LAW SCHOOL STUDY AFTER THE WAR*

The author of the address here reproduced is well known to members of The Canadian Bar Association. As a former President of the American Bar Association, teacher of law, and now Dean of the School of Law of New York University, practitioner, and member of countless Committees including the recent Attorney-General's Committee which reported on Administrative Procedure, and the Committee in charge of a revision of the rules of Federal Criminal Procedure, the author has had an opportunity afforded to few of observing the effects of modern legal education and its relation to problems of modern social control. While some of the references in the present address are inapplicable to Canada the general similarity between American and Canadian problems of legal education merits close consideration, if only for purposes of comparison, of the author's observations on the role of the law schools of the future.—ED.

Our law schools have suffered more severe losses in the present national emergency that any other part of the American educational system. They have not sought deferment for their students. Many of their professors and deans have been called into public service. With enrollments down from 33,000 in 1939 to 5,600 in March, 1943, they are fighting a rear guard action to keep their doors open. It is a credit alike to their courage and their foresight that each and every one of them is now busily engaged in planning for aggressive, effective public service in the reconstruction period, which, pray God, may come soon.

Any one who in this gathering of law school administrators and instructors would venture to present his views as to the law school of the future must first present his credentials. What I have to say is in large measure a reflection of what I learned from the judges and lawyers in thirty-odd states with whom I had the privilege of discussing matters of professional concern in the course of my travels five years ago as president of the American Bar Association. To a very large degree, the views I shall present to you are a summary of what many thoughtful leaders of the legal profession have been thinking and saying about the problems of our profession and the part that the law schools should play in solving it.

First let me discuss the subject matter of the law school curriculum after the war; next, methods of teaching; and finally, the great objectives of law school instruction.

SUBJECT MATTER OF THE CURRICULUM

I have said many times before, and I gladly repeat it now, that in the field that they have cultivated our law schools have

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done a splendid job. They have taken students, often none too well grounded in the fundamentals of a liberal education, and they have taught them to think and to work hard—and to like it. This is no slight achievement. We have, however, by and large confined our attention to parts of what may be termed the law of our business civilization. We have (1) neglected or at least paid mere lip services to the processes—judicial, legislative, administrative and jurisprudential—by which law is being created currently; we have (2), for the most part, overlooked public law or abandoned it to the political scientist, the criminologist and the student of international affairs; and we have (3) failed to teach law, private and public, substantive and remedial, as a living, growing system.

1. American law schools have traditionally belittled prodecure as a law school study. It has long been thought that procedure is something which can best be learned through a clerkship in a law office or, at the worst, in actual practice at the expense of clients. The unethical nature of the latter course becomes apparent, if we ask ourselves what we, or the community, would think of a physician who learned the technique of his profession at the expense of his patients. The other suggestion is equally untenable. The practitioner who has mastered *the judicial process* alone in its civil and criminal phases, in its common law, equity and probate branches, both in the trial courts and on appeal—in short, the all-around barrister—is a rather exceptional figure at the bar today. He is likely, moreover, to be an exceedingly busy man. Furthermore, if this all-around barrister had the time to instruct his clerks, the chances are that he would prove to be more interested in discussing his own experiences in the art of trying cases than in expounding the essentials of science which in the public interest should govern such proceedings.

Unfortunately there is no one jurisdiction which can be said to have achieved the goal of fully matured standards of procedure, though in several respects the federal courts, as a result, first, of several decades of agitation by leaders of the American Bar Association, and, more recently, of progressive action by the Attorney General, the Judicial Conference of Senior Circuit Judges and the Congress, are setting an example that state courts may well emulate. There are still twenty-eight states in which the trial judge may not comment on the evidence or review it in his charge to the jury—twenty-eight states in which the only impartial trained mind in the court room is barred from aiding the jury of laymen. There are twenty-eight states where

the judge's charge must be in writing, in language submitted to him by counsel, although a more ineffective way of instructing the jury as to the law of a case is hard to imagine. There are still twenty-two states in which the trial judge delivers his charge to the jury before counsel for the respective parties sum up, although it must be apparent that his charge will be forgotten by the jury after they listen to the barrage and counterbarrage of oratory from opposing counsel. There is at least one state in which counsel is still permitted to except generally to the court's charge without advising the judge in what respect counsel thinks the charge is erroneous. There is still one state in which the trial judge is obliged to tell the jury that they are ultimate judges of the law as well as of the facts. Should any student be permitted to leave law school believing that such practices are normal aspects of trial by jury? Manifestly, if we are ever to modernize our judicial procedure, we must teach the lawyers of tomorrow while they are still in law school not only what the practice in their state is but what it should be.

The procedure traditionally taught in most of our law schools (I exclude an occasional course in local practice) has been just enough common law pleading to make the study of judicial decisions intelligible and to overawe us, in bygone days at least, with esoteric references to it as the perfection of reason. Fortunately, some youthful intuition wisely guided us to ignore the professional suggestion that a perusal of Williams' Saunders would transform us into modern Daniel Websters or Rufus Choates. If our teaching of common law pleading has been sketchy, equity procedure has been even more neglected, and yet the fundamental nature of Equity, all would agree, can be understood only by grasping the essentials of procedure in Chancery and contrasting the practice there with that of the common law courts. In how many law schools, moreover, is criminal procedure, including the constitutional safeguards of the accused, a part of the curriculum? How many of our students realize the great gulf between criminal procedure and civil procedure as to actual practice and, in many states, as to ethical tone? In how many law schools is there a course in probate procedure, a branch of practice in which the courts have for centuries provided a judicial administration of decedents' estates that compares favorably with the boasted simplicity of the newer administrative practice? In how many law schools do we offer instruction in the prerogative writs and extraordinary remedies that are designed to hold public officers and bodies to the Rule of Law? How many law schools have courses in the jurisdiction of courts, federal and state? How many deal

with the vital problems of judicial selection and tenure? How many attempt to explain the judicial process, *i.e.*, how judges find the answers to the questions propounded to them? Certainly no questions can be more important from the client's point of view. We talk much in our courses in common law pleading and in evidence about jury trials, but do we explain how juries are called and empanelled? Clearly all of these matters and many others, too, must be the familiar property of lawyers who are expected to be experts in 'the judicial process,' a simple phrase which covers a very wide variety of patterns of legal and judicial thought and action.

We seldom realize how delicate even the simplest rule of procedure may be in operation and how a slight variation in its application may either render it more effective or destroy its usefulness. Let me cite an example. Some time ago I was complaining to Judge Orie L. Phillips, the Senior Judge of the Tenth Federal Circuit, the distinguished jurist who has just been elected chairman of the Section of Judicial Administration of the American Bar Association, that the three challenges of jurors allowed in civil suits in the federal courts are inadequate to protect the right of litigants to a fair trial. He disagreed with me. A discussion of the matter brought out the fact that it is the practice of most of the district judges in his circuit to tell the prospective jurors what the action is about, the nature of the defense and who the parties and the principal witnesses are, with a view to finding out whether or not any of the prospective jurors know them or are interested in the case and, if so, to excusing them on his own motion. Then each side may question the jurors and use its three challenges peremptorily. This obviously is a very different application of the rule from that prevailing in districts where the judge takes no active part at all in the drawing of the jury. There counsel all too often finds, as a result of what he learns from asking the jurors the same questions that the trial judge does in the Tenth Circuit, that he is in danger of exhausting his challenges before the jury box is half filled.

For the lawyer, whether he be advocate or counsellor, procedure is of paramount importance. I have never forgotten the sagacious comment of Judge Redfield to his students: very often your client will know more about the substantive law of his case than you do; he comes to you largely because he wants your professional advice as to procedure. The more intelligent the client, the more likely is this to be true. Manifestly the law schools cannot teach the judicial process as an art, but they can and

should teach it in all its branches as a science—as it is and as it should be. We should not hesitate to be critical of its imperfections. It is by rules of procedure that substantive rights, even our greatest constitutional rights, must be vindicated. As Mr. Justice Brandeis has well said, "In the development of our liberty, insistence upon procedural regularity has been a large factor."

Lawyers must know more than the judicial process, civil and criminal, equitable and probate, common and extraordinary. They must understand 'the legislative process' and 'the administrative process.' These terms, like the phrase 'judicial process,' are legalistic shorthand for complicated methods of law-making. The legislative output is constantly touching new fields of human activity. It is forever modifying old law, making new law. Yet by and large our law schools have quite neglected *the legislative process*, despite its very evident importance in the making of modern law. It does not, of course, fit readily into a system of legal education wedded to the case system of study. Its teaching requires a peculiar technique. Lawyers, nevertheless, must know how statutes and ordinances come into being and what they mean in action. Here, as in the field of judicial procedure, we must view both process and product critically. Many a legislative draftman has failed to recognize his brain child after it has been subjected to the judicial or administrative crucible of 'statutory construction.' This field is one the law schools cannot continue to ignore. Here continental legal education has much to teach us.

Not only must modern lawyers give more heed to the legislative process, but they must likewise comprehend *the administrative process*. Administrative law, we are told on every side, is the outstanding legal development of the twentieth century. In quantity, and often in vital effect on private rights, the regulations promulgated by the administrative agencies with the force of legislation dwarf into insignificance the ordinary legislative output. Indeed, it is in large part because the legislative branch has deemed itself unable to legislate adequately in various fields that legislative power has been delegated to these newer agencies. On the side of adjudication, moreover, the flood of law-making is even greater. The Bureau of Internal Revenue and the Tax Court, formerly the Board of Tax Appeals, dispose of more cases a year than all the federal courts put together. In the present emergency it is quite beyond the knowledge of any one man to list the names of all the administrative agencies in the federal government and their jurisdiction on any given day. An enumeration of the composition and jurisdiction of all the agencies

exercising legislative, executive and judicial powers in the federal and state governments would make the complicated system of English courts of an earlier day as sketched in the front volume of Holdworth's History of English Law seem as simple as a First Reader. The mere matter of admission to practice before these agencies is in itself a maze to the uninitiated. One need not insist that all administrative agencies pursue in all respects a uniform procedure any more than one should suggest that all judicial proceedings, civil, criminal, equitable, probate, admiralty, or statutory, be governed by the same practice. But surely it is unnecessary that each agency have its own individual methods, from an attorney's right to appear in a matter for his client up to the perfection of an appeal. A complicated administrative practice leave the ordinary lawyer bewildered and drives him to retain 'an expert.' Indeed, the average practitioner will experience great difficulty even in ascertaining the bare facts of the organization of many agencies and "their principal officers; or their duties, functions, authority and places of business," to quote the recent Report of the Attorney General's Committee on Administrative Procedure, which proceeds to say with entire truth "yet without such information, simply compiled and readily at hand, the individual is met at the threshold by the troublsome problem of discovering whom to see and where to go."

What are the law schools doing to instruct their students as to this plethora of new law that is being foisted on us daily through the Federal Register and the loose-leaf services or as to the law that governs the administrative agencies? A survey I made five years ago revealed that only 55 of the 94 law schools approved by the American Bar Association were offering any course at all in Administative Law and most of them were inadequate, optional courses given one hour a week for a school year. Nor has the last five years witnessed much improvement. The bare statement of these facts demonstrates that the law schools have fallen down woefully on the job of dealing with the outstanding development of the twentieth century. Indeed, so completely have we identified Administrative Law with the agencies exercising commingled governmental powers that there is hardly a law school in the country teaching what was known as Administrative Law prior to World War I, *i.e.*, the Law of Public Officers, the system whereby the executive branch of government is organized by statute law and every official in it held to his proper place by a system of common law, equitable and extraordinary remedies. Yet with the tremendous growth in recent years of governmental functions this great body of law is more

important than ever today. We are in grave danger of regarding the Administrative Law of the last quarter century as normal and inevitable and the Administrative Law that preceded World War I as obsolete and defunct.

Taught law, we have been told truly, is tough law; untaught law, by the same token, tends to become extinct law. We need to return to the learning of Goodnow and Freund and build thereon fully as much as we need to understand the newer administrative agencies. Our liberties—and our business civilization, too—obviously depend as much upon the effective functioning of the executive branch of the government as upon the courts. This makes it all the more difficult to understand why Administrative Law in the broad sense of the term has been so neglected by our law schools. Clearly we do not have time to teach in the undergraduate course the substantive law that is being spawned by these governmental agencies—that must be accomplished largely by experts in post-graduate courses or in institutes—but equally clearly, if our graduates are to understand the legal world in which they must work, we must instruct our students in the organization and the procedure of the various agencies of the executive branch of government and in the controls that are, or should be, exercised over them. And should not our law schools instead of posing, as all too often is the case, as apologists for the vagaries of the administrative process, lend their time and talents to pruning its too exuberant growth and to bringing order out of confusion, instead of leaving that task to the leadership of overburdened practitioners, who, often smarting under the injustice of particular decisions, have not always been as impartial in their comments on administrative proceedings as wisdom might require?

Our law schools must teach the science of the judicial, the legislative and the administrative processes in the most inclusive sense of these terms, and by that I mean not only the organization and the procedure of each of these three great branches of government, but also the mental processes that actuate the minds of the men who administer them. In addition, if we are to produce something more than mere craftsmen, if we aim at developing lawyers who may properly aspire to be the leaders of public opinion, we must train them in the methods of thought we vaguely call *jurisprudence*. They must learn to look at law in a broad way and in a deep way, not as closet philosphers but as practical men, applying the legal learning of every age to the needs of their own time. Such a study must comprehend more than mere law,

or even than business and economics; it must involve an acquaintanceship with and the power to use all the social sciences and to make them servants of the law. Such a course in jurisprudence should be the keystone in the arch of legal education. It should properly be the great subject of postgraduate study to be pursued in the light of a well rounded knowledge of substantative law and of the fundamental processes of law-making.

2. Our law schools, in concentrating on the law of our business civilization have sadly, one might in the present world crisis almost say tragically, neglected the study of *Public Law*. A generation ago at Columbia, Frank J. Goodnow, Thomas Reed Powell, Munroe Smith and John Basett Moore, as distinguished a faculty as has ever graced any institution, were lecturing to a mere handful of students on *Administrative Law, Taxation, Municipal Corporation, Jurisprudence* and *International Law,* while in nearby classrooms hundreds of bright young men were studying 'bread and butter' subjects. They tolerated Criminal Law, not because law and order so largely depends on its proper enforcement, not because their instructor was Dean Harlan F. Stone, the future Chief Justice of the United States, but rather because it was a topic in the bar examination. Except as to Taxation, which has by reason of the Sixteenth Amendment become a 'bread and butter course,' the situation has not changed much today.

It will serve no useful purpose to explore how this attitude towards Public Law developed. It presents a marked departure from the early traditions of American legal education. It is not without significance that in 1779, while the colonies were still in the midst of their struggle for independence and when the surrender of Cornwallis at Yorkton was still two years in the future, Thomas Jefferson brought about the appointment of Chancellor George Wyeth as Professor of Law and Police at William and Mary. Unfortunately, we have almost forgotten the abstract meaning of 'police' as the control and regulation of the state through the exercise of constitutional power of government. Chancellor Kent at Columbia, Justice Wilson at Pennsylvania, Justice Story at Harvard and Judge Cooley at Michigan, and many others elsewhere, taught Public Law in the same tradition. They recognized as a first principle that our future lawyers must understand public as well as private law, if our system of civil liberties was to be preserved in each succeeding generation.

The modern attitude toward Public Law is, in the last analysis, but one phase of the general indifference of Americans

toward government. In the Congressional elections of 1942, eleven months after Pearl Harbor, 10,000,000 less votes were cast than in the corresponding election of 1938, 24,000,000 less than in the presidential election of 1942. There is no stranger paradox in American life today that these figures present. Here we are spilling our best blood and mortgaging our economic future for generations to come to preserve a way of living and a system of government that only 54 percent of the eligible voters were sufficiently concerned with to take the trouble to go to the polls—and this in the face of the greatest emergency the nation has ever confronted! Whatever the attitude of the general public may be our responsibility as lawyers and as law teachers in the light of Pearl Harbor and the quarter century that preceded it is clear. Who can say what the course of American history would have been over the last quarter century had an earlier generation of American lawyers been trained in International Law and its background of Foreign Relations? Or if they had a comprehensive knowledge of the problems of criminal law enforcement in dealing with what the Director of the Federal Bureau of Investigation has called "the largest business in the United States?" Or if they really understood Administrative Law and its associated problem of governmental organization? How many American lawyers, for example, know that the typical English or Canadian administrative agency is under the direction of a Cabinet member, who in turn is responsible to Parliament and subject to public questioning in the House of Commons any week as to the work of his administrative agency? How many realize that with us there is a lack of direct responsibility on the part of the Chief Executive or members of the Cabinet for the work of many of our administrative agencies and governmental corporations? How many appreciate the undemocratic effect of such lack of responsibility?

Lawyers have a peculiar responsibility for public affairs. They fill many public offices. They exercise a predominant part in the shaping of public opinion. With the tremendous growth in governmental activities in peacetime as well as in war, accompanied by staggering increases in public expenditures everywhere, with new international relations thrust upon us willingly or unwillingly, as the result as much of aviation as of war, the law schools have an obligation to the nation that cannot be ignored. If the law is to merit being called a public profession, lawyers must be prepared in law school for their public duties. How else may lawyers be prepared today to fill public office, or to guide public opinion or even to advise private clients? The

relations of government and business are now so close that courses in Public Law have now become in truth 'bread and butter subbects.' Our teaching in Public Law, moreover, must not be merely technical. To be of value to the nation it must be broad and deep, grounded in the social sciences and in the experience of mankind. A large order for the law schools to fill, some may say, but how else may we meet our obligatons today and expiate our lapses of yesterday? The public interest in these matters is so vital that we should ask the bar examiners to cooperate with the law schools by adding to their present schedule the several topics of Public Law and stressing them in the bar examinations.

3. Finally, even in the field of private law, we have taught only certain selected subjects as to which our students are given a wide range of election, and consequently they have in most instances failed to grasp *the law as a system.* We must either agree that the law is a system or concede that the forces of disintegration are at work. If the law is a system, albeit an imperfect and constantly changing one, it should be taught as such. It will be objected that there is not sufficient time to teach each topic in the law and that it is better to teach what we do teach well. Admitting the force of this argument, are there not certain subjects of private law and of public law, in addition to the study of the judicial, legislative and administrative processes, which are especially adapted to revealing the system of our law? And granting that the age of the encyclopedic legal mind seems to be passing, is it not important in a period when the law is changing with great velocity that lawyers generally have a full view of the law as a system so that they may more readily chart the course of its development? Otherwise, how can we hope, *e.g.*, to grasp the significance of the present conflict between the law of our business civilization and our expanding governmental regime?

How, moreover, can either the law of our business and social civilization or the methods of governmental regulation or control be understood without a broad and deep knowledge of the pertinent facts and principles of the social sciences? Must not the law student, if he lacks any of these disciplines on entering law school, be obliged to familiarize himself with them as he proceeds with his law studies? Must he not also be required, if he does not already know, to learn to write, to speak, to think logically, yes, and to read? Again, a large order, but I submit, an essential one. Several years ago, I addressed the Association of American Law Schools here in Chicago (perhaps that is the

reason for my invitation to speak here today) on some of the achievements of the American Bar and on some of its shortcomings as well, such as the defects of judicial administration, the failure of criminal law enforcement, our pathless maze of legislation, our administration chaos. Singularly enough, these are the very matters on which out law schools have fallen down. How could it be otherwise? The law may lag (must lag, some say), lawyers and judges may lag, but if the public and the profession alike are not to suffer in succeeding generations, the law schools must not lag; they must lead.

Methods of Law Study

Coming to methods of law study, there seems to be more criticism of the case system among law school instructors than among lawyers. No doubt the case method has its limitations. It obviously is not as well suited to a topic that has been embodied in a uniform statute as it is to a subject that has not been codified or still is rapidly developing. The American Law Institute Restatements of the Law likewise create a teaching problem for the topics they cover. A very considerable part of the Judicial, Legislative, and Administrative Processes would seem to be outside of the proper orbit of the case method; here, as in some other fields, the problem method offers the possibility of a more effective attack. In dealing with such specialities, moreover, as Admiralty, Bankruptcy, Oil and Gas, Water Rights, case books supplemented by lectures of competent experts and free classroom discussions may be the solution. Text books, too, have their proper field; Wigmore's Judicial Proof, bringing Logic and Law of Evidence together, is an example of ripe scholarship that meets a definite need of both practitioner and student.

No doubt, too, if one may credit what one reads, the case system has at times been perverted. Do the students buy digests of the cases? The remedy is at hand—change casebooks frequently. Do the students purchase summaries of the instructor's 'lectures'? Let him stop lecturing and go back to the Socratic method, or better yet, shift to new subjects. Except where an instructor is writing a text, or editing a casebook or carrying on special research, there would seem to be great advantages both to him and his students in an occasional change of intellectual pasture. The worst defect of the casebook system is the tendency to treat each course as a watertight compartment without the possibility of the interchange of ideas or principle from one course to another. Instances are not lacking, more-

over, of the duplication of materials in different courses. Time is too limited and too precious to permit of such waste. What is very much needed is a system of cross-references, by topics and legal concepts, from one course to another. This would be especially valuable in giving vitality to the courses in procedure, but it should also be extended to the courses in substantive law. All of these suggestions call for team work among a group of men who, whatever their social views may be, incline to be arch individualists professionally. There can be no doubt that the 'vested interests' of individual faculty members in their particular subjects have retarded the revision of the curriculum in many a law school. It is too much to hope that out of our present necessities a spirit of joint enterprise may emerge which will result in much saving of valuable time and in much improvement in the students' opportunities for comprehending law as a system?

Whatever may be the defects of the case system in lax or unskilful hands, the fact remains that for thousands of college graduates it has meant their first real intellectual experience. For the first time they have learned what it means to argue a proposition through. The thrill of intellectual combat drives them to work as they have never worked before. The sense of discovery grips them as they trace a rule of law from its source to its modern application, or from its present expression to its point of origin. Exposition and argumentation, for the first time, become something more than formal methods; they are essential processes in the search for truth. The student's notes may be crude, but they are a record of his intellectual growth.

It is important that we continue to experiment with various kinds of casebooks. It is important that in at least a few major subjects the student trace every doctrine from its source. It is likewise important that in some subjects he deal with the complete reports of the cases without any editorial abbreviation. On the other hand, the recent interesting experiment of Thurston's and Seavey's Cases on Torts in presenting numerous cases in abbreviated form demonstrates the possibility of covering much ground in relatively little time, although a similar experiment over forty years ago by Dean Sommer in his Condensed Cases on Property had to be abandoned because of the wear and tear on the volumes in the law school library containing the full reports of the abbreviated cases.

Though the case system in various forms is generally conceded to be, in general, the best method for the first year or two of law school work, there can be no denying the need of alternative methods of study for more advanced work. The problem method,

as already pointed out, has great possibilities. Seminar methods have their proper place for special topics, particularly in the graduate school. Lectures, by experts in the radidly growing portions of the law, followed by informal discussion, might lead to a revival in our day of the Readers of the sixteenth century Inns of Court. Perhaps we might emulate what a friend told me was the practice at Dutch scientific meeting— forty-five minutes of lecture, fifteen minutes of the Dutch equivalent of beer and pretzels, and then an hour of 'argument'.

For mature students I think we should stress the comparative method. It is the use of comparative methods that has made possible the discoveries and inventions of modern science. Among the devotees of the comparative method in the law we find judges like Kent, Story and Mansfield. No little part of the judicial standing of the judges of the British House of Lords is due to their knowledge of the civil law of Scotland as well as of the common law of England, not to mention their acquaintance as members of the Judicial Committee of the Privy Council with all the various systems of law that come up on appeal from the dominions and colonies of the British Empire. There is no type of legal study that will strengthen the muscles of the mind like the comparative study of two great legal systems. And in the world of tomorrow, will lawyers generally not have to be as familiar with civil law as with common law? Will we, therefore, not do well to expose at least our advanced students to the classical Roman Law that once ruled the world, and to some facet of modern civil law which is still a rival of the common law in the markets of the world?

I can feel the question in the air, "How teach all these things, how pursue all these various methods in three short years?" It is not enough to quote Doctor Johnson: "Sir, while you are considering which of two things you should teach your child first, another boy has learned them both." I must confess I have long looked with covetous eye on the long summer vacation of the law student of bygone days. On the other hand, I hope as soon as the present emergency is over we will all abandon our all-year-round accelerated courses. They are causing a great deal of intellectual indigestion that may make for bad judicial decisions twenty-five years hence and some very poor legal advice meantime. Rather, I would have our law student use his summers to familiarize himself under expert guidance with the Roman law and the modern civil law paralleling the American law he has studied during the winter. I would have him pursue extensive

collateral readings in the courses he has just completed, and in the fall I would again examine him in the same subjects, this time on an entirely different plane, and if legally possible, I would give him advance credit for high grade work toward a graduate degree. Such a scheme would obviate what I have long regarded as the chief defect in the case system. It seems a little absurd for us to urge our students to derive their law from their study of the case and at the same time insist that they read the best literature on the subject. We might as well, in giving a student a problem in mathematics, hand over the teacher's answer book. Collateral reading contemporaneous with the study of the cases cannot but take the edge off all effort at original thinking. But separate the two, examine separately on them, and we will have gained the best of both processes, together with the advantages of a double presentation of the subject.

I should like to see each student spend part of his summers in discussing the courses he has just pursued with one or more—not many—students from other law schools. It would do us all good. And I should like to see him work out at least one practical problem in the law each summer, preferably under the direction of some practising lawyer. This will require guidance in Legal Bibliography and the Methods of Legal Research, which includes, of course, the use not only of law books but of other materials as well in the field of business and of the social sciences. If he can get further acquainted with the ways of the practitioner, so much the better. It would be especially helpful if he could get some practice in drafting documents and pleadings. Such contacts and such study in the summer would add to the reality of his next year's work. I should insist, too, on his using part of the summer to make up any gross defects of his pre-legal education, especially in the Three R's in the broad sense—Reading (a difficult and complete art), Writing (including, of course, Speaking; an inarticulate lawyer is a contradiction in terms) and Arithmetic (or in modern terms, Accounting). Every law student should master either before or early in his law course the principles of Accounting from the lawyer's standpoint. Such summer work should be on an individual basis, both as to quantity and as to credit; dependent on the student's capacity and available time.

The Objectives of the Law School

Our prime task is to train lawyers—lawyers equipped to be advocates, counsellors of public bodies or of private enterprise, judges, lawmakers, administrators, law teachers and, above all,

leaders of public thought. There have been relatively settled times within the memory of many of us when these tasks were comparatively simple. We are now living, however, in an age when the law along with other things is changing at an unparalleled pace. The only other period at all comparable to ours is the era of the American Revolution, the French Revolution and the Industrial Revolution. The law then met and encompassed the startling changes, political, economic and social, that were occurring in the social order. Lawyers, judges and statesmen then sought out all the knowledge and all the wisdom that was available to them from the past or from their contemporaries and applied it to the solution of the great problems of the day. Witness Madison ransacking the pages of history and political science in preparation for the work of the Constitutional Convention. Witness Kent, despising the French Revolution but quoting French jurists, to buttress his efforts to adapt the common law to the needs of a young country, and to popularize the system of equity that the people of many states frowned upon, largely because the chancellor acted without the aid of a jury. Witness Mansfield, removing the barnacles from the legal procedure of his day, adapting old forms of action to new ends of justice and bringing the law merchant of continental Europe within the scope of the common law.

What lawyers have done before they can and will do again. The conditions confronting us today, however, are vastly more involved than those of a century and a half ago. They cast a heavy burden on the law schools which we can and will meet. We must quicken our pace. We must lift up our standards. We must cover all and not a mere part of the field that is ours to defend. At the same time we must keep our balance, our sense of proportion. Like Madison and Kent and Mansfield, we must use precedents and contemporaneous experience—and our own common sense. We must imbue our students with the belief that they are to be the physicians, the architects and the engineers of the social order. We must inspire them to be intellectually alert and open-minded, to be tolerant of everything except wrong.

We cannot afford to lapse into the academic isolation of recent years, heedless of vital questions that are pressing for solution. Our second task, therefore, it seems to me, is to make our law schools the rendezvous of legal scholars, whether they be judges, legislators, administrators, professors or students. We should go further. We should welcome the cooperation of laymen who are interested in the law. The layman can ask questions

that will jar the complacency of the legal mind. It is not a mere coincidence that the most useful judicial councils in this country are those including lay members. We need laymen to remind us occasionally that the law is not the only angle from which to view life, that law is not the only means of maintaining the social order and of promoting individual welfare. At the same time, we need to have the expert come to us from the bench, from the forum, from the administrator's conference table to bring us the distillation of his ripe experience and autumnal wisdom.

It was by this practice in the Inns of Court, as Maitland has demonstrated in his Rede Lecture, that the common-law lawyers in the sixteenth century strengthened their common law to meet the assaults of its rivals in Chancery, in Admiralty, in the Council and in the Star Chamber and preserved the civil rights of the individual. This example is not without its significance for the law schools of tomorrow in their effort to achieve what I believe to be their highest function—pointing the way to the improvement and perfecting of the art of government while at the same time guiding us in the protection and preservation of individual liberty and initiative. In any absolute sense, it may be said, such a goal is beyond our grasp, but we must strive, nevertheless, to attain it so far as practicable in our day and age. We cannot hope to reach it alone but we do know that lawyers must play a large part in the struggle. Every step on the way involves technical legal problems that lawyers alone can solve. What branch of our profession has a better opportunity for leadership in this quest for justice than the teaching profession? The challenge of opportunity is here. We may neglect it, we may with myopic delight set obstacles in the path of those who would seek as a workable reconciliation of effectiveness in government for the protection of sound social interests, on the one side, with the right of the individual for the pursuit of happiness, on the other. Or we may individually and collectively accept leadership, as did the lawyers of the sixteenth century and of the eighteenth century, in the task of readjusting our law to the needs of our times without breaking the continuity of a legal system that has served English speaking peoples well for centuries.

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