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SCIENTIFIC ÉCLAT AND TECHNOLOGICAL CHANGE: SOME IMPLICATIONS FOR LEGAL EDUCATION

George T. Frampton*

I. LEGAL EDUCATION FOR WHAT?

THE law-trained man has frequently been viewed as faced toward the past and preoccupied with precedent, form, words, technicalities, and money.¹ Well might such a man be the fitting product of

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1. For some traditional views, but not gathered into a stonepile of citations, see Dickens, Swift, Shakespeare, Sandburg, Rabelais, and Daumier.

C. P. Snow made no place at all for lawyers among the "intelligent" or "cultured" people in his *THE TWO CULTURES AND THE SCIENTIFIC REVOLUTION* (1959), or in his *THE TWO CULTURES—AND A SECOND LOOK* (2d ed. 1964). He confessed greater awareness of intellectual persons in such fields as social history, sociology, demography, political science, economics, and government (in the American academic sense). These people are characterized as "something like a third culture," and "represent, vocalise, and to some extent shape and predict the mood of the non-scientific culture [and whose] words seep into the minds of [the main decision-makers of the western world]." *Id.* at 59, 66-67.

The following view by an economist, de Jouvenel, *The Political Consequences of the Rise of Science*, Atomic Scientists Bull., Dec. 1963, pp. 2-4, represents an attitude of some social scientists toward legal thought:

"Unwittingly and indirectly, the scientist undermines the juristic order. Technology, that by-product of science which society at large regards as its end product, permits, nay commands, an accelerating pace of social change. Our expectation of and enthusiasm for progress are in contradiction with fidelity to 'the ways of our fathers.' But the 'ways of our fathers,' so dear to ancient moralists, have always served as a significant basis for jurists. . . .

"[T]hose who operate traditionally are a drag upon progress, since, by applying the same process, they take as much time to do the thing as was the case before, and thus impede the general social goal of doing far more in a decreasing amount of time. Thus the old idea of 'due process' is hounded out of the productive realm. Judicial procedure is the sole remnant of the old idea of 'the right way,' and therefore an islet of stable procedure in a sea of shifting processes. Just how long can such an islet subsist, when it no longer corresponds to current attitudes? . . .

"Indirectly, science is a contributory influence to the dissolution of a juristic order. . . .

"Whether, and to what extent, one applauds or deplures such developments, they have to be taken into account; they tend to downgrade the jurist and upgrade the expert, who, however, being a specialist, cannot play in society the same role as the jurist previously performed."

A more cautious view of an articulate natural scientist, Glenn Seaborg, chairman of the United States Atomic Energy Commission, is stated in an address, AEC Release No. S-39-63, Dec. 9, 1963, p. 9: "One need only look at the educational backgrounds of our rising young industrial leaders to recognize the fact that the engineer is achieving dominance—and some say at the expense of men trained as lawyers and accountants."

The view of a sociologist, MILLS, *WHITE COLLAR* 122 (Galaxy paperback ed. 1956) is that: "Not persons . . . but a thin upper crust and financial interests are what lawyers serve."

One lawyer has said:

"In many parts of the world, there appears to be an uncomprehending assumption that law by its nature is a crystallization of the *status quo*. When change is required,

an educational diet of moldering appellate case opinions taken Socratically with a few crusts of casebook "notes" and classroom lapses into lecture. This is not a man for the season of scientific successes or for a society transformed by technological change.

That picture, however, is essentially untrue. Perhaps the man who professes to law does have some antipathy to rapid change, which is often engendered by impulsive action. His presumed predisposition to deliberative reasoning probably led him in the first place to "the legal way," which is usually the opposite way and is becoming the successor way to the quick use of force to clear one's path. Assume, for the moment, that the legal way means an accepted process for resolving conflicts between competing interests without resort to unilateral force and for accommodating whatever asserted interests are consonant with the contenders' common interests. A temperamental inclination to the legal way is bound also to be fortified by a legal education, which, for purposes of example and analogy, emphasizes the study of conflicts already resolved and the borderlines where those conflicts occurred. Form, which may be deceiving or empty considered alone, must be dealt with constantly as the surest evidence of a "fact," the best symbol of intent, or the most quickly communicable pattern into which a relationship is cast. "Mere words" are man's best way of conveying common meaning, describing action, and explaining decision. "Technicalities" is often an epithet reflecting impatience with the detail required for understanding or explaining a complex matter. And money, albeit cold, is the only impersonal compensatory exchange so far devised for an eye out, an arm off, or a valuable promise broken beyond repair.

A. *The Legal Way and the Scientific Way: A Comparison*

No matter how the lawyer's necessary training and absorption in such matters may make him appear, the notion that he is to play less than a leading role in a society oriented to scientific methods and technological developments subordinates his special fortes to surface appearances. His mission to administer in various roles a satisfying resolution of conflicts requires thought processes that parallel the scientist's in their nature and indispensability to society. Both lawyer and scientist marshal phenomena in the context of a specific problem, which for the lawyer is one of individual, institutional, or

it is assumed that law and lawyers automatically and unavoidably stand in the way." Director of the Harvard Law School International Legal Studies, 1954-1961 Report, p. 29.

group conflict, either actual or latent. Both seek to discover and assess what is relevant to the solution of specific problems and to discard what is irrelevant. Both are skeptical of facts which by their outward simplicity suggest that no questions need be asked. Both attempt to predict future occurrences by relating phenomena and behavior to some rational pattern. Both organize and reorganize data in an effort to elucidate a relationship between data and manifestation. Similarly, both are motivated by a common faith in the possibility and importance of reducing—perhaps eliminating—the operation of uncontrollable chance in the behavior of matter and energy and in the governing of man's conflicts and affairs.

Beyond there, the scientist will claim the paths diverge, for the scientist is neutral, the lawyer partisan—paid to be so. But that partisanship is little understood and its value greatly underestimated. In predicting, counselling, negotiating, litigating, conferring, arbitrating, mediating and public speaking, the lawyer is effective only as he aligns asserted interests alongside common interests and measures the legitimacy of any claim by its correlation with those common interests. When each conflicting interest is allied with a common interest, the lawyer has to conceive an order of importance of those common interests which is supported by reasons that at the same time apply specially in that context and take broad account of all interests affecting life. This recognition and balancing of common interests require dispassion and imagination that match the “creative neutrality” of the scientist.

In addition to the skills of other specialists in precise quantitative measurement and in the application of social science sophistication, the lawyer must be alert to slow and unapparent changes in the resolution of past conflicts so that he can predict, interpret, and plan for—if not alter—impending changes of the future. Even in yesterday's quiet changes a trend may be observed that will take the sting of surprise out of tomorrow's occurrence. One such trend, for example, can be seen in the current levelling of economic and political inequalities among men. In this respect there has been a gradual legal adjustment of the position of one party in a bargain, process, or struggle so as to equalize or improve it in relation to that of another whose office or background arms him with an unfair advantage.² A

2. Recent manifestations of this trend in academically unrelated “fields” have been:

a. The Supreme Court's reapportionment decisions in *Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Reynolds v. Sims*, 377 U.S. 533 (1964), which can be expected to increase the relative voting strength of urban centers as compared to the traditionally and disproportionately stronger rural districts,

man not trained to look for the exemplifying particulars of such trends in cases, statutes, and administrative attitudes and regulations will scarcely know how to evaluate and give meaningful shape to the interests of others in times of change. Furthermore, he will scarcely know why and how the common interest is advanced or jeopardized by accelerating or modifying a trend in a particular situation unless he is accustomed to predicting how the speed and direction of such trends affect individual and common interests.

Whatever the lawyer's individual capability for projecting the future, society cannot do without a specialist in the identification and protection of individual and group interests which, although frequently in conflict with others, are nevertheless common in the sense of their contribution to the alleviation of human difficulties and the expansion of the potential of human life. To the extent that the satisfaction of deeply-felt human needs for justice is the real basis for social controls, rather than power or automation for their own sake, the man who is occupied professionally in matters that involve those needs will never be relegated to a minor role in society. Meanwhile, the individual client receives from the lawyer-advocate a capability for disinterested analysis and skillful articulation focused so as to illuminate in the particular conflict every facet of the client's asserted but challenged interests that supports a common interest. If that client's interests prevail on balance, society is ultimately served, and the client is incidentally satisfied.

b. The enactment of the Civil Rights Act of 1964, 78 Stat. 241, 42 U.S.C.A. §§ 2000a to 2000h-6 (Supp. 1964), which is designed to obtain for all citizens equal access to certain services and facilities, and the decision in *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964), which upheld the constitutionality of that act as applied to a defendant engaged in a "small" business.

c. The enactment of the Securities Acts Amendments of 1964, 78 Stat. 565, 15 U.S.C.A. §§ 78c to 78t (Supp. 1964), which give thousands of shareholders whose shares are not listed on a national securities exchange access to corporate information not previously required to be provided, and which also subject "insiders" of such corporations to penalties for shortswing profits (within six months) from trading in the shares of their corporations. See also the decision in *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), wherein the Court affirmed a penalty assessed against an investment adviser who profited by selling in a market rise after advising his customers to buy.

d. The adoption of SEC Reg. § 240.11a-1, in 29 Fed. Reg. 7381 (1964) and Reg. 240.11b-1, in 17 C.F.R. § 240.11b-1 (1964), which restricts the trading opportunities for stock exchange floor traders and raises the standards of operation and surveillance of exchange specialists.

Consider also, as other examples of the trend, such academically unrelated legislation as the federal bankruptcy provisions, social security and unemployment compensation provisions, the Drug Amendments of 1962, 76 Stat. 780, 21 U.S.C. §§ 321-392 (Supp. V, 1964) and the Economic Opportunity Act (Anti-Poverty Act) of 1964, 78 Stat. 508, 42 U.S.C.A. §§ 2701-2981 (1964).

B. *The Legal Way and Technological Advances*

As technological advances add new interrelationships to a growing network, exclusive spheres of private interests in isolation become smaller and less tenable. Their assertion outside the legal way produces violent collision threatening the whole pattern of accommodation. The legal way becomes more obviously a matter of the preservation of that pattern and the survival of life itself. The acceptance and vitality of the legal way, therefore, become centrally important, rather than less so, in a society of technological change. Similarly, the law-trained man is specially called to make law vital by relating it and his legal work constantly to rapid changes in the conditions of life. In doing so, he rides not into the sunset of his day, as some suggest, but into dawn. It is true that he does not ride alone, but neither can he go behind other ministers to social needs.

1. *Uses of Lawyers' Traditional Fortes*

Future conflicts, which will be more numerous and complex, will sharpen traditional fortes of the lawyer. One of these fortes, precision in reconstructing the facts of past occurrences, has been shaped partly by requirements of efficiency and speed in the procedure of formal courtroom trial, the successor to personal combat. (A layman, who may not think of a trial as speedy or efficient, does not realize how the whole affair would go if it came to a head in a "common sense" but undisciplined free-for-all.) The function of the trial has now become, for many purposes, analogous to the function of modern war: it is more avoided than routine, and it serves less in actual occurrence than in projected occurrence. The participants' lawyers, hoping to by-pass the dread event, "use" the possibility of its occurrence as a basis for striking an accommodation, which frequently does not depart materially from the predicted outcome of an actual trial of the matter. So long as potential trial outcome remains such a touchstone for settlement, the lawyer must know his touchstone intimately. But so long as accommodation is effected by the design of lawyers in probably as many as ninety per cent or more of all claims, including those which reach the point of filing a complaint,³ resolution will rest increasingly on the lawyer's powers of prediction, detachment, patience, persuasion, and conciliation.

These very qualities of the "man without an interest" will be in-

3. See ZEISEL, KALVEN & BUCHHOLZ, *DELAY IN THE COURT* 111-19 (1959).

voked, moreover, in untraditional avenues. A scientist and educator has suggested that, since some important decisions within government have become so complex as to involve many factors not comparable or measureable, the public interest may be protected only by some form of adversarial presentation of alternative courses of governmental action.⁴ The spirit of such a presentation could most logically be achieved by men trained in the adversarial process. "Hearings," where none were conducted before, will be required to satisfy individuals that interests precious to them in a modern society, although too newly emerged to be hallowed, will not be subordinated to other interests without full consideration. Examples of interests that claimants newly possess or assert a right not to be deprived of arbitrarily and without a hearing include an exclusive franchise to distribute a nationally-advertised product,⁵ a private church board trusteeship,⁶ a corporation directorship,⁷ membership in a securities dealers' association,⁸ the use of a direct wire to securities exchange members' offices and to the exchange floor by a non-member of the exchange,⁹ attendance at college,¹⁰ a teaching

4. See CONANT, *MODERN SCIENCE AND MODERN MAN* 115-18 (paperback ed. 1952).

5. The Automobile Dealers' Day in Court Act, 70 Stat. 1125 (1956), 15 U.S.C. § 1222 (1958), gives the dealer an action against an automobile manufacturer who fails to "act in good faith . . . in terminating, canceling, or not renewing the franchise" of the dealer. See *Bateman v. Ford Motor Co.*, 302 F.2d 63 (3d Cir. 1962), where a dealer was granted an injunction against cancellation of his franchise.

6. "[S]pecific charges must be served, adequate notice must be given, and full opportunity of meeting the accusations must be afforded." In the Matter of Koch, 257 N.Y. 318, 322, 178 N.E. 545, 546 (1931).

7. "[A]n opportunity must be provided such directors to present their defense to the stockholders by a statement which must accompany or precede the initial solicitation of proxies. . . . I am not called upon to consider what procedural and substantive requirements must be met . . . at the meeting. . . ." *Campbell v. Loew's, Inc.*, 36 Del. Ch. 563, 579, 134 A.2d 852, 861-62 (1957). See also *Auer v. Dressel*, 306 N.Y. 427, 118 N.E.2d 590 (1954).

8. 78 Stat. 574 (1964), 15 U.S.C.A. § 78o-3(b)(10) (Supp. 1964).

9. "Congress . . . cannot be thought to have sanctioned and protected self-regulative activity when carried out in a fundamentally unfair manner . . . without notice and an opportunity for hearing. . . . Experience teaches . . . that the affording of procedural safeguards, which by their nature serve to illuminate the underlying facts, in itself often operates to prevent erroneous decisions on the merits from occurring. There is no reason to believe that the experience of the Exchange will be different from that of other institutions, both public and private." *Silver v. New York Stock Exch.*, 373 U.S. 341, 364-66 (1963). See also *id.* at 404-05 nn. 17-18 citing materials on required procedural safeguards in private associations.

10. See *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 159 (5th Cir. 1961), where the court held that a university student is entitled to the "requirements of due process" before he can be dismissed. Such requirements include furnishing the names of the witnesses against him, a report of the facts to which each witness testifies, and a hearing at which the student may produce witnesses and evidence.

position in a university,¹¹ public employment,¹² employment with a private contractor of government contracts,¹³ private employment,¹⁴ and union membership.¹⁵ Even if those interests are subordinated to others in particular contexts, the process of a hearing, if designed to provide a fair and speedy presentation of all relevant circumstances and considerations, will minimize feelings of alienation from the over-riding common interest.

The need for advocacy will thus appear in many new situations where relatively informal proceedings will be appropriate, but where familiar questions, such as what kind of notice, what kind of procedure, what kind of evidence, what kind of record and review, and what consistency with previous decisions, will be inescapable. Concurrently, the "disinterested" view of a conflict will also be more directly utilized in other situations in which advocacy is minimized. The lawyer as advocate is dispensed with in the growing volume of "small" claims (up to three hundred dollars in New York City, two thousand dollars in Philadelphia) handled by small claims courts in most large cities.¹⁶ But they commonly serve as volunteer arbi-

11. The hearing requirement in faculty dismissal cases which is set forth in American Ass'n of University Professors, *Principles on Academic Freedom*, 27 AAUP BULL. 40, 42 (1941), has been held applicable to a person who was hired on January 24 to start teaching in September, but whose contract was "reviewed" and "abrogated" on May 1 as "null and void by virtue of his conduct" (in the interim). Due process was not afforded him. "He was presented with no prior statement of written charges and received no opportunity to reply to charges before a faculty committee or other properly constituted body." American Ass'n of University Professors, *Report on Academic Freedom and Tenure—Wayne State College (Nebraska)*, 50 AAUP BULL. 347, 353 (1964).

12. Federal employees are entitled to dismissal hearings under the federal civil service system. 52 Stat. 354 (1948), 5 U.S.C. § 652(a) (1958). Many state, municipal, and other local government employees are also entitled to hearings under state laws. See, e.g., ILL. REV. STAT. ch. 24 1/2, §§ 38(b)14 (Supp. 1964).

13. See the dissenting opinion of Mr. Justice Brennan, in which three other Justices concurred, in *Cafeteria Workers v. McElroy*, 367 U.S. 886, 900, 902 (1961): "What sort of right is it which enjoys absolutely no procedural protection? . . . [I]t is fundamentally unfair, and therefore violative of the Due Process Clause of the Fifth Amendment, to deprive her of a valuable relationship [employment as a short-order cook in a cafeteria operated by a private restaurant corporation on the premises of the Naval Gun Factory in Washington, D.C.] so summarily."

14. The traditional common-law rule is that private employees not under contract may be discharged without notice or cause. The effect of the rule, however, has been considerably deflected by union contract provisions which require a showing of just cause for dismissal. See, e.g., *Tinnon v. Missouri Pac. R.R.*, 282 F.2d 773 (8th Cir. 1960); *Local 453, Int'l Union of Elec. Workers v. Otis Elevator Co.*, 201 F. Supp. 213 (S.D.N.Y. 1962); *Roberts v. Mays Mills*, 184 N.C. 406, 114 S.E. 530 (1922). For the right of the government to employ procedures which have the effect of denying private employment (telegrapher on a merchant marine vessel) without a hearing, see *Homer v. Richmond*, 292 F.2d 719, 724 (D.C. Cir. 1961).

15. See *Vars v. International Bhd. of Boilermakers*, 320 F.2d 576, 578 (2d Cir. 1963).

16. See SMALL CLAIMS COURTS, INSTITUTE OF JUDICIAL ADMINISTRATION—2U28 (1954); *id.* 7-U57 (Supp. 1959).

trators, or judges, of such matters in those courts¹⁷ and thus support an essential dispute-resolving mechanism. Lawyers are also active in the design and surveillance of self-imposed regulations to control conflicting interests of corporate managers.¹⁸ Similarly, they have taken an active role in arbitrating and mediating labor and civil service grievances which involve questions of proper procedure, admissibility of evidence, interpretation of writing, and adherence to previous decisions.¹⁹

2. *Development and Application of New Fortes*

If these traditional fortes have caused the Anglo-American lawyer to be known at different times as an advocate and architect of the independent court system, as a counsellor and adviser, and as a mediator and conciliator, still new fortes of the future lawyer in a society of technological change will make him known also as a participant in planning law and in coordinating legal and non-legal solutions to problems "before law." It is this latter area in which social change demands law in place of no law and new law in place of old; the attention and thought of lawyers will be directed more than before toward legal design and legal planning for new conditions in the light of past legal experience. Law will not arrest a society speeding without presently known theoretical limitations toward denser population, faster transportation and communication, higher mobility, more intricate machinery, faster automatic processing of

17. See Wall Street J., Dec. 29, 1964, p. 1, col. 4 (Midwest ed.).

18. See Thanhouser, *The Corporate Counsel's Viewpoint*, 17 Bus. Law. 79, 82-84 (1961).

19. The arbitrability of labor disputes under collective bargaining contracts was broadened under the "arbitration trilogy" decisions of *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); and *United Steelworkers v. Enterprise Wheel & Car Co.*, 363 U.S. 593 (1960). In the *Warrior & Gulf* decision, Mr. Justice Douglas indicated the need for judgment in arbitration on "not only what the contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, [and] . . . whether tensions will be heightened or diminished." *United Steelworkers v. Warrior & Gulf Nav. Co.*, *supra* at 582. For an indication of the traditionally "legal" kinds of problems in labor arbitration that many non-lawyers would frequently be at a relative disadvantage to deal with, see Jones & Smith, *Management and Labor Appraisals and Criticisms of the Arbitration Process*, 62 MICH. L. REV. 1115, at 1123-24 (1964) (review); *id.* at 1127-32 (evidence and procedure); *id.* at 1149 (legal interpretation of a contract); and *id.* at 1150 (use of precedent).

Another example of a situation in which a lawyer's experienced but "independent" view of a conflict is utilized is the statutory requirement that, in the absence of a disinterested majority of directors, an opinion "by independent legal counsel" must be submitted to determine whether corporate executives may be reimbursed by the corporation for expenses incurred in settling an action begun against them in their official capacity. N.Y. Bus. Corp. Law § 724(b)(2)(A).

data and performance of "mental" operations, and larger size in units of organized religion, education, government, and business. Law's best hope for keeping pace is to step up the rate of its development and change. To that end there are four related but distinguishable areas of activity in which new fortes of lawyers can emerge as extensions of the old.

The first of these areas is in the evolution of new legal concepts. The lack of correspondence between some historically basic principles and many modern conflicts forces lawyers to evolve new concepts to stabilize new policy decisions. For example, basic to much past and present statutory and common law is the importance attached to individual and moral fault and to the measurement of harm by the amount of compensation lost or the value of physical property diminished. There are modern areas of conflict that become increasingly difficult to resolve by reliance on these familiar ideas.

The attempt to determine individual fault is a frustrating and pointless exercise when the individual act in question is causally submerged in group action which is inter-meshed with machine action. The problem is often hopeless enough when previously "careful" operators collide in commonly-used machines.²⁰ The determination of moral fault becomes patently senseless as to some asserted injuries allegedly caused in the standard way of operating a new machine or device, or of handling a substance, that may be highly valuable to society but that is understood only partially by a very few men.²¹

20. The collision of two planes over New York City on December 16, 1960, raised novel fault questions that were finally compromised by a settlement in which the United States Government, without admitting either fault or potential liability, agreed to pay twenty-four per cent of the damages fixed in litigation and two airline companies agreed to share the remaining damages. The amounts of more than one hundred claims were reported privately negotiated under this settlement arrangement, and twelve or thirteen other claims await either trial or negotiation at the date of this writing. N.Y. Times, Feb. 2, 1965, p. 54, col. 1.

The collisions of ships operating with the aid of radar or electronic devices poses questions similar to air crashes. However, loss in "mutual fault" cases also raises specific issues to be determined under admiralty law. See, e.g., *Weyerhaeuser S.S. Co. v. United States*, 174 F. Supp. 663 (N.D. Cal. 1959).

Proposals for allocating risk and loss in automobile accidents other than by fault are currently being debated. See, e.g., Conard, *The Economic Treatment of Automobile Injuries*, 63 MICH. L. REV. 279 (1964); Marshall, *The Unreality of Accident Litigation—A Plea for a New Approach*, 50 A.B.A.J. 713 (1964).

21. For a proposal to eliminate fault in the administration of injury cases arising from sources of nuclear energy controlled by the states, but not applicable to injuries arising from other sources of ionizing radiation or from sources owned by the federal government, see Model Nuclear Facilities Liability Act, in NATIONAL CONFERENCE COMM. ON UNIFORM STATE LAWS 1961 HANDBOOK 224. The uncertainty as to the best method of handling these claims is reflected in the discussion in *id.* at 97-108. See also Cavers,

Compensation for lost income as a sole measure of personal injury damages ignores the values attached to the growth in leisure time which some men fight for and others receive as a by-product of the reduction of routine work time.²² Moreover, threats to a man's physical property, to which the law was largely confined in simpler days, do not extend to a new and growing threat to the whole entity of the human individual. On a case-by-case basis utilizing concepts other than traditional property ownership or property damage, an individual's right to privacy from the multiplying numbers of other humans and organizations and his claims to relief from the thoughtless and indiscriminating application of organizational policies, bureaucratic processes, and machine-made actions must be carved out. A similar approach must be taken toward newly-enunciated constitutional rights to equal treatment of every human in public and private facilities with respect to opportunities for education, recreation, service, housing, employment, advancement, and recognition of accomplishment and worth. It will be the responsibility of lawyers to create and administer new principles and concepts for recognizing and defining the limitations of these new interests.

The second area in which the lawyer has an opportunity to display new fortes is in the overhaul of legal machinery. Judicial reform of antiquated court structures and procedures has been carried on by laymen in some jurisdictions with only nominal support from lawyers,²³ although in other jurisdictions lawyers have recently begun to take a more active role.²⁴ The congestion of court calendars in some localities is a scandal to which many lawyers have grown insensitive by association. Outmoded procedures, such as inefficient jury selection processes which visibly waste the time of many people who otherwise have no direct contact with courts, as well as archaic constitutional provisions, statutes, and governmental subdivisions, make a striking contrast to progress in other aspects of life. They invite contempt for the legal way. Simple inertia and habit impede needed change in some respects; in others, the more serious obstacle of vested interests seeks to bar change. Mounting disaffection with the procedures, processes, and institutions which give expression to the legal

Improving Financial Protection of the Public Against the Hazards of Nuclear Power, 77 HARV. L. REV. 644 (1964).

22. See Botein, *The Future of the Judicial Process—Challenge and Response*, 15 N.Y.C.B.A. RECORD 152, 154-57 (1960).

23. See MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION xxxvi (Vanderbilt ed. 1949).

24. Kohn, *Modern Courts for Illinois*, 42 J. AM. JUD. SOC'Y 42 (1958); *Court Reorganization—Reform-1962*, 46 J. AM. JUD. SOC'Y 110 (1962).

way, and ultimate popular rejection of the legal way itself, can be forestalled only as lawyers eschew their complacency, their tendency to concentrate exclusively on the business of their practices, and their inclination to carry over their advocacy of special interests in specific conflicts to association with the positions of such interests on questions of legal reform.

A third area of endeavor involves the birth of law in the emerging world society and in societies moving closer to our own because of technological change. In that endeavor, every predisposition, skill, and attitude that makes law-trained men the administrators of the legal way in our own legally-oriented "free" society is needed to help maintain and strengthen interests common to all societies. The lawyer's hand can shape every aspect of international law and its pre-conditions: international understanding, realization of international interdependence, development of international intercourse, and emergence of international customary ways and expectations. Furthermore, he can design the agreements, processes, and institutions through which those pre-conditions will eventually conduce to an enforceable international law.²⁵

Fourth and finally, special fortes of future lawyers can emerge in planning solutions to problems arising from technological and social change that call for communication, interaction, and collaboration among lawyers and other specialists not ordinarily on common professional or disciplinary speaking terms. In this situation there is no matured conflict of recognized or asserted interests requiring a decision to allocate specific risks of loss in the context of the conflict. Here social change foreshadows interests and injuries about to arise on a scale which will not only over-tax the courts, which have always been under stress from rapid social change, but also legislatures and administrative agencies, which have often intervened at points of weakness in court-made or court-administered law. These social changes, which are labeled "technological" because they are traceable to the technology resulting from scientific activity and scientific éclat, include: the increase in population; the development of nuclear weaponry; the growth of urban centers reflecting economic

25. Francis Plimpton, Assistant to the United States Ambassador to the United Nations, is reported as having said that "anybody who is a lawyer has an advantage at the U.N.; in many ways this is like a perpetual lawsuit with 115 different parties. You also get into terrific arguments over shades of meaning, terribly reminiscent of arguments you get into when drafting contracts. . . . You have to maintain patience or you'd go insane, and you need the sheer argumentative ability to be persuasive in negotiation." Mayer, *"The Governor" at Work at the U.N.*, N.Y. Times, Feb. 7, 1965, (Magazine), p. 86.

patterns and technological possibilities of mobility and communication inconsistent with legal and governmental jurisdictional lines; the allocation of surface space and air waves; the control of outer space; the chemical and radioactive contamination and pollution of food, air, soil, and water; the national and world-wide availability and allocation of natural resources; and the impact of social conditions on the lives of people who do not share equally in the advantages of law and of the existing order, in which demand for change and impulse to violence are legally channelled.²⁶

Even though technology resulting largely from the scientific *éclat* of the past quarter century has already produced social change at an unprecedented rate, new possibilities for greater change from an increase in scientific and technological activity are already apparent. All signs portend a proliferation of the situations in which the just and nonviolent reconciliation of asserted interests with common interests will pass with greater difficulty through the "eye" of a court, or even of an administrative agency as conventionally constituted. Law will have an important, albeit not exclusive, role in grappling with the problems mentioned above. Moreover, the legal community must encounter such related difficulties as general alienation from common interests, under-financing of the education required to undergird a technological society, youth crime, caste poverty, and racial disorder. Law will also be involved in extending society's forward line of vision to foresee, anticipate, and begin providing for latent conflicts not yet immediately upon it. Previously unknown combinations of social, religious, political, medical, psychological, educational, and legal controls will be necessary. The function of developing solutions and guiding them toward the most effective channels for governing human conduct will be unsuccessful unless lawyers co-operate with specialists of other disciplines when faced with problems that defy traditional classification and that defy solution by established institutions, processes, and patterns.

II. NEW DEMANDS ON LEGAL EDUCATION

A. *The Pace of Curricular Change*

With formal law office training now almost wholly a thing of the past, and with "continuing" legal education confined almost entirely

26. See Cahn & Cahn, *The War on Poverty—A Civilian Perspective*, 73 YALE L.J. 1317 (1964), for a discussion of how lawyers can utilize their abilities "to deal with the intricacies of social organization," in order to provide leadership in attacking the grievances of neighborhoods.

to keeping lawyers *au courant* in specific areas of practice, the responsibility for seeding the professional qualities that will sustain the legal way in the future rests largely with the law schools. There the face of legal education has already begun to change, though slowly in proportion to the changes in the nature of interests the legal way must comprehend and the conflicts it must encompass or anticipate.

One explanation for the slowness of the change is that comparisons with other educational endeavors suggest advantages worth conserving. In contrast to legal education before the case method, there is now direct recourse to the recorded dispositions of litigated controversies and to the reasons given for the way they were decided. Compared with legal education even in the classic day of the case method, there are refinements in exercise with cases, and with statutory and administrative materials, in moot court, practice court, tutorial writing with teaching assistants, law review work, legal aid clinics, seminar papers, and problem approaches. Compared with foreign legal education, there is professional thoroughness and dedication in concentration for three years on law alone. Compared with undergraduate and other graduate education in American colleges, there is advantage in the close analysis, tested in dialogue with teaching professors, of materials and issues circumscribed by the problems of a particular controversy. The mind that is shaped in this process usually has a keener edge and a truer point for discerning the central issue in a specific problem of control and communications in human relationships than one tooled in a "softer" educational atmosphere.²⁷ No one likes to tinker too much with legal education at the risk of losing these accomplishments and the solid base on which the extension of new fortes would rest. This attitude is reinforced by increasing signs of student dissatisfaction with "mass" education outside the law schools.

Another reason for the slowness of the changes is that law deans hold loose reins on relatively small faculties which have a tradition of academic *laissez faire* in course content and approach. To the extent that self-generated change exists at all, it tends to be leisurely and law deans do not constitute a superbody for directing that

27. "[T]he law is exact, but not precise; science is precise, but not exact. In this sense all the historical disciplines from poetry to law are exact: they grip tight the single particular of the moment and never by chance mean the one next to it. BARZUN, *SCIENCE—THE GLORIOUS ENTERTAINMENT* 198 (1964). "[T]he ways of the law furnish an example that might strengthen the waning confidence in the reality of the unique, the concrete, and the nonstatistical." *Id.* at 218.

courses, methods, and performances in legal education be related to demands on law and lawyers.²⁸ Anyway, the course content suggested by course titles and catalogue descriptions is often minimized as not disclosing the heart of the matter. A course on the Legal Implications of Longevity Among the Huenzi might serve, under the right man, for many purposes. At least the right man often thinks so, and, with administrative oversight and serious classroom visitation discouraged by the tradition of teaching autonomy, who is to gainsay him? For these reasons, the first-year curriculum offered by most law schools in 1902²⁹ was much the same as the one scheduled for the fall semester 1965-1966 as well as the one predicted by some for the year 1984.³⁰

The first disadvantage of this continuity is the old one that most of the cherished advantages of legal education, except the training from law review work for about fifteen per cent of the class, seem largely won in the first year, which has long been considered the most important "half" of the whole three-year period. A second and more recently discovered disadvantage is that the educational accomplishments previously discussed do not alone condition the mind and attitude for the new fortes expected of future lawyers. And a third disadvantage is the existence of two other negative conditions, each of which is related in a different way to technological development and social change. One of these conditions is an insulation of the law schools and the legal profession from other disciplines and from the educated layman. The other condition is inadequate financing of most law schools in relation to a few, which results in significant unevenness in the quality of legal education and breeds excessive competition among law schools for teachers, students, money, and prestige.

These disadvantages and conditions, unfortunately, are interrelated and not easily corrected.

In regard to curriculum, aside from minor disagreement as to the

28. The Standards and Requirements of the Association of American Law Schools contain no specific course mandates beyond the statement that members are to be "encouraged" to maintain a "comprehensive curriculum." AMERICAN ASS'N OF LAW SCHOOLS, ARTICLES OF ASSOCIATION, § 6-1 (as amended to Dec. 30, 1956).

29. "The present curriculums of three-year law schools then appear most commonly to be selected from Contracts, Criminal Law, Torts, Elementary Law, Property, Pleading, Domestic Relations, Agency and Sales, the subjects being preferred in the order named." Beale, *The First Year Curriculum of Law Schools*, 1902 PROC. AALS, 42, 46.

30. See York, *The Law School Curriculum Twenty Years Hence*, 15 J. LEGAL ED. 160 (1962).

semester in which certain courses should be offered and whether they should be required or recommended, there seems to be general satisfaction with a fairly standard first-year program.³¹ Although not supported by objective findings, a firm belief exists that the customary courses in contracts, torts, property, procedure, criminal law, constitutional law, agency or business associations, introduction to law or legal method, legal bibliography, and legal writing or legal advocacy are the most basic and most elemental from among which to begin analysis of all conflicts. These subjects survive new demands in legal education because they serve as canopies under which new legal concepts and new organizing principles may be easily explored. To the extent that modern developments eclipse controversies and concepts for which the above course titles were designed, consideration of those developments is left to the professors who prepare the course materials and teach the courses—to their perceptivities of such developments, their preferences in emphasizing them, and their abilities to illuminate their relevance. The inclination and skill of law teachers in this regard will largely condition the future lawyer's initial understanding of the relationship between law and changing modern life. Thus, the ability to attract able men to teaching is the most determinative single ingredient of the future character of legal education.

B. Curricular Advances

The curriculum offered during the second two years of law school displays a greater awareness of the inadequacies of old fortes alone. The change in course content is indicated from a survey of the catalogues for 1963 to 1965 of approximately twenty law schools entitled to be included in a "front group" because of the amount of financial support they enjoy, and of several other law schools not so well supported. The basic course in international law which many schools formerly regarded as sufficient is now supplemented by courses concentrating on: international commercial law, international investments, international economic organizations, international business associations, international regional organizations, foreign relations, international conflicts-of-law, the Common Market, the United Nations, international human rights, world order, and

31. See generally Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL ED. 1 (1964); Rohan, *Some Basic Assumptions and Limitations of Current Curriculum Planning*, 16 J. LEGAL ED. 289, 295 (1964); Note, *Modern Trends in Legal Education*, 64 COLUM. L. REV. 710, 727 (1964).

world law. Courses are offered in multi-nation comparative law as well as the comparative contemporary law of specific countries or areas, including the Soviet Union (seven law schools), Communist China, Japan, Asia, Africa, Latin America, the Near and Middle East, and the Underdeveloped Countries. One effect of these courses is to give students perspective on their own law by suggesting relationships between law, economic development, political attitudes, social change, and constitutional evolution in a context in which those relationships can be grasped more quickly than in the context of the students' own experience. A second effect is to orient students to actual problems of international and foreign practice.³² A third effect is to attract students to help develop law in other societies, including a world society. The impetus for many of these courses, of which there are up to fifteen in some schools,³³ was supplied by an international legal studies program financed for selected schools between 1954 and 1961 by the Ford Foundation.³⁴

In the field of criminal law, new approaches are suggested by such courses as Psychoanalysis, Psychiatry and Law (Harvard, Yale, Southern California), Psychopathology and Law (Temple), Penal Law Revision (Columbia), Competency and Responsibility (Georgetown), Bail Problems of Indigent Accused (N.Y.U.), and Juvenile Delinquency and Offenders (Wisconsin, Illinois). Broader understanding of criminal law problems as well as of other legal problems may also come from such courses as Legal Medicine (Western Reserve, Maryland), Legal Aspects of Mental Illness (Southern California), Scientific Evidence (Northwestern), Mind and Deed (Southern California), and Anthropology and Law (Northwestern, Minnesota, California at Berkeley). The Supreme Court decision in *Gideon v. Wainwright*³⁵ will spark renewed interest in this field. Further impetus will come from such developments as the current programs financed jointly by the American Bar Foundation, the Avalon Foundation, and the Vincent Astor Foundation to formulate minimum standards of criminal justice administration in the United States,³⁶ and a program to stimulate new studies and new approaches

32. *Teaching of International Law and Related Courses in American Law Schools*, report of a conference on teaching and research, in 58 PROC. AM. SOC'Y INT'L L. 53 (1964).

33. Current course catalogues indicate that Harvard, Columbia, and Michigan offer the largest numbers of courses in the area of International Law.

34. FORD FOUNDATION, ANNUAL REPORT 41 (1957); FORD FOUNDATION, ANNUAL REPORT 159-60 (1961).

35. 372 U.S. 335 (1963).

36. American Bar News, Jan. 15, 1965, p. 4.

to criminal law in the law schools which is to be undertaken in 1965 at the University of Michigan.³⁷

In the area of professional responsibility, the National Council on Legal Clinics has provided grants to a number of schools in order to permit them to offer experimental courses in which an important aspect is the lawyer's role and responsibility in law complexes and in the legal ramifications of community problems and situations.

Other courses and seminars are taking, as a point of departure, a contemporary problem, a modern regulated activity, or a mode of thought of which scientific activity or technological change was a precursor: Communications, including television and satellites (George Washington), Urban Development and Renewal (Duke, Temple), Metropolitan Land Use and Planning (Washington), Intellectual Property (Virginia), Air Law and Aviation Law (Indiana, N.Y.U.), Nuclear Energy (Michigan, Cincinnati), Natural Resources (Washington, California at Berkeley), Water Rights (Stanford), International Shareable and Strategic Resources (Ohio State), Automobile Accidents (Harvard, Illinois), Race Relations (Michigan), Civil Liberties (Columbia, Northwestern, Wisconsin), Law, Science and Policy (Yale), Science and Law (Michigan), Law and Technological Change (Illinois), Arbitration (California at Los Angeles), Symbolic Logic and Legal Communications (Yale), Libel, Slander and Right of Privacy (with emphasis on "the legal response to social and technological changes which threaten the individual's interests in freedom from publicity and in physical seclusion") (Columbia, Ohio State), Modern Methods of Warfare (George Washington), Internal Affairs of Unions (Georgetown), Public Contracts (Ohio State), Pension and Profit-Sharing Problems (Western Reserve), Financial and Investment Aspects of Life Insurance and Annuities (Chicago), and Decision Processes (including consideration of quantitative measures for studying decisions, mathematical decision theory, and modern logic) (Yale).

The foregoing list of new ventures, although not exhaustive, is admittedly a more impressive array of course offerings than one could find at any one school. Furthermore, some may be indulged in their own schools as harmless seminar hobby-riding. A few are law graduate offerings, and still others may be limited in enrollment, either by rule or by student fondness for "practical" courses

37. This study is being conducted by Professors B. James George and Andrew S. Watson, M.D.

and bar examination subjects. Also, success in any one of these courses may be hard to identify, since the "point" of departure turns out to be a large staging area and the problems and materials do not tuck easily into a conventional academic frame. It is difficult to determine the effort to require, the depth of investigation to recommend, the standards of accomplishment to apply, and the measure of research and writing by which to judge success or satisfaction. The students are often enthusiastic, but student reaction alone can be a fallible index.

The courses, nevertheless, do signify an awakening which was not started, and whose dimensions cannot be measured, by course titles alone. "The study of law and its relation to society rather than . . . as a self-contained system" has always been "an established tradition" at Wisconsin, according to its catalogue.³⁸ A course bearing only the title of "Criminal Law" at Florida encompasses "physical, psychological and social aspects of criminology." "The Nature and Function of Property Rights in Social Organization" (Chicago) and "Social Responsibility and the Accumulation of Property" (N.Y.U.) do not appear to be conventional approaches to property law. Cornell, which lists no seminars as such in the catalogue, has at least sixteen "problem" courses. The "problem method" is described in the Northwestern catalogue as including the concept that "the concrete problem supplies the perspective in which basic questions of social policy, of the why and how of the development of law, can be considered in meaningful context."³⁹ Innumerable courses and seminars are described by such titles as "Law and Society" and "Law and Economics," and their content, often fluid, may involve the type of study undertaken in a course more readily identifiable by label as "new." A course offered at Minnesota entitled "Minnesota Public Affairs" involves "selected problems of importance faced by Minnesota legislators, legislative interim commissions, municipalities, and other public agencies; both factual and legal exploration is used, aimed at producing a recommended course of action or solution to be submitted to the government officials involved, together with draft legislation or other governmental action."⁴⁰ Almost any modern social problem with legal implications may obviously be the point of departure for an exercise in the use of legal materials, methods, and ideas in such a seminar. The same broad

38. BULL. OF THE UNIVERSITY OF WISCONSIN LAW SCHOOL L9 (1964-1966).

39. BULL. OF NORTHWESTERN UNIVERSITY SCHOOL OF LAW 26-27 (1964-1965).

40. BULL. OF THE UNIVERSITY OF MINNESOTA LAW SCHOOL 13 (1964-1966).

implications can be seen in a course offered at Chicago on "Dispute Settlement Mechanisms" in "private, national, and international groups." Finally, who knows what leavening effect the new courses, some of which may have been born out of older ones, are having on the older ones in ways not apparent at all?

Curricular banners, moreover, do not mark the whole parade. Other activities in the law school emphasize the relevance of legal ideas to problems not cast in traditional legal form. The research inquiries of faculty members are often prompted or shaped by course content, which is based heavily on practical needs. Frequently, however, the reverse is true: curricular design will show influences of faculty concern and curiosity about problems in which the influence of legal ideas and the need of legal activity are newly recognized.⁴¹ The reports of funds financing legal research show an increasingly high number of projects, many undertaken by law faculty members, which could be injected into the curriculum so as to involve students as well as faculty.⁴²

41. A Seminar in "Law and Technological Change" offered at the University of Illinois invites student study and reports on any one of a number of subjects not ordinarily associated with law course content. Suggested areas of investigation include: nuclear energy regulation; communication satellite development; population control; the implications of electronic, narcotic, and hypnotic devices in investigation and fact-finding, space law, and others. In the fall semester 1963 all students enrolled chose an aspect of the application of electronic computers to the retrieval of case opinions. They did so because they wished to participate directly in research on that subject made possible by separate donors. Copies of magnetic tapes containing more than five thousand case opinions were supplied through the American Bar Foundation by the American Council on Library Resources; machine time on an IBM 7094 electronic computer and the services of a mathematics graduate student to do programming were furnished by the Digital Computer Laboratory of the University of Illinois; and funds to employ at least one law student part-time were furnished by the University Graduate College. The combination of classroom and research inquiry was mutually beneficial.

42. The most recent projects of the American Bar Foundation include such studies as the law of outer space and the conciliation of disrupted marriages. Studies of legal problems of arrest, mental illness, and defense of indigents are in current progress. See *American Bar News*, Jan. 15, 1965, pp. 13-14. The Meyer Fund projects include study of: the neighborhood legal services program and related legal assistance, public emergencies growing out of labor disputes, consumer credit, the operation of fair housing agencies, interchange and research on English and American criminal justice, legal problems of the Negro protest movement, informal processes leading to guilty pleas, adjudication of delinquency in children's courts, immigration procedures, automobile accident reparation, and enforcement of metropolitan housing codes. Report of the Walter E. Meyer Research Institute of Law (1962-1964). Ford Foundation projects include research "in the public-policy area . . . [and] the preparation of law-school graduates for public and community leadership." FORD FOUNDATION, ANNUAL REPORT 40 (1958). Other projects encompass: model zoning and land use regulation; a model code of prearrest procedures; surveys and experiments in legal services for indigents; legal problems arising from jet transportation; manned and unmanned missiles; space exploration; and interuniversity research in the legal systems of the Soviet Union, China, Poland, and Yugoslavia. FORD FOUNDATION, ANNUAL REPORT 30, 116, 118 (1963).

In addition to research, many law schools regularly sponsor lectures or lecture series, symposia, conferences, institutes, colloquies, and publications (such as *Law and Contemporary Problems* at Duke and the *Race Relations Law Reporter* at Vanderbilt) which tend increasingly to explore or summarize such problems.

Finally, it should be noted that the extra-curricular efforts of some law professors in matters of indigent defense, race relations, civil liberties, the constitutional aspects of security risk accusation, academic freedom, and the legal position of the poor illustrate lawyers' involvement in these problems and the law's concern for the individual as well as its support of organized interests deemed salutary to individual welfare.

C. *The Legal Education of Tomorrow*

From these beginnings, therefore, the face of legal education may be expected to undergo further change toward the extension of skills and attitudes developed largely in concentration on the still-important party-to-party controversies. In this manner law students will become more accustomed to, more naturally familiar with, and more proficient at working on the social "macro-controversies."

1. *Interdisciplinary Communication and Cooperation*

Since many of these recent developments involve interdisciplinary activity, they also present possibilities for reducing the insulation of the legal profession. The truth so far, however, is that only modest results, and no over-all formula for effective interdisciplinary cooperation, have been reported. The settled views which many non-legal academicians have of law and lawyers both manifest the problem and deter its solution. These views range from respect for the highly technical but highly limited area to which it is assumed that the operations of lawyers should be confined, to close-minded and uncompromising hostility to all legal operations. Intermediate attitudes include innocence of any knowledge of the legal area, with varying assumptions as to whether it could hold anything of real interest or import to man's welfare, and polite but condescending amusement at legal tenets or traits assumed to be the inseparable and endemic characteristics of all legal thought. These attitudes, although not invariable, are common enough and limit the number of persons who are favorably disposed to a joint edu-

cational venture with lawyers and who are ready to give such a venture sustained priority over more rewarding academic commitments.

On the lawyer's side there is at least a presumption of customary dealing with other specialists, but usually in an inquiry having tighter boundaries than those that circumscribe a large-scale social problem coiled into legal and non-legal skeins. In this inquiry, the lawyer is not to ask all the questions and the other specialist is not to give all the answers. Their joint inquiry must be jointly designed, and the lawyer's familiarity with the learning, methods, and limitations of other disciplines becomes both a condition and goal.⁴³ After first contact, there is an inclination on both sides to back off in obeisance to years of academic and professional isolation. But a lawyer's discriminatory powers are wasted in exclusive concentration on narrower inquiries when they could be useful as well in broader ones. Despite discouraging obstacles to mutual exploration of complex problems, it lies with the academic lawyers to assume the lead in breaking down barriers that now separate law and other fields of learning.

2. Cooperation Among Law Schools

None of these developments, unfortunately, relieves the problems of under-financing and over-competition. In the period since World War II, population growth and mobility, age-group trends, inflation, exhausting of endowments, increases in state appropriations for graduate and professional education, and the increased percentages of students attending college and professional graduate schools⁴⁴ have changed the law school world. There are now approximately twenty-five private and publicly-supported law schools which are better financed than the others to meet requirements thrust upon them by recent developments.⁴⁵ These requirements include: library expansion necessitated by more users and a mountainous increase in bulk and refinement of library materials; increases in faculty salaries necessitated by more than proportional increases in competing pro-

43. See generally Derber, *What the Lawyer Can Learn From Social Science*, 16 J. LEGAL ED. 145 (1963).

44. An estimated twenty-five per cent of all college graduates now seek graduate study. Wall St. J., Nov. 10, 1964, pp. 1, 15. The percentage of college graduates entering post-graduate study exceeds seventy-five per cent at some colleges. Director of the Harvard Office of Graduate and Career Plans, Report (1964).

45. Disagreement about positioning on the borderline makes naming them inappropriate, but most deans and law teachers would probably agree on the identity of most schools to be included by such a criterion.

fessional compensation; new buildings necessitated by increased enrollments and a long period of building stability leading to physical obsolescence; additions to faculty necessitated by increased enrollments and new courses; and more scholarship funds needed to enable students to pay the higher tuition costs resulting from the other requirements. The "front group" schools are now supported financially at a fairly common level and are able to offer educational experiences, from the point of view of library and research material, classroom materials and methods, teaching caliber, physical facilities, curricular breadth and innovation, examination standards, professional seriousness, and placement opportunities, which are not substantially differentiable from each other.

The front group schools, however, cannot begin to accommodate the number of legally-trained men needed as future lawyers. Moreover, law school enrollment is currently undergoing a sharp rise.⁴⁶ Most future lawyers will be trained at one of the hundred or so law schools which meet the minimum standards of the American Bar Association or the slightly higher standards of the Association of American Law Schools, but which are not financially supported at the level of the front group. In this latter group of schools the quality of the educational opportunity varies, but in all of them the opportunities may be fairly called differentiable from those in the front group. Even the front group schools are under-financed when compared to any standard other than their less fortunate counterparts. Classes and sections run not uncommonly to the size of 100 to 150 students and are getting larger. New programs have been financed in some instances with non-recurring grants, so that extraordinary fund-raising will become necessary to maintain existing programs. The range of faculty salaries is barely competitive with professional compensation in the early years and even less so for experienced lawyers. After taking account of inflation and the impact of taxation, it seems likely that the salaries paid Columbia Law School professors in the period before and after World War I, when Harlan Stone was dean, amounted to more than the upper range of salaries in virtually all front group schools today.⁴⁷ As for scholarship funds and other types of financial assistance, law students on all campuses are today the only graduate students who are ex-

46. In the fall term 1964, the enrollments in law schools which are approved by the ABA rose more than ten per cent from the previous fall to about 55,000. *Law School Registration, 1964*, 17 J. LEGAL ED. 209, 223 (1965).

47. See MASON, HARLAN FISKE STONE—PILLAR OF THE LAW 125, 137 (1956).

pected to meet most of the large capital cost of postgraduate education out of their own resources.⁴⁸

From these considerations it is apparent that the position of the schools which have not been able to obtain financial support at the front group level puts equal educational opportunities out of the reach of most future lawyers.⁴⁹ Furthermore, students who have excelled in college or in LSAT test scores are led by this situation to differentiate sharply among schools and to migrate, to the extent possible, to front group schools and preferably to the most reputable of these.⁵⁰ Many of the disadvantages produced by the inferior financial position already suffered by the vast majority of all schools are thus reinforced. The schools themselves are less concerned with the over-all implications of this situation for legal education and for the caliber of future lawyers generally than they are with maintaining their own individual positions and the caliber of their own graduates. To accomplish this, and to stay at the financial level of the front group, they are preoccupied administratively with faculty recruitment, public relations activities, fund-raising and budgetary matters, and proselytizing students for their particular schools through college visitation and scholarship programs. This manner of carrying out their collective responsibility to attract and recruit future lawyers to the profession is hardly ideal.⁵¹

48. See ASSOCIATION OF AMERICAN LAW SCHOOLS, *ANATOMY OF MODERN LEGAL EDUCATION* 126-28 (1961); Dean, *Who Pays the Bills? The Cost of Legal Education and How To Meet It*, 16 J. LEGAL ED. 416, 426-28 (1964). Although approximately \$2,000,000 was available in 1961 for scholarship assistance, it was estimated that less than ten per cent of the students at 123 law schools received any aid. More than half of this amount was controlled by only nine of the 123 schools. ABA SPECIAL COMM. ON CURRENT NEEDS IN THE FIELD OF LEGAL EDUCATION, REPORT 11 (1961).

49. The suggestion that "local" or "regional" law schools (by whatever criteria) should strive for different objectives, or at least not to "attain greater similarity," is made in Jones, *Local Law Schools vs. National Law Schools—A Comparison of Concepts, Functions, and Opportunities*, 10 J. LEGAL ED. 281 (1958). The idea that there ought to be schools known as "national" and schools known as "local" or "regional" (as distinguished from the fact that there are adequately-financed schools and inadequately-financed schools) underestimates the common skills and attitudes which will be needed by all future lawyers in a society whose time-boundaries are shrinking.

50. A misconception kept alive in the rivalry between schools is that only the most reputable are really "national." For an example of the virulence of this idea, see the confident non-sequitur of a recent endowed study of 1961 entrants to law schools that "while most of these [law] schools [ranking numbers nine to twenty-four on the basis of the median LSAT score of their entering students] would be regarded as solid, substantial schools, they would not rank as top national schools." NATIONAL OPINION RESEARCH CENTER, *LAWYERS IN THE MAKING* 45 (1963).

51. "The development of an effective recruitment program appears to require long-range planning and action, national in scope in numerous respects, and involving concerted action by the law schools and the bar of the country. The law schools appear to have an important sphere of activity fully to inform and work with

Correction of these failings in the training of future lawyers to the fullest of their potential would require law schools to take a broad and collective view of their responsibilities for legal education. At the outset, such a view could be expected to be taken only by the more financially fortunate institutions. The deans of the front group schools could encourage a new inventory of the financial *desiderata* of all law schools, giving due regard where necessary to the desirability of merging or consolidating those which are below minimal size for efficient operation. If new criteria for the financial needs of the law schools of the country were agreed upon, the deans of all the schools should be seen working collectively for measures that will minimize internecine competition and bring more law schools to the acknowledged level at which each can fully prepare all future lawyers to sustain the legal way.⁵²

pre-law advisors and secondary schools counsellors and perhaps in other areas of the educational system. . . . Both a dearth of full and correct information about law study and the legal profession, and far too much incorrect information, have left too many potential law students little disposed to aspire to the profession." ASS'N OF AMERICAN LAW SCHOOLS, ANATOMY OF MODERN LEGAL EDUCATION 130-31 (1961).

52. Suggestions have already been made that the organized bar, through a foundation, and the federal government would be appropriate sources of increased financing for law schools. Malone, *Our First Responsibility—The President's Annual Address*, 45 A.B.A.J. 1023, 1084 (1959); Dean, *supra* note 48, at 416, 426.