Objectives and Insights In University Legal Education*

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OF KNOWLEDGE, SKILLS AND POLICY-MAKING

On anniversary occasions, it is conventional practice to lead off with a speaker whose assignment it is to describe the major occurrences in a chosen field during the twenty-five, fifty, or one hundred year period being commemorated. Who among us has not been subjected to ceremonial addresses entitled *Twenty-Five Years of Oral Surgery, A Decade of Scientific Hotel Management,* or — as the law reviews would have it — *1849-1949: The Formative Century in the Law of Undisclosed Principal?*

Dean Fordham's letter inviting me to participate in this conference made it quite clear that I was expected to address my remarks to legal education issues of present significance and vitality and distinctly did not suggest that I start out from 1873, the year this great University opened its doors. But it is necessary to the presentation of the ideas I want to offer for discussion this afternoon that I begin by tracing very briefly what seem to me to be the principal lines of development in the philosophy of American university legal education. And that, I find, cannot be done without at least an opening reference to certain events which were taking place at the Harvard Law School three quarters of a century ago.

In 1873 Christopher Columbus Langdell was in his third year as Dean of the Harvard Law School and devoting his energies single-mindedly to the installation of the case method, which was and is the distinguishing characteristic of university law training in the United States. The enduring quality of Langdell's accomplishment appears sufficiently from the fact that every proponent of a new approach to legal education still finds it unavoidable, at the very outset, to explain his proposed new venture either as an improvement or extension of the case method or as a revolt against it. The status of the case method as a norm in everybody's thinking about legal education was never more dramatically illustrated than at the 1947 National Law Students Conference on Legal Education, when Judge Jerome Frank, the most articulate opponent of the university tradition in American legal

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education, felt it necessary to begin his latest restatement of the case for clinical "lawyer schools"[1] by picking a fight with the ghost of Christopher Columbus Langdell.

To Langdell the aim of university legal education was the communication to students of scientific knowledge of essential legal doctrines.[2] His concern was with the theory or science of law not with the arts of the practitioner. The great virtue of the case method, in the mind of its originator, was that it made possible the teaching of basic legal principles from what Langdell thought of as their sources, reported judicial decisions. The essential innovations of the case method approach — a more critical attitude towards judicial decisions and the use of the Socratic method in classroom discussions — were both thought of as necessary to the scientific examination of legal principles. Langdell often spoke of the vocational objective of turning out better trained lawyers and judges, but the training towards which he aspired was theoretical training, mastery of a comprehensive system of governing legal principles, the essential doctrines of the common law.

Few case method law teachers of the present generation would attempt to justify the method as one suited for the communication of anything like an encyclopedic knowledge of fundamental legal principles. We have long since abandoned any attempt at complete coverage of the theoretical or doctrinal side of the law. Our present defence of the case method is essentially a practical or vocational one, that the case method forces the law student to use legal materials in a manner resembling as closely as manageable the use which practicing lawyers make of the same sources in litigation and in office practice. The great virtue we now claim for the case method is that it is the study and teaching procedure best suited for the development of the "legal mind" — respect for facts, abilities at case analysis and synthesis, habitual distrust of the undocumented assertion and the easy generalizations. This, I suppose, is still a justification of the case method in terms of theoretical training, but the emphasis has shifted from communication of present knowledge of case law principles to development of the ability to extract the governing principle from any group of judicial decisions which the law graduate may be required to handle in practice or on the bench.

From this "legal mind" justification of our characteristic case method, it is only a short step to an approach to legal education which puts the emphasis not on a grounding of students in legal

[1] Published as *A Plea for Lawyer Schools*, 56 YALE L. J. 1303 (1947).

[2] On Langdell's case system assumption and objectives, see REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 369-381 (1921); and Beale, *The History of Legal Education* in 1 LAW: A CENTURY OF PROGRESS 104 (1937).

theory but on a schooling of students in the arts and skills of the profession. The best statement I have seen of an out-and-out "skill" approach to legal education is in the 1944 report of the Committee on Curriculum of the Association of American Law Schools: "Legal education is in proper essence and purpose a training for *work* as a lawyer, and . . . knowledge of the law is only one of many needed lines of training."[3] My guess is that a very substantial majority of the teachers now active in university law schools would subscribe to this "professional skills" objective as the right emphasis. Certainly the greater part of the re-examination of law school curricula and teaching methods since the end of World War II has been with the avowed purposes of intensifying law school training in traditional case law skills and adding training in such newer skills as counselling, drafting, and law administration.[4] Progressive bar examiners, in New Jersey and elsewhere, have caught the "skill" religion and plan to recast their examinations in a pattern which will assign less weight to theoretical knowledge and more to the applicant's performance in counselling, drafting and other arts of the profession.

So far, though in fragmentary and inexact terms, I have traced a shift in legal education emphasis from what do students *know* about legal principles to what can students *do* with legal materials and in lawyer situations. A third and increasingly important school of thought in American university law schools would carry this re-examination of existing legal education another step and measure its adequacy in terms of a more ultimate aim — the uses to which law school graduates are to put their knowledge of legal principles and their developed professional skills. The best known statement of this third emphasis is in the 1943 article, *Legal Education and Public Policy*[5] by Professors Lasswell and McDougal of the Yale Law School:

> A first indispensable step towards the effective reform of legal education is to clarify ultimate aims. We submit this basic proposition: if legal education in the contemporary world is adequately to serve the needs of a free and productive commonwealth, it must be conscious, efficient, and systematic *training for policy-making.*

The specific proposals which the authors advance as means towards the accomplishment of their objective have caused just

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[3] 1944 HANDBOOK 159, at 160. The Report of the Committee on Curriculum is reprinted as *The Place of Skills in Legal Education,* 45 COL. L. REV. 345 (1945).

[4] The best skill-organized curriculum proposal I have seen is set out in the 1949 report of the Curriculum Committee of the College of Law, The Ohio State University.

[5] 53 YALE L. J. 203, at 206 (1943).

about as much disagreement in the law schools as attended Langdell's pedagogical revolution of 75-odd years ago. I know that I found and still find myself worried by the use of the terms "efficient" and "systematic" as descriptive of any phase of liberal university study. But the new emphasis is a dramatic and useful pointing up of the responsibility of university professional schools, a reminder that knowledgeable and skillful lawyers are not necessarily assets of society unless their aptitudes and abilities are directed to socially useful ends.

Shall the emphasis of university legal education be put on knowledge of the law, on artistry in the skills of the profession, or on wisdom and effectiveness in policy-making? The very posing of the question as a choice of mutually inconsistent alternatives indicates sufficiently its unreality. Certainly there is no university law school of any consequence which is exclusively a "knowledge" school, a "skill" school, or a "policy-making" school. All law schools, and I suspect all individual law teachers, aspire to a training which will produce graduates genuinely learned in the law, apt in the arts and skills of the profession, and equipped to participate in the decisions of policy which constitute an inescapable part of the work of the practicing lawyer. Much of the most heated of present legal education controversy on the aims of legal education reduces itself, on analysis, to dispute as to the extent to which a law teacher should make explicit the convictions which underlie his own philosophy of law. But the three emphases sketched during the past ten minutes seem to me real enough and significant enough to be used as the basis for considering the minimum insights which must be communicated to a law student if he is to be given anything like adequate schooling in the knowledge and understanding of legal principles and processes, in the use of legal skills, or in the science and art of policy-making.

During the rest of my discussion this afternoon, I shall assume that there is nothing exclusive about education for knowledge, education for skills, or education for policy-making. The three emphases, we would doubtless all agree, are related phases of the training of the complete lawyer. The question of which emphasis should be given priority in the planning of law school curricula, in the shaping of law school methods, and in the choice and assignment of law school faculty members, will be left to commentators better qualified and more venturesome than I. My point is that there are certain major respects in which existing law school training must be held inadequate, whether judged in terms of communication of theoretical knowledge, in terms of professional skill training, or in terms of conscious training for

policy-making.

The three principal shortcomings in present day university legal education are, it seems to me, the following: *First,* the almost complete failure of the law schools to communicate to law students a working awareness of the realities and potentialities of the legislative process and of the problems and methods which characterize the legislative development of the law; *Second,* the "once over lightly" treatment given in the law schools to consideration of the legal profession as an institution in the administration of justice and to analysis and discussion of the status and responsibilities of members of the bar; and *Third,* the oblique and usually hesitant consideration which most law courses give to the values which underlie and provide the basic directions of growth of our legal system.

Each of the three insights suggested by this listing of shortcomings is, I propose to show, essential to a rounded knowledge of legal doctrines and processes, essential to professional performance in the skills of the profession, and, perhaps above all, essential to useful participation by law school graduates in the activities which we have come to call lawyer policy-making.

Legislation in the Law Schools

Most of my own work for the past few years has been in the field of Legislation; so it is natural enough that I begin with a consideration of what needs to be done in the law schools to communicate to law students a sharper understanding of the potentialities of the legislative process and at least an awareness of the problems and methods which characterize the legislative development of the law. No one in this company will take issue with the statement that legislation has attained considerably more than a position of parity with judge-made law in the American legal system. The great legal and social issues of our day are and will be decided, one way or the other, by legislative, not by judicial action. For, as Chief Justice Stone phrased it, ". . . it has become increasingly our habit to look for the formulation of legal doctrines suited to new situations not to the courts, as through most of the life of the common law, but to the legislatures, and the primary record of the most important changes in the law in our time is to be found in the statute books."[6]

What is the bearing of this dominance of legislation as a form or source of law on the three approaches to legal education briefly outlined at the outset of my discussion? In terms of education for *knowledge,* we must carry over to the study of legislation the

[6] *The Common Law in the United States,* 50 Harv. L. Rev. 4, at 12 (1936).

fundamental idea, long accepted in the study of judicial decisions, that legal doctrines cannot be studied effectively in abstraction from the law-making process which developed and shaped them. Seventy-five years experience with case-method law teaching has convinced us all that common law principles can be grasped only on the basis of thorough-going student appreciation of the realities of the judicial process. Is it not equally beyond dispute that the governing legislative principles which run through every area of private and public law can be understood and appraised only by law students who have the same deeply-grounded insight into the realities of the legislative process?

If we approach legal education, as I think most of us do, with the primary emphasis on the *skills* of the profession, equal account must be taken of the lawyer's needs in a legislative age. The practitioner who aspires to usefulness and distinction in the profession must command a variety of what we may call "legislative skills", as well as the more conventional case law skills so effectively developed by good case method teaching. By "legislative skills" I mean more than aptitude in statutory interpretation, important as that art is in contemporary law practice. For lawyers everywhere are increasingly being called on to take part in the drafting of statutes, regulations, and ordinances, in the presentation of facts and points of view to federal and state legislative committees and municipal law-making bodies, and in the representation of clients before legislative investigating committees. And, when we consider the arts of counselling, it is evident that the lawyer's prediction, on the basis of which long-range business action is to be taken, is at least as likely to be a forecast of probable future lines of legislative development as a prediction of the course of future judicial decision.

The significance in law school training of a thorough grounding in legislative processes and methods is, or should be, most clearly underlined by those who approach legal education with the emphasis on *policy-making*. Legislative action is the characteristic, and by all odds the most important, form of policy-making in a representative democracy. Judicial policy-making — inescapable and important as it is — is at most interstitial and subject to being overridden altogether by subsequent legislative action. If legal education is, at least in one aspect, "conscious training for policy-making", a first priority must be given to the communication to students of a working familiarity with the legislative process and legislative methods by which "policy" is raised from the realm of criticism and argument to the status of binding law.

Effective as present methods and materials are in matters of case law, contemporary legal education is grievously behind the

times in its handling of legislative realities. The case method, even as employed by its most masterful and progressive exponents, is aimed essentially at an understanding of judicial doctrines and methods and is not at all suited for the presentation of legislative materials. American jurisprudence, even — or perhaps, particularly — so-called "realist jurisprudence" is concerned almost entirely with analysis and interpretation of the judicial process. The great names in American jurisprudence are Holmes, Cardozo, Llewellyn, and others to whom the problems and practices of the judge are the focus of interest and study. Recent law school boasts of "increasing attention to legislative problems" are, nine times out of ten, founded on little more than a few case method courses in which the principal judicial decisions studied involve the interpretation of statutes rather than the use of judicial precedents. And, even there, the emphasis is on *what the judge does* (or what the advocate does) with finished statutory sources in particular litigated cases — not on how the statutory materials came to be what they are.

It is particularly disappointing, I think, to find that most of the "policy teaching" now going on to some extent at almost every law school is 90% policy in theory and almost entirely divorced from the practical steps necessary to get the better policy where it belongs, on the statute books. How many "policy teachers", at your law school or at mine or even at Yale, follow up a stimulating session on abstract policy with such down-to-earth assignments or questions as: "What are the most persuasive sources of information to use in supporting a better legislative rule in this matter before a state legislative committee?"; "Draft a statute suitable, for immediate introduction into the state legislature, which will embody what we have agreed on as the better policy."; "Would the Banking and Currency Committees of the House and Senate, on the basis of your study of their work so far during the 81st Congress, accept your proposal in its present, or in a modified, form?" I have not been following the recently published casebooks as closely as I should, but I wonder how many extracts from committee hearings, committee reports, debates, veto messages, law revision commission reports, and other legislative sources are to be found in the latest "policy science" casebooks. Policy criticism is good. Policy accomplishment is a great deal better. And that accomplishment is a matter of insight and hard work in the legislative development of the law.

I am not suggesting at all that we take as our objective the training of large numbers of our graduates for careers as professional legislative draftsmen. The jobs are not there, of course, although the extent to which law graduates dominate the mem-

bership of federal, state, and municipal law-making bodies should cause us considerable concern as to the adequacy of our present training in statute law-making. My present point is rather that the approach of the practical legislative draftsman is uniquely instructive in the training of a lawyer for service in the conditions of contemporary law practice. No teaching approach I know of is as well calculated to put the emphasis on creative, constructive action, rather than on negative criticism of the workmanship of past lawyers, judges, and legislators. Continued working through of difficult legislative programs will give the law student completely new insight into the realities of statutory interpretation and law administration. But, more important even than this, it will give him the beginning of a professional appreciation of all that is involved in translating a bright idea into practical and progressive legal action.

The organization of a substantial number of law courses around the principal legislative problems in the fields under study would make possible a really effective integration of social science and other non-legal materials into the law school program. When I was in law school in the immediately pre-New Deal years, this effort to broaden the content of legal training by making use of the findings of related social science disciplines was usually hitched to discussion of the Brandeis Brief in due process litigation, a technique of considerably less consequence today under the Supreme Court's present standards of judicial review. But legislative problems must be tackled with the aid of all informative sources of guidance, and law students experienced in the employment of the methods of the legislative draftsman would be far less inclined than our students are today to discount non-legal materials as window-dressing data of only "fringe" importance in appraisal and development of the law.

I hope that it is not too much of a digression from my immediate point to add that wider use of a teaching approach stressing the constructive attributes of the legislative process would be as good for the law teachers involved, and for the universities which employ them, as it would be for the students. In a progressive society like our own, the lawyer is, above all, the organizer of scientific knowledge for practical social ends. Much of the scholarly research being conducted on American university campuses would have great value for the legislative development of the law if law school faculty members took the initiative in putting these research findings into the form necessary for their effective presentation to legislative committees and administrative policy makers. A law teacher who, in the classroom, regularly uses the methods of the legislative draftsman is likely to bring

the same approach to bear on his outside activities. No law school I know of has yet awakened to the endless opportunities which now exist for working collaboration on practical legislative problems between the law school and the other schools and faculties which make up a great American university.

THE LEGAL PROFESSION AS A SUBJECT FOR LAW SCHOOL STUDY

The second fault I have to find with existing university legal education relates to the "once over lightly" treatment given in even the best law schools to study of the legal profession as an essential institution in the administration of justice and to consideration of the status, opportunities, and responsibilities of members of the bar. It is fair to say, I think, that our law schools give closer study to every other institution of any importance in law administration than to the legal profession itself. We classify our law schools as "professional" schools, but examination of typical law school bulletins discloses this meager record: an occasional senior elective in the *Legal Profession,* some attention to problems of professional organization and discipline in a third year course like *Judicial Administration,* and here and there, a sprinkling of one hour courses in *Legal Ethics.* And, from all I have heard, the approach to the profession and its obligations characteristic of the usual law school course in *Legal Ethics* is not very different from the approach followed at Branch Rickey's Florida baseball academy in explaining the new balk rule to rookie pitchers from the Tri-State League.

Whatever the law school's primary emphasis may be — on knowledge, on skills, or on policy-making — a law student's training is incomplete if he leaves law school largely uninformed about the traditions, standards, and problems of the profession in which he will spend his life. If the criterion is *knowledge* of legal principles and processes, it is enough to state the known fact that the action of lawyers outside the courthouse affects and conditions the operation of legal rules fully as much as does the action of judges in contested cases. How, for example, can law students understand and appraise the existing legal principles governing liability for injuries resulting from automobile accidents if the focus of law school examination is too narrow to include such influencing factors as the availability of adequate legal services for persons of modest income, the causes and incidents of ambulance chasing, and the percentage of the amount of recovery in personal injury litigation typically required as lawyer's fees?

Law school *skill* training is equally unrealistic unless the practitioner techniques in which students are to be schooled and drilled are presented in the full institutional setting of their use. Four

years trial and error with a first semester, first year course in *Legal Method* has brought home to me that law students cannot be given anything like a "feel" for the arts of written and oral advocacy unless they first have an informed understanding of the role of the advocate in the administration of justice.[7] Skill training in counselling and negotiation will hardly be very profitable to students who know how to go through the motions but have only hazy ideas concerning the working realities of the lawyer-client relationships.

More effective recognition of the professional character of legal education is required, particularly, whenever law schools set out on the high enterprise of training their students for *policy-making.* For the lawyer is not a policy-maker without portfolio, an unattached and wholly independent doer of good deeds. The average successful practitioner gets into what we call policy-making not as the result of any choice or fondness for power on his part but because participation in policy decisions constitutes an inherent and inescapable part of his regular professional service for his clients. The lawyer's policy-making obligations and opportunities cannot usefully be examined outside the context of the lawyer's working relationships with his clients, with other members of the profession, and with the courts and other agencies of government.

What practical steps can be taken to bring university legal education closer to professional realities? In the first semester of law study, by separate course or otherwise, we must see to it that students develop at least the beginnings of insight concerning the history and organization of the profession, the function of the advocate in the operation of our legal system, the conditions and variety of contemporary law practice, and the professional considerations underlying existing standards of legal ethics. But a more sustained effort is required. Throughout the full three years of law study there should be brought into every course, as a part of its essential subject matter, at least some descriptive and critical discussion of the status and work of the lawyers significantly active in that field of law administration.

A few familiar examples should be sufficient to clinch my present point. How adequate and realistic is a course in *Corporations* in which no analysis is attempted of the work and conditions of employment of corporation "house counsel" and of regularly retained outside counsel? Or a course in *Labor Law* in which the unique relationships between labor lawyers and the

[7] This point is developed in context in Jones, *Notes on the Teaching of Legal Method,* 1 J. LEGAL EDUC. 13, at 17 (1948).

unions they represent are given only passing comment? What is more relevant to a professional course in *Criminal Law* than an informed and candid discussion of the recruitment, qualifications, and standards of the criminal bar, especially in the great metropolitan areas? Nor are these illustrations intended to be exclusive. A law school course in *Administrative Law* is incomplete without consideration of the kinds of work done by lawyers in the federal, state, and municipal legal service and a course in *Legislation* unprofessional unless it takes account of the issues suggested by Justice Brandeis' observation that the lawyer-client relationship is governed by different considerations in legislative representation than in court litigation. Systematic law school attention to this professionalizing objective would do a great deal, I think, to narrow the known and regretted gap from law school to law practice. The interim and final reports of the Survey of the Legal Profession[8] will provide urgently needed materials for law school study of the profession and its work.

So far I have been proposing this increased stress on professional standards, relationships, and problems as one designed to make the law student a more effective individual member of the bar after his graduation. The further point is that this emphasis, sustained throughout the three law school years, would give law graduates a more vigorous interest in the activities of the organized bar. Because of its unique position in American society, particularly in political matters, the legal profession is a popular target of attack from almost every other element in the national community, from social reformers to industrial leaders. Virtually all expressions of lay dissatisfaction with "the law" are in reality reflections of dissatisfaction with the practices of lawyers.[9]

The organized bar, to date, has a record of failure — or, at best, of only spotty success — in such of its essential activities as the elimination of unsavory practices by a minority of the members of the profession, the establishment of effective public relations to counteract certain commonly heard but unjustified complaints against lawyers, and the development of workable plans to meet urgent professional problems, notably the provision of adequate legal service for low-income and middle-income groups.

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[8] Porter, *Surveying the Legal Profession*, 32 J. AM. JUD. SOC'Y. 134 (1949) is an excellent interim report on the objectives of the Survey and its methods to date. My colleague, Professor Elliott E. Cheatham, plans to incorporate the essential findings of the Survey in a second edition of his thoughtful and stimulating CASES AND OTHER MATERIALS ON THE LEGAL PROFESSION (1938).

[9] See Smith, *Complaints Against Lawyers* (February 11, 1949), a memorandum submitted by the Director of the Survey of the Legal Profession to the Survey's Advisory Committee of Laymen.

A principal lack in the work of the organized bar has, I think, been the want of a common, unifying professional tradition, shared by all lawyers of all shades of political and economic opinion. An intensified law school emphasis on study of the legal profession, its work, and its standards might provide the basis for wider and more effective participation by recent law school graduates in organized bar activities.

Education in Legal Values

So far, in discussing the aims of legal education and certain insights which seem to me indispensable to the development of student knowledge, skill, and policy-making capacity, I have been on safe, or at least familiar, ground and have offered my specific prescriptions with respectable confidence concerning their necessity and appropriateness. I proceed now to a consideration of the place of values in the education of lawyers with full awareness that I am may be getting out beyond my depth. But great issues are better mishandled than dodged altogether, and there is no ignoring the fact that most university legal education is subject to sharp criticism for the hesitant and oblique consideration which is given to the values which underlie our legal order and control the directions of its development.

In the old textbook and lecture schools, legal rules were presented as if they were self-justifying units in a wholly autonomous system. The case method brought with it a more critical attitude towards judicial decisions, but the critisism and appraisal of existing law undertaken in the traditional case method course went on almost entirely in terms of doctrinal consistency. Classroom discussions of the "soundness" of a casebook decision related, nineteen times out of twenty, to the question whether the holding of the case was supported by legal precedent and legal principle. It was the rare law teacher who required his students to dig beneath the doctrines and concepts of the existing law to uncover the notions of expediency and judgments of value in which they were rooted.

One necessary corrective to this undue law school preoccupation with formal doctrines was furnished by the loose federation of jurisprudential freethinkers known as the "legal realists." In almost every aspect — casebook organization, teaching approach, law review scholarship — contemporary legal education shows the influence of realist insistence on the instrumental character of legal rules and the realist warning that the doctrines announced in judicial decisions are not to be taken at face value. A law student of average perception does not get very far into his first semester before we make abundantly clear to him the extent to

which judges are beyond doctrinal control, the frequency of the situations in which the judge has a choice between alternative decisions, either of which can be supported by citation of respectable authority.

A healthy scepticism towards the letter of the law is, we would all agree, a desirable professional attitude. But the "cynical acid" of unremitting legal realism is a strong dose for law students, particularly in the early stages of their development. But what is the net effect on the earnest beginner in the law who sees legal principles stripped of their pretensions and cut down to size — and nothing else provided in their place as the basis for understanding and prediction? We see in every law school class at least a few examples of that regrettable product, the junior grade Thurman Arnold,[10] to whom all principle is rationalization and the most tightly reasoned judicial decision a symbolic concealment of discreditable motivations.

There are many and varied recent manifestations of dissatisfaction with the debunking side of legal realism as a complete philosophy of law and legal education. Running through the writings of the most effective of the legal realists is the continuing effort to construct a theory of justice on the foundation of pragmatic method.[11] The same drive to extend the province of American jurisprudence beyond scepticism and the study of techniques appears in the attempts, by McDougal and Lasswell and others, to formulate catalogues of "democratic values" for the direction of legal policy-making.[12] In a very different camp, we have seen a sharp increase in interest, particularly since the end of World War II, in the approach and sanctions of natural law.[13] Whatever the form in which our inquiry for the reason and sanction behind the rule finds expression, most of us, I think, are becoming a great deal less defensive and self-conscious than we used to be about participating in the age old quest for a righteous law.[14]

The values which underlie our legal order, and fix the ends towards which legal rules and methods serve as means, are the

[10] The reference is to the Thurman Arnold of THE SYMBOLS OF GOVERNMENT (1935) and THE FOLKLORE OF CAPITALISM (1937), not to the respected procedure scholar, ex-Assistant Attorney General and ex-C.C.A. judge of the same name.

[11] The best available discussion of the affirmative side of the work of the legal realists is GALVAN, LEGAL REALISM AND JUSTICE (1942).

[12] Lasswell and McDougal, *supra* note 5.

[13] See Wilkin, *Natural Law: Its Robust Revival Defies the Positivists*, 35 A.B.A.J. 192 (1949); and NATURAL LAW INSTITUTE PROCEEDINGS, Notre Dame University (1949).

[14] For service to this cause, a medal should have been struck off for Professor Lon Fuller's THE LAW IN QUEST OF ITSELF (1942).

first concern of university law training. These values are the framework of any enduring and realistic knowledge of the law, its processes, and its institutions. Skill training is only shadow boxing if divorced from the consideration of values, since our law is not very often in such a sorry condition that the righteousness of a cause is not the best possible thing that can be said for it, and, as its founders recognized from the outset, "policy science" unguided by clear and constant perception of values is, at best, a kind of Dale Carnegie enterprise and, at worst, an education for membership in an undemocratic and irresponsible elite corps.

No course is acceptably taught in a university law school unless the student has at least these questions in front of his mind at every stage of analysis and discussion of the specific materials and problems with which the course is concerned: What are the underlying social values which the law seeks to maintain and advance in this field? Are they the *right* values? Are the means now being employed by courts, legislators, and administrative officers wisely calculated to advance the ends sought?[15] This kind of classroom inquiry will, of course, be most difficult of all in the fields — one thinks immediately of *Property, Family Law,* and *Constitutional Law* — which are characterized by the existence of conflicting and competing values. But this is the lawyer's inevitable problem when the legal order, as in the United States today, applies to a changing and developing society.

Current law school concern with the moral content of legal education proceeds from an awareness, which the best case method teachers have always had, that three years' preoccupation with sources as formal as judicial opinions and statutes can have a deadening effect on the moral sensibilities of students. It is disturbing to see, as I think we all do, that our third year students are less alert to issues of justice, and less concerned about them, than they were during their first semesters of law study. To offset this apparent attribute of formal legal materials, the law teacher must be more than a master of ceremonies and must use his characteristic Socratic method with all the persistence and at least a trace of the genius of Socrates himself. And no reason appears why a teacher of law should be more reluctant to record himself on an issue of value than he is to express himself as to the adequacy of the support for a finding of fact.

How, then, is the line to be drawn and maintained between moral education and propagandist indoctrination? I certainly am not rash enough to attempt a teacher's manual, but a few mini-

[15] Professor Jerome Michael's statement of ends and means in procedural law in the *Introduction* to his casebook, THE ELEMENTS OF LEGAL CONTROVERSY (1948) should be required reading for future casebook editors in all fields.

mum essentials can be suggested. *First,* there must be an ever-present awareness, on the teacher's part, that fair and reasonable men can differ in their value judgments as well as on other issues. The comforting philosophic theory that everybody subscribes to the same ultimate values has never been very convincing to me. Value statements on which all men agree are likely to be too general to be of much use in the handling of specific legal problems. The *second* requirement is complete frankness and candor in the statement of the teacher's position on the issue of value presented. In the teaching of mature students, it is the concealment of value judgments and convictions rather than their honest and open statement, which is unworthy of a liberal educational tradition. *Third* — and this is not always observed — there must be complete fair play on the teacher's part in seeing to it that his students have available to them the informational materials necessary to intelligent support of the other side, the side opposed to the teacher's personal views on the issue of value up for discussion. And, *finally,* every law school should arrive at a conscious and long range plan of faculty selection and assignment designed to give a fair hearing before its students to every honest and responsible point of view in our society concerning the nature and source of ultimate legal values.