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It requires no demonstration to show that lawyers are prominent among those who today are grappling with national and international problems of unprecedented gravity. Obviously, too, this situation will continue indefinitely in business and public affairs. A major concern of law schools must be the adequacy of the equipment of their future graduates for participation in such matters; and this concern arises with added urgency at a time when opportunity exists for readjustments in legal education as the post-war plateau is reached, provided another war can be avoided. It may be worth while, therefore, to attempt a brief appraisal of the present state of legal education and to suggest two developments in university training for law which, although closely related to numerous previous proposals, assume their particular character because of the world's current state.

At present the outstanding facts about American legal education are the unprecedented number of students enrolled and the continued reliance of schools upon curricula which have the appearance of being largely the same as two decades ago. The appearance of the curricula is, to be sure, to some extent deceptive; for within the courses that still bear the same names or still cover essentially the same ground under other names, new "coursebooks" and changed attitudes and methods on the part of instructors have come to prevail. Essentially, however, the summary supplied by the 1947 Curriculum Committee of the Association of American Law Schools is correct. Except for "an impressive enrichment of third year offerings" in schools "where resources of staff permit," the changes that have been made, outside of a few schools, are minor.¹

With regard to enrollments, approximately 50,000 students were registered last fall in 156 schools which supplied figures to the West Pub-

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¹ HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 130, 137 (1947). See also the statement of Professor Leach that "I have watched legal education at Harvard . . . since 1921, and it hasn't changed much." HANDBOOK 236 (1945).

lishing Company, together with another 1000 or 2000 students at twelve or fifteen non-reporting schools.² In 1940 the number of law students was approximately 30,000,³ after a steady falling off from the previous peak of just under 47,000 in 1929.⁴ The war caused a reduction of perhaps 25,000 in the number of recruits to the profession.⁵ What the post-war norm of enrollments will be depends, of course, upon general economic conditions, the demands of service in the armed forces, and the extent of financial aid to students from public funds.⁶ The strong probability is that, barring another war or other major catastrophe, legal education will be called upon to train increased numbers of students for an indefinite period, unless the requirements for admission to the bar and for a law degree are materially increased.

The minimum standards for admission to the bar and in legal education have, as is well known, been raised materially since the movement to that end began in 1921.⁷ All but eight American jurisdictions now require three years of full-time or four years of part-time study by candidates for bar admission who prepare in law school, and all but six jurisdictions require two full years of college or university academic study by all candidates.⁸ The American Bar Association has approved 111 law schools⁹ and the Association of American Law Schools has

² 10 AM. L. SCHOOL REV. 268 (1947); compare the list of law schools in RULES FOR ADMISSION TO THE BAR 405-409 (West Publishing Co., 1947). See also AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REVIEW OF LEGAL EDUCATION 19 (1947); 17 THE BAR EXAMINER 53-62 (1948).

³ 9 AM. L. SCHOOL REV. 839 (1940).

⁴ 6 *id.* at 623 (1930); *id.*, subsequent midwinter issues. While these figures are comparable to those for 1940 and 1947, they are perhaps less accurate than those given by the annual reviews of legal education of the Carnegie Foundation for the Advancement of Teaching to 1934 and the Section on Legal Education and Admissions to the Bar of the American Bar Association since 1934. As recapitulated to 1936 in ESTHER LUCILE BROWN, LAWYERS AND THE PROMOTION OF JUSTICE 39 (1938), these show a previous peak of nearly 49,000 in 1928, dropping to 46,751 in 1929. This series ends in 1938, but some later figures appear in the 1942 ANNUAL REVIEW, p. 11, and the 1944 ANNUAL REVIEW, p. 19.

⁵ Estimate based on admission figures published in *The Bar Examiner*.

⁶ The Report of the President's Commission on Higher Education for 1947 contains a recommendation for a considerable program of federal scholarships and fellowships for undergraduate and professional and graduate education. 2 HIGHER EDUCATION FOR AMERICAN DEMOCRACY 51-56; 5 *id.* at 59-60 (1947).

⁷ In that year the American Bar Association, having formed its Council on Legal Education and Admissions to the Bar the year before, adopted a statement of its goals in regard to the educational requirements for law practice. In the same year Alfred Z. Reed's study for the Carnegie Foundation for the Advancement of Teaching, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, made its appearance. Its inventory and critique of legal education was carried forward in PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA (1928), and in Esther Lucile Brown's study for the Russell Sage Foundation, LAWYERS AND THE PROMOTION OF JUSTICE (1938).

⁸ REVIEW OF LEGAL EDUCATION 20-25 (1947).

⁹ *Id.* at 26.

admitted 103 to membership. Before the war, the number of students in approved schools increased during the period when the total number of students was declining.¹⁰

In one respect, legal education is still an outstanding example of the blind leading the blind. The oft-lamented lack of knowledge on the part of law teachers as well as others of what lawyers actually do and of what they should do in contemporary society¹¹ continues unabated, although the ambitious Survey of the Legal Profession, initiated by the American Bar Association, which is now going forward,¹² may supply some of the missing information. If it does, it will be as a result of the first considerable attempt by the organized legal profession to apply modern research methods to its problems.¹³ Even if a significant contribution is made through the Survey, the law schools will remain unequipped with facilities, cooperatively provided, for research directed to meeting the revealed demands upon legal education; for unless changes are wrought, the Association of American Law Schools, unlike some other organizations of professional institutions,¹⁴ will remain without permanent headquarters or a paid professional staff, dependent upon the devotion of a few uncompensated officers for its management. Its committees, like their predecessors for almost half a century, will be compelled to compile information on particular topics, to the extent that they can, through laborious "spare-time" examinations of law school catalogues and use of questionnaires, employing the information to mold nuggets of sound but largely ineffective thought in addition to the store that now lies buried in the annual Handbooks.¹⁵

The modest resources of organized legal education¹⁶ are indicative of the scale upon which the schools themselves operate. Despite general

¹⁰ ANNUAL REVIEW OF LEGAL EDUCATION 64 (1935); *id.* at 33 (1933).

¹¹ See *e. g.*, Dean Harno, HANDBOOK 140, 141 (1943); *id.* at 124 (1945); Dean Fraser, *id.* at 106-107 (1946); *Report of the Committee on Curriculum*, *id.* at 113-119 (1946); Clark and Corstvet, *The Lawyer and the Public: an A.A.L.S. Survey*, 47 YALE L. J. 1272 (1938).

¹² An account of the Survey is given in the HANDBOOK 239 (1947), and in 33 A.B.A.J. 1075 (1947), supplemented in 34 *id.* at 18 (1948).

¹³ ESTHER LUCILE BROWN, USE OF RESEARCH BY PROFESSIONAL ASSOCIATIONS IN DETERMINING PROGRAM AND POLICY 34 (1946) contrasts the legal profession unfavorably to others in this regard.

¹⁴ The Association of American Medical Colleges is financed by annual dues of \$500 paid by the member schools. It has rented headquarters in Chicago and has a paid staff of two in addition to the secretary. The American Association of Schools of Social Work, with forty-seven members, has an annual budget of \$40,000, of which \$12,000 comes from membership dues. It has permanent headquarters in New York and employs a professional staff of three.

¹⁵ The work of the Association and its committees would obviously be facilitated immeasurably by the regular compilation of curricular information through a paid staff and by the availability of such a staff to conduct special studies when needed.

¹⁶ "The layman finds difficulty in understanding why this particularly favored [legal] profession, which includes thousands of highly educated and successful

knowledge on this score, it somehow comes as rather a shock to be told that student tuition fees have paid not only for 90 per cent of the instruction but also for an equal portion of the cost of assembling the outstanding library of the Harvard Law School.¹⁷ Yet most law schools are in a similar position within the universities. A few schools are pretty clearly being subsidized now on a considerable scale from endowment income or taxes, and in the state universities public funds provide the equivalent of a large part of the tuition fees of students in the private institutions. On the whole, however, legal education is conducted on a scale which can easily be met from fees, at least if a building has been provided; and in many institutions it is carried forward on that basis, if, indeed, a profit does not result. A building with three classrooms, a library of 30,000 volumes and a librarian, reading-room space for 150, a faculty of eight with an office for each, and an operating budget of \$100,000 would provide better-than-average facilities today for a student body of 300.

There is, of course, no self-evident vice in education which pays its own way or any necessary virtue in drawing upon funds which do not come from the immediate beneficiaries of instruction. If legal education meets the needs for which it exists, the economy with which it operates should be cause for pride in its efficiency rather than for apology or regret. And there is significant evidence of merit in the work the law schools are doing. Lawyers, largely the product of schools, have, in the first place, met the test of the market place by selling their services for incomes almost as substantial as those of physicians and considerably greater than those of some other professions,¹⁸ however unsatisfactory they may appear to be from an ideal standpoint. From the standpoint of public service, not only have lawyers continued to be prominent in legislative and other official positions, but the more active members of the profession have brought about reforms of judicial adminis-

lawyers and which is nearer to sources of wealth than perhaps any other profession, should have lagged far behind some young or struggling groups in maintaining well-staffed, creative associations." BROWN, *op. cit. supra* note 13.

¹⁷ ANNUAL REPORT OF THE DEAN OF THE HARVARD LAW SCHOOL 21 (1946-1947).

¹⁸ Average figures for the years 1929-1941, drawn from a Department of Commerce survey, are given in 34 A.B.A.J. 440 (1948). Figures for earlier years are given in AMERICAN BAR ASSOCIATION, SPECIAL COMMITTEE ON THE ECONOMIC CONDITION OF THE BAR, THE ECONOMICS OF THE LEGAL PROFESSION 39-43 (1938). The present writer was impressed, in the course of the examination of several thousand applications for legal positions with the Federal Government during the war, by the success of many relatively young lawyers who had commenced practice during the 1930's in rather quickly attaining incomes of \$3000 and up. Few had attained large incomes or economic security; but they were getting along financially far better than all but a tiny minority of their countrymen. The figures were doubtless padded to some extent, however, and the group they covered was not a cross-section of the profession. It was nevertheless significant.

tration that have transformed the courts from slow-moving, technicality-ridden tribunals usually behind in their dockets to reasonably efficient agencies for dispensing justice, at least on the mechanical side.¹⁹ In addition, as law teachers have been particularly fond of pointing out, lawyers, predominantly young, played a vital if not dominant role in federal administration during the years of the New Deal and World War II.²⁰ If these contributions were the work of a minority consisting of the ablest law school graduates,²¹ it is also true that today in small and large communities in many states there is a similar minority of able younger practitioners who are admirably sensitive to contemporary public interests. There is ground for pride on the part of the schools in having helped create such a professional group and having supplied it with some of the tools of the craft.

These credit items in the recent record of legal education may fairly be said to be the result of the leaven that has been at work among law teachers during the past thirty years and that has had its most identifiable effect in the casebooks, now perhaps better called coursebooks,²² which have come into general use. The transformation in these teaching tools has been adequately described elsewhere.²³ However deficient legal education remains in the face of it, teachers and students who use these materials, even if some should continue to search for "the rule" that has decided or will decide a particular case, cannot fail to become aware that such rules have a validity which is conditioned by social need. This, after all, is a considerable gain, even though it is not matched by equivalent ability to determine social need and to shape new rules wisely in the light of it. The lesson, it is true, results from political events and new judicial techniques as well as from educational progress; but the former are to some extent the consequences of the latter, produced as young lawyers have gone from the schools into government posts and teachers from their professorships onto the bench.

Law teachers have been told in a manner which has rightly carried conviction that the progress so made, together with the increase in

¹⁹ One of the prime movers in this judicial reform, former Dean (now Chief Justice) Vanderbilt, continues to refer to the apathy of the great preponderance of lawyers toward professional problems. *The Idea of a Law Center*, 23 N.Y.U.L.Q. REV. 1, 5 (1948). Yet the profession is perhaps entitled to be judged by the overall results of its work, which, like the product of other human institutions, are largely the accomplishments of a leadership that is tolerated, if not actively supported, by the rank and file.

²⁰ HANDBOOK 60 *et seq.* (1943); *id.* at 232-244 (1945).

²¹ Professor Clark Byse in HANDBOOK 238 (1945).

²² The word is probably Llewellyn's. See *On the Problem of Teaching "Private" Law*, 54 HARV. L. REV. 775, 776 (1941).

²³ Ehrenzweig, *The American Casebook: "Cases and Materials,"* 32 GEO. L. J. 224 (1944).

"public law" courses in law-school curricula, has not only been insufficient but has brought with it a deterioration in the training of students in essential professional skills.²⁴ To some extent the remedy for this deterioration lies, as has been urged, within the competence of existing law faculties, operating with their present facilities. More precise identification of the particular skills of "analysis," "synthesis," "diagnosis," and "solution" which it is desired to impart, accompanied by the allocation of responsibility for inculcating them to particular faculty members in specific courses, is surely possible and desirable.²⁵ These skills of reasoning, are however, only a portion of those which are under-developed by current instructional methods. Drafting, brief writing, and counseling likewise need greater emphasis and provision for intensive drill by students. To afford these the present facilities of the schools would be taxed far beyond capacity, for it clearly exceeds the possibilities for the small faculties of today to extend careful supervision to students in this type of work at a rate, say, of thirty students per man each year. Any attempt to do so, other than an experimental beginning, would be at the expense of scholarship and of other values now present in legal education. We are driven, then, to contemplate the doubling of our teaching staffs or the addition of considerable numbers of assistants, on their way to graduate work and full-fledged teaching or to practice, as a condition of improvement along this line. Whether such additions could be made without sacrifice of quality remains to be seen; but here alone is reason enough for a vigorous offensive in the direction of substantially enlarged budgets.²⁶

²⁴ *Report of the Committee on Curriculum*, HANDBOOK 159 (1944).

²⁵ The quoted terms are from the valuable, suggestive analysis and discussion prepared by Professor Frank R. Strong and the Committee on Teaching and Examination Methods, and presented in mimeographed form to the meeting of the Association of American Law Schools in December, 1947. Professor Strong's outline takes cognizance also of the aim of inculcating "insights" into the purposes and functions of law and of the methods of conveying knowledge of the content of positive law.

²⁶ In this connection, Judge Jerome Frank's earnestly renewed "Plea for Lawyer Schools," which would make "the core of the law school . . . a sort of sublimated law office" (56 *YALE L. J.* 1303, 1320 (1947)), is not convincing. One might concede that learning by direct observation and by doing has all the values which Judge Frank attributes to it, and leave out of account the danger of inattention to the ends of law, which seem inescapable, without agreeing to his proposal. The learning and dialectical skill which Judge Frank himself exemplifies cannot be acquired even by good students without several years of concentrated study, diluted at most by supplementary first-hand inquiry into reality. Such study is the most efficient means of achieving a professional grounding, because the information and thought that are recorded in books and can be acquired from them are vastly greater in amount and richer in quality than can be obtained in the same time through any other medium. It is true that the existing methods of legal education lack sufficient realism and variety; but the remedy hardly lies in casting the student upon a sea of phenomena before he has acquired his intellectual bearings. *Of.* Judge Charles E. Clark, Book Review, 57 *YALE L. J.* 658, 663-664 (1948). So nor-

Improved training in skills is, however, by no means the most needed development in legal education today. It does not have within it the potentiality of rendering the work of the schools adequate to present needs. Neither does training in the skills which can be learned from discriminating use of the case method deserve allocation of the whole first year of law study to it, as has been suggested. Such a development, indeed, would threaten more important reforms. There is more than a little danger that the next general change in the methods of law schools throughout the country will be the adoption of just this recommendation of the 1944 Curriculum Committee, unaccompanied by the other improvements to which the committee also pointed. The committee urged intensive use of the first year for training in specific case skills, course by course, because of the importance of that training and because of the advantage of clearing the decks, as it were, for other types of training in the subsequent years.²⁷ Also, the committee recognized that here was a reform that lay within the competence of existing faculties in the general run of American law schools.²⁸ For precisely this reason, however, faculties may well be inclined to go so far and no farther.²⁹ The proposal, moreover, would crystallize the present inadequate first-year course designations, in disregard of the importance of the direction they give the student's thought.³⁰ As they stand, these designations shape his initial conception of professional subject matter

mative a discipline as law can do better than imitate the clinical methods of medical education, which, whatever their justification and beneficent results, have scarcely produced statesmen in even medical matters. The more modest use of legal clinics which Professor Bradway has so ably developed and urged is another matter. Both social insight and professional skill can be developed by this means, and should be, provided the requirement of an adequate staff can be met. For a thoroughgoing criticism of medical education on account of its excessive use and poor handling of clinical training, see Dock, *The Medical School's Relation to the University and to the Practice of Medicine*, 23 J. ASS'N OF AM. MED. COLL. 250 (1948), which begins as follows: "After nearly three-quarters of a century, the efforts of many energetic and far-sighted people to raise medical education to a university level seem to have failed. In no medical school in North America do the clinical departments and their undergraduate students function under conditions approaching those in the graduate schools of law . . ."

²⁷ As to the second reason, see HANDBOOK 160, 163, 181-200 (1944).

²⁸ *Id.* at 177.

²⁹ Cf. Professor Cavers' objection to making Negotiable Instruments the chief vehicle for training in statutory construction, that "The capacity of the law schools to convert the new into the familiar should be noted in this connection; nothing would be more congenial to those who dislike the disruption of existing curricular structures than the thought that their obligation to be 'progressive' could be discharged, pro tanto, by good old Bills and Notes." *Id.* at 183n.

³⁰ David Riesman speaks of "the propagandistic need for a socially significant plan of organization." *Law and Social Science: A Report on Michael & Wechsler's Classbook on Criminal Law and Administration*, 50 YALE L. J. 636, 642 (1941).

according to an eighteenth-century pattern,³¹ omitting reference to significant contemporary categories.

Today's major need in training lawyers lies in the development of understanding of the institutions and problems of contemporary society, of the lawyer's part in their operation, and of the techniques required for professional participation in solving the major problems with which lawyers deal. Training in specific professional skills is needed too—let the point be emphasized again—but the current deficiencies on this score are far less conspicuous and grave than the shortcomings in developing the insights and techniques just mentioned. The task of remedying these shortcomings in lawyers extends beyond the law schools, of course; but the institutions which assume primary responsibility for training lawyers cannot escape concern with the entire process of their formal education. A program for discharging that responsibility fully, followed by early steps toward its execution by schools in all parts of the country, is needed now.

The need for improving the education of lawyers is but part of a larger problem, of course. The basic difficulty, which educational reforms are necessary to reduce, is that the requisite combination of will and ability for adequately attacking the gravest social problems does not exist on a sufficient scale in the society of today. There is need to develop it in many groups, especially professional groups; but nowhere more strikingly than among lawyers, the strategic importance of whose role in society requires no elaboration in a journal which is read by law teachers. The inadequacy of education generally and of legal education in particular is caused, of course, by the very shortcomings of thought and motivation which educational reform should be designed to remove. All groups, including teachers, tend to conform to the mass from which they come and with which they must work; but, equally, progress can take place only as some forge ahead. Bootstrap lifting is, in one sense, the necessary method of advance. Failure to engage in it with sufficient vigor is understandable in these times, when the pace of events is so headlong; but, by the same token, the price of failure may be disaster or even extinction.

The call seems clear, then, for legal education, in common with other education but to a special extent, to develop a program for training personnel adequate to serve the world's most pressing needs, undeterred

³¹ Property and contract, along with liberty to use them subject to criminal and tort law as the chief governmental means of regulation, were, of course, the legal framework of the agricultural-commercial society. See Charles A. Beard's incisive account of the conceptions which dominated the "capitalist-constable state of English Manchesterism" in his *Individualism and Capitalism*, 1 *ENYO. Soc. Sci.* 145, 153-154, 161 (1930).

by the slenderness of the schools' present resources and their tendency to measure their capacity modestly. Yet law teachers give evidence of lagging rather than leading. Symptomatic, perhaps, have been the programs of the three post-war meetings of the Association of American Law Schools. While economists, political scientists, and others have discussed topics of moment to the world, law teachers have confined themselves, except in a few round-table discussions, to narrow professional questions and to pedagogical and organizational issues. We are, it is true, an association of schools rather than of individuals, and hence obligated to give heed to specifically academic issues; but we have a duty also to instill breadth and vigor into our work. It was in part a desire for such invigoration which led the Association at its last meeting to decline to adopt a rule that one session each year be devoted to teaching and examination methods, and to express a wish for joint sessions with social-science organizations.³² The same feeling may well lead soon to a concerted attack upon the most fundamental needs of legal education itself.

The two most fundamental needs at present appear to be the following: First, better integration of legal training with the remainder of the student's university education; second, collaboration between law schools and other schools and departments in the universities to prepare students for attacking major social problems cooperatively. The direct infusion of more social-science material into legal education itself is not now of equal importance, because the need of such an infusion is already well recognized, and some progress in meeting it has taken place. At the same time, it has become apparent that there are distinct limits to what may be accomplished by this means.

As respects the remainder of a student's university education in relation to his legal training, much depends, of course, upon the interests of the student himself. One may subscribe unreservedly, as most law teachers probably do, to the principle that the best law student is the person possessing a genuine culture, such as is evidenced by the A.B. degree at its best, whatever may have been the interest that led to it and whatever may be the specific intellectual content of that culture. It is not necessary to prescribe a pre-legal curriculum or seek to interfere with developments in liberal-arts education in an effort to render the

³² HANDBOOK 97-99 (1947). The content of the law reviews is, of course, at least a partial answer to the impression of narrowness which Association programs may create. The law-teaching profession is certainly entitled to take credit for the range of interests which that content signifies. Yet it is a minority possessing those interests who do the writing that becomes available for publication and who serve as student editors. Although law schools nurture these interests to a degree, they are derived to some extent from a law-review tradition that rises above the level of many schools in which it has found a place.

student's experience before entering law school of maximum value to him as a lawyer. The law schools may well accept gratefully those individuals who come to them with intellectual maturity however achieved. It is especially important that those who have not previously studied closely related subjects, however, should not be introduced to law study by simply being thrown into a congeries of courses bearing little apparent relation to their most vital previous interests and designed, let us say, to develop "case-method skills." Few of those who possess substantial intellectual stature will under these conditions muster the faith of a Holmes that law "is a part of man, and of one world with all the rest."³³ More of them will either abandon the law for seemingly greener pastures or succumb with resignation or cynicism to "practicality" in pursuit of a vocation.

In these United States, however, students whose intellectual hunger exceeds the current capacity of the law schools to satisfy do not constitute the schools' principal problem, at least quantitatively. American life brings into the universities a horde of youngsters in search of knowledge that will be immediately useful in day-to-day affairs. These students are devoid of intellectually significant interests and lack a sense of direction, other than a desire to lead satisfying lives. To provide for the needs of these people, an elaborate machinery has been set up—junior divisions, supervision of activities, "guidance," and all the rest. Just here, in institutions where law schools and machinery for steering beginners exist side by side, there is opportunity for the law schools to aid in taking hold of the floundering freshman who thinks that law may be his destination, and do a job of diagnosing his capacity and—in the absence of well-defined immediate interests on his part—steering him in the direction of those subjects of study most relevant to his supposed purpose.³⁴ Again, staff will be needed—competent professional staff, selected in part by the law school and responsible in part to it. No obstacle to its provision exists except possible lack of funds and of personnel to be hired. There is a reasonable chance of supplying both if the effort to obtain them is made.³⁵ The result should be a network

³³ OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS 165 (1921).

³⁴ Cf. the statement of President Donald B. Tresidder of Stanford University, in his address, *The Aims and Purposes of Medical Education*, 23 J. ASS'N AM. MED. COLL. 8, 16 (1948): "Since the four undergraduate years and the four years in medicine are a continuous part of one educational process, I should like to see the medical faculty participate in the guidance and education of the student throughout this entire period."

³⁵ The operation of such a system of guidance for students interested in social work, maintained by arrangement between the Junior Division and the Division of Social Work of Indiana University, is described by Agnes Anderson, *Guiding the Undergraduate Student Toward the Profession of Social Work*, in SELECTED PAPERS DELIVERED AT THE 29TH ANNUAL MEETING OF THE AMERICAN ASSOCIATION OF

of counseling units all over the country, attached to legal education itself, which would do a far better job than is now being done of selecting students for the study of law and of equipping them with useful preliminary education. The fact that such a system would not reach all students, because some go to independent colleges and others develop a professional interest late, would not militate against its usefulness for those whom it did reach; and it might in time produce a literature that would be helpful outside the universities where it was prepared.

The content of the preliminary education to be recommended need not be rigidly prescribed, and might turn in individual instances upon the need to remedy deficiencies (*e. g.*, the proverbial deficiency in the use of English) or the desirability of developing capacities that are found to be present. In the absence of such determining factors, however, the desirability of emphasis upon logic, ethics, history, and the social studies seems clear. Subject matter that is certain to be illuminating and relevant in the study of law is preferable to that which is not, other factors being equal. In so far as improvement in the college teaching of these subjects to prospective law students is called for, there is considerable likelihood that improvement might be obtained in the course of time. If it were refused after negotiation, a demand for betterment might be in order in particular situations; and it would be a powerful demand if, perchance, several professional schools and departments within a university were to climb down simultaneously from their altitudinous separate existence and unite to obtain satisfaction of a felt need.³⁶ In any event, the law schools cannot long continue to justify a persistent shirking of responsibility for the adequate grounding of law students in relevant social-science material at some stage of their training; and provision for it at the pre-legal stage in a considerable portion of instances would make a good beginning. As Dr. Esther Lucile Brown has tellingly pointed out, the schools have, with some exceptions, while admitting the need, (1) failed to require pre-legal work in the social studies, on the ground that these subjects are not properly taught for professional legal purposes at the college level, (2) adhered to the conclusion that law teachers are not equipped to teach them, and (3) avoided the addition of social scientists to their own faculties.³⁷ Although references to social-science material in law-school courses have

SCHOOLS OF SOCIAL WORK 46-50 (1948). This account omits discussion, however, of the aid given in electing undergraduate work and of arrangements that have been made for adaptation of certain college courses to the needs of pre-social-work students.

³⁶ Speaking of medical schools, Tresidder, *supra* note 34, at 15, states: "We have either refused to concern ourselves with undergraduate work in college at all, or our participation in it has been haphazard and circumstantial."

³⁷ LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE 118 (1948).

become substantial, these do not add up to an adequate grounding in the social studies.

The duration of pre-legal education might vary in individual cases, subject to prevailing law-school entrance requirements. Vocational-mindedness, if found to be persistent as well as prevalent, might argue for the commencement of law study after two years of other university work, with four additional years devoted to law study and to advanced college or business-school work,³⁸ or to an enriched four-year law-school course where that exists. The vocational purpose, transformed to a professional approach, would serve as a stimulus to later interest in the social studies wherever they might be pursued.

Whatever the beginning law student's previous training, the first task of the law school should be to relate the field he is entering to his previous thought and experience. His most relevant previous thought and experience—whether in college courses or simply as an individual of some intelligence living in the world of today while studying literature, or art, or engineering, or what have you—must have related mainly to government and to the economic and social order. The first-year curriculum, therefore, whether in a single course or in several, should focus in part upon contemporary institutions and problems of society. These should appear vital not simply to the lawyer as such, but more importantly to the student as a person not yet become a lawyer. His profession will come to have significance as its relation to these matters appears. The enlistment of interest and the shaping of attitudes at this particular stage of the student's career is vital to all that follows.

Techniques for accomplishing this essential first-year task may vary. A course in Law and Society, whether called by that or any other name, such as a number of schools are trying to develop,³⁹ and which undertakes to bring out the response of legal agencies to changing circumstances and their interaction with other institutions, represents at least a beginning. A course in Legal History, if it embraces developments that have a sufficiently clear relation to vital contemporary problems, may serve as a vehicle. Companion courses in The Judicial Process (*i.e.*, the development of judge-made law) and Legislation may serve the purpose. Better still, along with one or more of these general "introductory" courses, the first-year substantive-law courses can be made into "functional" rather than doctrinal studies, as well as vehicles for imparting professional skills. Thus Property may become Control of

³⁸ See Hall, *A 2-2-2 Plan for College-Law Education*, 56 HARV.L.REV. 245 (1942).

³⁹ *Of* Simpson and Stone's recently published Table of Contents to their forthcoming *CASES AND READINGS ON THIS SUBJECT*; Llewellyn, *supra* note 22, at 794, 800-810.

Land Use and Development; ⁴⁰ Contracts may become Business Transactions I; ⁴¹ and so on. ⁴² Obviously, changes in more than course designations are needed, although these are important in themselves because of the "slant" they give to student attitudes. ⁴³ Mainly, emphasis upon the instrumental character of legal doctrine and of legal action, especially in relation to contemporary problems, is needed so that, at the beginning of his professional study, the student may come to regard his profession and himself as vitally related to the critical issues of the day—which are, of course, also the enduring problems of society.

Attempts to equip students later in the law course for grappling in a professional capacity with major social problems are considerably more common in law schools today than the suggested first-year approach. The continuance of such attempts is needed, of course, along with the training in recognized legal skills and the imparting of legal knowledge which all must recognize as essential. One difficulty so far has been, however, that in progressive schools more has been attempted than lies within the possible competence of law teachers, in an effort to create a correspondingly unattainable capacity on the part of future lawyers. Casebooks have been supplied with non-legal materials, or with references to non-legal materials, which the law student and, later, the lawyer has been expected to use and to comprehend himself, with only the aid of another lawyer, the instructor, or occasionally with the aid of an associate instructor who has been trained in another discipline. When non-lawyers have been procured to aid in legal education, it has been for the purpose, except in rare instances of joint seminars for law students and those in another school or department, of making the law students masters of some other subject in addition to their own. The best-known, most striking articulation of the thesis that lawyers should be trained to play their part in solving the world's problems, by Lasswell and McDougal, ⁴⁴ seems actually to recognize no limitations on this

⁴⁰ The pioneering attempt to transform the study of Property in this manner has just appeared. MYRES S. McDOUGAL AND DAVID HABER, *PROPERTY, WEALTH, LAND: ALLOCATION, PLANNING AND DEVELOPMENT* (1948).

⁴¹ Fresh attempts to invigorate the teaching of Contracts are currently being made in at least a few schools.

⁴² It would be beyond the competence of the author to single out particular casebooks in Contracts, Business Organizations I, and Torts that might be regarded as embodying such transformations. In Criminal Law, where the tendency has long been strong to subordinate the study of doctrine to consideration of the purposes for which offenders are taken in hand, the recent casebooks of Michael and Wechsler (1940) and Dession (1948) carry the tendency to the point of making it the basis of the organization of the materials. FRANK E. HORACK, *CASES AND MATERIALS ON LEGISLATION* (1940), treats legislation throughout as a tool for solving social problems, not to be understood except in relation to the problems themselves.

⁴³ See note 30 *supra*.

⁴⁴ *Legal Education and Public Policy, Professional Training in the Public Interest*, 52 *YALE L.J.* 203 (1943).

score. Even when the lawyer, in this view, is not himself formally a "policy-maker," he is "the one indispensable adviser of every responsible policy-maker of our society." In this relation, moreover, his position is so strategic and so often leads to his assumption of formal responsibility that "for better or worse our decision-makers and our lawyers are bound together in a relation of dependence or of identity."⁴⁵

It may be doubted whether every public and private "policy-maker" who is not a lawyer is more dependent on his legal adviser than on any other, although the picture thus drawn has large elements of truth.⁴⁶ It should be sufficient that lawyers occupy positions of great importance and that heroic efforts should be made to equip them for their strategic role. At the same time, an effort should be made to discover sharers of the burden and even to develop a sense of modesty to accompany the sense of professional mission. Social salvation can hardly be achieved, at least democratically, by creating a caste of super-intellectuals and placing them in charge of affairs. It is demonstrable, indeed, that neither lawyers nor any other single group can successfully assume the primary policy-making role in modern society.

The traditional view of the role of professional groups in society is derived from the state of affairs, now past, when power and authority were widely dispersed. Each aggregate of power, lodged in a person to whom it belonged or in an institution, was managed by one or a few individuals who employed, among others, professional advisers. Each such adviser had his special competence and was not responsible beyond it, since coordination of advice for the purpose of "decision-making" was the business of the managers, who could encompass the affairs that were subject to their authority. The need of coordinating decisions was at a minimum, since aggregates of power did not generally embrace large areas nor impinge upon each other closely. There was room for play; and when maladjustment occurred, its victims might escape to the frontier. Now institutions, especially economic and governmental, have grown enormously larger and closer together, and those whom their operations affect adversely usually have no satisfactory means of escape. The problems with which their managers must deal have grown correspondingly more difficult and complex, actually extending over the entire world in a good many instances. The skills, knowledge, and insight which are required for the operation of such institutions exceed the attainable capacity not only of single individuals but also of groups of individuals trained in the same way. No individual or council or com-

⁴⁵ *Id.* at 208-209.

⁴⁶ BROWN, *op. cit. supra* note 37, contains an excellent, realistic account of the recent role of lawyers in American government, particularly in the executive branch of the Federal Government.

missariat, lacking a variety of specialized skills itself, can even assimilate the advice of enough experts to reach sound conclusions as to many major problems. Hence the conception of lawyers serving as principal advisers to policy-makers in such matters, or doing the policy-making themselves, is unworkable—is, in fact, a carry-over from simpler times and from less complex affairs. Yet it is precisely these larger problems that most strikingly require more adequate handling, in which lawyers must somehow be trained to participate—such problems as relate to the structure of industry, to the negotiation of prices and wages, to the management of natural resources, to the movement of populations, to the drawing of political boundaries, to the regulation of armaments, and to the control of atomic energy.

The only possible answer to the need of handling such problems involves the creation of managerial bodies whose membership includes persons severally trained in the needed skills and insights and educated in the relevant bodies of knowledge, who must at the same time be trained to employ methods of collaboration that will “integrate”⁴⁷ the contributions of these persons into sound group decisions. The point need not be labored. Actually, many specific matters are now handled in this way. Collective labor agreements are hammered out in conference, setting the conditions under which “managers” must afterward function for periods of time; administrative decisions result from the combined contributions of agency staff members possessing varied qualifications;⁴⁸ statutes are drafted by official and unofficial groups possessing a variety of backgrounds and skills; and international arrangements emerge from a crucible of negotiation and discussion into which the contributions of numerous experts frequently are cast.⁴⁹

Educationally, the development of such a technique of cooperative problem-solving, like the development of other techniques and skills, calls for opportunity to learn by doing and, therefore, for collaborative study by students preparing for various specialties. Seminars, clinics, and institutes, centering upon matters in which these students have a common concern and to the handling of which they have distinct but

⁴⁷ This concept of integration is elaborated in Mary Parker Follett's *THE NEW STATE* (1920).

⁴⁸ Professor Kenneth Davis has recently elaborated upon the “institutional” character of some administrative decisions. *Institutional Administrative Decisions*, 48 *COLL. L. REV.* 173 (1948). The discussion at p. 194 is particularly relevant.

⁴⁹ The periodical *Law and Contemporary Problems* has for a considerable period exemplified the need of bringing together the contributions of different types of specialists in treating particular problems that possess legal significance. Lawyers might no doubt have made researches and written papers that would have covered the same ground; but the effort involved would have been enormously greater and their contributions to solutions for the problems covered would have been less potentially significant.

supplementary contributions to make, may usefully be employed. Each participant must understand enough of the others' contributions to see their relation to his own and to the common objective; but none need strive to become a master of all trades. The central purpose as each problem is attacked would be, of course, to pool the knowledge, insight, and judgment of the participants, developed by study of the problem, in arriving at a solution. The fact that the solution would be a student solution and hence not conceivably adequate to the problem itself would not detract from the value of the training which its formulation would give.

At first, training of the sort proposed would necessarily have to be given by instructors who had not had previous experience with it; but for them as well as the students, learning by experience should lead to rapid improvement in methods. Nor should the beginnings be on too limited a scale; for it is proposed to inaugurate a major feature of legal education and of the other branches of education that would join with it. Projects should be undertaken with the business school, the medical school, the engineering school, and various graduate departments, each embracing students from those university divisions whose province extends to the problem under attack. An effort to deal with the basing-point problem—to take a currently conspicuous example—would call for the participation of students and teachers of marketing and of economics, as well as of law. Consideration of planning for use of the water resources of a given area would call for the participation, where possible, of students of engineering, agriculture, economics, government, social welfare, and public health, along with those of law. The task of framing a proposal for the control of Middle Eastern oil that might stand a chance of being acceptable to Soviet Russia would call for the cooperation of many of those previously mentioned and of geographers, anthropologists, psychologists, and students of ethics. And so on. The plan seems ambitious, and it is; but it is not unmanageable, and it does not exceed in scope the need it is designed to meet.

The beginnings of such cooperative projects within universities, with participation by law students, have been both made and suggested, of course. There have been joint seminars,⁵⁰ and legislative drafting as practiced in a few institutions has drawn in other students as well as those in law schools.⁵¹ A study made for Ohio State University with reference to the possible establishment of an Institute of Public Af-

⁵⁰ BROWN, *op. cit. supra* note 37, at 129-134.

⁵¹ Cohen, *On the Teaching of "Legislation,"* 47 COL.L.REV. 1301 (1947), especially pp. 1304, 1307, 1312.

fairs in the University⁵² has envisaged a project in which groups of students drawn from the various divisions of the University would seek to formulate answers to community problems submitted to the Institute for study and report. The present need, however, goes beyond such incidental projects and demands that cooperative training become a central feature of professional education and of various other branches of advanced study. The lead in this direction should come from the law schools, because it is true, as Lasswell and McDougal have stressed, that the lawyer's role in decision-making is more nearly all-pervading, if not always more vital, than that of any other profession.

Let it be emphasized that such a plan for cooperative attack upon major social problems does not involve transforming the law schools into instruments for superficial talk about public issues among various categories of students. The cooperative projects would have to come at stages of the curriculum when the students have acquired enough professional training to function to some degree as professional people; and the demands of the work for research and drafting should be not less rigorous than in other advanced law study. Neither is it proposed to turn the law schools into public-policy institutes in which narrower professional training would be neglected. The cooperative projects would parallel the training in strictly professional drafting, brief writing, and legal clinic. They have assumed prominence in this discussion simply because (1) the need for them is less generally recognized and (2) the serious state of national and world affairs emphasizes the acuteness of the need.

It is not necessary or desirable to hitch a program for projects such as those here suggested to some over-arching purpose or set of values, such as maintenance and strengthening of the democratic system. As has been pointed out,⁵³ the legal profession has its place in other systems as well as in a democratic order; and universities in their primary role of the pursuit of truth cannot rightly erect even democratic principles into a dogma to which their function is to be subordinated. On the operating level, it is possible to select problems for study and reach conclusions according to a consensus as to immediate purposes without attaching a commitment as to ultimate ends—much as the statesman and the wise judge govern their official acts according to values which they find in the community, without thereby becoming untrue to possibly conflicting inner convictions of their own, which they must serve

⁵² The report, prepared on the basis of a survey of which Professor Robert E. Stone, now of Syracuse University, was director, and Professor Harvey Walker was assistant director, was made in 1946 but has not been published.

⁵³ Professor Edwin W. Patterson, *HANDBOOK* 143 (1943).

in less immediate ways. The highest duty of the law school as part of a university is, indeed, to aid its students to become self-conscious and critical with respect to the ends they serve, including the ultimate ends. No feature of its program may rightly be permitted to outweigh this duty.

Two important questions as to the feasibility of a program for cooperative projects naturally arise. These are whether it is financially and administratively practicable and whether it should extend to all law students and all law schools. Ample faculty strength will of course be required for both planning and execution; and there must be simultaneous development of a number of divisions of the university. All that can really be said is that administrations must be convinced of the need and induced both to seek the necessary resources and to overcome institutional inertias. It cannot be doubted that the resources exist in this country and could become available. Institutional inertia has no excuse for existence. The obstacles can perhaps best be surmounted by a re-charting of the program for legal education as a whole, in which its relation to other branches of university education would be developed.⁵⁴ In one way or another, however, an organized attack upon the problem should be launched on an adequate scale, with legal education taking the lead.

Whether all law students should be included in a program of intensive training in handling the matters proposed is a question relating to goals rather than to initial steps. Any projects that might be launched at first would necessarily be limited to selected groups of students. It is doubtful at best, however, whether a selection simply on the basis of academic performance would be wise; for the simple fact is that industrial and political leadership in this country, for which the training in question would be particularly valuable, devolves in many instances upon those whose qualifications are other than intellectual. Election by students may be as good a selective device as any in the early stages but, again, would not necessarily result in conferring the training upon those who will later receive opportunities to make the best use of it. From the standpoint of the purpose to be served, little justification can be found for limiting the proposed program to any selected groups of students. Students might to some extent, however, be assigned according to ability to projects of varying degrees of difficulty.

⁵⁴ See the eloquent concluding plea in BROWN, *op. cit. supra* note 37, at 246-258, for the development of adequate "Plans" for legal education, as perhaps the best means of attracting the vastly enlarged financial provision which the author regards as necessary.

By the same token, it is difficult to discern a basis for concluding that only a limited number of law schools should undertake such a program as is envisaged. There is no way, and probably there should be no way, to limit the opportunities for the more responsible types of professional work to those who have obtained their degrees at particular institutions. Specialization as to subject matter among law schools is possible,⁵⁵ and it may be desirable so long as the training at each school is not designed to create specialists;⁵⁶ but each school's purpose must remain to inculcate methods which have application outside its specialty and to arrive by different paths at an understanding of common subject matter. Unless, therefore, a divided bar such as Reed once envisaged⁵⁷ were to be established, a genuinely adequate legal education should be given at all law schools that are permitted to operate. If the thesis here advanced has validity, these schools would offer work of the type proposed and could exist only at universities possessing adequate facilities and programs. In so far as existing schools could not adapt themselves, they would necessarily be eliminated, and the remainder would be built up to the point of supplying the needed numbers of adequately trained lawyers. Much research and experience will be required to determine how many lawyers are needed; but the duty to build up institutions for training them adequately is clear.

Training of the sort proposed would be largely by way of addition to the law curriculum as now generally envisaged. Basic training in professional techniques and initial study of particular areas of law could scarcely be carried on by this means. It would be necessary, rather, for the students to take the results of previous professional study to the cooperative projects and there develop and apply their knowledge and skills through further study and practice. Properly carried out, a program of such projects would be a principal ingredient in additional content of the law curriculum justifying a fourth year between entry into law school and graduation.⁵⁸ Nor should the addition of a year to the time for which law schools assume primary responsibility constitute an objection, if the work offered in the additional year possesses sufficient substance. Although such a step is not to be prematurely or rashly taken, it is unrealistic to suppose that legal education for the responsibilities of today, even if efficiently conducted, can

⁵⁵ Professor David Riesman, *HANDBOOK* 144-147 (1943).

⁵⁶ Attempts of this sort are being made, of course, at a number of schools that have been established to train students in industrial relations, international affairs, etc.

⁵⁷ *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 416-420 (1921).

⁵⁸ The scheme would fit into the 2-2-2 (or 3-2-2) proposal of Professor Jerome Hall, *supra* note 38, as well as into a four-year law curriculum.

develop adequate professional capacity in most students in three years' time. Given an added year and the resources that should go with it, the law schools in conjunction with the remainder of the universities in which they function may hope to meet the needs of the present in a manner approaching adequacy.