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POST WAR LEGAL EDUCATION AND THE SERVICE MEN

ELLIOTT E. CHEATHAM*

In post war legal education the two principal forces will be the returning law teachers and the returning service men. Between them they will give shape to it for half a generation. Their influences may be somewhat opposed.

The law teachers now on leave from their faculties will return after years spent in work where the old course divisions, as, Contracts, Torts and Property, seem to mean little. For some there may be nostalgia for the familiar grooves, free from the difficulties and challenges of the war years. For many who have had a share in the political and social and economic changes hastened by the war, there will be dissatisfaction with the old organization and methods of the law school curriculum. They will be convinced changes must be made if the students are to be prepared adequately for their work in the coming generation and if, indeed, the profession of law is to maintain its old standing.

The demand for training for utilitarian ends narrowly conceived will also be present. This call will be strengthened by the desires of the service men. After the sacrifice of years normally spent in preparation for and early advancement in their professional careers, they will feel an urge to get on as rapidly as possible with training so they may enter the profession and earn their living. Impatience with liberal or broad curricula may be expected.

The influences typified by the two returning groups will for some years necessarily go along together; the one calling for renewed attention to the development of legal education; the other demanding consideration for the special problems of the service men. The urgent temporary problem will consume so much faculty time and energy that normal developments will inevitably be somewhat slowed down, but they must not be halted. Even during the war there have been new proposals and some experimentation.¹ These movements

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1. With the faculties depleted the study of legal education has been continued largely by committees of the Association of American Law Schools, whose reports are contained in the Handbook of the Association. For an outline by Dean Charles T. McCormick of recent activities, see A Message from the President of the Association, Handbook, 1943, p. 7.

are fundamental and of long duration. The more immediate problems of the veterans will here be discussed.

The demands of the Selective Service Act calling men from 18 to 38 years of age and the privilege of volunteering even wider in its invitation have ranged over twenty or more law school classes. They have taken nearly all of the men already in law school, and in even larger numbers they have taken the prospective law students and law graduates. For several years after the war returning service men will form the bulk of the student bodies. If the European phase of the war ends within a year so as to permit the beginning of demobilization in 1945, there will already be an accumulation of prospective law students covering more than three normal years. The effect of this accumulation will be spread over several years, however, because the pre-legal work has similarly been slowed down by the lowering of the draft age from 21 to 18.

The student bodies will be swelled by the return of the large number of law students whose studies were interrupted by the war. They will be increased still more through the generous provisions for education in the G. I. Bill of Rights. The Armed Forces Committee on Post War Educational Opportunity for Service Personnel estimates that there will be a million former members of the armed forces to avail themselves of postwar educational opportunities at all levels.

These service men will be significant, not so much because of their numbers or because of their future position. In them there will be combined the two most important elements in American political life; they will be veterans of a great war and they will be lawyers. Their political and social influence, it may be hazarded, will be like that of the veterans of the post Civil War period rather than like that of the veterans of the first World War. It will be remembered that from 1865 until 1901 every elected president of the United States except one had been a soldier in the Civil War, and every president except the first was a lawyer. In the lower ranges of political life as well as the upper ones, the veterans will be dominant. With the great increase in the government service there will be a demand for veterans' privileges which will mean that for the next generation they will give the tone to the civil service. It is of great importance to the country that these men be adequately trained. If they are

to be so influential in government, they should have preparation and training correspondingly broad in character.

In addition to the men beginning or completing their undergraduate work in law, there are thousands of law graduates who entered the military service and who on their return may desire aid in re-establishing their professional knowledge and competence. Some of them may look to the law schools.

For consideration of the appropriate policy of the law schools, it will be useful to divide the service men into four groups: 1. Students entering the law school. 2. Students whose law studies were interrupted. 3. Practicing lawyers. 4. Law school graduates not yet admitted to the bar.

1. *Students Entering the Law School.* The admission policy for service men has begun to receive attention. Relaxation of entrance requirements is urged because of the sacrifices the men have made, their maturity and development of leadership, and their educational training during the years of service. These factors will carry greater weight than the objection that work at the bar and special opportunities of civilian leadership should rest on the same pre-law training required of other students. The measure of relaxation believed called for by fairness to the service men and permitted by protection to their future clients and constituents will vary with the state and the school. The Council on Legal Education and Admission to the Bar of the American Bar Association and the Association of American Law Schools seem disposed to lower their normal requirement of two years of college work to only one year in residence for a service man, provided the applicant's intellectual growth up to the level of the college junior has been satisfactorily evaluated through a testing program within the armed forces or examinations given by an approved college, and a special committee of the Joint Conference on Legal Education of the State of New York has made a recommendation to this effect. The law schools which now require two or three or four years of college work for admission are considering a reduction of their requirements by one year on similar terms.²

2. The subject of the returning veteran and postwar legal education, including the relaxation of admission requirements, is discussed in the report of Dean Young B. Smith of the Columbia Law School, 1943, pp. 7-12.

This relaxation of formal requirements may be wise, but the veterans should not be accepted en bloc. It is imperative that there be closer consideration by the school admission authorities of the capacity and aptitude of each applicant. The payment by the government of subsistence and expenses for one year for any man who wishes to resume his formal education will encourage doubtful risks to take another fling at university work. Many of those on whom the strain of military life has told heavily will think of law as an easy profession suited to their impaired strength. It is far better that they meet disappointment when they seek admission rather than frustration and bitterness in their school or professional careers. Inflation and then deflation of personal hopes and ambitions may be quite as dangerous as inflation and deflation of currency and values. Indeed, the latter is dangerous only because it brings the former with its disappointments and bitterness. For the individual veteran it is important that there be some sort of guidance program which will aid in the determination whether he is fitted to the study and practice of law. The government will doubtless provide an advisory service but the law schools should have their own selection and guidance programs.

The efforts of the responsible schools to keep away from the bar those not fitted for it may create a danger of exploitation by irresponsible schools run for the profit of their proprietors. The protection of the veterans against this danger must rest with the state educational and bar admission authorities and with the administrator of federal aid to veterans, which among them will determine the approved schools in which the government-aided veterans may study.

It is important for the country, as well as for the individual veterans, that there be not an excessive number of law-trained men. The experience of continental Europe after the other war is a warning. One of the forces which helped Hitler to power was the "intellectual proletariat" turned out by the universities. On graduation many young men found no place for their talents or their training and became rebellious toward a regime which in unlimited numbers gave them university training and then denied them opportunities which they had been led to believe were their own. So they turned against the regime and helped overthrow it under the promises of a new order which seemingly could not give them less

and offered much more. A committee has been created in Great Britain to consider, in the light of the prospects for employment at home and abroad, the number of persons who should be encouraged to enter upon various courses of work and the opportunities available for service men. Perhaps, some such over-all study could well be made as to lawyers in this country.

The curriculum for the service men will, doubtless, be the same as that for other students. Teaching methods, which have been developed for men coming directly from college to law school, must be modified in the first semester to meet the temporarily lowered capacities of men who have been away from university work or even from intellectual work for years. Men whom the strains of combat or of service life have brought close to the breakdown may need increased opportunity for personal conference. After the period of adjustment the usual rigor must prevail and the service men must again meet the same test applied to other students.

What of the accelerated program, with a summer term of full length and with the consequent opportunity for a student who goes three terms a year to complete the work for the degree in two calendar years? There is reason for it in the desire of the servicemen to complete their already seriously delayed legal education and to pick up as soon as practicable the thread of their civilian work. Another reason inheres in the present form of the G. I. Bill of Rights which in its provision of maintenance allowances puts a premium on consecutive study throughout the year.

Yet there are substantial reasons against the accelerated program, at least for many service men.³ The study of law is not merely the acquisition of information but the slow development of an attitude of mind. The development process cannot well be forced even for the usual students and the civilian students now taking the accelerated curriculum are not getting as sound a training as their predecessors under the normal régime. Most of the returning servicemen will have been away from intellectual work for a long period and many of them have suffered nervous shocks. They cannot be expected to go at the normal pace at the beginning

3. The objections were stated with special clarity by Professor Laurence Eldredge, of the University of Pennsylvania, at a meeting of law teachers in Philadelphia in May, 1944, called by the Association of American Law Schools.

of their work, and with lessened mental resiliency they will tire even more quickly than their civilian fellows. If these men are subjected to the prolonged and unbroken strain of the accelerated program, we may expect many of them will be seriously injured. Two things can be done. One is for the deans or counsellors to advise the men against the accelerated curriculum unless individual stamina makes that curriculum practicable. The other is an amendment of the G. I. Bill of Rights which, by permitting the work subsidized by the government to be spread out over a longer period, will reduce the pressure to take the accelerated curriculum.

2. *Students Whose Law Studies Were Interrupted.* Students who resume the study of law after the interruption of war will be under the general veterans' handicap of years of absence from academic work. If they are to undertake with profit law school work where they broke off, some refresher work is needed. The need is accentuated by the fact that for most of them the year or the semester before induction was impaired by the distraction of the war, the imminence of induction, and the wide grant of credit for the work of a whole semester if completion was prevented by entry into service.

The nature of the refresher work offered by a faculty will be limited by the burdens of an accelerated curriculum and a large student body. It may be that some of the students will be willing to repeat their last semester before induction, but with the eagerness to complete professional training the number of such men will be small.

An essential thing is to convince the men that salvation here is personal and that the revival of their knowledge and intellectual capacities must come through renewed work on their own part and can not be handed to them by others. The faculty can do something of aid without slighting other tasks. One possible measure, if nothing more extensive is practicable, is a reading period for veterans covering a month or so prior to their registration. Books and articles in the courses would be recommended, and once or twice a week each faculty member might give in his field a refresher course of much the same kind as that sketched under the next head. The type of work given will vary with the desires of the instructors. In my belief, the work will be of most aid if it helps to point up the reading by the men to

specific situations and to acquaint them with the developments in the law since their induction. It ought to be possible in each school for the instructors concerned to have mimeographed a set of problems based on recent cases and statutes through which the reading of the students could be brought to a focus. In the discussion of the problems there would necessarily be brought out most of the important principles in the fields.

The question has occasionally been asked by service men whether they can receive law school credit for study while in service. The English have developed a system of supervised law study for men in the forces. It has been more practicable for them because the presence in the British Isles of the bulk of the Army has made possible supervision and aid by lawyers and teachers.⁴ The Association of American Law Schools and the Council on Legal Education and Admission to the Bar of the American Bar Association permit credit to be given only for work in residence. There will be no serious urge to change this requirement, unless our occupying forces are numerous and are held away for long periods.

3. *Practicing Lawyers.* The largest group of returning veterans will be the men who have graduated from law school and begun practice. These men will vary widely in their age and length of service, in their ability and knowledge of law, and in their position and opportunities in the profession. Some will return to position or membership in firms or will at once open offices of their own, but others will be unable to do so. The diversity in the situations and needs of the men calls for variety and flexibility in any program to assist them.

Their needs, it is believed, are not essentially a law school problem. The men would not find it pleasant or especially profitable to work through old law courses with undergraduates, and they would see that the graduate courses in law, designed as they have been previously for the more scholarly

4. The scheme of correspondence courses and of tutors planned by the Law Society, the governing body of the solicitors, is referred to in the Annual Report of the Council for 1942, p. 23. The Council of Legal Education, established by the inns of court to superintend the education and examination of students preparing for the bar, has made special provision for giving the bar examination at some foreign centers. Calendar of the Council of Legal Education, 1942-43, p. 39.

and proficient, not suited to the needs of those who wish to revive their legal ability and to enter practice. The law faculties under the heavy burdens already mentioned could not find the time to develop and give another body of special courses. These graduates, moreover, are looking for much more than a law school can give, for while they need to re-establish their old knowledge of law and ability to work with law books they need even more to recreate the links with practice and the handling of practical affairs.

The bar associations and the practicing lawyers can here give the greatest aid. Their methods will necessarily vary with the environment. The bar in the small communities will have some advantage in their close acquaintance with the men returning and in the informality and directness of any plan of work. The veterans can best re-establish legal ability and self-confidence by devoting most of their time to actual cases, and the older lawyers can more readily make this possible.

In the large cities, though there will be some informal help like that in the smaller communities, much of the aid will necessarily be more formal refresher courses. The law school faculties may be of assistance in helping to plan and to give these courses.

Many of the men, doubtless, will believe they need only survey or cram courses covering the whole field of law and administered to them without effort on their part. They must be disabused of this belief if the work is to be of substantial aid to them. The primary need, especially of those who have been away from law for years, is to bring back their old ability to use legal materials and to deal intelligently with legal problems, and this can be re-established only through work by them. Their need will include a knowledge of the recent developments in the more important fields of law. For the younger of them it may extend to the establishment of self-confidence, the acquisition of the necessary minimum of information on the practical details of the profession, and the creation of a feeling of membership in the profession. With these cautions and needs in mind, some suggestions on a proposed refresher course are submitted.⁵

5. In the discussion which follows I am especially indebted to a committee to which I belong, though I may not succeed in expressing the views of the committee as a whole. The other mem-

The full-length course would be three or four months in length. It would be given in the late afternoon or evening four days a week. This schedule would enable men already placed in offices to take the few courses they desired and would give others the time and opportunity to seek office connections.

The body of the work would consist of courses in some of the more difficult or more important fields, and the men would take the work only in the fields of their interest. In the fields selected, it will be undesirable to offer courses which treat the whole subject evenly but thinly. It will be best to deal with the new developments both case and statutory and in their discussion bring in the necessary background material from the earlier law. The courses will not be organized in the narrow manner of law school work, as Contracts, Agency, Partnership, but in segments substantially identical so far as possible with broad divisions in the active practice of law; though exception might be made of Taxation because of its almost universal importance. Some segments might be: in the fields of property law, courses on Real Estate Law (sales of land, leases, mortgages, recording acts, abstracts, property and title insurance), and Trusts and Estates (estate planning, descent of property; personal trusts; future interests; administration of decedents estates and trusts; taxation of gifts, estates and trusts; probate practice); in the field of business law, courses on Business Organization (agency, corporations, partnerships) and Commercial Law (contracts; sales; bills and notes; banking; bankruptcy). Similarly there might be courses in the fields of administrative law, of wrongs, and of civil litigation.

In addition, two other types of courses should be considered. One is the ordinary case-system course, which may have the value of the familiar type of work in reviving in the younger men the old habits of study. If given, the fields selected should be important and developing ones frequently not covered in undergraduate work, as, Administrative Law, Labor Law, Taxation, and Trade Regulation.

The final type here suggested consists of courses which are more immediately practical or more detailed in their

bers are Mr. R. E. Lee, of the New York Bar, Chairman, Prof. F. J. de Sloovere, Prof. Walter B. Kennedy, Dean George W. Matheson, and Prof. Donald F. Sealey.

treatment, as, on drafting, or on the details of practice in certain fields. This type could with special profit include seminars in legal problems, in which the problems discussed would be actual cases on which the practicing lawyers in charge had recently worked, and in which the members of the seminar would be expected to work out the solutions and then discuss them with the instructors.

4. *Law School Graduates Not Yet Admitted to the Bar.*

There are recent graduates who went into the service without taking the bar examination. Some omitted the examination out of necessity or out of a belief they could not adequately prepare for it. Others skipped it in the hope of being admitted to the bar without examination on a plea of hardship. There is an even larger group of service men graduated prior to the present emergency, who have failed in their efforts to pass the bar examination and who despite their failure may seek a similar veterans' privilege for admission.

The decision on admission rests, of course, with the bar admission authorities. They will be under pressure from their sympathies and from politicians to do something for these men. It would be unfair to the veterans as well as to the community and to the future clients to give them the privilege of practice unless they can meet the state's usual test of adequate professional knowledge. The plea to the law schools in the early war years for the accelerated curriculum and the grant of credit to men whose work was interrupted by induction was at times supported by the statement that these men would have to meet the ultimate test of the bar examination. Our disastrous experience in other wars with political generals demonstrated that political and legal ability are no substitute for military ability, and the converse is equally true. It may well be thought something of an injustice to the recent graduates, however, if they are compelled to take the bar examination years after completion of the law school work, without provision by the schools or the bar for a revival of their knowledge. Unless means are provided to aid them, the pressure for admission may prevail even for the men of earlier classes who tried and failed the examination.

The suggestion has come that law schools offer a review course of about a semester in length specially planned for these men. The proposal may fall under the ban of the

American Bar Association or the Association of American Law Schools on bar examination courses by law schools.⁶ Even if permitted, it is doubtful that many law faculties could find the time to plan and give such special work with the other unusual burdens on them at the end of the war.

There are several sources of aid. The veterans might well be given the privilege of again attending regular courses in their old law schools and of taking refresher work for practicing lawyers. Combined with the bar review courses, these opportunities are enough aid in reviving their knowledge of law to make insistence on the bar examination no serious hardship and to justify requirement of it as the usual measure of protection to the public against unqualified practitioners.

6. Since this was written, the Joint Conference on Legal Education in the State of New York has authorized the giving by law schools of such a course for veterans, provided the course is at least fourteen weeks in length for full-time schools, and twenty-one weeks in length for part-time schools.