ABA had its organizational meeting in August of 1878. Among the standing committees of the association named at this meeting was a committee on legal education.³ The assembly adopted the following resolution:

That the Committee on Legal Education and Admissions to the Bar be instructed to report, at the ensuing annual meeting, some plan for assimilating throughout the Union, the requirements of candidates for admission to the bar, and for regulating, on principles of comity, the standing, throughout the Union, of gentlemen already admitted to practice in their own States.⁴

Thus, the ABA from its initial creation was concerned with legal education and admissions to the bar.

At the ABA's second annual meeting in 1879, Carleton Hunt reported for the Committee on Legal Education and Admissions to the Bar on the importance of law school training. Hunt claimed that "[t]here is little if any dispute now as to the relative merit of education by means of law schools, and that to be got by mere practical training or apprenticeship as an attorney's clerk. Without disparagement of mere practical advantages, the verdict of the best informed is in favor of the schools."⁵

3. 1 REPORT OF THE AMERICAN BAR ASSOCIATION 5, 16 (1878).

4. *Id.* at 26.

5. 2 REPORT OF THE AMERICAN BAR ASSOCIATION 209, 216 (1879).

Mr. Hunt went on to observe, however, that although some schools were doing a very good job, others did not deserve approval.⁶

In 1892, the Committee on Legal Education and Admissions to the Bar presented the following resolutions, which were subsequently adopted:

[1.] That the American Bar Association strongly recommend that the power of admitting members to the Bar, and the supervision of their professional conduct, be in each State lodged in the highest court of the State. . . .

[2.] That at least two years of study should be required of every student before he presents himself for examination. . . .

[3.] That, in the opinion of this Association, it is a part of the highest duty and interest of every civilized State to make provisions when necessary for the maintenance of law schools, and the thorough professional education of all those who are admitted to practice law.⁷

In 1893, the ABA adopted a resolution that a Section of Legal Education be created.⁸ This was the first section of the ABA. The chairman of the Section, Henry Wade Rogers, reported at the first meeting in 1894 that seventy-two law schools were in operation in the United States, and that of this number all but seven were associated with universities. He reported that enrollment in schools for the academic year 1893-94 was 7600; he noted that in 1870 only 1611 students had been enrolled in law schools.⁹ "The Law Schools," Rogers stated, "have grown immensely in the favor of the profession, and the best informed and ablest members of the profession are arrayed on their side."¹⁰ He also pointed out that substantial advances had been made in admission requirements; in 1875 there were generally no required qualifications for admission to law school,¹¹ but by 1895, Harvard had announced a general admissions requirement of a college degree.¹²

In 1921, the House of Delegates, upon recommendation of the Section, adopted the following resolutions:

(1) The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

6. *Id.* at 217.

7. 15 REPORT OF THE AMERICAN BAR ASSOCIATION 7, 9 (1892).

8. 16 REPORT OF THE AMERICAN BAR ASSOCIATION 3, 7, 10 (1893).

9. 17 REPORT OF THE AMERICAN BAR ASSOCIATION 389, 391-94 (1894).

10. *Id.* at 394.

11. Harvard Law School sought to establish the general requirement of a college degree in 1875; the decision provoked a harsh reaction from the Board of Overseers. See 2 C. WARREN, HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA 394-98 (1908).

12. See R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 45 n.22 (1983).

(a) It shall require as a condition of admission at least two years of study in college.

(b) It shall require its students to pursue a course of three years duration as they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

(c) It should provide an adequate library available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure a personal acquaintance and influence with the whole student body.

(2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by a public authority to determine his fitness.

(3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not and to make such publications available so far as possible to intending law students.

(4) The president of the Association and the Council on Legal Education and Admissions to the Bar are directed to cooperate with the state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements for admission to the bar.

(5) The Council on Legal Education and Admissions to the Bar is directed to call a Conference on Legal Education in the name of the American Bar Association, to which the state and local bar associations shall be invited to send delegates, for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles above set forth.¹³

Elihu Root, the Section chairman, presented the resolutions to the House of Delegates and they were adopted.¹⁴

Although the highest court of each state or other admitting jurisdiction determines its own admission criteria, since the 1920's the vast majority of jurisdictions have relied on the standards promulgated by the ABA. Reliance on a nationally recognized accrediting agency relieves each state of the burden of annually assessing the merits of each applicant's educational qualifications and those of his or her law school. The role that the ABA plays as a central accrediting body has made accreditation national in scope, rather than fragmented among the fifty states and other admitting jurisdictions.

The ABA's accreditation function is an example of the profession

13. 46 REPORT OF THE AMERICAN BAR ASSOCIATION 679, 687-88 (1921).

14. *Id.* at 656, 661, 678.

responding to public needs.¹⁵ Although some may criticize the accreditation process, and healthy criticism is to be encouraged, the process has been developed according to certain fundamental principles. First, the ABA believes that the profession itself is best equipped to form the ultimate judgment of quality. Second, it believes that participation of different components of the profession, the bench and bar, and the professorate is the best way to form that professional judgment. And third, it believes that a thorough undertaking of the accreditation process is necessary if that process is to be effective. Professional review of law schools ensures confidence on the part of individual state admitting authorities that the public is served by lawyers who have received a legal education meeting the standards of the profession.

This review has been administered in a benign manner, with minimal infringement on the autonomy of law schools and their faculties. Indeed, Standard 204 of the Standards for the Approval of Law Schools by the ABA provides that:

[t]he Governing Board may establish general policies for the law school, provided they are consistent with a sound educational program.¹⁶

Standard 205 provides that:

Within those general policies, the dean and faculty of the law school shall have the responsibility for formulating and administering the program of the school, including such matters as faculty selection, retention, promotion and tenure, curriculum, methods of instruction, admission policies, and academic standards for retention, advancement, and graduation of students.¹⁷

Although some academics complain that sometimes the ABA intermeddles in the affairs of the law school and stifles experimentation,¹⁸ the ABA, the Association of American Law Schools (AALS), and the National Conference of Bar Examiners have taken the following position:

Very great progress has taken place in the caliber of legal education in the fifty years intervening since 1921. In part the improvement

15. I do not mean to imply that there are no critics of the law school accreditation process. As Robert B. Stevens has observed, "[t]he structural discussion of the 1970s proceeded amid increasing public and political confusion about the role of accreditation. The process irritated radicals for being elitist and market economists for being anticompetitive." R. STEVENS, *supra* note 12, at 243. See also J. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 102-29 (1976) (advancing the view that accreditation of law schools was in part an attempt to prevent persons of certain religious and ethnic backgrounds from entering the legal profession); First, *Competition in the Legal Education Industry (I)*, 53 N.Y.U. L. REV. 311, 313 (1978) (a noncompetitive structure of legal education has grown over the last seventy years, and "[m]any characteristics of legal education . . . might not withstand antitrust scrutiny").

16. STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 204 (1987).

17. *Id.* Standard 205.

18. See AALS NEWSL., Nov. 1985, at 4.

in legal education has been the result of experimentation in teaching techniques. Not all such experiments have proved successful. Public authority should not dictate teaching techniques but it should make sure that all applicants have the training necessary to adequately serve the public upon their admission.

Not only are law schools quite properly experimenting in teaching techniques but they are experimenting in curriculum content. Again, public authority should not dictate curriculum content but by examination should determine that the content of the applicant's education is such that upon admission he will be able to adequately serve the public. In one of the jurisdictions where graduates of certain law schools are admitted without examination, the Court found it necessary to a certain extent to dictate the curriculum content of those schools—an unfortunate limitation on the educational freedom of those schools.¹⁹

Furthermore, the law school approving agencies have vigorously resisted the development and implementation of separate rules of admission in various jurisdictions, such as Indiana's Rule 13, which requires fifty-three hours of designated course work for those wishing to take the Indiana bar examination,²⁰ and South Carolina's Rule 5A, which prescribes fourteen courses which must be studied by South Carolina bar applicants.²¹ Such rules interfere with the duty and responsibility of each individual law school faculty to determine and periodically to revise the law school curriculum; these rules also limit the opportunity for the law student to determine his or her own course of study within the requirements of the law school. Fortunately, requirements such as South Carolina's Rule 5A are rare, and do not enjoy significant support.²²

19. A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES: FALL 1985, at 71 (1986) (statement of the Council, ABA Section of Legal Education and Admissions to the Bar, the Executive Committee of the AALS, and the Board of Managers of the National Conference of Bar Examiners).

20. IND. ADMISSION & DISCIPLINE R. 13. Professor Millard H. Ruud, Executive Director of the AALS, wrote the following to Indiana Chief Justice Norman F. Arterburn concerning Rule 13:

With respect to the competence in those subject matter areas that the Supreme Court of Indiana considers of special importance to those of whom it admits to the bar of the State of Indiana, it seems that the bar examination testing process should satisfy the Court's concern for the public's interest in a competent bar . . . I would suggest that the National Conference of Bar Examiners would be pleased to give expert assistance in a review of the evaluation of that process and in making suggestions for any needed improvements.

Letter from Millard H. Ruud to Chief Justice Norman F. Arterburn (Apr. 25, 1974).

21. See Littlejohn, *Ensuring Lawyer Competency: The South Carolina Approach*, 64 JUDICATURE 109, 111-12 (1980); Littlejohn, *South Carolina's Rule 5 Works Well*, B. EXAMINER, Aug. 1985, at 19. As of 1986, the required courses were Business Law, Civil Procedure, Commercial Law, Constitutional Law, Contracts, Criminal Law, Domestic Relations, Equity, Evidence, Legal Writing and Research, Professional Responsibility, Property, Taxation, Torts, and Trial Advocacy. See S.C. SUP. CT. R. 5A.

22. See Blackmar, *South Carolina Is Out of Line: A Response to Chief Justice Littlejohn*, B. EXAMINER, Feb. 1986, at 4.

The ABA takes a less intrusive approach. Standard 302 of the Standards for the Approval of Law Schools provides:

- (a) The law school shall:
 - (i) offer to all students instruction in those subjects generally regarded as the core of the law school curriculum;
 - (ii) offer to all students at least one rigorous writing experience;
 - (iii) offer instruction in professional skills;
 - (iv) require of all candidates for the first professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Model Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar in such instruction.
- (b) The law school may not offer to its students for academic credit or as a condition to graduation, instruction that is designed as a bar examination review course.²³

Thus, in contrast to states such as South Carolina, the ABA requires only that law schools provide law students a sound basic education, including instruction "in those subjects generally regarded as the core of the law school curriculum,"²⁴ and recognizes the basic responsibility of each individual law school faculty to develop basic courses and credit requirements.

II. JUDICIAL INFLUENCE ON LEGAL EDUCATION

In 1973, at a lecture delivered at Fordham Law School, Chief Justice Burger argued that America's law schools should be required to provide training in litigation skills, the art of oral advocacy, and the use of better written expression.²⁵ Chief Justice Burger stated:

[One] cause of inadequate advocacy derives from certain aspects of law school education. Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyer's function. With few exceptions, law schools also fail to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy. I have now joined those who propose that the basic legal education could well be accomplished in two years, after which more concrete and specialized legal education should begin. If the specialty is litigation, the training should be prescribed and supervised by professional advocates cooperating with professional teachers, for both are needed. A two-

23. STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 302 (1987).

24. *Id.* Standard 302(a)(i).

25. See Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227 (1973).

year program is feasible once we shake off the heritage of our agricultural frontier that the "young folks" should have three months vacation to help harvest the crops, a factor that continues to dominate our education. The third year in school should, for those who aspire to be advocates, concentrate on what goes on in courtrooms. This should be done under the guidance of practitioners along with professional teachers. The medical profession does not try to teach surgery simply with books; more than 80 percent of all medical teaching is done by practicing physicians and surgeons. Similarly, trial advocacy must be learned from trial advocates.²⁶

In response to a resolution of the Judicial Conference of the United States, the Chief Justice in 1976 appointed a committee to consider standards for admission to practice in the federal courts.²⁷ This committee was called the Devitt Committee after its chairman, the Honorable Edward J. Devitt, then Chief Judge of the United States District Court for the District of Minnesota.²⁸ The Conference appointed the committee "to investigate the quality of trial advocacy in the federal courts, and, if deficiencies were found, to recommend ways those deficiencies could be remedied."²⁹ The committee heard much testimony concerning whether the nation's law schools should be required to make trial practice a mandatory course.

Another outgrowth of Chief Justice Burger's remarks was the creation of the Clare Committee in the Second Circuit to develop minimum educational requirements for lawyers appearing before the courts of that circuit. After eighteen months of hearings, the Clare Committee submitted its report. In the report the committee observed:

At the same time that there exists a need for greater competency at the trial bar, law schools are being met with student demands that include almost complete freedom of choice in course selection. Courses that ten years ago were considered essential for every lawyer are now elective. These developments, which are signs of the times, may produce more "mature" or "better rounded" individuals, but this does not necessarily mean that the young lawyer is grounded in basic fundamentals and qualified in technics of trying cases.³⁰

26. *Id.* at 232.

27. REPORT AND TENTATIVE RECOMMENDATIONS OF THE COMMITTEE TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES, 79 F.R.D. 187, 192 (1978).

28. The committee consisted of twelve federal judges, six law school deans, six practitioners, and four law school student consultants. *Id.*

29. FINAL REPORT OF COMMITTEE TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES, 83 F.R.D. 215, 218 (1979).

30. FINAL REPORT OF THE ADVISORY COMMITTEE ON PROPOSED RULES FOR ADMISSION TO PRACTICE, 67 F.R.D. 159, 167 (1975).

The Clare Committee proposed that every lawyer seeking admission to practice before the federal courts in the Second Circuit be required to show successful completion of courses in five subject-matter areas: evidence, criminal law and procedure, professional responsibility, trial advocacy, and civil procedure, including federal jurisdiction, practice, and procedure.³¹ Both national law school approval agencies, the ABA Section of Legal Education and Admissions to the Bar and the AALS, have been vigorously opposed to the proposals and their implications for diminished law school autonomy.³² Fortunately, the proposals were not implemented.

Implementation of the proposals would have had serious undesirable effects. First, because of the national influence of the Second Circuit, most law schools would have felt pressured to conform their curricula to the adopted requirements. Second, other federal circuits and state courts may have adopted curricular requirements somewhat different from the Second Circuit's, resulting in a balkanization that would have left each law school and each law student in the dilemma of having to decide which requirements to follow. Given the mobility of modern society, many students do not know where they might ultimately reside and hence would not know which jurisdiction's requirements to follow when they attend law school. Third, if the Second Circuit had adopted the Clare Committee's recommendations, a number of "national" law schools might have been forced to adopt regional curricula. Such a development would have discouraged students from attending schools located outside the geographical area where they might practice. This kind of reaction would have severely undercut one of the strengths of contemporary American legal education, the broad mixture of students and faculty from different geographical backgrounds.

III. BAR LICENSING AUTHORITIES

Almost all admitting jurisdictions require that graduates of approved law schools sit for a bar examination before they can be admitted to the practice of law.³³ The bar examination, however, has been the subject of much criticism. Law school faculty, law school graduates,

31. *Id.* at 168-70.

32. See Special Committee on Admissions to the Bar, Analysis of the Clare Committee Proposal for Rules for Admission to Practice in the Federal District Courts in the Second Circuit and Alternatives Thereto (Apr. 4, 1976) (memorandum to the Executive Committee of the AALS). This report was approved by the AALS Executive Committee at its May 21-22, 1976 meeting and was given wide distribution. The Report was approved by the Council of the Section of Legal Education and Admissions to the Bar at its June 1976 meeting.

33. In Wisconsin the "diploma privilege" permits graduates of the accredited law schools within the state to be automatically admitted to practice after meeting course and character require-

members of the judiciary, members of the bar, state legislators, and the press frequently and often vociferously express concern about various aspects of the bar examination.³⁴ Critics suggest that the bar examination requirement has the effect of turning law schools into high-powered cram courses. It has also been suggested that because of their limited nature and focus, bar examinations tend to hold law school methods of instruction within narrow limits and thereby inhibit the breadth of perspective necessary to evaluate the law's principles and institutional relationships.³⁵

Bar examinations should not, however, interfere with the development of an individual law school's curricular offerings. The national law school approving bodies cooperate with the various boards of bar examiners to minimize infringement on individual law school autonomy. Indeed, in each admitting jurisdiction, law deans and faculty are urged to meet periodically with the board of bar examiners to exchange views and to review current developments. Dean Erwin Griswold has observed:

I do not exalt bar examinations, but I regard them as necessary and proper. They provide a stimulus to the law schools, a means of encouraging the law schools to do the best job they can in legal education and not to slough it off in any way simply because the numbers of their students have become so large.³⁶

Dean Norman Redlich has observed that bar examinations perform a useful function from the perspective of the law school and the law faculty:

[The bar examination] enables the law schools to avoid the dreary task of training students in the laws of individual states and to become, instead, centers of learning in which law is not viewed as merely the acquisition of a body of substantive knowledge. Law schools perform a far more exciting intellectual function, and the existence of bar examinations makes this possible.³⁷

Legal educators continue to debate over both the content and the value of the bar examination. Yet there is no movement to abolish the

ments. For over 60 years the ABA has opposed the "diploma privilege." When it adopted the Standards for the Association of Law Schools in 1921, the ABA issued the following statement:

The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

46 REPORT OF THE AMERICAN BAR ASSOCIATION 679, 688 (1921).

34. For various opinions regarding the bar examination, see *Looking Toward the 21st Century*, B. EXAMINER, Feb. 1985, at 3.

35. Getz, Siegfried & Calvani, *Competition at the Bar: The Correlation Between the Bar Examination Pass Rate and the Profitability of Practice*, 67 VA. L. REV. 863 (1981).

36. Griswold, *In Praise of Bar Examinations*, 60 A.B.A. J. 81, 81 (1974).

37. Redlich, *We Train Our Students to Work for Wall Street*, LEARNING & L., Winter 1977, at 7.

bar examination. The National Conference of Bar Examiners, through the development of the Multistate Bar Exam, has sought to both strengthen and give a national perspective to the bar examination. The question must still be asked whether the bar examination exerts too great an influence on the law school curriculum and training. The bar examiners must not become such disciples of modern technology that they forget that the craft of legal education is the development of skills of analysis and synthesis, negotiation and problem solving, advising, counseling, and advocating. These are the basic skills of lawyering and may not be readily and accurately assessed by the bar examination process.

IV. THE ORGANIZED BAR

In recent years, some segments of the practicing bar have expressed attitudes of impatience and hostility toward the law schools.³⁸ This criticism goes beyond advocating greater curricular emphasis on practical lawyering skills. Some members of the bar have proposed that law schools be required to give credit for work experience, offer instruction in the economics of law practice, make clinical experience mandatory, and offer more creative professional responsibility courses.

All of these proposals have implications for institutional autonomy. Much of the criticism from the organized bar may reflect a genuine concern on the part of the profession about the form and focus of legal education. In any event, many of the complaints have substance and must be addressed by the legal education community.

Law school faculty must follow the suggestions of the practicing bar and address the problems of the legal profession. Faculty must be aware of and understand the problems of the practicing profession. Lack of effective dialogue between faculty and practitioner simply fuels further proposals for change by the organized bar. Law teachers must realize that scholarship and teaching cannot develop in some isolated tower, and they must respond with honesty and candor to the proposals of the profession.

V. THE LAW SCHOOL AND UNIVERSITY

Another area of tension is the relationship of each law school with its parent university. Law has long been considered an integral part of

38. Allen, *The Prospects of University Law Training*, 63 A.B.A. J. 346, 347 (1977). One commentator has suggested that an "inevitable tension" exists between a practicing profession and a university-based system of legal education. Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 A.B.A. J. 447, 449 (1976).

professional education within the university curriculum.³⁹ The professional schools, particularly the law schools and the medical schools, have always considered themselves the elite within the university community.

During the last decades of the nineteenth century and the beginning of the twentieth century, professional organizations such as the AALS and the Section of Legal Education of the ABA were set up to assist the law schools in establishing their role within the academic community.⁴⁰ One of the major functions of these groups was to approve individual schools, but they also did much to develop the programs of legal education that ultimately replaced the apprenticeship system. The AALS sought to promote the quality of educational programs by promulgating a set of articles binding upon its members.⁴¹

Both the ABA's Standards for Approval of Law Schools⁴² and the AALS's Articles helped to create and perpetuate the uniqueness of the law school within the university. Requirements as to faculty teaching loads, academic standards for students, academic freedom and tenure, and law library independence helped create and maintain a position of strength within the university. The university administration recognized that the law faculty should control its own curriculum, its student body, and its own faculty and decanal appointments. The law school was even to have its own separate alumni association.⁴³

Professor Robert B. McKay made the following observation:

39. See D. GILMAN, *THE LAUNCHING OF THE UNIVERSITY* 3-10 (1906); A. HENDERSON, *POLICIES AND PRACTICES IN HIGHER EDUCATION* 61 (1960).

40. See A. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 80-89 (1953).

41. Professor Harno observes that

these Articles did little more than parallel the actions previously taken by the American Bar Association. There was, however, this difference. Whereas the resolutions of the American Bar Association had expressed views and opinions that were aimed to bring about results through persuasion, the Articles of the Association of American Law Schools spoke with authority as to those schools which wished to maintain themselves in this select circle. Even so, in the light of present ideas about legal education, the requirements stated in the original Articles seem pitiful. What is significant is that through the organization of the Association of American Law Schools, a new and potent instrumentality for the advancement of the cause of legal education had been introduced into the scene.

Id.

42. Standards 210 and 210(a) provide:

Affiliation between a law school and a University is desirable, but is not required for approval. If the law school is affiliated with or a part of a University, that relationship shall serve to enhance the program of the law school. If the law school is an independent institution, it shall endeavor to secure the advantages that would normally result from being part of a University.

(a) A University affiliation permits an educational program that extends beyond the traditional law school curriculum, the development of academic programs that involve other disciplines, and enables law students and faculty to enjoy the advantages of the University library and other facilities and to participate in the academic life of the University community.

STANDARDS FOR APPROVAL OF LAW SCHOOLS Standards 210, 210(a) (1987).

43. R. HUTCHINS, *THE HIGHER LEARNING IN AMERICA* 1 (1936).

and the profession. The competition for resources between the law school and the central university administration may well pose the greatest challenge for law school autonomy in the last decade of the twentieth century.

VI. CONCLUSION

Law school autonomy in an era of change translates to minimal interference with law school autonomy by the bar admitting authorities, the bar licensing authorities, the organized bar, the law school approval agencies, and the central university administration. All of these entities have a legitimate interest in the nature, quality, and scope of American legal education. Yet effective autonomy for law schools in an era of change can be preserved only by balancing these legitimate interests in a way such that they do not impede or hinder the intellectual enterprise.