SUBJECT MATTER IN THE THIRD-YEAR CURRICULUM

The debate on curriculum at the 1947 meeting of the Association contained numerous unflattering and dubious references to subject matter, especially in third-year courses. The advocates of the problem method at times seemed to imply that, so long as technical craftsmanship is acquired, it makes little difference what or how little or much of subject matter is presented. This viewpoint has some validity, just as there would be some utility to a student of carpentry in learning the use of saw, plane, square, and glue on any wood; but if the apprentice wished to be a cabinetmaker, it would be of considerably more advantage to him to understand the whole field of cabinetmaking, its history, the functional utility of its different aspects, and the wide variety of woods and other materials that present different challenges to craftsmanship. Formal discipline may be discredited, but something more than its ghost still appears at educational conventions.

Commercial-law subjects seem to be the chief victims of any curriculum changes. Although they are the bread and butter of the average lawyer's practice, they have already suffered from the encroachments of the public-law enthusiasts. While the length of the law-school course has remained the same, new hours, both elective and required, have been provided for administrative law, trade regulation, labor law, and a wide range of other public-law courses. The advent of these has coincided with the enlargement of the functions of government. One may be forgiven a mild wonder if some of the advertising of these courses may not be a cover for advancing the dogma of statism. However this may be, we now hear that even the existing presentation of commercial law is to be superseded by problem seminars.

No one can question that, for a student who has made his decision as to specialization, a problem seminar, including drafting, can be a valuable supplement for an introductory course in any field. That it is a satisfactory substitute certainly is unproved.

The commercial lawyer is primarily a counsellor. His function is not only to execute requisite papers but to advise, on the basis of his knowledge of business needs and legal institutions. The objective of such a course as Security is not only to afford a comprehensive view of specialized rules of contract and property, but to show how equitable principles modify, control, and occasionally alter interests normally created by the parties. In a course of this kind, an attempt at the sort of detailed thoroughness demanded in a first-year course is a mistake. What the student needs first is a view of the whole field in its economic and business setting. Selected controversial issues can be examined exhaustively, but what is essential is a synthesis of the area. That any problem method can accomplish this result in the attenuated hours still allowed for commercial law seems absurd.

The commercial courses also afford an opportunity for the review of case-method techniques already emphasized in earlier courses. Some cases are analyzed for their precise holdings. Others develop a principle of broader application. Still others are read not individually, but as members of a group —a procedure which demands preliminary synthesis before the identification

of the controlling principle. Numerous cases are a challenge to policy judgment. In our casebook on *Creditors Rights,* Professor MacLachlan and I have selected cases so that these various techniques can be reviewed seriatim.

Finally, it is desirable in the third year to have some courses which are to some extent a synthesis of the whole law-school curriculum. Probably no courses in this respect equal those in which the student is asked to put himself in the position of counsel for debtor or creditor. Both the selected methods and the instruction challenge the student to use whatever he has already learned in the solution of his problems. Contracts, torts, procedure, bills and notes, corporations, sales, even constitutional law may be involved, as well as the rules pertaining to the fields called Creditors Rights and Security.

The third-year curriculum should afford the student a chance to mature his technical skills. For that purpose the problem seminar has some justification. The third year should also be a time for comprehensive survey, for review in technique, for comparative judgment and synthesis. These are elements of law-school training to which the problem seminar can make only an inadequate contribution.

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