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BACK TO THE CRIB?

William B. Stoebuck*

First, let me note that this Rembe Lecture honors Toni Rembe, Esq., a distinguished graduate of this law school, class of 1960. Toni and I knew each other as fellow students and members of the Washington Law Review, since I was class of 1959. After graduating here, she took a Master of Laws in taxation at New York University in 1961. Then she joined the premier San Francisco law firm of Pillsbury, Madison & Sutro, where she has long been the head of the tax law division. Toni, who is a Seattle native, has maintained her ties to this city. Among her other honors and positions, she is a director of Safeco Insurance Company. Also, let me thank Toni's husband, Arthur Rock, for making it possible for us to honor her today. He is a leading—we can without exaggeration say “famous”—San Francisco venture capitalist, whose generous gift funds the Rembe Lectureship.

In the rare book collection of the University of Washington law library are several editions of the famous *Year Books*. Many of the so-called “black-letter” editions were published in England through the centuries as late as 1679. But the original *Year Books* began in 1292 in the reign of Edward I and continued annually until they abruptly ended in 1535 during Henry VIII's reign. They are curious books, and there is some mystery about their purposes. Essentially, they are notes of cases argued in court. However, they generally give only the arguments of counsel and the colloquies between counsel and the judges; rarely do they give the court's decision and then only as a postscript.

Perhaps it is a coincidence, perhaps it is not, that systematic legal education in England began in the same year as the *Year Books* began. In that year King Edward issued a royal writ to the chief justice of Common Pleas directing that “promising students” in each county be appointed as “apprentices” to “follow the court and take part in its business.” These apprentices sat in a special area in the courtroom, called the “crib,” which I suppose is the origin of our expression “crib notes.” They took notes of the proceedings and on occasion were given little lectures by the judges or even asked to give their opinion on some matter. Maitland, the great legal historian, believed some of the

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apprentices' notes ended up in the early *Year Books*. It seems very likely in any event that one purpose of the *Year Books* was to train apprentices in pleading and argumentation.

By early in the fourteenth century the Inns of Court had begun. The largest, Gray's, Lincoln's, Middle Temple, and Inner Temple, are still in London today. There is some question about their original purpose, but by mid-fourteenth century we find the apprentices as members of the Inns, receiving instruction. The most famous form of professional instruction in the Inns was the mock trial, the "moots, endless moots."¹ But by the fifteenth, sixteenth, and seventeenth centuries, the Inns had really become universities, alternatives to Oxford or Cambridge. They taught not only the profession of law, but history and even music and dancing.²

It remains true in England today that legal education is conducted by the profession.³ There are two separate professions, the barristers, who are the courtroom gladiators, and the solicitors, whom we would call office lawyers, though they handle trials up to a certain level. Every barrister is a member of one of the Inns of Court. Solicitors are members of the Law Society. The four Inns of Court, instead of having instruction within each Inn as they did in the Middle Ages, now have gone together to operate the Inns of Court Law School, which is located at Gray's Inn in London. For budding solicitors, the Law Society operates the Law Society College of Law. It is customary, though not strictly required, that, before attending either the Inns of Court Law School or the Law Society College of Law, a student have taken a three-year baccalaureate degree at a university. The degree is often an undergraduate law degree, an LL.B., but it may be some other kind of degree. However, the Inns of Court and the Law Society prescribe a core curriculum of law courses that students should have in university: contracts, torts, criminal law,

1. I credit Professor Samuel B. Thorne, a great American scholar of English legal history, with the quoted expression. He used it in his course in English Legal History in Harvard Law School in 1966, where I was privileged to be his student.

2. The sources for the early history of the Inns of Court are Theodore F.T. Plucknett, *Concise History of the Common Law*, 217-18, 224-38 (5th ed. 1956); Frederick Pollock & Frederic W. Maitland, 1 *History of English Law*, 216-17 (2d ed. 1898).

3. Following are sources relied upon in describing the current English system of legal education. Roger C. Cramton, *Preparation of Lawyers in England and the United States: A Comparative Glimpse*, 10 Nova L.J. 445 (1986) (a short, cursory overview); Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 Loy. L.A. Int'l & Comp. L.J. 601 (1991) (lengthy, but not generally as useful as the Teeven article); Kevin M. Teeven, *An American Lawyer's View of English Legal Education*, 11 N. Ky. L. Rev. 355 (1984) (most useful first-hand observations by an American lawyer).

land law, constitutional and administrative law, and trusts. If a student has not had these six courses in university, then, before entering the Inns of Court Law School or the Law Society College of Law, he or she must take a nine-month preparatory course from the Inns or the Society. Thus, the Inns and the Society impose course requirements on universities.

When a student has met the entry requirements, he or she must choose whether to become a barrister or solicitor. If a barrister, then he or she must become a member of one of the Inns. Then he or she will attend a nine-month vocational course at the Inns of Court Law School. If the student chooses to become a solicitor, then he or she must join the Law Society and attend its nine-month vocational course. Following completion of the course in either the Inns of Court Law School or the Law Society College of Law, the student must serve an apprenticeship or clerkship in the office of a barrister or solicitor, as the case may be. Finally, after all that, the new barrister or solicitor is admitted to practice by his or her profession. Compared with the American system of legal education, the English system is more practical, more vocational, and much more controlled by the two legal professions.

American legal education has evolved along much different lines. In colonial America, there was nothing comparable to the Inns of Court, no law school of any kind. Our profession has never been divided into barristers and solicitors; American lawyers have always handled both office and courtroom practice. Almost from the beginning of the colonies, there was a core of lawyers who had an English legal education, either in the Inns of Court, in other so-called "equity inns" that have since disappeared, or as solicitors. Only a handful of English-trained lawyers are known to have practiced in the colonies in the seventeenth century, but the number increased at an increasing rate in the eighteenth century up to the American Revolution.

By far most colonial lawyers were products of an apprenticeship system, "reading law" in law offices. These apprentices might have any kind of educational background, from no formal education to a good college education at such colleges as Harvard, Yale, William and Mary, Princeton, Queen's College (now Columbia), or Brown. Such a system produced lawyers of wide-ranging ability, from crude pettifoggers to ones well educated and thoroughly trained in the offices of fine lawyers. George Wythe of Virginia, a great colonial lawyer who appears to have been himself a product of the apprenticeship system, trained in his office Thomas Jefferson, John Marshall, James Madison, and James Monroe.

So, the apprenticeship system could be very good or very bad; quality control was lacking.⁴

It was the lack of quality control, I think, that led to a demand for a more assured system of education for the bar at the end of our colonial period.⁵ The first college venture into legal education was at William and Mary, where George Wythe became professor of law in 1779. Chancellor James Kent was elected to a chair of law at Columbia in 1793. Meantime, the first American professional law school was a proprietary one, founded by Judge Tapping Reeve in Litchfield, Connecticut, in 1784, which operated until 1833. A number of proprietary law schools operated on the Litchfield model in the early 19th century. Instruction in these schools, as well as in the early college law departments, was intensely practical, essentially like apprenticeship in the classroom. No state required attendance at any kind of law school at that time or, indeed, until nearly 1930.

Harvard is generally credited with having the first college law school in 1817, with Chief Justice Isaac Parker of Massachusetts as a part-time professor and then in 1829 with Justice Joseph Story of the United States Supreme Court as a part-time professor. Other law schools were established at various colleges, including Yale, Princeton, George Washington, Tulane, North Carolina, and, perhaps the most successful, Transylvania, between 1817 and, say, 1850. They came and went. Their level of instruction was similar to that in the proprietary schools. Professors were mostly part-time judges or practitioners. Law schools were attended by relatively few students, as an adjunct to apprenticeship. States relied upon the bar examination as the ultimate qualification for practice, as they still do. During the mid-1800's, qualifications for practice actually declined.

Modern university law schools had their first stirrings in the 1850s or 1860s, at which time we also find a resurgence of proprietary law schools. There was an increased demand for lawyers, which the universities were eager to meet. The movement in legal education was part of a larger movement to attach other professional schools,

4. The sketch of colonial legal education is drawn from William B. Stoebuck, *Reception of English Common Law in the American Colonies*, 10 Wm. & Mary L. Rev. 393, 404-05, 413-15 (1968).

5. The sketch of the development of American legal education that follows is drawn mostly from J. Willard Hurst, *The Growth of American Law*, Ch. 12 (1950); Robert B. Stevens, *Law School, Passim* (1983); John T. Gaubatz, *Of Moots, Legal Process, and Learning to Learn the Law*, 37 U. Miami L. Rev. 473 (1983); and M. H. Hoeflich, *Plus ca Change, Plus c'est la Meme Chose: The Integration of Theory & Practice in Legal Education*, 66 Temp. L. Rev. 123 (1993).

particularly medicine, engineering, and divinity, to universities. Historians generally trace the pattern for the modern law school to 1870, when Harvard hired Christopher Columbus Langdell from practice to be its full-time law dean. He is famous for the case method of study, but I want to focus on another event in his deanship. In 1873, Harvard hired James Barr Ames as a full-time professor of law. In Robert Stevens's words, "The appointment of James Barr Ames . . . was considered a milestone. He was the first of a new breed of academic lawyer, a law graduate with limited experience of practice who was appointed for his scholarly and teaching potential."⁶

The American Bar Association (ABA), formed in 1878 to elevate the profession, took an intense interest in legal education, an interest that abides today. A team effort developed between the ABA and the university law schools. Whereas many or most university law schools did not require any college as a prerequisite when the ABA was formed, today a college degree is a practical, if not always a formal, requirement for admission. Most states require law school graduation to sit for the bar examination, though a few, including Washington, still accept law office apprenticeship as a rarely used alternative. The ABA conducted a long struggle with proprietary law schools, which the ABA has largely won. Proprietary schools, usually evening schools, flourished until the 1950s; around 1920, there were more law students in unaccredited proprietary law schools than in ABA-accredited schools. Proprietary schools still operate, particularly in the more populous states like California, but they are not the major player in legal education they once were. The vast majority of lawyers today, and nearly all leaders of the bar, are graduates of accredited university law schools.

I have sketched the history of legal education to establish some propositions for my main subject. Legal education began in England as an apprenticeship system, with the crib and the *Year Books*. In England, legal education has continued to be, and is today, under the control of the branches of the profession and more vocationally oriented than in America. In America, from office apprenticeships in the colonies, legal education has evolved into a system in which professional law schools, attached to universities, hold a near-monopoly. Perhaps I will be excused a little chauvinistic pride if I say that I believe—and some contemporary English observers agree—that our system produces on the whole better lawyers than theirs.

6. Robert B. Stevens, *Law School* 38 (1983).

Looking back into recent history, we all know that the past 20 or 25 years—a generation now—have been ones of much change in, not so much the form, as the content of American legal education. We are in a period of deep introspection. Or maybe we are, in Kenneth Pye's words, "at a point midway between introspection and self-flagellation."⁷ In doing the reading for this lecture, I was amazed at the volume of writing by American lawyers and legal educators about legal education in the past few years.⁸ Just now, much attention is focused on the so-called MacCrate Report, the report of the ABA Task Force on Law Schools and the Profession headed by Robert MacCrate, recent president of the ABA. I have read large parts of the report and also comments on it by Mr. MacCrate and others.⁹ The Report is all about "skills and values" for "the profession of law." It elaborately builds up descriptions of necessary skills and values.¹⁰ There is obvious concern, even a sense of urgency, that lawyers, especially newly admitted ones, too often lack these skills and values. Concerning law schools, two overarching themes are clear: (1) law school education is not sufficiently pointed toward the legal profession¹¹ and (2) law schools are not sufficiently inculcating the professional skills and values. The Report is vague on just how law schools should teach these. Apparently the Task Force would have them pervade the curriculum. One can read the Report to call for more clinical programs, yet one of the recommendations suggests a quite limited role for such programs.¹² The Task Force recommends—and this raises eyebrows in academic circles—that the ABA Section of Legal Education

7. A. Kenneth Pye, *Legal Education in an Era of Change: The Challenge*, 1987 Duke L.J. 191, 199 n. 22.

8. A good overview of currents in, and writing about, contemporary American legal education is David Barnhizer, *The Revolution in American Law Schools*, 37 Clev. St. L. Rev. 227 (1989).

9. Section on Legal Educ. and Admissions to the Bar, American Bar Ass'n, *Legal Education and Professional Development—An Educational Continuum* (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992) [hereinafter *MacCrate Report*]; John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. Leg. Educ. 157 (1993); Robert MacCrate, *A Fresh Look at Lawyers' Education*, 27 U. Rich. L. Rev. 21 (1992).

10. Discussion of the "skills" and "values" American lawyers need pervades the entire report. See, especially, *MacCrate Report*, supra note 9, Part Two.

11. Pointedly, *MacCrate Report*, supra note 9, at 330, recommendation 2, wants Standard 301(a) for law school accreditation changed, so as to require a law school not only to prepare its graduates to pass the bar examination, also to "participate effectively in the legal profession."

12. *MacCrate Report*, supra note 9, at 332, recommendation 15, says "clinical programs should help students understand the importance of the skill of 'organization and management of legal work,' although it will remain for the first employer or mentor to translate that awareness into . . . practice experience." (emphasis added).

and Admission to the Bar, which accredits law schools, should adopt standards requiring “skills and values instruction.”¹³

An article that has much provoked my thinking is Judge Harry T. Edwards’s 1992 Michigan Law Review article, entitled *The Growing Disjunction Between Legal Education and the Legal Profession*.¹⁴ It has caused a firestorm of comment, since Judge Edwards came to the Second Circuit after a distinguished academic career. I have read with interest Judge Richard A. Posner’s and Professor George L. Priest’s critical replies to what Priest calls Judge Edwards’s “lively essay.”¹⁵ Judge Edwards’s particular target—which is not my central focus today, though I share much of his concern—is the law reviews: much of the writing, especially in the elite reviews, is useless to the legal profession and in particular, as you might guess, to judges. He divides scholarship into that which is “practical,” that is, “prescriptive” and “doctrinal,” directed toward the profession; and that which is “impractical,” which is wholly theoretical, and “ignores the applicable sources of law.”¹⁶ In particular, he singles out Critical Legal Studies and interdisciplinary scholars as purveyors of “impractical” writing. He says, “I wholly reject the ‘graduate school’ model of legal education.”¹⁷ You can see a concern that Judge Edwards and the ABA Task Force share: they feel that academic legal work today is not sufficiently directed toward the profession.

While I too share some of Judge Edwards’s concerns, I do not wholly subscribe to some of his characterizations. To me, the distinction is not between “practical” and “impractical,” or “theoretical” and “untheoretical” scholarship. Judge Posner’s phrase, “law as an autonomous discipline” captures the essential difference better for me.¹⁸ As Posner says, traditional legal scholarship, from the time of Langdell onward, at least good legal scholarship, has been “theoretical.” But theory is worked out within the history and principles of law as an autonomous discipline or, as I might put it, from a perspective within the

13. *MacCrate Report*, *supra* note 9, at 330, recommendation 3.

14. 91 Mich. L. Rev. 34 (1992).

15. Richard A. Posner, *The Deprofessionalization of Legal Teaching and Scholarship*, 91 Mich. L. Rev. 1921 (1993); George L. Priest, *The Growth of Interdisciplinary Research and the Industrial Structure of the Production of Legal Ideas: A Reply to Judge Edwards*, 91 Mich. L. Rev. 1929 (1993).

16. Edwards, *supra* note 14, at 38, 42–44, 46.

17. Edwards, *supra* note 14, at 40.

18. See Richard A. Posner, *The Decline of Law as an Autonomous Discipline*, 100 Harv. L. Rev. 761 (1987).

legal system. Oliver Wendell Holmes's famous book, *The Common Law*, is certainly regarded as "theoretical," but it draws upon sources and reaches conclusions that are peculiarly within the domain of lawyers and legal scholars. To be sure, the traditional legal scholar is informed about society and often measures law and legal institutions by that knowledge, but it professes to be only the knowledge that intelligent, educated persons generally have. The scholar is not examining law and legal institutions as an outsider, as a biologist might examine a bug under a microscope, but as a participant in the system.

Within the past generation, fashions in American legal scholarship have changed enormously. One like myself, whose legal education occurred when traditional legal scholarship was the mode, and who still works in that genre, is poignantly aware of the trends. Judge Edwards complains, not that the newer forms of legal scholarship should not exist or that, done well, they are illegitimate, but of their dominance in academic circles. But beyond that, he gives evidence that, especially in elite law journals and leading law schools, it has become outré to work in more traditional ways, for instance, in doctrinal analysis. He has been criticized for basing his reliance upon anecdotal evidence, though the critic does not doubt Edwards's general observations.¹⁹ Anyone familiar with contemporary legal education, especially a faculty member, knows that acclaim, promotion, and tenure at the more prestigious law schools come more easily to faculty who engage in the newer forms of scholarship than in traditional, doctrinal work.

It is not my purpose to analyze the content of the newer forms of scholarship; I am moving on to another point. I do not regard myself as expert in any discipline other than law, not even in legal history, where I dabble a bit. But I am aware of some observations others have made about interdisciplinary studies. A frequent observation is that, while some law teachers who write in that idiom are well qualified to do scholarship in the "other" discipline, many are not.²⁰ Law teachers who write from the perspective of some other discipline should have their work evaluated by good scholars in that discipline for, say, decisions on promotion and tenure. Then, too, interdisciplinary studies have made,

19. See Posner, *supra* note 15, at 1930 n. 3.

20. See, e.g., Edwards, *supra* note 14, at 36 ("mediocre interdisciplinary articles"); Richard A. Posner, *Legal Scholarship Today*, 45 Stan. L. Rev. 1647, n. 15 ("much of it [new scholarship] is embarrassingly bad"). Reflect also upon David Barnhizer's observation that legal scholars, being trained as advocates, bring an advocative cast to their writing, which is contrary to the tradition of neutrality of scholarship in other disciplines. David Barnhizer, *The Revolution in American Law Schools*, 37 Clev. St. L. Rev. 227, 235-39 (1989).

and have the capacity to make, greater contributions in some areas of law than in others and on some kinds of questions than on others.²¹ Even Judge Edwards values the insights of interdisciplinary studies when the writing is directed toward the resolution of what he calls “very hard” cases.²² His complaint is that, especially in the more prestigious law reviews and schools, the balance has swung too far over to his “impractical” scholars. He has much common ground with the MacCrate Report: both feel that legal education should be professionally directed.

Concerning the Critical Legal Studies movement, I have more difficulty seeing its contribution to legal education than I do that of the interdisciplinary scholars. Again, it is not my purpose on this occasion to critique the content, or lack of content, of critical studies. Many others have, to borrow a word from the critical scholars, done a lot of “trashing” of their ideas and their methods.²³ They are generally accused of being Marxist and nihilist. In a former life, I was a student of Marxism, and I think they are incomplete Marxists. Critical scholars deconstruct other schools of thought, but they offer no coherent replacement. Marxists, who similarly preach the disintegration of existing society, at least have, or had, a vision of a new world, though now seen to be false. Like the Marxists, the Critical Legal Studies scholars see the thesis and antithesis of the Hegelian trilogy, but, unlike Marxists, they do not see any synthesis. One thing is certain, a scholar who believes that the legal system is a total fraud cannot be very professionally oriented.

In any discussion of contemporary legal education, someone is sure to point out that the clinical movement is professionally directed. I acknowledge that there are cross-currents in legal education and that clinical experiences do provide professional skills training. But I would note that other motivations also fuel the clinical movement, which came out of social justice concerns of the early 1970s; the movement was quite politicized.²⁴ To provide services to underprivileged groups and to raise the level of student consciousness remain as much the clinical purpose as

21. See Posner, *supra* note 20, at 1647.

22. See Edwards, *supra* note 14, at 43–45.

23. See, e.g., Arthur Austin, *The Greening of the Law—Anarchy and Elegance: More Anarchy than Elegance*, 28 Idaho L. Rev. 213 (1991–1992); Paul D. Carrington, *Of Law and the River*, 34 J. Legal Educ. 222 (1984); Phillip E. Johnson, *Do You Sincerely Want to be Radical?*, 36 Stan. L. Rev. 247 (1984); Louis B. Schwartz, *With Gun and Camera Through Darkest CLS-Land*, 36 Stan. L. Rev. 413 (1984). A less critical review of critical legal studies, putting them in context with other forms of legal scholarship, is in Barnhizer, *supra* note 20. A discussion of “trashing” and other techniques used by critical scholars will be found in Mark G. Kelman, *Trashing*, 36 Stan. L. Rev. 293 (1984).

24. See Barnhizer, *supra* note 20, at 266.

to train in practice skills.²⁵ Critical legal scholars welcome clinical programs, not because they develop practice skills per se, but because they “empower students to avoid traditional law firm jobs.”²⁶ So, even clinical studies, as they have developed, are not purely practice skills courses.

Let me now state in plain my concern with some of the recent developments in legal education. I am concerned, with Judge Edwards, about a “disjunction” between legal education and the legal profession, but my concern is with something of which law review writing is only one reflection. It is with underlying assumptions. What we do as legal educators—what we teach, what we write, what we are as legal educators—all comes from the way we conceive of our purpose, our role, and that of university law schools. Over and over again the words “graduate school model” or some variant of that phrase appear in the literature.²⁷ When that label is used, it is clear that the writer is referring to some of the newer modes of legal scholarship, chiefly interdisciplinary work and critical legal studies.

Those legal scholars who have produced the trend toward the “graduate school model” tend, in varying degrees, I am sure, to reject the traditional professional role of the law school. This is a recent phenomenon. Legal educators, and certainly the public and the profession, have viewed law schools, like professional schools of medicine, dentistry, religion, and engineering, as different from, and with different purposes than, the academic departments: *in* the university but not fully *of* the university. I believe most legal educators still accept that

25. See, e.g., Leslie Newman, *Law Schools and Community Economic Development* (unpublished manuscript 1993) (in my files), which reports on a number of clinical programs in community economic development; Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A MacCrate Report on Experiments in Progress*, 43 J. Legal Educ. 199 (1993), describing poverty law courses with a clinical component, designed to sensitize students.

26. See Paul Brest, *A First-Year Course in the “Lawyering Process,”* 32 J. Legal Educ. 344 (1982) (describing a required first-year simulated clinical course he and William Simon taught at Stanford Law School); Kelman, *supra* note 23, at 300.

27. See, e.g., Barnhizer, *supra* note 20, at 263 (“what university scholarship in law would be if the Langdellian/ABA paradigm had never been constructed”); Edwards, *supra* note 14, at 40 (“the ‘graduate school’ model of legal education”); Hoeflich, *supra* note 5, at 141 n.86 (“many law professors . . . redefined their roles to be more like humanities or social science faculty”); Posner, *supra* note 18, at 779 (“the study of law not as a means of acquiring conventional professional competence but ‘from the outside’”); Posner, *supra* note 20, after n.17 (“Law curricula would become more practical. Room would thereby be created for true graduate departments of legal studies . . .”); Pye, *supra* note 7, at 199 n.25 (“One law professor [George L. Priest] sees the need to transform the law school into a self-contained university with a set of miniature graduate departments. . .”).

role, but it is the drift toward a changed conception about which I am concerned.

To the extent law faculties are tending to become, and to believe they should become, less professionally oriented, to that extent they abandon the role that university law schools struggled to attain in America. Perhaps James Barr Ames's appointment at Harvard marks the beginning of an inevitable tendency in our system, that law teachers gradually assume more the role of academicians, losing their sense of identity with the profession. I am sure that many of the interdisciplinary and critical scholars feel little affinity with the profession.

My concern is that we—the university law schools—will lose it. Our society will have lawyers, and *someone* will prepare them for their professional work. To the extent university law schools create a vacuum, then someone else will do it. There is an implicit threat of this in the MacCrate Report: clearly the Task Force has some dissatisfaction with how university law schools are preparing students for professional work and is calling on the profession to take over some of the preparation. Suppose we were to become graduate schools in which the purpose, or the main purpose, was to explore the role of law and the legal system in government and society. For one thing, this would not serve our own selfish interests. Law professors have a very enviable position in American universities; because we are academics who are part of another profession, we enjoy the pleasures of university life, but we are promoted faster and paid better than faculty in the purely academic departments. Do we sincerely want to become pure academics? But I hope our ultimate concern is more principled. Would the legal system, government, and society be better off if someone else, the practicing profession and no doubt proprietary law schools, replaced us as the providers of lawyers? *Do we want American legal education to go back to the crib?*

What would I have us do about my concerns? Since my thesis is that the threat to university legal education is one of attitudes and values, my purpose is only to persuade and not to prescribe. I suppose there are a number of actions law faculties could take to foster professionalism in university legal education. We could give more weight to professional experience in the hiring, promotion, and tenuring of faculty. We could give more credit for teachers' professional activities. We could have a higher regard for traditional modes of legal scholarship. A Canadian study recommended two separate kinds of law study, one professional

and the other academic.²⁸ But I have not thought much about what actions we could take, and I do not want to dwell on them. To affect attitudes about university law schools and the profession is my purpose.

Having expressed my concerns, I now have to make a confession: I have a concern about my concerns. There is little danger of this in today's climate, but I certainly do not want American lawyers to be merely legal technicians, mechanics of the law. A strength of our profession for hundreds of years, here and in England, is that lawyers have been leaders in government and society; this peculiarly marks our profession. Good lawyers are persons whose intelligence, broad liberal education, combined with a lawyer's directivity, specially equips them for leadership at every level of society. I do not want to lose or diminish their capacity or inclination for this kind of service. Therefore, while I want our lawyers to have a rigorous professional legal education, I also want them to have a broad, liberal education, especially in the humanities and social sciences. Especially, I want them to appreciate deeply the role of the law and the legal system in society. In the idiom of the day, I want my lawyers to "have it all."

And I have a modest suggestion, which, as far as I know, is original in the context in which I am speaking. How about law schools requiring as prerequisites to admission a core of specified undergraduate courses whose special focus is on the role of law and the legal system from the perspective of other disciplines? I have not worked out the details, but I am thinking of a core of perhaps six prerequisite courses. These would have the opposite function of the six core courses English legal professions require; their courses are basic law courses; mine are intensely academic courses in the humanities and social sciences. For instance, we might require a political science course on the legal system's role in government, a history course on the role of the legal system in American history, and a sociology course focusing on the capacity of the legal system to order social groups. To a considerable extent these courses could be built upon existing courses, but the focus and purpose would be different. It would be a sort of pre-law curriculum, but of course not as extensive as the required pre-medical curriculum. I think college students would readily accept this; you hear them talk about being "pre-law majors" now, though they are really history, music, or engineering majors. They would come to us ready to

28. Social Sciences and Humanities Research Council of Canada, *Law and Learning* 140-44, 154-57 (1983). This report advocates "pluralism in Canadian legal education," "university law faculty . . . with non-professional goals," and "alternative curriculums."

see their law subjects in the larger scheme of society. There would be problems to work out, but I have confidence that a law faculty that is clever enough to put a law school on the semester system in a quarter-system university could solve them. Many law school professors who now teach interdisciplinary courses in law school would probably want to teach similar courses in my core curriculum, especially if they were qualified for joint appointments in the offering departments. One additional feature that I think is worth serious consideration would be to have in law school a first-year "bridge" course. It would be something like a processes course, but specifically designed to bridge the undergraduate core curriculum to law school courses.

Let me close on this note: I want to preserve American legal education in its chosen role, professional schools attached to universities. This American innovation has proven a superior way to populate a profession that is both professionally competent and alive to the broader purposes of society. My concern is that if legal education too much strays from its professional role, the enormous and elevating influence we have had on the profession and, through the profession, on all of society, will be lost or curtailed. Others with more parochial outlook will take over. Even if it means some legal scholars do not pursue their scholarship into more academic, more speculative, realms, the compromise will be worth it. The same hand that wrote, "Half a loaf is better than none" also wrote, "Better to bow than to break."²⁹

29. John Heywood, *Proverbs*, Part I, Ch. 9, Ch. 11 (1546), as quoted in John Bartlett, *Familiar Quotations* 90 (13th ed. 1955).