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Charles D. Kelso

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THE DENVER CURRICULUM COMMITTEE CONFERENCE: A SUMMARY

BY CHARLES D. KELSO*

ON December 29, the 1967 Curriculum Committee will present a Round Table entitled, "A Curricular Concern: Interdisciplinary Training — What Does it Mean?" The Denver Conference was held in preparation for the December meeting and in order to catalyze further inquiry into problems such as these:

- (1) How will law and lawyers be socially relevant in the future, as the future is now viewed by social scientists, philosophers, scientists, and historians?
- (2) How may the law school curriculum usefully be liberalized to include knowledge and techniques developed in law-related disciplines?
- (3) What are the effects, in class and in teaching materials, of importing information and techniques from the work of non-lawyers?

To determine how legal education can become more relevant and responsive to social and professional needs, conferees drew upon concepts and projections supplied by a sociologist, a philosopher, an historian, a scientist, and a social scientist. A free-ranging discussion followed each paper.

The following summary is cast in a new mold: an interaction analysis of participant-observers engaged in communication transactions in which discussion and decision-making are intertwined. Hopefully, some of the on-goingness shared by participants in the conference has been preserved.

I. THE LAWYER OF THE FUTURE: HIS NEEDS AND PROBABLE DEEDS

JUMPING-OFF QUESTIONS: What will be the functions of lawyers in the future? What roles will be performed by individuals, and in what professional and social context? How can law schools best produce graduates to fill the need?

Hidden question: To what extent will lawyers seek to do only what they have been taught to do, and to what extent will they respond to demands that can be satisfied by branching from what they already know?

Deep question: If need for a substantial amount of branch-

*Associate Dean, University of Miami School of Law; A.B., 1946, J.D. 1950, University of Chicago; LL.M., Columbia University, 1962.

ing can be foreseen, how can that capacity best be taught amid pressures for more specialized training?

ASSERTION IN RESPONSE: Society will increasingly be characterized by planned change in the quality of social life. In the future, there will be more freedom to select goals and ways of achieving them.

To be competent, to be forward-looking decision-makers and participants in decision-making processes, lawmen must know the structure of their society and the solutions of the past. They must learn of technology; they must know how to use it in practice; and they must learn how to solve the problems it creates. Further, they must be able to assess, in terms of values and goals, the factual knowledge available to them.

Accordingly, this conference should focus on how the fields of sociology, philosophy, technology, history, and social science methodology may find their way into legal study.

PLANTED QUESTION: If we look ahead to the future, as suggested, what will be the results of planned change, and what impact will it have on legal education?

PREDICTIONS IN REPLY: The law will develop along functional lines, such as problems of the aged, rather than follow the traditional subject by subject approach. Lawyers will be assisted by para-legal specialists who will be needed if the legal profession is to serve all of the public as it wants to be served. Lawyers will become more specialized, but will understand the place of their specialty in the larger value structure of the community.

II. THE INTERACTION BETWEEN LEGAL SPECIALIZATION AND SOCIETAL VALUES

RHETORICAL QUESTION THAT BECOMES TROUBLESOME: Should law schools continue to train generalists even though the careers of most graduates will probably be more specialized?

A plug for the status quo: Specialists must ordinarily work within complex organizations which need generalists to coordinate their activities.

The Maverick attacks: Because lawyers' value systems are too restricted, they are becoming socially less relevant all the time. Lawyers are constantly being replaced by specialists in other disciplines who have recognized a problem that lawyers have ignored or have badly handled. Unless in curricular planning we concern ourselves much more with society's evolving and already existing values, lawyers will be replaced by more effective kinds of people.

Immediate response to Maverick:

- (1) #&* @&# \$*&#*
- (2) Lawyers will respond to the demand. They always have; otherwise there would have been no tax lawyers in the 1930's.

QUESTION ROOTED IN CONCERN THAT MAVERICK MAY HAVE A POINT: Are the changes now foreseen in society less clearly related to the things that lawyers have done in the past than were the changes of the 1930's, which involved, for the most part, government regulation of economic activity?

PRECONSIDERED PREDICTION AND ADVICE: Yes, there is a new quality in that which is going to happen.

Advanced societies become "participation societies." It is acknowledged that all persons should be able to share in evolving values which can be made available to all, *e.g.*, legal and medical services.

To be fully involved in the conscious process of change in social structures, lawyers must understand that changes are increasingly decided on and carried out by organizations in which job roles are highly differentiated and specialized. To gain the necessary understanding, law students must study the nature of problem-solving organizations, in the value context of removing inequalities that prevent desirable differentiation and mobility. Law students must also understand the social need for the reasons underlying the procedures, rules and decisions of organizations to be communicated understandably to administrators and to affected persons.

New relationships will be necessary between law schools and other schools, and between the profession and the law schools, because it will be necessary to learn new methods of data input and probability assessment, methods that are used in organizational decision-making.

Putting the matter negatively, if law students are to be trained for involvement in the participation society of the future, law schools must avoid limiting law study to:

- (1) the problems of people who already are high level participants in society's values and services (Maverick: "I told you so.");
- (2) the work of already matured organizations;
- (3) education in analysis without value content;
- (4) the consideration of what rules and procedures are desirable, without further considering problems of communication;

- (5) non-empirical methods of reasoning; and
- (6) generalized study for generalized law practice.

A DEBATE-CREATING DEFENSE FOR THE STATUS QUO: Generalist training provides more opportunities for inculcating needed value-skills.

Negative response: We cannot impart values in law school.

Positive response: The emphasis is on "skills." We can usefully point out value conflicts in concrete contexts. In all courses the teacher should present as many aspects of the conflict of values as he can. If he has a preference, it should be indicated as such.

Maverick response: The subject areas chosen for study in law school and the method of study involve value choices and do impart such values as this: it is more important for lawyers to be able to deal with problems of wealth, power and procedure than with, for example, problems of the underprivileged. (Author: Can this man be right?)

A POSSIBLE WAY OUT: Does specialization really imply, as the discussion above suggests, a loss of values?

Pro and con: Specialization will implement the values served by the specialist. However, if his organization is inflexible, some values will be lost.

A TENSION-REDUCING CONSENSUS: Students should become generalists in the area of their specialty. They should have the ability to sense all pertinent value-conflicts and to work out appropriate compromises and priorities.

III. NEW KINDS OF PROBLEMS FOR CURRICULUM DESIGNERS: THE RELATIONSHIP BETWEEN VALUES AND FACTS

A PROFESSORIAL "NEXT QUESTION": If lawyers are to be trained for making policy decisions as generalists, specialists, or generalist-specialists, what new problems does this pose for curriculum designers?

Many hands raised: What are the legitimate uses of power? What are the ambits of legitimate inequality? Must one work within a fairly stable body of belief? Must lawyers take certain givens, and reject values or means that prevent social mobility, participation, or skill-development?

The cautious Dean: Will struggling with value system questions such as these result in a diversion of scarce resources into indoctrination of a value system?

THE POSITIVE RESPONSE GIVEN ABOVE APPLIES AGAIN: This would perhaps be so if we were in a monolithic society. However, training for policy making raises no new curricular question insofar as values are concerned since we are in a multi-valued society. All a law teacher really can do is to contrast value conflicts and point out changes in the relative weight given different values at different times.

A question to take this thought further: How can students be made more aware of what values really are to a lawyer?

A long-pondered reply: Policy thinking is realistic only when connected with a wealth of meaningful data. Students are not aware of this until they have dealt with a case that includes a mass of data. Thus, students must deal in law school with at least one area in depth, as a demonstration of how one tackles and carries through on a problem.

WITH WHAT VALUES SHOULD LAW SCHOOLS BE CONCERNED: Conceding that we have a multi-valued society, are law schools concerned with too narrow a range of values, and, hence, too narrow a range of facts and problems?

The rational allocator of resources: 60% of lawyers' predictable business deals with questions of wealth, power, and procedure, though we may realistically talk of reform for the other 40%.

The Dean: Should this 40% provide problems and dimensions for an elective program offered to advanced students?

Most: Yes.

Maverick: Why wait? The great risk of the first year is that students will grow to like case analysis and concepts, particularly if they do it well. We put blinders on them. Perhaps we need clinical programs and field training then so that they can see and feel social needs and the ways in which government can and does deal with them. With whom do we want students to identify? This is a value question we can avoid only by ignoring it. It is really a question of jurisprudence or legal philosophy.

The Philosopher's contribution: New tasks emerge and old skills become diluted when specialization and collective decision-making become the format for society's decision-makers. As decisions become the choice not only of means to attain goals but also as between goals in relation to means, the criteria for decision become of paramount concern for leaders and followers. Present philosophies of law are inadequate for the task of coping with such change. The law process is becoming a device for mediating and managing tension in the process of providing order in the context of change.

To help create an adequate philosophy, law schools must have freedom to innovate without too much pressure from the organized bar, particularly with respect to subjects required on the bar examination. Further, since law is a process of ordering society, the law schools should not remain aloof from social action.

The Scientist's rejoinder: It may be more important in many situations to realize that you face an issue of fact rather than one of values. However, fact and value are intertwined as are the concepts "specialist" and "generalist."

The problem posed for the legal profession by a complex society which is built on an advanced technology and is undergoing rapid change, is how to find an adequate balance between the generalist and the specialist, both profession-wide and in the life of each lawyer. Viewed in the time-dimension, the problem is how to develop men who not only can handle their beginning practice, but who also are prepared for the kind of problems they will have to deal with in their prime.

This is not a dichotomy between private practice and public policy. In getting a client to understand law and its flexibility, the lawyer must understand the relevant public policy and be able to teach it. Thus, if a scientist is a client or administrator, the lawyer must educate him to the purpose of a statute. By the same token, if the problem requires the use of scientific data, the lawyer must be able to work with scientists in many fields.

Lawyers can't solve the questions of science. But they must know something about the scientists' skills, what they contribute, and their limits.

The problem for education is to develop teachers who will bring issues of science into the classroom, and who will themselves be interested in public policy research.

PEOPLE MOVING TO THE SCIENTIST'S SIDE

- (1) There is need for interdisciplinary contacts — non-law students in law courses, jointly taught courses, non-legal courses in law school, combined courses (law and science, etc.).
- (2) There is value in teaching legal process to non-law students: they must know the difference between the production of knowledge, as in science, and the making of decisions for which the decision-maker bears responsibility.
- (3) So, too, there is need for lawyers better to understand quantification, particularly as it relates to policy decisions.

- (4) Law students should learn to think in terms of what questions to ask, and of whom.

WITH WHAT FACTS, IN A VALUE CONTEXT, SHOULD LAW SCHOOLS BE CONCERNED: If a student can be made aware in one scientific area of the multiplicity of factors that bear on a real problem, he will understand the nature of problems in other areas as well. Problems should be studied in law school with the aid of scientists.

The Historian can no longer remain silent: It is equally important that lawyers should understand social problems and social progress. So we must attempt to understand what has happened, and why, and the implications. Legal history helps show coincidences between things taking place in seemingly disparate areas.

Thus, legal history is most usefully approached as the study of the development of a legal system over time, with particular emphasis on the interaction of law and social problems. This is more easily done in the context of the here and now, rather than by study of ancient times, because there are fewer barriers to researching modern issues (*e.g.*, no language problems, and more ready access to pertinent materials).

You need not show how much hangs over from the past. Concentrate instead on how the new emerges from the past and what are seen to be the problems of the time. Legal history thus approached will produce a much needed historical sociology of American law. And, historical perspective aids in prediction.

Should legal history be offered as a separate course? Yes. You need to work with original materials and study something of the technique of historical research.

Even in other courses, it may be useful to order the cases chronologically.

Building relationships: To legal philosophy: History can show something about a people's philosophy because people react differently at different times to essentially the same situations, *e.g.*, cholera epidemics. To social science: The skill of an historian is a form of social science skill.

IV. IN CONCLUSION

Effective curricular reform depends upon legal educators

- (1) gaining a realistic view of the future, including the nature of social change to come and the methods by which decisions will be made;
- (2) determining the extent to which changes must occur in

lawyers' knowledge and skill in order effectively to play significant roles in such a society; and

- (3) planning how to get from the "here" of legal education to the "there" demanded by the future, without on the one hand taking too many risks or, on the other, being so timid that the necessary creativity is stifled.

If projections are made from things in the here and now which seem most likely to be increasingly significant in the future, the world of tomorrow is likely to have these qualities:

- (1) an increasing amount of planned change, in which goals as well as means are involved in the decisional process;
- (2) group decisions made in organizations which have highly differentiated job roles and many specialists;
- (3) the use of systems analysis and empirical methods in decision-making;
- (4) the "participation society" concept; and
- (5) a great need for decisions to be explained to those affected by them.

To be effective in such a society, lawyers must be responsive to a wide variety of social situations, and must be adept in working with persons in many other disciplines.

To bring this about, the law schools must teach students more about the relation of law to other disciplines, and more about the real world of values. Students must see that there are always value conflicts. These clashes can be seen clearly only when dealing with a problem having a mass of fact detail. Law students must work with such problems so that even those who become specialists will remain generalists within their specialty. Specifically, we must experiment with interdisciplinary materials and courses, knowing that what we are doing has a less predictable connection with the future than did adding labor law, trade regulation, etc., in response to the legal revolution of the 1930's.