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THE PLACE AND FUTURE OF THE STATE UNIVERSITY LAW SCHOOL

CHARLES TILFORD McCORMICK*

Of the ninety-four schools listed as members of the Association of American Law Schools in the latest hand-book, thirty are state universities. Unlike the University of North Carolina, most of these universities have had their rise in the post-civil-war era, and thus are comparative newcomers in the field of American higher education. Their law schools, accordingly, have usually had a much shorter life than the hundred year span of the School at Chapel Hill. Consequently, it is not surprising that in the past we have looked for intellectual leadership and pioneering in legal education almost wholly to the older endowed institutions such as Harvard and Columbia. Charles Warren is hardly exaggerating when he says, "It was the success of the Harvard Law School under the Story regime which was largely responsible for the growth of American law schools after 1830."[1]

It is common knowledge that in recent years the position of the privately endowed universities has been weakened by the lessening of the rate of their income from investments, whereas the tax-supported universities have been placed, relatively, in a stronger position because of the prospect of fairly secure support from the public treasury. Whatever the reasons, it is certain that the state university law schools, though numbering less than a third of the accredited schools, have in recent decades gained a position of prestige and influence out of proportion to their number. I invite you to make a list of the fifteen law schools in the country which you consider the leaders. I shall not be so rash as to set forth my own list, but I found that in any reasonable selection I could make, at least eight of the fifteen leaders are state university schools. These schools waited for the privately endowed law schools to introduce full-time professional law teachers, the three-year law course, the case-book, and the student-edited law review. Today, a hand in the pioneering is taken by the state university schools. To realize this, we have only to think of the experimentation of Minnesota and Washington with the four-year law course, the great part taken by the group at Pennsylvania in founding the American Law Institute, the

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[1] 2 *History of the Harvard Law School* 496 (1908).

courageous limitation of students at California to those of graduate quality, and the massive accomplishments in research at Michigan.

Michigan, indeed, may be a pioneer in another fashion. Of the 158 colleges and universities in the United States and Canada having an endowment of $2,000,000 or more, eighteen are state or provincial institutions. Of the thirty-six having $10,000,000 or more, seven are public-supported.[2] Among these is Michigan. Its large endowment is unique, however, in including a very substantial foundation of several millions for the support of instruction and research in the school of law. Of course, leadership in law schools is mainly dependent upon being able to provide secure and adequate salaries for the kind of men who can lead. It was not the beauty and impressiveness of Dane and Austin Halls that brought greatness to Harvard Law School, but the powers of men like Story, Langdell, Williston and Pound. It is remarkable that more lawyers of great wealth have not followed the lead of Cook in his gift to Michigan, and likewise that lawyers, who are the most influential advisers in the making of bequests, have not been more successful in pointing out the attractions of law schools, and particularly of state university law schools, as the subjects of fruitful benefaction. This is one of the developments which seems overdue and one of the hopes which the near future may well bring to fruition in the state schools.

Benefactions apart, however, it is manifest that year by year, a greater number of the state law schools are accepting responsibility for sharing leadership with the great national endowed schools. This will be extended further as the governing boards of state universities come increasingly to realize that law schools of distinguished quality can be developed and maintained for a fraction of the cost of medical schools, but with returns in service to the community and in enhancement of the prestige and influence of the university quite comparable to the benefits emanating from a great medical school.

The state law schools, in common with the others, have not stood still during the war period. As law schools they have fallen far back, as their youngest and most vigorous minds, in faculty and student body, were called to the national task. Like the abbé, who was asked what he did during the French Revolution, the law schools can boast, "We survived." But the next few years will witness the swiftest and most vital resurgence of legal education that America has ever seen. Accepting the burden of crowded classrooms, accelerated programs and over-taxed faculties, the law schools will not merely complete the interrupted training of the lawyers who left for the colors. They will bestir themselves forthwith to attack those long-term tasks that were neglected perforce during the years of the locust.

[2] *The World Almanac,* 1945, p. 597.

What are some of these tasks that are pressing for the state law schools? First, we must better cultivate our own gardens. State law schools and their faculties need more fully to realize that law is government and state law is a part of the institution of state government. Albert Coates, with unique courage and imagination, has shown the value of the study by law school men of the operations of state government and the transforming benefit they can contribute in the training of state officers, high and low. May not our law reviews begin to comment occasionally on an opinion of the Attorney General or a regulation of the Corporation Commission, as well as upon statutes and judicial decisions? May we not give adequate attention in our public law courses to state constitutional problems? Another bit of home work that most of us have long neglected is the exploration of the state's legal history, including the history of the bar and of legal education. The long trail in North Carolina that is illumined by such names as Ruffin, Battle, Pearson, and Gaston is an inviting study.

There are other local problems of particular states or groups of states. The recent action of Indiana University in absorbing the Indiana Law School in Indianapolis raises the question whether the states should assume the responsibility for providing part-time legal education of high standard in large cities which have need of such facilities. Another question common to many state schools is whether they are free to attempt to avoid the waste of admitting students destined to fail, by adopting methods of selection involving discretionary administration. Must they confine themselves to pre-law requirements of years of work, subject-programs, and minimum grade averages, or may they use aptitude tests, general knowledge tests such as the Graduate Record examinations, and estimates based on personal interviews, as additional factors of choice? The question of policy is a delicate one in a law school supported by public money, and it may have important implications as to the standards of such law schools and of the bars of their states in the crowded years ahead.

Finally, in cultivating our gardens, we of the state law school faculties, engaged as we are in the job of legal education, need to learn the craft of the teacher. We know something about law. It is time for us to learn something about education. Presumably the people to learn from are not the casual extemporizers, but those who have been actually working in that field. It is true that they are relative newcomers to the campus and like the physical scientists of a hundred years ago and the law teachers of fifty years ago, are still looked upon with condescension if not with hostility by the votaries of the older disciplines. A law teacher in a state university recently had occasion to study the findings of the writers on education, and he reported, "It was with

some surprise that I discovered that our colleagues in education . . . had learned a number of things about teaching techniques and the learning process which have practical value even for law teaching."[3] He has embodied the results of his excursion in an enlightening article which tells us significant facts about such matters as incentives, retention and forgetting, memorizing versus understanding, values of the problem method, concentrated versus extended teaching of a subject, and the analysis of the abilities constituting "intelligence." A committee of our association manned chiefly by teachers from state law schools has done notable work in interpreting this research and studying its application to training in law.[4] The state law schools have an opportunity for leadership in the creative use of such findings in the planning of curricula and in the improvement of methods of teaching and examining.

The greatest challenge and responsibility, however, of the state law schools, newly come into the places of leadership, are not the problems internal to the states and the schools, but the task of adjusting our interests to a wider world. Many realized it before, but in the summer of 1945 it became shockingly apparent to all, that for lawyers as for everyone else, the boundaries of cities and counties, of states and of nations had changed their meaning. We suddenly see with blinding clarity what we glimpsed darkly before, that if we are to survive at all in this new world, we must project our knowledge and our sympathies beyond all these boundaries! We are in the states and of them, but if we are to serve them adequately, we must widen our orbits.

Actually the curriculum of the American law school is astonishingly limited, perhaps the most narrowly technical in the Western world. Despite its obvious superiority to the trade school and office apprenticeship, the Harvard pattern of case-book training shared the narrowness of those systems. The office trained a man to be a client-caretaker. The schools of the Harvard type trained him precisely to the same end. They merely trained him better. This is still the pattern of instruction of all but a few of the state law schools.

We profess the ideal of training for leadership in community, state and nation, but except as training in legal doctrine contributes to this end, we do nothing about it. As we rebuild our curricula, it seems that more attention should be given to the knowledge that a lawyer needs in order to be a community leader—such matters as planning, zoning, and housing come to mind—and to the adaptation of the public law courses not only to the needs of the lawyer serving private clients, but to the

[3] Weihofen, *Education for Law Teachers*, 43 COL. L. REV. 423 (1943).

[4] See Reports of Committee on Teaching and Examination Methods, Frank Strong, Chairman, Handbooks, A.A.L.S., 1942, p. 85; 1943, p. 187.

requirements of graduates who will enter the service of the state and national governments.

Traditionally a state law school is state-minded. It has been hard for us to move from primary attention to state law toward an equally craftsmanlike mastery of the Federal area. The extension of the domain of national control and the practical requirements of our graduates have compelled us to extend our offerings in such predominantly Federal fields as Constitutional Law, Administrative Law, Income Taxation, and Labor Law. It seems doubtful whether even yet our training in the fields of national law and regulation has overtaken the need.

I have before me the catalogue of the University of Texas Law School of fifty years ago. The school had only three full-time members of the faculty, had only a two-year course, had not fully adopted the case-book system, and offered only fifteen subjects. One of those subjects was International Law. Today we have a three-year course and offer a far greater number of subjects, but International Law is not among them. Only a negligible number of state law schools offer any substantial training in International Law or in Comparative Law. It seems clear that we must assume the duty of offering such training. The opportunities, it is true, whether in private practice or in government service, for direct employment in those fields, though expanding, are meager and possibly will never be extensive. But in the future should we not offer our graduates at least an elementary knowledge of international legal relations, and such acquaintance with Comparative Law as will enable them to value with some understanding the merits of our own concepts, standards, and principles of law when compared with those of alien and contrasting systems? Only thus will the state law schools take their rightful place in the training of lawyers for their tasks in the courts and councils of the new and wider world.