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William L. Prosser

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RANDOM OBSERVATIONS ON LEGAL EDUCATION

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I suppose that on this occasion I represent, in a very modest and unofficial way, the other law schools of this country—or at least the hundred and twenty-odd schools which go to make up the Association of American Law Schools, of which I am an ex-president who is now of purely historical interest. At least I have some claim to represent the other law schools of the State of California; and without any formal commission from them, I feel that I am authorized to convey to the University of Santa Clara their felicitations and good wishes on this happy and auspicious day. And on behalf of all those who are interested in the future of legal education in this State, I may perhaps make free to express the gratitude and appreciation of all of us to Mr. Heafey for his most magnificent gift.

"Give me," said Archimedes long ago, with reference to the principle of leverage, "a place to stand, and I will move the world." This is a very good place to stand that we have here; and the world awaits. It is trite to say that it is not buildings alone that make a good law school. In that classic definition of a university—Mark Hopkins on one end of a log and a student on the other—it was never the log which was the thing of paramount importance. In the great days of the Harvard Law School, it was not Dane and Austin Halls, with their crumbling stones, their sagging floors, and the rats who were reputed to live in their basements and feed on the crumbs of knowledge which fell through the multitudinous crevices, which made the law school great. It was a faculty, and a student body, fiercely devoted to the pursuit of knowledge. It was Ames and Thayer, Williston and Pound, Morgan and Scott, and the rest of the legendary professors, and the students whom they taught.

The early history of legal education is confused and uncertain. A good place to start would seem to be with the Inns of Court—those

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* A.B.; LL.B.; LL.D.; Professor of Law, Hastings College of Law; Dean Emeritus, University of California Law School (Berkeley). Professor Prosser's address was delivered from notes without a manuscript. This is a reconstruction of his remarks pieced together from the collective recollection of several members of his audience. Professor Prosser has read it, and he agrees that it is substantially accurate.

voluntary societies, unchartered, unincorporated and unendowed, which certainly engaged in law teaching at a very early date. The Inns can trace their beginnings to the late thirteenth and early fourteenth centuries. In these ancient "law schools" the period of instruction was often seven or eight years and is said to have reached twelve years in the days of Elizabeth. The Inns reached their peak around 1500.

The first genuine law professor, in the sense in which we know that term, was William Blackstone. He began to read law at Oxford in 1753 and was made Vinerian professor at that institution in 1758. His was the first attempt to systematize the law, and Blackstone's Commentaries are famous, though now largely obsolete.

In colonial days in America law was taught and learned through the apprenticeship system. There is a very famous promissory note which can serve as dramatic evidence of the existence of this system. It reads:

> Phila. May 22, 1782. I promise to pay James Wilson Esq. or order on demand one hundred guineas, his fee for receiving my nephew Bushrod Washinton as a student of law in his office.
>
> G. Washington

In this period books were scarce and those that existed were not very intelligible and did not constitute good teaching tools. The instruction received by the apprentice, therefore, was largely oral. It was only as good as the lawyer who gave it.

It was at this time, also, that universities began to establish chairs of law. Thomas Jefferson set one up at William and Mary University in 1779. In that same year one Isaac Royall made a will leaving money to Harvard College for a professorship of law. He died in 1781, but the position was not filled until 1815, when Chief Justice Isaac Parker of Massachusetts was appointed. The greatest of the early professors was James Kent of Columbia College who wrote an American set of Commentaries.

The first American school devoted exclusively to law teaching was established at Litchfield, Connecticut in 1784 and remained in existence for nearly fifty years to 1833. Two men, Tapping Reeve and James Gould, had set up the school and taught all forty-eight subjects on the curriculum. Of the 903 students who attended the school, 28 became United States Senators, 101 became members of Congress, 34 became State Supreme Court Justices, 14 became Governors of States and 10 Lieutenant Governors, 3 Vice-Presidents of the United States, 3 United States Supreme Court Justices, 6 members of the Cabinet, as well as many who never went on with the law and became prominent clergymen, business men, inventors, editors and authors. Any law school would find this record difficult

to match. It has been suggested, however, that this remarkable record was due to the fact that in Litchfield there was nothing to do but learn law.

New barriers to legal education now presented themselves. The era of Jacksonian democracy arrived and with it the popular view that every man was entitled to practice law without qualifications. Vestiges of this law remain with us today. Usually this philosophy is expressed by pointing out that Abraham Lincoln never went to law school. What most people forget is that practically nobody went to law school then. Lincoln himself, however, felt very strongly that formal training was necessary to learn law properly. After losing a case, he is reported to have said to a friend that the law school people won because they were better prepared. They researched the law and became thoroughly familiar with the facts. The only thing to do was to join them! Lincoln then indicated that he too would study law.

Harvard Law School got under way in 1817. Its real stimulus was the appointment of Joseph Story as Dane Professor. He was a Supreme Court Justice and had written some eight treatises in the law.

By 1855-1856 Harvard Law School was regarded as the leading law school in the country. Parker lectured on bailments, constitutional law and the jurisprudence of the United States, equity, pleading, evidence and practice. Parsons lectured on Blackstone, insurance, bills and notes, and partnership. Washburn lectured on domestic relations, conflict of laws, sales, and real property.

Ames has described the Harvard of that period as "a school without examination for admission or for the degree. A faculty of three professors giving but ten lectures a week to one hundred and fifteen students, of whom fifty-three per cent had no college degree, a curriculum without rational sequence of subjects, and an inadequate and decaying library." This is a description of what was generally regarded as the foremost law school in America. None of the three professors has left any great reputation in legal education or in law generally.

This is a very fragmentary account of the early days of legal education, but it should serve the intended purpose of establishing the framework for the significant development which came next.

The spark which set off legal education, as we know it today, was furnished by Christopher Columbus Langdell, a little-known bookworm of an office lawyer in New York City. He was himself a graduate of the Harvard Law School, well-read and extremely studious. President Eliot of Harvard had met him years before in the

rooms of a friend in the Divinity School and had been impressed by the brilliance of his conversation about law. Eliot made him Dane Professor in 1870 and soon afterwards Dean of the law school.

Langdell introduced the case method of teaching law, and his *Cases on the Law of Contracts,* published in 1870, was the first casebook used in American law schools. The theory of the case method is that the very best possible way to instruct in the law and to acquire a knowledge of the law is by going to the original sources. Langdell thought that all available materials could be found in the cases; that everything that a lawyer needed to know was contained therein. The casebooks then constituted a portable library. The development, expansion and refinement of this system made Harvard Law School great.

The case method means different things to different teachers. It is a springboard to launch a homily, to searching analysis, to going into facts and doctrines, and to ranging over variations of hypotheticals. It is extremely time-consuming and can be justified only if the student learns enough from it to prepare him well for the practice of law. Teaching by the case method is not easy. It demands a teacher of real skill—a versatile, flexible man. It is not a method for the wooden soldier.

The principal weakness of the case system as devised by Langdell is that it tends to divorce law from all other human knowledge. The current trend is to attempt to integrate legal knowledge with all other applicable fields of human knowledge. Lawyers, judges and law teachers now attempt to deal with legal questions in relation to other background knowledge; in relation to science, economics, political theory, psychology, international relations, history—all human knowledge. Law ranges over everything—colloidal chemistry today and territorial history tomorrow, jurisprudence, religion, philosophy —everything! Some follower of Mrs. Malaprop has said, rather indecorously, that a lawyer, like Caesar's wife, must be all things to all men. Few lawyers really measure up to the magnitude of this task.

In this current trend, there is then an invasion of the law schools by other disciplines. Sociology, criminology, psychology, political and governmental theory, economics, many other disciplines, as well as political propaganda and theories of progress, are all cutting into the time formerly devoted exclusively to developing a hard core of professional competence. Obviously this can be carried too far. The present task of legal education is to strike a balance for the future between the isolation of Langdell's case system and the integration of all human knowledge into instruction for the practice of the profession.