

Case 12

Reforming the Legal Profession through Education and Practice

Carnegie Foundation for the Advancement of Teaching, 1921

Steven Schindler

Background. In the first few decades of the twentieth century, the leaders of the legal profession, particularly the leadership of the American Bar Association, were concerned about the path of their profession. For one, the sheer number of practitioners exploded, as the number of law schools rose nearly 50 percent and the number of law students nearly doubled between 1900 and 1920. The number of young lawyers was not as disconcerting to many in the legal profession as was the influx of immigrants. Because many of these new entrants into the field did not have access to the requisite educational background to be admitted to the prestigious university-associated law schools, they came to the practice of law through proprietary night schools and other schools with virtually no selective admission policies. To reform-minded legal scholars, raising the academic standards of legal education was a means of limiting access to the legal field.

Another concern of the legal profession's leadership was the widespread belief that the volume of case law and legal literature in the various jurisdictions of the United States was growing at an unmanageable rate and needed to be addressed in a systematic fashion.¹⁷⁸ Corporate lawyers representing wealthy corporations complained that the unwieldy state of case law left them unable to advise their clients with any confidence as to which behavioral paths would be clear of legal threats.¹⁷⁹ A group of representatives from the legal profession argued that they, and not outside reformers, should be responsible for addressing these.¹⁸⁰ Elihu Root, a trustee of the Carnegie Corporation and a lawyer himself, advocated a solution of self-regulation so as to avoid outside interference and meddling in the profession's course.¹⁸¹

Strategy. In light of Abraham Flexner's influential report on the status of medical education that included a recommendation of higher admissions standards and standardization of the profession, these legal reformers thought that the Carnegie Foundation for the Advancement of Teaching (CFAT), the sponsor of Flexner's report, could fund another study to repeat the process in the legal profession and thereby address the first objective: raising the bar of entry into the profession.¹⁸² The Committee on Legal Education of the American Bar Association asked CFAT to conduct a study of legal education. Pritchett commissioned two studies to that end: Joseph Redlich's *The Common Law and the Case Method in American University Law Schools* in 1914 and Alfred S. Reed's *Training for the Public Profession of the Law* in 1921, published after Reed's eight-year study of the field.¹⁸³

While Redlich's report had relatively little influence in legal education, Reed's report was quite controversial. Reed did not share the desire to restrict access to the field of law that motivated those prompting his report. In *The Public Profession of the Law*, his conclusion was instead that the public nature of the legal profession demanded diversity in training styles in order to prepare a diverse corps of lawyers for the legal practice. Committed to maintaining the "poor boy's" access to the legal profession, Reed rejected the push for standardization that the Legal Committee of the ABA desired in favor of wider access to the profession.¹⁸⁴ The report took issue most directly with the unified nature of the bar, especially in its inadequacy in serving the diversity of practice areas within the legal profession.

Prior to the report's publication, CFAT provided advance copies to the ABA Section on Legal Education and Admission to the Bar. The Section, chaired by Elihu Root, was disheartened by the report's findings. In order to prevent the report from enjoying the same influence as did Flexner's report on medical education, the Section quickly offered its public endorsement of a competing proposal by the American Association of Law Schools to raise academic standards.¹⁸⁵

Ironically, this rejection of legal education standardization led to where the reform-minded legal scholars had hoped. Reed's acknowledgement that the part-time and night schools were the entryways for immigrants into the legal profession prompted the ABA to adopt the Legal Committee's position on increased academic standards for all legal education as a prerequisite to admission to the bar.¹⁸⁶ The ABA's prominence enabled its leadership to institute its own recommendations and to raise academic standards while dismissing Reed's recommendations.

Following Reed's report, CFAT began publishing *The Annual Review of Legal Education*, written from the premise that a balance was needed between maintaining high bar admission standards and providing access to careers as lawyers for individuals of all socio-economic backgrounds.¹⁸⁷ The report noted that the thirteen states that empowered their high courts to control bar admission generally administered the most advanced rules and best standards.

While CFAT continued to monitor legal education, the Carnegie Corporation took aim at the profession's second concern—reform of the system that produced vast and growing amounts of case law and scholarship. In 1914 two speeches to the Association of American Law Schools (AALS), delivered by Wesley Newcomb Hohfeld and Joseph H. Beale, prompted the creation of a committee, chaired by Elihu Root, to pursue the establishment of a center for legal reform. A committee formed in 1915, but it was inactive until after World War I.¹⁸⁸

One of the early motivations for legal reform, as for reform of legal education standards, was the tremendous immigration boom from Eastern and Southern Europe. Practicing lawyers in particular were fearful that immigrants from dictatorial or anarchical countries would be incapable of showing respect for the rule of law in the United States.¹⁸⁹ This xenophobic response to perceived threats, which brought together the ABA and the AALS, were shared by leading trustees of the Carnegie Corporation. In addition to Root's warnings of lawless traditions being transferred to the United States through immigration, Henry Pritchett sought an investigation to verify his perception that immigrants learned more slowly the legal traditions unique to America.¹⁹⁰

In pursuit of his desire to bring about a stronger, more uniformly well-qualified legal profession, Root formed an alliance with the legal academics at the AALS, and he secured critical funds from the Carnegie Corporation to fund the endeavor that became the American Law Institute (ALI).¹⁹¹ In 1922, the Carnegie Corporation granted \$25,000 to a committee, chaired by Root, on the establishment of a permanent organization for the improvement of the law. At a meeting in Washington, D.C. in February 1923, Root delivered the address that preceded the motion to establish the American Law Institute. On April 17, 1923, a grant of \$1,075,000 followed the initial \$25,000, this time to provide the ALI with sufficient financial support to render it independent of financial concerns for its first decade.¹⁹² The corporation authorized a third grant of \$1,020,196 in 1933 for continued support of the ALI in developing restatements of the law.¹⁹³

Impact. In its eighty years of existence, the ALI has become the authoritative body for compiling and publishing restatements of the law in all major fields and in developing and recommending, in conjunction with the National Conference of Commissioners on Uniform State Laws, the Uniform Commercial Code, now adopted in forty-nine states and the District of Columbia, and several other model laws which have also been adopted by many states.¹⁹⁴

Notes

178. Ellen Condliffe Lagemann, *The Politics of Knowledge: The Carnegie Corporation, Philanthropy, and Public Policy* (Middletown: Wesleyan University Press, 1989), 71.

179. *Ibid.*, 72.

180. *Ibid.*, 72.

181. *Ibid.*, 73.

182. Ellen Condliffe Lagemann, *Private Power for the Public Good: A History of the Carnegie Foundation for the*

- Advancement of Teaching* (Middletown: Wesleyan University Press, 1983), 76–77.
183. *Ibid.*, 75–76.
 184. *Ibid.*, 79–81.
 185. Lagemann, *Politics of Knowledge*, 79.
 186. Lagemann, *Private Power*, 81.
 187. “For Court Control of Bar Admission,” *New York Times*, 4/13/1931, 27.
 188. Lagemann, *Politics of Knowledge*, 73–74.
 189. *Ibid.*, 77.
 190. *Ibid.*, 80.
 191. *Ibid.*, 91.
 192. *Ibid.*, 71.
 193. *Ibid.*, 91.
 194. “This is ALL,” *The American Law Institute*, <http://www.ali.org/ali/thisALI.pdf>.