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Legal Education

Past, Present, Future

By E. BLYTHE STASON



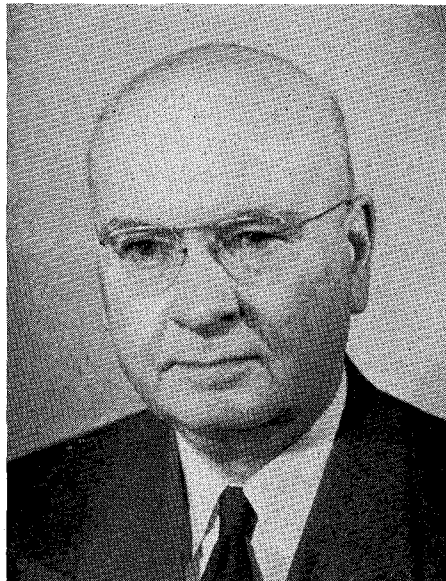
FOR this Law School Centennial issue of the Journal, I am undertaking to offer, first, a retrospective view of legal education of the past generation, and, second, a speculative preview of the years that lie ahead. This is a task of no slight challenge, for legal education is a truly complex activity in a rapidly changing world. To present an evaluation of the past as well as a prediction for the future within the compass of a short article necessarily involves both brevity and careful selection of the features of the subject to be examined. Moreover, since I am principally acquainted with the University of Michigan Law School, my observations must necessarily be somewhat localized in nature.

Over the doorway of the State Street entrance to the Lawyers Club of the University of Michigan is placed a rather meaningful inscription:

"The character of the legal profession depends upon the character of the law schools. The character of the law schools forecasts the future of America."

This is no grandiose boast, for in a very real sense members of the legal profession are responsible for the development and welfare of very large seg-

ments of the body politic—governmental, diplomatic, legislative, industrial, commercial, as well as educational, and sometimes including even the scientific



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and technological fields. The 200,000 lawyers in the nation wield large influence and accordingly must assume serious responsibilities.

LAWYER'S INTELLECT

What is the nature of the intellectual equipment required to fit these lawyers for their professional activities? Views may differ somewhat, but my experience leads me to list four principal features. They are:

(1) The lawyer must acquire familiarity with a large number of rules, principles, and standards of law. A large amount of the *corpus juris* must either be available at his fingertips or, alternatively, he must be sufficiently well acquainted with the subject matter so that he can swiftly and accurately explore the authorities in the library—the available treatises, encyclopedias, cases, and other primary and secondary sources, to come up with the answers to the legal questions that are constantly encountered in practice.

(2) The lawyer must possess an ability to reason effectively. He must be facile at inductive reasoning, deductive reasoning, and analogical reasoning. Above all, he must be skillful in the analysis of legal problems and their possible solutions. He must “think like a lawyer.”

(3) The lawyer must develop certain highly professional skills which he is called upon to use constantly in his practice. He must be competent at writing briefs, drafting documents, pleading cases, at advocacy at the bar and the council table, in preparing legislation, ordinances, corporate bylaws, etc. He must be articulate both orally and in writing.

(4) And perhaps the highest art of all is that which I have elsewhere called *legal statesmanship*. The lawyer must be well aware of the social, economic, and political impact of legal doctrine, and he must be prepared to contribute as a community leader to the development of the law as a means of social control. Thus he becomes in a measure an architect of a better world—and this is a truly heavy responsibility resting on the profession.

These, then, reduced to the simplest terms, are the basic essentials of the

lawyer's intellectual equipment—these his law school years must help him to acquire, although in a very real sense the educational process is only begun in law school and must be continued throughout a lifetime.

LEGAL EDUCATION IMPROVES

We may now ask ourselves what has legal education been doing, especially during the more recent years, to make certain that its graduates acquire these attributes during their three years of study of law. Those of us who were graduated more than a generation gone by will insist that we received good professional training even then, but nevertheless we must concede that some strikingly effective improvements have been made during the last generation, and especially during the post World War II years. What are they?

(1) As we all know, heavy reliance has been placed by legal educators on the so-called “case system,” conceived by Professor Langdell at Harvard three quarters of a century ago, and now used in almost all of the law schools in this country. Yet the efficacy of this system as the sole means of imparting legal education has in recent years been seriously questioned. It is time consuming in character, and only a limited number of skills are developed by it. Accordingly, legal educators have searched for alternatives, or at least for supplementary devices, and these have been forthcoming. In many schools “problems” are currently being used whenever the subject matter permits, and to an ever-increasing extent, especially in small seminars, use is being made of independent research, the drafting of documents, pleadings and statutes, and the preparation of papers—all in supplementation of the rather uniform and occasionally uninspiring diet of judicial decisions served up in the earlier years. The result has been favorable. Student interest has improved and, particularly, a larger area of subject matter has been covered. Moreover, the students have acquired a larger variety of the essential skills of the lawyer. The “case system”

is still an important tool of legal education, but it no longer enjoys a complete monopoly of the field.

(2) Fully as significant as improvements in teaching method has been the evolution of the substantive content of legal education, taking into account the changes that have been emerging in the practice of law. Relative newcomers include taxation, labor law, legislation, problems of international trade, administrative law, and, more recently, such innovations as air law and atomic energy law. These have introduced many new concepts into the classrooms, not to mention the new facets that have been introduced as a result of current developments in such relatively conventional subjects as torts, property, and constitutional law. Some of the familiar course names of an older generation have disappeared, although the significant portions of the subject matter have ordinarily been absorbed into other courses. Thus we have witnessed the demise of separate courses in damages, public utility law, equity jurisprudence, common law pleading, and agency. With only three years available, legal educators have been forced to make some hard choices, and as a result, the evolutionary process has gradually changed the appearance of the law school catalogue of courses. Sometimes this has resulted in adverse criticism from older generations of law graduates.

(3) Among the more notable changes of recent years, credit can be claimed for a truly new dimension in legal education developed very largely, although not entirely, since World War II, and partly resulting from some of the end results of that conflict. I refer to education for legal statesmanship. By this I mean a generous supplementation of the skills of "client caretaking" with an awareness of the social, economic and political impact of legal principle. After all, law is a means of social control as well as a device to effectuate individual rights, and the law schools, have, to an ever-increasing extent in recent years, endeavored to bring home to their students consciousness of their obligation

and opportunity in this regard. Courses in labor law, administrative law, land utilization and, very especially, in international law, comparative law, and related matters have placed marked emphasis upon the obligation of the lawyer to be a constructive citizen as well as a careful guardian of his client's interests. Rapidly changing contours of the body politic have given rise to a wealth of opportunity for members of the bar to exert a worthy influence in the formation of policy at all levels of government—local, state, national, and international. Legal education has increasingly recognized its obligation in this regard. Classroom and seminar materials are being selected not only to educate good craftsmen of the law, but also to create effective legal statesmen.

(4) Another truly important post-war development in legal education in most law schools, and certainly at Michigan, has been the great upsurge of faculty interest in legal research. Law faculties have become thoroughly conscious of their obligations and opportunities in the field of productive scholarship and constructive activity on the frontiers of the law. This interest, second only to the doing of effective teaching, is virtually another new dimension in legal education. It is no overstatement to say that in due course the products of such research activities will have a marked effect upon the evolution of the law and administration of justice, by helping to bring into being new legislation, new court rules, new ideas for strengthening and improving the substance of the law. We are working out a judicious combination of effective law-teaching with forward-looking legal research, much of the latter being in the nature of research on legislative matters for public and quasi-public agencies *pro bono publico*. These activities are making the law school of the present and future a truly powerful agency among American institutions. This, too, is an opportunity we cannot afford to ignore.

(5) Finally, reference should be made to some of the "housekeeping"

aspects of contemporary legal education, and especially to two of the more significant innovations of the post World War II years.

First, law school admission standards have been markedly improved, thus keeping pace with and perhaps even leading the increasingly exacting requirements of professional life. Both by increasing the length of pre-law education and also by greater selectivity among applicants for admission has the quality of the law student body been upgraded. As a result, better qualified graduates are being sent forth to confront the increasingly difficult problems of the law in action. "C" average students as well as the law review editors are nowadays well able to take their places competently, even in the stepped-up professional life of today.

Then, as a second and very important "housekeeping" matter, we have encountered a very great increase in the cost of legal education, and accordingly have made arrangements to provide substantial amounts of financial assistance to many worthy but needy young men and women who, without such assistance, would either be completely unable to obtain a legal education, or at least would be forced to work too many hours at odd jobs to obtain necessary funds. Alumni and friends of the University of Michigan Law School have been most generous in their support of our scholarship and student aid programs. Without such assistance, we would have been severely handicapped.

These, then, are some of the principal changes that have taken place in legal education at Michigan and elsewhere in the more recent years. They represent a significant response to the changing needs of the profession, having in view the totality of its duties and obligations.

THE YEARS AHEAD

Now we should look into the future, to try to get a preview of the years ahead. The Michigan Law School has turned the corner and entered upon its second century of life. A centenary year

is an especially appropriate time for crystal gazing. The world is changing, perhaps even more swiftly than we realize, and if legal education is not to be left behind in the procession of world events we must be prepared to undertake adjustments possibly even more radical than those of the past, even though they may seem startling to those of us who acquired our education in an earlier day. By way of illustration, consider some of the following barometric indicators that may compel a revision of our thinking for the future:

(1) **Consider the rapidly changing nature of law practice.** For example, in the past we have lived in a primarily commercial world, and rights arising from detailed contractual arrangements have been of major importance. Yet we are rapidly moving into a scientific and technical world in which major events in industrial life are becoming so vast and are so rapidly changing as almost to preclude the old, carefully programmed order, and to compel resort to rapid and large-scale action, based not upon fully developed contracts but upon "letters of intent," subject to future negotiation and renegotiation, with specifications evolved as the activity progresses and with strict legal rights yielding in important particulars to the technological findings of the moment. Ordering a space ship or even a commercial airplane differs markedly from contracting for a small dwelling house. The law of contract is changing with the times. In many ways and in many areas of the law — not only in contracts, but in torts, property, procedure and elsewhere—industrial, commercial and political needs will compel a re-writing of long-revered legal concepts. Legal education must adjust itself accordingly, and the substantive content of our curricula will be changing very rapidly in the years to come.

(2) **Again, consider the ever-changing role of government in our society.** Much of the common law was evolved in a period of private freedom from governmental restraint. Those days are gone forever. We were brought up to be-

lieve in the virtues of property rights, and much of our law is based thereon. Yet in the future it is apparent that we shall hear less about such rights and more about laws regulating and restricting them. Labor laws, anti-trust laws, licensing laws, securities regulations, and regulatory laws generally, are of necessity having a marked effect upon the activities of members of the bar and, accordingly, upon legal education. The process is non-reversible. Whether we like it or not, we shall become even more deeply involved in paternalistic government as the years go by. Law school curricula and research programs must adjust themselves to the new order and be prepared to give law students the necessary knowledge and skills to deal with it effectively.

(3) **Again, consider the changes in the nature of the sources of law to which we must turn for the solution of legal problems.** A generation ago we were taught to believe that the judicial decision was the most important building block of jurisprudence. Statutory provisions occasionally crossed our consciousness, but they were certainly of minor significance in the temple of justice. Today the law written by legislative bodies is of overwhelming importance, and when supplemented by administrative regulations, certainly assumes a position of at least equal importance alongside the judge-made law. Reference to tax laws and regulations should suffice to illustrate the point. We are well aware of the importance to legal education of the upsurge of statute law, and I have on occasion asserted that the legal educators who really solve effectively the problem of teaching statute law will make as great a contribution to legal education as did Professor Langdell when he devised the case system for law students at Harvard. The necessity of dealing with this vast aggregation of ill-digested material assuredly will increase and complicate the task of legal education of the future.

(4) **Still again, consider the change in the extent of the legal horizons of the present day as compared with those of**

a generation ago. We used to regard the early English and American precedents as both sufficient and conclusive for the solution of practically all legal problems, although to a very minor extent we paid a little attention to the civil law of Rome and its modern manifestations in the form of European codes. Yet no longer can the professional life of the lawyer be so narrowly circumscribed. World trade, world-wide financial problems, legal liabilities in tort and contracts that cross international boundary lines, all bring an ever-increasing number of members of the bar in contact with the laws of other nations, as well as with both public and private international law. Moreover, in the future we may predict that the laws of Moslem and Hindu states, as well as those of the countries behind the Iron Curtain of communism, will play an increasingly important role in our jurisprudence. We can no longer afford insularity in law practice, and the same applies to the processes of legal education. We are only just beginning to realize the bearing that these considerations will have upon law curricula of the future, but we may be certain that the laws relating to such matters as international trade, international financial settlements, and foreign investments will loom increasingly important as the years go by. Incidentally, this fact will also force us to change our habits of provincialism in connection with acquiring at least a working knowledge of the language of some of the world's more important countries.

(5) **Finally, we must give consideration to the increase in the sheer bulk of the legal materials which, for very practical reasons, our students must master.** I have in mind not only the greatly increased volume of legal materials, but also the fact that we are obliged to educate young men and young women to take an active part in life in an increasingly complex and practical world. With this in mind, I wish to look into the crystal ball to offer a prediction concerning the length as well as the general structure of the law school

program, fifteen or twenty years hence. In so doing I shall be re-stating in brief form and with certain variations a program which I have discussed with law alumni groups in many parts of the country and which a year ago I set forth in writing in the Law Quadrangle Notes (See June 1958 issue, pages 1, 2).

A PROPHECY

It is my belief that inside of ten years the principal law schools of the country will require their students to utilize four full academic (nine-month) years—or the equivalent—to acquire a legal education. The additional time will be required to deal with the increased bulk of legal materials, as well as the legal skills which the law graduate must possess when he enters the profession. The time will be found either by taking advantage of one of the four pre-law college years or, preferably, by making more effective use of the summer sessions. Long summer vacations are a relic of the days when young men and women were needed in the fields to help plant, cultivate and harvest the crops. If full use were made of the entire calendar year, setting aside a reasonable four weeks for rest and relaxation, this should be fully satisfactory for professional education, and at the same time students would be able to get into productive life without the loss of too many valuable years.

Furthermore, I suggest that legal education should and will readjust its program rather radically to deal far more effectively than at present with the essential skills requisite to practical professional life in a stepped-up world. To this end we may well borrow from the experience of the medical schools. I envisage a law program in which the four-academic-year period will be divided into two equal divisions—the basic years, and the “laboratory” years. The first two years will be basic and be devoted to the fundamentals. There we will place the required courses in contracts, property, torts, procedure, trusts, estates, evidence, constitutional law, taxation, conflicts, corporations, administra-

tive law, and perhaps certain others. There, also, will we prescribe lists of required but independently pursued reading, to impart familiarity with certain subjects that can, at least at the elementary level, be adequately dealt with in that manner. For example, domestic relations, sales, bills and notes, legal history, and certain aspects of jurisprudence might conceivably be placed in this category.

These basic years will not only impart the fundamentals of the *corpus juris*, but they will also be devoted to student acquisition of certain of the necessary legal reasoning skills—including powers of analysis, and powers of inductive, deductive, and analogical reasoning. During this period students will be expected to “learn to think like lawyers.”

At the end of the second year a comprehensive examination will be given, covering the entire two years of work, although this examination will not replace or do away with the regular course examinations. All examinees below a prescribed “cut-off” score will be obliged either to repeat their poorest courses for one full year, or, alternatively, to transfer to some other law school.

Thereafter will follow the third and fourth years—the “laboratory” years. These will be devoted to closer and more intensive work, principally in smaller groups. Student interest and motivation will be stressed, specialties will be pursued, special skills will be inculcated. Experience will be obtained in advocacy, drafting of documents, and legal writing. Time will be devoted to specialties such as insurance law, securities, creditors’ rights, patents, anti-trust, unfair trade practices, labor law, and to advanced work in jurisprudence, taxation, sales, and bills and notes. These, too, will be the years for broadening horizons, for work in international law, comparative law, the law of foreign trade and investment, and the other frontiers of the law. Seminars will figure importantly, and research tasks will be assigned. Students will learn how to use the library and how to write. Formal

examinations will be minimized. Student contacts with the practicing bar will be developed systematically and seriously, thus, so far as possible, uniting the study of law with the law of action. Certainly, to the extent that suitable talent can be recruited, advantage should be taken of instruction in the practical arts that can be obtained from members of the bar who are actively engaged in practice. These, then, will be the "laboratory" years—the legal equivalent of the clinical years in the study of medicine, the years during which law students will learn to apply the theories acquired during the first two "basic years," and to make of themselves both capable craftsmen and forward-looking statesmen of the bar.

4-YEAR COURSE INEVITABLE

Although my crystal ball reveals that the four-year law course is nearly upon us, I should point out that many of my colleagues in the teaching branch of the legal profession believe, at present at least, that we should refrain from sig-

nificantly extending the present three-year program. They are concerned about the inevitable burden of increasing the length of time required for the law degree and for entry into law practice. So far as the immediate future is concerned, I agree with them. For the present and for the next few years we shall doubtless continue to make adjustments within the current three-academic-year framework. But needs are changing and pressures are mounting. I am looking forward to a decade hence, when a "new look" at our professional life will assuredly call for a radical readjustment of our concept of the proper education for the bar. By then we shall be devoting four academic years to legal education.

By way of a concluding observation, may I say that the next century and even the next decade will bring much of interest and even excitement for those engaged in law teaching. The responsibilities are significant, the opportunities are most challenging, and the rewards in the form of contribution to society are full of appeal.

**"Let the bar inform the world of the mighty
struggles and numberless sacrifices made by
our ancestors in defense of freedom."**

JOHN ADAMS, 1765

(A Dissertation on the
Canon and Feudal Law)

*From the collection of famous quotes of
the State Bar Committee on Citizenship*