Law and the Future: Legal Education

By Brainerd Currie*

No man ever leaped clear-eyed from his bed, crying "Go to! I will write a paper on the future of legal education," and proceeded to do so forthwith.1 The process by which such papers come into existence is rather different. In the beginning, there is that superlatively regrettable moment of surrender to the blandishments of an editor with an Idea. This is followed by a long period of bleak unproductivity, during which the putative writer attempts half-heartedly and without success to delude himself with the assurance that something will come to mind even while he gives his attention to other matters. The next phase is marked by an almost irresistible compulsion to treat the subject facetiously; but the promise of this line of attack fades rapidly as, one after another, the humorous devices which present themselves are rejected as both ponderous and incompatible with the spirit of the occasion. As the deadline approaches, bringing with it something like panic, the writer turns to defensive and evasive tactics, composing in his mind opening paragraphs which more or less elaborately protest that he is not endowed with the gift of prophecy. But this is merely to state the obvious, and perversely to misinterpret the purpose of the symposium. No one ever supposed for a moment that he was so endowed; a symposium on the future of the law is, of course, merely a device for inducing the contributors to select from current and impending problems those which they regard as most signifi-

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cant, and to comment on them perhaps more forthrightly than they otherwise would. There is no escape; the assignment is not an unreasonable one; yet weeks pass, and the writer still has not found courage to commit to paper his first pronouncement on what the condition of legal education will, or must, or should be fifty years hence.

These difficulties began to yield, in my case, only when I came to the belated realization that the assignment might be interpreted as calling for a discussion not of the status of legal education fifty years from now, but of the course of development of legal education during the next fifty years. The difference may not be a radical one, but it at least serves to break the ice. For the next half-century of legal education begins tomorrow—or, at the latest, next year; and it requires no great amount of either foresight or conviction to affirm that legal education next year will be very much like what it is today. A few of our colleagues will retire; some—as we are becoming increasingly aware—will die; the students we know best will graduate; a few new casebooks will be published; some courses will be added, and some dropped; an eastern school will announce a comprehensive reorganization of its curriculum; there may even be a new Internal Revenue Code to delight the tax men and spawn new institutes; but future historians will not record 1956-57 as the year in which legal education was revolutionized. They may, indeed, trace some future revolutionary development to its origin in an obscure idea or experiment which, unknown to us, is to make its appearance in the course of the year; but great changes themselves will not occur in 1956-57.

Moreover, the essential sameness of legal education, at least to outward appearances, will continue deep into the next half-century. We can see this in the new law buildings which are going up all over the country. In a very literal sense, these structures provide the framework within which legal education must develop for at least fifty years. And are they imaginative conceptions of what will be required to house the shining new functions of a legal education of the future? They are not. They are projections of legal education as it exists today. They represent our best efforts to tabulate all our present functions and to facilitate their more gracious and commodious performance; but, despite our talk of planning for expansion and flexibility, they neither envisage nor permit anything very different. They do not even embody our present convictions as to certain changes which ought to come about in the interest of improved training. We agree, quite generally, that the weakest part of our apparatus is the large class. Dean Griswold, speaking recently on "The Future of Legal Education," said:
The law schools of the future, I prophesy, will provide less mass instruction than they have in the past. They will offer more small classes, more opportunity for individualized work of one sort or another for their students.2

Yet no building plans I have seen fail to provide classrooms larger than the largest in the building to be replaced. We tell ourselves that such planning preserves freedom of choice for the future, and in justification we point to the fact that every new building contains a few elegantly designed seminar rooms; but this is hardly candid. If we build large classrooms their very existence will condition our future thinking and that of our successors, and the cost of leaving them idle will be a powerful deterrent to change. The truth is, of course, that smaller classes and individualized instruction mean not only better but much more expensive legal education; and we cannot commit ourselves to such a program without assurances, which we do not have, that the requisite financial support will be available. Of necessity, in our most conscious planning for the future we tend to perpetuate things as they are.

A second condition which makes for continuity (to use a pleasanter term than “sameness”) in legal education is the accumulated supply of teaching materials. The current directory in the Harvard Law Review, which seems less than exhaustive, lists 168 extant casebooks. These represent a very substantial investment of publishing capital, which would not have been made in the absence of good reason to suppose that the publications would be accepted as teaching tools over an appreciable period of time. Blackboard and Chalk’s Cases and Materials on the Docking of Entails will not become obsolete overnight. Like other casebooks, it has a roughly predictable life expectancy, and will lose its place in the active list only as it is gradually superseded by competing collections or as the course becomes less popular. The actuarial expectations of the publishers are a more reliable guide to the future than any wishful predictions of mine; therefore, I do not anticipate profound changes in the materials of law study for a good many years to come.

Still other conditions which militate against change could be enumerated. There is the matter of our own skills and capacities: we are not likely suddenly to devaluate our stock in trade, nor to learn radically different techniques. There is the matter of procedure: most programmatic changes of any moment must win the

2. 5 J. LEGAL ED. 438, 444 (1953). Dean Griswold added: “I do not prophesy the elimination of large classes. In the hands of qualified teachers they can be excellent instruments for legal education in many fields. But I do prophesy that a considerably larger portion of law school instruction will be in smaller classes or on an individualized basis.” Ibid.
approval of a curriculum committee, a faculty, a dean, an administra-
tion, a bar association, a foundation, a publisher, or a combina-
tion of some or all of these. There is the fact that law itself
changes slowly, and that the task of dealing with some of its lesser
problems seems endless. Exactly fifty years ago, in the first issue
of the Illinois Law Review, Professor Wigmore was saying:

The statute (c. 51, §§2, 4) against admitting an interested
survivor to the stand is thoroughly unsound, in principle and
in practice.... Repeal it at once.  

It is conducive to the development of a philosophic attitude con-
cerning dynamism in law and legal education to note that in 1956
every operative provision, almost every comma and syllable, of the
statute in question remains intact; even the citation remains
accurate. Fifty years from now, no doubt, teachers of evidence
will still be saying that sections 2 and 4 of chapter 51 of the Illinois
Revised Statutes are unsound.

But perhaps it is unnecessary to adduce elaborate arguments to
prove that the principle of inertia applies to legal education. I must
confess that, in common with everyone else, I have been aware of
this phenomenon for some time. If I dwell on it now as if it were a
new discovery, the reason is that it seems to take on new interest
and significance in the context of an attempted discussion of the
future of legal education. Not only so, but a strange thing has hap-
pened: whereas I used to think of the inertia of legal education
with impatience, and perhaps a trace of contempt, I find myself, in
this context, savoring the fact, and finding it, on the whole, a
source of satisfaction.

In part, this euphoria stems from the circumstance that recogni-
tion of the principle of inertia simplifies the task of writing about
the future of legal education. Not only will things remain pretty
much the same for a long time to come; changes, when they do
come, will have to overcome formidable forces of resistance, and
will have to come slowly, well heralded, and amply supported by
general opinion. We can therefore put aside Utopian hopes and
marginal possibilities, and narrow the field of discussion to such
changes as may be expected to result from acute discontent with
specific aspects of the existing order, from the further growth and
acceptance of innovations of yesteryear which have exhibited a
degree of viability, and from the more irresistible of external pres-

4. *Ill. Rev. Stat. c.51, §§2, 4 (1955).* In 1951 §2 was amended, in recognition
of the progress of modern science, to substitute "person who is mentally ill" for
"idiot, ... lunatic, or distracted person." Ill. Laws, 1951, at 1559.
The principal basis for my feeling of relative contentment, however, is broader than the transient self-interest connected with the preparation of this paper. I should be very much surprised to discover that I am fundamentally a conservative in my attitude toward legal education, and certainly I am not complacent about its achievements. While I should not care to reiterate Karl Llewellyn's timeless indictment, that legal education is "so inadequate, wasteful, blind and foul that it will take twenty years of unremitting effort to make it half-way equal to its job,"5 I am conscious of many respects in which improvement is sorely needed. Nevertheless, I have come to be distrustful of reform measures. We are inclined, in our perpetual concern for betterment, to be too much like the conscientious man who, in his aspiration to be a better father, thinks in terms of a newer automobile, a better house, an older college, and a more distant vacation—forgetful that, important as such matters may be, his temper at the breakfast table may be more so. For the ills of legal education we tend to prescribe longer periods of pre-law training, added courses, legal aid clinics, internships, curriculum revision and extension, "centers" for research and public service, and—not necessarily as a last resort—regulatory action by an accrediting agency. We are especially prone to emphasize formal arrangements when, essaying the historian's function, we attempt to identify significant developments of the past. Thus when I took it upon myself to list the "epochal" events of legal education in America, I selected Thomas Jefferson's creation of a professorship of law at William and Mary in 1779, the establishment of the Litchfield School in 1784, the reorganization of the Harvard Law School under Joseph Story in 1829, Langdell's introduction of the case method in 1870, the founding of the Harvard Law Review in 1887, the formation of the Association of American Law Schools in 1900, and, dubitante, the Columbia faculty's efforts in the 1920's to reorganize the curriculum for the reception of the social sciences.6 In the sense that I cannot think of a better one, I am prepared to defend that enumeration; but surely it gives nothing like an adequate or meaningful account of what has actually been happening. According to my reckoning, only one development of outstanding importance has occurred since the turn of the cen-

5. On What IS Wrong With So-called Legal Education, 35 Colum. L. Rev. 651, 678 (1935).
6. Currie, The Materials of Law Study, 3 J. Legal Ed. 331 (1951). In a footnote I conceded that there was something to be said for recognition of certain other developments: (1) the establishment of public law as a major component of the curriculum, (2) the increased attention given to legislation, (3) the hospitality displayed toward the "cultural" courses—jurisprudence, comparative law, Roman law, and legal history, and (4) the interest in legal clinics and related devices. Id. at 332, n.2.
tury; but I have not the slightest doubt that in that time legal education has changed profoundly, and for the better. It has gained in depth, in breadth, in dignity, in perceptiveness, and in humanness. It has grown in this way largely because of countless developments and influences too small to be caught in the historian's net—most of them having to do with the dedication of individual law teachers. A more meaningful survey might well locate a "milestone" at each point where a young instructor wrote his first law review article, or gained insight or inspiration from a colleague, or decided that the preparation of new materials for his course was more important than his rose garden. The classic inertia of legal education does not inhibit developments of this order as it does programmatic and institutional innovations. Now that we have attained a decent level of minimum standards, and now that most reasonable proposals for pretentious change are being open-mindedly tested in at least some quarters, we could contemplate without dismay a half-century free from "epochal" events if we could expect a maximum of the kind of improvement that results only from individual effort.

My first specific forecast is related to these reflections. The forecast is that the next fifty years will bring law teachers relief from much of the deadly drudgery which takes such a toll of their time, their energy, and their initiative. The relation consists in the fact that such a consummation not only would release the most potent forces available for the improvement of legal education, but is attainable, in good part, by individual action and informal cooperation. Why do we inflict upon ourselves the cruel and incapacitating task of grading piles of bluebooks? Many of us, as though obsessed, sacrifice weeks out of every year to the performance of this debilitating and unrewarding rite. Delegation of the task to readers is, of course, not a solution; we are much too conscientious for that, and, besides, no one who has the training and intelligence to evaluate the answers to a law school examination should waste his time in doing so, whether he is reader or professor. The solution will come with the more general acceptance of objective examination techniques. I suppose I shall be among the diehard opponents of such a deliverance. Having little skill in the construction of objective questions, I shall continue to make a virtue of my ignorance, pointing out that such questions lack the subtlety of the essay type, and that it is impossible by such means to evoke the creative imagination of the superior student. In the end, though, even I will yield to the weight of evidence showing that objective questions can test and differentiate as well as any—and to the crushing burden of grading essay-type examinations. The process of eman-
icipation could be speeded if those among us who have achieved their freedom would be less modest and more communicative concerning their skill and experience. Indeed, since the construction of good objective questions is at best an exacting task, but one that can be shared, it is reasonable to anticipate the growth of informal cooperation among individual teachers, perhaps ultimately leading to the availability of something like sets of standard examinations within certain course areas.

A less gruelling, but still consuming, form of drudgery consists in the routine aspects of legal research. Without impairment of scholarly standards, we could liberate a goodly store of our energies simply by a more realistic approach to the question of what operations in legal research are delegable. In the main, however, the problem is one of funds and manpower. Well before the lapse of fifty years—I hope—every law school will have a working reference librarian, and, where faculty productivity warrants it, teachers will be provided with research assistance at least to the extent that stenographic assistance is now provided. Where the funds will come from I do not know. When I mention this hope to my more knowing colleagues, I am told that the foundations probably will not provide support for unspecified, individual research in law. If this is true, it is unfortunate both for the foundations and for legal education. I have nothing to say against organized and programmed research, with its lofty objectives, unless it is a stricture to say that it is no substitute for the research which individual teachers are impelled to undertake for the satisfaction of their own curiosity, the solution of their immediate problems, and the integrity of their day-to-day teaching. This is the kind of inquiry that arises immediately out of the concerns of the educational process, and the kind whose results are most readily assimilated. The donor who wishes to maximize his return in beneficial impact on the development of legal education will provide for the use of local discretion to release and supplement the kaleidoscopic energies of individual teachers.

Even when the money is available, however, we shall be hard put to find qualified people whom we can conscientiously ask to do this work. Any substantial reliance on research assistants presupposes a high degree of competence, and the need will increase for competence in extra-legal research as well. So far as our own undergraduates are concerned, the limitations on their abilities are less important than the limitations on the extent to which we can properly encroach on their time—although work of this kind might, indeed, be a good substitute for part-time work of the sort in which they commonly engage. It seems likely that we shall turn to the
enlistment of recent graduates, thereby adding another to the growing list of short-term, junior-professional employment opportunities, which already includes judicial clerkships, tutorial appointments, and staff work on organized research projects. This is a prospect not to be contemplated without misgiving unless we are prepared to invest the work of the research assistant with a reasonable degree of responsibility, and perhaps in addition to combine it with other significant work, such as that of the graduate legal aid clinics which Dean Levi has suggested. The prospective multiplication of employment opportunities of this sort is in its own right a matter which should cause us some concern, postponing as it does the graduate’s attainment of full professional status without the assurance of compensating educational values. It suggests the potential re-creation of something akin to the old status of apprenticeship; but, by contrast with modern internship requirements, it has at least the advantage that the graduate is reasonably compensated for his work.

Given more space and inspiration, I could perhaps amuse myself at some length by commenting on various enthusiasms of recent years and their prospects for the future. Foregoing that pleasure, I shall confine myself somewhat capriciously to two which seem reasonably relevant to my principal theme, which is that the most important developments in the future of legal education will result from what Mr. Justice Holmes has taught us to call molecular rather than molar motion.

The first of these has to do with what is sometimes called “audio-visual” education. The phrase itself is rather objectionable. Listening and seeing are not new to legal education, and it has not been my experience that the role of the olfactory, gustatory, and tactile senses has been overemphasized. Idiomatically understood, of course, the phrase means “mechanical and electronic” education, and, so understood, it is even more objectionable. I confess to a certain weakness of my own for gadgets, but, with great deference to my friends who are sincerely interested in the potentialities of modern inventions for legal education, I predict with some confidence that nothing of fundamental importance will result from their efforts. The great difficulty is that this preoccupation with education as a sensory experience posits the student as a passive vessel, whereas, if we have learned anything, it is that he must be an active participant. Audio-visual techniques offer to mechanize legal education when we know, if we know anything, that what it needs is to be personalized. If we have lost faith in the efficacy of

a lecturer appearing in the flesh before a body of supine students, it is hard to see why even the miracle of electronics should lead us to have confidence in his image or his recorded voice. It is not unlikely that from time to time procedures will be developed for employing electro-mechanical devices in aid of meaningful educational experiences, but the effect on the basic character and problems of legal education will not be great. The future belongs to people, not machines.  

The attempt to invoke the aid of the social sciences is, without much question, the most important of recent developments in legal education. I have previously said substantially all I have to say for the time being on this subject, but the invitation to state one's views in the form of a prediction is a challenge to put them concretely and clearly. It occurs to me, therefore, that perhaps the problem with respect to the social sciences might be stated better than it has been. If we are told that law is a benighted discipline, and that for its enlightenment we must unlock the rich resources of modern psychology, economics, sociology, criminology, and the rest, it is not surprising that we are simply overwhelmed. If that is the problem, I cannot predict that much progress will be made toward its solution in the next fifty years. The rhetoric whereby we seek to emphasize the importance of an objective may well block progress toward its attainment by inducing a sense of frustration. Is it not possible to put the problem in more modest and more feasible terms? The essential fault of legal education is that we do not know certain things that we need to know in order to form critical judgments. When the soundness of a rule was tested by history or logic or authority, the essential knowledge was not hard to come by. But the pragmatic spirit entered legal education, and it has become necessary to judge rules in terms of their effects. This is embarrassing, because, knowing little about the effects of rules, we are compelled either to rely on unverified assumptions or to confess ignorance. We have also come to recognize that particular rules of law exist not because, in the nature of things, they must, but because there is policy to be effectuated; but we know little about how to ascertain policy and make it explicit. What teacher of Contracts can produce an intellectually satisfying demonstration that the doctrine of consideration serves—or does not serve—a useful purpose? How can the Supreme Court judge whether the applica-

9. See Wriston, How To Finance Higher Education in the Future, 301 ANNALS 196, 196-97 (1955). Do not see id. at 197-98, where President Wriston (of Brown University) satirizes that object of my recent enthusiasm, the objective examina-

tion of state law to marine insurance cases is subversive of the
harmony and uniformity which are held desirable in laws affecting
the shipping industry? After we tell our students that it is fatu-
ous to suppose that we can resolve conflicting policies of different
states by reference to talismanic irrelevancies, what can we offer
as a substitute? For that matter, how do we know that Professor
Wigmore was right in his denunciation of the Dead Man's Statute
as "unsound, in principle and in practice"? Diogenes will find his
quarry before you can find an evidence teacher who will doubt the
purity of that pearl of modern legal criticism; but has a conclusive
case against the statute been made? The indestructibility of the
statute suggests that the bar, at least, is not persuaded that it
does not serve the ends of justice.

The problem, then, is not the massive one of "integrating law
and the social sciences." It is only the aggregate of specific prob-
lems which confront individual teachers when they reach the limits
of their knowledge in the teaching of ordinary courses. We need
not all become masters of the "entire domain of the social and
philosophical disciplines," as Wilhelm Wundt is supposed to have
done. What is needed is particular knowledge beyond the scope
of traditional legal research, relevant to the problem at hand. At-
tainment of such knowledge may often require the aid of special-
ists, may sometimes be impossible, may sometimes be a simple
matter of fact-gathering. When the problem is stated in this way,
I am encouraged to predict that the next fifty years will see ma-
terial progress. Law teachers will not be content with their ignor-
ance and their assumptions; they will attempt the solution of prob-
lems of manageable scale. Organized research has a part to play in
this process. The great contribution of such research, in the be-
inning, is not so much the discovery of mines of new information
as it is the development of procedures for investigation. Armed
with such procedures and with adequate assistance, individual
teachers can take over the task of determining what information
is relevant, and of gathering and assimilating it. For the grand
synthesis we can wait more than fifty years.

External pressures affecting legal education may be expected to
come from the bar, from foundations, and from the evolution of
society around us.

The bar will continue to press for more practical training, point-
ing to the admitted fact that law schools do not fully equip their
graduates for practice. There is not much to be added to the peren-


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nial debate on this subject. It occurs to me, however, that one small observation may be in point. Among the little-noticed results of the transfer of law training from the offices to the universities was that the cost of training the profession's new recruits, to the extent that it was not borne by the students themselves, was shifted from the profession to the general public. The public interest in the quality of the bench and bar and of public servants has justified the shift, because the capacity of the universities to provide superior intellectual training has been demonstrated. On what grounds, however, can the profession justify a demand that the public assume the whole cost of preparing young men to perform work which, whatever its societal implications, has as its immediate object the production of income for themselves and the firms that employ them? My hope for the future is that the profession will continue to provide all that training which it can provide more efficiently than the universities, and to bear the cost of doing so.

The profession has been primarily responsible for the elevation of standards for admission to the bar. Since 1900, we have moved from a condition of no general standards to a prevailing requirement of three years of college, three of law school, and a bar examination. But for one fact, I would be inclined to predict that this remarkable achievement would satisfy us for a while, and that no substantial increase would be necessary in the next fifty years. The fact which has to be reckoned with, however, is that, whereas our present law students have been selected from an annual crop of babies averaging, in 1930-35, less than two and a half million, the law students of twenty to twenty-five years hence will be selected from the current baby crop, which is averaging better than four million a year.13 Dean Griswold has predicted that "the next fifty years will find greatly increased opportunities of employment for well-trained lawyers."14 I hope he is right. But I predict that the opportunities for employment will increase less rapidly than the number of applicants for admission to the bar; and it follows that, in response to pressure from the bar, standards for admission will be raised.

I realize that this is a cynical statement. It amounts to saying that educational requirements for admission will be raised without substantial justification in terms of educational policy, for the purpose of controlling access to the privileges of the profession. I hope

13. "[F]or the nation as a whole the number of persons who will be of college age each autumn is a projection and not a prediction. They are here with us as infants, children, and adolescents. There will be 2,300,000 eighteen-year-olds in 1955; 2,800,000 in 1960; 3,700,000 in 1970; and 4,000,000 in 1971." Brown, A Long-Range View of Higher Education, 301 Annals 1, 3 (1955).
it is a wrong statement, but I am afraid it has support in history. I do not, of course, say that past improvements in educational standards have been without educational justification. I do say that they have been brought about primarily through the efforts of the bar; that at times the restrictive motive has been conspicuously the dominant one; and that no substantial educational justification is apparent for a general increase in the near future. I very much hope that, before we increase the general pre-law requirement to four years, extend the law course to four, and add a year or two of "internship," we will make certain that we sincerely believe this to be a better use of the lives of young men and women than we now dictate. Even if the plenitude of our economy during the next fifty years permits such a postponement of entry into productive activity, there are grave questions to be asked about the wisdom of postponing further the age at which men become self-reliant and achieve full maturity and responsibility. I sometimes think it is a blessing that bar associations have no control over the human period of gestation.

I suppose it is indelicate to suggest that pressures bearing on legal education may emanate from eleemosynary foundations, and I hasten to emphasize that I do not for a moment suggest that foundation officials would deliberately bring pressure to bear. But they have no choice. It is their responsibility to make decisions as to what constitutes the wise distribution of large sums of money. Law schools will naturally plead the cause of legal education. In some instances they will be successful, and grants will be made which will enable some schools to carry out projects which they have long believed to be essential to their function. To grant to one is to withhold from others. Under the pressure of being left out, schools which have been skeptical of the value, to them, of projects which have found favor will undertake agonizing reappraisals. My hope for the future is that in petitioning for foundation support the law schools will always be motivated by sincere conviction as to what is in the interest of legal education, and never by any consideration of what is required to come within a foundation's sphere of interest. This hope, I predict, will be disappointed here and there.

As we turn, finally, to developments which may be expected to result from the awesome pace of civilization in general, I am aware that this paper ought to take on the apocalyptic tone of a commencement address, but I must apologize to any editors or readers who may be disappointed by the absence of such oratory. Of course it is a truism that the future of legal education depends on the future of everything else, but I am not sure just what the appropriate relation is between changes in technology and world politics.
and adaptation in legal education. To be sure, the next fifty years will be an age of atomic weapons and energy, automation, wars of varying temperatures, supersonic transportation, intercontinental ballistic missiles, and assaults on the frontiers of space. The past fifty years have not been uneventful, either; yet in that period legal education has not undergone, nor do I suppose it should have undergone, anything like a corresponding process of development. Furthermore, I am not sure that I have any great faith in the kind of measures to which we typically resort when we gird ourselves to prepare the future lawyer for his new and great responsibilities. Legal education does not always lag. Within two years of Hiroshima a course on legal implications of atomic energy, entitled "Recent Scientific Developments and the Law," appeared in the summer curriculum at Yale.\textsuperscript{15} It has not survived,\textsuperscript{16} and I cannot grieve—not only because such topical adjustments constitute an unworkable method of dealing with our myriad problems, but also because they divert attention from an indefinable fundamental. I would not deny that the outlook for world peace calls for increased emphasis on international law, but I should not like to see us inaugurate new courses on international law and congratulate ourselves on having taken care of the problem.

Exactly fifty years ago, Professor Floyd R. Mechem, of the University of Chicago, said, as I might be saying, \textit{mutatis mutandis}, in this connection:

Contemplate for a moment what it means to be able to train men who directly and indirectly are to exercise the most potent influence over the growth and development of our law. We have in this country today, I suppose, considerably over one hundred law schools with something like fourteen thousand students. Think what it would mean if the thirty-five hundred or so young men who now go out yearly from these law schools to every town and city in the land could go with not only the best possible training in the law, but with the highest possible ideals as to its duties and responsibilities and the strongest possible ambition for its improvement and advancement.\textsuperscript{17}

Well, they had problems in 1906, too. Among others, they had the problem of race relations and the equal protection of the laws. And how have the law schools handled their opportunities and responsibilities in that regard? In the constitutional crisis which has followed the unanimous decision of the Supreme Court in the school

\textsuperscript{15}. McDougal, \textit{The Law School of the Future: From Legal Realism to Policy Science in the World Community}, 56 \textit{Yale L.J.} 1345, 1350 (1947).

\textsuperscript{16}. Perhaps the current course in "Law, Science, and Policy" is a more viable successor.

\textsuperscript{17}. \textit{The Opportunities and Responsibilities of American Law Schools}, 5 Mich. L. Rev. 344, 346 (1907) (an address delivered August 28, 1906).
segregation cases, ninety-six senators and representatives have contributed a declaration repudiating the decision. Seventy-four of the signers are law-trained men—the products of some thirty law schools. Plainly, legal education has failed to fulfill the hopes expressed in statements like that of Professor Mechem. There is not much point in repeating such hopes for the future without analyzing the causes of the failure. We have failed even if, as some may believe, the error consisted in overestimating the capacity for growth of written constitutions, and in wrongly gauging the limitations of law as a means of social control. We have failed without question if the error consisted in neglecting to inculcate an understanding of the essential conditions of constitutional government, a respect for human dignity, and an appreciation of the obligation of the lawyer to the law and to those who claim their rights under the law. I do not charge the law schools with responsibility for the conditions which have brought on the crisis, but I suggest that, if the law schools had fulfilled their aspirations, we might be witnessing leadership of a different sort from seventy-four senators and representatives, and from their brethren of the bench and bar.

In retrospect, what might the law schools have done? We had courses on jurisprudence, legal ethics, and civil rights, and they left their mark, but it was not enough. If we had had more such courses, and added seminars on segregation, would that have helped? Perhaps, but perhaps not enough. If our aspirations were attainable at all, the way was not through such formal arrangements alone, but through concentration on what I have referred to as an “indefinable fundamental.” As the expression confesses, I do not know quite what this means. I believe it means, for one thing, that training for professional responsibility and for awareness of the role of law in society is not a matter that can be parcelled out and assigned to certain members of the faculty at certain hours, but is the job of all law teachers all of the time. It means that we should be less concerned with seeking new things to do than with doing better the things we already do fairly well. It means that we should confront, and bring our students to confront, the most explosive problems with which law may deal, facing all the facts and plumbing all the issues to their full depth without fear or prejudice. It means that each law teacher should joyfully accept with Holmes the challenge that in his work he “may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable.”

This is all I have to say about the future to those whose profession is not legal education. To the law teacher I can say something more meaningful: if you would know what legal education should become, look into your own heart when you have finished a course and read the examination papers. Then your shortcomings are clear and acknowledged; you conceal nothing from yourself, you are not attempting to impress others with your eloquence, you have no panaceas to promote. If you—if all of us—will do about half the things we know, in such moments of honest self-appraisal, that we ought to do, we shall have reason to be gratified with our progress in the next fifty years.