

# CHANGING OBJECTIVES IN LEGAL EDUCATION

ROSCOE B. TURNER\*

IT may be said without much question that there is more activity in the law school world today than there has been at any time within the last generation or two. Things are in a state of flux—the culmination of a long period of suggestion and counter-suggestion with little change. The addition of new courses to the curriculum, the general re-arrangement of existing courses to admit various types of non-legal materials, new approaches in legal thought, new ideas concerning teaching methods, the advent of fact research, and a dawning awareness of the existence of other social sciences than law, all testify to a rapidly changing world. But while there is thus much acceleration and some motion, it is safe to say also that there is far less idea of direction than apparently existed during the last sixty years. The old law school objectives have to some extent been swept aside and new ones have not yet been adequately formulated. It is here proposed to examine the older order briefly in the light of recent developments and to attempt a statement of possible present objectives in terms of concrete curricular re-adjustment.<sup>1</sup>

## I

With the introduction of the case system at the Harvard Law School some sixty years ago,<sup>2</sup> a new era in legal education was inaugurated—one that has had an important influence on teaching methods not only in law schools but in other fields as well. But the long continued advertisement of the case method as the apotheosis of teaching technique has overshadowed the other important development which took shape at about the same time,

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\* Professor of Law, Yale University; member of the New York bar.

<sup>1</sup> This paper in substantially its present form was submitted to the Yale Law School faculty one year ago. A brief summary of its contents appeared last June in the writer's review of LLEWELLYN, *CASES AND MATERIALS ON THE LAW OF SALES*, (1930) 30 *COL. L. REV.* 904, 906. It should be clearly stated, however, that it is in no sense an expression of the official attitude of the Yale Law School but sets forth merely the writer's personal viewpoint. At the same time the writer wishes to acknowledge fully his indebtedness to his colleagues, former as well as present, for many of the ideas here discussed.

<sup>2</sup> The case method was instituted shortly after the appointment of Dean Langdell in 1870. Joseph Redlich, *The Common Law and the Case Method in American University Law Schools*, *CARNEGIE FOUNDATION BULLETIN* No. 8 (1914).

*viz.*, the organization of the law school curriculum.<sup>3</sup> With the crystallization of the case method as a teaching device, courses of study designed to serve the case method took on a permanent aspect. As a matter of fact the curriculum which was marked out at this time, has remained almost without significant change until recently—a tribute to the workmanship of the founders of the system, if you will, or a commentary on the intellectual lag of the lawyer, if you prefer.<sup>4</sup>

It is difficult to assess the underlying assumptions and purposes of those who built the present curriculum. Law schools had but recently emerged from a period in which they had been almost wholly preoccupied with training practitioners. Their educational superiority over the prevailing custom of reading law in the office of a practicing attorney had not yet been definitely established. Obviously one of the principal objectives was to train men for practice. At the same time there were many, perhaps sharing the age-old disdain for things commercial or practical,<sup>5</sup> who sought a school of jurisprudence—law as a system of culture, law as a science, and, only incidentally, law as a preparation for practice. Yet however high the aspirations may have been, it is clear that from the beginning the content of most courses was shaped primarily to appeal to the practical-minded student intending to practice law.

Granted this objective, it seems strange that there has been so little apparent change in law school curricula, since it needs no argument to show that practice is today very different from practice sixty or even thirty years ago. It is a far cry from the trial work of the Mr. Tutt school, whose practice seems to have comprised a series of jury trials conducted chiefly as a matter of chivalry, to the practice of the larger law firms today.<sup>6</sup> In many modern law firms only work of a specialized character is handled and quite generally there is considerable division of labor within the firm. An increasing number of attorneys now rarely,

<sup>3</sup> A discriminating appreciation of the work of Langdell, Thayer, Gray and Ames in this effort appears in Professor Williston's recent little volume, *SOME MODERN TENDENCIES IN THE LAW* (1929). And see further, A. Z. Reed, *Training for the Public Profession of the Law*, *CARNEGIE FOUNDATION BULLETIN* No. 15 (1921) 345, 353.

<sup>4</sup> One is tempted to say the latter since as late as the school year 1928-29 only 47 out of 60 schools which were members of the Association of American Law Schools appear to have finally adopted the case system. *LEGAL EDUCATION, BULLETIN* No. 31 (U. S. Dep't of the Interior 1929).

<sup>5</sup> An interesting development of this attitude in another connection is presented by Max Radin, in a series of essays under the title, *THE LAWFUL PURSUIT OF GAIN* (1930).

<sup>6</sup> The practice of John W. Sterling (1844-1918), a prominent member of the New York Bar for many years, is interesting in this connection. *GARVER, JOHN W. STERLING* (1929). And see *HICKS, HIGH FINANCE IN THE SIXTIES* (1929), for further light on the changing practice of the period.

if ever, have occasion to appear before a court. Practice has become more and more a matter of giving advice on transactions as diversified and varied as are modern affairs.<sup>7</sup> Notwithstanding this, almost all law school graduates today, like their predecessors of fifty years ago, are turned out according to one model—a model which itself has scarcely changed at all.

Probably the most significant factor which has contributed to this stability of the law curriculum is also the most intangible—the attitude of thought, the basic conceptions, concerning law. Even up to the present generation some legal scholars held the view that there exist certain fundamental principles of law which, once accurately formulated, would permit any one conversant with them to decide future cases almost automatically. And of course the courts have long phrased their opinions as though judges were merely the instrumentalities through which the “law” was given effect, rather than its creators. In part the stress on cases as the repositories of such principles can be ascribed to this view<sup>8</sup>—the idea of delving into the past to bring forth all bright and shining the pure gold of the view which, “on principle,” is “true.”

This tendency to look backward to the supposed source of things for guidance had far reaching consequences. The early casebooks were devoted almost exclusively to historical English and American decisions. It has only been within recent years that cases decided in the present century have found any large part in casebook construction—and then the change has been regarded as an innovation. New legislation could have no part in such a system for, as has been quaintly said, the legislature might at its next session change the law and away would go a student's education. Courses dealt only with the opinions of the appellate courts, setting apart the law in “water tight compartments.” Altogether it was a nicely wrought system, though out of step with modern requirements and now being either damned, or praised, with the word “classical.” It is this system

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<sup>7</sup> This should be verified as a matter of fact by a careful study of the requirements of modern practice before any considerable change in the course of study is made. At the same time, the point is so much a matter of common knowledge that it has been suggested with considerable force by Professor Hanna of the Columbia Law School that the law schools in the larger commercial centers at least should offer a great deal more non-legal business material than is now the case. *A Modern Approach to Legal Education* (1930) 6 AM. LAW SCHOOL REV. 745-750.

<sup>8</sup> No disparagement of the value of historical studies is intended by this if such studies are pursued to deepen an understanding of the course of development of law; in fact, as is hereinafter pointed out, an opportunity should be given to acquire much more material of this character than is now possible. The increasing introduction of new cases has necessarily crowded out of the new case books practically all pretense of a historical development.

which, almost to the exclusion of everything else, comprises modern law school training today.

Everyone is willing to grant today that there are no fixed principles existing in space and merely awaiting discovery. The main effort of legal scholars now pretends to no more than the formulation of generalizations from past cases, a process which will no doubt continue so long as we adhere to a rule of *stare decisis*. The American Law Institute is engaged in an extremely ambitious effort of this character.<sup>9</sup> But while this work has its value it is also being recognized that it has distinct limitations. Among legal scholars probably Walter Wheeler Cook has most clearly shown the fallacy inherent in assuming that "new" cases can be decided by a process of deductive logic from prior generalizations.<sup>10</sup> It is clear also that among the

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<sup>9</sup> The attempt is even being made to reduce to a statement of precise general principles so indefinite a matter as the elements of "negligence" in tort cases. It would seem that law administration here is a process calling mainly for judgment and cannot be controlled in advance to any important extent by rules and principles, except of the very broadest sort. GREEN, JUDGE AND JURY (1930) 21. Of course many rules and principles can be stated with considerable definiteness in commercial subjects and the relative certainty thereby attained is extremely important.

<sup>10</sup> "Legal principles—and rules as well—are in the habit of hunting in pairs. By this is meant that whenever we are confronted by a doubtful situation, one which therefore demands reflective thinking, we usually find that in the past conflicting interest and conflicting social policies have each received recognition from the courts to some extent, and that these results have been rationalized in terms of 'conflicting' principles (or rules), each of which can easily, and without departing from any prior decisions be 'construed' as 'applicable' to the 'new' case. . . . Obviously a more realistic logic would recognize that, so far as the decisions go, neither of the supposed 'principles' ought to be stated as a 'universal,' ready to serve as the major premise of a syllogism by which the case can be decided. . . . Thus deprived of our 'deductive' support, we shall find it necessary to examine into our 'real' reasons for wishing to decide the case one way or the other, and thereby be compelled to note the social or economic consequences of a decision one way or the other." Walter Wheeler Cook, Book Review (1929) 38 YALE L. J. 405, 406.

It is interesting to set off against this view the opinion of Professor Williston: "I venture the assertion, however, that these critics [Cook and Oliphant] either do not fully grasp the methods of legal reasoning actually employed in many decisions, or, finding that legal reasoning has not the certainty and necessary results of arithmetic, conclude that deductive logic not only is a useless tool in reaching legal conclusions, but that it is in fact not used." WILLISTON, *op. cit. supra* note 3, at 154.

If one may hazard a word in this setting the disagreement turns on the word "new." It is in the "new" case that by some process other than deductive logic the decision is reached to "apply," that is to expand, one "principle" rather than another. Having reached a decision, perhaps because of underlying social or economic reasons, the result is stated as though arrived at by a process of deductive logic. At the same time it is clear to the writer that both Cook and Oliphant, quite as much as anyone else, recognize that the great majority of ordinary transactions are con-

judges, Cardozo and Holmes, to mention no others, have long been fully and frankly aware that there are many other factors besides legal precedent which affect decisions.<sup>11</sup> Cases cannot be decided solely by recourse to the past. The science of law, if it is to be realistic, must include, but at the same time look beyond, case materials.<sup>12</sup>

As long ago as 1919, former Dean Swan, speaking of the public responsibilities owed by the law schools, said:

"The lawyers of the country must be leaders in law reform; and where shall we find lawyers possessing adequate knowledge of legal history, of foreign legal institutions, of sociology, of economics, of political science, of analytical jurisprudence, to enable them to carry out this great task . . . ? Our law schools with few exceptions have devoted themselves almost exclusively to the training of young men to make their living by practice at the bar. They have indeed tried to attain this object by scientific methods of instruction, but few of them have recognized the opportunities and responsibilities with regard to the broader and greater service which present day conditions are demanding."

"In all the leading law schools the student is now trained in the original determination of legal principles by the case method, a comparative and critical study of the decisions of courts along historical lines. To this must be added more efficient methods of analysis, a more exact terminology and a more vivid conception of the *mores* as the source of law. In all the universities closer connection should be established between the schools of law and the departments of social science, political science, economics, history, and psychology."<sup>13</sup>

Out of this emphasis on the social importance of law have come various developments. Many undertakings involving considerable fact or field research have been commenced. For example, the Yale Law School has in progress a study of court administration, a survey of the results achieved by the Workmen's Compensation Laws, an investigation of the causes of business failures, and certain other projects. Other schools have

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trolled by previously formulated rules and principles. And even in the "new" case it must be recognized that courts are sometimes prone to reach a decision apart from the merits of the case for the reason only that they have conceived a plausible way of rationalizing it in terms of an existing rule or principle. The point is that a result so achieved is merely technical legalism.

<sup>11</sup> CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1928).

<sup>12</sup> The epoch making Brandeis and Frankfurter briefs in the Minimum Wage Law litigation presented the "due process" question of the 14th Amendment as primarily a problem in economics.

<sup>13</sup> Swan, *Reconstruction and the Legal Profession* (1919) 28 YALE L. J. 784, 792, 794. Professor Corbin has pointed out also that legal rules and principles are part of the social "mores" of their time and that they change sooner or later as social conditions require. Corbin, "*The Dead Hand of the Common Law*" (1918) 27 YALE L. J. 668.

conducted crime surveys and procedure investigations, and in various similar ways have shown an aliveness to the world about them formerly not expected of a law school. It must be confessed, however, that to date there has been very little in this of direct value to the law student; in fact, only rarely has the attempt to study law in a setting of social practices and economic principles been made. It cannot be said that fact materials have been presented with anything remotely resembling the care and precision found in presenting purely technical legal materials.<sup>14</sup>

Another matter demands consideration. Not only are some of the latest casebooks in established courses including so much new material in the shape of recent decisions and non-legal materials as to become unwieldy,<sup>15</sup> but the pressure for the addition of new courses is becoming increasingly difficult to withstand. Whole fields of law, of small moment fifty years ago but of great importance to a highly specialized industrial community, have come into prominence. It has been sought to meet this situation by the addition of many electives in the second and third years, leaving it to the student to work out his own salvation. In some schools the field of electives has been increased to the point where a fourth year would be necessary to "cover" the material as now

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<sup>14</sup> Some indication of what is meant here can be given by a reference to the process employed by the courts in establishing the "fellow servant" rule in this country. In the absence of precedent Chief Justice Shaw in *Farwell v. Boston & Worcester R. R.*, 4 Metc. 49 (Mass. 1842), based his decision in part on the *fact* that to deny a workman injured by a fellow employee any recovery against his employer would tend to induce greater care. No evidence on the point was admitted or indeed would have been considered had it been offered; no study of the relative bargaining power of employer and employee was made; no account was taken of the effect the increasing industrialization of life would have on the relations of the parties; and it took years before legislatures could be brought to set aside the rule with the Workmen's Compensation Acts. Perhaps a better illustration, since it constituted an unwillingness to change precedent in the face of changing facts, was the decision of Chief Justice Gibson in *McFarland v. Newman*, 9 Watts 55 (Pa. 1839), ruling that it would be better for trade to hold that a buyer should have no action of warranty against his seller unless he demanded an express undertaking on the part of the seller. There was no fact study of what rule would actually be best for trade and the court's rule was not modified by legislation until 1915. These judges, as do most law school instructors, cover a glaring lack of sound factual information with general dicta that "modern conditions require" or "for business reasons" and so on and on. For an interesting effort to bring some element of precision into this situation see Moore, *An Institutional Approach to the Law of Commercial Banking* (1929) 38 YALE L. J. 703.

<sup>15</sup> LEWELLYN, *op. cit. supra* note 1, is an excellent work but so filled with material important to one particularly interested in the sales field that it cannot be adequately treated in the time allowed for the subject in most schools. At that the book does not purport to cover the whole trade field.

presented.<sup>16</sup> No substantial assistance for preparation in a particular field is afforded the student by these newer courses, however, since to elect them means the omission of some older well established courses; and, faced with this dilemma, the great majority of students have quite wisely tended to elect substantially the same program of study.<sup>17</sup> Thus, from still another angle, these courses testify to the inadequacies of the organization—or lack of organization—in the present curriculum.

Perhaps the most serious blow to the older order has come from student impatience with three years of the same type of discipline. The case system, found to be unexcelled as a means of developing a critical, analytical attitude of mind, has been employed indiscriminately as the only approved means of presenting even the simplest points throughout the entire three years of work. Once a student has been awakened to the ambiguities lurking in the generalities of text statements such a process is often needlessly slow. However, with the greatly increased law school enrollments since the war—the advent of “mass education”—it has been still more difficult for many schools, even in supposedly advanced third year work, to take account of the individual student. Libraries, instead of being extremely important teaching aids, have become too often merely places where students read their casebooks. Out of it all the better student has tended to lose his enthusiasm—his lust for discovery—after about the middle of his second year. He has begun to demand a freer hand.<sup>18</sup>

The foregoing pictures briefly an established institution bursting at every seam with the new wine of a changing order. It is possible to let things continue to evolve indefinitely, more or less without direction; but such a course is by no means the only one open, nor is it necessarily the most desirable. It is clear that something will have to give way and there is a certain obligation to see that nothing of value already attained be lost in the process.

## II

The principal strength of modern law schools lies in the curriculum which they have built up through the years. And yet it is

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<sup>16</sup> The University of Minnesota Law School has announced that it is to offer a fourth year of law beginning next year.

<sup>17</sup> For a study of this tendency at the Harvard Law School see A. Z. Reed, *Present Day Law Schools in the United States*, CARNEGIE FOUNDATION BULLETIN No. 21 (1928) 279.

<sup>18</sup> The inadequacies and limitations of the present course of study in serving the needs of a student interested in law as a broad background for a public career, for example, are admirably stated by a recent graduate of the Yale Law School. Bingham, *The Mule Considers his Burden* (1930) 16 A. B. A. J. 816.

the present curriculum, its plan of organization and the tacit assumptions on which it has been developed, which constitute the chief obstacle to change. Development during the past fifty years has consisted almost exclusively in the presentation of further and even more minute technical details—all carefully kept within the boundaries of the courses already marked out—with correspondingly greater and greater danger that a student would lose the broader outlines of a subject in a maze of minor matters. The addition each year of new cases continually being decided by the courts tends still further to exclude the possibility of introducing new non-case material, since the instructor is prone to feel that all of these decisions are “important,” as indeed they are *from the standpoint of the subject*, and that they should be “covered” if possible.

In this matter of the “importance” of course work and the extent to which subjects should be “covered” lie certain assumptions which should be considered. What is sought to be accomplished by the present curriculum? Faced with the impossibility of “covering” courses in the time allotted and with the fact that all courses no doubt are “important” in some respect or other, most instructors have fallen back on the rationalization that the chief end of a legal education is to “teach students to think.” This is bolstered with another rationalization that the law is a “seamless garment” and, since no one man can wear the whole garment, it really makes little difference where it is taken up. Of course these rationalizations are ideally suited to justify a purely classical curriculum and they have been so used. If they were wholly true, however, the subject matter of legal education would never require change. Such a position is obviously untenable.

Granting the importance of training to think and the impossibility of any one knowing all the law, it does not follow that the student taking a succession of unrelated courses, selected for a variety of reasons and “covered” only more or less completely, with no organized development toward an end discernable throughout the entire three year program has necessarily received the best training possible. The process would seem doomed to fail in the very thing it was supposed to accomplish; it is quite without the possibility of training men to think, except superficially and intermittently. It is worthy of note that Langdell thought so highly of organized development that he went to an extent that we are unwilling to do and restricted study to early cases, excluding most matters of practice, politics and economics and only reluctantly allowing elective courses in small numbers.<sup>19</sup>

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<sup>19</sup> “Dean Langdell thought that English and American law should be studied by itself without admixture of other subjects, such as government,



It is fair to contrast with this attitude of the law schools the attitude of modern scientific schools. Very definitely the modern engineering school purports to equip its graduates with something more than an ability to think, supposedly derived from a haphazard collection of courses. Even the schools of business administration have gone about their task in a much more scientific manner. And as to the attitude of present day medical schools, it would be almost unthinkable to propose that they should turn out graduates whose principal qualification to practice upon society was an ability to think, valuable as that quality may be. There are of course obvious differences between the requirements of a medical and a legal training, but the similarities are too many to be ignored.

It should be apparent that there are at least two functions<sup>20</sup> of a good law school training: one, the ability to handle legal materials, to find one's way among a maze of rules and principles, precedents and statutes, to use legal devices toward a desired end; the other, some acquaintance with the materials themselves. The acquisition of one enriches the other. The stress in the better schools heretofore has been principally upon the former, and with some reason, since to go to the other extreme and deal in information only, tricks of practice, the latest decisions—all merchandise of the trade school—has little to justify itself. It should be clear, however, that there is no irrecon-

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economics, international law or Roman law." Eliot, *Langdell and the Law School* (1920) 33 HARV. L. REV. 518, 523. Perhaps the clearest exposition of Langdell's attitude appeared in the first edition of his *CASES ON CONTRACTS*: "Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied."

Without in any way minimizing the importance of what Langdell sought to achieve by a carefully organized and developed course of study, the criticism made by Justice Brandeis, speaking of the case system, can also be accepted: "The broadening of view which comes from political life was lost. The deepening of knowledge in certain subjects was purchased at the cost of vast areas of ignorance and grave danger of resultant distortion of judgment." Brandeis, *The Living Law* (1916) 10 ILL. L. REV. 469.

<sup>20</sup> No wish is made here to limit the functions of student training, or to evaluate the social importance of one type of training over any other. For example, a lawyer keenly aware of the social importance of legal questions and trained to translate changing social requirements into new rules and principles of law clearly fills a much more important societal position than one merely conversant with technical rules of the past. This is so true that law schools cannot afford to neglect such training.

cilable conflict here, for training in thinking can best go hand in hand with the fullest information both of fact and of legal theology. Training in a system divorced from fact becomes little more than an interesting intellectual diversion.

Law school training today may be criticized for accomplishing neither of these objectives satisfactorily. The need is for the will to face facts and to attempt deliberately to formulate in their light a plan preserving the good points of the classical school and yet granting recognition to the many counts against it. The old notion of one education for all students is no longer tenable. It breaks down from an overelaboration in the details of the curriculum, and no escape has been offered from a plan of organization already so far extended as to become incoherent.<sup>21</sup> It seems almost inevitable that modern law schools must build a course of study making it possible for a student to acquire as briefly as possible a co-ordinated informational legal background, and to follow this by work focusing both legal and non-legal materials in a single field.

This merely recognizes what has long since been recognized in other professional schools, and, for that matter in the colleges, with their various schemes for majoring in a particular field. It is what the law school graduate himself is forced to recognize upon entering practice in the larger cities. Being as well or poorly prepared for one line of work as another, he may be shunted this way or that quite as a matter of chance. But the idea of a unified practice dies hard, and many who preach breadth of training forget that their own breadth of view is a product of expansion from intensive concern with a single field. Moreover those who decry the narrowness of "specialization" betray a singular lack of appreciation of the possibilities of work in a single field—if it is no longer to be circumscribed by severely technical limits as heretofore. For law schools to graduate

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<sup>21</sup> The inadequacies of the curriculum with its confusion of aims was entertainingly but more or less accurately described some ten years ago in terms which are, if anything, even more applicable today: "The condition of American law continued with the traditional manner in which the law was parceled out among the professors, to perpetuate the patchwork character of the curriculum as a whole. Formed by a rough piecing together of rather large-sized scraps, it resembled nothing so much as a crazy quilt, that most inadequately covered the body of the law. Sometimes the patches would over-lap in several thicknesses. Sometimes an ugly gap would be left. More important even than this, statutory law and government were largely ignored. While the torso of the legal anatomy was covered more or less, its most rapidly growing portions stuck out in ungainly fashion. All this the law schools did nothing and could do nothing to change. What they did do was to substitute for threadbare material more modern and less sleazy stuff. The garment was basted together much as before, but the individual pieces were infinitely better woven." Reed, *Training for the Public Profession of the Law*, CARNEGIE FOUNDATION BULLETIN No. 15 (1921) 352.

students into enforced specialization without doing what they can to disclose these possibilities is to fail to meet the social responsibilities imposed upon them.

Of course any attempt at concentration is scarcely defensible, in fact would defeat its own purposes, if made at the expense of adequate general foundation work. But it is thought that both can be accomplished, and that in the process a better ground work can be provided than at present. In the absence of a plan calling for cooperative work toward an objective—third year concentration—it is very hard to say that one course is more important than another or that any part of a course is more important than any other part. A direct effort to formulate a basic program,<sup>22</sup> however, would strip away much material, important possibly to one specializing in the work of the particular course, but of little value to one having another end in view and now serving in many cases merely to obscure the more important phases of the subject.

An illustration of the possibility of shifting specialty material to the third year will serve to make the point clearer. The course in Negotiable Instruments is given for three hours in one semester in most schools, although sometimes four units of credit are given. It is one of the courses usually elected by nearly all students in the second year class. No doubt some members of the class may be primarily interested in trial work or in public law, others in corporation work, and still others, possibly, in banking. No effort is made to suit the varying needs of these groups, although the work is almost necessarily more interesting to some than to others. To the average student the broad difference in approach to commercial questions as contrasted, for example, with the approach to a tort question is of most importance. He will want to know what is necessary to constitute a purchaser a holder in due course and, of course, many other points; but it is certainly not essential that he make a detailed case study of the formal requisites of negotiable paper, or of all the intricacies involved in proper proceedings upon dishonor. Even many of the questions concerning "value" and "payment," usually discussed in the course, are perhaps too detailed to be of any considerable value to many members of the class and should be deferred until

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<sup>22</sup> When one considers the relatively recent character of even the so-called classical law school curriculum it seems almost certain that much can be done to reshape this material to provide broad foundation work with less expense in time consumed. In several instances—the question of "negligence" in Torts, of "due process" in Constitutional Law, of "scope of employment" in Agency—all that can be attained profitably is a knowledge of the process and it is useless to spend a great deal of time simply multiplying different illustrations of the same thing. It is only rarely that the process, the pleading questions, rules of evidence, presumptions, the function of judge and jury are given any attention in this connection.

the third year for intensive study by the few members interested in banking.

Another illustration is the course in Sales. This also is elected by most students in nearly all schools. The most recent casebook in the field<sup>23</sup> is so filled with important material that it is impossible to discuss it at all adequately in class in the three hours usually allotted to the course. It is equally clear that the book contains much detail which to the student of procedure or public law, for example, is of considerably less value than a year of intensive work in his particular field would be. And that is the alternative. For under present conditions, in order to get any training in Sales and similar courses, it is necessary for a student to take the entire work. I would seem wiser and quite as feasible to treat only the broader outlines of Sales in the second year and postpone many questions until the third year for intensive work with the smaller number of students interested in commerce or trade as a field of practice. Some of the problems concerned with large scale financing of sales transactions, as for example the letter of credit material, could profitably be postponed for comprehensive treatment in the Trade and Banking fields.

Enough has been said to indicate that there are distinct possibilities in a rearrangement of existing materials to shorten considerably the work deemed desirable as groundwork. It will no doubt also develop, once a serious study of the question is undertaken, that there is now considerable unnecessary duplication of effort which can be eliminated. Before considering this development further, however, some attention should be given to the fields in which intensive third year work might be done. Of course, it is not possible to set out now what these fields should be, and it is more than probable that the fields should vary with different schools.<sup>24</sup> All that is attempted here is to present a possible program for comparison with that now in use.

### III

A determination of fields in which intensive work may be undertaken must necessarily be conditioned in part by the location of the school and the interests and limitations of the teaching staff. The size and quality of the student body will have an important bearing. In any case, however, if the maximum of stu-

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<sup>23</sup> LLEWELLYN, *op. cit. supra* note 1.

<sup>24</sup> Recognition of the possibility of affording special training in the third year would no doubt bring about a considerable differentiation between law schools, since not all will have occasion to train students in some of the higher and more specialized reaches of law and many will not have the facilities to do so. At the same time this fact should make it even more possible than formerly for certain schools to be regarded as national schools.

dent interest and enthusiasm is to be had, the fields selected must have some actual relation to the work the student expects to undertake immediately upon graduation. For many years attempts to persuade students to do graduate work in Roman Law, Comparative Law, Jurisprudence and similar "cultural" subjects, as the *sine qua non* of "greatness" in the profession, have met with indifferent success.<sup>25</sup> Such courses have quite properly interested men intending to teach law—and so viewed they have a purely practical aspect. It is believed that there is a wealth of material equally practical, or equally cultural, in other fields which awaits development—not as a fourth year's work necessarily but as part of the regular three year course.

For illustration let us take what may roughly be described as the Estates field, a rather technical but growing field of practice, having extremely interesting contacts with the sociologist and the economist in that most of the family problems concerning property are focused there. To mention only the legal material, at present there is a course given in some schools under the heading Persons or Domestic Relations; there is also in the second year a course in Wills; in the third, work is offered in Trusts and in Future Interests. No effort is made to correlate these subjects for comprehensive study in one year as a related group. In fact it is often a matter of chance that any student should happen to have taken more than two of the four. In the process it is customary to ignore most of the extremely interesting problems of trust administration, nothing is given of inheritance taxation (unless in a general course on taxation), and the liquidation of insolvent trust estates is scarcely mentioned. New legislation in the field as, for example, the proposed Uniform Principal Income Act<sup>26</sup> and the more recently proposed Uniform Trustees' Administration Act can be given almost no consideration. The many questions in the Conflict of Laws relating to estates are taken up, if at all, in another separate course dealing generally with all types of Conflict of Laws problems. And of course nothing whatever is given of the Comparative Law of estate administration, nor is any adequate opportunity afforded

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<sup>25</sup> It is not meant to say that these courses have no value or even that students of sufficient range and imagination to appreciate them should not be encouraged to take such work but merely that it borders on the absurd to offer three years of severely technical practical training and then to top it off with a surface dressing of so-called cultural subjects, often having no relation either to the previous studies or to the future work of the student. Even viewed in the most charitable light, as specialized training for teaching, it would seem to be poorly conceived. The writer would prefer to see the future teacher thoroughly grounded in a particular field and to work out from such a study into relevant studies in foreign law and the history of his subject.

<sup>26</sup> This statute is being drafted by Dean Clark. REPORT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1930) 190, 201.

the student to obtain an understanding of the history of developments in the field.

It will be noted that it would be possible to offer with the second year a short course in both Trusts and Wills, for example, designed to acquaint all students with some of the elementary aspects of those subjects. In this way the task of the third year would not be so difficult as it might seem at first thought. Again it should be noted that since only a small group out of the usual third year class would elect the Estates field, every opportunity would be afforded them to do a thorough-going year's work. By intensive work of this character, free from the usual competition with unrelated subjects, it should be possible for both student and instructor to do constructive work of the highest order. Clearly the work would be quite the reverse of narrowing, since for the first time an opportunity would be presented to look at all aspects of the subject, social as well as legal.<sup>27</sup>

The writer has been chiefly interested in the future development of Trade and Banking as separate fields of third year concentration. All that is given today falling within these fields are elementary courses in Sales and Negotiable Instruments, together with, in some schools, a course in Trade Regulation which is often taught as a public law subject having no relation to the others. A training of this character would hardly qualify a student to advise the General Motors Corporation on its domestic and foreign sales problems, or for that matter the Bank of America on its banking problems. When one considers the rapid concentration of business which has taken place in the last few years it is apparent that the lot of the small town practitioner (the man for whom the law school curriculum was designed) is becoming increasingly difficult. For example, there are over 5,000 fewer banks in the country today than there were ten years ago, and of the remaining banks over 5,000 are in group or branch systems.<sup>28</sup> It may thus be said roughly that nearly 10,000 out of a total of 30,000 banks, or fully one third of the bank clients have been taken away from the local practitioner. The same may be said in many of the sales fields. On the other

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<sup>27</sup> The objection that students will be unable to choose a field may be answered by saying they will have no greater difficulty than they had in deciding to study law and, of course, with many of them it means making a conscious choice rather than one forced upon them on entering practice. And even if they never practice in the field selected, or never practice at all, the training received should be of infinitely more value than further detailed case information in orthodox courses taught in the ordinary way. It is illusory to say that this last is broadening—a subject does not come alive until its various aspects are opened up. This cannot be done by the student taking at one time a series of unrelated courses.

<sup>28</sup> FEDERAL RESERVE BULLETIN (Dec. 1930) 766. On the causes underlying this development as it concerns banking, see OSTROLENK, *THE ECONOMICS OF BRANCH BANKING* (1930).

hand, while this movement requires fewer legal advisers it very definitely demands men having more detailed and comprehensive understanding than sufficed the ordinary practitioner a generation ago.<sup>29</sup> It would seem that practice is to become scientific in spite of the law schools rather than with their help.

The Trade field is particularly rich in possibilities. It could well include a study of various types of sales organizations, cooperative marketing problems, taxation questions, various security problems and questions of sales financing. It might well include also something of patents, advertising, accounting, even shipping and insurance, nearly all matters not adequately covered in the ordinary curriculum. Again conflict of laws questions and a study of the comparative law of sales should be included. With the increasing importance of export trade to this country there is more and more demand for law trained men conversant with problems arising in foreign commerce. Even a brief survey of possibilities indicates that the treatment would be the opposite of narrowing.

In addition to the foregoing there are at least three other fields in which intensive third year work might be done: Business Units, Public Law and Procedure. No doubt also a similar development might be made in Property. Of these the first has had most attention in recent years and in some schools the usual courses in Corporations and Partnership together with some Agency have been combined into a single sequence of work. This effort has introduced much valuable finance and re-organization material not otherwise presented. There remains much to be done, however, before a comprehensive program such as here contemplated is carried out. Both the Public Law and the Procedure fields are very much in need of development—particularly the latter. Not only should work of a technical character dealing with Federal and Appellate practice be offered, but there is a considerable opportunity for the law schools to make a distinct public contribution by initiating constructive suggestions for the improvement of practice.<sup>30</sup> Only a beginning, though a brilliant one, has been made in testing the validity of rules of evidence in the light of modern psychology.<sup>31</sup> Of perhaps greatest

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<sup>29</sup> It is not sought solely to train men so that the work of the larger corporations may be more profitable; but surely, granting that such concerns will have legal advice, the law schools owe some obligations to see that the men trained to such work have something more than a technical understanding of the social implications of the movement toward greater concentration of wealth.

<sup>30</sup> The procedure investigation initiated by Dean Clark in 1927 has collected a large amount of fact data which should be of value in this connection.

<sup>31</sup> Hutchins and Slesinger, *Some Observations on the Law of Evidence*, a series of articles published in various law journals. See, for example,

social importance, this field would seem pre-eminently the one in which to offer work looking to the training of future judges—to carry the student past the matter of seeing how the machinery of the law works to some comprehension of why it exists.<sup>32</sup>

Enough has been said to give an indication of what may be accomplished by a program of third year concentration. It has been impossible to do more, however, than to suggest possibilities.<sup>33</sup> The fields of third year work may be those mentioned here or any others.<sup>34</sup> What they shall be is a matter of relatively small importance; the essential thing is that law school effort be released from the limitations and restrictions of the present curricular organization.

#### IV

It remains to consider in some detail how the first two years may best be used to provide a satisfactory background for third year concentration. No one knows, either in terms of courses or in terms of disciplines, a point on which very little study appears to have been made,<sup>35</sup> what the basic or essential elements

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(1928) 37 YALE L. J. 1017; (1929) 38 YALE L. J. 283; (1929) 29 COL. L. REV. 147; (1929) 41 HARV. L. REV. 860; (1929) 77 U. OF PA. L. REV. 432.

<sup>32</sup> It is fair to point out that the teaching of procedure has tended too much to become a mere matter of acquainting students with rules of practice. Of course it is also fair to say that with the curriculum as crowded as it is there has been little possibility for the instructor with vision to do more than he has done. But at the expense of some needless reiteration it is also true to say that very little conscious effort seems to have been exerted to remedy the situation. Time must be provided in which to acquaint students interested in doing trial work, particularly if they have an ambition to go on the bench, with the serious social duty imposed upon the legal profession to improve the machinery of the courts—and to acquaint them in some measure with how that work can be done. Under our present formula of one education for all students it has been necessary for the instructor in this field to demonstrate that his work is equally as important as Suretyship, for example, or some other orthodox subject. As a consequence only a little of any course has been developed.

<sup>33</sup> An interesting program for the re-alignment of teaching materials and a proposed separation of work into different groups has been announced by Northwestern University School of Law. THE LAW SCHOOL DEVELOPMENT PROGRAM, BULLETIN No. 2 (Oct. 5, 1929).

<sup>34</sup> As indicated heretofore much graduate work actually serves principally as special training for the teaching profession. Possibly the undergraduate curriculum should be designed to take account of this specialty as well, though this seems doubtful. In addition to teaching as a graduate specialty there are of course other possibilities, as, for instance, International Law. In fact this latter may be of importance to a sufficient number to find place in the program of third year concentration.

<sup>35</sup> The principle study of the kind was published in 1917 by Dean Wigmore. *Nova Methodus Discendae Docendaeque Jurisprudentiae* (1917) 30 HARV. L. REV. 812. Six processes were conceived to be important in law school training; these were described as analytical, historical, legislative,



of a legal education are. Possibly there are no "essentials" or "fundamentals," as they have been called in the medical schools. It may also be that law school training is merely a process of "ageing in the wood," and that not much can be done to hasten it. Nevertheless, it is thought that by carefully cutting away unnecessary details, by eliminating many duplications and by adopting certain improvements in teaching method, a great deal can be accomplished. Of course any change of the sort here contemplated must necessarily take place slowly, both because it will take study to work out a satisfactory basic program and even more because there has been so little done of the sort required to build up the work in the third year fields.<sup>36</sup>

Building with what has already been developed, it would seem that the first year of law training should include work in at least the following orthodox subjects: Contracts, Procedure I (including Equity), Property I, Torts, Agency or the first work in Business Units, and Constitutional Law. Of course this is substantially the present arrangement of courses in most schools, except for the work in Business Units and Constitutional Law. It will be noted, however, that these latter courses correspond to some extent to the fields of third year concentration above suggested—sufficiently, it is assumed, to assist a student to elect the particular field in which he may wish to "major" in his third year. The Agency work should be revitalized to present questions of management and personnel in modern business situations and thus provide a groundwork for subsequent study in the business organization field. The work in Constitutional Law should be arranged to serve as a basic course in the Public Law field.

Before considering the second year work, a word should be said concerning method. In addition to some knowledge of the content of courses, the first year should give the student some conception of how to read cases; it should develop a critical and analytical attitude of mind. Granting that this has been accomplished, or at least well started, the second year's work

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synthetic, comparative and operative. Of most interest at the moment is the conclusion, which seems to be almost as true today as when Dean Wigmore wrote, that the case method of study has monopolized "five-sixths or more of the student's activity" during his entire time in law school to develop the analytical process alone; and that this is, to say the least, disproportionate.

<sup>36</sup> There must also be considered the resistance which instructors claiming "vested interests" in certain subjects may wish to offer. In so far as this should derive from the quite proper desire on the part of the instructor to develop a subject fully, the present suggestion should be more than acceptable, since the third year work would furnish an opportunity not now possessed to do advanced work of the most intensive character—quite a different matter from that of merely requesting an instructor to reduce the time devoted to his course or to omit it altogether.

can be speeded up.<sup>37</sup> It is no longer necessary or even desirable to demand that the student state with painstaking care all of the facts of a particular case; he should be able to distinguish facts from legal conclusions; he should be able to distinguish a technical argument from one of policy. Accordingly, more cases and much other material can be brought before a class in a single hour's discussion than was possible in the first year, and more ambitious attempts at correlation and synthesis can be undertaken.<sup>38</sup>

Again, and more important, all students in the first year should commence formulating their ideas in writing, not merely by reporting class discussion in their notebooks or by stating their conclusions upon final examinations, but by working during the year under faculty supervision on problems closely related to the regular class work. The second year should permit an increasing amount of such work, even at the expense of some lessening of class room activity of the usual type. This is merely recognizing a point accepted by everyone that work of the sort done by students on the leading law journals is perhaps the most valuable training they receive in law school. Moreover, such training is indispensable to prepare students to undertake the work here contemplated for the third year.

Such studies as have been made of the matter indicate that in both the second and third years the larger number of students elect much the same group of courses. Even in schools offering a considerable number of electives this is largely true. These courses and the number of hours usually allotted to each course are as follows:<sup>39</sup>

Subject	Units
Bills and Notes .....	3
Code Pleading .....	3
Conflict of Laws .....	3
Constitutional Law .....	4
Corporations. ....	4
Equity. ....	5
Evidence. ....	4
Mortgages. ....	3
Real Property .....	3
Sales. ....	3
Trial Practice .....	4

<sup>37</sup> An able exposition of this view appears in the introduction to LLEWELLYN, *op. cit.* *supra* note 1.

<sup>38</sup> This in a measure is further exemplification of the conclusions urged by Dean Wigmore, *supra* note 35.

<sup>39</sup> The most recent study of this character is found in the report of the Committee on Curriculum of the Association of American Law Schools. PROGRAM AND REPORTS OF COMMITTEES, ASSOCIATION OF AMERICAN LAW SCHOOLS (1930). See also *supra* note 17.

Trusts. . . . .	4
Wills. . . . .	3
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Total. . . . .	46

It is not to be supposed that these subjects are necessarily those to be included in a basic program for the second year, but at the same time they are quite definitely of such a substantial character that they must be given considerable prominence in any such program. The difficulty of attempting to treat these subjects adequately in a single year is evident when it is considered that only 50 or 52 units of work in the second and third years are ordinarily required for graduation. In addition to these courses there are also: Bankruptcy (2 units); Domestic Relations (3 units); Future Interests (3 units); Insurance (2 units); Municipal Corporations (2 units); Partnership (2 units); Public Utilities (3 units); Quasi Contracts (3 units); Suretyship (2 units)—a group of courses aggregating about 22 hours of work, the number varying with different schools.

If one were to attack this mass of material in the light of the previous discussion, letting the chips fall where they would, the following adjustments should be made. Most of the work in the group of courses last named should be taken up, if at all, in the related third year fields, Domestic Relations and Future Interests in Estates, something of Insurance in the Business Units, Trade and Estates fields, Municipal Corporations and Public Utilities in Public Law, and Partnership in the Business Units field. On the other hand, it is assumed all students should know something of the other subjects. Accordingly work in Bankruptcy<sup>40</sup> and Suretyship, although not a full orthodox course in these subjects, should have place in the second year. Enough of Quasi Contracts to suffice could easily appear in the first year Contracts or Procedure course. Some of the newer subjects not yet mentioned, as for example Taxation, would similarly fall in the third year, Inheritance Taxation in the Estates field, Income Taxation in the Business Units field and so on. If Accounting is to have a place, as seems desirable, it also should

<sup>40</sup> In many schools work in Suretyship, Mortgages, Conditional Sales and Bankruptcy is given as one course in the third year. While there are undoubted advantages in so doing, such a combination does not fit in well with the objectives here stated since it would require that all students must take the entire course to get even an introduction to Bankruptcy. It would be better to give some Bankruptcy in the second year, enough for all students, and leave until the third year a more detailed consideration of the subject as questions arise in Banking, Business Units, Trade, Estates, and so on. The same is true of Mortgages, since detailed consideration of corporate mortgage problems would come up best in third year Business Units work—the student in Procedure, for example, not being particularly interested.

be taken up in each of the third year fields in which it is needed.

The question of presenting the first group of courses at all satisfactorily in a single year, however, constitutes a problem of more difficulty.<sup>41</sup> After rather careful study the writer is convinced that a valuable groundwork in Bills and Notes can be offered in two hours. This would mean singling out the most important phases of the subject for careful class room treatment. It would further require that auxiliary material of a text character be prepared by which much of the "feeling" for the subject and the story of the development and use of commercial paper could be presented. It is obviously not necessary to devote valuable class room time to presenting material of such character by the case system. Similarly the course in Sales could be cut to two units of class room work. The writer has no doubt but that other courses in this group could also be reduced with actual benefit to the large number in each class who seek a groundwork only in the subject.

Even assuming that similar reductions could be made satisfactorily in the other courses listed, there would still remain a total of twelve or more separate courses aggregating thirty or more hours of class room work—a somewhat difficult assignment to be completed in one year since it is not usual for a student to take more than twenty-five hours of work a year.<sup>42</sup> The difficulty encountered in scheduling six or seven courses to run concurrently each semester also would have to be considered. This, however, could easily be circumvented by dividing the second year into thirds, the first ending with the Christmas holidays and the second about the middle of March. There would seem to be no serious administrative difficulties with this arrangement and it would certainly relieve an otherwise impossibly congested schedule. But this device would not, of course, meet the principal issue, that of presenting some thirty hours of class work during a single year.

The chief difficulty arises from the tacit assumption, one by no means clearly established, that the only work meriting credit toward a law degree is that done in the class room under the watchful eye of the instructor and at the measured pace dictated by the slower men. Reluctant as some instructors imbued with the "spoon-fed" idea of instruction may be to grant it, surely much more can be done in law schools than has been done

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<sup>41</sup> The course in Trial Practice could of course be shifted to the third year and if necessary no second year work need be given in Constitutional Law inasmuch as a groundwork at least would have been offered in the first year. At the same time it would seem desirable to offer continuation work, at least to those intending to do third year work in the field.

<sup>42</sup> This limitation is apparently fixed on the assumption that all men should travel at the same pace and is, therefore, not necessarily well founded.

in the past to put the student on his own responsibility. If this be sound there is no danger in limiting class room work in a three unit subject to two or even only one hour. In fact it seems quite feasible, assuming certain safeguards to be mentioned later are adopted, to insist that a limited number of subjects be studied without class room work of any kind. Certainly five additional units of work could be accomplished this way, which would seemingly allow the entire group of courses above listed to be covered without difficulty.<sup>43</sup>

Of course it is clear that putting additional individual work upon the student would not in any way lessen the amount of work he would have to do. There are possibilities in the situation, however, not yet considered. In the first place each course in this group should be outlined carefully in terms of problems or questions and a list of assigned readings prepared. It would then be possible for a student to elect to do his non-class room work in any courses he should see fit and at his own pace. In the next place there is every reason to expect that an increasing amount of this non-class room work would be done during the summer months, time otherwise largely wasted by most students—in keeping with the grammar school tradition and without its reason. Of course it would be important that some members of the faculty be present for consultation purposes and it might well be that certain course work should be offered.<sup>44</sup> In such case it would be optional with a student to study during the summers between the first and second and the second and third years, to complete the work in the regular year by superior application, or to spend a fourth year.

There is little question but that individual student work, if organized as here proposed, would do more to develop power in a student than any other type of training;<sup>45</sup> the difficulty is to

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<sup>43</sup> It is clear that this process cannot be pressed too far, for while there is no doubt but that an average student could, given enough time, work out his understanding of law entirely on his own responsibility, the process is unnecessarily slow. But while he may be nursed over the early part of his work he must sooner or later be weaned. The progression here suggested is from short papers in the first year, through a limited number of units in the second year, until in the third year an even more substantial amount of work could be done unaided, though of course under faculty supervision.

<sup>44</sup> Since faculty salaries are based on a nine month year this work should be remunerated accordingly. At the same time many members of the faculty might wish to be freed from teaching at some other period of the year so that summer teaching might place no additional burden on the staff. This would be particularly practicable if the second year work were to be placed on the three term system as here suggested.

<sup>45</sup> For one thing it brings home to the student as nothing else does that in the last analysis no one can educate him—it is a matter for himself alone. For a somewhat poetical exposition of this idea see LLEWELLYN, *THE BRAMBLE BUSH* (1930).

check and supervise such work. Two devices, neither of them wholly satisfactory, are available. By setting one or more special questions in the non-class room courses for written report it would be possible to make sure that a considerable understanding of the subject matter had been attained and at the same time develop an ability to deal with the materials of the subject. In so doing there would be no need whatever to confine questions closely to a pre-ordained casebook development of the subject. In fact by varying questions from year to year a considerable body of materials would be furnished the school which might well prove of value.

The other check on individual work should be a comprehensive examination set in June of the second year, and probably also in September<sup>46</sup> of that year, to cover the entire work of the first *two* years of study, class room as well as non-class room subjects. By this method rather definite assurance would be given that a thorough background had been obtained before a student would be permitted to undertake research work of the character to be demanded in the third year. It would doubtless be undesirable to give any course examinations during the second year, since too many would be required. Moreover, it would be well to destroy that false sense of security a student gains when, by passing a course examination, he knows he has garnered a few more credits toward the total necessary for graduation. On the other hand there would seem to be no reason for abandoning the present system of course examinations in the first year.<sup>47</sup> In the third year it might prove feasible to omit examinations and rely upon an evaluation of the research work accomplished.

There is a fair chance that by the time a student has reached his third year, through such a drill, he would be able to stand on his own feet intellectually. He would have accomplished enough work to enable him to pass his bar examinations. The pressure upon him to "cover" certain material would be considerably relieved. There would be no competing courses to consider. There would be a good deal of pleasure on the part of the faculty in

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<sup>46</sup> The September examination would be to accommodate the many who might wish to work through some part of the summer.

<sup>47</sup> The comprehensive examination has sometimes been advocated purely for its supposed value as an educational device. While the writer agrees in large part with this it is none the less not demonstrably superior to the usual course examinations in the first year. By the end of the second year, however, a student will have attained a sufficient body of material so that some device to require an effort to correlate it is very necessary. Moreover since even the first year's work would be understood by the student to be only a segment of the whole and not a separate entity the beneficial effects of having a comprehensive examination would be felt there as well.

working *with* such a man under such conditions<sup>48</sup> in developing in the broadest way the questions arising in the field in which he should undertake to do his third year work. Those who say that there can be no research worthy of the name by law school undergraduates simply have no conception of the inherent possibilities in the average man once he is given an opportunity to assume responsibility for his own education.

Even assuming that what has been said thus far is plausible there are many questions left unanswered, some of which should at least be noted. One of the most important concerns the place of field research in such a program. The writer heartily agrees with Professor Dickinson when he says that not enough attention is being paid by the law schools to teaching,<sup>49</sup> but he doubts that the development of research work need in any sense stand in the way of student training. In fact a student's law work may very well be enriched from time to time by the results of such investigations. Assuming field research is not allowed actually to interfere with teaching developments, an altogether unnecessary consequence, there is every reason why the law schools should undertake much of this work in recognition of the considerable social obligation resting upon them. Moreover, it is to be expected that many such studies will *grow out* of the third year work here proposed.<sup>50</sup>

By way of conclusion it should be said frankly that the proposals here made contemplate a measure of specialization, something not possible under the present system, except in a fumbling sort of way. It represents a complete about face from the "classical" attitude of the past and assumes that a conscious effort must be made to train lawyers who will be able to take an informed part in settling questions of law and social policy in the future. It recognizes that it is little more than the assertion of a pious wish to parrot the statement that law should be studied in conjunction with the social sciences, unless some *point* be selected at which to start the study. It urges that it is equally important that students undertaking such study not only be brought to a

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<sup>48</sup> The importance to research work of these matters is admirably stated by Professor Frankfurter, speaking in a somewhat different connection. *The Conditions for and the Aims and Methods of Legal Research* (1930) 6 AM. LAW SCHOOL REV. 663.

<sup>49</sup> In a very stimulating article published last June, Professor Dickinson makes some of the points presented here and concludes that more attention should be paid to teaching and less to the development of research projects. *Making Lawyers* (1930) 8 N. C. L. REV. 367.

<sup>50</sup> In the Banking field, for example, it would be particularly appropriate today for a law trained man to participate in a study of the data provided by the five thousand and more bank failures which have occurred in the last ten years, to ascertain causes, and to draft remedial legislation. The results of such a study should be of considerable value to those studying in the Banking field.

stage where they have a sufficient background and are reasonably competent for the work but that they be given the free time to handle the larger amount of material that would have to be considered in doing it. No other course seems possible if the law schools are to set standards in any way comparable to those of other scientific professional schools.<sup>51</sup>

Finally it may be well to set out the propositions underlying the specific proposals which have been made. Some of these are:

(1) That the instructor's duty to carry his class along, to impart information, diminishes from year to year.

(2) That conversely the student should be expected and permitted to an increasing extent to assume responsibility for his own education.

(3) That the teaching of an analytical attitude should be largely accomplished by the end of the first year and increasing opportunity to use such training should be given in the second and third years.

(4) That there is no requirement that second and particularly third year work be paced to suit the average man.

(5) That a co-ordination of subjects to develop a sound background is preferable to a haphazard elective system.

(6) That a certain amount of concentrated effort in a single field is of more value than three years devoted solely to one type of work.

(7) That concentrated work in a field in which the student is interested is best calculated to produce satisfactory results.

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<sup>51</sup> It will be noted that the proposals here made stop short of the suggestion made by Professor Hanna *supra* note 7, that law schools should turn to training business advisors. It is conceived that the principle function of the law trained man, even if he does not engage in trial work, must continue to be that of keeping abreast of purely legal developments and that, however much of business may be involved in questions he has under advisement, the final decision on the business side must rest with the business executive. It is not for the lawyer, primarily, to keep advised of the latest developments in the money market, of the credit conditions of his clients' customers or of probable future price trends; these are for the business executive—though they should no longer be as a closed book to the lawyer.