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THE LAW SCHOOL AS A FUNCTION OF THE UNIVERSITY

JOHN HANNA*

The objectives and methods of legal education have been the subject of much attention during the last ten years, and, notably during the latter half of this period, of acute differences of attitude. This article is not so ambitious as to purport to say much if anything that is new. It is rather an attempt at a synthesis of the positions of the leading personal and institutional reformers of legal education, particularly as these have been set forth at the annual meetings of the Association of American Law Schools. Its further purpose is to indicate, as far as can be done in a few pages, the chief effects thus far of the agitation for curricular and other reforms, and to suggest something of what still must be done if the law schools are to become an approved function of the genuine university.**

I

The bar of the United States was originally an English professional colony. On the continent legal education was university education. The law teacher was a university professor. In England, the university professor was a philosopher or historian. He had nothing directly to do with professional training. Law practice in England was concentrated in London. It was convenient for the lawyer's guilds to assume responsibility for training professional apprentices. The system has worked well enough to prevent its opponents from overcoming the strength of the lawyers' influence in Parliament. Even today the only way to become a member of the English bar is to pass the required examinations after having been admitted to the privilege¹ of eating a stipulated number of meals in English law clubs² over a period of at least eighteen months.

American lawyers assumed from the start the responsibility of training legal apprentices, but local conditions made impossible the

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** This article is not an attempt to state the views of the Columbia faculty. Such of my colleagues as have read this composition are concerned that the foregoing statement shall be emphasized.

¹ This privilege is by no means accorded to all applicants. For example, no person "in trade" will be accepted as a candidate for the English bar.

² The Inns of Court. See A. E. W. Hazel, *Law Teachers and Law Practice* (1931) 47 LAW Q. REV. 502.

development of powerful lawyers' guilds. The exclusiveness of the English bar was offensive to American democratic traditions. Local judges assumed or were given by legislation authority to determine who were fitted to practice before them. There was universal official acceptance of the theory that any apprentice could obtain a satisfactory training in the office of any attorney. The growth of the country and the increasing number of legal apprentices, combined with the reluctance of many lawyers to accept even a nominal responsibility for the training of law students, afforded the opportunity to individual lawyers or judges to instruct groups of students. As these classes expanded several lawyers were frequently associated in a teaching enterprise. Unless a lawyer or judge had retired from practice, it was unusual for such teachers to devote all their time to teaching.

A few colleges had offered courses in jurisprudence. Since the graduates of these colleges in considerable numbers desired to become lawyers, it was natural that the universities should in time accede to the suggestion that the convenient university class rooms and libraries be utilized for professional training. When this occurred the judges and lawyers who had previously done the teaching moved into the university buildings. Their actual separation from the life of the university community remained practically complete. There could be no suggestion that the law teaching was too theoretical or that it was outside of the current experience of the man in daily contact with clients and courts. From time to time these university professional schools raised their standards of admission and broadened their curricula to prepare for the more comprehensive types of practice. This exclusiveness and the continued demand for legal education encouraged the growth of other law schools, either not connected with universities at all, or connected with nominal universities created for the sake of law schools.

Langdell's case system worked two revolutions. It changed the methods of legal instruction. It removed the practicing lawyer and the judge from university faculties. The case system not only required thought on the part of the students; it required time, intelligent organization, and a new technique of presentation on the part of the teacher. The practicing lawyer could not afford the time for such teaching. The result was the full-time university law teacher of whom Ames is the characteristic example. The practicing lawyer

and the teaching judges stayed with the part-time law schools. The office-trained lawyer was becoming a rarity.³

Everyone is familiar with the long-continued hostility which had to be worn down before the university law schools with their full-time teaching staffs were accepted as the standard for legal education.⁴

³ About four per cent of the applicants for admission to the New York bar lack a law school degree. In 1922, seventeen per cent relied wholly or partly upon office training. Philip J. Wickser, *The Law Schools and the Law*, 1930 HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS 77. Mr. Wickser is a member of the New York State Board of Bar Examiners.

The obvious defect of law office training is that it is usually an unsupervised patchwork. A member of an important board of bar examiners has said that the affidavits of most nominal sponsors for law office students, if investigated, would justify disbarment proceedings against the affiants.

⁴ The number of law students trained in part-time schools still exceed greatly those trained in the schools which are members of the Association of American Law Schools. The following table showing 1930 attendance is compiled from the 1930 ANNUAL REVIEW OF LEGAL EDUCATION, published by the Carnegie Foundation for the Advancement of Teaching, p. 54:

UNITED STATES LAW SCHOOL ATTENDANCE SINCE 1890, CLASSIFIED BY TYPE OF SCHOOL

	1889-1890	1899-1900	1909-1910	1919-1920	1924-1925	1925-1926	1926-1927	1927-1928	1928-1929	1929- (aut.)
Full-time schools requiring more than five academic years (I).....	0	761	1,741	3,407	4,811	5,068	6,288	6,531	6,796	6,987
Five academic years (II)	0	0	751	2,326	5,617	8,158	8,034	8,188	9,129	7,686
Three or four academic years (III).....	1,192	3,992 ¹	5,946 ¹	4,799	4,600	1,675	1,385	1,065	349	283
Part-time schools having a law course of three or more academic years (IV)	108	2,275 ¹	4,787 ²	9,338	15,208	16,160	15,743	16,767	16,669	15,475 ³
Mixed full-time and part-time schools (V).....	0	704	1,963 ¹	3,087	11,658	12,365	14,927	15,284	15,229 ⁴	12,917 ⁵
Schools having a law course of less than three academic years (VI).....	3,186 ⁶	4,676 ⁶	4,310 ⁶	1,546	849	914	980	758 ³	770 ³	641 ³
Total.....	4,486	12,408	19,498	24,503	42,743	44,340	47,357	48,593	48,942	43,989

¹Omitting 1 school. ²Omitting 2 schools. ³Omitting 3 schools. ⁴Omitting 5 schools. ⁵Omitting 6 schools. ⁶Omitting 8 schools.

Percentage of Total Law School Attendance

	1889-1890	1899-1900	1909-1910	1919-1920	1924-1925	1925-1926	1926-1927	1927-1928	1928-1929	1929- (aut.)
Full-time schools requiring More than five academic years (I).....	0	6.1	8.9	13.9	11.3	11.4	13.3	13.4	13.9	15.9
Five academic years (II)	0	0	3.9	9.4	13.1	18.4	17.0	16.9	18.7	17.4
Three or four academic years (III).....	26.6	32.2	30.4	19.6	10.8	3.8	2.9	2.2	0.7	0.6
Part-time schools having a law course of three or more academic years (IV)	2.4	18.3	24.6	38.1	35.6	36.4	33.2	34.5	34.1	35.2
Mixed full-time and part-time schools (V).....	0	5.7	10.1	12.6	27.3	27.9	31.5	31.4	31.1	29.4
Schools having a law course of less than three academic years (VI)...	71.0	37.7	22.1	6.3	2.0	2.1	2.1	1.6	1.6	1.4
Total.....	%100	100	100	100	100	100	100	100	100	100

The Autumn attendance of the largest American law schools in 1929, 1930 and 1931 is shown below. The 1929-30 figures are from the 1930 and 1931

The early days of the case method were perilous times for the university law schools. The records of their graduates were scrutinized with critical attention. The easy victory of the university law schools might have been anticipated, even with a slighter faith in their new methods. The university law schools were attracting graduates of their own and other colleges who were the cream of the nation's

Bulletins respectively of the Carnegie Foundation. The 1931 figures are from 7 *American Law School Review* 337 (December, 1931). While the comparison indicated by the attendance figures cited is substantially accurate, the figures furnished by the Carnegie Foundation and those by the *American Law School Review* do not wholly coincide. For instance, the *American Law School Review* (December, 1931) credits the University of Baltimore Law School with 818 students in 1930, although the 1930 Autumn attendance of the same school as shown by the 1931 Bulletin of the Carnegie Foundation is 374. In 1929 Columbia was the smallest law school in the City of New York. About one-fifteenth of the total number of New York City law students were registered at Columbia. Harvard, George Washington, De Paul and Columbia are the only members of the Association of American Law Schools in the lists for 1929-30. From 1929 to 1930 Harvard was the only one of the first six to maintain its numerical strength. George Washington, in 1930, had moved up from eleventh to ninth, while Columbia had moved up from fifteenth to fourteenth, replacing the New York Law School. Harvard remained fourth, but was much closer to the leaders. The 1931 figures show that Harvard has advanced to second place, being outranked in numbers only by St. John's. The University of Baltimore Law School is ninth, Columbia has advanced to twelfth, while Michigan is tied with Detroit for fifteenth place. The table follows:

	1929	1930	1931
1. Brooklyn Law School (St. Lawrence Univ.)..	2755	Brooklyn1956	St. John's1685
2. St. John's College School of Law, N. Y..	2527	Suffolk1915	Harvard1596
3. Suffolk Law School (Boston)	2200	St. John's1865	Suffolk1385
4. Harvard Law School..	1640	Harvard1596	Brooklyn1381
5. New York University School of Law.....	1414	N. Y. Univ.1437	N. Y. Univ.1210
6. Fordham University School of Law (N. Y.)..	1320	Fordham1202	National1095
7. Northeastern Univ. School of Law (Boston, Y.M.C.A.)....	1016	National 937	Fordham1071
8. Detroit College of Law (Y.M.C.A.)	905	Northeastern 925	Northeastern 858
9. National University School of Law (District of Columbia).	901	G. Washington 814	Baltimore 780
10. New Jersey Law School (Newark)	861	De Paul 812	G. Washington 776
11. George Washington Univ., The Law School (District of Columbia).	725	Detroit 754	De Paul 750
12. De Paul University College of Law (Chicago)	708	New Jersey 688	Columbia 719
13. Kansas City School of Law (Missouri)	667	Kansas City 658	New Jersey 638
14. New York School of Law	637	Columbia 566	Kansas City 605
15. Columbia Law School..	595	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">}</div> <div> Univ. of Michigan.. 600 Detroit 600 </div> </div>	

talent.⁵ Their legal preparation might have been much inferior to what it actually was and still they would have had little difficulty in meeting the modest standards of the bar. So long as the pioneer era lasted, success at the bar depended not so much upon legal knowledge and technical skill as upon the elemental human qualities. The university law graduates in fact found no difficulty in obtaining far more than their proportionate share of eminence at the bar. In the meantime, however, the universities were on the defensive and consequently did not venture much beyond the narrowly professional curriculum. Story had written a treatise on agency out of his head, and then had looked up as many cases as possible to support his conclusions. Ames proved that a student could work out the principles himself from decided cases, mostly early ones, and in the end would know more about his topic than the student who read the treatise, but there was no thought of questioning the old categories.⁶ The fear of

⁵ Most persons would concede that the English bar is superior to the American bar in average character and ability, in spite of the inadequate provision for English legal education. The explanation is obviously that most English barristers are English university men and in large measure from Oxford and Cambridge.

⁶ While the modern university law schools are introducing certain innovations in methods of instruction and while the present-day casebooks exhibit certain conscious modifications of the Ames standard, the university law schools are as firmly committed to the basic notions of the case system as ever. That this opinion is not yet universal outside the universities is indicated by the following quotation from the Catalog of the Suffolk Law School:

"The case system is essentially an inductive philosophy. From the reading of assigned cases the student is expected to deduce legal principles. But the law is so vast, the number of cases so prodigious (enough to fill more than two hundred and sixty volumes in Massachusetts alone, and no two cases alike), that only a very limited number of principles can thus be mastered. But these very principles have long ago been extracted from these very cases by great legal authors and jurists. Blackstone and Kent, Marshall and Shaw, Story, Greenleaf, Bigelow and many others have spent lifetimes in legal research. Their work, however, is waived aside by the case system. Callow beginners at law study are to do the thing all over again!

"In other fields of education teachers proceed upon the theory that the youth of today should be given the advantage of the accumulated wisdom of the past, and not be sent back to the beginning to work it all out for himself. For a century the legal profession has been accumulating textbooks, digests and encyclopedias, to which the important cases from all jurisdictions have contributed, in order that the fundamental principles of law might be rendered clear and understandable.

"Suffolk Law School believes that to disregard this accumulated wisdom, and to oblige the student who knows nothing of law to attempt single-handed to accomplish in three or four years what thousands of skilled workers have spent their lifetimes in accomplishing before he was born, is a pitiful waste of human effort." SUFFOLK LAW SCHOOL CATALOG, 1931-1932, 16, 17.

"When it was first proposed to establish laboratories at Cambridge, Todhunter, the mathematician, objected that it was unnecessary for students to

giving a fresh impetus to their opponents made the university law schools especially wary of emphasizing any frankly theoretical subjects.

An incidental consequence of the rise of the full-time university law schools with their professional law teachers was the almost total separation of the law teacher from the practitioner. Law practice was largely court practice and the lawyer who did not participate in trials had no standing with bench or bar. Dean Ames, although the outstanding American authority on Bills and Notes, was not even consulted in the drafting of the Uniform Negotiable Instruments Law.⁷ The university law professor and the practitioner in the urban communities were often kept apart by differences in financial status.⁸

see experiments performed, since the results could be vouched for by their teachers, all of them men of the highest character and many of them clergymen of the Church of England." BERTRAND RUSSELL, *THE SCIENTIFIC OUTLOOK* (1931) 72.

⁷James Barr Ames, *The Negotiable Instruments Law* (1901) 14 HARV. L. REV. 241: "The writer, although interested in the subject of Bills and Notes both as an author and as a teacher, saw the Negotiable Instruments Law for the first time after its enactment by four state legislatures."

⁸The university law teacher though usually among the best paid of the university faculty, still finds life a severe problem in applied economics in the larger urban communities unless he happens to have or be connected with a substantial private fortune, or unless he dissipates his energies and deprives his school of his best services by engaging in private practice. If he depends on his university salary he finds it difficult to maintain any casual social connections with the active members of the bar. He cannot live in the same part of town; his children cannot attend the same schools; he does not belong to the same clubs; he spends his vacations, if any, at different summer resorts. When he goes to an infrequent play or concert he looks down from above on the heads of his professional colleagues. The law professor today by writing and by means of various contacts with bar associations has nothing to complain about in regard to his indirect and even direct influence in his profession. His direct and immediate public influence, compared to that of persons of equivalent position on the Continent, is slight. This situation deprives the public of much useful and unselfish effort. The law school professor inevitably outranked most of his contemporaries in college and law school. His interests are often centered in highly realistic branches of law. He has the opportunity to view both his specialty and his profession in perspective. His freedom from the annoyances of the petty troubles of clients gives him comparative leisure. His lack of dependence upon particular clients gives him independence to judge and to express his judgment. He should be in friendly contact not only with the leaders of his own profession but with the significant administrators of business and public affairs, with the active figures of other professions and especially those who are the moulders of public opinion. These contacts are necessary if the law professor as an expert in social control is to keep his own thinking concrete, and if his life is to make any vital and contemporary contribution to society. There is of course no thought here of personal association with the American granddaddy establishments or with the conspicuous spenders and wasters who are the products of a society both acquisitive and speculative. The law professor merely deserves the economic position that will make him a part of a community that includes the active and influential lawyers, doctors, clergymen, journalists, engineers, artists, public officials and the responsible hired men of the larger corporate enterprises.

If the professor attended a bar association meeting he was ignored because of his lack of standing in his own locality. Legal periodicals were mostly the work of professional journalists and were filled with biographical sketches, trial reports, addresses at bar association dinners and funny stories. There was little community of interest between judges and law teachers. The judges were often practical politicians with little time and less inclination for scholarship.

What the university law schools needed in order to consolidate their position was time. It was not enough for their graduates to succeed in practice. These graduates had to become the heads of famous firms, appellate judges, and influential statesmen. By the twentieth century the prestige of the Harvard Law School and of a few other law schools was established in the legal profession and it was not long before university law schools generally were sharing this prestige. Law school reviews were beginning to monopolize the legal periodical field. The war interrupted the progress of legal education, as well as most other admirable things, but by 1920 the university law schools could speak with confident assurance on any matter pertaining to the legal profession.⁹ The law professor could criticize his

⁹ The American Bar Association at its Cincinnati meeting in 1921 adopted the following resolution:

"The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

"(a) It will require as a condition of admission at least two years of study in a college.

"(b) It will require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

"(c) It shall provide an adequate library available for the use of the students.

"(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body."

Referring to (b) *supra* it is interesting to compare the requirements of the two largest New England law schools, as shown by their latest catalogs. Harvard requires 72 semester hours for graduation and three years residence. Suffolk requires three courses of one and one half hours each for four years, that is, 9 semester hours a year, or 36 for the full four-year course. The Suffolk course, it is announced, will be five years commencing 1932. Accepting the Harvard hour requirement as standard and disregarding possible differences in time available for study by full-time and part-time students it would seem the Suffolk course should be eight years. The Suffolk catalog (1931-32), p. 16 makes this comment:

"... The student engaged in industry while studying law is in daily contact with the very conditions of life upon which law is based. Principles enunciated in the classroom find instant response in the minds of men whose life experiences furnish illustrations of the principles themselves. To the average full-

own curriculum without caring for the aid and comfort it gave to the opposition. He could criticize the legal profession as a whole or any of its several aspects without fear that his position would be endangered.

The increasing prestige of the university law schools in training lawyers was paralleled but not wholly caused by an independent advance in the standing of the university law professors. The Bar was becoming sensitive to popular criticism of defects in legal procedure and was more and more conscious of the terrible waste caused by unscientific legislation and carelessly formed opinions. It would have been only natural to have gone to the learned doctors in these predicaments even if the scholars had not made such consultation inevitable by their practical monopoly of legal journalism or by the considerable reputation their leaders had obtained as the authors of legal treatises. The more responsible and thoughtful members of the bar, and especially a group of scholarly and respected judges recognized in the university professors useful allies.¹⁰ While the financial status

time day student such principles are mere academic theory to be studied and slumbered over.

"The practical experience of the employed student counterbalances the additional leisure of the full-time student. But in building up a law practice after graduation the part-time student has an overwhelming advantage. Law practice comes very largely from business men. A business acquaintance is the first requisite of a young lawyer's success. Full-time day school graduates, as a rule, have been in school all their lives. They know no one except their schoolmates. When they open a law office they encounter the proverbial 'starving time.' It is years before business men become aware of their existence.

"The average part-time student, on the other hand, has been in daily contact with business men for years before beginning his practice. If he has won the confidence of business men of his acquaintance he starts off with a real law practice from his beginning."

¹⁰ See Learned Hand, *Have the Bench and Bar Anything to Contribute to the Teaching of Law*, 1925 HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS, 45-59, *passim*.

"I suppose that, if some divine statistician could calculate only the material loss yearly arising from the litigation and labor which a greater formal perfection in theory would avoid, it would be greater even than that unbegrudged item for cosmetics and perfume which our sisters roll up to nearly a half billion dollars. I speak only of the most material considerations. How far the improved rectitude of our thinking might pervade our lives generally, who shall say?

"You are by circumstances and by training less prone to become partisans of wealth, or at least you should be. Most legal controversy, litigious or other, concerns property. Lawyers as a rule are of the propertied class; their clients, when they are successful, nearly always are of that group, and they have seldom shown themselves, except in rare exceptions, sympathetic with the claims of other classes. The collective opinion of the bar has, I fear, scarcely more detachment, or more impartiality, than the opinion of college alumni. Can I say more?

"Again, by opportunity you are better fitted to solve new questions, so far

of the professor had not greatly improved and while his local influence remained slight, his actual effect upon law making, as a legis-

as solutions are possible at all, because they are not presented to you as avowed partisans.

"What light can you find in the sayings of bench and bar? I do not really believe that the decisions will advance you very much until, if they ever get settled, you can use them as data; that is, after the battle has been lost and won.

"Here [in the field of legal theory and social choice], as elsewhere, success depends upon continuous, specialized, impartial and systematic study, which practitioners cannot give, and which you can. The harvest comes to him who has cultivated his garden, not to him who has done odd jobs about the village generally.

"But the law is not a system of inexorable rules; in its most interesting aspect it concerns, if we must seek analogies, rather the behavior of a living organism than the absolutes of rigid formulas. You are dealing with a social group, on the whole self-conscious as such, plainly becoming such under your guidance. You touch it in its vocation, and its response will be more controlled by reason.

"However when all is said, I very much fear you cannot rely entirely upon that. The number of practitioners who can or will keep up with current legal discussion is extremely small. Many are engaged in business, and have no interest in legal theory, concrete or abstract. Indeed, in my own city, the best minds of the profession are scarcely lawyers at all. They may be something much better, or much worse; but they are not that. With courts they have no dealings whatever, and would hardly know what to do in one if they came there. [I shall insist upon your] error if you insist upon the supernatural powers of another fetish, the Practical Man. Him I know, and he is a god of mud. I would not scorn or dishonor him, he is my friend; he is my colleague; he is me; he is the backbone of his country; he is useful; at least he is necessary. But, if you propose his apotheosis, I shall not attend, or if I do, it will be with stones. Within his experience he may be admirable, but the scope of the law lies beyond that experience. His certitude is generally measured by his limitations; his assurance by his ignorance, his competence by his routine. Because he makes up your following, you must woo him, captivate him, adopt him, convince him. But since he has no fitness for your work, do not make the mistake of deferring to his judgment, or supposing that you can learn much from him.

"We know that common opinion is not generated simultaneously in the minds of many who are reflecting upon the same facts. It arises in a directing group small enough to have genuine interchange of ideas and common interests. The ideas will gain or lose acceptance with the group as a whole, either through the authority of the directors, or by their incorporation into other ideas already current and authoritative in the group.

"To you I ascribe the excellent function of systematizing, of rectifying, and of clarifying what exists, so that we shall know our possessions and be able to use our tools. To you, too, I will ascribe the still more excellent function of contriving new methods, of discovering new ideas, of surveying new territory. And to ourselves [*i.e.* the bench and bar] I reserve a more humble rôle; we are the mass from whom proceeds moral authority over the people. We furnish the momentum; you the direction. But each is necessary to the other; each must understand, respect, and regard the other, or both will fail.

"It is worth our effort to succeed. Much nonsense has indeed been written by lawyers about their work and their importance; it makes rather sorry reading, though the tendency is common enough among all sorts and conditions of men. I have been present at a meeting of brokers when I felt that after all the last perfect flower of civilization was a broker. The doctors, the soldiers, the business men, the plumbers, the grocers, all believe the same; no doubt so,

lative consultant, as a publicist, and most of all in the American Law Institute, had become of the highest significance.¹¹

It would be easier to apportion credit for the first steamboat than to allocate to individual law teachers their appropriate share in the ferment which was evident in the meetings of the Association of American Law Schools after the war. It is scarcely easier to identify the prophets who preceded the pioneers. Perhaps there will be little dissent with the designation of Wesley Newcomb Hohfeld as the major prophet of the pre-war period. Professor Hohfeld of Yale at the 1914 meeting of the Association of American Law Schools in

also, do those last friends of our earthly course, the undertakers. Let us try to see with more objective eyes. Civilization has its roots far deeper than the law can touch; it proceeds from the irrepressible fertility of human nature. Its fruits spring from passions, desires, hopes, and aspirations. But the regulation of conduct, the standards of mutual behavior, so far as they can become a matter of formal social control, are nevertheless a condition upon all the rest. A part, an essential part, of such standards is intrusted to us. In that sense it is not extravagant for us to say that without us all efforts would be fruitless, all society impossible. Not only is order necessary to civilized life, but so is such law measurably adjusted to its needs. The Temple of Justice we think of as especially our own, but its roof covers more than we can occupy. For Justice is no less than the Good Life, and we shall have but a small part in bringing that to pass, so far as it comes."

¹¹ The American Law Institute is a corporation organized February 22, 1923, for the improvement of the law. Its original membership of 343 consisted of 16 federal judges, 31 judges of state courts of last resort, more than 20 officers and former officers of the American Bar Association, 22 special representatives of state bar associations, 50 members, including 27 deans, of faculties of 30 law schools belonging to the Association of American Law Schools, and other distinguished lawyers including a number of ex-officio members, *e.g.* the Attorney General of the United States. The principal work of the Institute has been the restatement of the law of Contracts, Torts, Conflict of Laws, Agency, Business Associations, Property and Trusts. The Institute has also undertaken the drafting of a model code of criminal procedure. Plans are under way for beginning the restatement of several other branches of the law, perhaps including Bills and Notes, Sales and Security. It is expected that the program of the Institute will be completed by 1941. The Institute is headed by a Director with whom is associated an Adviser on Professional and Public Relations. The Director is William Draper Lewis, former dean of the University of Pennsylvania Law School. The Adviser is Herbert F. Goodrich, present Dean at Pennsylvania. Each restatement is in charge of a reporter with each of whom are associated several advisers. The reporters are Samuel Williston, Contracts; Francis H. Bohlen, Torts; Joseph H. Beale, Conflict of Laws; Warren A. Seavey, Agency; William Draper Lewis, Business Associations; Richard R. B. Powell, Property; Austin W. Scott, Trusts; William E. Mikkell and Edwin A. Keedy, Code of Criminal Procedure. Roscoe Pound is special adviser on classification and terminology. All the reporters, except Mr. Lewis, are now law school professors, so are most of the advisers. The American Law Institute's work has been supported to the extent of \$1,075,000 (available 1923-1933) from the Carnegie Corporation. The future budget of the Institute is estimated at \$1,500,000. The continued support of the Carnegie Corporation has been assured. The Laura Spelman Rockefeller Memorial devoted \$147,000 for the work on the Code of Criminal Procedure.

Chicago delivered an address entitled, "A Vital School of Jurisprudence and Law. Have American Universities Awakened to the Enlarged Opportunities and Responsibilities of the Present Day?"¹² Mr. Hohfeld first raised the following questions: "Have our university law schools been giving full recognition to the conscious struggle for change and adjustment which characterizes our era?"¹³ And are they doing all that they reasonably might by way of guiding this struggle toward the conservative, fundamental and lasting betterment of our legal institutions? Please remember the question is not whether our universities are doing *something* in the right direction, but whether they are contributing that reasonable maximum which alone is worthy of great universities." Professor Hohfeld went on to state that the courses and activities of a true university school of jurisprudence and law school consist of three divisions, not however mutually exclusive:

I. The Systematic and Developmental Study of Legal Systems.

II. The Professional and Detailed Study of the Anglo-American Legal System.

III. The Civic and Cultural Study of Legal Institutions.

In support of the first division, Professor Hohfeld pointed out that studies in general jurisprudence were omitted or neglected by most law schools, and that a true university school of law should, in the *interests of the public for whose benefit alone it has any right to existence*, develop the following departments of general jurisprudence.

1. Historical, or genetic jurisprudence.

2. Comparative or eclectic jurisprudence.

3. Formal, or analytical jurisprudence.

¹² (1914) HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 76-139. One must not overlook the activities of John H. Wigmore as a reformer of legal education. See Wigmore, *Nova Methodus Discendae Docendaeque Jurisprudentiae* (1917) 30 HARV. L. REV. 812.

¹³ Cf. the remarks of the late H. S. Richards (1926 HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 31). "The Bar is always talking about the law being a learned profession. I am tired of that phrase 'learned profession.' The Bar, as a whole, does little or nothing to make it real. If there is any attempt to make the Bar learned or near-learned, there is always opposition from them. Who make up the faculties of all the poor law schools we have in the United States? Members of the Bar, and of the Courts. They will denounce chicanery and the low tone of the bar, and then run and deliver their lecture in some school that is inducing young men with insufficient preparation and improper training to aspire to a career at the bar. The only body I know that is really attempting to make the legal profession a learned profession is this association."

4. Critical, or teleological jurisprudence.
5. Legislative, or constructive jurisprudence.
6. Dynamic, or functional jurisprudence.

Professor Hohfeld's address should be read in its entirety for his arguments in support of the utility of each type of jurisprudence. There is only space here for a few extracts. For example, in support of his plea for comparative jurisprudence, Professor Hohfeld quotes Judge John F. Dillon, as follows:

"In England and America the law of real property is almost wholly distinct from the law of personal property. . . . The existing law . . . not only makes many unnecessary distinctions between real and personal property, but it has, not by design, but as the result of historical causes, divided the rights of real property into great classes of legal estates and equitable interests—the one set of rights administered by courts of law, or courts which apply legal rules, and the other by courts of chancery, or courts which apply the doctrines of equity. . . ."

"I insist," continues Judge Dillon, "that the law of real property in this country ought to be assimilated as nearly as possible to the law of personal property; and that it is practicable to emancipate it from all of the pernicious consequences of tenure, whether existing by the common law or growing out of the doctrine of uses, and to make it as simple and as easily understood as the law concerning personalty."

"I do earnestly maintain that it is owing simply to the inertia and conservatism of our Bar that it is willing to let this great department of our law remain in its present condition—chaotic, uncertain, complex, and abounding in subtleties and refinements. . . ."¹⁴

Especially in connection with his survey of teleological jurisprudence Professor Hohfeld emphasizes that the teleological study should form a very important part of the ordinary professional courses, for only by doing so shall we elevate the practice of law and the administration of justice above a mere mechanical trade; "only so shall our lawyers and judges know the 'reason for the rule' and hence be able to determine its proper limits in relation to new sets of facts."

By functional or dynamic jurisprudence Professor Hohfeld meant the systematic and empirical study of the actual functioning of the various rules of law—what might be figuratively called "the law in motion." "Obedience and disobedience to law, conformity and non-conformity, resistance and non-resistance—all the forces of per-

¹⁴DILLON, *LAWS AND JURISDICTION OF ENGLAND AND AMERICA* 236-240. Cf. to similar effect, GRAY, *RESTRAINTS ON ALIENATION* (2nd ed.) §286.

suation and coercion, including ignorance, habit, religion, custom, knowledge, public opinion, and more particularly, the various courts, commissions and officers constituted for enforcing the law and vindicating jural relations, should be systematically and intensively considered."¹⁵

The products of the studies in jurisprudence would satisfy the need for professional jurists, jurists for legal authorship, jurists for legislative reference and drafting work, jurists and experts for membership in, and assistance to, various types of administrative commissions, executive departments, etc., jurists for membership in legislatures and jurists for the Bar and the Bench.

In discussing his second main division, that of the professional study of the Anglo-American legal system, Professor Hohfeld tendered suggestions on four topics: 1. Prescribed professional courses in legal history and general jurisprudence. 2. Prescribed reading courses in the history of the legal profession, legal biography, legal ethics, and general legal literature. 3. Office Practice. 4. Court procedure and practice. Professor Hohfeld elaborated his four points in part as follows:

"The time seems to have come when we should definitely recognize and apply the proposition that the great university law schools are training men who, besides becoming advisers of clients and directors of litigation, are destined to be leaders of public life and government, and pilots of public opinion on many vital questions affecting law and justice. It is our ordinary lawyers, moreover, who in time become judges and as such wield a large influence both in applying the existing law and in making new law; it is our ordinary lawyers who, in large numbers, enter our National Congress and our state legislatures and thus have a profound effect on our law and on every phase of life; it is our ordinary lawyers who, in large numbers, are becoming members of important commissions having both quasi-legislative and quasi-judicial powers of the highest importance; it is likewise our ordinary lawyers who fill many other offices of the greatest possible importance to the development of the law, the administration of justice, and human interests in general, for example, the office of President, the various offices of the cabinet, the various gubernatorial offices, and so forth; it is, finally, the ordinary lawyers who, quite independently of holding any public office, must always have more general influence than any other single class of people as regards the amelioration of our legal system and the administration of justice."

¹⁵ Cf. Herman Oliphant, *A Return to Stare Decisis*, 1927. HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 61-83. See also Turner (Roscoe Turner Steffen), *Changing Objectives in Legal Education* (1931) 40 YALE L. J. 576.

Professor Hohfeld had this to say about law school training and office practice.

"It is one thing to have more or less latent knowledge of legal principles and rules, and it is quite another thing to have that adequate and *immediate* 'association of ideas' that is necessary for applying these principles and rules to the drafting of legal instruments. This explains why even otherwise well-educated lawyers and recent law graduates are constantly making mistakes and introducing altogether unnecessary difficulties and ambiguities into wills, contracts, deeds and other instruments drafted by them, thus inflicting untold injustice and loss upon clients and enormously increasing the social and economic waste involved in litigation, family dissensions, and so forth. The general inefficiency of the American legal profession in these particular seems to me to be a matter for serious indictment and for immediate correction so far as university law schools can contribute thereto.

"The argument that the art of drafting instruments can be acquired *after leaving the law school* proves too much; for of course it is still possible for one to get his *entire* legal education without ever attending a law school; and, moreover, the same line of argument would lead to sending forth medical graduates who had no clinical work whatever. Furthermore, adequate instruction in concrete forms and methods, well distributed throughout the three years of the professional curriculum, would react favorably on the student's interest in his work and in his understanding, grasp and retention of substantive legal principles and rules. The *abstract* and *concrete* methods of instruction tend to act and react favorably upon each other, a matter of the greatest importance when we consider that many law students are of sufficiently limited ability to render necessary every possible aid toward making them trustworthy lawyers and good public servants."

The speaker's argument for study of court practice and procedure followed the same lines of his argument for a study of office practice.

The last main division of Professor Hohfeld's address concerned non-professional study of legal institutions. One may assume that since Professor Hohfeld was convinced of the cultural value of the study of legal institutions for non-professional studies, he would not object to crediting such study both for college and law school degrees.

Professor Hohfeld in conclusion faced the problem of financial support for his program. He stated that in most universities the financial support for legal work from the general endowment or legislative appropriations is inadequate when it is not niggardly in comparison to what is devoted to other departments of university

work. It is not difficult to make a law school a source of income to the university. All one needs to do is to restrict courses to purely vocational ones and to adopt a practical attitude in the matter of admission and scholastic requirements. From the standpoint of the country as a whole, such a policy by the universities is financially improvident if it is at the expense of the university's larger functions.^{15a} The economic loss from unnecessary litigation due to unskillfully framed constitutional and legislative enactments, ambiguous, conflicting or otherwise faulty judicial opinions, and careless or stupid advice of counsel, is scandalously large.

"Not to consider, for the moment, still deeper social values and losses, it would seem to be time for men of affairs and leaders of public opinion to recognize and reckon the tremendous sum total of social and economic friction and waste involved in the various imperfections of our legal system, and to consider the far-reaching possibilities of service by an adequate school of jurisprudence and law with the right kind of program. In this connection, a comparatively recent utterance by Professor Thomas Nixon Carver, the distinguished economist of Harvard University, is deserving of careful thought:

"We have often been told of the enormous waste of war, and the cost of supporting European armaments. The withdrawal from production of so many young men as are required for the standing armies of those militant nations can easily be understood as a factor in the high cost of living.

"But we are not so ready to consider the enormous cost of litigation in this country and the enormous waste involved in the withdrawal of so many of the most capable men in the world from productive work in order that they may fight our private battles for us.

"Here is a cost comparable with that of European armaments."

"Several years ago I heard Professor William James remark during a public address that the cost of developing and maintaining men like Pasteur and Von Helmholtz was altogether irrelevant in view of the enormous gain to the world as the result of their studies and activities. Of course that remark would apply with equal truth to men like Bentham, Savigny, Von Jhering and other great jurists. In the same way I venture to submit that, with so much important work pressing for accomplishment as to stagger the imagination, the cost of maintaining several great schools of jurisprudence and developing a large class of American jurists comparable in their field to our great natural scientists is practically irrelevant in view of the beneficial results to be achieved."

^{15a} Professor Hohfeld's criticism of the universities' fiscal policy was not wholly fair to the greater universities even in 1914 and if made today would be sharply challenged. However, see H. Claude Horack, *Law Schools Today and Tomorrow* (1928) HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 12, 15.

The challenge of Professor Hohfeld and other criticisms dealing more in detail with the contents of the typical law school curriculum were considered by all law schools but perhaps nowhere so actively as at Columbia and among Professor Hohfeld's own associates at Yale. After a number of years of unorganized activity, the Columbia faculty voted in 1926 to undertake a comprehensive study of the whole subject of legal education with a view to devising and effecting plans for its improvement. To this end, Professor L. C. Marshall, Dean of the School of Commerce of the University of Chicago was invited to Columbia as visiting professor. During the second half of 1926-1927 and for a number of months in the following year the faculty met in extended weekly sessions which were attended also by representatives of other departments of the University. The reports submitted at these meetings if printed would cover close to 1000 pages and taken collectively constitute an important contribution to the study of legal education.

The sessions were initiated by a sharp debate on the objectives of legal education. One group believed that the major objective should be the study of law as an aspect of social organization. This did not mean merely a broadening of the content of the legal curriculum, nor a graduate school of law added to the regular course but an entirely different approach. The study of law would be non-professional in order to comprehend the function of law, evaluate its results and assist in keeping its development more nearly in step with the complex developments of modern life. The opposing view would continue the professional curriculum but regarded the major objective as that of providing an adequate scientific preparation for public service in law. The expression "public service in law" was intended to indicate both that the school would expect its alumni to serve society in capacities other than those of the practicing attorney, and that "even the most specialized practitioner is a public officer, and, insofar as he is enabled through the presentation or the settlement of his case to influence the administration of justice, his training will be inadequate to the extent that it discounts that consideration." No final opinion was expressed by the faculty on their objectives. It is obvious that the latter objective represents the policies of the school. Although much attention is devoted to research projects, these are far from constituting the research law school which the advocates of the first objective envisaged.¹⁸

¹⁸ The amount of study and discussion of the aims and methods of legal research which has characterized recent meetings of law teachers and much

Turning to the subject of the curriculum the faculty asked the following questions from the standpoint of a student of education: What are the broad phases or divisions of legal material most useful for pedagogic purposes? As a matter of proper curricular sequence with what phases of legal education should he begin? To what

of their published work is a tribute alike to their scholarship and their common sense. See especially, Cook, *A Council of Education*, 1916 HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 103-147; McMurray, *The Place of Research in the American Law Schools*, 1925 *ibid.* 20-30; discussion by Philbrick, Patterson *et al.* *ibid.* 30-45; Frankfurter, Llewellyn, Sunderland, *Symposium—The Conditions for, and the Aims and Methods of, Legal Research*, 1929 *ibid.* 26-60; Llewellyn, *A Realistic Jurisprudence—The Next Step* (1930) 30 COL. L. REV. 431; Cook, *The Johns Hopkins Institute for the Study of Law* (1928) 6 AM. L. SCH. REV. 336; Cook, *Statewide Studies in the Administration of Justice* (1931) IND. L. REV. 112; Yntema and Jaffe, *Preliminary Analysis of Concurrent Jurisdiction* (1931) 79 U. OF PA. L. REV. 869. Legal research in a law school may take the form of directing certain students in the sort of independent study that any lawyer must do to write a brief; in faculty studies, either singly or group, of law with a pedagogic objective; or in studies sponsored by the law school though not necessarily conducted by its members, whose objective is the guidance of the profession or the public, or both. The existing work of the Columbia Law School illustrates the several types of research. The magnificent family study by Jacobs and Angell had primarily a pedagogic significance, the corporation studies of Berle and Means, the automobile accidents studies of Chamberlain, Dowling and Deak and Handler's restraint of trade studies are chiefly for the legal profession and the public. The reports of Dean Young B. Smith for 1928, 1929, 1930 and 1931 should be consulted for further accounts of Columbia research activities. The announced aims of the Johns Hopkins Institute of Law are: "The study of the economic and social effects of law; the classification and simplification of law; the training of jurists and codifiers; and the guidance of writers of text books and thinkers upon the human effects of law." The Yale Law School both independently and in coöperation with the Yale Institute of Human Relations has been devoting much of its resources of energy and money not only to individualized study but notably to several important studies in the field of procedure, insolvency and banking. See Clark, *CONNECTICUT BAR JOURNAL*, July 1928, 211, and Clark, *An Experiment in Studying the Business of Courts of a State*, 14 A. B. A. J. 318 (1928); *The Business Failures Project—A Problem in Methodology* (1930) 39 YALE L. J. 1013; Douglas and Thomas, *The Business Failures Project—II. An Analysis of Methods of Investigation* (1931) 40 YALE L. J. 1034; Moore and Hope, *An Institutional Approach to the Law of Commercial Banking* (1929) 38 YALE L. J. 703; Moore and Sussman, *Legal and Institutional Methods Applied to the Debiting of Direct Discounts* (1931) 40 YALE L. J. 381, 555, 752, 928, 1055, 1219.

Research at Harvard is organized as research in candidacy for a degree and other research. The former is carried on as a part of graduate instruction. The latter is carried on by professors whose major activity is research, acting as directors of institutes, by professors whose major activity is teaching, and by holders of research fellowships who work in connection with institutes, with individual professors or independently. Harvard has assigned an endowment of \$2,250,000 for research. In addition a fund of \$200,000 is available for bibliographical assistance to those engaged in research. Forty-six study rooms, 83 stack stalls, 12 seminar rooms in addition to professors' offices and special libraries in International Law, Comparative Law and Criminal Law are part of the research equipment. The special libraries are maintained by a fund of \$500,000 in addition to general library funds. There are six research fellowships, one of \$2000, four of \$2750 and one of \$3000. Two publication

phases should the middle reaches of the curriculum be devoted and what should be the final part?

In answer to these inquiries the faculty outlined a plan for a law school curriculum consciously drawn in accordance with articulated educational standards.¹⁷ Six phases were determined in this plan:

funds are provided, one yielding \$10,000 annually and the other a rotating fund of \$10,000.

Five professorships are provided for, devoted primarily to research—a professorship of criminal law, a professorship of legislation, a professorship of judicial organization and administration and a professorship of comparative law. As an example, the organization of the Institute of Criminal Law may be set forth. The professor of criminal law is director. With him are associated an assistant professor of penal legislation and administration, and an assistant professor of criminology. These three conduct a seminar for graduate students and for the rest give their time to research. With them are associated the two teachers of criminal law in the regular professional curriculum, each relieved of one-third of the standard work of a teacher in order to give that part of their time to the institute. In addition a committee of three members of the faculty is part of the institute.

Besides the research conducted with the school's regular endowment and as part of a continuous program, special projects are undertaken from time to time. Two such projects were the survey of crime and criminal justice in Boston, and a study for the First Conference on the Codification of International Law, planned by the Eighth Assembly of the League of Nations in its resolution of September 27.

The three foregoing paragraphs are from the report of Roscoe Pound in 1928 HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 147-149.

The elastic connotation of the term research is indicated by the following description of the Department of Research and Review of the Suffolk Law School, Catalog (1931-1932), 18: Department of Research and Review.

"This department has become one of the strongest features of the school. Through its agency every student receives that personal attention so essential to rapid development of his understanding of law and to discriminating analysis of cases.

"This is distinctly pioneer work. Law schools in general depend entirely upon classroom work and give a written examination only at the end of a course. We direct the outside study of each student as well as test its quality and correct his misunderstandings. Each student is required at regular intervals to answer an aggregate of sixty questions in case form in each full year subject. Papers carefully graded are returned to the student, together with a correct and fully reasoned answer for his future use. Upwards of three hundred and fifty thousand individual answers are corrected annually at the school.

"These papers are examined by the staff of our Research Department and graded according to their merits or defects, thus aiding the careless student, the weak reasoner, and the writer of faulty English to overcome his faults. It accords also to the student whose work is of high grade that recognition of merit which develops assurance of mind and poise of character.

"The director of the department not only oversees the correction of papers, but edits all questions and answers before they are stenciled or printed, thus ensuring high quality and uniform standards of work."

For further light on the possibilities of research the reader is referred to the activities of the Research University of Washington, D. C.

¹⁷ Much of the discussion of the Columbia studies is based on the unpublished Summary of Studies in Legal Education by Herman Oliphant, with a concluding chapter by Roswell Magill. See also Oliphant, *The Future of Legal Education* (1928) 6 AM. L. SCH. REV. 329.

1. The acquisition of a background for the study of law, consisting of an understanding of the structure and functioning of modern society, an appreciation of the devices and processes of all forms of social control in contemporary society, and an orienting knowledge of the agencies and processes of law, viewed as but one form of social control in modern society.
2. An appreciation of what a truly scientific attitude of mind toward any work in any of the social sciences, including law, involves.
3. The acquisition of the tool skills widely involved in legal study, that is, the acquisition of those methods of collecting, observing, and evaluating social data, and of erecting autonomous systems of thought embracing and "accounting for" them.
4. Working through the main corpus of substantive and adjective law in which training is indicated, the student starting with the scientific attitude of mind and equipped with background and methods needed for the study of law.
5. Getting a synthesizing view of all the fields of law thus covered in order to see elements common to all the fields and to see significant differences among them; this being done in order that the student's knowledge of the law may be an organized whole instead of a confusing mass of loose ends.
6. Making a general survey of the law and its administration for the purpose of evaluating the effectiveness of the latter and the long-time social implications of the former.

The faculty did not necessarily believe that all these phases should be represented by integrated courses of study. The scientific attitude of mind and methods of legal study might be developed with the main body of introductory subject matter. Similarly synthesis, comparison, evaluation, might characterize a part of the concluding courses.

Assuming that the general outline of the curriculum had been determined from a pedagogical standpoint the next task of the faculty was to decide upon a classification of the legal subject matter for the greatest convenience of the professional student. In existing subdivisions as shown by titles of courses listed in various law school catalogs, no conscious or consistent plan of classification was found. Fortuitous factors had operated to give such classification as existed. Some courses were of procedural origin, often representing obsolete categories. Some courses represented comprehensive subdivisions in digests or encyclopedias. Many courses corresponded to titles adopted by textbook writers like Story, whose divisions of law were fixed by personal interests. Added to these were courses representing newly developed and specialized areas of the law like restraint of

trade or public utilities. No attempt had been made to attempt a reorganization of basic courses so as to integrate these new areas. Whatever the divisions of the law school curriculum it was evident that they were largely the result of haphazard growth.

If the faculty was to replace an accidental classification with a reasoned one, it was evident the first problem was a choice among several possible methods of classification. Any classification involves abstractions but the existing classification seemed to embody abstractions unnecessarily broad. New angles of approach were suggested by the incorporation of non-legal material from other social sciences. Several members of the faculty observed that in the treatment of a body of material it was impossible to employ merely a single basis of classification. If the classification is on the basis of functionaries any discussion must take place in terms of categories obtained from some other type of classification; for example, one of procedural origin. As one professor stated it, discussion and study of law is like a weaving process. The categories arising from the basis chosen for the master classification constitute the warp into which is woven day by day a woof, whose strands are the categories arising from another basis of classification. By the choice of the warp we designate the aspects of the matter under treatment which is to receive special emphasis. In the last analysis the choice of a type of classification is determined by the major objectives. Briefly summarized the faculty's conclusion was that part of the law, as at present, should be classified, but more comprehensively, in terms of procedural and administrative devices and processes operative to obtain adherence to norms of human conduct. Setting to one side the areas of the law covered by the term law administration, the classification of the remainder which one may call substantive law involves making a pragmatic choice. What are the broad areas of life most affected by and affecting law and how have experts in those fields divided them? The tentative answer of the faculty was that these areas were those of business relations, family relations and communal-political relations. The faculty recognized, however, that a reorganization of the curriculum along functional lines, would not afford a satisfactory legal education if it did not take care of possible deflections caused by concepts still rooted in our ideology, however slight their present utility. The successful practice of the law requires the ability to state results both understandable and palatable to those trained in legal

concepts. In the part of the curriculum devoted to synthesis and comparison can be incorporated material organized in terms of existing legal concepts. So long as Contracts and Torts remain in a law school curriculum there need be no occasion for worry lest abstract doctrine in legal concepts will be neglected. The accompanying diagram sets out in tabular view a curriculum constructed along the lines just set out.

Evaluation and Criticism			
Synthesis and Comparison			
Law Administration	Political Relations	Business Relations	Familial Relations
Methods of Legal Study			
Societal Background			
Scientific Attitude			

The factor, which more than any other, had driven the Columbia law faculty to a consideration of its curriculum was the extent to which the time of the teaching staff and the resources of the school were being scattered over courses regarded as of minor importance. Columbia had been offering an excess of 76 semester hours over the minimum required for graduation. Harvard, Yale, California, and Michigan, Stanford, and Chicago also were offering much excess instruction. While only the first year was prescribed the large num-

ber of hours comprehended by courses considered basic meant that in practice there was little real election of courses.¹⁸ In a study of the programs of 143 Harvard students it was found that their courses were as if 66 of the requisite 74 semester hours had been fixed, and

¹⁸ The 1930 report of the Committee on Curriculum (Roswell Magill, Chairman) of the Association of American Law Schools (1930, *HANDBOOK*, 131-138), showed that 19 member schools out of 49 reporting require all or nearly all of their second and third year courses. Seven schools require more than half of the total hours for a degree. All these require Bills & Notes, Conflicts, Corporations, and Evidence; and nearly all require Constitutional Law, Equity, Trial Practice, Trusts, Wills and a Real Property course. Mortgages, Public Utilities, Bankruptcy, Sales, Suretyship, Code Pleading are required by approximately two-thirds. The following table indicates the more popular courses

Courses	Schools Offering (22 in the Group)	Maximum Hours	Minimum Hours	¼ to ½ of the Students	Taken by ½ to ¾ of the Students	¾ or more of the Students
Bankruptcy	15	3	1	5	4	2
Bills & Notes	22	5	2	1	5	16
Code Pleading	17	4	2	0	2	14
Conflicts of Laws	22	4	2	8	4	10
Constitutional Laws	22	6	4	3	7	12
Corporations	22	4	2	1	5	16
Dom. Relations	17	4	2	5	1	6
Equity	19	8	3½	0	4	15
Evidence	22	6	2	0	1	21
Fut. Int.	17	4	2	5	5	1
Insurance	20	4	1	4	5	4
Mortgages	18	3	2	2	9	4
Municipal Corps.	20	4	1	8	1	2
Partnership	18	4	2	8	2	3
Public Utilities	18	4	2	5	3	2
Quasi-Contracts	16	4	2	6	2	2
Real Property	21	6	2	2	3	16
Sales	21	4	2	5	4	11
Suretyship	15	3	2	1	6	2
Trial Practice	20	9	2½	2	3	14
Trusts	22	4	2	1	11	9
Wills	22	3	2	0	7	15

It appears, then, that the following courses are taken in 15 or more (about three-fourths) of this group of schools by one-half or more of the men.

	Usual Hour Allotment
Bills & Notes	3
Code Pleading	3
Constitutional Law	4
Corporations	4
Equity	5
Evidence	4
Real Property	3
Sales	3
Trial Practice	4
Trusts	4
Wills	3
Total	40

even as to other 8 hours there was a tendency to concentrate on certain courses. A number of proposals had been made to make possible a larger actual choice. The most obvious suggestion was to increase the curriculum from three years to four years.¹⁹ A second was to increase the contents of each course, and to offer summer instruction for those unable to carry the increased program.²⁰ A third was to survey the different courses with a view to the elimination of obsolete material, and to possible consolidations. A fourth was to divide the courses into disciplinary groups and informative groups, and to cover courses in the latter group by lectures. A modification of this suggestion was to cover only the most difficult phases of subjects in the second category, but to complete the outline of the course by text discussions or lectures.²¹ A final suggestion

¹⁹ See (1920) HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 213-221, and 1921 *ibid.* 34-39 for majority reports refusing to recommend a four year curriculum and vigorous minority reports by John H. Wigmore favoring it. The points made in opposition were the further prolonging of entrance into practice, or the shortening of academic preparation, and driving desirable students into inferior schools. The committee felt that newer courses like jurisprudence, comparative law, legal history, legislation and criminology are not sufficiently developed for admission to the law school curriculum. The points made for the four year curriculum were (a) three years do not suffice for encompassing the present curriculum; (b) important additional subjects of instruction are now barred from recognition; (c) the profession recognizes and demands an additional year; (The Section of Legal Education and Bar Examiners of the American Bar Association voted Aug. 30, 1916, that "all applicants should be compelled to study law for four years"); (d) medical and other professional schools require four years; (e) university law schools on the Continent recognize the same necessity.

Seven law schools now appear to require seven years of academic and professional study for a law degree, assuming that the academic degree is obtained in four years. These schools are California, Stanford, Harvard, Yale, Pennsylvania, Pittsburgh, and Northwestern. See Green, *A New Program in Legal Education* (1913) 17 AM. BAR A. J. 299.

Interviews with members of a representative group of New York law firms showed a considerable sentiment in favor of a four year curriculum. It seems likely that the four year graduate would be accorded the salary rating of the three year man with a year of office experience. Most of the recent Columbia graduates interviewed were opposed to a four year curriculum.

It should be observed that the standardization of preparatory school curricula, and the selective processes for choosing college and law school students have resulted in a decrease in the average age of law school graduates. The day is not far distant when the average age of law school graduates who have also completed a college course will be about 24 years. If a man can complete a college course, a law school course and one year of office apprenticeship by 25 it would seem that he has started his professional career soon enough, especially in view of the increased average length of life. Law is not a career in which the forty year old is ready for the discard.

²⁰ Summer instruction is also a possibility in making a four year curriculum more acceptable.

²¹ Notwithstanding that the lecture method is the standard type of advanced instruction on the Continent and to a certain extent in American colleges, and

was that some courses be offered either as disciplinary courses for those intending to specialize in such fields, or as informative courses for those whose major interest was elsewhere. The third proposal was the one primarily accepted in the revision of the Columbia curriculum, although with the improvement in the minimum level of student capacity due to the selective process, the scope of certain courses has been naturally widened. The faculty was thus able to reduce courses totaling 99 semester points to 64 points. From the standpoint of the time of the individual member of the faculty this saving of hours was largely absorbed by the parallel seminar and other individualized instruction.

III

The Columbia curriculum of 1931-1932 should be examined in the light of the stated objectives of the faculty study of 1926-1928. Certainly much has been accomplished. The present curriculum is only slightly less strange to the student of Dean Stone than it is to the students of Deans Kirchway²² and Keener or Warden Dwight.²³

in spite of the fact that lecturing is not unknown in law schools, the class lecture is in low repute among American law professors. They are apt to recall the empty lecture rooms and the crowded tutoring classes in some German university towns. They are apt to feel that any subject that can be presented by lectures can be studied independently by the student. This is not wholly true. A student whose major interest is industrial relations may wish to know something about the law of marketing without taking Llewellyn's Sales course or reading Williston's treatise. Some topics are so complex that a lecture is needed as illumination for the student not taking the subject as a major course. Moreover, law professors occasionally know amusing bits of information that neither they nor anyone else have written down. A lecture course by Zechariah Chafee on certain phases of equity would meet any law school standards.

A further difficulty in the way of drawing up a list of disciplinary and less-important subjects is that there is no agreement as to the contents of these categories. See *Report of the Committee on Curriculum, and Discussion*, 1922 HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 35-37, 67-79.

²² When Theodore W. Dwight was head of the Columbia Law School his title was Warden. Dean Kirchway obtained that title only upon his retirement.

²³ Dwight was in charge of the Columbia Law School from 1859 to 1891. During much of that time he had an international reputation as the foremost law teacher in America. See *Training for the Public Profession of the Law* (1921) CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, BULL. No. 15, 186. See also the opinions of Dicey and Bryce, quoted in *A HISTORY OF COLUMBIA UNIVERSITY, 1754-1904*, 343. These opinions were expressed on the basis of visits made in 1871. From 1859 to 1891, the curriculum went on from year to year with few changes. The earlier catalogs give scarcely a clue as to the actual contents of the curriculum, except to impress one with the extraordinary breadth of the nominal program in contrast to the severely professional one of the present day. The departments of instruction were three: 1. Municipal law; 2. Constitutional law, treating of constitutional history, international and constitutional law, and political science; 3. Medical jurisprudence.

Attendance upon lectures in municipal law was all that was required for the ordinary degree of LL.B., though the trustees sought to encourage interest in the other two by specifying that a parenthetical *cum laude* was to be awarded to graduates who subjected themselves to this additional training. The course itself was two years in length until 1888. An optional third year of post graduate work was organized in 1862. During the first year the attention of the student was directed to the mastery of general commentaries on municipal law, the law of contracts, and the law of real estate. The second year included equity jurisprudence, commercial law, the law of torts, criminal law, evidence, pleading, and practice. In the third year particular attention was given to the law of real estate. To quote from the catalog of 1876-77: "It will be the aim of the School to make its students systematic and thorough in their attainments. It proceeds upon the principle that the science of jurisprudence is to be inculcated by the approved modes of teaching the fundamental principles of other sciences, by the use of text-books, and by the drill of the recitation-room, with supplementary lectures and expositions, oral and written." The only tabulated list in the catalog is the course of lectures, *viz.*:

"COURSES OF LECTURES

By Professor Dwight—On Constitutional and Parliamentary Law. On the various topics of Municipal Law, as supplementary to the general course of instruction.

By Professor Ordronaux—On Medical Jurisprudence—including Personal and Domestic Relations—physically considered;
Poisons, Wounds, and exceptional forms of death;
Insanity in all its bearings, civil as well as criminal, on legal responsibility;
Malpractice and Medical Evidence—Coroners' Courts—Life Assurance—Survivorship.

Also, a Course of Lectures on Anatomy.

[For many years law students could attend any lectures in the medical school.]

By Professor Chase—On Criminal Law.

On the Law of Torts.

On Pleading.

By Professor Burgess—On Political Science. (Professor Burgess's service began in 1875. He succeeded Francis Lieber who died in 1872.)

On International Law."

(From the catalog from 1876-1877.)

"The leading end sought to be accomplished is the thorough and careful training of the student. He is led to look for the leading principles of law without encumbering himself with a search for minor details. To this end, he is expected to familiarize himself with definitions and to become practiced in deducing, from general principles, rules to govern specific cases that are from time to time presented to him. The instruction in the class-room presupposes that he has given some attention to the subject, and, to a certain extent, grappled with its difficulties. With this view a topic is assigned to him from some approved text-book. He is questioned upon it for the purpose of determining the extent to which he has grasped the principles involved. Accompanying the questions is a full oral exposition from the Professor in charge of the class, with suitable illustrations from decided cases. The exercise is made familiar, and the student is encouraged to state his difficulties and to ask explanation on such points as still remain obscure. Besides this class of exercises, a short course of lectures is dictated to the students daily. This is deemed to be useful as a brief general statement for the purpose of review and of fixing leading legal rules in the memory. It will be observed that this system excludes, in the main, lectures in the ordinary sense. It is rather a system of questions, expositions, and dictations. However, in some branches, *e.g.*, criminal law, lectures, as ordinarily understood, are resorted to. But of these lectures, a comprehensive synopsis, embracing the general principles of criminal

jurisprudence, is dictated to the students, to be preserved for study and reference. . . .

"The student is also encouraged, after he has made some acquaintance with the general legal rules, to read and carefully study leading cases, so as to observe the application of principles to practical affairs. . . ."

In 1888 the two-year course was made into three. In 1891, with the retirement of Professor Dwight as Warden and the choice of Professor Keener as Dean, the entire curriculum was reorganized. In addition to the general discussion as to methods found in the catalogs of this period (with particular reference to the case system), there is a real list of separate courses. Contrary to the custom of the present day, the courses in this list are not described. They are as follows:

JUNIOR YEAR

Required

CONTRACTS, Professor Keener. Three hours a week. Keener's Selections on Contracts.

REAL AND PERSONAL PROPERTY, Professor Kirchwey. Two hours a week. Gray's Cases on Property.

TORTS, Professor Burdick. Three hours a week, October to February. Pollock on Torts, Burdick's Cases on Torts.

CRIMINAL LAW AND PROCEDURE, Professor Burdick. Three hours a week, February to June. Chaplin's Cases on Criminal Law.

LAW OF PERSONS AND DOMESTIC RELATIONS, Professor Cumming. Two hours a week, October to February. Ewell's Cases on Domestic Relations (student's edition).

COMMON LAW PLEADING AND PROCEDURE, Professor Cumming. Two hours a week, February to June. Ames's Cases on Pleading.

ELEMENTS OF JURISPRUDENCE, Professor Kirchwey. Two hours a week until Nov. 11th.

Optional

CONSTITUTIONAL HISTORY OF EUROPE AND THE UNITED STATES, Professors Burgess and Osgood. Four hours a week.

CONSTITUTIONAL HISTORY OF ENGLAND, Professor Osgood. Two hours a week.

INSTITUTES OF ROMAN LAW, Professor Smith. One hour a week.

MIDDLE YEAR

CONTRACTS AND QUASI-CONTRACTS, Professor Keener. Three hours a week. Keener's Selections on Contracts. Keener's Cases on Quasi-Contracts.

ADMINISTRATIVE LAW, Professor Goodnow. Two hours a week.

BAILMENTS, Professor Cumming. Two hours a week.

EQUITY JURISPRUDENCE, Professor Keener. Two hours a week. Ames's Cases on Trusts.

HISTORY OF EUROPEAN LAW, Professor Smith. Two hours a week.

REAL AND PERSONAL PROPERTY, Professor Kirchwey. Two hours a week. Gray's Cases on Property.

AGENCY, Professor Burdick. Two hours a week, February to June.

CODE PRACTICE, Professor Cumming. Two hours a week, February to June.

COMPARATIVE CONSTITUTIONAL LAW, Professor Burgess. Three hours a week, December to May. Burgess' Political Science and Constitutional Law.

EQUITY PLEADING AND PROCEDURE, Professor Cumming. Two hours a week, October to February.

INSURANCE, Mr. Richards. Two hours a week, February to June. Richards' Treatise and Select Cases on Insurance.

The first year is still prescribed, but such newcomers as Development of Legal Institutions and Legislation occupy five hours of it. The courses in Contracts and Torts which are primarily courses in

SALES OF PERSONAL PROPERTY, Professor Burdick. Two hours a week, October to February. Benjamin on Sales.

Optional

MEDICAL JURISPRUDENCE, Professor Ordranax.

(The courses in the middle year are elective, with 12 hours the minimum requirement.)

SENIOR YEAR

CODE PLEADING AND PRACTICE, Professor Cumming. Two hours a week.

PRIVATE CORPORATIONS, Professor Cumming. Two hours a week. Cumming's Cases on Private Corporations.

EQUITY JURISPRUDENCE, Professor Keener. Two hours a week. Langdell's Cases on Equity Jurisdiction.

EVIDENCE, Professor Kirchwey. Two hours a week. Thayer's Cases on Evidence.

INTERNATIONAL LAW, Professor Moore. Two hours a week.

NEGOTIABLE PAPER, Professor Burdick. Two hours a week. Ames's Cases on Bills and Notes.

PARTNERSHIP, Professor Burdick. Two hours a week. Ames's Cases on Partnership.

SURETYSHIP AND MORTGAGE, Professor Kirchwey. Two hours a week.

SYSTEMATIC JURISPRUDENCE, Professor Smith. Two hours a week.

WILLS AND ADMINISTRATION, Professor Kirchwey. Two hours a week. Gray's Cases on Property.

ADMIRALTY AND SHIPPING, Mr. Nathan. Two hours a week, February to June.

CONFLICT OF PRIVATE LAW, Professor Smith. Two hours a week, October to February.

MUNICIPAL CORPORATIONS, Professor Goodnow. Two hours a week, October to February.

LAW OF TAXATION, Professor Goodnow. Two hours a week, February to June.

Optional

CONFLICT OF CRIMINAL LAW, EXTRADITION AND NATIONALITY, Professor Moore. Two hours a week, February to June.

DOCTRINES PECULIAR TO NEW YORK LAW, Mr. Canfield. One hour a week.

A typical *ante litem motam* catalog is that of 1921-22. There the purposes of the law school are stated as follows: "The design of the School of Law is to afford a thorough practical and scientific education in the principles of:

THE COMMON AND STATUTE LAW OF THE UNITED STATES

THE ENGLISH AND AMERICAN SYSTEM OF EQUITY JURISDICTION

THE PUBLIC LAW OF THE UNITED STATES AND EUROPE

THE ROMAN LAW, ANCIENT AND MODERN

THEORETICAL AND COMPARATIVE JURISPRUDENCE

"These subjects are taught with reference to their historical development as well as their practical application, the aim of the School being not only to fit its students as completely as possible for the actual practice of the law and the conduct of public affairs, but also, by the encouragement of scholarship and research, to lay a substantial foundation for legal authorship and furnish preliminary training for the profession of the law teacher. . . ."

legal concepts, are given four and six hours respectively.²⁴ Law Administration receives six hours, or nine, if one includes Criminal Law. Three hours are devoted to Possessory Estates in Land. In addition every first year student must stand a true-false examination on a prescribed list of readings.²⁵ An element of sequential arrangement has been introduced into the second and third years by the limitation

²⁴ See Beale, *The First Year Curriculum of Law Schools*, 1902 PROCEEDINGS, ASSOCIATION OF AMERICAN LAW SCHOOLS, 42:

"At the beginning of the study of law two things are to be considered: First, the fitness of the student to pursue a certain course of study, and, second, the relation of this course at this period to the rest of his legal education. He can pursue no course which is merely a specialized branch of a more general subject not yet learned, nor one which has to do with the application in practice of principles with which he is not familiar, nor one which deals with facts too complex for his present knowledge. In short, the studies at the beginning must be fundamental and simple. In the second place he must study as soon as possible such courses as are conditions precedent to his further work. He must, for instance, learn the principles of the law of contract before he can deal with Sales and Insurance or Partnership. It is not difficult to determine what is fundamental law. Civil rights are based ultimately upon rights of property and upon obligations, whether *ex contractu* or *ex delicto*, and the study of law must begin with the simplest and most general forms of such rights. We should start, therefore, with courses upon Contracts, Torts and Property. They are simple and fundamental, and they form a necessary preparation for the study of more highly specialized branches of law. Criminal Law is equally simple and fundamental, being the basis of all public obligation. It is not so essential a preparation for subsequent study as the first three named and could be postponed better than they; but the simplicity of the facts with which it deals and the neatness and subtlety of much of the reasoning involved will fit it for study by a beginner. Pleading, the body of principles and rules in accordance with which these simple rights are prepared for presentation to the court, is clearly fundamental, and an investigation of the rules of pleading throws much light on the problems which arise in the other courses. There is, therefore, good reason for the adoption of these five subjects as the basis of first year instruction."

²⁵ The first list of readings was as follows:

- Dewey, *Logical Method and the Law*, 10 CORN. L. Q. 17.
- Holmes, *Collected Papers*, 138, 164, 167, 210, 310.
- Gray, *The Nature and Sources of the Law*, §§1-20; ch. IV; §§366-390; §§448-512; ch. XI, XII.
- Cardozo, *Nature of the Judicial Process*.
- Cook, *Scientific Method and the Law* (mimeographed).
- Cohen, *The Place of Logic in the Law*, 29 HARV. L. R. 622.
- Pound, *Introduction to the Philosophy of Law*, ch. III, VI.
- Cohen, *Property and Sovereignty*, 13 CORN. L. Q. 8.
- Brooks Adams, *Modern Conception of Animus*, 19 Green Bag 12 (mimeographed).
- Burdick, *Is Law the Expression of Class Selfishness?* 25 HARV. L. R. 349.
- Sumner, *Folkways*, 2-36; 39, 48-70; 75-96; 100-102; 109-118.
- Lowie, *Primitive Society*, ch. XIII, XIV.
- Maine, *Ancient Law*, ch. II, III, V (Pollock's edition with notes).
- Aristotle, *Politics* (Everyman ed.), Introduction by Lindsay; Book II, ch. 7-8; Book III, ch. 9-16; Book IV, ch. 15-16; Book VI, ch. 8.
- Hobbes, *Leviathan* (Everyman ed.), ch. 14, 26.
- Ihering, *The Law as a Means to an End*, ch. I, III.
- Smith, *Bases of Juristic Thought*.
- Llewellyn, *A Modern Law School*.

of registration for certain subjects to second year students, for others to third, while still others may be elected in either year.²⁶ No

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SECOND YEAR ONLY	THIRD YEAR ONLY	SECOND OR THIRD
Constitutional Law	Administrative Law	Admiralty
Future Interests*	Civil Procedure II	Bills and Notes
and Non-Commercial	Conflict of Laws	Business Organization*
Trusts	Contracts II	Comparative Law*
Sales	Corporation Finance*	Family Law*
	Creditors Rights*	Federal Jurisdiction*
	Evidence	Industrial Relations
	International Law II*	International Law*
	Public Utilities and	Insurance
	Rates	Landlord and Tenant*
	Security*	Legal Problems in
	Taxation*	Accounting*
		Roman Law
		Trade Regulation
		Vendor and Purchaser*

The courses marked * do not appear in the 1922 catalog. In 1922 more than 20 courses were offered which are no longer given although many of them are incorporated in whole or in part in existing courses.

See John Dickinson, *Making Lawyers* (1930) 8 N. C. L. REV. 367. Professor Dickinson includes the following table showing the shifts in emphasis of law school teaching in a century and a half expressed in terms of percentages allotted to different topics by Blackstone, Kent and by the University of Pennsylvania at three different periods:

	Black- stone %	Kent %	U. of Penn. 1871 %	U. of Penn. 1874 %	U. of Penn. 1930 %
<i>Private Law</i>					
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	
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	

courses after the first year are prescribed by the faculty. Several courses represent important consolidations and reductions. For example, taking the catalog of 1925-1926 as a basis for comparison, Business Associations in six hours covers four hours of Corporations, three hours of Agency and three hours of Partnership. Bills and Notes has been reduced from four to three hours. Security in three hours covers several topics in addition to the old courses of Suretyship and Mortgages, each allowed three hours. Future Interests and Non-Commercial Trusts covers in eight hours the thirteen hours previously distributed among Future Interests, Wills, Trusts and New York Trusts.²⁷ Courses in which the functional approach is apparent include among others Corporation Finance, Legal Problems in Accounting, Security, Vendor and Purchaser, Landlord and Tenant, and Public Utilities. Other courses in which the business or social background is made realistic are Sales, Taxation, Trade Regulation, Family Law and Creditors' Rights. To individualize instruction, six courses are paralleled by seminar courses which may be elected by students of high standing. Several seminar courses not paralleling established courses are also offered. In addition 12 research courses are listed. All such courses are open not only to graduate students but to approved students who have completed the first year. In addition every student, whether of high standing or not, is required to present at least one paper in his second and third year. Two such papers each year will be accepted. To satisfy these essay requirements a student must demonstrate his ability to perform independently a legal task of the nature of that to be met in actual practice. Actual conditions of existence in New York made it seem impractical for the law school to require its students to participate in the work of a legal clinic or to cooperate in the work of a legal aid society.²⁸ Law students are given generous opportunity to elect for law school credit courses in other departments of the University.

²⁷ This consolidation with its requirement for a registration of eight hours deserves further study. There is considerable student sentiment against the course because of the impossibility of obtaining an acquaintance with any of the elements of the course without taking the whole. Election for the course restricts seriously the student's opportunity for choice elsewhere in the curriculum.

²⁸ Harvard, Southern California, Cincinnati, Northwestern and Duke are among the schools in which students have an opportunity to participate in legal aid activities. The work at Harvard is under student control. Southern California, Northwestern and Duke have legal aid clinics under faculty direction. A minimum participation is required of all students. See various articles by John S. Bradway (1930) 3 So. CAL. L. REV. 103, 173, 320, 384; (1931) 4

A comparison between the 1926 and 1931 catalogs of the Columbia Law School can be made with considerable satisfaction to the Columbia faculty. The more obvious points of attack are minor ones. It may be doubted for instance whether Torts is still worth fifty per cent more than Contracts of the time of the Columbia first year student. Its utility to the average practitioner is small. Its historical significance can be indicated in the course in the Development of Legal Institutions. The legal concepts of the course might perhaps be satisfactorily introduced in a course of two hours throughout the year.

The conventional course on Bills and Notes might be replaced by a more modern treatment of the subject matter. The elements of the subject can be acquired with relative ease in convenient manuals while the minutiae consist of the sort of technicalities that concern few lawyers and are soon forgotten by others. It would seem that here if anywhere there is an opportunity for the definite introduction of non-legal material dealing with the relation of bankers and depositors including borrowers.²⁹ Such a course might take some topics

ibid. 36. See also Morgan, *The Legal Clinic*, 1916 HANDBOOK, ASSOCIATION OF AMERICAN LAW SCHOOLS, 147-155, and discussion 41-60.

The University of Wisconsin for 15 years has required six months of office work for a degree in addition to the regular curriculum but will accept an extra summer session of school study as an alternative. About half the Wisconsin students obtain their degrees after the required office practice. Some students find it impossible to make necessary office connections. The University does not supervise the office practice beyond requiring a certificate from a lawyer that the student has actually worked under his direction.

Opinions of New York lawyers who were consulted about the possibility of an office practice requirement for New York city students were unanimously against it. It is not impossible, however, that an independent urban law school if it were convinced that the Wisconsin policy is desirable, could establish it. The Harvard Graduate School of Business Administration requires each student to spend one summer in some approved employment. If a law school had a similar condition for a degree and would permit as an alternative, attendance at summer practice courses or affiliation with a legal aid society, the requirement seemingly could be administered.

²⁹ The following outline was suggested in the Columbia studies of 1926 as a possible substitution for bills and notes:

THE MEDIUM OF EXCHANGE: COMMERCIAL BANK CREDIT

Introduction

1. The Pecuniary Unit.
2. The Standard of Deferred Payments.
3. The Store of Value.
4. The Medium of Exchange: Commercial Bank Credit.
5. The Relation of the Medium of Exchange and Prices.

Part I

The Creation of Commercial Bank Credit

Chapter I

Sec. 1. Commercial Paper.

from the security course, leaving the latter free to devote more attention to urban real estate finance. Perhaps other business subjects must be supplemented by additional non-legal material, so that the

1. The Credit Department.
 - (a) The Financial Statement.
2. One and two name paper: The obligation of the maker and endorser.
3. The Middlemen.
 - (a) The commercial paper house.
 - (b) The discount house: The purchaser of accounts receivable, etc.

Sec. 2. Paper not Commercial: "Collateral Loans."

1. Purchase of securities.
2. Consumption.

Sec. 3. Bank Notes.

Sec. 4. Legal Tender Notes.

Sec. 5. Specie.

Chapter II

Forms of Commercial Bank Credit: The Media of Exchange

Sec. 1. Current Checking Account.

Sec. 2. Bank Notes.

Sec. 3. Other forms not used as media of exchange.

1. Certificates of deposit.
2. Over certification.
3. Traveller's letter of credit.
4. Acceptances and commercial letters of credit.

Part II

The Transfer of Commercial Bank Credit

Chapter I

The Current Checking Account

Sec. 1. The Check

1. Without clearing.
2. Community clearing: The clearing house.
3. Inter-community clearing.
 - (a) Federal Reserve.
 1. One district.
 2. Several districts.
 - (b) Correspondents other than Federal Reserve.

Sec. 2. The Note Made Payable at a Bank.

Sec. 3. The Bill Made Payable at a Bank.

Chapter II

The Bank Note

Chapter III

Forms of Bank Credit Other Than the Current Checking Account and the Bank Note

Part III

International Clearing: Foreign Exchange

Part IV

Payment and Liquidation

Chapter I

Specie

Chapter II

Legal Tender Notes and Bank Notes

Chapter III

The Current Checking Account

Sec. 1. Performance of Conditions.

Sec. 2. Liquidation.

student will have brought to his notice concrete information dealing with marketing, real estate practices and transportation.³⁰

A more significant comment about the present curriculum of most of the greater American law schools is that it is quite possible for a student to receive a degree without being compelled to consider critically and generally either law and legal institutions or the legal profession and without being exposed to any courses after the first year, which definitely emphasize the public standing of the lawyer. Such courses are offered but they need not be elected and usually are not elected by the majority of the students.³¹

The criticisms of the ordinary curriculum that seem most significant, however, are relevant even in the instances of the progressive university law schools. The first criticism is that the law school has an unnecessarily indefinite idea of the functions for which it purports to develop its students. The second is that the law school has an unduly modest conception of its place in the University, and through the University of its position in the social and political life of the state.

As has been stated elsewhere in this article, no one doubts that the university law schools do a competent job of training neophytes for their vocations. From a professional viewpoint the law school tries to bridge the gap between college and law office. No one expects

³⁰ The subjects of a graduate business school curriculum that might be incorporated into the training of the business counselor include parts of certain accounting courses and courses in commercial banking, investment banking, labor problems, marketing, public utility management, transportation and corporation finance. Several of these already appear in the Columbia curriculum. Business does not furnish the only non-legal material deserving the attention of the lawyer. See Stone, *The Future of Legal Education* (1924) 10 A. B. A. J. 233. Moreover the purpose of teaching the student about business is not to make his professional training subordinate but to enable him to become the independent and informed critic of business. The objective is to make the lawyer the master, not the slave, of the big business giants. If we are to be ruled humanely by business, business must be dominated by professional ideals. Law is a profession. With all the lawyer's imperfections he does represent a tradition of justice and humanity. His professional loyalties make it relatively safe to intrust him with power and responsibilities. The surest way to make business a profession is to increase the influence of lawyers in its councils. The way to make this succeed is to teach lawyers what they ought to know about business before they have lost perspective. The end is a combination of the social conscience with professional skill, technical knowledge with a sense of relative values. Out of it all there may develop that ideal creation, the financial statesman. See Dickinson, Hanna, Beale, *The Aims and Methods of Legal Education* (1931) 7 AM. L. SCH. REV. 133. See also Hanna, *A Modern Approach to Legal Education* (1930) 6 AM. L. SCH. REV. 745.

³¹ Conflict of Laws might be developed into such a course along the lines of Hohfeld's proposals for the study of comparative or eclectic jurisprudence.

the law school completely to train the lawyer. It gives him a technique, and a certain familiarity with his future materials. The rest of the training he must give himself over many years. Part of the function of the law school is to give the apprentice a chance to mature a little in a contemplative and non-sordid atmosphere. The law school recognizes an enormous variety in types of law practice and a tendency to specialize. Its attitude is that no one can tell what its students will actually do in practice. If they specialize it will be only after they have tried their personal qualities in competition with their fellows in a general apprenticeship. The law school consequently aims to cover subject matter in which will be found as many common elements as possible of all kinds of law practice. Every law student is supposed to get a little training for being an advocate, a collection agent, and a business counselor.³² The law school, in short, takes the position that its function is to serve its community. A closer examination of this thesis indicates its hollowness. The university, or at least the independent university, always maintains its privilege of choosing the community it will serve. If Columbia, for example, really thought it ought to provide facilities for all persons who might wish to study law in its confines it would prepare to instruct five thousand instead of five hundred. The first though not necessarily the only purpose of the university law school is to train the future leaders of the bar, the jurists, judges and eminent counsel. That being true, it is the business of the university to exercise its own intelligence and make a deliberate choice of the sort of training it regards as the most significant, not for the majority of the bar, but for the rulers of the profession. Numbers here are unimportant. What at least a few law schools want to know is what type of law work will be the specialties of the top men of the profession in the next

³² Interviews and correspondence both with leaders of the bar and those beginning to practice indicate a numerically adverse opinion to any attempt even of an urban university law school to train any sort of specialists, and specially not business counselors. On the other hand, the notion had considerable support among both groups. Those consulted were for the most parts alumni of the Columbia or Harvard Law Schools.

Specific interviews with practicing lawyers where frank comment was the rule leave little doubt that the present work of the leading law schools is reasonably satisfactory to the profession. It must be realized that most of the comments come from active practitioners primarily concerned with making a living. The rather careless lawyer whose connections have brought him the business of drafting railroad mortgages naturally wants the law school to furnish an apprentice trained in picking up pins. Others have their different individual standards. No one expects all these to be satisfied every time. See Learned Hand, quoted *supra* note 10.

generation. Their cognate policy should be to use every legitimate endeavor to attract precisely the students who by personal qualities, especially mental power, preliminary training and more adventitious advantages are likely to be found in the position of leadership. As a tentative proposal it may be suggested that the leaders of the bar in the next generation will be the counselors of big business, the appellate judges of the larger states and the federal system, the penal experts and the university law teachers, among whom will be most of the jurists and legal publicists. If a law school trains its proportion of these groups it will be rendering distinguished service to the state and will possess preëminent influence. If it does not it will be a more or less useful trade school.

IV

The late James Lorimer of the University of Edinburgh once said that the faculty of law as its ultimate sphere must embrace the whole science of man seen in relation to his fellow men and to the external world.^{32a} "As the highest manifestation of animal life, man falls to the faculty of medicine; as an isolated spiritual existence, to the faculty of arts; as related to his Creator, to the faculty of divinity; but as a social being, he is ours and ours alone." American law schools with their abject concern for what will be regarded as immediately practical by a numerical majority, their distrust of the theoretical, have failed to assert their right to dominate the social science activity of the university. To gain an immediate popular favor they have imperiled their ultimate significance and power.³³

The ordinary law school curriculum affords a fairly satisfactory preparation for the average commercial lawyer. The actual programs of the law students are commercial law programs. The student who detests business and the whole struggle between individuals and groups with acquisitive talents finds only a few courses offered. The little orphans of the curriculum attract chiefly students who want a two hour course at eleven on Monday and Wednesday mornings. It is generally impossible for the student to formulate a comprehensive schedule of topics dealing primarily with public law in which he will

^{32a} LORIMER, *STUDIES IN NATIONAL AND INTERNATIONAL LAW*.

³³ Courses in public law, for example, should not be obliged to enter the university curriculum through the political science faculty. The law school should be the seat of law study of all sorts. The law school should be the legal center of the university, if indeed, it should not direct all study relating to social control. That and not vocational training is the ultimate aim and should be the dominant province of the university law school.

find a sympathetic group with similar interests and enthusiasms. When one reaches the field of criminal law it is difficult to speak of the typical law school attitude without invective. There is scarcely a phase of American penal administration which is worthy of a civilized population. A few of the larger American law schools should at once offer comprehensive training in criminology and penology and simultaneously assume responsibility for a vigorous and sustained campaign for the placing of their graduates in responsible positions of criminal and penal administration.³⁴

³⁴ See the following reports of the National Commission on Law Observance and Enforcement (The Wickersham Commission) 1931:

No. 7. Progress Report on the Study of the Federal Courts.

No. 3. Report on Criminal Statistics.

No. 4. Report on Prosecution.

No. 5. Report on Enforcement of Deportation Laws of the United States.

No. 6. Report on the Child Offender in the Federal System of Justice.

No. 8. Report on Criminal Procedure.

No. 9. Report on Penal Institutions, Probation and Parole.

No. 10. Report on Crime and the Foreign Born.

No. 11. Report on Lawlessness in Law Enforcement.

No. 12. Report on the Cost of Crime.

No. 13. Report on the Causes of Crime (2 vols.).

No. 14. Report on Police.

The entire November, 1931, issue of the MICHIGAN LAW REVIEW (30: 1 *et seq.*) is devoted to a review of the reports of the Wickersham Commission.

To say that these reports indicate a deplorable condition is a climax of understatement. They present a compelling challenge to the American law schools. Space is not available either to comment on the vast body of information made available and interpreted by the Wickersham Commission or to outline a course for urban institutes of criminology. The law schools at present, with the exception of Harvard and perhaps one other are doing literally nothing to meet their obvious responsibility. It is admitted of course that the law school must enlist the cooperation of others than lawyers. The staff of a school of criminology and penology must include medical and psychological experts, statisticians, and experts in penal administration, as well as political scientists and lawyers. See Lashly, *The Illinois Crime Survey*, 1928 *HANDBOOK*, ASSOCIATION OF AMERICAN LAW SCHOOLS, 65; Olson, *Criminal Justice in Minor Courts*, 1928 *ibid.* 91. Judge Olson during a luncheon address in describing his experience in the municipal court of Chicago (93-95) sets out informally but vividly the basic counts in the indictment of the present system as well as acute proposals for improvement:

"We began to look over this criminal material, and there were my old friends in the Criminal Court, types like the Hickman boy, the California killer, the Church boy, who killed the two Packard salesmen here in Chicago and buried one of them under the garage floor and threw the other in the Desplaines River. He was a katatonic case. He had a fit of catalepsy before they hung him. He was tried while unconscious for his sanity after conviction, and found to be sane by the jury. He remained unconscious for forty days until the hanging. Then he was taken in a chair, put on the gallows, and our health commissioner told me he held his pulse on the gallows and that he had not recovered consciousness. He was hung while unconscious. Our Dr. Hickson examined this youth in jail, and found that he had been burned by alientists with lighted cigars, ether had been injected into him, and he was otherwise maltreated and abused.

"They didn't understand what was the matter with him. They thought he

A standard curriculum for a national law school would provide after the first year for three major integrated concentrations. The object of the major programs would be to train respectively the business counselor, the counselor of the public and the criminologist and

was shamming, and yet he was a case of katatonia, with catalepsy, a common sight in the wards of large insane asylums. I had seen such cases when I was in the State Attorney's office. . . . The katatonic insane have always been recognized. They make trouble on the streets; they break windows and somebody has to grab them. Everybody knows they are insane. They are the hyperemotional, but the katatonic defective, the one with low-grade emotions, who is hypo-emotional, who is, without feeling, without charity, without pity, who is quiet—he is your dangerous individual. He is insane medically, and ought to be insane by law. He and his kind have been sent to the penitentiaries, and they are the lost legion in biology. This is the type of Hickman. Hickman was in court once before the murder in Los Angeles occurred, and he should have been brought in and examined before he committed the atrocious crime that he committed in killing the druggist and cutting up the little girl whom he gave back to the father dead for ransom. No one but a cold-blooded katatonic dementia praecox could do that, and the fact of the nature of the crime indicated that he was insane.

"We had such a case in our own community lately, where a negro boy had been arrested for peeping into the sorority windows on the college campus in Evanston. He had been arrested and was sentenced by the justice of the peace to the house of correction, where he remained for about five months. After he got out, he was again brought into the courts of this county for a crime against nature, a bestial act, and he was put on probation, on the theory by the court that he was only dangerous to himself. Then he slew a brilliant woman, a teacher in a Peoria college, who was coming from the library in Evanston to her home, upon the public streets, by striking her with an iron pipe, and mutilated her body.

"Our doctor, who examined him, says he is three and one-half years old. He is scarcely able to feed himself, and if he strayed far from home he couldn't find his way back; yet under the testimony of alienists he has been found sane, that he knows right from wrong, has the power to choose. He will be executed on January 14 in the electric chair. He does not know what it is all about. Since this was said, he has been given a trial for his sanity after verdict.

"Most people justify the execution of defectives who have killed. Biologically they are right, but failure to recognize their dangerous character leads society to believe their execution sets an example to others and deters, when it does not. If their condition was recognized, they would be isolated when young, and we would spare valuable lives now sacrificed to our ignorance.

"The courts must be more careful in these cases. Lawyers must be educated along psychological lines. College professors even must be abreast of science. I occasionally sit in with a committee in New York of the American Institute of Law, who are revising the Criminal Code for the United States, and we are working on the authorities, what judges have said, what courts have said, and we are collecting it all. I do it with great impatience, because I realize that the law upon which the decisions of those courts were based is often fifty years behind science.

"We lawyers, college teachers, and judges must realize that in dealing with human beings we stand alongside the biologist, the psychologist, the psychiatrist, with his laboratory, with his test tubes, with science reaching forward, forward, and we are working backward in ideas at least forty years old. You can see it in the decision in the Olander Case in Iowa, where they had a case of feeble-minded dementia praecox. Olander pleaded guilty in the lower court,

penologist. To these would be added permanent research activities and courses in general jurisprudence. The research projects would be partly to afford student training but mainly as a means of enabling the law faculty to serve the bar, the bench, and the general public. The standards of admission to any of these groups would be so high that the numbers would perforce be small and the opportunities for individual self-education large. A student electing any major concentration would be encouraged if not required to obtain a certain acquaintance with the other concentrations. The resources of the school would be divided with substantial equality among each concentration.

Persons with whom this program have been discussed have raised three objections to it.

The first is that a student concentrating in one of these programs could not become a lawyer because he could not pass the bar examination. The law school should meet this objection by offering a cram course during the last year or last semester.

The second objection is that students in the second and third fields would never have an opportunity to utilize their training because the positions for which they have fitted themselves are all filled by political appointees. This objection has obvious weight. It must be remembered that the university's lack of popular influence is partly balanced by its avenues of approach to the invisible government. Indirectly because of its contacts with organs of publicity the university is by no means without ultimate effect on public policy. Moreover, wherever the merit system is in effect as it is in many branches of the federal system, the university man would be likely to come out on top. Where political considerations prevail the problem as now

and a distinguished lawyer of Ft. Dodge threw his whole soul into the argument before the Supreme Court, and asked them not to hang that boy, because he was young, and because he had pleaded guilty. The Supreme Court, because the law of hanging had been restored in Iowa, hesitated and refused to interfere. There was not a syllable in the record about that boy's mental condition presented by counsel. There was, it is true, a katatonic letter, a feeble-minded letter, written by Olander, that would have been recognized by a psychologically trained lawyer as indicating his condition.

"His previous history, which showed that he was spending his time in the reform schools and in crime, should have been noticed; but no claim of insanity went into the record, and hence the Supreme Court could not and did not pass upon it.

"The case went to the Supreme Court of the United States and there sat the dignified Supreme Court, trying the record; but no knowledge of the actual truth about that youth was before them. They tried the record, as they must, and we find that to be true in courts here, there, and everywhere."

would be one of circumventing the dominant party machine. Finally, it is a legitimate responsibility of the university to use its varied resources and influence to create a demand for its best-trained products.

The last objection is that such a law school would cost so much as to be impracticable. One must recognize that not all law schools could undertake so ambitious a program. Where an agricultural state supports a law school to train the men who will do the law work primarily of its numerous small communities, no one could properly advocate that such a law school should employ its resources much beyond the function the state has set for it. The notion that all law schools should have the same program is as unrealistic as the assumption that all law students in the same law school should be restricted to the same curriculum.³⁵ At a time when scientists are ascribing eccentricity even to atoms³⁶ it is not too much to ask a law faculty to accept a certain individuality in the inclinations of students. The classification of law school programs can never be precise. There will always be many gradations between such a school as the Johns Hopkins Institute of Law and the purely commercial night schools. A few schools can afford only the vocational program. Farsighted affluence might make an actuality a few super law schools for picked students about whom a school was making a definite wager of leadership. Where great resources are lacking to permit the university to dedicate all its energy to its genuine function in legal education, or where the university seems committed to a more extensive responsibility in professional training, the university should consider whether it ought not to offer two separate types of training for the bar.³⁷

³⁵ "Academic philosophers, ever since the time of *Carmenides*, have believed that the world is a unity. This view has been taken over from them by clergymen and journalists and its acceptance has been considered the touchstone of wisdom. The most fundamental of my intellectual beliefs is that this is rubbish." *BERTRAND RUSSELL, THE SCIENTIFIC OUTLOOK* (1931) 94.

³⁶ See discussion of quantum theory in any advanced modern book of physics.

³⁷ It should be emphasized that this is not an ideal solution. The difficulties of keeping a law school to an expensive program designed for the training of a few where it contains a numerically strong, active popular element having little sympathy with such aspirations is recognized. Adherence to the program would test the strength and diplomacy of the ablest administrators. Nevertheless, the idea is not fantastic. It is essentially the Oxford system of the pass and honors curriculum. Story fashioned his program for the Harvard Law School along these lines. The modern urban law school is apt to pay a nominal respect to general jurisprudence while yielding everywhere in fact to the vocational enthusiasts. Its program is like the foreign policy of the United

Critics of university education often point out that the university does not make its students keen with intelligent curiosity about the unknown. It tries to give positive knowledge, even in fields where there is little certain knowledge.³⁸ Granted that the true university's function is to stimulate intellectual curiosity, such an idea cannot be followed in respect to all students. In the first place comparatively few persons even in universities, enjoy mental effort, or are capable of intellectual curiosity. In the second place, only the competent and responsible should be encouraged to think. Students who are to be the ordinary men of this world should get a different sort of education from that offered those destined for leadership.³⁹ Ordinary men and women should be docile, industrious, punctual, thoughtless and contented. One does not need to be intellectual to be a successful lawyer. One needs certain basic qualities plus a few technical skills. This is particularly true of the great body of lawyers who are still concerned with the relations of individuals and with the action of courts in respect to such relations. The leaders should be trained in intelligence, in self-command, and in command of others. They should not be handicapped by institutional loyalties. They should be released from any illusions about the nature of institutions. They should know the realities about social control. In their own circles they should be encouraged in the most searching criticisms. Their law school course, or at least the last two years of it, should be devoted to independent thought and inquiry, to critical analysis and syntheses.

It might be better if a university law school could dedicate itself completely to the ambitious task of educating only those capable of education. If it does more, the mere force of adverse numbers, makes the lot of the true university groups at times a trying one. Nevertheless, if the directors of the law school maintain their real

States, waveringly altruistic, uncertainly committed to *Realpolitik*, too selfish to gain moral authority, too sentimental to gain the rewards of the powerful.

It may be unlovely for a law school to become to a limited extent commercial, in order to improve its equipment, raise the financial status of its faculty, and to embark on enterprises of great moment. Life in America is often unlovely. Economic power unfortunately is not always in what seems to us the best hands. It is easy to oppose a realistic proposal with a truculent defense of vaguely conceived adolescent fantasies and to express one's opposition in question-begging epithets drawn from one's past existence, moral and immoral. The problem deserves a cooler survey. In sacrificing what we might have we may be paying too high a price for our modest wherewithal.

³⁸ See LINCOLN STEFFENS, *AUTOBIOGRAPHY* (1931) 644 *et seq.*

³⁹ This does not amount to any denial of the principle of equal opportunity. "Destined for leadership" certainly should be scientifically predictable in most cases by the time the student enters a graduate school of law.

objectives clearly and persistently with the support of the university management, the desired end might be attained.

There is certainly a respectable place for institutions affording instruction for the more modest activities of the bar. For the university to assume to offer what is frankly vocational training does not mean that it must accept unworthy candidates or stultify itself by the character of its instruction. If it would compete with the institutions run for profit, it would need to make its admission requirements coincide roughly with the actual or prospective requirements for admission to the bar, but within such a group it could still make selections, not to mention eliminations because of demonstrated unfitness to comply with the demands of the curriculum. Such a university policy might in time give it the desired monopoly of legal education. If it was willing to accept all qualified candidates there would be less excuse for permitting the operation of schools created for the private advantage of their sponsors. Some university law schools are now pursuing the policy suggested. Some of the large urban law schools refuse to do this, however, although their traditions and their lack of money prevent their concentrating on the more ambitious university project I have described. If an urban university law school whose standing was established, would receive applications from all students otherwise qualified, who had completed two college years, and would provide a largely prescribed three-year course at convenient hours, devoted primarily to preparing for local practice, the enterprise would likely be a splendid financial success, even if this course were sharply separated from the graduate course in law, and the degrees awarded were different. Moreover the students would get a better professional training than they get in the commercial schools, and under conditions that might well raise the ethical tone of the urban bar. The additional income, which might amount to half a million dollars or more, would provide the additional staff needed for the vocational school, support the university law school, and go far towards amortizing the cost of new buildings and equipment. The net result would be the enhancement of the university's prestige and the enlargement of its usefulness.