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Legal Education During the Past Fifty Years as Reflected in the Changing Character of Law Library Acquisitions

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LEGAL EDUCATION DURING THE PAST FIFTY YEARS AS REFLECTED IN THE CHANGING CHARACTER OF LAW LIBRARY ACQUISITIONS

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The Association of American Law Schools recognizes that "The law library is an integral and essential part of the educational process of the law school"[1] and prescribes minimum quantitative and qualitative standards for the collection and staff of the libraries of member schools. The American Bar Association also prescribes minimum standards for the libraries of schools certified by it. This being true, it is natural that, as the law school curriculum and teaching methods change over the years, the library collection and service keep pace.

GROWTH IN SIZE AND COST

Since 1924 the minimum number of volumes required by the Association of American Law Schools has increased by geometrical progression — from 5,000 to 10,000 to 20,000. The corresponding required annual expenditures for the purchase of books and periodicals have increased from none at all in 1924 to $2,000 in 1932 and $4,000 in 1955. The latest minimum standards, adopted last December and effective September 1955, call for a library of at least 20,000 volumes and an annual appropriation for books and periodicals of at least $4,000. These are the minima for a school with 100 students; each major fraction of 100 additional students calls for an increased appropriation.

The qualitative standards occupy two full pages of print and specify in effect a working collection of the fundamental sources and indexes of Anglo-American law — reports, digests, laws, encyclopedias, legal periodicals, American Law Institute *Restatements,* treatises, Shepard's *Citations,* and so forth. Not satisfied with this, the Association appointed a committee at its December 1952 meeting to consider increasing the minimum requirement to 30,000 volumes for a school of 100 students.

This minimum library, large as it is by standards prevailing at the beginning of the period covered by this article, is for a "small" school of 100 students only, and makes little or no provision for the research now carried on by both faculty and students of most first-rate schools.

[1]Standard III-3 (a), adopted Dec. 1952, in *Program Annual Meeting 1952,* p. 104.

It provides much of the indispensable literary bread, meat, and potatoes forming the irreducible basis of a working law library but lacks the vitamins without which in these days effective instruction and its underlying research cannot be carried on. Since 1924 the minimum requirements in size of collection and expenditures have quadrupled for member schools, with future radical increases indicated.

Why this enormous increase in the size and cost of the modern law school library? It is traceable directly to the increased complexity of modern life, as reflected in the law and consequently in legal education.

The young Lincoln, lying on the floor of his log cabin to study his Blackstone by the light from the fireplace, gives a fairly typical picture of legal education in a time when about all the library needed for the study of law was this same Blackstone and perhaps a state code or practice book. The student then "read law" as an apprentice in a law office; such law schools as existed gave a few lectures on law in connection with other courses in the college with which they were connected, but there was little more. The first chief justice of the United States to be graduated from a law school was William Howard Taft, appointed in 1921.

In this early period admission to practice was rather informal and was usually regulated by local committees of the bar. One such committee, upon being reproved for recommending the admission of a notoriously unfit candidate, said: "But we had no choice. As you know, the passing grade is fifty percent. We asked him a question in torts, which he answered incorrectly. Then we asked him one in contracts, which he said he didn't know. That was right, so he had answered one question incorrectly and the other correctly, for a fifty percent average; and we had to admit him."

By fifty years ago, however, at the beginning of the period covered by this paper, not only were law schools well established but the case system of instruction had become a fixture. There was a very heavy emphasis in the curriculum on common law subjects throughout the entire course, such as is now given during perhaps the first three terms. Statute law was represented by little more than criminal law, constitutional law, and practice.

The courses at the turn of the century were nicely compartmented under such titles as equity, torts, contracts, practice, property, mortgages, and agency — very much the same titles as those of present-day law school courses. But law was law, with no trace of overlapping into

any consideration of sociology, economics, or the like. Pennsylvania still offered a two-point course in Blackstone. One looks in vain in Ames' *Casebook on Bills and Notes,* of that period, for any hint as to the practical work of a bank, the sort of information needed to help the student to a better understanding of the mechanics of business as related to negotiable instruments. Again, Wormser's *Cases on Corporations* then had no material on what makes a corporation tick — corporate papers, financing procedures, balance sheets, and the like.

This attitude that law is law, that economics is economics, and that labor law is common law master-and-servant, divorced from all background considerations relating the legal concepts to the realities of human society, was of course reflected in the law school libraries of the day. Why bother about other implications when the courts did not? The Harvard Law Library of 1908, then as now the finest of law libraries, was in all its 111,000 volumes innocent of anything but law reports, statutes, treatises, periodicals, and digests of the law. As late as 1909 the first announcement of the University of Florida law school was able to boast of "a good working library" composed exclusively of law reports, statutes, and "more than two hundred of the leading text-books and books of reference." These textbooks, as compared to the present-day crop, were delightfully simple — in a day when the successors of Blackstone could cover the whole of a major topic in one comparatively small treatise.

New Legal Fields and Techniques

As life grew increasingly complex in the twentieth century law followed suit. Instruction in the law had to keep in step, and the content of the supporting law library began to lose its pristine simplicity. Law as taught, practiced, and written about was no longer simply law; it was law as influenced and directed by sociological, economic, and other factors.

Looking back, it is easy to distinguish certain landmarks in the progress of the law during the past fifty years, as taught in the law schools and as collected by law school libraries.

More Legislation

With the rapid industrialization of the United States the doctrine of laissez-faire proved inadequate to cope with changing conditions. The common law doctrine of master-and-servant afforded insufficient protection to the workman, especially to women and children. In-

dustrial combinations got out of hand and became increasingly complex in organization. Judicial changes in the law being tardy and ineffective, legislatures stepped in to fit the law to changing conditions.

This transition marked the first great breach in the solid front of the law as it had been, as it had been taught, and as it had been written about. Legislation, of course, was not new, but the scope of its coverage and the violence it did to age-old legal relations were. As pointed out by Mr. Justice Frankfurter:[2]

> "Inevitably the work of the Supreme Court reflects the great shift in the center of gravity of law-making. Broadly speaking, the number of cases disposed of by opinions has not changed from term to term. But even as late as 1875 more than 40% of the controversies before the Court were common-law litigation, fifty years later only 5%, while today cases not resting on statutes are reduced almost to zero. It is therefore accurate to say that courts have ceased to be the primary makers of law in the sense in which they 'legislated' the common law. It is certainly true of the Supreme Court, that almost every case has a statute at its heart or close to it."

Although the situation in Florida does not quite coincide with the foregoing picture, Florida statutes and their annotations were specifically mentioned in seventy percent of the cases in a recent volume of the Florida Reports and in eighty percent of the cases in a recent volume of the Florida Supplement.

But the profession, including the courts, often looked coldly upon legislation in derogation of the common law. Another one of those local bar examiners mentioned earlier had run the gamut of common law questions with a candidate vainly searching for something the boy knew. Finally the candidate said hopefully, "I don't know much about the common law, sir, but I am good at statute law." "Son," said the examiner, "you've been wasting your time, because the next legislature is likely to come along and repeal everything you know."

Lawyers found that a new technique was necessary in order to overcome this attitude. Led by the 1908 example of Louis D. Brandeis in *Muller v. Oregon*,[3] they went outside their cases, statutes, and

[2]Sixth Annual Benjamin Cardozo Lecture, delivered before The Association of the Bar of the City of New York, Mar. 18, 1947, 2 *Record of Ass'n of Bar of City of N.Y.* No. 6 at 213 (1947).

[3]208 U.S. 412 (1908).

treatises for additional evidence with which to demonstrate the constitutionality of this remedial legislation. In his brief to the Supreme Court Brandeis not only cited statutes of eighteen states and seven foreign countries, a process common enough even then, but also submitted extracts from over ninety reports of committees, factory inspectors, and the like relative to the effect of long hours of labor on working women. He won his case and established a trend.

No longer was the law confined to court rooms and legislative halls. Thenceforth it had to be sought also in government documents, research publications of all kinds, labor union and manufacturers association studies, and similar publications. Law schools had to take cognizance of legislation to an extent undreamed of before, not only of its substance but also of its form, techniques, and backgrounds. Courses in legislation and its interpretation became common; and books were written accordingly, which the library had to stock.

Still another technique affecting the curriculum and the library arose, the search by the lawyer for "legislative intent" as extracted from debates, hearings, committee reports, and other sources. As Mr. Justice Jackson put it:[4]

> "The custom of remaking statutes to fit their histories has gone so far that a formal Act, read three times and voted on by Congress and approved by the President, is no longer a safe basis on which a lawyer may advise his client, or a lower Court decide a case. This has very practical consequences to the profession. The lawyer must consult all the committee reports on the bill, and on all its antecedents, and all that its supporters and opponents said in debate, and then predict what part of the conflicting views will likely appeal to a majority of the Court."

It becomes obvious that the law student must be taught the new techniques, on both the national and the state level, and that the library must be alert to acquire and service the multitudinous and varied publications of such organizations as legislative committees, legislative councils, law revision commissions, legislative reference services, and university bureaus of public administration or industrial relations. Our nice, tight little compartments have indeed burst their bounds.

[4]*The Meaning of Statutes: What Congress Says or What the Court Says,* 34 A.B.A.J. 535, 538 (1948).

Administrative Law

Perhaps the most disruptive force of all, however, has been the intrusion of federal and state governments into every aspect of human relations, and the consequent growth of administrative law.

We have had administrative law from the beginning of our government, of course, but its impact was for decades limited to highly specialized and small groups of clients and lawyers. The Sixteenth Amendment in 1913 really opened the gates. It introduced the practice of frequent and devastating statutory changes, implemented by agency rules and decisions in such volume that the lawyer could not cope with them by known techniques and publications. The loose-leaf service was then born and has since spread to a large number of tax and regulatory fields, federal and state.

What the Income Tax Amendment started the New Deal completed — the application, to every citizen, of the statute law of state and nation. Social and economic legislation of all kinds, establishing innumerable agencies and bureaus to administer it, with countless and constantly changing regulations administered by bureaucrats and construed by a new breed of quasi-judicial tribunals — all this has upset our earlier concepts of law and legal relations in many fields. Once the lawyer specializing in federal or state statute law was a man apart in his profession; now, to quote Jimmy Durante, "Everybody's in the act." Thus we have federal and state tax, fair trade, marketing, and labor laws that nobody can escape; and most of the effect is felt at the agency level without ever reaching the courts. In the fiscal year 1950, for example, the National Labor Relations Board closed 20,640 cases, but in that same year only 101 cases were appealed from the board to the courts. Similarly, the Federal Trade Commission in that same year disposed of 1,172 complaints, with only eleven federal court decisions.

The effect of this upon the law school curriculum and its supporting library is obvious and devastating.

Today every school offers one undergraduate course or more in federal and state income, gift, and estate tax, in labor law, and in government regulation of business and agriculture. As a result of complicated tax and marketing laws courses in legal accounting are frequent. Most larger schools in addition offer seminars and research courses in special aspects of these topics. Administrative law courses are universal.

On the publications side the fact that so much of this development involves delegated subordinate regulations rather than formal legislation, and agency rather than court decisions, has resulted in a rash of new kinds of law publications undreamed of in the earlier days yet indispensable for present-day research and practice. Foremost among these are the tax and regulatory loose-leaf services, but most governmental agencies have their own publications as well. Unofficial treatises and studies there are without number, split into an infinitude of diminutive sub-topics. Instead of master-and-servant we now have full-sized books on *Collective Bargaining in Spokane County, Washington.*

Comparative and Foreign Law

Another development affecting the library, and one of rapidly growing importance to schools on the seaboard, is the presence in the law school curricula of comparative and foreign law courses. In my youth there was a saying that "Trade follows the flag." Now the American flag is everywhere, resulting in legal problems of all kinds: contracts, labor relations, admiralty, foreign exchange, and many others. Solution requires some knowledge of foreign legal systems, codes, and decisions. More and more law schools are therefore offering courses in these systems, necessitating the stocking by libraries of the foreign legal material. These courses, as many a seaport lawyer is discovering to his profit, are strictly bread-and-butter.

Seminars and Graduate Courses

A final factor to be considered in the development of law school curricula as affecting law library acquisitions is the growth of seminars and graduate courses, as well as the large amount of research done by law school teachers. These seminars permit a more detailed examination of limited but important areas for which the elementary courses have supplied a basis. Typical seminars have to do with estate planning, commercial or comparative law, labor law, and legislative drafting. The principal impact of these courses upon the library is that, as is the case with most law study now, they call not only for a full complement of conventional legal publications on the one hand — statutes, reports, legal periodicals, treatises, citators — but also for related subject-matter studies furnishing the technical, economic, sociological, and legislative background necessary to a proper understanding of the sum total of the law involved.

Faculty Research

The change in law school curricula, prompted by efforts to keep up with the rapidly changing conditions as reflected in the law, has in turn called for a different kind of faculty than was common earlier in this century; and this change affects the library. The part-time teacher, whose main interest was in his law practice or his judgeship, has for the most part given way to the "community of scholars," whose members devote their full time to teaching law and engaging in research.

This shift is not due to any lack of competence in the part-timers, most of whom were and are excellent lawyers and teachers. Rather it has come about because the part-timer usually lacks the time to keep up with the progress of the law, whereas an important part of the accepted duties of the full-time teacher is to engage in serious research, so that he can teach his students the living and growing law.

The formative influence of these research professors is enormous. Articles by Florida professors — for example, on water law, estate planning, extraordinary writs, and contingent remainders — will be cited by lawyers and judges and will influence decisions. Among the reforms or legislation directly attributable to the writings and research of law professors are the current Federal Rules of Civil Procedure, fair trade laws, "heart balm" legislation, the undistributed profits tax, and declaratory judgments. State legislatures in particular call upon their law schools for aid in drafting new legislation, a task calling for the widest knowledge of every legal, social, and economic factor entering into the picture. The modern law school library must have material of these varied types for these men. The best teachers go where they find the best libraries, and teachers make the law school.

The modern casebook, now usually called "Cases and Materials" in direct reflection of the changed curriculum and the expanded content of legal materials, presents graphic evidence of the complex make-up of the modern law school library. A recent example in somewhat extreme form is Fowler Harper's *Problems of the Family,* in which cases occupy only half the space. The remainder, interspersed throughout the book, comprises documented essays and excerpts from theses, bulletins, and similar sources on such topics as blood tests, legitimation, and love problems of adolescence. That this sort of thing is not just a law professor's dream of how law should be taught is shown by such cases as *Perez v. Sharp,* in which the opinion, on a

miscegenetic marriage, cites sixteen such bulletins and reports in addition to treatises and legal articles.[5] Similarly, for corporation law the casebooks cite and the library must stock books on the setting up and practical operation of a corporation, the conduct of its meetings, and other activities, so that the student need not read his corporation law cases in a vacuum.

To rely upon the contents of the casebook is not enough, however; the alert teacher frequently supplements the book with materials of his own selection in order to meet a local need or to bring the older materials up to date, and he expects to find what he needs for this purpose in the library. Many teachers prepare their own casebooks, and they cannot do this unless backed by an adequate library.

Even straight law books are different from what they were a generation ago. There are new subjects to write about, or new ways to divide old subjects. Instead of treatises on torts one sees works on the tort liability of third-class cities in Oregon, or the tort liability of the government for school accidents or for atom plants. Legal writing is itself atomized. To use a favorite expression of librarians, authors write more and more about less and less. One is reminded of the entering medical student whose registrar remarked, "Of course you will specialize." "Yes, indeed; on the diseases of the nostril." "Fine, which nostril?"

Just how far this branching out can go, and the effect that it has upon the character of the available material and its publishers, is illustrated by the topic "Labor Relations," still so new that, although the topic will appear in the *Sixth Decennial Digest,* it is lacking in the *Fifth.* In the Columbia University Law Library, which is very careful indeed not to duplicate subject headings needlessly, the general topic is split into some thirty-five subheads, ranging from Apprentices, Arbitration, and Boycotts, through Industrial Relations, Mediation, and Open and Closed Shop, to Trade Unions and Workmen's Compensation. The materials catalogued are just as diverse in their origin. The straight law books published by law publishers are in a decided minority. Other publishers of labor law books, for example, include federal and state governmental agencies, state and private university research bureaus and institutes, learned societies and endowments, trade and professional societies, trade unions, and compilers of special loose-leaf services. Something new has indeed been added.

The fundamental materials of the law continue to be the statutes,

[5]32 Cal.2d 711, 198 P.2d 17 (1948).

reports, digests, citators, treatises, and periodicals, just as in the past. They are now fully as necessary as they ever were, but they no longer suffice by themselves — not for teaching, and still less for research. These new ways of teaching law, these new subjects taught, and the new or changed materials accordingly required are emphatically not fancy; on the contrary, they are eminently practical, as law is now administered.

Library Service to the Bar

The recent trend of the state law school library to extend its services beyond the walls of the university proper is making it a vital force throughout the state. Lawyers in many communities lack even reasonably adequate libraries, with resulting detriment to all concerned. A remedy for this has been found in some states; the law school library acts as a central repository serving the entire bar of the state. Usually this library will be the best law library in the state and the best staffed.

The service of the library to the bar may be of several kinds. It may confine its service to assembling, at one place in the state, the material that the lawyer usually needs, and he can obtain it by visiting the library in person. More likely, however, the library will lend books by mail, either directly to the individual lawyer or to a local bar library as a supplement to its collection. If only a few pages are required the library may photostat and mail copies of them, or may even read them over the telephone. Some libraries offer a bibliographical reference service, in which they undertake to survey the literature covering a given topic.

However the job is done, the modern law school library has obviously come a long way from the meager collection of reports and statutes of an earlier day. It is a living and indispensable entity, bringing together a varied mass of materials necessary to the study and the practice of law and actively rendering daily service both to the law school and to the bar of the state.

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