

# Washington University Law Review

---

Volume 59  
Issue 3 *Legal Education*

---

January 1981

## Commentary: Legal Education's Future; A Broader Horizon or a Narrowing Window?

Charles D. Kelso  
*University of the Pacific*

R. Randall Kelso  
*Columbia University School of Law*

Follow this and additional works at: [https://openscholarship.wustl.edu/law\\_lawreview](https://openscholarship.wustl.edu/law_lawreview)



Part of the [Legal Education Commons](#)

---

### Recommended Citation

Charles D. Kelso and R. Randall Kelso, *Commentary: Legal Education's Future; A Broader Horizon or a Narrowing Window?*, 59 WASH. U. L. Q. 661 (1981).

Available at: [https://openscholarship.wustl.edu/law\\_lawreview/vol59/iss3/3](https://openscholarship.wustl.edu/law_lawreview/vol59/iss3/3)

This Symposium is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact [digital@wumail.wustl.edu](mailto:digital@wumail.wustl.edu).

# COMMENTARY

## LEGAL EDUCATION'S FUTURE: A BROADER HORIZON OR A NARROWING WINDOW?

CHARLES D. KELSO\*  
R. RANDALL KELSO\*\*

### INTRODUCTION

Professor Charles McManis suggests that by studying the history of American legal education—and American political life in general—we can better understand the processes that change institutions such as American law schools. We can thus better understand their present and predict their future.

Professor McManis' basic thesis is that a dialectic process has been at work on two models of legal education, the "broad" and the "narrow."<sup>1</sup> He tells us that forces which led law schools to abandon the broad view at the end of the first century of American legal education (approximately 1875) and which favored the narrow view during its second century (1875-1975) now foretell a return to the broad view.

The two curricular perspectives can be summarized briefly:

	<u>NARROW VIEW LIMITED TO:</u>	<u>BROAD VIEW; THE NARROW PLUS:</u>
Subject Matter (What is Taught)	Case Law and Judicial Process	Legislative and Administrative Law and Process; study of extra-legal materials
Method (How Taught)	Case method predominates; practice perspective; case skills training	Policy-oriented perspective; applied skills training; empirical and humanistic study of law; impact of law on society
Objectives (To What End) and Structure (By Whom and To Whom)	Develop private practitioners (particularly those who will represent private interests before judicial tribunals)	Public practitioners of law; public officials and administrators; non-professionals

---

\* Professor of Law, University of the Pacific, McGeorge School of Law. A.B., 1946, J.D., 1950, University of Chicago; LL.M., 1962, Columbia University; LL.D., 1966, John Marshall Law School; J.S.D., 1968, Columbia University.

\*\* Associate in Law, Columbia University. B.A., 1976, University of Chicago; J.D., 1979, University of Wisconsin-Madison.

1. McManis, *The History of American Legal Education: A Revisionist Perspective*, 59 WASH. U.L.Q. 597 (1981). Not surprisingly, Professor McManis associates the "broad" view with more positive consequences.

Professor McManis' history of American legal education is revisionist and, therefore, contentious. It is customary to locate the beginnings of American legal education in Litchfield and other proprietary law schools of the late 1700s that taught a narrow common-law curriculum. Professor McManis rejects this view. Instead, he finds the beginnings of modern American legal education in the first university professors of law, such as George Wythe at William and Mary. Beginning in 1779, the programs in which Wythe and other professors participated did not separate professional training in law from general academic education in politics and philosophy. Wythe, for example, lectured on politics and philosophy and also conducted moot court and moot legislative exercises. Practical law was thus combined with practical politics to provide training in citizenship and public service. Thomas Jefferson created such a professorship at the University of Virginia. Largely because of the influence of Jefferson and his Republicanism, a number of such programs spread throughout the South.

After the Civil War, political and educational forces combined to mold education to a narrower view—a view frequently associated with Dean Langdell, inventor of the case method in 1873. During this period of legislative inaction, the judiciary shaped legal education by court opinions and by scholarly writings that brought coherence to the common law. One result, says Professor McManis, was that “[a]s law-making power increasingly became concentrated in the judiciary, training for public service increasingly became synonymous with training in private law for those preparing to practice before the courts.”<sup>2</sup>

Concurrently, the universities, faced with declining enrollments, engaged in a tactical retreat by acceding to demands for practical training. A university that sheltered a professionally oriented law school could more easily continue academic training in its other departments. In the future, says Professor McManis, the broad view may return.<sup>3</sup>

The thesis of this Commentary, contra to the McManis article, is that:

- (1) The curriculum and perspective of law schools today are broader

---

2. *Id.* at 643.

3. A less revisionist, albeit more summary, account of legal education in England and America before the twentieth century can be found in Stein, *The Path of Legal Education From Edward I to Langdell: A History on Insular Reaction*, 57 CHI.-KENT L. REV. 429 (1981). See also Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 762-90.

than they have ever been, especially for students who elect to seek a broad legal education.

- (2) Even broader legal education is not likely because factors both within and outside the universities point toward a narrowing of law school programs.
- (3) There is at best an uneven case on the merits for further broadening of legal education.

### I. TODAY'S CURRICULUM: A SMORGASBORD OF BROAD AND NARROW

At the outset, it is necessary to define what is included within the phrase "law school curriculum." Professor McManis seems to include within his definition any classes that may be given as part of a continuing legal education program, including an undergraduate course relating to law or an adult evening education program. To McManis, such instruction seems relevant in determining whether a legal curriculum is broad or narrow. We will postpone consideration of those aspects of "legal education" because the main focus of law schools is the training of students who seek a J.D. degree.

It is clear that in J.D. programs today the breadth of curricular choices available to students in most schools, whether measured in terms of subjects, methods, or both, is at an all-time high. Law schools are on a plateau at the end of a fifteen-year period of unparalleled expansion. Between 1965 and 1975 the post-war baby boom reached the law schools and nearly doubled enrollment.<sup>4</sup> The average size of a law school student body increased from 439 students to 713. During the same ten years, the average size of a law school faculty rose from fifteen to twenty-two full-time teachers, and the total number of full-time faculty members increased from 1,975 to 3,525.<sup>5</sup> Thus, the law

4. The American Bar Association's *Review of Legal Education in the United States*, Fall 1979, provides the following data at page 63:

<u>YEAR</u>	<u>TOTAL LAW SCHOOL ENROLLMENT</u>
1950	53,025
1955	40,347
1960	43,695
1965	65,057
1970	86,028
1975	122,542
1979	126,915

5. See Kelso & Kelso, *Must Bar Exams Distort Legal Education?*, JUDGES' J., Spring 1977,

schools had an array of new teaching resources to allocate much as they pleased throughout the curriculum.

Most of the new teachers were assigned to bar examination subjects or to courses related to bar examination subjects.<sup>6</sup> In these courses the standard teaching perspective is narrow, or is broad only because the subject includes statutes and regulations or because, in some subject-areas, one-half of the lawyers involved in the cases are likely to be employed by the government. Many new teachers, however, were recruited into clinical programs.<sup>7</sup> These programs are broad-gauged because they teach applied skills, demonstrate the impact of law, and force the students to confront live problems of professional responsibility. Likewise, courses focusing on applied skills, such as negotiation, counseling, and interviewing, were added to the curriculum of many law schools.<sup>8</sup> A number of new courses also were created in burgeoning legal areas governed largely by statutes and regulations.<sup>9</sup> In many of these new areas the law was undergoing such rapid develop-

---

at 16, 18. The data are available in the yearly American Bar Association Review of Legal Education in the United States.

6. Kelso & Kelso, *supra* note 5, at 18. Fields in which the number of full-time teachers increased more than 150% between 1965 and 1975 were as follows (with the total number of full-time teachers for 1975 enclosed in parentheses):

**BAR EXAM COURSES**

Criminal Procedure (443); Property (527); Federal Taxation (636); Torts (502); Commercial Law (272).

**BAR RELATED COURSES**

Securities Regulation (188); Corporate Finance (228); Land Use (202); Anti-Trust (296); Legal Profession (297).

**SPECIALTIES**

International Organizations (50).

**PRACTICE SKILLS**

Arbitration (60); Clinical Teaching (489); Trial and Appeal Practice (432).

**NEW FIELDS AND HORIZONS**

Credit Transactions (202); Environmental Law (195); Civil Rights (101); Regulated Industries (100); Law and Poverty (86); Women and the Law (82); Law and Psychiatry (71); Consumer Law (64); Juvenile Law (62); Water Law (45); Law and Science (96); Law and Society (96); Law and Medicine (161); and Military Law (28).

*Id.* at 19. For a critical appraisal of the bar exam in general, see Kelso, *In the Shadow of the Bar Examiner, Can True Lawyering Be Taught?*, LEARNING & L., Winter 1976, at 38.

7. See Gee & Jackson, *supra* note 3, at 881-82.

8. *Id.* at 877-81. See also Galinson, *Interviewing, Negotiating, and Counseling*, 27 J. LEGAL ED. 352 (1976).

9. See note 5 *supra* (New Fields and Horizons subheading). These courses, in general, were in response to increased legislative activity during the New Deal and Great Society administrations.

ment that attention naturally focused on factors underlying its development and on what the law should become.

It is also possible to inject a broad perspective into traditional first year courses originally built around judicial decisions. Torts or Property could be used as the background for an empirical investigation into whether judicial decisionmaking or some alternative dispute processing system is a more effective way to resolve disputes. Contracts could be a testing ground for "broad-based" questioning of the premises of private commercial law. Most teachers, however, are likely in a course such as Contracts to concentrate on judicial reasoning and on relationships between judge-made law, the Restatements, and statutes such as the Uniform Commercial Code. The values at stake are likely to be seen as an interplay of familiar homilies such as expectation interests, reliance, and restitution. The possibility for broader treatment nevertheless remains.<sup>10</sup>

Never before in American legal education have so many facets of the law and its practice been the subject of law school courses. Because at least most of the curriculum is elective after the first year, students today have the opportunity in courses, seminars, and clinics to develop skills for private or public practice in litigation or office work. Fewer courses can be found in which policy science is central. Even so, the curriculum usually will include a course or two in jurisprudence, economics and the law, social legislation, etc. In most schools only a few non-clinical courses are built around an empirical study of the impact of law on society (other than the impact mirrored in judicial decisions or an occasional footnote in a coursebook). However, a student who looks can usually find three or more courses in the catalog that involve empirical research. Also, opportunities exist for individually guided research.

The demand for such courses is admittedly not substantial, perhaps because law students do not view that work as central to what they need for entering the profession or for success in its practice. It may also be true that first year courses tend to persuade students that such work is not in the mainstream. Whether the law schools should do more to whet student appetite for a broader curriculum is, of course, a debatable question. We consider that question in Section III of this

---

10. A full-context perspective of Contracts problems is embodied in new teaching materials being prepared by a group of teachers at the University of Wisconsin School of Law that includes Professor Stewart Macaulay.

Commentary. We turn now to the question of whether a broader perspective seems likely to emerge.

## II. WHY THE FUTURE PORTENDS A NARROWER VIEW

### A. *Factors Traditionally Recognized as Influencing the Curriculum*

Whether the range of subjects included in law school curricula becomes broader or narrower and whether the curriculum will be taught from a broader or narrower perspective depend upon forces both within and without the law schools. Many of those forces are quite familiar.

#### 1. *Internal Forces*

The single most powerful internal force is the budget. How much money will be made available to the law schools from donors, state legislatures, and university budget processes determines what the law schools can hope to do. Most law school budgets depend substantially on tuition income. If enrollment falls, tuition income will decrease. For the years ahead, most observers predict a decline in student enrollment. External sources of money are not likely to replace the loss of tuition income. The Council on Legal Education for Professional Responsibility (CLEPR) is no longer funding clinical programs. No other private foundation has taken up that slack, and in the near future Congress is not likely to support law school building programs or legal service activities within the law schools. Congress is providing less grant money to the states, and state legislators will be looking for places to cut their own state budgets.

It thus seems likely for the decade of the '80s that at least some of the law schools and their universities will face the question of whether the existing number of instructors can be maintained. Some cuts may be handled merely by eliminating one section of a course currently offered twice in the same semester or academic year. Some courses may come to be offered every other year. A few cuts may go even deeper and require that the curriculum be trimmed. Expensive clinical programs and seminars on newly developed fields will be tempting places to begin. They probably will have less powerful support in faculty councils than will the more traditionally established courses that relate to the

bar exam and that draw heavy student enrollment.<sup>11</sup>

There was a time in the late 1960s when some students clamored for courses that they considered relevant to current social problems. They wanted to re-examine the foundations of the legal system, consider alternatives, and explore implications for a new style of life. A number of those concerns were embodied into law by Congress and state legislatures, and they have been absorbed into courses on the environment, on poverty, on women and the law, and the like. The pressure for continued change in that direction has now slackened. Students seem far more concerned with getting a foothold in the profession as it now exists and preparing themselves in a traditional fashion.<sup>12</sup> Bar-related courses draw the largest enrollment.

Other internal forces press against any substantial change, broad or narrow. First, the law schools have grown large, and inertia is the strongest force in any large institution. Second, the strongest economic motivation for scholarship in legal education is coursebook royalties, and a large publishing system is entrenched. It is not easy to bring about substantial changes in the format or content of law school teaching materials. Dramatic experiments are few and far between.

## 2. *External Forces*

The American Bar Association's program of accreditation is administered by the Council of the ABA's Section of Legal Education and Admission to the Bar. The Council attempts to ensure by its visitation program and by gathering annual statistics that law school libraries are adequate to user needs, that the faculty-student ratio is appropriate to the program, and that a reasonable portion of law school tuition income is used for law school purposes and not diverted to other uses.

---

11. The preference of law students for bar related courses is thoroughly documented in D. JACKSON & E. GEE, *BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION* (1975).

12. The high number of law graduates in recent years and thus the possibility of an increasingly vigorous scramble for employment after graduation may be, in part, a cause of this changing attitude. Professor Roger Cramton recently noted:

The number of law graduates in recent years has affected the psychology of both law students and practicing lawyers. The scramble for employment has significantly influenced the hidden curriculum of law schools—that amalgam of attitudes, values, activities, and experiences that may not be part of the formal curriculum but is a significant part of the total educational experience. Law students, in their preoccupation with securing employment, select courses that they believe to be preferred by employers, participate in law practice during law school, and spend an enormous amount of time and psychic energy on job hunting.

Cramton, *Change and Continuity in Legal Education*, 79 MICH. L. REV. 460, 462 (1981).



The Council does not, however, intrude very deeply into the curriculum. ABA curriculum requirements call for offering instruction in subjects generally regarded as the core of the law school curriculum, offering training in professional skills, and requiring for all students at least one rigorous writing experience and some training in professional responsibility.<sup>13</sup> Beyond this they do not go. Thus, schools are free to present a broad or a narrow perspective, as they wish. The membership requirements of the Association of American Law Schools do not explicitly require any different kind of program, though they do call for a commitment to research.<sup>14</sup> Students, however, tend to select elective courses that have immediate relevance for the bar exam. To the extent that bar exams stress narrow subject matter and narrow skills, the bar may provide indirect pressure for a narrow legal education.

In recent years the judiciary has sought to influence legal education in a single direction that falls within McManis' broad category.<sup>15</sup> Some judges and several court-appointed committees have called for more training in practical skills, particularly trial advocacy.<sup>16</sup> Several state supreme courts have made instruction in certain traditional subjects a prerequisite for taking the bar exam or for admission to practice.<sup>17</sup> An ABA committee formulated guidelines for clinical legal education that, in general, endorsed what the courts have been saying about competence and skills training but sought to put skills training in a broader context.<sup>18</sup> As noted, there has been a substantial increase in clinical courses and practical skills instruction. Some of this may have been due to judicial pressure. More of it was due to the encouragement of the CLEPR, which made grants to law schools to aid in the establishment of clinical programs. CLEPR is no longer making its grants,

---

13. See ABA STANDARDS AND RULES FOR THE APPROVAL OF LAW SCHOOLS, Standard 302(a) (1979).

14. Faculty members have an important responsibility to advance as well as to transmit ordered knowledge. A member school has an obligation to assist its faculty to discharge this responsibility. Bylaws of the Association of American Law Schools, Inc. 6-8(c) (1980).

15. See Kelso, *supra* note 6, at 38; Kelso & Kelso, *supra* note 5, at 17.

16. Burger, *Advocacy on Trial*, LEARNING & L., Spring 1974, at 26; Pedrick and Frank, *A Clare and Present Danger*, LEARNING & L., Winter 1976, at 46; *The Open Door Policy on Trial: A Symposium*, LEARNING & L., Winter 1975, at 46. See also Gee & Jackson, *supra* note 3, at 909-10.

17. Boshkoff, *Indiana's Rule 13: The Killy-Loo Bird of the Legal World*, LEARNING & L., Summer 1976, at 18; Givan, *Indiana Rule 13: It Doesn't Invite Conformity. It Compels Competency*, LEARNING & L., Summer 1976, at 16. See also Gee & Jackson, *supra* note 3, at 905-08.

18. AALS/ABA COMMITTEE ON GUIDELINES FOR CLINICAL EDUCATION, GUIDELINES FOR CLINICAL LEGAL EDUCATION (1980).

however, and what was once a crescendo of judicial concern seems to have abated. There now seems to be enough clinical and trial practice instruction to satisfy most of the judicial concern.

The bottom line for the immediate future is that curriculum decisions will probably be more influenced by internal factors—which press for narrowing of the curriculum—than by external factors. Decisions to eliminate all clinical programs or all practical instruction would command the attention of the ABA and of the judiciary. Trimming and adjustment are not likely to get much attention.

### B. *The Influence of Political Forces*

McManis asserts that yet another external force affects the breadth or narrowness of legal education: political forces in the society. He concludes that this force points toward a broadening of American legal education. This original contribution deserves discussion.

McManis' basic insight is to associate judicial supremacy with narrowly focused legal education. This leads us to ask whether legislative supremacy, on the other hand, should be associated with broadly focused legal education. During the first period of legislative supremacy in this country's history—the Jeffersonian era and Jacksonian democracy—broadly based law professions vigorously competed with the narrower proprietary schools. Broad training for citizenship and public service was considered a particularly worthwhile form of education.

During the era of judicial supremacy that followed the Civil War, however, the narrow view of legal education won out. During this era, McManis notes, judges both “dominated the faculties of a number of academic law schools” and constituted “their chief rivals, both in their doctrinal writing . . . and in their own private law schools. If, after all, the law is what judges say it is, what better place to learn the law than from the person who purported to discover it . . . .”<sup>19</sup> McManis concludes:

[T]he decline of the broad view of academic legal education after the midpoint of the nineteenth century was attributed not so much to the triumph of the Harvard model of legal education as to the triumph of the judiciary.<sup>20</sup>

McManis' analysis appears to presuppose a dichotomy between two

---

19. McManis, *supra* note 1, at 643.

20. *Id.*

kinds of societies: common law societies and civil law societies. This dichotomy seems correct at the general level at which it is offered. One can nonetheless question whether the analysis correctly foretells a return to the broad model of legal education. Our hunch is that the political forces existing and gathering in society today tend to reinforce all of the other external and internal forces that press toward the narrow version of legal education. Clarification of the dichotomy may help evaluate its use for prediction.

In his discussion McManis alludes to a number of differences between common law and civil law systems that can be reformulated in the following way.<sup>21</sup> In common-law systems, the judiciary is central to much of legal decisionmaking. Because the common law grows from fact analysis applied to individual cases, it tends to emphasize individual rights fixed in rules and principles. The decisionmaking thus involves more narrowly focused analysis than the broad-based policymaking that is typical of legislatures.<sup>22</sup> The overriding concern of a common law system is likely to be the protection of individual personal and property rights against majoritarian tyranny.<sup>23</sup> Thus, common law systems are typically associated with capitalism. The roots of the common law are in England, with the early American counterpart being the Federalism of Alexander Hamilton.<sup>24</sup> When the system oversteps its bounds, it is likely to be because the judiciary has too greatly emphasized individual rights to the exclusion of legislative enactments. *Lochner v. New York*<sup>25</sup> stands as the best American example.

Civil law societies, on the other hand, start from the premise of unquestioned legislative supremacy. Legislation, not appellate opinions, is the main legal source. Legislatures balance social policies. Thus, arguments made before a legislature are more likely to be concerned

---

21. *Id.* at 638-39. The dichotomy between common law and civil law societies that follows in this article is based on McManis' discussion but goes somewhat beyond it in systematizing a distinction between common law and civil law systems about which McManis only hints.

22. The distinction drawn here is rooted in the distinction drawn by Ronald Dworkin between rules and principles, about which courts are primarily concerned, and policies, about which legislatures are primarily concerned. See R. DWORKIN, *TAKING RIGHTS SERIOUSLY* 81-130 (1977). The distinction is summarized neatly in Richards, *Taking Rights Seriously: Reflections on Dworkin and the American Revival of Natural Law*, 52 N.Y.U. L. REV. 1265, 1306-13 (1977).

23. See, e.g., J. LOCKE, *TWO TREATISES ON GOVERNMENT* (P. Laslett 1960).

24. See Hurst, *Alexander Hamilton, Law Maker*, 78 COLUM. L. REV. 483 (1978).

25. 198 U.S. 45 (1905) (state maximum work week law declared unconstitutional for interfering with the freedom of master and employee to contract with each other).

with general welfare than with individual rights.<sup>26</sup> As the individual rights emphasis of the common law is compatible with capitalism, the general welfare focus of the civil law tends toward socialism. The civil law system's modern-day roots are in France and the Napoleonic Code. The American revolutionary counterpart to the civil law system is the Republicanism of Thomas Jefferson. When the civil law system oversteps its bounds, it is likely to be in the direction of denigrating individual rights by placing too great an emphasis on the collective. The fact that all Marxist societies have developed within civil law countries and adopted civil law systems is the legacy of the civil law system's errors.<sup>27</sup> Judicial review, given the premise of legislative supremacy, is likely to be limited to a representation reinforcing model, à la John Hart Ely.<sup>28</sup>

As regards legal education, the corollary is between common law systems and narrow legal education, and civil law systems and broad legal education. When the judiciary exercises broad decisionmaking power, when the relevant standards for decision are rules and principles involving individual rights (particularly property rights), and when the system tends toward representing private interests, legal education will tend to be focused on the narrow skill of representing private interests before courts. Instruction will be on how to read judicial opinions and how to argue cases to a court. Under a civil law system, it is more important to have the broader ability to understand the legislative and administrative processes, argue policy to a legislative committee, and

---

26. See generally R. DWORKIN, *supra* note 22, at 83.

27. See J. HAZARD, *COMMUNISTS AND THEIR LAW: A SEARCH FOR THE COMMON CORE OF THE LEGAL SYSTEMS OF THE MARXIAN SOCIALIST STATES* (1969). A related problem with civil law systems is their tendency to be manipulated by demagogues who claim to represent the will of the masses. Napoleon's statement, "The Revolution is Me," is reflected in civil law personality cults from the Fascist right to the Marxist left. (That society is supposed to have, in Rousseau's phrase, one "common will" may account for the plausibility of the demagogue's claim.)

In the United States, one can also see the results of an errant civil-law process at work. In our political history, we have had only one politician who combined collectivist learnings with the Napoleonic attitude and the demagogery one associates with a civil-law system gone awry. That person was Huey Long. It is merely a coincidence that he came from and was able to hold sway over our only civil-law state, Louisiana?

28. J. ELY, *DEMOCRACY AND DISTRUST* (1980). An additional correlation between common-law and civil-law societies can be suggested. Because civil-law systems start with general rational principles of social welfare, arguments within such a system are more likely to be phrased in terms of grand systems of over-arching rationalized ideology. It is the French, Germans, and Russians, all from civil-law countries, that one associates with ideological tracts. Common-law analysis, on the other hand, starts from the facts given in an individual case. Thus the emphasis is more likely to be on solving the particular problem first. The pragmatic philosophies of William James and John Dewey are consistent with this type of analysis.

base arguments upon the general welfare of the society instead of individual rights. Public solutions bargained out in the legislative arena, rather than private solutions structured by the common law of the courts, will be more the focus of a lawyer's training. To the extent that a legal system tends toward socialism, education for such a society tends to be broader as there is a greater need in socialistic societies for public practitioners concerned with planning public policy.

The above dichotomy helps reveal certain tendencies in the American political scene over the past fifty years that, consistent with McManis' analysis, might support a broadening of American legal education. The triumph of Roosevelt's New Deal reaffirmed the legislature as the central balancer of public policy decisions in our society. The program of the Great Society stressed public solutions and legislative answers to societal problems. Although the judicial activism of the Warren Court led to acquiescence in an activist judiciary by many constitutional law scholars (perhaps because of agreement with that Court's substantive decisions), the emergence of the Burger Court in the 1970s has renewed calls for limits on judicial review. Congressional supremacist positions, combined with judicial restraint, have become the fashion.<sup>29</sup> The ideal of process-based rights, limiting the Court to ensuring better access to the political process, has been in vogue.<sup>30</sup> Further, codification efforts have gained force at the state levels, as state legislatures, now meeting frequently, have begun to reassert decisionmaking authority that previously had been left up to "the only ongoing political institutions in the state capitals,"<sup>31</sup> that is, the courts. These events, increasing legislative power at the expense of the courts, should lead to a broadening of legal education if McManis is correct about the interplay of such political processes and legal education.

Some evidence for this exists. The infusion of lawyers into public policy positions in the government at the time of the New Deal led to

---

29. Concern over the appropriate limits on judicial review and emphasis on congressional supremacy runs from persons on the conservative end of the political spectrum, see Friendly, *The Courts and Social Policy: Substance and Procedure*, 33 U. MIAMI L. REV. 21 (1978); Rehnquist, *The Adversary Society*, 33 U. MIAMI L. REV. 1 (1978), to persons on the liberal end, see Tushnet, *Constitutional and Statutory Analysis in the Law of Federal Jurisdiction*, 25 U.C.L.A. L. REV. 1301 (1978); Tushnet, *Rethinking the Dormant Commerce Clause*, 1979 WIS. L. REV. 125. The results of the arguments, of course, depend upon the author's political persuasion.

30. See J. ELY, *supra* note 28. See also J. CHOPER, *JUDICIAL REVIEW AND THE NATIONAL POLITICAL PROCESS* (1980).

31. McManis, *supra* note 1, at 642, quoting Stevens, *Two Cheers for 1870: The American Law School*, in *LAW IN AMERICAN HISTORY* 424 (D. Fleming & B. Bailyn eds. 1971).

calls for a public policy focus in legal education.<sup>32</sup> Increased legislative activity spawned courses in legislation. Increased administrative activity led to courses in administrative law. The Great Society legislation is reflected in courses such as civil rights, environmental protection, poverty law, and employment discrimination.<sup>33</sup>

Further, the rapid increase in the number of law schools and in law school enrollment in the last fifteen years has brought into legal education a number of young law professors who, having received their college and legal education during the '60s and early '70s, are more to the left in the political spectrum than are their older colleagues. These young professors tend to conduct a more policy-oriented class.

One should not, however, overestimate the power of these forces at work. Courses in legislation, administrative law, and public interest law, for example, have tended to focus on the substantive side of the law and not on the process through which the laws are passed, administered, and enforced. The perspective has not been to study reformist Great Society statutes as attempts by the government to legitimate its authority.<sup>34</sup> Nor has the focus been on showing how these statutes, ostensibly passed to ameliorate the harsh effects of capitalism, inevitably turn out, at the level of implementation, to be less burdensome on corporate interests than they seem to be on their faces.<sup>35</sup> Rather, the focus has been on the practical narrow legal skill of how to argue the Great Society statutes both ways before a court—the narrow case method skill of legal analysis perfected at Harvard by Ames.<sup>36</sup>

Further, to the extent that political forces have an effect, the present political climate does not suggest any support for a broadening of the law school curriculum. Indeed, the political forces appear to be moving in the opposite direction. The controlling powers in Washington today are not committed to public or government solutions to problems. They seek private sector answers. The Great Society programs are being rolled back, if not eliminated. In the short-run future,

---

32. See, e.g., Lasswell & McDougall, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203 (1943).

33. See note 6, *supra*.

34. See, e.g., Offe, *Political Authority and Class Structures—An Analysis of Late Capitalistic Societies*, 2 *INT'L J. SOC.* 73 (1972).

35. Macaulay, *Lawyers and Consumer Protection Laws*, 14 *LAW & SOC'Y REV.* 115 (1979).

36. Ames is generally credited for making the case method work as an instructional tool. See Holmes, *Education for Competent Lawyering—Case Method in a Functional Context*, 76 *COLUM. L. REV.* 535, 557 (1976).

lawyers will not be asked to aid in creating new programs, a task that would call for a "broader" legal education. Rather, they will be asked only to aid in administration of the present law, a "narrower" task.

Additionally, if Congress itself becomes increasingly conservative, the cry for congressional supremacy to offset Burger Court conservatism will become increasingly counterproductive from the liberal perspective. If the legislature should be "hegemonic" over the court, this suggests that the legislature should be able constitutionally to control the Supreme Court's docket, removing jurisdiction to hear cases dealing with abortion, prayer in school, busing, and the other issues on the conservative agenda. The response to a conservative Congress may be a return of individual rights theories that stress the judiciary's role in protecting against the majoritarian bias of legislative enactments. Infatuation with the process-based theories appears to be on the wane. The rather strong message from a recent *Ohio State University Law Journal* Symposium on books by Professors Ely and Choper (which advocate representation reinforcing models of judicial review) is that the time for process-based theories has come and gone.<sup>37</sup> To the extent that this has any effect on legal education generally, it would be to re-emphasize individual rights, judicial power, and appellate decision-making; in short, the narrow perspective on legal education.

Of course, it is possible that the present political tendency in the United States may turn around. The liberal scenario for this future is based on the premise that if the Reagan economic program creates economic havoc, social pressure might once again be generated for increased government involvement in attempting to solve social problems.<sup>38</sup> In such a case, public opinion might turn away from the Reagan administration's English, capitalist, individual rights model (with its emphasis on the private sector, small government, and property rights) and turn toward the French civil law model (focusing, as it does, on government solutions, group welfare arguments, and the socialism of Mitterrand). More government would create a need for more public practitioners to ensure effective management of a once-again expanding public sector. This might increase the pressure for broad-based legal education, in ways suggested above, and, perhaps, lead to government funding of broad-based programs. Such funding

---

37. See Symposium: *Judicial Review Versus Democracy*, 42 OHIO ST. L.J. 1, 1-434 (1981).

38. John Kenneth Galbraith predicts such a failure of the Reagan economic program in *Up From Monetarism and Other Wishful Thinking*, N.Y. REV. BOOKS, August 13, 1981, at 27, 30-32.

probably is needed if such programs are to increase in number; a possibility severely limited under the present administration.

The die-hard leftist, of course, would see a different picture. Adopting the fiscal crisis model of James O'Connor,<sup>39</sup> the leftist would argue that capitalism itself creates a structural fiscal crisis evidenced by present levels of inflation and unemployment. That crisis cannot be solved under the capitalist model. According to this analysis, we are in the period of late capitalism—soon to be replaced by socialism.<sup>40</sup> Reaganomics is the last, or next to last, gasp of capitalism before its eventual demise. To the contrary, however, the overzealousness of leftist predictions on the demise of capitalism is well known. Further, it is probably more true that loose monetary policy and deficit spending by Congress over the past twenty years has created inflationary pressures and that they will be eased by better monetary control, decreased government spending, and a freeing up of the private sector.

In short, unless capitalism is structurally doomed as leftists predict, or unless Reagan's economic program fails, it is unlikely that political forces will be arrayed to push for or even aid a broadening of law school instruction. McManis may hope or predict that either the liberal or the leftist scenarios suggested above may happen. Our reading of the historical evidence suggests, however, that national conservatism, à la Reagan, may be here to stay for quite a while. Broadening the law school curriculum will find little support from those conservative political forces.

Admittedly, institutional factors within the law school are likely to play a greater role than politics for any change in legal education in the near future. Some internal pressure may be generated for a broader curriculum, because the law faculty now exerts more control over curricular choices than in the past and there has been an infusion of young professors with somewhat more activist liberal leanings who would support a "broadening" of legal education. Financial pressures and student desires, however, are likely to be more decisive factors in an era of declining enrollment and financial difficulties. These factors point to a narrowing of legal education.

Scholarship on legal education may, of course, play a role in deter-

---

39. J. O'CONNOR, *THE FISCAL CRISIS OF THE STATE* (1973).

40. *Id.* at 1-10, 221-56.



mining the future. We include a consideration of that factor as we consider what the future of legal education should be.

### III. THE UNEVEN CASE FOR BROADENING LEGAL EDUCATION

#### A. *The Issues Raised by McManis*

Schools should continually face the question of whether to change what they are doing—even though inertia is hard to overcome and change in large institutions is difficult to implement. McManis' distinction between narrow and broad perspectives in legal education raises these questions for the future:

- (1) Should judicial law and process be de-emphasized and greater attention given to legislative and administrative law and process?
- (2) Should more instructional time be devoted to applied skills rather than to analytic abilities?
- (3) Should law schools concentrate on training students to represent private clients, or should legal education become more directly relevant to future public practitioners, public officials, and nonprofessionals whose careers relate to law?
- (4) Should there be a more policy-oriented perspective in law school curriculum—whether, for example, the law schools should give more attention to what the law ought to be and how it is actually working in society?

#### 1. *Legislative and Administrative Materials*

During the 1960s and 1970s, the law grew more rapidly by enactment and promulgation than by judicial decision. As we have noted, those legal changes are reflected in new courses on civil rights, employment discrimination, poverty law, and the like. These new developments have not fully been absorbed into coursebooks for traditional core areas. That should happen, and it will happen. The formulation of legislative policy should be an explicit subject of discussion in at least one first year class, just as following the development of judicial doctrine through a set of related cases is typically dealt with in at least one first year course.<sup>41</sup> The skills of analysis, long a focus of the narrow curriculum, should be broadened in this way.

---

41. Compare H. JONES, J. KERNOCHAN & A. MURPHY, *LEGAL METHOD: CASES AND TEXT MATERIALS* 37-219 (1980) ("Case Law: The Analysis and Synthesis of Judicial Decisions") *with id.* at 255-593 ("The Interpretation of Statutes") *and id.* at 594-736 ("Coordination of Judge-Made and Statute Law").

## 2. *Applied Skills v. Analysis*

For some time, law students have complained that the traditional second and third years of law school tend to duplicate the first, except with different subjects.<sup>42</sup> In clinical courses and simulations, however, law students are faced with a wider variety of factors and with situations that more accurately reflect the problems lawyers face. As a result, students tend to acquire a more complex set of sophisticated skills. This is a desirable broadening of legal education, particularly as it provides opportunities for probing certain issues of professional responsibility.

Our representational system creates a tension that each lawyer must face in terms of balancing personal and representational roles. What the client wants and what the lawyer would like to do are sometimes in conflict. In a representational system, this tension never goes away—although it can be ameliorated by choosing a professional setting in which a majority of client desires are similar to what the lawyer prefers.

Until recently, law schools have not explicitly addressed this tension. Awareness of the problem, and a sense that it ought to be discussed in law school, seems to be on the upswing, particularly in clinical programs and in professional responsibility courses. Some professional responsibility courses may still deal only with the disciplinary provisions of the present Code. Others, however, take the opportunity to discuss how lawyers do and should balance personal choices and their representational roles.<sup>43</sup> Clinical programs potentially provide an even better avenue for discussion of the problem. A student experiences the tensions and conflicts of professional practice directly when representing clients in the clinic. Discussion has a felt relevance and immediacy not present when problems are raised in a classroom.<sup>44</sup>

In addition, clinical programs generally create a broader perspective with respect to all applied legal skills.<sup>45</sup> Pressures from the bar for

---

42. See, e.g., Dunne, *The Third-Year Blahs: Felix Frankfurter After Fifty Years*, 94 HARV. L. REV. 1237 (1981).

43. For a few articles on the subject, see Freedman, *Personal Responsibility in a Professional System*, 27 CATH. U.L. REV. 191 (1977); Lehman, *The Pursuit of a Client's Interest*, 77 MICH. L. REV. 1078 (1979); Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29. See also Kelso & Kelso, *Conflict, Emotion and Legal Ethics*, 10 PAC. L.J. 69 (1979).

44. See, e.g., Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 71-79 (1979).

45. For a useful survey of clinical legal education, citing many of the relevant articles, see

more skills training courses and student interest in applied skills bode well for these courses. Whether clinical instruction will remain at its present level (or will increase) probably will depend in large part on whether clinical professors generate convincing evidence that they are teaching important skills that differ from those acquired in less costly classroom settings. They must be able to show that they are not merely giving students a foretaste of practice. An ability to make this case may rest in part on whether carefully recorded observations documenting the effectiveness of clinical teaching methods can be made and in part on creating materials and syllabi whose intellectual content can be judged in conventional ways.<sup>46</sup>

### 3. *Training for Private Practice or Public Office*

Whatever may be its research and service goals, a modern law school is not likely to survive very long unless its graduates are prepared to pass the bar exam and enter a certain number of career roles. A typical array of first jobs for a graduating class is as follows: Private practice, 55%; government, 16%; judicial clerkships, 5%; business, 9%; public service/public interest, 4%; academic, 5%; military (JAG Corps), 5%; other, 1%.<sup>47</sup>

It may not be wise to design an educational program around the specifics of a particular career, such as private practice. The broadness of present curriculum offerings discussed in Section I shows that law schools are not presently guilty of that error. Nevertheless, a law school's curriculum would surely be incomplete if it did not provide instruction in at least some of the applied skills of private practice: trial practice, counseling, negotiation, and transaction planning, for example. Further, the basic analytical skills used in private practice are in general the same skills used by a government lawyer who makes or administers the law. With four years of college a prerequisite for law school, and many other graduate programs available for persons who wish to continue their study of political science, philosophy, or economics in post-collegiate programs, it would seem reasonable for the

---

Gee & Jackson, *supra* note 3, at 881-92. See also Kelso & Kelso, *The Future of Legal Education for Practical Skills: Can the Innovations Survive?*, 1977 B.Y.U. L. REV. 1007, 1015-23.

46. The survival problems of clinical programs that are expensive, that are not immediately assimilable into the traditional program, or that are inconsistent with the present incentive programs of the law schools are discussed in detail by Gee & Jackson, *supra* note 3.

47. 1980-81 McGEORGE SCHOOL OF LAW CATALOG 23.

law schools to concentrate on those phases of education that make legal education distinctive, bringing in extra-legal materials and other career models only where they contribute to the law school's central mission.<sup>48</sup>

#### 4. *Policy-Oriented Perspectives*

A faculty should have members who are prepared to question the most fundamental of accepted social values or legal premises and subject them to close intellectual scrutiny. All professors should be ready to question—at some level of generality—the premises of a subject under study. Part of a professor's (indeed a lawyer's) job involves concern with whether beneficial changes can be made in the legal system or in concepts of professional responsibility.<sup>49</sup>

Broad instruction that addresses issues of what the law ought to be—questions of public policy—nevertheless raise somewhat different questions than are raised by instruction in professional responsibility or applied legal skills. Law professors typically have beliefs about what is right, what the law ought to be, and how to go about reaching conclusions on such matters. Yet law professors are properly concerned to avoid propagandizing particular positions on public policy.

This concern does not necessarily mean that law professors should be neutral at all times during class. Assuming the posture of a neutral observer—even if that can be done—is at least implicitly to take the position that a lawyer is above policy disputes. That view is itself debatable.<sup>50</sup> Further, impartiality is difficult, if not impossible, to maintain. Decks should not be secretly stacked. It may be better to admit one's point of view to a class rather than try to keep it hidden.

A professor who is aware of his or her own value and policy biases and who alerts the class is probably acting within the tradition of American academic education. Our tradition has been that a profes-

---

48. It may be disagreement on this proposition that prompts McManis to disagree with traditional writers. In McManis' Epilogue, Reed and the Columbia movement are chastized for having pulled back from unlimited use of general public policy or social science materials and for using those materials only as they related to the law school's central mission of training lawyers. McManis would have liked them to go further, apparently even if more effective training of lawyers would not have been the result.

49. The ABA Code of Professional Responsibility, Canon 8, provides that "A Lawyer Should Assist in Improving the Legal System." ABA CODE OF PROFESSIONAL RESPONSIBILITY, Canon 8. EC 8-9 provides that, "The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements." *Id.*, EC 8-9.

50. See note 41 *supra* and accompanying text.

sor's role is to help students learn the process of thinking and weighing competing claims so they can better make decisions for themselves. Students must be able to free themselves from the confines of doctrine and to exercise an ability to clarify goals, determine trends, make projections, and consider alternatives.<sup>51</sup>

Traditionally, law schools develop that kind of thinking by training in the methods of careful reasoning, looking for arguments "both ways," following the implications of conclusions, and the like. They can also develop that kind of thinking by studying materials that explicitly raise policy or value conflicts within concrete settings. In the course of such a discussion, individual viewpoints—even the professor's—may be discussed. Honest disclosure of value positions differs, of course, from attempting to bring students around to one point of view on a particular policy or social perspective.

Discussion of policy conflicts within concrete settings additionally focuses attention on the empirical consequence of adopting various courses of action. It thus helps to avert a tendency, inherent in "broad" policy discussions, to base arguments upon abstract generalizations that may have little truth or relevance to the particular problem at hand. Broad policy courses must be something other than the general political science lectures that one envisions were given as part of the broad curriculum at Virginia or at William and Mary after the American Revolutionary War. Policy courses must show that they are useful adjuncts to the traditional values taught in law schools—values such as a concern about facts, a wariness about premature or over-generalizations, and a concern for applied legal skills. Useful discussion about policy at an abstract level of ideology presupposes an informed understanding of facts drawn from a multitude of disciplines that most law students, and law professors, do not have. Discussion by law students and law professors of these issues is likely to degenerate into general platitudes devoid of any understood rigorous analytic foundation.

An over emphasis on the need to infuse the legal curriculum with broad policy discussions involves the risk that it may lead to the pursuit in individual classes of an unstated ideology that is assumed to be true to the exclusion of an objective examination of all competing theories. The McManis article can perhaps be analyzed as an example of this tendency. The article does not explicitly adopt or refer to Marxist ide-

---

51. See Kelso & Kelso, *supra* note 45, at 1021-23.

ology, yet Marxist catchwords frequently appear. We are told that we must “unite theory and practice.” We are told that historical forces determine the progression of events. A dialectic exists in which Jefferson’s broad view, replaced by Langdell’s narrow view, is to be replaced by a move back to the broad view, with a higher level of understanding. The author’s preference is for the Jeffersonian view, which is described as “truly revolutionary.” We should beware lest the judiciary becomes “hegemonic” over the legislature. We should be skeptical of a tendency by the judiciary and private lawyers to act in the interests of “corporate, mercantile interests.” The historical account is “revisionist.”

Further evidence exists in the political dichotomy outlined earlier. It is clear that McManis falls on the civil law/socialist rather than the common law/capitalist side of the line. He argues against judicial hegemony. He appears to prefer the French civil law system to the English common law. He prefers Jefferson to Hamilton, citing, one assumes with approval, Jefferson’s attack on Blackstone and the English common law tradition. McManis’ concern is for more public practitioners, greater public participation in law school education, and infusing into legal education a concern with politics and the common good. He is less concerned with improving the training of lawyers for the private sector. Training public practitioners goes hand in hand with public, governmental solutions and centralized planning. A general “broad” legal education for the public at large may be a catchphrase for an unstated desire to “demystify” the law by “raising the consciousness” of the general public so it will believe in the exploitive nature of the present, private commercial law and the need for government control of the economy.

This may be the McManis picture—or it may not. The Marxist perspective may be right—although it probably is not. The important point is that no explicit caveat to the article exists that describes the ideological tradition out of which McManis’ conclusions are drawn. Thus, one does not know whether to take seriously the Marxist catchwords: are they red herrings or not? Information on this point would help in deciding whether this article is just another overly optimistic reading of why the historical forces mandate that society—here legal education—will move in a direction that the author wants.

### B. *Avoiding an "Identity Crisis"*

Debate on "broad" and "narrow" legal education is not new. The issues, when clarified, usually amount to questions of degree in reconciling and accommodating elements that all persons concede have some place in the process. For example, the first issue of the *Journal of Legal Education*, in 1948, carried essays on law school goals by Lon Fuller and Karl Llewellyn that addressed many of the issues raised by a "broad" versus "narrow" debate.<sup>52</sup>

Fuller argued that although law schools can and should impart knowledge and lawyer skills while exposing students to great minds, their most fundamental goal should be to provide students with insight into the basic processes of adjudication (dispute settling of all kinds) and legislation (the accommodation of conflict interests and crafting that accommodation into a plan for the future).<sup>53</sup> This is clearly one aspect of what McManis considers a broad perspective.

In contrast, Karl Llewellyn emphasized another aspect of a broad curriculum.<sup>54</sup> He contended that various legal craft skills, such as case analysis, interpretation, and the arts of argument, drafting, counseling, and negotiating, should be taught more directly by concentrating on problem raising situations presented in considerable detail. He thus anticipated the clinics and simulations developed in the 1970s, just as Fuller had urged with prescience that the law schools should concentrate on classroom discussion of adjudication and legislation.

Fuller and Llewellyn agreed that the first degree program should not be organized in terms of intense specialization for relatively narrow areas. Both also called for explicit training in professional responsibility—thus anticipating by almost twenty-five years the ABA's requirement. They disagreed, however, on the essence of professional responsibility.<sup>55</sup> Llewellyn, the advocate for skills training, saw professional responsibility as the art of making reasonably sound decisions on policy. Fuller, who advocated concentrating on legal processes, saw professional responsibility as an ability to explore the relevant factors involved in accommodating the demands of the lawyer/client relation-

---

52. Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. LEGAL EDUC. 189, 189-202 (1948); Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211, 211-18 (1948).

53. Fuller, *supra* note 52, at 189-202.

54. Llewellyn, *supra* note 52, at 211-18.

55. Compare Fuller, *supra* note 52, at 202-04 with Llewellyn, *supra* note 52, at 219-20.

ship. Thus each professor emphasized, in discussing professional responsibility, what he had tended to slight in describing the central goal of legal education.

How to find a golden mean that best accommodates the overlapping objectives discussed by Fuller and Llewellyn remains an unresolved problem. On the one hand, schools are and should be studying basic social problems to an extent, occasionally with the aid of methods drawn from other fields. In this way, the law schools are drawn more deeply into the central intellectual current of university life. On the other hand, the schools properly are seeking ways of improving skills training to develop the competence of young lawyers. This brings the schools into contact with the profession. An uneasy tension exists. Dean Francis Allen has recently characterized this tension as an "identity crisis."<sup>56</sup> However, Dean Allen does not predict or advocate a victory by one side over the other. Instead, he says, the law school must become an even more pluralistic community than it has yet become.<sup>57</sup>

Achieving a creative and balanced pluralism will be difficult—probably even more difficult in the 1980s than in the 1970s. Schools now face the likelihood of a decline in applications, and the size of faculties is not likely to increase. The schools will work largely through personnel who are already in place. Financial difficulties will continue, and no great breakthrough in teaching effectiveness or in administrative efficiency can be expected. No great breakthroughs were achieved in the 1965-75 period of expansion, even though it was then possible to fund clinical programs and the beginnings of TV and computer technology were present. It seems even less likely that breakthroughs will occur in the forthcoming period of stability or retrenchment.

Arguments for the introduction of undergraduate programs, continuing legal education programs, or adult education programs have little relevance for this general conclusion. CLE programs are typically targeted for practicing lawyers. The instruction they provide is geared

---

56. Allen, *Humanistic Legal Education, The Quiet Crisis*, U. MICH. QUADRANGLE NOTES Spring 1981, at 25.

57. *Id.* at 31. Dean Allen says,

Educational policy in the law schools during the closing years of this century is likely to become increasingly pragmatic, consciously experimental. We shall have to distribute our eggs among many baskets. This is true because the needs we serve are altering and we do not yet know very clearly what form they will take and, in any event, the demands of legal education will become increasingly numerous and diverse. It seems likely, therefore, that if the law school is to flourish as part of the university, or even survive, the law school must become an even more pluralistic community than it has yet become.



toward the needs of the private attorney. Thus, they tend to address “narrow” questions. Undergraduate classes may address “broader” questions. It is difficult, however, to believe that it would make much difference in what the students actually receive whether their professor was a political scientist or a law professor doing a political science type of instruction. What difference it would make in terms of a broad legal education to have professors teach a few adult night classes is not explained by McManis.

The question of joint degree candidates is worth a little more attention. It may be that having a few students involved in a joint degree program would add to the “chemistry” of a law school class. It seems, however, that joint degree programs in business or accounting would have little impact because the additional instruction would be directly related to skills used in private sector, commercial employment, and that is “narrow” under McManis’ definition. Joint degree candidates in public administration, public policy, or sociology might create greater pressure for broader legal education. It is likely, however, that any increased pressure for broader consideration of problems by a few joint degree candidates would be more than outweighed by internal and external factors that suggest no further broadening and, indeed, some narrowing of the traditional J.D. degree program.

#### IV. CONCLUSION

It is tempting to find that historical forces make inevitable what one would like to see occur. One hopes to discover those historical forces because describing them may help to bring about the desired objective. Another tendency is to view life in either-or terms or to find dichotomies rather than unravel a complexity or sense a randomness of blooming, buzzing confusion. Again, it is nice to find in the past a Shangrila, a Utopia, and then to discover that in the future there will be a return to the halcyon days of yore.

To the extent that McManis focuses on legal education of law students interested in becoming lawyers, we sense all three temptations at work in McManis’ article. The past was rarely the “good old days,” however, and fortunately the present is better than nostalgia might make it seem.

As for the future, we hope that it will contain some of the broad aspects that McManis predicts. Nevertheless, that breadth will have to be defended by a more vigorous line of argument than that Thomas

Jefferson or George Wythe thought it relevant and appropriate for gentlemen in post-revolutionary America. The historical currents that McManis thinks favor a return to a broader view of legal education are more likely to be swamped by the financial, institutional, and external pressures that pull in the opposite direction.

If legal educators have anything to learn from studying their own history, it is not that a return to broader education is on the horizon, but rather that first, useful change is infrequent and very difficult to accomplish, particularly in large institutions, and second, it is hard to do anything well.

It is tempting to think that there was once a brief, shining moment of glory and that it can be easily recaptured. The truth, rather, seems to be that once upon a time George Wythe gave some lectures on law and political science that today can be found in any good political science department. Students would not choose to attend a law school today that offered such a curriculum. The guidelines for legal education are much better grounded in an analysis of what law students need today than what colonial gentlemen needed in the late 1700s.

