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THE LOUISIANA SUPREME COURT AND BAR ADMISSIONS

The public calling of the law was well served by the recent decision of the Louisiana Supreme Court in the matter of Ex parte Steckler and Gaudin.1 The opinion, ably written by the Chief Justice of the Court, decided that the two petitioners, though graduates of two of the university law schools of this state, were not entitled to a license to practice law without passing the bar examinations as prescribed by legislative enactment and by court order. No discussion of the reasoning by which the Court arrived at its important conclusion is necessary for the purpose of this editorial. The Court could hardly have given serious consideration to a contention that bar admission requirements were not within the domain of the police power of the state. The police power cannot be surrendered. The Court in effect said that the legislature “by the ninth Section of the Act of 1855 or by proposing the constitutional amendment which was adopted in accordance with the act of 1884”, had not made it impossible to subsequently change bar admission requirements. It could not have done so, said the Court, without “usurping a judicial function in that it would have been depriving the judicial department of the state of its power to impose further conditions, in addition to such reasonable conditions as might be imposed by the legislature, upon the privilege of a person” to be admitted to the practice of law; that “the power to prescribe ultimately the qualifications for admission to the bar belongs to the judicial department of the government of the state.”

For many years it has been the opinion of those who have given the most thought to many of the problems confronting the legal profession that admission to the bar should be by examination of the applicants by a responsible committee. This committee should possess adequate technical skill and should also be one made up of men who are sufficiently aware of the current thought in modern legal education to enable them to conduct their examinations in accordance with such training so as not to be unfair to the applicant, with such committee being under the direct supervision of the Supreme Court of the state. For a long while that has been the position of modern legal educators. The Tulane Law School has consistently supported that position and, in fact, urged the legislative enactment of 1924 requiring such examinations. It is felt that it would be a distinct step backward to abrogate the requirement that the license to practice law will be granted only to an applicant who successfully passes the bar examination given by the examining committee of the Supreme Court. As early as 1892 the American Bar Association

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153 So. (1934) Supreme Court Docket No. 32,769.
ured that the power of admission to the bar in each state be lodged in the highest courts of the several states and that examinations of candidates be referred to committees appointed by the courts. The National Conference of Bar Association Delegates in 1922 went on record as favoring such requirements. The State of Georgia was the most recent state to adopt this procedure, having done so by legislative enactment at the last session of its legislature.

It is believed that in the light of immediate purposes, the Court in this decision wisely spoke when it declared that the Supreme Court has authority to prescribe the ultimate qualifications for admission to the bar. An examination of the authorities will show that principally three views have been taken in this country on that issue: (1) that the power to prescribe rules for admission and for the regulation of professional conduct belongs to the legislative branch, with the duty of their enforcement lying within the province of the judiciary; (2) that the entire subject is one pertaining inherently to the judicial branch of government; (3) that although the whole subject is a judicial one yet that branch of the government will respect reasonable regulations provided by the legislature so long as they are not restrictive.

The court in this case, as quoted above, seemingly chose the third view. There is, it is submitted, excellent authority for the second view. The practicing attorney is an officer of the court. He is a necessary part of the judicial system. The courts, it would seem, therefore, are the best judges of his fitness. They are the better able to decide whether he possesses sufficient legal learning, among other attainments, to promote the efficiency of the courts in the administration of justice. The court's right of removal of attorneys for unfitness can hardly be subject to question, when it is understood that such right is necessarily inherent to its proper organization and operation as a court. The power to control admissions can hardly be regarded as less inherent. Such right, furthermore, may be claimed as necessary for the maintenance and protection of the integrity and dignity of the court. Historically, also, a very strong argument may be made. As early as the time of Edward I this "authority to call to the Bar" was granted to the judges exclusively. Furthermore, the justices in England, as early as 1402, examined applicants for admission as attorneys, and the Court of Chancery exercised the power of appointment and supervision over solicitors in chancery. When lawyers finally gained recognition as a profession in the American colonies, their admission and supervision were given over to the courts. During the period following the Revolution the courts were not deprived of their power, despite the intense distrust of and dislike for lawyers as a class.

The court took a practical and therefore acceptable position in saying as it did that the legislature has the power to impose "reasonable condi-
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tions” upon the right of a person to be licensed to practice, though asserting that the power to prescribe ultimately the qualifications for admission belongs to the judiciary. This is asserted largely because of the impossibility of drawing any clear, distinct and unalterable lines of demarcation between the powers of our legislative, judicial and executive branches of government. Each branch can hardly avoid exercising, as necessarily incidental to its own primary power, powers primarily vested in the other two divisions. There are many duties which may with equal propriety be referred to either. Since, however, attorneys and counsellors relate almost exclusively to proceedings of a judicial nature, the determination of their appointment or admission should at least be considered primarily, if not entirely, as a judicial function, with the legislature being permitted to exercise as a part of its police power only minimum regulations, provided even they are unrestrictive in their scope and provided they do not deprive the courts of their inherent power to prescribe other rules and conditions for admission in its sound judicial discretion.

In the matter of qualifications demanded generally of candidates for bar admittance, strictness is necessary if the profession is to protect its historical vitality. That, however, is not the only consideration. The problem affects the administration of justice through and through. The practice of law today is not nearly as simple as it was a generation ago. Our legislators as a whole are not yet awake to the value and necessity of an educated bar and the lawyer member is always to be found who resents the suggestion that his own training was not adequate. There was for a long time a notion that a trained bar was undemocratic. Such a notion implied a conclusion that ignorance and incompetency were prerequisites for democracy. Such an attitude was merely a misplaced sympathy for the so-called “poor boy”, without realizing that low standards do not help the poor boy but serve only to allow the trifler and trickster to cheapen the profession. On the other hand, our courts are generally awake to its chief needs and problems. They know from experience the miscarriages of justice which can be laid at the doors of the incompetent. They know the value of able and competent lawyers in cases which have been thoroughly prepared by such lawyers, and how relatively easy it is to correctly decide those cases. They know how difficult is the decision where the cases are not properly prepared, and where the facts and the law are distorted. They remember the scores of instances in which they have been compelled themselves to brief the cases and to search for the authorities in order to do justice to the unfortunate litigants who have entrusted their fortunes to the incompetent or to the legal charlatan.

There are compelling reasons for thoroughly trained lawyers. The American Bar Association went on record in 1920 as urging as a require-
ment for admission to the profession graduation from a three year law school with the law study being preceded by two years of college pre-legal work. The Louisiana State Bar Association has since urged these as requirements for admission to the practice. The three university law schools in Louisiana, as well as the university law schools of all the southern states, enforce these minimum requirements. The legal profession has waited almost too long to recognize the tremendous importance of this problem. It is important to all classes of our citizens, and in fact to our entire social organism. Nothing less than a comprehensive understanding of the profession’s history, involving an appreciation of the organization of our governmental system, will show the far reaching effects that the legal profession must have on every phase of our social life. Lawyers must be able to perform the vitally useful functions which our modern social organization rightfully expects of them. The lawyer, indeed, as an Illinois court once said, “is the first to sit in judgment on every case, and whether the courts shall be called upon to act depends on his decision.” Real statesmanship from the bench in the vital matters relating to a well trained and competent bar is necessary if the structural foundations of the profession are to be vitalized to the extent of permitting it to fulfill its destiny in the administration of justice. As its economic and social life becomes more intricate the legal rules governing social conduct and their administration through courts of justice become more complicated. Adequately trained lawyers are consequently increasingly necessary if they are to properly and competently exercise their functions as officers of the courts.

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ANNOUNCEMENTS

THE AMERICAN BAR ASSOCIATION SECTION ON INTERNATIONAL AND COMPARATIVE LAW

The Council of the newly created Section on International and Comparative Law of the American Bar Association at its mid-winter meeting in Chicago chose the Tulane Law Review as the official organ of the Section. The Review takes pleasure in accepting this relationship with the new Section and it is hoped that the association will prove as mutually beneficial as did the connection between the Review and the Bureau of Comparative Law, which the new Section supersedes.

The Section on International and Comparative Law will hold its first meeting on May the ninth in the Mayflower Hotel, Washington, D. C., in connection with the American Law Institute meeting. The Committee has arranged a luncheon followed by a discussion of problems of American corporations abroad, and legal difficulties arising from the recognition of