

The Immediate Impact of the First Carnegie Report on Legal Education and Some Lessons for the Present

Paper Prospectus

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The first Carnegie Report on legal education—the 1921 Reed Report—is one of the most celebrated documents in the history of American legal education. It was released within one month of another celebrated report, the American Bar Association’s Root Report (named after the ABA Committee on Legal Education and Admission to the Bar chairman Elihu Root). As students of the history of the legal profession know, the Reed and Root Reports reached somewhat different conclusions regarding the future direction of legal education in the United States.

The Reed Report—so named because its author was non-lawyer Alfred Z. Reed—surprised many of those who saw themselves as members of the bar’s elite by endorsing the idea of a differentiated legal education. Reed found that the current educational landscape included some law schools featuring high admissions standards and rigorous full-time study and others providing part-time legal education to students whose educational credentials might not match those who attended the more “academic” law schools. For Reed, this was not a problem, but actually a strength for the bar. In Reed’s view the legal profession—while definitely a public profession with special obligations—already served a divided clientele with low income Americans in both urban and rural areas receiving legal services from students who attended the less rigorous law schools.

However, in terms of the current content of part-time legal education, Reed was actually quite critical of the current standards in the part-time and shorter course American law schools. For example, he suggested that a part-time law school should offer a course requiring at least six years of study and that it should pay more attention to the recruitment of dedicated instructors. However, this aspect of his report was largely ignored both at the time the report was released and ever since.

Where the Reed Report envisioned a democratic and varied world of legal education in which some law teachers were full-time academicians and others were practicing lawyers, the Root Report envisioned a much more limited form of legal education. The Root Report called for all law students to have a minimum of two years of college study before entering law school. It also asserted that the desired law course should consist of three years of full-time study. Although it did not call for the end of all part-time legal education—a position favored by some “reformers” in the ABA—it demanded that part-time students be held to the same educational prerequisites as full-time students and that part-time programs be of sufficient length to allow for the same number of hours of instructions as offered in full-time programs. The Root Report led directly to American Bar Association’s 1923 decision to begin to accredit law schools,

and the new accreditation standards were essentially the recommendations of the Root Report.

This paper examines the impact of both the Reed and Root Reports on legal education in the United States in the decade following their publication. It begins by surveying the landscape of American legal education in 1921 in regard to the educational prerequisites for admission, the length of the law course, and the time of day (morning, late afternoon, or evening) that instruction began. The paper then describes the changes that occurred in American legal education over the next decade.

Although it was the vision of the Root Report, not the Reed Report, that triumphed in post-World War II America, a survey of legal education in 1931 suggests that institutional inertia and the market demand for low cost legal education were far more important factors in determining the shape of American legal education than either the Reed or the Root Report. Some law schools, like Marquette, did take significant steps to bring itself into compliance with the Root Report and to obtain ABA accreditation. It abolished its part-time program, which dated back to the 1890's; it increased its prerequisites for admission to two years of college; and it hired additional full-time faculty members. However, the reaction of Marquette was not the norm, and a majority of law schools chose to ignore the recommendations of both reports.

By 1931, part-time legal education had not disappeared; in fact, it was flourishing. Schools offering part-time legal education outnumbered full-time-only schools by a margin of 100 to 82, and 77 of the 100 offered only part-time instruction. The next year (1932), the number of full-time schools actually declined by one, while the number of part-time schools increased by four. Nor had the short course disappeared from the landscape. In 1931, there were still 10 law schools which offered a course of less than three years, including the John Randolph Neal Law School of Knoxville, Tennessee which still offered a law school course that could be completed in a single year. In 1932, the number of law schools with shorter courses actually rose from 8 to 10.

Moreover, there was no stampede to secure ABA accreditation. While the more "prestigious" full-time law schools had rushed to obtain this new certification, a majority of schools seemed unconcerned. (In the 1920's and 1930's ABA accreditation signified that the school was a certain quality but it did not provide the school's graduates with any formal advantage in securing admission to the bar.) Only 78 of the 182 American law schools had secured the status of "ABA accredited" by the beginning of the 1931-32 academic year and the number of newly accredited schools had slowed to a trickle. (Fifty-eight of the 78 accredited schools had been accredited between 1923 and 1925, and only five schools would be added to the accredited list between 1932 and 1935.)

Educational prerequisites for admission to law school did increase during the 1920's, but a majority of schools fell below the ABA norm of two years. The greatest impact of the Root Report can be seen among full-time, day-only law schools that in 1923 (when ABA accreditation began) required students one year of less of college study for admission. Between 1924 and 1931, the number of full-time-only schools requiring

less than the two years of college education as a pre-requisite for admission mandated by the ABA dropped from 27 to one. However, the two-year recommendation of the Root Report was clearly intended to be a minimal standard, and in the discussions that preceded its adoption, it was clear that most committee members believed that a successful law student should have a college degree. However, only a small number of law schools moved in this direction. In 1921, eleven law schools required students to have three or more years of college education; by the end of the 1928-29 academic year, the number was still only 15, but by the fall of 1931, it had risen to 24.

It is tempting to argue that the continued diversity of American law schools as witnessed by the survey of the situation in 1931 represented an embrace of the Reed Report. Reed, of course, had endorsed the idea of a bifurcated legal profession with different types of law schools training lawyers for types of clients. However, if one looks more closely, no law school had accepted Reed's recommendation that part-time legal education be extended to six years. In fact, only two law schools—one in Bakersfield, California and the other in Boston—offered five year law courses. Although it is true that part-time law courses were lengthened over the course of the 1920's—the four year law course replaced the three year course as the most common program during the decade—that change was probably the consequence of the growing difficulty of most state bar examinations—at least as calculated from bar passage rates—in the 1920's.

If there is a lesson to be drawn from the impact of the Reed and Root Reports in the 1920's and early 1930's, it is that reformers should temper their expectations that even “good ideas” will be quickly embraced by their colleagues in legal education.