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"Law-Society" in the Liberal Arts: A Whispered Interdisciplinary Consensus*

ALBERT BRODERICK, O.P.**

In a favorite story of the late Professor Thomas Reed Powell,¹ a village parson asks one of his vestrymen: "Do you believe in infant baptism?" The reply comes swiftly, "Of course I do. I've seen it done." Non-believers in the possibility of interdisciplinary cooperation in teaching law and the social sciences might react with some of the same conviction to things seen and heard at the December, 1964 conference held at The Catholic University of America on Law in the Liberal Arts: the Social Dimension. Emphasis there was placed on specific interdisciplinary activity now in process in "law-society,"² and on plans for immediate further steps.

This report will confine itself to a brief look at the antecedents of the conference, and to a consideration of three aspects of its work: (1) Recent interdisciplinary cooperation in law-society; (2) Law-society courses in the undergraduate curriculum; (3) Proposals for law training for Arts faculty personnel as a prelude to adequate presentation of legal material in social science courses.

¹ Apropos of the Conference on Law in the Liberal Arts: the Social Dimension, held December 2-5, 1964 at The Catholic University of America.

² See text accompanying notes 22-25, infra.

It is not inappropriate to start with reference to this rugged veteran of earlier interdisciplinary wars. Professor Powell, who took a law degree at Harvard and a political science Ph.D. at Columbia, taught constitutional law at both schools. At one time he edited the Political Science Quarterly, and in 1957 (midway in his 1925-49 Harvard Law School professorship) was President of the American Political Science Association. See Frankfurter, Thomas Reed Powell, 69 Harv. L. Rev. 797 (1956).

* See text accompanying notes 22-25, infra.
The Catholic University Conference did not create the problems it set out
to consider.\textsuperscript{3} Large credit for the questions being in the air belongs to the
superbly qualified panel of scholars called together at Harvard Law School
in November, 1954 under the chairmanship of Professor Harold J. Berman
to confer “On the Teaching of Law in the Liberal Arts Curriculum”. Ber-
man’s splendid summary of their deliberations\textsuperscript{4} is still the prime reading in
the field. There were other obvious fruits of the Harvard Conference: Re-
spanding to its spur, the Association of American Law Schools in the same
year established a special committee to deal with the question; it has con-
tinued to date with annually changing membership.\textsuperscript{5} Professor Berman him-
self has since been a consistent and eloquent preacher of the gospel. A slen-
der literature has developed.\textsuperscript{6} Course materials have been published.\textsuperscript{7} Some

\textsuperscript{3} The following questions were posed in the preconference materials:
1. Is a basic college course in law now a must for an educated American? Do only the pro-
essional lawyers know where the “school prayer” decision came from and if it must stay?
How did the Supreme Court come to change its position on school integration? On right of
indigents to counsel? On compelling state legislatures to redistrict? Why is the Court so con-
cerned with “rights” of those accused of crime? Why is there anti-poverty legislation? Civil
rights legislation?
2. Are lawyers equipped to handle their professional responsibilities without fuller coop-
eration with social scientists, philosophers, theologians? Is not law, truly understood, itself a
social science?
3. Can social scientists find a common language in which to speak among themselves?
With lawyers? Philosophers? Theologians?
4. Can positivist (behavior-oriented) and norm- (value-) oriented social scientists use “the
law-society area” as a new, common field in which to attempt a reintegration of social science?
5. Can we exclude values (as “unscientific”) from political science? From sociology? From
law?
6. Can we stop the progressive splintering of social science e.g., a suggested “new social
science of organizations”)? Should we try?
7. Can the undergraduate liberal arts curriculum find a place for the new theme of con-
centration—“Law-Society”? As a minor? As a major? Within a seminary curriculum (as phi-
losophy? Theology? Sociology)?
8. Does the present theological dialogue have relevance to these educational problems in
our pluralistic society? Is a “subjective” (individualized, emotional, equivocal) approach in
the sciences to theology an inevitable reaction against the analytic (mathe-
matical, positivist, univocal) approach?

\textsuperscript{4} Berman, ON THE TEACHING OF LAW IN THE LIBERAL ARTS CURRICULUM (1956).
\textsuperscript{5} First designated as a committee on “Teaching of Law in the Liberal Arts Curriculum,”
since 1962 it has been called the committee on “Teaching Law Outside of Law Schools.” Pro-
fessor Berman was its first chairman. The committee is now headed by Professor Robert
O’Neil of the School of Law, University of California, Berkeley.
\textsuperscript{6} Appel, LAW AS A SOCIAL SCIENCE IN THE UNDERGRADUATE CURRICULUM, 10 J. LEGAL ED. 485
(1958); Beaney, Teaching of Law Courses in the Liberal Arts College: A View from the Col-
lege, 13 J. LEGAL ED. 55 (1960); Becker, A Political Science-Law Course for the Liberal Arts
Curriculum, 16 J. LEGAL ED. 333 (1964); Berman, Teaching Law Courses in the Liberal Arts
College: A Challenge to the Law Schools, 13 J. LEGAL ED. 47 (1960); Eliot, Law in the Liberal
Arts Curriculum, 9 J. LEGAL ED. 1 (1956); Hall, Law and the Intellectuals, 9 J. LEGAL ED. 8
(1956); Harum, The Case for an Undergraduate Law Elective in Liberal Arts, 12 J. LEGAL ED.
418 (1960); Weissman, Law and Liberal Education, 15 VAND. L. REV. 609 (1962); Wright, Law
as a University Discipline, 14 U. of TORONTO L. J. 253 (1962).
\textsuperscript{7} AuERbach, Garrison, Hurst and Mermin, THE LEGAL PROCESS: AN INTRODUCTION TO DE-
CISION-MAKING BY JUDICIAL, LEGISLATIVE, EXECUTIVE AND ADMINISTRATIVE AGENCIES (1961) (but
of the A.A.L.S. Committee's annual reports show stirrings of periodic activity.\(^9\) And yet a survey compiled in the summer of 1964 by the chairman-designate of the 1965 A.A.L.S. Committee on Teaching Law Outside the Law Schools reports that of the approximately 2100 American universities and colleges only 80 as yet offer basic liberal arts courses on law.\(^9\) The question arises, why this gap between doctrine and action?

Prospects for the proposed 1964 conference were enhanced by the acceptance of its chairmanship by the distinguished lawyer-economist, Mark S. Massel of Brookings Institution.\(^10\) When the conference convened, the aim of securing balance among law and liberal arts faculty members had been achieved.\(^11\) Diversification was also evident in certain other respects: geography, size, relative educational standing; institutions for men, for women, and

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\(^8\) Its annual reports are published in the Proceedings of the Annual Meetings of the Association of American Law Schools from 1955 to 1964. The 1964 committee in reviewing the work of its predecessors stressed the need for a broader-based approach: "While nibbling at the edges of the original problem—i.e., promotion of the teaching of law in the liberal arts curriculum—the Committee has expanded its scope to provide itself with fresh edges to nibble on. Each new Committee is moved to do something; the something must be within the competence of the Committee; it must be something which the Committee has not previously done—better yet, has never even started to do; if it, itself, can do nothing, it must at minimum recommend something for the succeeding Committee to do. And so the nibbling goes on, fresh adjuncts to the original jurisdictional structure being tacked on from time to time by imaginative Committee personnel (who are rotating through) to provide fresh edges for fresh nibbling." Proceedings, 1964 Annual Meeting, Association of American Law Schools, Part One, pp. 167-68.

\(^9\) Summers, "Law and the Undergraduate Curriculum" (Mimeographed memorandum, dated July 24, 1964, p. 1). Professor Summers specifies that "basic courses about law," as used here, refers to courses of the kind typically offered under one of the following titles: Law and Society, Legal Process, Elements of Law, Introduction to Law, The Nature and Functions of Law, Law and Social Control, Law and Its Administration, Law and the Modern State, Introduction to the Legal Order, Law and the Political Community." He adds that 40 other institutions "offer a course entitled Jurisprudence or The Judicial Process."

\(^10\) The conference was planned with the cooperation of a steering committee that included Professors Harry V. Ball of Wisconsin, Howard Mann of Indiana, Arthur Miller of George Washington, Victor Rosenblum of Northwestern, Robert Yegge of Denver, and Dean Richard Wasserman of Tuskegee Institute, in addition to Mr. Massel and the Conference Coordinator.

\(^11\) A breakdown of conference participants shows 17 law faculty members, 42 from the other disciplines (anthropology 2, economics 2, history 4, philosophy 6, political science 10, sociology 15, theology 5), 5 from administration (3 Deans of Arts and Science, 1 Executive-Vice President, 1 Assistant to the President), 2 from government, and 5 from community organizations (Council of Graduate Schools in the United States, District of Columbia Bar Association, Legal Aid Society of the District of Columbia, Religion and Labor Council). In addition, several specialists in the fields of "Law and Poverty" and "Social Studies in Religious Education" participated in the workshops held on these subjects.

By contrast, 25 of the 31 eminent participants at the 1954 Harvard conference were lawyers, seven of whom were arguably bi-disciplinary (three in political science, one in history, one in rhetoric and oratory, one Dean of Humanities and Science, one Provost). The non-lawyers
co-educational, religious and non-denominational, state and private. The preconference literature and planned agenda proposed that the conference concentrate on sharing recent interdisciplinary experience in the field, and on a search for solutions to special problems of curriculum and staffing in the variety of participating institutions.

THE CONFERENCE DELIBERATIONS

That law draws upon the findings of social science for its content hardly needs demonstration today. The influence of historical, economic, psychological, political science and sociological materials in constitutional interpretation, for example, has come far since the call to a sociological jurisprudence was sounded by Pound for the legal scholar, and Cardozo for the working judge. Any current volume of the United States Supreme Court reports gives evidence enough. The use of opinion research (samples and polls) has become familiar, if not yet common, in multifarious litigation ranging from unfair competition to motions for change of venue in criminal trials for community prejudice. Lawyers have, in the

were one each from economics, industrial history, political science, and business, with two sociologists. The institutions represented were Harvard (9), Massachusetts Institute of Technology (3), Stanford (3), Chicago (2), Columbia (2), Amherst, Carnegie Institute of Technology, London School of Economics, Michigan, Princeton, Tulane, Washington University, Wisconsin and Yale, with one participant each from bench, bar and business.

The institutions represented at the conference were: American University; Aquinas Institute of Philosophy and Theology, Chicago, Ill.; University of California, Berkeley; Cardinal Cushing College; Carleton University, Ottawa, Canada; The Catholic University of America; City College of the City University of New York; Columbia University; University of Denver; De Paul University; Georgetown University; George Washington University; Howard University; College of Mount St. Vincent; Northwestern University; Providence College; University of Paris; Seton Hall University; University of Toledo; Trinity College, Washington, D.C.; Tuskegee Institute; Villanova University; University of Wisconsin; Yeshiva University; Brentwood College, Long Island, N.Y.; St. Mary's College, Winona, Minn.; College of St. Rose, Albany, N.Y.; Maryknoll Sisters Motherhouse, Maryknoll, N.Y.; Convent of Mount St. Vincent, N.Y.

The most celebrated, or notorious, recent instance, of course, is the use of psychological data by the Supreme Court in footnote 11 of its opinion in Brown v. Board of Education, 347 U.S. 483 (1954).
main, become alerted to their professional need for familiarity with social science developments and techniques, at least wise enough to know when to call in the specialist. The Catholic University Conference deliberately merely brushed by this phase, and more directly interested itself here in the needs of the social scientist whose work brings him face to face with the legal system. If he acquires greater familiarity with the beast perhaps the key would finally be in hand for widespread liberal arts study of law.

What are the barriers to cooperation of lawyers and social scientists? This question was specifically posed at the opening session of the conference. It recurred later throughout at times. The complaints overflowed. From the social scientists: The law schools detach themselves from the rest of the university, yet remain seats of great power within the university complex: Lawyers are simply "quasi-business men"; law schools have highly professionalized their subject, and do not respond to university pressures, but more to state-imposed professional standards. Law men seek to create and perpetuate a belief that in law we are dealing with something esoteric that cannot be communicated. Lawyers, in turn complain that social scientists are interested in mere actuarial data and not in the specifics that are "right in our laps". Despite constant disavowals, social scientists "pronounce moral judgments, political judgments, economic judgments, yes, and legal judgments too, without having any awareness whatsoever as to what they are about." Social scientists are "ignorant" or at least "somewhat unsophisticated" in the law, and have enshrouded themselves in "an aura of mystery". Lawyers insist that social scientists should be specific, but these law men retain themselves the right to say "on the other hand"; social scientists accuse lawyers of the same duality. Both sides point to need for struggling with the mutual language and concept barrier and the barrier in methodology, and to the need of all hands—lawyers and social scientists alike—to identify and freely avow judgments of value and policy when they use them.

1. Recent Cooperative Interdisciplinary Efforts in Law-Society

The directors of four projects currently supported by the Russell Sage Foundation in the law-society area gave evidence of a considerable recent achievement in interdisciplinary cooperation. Northwestern (Program in Law and the Social Sciences, Professor Victor Rosenblum, political science and law),


20 See text accompanying note 29, infra.

21 Perhaps because of the larger proportion of liberal arts faculty present at this conference than at Harvard, far greater interest was shown at this meeting in training social science faculty members in basic elements of law.

21 The statements cited in this and in the following paragraph appear in the unpublished transcript of the conference at pp. 11-60 (henceforth cited as Transcript, p. ).
Denver (Program in Judicial Administration, Professor Robert Yegge, law and sociology), California (Berkeley) (Center for the Study of Law and Society, Professor Philip Selznick, sociology) and Wisconsin (Program in Law and Sociology, Professor Harry V. Ball, sociology). To date these projects have been largely involved in cooperative research, but they also report some interdisciplinary course programming experience.

Professor Rosenblum\textsuperscript{22} told of Northwestern's program which represents the cooperative effort of faculty members and departments in law, political science and sociology. It embraces a series of interlocking seminars with joint credit and a non-credit unifying seminar in law-society. Research areas covered by faculty members and doctoral candidates associated with the project include "social science annotations to legal phenomena" (exploring, for example, the Supreme Court's use of social science data at the 1963 Term) and studies in compliance with tax laws, and on the uses of compromise in dispute settlement within a judicial setting.

At Denver the program is housed in the Law School. Professor Yegge\textsuperscript{23} stressed its use of anthropological and social data in predicting behavior by law men in their various roles: legislator (drafting legislation), judge (as decision maker and as bureaucratic administrator of a court), and practitioner (as adversary, counselor and fact gatherer).

Professor Ball's\textsuperscript{24} five-year old program at Wisconsin both trains social scientists in the legal process and introduces law faculty men to the ways of social science. He also reviewed plans of the recently launched Law and Society Association to provide a forum for interchange of information by law-society oriented lawyers and social scientists. The Association plans seminars and courses on regional bases at which programs modeled on those conducted at Wisconsin may be adapted to the special need and financial limitations of interested smaller educational institutions.

California's Center for the Study of Law and Society, according to its director, Professor Philip Selznick,\textsuperscript{25} is an interdisciplinary institute that has been to date "an organized research unit . . . mainly concerned with the extension in society of ideals associated with justice, as well as with the effort to develop new approaches in scholarship that will cast some additional light on some very ancient problems." The program thus far has been "eclectic" although certain themes have tended to emerge, for instance: studies in the "social functions of legality"—to what extent is the ideal of legality actually embodied in the institutions of society. This project considers whether such conventional agencies as the police have the capabilities to "meet the moral

\textsuperscript{22} Transcript, p. 83-87.
\textsuperscript{23} Id. at 88-96.
\textsuperscript{24} Id. at 97-106.
\textsuperscript{25} Id. at 107-112.
demands made upon them". The program has also concentrated upon problems of correctional institutions and of private governments, extension of the ideals of justice within universities and private corporations, comparative and international legal studies, studies in law and culture (variations in the conceptions of a legal order, and the demands society makes upon it), and newly emerging branches of the law such as a law of the consumer and of welfare. The Center works in close coordination with the Law School at Berkeley. A recent study made jointly with members of the law faculty wrestled with the nature of the adversary principle itself.

The common report of the four Russell Sage projects is that programs of cooperation of various social sciences among themselves, and with lawyers as well, have by patient, empirical effort, and sometimes sheer serendipity, produced fruit. Professors Rosenblum, Yegge, Ball and Selznick all stress that only a beginning has been made; all seem to concur in Selznick's words:

I have a modest optimism in all of this. I think we start from the proposition that this generation is going to do something about law and social science . . .26

Some specific contributions were suggested by Rosenblum:

We are reformers in a sense . . . seeking to do something in the way of innovation through this union of law with the social sciences . . . to ask to what extent certain aspects of lawyering have been concerned with the reinforcement of levels of stratification within society: (1) by keeping the law unavailable to some elements of the community; (2) by prideing ourselves on the role that law plays procedurally, but not looking at all on the substantive functions that are performed by the law with regard to major segments of the community.27

As for the future Selznick says: "Ultimately it seems to me we are either going to make some contribution to jurisprudence by way of the energies and concerns now stemming from social scientists or we will probably not have advanced very far."28

Ball, a sociologist himself, sees a mutual impenetration by law men and social scientists of new social knowledge emerging from interdisciplinary cooperation. On the one hand, "... anyone in the liberal arts-social science area today who doesn't think that law is an absolutely significant institution in our modern society is either blind, deaf or dumb." And yet on the other side the very skills of lawyering today require familiarity with social science materials.

26 Id. at 111-112.
27 Id. at 119.
28 Id. at 112.
Now for a lawyer to go into court with statistical information, without understanding the basis of that information... would be a most foolhardy thing to do... this evidence is going to be collected; and the lawyer can either broaden his skills, acquire those skills, or he'll simply be replaced by the economist in other areas. The position will continue to invert until the lawyer becomes simply an expert on procedures.29

2. Law-Society in the Undergraduate Curriculum

The theme of interdisciplinary cooperation in law-society, as just treated, had its chief (though not exclusive) focus in the graduate studies area. The chief inquiry there was “the extent to which social science provides components in the law, and the extent to which law is a component in the social sciences.”30 Turning to the undergraduate curriculum, the overriding question appeared as the extent to which basic courses31 in law-society and in the legal system should become an element of basic liberal arts education. The question breaks down into two parts: (1) what form basic courses in law-society should take; and (2) what other more ambitious programs are feasible, such as a major or minor undergraduate program in law-society, or an undergraduate Department of Law.

(1) Materials for a course, or courses, in law-society.

Unlike the situation at the time of the Harvard conference in 1954, there are available today various sets of materials on the legal system and the legal process.32 None of the Russell Sage projects discussed above has yet published a set of interdisciplinary law-society materials, although Professor Richard Schwartz of the Northwestern project, and Professor Jerome Skelnick of the Berkeley Center for the Study of Law and Society have collaborated on materials that will be published in the fall of this year.33

Professor Richard Wasserstrom, Dean of the College of Arts and Sciences at Tuskegee Institute, a former law professor at Stanford, complained that some existing course materials concentrate “largely upon appellate court decisions” which represent “only one very small slice of the legal system”.34

29 Id. at 124.
30 Id. at 134.
32 See note 7, supra, for a partial listing of the most basic course materials on the legal process.
33 Transcript, p. 311.
34 Id. at 232.
Some materials, in addition to stressing the case method, concentrate upon special selected areas of the law, such as contracts or workmen’s compen-
sation. Wasserstrom suggested a basic survey course that would give a “macro-cosmic view of the legal system”. First he would consider primitive law, ask just what a legal system is, look at the development of our own common law legal system, at the nature of legal analysis, at the structure of the court, legislature and executive and their roles within the system, and at the specific “great men” who have made the system tick. He would next consider “the anatomy of a legal case”, the rhetoric of the law, alternatives to the Anglo-American legal system, the influence of society on law, what could happen if we didn’t have any legal system at all. And, finally the course would incorporate the clinical experience of visits to local courts and confrontation, to the extent possible, of the men who make them go.

Other suggestions were made of basic type courses in specialized areas of law-society. Edgar Cahn of the Office of Economic Opportunity outlined a possible interdisciplinary course in Law and Poverty, later taken up in a workshop session. Professors Arens and Granfield of Catholic University Law School suggested application of the Lasswell-McDougall approach to a course in family law.

(2) More ambitious programs

Consideration was also given to the possibility of a major or a minor theme of concentration in law-society. Although the conference appeared united in advocating a greater place in the curriculum for law-society, there was little enthusiasm for the law-major proposal, originally advanced by Dean Carl Spaeth at the 1954 Harvard Conference. The fact that law as a major theme of concentration has been reality in England and on the continent since the founding of the universities in the Middle Ages was highlighted by the remarks of Professor Michel Villey of the Faculté de Droit et des Sciences Economiques of the University of Paris. Professor Villey reviewed the recent burgeoning of social science subjects within the “law faculty” at Paris and...
reported increased disciplinary fragmentation there at the expense of "cultural law".\textsuperscript{40} The law minor (an existing institution at the University of Indiana, according to Professor Howard Mann, a member of the steering committee of the conference) did not enlist broad enthusiasm among the participants.

A fresh development that did attract wide interest was the Carleton University formula: a Department of Public Law within the School of Arts and Sciences \textit{without} a major or minor field of concentration in law. Professor Richard Abbott of Carleton reported that his undergraduate "law" department was "quite autonomous", like the English, Philosophy or History Departments "except that we don't have a minor program; we don't have a major program. In other words, we have no integrated set of courses."\textsuperscript{41} Professor Yegge of Denver had recalled that it is difficult to find lawyers who will become members of an Arts faculty and who will take on the job of teaching the basic law courses. "This is true", said Professor Abbott "unless we give the law man the autonomy of a separate department." This arrangement also achieves a satisfactory interrelationship with the other university departments.

\textit{3. Training of Faculty Personnel for Law-Society}

At the 1954 Harvard Conference doubts had also been expressed on the possibility of getting enough law men to do the undergraduate law teaching. Sheer disinclination, lack of professional incentive, cost in scholarly time—all these were presented as obstacles to achieving the objectives most seemed to share.\textsuperscript{42} And yet no enthusiasm was expressed for the idea of non-lawyers giving courses involving the basic legal elements.\textsuperscript{43}

At the Catholic University Conference, from the social science side, great stress was placed upon training social science men—historians, sociologists, economists, political scientists, etc.—in the law. But participating lawyers and social scientists who agreed on the need for courses about law in the liberal arts curriculum did not share the Harvard consensus that such courses should necessarily be taught by lawyers. This view did not stem exclusively from the unavailability of sufficient teachers of law to satisfy the undergraduate needs. Some asserted their unsuitability for the task. Mark S. Massel of the Brookings Institution, a lawyer and economist, recalled that "the roles and functions of government which lie outside of the conventional field of law are becoming more important." He cited such developments as social secur-

\textsuperscript{40} Transcript, pp. 170-180.
\textsuperscript{41} Id. at 352.
\textsuperscript{42} Berman, \textit{op. cit supra} note 39.
\textsuperscript{43} Id. at 143-5.
ity, regulations concerning safety and minimum standards, the wide range of government licensing functions that escape judicial review, governmental activities in purchasing, research and development and anti-trust. In this era of great change, said Massel, “much of the work in the law schools of the United States suffers from a substantial cultural lag; ... much of what is taught in the law school has little to do with what lawyers do in practice.” In this posture, he contended, it would be preferable not to leave to law teachers the development of liberal arts courses in law-society:

... the social sciences, through sociology, political science and economics may, because of the areas with which they are concerned, actually help to throw more light upon an understanding of law and our society than if we develop liberal arts courses which are left entirely in the hands of people coming from the law schools.4

But just as law faculty members need training in social science to keep abreast of the development of the law itself, so the social science faculty men who will deal with legal materials as part of their own disciplines need specific, if brief, training in the operation of the legal system. At the conference the leading proponent of the specifics of such training was a sociologist, Professor Ball of Wisconsin.45 Ball had little confidence in a law major, a law minor, or even a separate Department of Law on the Carleton style. He stressed the importance of “seeing law introduced into all of the liberal arts courses.” And yet majors and minors, whatever their worth, would necessarily be restricted to large schools with great resources and specialized facilities. In major schools there can indeed be other kinds of specialized programs, assuming the faculties are willing to cross-fertilize. But the present ignoring of law (“a really tragic oversight”) in American liberal arts education calls for a program with a much broader impact than one limited to major institutions.

The American social sciences are not going to get going again in terms of any kind of major synthetic integrated work until they rediscover law and they rediscover religion. These are the two major institutions that have been ignored.

And so when we turn to “the kind of schools that aren’t going to be able to have highly trained faculty members around to teach these things, we are going to have to rely on training the faculty.”

Ball’s proposals for faculty training and the proposals by the planning ses-
sion of the conference for the establishment of a permanent interdisciplinary institute to prepare course materials and to furnish law-trained personnel for smaller educational institutions are too lengthy and specific to be detailed here. They will be published in the Proceedings of the conference. Briefly, they call for faculty seminars to be conducted by consultant law men, summer institutes, special one year programs at certain law schools for training social scientists, and joint use of certain law professors by the faculties of several institutions in the interim period until liberal arts faculty members secure the abbreviated law-training necessary for teaching their courses.

REPRISE

The basic proposal of the Catholic University conference was then modest enough: Further regional conferences and a sustaining institute should be sparked and local programs commenced by those participants that shared its notes of urgency and hope. The “whispered consensus” should be thus enlarged at the very time when basic institutions of American legal and social life are being radically transformed and pitifully misunderstood.

The note of urgency related to fragmentation of learning, to departmental barricades, to inarticulated values smuggled into both the social sciences and law; to a “crisis in the humanities” and an impending “scientology”; to a flight from generalization, to social scientists bewitched by their own models, to professional mystiques in economics, sociology and law (the social sciences allegedly now most firmly in social command) that only the initiated may aspire to comprehend.

46 The recommendation of the Conference provides in part: “That some central institute be set up for the purpose of developing an effective program in this area...; that this institute should make available a series of programs to educational institutions that would be interested in cooperating... That the program should be developed with flexibility with regard to time (by providing courses for a year, for a summer, and discussions for a week), but also with flexibility in helping to tailor programs which would be carried out at individual institutions... That, in addition the program would be aimed at finding central areas in which there was a collection of small colleges that would cooperate, working out an arrangement through its own institutes and educational programs whereby men on the faculties of local law schools would undertake the task of running faculty seminars for the social science faculties within the area, and then to cooperate with the faculties within the area in order to develop courses and seminars for the students... Even though universities and colleges might like to participate in such a program, no one university or college has the resources, in terms of funds and in terms of personnel, to develop a program by itself. It is most desirable, therefore, to find a way for channeling funds and resources to be used on a broader basis, ... and to develop, an institutional framework to carry the program through.” Transcript, pp. 552-555. The further suggestion was made: “even before the full program is implemented to have some follow-up discussions on a regional basis... looking for methods of cooperation with other groups, and other organizations, including the National Science Foundation, the National Humanities Foundation when it is set up, and the various charitable foundations that might help to supply funds.” Id. at 554-555.
A sense of urgency may itself be ground for hope. But there was more. Selznick's "modest optimism," and his aim that interdisciplinary gains should affect jurisprudence itself; Berle's reminder that philosophy has its place at the top of activity in the public sector; Arlt's reminder that barriers between natural science disciplines broke down only recently, and his intimation that history may well repeat itself by a reunion in the humanities; the keen interest expressed by small colleges (and by religious institutions, such as seminaries) in the proposed reintegration of law, social studies, philosophy and theology; voices from France (Villey) and from Canada (Abbott) joining in the call for a return to law as a cultural discipline in the liberal arts tradition; and, perhaps most hopeful of all, insistence by sober scholars like the Balls, the Massels and the Rosenblums that sheer moderation and realism demand broad new institutional devices to help train across disciplinary lines the faculty men needed to do the job.

Beyond the obvious utility of recording an inventory of recent interdisciplinary experience, did anything emerge from the conference of special relevance to the future of learning in the United States? The following tendencies indicated there may bear watching: a spirit of self-criticism by both law men and social scientists, each questioning their own exaggerated provincialisms and mystiques; the frank avowal by each of need for awareness in frontier areas of basic work methods and techniques of disciplines other than their own; a general awareness of the inadequacy of traditional project research alone to meet the time schedule called for by current political and social exigencies. This last reaction does not undervalue patient research, which can itself lead to production of the effective teaching materials in law-society for which participants expressed a growing need. But it is across the whole field of American higher education that such materials must be put to early use—in the small colleges as well as in the large, and even in such

47 Dr. Gustave O. Arlt, President, Council of Graduate Schools in the United States: "... this gradual loosening of the structure of strict departmentalization will be increasingly advantageous, not only for the humanistic and social science fields, but also for the learned professions, law and medicine." Transcript, p. 346.

48 Professor Richard Schwartz, a sociologist now associated in the Northwestern Program in Law and the Social Sciences rejects "the dubious premise that legal resistance to social science is based on arrogance rather than on reasonable doubt as to the utility for law of social science research. ... The lawyers I know ... have shown little evidence of irrational resistance. If anything, some lawyers (not my friends) have at times been too eager to accept the substantive conclusions of social scientists without inquiring into the adequacy of the methods and findings on which these conclusions are based. Reliance on Kinsey and on some of the sources cited in footnote eleven of the desegregation cases are painful evidence of this tendency. Greater methodological sophistication on the part of lawyers should make it possible for them to select and interpret sound empirical findings, while rejecting invalid and irrelevant ones." He then adds that "In the present state of the social sciences, however, I am afraid that such selection would not leave us much. Our problem, as I understand it, is to explore ways in which we can increase the supply of scientifically valid and legally relevant empirical research." Schwartz, Field Experiment in Sociological Research, 13 J. LEGAL Ed. 401, 402 (1961).
specialized institutions as seminaries and programs for sister formation. It is this widespread need that calls for broad and widespread training of teaching personnel—those in anthropology, economics, history, political science, psychology, sociology, and those in philosophy and theology and law as well—in the basic disciplines most directly related to the development and operation of our law and our society.

THE RECURRING QUERY: THE PLACE OF VALUES

From start to end the conference heard lively disagreement as to the proper place of values in the total scheme—disagreement between rival disciplines, and disagreement between practitioners of particular disciplines among themselves. There was accord that law and the other social sciences must at least deal with values as data. It would then be the task of "constructing" disciplines such as sociology and political science to identify and build on shared values, and of a "controlling" discipline such as law to implement and to foster the development of these values in social institutions. A consensus did seem to emerge that determination of values as such, i.e., which goals should be sought or which interests recognized, was not strictly the role of law, or of any of the social sciences, but of the moral forces of the community (and of the moral disciplines, such as ethics and theology). But the nature of legal and political and social relations does not admit of too ready a compartmentalization even here. For the moral "ought" in many matters in a complex society cannot often be glibly given without attending to the social facts.

Is there then need for conscious development of a new field of social inquiry? One political scientist from a Middle Western University, writing three months after the event, thought the conference's chief contribution was suggesting an answer here:

I have had some time to reflect upon what was said at the conference and, indeed, upon what was not said. As to the latter, the truly revolutionary and innovative aspect of the conference lay in what the participants felt went without saying. If memory serves, only once was the what-can-social-scientists-tell-lawyers line trotted out, and then only perfunctorily. Implicit in both the formal presentations and the ensuing discussions was the shared assumption that something resembling a brand new discipline exists, so now, in fact, that it has no name and was most often referred to by the shorthand "law-society". Thus quite without fanfare and in a most unself-conscious way, the conference rose above familiar matters of semantics, definition, and communication to directly tackle substantive and pedagogical problems."

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JUST ANOTHER "WHISPERED CONSENSUS"?

A veteran of the 1954 Harvard sessions advised against holding the 1964 Catholic University Conference, saying: "All the points were made at Cambridge ten years ago." On hearing this the dean of a large law school (a bit further west) said: "The Harvard conference did not make a ripple." The last comment may be overstated, but both statements seem substantially accurate. There is a difference between notional assent to (or a whispering consensus in) ideas soundly conceived and brilliantly expressed, and implementation of them—all the difference between mere thought and the action that follows upon concern.

The time may be more favorable for action now than before. Some obstacles merely adverted to in 1954 are accepted now: law teachers cannot do the whole job, even if they would be accepted. Their most efficient expenditure of energies may be in teaching teachers, not undergraduates. Some realities are now squarely faced: the social scientists are in need of legal indoctrination and vice versa. A vast cooperative effort is needed that transcends the knowledge or energies of any one discipline. The new Law and Society Association is an inspiring recognition of this fact. So is the proposal of the 1964 Teaching Law Outside the Law Schools Committee of the Association of American Law Schools that calls for a sustaining body that should include "representatives of the AALS, the American Bar Association, the American Political Science Association, the American Historical Association, the National Assembly for Teaching the Principles of the Bill of Rights, professional educators and school administrators, and other similarly interested and strategically situated organizations and groups." But if the first may be tilted too much towards sociology, the last may lean overmuch to law and political science. Neither proposal gives adequate evidence of reserving a working, however muted, role in their plans for crucial value disciplines as such—philosophy, ethics, religion, theology—or of providing border participation,

50 The point was recently made that Professor Berman's book on the Harvard conference is one of the finest short compilations of material in existence on the functioning of the legal system, and the suggestion was added that it be reedited for general distribution. A member of the audience noted that the book would never sell in popular paperback under its present title On the Teaching of Law in the Undergraduate Curriculum, and suggested that the new edition be entitled Law and the Single Girl.

51 See text accompanying notes 24 and 25.


53 A recent English study, J. H. Plumb, ed. Crisis in the Humanities, Penguin Books, 1964, includes among the humanities: Classics, history, philosophy, divinity or theology, literature, fine arts, sociology, and economics. One contributor claims the most central place among them for philosophy: "I do not mean that...a lawyer puzzled by justice, or a historian puzzled by causation or determinism [will]...ring a philosopher of their acquaintance for the answer. They don't. (They might, in these days of Foundation-subsidized travel, arrange an 'interdisciplinary Conference, ...') [Sic]. I do mean that the most general and fundamental questions, which do crop up in the course of historiography, jurisprudence, literary study, etc., are philosophy, and when treated systematically, are classed as 'philosophy' rather than
at least, for medicine and the natural sciences. Perhaps the best hope is a truly coordinating institute of existing organizations, touching all the areas, with no disciplinary group taking charge and no individual or individuals claiming authorship or suzerainty. This was, in effect, the recommendation of the conference.

Perhaps, as with Professor Powell's vestryman who has "seen it done," any prior disbelief in interdisciplinary possibilities did fade among participants as the 1964 conference ran its course. But the tantalizing question remains, Is this just another whispered consensus, or is it the beginning—a new beginning? A scientific answer must await the accumulation of data on things as yet "undone".54

54 Some preliminary returns have come in. Within two weeks of the conference closing (1) one college reported that it will institute in 1965-66 a law-society course broken down into "Law and History," "Law and Economics," "Law and Sociology," and "Law and Political Science" with local law-trained personnel doing the legal honors, and (2) a small law school introduced a course (Spring, 1965) entitled "Trial and Appellate Use of Social Science Materials." (Each identified the new course as a direct result of participation in the conference discussions).