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Recent Issues in Legal Education

David F. Cavers
Harvard University Law School

Walter Gellhorn
Columbia University School of Law

John G. Hervey
Oklahoma City University Law School

Richard C. Maxwell
UCLA School of Law

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(*A Survey*)

David F. Cavers[1]
Walter Gellhorn[2]
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[EDITOR'S NOTE: Six issues in legal education, much discussed recently, were posed by the Editors of this Review to leading legal educators.

These questions were and are frankly difficult and controversial, but their answers are important to our system of legal education and to our society. Capsule answers given by these distinguished legal educators are believed to be interesting and significant. Each is a personal rather than a representative opinion.

Brief answers such as these, of course, are not expected to be, nor do they pretend to be, complete or profound. Their purpose is to indicate succinctly the approach of outstanding American "opinion makers" to difficult problems of legal education.]

I. Over-Standardization

The Problem: At the 1961 A. A. L. S. meeting in Chicago, a faculty member of a law school proposed that a committee be established to look into the charge that American law schools are being over-standardized, thus preventing development of a school's special character and thinking, and encouraging dull sameness and monotony.

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[1] Prof., Harvard University Law School.
[2] Prof., Columbia University School of Law.
[3] Dean, Oklahoma City University Law School.
[4] Dean, Univ. of California, Los Angeles, School of Law.
[5] Dean, Southern Methodist University School of Law.
[6] Dean, University of Michigan Law School.
[7] Dean, Cleveland-Marshall Law School.
[8] Dean, University of Miami School of Law.
[9] Dean, University of North Dakota School of Law.
[10] Dean, Chicago-Kent College of Law.

QUESTION: Are American law schools being over-standardized, and what should be done about this?

ANSWERS:

Prof. Cavers: To the extent that American law schools are being "over-standardized," this is due much less to the standards and other requirements of the A. A. L. S., and much more to a lack of imagination and diversity among law faculties. They reflect the satisfaction with which, in general, American legal education has been viewed by the bar and by the educators alike.

Prof. Gellhorn: No, they are not. But some of them need more vitality, more zest for innovation, more inventiveness. The chief danger lies in over-prescription by bar examiners and like authorities. Not a *national* problem.

Dean Hervey: Much depends on how one defines "over-standardization." Personally, I do not feel that they are over-standardized. Such as exists is largely exacted by the rules governing admission to the bar in the admitting jurisdictions.

Dean Maxwell: I do not think that American law schools are becoming over-standardized. There is a great variety in their curriculums and considerable experimentation being carried on. I think there are too many schools whose resources for legal education are below standard and that thought should be given to ways of bringing them up to standard in this respect.

Dean Riehm: To a considerable degree they are being over-standardized and in the writer's opinion this is due to the fact that most institutions feel they can justify their existence only by copying what is done at two or three of the national law schools. What works in Cambridge will not necessarily work in Laramie, Wyoming, and every faculty owes a serious responsibility to define its mission and then offer a program that will support the mission as defined.

Dean Smith: I do not believe over-standardization is a serious problem.

Dean Stapleton: There is a tendency to over-standardization. Admittedly there should be no deviation in respect to the basic substantive courses, *e.g.*, Contracts, Torts, etc., but when Supreme Courts and accrediting agencies dictate course material to the end that no leeway is permissible within the

curriculum then the individual faculties have no chance to explore fields that are either new or covered in fragmentary fashion.

Dean Sturges: Probably so, in so far as "over-standardized" is critical of course alignments, sequence theory, and content of instruction. Struggles against conformity are, it seems, most rewarding in non-classroom activities pertinent to a legal education.

Dean Thormodsgard: No. The first, second and third years of law should be standardized. We should encourage law graduates to specialize during their fourth year in law.

Dean Zacharias: No. The reference at the A. A. L. S. Meeting was one in relation to over-standardization of minimum criteria with respect to physical plant, library content, quantitative standards and matters of like nature, which would have little bearing on either the special character or the thinking of any particular institution. Beyond these minima, each school could be as distinctive as it pleased. Without doubt, there will be no dull sameness and monotony in the field of legal education, nor would any worth-while school feel strait-jacketed.

II. Accrediting Authorities

The Problem: The A. B. A. and the A. A. L. S. in effect have accreditation powers over law schools, and in Ohio also the League of Ohio Law Schools. Lately a new group of college and university presidents has been seeking accreditation authority over all law schools, while other groups apparently would like to do so.

QUESTION: Who or what should be the accrediting authority or authorities over law schools, and why?

ANSWERS:

Prof. Cavers: I believe the accrediting functions of the A. B. A. and the A. A. L. S. are sufficiently distinct to justify both bodies in continuing their work. I see no need for other accrediting bodies.

Prof. Gellhorn: A. A. L. S., as body most fully informed concerning the needs and potentialities of legal education.

Dean Hervey: The power should be lodged in the profession. The reasons are that historically it has been vested there and

the profession best knows the standards which should be exacted of those who propose to enter the profession.

Dean Maxwell: In the last analysis, the only accrediting procedure with real teeth is that procedure which decides which law schools can give instruction or degrees which qualify students to take the bar examination. This power is in the hands of the states. I would hope that eventually all states would require at least the level of performance provided by the American Bar Association accrediting procedure.

Dean Riehm: The problem is not accurately stated, I think; for as I understand it the college accrediting agencies have asked for conferences to determine whether the number of accrediting agencies might be reduced. As a practical matter the ultimate test lies in the courts of the various jurisdictions on the issue of whether they will accept a candidate to take a bar examination. Whether an outside group accredits a law school or not is irrelevant if a state supreme court won't recognize the institution. Thus, it would seem to me personally that accrediting authority is really irrelevant unless it is carried on by an organization such as the National Conference of Bar Examiners, if that organization had authorization from the State Supreme Courts.

Dean Smith: I suggest the A. B. A. Council is the best accrediting agency. It is able to devote full time to the job and to exercise appropriate sanctions.

Dean Stapleton: The American Bar Association through its Legal Education Section should be the sole accrediting agency. The A. A. L. S. cannot be as objective as the American Bar. College and university presidents are not close enough to the field to achieve validity.

Dean Sturges: A. B. A. and A. A. L. S. and no others.

Dean Thormodsgard: The Section on Legal Education and Admission to the Bar of the American Bar Association should be the only agency to accredit or approve law schools.

Dean Zacharias: If the A. B. A. assumed full responsibility for accreditation of law schools, A. A. L. S. would, in all probability, withdraw from this field. Certainly, if there is one good standard authority doing the job, there is no occasion for any duplication of effort. Without doubt, the job should not be given

to any authority composed of lay persons not acquainted with the special problems of the profession—whether composed of academic personnel or not.

III. Publish or Perish

The Problem: In some law schools a faculty man's progress is measured by his published books or articles, while in some this factor seems relatively unimportant, and in others some faculty men never write anything and yet are esteemed highly.

QUESTION: To what extent, if any, is a law professor's writing a criterion of his professional quality?

ANSWERS:

Prof. Cavers: A law professor's writing may indicate a brilliant mind, sound judgment, exceptional research capacity, or the lack of these qualities. Ordinarily it will fall within these extremes and so one may have to rest one's opinion of the professor's ability on other manifestations. A non-writing professor may, of course, be a good, even an excellent, teacher. A law school which is staffed predominantly by non-writing teachers is not discharging its responsibility as a branch of a university to contribute to knowledge.

Prof. Gellhorn: Law faculties have a dual responsibility: to teach and to contribute fresh ideas. I do not contend that writing is the sole criterion of a law professor's achievement, but it is an important one. Merely having some pages in print should not be accepted as an accomplishment. The *quality* of what has been published is what counts. Almost any balderdash can find its way into print.

Dean Hervey: None as a usual rule. Naturally, it depends on where the school places the accent or stress. Some engage teachers to teach—others to research, write, and publish.

Dean Maxwell: With some rare exceptions, most competent law professors are moved to comment in an original or useful way on legal problems.

Dean Riehm: You can not generalize an answer to this question. It must be answered on an individual basis.

Dean Smith: It is only a factor. There is room for the able teacher whose publications are minimal. Nevertheless, the best

faculty member is one who is both a good teacher and a productive scholar. It is my belief that research and writing enhance the classroom capacities of the teacher.

Dean Stapleton: Unfortunately faculties are chosen largely by reason of degrees earned or books published which, on the face of the record, enhance the prestige of the school. A faculty member's most important function is his teaching ability and while there is some correlation between writing and teaching, good teachers chosen under the prevailing system come in large part by accident.

Dean Sturges: Very substantial; but not exclusive.

Dean Thormodsgard: All good law teachers are not research scholars. All research men are not good teachers. A good teacher should be given extra compensation if he is competent to do research. Administrators should recognize the differences between good teaching and quality work as a research student or teacher. We need both.

Dean Zacharias: Any evidence of scholarly attributes—written or otherwise—serves as a criterion of professional quality, but no one factor should be the sole criterion. If a man demonstrates capacity in his basic function—that of teaching students enrolled in his courses—this should be the principal factor in determining his progress in the academic field. Other elements may then be taken into consideration but would be done with full knowledge that some persons are better teachers in the classroom than they are writers, and vice versa.

IV. Preparation for Non-Practicing Law

The Problem: Increasingly more students are coming to law schools who do not intend to practice law but intend to use their legal training to advance their careers in other fields. This has been condemned as very nearly fraudulent, and praised as a valuable contribution to society generally.

QUESTION: What should be the attitude of law schools towards students who do not intend to practice law?

ANSWERS:

Prof. Cavers: If a law school is able to admit all students who apply with academic qualifications, I see no reason to exclude persons not planning to practice. If a selection must be

made and if it is possible to ascertain the motives and purposes of the applicant with a reasonable degree of reliability (a very difficult matter), I should think the school would be justified in favoring to some extent the applicants who seem clearly determined to practice.

Prof. Gellhorn: I do not know the factual basis for your statement that this is an "increasing" problem. Nor have I heard either the condemnation or the praise to which you refer. I rather suspect that this is not a genuine issue. In any event, I believe that law schools should welcome diversity in their student bodies.

Dean Hervey: Law schools should be for those who intend to practice law. Let those who want it for business purposes pursue the business law courses in schools of business administration. Law School instruction should be pitched for prospective practitioners. It downgrades the pitch of the instruction and the scholastic standards, as I view it, to have classes filled with those who do not intend to practice law.

Dean Maxwell: I think a legal education can be very valuable in many areas of activity. I cannot believe that the question is directed toward a real problem.

Dean Riehm: Those students should be treated just like the students who intend to practice. Our task is to prepare lawyers for practice, not to run a three ring circus, and if others wish to obtain the advantages of law study the price they must pay is the involvement in areas that are not of particular interest to them.

Dean Smith: I see no reason to exclude them, nor do I see any objection to this practice. On the contrary, I believe that legal training with its emphasis upon careful evaluation of facts, and with its ability to develop skills in decision-making is a desirable training for many other careers than private practice of law.

Dean Stapleton: Any educational process that raises the level of the student and in turn the society in which he operates is a valuable one. The law schools should not be concerned as to the ultimate use of the knowledge and skills imparted if the end object be in itself basically good and useful to society as a whole.

Dean Sturges: Favorable.

Dean Thormodsgard: As a citizen in a republic, a person is entitled to study law—even if his plan is to become a poet, a commentator, a business man or as a lawyer.

Dean Zacharias: There would seem to be no reason why persons other than those seeking admission to the legal profession should be discouraged or denied the opportunity of seeking specialized training. While the principal function of professional schools should be recruitment of the profession, such schools are also educational institutions and education may be used in other lawful ways than in private practice.

V. Integration of Faculties

The Problem: Some university administrators want the law school's faculty to be an integrated part of the entire university faculty, while most law school administrators want their law faculties to be substantially autonomous.

QUESTION: Should the law school faculty be an integrated or autonomous part of the university faculty?

ANSWERS:

Prof. Cavers: This is a difficult question to answer, and any answer should be based on knowledge of the structure and character of the school and university involved.

Prof. Gellhorn: The issue as you state it is unreal, so far as my own experience goes. I strongly believe that law schools should be a part of a university, drawing strength from related disciplines and having a sense of intellectual kinship with colleagues in other faculties. That doesn't mean that the faculty shouldn't be "autonomous" in conducting its own affairs—such as curriculum, admissions, choice of new members, and so on. I reject the notion that integration and autonomy are, in this context, antonyms.

Dean Hervey: They should be substantially autonomous.

Dean Maxwell: In many respects a law school faculty can add considerable strength to general university activity, but certainly the internal affairs of a law school should be subject primarily to the judgment of its faculty.

Dean Riehm: I have never heard that some university administrators want the law school's faculty to be an integrated

part of the entire university faculty. They may decry scholarly isolationism but to have all one faculty would be to destroy the very concept of a university. I think law faculties, as all other faculties, must be autonomous, but they should not work in isolation and there should be much greater interdisciplinary exchange of ideas if we are to keep pace in the development of the law.

Dean Smith: Administrative autonomy is desirable. Scholarly integration (also desirable) can be achieved without administrative integration.

Dean Stapleton: The law school faculty should be an autonomous part of the university faculty if for no other reason than to avoid even the suggestion of being submerged by the greater body.

Dean Sturges: Autonomous but engaged in friendly and practical relationships outside.

Dean Thormodsgard: The Law School faculty should have autonomy.

Dean Zacharias: Not applicable to this College, which is non-university affiliated. As general comment, because professional training should not be in the hands of persons other than members of the profession, there would seem to be sound reason for a substantial degree of autonomy.

VI. Admission Policy

The Problem: Some law school administrators argue that admission to law school always should be highly selective. Some prefer a liberal admissions policy and strict attrition and eliminations, thereby at least "giving a chance" to doubtful candidates.

QUESTION: Should law school admissions be highly selective with liberal retention, or based on liberal admissions with strict attrition?

ANSWERS:

Prof. Cavers: If a law school has facilities for handling poorly qualified students without strain, I believe it would be justified in liberal standards of admission—provided that "liberality" doesn't become no real standards of admission. The presence of ill-qualified, indifferent students can handicap the con-

duct of the first year work for the others. And "attrition" under such circumstances may not in fact be "strict," as the bar examinations will later demonstrate.

Prof. Gellhorn: Highly selective, for two reasons: first, a selected student body progresses faster and is thus fairer to those who have been admitted; second, an unselected student body causes wounding experiences for those who are ill equipped for law study and should not have been accepted in the first place. No young person should be needlessly and callously exposed to the likelihood of failure at the outset of his career. Rather, he should be steered into channels more congenial to his particular capacities.

Dean Hervey: I think that a school can come out at the same place under either policy. I personally prefer selective admissions. But schools which are public-related, state and municipal institutions, have to be practical.

Dean Maxwell: Insofar as reliable criteria can be utilized to restrict law school admission to those students who have a reasonable chance for success in the study of law, they should be applied.

Dean Riehm: I think a middle of the road policy is appropriate here for good arguments can be made on either side of the issue, but I think a compromise which can always accommodate the exceptional individual case is by far the best approach.

Dean Smith: This is not susceptible of categorical answer. The selective admission policy is certainly defensible where applications are numerous.

Dean Stapleton: Liberal admissions, granted a reasonable minimum requirement, with strict attrition if the candidate cannot perform. This places a greater burden on the school in respect to budgeting but the rule should only be amended if by reason of it some top students are precluded from admission.

Dean Sturges: Highly selective; there are ways readily available to search out the less competent records for the slow bloom.

Dean Thormodsgard: Law schools should have a liberal policy for admission. Many college students are active in athletics, dramatics, journalism, campus politics, etc. If a student cannot do quality work as a law student, he should be en-

couraged to acquire good study habits; to acquire skill in advanced composition, how to write examinations. In other words, he should have real professional guidance.

Dean Zacharias: Admission to law school may already be said to be highly selective because of minimum standards fixed for admission as a regular student which quite naturally tend to limit the number of applications for admission. Beyond this point, the matter should be left to the judgment of the individual school or its admission officers, to be guided by such information, testing or other predictive devices as may be available only to resolve borderline questions.