Bramble Bush Revisited: Llewellyn, The Great Depression and the First Law School Crisis, 1929-1939

Anders Walker

I. Introduction

Nihil sub sole novum.[1] Early in the fall semester of 1929, Columbia Law Professor Karl Llewellyn delivered a series of bn lectures "to introduce the students at Columbia Law School to the study of law," including the "case method."[2] Adopting a lively, spirited tone, Llewellyn likened the case method to the fabled bramble bush, a barbed plant into which "a man … wondrous wise" jumped, only to scratch out his eyes and, after some amount of suffering, return to scratch "them in again."[3] Rigorous but rewarding, legal education was well worth it. "[A]s the tonic iodine burns in the wounds and beneath the skin," rhapsodized Llewellyn, "the [student's] whole body tingles with that curious bubbling sense of muscle pleasure," a sense that "for too much law, more law will be the cure."[4] Five years later, in the winter of 1935, the 43-year-old law professor strummed a darker chord. American law schools were a sham, Llewellyn declared to an audience at Harvard in the midst of the nation's worst economic crisis in history.[5] Rather than train students for the job market, law schools took their students' "coin" and, in return, offered little more than a "pretense of training for the law."[6] While legal education had

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1. "There is nothing new under the sun." *Ecclesiastes* 1:9.
2. Karl Llewellyn, The Bramble Bush vii (1930).
3. *Id*. at iv.
4. *Id*. at 122.
5. Karl N. Llewellyn, *On What Is Wrong with So-Called Legal Education,* 35 Colum. L. Rev. 651 (1935).
6. *Id*. at 657.

invigorated him only five years before, now it sickened him; law schools were mere "conveyor belts," industrial facilities aimed at "mass-production."[7]

Then—suddenly—happy days returned. By 1956, amid an economic boom that lasted more than a decade, Llewellyn cast himself joyously back into the bramble bush, extolling legal education and legal scholarship. "Look about you," Llewellyn implored a group of law professors at a conference in Michigan, "[o]ne of you three, before this current academic year is out, will not only be doing legal research—every man of law has been doing that all his life—one of you three will be doing or contributing to a bit of significant legal research."[8] This, argued Llewellyn, was "a new something in this America," particularly since he could "remember when legal research other than into doctrine—except perhaps in the fields of history, crime and divorce—seemed, if not disreputable, at best queer."[9] Now, argued Llewellyn, the field was ripe for interdisciplinary work, conducted by the "double or treble discipline law teacher," capable of "cut[ting] moats across the path of the social scientist who seeks to work in that disregarded, even almost disreputable, discipline, the law."[10]

Law's long struggle to gain academic respectability remains one of the most overlooked aspects of the history of legal education, even though it helps explain the prominence of theoretical research in law schools today.[11] During the 1920s, for example, law professors at elite schools promoted theoretical scholarship in a deliberate bid to improve the intellectual integrity of legal education generally. This continued during the Great Depression, even as many blamed law schools for poorly preparing students, a move that—like today—yielded calls for reform.[12] However, proposals for reform in the 1930s differed from current suggestions in that they argued not simply for more apprenticeship-style programs—a popular current corrective—but also for more inter-disciplinary offerings, what Llewellyn termed an "integration of the human and the artistic with the legal."[13] While most critics today argue that law schools spend too much time on such pursuits, even outspoken critics of legal education in the 1930s did not.[14]

Law teachers in the 1930s remembered all too well the battles that law schools fought to earn academic parity with other university departments

7. Llewellyn, *supra*, note 5, at 677.

8. Karl N. Llewellyn, *On What Makes Legal Research Worth While,* 8 J. Legal Educ. 399, 400 (1956).

9. *Id*. at 400.

10. *Id*. at 412.

11. Brian Z. Tamanaha, Failing Law Schools ix-xiii (2012); A. Benjamin Spencer, *The Law School Critique in Historical Perspective,* 69 Wash. & Lee L. Rev. 1951 (2012).

12. Llewellyn, *supra* note 5.

13. *Id*. at 663.

14. Tamanaha, *supra* note 11, at 54-61; David Segal, *What They Don't Teach Law Students: Lawyering,* N.Y. Times, Nov. 19, 2011, at A1.

during the early Progressive era, an ordeal that lasted from the 1890s through the 1920s.[15] Christopher Columbus Langdell pioneered this project, in part by hiring nonpractitioner teachers, declaring law a science, and promoting the case method.[16] Scholars such as Karl Llewellyn continued it, arguing that "the background of social and economic fact and policy" should be integrated with case materials lest law professors "fail of our job."[17] Meanwhile, law schools worked steadfastly to acquire the same degree-granting privileges that other university divisions enjoyed, a battle that became particularly intense over the question of the doctorate in law, or J.D.[18] As law schools lobbied to grant doctorates, they found it necessary to overcome their trade school reputation by deliberately making their programs more research-oriented.[19] This struggle coincided closely with a lengthening of the law school curriculum from two to three and, in some cases, even four and five years.[20]

Taking Karl Llewellyn's meditations on legal education as a lens, this Article posits that the Depression-era law school crisis informs current debates about the direction of legal education, in particular calls that law schools should discourage theoretical scholarship in order to dedicate more time to practical skills. While moving legal education in a more practical direction may have its advantages, stripping the J.D. of its academic garb may not. Already, the Juris Doctor demands a lighter research requirement than the Ph.D.; derobing it further may only rekindle old critiques that law schools lack academic rigor and, ultimately, legitimacy. Instead, reformers may be better off considering the benefits of conferring plural law degrees—much as schools did in the past—conferring Master's degrees for less than three years of study, J.D. for three, and S.J.D.s, or research doctorates, for more.

To elaborate, this Article proceeds in four additional parts. Part II recovers the political history behind Langdell's initial decision to elevate law teaching beyond the trade school model, tying it first to the rise of the Bachelor's and then the Master's degrees in law. Part III demonstrates how the Bachelor of Laws degree grew from a two-year to a mandatory three-year program as law schools struggled to improve their academic profiles within larger university systems. Part IV shows how the Great Depression complicated this effort, pushing many to question the length and value of legal education as law

15. *See* Robert Stevens, Law Schools: Legal Education in America from the 1850s to the 1980s 115, 159 (1983).

16. Spencer, *supra* note 11; Stevens, *supra* note 15, at 52-55; *see also* William LaPiana, Logic and Experience: The Origin of Modern American Legal Education (1994).

17. Llewellyn, *supra* note 5, at 706.

18. Julius Goebel, Jr., A History of the School of Law: Columbia University 292-97 (1955).

19. *See infra* Part III.

20. Some law schools, such as Columbia, added a fourth year to its standard three-year Bachelor of Laws program for those who wanted a doctorate. Goebel, *supra* note 18, at 333. Columbia Law School did not receive permission from its Board of Trustees to issue a doctorate in law, or J.D., until 1923, and only then after a considerable fight. *Id.* at 108-09, 333.

firm hiring declined. Finally, Part V illustrates how reforms wrought during the Depression introduced more theoretical work into the first three years, reduced interest in optional graduate work, and set the stage for conferral of the Juris Doctor, or J.D., on all law school graduates.[21]

While the history of legal education is nothing new, relatively little attention has been paid to the precise manner in which curricular reform intersected with the conferral of law school degrees.[22] Yet the move to a single degree did much to eliminate variation among schools, pushing all schools toward a three-year template that stressed an "academic" approach.[23] For schools that either possessed or aspired to build a research reputation, this may have been a good thing, even if it undermined support for advanced independent research. However, for schools that did not aspire to be part of a larger research university, the push for a Juris Doctor may have been a mistake.[24]

II. The Case Method as Practical Skills

Prior to the Civil War, legal education in America focused on the law office.[25] Aspiring attorneys worked as apprentices to experienced practitioners, free from classroom instruction or formal academic supervision.[26] Though a few isolated law schools existed, universities generally struggled to mount viable law programs.[27] Princeton, George Washington, New York University and Alabama all founded law schools during the antebellum period only to promptly see them close for lack of enrollment.[28]

Following the Civil War, claims that apprenticeships lacked rigor began to coalesce, particularly as the economy industrialized and legal markets

21. *See infra* Part V.

22. While historians show that "prominent legal educators" lobbied for a two year curriculum in the 1970s, few note the tension between this move and the even larger "J.D. movement" sponsored by lower-ranked schools hungry for heightened prestige. *Compare* Tamanaha, *supra* note 11, at 20 and Stevens, *supra* note 15, at 242 *with* John G. Hervey, *Law School Graduates Should Receive "Professional Doctorates" Time for a Change from LL.B. to J.D. Degree,* 10 Student Law. J. 5, 6 (1965) and George P. Smith, II, *Much Ado About Nothing–the J.D. Movement,* 11 Student Law. J. 8, 8-9 (1965).

23. Tamanaha, *supra* note 11, at 23. The push for a singular law degree, it is important to note, was not the only factor that inhibited variation. As early as the 1920s, both the AALS and the ABA endorsed accreditation standards that promoted a singular "academic model" of legal education. *See id.* at 24-26.

24. *Id.* at 54-61.

25. Spencer, *supra* note 11; Stevens, *supra* note 15, at 8.

26. Stevens, *supra* note 15, at 8.

27. David S. Clark, *Tracing the Roots of American Legal Education: A Nineteenth-Century German Connection, in* 1 The History of Legal Education in the United States 495, 497 (Steve Sheppard ed., 1999); Stevens, *supra* note 15, at 16-17 n.50.

28. Stevens, *supra* note 15, at 8.

grew.[29] Top lawyers formed bar organizations, sponsored "systematic bar examinations," and called for "more rigorous training" of new attorneys.[30] Some complained that law office apprenticeships proved erratic, leading to the vetting of lawyers who had little general knowledge but were trained simply to perform rote tasks.[31] Others complained that the law office model lent itself to political corruption, placing political acuity above legal acumen.[32]

One such critic was Christopher Columbus Langdell, a practicing attorney in New York who had worked his way through Harvard Law School as a librarian, taking three years rather than the customary one and a half.[33] Upon graduation, Langdell entered private practice in New York, spending much of his time in the New York Law Institute's library, one of the few libraries open to attorneys at the time.[34] Already trained as a librarian, Langdell quickly developed a reputation for being one of the best-read lawyers in the city, a person whom other attorneys in Manhattan came to consult.[35] One such lawyer, William Stanley, learned so much from Langdell that he offered him a partnership in his firm, literally moving him—physically—into the firm's office space. "A narrow winding staircase," recalled James Barr Ames, "led from the office of [Stanley's] firm to a room above, which was [Langdell's] private office, and adjoining it was his bedroom."[36]

Langdell's installation in Stanley's office led many to suspect that the young attorney prized books over clients, developing an aversion to practice that would later color his approach to legal education.[37] For example, many attributed Langdell's eventual development of the case method to his failings as an attorney.[38] Precisely because he spent most of his time in the library, they argued, Langdell manufactured the idea that law was a "science" consisting of "certain principles or doctrines," each of which has evolved, over time, in "slow degrees," and "[t]his growth was to be traced in the main through a

29. Stevens, *supra* note 15, at 24.

30. Stevens, *supra* note 15, at 24, 25, 27.

31. Stevens, *supra* note 15, at 22.

32. Bruce A. Kimball & R. Blake Brown, *"The Highest Legal Ability in the Nation": Langdell on Wall Street, 1855-1870*, 29 Law & Soc. Inquiry 39, 46 (2004).

33. James Barr Ames, Lectures on Legal History and Miscellaneous Legal Essays 467, 470 (1913).

34. *Id.* at 471.

35. *Id.* at 471-2.

36. *Id.* at 472.

37. Allen Boyer, Book Review, 80 Cornell L. Rev. 362, 364 (1995) (reviewing William LaPiana, Logic and Experience: The Origin of Modern American Legal Education (1994)); W. Burlette Carter, *Reconstructing Langdell* 32 Ga. L. Rev. 1, 67 (1997); Steve Sheppard, *An Introductory History of Law in the Lecture Hall,* in 1 The History of Legal Education in the United States, *supra* note 27 at 25.

38. *See, e.g.*, Boyer, *supra* note 37, at 369 (describing how "Langdell's vision of law was shaped by" his time practicing in the courts).

series of cases."[39] Practitioners, even scholars, came to view this method as the product of a lawyer "unready for the courtroom," a "sensitive spectacled student", someone who remained "unduly trusting in knowledge from books," precisely because he could not hold his own against seasoned New York City attorneys.[40]

Yet historian Bruce Kimball argues convincingly that even as Langdell mined the library, so too did he became deeply involved in practice, serving as lead or co-counsel in at least fifteen "prominent" cases between 1855 and 1870, meanwhile joining "the vanguard of those pioneering a new role in litigation" by focusing more heavily on "extensive" brief writing than "oral argument."[41] Thanks to his success, Langdell gained clients such as the Erie Railroad, became known for possessing "the highest legal ability," and argued cases with "increasing frequency" during his time in New York.[42] In fact, Langdell's success as a practicing attorney—not his naiveté—led him to become estranged from the practicing bar precisely because he approached legal work in a formal, assiduous manner, a tack that most office-trained attorneys in New York found alien.[43]

The more Langdell succeeded as a practitioner, the more he became convinced that law office apprenticeships fell short, leading to widespread "ignorance" and "incompetence" within the bar.[44] In New York, such incompetence enjoyed the aid of an 1846 law making all state judges elected, placing much of the city's judiciary directly under the control of Tammany Hall's William "Boss" Tweed, who handed out judgeships as a form of political patronage, often to supporters who had little if any legal training.[45] Meanwhile, New York abolished "demanding examinations" for aspiring attorneys that same year, lowering the "standards of expertise" required to begin practice.[46]

Langdell further soured on the state of legal education in 1869, when he personally represented the Northern Railroad Company in a case against the state of New York, which prematurely declared the company insolvent.[47] Well-versed in the newly enacted Field Code of civil procedure, Langdell witnessed a partisan judge deride his carefully crafted legal brief as a "sham"

39. Christopher C. Langdell, Selection of Cases on the Law of Contracts viii (2d ed. 1879).

40. Kimball & Brown, *supra* note 32, at 39.

41. *Id*. at 44; *see also* William P. LaPiana, *Just the Facts: The Field Code and the Case Method*, 36 N. Y. L. Sch. L. Rev. 287 (1991).

42. Kimball & Brown, *supra* note 32, at 44.

43. *Id*. at 40, 46.

44. *Id*. at 46.

45. *Id*. at 46.

46. *Id*.

47. *Id*. at 89.

and "irrelevant."[48] Though Langdell was ultimately vindicated on appeal, such experiences contributed to a general disillusionment on his part with the state of legal practice and, by extension, legal education in America.[49]

Angered at the ineptitude of judges and practicing attorneys, Langdell proposed a radical reform of legal education in 1870, shortly after Harvard President Charles Eliot tapped him to head Harvard Law School.[50] Once there, Langdell devised a pedagogical method focused solely on the study of cases, independent of either law office work or more traditional pedagogical models, such as lecture.[51] To illustrate, Langdell organized a course on Contracts that required students to read "all the cases which had contributed in any important degree to the growth, development, or establishment of any of [Contract's] essential doctrines."[52] Conceding that this included "an exceedingly small proportion" of all the "reported" cases, Langdell nevertheless assembled a sizable compendium.[53] For the section of the course dedicated to the topic of consideration, Langdell assigned no less than one hundred twenty-six cases, most from England.[54]

Compared to other available texts at the time, Langdell's casebook differed dramatically in that it cast students into a sea of opinions without any editorial comments or notes. For example, Langdell's own teacher at Harvard, Theophilus Parsons, "relegated all discussion of cases to notes" in his Contracts textbook.[55] Likewise, treatises popular with office-trained attorneys such as Blackstone's *Commentaries on the Laws of England* provided students with a general overview of the law, sparing them the trouble of actually reading judicial opinions.[56]

Bold in its departure from tradition, Langdell's pedagogical "innovation" sparked initial "hostility."[57] According to Langdell's protégé James Barr Ames, "[h]ardly one" of the lawyers in Boston at the time "had any faith in it," nor

48. *Id*. at 89-90.

49. *Id*. at 89-92. Laura Appleman discusses the corruption that accompanied railroad cases in the late 19th century, factors which may have contributed to Langdell's disenchantment. *See* Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped our System of Legal Education,* 39 New Eng. L. Rev. 251, 260 (2005).

50. Stevens, *supra* note 15, at 35-36; Kimball & Brown, *supra* note 32, at 90-91.

51. Stevens, *supra* note 15, at 35.

52. C. C. Langdell, *Preface to the First Edition,* Oct. 1, 1871 in C.C. Langdell, Selection of Cases on the Law of Contracts ix (2d ed., 1879).

53. *Id*. at viii.

54. *Id*. at 164-441.

55. LaPiana, *supra* note 41, at 326 (1991).

56. William Blackstone, Commentaries on the Laws of England (1758).

57. Ames, *supra* note 33, at 479.

did most students seem to like it.[58] After his first lecture based on the case method, Langdell's class enrollment "dwindled to a handful of students."[59] Many walked out of the room.[60] Others chose not to enroll, leading to a precipitous drop in Harvard's class size.[61]

Langdell persisted. To bolster his new method, he encouraged the hiring of law professors who had little, if any, legal experience. "What qualifies a person … to teach law," argued Langdell, "is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes, not experience, in short, in using law, but experience in learning law."[62] Langdell's casebook explained why. He assigned his students one hundred twenty-six cases on the substantive topic of consideration at a time when most attorneys focused less on substantive topics than procedure, particularly forms of pleading.[63] As historian William LaPiana notes, leading lawyers "lauded the 'science' of pleading" more than they did a command of substantive topics, since forms of pleading tended to determine case outcomes.[64] Law teachers followed, publishing treatises on pleading that became more popular than treatises on doctrinal subjects.[65] According to law professor James Gould, pleading comprised "the most important single title in the law", in part because all questions of common law depended on whether they were accurately pled.[66]

Yet, pleading changed dramatically in 1848, when the state of New York adopted a new Code of Procedure named after David Dudley Field.[67]

Enacted as part of a larger campaign of constitutional reform, the Field Code did away with separate courts of law and equity, establishing a unified "court of appeals."[68] Field had long argued for such a court, claiming that complex disputes should be brought in one forum and "settled in one action," with pleadings that "told as simply as possible what happened," not pleadings that adhered to complex, predetermined forms.[69] For the practicing lawyer, this meant that attorneys did not simply need to know "the rules of pleading," but

58. *Id.*

59. *Id.*

60. *Id.*

61. Bruce A. Kimball, *The Principle, Politics, and Finances of Introducing Academic Merit as the Standard of Hiring for "the teaching of law as a career," 1870-1900,* 31 Law & Soc. Inquiry 617, 626 (2006).

62. Ames, *supra* note 33, at 477-78.

63. Langdell, *supra* note 39, at 164-441.

64. LaPiana, *supra* note 41, at 287.

65. *Id.*

66. *Id.* at 296.

67. *Id.* at 304.

68. *Id.* at 302.

69. *Id.* at 305.

also "the legal principles" underlying their claims.[70] This, in turn, encouraged a renewed attention to cases. "Under the [Field] Code," argues LaPiana, "the careful lawyer had to concentrate on a close reading of earlier cases to find a narrower sort of precedent—one in which the facts resembled the case at hand."[71]

For Langdell, the Field Code coincided nicely with his new approach to legal education, one focused less on pleadings and more on cases. The more students engaged in "the careful searching of past cases for particular circumstances," he believed, the better they would be at providing "analogies" for use in Field Code pleadings.[72] Langdell's own career demonstrated the logic of such an approach. While other lawyers exploited political connections and mastered procedural forms, Langdell built his reputation on reading cases, eventually developing an encyclopedic knowledge of New York law that garnered him a regional reputation.

Precisely because private study bolstered his career, Langdell came to believe that those best-equipped to instruct students were those who excelled at case work in school, not necessarily those who succeeded in practice. This may have stemmed from his own experience. Long before Langdell entered the practicing bar, he worked as a research assistant to Harvard Law professor Theophilus Parsons, who pushed him and his fellow assistants to digest over six thousand cases for his treatise on contracts.[73]

This point warrants some comment. Prior to Langdell, law students could be successful without learning much about cases, absorbing most of their information through general lecture.[74] At Columbia University, for example, law professor James Kent noted that the school dedicated a mere four lectures to the entire subject of Contracts in its first-year curriculum, leaving students with little sense of where the principles of contract derived, or how they applied in specific circumstances.[75] Lawyers trained in law offices arguably knew even less. Even those who augmented their practical training with independent study of sources such as Blackstone's *Commentaries on the Laws of England,* ended up knowing next to nothing about judicial opinions: how they were crafted, what legal principles they held, or how they might be synthesized.[76] For example, Blackstone dedicated one chapter in his four-volume treatise to the subject of Contracts, presenting little more than a general overview of

70. *Id*. at 313.

71. *Id*. at 316.

72. *Id*. at 325.

73. *Id*. at 326.

74. *See, e.g.*, James Kent, *A Summary of the Course of Law Lectures in Columbia College, 1824 in* 1 The History of Legal Education in the United States, *supra* note 27, at 239 (discussing how law school lectures taught law principles without case law).

75. *Id*.

76. William Blackstone, Commentaries on the Laws of England (1758).

contract doctrine.[77] To make matters worse, no headnote system existed, most cases were not reported, and judges in cities such as New York tended to rule based on their professional connections and political leanings.[78] For this very reason, Langdell actually became convinced that practitioners threatened to inculcate the wrong values in students, instilling "the arts of chicane and self-promotion," not doctrinal expertise or logical consistency.[79]

Suspicious of the notion that practice made for sound pedagogy, Langdell revolutionized law school teaching, a point historians have long recognized. Yet, as the next section shall demonstrate, Langdell's reforms intersected in subtle ways with a larger law school interest in being considered equal, academic partners in university systems. Critical to this move was an effort to boost admissions criteria, curricular content, and law school length.

III. A Second Bachelor's in Three Years

As Langdell reformed legal pedagogy, law schools worked diligently to make entrance into their programs more competitive. In 1876, Columbia became the first law school to require an entrance exam, though it applied only to applicants who had not graduated from a "literary college."[80] College graduates were "admitted without examination" under the theory that they had already proved their academic merit.[81] Non-graduates, on the other hand, had to pass an entrance exam on "Greek and Roman History," the "History of England and of the United States (of North America), English Grammar, Rhetoric, and finally "the principles of composition" as used "in Caesar's Gallic War (entire), six books of Virgil's Aeneid," and "six orations of Cicero."[82]

At the time, Columbia required only two years of study, a span that Professor John W. Burgess attacked as insufficient in 1881.[83] Burgess proposed a three-year program before students could qualify for a "Bachelor of Laws" degree.[84] A majority of the faculty disagreed, arguing that students should gain a Bachelor's after two years, with the option of continuing on for a third year to earn a "Master of Laws" degree.[85] Columbia University President Frederick Barnard balked at such a move, declaring the mere notion that a student who had not attended college might gain entrance to Columbia Law School

77. *Id.*

78. Kimball & Brown, *supra* note 32, at 44.

79. Kimball, *supra* note 61, at 619.

80. Goebel, *supra* note 18, at 76-77.

81. *Id.* at 76.

82. *Id.* at 76-77.

83. *Id.* at 108.

84. *Id.*

85. *Id.*

and receive a master's degree within three years to be a "farce."[86] Instead, Barnard proposed that only students who boasted both a Bachelor of Laws and a Bachelor of Arts degree should be admitted into the optional, third-year master's program.[87] One advantage of such a program, argued Barnard, was that it "would bring in additional revenue without incurring additional expenses."[88] Another advantage was that it would better-position Columbia vis-à-vis Harvard and Yale, both of which adopted an optional third year for those interested in a master's degree in the 1880s.[89] Despite initial reluctance, the Board of Trustees in 1888 finally approved a mandatory third year for all students interested in pursuing a Bachelor of Laws degree, making Columbia the first law school not only to implement an admissions exam but also to require a mandatory three-year course of study.[90]

This warrants some comment. Rather than respond to a clear and compelling need, say a demand for a year of supervised clinical work akin to medical school residencies, the mandatory third year at Columbia focused more specifically on deepening students' understanding of doctrinal subjects. As Professor Dwight put it in 1890, the theory behind the third year is the "assumption that a student in going through the two years' course has obtained a good general outline of the law, and is now prepared to take up *special subjects in detail*."[91] Such subjects, continued Dwight, included topics of "intrinsic importance," matters frequently used "in the affairs of life," and areas of unusual difficulty, including Corporations, Federal Jurisprudence, and Constitutional Law.[92]

Not all agreed with the merits of such an approach. Some argued that charging one more year's tuition discriminated against less affluent students, reserving law school to the "sons of wealthy families."[93] Others complained that the move to three years aimed to shift the emphasis of the school away from practical training and toward more theoretical concerns.[94] As one student put it, the third year amounted to little more than "padding out the course with 'political science,'" an oblique reference to an effort by University President Seth Low to integrate programming and build bridges between departments, all part of raising Columbia College to the status of a university.[95] Among Low's directives was a requirement that all applicants to law school first complete "three years of college," and that the second year of law school be

86. *Id.* at 109.

87. *Id.*

88. *Id.* at 110.

89. *Id.* at 109-10.

90. *Id.* at 112.

91. *Id.* at 116.

92. *Id.* at 116-17.

93. *Id.* at 123.

94. *Id.*

95. *Id.*

dedicated to more explicitly academic concerns, including forty lectures in political science.[96]

That the law school suffered pressure from the university to focus on theoretical, interdisciplinary courses is worth noting. Though training attorneys remained a core aspect of the school's mission, so too did the institution aspire to remain a respected division of the larger university; a place supportive of research and theoretical work. For example, law professor John Burgess delivered lectures on decidedly non-skills-based courses such as Comparative Law, Constitutional History, Diplomatic History, and International Law as early as the 1870s.[97] At the time, Burgess hoped to "neutralize the intense professionalism of the Law School" by lecturing on public law subjects, in essence providing a counterpoint to the school's exclusive focus on training attorneys.[98] As Burgess put it, he hoped to elevate the academic reputation of the school "by supplementing the studies in Private Law," contracts, corporations, wills, and so on, with "studies in Ethics, History, and Public Law," all of which he grouped together as integral parts of "the science of Jurisprudence."[99] He also hoped to train students for positions in government, a dream that his successors would take up during the Great Depression.[100]

While the private law faculty tolerated Burgess, some viewed his theoretical courses to be better-suited for advanced candidates with academic aspirations. Such was the view of Professor Theodore Dwight, who argued that courses in public law should be reserved for an optional, postgraduate year of study.[101] Specifically, Dwight argued for an elective third year devoted to theoretical and/or public law topics, resulting in a Master of Laws degree.[102] Of course, this was before the law school moved to a mandatory third year. Had the law school moved to such a year in 1878 rather than 1888, Burgess might have succeeded in molding the third-year curriculum. As it was, however, he met

96. *Id.* at 124. Laura Appleman argues that much of the inspiration for elevating American colleges to universities stemmed from Germany, then the world's leader in higher education and a destination for thousands of American students. Appleman, *supra* note 49, at 281-82. James Moliterno contends that the push for requiring students to attend college prior to law school stemmed from a desire to exclude immigrants, a phenomenon that spiked during the first two decades of the 20th century. James E. Moliterno, The American Legal Profession in Crisis: Resistance and Responses to Change 30-31 (2013).

97. Goebel, *supra* note 18, at 86.

98. *Id.* at 87.

99. *Id.*

100. Not simply an academic, Burgess hoped that training in political science might also prepare students for careers in the newly formed federal civil service. *Id.* at 89. A similar debate emerged at Columbia in the 1850s, when Francis Lieber pushed to include courses in public law and jurisprudence at the law school, arguing that such courses promoted an ideal of "high and liberal culture." *Id.* at 50.

101. *Id.* at 87-88.

102. *Id.* at 88.

significant resistance to merging theoretical work with private law courses in the limited two-year program that still existed in the 1870s.[103]

Frustrated, Burgess requested and received permission to found a separate School of Political Science, the university's first "nonprofessional graduate school" in 1880.[104] As political science broke from law, it left the private law faculty, and the case method, ascendant.[105] Few personified this transition better than William Albert Keener, a Harvard hire who rejected the lecture approach of men such as Burgess and worked diligently to nudge his colleagues in the direction of the case method, arguing that it offered a more rigorous training than lectures and recitations. Like Langdell, Keener believed that after studying a series of cases, students left class better-trained, more conversant on the particulars of legal doctrine, and better able to extract general rules from a set of specific circumstances. Others articulated this view as well. For example, Eugene Wambaugh noted in his 1894 treatise *The Study of Cases* that "having collected several cases bearing more or less directly upon the point," students subsequently "attempt[] by combination and comparison to ascertain what doctrine is to be deduced from the cases taken together."[106] This process of "combining and comparing cases" assumed a quasi-scientific aspect, involving the same "methods of induction" used by scientists to analyze experiments, though the experiments were replaced by "many thousands" of cases.[107] Precisely for this reason, law teachers who had not practiced stood an equal if not better chance of successfully guiding students through the study of cases, a form of pedagogy that had little to do with real-world experience.[108]

Yet students were not unanimously pleased. While some appreciated the victory of the case method over "attorneyism," others lamented the new teaching style, as Harvard students had more than two decades before; they also protested the extra third year.[109] A significant number of students in the Class of 1892 refused to stay for the extra year, opting to simply take the Bar exam without graduating.[110] A similarly minded cadre of faculty members defected from Columbia and formed a rival school, the New York Law School, dedicated to opposing the case method and maintaining a two-year program.[111] By 1904, New York Law School had become the biggest law school in the

103. *Id.*

104. *Id.*

105. *Id.* at 87-89.

106. Eugene Wambaugh, The Study of Cases: A Course of Instruction 67 (2d ed. 1894).

107. *Id.* at 67-68.

108. *See* LaPiana, *supra* note 41, at 296-97 (describing some academics' use of, and penchant for, the "rigorously logical" study of cases).

109. Goebel, *supra* note 18, at 123.

110. *Id.* at 151.

111. *Id.* at 152.

United States, even as Columbia saw its enrollment drop precipitously.[112] Yet Columbia persisted, led in large part by Keener's growing conviction that the study of cases imparted the most practical skill of all, namely the ability to engage in "legal thinking and legal reasoning."[113]

So dominant became Keener's emphasis on reasoning that the more academically minded faculty conceded his method to the first three years, arguing that students interested in theoretical work should be allowed to remain on for a fourth optional year, resulting in a Master of Laws degree.[114] Granted in conjunction with the Faculty of Political Science, the Master of Laws required that students take additional courses either in the law school or the School of Political Science, including courses on economics, history, and public law.[115] At the end of their year, applicants sat for examinations in Comparative Constitutional Law, Administrative Law, Roman Law, International Law, History, Economics, and Social Ethics.[116] However, no express research requirement was imposed.[117]

112. *Id.*

113. *Id.* at 152-55. As Columbia joined Harvard in transforming legal education, not all law schools followed; many remaining faithful to older methods through the 1890s. To take just a few examples, Georgia Law School boasted nine instructors in 1891–all practitioners–teaching 14 students. The first year consisted of lectures on Blackstone's *Commentaries,* Brown's *Commentaries* (Contracts and Torts), the Constitution of the United States, the Constitution of Georgia, Part I of the Georgia Code (political organization of the state); the Georgia Penal Code, and Ewell's *Medical Jurisprudence.* Rather than rely on the case method, lessons were "assigned in the text-books" and professors asked students to "recite what they have memorized, the professor illustrating and illuminating the text." "Recitation work" also comprised the primary mode of legal pedagogy at Yale Law School in 1891, though Yale boasted a slightly more interdisciplinary first-year curriculum. There, students took English Law, Constitutional Law, Wills (or Roman Law), the Nature and History of American Law, International Law, and "Forensic Pleading," as well as standard courses such as Evidence, Contracts, and Torts. At Washington University in St. Louis, students relied on "lecture and recitation from text-books" to learn Real Property, Personal Property, Torts, Contracts, Causes of Action Between Tort and Contract, and a "daily course of lessons upon elementary law, both civil and criminal until Christmas vacation." American Bar Association, Courses of Study in Law Schools in 1891 (1893), *reprinted in* 1 The History of Legal Education in the United States, *supra* note 27, at 542, 544-56. Such methods–heavily reliant on lectures and recitations–lent themselves to the study of English law, particularly English common law, and to an early version of legal history–an "institutional-evolutionary" approach that conveyed American law as "a long, continuous process beginning in the ancient Teutonic forests." Robert W. Gordon, *J. Willard Hurst and the Common Law Tradition in American Legal Historiography, Law & Society* (1975), *reprinted in* Main Themes in United States Constitutional and Legal History: Major Historical Essays 152, 158 (Kermit L. Hall, ed., 1987). Yet such an approach declined from 1900 to 1930, notes historian Robert W. Gordon, as legal "history, such as liberal learning generally in that period, fell victim to the case method's exclusive claim on the … law curriculum." *Id.* at 161.

114. Goebel, *supra* note 18, at 157-58.

115. *Id.* at 158.

116. *Id.*

117. *Id.*

Columbia's decision to award a master's degree after four years was noteworthy; evidence that the school was resolving the tension between practical skills and research by relegating practical skills to the Bachelor of Laws, meanwhile elevating research to the master's level. This satisfied the predominantly private, practitioner-oriented faculty by not watering down their curriculum, even as it maintained the law school's academic profile by reserving theoretical work for advanced study. Finally, reserving the master's for those who took interdisciplinary courses in political science went far toward preserving a meaningful distinction between the degrees.

Yet, some wanted the school to go even further. As early as 1908, University President Nicholas Butler proposed to the Trustees a doctorate in law, or "Doctor Juris," to the Trustees.[118] However, faculty in Political Science and Philosophy balked at such a move, afraid that it would cheapen the university's Doctor of Philosophy, or Ph.D.[119] To accommodate such concerns, the law school agreed to a "compromise scheme" by which "the doctorate in law" would "be administered by a joint committee of the Faculties of Political Science, Philosophy, Pure Science, and Law, so as to maintain common standards for the two degrees."[120] The Trustees approved a "Doctor Juris" in 1923.[121]

The Juris Doctor dramatically increased interdisciplinary offerings at Columbia, as "the Faculties of Political Science, Business, and Philosophy" all offered "seminars and problem courses" to doctoral candidates in the law school.[122] The doctorate also increased the emphasis on research at the school, offering students the opportunity to complete a substantive research project, or dissertation.[123] Students who undertook to write a dissertation received a Master of Laws after one year of coursework and were then allowed to complete their dissertation in absentia.[124] Thus, the law school assumed a degree structure not unlike the rest of the university, with a bachelor's for preliminary work and a master's and doctorate for advanced, theoretical study.

Yet not all members of the faculty were satisfied, some arguing that the law school should jettison its emphasis on training practitioners completely and focus instead on pure research.[125] One such professor, Herman Oliphant,

118. *Id.* at 292-93.

119. *Id.* at 295-96.

120. *Id.* at 296.

121. *Id.*

122. *Id.*

123. *Id.* at 333.

124. *Id.*

125. *Id.* at 301-02. In 1924, for example, Columbia Law School Dean Harlan Fiske Stone declared that while the case method was helpful in negotiating "the jungle of judicial decisions," law professors should not approach legal teaching as simply a "hermetically sealed compartment." Instead, they should look to the "social and economic forces" that gave law its "form and substance." Harlan Fiske Stone, *Some Phases of Legal Education in America,* 58 Am. L. Rev. 747, 752, 754 (1924). Such critiques were made by other scholars as well, at

wrote to Columbia University President Nicholas Murray Butler in 1923 asking him to approve "[more] concentrated research on the interrelation of law to the other social sciences—research so concentrated that it ought to be the sole concern of the School, to the exclusion of everything else."[126] Butler denied the request, but the issue reemerged in a self-study completed in 1928 that divided the faculty.[127] According to Oliphant and others, the school should "abandon its traditional purpose of preparing students for practice" and focus instead on devoting itself "to critical, constructive, creative research."[128] A contingent of professors lobbied for Oliphant to become dean, a move that met resistance from the rest of the faculty, including the university president.[129] As "deadlock[]" ensued, President Butler sided against Oliphant and in favor of more moderate candidate Young B. Smith, prompting an "immediate uproar" that resulted in resignations by Oliphant and friends, including Leon Marshall, Underhill Moore, Hessel E. Yntema, and future Supreme Court Justice William O. Douglas.[130]

Following the "secession" at Columbia, Dean Smith defused remaining tensions by endorsing both academic research and practical preparation, augmenting traditional courses with offerings that approached "the study of law in terms of underlying political, economic, and social factors."[131] This included retaining standard courses such as Civil Procedure, Corporations, and Partnerships, meanwhile adding nondoctrinal courses on "public law, legal history, and jurisprudence."[132] The latter aimed at "reevaluat[ing] legal institutions in terms of their effects, in order that the law might be more usefully employed, and to revise their curricula and methods of teaching so as to accustom lawyers to the use of knowledge derived from other fields of knowledge."[133]

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other schools. In 1915, for example, Harvard Law Professor Felix Frankfurter noted that the "growing legislative activity of the time"–much of it spawned by progressive attempts to deal with dislocations caused by urbanization and monopoly power–should guide law schools in revising their curricula, moving them away from strict adherence to the case method and toward a more normative, policy-oriented approach." Felix Frankfurter, *The Law and the Law Schools,* 1 A.B.A. J. 532, 535, 539 (1915).

126. Goebel, *supra* note 18, at 299.

127. *Id.* at 299-303.

128. *Id.* at 301-02.

129. *Id.* at 304.

130. *Id.* at 304-05.

131. *Id.* at 312.

132. *Id.*

133. *Id.* Other schools followed Columbia's lead, including Howard University. Dean Charles Hamilton Houston became inspired by realist innovations at both Columbia and Harvard. *See* Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before Brown,* 115 Yale L. J. 256, 314 (2005).

While such courses had long been reserved for upper-level study, specifically the master's and doctorate degrees, now they emerged in the required three-year curriculum. Yet the case method remained dominant. Even faculty with interdisciplinary interests like Karl Llewellyn extolled it, as he made clear during his introductory "*Bramble Bush*" lectures to first-years in 1929.[134] During those talks, Llewellyn stressed the value of the training that the students were about to receive. "We have discovered," he began, "that students who come eager to learn the rules, and who do learn them, *and who learn nothing more*, will take away the shell and not the substance" of legal education.[135] That substance, he continued, came in part from the study of cases, precisely because they demonstrated how "general proposition[s]" were best illustrated by focusing on "concrete instances" of the way general principles applied to specific circumstances.[136]

Simply imparting general principles, argued Llewellyn, "hinder[ed]" rather than "help[ed]" instruction because the practice of law focused less on imparting rules than resolving "disputes."[137] Such disputes were relevant to attorneys precisely because their "oldest job" was to serve as "advocate[s,]" for clients, both by counseling them and lobbying on their behalf in court.[138] "Lawyers are lawyers because they alone among men devote themselves with some constancy to studying out what courts are going to do," he argued.[139] What courts did played directly into the identification and comprehension of legal rules. Once students had deciphered the language of each case, maintained Llewellyn, then they were to identify the dispute in question, remembering that courts only decide a "particular dispute" "according to a general rule."[140] At the "kernel" of each opinion, he continued, lay the "rule of the case."[141] Hence, by reading through a series of cases students came to learn not only the general rule, but how that rule applied in different contexts. Further, students learned to decipher which facts were relevant and which were irrelevant to comprehending rules, a process arrived at through a series of questions.[142] Once students identified the relevant facts, they then moved to the rule of the case, and were subsequently pushed to compare that case with others. To Llewellyn, the comparing of more than one case "brings us at last,"

134. Born in 1893, Llewellyn rose rapidly through the ranks of legal education, joining the faculty at Columbia in 1924. Goebel, *supra* note 18, at 280-81.

135. Llewellyn, *supra* note 2, at 2.

136. *Id.*

137. *Id.*

138. *Id.* at 14.

139. *Id.*

140. *Id.* at 36.

141. *Id.* at 39.

142. "Is it not obvious that as soon as you pick up this statement of the facts to find its legal bearings you must discard some as of no interest whatsoever, discard others as dramatic but as legal nothings?" *Id.* at 42.

he noted, "to the case system."[143] Simply reading one case on a legal topic, he argued, was futile, for "no case can have a meaning by itself."[144] "Standing alone," he maintained, cases provided "no guidance" into legal rules. What gave students "sureness" was relating "the background" of different cases, forming the "foundation of the case system."[145] To Llewellyn, the case system was itself a type of game, a "game of matching cases," that "proceed[ed]" by "a rough application of the logical method of comparison and difference."[146]

Llewellyn's lectures revealed that the case method had done more than simply prepare students for practice under the Field Code; it had also achieved Keener's objective of imparting a particular way of thinking.[147] "From this angle, moreover," he wrote, "you will observe another value in the study of the cases.[148] Each opinion is an example of legal reasoning–Where do the quotes begin and end in this sentence? Check your source. Could not locate within the source either with and from prior cases."[149] He warned against students going "too early to the writers" of treatises, noting that "[t]o do so is to come under strong temptation to skip through the process of case matching."[150] By matching cases, students honed their analytical skills, developing a more rigorous habit of reasoning than if they had simply read treatises outlining the general principles of law.[151]

Llewellyn's exuberance over the case method underscores the extent to which the approach had come to dominate legal education by the close of the 1920s, even after scholars such as Oliphant argued for a more contextual course of study. As we have seen, the method's initial adoption bore a distinctly practice-oriented objective, one that coincided with Langdell's own practice experience and with changes in pleading wrought by New York's Field Code.[152] By 1929, however, the popularity of the method far exceeded its relevance simply to procedural rules in New York. As Columbia Law School Professor William Keener put it, the method developed "reasoning powers,"

143. *Id.*

144. *Id.*

145. *Id.* at 43.

146. *Id.*

147. *Id.* at 72-73.

148. *Id.*

149. *Id.*

150. Pursuant to this process, each legal point needed at least three cases. "In the first case," he wrote, "you have facts a and b and c." "In the second case," you have "facts a and b and d." "How," he asked, are students "to know with any certainty whether the changed result is due in the second instance to the absence of fact c or to the presence of the new fact d?" Such an inquiry would require turning to "a third case." *Id.* at 46.

151. Through all this, they came to learn law's "foreign tongue." *Id.* at 34.

152. LaPiana, *supra* note 41, at 287.

in part by inculcating "legal analysis and synthesis."[153] Future Supreme Court Justice Harlan Fiske Stone reiterated this point, noting that the case method ultimately helped elevate law schools to their "proper relation" with the American university, in part by instilling "a more profound knowledge of legal principles" that transcended technical training.[154] According to historian Julius Goebel, "the widespread adoption of the case method" in American law schools led legal education to become "highly standardized" by 1920, based heavily on an "accepted pattern of [case] study."[155]

Yet, the case method's ascension would face a unique challenge during the Great Depression, as the next section will show. Law teachers at Columbia, in particular, moved to broaden legal education not simply by adding public law courses to the traditional curriculum, but transforming that curriculum itself, de-emphasizing the case method and including interdisciplinary components within traditional courses as early as the first and second year. This move invariably exploded the tiered approach to legal education established by Columbia in the 1920s, a fracturing brought on by slowdowns in hiring resulting from the Great Depression. As the nation sank into a decade of decline, some even blamed the case method for contributing to the crisis. As we shall see, critics agreed that the preparation of practice-ready attorneys remained paramount, even as law schools required a more expansive, interdisciplinary curriculum.

IV. Llewellyn & the Depression

When Karl Llewellyn delivered his first *Bramble Bush* address to law students in the fall of 1929, few anticipated the economic crisis about to hit the nation.[156] Even the "avalanche of liquidation" that rocked the stock market on Tuesday, October 23rd, did not strike observers as the beginning of a decade-long crisis, some foolishly heralding the crash as a "long-predicted" market "correction" likely to "purge the economic system of unhealthy toxins."[157] Similar sentiments held through the following year, leading many to conclude as late as December 1930 that the nation was simply "caught up in yet another of the routine business-cycle downswings" that "periodically" affected America's "boom-and-bust economy."[158] Perhaps for these reasons, Karl Llewellyn expressed little consternation in his *Bramble Bush* lectures that legal education was either in crisis or in need of change.[159]

153. Goebel, *supra* note 18, at 154-55.

154. Stone, *supra* note 125, at 751.

155. Goebel, *supra* note 18, at 297.

156. David M. Kennedy, Freedom from Fear: The American People in Depression and War, 1929-1945, 39 (1999).

157. *Id.*

158. *Id.* at 65.

159. Llewellyn, *supra* note 2.

By 1935, however, things had worsened. Few could deny that the country was in the midst of "a colossal financial meltdown" affecting "not only the notoriously idle rich" but "struggling neighborhood banks, hard-earned retirement nest eggs, and college and university endowments."[160] America's gross domestic product fell by half its 1929 level, "millions" lost their homes, and "25 percent of the work force" found itself jobless.[161] According to Columbia Law Professor Herbert Wechsler, the Depression "had a damned demoralizing effect" on recent law graduates, not least because "jobs were scarce," but also because "salaries were low."[162] Even "large and well-established" firms such as Sullivan & Cromwell, Davis Polk, and Cravath, De Gersdorff, Swaine & Wood posted only "rare vacancies," pushing many to find work at "much smaller outfits" for "very little return."[163]

As the magnitude of the crisis became apparent, Karl Llewellyn revised his opinions on legal education. In a lecture delivered at Harvard on January 22, 1935, he announced that legal education had become "blind," "inept," "factory-ridden," "wasteful," "defective," and "empty."[164] Part of law school's problem, began Llewellyn, was that it had lost touch with the kinds of jobs that law graduates actually acquired, focusing too heavily on corporate "legal factory-hand" work and not enough on students who went into small firms, politics, and "government administration," a "recent trend" at Columbia given the slowdown in big-firm hiring.[165]

If law schools did not adapt, warned Llewellyn, their "existing bankruptcy" would become "an open shame."[166] "Demands on us rise by the hour," he lamented. "We have taken coin, we have usurped status, under the pretense of training for the law."[167] To Llewellyn's mind, European schools provided an alternate model of legal education, aspects of which were worth replicating in the United States. In Germany, for example, students completed three years of coursework only to then begin "a further three years of directed, rounded, apprenticeship," funded in part by the government, which provided students

160. Kennedy, *supra* note 156, at 162.

161. *Id.* at 163.

162. *The Reminiscences of Herbert Wechsler,* Interview by Norman Silber and Geoffrey Miller with Herbert Wechsler, Professor, Columbia Law School, in New York, NY. (Aug. 11, 1978 & Feb. 23, 1979), at 58 [hereinafter *Reminiscences*].

163. *Id.* at 59. During the Depression, many states raised their educational requirements to enter the bar, in part out of fear that the market would be oversaturated with attorneys. Stevens, *supra* note 15, at 177. For the Depression's impact on Boston schools, particularly Suffolk University Law School, *see* Appleman, *supra* note 49, at 271. Cravath, Swaine and Moore was then named Cravath, De Gersdorff, Swaine & Wood. Goebel *supra* note 18, at 328.

164. Llewellyn, *supra* note 5, at 653.

165. *Id.* at 654-56.

166. *Id.* at 657.

167. *Id.*

with a "modest stipend."[168] "What have we done," asked Llewellyn, along similar lines? The answer was, nothing. American schools "face[d] the absence of any apprenticeship at all," he noted, implying that some form of law office training needed to be returned to the law school curriculum.[169]

Yet, even as Llewellyn endorsed a return to practice, he by no means abandoned the case for academics. In fact, he lobbied for something arguably new in legal education, a merger of case study with contextual material. "[W]e either integrate the background of social and economic fact and policy" into law school courses, argued Llewellyn, "or fail of our job."[170] This was new, particularly in the context of private law courses. Yet Llewellyn believed strongly that such courses warranted revision, and that a purely academic faculty possessed the best qualifications for doing so. To his mind, academic, full-time faculty remained the most able to provide "perspective" on the case method, including "social and economic fact and policy."[171] The reason for this, he posited, was that "legal rules" by themselves meant "next to nothing," and that students needed to understand the context of such rules in order to effectively counsel clients.[172] Such contingencies included an inquiry into sociology and political science, something that lawyers were poorly equipped to provide.[173] "[W]hen it comes to broadly social facts, in their social bearings, lawyers are helpless," argued Llewellyn. "They fall for the tripe that journalists talk"—a colorful way of saying that lawyers lacked critical perspective, preferring instead to "manhandle statistics" for tactical reasons.[174]

Convinced of the importance of an interdisciplinary approach, Llewellyn called for reform, modifying his longstanding endorsement of the case method with calls for new approaches to legal pedagogy, including an emphasis on nontraditional, interdisciplinary material.[175] "The need is," he exclaimed, "for an integration of the human and the artistic with the legal," ultimately with an eye to broadening the career opportunities of law school graduates who may not receive jobs as "legal factory-hand[s]" in large corporate firms—what Llewellyn termed the "upper reaches of the corporation-factory."[176] The economic strain of the Great Depression loomed large in Llewellyn's arguments, pushing him

168. *Id*. at 658. Laura Appleman argues that German legal training influenced American law schools prior to the Depression by encouraging higher admission standards and a greater emphasis on scholarship. Llewellyn's invocation of German legal pedagogy during the Depression suggests that this influence continued. *See* Appleman, *supra* note 49, at 274-77.

169. Llewellyn, *supra* note 5, at 657.

170. *Id*. at 671.

171. *Id*. at 658, 671.

172. *Id* at 669.

173. *Id*. at 668, 671.

174. *Id*. at 673.

175. *Id*. at 654, 663.

176. *Id*. at 654, 663.

to acknowledge the need for new approaches given new market conditions, particularly the decline of big-firm hiring and the "recent trend" of jobs in "government administration," particularly Roosevelt's New Deal.[177]

However, Llewellyn revealed some concern about mounting interdisciplinary, nondoctrinal courses such as "Legal History, Legal Philosophy, and Jurisprudence."[178] Noting that earlier reformers had rushed to "pile on" such courses in a "fourth year" of law school, Llewellyn countered that three years was ample time to gain a satisfactory legal education, provided that professors recognized the importance "of integrating background–social or philosophical–into every course."[179] "[C]ritique is of the essence," he maintained, "not only of understanding and reform, but of practice,"; therefore law professors should strive to provide "background" material "as an inevitable part of the rule-material studied."[180] "The professor's job," concluded Llewellyn, involves incorporating the "fact-background necessary to give to a policy-inquiry interest; to a rule, meaningfulness; to a counselling-question [sic], body; [and] to a critical evaluation, hands and feet."[181]

Llewellyn's interest in augmenting the case method with external materials is worth noting. Columbia had long mounted nondoctrinal courses, as we have seen. However, such courses tended to accumulate at the master's and doctoral level, not during the first three years. Now, Llewellyn proposed that the entire curriculum assume an interdisciplinary, policy-centered cast, including even private law courses traditionally taught via the case method.

However, in a manner that is worth noting today, Llewellyn did not view a more interdisciplinary focus to be less practical.[182] "I think the most lamentable thing about American legal education," he declared during a talk at Duke Law School in 1936, "is it has taken into account neither the society in which the job must be performed nor what we are educating for."[183] Foremost in Llewellyn's mind was the cost of legal education and the need to represent the poor, both complicated by calls for "standards" from practitioners and bar associations.[184] "Who," asked Llewellyn, "is going to spend four years in college and three years in law school and five years building up a practice to go down and work for $5.00 or $10.00 on a case[?]"[185] Legal clinics, he argued, were simply not staffed well enough to address the need for "poor man's law

177. *Id*. at 656.

178. *Id*. at 671.

179. *Id.*

180. *Id*. at 673.

181. *Id*. at 678.

182. Karl N. Llewellyn, *On the Why of American Legal Education,* 4 Duke B. Ass'n J. 19 (1936).

183. *Id*.

184. *Id*.

185. *Id*.

work," particularly at a moment when more than half the population found itself mired in poverty.[186]

Next, Llewellyn blasted legal education for failing "to equip" students "for the practice of law."[187] "How is it possible," he argued, "for three years' law school and one bar examination to equip a man for the practice of law?"[188] Though he had not expressed it as a concern during his *Bramble Bush* talks, Llewellyn suddenly seemed extremely interested in the incorporation of apprenticeships into the law school curriculum, perhaps because law firms had stopped hiring students with little or no practice experience.[189] "Where is the apprenticeship here?" he wondered, rejecting Langdell's view that law teaching should be separate from practice.[190] "[E]very lawyer," he observed, "hires a kid at a loss for the first six months at least," something fewer firms proved willing to do under Depression-era constraints.[191] "We need an apprenticeship again," announced Llewellyn, alluding to the pre-Langdellian days of law office learning.[192]

Even as he called for a return to antebellum apprenticeships, however, Llewellyn did not reject the case method. Provided that cases were not overedited, they too served a practical purpose; they were "concrete."[193] "Every case in an office is new," he declared, and "[y]ou can help get ready for that, with your casebook."[194] However, overedited casebooks were dangerous. "Many casebooks," posited Llewellyn, "edit their facts right out of the picture," reducing their utility to "a bunch of judicial essays, each about nothing concrete and rather badly put together."[195] The end result of this trend, he announced, was that students did not "begin to learn law" until they were "out of law school" and, when they did, it was "in spite of" their teachers.[196]

Amid his drubbing of legal pedagogy, Llewellyn made an odd claim. "I think that one of the things that goes to make lawyers is to make the law a cultural study."[197] He noted that calls for "culture with a Capital 'C'" had existed for decades, adding worthwhile courses in "Roman Law, Jurisprudence, and the

186. *Id.*

187. *Id.* at 23.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.* at 22.

194. *Id.* at 23.

195. *Id.* at 22.

196. *Id.*

197. *Id.* at 24.

then still unfamiliar fields of Constitutional Law" and "Administrative Law."[198] But, argued Llewellyn, law schools needed to do more, "to make the meaning of law to human people take on the same color that it has in a well-written drama,—a thing of excitement."[199] He summarized by saying that "the best two lines" of improving legal education were to develop "sounder technical training" and also "the development of a realistic sense on the basis of fact," in particular the interaction of legal doctrine with evolving customs.[200]

Concerned with the cost of legal education and the practicality of legal training, Llewellyn remained mindful that interdisciplinary methods could still be relevant to preparing students for other types of work, particularly policy work in the New Deal. As the private sector shrank, Columbia realized that one of the few areas of job growth in the country lay in government service, particularly as the Roosevelt administration endorsed the creation of new federal agencies and, with them, new federal responsibilities.[201] As Columbia Law Professor Julius Goebel noted, the New Deal generated a "phenomenal increase in governmental functions," many of which required "competent lawyers."[202] Recognizing an emerging market for graduates, Columbia worked diligently to refashion itself into a "training place for public service," in part by emphasizing "the importance of integrating work in public law into the professional law curriculum."[203] Fueling this move, confirmed Goebel, was the "decline of employment by law offices" caused by the rigors of the Great Depression."[204] While training students for government service had once been a prominent goal of Professor John Burgess, its primary advocate during the 1930s would be a much younger professor of Criminal Law, Herbert Wechsler. As the next section shall demonstrate, Wechsler joined an assault on the case method that would intersect in important ways with the decline of the LL.B. and the rise of the J.D.

V. The Case Method on Trial

As the nation sank into Depression, members of Columbia's faculty began to call for new approaches to pedagogy, including a reconsideration of the role of public law in the law school curriculum.[205] One reason for such requests was a hope that students might gain jobs in federal offices involved in the New Deal, prompted by "the phenomenal increase in governmental functions during the early thirties" coupled with the "coincident decline of employment

198. *Id.* at 23.

199. *Id.*

200. *Id.* at 24.

201. Kennedy, *supra* note 156, at 149.

202. Goebel, *supra* note 18, at 325.

203. *Id.* at 325.

204. *Id.*

205. *Id.* at 325-27.

by law offices due to the rigors of the Great Depression."[206] Another was political. Perhaps no faculty member demonstrated this more clearly than Assistant Professor Herbert Wechsler.[207] Hired in 1933 to invigorate the teaching of public law at Columbia, Wechsler agreed to teach Criminal Law in the first year, replacing the more traditional private law course in Business Organization.[208] The new professor happened to believe that the Great Depression had been caused in part by a blind faith in the market, an over-enthusiasm for laissez faire capitalism that ignored "the abuse and dislocation incident to the development of an industrial society."[209] Such factors contributed to the economic crisis, believed Wechsler, and made a mockery of the formalist premise that economic affairs were best-managed through the private adjudication of legal disputes.[210] The case method further confounded the problem, argued Wechsler, precisely because it perpetuated what Roscoe Pound called the common law's "antipathy to legislation," its tacit dismissal of state regulation as a lesser form of lawmaking than the private ordering of property and contract.[211] Even as culturally minded scholars such as Llewellyn clung to Langdell in the midst of the howling 1930s, in other words, Wechsler began to view the study of cases in expressly political terms as limiting, even dangerous. Not surprisingly, he turned to earlier thinkers who had long called for curricular reform, law teachers such as Felix Frankfurter among them.[212]

To Herbert Wechsler and his senior colleague Jerome Michael, Frankfurter provided theoretical ammunition for fighting the nation's frightening plunge into economic recession, a recession accelerated by doctrinal formalism.[213] Frankfurter's conviction that students should be taught that law is "an

206. *Id.* at 325.

207. *Id.* at 325-27.

208. *Id.* at 326.

209. *Reminiscences*, *supra* note 162, at 51.

210. Wechsler's charge that the case method promoted a "closed system" anticipated arguments made in the 1960s and 70s' that *Lochner*-era jurisprudence reflected a "formalist" approach to law. As historian Brian Tamanaha shows, such allegations misrepresented judicial behavior during the progressive period and stemmed from scholars who "worked at elite law schools" and "were politically on the left." *See* Tamanaha, *supra* note 11, at 54, 61. Wechsler, too, had close ties to the left, suggesting an instrumental explanation for the reason scholars may have deliberately characterized late-19th- and early-20th- century jurisprudence as formalist. For Wechsler's left-wing affiliations during the 1930s, see Anders Walker, *Neutral Principles: Rethinking the Legal History of Civil Rights,* 1934-1964 40 Loy. U. Chi. L. J. 385 (2009).

211. Roscoe Pound, *Liberty of Contract*, 18 Yale L. J. 454, 462 (1909).

212. *See, e.g.*, Frankfurter, *supra* note 125. Interestingly, Wechsler's relationship with Frankfurter lent more than just intellectual support to his decision to break from the case method and produce a different type of lawyer trained to work in administrative agencies. Due to the connections that he had with the Roosevelt administration, Frankfurter became a "one-man employment agency" for recent law graduates interested in working for federal New Deal agencies. Kennedy, *supra* note 156, at 121. Though he would later become more conservative, Roscoe Pound also called for curricular reform. Pound, *supra* note 211, at 470.

213. *See supra* note 209.

instrument" to be used for "human betterment" impressed them, as did Frankfurter's support for President Franklin Delano Roosevelt's New Deal.[214] Both Wechsler and Michael proudly endorsed Roosevelt, standing out as two of only five "New Dealers" on Columbia's law faculty at the time.[215] When the Supreme Court began striking down New Deal programs such as the Agricultural Adjustment Administration and the National Industrial Recovery Act on what they believed were overtly formalist, "closed system" grounds, both Wechsler and Michael placed at least some blame at the feet of the case method for producing a socially isolated, politically unresponsive judiciary.[216] As Wechsler later remembered it, the Court possessed no "receptivity to statutory changes of the common law," lacked any "sympathetic treatment of administrative agencies," and clung desperately to the notion of the common law as a "closed system," a position that deserved "unqualified disdain."[217]

Rather than view law as a closed system, Wechsler came to view it in more "utilitarian" terms, as an instrument of "statecraft" that could be used to pull the country out of its fiscal woes.[218] Before this could happen, however, lawyers and law students needed to learn to think about the law differently; as a tool for change and not a prophylactic to state intervention and control. Wechsler distilled these notions into four separate "articles of faith" that guided his legal career.[219] They included: 1) a rejection of the common law as a "closed system," 2) an emphasis on "judicial receptivity to statutory changes of the common law," 3) a presumption that "legal understanding is imperfectly obtained", and 4) an "unqualified disdain" for the Supreme Court's formalist destruction of New Deal programs "despite the magnitude of the abuse and dislocation incident to the development of an industrial society."[220]

Wechsler let his "articles of faith" guide his selection of materials for teaching criminal law.[221] Not offered at Columbia prior to Wechsler's arrival on the faculty in 1931, criminal law had been virtually ignored because it was "generally thought to have no money in it" and was therefore "not interesting" to most "bread-and-butter" students.[222] Precisely for this reason, Wechsler saw

214. Frankfurter, *supra* note 125, at 539.

215. *Reminiscences, supra* note 162, at 50.

216. *Id.* at 50-51.

217. *Id.* at 50. Not simply a financial crisis, the Depression also bore a radicalizing effect, pushing teachers and students to think more about "social problems" than they might otherwise have in more robust times. *Id.* at 59.

218. *Id.* at 59.

219. *Id.* at 50-51.

220. *Id.* at 51.

221. *Id.* at 50.

222. *Id.* at 98.

teaching the course as an "opportunity" for him to put his philosophical and political assumptions into practice.[223]

Yet Wechsler did not stray completely from the case method. He and Michael chose an arguably conservative, perhaps even subversive path to reform by assembling "pedagogical materials" that included traditional cases but also "invited cogitation outside the closed system."[224] Rather than debunk the casebook entirely, they modified it to introduce students both to case reading and to "legislative or quasi-legislative judgment," in part by incorporating a variety of materials that pressed students to ponder such "interesting questions" as: "What are the consequences of this or the other type of formulation or norm?"[225] "How can we find out something about consequences?"[226] And "How can we face up candidly to value choices?"[227] Such questions, believed Wechsler, constituted a "wholly different way of thinking about the law" than the earlier "Langdellian way."[228]

Other members of the Columbia faculty also leaned toward incorporating new methodologies into their case method classes. In his landmark 1930 casebook on *Sales,* for example, Karl Llewellyn declared openly that "an effort" had been made "to draw on suggestions from the other social sciences," including "modern psychology," "sociology," and "anthropology."[229] Columbia Law Professor Walter Gellhorn joined Llewellyn, including new materials and mounting new courses in public and administrative law, eventually publishing an influential casebook on administrative law in 1940.[230] Meanwhile, Herbert Wechsler and Jerome Michael completed the final touches on their criminal law casebook, publishing it in 1940.

By the close of the 1930s, Columbia Law School had undergone a quiet transformation, directed by law professors committed to realigning legal pedagogy with New Deal politics, meanwhile preparing law students for new careers. During this time, Karl Llewellyn's enthusiasm for the "bramble bush" of the case method diminished, pushing him to become increasingly

223. *Id.* at 98.

224. *Id.* at 105. Wechsler's decision to reform legal pedagogy by subtly undermining the case method might be criticized for not going far enough, for "allowing," as Bruce Ackerman puts it, "the profession to survive the New Deal without reconstructing its basic conceptual equipment." Bruce A. Ackerman, Reconstructing American Law 5 (1984). However, Wechsler may also have been afraid that too blunt a revolt might have precipitated a crisis similar to the one that precipitated Herman Oliphant's departure from Columbia Law School to the Political Science Department at Johns Hopkins. *See supra* text accompanying note 130.

225. *Reminiscences*, *supra* note 162, at 100.

226. *Id.*

227. *Id.*

228. *Id.* at 100-01.

229. Karl N. Llewellyn, Cases and Materials on the Law of Sales xi-xii (1930).

230. Walter Gellhorn, Administrative Law: Cases and Comments (1940).

critical of legal education as the 1930s progressed. Others joined, including Llewellyn's colleagues Herbert Wechsler and Jerome Michael, all assembling new casebooks with fewer cases and more secondary materials, essentially merging the study of cases with the study of secondary sources during the first three years.

This was important. Even as schools in the 1920s veered toward an incorporation of interdisciplinary materials, they did so primarily in advanced third and fourth years, frequently with the understanding that interdisciplinary work was best reserved for advanced students interested in pursuing optional master's or doctorate degrees. Beginning in the 1930s, however, scholars at leading schools such as Columbia began to incorporate secondary materials earlier. To illustrate, one need only compare a section of Wechsler and Michael's casebook on voluntary manslaughter with that of Joseph Henry Beale.[231] In his 1893 text, Beale covered the specific offense of voluntary manslaughter by assigning eight cases, no comments or notes.[232] By contrast, Wechsler assigned only one case.[233] The case, *Regina v. Welsh,* was one that Beale had included in his casebook, but Wechsler and Michael omitted its companions, providing students with little sense of how cases could be synthesized or "matched" to derive legal rules.[234] Instead, Wechsler filled the section with notes, including brief summaries of several cases along with North Dakota's statutory prohibition against infanticide, an excerpt from Bentham's "Theory of Legislation," an excerpt from Holmes' "The Common Law," and a statute from India.[235]

For a new generation of law teachers, Wechsler's method provided an exciting new take on the old case method. According to Sanford Kadish, a World War II veteran who took Wechsler's class and went on to draft one of the most widely used criminal law casebooks in the country, Wechsler's approach was "intellectually exciting in a way that other classes were not."[236]

231. Joseph Henry Beale, A Selection of Cases and Other Authorities upon Criminal Law (1894).

232. The first case, *Lord Morly's Case* (1666), drawn from England, held that words alone could not constitute provocation, but if words led to combat "betwixt two upon a sudden heat," then any ensuing death could be charged as manslaughter. In the next case, *Huggett's Case* (1666) a defendant was impressed into the "Majesty's service" without a valid warrant, leading several men to come to his rescue, killing a police officer in the process. Reluctant to offer "encouragement to private men to take upon themselves to be the assertors of other men's liberties," the court held that the killing was murder, not manslaughter. In the remaining six cases, all drawn from English courts, students were required to actively consider different applications of the principle of provocation, all arising from slightly different factual scenarios, including throwing a pickpocket into an "adjoining pond," stabbing a woman in the back after she delivered a "box on the ear," and killing a constable in response to an "illegal" arrest. *Id.* at 473-77.

233. *Id.*

234. *Id.*

235. *Id.*

236. Interview with Sanford Kadish, Alexander F. and May T. Morrison, Professor of Law,

While other courses stressed "legal distinctions and legal analysis", Wechsler mounted a class that was at once "highly analytical and self-consciously intellectual," pushing students to consider problems from a "legislative point of view."[237]

Kadish left Wechsler's class transformed, eventually publishing his own, Wechsler-inspired casebook in 1960.[238] The book enjoyed lasting success, going through subsequent printings into the 21st century.[239] Meanwhile, Karl Llewellyn softened his attack on legal education, returning in the 1950s to calls for "legal scholarship" that "lay almost wholly outside the orbit of doctrine."[240] "[O]nce war and the teaching jam were over," declared Llewellyn, "we had acquired a profession with heavy injections of new ideas, new personnel, new backgrounds of experience," and new "hungers for facts about the life of the law, for knowledge about and understanding of conditions in this sport or area or in that or somewhere else; even—and this is the most gratifying—hungers for knowledge and understanding of basic processes in legal institutions."[241] If the Depression sparked anger at legal education's failure to prepare practice-ready lawyers, in other words, the economic boom that followed World War II coincided with renewed interest in theoretical work. "I should guess," asserted Llewellyn in 1956, "that 1951-1960 offers prospect of three times as much significant research about matters legal, in areas other than doctrine, as got done in the whole preceding fifty years."[242]

One year later, as Llewellyn settled into a new position at the University of Chicago Law School, he continued to exhibit enthusiasm for research, even criticizing law teachers who aimed to eliminate "that whole perspective and background of philosophy and of national and international governmental practice."[243] "[T]he arts of law," continued Llewellyn, "are not only essential to any professional work, they are also law's common ground with those humanities which are a university's core and pride, and among which law should stand with the proudest."[244] Llewellyn's reference to the humanities flagged a resurgent post-Depression interest in keeping a place for law schools at the university's "core," a place otherwise dominated by departments focused heavily on academics and research. To demonstrate how Chicago Law School warranted a seat at the university's table, Llewellyn extolled its diversity of course offerings, including "a most interesting comparative law

Berkeley Law School, in Berkeley, Cal. (May 19, 2008)(on file with author).

237. *Id.*

238. Sanford H. Kadish & Monrad Paulsen, Criminal Law and Its Processes (1960).

239. *See* Sanford H. Kadish, et al., Criminal Law and Its Processes (9th ed. 2012).

240. Llewellyn, *supra* note 8, at 410.

241. *Id.*

242. *Id.* at 410-11.

243. Karl N. Llewellyn, *Chicago … Advancement of the Law,* 3 Student Law J. 16 (1957).

244. *Id.*

development" involving "a full year's intensive work in a foreign legal system and its language … followed by a year's locally-supervised study and practice in the relevant foreign country," what Llewellyn described as an "ingenious device for equipping an American to do legal work across national and language barriers."[245] Llewellyn also celebrated Chicago's course offerings in jurisprudence, particularly its "Jurisprudence Law in Our Society," a course that involved "weekly papers" focused on "philosophies of government."[246]

Yet, even as Llewellyn extolled scholarship, so too did he lament the textbook innovations of his former Columbia colleague Herbert Wechsler.[247] "[N]ot too many students are fully aware," argued Llewellyn, "of the ways in which today's case-books have tended to defeat the finest values open to the case-method," a not-so-subtle allusion to Wechsler's reduction in the number and length of cases that students were required to read.[248] Alarmed at the emerging popularity of Wechsler's approach, Llewellyn urged caution. Not only did new casebooks tend to overedit cases, he argued, but their reduction in the total number of cases caused pedagogical problems, as well. "[T]he case loses its very discussion value," argued the recently hired Chicago professor, "if it is presented alone and simply to illustrate or communicate its rule, instead of appearing with companion cases to show development or to challenge to thoughtful distinction and synthesis and in either aspect to clothe the general situation in question with detail and flavor enough to turn student's policy-judgment into more than a guess or a daydream."[249] Luckily, Chicago "edited" cases "in the finest original tradition," much as he did in his book on *Sales,* providing a much-needed counterpoint to the emerging trend.[250]

Though careful not to implicate his new school, Llewellyn's critique of "today's casebooks" revealed the extent to which Langdell's method had begun to evolve as authors such as Wechsler added new, secondary materials to provide interdisciplinary perspectives. However, the emergence of such perspectives in the first three years of law school had an unanticipated effect. By introducing more theoretical materials to required courses, it diluted the notion that theoretical work should be reserved for optional, post-graduate degrees. Just as legal education became more interdisciplinary, in other words, so too did legal reformers begin to call for awarding all graduates of three-year law schools a doctorate, whether they completed independent research projects or not.

This became particularly obvious in the 1950s and 60s', as smaller, regional schools clamored for greater prestige. By 1964, for example, twenty-seven

245. *Id*. at 17.

246. *Id*. at 18.

247. Others joined Wechsler in rethinking the casebook. *See* STEVENS, *supra* note 15, at 158.

248. Llewellyn, *supra* note 243, at 18.

249. *Id*.

250. *Id*.

schools had abandoned the Bachelor of Laws, or LL.B., for the J.D.; almost all regional institutions that enjoyed little national prominence.[251] One of the foremost proponents of such a move, Oklahoma City School of Law Dean John G. Hervey, possessed little interest in scholarship or research, drawing a clear line between "professional doctorates" such as the M.D. and D.D.S. (dentistry); and "research doctorates," like the Ph.D.[252] Though prominent law schools such as Columbia, Harvard and Yale reserved the doctorate for advanced candidates conducting original research, Hervey viewed such accolades in shallower terms; arguing that awarding J.D.s would eliminate confusion between the LL.B. and the Bachelors of Arts and Science, meanwhile "enhanc[ing] the professional stature," of law school graduates.[253]

Of course, Hervey failed to mention that just as some confused the LL.B. and the B.A., so too did others confuse the J.D. and the Ph.D. No less than the National Education Association made such a mistake, conducting a study in 1960 equating the LL.B. degree with a "low level of preparation" in law on par with a B.A., meanwhile counting J.D.s "as doctor's degrees," on par with the Ph.D.[254] Though careful to note that the J.D. remained a "professional doctorate," even Hervey maintained that the "level of intellectual activity" required for the J.D. placed it firmly within the range of a doctorate and not a bachelor's or master's degree.[255] Time spent in school was a factor. "A change of the education symbol to J.D.," he argued, "is thus required to insure fairness to law school graduates who pursue three or more years of post-bachelor study."[256]

By the time Hervey put pen to paper, a number of law schools had already moved to the Juris Doctor—reasoning that since they no longer accepted students straight out of high school, a second bachelor's degree was redundant. While Hervey conceded that some required students to complete independent research projects before granting them a doctorate, most did not. "During the academic year 1963-64," he noted, "the J.D. degree was conferred by 27 schools," only some of whom reserved it for "those who had attained a specific

251. They were the Drake University, State University of New York at Buffalo, St. Mary's University, University of South Dakota, American University, Willamette University, University of San Diego, California-Western University, South Texas College of Law, Ohio Northern University, Western Reserve University, Chase College, Franklin University, University of Toledo, Emory University, University of Oklahoma, University of Missouri, University of Tulsa, Washburn University of Topeka, Creighton University, Washington University (St. Louis), University of Akron, Saint Louis University, University of Missouri at Kansas City, University of Cincinnati, Cleveland-Marshall Law School of Baldwin-Wallace College and the University of Kansas. Hervey, *supra* note 22, at 5.

252. *Id.*

253. *Id.* at 6.

254. *Id.*

255. *Id.* at 7.

256. *Id.*

grade average or who had successfully completed a research project."[257] Rather than promote heightened research requirements, essentially nudging the J.D. in the direction of the Ph.D., Hervey called for cosmetic reform, arguing that a simple name-change would enhance the stature of law schools within larger university systems. "The receipt of a second bachelor's degree by law school graduates," he maintained, "tends to impair the image of the legal profession," meanwhile lowering "the image of the law school in the minds of those who instruct in the other divisions of the parent institution."[258]

Not everyone agreed. According to George P. Smith, an instructor at the University of Michigan, law schools should strive to improve their core curricula if they wanted to command the respect of the larger academic community, not simply rename their degrees. "Although the 'image' of the general profession as well as the law schools need to be strengthened," conceded Smith, "the uniform awarding of the J.D. degree is not, at this particular time, the proper remedy to pursue. Rather, the development and improvement of the standards for the work done for the basic law degree should be of first and primary consideration."[259] Smith did not elaborate on how, precisely, the mandatory curriculum should be improved. However, he did seem to indicate that advanced level research remained better suited for advanced law degrees, either the Master of Laws (LL.M.) or the Doctor of Jurisprudence (S.J.D.).[260]

Schools that awarded the S.J.D. and LL.M. tended not to support the J.D. movement for at least two reasons. One, the conferral of a doctorate on all students who had completed three years of law school undermined the prestige of advanced degrees. After all, why pursue an additional doctorate, much less a master's, if one already held a doctorate in hand? Two, the move to a uniform J.D. originated with inferior, evening law schools that did not support advanced research to begin with, a fact that further rankled the "big" East Coast schools.[261] At least this was the fear of the three schools that offered "the largest graduate programs" in the country, "Harvard, Yale, and Columbia," none of whom were "anxious to award a 'doctor's degree' before the LL.M. and S.J.D.".[262]

Ivy League reluctance underscored Smith's complaint that the "J.D. Movement" was "spearheaded" by inferior schools, institutions that were not "members of the [AALS] and are evening schools."[263] "Dean Hervey lists 27 schools," continued Smith, "[e]ight of the twenty-seven schools are not members of the Association of American Law Schools. Of the four additional

257. *Id.*

258. *Id.*

259. Smith, *supra* note 22, at 8.

260. *The Juris Doctor: A Year in Review,* 11 Student Law. J. 14, 15 (1966).

261. *Id.*

262. *Id.*; Hervey, *supra* note 22, at 7.

263. Smith, *supra* note 22, at 8, 10.

schools proposing (considering) the adoption, two are not members of the Association. Thirteen out of the twenty-seven schools comprising the Hervey List are night schools, with five being solely evening schools and the other eight having both day and evening classes."[264] In a private letter to Smith, Harvard Law School Dean Erwin N. Griswold agreed with him, describing the "J.D. Movement" as "unwise, unsound, and undesirable."[265]

Sadly for Smith, elite law schools found themselves outnumbered. Both the American Bar Association (ABA) and the Association for American Law Schools (AALS) recommended in 1964 that law schools move to the Juris Doctorate for three years of work.[266] One reason for this was to place "the graduates of law schools upon an equality" with those "who receive professional doctorates."[267] Another was to eliminate public confusion between the Bachelors of Arts and Sciences and graduate legal work. To "the general public," noted Hervey, a "bachelor's is a bachelor's is a bachelor's."[268]

VI. Conclusion: A Doctorate for All

By the close of the 1960s, the Juris Doctor reigned ascendant over other law degrees, Columbia and Harvard both adopting it in 1969 and Yale—the final holdout—in 1971.[269] Thus ended a half-century of debate over the appropriate law school credential, even as the role of theoretical work, interdisciplinary material and pure research in the first three years remained unsettled. As we have seen, early progressive-era proponents of raising the academic profile of legal education lobbied for optional fourth and fifth years dedicated to academics and research resulting in a master's and then doctoral degree.[270] Such a system provided a clear, logical delineation between minimum standards required for entrance to the bar and more advanced work for those interested in specialization or pure academics.[271] The tier structure made further sense given that law students graduated with a second bachelor's, or LL.B., upon completing the first three years, a holdout from the days when students could matriculate without first earning a Bachelor of Arts or Science.[272]

Karl Llewellyn's iconic *Bramble Bush* lectures extolled the practical value of the LL.B. system as late as 1929, even as schools across the country tacked

264. *Id*. at 10.

265. Dean Erwin N. Griswold to George P. Smith, II, Sept. 20, 1965, *cited in* George P. Smith, II, *Much Ado About Nothing–The JD Movement*, 11 Student Law. J. 8, 9 (1965).

266. Hervey, *supra* note 22, at 6.

267. *Id*.

268. *Id*.

269. David Perry, *How Did Lawyers Become Doctors?* 84 N.Y. St. B.A. J. 20 (2012).

270. *See supra* Part III.

271. *Id*.

272. *Id*.

an extra year onto their bachelor's curriculum.[273] Though many students lamented the addition of a third year, Llewellyn embraced it, celebrating deeper immersion into legal topics, more interdisciplinary offerings, and a heightened profile for legal education generally.[274]

Enter the Great Depression.[275] As this Article has sought to demonstrate, the economic downturn of the 1930s dramatically influenced views of legal education, a point illustrated starkly by Karl Llewellyn himself.[276] While enthusiastic about legal education in 1929, Llewellyn soured as the Depression dragged on. By 1935, he complained that law schools were mere "assembly lines" dedicated to taking their students' "coin" and providing them little of practical value in return.[277] Llewellyn furthered this critique in 1936, joining a score of academics calling for pedagogic reform.[278]

However, Llewellyn did not target interdisciplinary scholarship. While some reformers called for an increased attention to clinical work and practical skills, Llewellyn joined a cadre of pro-New Deal law teachers who advocated interdisciplinary, policy-centered coursework.[279] For example, Llewellyn's colleague Herbert Wechsler argued that private-sector slowdowns could be compensated by placing students in federal New Deal agencies, a move that required at least some familiarity with interdisciplinary policy issues.[280] Further, Wechsler joined other scholars in de-emphasizing the value of the case method, arguing that it contributed to overconfidence in the private sector and did not warrant its dominant position in legal pedagogy.[281] To weaken the method's hold, Wechsler joined his senior colleague Jerome Michael in pioneering a new style of casebook featuring fewer opinions and more secondary, interdisciplinary materials.[282]

As the Depression gave way to postwar prosperity, Wechsler's method caught on.[283] Even diehard proponents of the case method such as Karl Llewellyn—who lamented the drop in assigned cases in books such as Wechsler's—extolled the availability of interdisciplinary offerings in fields such as comparative law and jurisprudence.[284] That such offerings came in the first three years did not

273. Llewellyn, *supra* note 2, at 11-15.

274. *See supra* Part III.

275. *See supra* Part IV.

276. *Id.*

277. *Id.*

278. *Id.*

279. *See supra* Part V.

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *See, e.g.*, *supra* Part V.

seem to bother anyone, even though they had once been reserved for optional fourth- and fifth-year work.[285]

That interdisciplinary work had once been tied to fourth- and fifth-year classes remains one of the most overlooked aspects of law school history today. Current critics of legal education lament the fact that overly academic courses clutter the J.D. curriculum, forgetting that the simple pursuit of practical training underwent its own dark period prior to the Depression as law schools strove to increase their standing among other university departments.[286] Early reformers solved this challenge by trifurcating law degrees, leaving the LL.B. for practice-minded students and the more advanced master's and doctorate degrees for students who wanted specialized, even abstract knowledge.[287]

However, less prestigious schools clamored for the right to confer a higher credential in the 1950s and 60s', disrupting the progressive-era equilibrium.[288] Just as the distinction between mandatory and optional work faded, so too did the J.D. movement confuse the role that pure research played in the legal academy.[289] Yet proponents of the J.D. movement justified their position, in part, by citing the increasingly theoretical nature of the three-year curriculum.[290] Herein lies an irony that current law school critics fail to appreciate: Even as top law schools attacked the J.D. movement for watering down legal credentials, few proponents of that movement complained about theoretical work in the first three years, conceding that precisely such work warranted a Juris Doctor degree.[291]

While we may wonder whether the incorporation of theoretical work into a three-year curriculum is practically necessary, the rise of the Juris Doctor would arguably never have occurred had law schools simply aimed to train practitioners. As we have seen, its history is closely tied to efforts by legal reformers to make law school the equivalent of comparable graduate programs, a struggle arguably dating back to the days of Langdell.[292] Even John Hervey, champion of the "professional" doctorate, extolled the academic nature of the three-year program, a program that did indeed become much more theoretical during the New Deal.[293]

This leads to a final point. While current arguments that law school is too long may warrant merit, the conferral of a Juris Doctor for two years

285. *See, e.g.*, *supra* Part III.

286. *See supra* Part III.

287. *Id.*

288. *See supra* Part V.

289. *Id.*

290. *Id.*

291. *Id.*

292. *See supra* Part II.

293. *See supra* Part V.

of practical/clinical training may not.[294] Already, the legal doctorate lacks academic credibility of the Ph.D. Further diluting its significance may only jeopardize the standing of law schools *vis-à-vis* other university departments, perhaps weakening their institutional status and claims to resources. Better to keep law schools firmly wedded to the research mission of universities generally, meanwhile providing more options for students interested in practical skills, maybe by revisiting the question of plural degrees. As we have seen, there is precedent for such a move (a Master of Laws after two years' work with an option to then take the bar exam, a Juris Doctor for three, and an S.J.D. for more). It also enjoys a certain logic, perhaps one more compelling than the postwar argument that all lawyers deserve the J.D. simply because it enhances their prestige.[295]

294. *See, e.g.*, Barack Obama, Remarks by the President in Town Hall at Binghamton University, Aug. 23, 2013, *available at* http://www.whitehouse.gov/the-press-office/2013/08/23/remarks-president-town-hall-binghamton-university.

295. Spencer, *supra* note 11, at 1984. Shaving one year off the current curriculum will leave little room for inter-disciplinary, policy-oriented courses, and may even change the way doctrinal courses are taught. For example, two years reduces the time available to take bar classes, a move that they may push casebook authors and teachers to truncate their syllabi, and adopt more condensed teaching methods. Precisely such methods dominated American law schools during the early Progressive Era, as law schools crammed multiple topics into a single year through BarBri style lecture. While a return to lecture may be agreeable to some, important questions remain as to whether graduates of such truncated programs should receive a Juris Doctor degree. For free-standing law schools with no university ties, the answer may be yes. For law schools affiliated with larger, research universities, however, the abbreviation of legal education may warrant some consideration of the continued legitimacy of legal education in the eyes of universities generally, a dilemma that might warrant reconsideration of the plural degree.