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LEGAL EDUCATION IN THE UNITED STATES:*

A BOOK REVIEW

Roy R. Ray**

THIS is another of the reports prepared for the Survey of the Legal Profession, and it is definitely one of the best. Of the various subjects which were designated by the Survey for study, none is of greater present-day importance than that of legal education. The Survey was indeed fortunate in its choice of Dean Harno to make this particular study. He is a stalwart in legal education. Through his long service as Dean of the University of Illinois College of Law, his term as President of the Association of American Law Schools, and his chairmanship of the Section on Legal Education of the American Bar Association, he has had an unparalleled opportunity to observe legal education from both the viewpoint of the schools and that of the Bar.

The book traces the development of legal education from its English heritage through its formative period in America on down to the present time. In the course of this the author calls attention to the great influence of William Blackstone on legal education in this country. Many older lawyers at the bar remember reading Blackstone's *Commentaries* during their law school days. It is, of course, a recognized legal classic on both sides of the Atlantic. But most lawyers are not aware of the great impact which Sir William Blackstone had on the early period of legal education in America. At the time he began his lectures at Oxford in 1753, the only avenue of preparation for the profession was through self-education and office apprenticeship. His lectures were the first on English law ever given in a university. In his initial

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lecture, *On the Study of Law*, he described the deplorable situation then existing and outlined his conception of a sound system. While he failed in his attempt to establish a system of legal education in England, his message reached America and was later to play a great part in the development of a formal system of legal education here. At first this influence was evident in the establishment of chairs of law in American universities, which was in itself an historic event in American legal education, focusing attention on the need for and benefits of a liberal education for lawyers. An account of these early chairs of law and their occupants is given by the author. He also describes the early American law schools, the first being The Litchfield School, which was an offspring of the office apprenticeship system and had no university affiliation. It was not until 1817 that the first university law school was established at Harvard, and its career was undistinguished until Justice Joseph Story came to the school in 1829. There is no doubt that Story's leadership launched the Harvard Law School on its path to a distinguished position in legal education. On the other hand, his contribution to legal education is more debatable. Under him liberal and legal education were completely divorced, and he, probably more than any other individual except Langdell, was responsible for the narrow legal content the course of instruction in law schools was to take for generations to come.

What the author describes as the most significant event in the evolution of American legal education was the introduction by Christopher Columbus Langdell in 1871 of the case system of instruction. Some 20 pages are devoted to Langdell, his thesis, his method, later developments in the case method and recent appraisals of it by leading teachers. That Langdell and his disciples perfected a system of instruction which, in the hands of an able teacher, is unsurpassed as an educational device, cannot be doubted. But he and they are also responsible in large part for confining legal education in a strait mold which for almost 50 years was to disassociate it from the living world about it. Lang-

dell's thesis was that law was a science and that all available materials of that science were contained in printed books, namely, casebooks containing selected decisions from appellate courts. Thus disregarded were the broad premises for law study conceived by Blackstone and those men in this country who held the original professorships of law. Much controversy rages today about the case method and the extent of its use. Some think it has been virtually supplanted by a combined lecture and hypothetical fact method. At any rate, Langdell would hardly recognize the average book of cases and materials in use today. Inclusion of non-case materials, such as textual statements, statutes, forms, and even non-legal materials, is now a common practice. In the last 20 years there is evident a trend to return to the earlier view of legal education mentioned above.

Approximately one-fifth of the book is devoted to the impact of professional organizations on legal education. The two which have contributed most to the advancement of legal education are, of course, the American Bar Association and the Association of American Law Schools. Here Dean Harno recites some of the great moments of legal education and pays tribute to some of its greatest champions. Such significant developments as the formation of the Section on Legal Education in 1893, the resolutions of the American Bar Association in 1921 establishing the first comprehensive standards for admission to the Bar, the conference of Bar Association delegates in 1922, the publication in 1923 by the Council of the Section on Legal Education of its first list of approved schools, are milestones on the American Bar Association's record of abiding and continuous service to the cause of legal education.

A new and potent instrumentality for advancement of the cause of legal education came into being with the organization of the Association of American Law Schools in 1900 under the sponsorship of the Section on Legal Education. It became entirely inde-

pendent of the American Bar Association in 1914, but for more than 50 years the two have joined forces to improve legal education. The standards of the American Bar Association and the requirements of the Association of American Law Schools have closely paralleled each other. These deal primarily with quantitative measures—so many years of pre-legal study, so many of law study, a specified number and kind of books in a law school library, a minimum number of full-time teachers in each school, etc. In more recent years the Association of American Law Schools requirements have been substantially higher. Although in name and organization the Association of American Law Schools is an association of schools, it functions more like a society of teachers and scholars, and the programs show that a primary concern of this group has been improvement of the quality of the educational programs of the member schools with special reference to teaching and research. In fact, there has been substantial sentiment in recent years in favor of the position that the approval of schools and the enforcement of minimum quantitative standards should be left entirely to the American Bar Association.

Tribute is paid by the author to some of the great figures in the never-ceasing struggle for improvement in legal education, such as Elihu Root, who probably more than any other one man was responsible for the adoption of the standards in 1921. But we learn also of that unsung hero, Carleton Hunt of Louisiana, who as chairman of the American Bar Association's first Committee on Legal Education, lit the spark that kindled the Association's interest in improvement in this field.

To many readers the most interesting part of the book will be the chapter on Criticisms of Modern Legal Education. Today legal education is under heavy attack both from within and without the Bar. Dean Harno sets forth the major complaints and then proceeds to evaluate their validity. One of the most vocal is that the law schools have neglected their responsibilities in the important

field of pre-legal study. It must be admitted that while pre-legal education has been the subject of much discussion by law teachers and study by committees of the Association of American Law Schools, little or no guidance has been offered to the pre-law students or pre-law advisers. The most promising approach to the subject has been the statement of policy on the "Aims and Quality of Pre-Legal Education" adopted by the Association in 1952. This statement rejects the approach of prescribing particular courses, and sets forth the basic skills and insights which it is believed the undergraduate instruction should seek to develop in pre-law students. These are: critical understanding of human institutions and values, the capacity to think, and the ability to express thoughts with clarity and force. This is necessarily indefinite and is entirely unacceptable to those who think the law schools must ultimately prescribe the courses which will normally be best calculated to prepare the student for professional study. On one point, though, there is agreement, *i.e.*, that this is one of the least explored problems in legal education.

Probably the greatest criticism from the profession in general and that which has been the subject of most debate in recent years is the charge that the law schools do not adequately prepare students for the tasks they will have to perform in the practice. Dean Harno breaks the complaints into five more specific charges: "(1) that the programs of instruction, with their emphasis on case study, are time-consuming without commensurate educational returns to the students; (2) that they are lacking in perspective as to scope and implications of the law, and as to the problems the lawyer must solve in the practice; (3) that they fail to provide a synthesis of the law and a synthesis of law and related disciplines; (4) that they neglect training in the practical skills a lawyer must have; and (5) that they fail to inculcate in students an understanding of professional standards and ideals."

Of course, case study is time-consuming, but the criticism is

valid only to the extent that case study and case teaching are used throughout the three years of law study. Its value in the first year of law study cannot be seriously doubted. Today, in most of the good law schools time is not taken up in second- and third-year classes with laborious recital and analysis of each case in the book being used as the basic material for the course.

A criticism of more substantial merit is that the law school programs of today lack breadth and perspective. Only a comparatively small number of law graduates devote themselves to court procedure and the trial of cases. In our complicated economic and social structure the public looks to the legal profession for guidance and leadership, and new talents are constantly demanded of lawyers. The lawyer of today must be a counselor, draftsman, negotiator, and planner. One outstanding illustration of the lack of breadth in the programs is the subject of "legislation" in its broad sense, which has received scant attention from law teachers. It may seem indeed strange that a phase so essential to the education of the modern lawyer as the legislative process should have been almost ignored. But the explanation lies in the emphasis on the case method and the adherence to Langdell's thesis as to the ultimate source of legal education. It should be said, however, that the last two decades have seen substantial improvement in this area, though the surface has hardly been scratched in many law schools.

Another criticism of some substance is that training presently given law students emphasizes primarily the particular rules of law, and ignores the importance of studying law in terms of universals. It is said, and with much truth, that the student gets little, if anything, of legal philosophy and the major intellectual currents which have influenced the growth of the law. Here the major problem is one of coordination and synthesis of pre-legal and legal studies. It may well be that courses such as economics, psychology and philosophy can be studied with greater benefit after

the student has had some of the elementary law courses. Some experimentation in the fusion of relevant legal and non-legal materials in the earlier part of the total six-year period as well as in the last three years must be done before sound judgments can be reached in this area.

Probably the most vocal and persistent attack upon legal education today comes from that segment of the Bar who assert that law schools do not adequately equip their students with the skills of law practice. It must be agreed that there is a gap between what the young attorney learns in school and the skills demanded of him in practice. The problem, however, is, Who is responsible for bridging the gap? To do the job with anything like the thoroughness some lawyers suggest would require an extended period of apprenticeship training. This was the exclusive system of legal education in England and early America. Very few, if any, would suggest a return from our present law school system to apprenticeship exclusively. But there is a serious question as to what the schools can do effectively in this field. Many are now doing more than in the past. We have courses in practice court, legal drafting, brief writing and oral advocacy, legal aid as well as legal writing, in which training in the skills of practice is required. Furthermore, to speak of something with which this reviewer is very familiar, the Southern Methodist University Law School has set up a program of Applied Legal Training, which includes a three-month period of law office internship in the summer between the second and third years, and a series of seminars on legal practice.

This reviewer will not comment at length on the final criticism, namely, that law schools are derelict in their duty to the profession in their failure to teach legal ethics. This criticism is probably the weakest of all. There is serious question as to whether ethics is something which can be taught. If the critics mean that the schools should give formal courses based upon the canons of ethics, experience has demonstrated that such courses are almost

useless. On the other hand, the schools probably could do much more than they are doing toward the development of professional character and a sense of professional responsibility. This, however, is something which cuts across all the law subjects and must be the concern of the entire faculty rather than capsuled into a course of one or two semester-hours.

In a final chapter Dean Harno has attempted what he calls a Present Appraisal of Legal Education. Here he gives the reflective thinking of a number of men who made personal inspections of all the law schools in the United States for the Council of the Section of Legal Education of the American Bar Association. (1) One conclusion of this group was that law school faculties have done too little thinking in terms of the aims and objectives in legal education. While a few schools have subjected their instructional programs to searching analysis, this has been a rare occurrence. A majority have no committee on curriculum, and only a handful have committees on aims and objectives. Surely this indicates a major weakness. (2) Another observation of the inspectors was that the time was overdue for placing more emphasis on the quality criterion as distinguished from quantitative standards. (3) There was common agreement on the proposition that the law schools are inadequately financed and that many of our present troubles stem from this. If legal education is to meet the needs of society for law and order, appropriations for it must be increased manyfold. Budgets today are pathetically below that necessary to secure and hold the type of personnel capable of carrying on top quality programs of teaching and research. Law school finance must achieve some sort of parity with medical school finance. (4) Many of the inspectors made the criticism that classes as conducted in many law schools are too large for educational efficiency. This results from a constant pressure to make legal education cheap. Compared to medical schools law schools have become notorious as mass producers operating on a low-cost basis. (5) One of the most serious problems facing the law schools today is

a curriculum overcrowded with course offerings. For 40 years and more the orthodox period of study has been three years. Most of the courses taught near the beginning of this century still have a place in some form in the curriculum. In the meantime many new and major courses have been introduced covering such fields as administrative law, taxation, labor law and trade regulation. In addition there has been an influx of the so-called cultural courses such as jurisprudence, legal history, law and society, philosophy of law, comparative law and international law. To these must be added the so-called practical courses such as legal writing, draftsmanship, practice court, legal aid, etc. Pouring all this into the traditional three-year mold has resulted in an almost chaotic situation. From the viewpoint of the student who needs a comprehensive program of instruction, the piling up of new courses results only in confusion. While there has been some consolidation, telescoping of courses and regrouping of materials, most of the schools have not come to grips with the problem. Dean Harno suggests three possible solutions: "(1) reorganization of the law curriculum involving drastic measures of consolidation and elimination; (2) a fusion of the pre-legal and legal work involving a more efficient employment of the pre-legal years . . . ; (3) the extension of the period of law study beyond the orthodox three years." It should be mentioned that several schools have taken this latter step.

Most of the book is devoted to a critical appraisal of legal education. But toward the end the author does record some encouraging developments. As he puts it, "there is a substantial measure of activity and ferment in the law schools." Self-criticism among law teachers is more evident than at any time in history. Substantial numbers of teachers have demonstrated a willingness to engage in educational experiments. Some of these experiments have already resulted in new courses and new programs finding a permanent place in the curriculum of a number of schools. These include legal writing courses, legal aid clinics, visual aids and the

seminar as an instrument of instruction. In the latter the shift is from case analysis to problem solution. This experimentation is not only encouraging but holds great promise for the future. In this connection Dean Harno gives well-deserved credit to the *Journal of Legal Education* (founded in 1948 as the official quarterly of the Association of American Law Schools) for the significant part it has played in stimulating experimentation in recent years. This last chapter seems to this reviewer the weakest part of the book. The attempt to present the views of a number of other men on some dozen or more different topics has resulted in a piecemeal and disjointed collection of ideas which leaves the reader somewhat confused. Furthermore, it is something of an anticlimax after the author's fine chapter on Criticisms of Modern Legal Education, in which many of these topics had already been discussed.

I could not close this review without commending Dean Harno for the good job he has done. The law teachers, as well as the practicing Bar, are greatly indebted to the author for this new service he has rendered to our profession. He has presented an unbiased report on legal education, pointing up its weaknesses, its strong points and focusing attention on its main problems. The book deserves to be read by the critics as well as the champions of the present-day law schools, and in fact by all members of the Bar who are interested in the improvement of our profession. Finally, a word of thanks should go to the Bancroft-Whitney Company for its generous assistance and cooperation in making possible the publication of this volume.

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