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THE PLACE OF THE LEGAL FRATERNITY IN LEGAL EDUCATION

Milton D. Green*

Legal education in America began with the apprenticeship system. If a young man wanted to become a lawyer, he persuaded an older practitioner to take him into his office where he ran errands, served papers, "polished up the handle on the big front door," and in his spare time read law. That is a far cry from the modern approved law school which requires as a condition to admission at least three years of college work and the completion of three full years of intensive legal study. Throughout the years there has been steady pressure to improve the quality of legal education and to insist upon higher standards for admission to the bar. The story is graphically told in Dean Harno's excellent book on Legal Education in the United States.¹ Part of the pressure has come from the practicing members of the bar;² but, as might be expected, most of it has come from within the teaching profession itself.³

The case-book method of study, conceived by Professor Christopher Columbus Langdell of Harvard, in the 1870s, is undoubtedly the greatest single contribution to modern legal education. Other law schools were quick to recognize its virtues and adopt it, and it soon became *the* acceptable method of teaching law. It brought the students into close contact with the primary sources of the law and proved to be an excellent device for developing in them the analytical skills of the lawyer. However, in recent years, the law schools have come to realize that the case method of study is not a panacea. Although still regarded as a valuable teaching device, it is a great time waster in a crowded curriculum, it fails to take account of essential stat-

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¹ Harno, *Legal Education in the United States* (1953).

² A recent article along this line which provoked a storm of comment was Centrail, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 907 (1952). See also Hornstein, *A Lawyer Looks at the Law Schools*, 1 J. Legal Ed. 516 (1949); Frank, *A Disturbing Look at the Law Schools*, 2 J. Legal Ed. 189 (1949).

³ In 1900 a group of law teachers organized the Association of American Law Schools, which meets annually, and now has a roster of 114 member schools. It has been an extremely significant influence for the improvement of legal education. In 1948 it established a quarterly periodical called the *Journal of Legal Education* which is devoted almost exclusively to the problems of legal education.

utory, non-legal and extra-legal materials, and it neglects other skills also required of the lawyer.

Legal educators everywhere are searching for better ways to utilize the three or four short years available to them to educate their students for the practice.⁴ They are struggling with many unsolved problems, but I should like to confine my discussion to four troublesome ones. First, there is the problem of teaching legal ethics.⁵ It is generally agreed that this cannot be done effectively merely by requiring the students to read the Canons and study cases of disciplinary action. What is needed is to inculcate a proper sense of professional responsibility, to create an awareness of the public interests involved as contrasted with the private affairs of the client,⁶ and to develop qualities of leadership in a democratic society which leans heavily on members of the legal profession for guidance.⁷ Sec-

⁴ One of the promising aspects of modern legal education is that those in charge of it display a keen awareness of its deficiencies, a self-critical attitude, and a willingness to experiment in search of better ways of doing the job. For representative articles see: Morse, *Let's Add Another Year*, 7 *J. Legal Ed.* 252 (1954); Elliott, *Remarks on Legal Education*, 6 *J. Legal Ed.* 158 (1953); Pollack, *A Proposal for the Re-assessment of Law School Activities*, 5 *J. Legal Ed.* 324 (1953); Harno, *Legal Education: Convictions and Perplexities*, 1 *J. Legal Ed.* 99 (1948).

⁵ Mathews, *The Association's Project for Training in Professional Responsibility and Leadership*, 7 *J. Legal Ed.* 373 (1955); Kingsley, *Teaching Professional Ethics and Responsibilities: What the Law Schools are Doing*, 7 *J. Legal Ed.* 84 (1954); Stevens, *Professional Responsibility—The Role of the Law School and the Bar*, 6 *J. Legal Ed.* 203 (1953); McCoy, *The Teaching of Professional Responsibility*, 5 *J. Legal Ed.* 302 (1953); Mathews, *Legal Education and Responsible Leadership*, 4 *J. Legal Ed.* 249 (1952); De Capriles, Fuller, Katz, Llewellyn, *Education for Professional Responsibility, a Symposium*, 1 *J. Legal Ed.* 175 (1948).

⁶ Maloof, *Law Schools and Good Government*, 4 *J. Legal Ed.* 278 (1952); Vanderbilt, *The Responsibilities of our Law Schools to the Public and the Profession*, 3 *J. Legal Ed.* 207 (1950); Lepawsky, *The University and the Public Service*, 2 *J. Legal Ed.* 253 (1950); Fuchs, *Legal Education and the Public Interest*, 1 *J. Legal Ed.* 155 (1948).

⁷ An interesting experiment is currently being conducted by the School of Law of the University of Southern California. It has established a course which is conducted by a group of practicing lawyers and judges who meet their classes at dinner and informally discuss the problems somewhat in the manner of the old Inns of Court. For a discussion of this experiment and related problems, see: McCoy, *The Law Student and Professional Standards: The Problem of Teaching Legal Ethics*, 40 *A.B. A.J.* 305 (1954); Kingsley, *Teaching Professional Ethics and Responsibilities: What the Law Schools are Doing*, 7 *J. Legal Ed.* 84 (1954); see also Harris, *The Inculcation of Professional Standards at Southern*

only, there is the problem of crowding into the three or four years available all that the student needs to know to equip him for practice.⁸ Recent decades have produced a staggering volume of new law, some of it in entirely new fields, some of it the development of specialties in old fields. To mention only a few of the expanding areas, there is tax law, administrative law, labor law, and the growing field of governmental regulation. Thirdly, there is the problem of training students in the many practical skills required of a lawyer.⁹ Admittedly, the ability to analyze a case is not the only technique a lawyer needs to know. Some of the neglected skills, according to the critics of the law schools, are drafting, counseling, negotiating, pleading, advocacy, and brief writing. Much is being done in the law schools along these lines, of which the critics are apparently unaware, but much more needs to be done. The problem is how to do it without sacrificing other and perhaps more important values in the curriculum. Fourthly, the law schools have recently been accused, and I think justly accused, of neglecting fundamental training in human relations,¹⁰ which are often more important than rules of law in modern practice.

Methodist University School of Law, 21 *Tenn. L. Rev.* 823 (1951); Harno, Professional Ethics at the University of Illinois, 21 *Tenn. L. Rev.* 821 (1951); Cheatham, The Inculcation of Professional Standards and the Functions of the Lawyer, 21 *Tenn. L. Rev.* 812 (1951); Gavit, Legal Ethics and the Law Schools, 18 *A.B.A.J.* 326 (1932).

⁸ Mathews, Negotiation: A Pedagogical Challenge, 6 *J. Legal Ed.* 93 (1953); Marx, Shall Law Schools Establish a Course on "Facts"?, 5 *J. Legal Ed.* 524 (1953); Sherman, The Law Student and Collective Bargaining, 3 *J. Legal Ed.* 445 (1951); Rostow, The Study of Economics in Relation to Education in Law, 2 *J. Legal Ed.* 335 (1950).

⁹ A reading of the following titles will indicate the concern with which the members of the teaching profession view this problem: Stephenson, More on Bridging the Gap, 7 *J. Legal Ed.* 259 (1954); Joyce, Lefever, Park, Stason, Legal Internships, 6 *J. Legal Ed.* 504 (1954); Griswold, Legal Education: Extent to Which Know-How in Practice Should be Taught in Law Schools, 6 *J. Legal Ed.* 324 (1954); Cantrall, Practical Skills Can and Must be Taught in Law Schools, 6 *J. Legal Ed.* 316 (1954); McClain, Legal Education: Extent to Which "Know-How" in Practice Should be Taught in Law Schools, 6 *J. Legal Ed.* 302 (1954); Joiner, Legal Education: Extent to which "Know-How" in Practice Should be Taught in Law Schools, 6 *J. Legal Ed.* 295 (1954); Orschel, The Teaching Approach of a Practicing Lawyer, 5 *J. Legal Ed.* 515 (1953); Clark, "Practical" Legal Training an Illusion, 3 *J. Legal Ed.* 423 (1951); Gifford, The Placement and Apprenticeship of Law School Graduates, 1 *J. Legal Ed.* 403 (1949); Bradway, "Case Presentation" and the Legal Aid Clinic, 1 *J. Legal Ed.* 280 (1948).

¹⁰ Griswold, *Law Schools and Human Relations*, 1955 *Wash. U.L.Q.* 217.

These are four of the stubborn problems currently causing trouble. Perhaps the answers will be found in adding another semester or another year to the curriculum, but such solutions are unpopular due to the already long period of study required¹¹ plus the heavy economic pressures on the students. In any event, as Dean Prosser has pointed out, if the law schools added all the new courses which have been suggested, the law school course would take ten years.¹²

In colleges and universities generally it is coming to be recognized that a significant portion of the liberal education of a student is acquired outside of the classroom in extra-curricular, or co-curricular activities. There is no reason why this process of student self-education should not also occur in the professional schools. As a matter of fact it does, and I should like to cite three examples which are currently found in most law schools. The first and most widely heralded is the law review. Notwithstanding the fact that most law reviews enjoy a high degree of student autonomy, they are recognized as one of the greatest and most effective teaching devices for preparing a student for the successful practice of law.¹³ This is eloquently attested by the fact that so many prospective employers specify that they do not care to recruit any except law review men. The second is the student bar association, or equivalent student self-governing organization.¹⁴ Such associations not only co-operate with the faculty and administration in handling many law school problems but also arrange programs of speakers for the law schools and frequently administer the honor system. Some of them also co-operate actively with the work of local bar associations. In these activities the student often receives valuable training in leadership, in human relations, and acquires desirable professional attitudes. The third is the legal fraternity, and because it has received such scant attention,¹⁵ it occurred to me that it

¹¹ Grade school (8) plus high school (4) plus college (3) plus law school (3); or a total of 18 years.

¹² Prosser, *The Ten Year Curriculum*, 6 *J. Legal Ed.* 149 (1953).

¹³ Marsh, *The Law Review and the Law School: Some Reflections About Legal Education*, 42 *Ill. L. Rev.* 424 (1947); Westwood, *The Law Review Should Become the Law School*, 31 *Va. L. Rev.* 913 (1945).

¹⁴ There is now an American Law Student Association which was formed under the protective wing of the American Bar Association. For an account of its activities, see Spiro, *The Extra Teacher*, 7 *J. Legal Ed.* 322, (1955).

¹⁵ I was curious to find out what had been written about legal fraternities so I examined the Index to Legal Periodicals for the last thirty years. I decided not to extend my search into more remote times when I got back to an article entitled *The Place of the Articled Clerk Today*,

would not be inappropriate to say a few words about the general nature of legal fraternities and the part which they are playing in legal education.

The first legal fraternity was founded in Ann Arbor, Michigan, by a group of law students in the year 1869—ten years before the organization of the American Bar Association. There are now several large national legal fraternities. One or more of them has local chapters in about nine out of ten of the approved law schools in America. Although there is considerable competition among the legal fraternities on the local level, particularly in their rushing activities, on the national level they live in great harmony. This is due I believe to the fact that they are all striving to attain the same ideals and they realize that several roads may lead to the same goal. The purposes for which these legal fraternities were founded and the ideals for which they stand are (1) to promote excellence in legal scholarship, (2) to inculcate high standards of professional ethics, and (3) to develop qualities of leadership. The social activities and benefits of legal fraternities cannot be ignored but are subsidiary to the primary purposes.

Each local chapter of such a fraternity consists of a selected group of law students who are dedicated to the promotion of the high ideals of the fraternity. These local chapters are generally fairly autonomous and hence their activities will vary greatly from group to group. What might be considered an excellent program for a chapter located in a large metropolitan law school might be wholly inappropriate for a chapter located in a small town in a sparsely populated area. It might be said, however, that each local chapter has at least a minimum pattern of activity which consists in a series of regularly held meetings¹⁶

and another on Does Academic Training Benefit Law Students? I found only two articles which discussed legal fraternities. One was entitled Redden, Extra Curricular Activities—the Ugly Duckling, 2 J. Legal Ed. 195 (1949), which stated in a footnote “although primarily social in purpose and organization, legal fraternities may also provide other useful functions.” The other was a serious attempt to assess the value of legal fraternities and is well worth reading. Rae, Extra Curricular Activities and the Legal Fraternities, 3 J. Legal Ed. 564 (1951).

¹⁶ Many chapters hold weekly luncheon meetings, others hold biweekly meetings. Some also have monthly or quarterly dinner meetings. Only a few have their own chapter house in which members live the same as they would in a social fraternity. This is partly due to the fact that many present day law school students are married.

usually addressed by some speaker who is a lawyer, a judge, a professor, or a government employee.

Beyond this minimum pattern of local activity the great majority of local chapters, if not all, carry on a program which the members feel is designed to fit the local situation. These programs can be divided roughly into three categories: (1) improvement of scholarship, (2) extra-curricular education, and (3) service functions.

The activities of the local groups to improve legal scholarship take a diversity of forms. Some chapters by their by-laws prescribe a minimum scholastic average as a prerequisite to initiation. In this way membership in the fraternity becomes in a sense an honorary recognition of better than average scholarship. Many local chapters have established scholarship prizes and awards. Others accord recognition by maintaining a bronze plaque which is annually inscribed with the name of the student achieving the highest scholastic average.¹⁷ Many chapters maintain fraternity libraries, some of which are open to non-members, and many also maintain study review files. It is quite common for local chapters to put on an orientation program for the benefit of entering law students, and it is not uncommon for the fraternities to conduct review sessions prior to final examinations.

There is also great variety in the extra-curricular educational programs of the various groups. Normally, a local chapter will have a program chairman whose duty it is to provide speakers for the luncheon and dinner meetings. These speakers are usually men of prominence in the legal world who discuss the problems of practice, the work of the courts and special agencies, and cover fringe material on subject matter which is not ordinarily included within the law school curriculum. It is not uncommon for a local fraternity to sponsor one or more lectures during the course of the academic year which are open to all students in the law school. Some chapters have organized annual field trips to various courts and governmental agencies. In this situation the local group is often sponsored by a judge or prominent member of the bar who acts as a guide or instructor on the trip. In law schools where there is no formal moot court program in the curriculum, local chapters have often filled this gap by establishing moot courts, usually on the appellate level.

¹⁷ This year, at the national convention of one of the legal fraternities it was decided to establish a national scholarship program under which the fraternity would annually award fifteen scholarships in the amount of \$500 each.

Many local chapters undertake to perform service functions for their members or for civic groups. Used book exchanges are not uncommon. Some chapters, in co-operation with the school administration and alumni, have established briefing services by which the students undertake to brief points of law sent in by lawyers in small rural areas who do not have adequate library facilities. In addition to the service performed for the local lawyer, such activities have a very real educational value for the students and tend to promote good public relations, not only with the fraternity but with the law school. Some chapters maintain some type of placement service for the benefit of their graduating seniors. It is not uncommon for fraternities to engage in civic service by furnishing speakers for local civic groups and luncheon clubs, by participating in radio and television programs, and by working with local bar associations.

As might be expected, some of the above activities, like moot court programs, briefing services, placement activities, and student convocations, although initiated by the fraternities, are later taken over by the student bar association or by the law school.

CONCLUSION

In conclusion, and by the way of recapitulation, I should like to indicate the contributions which legal fraternities are making toward the solution of the four troublesome problems of legal education which I previously mentioned.

1. *Training for professional responsibility.* Proper professional attitudes and an awareness of the ethical obligations of the lawyer are best acquired by association with lawyers of standing and prominence in the community. In the informal luncheon and dinner meetings, the students have an opportunity to become acquainted with such men, to hear problems realistically discussed by them, and to gain inspiration from such contacts. This is in line with the tradition of the Inns of Court and the recent experiment at the University of Southern California.¹⁸

2. *Enriching the curriculum.* Law students are hungry to learn more law than is possible in the classroom. They welcome the opportunity to invite to their meetings lawyers and judges who will discuss subjects beyond the scope of the orthodox curriculum. In promoting such types of programs, the legal fraternities are carrying the excess burden which the curriculum is unable to bear.

¹⁸ See note 7 supra.

3. *Practical skill training.* In several ways the legal fraternities have a contribution on this front. Many of their speakers will discuss practical aspects of legal problems not covered in the curriculum. Conducted field trips also help. The moot court programs and briefing services of some chapters likewise make a contribution.

4. *Human relations.* Man is by nature a social animal and acquires knowledge of his fellow human beings by close associations with them. Deeper insights into human relations are acquired by fraternity groups through association with their fellow members, their alumni, and the prominent lawyers and judges whom they invite to be their guests.

The law schools are searching hard for better ways to solve these problems. Ultimately, they will probably come up with admirable solutions. Until that time comes, they would do well to encourage the legal fraternities in their efforts to achieve the common goal.