

# Michigan Law Review

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Volume 79 | Issue 3

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1981

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### Recommended Citation

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# CHANGE AND CONTINUITY IN LEGAL EDUCATION

*Roger C. Cramton\*†*

The landscape around us changes with bewildering speed. Applications of technology are the principal engines of change in the economy, the physical environment, and patterns of life. New lifestyles and social values emerge from these changes to challenge existing ways. Social patterns and established institutions, slowed by the inertial grip of things-as-they-are, accommodate themselves more grudgingly to new circumstances. Novel legal rules and institutions emerge to deal with new problems of social control. Hardly a rule of public or private law remains unchanged for more than a few decades.

Within this maelstrom of accelerating change, the American law school remains, by comparison, an island of stability. Change there has been; one of the purposes of this piece is to chronicle some major recent changes. But in broad outline the structure, method, and content of American legal education has remained remarkably untouched. Whether this demonstrates that American legal education is remarkably flexible in its adaptation to a changing legal environment or that it is irrelevant to social change, I leave to the reader.

The occasion for penning these remarks is a happy one. Whatever the effects of legal education on the body politic at large, Alfred F. Conard and Allan F. Smith are thinkers and doers who have had a large effect in the shaping of my views of legal education. Their personalities and temperaments are different, but they share a large-minded, enthusiastic, comprehensive view of the challenge and opportunity of teaching and scholarship of and about law in a university setting. As one who has drunk deeply and pleasurably from their separate wells, I acknowledge my thanks and appreciation.

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† Portions of the material in this Paper were included in a talk to the Law Club of Chicago on February 3, 1977, and in a paper prepared for a national conference on legal education held at Key Biscayne, Florida, in October 1979 under the auspices of the Council on Legal Education for Professional Responsibility.

## I. SOME RECENT CHANGES IN LEGAL EDUCATION

Changes in legal education and the practice of law, Murray Schwartz has argued, have not been related to one another but have moved on separate paths.<sup>1</sup> The organization of the legal profession, for example, has dramatically changed in the twentieth century from "the 'custom' practice of the individual artisan to membership in increasingly large firms and single-client (government or corporate counsel) aggregates."<sup>2</sup> Further changes are afoot:

The advent of group and prepaid legal services for middle-income Americans, government-subsidized legal services for the poor, a growing public interest bar, the use of paralegals in the performance of tasks once strictly reserved to lawyers, and the abolition of the anticompetitive restraints on advertisement of professional services have all laid the foundation for a major restructuring of the profession.<sup>3</sup>

Although the law schools have not neglected these developments in their teaching and scholarship, Schwartz concludes that legal education appears to have been neither influential in bringing them about nor radically altered by them:

By contrast [to the sweeping changes in the structure of the legal profession and the nature of legal work], only two major changes in the field of legal education can be readily identified — clinical legal education and a change in the demography of the law student population — both of which bear little relation to changes in the practice of law.<sup>4</sup>

I believe that changes in legal education have been more numerous and substantial than Schwartz recognizes and, whether or not they have been caused by changes in law practice, will have profound effects on it.

### A. *Changes in the Law School Population*

In discussing the demographic changes in legal education, Schwartz mentions the growth in the numbers of law students and the inclusion of women, blacks, and other minority groups in the flow of law graduates. In the twelve-year period from 1968 to 1979 the number of students enrolled in ABA-approved law schools doubled (62,779 to 122,860), as did the number of first professional degrees granted (16,077 to 34,590) and the number of first admissions to the bar (17,764 to 39,086).<sup>5</sup>

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1. Schwartz, *How Can Legal Education Respond to Changes in the Legal Profession?*, 53 N.Y.U. L. REV. 440 (1978).

2. *Id.* at 441.

3. *Id.* at 440.

4. *Id.* at 441.

5. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, A REVIEW OF

Many have expressed fears about whether the profession will be able to absorb this large number of law graduates.<sup>6</sup> The explosive growth in the demand for lawyers' services, especially in the national market for the services of the law graduates with the best academic pedigrees, has resulted in a brisk upward movement in beginning salaries for some positions. Other more local employment markets for lawyers have entered a period of relative depression.

The high number of law graduates in recent years has affected the psychology of both law students and practicing lawyers. The scramble for employment has significantly influenced the hidden curriculum of law schools — that amalgam of attitudes, values, activities, and experiences that may not be part of the formal curriculum but is a significant part of the total educational experience. Law students, in their preoccupation with securing employment, select courses that they believe to be preferred by employers, participate in law practice during law school, and spend an enormous amount of time and psychic energy on job hunting.

The massive flow of graduates has also generated concerns in many segments of the bar about "overcrowding." These concerns are bound to reinforce, if not provoke, proposals to stem the tide of new entrants. Other changes in the structure of the profession reinforce practitioners' feelings of uneasiness and dislocation: group legal services, publicly funded legal services for the poor, the attrition of solo practice, and the relaxation of restraints on advertising. No one knows where all these changes may lead, but fear of the unknown fosters a protective stance. Emphasis on the trade union or guild aspect of professionalism is a natural reaction to a succession of changes in the structure of the profession and the ways in which lawyers carry on their work.

Even more significant than the growth in the total number of law graduates are the changes in the composition of the law student population. Women, who formerly were a mere trickle in the continuing flow of graduates, now constitute nearly one third of law students and will gradually gain a similar representation in the profession.<sup>7</sup> Blacks and other minority groups, largely excluded from the profes-

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LEGAL EDUCATION IN THE UNITED STATES — FALL 1979 at 64 (1980) [hereinafter cited as 1979 REVIEW].

6. See, e.g., York & Hale, *Too Many Lawyers? The Legal Services Industry: Its Structure and Outlook*, 26 J. LEGAL EDUC. 1 (1973); *Job Prospects for Young Lawyers Dim as Field Grows Over-Crowded*, N.Y. Times, May 17, 1977, at 1, col. 5.

7. In 1979 there were 38,627 women in a total law school enrollment of 122,860. 1979 REVIEW, *supra* note 5, at 64. See also White, *Legal Education: A Time for Change*, 62 A.B.A.J. 355, 356-58 (1976).

sion before the 1960s, have been represented in substantial and generally growing numbers since then. In the 1979-1980 school year 4.3% of all law students were black; another 3.9% were representatives of other minority groups (Hispanic Americans, native Americans, Asian Americans, etc.).<sup>8</sup> These demographic changes will alter the character of the legal profession in ways that are hard to predict.

Qualitative changes in the law student population, unmentioned by Schwartz, will have significant effects on the average competency of the legal profession. During the past fifteen years the intellectual qualifications of law students have increased substantially; law students today at all law schools are brighter and have better college records than their predecessors of earlier decades.<sup>9</sup> There are not only more of them but on the average they are much better qualified.

The Evans study of 1977 compares the qualifications of law students in the early 1960s with those of students in 1977, and concludes that LSAT scores at all law schools have risen dramatically: "[A]t least in terms of the average LSAT scores of their entering classes, every law school today is more selective than 80% . . . were in 1961, and . . . 90 schools today are at least as selective as [the eighth most selective] school in 1961."<sup>10</sup> Although comparable data are harder to come by, it appears that the undergraduate academic records of students admitted to law school have similarly improved. A sample of twenty-three law schools included in the Evans study showed that the average undergraduate grade point average increased from 2.76 in 1965 to 3.04 in 1970 to 3.35 in 1975, a change that probably exceeds the grade inflation during the same period.<sup>11</sup>

The significance of these changes for lawyer competency and law practice is that the profession will be composed of individuals who are abler than their predecessors and who have demonstrated the capacity and willingness to do excellent academic work. On average they will have better analytical ability and greater verbal skill and will be somewhat more motivated, competitive, and achievement-

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8. There were 5,257 blacks and 4,751 other minorities in the 1979-1980 total enrollment of 122,860. 1979 REVIEW, *supra* note 5, at 60-61.

9. Evans, *Applications and Admissions to ABA Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976*, in 3 LAW SCHOOL ADMISSION COUNCIL, REPORTS OF LSAC SPONSORED RESEARCH 551, 634 (1977).

10. *Id.* at 572.

11. *Id.* at 573-74.

These changes reflect the greater selectivity that increased competition for admission to law school has permitted. In 1963, for example, the ratio of LSAT test administrations to the number of places in entering classes was approximately 1.5 to 1 (*i.e.*, for every three college students interested in law school there were two places available). *Id.* at 570. In recent years the ratio has been about 3.5 test administrations for each first-year seat. *Id.* at 570-71.

oriented than their predecessors. One suspects that these changes will produce a more qualified profession.

It is possible, as some observers have suggested, that there is a negative side to populating the profession with individuals who excel in analytical and verbal combat. These new lawyers may be less interested in people, less inclined toward empathy and sensitivity in interpersonal relations, more inclined to talk than listen, and unprepared to devote their considerable intellectual talents to the mundane realities of routine service to the middle class and the poor. As intellectual capability has expanded, experience of people and of life may have decreased. These intuitive propositions, however, are not supported by empirical data such as those establishing the increase in intellectual capability and undergraduate performance.

### B. *The New Apprenticeship*

Another major change with large implications for lawyer competency is the growing number of law students participating in law practice while in law school. Unlike the revolution that has introduced more skills training and clinical experience into the law curriculum,<sup>12</sup> the extracurricular growth of apprenticeship experiences has been largely unplanned.

Virtually all legal employers have inaugurated or expanded summer clerkship programs for upper-class (second- and third-year) law students, and increasingly these opportunities are extended to students who have completed only one year of law school. Although accurate data are not available, a high and increasing proportion of law students have at least one two-month apprenticeship experience while in law school.

Legal employment during the academic year is also on the rise. Although it has been customary for many students in local law schools to work part-time while in law school, this phenomenon has now spread to all schools. The Pipkin study of how law students spend their time suggests that about one half of all upper-class law students are engaged in part-time work during the academic year, much to the alarm of some teachers, who complain of a decline in class attendance and preparation and talk openly of "the part-time

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12. For a useful survey of the development of clinical legal education, citing many of the leading articles on the subject, see Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 881-92. See also Barnhizer, *Clinical Education at the Crossroads: The Need for Direction*, 1977 B.Y.U. L. REV. 1025. With respect to skills training, see Vukowich, *The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 CASE W. RES. L. REV. 140 (1971).

full-time student."<sup>13</sup> Although ABA accreditation standards prior to 1980 limited a full-time law student's outside work to fifteen hours per week,<sup>14</sup> it is widely believed that many upper-class students clock fifteen to thirty hours per week on a fairly regular basis. They do so partly for economic reasons, partly for job placement purposes — in many cities the best avenue to a permanent position is a clerkship during law school — and partly because they find apprenticeship experience helpful and interesting.

My purpose is not to praise or condemn the apprenticeship experiences that students have provided for themselves during their law school years, but to point to those experiences as a new development that responds to the call for expanded apprenticeship experiences and more skills training. Law students today have far more opportunities, both within the classroom and without, to learn about and to experience law practice. One suspects they are much more ready than their predecessors of some years ago to assume some of the common tasks of the profession, such as interviewing clients, investigating facts, and devising legal strategies.

The question for legal educators is whether to fight the apprenticeship practices that compete for a student's time during the year or to incorporate them into the formal educational program. The old ABA standard, limiting hours of work during the term to fifteen per week, was violated by substantial numbers of law students. Many law schools seek to restrict outside work by scheduling classes throughout the day and week. Many faculty members reinforce this structural device by requiring class attendance, and some schools make regular class attendance an institutional requirement. Elsewhere a more relaxed attitude prevails, and school officials rely on the capacity of adult students to make good judgments about the use of their time in preparation for a career. Only a few law schools, notably Northeastern,<sup>15</sup> have tried the other alternative, systemati-

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13. See Brickman, *Is Law School a Full Time Enterprise?: Part Time Students and Part Time Teachers*, 10 COUNCIL ON LEGAL EDUC. FOR PROFESSIONAL RESPONSIBILITY NEWSLETTERS, May 1978, at 1 (reporting a panel presentation by Roger C. Cramton, Ronald M. Pipkin, Norman Redlich, and Robert B. Stevens). Professor Pipkin's empirical study, sponsored by the American Bar Foundation, is not yet available in published form, but the major findings are included in Brickman, *supra*.

14. In August 1980 the Council of the ABA Section of Legal Education and Admissions to the Bar relaxed this longstanding limit to 20 hours per week by reinterpreting Standard 305(a)(iii), which defines a "full-time student" as "a student who devotes substantially all working hours to the study of law." ABA STANDARDS AND RULES OF PROCEDURE, APPROVAL OF LAW SCHOOLS (as amended 1979). Query whether this modest concession to reality is consistent with the text of the standard.

15. The programs at Northeastern and Antioch are discussed in Gee & Jackson, *supra* note 12, at 857-59, 862-66.

cally incorporating the apprenticeship experience into the formal educational program. Courses and seminars that utilize the practice experiences students have while in law school may be desirable, since a critical and informed observer in a legal setting will learn a great deal more than an uncritical and uninformed one. Whether the on-the-job experiences of law students can be effectively utilized in the educational program without breaching attorney-client confidentiality or causing other difficulties remains an unresolved question.

The traditional method of transition from law student to lawyer is the period of informal apprenticeship provided to new recruits by many law firms and legal employers. In the past it was assumed that supervised self-instruction on the job was the least expensive form of practical legal training, and many of the best law firms asserted that the quality of the firm's product was in part dependent on the structured supervision provided to associates in the initial years of practice. In recent years, however, many practicing lawyers are taking a contrary view: The beginning lawyer, if he is to be paid \$20,000 to \$40,000 in the first year of employment, must have more practice skills, since he must begin to earn his own keep soon after being hired. Law firms now complain about the enormous cost in partner and associate time attributable to recruiting, training, and supervising new attorneys. They want to shift as much of this cost as possible to the law schools or to other organizations, such as new institutes that would provide transition training to recent graduates, just as bar review courses prepare them for the bar examinations. The establishment of specialized training programs, such as the tax, labor, and other LL.M. programs that have been associated with some metropolitan law schools for many years, could satisfy part of this demand. The creation of trial advocacy institutes of the kind urged by Chief Justice Burger would also add to the growing diversity of preparatory alternatives.<sup>16</sup>

### C. *Effect of Law School on Career Choices*

It is frequently stated that law schools inculcate in students a view of the relative value of different kinds of professional work by emphasizing the intellectual appeal of corporate law specialties such

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16. Burger, *Annual Report on the State of the Judiciary*, 49 PA. B.A. Q. 212, 215-18 (1978)(speech by Chief Justice Burger at the ABA Midyear Meeting, Feb. 12, 1978, New Orleans, La).

as taxation and securities regulation.<sup>17</sup> And many students, especially at the elite schools where they are surrounded by classmates who are being interviewed by or talking about job possibilities with major corporate law firms, claim that law schools are totally oriented toward the service of big business.<sup>18</sup>

Law schools, however, are not single-minded in the values they serve, and these faddish criticisms are much overdrawn. During the last generation the trend in law schools has been toward wider recognition of the diversity of the legal profession and its responsibility to ensure legal services for the poor. The law school world entertains an increasingly skeptical attitude toward the corporate elite of the established bar. Certainly there is more interest in fundamental issues of professional responsibility today than there was in earlier years.

A number of studies of changes in student attitudes toward various kinds of careers have sought to illuminate the effect of law study on career choice, but with mixed results.<sup>19</sup> According to these studies, students say that they come to law school in order to be independent, that they want to work in small offices rather than large, that they prefer public interest and criminal law employment, and the like. Although students change their attitudes somewhat during law school, it is not the change that is surprising, but the contradiction between attitudes and behavior. Why do students who say they prefer employment with small firms accept employment with large ones? Why do students who say they prefer serving people in areas like criminal law choose business-oriented practice? The answer appears to lie in market forces — students must choose from the available jobs. One of the most recent studies, that of Erlangen and Klegon, concludes that only modest attitudinal changes occur during law school on these matters and that market forces in the employ-

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17. See Nader, *Law Schools and Law Firms*, 54 MINN. L. REV. 493 (1970) (reprinted from THE NEW REPUBLIC, Oct. 11, 1969, at 20).

18. Cf. OFFICE OF THE ASSISTANT DEAN OF STUDENT AFFAIRS OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL, *LAW SCHOOL STUDENT HANDBOOK 57* (1980) (student comment: "If the school turns out many corporate lawyers, it is because the students *choose* to enter that field, not because they are forced or 'brainwashed' into it").

19. The literature on this subject is surveyed in Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 235-82 (1974). For more recent research, see Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 1979 AM. B. FOUNDATION RESEARCH J. 791; Rathjen, *The Impact of Legal Education on the Beliefs, Attitudes and Values of Law Students*, 44 TENN. L. REV. 85 (1976); Schwartz, *Law, Lawyers, and Law School: Perspectives from the First-Year Class*, 30 J. LEGAL EDUC. 437 (1980); Simon, Koziol & Joslyn, *Have There Been Significant Changes in the Career Aspirations and Occupational Choices of Law School Graduates in the 1960's?*, 8 LAW & SOC. REV. 95 (1973).

ment of law graduates and in the demand for legal services are the major conditioners of practice preferences.<sup>20</sup>

The attitudes and values of law students tend to mirror those of the profession at large. Since law students choose the profession in part because of the rewards in status and coin of the realm that it offers, they can be expected to respond to the profession's own subtle notions of its internal pecking order. Laumann and Heinz, in studies based on personal interviews with a sample of Chicago lawyers in 1975, confirmed the prevalent view that legal specialties serving big business have the most prestige among lawyers and that more routine legal specialties serving individuals — general family practice, divorce, personal injury, consumer, and criminal law — are at the bottom of the prestige heap.<sup>21</sup> The higher-ranked specialties are thought to have more intellectual content and to involve a higher level of ethical conduct than some of the specialties that have a low prestige ranking, such as plaintiffs' personal injury work, divorce, and criminal defense. The prestige ranking is correlated to some degree with income levels at the very top and bottom of the ladder, but not significantly otherwise.

It is not surprising that the major influence on the career choices of law students runs from the profession to the schools rather than in the reverse direction. But there is an important lesson in this: Law students pay close attention to the factors considered significant by important legal employers in hiring law graduates, and student response to these signals can have a powerful influence on law schools. Thus the skepticism of some large corporate law firms about the value of clinical legal education has influenced students in some schools not to enroll in such courses. One of the ironies of the moment is that the same judges and lawyers who call for law schools to provide more training in legal skills continue to select their law clerks or new associates on the basis of traditional criteria that reinforce the dominant curriculum: the class standing of the student, law review experience, the repute of the student's law school, and the scholarly reputation of the faculty members who provide references. These may be the appropriate criteria. If, however, these critics of

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20. Erlanger & Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 LAW & SOC. REV. 11 (1978); Erlanger, *Young Lawyers and Work in the Public Interest*, 1978 AM. B. FOUNDATION RESEARCH J. 83.

21. Laumann & Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 1977 AM. B. FOUNDATION RESEARCH J. 155. See also Laumann & Heinz, *The Organization of Lawyers' Work: Size, Intensity, and Co-Practice of the Fields of Law*, 1979 AM. B. FOUNDATION RESEARCH J. 217 (concluding that lawyers specialize more in a particular clientele than in a distinct area of law).

legal education are sincere in their view that a legal education should include more than just classroom and writing experience, they would exercise a powerful influence on legal education if, in interviewing and selecting law graduates for employment, they considered only students who had taken clinical or other skill courses. Achievement-oriented students would respond quickly to such signals from prestigious sources, and they would make demands for the development or expansion of skills courses that law faculties would soon heed.

## II. CONTINUITY IN LEGAL EDUCATION

Legal education today is being subjected to criticism which is unprecedented in scope and extent. The bench and bar argue that law graduates are not fully trained to assume professional duties. They argue that law schools should better prepare their graduates for advocacy and counseling roles.<sup>22</sup> Students complain about the quality of instruction, the competitive atmosphere of the first year, and the boredom of the second and third years. They ask for more and better lectures, more individualized instruction, and more clinical opportunities.<sup>23</sup> From the general public come expressions of concern about the ethical standards of lawyers and the growing dominance of lawyers' procedures in the everyday work of the world.<sup>24</sup> You can't do anything, businessmen and government officials complain, without excessive formalism and elaborate and expensive procedures — procedures that often are less geared to the merits of "what happened?" or "is he guilty?" than to what is perceived as makework for lawyers.<sup>25</sup>

The critics agree on only one thing — that all these problems

22. See, e.g., Devitt, *The Search for Improved Advocacy in the Federal Courts*, 13 GONZ. L. REV. 897, 924-27 (1978); Kaufman, *Continuing the Call for Courtroom Competence*, 64 A.B.A.J. 1626 (1978). See generally articles cited in note 12 *supra*. The view that legal education is responsible for alleged deficiencies in the trial bar is criticized and discussed in Cramton & Jensen, *The State of Trial Advocacy and Legal Education: Three New Studies*, 30 J. LEGAL EDUC. 253 (1979).

23. See, e.g., Coven, *Random Thoughts on the Rights and Status of Law Students*, STUDENT LAW., Sept. 1973, at 14; Mohr & Rodgers, *Legal Education: Some Student Reflections*, 25 J. LEGAL EDUC. 403 (1973); Stern, *Are You Enrolled in a Finishing School for the Establishment?*, STUDENT LAW., Sept. 1980, at 42; Wood, *Teaching as Torture*, STUDENT LAW., Feb. 1979, at 28. See also Pipkin, *Legal Education: The Consumers' Perspective*, 1976 AM. B. FOUNDATION RESEARCH J. 1161 (statistical study of student attitudes).

24. See, e.g., *America's Lawyers: "A Sick Profession"?*, U.S. NEWS & WORLD REP., March 25, 1974, at 23 (special report).

25. See, e.g., Green, *Challenging the Bar: The Legal Profession Finds Itself on Trial, Moves Toward Change*, WALL ST. J., May 8, 1974, at 1, col. 6; Peters, *The Screwing of the Average Man: How Your Lawyer Does It*, WASH. MONTHLY, Feb. 1974, at 33; *President Says Lawyers Foster Unequal Justice*, N.Y. TIMES, May 5, 1978, at 1, col. 5 (President Carter's address to the Los Angeles Bar Association).

could be solved if only the law schools would do a better job of training law students! Of course, there is a natural human tendency to think that our problems would be solved if only someone else would do a better job. I am reminded of the story about a wealthy man who had fallen on hard times and told his wife that they would have to economize: "If you could only learn to cook," he said, "we could fire the maid." "If you could only learn to make love," she replied, "we could fire the chauffeur."

Legal education in the United States today, at least when judged by outward manifestations, is the healthiest it has ever been. There are more schools with more resources,<sup>26</sup> larger and better faculties,<sup>27</sup> and more and better students.<sup>28</sup> Yet inwardly, legal education, like America itself, is puzzled and uncertain about its present and its future. What are the attributes of a good lawyer?<sup>29</sup> How should a curriculum be structured to teach those attributes that are best taught in an educational setting, as distinguished from the apprenticeship experience of the initial years of legal employment?<sup>30</sup> And to what extent should the law school be a research institution producing new knowledge about law and legal institutions, as distinct from a vocationally oriented professional school?<sup>31</sup>

The history of legal education in the United States suggests a per-

26. There were 114 ABA approved law schools in 1949, 130 in 1959, and 170 in 1979. See ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 1949 REVIEW OF LEGAL EDUCATION; ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 1955 REVIEW OF LEGAL EDUCATION; 1979 REVIEW, *supra* note 5, at 2.

27. A comparison of the ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS (1979-1980) with its predecessor for 1953-1954, ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF TEACHERS IN MEMBER SCHOOLS (1953-1954), reveals that the number of entries has more than doubled during this period of approximately a quarter century. There are now about 5,750 entries compared with about 2,300 in 1953-1954, although the editorial policy about adjunct and part-time teachers is more stringent today than it was in the 1950s. See also Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUNDATION RESEARCH J. 501 (study of law teachers which found that they tend to be highly-credentialed graduates of several elite law schools).

28. See text at notes 5, 9-11 *supra*.

29. The most comprehensive and recent attempt to state "criteria of attorney competence" appears in ALI-ABA COMM. ON CONTINUING PROFESSIONAL EDUCATION, A MODEL PEER REVIEW SYSTEM 11-26 (April 1980 Draft). This report contains extensive citations to other materials.

30. See, e.g., ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979); Carrington, *The University Law School and Legal Services*, 53 N.Y.U. L. REV. 402 (1978); Cramton, *Rising Expectations in Law Practice and Legal Education*, 7 N. KY. L. REV. 159 (1980).

31. For other views of the law school's role, see Allen, *The New Anti-Intellectualism in American Legal Education*, 28 MERCER L. REV. 447 (1977); Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 A.B.A.J. 447 (1976); Allen, *The Prospects of University Law Training*, 29 J. LEGAL EDUC. 127 (1978) (also in 63 A.B.A.J. 346 (1977)); Carrington, *supra* note 30.

ennial failure to answer these and other basic questions. Consider the following assessment of American legal education:

Legal education is too uniform in method and outlook. It fails to recognize that professional tasks are enormously varied and require persons with a range of talents and skills. A differentiated bar, with a variety of specialized sectors of practice, would allow more open access to the profession and make lawyers available to all segments of the population. The lack of differentiation among law schools and law school graduates leaves important needs of a pluralistic society unmet.

The dominance of the case method in law teaching impairs both the teaching and scholarship functions of law schools. In the classroom, the case method emphasizes judge-made law but pays inadequate attention to statutory and other material, local variation, historical development, and legal theory. It is an inefficient method to communicate information and, when used throughout law school, it becomes repetitive and boring and fails to give law students a broad grasp of any area of law. It teaches "the American lawyer [to look] for cases 'on all fours' with the state of facts before him, instead of for the underlying theory of law." The orientation of American law schools toward the profession leads law teachers away from fundamental concepts of legal theory, historical work, and scholarship of greater depth. They fill the literature with "fragmentary discussions of particular topics, interspersed with fragmentary portions of opinions from reported cases," taking an "atomistic" rather than a "monistic" approach to law. American law is associated with precedents rather than principles.

Moreover, "the failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly." A scientific approach to law necessarily requires a clinical experience — the understanding that comes from participation in the professional role. Just as medical education exposes the medical student to patients, so legal education must introduce the law student to clients.

Do these comments have a contemporary flavor? I think they do. They are pieced together from sentences and paragraphs in two famous reports on legal education: one by Josef Redlich, an Austrian scholar, who studied American teaching methods in 1914;<sup>32</sup> and the second by A.Z. Reed, who published his famous reports on legal education in 1921 and 1928.<sup>33</sup>

The disheartening thing is that, although these comments are more than fifty years old, they remain almost as true today as they were when written. A review of curricular developments in the post-

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32. J. REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS* (1914).

33. A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* (1921), *abridged in* H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 164-226 (1972) (*abridged by* Kate Wallach); A. REED, *PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA* (1928).

1945 era produces, as Robert S. Stevens has said, "an overwhelming sense of *déjà vu*."<sup>34</sup> Curricular reforms of the '20s, '30s, and '40s regularly reappear like reinventions of the wheel. While continuing progress has been made, these recurrent waves of reform seem doomed to failure for the same reasons that most of the earlier experiments failed — the lack of resources available for legal education,<sup>35</sup> student apathy, the inertia bred by faculty autonomy, and the continuing pressures from the profession. The law curriculum continues to grow primarily by accretion and fragmentation, changes which are not threatening to either students or faculty and require only modest additional resources. Recurrent calls for skills training, exposure to "in depth" problem-solving in small group classes, experimentation with policy sciences and other university disciplines, a continuing proliferation of the elective smorgasbord — these seem to be the story of our past, present, and future.

The problems considered by Redlich and Reed continue to be discussed, almost in the same terms, more than a half century later: the myth of the unitary bar and the rigid four-three structure of legal education (four years of college followed by three years of law school),<sup>36</sup> the waste and boredom of much upper-class law school instruction;<sup>37</sup> the lack of exposure to practical experience;<sup>38</sup> the trade

34. Stevens, *Two Cheers for 1870: The American Law School*, in 5 PERSPECTIVES IN AMERICAN HISTORY 403, 511 (D. Fleming & B. Bailyn eds. 1971).

35. Graduate education on the cheap — that is the dominant characteristic of legal education in the United States. While medical schools now spend an average of at least \$35,000 per student per year, the annual cost of educating a law student in the United States is about 10% of this amount — less than \$3,500. Conversations with Peter Swords, updating the figures in P. SWORDS & F. WALWER, THE COSTS AND RESOURCES OF LEGAL EDUCATION 12 n.34 (1974) (Council on Legal Education for Professional Responsibility) (Swords is responsible for collecting resource material from ABA-approved law schools for the ABA Section on Legal Education and Admissions to the Bar). "Society has long assumed that the needs of a law school are a building, a few instructors of professorial rank, and a small, specialized library." E. BROWN, LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE 246 (1948). See also A. HARNO, LEGAL EDUCATION IN THE UNITED STATES 133-36 (1953). Alone among university departments, law schools have been expected to be self-supporting and in some cases have been used to subsidize other parts of the university. See *id.* at 134.

36. See, e.g., *Training for the Public Profession of Law: 1971* (P. Carrington ed.), in PROCEEDINGS — 1971 ANNUAL MEETING OF ASSOCIATION OF AMERICAN LAW SCHOOLS pt. 1, § 2 (1971), reprinted in H. PACKER & T. EHRLICH, *supra* note 33, at 93; Cavers, *A Proposal Re-named: Legal Education in Two Calendar Years*, 66 A.B.A.J. 973 (1980); Stanley, *Why Not Let the Bar Take Over the Third Year of Law School?*, B. LEADER, July 1976, at 18; Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL EDUC. 37 (1973).

37. See Boyer & Cramton, *supra* note 19, at 276-82; Carrington & Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887 (1977); Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL EDUC. 1 (1964); Kelso, *Curricula Reform for Law School Needs of the Future*, 21 U. MIAMI L. REV. 526 (1967).

38. See E. GEE & D. JACKSON, FOLLOWING THE LEADER? THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA (1975) (Council on Legal Education for Professional Responsibility study); E. GEE & D. JACKSON, BREAD AND BUTTER? ELECTIVES IN AMERICAN LEGAL

school orientation of much law school teaching and most student behavior;<sup>39</sup> the continuing isolation of the law school from university scholarship and intellectual interests, despite the recurrent flirtation with the social sciences and other disciplines;<sup>40</sup> and the lack of a coherent theory concerning the purposes of legal education or the nature of law — learning “how to think like a lawyer” is too general a goal to be satisfactory.<sup>41</sup>

Perhaps a few dyspeptic comments on some of these matters are appropriate.<sup>42</sup> The myth of the unitary bar was exposed by A.Z. Reed in his 1921 report.<sup>43</sup> Developments in the intervening period have led to even further differentiation of legal tasks and roles. Corporate practice on the Wall Street model bears little resemblance to the work of the individual practitioner in New York, Chicago or elsewhere.<sup>44</sup> Specialization proceeds at all levels of the profession, but about one half of all lawyers continue to be solo practitioners whose activities as social workers or business managers to the middle class and to small enterprise are very different from those of the elite of the major law firms. The expansion and diffusion of law have created many new areas of specialized legal activity. The extension of legal services to the poor adds new dimensions of diversity to an already diverse profession. Yet the structure of the bar and of legal education are cast in the same mold that hardened at about the time that Reed was writing.

We tend to forget how recent some of these developments in legal education are: the three-year law program, now universal, did not take hold until late in the nineteenth century;<sup>45</sup> the requirement of a

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EDUCATION (1975) (Council on Legal Education for Professional Responsibility); Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 68-69 (1979); Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933); Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 303 (1947); Vukowich, *The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change*, 23 CASE W. RES. L. REV. 140 (1971).

39. See, e.g., E. GEE & D. JACKSON, BREAD AND BUTTER? ELECTIVES IN AMERICAN LEGAL EDUCATION (1975) (Council on Legal Education for Professional Responsibility); Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 661 n.184 (1973).

40. See, e.g., Kalven, *The Quest for the Middle Range: Empirical Inquiry and Legal Policy*, in LAW IN A CHANGING AMERICA 56 (G. Hazard ed. 1968); Ohlin, *Partnership with the Social Sciences*, 23 J. LEGAL EDUC. 204 (1970).

41. See, e.g., Boyer & Cramton, *supra* note 19, at 270-71; Stevens, *supra* note 34, at 539-41; Strong, *The Pedagogic Training of a Law Faculty*, 25 J. LEGAL EDUC. 226 (1973).

42. It goes without saying, of course, that none of these jaundiced comments are applicable to the Cornell Law School, to the University of Michigan Law School, or to your law school.

43. A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921).

44. Compare J. CARLIN, LAWYERS ON THEIR OWN (1962) (study of individual practitioners in Chicago) with E. SMIGEL, THE WALL STREET LAWYER (2d ed. 1969).

45. See Stevens, *supra* note 34, at 430-31, 454-55.

college degree prior to law school came much later (in 1921 only six law schools required the baccalaureate degree for admission);<sup>46</sup> and it was only after World War II that the number of lawyers with a law school education finally passed the number who had entered the profession via the apprenticeship route that is now virtually nonexistent.<sup>47</sup> The American experience on this continent goes back nearly four centuries; only during the past generation has the law school become one of the gatekeepers to the legal profession.

The case method of instruction is both the greatest accomplishment and the greatest limitation of the American law school. It was conceived by Christopher Langdell as the "shortest and best, if not the only way" of mastering the basic principles of law from the raw material of selected cases.<sup>48</sup> Langdell's naïve view that a small body of fundamental principles could be scientifically deduced from appellate decisions (and nothing else) has long since been abandoned, but the case method has survived the theory on which it was based. The method's intermediate level of abstraction has proven to be an effective way to teach substantive principles, to hone analytical capacity, and to convey understanding of legal processes. Its enormous efficiency — allowing one teacher to handle as many as 200 students at a time — has also commended the case method to law school and university administrators.

Yet by relying on the case method and associated question-and-answer teaching techniques, law schools convey only a limited amount of information to law students and stress a limited methodology.<sup>49</sup> "[I]t is obvious," wrote Karl Llewellyn in 1948, "that man could hardly devise a more wasteful method of imparting information . . . than the case-class."<sup>50</sup> "After the first year," added David Cavers, "the system is not exacting in its demands on any but the

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46. *Id.* at 455 n.43.

47. *Cf. id.* at 505-06 (describing the movement of states toward requiring a law degree for admission to the bar).

48. C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS* vi (1871). Langdell believed that the scientific study of appellate judicial decisions, cutting across jurisdictional lines, would reveal the small number of fundamental doctrines that a lawyer should know and "be able to apply . . . with constant facility and certainty to the ever-tangled skein of human affairs." *Id.* Under Langdell's approach, neither other disciplines, such as government and economics, nor clinical or practical experience, had much to contribute to the education of the lawyer.

49. In 1928 Reed stated that the American law school curriculum was "a mere aggregate or conglomerate of independently developed units." A. REED, *PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA* 252 (1928). Since then, the expanded smorgasbord of the elective system has intensified the chaos.

50. Llewellyn, *The Current Crisis in Legal Education*, 1 *J. LEGAL EDUC.* 211, 215 (1948) (emphasis deleted).

morbidly conscientious student."<sup>51</sup>

Recent commentators have not been more generous. Tom Ber-  
gin, a Virginia law professor, says: "To be mercifully brief, law  
school is unmercifully dull . . . because the only skill gained after  
the first year is the skill of feigning preparedness for class."<sup>52</sup>  
Charles Meyers, former chairman of the AALS Curriculum Com-  
mittee and now dean of the Stanford Law School, states, "in any  
given law school most of the students are doing the same things: ex-  
actly the same thing in the first year, much the same in the second,  
and only marginally different things in the third year."<sup>53</sup> Meyers  
concludes: "Fundamental changes must be made soon. It is not  
only that law students over the country are reaching the point of  
open revolt, but also that law faculties themselves, particularly the  
younger members, share with the student the view that legal educa-  
tion is too rigid, too uniform, too narrow, too repetitious and too  
long."<sup>54</sup>

The vocational orientation of most legal education is a major de-  
terminant of its nature. Law schools are predominantly teaching in-  
stitutions that are closely linked to the profession. Students come to  
law school to be trained as lawyers; they tie their course elections to  
bar examination requirements and they view the intellectual and  
scholarly pretensions of the faculty as a diversion.<sup>55</sup> As a result of  
lack of both time and interest, faculty members produce little schol-  
arly literature. Most writing is oriented toward the profession or has  
an immediate law-reform quality. Both students and faculty are  
caught up with the contemporary and the short term at the expense  
of history, other disciplines, and fundamentals.<sup>56</sup>

The lack of any coherent theory of legal education or of law de-  
prives scholarship and teaching of focus. Legal educators share with  
other American lawyers an increasingly purposive and instrumental  
view of law. Law as an inherited body of rules or as a scientific  
discipline has been rejected — the modern lawyer does not search  
for basic principle, but manipulates precedents and arguments. He  
uses the system to enable his client or interest group to achieve its  
goals.

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51. Cavers, *In Advocacy of the Problem Method*, 43 COLUM. L. REV. 449, 453 (1943).

52. Ber-  
gin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637, 648  
(1968).

53. Meyers, *Report of the Committee on Curriculum*, in PROCEEDINGS — 1968 ANNUAL  
MEETING OF ASSOCIATION OF AMERICAN LAW SCHOOLS pt. 1, at 9 (1968).

54. *Id.* at 7-8.

55. Stevens, *supra* note 34, at 537.

56. *Id.* at 538; Ber-  
gin, *supra* note 52, at 645-46.

Perhaps it is not surprising, given this overly narrow view of the lawyer's role, that legal theory in the United States has been so sparse and stunted. As Daniel Boorstin has said: "Nothing is more revealing of the peculiar character of American law than the lack of a solid body of historical writing about the American legal past. . . . [One] explanation is the increasing professionalization of American Law Schools, and (despite their frequently expressed interest in 'social sciences' and 'interdisciplinary research') their myopic pre-occupation with what is in current demand by practitioners."<sup>57</sup>

The law schools' long flirtation with the social sciences has generally been only skin deep. The integration of law and social science is easier said than done.<sup>58</sup> Adding a social scientist or two to the faculty provides a façade of integration. But law students, while complaining of the narrowness of the traditional curriculum, avoid exposure to interdisciplinary offerings. And social science research is usually too time consuming and expensive to undertake in the law school environment. The promise of a legal education integrated with the university, with law as the queen of the social and policy sciences,<sup>59</sup> has been frustrated by insufficient resources, student apathy, faculty resistance to change, and the strong pull from the profession.

Professor Stevens, from whose excellent writing on the history of legal education I have generously drawn, has asked whether change in legal education is possible under these circumstances:

Are students interested in changes other than those which take them into a practice situation sooner? Are law professors interested in any change which might impinge upon their well-known independence? Is there any chance of developing a form of legal scholarship which is meaningful both to the profession and the university community? Finally, is there the remotest chance of the type of funding which will allow radical reform of legal education to proceed?<sup>60</sup>

Dean Prosser, in the course of a similarly jaundiced report on the state of legal education (at institutions other than his own), reported a statement which weighs on my mind as I ponder questions such as these. It is the final reflection of an aged West Coast Indian who for many years had observed a lighthouse off a rocky shore: "Light-

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57. D. BOORSTIN, *THE AMERICANS: THE NATIONAL EXPERIENCE* 444 (1965), quoted in Stevens, *supra* note 34, at 406 n.3.

58. See note 40 *supra* and accompanying text.

59. See Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203 (1943); Stevens, *supra* note 34, at 513, 530-32.

60. Stevens, *supra* note 34, at 546 (footnotes omitted).

house, him no good for fog. Lighthouse, him whistle, him blow, him ring bell, him flash light, him raise hell; but fog come in just the same."<sup>61</sup>

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61. Prosser, *Lighthouse No Good*, 1 J. LEGAL EDUC. 257, 257 (1948).