Law Schools and the Universities

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I suppose it is true that in an important sense law schools today are stronger than they ever have been. Students are becoming plentiful. A sufficient number of them are attractive, well balanced and marketable. Three years of ordinary growth and loss of sleep will make them look the way law offices think entering law clerks should look. In some instances their geographical distribution is likely to be such as to give them good points in some employer's eyes. He likes home grown products if they are the right kind. He also likes to pull in the best from far away places. On top of that, the lad by then may have been a law clerk to a Supreme Court justice. Many of the law students have high aptitude scores, a sufficient number to enable the quality law schools to vie with each other on their average and minimum scores, in a continuous effort to convince themselves that their students are really good. The drive, imagination and tolerance of the students are wonderful. They enable the students to relish the stimulating atmosphere of a closed society, which at times partakes of the sadistic flavor of an intellectual boot camp, and at other times is a grand theatrical performance in which every law professor is a Supreme Court Justice—U.S.—that is. When the students come, they don't read or write very well. This enables law school deans to make courageous speeches on this controversial topic. It also gives the law schools something to do, for the training which is offered is largely a training in reading and writing. Despite this training, complaints concerning the failure of entering students to read or write well evince a sympathetic response from law firms, for they know that law graduates are similarly incapacitated. Of course, as night follows day, a certain number of law students will make the Law Review. From this group, future law professors will be picked. They become full professors very fast, because they are very bright, have good aptitude scores, make good grades, and, at the very least, were on the Law Review.

I assume this partial and unbalanced description will be taken for the loving caricature which it is intended to be. It is not easy to describe the modern university law school—partly prep school, partly graduate school—in part directed toward the intellectual virtues and the attributes of scholarship, and yet in main thrust the producer of technicians for a learned (and sometimes demi-learned) profession containing within itself many of the same contradictions and conflicts. I recall a talk, probably given for proselytizing purposes, by a most eminent law teacher in which he referred in a matter of fact way to the "pecking order" as he described it, among the law schools of the Ivy League. Since I was dean of one of the greatest law schools in the world in one of the greatest universities in the world, and that university did not even play intercollegiate football, I was at a momentary loss to understand what the Ivy League business had to do with the law or law schools. I was further puzzled because I had forgotten that his particular urban university was even in the Ivy League. But then with the ability to reason given to me through legal training, I realized this was the whole point. The finishing school or prep school attributes are still with us. But the result is not bad. The esprit and spirit of the modern law school are the wonder of many graduate departments and other professional schools. Indeed recognizing the slowness with which ed-
ucation proceeds in the United States, we have created a liberal arts graduate program and have given to it a generalist professional thrust to justify an across the board attention to precision and structure within a common subject matter. We have substituted the law for the classics. We are for the most part overwhelmingly interested in teaching, which to some extent sets us apart from other graduate areas. We are giving the modern counterpart of a classical education to many who will be the leaders of our country as well as of the Bar. The result is a powerful intellectual community in which a continuous dialogue is not only possible because of the sameness of subject, but is insisted upon both because of the method of instruction and the type of research which is expected and honored. The subject matter may be that of the social sciences, but we are the inheritors of the humanistic tradition. We create structures and admire them. We initiate our students into appreciation and make artists of the best of them. We write book or court opinion reviews with enthusiasm or acrid distemper which the layman misunderstands as somehow being concerned with the practical effects for good or bad of particular decisions. Poor layman. He does not understand we are artists, not social planners.

If this description has any considerable element of truth in it, I think we must agree that the modern university law school (and I realize of course that not all modern law schools are in universities) could not so well exist outside of a university environment. At the very least the University has placed a protective cloak around the school. I think the result which has been achieved is perhaps largely unintended, or at least has not been directly faced. The motor power of course is still the thrust for the training in a profession. The Bar still regards the modern law school as the successor not only in time but in spirit to the law office traineeship. The law faculties still worry most directly about the actual problems which graduates may face. The focus of law school discussions may be good, hard, tough actual problems, or problems thought to be so, no matter how far from reality they really are. But in truth this is a liberal arts education in structured reasoning. So far as subject matter is concerned, it could be cut down to two years, or, if this were really desired, it could be expanded to cover much more of the art of practice. Perhaps taking seriously the mission of the law school to train the elite citizen to participate in government within a democracy—including the governmental function of private practice, the education should—indeed must—expand to draw into itself the new knowledge of the social sciences. But change is difficult and our skepticism, which is our stock in trade anyway, is very great. We are the victims of our own success. We have a protected oasis within the University community, and we are doing just fine. Moreover I should say at once that the law school contribution to a university through the school’s adherence to the liberal arts tradition at the graduate level—a tradition of talk and skepticism and appreciation, and its strong tradition of interest and instruction and concern for students—is very great. One can have a great university without a law school, because it has been done, but it must be much more difficult.

The modern university, mirroring many of the conditions of modern life, has changed a great deal in the last quarter century. In the first place, it is apt to be very large not only in numbers of students and of faculty, but in the sheer number of transactions, financial or otherwise, which take place. Second, there has been an enormous change in the research environment of many universities, and to some extent what is meant by research. The large machines needed for important scientific research are expensive. A considerable portion of the budget of a university, between one third and one fourth in some instances, may reflect governmental support for research largely in the biological and physical sciences, and to some extent in the more behavioral aspects of the social sciences. Individual faculty members become entrepreneurs for financial support and in one way or another become accountable for the time which they spend upon it. The weight of the jobs to be done and the evolving structure of the modern university encourage the pulling away of faculty groups into more or less separate entities. And this comes at a time when a whole view of the university is desperately needed.

The values represented in a university are still taken for granted. Among these are the pursuit of knowledge for the purpose of understanding; the acceptance of the power of the free spirit of inquiry. But the modern condition appraises the productivity of the institution in terms of the numbers of students handled and the research which counts. This is not a conflict between the scientific and the humanistic spirit, as has been said, but whether either will survive in strength the condition which has made possible the much needed support of education and research in our day. That condition is the acceptance of the importance of education and research because of the material gains they make possible and because of their impact upon security. The inner spirit and the cultural values which provide the setting and the reason are not forgotten, but neither are they much loved for their own sake. Perhaps they never are, and yet they are all important.

In this setting the modern law school within a university community finds its position considerably altered. The law school as a graduate area is no longer particularly unique by virtue of its post undergraduate status. There are many graduate areas, and graduate work is the assumed objective of a large proportion of undergraduate students. A recent study showed 26 per cent of the students in some large state schools and up to 65 per cent and 72 per cent in other selected colleges intending to go
on to do graduate or professional study. Recent studies have been interpreted also, and I don’t believe them, to suggest that Ph.D. and medical students are even brighter than law students. But what this says, and we all know it, is that both some of the uniqueness of the law school by virtue of its post graduate study and the uniqueness of the bar itself are diminishing. Lawyers after all were first important—and this was a long time ago—because they could read and write, not in the way law schools deans now say they should, but barely. Now many people can read and write in the same way. Then they were unique because they were the undoubted leaders in the community. They are still among the leaders, but there are many professions which in some sense have taken over. Business itself has become a profession and is gaining strong professional and well-supported schools. The lawyer now finds himself advising clients in industry who have had more schooling than he has had and who have been back for more high level refresher courses than are available in the law school world. Law schools are not unique either to the extent that through their Association or otherwise—they demand special recognition of their separatism, as, for example, on such an important matter that the law library be autonomous, whatever that means.

Every area of the University is apt to demand the same kind of recognition in the flurry of centrifugal forces which have overtaken the modern institution of learning. What may be unique is that the law schools have relatively less financial means to go it alone than some of the other areas. Law schools do not get large federal grants, and the day when law schools could operate as large tuition receiving institutions is probably vanishing. Even the competition of the Bar may not be the help to law school faculty salaries in that unique sense which may have been assumed. There is a lot of competition for physicists, mathematicians, economists, and, perhaps because of the speeches of law school deans, even English professors. I fear I am now distorting what should be the merit of the inner spirit and cultural values with somewhat crass material considerations. But if universities are to be divided up for the benefit of those areas which bring the most money or have the greatest political power, I doubt the law schools will fare very well.

These thoughts are not a new found cloak to protect a professor of law on leave as a central administrator. I got them, mistakenly or otherwise, as a law school dean. Indeed I was summoned along with some of my colleagues to appear before the Legal Education Section of the American Bar Association which has some intimate connections with your organization, to show cause, as it were, why our school should not be punished because our law library, while in fact quite separate, was part of the University system, and therefore not autonomous, and because of our recalcitrance in observing a university rule that we could not publish the separate law school faculty salary schedules. The faculty of which I was a member took the position it did because I think we realized that in the long run the strength of law schools would be greater to the extent they were part of the universities, and that separatist pressures upon universities weaken these institutions. I realize of course the public spirit and, to some extent, the provocations which have induced such separatist moves. But I suspect that at least now, or if not now, soon, the greater glory and the greater service is all the other way, and lawyers who so frequently are the guardians of the resources of our universities as well as of our law schools should be the first to recognize this.

Just as lawyers conceive of themselves as generalists and frequently are, so law professors move naturally to this same role within the University community. They come armed with a discipline and a structure of ideas covering a vast area of human knowledge and related to immediate issues of social policy. It is of course true that law, perhaps in an effort to establish itself as scientific, has often tended to make policy issues a matter of value judgments to be decided by political processes and upon which much cannot be said in any disciplined way. But the value judgments then enter into the argument anyway, even though perhaps illicitly, and the important thing is that the dialogue includes them. One might feel a little more comfortable about the role of the law schools in directing inquiry to social problems before they erupt into crises, if, for example, on such matters as reapportionment we had been more concerned with the problem of urban and rural representation prior to the recent decisions, and were not so frequently satisfied to be only critics of the Court. Our law schools are court-tied to a considerable extent. Too much so undoubtedly. And we are talking court law, when our colleagues within the University community are mistakenly grateful to us for discussing the underlying issues. They do not realize we are only talking law in a most narrow sense and of course we aren’t. This suggests that somewhere within the University structure, and probably not the mission of only one school in particular, a continuing and structured dialogue ought to be fostered on important policy issues. Much of this role, indirectly sometimes and frequently directly, is performed by the law schools, and it is a magnificent and unique contribution. Law schools also have the opportunity, and sometimes they take it, to examine for law the consequences of apparent new knowledge and new techniques. One example is the research today which purports to show the overwhelming and perhaps defeating influence of early childhood environment upon later adolescence and the adult years. How should our legal institutions fashioned for the protection of the family, and also to protect the community, respond to these facts, if they are facts in a society which has mass delinquency and cultural deprivation? It is not I think sufficient for us to discuss only procedure and to leave the substance to
some unknown other discipline to pick up. A dialogue of values—in addition to our humanistic appreciation of our artistic creations of logic—is in fact within our tradition. It is one of the things which makes us uniquely valuable to the university community.

As institutions the law schools and universities confront each other with their own way of doing things. I suspect each could learn with profit from the other. The law schools offer an example of a community within a faculty, and including the students—a community unfortunately increasingly rare in the large amorphous university where remoteness and separatism has become the atmosphere felt by all. The university on the other hand increasingly backs the individual faculty member to help him go where his research runs, from one discipline to another, if necessary, and without as many confining notions of what is a priori significant or achievable. The very sense of community which law schools have—and I hesitate to say this but I think it is true—have to some extent dampened the interest in new experiments and new directions by individual faculty on their own, backed up by the kind of research support which in one way or another is made available in other areas. And this indeed is strange with a subject as complicated and varied as law is, where the interdisciplinary work for one corner may be quite irrelevant in its lesson for work in another. I don't suppose it is significant in this respect that this association of law school professors is called an association of law schools. I should like to think that is a trick to compel the law schools to pay what otherwise would be our dues; yet the symbolism has some importance. Perhaps we should give less attention to what law schools do and give greater encouragement to law professors to do as they please. I realize, of course, this is often done but still the results from a little bit more might be surprising.

When I was a law school dean I had to say, or so I thought, that law and law schools were of the greatest importance to the larger community and to the universities of which they are a part. Now that I am in a sense free, I find that what I said was true. I had not fully realized, however, how intertwined the roles of law school and university were, nor had I appreciated that so much of the humanistic tradition is kept alive in the professional course of liberal arts—which is the law. And that is the sense of values, which while so frequently formally eschewed, helps give the law schools their distinction. It is good to hope that the values and ways of life of law schools and universities will gain from each other.

The Honorable Ramsey Clark, JD'51, Deputy Attorney General of the United States, speaking informally with law students in the Green Lounge.