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BAR ASSOCIATIONS

PHILIP J. WICKSER*

I

Bar associations, state and local, have rapidly increased in number during the last thirty years; more rapidly in proportion, than has the profession or the population.[1] Does this reflect a heightening group consciousness within the profession, or merely an increased appetite for good fellowship and postprandial felicity? Since 1916, much discussion of the duty of the bar to the public, and considerable experimentation in an endeavor to find a suitable vehicle for its discharge, has taken place. Many think, or seem to believe, that American lawyers have never desired to constitute themselves a guild, and have not the capacity, *en masse*, to assume its responsibilities. Others are more optimistic. The discussion has developed three main theories as to how the bar ought to organize, the implications of which often clash. Premature insistence upon the universal validity of any one of them, and the frequent employment of an evangelistic technique in its behalf, has not, however, shown much promise of solving the problem. The profession as a whole has thus far spoken haltingly and made confused decisions. It is as though it sensed a need first to inform and arouse itself, before deciding whether or not its collective and public obligations call for more complete and powerful organization, and, if so, what form that organization should take. Until opinion has been more generally drawn out, no one can say whether, under the widely varying conditions of today, a compulsorily incorporated bar, a federated bar, or the selective voluntary association promises most. But anyone is safe in asserting that the apathy of the bar as a whole, the myopic attitude of the great majority toward the social realignments that are taking place all around them, and toward the changing status of the lawyer and his group, promises nothing good.

Perhaps some examination of the units with which we have to deal, and, with it, some scrutiny of the history and development of associational activity in this country, thus far, may be in order. Group progress must always overcome the undertow of tradition, but overcomes it better when its causes and its force have been analyzed and gauged.

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*Member of the Buffalo (N. Y.) Bar; President, Federation of Bar Associations of Western New York, 1927–28.

[1]See Appendix, Tables I and II.

II

To begin with, it must be recognized that we shall start and finish with an individualist, and deal with a group which has never been able to resolve completely the conflict between the social and a-social aspects of its calling. Even though a casual reading of the newspapers soon deflects one's attention to the picture of lawyers regarding themselves, and offering themselves to be regarded by others, in a collective capacity, the individual lawyer still uses an individualist's terminology. He knows that he must develop in himself courage to make decisions, and a willingness to accept personal responsibility. He has seen many a weaker brother leave clients in a morass of indecision, only to be left, presently, to enjoy the morbid pleasures of doubt, unencumbered by clients. He knows that the most important questions before him are seldom decided by vote, or even, in the narrow sense, by cooperative effort. His immediate horizon bounds a world wherein one occasionally speaks of collective activities and duties, but thinks in terms of personal ones. This is true even though, to some extent, lawyers have always sensed the necessity for organizing themselves (just a little, perhaps, when they had finished organizing the laity). Self-preservation has dictated that the window be kept carefully dressed, and that the idea of the "bar", as an entity, be kept current. And so he has made laws which insured his prerogatives, and implied the corporate status of a guild—but a guild, indeed, which was to be left to experience an eternal adolescence. Yet, as time goes on, the underlying dilemma becomes more acute, and many members of the younger bar seem to think imperative some solution of the essential conflict between inclinations and traditions, highly individualistic and conservative, and a world whose progress tends more and more to depend upon organization and to lean toward a collectivist philosophy.

III

What were the reasons that caused the American lawyer to develop characteristics so predominantly individualistic? Why is it, as Dean Pound has said, that even today "in the ordinary American jurisdiction, there is no bar, in the sense of the bar in England, or the Faculty of Advocates in Scotland, or the societies of advocates on the continent"? Why, "instead, simply so many hundred or so many thousand lawyers, each a law unto himself, accountable only to God and his conscience,—if any"?[2] Undoubtedly, the economic and social background against which the American lawyer developed

[2]Roscoe Pound, Speech at Brooklyn Law School, Nov. 10, 1928.

has something to do with it. For more than two centuries American society was preponderately pioneer, rural, and agricultural. Vastly important was the influence of the frontier, even now, hardly passed away. "A pioneer society does not believe in specialists nor in an organized profession of lawyers. The pioneer feels himself equal to anything and prefers to believe that he can prosecute, defend and judge his own law suits. He would leave everyone free to change his occupation as and when he likes and to take up freely such occupations as he chooses."[3] During the post-revolutionary economic depression, only lawyers seemed to prosper, and the courts were used largely to collect debts. Why should that profession organize in an aristocratic British way, when everywhere else in the land of the free, unfettered individuals fought their own battles single-handed? Statutes throwing the practice of the law wide open to all were often the result. Such conditions did not exactly foster organization, nor inspire collective self-consciousness. And, too, the individuals whom they surrounded had been nourished on traditions which seemed not at variance with the facts in hand. The books which the early American lawyer read were imported from England. They were books about a period of exploration and individualism comprehended by the seventeenth and eighteenth centuries. They described a civilization intermediate between the close of a feudal age and the rise of an industrial era, and described the lawyer's place in relation to it. Wanting native prophets, the scheme of things seemed fixed and immutable and moved but slowly out of its groove. That the English bar should move much faster did not seem significant. That there, as time passed, the profession should have differentiated itself into two classes, each of which, through appropriate agencies, should become measurably all-inclusive and supreme in its governance, made little impression.[4] At most, in this country, but feeble attempts

[3] *Ibid.*

[4] The Inns of Court are of great antiquity. They originated as companies or quasi corporations of lawyers who owned and resided in the four Inns of Court. They were patterned after the French College of Advocates and were part of the general mediæval guild movement. Henry III in 1235 prohibited the study of law in any other place in London than the Inns of Court. They assumed somewhat their present form in the reign of Edward III in 1327. By the time of Henry VI (c. 1450) there had been established ten lesser Inns of Chancery. In 1586 the number of students in both was 1703. Though previously admissible to the Inns of Court "attorneys" were expelled therefrom in 1556. By this action and thereafter, in 1606, by statute, the barristers succeeded in definitely organizing the English bar, and obtained a monopoly of the most desirable practice. The organization was independent and self-perpetuating. The lower branch of the profession gradually organized itself similarly. A "Society of Gentlemen

were made to achieve similar advantages. Such as were made expressed themselves in the development of the schools of law,[5] and the establishment of a few short-lived inclusive bar associations, which vainly hoped to speak for the whole bar.

With the advent of Jacksonian democracy, the pendulum entered its ultimate arc. Badges of social distinction were torn away; class distinctions of any kind were never less popular, and hostility, rather than recognition, was accorded groups which sought any privileges, even though they were only privileges and duties that sprang from common membership in a profession. Every franchise was to be enjoyed by all. We find the *Southern Literary Messenger*, in 1838, saying of bar associations: "They are wrong in principle, betray competition, delay professional freedom, degrade the Bar." We find organized efforts made to drive lawyers from their profession and to prevent the existence of a bar as such. In Kentucky in 1846, a constitutional amendment was proposed against the profession, and in Indiana today, there is still a provision in the Constitution safeguarding the inalienable right of any man to be admitted to the bar, if he shall be of good moral character—a strictly relative qualification even in Indiana.

Prior to the revolution, a number of colonial bar associations had been formed. They appear to have invited the support of every member of the bar in an endeavor to develop collective opinion on

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Practisers in the Courts of Law and Equity" was established in 1739. It successfully defended the right of its members to draft deeds and to do similar work against the attempted monopoly of the London Company of Scriveners. It existed well into the last century, and was followed in 1825 by a society called "The Law Institution", the name of which was later changed to "The Law Society of the United Kingdom", and again, in 1891, to "The Incorporated Law Society", as which it now exists. During the nineteenth century Parliament consolidated all practitioners other than barristers in a single class of "solicitors". These are entitled to practice law generally, subject to privileges reserved for barristers. Their admission and discipline is controlled by The Incorporated Law Society. The Council of Legal Education of the Inns of Court and their governors exercise similar prerogatives as to the upper branch of the profession. See REED, *op. cit. infra* note 17, BULL. No. 15, c. 1; Warren, *op. cit. infra* note 6, c. 1; SMALL, *op. cit. infra* note 7, at 33; Wickersham, *Bar Associations, Their History and Their Functions* (1914) 11 MISC. B. A. REP. 12, Assoc. B. C. of N. Y.

[5]The School of Judge Reeve of Litchfield, Conn. was established in 1784. Under the Royall Bequest of 1781, the Royall Professorship of Law was established at Harvard in 1815. A Professorship of Laws was established at William and Mary College in 1779, at the College of Philadelphia (Univ. of Pa.) in 1790, and at Columbia College in 1793. CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL (1918) c. I; Warren, *op. cit. infra.* note 6, c. xiv, REED, *op. cit. infra* note 17, BULL. No. 15, 128, 423, 431.

the economic issues at the bottom of the coming struggle, and to have attempted to control admission to practice. The first of these was a "New York Bar Association", which existed in New York City from 1747 to 1770, and an association in New Jersey, which was formed to discuss the Stamp Act in 1765. There were associations in various counties in New England, sometimes comprising several counties, which prescribed precisely the amount of preliminary study, legal and general, to be required for admission to the bar.[6] Though the theory implied an all-inclusive, self-governing bar, control of admissions was rapidly taken over by the courts and the legislatures. The sovereign people not alone dictated how wide the door should stand open, but actually kept lay members upon the appellate courts in many states, until well into the nineteenth century. The post-revolutionary conditions above referred to seem not only to have completely extinguished these early bar associations, but (with the outstanding exception of The Law Association of Philadelphia) to have prevented the formation of any others until after the Civil War. The few feeble associations formed in the south simply illustrate by their swift disappearance the force with which the tide ran.[7]

It will be observed, therefore, that some of the significant characteristics of the period between the Revolutionary and Civil Wars

[6]There was such an association in Massachusetts in 1761; in Essex County in 1768; in Boston in 1770–1805. See WARREN, A HISTORY OF THE AMERICAN BAR (1911), where reference is also made to a State Bar Association in New Hampshire as early as 1788, and in Connecticut in 1783. There were also law clubs such as "The Sodality" in Massachusetts in 1765, and "The Moot" in New York in 1770–1775.

[7]The bar was organized in Mississippi in 1825; in Arkansas in 1837; in Louisiana (Association of the Bar of New Orleans) in 1847 and in 1855; in Kentucky in 1846; and in Massachusetts in 1849. See A. J. SMALL, CHECK LIST OF PROCEEDINGS OF BAR AND ALLIED ASSOCIATIONS (1923). None of these associations have left permanent records, and none of them appear to have had more than a temporary existence. There appears to have been an attempt to form a "Legal Alliance" in New York City in 1835. Two associations, more in the nature of library associations, were permanent and are active today. These are the Social Law Library of Boston organized in 1804, and The New York Law Institute in 1828. The Law Library Company of Philadelphia was organized in 1802. In 1827 it consolidated with the Associated Members of the Bar of Philadelphia, which had been organized in 1821, and its name was changed to The Law Association of Philadelphia, as which it has existed continuously ever since. It had a committee of censors which paid special attention to delinquent members of the bar and reported them to the association, which took action, as an association, in their cases. Its law library comprises 81,000 volumes; its membership is 1604. The recent brilliant work of The Law Association of Philadelphia in conducting an investigation into ambulance chasing without recourse to the courts or legislature is in line with the best traditions of the early American Bar.

were: (1) the development of an individualistic bar in an individualistic community; (2) unrelated and fitful attempts to organize, often unsuccessful, but generally all-inclusive in theory; (3) practically no evidence of selective associations, at least in their purposive aspects; and (4) some claim to control standards of education, admission, and discipline, which melted away before a philosophy of demoracy, pure and sovereign. The ablest members of the profession still knew each other's language, and, as a group, talked loudly and definitely about the major political and economic questions before the nation—for which, as a class, they were handsomely paid—but neither they nor the bar as a whole made serious attempt to change the philosophy of the day, nor to object to its application to their own body, no matter what results might ensue.

IV

Of course, results did ensue. The logic of events dictated sundry new observations. The Civil War indicated that sometimes directional control might well be blended with the unrestrained philosophy of the pioneer and the social democrat. A certain amount of jostling became noticeable within the area reserved for the bar, jostling which had its economic aspects for the leaders, as well as for the rank and file. Presently, we find the presidents of two state associations rising to protest, almost as soon as they could get forums. In 1879, Mr. Samuel Hand, second President of the New York State Bar Association, advised that body that "During the last thirty years there have poured into the profession, through the doors thrown open by the well-meaning, but in many respects, short-sighted, reformers of 1846, large numbers of men, unfit by culture or training or character to become incorporated into any learned profession. Hundreds of men without a tincture of scholarship or letters, old pettifoggers in county or justices' courts, and others, still more rude, have found their way into our ranks. Men are seen in almost all our courts slovenly in dress, uncouth in manners and habits, ignorant even of the English language, jostling, crowding, vulgarizing the profession."[8] And in the same year, Mr. Moses Strong, first President of the Wisconsin Bar Association, lamented: "The older of you can remember when nothing less than seven years study was requisite to entitle an applicant to earn an examination for admission to the bar. Now how changed! There are practically no prerequisites, of either knowledge of laws, or knowledge of anything else, as conditions of admission to the bar."[9]

[8](1879) 3 N. Y. St. B. A. Rep. 67.
[9](1879–85) 1 Wis. B. A. Rep. 13.

This revulsion against low professional standards, and a like revulsion against national, state, and municipal political corruption were chief among the forces which gave rise to the new instrumentality which the bar was to forge. This was the selective voluntary bar association. Apparently no attempt to arouse or capitalize a self-consciousness of the whole guild, as such, was thought of, or could have been successful if it had been thought of. The philosophy of *laissez faire* was to wait forty years to receive its death blow from another class of leaders, and from the stimulus of a great world conflict.

Almost all bar associations, as we know them today, have been organized since 1870. The period from then to 1920 constitutes one distinct era with characteristics all its own. The first of these new associations was the Association of the Bar of the City of New York, which was founded in 1870,[10] and which was the model for the others. The primary object stated in its constitution, and restated in the others, was "to maintain the honor and dignity of the profession". In the next eight years, there were organized seven city and eight state bar associations, in twelve different states.[11] With the exception of Iowa and Wisconsin, where the organization call was to the whole bar, admission to membership was by invitation, which was confined to a selected list, who thereafter constituted a self-perpetuating group—a group which intended to be concentric, but never coextensive with the whole bar; which had been formed, not for social intercourse alone, not to furnish library facilities alone, not as militant crusaders alone, but with somewhat of all of these things, subordinated to a great primary objective—to be typical of the best the profession had to offer, and to remain so by capitalizing negative values, when necessary. Some have thought that all this answers the description of a self-professed aristocracy of the bar, and the movement was, undoubtedly, strongly influenced by the English

[10]In the days of the Tweed Ring. In 1869, 230 members of the New York City bar, headed by W. M. Evarts, signed the call for organization. Immediate attention was given to judicial qualifieations. Ledwith was defeated, and McCann and Barnard were impeached and removed. Its Judiciary Committee has always been very active; its Grievance Committee considered 1967 complaints last year, at an expense to the association of $24,000. In 1894, it built a fine library and home on 44th Street. Its last balance sheets showed a surplus of two million dollars. Its membership has increased as follows: 1872, 600; 1910, 2056; 1920, 2333; 1929, 3823. This truly magnificent institution is an example of what lawyers can accomplish as a group when so minded.

[11]The city associations were Cincinnati, 1872; Cleveland, 1873; St. Louis and Chicago, 1874; Memphis and Nashville, 1875; and Boston, 1876. For State Associations see Appendix, Table I.

theory of governance by, and through the example of, the best. Nevertheless, the early selective bar associations were not founded to be aristocratic institutions. The very theory of selectivity was to be questioned more than once before it finally became entrenched behind tradition and prestige.

V

In 1878, the American Bar Association was founded. Its organization was largely the work of a great personality, Simeon E. Baldwin.[12] The basic impulse, it is true, was still the urge to reform and improve, which was in the air everywhere. An organization known as the American Social Science Association had been holding meetings at Saratoga. It had assisted in the foundation of the Civil Service Reform Association, and had a section devoted to jurisprudence. The need for reforms, national in their scope, was emphasized, and the idea spread. It took root in Connecticut, where the State Bar Association, acting upon Judge Baldwin's motion, authorized a committee to send a letter calling "an informal meeting at Saratoga, New York, on Wednesday morning, August 21, 1878, to consider the feasibility and expediency of establishing an American Bar Association". "This," it said, "should consist of a body of delegates representing the profession in all parts of the country, which should meet annually for a comparison of views and friendly intercourse." Judge Baldwin wrote personally to over 600 lawyers scattered throughout forty states. Seventy-five came, and, once assembled, drafted a constitution, appointed a Committee on Legal Education and Admission to the Bar, took up the subject of uniform state laws, and immediately appreciated that close relations between the Association and the bar associations of the several states was a desirable thing. They instructed the Executive Committee to report measures to bring that about. At the close of the first meeting the membership was listed as 291, with 29 states represented.

The American Bar Association is an organization consisting entirely of individual members. It has no structural connection with state or local associations and does its work through its committees. Of late years, however, it has established Sections which, in effect, are separately organized bodies.[13] These represent, today, its nearest

[12]See F. Rawle, *How the Association Was Organized* (1928) 14 A. B. A. J. 375; J. G. Rogers, *Fifty Years of the American Bar Association* (1928) 14 A. B. A. J. 521.

[13]Nine in all: Comparative Law, Bar Association Delegates, Criminal Law, Judicial, Legal Education, Mineral Law, Uniform State Laws, Patent Law, and Public Utility Law. In addition, there are 16 Standing Committees, and about a

approach to the ideal of its founder: that "it should consist of a body of delegates representing the profession in all parts of the country". For many years the Association fought hard to retain its selective quality, and not to forget that a relatively small homogeneous group could get the most done.

For the first decade after its organization, the American Bar Association concerned itself with the advancement of the science of jurisprudence and the promotion of uniform legislation, professed objects of its constitution. Its membership soon attained 500, but remained at approximately that figure for some years.[14] In addition to a bitter fight on codification in 1885, the problem of the relation between the Association and other bar associations commenced again to be troublesome. The organization of the medical profession displayed continuously the operation of a theory diametrically opposed to the theory of a selective association. The American Medical Association, as early as 1847, had been organized along national lines by the integration of local units.[15] On that occasion, 250 delegates represented over forty medical societies, and 28 medical colleges. The wisdom of applying such a method to bar associations was first discussed upon the occasion of the formation of the New York State Bar Association, in 1876. Inasmuch, however, as no local associations of consequence then existed, and as the opposite theory was

dozen Special Committees. The Executive Committee, which has most of the burdens and power, numbers 15. The General Council, one from each state, is elected by caucus on the first day of the annual meeting by those present from each state. It meets once and nominates the Association's officers. There is a Vice-President and Local Council of four for each state.

[14]See Appendix, Table II.

[15]In 1806, the New York State Medical Society was chartered to be composed of delegates from each county society (REED, *op. cit. infra* note 17, BULL. No. 15). Today it has enrolled 96,000 physicians out of 154000 in the country (61%). Each must belong to his local county unit and pay approximately $20 in dues. About 40,000 are fellows who pay $30. It is governed by a House of Delegates numbering 150, who are elected for two year terms by their State Associations. Of the general membership, about 8000 usually attend the annual meetings. These listen to lectures and take part in discussion sections. Of the other professions, the clergy are not organized; the American Association of University Professors (1914) has 6896 enrolled (18%); the engineers have four national associations: American Institute of Electrical Engineers (1884), American Society of Civil Engineers (1852), American Society of Mechanical Engineers (1881), and American Institute of Mining and Metallurgical Engineering (1871). Total enrollment 57,000 (35%). The medical and engineering societies are in practical control of professional rating and discipline. Each has a substantial building as national headquarters. In contrast the legal profession has an enrollment of not over 20% and has no headquarters. See J. G. Rogers, *The Demand for Reorganization in the American Bar* (1930) 16 A. B. A. J. 15.

distinctly in the ascendency, the New York State Association rejected the plan, and organized itself on invitation lines. The American Bar Association, however, did not entirely dismiss the idea. In 1879, it extended full privileges of membership, at any annual meeting, to any three delegates that any state association might send.[16] As no real efforts were made to develop this notion, it came to nothing, and for the same reason a temporary recoil resulted in the formation, on representative lines, of the short-lived National Bar Association, in 1887. Mr. J. A. Broadhead of Missouri, the first President of the American Bar Association, and now in a somewhat discordant mood, was elected President, and about half of the 38 associations which professed an interest, sent delegates to the first meeting. After a few more meetings, the Association disappeared, holding a last banquet in 1891 at Washington, when, as Mr. Reed says, "the guests were regaled with a dream that Congress might appropriate funds for a building."[17]

Nevertheless, the episode caused some stir in the American Bar Association. For a time, it paid considerable attention to local delegates, but with the New York and Boston City Bar Associations definitely cold toward any project of federation, there was little reason to anticipate structural changes in the larger body. Finally, in 1916, the American Bar Association established its Section of Bar Association Delegates, which holds a conference just prior to the annual meeting.[18] The attendance at these conferences has been

[16]Also, to two delegates from any city or county association in states where no state association existed. The plan was abandoned in 1919. The number of jurisdictions entitled to such representation rose from 40 in 1890 to 49 in 1916. Those represented at meetings: from 12 to 32.

[17]See A. Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, BULL. No. 15 (Carnegie Foundation for the Advancement of Teaching, 1921) c. xix, xx; A. Z. REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA, BULL. No. 21 (Carnegie Foundation for the Advancement of Teaching, 1928), and supps. Acknowledgment is here made to Mr. Reed for much valuable information contained in these works.

[18]Elihu Root was then President. Foreseeing insuperable objection to any plan actually to federalize the association, he devised the plan for a Section which should reflect local opinion, and consist of delegates chosen by local associations. The organization meeting took place just before the annual meeting at Chicago, Aug. 28, 1916. Fifty-four state and local associations sent delegates. In addition to the establishment of the Conference, and largely through Mr. Root's efforts, the Constitution was amended so as to provide for referenda to all the members on important questions of policy (Art. XIII). It has never been employed. Also, a provision was inserted making the President of each State Association, ex officio, an additional member of the General Council [(1916) 41 A. B. A. REP. 94]. Though 37 state associations accepted the plan, the provision was dropped

consistently of some size, frequently running over 100 delegates, but it must be remembered that even in 1916 there were state and local associations in practically every state, and a total of more than 650 bar associations.

Thus, in the first forty years of the Association's existence, we see no sign of the old idea of an all-inclusive bar, which through the device of incorporation and compulsory membership was to reassert itself after the late war; we see no real or successful attempts on the part of the profession to organize itself along federated lines; and we see the principle of selective independent associations still supreme. It should not be forgotten that during this period, the selective associations accomplished many things of great value to the profession. They have improved the standards of admission to practice in nearly every state; they have provided forums for the discussion of needed changes in the field of procedure and substantive law, and still do. They have exercised a beneficial influence in the shaping of a certain amount of legislation, and have promoted the work of the Commissioners of Uniform State Laws. Though they have frequently withheld eligibility from the young lawyer of less than three years standing,[19] they have suggested to him that membership was worth qualifying for, and they have continuously endeavored, through the adoption of Canons of Ethics,[20] and otherwise, to elevate the standards of the whole profession.

VI

When, in 1878, the American Bar Association was formed, there were practically no county associations in existence. Most of the older ones now effectively functioning began in the eighties.[21] Though,

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in 1919. In 1923, President J. W. Davis, in his annual address, recommended federation with state associations, and appointed a Special Committee to devise a plan for cooperation. It proposed that the General Council should be entirely selected by state associations. The plan was frustrated on the floor of the meeting. In 1924, President R. E. L. Saner attached to his annual address a "Memorandum on National Federalization of the Bar" [(1924) 49 A. B. A. REP. 149, 152], but nothing resulted. However, it is probably correct to say that the tide has turned since 1916. At Memphis, in October 1929, the Executive Committee, the General Council, and the Conference of Bar Association Delegates each appointed a committee to devise some plan for reorganization. See *Need for Reorganization in the American Bar* (1930) 13 J. AM. JUD. SOC. 142.

[19]This barrier is rapidly disappearing. It was dropped by the American Bar Association in 1928.

[20]By the American Bar Association in 1908; by the New York State Bar Association in 1909.

[21]The first appears to have been The Allegheny County Bar Association (Pa.), chartered Feb. 28, 1870.

as has been shown, the movement, once started, made rapid strides, there was a period, roughly, during the nineties, when the careers of most local associations were, indeed, desultory,[22] when they had little or no purpose, narrow objectives, and no reasonable hope of an outlet for their energies through union with stronger bodies, either state or national. It remained until a later day for their very multiplication to implant in them some glimmering of a self-consciousness that might engender activity. The evidence of conditions during the nineties produces for us a picture of local associations enduring long winters of stagnation, tempered only by occasional springs of delight. In 1895, two gentlemen published views to this effect—Mr. Alexander Simpson, Jr., addressing the Pennsylvania Bar Association, and Mr. Ralph Stone, the New York State Bar Association. Mr. Simpson said: "Most of our local associations appear to do little, except give annual banquets to the Justices of the Supreme Court, or to some incoming or outgoing judge of a local court, at which fulsome eulogy and wit of a local flavor absorb the speech-making. At times, it is true, papers have been read at meetings of the Association; in aggravated cases action has been taken looking to the disbarment of guilty practitioners; and when, during legislative sessions, some venturesome reformer has endeavored to obtain what he considered needed changes, the dry bones have stirred, and resolutions, accompanied by addresses more or less relevant, have been duly passed and forwarded to the proper legislative committee, to be followed, in turn, by a great calm, lasting until the next session of the legislature."[23] Mr. Stone seems to have been no less aroused. He said: "There are now 26 state associations, and their average membership is from 100 to 200. Almost all of them have exerted a good influence by bringing the lawyers together and cultivating a brotherhood of the bar, but they have generally proved an absolute failure insofar as any practical good is concerned. The result is that the associations are not representative of the Bar of the state."[24]

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[22]The Bar Association of Erie County (N. Y.), when organized in 1887, had over 200 members. It appears to have held but one annual meeting until 1900. Failing a quorum for an attempted meeting in 1900, it sent out the following notice: "The Association has done little in 13 years, except to pass memorial resolutions, and get into debt for picnics. The members, it is hoped, will demonstrate by their presence at the adjourned meeting, that there is a sentiment at the bar in favor of an Association with some purpose besides a desire to eat, drink, and be merry, and to eulogize the dead."

[23]Simpson, *The Local Bar Association* (1895) 1 PA. B. A. REP. 140.

[24]Stone, *The Mission of State Bar Associations* (1895) 18 N. Y. ST. B. A. REP. 148.

The conditions adverted to by these gentlemen improved somewhat during the first decade of this century, which saw, in 1908, the foundation of the New York County Lawyers Association.[25] It has been a success from the start and has done notable work through its Committee on Professional Ethics, and in the prosecution of persons and corporations unlawfully practicing law. There is abundant further evidence that the activities of local associations have increased with the increase of their numbers. Many of them have entered the field of politics and have elected candidates to the bench, whom their judiciary committees endorsed.[26] Others have raised large sums of money by popular subscription to entertain the American Bar Association, or to establish permanent headquarters.[27] It indeed seems surprising that organizations given to charging dues of about $5.00 could perform any such feats. Perhaps the success with which they have done so indicates that certain elements of strength in the profession had been overlooked. It might even be possible that the failure of state and national organizations to provide some means for the smaller bodies to become articulate had allowed much valuable energy to run away unused.

Unused in the sense that it has not been coordinated. The chief failure of the selective associations to serve and represent the whole profession has been in the field of state organization, in the densely populated metropolitan areas, and to a certain extent nationally.[28]

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[25]It has just raised nearly a million dollars for its building. Its membership is over 6200, and is open to any practicing lawyer in the county. Its dues are but $15, and it has no entrance fee. In spite of this reckless democracy, it has consistently elected its officers from the same type of leaders of the bar who made the Association of the Bar of the City of New York so great a success.

[26]The Cleveland, Chicago, St. Louis, Los Angeles, Cincinnati, Detroit, Omaha, and Oregon Associations have been thus successful. See (1930) 16 A. B. A. J. 57; (1929) 12 J. AM. JUD. SOC. 178; (1930) 13 *ibid.* 158.

[27]Local associations, such as of Denver, Buffalo, Seattle, and Memphis, supply most of the funds when host to the American Bar Association. The cost usually exceeds $20,000. In recent years many projects for permanent headquarters for local associations have been launched, and several perfected. In Buffalo, $50,000 was raised in a short time for this purpose. See also, *supra* note 25.

[28]The energy escaped because the lawyers did not join the associations. In New York City there are nearly 25,000 lawyers. Local membership is as follows: Association of Bar, 3000; New York County Association, 6200; Bronx, 360; Brooklyn, 675; Kings, 125; Queens, 310; Richmond, 150. Total, *ex* duplications, about 33%. In Philadelphia, 40% out of 4000; in Boston, 40% out of 4000. Less than 1% of American lawyers belonged to the national association up to 1900; less than 20% belong now. The tremendous difficulty confronting membership committee drives is illustrated by the fact that the American Bar Association sent out 28,000 letters of invitation in a year to make a net gain of 1613

Though in the majority of counties in the country there are as yet no local associations, the number in which there are has of late years grown to a very respectable total.[29] Most county associations—even the large New York County Lawyers Association—have, in fact, been postulated on the theory of an all-inclusive, informally incorporated bar. In the rural counties nearly every practicing lawyer joins his local association (though often the number eligible may be as low as a score), because he finds it of practical benefit to do so. However confined to matters of small importance the county bar may be, it has little difficulty in imposing its collective will within its own province. The generality of the bar has likewise joined its associations in the cities.[30] Here again, the organization may be loose, and opportunities for service and progress may have been woefully neglected. Yet, taking account of the number of admitted lawyers who do not practice, the profession has displayed loyalty rather than ostracism toward its organization, and the leaders have not shown fear of loss of prestige and power because of size alone.

Up to 1916, the state associations, on the other hand, had done nothing to unify or integrate, on state-wide lines, either all of the individuals at the bar, or the existing units at hand. It is for this reason that the energy ran away unused. The selective associations called loudly for recruits, and, in alleging eagerness that every lawyer in good standing seek membership in them, paid lip service to the principle of a community of ideals and effort, but took no steps to provide machinery for cooperation, except on their terms. Thus they weakened their own prestige and efficiency, if not absolutely, at least in relation to what it might have become. The implications of their failure were not lost on the fourth estate, which simply stayed

members [(1928) 53 A. B. A. REP. 94, 296]. But there were approximately 10,000 persons admitted to practice during the same period. Membership in voluntary state associations as reported to the Conference of Bar Association Delegates ranges from 70% to 85% in Delaware, Iowa, and Vermont; averages about 50% in North Carolina, Rhode Island, Ohio, South Carolina, Georgia, Montana, Texas, and Kansas; and declines below 30% in the other states, including 13 states not reporting, where, presumably, activity is at a low ebb. New York state shows membership of 16% out of 30,000. The seven states with federations average about 66%, with Washington, highly organized, 85%. For figures for 1923 see (1924) 49 A. B. A. REP. 783.

[29]Out of approximately 3000 counties, there are 1165 local associations.

[30]For example: Cleveland with 3000 lawyers has a membership of 60%; Los Angeles with 3200, 66%; Rochester with 500, 80%; Buffalo with 1500, 66%; Pittsburgh with 1800, 40%; San Francisco with 2500, 40%; Chicago with 7800, 55%. Associations in most cities of this class have their own headquarters and library.

outside, taking care, however, to retain control of the legislature, and thus impose a splendid negativism on projects and reforms concerning which it had not been consulted in advance.[31] But as facilities for communication and travel increased and county lines began to disappear, the average lawyer began to think in state-wide and national terms, and began to lose some of his individualism in spite of himself. He began to give some attention to the idea of a bar, which he saw the public was coming to regard as a fiction. He began to wonder whether it was not possible, after all, to organize in some way that did not involve distant and expensive annual journeys to assemblages whose programs were apparently sure to succeed, whether he came or not. The logic of his argument compelled the conservative wing in the selective associations to assert that complete organization is an excellent thing when applied to the rural or municipal bar, but is unworkable and dangerous when applied to the state or national bar. The inference was that the little fellows were harmless, not to say commendable, when kept preoccupied with strictly local matters of small consequence, but would constitute an unwieldy mass, discordant,[32] and unresponsive to real leadership if ever allowed true representation in state or national forums. To the majority this inference never recommended itself.

VII

And so, despite all arguments in favor of stability and tradition in a best of all possible worlds, the changing conditions referred to gave birth to new ideas and made new movements inevitable. The chief of these was the idea of an incorporated bar. Since the failure of the selective associations was thought to be because of the disaffection of great numbers of the profession, the obvious and quickest remedy seemed to be to bring about the exact opposite state of affairs, and that in the approved American fashion, by legislative fiat.

The theory of an all-inclusive state bar was first discussed at certain state association meetings in the west commencing in 1914.[33] Discussion continued in the pages of the Journal of the American Judicature Society, and in 1919 the principle involved was considered

[31]In New York, the legislature failed to pass 16 out of 18 bills sponsored by the Association of the Bar of the City of N. Y. during the last three years. (1928) YR. BK. A. B. C. N. Y. 227.

[32]See dissent, *Rep. Com. on Organization of the Bar*, to New York State Bar Association, 1930.

[33]At state bar meetings, Wisconsin, 1914; Nebraska, 1915; California, 1917. A bill introduced in California in 1921 failed to pass; one passed in 1925 was vetoed. The same bill became a law July 29, 1927.

by the Conference of Bar Association Delegates of the American Bar Association.[34] The idea, once started, attracted attention rapidly. Today, the bar is incorporated by statute in seven states.[35] The fierce opposition which it aroused in the east[36] when it finally came under close scrutiny indicates, however, the degree to which its most ardent protagonists overlooked the real factors with which they had to deal. These are the vast amount of propaganda yet necessary before the bar as a whole can possibly assume its obligations, the lingering individualism and conservatism of the average lawyer, the tremendous subconscious hostility which necessarily exists on the part of those who have worked and given to build up and lead the selective associations,[37] and a genuine disparity of conditions throughout the country.

[34]The Conference appointed a committee which reported favorably in 1920. Delegates present from the three largest New York Associations registered approval.

[35]North Dakota (in 1921, with 600 lawyers); Idaho (1923, 625); Alabama (1924, 1600); New Mexico (1925); California (1927, 11000); Nevada (1928); and Oklahoma (1929, 1200). States reporting favorable action on incorporation as soon likely are: Arizona, Georgia, Kentucky, Louisiana, Montana, Texas, and Virginia.

[36]In 1922, the New York State Bar Association, after a speech by Judge C. N. Goodwin, instructed a committee to investigate. In 1924 and 1925 the Association recorded itself in favor of the principle involved, and at its instruction the "Gibbs Bill" was drafted [printed in (1926) 48 N. Y. ST. B. A. REP. 80; (1927) 49 *ibid.* 299]. It was similar to the California act (*infra* note 38), but in addition provided that the "State Bar" could nominate candidates for any judicial office, that it could assimilate the property of any existing associations after appropriate affirmative action on their part, and that two governors should be elected from each of 9 districts—none at large. This gave the two metropolitan districts with 75% of the lawyers only 4 delegates. This hastily drawn bill hurt the movement in New York. In 1926, the New York City Associations by a vote of 10 to 1 instructed their delegates to the Special Conference of Bar Association Delegates, held at Washington that year, negatively. That meeting marked the limit of the movement in its national aspects [see (1926) 12 A. B. A. J. 326]. The call for the meeting, over Mr. Hughes's signature, had stated that the movement for statutory organization was becoming nation-wide, and that the time had come for a union of forces, discussion, plans, and a demonstration that it was not local but national. But any hope for definition of a basic or national formula was frustrated by the adoption of a compromise resolution declaring that the question was fundamentally one to be determined by each state. In 1927, the New York State Association definitely repudiated the whole idea. The up-state local associations, as well as the leaders and metropolitan bar, were almost unanimously against it.

[37]In New York, the state and metropolitan associations had long records of power and prestige. They had considerable tangible assets which had been slowly and painfully acquired. They were surrounded by thousands of lawyers who, by birth and background, were foreign to their ways, their terminology, and

The outstanding features of an incorporated state bar are these: every lawyer who practices is a member; in form it is a representative

presumably to their ideals and standards. Fear inspired a conservative attitude. The argument, in effect, was that no hope existed, and that by attempting to regenerate the multitude the associations would damage themselves and accomplish nothing. In the debates, the temperament and philosophy of the individual leaders asserted themselves. In the beginning the issue seemed open; in the end caution prevailed. Mr. Root said: "[T]he bar of the state ought not to be willing to permit one local association to do the tremendous amount of disciplinary work necessary, and pay the expense of it, while the bar itself does nothing. Efforts to get the bar incorporated should receive universal support." Mr. Hughes: "The vision we have . . . of lawyers together feeling that they are members of a profession, feeling that the interests of the profession are not the interests of a minority, but are the interests of all, feeling a duty to establish and maintain standards and willing to discuss with anybody the way to do it, but intent on getting it done . . . don't let that vision fail." Mr. Conboy: "Difficult as the obstacles in the way may be, some method must be devised to remove them, if the bar is to function as an organized body to accomplish its purpose. Voluntary associations will not produce an organized bar." Conboy, *The Organization of the Bar* (1923) 46 N. Y. ST. B. A. REP. 266. See also, J. H. Cohen, *The National Call for the Organization of an All-Inclusive Bar* (1926) 4 N. Y. L. REV. 80, 135.

On the other hand, Mr. Louis Marshall, at the Washington conference, said that in practice the whole bar could never, through incorporation, be induced to discharge its duties as well as it discharges them today: "Instead of keeping up our standards, we [would be] lowering our standards to the weakest link in the chain. We [would be] trying a useless experiment, and so far as the State of New York is concerned, we would destroy that which has been built up by voluntary effort, and substitute, in place of it, chaos." Mr. W. D. Guthrie bore the leadership in opposition. With great candor he struck at the heart of the philosophy involved. First he quoted Mr. Hughes as having said, "[Some are] profoundly concerned by the influx of mixed elements in the legal profession due to immigration, and by the great numbers of those who are admitted to practise at the bar. It is said that the standards of the bar are already in peril of being dissipated by numbers. Instead of that being a reason to oppose organization of the entire bar, it is a fundamental ground for urging that organization." [(1927) 49 N. Y. ST. B. A. REP. 91]. Mr. Guthrie then replied: "But I am convinced that the truth is otherwise, and that this menace cannot be met or removed by any such formulas as are now proposed. We cannot create a new spirit and sentiment among these undesirable members by merely enacting a program devised for the purpose and compulsorily grouping them with us. We who are responsible for the future destiny of the profession are not justified in running the risk involved in compulsorily incorporating into a state organization thousands of men and women who have never shown the slightest . . . professional pride, or any interest whatever in professional organization." In New York State, at the time, about three lawyers out of four did not belong to any association. Nearly 15,000 of these lived in the metropolis and shared the distinction thus conferred upon them. Continuing, Mr. Guthrie said: "The existing voluntary bar associations are generally functioning with satisfaction and usefulness . . . [T]hey are competent to perform all the duties and render all the service, public or professional,

organization, due consideration being given to geography; it has control over admission and discipline; it yields adequate annual revenue without undue burden on anyone; and it places responsibility squarely on the whole profession.[38] As an intellectual matter, it is difficult to raise any valid objections to the theory of an incorporated bar. There are, however, many practical difficulties. In the first place, it implies an homogeneous bar—at least one made up of units, all of whom subscribe to the duty of interest and effort in public affairs and relations, and who are ready more than passively to follow enlightened leadership. In short, it implies a bar, each member of which is willing to work for his profession. For the most part, such a bar does not exist, as yet. Furthermore, the tendency to introduce politics into the profession cannot be denied. A highly organized body places great power in the hands of its elected governors, who, instead of leading, can debase it, dragging in their train the finest elements of the whole. The Anglo-Saxon bar has always, perhaps more than any other profession, dedicated itself to holding abstract ideals in trust. The leaders of the selective associations have been

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which it has so far been suggested might be rendered by any compulsory all-inclusive organization. We, who are a voluntary body of lawyers, have been drawn together by the fact that we are interested in all that is best and highest and noblest in our great profession. It is because we are thus, because of our services and our interest, that we are representative, not so much of the whole Bar as representative of the elite of the Bar, of the best part of the Bar. You will accomplish nothing by what is called democratizing the Bar, pulling down the Bar to the level of the great majority and destroying that incentive to work which now inspires most of us in an Association of this kind." (1927) 49 N. Y. ST. B. A. REP. 273; Report as President to Association of Bar of City of New York on Gibbs Bill, April, 1926.

[38]For example: The State Bar of California is divided into eleven (congressional) districts, each of which elects a governor, and there are four governors at large. This board meets each month in a different district, generally with a local association. The whole bar meets once in a year. It has headquarters in San Francisco and Los Angeles. In effect, it controls standards of admission and discipline, the latter function having been removed from the province of local associations. Last year its Grievance Committee considered 952 complaints. Thousands of its members, at their own request, have been assigned to the various sections that are organic parts of the whole, such as Courts and Judicial Officers, Professional Conduct and Regulatory Commissions. Before being brought up at the annual meeting, questions pertinent to these subjects are debated by the sections, and something of a cross section of the opinion of the whole bar about them is thus elucidated. The annual registration fee is $5.00. California has 57 counties and 46 local associations, which have not been disturbed. The first and second state associations organized in 1889 and 1901 were moribund. The 1909 association had 1500 members out of 11,000 lawyers upon incorporation in 1927. See (1929) 12 J. AM. JUD. SOC. 174.

faithful to this trust. So precious has it been in their eyes, that they have imposed the most rigid tests on any who would bear the standard, and have feared the slightest compromise. Mr. Joseph Webb has said that "The State Bar of California is endeavoring to mobilize, organize and direct the entire intellectual and moral resources of the legal profession of their state; a tremendous task, and one that may require years to accomplish."[39] This statement epitomizes the problem.

In the end aspiration usually overcomes conservatism, but in the meantime much damage can be done by applying too legalistic a rationale. The incorporated bar will come when the profession is ready for it, when it has, if ever it can, raised itself by its boot straps. The formula of an incorporated bar will fail, as it has thus far failed, wherever force is attempted in its application. The five year battle in New York illustrates perfectly how impossible the project is when

[39]The history of the movement in California illustrates this. Certain judges were charged with taking bribes, but the association failed in efforts to have them disbarred and failed in an attempt to get a law passed enabling it to subpoena witnesses and take testimony when investigating such charges. It likewise failed to stop certain trust companies from advertising for legal business, but obtained a law directed against unlawful practice. The banks thereupon submitted the law to the electorate, which showed its lack of confidence in the profession by recalling the law. "After this overhwelming defeat," says Mr. Webb, "there gathered in San Francisco a few men devoted to the ideals of the profession. One and all agreed that the bar of California had no organization worthy of a name. Shortly after this meeting a Special Committee was appointed to investigate conditions and make a report to the 1923 State convention. Immediately after its appointment this Committee began corresponding with fourteen other state bar associations, which had given the matter consideration. Reports received showed that similar conditions prevailed in other states; they had the same difficulties with reference to membership; they could not successfully cope with disciplinary matters; the same lack of confidence on the part of the public was evident, and one of the remedies under consideration was the all-inclusive form of organization. As a result thereof, the Special Committee prepared a bill drafted after the model act and submitted it to the 1923 convention with a report strongly urging approval of the plan. By a unanimous vote the bill was endorsed, and the Committee authorized to conduct a vigorous campaign in behalf of same. We appeared before every local bar association and discussed the situation fully and frankly; also before chambers of commerce and many other civic organizations. All members of the Legislature received a copy of the proposed measure, together with an explanation of its history and purpose. To all meetings we extended a cordial invitation to representatives of the local press and members of the Legislature. Our efforts were successful, and the measure passed the 1925 Legislature by an overwhelming vote, but it did not receive the Governor's signature." In 1927 the same bill, re-introduced, became a law. See *Genesis and Achievements of Self-Governing Bar* by Joseph J. Webb, First President, State Bar of California.

the terrain shows huge chasms already existing between rural and metropolitan bars, and even greater ones within a metropolitan bar itself.

Though the incorporated bar acts make provision for preserving the integrity and the property of existing voluntary associations, the basic concept itself excludes them. Assurance against confiscation is cold comfort at the price of surrender of actual leadership and all the other precious imponderables. As a matter of psychology, this difficulty has made no little trouble. The selective associations, whatever their deficiencies, are intrinsically agencies of great value, of which the state bar acts take but scant account. They are at least vehicles through which self-sacrificing, energetic individuals can work. They are voluntary, not alone as to membership, but as to effort. It has been well argued that the legal profession in this country must always have a super-bar, alert, energetic, and courageous for ideals.[40] This group the selective associations recruit, and it is significant to note that they came into being at a time when the profession had lost all control over admissions. In that dark hour they at least preserved a set of qualifications of great value within their limited jurisdiction. Nevertheless, the idea of an incorporated bar has made substantial progress. There seems but little merit in the contention that it is inherently unsound, and little doubt that, when the whole profession is ready for it, it will emerge triumphant.

VIII

When Judge Baldwin organized the American Bar Association, he indicated that he thought it should be federal in structure. The idea of a federated bar has never died out, and since 1916 has made great progress. To Americans, it presents a familiar picture, and as conditions exist today, it offers an acceptable compromise between theories and demands otherwise largely divergent. It has been practically perfected in Pennsylvania,[41] has been in operation for

[40]REED, *op. cit. supra* note 17, BULL. No. 21, at 237.

[41]Membership in the association consists of individual members and county bar association members. The state has about sixty counties, which are divided into eight zones, ranging from five to eleven counties. Each of the eight zones is entitled to one Vice-President and three members of the Executive Committee elected at an annual meeting, and they comprise the entire committee. Individual members pay $8.00 dues, and affiliated county associations such dues as the delegates prescribe. The State Association is highly organized and has a variety of active committees reporting directly to it. The Vice-President and officers of the State Association cooperate directly in bar associational activities in their respective zones. At annual meetings all questions voted upon are first put to the State Association members present, and if voted down by them are lost.

some years in Washington and half a dozen other states,[42] and is developing rapidly, in a variant form, in New York.[43] It avoids

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If carried by the general membership, any question is next voted upon by the delegates of county associations, and cannot be considered to have been carried without their approval, providing at least thirty votes are cast against any resolution. Each affiliated county association is represented by two delegates. *By-laws*, adopted July, 1928.

[42]Illinois, Minnesota, Oregon, South Dakota, Washington, Wisconsin, and to a certain extent, in a few other states. In some affiliation is optional; in some membership in the local involves membership in the state association. Federation is generally not as complete as in Pennsylvania. Illinois has 10,800 lawyers of whom 7800 reside in Chicago. Thirty-eight hundred are members of the state association. Since 1915, a plan of federation has been in operation. One hundred sixteen local associations, county and city (including the large Chicago Bar Association with 4200 members) comprise seven Federations, averaging 17 members, and organized according to Judicial Districts. Each holds its own annual meeting in the fall with an attendance of about 65. Federations have no individual members. Each local is represented by delegates, but participation is in fact general. Each Federation elects one member of the Board of Governors of the state association, which consists of 20 governors in all. The state association is not on a delegate basis, though for several years there has been a movement in this direction. (1929) ANN. REP. ILL. ST. B. A. 10, 237, 321. The states of Kansas, Maryland and Tennessee report federation impending. See (1926) 12 A. B. A. J. 326, and 8TH, 9TH, and 10TH REP. OF COM. ON ST. BAR ORG. TO CONF. OF BAR ASS'N DELEGTAES, A. B. A., 1927–29. For model Constitutions and Articles of Association see 8TH REP.; also (1926) 10 J. AM. JUD. SOC. 23.

[43]The Federation of Bar Associations of Western New York was started quite independently of the state association, under the auspices of the Bar Association of Erie County at Buffalo in June, 1926. It is not an association of individuals, but an association of 18 local bar associations of 16 counties. It has its own officers and committes (Ethics; Admissions and Information) and has no structural connection with the state body. A Council consisting of one representative from each local meets twice during the winter and functions as an Executive Committee. Attendance at annual meetings averages about 400 lawyers out of 2500 in the two judicial districts, and exceeds state meetings in size. Participation is open to all, but voting may be restricted to the two delegates from each local on demand. For Constitution and Annual Program see (1929) 52 N. Y. ST. B. A. REP. 97. In 1929, a similar federation was organized in the Sixth Judicial District. Federation plans are under way in three other districts. The Committee on Organization of the Bar (Messrs. W. D. Guthrie and A. McCulloh dissenting) reported favorably at the State Association annual meetings in 1928, 1929, and 1930, and attempted to induce it to take the lead in organizing such federations, and to establish contacts with them, at least by giving them representation on its Executive Committee. In 1928 and 1929 the Association went on record favoring the principle involved only. In 1930, after a vigorous debate, and by a large majority, the Committee on Amendments was instructed to report some method for giving federations representation. No attempt has been made to put the State Association itself on a delegate basis. Debates and reports appear in (1928–30) 51–3 N. Y. ST. B. A. REPS.

many of the problems which plague the incorporated bar, building from the ground up, and seeking to capitalize the enthusiasm and public spirit of existing units. True, it makes the unproved assertion that the average comprehensive group, because of its greater objectivity, is, *per se*, better fitted to assume the burden of solving the profession's internal problems and of speaking for it to the laity, than is the restricted typical group, in spite of the latter's superior definition of thought. True, also, it must finally demonstrate that it does not entirely rest upon the enthusiastic effort of a few individuals, and must prove that the minor units of which it is composed will not presently fall apart, to slumber peacefully, as they have so often done in the past. The evidence, however, seems to show that this danger is not too great. Federations provide what the rural and city bars want: a regional forum of their own; Grievance and Ethics Committees neither coldly state-wide, nor impotently local; annual meetings which can be reached by automobile; and, above all, preservation of the integrity of local opinion within the profession. In the last analysis, the American lawyer still decides questions for himself; it will probably be a long time before he is ready to accept the decisions of relatively small annual state assemblages as binding upon him, and as necessarily wholly appropriate for state-wide application. It may be that the federated bar, in the long view, will prove to have been but a passing phase in the hoped-for renaissance of our profession. But, at least, the flexibility of the plan provides for growth where there is spirit and will to grow, and avoids those enduring bitternesses always generated when one lawyer is asked to take for a bed-fellow another whom he does not like, or perhaps even respect.

IX

The discussion and experimentation which has gone on during the last two decades as to which, in the abstract, is the best method for organizing the bar is important and has undoubtedly served useful ends. To a certain extent, however, it has also served to distract attention from a still more important consideration. This is the pressing necessity that the profession appreciate that it has problems as a whole which are distinct from the problems of the associations as they have seen them. The problems of the profession as a whole cannot be solved by individuals, nor by groups of individuals, intermittently, or even continuously, active. They can only be solved by the profession as a whole with the cooperation of all its members. That is why their solution demands measurably complete organization. The test as to what form that organization should take in any

particular state or locality is pragmatic. The answer does not affect the fundamental necessity for action.

To illustrate it is only necessary to mention the present failure of the bar to discharge its collective responsibility to the public, or properly to assimilate its new members. We get into the habit of thinking that these two problems, for instance, can and will be solved by existing organizations. But of this there is no assurance. Too generally the associations have been preoccupied with their own problems and in safeguarding their prestige. It is as though they, the cavalry, had for fifty years been executing brilliant feats of leadership without bothering to notice that the infantry had failed to come up. Meanwhile, the bar, as a whole, left to take care of itself, seems to have become quite unconscious that it has either problems or collective responsibility.

Has the bar any collective responsibility? Is it true that the laity has always expected and demanded from it a leadership in moulding public opinion, that it has looked up to the profession as learned, not alone in legal lore, but in the art of government, in political philosophy, and in the intricate, never-ending process of domestic and international economic and social readjustment?

In the past, the best elements in the bar formed a compact, vigorous, and articulate group, which assumed a definite attitude upon the major questions of the day. As distinct from the rest of the people they interchanged analyses, ideas, and plans, until decisions that represented collective conclusions were arrived at. In the little scattered, colonial general assemblies, it was the lawyers who framed the economic issues with England, and when they had been framed, the people accepted leadership and fought them out in the Revolution. The bar of one hundred and forty years ago presented its analysis of the work of the Constitutional Convention to the public in a far less diffuse and a far more conclusive and united manner than did the bar of ten years ago, when it had a similar opportunity in respect to the League of Nations. In the struggle over federal sovereignty, the adjutants who made the genius and intelligence of John Marshall a vital part of our daily lives were lawyers who knew, not only what John Marshall had thought and said, but what the majority of other lawyers thought about what John Marshall had thought and said. Instances embracing the economic struggle that culminated in the Civil War, the questions implicit in the opening of a continent, and many another could be rehearsed to labor the contrast with the present. Who, today, can define the views of the whole bar on the questions involved in the wholesale barter of natural resources; in

the penetration of sumptuary legislation from every transient statute book into the very Constitution itself; in the clashing implications of the Sherman Law and the economic necessities of modern mass production; in the increasingly centripetal whirl of federal activities? If he exists, he is a modest individual, whose secret has not yet found its way into print.

Lacking solidarity and self-consciousness, it is not surprising that the bar of today has no opinions, and displays a decreasing capacity for leadership. Nor that the public is rapidly coming to take it at its own valuation. The leaders alone can no longer discharge this peculiar obligation of the legal profession. Conditions have changed; it is no longer possible for them to represent the whole bar to the extent they once did. In the past, the leaders were a more compact group and formed a much higher proportion of the profession, which itself was separated by a greater margin of intelligence from the general public. On their account, the whole bar received and accepted a credit which is no longer given.

It is indeed pleasant to ride the momentum of a splendid inheritance, but it cannot be done forever. Mr. Root has said: "The Bar of America has been fumbling for years through national, state and local associations; in private conference, and in public addresses, to find some way to render the public service we know we are bound to render, and that we all feel we are not rendering satisfactorily."[43a] It generally happens that the team which fumbles long enough loses the ball. Already there can be discerned on the field another alert, well-organized team—our friends, the bankers—which seems quite ready to pick it up.[43b] Perhaps, it was not merely circumstantial that a federal court should have appointed a trust company as receiver in a recent million dollar bankruptcy court scandal in New York.

[43a](1929) 52 N. Y. ST. B. A. REP. 265.

[43b]See A. C. Ritchie, *The Imperialism of the Dollar* (1928) 141 ATL. MONTHLY 587. The author points out, that already having mobilized dollars, the bankers are now mobolizing credit, and with it almost irresistible group power to state every important question before the American people in their own terminology. A fine self-consciousness of duties to be assumed grows with this power until one hears it proclaimed at a meeting of the American Institute of Banking that "once the banker's chief appeal to the public was to save money, which really meant deposit it with him. Now you hear a veritable chorus in crescendo on the word 'service,' which, among other things, means that the banker's job is not only to encourage saving, but to give the people an opportunity to put their money to work and show them how to keep it at work most efficiently." (N. Y. Times, June 20, 1928.) In other words, as a class, to solve for the people as a whole problems far too great for the individual banker and the individual borrower or depositor.

Nor that daily, private individuals place in others confidence which they once reposed in us alone. In fine, society usually ceases to pay for what it ceases to get: the prestige, the power, and the high estate which the bar has enjoyed, may quite conceivably be found to have been limited in its original grant, and not to be an estate in fee, after all. It is the duty of our generation to see that credit is restored to the profession by again assuming leadership as a guild, by fashioning some mechanism that will ferment and draw out representative opinion of the whole bar and make that opinion known to the people. All of which will take much work, and less blind preoccupation.

To cap the climax, the profession seems determined to give but scant attention to the matter of assimilating its new members. In the heat of argument, leaders of the bar sometimes denominate them undesirable persons, but the epithet is not lethal, and they remain with us, increasing in number yearly. Until recently, the national body and many state associations would not let them join until three years after admission to the bar. Even today no antitoxin is provided for those whose novitiate is spent with ambulance chasers or hanging around the doorways of criminal court rooms. No practical plan is employed to bring them within the influence of the greater associations, and to inculcate in them the ideals and traditions of which those associations are the repositories. Finally, when the wound festers, and the press clamors, the courts are petitioned to conduct an investigation as to specified evils, and bills begin to be introduced into the legislature, the ultimate agent which may be asked to do our work for us. Nor is much of any connection established between the associations and the law schools. It is all one how much time the students are required to spend on the Canons of Ethics, or how much instruction is given them in the philosophy and traditions of their guild.

These things would not be so serious were it not for the overwhelming influx that has taken place.[44] There were 850 new applicants for admission in New York in 1919; there were 3274 in 1929. There were 45,000 persons enrolled in law schools last September. Over 2000 were admitted in New York City alone last year, and 10,000 are studying there now. This indeed constitutes a problem for the profession as a whole, the importance of which can hardly be overstated. It means that the American bar, as it has always been thought of, its traditions, customs, and ideals, are bound shortly to undergo a basic change, unless through some form of better organization, self-consciousness and aspiration come to its rescue.

[44]See Appendix, Table II.

X

Whether they shall come or not rests, of course, with the average American lawyer. Without his awakening many windy battles bid fair to be fought to no purpose. At the same time, a great opportunity seems today to lie at the doorstep of the American Bar Association. Its traditions are fine, its leadership devoted; and though its strength be great now, its potential strength is tremendous. It is the natural medium through which the American legal profession should attain unity.

Thus far such unity has been hoped for through the maturing strength of the state and local associations. Known to be resentful of any external interference, these have been but cautiously approached, the theory being that even though left isolated they would act as feeders, and become indirectly a source of strength to the national body. Unfortunately, as this theory succeeded, it defeated itself. It has yielded now some 25,000 individual members for the American Bar Association. When two thousand of them arrive at a meeting, it scarcely knows what to do with them. As a deliberative body, they can do little. On a close issue their vote would not be convincing, since the state in which the meeting is held usually furnishes about a third of the attendance.[45] In practice, those who are delegates from other associations depart from their homes without instructions and arrive to find themselves possessed of personal influence only. The whole notion of leadership of the American bar by precept and example and of voicing its opinion, much less binding its conscience, by the device of annual assemblies, belongs to a bygone century.

He who grants the premise that there is work to be done and that the problems of the profession as a whole deserve the attention of the associations as its true agents, grants the entire first step. He grants at once the pressing need for more and better contacts—contacts between associations as such; contacts during the year; better channels of communication. This implies a reversal of the old idea; it calls for leadership from the top—not mere lazy hope that some day the mass will regenerate itself. The problem is primarily one of relation.[46] Once the American Bar Association has informed itself

[45]See Appendix, Table III.

[46]The same reasoning applies, of course, in respect of state bar organization, whether by incorporation, or any other method. The true objective is the stimulation of regional activity, and the establishment of group relationships, based on the same units. Annual assemblies should be made adjective to the whole plan rather than left to provide the chief medium for contacts.

of conditions as they actually exist in each individual state, it can treat with the bar of that state. It is not particularly important that the contacts it then establishes be with an incorporated bar in California, with a federated bar in Pennsylvania, and with voluntary associations in other states, so long as it establishes the contacts. Each bar, it will soon find, will quickly respond. Each bar will welcome inquiries addressed to it collectively, *during the year*, on subjects of importance, and will not be slow to furnish its opinion, if it thinks someone is going to listen to that opinion.

To arouse the profession to the value of group consciousness, to awaken it to the changing conditions all around it, to make it deeply sensible of its duty to the public and to the common weal—these are noble projects. Thirty years ago, they would, perhaps, have been fantastic. But today they are worthy of everything we can give to their advancement. The evidence on all sides shows that the profession is striving to find itself, and that a movement has started which cries out for leaders to consolidate its energies and point out its goal.

Lord Bacon said: "I hold every man a debtor to his profession, from the which, as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves to be a help and an ornament thereunto."[47]

Which of us shall say less?

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[47]THE ELEMENTS OF THE COMMON LAWES OF ENGLAND (1630), preface.

APPENDIX

I. Table Showing Growth of Bar Organization Movement.

Date of Organization of Present State Association		Number of State and Local Associations		
		1900	1911	1929
1876	New York	11	50	61
1877	Illinois	7	66	103
1878	Alabama	2	4	15
——	Vermont	1	1	2
——	Wisconsin	8	7	45
1880	Missouri	3	4	47
——	Ohio	28	32	86
1881	Tennessee	7	5	8
1882	Texas	3	3	40
1883	Georgia	3	24	39
——	Kansas	1	4	33
1885	Montana	4	8	13
1886	New Mexico	1	2	1
——	West Virginia	4	21	32
1888	Virginia	2	8	7
——	Washington	8	28	33
1890	Michigan	7	37	28
——	Oklahoma	—	1	41
——	Oregon	3	7	26
1891	D. of Columbia	3	2	1
——	Maine	8	17	17
1894	Utah	1	1	7
1895	Iowa	27	27	62
——	Pennsylvania	43	69	67
1896	Alaska	1	1	1
——	Indiana	23	27	27
——	Maryland	6	12	13
1897	Colorado	4	10	13
1897	South Dakota	8	4	8
1898	Louisiana	1	1	18
——	Rhode Island	2	2	3
1899	Arkansas	1	4	16
——	Hawaii	1	1	1
——	New Hampshire	5	5	10
——	New Jersey	10	16	18
——	North Carolina	1	1	39
——	North Dakota	2	15	12
1900	Nebraska	4	4	16
1901	Kentucky	1	4	10
——	South Carolina	1	1	28
1904	Minnesota	9	10	26
1906	Arizona	1	2	4
——	Mississippi	4	4	19
1907	Florida	3	7	19
1908	Connecticut	3	5	12
1909	California	5	19	46
——	Idaho	—	2	7
——	Massachusetts	16	18	21
1911	Nevada	—	1	5
1915	Wyoming	—	—	6
1923	Delaware	3	4	4
		300	608	1216

There were earlier associations in the following states: 1825, 1892–96, Mississippi; 1837–38, 1882–89, Arkansas; 1849, Massachusetts; 1873–78, New Hampshire, 1874, District of Columbia; 1874–81, Iowa; 1875, 1881–91, Connecticut; 1876–82; Nebraska; 1878, New Jersey; 1878–81, Indiana; 1881, Maine; 1882–84, Colorado;

1882–84, Kentucky; 1883–96, Minnesota; 1884–92, South Carolina; 1887–88, Florida; 1889, 1901, California; 1890, Nevada; 1894, Arizona; 1899, Idaho; 1901, Delaware. Compilation has not been made showing how long, in each case, the association continued in active existence.

Figures are from A. B. A. REPS.; dates from SMALL, *op. cit. supra* note 7.

II. Statistical Tables

	Population U. S. in Millions	Number of Lawyers in U. S.	Law School Registration in Sept.	Membership A. B. A.	Attendance at Annual Meetings A. B. A.	No. of Bar Associations in U. S.
1880	50	64,137	——	552	97	17 (1878)
1890	63	89,630	4,486	943	132	188
1895	——	——	——	1,393	199	——
1900	76	114,460	12,384	1,720	230	300
1905	——	——	——	2,606	277	518 (1906)
1910	92	114,704	19,498	4,701	324	609
1915	——	——	21,923	10,651	531	672 (1916)
1920	106	122,519	24,503	15,181	727	——
1925	——	——	44,340	23,524	1839	——
1927	——	——	48,593	25,719	1448	——
1929	120	155,000	45,777	28,000	1578	1216

New York State Bar Association membership: 1878, 438; 1888, 335; 1900, 750; 1912, 2100; 1920, 3311; 1929, 4950. Law School registration in New York State: 1916, 2705; 1923, 6225; 1928, 10470; 1929, 9950. The New York State Board of Law Examiners issued 15,939 certificates during the decade commencing 1920. New York secondary school registration increased from 211,000 to 400,000 during the same period.

Figures are from U. S. CENSUS REP.; REED, *op. cit. supra* note 17, BULL. No. 15, c. xix; No. 21, p. 32; supp. (1929) 62; THE AM. L. SCHOOL REV.; THE LAW STUDENT; A. B. A. REPS.; and N. Y. S. B. A. REPS. For 1929, estimates are given. The last three entries, column 3, exclude title searchers, notaries, and justices of the peace (7445 in 1910; 10071 in 1920). The census figures did not distinguish prior to 1910. The last two entries, column 6, refer to members in attendance; the earlier figures to gross attendance.

III. Table of Attendance at Annual Meetings of American Bar Association

State	Average Membership 1924–1928 Incl.	Average Attendance 1924–1928 Incl., Excluding State Holding Convention	Attendance Memphis 1929, Excluding Tenn.	Attendance 1924–1929 Incl., of State Holding Convention
Alabama.....	212	10	31	——
Alaska.....	16	1	0	——
Arizona.....	117	8	3	——
Arkansas.....	298	14	214	——
California.....	1423	31	32	——
Colorado.....	515	14	20	783
Connecticut....	432	12	8	——
Delaware.....	71	6	3	——
D. of Columbia	656	44	28	——
Florida.....	354	15	29	——
Georgia.....	325	10	15	——
Idaho.....	106	7	3	——
Illinois.....	1983	88	100	——
Indiana.....	471	31	23	——
Iowa.....	530	33	29	——
Kansas.....	350	45	33	——
Kentucky.....	311	14	48	——
Louisiana.....	333	12	44	——
Maine.....	171	3	2	——

III.—Continued

State	Average Membership 1924–1928 Incl.	Average Attendance 1924–1928 Incl., Excluding State Holding Convention	Attendance Memphis 1929, Excluding Tenn.	Attendance 1924–1929 Incl., of State Holding Convention
Maryland	457	22	17	—
Massachusetts	1353	26	25	—
Michigan	756	25	20	585
Minnesota	623	29	13	—
Mississippi	139	10	226	—
Missouri	775	46	70	—
Montana	116	5	2	—
Nebraska	342	35	11	—
Nevada	96	4	1	—
New Hampshire	83	1	2	—
New Jersey	548	20	16	—
New Mexico	103	10	5	—
New York	3190	75	48	319
North Carolina	299	12	19	—
North Dakota	175	4	2	—
Ohio	1126	77	65	—
Oklahoma	352	39	51	—
Oregon	232	25	6	—
Pennsylvania	1474	48	24	232
Rhode Island	142	6	6	—
South Carolina	194	9	6	—
South Dakota	172	9	9	—
Tennessee	368	14	—	720
Texas	583	40	48	—
Utah	125	8	5	—
Vermont	87	5	3	—
Virginia	386	12	8	—
Washington	468	4	6	456
West Virginia	304	16	13	—
Wisconsin	503	24	24	—
Wyoming	102	15	5	—
Foreign	236	3	2	—
	24,590	1,076	1,423	

Six year average attendance, gross: 1793. Number of members attending, average, 1927–1929 inclusive: 1433. Memphis attendance: 1578 members, 636 non-members, 2214 gross. Figures compiled by Mr. D. A. Simmons of Houston, Tex. See Simmons, *Representative Government for the Bar* (1929) 13 J. AM. JUD. SOC. 74.