New Wine In Old Bottles

CURRICULUM REVIEW

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The growth and expansion of the Marshall-Wythe School of Law has brought with it many of the difficulties which confront other law schools throughout the world, not the least of which is how and what to teach. These difficulties arise because the aims, ambitions and backgrounds of the students become more varied as their numbers increase and because there is the desire on behalf of most legal academics to meet these aims and ambitions within the framework of the law school. At the same time it must be noted that within the law teaching profession, there are variations in ideas as to the function of a law school. There are those who see a law school as an institution for the training of people for the practice of law and there are those who believe that the function of the law school is multi-purposed and any curriculum must be designed to meet many requirements. The following takes the second view as given and is only designed to suggest some problems and ideas in an admitted incomplete manner, which I believe arise out of this concept.

If there is to be an analysis or evaluation or projection of any law school curriculum, it is necessary to begin with the initial premise that nothing is sacrosanct; not the three-year law school, not the first-year curriculum, not the course divisions or the casebooks that we, as teachers, know and respect. If a projection for the future is to be meaningful, new and old teachers alike must be prepared to face the fact that what we have been teaching and what we would like to teach may not, in fact, be terribly significant in an ideal scheme of legal education. This means that we must be prepared to spend a considerable amount of time deciding why we teach the courses we do and in the manner we do.

Why do we teach torts, or contracts, or property as separate courses, and why in the first year? Why do we teach consideration in contracts, or **Adams v Lindsell?** At each of these levels of abstraction, we must justify what we are teaching to ourselves, to our colleagues and to our students.

It may turn out that most of what we presently do will merit retention, but if this occurs it will be by coincidence and if any curriculum study is to be worthwhile, we, as teachers, must be prepared to sacrifice some very familiar life patterns.

The fundamental question is: Who are we trying to educate? The substantial changes which have occured at law schools across the country makes the answer to this question almost impossible. We have only the remotest idea of what kinds of jobs our future graduates will hold down during their professional careers. We do know that the change in the composition of this law school will mean that the interests and career plans of the students will be far more diverse than they were twenty years ago. It is our job then, to reassess what we are trying to teach our graduates to be. It is possible at this stage to introduce some categories. There will be the general practitioner who we are training to be able to handle a typical small office with its wide range of typical problems presented by typical individual clients. There will be the specialist practitioner, who will move into a larger firm and spend most of his time drafting wills, creating and dissolving charitable corporations, negotiating labor contracts or transferring real property. There will be the policymaker in business and legislature. There will be the scholars who are interested in the workings of the legal process as a means of solving society's problems and analyzing its structure and development. Lastly (for the purpose of this paper), we are simply training people to be better able to understand events because of their exposure to problems of government and lawmaking in all its forms.

It is the prototype of the type of person we are trying to turn out from law school that must determine the content of the law course which we offer.

I would suggest that no matter into which group an individual student placed himself, there would be some common thread in his legal education. Each student must be given an introduction to the legal process, the various institutions created by society to resolve its disputes, and should also be given training in "thinking like a lawyer." This would include respect for facts, ability to analyze and synthesize cases and an habitual skepticism toward undocumented assertions and generalizations. It is suggested that this can be quite adequately carried out in the

first year of law school and from thereon the paths of our prototypes would diverge, but nevertheless, it must be remembered that the law school is training lawyers. The determination of what makes a lawyer discernibly different from the political scientist will largely dictate the way in which these divergent paths are trodden. It has been suggested that a lawyer possesses a particular attitude toward the handling of facts given to him by others and if we can discover any other attributes which we want to cultivate, we can understand better what it is we want to teach and how we should do it.

WHY THE THREE YEAR LAW SCHOOL?

Almost fifty years ago the American Association of Law Schools wrote the three year law school into 'law' and made it the basis of its system of accreditation. The A.A.L.S. also required that each student must have the equivalent of two years of college prior to his admission into law school. It is worth noting that until well into the 1930's, most law schools were accepting students who had only obtained a high school diploma. In this context the three year law school takes on an entirely different hue. Today, of course, things are vastly different. Students come to law school with four years of college training and many come with advanced academic degrees. The construction of the three year format cannot be justified by the same reasons that existed fifty years ago. If we try to justify the three year program on the basis of the introduction of new fields of law, then new questions become apparent. Why must we teach every law student these recently evolved subjects and, if these subjects are evolving so rapidly, is it realistic to believe that that which we teach now will be of value in five years time? It may be that the present justification for the three year course is purely pragmatic. The third year helps finance the enterprise; if we abandon it we would lose our A.A.L.S. accreditation, and our student bar admission in practically every state would be in jeopardy.

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WHY THE PRESENT FIRST YEAR STRUCTURE?

Langdell believed that the subject matter of our familiar first year curriculum was basic to the science of law. Now, more than seventy-five years later, we have substantially the same curriculum. [It should be noted here that the introduction of the Administrative Law and Legislation course in 1971 at this law school shows a moving away from this philosophy.]

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It is suggested however, that the subject matter is really only the vehicle which carries the purposes of the first year program. During his first year the student should be made familiar with legal institutions — their purposes, methods, limitation and development. It has been long accepted that an intensive consideration of one institution, the judiciary, was preferable to that of a rounded picture of them all — judicial, legislative and executive. The inadequacy of the former is especially true today when more and more law is being created by the legislative and executive-administrative branches of government. The first year should include skill training. Traditionally, the emphasis has been upon the skills of case analysis, but should we not at least try to introduce other lawyer-like skills? We can only justify our exclusive diet of case analysis, if it is indeed the most fundamental, and takes two semester, in all first year courses to complete. This assumption is at best doubtful. Would it not be more economical to use a part of the first year program, maybe two or three courses, for this purpose thus creating time for a concentration in other skills. It is not suggested that the other courses should totally ignore it, but rather de-emphasize it and thus give a more accurate picture of what it really means to "think like a lawyer." Training in lawyer-like skills and acquaintance with different legal institutions can be carried out by selecting from an enormous number of courses. What makes a particular subject matter especially appropriate for inclusion in a first year curriculum? The subject matter is especially appropriate for instruction in a particular skill or institution, (e. g. in civil procedure, the historical emergence of the equity court and equitable remedies.) The sub-

(Continued on Page 12)

Curriculum

(Continued from Page 7)

ject matter is such that it presents certain concepts which are so fundamental that an educated lawyer must have an acquaitntance with them (e.g. proximate cause, reasonable man). The subject matter affords a suitable starting point for more advanced courses in later years. The subject matter is exciting or easy to grasp and acts as a source to an otherwise strange and difficult and sometimes dull bill of fare.

With these facts in mind, various aspects of various courses lose their significance. Can we explain the usual presence in contracts of public reward offers, offers which lapse or are subconsciously revoked or cross in the mail, or the supposed Constable which turns out to be a tenth grader's examination project, on the basis that they provide the student with a better way of learning to "think like a lawyer" than would a dozen other conceivable first year courses. It is quite possible that this approach would result in the first year curriculum looking very little like the way it does at the moment. Some courses which have traditionally been second and third year electives might leap to the fore as being eminently suitable for a first year course. An example of this could be a course in Family Law.