Every university law school which takes itself seriously has become during the last twenty years a self-conscious institution troubled about its aims and methods. During the course of the inventory which it has taken of itself, it has discovered that it is still the possessor of a great method of legal instruction which it inherited—namely, the case method—that it is the recipient of much and sometimes contradictory criticism from the bar and from the educational world, and that it has a host of problems which it must try to solve.

The conflicting criticism of law schools—that they are either too vocational or too theoretical—has served to make important the somewhat unreal question of whether university law schools exist to train lawyers or to give training in the science of the law. A statement of the supposed conflict in the language of almost fifty years ago would be ask whether law schools exist to give “adequate preparation for the practice of law as a profession” or rather “to cultivate and encourage the scientific study of systematic and comparative jurisprudence, legal history, and principles of legislation.” This language is taken from the first announcement of the University of Chicago Law School issued in the year 1902. The faculty of that school at that time included Dean Joseph Beale, Professor Ernst Freund, Professor Horace Tenney, Professor James Parker Hall, and Judge Julian Mack. The answer which they gave to the supposed conflict was that both of these aims are proper objectives of a university law school.

Surely the correctness of this answer has not changed in the course of the years. No law school has any right to be in operation if it is not interested in and dedicated to the training of lawyers. But law is a learned profession. Good vocationalism requires that preparation for law be accomplished in institutions of learning and that the learning must be broadly conceived.

When the objective of a law school is stated to be the preparation of lawyers for the practice of law and also to provide research and study in the science of law, certain deficiencies are at once apparent in the method of instruction. The predominant method of instruction in university law schools today is the case method originally introduced in its popular form by Langdell at Harvard in 1871. The method has many virtues. It is an instrument which can give training in precision unequalled in the social sciences. It combines the development of general theory with the application to the specific case. When well done, it demands the active participation of the student in an enterprise which is unyielding in its requirement of clarity of thought. The case method, as Holmes stated, put body on the principles which otherwise would be nothing more than a “throng of glittering generalities, like a swarm of little bodiless cherubs fluttering at the top of one of Corregio’s pictures.”

But an understanding of law and
the practice of law require more than the reading of cases. There are at least three important weaknesses in the case method. First, the case system is clearly inadequate as a method of giving training in legal writing, draftsmanship, and trial practice. Second, the case method is insufficient for adequate training in techniques which are an important part of the modern lawyer's equipment in some fields. For example, the case method is not an adequate device for the teaching of accounting. It provides the examples but does not provide the written material necessary for a development of the economic theories which are an indispensable part of the lawyer's equipment for the handling of such subject matter as trade regulation cases. Third, the case method does not require a reading of the classics of law other than those that happen to be cases. Indeed, the preceptorial or apprenticeship method of instruction often forced the student to read more of the legal classics than is now required. The law must be seen not only intensively as through a particular case but in general, and this was the contribution of Blackstone, Story, and Kent, even though no one would now propose that their textbooks replace the case method. The case method puts body upon the principles, but, standing alone, it does not sufficiently show the purpose and effect of legal institutions or the values of our own legal order so important in a world in which those values are under constant attack.

Inasmuch as the case method of instruction is not only the predominant method of instruction in the modern university law school but almost the only method, it seems clear that some of the criticism which law schools have received from the bar and from educators must be accepted as correct. But the law schools have a defense. The excellence of the case method is such that it is right and proper that law schools should have been slow to incorporate into the curriculum new methods or new subject matter risking deterioration of quality in favor of innovation. Law schools are intensely concerned with high standards in instruction and high standards in learning. We know how to work the case method. We are not so sure we know how to work anything else as well.

There are real difficulties which must be met, and over a fifty-year period they have not been solved. Law schools are sometimes unfavorably compared to medical schools. But, if the analogy be a fair one, then it must be pointed out that law schools do not have cases on which to operate. They do not have the money or the authority to create an actual police court. No court has provision for a glassed-off area where law students under the guidance of a trained instructor can watch and receive comments upon the operation going on below. In this area, following the analogy, the problem is not to get a trained doctor to lecture to the students on how he operates; it is really to provide some way for the students to take part in something at least similar to an operation. Or, following the analogy to another area, in contrast to the vast sums of money provided for medical research, it is almost correct to say that no money whatsoever is provided for research in the law schools.

But even if we do not have the solution in all cases, and perhaps though there may be no solution, it is incumbent on law schools to recognize their problems and to try to provide some answers for them. Let me speak of four of them.

First, law schools have been grossly deficient with respect to training in legal writing and draftsmanship. The best
1977-78

Antonin Scalia joins the faculty.

Elements of the Law returns to the first year curriculum. The Law School establishes a joint degree program with the Dept. of Economics.

The Law School Film Society is established.

The Law School marks its 75th anniversary with two days of celebrations, October 1-2.

The Lee and Brenna Freeman Professorship and the Harry N. Wyatt Professorship are established.

1978-79

Frank H. Easterbrook '73 joins the faculty.

The first Ann Watson Barber Outstanding Service Award for students, for improving the quality of life at the Law School, is awarded.

The first issue of Crime and Justice appears.

The Edward H. Levi Distinguished Service Professorship is established.

Professor Philip Kurland publishes Watergate and the Constitution.

1979-80

Gerhard Casper is appointed Dean.

The Phoenix, the student newspaper, makes its first appearance.

The annual Fund for the Law School reaches $500,000.

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Law students receive training in writing for the law reviews. Most law students probably have the opportunity of writing one brief in a moot-court case. Beyond that, and occasional course papers, the only additional writing a law student is required to engage in is the final examination. The deficiency in preparation, however, is greater than this makes it appear. The law student's knowledge has come to him as a result of the examination of selected cases grouped around the theoretical framework of a particular subject matter. A typical law student has never been forced to cut across subject matters, as one would be required to do in drafting the documents needed for one business transaction. Some members of the bar may recall their own sense of difficulty when confronted for the first time with a problem such as drafting the papers for a co-operative housing project wherein it was necessary to keep in mind matters of property law, taxation, business law, and credit devices.

Probably the principal reason why law schools have not given such training is financial. Instruction in legal writing and in draftsmanship requires individual attention for each student. It is not enough to set the problem and then let the student go to work. Someone must read this product with a critical eye, point out the weaknesses, and require the draft to be redone. Learning comes from the rewriting. Instruction in writing and draftsmanship when so accomplished equals the precision of the case method, but it is far more costly.

The University of Chicago Law School, in an endeavor to remedy this deficiency, initiated in 1937, and has since developed, its tutorial system. Under the tutorial system the students are given problems somewhat similar to those which might be met in practice. The students are then required to conduct research on their own and to set forth their findings in a legal memorandum. The tutor goes over each memorandum and points out its weaknesses, and a new draft must then be submitted. This new draft is again reviewed by the
prepare a case for trial. He still has ahead of him the delightful experience of not being able to find the right document at the crucial moment because he failed to make a cross-index. He will learn by doing once he is in the practice. And he undoubtedly will then learn techniques of practice better than he would in the law school.

Law schools do realize that in a real sense they do not train lawyers; rather they train students who, after they have engaged in practice, will become lawyers. It is a matter of continuing self-education. Law offices do carry on and control a kind of apprenticeship or internship training in which the education is continued. But it must be admitted that, while this training is often superbly given, sometimes it is not. A young law graduate may spend his early years in a large office writing legal memoranda and perhaps drafting, and while he no doubt will be told that the test of his work is whether it stands up in court, this may be an experience which, in the early years at least, he will not have. If it is important that young lawyers be well rounded, then the problem of completion of legal education to cover matters of trial practice still remains an area where work can be done. Perhaps this is not a matter for the law schools, it surely is not a matter for the law schools alone.

1980-81 Douglas G. Baird and Joseph Isenbergh join the faculty; Judith M. Wright is appointed Law Librarian. The William B. Graham Distinguished Service Professorship and the Russell Baker Scholarship Fund are established.

1981-82 Cass R. Sunstein and Diane P. Wood join the faculty. The Legal History Program is established. The Mandel Clinic wins a landmark decision in Logan v. Zimmerman Brush before the U.S. Supreme Court. The Chicago Law Foundation is established to raise funds to support public service activities by students. The Russell Baker Scholars Fund is founded.

1982-83 Mary E. Becker '80 and Richard H. Helmholz join the faculty. The Federalist Society is established. The Harry N. Wyatt Scholarship is established. Seventy-five percent of the students now receive financial aid. A Capital Campaign is launched.
1983-84  Geoffrey P. Miller joins the faculty.
The International and Comparative Law Society is established.
Students perform the first Law School Musical, "Lawyers in Love," February 17.
The Ruth Wyatt Rosenson Professorship and the Edith Louenstein Scholarship are established.
Professor Hans Zeisel publishes The Limits of Law Enforcement.

1984-85  Albert W. Alschuler, Daniel R. Fischel '77, and Michael W. McConnell '79 join the faculty.
Tuition exceeds $10,000.
The University of Chicago Legal Forum begins publication.
Groundbreaking for the library extension takes place Saturday, May 4.
The Gay/Lesbian Law Students Association is founded.
The Kirkland & Ellis Professorship and the Frank Greenberg Dean's Discretionary Fund are established.

1985-86  David A. Strauss and Paul M. Bator join the faculty.
The Frank and Bernice J. Greenberg Professorship, the Norton Clapp Fund, the Frank and Bernice J. Greenberg Scholarship Fund, and the Maurice and Muriel Fulton Lectureship are established.

1986-87  Stephen J. Schulhofer and Alan O. Sykes join the faculty.
The Progressive Law Students Association is established.

Progress in this area will require the special collaboration of the bar. I hope we may have this collaboration.

The third deficiency relates to the failure to provide training in certain techniques which over the last fifty years have become part of the modern lawyer's equipment. The case method was evolved in the period directly after the Civil War—a period of great industrial development but before the growth of the modern corporation, the holding company, the labor union, and the regulatory acts and commissions. In many areas the practice of law has changed completely since that time. Lawyers have recognized the change. It was perhaps first recognized in the constitutional law field with the Brandeis brief. But today it is matter of private law as well. In the 1920's, when Chicago lawyers litigated the legality of certain trade association practices, they presented the Supreme Court of the United States with a brief replete with economic data and a full volume of economic theory. When the United States Steel Corporation appeared before the Temporary National Economic Committee, its lawyers employed economists and statisticians to present an economic view of the operations of the company. Today the balance sheet and economic theory have become exceedingly important in some areas of the law, as, for example, corporations, taxation, labor law, and trade regulations. And it can no longer be said that this is true only for the large and exceptional case. Today's law student has a right to ask that he receive sufficient training to equip him to handle the evidence and theories used by law-

The women's intramural football champions, 1984

The women's intramural football champions, 1984
this I mean that legal theory does not exist in isolation. It describes historic institutions which have purposes to serve and which are to be seen as part of the structure of modern society. An understanding and evaluation of these institutions must be a central purpose of legal education. It is not enough to teach economics and accounting as techniques used by some lawyers in some fields of law. An ability to use accounting in handling a tax case, or in determining when dividends may be paid, or in evaluating a price differential under the Robinson-Patman Act is only part of the story. The art of a lawyer requires much more. Ultimately the lawyer must advise on matters of policy. He must be able to translate the issues of the present into the probable issues of the future. He must be able to cut through the clichés of his own time and to understand the basic forces which may bring about changes. And since the profession itself can exert a powerful influence on the course of events, it is important that the individual lawyer be assisted to gain for himself a philosophy of law in which legal institutions are understood in terms of the interests which they protect.

A lawyer ought to have a philosophy about civil liberties. He ought to have a philosophy about property rights, which is to say that he must have some understanding of economic and political theory. An institution of learning ought to assume some responsibility for helping him educate himself in these areas. The areas are of course controversial, but they are important, and they should not be avoided. What is required today is a restatement of law in the various fields, not in terms of legal doctrine alone, but in terms of the basic principles which the institutions of law exemplify. No one would doubt that the laws of conveyancing originally reflected the principles of a feudal system. The modern institution of law must be similarly understood and evaluated. The law schools have not been equipped to do this.

The legal philosophy of instrumentality has dominated the law schools for a considerable period of time. Law is viewed as an instrument to achieve ends which are given. Law is an argumentative technique to be used as the fashion of the moment requires. Where public policy enters in, then it is left to the nonlawyer, the psychiatrist, the criminologist, the economist, or the social worker, to state the desired end. The lawyer is regarded as the technician; the substance is left to someone else.

But in actual fact the lawyer has not been so demoted in our society, and to so demote the lawyer would be quite contrary to the whole tradition of the law. It was the common law, the work of the lawyers, which held society together as a kind of constitutional law. In our own day changes in the field of criminology, or public regulation of business, or in the field of international institutions, ought to be measured against the concepts, purposes, and operations of our own legal system. But this cannot be done unless the underlying theories of our own institutions have been re-examined and restated. One place where this should be done is in the universities, and the place in the universities for this is the law school.

This recitation of deficiencies should not serve to detract from the virtues of the modern university law school. These are mainly the virtues of the case method: superb training in legal principles and in legal reasoning, related so far as possible, to the actualities of our own day. In some instances in addition—and the work of Professor Crosskey at Chicago is an example—there has been truly monumental work into the historical background of legal institutions.

But something more is required. At Chicago we propose to bring back to the Law School each year a number of lawyers who have been in practice, to undertake for a year or two special studies in various fields of the law which are either neglected or suffer from an inadequate combination of scholarship and experience. That hodgepodge of legislation, the Robinson-Patman Act, deserves thoroughgoing study both in terms of legal and economic theory and in terms of its practical application. Law enforcement and criminology surely need such attention. More broadly, gov-

The Capital Campaign raises a total of $25 million and the Fund for the Law School tops $1 million.
The D’Angelo Law Library and the Benjamin Z. Gould Administration Building are dedicated Friday, June 12.
Professor David Carrie publishes The Constitution in the Supreme Court: The First Hundred Years, Professor Richard Epstein publishes Takings: Private Property and the Power of Eminent Domain.
The Law Review and Legal Forum publish A Manual of Legal Citation.
The Max Rheinstein Visiting Professorship is established.
The Hormel Public Service Program is established.

1987-88  Geoffrey Stone is appointed Dean; Daniel N. Shaviro joins the faculty.
The Program in Law and Government is established.
The New Graduate Residence Hall replaces Burton-Judson Courts as Law School housing.
The first Midway Dinner for second-year students is held.

1988-89  Thomas R. Mulroy Awards for Excellence in Appellate Advocacy and the Ruth Wyatt Rosenson Scholarship Fund are established.
The student phonathon is established.
1989-90

Stephen T. Holmes joins the faculty.
New courses are taught in American Foreign Relations Law and Comparative Japanese and U.S. Business Law.
The Health Care Law Society and Law Students against Homelessness are established.
The D'Angelo Law Library exceeds 500,000 volumes.
The first student talent show is held.
The women's intramural football team wins the University championship for the fourth year in a row.

1990-91

Clinical Professor titles are established. Randolph Stone is appointed Director of the Mendel Legal Aid Clinic.
Twenty-eight LL.M. degrees are awarded—the largest number in Law School history.
Tuition exceeds $15,000.
The Fund for the Law School reaches $1.5 million for the first time.
The Center for the Study of Constitutional and Legal Change in Eastern Europe is established.
The Hon. Frank Easterbrook and Professor Daniel Fischel publish The Economic Structure of Corporate Law.
Professor Joseph Isenbergh publishes International Taxation: U.S. Taxation of Foreign Taxpayers and Foreign Income (2 vol.).
Professor Cass Sunstein publishes After the Rights Revolution: Reconceiving the Regulatory State.

1991-92

The Law School celebrates the University's centennial.

Graduation 1990

Embracement regulation of business and the philosophy of law and international law ought to be studied intensively in view of the special problems of our times. There is no reason why the kind of study suggested here, which already has its counterpart in the special research programs in the medical schools, cannot be effective. And because such work is important not only to law schools but to society, we are hopeful that funds can be found which to pay lawyers who have been in practice to come back to the universities and to engage in such cooperative ventures.

While law schools have been troubled about their aims and methods, and perhaps unduly worried about their shortcomings, they have been always confident of the importance of the work which is their calling. Law schools are important because lawyers are important. A community is to be judged by its standard of justice and its use of the standard. The standard to a considerable extent is made, and in any event is applied and made real, by the lawyers. Their work habits, their standards of morality, and their ability to see institutions in perspective and yet to handle the immediate problem with precision and care are of extreme importance to the workings of a democratic society. And law schools are important also because an understanding of law is a necessity in a democratic state. Not only must each generation restate for itself the values exemplified in the legal order, but this is an era in which a failure to understand and to restate the science of law may leave a community vulnerable in the face of an attack on the nature of law itself. So the perspective, knowledge, and judgment which the study of law can give have a special value in this time of stress.

The purpose of a university law school is to train these lawyers and to promote and increase the understanding of our own legal institutions. In this work it asks for the understanding, collaboration, and support of the bar.