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LEGAL EDUCATION *

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GROWTH OF LAW SCHOOLS

The outstanding fact in legal education in this country during the past twenty-five years is the shift from the law office to the law school as the avenue of approach to the bar. This is shown both by the increase in the number of students in the law schools and by the increase in the number of schools themselves. In 1891 there were 96 schools with a total attendance of 12,516 students. In 1916 there are, according to the reports of the United States Bureau of Education, 124 schools, with an aggregate attendance of 22,993 students. The following is a summary of the statistics for the year ended June 30, 1916:

Law Schools, 1915-16.

Number of law schools.....	124
Instructors.....	1,531
Students (men, 22,306; women, 687).....	22,993
Students with college degrees.....	4,451
Graduated in 1916.....	4,323
Volumes in libraries.....	1,164,687
Value of grounds, buildings, equipment, etc.....	\$5,593,740
Amount of permanent endowments or productive funds.....	\$2,091,592
Total receipts for the year.....	\$1,500,669

This increase in the number of institutions teaching law and in the number of students preparing for the bar in this way makes on the whole for improvement, but the ointment is not without its flies. The change has been brought about by a number of causes, chief of which is that the average law office has become a much less effective place than it formerly was for the purpose of instruction. It has been pointed out repeatedly that the successful lawyer of to-day is too busy to give anything like adequate time to the instruction of young men in his office. A second cause, resulting of course somewhat from the first, is that the American Bar Association and many State associations have recommended, and even urged that young men going to the bar should seek their instruction in law schools.

*This report forms Chapter XI of the Reports of the United States Commissioner of Education for the year ending June 30, 1916.

Unfortunately some lawyers, and some persons who are not lawyers, have seen in this tendency and in this organized professional support of the law schools an opportunity to make money out of the functions of legal instruction. Thus it is that there are a large number of proprietary schools organized on a commercial basis, advertising extensively, frequently without any regard to the dictates of good taste or of ordinary honesty. It is only fair to add that there are some proprietary schools conducted by conscientious men and with as much adherence to the requirements of a sound educational policy as is possible within the limitations under which they necessarily work. Many high-minded lawyers give of their time and energy to the work of instruction in such schools, not infrequently for wholly inadequate compensation, and in some instances without any compensation at all. They are led to do this largely out of a desire to be helpful to young men seeking the profession to which they themselves have devoted their lives. Sometimes such men give really adequate instruction, but the instances of this are necessarily growing increasingly rare, for the work of legal instruction has become more and more a distinct profession, with an increasingly growing appreciation by practicing lawyers of the demands made upon the time, energy, and devotion of the really scientific law teacher. Men engaged in the active practice of law, especially if they are able and successful, have neither the time nor the energy left after the day's work in the practice of their profession to do the work absolutely necessary for developing the highest type of scholarship or for acquiring the technique of law teaching in its modern development. It is important, of course, that law teaching shall be in close contact with specific and practical needs of the profession; but, on the other hand, if law is to grow, if it is to become liberalized, and if it is to meet the wants of the changing community, it is extremely important that the function of legal education should be in the hands of men who are able to view law in something of a scientific and a philosophical spirit and with a consciousness of its evolutionary character.

For these reasons and others more obvious the proprietary city school can seldom give to its students a sense of the importance of making the law conform to changing conditions of society in performing its prime function of accomplishing justice. Despite the brilliant things that have been said about the difference between law and justice, and conceding all that any rational person would claim as to the necessity of certainty and such permanence as may be possible in the rules of law, there are nevertheless overwhelming reasons why the endeavor should be to make law coincide with justice to the fullest possible extent.

MULTIPLICATION OF SCHOOLS

It is with these thoughts in mind that one cannot but deplore the growth of mushroom schools in the commercial centers. California, for example, has at least two excellent schools, amply equipped in every way to train all the lawyers the State can possibly need, except those who for one reason or another wish to go outside for their legal education. Nevertheless, according to the Carnegie Foundation study, there

were in 1915 seven other schools in California, and the past year has witnessed the addition of still another to the list, its faculty being made up of men actively engaged in practice at the bar. The same situation in multiplication of schools, subject to such limitations that they can not possibly do the best work, is to be found in New York, Philadelphia, Chicago, and other large centers.

Frank speaking on this subject is unfortunate in that it is almost certain to give offense to high-minded, conscientious lawyers who are giving their time to instruction in such schools from motives altogether creditable to themselves. But the future of legal education and indirectly of the bar and of the great work which it is its duty to perform for the State make it a plain duty, however unpleasant, to insist upon a conscientious and open-eyed consideration of the situation.

Men like to speak of lawyers as officers of the court, and such they are in some sense and to a large extent, and in just that sense and to that extent they are public officers; and irrespective of their official status they are of course the most powerful single agency in making, declaring and enforcing the principles of private law. Upon their intelligence, their knowledge of legal principle, and their real understanding of the function of law depends in no small degree the very future of the law itself. Furthermore, as judges, as legislators, and as administrators they affect powerfully the administration of law and the accomplishing of justice in the State. This being the case, it should be frankly recognized that the practice of law is not a matter of private right, but a privilege, and a privilege, moreover, which should be controlled by the public in the interest of the public alone. These considerations require that the matter of legal education should be looked at in the same light and controlled in the same way and for the same reasons. These purposes are so nearly self-evident, and they concern community interests so important, that it is amazing that their force should not be recognized by the public in an insistence that legal education and admission to the bar should be regarded as wholly without the scope of mere private right or enterprise. A man should no more be permitted to practice law merely because it would be for him a gainful occupation, or because for other reasons he wishes to, than a man should be permitted to become a judge or legislator for the same reasons. With almost as much truth it may be said that the function of legal education should not be confided to persons or institutions, merely because the exercise of the function may be profitable or agreeable to such persons or institutions. The state, in this matter, should insist not only upon the best available methods and instruments of legal education, and should not tolerate the suggestion that it be satisfied with instrumentalities and methods which may perhaps suffice to give a man a smattering of the law or even to enable him to pass examinations for the bar. This last assertion is made with confidence, because with the means at hand and with the time and other limitations under which boards of law examiners must act under present conditions, the bar examination, however valuable, cannot answer as the sole means of determining a candidate's qualifications for practicing law.

IMPROVEMENTS IN REGULATIONS.

It is gratifying to note important advances made in public opinion regarding these matters, and in some cases the actual effectuation of that improved public opinion. In New York, Illinois, Michigan, Kansas and other States steady improvement in the regulations for admission to the bar have been made during the past three or four years, and even a cursory examination of the questions asked upon examination for admission will show how these questions are improving in many States.

In Ohio the matter of admission to the bar has been in the hands of the supreme court, which acts through a board of examiners that has been steadily improving the type of its questions and the method of marking answers. The Ohio State bar association at its annual meeting in July unanimously adopted a resolution recommending that four years of law study instead of the prevailing three be required of all candidates for admission to the bar, except those who are college graduates. In Michigan a law passed in 1913 has this year for the first time become fully operative. This law has repealed the old statute exempting the graduates of law schools of the State from the State examination. All candidates for admission to the bar are now required to take these examinations, which are given by a competent and conscientious board of five examiners.

POLICIES AND METHODS

The past two years have witnessed no radical changes in the law school curriculum or in policies or methods. The case method of instruction has been fully vindicated and is now the principal method in a large majority of the law schools. But no adherent of the case method, however devoted to it he may be, believes that it contains the last word on the subject of legal education. Changes in general education, shifting industrial, commercial, and social conditions and the gradual rise of new types of law business will necessarily bring about modifications in present methods of legal instruction. There are now so many good law schools in the country, and there is among them such generous rivalry to attain high efficiency and usefulness, that there need be no fear that modifications will not come rapidly enough. Indeed, there may be some danger that experiments and changes will be tried too freely and without sufficient consideration of the fundamental functions involved. There can be little doubt that the law schools of the country have reached a measure of efficiency beyond that of many other institutions of university or college rank. This is due in large measure to forces and conditions for which college teachers are not to blame and for which the law-school teachers can claim no credit. In the first place, the function of the law school is narrower and simpler, and however important it may be, the field of law-school endeavor is much smaller than that of the college. It is very much easier, too, for the law faculty to get serious, hard work from its students than for the college professor to obtain the same result from college boys. The law student is older; more-

over, the law student feels that he is forging the very instruments with which he is to make his living, whereas the college student is altogether too apt to think that his work is lacking in practical value.

CURRICULUM PROBLEMS

One thing the law school has done—it has “stuck to its last.” It has recognized that it had a definite and important function to perform. It has insisted that that function be performed only in the best possible way, all conditions being taken into account. It has felt that to wander from the main highway of legal instruction into the by-paths of matters of relative insignificance or only collateral to law would be to impair the efficiency of its work. It has, moreover, insisted in the main that only such subjects should be taught as were susceptible of treatment with sound pedagogical methods.

For these reasons the law school of to-day excludes from its curriculum subjects which it may be well for the lawyer to know something of, but which are not immediately and necessarily constituent elements of the law. It has not felt that it could or should teach sociology, political economy, or philosophy. And it has pretty steadily refused to include its courses any which, because of the character of the available material for teaching, could not be the basis of intensive preparation by the student and then of free discussion between instructor and class in the classroom. The law-school teacher who discusses with his class problems upon which they have spent hours of time before the class meeting, who knows what they are thinking, who sees their difficulties, who becomes acquainted with them while they are becoming acquainted with him, who reads and marks all of his examination papers, is by these very facts compelled to keep fresh upon the subject matter of the course, to adapt his instruction in all respects to the needs and capacities of his students, and with each passing year to become more familiar not only with the subject but with the best method of handling it and with inspiring his students to real thinking.

But the law school has maintained its sound position despite temptations to depart from it—temptations that are growing in number and in intensity of appeal. The insistent demand to “liberalize the law” is not unnaturally accompanied by efforts to introduce liberal and cultural elements, so called, into law-school instruction. Herein lies a danger which needs to be sedulously guarded against. As the case stand to-day the law student in a three-year course can cover only from perhaps 60 to 80 per cent of those subjects that are universally regarded as of importance to the general practitioner and as susceptible of the best educational use. To include in the undergraduate curriculum, then, philosophical, economic, or social subjects would be to exclude an equivalent amount of pure legal study. This certainly cannot be done to any considerable extent without seriously restricting the student's study of general law subjects in which he ought to have careful training, and without impairing his subsequent efficiency as a lawyer. It is for this, among other reasons, that the law school ought to, and the better schools actually do, insist that as much of

these and other liberal subjects as possible shall have been pursued by the student in school or college. It is this, among other reasons, which makes a complete college course highly desirable, if not necessary, for any student who hopes to become a broadminded, successful practitioner at the bar under modern conditions. The three-year period is all too short for the law school to do for the student what should be done in preparing him for the actual practice of his profession. It would seem, then, that the law school must recognize that there should be a division of functions, and that to the college and the graduate school should be confided the work of infusing the spirit and the content of a liberal culture into the prospective lawyer's mind.

There is doubtless a place in the undergraduate curriculum in law for the elements of such subjects as Roman law, jurisprudence, international law, and the theory of legislation; but it is doubtful if the average student should be allowed to do much even in these fields as an undergraduate in the law school.

What can be done and what ought to be done is for the law faculty to become so saturated with the principles of jurisprudence, the philosophy of law, and the economic and social content of law that it will, in imparting instruction in strictly legal subjects, give to the student an enlightened view of the principles of the great subject which he is to practice, and will send him out with a forward, progressive spirit, with an understanding of the underlying philosophic problems involved in any legal system. A few students—those with broad, general education and with minds capable of grasping philosophical conceptions—should then be influenced to continue their studies in graduate schools in order that there may be a constant supply of men qualified in mind, spirit, and knowledge to become real jurists, the leaders in legal thought and legal instruction of the future.

It may be objected that if, in courses upon particular subjects, anything but the rule of law is taught there will be a blurring of the student's knowledge and understanding of the legal principle. It hardly seems that this is at all a necessary result. For example, if in torts the topics of liability of the employer for injury received by the employee in the course of his employment, or of contributory negligence, or in constitutional law the matter of "due process," are discussed in the classroom solely with reference to the law as it has already been declared, a great majority of students are likely to emerge with a purely legalistic conception of law. On the other hand, if, when these topics are reached and the law as it is has been carefully discussed and criticized, it is pointed out how the fellow-servant doctrine and that of contributory negligence, or an early nineteenth-century view of due process of law, no longer meet the requirements of a growing and highly complex society, it is submitted that the student will have an even clearer understanding of the law as it is, and that he will go to the bar with a forward and progressive spirit which will contribute its mite to intelligent reform. Similarly throughout the curriculum; if the faculty is itself saturated with jurisprudence and is reading and reflecting upon the philosophy of law, it will be able to interest the students in the nature of law and in the light

which the study of jurisprudence and justice philosophy throw upon any given system of positive law. Anything like exhaustive or comprehensive study of jurisprudence, juristic philosophy, or even comparative studies of law ought to be reserved, generally speaking, for graduate work.

The faculties are still groping for some suitable material and some proper method with which to give instruction in the elements of law, as suggested by Prof. Josef Redlich in his report to the Carnegie Foundation upon the case method of instruction. By this is not meant the old-fashioned course in "elementary law." This problem was discussed at the 1915 meeting of the Association of American Law Schools held in Chicago, and two interesting papers upon the recommendation of Prof. Redlich, one by Dean Stone, of Columbia, and one by Dean Woodward, then of Leland Stanford, were read. It may fairly be said that while unquestionably a study of the real elements of law in a scientific sense would be valuable, yet, as the Anglo-American law has never yet been stated in "elements" in the sense in which Prof. Redlich used the term, it is impossible to teach it in that way. Nevertheless some interesting efforts to meet what is undoubtedly to some extent a defect in legal education are receiving consideration. Courses of one kind or another in the elements or principles of law are given at California, Chicago, Leland Stanford, and Northwestern. Courses which are in some degree comparative studies of law are offered at California, Leland Stanford, and Northwestern in the undergraduate curricula, and at Harvard and the University of Michigan in the graduate courses. Special and more narrowly limited comparative studies, as, for example, upon commercial law, procedure and legislation, are offered in one or more of the schools already named.

Other interesting developments of the past year or two in law-school curricula would include the course in criminal law, criminology, and penology offered at the University of California in the summer session of 1916, and the advanced courses in procedure based upon studies of the reformed procedure of England and several of the States as offered at Harvard and the University of Michigan.