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A FOUR-YEAR PROGRAM FOR LEGAL EDUCATION*

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IT IS hazardous, as well as difficult, to attempt a brief statement of the objectives of the Law School reorganization which has been initiated at the University of Chicago.¹ This is not an official statement. It is not to be expected—nor, indeed, is it to be desired—that members of the faculty should agree as to the significance of the changes being made. In presenting a personal interpretation I must use the familiar disclaimer of the investment banker: under no circumstances is this statement to be construed as an offering; the offering is made only in our printed prospectus; no faculty member or other person is authorized to give any information or make any representations not contained in the prospectus. Nor can I present a complete picture. The attempt will be merely to outline three phases of the plan: the introduction of non-legal studies, the emphasis on questions as to what law is and the ends which it promotes, and the administrative and pedagogical changes aimed at more effective instruction.

I

Perhaps the most striking feature of our plan is in the incorporation of subjects such as economics, political theory, and psychology. These are combined with law courses into a four-year program to which students will be admitted after the completion of two years of general college work. The minimum period of study required for the law degree thus remains six years.² For students who enter with a bachelor's degree and a creditable record, only three years in the Law School are required.³

* An address delivered before a group of alumni of the University of Chicago Law School and other members of the bar, April 3, 1937.

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¹ An outline of the new four-year curriculum is set forth in the appendix, pp. 534-6.

² The University of Chicago Law School has admitted students with three years of college work.

³ These students will not be required to take the separate non-legal courses in the first three years. See pp. 534-5 *infra*.

There is, of course, nothing new in the recognition of a close relation between law and the study of society. For at least fifteen years law schools and law teachers have been outdoing each other in the eloquence of their protestations that law is a social science and should be considered in its relation to the other social sciences. Annually this gospel has been preached in deans' reports, in legal periodicals, and in learned papers read before the sessions of the Association of American Law Schools. But with all this fanfare the progress has been disappointingly small. We have renamed some courses; we have taken more note of the practices of modern business; and our students prate all too glibly about social policy. Occasional joint seminar courses have been arranged with instructors in related departments. Recommendations as to pre-legal study have been made, emphasizing the importance of these related fields. But none of this has appreciably increased the effectiveness of law school teaching.

That this has been so is not surprising. At least four obstacles have prevented substantial advance in the integration of legal and non-legal studies, and each of these obstacles has operated to increase the effect of the others. In the first place, the available academic courses in the related fields have not been well adapted to the needs of the lawyer. The academic course sequences are usually arranged with a view to the student who is to specialize in the subject. The elementary courses cover many topics of no special value for the law student and yet these courses are prerequisites for the advanced theory courses. This is true in many fields, of which accounting may serve as an example. The elementary courses contain much material as to bookkeeping practice which the lawyer does not need and many problems of vital interest to him are dealt with only in advanced courses. The period of pre-legal study is far too short to include the standard elementary and advanced courses in even a few of the desired fields.

The second and third difficulties are very closely related. When all of the non-legal work is taken before the beginning of the law study, it is not surprising that much of it is forgotten before the student reaches the law courses in which it would be useful. This difficulty is aggravated by an unfortunate attitude toward pre-legal studies which has been shared by a large portion of the students. Once they have decided upon law as a profession they give unmistakable evidence of regarding their pre-legal studies as chores. At one law school, students have customarily referred to the pre-legal study as "working off their culture." The separation of the legal and non-legal work has undoubtedly contributed to the development

of this attitude and the attitude, in turn, has increased the likelihood that the non-legal material will be soon forgotten.

The fourth obstacle is perhaps the most stubborn. It is the inherent difficulty in communication and effective co-operation between instructors trained in traditionally separate disciplines. The economist or psychologist must be willing to set aside his professional contempt for the law and master some of its methods and doctrines before he can locate the points where material in his field might be helpful. The law teacher will have to cease his reading of the latest cases and become familiar in some degree with the concepts and theory of the economist. The mutual education of instructors requires much time and infinite patience and its course is beset with many hazards. After a promising start it is all too easy to slide back into the old grooves. The economist all too quickly may wash his hands of the matter and leave the law to stew in its unsavory juices. As for the law teacher, when cooperation becomes difficult, he will decide with regret that three years is all too short a period in which to teach "the law itself" without trying to work out relations to economic material; there are always new batches of cases to be dissected with the technique in which he feels at home. He will salve his conscience with repeated exhortations to students to bring non-legal material to bear on legal problems and in his law review articles he will note his regret that space does not permit the development of social and economic phases.

In the Chicago reorganization a direct attack has been made on all of these obstacles, although I hasten to say that the program represents only a beginning. In the new four-year course non-legal material is to be introduced in two ways, through specific required courses⁴ at various points in the curriculum and by infusion in law courses themselves. Reference again to accounting will afford a good illustration. The study of corporation law will come principally in the third year. In the second year there will be an elementary accounting course—not the usual business school course, but a condensed study enabling a student to read a balance sheet and a statement of profit and loss with some comprehension and to understand something of the process by which these statements are prepared. In the corporation law course itself advanced topics will be introduced, such as accounting for treasury stock, types of surplus and their availability for dividends, and holding company accounts.

Under this plan the difficulties of which I have spoken will be mini-

⁴ Separate courses in non-legal material are introduced as follows: first year—Psychology, English Constitutional History; second year—Economic Theory, Accounting, Political Theory; and third year—Ethics.

mized. The non-legal material will be specially selected with the needs of the lawyer in view. Even the elementary topics will be taught in close enough proximity to the related legal material to give some hope that it will not have been forgotten before it is needed. This arrangement should also operate to show clearly the great practical importance of such studies and to eliminate the tendency of students preparing for the bar to view them as chores. The system of annual cumulative examinations referred to below will also help in this connection. Finally wholesome pressure will be put upon instructors in law and the related subjects to overcome the remaining obstacle and to develop effective techniques of cooperation. Students who have been studying economics and political theory as part of such an integrated program can be relied upon to ask embarrassing questions in law courses, questions which will stimulate the law instructor to broaden his equipment. Stimuli should develop in the other direction as well; the social science instructor also will be "on the spot."

II

A second phase of our program is an attempt to deal more articulately with the question of what law is and of what is involved in the criticism of rules of law. I do not mean, of course, that law teachers have given too little time to criticism, or to questions of what should be the law. But a clearheaded layman visiting our classes would have difficulty in understanding just what we are trying to do. Indeed, large numbers of law students graduate without having achieved any clear understanding. I think this is so largely because in our critical discussions we mix together at least three different elements in a rather confusing way.

First there are our assumptions as to the desirability of various results—and these we seldom more than half articulate. Then there are facts or assumptions as to the way business or society or human nature operates—and here also we usually tread very lightly for want of information. Finally we discuss the legal rules and theories themselves—and even here many assumptions remain unstated and we leave students to develop as best they can judgments as to the proper functions of legal theory and precedent and standards for the evaluation of legal concepts. In our critical discussions, we shift back and forth between these elements and rush on to the next case before we have time to be acutely uncomfortable over the resulting confusion. Or, as teachers, we say that the confusion is good for the students. I am overstating the case, of course, and have no illusions that we can do more than make an earnest attempt at clarification. The new first year course on Legal Methods and Materials which has been

worked out by Professor Levi in collaboration with Professor Steffen of Yale is a promising effort to get students to appreciate early in their course what is involved in the study and criticism of law.

We propose to consider a little more consciously whether anything worth while can be said as to the ends which law should serve. For this purpose we are adding to the curriculum the study of possible standards for individual and group conduct—the study of moral and social philosophy. Law teachers have usually scorned such study. We have often argued that no one has ever stated principles of ethics or political philosophy with sufficient precision to afford answers to specific questions of law. We have pretended, therefore, to eliminate all such principles. None of us, of course, has really done so; we have our underlying assumptions or principles or prejudices. But we have usually left them unstated and when we are forced to attempt a statement we always do so with an embarrassment which is as significant as it is acute.

When I say that we wish to overcome this embarrassment and consider with students the ends of law, I do not mean, of course, that an official philosophy is to be preached. It is not likely that our students will agree on any formulation, but the discussion is bound to be fruitful in enabling students to understand the diverse notions as to the ends of law which have influenced judges and legislators at various points in the development of our legal system. Only in such terms may they understand many of the peculiar doctrines of the common law.⁵

In the course of this inquiry as to the ends of law, the student will also develop an understanding of the relation of psychology, economics, etc., to law. He will probably see them as bodies of knowledge of human nature and contemporary society in the light of which the lawmaker, whether judge or legislator, is to determine what rules will promote the ends desired.

III

A third phase of the reorganization consists of changes in the arrangement of the legal material into courses, a revision of the examination system, and the introduction of teaching methods supplementary to the case method. The principal objective of these changes is to require students to think more broadly and work more independently. The chief need for reorganization arose from the artificial barriers which had grown up between the traditional courses. These barriers had developed as by-products of the multiplication of elective courses and of the system of separate course examinations. In the second and third year courses, the

⁵ For the same purpose, increased emphasis is placed upon historical material.

classes have consisted of students who have elected widely different combinations of courses. Furthermore, additional irregularity of student programs has resulted from the quarter system under which students might begin their study in the summer as well as the autumn and might further shorten their period of residence by additional summer work.

The resulting situation has handicapped effective teaching in two ways. It has made necessary substantial overlapping of subject matter in many second and third year courses, since instructors in these courses could not assume that the students have all studied any courses except those of the first year. Each of the courses has therefore had to be presented as though it covered an entirely separate subject matter. Such presentation, aided by the system of separate course examinations, has led students to take a very unwholesome view of the legal field. They believe that the law consists of conveniently small units which may be learned separately and forgotten with impunity, at least until the period of cramming for the bar. No one who has not taught law will quite appreciate the tenacity with which students cling to this view of law. They resent and resist any attempt to apply or consider in one course something they may have had in another. One student complained, after finishing his course at Yale, "There is so little correlation between the various conventional subjects that if an instructor ventures a statement in one classroom that should have been made in another the student resents it as a presumptuous trespass."⁶

Under the new plan a little over three-quarters of the work is required and must be taken in a specified order. In the first year, there are courses in torts, contract and quasi-contract, family relations, and procedure,⁷ as well as in non-legal subjects already referred to. The legal work in the second year is in criminal law, business organization (largely agency and partnership), sales, property, constitutional law, and procedure;⁸ that in the third year is in negotiable instruments and banking, trusts, evidence, business organization (largely corporation law), taxation, and conflict of laws.⁹

The presentation of this legal material in a specified sequence will permit instructors to suggest more effectively the relations between doctrines in different fields, and the change in the examination system will

⁶ Bingham, *The Mule Considers His Burden*, 16 A.B.A.J. 816 (1930).

⁷ These courses are described on pp. 534-6 *infra*.

⁸ These courses are described on pp. 534-6 *infra*.

⁹ These courses are described on pp. 534-6 *infra*.

encourage students to give attention to such interrelations. Course examinations are abolished; students will be examined only once a year and the examination for each year must be taken as a unit. The questions will be presented to students more as they arise in practice. No longer will they be labeled Agency or Suretyship; and there will be problem cases which involve questions in more than one branch of law. Furthermore, the examinations will be cumulative as well as comprehensive. For example, the examination at the end of the third year, while primarily on the work of that year, will require students to make use of general doctrines considered in the first two years. These examinations are devised primarily as a teaching device rather than as a means for the elimination of students. Most of the elimination is to be done by sifting applications for admission. The examinations will have served their purpose if they induce students to let their thinking cross the boundaries of the traditional course units.

The required work of the fourth year consists of legal and non-legal material focused upon the problem of economic organization—the problem of the division of the national income and the business cycle. Advanced economic theory will be studied and methods of statistical analysis as illustrated in economic material. The legal aspects of the problem—including restraint of trade, unfair competition, rate regulation and price fixing, reorganization and some branches of labor law, corporation law, and taxation—will be developed in close relation to the economic and business material. While these subjects have never been required studies in any law school, they have been made so in the new curriculum because of the crucial importance of the general problem with which they deal.

Elective work will fill about one-half of the time in the fourth year and about one-fifth in the third. Here the work is organized in broad fields rather than small course units and students will normally concentrate their elective work in two of these fields. The fields are crime, marketing and credit, property, economic and business organization and regulation, government, civil procedure, and history and theory of law.¹⁰ In this advanced work, both legal and non-legal material will be studied, and students will be required to work on individual problems and submit written reports. Such reports are to be required also during the earlier years. The reports will be criticized in detail and revision required. This individual problem work, we believe, will not only help students to

¹⁰ These fields are described on p. 536 *infra*.

develop powers of expression but also afford practice in the use of legal research devices and some encouragement to attempt independent and imaginative work.

In some of the newspaper reports of the program, a statement has been made that the case method of instruction is to be abandoned. No such proposal is made. As a device for training students in analytical thinking and the common law techniques of argument from precedent, the case method is of highest value and full use of it will be retained for this purpose. But it has long been recognized that the case method is exceedingly time consuming and that an unmixed diet of case instruction causes many students to lose interest by the third year. After the first year, the case method may safely be supplemented by lectures, reading of secondary material, and informal discussion. As a means of covering more ground in the work of the later years, some instructors will undoubtedly make use of such supplementary methods as well as case discussion.

In this brief compass, I have been able only to sketch the principal features of the plan. It affords a promising framework, I believe, within which concrete advance in legal education can be made. But until the framework is filled in and the plan tested in practice, it will be wiser to leave unexpressed our hope as to what such a program may come to mean in the training of the law men of the future—judges, legislators, and administrators, as well as advocates and counsellors.

APPENDIX

ARRANGEMENT OF SUBJECTS UNDER THE NEW PLAN

First Year:

Legal Methods and Materials.—Elements of the law; types of legal concepts, their evolution and function; precedent, logic, and social policy; the relation of law to other studies; research techniques and written work.

Psychology.—Analysis of problems of individual and social psychology relevant to the study of substantive and procedural law.

Torts.—Protection of personal integrity, including freedom from contact, defamation, etc.; compensation for personal injuries; protection against injuries to property interests; protection of consumers, purchasers, and investors; protection of business and other interests from wilful invasion, including relationship between employers and workmen; protection of political and civil rights.

Family Relations.—Marriage and the family as social and legal institutions; legal relations between members of the family and between the family and outsiders; dissolution of the family.

English Constitutional History.—Study of the growth of English legal and governmental institutions.

Contract and Quasi-contract.—Limits on enforcement of promises; performance and non-performance; multiple party contract relations; contract and quasi-contract; contract in the economic and legal order.

Procedure I.—The English and American Court systems; federal jurisdiction; jurisdiction of person and subject matter; equity jurisdiction and the union of law and equity.

Second Year:

The Problem of Crime.—Social and legal problems in the substantive law of crime and in its application; detailed study of particular crimes.

Economic Theory.—A transition course supplementing college economics and developing the relations between economic and legal institutions.

Accounting.—An introduction to accounting techniques and to the interpretation of financial statements.

Business Organization I.—Problems of the distribution of business risks and devices for the limitation of liability in agency, partnerships, business trusts, and corporations.

Sales.—Elementary problems of contract and conveyancing law relating peculiarly to transfers of the general property in goods and documents of title.

Property.—Interests in real and personal property and their transfer; conveyances *inter vivos*, including land contracts; wills.

Government.—Political theory; the constitutions of the United States and the states and some problems in their interpretation.

Procedure II.—The process of litigation; parties and pleading; logic in relation to the development and determination of issues; preparation for trial and trial practice, with emphasis on the functions of judge and jury.

Third Year:

The Historical Method.—Detailed study of selected legal institutions from the point of view of legal, social, and economic history.

Ethics.—Ethical principles and their relation to law; standards of reasonableness; concepts of economic justice, especially as related to notions of fair price, fair wage, and usury; the bearing of ethical analysis upon ideas of natural law, due process, and related concepts.

Business Organization II.—Control and management, application of the fiduciary principle to agents, partners, directors, shareholders, and promoters; the procuring and maintaining of corporate capital.

Negotiable Instruments and Commercial Banking.—Types of negotiable obligations, their functions and legal incidents; letters of credit; banking problems such as collections and clearings.

Trusts.—The more elementary problems relating to the creation and administration of trusts.

Public Finance and Taxation.—Introduction to public finance and tax systems.

Procedure III.—The process of litigation (continued); the proof of facts in issue, including burden of proof and presumptions; functions of judge and jury; competence, privilege, and examination of witnesses; logic in relation to problems of circumstantial evidence and relevance; the exclusionary rules of evidence.

Conflict of Laws.—The problems arising when important facts of a case occur in states or countries having different rules of law.

Work in Fields of Specialization.—Students will devote approximately one-fifth of their time in the third year to work in the fields of specialization outlined below.

Fourth Year:

Economic Organization.—Distribution of income and the business cycle. Economic theory: money, interest, prices. Statistical analysis. Legal aspects of competition and prices; unfair competition; control devices such as antitrust legislation, co-operative trading, collective labor agreements and labor legislation, price-fixing and rate regulation, tariff, taxation, and regulation of incorporation. Bankruptcy and reorganization.

Work in Fields of Specialization.—Students will devote approximately one-half of their time in the fourth year to work in the fields of specialization outlined below.

Work in Fields of Specialization

As noted above, part of the work in the third and fourth years must be done in elected fields through individual or group work or in advanced courses. Students will be required to concentrate most of this elective work in two of the general fields listed below. Comparative law, legal history, and the philosophy of law are dealt with, so far as appropriate, in all of the fields of specialization and not merely in the field of history and theory of law.

Crime.—Criminal law and procedure in the light of sociology and criminology; responsibility as affected by age and mental condition; police administration and penology.

Marketing and Credit.—Advanced problems in sales, contracts, banking, commercial paper, suretyship, insurance, bankruptcy, and commercial torts; co-operative marketing.

Property.—Advanced problems in the disposition and management of estates, including tax questions; future interests; the family in relation to property interests; decedents' estates; leases, servitudes, and mortgages.

Economic and Business Organization and Regulation.—The flotation of securities; securities exchanges; advanced accounting problems in relation to law; advanced problems in reorganization, competition and price control, unfair competition, labor, and social insurance.

Government.—Political theory; administrative law; additional problems in constitutional law; legislation; municipal corporations; public finance and taxation.

Civil Procedure.—Advanced problems, including judgments and their enforcement, appellate practice, pretrial examination and discovery, arbitration, administrative procedure, logic in relation to pleading and proof.

History and Theory of Law.—Philosophy of law; legal history; comparative law; international law; advanced problems of conflict of laws.