For “A Clear Comprehension” of the Law

Gerhard Casper

This month the University of Chicago will mount a capital campaign designed to increase the school’s endowment and to finance the first physical expansion of the Law School complex in nearly three decades. This seems a fitting moment to review for our alumni and friends the traditions on which the school was founded, the scope of its present teaching and research programs, and the academic and financial challenges it must prepare to meet in future.

Our Tradition

The Law School of the University of Chicago opened its doors eighty-two years ago this month. University President William Rainey Harper “borrowed” Joseph Beale from Harvard Law School to serve temporarily as dean. Two years later, Harper enticed the thirty-one year old James Parker Hall to leave Stanford and succeed Beale as the first permanent dean. Under the leadership of Harper and Hall, the faculty, which included Ernst Freund, Floyd Mechem and Harry Bigelow, created a new kind of Law School, professional in its purpose but with a broader outlook than was prevalent in the leading American law schools.

Of the forty-nine students enrolled in the fall quarter of 1902, (two of whom were women), thirty-seven came from the University of Chicago and twelve from eleven other colleges. Of this first class, twenty-eight students were residents of Illinois and the rest came from eleven other states and Canada. Only five years later, enrollment was up to 265, more than 100 colleges were represented, and less than one-third of the students came from the University of Chicago.

From its inception, the Law School was motivated by Harper’s view that education in law implies a scientific knowledge of law and of legal and juristic methods. These are the crystallization of ages of human progress. They cannot be understood in their entirety without a clear comprehension of the historic forces of which they are the product, and of the social environment with which they are in living contact. A scientific study of law involves the related sciences of history, economics, philosophy—the whole field of man as a social being.

The concept of the Law School which emerged over the years is still true to the dominant meaning and structure Harper created.

Throughout its history, the Law School has aspired to be a center of scholarly activity. Even a partial list of former faculty can serve as a history of innovative and scholarly achievement in the legal profession of the twentieth century. They include Mortimer Adler, Harry Bigelow, George Bogert, Ronald Coase, Walter Wheeler Cook, William Crosskey, Brainerd Currie, Kenneth Culp Davis, Aaron Director, Allison Dunham, Ernst Freund, Grant Gilmore, Charles Gregory, James Parker Hall, Harry Kalven, Stanley Kaplan, Wilber Katz, Friedrich Kessler, Karl Llewellyn, Floyd Mechem, Soia Mentschikoff, Dallin Oaks, Richard Posner, Ernst Puttkammer, Max Rheinstein, Kenneth Sears, Malcolm Sharp, Henry Simons, Roscoe Steffens, Sheldon Telft and Hans Zeisel, all indicative of the quality of teaching, then and now.

During the school’s celebration of its seventy-fifth anniversary, Edward Levi, newly returned to the Law School from his service as attorney general of the United States, observed: “As with a constitution, the original meaning [of the school] is important, but so are the subsequent readings.” Levi went on to discuss the New Plan for the Law School, developed in the late thirties.

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During the presidency of Robert Hutchins:

"The new plan for the Law School on which Wilber Katz and Malcolm Sharp worked so hard in the thirties, and which helped to spawn most of the developments in legal education since that date, took considerable time. It was that new plan which expanded the horizons of the School to include such radical subjects as economics and accounting. But it did not stop there. It included sociology, criminology, and comparative law. It thought legal history was important. It introduced the tutorial system which, when another law school adopted it, was considered invented. It emphasized jurisprudence and ethics.

Often in the face of powerful countrends, the school has insisted upon the concept of the legal profession as a learned profession. Past deans James Parker Hall, Harry Bigelow, Wilber Katz, Edward Levi, Phil Neal and Norval Morris have all been committed to this understanding of the school's mission.

While the Law School was initially dedicated to preparing students for the practice of law "in any jurisdiction in which the common law prevails," its development has been less parochial than this goal suggests. Beginning with Ernst Freund, its faculty has always included scholars trained in foreign legal systems. Due largely to the leadership of Max Rheinstein, the Law School counts several alumni in approximately forty foreign countries who have distinguished themselves as lawyers, professors, government servants, and judges.

Our Present Programs

The Law School today seeks to combine a rigorous professional emphasis with the study of law as a social phenomenon. The program for the J.D. begins with a common core of required courses for all students in the first year, covering contracts, torts, property, civil procedure, criminal law, and Elements of the Law. These courses emphasize training in legal reasoning, research techniques, and writing legal documents, and they introduce the art of appellate advocacy. Students meet in small sections for legal writing work under the supervision of the six Bigelow teaching fellows. The first-year program also includes an elective course to be chosen from among six courses on such topics as Economic Analysis of Law, History of American Legal Thought, and the Criminal Justice System.

After the first year, all courses are elective with the exception of one course on The Legal Profession which students must take to meet requirements of state bar examiners. All students take courses which provide them with a strong foundation in the traditional subject areas, and in addition most engage in research seminars and independent study.

Students leave the University of Chicago Law School superbly prepared to assume their place in the legal profession. Clerking for a judge prior to entering the practice of law has become increasingly common among University of Chicago students, and almost twenty percent of the class of 1984 are pursuing judicial clerkships during the 1984-85 term.

Prior to graduation, ninety-eight percent of the class of 1984 obtained legal employment, most through the fall interviewing process provided by the Law School's placement office. Seventy-two percent went directly into the private practice of law.

While at the Law School, many students participate in extracurricular activities. Among the most popular are the Women's Law Caucus, the Black American Law Students Association, the Comparative Law Society, the Federalist Society, and the Mandel Legal Aid Clinic.

The University of Chicago Law Review is one of the country's leading reviews. Its membership is elected on the basis of grades and a writing competition, and approximately twenty percent of the student body are members. In addition to the Law Review, the Law School is the home of four scholarly journals edited by our faculty. These are the Supreme Court Review, the Journal of Law and Economics, the Journal of Legal Studies and our newest, Crime and Justice: An Annual Review of Research.

Several programs at the Law School emphasize particular areas of law. Beginning with Henry Simons and Aaron Director and through the current work of such faculty members as Kenneth Dam, Frank Easterbrook, Richard Epstein, and Richard Posner, the Law School has been noted for its development of the field that has come to be known as Law and Economics. The Law and Economics Program, directed by Daniel Fischel, conducts research activities, a program of fellowships, and workshops organized jointly with the faculty from the Department of Economics and the Business School. In the words of one of its former directors:

"The combination of institutional knowledge and sophistication found only in a professional law school combined with the rigor of the analytic tradition in economics at the University of Chicago and the long-standing tradition of applied research within the Program has helped to develop an influential and still growing field of scholarship in American and foreign universities."

The economic analysis of law in recent decades has been the only methodological development in American law to gain widespread critical attention abroad. The Law and Economics Program at the University of Chicago is the preeminent program in the nation. The work of the faculty and fellows has emphasized both the impact of
legal institutions on the market place and the use of economic theory for the analysis of legal institutions. Research conducted at the Law School on government regulation and the antitrust laws has been highly influential.

The Law School is also the home of two more recent programs. Established by former dean Norval Morris, the Center for Studies in Criminal Justice is currently under the leadership of Franklin Zimring. The Legal History Program, of which Richard Helmholz is the director, divides its research between American and European legal history. The Edwin F. Mandel Legal Aid Clinic, which celebrated its twenty-fifth anniversary in 1982, pioneered the practice of providing students with ongoing supervision by experienced staff attorneys as they work on actual cases. Usually twice as many students apply for the available positions as can be accommodated by the current staff. The Clinic has rendered significant legal services to the poor in the immediate neighborhood of the University, as well as in the entire Chicago metropolitan area. Reductions in the financial support of the Clinic by United Charities of Chicago and the federal government in the late seventies and early eighties have forced the Law School to shoulder a growing part of the Clinic budget. These funds come from both the Fund for Clinical Legal Education and the Fund for the Law School.

Academic and Financial Challenges
A dominant feature of American legal education has been the diversity of the mission undertaken by law schools and the autonomy these schools have enjoyed. The "case method" practiced at Harvard, the study of Law and Economics introduced and developed at Chicago, the emergence of law faculties devoting their full time to teaching and research, and the modern concept of clinical education were pioneered at the great private schools of the country. The autonomy of private legal education has been crucial in offering students a wide variety of options and in maintaining traditions of independent inquiry and political freedom. One of the distinguishing characteristics of the University of Chicago Law School has been its disinclination to follow legal fads or fashions. Instead it pursues its own course according to the goals and standards it values. It is hard to envision Chicago's contribution to legal education in a framework other than that of the autonomous private university that can set its own priorities and freely choose the means for implementing them.

In recent years the notion has gained currency that law is essentially an empty vessel into which one may pour almost anything. The indisputable ambiguity of law seems to make the laborious task of immersing oneself in legal institutions and their historical background a futile and therefore dispensable undertaking. In the extreme version of this approach, law becomes mere advocacy. Undeniably one of the functions of law schools is to train advocates as Chicago does through its moot court programs and trial practice seminars as well as in more specialized courses. Only when we teach the substance of law and the skills of analysis do we satisfy the most rigorous standards of professional education. The contemporary debate about ethical obligations of lawyers, as well as the teaching of legal ethics, may be insufficiently mindful of the fact that the teaching of substantive law and modes of analysis is directly concerned with core ethical issues: fidelity to one's materials and the moral uncertainties that should concern a lawyer as he seizes ambiguities in law to help it develop new directions.

The challenges confronting this law school as we face the years ahead include the need to focus the curriculum more directly on lawmaking by all levels of government. Law schools remain preoccupied with judicial interpretations of legislative and administrative action. The questions of who governs, in what respect, and by what basis of authority call for more systematic curricular examination than can be found at present.

In the last two decades of the twentieth century, private legal education faces two major threats. One
threat originates with various governmental and professional organizations that seek to govern law schools through mandating course offerings, resource allocations, and library requirements. The second threat to private legal education is financial. In the early decades of the University of Chicago Law School, income from University endowment covered a much larger proportion of Law School expenses than tuition or other sources of revenue. As the relative role played by endowment has decreased over time, we have increasingly depended on revenue from noncapital sources.

For many years tuition income has met about fifty percent of the Law School's operational costs. That Law School tuition is substantially below actual costs is a reflection of basic American assumptions concerning higher education. We believe neither that higher education should be the exclusive responsibil-

ity of government (the approach followed by most of the world) nor that private education should be available only to the rich. To be sure, the precise mix of tuition charges, direct financial aid and indirect subsidy has varied over time and has also reflected different competitive pressures. Nevertheless, it is true now as it was true in the past that even those graduates who did not receive financial aid were substantially "subsidized" when they went to Law School. Some of these graduates "pay back" the subsidy when they can afford to do so, others add generous "interest," and still others provide money for the purpose of supporting private legal education because they believe in the cause.

The most important source of Law School revenue other than tuition is provided by the Fund for the Law School, which consists of annual unrestricted gifts to the Law School by alumni and friends. Endowment provides the third source of funding for Law School expenses. If wealth is measured in terms of endowment the Law School is not a wealthy institution. Among the private law schools that are Chicago's closest competitors, the "poorest" has an endowment twice the size of Chicago's. The most highly endowed law school has an endowment five times the market value of Chicago's endowment.

When I first saw those comparisons I was amazed at the outstanding job the University of Chicago had done with such lean resources. But during my six years as Dean of the Law School, my amazement at our resourcefulness has turned into misgivings about how long we can continue to rely on these resources. I do not believe the Law School can continue to maintain its preeminent position without a strong infusion of capital.

We will announce a capital campaign for the Law School this fall. While not every graduate will be asked to participate directly by making a gift to the campaign, I hope you will all join in our endeavor by supporting the Fund for the Law School and remembering the Law School when you learn of an opportunity which might be to its benefit.