

A LAWYER LOOKS AT THE LAW SCHOOLS

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IN THE quest for justice, everyone concerned with legal machinery must be disturbed by the frequent dichotomy between the goal and the actual result of the administration of law. As a practicing lawyer, I suggest that this cleavage can be narrowed by legal education. If this assumption is valid, practices in legal education command an interest and importance far transcending their value simply as pedagogical techniques for the training of practitioners.

The concept of what makes up "the law" is necessarily broad. The layman or the legislator thinks first of a statute duly promulgated. The lawyer or the judge thinks first of judicial decisions (an attitude which is itself a commentary upon the effect of legal training). The research scholar now also ranks high lawyers' opinions¹—a circumstance which should remind us that opinions of contemporary lawyers, before they become history, may be effective as a source of law and sometimes more effective than statute or reported decision.

To these sources of law must be added discussions in the law classroom, which, I contend, are in themselves part of our system of justice. Excusable may be past failure to recognize the effect upon law-making of methods of legal education; but we cannot now close our eyes to the profound influence of the law school as a formative force in the law-making process. Not only prospective lawyers, but also future legislators, judges, and writers who sit together side by side develop a point of view from classroom discussion; their approach to future action and judgment is often determined by it.² The power of student criticism in

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¹ During the eighty years following enactment of the Bubble Act in 1720, the English corporation law guiding and regulating great enterprises was to be found not in the statutes, nor in judicial opinions, nor even in the treatises of the time, but in the opinions of counsel which enabled these enterprises to be conducted with a minimum of resort to the courts. For a fully documented study of this period, see ARMAND BUDINGTON DU BOIS, *THE ENGLISH BUSINESS COMPANY AFTER THE BUBBLE ACT, 1720-1800* (1938).

² "This book could not have been written without the eager cooperation of forty classes of students. In the discussions in the classroom one's mind is cleared more than in a score of years of private investigation. One submits one's conclusions to the class and the class pick out the weak points, ruthlessly out-argue an illogical rule or one not fairly based upon ethics or the requirements of society." BEALE, *CONFLICT OF LAWS*, Preface, vii (1935). To the same effect, see also Oration of Mr. Justice Holmes at Cambridge, Nov. 5, 1886, on the 250th Anniversary of Harvard University, 3 L.Q.REV. 118, 122 (1887).

the formulation of law is implicit in the witticism: "From the Supreme Court of the United States there is no appeal—except to the law reviews."

Where an explicit statement of standards of values is lacking, the students' discussion of the principles of a particular case may appear to be without relevance to the goal of justice—the most important aspect of law. Yet, value judgments and other preconceptions which students bring to the law school class (whether determined by ethical background, philosophic acumen, social-bias, or what not) will mold the discussion significantly. And discussions influenced by the character—social, economic, educational, racial, religious, or sex—of the student body will inevitably affect the future lawmakers. In consequence, the discussion and the students who do the discussing must be recognized as a vital part of our system of justice.

This article proposes to show by a survey of Anglo-American legal education a decisive trend (1) from a homogeneous *student body* coming from a single social class to a heterogeneous student body—men and women—drawn from all segments of the population; (2) from a *curriculum* designed to preserve the status quo to a system of law formulated with a view to promoting the "general welfare"; and (3) from a *method of study*—memorization—appropriate to the learning of presumably immutable law, to use of the scientific method in an effort to ascertain what the law should be.

I

THE LAW STUDENTS

Prior to the American Revolution the bar had been a compact, homogeneous unit representing a single social stratum.³ This country, especially after the Revolution, witnessed a considerable broadening of the class studying law.⁴ The circumstance that a large percentage of those registered at the Litchfield School in Connecticut during the period 1784–1833 possessed college degrees before entering upon the study of law⁵ permits the inference that their financial status made possible such extended study, at that time not available without considerable cost.

³ Great caution seems to have been observed in admitting persons as members of the Inns of Court, and an order bearing the signatures of both Coke and Bacon directs that no one be admitted unless he be "a Gentleman by descent." WILLIAM DUGDALE, *ORIGINES JURIDICIALES* 316 (1st ed. 1666). The tremendous cost of study at the Inns further served to exclude all but the very wealthy; there was an occasional exception, so rare as to be a matter for comment. HERMANN COHEN, *A HISTORY OF THE ENGLISH BAR AND ATTORNATUS* 471–472 (1929).

⁴ CHARLES WARREN, *HISTORY OF THE AMERICAN BAR*, *passim* (1911).

⁵ SAMUEL H. FISHER, *LITCHFIELD LAW SCHOOL, 1774–1833, BIOGRAPHICAL CATALOGUE OF STUDENTS* 6 (1946).

Yet more than half did not have college degrees. Moreover, it became possible in this country to enter upon the practice of law without attendance at any law school. During the nineteenth century in the United States enough lawyers came from the less well-to-do elements of the community (as did Abraham Lincoln) to assure a broader base.

Today the body of law students in this country comprises a heterogeneous group of both sexes, of diverse social and economic classes, and of different races and religious faiths, although the proportions of each type are far from being completely representative.⁶ Nor is the diverse character of the law students necessarily represented in individual law schools. Until World War II, women, when present at all, constituted a minute percentage of the students at the nationally famous law schools (and are to this day still completely barred from Harvard Law School); those in the lowest economic group in the population, who had to earn a livelihood while attending law school, studied at unapproved part-time law schools (schools open to late afternoon or evening students);⁷ most Negro students received their training at law schools serving exclusively members of their race;⁸ and a relatively large proportion of Catholic students studied at Catholic law schools.⁹

World War II partially changed this condition in the top-ranking schools, at least temporarily. During the war, when most able-bodied young men were in the armed forces, Columbia and Yale accepted increasing numbers of women students, who at times constituted approximately 25 per cent of the small wartime classes; *e.g.*, of sixty-one in a Columbia class, seventeen were women; of fifty-two in a Yale class, fourteen were women. With a return to "normal" conditions, with applications from prospective students four or five times as numerous as the limited group which are accepted, the number of women students in

⁶ Unfortunately, accurate statistics are unavailable except for sex and color. The 1940 census figures disclose the following allocation of "Lawyers and Judges":

	Male	Female	Total
White	172,329	4146	176,475
Colored	1,127	41	1,168
Total	173,456	4187	177,643

SIXTEENTH CENSUS OF THE UNITED STATES, 1940, III UNITED STATES SUMMARY, Pt. 1, Population, pp. 75, 88, 90.

⁷ In unapproved part-time schools many noted lawyers and public figures have received their legal training and have amply justified the views which made it possible for them to embark upon the study of law. See, *e. g.*, 118 N.Y.L.J. 1751 (1947) for a list of distinguished graduates of the New York Law School.

⁸ Thompson, *Some Critical Aspects of the Problem of Higher and Professional Education for Negroes*. 14 J. NEGRO EDUCATION 509 (1945).

⁹ The administrative head of a large metropolitan Catholic college advises me that a majority of graduates from his college who study law go to Catholic law schools, and that this proportion is confirmed generally by the heads of other colleges with whom he has spoken.

these highest-ranking schools has again progressively approached the vanishing point.

Also, the top-ranking and sought-after schools, which can afford to be selective in peacetime, attempt to obtain geographical distribution by having as many states as possible represented in the make-up of their entering classes.¹⁰ This practice is desirable in procuring for the classroom the viewpoint of all sections of the country; but geographical limitations—unduly favorable to the small states—militate against proportionate diversification of racial and religious strains, since the majority of Negro, Catholic, and Jewish applicants come from the large cities.

As a result of veterans' aid, the law school has become better representative of all economic groups in the population. The "G.I. Bill of Rights" has for the last two years made possible attendance at day law schools by many for whom it would not otherwise have been possible, the student body in these day law schools being about 90 per cent veteran.

To make pre-legal education possible for representatives of poorer economic groups, it may be desirable to make provision beyond the G.I.'s governmental educational benefits and subsistence. The prerequisite of some college education now sets up (despite the free state universities) a severe and frequently complete barrier to many potential law students of low family income.¹¹ This prescription of a minimum of college study may at first sight appear inconsistent with American political principles; in fact, over thirty states do not even today require law school training, presumably because such a restriction may keep from the law those who are worthy but without the resources necessary to finance formal law school education.¹² Yet many of these very states do require a minimum of two years of college work before law study begins, even where the law study may be in an office.¹³

The requirement of college training (or its equivalent) is amply justified. If full, profound discussion is to be had in the law classroom, the student should come to it already imbued with the scientific method, an understanding of logic, and a familiarity with the social sciences and the "humanities"—training not currently secured below the college level.

¹⁰ A comparative chart by states for the most recent entering classes at Harvard and Columbia will be found in *Columbia Law School News*, April 16, 1948, p. 2.

¹¹ REPORT OF THE PRESIDENT'S COMMISSION ON HIGHER EDUCATION, 1 HIGHER EDUCATION FOR AMERICAN DEMOCRACY 27-28 (1947).

¹² 1947 REVIEW OF LEGAL EDUCATION 20-25, (AM.BAR ASS'N 1948). Cf. England, where candidates cannot now become solicitors unless they have pursued for at least a year a course of legal education at a law school approved by the Law Society. Solicitors Act, 1922, 12 & 13 GEO. V, c. 57, § 2.

¹³ RULES FOR ADMISSION TO THE BAR (West Publishing Company, 13th ed. 1947).

This prior training is no mere social and cultural decoration; it is essential in determining values, expounding a design for justice, and enabling one to express himself with vigor and precision.

The increasingly democratic character of law school classes, regardless of whether the representation is fairly proportionate for all types, augurs well for fuller and more inclusive consideration of all those elements which should determine law. Fresh views as to the purpose of law may confidently be expected—views not likely to have been formulated in a chamber of judges personally inexperienced in the problems of nine-tenths of the population. Sheer increase in the number of law students and lawyers multiplies the chances that they will not all think alike. A uniformity of view conceivable in the 350 men who constituted the English Bar at the time of the American Revolution¹⁴ is inconceivable in the American Bar, which at the last census numbered 177,643 duly admitted lawyers.¹⁵

Although the body of law students has evolved from a homogeneous to a heterogeneous group, one significant condition remains unchanged. Throughout history, the law student body has included some who do not intend to put to vocational use their knowledge of "law." In all Renaissance universities, law studies were the center of learning for students who had no thought of ever practicing law. In England, most of those attending at the Inns of Court were preparing for political and social life, not for the bar. Today the more renowned the law school, the more students there are in it who do not contemplate becoming practitioners. Can we learn something from their interest in the study of law?

Legal study, whether at school or not, imparts a skill highly prized in many walks of life. Edmund Burke noted that study of the law "renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources."¹⁶ The qualities just described are a by-product accompanying the acquisition of a special knowledge—familiarity with the content of "the law" and with the techniques of handling the machinery of law.¹⁷ This by-product skill has a recognized value independent of professional utility, and causes law-trained men to be very much

¹⁴ MacKinnon, *The Law and the Lawyers*, printed in 2 JOHNSON'S ENGLAND 287 (A. S. Turberville ed. 1933).

¹⁵ See note 6 *supra*.

¹⁶ JOSEPH VILLIERS DENNEY (ED.) EDMUND BURKE'S SPEECH ON CONCILIATION WITH AMERICA 54 (1898).

¹⁷ Lasswell and McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203, 210-211 (1943); McDougal, *The Law School of the Future: From Legal Realism to Policy Science in the World Community*, 56 YALE L.J. 1345 (1947); Leach, *Property Law Taught in Two Packages*, 1 J. LEGAL ED. 28, 30-31 (1948).

in demand as public leaders and business executives. The advice of the law-trained man is sought because frequently he has better vision and greater skill in implementing his ideas than a man without this or equivalent training. The question seriously presents itself whether—as so often in industry—the by-product is not more valuable than the admitted vocational goals.

II

THE SUBJECT OF STUDY

What modern law students learn (or, depending on the viewpoint, what they are taught) discloses considerable change from the subject of study centuries ago:¹⁸ (1) Present-day students generally acquire an “approach” or attitude to substantive law; (2) they discover and evaluate present-day sources of substantive law; (3) they learn segments of what is called well-established substantive law, and in the first-rate law schools acquire considerable skill in analysis; (4) they learn a little, very little, adjective law.¹⁹

The lacunae in the present-day curriculum are clearly apparent. Omitted from the curriculum are large sections of fairly well established substantive law, an “approach” to adjective law, and an acquisition of skill in the operation of the legal machinery. Another regrettable, but in this instance easily remediable, omission is the failure to give an introductory course explaining to the students the law school’s function and mode of procedure, the reason for the methods employed, a statement of what kinds of knowledge and what skills the student is expected to acquire during the law school years, and, equally important, what he is not expected to learn, so that he will not feel frustrated and inadequate during his law school studies.

¹⁸ In England, almost up to the American Revolution, the approach was simple. Protection of the landed interests was then considered the essential need of society to such an extent that Maitland has declared that England’s “whole constitutional law seems at times to be but an appendix to the law of real property.” F. W. MAITLAND, *THE CONSTITUTIONAL HISTORY OF ENGLAND* 538 (1908). Past decisions were therefore the law, and to learn law all one needed to do was learn the precedents. The foregoing summary is believed fair as a sweeping survey, although English law in spots did show the effect of conflicting interests pressing for different results. Economic ends were considered by some old-time judges who, however, did not appreciate the extent to which their conclusions were determined by the interests of their own social stratum. Adjective law was also studied; in fact, most decisions were procedural and therefore really “precedents” (forms)—the tools the student would use throughout his life.

¹⁹ For convenience in discussion, law is being arbitrarily divided into two parts, substantive and adjective, although in practice the two are so interrelated as to be inseparable. No positive law operates in a vacuum, and the adjective element probably outranks the substantive contribution in importance.

A

The substantive law is inseparable from the "approach" to law which is acquired, often unconsciously, at law school. Lip service may be paid to the doctrine that positive law is made primarily by the legislature and interstitially by the courts, but the weighting of the values which determines the final result comes from one's "approach." Whether a statute will be adjudicated "in derogation of the common law" and therefore strictly construed—*i.e.*, rejected as far as possible—or whether it is "remedial" and therefore to be enforced, is determined by the court's attitude on the power of a legislature to make changes, not by anything in the statute itself. Overlapping theories of jurisprudence are inevitable. The medieval mechanical follower of precedent had his sociological approach, though it was different from that which a majority favors today. His view was that the status quo must be maintained. The most rabid sociological jurist of today is at the same time an advocate of precedent—the precedent that jurists in the future shall likewise proceed on the view that law is a means to implement a specific end: "the general welfare." Each could, and probably would, characterize the judgment he reaches as morally correct, thereby bringing them both into the camp of followers of "natural" law. The weighting of each point of view varies, however, and permits the long-range observer to classify certain stages of legal history as more representative of one attitude than another; *e.g.*, the precedent or common-law approach was prevalent in England almost up to the American Revolution; a natural-law approach exercised some influence in the Colonies; the sociological approach has been popular during the last two decades. The approach is affected by the cultural *milieu* of the teachers and the students; and when the background of enough students prevents their accepting the doctrine laid down by the teachers, a change may be expected to ensue in the courts and in the next generation of teachers.

Recognition of this interrelationship makes positive law at a particular period more understandable, but the student does not always realize that his "approach" is determining the law he finds. To comprehend the major significance of this subtle element in the formulation of law, the student requires a foundation in history and the social sciences broader than is to be found in merely the study of "law." Once one appreciates the part played by one's approach (whether that of the student or that of the judge who wrote a precedent opinion), the comprehension and formulation of law becomes simpler, apparent conflict in rules becomes understandable—and what is understood can be worked with.

Led by Columbia and Yale in the late Twenties, some twenty law schools now make some effort to interrelate elements of economics and sociology so that discussions in class need not be derived solely from historical conditions and the needs of times past, but may be based on current conditions and present needs.²⁰ The manner in which presentation of these elements can best be accomplished has been the subject of intensive study. The Columbia Law School almost twenty years ago compiled a summary of the problems and proposed solutions outlined by the faculty at that school.²¹ Just how significant the effects of this new approach could be were disclosed by its first fruits: A. A. Berle's *Cases and Materials in the Law of Corporation Finance* and a modified textbook, *The Modern Corporation and Private Property*, written by him in collaboration with Gardiner C. Means, the economist.²² The first volume, published in 1930, made available material showing how a business corporation is really financed and operates (a sharp contrast with obsolete practices gleaned from hoary "leading"—and misleading—cases). This volume contained not merely cases and relevant state statutes, but also the living background of "law": documents originating corporate financing and other corporate instruments, including a thirty-five page trust indenture, New York Stock Exchange listing requirements and papers filed pursuant thereto, economic data on the size of corporations and the state chosen for incorporation, and views of a writer frequently consulted by financiers.²³ The supplemental volume, *The Modern Corporation and Private Property*, analyzed the extent of "the corporate revolution" through which we are passing, disclosing it to be quite as important as the industrial revolution in its effect upon man's life and "law."

For the purpose of ascertaining the effect of the new material in use, I have recently compared three sets of student notes on Corporations: (1) an almost verbatim transcript made by a Harvard student in 1892-93 (the teacher: ex-Judge Jeremiah Smith; the casebook by Professor

²⁰ ESTHER LUCILE BROWN, *LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE* (1948), is an excellent report to the Russell Sage Foundation on the "dynamic, ongoing movement within legal education as it existed at the outbreak of World War II." *Id.* at 9.

²¹ COLUMBIA UNIVERSITY, *FACULTY OF LAW, SUMMARY OF STUDIES IN LEGAL EDUCATION* 20, 75 (Oliphant ed. 1928). The Yale Law School faculty now includes professors of economics, political science; and philosophy—all three teachers being non-lawyers. Harvard Law School, in contrast, has relevant materials from the social sciences taught by regular lawyer-members of the faculty.

²² The material for the two volumes, published respectively in 1930 and 1932, was gathered as part of a research project under the direction of the Columbia University Council for Research in the Social Sciences.

²³ Cf. Edward H. Warren's *Cases on Corporations* (1909), which in an Appendix likewise made available to students a number of corporate documents. Berle's *Cases and Materials* takes the student one step below the surface of Warren's forms.

Cumming of Columbia, 1892); (2) my own notes taken at Columbia in 1926 (the teacher: George F. Canfield; the casebook by Professors Canfield and Wormser, 1925); (3) the notes of a Columbia student in 1946-47 (the teachers: A. A. Berle and William C. Warren; the casebook by Professors Dodd and Baker of Harvard, 1946). The earliest set of notes was for the first class in Corporations ever to use a printed casebook;²⁴ the second, for almost the last Columbia class before the 1927 implementation of sociological jurisprudence; and the third set is representative of the current method. The three classes, all in the field of general corporation law, were conducted on the same level, so far as analysis goes, and almost the same traditional "legal" topics were covered; but the conception of a corporation in action as derived from the third set of notes is so revealing as to make almost a half-truth that derived from the preceding sets of notes—even as late as 1926.²⁵ Apparent now is the full extent to which the American business corporation has changed from a private enterprise, with limited powers and definitely fixed stockholder participation and control, to the modern colossus in which corporate powers are boundless, managerial powers are virtually unlimited, and correspondingly the rights of individual stockholders and control by them have largely disappeared. The uncovering of this actual situation makes it clear that the law of corporations—at least in so far as gigantic corporations are concerned—must likewise change from rules aimed to cover "private" transactions to rules whereby the interests of the investing public and the state are protected. The subject of corporations, perhaps better than any other, demonstrates that only continuous awareness of actual conditions can make the "law" compatible with the legitimate needs of the community. The law appropriate to municipal corporations was scarcely serviceable to the private corporation of a century ago; the law of the private corporation is dangerously inadequate for the large publicly financed corporation of today, which has made a stock certificate as common and acceptable in civilized society as checks and paper money.

"Materials" for use together with cases have appeared in other branches of law—administrative law, criminal law, and a number of the conventional "private law" subjects. Very little nonlegal material has thus far actually been integrated in the law school program, even in the field

²⁴ At Columbia, in 1891, the subject of Corporations was not taught at all, we are told by Mr. Justice Cardozo, who was a student there at that time. CARDOZO, *LAW AND LITERATURE* 165 (1931).

²⁵ The Columbia Law School's Announcement for 1947-1948 describes the currently offered course in general corporation law as follows: "*Classical corporation law* with which is combined the principal rules and operations of corporation finance. Consideration is also given to some of the changes in the property system resulting from the extension of the corporate method of business organization."

of corporations, but it is significant that experimentation is going on at all.²⁶

Law formulated upon knowledge of actual conditions and practices, rather than upon a rare aberration, may be longer lasting. Much will always remain to be done in ascertaining and interpreting the data of social science—or “social not-yet-science,” as it has also been characterized; but whether it is science or not, attention to the part it plays and should play in the formulation of law is now a very pervasive feature of law school discussion.

The present paper does not advocate that any one approach should be sponsored by all the schools or even by any one school. Uniformity is not a desideratum in higher education; it discourages that comparison which is vital to progress. But it is important that the student realize that everyone—teacher and fellow-student, as well as judge—is proceeding from some preconceived standard of values and that the standard used will affect the result. Those who disapprove of the “policy” approach of our leading law schools are not being neutral. They would try to keep the law student ignorant of the fact—an indisputable fact—that law is a means of social control.

Finally, we must note an additional, by no means new, explanation of judicial decisions which has received some scholarly attention during the last few decades. Sometimes denominated the Realistic or Neo-Realistic or Gastronomical approach (although really a caveat rather than an “approach”), it points out that judicial decisions are not always the result of judicious thought and warns of the influence on decisions of the judge’s digestion, itching palm, and other non-intellectual conditions. Such factors are, of course, of major importance to the parties involved in an individual case, but, except in a precedent-bound society, have comparatively little effect upon the body of our law. The judges purport to be bound by rules of law—whether found by precedent, natural law, or sociological approach.

B

The sources of substantive law are weighted by the “approach,” which can act as a catalytic agent transmuting “hard law” into justice. Readily apparent is the extent to which the “approach” will determine the law

²⁶ An abortive Yale Law School project proposed that the regular three-year law school course at New Haven be interrupted to provide a year’s training in Cambridge at the Harvard Graduate School of Business Administration, with courses in Production, Marketing, Finance, Accounting, Statistics, and Public Utility Economics. (Dean’s Reports 1932–1933 through 1938–1939.) Lack of enrollment caused the discontinuance of this interesting venture.

"found." A jurist who considers adherence to precedent the prime goal is less likely to consider or give weight to changed conditions than one employing the sociological approach. Since a superabundance of cases supplies adequate material for the support of any or all approaches suggested, the choice of material by the law school teacher makes it possible to guide the students into one or another of them. Precedent was the earliest and still is the easiest. At Catholic law schools, which are frankly unsympathetic with "modern legal philosophy," the "natural law" approach plays a greater part in training than in the nonsectarian schools. All law schools in this country at least call attention to the sociological approach, and the most renowned (*i.e.*, those with nationally respected faculties) give some training in it. At such law schools, students today come to view the sources of law as follows:

Legislation changing the law is an accepted means of social control in a democracy. The statute, in theory, is the voice of the majority prescribing a rule for the future on the basis of present-day vision as to the needs of the future—it is prospective both in formulation and in operation. A statute, however, cannot possibly provide for all situations. Even where it appears to do so, a statute is inanimate except as applied by the courts. For application and interpretation, we turn to the courts and "case law."

In case law, precedent is utilized as a tool—as a means, not an end. The practice of following judicial precedents has been and is the *working* rule of our law. A decision by a court of competent jurisdiction on a controverted question of law not only is binding on the parties before the court, but also is generally considered an authority to be followed by the same court or courts of lower rank in subsequent cases, where the significant features or subsumptions are the same. Precedents help give certainty, and (if there are no conflicting precedents) they enable the court to render a decision speedily, much more quickly than if the court had to consider the problem involved afresh in every case. But this does not mean that precedent is law—conclusively.

The apparent law gleaned from prior reported judicial decisions is generally not binding upon the courts if the result would be unjust.²⁷

²⁷ A broad exception must, however, be noted: "In matters of property and commercial law, where the economic forms of the social interest in the general security—security of acquisitions and security of transactions—are controlling, mechanical application of fixed, detailed rules or of rigid deductions from fixed conceptions is a wise social engineering." ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* 154 (1923). Real property titles and, to some extent, the field of bills and notes require, as a matter of convenience, that conduct and terms used therein be regarded as symbols and always given the same connotation. In these cases "the finality of the rule is in itself a jural end." CARDOZO, *THE PARADOXES OF LEGAL SCIENCE* 67 (1928).

The refusal to regard case precedents as conclusively determinative is not a radical innovation; it was applied by Bracton,²⁸ was approved by Blackstone²⁹ and Kent,³⁰ and more recently was referred to by Chief Justice Stone as "the very life of the law."³¹ Paradoxically, nothing is better established by precedent than the principle that precedents are not necessarily binding.³²

Precedent is not lightly disregarded; neither are ideals and goals. Even well-reasoned precedents should not be binding if they do not conform to the pragmatic standard, or if they are based on goals or on premises now obsolete or on economic or social conditions which have changed. Current judicial theory, perhaps sensitive to the impact of the scientific method in education, regards law as a branch of human experience which must evolve with the complex developments of life. By its nature, law is evolutionary, both in itself and in its adaptation to a continuously evolving world. Static rules cannot forever be the molds to which the body social must conform.

Few will now be found to urge seriously that there was, is, or can be an unchanging permanence in principles of justice, or that the law can never be improved.³³ We would not today want to be governed by the dead hand of the past—by the *lex talionis*,³⁴ by the principles of justice inherent in medieval serfdom, or even by the almost as barbarous rules of Coke's day.³⁵ Law, in fact, is not static, and there is hardly a rule or doctrine of case law which has not been abolished, changed, or modi-

²⁸ PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 231-232 (4th ed. 1940).

²⁹ 1 BL.COMM. *69-70 (1765).

³⁰ KENT, COMMENTARIES 444 (1826).

³¹ HARLAN FISKE STONE, LAW AND ITS ADMINISTRATION 47 (1924).

³² In 1821 Professor Greenleaf of Harvard published a volume listing overruled cases. Between 1840 and 1856, "upwards of fifteen hundred cases" made necessary a fourth edition. SIMON GREENLEAF, A COLLECTION OF CASES OVERRULED, DENIED, DOUBTED, OR LIMITED IN THEIR APPLICATION, TAKEN FROM AMERICAN AND ENGLISH REPORTS, Preface (4th ed. 1856). For a list of important decisions recently overruled by the Supreme Court of the United States, see *Smith v. Allwright*, 321 U.S. 649, 665, n. 10, 64 Sup.Ct. 757, 88 L.Ed. 987 (1944).

³³ Aristotle noted that a problem arose when a written law remains, but no longer under the conditions which led to its enactment. As early as his day laws were to be found "contradictory to another approved law." ARISTOTLE, "ART" OF RHETORIC, Bk. I, xv, fol. 1375b (Freese trans. 1926).

³⁴ Under the Code of Hammurabi if faulty construction of a house by the builder causes the death of the owner, the builder is killed; if it causes the death of the son of the owner, not the builder but the builder's son is killed. ROBERT FRANCIS HARPER (ED.), THE CODE OF HAMMURABI 81, §§ 229-230 (1904). Biblical law did not carry the doctrine of *lex talionis* this far. EX. 21:24; Lev. 24:19.

³⁵ Witchcraft, adultery, and murder were all crimes and all offenses of equal degree—all punishable by death. On the eve of the Industrial Revolution, death was the prescribed punishment in England for 160 offenses, 4 BL.COMM. *18 (1765), some of which today are not considered sufficiently serious to bring an offender into court.

fied.³⁶ The flux and change seen in conflicting rules both in statutes and in judicial opinions are evidenced by the demand for Uniform State Laws and the American Law Institute's Restatements. Further recognition that specified case law is at times anachronistic and requires reform—changes too drastic to be applied by retroactive judicial decision—is to be found in the annual suggestions for statutory changes recommended by New York's Ministry of Justice—the Law Revision Commission (for substantive law) and the Judicial Council (for procedural law).³⁷ Future changes are inevitable as long as there is growth. "I do not think we are more inspired, have more wisdom, or possess more virtue, than those who will come after us."³⁸

C

Familiarity with what are believed to be the substantive rules of law is one of the major aims in law school study. Knowledge of black-letter law is desirable both to suggest "the law" and to permit arrangement of the material into an ordered pattern from which departures or changes may be more systematically noted and evaluated. The practice of the highest ranking law schools in continually emphasizing the possibility of change is adopted deliberately to avoid the great danger that students will conclude that a statement of "the law" is final. The ease, almost instinctive, with which one follows precedent makes it especially important that the law-trained man be educated to be eternally vigilant against blind acceptance. That caution is his skill.

The most renowned law schools, however, are frequently indicted as training appellate judges when they should be trade schools teaching "black-letter" law and training counselors; complaint is made that law schools place too great emphasis on change in law, or what the law "should be," and that this emphasis is out of proportion to the sort of activity which will occupy the graduate in practice as a lawyer. The uncertainty as to the content of "the law" is not attributable to a failure in educational technique. It should be clear that education which does not prepare one to anticipate both the possibility and the degree of likelihood of change in "law" will make one deficient as a counselor. Social

³⁶ John N. Pomeroy in THEODORE SEDGWICK, A TREATISE ON THE RULES WHICH GOVERN THE INTERPRETATION AND CONSTRUCTION OF STATUTORY AND CONSTITUTIONAL LAW 270 n. (Pomeroy ed. 1874).

³⁷ The New York Law Revision Commission is charged with the duty "of discovering defects and anachronisms in the law" and recommending changes "to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions." N.Y.LEG. LAW § 72. See also N. Y. JUDICIARY LAW § 45 for like authorization of the Judicial Council.

³⁸ George Washington, letter to [Mr. Justice] Bushrod Washington, November 10, 1787, 9 THE WRITINGS OF GEORGE WASHINGTON 277, 279 (1835).

and economic conditions and other factors change; within recent generations, they have changed faster than ever before. The "law" appropriate to these conditions has similarly changed or developed,³⁹ and at about the same pace, but with a time lag. The training of law students consequently must prepare them not only to handle routine matters, but also to anticipate changes which will adapt the law to the altering conditions of contemporary life. Also, although routine situations may constitute the bulk of one's activity in ordinary practice, some more complex problems are bound to arise. Any layman can, for a dollar or less, buy a compact "Compendium of Business Law," but what the layman wants is not *elegantia juris*, but counsel.

The counselor (who is an officer of the court) owes a primary duty to the community not to advise action, albeit within the four corners of earlier precedents, if it runs counter to the morality and interests of the community collectively. At the same time, such enlightened counsel will be of service to a client who might otherwise be the first to be convicted by the heightened sentiment of the community. The plaint of the high financiers of the Twenties that they were simply doing what others had been "getting away with" was not entirely baseless; their error (or that of their counsel) was in not correctly gauging a shortening time lag between "stability" in law and the ability of the community and the courts to catch up with novel predatory practices.⁴⁰

The lawyer's prophecy of what the courts will do has two aspects: (1) He can determine with a reasonable degree of accuracy the background—whether there is an applicable statute, and, statute or not, what the courts have done previously in the same or almost similar situations. Cardozo estimated that nine-tenths of all cases coming before the appellate courts are predetermined by precedent.⁴¹ (2) The guesswork comes in predicting whether the specific case is one of the uncertain one-tenth. The prediction depends on an intervening future human act—whether the judge will be convinced, if the matter comes to litigation: that the precedents are in point, and sustain the principle urged; that

³⁹ An examination of the last bound volume of Reports of the United States Supreme Court (Vol. 331) discloses that, of the cases in which opinions were written, only a half-dozen brought before the Court subjects which by any stretch of the imagination had been before the courts by 1776: one on freedom of the press, one on freedom from unreasonable search and seizure, one on rules of evidence, and three on property rights with international or nation-wide ramifications. The other opinions were concerned with questions of constitutional law and the application of statutes, especially those creating administrative agencies and those dealing with bankruptcy, income taxation, trade-marks, and the statute of limitations.

⁴⁰ "Imagine a state of society in which it is possible to travel through life with a criminal purpose and yet never, because of this legal time-lag, leave the white squares of legal innocence." REBECCA WEST, *THE MEANING OF TREASON* 64 (1947).

⁴¹ CARDOZO, *THE GROWTH OF THE LAW* 60 (1924).

there are no conflicting precedents; that the precedents are reasonable; and that no additional factors (including economic or social changes) now require a different ruling.⁴² Whether a lawyer is "good" then turns on his having been trained to find prior decisions which bear on the principles involved in the problem; his ability to reason (which includes the skill to anticipate which of conflicting precedents or principles will prevail); and his general knowledge of the community interest which will bear upon the decision. Even so, his prediction may prove erroneous if these various elements are not adequately presented by the advocates before the court when the matter reaches litigation. Inadequate presentation may result in the court's following "black-letter" law—right or wrong. But a lawyer cannot base his advice on anticipation of inadequate presentation in the event that a problem reaches the courts.

More important than the student's absorption of "black-letter" law is his training in analysis and the formulation of law, a subject which will be discussed in some detail hereafter. When the student becomes a lawyer, he is expected to apply to the problems of his clients the power of analysis in which he has been trained at law school. If he has not acquired this skill, he cannot be considered a lawyer regardless of how much "black-letter" law he has memorized.

D

In the early days of law studies, the stark "precedent" days when choice of the correct writ was vital and the merits unimportant, students concentrated on what we today would consider adjective law. Now that aspect of law administration is the most neglected in the law school.

Law school courses do make it possible for the student to learn the rules of adjective law—the basic materials essential to the drafting of a pleading—but they cannot be expected to and they do not develop skill in draftsmanship, which is a facility in composition which comes only after years of application. Law schools also give instruction in the rules applicable to the operation of the law machinery made available by the community, but they cannot be expected to and they do not develop skill in the conduct of trials—a talent also requiring long practice. That the law schools do not attempt to develop these skills requiring practice rather than precept is understandable.

Less excusable, however, is the failure of the law school to develop in the student an attitude toward the adjective law comparable to the "approach" to substantive law. I refer here not to skill in the use of law

⁴² Words change in meaning. A "manufactured" article no longer connotes something made by hand. The term "commerce" today bears no relation to its connotation in 1789.

machinery, but to an ethic—a realization of the vital role of the lawyer in the administration of justice and an appreciation of his responsibility. As important as knowledge of the rules is avoidance of their misuse.

Almost at the very inception of legal education in England, a writer envisaging the possibility of abuse of legal practice warned:

That every pleader is bound by oath that he will not knowingly maintain or defend wrong or falsehood, but will abandon his client immediately that he perceives his wrongdoing. Thirdly, that he will never have recourse to false delays or false witnesses, and never allege, proffer, or consent to any corruption, lie, or falsified law, but loyally will maintain the right of his client, so that he may not fail through his folly, or negligence, nor by default of him, nor by default of any argument that he could urge.⁴³

This ancient exhortation unfortunately continues to be a needed warning to this day.

The law schools bear a heavy responsibility both for what is included in and what is omitted from the curriculum. The lacunae noted are doubly serious: first, because law is inanimate except as administered, and second because the lawyer's participation in the administration or maladministration of law is more patent than his part in the making of law. The law schools could by affirmative action in the training of law students take a constructive part in law administration and help considerably in reducing the disrepute in which law is held.

Bearing in mind that the administration of justice is the process whereby the conformity of law to justice is induced, we must note that lawyers' advice (whether based upon statute or case law) is itself law to the client—law, perhaps, which conflicts with law which may be pronounced by another lawyer, but nevertheless a factor which will to some extent determine the conduct of the client. Were lawyers to give their clients the unbiased, considered judgment expected of judges in an ideal state, disputes and litigation would be cut down considerably.

III

THE METHOD OF STUDY

The methods of legal education in vogue over the last three hundred years may be traced through three major stages: (1) the apprentice method, (2) the lecture method, and (3) the case method.⁴⁴ More than

⁴³ ANDREW HORN, *THE MIRROR OF JUSTICES*, Bk. 2, § 5 (Selden Society Publication for 1895). (This treatise is believed to have been written in 1307; its author died in 1328).

⁴⁴ Only Anglo-American legal education is being discussed in the text. It may be noted that law schools existed under Justinian, and attendance at such schools was compulsory for those who expected to be judges or practitioners. SAVIGNY, *HISTORY* 435, 440 (Cathcart trans. 1829).

pedagogical interest is aroused by the changes since the old-time practice of learning immutable law was superseded by a form of study calculated to develop skills in analysis and in the formulation of law based upon a consideration of broad social policy. Although the different major stages were never clean-cut, and overlap to this day, can we draw any conclusions as to whether the method of study was or is in any way responsible for the concurrently prevailing attitude toward law and justice?

Discussion in the classroom among a heterogeneous body of students has changed the approach from "How did a court decide a given problem?" to "How and *why*?" Discussion is not confined to what the law "is," but extended to what the law "should be." Where there is a variance between what the law "is" and what it "should be," it is a safe prediction that within a generation these or similarly trained students will—as judges—rule that what the law "should be" "is" the law. The students, meanwhile, have been put on their guard against thinking that what the law "is" when they are at law school will be the law when they are in practice. The law schools here are clearly leading the way for the courts, and one must be indeed short-sighted who does not realize the powerful social force—the significant effect upon future decisions—of this type of indoctrination in the law school. It is helpful to bear in mind Holmes's frank summary: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."⁴⁵

Implicit in classroom discussion is another major aspect of law—the true function of the courts. Despite the implications of its name, the case method tends to weaken the effect of mere cases as authority. It has thus been salutary in counteracting a very unhealthy consequence of the multiplicity of decisions which flooded the country. As decisions became more numerous, the average practitioner and the lower court judge tended to rely upon a precedent "on all fours" rather than to search out and test the applicable principles—a difficult task for one who has been taught under the lecture system and who has simply memorized a number of general principles not differing much from the maxims (hasty generalizations) which served our forefathers.

Certainty in the law meanwhile has not been materially weakened. The case method coupled with the sociological approach at times leads not only to departures from prior decisions, but also to the predictability of such changes;⁴⁶ the latter result refutes the criticism that the case

⁴⁵ OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS 173 (1920). "For legal purposes a right is only the hypostasis of a prophecy." Holmes, *Natural Law*, 32 HARV.L.REV. 40, 42 (1918).

⁴⁶ "In recent years, however, seven of the nine justices have been replaced and an examination of the changes effected by the decisions of the reconstituted Court is necessary to map out the present boundaries of the commerce clause." Note, 42

method with its "what-the-law-should-be" approach does not properly prepare practitioners. Departure from precedent does not deny stability in the law. If there were no stability, the change would be meaningless because the law could be changed again tomorrow and the whipsawing back and forth would result in chaos. There is a fixed element in our law, that prior decisions *are* followed unless a change is called for by logic or experience or a factor not previously evaluated. Once a change is effected, the new law becomes just as certain as was that before. The resulting elasticity leaves the "law" no more uncertain than when equity began to supplement the common law, which had proved unable to cope with certain situations. Yet how harsh and intolerable would our law be to-day had various equitable rights been denied because they introduced some element of uncertainty into the common law!

A weakness in the case method as it was used until the late Twenties was that the use of cases developed into an obsession. Even relevant statutes frequently went unmentioned. The result was that students, who thought that their classroom discussions culminated in current legal doctrine or in conclusions as to what the law "ought to be," never learned, for example, of statutes expressly to the contrary. Another limitation was that the student's knowledge of the social factors which were bringing about changes in law (even common business activities and normal legal documents) was confined to such information as appeared haphazardly in opinions dealing with pathological cases.

Although all law schools now direct attention both to statutes and to the new sociological jurisprudence, not all give training in their use and application. Most schools have been slow to incorporate non-case material into a curriculum which is already overwhelming; moreover, material giving information is a departure from the technique of the case method, which endeavors rather to give training in analysis. On the other hand, it may be urged, the information to be supplied is little different from that which, in earlier periods, it was assumed the student had previously learned and brought to the study of law: to understand medieval rules, the student must have a knowledge of the feudal system.

Institution of the case method, it cannot be doubted, caused the law to be considerably influenced by the views of teachers who were never to be on the bench—but whose pupils would be. Wigmore and Williston are far more persuasive authorities for legal principles in the subjects with which their names are respectively associated than many a judge.⁴⁷ Some writer-teachers are frank to admit that their views of the law are formu-

COL.L.REV. 1333 (1942). Cf. Palmer, *Dissents and Overrulings: A Study of Developments in the Supreme Court*, 34 A.B.A.J. 554 (1948).

⁴⁷ Cf. Oliphant, *A Return to Stare Decisis*, 14 A.B.A.J. 71, 159 (1928).

lated as a result of the unrestrained classroom discussion. Such discussion among students of differing views developed into the sociological approach; and the elevation to appellate courts during the last twenty years of so many law school deans and teachers who have led and been exposed to discussions in the law school class leaves little doubt that the law of the near future will continue to evidence a consideration of its social functions.⁴⁸

In the eighteenth century, during the early "pupilage" era at the Inns, the mode of education seems to have been unimportant, for British practitioners and judges continued extremely conservative while Americans similarly trained at the Inns displayed greater responsiveness to popular ideas. The explanation may be that in America it was the people who elected the judges. The effect of education on the law became more observable after Blackstone's lectures, published as his *Commentaries*, built up a systematic conception of law and made the English legal pattern coherent and intelligent. He was speedily followed by a century of treatises by American teachers of law. In England treatises could not be cited as authority unless the writer was or subsequently became a judge (and the authority then was judicial rather than professional).⁴⁹ In this country a distinguished line of nationally known teacher-writers has left an inescapable impress upon the law.

Although in the early days changes in legal attitude appear to have preceded changes in legal study, the order was completely reversed with the inauguration of the case method and the broadening of the class of law students. The possibility that this recent sequence may continue puts even greater responsibility on those who select not only the law school curriculum but also the pedagogical devices employed.

Interestingly enough, the substantial changes in legal education have followed important wars. After the Civil War of 1642, the Inns abandoned their traditional practices, which were superseded by the "pupilage" system or apprentice stage. After the American Revolution, the Litchfield School in Connecticut developed the lecture method (organized law study, conducted by professional teachers). After the American Civil War, Langdell initiated his famous case method with its emphasis

⁴⁸ The trend toward identifying social justice with "the law" has been charted by Dean Roscoe Pound, *A Generation of Improvement of the Administration of Justice*, 22 N.Y.U.L.Q.REV. 369 (1947). The trend has also been confirmed by a distinguished historian's conclusions as to the changing functions of the state. Toynebee, *Bampton Lectures in America* (delivered at Columbia University in the City of New York, April 14, 1948, not yet published).

⁴⁹ *Johnes v. Johnes*, 3 Dow 1, 15, 3 Eng.Rep. 969, 974 (H.L. 1814). For additional authorities applying the English rule that a writer to be cited must have been or must have become a judge and that the living could not be cited, see ROSCOE POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 139, 167 (1938).

upon self-education (student formulation of law inductively from the cases themselves). And World War I was followed by sociological jurisprudence with its frank consideration of social and economic factors—arithmetic rather than rhetoric. Our present view is that all but the first of these changes represented an advance. What will follow World War II?

IV

THE FUTURE

Before the next chapter in legal education is written, a decision must be reached whether the practice of law is a “public” or a “private” calling. Once this issue is determined, the law school may have a clearly stated goal and may vigorously undertake to implement its objectives.

The individual lawyer occupies an anomalous position in the administration of justice. It is said to be his duty to advance the claims and interests of his client, and at the same time he is told that he is a member of a profession which collectively has the responsibility of administering and promoting justice. Regardless of the canon of “ethics” upon which he may rely, the lawyer who will sacrifice the welfare of the community to benefit an individual client ultimately arouses the community’s hatred, contempt, and ridicule. Admittedly, the law schools must train the student to give competent service to his client; but more important than the development of trade skill, the community says, is the development of a wholesome professional attitude—that the skill be used to further, not thwart, the welfare of the community. Without such an attitude the skill is not merely undesirable; it is a menace.

Unless the student while at law school is thoroughly indoctrinated with this viewpoint of the welfare of the community, his ultimate objectives may be dangerously at variance. Once the novice begins to practice, he will be confronted by tremendous private pressures, equally powerful whether he is wealthy or not. He may be more successful as a lawyer if he is not hampered by a social conscience (a knowledge of the social interest may prove of Machiavellian value to him). If only his personal success is the criterion, more valuable than policy-training or, in fact, any knowledge of substantive law would be courses on how to find clients (“get business”), how to win the friendship of political leaders, and so forth.

The law school, on the other hand, is the representative of the community and consequently should be motivated solely by the desire to supply competently trained individuals who will further the administration of justice, whether as lawyers, judges, legislators, or public officials. Ironically, the viewpoint just stated is negated by “conservative”

groups which deprecate "policy training" and take the attitude that the law school should concentrate on professional competence.

It must be admitted that the shift in emphasis to policy-learning as the vital aspect of law study has caused less attention to be paid to positive substantive law and still less to adjective law. Some efforts may be expected and approved to give students "experience" in the use of the legal machinery. Caution must be exercised, however, to make sure that new or different techniques involve only techniques and do not cloak a difference in views as to the scope of the law as a social science. No one can deny that it would be desirable if the prospective lawyer acquired not only a philosophy of law and analytical technique, but also practical experience in consultation with clients, in drafting pleadings and legal instruments, in the actual trial of cases and argument of appeals, and in dealing with life-and-blood clients, witnesses, adversaries, and judges. But human lifetime is limited, and that portion of it devoted to vocational preparation is still more limited. Within the training period what is it most important to do? My opinion is that in the limited law school years there should be emphasized the ultimate purpose of law and a technique of analysis which the future lawyer cannot acquire on his own or in a law office.

A number of law schools (including Harvard and Yale) have attempted to give their students "clinical" experience (somewhat analogous to that given medical and dental students) by requiring or giving credit for student work in a legal aid bureau. There was recently published a graphic description of this type of training as developed in one of the progressive schools.⁵⁰ It invites similar experimentation by other law schools. Its usefulness as a public service to residents of the community is unquestioned, and the experience will make law study more interesting to the students and may possibly have some permanent value for them; but *quaere* whether it is of such relative value as to justify any appreciable portion of the three-year period usually allocated to law school study.

More useful appears a new course in "Case Studies," recently initiated at Yale, wherein the *complete* record and proceedings of an actual litigation finally determined by the highest court of a state or the Supreme Court of the United States are the subject of study. The course proposes to analyze the legal problems as they appear to counsel when the case first comes to him; determine the *modus operandi* for handling the case, and the reasons for the choice; consider business problems involved

⁵⁰ Bradway, *Education for Law Practice: Law Students Can Be Given Clinical Experience*, 34 A.B.A.J. 103 (1948).

which affect the handling of the case; and trace the action as prepared for trial, and through trial and appeal.⁵¹ This course could be still more useful and realistic if the illustrative problems involved were less crucial and did not go to a court of last resort. Of 800 *litigable* matters which reach the lawyer's office, only one, on the average, reaches the court of last resort;⁵² and decisions must be made by the attorney who cannot rely on ultimate correction by a higher court—even if the client can afford and is willing to pay for that luxury.

This type of supplement to the generally accepted law school curriculum, however, justifies experiment. Intermediate appeal "Cases and Points" which contain all the necessary source material are readily available and will prove of unusual interest and enlightenment. The practical operations in a court may be studied—albeit from a printed page—with greater efficiency than the cases which come to a legal aid clinic. Actual facts may be contrasted with those which the judge (trial or appellate) saw fit to use in his opinion to make it seem more persuasive. The possibility that the judicial opinion will some day in a law school class be matched up against the record may have a salutary effect upon judges.

On the substantive-law front, any increase in the proportion of "black-letter" law taught in the law schools is unlikely. It is extremely significant that when the Civil Service Commission's Board of Legal Examiners had occasion during World War II to test some 13,000 candidates for legal positions in the Federal Government service,⁵³ the written tests required no legal information (other than that supplied in the question). The tests were constructed to measure professional competence—ability to perform the analytical, deductive, and interpretative functions involved in legal work—and to ascertain the candidate's knowledge of current events and general knowledge of economics, history, and government. A conventional intelligence test (vocabulary and comprehension) completed the written examination.⁵⁴ This screening was fol-

51 BULLETIN OF YALE UNIVERSITY: REPORTS OF THE DEANS AND OF THE LIBRARIANS OF THE LAW SCHOOL FOR THE ACADEMIC YEARS 1944-1946 28 (1946); LAW SCHOOL ANNOUNCEMENT FOR THE ACADEMIC YEAR 1947-1948 29 (1947).

52 "Statistics based upon a study of litigation in New York County show that (roughly) compared to one case disposed of by the Court of Appeals, four are disposed of by the Appellate Division, 33 by the trial tribunal, 66 by the calendar judge, and 180 by the judge presiding at motions; while in 492 disposition should be credited to the lawyer, through preliminary investigation or settlement." Philip J. McCook, address delivered January 27, 1933, reprinted in FOURTEEN YEARS OF JUDICIAL SERVICE (1933).

53 Salary \$3,200 a year, or less.

54 Weihofen, *The Written Federal Attorney Examination*, 11 U. OF CHI. L. REV. 154 (1944); Weihofen, *Investigational Possibilities in the Area of Examination Techniques*, 9 AM. L. SCHOOL REV. 1329 (1942).

lowed by an oral examination to determine the candidate's experience, personality, and proficiency.⁵⁵

The great value of such training was confirmed by the experience of Chief Justice Stone, who declared towards the close of the 1941 term of the Supreme Court that since October he had examined 1,200 cases, none having anything to do with what he had studied in law school. Yet he was completely prepared. "I am of the opinion," he said, "that it does not matter so very much what subject is studied, if it has good legal material of current importance."⁵⁶

Very desirable would be classes small enough to permit personal attention by the instructor so that every student might experience the equivalent of law review training. Each student could be assigned a case or problem. Then, after the assignment had been worked out and written up by the student, the instructor in class could review the procedure and criticize the product in detail. Student work sufficiently worthy might be published either in the school's recognized law review or in a special publication.

Inevitably, the law school of the near future will spend much more time than its predecessor on the theory and processes of administrative agencies.⁵⁷ Administrative law, it may be predicted, will match the importance of equity in our legal system. Opposition to administrative agencies, while sometimes sincere, is reminiscent of similar, equally sincere opposition in the days of Coke to the encroachment of equity upon the common law.⁵⁸ But the administrative agencies are here to stay. Many social and economic problems are too complex to be handled by pre-existing legal machinery, and the growth of these agencies makes necessary schooling in their theory and operation.

In considering future legal education, we should bear in mind a political condition—the "global" attitude of our statesmen. I anticipate that just as the financial center of the world moved from Lombard Street

⁵⁵ Wechsler, Cannon, and Hurst, *Lawyers Under the United States Civil Service*, 9 AM. L. SCHOOL REV. 1307 (1942).

⁵⁶ N.Y. Times, May 27, 1942, p. 13, col. 4.

⁵⁷ Professor Gellhorn has recently urged that the Columbia Law School (which initiated the Legislative Drafting Office subsequently adopted by Congress) should now make available for the benefit of the Federal and state governments an "Office of Administrative Procedure" to concern itself with control, procedures, and practices in administrative agencies, to maintain a staff continually examining them objectively and critically, to act as a clearing-house receiving complaints or suggestions, and to give expert assistance to any national or state officials seeking technical assistance. Gellhorn, *Administrative Procedure Office—At Columbia*, Columbia Law School News, April 2, 1948, p. 3.

⁵⁸ Now, so respected a historian as Maitland says that "equity saved the common law." H. A. L. FISHER (ED.), *THE COLLECTED PAPERS OF FREDERIC W. MAITLAND* 496 (1911).

to Wall Street, the law center of the world will also find itself in New York City. The United Nations Library must be in this city as part of the regular U. N. organization. Columbia University is building up an extensive library of foreign law, and New York University has announced establishment of an Inter-American Law Institute to study the common law and the civil law on a comparative basis at the graduate level and thereby promote mutual understanding between the two American civilizations.⁵⁹ When these foreign materials are thus made more readily available, and more students from other countries intermingle with our own, we may expect comparisons and contrasts and a "give and take" which is bound to be reflected not only in the body of law but also in the manner of teaching it. At the same time we must be doubly alert, because the views of other countries as to the desirability of our way of life will be largely determined by the "justice" accomplished by our legal system.

⁵⁹ REPORT OF THE DEAN OF THE SCHOOL OF LAW, NEW YORK UNIVERSITY 1945-1946 13-14 (1946). The degree of Master of Comparative Jurisprudence will be awarded.