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In his recent presidential address[1] Mr. Alexander B. Andrews called attention of the North Carolina bar to the movement now in progress for the betterment of legal education. That movement may be described as proceeding on two fronts:

(1) On the one hand there is a general movement to raise standards of admission to the bar, and, as part of this process, to insist on law-school training as one of the qualifications for entering the profession. This most urgent aspect of the problem was ably and exhaustively discussed by Mr. Andrews in the address referred to. Great impetus in the desired direction has come from the adoption by the American Bar Association of its 1921 "Standards of Legal Education," reaffirmed at the annual meeting last fall.[2]

(2) The second front on which the forward movement is progressing is within those law-schools which meet the Bar Association standards for "approved schools." Never before has there been such ferment among legal educators, or so much conscious effort to discover the best and most effective way of doing the work for which the bar looks to them. On the other hand, it must be added, never has there been so much apparent difference of opinion and seeming uncertainty as to the nature of the task. At the moment when the bar is becoming fully committed to the program of our approved law-schools, many of those schools are assuming a critical attitude toward their work. From some points of view this result is to be welcomed. It holds out a promise of fresh growth, vitality, and progress which could never be hoped from passive acquiescence in maintaining an existing educational program, no matter how good. On the other hand the situation presents elements of danger. Just as the bar becomes ready to commit the task of legal education to the law-schools, are the latter to create the impression that they are uncertain how to perform the trust? Insofar as they allow such an

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[1] "Legal Education and Admission to the Bar," address of Alexander B. Andrews, President of the North Carolina Bar Association, reprinted from 1929 NORTH CAROLINA BAR ASSOCIATION PROCEEDINGS, 38 pp.

[2] See "Proceedings of the Section on Legal Education of the American Bar Association, October 22, 1929" in 6 AMERICAN LAW SCHOOL REVIEW, pp. 564-615.

impression to exist, they run the risk of dissipating the confidence which the profession shows itself ready to repose in them. The situation discloses the dilemma, so familiar to the lawyer, between the need for security on the one hand, and the need for progress on the other. The problem of legal education at the moment is how to progress, while at the same time maintaining on the part of the profession an assurance that law-schools feel their full responsibility for educating lawyers, and that experimentation, so far as necessary, will be conducted under a sense of that responsibility.

I

The problem of the kind of education which should be given in a law-school cannot be disjoined from the considerations which make it desirable that lawyers should be educated in a law-school rather than in an office. Advocates of law-school education do not deny that it is possible by work in an office for the student to acquire satisfactory aptitude for many of the tasks which the practicing lawyer performs. He can, for example, acquire skill in drafting the types of instruments,—contracts, wills, conveyances,—which are familiar in the community in which he practices, as well as satisfactory ability to search titles, handle collection cases, and even prepare pleadings in familiar kinds of actions. By frequenting the courts and clerk's offices, he comes to feel at home in the atmosphere of practice and becomes steeped in the every-day rules of procedure and evidence. These aptitudes cannot be acquired in a law-school or anywhere save in practice.[3] There is, therefore, every reason why the law-school student during his preparation for the bar should make himself familiar during his summer vacations with the work and atmosphere of an office. The question is not whether the law-student can wholly dispense with office training, but whether office training is sufficient to prepare him to be a competent practitioner without a law-school education.

The kind of training which can be obtained in a law office is necessarily limited to routine. The student gets to know how to do the things which the lawyer in whose office he works does most frequently and repeatedly. His law, in other words, comes to him as a matter of habit rather than of understanding; and in consequence

[3] Since this paper was written, this point has been very ably elaborated by Mr. Reed in the CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING REVIEW OF LEGAL EDUCATION FOR THE YEAR 1929.

he is subject, like all who rely exclusively on habit, to the disadvantage of not being equipped to face other than familiar situations. It is tolerably obvious, however, that if a lawyer is to serve his clients, he must be competent to meet an indefinite variety of situations and have within reach so far as possible the whole armory of the law applicable to the problems which may come before him. This means that he must know a great deal more law than the daily routine of his practice calls for, and such knowledge can only be built on a broad preliminary foundation of study. It is also obvious that no lawyer, no matter how long he practices, can know the entire law, and that therefore he must have the facility of learning new law as he needs it. During his preparation for the bar he must consequently learn a great deal more law than will actually be practiced during the same period in any single office, and he must learn enough law to have acquired the ability to go on learning more as he needs it. In the hurry and pressure of business, the legal learning acquired by a student in an office today is bound to consist almost wholly of what he can get for himself without supervision or direction,[4] and this in an age when the great increase in the volume of law and the emergence of new branches of law have created a mass of materials which require as never before experienced guidance to orient the novice.

All this was long ago pointed out by no less an authority than Blackstone himself, whose word should carry weight with the surviving advocates of purely office training, since they still rely so largely on his *Commentaries* to make up for the deficiencies of training of that kind. Blackstone refers to

some who warmly recommend dropping all liberal education as of no use to students in the law; and placing them, in its stead, at the desk of some skilled attorney in order to initiate them early in all the depths of practice and render them more dextrous in the mechanical part of the business. A few instances of particular persons . . . who in spite of this method of education have shone in the foremost ranks of the bar have afforded some kind of sanction to this illiberal path to the profession, and biased many parents of short-sighted judgment in its favour; not considering that there are some geniuses

[4] For a picture of the systematic and scholarly instruction which was sometimes given by old- time practitioners to the law-students in their offices see John Samuel, "John Cadwallader's Office" in ADDRESSES AND PAPERS TO COMMEMORATE THE CENTENNIAL OF THE LAW ASSOCIATION OF PHILADELPHIA, pp. 366-375, especially pp. 371 ff. But for a much less favorable contemporary picture see Josiah Quincy, ADDRESS AT THE DEDICATION OF DANE LAW COLLEGE, Cambridge, 1832, pp. 16 ff. See also CHARLES WARREN, 1 HISTORY OF THE HARVARD LAW SCHOOL (N. Y., 1908), p. 143.

formed to overcome all disadvantages, and that from such particular instances no general rules can be formed; nor observing that these very persons have frequently recommended by the most forcible of all examples, the disposal of their own offspring, a very different foundation of legal studies, a regular academical education. . . . Making allowance for one or two shining exceptions, experience may teach us to foretell that a lawyer thus educated to the bar, in subservience to attorneys and solicitors, will find he has begun at the wrong end. If practice be the whole he is taught, practice must be the whole he will ever know; if he be uninstructed in the elements and principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him; *ita lex scripta est* is the utmost his knowledge will arrive at.[5]

In connection with the last point here made by Blackstone, it must be remembered that the training of a lawyer cannot be limited to merely equipping him to meet the demands of clients. The law is a public profession and the practitioner has other duties than to earn the best livelihood he can by serving his clients to their fullest satisfaction. If law were a complete system of rules for which responsibility rested solely on the legislature, it might well be that the lawyer, by merely knowing and applying those rules as the legislature handed them down, would at one and the same time most fully serve his clients and also do all he could be asked to do in the public interest. But every lawyer knows that the law is not such a complete system, and that responsibility for developing and adapting it to new situations rests as a practical matter far more heavily on the bar and the bench than on the legislature. The task of the lawyer is therefore not merely to know the law as it is, *'ita lex scripta,'* and apply it, but often to make new law through his arguments before courts and his influence on the business practices of his clients. Furthermore, even well-established legal rules depend largely for their effect on the method and spirit of their application, and the method and spirit of their application are in the hands of the bar. The lawyer who is to do his duty to the public must envisage law not as a closed system which leaves no responsibility upon him, but as an organism, the direction of whose growth he has a vital part in shaping, with the result that he must not flinch from facing considerations of public policy, as well as mere private interest.

[5] 1 COMMENTARIES 32. See Quincy, *op cit.*, p. 18.

II

What has thus far been said is so familiar that it needs repetition only to bring into relief the nature of the law-school's work. The law-school cannot hope to compete with the office in habituating prospective lawyers to the atmosphere and routine of practice. Its task is to do two things: (1) to equip students with knowledge of a large enough body of law to serve as an orientation and starting point for learning the additional law they will need from day to day in practice; (2) to habituate them to dealing with the application of law, and with gaps in the law where no legal rule exists.

Each of these tasks is important. The first has always been taken largely for granted; that the time has come to give it closer attention will be suggested later in this paper. Meanwhile for a generation the efforts of legal educators have been devoted mainly to the second task. The outcome of their efforts has been the general adoption of that excellent instrument of training, the case system of instruction and study. As a method of study the great merit of the case system is that it puts legal rules before the student as they are in process of being applied to facts,—it shows him their shadowy edges and reveals them as forever in process of filling out or wearing away. As a method of teaching, on the other hand, the system forces the student to face gaps in the law and attempt to bridge them by legal thinking as judges and lawyers have bridged them in the past. In the presence of the great increase in the volume of law the case method raises problems of its own which are beginning to stir; but for the moment attention among legal educators has come to be centered on what are felt to be certain special limitations of the method as usually employed.

For a good while it has been observed by law teachers that in certain branches of law a proper understanding of decided cases requires knowledge of factual materials not always appearing on the face of the opinions reprinted in case-books. This is true not only in such subjects as constitutional law, taxation and public utilities, but also in the commercial branches like sales, negotiable instruments and corporations, where a knowledge of prevailing business technique is often indispensable to explain the origin, working, and effect of legal rules. Where the case-book does not put such knowledge before students and teacher, the analysis of cases is in danger of degenerating into barren logic-chopping which will shape the student's habits

of thought into channels as far removed as possible from the practical thinking of the sound counsellor or jurist. To overcome this possibility has been the objective of many progressive law-teachers in recent years. The result has been the development of a new type of case-book including much so-called "non-legal" material in the form of business documents, and descriptions and discussions of business practices. In this way it has been thought possible to bring the student to see legal problems, as the practical lawyer sees them, in their proper setting and perspective against a background of business and social facts which the lawyer and judge cannot safely ignore.

In the last few years, this conviction of the necessity of presenting law to the student in the tissue of actual life has taken specially strong hold on at least one group of legal educators, and has led them to propose the drastic remedy of reshuffling the subject-matter of law-school courses into other groupings than the familiar ones of contracts, torts, property, equity, and the rest. Of course, there is nothing inherently necessary or sacred in the special grouping to which we are accustomed. You will search in vain for any of our familiar headings in Viner's Abridgment or Comyn's Digest—Viner and Comyns know nothing of contracts or torts or suretyship or agency. In black-letter days the student began his studies with "abatement," and when he mastered that, went on through "arrest," to "assault" and "assumpsit," and then to "bailiff," "battery," and so on. Our existing major groupings and classifications are due in large measure to the generation of systematic lawyers typified by Chitty and Story, who thought they were putting some order into law and making it more easy to understand and apply by grouping its multitude of special rules under a number of broad headings. That the structure which they left us is by no means complete is shown by the constant emergence of new headings like torts, law of officers, quasi-contracts. That it is not logically systematic is clear from the fact that contracts, sales, persons, and personal property are obviously not coördinate and mutually exclusive categories. There is no logical necessity, for example, for teaching the law of vendor and purchaser as part of a course called "equity" rather than making a separate course of it, or adding it to the course on sales.

The chief objection brought against our present distribution of subject-matter by those who would revise it is that it follows lines

not of life but of abstract jurisprudence, and thereby separates and divides problems and situations with which the practical lawyer must deal as a unit; that, on the other hand, it brings into arbitrary juxtaposition situations having only formal resemblances, and so tends to mislead teacher and student into thinking in terms of artificial rather than substantial categories. A spokesman for this point of view has explained it at length, as follows:

Our grouping of materials is largely the product of the grouping of material made by certain text-book writers of the late eighteenth and early nineteenth centuries. . . . The fact that the society of today differs widely from the society of ten or fifteen decades ago is admitted by all. . . . Slight inquiry showed that the courts, in deciding cases, pay more attention to the type of human activity involved in the transaction before it *(sic)* for adjudication than they do to the traditional categories into which any formal statement of our law is cast. A "contract" in a familial transaction has only distant resemblance to a "contract" in business activities. Thus, we found that, while our instruction was conveying excellent familiarity with the formulas in which courts couched their results, we were placing little or no emphasis upon these fact-variations that are playing so vital a part in the reaching of the results. . . . Observance of society . . . reveals certain cluster spots of human activity. Much of our law centers about, and is animated by, its relation to the institution of the family. More of our law deals with business, i.e., the anatomy and physiology of the business units, the relations with labor, the marketing of products, the financing of enterprises. Another large cluster spot deals with law administration and the closely related problems of criminal law and criminology. . . . A grouping of materials which presents the material in units corresponding to the chief cluster spots of human activity gives promise of permitting the needed efficiency in time utilization that will permit the attainment of more comprehensive results. . . . Until the current academic year, we offered courses in the Law of Future Interests, Trusts, Wills, and a special course called Statutory Trusts and Perpetuities. That part of the course in trusts which deals with collection of checks or other types of commercial paper is now transferred to [the course on] banking practice. The remainder of the law of trusts, the entire law of future interests, the law of wills and the peculiarities of the statutory system of trusts and perpetuities deal primarily with the dispositions which one can make of that which he has been successful in accumulating. Living trusts, insurance trusts, testamentary dispositions are all devices clustering about the institution of the family. . . . This year a course is offered which seeks to treat this material from this viewpoint. The availability of the different devices and their relative superiorities for the accomplishment

of the purposes of the client are made much more obvious in a much briefer period of time.[6]

If banking trusts are thus to be ejected from the company of other trusts on the ground that they have no special relation to the institution of the family, why should not constructive and resulting trusts arising from transfers of land be excluded also, and relegated to a course on real-estate practice? Or are we to leave real-estate trusts in the course on the family because a family often buys a home? Does not the head of a family generally keep a bank account, too, which represents "a disposition of that which he has been successful in accumulating"? If we are to organize our course around such a center as the family rather than around the legal concept of a trust, it would seem that such a course should embrace not only trusts and wills but also divorce, criminal conversation and the law of infancy, not to speak of conditional sales and installment buying, which figure so largely in the economy of the middle-class American home. Tort liability and workman's compensation for injuries to domestic servants might be thrown in for good measure, and the graduate of such a course would then feel fully competent to set up a family without running into legal pitfalls of which he is unaware.

Of course, this is not really a fair criticism of the idea underlying the suggested new distribution of courses. The advocates of the new program would certainly not push it so far. But what greater excuse is there for separate law-school courses on the family and on banking practice than for courses on real-estate practice and on the business practices of manufacturers or stock brokers? Each of these occupations has its own special business problems which are taken into account by the courts and sometimes operate to produce modification in the application of a general rule of law. If courses are to be organized not around bodies of legal rules but around bodies of business practice or social custom, it would seem that each of the great fields of business with which a practicing lawyer is likely to come into contact should be represented by a separate course. To such a method of arranging a law-school curriculum there seem at least three objections:

(1) If carried out with any thoroughness it would involve excessive duplications. Banks, manufacturers, real-estate agents and

[6] HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS AND PROCEEDINGS OF THE TWENTY-SIXTH ANNUAL MEETING, 1928, pp. 35-39.

stock-brokers, for example, all engage in the practice of pledging collateral. All of them, no less than individual families, do much letting and hiring of real-estate. All of them make contracts and transact business with negotiable instruments. Are these legal topics to be dealt with separately, four or five times over, in connection with separate courses on each particular business? Clearly no one is suggesting this.

(2) Secondly, it is the exception rather than the rule that the legal effect of a given type of transaction varies very greatly because of the special kind of business in the course of which it occurs. It is hardly just to say that "a contract in a familial transaction has only distant resemblance to a contract in business activities." Where such differences exist, as, for example, in the different treatment which the law accords to a corporate surety company and an individual surety, it would seem pedagogically most effective to bring out such a difference by putting the two cases before the student side by side rather than by presenting them to him, perhaps a year apart, in separate courses. Similarly, the difference between a business contract and a "familial" contract, so far as it exists, can best be emphasized by dealing with the two kinds of contract together, rather than by treating the latter in connection with such legally unconnected topics as divorce and intestate succession.

(3) Finally, and most importantly, there is a sound reason why a student of law should make the acquaintance of legal rules primarily in connection with other legal rules, rather than in connection with the body of business or social practice to which each rule happens to apply. The concern of the lawyer, even the business lawyer, is mainly with law, rather than with business activity in general. He is employed by business men to deal with the legal problems of business, and to that end must, at least insofar as he acts as a lawyer and not as a business man, deal with business problems from the standpoint of law. It would therefore seem to be beginning from the wrong end, as Blackstone says, if we teach the student of law to think primarily in terms of business categories to the exclusion or subordination of legal categories. His task must be to understand the legal categories which cut across various lines of business, and only by focusing on that task can he then come to see the way in which particular legal rules operate differently when applied to different kinds of business situations, and so come to understand how

they may have to be modified to meet differences of policy. He can, in other words, never understand the way in which business considerations affect legal categories unless he approaches the problem from the standpoint of the legal categories.

Of course, this is not to say that legal authors should not, for the convenience of practitioners or by way of research, gather together and line up the body of legal rules relating to a particular business in the form of a treatise on "The Law of Banks and Banking" or "The Law of Real Estate Practice." Such efforts toward presenting as a unit a particular cross-section of law, cut through at the point where the law impinges on a given economic or social unit or institution, are immensely valuable, not only for the specialist in practice, but also for the purpose of taking stock of the working of the legal system. Such a study may well suggest anomalies which call for correction, or disclose the emergence of principles which might be profitably extended. Neither of these tasks, however, has the same objective as a course given to law-students. What the student needs is at one and the same time to learn a body of law and the method of legal thinking. This means that his thinking must be focused primarily, even if not exclusively, on legal categories, and that the interaction between legal categories and social and economic facts must be brought before him in the course of directing his attention to the former. The law, and not the economic unit, must hold the center of the stage.

Subject to this broad principle it would seem that the distribution of subject matter into law-school courses is not a question to be decided by the application of theory, but by pragmatic considerations of utility, convenience, and habit. It is interesting to note that the existing arrangement of courses already embodies to a limited extent the idea advocated by the reformers. Thus well-established courses are built around the law of carriers and of insurance. It is to be noted, however, that, in the case of these two businesses, the law has developed such special peculiarities applicable nowhere else that it can conveniently be studied in a separate compartment. In other words, it is still the unity of a given body of law that gives unity to the course, rather than the unity of the business institution. The given body of law can in these instances be studied separately with advantage because, in adapting itself to the business, the law has, in fact, isolated itself as a separate body of rules which can be presented

without necessitating a shift in the student's attention from problems of law to purely business problems.

III

It would seem clear without argument that there is no one right way in which to divide the law for all purposes. There is an indefinite number of angles from which cross-sections may be taken and decided cases brought into juxtaposition and comparison. Any given cross-section and arrangement must justify itself by its relevance to some purpose. An arrangement that would be helpful and illuminating for one objective might be of no value for another. The question suggests itself whether proposals to rearrange law-school courses to conform to business categories are not in part the result of a tendency to identify the task of legal education with the task which goes by the name of "research."

So far as applicable in the field of law, "research" should mean any careful study which contributes to the solution of legal problems, whether by illustrating the state of the law, or explaining how the law came to be what it is, or disclosing the operation and effect of a rule or body of rules.[7] A piece of legal research may thus consist merely of a new juxtaposition and analysis of cases and statutes, as in the ordinary law-review article, or of a historical investigation, or of a more or less elaborate statistical study of some field of fact on which law operates. The intelligent application and development of law is obviously dependent on the widest amount of competent research in all these directions and on making such research relevant in its objectives and available in its results to those engaged in teaching and practice. This does not mean, however, that research activity is the same thing as studying or teaching law in a law-school, or that the training of law-students is the same thing as training research-workers.

Of course, in a sense, the task of the lawyer in looking up and arranging precedents to meet new situations is similar to that kind of research which consists in making a new juxtaposition of cases and statutes—it may even at times require investigations of an historical or economic character. It is therefore highly desirable that during his law-school course the student should gain some practice in work

[7] For excellent comments on this subject see Felix Frankfurter, *The Conditions for, and the Aims and Methods of, Legal Research* (1930), 15 IOWA L. REV. 129-141.

of this kind; it is more than desirable, it is essential, that the law-teacher should constantly carry on such work to enlighten for himself and his students the dark places of the law which he teaches. But neither the law-teacher nor the law-student can afford to place himself wholly or mainly in the point of view of the research-worker. The more pressing and elementary nature of their task makes it essential for both to follow in the main the well-beaten paths of the law and regard merely as occasional excursions and deviations the novel and uncharted lines of investigation which the research-worker pursues as his objective. Thus, for example, a research-worker may undertake to investigate the effect of the legal rules concerning conditional sales on the extension or curtailment of installment-buying. The results at which he arrives may contribute interesting material which can profitably be brought before students in a course on the law of sales as an incident of the course; but the pursuit of such an investigation by students who are covering the law of sales for the first time would result in altogether misplaced emphasis.

It would, therefore, seem to be a mistake to organize law-school courses as if they were research "projects," cutting through a body of material from a fresh angle, with the primary purpose of making new discoveries and contributions to knowledge. It might be true, for example, that the legal rules dealing with the economic function of "risk-bearing" have never been gathered together for comparison; it might also be true that such a collection and juxtaposition of materials would shed valuable new light on a number of points of law; but it would by no means follow that such an arrangement of materials, promising though it might be for a research project, would be a good arrangement for a law-school course. It is an unsatisfactory thing to have a course so unified in its objective as to lead up to and culminate in a few conclusions in the student's mind, especially if those conclusions are to be novel discoveries. Rather, the student needs to make the acquaintance of many things, some of them quite old, and travel around his problems from many points of view. Such a procedure of course does not lead, like the procedure of research, to additions to the existing stock of human knowledge; but it sometimes leads to what is more important in a law-school, an increase in the stock of knowledge possessed by the students.

How far should a law-school regard the carrying on of research work as an essential part of its activity? So far as elaborate research projects are concerned, requiring large-scale mechanical collection and tabulation of statistical data, there would seem to be no more reason for carrying on such projects in connection with a law-school than elsewhere. The type of work involved in such projects is so different from legal scholarship in the proper sense that, while it is doubtless advantageous for a law-teacher to participate occasionally in research of this character in order to form a first-hand opinion of its value and utility, constant immersion in such work tends to specialize a man in directions other than those which make him the most valuable guide for students in forming their first acquaintance with the law. Of course there is every reason why a law-school should, if possible, take up specific legal problems arising from the current state of the law in the jurisdiction in which the school is located, and give to bench and bar the benefit of any light which its professors may be able to shed by their studies on the solution of such problems. This is, however, a different thing altogether from wholesale researching in the abstract, valuable as the latter may in the long run prove to be when conducted by social-science foundations and law-research institutions.

IV

In what has been said, my intention has been to suggest that the major problem connected with the law-school curriculum today is not the problem of how particular legal materials are to be distributed among different courses, so long as the distribution is made with a pedagogical, rather than a research, purpose. What seems, for the moment, a question of far more urgent moment is one to which, until now, very little attention has been paid—the basic question of how much law we shall attempt to bring before the student, and what parts shall be selected for the purpose? How shall we proportion the student's time between the many different things that a law-school might teach him?

It is clear that, with the great increase in the volume of law, only a relatively small part of it can be brought before the student during a law-school course. Reading steadily for ten hours a day, it would take more than twelve hundred days merely to read the reports of a single jurisdiction, in the case of our older and more populous states. It would take as long again to read Cyc without looking up a single

citation or taking time out to debate a single moot point. Obviously there must be compression and omission, and the vital question is how to compress and what to omit. This is the connection in which, for the moment, the possibility of improving the law-school curriculum would seem to demand serious consideration.

The curriculum of American law-schools of approved standing is today fairly well standardized. It represents a compromise that has been worked out more or less haphazard in the past, in part consciously and in part unconsciously, between teaching too much and not teaching enough. As a working compromise which we have inherited the only criterion by which it is fair to judge it is to ask: Does it still take satisfactory account of all the parts and branches of the law that the student needs to be introduced to, or have new claimants come into the lecture-room since the seats were allotted? To such a question, no answer can be given which can claim to be scientific; but suggestive light is thrown upon it by noting the shifts and changes in emphasis on different branches of the law which have taken place in the law-teaching of the last century and a half. Very roughly, these changes are mirrored in the following table, which compares the relative amount of time, expressed in terms of percentages of the whole field, allotted to the different topics of the law in Blackstone's *Commentaries,* Kent's *Commentaries,* and the curriculum of the law school of the University of Pennsylvania at three representative dates, 1871, 1874, and 1930:

	Black-stone	Kent	U. of Penn. 1871	U. of Penn. 1874	U. of Penn. 1930[8]
Private Law	%	%	%	%	%
Property Law (Total)	33.3	33.9	20.6	20.3	21.0
Real Property	24.0	22.2	16.6	12.5	10.5
Personal Property	1.8	2.5	4.2	4.7	2.6
Wills & Succession	4.5	5.4		3.1	2.6
Mortgages	0.26	2.7			
Trusts	0.1	1.1			5.3
Contract Branches (Total)	2.6	14.8	2.7	25.0	23.9
Contracts		1.1		3.1	8.0
Sales		3.7		3.1	5.3
Negotiable Instruments		2.5		3.1	5.3
Agency		1.5		1.6	5.3
Bailments		2.6		1.6	
Suretyship		0.0		6.2	
Insurance		0.5		4.7	

[8] This disposition of subjects reports the course taken by the large majority of students. There are many elective courses in other subjects, a few of which are taken by each of a considerable number of students.

Partnership		2.1		1.6	
Bankruptcy		0.8		0.0	
Maritime Law	0.0	11.5		0.0	
Torts	0.4	0.4	0.0	0.0	8.0
Persons	2.7	8.5	4.2	3.1	2.6
Corporations	0.9	2.1	0.0	1.6	5.3
Equity and Equity Procedure	1.5	0.0	25.0	18.7	8.0
Criminal Law	21.4	0.0	2.7	3.1	5.3
Conflict of Laws	0.0	0.0	2.7	3.1	5.3
Procedure, Pleading and Practice (including evidence)	14.2	0.0	25.0	18.7	15.8
Public Law (Total)	25.8	28.1	16.7	6.2	5.3
Constitutional Law	16.7	13.2	4.2	3.1	5.3
International Law	0.0	10.5	4.2	3.1	
Jurisprudence	9.1	4.4	8.3	0.0	

The different allotments represented on the foregoing table are not perfectly comparable. Thus Kent totally omits procedure, equity, and criminal law, obviously not because he did not consider those subjects worthy of study, but because he must have believed that the student could study them satisfactorily in other books. Similarly Kent devoted what seems to us today an excessive amount of space to maritime law, a branch of law which we now see rose to temporary prominence in the United States in the shipping era of the Napoleonic wars. Again the classification "equity" in the law-school curriculum of 1871 and 1874 doubtless included trusts and mortgages. In spite of allowances which have to be made for omissions or duplications like these, some facts of considerable interest stand out from the face of the comparison.

The first of these is the enormous increase in the proportion of attention allotted to the so-called contract branches of the law since Blackstone—a rise from approximately 2.5% to 25.00% of the entire field. This expansion was largely accomplished at the expense of real property, which in the same period has fallen from approximately 25% to 10% of the total. This equilibrium was already reached at the University of Pennsylvania Law School in 1874. Subsequent readjustments have been at the expense of other subjects. Thus torts, corporations, and conflict of laws have forced their way in and called for room, and room has been found for them largely by taking it from procedure and public law. For this adjustment there have been good and sufficient reasons. Public law has come to be taught at least in an elementary way in the liberal arts colleges which many students now attend before coming to law school, and the law-schools can therefore escape the responsibility of giving much

of the instruction in this field which fills the pages of Blackstone and Kent. At the same time procedure has lost because it has more and more come to be recognized that it is futile to try to teach practice in any truly practical sense in a law-school. Indeed at most law-schools the amount of room left to this subject is less by one-third than at the University of Pennsylvania.

Viewing the curriculum as it now stands, one striking feature is the relatively large amount of time allotted to individual course-subjects like contracts, sales, trusts, negotiable instruments, etc., as compared with the curriculum of a former generation. This is especially true within the field of the contract branches. Today in some law-schools a full year's course of sixty or more hours is allotted to each of a number of subjects like sales, bills and notes, agency, insurance, partnership, persons. The result is that usually a given student can find room for only two or three of these courses, in the midst of the pressure from other subjects. If he wishes to take insurance, we will say, he cannot take persons; if he wishes to take suretyship he cannot take partnership. So far as choice and the elective principle are left to operate among the courses just mentioned there is slight ground for dissatisfaction. The allotment of a full-sized course of sixty or more hours to almost every subject in the curriculum does, however, create a serious problem of a different kind. A long list of these subjects are practically indispensable to every student. In the ordinary law-school after the student has taken these indispensable courses, contracts, torts, procedure, evidence, property, wills, equity, trusts, sales, bills and notes, corporations, conflict of laws, and the like, he is seldom left with openings for more than a very few of the "elective" courses. In other words he can take only two or at most three of a long list of subjects like suretyship, insurance, partnership, mortgages, quasi-contracts, persons, damages, bankruptcy, not to speak of public utilities, taxation, municipal corporations, administrative law, restraint of trade, labor law, federal procedure, criminal procedure. Here is where the real problem of the curriculum emerges. Is it advisable for a law-school to graduate men who have had no opportunity to gain any initial orientation in so large a part of the law? Is it desirable that they should not be able to take more of these courses except at the cost of omitting courses in indispensable subjects like sale, bills and notes, future interests, conflict of laws? Granting that essential courses should not

be skimped to make room for "fancy" subjects, does the standard curriculum today draw the line wisely between the essential and the "fancy"?

There can hardly be much doubt that the courses referred to above as "indispensable," the courses which most students in a law-school do as a matter of fact take, are courses which should be taken to the exclusion of other courses if room cannot be found for both. Nor can there be much doubt that many of the "elective" subjects can be omitted by any given student without serious disadvantage. The question is merely whether it would be feasible and desirable to enable a student to include in his course a larger assortment of these electives than is possible at present.

The question of feasibility turns on whether or not some of the indispensable subjects can be compressed into smaller total space than they now occupy. That this might be done seems suggested by comparing the way, for example, in which the subject-matter of equity fares at the Harvard Law School and elsewhere. At Harvard this subject-matter is given in two full-year courses, one devoted mainly to specific performance, the other to injunctions. At many other schools a single case-book is used which covers both topics and only one full-year course is allotted to the subject. If matter which can be spread over two courses can thus be compressed into one, the question naturally suggests itself whether there may not be other instances where matter now occupying a year could possibly be reduced to a course of less length.

Just as there is no logical inevitability about the particular headings into which the law is to be divided for the purpose of study, so it would seem that there can be no logical test of the right amount of time to be allotted to any one heading. There is practically no topic of the law from torts to admiralty which could not be made to supply more than enough material to fill several full-year courses. It is obvious to everyone, however, that from the standpoint of the student's needs no single topic can be thus exhaustively treated and that selection and compression are inevitable—the question is simply how far they can be wisely carried. It would seem wholly arbitrary to draw the line at the full year's course and say that no subject is to be reduced below that limit. A method which would allot the same measure of time to subjects like contracts, torts and constitutional law on the one hand and to damages, insurance and admiralty

on the other would appear to be lacking in a certain fundamental sense of proportion, which might well be called a sense of humor.

The principal objection to compressing the subject-matter of courses is a pedagogical one connected with the use of the case-method of teaching. This method, if exploited to its full possibilities, requires an ample amount of class-room time to develop a single point, and the total number of points that can be covered in even a full year's course is therefore severely limited. This slowness of progress through a subject is more than compensated insofar as it means that the students are having constant practice in legal analysis. Its justification, in other words, consists in its value as a training exercise in legal habits of thought, which is bought at the price of reducing the amount of law to which a student can be introduced in a given time. The practical question is to determine the point at which this price becomes too high to pay. In other words, one might well ask in the case of a subject like sales whether it would not be advantageous to reduce the total number of points in the courses which are developed by full case analysis in order to bring the course within shorter compass, and rely on developing the remaining points by discussion incidental to those points which are developed directly by means of the cases. This is what is to some extent actually done in all courses in view of the fact, already noticed, that practically every course-subject contains enough material to fill out several courses of a full-year's length. If some of the courses, like sales and bills and notes, for example, now usually given in the second year of the law-school curriculum, were to be compressed in this way into shorter compass it would be possible for the student at the end of his second year to have covered most of the "indispensable" subjects except two or three, such as corporations and conflict of laws, which would have to be taken in the third year. This would leave a much larger amount of time than at present for the student to distribute in his third year among the "elective" courses. The question is whether this result would have advantages which would make up for any disadvantage incidental to shortening some of the courses on indispensable topics. This question cannot be answered without reference to two significant current developments: (1) the emergence and rapid expansion in recent years of departments of law which have not hitherto been of outstanding importance; (2) the growth of a tendency to specialization in the practice of law.

With the rise to importance of new branches of law we are in presence of a development in some respects like that which brought the contract branches into enhanced importance during the nineteenth century as compared with the older law of real property. Today the new advance is taking place principally in fields like corporations, taxation, public utilities and administrative law. Any recent volume of law reports will serve to show the extent to which these newer fields are now engaging the attention of the courts, and will indirectly indicate their importance in non-litigious practice. As the typical curriculum now stands, courses in all these fields, except the elementary course in corporations, fall within the group of elective courses for which little or none of the student's time is available except at the expense of essential subjects.

Coupled with the rise of these newer branches of law there has come an inevitable tendency toward specialization in the practice of the profession. While it doubtless remains as true as ever that the function of legal education is to make lawyers, one is more and more driven to ask in the case of any individual student, "Yes, but what kind of lawyer?" The distinction goes deeper than that between the civil and criminal practitioner, the litigating lawyer and the office lawyer. Some offices confine their attention almost exclusively to corporate organization and security issues, others never handle business of this kind. Title-searching is coming to be a specialty, tax practice is already one. Some offices have a great deal of business before administrative offices and boards, others rarely handle such matters. Even in the smaller cities and county seats there is differentiation between kinds of practice, between the political lawyer who appears before administrative boards and represents public officers in the courts, the lawyer whose practice is largely confined to the settlement of estates, and the business practitioner who advises banks and manufacturing concerns. Of course no student can know in advance precisely the kind of practice in which he will ultimately find himself. To some extent, however, this question will be determined by the individual's tastes and interests no less than by his opportunities. A lawyer with a *flair* for politics will almost inevitably find himself in a different line of practice from the lawyer without political inclinations. A man with another type of interest will gravitate toward estate or tax work. Insofar as these differences in interest exist, there seems every reason why the student

after completing the essential courses in the law-school curriculum should be able to devote at least a certain amount of time to a group of elective courses which more or less point in the direction of special kinds of practice.

It is in this way that the elective courses promise to yield their largest usefulness. We have already seen that considerations of time necessarily prevent a given student from taking any large number of these courses. On the other hand they include among them the very branches of law in which for the moment the greatest strides are being made, and where consequently law-school training can have the highest value. From the standpoint of public interest there is the most urgent reason that the lawyers who are feeling their way in moulding novel and important departments of the law should approach their task with the fullest background of training. This need is more urgent, if possible, than in the more settled branches of the law, and it is especially urgent insofar as these newer departments happen to fall within the field or on the border-line of public law. The law which is in the making in such fields is destined in larger measure to affect the interests of wider groups, and touch on more important issues, than the ordinary branches of private law. There is perhaps no more unfortunate result of the present status of the law-school curriculum than the fact that the time of students is necessarily so monopolized by purely private-law subjects that more and more the bar is being left without an adequate introduction to those highly important branches of public and quasi-public law which it inevitably has so much part in shaping to the lasting benefit or detriment of the community at large.

It is not, however, merely the opportunity for more study of public law by students thereto inclined that would be afforded by widening the range of elective courses available to the student in his last year of law-school work. The effect would be that students having a dominant interest in other directions would be enabled to lay a basis for later specialization in a number of allied subjects. This specialization might take, for example, the direction of general commercial law, leading to an election of courses on bankruptcy, insurance, partnership, receiverships; or it might lead in the direction of a number of more intensive courses on special topics of corporation law and finance or on criminology, penology and criminal procedure. One helpful result of the possibility of such a beginning

toward specialization would be that it would create room in the law-school for courses of a more advanced character than can now be given. At the same time it would aid in eliminating the argument sometimes made that because of the specialized character of the practice of many offices a student can be better prepared for such practice by work in the office itself than by law-school training, which makes the requisite specialization impossible.

In view of all these considerations it would seem safe to conclude that the very real pedagogical disadvantages of compressing some of the law-school courses in essential subjects into narrower compass would on the whole be more than compensated for by the increased opportunity which the students would thereby gain of taking a wisely selected grouping of elective courses. Only in this way under present conditions can any considerable number of students acquire an acquaintance under competent scholarly guidance with some of the departments of law in which the activity of the next generation of lawyers and judges is certain to leave its deepest and most important imprint on the growth of the law. Only in this way will the increasing specialization of practice be prevented from losing touch with the scholarly development of those branches of law in which specialization is taking place. It is believed that these objectives in spite of the comparatively modest nature of the educational reform which they indicate are of sufficient practical importance to claim the attention of legal educators in preference to some of the more ambitious projects with which they are now concerned.