

University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

1923

Some Observations on the Law School Curriculum

James Parker Hall

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

James Parker Hall, "Some Observations on the Law School Curriculum," 5 American Law School Review 61 (1923).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

THE AMERICAN LAW SCHOOL REVIEW

AN INTERCOLLEGIATE LAW JOURNAL

S. E. TURNER, Editor

Vol. 5

PUBLISHED BY THE
WEST PUBLISHING COMPANY
ST. PAUL, MINN.

No. 2

Some Observations on the Law School Curriculum

By JAMES PARKER HALL

[Address of the President of the Association of American Law Schools, delivered at the Twentieth Annual Meeting at Chicago, December 28, 1922. The discussion following the President's address will be found on page 108 of this magazine.]

DURING the past two years the members of the Law School Association have been largely engaged, in co-operation with the American Bar Association, in endeavoring to state and to secure public recognition for higher standards of admission to the bar than have heretofore prevailed in this country. At its annual meeting in 1921, the Section of Legal Education of the American Bar Association adopted resolutions expressing its opinion that every candidate for admission to the bar should be a graduate of a law school requiring for admission at least two years of college study, providing for its students an adequate library and faculty, and requiring three years of full-time study of law (or an equivalent increase in this period for part-time schools). At its meeting in December, 1921, this Association changed its admission requirements for member schools, so as to require that by 1925 they all exact from students the two years of college study recommended by the Bar Association as preliminary to the study of law; the other requirements being already substantially in force.

In February, 1922, there was held in

Washington a Conference on Legal Education, attended by over 300 delegates from Bar Associations and law schools, which, in substance, indorsed the recommendations of the American Bar Association as regards states where there exist adequate educational facilities for meeting them. The Executive Committee of our Association is proposing at this meeting certain amendments to our articles designed to facilitate the enforcement of these standards within the Association, and to make our requirements substantially similar to those recommended by the American Bar Association for admission to the bar. These measures mark the close of a long campaign within the Law School Association for the adequate standardization of admission requirements to law schools. From requiring in 1901 the equivalent of a high school course of unspecified length, the Association came in 1907 to demand a full four-year high school course, and in 1908 officially expressed the hope that ultimately all members would require two years of college work, a hope that was realized last year by a unanimous vote of the schools in the

Association. The Association's requirement of a three-year law course dates from 1905; that of an adequate library from 1912; and the one for full-time instructors became effective in 1919.

The only respect in which our requirements substantially differ from those of the American Bar Association regards the recognition accorded to night schools. They at present are ineligible to our membership. The Bar Association accepts the work of such schools (if otherwise qualified), provided that they require of their students a course that shall contain as many working hours as that of a full-time school. Probably no night school could do this in less than four years, and many would require more time. The amendments to article 6 submitted by our Executive Committee at this meeting make night schools eligible for membership in the Association on the same basis as day schools, provided they require as much work for a degree. Such a change was informally discussed at our meeting a year ago, without decisive result, and is now offered in a form that it is believed can be administered without undue difficulty. I venture to express the hope that it may be adopted, for three reasons:

First. It may encourage night schools of a noncommercial type—of which there are happily a few—to raise their entrance requirements and lengthen their courses of study, so as to become more effective instruments of legal education than would otherwise be possible, and the prestige of membership in the Association would be of distinct advantage to them in competition with various commercialized non-member rivals. Not a few of the students in the night law schools of our large cities have had at least two years of college work, and probably would prefer to attend a night school composed chiefly of students as well prepared, if one were available. It is not too much to hope that at least one night school in each of our larger cities might be induced to adopt such standards, if adequately encouraged to do so, and a place on the American Bar Association list of preferred schools and

membership in our Association would certainly help them.

Second. Considerable criticism, whether deserved or not, has been directed against our Association, because it has refused to recognize night school work as such, without regard to its quality. Inasmuch as there is no likelihood of the abolition of night law schools for an indefinite period, while there is much possible room for improving them, it seems the part of wisdom and fairness to help the better ones, where it can be done to the improvement of legal education. Any night law school which in good faith would be willing to meet the present high requirements of the Association would be a great improvement upon existing night schools, and would deserve whatever advantage membership in the Association might give it. There will always be considerable differences between members of the Association, and it may well be believed that night schools that could qualify for admission would not necessarily be the least efficient schools in the Association. Such recognition of them would also largely disarm criticism of the motives of the Association and increase the weight of its recommendations for admission to the bar.

Third. Now that the American Bar Association and many of the local and state associations have embarked on a campaign to raise the requirements for admission to the bar it would be unfortunate to have any substantial differences of opinion between them and ourselves as to what constitutes proper standards of legal education. It is going to be hard enough at best to induce Legislatures and courts to adopt our views, if we are unanimous, without subjecting those views to such suspicions of unsoundness as may arise from controversy between ourselves.

But, while we are doing what we can to educate public opinion to the desirability of higher standards for admission to the bar, there remain with us permanently our own internal problems, and, among them, the one of the best use to make of the time that can be devoted by

students to law school training. It is to a phase of this that I shall devote the remainder of my remarks. Assuming that, for a considerable time at least, not more than three full years of legal study will be required by our states for admission to the bar, nor by our law schools for degrees, how shall we enable students to get as much out of this time as possible?

A careful examination of the courses commonly offered to students by members of the Association seems to justify the conclusion that enough of them to occupy about three-fourths of a student's time—that is to say, about two and one-fourth school years—are so important that a student would rarely be wise to replace any of them with courses chosen from the remainder of the curriculum. Doubtless not all teachers would agree upon the content of a list of the fundamental courses, and probably the same teacher would not make the same list for all schools; but, after making due allowance for reasonable differences of opinion, I think the above statement approximately correct. A student is, therefore, ordinarily at liberty to choose about three-fourths of a year's work from the courses of lesser importance. The entire list of those courses, in several schools, exceeds the fundamental ones in number and substantially equals them in combined length. In such a school the student who does no extra work for a degree will be able to take only one-third of the less important courses, if he takes all of the more important ones. In schools with a smaller number of electives the proportion that may be taken is greater, but, taking all members of the Association together, it is clear that the average three-year graduate, even though he do some extra work, will not be able to undertake more than from two-fifths to two-thirds of the lesser courses offered.

It is, of course, easy to exaggerate the importance of taking all, or nearly all, of these lesser courses. Even if a student could study them all he would still find in the world of practice many subjects, particularly statutory ones, of great prac-

tical value and interest, which are not, and are not likely to be included in law school programs. But a well-prepared student, who has studied three years in a good law school, who has taken under capable instruction all of the more important subjects and a fair number of the less important ones, is not helpless when a question arises in practice outside of any course he has studied, or even outside of those taught in law schools. Almost always he has a reasonable opportunity to study the matter and to inform himself. By fair industry and the use of that power of legal reasoning which he has acquired in the law school, he can rapidly come to sound conclusions about most questions on which he has had no systematic instruction.

But, other things being equal, the more ground a student can cover in a law school the better, and so I wish to examine critically certain suggestions that have been made with this end in view.

The case method of studying law, which has achieved so complete a mastery of American legal education of the better sort, has certain unrivaled advantages in dealing with fundamental or difficult legal problems. As a method of training students in the technique of legal reasoning and in the rational and historical processes of legal thought, it yields incomparably better results than does any other. And this, of course, is the heart of the matter of making real lawyers. But, as has often been observed, it is a slow method, and in a given time very much less ground can be covered by it than by methods variously described as didactic, or descriptive, or informational. It is not so often perceived, however, that this is not so much a criticism of the case method as a statement (of what is indeed the fact) that there is no easy and rapid method of acquiring an adequate professional knowledge of a subject like law. History, economics, politics, religion, and all the important emotional reactions of society have affected the reasoned processes by which its doc-

trines have been wrought, and no mere description of the results as they appear at any given moment of time can begin to give the insight and mastery that come from thinking them through in company with the judges and lawyers who were the instruments of their fashioning. If this is a slow way, it is at any rate the only sure way.

Two plans have recently been proposed for enabling students to cover in the allotted three years of law school study more of the courses of lesser importance.

The first one suggests¹ that much of the instruction in the lesser courses be made *informational* rather than *disciplinary*, and that the case method of study be here largely abandoned, on the ground that students get enough of this, for purposes of training, in the important courses which take three-fourths of their time, and hence that *information* about a considerable number of the remaining topics of the law becomes more valuable than *reasoned training* in a lesser number.

The second plan would retain the case method of instruction, but would attempt to cover with it only the more important or more difficult parts of the lesser courses (omitting other parts or merely giving reading references to them), thus enabling a student to touch the "high spots" of a larger number of the lesser courses, at the sacrifice of their simpler portions and relative details.

Of the two, the second seems to me the better plan. It is true that a student who has spent three-fourths of his law school time in case method study has learned to work by this method, and can use it intelligently on any topic that he may choose to investigate. In this sense it is also true that somewhat more case study in the law school probably would not give him greater facility in this. But the time spent in a law school is so important, educationally, that it seems unwise to spend any substantial part of it in exercises which a student could carry on nearly as well by himself outside of school; and the acquisition of mere

information about law is chiefly of this type.

Even though the information a teacher may give is better organized and more accurate than can be obtained elsewhere, it had better be given in the form of supplementary reading or auxiliary lectures, designed to occupy as few as possible of those precious and all too brief hours that teacher and student can spend together in the classroom. There is very little educational value in displaying before a student a series of snapshots of the law as it is (or is said to be) at any given moment, without adequate consideration of the rational and historic processes of legal thought by which these results have been achieved. I know it will be said that a teacher may rehearse these, too, in outline, at least, as part of the "information" he is giving—and, if he is doing his work artistically, this is, of course, true—but dissertation can never take the place of discussion as a means of securing a really adequate comprehension of the more important legal principles. So far as practicable, the student's time in school should be occupied with a study of those doctrines that have become what they are through historic development and reasoned processes of thought, which repay careful directed study, and this means in the main the case method.

The advocates of the second plan admit all of this fully, but suggest that, when a student has studied the more fundamental subjects somewhat thoroughly in this manner, he may more profitably devote the remainder of his time solely to the more important and difficult portions of a considerable number of the lesser courses than to a detailed study of fewer of them. To put the matter concretely, let us assume (1) that, by a purely informational method (whether by lectures or by printed material), the content of about fifteen of the lesser courses could be fairly covered in the time at the student's disposal after he has studied the fundamental courses somewhat thoroughly by the case method; (2) that the difficult and important parts only of about ten of the lesser courses could be studied using the case

method; and (3) that only six or seven of these courses could be covered by the case method in the same detail in which the fundamental courses are studied. This, I estimate, is just about what the alternatives amount to.

No doubt reasonable arguments can be made for any one of these views. In practice they will not be so sharply differentiated as they are in my statement of them. They will overlap more than would be indicated by partisan arguments for or against any of them. No sensible advocate of alternative No. 1 will insist on dealing didactically with *every* topic, even though it is quite clear that at least a few are specially unfit for this treatment; nor will any sensible advocate of No. 3 treat *all* the lesser subjects in the same detail as he would the fundamental first year courses. So we may here discount in advance a type of argument often advanced by those who assume that persons who differ from them in policy will necessarily administer their policies in the most extreme and unwise manner conceivable. But, allowing for the most reasonable pursuit of either of the three plans, the differences in both method and result will be substantial.

As already indicated I believe plan 2 to be better than plan 1, despite the greater *variety* of information that can be obtained by the latter. My experience, both personal and from observation, is that no legal doctrine of importance or difficulty can be adequately understood save by a careful study and analysis of its original sources. Being told all about it is no substitute for personal investigation of it, though it may greatly assist the latter. Much of the information ostensibly gained by the didactic method is not knowledge that is really usable in a pinch, or that can be relied upon to illumine novel or analogous situations, as can the more hard-won mastery that comes from a study of sources; and the supposed gain from a wider horizon of legal learning is thus largely specious.

There remains the objection that such a touching of the "high spots" only, in

the lesser courses, as is contemplated by plan No. 2, really means superficial work, as compared with a more thorough treatment of each course as a whole. Now "superficial work" is a relative term. Any one of our major subjects could be given more intensively with advantage, so far as that particular topic is concerned, were it not for the just demands of other topics, which require some pruning of them all. In fact, the amount of time actually devoted to standard subjects like Contracts and Torts differs a good deal in equally good schools. It varies all the way from about 90 hours to nearly 140 in the case of Contracts, and from about 70 to 110 in the case of Torts. It cannot fairly be said that these subjects are "superficially" taught, where the lesser number of hours are required. What really happens is that the simpler or less important parts of these subjects are omitted in some schools, in order to gain time for other subjects not so important as a whole, but *some* knowledge of which is believed to be more important than a more *detailed* knowledge of Contracts and Torts. The plan here advocated merely prunes, more ruthlessly, the lesser topics, with the deliberate purpose of devoting as much law school study time as possible to those matters of which it is most difficult to acquire an effective knowledge outside of a law school, whether they can be classified together into a moderate number of rather compact subjects or not.

The traditional division of the field of legal learning into law school "courses" being somewhat arbitrary, anyway, it is very arguable that a student is better equipped for practice who has mastered the difficult parts of a good many subjects than if he has both the difficulties and the details of a smaller number. It certainly seems easier for him to study the details of the lesser subjects by himself than it would be independently to master *both* the difficulties and details of those that he must otherwise omit altogether. The actual doctrines studied under this plan will be studied thoroughly, but they will be chosen for their difficul-

ty rather than for their continuity with each other. Of course this does not mean that topics will be strung together as they might be drawn from a legal grab bag. They will still be assembled into groups of relative similarity and divided into convenient units of length for teaching purposes; but the grouping of topics in some of the lesser subjects may be different from that now prevailing, and they will be shorn of details and relatively simple matters.

For the sake of completeness the student can be provided with syllabi and reading references to guide his own later or collateral study of the omitted parts, which are not to be taken up in the classroom. He will thus obtain case method discussion of the difficult parts of most subjects, and expert guidance for his independent study of the simpler and less important parts of the law. Such connections as may be necessary

for understanding related branches of a subject can readily be supplied without a substantial sacrifice of the plan. In practice, some courses will simply be shortened, while others will also be consolidated with those of related doctrines. Suretyship and Mortgage, Public Service Companies and Carriers, Quasi Contracts, and part of Equity may be mentioned as presenting obvious possibilities of consolidation. Perhaps some entirely new groupings of cross-section topics of the law, like Misrepresentation, Purchase for Value without Notice, Restraints on Dealings with Property, and so on, might emerge as the result of reflection and experiment. Just what should be done will be largely determined on grounds of convenience, but an intelligent and sympathetic effort along these lines seems to be an experiment in legal education of much promise and well worth making.

The Law School Curriculum as Seen by the Bench and Bar

By *CUTHBERT W. POUND*

Associate Judge, New York Court of Appeals

[Address delivered before the Association of American Law Schools at Chicago, December 29, 1922. The discussion following this address will be found on page 123 of this magazine.]

THE Association of American Law Schools asks the Bench and Bar to indicate their views of the methods of legal education adopted by the schools. The request is timely. So large a proportion of the training for the profession of law has become the function of the law schools that lawyers and judges have the keenest interest and concern in the lines along which legal education is now developing. Of 643 students trying the New York state bar examinations in June, 1922, for the first time, only 9 had no law school training, and, of the 9, 3

were college graduates. The betterment of such education, not only as the means of preparation for earning a livelihood, but also as the means of raising the general standards of the bar as leaders in the community, is a problem, not for the benefit of the individual student only, but for society.

The young lawyer should possess some knowledge of the rules of the law of the place and of their use as weapons of attack and defense; a habit of obtaining information, knowing both sides and preparing to meet objections; carefulness