# *Advancement of the Law*

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What one notices first and most about the Law School of the University of Chicago is the combination of fire and drive with roundedness and balance. There is no uniqueness merely in the presence of a large full-time faculty full of distinguished scholars and teachers. There is no uniqueness in the development and use of a varied battery of instruction techniques in addition to the more usual case-class and occasional lecture. There is no uniqueness merely in the presence of a highly select student body, nor in one small enough to make possible a striking amount of personal contact and instruction. There is no uniqueness merely in sustained insistence on vision, range, the human background and the political and social problems native to sound work in the legal field; neither can uniqueness be found in sustained insistence on the importance of the materials and teachings of the other social disciplines.

Although it can indeed be doubted whether any other school at all rivals Chicago's stress on theory and workshop practice in basic lines of legal craftsmanship, the distinguishing characteristic of the school remains the way in which that stress is fitted into harmony with such other attributes as have been mentioned, the way in which all such things are merged into a working, rounded whole.

This characteristic becomes most clear if one runs the eye over the history of American law schools and notes how each notable advance has tended to come at one or another high price in exaggeration. The growing point of the decade or the region has always been exciting for the teachers concerned and for some or most of the best of the students; but the bulk of the class, who need formed and sustained lines of instruction, have commonly missed out in regard to various important matters which were not at the place and the moment in the focus of conscious attention.

Take for example the huge gain which came from introducing schools at all. Here was a beginning of order and of system in legal training, the substitution of a reckonable course of study for the hap-hazardness of the older reading-and-apprenticeship approach. It was another huge gain to develop the full-time teacher, whose teaching of his students can become his life, and is in no event merely a by-product or a touch of

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extra income or an avocation or a sop to an idealism "for which practice leaves no room," nor even one expression of a richly-living man's desire to ride a two- or four-horse team. But the price for these conjoint advances came close to being as great as the gain. Both the courses and the full-time teachers were concentrated on the rules and fields of law, "positive" law, the rules largely as they stood at the moment, indeed dominantly the rules "of substance." There was some reason for this. The rules and fields of our law were in chaos; they cried for organization. And one can understand the initial neglect of the crafts if the school was to provide, reliably, precisely what apprenticeship did not so provide.

*How Chicago Teaches Craftsmanship*

Less justifiable and more unfortunate was Joseph Story's influential curriculum at Harvard concentrating on his straight "private" law, cutting out that whole perspective and background of philosophy and of national and international governmental practice which had laid the foundation of such lawyers as Hamilton, Kent, Calhoun, Webster and indeed Story's self. Harvard itself is still laboring on the needed recapture of what Story butchered out, but like every first-rate school has long been at that job; the law school at Chicago, the entry-port by which Administrative Law and Theory of Legislation came into the American law school world, was founded with the

objective of such recapture.

It is also difficult to understand why, as the law schools all over the country became parts of universities, they so long and persistently shut their eyes to their duties of the exploration and inculcation of the principles of craftsmenship. With the waning of apprenticeship the arts of the legal crafts slipped into the forgotten or into disrepute; either they were wholly neglected or they were seen in terms not of deep truths about man's nature and man's life with his fellowman, but as matters of shallow and often ignoble artifice and trickery. Yet the arts of law are not only essential to any professional work, they are also law's common ground with those humanities which are a university's core and pride, and among which law should stand with the proudest.

When the arts come to be slighted the answer does not lie in shunting the responsibility, turning for example as Columbia just proposed to an entrance test in writing. The job is instead to *develop* in the student rough carpentry and even skill in writing—in *legal* writing, which as it ranges from statute and document through to the brief and the negotiating letter runs the gamut of all kinds of writing there are, outside of formal verse. This is not hard to do, nor is it hard, as one works in the instruction for accuracy and conciseness and simple structure, to press also for life and style. The brief, for example, and the statute, provide teaching apparatus unmatched by the arts college. But the job does take conscious thought, and some effort.

*Theory and Workshop Instruction Go Hand-in-Hand*

That thought and that effort Chicago finds time for on a scale not matched in this country, readily, if at all. Hand in hand with it go theory and workshop instruction in such basic crafts as advocacy and counselling—each viewed whole and as a discipline, with details of substance used as a good case-book uses cases: to inform discussion and raise questions more than to purvey information. The reference here is not alone to the elementary composition which results for every student from his first year tutorial research. It is not alone to the counselling experience available in the school-run legal aid work, but to the sustained theory-and-practice of such a "course" as "Commercial Law Practice," not alone to the general moot court system and competition which is paralleled in many schools, but to the developed theory which lays the basis of the workshop "course," "Legal Argument." Similarly, in the area of legislation, there is not alone the universal introduction by way of second-year tutorial work, but the basic theory that underlies each of the three or more seminars in current legislation.

Three of Chicago curative procedures on the side of perspective and vision call for particular mention. As

with many another school, the work of the federal government generally and of the Supreme Court of the United States in particular come for heavy attention, from federal taxation and jurisdiction and the due process and full faith and credit phases of conflict of laws on through admiralty, the federal aspects of labor law and the rest.

But on the international side there is not only a useful branching out from International Law as commonly conceived into specialized work in international commercial and investment problems (courses, not seminars), but there is a most interesting comparative law development: a full year's intensive work in a foreign legal system and its language is offered, followed by a year's locally-supervised study and practice in the relevant foreign country—a novel and ingenious device for equipping an American to do legal work across national and language barriers.

The second next matter on the side of vision and perspective can be indicated very briefly: jurisprudence. There is not only an intensive course for second or third year (weekly papers) on "Jurisprudence Law in Our Society"; there are in addition no less than four further seminars in one or another important aspect of jurisprudence, given by five other instructors from four or perhaps five other and further points of view. One of the *compulsory* first year courses has a full half of its five hours devoted openly and happily to jurisprudence. But the most interesting deliberate exposure to divergent points of view is the third matter of mention. The general federal government course, "Constitutional Law" is given by three different instructors from three sharply divergent angles, while at least three further approaches appear prominently in other instruction. It is well nigh impossible for any student to get through the school without heavy exposure to two or more of these philosophies of government. The corridors resound.

There has, of course, been no thought in all of this of so rebelling against the narrowness of the law school's first great contribution as to allow the benefits of that contribution to slide away. The full-time law faculty at Chicago is large, distinguished and devoted. And such work—taken by almost all students—as that in estates, corporations and taxation provides full and repeated exposure to what it is fair to call the classical style of doctrinal architecture in a "field" of law.

### *Case-Book Instruction Is a "Wasteful Road"*

The same holds in regard to the second great advance in American legal education, the invention and spread of the case-book. But not too many students are fully aware of the price we have come to pay for case-book teachings and, above all, of the ways in which today's case-books have tended to defeat the finest values open to the case-method. The price is of course in first instance one of time-consumption: the case-book is a horrifying wasteful road to information about rules of law, while the modern editor who feels that he must "cover" "the subject" is visited with material as complex as that which faced the editor of seventy years ago.

The case loses the life-contact and life-meaning which are its essence when its facts are edited out. Moreover the case has no instructive value on how the judges do their work if its complexities are edited out, and no training value for argument if counsel's points are omitted. In addition the case loses its very discussion value if it is presented alone and simply to illustrate or communicate its rule, instead of appearing with companion cases to show development or to challenge to thoughtful distinction and synthesis and in either aspect to clothe the general situation in question with detail and flavor enough to turn student's policy-judgment into more than a guess or a day-dream.

Again Chicago both capitalizes the virtues of the invention and cuts down price and waste. While case-instruction dominates the first year and even the second, it is case-instruction based on materials which in instance after instance have been edited in the finest original tradition: cases selected for discussion value and for challenge; the cases presented in full; if "collateral" discussion is excised, the bearing of its content is indicated; companion cases presented in quantity; and the like—with no hesitance at using text-stuff for "coverage," if the class-hour is filled with intensive discussion.

Moreover—and not alone in those federal-oriented courses which properly center on the Supreme Court, as in the very intensive series of cases on Competition and Monopoly—a whole series of cases in a relatively narrow area has been developed (sometimes from a single jurisdiction) to enable real study of growth, force exact analysis, and afford practice in argument with the same materials which were available to each successive bench.

### *Chicago Has Achieved A Healthy Balance*

Finally there are the courses which vary the diet by centering class-discussion on problems of counselling, and those which use as the major material for use statues fresh enough to force original solution of questions out of the study of their text, without advance inquiries by any court. These last types of instruction mean grateful change of pace in the instruction. They also work in easily and quietly with the emphasis on

counselling, some phrases of writing, and both theory and practice of drafting.

The most recent of the major innovations in American law teaching has been the spread of materials, interest and inquiry into the general societal and government area of problems for government and law. For forty years there has been drive and talk and hope and experiment in this direction, with more effect on teachers and on scholarly production than on curricular architecture or the individual class-room. Chicago has achieved as close an approach to healthy balance here as the country has yet seen.

The pioneering explorations into behavioral science for which the school has become famous have not in the main touched the curriculum directly, though they have offered students opportunity to earn money in intellectually exciting work. But apart from the value to any school of having the thinking of faculty members profit by the ferment of frontier-research, one finds interesting direct values for teaching emerging from the studies of the processes of deciding, and one finds the students alert, and pleased to be alert, to the human richness of "law"–thinking which can draw on (while dominating, not being dominated by) the more usable results from neighboring disciplines.

The tradition of cross-fertilization is old at Chicago. Its law faculty has contained a logician-philosopher, long contained two economists, has in these recent days of behavioral inquiry added men from sociology and psychology. Such men do not interefer with the solidity of the school's training in the work of law. They add–as each of the other aspects mentioned adds–good measure of rich roundedness and balance. They add–mostly by way of influence on their legal colleagues–their part of that which makes the Law School of the University of Chicago not only a professional school of the first order, but a school of the humanities: a place where vision and sound measure live in concert.