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”Too Important To Leave To The Lawyers:” Undergraduate Legal Studies And Its Challenge To Professional Legal Education

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Abstract

The American law school, the standard law school curriculum, and the traditional case and Socratic teaching methods have all taken a substantial beating of late, as evidenced in the pages of *Journal of Legal Education* and other professional reviews.

KEYWORDS: legal, education, challenge

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"If there be one school in a university of which it may be said that there students learn to give practical reality, practical effectiveness, to vision and to ideals, that school is the school of law."

— Karl Llewellyn

"Law schools belong in the modern university no more than a school of fencing or dancing."

— Thorstein Veblen

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I. Introduction: The Critique Of Professional Legal Education

The American law school, the standard law school curriculum, and the traditional case and Socratic teaching methods have all taken a substantial beating of late, as evidenced in the pages of *Journal of Legal Education* and other professional reviews. While collectively portraying a problem of close to crisis proportions, individual critiques have variously charged that professional legal education is not humanistic enough,¹ not realistic or practical enough,² too technical or materialistic and therefore not ethical enough,³ or too formalistic and therefore not political enough.⁴

Though less single-mindedly, some critics have leveled an additional accusation: that law school instruction is not interdisciplinary or

1. See, e.g., Himmelstein, *Reassessing Law Schools: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514 (1978); Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624 (1983); Redmount, *Humanistic Law Through Legal Education*, 1 CONN. L. REV. 201 (1968); Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402 (1965); Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); Weinstein, *The Integration of Intellect and Feeling in the Study of Law*, 32 J. LEGAL EDUC. 87 (1982).

2. See, e.g., Brown, *If I Were Dean*, 35 J. LEGAL EDUC. 117 (1985); Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695; Macaulay, *Law Schools and the World Outside Their Doors: Notes on the Margins of "Professional Training in the Public Interest"*, 54 VA. L. REV. 617 (1968); Redlich, *Clinical Education: Stranger in an Elitist Club*, 31 J. LEGAL EDUC. 201 (1981); Twining, *Taking Facts Seriously*, 34 J. LEGAL EDUC. 22 (1984).

3. See, e.g., Auerbach, *What Has the Teaching of Law to Do with Justice?* 53 N.Y.U. L. REV. 457 (1978) and response, including Bard, *Teaching Justice*, 53 N.Y.U. L. REV. 616 (1978); Bonsignore, *Lacunarian Law*, 15 AM. BUS. L.J. 52 (1977); Bonsignore, *Law School Involvement in Undergraduate Legal Studies*, 32 J. LEGAL EDUC. 53 (1982); Hellman, *Considering the Future of Legal Education: Law Schools and Social Justice*, 29 J. LEGAL EDUC. 170 (1978); Kronman, *Foreward: Legal Scholarship and Moral Education*, 90 YALE L.J. 955 (1981); Lesnick, *Legal Education's Concern with Justice: A Conversation with a Critic*, 35 J. LEGAL EDUC. 414 (1985); Luban, *Against Autarky*, 34 J. LEGAL EDUC. 176 (1984); Symposium on Bhopal and Legal Education, 36 J. LEGAL EDUC. 285-330 (1986).

4. See, e.g., Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACT. 71 (1970); Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982); Klare, *The Law School Curriculum in the 1980's: What's Left?* 32 J. LEGAL EDUC. 336 (1982); Richardson, *Does Anyone Care for More Hemlock?* 25 J. LEGAL EDUC. 427 (1973); Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970); Simon, *The Ideology of Advocacy: Procedural Justice and Professional Responsibility Ethics*, 1978 WIS. L. REV. 30; Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487 (1980).

"social" enough, not focused on the impact of law and legal institutions on society as a whole, or on the intersection between law and public policy. For instance, Karl Klare has proposed that one third of the law school curriculum consist of advanced training in interdisciplinary cultural and social analysis and that the entire program be "organized around inquiry into various social problems and relationships but without a separation between public law and private law learning."⁵ Duncan Kennedy's "Utopian Proposal for a New Model Curriculum" suggests a similar tri-partite division into doctrinal, clinical and interdisciplinary components, the latter "covering materials in history, jurisprudence, economics, sociology of law and the legal profession, social psychology, social theory and political philosophy."⁶ The call for interdisciplinary study of law as social control has even been heard from a less-radicalized source, the Carrington Committee's 1971 Report for the Association of American Law Schools (AALS).⁷

In questioning the talismatic "thinking like a lawyer," John Mudd has proposed:

If thinking like a lawyer includes the ability to see issues in perspective, we may enhance the skill by involving first year students in questions of the role played by the law and lawyers in society. Understanding and dealing with these issues might be as fundamental to developing a law student's critical thinking skills as today's method of examining the nuances of a line of appellate decisions. Students wrestling with fundamental jurisprudential questions would not then be viewed as wasting time but as developing perspective and practical intellectual skills needed to work as lawyers.⁸

5. Klare, *supra* note 4, at 343.

6. Kennedy, *Legal Education*, *supra* note 4, at 614. The interdisciplinary course would be taught so that each student is exposed to "two formally distinguished 'streams'" representing both left and right "political tendencies." *Id.* See also Trubek & Plager, *The Place of Law and Social Science in the Structure of Legal Education*, 35 J. LEGAL EDUC. 483 (1985).

7. Courses in Legal Decision Making and Law and Social Control, along with four more traditional courses, would constitute the first year of the "Standard Curriculum" for the J.D. degree. "The Carrington Report," Appendix A of H. PACKER & T. ERLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 110-12 (1972). The report also proposed an "Open Curriculum" for collegiate instruction in law. See *infra* note 23.

8. Mudd, *Thinking Critically About "Thinking Like a Lawyer,"* 33 J. LEGAL EDUC. 704, 709 (1983).

And one thrust of the much-discussed "Bok Report," "A Flawed System of Law Practice and Training," is the need for law schools to conduct empirical, social science training into "the law in action."⁹

But these proposed models remain, for the most part, just that. Other than at the bankrupt Antioch, the fledgling CUNY, and the SCALE program at Southwestern University law schools, "social perspective" is nowhere a substantial component of the professional law school curriculum. (Typically, law schools offer a handful of meagerly-attended, optional, upper-class seminars on interdisciplinary themes. Occasionally, a one-course "perspectives requirement" consists of a choice of jurisprudence, legal history, international law or comparative law.) That is not surprising, given American legal education's 130 year history of cyclical self-critique and perpetual stagnation.¹⁰ What may be more of a surprise to many legal professionals and educators, however, is that concomitant with the proliferation of published attacks on law schools, a response has been occurring *outside* of such institutions, in the small but growing movement of legal studies programs in undergraduate, liberal arts settings.

Often titled "Law and Society," "Law and Justice" or simply "Legal Studies," over thirty such programs now operate across the country, either at universities without law schools or quite independently of law schools at institutions where the latter do exist. Why have non-profes-

9. Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570 (1983). See also Comments on the Bok Report: Trubek, *A Strategy for Legal Studies: Getting Bok to Work*, 33 J. LEGAL EDUC. 586 (1983), and Conard, *The Law School's Responsibility for the Quantity of Justice*, 33 J. LEGAL EDUC. 600 (1983). As the commentators note, the attempt to study "the law in action" originated 50 years ago with the Legal Realists.

10. The first half of Robert Stevens' chronological study, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983), is replete with criticisms replicated in the second half, to which one can only pen in the margin, "still true." See, e.g., Alfred Reed's 1921 attack on the case method. *Id.* at 120 and 129, n. 50. Terry Sandalow and Roger Cramton have raised some real but unsatisfactory explanations for the intense resistance of law faculties to reform. See Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321 at 334-5 (1982).

In the area of "social perspective," more may have been achieved at the level of faculty scholarship than student curriculum, given the high faculty membership in the Law and Society Association, but low student enrollments in law school "law and society" courses. See Monahan & Walker, *Teaching Social Science in Law: An Alternative to "Law and Society,"* 35 J. LEGAL EDUC. 478, 478 (1985), one of the papers delivered at the 1984 AALS workshop on the role of social science in legal scholarship and education. See also Trubek & Conard, *supra* note 9.

sional students, scholars and educators responded to the call for "more social perspective on law" more readily than professional law faculties? Perhaps, by the very nature of the problem, these issues can only be addressed where the private market for law and legal practitioners has little or no influence. Perhaps law faculties are too close to the strands of the "seamless web" to clearly observe the web itself. Or perhaps legal studies scholars have come to believe, like much of the general public, that law is too important to leave to the lawyers — or to the law professors.

Whatever the reason, professional legal educators have much to learn from undergraduate legal studies, including: a) what it implicitly reflects about the deficiencies in the legal system and in law school teaching; b) what graduates of legal studies programs, who later become lawyers, will carry with them into law school and into the profession; c) what students in these programs who will not become lawyers are learning about law and legal institutions; d) what innovations or new perspectives in the non-professional study of law can and should be incorporated into law schools; e) what lawyers and law professors can do to become more integrated into interdisciplinary scholarship and the university community; and f) what may become of law schools if the innovations in legal studies remain external, non-professional developments.

This article begins with a profile of undergraduate legal studies — including its history, theory, methodology and problems — before proceeding to examine the issues that directly affect the professional study of law.

II. An Overview Of Undergraduate Legal Studies

A. Institutional Development

The movement to introduce "sociological jurisprudence" within professional law schools during the period between the World Wars is well-known. Although it was Harvard's Roscoe Pound who coined the phrase and first urged lawyers to train in sociology, economics and political science, it was at Yale and Columbia where specific curricular innovations were introduced. Under the influence of Arthur Corbin and Benjamin Cardozo, Yale proposed a "School of Law and Jurisprudence" that would "relate law to other institutions of human society"

and cooperate with social science departments in the university.¹¹ Harlan Fiske Stone and Herman Oliphant called for a research school at Columbia to create a "community of scholars" devoting itself to the non-professional study of law."¹² Columbia's standard curriculum was restructured in the 1920's along "functional" lines, defined as "related to the areas of social life affected by law."¹³ But disillusionment, practical obstacles and other diversions soon quashed Columbia's reformist mood.

Though Yale Law School has maintained an anti-formalist attitude, its grandiose plans for a truly new educational venture have never quite materialized. University of Wisconsin has opened an Institute for Legal Studies within its law school and Syracuse University has a Center for Interdisciplinary Legal Studies in the College of Law. But at other schools, "Harvardization" — the persistence of the Langdellian "law as pure science" approach — has continued to triumph. The Columbia experiment remains largely an unfulfilled promise.

Less well-known are law school efforts to develop undergraduate law programs, such as Yale's early introduction, in 1887, of a Bachelor in Civil Laws degree, designed "for those not intending to enter any active business or professional career but who wish to acquire an enlarged acquaintance with our political and legal systems, and the rules by which they are governed." Only nine students received the degree, however, before it was abolished in 1916.¹⁴ In the 1940's, the University of Nebraska introduced a short-lived Bachelor of Science in Law, involving two years of political theory, social science and "basic law," which was followed by a two year professional degree program in "technical law."¹⁵ Additional proposals for non-professional graduate programs, such as "A School of Cultural Legal Studies," have also been raised over the years.¹⁶ After World War Two, Alpheus T. Mason

11. Stevens, *supra* note 10, at 135, 145 n.34.

12. *Id.* at 138-9.

13. *Id.* at 147 n.56.

14. *Id.* at 39, 49 n.46.

15. *Id.* at 225 n.53.

16. See, e.g., *id.* at 233; Hall, *An Open Letter Proposing a School of Cultural Legal Studies*, 4 J. LEGAL EDUC. 181 (1951). Current graduate programs in law and policy, which are beyond the scope of this paper, are described in Musheno, *Law and Social Science Programs: A Survey and Assessment*, 1 FOCUS L. STUD. 4 (Fall 1985) and Brooks, *Educating Professionals in the Law*, 2 FOCUS L. STUD. 4 (Fall 1986). Law courses in business schools, long a staple of M.B.A. degree programs, are beyond this paper's parameters.

at Princeton, Mark de Wolfe Howe at Harvard, and Willard Hurst at Wisconsin were giving college courses with titles such as "The Structure and Growth of Law" and "Law in Society."¹⁷ But these were isolated enterprises. It was not until the 1950's that an actual movement to promote legal studies on the college level could first be identified.

Keynote addresses by Charles Bernard Nutting at the 1952 AALS Conference and another the same year by Brainerd Currie at the University of Chicago Conference on the Profession of Law and Legal Education, along with a lecture by Paul Freund at the Washington University School of Law in 1953, gave impetus to the growing interest in collegiate-level legal education. In Currie's words:

[T]he ultimate task of law, which is to contribute to fulfillment of the aims of our democratic system, would be materially lightened if our citizens were to come from the colleges with a clearer grasp of the practical and legal problems involved in the eternal effort to balance the ideal of individual freedom against the need for restraints in a free society.¹⁸

In 1954, Harvard Law School and the Carnegie Corporation sponsored an informal but influential Conference on Teaching Law in the Liberal Arts Curriculum. In conjunction with the conference, Harold Berman surveyed existing undergraduate introductory law courses, revealing a handful of classes, mostly based in political science departments, which emphasized jurisprudence, legal history, and legislative and judicial institutions, often using law school casebooks and teaching techniques.¹⁹ The conference concluded: a) that law study could help develop students' intellectual and moral capacities; and b) that law fac-

17. Currie, *The Place of Law in the Liberal Arts College*, 5 J. LEGAL EDUC. 428, 432 (1953). Pre-World War II interlinkage — as well as divergences — between law and the liberal arts are briefly examined in Gee & Webber, *The Historical Development of Law in Liberal Education*, 10 LEGAL STUD. F. 7-12 (1986); and Lader, *Experiments in Undergraduate Legal Education: The Teaching of Law in the Liberal Arts Curriculum of American Colleges and Universities*, 25 J. LEGAL EDUC. 125, 127-131 (1973), both of which focus in depth on the contemporary period.

18. Currie, *supra* note 17, at 436; see also Nutting in AALS PROC. 72 (1952); Freund, *Law and the Universities*, 1953 WASH. U.L.Q. 367.

19. Reported in Berman, *Institute in Law and Social Relations*, 8 HAR. L. SCH. BULL. 5 (1956); H. BERMAN, ON THE TEACHING OF LAW IN THE LIBERAL ARTS CURRICULUM 174-5 (1956), summarized in Berman, *Law in the University*, 10 LEGAL STUD. F. 53 (1986), and discussed in Lader, *supra* note 17, at 133; and Gee & Webber, *supra* note 17, at 13.

ulties should offer undergraduate law courses. It was shortly followed by a spate of supportive articles in *Journal of Legal Education*²⁰ and by the publication of a number of law textbooks specifically designed for undergraduates.²¹ Concurrently, AALS appointed Harold Berman as chair of a Committee on the Teaching of Law in the Liberal Arts Curriculum (still operating as the section on Teaching Law Outside Law Schools).

In the following decade, additional conferences were held at Catholic University, the University of Colorado School of Law and Fairfield University, while the Russell Sage Foundation sponsored a number of interdisciplinary university projects, among which Berkeley's Jurisprudence and Social Policy Program retains current prominence in the field. Harvard Law School also initiated in 1960 and still maintains its Liberal Arts Fellowships in Law, to expose scholars from other fields to law school subjects, teaching methods and scholarship.²² In addition to proposing interdisciplinary courses in the standard law school curriculum, the AALS's Carrington Report also devised an "Open Curriculum" consisting of "legal process seminars," courses about law, and substantive law courses as part of a collegiate instruction program.²³

It was not until 1975, however, with the formation of the American Legal Studies Association (ALSA), intended to promote "humanistic, critical and interdisciplinary teaching and research in legal studies," that the movement could be classified as full-fledged and self-generating. This was followed in 1977 by the American Bar Association's (ABA) formation of a Commission on Undergraduate Education

20. Currie, *supra* note 17; Ward, *Liberal and Legal Education*, 5 J. LEGAL EDUC. 424 (1953); Fluno, *Constitutional Law in a Liberal Arts Curriculum*, 6 J. LEGAL EDUC. 214 (1953); Raphael, *Law in the College Curriculum*, 7 J. LEGAL EDUC. 313 (1955); Appel, *Law as Social Science in the Undergraduate Curriculum*, 10 J. LEGAL EDUC. 485 (1958); Berman, *Teaching Law Courses in the Liberal Arts College: A Challenge to the Law Schools*, 13 J. LEGAL EDUC. 47 (1960); and Beany, *Teaching of Law Courses in the Liberal Arts College: A View from the College*, 13 J. LEGAL EDUC. 55 (1960). Later articles include Lader, *supra* note 17, and a symposium appearing in 28 J. LEGAL EDUC. 1-119 (1976).

21. The most influential were H. BERMAN, *THE NATURE AND FUNCTIONS OF LAW* (1958, and later editions, as recent as 1980, with W. Greiner), which grew out of the Harvard conference; R. NEWMAN & C. NEWMAN, *THE ROLE OF LAW IN SOCIETY* (1957), prepared for a course at American University; and C. AUERBACH, L. GARRISON, W. HURST & S. MERMIN, *THE LEGAL PROCESS* (1961), developed at the University of Wisconsin.

22. See Lader, *supra* note 17, at 136-41.

23. "The Carrington Report," *supra* note 7, at 120-23.

and the Humanities, reorganized in 1984 into the Commission on College and University Non-Professional Legal Studies, which sponsors surveys and national conferences and publishes a biannual newsletter, *Focus on Law Studies: Teaching About Law in the Liberal Arts*. The ALSA publishes the thrice-annual *Legal Studies Forum: An Interdisciplinary Journal* (formerly *ALSA Forum*). Unlike previous organizational efforts, which were heavily influenced by professional law schools, the ALSA is the representative of legal studies scholars teaching at undergraduate institutions, reflecting a certain coming of age of the legal studies movement.²⁴ In fact, most of the actual programs in legal studies established since the early 1970's have been the creation of educators unaffiliated with law schools.

B. Current Profile

Any effort to portray the form and nature of legal studies outside of law schools must begin by distinguishing between law taught as part of a liberal arts curriculum and law taught in other professional institutions, such as business, engineering, social work, public health, nursing and criminal justice schools. The latter type of instruction usually consists of substantive law as related to the profession, such as "Rights of Mental Patients" taught to social workers. Undergraduate legal studies, by contrast, teaches *about* law from a broad, social science — or even humanities — perspective. "Rights of Mental Patients" might very well be taught in such programs, perhaps as a unit in a political science course on civil liberties, but to illustrate themes concerning the relation of the state and the individual, rather than "the law" *per se*

24. See Gee & Webber, *supra* note 17, at 24-25, also noting the spill-over influence of the Critical Legal Studies Movement. See also Ryan, *Proceedings of the ABA National Conference of Law in Undergraduate Liberal Education*, 10 LEGAL STUD. F. 121 (1986). The ABA frequently co-sponsors conferences with academic organizations such as the American Political Science Association and the American Sociological Association, which have their own sections on undergraduate legal studies. Its FOCUS ON LAW STUDIES often contains course syllabi and other resources. ALSA, originally organized at University of Massachusetts at Amherst in 1975, recently moved to Northeastern University. Note however that 1975 was also the year that the University of Utah's legal studies program — operated by the College of Law — was terminated for lack of funds. See Frankel, *Legal Studies at Utah: A Requiem and Eulogy*, 28 J. LEGAL EDUC. 6 (1976).

Note that JOURNAL OF LEGAL STUDIES is not an "undergraduate legal studies" review. Published by University of Chicago Law School, it is primarily a vehicle for the Law and Economics movement.

that a professional in the field will "need to know."

In a 1984 survey of 100 colleges and universities, the ABA Commission identified twenty-six formal undergraduate programs which "focus on law from a liberal arts perspective." Moreover, faculty at another sixty-some schools reported that they teach one or more "law-related" course, defined as "devoted *primarily* to the philosophy, history or current practices of law, legal institutions, the Constitution, courts, criminal, civil, juvenile, and administrative justice systems, etc."²⁵ Of the twenty-six formal programs, the University of Massachusetts at Amherst (hereinafter UMass/Amherst) and the University of California at Berkeley are full academic departments with their own faculty and budgets. The other programs are "loose confederations of interested scholars,"²⁶ drawing on existing faculty from political science, sociology, history, economics and philosophy, and sometimes psychology, anthropology, communications, urban studies and similar departments. Some programs offer students formal majors, some only minors or "areas of concentration." Most require an introductory, multi-disciplinary "law and society" course in addition to specialty courses (usually based in other departments) and independent research or field work. Occasionally, the programs offer "legal methods," similar to but less rigorous than traditional law school writing and research classes, or courses in legal rhetoric and communication.

The faculty who teach in these programs are predominantly full-time, tenured instructors. Some schools also utilize practicing lawyers as adjunct instructors. Almost two-thirds reported to the ABA that their primary scholarly interest is law-related; twenty percent hold J.D.

25. Ryan, *Law, Liberal Education and the Undergraduate Curriculum*, 10 LEGAL STUD. F. 29, 31 (1986). The 26 identified as having formal programs are: University of California at Berkeley, Riverside and Santa Barbara; Florida State; Georgia State; Sangamon State; Northern Kentucky; University of Massachusetts at Amherst and Boston; Brandeis; Hampshire College; Washington University; SUNY-Stony Brook; Case Western Reserve; Oberlin; Antioch; University of Tulsa; Lehigh; Brown; Memphis State; Rice; Pacific Lutheran; University of Wisconsin at Madison and Milwaukee; Cornell; and University of Pittsburgh. Others known to this author are Wellesley; Bowling Green State; Brooklyn College; Bryn Mawr; Syracuse; University of Chicago; Manhattanville College; Boston University; University of Minnesota; Northeastern and University of Florida. Of the 90 schools answering the survey, 43% are part of institutions with law schools. *Id.* at 48. Of the schools without formal programs, a high percentage of faculty and even deans believe establishment of such programs would be beneficial. *Id.* at 38-9.

26. Gee & Webber, *supra* note 17, at 20.

degrees, usually in addition to a Ph.D. or M.A.²⁷ The most commonly taught courses are constitutional law (or constitutional history) and civil liberties, followed by a number of different criminal justice courses, such as crime and delinquency, corrections and criminal law/procedure. The next most common courses are on courts and the judicial process, the introductory courses ("law and society") and philosophy of law. Courses in legal history, sociology of law, and economics of law are much less frequently taught. Courses in comparative law and jurisprudence are rarely given, but those surveyed frequently suggested that they are needed.²⁸ Alternative dispute resolution and issues of gender, class, race and ethnicity are new subjects gaining in popularity.

Information about students is harder to come by. Many more are exposed to law in pre-professional contexts than in liberal arts settings, but as to the latter, estimates range from 25% to 75% as those majoring or concentrating in legal studies who plan to go to law school.²⁹ (Many different kinds of students may enroll in only one or two legal studies offerings, of course, without a formal major.) One-third of the faculty who responded to the ABA survey perceive that "preparation for law school" is a very important motivating factor in student enrollment, equal to "broad understanding of law" as a motivation.³⁰ The issue of student careerism, as it affects the identity of legal studies programs and the admissions policies of law schools, will be addressed at later points in this article.

27. Ryan, *supra* note 25, at 31-32.

28. *Id.* at 32-34. This breakdown varies somewhat from the student enrollment levels, which are higher in criminal justice courses than constitutional law and civil liberties. The introductory courses, designed for freshmen and sophomores, also have high enrollments. *Id.* at 40. At least one program, at University of California/Santa Barbara, offers a specific criminal justice emphasis, "stressing the study of criminal justice as a social science." 1985 College of Letters and Science Catalogue at 227.

29. Ryan, *Proceedings of the ABA*, *supra* note 24, at 121, 125. A random sample of Columbia University School of Law students who had taken legal studies courses in college indicated to the author that, by their estimates, the percentage of pre-law students in their legal studies courses ranged from 10% in "Law for Engineers" to close to 100% in Law and Economics. Other estimates included 75% in American Constitutional History, 50% in Law and Social Order, 40% in Business Law, and 25% in Legal Problems of the Poor.

30. Ryan, *Law, Liberal Education*, *supra* note 25, at 41. Fewer, in the view of the faculty, enroll as preparation for other law-related courses or to gain practical legal information or skills. *Id.*

C. The Theory Of Legal Studies

Professional legal educators have, over the years, articulated their own theories as to the purpose of undergraduate law study. For instance, Herbert Packer and Thomas Erlich, in their 1972 study, *New Directions in Legal Education*, for the Carnegie Commission on Higher Education, devoted a subchapter of "The Law School in the University" to "The Role of Law in Undergraduate Education." First noting that law is an undergraduate subject in most Western countries, and *had been* so in America before Langdell forged the Harvard model, they suggested two educational objectives:

- a) "the study of law as fact and artifact": the conception of a legal system, law as institution, as social process and ordering process; and
- b) "the study of law as methods of thought": the analysis of verbal signals and messages, the use of communications as a planning and control mechanism, the process of digesting and synthesizing problems and solutions.

Together these two foci provide insight into "the ways in which men [sic] actually reach decisions . . . involving values and value choices . . . [how] theory and practice meet and interact."³¹

Harold Berman, reflecting in 1986 on conclusions of the 1954 Harvard conference, concurred with Packer and Erlich that law study enriches general education by illustrating the "interaction of ends and means in reaching decisions," with the elaboration that law study is important because it "is itself an integral part of the Western tradition of thought and action . . . rank[ing] with language, with history, and with science as one of the intellectual foundations of our common belief system, our faith." He noted two additional contributions:

- a) law study as supplement and enrichment for the understanding of other disciplines; and
- b) the moral value of law study, to help the student "enlarge his own intellectual responsibility and his moral capacity to judge between competing claims and to strike a proper balance between rule and discretion" in both general principles and concrete cases.³²

31. PACKER & ERLICH, *supra* note 7, at 59-61.

32. Berman, *Law in the University*, *supra* note 19, at 55-60. For an accessible version of Berman's 1956 statement of objectives, see Lader, *supra* note 17, at 146-47.

The 1971 Carrington Report's Model Curriculum for undergraduates synthesized each of these rationales as: "the desirability of using the legal setting as a matrix for intellectual inquiry about such pervasive issues as 'the tension between stability and change, freedom and security, history and logic,' ideal justice and justice in practice." It also added two other rationales for such a curriculum:

- a) the increasing importance of law to citizens in our society; and
- b) an opportunity for students to test their interest and capacity, a kind of "headstart" rationale.³³

Thus we have six separate objectives for undergraduate legal studies, as delineated by law professors: 1) law as institution, social process, belief system; 2) law as intellectual method; 3) law as interdisciplinary vehicle; 4) law as moral and intellectual decision-making; 5) law as modern civic knowledge; and 6) law as pre-professional preparation. How do these compare with the official statements of legal studies programs and educators? Two programs in Massachusetts, the Program in Legal Studies at Brandeis University,³⁴ and the Legal Studies Depart-

33. Compare to the objectives outlined by practicing attorney Lader in 1973, *supra* note 17, at 147:

[1] "the practical merits of law study, including the preparation of knowledgeable clients and the introduction of potential law school students to law study and the legal system;

[2] the understanding of the relation of law and the social order as a means of both learning about one type of authoritative policy-making and dispelling the notion of law as a monolithic authority;

[3] the cultural value of law study as a subject requiring normative reflection;

[4] the scholarly objectives of cross-fertilization of legal science and the liberal arts;

[5] the training of legal reasoning as a method of cultivating disciplined thinking;

[6] the informing of the public sense of young citizens; and

[7] the clarification of the individual's role in society."

34. It is fitting that a university named for a Supreme Court justice — not to mention an early public interest lawyer and innovator of the social-science based "Brandeis Brief" — should have a legal studies program. At one time, Brandeis University considered establishing a graduate program in law, and the notion of a law school as the university's first professional school has been broached over the years. Stevens, *supra* note 10, at 233 The legal studies program was established after this author's graduation from Brandeis. Recent information provided by adjunct instructor Robin Mayer Stein has supplemented the author's prior conversations with Program Director Saul Touster and Professor Jeffrey Abramson.

ment at UMass/Amherst,³⁵ are representative of the "interdisciplinary concentration" and "departmental" models, respectively, so it is worth examining their promotional literature, along with legal studies materials from other sources.

The Brandeis brochure for prospective enrollees mentions five of the above six objectives:

The law, one of the most significant institutions in the life of any society, is an important subject of study for any student — especially so in the United States, where our lives are so critically affected by the legal system and where citizen knowledge and participation are needed. The law also represents a body of ideas, values and functions of serious concern to scholars in the various fields of the social sciences and humanities.

To fulfill these diverse interests and needs, the Program in Legal Studies is an interdisciplinary one, designed to offer students the opportunity of studying law not as a subject of professional practice but one worthy of liberal inquiry. The Program, open to students with any departmental concentration, is a means by which students may structure their interests in the law in one or more of its several aspects: historical, anthropological, sociological, philosophical, political, economic, psychological or literary. Students considering going to law school may find the Program useful in testing their interest in working with legal materials, but it should be noted that the Program is not intended as a pre-law course of study.

The sixth, "intellectual method," is reflected in a quotation from Justice Louis D. Brandeis which introduces the brochure:

The study of law should be introduced as part of a liberal education, to train and enrich the mind I am convinced that, like history, economics and metaphysics — and perhaps even to a greater degree than these — the law could be studied with a view to the general development of the mind

35. UMass/Amherst, as the founder of ALSA and the paradigm department to which other programs aspire, is also the source of one of the most frequently used introductory texts, J. BONSIGNORE, M. KATSH, P. D'ERRICO, R. PIPKIN, S. ARONS & J. RIFKIN, *BEFORE THE LAW: AN INTRODUCTION TO THE LEGAL PROCESS* (3d ed. 1984). M. Katsh has also edited *TAKING SIDES: CLASHING VIEWS OF CONTROVERSIAL LEGAL ISSUES* (1982). Both books contain introductions to the "theory" of legal studies. See also d'Errico, Arons, and Rifkin, *Humanistic Legal Studies at the University of Massachusetts at Amherst*, 28 J. LEGAL STUD. 18 (1976) [hereinafter d'Errico, *Humanistic*].

This quotation also appears in the opening of a text used by the UMass/Amherst department. That school's brochure similarly describes the interdisciplinary connection and humanistic approach. It focuses at greater length, however, on the distinction from professional preparation: "The study of law and society . . . is not a preparation for any one specific career Yet a clear understanding of the role of law in modern society is increasingly important to any career covering public issues" such as in the legislative, justice, mental health or educational systems. A political scientist at another school underscores "the importance of *acquaintance* with the law by the doctor, teacher, scientist or secretary Given the increasingly litigious nature of our society, I think it is essential that every adult develop some familiarity with the basic tenets of law."³⁶

A theme in many programs is that law is a process, rather than a fixed and predictable system.³⁷ Moreover, *all* citizens in a democracy — not just the "elite" who become lawyers — need a legal education, in order to: know how to exercise their rights and responsibilities, understand issues of justice and policy, obedience and conscience, change and process. Thus among the topics considered in an introductory course at Brandeis are: "the nature of legal reasoning and the use of precedents; the relation of law to questions of justice and morality; the relation of law to politics; the occasions for disobeying the law; and the use of law to foster social change."³⁸ Many legal studies educators have emphasized the importance of correcting common student misperceptions about law and the legal system — e.g., that it does not provide a solution for every problem, that it is not uniform — in order to reduce general cynicism caused by the gap between what the legal system provides and what it delivers.³⁹ This objective should apply both to future

36. Nolan, *Business Law for Artists and Poets*, 2 FOCUS L. STUD. 5 (Spring 1987).

37. d'Errico, *Humanistic*, *supra* note 35, at 34. Jeffrey Abramson explains that Brandeis does not have a pre-law curriculum because "what lawyers do is always changing." Abramson introductory lecture in *Introduction to Law*, Brandeis University, January 1986.

38. Abramson, *Introduction to Law*, syllabus, Spring, 1987.

39. The need to correct misunderstandings has been noted by legal studies professors such as Huff, *Law and the Humanities: Reflections on Ten Years of Cross-Disciplinary Work*, 1 FOCUS L. STUD. 2 (Spring 1986); Grossberg, *Teaching Legal History*, 2 FOCUS L. STUD. 3 (Spring 1987). See also Ryan, *Proceedings of the ABA*, *supra* note 24, at 123, summarizing a similar observation by Stewart Macaulay, from the perspective of a law professor.

lawyers and future [non-lawyer] citizens.

But undergraduate legal studies is more than advanced "high school civics." The UMass/Amherst educators espouse a philosophy that is clearly a descendant of Legal Realism and which, in its rather explicit attack on the legal formalism taught in law schools, resembles Critical Legal Studies: Law "is affected by personality, culture and economics, as well as by logic and reason The attempt [in the UMass/Amherst program] to transcend the limitations of professional legal education is accentuated through focusing on such perspectives as the psychology of authority, the nature of communal and individualistic legal systems [or] economic and political qualities of legal institutions"⁴⁰

The former editor of *Legal Studies Forum*, David Friedrichs, also acknowledges that his teaching style is more critical, more value-conscious, than the standard law school approach: "It challenges some of the fundamental assumptions of conservative and liberal theory which shape and direct American law . . . [i.e., the] conventional civics class conception of the role and purpose of law." He believes, "as a matter of integrity, a professor should make a class aware of her or his ideological commitments," and has an obligation "to expose students to an interpretive moral vision pertinent to understanding the larger purposes of law."⁴¹ Friedrichs concludes: "Values as an element of law in any context are pervasively central to the enterprise and must therefore be highlighted. The discussion of values and law is too important (to paraphrase a well-known aphorism) to be left to the philosophers."⁴²

And to the law professors, he might have added, except that mainstream law professors rarely raise values — either out of a conscious

40. d'Errico, *Humanistic*, *supra* note 35, at 27. The UMass/Amherst brochure's course descriptions indicate that this program has a clear radical leftist slant, e.g., "Anarchist Perspectives on American Law," "Critical Legal Theory," "Law and Wealth." The Brandeis brochure, characteristically, includes courses on Talmudic law and Jewish ethics. As noted above, University of California at Santa Barbara's program has a criminal justice emphasis.

41. Friedrichs, *Values in Teaching About Law to Undergraduates*, 2 FOCUS L. STUD. 1, 6 (Spring 1987). A sociologist, Friedrichs notes that he has been especially influenced by Marxist sociologists and Critical Legal Studies scholars, but believes a dogmatic interpretation of Marxist theory is wrongheaded — because of Marxist fallacies — and counterproductive — because it may turn off students. *Id.*

42. *Id.* at 8. See also Kagan, *Using Substantive Law to Teach*, 1 FOCUS L. STUD. 1, 6 (Spring 1986): "Undergraduates (like the rest of us, perhaps) seem most galvanized by normative, policy questions."

belief in their irrelevancy to law, or out of the fear that to do so will expose them as "soft-minded." As John Bonsignore of the UMass/Amherst program juxtaposes undergraduate legal studies to law schools:

An undergraduate program need not run rough shod over the prior experiences of students, and it can teach to the whole person, show alternatives to hierarchy and exploitative relationships, and encourage the preservation of democratic and egalitarian values. [It] can better achieve these aims because at present it is an art form and not a pragmatic form⁴³

It appears, therefore, that while legal studies educators basically agree with law professors on the objectives for the non-professional study of law, they may differ over matters of methodology and philosophy.

D. Methodology and Resources

A review of the teaching materials and methods used in legal studies courses reveals a tension between the traditional law school model and modes more common to liberal arts education. In certain respects, methodology tracks the instructor's own background and affiliation. Law professors and law practitioners who teach undergraduate courses tend to rely more heavily on the law school staples, appellate cases; moreover, in "toning down" but still employing Socratic techniques, they seem to conceive of the undergraduate law course as simply a "slower, less rigorous" version of law school.⁴⁴ Educators trained in social sciences or the humanities, by contrast, tend to feel freer to utilize eclectic materials in addition to cases, such as articles and texts from other disciplines, novels, letters, films, cartoons and guest lecturers from the community, and to engage frequently in role-playing, simulations, team-teaching, open discussions, internships and field interviews

43. Bonsignore, *Law School Involvement*, *supra* note 3, at 64-65. The art/pragmatic distinction is borrowed from M. McLuhan, *UNDERSTANDING MEDIA* (1964).

44. Interview with Barry Davidoff, Esq., Legal Methods instructor in Manhattanville College's six-year B.A./J.D. program (October 28, 1987); Interview with Columbia Law School professor William Jones (October 22, 1987) (about the Columbia College course he taught in the early 1970's with Jack Kernochan and Telford Taylor on Law and Mass Communications). Kernochan's portion of the course text consisted entirely of cases and the Copyright Act. They taught in a "modified Socratic" way, resorting to lectures to fill in gaps in students' substantive knowledge.

and observations.⁴⁵

The UMass/Amherst educators, most of whom have law degrees, are highly critical of the case method.

What students understand, as doctrine is manipulated and reversed, is that judicial opinions do not reach conclusions through purely logical processes, that such opinions often have only the appearance of objectivity, and that the choice made by a judge among competing plausible arguments put forward by lawyers is often influenced by his values and the structure and ideology of the legal system and the society.

Thus, "[i]n general, when cases are now used in our courses, it is as much to discover what understandings have been omitted or ignored as to understand what questions and considerations the judge believed important."⁴⁶ (They are perhaps unaware, however, that many law schools professors tend, nowadays, to use cases the same way.)

Nevertheless, judicial decisions do serve a significant function in most legal studies courses. Robert Kagan of Berkeley uses cases not only to demonstrate precise and logical argument but to stimulate discussion of underlying normative and policy questions:

Only after arguing whether a judge should have shut down a polluting coal mine (*Versailles Borough v. McKeesport Coal and Coke*) or a power plant (*Friends of the Earth v. Potomac Electric Co.*), it seemed to me, did students really understand the tensions between important values such as public health, job security and economic efficiency. And only then, I thought, did students become interested in empirical readings that address the social scientists' questions — *why* do people and institutions act as they do, and what variations in institutional arrangements might produce a dif-

45. See, e.g., Grossberg, *supra* note 40; d'Errico, *Humanistic*, *supra* note 35, at 34-37; McEwen, *Legal Resources for Undergraduates*, 1 FOCUS L. STUD. 2 (Fall 1985); Ryan, *Proceedings of the ABA*, *supra* note 24, at 127-8; Zuckert, *Teaching Constitutional Law*, 2 FOCUS L. STUD. 3 (Fall 1986). The syllabi printed in issues of FOCUS L. STUD. also reflect this eclecticism. For instance, Cassidy & Glickman, *Introduction to Law and Justice*, 1 FOCUS L. STUD. 3 (Spring 1986), report using, *inter alia*, HOBBS, LEVIATHAN; "Clockwork Orange" (the movie); *In re Gault* and *Furman v. Georgia*; King, *Letters from A Birmingham Jail*; "My Neighbor Bernie Goetz," from NEW YORK magazine; and DOSTOEVSKY, CRIME AND PUNISHMENT. The title for Bousignore's BEFORE THE LAW is from the Kafka story.

46. d'Errico, *Humanistic*, *supra* note 35, at 33.

ferent set of compromises.⁴⁷

Kagan tends to use paired sets of readings: cases and political science articles. This combination is reflected in introductory tests such as UMass/Amherst's *Before the Law*, which itself is used in an introductory course at Brandeis, for instance, with supplementary material including additional cases and novels such as *Gideon's Trumpet* and *Darkness at Noon*.

Depending on an instructor's disciplinary training or inclination, identical subjects — even identical cases — can be taught for different effect. For instance, constitutional law has been treated from at least three approaches which differ from the doctrinal, substantive emphasis in law schools: a) in a political-historical context, to explore the Supreme Court as a policy-maker and governmental institution; b) as a platform for raising issues of political and moral philosophy concerning rights; and c) to emphasize questions of hermeneutics, the nature of meaning and interpretation.⁴⁸ Legal studies courses, moreover, often focus on institutions and actors within the legal system that law students are rarely exposed to: for instance, juries, legislatures and the police.⁴⁹ Even courses taught close to the traditional case model may require readings of trial transcripts, exhibits and briefs — in further juxtaposition to professional law study.⁵⁰

The legal studies movement has already generated an extensive bibliographic literature,⁵¹ so that liberal arts faculty without formal le-

47. Kagan, *supra* note 43, at 6.

48. Zuckert, *supra* note 45.

49. See Bonsignore, *BEFORE THE LAW*, *supra* note 35, chs. 2, 4. Legislative testimony, in addition to law review articles and judicial decisions, are excerpted in *KATSH, TAKING SIDES*, *supra* note 35, to illustrate pro and con positions on such issues as "Should the Legal Services Program be Abolished?" and "Should Television Advertising to Children be Banned?" See also Shanley, *Using Legislative Debates to Teach*, 2 *FOCUS L. STUD.* 2 (Fall 1986).

50. *E.g.*, term paper assignment for Prof. Alan Westin's Fall 1987 Columbia College course, *The Supreme Court and American Politics*.

51. *FOCUS ON LAW STUDIES* regularly contains syllabi, book reviews and lists of new books. See the frequently used texts surveyed in Ryan, *Law, Liberal Education*, *supra* note 25, at 43, and an earlier survey, Allen & Spiro, *New Dimensions in Undergraduate Legal Studies: A Progress Report on Eighteen Introductory Texts*, 28 *J. LEGAL EDUC.* 112 (1976). See also issues of *LEGAL STUDIES FORUM* and the American Sociological Association's *Syllabi and Instructional Materials for Sociology of Law* and other ASA syllabi packages. In addition to the Berman and Bonsignore texts mentioned above, frequently used introductory texts include L. FRIEDMAN, *INTRODUCTION*

gal training can readily devise curricula. In addition, individual disciplinary journals, particularly the pedagogical variety, occasionally publish articles on the use of law within less obvious fields, such as psychology and geology.⁵² The extent to which the movement could benefit, however, from closer contact with professional law faculties, is as important a question as the reciprocal one, both of which will be addressed below.

E. Identity Conflicts

In probing the theories, methodologies, successes and failures of the array of undergraduate legal studies programs, a pattern emerges which can readily be characterized as "identity conflicts" involving both an ambiguity concerning for whom the programs are intended to serve, and an uncertainty whether the myriad approaches to legal studies actually cohere as a unified subject. These issues will only be touched on here. For purposes of this article, the significant point is that the identity problems reflect similar tensions in the relationship of non-professional to professional law study, that is, the challenge that legal studies poses to law schools, from the dual perspectives of students and faculty, which will be taken up in Part III.

1. Student Intentions

Almost across the board in the past decade, undergraduate departments and institutions have experienced increased student preference for career-related courses, to the exclusion of the classical, but impractical, liberal arts. This phenomenon is probably intensified in subjects such as legal studies which resemble and relate to actual occupations.

TO AMERICAN LAW (1984); L. FRIEDMAN & S. MACAULAY, *LAW AND THE BEHAVIORAL SCIENCES* (1977); and MONAHAN & WALKER, *SOCIAL SCIENCE IN LAW: CASES AND MATERIALS* (1985). See also LAW, JUSTICE AND THE INDIVIDUAL IN SOCIETY: PSYCHOLOGICAL AND LEGAL ISSUES (Tapp & Levine, ed. 1977), J. AREEN ET AL, *LAW, SCIENCE AND MEDICINE* (1984), and J. BARTON, J. GIBBS, JR., V. HAO LI, & J. MERRYMAN, *LAW IN RADICALLY DIFFERENT CULTURES* (1983), for specialized texts.

52. E.g., *Incorporating Law into the Undergraduate Psychology Curriculum*, 10 *TEACHING OF PSYCHOLOGY* 119 (April 1983); Tank, *An Undergraduate Course in Legal Aspects of Geology*, 32 *JOURNAL OF GEOLOGICAL EDUCATION* 155 (1984). See also Matlon, *Communication in the Legal Process: A Pre-Law Course at the University of Arizona*, 31 *J. LEGAL EDUC.* 589 (1981) for a course within a department of speech communications.

As reported above,⁵³ in many legal studies courses, a significant portion of students are "pre-law," that is, planning — and presumably in the process of preparing — to attend law school. Career-minded students may take these courses for instrumental rather than intrinsic purposes, perhaps to "test" whether they really want to become lawyers, or out of more pragmatic motivations, to "get a jump" on the knowledge they assume they'll need in law school, or even more opportunistically, to obtain the letters of recommendation they need to be admitted.⁵⁴

This phenomenon can have at least two negative effects. First, it may discourage students who clearly have no "pre-law" intentions from studying about the law. As noted even by legal studies instructors in Hampshire College's ungraded atmosphere, "It was apparent that the presence of an excessively large proportion of pre-law students in the Program would drive others from it, for fear that their own motivation and interest would seem too low."⁵⁵ How much greater must be the disincentive where grades are awarded and concern for the overall grade point average discourages dabbling in fields outside one's specialty. A second effect is that student demand for more technical, formalistic law studies — that is, for a replication of the standard methodology of professional law study as preparatory "testing ground" — may run counter to the high ideals and creative techniques of legal studies faculty.⁵⁶ Ironically, as legal studies becomes more popular, it may be attracting the very students that the faculty would rather discourage. This accounts for the self-conscious statements in the promotional brochures that "we are not a pre-law curriculum . . ." Although too early to tell whether undergraduate legal studies will ultimately fulfill the hopes of faculty theorists or of student adherents, catering too

53. *Supra* notes 29-30 and accompanying text.

54. William Jones, a Columbia University School of Law professor who taught in Columbia College, acknowledged that some of his students hoped he'd help them gain admission to the law school. Interview with William Jones, Columbia University Law Professor (October 22, 1987). All of the Columbia law students surveyed by the author stated that their legal studies courses had no influence on their decisions to apply to law school, though they may have had a reinforcing effect on their plans.

55. Mazon, *The Hampshire College Law Program*, 28 J. LEGAL EDUC. 40, 47 (1976).

56. See Ryan, *Law, Liberal Education*, *supra* note 25, at 42; d'Errico, *Humanistic*, *supra* note 35, at 37; Gee & Webber, *supra* note 17, at 23. As early as 1953, Brainerd Currie warned that professionalism in college law courses was poorly serving the objectives of general education. But he noted that student professionalism was being injected by the instructors, perhaps as a by-product of their "enthusiasm" for the subject. Currie, *supra* note 17, at 430.

enthusiastically to student careerist pressure may bolster short-term budgets but hinder pedagogical aims.⁵⁷

2. Faculty Aspirations

The legal studies literature is replete with descriptions of its "multidisciplinary," "interdisciplinary," "cross-disciplinary," "transdisciplinary" or "personally interdisciplinary" nature. While valiant attempts may have been made to distinguish each of these and rank them on an evolutionary scale,⁵⁸ legal studies programs, no matter how they define themselves, often lack conceptual coherence. In the less unified programs, many of the courses are highly specialized, but beyond offering a "dilettante's delight," this may leave students with a very fragmented view of the law. Given the inherent nature of individual disciplines as insular, narrow and even rigid, the barriers to transcendence may be inevitable, if not insurmountable. "Two or three narrow visions do not add up to a broad one, and so the borrowing scholar must be discriminating, adventuresome, and willing to tolerate ambiguity and confusion in the interaction of different perspectives and thought structures," comment the UMass/Amherst educators.⁵⁹

But additional explanations are less ethereal. Barriers are often administrative and thus potentially correctable. The ABA reports that only 45% of its surveyed legal studies faculty know personally all or most faculty in other departments of the same institution who teach

57. The fear of student "professionalism" leading to a narrower sense of mission is expressed in Gee & Webber, *supra* note 17 at 27-28. Barry Davidoff admits that Manhattanville College developed its six year B.A./J.D. program with New York Law School as an explicitly "pre-law" marketing device. However, if the students have reasonable success in the undergraduate portion of the program, they "drop out" to apply to law schools other than New York Law. See *supra* note 44. One legal studies program with a manifestly pre-law aim, to encourage disadvantaged students, particularly those from ethnic backgrounds, to consider careers in law, was terminated after three years. Frankel, *Legal Studies in Utah*, *supra* note 24. Although a laudable idea, "[p]erhaps the most significant failure of our program was the goal of developing a meaningful program for teaching legal communication skills to disadvantaged students." *Id.* at 11. This was not necessarily the reason the program was defunded, however.

58. See, e.g., d'Errico, *Humanistic*, *supra* note 35, at 23-27; Gee & Webber, *supra* note 17, at 22.

59. d'Errico, *Humanistic*, *supra* note 35, at 23. See also Brooks, *Legal Studies and Liberal Arts: Outline of a Curriculum Based upon the Practical Syllogism*, 10 LEGAL STUD. F. 97-98 (1986), criticizing the lack of a central focus.

law-related subjects. One in seven report knowing *none*. Whereas two-thirds of the professors surveyed are satisfied with the intellectual orientation and quality of their school's program, only 29% were satisfied with "coordination among departments."⁶⁰ This isolation is undoubtedly attributable to the "loose confederation" structure existing at all but two schools; however, where the program *is* based in its own department, insularity from the rest of the school may actually be heightened. Moreover, in an era when departments may have to compete for students in order to maintain their own budgets, the incentives for inter-departmental coordination are lacking. Nevertheless, given that desire for increased interaction exists, perhaps greater efforts can be made in the future to overcome fragmentation on the structural if not conceptual level.

III. The Challenge To Professional Legal Education

This article will now consider the challenge that undergraduate legal studies poses to law schools — to the legal profession, really — from the perspective of both student and faculty, that is, on the level a) of learning, and b) of teaching and scholarship. Before taking up these issues, it would be useful to articulate the methodological — even ideological — differences between collegiate and professional law study, in order to understand the nature of the challenge. Beyond the "education *about* law v. education *in* law" distinction, Lester Mazor of Hampshire College's program has raised these juxtapositions:⁶¹

<i>law schools</i>	v.	<i>legal studies</i>
- law as a discipline		- law as a phenomenon
- undisciplinary curriculum		- interdisciplinary curriculum
- emphasis on legal doctrine		- emphasis on law as ordering process
- emphasis on analysis, with synthesis only on molecular level		- emphasis on synthesis, on molar level
- training for service		- exercise in inquiry
- socialization into the profession		- development of critical spirit

60. Ryan, *Law, Liberal Education*, *supra* note 25, at 35, 46-47. They have even less contact with law school professors. *Id.* at 47-48. The study noted that faculty are least of all satisfied with the levels of funding for their programs.

61. Mazor, *supra* note 55, at 43. The chart is constructed by the author from Mazor's lengthy notes.

- assumption of centrality of law
and lawyers

- questioning of centrality of law
and lawyers

Or as the UMass/Amherst educators have put it more metaphorically, "In legal studies, law is a vehicle for the educational journey, as opposed to being the journey itself."⁶² The criticism, even if not explicitly intended, is manifest: law school teaching is too formalistic, too narrow, too uncritical. The fact that the criticism has been not only published, but actually embodied in a growing series of curricula, makes undergraduate level studies more than a mere critique of professional legal education. It makes it a *challenge*.

In some respects, however, the challenge may lie in explaining the great indifference of law schools to legal studies. If law faculty know about the growing movement, fewer than a handful have expressed an interest. Whether the indifference is born of arrogance toward "amateurs," fear of the critical message, or of the unknown,⁶³ it must be overcome, if only because of the growing population of legal studies graduates whom the legal profession and professional legal education will increasingly face. The following explores some of the ways in which the two approaches to law not only face-off, but actively interrelate.

A. The Implications For Students

1. Citizens and Consumers

Although the obvious impact on law schools will be felt through legal studies graduates who later attend law school, law professors and professionals should first consider the effect of legal studies enrollees who are not identified as "pre-law." They might begin by asking why, as reflected in the growth of the legal studies movement (as well as other social phenomena such as general literature and popular culture),

62. d'Errico, *Humanistic*, *supra* note 35, at 20.

63. Trubek & Plager, *The Place of Law and Social Science in the Structure of Legal Education*, 35 J. LEGAL EDUC. 483, 485 (1985) ("Teachers in our law schools feel either threatened by legal studies or totally unable to comprehend it.") *See also* Pipkin & Katsh, *Undergraduate Legal Studies and Law School Gatekeepers*, 28 J. LEGAL EDUC. 103 (1976). Currie, *supra* note 17, at 428 (referring to "the haughty, proprietary attitude of some law school men, who regard any attention by the college to conventionally legal subjects as a presumptuous infringement by self-appointed incompetents").

there is an apparently rising popular interest in the role of law and the legal system.

More specifically, they might ask, why would non-lawyers want to or believe they need to know how lawyers "think" — assuming that "thinking like a lawyer" is indeed different from any other kind of thinking.⁶⁴ What good is a critical understanding of "*stare decisis*" or "distinguishing cases" beyond Louis Brandeis's oft-quoted aim, "to train and enrich the mind"? The standard answer is that this leads to "a better citizenry": "[T]he law — the practice of grasping, interpreting, criticizing, reshaping, and applying rules, standards and institutions in light of their histories and their futures — provides us with an appropriate forum and focus for the exercise of democratic leadership."⁶⁵ What lawyers do (or are presumed to do) is what citizens do: "resolve matters of public concern. . . through reasoned presentation of principled arguments in a public forum of free discourse."⁶⁶ Legally-aware citizens need not leave governance of political, social and even legal institutions solely in the hands of lawyers.

A more cynical but perhaps more pragmatic view is that undergraduate law study will make non-lawyers not only better citizens, but also better consumers of the legal system. More sophisticated clients, in effect, should demand higher standards of their lawyers. If clients — and non-clients who are, nevertheless, affected by the action of attorneys — are better able to understand and articulate concerns about justice, fairness, obedience and rights, but likewise understand the limitations of law, perhaps their lawyers will need to be more responsive to the same factors. If law schools intend to produce lawyers who are better able to serve their clients (a questionable assumption, but at least one commonly avowed), they had better take into account the increased legal sophistication -- and in particular, the increased socio-legal sophistication — of non-lawyers.

A separate implication for "non-pre-law" undergraduates should also be explored. Harold Berman has suggested that one purpose of undergraduate law study is to stimulate and prepare students to proceed to advanced legal studies in graduate schools of history, philoso-

64. See Mudd, *supra* note 8, at 704-6, who questions this standard assumption.

65. Postema, *Democratic Citizenship and the Teaching of Law*, 10 LEGAL STUD. F. 65, 68 (1986). Despite Postema's innocent perspective, he coins an apt phrase for these citizenship skills, "civic-prudence," as a complement to the jurisprudence of lawyers and judges.

66. *Id.* at 67.

phy, government, sociology and economics. (This might occur within graduate "law and xxx" programs, or through more permissive cross-registration of graduate students from other disciplines in law school courses.)⁶⁷ However, the possibility exists that enrollment in undergraduate law courses might influence a prospective historian, for instance, to change plans and go to law school. Granting that the market attraction of lucrative incomes is undoubtedly even stronger than exposure to college-level law, this does raise the specter of "too many bright law students," the charge of Derek Bok:

[The law] attracts an unusually large proportion of the exceptionally gifted, [resulting in] . . . a massive diversion of exceptional talent into pursuits that often add little to the growth of the economy, the pursuit of culture, or the enhancement of the human spirit [T]he supply of exceptional people is limited. Yet far too many of these rare individuals are becoming lawyers at a time when the country cries out for more talented business executives, more enlightened public servants, more inventive engineers, more able high school principals and teachers.⁶⁸

The reply of some legal studies educators, and at least one law professor, is not to fear legal studies for this reason. Richard Brooks of Vermont Law School argues that legal reasoning is a "practical syllogism" (logical analysis which concludes with action), useful for non-lawyers as well as lawyers, and that legal studies is intended to be "practical" without necessarily being "vocational." "'Practical' refers to the end of action. 'Vocational' refers to compensated action in pursuit of a societal role. The actions to be taken and the reasoning leading to them need not be seen as pursuit of the lawyer's profession."⁶⁹ The problem is that, in the practical world, action-oriented conclusions are not always so intended. Professors may mean one thing and students perceive another. Inadvertant production of more prospective

67. Katsh, *Comments* [on Undergraduate Legal Education], 28 J. LEGAL EDUC. 93, 94 (1976). Such cross-registration would require greater respect and tolerance by law school professors for such students' varied backgrounds — not, as this author has witnessed, the insistence that, e.g., a psychologist submit a seminar paper based solely on legal analysis.

68. Bok, *supra* note 9, at 573. Cf. Tushnet, *Elite Efforts to Restrict the Supply of Lawyers* 33 J. LEGAL EDUC. 593 (1983); McKay, *Too Many Bright Law Students?* 33 J. LEGAL EDUC. 596 (1983).

69. Brooks, *supra* note 59, at 109. Llewellyn (see frontisquote) had a similar view of the law school.

lawyers with a background in legal studies may not, Bok aside, be a bad thing. But the question remains, do the law schools want them?

2. Law School Preparation and Admissions

Unlike preparation for medical school, there has never been a prescribed pre-law curriculum for admission to American law schools. Pre-med students are usually expected to major in biology or physics and to take specified courses such as organic chemistry which are deemed necessary background for the study of medicine. By contrast, while pre-law students most often major in political science,⁷⁰ and law school catalogues often recommend one or more college courses in economics and history, undergraduate major is rarely considered a significant criterion of acceptance by law school admission offices. Many schools, in fact, hardly consider it at all, weighing grade point average, LSAT score, reputation of the college, letters of recommendation and non-academic experiences, in that order, more heavily.⁷¹ When specifically surveyed in 1975 about an undergraduate major in legal studies, only 3% of law school admission offices rated such applicants as less qualified than those with other majors, while 6% ranked them as more qualified, and 91% indicated that they considered legal studies majors to be equally as qualified as applicants with other majors, all other factors being equal.⁷² This latter result probably reflects the lack of concern about

70. Astin, *Pre-Law Students: A National Profile*, 34 J. LEGAL EDUC. 73, 77 (1984). Political science was the major of 31.7% of "pre-law students". The second most popular major, reported by 15.5%, was "pre-law," but Astin does not define this. It is unclear if it is the same as "legal studies." The other majors, in descending order, were reported as business administration, history, accounting, English, law enforcement and economics. The study was conducted by UCLA and the American Council on Education. Note that it surveyed college students who declared themselves to be pre-law, not necessarily those who eventually entered law school.

71. Pipkin and Katsh, *supra* note 63, at 107. This study was conducted by the UMass/Amherst Legal Studies Department for the purpose of evaluating law school responses to the undergraduate legal studies major. Answers were received from 110 of the 157 ABA-accredited law schools. A 1986 study conducted by the Law School Admission Service and reported in PRELAW HANDBOOK 9 (1987-88) also revealed that undergraduate major had no particular impact on law school admission.

72. Pipkin & Katsh, *supra* note 63, at 110. The study also asked about "ad hoc law concentrations," which received similar responses, as well as law enforcement and paralegal backgrounds, which had mixed results. For legal studies programs which are minors, not majors, admissions officers would have to look even more closely at college transcripts, which seems unlikely.

undergraduate major, rather than an affirmative endorsement of legal studies. Nevertheless, it runs counter to what the AALS and Law School Admission Council (LSAC) were apparently advising pre-law students until this past year.

The official AALS/LSAC *PreLaw Handbook* has for many years accepted the AALS statement on prelegal education, which steadfastly refuses to recommend concentration in any one subject matter, prizing instead a "highly individualized process pursued with high purpose and intensive intellectual effort." Especially called for are:

- comprehension and expression in words;
- critical understanding of the human institutions and values with which the law deals; and,
- creative power in thinking.⁷³

Given the "theory of legal studies" as described above, this recommendation in itself is certainly not incompatible with such a major. However, since 1952 the AALS has issued, and until 1973-1974 the *PreLaw Handbook* was printing, the warning: "So-called 'law' courses in undergraduate instruction should be avoided." In 1973-1974 the *Handbook* modified this language to the following:

So-called "law" courses in undergraduate instruction should not be taken for the purpose of learning "the law." They are not intended, and are not likely to be effective, as education for lawyers, although they can be very helpful in undergraduate curricula for teaching students "about law," and quite possibly for helping students estimate whether they might be interested in law study.⁷⁴

Although, again, not inconsistent with the claims and distinctions made by the legal studies movement, such an ambivalent view might certainly persuade pragmatically-oriented pre-law students to take at most one or two legal studies courses, but to avoid the major like the plague.

The statement carried in more recent *Handbooks*, through 1986-1987, appears more negative than the above-quoted version. After discussing the desirability of "acquiring a well-balanced education," it states:

73. See, e.g., PRELAW HANDBOOK 12 (1974-1975); PRELAW HANDBOOK 10 (1987-1988).

74. PRELAW HANDBOOK 12 (1973-74). Pipkin and Katsh, *supra* note 63, also analyze these AALS/LSAC developments through 1976.

The Pros and Cons of PreLaw Study: Undergraduate courses designated "prelaw" tend to be less effective means of preparing for law school. Such courses may introduce you to broad legal principles and provide a basis for deciding whether to pursue legal studies, but they are rarely taught with the same depth and rigor as actual law school courses. For this reason, most law schools do not recommend them.⁷⁵

Given the studies indicating that undergraduate major is irrelevant, it is doubtful whether the last statements, either "most law schools do not recommend them," or "for this reason," are true. At any rate, in the 1987-88 and 1988-89 editions of the *PreLaw Handbook*, any reference to pre-law courses, whether positive or negative, is conspicuously absent.⁷⁶

The recommendations of AALS, LSAC, admissions officials and catalogue writers may not necessarily correspond to the views of law school faculty. Although the latter's opinions have not been officially solicited, it would not be an inaccurate assessment that traditional law professors often prefer to teach first year students whose views are unformed about law, who are ignorant, blank slates upon which the professors sketch the first lines. The "slates" should have backgrounds, if they must, in fields unrelated to law — in physical anthropology, for instance, rather than anthropology of law. (If pressed, a typical law professor might recommend an undergraduate law-related course in, for example, "English Legal History" — undoubtedly as a grounding for the much vaunted case method — but rarely outside the Critical Legal Studies movement would a course such as "Law and the Social Order" be endorsed.) In fact, it often seems that a law student's prior intellectual experiences, whether acquired as an undergraduate or in advanced graduate or other professional training, are deliberately ignored by law faculty. If a non-legal perspective is raised in class, it is generally dismissed as hopelessly tangential or, at best, tolerated as "interesting but soft-headed." Thus, the irrelevancy of undergraduate major.

American law professors would probably reject a pre-law curriculum patterned after pre-med preparation (or after the undergraduate

75. PRELAW HANDBOOK 16 (1986-1987).

76. This may reflect the growing influence of the ABA Commission on College and University Non-Professional Legal Studies — not to mention the AALS's own section on Teaching Law Outside Law Schools. For the past few years, the ABA has been a co-publisher of the PRELAW HANDBOOK.

bachelors in law that European lawyers obtain) for what, at least on the surface, are laudable reasons. They would probably prefer individual depth (evidence of "intensive intellectual effort") and collective diversity in the student body. (Granted, medical students are notoriously similar in prior experiences, in part because pre-professional science courses are more readily standardized than a prescribed pre-law curriculum could ever be.) But it must be questioned whether this *laissez-faire* attitude is proffered for the good of the students, or for the ease of the faculty, who can then more readily impose their own ideas on willing neophytes.

This discussion, thus far, of *what law schools want*, is not necessarily consistent with *what law students need*. "Need," however, is not so readily agreed on. Do pre-law students need to prepare for law school and practice by "practicing" at being in law school — that is, taking courses which closely replicate, even if less rigorously, the methodologies and content of professional legal education, or at least courses that serve as direct stepping stones along the way? Or do pre-law students need to prepare to become, first of all, educated citizens — which is, one would hope, not incompatible with later becoming educated lawyers? And are these two approaches necessarily antagonistic? For just as the legal studies movement claims that citizens need to know about the law, lawyers need to know about citizenship, or more appropriately for the academic environment, about the humanities.

Allan Bloom's recently acclaimed (and attacked) *The Closing of the American Mind: How Higher Education Has Failed Democracy and Impoverished the Souls of Today's Students*, without taking specific note of legal studies programs, decries the campus "relevance" and, ironically, "openness" movements of the 1960's and 1970's which laid the foundation for "area specialties" such as legal studies (as well as women's studies, urban studies, Afro-American studies . . .). Bloom also connects these trends to the careerism of the 1980's:

Openness, as currently conceived, is a way of making surrender to whatever is most powerful, or worship of vulgar success, look principled . . . [In the university, the young person] . . . finds a democracy of the disciplines . . . [which] is really an anarchy, because there are no recognized rules for citizenship and no legitimate titles to rule. In short, there is no vision, nor is there a set of competing visions, of what an educated human being is . . . Better to give up on liberal education and get on with a specialty in which there is at

least a prescribed curriculum with a prospective career.⁷⁷

He believes that the only students who have a chance to obtain a liberal education "are those who do not have a fixed career goal, or at least those for whom the university is not merely a training ground for a profession Premed, prelaw and prebusiness students are distinctly tourists in the liberal arts. Getting into an elite professional school is an obsessive concern that tethers the mind."⁷⁸

Thus, the answer is "back to the basics," the traditionalist trend that threatens to undercut interdisciplinary programs such as legal studies as too experimental, too unnecessary.⁷⁹ The proponents of broader studies in the humanities and classics are not, however, adverse to probing the connections with law. Arguing that "the study of poetry is the best preparation for the study of law," an English professor (with a law degree) offers four reasons:

- I. No other discipline so closely replicates the central question asked in the study of legal thinking: "Here is a text; in how many ways can it have meaning?"
- II. No other discipline communicates as well that words are not often fungible.
- III. No other discipline concentrates as much on the effects of ambiguity of individual words and phrases.
- IV. No other discipline concentrates as much on the concept of contextuality.⁸⁰

Archibald MacLeish (a proud graduate of Harvard Law School) drew

77. A. BLOOM, *THE CLOSING OF THE AMERICAN MIND: HOW HIGHER EDUCATION HAS FAILED DEMOCRACY AND IMPOVERISHED THE SOULS OF TODAY'S STUDENTS* 41, 337 (1987).

78. *Id.* at 370. Bloom would approve of the pre-electrical engineer who deliberately chose a small liberal arts university without an electrical engineering major because, "I wanted a broad education that would provide me with flexibility and a value system to guide me in my career. I wanted to open my eyes and expand my vision by interacting with people who weren't studying science or engineering." Keller, *Can Engineers be Humanists?*, *NEWSWEEK ON CAMPUS*, November 1987, at 46.

79. See Gee & Webber, *supra* note 17, at 27.

80. Gopen, *Rhyme and Reason: Why the Study of Poetry is the Best Preparation for the Study of Law*, 46 *C. ENG.* 333, 334 (1984). See also Schmeling and Homan, *The Law as Servant of the Humanities*, 70 *LIBERAL EDUC.* 133, 141 (1984): "A student who chooses law for a profession and studies the humanities thoroughly could acquire the discipline to find the riches of value and meaning in law because he will have brought those riches to the law." *Id.*

a related connection at the 1954 Harvard Conference on the Teaching of Law in the Liberal Arts Curriculum: "What the law does is very much what poetry does . . . present experience as it is, which is to say as disorder . . . but to present it in a *form* of order . . . [The law is] engaged constantly in building this same bridge from actual human life over into the kind of generalization which will not be abstracted out of it but will impose order *on* it."⁸¹

The proponents of legal studies would not disagree. They would insist on more, however; that legal studies also provides a vision, a more complex vision, one with social and political context, not merely the analytical, interpretive and communication skills that poetry or literature share with the formalistic emphasis of traditional law school education. (They might not admit, however, that discovering the humanities' contribution to law requires the kind of deep, rigorous work that law schools look for in applicants, whereas legal studies more readily — perhaps too readily — announces its self-important values and insights.) Moreover, legal studies directs its attention to the deficiencies in professional legal education, not merely the commonalities between undergraduate and graduate foci. Its message is that future lawyers need to acquire social perspective on the law *before* they reach law school. As Brainerd Currie first said in 1953 in support of pre-law legal studies training, "There is little enough opportunity in the law school itself for the long perspective, and when it comes, it usually comes late."⁸² And late may be too late. As legal studies educators — many of whom have had first-hand experience obtaining J.D.'s — believe:

Students in law school learn in the first semester how to think like lawyers, and they then become a sanctioning group for what professors can do. It is not possible to break through the law school framework unless one has an intellectually coherent account of what one wants to do under the heading of law and society, and one is able to construct a context where professors with these questions are able to pursue them in their own work.⁸³

81. Quoted by Berman, *Law in the University*, *supra* note 19, at 62. MacLeish also said, "Insofar as I have any degree of liberal education, I owe it to Harvard Law School." *Id.* at 61. Some would beg to differ.

82. Currie, *supra* note 17, at 437.

83. Katsh, *Comments*, *supra* note 67, at 94, anonymously quoting a statement made at the Conference on Undergraduate Legal Studies, Amherst, Mass., March 21-23, 1974.

B. The Implications For Faculty: Four Choices

The challenge of legal studies is directed, ultimately, at law school faculties. The challenge to "construct a context" requires that social issues and perspectives be integrated into the entire framework of professional legal education, into all or almost every course, not only a handful of small, upper-class seminars. And the need for an "intellectually coherent account" is an invitation for collaboration — both scholarly and pedagogically — between undergraduate legal studies educators and law school faculties. In essence, what is sought is the closer integration of the university and the law school, a return, in effect, to the relationship that might have been if, after universities began to absorb the proprietary law schools, Langdell and his troops had not fenced them off as insular, autonomous worlds.⁸⁴ Or to how law has been taught at Oxford, from Blackstone to H.L.A. Hart. In raising the challenge, legal studies scholars are of course ever skeptical that integration can easily be accomplished:

Law, as it is studied in the law schools and practiced in the profession, is related only to itself. Divorced from community and from individuals who directly suffer its abrasive effects, law has alienated both sensitive professionals within its ranks and thinking lay people who have cut through the professional mystique. The isolation of the legal system has traditionally obviated any confrontation with contradictions.⁸⁵

The challenge suggests a number of possible responses by law school faculties, posed here in ascending order of magnitude, with relevant commentary:

a) *They can choose to continue their indifference to undergraduate legal studies.* Intellectual arrogance has worked this long. It will probably work a while longer. That won't resolve, however, the crisis that is brewing on all other fronts, the various demands for more humanism, realism, ethics and theory in professional legal education (all of which the legal studies critique subsumes). It will probably never be possible for all law schools to be all things to all critics. As William Prosser lamented 25 years ago, if law schools provide every perspective deemed essential to the well-educated lawyer, the result will be "a ten

84. See Stevens, *supra* note 10, at 5-39.

85. Bonsignore, *Law School Involvement*, *supra* note 3, at 65.

year curriculum."⁸⁶

One solution might be diversification, the development of some "humanistic law schools," some "clinical law schools," some "justice in law schools" and some "theoretical law schools." But the American model of professional legal education has always endorsed the unified approach; common sense and the needs of the profession also argue for it. The legal studies challenge, by contrast, offers a solution within the pre-existing model: integrate the law school and the university, so that the latter can provide the perspectives for which the former currently lacks the ability, the time or the will to offer.

b) *They can choose to endorse legal studies as a viable undergraduate preparation for law school.* Even without any additional steps, the impact of such a decision would soon be felt within professional legal education. "If we can look forward to a time when a large number of law students have already had various courses in law before entering [the] law school, it will be very difficult for professional law teachers to treat them as neophytes capable only of the most elementary kind of legal training, namely, training in reasoning by analogy of cases and in analysis of legal concepts," predicts Harold Berman.⁸⁷ Or as Arthur S. Miller writes, "[w]hat would be improved — through time — is the breed of student who comes to law school. Were students to come to law school with more valid perceptions about law and the legal system than they now have, then perhaps [professional] legal educators would be forced to alter patterns of behavior honored by time but little else."⁸⁸

What is suggested is that teaching methodologies would change, as would law school curricula. If students are pre-primed to inquire about the social impact of law, they would demand more advanced studies within the law school about the nature and functions of law and the legal system. Moreover, if basic legal reasoning and legal process were introduced before law school, there would be more room in the law school curriculum — indeed, even in the now overbulging first year curriculum — for exposure to more clinical work, which will certainly continue to be demanded. (This would echo the medical school model, where much of the basic "theory" is taught beforehand, so that the professional training can be concentrated in clinics.) These changes

86. Prosser, *The Ten Year Curriculum*, 6 J. LEGAL EDUC. 149 (1953). But Prosser actually opposed the integration of law school and university.

87. Berman in Katsh, *Comments*, *supra* note 67, at 95.

88. Miller in Katsh, *id.* at 96.

would require greater trust and respect on the law faculty's part for the pre-professional level education taught outside of law schools. If such trust is asking too much of law professors, then perhaps they need to ask themselves why they haven't participated more readily in the legal studies programs in their own universities.

Undergraduate legal studies could be endorsed as one *alternative* pre-professional major, or as the *only* one, resulting, in effect, in a prescribed pre-law curriculum. This latter approach seems ill-advised and unlikely, not only because it would destroy the intellectual diversity of the student body, a seemingly cherished commodity in every law school. (In the short run, it might also destroy the social diversity, as only students who had taken such courses at the schools where they are already developed would qualify for admission.) It would also destroy the character of undergraduate legal studies, which already suffers from an unwanted infusion of careerist enrollees. Most importantly, the argument that well-educated lawyers must first be educated as well-rounded humanists will retain its persuasiveness. Nevertheless, the European model's "bachelors in law" might be examined more closely for possible adaptation in America.⁸⁹ Greater participation by law faculty in advising pre-law students might also be encouraged.

c) *They can choose to sponsor Centers or Schools of Public Justice, either independently or jointly with other parts of the university.* As already noted,⁹⁰ schools such as these have previously been proposed and a number of graduate schools of law and policy studies already exist. New ones could either be administered as separate units of the university, co-ordinated with other graduate departments (for instance, as graduate legal studies programs), or housed within law schools. (For the latter approach, the specialized institutes on, for example, international and comparative law now operating in many law schools, could serve as bases for expanded perspectives.) Law schools might reach out to undergraduate legal studies programs seeking to expand; UMass/Amherst, for example, though without its own law school, has long conceived of its Legal Studies Department as a step toward a future university Law Center.⁹¹ Moreover, the organized bar and judicial institutes would most certainly be interested in collaborating with such centers, to give continuing legal education a more academic foundation.

89. As a start, see, e.g., Green, *Legal Education in England*, 28 J. LEGAL EDUC. 137 (1976), pertaining to another common law system.

90. See notes 16 and 22, *supra* and accompanying texts.

91. d'Errico, *Humanistic*, *supra* note 35, at 39.

Schools of Public Justice would undoubtedly concentrate on integrating legal scholarship with the social sciences. As Richard Posner has recently demonstrated, the "decline of law as an autonomous discipline" has, for more than two decades, resulted in the application of other disciplines — notably economics and philosophy — to traditional subjects of legal scholarship. He endorses "departments of law, where students can pursue doctoral programs in Legal Theory, or alternatively programs that meld college, law school, and doctoral training in another discipline into an integrated course of study taking less than the minimum of ten years after high school that such a program would currently require."⁹² But despite occasional AALS workshops on, for example, "the Role of Social Science in Legal Scholarship and Legal Education,"⁹³ or the work, for instance, of John Monahan and Laurens Walker developing texts and syllabi for teaching the application of "social science *in* law" (as opposed to "social science *of* law"),⁹⁴ the Center or School approach would tend to elevate scholarship over curriculum, neglecting the average J.D. student. Even if all J.D. candidates were required to take a certain minimum of courses within the Center, the rest of the curriculum would continue to stagnate in its formalities and insularity.

d) *They can choose to infuse the law school itself with the social, humanistic spirit of the university.* As the previous comments indicate, the first three options are interlocking. One step — even the non-integrative first choice — naturally leads to another. This final option commends itself for all those reasons and for one more: if undergraduate legal studies is not, as seems unlikely, universally required of all prospective law students, then the overwhelming majority of entering students will not have been exposed to the social perspective on law. Law schools, therefore, will not be left off the hook.

True integration of the law school and the university faces innumerable obstacles. If fragmentation within liberal arts faculties is rampant, the separation between law schools and liberal arts departments is epidemic. As the ABA reported, even at the minority of schools where a legal studies program co-exists with a law school, only 13% of the undergraduate professors have substantial contact with law school

92. Posner, *The Decline of Law as an Autonomous Discipline*, 100 HARV. L. REV. 761, 779 (1987).

93. See, e.g., Symposium in 35 J. LEGAL EDUC. 465-506 (1985).

94. See Monahan & Walker, *supra* note 10, and their casebook, *supra* note 51.

faculty.⁹⁵ And where social scientists or lawyers with social science training already sit on law faculties, they suffer from a characterization — usually fostered by traditional law professors and absorbed by students — as “soft” and “unserious” scholars.⁹⁶ Without a change in this image, students will continue to perceive even required social science courses as superfluous “guts.”

Law schools could require each student to take courses in legal history, jurisprudence, legal sociology, law and economics and more, recognizing that many of the doctrinal staples of the current upperclass curriculum (such as, labor law, family law, anti-trust, and the more esoteric admiralty and copyright) are competently practiced every day by attorneys who learned the substantive law in their offices, not in law school. However, a more integrated approach would entail, following the Klare and Kennedy proposals mentioned at the beginning of this article, the absorption of the lessons, skills, values and views of the liberal arts into one-third or more of the curriculum, including, most significantly, the first year. Public law would naturally have a prominent place in the first year, without neglecting the standard private law subjects, taught with more social perspective. Upper class students could then choose to concentrate in one or more substantive areas (such as, business law, family law, welfare law) that are presented with social, clinical, theoretical and empirical, as well as doctrinal foci. Factual and policy analysis would be invoked at least as often as the case method, resulting in a true “problem method” that would substitute the study of appellate decisions for examination of human problems in full social context — that is, more like the way they actually come to attorneys in practice. Team teaching, not only among law school professors, but between them and other faculties in the university (as well as adjuncts from the bar and judiciary) would be the norm. The “favor” would be reciprocated by law professor visitation to and integration in college courses.⁹⁷

The result will not look very much like the present content of professional legal education. It may not look much like undergraduate legal education either, given the tendency there to graft a social science

95. Ryan, *Law, Liberal Education*, *supra* note 25, at 48.

96. See Gee & Jackson, *supra* note 2, at 695, 934.

97. See Huff, *Law and the Humanities*, *supra* note 39, for an example of true cross-disciplinary collaboration in teaching as well as scholarship at the University of Montana. See also Schmeling & Homan, *supra* note 80, on the team teaching at University of Florida funded by the National Endowment for the Humanities.

onto a legal topic and call it an advanced course. Law would look instead like a cross between humanities and social sciences, instead of one or the other — or the “hard science” it has purported to be since Langdell’s time. Legal studies scholars have themselves already begun to devise a “revised jurisprudence for law schools,” which would integrate the currently neglected but “traditional” methodologies such as religious, ethical and historical theories of law as well as the newer liberal arts disciplines such as linguistics and political economy. Informal and alternative institutions for resolving disputes would naturally be emphasized.⁹⁸ But the resulting curriculum would share with traditional legal education the idea that law is, above all else, practical. As David Trubek has written, “If we thought of legal education as teaching lawyers about what happens, how things work, what works and does not work, then the legal studies approach would fit more easily into the curriculum.”⁹⁹

Along with law professors’ traditional condescension toward social science, one encounters the seemingly contradictory assumption that the other disciplines are too esoteric to master. But from two angles — both the undergraduate legal studies educators attempting to employ multidisciplinary approaches, and the handful of law professors already attempting to bring social science theories or techniques to the law — those already involved in this integrative work share the belief that “anyone can do it,” even without full, formal training in other disciplines. Institutions that are truly committed to integration could begin by encouraging faculty sabbaticals to other parts of the university. Even without that, “[y]ou can do it if you really want to because legal studies means finding out what is going on, and there are many ways to do that.”¹⁰⁰

The challenge, thus, to law faculties is to disprove the claim by legal studies adherents that law schools are “singularly unfit” and law professors “the greatest stumbling blocks” to change.¹⁰¹

98. See, e.g., Bonsignore, *Law School Involvement*, *supra* note 3, at 66-67.

99. Trubek, *The Place of Law*, *supra* note 63, at 485.

100. *Id.* at 483. See also d’Errico, *Humanistic*, *supra* note 35, at 26-27. Harvard’s program of one-year fellowships to expose law professors to the liberal arts — the inverse of its program to expose liberal arts professors to the law — could be replicated at similarly endowed schools.

101. Bonsignore, *Law School Involvement*, *supra* note 3, at 68; Miller in Katsh, *Comments*, *supra* note 67, at 97: “[Law professors] have a vested interest in current knowledge and current techniques; and, as with all guilds, will not quickly change their ways.”

IV. Conclusion: The University In The Law School, The Law School In The University

The challenge of undergraduate legal studies, perhaps better than the other critiques of professional legal education, offers the law school a vehicle for reassessment and for reentry into the university, where it belongs. Francis Allen has written in *Law, Intellect and Education*:

As an integral part of the university [the law school] assumes the university's obligation to discover and communicate new knowledge. It must be deeply concerned with the values given expression in the law. Its purpose is not simply to affirm, but also to criticize, and this critical obligation [must] at times [be] directed toward lawyers, the law, and the society of which they are a part.¹⁰²

As Harold Berman has pointed out in this context, "[u]nless and until this happens, we must continue to question whether law should continue to be considered a learned profession and whether it is justified for the law school to continue to be part of the university."¹⁰³

102. F. ALLEN, *LAW, INTELLECT AND EDUCATION* 80 (1979).

103. Berman in Katsh, *Comments, supra* note 67, at 95.