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Leon Green

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## THE PATH OF LAW SCHOOL DEVELOPMENT

LEON GREEN\*

Legal education is taking on new meaning. Law schools are entering upon a new development. The classical American law school, represented by three or four well known schools after which all the better schools are patterned, has clung rather tenaciously to a twin-function program of training technically fit young lawyers and promoting scholarly legal research. That it has succeeded in both undertakings is attested sufficiently by the present leadership at the bar and by the fact that the law books which have commanded the greatest respect and influenced the development of the law most profoundly, with rare exceptions, have been the products of law teachers. Nor will either of these functions receive less emphasis in any revised program of legal education. Rather, will they be tremendously accentuated. The bar is insistently calling for a better trained graduate. Whatever the cost, it wants a man who has the capacity to turn out work from the moment he steps into the office. Moreover, the general standard of living demands that a young man be able to earn a decent income from the moment he enters the practice. The five year starvation period of grace has been cut down to a few months at the most. The profession is even demanding that the school take over that most difficult of teaching tasks, the instruction of the young lawyer in both the theory and routine of procedure. The office is no longer willing to overlook the initiate's lack of precision in this particular nor to afford the instruction itself without grumbling. The school has so improved its product from time to time that it has no alternative other than continue to offer a better and better graduate.

In addition, a whole regiment of new developments in the law itself has placed a strain on the school's already crowded curriculum. Compare the curricula of today with those of ten, fifteen, twenty or thirty years ago and mark the growth in the number of subjects in which instruction is now offered. And for most parts these recently added subjects are the ones in which the litigation of today arises in its most vexing and complex form. Administrative Law, Interstate Commerce, Taxation in its manifold varieties, Conflict of Laws,

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\* Dean-elect of School of Law, University of North Carolina. At present visiting professor at Yale School of Law, New Haven, Conn.

International Law, Admiralty, Workmen's Compensation and Insurance in its numerous modern developments, Future Interests, Labor Law, Credit Transactions of various types, Bankruptcy, Trade Regulations, Suretyship, Mortgages, Oil and Gas and other types of Mining Law, Criminal Law in its new phases, Trial and Appellate Procedure, Legal History, and others, are subjects which either were not noticed at all in the classical curriculum or were passed over with the slightest consideration. Most of these represent the problems of the lawyer's office which give most trouble. The law school has added them to its curriculum and its students include as many of them as time permits in their crowded three year course. The school is thus placed under a heavy demand to speed up its operation. It must turn out well equipped technicians who can begin their work with some understanding of the problems they must handle for clients and with some assurance that its graduates can stand up under the increasing competition to which the modern lawyer is subjected. That it cannot let down at this point is clear.

The same considerations demand of the law teacher a corresponding increase in his efforts. His ranks have grown but not in proportion to the increase in the number of students he must teach and the material he must survey. The increasing output of decision, and the welter of legislation modifying, extending, superseding, in varying degrees, the subject matter of his study, are beyond the appreciation of those who do not seriously undertake to keep abreast with even one small division of the law. The very bulk of the source material, hidden beneath the artificial and mechanical devices and classifications employed to make it available to the profession, requires a life time for the mastery of a single small field. This is assuming that the task is simply that of salvaging an already refined product. But the contrary is the case. The same forces which are bringing about a reordering of man's theories and relations in economics, religion, government, family life, and the advances being made in the physical sciences, have brought under suspicion the long accepted tenets, postulates and dogmas of the law itself, and the law teacher is expected to lead the way in re-examining and restating the postulates found necessary in the reconstruction of the science of law. The practitioner is too busily engaged with his client's interest; the judge with his docket. This is an undertaking demanding the best intellect and statesmanship the profession can furnish. It is a

public service. The outlook it affords for personal gain is barren. But the school cannot let down here. It must supply both the spirit and the workmen for this job which the legal profession owes to society, and it must do it without too much delay.

These functions which law schools have been performing on behalf of the legal profession are of increasing importance. Instead of emphasis being taken away, it must be added in the largest measure. This means better teachers and better teaching, a better trained student body as raw material and better physical plants, a more genuine scholarship, and it means a further division of labor and a speeding up of educational processes which themselves must be the subject of constant improvement.

As important as these functions of the law school are, they no longer represent the ends of legal education or the legitimate sphere of law school activity. There are at least two other objectives of equal importance which must become a part of the law school program. The first of these I may call the building of the legal profession. As large a part as law schools have played in legal education they seemingly have never considered themselves nor have they been considered by the bar in America as a part of the legal profession. They have grown up outside the profession as a distinct sort of institution neither depending upon practitioners for support, nor being considered by them as one of the profession's charges. Perhaps the idea has been at large that the school and profession should keep at arm's length, the members of each rather resenting too close alignment or identification with the other. Each seems to have been jealous of its own prerogatives and independence. The profession as such has never assumed the responsibility of supporting the schools, and certainly, the schools have never seriously undertaken the promotion of the interests of the profession as such. Their graduates have gone out knowing little of the history, organization and obligations of the profession at large outside of what might have been incidental to their training as partisans in litigation. The idea of building the profession has apparently gone without much consideration. This perhaps accounts in some measure for the fact that there has been so little development of the profession. There is an abundance of material out of which a profession can be created; there is a need for it; there is even a popular notion that such exists; but further than the name there is not much which can be truly

called a profession. Law school graduates have gone straight from the school to law examinations; from there to the office. Broadly speaking there is no interneshíp, no association with which to become aligned as an introduction to the practice; no organization which attends to the serious business of the group. It is only after a young lawyer is on the way to financial success that he wakes up to the existence or the desirability of a local or state bar association. Fortunately, there are enough of this sort coming along at any one time to maintain at least a semblance of such organizations in the more populous centers. But with rare exceptions these associations never have the support and interest of any large number of those who should be found in their ranks, nor do they function at all with respect to the profession's serious problem. They are largely social in their activity and at most concern themselves with urgent procedural reforms. The every day business of the profession gets scant consideration. Why is this? Can it be because there are so few lawyers who really understand the functions of the profession outside the purely personal interests of its members? Is it because most lawyers are so busy that they have no time except for their clients or their official duties? Perhaps both of these play a part, but of more significance than either, no doubt, is the fact that lawyers, by and large, have never seriously addressed themselves to the building of the profession. What the character of organization should be or what it should undertake have never been clearly outlined. They have gotten no further than the name and a few surface problems.

The last ten years have seen a general movement taking shape throughout the country which promises to bring into being an articulate profession. Some of the states have made considerable headway in this direction and the American Bar Association has shown a vigor and continuity of effort which if continued will make it a real force in our national life. It has already given great impetus to local and state associations, and it is upon these that the real administration of the profession's affairs must rest. But the movement is just beginning to get under way. That there are problems of the highest import to both the profession and the public at large now ripe for consideration is too clear. The very part which the law school itself shall play is one of the larger questions. Shall the profession at large undertake to support those schools worthy of support and dis-

countenance those which are unnecessary or unequipped, is another. What means shall the profession make use of in determining its membership, and what standards shall it set both for admission and continued membership? What are the limits of the numbers to be admitted? What machinery can be provided for effectually guarding the profession's interests and through them the public's interest? What part is the profession to play in superintending the operation of the machinery for administering justice and how shall it play such part? Suffice it to say that the profession is not for some reason meeting its problems: As individuals, lawyers are the most powerful units of society; as a group they have so little power in public affairs that they never attempt to exercise it. The lack of effective group machinery accounts for this anomaly. In no other way can the profession's impotency be explained.

Admission to the bar ought to be a high privilege, and is so in theory. There is neither a legal nor moral right to become a lawyer. The public's interest is the sole determinant. A bar of high grade lawyers capable of attending to the business of the community, unsubjected to the degrading effects of overcrowding may some day strike the public and the profession alike as the only rational solution for many of the evils which bring disgrace to the profession at large, crowd out court calendars with suits which for one reason or another should never have been brought, and pile up enormously the costs of the administration of an unsatisfactory justice. The point to be made here is that the problems of real moment are receiving no conscious, consistent and scientific thought by those who should be the mainstays of the bar's professional life. There are no others who have the background for dealing with the problem.

In building the professional machinery and spirit, the school and bar should find common ground. The state school serving a single jurisdiction for most part has a peculiar advantage over the larger national school in taking the lead in pursuing this objective. Its students should be given the opportunity of studying the history, needs and problems of the profession so that as they go out they may be prepared to take part in setting up and operating the machinery necessary to the profession's growth and protection. The members of the faculties of such schools should become active members of both state and local organizations, willing to undertake such research and investigations as they are fitted to make, and the faculty as a

whole should be charged with the details incident to such organization which can only be cared for by a group of individuals closely associated rather than by single individuals widely scattered over a state. In short the school should assume those responsibilities which can be met by its faculty to much better advantage than by any other contingent of the profession. By some such close coördination of the efforts of the practitioner, the judge and teacher, the spirit of a profession can be evolved and great strides can be made in the administration of the profession's affairs. That each contingent will be greatly benefitted and that the public service rendered by the profession will be greatly enriched there can be no doubt. That the school must show a willingness to move along some such line is clear.

The second additional objective which the law school must make a part of its program is similar to the one just discussed but turns in another direction. May I call it the process of harnessing the other social sciences? A tremendous amount of study and constructive work by able men is being done in the fields of Economics, Sociology, Business Administration, History, Government, Psychology, and Philosophy, but the results of their work have great difficulty in being put to practical tests. In large part their contributions go unheeded and unused. Their most serious obstacle is getting the favorable attention of lawyers, who in large measure are the engineers in charge of affairs. Progress is made in dealing with social and economic problems just about as rapidly as lawyers and judges learn how to deal with them. Any plan of social and economic readjustment must first be accepted by them. Lawyers are for most part our legislators, as well as the important administrative officials, and make up entirely our judges and the advisers of influential and powerful citizens and groups of citizens of every sort. Holding the important place that they do in our social order, their understanding of the allied social sciences, their touch with the workers and thinkers in those fields, should be such that any contribution those sciences and scientists may have for society may be quickly and effectually passed along. Without an understanding of what they are doing, lawyers in whatever capacity they may be serving can offer little assistance in making available the results of the labors of these men, and on the contrary are frequently great obstacles against making headway at all. The law schools are thus placed in the position of having to provide a means of contact be-

tween the legal profession and these groups of scientists having to do with the social order.

How these contacts can be brought about most effectively and with least expense in time and money is by no means of easy solution. Some schools are depending upon higher scholastic requirements for their entrants to afford them a sufficient background in these fields. That these alone are insufficient for the purpose intended is becoming increasingly clear. Other schools are taking their entrants at an early stage in their academic career and providing special courses designed to acquaint them with the necessary understanding of the interplay of these groups. Others are resorting to various means of selecting high grade students, while still others are broadening their curricula by providing coördinated courses given by masters from the other fields, side by side with the technical courses of the law school. Perhaps the final solution will be in part a combination of all of these ideas. If so, it will mean a serious readjustment of the present law school curriculum. It may require a revolutionary reclassification of the subject matter of law courses throughout as well as the methods of instruction. It is growing clearer every day that there is no sharp dividing line marking off the study of the lawyer from that of the study of history, economics, government and other branches of social science. The men who propose to serve the public interests, whether as private advisers or in official capacity should be acquainted with the whole field. There is not an important problem that does not involve them all. The lawyer plays too important a part in our whole social organism to limit his training to the more or less technical subjects of his profession. His learning outside of these should not be left to chance. He must have more whatever the cost—and cost it will—though it may be that the cost will be but the reorganization of the law school plan of study so as to require a year or so more of the immature years of youth—a cost which will repay itself over and over again in returns both to the individual and to society. If the law school can furnish a sort of “outlet to the sea” for the other social sciences, it will have supplied a step in our educational processes which cannot be too highly valued. It will turn the thought and experience of the world of social science towards strengthening that division of their group which has most to do with the setting in motion and administration of society’s machinery. No doubt a close



alignment with the other social sciences would be of tremendous value to the law school itself. Their insistence upon getting at the workability of our rules and our machinery through observations reduced to the form of statistics instead of merely guessing at the results, gives the legal scientist a real shock. That he will be compelled to reorganize his methods of study along more scientific lines is an easy guess. While in this readjustment process the law school has a duty which demands all the forces it can muster, likewise it has an opportunity for serving the legal profession and society at large which cannot well be over emphasized.

An institution having the high functions outlined, whether as an independent educational undertaking or as a unit of a larger institution such as a state university, must necessarily within itself be a well founded, supported and ably manned enterprise. Its operation should be somewhat in keeping with the importance of its functions. It is a remarkable fact, however, that a first class law school can be founded, supported and operated at less expense than any other of the comparable units of a university. While it renders a service second to none, its cost as compared with the other scientific enterprises is relatively small. The good account to which law schools have in general put their comparatively limited budgets has been the subject of wide comment, and has suggested the advisability of a more generous attitude towards their support. But the most remarkable fact is that, notwithstanding lawyers are in contact with the unlimited sources of wealth of the nation, no law school as such has yet been the subject of any adequate endowment. Numberless institutions of varying importance to society have been the subject of lavish benefactions, but this institution to which is left the training in large measure of those who are intrusted with the setting up and the guidance of our social machinery, those who have to deal with the most troublesome problems of community, state, nation and the whole human family, has been left to fortuitous hazards of a hand to mouth existence. There is little of explanation to account for this curious phenomenon. Perhaps, at bottom it is due to the difficulty of picturing its far reaching importance so as to make it attractive to the benefactor, together with the idea behind the adage that the "cobbler's children go barefooted." Whatever has been the cause, the day is here when the desirability of placing such an insti-

tution on the soundest basis for performing its work is no longer doubted. Its delay will be inexcusable.

The needs of a law school are not many. First in importance is its faculty—the men who are to bear the every day brunt of the class room and conference with the young men under their instruction. These men must be well trained, not only in the theory and practice of their particular subjects, but trained in the technique and processes of instructing. More than this, they must be men of wide interests and big spirit, able to command the interest of their students in order to make effective their teachings. They are rare combinations because few men have subjected themselves to a process of training for such duties. They are the products of rigorous and extended experience designed to perfect them to render such service. Not many of them are required for any one school. They must be attracted while relatively young—if possible after a brief experience at the bar—so that with a few years of teaching experience in fitting themselves for the undertaking, they will have left a relatively long period of life to give to the school. The economics of teacher-training require this tedious process. Needless to say that the same fundamental elements of personality, character and physical constitution are required here as are demanded by the exacting duties of a practitioner. No law teacher can get very far who is either lazy or physically weak; who is lacking in mental alertness or ability to pass judgment; or who lacks the courage to follow where the evidence at his command seems to lead. He must generate his own spirit, criticise his own productions, for there is no court to point out his errors, no opposing counsel to do battle. His way is the lonely way of every scientist.

In addition to the instructing staff, there is a place for the purely legal scholar—the man who is willing to devote himself to a single subject for the duration of a life time if necessary. He may no longer be equal to the burdens of the class room, or he may have no desire for an audience. Normally his desire is put into text the conclusions of long years of experience and study. The law school has not made the place for this man that it should. It has lost much from its failure to do so. It could well afford to furnish him with all the physical conveniences and facilities for doing his work, provide the means for publication where private enterprise is lacking, and in some cases provide for his maintenance. It would find in

him a source of great value in giving instruction over brief periods in special problems as to which the regular staff cannot be expected to be familiar. But of more value is the atmosphere and spirit of learning and scholarship that a few such men would give to a school. As an extension of this same idea, provision should be made for furnishing every facility and convenience for those of the profession such as judges and active practitioners who desire to pursue the investigation or study of particular current problems. The constant enrichment of our industrial life and contributions of our physical scientists create problems which no single lawyer or firm is capable of handling on short notice. Long continued research, study, and conference with trained minds are required in the struggle for their solutions. These rare demands could well be cared for by the kind of institution suggested. And by this process, a center of learning can be developed which will furnish a stimulus to the whole profession, tend to unify it in thought and action; in short create that much talked of "juristic center" which in turn would become the permanent home of the profession of any single jurisdiction, promoting its peculiar interests and through it rendering to society a full measure of service.

Along with such a conception would have to go an adequate physical plant and equipment. The needs of a particular jurisdiction would dictate the scope of the plant. Adequate lecture rooms, offices, and equipment for pursuing study are necessary. The most expensive item would be the acquisition and maintenance of an adequate library. Inasmuch as the wisdom of the race is not confined to any one language, or country or period in history, a library requires a considerable outlay. When it is realized, however, that one library would be adequate to serve a single jurisdiction, save in that part which would be least expensive, the cost of a well equipped library is not out of keeping with the enterprise. Scholarship must have it and the requirement is reasonable.

As another part of the physical plant, the value of dormitories, clubs, dining facilities and the like cannot be overlooked. The accommodations should provide not only for students, but also for visiting scholars, judges, lawyers, committees, and all kindred spirits, whether for a day or longer period. A center of learning is promoted in no small degree by frequent and close personal contacts, and these are stimulated in no other way so greatly as by dining and

quartering. The study of law lends itself to such an atmosphere and no school program would be complete which failed to perpetuate at least this feature of the English Inns of Court.

A means of publication open to the profession as a whole is also an essential. The service which a well ordered legal periodical can render for a jurisdiction is far beyond the small cost of its maintenance. Until it becomes the clearing house of its jurisdiction it is not serving its proper function, but with the growth of a school and the professional spirit such a publication quickly takes its place. Most schools have such a publication and in no instance where properly directed does its maintenance offer any difficulty. This phase of its utilization is in addition to the tremendous part it plays in the training of law students.

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Whose problem is it to provide for such an institution? Is it that of the state as a whole or of a single group, the legal profession?

In my own mind it is clear the problem is one for the state. It can only afford to hand it over to a group when assurance beyond any uncertainty is forthcoming that adequate provision will be made for it. The state can spend no equal amount of money which will give so great returns to all the interests of the state. The state itself is a legal conception, and as such its very vitality depends upon those trained to administer the affairs of the conception when translated into every day activities. Nothing could be any more directly public than the training of those in whose hands will so largely rest the administration of the state's affairs, as well as to whom all enterprises, large and small, public and private, must look for guidance and direction over the troublesome periods of their existence. Society has no more general agent than the lawyer. The state for its own protection must insist that he be trained broadly.

As certainly as I feel that the problem is one for the state, I am equally as certain that the provision for such an institution should not be left for the state any longer than the time required for its transfer to and acceptance by the profession as a whole. The state's money is always in demand. Taxation should be relied on only when other agencies prove incapable of supporting a valuable social enterprise. The state has hundreds of other pressing obligations. Some of them cannot be shifted to other shoulders. This is not true of the law school. The profession in the weakest state is strong

enough to provide for a thoroughly equipped law school. The legal profession is not a wealthy one in its own right, but it is in touch with the wealth of the country in the most intimate of business relations and by giving attention and thought to its obligation to perpetuate an increasingly perfected profession it can easily make adequate provision for its nursery and parental roof, the law school. No doubt this idea is occurring to the consciousness of lawyers generally and it may be expected that in due season the profession will take over the law school as its own charge.

Proper provision for the school will have to take the form of endowments and foundations for the school at large and for the various units of the school's activities—permanent provision being made not only for the founding and maintenance of such units, but also their expansion as the demand for a larger service grows. One or more benefactors will provide for a library or units of a library. Other benefactors will provide for the endowment of professional chairs. Others are a building and dormitories and clubs, and still others for lectureships, fellowships, research undertakings and the like. Perhaps the greatest need at this time is for those who are familiar with the interests to be promoted to make them articulate so that those who are in touch with potential benefactors may proceed with intelligence and assurance towards calling their attention to the purposes of the school, the extensive sweep of the interests it serves, and towards enlisting their sympathies in its behalf. No one man could possibly get started on such a program. No president or faculty could get very far with it. The combined efforts of administration, faculty and student body as well as alumni could hardly be expected to succeed fully. The enterprise is that of the profession's. It must enlist the spirit as well as the material support of every lawyer who cares for the upbuilding of his profession and the scientific study and development of the social force we call jurisprudence.