The Position of the Law School
In the University*

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I HAVE CHOSEN as my topic this evening the position of the law school in the university. A generation ago, Thorstein Veblen, the celebrated, if unorthodox, economist, said of this subject:

Law schools belong in the modern university no more than a school of fencing or dancing.1

I suspect that this cynical observation merely echoed what many members of the academic profession felt then, and still do feel, about that somewhat suspect and rather unwelcome intruder from the world outside, the modern American professional law school. Veblen’s strictures were not altogether unjustified when he voiced them, and have some validity even today. But, as I hope to show, it was not always so, nor need it be so in the future.

I propose this evening to discuss three main topics:
(1) The law school as an academic institution;
(2) The university and the study of law; and,
(3) The role of the Catholic law school.

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THE LAW SCHOOL AS AN ACADEMIC INSTITUTION

As I see it, a law school has at least four functions to perform:
(1) The teaching of law;
(2) Encouragement of legal scholarship and research;

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1 VELENE, THE HIGHER LEARNING IN AMERICA 211 (1918).
Promotion of law reform;
(4) In general, serving as a "law center" for the community, state, or
tation.
Undoubtedly there are others, but for the present, these will suffice. With-
out disparaging the importance of (3) and (4), I shall of necessity have to
emphasize (1) and (2), law teaching and legal scholarship.

The approach taken by a law school toward these functions can be (i)
purely academic, (ii) strictly professional, or (iii) some combination of the
two. At its best, the modern American law school combines the best features
of (i) and (ii). At its worst, I fear it may accomplish neither.

(I) The Academic Law School

Last year, Cornell University celebrated its centennial. To the opening exer-
cises, held in October 1964, were invited representatives of the major uni-
versities of the world. An academic procession was held, led by these repre-
sentatives in order of the founding of their institutions. Leading the proces-
sion was the representative from the University of Bologna, traditionally
founded in the year 1088. It was a thrilling experience to see this tangible
evidence of the unbroken continuity of the university tradition from the
Middle Ages to the present. But to a lawyer, even more thrilling was the real-
ization that the University of Bologna was founded as, and for centuries re-
mained, primarily a school of law. Excited by the rediscovery of portions of
the original texts of Justinian's Corpus Juris Civilis, there resorted to
Bologna eager students from all of Western Europe to hear these texts ex-
pounded and explained by the glossators and the post-glossators, the found-
ders and the great doctors of the civilian and canonist traditions, men such as
Irnerius and his pupils, the famous "Four Doctors" of Bologna, and later,
Azo, Vacarius, and Accursius. They were followed, in subsequent centuries
and at other universities, by such men as Bartolus and Cujas, who completed
the task of adapting Justinian's code to the needs of the times, and making
it the basis of the medieval law of the continent.²

From our point of view, the most interesting aspect of this early continen-
tal legal education was its purely academic character. It was based on a close,
textual study of the law of Imperial Rome and, more specifically, Justinian's
codification thereof in sixth-century Byzantium. This was regarded as the
true law, the pure law, the only law worthy of academic study. But it bore
little resemblance to the actual living law of the cities and states of early
medieval Europe, which by then had become a crude and degenerate mix-
ture of Roman and Germanic law, varying greatly from locality to locality.³

³ Id. at 295.
Yet so great was the influence of the universities and of the doctors that this learned law, this law of the books, was gradually absorbed ("received" is the term we use) into the law of the local communities and ultimately came to dominate it. Welcomed by the sovereigns of the newly emerging national states as introducing an element of order and uniformity, as well as rationality, this learned law of the doctors and students finally became (much transformed, it is true) the civil law of Continental Europe, first uncodified, but eventually organized into those masterpieces of legal draftsmanship, the Napoleonic Code, the German Civil Code, the other codes of Western Europe, and their offspring throughout the world.

(2) The Professional Law School

Nothing like this happened in England. Although Roman law was taught sporadically at Oxford, it was never "received" as the basis of English law. In fact, it was specifically rejected by the barons at Merton who in 1236 with drawn swords proclaimed their defiance: "Nolumus leges Angliae mutari!"

While the importance of this event has no doubt been exaggerated, and while Roman law has continuously influenced English law, especially via canon law and the ecclesiastical courts, the fact remains that the law of England, and of nearly all English-speaking countries, was and is based on the common law and not the Roman law. So much is this true that some of the most characteristic aspects of the common law, such as the law of real property, are practically incomprehensible to the civilian.

We need not go into the reasons for the surprising strength and survival of the English common law; it would transcend the bounds of this address. But an indispensable element in this survival was the unique method of legal education followed in medieval England, a method which was purely professional, totally unacademic, and at the opposite pole from its continental counterpart. In this system the established universities at Oxford and Cambridge played no part. The key role was that of the Inns of Court, the so-called "third university." To these inns, situated in London, near the courts, came the aspiring law students, and here they lived, ate their meals, conducted their "moots," attended their "readings," went to sessions of the courts, and engaged in continuous dialogue with their more experienced seniors, the utter barristers, the apprentices, the serjeants-at-law, and the learned judges themselves, all members of a closely knit and jealously guarded professional fraternity, the secrets of which were barred to the profane.

In many respects, the techniques of study were surprisingly modern. The

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4 Id. at 16, 296.
5 Id. at 224-25.
moots resembled our moot courts, the "readings" were not monologues, but rather the presentation of a thesis, followed by a rebuttal and a defense of the original presentation. Most important of all, the whole approach was strictly professional, based on continuous exercise and dialectic in the complex and highly technical forms of action, rules of pleading, estates in land, and all the rest of the formidable arsenal of the common law.

This method had its disadvantages. The common law was never codified but became Cromwell's "ungodly jumble," Tennyson's "wilderness of single instances," Llewellyn's "bramble bush." Quite regularly the lawyers resisted reform and became the guardians of special privilege.

And yet it had its good side too. As Maitland said, taught law is tough law. And this tough, taught law, with its emphasis on procedural rights and judicial independence, lay behind the great constitutional struggles of the seventeenth century, the American struggle for independence, and today's concern for civil liberties and due process. Truly, the professional approach to legal education has had an impressive heritage.

(3) The American Experience

(a) Early University Efforts

Although Harvard offered lectures on "Ethicks and Politicks" as early as 1642, and in 1756 the College of Philadelphia (now the University of Pennsylvania) offered a course which included the "civil law," it appears that King's College (now Columbia University) was the first American institution to make law as such the subject of a college course, offering in 1755 "Principles of Law and Government" and in 1762 establishing a Chair of "Natural Law."

In 1779 Thomas Jefferson helped to establish the first distinctive professorship of law, at William and Mary, and induced George Wythe to assume it. Then in 1793, Columbia took the same step and in 1794, appointed James Kent professor of law. Kent's inaugural lecture set a noble standard for the profession:

A lawyer in a free country, should have all the requisites of Quintilian's orator. He should be a person of irreproachable virtue and goodness. He should be well read in the arts and sciences. He should be fit for the administration of public affairs, and to govern the commonwealth by his councils, establish it by his laws, and correct it by his example.

In addition, Kent believed, he should be:

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* Maitland, English Law and the Renaissance 27 (1901).
* Id. at 176-77.
* Id. at 181-82.
well read in the Greek and Latin classics, have some knowledge of the civil law, develop his power of reasoning by the study of logic and mathematics, be grounded in moral philosophy, and possess the art of public speaking.10

This ambitious program met with only moderate success. Kent opened his lectures to the public. The first year he had seven students from the college and thirty-six others. By the second year this number had dwindled to three students, whom he met in his own office, and the third year to none at all. Although six or eight students appeared in the fourth year, Kent understandably became discouraged and abandoned the whole enterprise, not resuming it until 1824, when he had a better response, lecturing for about a year and a half to an average of thirty students. He then retired to write his famous *Commentaries.*11

Kent disparaged his own lectures as "slight and trashy productions."12 Like many a modern law teacher, he found he could not get through the program he had planned. While some of this can be attributed to modesty, Professor Chroust is inclined to agree that Kent's course was probably too general, diffuse and impractical, beside being saturated with Federalism.13 Thereafter, legal education at Columbia remained quiescent until 1858 when Dwight assumed the leadership.14

Other universities, such as Yale and Virginia, had the same experience, of law courses starting at a high academic level and then either dying out altogether or becoming purely professional and practical.15 A novel approach was tried at the University of Maryland, established in 1812 with the four traditional faculties, including a faculty of law. David Hoffman spent four years just in preparing an ambitious curriculum in law, very modern and forward looking, which if adopted, Professor Chroust thinks, would have revolutionized American legal education, but the whole enterprise came to an end in 1832.16

The story at Harvard was a somewhat more successful one. In 1815 Harvard established the Royall Professorship of Law, with Judge Isaac Parker as the first incumbent. Parker conceived the idea of a separate professional school, on the graduate level, under the aegis of the university, teaching the local law of Massachusetts, with practical experience to be obtained by means of the students working in Boston law offices. A program

10 Id. at 182.
11 Id. at 182-86.
12 Id. at 182.
13 Id. at 182.
14 Id. at 183.
15 Id. at 189.
16 Id. at 188-91.
17 Id. at 205-06.
along these lines was started in 1817, but the school did not attract students and closed in 1829. Nevertheless, says Professor Chroust:

Despite its failure, the first Harvard Law School... constituted a startling innovation in the field of Anglo-American legal education. Combining the English idea of the Inns of Court and of apprenticeship training with the Continental idea of academic law teaching... , it established the first university school of law in any common law country... . It became an academic professional school, as contrasted with the purely academic laws schools of Continental Europe and the purely professional legal education prevailing in England. In sum, it established a distinctly American type of legal education.

Although the Parker experiment had apparently ended in failure in 1829, in that very year Harvard established the Dane Professorship of Law, with Joseph Story as the first incumbent. Story's lectures were well received, and by 1844 the student body had increased in number to 163. They became the basis for his celebrated treatises on the various branches of American law, works which soon became classics and are even today occasionally cited.

Inspired by the Federalist outlook of Nathan Dane, its founder, the new program laid the foundation for the "national law" approach of the Harvard Law School, an approach which still prevails in the leading law schools of the nation. On the other hand, Parker's concept of a professional, autonomous school, under the protection of the University but more or less isolated from its other components, continued to prevail, and is still the hallmark of the American university school of law.

(b) Private Law Schools in Early America

After the Revolution, many private law schools, not connected with any university, grew up. They varied in size from the famous Litchfield School, which flourished from 1784 to 1833, to a "school" consisting of an elderly lawyer or retired judge with a few law clerks as "students." Professor Chroust tells us that in some instances their names or the names of their founders are hardly known. These schools were essentially extensions and enlargements of the traditional law office apprenticeship, and in many cases such a school differed from the apprenticeship only in that the founder "chose to call it by the honorific name of 'law school.'"
These schools proved to be very popular, however, and many of the most eminent lawyers and judges of the first half of the nineteenth century received their legal training there. Not only were they a serious competitive threat to the university law schools, but they profoundly influenced the character of the latter. As Professor Chroust says:

In the end many of them did not simply dissolve or close their doors, but were absorbed by university law schools, which, after some abortive "academic" beginnings, frequently molded their new and more successful law curricula after these private schools.25

The academic institutions were long regarded with suspicion by the members of the practicing bar, who for the most part had obtained their legal training via the apprenticeship method or at a private law school. But eventually the undeniable advantages of an academic legal education were recognized, and the university law school, its professional character strongly influenced by the private law school, won the day.26

(c) Introduction of the Case System

Thus matters stood when in 1870 Christopher Columbus Langdell introduced his case system at Harvard. Although a few private or "proprietary" law schools survived, the university law school had won the field. But it was modeled after the private law school of the earlier period; its orientation was professional and often local, concentrating on the law of a particular jurisdiction. The "lecture," in the form of a monologue, was the accepted method of instruction, and although cases were not altogether ignored the text was the approved medium of study. Student participation was not encouraged and rote learning and memorization were the order of the day.

Langdell determined to change all this. Back to the cases, he cried. "Melius est petere fontes quam sectari rivulos."27 To solve the practical difficulty of making the cases available to the students, he hit upon the happy expedient of collecting a limited number of leading cases in a single book, and his "Selection of Cases on the Law of Contracts," published in 1871, was the result.

Received at first with skepticism,28 the new method gradually won adherents, and ultimately swept the field. Today, almost a century later, any American law school which does not place primary emphasis on the case

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25 Id. at 210.
26 Id. at 221-23 (quoting at length from President Quincy's address at the dedication of the Dane Law College in Harvard University on October 23, 1832).
27 LANGDELL, Title Page to Selection of Cases on the Law of Contracts at iii (1871), quoting Co. Litt. 305 b.
The Position of the Law School

method of instruction is regarded as hopelessly outmoded and reactionary.

(d) Advantages of the Case Method

Langdell's theory was that the law is a science, with a few basic principles or doctrines, which like other sciences can best be learned inductively.

Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. . . . It seemed to me, therefore, to be possible to take such a branch of the law as Contracts, for example, and, without exceeding comparatively moderate limits, to select, classify, and arrange all the cases which had contributed in any important degree to the growth, development, or establishment of any of its essential doctrines; and that such a work could not fail to be of material service to all who desire to study that branch of law systematically and in its original sources. 29

Few today would accept Langdell's basic thesis. Law is more an art than a science, and the case system, as used by Langdell and his followers, is hardly an exemplar of the inductive method of science or of sound historical scholarship. 30 Nevertheless, it has proved extraordinarily successful, for a variety of reasons.

First of all, despite its revolutionary appearance, it was not really new at all, but was a harking back to the methods used in the Middle Ages. The Year Books furnish a striking example. Professor Plucknett says of one volume of these which he edited:

The present volume, like its immediate predecessors, bears unmistakable traces of patient study in the classroom. Many of the cases here printed have a concluding paragraph which states in general terms the principles involved . . . , sometimes showing that the principle can be extended to other cases. . . . Sometimes the comment distinguishes the instant case from some other case . . . , but the commonest type of remark is a query of what would have happened if the facts had been slightly different. . . .

We can hardly doubt that the explanation is that these reports were made the starting point of class teaching, and that they sometimes, at least, afforded matters for disputatio. 31

29 Langdell, Preface to Selection of Cases on the Law of Contracts at vi-vii (1871).
30 For a historian's criticism, see Beard, Little Alice Looks at the Constitution, 87 New Republic 315, 316-17 (1936).
This sounds like a perfect description of any good set of notes taken by a modern law student of a class conducted under the case system.

The medieval "reading" was much more akin to a law school "class" than to the typical college lecture, even though the latter has inherited the name. In the Inns of Court, a senior Utter-Barrister would be selected to deliver a course of readings on some statute during the summer or Lenten vacation.

He that is so chosen shall reade some one suche Act or Statute as shall please him . . . , and that done, doth declare such inconveniences and mischiefs as were unprovided for . . . and then reciteth certain doubts and questions which he hath devised, and that may grow upon the said statute, and declareth his judgement therein. That done, one of the younger Utter-Barresters rehearseth one question propounded by the Reader, and doth by way of argument labour to prove the Reader's opinion to be against the law, and after him the rest of the Utter-Barresters and Readers, one after another in their ancienties, doe declare their opinions and judgments in the same; and then the Reader who did put the case endeavoreth himself to confute objections laid against him, and to confirm his own opinion, after whom the judges and serjeants, if any be present, declare their opinions, and after they have done, the youngest Utter-Barrester again rehearseth another case, which is ordered as the other was.32

Secondly, the case method was fortunate in having an extraordinarily able group of teachers. Langdell, Ames, Williston—their names read like those of the heroes enshrined in a Hall of Fame. Truly there were giants in those days, but they have had worthy successors—men like Llewellyn, Stevens, Whiteside, and those younger men who continue the grand tradition in the law schools throughout the land. Brilliant, learned, quick of mind and tongue, disputatious, witty, sarcastic, occasionally even sadistic, devoted to teaching above all else, the American law school teacher, at his best, has had few equals and has rarely been surpassed, a worthy successor to the great teachers of the past, such as Socrates and Aberlard, whose methods he has adopted.

Inevitably this has its effect on the students. Those who are able to survive the first traumatic experience of the transition from college to law school learn to read, to think, to analyze, to argue, to persuade, in short, to be lawyers. In truth it was, and is, "Spartan Education,"33 but it is effective unbelievably so.34 No wonder that Provost Levi of Chicago, formerly Dean of the law school there, has said:

33 See Warren, Spartan Education (1942).
The *esprit* and spirit of the modern law school are the wonder of many graduate departments and other professional schools. . . . We have created a liberal arts graduate program and have given to it a generalist professional thrust to justify an across-the-board attention to precision and structure within a common subject-matter. We have substituted the law for the classics. . . . The result is a powerful intellectual community in which a continuous dialogue is not only possible . . . but is insisted upon. . . . The subject-matter may be that of the social sciences, but we are the inheritors of the humanistic tradition.35

(e) Disadvantages of the Case Method

Excellent as it is, the case system has its weaknesses as well. Paradoxically, I suggest that it is at one and the same time not sufficiently practical, nor yet sufficiently theoretical. Let me try to explain what I mean.

On the practical side, the criticisms have been voiced many times: (a) the preoccupation with opinions of appellate courts, with corresponding neglect of trial court records, statutory and legislative materials, and administrative proceedings; (b) the emphasis on legal doctrine as opposed to "fact research" and functional considerations; (c) inadequate training in the lawyer's skills of drafting, legal writing, examination of witnesses, argumentation in court, negotiation, and counseling of clients.36 There is considerable merit in these criticisms, but they have at times been overstated. Few law teachers would accept all of Mr. Arch M. Cantrall's proposals, voiced in 1952, that as a minimum the law school should train its students in all the basic skills of practice (he lists fifteen or more, each of which might take a year to cover adequately), or his assumption that the method of instruction followed at the Army's Command and General Staff School is superior to that used in law schools.37 And yet I agree with his basic contention that the law schools can do a better job of teaching theory and at the same time teach at least some of the basic skills of practice.

Actually, the law schools are doing a good deal more of this than they are usually given credit for, with the introduction of "problem" courses, courses in estate planning, in the art of negotiation, in legal counseling, in trial practice, and so on. I would suggest, though, that these courses be made part of a well organized and coordinated program in "legal method," extending over the entire three years, starting with bibliography and the use of the library

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and covering the drafting of legal instruments, the art of brief-writing, the
trial of a lawsuit, and other fundamental skills. I would propose that this
three year program be made mandatory for all students, rather than largely
elective as at present. And I think serious consideration should be given to
reinstating the requirement of an apprenticeship or internship after gradu-
ation and before admission to the bar, but without the exploitation and star-
vation wages which used to prevail.

On the theoretical side, I think the case system fails to give the student an
adequate conception of the role and function of the law in society, of its his-
torical development, and of its philosophical implications. Courses in these
areas are offered in most law schools, but they are usually electives, regarded
by students as mere frosting on the cake, "cultural subjects," not really to
be taken seriously, like the "bread-and-butter" courses necessary for passing
the bar.

This is not merely the complaint of an academic purist. If, as Professor
Julius Stone has observed, it is the duty of lawyers (and there are about a
quarter of a million lawyers in this country) "to preserve and advance the
indispensable and enlightened cooperation in the maintenance of funda-
mental democratic processes and forms, on which free government de-
pends," 88 how can they be expected to do this if their education gives them
no conception of what the law is about, or indeed of why such an institution
as the law should exist at all?

At the 1956 Conference on the Education of Lawyers for their Profession-
al Responsibilities, sponsored by the Association of American Law Schools,
the view was widely shared that "the broad impact on problems of public
responsibility of the legal profession, of movements in legal education since
Langdell's institution of the case method in 1890, was a negative one." 89 This
unfortunate result was attributed by many to (1) the Socratic method, (2)
the case method, and (3) the separation of law and morals. 90 Professor
Robert E. Mathews saw the central problems of legal education as "the diffi-
culty of communication to law students of a capacity to perceive the pres-
ence of ethical values, and of the desire to identify these values, and espouse
them in their life and work." 91

A non-lawyer participant at this conference, the late Professor Edwin E.
Aubrey, formerly Chairman of the Department of Religious Thought at the
University of Pennsylvania, deplored the prevalence of the conception of
ethics as conformity with prevailing mores (a view which he thought was

88 STONE, LEGAL EDUCATION AND PUBLIC RESPONSIBILITY—REPORT AND ANALYSIS OF THE CON-
FERENCE ON THE EDUCATION OF LAWYERS FOR THEIR PUBLIC RESPONSIBILITIES, 1956 at 19 (1959).
89 Id. at 79.
90 Id. at 82-84.
91 Id. at 24.
picked up in college courses in ethics and sociology). He pointed out that this was a concept which could not be reconciled with the history of moral progress, and made this rueful observation:

And, if I ask them [i.e., my students] how they would ever explain the Hebrew prophets and their ethical message on the basis of conformity to the group, unfortunately, the question doesn't elicit any response because most of them have never heard of the Hebrew prophets.42

Last December I attended a meeting of the American Section of the International Association for Philosophy of Law and Social Philosophy, at which a Symposium was held on "Philosophy and Legal Vocationalism: Theoretical Considerations and Practical Proposals." The consensus was that the law schools had gone too far in their emphasis on professional training and that much greater attention needed to be given to theoretical and jurisprudential studies. One speaker, Professor Jerome Hall, thought that a third of the student's time should be devoted to such subjects.

While I might not go this far, I do think that every law student should be required to pursue an integrated program covering such subjects as Jurisprudence, Legal History, Law and Society, Roman Law, Comparative Law, and International Law, and that he should have to take one such course each semester (this would be about one-fifth of his time).

You will see that I am proposing that 20% of the student's time be devoted to legal method and 20% to theoretical studies. Public Law (including Criminal Law) cannot be neglected, nor can Civil and Criminal Procedure and the Rules of Evidence. Obviously, something has to give. The only thing that can give is the area of substantive private law, which in the present curriculum occupies about two-thirds of the student's time. I am not such a zealot as to minimize the importance of substantive private law: obviously it is the central corpus of our legal system. Its various branches must be taught, and the law schools must have experts in these branches. But not every school need have an expert in every specialty. Nor need every student be expected to take all, or even most, of the courses offered. We have long since abandoned such a notion in the undergraduate college. We no longer think that any lawyer can know all the law. I suggest that it is time to abandon the notion that every law student must take all the so-called "basic" courses. I even advance the heretical notion that it is not necessary that every first year student must learn the basic law of Contracts, Torts, and Property, and that these form the foundation of his later studies.43 I don't believe that

42 Id. at 76.
43 On Contracts as a basic course, see the skeptical views of Friedman, CONTRACT LAW IN AMERICA at viii (1965).
they are any more basic than other subjects, such as Commercial Law, Corporations, or Trusts, to name a few. Most of what the student learns will no longer be the law 10 or 20 years hence. But what will not change (barring a revolution) is the common-law method of approach, of reasoning, of research, of analysis. For these, a relatively few courses of substantive law, well taught by acknowledged masters and taught to the smaller groups which would be taking each subject, would, I submit, be not only adequate, but superior.

This would, of course, require that the young lawyer continue his legal education after law school, and it would require some changes in the approach of the bar examiners. But these are not insuperable objections. "Continuing Legal Education" is becoming more and more popular with practicing lawyers. And I am sure that the bar examiners had to revise their methods when the case system was introduced 95 years ago.

All of this calls, of course, for imaginative but sensible curriculum planning. We haven't had enough of it in the law school world, but a few daring ideas have been advanced, and I foresee great ferment in this area. But this would open up a whole new topic, and I cannot say more about it now.

II

LAW IN THE UNIVERSITY

I have already mentioned Professor Hall's proposal that one-third of the law student's work be devoted to non-professional and non-vocational courses. He coupled this with the even more radical proposal that these courses be taught, not in the law school, but in the arts college of the university of which the law school is a part.

Whether or not such a proposal is practical, it raises intriguing possibilities. Even if it were not adopted, why should not the arts college of a great university show a greater interest in law as an academic discipline, worthy of study, teaching, and research, altogether apart from its professional and vocational aspects?

True, most undergraduate colleges offer courses in constitutional law and international law. A few offer jurisprudence, and even legal history is occa-

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There is growing interest in the possibility of a general course in law and the legal system. Such courses are usually included in the program of the department of government or political science, and grouped with the latter, along with economics, sociology, and history, as part of the area of the "social sciences." But law is not a science, social or otherwise, and to regard it as a mere adjunct to political science is to place it in false perspective. Is there not room, in a few universities at least, for a full-fledged department of law, conceived of as one of the humanities, and pursued by scholar and student alike as one of the noblest and most impressive of man's cultural achievements?

Perhaps one of the most important purposes such a department of law could achieve would be to give the educated layman a better understanding of the purpose and function of law and of its actual operation in society, more accurate than he now gets from reading to newspapers and popular magazines and more objective than he is apt to obtain from a typical undergraduate course in politics or sociology. Sir Charles Snow has complained of the gulf which exists between the man of letters and the natural scientist, neither comprehending the intellectual world of the other. I suggest that an even greater gulf exists between the average cultivated layman and the scholar or practitioner of law. A university department of law might help bridge this gap.

The idea is not new. It was with this very purpose in mind that Sir William Blackstone delivered his Vinerian lectures at Oxford, lectures which became the text of his famous Commentaries, ironically destined to become the legal text par excellence in America, although his contemporaries in England thought it rather oversimplified. The following remarks from Blackstone's introductory lecture, delivered on October 25, 1758, and later included in the Introduction to the Commentaries, are very much in point:

I think it is an undeniable position, that a competent knowledge of the laws of that society in which we live, is the proper accomplishment of every gentleman and scholar; an highly useful, I have almost said essential, part of liberal and polite education. . . .

The inconveniences here pointed out can never be effectively prevented, but by making academical education a previous step to the profession of the com-

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45 Princeton for a long time offered Jurisprudence and now has a course entitled "Law and Society." Professor Frederick G. Kempin, Jr., teaches Legal History at the Wharton School and Professor Earl Finbar Murphy of Temple used to teach Legal History at Harpur College.

mon law, and at the same time making the rudiments of the law a part of academical education. For sciences are of a sociable disposition, and flourish best in the neighborhood of each other; nor is there any branch of learning but may be helped and improved by assistances drawn from other arts.\textsuperscript{47}

Similar ideas were expressed by university presidents in America during the revolutionary and post-revolutionary period. For example, in 1777 Ezra Stiles, President-Elect of Yale, proposed the establishment of a professorship in law as no less desirable than one in medicine or any other academic subject. For, said he, knowledge of the law qualified a man to become a better citizen and public servant, and the academic teaching of law would not only improve professional training, but would make better citizens.\textsuperscript{48} "It is scarcely possible to enslave a Republic, where the body of the people are Civilians, well instructed in their Laws, Rights and Liberties."\textsuperscript{49} Accordingly, he proposed courses in Roman Law, common law, the English statutes, the codes of the American colonies, the law of nature, comparative government, and political science. The actual result of this ambitious program was one lecture by Stiles on law and jurisprudence, and the prescribing of Montesquieu's \textit{Spirit of the Laws} as required reading.\textsuperscript{50}

In 1812 President Smith of Princeton proposed a course on "those principles . . . of . . . jurisprudence, politics, and public law or the law of nature and nations with which every man . . . in a free country ought to be acquainted."\textsuperscript{51} Again, nothing came of this proposal.

Aside from introducing undergraduates to the general principles of law which will govern their lives as citizens and voters, what other areas might be encompassed in a university arts college department of law? I can think of several, beside the customary courses in constitutional law, international law, and business law: jurisprudence and legal philosophy, legal history, the sociology of law,\textsuperscript{52} primitive law, Roman law, Soviet law, the law of Communist China, and the law of the underdeveloped nations of Africa and Asia.

It may be objected that these are more properly taught in the law school and are in fact taught there. The trouble is, though, that there they are apt to be subordinated to the professional aims of the curriculum and to be taught by "law professors" whose real interests lie elsewhere. What I have in mind is something more than the survey course and something more than

\textsuperscript{47} 1 BLACKSTONE, COMMENTARIES *5, *33.
\textsuperscript{48} 2 CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA 189 (1965).
\textsuperscript{49} \textit{Ibid}.
\textsuperscript{50} \textit{Id.} at 189-90.
\textsuperscript{51} \textit{Id.} at 208.
\textsuperscript{52} On possibilities in the sociology of law, see LAW AND SOCIETY, a Supplement to the Summer 1965 issue of SOCIAL PROBLEMS, sponsored jointly by the Law and Society Association and the Society for the Study of Social Problems. In general, see Hall, \textit{Law and the Intellectuals}, 9 J. LEGAL ED. 9 (1966).
a mere "cultural" addendum to the professional curriculum. I envisage rather the intensive cultivation, by scholars and graduate students, of important but neglected areas of legal theory, work which could result, say, in publications such as the annual volumes of the British Selden Society, or the monumental studies in world order and international politics published by McDougal and Lasswell at Yale. True, such work can be done in law schools and in some cases is done in the law school. But in many, if not most, universities, the arts college would seem to be the more appropriate center for studies of this sort.

Impractical? Ivory-tower? Yes, but so appeared to be nuclear physics and linguistic science when I was a college student. And even if theoretical legal studies never assume any practical importance, consider the words of Oliver Wendell Holmes:

An intellect great enough to win the prize needs other food besides success. The remote and more general aspects of the law are those which give it universal interest. It is through them that you not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law.\(^5\)

III

THE ROLE OF THE CATHOLIC LAW SCHOOL

As a member of the law faculty of a secular university, it is with some diffidence that I approach this subject. And yet, having begun my law teaching career in this university 14 years ago, I feel very much at home here and so am emboldened to speak out.

Last winter a colleague at another Catholic law school told me that he had been asked by a law teacher at a secular university why there should be any such thing as a "Catholic" law school, and that he could think of no reply. I ventured the suggestion that, given the existence of Catholic universities, a law school was a proper part of any university. It seemed to me then, and still seems, a lame reply.

Historically, it is probably the correct explanation. The first Catholic law school in the United States was established at the University of St. Louis in 1842. But it closed in 1847 and did not reopen its doors until 1908.\(^4\) The oldest continuous Catholic law school in this country is Notre Dame, founded in 1869.\(^5\) Your own law school dates back to 1895, I believe.

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\(^4\) 2 Chrout, *The Rise of the Legal Profession in America* 208 (1965). It was also the first American law school west of the Mississippi.

But although this may be the correct explanation historically, I should like to suggest a rationale which appeals to me more. It seems to me that there is really no good reason for the existence of a Catholic law school, as such, if it is only going to be a carbon copy of the nearest secular law school. There is in fact a great Catholic tradition in our common law which, if it is neglected by the Catholic law schools, will be explored nowhere.

True, most Catholic law schools include admirable statements in their catalogues concerning their dedication to Christian ideals. All, or nearly all, offer courses in Jurisprudence in which the natural-law approach is stressed. At the 1952 Conference on the Education of Lawyers for their Professional Responsibilities, Father Joseph T. Tinnelly and Father William F. Cahill, both then professors at St. John’s University School of Law, said that a Catholic law school pressed for “fuller discovery, analysis and recognition of the lawyer's duties to God, to his fellowmen and to society, under the divine and natural law.”

But even so, they ruefully conceded the difficulty of communicating to American law students the values of a legal philosophy oriented to the concepts of Roman law and couched in the Latin language of scholasticism.

And here I think is where we may have made our mistake. The common law lawyer does find the terminology of scholasticism repellent, if not “ugly.” To me, at least, such basic concepts of Aristotelian and scholastic natural law as “commutative justice,” “distributive justice,” and “retributive justice” strike no responsive chord, and I am convinced that it is because this is not the language of the common law, the language I have been speaking for 30 years.

Nevertheless, we can and do find our Catholic tradition embedded in the common law. The fundamental conceptions of equality before the law, of the accountability of the ruler to God and the law, of civil rights and liberties, of the individual's responsibility for his own acts, of mens rea, of the sanctity of promises, in fact the whole structure and content of our constitutional, civil, and criminal law, are all derived from the Judaeo-Christian tradition, and can only be fully understood by one who has studied and mastered that tradition.

In his delightful book, “Fountain of Justice,” Dr. John C. H. Wu, formerly Professor of Law at Seton Hall, demonstrates this, conclusively, to my way of thinking. Comparing the Roman law and the common law, he states his con-

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57 Id. at 62-63.
viction that the common law has grown into a more glorious system of law than its predecessor, saying:

No doubt there are many causes for this superiority; but in my humble opinion, the most important is that, while the Roman law was a deathbed convert to Christianity, the common law was a cradle Christian. In preparing this study, I have gone to the very origins, and have been thrilled to find that many sages of the common law are also Saints of the Church.59

In this connection, let us always remember that the patron saint of lawyers, St. Thomas More, was first and foremost an English common-law lawyer.

Now, I do not wish to be misunderstood. I am not advocating that the Catholic law school become a proselytizing instrumentality, or that it teach a particular “Catholic” theory of contracts, torts, or whatever. And I hope the day will never come when this law school, or any other Catholic law school, will abandon its policy of opening its doors to any qualified student, whatever his race, creed, or national origin.

Rather, what I have in mind is in the spirit of ecumenism, a realization that the real meaning of the word “catholic” is “universal,” and an understanding that the common law, no less than the civil law or the canon law, is truly an heir of the great Judaeo-Christian tradition, which has given us our religion, our democracy, our values.

More specifically, I have in mind such enterprises as the *Natural Law Forum*, published by Notre Dame Law School, probably the best journal on jurisprudence published in the English language, having on its editorial board and its board of advisory editors distinguished jurists of every school and every religion, and publishing articles espousing every jurisprudential *credo*. I have in mind such programs as the Riccobono Seminars on Roman Law conducted at this University, one of which I had the pleasure of attending when I was on this faculty, hearing addresses by Mr. Justice Douglas and by Professor Stephan Kuttner. I would like to see such activities at every Catholic law school, and I would like to see them have a genuine impact on the students at those schools, as well as on the faculty and the scholarly world outside. Here, at your university, it seems to me that the Law School and the School of Canon Law could cooperate to a greater degree than they now do, to the mutual enrichment of each. In short, I am suggesting that the Catholic law school should become, not just a copy of its secular counterpart, but a truly Catholic, a truly universal, school of *law* in all its aspects, its finest traditions, and its highest aspirations.

I should like to close these remarks on the place of the law school in the university by quoting the following words of Cardinal Newman:

If then I am arguing, and shall argue, against Professional or Scientific knowledge as the sufficient end of a University Education, let me not be supposed, Gentlemen, to be disrespectful towards particular studies, or arts, or vocations, and those who are engaged in them. In saying that Law or Medicine is not the end of a University course, I do not mean to imply that the University does not teach Law or Medicine. What indeed can it teach at all, if it does not teach something particular? It teaches all knowledge by teaching all branches of knowledge, and in no other way. I do but say that there will be this distinction as regards a Professor of Law, or of Medicine, or of Geology, or of Political Economy, in a University and out of it, that out of a University he is in danger of being absorbed and narrowed by his pursuit, and of giving Lectures which are the Lectures of nothing more than a lawyer, physician, geologist, or political economist; whereas in a University he will know just where he and his science stand, he has come to it, as it were, from a height, he has taken a survey of all knowledge, he is kept from extravagance by the very rivalry of other studies, he has gained from them a special illumination and largeness of mind and freedom and self-possession, and he treats his own in consequence with a philosophy and a resource, which belongs not to the study itself, but to his liberal education.60

When I last taught here, from 1952 to 1954, the law school was located on the university campus. Just before I left to come to Cornell, it moved to its location downtown where it has been ever since. While I recognized the reasons for the move at the time, I was sorry to see it come about. Next month, you are to move back to the campus, to a fine new building which will be dedicated in November. For the reasons which I have tried to set forth in this address, I welcome this move. I look forward, with you, to many, many years during which you will enjoy your new building, a great law school in a great university.