The University Law Schools

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"Mr. Chancellor, I have the honour to present, for the degree of Doctor of Laws, *honoris causa*, CECIL AUGUSTUS WRIGHT, Dean of the Faculty of Law of the University of Toronto.

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"His life is devoted to sharing this knowledge and understanding. For more than twenty years he has stimulated and enlightened students at Osgoode Hall and at the University of Toronto with his brilliant class discussions of legal problems and over the same period his articles and comments in the Canadian Bar Review and other legal periodicals have been eagerly read and highly regarded by the legal profession both at home and abroad.

"In honouring him, the University of British Columbia takes this occasion to express its recognition of the debt which Canadian legal education owes to this penetrating scholar and stimulating teacher."

N. A. M. MACKENZIE

In 1938, in this city, I had occasion to express in some detail my credo as to the future course which our Canadian law schools should take. That statement is still in print and if, as some of my medical friends insist, no man has an original idea after thirty-five years of age, I might rest content to refer you to what I then said.[1] I am sure I knew more then about the subject, or at least thought I did, than I do now. The longer a man remains in law school work the less confident he becomes of knowing the answers to the fundamental problems of his trade. The fact that we are here today shows, and I believe will increasingly show, how little we professional teachers really know and how little we can agree upon. I trust it will not pass unnoticed — my subject being the university law schools — that although connected

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[1] Law and the Law Schools (1938), 16 Can. Bar Rev. 579.

with a professional school of law for over twenty-two years I have been with a university school for only three months. Whether this has any significance I am not sure. In any event, I certainly do not claim to know the answers which must be given to the burning questions of legal education, and much that I will criticise I plead guilty in advance to actually practising.

My object is to invoke your criticisms and suggestions for the assistance of myself and my colleagues. The great and crying need today, as it has been for years, is a clear understanding of the objectives and aims of a university law school. Given general agreement on the objectives, the means, though difficult, should not be impossible.

Do university law schools exist for the training and production of a lawyer in the sense of a legal practitioner? If not, what is their purpose? If so, how shall we describe a lawyer?

What does a lawyer actually do? With the trend towards specialization in the larger cities, this is a question almost impossible to answer. For the past two years the United States has had in hand a survey of the profession, of which one of the objectives is to find what the profession is doing and how they are doing it. Canada has just recently undertaken a somewhat similar project. It may be that in light of the results of that survey we shall get a better description of the various individual jobs undertaken, as well as the jobs left undone. I feel sure that we shall be surprised at the variegated and somewhat dissimilar nature of the tasks which fall to the lot of lawyers in various communities. I doubt, however, if we shall, even in the light of this information, be able to solve our basic problem. We shall no doubt find an increasing number of persons who are not educated as lawyers doing work that the profession has traditionally felt was its own. So-called encroachments of trust companies and accountants need no further mention. As lawyers we say that we should have — and in theory we do have — a monopoly on things legal. Why have we got it and how can we justify it?

Time was when the lawyer traditionally handled the private litigation of reasonably wealthy litigants, and the conveyancing work of individuals, within a simple framework in which the rôle of the state was that purely of a police power and when the notion of liberty—a maximum freedom from state interference—was the order of the day. There are those who, in speaking of the training of a lawyer, think only in terms of court litigation and the problems of conveyancing. To the extent that schools have striven to *train* lawyers there has been, and still is perhaps, too great an

emphasis on these two traditional branches, often, I am afraid, in the philosophical atmosphere in which they flourished over one hundred years ago. Today we find fewer and fewer of the profession engaged in litigation, and unfortunately, in that branch which will in my opinion continue longest, criminal law, so few as to be negligible. Conveyancing and property work is still important but with the rise of the modern trust company, the torrens system and the ever-present threat of the guarantee company, the profession is performing a myriad of jobs seemingly quite unlike: appearing before municipal boards on questions of municipal financing; advising a labour union on the methods of bargaining; appearing on and before arbitration boards; advising business on policy and finances; and so forth.

It would seem to me impossible to train lawyers for all these myriad specialized tasks even if we wanted to. The only other solution is to *educate* persons who will come to these tasks with the *qualities of mind* and general discipline which should characterize the group to whom a monopoly on social control through law has been given. The university law school must find and train in that common denominator if it is to fulfil its task.

I think most legal educationists would agree — and that is certainly something at least — that the university law school does not, should not and can not produce a competent and qualified member of the practising profession. As Fuller put it, we simply "haven't time in three years to make a man a lawyer". Lack of time, of course, is no answer. If more time could do it, should we take that time for the purpose?

This raises the fundamental issue: Should a university law school be vocational or educational? Should we, to use Stallybrass's expression, provide an education or training *in* law or *for* law? There is no doubt that the practice of law is one of the most practical of callings, requiring a detailed knowledge of procedures, skills and all the tricks of the trade which can be roughly categorized as the "know how" of the profession. It scarcely seems the function of the university to provide a man with the mere tools of a trade. From this point of view, the inclusion of law schools in a university may seem a paradox. There might be said to be an apparent conflict between the aims of a university in pushing back the frontiers of knowledge in the pursuit of wisdom and understanding with no immediate object of practical value, and a short term professional competence which the training for membership in the legal profession might seem to demand.

Do these two objects clash, so that a university school must

pick one or the other or fall between two stools in trying to make the best of both worlds?

I do not believe there is any clash between these objects, provided we do not make the mistake of translating "professional" as mere expertness in existing technique. That it has frequently been so used cannot be gainsaid. I do not need to point out to this audience that there is always a tendency inherent in any profession to turn in on itself and mistake the existing means for ultimate aims, and thus either to ignore the problems for which these means supply no answer or to answer them with specious arguments resting on little save the experience of yesterday.

It is this mistaken narrow professionalism that now and then cries out at the law schools for being academic, impractical and theoretical. In that connection it may be wise to remember the gibe of Disraeli that "the practical man is the man who practises the errors of his ancestors". Personally, I have no hesitation in throwing in my lot with the statement of Holmes that "Theory is the most important part of the dogma of the law, as the architect is the most important man who takes part in the building of a house. . . . theory is not to be feared as impractical for to the competent it simply means going to the bottom of the subject."

The university schools of law must stand out against this narrow professionalism. Indeed it is in the interest of the legal profession itself that they do. They can only do so, and resolve the apparent paradox which I have mentioned, by taking a broader and, in my opinion, truer view of professionalism itself. It is not my purpose to discuss the meaning of a "profession", but I would suggest that the ultimate test of a true profession is the dedication of an organized group to the solution of its neighbours' problems of living. Thus, medicine is concerned with disease and national health; religion with the upright life and spiritual happiness. Law should be concerned with the problems of human relations and society with the ultimate object of enabling men to live in peace with their neighbours, groups with groups and nations with nations.

Since I do not need to argue to this audience that the legal profession as an organized group must continue to play its part in this general aim, I would suggest that the three big objectives of a university law school are (i) education in the *qualities* that should be found in a legal practitioner; (ii) education that will train a man not merely in the work of solving problems of individual clients but of the society in which he lives; and (iii) to act as a centre of research, criticism and contribution

to the better understanding of the laws by which societies are held together. I understand that Dean Griswold is dealing with the third problem in this connection and, therefore, my concern is chiefly with the two first stated objectives.

At a time when practitioners dealt with general cross-sections of the public and when the entire emphasis in a lawyer's office was on the settlement of private disputes, there is no doubt that the practitioner's office was an excellent training ground for membership in the practising profession. As the effects of the industrial revolution spread into our own day, and with the rise of modern technocracy, there emerged the modern law schools, which for a time were considered merely as an adjunct to office practice. As such an adjunct, students were exposed to didactic and dictated lectures which were as boring as they were unrealistic. It was felt that the schools could and should deal only with abstract principles and that the application of law to facts was the work of the office. Such is still the view of many university men in other parts of the common-law world. This tended to draw lines which were unfortunate and which have had a lasting influence on our approach to the work of law schools in this country. To put it shortly, schools in their beginning were conducted as if they existed merely to purvey information. Students were told dogmatically and emphatically what the law was. Questioning, criticizing or analyzing was not encouraged.

I hardly need to mention how, presumably, law was taught to you, as it was taught to me, with respect to a manufacturer's liability in tort. The simple and infallible rule was that a third person injured by the negligence of the manufacturer could not sue him because there was no privity of contract. This was a dogma which appeared in every textbook and was handed down like one of the Ten Commandments. I presume that in those days if you ventured to suggest that a manufacturer could be liable in tort, you would be marked as wrong and might be refused admittance to the profession. Today we realize how unrealistic an approach like this is, and more and more we come to appreciate the truth of Cardozo's remark that "hardly a rule of today but may be matched by its opposite of yesterday. . . . For every tendency, one seems to have a counter tendency; for every rule its antinomy. . . . All is fluid and changeable. There is an endless 'becoming'."

The idea that law is a pre-ordained and absolute whole, waiting only to be discovered in the instant case, may manifest man's innate yearning for the absolute. In truth, so far as the legal

process is concerned, it leads to a theory of inevitability under which individual caprice, unacknowledged and unexpressed, may play an exaggerated part.

Realizing that information is good today and bad tomorrow, that a lawyer does not exist to sell information but to assist in the solution of problems, one of the greatest advances in legal education was made with the introduction of the much maligned and misunderstood Langdellian case method. Its theory was sound in placing in the forefront the question of handling *problems* as the core of a lawyer's education, thus shifting the emphasis to the essential facts involved in any problem. The ideal was to drive students to the facts as they arose in controversies and thus to compel them to appreciate the conflicting and competing avenues of approach and to learn by doing the art of choosing wisely and well the solution to individual problems. By comparing solutions the student was to learn to synthesize into generalities from particulars — the inductive method of reasoning — and to appreciate the limitations of applying general principles to the particulars — the form of deductive reasoning.

The "method", if such there be, varied from instructor to instructor, but the emphasis was and is sound. Properly used, the case method should awake the student to a realization that he was engaging in a tough realistic struggle in reconciling claims and he would thus be acquiring that quality of mind which makes the lawyer the "trouble-shooter" in problems of social control. As Archibald MacLeish said of his first contact with this method at the Harvard Law School, it was "to experience, usually for the first time in your life, the classic delight of using your single and naked mind . . . upon a body of material which other minds have created and which your mind might, if it had the necessary strength and knowledge, alter and improve. You had discovered, in other words, the fact and the meaning of a great intellectual tradition. You had discovered that you were yourself part of this tradition — part of its growing, living, changing edge. Discovering these things, you had discovered at the same time what education really is. In discovering what education really is, you were well on your way to be educated."

Our Canadian law schools have been slow — some slower than others — in appreciating the purpose or object of making students do this type of work. Whether it be called a case method or whether it be called an education in the mental process that forms the fundamental basis of the legal discipline as distinguished from the discipline of other branches of knowledge, the

introduction of a method which impelled a student to think his way through to the solution of social problems forced the university law schools consciously to consider and re-consider their aims and objects.

I am afraid that, while paying lip-service to a method of instruction, there is not yet sufficient uniformity of objective, consciously directed, in some of our schools concerning the general qualities which a legal education is intended to produce. The common denominator previously referred to has not been consciously stated or followed. In my opinion, it is essential, particularly in the first year, that there should be a drive towards general objectives because it is in that year that the aims and objects of the method must be rigorously pursued if they are to bear fruit. If different instructors in the first year have different objectives the result is both confusing and vicious in leaving students in a state of indeterminate indecision. I know of no place where those objectives have been better or more tersely stated than in a recent article by Professor Leach of Harvard. He lists the qualities which law school training should produce as follows:[2]

1. *Fact consciousness.* An insistence upon getting the facts, checking their accuracy, and sloughing off the element of conclusion and opinion.

2. *A sense of relevance.* The capacity to recognize what is relevant to the issue at hand and to cut away irrelevant facts, opinions, and emotions which can cloud the issue.

3. *Comprehensiveness.* The capacity to see all sides of a problem, all factors that bear upon it, and all possible ways of approaching it.

4. *Foresight.* The capacity to take the long view, to anticipate remote and collateral consequences, to look several moves ahead in the particular chess game that is being played.

5. *Lingual sophistication.* An immunity to being fooled by words and catch-phrases; a refusal to accept verbal solutions which merely conceal the problem.

6. *Precision and persuasiveness of speech.* That mastery of the language which involves (a) the ability to state exactly what one means, no more, no less, and (b) the ability to reach other men with one's own thought, to create in their minds the picture that is in one's own.

7. And finally, and pervading all the rest, and possibly the only one that is really basic: *self-discipline in habits of thoroughness,* an abhorrence of superficiality and approximation.

I think you will all agree that a man who has acquired these qualities is entitled to be called "educated" and a person who in time will be a more valuable member of what is still described as

[2] Property Law Taught in Two Packages (1948), 1 J. Legal Ed. 28, at pp. 30-31.

a "learned" profession than a person who can recite the whole of Halsbury standing on his head, or who knows how to fill in properly all the blanks on every form of legal document the stationers have placed upon the market. True, in gaining these qualities he may lose something. He may not know at the end of his law course many of the legal niceties which the office apprentice learned early in his career as means of blocking or assisting the wheels of justice. The process is slow, and his store of legal information may not be extensive, but I think the story of Patterson of Columbia expresses well the general feeling of law teachers on this point. Patterson relates how a father of one of his recent graduates came back in a highly irritable mood and complained bitterly that his son, on reaching his office, had not known how to draw a replevin bond. Patterson expressed his sorrow and inquired what the father had done. The father admitted that he had been compelled to show the boy how to do it. He was asked by Patterson how long this process took. The answer was, roughly, five minutes. To which, I am pleased to say, Patterson is reported to have replied "I thought so. You see, we are teaching our students things which you couldn't teach him in a life time." As a matter of fact, this story may be a little unfair. No doubt the office could possibly give these characteristics and qualities, and no doubt it does give them over a period of years at clients' expense. But mere abstract qualities are not alone what a school can give nor can such qualities be taught in the abstract. There must be something more which goes into a legal education. The question is, what is that something? On what material or subject matter can these qualities best be developed? It is at this stage we enter the real difficulties and differences of opinion that are today being energetically debated among the law schools.

It has been said that the case method has become a slower, more tedious and less effective method of imparting information than the system it supplanted. That it is slower cannot be denied. That it does develop some of the qualities I have mentioned, likewise cannot be denied. The complaint here really is that the case method has ended by teaching the same arid and legalistic conceptions which the textbook used to supply. By a consideration of past decisions arranged on a plan of developing legal doctrine it is said we have departed little save in method from the objects of the orthodox text.

There may be some truth in this charge. Many, in fact most, schools have courses based on developing legal concepts, doctrines or principles — contracts, torts, equity, mortgages, trusts

and so on. The criticism is that, the job of lawyers being to assist either in adjudicating on past conflicts which have reached the legal controversy stage or of legislating by contract, will, by-law, treaty or legislation in its parliamentary sense to obviate legal controversy in the future, the schools have interested themselves more in developing past legal doctrine at the expense of the functional approach of developing power to deal with future problems which cut across orthodox text-book boundaries.

The problem is a real one as any teacher of law will readily admit. Legal concepts must be taught but they are a means only to the solution of problems. Should the emphasis be on the developing of concepts or on taking related factual problems and letting the concept develop in relation to the problems concerned? Certainly, the emphasis in our schools has been on the former. Equity is still taught as such in most schools. Mortgages is another subject; Bills and Notes a third. Such tags are familiar to the practising profession and I rather fear that their continuance in many of our university schools raises what Vanderbilt — well-known to this audience as practitioner, teacher and judge — recently referred to as "the embarrassing question whether the law schools have not erred in letting the legal profession . . . shape the curriculum". It seems to be a popular professional belief that a law school curriculum should contain a certain number of familiar names, and my guess is that that is because the profession is accustomed to texts bearing the same labels. The idea of a one-text course dies hard.

Personally, I can see no reason for carefully segregating the operation of equity from a consideration of other contractual problems in the first year; or of separating easements and servitudes from restrictive covenants enforceable in equity. The great difficulty which faces the modern law school is what to leave out of the curriculum, how to correlate courses to prevent law being considered as a number of water-tight conceptualistic compartments, and at the same time create a familiarity with present-day problems and some insight into the manner in which they might be solved, having regard both to the past and the future. I offer no solution to this problem. It is, I believe, to a large extent a matter of personnel. Have you a man on your staff who can *do* a course, cutting boundaries, which will be not merely a combination of two text courses but a course based on a core of related problems.

Small beginnings have been made in some schools. Equity as such has disappeared; courses based on problems involved in real

estate transactions have made their appearance; future interests, trusts, and fiduciary administration problems have been considered as part of the broad problem of the distribution of accumulated wealth; bills and notes, the financing of sales and other related concepts are being brought together in some schools in what looks like a return to modern problems of commercial law or the law merchant. The profession ought not to fear these so-called innovations. It must learn to expect more and to look on experimentation in the law schools as one of the healthiest signs of the educational process. The teaching profession in Canada is still in its infancy and the full-time teacher is only now being recognized as a distinct — if somewhat peculiar — third branch of the legal profession. The part-time teacher cannot be expected to make these changes, particularly as he will have no convenient text to guide him.

Notwithstanding any reorganization of traditional textbook topics, two further criticisms of major importance have been made concerning the work of the present-day law school. The first criticism, largely fostered by Jerome Frank, is that the case method, far from being a move towards reality, ends up in a method of pure "library law" or "book law", since the education of students is directed not to facts as they are but to the neat statements of facts on which courts of appeal base their legal essays in the form of judgments. Assuming that the objective of legal education is to train in the solution of problems, Frank's insistence is that a student should be trained almost exclusively, if I understand him correctly, in "fact-handling". He would go so far as to abandon the old type-case method of instruction or to relegate it to the first year for a period of about six months only. What Frank might seem to be after in his call for "lawyers' schools" is really a return to the apprentice system as the sole method of training lawyers: a system which only recently has been abandoned in its last stronghold in this country. Some persons, scornful of the whole Frank approach, say that he has no belief in the existence of legal rules in the abstract and insist that it is the function of a law school to give theoretical instruction in such abstract rules. Critics like Frank do not advocate the abolition of law schools in favour of the apprentice system, however, for the very simple reason that they realize that the apprentice system as such will not supply in a systematic way to the majority of students the education they will need in their own practice. That there is a considerable element of truth in his criticism cannot be gainsaid. The gap between law in the books and law in

action is one that many graduates from our law schools find extremely difficult to bridge. In most provinces in this country work in the law schools is followed by certain periods of work in an office, and it would be very simple for the law schools to say that the law school should have no part in educating a student in "fact-handling" and that this part of his training should take place in his subsequent law-office apprenticeship. Theoretically, this might be possible, but the same difficulties which have led to the abandonment of apprentice training as the sole method of admission to the profession raise doubts whether graduates of our law schools can expect that all-round education in fact-handling which may be necessary for them in their own practice. Furthermore, even if we were justified in believing that students would obtain an all-round experience as a result of such apprenticeship, I still believe that our law schools cannot afford to treat law as divorced from actual "facts in the raw".

Students reaching the university law schools very seldom seem to relate the work which they have done in their pre-law school courses to any actual problem affecting themselves, their lives or the lives of the people about them. I have felt that one of the great difficulties in teaching law is to make students realize that they are no longer engaged in a process dealing with description of things, past or present, but that they are engaging in a process very similar to that where someone hands them a set of novel facts across a desk and expects them to do something about it. It is this problem that critics like Frank bring forward and it is one that the law schools must face. How it is to be faced is another question. We at the University of Toronto are making an experiment by appointing, in addition to the full-time lecturer in charge of various subjects, an associate who will usually be a leading practitioner in his own field. His duties are, first, to supply a series of junior demonstrators who will take students through actual office problems as they have come up in recent times and integrate them with the work of the classroom; and, secondly, to hold himself ready as well to discuss, advise and plan the course with the faculty so that it does not become too much of the ivory tower type or too far removed from current facts. I think this is particularly necessary in regard to the fields of court practice and procedure, and one of the express recommendations of Jerome Frank is now being adopted at the University of Toronto, namely, that students at the end of their first year, and after class work in that year on "Courts in Action", directed by a practitioner with the sole object of showing the elusive nature of facts

as they are and as courts come to believe they are, must devote at least one month prior to the beginning of the school year visiting, in small groups, every court, under the guidance of competent practitioners, for observation, discussion and report. What other steps will be taken in this connection is one which time alone can tell and on which I would gladly have suggestions from this meeting.

While the reorganization of traditional materials around factual problems rather than past decisions themselves may help solve some of the demands pressing on the law school, in itself it will achieve little so long as we persist in making court decisions the central, and frequently the sole, subject of examination and study. At a time when law reaches into the lives of individuals in a regulatory sense hitherto unknown, it is common knowledge, whether we like it or not, that the courts as we have known them are losing ground. The reasons are not hard to find. The whole history of the development of our judicial system is one in which the individual, as an individual, set in motion for the protection of his individual claims or rights a method of procedure largely left to the individuals as party contestants. It is not without significance that the courts reached their maturity in an era characterized by Benthamite liberalism, based on the principle of individual liberty and actuated by a philosophy which required a minimum of state interference with the so-called individual liberties. Private law was concerned with securing to individuals a maximum of free individual assertion in the hope that the individual, set free and policed only by the state, would lead us to social progress. It was in this spirit that the common law courts thrived and in this spirit that they worked out their concepts of freedom of contract, of free use of property, and their notions of fault as a condition of tortious liability. Any idea that society demanded for its own protection and the protection of its members, limitations on individual rights based on a recognition of the inter-dependence of individuals in a modern industrialized state and the view that such inter-dependence postulates an efficient working of society as a whole in the interests of individuals themselves were, and to a large extent still are, foreign to the spirit of the common law.

Dicey saw, over fifty years ago, that it was becoming impossible to separate actions which concerned the individual alone and those which concerned society as a whole — that the lines between "public" and "private" law were even then becoming blurred. How much more quickly the tempo has risen since then I scarce-

ly need mention. The fact is that to a large extent the courts are operating today in a social and ideological background totally foreign to the views which inhere in the body of case law on which it relies. This is not the place to develop or demonstrate the move from the individualistic concept of the police state to "collectivism", the "social state" or whatever you may wish to call it. The point is, and again I say it makes no difference for this purpose whether you like it or not, that, in the words of a recent writer, "social control [has] stepped out of the shoes of the traffic policeman and into those of the guide, mentor and protector of economic institutions".

That control has been expended not in the courts but in a flood of legislation, regulation and administrative discretion. The necessity of regulating business in the interests of the safety of the employees, public health and the investing public, as well as other competitors, is simply an illustration. The entry of the state into what was formerly considered the field of private enterprise is another. The conscious efforts of the "welfare state" to cover the losses and risks of modern industrialized society by compensation or other methods of insurance is another illustration of the shift in emphasis from law as a mere restraint on activity to law as guiding and controlling human activity.

In the midst of this complete change of social atmosphere, up until a few years ago our law school courses were in name and content not much different from those in the time of Blackstone. They are still too heavily overladen with the study of judicial decisions on matters of private law. On this point I plead as guilty as any man teaching law in Canada. It has, of course, been traditional for the common law lawyer not merely to dislike legislation but to blame all our ills upon it. You may recall that Blackstone attributed "all the perplexed questions, almost all the niceties, intricacies and traditions" in English courts of justice "not to the common law itself but to innovations that have been made in it by Acts of Parliament". He called in aid Coke's bitter diatribe against the confusion introduced into the common law by "ill-judging and unlearned legislators".

In my capacity as editor of a series of law reports, I have seen much the same thing said by judges within the last few years. Today, however, for courts to attempt to construe statutes in conformity with, and to disturb as little as possible the "common law" is, as Lord Wright pointed out some years ago, extremely dangerous as being a direct violation of the legislative intent

which almost invariably today is more or less opposed to the extreme individualism of the common law.

No one has ever suggested, so far as I know, that we should not study the common law method and study it thoroughly. Indeed, there is a large place for the tradition of the common law and its protection of individual freedom. The big problem facing our law schools is how to incorporate along with such study problems of modern legislation and its charging of almost every department of private law with a public law aspect. This means that, in addition to the study of the judicial process, our law schools cannot afford to exclude the legislative process as a major source of study. To a common law lawyer a study of legislation all too often means a study of so-called court rules of interpretation. Typical is the statement made by the late Dr. Stallybrass in a published address a few years ago when he commended Oxford for excluding from its courses of study branches of the law which depended on statute and not on precedent. He indicated that the valuable part of statute law was the interpretation of statutes.

This is indicative of an attitude which we must reject. If we are to have adequate legislation the problems of fact-finding, expert investigation and sound knowledge of an exploration of various sanctions for securing the desired end are definitely topics that must be studied systematically and thoroughly in the university law schools. Unless the profession supplies this skill and knowledge there can be little doubt that the initiative will be taken by others lacking an acquaintance with the wisdom of centuries of common law tradition.

It goes without saying that with an increased emphasis on the legislative process must come an increased emphasis on the administrative process. Most Canadian law schools now do provide a major course in administrative law and the importance of "the meeting point of legislation and adjudication" cannot be overemphasized. There is little doubt that the administrative process is the present generation's answer to the inadequacy of the judicial and legislative processes. This has frequently been taken by lawyers as a challenge to the supremacy of law and we find them saying that the "supremacy of Parliament is an ever-present threat to the supremacy of law". The truth behind such statements is that, whereas formerly our law was a rule of judges, the shift to boards, commissions, etc. has tended to threaten that supremacy and these are now labelled, rather indiscriminately, as "the new Bureaucracy". While there is undoubtedly much to

be criticized in the growing powers of the executive, there is even more to be studied and regularized and brought to the same happy correlation with other branches of social control through law as were the irregularities and departures of the old Court of Chancery. The task has been described as one of the great problems of the democratic world, namely, "how to reconcile the collectivist pressures of a complex modern society with traditional democratic freedoms". In this task I believe it essential that the law schools play an increasingly important part.

The general objectives I have outlined do not call so much for a revised curriculum as they do for a revised state of mind on the part of many in the teaching profession and governing bodies. The next matter which I propose to mention, as one which should increasingly concern the law schools of the future, may well involve a general overhaul of existing subject matter not merely in light of the matters already referred to but, more explicitly, having regard to the end to be achieved by the law in the solution of contemporary problems. In one sense it raises the whole question of teaching what *is* the law or what *ought* to be the law. In a wider sense it raises the second of the major functions which I earlier indicated as inhering in the university law schools, namely, training for the solution of problems of society as well as the problems of individual clients.

There is nothing new or novel in speaking of the legal profession as one of "social engineers"; in the sense of a group claiming to be specialists in social arrangements the profession must accept the compliment. Whether the public feels the same confidence in the ability of these engineers as it does in the engineers working in the realm of the physical and experimental sciences is an altogether different matter. It has been pointed out on more than one occasion that whereas the engineer and the physical scientist relentlessly and even ruthlessly pursue their philosophy of increasing man's control over the physical forces and command the respect of the public as leaders because they "assume in respect of physical nature that it is never better to let well enough alone", the position of the lawyer is quite different. Despite the fact that the legal profession still supply a large number of our political leaders, I think it unfortunately true that there is doubt in the public mind whether the lawyer's outlook or training or basic assumptions are such that lawyers may be trusted so to manage social relations as to keep abreast of fast-moving and challenging social innovations. In contrast to the physical engineer, one writer rather bitingly characterized the lawyer as one

who "is typically frightened by social innovation. When he deals with an eight-cylinder social machine, such as an interlocking corporation or a trial marriage, he typically considers it his primary duty to paint the engine to look like a horse. In doing so, he performs a social function. He permits those who are afraid of engines to continue to believe that they are being drawn by the old gray mare. But he frequently delays the achievement of a frank and thorough-going adaptation to the machine."[3]

Can our university law schools do anything the better to enable students to take that engineering rôle which so urgently needs doing, or is that something foreign to the education of a lawyer? A law teacher worthy of the name is never satisfied with mere exegesis, and a university law school that does not seek to teach law "as it is, how it came to be what it is, and how it ought to be" is not entitled to a place within the university walls. Every good teacher in his own courses is daily testing and probing the solutions of the past with a view to discovering and discussing what the next decision might or ought to be. I am afraid, however, that this has largely been a question of working from within the body of law itself with a view to internal consistency, rationalization, or simplicity and accuracy.

What I am suggesting is that our schools must not be afraid to step outside the boundaries of law itself and examine the results achieved by our existing law: to assess and re-assess the results in light of possible objectives, indeed, in light of whatever information is available. I am not going to bore you with talk about law joining hands with the other social sciences. There has been too much talk along those lines and too little practical action. Nor am I even remotely suggesting that our law schools should seek to produce a race of Roscoe Pounds or Karl Llewellyns. All I am suggesting — and it is certainly not novel — is that there is a crying need in our educational system for what Simpson has referred to as a "school of applied jurisprudence". That surely is neither heresy nor calling for the moon.

It may be that in touching on this aspect of a school's work I may be trenching on the ground reserved for Dean Griswold so far as graduate work is concerned. Frankly, I do not know how a law school, within the time at its disposal and the demands made upon it, can adequately perform what to me is an essential task. I am not chiefly interested in giving formal courses in jurisprudence at the undergraduate level so much as I am concerned in having students consider contemporary social problems, which in

[3] Robinson, Law and the Lawyers, p. 6.

a sense are world-wide, with some indication of the background that produced them, so that they may have an opportunity of considering how best they may be solved under a legal order of democratic society.

As an illustration, we deal in the law of torts with a segment known as defamation, in which the technicalities of libel and slander are explored. What a small, comparatively unimportant part this topic plays in the general problem of the relationship between freedom of speech and government activity! Where in our present curriculum is a student made even remotely aware of the various problems of censorship of moving pictures, of governmental action in limiting the introduction of books in customs departments under headings of obscenity or otherwise, of censorship in relation to broadcasting, and the problems of encouraging communication of news so essential to the operation of the democratic process, as compared to the discouraging and restrictive elements already referred to? What can be done along this line is admirably illustrated by Chafee's report on Government and Mass Communications, a report made to the United Nations Commission on Freedom of the Press. Again, is it not important to consider whether our whole law on the compensation for victims of automobile accidents is worth the effort, the niceties and the expense involved in maintaining an appearance of liability for fault when, in reality, every practitioner knows that juries are actuated by other motives? And what has been the experience of other countries? And what alternatives are there for the solution of a pressing problem? Surely these subjects are worthy of impartial study by the schools, freed of the pressure of groups with axes to grind.

Again, we teach the niceties of criminal law. At the moment we have a commission established by the Dominion Government to examine into the criminal law. Do we teach or explore in our law schools the true purposes of the criminal law, and is this commission willing to examine the means by which we achieve those purposes in this country, or will its effort be confined to trimming away obvious incompatibilities in relation to procedure and things of that nature? I doubt very much, and my doubts were strongly reinforced by reading Jerome Hall's recent book on the principles of criminal liability, whether we really have a theory of criminal law. We certainly have no theory of tortious liability and we seem to take a particular glory in the fact that we really do not know where we are going in that field. Are these not matters of concern to our schools?

And what do our schools say about the change in the concept of property introduced by the corporate system, in which beneficial interest is more and more separated from control and entirely new relationships are established by which persons, not subject to effective control themselves, may literally control the economy of a country? Hundreds of other problems raised by present social conditions will readily present themselves to your imagination from as diversified fields as that of marriage and divorce to the problem of attempting to regulate or alleviate the disturbing effect of depression and expansion in the business cycle.

I repeat again that I do not know how our law schools can handle these matters. I only know that they must be handled at either the under-graduate or graduate level. That there should be some exposure at the under-graduate level seems essential to me as the most effective means of bringing home a sense of social responsibility to members of the profession. It may be that we can expose a student to some consideration of specific problems in his third year. It may be that we shall have to leave a great part of this to graduate work. One of the most hopeful and helpful signs that I have seen is the appearance recently of Simpson and Stone's three volumes on Law and Society, in which the editors, with amazing industry, have attempted to present for consideration problems raised by various periods of social development, including problems of our own industralized democracies and those raised by the growth of totalitarian forms of government. There is some hope in work of this kind that perhaps an all-embracive course can be given to students to bring them the realization of participating in social control through law in a broader sense than our law schools now envisage. Much has been said and written of training for professional and social responsibility. Sometimes the profession urges the teaching of legal ethics. To me that is futile as well as dangerous. There is only one way in which this can be done and that is by showing the rôle which law has played in the course of civilization and the rôle which it must play now, and play hurriedly, if civilization is to survive the problems posed for it by the progress of the physical sciences in a society which so far has shown itself ineffective in producing a social control through law which can guarantee its survival.

In view of the pressing need, I would urge strongly that we must in our third year do something along the lines of contemporary problems, including international problems. Whether we call the study jurisprudence or any other name makes no difference. At the same time, in considering the question, we should be

ashamed that in Canada particularly we have done so little by way of considering the solutions which other systems of law, and particularly those of the civil law, have provided for common problems. If this be due to a felt necessity of satisfying the technical requirements of a professional governing body then I would urge that in this connection, as well as in connection with some of the other problems I have mentioned, the time is long overdue for the establishing of national schools of law beholden to no one save the demands of society and dedicated to the pursuit by all means within their power of producing men who will meet those demands.

In a recent report by the dean of one of our leading medical faculties the following appeared: "A medical school should have as its primary duty the qualification and training of a group of students who will go out to serve the health needs of the nation. It should also serve as a place to which doctors may return to refresh their knowledge — a place where special fields of medicine may be explored, modern techniques acquired, and finally as a centre where research in the many involved problems of medicine may be fostered and encouraged." Have we in Canada one law school properly endowed, properly staffed and capable of meeting, and interested in the main objective of serving three similar needs in the field of human relations? And if not, why not?

It will not do for the legal profession to say that a man's general education is complete before he enters the law school. I believe the time has come when we should cease deluding ourselves and the public by the naive belief expressed on every conceivable occasion that the professional training a lawyer obtains necessarily equips him for any larger sphere of influence in shaping policies pertaining to the administration of justice than any other group of persons. If, as I believe, the lawyer's rôle in society is concerned with resolving problems of compromise and adjustment, a lawyer should be so equipped and so educated that he can appreciate the conflicting claims. In this connection I am pleased to see that the American schools are taking an increasing interest not merely in the problems of the democratic countries but in the social problems of those countries with whose philosophy we may fundamentally differ. It seems idle for lawyers, realizing the necessity of living in a world with other nations whose policies are not the same as ours, even to hope to solve anything without knowing the nature of the social background and the social problems which our neighbour feels we do not understand. This is merely to say that the legal educational pro-

cess can not be confined merely to national problems but today must, of necessity, enter the international field, This, however, I must leave to Professor Parry.

Just before leaving for this meeting, I had the opportunity of reading Dean Griswold's report on the revised curriculum of the Harvard Law School. That curriculum has taken concrete steps towards a realization of the matters which I have been urging before you. In his second year, a student is required to select one of the following courses: American Legal History, Comparative Law—the Civil Law System, Comparison of Soviet and American Law, Jurisprudence and Legislation. The express object of these courses is "that of examining the principles underlying our legal system, so that the student may gain a larger perspective of its aims and its relation to the whole life of man in society". Canadian law schools would do well to watch this experiment.

Perhaps the gist of what I am trying to say has been said much better by a person whom the University of British Columbia honoured in 1938, Arthur T. Vanderbilt. In his final report as Dean of the New York University Law School he had this to say:

> As I look about me and see the need of the world and of our own country for law — a better law, better adapted to the needs of the time, better known, and better administered — and compare the state of legal education in even the most advanced law schools with what is being done and the standards that are insisted on in the medical colleges, the engineering schools, and some of the university schools of business, I wish I had the voice of a prophet to make the members of our profession and the leaders of public opinion everywhere realize what our civilization over the centuries owes to the law and how grave are the risks to which civilization is subjecting itself by its failure to give the law and its related sciences the same degree of scientific study that is cheerfully bestowed on nature and physical man. It is trite to observe that man's mastery over the physical sciences and nature has surpassed his mastery over the social sciences and man, but it is not trite to ask what is going to be done about it, when the consequences of this uneven struggle threaten not only civilization but existence itself.

Our university law schools must teach law as a method of living, not as a way of making a living. The primary end of all legal education must, therefore, be the training of individuals acutely aware of the pressing problems of social adjustment calling for solution, some idea of the possible solutions, and an awareness of the dire peril of failing to find a solution. Above all, they must be actuated by a passionate desire to assist in the solution of those problems. This is the challenge which faces the law schools. It is a challenge which the law schools must meet if our civilization is to endure.