Regulating the Gatekeepers: Constitutional Limits, Institutional Design, and the Crisis of Legal Education in Ghana

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This Article argues that Ghana's recurring legal education crisis reflects a deeper constitutional failure in the design of professional regulation. When regulatory, educational, and gatekeeping functions are institutionally conflated, discretionary scarcity emerges that courts can constrain but cannot fix. Using Ghana as a case study, the Article shows why judicial intervention—while effective at limiting unlawful discretion—cannot substitute for sound institutional design. Drawing on Supreme Court jurisprudence, legislative reform efforts, and regulatory practice, the Article proposes a constitutionally grounded blueprint for legal education reform based on functional separation, accountable accreditation, and judicially manageable discretion. The analysis offers general lessons for constitutional systems confronting professional gatekeeping, access to regulated professions, and the structural limits of courts as agents of regulatory reform.

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Introduction

For more than a decade, legal education in Ghana has been mired in recurring controversy.[1] Each year brings a familiar cycle: thousands of law graduates seek admission to professional training; only a fraction are admitted; public outcry follows; litigation ensues; courts intervene at the margins; regulators adjust procedures; and the cycle begins anew.[2] The persistence of this pattern has fostered a widespread, but mistaken, belief that Ghana's legal education crisis is fundamentally a problem of capacity, standards, or the so-called "mass production" of lawyers.[3] This Article argues that it is none of these. Rather, the crisis reflects a deeper constitutional and institutional design failure rooted in the conflation of regulation, provision, and gatekeeping of professional legal education within a single body.

The dominant narrative frames legal education as a technical or pedagogical problem: too many graduates, too few places, declining quality, or insufficient professional discipline. That framing has driven calls for stricter entrance examinations, interviews, quotas, and discretionary screening mechanisms. Yet these responses have not resolved the crisis. Instead, they have produced legal uncertainty, opaque decision-making, repeated constitutional challenges, and a steady erosion of public confidence in the fairness of the system. The persistence of these outcomes suggests that the underlying problem lies not in

1. Stephen Kwaku Asare, *The Way Forward for Legal Education Reform* (Ghana Ctr. for Democratic Dev., Briefing Paper Vol. 16 No. 4, 2019), https://www.cddgh.org/wp-content/uploads/2019/10/Briefing-Paper-Vol.-16-No.-4-Legal-Education-Reform-in-Ghana-…pdf [https://perma.cc/32TU-BLFV] (tracing a decade-long pattern of institutional instability marked by regulatory fiat, examination irregularities, legislative intervention, and recurrent litigation over access to professional legal education).

2. *See id.* at 1–4.

3. *See*, *e.g.*, Nii Larte Lartey, *I Won't Allow Mass Production of Lawyers – Chief Justice*, Citi Newsroom (July 23, 2019), https://citinewsroom.com/2019/07/i-wont-allow-mass-production-of-lawyers-chief-justice/ [https://perma.cc/N86V-VLWF] (treating "mass production" of lawyers as a risk warranting restricted admissions despite persistently limited access to professional training).

the number of aspiring lawyers, but in the institutional architecture governing access to the profession.

This Article contends that Ghana's legal education regime is structurally defective because it vests incompatible functions in a single regulator. The General Legal Council, acting through the Ghana School of Law, simultaneously determines who may enter professional training, provides that training as a monopolist or near-monopolist, and controls the examination and certification processes.[4] This fusion of roles creates inherent conflicts of interest, incentivizes exclusionary gatekeeping, and invites the exercise of broad discretionary power with limited transparency or accountability. Crucially, it also places the system in persistent tension with the constitutional requirements and tenets of administrative fairness, non-arbitrariness, and equal educational opportunities sanctioned by the Constitution of the Republic of Ghana of 1992 (hereafter "the Constitution").[5]

The constitutional dimensions of this crisis have repeatedly come before Ghana's Supreme Court for determination. In *Asare v. Attorney-General* (2017),[6] the Court invalidated administrative attempts to impose entrance examinations and interviews without legislative authorization, emphasizing the limits of discretionary power and the necessity of compliance with Articles 11(7), 23, 296, and 297 of the Constitution.[7] Yet the Court's remedial posture has been notably restrained. Even where regulatory action has been found unconstitutional, it has been reluctant to fashion remedies with systemic effect, instead permitting the continued operation of unlawful arrangements through consequential orders and the inapposite invocation of doctrines such as prospective overruling.[8]

In *Asare v. Attorney-General & General Legal Council* (2020),[9] the Supreme Court was asked to assess whether the Ghana School of Law's monopolistic control over professional legal training was compatible with Article 25(2) of the Constitution, which protects the right to establish and maintain private schools at one's own expense.[10] The Court declined jurisdiction and, in doing so, left the substantive constitutional question unresolved. Together, these cases reveal both the judiciary's role and its limits: the Court has been willing

4. *See* Legal Profession Act 1960 (Act 32) (Ghana).

5. Constitution of the Republic of Ghana 1992, arts. 23, 25(2), 296.

6. Asare v. Att'y Gen. [2017] GHASC 25, Writ No. J1/1/2016 (Ghana).

7. *Id.* (the Supreme Court of Ghana invalidating the General Legal Council's administrative alteration of admission rules for lack of legislative authorization and for violating constitutional requirements of legality and fairness).

8. *See* Stephen Kwaku Asare, *Inconsequential Declarations of Unconstitutionality and Unconstitutional Consequential Orders: The Case of Professor Stephen Kwaku Asare v Attorney General and General Legal Council*, 63 J. Afr. L. 463, 466–75 (2019) (analyzing the Supreme Court's use of consequential orders and its misapplication of the prospective overruling doctrine to permit the continued operation of General Legal Council admission practices that the Court itself had declared unconstitutional).

9. Asare v. Att'y Gen. [2020] GHASC 50, Writ No. J1/01/2020 (Ghana).

10. *Id.* (the Supreme Court declining original jurisdiction and thus avoiding the constitutional question whether a monopoly over professional legal education is compatible with Article 25(2)'s protection of the right to establish and maintain private educational institutions).

to constrain unlawful discretion, yet is structurally unable and institutionally unsuited to redesign the legal education system itself.

The gap between judicial constraint and institutional reform has been filled by legislative and regulatory experimentation, most recently through the Legal Education Reform Bill, 2025.[11] The Bill is a significant acknowledgment that the status quo is untenable. It proposes separating the regulation of legal education from that of legal practice, decentralizing professional training to accredited universities, and introducing a national bar examination.[12] These reforms move in the right direction, yet they also raise unresolved constitutional and institutional questions about accreditation standards, discretionary power, accountability, and the enduring risk of recreating centralized control through different means.

This Article makes three principal contributions. First, it reframes Ghana's legal education crisis as a problem of constitutional institutional design rather than capacity or quality control. Second, it offers a sustained doctrinal analysis of the Supreme Court's legal education jurisprudence, showing how the Court's reasoning implicitly identifies structural defects that litigation alone cannot cure. Third, it advances a constitutional blueprint for legal education reform grounded in the separation of regulatory, educational, and examining functions; transparent and plural pathways to professional qualification; and judicially manageable standards for administrative discretion. The Article demonstrates that many professional education crises are wrongly blamed on limited capacity or falling standards, when the real problem is flawed institutional design. This insight applies beyond Ghana.

The analysis proceeds as follows: Section I situates Ghana's contemporary legal education crisis within its historical foundations, showing that governance of legal education was contested from its inception and never settled through coherent institutional design. Section II examines the institutional architecture that emerged from this history, focusing on the rise of the gatekeeper state and the conflation of regulatory, provider, and examining functions. Section III outlines the constitutional framework governing legal education, including rights to education, administrative justice, and constraints on discretionary power. Section IV analyzes the Supreme Court's intervention in the Asare litigation and related cases, explaining why courts function as constitutional constraint-setters rather than system designers. Section V diagnoses the resulting regulatory failure as a separation-of-powers problem embedded in institutional design. Section VI evaluates the Legal Education Reform Bill, 2025, to assess whether it meaningfully addresses these structural defects. Section VII places Ghana's experience in a comparative and normative context, drawing lessons from other regulated professions. Section VIII advances a constitutional blueprint for legal education reform grounded in functional separation, transparent accreditation, and judicially manageable discretion. The final section

11. Legal Education Reform Bill 2025 (Memorandum dated Oct. 24, 2025) (Ghana) (proposing establishment of the Council for Legal Education and Training; shifting professional training to accredited universities; and creating a National Bar Examination). *See generally Bills*, Parliament Ghana, https://www.parliament.gh/docs?type=Bills&OT&P=28 [https://perma.cc/B265-633N] (last visited Apr. 7, 2026).

12. Legal Education Reform Bill 2025 (Memorandum dated Oct. 24, 2025) (Ghana).

concludes that durable reform requires a shift from emergency governance to constitutional normalcy.

I. Historical Foundations: Contestation, Not Consensus, at the Birth of Legal Education

Ghana's contemporary legal education crisis cannot be understood without careful attention to its historical foundations. The current institutional architecture did not emerge from a deliberate constitutional choice about scale, access, or professional standards. Instead, it is the product of layered historical contingencies rooted in colonial inheritance, post-independence urgency, and open-ended statutory delegation, none of which were ever reconciled through coherent institutional design. What appears today as a crisis of capacity or quality is better understood as the long afterlife of an unresolved governance settlement.

A. Colonial Inheritance and the Elite Professional Model

Under British colonial administration, legal education in the Gold Coast, as in other African colonies, was externally oriented and deliberately elite.[13] Aspiring lawyers were trained in England and called to the Bar at the Inns of Court, a path available only to a narrow social stratum.[14] This model served colonial governance well: it produced a small, anglicized legal profession closely aligned with imperial institutions and norms, while keeping legal training beyond the reach of mass participation.[15] At independence, the central concern was not regulatory coherence but state-building. Ghana urgently needed legally trained personnel to staff courts, ministries, and an emerging domestic bar, thereby removing the hurdle of Ghanaians travelling to London to study at the Inns of Court.[16]

Domestically produced lawyers were thus seen by political actors as a necessary catalyst for securing Ghana's socio-economic development and for transforming the Ghanaian legal system to accommodate its unique context.[17]

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13. *See* John Harrington & Ambreena Manji, *'Africa Needs Many Lawyers Trained for the Need of Their Peoples': Struggles Over Legal Education in Kwame Nkrumah's Ghana*, 59 Am. J. Legal Hist. 149, 151–56 (2019) (explaining that colonial legal education in the Gold Coast relied on Inns of Court training in England and produced a small, socially narrow, English-trained legal elite); S. K. Date-Bah, former Supreme Court Justice, Keynote Address at the Commonwealth Legal Education Association Conference: Legal Education in Ghana: International and Local Dimensions (Apr. 2015) (noting that professional legal training for Ghanaians remained an overseas activity centered on the English Bar until the establishment of the Ghana Law School).

14. T. O. Elias, *Nigeria: Legal Education in Nigeria*, 6 J. Afr. L. 117, 122 (1962).

15. *See* L. C. B. Gower, Independent Africa: The Challenge to the Legal Profession 111 (1967) (noting the British colonial government was hesitant about implementing domestic lawyer training (legal education) systems in the colonies, fearing it could stimulate nationalist movements.)

16. William Burnett Harvey, Law and Social Change in Ghana 369–89 (1966).

17. Kwame Nkrumah, *Ghana: Law in Africa*, 6 J. Afr. L. 103, 104 (1962) (where Nkrumah noted: "[t]he teaching of law in Africa would also be totally incomplete if it did not include the study of African law. The understanding of the basic principles of customary law is particularly important in that it is necessary to grasp the process by which this law has responded to economic

The problem confronting the new state was therefore practical and immediate: how to localize professional legal training without dismantling inherited professional standards. As Harrington and Manji document, this question was contested from the outset, entangled with broader struggles over nationalism, development, academic autonomy, and state power rather than resolved through settled institutional design.[18]

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and social changes, and the valuable contribution which it can make to legal thinking."). In Africa, legal education generally began right after independence due to the urgent need for lawyers to support social and economic development. *See* Gower, *supra* note 15, at 108–17; A. N. Allott, *Legal Education in East Africa*, 4 J. Afr. L. 130, 130–32 (1960); A. B. Weston, *Legal Education in East Africa*, 15 U. Toronto L. J. 187, 187–89 (1963); William Twining, *Legal Education Within East Africa*, 12 Int'l & Compar. L.Q. Supp. Pub. 115, 115–19 (1966); J. B. Ojwang & D. R. Salter, *Legal Education in Kenya*, 33 J. Afr. L. 78, 79–80 (1989); Muna Ndulo, *Legal Education, Internationalization and African Law Schools*, 2 J. Commonwealth L. & Legal Educ. 23 (2004); Muna Ndulo, *Legal Education in Africa in the Era of Globalization and Structural Adjustment*, 20 Penn St. Int'l L. Rev. 487, 487–95 (2002); Kujo E. McDave & Alexander Hackman-Aidoo, *Advancing Africa's Development Through Legal Education: A Ghanaian Insight*, 17 U.S.-China L. Rev. 203 (2020) (highlighting the impact of colonialism on Africa's development and leveraging a reformed legal education and system as a platform to advance Africa's progress development); Bruce L. Ottley, *Legal Education in Developing Countries: The Law of the Non-Transferability of Law Revisited*, 2 Loy. L.A. Int'l & Compar. L. Rev. 47, 47 (1979); Jarpa J. Dawuni, *The Legal Profession in Ghana: From Indigenization to Globalization*, 29 Int'l J. Legal Pro. 75, 78–80, 85 (2021); Harrington & Manji, *supra* note 13, at 165 (citing to Ekow W. C. Daniels, *The Birth of Legal Education in Ghana*, on the historical development of legal education in Ghana); Antoinette Kankindi & Victor Chimbwanda, *Legal Education and Its Contemporary Challenges in Sub-Saharan Africa*, 5 Strathmore L.J. 145 (2021) (reflecting on some of the factors influencing the establishment of legal education structures, particularly in common law jurisdictions during the early wave of political independence.); Thomas F. Geraghty & Emmanuel K. Quansah, *African Legal Education: A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to a Neglected Means of Securing Human Rights and Legal Predictability*, 5 Loy. U. Chi. Int'l L. Rev. 87, 91 (2007); Yash Ghai, *Law, Development and African Scholarship*, 50 Mod. L. Rev. 750–76 (1987); Emmanuel Kwabena Quansah, *Educating Lawyers for Transnational Challenges: Perspectives of a Developing Country—Botswana*, 55 J. Legal Educ. 528, 528–30 (2005).

18. Harrington & Manji, *supra* note 13, at 149–156 (documenting early post-independence conflicts over the purpose, scale, and control of legal education, and the placement of legal training within broader struggles over nationalism, development, and academic autonomy); Kankindi & Chimbwanda, *supra* note 17, at 149 (emphasizing that "it is this multi-faceted conception of a lawyer that led to ideological clashes over the objectives of university legal education and how lawyers should be trained in post-independence Africa. . .local systems for the training of lawyers divided legal education into different stages with divergent variations, but largely based on the 'Gower Model' adopted in nearly all common law African jurisdictions."). *See also* William Twining, *Developments in Legal Education: Beyond the Primary School Model*, 2 Legal Educ. Rev. 35, 52 (1990) (explaining the Gower Model delineates legal education to comprise about four distinct stages: academic, vocational, apprenticeship, and continuing education. It is important to note that this model was specifically developed within the unique context of Ghana and Nigeria). For further critique and other perspectives of the Gower Model, *see* William Twining, *The Benson Report and Legal Education: A Personal View*, *in* Law in the Balance: Legal Services in the 1980s 186 (1982); J. Griffiths, *W. Twining, Law in Context: Enlarging a Discipline (Oxford: Clarendon Press, 1997)*, 6 Eur. J. Crime Crim. L & Crim. Just. 145; William Edlund, *Contemporary English Legal Education*, 10 J. Legal Educ. 11 (1957); John A. Harrington & Ambreena Manji, *'Mind with Mind and Spirit with Spirit': Lord Denning and African Legal Education*, 30 J.L. & Soc'y, 376 (2003); Emeka Ngige & Sylvester Udemezue, *Navigating the Future of Legal Education in Contemporary Nigeria: Effective Strategies for Addressing Current Challenges and Proposals for Reforms*, 2 Int'l J. Pub. Pol'y L. & Dev. 19 (2025); Okechukwu Oko, *Legal Education Reform in Africa: Time to Revisit the Two-Tier Legal Education System*, Miami Int'l & Compar. L. Rev. 130, 131 (2021).

B. Post-Independence Pragmatism and the Accidental Bifurcation

It was in this context that Ghana localized its professional legal training by establishing the Ghana School of Law in 1958.[19] The School was not conceived as a monopoly institution or as a constitutional gatekeeper to the profession. Rather, it was a pragmatic response to immediate national needs: a practical training facility intended to complement university-based academic instruction.[20] The resulting bifurcation of legal education into an academic stage, (the LLB) and a professional stage (which later became the Professional Law Course) was not grounded in any intrinsic feature of legal knowledge.[21] It was an administrative compromise shaped by capacity constraints and inherited professional norms.[22] Universities focused on doctrinal instruction; the School provided practical training in advocacy, procedure, and professional ethics.[23]

Writing in the mid-1960s, William Burnett Harvey emphasized that professional qualification and university legal education were conceived as distinct but coordinated processes, with neither intended to subsume the other.[24] This account confirms that the early bifurcation was understood as a pragmatic division of labor rather than a hierarchical screening mechanism. Crucially, this

19. William Burnett Harvey, Law and Social Change in Ghana 177 (1966).

20. *See id.* at 177–180 (attributes the establishment of the Ghana School of Law, in part, to Geoffrey Bing, then Attorney-General, who justified the institution on grounds of rapid capacity building for national development, expanded access for capable candidates unable to study abroad, and the political and professional dilution of the existing British-trained Bar, which he regarded as economically and politically conservative.)

21. *See* William T. Vukowich, *Comment: The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 Case W. Rsrv. L. Rev. 140, 142 (1971) (explaining that conceptually, the bifurcated or two-tier legal education system aligns with the idea that "[u]niversities are generally regarded as the traditional citadels of knowledge and theory, rather than training grounds for the development of career-oriented skills.").

22. *See* L. C. B. Gower, *English Legal Training: A Critical Survey*, 13 Mod. L. Rev. 137 (1950); Gower, *supra* note 15, at 102–145; Berthan Macaulay, *Students for Law Schools and Faculties in Africa*, 6 J. Afr. L., 81 (1982) (submitting that the bifurcated approach involved a two-tier system of legal training, with academic training under the control of universities, followed by professional training under the control of professional bodies commonly referred to as 'Law Schools'). *See also* Twining, *supra* note 17, at 52–53 (criticizing the Gower model in saying that ". . .in adopting this structure, most Commonwealth countries have rejected other possible models that once were realistic options: the medical school model, the American law school model, and the significantly Continental European Model, which in its Prussian version was seriously argued for in England in the nineteenth century. To put the matter boldly, the rigid four-stage structure marginalizes the contributions of academics (in respect of research and policymaking as well as teaching) to matter [sic] dealt with at the later stages and to the operations of the legal system generally.")

23. *See* Harrington & Manji, *supra* note 13, at 166 (showing that the separation between university legal education and professional training emerged from pragmatic and political compromise rather than from any settled conception of monopoly provision or exclusionary gatekeeping).

24. *See generally* Harvey, *supra* note 16. The 1959 International Advisory Committee on Legal Education in Ghana expressly treated bifurcation as a temporary expedient, recommending that the diploma route at the Ghana School of Law be discontinued by 1965 and that the school thereafter function primarily as a post-LLB practical training institute affiliated with the University. *See* Committee on Legal Education for Students From Africa, Report of the Committee on Legal Education for Students From Africa (1961) Cm. 1225 (UK) [hereinafter The Denning Report] (endorsing a model in which a university law degree is followed by a year of professional practical training prior to admission to practice).

model assumed modest numbers. When the University of Ghana was the sole provider of the LLB, progression from academic study to professional training functioned largely as sequencing rather than screening.[25] The distinction between stages did not operate as a barrier to entry, nor was it designed to do so.

C. Expansion Without Redesign: The Bifurcated Model Under Strain

Over time, however, the institutional context changed even as the basic architecture remained fixed. The number of universities offering the LLB expanded dramatically, reflecting broader access to higher education and rising demand for legal training. By contrast, professional training remained centralized.[26] What began as a functional division of labor evolved into a structural bottleneck. The bifurcated model hardened into a gatekeeping device, even though neither its historical justification nor its statutory foundation contemplated exclusion as a defining feature. Scarcity arose not because legal education had been overproduced but because institutional form failed to adapt to scale. This transformation is critical. It marks the point at which governance of legal education shifted from coordination to rationing—not by constitutional decision, but by institutional drift.

D. The Legal Profession Act and the Open-Ended Statutory Mandate

The Legal Profession Act 32 (1960) codified this early arrangement, but it did so in deliberately flexible terms.[27] The Act vested the General Legal Council with responsibility for "establishing a system of legal education" and for "affording opportunities" for persons to qualify as lawyers.[28] It did not prescribe a single institutional pathway, nor did it mandate that professional training be delivered exclusively by a council-run school. On the contrary, Act 32 expressly contemplated pluralism. It authorized the Council to make arrangements for legal education "through a school of law or through any educational institution."[29] This language reflected an expectation that legal education

25. *See* Twining, *supra* note 17, at 53–54 (highlighting the structural challenges of the Gower Model and its unworkability, leading to the collapse of the academic and vocational stages in some Commonwealth countries, such as Zimbabwe and India, and the establishment of a single four-year integrated course).

26. Asare, *supra* note 1, at 2–3.

27. *See generally* Legal Profession Act 1960 (Act 32) (Ghana).

28. *Id.* § 13(1) (outlining the duties of the General Legal Council to include making arrangements:

> (a) for establishing a system of legal education, (b) for selecting the subjects in which those seeking to qualify as lawyers are to be examined, (c) for establishing courses of instruction for students and, generally, for affording opportunities for students to read and to obtain practical experience in the law, (d) for regulating the admission of students to pursue courses of instruction leading to qualification as lawyers, and (e) for holding examinations which may include preliminary and intermediate examinations as well as final qualifying examinations).

29. *Id.* § 13(2) (providing that the Council, in discharging the legal education mandate under the Act, may make arrangements in such a manner as they deem fit. This provision has perhaps amplified reliance on discretion rather than on proper institutional structures to address the challenges of legal education in Ghana.)

would evolve, and that institutional form would follow functional need. The Act's openness was therefore a feature, not a flaw.

Contemporaneous analysis of the Legal Profession Act confirms that this statutory openness was deliberate. Writing shortly after the Act's enactment, William Burnett Harvey observed that Parliament "wisely provided" that the General Legal Council could discharge its educational responsibilities either through a school established by it or "through any other educational institution."[30] The Council's responsibility for legal education and admission to the Bar was understood to be plenary but not exclusive. University legal education, by contrast, rested on its own statutory foundation, with full authority over degree programs.[31] Harvey emphasized that the problem confronting policymakers was not institutional supremacy, but how to relate these two bodies to avoid duplication, ensure sound educational programs, and maintain a reliable flow of qualified candidates to the Bar.[32] What Act 32 did not do was anticipate sustained growth in demand for legal education or specify how discretion should be exercised once capacity constraints emerged. It provided authority without architecture. That silence would later prove consequential.

E. From Flexibility to Centralization: Institutional Drift and Constitutional Stakes

As demand increased, the institutional response was not expansion through accreditation, but consolidation through discretion. The Ghana School of Law increasingly became the sole locus of professional training, not by statutory command, but by regulatory practice.[33] Admission ceased to be

30. Harvey, *supra* note 16, at 387 (explaining that Parliament "wisely provided" that the General Legal Council could discharge its educational responsibilities either through a school established by it or "through any other educational institution").

31. *See, e.g.*, University of Ghana Act 2010 (Act 806) (Ghana); University of Cape Coast Act 1992 (Act 278) (Ghana); University for Development Studies Law 1992 (Act 279) (Ghana); University of Professional Studies Act 2012 (Act 850) (Ghana); Ghana Institute of Management and Public Administration Act 2004 (Act 676) (Ghana) (the Acts of Parliament governing public universities offering Bachelor of Laws (LLB) programs in Ghana and the statutory parameters consolidating their institutional autonomy and independence).

32. *See* Harvey, *supra* note 16, at 387–89 (describing the General Legal Council's statutory responsibility for legal education and admission to the Bar as plenary, while emphasizing that university legal education rests on an independent statutory foundation and that the central institutional challenge was to coordinate these bodies to avoid duplication and ensure a reliable flow of qualified candidates to the Bar.)

33. *See* Professional Law Course Regulations, 1984 (L.I. 1296) (Ghana), reg. 1 (conditioning eligibility for the Qualifying Certificate on completion of an approved course of study "at the Ghana Law School, Accra"); *id.* at reg. 2 (limiting admission to the Professional Law Course to entry into the Ghana Law School under the control of the General Legal Council). *See also*, Legal Profession (Professional and Post-Call Law Course) Regulations 2018 (L.I. 2355) (Ghana), regs. 1–4 (authorizing the General Legal Council to regulate admissions, quotas, and entrance examinations solely for admission to the Ghana School of Law); *id.* reg. 36 (defining "School" as the Ghana School of Law or its campuses). *See generally* Legal Profession (Professional and Post-Call Law Course) (Amendment) Regulations, 2020 (L.I. 2427). Although neither instrument expressly declares a statutory monopoly, their combined effect is to entrench the Ghana School of Law as the exclusive institutional pathway to professional legal qualification through regulatory design and administrative practice rather than explicit legislative command.

an administrative transition and became a competitive barrier. This shift transformed the role of the General Legal Council. Originally conceived as a coordinator and standard setter, it became an allocator of opportunity.[34] The later consolidation of professional training within a single institution, therefore, represented not the maturation of the original statutory design, but a sharp departure from it. Where the early framework assumed plural provision and coordination, regulatory practice gradually substituted exclusivity and rationing. Discretion, once peripheral, moved to the center of the system. Entrance examinations, interviews, quotas, and suitability assessments emerged as mechanisms for managing scarcity within a centralized structure.

Yet the statutory framework had not changed. Act 32 continued to speak in terms of opportunity, arrangement, and qualification—not exclusion. The widening gap between statutory purpose and regulatory practice laid the groundwork for constitutional tension. Ghana's legal education crisis is therefore not the product of sudden expansion or declining standards. It is the predictable consequence of institutional inertia operating within a framework that was never designed to sustain monopoly provision or exclusionary gatekeeping. As later sections demonstrate, the Supreme Court's interventions reflect an implicit recognition of this mismatch. The Court has repeatedly constrained the exercise of discretion without endorsing the underlying institutional arrangement. That posture makes sense only when the historical origins of the system are properly understood. The next section turns to the institutional architecture that emerged from this history, examining how the rise of the gatekeeper state embedded structural conflicts into Ghana's legal education regime.

II. Institutional Architecture and the Rise of the Gatekeeper State

The historical trajectory traced in Section I culminated not in deliberate institutional redesign but in the gradual emergence of a governance model characterized by the concentration of power. As Ghana's legal education system expanded without corresponding structural adjustment, regulatory authority, training provision, and qualification control became increasingly centralized within a single institutional complex. This section examines how that architecture took shape and why it produced a gatekeeper state ill-suited to constitutional governance.

A. The Bifurcated Model Revisited: From Sequencing to Screening

The bifurcated structure of legal education, comprising academic instruction followed by professional training, was initially benign.[35] It was initially a pragmatic and transitional response to post-independence urgency rather than the product of a settled institutional or constitutional design.[36] It thus reflected

34. *See* Harrington & Manji, *supra* note 13, at 170–77 (tracing the transformation of legal education governance from coordination to discretionary control as centralized institutions absorbed increasing demand).

35. *See* Harvey, *supra* note 19, at 177–80.

36. *Id.* (noting that the Ghana School of Law, established in 1958, initially operated as a non-university institution under the supervision of the General Legal Council, offering

a functional division of labor between universities and the Ghana School of Law, premised on modest numbers and routine progression. Over time, however, that sequencing function was transformed into a screening mechanism. As population growth and the rapid expansion of university law programs increased the number of LLB graduates without a corresponding expansion in professional training capacity, the transition point between academic and professional stages acquired new regulatory and distributive significance. Admission to the professional stage ceased to be a matter of course and became the principal site for rationing access to the legal profession. The bifurcated model thus evolved from an educational arrangement into a regulatory choke point, even though its foundational logic had not changed. This transformation was architectural rather than doctrinal. Nothing intrinsic to legal education required that professional training be centralized or that access be restricted *ex ante*. The gatekeeping function emerged because institutional structures failed to adapt to scale.

B. The Ghana School of Law: Finishing School, Not Natural Monopoly

The Ghana School of Law occupies a central place in this architecture, but its current role should not be mistaken for an inevitable one. Historically, the School served as a finishing institution, providing practical training to complement academic study.[37] It was never conceived of as a natural monopoly, nor was it constitutionally designated as the exclusive pathway to professional qualification. The monopoly provision arose not through explicit legislative choice but through regulatory practice under conditions of scarcity.[38] As professional training became increasingly centralized, the school's institutional identity shifted. It moved from being one component of a pluralistic legal education ecosystem to the dominant and exclusive provider of professional training. This shift matters because monopoly status fundamentally alters institutional incentives. A provider that also controls access to training has little structural incentive to expand capacity by accrediting alternative institutions. Scarcity becomes administratively manageable through exclusion rather than institutionally resolved through decentralization.

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part-time instruction aligned with the English Bar examinations and having no formal connection to the University College of the Gold Coast at inception). *See also* Oko, *supra* note 17, at 134 (writing in the Nigerian context, the two-tier system was noted to have performed relatively well from the early 1960s to 1970, producing reasonably competent lawyers, however, over time, the system's success proved to be illusory, and the system progressively waned). For further critique of the bifurcated system, *see* Beatrice Shuwa, *The Evolution of Academic and Clinical Legal Education in Nigeria and Selected Common Law Countries*, 17 Nigeria L.J. 102 (2014); Bagoni A. Bukar, *Legal Education and Challenges of Contemporary Developments in Nigeria*, 20 Int'l J. Clinical Legal Educ. 593 (2014); Grady Jessup, *Symbiotic Relations: Clinical Methodology–Fostering New Paradigms in African Legal Education*, 8 Clinical L. Rev. 377 (2002).

37. Harvey, *supra* note 9, at 177–80 (according to Harvey, the Ghana School of Law was originally planned to offer a one-year practical course for law graduates. Its purpose as a finishing school was to prepare students for Parts I and II of the English Bar Examinations). *See also*, Harrington & Manji, *supra* note 13, at 166.

38. Asare, *supra* note 1, at 1–2.

C. Act 32 and Deliberately Open-Ended Delegation

The rise of centralized gatekeeping cannot be attributed to a statutory mandate. As noted earlier, Act 32 vested the General Legal Council with broad authority to establish a system of legal education, but it did not prescribe the institutional form.[39] The Act authorized arrangements "through a school of law or through any educational institution," signaling flexibility rather than exclusivity.[40] This open-ended delegation served an important function at the time of enactment by allowing legal education to evolve without constant legislative amendment. But it also placed a heavy burden on institutional judgment. In the absence of clear architectural constraints, regulatory discretion became the primary mechanism for managing growth. What Act 32 did not provide was a separation of functions. It did not clearly distinguish between standard-setting, training provision, and qualification assessment. That omission became increasingly consequential as demand rose and discretion expanded to fill the resulting design vacuum.

D. The General Legal Council as Regulator, Provider, Examiner, and Gatekeeper

Within this statutory and institutional context, the General Legal Council gradually assumed multiple and incompatible roles. It sets standards for legal education, determines eligibility for professional training, oversees or provides that training through the Ghana School of Law, and controls examinations and certification for entry into the profession.[41] Each of these functions is defensible in isolation. Their combination within a single institutional framework is not. When the same body writes the rules, provides the training, and controls qualifications, conflicts of interest are built in by design. Decisions about admission, assessment, and progression inevitably carry distributive significance, yet they are made within an institutional structure that lacks external counterweights.[42] The result is a governance model in which discretion performs the role that institutional design should. Rather than expanding capacity through

39. Legal Profession Act 1960 (Act 32) s 13(2) (Ghana).
40. *Id.* § 13(2).
41. *Id.* §§ 13(1)(d)–(e).
42. *Id.* For example, there is no unified law teachers' association or union to counterbalance the Council's influence on curriculum standardization and other institutional matters. Notably, however, there has been an effort to unify law Deans and reform legal education policies in Ghana through the Conference of Law Deans (COLD) Project. *See Ongoing Research Projects*, Univ. Ghana Sch. L. https://law.ug.edu.gh/research-unit/ongoing-research-projects [https://perma.cc/UWD6-VHWN] (last visited Jan. 7, 2026). However, for comparable institutions or associations in Africa, *See Advancing Legal Education, Together*, S. Afr. L. Deans' Ass'n https://salda.co.za [https://perma.cc/23K4-JJUH] (last visited Jan. 7, 2026) (a national association representing the leadership of law faculties in South Africa that establishes a collaborative forum to shape the future of legal education in South Africa). Additionally, the Society for Law Teachers of Southern Africa (SLTSA) has acted as a voice for legal academics in South Africa for many years, aiming to promote the shared interests of law teachers across South Africa and the Southern Africa sub-region. *See About*, Soc'y L. Tchrs. S. Afr. https://www.sltsa.org.za/about [https://perma.cc/N4A9-EUP4] (last visited Jan. 7, 2026).

plural provision under uniform standards, this model rations access through discretionary screening at the point of entry.

E. Structural Conflict and the Logic of Gatekeeping

The rise of the gatekeeper state is therefore not a story of regulatory overreach in the abstract. It is the predictable outcome of institutional concentration amid scarcity. A regulator that also serves as a provider operates under a structural conflict of interest.[43] When demand exceeds capacity, the entity faces pressure not only to regulate access but also to protect its own operational resources, service quality, and institutional reputation. In such settings, regulatory tools become instruments of load management. Rather than expanding supply, the entity may use its regulatory authority to ration access, creating a form of artificial scarcity through mechanisms such as entrance examinations, quotas, and suitability assessments.[44] These tools, while formally justified in terms of quality assurance, also function to manage demand and preserve institutional stability.[45] Yet such mechanisms carry high costs. They shift quality control from transparent accreditation and curriculum design to opaque decision-making. They invite arbitrariness and undermine confidence in fairness. They also place sustained pressure on constitutional norms governing discretion, equality of opportunity, and administrative justice. Most importantly, they obscure the true source of the problem. The crisis in legal education is not caused by too many aspiring lawyers, but by an institutional architecture that forces discretion to substitute for design. Until that architecture is confronted, reform efforts will continue to oscillate between exclusion and adjustment without resolution. The next section examines the constitutional framework governing this institutional arrangement, explaining why the concentration of functions and reliance on discretion place Ghana's legal education system in persistent tension with constitutional norms of legality, fairness, and accountability.

III. The Constitutional Framework Governing Legal Education Regulation

Legal education in Ghana does not exist in a constitutional vacuum. Although the 1992 Constitution does not prescribe a specific institutional

43. *See* OECD, *The OECD Report on Regulatory Reform: Synthesis* 9 (1997) (noting that regulatory systems can be influenced by vested interests and unaccountable discretion, leading to biased outcomes); Morris M. Kleiner & Alan B. Krueger, *The Prevalence and Effects of Occupational Licensing*, NBER Working Paper No. 14308, at 3–4 (2008) (explaining that licensing systems are often controlled by incumbents and used to restrict entry); *see also* Ioannis N. Kessides, *Regulatory Policies and Reform in Telecommunications*, *in* Regulatory Policies and Reform: A Comparative Perspective 235, 246 (Claudio R. Frischtak ed., 1995) (arguing that regulatory and operational functions should be separated to ensure neutrality and credibility).

44. *See* Kleiner & Krueger, *supra* note 43; Morris M. Kleiner, Licensing Occupations: Enhancing Quality or Restricting Competition? 1–10 (2006) (describing how licensing systems can protect incumbent providers and limit competition).

45. See Kleiner & Krueger, *supra* note 43, at 4 (describing licensing as justified in part by quality assurance through minimum competency requirements while also restricting entry); Kleiner, *supra* note 44, at 7–9 (explaining that licensing establishes minimum standards intended to improve quality but may reduce the number of practitioners and raise prices).

model for professional legal training, it provides a set of binding design constraints that govern how such a system may be structured and operated.[46] These constraints stem from constitutional commitments to education, administrative justice, legality, and the disciplined exercise of discretion.[47] Together, they define the outer limits of permissible gatekeeping and explain why Ghana's current legal education regime has repeatedly faced constitutional challenges. This section develops the constitutional framework not as a catalog of rights but as an architecture of constraint. The Constitution does not tell policymakers how to design legal education; it tells them which institutional designs they may not adopt.

A. Legal Education as a Constitutional, Not Merely Policy, Domain

Professional legal education occupies a distinctive constitutional position. It is neither a purely academic enterprise insulated from public law nor a purely discretionary privilege granted at regulators' pleasure. Entry into the legal profession implicates public power, access to justice, and equality of opportunity. As a result, the regulation of legal education is subject to constitutional constraints even without explicit textual prescription. This framing is critical. Many controversies surrounding legal education have been treated as matters of policy choice—capacity, standards, pedagogy, or professional preference. The Constitution reframes these questions. Once the State establishes a regulated pathway to professional qualification, decisions about access, progression, and exclusion become exercises of public power subject to constitutional control.

B. Article 25 and the Structure of Educational Opportunity

Article 25 guarantees equal educational opportunities and facilities.[48] While it does not confer a right to professional certification, it limits how pathways to

46. Constitution of the Republic of Ghana 1992, Arts. 25, 296.

47. *Id.*

48. *Id.* Art. 25(1) (establishing that "all persons shall have the right to equal educational opportunities and facilities"). This right is elaborated in Article 38 of the Constitution, which sets out the State's educational objectives and frames access to education as a progressive, resource-dependent obligation under the Directive Principles of State Policy. *Id.* Art. 38. The aim of the right to equal educational opportunities is, among other things, to achieve free basic education, progressively free secondary education in its various forms, including technical and vocational education, progressively free higher education, the promotion of functional literacy, and the development of a system of schools with adequate facilities at all levels. However, whether this right is justiciable in and of itself has been a subject of judicial debate. *See* New Patriotic Party v. Att'y Gen. [1993–1994] 2 GLR 35 (Ghana) (holding that the Directive Principles of State Policy (DPSP) are justiciable unless the Constitution itself provides otherwise); New Patriotic Party v. Att'y Gen. [1997–1998] 1 GLR 378 (Ghana) (holding that the DPSP, which encapsulates socio-economic rights, such as the right to education, is not justiciable in and of itself unless read in conjunction with a substantive provision in the Constitution); Ghana Lotto Operators Association v. National Lottery Authority [2007-2008] SCGLR 1088 (holding that "all provisions in the Constitution are presumptively justiciable, unless there are strong indications to the contrary in the text or context of the Constitution"). For further discussion on the justiciability of the right to education and socio-economic rights, *see* Francis Kofi Korankye-Sakyi, Solomon Faakye & Peter A. Atupare, *Critical Reflections on the Justiciability of the Right to Education in Ghana*, 22 Afr. Hum. Rts. L. J. 161 (2022); Atudiwe P. Atupare, *Reconciling Socioeconomic Rights and*

professional qualification may be structured. It prohibits regulatory regimes that turn education into a system of arbitrary exclusion, untethered from demonstrable necessity. This constraint is reinforced by Article 25(2), which affirms the right of individuals, at their own expense, to establish and maintain private educational institutions at all levels, subject only to conditions prescribed by law.[49] Together, these provisions signal a constitutional preference for regulatory pluralism over monopolistic control in the provision of education.

The constitutional significance of Article 25, therefore, lies not in mandating universal admission to the Bar but in shaping the design logic of legal education. When large numbers of otherwise qualified candidates are systematically denied access to professional training because of institutional bottlenecks, the burden of constitutional justification intensifies.[50] Scarcity alone is not a sufficient answer. Restrictions must be reasonable, proportionate, and grounded in law rather than in administrative convenience. Article 25 thus serves as a structural constraint on institutional design. It disfavors arrangements that manage demand primarily through exclusion at the point of entry rather than through the expansion and diversification of training capacity, coupled with rigorous and transparent exit standards.

C. Administrative Justice and the Discipline of Discretion: Articles 23, 296 and 297(b)

If Article 25 defines the outer boundary of educational opportunity, Articles 23, 296, and 297(b) impose internal discipline on the exercise of regulatory power.[51] Article 23 requires administrative bodies to act fairly, reasonably, and in accordance with law.[52] Article 296 gives this requirement

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Directive Principles with a Fundamental Law of Reason in Ghana and Nigeria, 27 HARV. HUM. RTS. J. 71 (2014); Nana Tawiah Okyir, *Toward a Progressive Realisation of Socio-Economic Rights in Ghana: A Socio-Legal Analysis*, 25 AFR. J. INT'L & COMPAR. L. 91 (2017).

49. Constitution of the Republic of Ghana 1992, Art. 25, s 2 (providing that "every person shall have the right, at his own expense, to establish and maintain a private school or schools at all levels and of such categories and in accordance with such conditions as may be provided by law").

50. The constitutional objection is not that the State may not regulate entry into the legal profession, but that it may not structure educational pathways in ways that convert regulation into systematic exclusion.

51. *See generally* Constitution of the Republic of Ghana 1992, Arts 23, 296(a)–(c) (requiring administrative bodies and officials to act fairly and reasonably; prohibiting arbitrary, capricious, or biased exercises of discretionary power; mandating that non-judicial discretion be governed by published regulations; and affirming the right of persons aggrieved by administrative acts or decisions to seek redress before a court or other tribunal). For case reflections of these constitutional provisions by the Supreme Court of Ghana and the contours of exercising discretionary power, *see* Ablakwa v. Att'y Gen. [2012] GHASC 32, Writ No. J1/4/2009 (Ghana); Afoko v. Att'y Gen. [2019] GHASC 41, Writ No. J1/8/2019 (Ghana); Awuni v. West African Examinations Council [2003–2004] 1 SCGLR 471 (Ghana); Ransford France v. Electoral Comm'n and Att'y Gen. [2012] 1 SCGLR 705, Writ No. J1/19/2012 (Ghana).

52. Constitution of the Republic of Ghana 1992, Art. 23 (serves as the foundational pillar of administrative justice under Ghanaian law). *See also* Akpass v. Ghana Comm. Bank Ltd. [2021] GHASC 80, Civil Appeal No. J4/08/2021 (Ghana) (the Supreme Court emphasized the importance of fairness in the decisions by administrative bodies and officials by stating that:

operational content by prescribing how discretionary power must be structured and applied.[53] Article 297(b) reinforces that regulatory discretion carries a continuing obligation to respond to necessity, not a license to manage pressure through permanent exclusion.[54] Discretion under the Constitution is not free-floating. It must be guided by intelligible criteria, applied consistently, and exercised transparently. Decisions that significantly affect individual opportunity, such as admission, exclusion, or progression within professional training, trigger heightened constitutional scrutiny. In the context of legal education, this has clear institutional implications. A regulatory regime that relies heavily on individualized discretion to ration access to scarce training opportunities is constitutionally fragile unless that discretion is tightly bounded. Where discretion substitutes for institutional design, arbitrariness becomes a structural risk rather than an aberration.

D. Legality, Rulemaking, and Article 11(7)

The constitutional commitment to legality is reinforced by Article 11(7), which governs the making of subsidiary legislation.[55] Where regulation is

> The fairness expected by the framers of the Constitution has been further given a boost in Article 23 where administrative officials and tribunals of administrative bodies have been charged to act fairly. . .Administrative bodies, therefore, exercising discretionary power to determine the fate of workers facing disciplinary hearings, are to make conscious effort to guard against 'illegality, irrationality, and procedural impropriety'. . .

For further discussion, see, e.g., Awuni v. West African Examinations Council [2003-2004] 1 SCGLR 471 (Ghana); Civil & Local Government Staff Ass'n of Ghana v. Att'y Gen. [2017] GHASC 18, Writ No. J1/16/2016 (Ghana); Afrifa v. Ghana Revenue Authority [2022] GHASC 99, Reference No. J6/02/2022 (Ghana); Aboagye v. Ghana Comm. Bank [2001–2002] SCGLR 797, Civil Appeal No. 10/2000 (Ghana); Awuku-Sao v. Ghana Supply Co. Ltd. [2009] SCGLR 710, Civil Appeal No. J4/15/2008 (Ghana); Softtribe Ghana Ltd. v. Auditor-General [2025] GHASC 11, Civil Appeal No. J4/54/2023 (Ghana); Kobea v. Tema Oil Refinery [2003–2004] 2 SCGLR 1033 (Ghana).

53. *See e.g.*, Afoko v. Att'y Gen. [2019] GHASC 41, Writ No. J1/8/2019 (Ghana); Ablakwa v. Attorney-General [2012] GHASC 32, Writ No. J1/4/2009 (Ghana); Agbemava v. Attorney-General [2018] GHASC 52, Consolidated Writ Nos. J1/20/2016, J1/21/2016 & J1/23/2016 (Ghana); Boateng v. Nat'l Media Comm'n [2012] 2 SCGLR 1038, Writ No. J1/1/2012 (Ghana).

54. Constitution of the Republic of Ghana 1992, Art. 297(b) (providing that "where a power is conferred or a duty is imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires"). For a normative reference on the importance of the provision, see Asare v. Att'y Gen. [2017] GHASC 25, Writ No. J1/1/2016 (Ghana); Twum v. Att'y Gen. [2006] SCGLR 732, Writ No. J1/7/2006 (Ghana); Apaloo v. Electoral Comm'n of Ghana [2001] 2 GLR 372, Writ No. 5/2000 (Ghana); Ass'n of Finance Houses v. Bank of Ghana [2021] GHSAC 83, Writ No. J1/04/2021 (Ghana); Raymond Atuguba, The New Constitutional and Administrative Law of Ghana: From the Garden of Eden to 2022, 707-726 (2022).

55. Constitution of the Republic of Ghana 1992, Art. 11(7) (providing that any order, rule, or regulation made under constitutional or statutory authority must be laid before Parliament, published in the Gazette, and take effect only after the expiration of twenty-one sitting days unless annulled by a two-thirds majority of Parliament). For further discussion of the provision, see Faakye v. University of Ghana [2024] GHASC 36, Consolidated Writs Nos. J1/10/2018 & J1/03/2019 (Ghana); Opremreh v. Electoral Comm'n [2011] GHASC 36, Writ No. J1/3/2011 (Ghana); Okane & Others v. Electoral Comm'n of Ghana [2011] GHASC 42, Writ No. J1/2/2011 (Ghana); Osei-Akoto v. Att'y Gen. [2012] GHASC

contemplated through rules, orders, or criteria of general application, those norms must be enacted through lawful rulemaking procedures. Administrative policy or informal practice cannot be a substitute for law. This requirement serves two constitutional functions. First, it ensures democratic accountability through parliamentary oversight. Second, it promotes predictability and transparency by allowing affected persons to know in advance the rules governing access to professional qualifications. In legal education, repeated reliance on administrative directives, ad hoc criteria, and evolving admission practices has strained this constitutional settlement. The problem is not merely procedural. When exclusionary mechanisms are introduced without lawful rulemaking, discretion is exercised outside the channels designed to legitimate it.

E. Legitimate Expectations and Structural Fairness

A further constitutional dimension, implicit yet powerful, is the protection of legitimate expectations. When the State establishes a structured pathway to professional qualification, individuals who invest time, effort, and resources to meet prescribed criteria acquire a legitimate expectation that the pathway will not be arbitrarily obstructed. In Ghana's legal education system, obtaining an LLB from an approved institution has historically served as the gateway to professional training. Although that gateway has never been unconditional, its systematic obstruction through post hoc administrative barriers raises constitutional concerns. Legitimate expectations do not freeze policy, but they require that change be lawful, proportionate, and procedurally fair. This principle reinforces a broader design argument: institutional arrangements that rely on shifting discretionary barriers rather than stable, rule-based pathways are constitutionally suspect.

F. Constitutional Silence and Institutional Responsibility

It is important to emphasize what the Constitution does not do. It does not mandate a monopoly model of professional training, it does not require decentralization, and it does not prescribe a particular regulatory body.[56] This silence, however, is not an invitation to unconstrained discretion. Rather, constitutional silence places responsibility squarely on the political branches to design institutions that are compliant by construction rather than corrected piecemeal through litigation. The Supreme Court's jurisprudence reflects this understanding: it enforces constitutional discipline at the level of discretion and legality, while declining to specify institutional form.[57]

45, Writ No. J1/16/2012 (Ghana); Akosa v. Att'y Gen. [2012] GHASC 29, Writ No. J1/4/2009 (Ghana).

56. *See*, *e.g.*, Constitution of the Republic of Ghana 1992, Arts. 25 (confers the right on all persons to, among other things, have equal educational opportunities. It also confers the right on persons to establish and maintain school(s) at all levels at their own expense in accordance with conditions prescribed by law).

57. *See, e.g.*, Asare v. Att'y Gen. [2017] GHASC 25, Writ No. J1/1/2016 (Ghana).

G. The Framework Applied

Taken together, these constitutional principles explain the recurring pattern in Ghana's legal education disputes. Administrative bodies stretch discretion to manage scarcity; courts intervene to restrain excess; regulators adjust tactics; and the underlying structure remains intact. The Constitution supplies the constraints, not the architecture. This is not a failure of constitutional law. It is a warning about institutional design. The next section examines how these constraints have been applied and deliberately limited by the courts, showing why judicial intervention has functioned as boundary enforcement rather than system redesign.

IV. Judicial Intervention and Its Limits: Courts as Constraint-Setters, Not System Designers

Judicial engagement with Ghana's legal education crisis has been principled, consistent, and ultimately constrained. Across multiple challenges, the Supreme Court has confronted administrative overreach, discretionary gatekeeping, and claims of monopoly power in professional legal education. Yet in each instance, the Court has declined to redesign the institutional architecture that produces these disputes. This jurisprudence reflects not timidity or indifference, but a coherent constitutional posture: courts enforce limits on power; they do not construct regulatory systems. Understanding this posture is essential to appreciating both the achievements and the limits of litigation as a reform strategy.

A. *Asare v Attorney-General* (2017): Administrative Fiat and Constitutional Boundaries

The 2017 *Asare* decision arose from the General Legal Council's attempt to impose entrance examinations and interviews as conditions for admission to the Professional Law Course through administrative directives rather than through duly enacted legislative instruments.[58] The central issue before the Court was not whether screening mechanisms were desirable as a matter of policy, but whether they were constitutionally lawful as a matter of governance.[59] The Court framed the dispute squarely within the Constitution's framework for the exercise of discretionary power.[60] Relying on Articles 11(7), 32, 296, and 297, it emphasized that when Parliament has prescribed regulation through legislative instruments, administrative bodies may not circumvent this authority by resorting to informal policy, circulars, or institutional practice.[61]

58. *Id.* (invalidating the General Legal Council's administrative alteration of admission rules for lack of legislative authorization and for violating constitutional requirements of legality and fairness).
59. *Id.* at 8–11.
60. *Id.* at 13–15.
61. *Id.* at 18–19.

Discretion, the Court stressed, is not synonymous with unbounded choice; it is authority constrained by legality, fairness, and procedural regularity.[62] Of particular significance was the Court's treatment of Regulation 3(b) of L.I. 1296, which empowered the Council to exclude applicants deemed "unsuitable" for admission.[63] The Court did not deny that suitability assessments may play a legitimate role in professional education.[64] Instead, it insisted that such discretion must be guided by intelligible standards, applied consistently, and accompanied by procedures that respect due process and legitimate expectations.[65] The Court held that vague criteria administered through opaque processes invite arbitrariness and violate Article 296's prohibition on capricious administrative action.[66]

The constitutional difficulty in *Asare* (2017), however, did not lie in the declaration of unconstitutionality but in the remedial posture the Court adopted afterward. Although the Court found that the entrance examination and interview regime violated the Constitution, it nevertheless relied on the doctrine of prospective overruling to issue consequential orders that allowed the regulator to continue applying the unconstitutional regime to current and future cohorts while directing the Council to regularize its position within a future time frame.[67] This deployment of prospective overruling was both doctrinally and constitutionally anomalous.[68] Prospective overruling is traditionally invoked when a court overrules a prior judicial precedent or invalidates a statute whose prior application created settled reliance interests.[69] The decision in *Asare* (2017) involved neither of them. No statute was struck down, and no precedent was overturned. Instead, the Court found that an administrative body acted ultra vires existing law and in violation of settled constitutional requirements.[70] Allowing that unlawful conduct to persist under the banner of prospective overruling inverted the supremacy clause and rendered the declaration of unconstitutionality largely inconsequential.[71]

More fundamentally, the Constitution itself addresses temporal effect. Article 1(2) declares that any law or act inconsistent with the Constitution is

62. *Id.* at 19–20.
63. *Id.* at 8–10.
64. *Id.* at 21.
65. *Id.* at 15–16.
66. *Id.* at 21–22.
67. *Id.*
68. Asare, *supra* note 8, at 463.
69. For further discussion on the doctrine of prospective overruling, see Thomas E. Fairchild, *Limitation of New Judge-Made Law to Prospective Effect Only: "Prospective Overruling" or Sunbursting*, 51 Marq. L. Rev. 254 (1968); Beryl Harold Levy, *Realist Jurisprudence and Prospective Overruling*, 109 U. Pa. L. Rev. 1 (1960); John O. McGinnis & Michael Rappaport, *An Originalist Approach to Prospective Overruling*, 99 Notre Dame L. Rev. 425 (2023); Roger J. Traynor, *Quo Vadis, Prospective Overruling: A Question of Judicial Responsibility*, 28 Hastings L.J. 533 (1977); Alan R. Vogeler, *Prospective Overruling of Constitutional Construction*, 28 Ky. L.J. 351 (1940); Wolfgang Friedmann, *Limits of Judicial Lawmaking and Prospective Overruling*, 29 Mod. L. Rev. 593 (1966); Andrew G. L. Nicol, *Prospective Overruling: A New Device for English Courts*, 39 Mod. L. Rev. 542 (1976); M. D. A. Freeman, *Standards of Adjudication, Judicial Law-Making and Prospective Overruling*, 26 Current Legal Probs. 166 (1973).
70. Asare v. Att'y Gen. [2017] GHASC 25, Writ No. J1/1/2016 (Ghana).
71. Asare, *supra* note 8, at 463.

void to the extent of the inconsistency.[72] In that context, prospective overruling cannot validate unconstitutional administrative action without undermining the constitutional text itself. The Court's consequential orders thus decoupled declaration from remedy, violating the principle that where there is a constitutional wrong, there must be a meaningful constitutional remedy. The difficulty lies not in the Court's recognition of institutional limits but in the remedial accommodation of unconstitutional conduct that those limits were meant to restrain. Equally important was what the Court did not do. The Supreme Court of Ghana did not prescribe how admissions should be structured going forward, nor did it mandate a specific institutional arrangement for professional legal education. Its restraint in institutional design was appropriate. Its remedial indulgence toward unconstitutional conduct was not. The result was a jurisprudence that policed the boundary of legality in principle while tolerating its breach in practice.

B. *Asare v. Attorney-General* (2020): Monopoly Claims and Jurisdictional Evasion

The *Asare* (2020) litigation presented a more structurally ambitious challenge. The plaintiff did not ask the Court to reinterpret Article 25(2). Instead, the plaintiff invoked the Court's enforcement jurisdiction, alleging that the Ghana School of Law's effective monopoly on professional legal education constituted an ongoing violation of Article 25(2)'s guarantee of the right to establish and maintain private educational institutions, subject only to conditions provided by law.[73] The claim was therefore not interpretive but remedial. The constitutional meaning of Article 25(2) was not in dispute. The question was whether the State, through regulatory design and administrative practice, had created a monopoly inconsistent with that provision.[74] The Court declined to reach the merits.[75] Framing the case as implicating its exclusive interpretive jurisdiction, the Court held that because Article 25(2) was clear on its face and the alleged violations turned on statutory implementation and administrative practice, the matter fell outside its original jurisdiction.[76]

This reasoning was analytically fragile. Article 2 of the Constitution expressly empowers the Supreme Court to enforce the Constitution against acts or omissions that contravene its provisions.[77] When a plaintiff alleges that an existing regulatory arrangement produces unconstitutional effects, the claim sounds in enforcement, not interpretation. By recasting an enforcement claim as an interpretive deficiency, the Court avoided addressing the substantive constitutional question before it. That avoidance mattered. The plaintiff's monopoly argument went to the heart of Ghana's legal education architecture: whether a single institution may constitutionally control access to professional

72. Constitution of the Republic of Ghana 1992, Art. 1(2) ("This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void.").
73. Asare v. Att'y Gen. [2020] GHASC 50, Writ No. J1/01/2020 (Ghana), at 1–2.
74. *Id.* at 3–5.
75. *Id.* at 9–10.
76. *Id.* at 6–10.
77. Constitution of the Republic of Ghana, 1992, Art 2.

qualification in a way that forecloses private participation, notwithstanding Article 25(2)'s express endorsement of private educational provision.

By declining jurisdiction, the Court left unresolved whether the monopoly provision in professional legal education is constitutionally permissible or merely historically contingent. Importantly, the Court's refusal to decide the case cannot plausibly be read as a substantive endorsement of the status quo. The Court neither affirmed the constitutionality of the monopoly provision nor rejected the normative force of Article 25(2). Instead, it signaled institutional reluctance to confront the structural consequences of entrenched regulatory arrangements through constitutional litigation alone. The result is a jurisprudential gap. *Asare* (2017) constrained how discretion may be exercised within the existing system. *Asare* (2020) declined to interrogate whether the system itself is constitutionally defensible. Together, the cases illustrate both the power and the limits of judicial review: courts may invalidate unlawful practices yet remain hesitant to confront structural monopolies that transform discretion into exclusion.

C. Prince Ganaku and the Persistence of Gatekeeping

Subsequent litigation has continued to contest the legality of exclusionary practices at the margins of professional legal education. A prominent example is *Prince Ganaku & Others v. Attorney General & General Legal Council*,[78] a High Court decision arising from the administration of the 2019 entrance examinations to the Ghana School of Law.[79] The applicants were LLB graduates who had sat the entrance examination but were required, as a condition of application, to sign an undertaking to "accept without question" the General Legal Council's decision with respect to the published results.[80] They challenged not the existence of an entrance examination per se, but the Council's refusal to provide procedures for script viewing, remarking, or review, and the attempt to immunize examination outcomes from scrutiny through a blanket undertaking.[81] The applicants framed their claim squarely in constitutional terms, alleging violations of administrative justice and due process under Articles 23, 33, and 296 of the Constitution.[82]

The Court rejected preliminary objections based on jurisdiction and mootness and held that administrative justice under Article 23 constitutes a fundamental human right enforceable through judicial review.[83] It emphasized

78. Ganaku v. Att'y Gen. [2020] (unreported), Suit No. HR/008/2020 (Ghana) (reaffirming judicial restraint in disputes arising from the GLC's gatekeeping role and declining to restructure professional legal education through adjudication). *But see* the Court of Appeal decision in Attorney General v. Ganaku [2023] GHACA 37, Suit No. H1/114/2022 (Ghana).

79. The factual matrix of the case is restated in Att'y Gen. v. Ganaku [2023] GHACA 37, Suit No. H1/114/2022 (Ghana), at 2–5.

80. *Id.*

81. *Id.*

82. *Id.*

83. *See generally* Ganaku v. Att'y Gen. [2020] (unreported), Suit No. HR/008/2020 (Ghana); *see also id.* at 18–20. In the latter the Court of Appeal noted:

> It is obvious that the application before the trial court was not a judicial review application under Order 55 of the High Court (Civil Procedure) Rules, C.I. 47.

that even in academic and professional settings, administrative bodies exercising statutory power must act fairly, reasonably, and in accordance with law.[84] The Court held that the undertaking imposed on candidates was arbitrary and unlawful, that the lack of transparent review or remarking procedures violated administrative justice, and that the General Legal Council could not, by policy or contract, insulate its decisions from constitutional scrutiny.[85]

At the same time, the Court's intervention was carefully bounded. It granted relief focused on procedural fairness, including orders invalidating the undertaking and requiring the publication of review procedures, but declined to issue broader structural remedies or to question the institutional configuration of professional legal education.[86] The judgment thus reinforced a familiar pattern: courts are willing to police the fairness and legality of discrete gatekeeping practices, yet remain reluctant to examine the deeper institutional arrangements that produce recurrent exclusion. What *Ganaku* illustrates, therefore, is not doctrinal inconsistency but structural persistence. If a single body controls access to professional training, administers the selection process, and determines qualifications, disputes over exclusion will persist. Judicial review provides important constitutional safeguards at the margins, but it does not resolve the underlying design problem that repeatedly converts discretion into exclusion.

D. Synthesis: Judicial Restraint as a Rational Response to Bad Design

Read together, Ghana's legal education cases present a coherent judicial posture. The Supreme Court has been vigilant in enforcing constitutional limits on administrative discretion. It has invalidated unlawful practices, insisted on procedural fairness, and guarded against arbitrariness. At the same time, it has consistently resisted invitations to redesign the institutional architecture of legal education. This posture is not an abdication of constitutional responsibility. It reflects an accurate assessment of institutional competence. Courts are well-suited to determine whether power has been exercised lawfully; they are

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> Indeed, the record before us will bear out, that the issue was taken before the trial judge as to whether judicial review was not the rightful procedure to invoke its jurisdiction. The trial judge determined, correctly in our view, that the matter could proceed under Order 67 provisions of the procedure Rules. It is a principle of judicial review that its remedies are generally discretionary.

84. *See* Ganaku v. Att'y Gen. [2020] (unreported), Suit No. HR/008/2020 (Ghana). It is noteworthy that Ghanaian courts have examined the constitutional boundaries of fairness and reasonableness in the exercise of discretionary powers by administrative bodies and officials. *See* Awuni v. West African Examinations Council [2003–2004] 1 SCGLR 471 (Ghana) (Kpegah J., remarking: "[t]he phrase 'to act fairly and reasonably' in my opinion necessarily imports a duty to observe the common law maxim of audi auteram patem and other principles of natural justice, which is very much part of our jurisprudence and are implicit in the constitutional provisions in Article 23."); *see also id* (Twum, JSC, stating):

> . . .to act fairly is to make over to the party affected the evidence available to him. Where the party affected has the right to make representations, this involves three things: (i) he must be informed of the case against him; (ii) so as to tailor his submissions thereto; and (iii) to refute some of the allegation, (if that is the case), correct mistakes or explain away otherwise damaging evidence.

85. *See* Ganaku v. Att'y Gen. [2020] (unreported), Suit No. HR/008/2020 (Ghana).

86. *See id.*

ill-suited to designing sustainable regulatory systems in domains that require balancing access, quality, resources, and professional standards over time.

The consequence, however, is a reform gap. Judicial intervention constrains what regulators may not do but does not specify what they must do. In the absence of legislative redesign and functional separation, regulators respond by recalibrating discretion rather than relinquishing conflicted roles. The result is a cycle of exclusion, challenge, and partial correction, precisely the pattern that has characterized Ghana's legal education crisis for more than a decade. The failure of litigation to "solve" this crisis is therefore not a failure of constitutional law. It is a reminder that constitutional compliance requires institutional design, not merely judicial correction. Alternatively stated, the insistence on constitutional compliance through judicial correction goes hand in hand with robust institutional design. The next section turns to the regulatory failure produced by the conflation of functions, explaining why meaningful reform cannot be achieved without structural separation.

V. Regulatory Failure as Separation-of-Powers Failure

The persistence of Ghana's legal education crisis cannot be explained by judicial restraint, administrative incompetence, or pedagogical weakness. It is best understood as a failure of institutional design that collapses distinct constitutional functions into a single regulatory body. The resulting concentration of authority creates conflicts of interest, distorts incentives, and forces discretionary power to perform tasks that only structural separation can accomplish. In this sense, regulatory failure in legal education is not merely a policy problem; it is a separation-of-powers failure within the administrative state.

A. Conflation of Functions and Institutional Self-Dealing

At the core of Ghana's legal education system lies a conflation of three constitutionally distinct functions: regulation, provision, and qualification.[87] The General Legal Council sets standards for professional training, determines eligibility for admission, provides training through the Ghana School of Law, and oversees examinations and certification for entry into the profession.[88] Each function is defensible in isolation. Their combination within a single institutional framework is not. When the same body writes the rules, provides the training, and controls the gateway to qualification, regulatory judgment is inevitably entangled with institutional self-interest. Decisions about admission, curriculum, and assessment acquire distributive consequences,[89] yet

87. *See, e.g.*, Legal Profession Act 1960 (Act 32) § 13 (Ghana).

88. *Id.* §§ 1–3, 13–15 (Ghana) (establishing the General Legal Council and vesting it with responsibility for arranging legal education, regulating admission, conducting examinations, and issuing qualifying certificates); *see also*, Legal Profession (Professional and Post-Call Law Course) Regulations 2018 (L.I. 2355) (Ghana) (governing admission, training, examinations, and qualification for entry into the legal profession).

89. *See*, *e.g.*, Thaddeus Nkum Manu, Lydia Apori Nkansah & Jennifer Djanbea Asare, *Overreliance on Summation Assessment in Ghana Law Schools: Shifting Regime Towards a*

they are made within a structure that lacks internal separation or external counterweights.

The risks inherent in this conflation of functions are amplified by the composition of the General Legal Council. The Council is constituted in a way that concentrates regulatory authority within the professional and judicial elite most directly implicated in the consequences of regulatory scarcity.[90] Senior members of the judiciary participate in regulatory decisions that are later subject to judicial review, while representation from universities and other affected stakeholders is limited or historically contingent.[91] This institutional arrangement blurs the constitutional boundary between regulation and adjudication and undermines the appearance and reality of decisional independence. From a separation-of-powers perspective, the problem is not personal bias but structural role confusion. When the same institutional actors participate in rulemaking, administration, and the adjudication of disputes arising from those rules, discretion is exercised within a closed professional loop.

The Constitution does not require proof of impropriety to condemn such arrangements. It presumes that concentrated power, even when exercised in good faith, is prone to distortion and therefore demands structural safeguards that separate functions, diversify representation, and insulate adjudication from prior regulatory involvement. This is not an allegation of bad faith. It is a design critique. Even well-intentioned actors operating within a conflated structure will predictably manage pressure in ways that protect institutional convenience, reputational control, and administrative manageability. The Constitution does not assume perfect actors; it assumes imperfect institutions and therefore demands structural safeguards.

B. Opaque Discretion, Scarcity, and Legitimacy Collapse

The most visible manifestation of this design failure is exclusionary gatekeeping amid scarcity. As the number of LLB graduates has increased and professional training capacity has remained centralized, discretion has become the primary means of rationing access.[92] Entrance examinations, interviews, quotas, and suitability assessments function less as pedagogical tools than as scarcity-management devices. This reliance on discretion has predictable consequences. Admission criteria become opaque, standards shift from year to

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Balanced Inclusion of Teacher and Externally Administered Standardised Assessments to Measure Effective Legal Knowledge and Skills, 59 Law. Tchr. 64 (2025).

90. *See* Legal Profession Act 1960 (Act 32) §§ 1–3 (establishing the composition of the General Legal Council, including representation from the judiciary and the practicing Bar, with limited institutional representation from universities or independent public members). *See also* Asare, *supra* note 1, at 6–11 (arguing that this composition concentrates regulatory, pedagogical, and gatekeeping authority within the practicing profession and undermines institutional independence).

91. *See Council Members*, Gen. Legal Council (last visited Jan. 7, 2026), https://www.glc.gov.gh/about-us/council-members/ [https://perma.cc/6WQD-3B5U] (noting the Chief Justice of the Republic of Ghana, as the chairperson of the Council, and two Justices of the Supreme Court).

92. Asare, *supra* note 1, at 3–6 (documenting recurring changes in admission requirements, examination regimes, and program duration, alongside the absence of transparent criteria, consistent standards, or meaningful review mechanisms).

year, and decisions are often made without explanation or effective review.[93] Candidates denied access are left without clear reasons, while regulators struggle to articulate defensible benchmarks that distinguish competence from convenience.

Over time, legitimacy erodes not because standards are enforced, but because exclusion appears unmoored from transparent justification. These dynamics place sustained pressure on constitutional norms of administrative fairness and non-arbitrariness. Articles 23 and 296 require discretion to be bounded, reasoned, and reviewable.[94] Yet a system that relies on discretion to address structural scarcity is constitutionally fragile by design. Discretion is being asked to do work that the institutional architecture has refused to do.

C. Why Capacity and Pedagogy Debates Miss the Point

Public debate often frames Ghana's legal education crisis in terms of capacity constraints or pedagogical rigor. Too many students, it is said, overwhelm limited resources; stricter screening is therefore necessary to preserve quality.[95] This framing mistakes a symptom for a cause. Capacity constraints are not natural facts; they are institutional choices. A system that centralizes professional training while expanding access to academic legal education will inevitably create scarcity. Responding to that scarcity through exclusionary discretion does not preserve standards; it substitutes rationing for design.

Likewise, pedagogical arguments cannot justify institutional arrangements that structurally depend on arbitrariness to function. Quality control is not inherently incompatible with expanded access.[96] What is incompatible with constitutional governance is a system that enforces quality primarily by restricting entry into training rather than by regulating training itself through accreditation, curriculum standards, and independent assessment. The persistent return to capacity and pedagogy debates obscures the real issue: institutional architecture has failed to keep pace with demand.[97]

D. Gatekeeping Capture and Professional Sovereignty Without Accountability

The cumulative effect of conflated functions, opaque discretion, and scarcity management is a form of gatekeeping capture. Control over entry into the profession becomes concentrated in a single institutional actor, insulated from competitive pressure, meaningful oversight, or structural accountability. Professional sovereignty is exercised without corresponding responsibility for access or justification. This condition is constitutionally problematic. The Constitution tolerates regulation of professions in the public interest, but it

93. *Id.* at 3–6.
94. Constitution of the Republic of Ghana, 1992, Arts. 23, 296.
95. *Id.* at 1–2 (summarizing public and official explanations of the legal education crisis in terms of capacity constraints and quality control).
96. *See id.* at 7–11.
97. *See id.* at 2.

does not license unaccountable control over educational opportunity.[98] Where institutional design systematically produces exclusion, opacity, and resistance to review, the issue is not merely administrative excess but constitutional misalignment.

The pattern observed in litigation underscores this point. Courts repeatedly constrain unlawful discretion but decline to redesign institutions.[99] Regulators respond by adjusting procedures rather than relinquishing conflicted roles. The structure persists, and disputes recur. This cycle is the hallmark of a separation-of-powers failure: functions that ought to be distributed across institutions are concentrated into one, and constitutional limits are enforced only episodically through litigation.

E. Regulatory Failure as a Constitutional Diagnosis

Regulatory failure in Ghana's legal education system is therefore best understood as a constitutional diagnosis. The problem is not that discretion is exercised poorly, but that it is asked to compensate for an institutional design that violates basic principles of functional separation. The Constitution imposes constraints on power,[100] but it cannot by itself supply architecture. When institutional design ignores those constraints, discretion becomes a pressure point rather than a solution. Meaningful reform must therefore operate at the structural level, not the procedural level. So long as regulation, provision, and qualification remain fused, no amount of judicial policing or administrative adjustment will produce durable legitimacy. Structural separation is not a policy preference; it is a constitutional necessity.

The next section evaluates whether the Legal Education Reform Bill, 2025 meaningfully confronts this separation-of-powers failure or merely reconfigures it. In doing so, it asks whether the proposed reforms finally align Ghana's legal education system with constitutional requirements of fairness, accountability, and institutional coherence.

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98. Constitution of the Republic of Ghana, 1992, Art 109 (which calls for Parliamentary oversight and regulation over professional, trade or business organisations. Pursuant to this constitutional mandate, the Professional Bodies Registration Act, 1973 (Act 143), requires that any professional body established in Ghana be registered in accordance with its provisions. Parliamentary oversight through statutes is intended to ensure that professional regulation remains within the bounds or contours of the Constitution. That notwithstanding, the enjoyment of fundamental rights is generally subject to public interest. See, e.g., Constitution of the Republic of Ghana, 1992, Art 12(2)).

99. *See* Awuni v. West African Examinations Council [2003–2004] 1 SCGLR 471 (Ghana); Asare v. Att'y Gen. [2017] GHASC 25, Writ No. J1/1/2016 (Ghana) (highlighting the willingness of Ghanaian courts to constrain the exercise of discretion, but at the time, courts refrain from redesigning institutions). One discernible reason for Ghanaian courts' repeated refusal to redesign institutions is that such matters are often conceived as governance and structural reforms reserved for the legislature and the executive branches of government. *See generally* Kwadwo B. Mensah, *Legal Control of Discretionary Powers in Ghana: Lessons from English Administrative Law Theory*, 14(2) Afrika Focus 119–140 (1998).

100. Constitution of the Republic of Ghana 1992, Art. 23, 296 & 297 (serves as constitutional guardrails against unbridled exercise of administrative power and discretion under Ghanaian law).

VI. Legislative Response Assessed: The Legal Education Reform Bill, 2025

The Legal Education Reform Bill, 2025 represents the most ambitious legislative response to Ghana's legal education crisis since the enactment of Act 32.[101] Unlike prior regulatory adjustments, which operated largely through administrative discretion, the Bill explicitly acknowledges and describes the existing institutional and regulatory architecture for legal education, training, and the legal profession as unsatisfactory and largely problematic.[102] Its central promise is structural: the Bill replaces the single-provider model of professional legal education with a regulated, multi-institutional framework in which accredited universities deliver professional training under nationally prescribed standards and are supervised by a newly constituted statutory regulator.[103]

Indeed, the Legal Education Reform Bill represents an official policy acknowledgment of regulatory and institutional challenges in legal education and training, after decades of caution and warnings from academics and experts. The Bill acknowledges the following about the current model:

> [T]he model of professional legal education which Act 32, through the Ghana School of Law, presents today has, demonstrably, moved out of tune with the realities of modern Ghana, especially the demands of the market for legal services, both in respect of quantity and quality.[104]

Notwithstanding the foregoing recognition of the existing challenges, whether the Legal Education Reform Bill fulfills the promise it outlines depends on how fully it addresses the constitutional design failures identified in the preceding sections.

A. Reform Objectives and the Bill's Diagnostic Premise

At a high level, the Bill reflects a significant shift in diagnosis. Rather than attributing the crisis to declining standards or excessive demand, it recognizes that centralized provision and exclusionary gatekeeping cannot indefinitely

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101. Legal Education Reform Bill 2025, § 1 (Ghana) (proposing the establishment of the Council for Legal Education and Training, shifting professional training to accredited universities, and creating a National Bar Examination).

102. *See* Legal Education Reform Bill 2025 (Oct. 24, 2025) (Ghana) (acknowledging the deficiencies of the current legal framework by providing that):

> Act 32 integrates the legal framework on the education and training of persons who wish to become lawyers with the legal framework for the practice of law. However, a perusal of Act 32 shows that it deals more comprehensively with matters pertaining to the regulation of the legal profession than with matters of legal education. This is problematic in at least two ways. Firstly, the Act 32 regime leaves professional legal education and training largely unregulated. Secondly, the regime conflates the regulation of professional legal education with the regulation of professional law practice and vests the two frameworks in one body of persons, namely the General Legal Council, though the General Legal Council may delegate immediate administration and supervision of legal education to the Board of Legal Education.

103. *Id.* §§ 1–3, 18–34 (Ghana).

104. *See* Legal Education Reform Bill 2025 (Oct. 24, 2025) (Ghana).

absorb the growing number of law graduates seeking professional qualification.[105] The Bill therefore proposes reconfiguring the legal education ecosystem along three principal dimensions. First, it separates the regulation of legal education from that of legal practice by establishing a new Council for Legal Education and Training.[106] Second, it decentralizes professional legal training by authorizing accredited universities to offer a Law Practice Training Course.[107] Third, it introduces a National Bar Examination as the decisive gateway to entry into the legal profession.[108] Taken together, these reforms signal an important normative shift. Professional competence is to be ensured not by restricting access to training but by regulating the quality of training and the outcomes of assessments. In this respect, the Bill directly responds to the constitutional critique developed in Sections II through IV of this Article.

B. Structural Gains: Separation, Accreditation, and Decentralization

The Bill's most consequential contribution is its effort to separate incompatible functions. By removing exclusive control over professional training from a single provider and allowing multiple institutions to deliver training under a common regulatory framework, the Bill begins dismantling the gatekeeper state. Decentralization addresses the artificial scarcity that has long driven exclusionary practices. Universities with existing faculty, infrastructure, and experience in legal education are well-positioned to assume professional training responsibilities, subject to accreditation.[109] In principle, this model allows expansion without diluting standards, provided that accreditation criteria are transparent, rigorous, and consistently applied.

The introduction of a National Bar Examination further reinforces this structural logic. By externalizing the decisive quality-control function, the Bill reduces incentives for providers to ration access at the point of entry. Standards are enforced at the point of qualification rather than admission, aligning legal education with prevailing models in other regulated professions. From a constitutional perspective, these changes move the system closer to compliance with Articles 23 and 296 of the Constitution of Ghana. Discretion is redirected from individualized exclusion toward structured evaluation of institutions and outcomes.

C. Persisting Risks: Discretion Repackaged

Despite these advances, the Bill does not entirely escape the gravitational pull of centralized discretion. Several features raise concerns that the prior

105. *Id.* (describing Ghana School of Law as sole institution providing professional legal education to aspiring lawyers). *See also id.* ("stating that with the growing number of eligible students aspiring to be lawyers, the Ghana School of Law appears to have 'significantly diminished capacity, in terms of infrastructure, human resources, finance and administration to admit and train all the students who qualify for admission to the Qualifying Certificate programme in accordance with Act 32.'")

106. Legal Education Reform Bill 2025, §§ 1–3 (Ghana).

107. *Id.* §§ 19–34 (Ghana).

108. *Id.* §§ 62–70 (Ghana).

109. *Id.* §§ 19–34 (Ghana).

regime's pathologies could reappear in new administrative forms. First, the accreditation regime vests substantial discretionary power in the new Council.[110] While evaluative judgment is unavoidable when assessing institutional capacity and curriculum quality, the Bill leaves key standards to subsidiary legislation and administrative rulemaking.[111] Without clearly articulated statutory criteria and robust procedural guardrails, accreditation risks becoming a new site of opacity, inconsistency, or institutional capture. Second, to the extent executive influence remains embedded in the governance of legal education, questions of independence and accountability persist. Ministerial involvement in appointments and oversight is not per se unconstitutional,[112] but where discretion is broad and review mechanisms are weak, executive proximity heightens constitutional risk. Third, the National Bar Examination, though normatively attractive as an external quality-control mechanism, shares the same conceptual limitation as the bifurcated model.[113] Its emphasis on "legal practice" presumes a sharp distinction between doctrinal competence and practical readiness that is neither pedagogically sound nor professionally necessary. A licensing examination that assesses mastery of core legal subjects and legal reasoning would better align with the constitutional objective of competence-based qualification while avoiding the risk that the Bar Examination itself becomes a new site of opaque exclusion.

Moreover, it raises familiar concerns about transparency, grading methodology, moderation, and reviewability. Ghana's recent experience with high-stakes entrance and qualifying examinations requires caution. Without clear standards, external moderation, and accessible appeal mechanisms, the bar examination could reproduce exclusionary effects at a different stage of the process. These risks do not negate the Bill's reformist intent. They underscore the difficulty of escaping discretionary governance without deliberate architectural discipline.

D. Reform or Reconfiguration?

The central question is whether the Legal Education Reform Bill, 2025 constitutes genuine reform or mere institutional reconfiguration. The answer is necessarily mixed. Structurally, the Bill breaks with the monopoly provision and acknowledges the constitutional necessity of separating regulation from training

110. Legal Education Reform Bill 2025 § 3 (Ghana) (the functions of the proposed Council are broad and wide-ranging, including accrediting universities to provide professional legal education and training in Ghana, setting standards for accreditation, supervising the accredited universities to ensure continued compliance with the standards of accreditation, making provision for the course of study provided by accredited universities, and performing any other function incidental to the achievement of the object of the Council, among others).

111. *Id.*

112. *Id.* § 4 (Ghana). The Legal Education Reform Bill continues to confer the overarching responsibility for legal education and training on the Attorney-General and the Minister of Justice. Accordingly, the Attorney-General is a member of the Council and has the power to nominate one person to be appointed to the Council.

113. *Id.* §§ 62–70 (Ghana) (the Bill effectively replaces the Ghana School of Law with accredited universities, as holders of LLB degrees or other approved first degrees in law will be required to apply to those accredited universities for admission to the Law Practice Training Course before qualifying to sit for the National Bar Examination. The Bill accordingly maintains the heavily criticized and elusive two-tier Gower model).

delivery. Normatively, it reframes quality control as a function of accreditation and independent assessment rather than exclusionary screening. These are decisive steps forward. At the same time, the Bill risks overcorrecting by extending professional regulation deep into the internal governance of university legal education.[114] Provisions governing curriculum design, grading standards, academic administration, and student progression intrude on domains traditionally regulated by policies of the academic boards of university statutes.[115]

While coordination between professional regulators and universities is constitutionally permissible,[116] replacing centralized regulatory control with institutional autonomy risks creating new forms of conflict and resistance. The challenge is not merely to relocate professional training but to recalibrate the boundary between professional regulation and academic self-governance. These structural design choices matter because, once universities are authorized to provide legally recognized training, Article 25 constrains institutional arrangements that systematically frustrate progression through exclusionary or incoherent qualification pathways.

More crucially, the Bill leaves intact the conceptual distinction between "academic" and "professional" legal education that underpins Ghana's legal education crisis. By relocating professional training from the Ghana School of Law to accredited universities without rethinking the substance and sequencing of legal education itself, the Bill risks entrenching the very bifurcation it seeks to ameliorate. Decentralizing delivery is not the same as integrating pedagogy. Without confronting why core subjects such as procedure, evidence, and advocacy are artificially deferred to a post-LLB stage, the reform may reproduce old dysfunctions in a new institutional setting.

The reform may repeat the old sin of diluting the core subjects that define Bachelor of Laws qualifications. Indeed, the Memorandum to the Bill provides no justification for why certain courses essential to the normative and practical essence of Bachelor of Laws studies should be deferred to post-LLB studies.[117] The Bill illustrates the limits of reform that stop short of fully bounding

114. *See id.* § 3 (Ghana) (which, among other things, gives the proposed new Council supervisory powers over accredited universities in terms of courses of study, evaluation, among others). For a detailed evaluation of the statutes of public university institutions accredited to deliver Bachelor of Laws programmes, see, e.g., University of Ghana Act 2010 (Act 806); University of Cape Coast Act 1992 (Act 278) (Ghana); University for Development Studies Act 1992 (Act 279) (Ghana); University of Professional Studies Act 2012 (Act 850) (Ghana); Ghana Institute of Management and Public Administration Act 2004 (Act 676).

115. *See, e.g.,* University of Ghana Act, 2010 (Act 806)(Ghana), §§ 17–18 (establishing the Academic Board of the University whose functions, among other things, include formulating and carrying out academic policy, devising and regulating course instructions, regulating, and conducting examinations).

116. Constitution of the Republic of Ghana, 1992, Art. 21(1)(b) (guarantees the freedom of thought, conscience, and belief, including academic freedom, is fundamental for the smooth operation of universities. Additionally, through constitutional oversight, professional regulators established by Acts of Parliament, such as the Ghana Tertiary Education Commission (GTEC), ensure the creation of accountability and quality assurance frameworks in universities in Ghana. See, the Education Regulatory Bodies Act, 2020 (Act 1023)).

117. *See* Legal Education Reform Bill 2025 (Oct. 24, 2025) (Ghana) (Clause 68 outlines the courses to be covered in the National Bar examination, including civil procedure, criminal procedure, law of evidence, but does not indicate whether such courses form part of the Bachelor of Laws programme or part of the Practical Legal Training programme).

discretion. By leaving critical implementation elements to administrative judgment, it risks reproducing a system in which access depends less on a clear legal entitlement than on regulatory favor. If discretion is not disciplined by clear standards, reasons, and review, it will again be asked to manage scarcity, this time through accreditation and examination rather than admission.

The Legal Education Reform Bill should therefore be understood as a necessary but incomplete response. It opens the door to a constitutionally coherent system of legal education, but it does not guarantee one. That guarantee depends on whether implementation respects the separation-of-powers principles identified in this Article: functional separation, transparent standards, and judicially manageable discretion. The next section situates Ghana's reform effort within comparative and normative perspectives on professional education, demonstrating that the design choices confronting Ghana are neither unique nor intractable and that workable constitutional models already exist.

VII. Comparative and Normative Perspectives on Professional Education

Ghana's legal education crisis is often treated as an exceptional phenomenon, attributed to local capacity constraints, professional conservatism, or institutional inertia.[118] Comparative experience across professions and jurisdictions suggests otherwise. Systems of professional education routinely face the same core challenge: expanding access while maintaining standards. The decisive variable is not culture, history, or professional temperament, but institutional design.

A. Access and Standards as Complementary, Not Competing Values

Debates over legal education reform often assume a trade-off between access and quality. Expanded access, it is argued, inevitably dilutes standards; rigorous standards, conversely, require restricted entry.[119] Comparative experience decisively rejects this dichotomy. Across regulated professions, including medicine, accounting, engineering, and nursing, jurisdictions have responded to rising demand not by restricting access to training but by separating training provision from qualification standards. Universities and accredited institutions deliver education; independent or semi-independent bodies set standards and administer qualifying examinations.[120] The result is not indiscriminate credentialing but

118. Asare, *supra* note 1, at 3–6.

119. *Id.*

120. *See, e.g.*, Institute of Chartered Accountants Ghana Act 2020 (Act 1058) § 3 (mandating the Institute to certify persons who can qualify as auditors, regulate the training of accounting trainees, and conduct qualifying examinations for membership in the Institute); Chartered Institute of Human Resource Management, Ghana Act 2020 (Act 1020) § 3 (highlighting the functions of the Institute, including administering professional examinations for the registration of human resource management practitioners); The Chartered Institute of Taxation Act 2016 (Act 916) § 3 (Ghana) (conferring authority on the Institute to conduct qualifying examination for membership of the Institute, prescribe and approve courses of study for the examinations); Chartered Institute of Bankers Act 2019 (Act 991) § 3 (Ghana) (requiring the Institute to conduct professional examinations, register bankers, and award certificates of qualification); Ghana Institution of Engineers Decree 1969

mass opportunity, disciplined by rigorous exit points. The key insight is structural. Standards are best enforced at the point of certification, not admission. Screening aspiring professionals before training manages scarcity; screening after training assesses competence. Ghana's historic reliance on pre-entry exclusion thus reflects institutional bottlenecks rather than a normative necessity.

B. Decentralization with Centralized Standards

Comparative systems converge on a model of decentralized training with centralized oversight. Diversity in pedagogy and institutional culture is tolerated, indeed encouraged, because standards are externalized. In many common-law jurisdictions, professional education typically operates through plural providers subject to accreditation, while qualifications are determined by standardized examinations or supervised practice requirements.[121] No single institution controls admission, training, or certification. Accreditation criteria are published, measurable, and subject to review; examination processes are standardized, moderated, and legally contestable. The lesson for Ghana is not to import foreign institutions wholesale but to internalize the design logic that underpins them: plural pathways, transparent accreditation, and independent assessment. Where these elements are present, access expands without eroding professional integrity.

C. Discretion, Accountability, and Reviewability

Comparative experience also illuminates the proper role of discretion in professional regulation. Discretion is unavoidable when evaluating institutional capacity, curriculum adequacy, and professional competence. The

(NLCD 404) § 4 (Ghana) (requiring passing a qualifying examination prescribed by the Council and completing practical training for membership).

121. *See* Julian Webb et al., Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales 134 (2013) (noting that elements of legal education are delivered by "a range of semi-autonomous providers"); Andrew Boon & Julian Webb, *Legal Education and Training in England and Wales: Back to the Future?*, 58 J. Legal Educ. 79, 80–82 (2008); *see also American Bar Association, Standards and Rules of Procedure for Approval of Law Schools*, https://www.americanbar.org/groups/legal_education/accreditation/standards/standards-rules/?utm_medium=sem&utm_source=google&utm_campaign=mk26adsa&promo=mk26gaccleb&gad_source=1&gad_campaignid=8167138951&gbraid=0AAAAAClWeMTa4mFAYm_GBL-1NPea8zybd&gclid=CjwKCAjwtIfPBhAzEiwAv9RTJjd2g3kl-MG3tjc1cBVHI3fJrWC9-Nzp8fwPu8L5J3tXNCf2nuZNGRoC2JYQAvD_BwE [https://perma.cc/5ZLG-PVMU](last visited Apr. 17, 2026) (accrediting multiple law schools while leaving licensing to bar authorities); Nat'l Conf. of Bar Examiners, *Uniform Bar Examination*, https://thebarexaminer.ncbex.org/2024-statistics/the-uniform-bar-examination-ube/ [https://perma.cc/3CMF-P55Q] (last visited Apr. 17, 2026) (standardizing assessment for admission to the bar); Fed. of Law Societies of Canada, *National Requirement*, [https://perma.cc/3JTP-9B93] (last visited Apr. 17, 2026) (harmonizing competence standards across provincial licensing bodies while training is delivered by universities and other providers); NSW Gov't, *Legal profession Uniform Admission Rules 2015*, https://legislation.nsw.gov.au/view/html/inforce/current/sl-2015-0240 [https://perma.cc/WZ4T-ND3R] (last visited Apr. 17, 2026) (establishing uniform admission standards alongside multiple approved academic and practical training providers in Australia).

constitutional problem arises not from discretion itself but from its exercise without clear standards, procedural safeguards, or effective review.

Well-functioning systems discipline discretion in three ways. First, statutory or regulatory criteria guide decision-making. Second, affected parties are entitled to reasons, hearings, and review. Third, courts can assess whether discretion has been exercised consistently with the law and purpose without substituting their judgment for that of regulators. Ghana's experience with legal education illustrates the inverse. Discretion has been deployed to manage scarcity, insulated by opacity, and repeatedly subjected to constitutional challenge. Comparative practice reinforces the principle that discretion must follow design, not substitute for it.

D. Professional Education as a Constitutional Question

Comparative analysis also underscores a deeper point often overlooked in domestic debates: professional education is not merely a sectoral or technical matter. It is a constitutional matter. Decisions about who may train, qualify, and practice implicate equality of opportunity, educational rights, administrative justice, and the rule of law.[122] Courts in jurisdictions with strong constitutional or administrative law traditions have been careful not to impose professional standards.[123] At the same time, they insist on legality, fairness, and rationality in the processes for applying those standards.[124] Ghana's Supreme Court has adopted this posture precisely, intervening to restrain arbitrary discretion while declining to redesign institutions.[125] Comparative experience confirms both the wisdom of that restraint and the necessity of legislative action to complete the constitutional settlement.

E. Normative Design Principles for Constitutional Compliance

Synthesizing the comparative analysis developed in the preceding sections yields a set of normative principles directly applicable to Ghana's reform trajectory:[126]

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122. Asare v. Att'y Gen. [2017] GHASC 25, Writ No. J1/1/2016 (Ghana).

123. *See, e.g.,* Lewis v. Casey, 518 U.S. 343, 349 (where the United States Supreme Court noted: ". . .it is not the role of the courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution"). Also quoted in Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 Yale L.J., 1839, 1843 (2015).

124. North Carolina Board of Dental Examiners v. FTC, 574 U.S. 494 (2015) (where the U.S. Supreme Court emphasized that "state action antitrust immunity does not apply to a state board that places a restraint on an occupation when a majority of its decision-makers, elected by others in the occupation, are active participants) in the occupation and the state does not actively supervise the board nor has the board acted pursuant to a clearly articulated and affirmatively expressed state policy.")

125. *See* Asare v. Att'y Gen. [2020] GHASC 50, Writ No. J1/01/2020 (Ghana); Ganaku v. Attorney General [2020] (unreported), Suit No. HR/008/2020 (Ghana); Attorney General v. Ganaku [2023] GHACA 37, Suit No. H1/114/2022 (Ghana).

126. *See* Julian Webb et al., *supra* note 121 (discussing the role of standardized outcomes, assessment, and regulatory coordination in systems involving multiple training providers), *passim*; Boon & Webb, *supra* note 121, *passim* (describing the structural separation of academic, vocational, and supervised practice stages across multiple institutions under professional regulation).

1. Functional Separation: No single body should control admission, training, and qualification.[127]
2. Plural Pathways: Multiple institutions should be permitted to provide professional training under uniform standards.[128]
3. Externalized Quality Control: Competence should be assessed through standardized, independently administered examinations or supervised practice requirements.[129]
4. Transparent Accreditation: Entry into the training market should be governed by clear, published, and reviewable criteria.[130]
5. Judicially Manageable Discretion: Regulatory judgment must be bounded by law and subject to meaningful review.[131]

These principles do not mandate deregulation or require abandonment of professional rigor, they articulate the minimum conditions under which professional education can be governed in a manner consistent with constitutional norms of fairness, accountability, and equality of opportunity. The next section builds on these principles to propose a constitutional blueprint for legal education reform in Ghana that completes the unfinished institutional settlement identified in the preceding analysis.

VIII. A Constitutional Blueprint for Legal Education Reform

If Ghana's legal education crisis stems from the system's structure, lasting reform will require redesigning that structure rather than relying on a series of ad hoc fixes. Courts can restrain unlawful discretion, and legislatures can recalibrate regulatory authority, but neither intervention will succeed unless the underlying structure of legal education aligns with constitutional norms. This section advances a constitutional blueprint for reform grounded in functional separation, transparent governance, and judicially manageable discretion. The blueprint does not prescribe a single institutional form. Instead, it articulates design principles that any constitutionally compliant system of legal education must meet. Its ambition is modest yet decisive: to ensure that access, standards, and accountability are governed by structure rather than discretion.

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127. *See id.*(emphasizing a regulatory architecture in which multiple actors, including education providers, regulators, and professional bodies, perform distinct roles within a coordinated system rather than a single centralized authority).

128. *See id.*(advocating flexible and multiple pathways to qualification and a diverse training ecosystem); *see also id.* (discussing the development of alternative and nonlinear routes into the profession)

129. *See id.*(emphasizing standardized learning outcomes, assessment mechanisms, and the need for competence to be demonstrably attained through externally defined standards); *see also* Nat'l Conf. of Bar Examiners, *Uniform Bar Examination*, https://www.ncbex.org/exams/ube [https://perma.cc/VDW7-5YG8](last visited Apr. 7, 2026)(standardizing assessment for admission to the bar).

130. *See* Julian Webb et al., *supra* note 121 (emphasizing the importance of clear, consistent, and accountable regulatory frameworks governing education and training providers).

131. *See id.* (emphasizing that regulatory decision-making should be guided by articulated standards, transparency, and accountability mechanisms); *see also* Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 K.B. 223 (articulating limits on administrative discretion and the principle of reasonableness in judicial review).

A. Separation of Regulatory, Educational, and Examining Functions

The most fundamental design requirement is functional separation. Ghana's legal education regime has faltered because a single institutional complex has exercised authority over admissions, training, examinations, and certification.[132] This concentration of power is neither constitutionally required nor institutionally sound.[133] A constitutionally coherent system must allocate three functions to distinct institutional actors:

1. Regulation and Accreditation – a body responsible for setting minimum standards, accrediting training institutions, and monitoring compliance;
2. Education and Training – universities and other accredited institutions are responsible for delivering professional instruction;
3. Examination and Certification – an independent mechanism responsible for assessing competence and determining eligibility for admission to practice.

Separation does not imply fragmentation or deregulation. It implies role clarity. Each function is exercised under the law, subject to defined purposes, and insulated from conflicts of interest. No institution should both provide training and control access to that training through discretionary gatekeeping.

B. Accreditation as the Primary Regulatory Instrument

In a system governed by separation, accreditation—rather than admission screening—becomes the principal regulatory lever. When accreditation standards are rigorous, transparent, and enforced, the need for discretionary exclusion at the point of entry diminishes substantially. A constitutionally defensible accreditation regime should exhibit four features: first, standards must be publicly articulated and tied to pedagogical and professional objectives, specifying requirements for faculty, curriculum, infrastructure, assessment, and governance. Second, accreditation decisions must be reasoned, with written explanations sufficient to permit understanding and response. Third, accreditation must be periodic and conditional, ensuring continuing compliance rather than one-time approval. Fourth, adverse decisions must be reviewable through administrative appeal or judicial oversight. This model aligns directly with Articles 23 and 296 of the Constitution.[134] It channels discretion into structured evaluation rather than ad hoc judgment, thereby reducing arbitrariness and enhancing accountability.

C. National Examination with Constitutional Safeguards

A National Bar Examination can play a central role in maintaining professional standards, but only if it is designed with constitutional safeguards. High-stakes examinations are powerful regulatory tools, yet they are prone to abuse if insulated from transparency and review. A constitutionally compliant

132. *See* Asare, *supra* note 1, at 3–6.
133. *See* Asare v. Att'y Gen. [2020] GHASC 50, Writ No. J1/01/2020 (Ghana).
134. Constitution of the Republic of Ghana, 1992, Art. 23, 296.

examination system requires clarity in syllabus design, grading methodology, and standard setting. It requires moderation and benchmarking to ensure consistency across cohorts. It must also provide meaningful avenues for review, whether through remarking, appeals, or independent oversight.[135] Most importantly, the examination must serve as a quality-control mechanism rather than a covert capacity-management tool. When failure rates are systematically disconnected from demonstrable competence deficits, constitutional concerns inevitably arise. Standards must measure ability, not absorb scarcity.

D. Judicially Manageable Standards and the Role of Courts

A recurring theme in Ghana's legal education jurisprudence is institutional humility. The Supreme Court has resisted invitations to design systems while insisting on legality, fairness, and rationality. A well-designed legal education regime should respect that posture by making regulatory decisions judicially manageable. This requires statutes and regulations to articulate purposes, criteria, and limits with sufficient clarity to permit review. Courts need not second-guess academic judgments, but they must be able to assess whether discretion has been exercised consistently with the law, reason, and constitutional principle. Vague standards and opaque processes undermine this function and invite either excessive deference or intrusive intervention. Judicial review is not a substitute for design, it is a backstop. A constitutional blueprint must therefore aim to reduce the frequency and intensity of litigation by embedding legality and fairness into institutional design.

E. Education Rights and Reasonableness

Finally, reform must be attentive to the constitutional dimension of education rights. Article 25 does not guarantee admission to the legal profession. Its core protection, particularly under Article 25(2), is the right of individuals, at their own expense, to establish and maintain private educational institutions in accordance with the law.[136] A system that concentrates professional legal education in a single institution, thereby excluding large numbers of otherwise qualified graduates due to capacity constraints, strains this constitutional commitment to institutional pluralism and reasonable regulation. This concern is reinforced by Article 25(1)(c), which requires that higher education be made equally accessible to all on the basis of capacity through every appropriate means.[137] By contrast, a framework that permits multiple providers of professional legal training, subject to rigorous and uniform exit standards, better aligns with the Constitution: access is broadened, professional integrity is preserved, and discretion is constrained through institutional design rather than exercised defensively.

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135. *See* Asare v. Att'y Gen. [2020] GHASC 50, Writ No. J1/01/2020 (Ghana); Ganaku v. Attorney General [2020] (unreported), Suit No. HR/008/2020 (Ghana); Attorney General v. Ganaku [2023] GHACA 37, Suit No. H1/114/2022 (Ghana).

136. Constitution of the Republic of Ghana 1992, Art. 25(2).

137. Constitution of the Republic of Ghana 1992, Art. 25(1)(c).

F. Completing the Institutional Settlement

The blueprint advanced here is neither radical nor novel. It reflects design choices that have become standard across regulated professions and constitutional democracies. What has been missing in Ghana is not knowledge of alternatives but the completion of an unfinished institutional settlement. Legal education reform has too often been reactive, driven by litigation, public pressure, or administrative convenience. A constitutional blueprint offers a different path: deliberate institutional design grounded in constitutional principle. Only by embracing such a design can Ghana move beyond recurring crises toward a stable, legitimate, and constitutionally compliant system of legal education.

Conclusion: From Emergency Governance to Constitutional Normalcy

For more than a decade, Ghana's legal education system has oscillated among exclusion, litigation, and reform without resolution. Each cycle has produced new procedures, discretionary mechanisms, and constitutional challenges, yet the underlying structure has remained intact. This Article has argued that this persistence is neither accidental nor inevitable. It is the predictable consequence of an institutional design that conflates regulation, provision, and gatekeeping of professional legal education within a single framework. Judicial intervention has played an important but necessarily limited role. The Supreme Court has repeatedly reaffirmed foundational constitutional principles: discretionary power must be exercised lawfully, fairly, and non-arbitrarily; administrative fiat cannot substitute for legislation; and access to education must be governed by reason rather than convenience. At the same time, the Court has appropriately resisted invitations to redesign legal education through adjudication. Courts constrain; they do not construct. The limits of litigation in this domain reflect institutional competence rather than constitutional failure.

Legislative reform has begun to acknowledge this reality. The Legal Education Reform Bill, 2025 represents a decisive recognition that monopoly provision and centralized gatekeeping are no longer defensible. The Bill succeeds to the extent that it replaces discretion with structure; it fails to the extent that it merely relocates discretion to new institutional sites. Moreover, legislation alone cannot guarantee constitutional compliance. Without clear functional separation, transparent standards, and judicially manageable discretion, reform risks reproducing old pathologies in new administrative forms. The comparative experience of professional education underscores a simple but often obscured truth: access and standards are not competing values. They are complementary outcomes of sound institutional design. Systems that expand training opportunities while enforcing rigorous, independent qualification standards do not dilute professionalism; they sustain it. Ghana's Constitution neither requires nor tolerates a regime in which scarcity is managed through opaque discretion and exclusionary practices.

The constitutional blueprint advanced in this Article offers a path forward. By separating regulatory authority from training provision, anchoring quality control in accreditation and independent examination, and limiting discretion through law and review, Ghana can align legal education with constitutional norms of fairness, accountability, and equality of opportunity. Such reform would move legal education beyond emergency governance toward institutional normalcy. Ultimately, the stakes extend beyond the legal profession. Legal education shapes access to justice, the composition of the Bar, and public confidence in the rule of law. A system that arbitrarily constricts entry undermines not only professional legitimacy but also constitutional governance itself. Reforming legal education is therefore not merely a sectoral concern. It is a constitutional imperative. A legal profession produced through opaque exclusion cannot plausibly sustain public confidence in the rule of law it is meant to serve.