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1903 & 1946: The Making and Remaking of the University of Nebraska College of Law

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1903 & 1946: The Making and Remaking of the University Of Nebraska College of Law

I. INTRODUCTION

Legal education at the University of Nebraska College of Law has undergone at least two significant upheavals. In rough terms, one can be associated with the deanship of Roscoe Pound from 1903 to 1907 and the other with the years 1946 to 1950 when Frederick Beutel was dean. Both periods presented fertile opportunity for educational reorganization. In 1903 the College of Law began its thirteenth year. The school was at a point when the adoption of a coherent program of legal education was both necessary and possible. In 1946, the College of Law started anew, its doors having been closed for three years during World War II. The unintentional lapse in continuity created an excellent atmosphere for total reorganization. Important philosophies of legal education were also readily available for the College of Law to embrace during each era. In 1903, the College of Law adopted the Harvard model of a school designed to produce legal professionals through the study of selected cases in fundamental common law subjects. In the post-war years, there was an emphasis upon training for the public service of law along with the movement to integrate nonlegal materials into the study of law.

It is the thesis of this commentary that the two educational revisions, and their underlying philosophies, reflect clearly identifiable conclusions about the perceived purpose of a law school. Each program was designed as a solution to what was judged to be a deficiency in the then existing course of study. This commentary will first describe the chief characteristics of the educational process at the College of Law which predated the reorganization in order to provide a basis for understanding what problems were perceived during each period. Then, it will discuss both the curriculum revisions for the period and their philosophical bases with a view toward understanding the purposes of legal education thereby advanced. Finally, by way of conclusion, a comparison of the two periods will be offered.

While this commentary focuses upon two brief periods in the history of the College of Law, there is no attempt to provide a comprehensive account of the school for the years involved; the topic is far narrower. Attention is directed only to the course of study which was offered, the educational materials and methods which were employed, and the philosophies which were adopted. Thus, no attempt is made to study the admission standards, the teaching styles, or the physical facilities except as they may bear incidental significance to the curricula, materials, and philosophies of the two eras.

While both Pound and Beutel were strong deans and notable legal figures, the intended emphasis of this commentary is not on the two deans themselves, but rather on the nature of the educational process at Nebraska during the two periods. It is not contended that each man dictated every aspect of the process while he was dean, nor is it assumed that each reorganization of the College of Law would have occurred even without the influence of the men who were in command.

II. 1903-1907, DEAN ROSCOE POUND

A. The Pre-Pound Period

The College of Law admitted its first students in the fall of 1891. However, the organized study of law in Lincoln was initiated three years earlier.¹ Professor Charles A. Robbins, writing for an 1897 school publication, described the incipient law school:

In the fall of 1888, some two dozen young men who were reading law in the offices of Lincoln lawyers, organized a class for more systematic study and the trial of moot cases. . . . Soon after the

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1. During this period young Nathan Roscoe Pound, a lifelong Lincoln, Nebraska resident, vacillated between an academic career in botany and a practical profession in law. Pound's activities are described in D. WIGDOR, *ROSCOE POUND PHILOSOPHER OF LAW* (1974). Pound finished his undergraduate work at the University of Nebraska in 1888 at the age of 17. He started graduate studies immediately in the fall of 1888, but following the advice of his father, also began to read law. He spent the academic year 1889-1890 at the Harvard Law School. He then returned to Lincoln and pursued both graduate work in botany and legal work. By 1897 Roscoe Pound had earned his Ph.D. in botany and had gained considerable respect within the field. He was, however, a practical man and it is said that he was influenced to finally settle upon a legal career by his belief that the profession had much to offer. In 1901 the Nebraska Supreme Court docket was critically backlogged and Pound was appointed a commissioner of the court to help clear the caseload. He continued in this capacity until the Supreme Court Commission was no longer needed in 1903.

organization of the class the writer accepted an invitation to become its leader and instructor. . . . The class met two evenings in each week. Readings were assigned in some standard text book, and the regular class work was limited to a quiz upon the subject matter of the reading.

The work of the class as a whole was not satisfactory. All the advantages of law office study, so much vaunted by some lawyers who know nothing of the better methods, were possessed by these young men, supplemented by the regular assignment and discussion of readings; but their average progress was discouragingly slow and uncertain. Class organization was too lax; recitations were too few; the study of the assigned readings could not be made compulsory. It ought to be said that a number of the young men appeared to apply themselves diligently to the work and made satisfactory progress.²

From these beginnings, Robbins reported, sprung a more formal law school:

Probably encouraged somewhat by the apparent success of that class, and at the suggestion of Messrs., T. S. Allen and W. F. Schwind, Mr. William Henry Smith, who had lately come to Lincoln from Philadelphia, organized, in the fall of 1889, a law class which he called Central Law College. . . . The printed announcement contained the names of a very long list of lecturers including some of the most prominent lawyers in the state. Some of these gentlemen, and notably Judge Webster and Mr. Wilson of the present faculty of this college, did deliver systematic courses of lectures.³

When the Regents of the University of Nebraska agreed to the establishment of the College of Law beginning with the 1891-1892 academic year, William Smith became the first dean. He was followed in 1893 by M. B. Reese, a former Chief Justice of the Nebraska Supreme Court who served until Roscoe Pound was appointed in 1903. During these early years the school offered a two year undergraduate program. The admission standard specified only that "[e]ach applicant must satisfy the Law faculty that his educational advantages have been such as to warrant his taking up the study of the law with reasonable assurance of success."⁴ Students were expected to be at least eighteen years old. Each academic year was divided into four terms of approximately two months.

The dominant mode of instruction for the period 1891-1893 was the lecture system because Dean Smith had a definite preference

2. The account appears in Robbins, *History of the College of Law*, in the first yearbook of the College of Law, *THE DIGEST '97* (1897), and is reprinted in *YEAR BOOK OF THE COLLEGE OF LAW 1903-1904*, at 26-30 [hereinafter cited as *YEAR BOOK 1903-1904*].

3. *YEAR BOOK 1903-1904*, *supra* note 2, at 26.

4. University of Nebraska Announcements, 1894-1895 at 32.

for that method. He also believed it necessary to include a large number of courses in the curriculum in order to give the students knowledge necessary for dealing with all aspects of the law. Professor Robbins' account of those first two years leaves no doubt that much improvement was needed:

The original course of study prepared by Dean Smith covered fairly well the field of elementary law, but it was greatly lacking in systematic arrangement, and unsuited to that orderly development of legal principles so helpful to the student, and so necessary to an understanding of the essential unity of our common law. It is said that the actual performance was even more disorderly than the printed program.

. . . The Dean was a firm believer in the efficiency of the so-called lecture system. There was no case study in the proper sense of the term. Text-books and cases were cited rather as authorities to justify the conclusions of the lecturer than as the proper subjects of careful study.

The results obtained were disappointing to the friends of the school. After much deliberation a committee . . . reported . . . that the "curriculum should be simplified and so modified as to give to each student a comparatively small number of topics at any one time," and that "the greater part of the undergraduate course must be that of the recitation," "based very largely upon the use of text-books." Dean Smith resigned, not being "in accord with this method of instruction."⁵

Roscoe Pound apparently shared Professor Robbins' judgment of the school as organized by Dean Smith. Many years later he was to comment that Smith "[o]perated a law school which was not at all what a law school in a university ought to be."⁶

When Reese became dean the curriculum was simplified and organized with a view toward teaching basic courses first and then building upon them. Ten courses were offered each year, but only two or three were included in each of the four terms of the year. The first term included only elementary law, based on Blackstone's *Commentaries*, and a course in Domestic Relations.⁷ In addition

5. YEAR BOOK 1903-1904, *supra* note 2, at 29.

6. Robert Manley, Roscoe Pound Interview at 11 (June 12, 1962) (Unpublished manuscript in the Roscoe Pound Collection of the University of Nebraska-Lincoln Archives) [hereinafter referred to as Archives]. Pound did not specify whether he was commenting on Smith's Central Law College or the first two years of the College of Law. Nor did Pound mention Smith by name, although there could be little question that it was he to whom Pound referred when speaking of a fellow from Pennsylvania with Pennsylvania notions about Law.

7. The other first year courses were: Contracts, Agency, Torts and Negligence, Partnership, Sales and Mortgages of Personal Property, Crimi-

to the regular courses, a series of special lectures on a wide variety of topics was offered.⁸ Students were required to participate in the practice courts, where mock trials were conducted. It was also suggested that each student secure desk room in some local law office.

Some courses continued to be taught exclusively by lecture, but with the exception of these courses, students were called upon in class to recite. From 1893 until Pound became dean, the dominate method of instruction consisted of the textbook and recitation:

It is believed that definite and permanent impressions concerning the principles and rules of law are best acquired by the study of standard text-books in private, followed by the examinations and explanations of the recitation room. The curriculum is therefore based very largely upon the use of text-books, with daily recitations of one and one-half hours each. But the course of instruction aims to combine the advantages of all approved systems; and includes lectures, practical exercises in drafting legal papers, and the careful study of selected cases.⁹

Hence the course books used were not casebooks but texts such as Blackstone's *Commentaries* and *Cooley on Torts*. Nevertheless, the reading and discussing of cases was included in the classroom instruction and the bulletin noted the use of selected cases for several courses. Students were sometimes required to read cases and present prepared abstracts to the class.¹⁰

The primary task for the faculty, however, was not so much how best to teach law as how to establish a law school. The need for the school was not immediately recognized by all members of the bar and community. Indeed the University itself was only beginning to gain the trust and support of the public.¹¹

Thus the pre-Pound period was absorbed with the matter of establishing a workable program. The task of developing the

nal Law, Commercial Paper, and Bailments and Carriers. In the second year the program covered: Evidence, Common Law Pleading, Equity, Personal Property, Equity Pleading, Real Property, Code Pleading, Corporations, Wills and Administration, and Constitutional Law. Announcements, 1894-1895, *supra* note 4, at 33-36.

8. Announcements, 1894-1895, *supra* note 4, at 35. Among others Roscoe Pound's father, Stephen Pound, was a lecturer in 1893. YEAR BOOK 1903-1904, *supra* note 2, at 28.

9. Announcements, 1894-1895, *supra* note 4, at 33.

10. *Id.*

11. According to Pound the Nebraska pioneers of the 1880s were suspicious of the University and it was not until 1890 or 1900 that the University began to enjoy popular support. Robert Manley, Roscoe Pound Interview, *supra* note 6.

course of instruction was reserved for the second decade of the College of Law and the deanship of Roscoe Pound. Dean Pound and his faculty would see the existing program as inadequate in two fundamental aspects: the organization and length of the course of study, and the method of instruction.

B. 1903-1907

Although Roscoe Pound did not become dean until 1903, he was not a stranger to the College of Law in the earlier years. Through his work in botany, he was in contact with the University of Nebraska almost continually. In 1899 he began to teach at the College of Law, although the extent of his services at that time is unclear.¹² Pound was also associated with the teaching of Jurisprudence and Public Law in the general University, a connection that continued throughout the period of his deanship.¹³ In 1903 Pound was persuaded by Chancellor Andrews to take Reese's place as dean. It appears that originally he was not greatly attracted to the position. The salary was far below what he could expect to make in practice. Moreover he may have feared that the position was a rather inactive one, more suited for an attorney who was ready to retire.¹⁴ Nevertheless Pound admired Andrews and had an inclination for the academic life. He therefore agreed to accept the position with the understanding that he might still engage in private practice. Once he began, however, he discovered that it was impossible to combine private practice with the deanship.¹⁵

When Pound became dean, the College of Law was just coming of age. It was perhaps only then possible to settle upon a philosophy of instruction. By 1903 an academic legal education had been

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12. He was listed in the 1899 Announcement as a lecturer and he attended at least one faculty meeting that year. 17 Faculty Minutes (Law) (May 20, 1899) (Archives, *supra* note 6). His connection was clearly part-time since from 1901 until 1903 he served as a commissioner of the Nebraska Supreme Court Commission. See note 1 *supra*.
 13. Jurisprudence and Public Law was connected with the Arts and Sciences College and was the subject of several reorganizational efforts by Pound and his colleagues. Although during Pound's deanship the burden of the department was on the law school, it was not part of the law school curriculum (data regarding this subject is scattered throughout the Pound collection at the Archives, *supra* note 6).
 14. At the time of the offer Pound commented to a friend that he was not prepared to retire at the age of 33. D. WIGDOR, *supra* note 1, at 103.
 15. This is Pound's own account. Robert Manley, Roscoe Pound Interview, *supra* note 6, at 12. One biographer indicates that Pound did engage in practice during his deanship. See P. SAYRE, *THE LIFE OF ROSCOE POUND* 138 (1948).

established in Nebraska. Thus the faculty could attend to the business of constructing a more coherent program for legal education. Pound's year as a student at the Harvard Law School occurred during the deanship of Christopher Langdell. Langdell's case method of instruction had been fully implemented at Harvard by that time.¹⁶ The Harvard system included both the case method and a coordinated curriculum. The first year was designed not to teach a body of legal rules but to introduce the principles of legal reasoning.

Pound was dedicated to the Harvard system and beginning with the 1903-1904 term the curriculum was reorganized. The case method was adopted for all courses. This was not a radical departure in view of the fact that Professor Robbins and other teachers had used the case method in combination with other devices almost from the beginning. Indeed, although the original description of the method of instruction did not emphasize the study of cases, by 1899, the year Pound first taught at the College of Law, the study of cases was noted as one of the major methods used. In that year, the "Methods of Instruction" statement in the Announcement was amended upon the motion of Professor Webster to elevate the importance of the case system.¹⁷ Thus, it cannot be said that Dean Pound introduced the case method or that he alone among the faculty members promoted it. It was, however, during his deanship and under his direction that the previous practice of officially leaving the choice of teaching methods to the individual instructors was abandoned in favor of a single system for instruction. It was also Pound who had the most legitimate claim to knowledge about the methods of Dean Langdell.

There is no evidence that any member of the faculty opposed the official adoption of the new curriculum and method of instruction. However, that is not to say that each teacher became a faithful disciple of Langdell. Professor Robbins, of course, was a proponent of the case method. Moreover, Professor Cook was heralded as being the first teacher to "formally inaugurate the pure system" into all of his classes.¹⁸ But it is likely that most instructors

16. See generally Stevens, *Two Cheers For 1870: The American Law School*, in *LAW IN AMERICAN HISTORY* 435-41 (D. Fleming & B. Bailyn eds. 1971).

17. The original statement had emphasized the dominance of the text and recitation system. Professor Robbins' amendment made the text system share the priority with the case method. See 17 Faculty Minutes (Law), *supra* note 12. Pound attended this meeting but the minutes do not reflect his participation.

18. YEAR BOOK 1903-1904, *supra* note 2, at 31.

throughout Pound's deanship utilized the case method in a somewhat diluted fashion. The best evidence of this is the traumatic reaction of some students to the unadulterated Langdellian case method as employed by Professor Ayers, a Harvard graduate who was recruited by Dean Pound.

The disharmony came from certain advanced students who had become enamored of the less rigorous methods of the local professors. The students registered a complaint against Ayers with the Chancellor who in turn contacted the young professor. The result was almost disastrous. Pound was enraged at what he considered a usurpation of his powers. He placed the full blame on the students, asserted that the Harvard system was the "true method," and offered to resign forthwith if there was any further question as to the methods he chose to employ.¹⁹

Ayers' response to the Chancellor was of a much subtler tone, but the underlying adulation of the case method was not concealed. Ayers' letter is a valuable original apology of the philosophy underlying the case method as introduced at the College of Law, and for that reason a substantial portion is here summarized.²⁰

Ayers' primary explanation for the hostility of the students was that the reaction was inevitable whenever the Harvard system is first used. The initial attempt, Ayers wrote, will always be criticized as "indefinite" and "desultory." Moreover, when the system has been given a chance it is soon recognized as far superior to the other "predigested methods." For this reason, certain third year men who had recognized the values of the system after one semester with Ayers actually were able to persuade complaining second year students not to adopt a resolution against Ayers' approach.

Ayers went on to argue the affirmative merits of the system. It was the application of the socratic method to the teaching of

19. Letter from Roscoe Pound to Chancellor Andrews (Aug. 9, 1906) (Archives, *supra* note 6). Pound's defense of the method was a brief restatement of Ayers' letter to the Chancellor. See text accompanying note 21 *infra*.

20. See letter from George Ayers to Chancellor Andrews (July 13, 1906) (Archives, *supra* note 6). The letter was sent from Malden, Massachusetts, where Ayers was during the summer. It was in response to a July 2 letter from Andrews. Ayers, with extended elaboration, thanked the Chancellor for his criticisms. Ayers expressed a humble intention to welcome the comments and improve upon his faults. Then, relying upon the proposition that he might acknowledge his own inability to properly employ the system while maintaining absolute confidence in the use of it, he proceeded to issue a comprehensive defense of the Harvard method.

law. The system had fought its way to recognition as the best method of instruction; it had revolutionized the study of law. It was because of Langdell's case method that Harvard occupied the highest status among law schools. "The system substituted thinking, criticism, analysis, for memorizing; and the student thrown more than ever before upon his own resources and feeling a weakness somewhere, ascribes it at first to the method, rather than to himself."²¹

All this might lead one to conclude that the introduction of the case method produced a complete uproar. Yet the method was introduced gradually and for the most part smoothly, beginning with Professor Robbins. The reaction in 1906 may well have been as much against Ayers personally as against his methods. Even if the Ayers incident reflected a reaction against the case method itself it was an isolated event. Pound did not resign, and the use of the Harvard method grew.

The introduction of the case method had a great impact on legal education at Nebraska. The faculty at this point committed the school to a distinct theory of legal education. The proposition that a law student must be taught legal reasoning has become so commonplace that it is difficult to appreciate the significance of the adoption of the case method at the College of Law in 1903. There can be little doubt that if Pound had not become dean in 1903 the case method would eventually have been accepted at the College of Law as the exclusive system for teaching law. By 1920 the case method became the hallmark of legal education, and most law schools converted totally to the Harvard approach; however, by 1903 the trend was only gathering momentum.²² It is a credit to Pound and his faculty that the College of Law embraced this approach so completely this early in its history.

No less important than the adoption of the case system was the decision to add a third year to the curriculum. Again, although the innovation occurred during the first year of his deanship, it does not seem to have been Pound's product alone. At a 1902 meeting of the faculty, Professors Wilson and Robbins were appointed to a committee to report on the desirability of a three-year program.²³ Professors Robbins and Wilson are credited with getting the period of study required for admission to the bar lengthened to three years with the result that beginning in 1903, the College

21. *Id.*

22. See Stevens, *supra* note 16, at 435-41.

23. Twenty-five dollars was allowed for expenses. 17 Faculty Minutes (Law) (Feb. 11, 1902). Pound did not attend this meeting.

of Law was able to extend its program to a third year without losing a competitive advantage to law office study.²⁴

The curriculum was revised so that each year was divided into semesters rather than quarters. During the first year, four courses for twelve hours credit were required in the fall semester. Contracts and Torts constituted three and two hours respectively. Property I was introduced into the first year curriculum for five credits. In addition a totally new course, History and System of the Common Law, was designed and taught by Dean Pound for two hours credit. In the second semester, Contracts and Torts were continued and Agency, Domestic Relations, Equity I, Criminal Law and Procedure, and Civil Procedure I were added, again for a total of twelve hours credit.²⁵

The moot court program was completely reorganized. According to a student account the prior system had been a farce.²⁶ The new program was a matter of pride to the editors of the 1905-1906 year-book:

How we advance! With Dr. Pound's advent as dean of the Law School one of the first reforms accomplished was the establishment of a complete system of practice courts. The old moot courts were abandoned and a newly organized system, similar in every way to the state courts of Nebraska, took their place. A complete outfit of courts, consisting of justice of peace, district, and supreme courts, was instituted, with regular appeals from one to the others. Nebraska procedure was made binding on these courts, and the work done in them and the cases tried similar to that in the state courts. Thus was combined training in remedial law with instruction in substantive law.

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During the year 1904-5 twenty-two cases were disposed of by the district court, a large number being appealed from the justice of peace courts. Nearly as many cases were argued in the supreme court during the same year, most of these being appeal cases or proceedings in error.

When established, these courts were much of a novelty. Yet, they have given the students a greater amount of training in prac-

24. YEAR BOOK 1903-1904, *supra* note 2, at 30. The law faculty was apparently always active in promoting higher standards for admission to the bar. In 1895, owing to the law faculty's influence, the old system of admission by motion in the district court was changed to examination by the Nebraska Supreme Court. *Id.* at 31.

25. Contracts and Torts accounted for two hours each, Contracts and Agency being completed in half of the semester. Civil Procedure and Domestic Relations provided one hour each and the rest of the courses counted for two hours each. University of Nebraska College of Law Announcement, 1904-1905 at 15.

26. YEAR BOOK 1903-1904, *supra* note 2, at 31.

tice and in the orderly conduct of a trial than had ever before been attempted. And after three years' operation they can no longer be called an experiment: those who know pronounce them a success.²⁷

The students' enthusiasm for the practice courts was shared by the Dean. In several communications to the Chancellor, Pound asserted the value of the program while pleading for sufficient funds with which to operate the greatly expanded system. In one such letter, Pound implored that \$150 be appropriated so that a Mr. Fogg of the University's Department of Rhetoric might continue as an instructor in the practice courts. The Dean related the request to a fundamental reason for associating a law school within the University. "One of the advantages of a law school connected with a University is that such connection makes it possible for the faculty of law to make use of the resources of the other faculties this way."²⁸

Like the introduction of the case method, the development of this expanded curriculum was of great significance to the College of Law. The courses of the earlier years were markedly disorganized and incomplete. The new curriculum made possible a fully academic development of legal skills. While Dean Pound would have preferred to require more rigid preparation for entrance into the school,²⁹ at least the new curriculum insured that a reasonably capable student would be able to become trained academically for the practice of law. The new curriculum indicated total commitment to academic rather than practical legal training.

The educational philosophy behind the new program at the Col-

27. YEAR BOOK OF THE COLLEGE OF LAW 1905-1906, at 97-98 [hereinafter cited as YEAR BOOK 1905-1906]. Each student was required to try at least one case in each of the courts and students were appointed by the dean to serve as judges of the courts. *Id.* at 98; YEAR BOOK 1903-1904, *supra* note 2, at 31.

28. Letter from Roscoe Pound to Chancellor Andrews (Dec. 11, 1905) (Archives, *supra* note 6). Other references to the funding or increased load of the practice courts are in similar letters dated June 6, 1904 and Feb. 13, 1905.

29. By 1897, work equivalent to graduation from an accredited high school was required and higher preparation was recommended. Pound strongly believed that proper preparation was essential. He designed a detailed program to be suggested for students interested in law school. The 1903-1904 Announcement reflected much of this program in its statement of admission requirements; however no college work was required. Pound's pre-law program was printed in a University of Nebraska publication, III University Journal No. 7 at 79 (April, 1907). He recommended two years of college work but suggested at the least the study of Mathematics, History, English and Latin.

lege of Law was clearly the theory of Langdell's Harvard.³⁰ During Roscoe Pound's deanship, the College of Law embraced the Langdellian system and its chief attribute, the case method. This is emphasized by Pound's and Ayers' defense of the Harvard system. The core concept of Langdell's approach to legal education was the assertion that law should be studied as a self-contained body of scientific principles.³¹ The proper goal of the law school was not to teach students every variety of legal dogma; rather, the object was to train the student in the analytic skill of legal thinking. The materials of the science of law were the reported cases. Since the way to study a science was to go directly to the primary sources, it was by studying, analyzing and discussing selected cases that the law students would master the principles of law. According to Langdell, there were relatively few such principles; thus it was possible to establish a curriculum which covered all the essentials but which adhered strictly to the time-consuming case method. The Langdellian philosophy of legal education resulted in an academic approach to the teaching of law even though the purpose of the law school was to train for the practice of law and not for scholarship. "Sound reason and experience" Pound stated in his inaugural lecture, "have joined in demonstrating that the teaching and the practice of law are wholly different professions."³²

During the period 1903-1907 the basic design for curriculum and teaching methods at the College of Law was established. It was, perhaps, too early in the history of American legal education for there to be a standard to which the aspiring law school could conform. But by 1907, the College of Law was becoming a part of what would later be characterized as a trend toward orthodoxy among law schools.³³

The case approach combined with the new curriculum to establish a law school patterned after the great eastern schools. This system of legal education is so ingrained into the history of legal education that it takes special attention to appreciate the significance of the 1903-1907 developments for the College of Law. There were other roads for a law school to take in 1903. It was possible

30. It might be thought curious that no mention is made in the text of Pound's own jurisprudence. However, there are no clear indications that any of the curriculum or method changes during Pound's deanship were influenced by his developing jurisprudence.

31. For a brief discussion of Langdell's philosophy see J. HURST, *THE GROWTH OF AMERICAN LAW* 261-71 (1950).

32. *The Evolution of Legal Education*, address by Roscoe Pound at 11 (Sept. 19, 1903) (Archives, *supra* note 6).

33. Stevens, *supra* note 16, at 430-41.

to become largely an adjunct to apprenticeship with the emphasis on the practical rather than the academic. Or a school could accept the notion that law training consisted of rote learning of legal dogma with special emphasis upon the nuances of local law. A less traveled path would have been to revise the theory of the earliest university-connected law schools, which treated the study of law as essentially a liberal education apart from the practice of law and tied closely to the study of economics and government. But if the College of Law had not converted to the Harvard system in 1903 it certainly would have done so ultimately; that was the fate of all the law schools which survived long enough to witness any serious revolution against the Harvard methods.

Indeed, the brief history of the College of Law culminating with the deanship of Roscoe Pound was a telescoped re-enactment of much of the history of legal education in the United States from its beginning to approximately 1920.³⁴ One who is familiar with the history of legal education will readily recognize the changes which occurred at the College of Law between the years 1888 and 1907. Prior to 1888, the University did not train lawyers, but it did have, in the Department of Jurisprudence and Public Law, its parallel to the law departments which were the very first instances of the academic study of law in the eastern schools. Legal training in Nebraska at the time the Central Law College was founded was strictly based on apprenticeship through clerking in local law offices. While much of this education was disorganized and wholly informal, there is no doubt that some lawyers with a bent for teaching developed training programs which eventually gave rise to the organization of students for periodic discussion and moot court sessions. This is precisely what had happened one hundred years earlier with the rise of the Litchfield School and its many offspring. But after the short tenure of Dean Smith and his practical but unsystematic school, law training in Nebraska became associated with the university community. Again in correspondence with the history of legal education, the College of Law was only loosely connected with the rest of the academic community and was in no sense a part of liberal higher education. Like the earliest university law schools the College of Law employed a textbook and recitation method, thus providing law training in an academic setting but with a purely practical concentration on the study of legal dogma. As was the case with legal education historically, this latter

34. A thorough treatment of the development of legal education is provided in Stevens, *supra* note 16. See also J. HURST, *supra* note 31, at 256-76. For a concentrated analysis of Langdell's Harvard system see L. FRIEDMAN, A HISTORY OF AMERICAN LAW 530-38 (1973).

phase lasted until the implementation of the Harvard approach. That system had a persistent effect both on the College of Law and all of legal education with only minor interruptions and but a few lasting changes.

If it is difficult to comprehend the importance of the evolution of the College of Law from its inception until 1907, it must be because the progression merely mirrored the history of the development of legal education in the United States.

It can thus be said that while the innovations of Pound's deanship were not noticeable at all in the course of legal education, they were the most important developments in the history of the College of Law. It was during these few years that the school took on completely the only lasting character it was to know.

What then were the philosophical bases underlying the revisions which occurred during the years 1903-1907? Of primary importance was the proposition that law was an isolated science to be taught not from a practical or dogmatic viewpoint but through a scientific examination of the best of the reported cases, which were the material of the science of law. The rest of the philosophy was that a coherent legal program could be developed without reference to non-law studies by presenting to a reasonably prepared student a curriculum of intense study of a few legal principles organized around purely law-minded categories. A student needed to come to the law school with at least a rudimentary education; but once there he could concentrate solely on the study of legal logic. Behind him lay the rest of the body of education; while the practical, localized, and technical skills of lawyering awaited his graduation from law school.

Though many have criticized Langdell's system for the narrowness which its complete dominance over legal education created, none can deny its contribution to the triumph of systematized, efficient, and effective academic preparation for the practice of law. Its finest compliment is that for a century Langdell's approach has successfully serviced the legal profession. But its undisputed fault is that its main feature, the case method, was employed with indiscriminating exclusivity. As a result, legal education for most of its modern history has been divorced from the social function of the law. "The case method isolated the study of law from the living context of the society."³⁵ As will be seen, a Herculean effort to cure that defect at the College of Law was undertaken in the years immediately following World War II.

35. J. HURST, *supra* note 31, at 265-66.

III. 1946-1950, DEAN FREDERICK BEUTEL

A. The Pre-Beutel Period

The program instituted in 1903 retained its basic characteristics for forty years. Changes were instituted throughout that period but the major features, the three year curriculum, the practice courts, the case method and the organization around the well-recognized divisions of the common law were all preserved. A brief survey of the program as it existed in the early 1920s will serve to illustrate that the educational philosophy of Dean Pound's era maintained its vitality throughout the period.³⁶

The 1920 College of Law existed within a more settled context than the one Pound had known. It was no longer a new school in a frontier town. More importantly the status of law schools in general had changed. The organized bar now had a stated preference for institutional lawyer preparation over law office training, and standards for legal education were being promulgated by the American Bar Association and the American Association of Law Schools.³⁷ At the College of Law, however, the 1920s were not years for great innovation. In 1920-1921 the curriculum was still similar to the one offered in 1904.³⁸ Such refinements as there were did not signal substantially different educational policy. Both the 1904 and 1920 curricula consisted primarily of the basic common law and equity subjects with but a few modest trimmings.

The 1922-1923 school year did produce some curriculum changes.³⁹ Previously all three years were divided functionally into two semesters. Beginning in 1922, the first year became a single year-long program for all practical purposes. Six courses were required plus participation in the practice courts. Property I was taught in the first semester only and Principles of Legal

36. The period chosen, 1920-1925, corresponds with the deanship of Warren Seavey.

37. See Stevens, *supra* note 16, at 453-64, 493-504.

38. In the first year program the differences were minor. Two procedure courses had been renamed, and Common Law Pleading, formerly taught in the second year, had been added. Domestic Relations and Criminal Law and Procedure had become first instead of second semester courses, and Property I had been extended to both semesters instead of the first only. Many of the same casebooks were still being used. There were also some changes in the advanced years, but of the twenty-two required second and third year courses from the 1904 curriculum fourteen were still required. Most of the changes in the curriculum related to the procedure courses. See University of Nebraska College of Law Announcement, 1920-1921 at 16-19.

39. See University of Nebraska College of Law Announcement, 1922-1923 at 13-14.

Liability was a second semester course. The other four courses—Contracts, Criminal Law, Pleading, and Torts—extended through both semesters. Although there were some changes in the curriculum for the advanced years, none of the nineteen advanced courses offered in 1922 were new.⁴⁰ The practice courts were preserved much in the manner as when Pound introduced them.⁴¹ The most significant addition of this period to the curriculum was the institution, in 1922, of the Nebraska Law Bulletin, later the Nebraska Law Review.⁴²

While the curriculum modifications were not spectacular, teaching method innovations were completely absent. Most courses used casebooks and the official description of methods was simply that "[t]he instruction is in the main, by the 'Case' or 'Source' system."⁴³ There is nothing to suggest that alternatives to the case method were attempted; indeed, the evidence is that the case method was firmly fixed as the mode of instruction:

[O]ur work deals entirely with cases—the very cases which constitute the body of the law. We do not use hearsay as to what the courts have decided and no fine-spun theories of the instructor can be successful unless they are in harmony with the decisions which are before the students. In dealing with a case in class we do exactly as lawyers have to do when the facts are presented to them by their clients. We take the facts as given in place of the client's story and seek to discover the rights and remedies. Nothing could have a more direct application than that.⁴⁴

The concept of the function of the College of Law was also largely unchanged. By 1920, then Dean Warren Seavey was able to formulate a singular purpose for the law school:

The purpose of the school is to assist the bar in developing the

40. That is, there were no innovations beyond the ones which existed in 1920. See note 38 *supra*.

41. Announcement, *supra* note 39, at 14-15. However, there may have been less emphasis upon the practice courts; the Announcement states that "[a] certain amount of [practice] work is required of upper classmen and the amount a student may do is not limited so long as the rest of his courses are not neglected for court work." *Id.*

42. The organization and development of the Law Review was accomplished primarily by Dean Warren Seavey and Professors Henry Foster and E. M. Dodd. See 4 NEB. L. BULL. 350 (1926); 5 NEB. L. BULL. 412 (1927). The first issues of the Law Review were the work of the faculty, but beginning with the January 1925 issue student editors were added and student comments and notes began to appear. See 3 NEB. L. BULL. 259 (1925).

43. Announcement, *supra* note 39, at 12.

44. Address by Warren Seavey (Dec. 28, 1920), reprinted in 11 NEBRASKA STATE BAR ASSOCIATION PROCEEDINGS 58, 68 (1920).

highest type of lawyer and judge. We are not interested in making good business men, although many of our graduates are highly successful business men. We are not engaged in making future legislators, although we believe that if we properly equip a man to be a lawyer, he must necessarily be a good legislator. Nor do we propose to make teachers of law, nor codifiers, nor learned men of any description, save so far as it is necessary to be a learned man in order to become a lawyer of the sort which the state has a right to demand. The school is essentially a professional school, single minded in its purpose to advance the interests of the profession.⁴⁵

The College of Law was working during this period of the early 1920s to develop and improve upon its established program. Its efforts conformed with the noticeable trends in legal education.⁴⁶

The period of Warren Seavey's deanship is typical of developments in the College of Law between 1907 and 1943. There were many minor changes, but nothing which represented a philosophy of legal education which was different from the one adopted during Dean Pound's tenure. In fact, the College of Law of the early 1940s would not have seemed at all foreign to either Dean Pound or Dean Seavey.⁴⁷ In sum, the philosophy which had been adopted during

45. *Id.* at 59.

46. Alfred Reed, in his 1928 report for the Carnegie Foundation for the Advancement of Teaching suggested twenty-five components of a typical law school curriculum. The College of Law curriculum of 1922 included the equivalent of most of these courses. In addition, Nebraska's first year courses included the five subjects which most often were taught by schools in the first year. The only aspects of the curriculum which might be considered less than fully typical of the national trend in legal education were the first year course in Principles of Legal Liability and the practice courts. But neither of these features were truly unusual; they were simply matters upon which there was no consensus. *See generally* A. REED, *PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA* 254, 260, 536-39 (1928).

47. *See generally* University of Nebraska College of Law Announcement, 1942-1943. The College of Law in the early 1940s continued to develop within the existing structure. Courses were periodically added, subtracted, renamed, restructured or relocated in the three-year curriculum. In addition, the admission requirement had been raised to three years of college work. What significance might be attached to any of these changes is a matter beyond the scope of this paper; however, it is clear that there was no radical revision of the program. The first year curriculum for the year 1942-1943 consisted of Contracts, Criminal Law, Equity I, Procedure I, Agency, Property I, Torts, and Legal Professions-Legal Bibliography.

The curriculum for the advanced years was comprised of most of the same common law courses which had been in the program for forty years. The most significant change was the inclusion of some public law courses. These were obviously a result of the increased impact of public law on the role of the lawyer. The 1942-1943 schedule included Government Regulation (designed to cover Labor Law,

the period 1903-1907 was nurtured and developed for forty years. The dominant theory was that institutionalized education in the Langdellian method was the proper way to serve the purpose of the law school, which was to train students in the skills necessary for the private practice of law. During the deanship of Frederick Beutel the faculty was to conclude that this theory was not consistent with the radically altered role of the lawyer in the postwar American society.

B. 1946-1950

1946 was a most remarkable year in the history of the College of Law.⁴⁸ The school had been closed for three years while its faculty and student body went to war.⁴⁹ When the school reopened in January of 1946 it had a completely new faculty which, reacting to what was perceived as a new postwar world, designed a radically different program of instruction.⁵⁰ A four-year curriculum was adopted with most noticeable additions coming in the fields of government and public law. A clinical or problem method was employed for a portion of the program. Moreover the proclaimed purpose of the law school was no longer limited to preparing students for private litigation. The new program was designed to also train lawyers for work in the public law areas.⁵¹

Antitrust and Regulation of Trade), Insurance, Administrative Law, Legislation, Taxation, and a seminar in Social Security Legislation. The last three courses were offered only in alternate years. The practice courts continued, although the major work in them was reserved for the senior year. There is no readily apparent evidence to suggest that any new teaching methods were introduced. As with the 1920s, in the early 1940s the basic educational philosophy underlying the curriculum and method at the College of Law was the same as that of the Pound era.

48. Much information regarding the law school during this period was acquired through personal interviews with individuals who were either faculty members or students then. In addition, valuable comments were obtained via letter correspondence with former deans Frederick Beutel and Edmund Belsheim.
49. Only five returning students were expected for the fall 1943 term, and the projection for the entering class was six to nine students. See 22 NEB. L. REV. 131-32 (1943). Moreover, all but one of the five full-time faculty members would be on leave to serve in some government capacity. There was some fear that the closing would be permanent, but the June, 1943 decision of the Board of Regents was explicitly temporary and prompted exclusively by the war. *Id.*
50. See University of Nebraska College of Law Announcement, 1946-1947; Beutel, *The New Curriculum at the University of Nebraska College of Law*, 25 NEB. L. REV. 177 (1946).
51. The term public law is here used in reference to any field of law not involved primarily with the rights and liabilities of individual

The period immediately preceding the war witnessed the infusion of government into the practice of law. Government regulation became pervasive, legislation of all types proliferated, and administrative agencies spread in number and power.⁵² The new importance of public law to legal education was reflected in the introduction of public law courses in the law schools.⁵³ The prewar period, especially the 1930s, was also the era of the movement to integrate the social sciences into the study of law.⁵⁴ Numerous articles were written suggesting a reorganization of law schools to accommodate the social sciences and/or the study of public law.⁵⁵ Some reformers recommended expanding law study to four years so that a more complete legal education program could be implemented.⁵⁶ Several schools made significant efforts to revise their curricula.⁵⁷ The 1946 plan for the College of Law was a product of these prewar reforms. The extent to which each of these movements was a determinant of the College of Law reorganization will be considered after the details of the postwar program are presented.

members of society *inter se*. Thus the traditional courses in Contracts, Torts and Property are private law fields. Constitutional Law, Trade Regulation, Labor Law and Taxation are public law courses.

52. The changing role of the lawyer as a result of the omnipresence of government is reviewed in E. BROWN, *LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE* (1948).
53. The College of Law curriculum already reflected this trend. See note 47 *supra*. When in 1951 Brainard Currie catalogued the twentieth century developments in legal education which might be considered of greatest significance, he included increased attention to legislation and public law. Currie, *The Materials of Law Study* (pt. 1), 3 J. LEG. ED. 331, 332 n.2 (1951). Currie predicted, however, that the development would not be regarded as among the "epochal events" in the history of legal education.
54. It was this movement which Currie embraced as the most important development in the twentieth century in legal education. The reform efforts of the Columbia Law School are discussed in Currie, *The Materials of Law Study* (pt. 3), 8 J. LEG. ED. 1 (1955). An overview of the movement is offered in Stevens, *supra* note 16, at 465-81.
55. The most radical proposal was by Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943), which advocated law training primarily as a means of propagating established democratic values for the public good. See also E. BROWN, *supra* note 52, and the articles cited in Beutel, *supra* note 50, at 178 n.6.
56. See, e.g., Hall, *A 2-2-2 Plan for College-Law Education*, 56 HARV. L. REV. 245 (1942); Katz, *A Four-Year Program for Legal Education*, 4 U. CHI. L. REV. 527 (1937).
57. Dean Beutel expressly relied on the curriculum revisions at Chicago, Louisiana State, Illinois, Minnesota, Northwestern, Stanford, Washington and William and Mary in promoting the new curriculum for the College of Law. See Beutel, *supra* note 50, at 177 n.2, 181 n.13.

The College of Law reopened in January of 1946 with a completely new faculty composed of individuals rich with immediate experience in public law fields.⁵⁸ Edmund Belsheim was with the Treasury Department and briefly with the Board of Economic Warfare. Julius Cohen came from war-time work with the Office of Alien Property Custodian and the Man Power Commission. Earlier in his career, he was legislative counsel to the governor of West Virginia. David Dow, prior to coming to the College of Law, was administrative assistant to the director of the Los Alamos Laboratory. The new Dean was Frederick Beutel. His experience included work in the Department of Interior, the Federal Security Agency, Office of the Coordinator of Inter-American Affairs, the War Labor Board, and the Office of Alien Property Custodian. Each man also had prior experience in private practice or teaching.⁵⁹

The immediate task of the faculty was to design and implement an accelerated curriculum to begin the reorientation and education of students whose law school careers had been disrupted by the war. Classes began January 7 and ran straight through July 31 in a monumental schedule that allowed some of the veterans to graduate in August.⁶⁰ The accelerated program for veterans involved a three-year curriculum which included the same first year courses as the four-year plan.⁶¹ The three-year option was also available to anyone who entered the College of Law with an undergraduate degree. Students in the three-year curriculum simply took fewer hours from the advanced course group and were allowed to omit one of the two laboratory courses.⁶²

The new course of study was described and defended by Dean Beutel both in an address to the Nebraska State Bar Association and in an article in the Nebraska Law Review.⁶³ The program was

58. The biographical material on the faculty is adopted from the "News of the Law School" sections of 24 NEB. L. REV. 241, 305-06 (1945).

59. The four faculty members discussed in the text were the only full-time faculty members when the school was reopened. Other full-time and part-time faculty members were added before the fall term of 1946 began. *Id.*

60. See 26 NEB. L. REV. 101 (1947).

61. University of Nebraska College of Law Announcement, 1945-1946 at 7, 13; Announcement, *supra* note 50, at 7.

62. Announcement, *supra* note 50, at 7; Beutel, *supra* note 50, at 178. The four-year students received a bachelor's degree in law after the completion of the second law school year; the three-year students did not.

63. Beutel, *The Crisis in Legal Education*, 25 NEB. L. REV. 46 (1946); Beutel, *supra* note 50.

designed to accept students with two years of undergraduate work. Previously, three years of college preparation was required. In order to protect admission standards, entrance exams were administered and students who demonstrated insufficient aptitude were excluded.⁶⁴ The 1946-1947 Announcement summarized the purpose of the new plan.

The new curriculum is designed to acquaint the law student with the social, economic, business and government activities which play so important a part in the modern practice of law. Social science, legal science and the problems of practice have been integrated in the new curriculum in a manner designed to give the student a broad education in those fields immediately impinging upon the practice of law; and, in the last two years, special emphasis is devoted to training him to step immediately into the practice of law not only in Nebraska but in any state in the United States.⁶⁵

The theory behind the new program was that modern America required that a lawyer's training be broadened. Dean Beutel described the changes in the practice of law which called for curriculum innovations in the law school:

Practice of law outside of the judicial ken has increased to tremendous proportions. The profession is required more and more to appear before and deal with administrative bodies of all kinds which draw their authority from statutes, constitutions and executive orders, which in many instances are beyond the reach of judicial review. The lawyer is also required more and more to work out problems involving the corporate structure and reorganization of business enterprises, and relations between capital, labor, business organizations, municipal, public and quasi-public corporations. Most of this practice seldom reaches the courts.

....

There has also emerged a rapidly growing arm of the profession that devotes its entire time to the practice of public law. It has been notorious in the past that the most numerous of all occupational groups serving as legislators, city councilmen and governmental administrators, have been lawyers; and there is now a growing branch of the legal profession which devotes its entire time to giving professional advice to these governmental officials.

... If the profession is going to maintain its position of service to the public at large, and to its clients in particular, it must be prepared to deal with these new types of practice.⁶⁶

The four-year curriculum, it was believed, met "the necessity of

64. The initial evaluation of the selective admission process was favorable. In 1948 it was reported that approximately 40% of the first year applicants were rejected because of the aptitude test, and the failure rate dropped from the prewar figure of 50% to 20%. See 28 NEB. L. REV. 104 (1948).

65. Announcement, *supra* note 50, at 6.

66. Beutel, *supra* note 50, at 179-80 (footnote omitted).

incorporating more social science and governmental information directly into the lawyer's training to meet the new requirements that are being thrust upon him in practice."⁶⁷ Thus while the purpose of the law school was still to prepare students for the practice of law, the 1946 faculty had an expanded perception of the role of the lawyer.⁶⁸

The new curriculum was fundamentally different from the old. There was much more than the addition of a series of courses on public law and the infiltration of a few social science notions. That the emphasis upon what was believed basic to legal education had shifted was evidenced by the infusion of business and public law courses into the first year curriculum.⁶⁹ Contracts, Property, and Torts survived for a total of ten credit hours. To these were added the new fundamental courses in Constitutional Law, Business Organization, and Legislation for fourteen credits.⁷⁰ Of the three traditional subjects, only Property was a year long course while each of the new courses lasted the full year. The first year also included a new two hour course entitled Introduction to the Law.⁷¹

Of the twenty-four advanced courses twelve were entirely new.⁷² Three were reorganized courses which combined more than one of the prewar offerings⁷³ and one was a subdivision of a pre-

67. *Id.* at 180.

68. Compare Dean Beutel's statements with the earlier comments of Dean Warren Seavey in the text accompanying note 45 *supra*.

69. Unless otherwise noted all information in notes 70-79 regarding courses included in the revised curriculum is drawn from the 1946-1947 Announcement, *supra* note 50.

70. Business Organization was a combination of Agency, Partnership, and Corporation concepts. The title was not new, although the course had previously been a third year offering. Announcement, *supra* note 47, at 14. The Legislation course is no longer in the curriculum but the Legal Process course which developed out of the original Legislation course is still taught to first year students and deals at length with legislative interpretation. University of Nebraska College of Law Announcement, 1973-1975 at 20.

71. This course was described as dealing with "[o]rganization of courts and the Bar; forms of action, bibliography of the law, both private and public, including case reports, constitutions, legislative enactments, treaties, administrative rules, orders, regulations and decisions, digests, encyclopedias and citators, periodical literature and treatises."

72. Accounting and Statistics, Problems of Proof, International Legal Organizations, Family Law, Social Legislation, Problems of Federal Government Organization, Contracts II (Government Contracts), Reorganization and Bankruptcy, Jurisprudence, Review (for returning veterans), Practice Laboratory, and Legislative Laboratory.

73. Problems in Equity and Trusts (history and development of equitable remedies and aspects of trusts), Interpretation of Uniform Commer-

viously offered course.⁷⁴ Out of this group of sixteen, only the three courses which reorganized and combined previous subjects plus Family Law fit easily into the traditional curriculum mold. Disregarding the review course for veterans, six of the completely new courses dealt with government,⁷⁵ three related at least in part to the social sciences⁷⁶ and the Practice Laboratory utilized a new method for teaching procedure and practice.

Of the eight courses carried over from the prewar program, four related to government or public law⁷⁷ and one was a procedure course.⁷⁸ Only three of these carry-over courses were of the traditionally structured private law variety.⁷⁹

Categorizations of this type are necessarily subject to dissent both as to which courses belong under a particular label and as to what significance is to be attached to the cumulative result.⁸⁰

cial Statutes (including Sales and Negotiable Instruments), and Creditors Rights (Suretyship, Subrogation, and Mortgages).

74. Labor Law was split off from Government Regulation.

75. International Legal Organizations, Social Legislation, Problems of Federal Government Organization, Contracts II (Government Contracts), Reorganization and Bankruptcy, and Legislative Laboratory.

76. Accounting and Statistics was the course most removed from the traditional law school curriculum. Problems of Proof could be considered largely procedural; however, it merits mention because it contemplated a "comparative study of methods of proof in social and physical science." Finally Jurisprudence, although not outside traditional concepts of a law course, is a branch of philosophy as much as of law.

77. Administrative Law, Criminal Law and Procedure, Government Regulation of Business, and Taxation. One could, of course, allocate a part of the Criminal Law and Procedure course to the procedure category.

78. Evidence. The major vehicle for teaching procedure was, of course, the Practice Laboratory.

79. Conflict of Laws, Property II, and Wills and Probate Practice. Even this may be a slight exaggeration. Property II included land planning, and Wills and Probate Practice was taught in connection with the Practice Laboratory.

80. Dean Beutel offered an analysis of the curriculum in terms of Private Rights, Procedure, Public Law, and Legal and Social Science. See Beutel, *supra* note 50, at 185-89. His purpose was to compare the old and new curricula, and to demonstrate that nothing had been lost and much gained. In the process, he listed several courses under the Private Rights label while they are considered in this commentary to be among the courses relating to public law and government. See note 77 and accompanying text *supra*. The courses are Labor Law, Contracts II (Government Contracts), Reorganization and Bankruptcy, Government Regulation of Business, and Taxation. Beutel, *supra* note 50, at 186 n.30. While the courses do in fact address private rights they have been considered in this commentary as among the courses which helped tip the balance from private to public law training be-

Yet two conclusions must be accepted. First, the revised curriculum placed unparalleled emphasis upon the teaching of subjects concerning public law and government. Second, the two laboratory courses introduced a wholly new teaching method into the College of Law.

The most interesting of the innovations among the advanced courses were the two laboratories, which were required of all students in the four-year program.⁸¹ These courses were described as proceeding by a clinical method, although in today's vernacular they might more readily be considered applications of the problem method.⁸² The Practice Laboratory was designed to ready a student to embark upon the practice of law immediately upon graduation.⁸³ With the exception of the moot court competition in appellate advocacy, all practice work was relegated to the final year. Practice Laboratory included aspects of brief writing, drafting of pleadings and other legal documents, trial of cases and office practice. The Practice Laboratory was designed around solutions to a problem-situation rather than a study of appellate cases.

The other clinical course was the Legislative Laboratory, which was conducted in the student's final year. It was a year-long course planned to impart a knowledge of the problems involved in codification and drafting of laws. The Laboratory was to go beyond technical skills and address matters of social and business policy: "In this process the student not only attempts legislative drafting but also studies the legal, business and social problems behind the statute being created, and gets a clear view into the nature of law re-

cause they dealt with private rights as affected by governmental regulation and policy rather than the rights of private individuals *inter se*.

It might also be useful to compare the revised curriculum to the old by reference to the emphasis on business law. One might expect the number of business-related courses to have increased in recognition of the expanded role of the lawyer as business advisor. However the results are not striking. Three business courses were added by the 1946 curriculum: Accounting and Statistics, Labor Law, and Reorganization and Bankruptcy.

81. Three-year students could elect to omit one of the two laboratories. Announcement, *supra* note 50, at 7.
82. The design was like modern clinical methods in that students were given legal problems to solve as practicing lawyers would. "The student in the practice laboratory studies law just as the intern studies medicine from carefully selected live case materials which directly simulate those which he will encounter in practice." Beutel, *supra* note 50, at 184. However, these live problems were not attached to breathing clients.
83. According to Dean Beutel the Practice Laboratory was instituted because "the majority of the students graduating from [the Nebraska] law school go directly into the individual practice of law." *Id.* at 183.

form by legal processes.”⁸⁴ The materials of the lab were existing legal and social problems. The classes were of the workshop variety and students were to have an opportunity to work on drafting problems presented by bills in the Nebraska Legislature.

The laboratory concept was completely new to the College of Law. The practice courts of earlier years bore only the slightest resemblance to the labs.⁸⁵ The practice courts were never designed to teach pleading and practice but only skills of advocacy. The Legislation Laboratory was even more radical because it gave to the legislative process a place in the College of Law previously reserved exclusively to the judicial process.

Frederick Beutel remained dean only through the 1949-1950 school year.⁸⁶ The new curriculum remained fully in force during that period; however, there were three significant additions to the curriculum in the 1949-1950 school year. Seminars were offered in Advanced Federal Taxation, Problems in Administration of Criminal and Penal Laws, and Problems in Labor Law Administration. Thus there was a further experiment in methods of instruction.⁸⁷ Apparently the seminars were conceived, as are current law school seminars, for relatively small groups of advanced students to study narrow problems and submit papers. However, these seminars were not repeated.

When Frederick Beutel stepped down as dean in 1950 he was replaced by Edmund Belsheim who was one of the four full-time faculty members who reopened the school in 1946. The four-year curriculum was retained until 1964, but over the years many changes were made so that long before the College of Law returned to a three-year program many of the innovations were abandoned and the school took on a more traditional curriculum.⁸⁸ Professor

84. *Id.* at 185.

85. See text accompanying notes 23-27 *supra*.

86. Beutel remained on the faculty as a full-time professor until 1963.

87. This was not the first time seminars were offered at the College of Law. Beginning in 1937, a seminar in Social Security Legislation was listed among the third year offerings. University of Nebraska College of Law Announcement, 1937-1938 at 14.

88. A detailed treatment of the developments after 1950 is beyond the scope of this paper. However, it is clear that while the laboratories and four-year curriculum were temporarily retained, the governmental courses were quickly deleted. The 1950-1951 curriculum represented a step away from the direction of the revised curriculum. Contracts and Torts both became two semester courses again and were listed along with Property I ahead of Constitutional Law and Legislation in the Announcement schedule. Business Organization was shifted to the second year. More important subjects removed from the cur-

Beutel's brief tenure as dean and the relatively quick erosion of some of the more radical aspects of the revised curriculum are evidence of the uproar within the local bar against the new program. The emphasis upon government and legislation was reduced. The Legislative Laboratory disappeared in 1961,⁸⁹ however the Practice Laboratory was retained as a required course until 1972.⁹⁰ Although the initial reorganization was hailed as progressive,⁹¹ its effects on the College of Law curriculum more than thirty years later are not spectacular.⁹²

The questions which remain about the 1946-1950 era largely concern the precise relationship of the revisions to the underlying philosophies of legal education. It is easy to mention the theories upon which the 1946 curriculum was obviously based, and that has already been done.⁹³ The more difficult task is to discern in what measure the reorganization attempted to give life to each of its theoretical antecedents.

Four more or less distinguishable educational theories supported the revised curriculum. First, a scientific approach to the study of law was desired. Second, it was also believed that nonlegal materials should be integrated into the study of law. Third, the post-war society required that lawyers be trained for public service as well as private representation. Finally, the four-year program was accepted as the most efficient method for preparing the student for the practice of law. Each of these proposals will be discussed as a basis for the 1946 curriculum. It was, however, the combined

riculum included Administrative Law, International Legal Organizations (however International Law was added), Social Legislation, Problems of Federal Government Organization, Contracts II (Government Contracts), Reorganization and Bankruptcy, and Government Regulation of Business. University of Nebraska College of Law Announcement, 1950-1951.

89. See University of Nebraska College of Law Announcement, 1961-1962 at 19-22.
90. Beginning in that year, the Practice Laboratory was no longer included among the requirements for graduation. University of Nebraska College of Law Announcement, 1972-1973 at 12. However, two years earlier the Practice Laboratory was reduced from two semesters for six hours credit to one semester for three hours. University of Nebraska College of Law Announcement, 1970-1971 at 27.
91. See E. BROWN, *supra* note 52, at 217, 226.
92. The law school now operates on a three-year curriculum and admission requires at least three years of work toward a bachelor's degree. The listed courses do not reflect any particular dedication to the study of public law and government. Compare University of Nebraska College of Law Announcement, 1975-1977 with Announcement, *supra* note 50.
93. See notes 52-56 and accompanying text *supra*.

acceptance of each educational thesis which resulted in the curriculum method innovations of the period. Much of the discussion which follows is based upon the comments made by Dean Beutel at the time the curriculum was introduced.

1. *Making Law Study Scientific*

The oldest debate in American legal education involves the extent to which law training should be academic rather than professional.⁹⁴ Scholarship scored an apparent victory over professional training through the gradually developed preference in the organized profession for law school education over law office apprenticeship.⁹⁵ However, law schools have generally promoted the idea that they are chiefly professional schools rather than academies.⁹⁶ Many of the most important developments in American legal education have been significant because they have improved upon the law schools' ability to train for the practice of law. The Litchfield school and Langdell's Harvard were each, in their time, superior to office training because they were systemized and efficient modes of teaching the skills of lawyering, not because they were more intellectually sound.⁹⁷ It is true that the major premise of Langdell's theory was that law was a science; but by this he meant only that law was an isolated body of principles to be studied scientifically and not that the work of the law school was scientific research and scholarship. Even Columbia's scholarly efforts to integrate the social sciences and law study were promoted as contributing to professional training as much as research and scholarship.⁹⁸

It is thus no surprise that the desire to make the study of law more scholarly was but a small part of the theoretical structure of the 1946 curriculum revisions at the College of Law. The most evident expression of a preference for scholarship was the proposal

94. For a chronical of the struggle see Stevens, *supra* note 16, and especially the discussion of *The Triumph of the Harvard Structure* at 430-41.

95. The preference was achieved in large part through the efforts of the American Bar Association and the American Association of Law Schools. See Stevens, *supra* note 16, at 453-64, 493-504.

96. That this has always been the case at Nebraska is evidenced by the ever-present official declaration that the purpose of the College is to equip students with the skills necessary for the practice of law. See, e.g., University of Nebraska College of Law Announcement, 1973-1975 at 4.

97. See Stevens, *supra* note 16, at 413, 430-435.

98. The success of the Columbia reform was threatened by an internal conflict over this issue. See Currie, *supra* note 54, at 64-67.

to make the school a center of research. Dean Beutel suggested that the College of Law, in cooperation with the Bar Association, undertake research necessary to solve problems, especially in government administration and legal education.⁹⁹

Dean Beutel also expressed a more generalized preference for the scientific study of the law. He was critical of the Harvard model for its singular dedication to hindsight in an age of futuristic science. He once wrote:

Law is the only profession remaining today which draws its educational materials and its cultural outlook wholly from the past. All of the other professions with the exception of the clergy have adopted the scientific method which requires an analysis of present-day conditions and the inventing of ways and means to change them in the future.¹⁰⁰

The scientific and scholarly interest was also reflected in the Legislative Laboratory where students were to explore all aspects of the legislative process and attempt to solve immediate social problems. It is to be concluded that a purpose to make the study of law more scientific and to enhance the academic status of the College of Law did play an important role in the revised curriculum. Notwithstanding this, a large part of the program consisted of the study of cases and the teaching of legal doctrine.¹⁰¹ Moreover the unquestioned goal of the law school was profession training, albeit in a broadened sense.

[T]he whole curriculum as planned prepares the student not only for practice before the local courts but also to step directly into the broader aspects of the activities of the legal profession. It has been occasionally argued by short-sighted people that graduates of the University of Nebraska practice only in rural communities of this state and that such practice will be the same as it was fifty years ago. This argument wholly overlooks the fact that even practice in rural communities is changing rapidly and also that many of the graduates of this institution go directly into government service, national and international, and into practice in large industrial centers. A university law school properly to serve its

99. Beutel, *supra* note 63, at 51-55.

100. Beutel, *Changes Necessary in the Law Curriculum to Meet the Role of Lawyers in Modern Society*, 9 LAW. GUILD REV. 89, 89-90 (1949). Dean Beutel's preference for a more scientific approach to law was later developed into a theory of jurisprudence. See, e.g., F. BEUTEL, *EXPERIMENTAL JURISPRUDENCE AND THE SCIENSTATE* (1975); F. BEUTEL, *SOME POTENTIALITIES OF EXPERIMENTAL JURISPRUDENCE AS A NEW BRANCH OF SOCIAL SCIENCE* (1957); Beutel, *The Relationship of Experimental Jurisprudence to Other Schools of Jurisprudence and to Scientific Method*, 1971 WASH. U.L.Q. 385.

101. Most of the traditional subjects were still taught and casebooks were used.

clientele must not only prepare its graduates for local private practice but must also give them a broader horizon of activities beyond the boundary of the state. This new curriculum attempts to achieve both ends.¹⁰²

There was a desire to make law study more scientific but not to place scholarship over professional training.

2. *Integrating Non-Legal Materials*

The most ambitious reform movement in modern American legal education was the attempt to integrate non-legal materials, especially from the social sciences, into the study of law. The idea was nurtured by the Columbia Law School faculty in the late 1920s and spread in the 1930s to the Yale Law School and the John Hopkins Institute for the Study of Law.¹⁰³

This integration spirit had an influence on the postwar program at the College of Law. The most obvious expression of it was that in 1949 Robert C. Sorenson, a sociologist, became a member of the faculty. He was to work with the Legislative Laboratory and the course in Problems of Proof.¹⁰⁴ Dean Beutel also considered three of the regular curriculum offerings as dealing primarily with what he termed Legal and Social Science. These were Jurisprudence, Accounting and Statistics, and part of the Legislative Laboratory.¹⁰⁵ Two other social science courses were explicitly approved for credit toward the Bachelor of Science in Law Degree which was conferred at the end of the second year of the four-year program; and additional courses could be approved by the faculty.¹⁰⁶

The integration theory was explained by Dean Beutel as a method for contributing to a more complete and unitary approach to the study of law.

Closely related to the increase in public law courses is the recognition in the new curriculum of the need for better understanding of social and legal science.

102. Beutel, *supra* note 50, at 185.

103. The full development is discussed in Stevens, *supra* note 16, at 470-81. A thorough treatment of the Columbia experiment is provided by Currie, *supra* note 54.

104. 28 NEB. L. REV. 104 (1949). This position was filled in 1953 by Reginald Robson but was discontinued by 1959. See University of Nebraska College of Law Announcement, 1953-1954 at 4; University of Nebraska College of Law Announcement, 1959-1960 at 4.

105. Beutel, *supra* note 50, at 186 n.36.

106. The two courses were Control and Treatment of Criminals (Sociology) and International Relations (Political Science). Announcement, *supra* note 50, at 16; Beutel, *supra* note 50, at 186 n.36.

In the prewar curriculum these subjects were wholly absent from the law course itself, illustrating that in the past there have been two theories in regard to the use of social and legal science material by lawyers. The old theory was that the student should get his A.B. or similar pre-law training before entering the law school. It was assumed that by this process he would pick up enough social science to apply to the legal activities when he got into practice.

The new theory as indicated by the Nebraska postwar curriculum insists that social and legal science be taught and integrated with the law work itself, so that the student gets the direct application of the social science, legal science and important facts of business and society bearing upon his practice while he is studying the structure of the law itself.

....

The lawyer of the present and the future works in the body politic in a capacity similar to that of a social engineer. He should be trained not only in the mechanics of the law as they appear in the courts, but also in the science and art of their application, and in the understanding of the impact of his work upon society.¹⁰⁷

This application of the integration theory was not as comprehensive as the plans devised during the 1920s and 1930s.¹⁰⁸ It was, however, a significant influence on the 1946 revised curriculum of the College of Law.

3. *Training For Public Service*

This theory was less well defined than the integration movement but its impact upon the College of Law curriculum was greater. In its most bland form the contention was simply that because government regulation was so greatly expanded, preparation for the practice of law must necessarily include exposure to a large measure of public law materials.¹⁰⁹ The effect of growing government on the role of the lawyer was widely recognized and law schools responded with varying degrees of enthusiasm. The inclusion of Administrative Law, Labor Law, and Tax Law in the standard curriculum was established in the prewar years, and many other public law subjects appeared thereafter.¹¹⁰

The movement also had radical advocates, the most notable being Professors Lasswell and McDougal of Yale.¹¹¹ They proposed a totally new goal for the law schools. Preparation for the private

107. Beutel, *supra* note 50, at 188-89.

108. See note 54 and accompanying text *supra*.

109. This is the extent of Professor Currie's assessment of the movement. See note 53 *supra*.

110. See Stevens, *supra* note 16, at 486-87.

111. Lasswell & McDougal, *supra* note 55.

practice of law was of secondary importance; the proper objective of the law school was to devise a program for infusing established democratic values into those who would become the public policy makers of the future. The proposition was enormously complex and rested on the contention that the law schools had an obligation to supply properly value oriented personnel for governmental service needs.

The revised College of Law curriculum displayed a clear dedication to increasing the emphasis upon public law and government. While the program stopped far short of the Lasswell-McDougal design, it went beyond adding public law courses to the standard curriculum. Courses such as International Legal Organization as well as the Legislative Laboratory were especially geared toward preparation for public service rather than private representation. However, there is no suggestion that the Lasswell-McDougal value oriented approach was contemplated. Rather the technique was to train for the public as well as the private practice of law with no exclusive dedication to either. The dualistic goal of the law school was expressed by Dean Beutel:

While not neglecting Private Law or Procedure, the new curriculum recognizes that the lawyer of the present and the future will spend a large part of his time and effort in dealing with problems of the body politic.

. . . This increased emphasis on public law also gives the student desiring to enter private practice the tools of the profession necessary to protect his clients from unjust encroachment upon their interests by badly directed public bodies.¹¹²

4. *The Four-Year Program*

In the 1930s, there was a minor trend toward four-year law school curricula.¹¹³ By 1939, no less than eight law schools had experimented with a four-year program. Significantly one of these was Louisiana State University School of Law, which adopted such a plan in 1936 while Frederick Beutel was Dean.¹¹⁴ Although there were many variations on the four-year theme, there were basic characteristics.¹¹⁵ The four-year proposal was a means toward achieving several goals in legal education. It allowed the ad-

112. Beutel, *supra* note 50, at 187-88.

113. The development is traced in Harsch, *The Four-Year Law Course in American Universities*, 17 N. CAR. L. REV. 242 (1939). The first schools to implement four-year programs were the Northwestern University School of Law and the University of California School of Jurisprudence, both of which had operative four-year curricula by 1919.

114. The Louisiana curriculum is discussed in Harsch, *supra* note 113, at 254-57.

115. *Id.* at 271-78.

dition of important legal subjects such as legislation and public law courses, it made possible the correlation of legal and important non-legal studies, and created a structure within which the broadened law school curriculum could be adequately organized. Properly viewed, the four-year plan was not itself an end but a way of achieving the most commonly proposed educational reforms.

The 1946 College of Law curriculum was a direct outgrowth of these prewar curriculum designs.¹¹⁶ Like the others who had embraced a four-year program, Dean Beutel saw the plan as the most efficient allocation of the time contemplated for law study. Under the old curriculum, most students would spend six years in pursuit of an undergraduate professional law degree—three in general college work and three in law school. Under the new plan, the same total number of years would be demanded but in a more functional arrangement. Two years of general preparation were thought sufficient to enable the student to begin law work. The rest of the non-law material would be more effective and valuable when taken along with and related to the study of law. Under the original design, the four-year curriculum was not the major aspect of the revised curriculum for the College of Law. It was the mechanism for increasing emphasis on public law and government and reorganizing the curriculum so that non-legal materials and scientific methods could be utilized. However, many of the innovative governmental and public law courses were eventually eliminated and the proposed use of the social sciences was not developed. Ultimately, the central feature of the College of Law program became the four-year curriculum which simply provided an expanded period for law study.

IV. CONCLUSION

The 1903 and 1946 reorganizations of the College of Law were similar in many respects. Each program was devised as a solution to a perceived deficiency in the existing program. Each was an attempt to structure the program in accordance with notions about legal education which were progressive at the time. Each included

116. In explaining the 1946 curriculum, Dean Beutel expressly relied upon the following articles: Gardner, *Remarks on the Occasion of Seconding Mr. Hall's Motion for a 2-2-2 College-Law Education Plan*, 56 HARV. L. REV. 270 (1942); Hall, *A 2-2-2 Plan for College-Law Education*, 56 HARV. L. REV. 245 (1942); Harsch, *supra* note 113; Katz, *A Four Year Program for Legal Education*, 4 U. CHI. L. REV. 527 (1937); Mechem, *The Proposed Four Year Law Curriculum: A Dissenting Opinion*, 38 MICH. L. REV. 945 (1940). See Beutel, *supra* note 50, at 181 n.14.

an infusion of new courses and methods as well as the lengthening of the program. Each advocated a more scientific model for the study of law. Most importantly, even though the role of the lawyer was perceived differently by the two programs, each was intended primarily to better train lawyers for the practice of law. In sum, while the products themselves were wholly different, as phenomena they were of the same genus.

Yet this commentary has revealed that the reforms of the Pound era were accomplished with relative ease and have persisted to the present, while those of the Beutel period resulted in tumult and, for the most part, have not endured. There are at least three reasons for this. First, in 1903 there was no model for the College of Law to adopt either from the school's own history or from the traditions of legal education. Thus, the faculty could develop a program without pressure to preserve the particular historical structure of the College of Law or to conform to the dominant trend among law schools. The 1946 reorganization effort, on the other hand, had to overcome the presumptions in favor of the status quo on both fronts.

The second reason is that the path which the College of Law set upon in 1903 became a trend among law schools so that there was general support to continue that approach. The program adopted in 1946 was not widely accepted, and the school risked the appearance of non-conformity by preserving it.

Third, and most importantly, the earlier reorganization was less complex than the postwar program. The almost exclusive goal of the 1903 changes was to implement the thesis that the law was a science which could best be taught through the study of selected cases. The application of the theory was not difficult and its validity was apparent. One needed only to teach cases selected to illustrate the relatively few fundamental principles of the basic common law subjects. A moderately bright student would soon learn to discover the law in any area by reading the cases. He thus had the major skill deemed necessary to enter upon the practice of law. The 1946 program reflected several theories about legal education and they were more difficult to apply and validate. Its goal was to train lawyers both for private practice and public service. This meant not only adding more courses but teaching a new type of skill. Public service was a broad area including drafting of legislation, making public policy and creating governmental solutions to social problems. Thus the objectives of the school were both multiple and difficult to define. It was also accepted by the 1946 program that nonlegal materials should be integrated into the study of law. The challenge of such an ideal was highlighted by

the previously unsuccessful attempts to achieve it. Another difficult proposition promoted by the postwar faculty was that a law school could serve in a research capacity to help solve problems of legal education and government. The only easily attainable aspect of the proposed program was that it extend to four years.

The changes in curricula and philosophies at the College of Law during the periods 1903 to 1907 and 1946 to 1950 were primarily designed to improve the training of lawyers for the practice of law as it was perceived by the respective faculties. No attempt has been made in this commentary to judge the two periods in terms of the value of their programs. It must be acknowledged however, that these were two of the most significant eras in the history of the University of Nebraska College of Law.

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