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INTRODUCTION

IN JUNE 1967, the Danforth Foundation made a grant to the Association of American Law Schools for use by its Curriculum Committee. A meeting of the Committee was held September 30 and October 1 at the University of Denver College of Law to explore how disciplines related to law can be made a part of the law school curriculum, in short, how the law school curriculum of the future might be "liberalized."

The thrust of the conference was an examination of the probable structure of law and legal practice in the future, not so far distant, and, on the basis thereof, an exploration of the content of the potential lawman’s training for the complex tasks to be demanded of him in future years. The general question pervading the committee session was "How might the law school curriculum be liberalized to include the knowledge and the methodology of the various developed disciplines which are law-related?"

Two papers were commissioned as a preface to the conference: Dr. Wilbert E. Moore of Princeton University and the Russell Sage Foundation, Changes in American Social Structure, and Chairman Robert B. Yegge, The Future Legal Practitioner in the United States: What Training He Must Receive. Thereafter, four separate sessions were held on the following subjects and led by the following scholars: Philosophy and the Future Law School Curriculum, Professor James E. Wallace, University of Denver; Science and Technology and the Future Law School Curriculum, Professor Mark S. Massel, Brookings Institution; History and the Future Law School Curriculum, Professor Lawrence M. Friedman, University of Wisconsin; Social Science and the Future Law School Curriculum, Dr. Wilbert E. Moore.

This volume contains the two prefatory papers and each of the introductory remarks of the session chairmen as above outlined. It is a preface to the Round Table Council Meeting of the Curriculum Committee of the Association of American Law Schools to be held in Detroit, Michigan, on December 29, 1967. The Round Table will consider the problem: "A Curricular Concern: Interdisciplinary Training — What Does It Mean?" The following topics will be presented:

- History in legal teaching — Lawrence M. Friedman, University of Wisconsin
- Survey research in civil procedure — Maurice Rosenberg, Columbia University
- Economics in natural resources — John J. Schanz, Jr., University of Denver
Social science in contract law — Ernest M. Jones, University of Florida
Economics in local government — Frank I. Michelman, Harvard University

This volume has two major purposes. First, it is hoped that law professors attending the Curriculum Committee Round Table at the annual meeting of the Association of American Law Schools on December 29, 1967, will have read and reviewed the content hereof as a prologue to the specific discussions. Second, it is hoped that this compilation of materials will form a basis for further review and analysis of the current law school curriculum.

The recognition of the need for broad and full training of the lawyer today seems unanimous, however different the implementation may be from school to school. With this material law schools may gain some direction and assistance in their most important task — constant re-examination of the nature and function of American legal education.

The Curriculum Committee is indebted to The Danforth Foundation for its generous grant which made the meeting and this report of it possible. For this forum and the many hours of editorial services required in its production, the Committee is grateful to the editors of the Denver Law Journal.

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ROBERT B. YEGGE, University of Denver, Chairman
AFTER long neglect, particularly on the part of social scientists, the topic of social change is now fashionable. It appears that the experts have belatedly recognized what the general populace knew all along, that we are in the midst of change of unprecedented scope and speed, and the end is not in sight. Reflections on social change are not novel, of course. Retrospective reflections, particularly by older persons, often yield views of less than total enthusiasm for alterations in standards, conventions, and even magnitudes of social relations. Awareness of current rapid change, however, is relatively recent but now widespread. Even more novel, and less widespread, is the awareness that much of our changing situation is the consequence of deliberate action—the intended result or a by-product of decisions and plans.

The new awareness of change has caused some overdue reconsideration of theoretical and methodological models in fields such as my own discipline of sociology. Our theory and our analytical procedures are primarily designed to detect and predict interdependence rather than trends or sequences. The crisis in that discipline need not detain us here, except that we must be warned that the repertory of scientific principles and procedures that might clarify the current confusion is in fact meager. Yet we must press on bravely, for rapid change presents new problems in both private and public sectors of our society. We must approach them as sensibly as we can.

I shall use the term social structure in a very general sense: patterned behavior. Thus phenomena as widely different as the temporal pattern of traffic flows and the modes of formal organization in business corporations are comprised in the concept. The minimum components of a social structure are roles, which are standardized actions expected of occupants of positions, conforming to rules that govern role behavior and thus the relationships among positions. This abstract way of characterizing social structure has

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*Sociologist, Russell Sage Foundation; Visiting lecturer with the rank of Professor of Sociology, Princeton University; A.B., Linfield College; Ph.D., Harvard University.
the virtue, already noted, of encompassing any patterned behavior and thus permitting attention to relationships across a wide spectrum of differences in scale. It should be noted in passing that we are not equating social structure with status gradations—as often occurs in the writings of economists, for example. Rather, the forms of social inequality represent sub-types of the generic term structure.

The abstract definition of social structure leaves much too much latitude for a relatively brief and coherent discussion. One mode of simplifying organization would be to attend to the major institutional contexts of social behavior, such as the family, religion, education, the economy, and the polity. One consequence of adopting this alternative would be a reinvention of the chapter titles of introductory sociology texts, which is not an evil prospect per se, but still presents an impossibly formidable agenda for this occasion.

The alternative we have adopted is to focus attention on certain pervasive processes of change, processes that impinge on the family, the economy, the polity, and so on. These processes we shall identify as differentiation, organization, and participation, each comprising several sub-sets of social transformations. We shall find that these processes are not wholly autonomous but rather intersecting (in federal prose, interdigitated) patterns of change.

I. Differentiation

Despite mountainous mole-hills of prose from subterranean critics of contemporary society, I can find no substantial and credible evidence for the dismal doctrine of "mass culture." The supposedly stultifying standardization produced by the mass media has at most resulted in some superficial commonalities: fashions, fads, and the latest, volatile "in" vocabulary and status symbols. Yet even language, which would seem most subject to standardization, retains its authentic regional accents, and all sorts of other differences abide and abound.

A. Growth and Specialization

Continuing specialization of roles and organizations is often taken as a sort of datum in the analysis of social change, a kind of prime mover not itself explained. I suggest that in American society we can identify three sources of specialization: (1) population growth and increasing density, providing opportunities for specialization and virtually assuring it; (2) the rapid growth of knowledge and of rational technique, so that any individual can command only a small portion of the total stock; (3) the rapid expansion of options in both products and practices, permitting discretionary choices and novel combinations by eclectic mixture.
Occupational specialization\textsuperscript{1} is certainly the most conspicuous form of rapid differentiation of adult roles. Some of the historic effect of technical changes in productive processes, and the one that invited the most critical comment, has been the dilution of skills through the subdivision of tasks. At no time, however, has this form of specialization been the unique or sovereign tendency, since an increasingly complex productive system has also demanded new skills and new skill combinations. The long-term trend has been for an upgrading of the minimum and average skill levels, and the most modern productive technology restores to production workers a large measure of machine mastery.

Occupational specialization exemplifies the intersection of increased size of units and increased useful knowledge to be translated into productive tasks. Yet just as the less-skilled worker is threatened by actual displacement by mechanization, the highly skilled worker and the professional are threatened by technical obsolescence by failure to keep pace with the expansion of relevant knowledge, and the modern manager is by no means exempt from the demand to be a learner throughout his career. Indeed, the manager is now faced with unprecedented complexity, for in most instances he cannot pretend to be a leader and exemplar by being more skilled than any of his subordinates. His prime role now is that of coordinator of specialists; in a sense, his prior authority is impaired while his task becomes more complex.\textsuperscript{2}

Specialization is also exemplified in the wondrous range of organizational forms, not only to produce and distribute goods and services or to govern and maintain order, but to prosecute special interests or indulge in various recreational and expressive activities. Although many organizations may "just happen," a wondrous amount of time and energy is spent in inventing organizations; eclecticism is a conspicuous feature of new organizations.

Organizational specialization has gone so far that it is difficult to find a broad-purpose — the sociological term is "functionally diffuse" — organization beyond the family. Some genuine neighborhoods exist, and a few genuine communities, but these are not immune to the divisive or at least fractionating effects of specialized organizations. As the family has become about the only place where an individual may legitimately display an emotion, it sometimes cracks under the strain. Yet the demise of the family as a functionally important unit of society is not imminent.

\textsuperscript{1} See Moore, Changes in Occupational Structures, in Social Structure and Mobility in Economic Development ch. VI (N. Smelser & S. Lipset eds. 1966).

\textsuperscript{2} See W. Moore, The Conduct of the Corporation ch. IV (1966).
Eclecticism is a conspicuous feature in styles of life. For the lowest income sectors, market choice is of course radically restricted. For others, the tremendous variety of alternative goods and services permits a wider choice. (Incidentally, for the marketing-minded, the moral is clear: income is a poor predictor of life styles. Education and occupation will predict part of the differences better than income levels.)

Specialization, whether of occupations, organizations or styles of life, poses problems of coordination. We shall return later to organization as our second pervasive process, for coordination is by no means automatic.

B. Inequality, Old and New

The notion of America as a "classless" society has not been taken seriously by scholars, but I feel, with decreasing justification. Not that the United States has ever had a genuinely equalitarian social order, nor is that precisely the trend. Rather, the semblance of hereditary strata, never absolute, has been steadily eroded by very strong intergenerational mobility and by the lack of sharp discontinuities across most of the status distributions in the society. The closest approaches to genuine strata are to be found at the very top and very bottom of income or other status differentials. Neither "class" is impermeable, but there are strong tendencies to self-perpetuation. For the substantial majority of the population the term "middle mass" has been suggested, though that suggests a homogeneity that does not exist. Rather, there are multiple gradations on one or another basis of ranking, but inconsistencies abound, the distinctions are often fine and somewhat arbitrary, and mobility is widespread between generations and within careers. Again, the tendency of Americans to identify themselves in polls and sample surveys as "middle class" may be more accurate than the views of critics who find this behavior amusing.

We should not leave the subject of inequality without a comment on poverty, now so much in public discussion. Aside from the aged and those having one or another disability—which constitute a fair portion of the poor—the problem of poverty involves the hereditary poor. As long as there is a range of income distributions, those at the lower end are relatively poor. But if the range is relatively narrow, the minima tolerably high, and the avenues of mobility by merit open, the inequality would be relatively consistent with our professed values. The current difficulties are several: (1)

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The general rise in levels of income and in broadening opportunities has left some segments of the population behind — mainly Negroes and some rural whites. (2) Poverty has become a minority phenomenon, and thus does not command widespread engagement for alleviating the problem. (3) Certain structural changes such as the increased reliance on formal education as an intergenerational mechanism of mobility and occupational sorting device may have actually decreased the opportunities for escape. To the degree that mechanical aptitudes, athletic ability, or entrepreneurial skill for starting a small business become progressively shut off as mobility opportunities, the occupational system becomes less open despite other expanded opportunities. Of course, the culturally deprived child does not even have "access to motivation" to want to achieve even when the opportunities are nominally open.5 A very considerable social ingenuity will be required to overcome this structural defect in American society.

C. Ecological Redistribution

Another form of social differentiation might appear at first glance to represent increasing homogeneity through urbanization. Certainly the rapid pace of rural-urban migration, together with the impact of modern transportation and communication on towns and villages, has radically reduced the "cultural" and even the organizational differences between city and country. However, the urbanization process has led to new forms of differentiation that seriously challenge the capacity of "inherited institutions" to cope with the complexity.

The "invasion" of central cities by Negroes (and, especially in the East, by Puerto Ricans) perpetuates a long-established pattern of ethnic concentration by successive immigrant groups. However, the assimilation of ethnic groups into the main stream of American life has proved to be conspicuously more difficult where "racial" distinctions are drawn. Dispersion of Negroes, occupationally and especially residentially, appears to be a very slow process. Meanwhile, and in some part owing to the concentration of Negroes in central cities, the process of suburbanization goes on apace. In larger metropolitan complexes, suburbs become differentiated, not only by income level but also by other social characteristics; some suburbs are quiet, some "swinging," some "cultural" and some recreational. Yet the common problems of metropolitan areas — air and stream pollution, traffic congestion, the provision of public services — are difficult or impossible to solve by traditional modes of political or-

organization. Again, substantial social inventiveness will be required to avoid an increasingly chaotic style of social differentiation.

D. Pluralism

The notion of American society as a "melting pot," assimilating diverse national and ethnic stocks into a single, homogeneous amalgam, had the disadvantage of most metaphors: exaggeration. Regional, ethnic, political, and religious differences persist, intersect, and add new elements of diversity in American social behavior. These differences represent a partial conspectus of tolerable disagreements; others include such preferences as cuisine, artistic taste, or form of recreation. Arguments may occur, with occasional emotion and even hostility, but divisions are either highly regularized—as in political parties—or recognized as not commanding preemptive allegiance.

The view adopted here is that pluralism is growing rather than decreasing in American society. More traditional sources of difference have been supplemented by newer forms of differentiation based on education and occupation. The result is far from a homogeneous community, but it is not necessarily one full of conflict or disorder.

Two principal dangers are evident in the rampant American pluralism: one is the ever-present possibility that common values or goal-orientations will be undermined or forgotten in the quest for distinctiveness. Secondly, some differences may come to be treated invidiously, some preferences or traditional differences may be regarded as unacceptable, and persistent allegiance to them may lead to segregation and discrimination. American history and contemporary American society offer ample examples of successful pluralism and of dangerous divisiveness.

The greatest perils of pluralism come not so much from frontal oppositions but from such a degree of discretionary specialization that a common identity or a common culture is lost to a host of diverse organizational interests. The other side of tolerance is indifference, and that may go to the point of disengagement.\(^6\)

II. Organization

Virtually everything that engages more than one person's interests gets organized in American society. The independent craftsman, tradesman, or professional is a diminishing category, and many a repairman handles the accounts of franchised dealers, and many a professional nominally in private practice is in fact in group practice or partnership. Even play gets organized: conspicuously so in the case of commercialized—it is a mistake to say professionalized—

spectator sports, but also in country clubs, bridge clubs, collectors' societies, and, so help me, girl watching societies. Traditional individualism is steadily eroded by the conformity-demands of nominally immortal organizations, which exist prior to the individual's tour of duty, and will survive him despite his possibly disruptive acts.\footnote{See W. Whyte, Jr., The Organization Man (1956).} In effect, however, the traditionally treasured individualism was not a pure and simple ideal, but had its highest relevance in the notion of an atomistic and impersonal market for goods and services. And since organized production and organized distribution have been characteristic of industrialism since its inception, individualism often came to mean the inequitable irresponsibility of exploitative employers or individualism by default rather than by design for the individual who did not exactly fit into the conventional arrangements.

Why should organizations multiply, and become more complex? Certainly a major part of the answer lies with social differentiation, already examined. And the character of contemporary differentiation is such that common understandings and the unspoken consensus must be increasingly rare. Aims become explicated, means for their achievement worked out, and formal groups set up for mobilizing effort and assigning tasks to participants. It used to be difficult to distinguish between apathy and simple contentment with ongoing arrangements; now apathy means a genuine withdrawal, for informal arrangements do not serve, and formal ones require positive participation.

A. Bureaucratization

By now the word has finally got around: bureaucracy is not an evil, do-nothing complex of offices uniquely characterizing national governments, but a type of organization to be found wherever numbers of specialized task-performers are coordinated in a system of graded steps of authority. Private corporations are as bureaucratic, by any of the standard tests, as are public agencies. The extension of bureaucracy, or administrative organization, into most of the world of work has not entirely dissipated the negative connotation of the original term. The reason for that is that size and specialization produce formalization of rules and procedures, of job specifications and the jurisdictions of components. There is as much tendency to formulate and apply rules mindlessly in the corporate world as in the publicly-supported agency.

The simplest measure of bureaucratization is the proportion of wage and salary earners among those gainfully occupied. It will scarcely be surprising that this ratio is highly correlated with the level of economic development, taken comparatively among coun-
tries at a point of time, and also increases with the level of economic performance. In the United States this proportion exceeds four-fifths of the labor force.\(^8\)

Subordination is partly softened by widespread sharing, and specialization further softens the authority of superiors, as already noted. Nevertheless, the intersection between individual personality and organized, collective goals must always be partial except for the patently pathological bureaucrat (often, unfortunately, an executive) who has no other interest in life.

Public and private bureaucracies share some irrational tendencies, which I cannot here document in detail:\(^9\) overstaffing with needless subordinates, who merely add to the entourage of administrators, but not to the efficacy of performing the mission; overstaffing with advisers of dubious value, on the chance that their magic will work, or on the grounds that some competitor has seen fit to add such an advisory function; a proliferation of essentially silly rules and controls, based originally on some real or imagined human frailty, and mindlessly applied thereafter to otherwise conscientious and possibly creative employees.

Every bureaucratic organization of substantial size (say, one hundred members or more) faces the perennial dilemma of centralization for the sake of uniformity and decentralization for the sake of temporal efficiency (not to mention the morale of lesser managers and workers). There is no known perfect solution to this problem. The primary tendency is toward centralization, but reversals occur, and occasionally leave some residue of autonomy with component units. The growing technical specialization of nominally subordinate units is a powerful basis for localism.

Bureaucracies commonly have been supposed to be inflexible, almost crystalline structures. The virtues of predictable continuity in performance do indeed encourage a kind of rule-regarding posture. Yet the very diversity now built into the personnel of administrative organizations assures some discord in non-routine decisions, and the fact that various staff specialists have external clienteles assures further lack of harmony. Despite the depressingly negative connotations of the term bureaucracy, there is a remarkable flexibility in such organizations in responding to external or internal stimuli.

Yet the stimuli generated are diverse, and the arguments propounded by advisers far from consensual. The old-style executive would not have tolerated such a discordant chorus and he would have made any decision on the basis of accumulated experience.

\(^8\) See Moore, supra note 1.
\(^9\) See W. Moore, supra note 2.
Experience is not now despicable, but it is known to be untrustworthy. The contemporary executive is trained in rational decision processes, with variable inputs of information and advice, and with variable credibility ratings and weights in the composite outcome. He may not be more often right; but in view of increased complexity and uncertainty, he is fortunate if he is not more often wrong.

Perhaps the most important feature of contemporary bureaucratic organization — and that feature grows apace — is the attempt to predict, cause, and control social change, and not merely react to environmental alterations. "Research and development" accounts for a growing proportion of corporate budgets, whether from their own funds or on governmental contracts. Universities, too, have greatly expanded research activities, to the degree that in most of the nominally private institutions more than half of the annual budget comes from federal sources. To these components of "the knowledge industry" we must add research agencies within government and a great proliferation of not-for-profit organizations engaged exclusively in research. Technology has become a major component of investment policy, both private and public.

There is a very popular notion abroad in the land that technology is an automatic, autonomous, and indeed sovereign source of social change. This idea is, of course, much admired by technologists, for after all that makes them leaders, but it will not pass muster as a social theory. To a remarkable degree, in the modern world every economy or society gets about the technology that it deserves, or at least what it is able and willing to support.

We have weapons rather than clean streams, moon shots rather than efficient urban transit, packaging machines but no depackaging machines because real decision-makers have allotted resources and mobilized talents for some changes and not for others.

The organization and institutionalization of change adds a considerable measure of predictability to outcomes, though accidents and unforeseen by-products will occur, and successive attempts will be made to bring those under control also.

There is another, and troublesome, aspect to the pervasively organized character of American life. To a growing degree decisions are "collective," made on behalf of others by persons in essentially fiduciary positions. Consider assets. Certainly the major part of our total national assets are held by units of government or by private corporations and various non-profit organizations. They are held in one form or another of trust, and decisions about them are not made in the first instance by beneficiaries. I do not suggest that we

11 W. Moore, The Impact of Technological Change on Industrial Organization, in Order and Change, supra note 6, at 88.
attempt to turn the clock back, to return to days that were better only through nostalgic distortion. I do suggest that the conduct of fiduciaries, whether public officials or corporate executives, is not clearly governed by rules that will assure equity to the various interests involved. One can confidently expect successive attempts to clarify rights and responsibilities, to make power "responsible."

B. Voluntarism

The bureaucratization of productive tasks does not end the pervasive character of organization. Both interest-oriented and expressive associations appear to multiply faster than the general growth of population, and undoubtedly reflect the increasing formalization of relationships associated with urbanization, and the increasing differentiation of positions and life styles. Though organizations do offer new forms of social participation, a point to which we shall return, the voluntarism that they exemplify is not untainted. The interest-oriented association is for some cause and thus against others. Those whose interests would be adversely affected by the association's success are virtually forced into a counter-organization. The right to be a non-joiner is being steadily eroded, and about that we may perhaps be allowed a faint note of regret.

III. Participation

American society has always fallen well short of the democratic ideal of universal adult participation in political processes. Aside from residential, educational, and property qualifications for the franchise—qualifications gradually liberalized over the long term—the citizenry has exhibited considerable apathy. Some of the apathy certainly has been associated with lack of local community ties, poor education, and poverty, even if those impediments do not constitute formal disqualifications. The extremely low participation by urban Negroes in anti-poverty programs designed to elicit some sharing of decisions is now widely known. Yet civil rights activities have attracted somewhat wider participation. Indeed, there may be a somewhat justifiable suspicion that conventional political organizations, and perhaps even novel ones that are externally sponsored, aim at co-opting rather than genuinely representing Negroes and other essentially disfranchised sectors of the population. As broader participation is pressed, we may continue to witness various forms of unconventional politics. New forms of participation may well challenge the constituted order, and may indeed here and there go well beyond the tolerable limits for the maintenance of public safety. Yet they bespeak involvement rather than apathy, and may lead to genuine improvement in the society's operation.
There is a further development in all post-industrial societies that merits attention. All such societies have become "welfare states" in various forms and degrees. One consequence of such welfare policies is to extend the common rights and privileges of citizenship — that is, simply being part of the society — in contrast to the differential claims to income and prestige from competitive or essentially chance sources (such as property inheritance). To educational, political, and labor force participation may be added access to various services, including medical and legal ones. Creeping socialism this may be — though many private corporations have long recognized certain uniform claims on services. I should prefer to call it creeping democracy as long as we keep private alternatives to public programs.

**CONCLUSION**

The very rapidity of contemporary change may lead to the mistaken impression that all is in flux. Yet some change remains gradual and essentially evolutionary. The family's emergence as the major source of personal integrity has been gradual. Our political system is also essentially evolutionary, though it could be argued that its change has been unduly slow in the management of such problems as those confronting metropolitan areas.

We should also note that some values and rules have a hardy survival power. Aside from such collective values as national patriotism and such commonly held individual values as longevity, health, and economic well-being, we also share such expectations as punctuality and trust. Perhaps even more important than these enduring values and expectations, and particularly in view of continuous differentiation, is the continuing reliance on the procedures for resolving differences. According to circumstances we rely on the democratic vote, bargaining and negotiation, and, if necessary, judicial processes that provide for litigation of disputes through advocacy on the part of adversaries. On the whole, these prove to be effective "tension-management" devices. Even if we may have to invent new ways of coping with problems, these are likely to endure.

12 See T. MARSHALL, CLASS, CITIZENSHIP, AND SOCIAL DEVELOPMENT (1964). See especially id. ch. IV.
BEFORE discussing some of the specific issues which Dr. Moore has outlined for us in terms of their relevance for legal structure, and hence for the legal curriculum of the future, I would like to remind him of some remarks he made at another time and place. I am not so sure that we could not substitute the word "lawyers" for the words "social scientists" in the following quote from Professor Moore's presidential address to the American Sociological Association last year:

Have we, in short, any obligations as social scientists [lawyers] to start taking account, not only of the changeful quality of social life but also of the fact that some portion of that change is deliberate? Do we, still as social scientists, [lawyers] have anything positive to add to the fulfillment of human hopes for the future, or are we always fated to counsel the eager traveler that "you can't get there from here"?1

I would suggest that as professionals charged with knowing and teaching about the nature of order in our society, we lawmen do know that a portion of change is deliberate, and we cannot and will not counsel that there are no answers to the problems involved.

I.

An insightful paper by Wendell Bell and James A. Mau of Yale University entitled "The Future as the Cause of the Present"2 emphasizes that the future can be studied scientifically, taking due account of the past and present. A point made by these scholars is that a major contemporary theme is "the rise of human mastery." Professor Moore commented on this when he said:

The art of prophecy, if it is to rest on scientific procedures rather than supernatural inspiration, requires some rather well-machined parts put together in a sensible order. To foretell the future, we should want first to identify probably persistent components of the present.3

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*Dean and Professor of Law, University of Denver College of Law; A.B., Princeton University, 1956; M.A., University of Denver, 1958; LL.B., University of Denver, 1959.

2 W. Bell & J. Mau, The Future as the Cause of the Present, 1967 (mimeo.).
The study of precedent — decisions made in the past — will remain an important emphasis in legal training. However, to the study of precedent will be added a systematic and empirical analysis of present structures, formal and informal, which govern and guide legal relationships. Prediction rests upon certain assumptions, as Professor Moore points out. First, it must be assumed that there will be a measure of order. Second, it must also be assumed that there will be survival of the system. “If chaos rules, prophecy cannot, or for that matter, man, survive.” This is all to say that the law school cannot merely acknowledge the impact of change. Change is ubiquitous; it is pervasive; it is increasing in rate and effect. The law is now charged with the responsibility of thinking in a new dimension — that of the future. The charge is a difficult one, for the law must maintain order in the face of rapid change.

In discussing human involvement in social change, Bell and Mau record the following accurate summary of the context in which contemporary change is taking place.

The theory of social change discussed in this paper rests upon the assumption that a major trend of history has been an objective increase in the mastery of man over his environment as well as a shift in his beliefs that this is so. An implication of this is that explanations of social change are only more or less relevant to the events of particular epochs, depending upon how accurate the explanation is in assessing and taking into account the amount of influence man himself may have, and thinks he has, in directing social change. For example, ecological explanations may be of considerable relevance to the behavior of primitive man, since primitive man’s chief struggle was against nature, and his life was shaped by that struggle. Ends were seldom questioned and means were often invested with ritualistic significance. Possibly the gods could be persuaded to bring about a desired future event, but fatalism was widespread. Likewise, explanations based on notions of economic determinism or technology, rather than ecology, had considerable relevance for industrializing men and societies of the 17th, 18th and 19th centuries. Ends or goals were still largely unquestioned and clearly defined, but means were increasingly free from religious dogma to be chosen according to criteria of efficiency and economy. Today, traditional ecological and technological explanations are no longer of primary importance in explaining the behavior of men in advanced societies, because in such societies man’s chief struggle is with himself and other men, not with nature or the lack of technology, and because both the ends and means of life have been increasingly freed for man to choose consciously. This freedom has been made possible by securing the essentials and amenities of life for most people in advanced societies while creating relatively short hours of productive labor and by advances in philosophy and science, including sociology, that have reduced people’s dependence upon superstition and fatalistic conceptions of the future. Of course, this freedom to select both goals and ways of achieving them, which permits some individuals and groups to establish new norms and

*Id.*
values for entire societies, occurs in a context of certain limiting agreed-upon principles of group survival which are seldom extensively violated. Nonetheless, the latitude of decision is quite large. Large enough, for example, to bring new burdens to modern man, especially the burden of knowing both that his life and environment will become what he will make of them and that he is not always certain just what he wants, or should want, to make of them. Thus in the most advanced societies, even structural explanations lose much of their compelling relevance and give way to the dominance of moral explanations. But the latter represent a new, secular morality, which is pragmatic and open to social choice and universal consideration. Thus, for modern man, life becomes a journey through time toward a better future that is represented by a series of emergent destinations, each one containing some features that appear more desirable than those of the present but also containing surprises and uncertainties. One surprise is that usually any destination once reached, is simply a way station to another, the ability to envision some better, more distant time or place, being both the blessing and curse of modern man.5

We might say that we are living in an era of self-fulfilling prophecy. As Bell and Mau have observed, man has control of his destiny more than ever before. His actions will determine the shape of the future to an ever greater extent in more and more areas.

A. History

From a knowledge of his past man can make plans for the ordering of his behavior in the future; and this he has done. Unfortunately, in the law, he has institutionalized reliance on the past. And such unilateral dependence can produce strange distortions as emphasized in the following bit of poor, but frightening, poetic philosophy found in the Colorado case of Van Kleeck v. Ramer:6

One day through the primeval wood
  a calf walked home as good calves should;
But left a trail all bent askew,
  a crooked trail, as all calves do.
Since then, three hundred years have fled,
  and I infer, the calf is dead.
But still he left behind this trail,
  and thereby hangs my moral tale.
The trail was taken up next day by
  a lone dog that passed that way;
And then a wise bell-wether sheep pursued the trail o’er vale and steep,
And drew the flock behind him, too,
  as good bell-wethers always do.
So from that day, o’er hill and glade,
  through those old woods a path was made,

5 W. Bell & J. Mau, supra note 2, at 7-9.
6 62 Colo. 4, 44, 156 P. 1108, 1121 (1916).
And many men wound in and out,
and bent and turned and dodged about,
And uttered words of righteous wrath,
because ’twas such a crooked path;
But still they followed — do not laugh —
the first migrations of that calf,
And through this winding woodway stalked
because he wobbled when he walked.

This forest path became a lane,
that bent and turned and turned ag’in;
This crooked lane became a road,
where many a poor horse, with his load,
Toiled on, beneath the burning sun,
and traveled some three miles in one.
And thus a century and a half they trod
the footsteps of that calf.

The years passed on with swiftness fleet,
the road became a village street,
And this, before men were aware,
a city’s crowded thoroughfare.
And soon the central street was this
of a renowned metropolis.
And men two centuries and a half
trod the footsteps of that calf.

Each day a hundred thousand rout
followed the zigzag calf about;
And o’er his crooked journey went the
traffic of a continent.
A hundred thousand men were led by
one calf near three centuries dead.
They followed still his crooked way,
and lost one hundred years a day;
For thus such reverence is lent to
well-established precedent.
A moral lesson this might teach
were I ordained and called to preach.

For men are prone to go it blind
along the calf-path of the mind,
And toil away from sun to sun to do
what other men have done.
They follow in the beaten track,
and out and in, and forth and back,
And still their devious course pursue
to keep the path that others do.
But how the wise old wood-gods laugh,
who saw the first primeval calf!
Ah! many things this tale might teach; —
But I am not ordained to preach.

B. Science and Technology

Man’s technology has determined many of his destinies. And
the law inevitably gets involved in science and technology. Legal
institutions can retard or implement scientific progress; but science
continues to provide new problems for the law. We need to know more about the effects of the legal rules on scientific invention, exploration, and innovation. We need to determine whether these rules channel application of the new developments into broad benefits for the society. Mark Massel, one of our seminar leaders, has observed:

There are many indications of these interplays. Tort and insurance law influence the establishment of atomic energy plants as well as the development of safety devices in factories and in automotive design. Employee contracts may govern innovation through their control of patents and shop rights. Provisions in government procurement contracts can affect invention and innovation through their power over patent rights, investment risks, and limitations of security. Antitrust laws can sway research and innovation, including changes in methods of distribution. The control of the radio spectrum can encourage or discourage innovation in television and radio. Health and safety standards can affect many types of research and can compel progress in the control of water and air pollution. Criminal law has a bearing on a life and physical science complex, including psychiatry, lie detection, and electronic eavesdropping.

On the other hand, scientific development can affect various elements in the legal system. Improvements in the use of the radio spectrum may permit a considerable increase in the number of broadcasting stations and lessen the importance of licensing and controls. Progress in the life sciences may increase the scope of tort liabilities through new methods of proving damages incurred from sustained cigarette use and radium poisoning. Techniques for capturing various resources of the sea will lead to substantial changes in maritime and international law. More effective means of controlling pollution will promote direct regulation and probably influence torts and contract law. Further development of electronic devices and computer technology may create new legal problems regarding the privacy of the individual.7

C. Humanities

The humanities, too, have an important stake in the deliberate and purposeful future planning which man can do and is doing. Frederick L. Polak has observed:

In setting himself purposefully to control and alter the course of events, man has been forced to deal with the concepts of value, means and ends, ideals and ideologies, as he has attempted to blueprint his own future. As long as the prophet-propitiator was acting only as a divine transmitter of messages from on high, man felt that he was accepting his ethics ready-made, with no alterations allowed. In a later stage man staggers under the double load of not only having to construct his own future but having to create the values which will determine its design.8

Polak's observations are particularly relevant for law. Law is about values. In order to construct or "design" a legal blueprint

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7 M. Massel, Legal Institutions in a Changing Society: The Need For Appraisal, 1967 (lecture, mimeo.).
for the future, value questions, on which the humanists are experts, must be solved.

For example, the Supreme Court in *Hickman v. Taylor*\(^9\) gave the lawyer's work product a qualified immunity from discovery. The legal and historical basis for, and the actual practice under, the rule has been widely debated. Courts have issued many divergent opinions about specific applications of the rule. Glaser has pointed out: "Plainly no survey of attorneys can decide whether work product should be discoverable, what documents ought to be considered work product, and the conditions justifying their discovery. These are policy decisions depending on the rule-maker's values and his estimates of the probable consequences for litigation resulting from each possible rule."\(^{10}\) The value content of the education of a potential rule-maker is critical to the orderly development of law.

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We must get there from here. Lawmen, probably more than any other single occupational group, affect decision-making beginning at high policy levels in our government right down through the decisions which may affect the course of dealings between neighbors. As decision-makers, lawmen have some notion about the future. Accordingly, they must be aware of the structure—present and future—of their society. They must be aware of the solutions of the past; they must be aware of the developing technology; and they must be able to assess, in terms of values and goals, the factual knowledge that is available to them. Accordingly, this conference on liberalization of the law school curriculum focuses on how the fields of history, science and technology, social science, and philosophy may find their way into legal study.

II.

Let us now examine the specific subject: "The Future Legal Practitioner in the United States: What Training He Must Receive." Necessarily we must draw on Professor Moore's analysis of the "Changes in American Social Structure." I suggest also that we must draw on those persistent elements of the future just discussed.

Dr. Moore traces some themes of change which are clearly observable in changing legal practice. *Occupational specialization* is conspicuous in legal practice. Almost every lawyer has a specialty. Look around. There are trial lawyers and office lawyers. Generally, the office lawyer brings in a trial man when an occasional case reaches the courthouse steps. A trial lawyer relies on his office

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\(^{10}\) W. Glaser, Pretrial Discovery and the Adversary System, at vii-7, 1966 (mimeo.).
counterpart to handle strictly office matters. Some of the specialization is by exclusion. It is usual, if not general, that even the "general practitioner" has certain areas in which he will not practice, notably domestic relations and criminal law. With the exponential growth of law and legal principles, it becomes increasingly difficult for one to be an effective "general practitioner." Indeed, for the protection of the public, specialized training would seem to be demanded. The fact of specialization follows in part from the explosion of knowledge in areas such as science and technology where the legal principles have grown, multiplied and become more specific at an extremely rapid rate. With the intricacies of American life, not only is specialization in knowledge of the law required but specialization in knowledge about the field which the law covers is frequently demanded of legal counselors. Accordingly, it is increasingly important that the lawyer know not only the law of a certain field but the subject matter as well.

Specialization raises some serious value questions. To a certain extent, specialization protects one from a moral obligation. It is more comfortable to draw away and be protected from large policy questions by announcing your technical expertise. If it be true that "humanity is overcome by competence," then the lawyer's obligation to understand the place of his specialty in the larger value structure of his community and society is intensified.

Lawyers have become ecologically redistributed. Recent figures clearly show that the number of lawyers in rural communities is diminishing, a trend which is offset by the growing number of lawyers in urban areas. This observation is merely a replication of ecological redistribution in most fields of endeavor. The redistribution of lawyers has had its organizational implications as well. Bureaucratization and growth in size of legal practice units is clearly observable. At the same time, the need for legal services is becoming more and more centralized. Thus, with some obvious exceptions, the practice of law is becoming increasingly collective. On the one hand, there is in-house practice for an established organization and on the other hand there is an increase in the size and number of law firms. Business, political, social, and legal aid organizations are realizing the need for in-house counsel. Legal departments and legal staffs in non-legal organizations increase daily. Each year the number and size of law firms are increasing. To hang out one's shingle is becoming increasingly difficult. As in clinical medicine, a team of legal advisors is increasingly used. In fact, economic facts today indicate that lawyers in large firms who specialize earn more than the lone practitioner, and hence the pressures toward collectivity are intensified. As Moore has observed, decisions at the legal practice
level are becoming increasingly "collective." And in this process, as one exercises collective judgment, the need for examination of underlying values is further increased.

Another manifestation of specialization follows Moore's charge that participation by a larger number of persons in society in available services is imminent. This increase in demands will also apply to legal services.

Lawyers have many incompetencies. There are sub-professionals, not lawyers, who can handle certain legally related problems with efficiency at least equal to that of lawyers. And the services of these para-legal people are more available to the society than are the services of the legal fraternity. The title insurance companies competently prepare title opinions in the form of title commitments. Insurance adjusters are experts in negotiation and settlement. Professional estate planners have in-depth knowledge of tax and legal rules and regulations, and they give sound advice. In fact, some of these sub-professional specialists have greater competence in their areas than do many general legal practitioners. Clearly, a larger base of the population has access to these para-legal people than to the professional lawman.

It is curious and unfortunate that few people enter the law with a "calling." This lack of calling is a function of non-interest of the lawyer in broad policy questions. With the exception of some stout-hearted and much-to-be-admired public servants, the lawyer goes to the law to make money. In law school he dreams of being a corporate lawyer so that he can manipulate dollars and solve the commercial problems of his clients. No wonder, then, that the organized bar meets the pressing need for para-legal assistance for a large share of the population with subjective negativism. If "equality" before the law is to be recognized, we have a major manpower shortage. There are not enough lawyers to go around for all the services ultimately demanded. It has been observed that a mere three hours more of legal service per year for each of the nation's 55 million families would require 40 percent more lawyers in the United States. Clearly, something has to give. "If you don't serve the public as it needs to be served," warned ABA President Kuhn, "the public will force some kind of change in the profession." Development of para-legal professions is predestined.

Our medical brethren early recognized the importance of a para-medical professional: the nurse. They incorporated the training of these para-medical people into the medical school curriculum. Now, I am told, American medical education is examining the con-

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tent of this indispensable training. Legal education has not even recognized the parallel problem. Yet, if we are to meet the predicted equality and meet the challenge of increased participation by all members of society, the law school must take steps at least to study potential training of para-legal occupational aspirants or, alternatively, we will see this function assumed by other, more socially concerned institutions.

Indeed pluralism is a major contemporary theme and promises to be even more important in the future. The law has, in a certain sense, tolerated demands for equality. But the evidence shows that we may be at a point of disengagement. Attorney General Katzenbach, at the American Bar Association Convention in 1965, reported:

Too often the poor see the law as something which garnishes his salary, which repossesses his refrigerator, which evicts him from his house, which channels his welfare, which binds him to usury, which deprives him of his liberty because he cannot afford bail. Small wonder, then, that the poor man does not respect the law.1

In the arena of science and technology, the law school must realize that the quilled pen has become obsolete. Whether lawyers like it or not, the computer has and will continue to refine the West Digest System and Shepard's Citations. As Shepherd S. Bailey, Jr., Director of the Princeton University Library, has observed:

The combination of the computer with remote copying technology will make some types of publications obsolete, such as scholarly journals, symposia, and certain kinds of reference works. It will be necessary to publish only the indices, perhaps with summaries or digests, and the wanted article can be transmitted on demand from a central station.2

Technology poses at least two questions for legal education. On one level, what are we doing about exploring the applications of this technology to legal education? If it is true that a basic purpose of law school is to teach the potential lawyer "how to find the law," what is going to happen when technology intervenes in the law library, which should be soon? At another level, what are we teaching our students about the uniquely new concept that a publisher may be selling not a book, but an image of a book which, unlike the traditional paper cloth-bound version, is easily reproduced in violation of copyrights?

Moore has observed that not only is bureaucracy here to stay, but that bureaucracies encourage a "kind of rule-making posture." Indeed, legal systems are manufactured and perpetuated in a bureaucratic organization. The private legal system developed by the bureaucracy is carried out through thorough empirical research of behavior,

12Id.
not through uncoordinated accumulated experience. In a similar manner, as Moore has observed, the contemporary executive empirically, carefully, and objectively examines facts (many generated from his "research and development" department) in making decisions. The lawman has been involved in the creation of private systems of law and in the decision-making processes of the bureaucracy in the past. But it is doubtful that the present legal curriculum is teaching him the methodologies for dealing with the new facts of science and technology which are necessary for today's professional advice. The lawyer's education has developed his sense of "common sense" but has not encouraged systematic observation of facts. The knowledge and methodologies of other disciplines, notably the behavioral sciences, are critical to the development of systems of looking at facts.

The future and, for that matter, the present practitioner of law in the United States has many gaps in his training. Notably, the gaps are due to an insulation from reality through an educational experience which unduly emphasizes the study of precedent.

As David Riesman observed in his talk to the Harvard Law School Sesquicentennial recently:

"Research" in the sense of empirical investigation into the impact of law and lawyer — the intricate two-way traffic between law and social subgroups — is only beginning; it is demanding, and nobody quite knows how to do it, but several people may perhaps do better than a single person if they bring disparate methodologies to the enterprise. . . . The amateurism of the law professor, the fact that he is a layman in terms of social science methods and their intricacies stands him in good stead, in warding off the call of the guilds and in heeding the call of the problems of the future. Yet, as I am sure many law professors do realize, there is a great danger in being too cavalier, too amateur, about the methodological problems within the central social sciences. This is evident in the use of the term "behavioral science" for some of the law sponsored ventures, and it is evident in some of the more interesting volumes of cases and materials which lumped together snippets from psychology, sociology, political science or philosophy without giving the law student any sense of the different languages of these breeds of men, or the intramural problems of knowing whether what seems plausible is actually so.\textsuperscript{14}

III.

All is not discouraging in the current curriculum of the law school. A most encouraging sign is that the law schools are beginning to think of problems in functional rather than categorical terms. Thus, we are developing courses in "poverty law" and "urban problems" rather than sticking to the traditional categories of torts, contracts, property, et cetera. The categorical approach necessarily limits

\textsuperscript{14} Harvard Law School Sesquicentennial, Sept. 23, 1967.
the considerations which the subject may encompass. The functional approach, on the other hand, forces the professor and the student to see the many faces of a problem, not all strictly legal. I might suggest that a way of “liberalizing” the law curriculum (and by liberalizing I mean introducing the accumulated wisdom of clearly related fields) would be to restructure more of our courses on functional lines. We must all chuckle at the Lord Chancellor in *Iolanthe* when he announced to a group of fellow peers that:

The Law is the true embodiment  
Of everything that is excellent  
It has no kind of fault or flaw  
And I, my Lords, embody the law.

Allow me to outline, functionally, a problem not frequently considered by the law because it cannot be found in any of the traditional categories. By approaching the problem functionally, the need for legal development becomes obvious.

In contrast to younger people, the older person typically has poor health and low energy; his educational background is comparably inadequate and out-of-date; he is often deprived of his occupational role; his earnings are cut off, and he is left on a fixed retirement income in the face of rising living standards and declining value of the dollar; he is cut off from the family group as his children leave home, his spouse ultimately dies, and he is left to live alone.

Particularly in the face of advanced technology, the implications of poor health and low energy, as well as inadequate and out-of-date educational background, are profoundly relevant for the law. Quite candidly, it is dangerous to allow the elderly person to operate that monster of death and destruction, the automobile. The law has recognized arbitrarily that minors are incompetent to perform certain acts. Is it not possible that adult “majors” are similarly incompetent? As with minors, the elderly have difficulty living alone. The law states that minors are dependent and support is decreed. Might it be similarly true that “majors,” unable to maintain themselves and likely to become public charges, should be supported by a responsible relative?

The educational levels of the elderly are inferior and clearly less adequate. Statistics on the education of lawyers make it unfortunately clear that very few elderly lawyers completed undergraduate education and a large number of them did not even attend law school. Should lawyers be licensed to practice their professional occupation for only a limited period of time and, indeed, should not all persons be re-examined from time to time on the currency of their knowledge?
The social sciences have given us some facts about "majors"; science and technology has created some serious problems for "majors"; we are aware that the value systems of older people are rich and deep. What has the legal system to say about elderly society? Anything? Shouldn't it?

IV.

It seems clear: We can get there from here. But we can't do it alone.
THE PLACE of philosophy in the future law school curriculum must be viewed in the context of the changes that are occurring in the social and political structure within which lawyers practice and the consequent changes in the legal profession itself. This context has been discussed by Wilbert E. Moore\(^1\) and Robert B. Yegge\(^2\) and the comments that follow are premised upon their discussions.

Dean Yegge indicates that a hallmark of the current situation is man's increasing mastery of change, not only in reaction to it but also in the creation of changes deemed necessary or desirable to attain certain goals, short and long range, and in the potential that man now may set the direction for his future. Human power in decision making coupled with the rapidity of change seems to compress time — the future becomes but the short step of implementing plans made in the present.

However, there may be surprises. Further, man is an historical creature. He cannot deny or escape the past which provides the matrix for his understanding of reality. Because he is a creature, he cannot avoid philosophizing about the nature and purpose of reality and human existence. The co-relation of man's historicity and creatureliness emphasizes the relativity of his philosophy. Thus, the legal realists of the early decades of the 20th century exposed the shortcomings of a self-contained, logically consistent, fully integrated philosophical system of law which seemingly was independent of those charged with its implementation. World Wars I and II again put in question the resort to authority as the final test of the right for the law. Man's dominion over his physical environment has injected new dimensions into the means-ends problem. As a result, the law today may be characterized as being in search of norms for its proscriptions and prescriptions. This search drives its inquirers to the more basic question, "What is the law?"

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*Associate Professor of Law and Director of Professional Responsibility Program, University of Denver College of Law; A.B., University of California at Los Angeles, 1943; L.L.B., University of California at Berkeley, 1949; B.D., Princeton Theological Seminary, 1960; Th.D., Princeton Theological Seminary, 1965.


Set free from a prior philosophical underpinning which found answers in the method of logic, and in quest for its identity and the guidelines to direct the planned change which is within the purview of lawmen, the law school is confronted with the fact of differentiation within the structure of the profession in American society. As Moore has pointed out, specialization is the trend and collective decision making the format for law practitioners in this society. In the process, new tasks emerge and old skills become diluted.

The development of new tasks entails anticipation in the training of new skills. The dilution of old skills creates pressure to spin off segments of the profession which can better be served by specially trained technicians. At the same time, a new perspective is called for which enables the specialized-collectivized practitioner to see the relation of his sphere of activity to the whole task and challenge of the profession in society lest he be lost in a sense of disengagement. Conforming to the niche of his speciality, he is subject to pressure to become a professional “drop out.”

Whereas the 18th century lawyer was seen as a legislator, and whereas the 19th century viewed the lawyer as a judge, the 20th century image of the lawman is in flux. The lawyer has been popularized as the advocate of justice and the rights of man by the mass media. He has been characterized as an architect of order whose task is to form the order for a changing society. He may also emerge as an important go-between who mediates and manages tension.

Cast off from the solidarity of an all encompassing philosophy, caught in the progression of specialization, and confronted with the opportunity for change, the diagnosis of the place of philosophy in the current law school curriculum is rather dismal. As stated in the resolution presented to a section at the 1965 meeting of the Association of American Law Schools,

While individual scholars in many law faculties have pursued the study of law as a theoretical, cultural discipline, the fact is that vocationalism tends to set the tone of the law schools — instruction in numerous unorganized "courses," minute specialization in most of them, lack of intellectual content in many of them that is usually expected in university study, and emphasis on technical competence. In this atmosphere scholarship is subordinated to standards of professional success; leadership both in scholarly contribution and in the formation of public policies has been lost to other disciplines. Non-legal scholars, however, are not equipped to meet the current challenge adequately. The fact is that the theoretical study of law has fallen in neglect between the law schools' vocationalism and the lack of legal training of social scientists, historians and philosophers.

3 Dorsey, Formation of American Section of International Association for Philosophy of Law and Social Philosophy, 18 J. LEGAL ED. 63 (1965).
To pick up the theme of Yegge's remarks, how do we get from here to there?

I. PHILOSOPHY AND CHANGE

It is tempting to place man at the helm of his destiny and frame a philosophy of law based upon human perfectability and power to determine the future. Scientific and technological advances seem to bring this possibility within the closer range of probabilities. Each step of progress, however, accentuates the necessity to consider anew man's purpose in it all. In a time when means and goals are problematical, the need for guidance in the choice of alternatives becomes more acute. When man both chooses the means to attain particular goals and decides between several goals in relation to these means, then the criteria for his decisions are of paramount concern for those who follow in addition to those who lead.

If lawyers are to provide order in the context of change—order that both contains that which is, and provides for that which is becoming—then the lawmen will need a philosophy adequate for the task. The inadequacy of any prior philosophical understanding of the law does not require its being ruled inadmissible because irrelevant, immaterial, and failing to prove or disprove an issue. The analysis of the internal structure of law does not lose its importance. Nor is the question of sovereignty and power beside the point. Also, it would be foolhardy to argue that the historical school of legal philosophers added nothing to an understanding of the nature of law. But these and other philosophical perspectives of the law do not exhaust the demands upon a philosophy of law confronted by purposeful change.

A view of the law is called for which is broader than substantive rules and hierarchies of power. Habit, custom, and the mores need to be kept within the framework of their relation to the jobs performed by those who can be identified as law professionals. In order to meet the challenge of change as now being understood, the law must be conceived as more than the legal order, law rules, or the judicial and administrative processes. It must include the process of ordering which is the special responsibility of lawyers. The concept of law is thereby turned to focus upon a particular way in which social relationships are ordered by identifiable actors who behave within the limits of certain controls over them because of the things they do and who thus have become accustomed to fairly well defined expectations. Ordering in this sense includes the ideological dimension of activity which justifies requiring conformity to norms in social

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4 This trilogy has been suggested by Roscoe Pound in many of his writings. See, e.g., Pound, Sociology of Law, in TWENTIETH CENTURY SOCIOLOGY 300 (G. Gurvitch & W. Moore eds. 1945).
relationships and also the initiation of new relational forms in the search for the right. It is preservation and creation in relation to certain ideals.

Within this perspective of the law, the lawman is conceived of as more than a purveyor of rules, a channel in the system of legal logic, an adjunct to an arm of political power, or a captive of his geography and history. The lawman is a participant in an ordering process which is directed toward the realization of higher objectives, conscious and unconscious, realized and unrealized. As a participant in this process, the lawman makes specific contributions toward the relative fulfillment of goals through the particular arrangements he devises, the rules he promulgates, the procedures he initiates, and the policies he declares. He is the high priest in the process toward order in the face of rapid change. As such he is in the position of leadership which offers the prospect of influence over the actions of others.

A caveat must be introduced in this discussion of change and the potential for determination of the future by human effort. Man is not perfect. He is finite and limited—as are his plans and predictions. In addition to the ubiquity of change which calls forth the serious look ahead, man experiences the reality of an ubiquitous evil as a source of strain which tends to produce change. Moral man lives in an immoral society. Ideals are not realized. Above all, man has the freedom to cheat. A philosophy of law which conceptualizes law as activity must therefore take seriously the imperfect nature of the ordering process in which the lawmen participate.

The lawman as participant in the ordering process which is the task of the law in American society will thus function within the limits of tension between that which is and that which ought to be. Such a lawman needs a view of the law which provides him with understanding of his role-status within the law process and also with the criteria for deciding among the various means and ends that are viable options in getting from here to there.

II. Identity and the Search for Norms

The question, "What is law?" is not new; nor is the search for norms to guide the legal structuring of relationships of recent origin. The new dimension for these questions is to pose them for an industrialized, bureaucratized, urbanized, secularized society. Philosophically and theologially the understanding of ultimate reality is

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5 W. Moore, Social Change 19 (1963). Moore uses the word "sin" which has certain theological connotations.
6 R. Neibuhr, Moral Man and Immoral Society (1932).
no longer an unquestioned given but one in which man in some measure participates. His stance in creating reality is that of a partner—with varying views regarding the identity of the other members of the partnership. The ontological understanding of the law is subject to like forces of relativity. Even the methodology of law has been put in doubt. Holmes challenged the method of logic as the life of the law in the late 19th century. The waters that were then muddied have yet to clear. As has been argued, many of the gaps in the lawyers' training are traceable to "an insulation from reality . . . which unduly emphasizes the study of precedent." Yet, precedent has a place in the task of the law to structure the relationships of contemporary society, especially in a time when change so accentuates the teleological questions which confront the lawmen in this task.

These several issues are not discrete but are interrelated. They are raised in a time when legal education is under close scrutiny as a result of the changes that are occurring within society and the legal profession. One change of particular note is the introduction of the behavioral sciences to dialogue with law professionals and the implications of this dialogue for a philosophy of law. The gradual appearance of courses in law school curricula dealing with law in process, law and society, anthropology of law, sociology of law, and the like, signal subtle changes of outlook within the profession. These courses may mark the initiation of a new concept into the law, or they may reflect changes resulting from the evolution of the idea of law. Be that as it may, attention to such subject matter and the defense of its integrity in the law school curriculum are evidence of a new look at the philosophy upon which the law has been taught for the past generations and its adequacy for the present time.

Meaningful interchange between behavioral scientists interested in the law and lawyers must be more than the refinement of tools for the kit of the law practitioner and the suggestion of problems which may be of interest to the student of society. This interchange requires a new look at the nature of law and the sources for norms which are given form in the ordering of the society. No longer is it necessary to justify the dialogue between the disciplines. Rather, it is time to look at the bases and the consequences of looking at the law in terms of the behavior of people in relation to stated and assumed ideals of law and the function and functionaries of law in society.

The interrelation of factors relevant to the introduction of a behavioral science understanding of the law to the law school curriculum and the development of a philosophy of law sufficient to undergird the task of law in a society marked by purposeful change

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8 R. Yegge, supra note 2, at 21.
is complex. It is not necessary to unravel the fabric of culture and the accumulation of knowledge to recognize the increasing literature based upon an attempt to understand what lawyers do and what the law does in society. For example, Lon L. Fuller has sought to formulate a philosophy of law based upon a conceptualization of law as activity and the legal system as the product of sustained purposive effort. Fuller's schema is a "new" natural law. Although the term "natural law" carries with it some unfortunate baggage from a prior time, the attempt to articulate a natural law philosophy for the contemporary lawman is grounded upon an understanding of man in social relationships and the elements of the human condition. Philip Selznick has examined the foundations upon which to build a fruitful collaboration between sociology and a natural law philosophy which suggests that the data of human experience may provide a basis from which norms may be formulated to guide action in the law ordering of society.

Although still emerging and far from being free of debate and doubt, the effort to formulate a philosophical understanding of law which identifies law as process, as activity, as what is being done by and within a group of practitioners in society is being made. Such a philosophy is required not only as a response to the demands of change and the invasion by behavioral scientists upon the sacrosanct domain of the law tradition, but also to suggest the parameters for that which is to come. Thus, as the lacunae between the claims of the law and the behavior of people are exposed by systematic investigators, lawyers recognize that if they are to perform their tasks responsibly as high priests in ordering a better society, then they must have a perspective consonant with the challenge and a new look at the data of human experience.

Two aspects of the state of legal philosophy in relation to the challenge of change to the law process have been considered — the need for internal reconstruction and the consequences of external contact with the behavioral sciences. External contact in the formulation of legal philosophy, however, cannot be limited to dialogue with behavioral scientists. In the search for norms and the task of sorting means and ends, lawmen also need to engage in conversation with ethicists. Just as dialogue is now in process with behavioral scientists, likewise bridges are needed for exchange with the professions which are engaged in the task of understanding values and articulating norms for human behavior based upon those values.

8 L. Fuller, The Morality of Law (1964). Fuller has written several items in this field. For a critique, see Summers, Professor Fuller on Morality and Law, 18 J. Legal Ed. 1 (1965).

No panacea will be found for initiating interchange between law teachers and ethicists in all law schools. The addition of philosophers to law faculties, interdepartmental seminars for faculty and students at universities, or specially convened workshops may be answers for some law schools. Certainly, the experience gained in the introduction of behavioral science concepts and materials into law school curricula should be informative in these respects. In the first instance, however, concerted attention must be focused upon the needs for — and of — legal philosophy and the teaching of law.

The lawyer as high priest will not be all things to all men. He will be a specialist serving the narrow aspects of a particular need of some men. He will enlist cohorts in order fully to serve his client, be the client an individual or group, an actual or a fictitious person. How and where will the lawyer-specialist find the engagement which provides meaning for the relationship of his part to the whole? How and where will he be turned from vocationalism to a sense of the profession which gives leadership in the creation of social order? How and where will he see himself as more than a technician who dispenses rules of law to financially acceptable clients?

There is no single answer to these questions. But there is one experience common to all lawyers. All who are admitted by the elders of the profession to the campfire of recognition must pass through the halls of a law school. The law school is at the vortex of the socialization process whereby the law neophyte is transformed into the accepted professional. Therefore, the law school is in a strategic position in the formation of the law-professional’s understanding of the law, its purpose, and its potential.

III. THE LAW SCHOOL AND PHILOSOPHY OF LAW

The law school, although strategic in the professionalizing process, is caught in the midst of the failure of philosophy to provide a theory of law compatible with the demands upon it, the increasing pressure for specialized training to equip lawmen for the tasks which they are called upon to fulfill, and the predicament of being compelled to lay the foundations for an order yet to come out of the uncertainty of the present situation.

The philosophy of law which supported the teaching and practice of lawmen for the past 50 years will not serve the next 50 years. It is not altogether wrong; it was the creature of its time and was not called upon to answer the questions which now perplex the law professional. New knowledge, the power of man over his environment, the consequences of technological advance, and the pervasive-
ness of an urban ethos are several of the factors which have revealed the shortcomings of prior systems of legal philosophy. Yet, this recognition does not automatically usher in a fully developed system of thought to take up their places. Consequently, the law school must teach lawmen for the tasks now anticipated and given meaning by a philosophy that is still nascent.

Three observations are in order concerning the stance of the law school in this position:

1. The law school has no choice concerning the philosophy of law.
2. It must accept realistically its place within the structure of the profession and not relegate its responsibilities to others.
3. It must maintain its freedom to seek out new ways to inject philosophy into the profession.

A. The Lack of Choice

The law school has no choice in regard to a philosophy of law in the sense that it can opt to ignore the problem and pretend that its curriculum is philosophy-free. The law it teaches, the perspectives it inculcates in its students, the courses deemed relevant to be taught, and the methods used in teaching them will reflect a philosophical point of view concerning the law. The absence of any concerted attention to legal philosophy as a scholarly discipline is no test of whether a philosophy is being taught. Such absence may more properly suggest a proliferation of legal philosophies.

The choice before the law school is to decide whether the philosophy which pervades its curriculum and teaching methods is sufficient for the task of the lawmen being prepared for service in the light of the changing structures of society. It is necessary to appraise the philosophical understanding of the nature of law which provides the foundation for the law school subjects being taught, their content, and methods of teaching.

Unanimity of viewpoint among all law schools is neither expected nor desirable. The first step in becoming aware of the direction toward which the law and the law schools may be headed is to look consciously at the philosophy of law now being proclaimed. Thereby the stage can be set to examine critically the sufficiency of viewpoints in the light of current knowledge.

Critical examination is but an initial step. To linger overly long with institutional introspection is to detour the development of the philosophy of law. It is incumbent upon the law schools to initiate the study of law as it relates to and is one of the processes of change now being observed.
B. Law Schools and the Structure of the Profession

In responding to the hue and cry for a philosophy of law compatible with the reality of social relations now becoming, the law schools must recognize and accept their place within the structure of the profession. Their responsibility must not be relegated to others. Two related ideas are involved in this injunction: The law school as an organization of law teachers has a function which is distinct from that of the law practitioners and more than "just teaching the law"; and, the responsibility for providing leadership in the development of policy may shift by default from the law schools to the bar associations.

The offering by a law school of studies in the law is conditioned upon a legal philosophy. As argued above, integrity in teaching requires realism regarding the philosophy which undergirds such teaching.

However, the differentiation which marks the change in social structures applies to the law schools. They are subject to the same pressures for change as is the law practitioner. Specialization, urbanization, inequality, and pluralism impinge upon and affect the law school. It cannot divorce itself from history and plead immunity from the forces of change.

One dimension of differentiation — specialization — has particular significance for the law schools. Among other characteristics, the law school represents that segment of the legal profession which is analogous to the board of directors of a manufacturing concern. The teachers of the law are in a position to influence strongly law policy. The place of the law journal and scholarly writing within the profession of lawmen must be appreciated. They provide a communication network, formal and informal, for the exchange of ideas and the initiation of change.

Consequently, in the market place of matters pertaining to the law — its definition, function, and goals — the law school fulfills a vital function in exploring new vistas and offering new ways of thinking and acting. At a time when the law seeks to know itself and to locate its bearings for future action, the teachers of law have a peculiar opportunity and an especial responsibility to think through and articulate the philosophy upon which they proceed.

Responsibility for the development of legal philosophy is not the sole prerogative of the law teachers. It is patent that all lawyers — be they practicing attorneys, teachers, judges, or association administrators — function in relation to a philosophy of law and so have some responsibility for its formulation. A legal philosophy

11 W. Moore, supra note 1.
undergirds their livelihoods and therefore, it can be argued, should be of concern to them. Responsibility in this general sense is important and hopefully more attention may be directed to it by all law professionals.

The concern at this juncture is with the law schools and the peculiar responsibility for a viable legal philosophy which is theirs because of the place of the law school in the training of lawmen. The existence of two organizations such as the Association of American Law Schools and the American Bar Association indicates that the interests of the lawyers who identify with them respectively may be distinguishable although allied in many respects. The growth of the American Bar Association and its aggressiveness in the meeting of new demands on the law may facilitate its assumption of leadership in developing a philosophy of law. Cooperation in the effort would appear to be advisable and consideration should be given to its enlistment. However, in the first instance the law schools are confronted with the possibility that default in understanding the nature and purpose of law from within their ranks may lead to a growing subservience of the schools to the organized bar in regard to the content of the law school curriculum and the philosophy which pervades the teaching of law. There is merit in maintaining the independence of the law school from the pressures of the organized bar associations in order to preserve the freedom necessary to the educational enterprise to permit experimentation and innovation.

C. The Need to be Free

The introduction into the law school curriculum of a philosophical view of law which conceptualizes law as process and seeks norms from an examination of the conditions of human behavior, when coupled with an increasing dialogue in depth with behavioral scientists concerning the function of law and lawmen in society, may open the door of a Pandora's Box, particularly if the law school loses its freedom to experiment in course offerings and research. The law school must retain the freedom which will enable it to pursue the truth from the perspectives of the philosophy of law which guides the curriculum and the areas of human behavior deemed critical for study. Freedom is a relative term and its limits will vary depending upon individual law schools. At least two freedoms are necessary in regard to the revivification of legal philosophy in the law school curriculum: the freedom to innovate, and the freedom to become involved.

The law school needs the freedom to introduce new courses into its curriculum without pressure from the organized bar toward the preparation of students for bar examinations. In the first place,
preparation to pass the bar examinations can be offered in well planned and executed bar review courses conducted in conjunction with or independent of the law school program. Secondly, the determination of subjects deemed relevant to the practice of law is a two-way street in which direction from the law schools to the organized bar is as essential as from the bar associations to the law schools. In this connection, the law school should have the option of changing the criteria for specifying the knowledge deemed to be of primary importance in the practice of law.

Thus, a philosophy which stresses the process of law and involvement in this process by law professionals may suggest that corporation law be viewed in terms of the locus and hierarchy of control and its consequences for a free enterprise economy, for the responsible use of natural resources, or for the distribution of purchasing power rather than in terms of the limits within legislative enactments to which powers can be conferred upon the fictitious entity called the corporation. Or, a course in contracts might focus more upon the nature of the contract as a means of arranging relations and providing a private law to govern individuals than in terms of offer and acceptance, consideration, performance, and the remedies for breach of contract. In addition, such a legal philosophy may suggest that required courses be in history, philosophy, and the legal process, leaving the electives to courses oriented toward learning law rules necessary in the practice of law.

The freedom to innovate should include the new dimensions of education now taking shape within the profession, for example, continuing education. The possibilities for retooling and introducing new ideas into the profession have yet to be exhausted within this field of activity. The format and content of specific courses offered to practicing lawyers will reflect a legal philosophy; a change in philosophy will require a change in the courses.

A third area for innovation is suggested by the programs conducted at law schools during the summer months at which law teachers assemble and engage in the process of cross-fertilization. The law schools can provide the sponsorship for conversations in depth by law teachers in regard to the implications of change for the teaching of law and its demands upon and for a philosophy of law adequate to give guidance to law teaching and practice.

The second freedom here suggested is the freedom to involve the law school in the processes of law in ways other than preparing lawyers-to-be for admission to the profession. A philosophy of law which accentuates the law process of ordering society may put in question the accustomed stance of the law school in remaining somewhat aloof from societal processes except for the published writings
of individual legal scholars. Such a philosophy may suggest that the law school has a responsibility for collective action in the political and social life of the community. The inclusion of a course in legal philosophy oriented toward process and change in the law school curriculum may entail involvement by the law faculty in ways not altogether within the patterns of past behavior. It is recognized that there is an element of activism in this suggestion. Perhaps this activism is one of the differentiating aspects of the new philosophy that is taking form. It may reflect a change in the understanding of human purposive effort in a time when man can effectuate his plans within known limits of probable success.

CONCLUSION

In conclusion, it has been argued that the time has come to recognize that the philosophies of law which provided the base for the teaching and practice of law during the late 19th and early 20th centuries are not adequate for the current time. Man has increased his control over the environment in which he lives and his powers for making decisions to plan and implement the structures for social life in accord with values deemed important enough to preserve. A new legal philosophy is needed which accounts for the changes that are incumbent upon the law-professionals in an industrialized, bureaucratized, urbanized, and secularized society.

In the context of these changes, the lawman is more than a dispenser of law rules; he is a participant in the creation of social order and his function as a professional takes on new dimensions from those of the past. The criteria for deciding between alternative means and goals now require examination; the lawman needs to understand the norms and the bases by which he sets the order for the future.

The law school is in a strategic position to develop, articulate, and implement a philosophy of law adequate for the task of lawmen in contemporary society. However, the place of legal philosophy in the law school curriculum will depend upon that philosophy and the source from which attention to the problem is derived. In this matter, the impetus needs to come from the law schools.
SCIENCE AND TECHNOLOGY AND THE FUTURE LAW SCHOOL CURRICULUM

By Mark S. Massel*

Many years ago Professor Lippman, an outstanding agricultural scientist, said that a basic problem which confronts the scientist is the relationship between himself and the philosopher. The total of knowledge is expanding rapidly in scope and depth. As a result, the scientist who formerly covered the entire field of biology had to confine his study to insects, then he narrowed his field to beetles, to black beetles, and finally to the hibernating habits of black beetles. On the other hand, the philosopher who tries to keep in touch with all knowledge cannot absorb all the additions to all fields. Hence, the scientist gets to know more and more about less and less while the philosopher gets to know less and less about more and more. Lippman said that one of his mathematical associates concluded that some day the scientist would come to know everything about nothing, and that the philosopher would come to know nothing about everything. Hence the specialist-generalist dichotomy achieves increasing importance as the years roll by.

The relationship between the terms “specialist” and “generalist” is not clear. As we shall see, this relationship has considerable importance in any consideration of the place of science and technology in the law school curriculum. The problem is a reflection of a much wider issue affecting the future development of the learned disciplines.

I. FUNCTIONS OF THE LAW SCHOOLS

A. Development of Lawmen

Before considering this problem, it would seem useful to delineate the functions of the law schools in three areas: development of lawmen; research in public policy issues; and cooperation with the rest of the university's components — the liberal arts, the social sciences and the technical disciplines — in promoting an appreciation of the role of law in society.

There is a growing need for law graduates of breadth — men and women who are well-equipped to handle the problems of present practice, and who have broad backgrounds for coping with the many novel problems (which we cannot predict with confidence,

*Member, Senior Staff, The Brookings Institution; M.A., J.D., New York University, 1934.
today) they must face when they reach the prime in their own law careers, either in corporate, governmental or private practice. These are conflicting goals which must be balanced. If the law schools produce young law students who enjoy a broad, philosophical approach to law without the capacity to handle the bread-and-butter stuff of law practice, most of them will not enjoy a good start in their legal careers. Generally speaking, law firms and government agencies expect a new young lawyer to be a competent journeyman. If he does not have a firm grasp of the basics of such areas as contracts, torts and corporations, he will not have a chance to use the broader philosophy which emerges from an excellent legal education. The task of preparing lawmen for future practice is complicated additionally by the obvious fact that no law school can deal with the specific problems which many of its graduates will face twenty years after graduation. Hence, it seems clear that the law schools cannot provide students with a substantial degree of specialization. Their essential task is to prepare lawmen for their future specialization, one which will be achieved as social and economic trends indicate the future needs. This task requires that the schools recognize an appropriate balance between the skills of the "generalist" and the "specialist."

1. Place of Public Policy

This balance depends on a clear understanding of the relationship between issues of public policy and of private practice. Many people mistakenly believe that there are clear lines of demarcation between the educational treatment of problems of public policy and of legal skills. They overlook the need for a firm view of public policy issues in order to cope with the future problems of law practice, problems which will be affected by the burgeoning role of government and its effect on the day-to-day lives of individuals and enterprises.

The importance of providing future lawmen with an understanding of public policy issues is indicated by the tremendous influence exerted by the private practitioner in many areas of regulation. An illustration can be found in the public utility industry. There is little doubt that the regulation of public utility rates has failed to meet many of its objectives. Innovation in the public utility field has been repressed because our regulatory process offers few incentives for higher efficiency and lower costs. There is considerable evidence that the main emphasis of public utility regulation has been on the control of profits rather than the regulation of rates. This situation has developed from the highly legalistic atmosphere, combined with rather mechanical approaches to accounting which
envelops the regulatory process. As a result, there are few incentives to innovate or to promote new methods.

There is considerable evidence that the lawyers for the utility companies have played an active role in the development of this process. While they may argue for higher rates of return, they never pose the issue in terms of incentives. They go along with the process of regulating profits because it entails profit floors as well as ceilings through the regulation of entry into the business and the acceptance of costs. Hence, the shortcomings of this area of regulation cannot be ascribed solely to the regulatory agencies or the courts.

A similar situation restrains innovation in methods of distribution. It will be recalled that the Robinson-Patman Act prohibits price discrimination, but allows price differentials if they can be justified by differences in costs. This proviso was added to the bill in order to permit innovations in distribution. However, the records show inadequate progress in applying this proviso, a deficiency that can be laid at the door not only of the Federal Trade Commission, but also of the private bar. By and large, the legal profession has failed to seize the opportunity to develop reasonable methods for determining and proving the cost differentials involved in different methods of distribution.

These are but two of many illustrations of the important role that the private lawyer plays in the development of public policy. They indicate a growing need of an appreciation of public policy, particularly in the regulatory area. They demonstrate the possibilities of better serving a client's interest through an understanding of the flexibility allowed by regulations and by a more fruitful contribution to the development of the regulatory process.

Some mistakenly assume that there are substantial differences in educating young lawyers for public service and for private practice. There is a growing need for a basic review of the future functions of the lawman, what understanding he needs for various types of practice, and what he should achieve in his law school career. Such a review should encompass the developing role of the lawyer in policy formulation as well as administration, working for government or private business, for small clients or large.

2. Function as Middleman

In the course of his work, whether in negotiation, in litigation, or in the formulation of rules and policies, the lawyer has to assume more and more of the functions of the middleman, or the translator. For example, the administrator in government or business may lack the scientific background needed for many policy decisions. Therefore, the lawyer is frequently required to learn enough about the
scientific issues to be able to apply them in formulating the policy alternatives. On the other hand, if the administrator is a scientist, the lawyer has to provide the background for an understanding of the pertinent legal policy issues. Indeed, he frequently must make the scientist or engineer aware of the importance of the legal details of a contract or regulation.

The development of lawmen who can serve as middlemen and who can apply scientific knowledge in the solution of legal-policy problems involves the generalist-specialist problem. The lawyer cannot absorb the knowledge of a physicist, a construction engineer, a medical scientist, an economist, or of any other group of disciplines. The law schools cannot produce renaissance men. Efforts to encompass any or all of these fields in the course of law study would probably produce poorer lawyers and third-rate knowledge about the other fields. Black letter law makes a poor lawman. The equivalent in other disciplines is no better.

The essential interdisciplinary task of the law school is to provide its students with an awareness of the various disciplines and a general understanding of their application in the solution of legal problems. Such an understanding calls for an appreciation of the problems encountered in working with practitioners of the other disciplines. Such an understanding calls for a general demonstration of the contributions that can be made by the various disciplines and of their limitations, a demonstration which may be achieved by selected case studies covering the specific applications of the disciplines in solving legal problems. Above all, such an understanding requires that the future lawman should acquire an appreciation of his own limitations in treating scientific issues, whether they fall within the rubrics of physical, life, or social sciences.

B. Public Policy Research

Turning to the second function suggested for the law schools, the area of public policy research has taken on increasing importance. The many drastic changes in our society in the past several decades require significant appraisals of our legal institutions. We need to update many aspects of the law and of its administration. Above all, we badly need a firm understanding of a multitude of current economic and social problems which society must consider.

Scientific and technological development provide one of the most important areas of policy research. Spectacular progress in the applications of atomic energy, of electronics, of space exploration, of medical observation, and of oceanography have demonstrated the present need for reappraisal. These current developments portend striking, unimagined changes in the future.
Policy research should not be divorced from the essential function of law schools — the education of able lawmen. Rather, policy research should provide important support for improved understanding of the nature of legal problems. To this end, research should be utilized to strengthen the teaching function, to provide law teachers with an improved appreciation of the current problems involved in adjusting our legal institutions to the socio-economic-scientific conditions of today.

C. Role of Law in Society

The third goal, the development of an understanding of the role of law in other parts of the university, should not be overlooked. The lawyer cannot be the sole policy maker in our society. The law schools must find some way to bridge the communications gap between themselves and the other disciplines which are involved in policy formulation. Education in science and technology is an important case in point. More and more public policies will be influenced by determinations and decisions of scientists and engineers. In many areas, such as atomic energy, the administrators do not enjoy a background in law or the social sciences. They need an understanding of the society within which they operate. Many of them are unaware of economic, social and political currents. Though they are essentially in favor of a democratic process, some forget all this process when they deal with a technical problem. One sign of this can be found in the writings of such a thoughtful person as Vannevar Bush. Writing on the frontiers of science, Bush maintains that science can come up only to the point where important value judgments must be made. At that point, he believes that we must go directly from science to the humanities. He fails to understand the application of the social sciences and the law in defining the issues and problems, definitions which are sorely needed before the value judgments of the humanities can be brought into play.

II. Science and Technology in Law School

Against this background, how can the law student develop an understanding of science and technology? Several interesting seminars in law and science have been conducted in law schools. These have been valuable courses. However, it seems to me that they do not provide a satisfactory method. We need to find ways to make students aware of the application of science and technology in every field of law. Such an awareness can be achieved most effectively by demonstration in each course rather than by special seminars which are not related to the specific subject matter of conventional fields of study.
The application of this approach can be demonstrated with examples from two areas of law, contracts and administrative law. Why should science and technology affect problems in contracts? Consider the problem of a contract covering the development of a new product, a contract written when the item is merely a gleam in the eye of an engineer. Nobody knows whether the product will work, how it will be made, or what it will cost to produce. Nevertheless, many lawyers write such contracts in terms that are just as definite as agreements covering wood-cased lead pencils whose specifications are clear. There, lawyers fail to recognize the difference between a physical specification and a performance specification. They fail to recognize the essential issue in contracts of this type: the distribution of the investment risk. Despite the uncertainty, many such contracts specify the price of the final product with no clue to the level of production costs or prospective sales volume.

Such illustrations can make students aware of the need even in such bread-and-butter courses as contracts, to communicate with administrators, scientists, or engineers to achieve a basic understanding of the subject matter of the contract before starting to draft, to negotiate, or to litigate.

The second illustration derives from administrative law. A statute aimed at preventing cancer sets up a standard for foods. It provides that a product may not be sold if the injection of any ingredient into an animal will induce cancer. The Department of Health, Education and Welfare administers the statute.

Several years ago tests of the insecticide residue left on cranberries showed that it could induce cancer in mice. I am told that a person would have great trouble in eating enough cranberries to develop cancer from that residue; indeed, it would be an impossible feat.

At least two errors were needed for this result. The drafters of the statute overlooked, or did not understand, the issue of proportions. The enforcers did not appreciate the nature of the problem in administering the statute, and such problems will attain increasing import with the further development of scientific observation. Means for observing molecules or lesser “quantities” may make it possible to detect cancer-producing elements in an increasing number of products. Conceivably, many common household foods, such as bread and milk, could be forced off the market by a literal interpretation of the statute.

III. Development of Faculties

Any serious effort to demonstrate the application of science and technology in conventional law courses (not to mention several other disciplines) requires the development of competent teachers.
Such a program cannot be satisfied by providing separate teachers in the other disciplines. Nor can it be achieved by a course in the subject unless the student finds an understanding of the problems in the other courses he takes. We cannot expect students who are just absorbing the vocabulary of the law to learn some vocabulary in science and technology, and to correlate those fields when their own professors have not yet achieved such an understanding.

The materials needed for such teaching must be created. The present casebook method is inadequate. Most of the cases present a distillation of facts used by an appellate judge as a jumping-off place for a discussion of the legal issues. We need to produce more insightful descriptions of problems such as the cranberry episode and the development contract. Rich materials of this type would give the student an opportunity to engage in substantial exercises in problem-solving, using the attractive activity which helps to make many law courses so interesting.

Another crucial problem is how to interest law professors in public policy research. A related need is to promote active cooperation and interaction with the other disciplines in analyzing public policy issues. Such cooperation would necessitate, of course, an effort to provide other university faculties with an understanding of the role of law in our society and an appreciation of the importance of the public policy issues — an endeavor which is worthwhile for its own sake.

There are no clear solutions for any of these problems. They provide an important opportunity to bring the law schools up to date. They offer the Association of American Law Schools and individual institutions the possibilities of engaging in absorbing, even exciting, experimentation. Above all, they can help to provide society with the valuable function that law faculties can offer.
HISTORY AND THE FUTURE
LAW SCHOOL CURRICULUM

BY LAWRENCE M. FRIEDMAN*

THERE are generally two approaches to the teaching of history in law schools today. In some schools it is taught as a separate subject. The emphasis is on English legal history, and the teaching matter is dominated by the English tradition of legal historiography. This tradition stresses the medieval period of English law, and to a lesser extent the Renaissance. The modern period is almost wholly neglected. Partly this is so because some of the greatest English legal historians were medievalists. Maitland is the best known example. But there is more to the story. Plucknett's *Concise History of the Common Law*, the leading textbook on the subject, devotes more than 90 percent of its pages to the period ending with the enactment of the Statute of Uses. The book runs to some 750 pages. It is doubtful if fifty pages deal with the last three centuries of British legal life. The discussion of real property devotes 83 pages to medieval times, ending with the passage of the Statute of Uses, in the sixteenth century. After this, the treatment dribbles away into a mere sketch. Not a word on twentieth century developments appears.

Plucknett's allocation of space would be most peculiar for a book which purported to treat generally the history of English law. If one read a history of England, or China, or the United States, one would find a very different sort of organization. Typically, the author would rush through the early parts and slow down the closer he got to the present. He would do so for two general reasons: first, because more is known about more recent times; and second, because the more recent is usually more relevant.

Now it is clear that Plucknett — and teachers of English legal history in general — have some other, very different theory of relevance. This theory of relevance is revealed in Plucknett's title. He has written a concise history not of *English law* but of *the common law*, which is by no means coextensive with the whole of English law. The common law, he assumes, is an entity that was fully formed by the time of Henry VIII. Accordingly, most of that which has gone on since then is not part of the core history of the common law. It is in some ways a further unfolding of common law or a further

*Professor, University of Wisconsin Law School; B.A. 1948, J.D. 1951, LL.M. 1953, University of Chicago.

emanation from its principles; perhaps it is even decay. But the im-
portant thing was the development of the common law, and this was a medieval job.

Under this view, American legal history has nothing much to contribute to the story. And sure enough, very little is taught in American schools. The teaching of American legal history seems even less to American tastes than the teaching of English legal history. Relatively few schools offer a course in legal history at all; even fewer offer courses in American legal history. American legal history is distinctly an academic backwater.

The second approach to the teaching of legal history is to insert it piecemeal in non-history courses. Particularly in real property courses rather large chunks of old law are inserted into the regular course work. It is an apparent advantage of this approach that these chunks come to the attention of all students, not just the few who might elect legal history. This approach, one might argue, makes up for the lack of a separate course in history. The argument is specious, however. The people who teach the courses by and large have no competence in legal history. Their history has been pulled out of its social and economic context. It is totally meaningless to the student and to the professor. Moreover, it is exceedingly technical and boring.

This approach, too, is heavily dependent upon medieval English legal history. The case books purporting to deal with real property and with the formation of the law of tenure and estates are American books by Americans and used in American schools; but their historical aspect is exclusively English. These books devote time to the Statute of Quia Emptores; but they are unlikely even to mention the Homestead Act of 1862. The development of American land tenure is a colorful and relevant story. But no one teaches it or gives it its due. The pseudo-history of the second approach is useless under any theory. The sooner it is eliminated the better. Professors and students are embarrassed by it. Perhaps it even poisons the general taste for legal history.

One of the causes of the low state of teaching in this subject is the low state of the art. In America, the most distinguished historians of law were concerned, like their English contemporaries, primarily with English law in the medieval period. Oliver Wendell Holmes' The Common Law is a case in point. Holmes seems far more concerned with the ancient origins of bailment than with the cutting edge of American law in the nineteenth century. In part,

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American scholars emphasized English antecedents because they shared the view that the common law was the proper field of study and that the common law was an English development adopted without essential change in this country. This theory of course is no longer tenable. Moreover, English legal history has ceased largely to be practiced and to be written in this country, with some notable exceptions, such as Samuel Thorne.

American legal history has never fully gained the prestige that English legal history has lost. It has, however, shown a good deal of life in recent years. *The American Journal of Legal History*, founded about 12 years ago, devotes more than half its space to American legal history. There is a society devoted to the cause. A number of excellent legal historians are at work in the law schools. A disproportionate amount of energy, however, is still going into legal antiquities. The only major legal historian who works on the nineteenth century or later is Wisconsin's Willard Hurst. Other fine American historians—George Haskins of Pennsylvania and Joseph Smith of Columbia, for example—specialize in the colonial period. There is no such thing as medieval times in the United States. The closest one can get is early Massachusetts.

There are those who love legal history, for its own sake. Naturally, they decry its lowly state. But for the rest of the world of legal education, the tough-minded question has to be asked: how harmful is the current neglect? Is there any real need for legal history in the law school curriculum? I have no hesitation in saying that conventional legal history is unnecessary. The piecemeal approach is positively harmful. Conventional whole courses are fine; they may be superb. For those who want to teach them, and those who want to study these courses, they are or can be rich, stimulating experiences. They are to be encouraged because we wish to encourage intellect, variety, and humanity in legal education. But no school need despair if it lacks *this* kind of history. If the school has limited funds and its history incumbent gets a better job or dies or tires of history, the school might as well consider a sociologist or an African law specialist as another historian of law.

On the other hand, there is a sense in which legal history, particularly American legal history, could serve a vital role—almost an indispensable role—in the curriculum. And that is if the course concerns itself with the legal past not as history, not for the sake of history, not for any interest in origins or any antiquarian interest, but simply because of the need, if law is to be integrated with the social sciences, to understand the temporal and developmental aspects of institutions. This means looking at how they respond to specific
economic and social problems in the course of their experience. Any
history can be used for this purpose—ancient history, the history
of Greek law or Roman law, or Chinese law for that matter. But the
job can most easily be done with American materials. The history of
American law in the nineteenth and early twentieth centuries presents
to the student the fewest technical barriers. The language is English.
The books are at hand. Here the data is the fullest. Here the rele-
vance to current problems is the greatest, and student interest is
likely to be at the highest.

In a course on American legal history, many social problems
might be illuminated. The confrontation of the races is one such
problem. There is fascinating material on the history of the law of
slavery. There is the dark chapter of race law in the reconstruction
period and thereafter. It is all one story, from the introduction of
slave labor up to and even past Brown v. Board of Education, with
important interconnections and ramifications. The present state and
future prospects of tort law can be made much clearer, I think, by
considering what past experience shows to be the influence of tech-
nological and economic change on tort law. Similarly, the progres-
sion from the poor laws through Social Security to the OEO is all of
one piece. The laws of behavior that produce one program are the
same as those which produce another. What changes are circum-
stances; and these should be studied in context. I would like students
of land use problems in modern urban and suburban settings to bear
in mind the tangled story of the growth of their system of control
from nuisance law through the restrictive covenant to zoning and
subdivision ordinance. But I would like each phase considered not
as an interesting curio, but as a piece of data, as a point to be used
on a social scientist’s curves, charts, and graphs. I would like history
to be treated as the record of past experiments, conducted by men
and by the invisible hand.

In other words, history might be used not to show how much
strength or continuity stems from tradition, from the history of the
legal system, but in a sense to show exactly the opposite. It could
be used to show how, in any particular period, the new emerges from
the mixture of that which is historically given, and the social and
economic currents of the time. Precisely this problem—of adjust-
ment—faces every historical period. History as the story of that
eternal confrontation is the very opposite of antiquarianism. And
it is in the highest degree relevant to the needs of current legal
education.


4 A notably successful attempt at making such a correlation is Malone, The Formative Era
of Contributory Negligence, 41 ILL. L. REV. 151 (1946).
I have described what I consider the ideal role of American legal history in the law school. The problems it faces are enormous. There is a critical shortage of personnel. This leads to a vicious circle. No one is training American legal historians. The demand is small, the number trained is small. The number trained is small, the demand is small. Only a handful of people are working in this field. It is not heavily supported by foundations or by government. There is a shortage of teaching materials. What is sorely needed are materials which would serve as a sociological and economic history of American law, a history of American law which would infuse the subject with whatever we know (or can guess) on the basis of social science data. Nothing of the sort is available. Something has to happen to break the cycle, if there is going to be any kind of vital legal history offered in our law schools. Social scientists themselves must bear some small part of the blame. They have shied away from historic data. They have preferred, in recent years, to approach behavior through controlled experiment, survey research techniques, and the statistical analysis of current data. But there are still some who look on history with respect. And lately history itself has become much more interested in the social sciences. American legal history — particularly the last hundred years of it — would lend itself admirably to the use of social science techniques. In general, data is available. The data is not as full as one would like; but it is much fuller than in the remote past; and far more accessible. Good historical studies have been done using such mundane bits of information as are supplied by building permits or census reports. An excellent doctoral thesis used Philadelphia bankruptcy statistics in a study of the history of the mortgage.

Enormous data banks are available in county courts. Court records are sometimes difficult to work with, but they are there. For those interested in property systems, there are real estate records in (comparatively speaking) marvelous preservation. Unbroken series of will records go back in some communities to the seventeenth century. The use of these might enable us to trace very precisely the connection between changes in legal institutions and changes in family structure, the economics of family property, family settlements, land tenure, and a whole host of other subjects.

This kind of work is beginning to be done by historians, and if it develops in any bulk, a relevant American legal history becomes more and more likely. This would be the kind of legal history which


7 See Friedman, Patterns of Testation in the 19th Century: a Study of Essex County (New Jersey) Wills, 8 Am. J. Legal Hist. 34 (1964).
is developmental in its approach; it would be sociologically, economically, and politically oriented. Courses of this kind are already taught in a few schools. It is the kind of history that is associated with the work of Willard Hurst. It is not, in my view, the only valid or even useful approach; but it is the most relevant approach, and the one which has the most legitimate claim on the scarce resources and time available in American law schools.

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SOCIAL SCIENCE AND THE FUTURE LAW SCHOOL CURRICULUM

By Wilbert E. Moore*

WHERE can social science be relevant if we are thinking of curriculum revision? Some of the obvious places have already been noted in earlier papers, and the evidence seems to be that moves are afoot in those directions. For example, what constitutes evidence and proof? What is the social science methodology of coming up with a verifiable statement of fact or relationship? There has been argument from time to time as to how much of this training the lawyer ought to have, because it may inhibit him in his adversary role. He may not really want precise scientific accuracy if that is against his client's interests. One still has to recall that there may be a difference in what the lawyer as a practitioner thinks of as evidence and legal proof as distinct from social science proof. It may be acceptable for him to tolerate both of these systems of truth and keep them in mind, but as a practitioner, he ought not to confuse them.

Another area which I think is of considerable interest to social scientists and lawyers is that of studies of the legal profession itself. By virtue of various commercial and noncommercial enterprises in the legal field a good deal of statistical information is available about lawyers. Missing, however, are many things of a subtler variety about the practice of law—such as, what does the law-man really do with his time? What are the proportions of trial work to negotiations, to office paper pushing, to public relations, to serving on boards, and to doing a variety of things which are not the practice of law, but rather are efforts to bring business to the firm? This latter activity is a valid function. Much of the voluntary service in the United States on boards of trustees, on fund-raising campaigns, and so forth, does come from this highly-educated portion of the community.

A side comment should be made with reference to the legal profession. Dean Yegge spoke about the lack of calling on the part of the legal profession. Perhaps it is more that the training in law is more directly used by the trainees as a stepping stone to some other career than is common in other professional fields. Moreover, there may be among lawyers an excessive orientation to where the

*Sociologist, Russell Sage Foundation; Visiting Lecturer with the rank of Professor of Sociology, Princeton University; A.B., Linfield College; Ph.D., Harvard University.
money is, rather than to where the need is, which may not be the same place.

It seems that if we want people who have some sort of an orientation to the fraternity, and particularly to a sense of having a high calling, then some of the things such as the history of law, even going back to its medieval origin in terms of the common law tradition, may be professionally valuable, even though they may not have any great current relevance, because they illustrate the identity of law with a continuing tradition in a high calling. Perhaps this is a subtle point, but a very important one.

What is the expected output of a legal education? A fairly high proportion of people can pass the bar in some jurisdiction, but surely that does not justify a three-year curriculum. It is not what the framers of educational programs had in mind as the mature output of professional training. What should professional training be? Certainly not the use of the human mind as a very inefficient data-storage and retrieval system, particularly since the data waste very fast and spoil quickly. Rather, what is desired is a set of habits—habits of mind.

First it is important to develop the habit of humility, of finding out, of not being certain. The medical fraternity has developed with high skill an air of assurance in dealing with clients, however uncertain they may be. The legal fraternity, in dealing with a client who desperately wants assurance that the odds are in his favor, will tell him that it seems to be this or that, but that if a certain judge is assigned, it would be better to negotiate and not go to trial. Thus, the client is left with a great air of uncertainty. Thus, we have to train clients. Often the problem of professional practice is that the clients will not play their role right. This habit of humility, which is kind of forced on lawyers in our particular legal system, is one which should be expected, and, on the whole, is an admirable trait.

The second habit is that of continuous learning. If information spoils rapidly, then the problem is to keep at it and to keep finding out what is going on and not assume that simply because one has an LL.B. or a J.D. and has passed the bar, that now he is for all time qualified to practice law. Professional obsolescence will set in in the legal practice at least as fast as in other fields over the coming years, and may be really severe if the individual does not approach his profession as a lifetime of learning rather than a lifetime of practice of things once learned.

Thirdly, the lawyer is a problem solver, as any professional who is helping clients is, in some degree. He wants to solve the problem for his client, whatever that client may be, a public agency, a con-
stitutional convention, a corporation, or a hapless person accused of some misdemeanor or crime.

It does not make much difference what the substantive content of the legal curriculum is if the consequence of that content is the development of these sets of habits. A problem-solving course in medieval law would be better than a "hornbook" or "black letter" law course on some current field of legal specialty.

Aside from the business of social science methodology, where else can social science feed in, if not precisely into the legal curriculum, or at least into the legal university community, into the interaction of specialists as researchers, or into seminars?

One major area is the increased importance of the invention of organizations and new organizational forms. Organizations in the private sector are imitative of one another. One looks at another's organizational chart and says, "Yes, with but a little tinkering we can adapt that for our purposes." Increasingly, private organizations depend on the advice of organizational specialists, people who are specially trained in administrative science, theory of formal organizations or similar areas. Public organizations, on the other hand, are mainly the outcome of legislative processes which are dominated by lawyers. This means that whatever public organizational inventiveness is being exhibited is the outcome of people who are not necessarily well trained either in organizational theory or in the ways in which one can adapt various organizational forms to do particular functions and purposes.

Lawyers, as legislators, or occasionally in administrative and similar agencies, are experts at rule-making, but not necessarily experts in estimating the probability that the rules will be obeyed or that they will in fact accomplish their purpose. Here is where a juncture of skills is appropriate.

The social scientist may be able to say, "That's a very interesting rule, but in view of X, Y and Z — the probability that that rule is going to get you where you want to go is not very high. Let's try it another way. Let's try it in a different formulation."

It is also true that lawyers are not highly enough trained, or their habits of mind well enough equipped, to do sequential problem solving. They tend to set up organizations and say, "Well, this is the way we're going to go about this," rather than thinking in terms of a sequence of steps in order to arrive at an outcome. They may get less help from the social scientists than they had good reason to expect, because the latter are not very good at it either. Therefore, we need to pay attention to what is currently called systems analysis, a concept which has been developed primarily in the engineering
field, but which is now being used in a variety of areas of concern both to regulate human order and to solve social problems.

What is different about what the Systems Development Corporation, the Rand Corporation, Arthur D. Little, Stanford Research Institute, or a variety of these places are doing from what, say, the well-trained social scientist is doing? Two notions of innovation have evolved, both of which are worth comment.

The first is the assumption that consequences have consequences; that is, that one is not doing a once-for-all set of problem solving. Rather he should look down the road and then back up and say, "All right. What would we have to do and what would that mean?" so that he gets the concept of lead time of first inputs, and the consequences of that leading on to some others. Sociologists generally do not think that way, and neither do lawyers on the whole. It is a very important part of organizational inventiveness and of social problem solving to have that perception which tells one that what he is dealing with is a sequence of moves and not simply a once-for-all solution.

The other notion which has evolved is that in the problemsolving development of a systems analysis, if there appear to be some factors on which one does not have good evidence, to say nothing of measurement, but which he yet believes are important or might be important to the outcome, the analyst assigns arbitrary values to them rather than not accounting for them. He is willing to settle for bad data, to settle for a plus or minus rather than a real quantity, or to settle for an arbitrary value. This often means that he comes out with less than highly precise on-target solutions, but they are likely to be better solutions than if one had not accounted for these things at all. Perhaps people not trained in all of the rigors of social science methodology have a slight advantage over those who think that one has to be rigorous in problem-solving or it is not worth doing at all, which, in the real world, may mean that he does not do it at all.

Systems analysis is a great bundle, and not a very homogeneous one, of what goes on. Operations research, linear programing, game theory, and cost-benefit analysis are also essentially in this mold of problem solving in a sequential series.

Another area not unrelated to what has just been discussed is social science's relevance to legal training and legal practice, and the use of law as an instrumentality of change. Twenty years ago this statement might have had some shock effect. It has none at all at the moment with most of the legal fraternity, certainly not with professors of law. The notion that law is purely a conservative force has been pretty generally abandoned. If it has not, the profession had better re-examine those antiquated notions and get some of them out of the practice. The articulation of social goals, including
new ones, seems a proper joint venture for the person who thinks in value terms and the person who thinks in instrumental terms, together with those people who may have some expertise at identifying goals on the basis of popular concern — people who know how to determine what the democratic goals of a society might be.

More and more our society is going in for planning, for a deliberate shaping of the future, and for stating future goals as to what the year 2000 will be like. How can it get there? This question applies not only to the articulation of these goals and the articulation of the social instrumentalities for achieving them, but also to thinking sequentially, and therefore not simply in terms of precedent and of the restraints on the system.

A helpful conceptual distinction is between teleology and teleonomy. Teleology is the description of a future goal and the behavior oriented to achieve that goal. Teleonomy consists of predicting that part of the future which probably cannot be controlled and making prior ameliorative or adaptive adjustment to that state of affairs.

In the dynamics of social inventiveness the effort is constantly being made to increase the teleological capacity and to reduce the effect of teleonomy of future states. Society has an extremely small power over the effect of both death rates and birth rates on the labor force, short of inhumane measures. The labor force of the year 2000 is pretty much at hand and its age structure is going to be highly predictable with very little margin of error, short of catastrophe. That can then be taken as a given factor with regard to a whole variety of other kinds of plans and implementation, such as urban congestion, demand for schools, labor input, and various kinds of economic production. This is not then a teleological state of affairs. There are going to be too many people, but no one is going to prevent that. Thus, the attempt is made to take such action as can be taken, or to take that fact as a parameter, or essentially as a datum.

Finally, let a challenge for joint social science and legal problem solving be put forth in reference to the national scandal of automobile insurance. If you have Blue Cross-Blue Shield Insurance, approximately ninety to ninety-three percent of the premiums paid for that insurance are returned to the insured population. In the case of automobile insurance, the percentage is perhaps thirty to thirty-two. The rest of the money goes to the profits of insurance companies, to claims adjustors, notably to tort lawyers, trial lawyers, to court costs and to the support, in part, of a fair proportion of trial court judges. One looks at that combination of interests, which have positive interests in the preservation of this wicked system, and he finds that it is a very difficult problem to solve. If one were thinking
in terms of systems analysis he would say, "Well, we may not be able to get ultimate causes, but where would we start?"

The basic problem obviously is the automobile accident. Thus, we need to know what can be done about the hardware technological problems, or about the psychological, or the sociological problems in reference to the accident rate. Perhaps one needs to ask if there are alternative ways, as has been proposed, of settling claims. Usually the analogy with workmen's compensation is the one that immediately gets into the conversation. Surely there must be other comparable alternatives to the handling of this problem which is clogging our courts and which, incidentally, supports probably the poorest segment, in terms of training and talent, of the legal fraternity.

The settlements are likely to be not only unjust in the gross, but it also appears that they are regressive. Those people who can best retain competent counsel and hold out for a just settlement are the ones who are getting just settlements. Others, who have no credit at the hospital or with their physicians and who do not have a variety of other amenities, including the capacity to identify an attorney, to say nothing of affording one, even if only on a contingent fee basis, are likely to be the ones who will take a quick settlement offered by the insurance companies. Again, a serious matter of social policy is involved.

Here, then, is an area where, recognizing the problem of the legal fraternity turning on part of its own, legal skills are absolutely requisite. One can see that a variety of other skills are requisite, not all of which are in the social science field. Some of these skills are in the technological area, such as, for example, electronic control of traffic and remote controls which prevent rear-end collisions, not because the driver has been educated not to tail-gate, but because the car will not tail-gate. It seems that the systems development approach is the only way in which one is going to get this type of problem ameliorated, to say nothing of resolved.
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 valueskills.

**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 ambiits 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.