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In this changing world, few institutions celebrate diamond jubilees. To couple such a celebration with the dedication of a new building is little short of unique. And when one state, even such a one as California, celebrates within a brief span of time the dedication of not one but three new law school buildings it is clear that the age of miracles has not passed. The Association of American Law Schools is proud to share your joy and, even though this particular emissary may show in his face something of the green of envy, to bring you congratulations and best wishes from your sister institutions throughout the United States. We particularly appreciate the graciousness with which you have invited a representative of the association to have such a prominent part in this memorable event.

Surely it is significant that after three-quarters of a century, the Hastings College of Law still exhibits so much of the vigor of youth. This is exemplified not only by the members of that admirable institution the Sixty Five Club themselves, but also by the courage and imagination of your dean, to whom so much of your past progress and your future prospects are due. Your diamond jubilee, then, is more than a time of reminiscence. It is also a time of introspection and a time of planning. In a real sense, "What is past is prologue." But for that very reason it would be a mistake to ignore the past. In judging the value of an institution the long look of history is essential as well as the long look of prophecy, since frequently hopes can be fulfilled only on the basis of past accomplishment.

There are others here today who can speak of the history of your law school far more effectively than I. As the oldest institution of its kind in the West, it has without question contributed substantially to the development of this great region. It has furnished leaders of the bar and bench, of government and of business. Throughout its history it has enjoyed the confidence and respect of the bar. It is truly a part of this community although its influence extends far beyond the borders of San Francisco or even of California itself. These things we know and your colleagues share your pride that they are true.

But the past of your school has greater significance when viewed in the context of the history of legal education as a whole. Therefore it is well to turn briefly to what has happened in legal education since the Hastings College of Law was first established. There were law schools, and a few good ones, in 1878. But in the main men were prepared for the bar by

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the apprentice system. Educational qualifications were practically non-existent. Teaching was largely by example with some reliance on a few English texts. Formal instruction was quite generally frowned upon and in at least some quarters engaging in the practice of law was regarded as one of the natural rights of man.

Legal education was then in a rudimentary state. But another historic event occurred in 1878. The American Bar Association was organized and held its first meeting in Saratoga Springs, New York. One of its avowed objects was "to advance the science of jurisprudence." I am not sure how seriously this objective was regarded at the time, but at least the meetings of the association attracted men who were interested in legal education. It thus came about that during one of these meetings in 1901 the Association of American Law Schools was organized. It was then and is now the only national group in the United States whose principal reason for existence is the improvement of legal education. It, together with the Section of Legal Education of the American Bar Association, has been working for more than half a century to establish and maintain high educational standards among law schools. Perhaps some measure of its success is found in the fact that over one hundred institutions in the United States are members of this group.

It would be useless to attempt to recite in detail the changes that have taken place, partly, at least, as a result of the leadership of these two great associations. Prelegal requirements have been increased. The commercial school has been largely eliminated. Respectable standards regarding such matters as the number of full time faculty members, adequate physical facilities and annual expenditures for the library have been insisted upon. In addition, it has been definitely established, whether through the efforts of the associations or otherwise, that law teaching is in itself a branch of the legal profession entitled to consideration and respect.

This circumstance is at once the strength and the weakness of modern legal education. And it is the fact that law teachers are in a sense regarded as separate from the profession as a whole that prompts me to discuss the subject which has been stated as the title for my remarks today.

I suppose that the primary task of the law schools is the training of men and women who will become practicing lawyers. This is not the only task but it is still the most important. If this is true, then legal education must be judged on the basis of the effectiveness with which the primary obligation is performed. That is why I suggested a few moments ago that the long look of prophecy is important in judging the value of a law school. The content of legal education in essence is determined by a prophecy as to what qualities will be of the greatest value in the practice of law during the coming half century. And at this point I would suggest that those who judge the law schools on the basis of the education of 25 or 30 years ago

are completely unaware of the true criteria which should be employed. To produce young lawyers who have studied only as their fathers did would be to make a travesty of the educational process.

My friend Erwin Griswold, the distinguished dean of the Harvard Law School, has recently made a speech which he has called "The Future of Legal Education." In it he has made a number of interesting predications, with most of which I would agree. But the one statement that has my wholehearted endorsement is that we can be sure that the practice of law in the coming years will be different from what it is today. Certainly we can agree with that statement in the light of past experience. I myself was educated and came to the bar in one of the less remote geologic eras. But in terms of subject matter the education which I received in one of the best law schools of the middle west was completely unadapted to the needs which I encountered in the practice. Administrative law was virtually unknown. Taxation was not taught in most of the approved law schools of the country. Labor law was not even a glow upon the horizon. The whole problem of trade regulation received but a modicum of attention and constitutional law was confined to an academic discussion of the structure of government with particular emphasis on the separation of powers.

If this was true yesterday, what of tomorrow? What do we teach today about legal devices for the control of atomic energy? What do we teach about international trade, world government, land utilization, or any one of a dozen topics with which the lawyer of the next generation may well be concerned? Obviously, very little, and for a perfectly valid reason. We cannot determine with finality what legal problems will emerge within the foreseeable future. We cannot place complete reliance on any system of substantive instruction.

In these circumstances, what is the most practical type of instruction which can be given to the lawyer of the future? With full realization that I speak as a academician, I venture to suggest that for law school undergraduates the most practical instruction possible is the most theoretical. Of course, knowledge of fundamental legal principles is essential, as well as training in the techniques of finding cases in point in the law books. The curriculum should reflect to some extent the changing body of law. But more important for the law student is a habit of mind which can best be described as analytical, an ability, as the then Professor Frankfurter used to say, "to think things and not words," a refusal to be drawn into verbal traps, and a capacity to find and dispose of issues rather than to become mired in a morass of trivialities. Once these things have been accomplished, the law student can be reasonably sure of accommodating himself to occasions as they arise, even though the precise answer to his problems may not have been imparted to him during his law school career.

In a manner of speaking, then, the requirements of basic legal educa-

tion are much the same as those which have been associated with "liberal" education in undergraduate schools. The word liberal is perhaps the most misused and distorted in the English language. By liberal education, however, I mean the type of education that frees the mind. Just as a study of the classics, of the masterpieces of literature and of the thoughts of great men frees the minds of college students, so a similiar study of principles and techniques employed in the practice of law frees the minds of would-be lawyers and fits them for the practice of their profession in later years. If I may venture this degree of dogmatism, I would say that all legal instruction at the undergraduate level should be geared to the development of an intellectual process rather than primarily to the imparting of information. I submit that this will result in a mastery of theory which is the most practical training the law schools can supply.

What has been said does not necessarily imply a blanket endorsement of the status quo. I think there are various areas in which theory, as I have used the term, may be expanded to great practical advantage. One instance that might be mentioned is in connection with the moral responsibilities of the profession. We badly need some instructional device which will teach prospective lawyers something about the duties of a professional man toward his clients, his fellow practitioners and the courts. I am quite clear that legal ethics taught in a vacuum to first year students is of slight if any value. On the other hand, more mature students can, I think, be taught ethical concepts in the law schools against the background of knowledge which they have acquired in other courses. A consideration of the duties and responsibilities of the legal profession, preferably taught with the participation of active practitioners, may well be of considerable value.

We must also recognize, I believe, that the legal education of the past generation was based too exclusively on an analysis of the opinions of appellate courts and failed to consider equally important aspects of legal training. Probably it was the recognition of this fact that led to the recent attack on law schools by Mr. Cantrall. His article in the American Bar Association Journal has, to say the least, fluttered the academic dove cote. Since Mr. Cantrall is a neighbor of mine it is perhaps inappropriate to come to California to discuss his analysis of law teaching, but his comments have aroused national attention. Briefly, he concludes that law schools are doing a poor job, that law students finish their three years of training in virtually complete ignorance and that it is ridiculous to suppose that law teachers, since they are not currently involved in the practice, really know anything about teaching law. You can well imagine that these views have commanded somewhat less than unanimous assent in academic circles.

And yet honesty requires me to state that within this mountain of misapprehension can be found a thin golden vein of truth. It is perfectly

correct to say that law schools do not produce men who are immediately qualified to enter the practice. It is not correct to assert that law schools are unaware of this deficiency or are indifferent toward it. As a matter of fact, some institutions, including my own, have made earnest efforts to remedy this defect to some extent through the use of problem courses designed to give training in professional skills such as drafting and counseling which are not emphasized in conventional law school instruction. But we must recognize that law schools do not hold themselves out to impart such information as the location of the washroom in the court house or the nickname of the clerk of courts. If they were to devote themselves to a program of "practical" instruction in what might be called the Cantrallian sense, they would actually be providing the most impractical training imaginable.

We thus find ourselves somewhat uncomfortably impaled on the horns of a dilemma. To be "practical" is impractical. To be theoretical is practical. But to be theoretical does not in itself make one fit for the practice. It will require a measure of skill to extricate ourselves from this situation. And although I have stated the problem somewhat facetiously it is a serious one which demands a satisfactory solution.

At this point it should be said that the solution cannot be provided by the law schools alone or by the practitioners alone as long as they assume an antagonistic attitude toward each other. One of the unfortunate results of the emergence of law teaching as a separate branch of the profession has been the involuntary segregation of the teacher from the life of the bar. The difficulty in my opinion is largely psychological but it is nevertheless real. Teachers, in my experience, tend to shun contacts with the bar because they fear that they may be rebuffed. Conversely, practitioners are likely to attribute to teachers an air of intellectual superiority which they do not in fact possess. We need to remember that we all are members of one profession and that we share, or should do so, common aspirations and ideals. Further than this, standards of legal education should be the joint creation of all segments of the profession. If they are so ultra-academic that they cannot stand the criticism of the practitioner they should fall. If they are so falsely "practical" that they represent merely a learning by rote of existing rules they likewise should fall. It is only as a result of joint agreement after full and free discussion in an atmosphere of tolerance and good faith that standards should be formulated and adopted.

I feel that these things can be said before such an audience as this because you at Hastings have apparently been able to live together very successfully. This institution has, I believe, the full confidence of the local bar in spite of, or perhaps because of, the fact that among the members of your faculty are some of the leading legal theorists in the United States. It is in the belief that you who are practitioners are sympathetic toward the

problems of law schools and that you who are teachers have a like attitude toward the needs of the bar that I now address myself to a discussion of possible solutions.

The first and most obvious point to make is that there is no ready made solution to the problem of fitting the law student for the immediate practice of law. Medical schools do not purport to fit doctors for the practice of medicine but they have at hand the solution of the hospital where interns may learn on "live materials" under the supervision of practicing physicians. There is at present no analogous institution for the training of young lawyers. If we could develop a system of legal internship it would go far toward solving one of the most pressing problems with which we are faced. Various experiments have been tried with varying degrees of success. A preceptorship or required clerkship is the rule in some states but the results, to say the least, are inconclusive. Large law firms can, if they will, supply the requisite practical training for their clerks but in some instances at least the young men have been forced into too early specialization. Legal aid work may be a partial answer but it does not fill the whole need. Serious and concentrated effort by all segments of the profession should be devoted to this problem in the hope that an answer may be found.

There are, however, other areas in which more progress has been made and in which the future seems to hold a degree of promise. These can roughly be described as the areas of continuing or post-admission legal education. Here, it seems to me, the demands of the practicing lawyer can be satisfied through the cooperation of the bar and the law schools.

I said a moment ago that in the field of undergraduate legal instruction a knowledge of theories and techniques is of the greatest importance. This is true in a more limited sense in the field now under discussion. But in many cases, continuing legal instruction *is* practical if it is "practical." For the man who has received an adequate instruction in theory there are many "know how" courses from which he can profit. Were it not for the fact that the law school years are necessarily few in number these courses might well be given to undergraduates as, indeed, some of them are. In any case, courses in trial techniques, the examination of titles, probate proceedings, income tax practice on an elementary level and the like can profitably be given either in institutes conducted by members of the bar or in law schools on week ends or in the evenings. The instructors should for the most part be practitioners and should strive for a factual type of presentation. Some profit may be gained from such endeavors even if they are preceded or followed by a dinner with the usual liquid embellishments.

On a somewhat different plane are courses designed for those who have become interested in particular fields of the law and who wish to learn more about them. Such courses assume a certain degree of competence on the

part of those who take them and thus are offered on a substantially higher level than those to which I have previously referred. Law school teachers who have become specialists in various areas will participate in these courses to a substantial degree. The duration may be longer than in the case of the more elementary type and a certificate of achievement may be the reward for successful completion. Institutes dealing with advanced income tax law are perhaps the best examples of this type of instruction.

There is still another area in which the law schools and the practitioners may well join forces. One of my theories about practice is that it is becoming more and more specialized. Although we still tend to think of the general practitioner, of whom the country lawyer is the prototype, as being typical of our calling, it is quite evident that he is passing from the scene just as the family doctor is vanishing into the realm of legend. Abraham Lincoln could practice law in the frontier community of which he was a part without special competence in any field but with a general facility which enabled him to handle all types of cases in an acceptable manner. Today, at least in the larger centers of population, lawyers are becoming specialists whose community of interest is constantly shrinking as their knowledge of particular areas is enhanced. Tax lawyers may talk to each other and, presumably, to God, but they do not begin to understand the labor lawyer or the obscure but prosperous person who lives and moves and has his being in the never-never land of bond issues and corporate indentures.

The bar is now faced with the problem of recognizing or not recognizing specialties. Current views of legal ethics, probably defensible in their present setting, preclude a lawyer from announcing to the public that his practice is limited to any one field. This is justified on the basis that such an announcement is at least indirectly a method of soliciting business in that it asserts by implication special competence in a field where there are no criteria by which competence may be judged. And yet we all know that there are lawyers who in fact practice nothing but tax law or labor law, although I was recently informed by an eminent member of the bar that the latter area does not exist.

It seems to me that the question here is whether or not there are definable bodies of knowledge which can be described as legal specialties and whether a person who demonstrably possesses such knowledge can then hold himself out as a specialist. This is a matter of sufficient practical concern to cause the President of the American Bar Association to appoint a committee to investigate the possibilities. As a member of the committee it would be inappropriate for me to express my individual views as to the desirability of the recognition of specialties at this time. It may be said, however, that the demand for practice in limited areas is such that legal education should take cognizance of it and endeavor to supply the need.

Formal graduate instruction in law has, in the past, largely been confined

to two phases which are interconnected. The first is essentially a year or two of training for the prospective teacher and consists in exposing him to instruction by faculty members of leading schools plus an opportunity to do some individual research. The second is little more than a fourth year of law where instruction is carried on in different subjects but by much the same methods as are used in the conventional law course. Neither of these, in my opinion, fills the particular need which we are now considering. Instead, it would seem possible to develop graduate curricula in various areas such as taxation, labor relations or trade regulation specifically designed to develop experts. These curricula should be open only to persons who have had adequate training and perhaps experience in the general practice of law. They should include not only courses in law but also instruction in related disciplines.

This last point is of particular significance. I suppose, although I have long since forgotten the words, that one need not have any particular competence in economics to apply the rule in Shelley's case to a real estate transaction. Similarly, and I speak with deference in the presence of an acknowledged authority on canine law (see Snodgrass, "Old Dog Tray Goes to Court," *California Monthly*, March, 1949) the maxim that every dog is entitled to one bite seems to involve no esoteric considerations of political science or sociology. In short, it seems quite possible to practice law in the traditional way without much knowledge of other fields of learning. But the practice of law in the newer fields involves to a considerable extent the formulation of economic and social judgments which cannot be made on the basis of information derived from traditional legal subjects. In addition, the application of statutory laws and administrative rules frequently requires a highly technical background which has little if any relation to what has been learned in law school. Thus the relation of law to economics or political science as the case may be needs to be brought out if instruction in this area is to fulfill its purpose. It is at this point, as it seems to me, that the integration of law and the social sciences can best be effectuated. This is true because it is at this point that the lawyer, having presumably developed his analytical powers as a result of his undergraduate legal training, can be properly selective and critical in the use of nonlegal materials. Furthermore, he knows much more precisely what he is interested in and has a much greater motivation than when he was a student in college.

It may well be that in future years we shall see curricula identified and developed which will make it possible for lawyers to recognize specialties as do physicians. That time is not yet but it is now possible for teachers and practitioners together to accomplish much of significance in the area of continuing legal education.

Let me recapitulate. My theories about practice have led me to assert

that the practice of law is constantly changing in emphasis and to some extent in direction. If legal education is to prepare men and women for the practice it must recognize this fact by providing at the outset a type of training which is theoretical in the true sense, which imparts knowledge of principles and techniques and which creates sufficient flexibility in the student to enable him to move with the times. But in our day, more than that is required. Educators must be prepared to offer to the bar and with the participation of the bar as a full partner continuing programs which will enable the lawyer to improve his performance, widen his horizons and increase his effectiveness as a practitioner.

This job is too big for one school or a few schools. If my argument is sound it will require the efforts of all schools if we even begin to fulfill the obligation which the coming years will place upon us. But on this occasion you will forgive me if I suggest that a school located in a metropolitan area, with a tradition of service to the bar and with a well established position might well assume a position of leadership in the field. Through the years you have prospered and grown strong. You are now in the full vigor of maturity. You have the enthusiasm which comes from the recognition which has been given you by those who have supplied you with this beautiful building. All these things speak well for the future. Perhaps, with the long look of prophecy, I can see the day when we gather to celebrate the one hundredth anniversary of the Hastings College of Law and to congratulate it for pioneering in yet another field.