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Article 4

Half Century of Legal Education

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A Half Century of Legal Education

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It is not the purpose of this paper to discuss theories of legal education but to present some reminiscences of law schools since the writer began the study of law fifty years ago.

At that time, the curriculum of Hamilton College provided for the study of Blackstone's Commentaries, of International Law, and of American Constitutional Law as a part of the A.B. course. The professor of law encouraged students who intended to enter the legal profession to pursue an extra course in Municipal Law, and at the same time he conducted a law school which led to admission to the bar. The founder of this system was Theodore W. Dwight, who secured the organization of the Hamilton College Law School in 1848. Under its charter, the head of the School was authorized to apply to a Judge of the Supreme Court of the District for the appointment of two lawyers to be associated with him in examining those who had completed the course of one year's study in the school. Those who were reported by this board to have passed a satisfactory examination, were admitted by the court as attorneys and counsellors. In other words, a single examination, successfully passed, entitled one to the degree of LL.B. and to admission to the bar.

For some years, Professor Dwight carried on this work with the undergraduates of the college and with the attendants upon the law school, with increasing success. The reputation, thus gained, led to his being called to Columbia College in 1858, where he organized and for many years conducted, with but little assistance from others a flourishing school of law. The course of study covered two years, and marked a distinct advance in legal education.

Professor Dwight was a remarkable teacher. English barristers like Mr. Dicey and Mr. Bryce, who visited the school in 1871, were very enthusiastic—the former referring to him as "one of the ablest professors that any school ever possessed," and the latter describing him as "a professor of great legal ability and an extraordinary gift of exposition." He did not lecture, in the ordinary sense of that term. He published very little. He did not follow the example of Gould and Reeve, at Fairfield, of Story, Greenleaf, Parsons and Washburn at Harvard, whose lectures were expanded into treatises. He put these treatises into his students' hands, assigned definite portions for their

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study, quizzed upon these, expounded and summarized their doctrines, added comments of his own and kept the students abreast of the development of the law in current judicial decisions. He gave instruction to the first year class in general commentaries upon municipal law, upon contracts and upon real estate. The second year included equity jurisprudence, commercial law, torts, crimes, evidence, pleading and practice.

Professor Dwight has borne testimony to the fact that he entered upon his new field of labor with many misgivings. Chancellor Kent had failed to build up a law school at Columbia, although but for his unsuccessful attempt as a teacher, his Commentaries would not have been written. Justice Wilson of the United States Supreme Court also had failed at Philadelphia, and Justice Parker of the Massachusetts Supreme Court had met with little encouragement at Harvard. It is true, the Harvard School had enjoyed prosperity under the stimulus of Justice Story's personality, but from his retirement in 1845, it "lost ground as to resources, number of students, and condition of the library." When Professor Dwight went to Columbia, the law schools *in this country* numbered less than twenty with a total attendance of about five hundred students. It was not strange that he considered his venture a doubtful one. His misgivings proved groundless, however. Thirty-five students were enrolled at the opening session. The next year the number was sixty-two. In the third year there were a hundred and three. Many of the students were already members of the bar, and the instruction was aimed primarily to fit men as legal practitioners.

In 1870 Mr. Langdell was called to the deanship of Harvard Law School and entered upon a career which was destined to revolutionize law teaching. He found a school in which but ten lectures a week were given to 115 students, and "the degree was conferred after one year of residence upon persons admitted to membership without any evidence of *academic* requirements and sent from it without any evidence of *legal* acquirements." The new dean introduced a new method of legal study. Instead of reading lectures to students or assigning textbooks for their reading, he put into their hands a collection of cases selected with a view to showing the development of a particular branch of the law. These were to be analysed bythe student and discussed in the classroom under the leadership of the instructor, for the purpose of inducing the student to make his own generalization from these orignal sources. His first casebooks, those on Contracts and on Sales of Personal Property contained an Index and Summary of the principles underlying the cases, as did Professor Ames's casebook on Bills and Notes. This new departure in law

teaching has been referred to as one of the earliest attempts "to apply the inductive method of the laboratory to matters foreign to the natural sciences."

In a modified form, we of the original faculty employed it in the Cornell College of Law at its foundation in 1887. It superseded the textbook and expository lectures at Columbia University upon the retirement of Professor Dwight in 1891, and has become the prevalent system throughout the United States. In connection with this change in educational methods— and partly because of it, has come an extension of the law course. No school with any reputation for thoroughness undertakes to fit its students for practising law in less than two years, while a three year course is now the rule. The number of hours in the classroom has been increased, and the examinations leading to the LL.B. degree have been made frequent and searching.

It has been noted above, that Harvard required no examinations either for admission or graduation, prior to 1870. In states where graduation from a law school entitled the holder of the degree to admission to the bar, examinations were not severe a generation ago, as the writer can testify from his experience as a student examinee and a court-appointed examiner. At Columbia, until the change in 1891, the required classroom work consisted of seven and a half hours a week, during two academic years; and at Harvard, until 1870, attendance upon ten lectures a week for one year was all that was required. Now, the latter requires 12 hours a week during three years, with three annual examinations, and bestows the degree as a rule only upon college graduates, while Columbia has similar requirements. Under Professor Dwight, lecture hours were arranged so as to give students the opportunity of spending most of the day in a law office. Since his era, a different policy has prevailed. Students are not encouraged to divide their time between office and classroom, and lectures are arranged not for the convenience of office clerks, but for the benefit of those who devote themselves exclusively, during the course, to a scientific study of the law.

That the change is conducive to an improved legal scholarship cannot be doubted. Even in universities where hard work is not considered good form on the part of undergraduates, it is deemed most commendable among law school students. Football stars shine with a brighter luster when they tackle their cases in classroom with the vim and success which have gained them a reputation out of doors. Still better evidence of scholarly improvement is afforded by the legal magazines now issuing from our law schools. They are unconscious self-revelations of the ideals and the scholarship of these institutions. I refer not so much to the leading articles, though many of these reflect

the new spirit of legal research now prevalent among teachers of law, as to the notes and comment on current cases by the student editors. These have come to attract wide attention, and, like the leading articles, are frequently cited by practitioners, judges and writers. They not only serve as an advertisement of the school but also supply a test of current law school work. A comparison of the *Columbia Law Review*, for example, with *The Columbia Jurist* and *The Columbia Law Times*, published in the eighties, will show how great an advance in legal culture has been made at that law school during the last thirty years.

The training which student editors get in preparing notes for law school reviews is of great value to them and to the school. I have described it in the following terms: "It requires the students to engage in genuine legal research. A note is often a fine monograph on a novel topic, or on one where authorities are divided. In its preparation, the editor will consult his instructors and will receive hints and suggestions as to authorities and lines of investigation. But when finished, the note is the product of a particular editor; it is the result of his research and of his thought, it is indicative of his grasp of legal principles, a test of his legal culture. No wonder, therefore, that the leading law offices are on the look-out for Review editors as they pass from their law school training to actual practice."

Indications are quite clear at present that the development of legal education is not at an end. The American Bar Association at its annual meeting in 1918 adopted a resolution that two years of prelegal college education are necessary for a first class law school. The Executive Committee of the Association of American Law Schools has issued a report within the last few months in which it recommends a law course of four years. Both of these actions are indicative of the same desire—namely, that lawyers shall be thoroughly equipped to enjoy a life of culture, as well as to meet the manifold opportunities in practice and in public life which are increasingly open to members of the legal profession. That a foundation of liberal education is highly desirable to the study of the law is now widely recognized and acted upon by American universities. It is also becoming increasingly felt that even three years are hardly enough for all that a law school should give. Courses in both private and public law have multiplied in our law curricula amazingly until they crowd each other for time, and now the international situation which is developing from the world upheaval of the last four years, is giving new meaning to International Law, and will naturally encourage the study of the Civil Law and of Comparative Law. Will the result be a four years' course in our better law schools? If so, will the existing tendency towards making

law schools more generally graduate schools be arrested, and supplanted by a new tendency towards making the normal maximum of prelegal requirement two years of college work? These are questions which the next decade will naturally answer. I had a part in legal education during a third of a century while the normal law course was increasing from one to two years and then from two years to three; I have watched prelegal requirements rise from zero to a present minimum of high school graduation and a maximum of four years of college work. I now wait with much interest to learn what the new developments will be.