



UNC  
SCHOOL OF LAW

## NORTH CAROLINA LAW REVIEW

---

Volume 24  
Number 4 *A Century of Legal Education*

Article 7

---

6-1-1946

# Legal Education after the War

Leon Green

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

---

### Recommended Citation

Leon Green, *Legal Education after the War*, 24 N.C. L. REV. 433 (1946).

Available at: <http://scholarship.law.unc.edu/nclr/vol24/iss4/7>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

# LEGAL EDUCATION AFTER THE WAR\*

LEON GREEN†

## I

What shall law schools do to prepare lawyers for their responsibilities following the war?

Perhaps the most significant development of the law during the past twenty-five years has been its growth—the constant broadening of the lawyer's field of operations. This is indicated in any number of ways—the shift from private to public law, from local to national law, from courtroom to office practice, from judicial to administrative process, from specific statutory enactment to broad policy determination and delegation; from abstract philosophy, theory and doctrine to economic fact, experience, experiment, and workability. Already the stage is set for a further and vast expansion into the areas of international and comparative law. The processes of government in their entirety—local, national and international, legislative, administrative and judicial—are now within the lawyer's domain.

Let us make the point clearer by illustration. Only a little while ago law schools focused their training almost entirely on private and local law. Courses in Constitutional Law, and here and there in International Law, were offered in law schools, but they were considered by the students who registered for them cultural studies outside the main stream of legal education. Washington was a far-off place where most students after they became lawyers expected to visit on a sightseeing trip, and perhaps while there as a matter of professional pride get admitted to practice before the Supreme Court. Only the students who had well developed political ambitions or expected to become associated with some big city law office thought of Washington and the federal govern-

\* *Note by the Author.* This article was prepared as a Report for the 1944 Committee on Aims and Objectives of Legal Education for the Association of American Law Schools, and is published with the consent of the other members of the Committee and the Executive Committee of the Association. It is also published with the separate statements of Professors Patterson and Reisman in the Handbook of the Association of American Law Schools for 1944, pp. 149-158. Various suggestions of Professor McDougal are incorporated in the report as here reproduced. The members of the Committee were: John P. Dawson, University of Michigan; Lon L. Fuller, Harvard University; Albert J. Harno, University of Illinois; Myres S. McDougal, Yale University; Edwin W. Patterson, Columbia University; David Reisman, University of Buffalo.

† Dean of the School of Law and Professor of Law, Northwestern University; Dean of the School of Law and Professor of Law, University of North Carolina, 1926-27 (absent on leave).

ment as of much importance. Even the federal courts were considered outside the scope of a lawyer's education and were outside the bounds of most lawyers' practice.

Within a very brief period the whole picture has changed. Public law is now the heart of the law school curriculum. The Congress and the Supreme Court are the great sources of new and important law. National administrative machinery and processes furnish the patterns for state and municipal administration. The organization and administration of the federal judicial system are pointing the way for effective state judicial systems. As indicated by the names, numbers and professional importance of courses, and equally so by the structure of the courses, legal education is now keyed to the pitch of national law.

What we are suggesting here is that during the next period of twenty, thirty, or fifty years, a further shift may be expected. Curricula will again be radically changed. Local and national law will not be any the less important, but they will be attuned to an international and comparative law pitch. And these new fields of operation will not be mere additions to the lawyer's domain or to law school curricula. They will expand the whole world of law. No one can visualize the changes they will require without appreciating the heavy responsibilities such a shift will throw upon law schools. Our labors must be done over again on a larger scale, and if we fail, any high place in the educational world is gone and the standing of our profession greatly impaired, for failure will mean that others will have taken over our functions.

The immediate factor that has brought about the necessity for an enlarged world of law is war, with all its barbaric destruction of lives and property, uprooting of peoples and their interests, the scattering of races and population with their faiths and prejudices, and with its demand for the stabilization of political and economic power if men are to survive in a civilized society. Back of war were many other factors—the passions of the men of science with their machines, technological inventions, skills, biological and chemical discoveries; the development of corporate industrial and financial institutions through which these machines, inventions, skills and discoveries are exploited. Back of these, of course, have been the lust for wealth and luxury, and greed for power which have affected aggressive men everywhere. And further back the failure to create the environment necessary to develop in human beings intellectual, moral and spiritual values as the essentials necessary to a healthy and stable society.

If there is to be any halting and reversal of the disintegrating processes which have resulted so disastrously to all peoples, it must be found in controls based on intellectual, moral and spiritual values. In its formal aspects this means law; in its more fundamental aspects it

means a fuller development of the individual personality and the group organism. The individual man must be brought to the heights that modern science makes possible so that he will have a more wholesome respect for himself and all other men. The group must be educated in the essentials of group life. This requires the concentration of creative educational processes of every kind in what we may call the social sciences, and particularly law through which many of the fruits of all the sciences are made available and their ends are made secure. In other words, the re-ordering of men's lives will be brought about only through ideas reinforced by law and morality. The bombing of civilian populations and the mass execution of human beings will not be stopped by the invention of more destructive machinery or further discoveries of science, but will be stopped, if at all, by ideas that will not permit the use of machines and the benefactions of science for such purposes. Nor will ideas conceived in the minds and recorded in the books of great humanists be enough to regenerate men who lust for wealth and power or to remove the conditions which breed such men. To achieve such ends these ideas must be imbedded in human hearts everywhere and be translated into practical controls which give the power to create and maintain an orderly society.

The universities and colleges have played and will continue to play a large part in the development of individual personality and group life. They are among the more important character-shaping institutions of our society. They have the facilities, in part the faculties, the students, the source material of ideas, and the creative urge essential to the processes of education. Moreover, through the esteem in which they are held they command the resources of finance and man-power required to sustain those processes. And in their law schools particularly, they have the organizations, techniques and disciplines at hand for training those who shall have the responsibility of developing adequate social controls. The assignment is a heavy one. What type of program must the schools devise in order to carry it through?

As during the past 25 years the *growth of the law* has been its most significant characteristic, so during the next period the *growth of the lawyer* must be its most significant characteristic. Legal education must therefore seek to develop in the lawyer power and skill and conscience to a greater degree than it has heretofore been able to do. If the lawyer is to measure up to his opportunities and his responsibilities these things must follow:

His basic academic and professional education must be broadened to include a working knowledge of the dynamics of our whole social process.

His skills and techniques in policy-making must be sharpened; his

skills and techniques in tactics of litigation, in administration and in negotiation directed in behalf of the basic interests of the whole group.

The instruments with which he does his work must have more precision: The organization of his courts must be integrated, their personnel improved, their procedures simplified, their substantive doctrines clarified. Legislative processes must be more thorough, more open, and more responsive to advocacy brought directly to bear upon legislative problems. Administrative processes must provide fair hearings, prompt and clear determinations; they must not be permitted to become the victims of endless routine and paper work.

And finally, the lawyer must realize that as an officer of government his first obligation is to the integrity of government, and that he is never justified in impairing an institution or process of government in order to profit his client or himself.

## II

Without attempting a discussion of great detail, let it be said that the center of gravity in any program of legal education having so broad a scope will be found in law faculties—faculties equipped to teach in terms of our world relations as well as our national and local relations—faculties sufficient in size and varied in talent to bring to bear upon the problems involved the ideas and practical experience of history—faculties big enough in spirit to command the respect and intellectual energies of the young men and women who will be under their direction. There are other essentials, such as curricula and student bodies prepared for such teachings, but with able men in the professors' offices and behind the teachers' desks, curricula will be developed as intelligence demands, and with the return of thousands of young men discouraged with the boring and stupid experiences of war, hungry for the sustaining power of ideas and anxious to contribute their lives to the improvement of the civilization they have helped to save, adequate student talent will not be wanting.

What ideas will the professors teach that they have not already been teaching? At most we can only suggest, and even that with the knowledge that our suggestions will fall far short of indicating what is required. Our principal suggestion calls for a change in emphasis and a broadening of the scope of what we already teach in part. This emphasis and broadening of scope affect all that law schools offer. It is not something that can simply be added in content and hours of credit. Let us indicate as specifically as we can.

*First*, the importance of the freedom, dignity and responsibility of the individual person must be brought out in strong portrayal, and not merely taken for granted. His rights as a person should be fully artic-

ulated—his right to earn a respectable living, his right to have the opportunity for education and training; his right to think and speak and enjoy all the relations and advantages of other men in keeping with his talents, character and skills. Efforts should be strongly directed to removing the prejudices of every type that deny him such rights. Likewise, the obligations of the individual to make himself worthy of such rights and to meet the responsibilities of a personality of dignity should be rigorously insisted upon. The willingness to pay the price for the rights of personality is no less an obligation than is their recognition by others. This teaching of course runs through all education. The point we are making here is that it has unusual significance for legal education.

*Second*, the dignity and responsibilities of the individual in his relations to others deserve equal stress. The rights and obligations of men in their general social relations, family relations, employment relations, trade relations, professional relations; are only feebly taught in law school teaching. They are of the highest importance in the world at large—the world that the lawyer serves. But why, it is asked, should lawyers give their time to the consideration of such matters? The answer is short and decisive. The lawyer is the person who as counsel or official, in large part at least, both devises and operates the controls which protect these rights or enforces the correlative obligations. The lawyer himself, therefore, should be the most sensitive person in the social order to their recognition. The lawyer is more than a champion in the battle of litigation. If he fulfills his function he is a teacher at large in the field of government.

*Third*, the quality and dignity of government, and law through which government functions, are basic to any social order. An unqualified faith in the processes of government, a wholehearted commitment to their operation and to their protection from corruptive influences, should be the dominating element in the lawyer's character. Lawyers contribute more to the recognition of the rights of citizens to participate in their government, perhaps more to the performance of their obligations to government, than any other group. They should have the fullest appreciation of the meaning of government and the part that citizenship plays in making it effective. This is in fact but a phase of the lawyer's professional relations, which are treated so inconsequentially in law school. Closely allied are the abuses of governmental power by those in authority. The self-restraint of officials is taken for granted. While the country was small and public officials were easily kept under eye, such an attitude may have been fully warranted, but it is no longer enough. The proper respect for their offices and their power is a subject which can well be taught to the future officials of government on all levels.

The quality and dignity of government come in sharpest focus in the

administration of what we call the criminal law. Here the lives and conduct of all people are brought into close contact with law. It is here that law presents its ugliest side. Lawyers have sought to escape the responsibilities of a proper administration of the criminal law. They leave the field largely to the least capable members of the profession. It offers few financial rewards and for the most part it involves dirty business. The law schools have devoted a few courses to the single phase of prosecution of persons charged with the more important crimes. Some have attempted more, but with limited success. At no other point have the schools failed so miserably in making clear the importance of the issues involved both to lawyers and to society as a whole.

*Fourth*, law inevitably reflects the interests on which men place most value. The emphasis of law for a long period has been placed upon property, and financial and political power. Individuals, institutions and groups which have amassed property and financial and political power have claimed and obtained a disproportionate share of the protections afforded by law and lawyers. Legal education has devoted a large part of its training to prepare lawyers to serve the interests of these individuals, institutions and groups. The interests of the great mass of citizens, small and personal as they usually are, have not attracted the talents of the best trained lawyers. In large cities, especially, lawyers have tended to become appendages to the powerful. Their activities run wherever their clients' interests may lead—to the courts, of course, but also to legislative bodies, to corporate directorates, to the privacy of official chambers, to civic committees, to bodies and organizations of every sort. Lawyers are pressed into service wherever their clients need an outpost.

That this broadening of the field of the lawyer's activities has given rise to abuses is frequently observed. The line where the lawyer must stop serving his client and respect the public's interest is not clearly drawn. Some would severely restrict the field of the lawyer's operations. We do not believe that the remedies for the evil lie in this direction. The lawyer must be permitted to go wherever legitimate business may go. But he must be given the understanding, the conscience, and the character so that he will of his own choice stay within the legitimate limits of the lawyer's service.

This, of course, does not solve the problem of the little man's need for a lawyer—and just as good a lawyer as the big man may have. We believe a healthy society requires that all citizens have available a high quality of legal service. No difficulty is so easily and quickly adjusted as when the adverse parties are represented by able counsel. In a democratic society nothing should be as prompt and inexpensive as justice. Obviously, the great majority of individuals cannot provide adequate

legal service for themselves. It is doubtful whether the profession of itself can or will provide the service required.

At both points—(1) the limits of legitimate practice for lawyers, and (2) the problems of providing adequate legal service to the average man—we believe the law schools must do effective research and teaching.

*Fifth*, the law school curriculum has gradually been broadened to include legislative and administrative processes as well as those of the courts. Their improvement is as much a part of legal education as is their operation. Their improvement depends largely on the officials who administer them. Key officials are selected almost entirely from the lawyer group. Lawyers are dependent upon intelligent and understanding officials in all the functions that lawyers perform. The choosing and training of officials are therefore of vital importance both to the law and to lawyers. So far nothing has been done either by the profession or by the schools to stimulate the young lawyer to prepare himself as an official and still less to give him the opportunity of official service. Law school teaching should comprehend both subjects. They should not be left to the fortunes of proprietary politics. Concentration of effort in the schools in training officials and in developing ways and means for their ultimate selection for office would probably be slow in registering its effects, but in time it would be brought to bear with great effect.

Some progress has been made in teaching the techniques of the legislative process, but little or none has been made in developing the subject matter of legislation. Here the field is extremely rich. There are innumerable problems both in local and national law calling for legislative treatment. The administrative and court processes are equally as fertile sources of problems. For most part only their forms have been taught. What can and should be done through those processes is of much greater importance. The opportunities and needs for creative thought and research are as great as they are in the natural sciences and should be far more productive in establishing a stable society. All of the problems to be found here cannot be studied in law school, but many important ones can be, and around them can be gathered the richest of materials for broadening the lawyer's education. Their study while in school should give a cutting edge to his training and develop his power more fully than we have yet considered possible.

*Sixth*, by far the most difficult job the law schools have to face in the years following the war is to provide training for those who must, in part at least, devise and operate the machinery and procedures of what for the lack of a better term we may call international law. A part of this job is the training of men in the law and procedures of other countries with whose peoples and governments our own people and government must deal. The problems, however, are not merely those



that arise out of our government carrying on its relations with other governments. The machinery and procedures required will affect the interests of every citizen everywhere in all countries. As a result of the activities of Lend-Lease, B.E.W., U.N.R.R.A., The Emergency Advisory Committee for Political Defense, the building of transcontinental highways to remote regions, the facilities of transport by water and air, and other activities growing out of the war, there will be a tremendous development of peacetime relations between our own people and those of other countries. The demands of finance, food, oil, insurance, rubber, communication, transportation, raw and finished materials of every sort, and all the accompanying items and incidents of trade, will call for thousands of people trained in law and its administration and the demands will increase with the years.

Our problem, therefore, is not merely getting our students now in the armed services back in school and getting them through so they can go out into the profession. It is far more complex and important. It is getting schools ready for them where they can learn to deal with the problems which their victories have brought to the fore, schools which will equip them to deal with those problems and we hope make their victories lasting. Our job is to open for them a tremendously wider profession than existed before they went to war, and the opportunities to play a very important part in stabilizing the political and economic power of society so that war may be eliminated as a means of aggression as well as a means of social revolution; so that we as a people can bring our everyday practices nearer the ideals of our form of government.