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Judge Learned Hand addressed the Association of American Law Schools some years ago on the subject, HAVE THE BENCH AND THE BAR ANYTHING TO CONTRIBUTE TO THE TEACHING OF LAW? After an extended exposition of his views, he concluded they have little to offer.

The bench and the bar have in fact done little to clarify the question of what is necessary to prepare the lawyer for a worthy career as a member of a learned public profession. The scholarly writings of the deans and faculties of the law schools emphasize theory and doctrine rather than practice and experience, and if we are to get a balanced well rounded view of the problem we need to hear from those who put teaching to the test in the courthouse and in the marts of trade.

Meantime, the teachers of law have not been asleep; they have not become the prisoners of the applied psychologists; and they have refused to adjust their courses of study or to lower their standards for graduation to suit the limitations of the dullard or to meet the convenience of the laggard.

The American law school has its roots in ancient history, and it is debtor to forty generations of law teachers. The scribe was the lawyer, legal writer and teacher of the Orient. Athens did not establish a law school or produce a law teacher, but it gave us the actor, the debater and the orator who bequeathed to the advocate some of his most powerful skills. Rome was the mother of law, the mother of the lawyer and the mother of the law teacher, as they are known

to modern times. The jurisconsult was a counselor, law writer and teacher, and in Cicero Rome boasted the most famous of advocates. The Roman system of law is one of the foremost achievements in the conquest of civilization, and the law teacher was a vital factor in that magnificent improvement in legal and political organization. Then, for the first time, law brought to organized society the symmetry, the strength and the cohesion which the bony skeleton gives to the human body. So great was the strength of this legal culture that it superimposed itself upon the barbaric tribes after they conquered the Western Roman Empire. In one of his most brilliant chapters in The Decline and Fall of the Roman Empire, Sir Edward Gibbon traced the origin and development of Roman Law, which found its ultimate expression in the Pandects, the Code and the Institutes of Justinian.

The Germanic tribes which took possession of the Western Roman Empire did not permit the representation of the litigants by attorneys, and this custom excluded for a time the lawyer and the Roman Law from their courts. The Church created a body of law of its own, provided for instruction in the universities in that law and in the Roman Law, and made use of lawyers in the Church courts. The Cannon Law was first collected in a body about 500 AD and was recompiled and brought up to date by Gratian in the 12th Century, but before the breakup of the Empire the Pope had made himself legislator and judge in matrimonial and testamentary causes, matters of good faith, and defamation, and this Church jurisdiction over temporal affairs was continuously enlarged down through the 12th Century. In these Church courts we will find the genesis of the modern legal profession.

For a thousand years the Churchmen - the only educated people in Europe - taught the Canon and Roman Law in the universities, and they also brought about the acceptance of the latter as the basis of the jurisprudence of continental Europe, Latin America and Japan. The universities during the Middle Ages conferred the degree of Doctor of Laws, after five years of study at least three of which were devoted to the Canon and Roman Law, and these graduates could practice as proctors and advocates in the Church courts throughout Europe.

The demand for professional skill led to the use of university-trained judges and counsel in the Church courts, and these same judges and counsel later became judges and advocates in the State courts. These courts found it convenient to imitate the Church courts in the use of attorneys and advocates, but the Church in the 14th Century put an end to the practice of law by the clergy, and thenceforward the lay lawyer enjoyed a monopoly of the legal business.

The law, the lawyer and the law teacher in England followed the patterns on the continent down to the beginning of the Reign of Edward I in 1272, but not thereafter. The practitioners in the courts were Churchmen, classified into attorneys and advocates or proctors and advocates, now solicitors and barristers or counsel. Even before Edward I, the courts enforced throughout England a uniform system of laws based on Saxon customs, with an infusion of the Canon and Roman Law, and afterwards it was called the Common Law. The management of the law whether by lawyer or judge is a learned art, and means had to be found to train practitioners in this Common Law, inasmuch as the Church-controlled

universities taught only Canon and Roman Law. The response was the creation of the famous Inns of Court which for centuries served as the law schools for the English Bar. The instructors in the Inns of Court were Common Law lawyers, and the instruction offered was intended to equip the student to practice in the Common Law courts. The courses of study consisted of lectures, the extensive use of moot courts, and the attendance of the students on trials in the courts. These Inns of Court made it possible to develop the Common Law as the law of the courts, whereas the Roman Law is the law of the universities.

On the European continent the universities have always stressed basic scholarship, and have provided intellectual training superior, on the whole, to that in the Common Law countries, but their strictly technical instruction is not always up to our best standards.

Prior to the Revolution there were no law schools in the Colonies, but barristers admitted by the Inns of Court practiced in the Colonies, and they sometimes became preceptors and their students in turn became the preceptors of many American lawyers, by way of reading in a law office.

Between 1760 and 1776 a hundred sons from the Colonies studied at the Inns of Court, of whom 17 were from South Carolina.

The apprenticeship method was widely adopted in the early history of this country. New York and Massachusetts prescribed nine and ten years training, whereas by an act of the Georgia Legislature in 1785 the period of apprenticeship was fixed at five years.

Through the influence of Mr. Jefferson, William and Mary College initiated instruction in professional law in 1779, the first in this country, but it was a culture or academic course and not preparation for the bar. In the next four decades courses of like character were offered at Pennsylvania, Columbia, Yale, Dartmouth, Maryland and Harvard.

Technical legal instruction made its appearance within a few years, and in 1793 William and Mary granted to William H. Cabell, later Governor of Virginia, the earliest recorded law degree in the United States. Its best known teachers were George Wythe and St. George Tucker, the latter being the author of the first annotated edition of Blackstone available in this country.

The rise of the private law school, which was an elaborated law office designed to prepare students for the law practice, had its start with the Litchfield, Connecticut Law School. It opened in 1784, operated for 49 years and instructed more than a thousand students, including John C. Calhoun. It was founded by Tapping Reeve, and with the assistance of Judge Gould and J. W. Huntington it attained a high reputation. At least seventeen other well known private law schools sprung up in the next several decades, but by 1843 only four of them were still in existence, and one of these had been merged with Yale and one with the University of Cincinnati. William T. Gould, the son of the Litchfield Gould, started one of them at Augusta, Georgia in 1833, with 19 students in its second year and 15 in its third, but apparently it expired shortly thereafter.

Joseph H. Lumpkin opened his law school at Athens in 1843. These schools offered a one-year course but did not confer a degree. Cambridge University had long conferred the LL. B. degree on its graduates, but is was based on the usual cultural studies supplemented by studies in Roman Law.

As the private law schools faded, the universities began to establish professional law schools as a separate department, as did Harvard in 1817, soon to be followed by Pennsylvania, Columbia, Maryland, Yale and Virginia.

Around mid-century suitable texts on a variety of legal subjects became available, including Kent's Commentaries, and Professor Dwight at Columbia did much to popularise the system of textbook instruction which came to be known as the "Dwight method," although it had been earlier used at Yale. Langdell brought the case system, sometimes called the "Langdell method," to Harvard in 1870, but an English lawyer, John B. Byles, had endorsed the method as early as 1829. Langdell's distinction lies in the fact that he adopted it and made it work. The case system has become dominant in the universities, although it bridges but indifferently the gulf which separates the study of legal principles and doctrine from the practical application of them in the daily work of the lawyer.

Judge Story joined the Harvard faculty in 1829 and Dane professor, and he pushed that school to the top in national recognition and in the number of students, until Cumberland at Lebanon, Tennessee passed it in 1859 with 189 students against 166 for Harvard. In the same year 26 registered at Georgia. The fame brought to Harvard by Story and Langdell was to be sustained and enhanced by

mes, Williston, Pound, Scott and others.

Our Law School dates back to 1843, but from 1843 to 1859 it was merely affiliated with the University, with authority to issue diplomas which admitted the holder to practice and it did not grant degrees. In 1859, it became an integral part of the University by action of its Board of Trustees, and at the same time Joseph Henry Lumpkin, T. R. R. Cobb and William Hope Hull were elected to the faculty. The more notable members of its faculty prior to the present generation were Benjamin H. Hill, William L. Mitchell, George Dudley Thomas, Andrew J. Cobb, Sylvanus Morris and the original three already named. Among its graduates who practiced law in the memory of men now living were such consummate advocates as Judge Emory Speer, Charles D. Hill and W. M. Howard, while Judge Samuel H. Sibley was a superlatively fine judge both on the trial and appellate bench. It has been said by one not a graduate that, No single institution has made a deeper impress upon the life of the State than the University Law Department. The progress of the American law school has at one time and another been adversely affected both by lawyer and by layman. At the outbreak of the Revolutionary War the lawyers in the Colonies, generally, were able and of high repute, but many of them turned out to be Royalists, and at least fifty of them departed the country at the end of the struggle leaving behind them much popular antagonism toward the profession. The traditions of the Colonial Bar were the transplanted traditions of the English Bar, and everything English was in disfavor with the Patriots. Jefferson disapproved these traditions as well as

the legal training then current, and at the same time the planters of Virginia looked on the lawyers as inferiors, and did nothing to elevate their status. Neither lawyer, law teacher nor law school was in popular favor for decades after 1776.

Meantime, many of the Colonists held to that beguiling notion that the ideal society is one which gets along without the lawyer. All Utopias have embraced this wishful thinking, including the Colony of Georgia which was described as "a happy flourishing colony - free from that pest and scourge of mankind called lawyers." The profession was abolished in France after the Revolution of 1789 and in Russia after the Revolution of 1917. Widespread efforts were made in New England in the early days of the republic to establish a system of justice to be administered by the clergy, and in Pennsylvania an attempt was made to place law enforcement in the hands of laymen. In spite of these efforts the bar largely maintained itself, especially in public affairs.

Then followed the era of Andrew Jackson with its frontier democracy. In 1800, fourteen out of nineteen of the states prescribed a definite period of preparation for admission to the bar; by 1860 only nine of thirty-nine states nominally maintained such a provision, while New Hampshire, Maine, Wisconsin and Indiana permitted anyone to enter the practice of the law without previous legal training - with a widespread depreciation of professional training and of the professional tone of the American Bar.

But the fifty years immediately preceding the Jackson era have been called the golden age of American law, and it was the time of the great American lawyer. In this era Kent, Story, Shaw, Gibson and Ruffin occupied the bench, while Martin, Pinkney, Wirt, Webster, Choate, Binney, Pettigru and Reverdy Johnson spoke for the American bar in its most brilliant age. Most of the judges and lawyers of that period came to the bar by way of a law office, and the law schools gained little from their glory.

This "log cabin and hard cider" thinking tended to retard development of the American law school, but by 1870 a broad advance in legal education had gotten under way. During the last ninety years it has experienced extraordinary growth in faculty and student body. In 1870 the number was 31, with 1653 students and little more than a hundred teachers; by 1900 it had increased to 102 institutions with 14,037 students; while today the figure is 156 schools with more than 41,000 students taught by approximately 1500 full-time and 900 part-time instructors.

Through the years our university law schools have undertaken the ambitious program to achieve three major objectives: One to provide thorough technical training in the law; one to stimulate and guide scholarly research and writing; and one to condition the minds of their students for the responsibilities of a public profession. As to the first two objectives they have undoubtedly merited high credit. The third objective tends to elude their grasp because of their inability to impart to their students a strong conviction that the lawyer is not merely a skillful actor in the legal arena, but that he is a public figure, an inseparable part of our scheme of justice, and that all he does reflects itself in the quality of that justice. The American law student has generally done well in

mastering legal distinctions, but too often he has been unmindful of the significance to the community of the particular use he makes of the tools the law school places in his hands. The Ford Foundation diagnosed a fault in our system of legal education in its 1957 Report in these words:

> 'Law is a basic element of our society. Legal education is one of the traditional preparations for public service, and lawyers today hold more legislative and Governmental offices than any other professional group. But the orientation of legal education is private rather than public...

Perhaps we can all agree on these propositions:

First, however well educated a judge may be in the rules of law, he is a very bad judge if he permits either personal or economic bias to enter into his management of the evidence in a case before him. It is the one judicial abuse for which there is no real relief in any appellate procedure.

Second, the advocate cannot perform to the best advantage his responsibilities as an officer of the court if he is not constantly mindful of the demands of professional good manners.

Third, the lawyer cannot vindicate his claim to being a member of a learned profession if he does not respect and honor useful and elevating traditions which restrain and guide his conduct beyond the frontiers of the statutes and the decided cases.

Next, the Canadian, the Australian and the English bars and courts command a public confidence and esteem not generally accorded to their American

counterparts, and this is attributable in no small degree to the universality of healthy professional traditions in those bars, whereas our traditions lack force and effectiveness. No statute or body of statutes in these other countries influences the lawyers and the judges more strongly than do the words, "It is not done," and this code is rooted in a certain ripeness of professional spirit, a pervasive respect for professional good manners which operates beyond the boundaries of the law but which gives added strength to the law and to those charged with the enforcement of the law.

About twenty years ago hundreds of trial examiners from newly created federal administrative agencies swarmed over our country, imbued with the notion they were to remold the economic pattern of the United States by making their particular business philosophy effective in their findings of fact in controverted cases. Such a demonstration of bias, not to say prejudice, in the treatment of evidence was perhaps never witnessed before or since in this country. The Federal Administrative Procedure Act was adopted to try to prevent a recurrence of such a performance.

During those same years an Attorney General of the United States who was later on the Supreme Court publicly proclaimed - and he practiced it, too - that it was proper for the United States Government when litigating with one of its citizens to contend in one court on a given day that an act of Congress meant one thing, and on the next day before another court to contend exactly the contrary. He, the ranking member of the American bar, might as well have said that the

Government is under no obligation to be candid either with the court or with the citizen, where the law is involved.

When Mr. Brandeis was appointed to the Supreme Court a respected and respectable group of lawyers from Boston charged him him conduct unbecoming a lawyer, and the attack was driven home with substantial evidence before the Judiciary Committee of the Senate, but his appointment was confirmed, nevertheless.

On the floor of the Senate, Justice Black was accused of having been a member of the Ku-Klux Klan. He stood silent until after his appointment was confirmed, and then admitted the truth of the charge.

Ambulance chasing is an unfair method of competing for business and it tends to corrode professional morality, but in the last twenty-five years we have seen elevated to high judicial position men who built a law practice by such means, and to make matters worse they were appointed by governors and presidents, with no audible opposition from the bar. Congress would not find it necessary to investigate the Federal Communications Commission and other administrative agencies if the Government lawyer and the private practitioner consistently observed the nicer professional standards.

While there are large numbers of cultured gentlemen at the bars of New York, Chicago and other metropolitan cities, a day in court in these cities will often leave you depressed over your profession. Many of the trials in these

centers where there is a great concentration of lawyers from our leading law schools suggest a burlesque, or a pugilistic show, completely lacking dignity and a sense of fitness.

This is the age of confusion in the American legal system, and for this the courts are primarily responsible. From the days of Tarquin uncertainty in the law deliberately brought about by official policy and action has been odious to civilized man. Perhaps nowhere else outside of Russia has the citizen during the last twenty-five years been subjected to so many ex post facto legal judgments, penalties and forfeitures as has the American citizen, due primarily to an uncontrolled disposition in the part of the Supreme Court to legislate. In his recent lecture at Harvard, Judge Hand upheld the view that the action of the Court in the integration decision is legislation, and is in plain conflict with the long established, commonly accepted understanding of the functions and powers of that Court.

So it is in our day the American Bar has given a poor demonstration of professional esprit de corps, - and a poorer demonstration still of the professional proprieties, whether engaged in the private practice or in the discharge of public duties. The presidents and the governors who appointed these judges, the judges themselves, the trial examiners and the others, with few exceptions, came from our university law schools.

Undoubtedly, the position of the lawyer in this country is one of special significance, but in this century he has lost influence and prestige, and his voice no longer carries high moral authority. In Government and out, he has not been

so firmly dedicated to the loftier professional ideals and practices as to give consistent force and vitality to them in his work as an officer of the court and in the conduct of public business. The lawyer cannot escape his responsibilities as a member of a public profession. Dean Pound put it in these words:

> "More than any other people, the American people, more than any other society in history, American politically organized society, a democratic society constitutionally and federally organized, relies upon law and so upon lawyers."

Professor Simpson used other terms to say the same thing when he wrote:

> "The legal profession has supplied our social mechanics and many if not most of our social inventors."

We are told that we are on the verge of becoming inhabitants of more than one world, with all of the breathtaking possibilities it could bring to our legal and constitutional systems and to the whole body of our intellectual philosophy. In these dramatic moments we are reaching out for a new and better perspective, and everywhere we are encompassed by legal authority and legal machinery, and always the law is with us. This means the lawyer, too, must always be with us, even in the social organization and control of the recent spectacular inventions - inventions which have stampeded the public to challenge the competence of just about everybody and everything. Admittedly, the flight of the satellites has not brought against the law schools the wholesale accusations directed at other education institutions, but this is not a license to ignore the

changes born of nuclear power.

Since the political and social revolution of the days of Andrew Jackson, if not before, the American Bar has been strongly imbued with the free-for-all frontier attitudes so graphically described by Baldwin in his book, FLUSH TIMES IN ALABAMA AND MISSISSIPPI, and for a hundred years it has been under the relentless pressures of naked commercialism. American folk ways and American grass roots customs, too, have had a part in retarding the development of higher standards in the profession.

In this climate, the task of training its students for membership in a public profession has overtaxed our law schools, and the lawyer has carried less than his share of the burden. It is a task worthy of the best efforts of both. The time has arrived for them to sit down together to see if there is something they can do to bring the aspirations and the practices of the profession into closer harmony with its obligations, its opportunities and its finer traditions.