Buffalo Law Review

Volume 19 | Number 1 Article 5

10-1-1969

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LESSON FROM OXFORD: A MODEST PROPOSAL

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I. INTRODUCTION

EVERY year leading American law schools refer, in their literature, to the increasingly high quality of those who apply for admission. Achievements in the Law Student Aptitude Tests climb upward; more and more A's appear in place of B's on applicants' undergraduate records. Quite logically, the number of legal academic failures declines toward the vanishing point.

Granting there is some inflation in all this, there is also much substance in qualitative improvement. We have, at least, eliminated before admission a large segment of poorly-qualified candidates for degrees in law. The average American law-student is better able than his predecessors to pursue self-directed study toward general objectives; indeed this is as it should be for the lawyer must direct his own study during his professional life. Yet we ask our students (in theory we require them) to attend twelve to fifteen classroom exercises each week, in which oral dialogue between students and teachers, especially in the first year, is intended to help the student understand and remember the lessons derived from carefully arranged "teaching materials." We do not call such ingeniously contrived books "learning materials;" this choice of terminology may be significant. Even in the second and third year of law study, though classroom dialectic diminishes, we still require twelve or more classroom exercises a week, predicated on the theory that students of our régime will not progress unless we lecture them about the contents of our books.

In American schools of law we do too much teaching. When one of our high-ranking graduates wins a fellowship for study at an English university, he is often misled by the apparently undemanding nature of the regimen. He may feel lost without the guidance of compulsory lectures on the American plan. He meets no course-examinations; on the contrary he is subject to a most strenuous examination at the end of his university career, where he is ordinarily examined by men who never taught him. High achievement at this point reflects a long period of intense self-discipline.[1] Few fail, but First Class Honors are rare.

In 1969 American universites, often under *peine forte et dure*, are challenging, more than they have for generations, their mission, their methods, their organization, and their manners. We members of law faculties would do well to see how our English cousins manage their University education in the

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1. For a striking account *see* A. L. ROWSE, A CORNISHMAN AT OXFORD (1965). Rowse was a candidate in history, but his anxious dedication must have resembled that of an ambitious candidate in jurisprudence.

law. This comparison is much facilitated by Dr. F. H. Lawson's scholarly 1968 study of legal education at Oxford.[2]

II. Legal Education at Oxford

The world's first university instruction in the Common Law began at Oxford in 1753 when Dr. William Blackstone offered his course of lectures at All Souls. The immediate success of his systematic presentation, and the popularity of his published Commentaries on both sides of the Atlantic, prompted American universities to offer similar instruction. As at Oxford, these early American lectures in law were intended not only for those seeking professional legal careers but also for any students who were attracted to the law as a general cultural régime.[3] But Oxford is the mother of us all, and the story of her evolving legal studies, told by a man who spent many years teaching there, is well worth the attention of anyone seriously interested in the evolution, past and future, of our own graduate professional education in law. The American who reads Professor Lawson's *Oxford Law School* must keep in mind differences in vocabulary and in organization. Dr. Lawson writes for those already free of the Oxford mystery, for men who knew the book-laden tables and easy talk in his Brasenose study, for those at ease with the presuppositions of English university life.

To the Oxonian of 1850 and of today, Professor Lawson's term "law school" is convertible for "course of reading and system of examination in law." In modern American universities, "law school" is, as we all know, a separate academic entity within a university, devoted exclusively to the study of law[4] by comparatively mature students who have already taken a first degree in arts or sciences. Each of our Law Schools has its administrator, a dean, who presides over a separate close-knit faculty, devoted to the teaching of law. Our law schools have their own buildings, in which students of law study in convenient libraries, in which they attend lectures or seminars, and in which their teachers have book-lined studies for reading, writing and consultation. Some university law schools have living quarters and dining facilities. A large proportion of their students are, for better or worse, probably worse, segregated from the busy intellectual life in other graduate Faculties.

The Oxford candidate for his first degree in jurisprudence is an undergraduate whose university life begins when he is about eighteen years old. His pre-university study has put him a year or more intellectually ahead of the

2. F. H. Lawson, The Oxford Law School 1850-1965 (1968). Dr. Lawson is a Lecturer in Law at the University of Manchester; formerly he was Professor of Comparative Law, Oxford. The book gives an account of the University where the author taught and wrote for many years. The Lawson book makes possible comparative scrutiny, most useful for any American who wonders whether we have attained, behind our ivy, the best of all possible law-school worlds.

3. I have sketched these beginnings in the first chapter of A. Sutherland, The Law at Harvard, A History of Ideas and Men, 1817-1967 (1967).

4. I do not overlook the presence of historians, sociologists, and doctors of medicine on some of our modern law faculties. They help us in our primary mission, the study of law.

average American college freshman. Young Englishmen seeking Honors in Jurisprudence, or the few who still seek only a Pass, spend three years acquiring a Bachelor of Arts degree in which law is a major interest, but is not the all-consuming, exclusively professional subject which it is for the twenty-two year old American A.B. who seeks the graduate LL.B (or J.D. as the degree is now called in many American universities). An Oxford undergraduate reading for the Bachelor of Arts in Jurisprudence may play rugby, or row, for the University, an activity for which the American law student is no longer eligible.

One must also read Dr. Lawson's *Oxford Law School* with some sense of difference between the federal structure of Oxford and that of, say, Cornell or Harvard, to name only two of many such American universities.[5] Our component "states" are separate Faculties or Schools—a Faculty of Arts and Sciences, a Medical School, a Law School, a School of Industrial and Labor Relations, a School of Government, or whatnot, administered by their several Deans who collectively form a sort of university Senate.

Oxford of 1850 and 1969 was and is also a federal structure, but its component states, throughout that long period, have continued to be the Colleges, ancient or new, Magdalen, Balliol, Merton, Brasenose, Lincoln, New College, University, Nuffield, and all the rest of that distinguished roster. Each is composed of Fellows and Tutors of divers disciplines. Each has students of assorted intellectual allegiances, gathered in the same quadrangle, dining together in the same hall, living in the same staircase. Each College is headed by a Master, or Principal or otherwise-named presiding officer. An Oxonian thinks of himself as an Oxford man, or as a member of his College at that university. I should be surprised to find an Oxonian who thought of himself primarily as an Oxford Law School man. For good or ill, Oxford has not yet developed an almost completely separate community of teachers and students of law such as those at most American universities.[6]

Apparently Oxford and Cambridge are both moving away from the College-centered life of law students toward a law school more in the American sense, but the route has been a long one and is still far from completed. Perhaps the start came, as Dr. Lawson suggests, in 1850.[7] He cites a famous Oxford Statute of that year which required that for

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5. The federal analogy was proposed to me by my thoughtful friend Dr. Ronald Maudsley, then of Brasenose. In 1956 he explained to me some of the facts of life at Oxford when I came to that College as a Fulbright Lecturer.

6. The admirable historical review of law teaching at Cambridge in the 1956-1957 Supplement to the Handbook of the Cambridge Law School describes the origin of the Squire Library and adjacent lecture rooms under Miss Squire's bequest, and their evolution to the present day when they occupy the Old School's quadrangle where canon and civil law were taught in the Middle Ages. That sketch suggests that in medieval Cambridge, some hostels were devoted to students of law. None of the present Colleges at Cambridge is primarily a College of Law, though the Squire Library may be the intellectual nucleus of a Law School in the American sense.

7. LAWSON, *supra* note 2, at 20 *et seq.*

. . . a degree in Arts it was henceforth necessary to take successfully two Schools, of which Literae Humaniores (now divided into Moderations and a Final School) had to be one, the other being chosen from the three other Schools, namely, of Mathematics and Physics, of Natural Science, and of Law and Modern History. . . .

The curriculum of the School of Law and Modern History was as follows:

> For common Degrees:—English History, from the Conquest to the end of the reign of Henry VII, together with that part of Blackstone which treats of the law of Real Property; or English History from the death of Henry VII to the accession of the House of Brunswick, together with that part of Blackstone which treats of the rights of Persons and the law of Personal Property. Justinian's Institutes may be substituted for Blackstone. The most approved edition of Blackstone to be used.
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> For Honours:—Candidates must take up what is required, as above mentioned, for a common Degree. History, from the Birth of Christ to the year 1789; Jurisprudence, and especially the Law of England; the Law of Nations; Adam Smith's Wealth of Nations. . . .

Three remarks may here be made. In the first place, although two Final Schools were needed for a first degree, the second School, that is to say, the one taken after Literae Humaniores, might appear to have been what we should call a post graduate examination. That was certainly not intended; nor did it happen the second School was, no less than the first, to be part of a liberal education.

Secondly, the School, although it included law in its title and called for some study of law, resembled much less a modern law school than the modern School of Philosophy, Politics, and Economics, if one recalls the need for studying philosophy beforehand in Literae Humaniores. It was a school of modern studies. What was in the minds of the reformers certainly included the notion that the average country gentleman, who was becoming as important a candidate for a sound Oxford education as the country parson, should know something of the world about him, including at least the rudiments of political, economic, and legal thought. Anyone who might feel inclined to magnify the importance of law in the curriculum should note that the word 'law' was introduced into the name of the School only at a late stage in the discussions.

Thirdly, although law seems to have been the weaker partner, it was less assailable as a subject of university study than modern history, and that for a characteristically Oxford reason. The peculiar character of Oxford examinations, in which a candidate was and is examined for the most part by persons who have never taught him, made it necessary for specific books to be set for study rather than subjects. . . . Specifying set books was natural in classics; it presented a real difficulty in modern history, where the solution that was adopted of setting papers headed 'Gibbon', 'Guizot', or 'Hallam' seems to us strangely artificial, but no serious difficulty in law, where candidates could be made to study the Institutes of Justinian and the Commentaries of

> Blackstone. To this there was an interesting and slightly amusing corollary. Obviously any person intelligent enough to teach Aristotle could perfectly well teach Justinian and even Blackstone without being a trained lawyer; and for many years to come the same person often taught both law and modern history.

"Taught" requires some explanation for the American reader. At American law schools, the teaching is mainly or entirely done by professors of various grades, who teach "courses" orally at numerous prescribed class periods, giving out definite assignments of work from day to day. The American student of law thus gets a much more closely guided tour through the curriculum than his English cousin.[8] In contrast, the Oxonian is left much more to himself, like an American Ph.D. candidate preparing for his General Examination. Ideally the Oxford man meets a tutor in his own college for individual tuition one hour a week for twenty-four weeks (three terms) of the year. In that hour the student discusses with the tutor an assigned paper the student has written during the preceding week. This expensive tutorial process is the core of Oxford education in law. The student can attend lectures or not, as he pleases. The tutor, in term time, may be giving twenty or more tutorial sessions a week—an exhausting intellectual effort, feasible only because of the comparatively short terms. Modern pressure for admission of more students means more demands on tutors, and has led to increasing use of group-tutorials, which dilutes the tutorial experience. If the student in jurisprudence chances on an untalented law-tutor, he is obviously in an awkward predicament, sometimes curable by seeking a better tutor in a different college.

Professors of Law at Oxford and Cambridge are far fewer in number, proportionate to all teachers of law, than they are in American universities. Their Chairs carry great prestige. Probably the Oxford Chair best known in America is the Vinerian, of which Dr. William Blackstone was the first holder.[9] Professors may also tutor pupils from one or more colleges. They lecture (as do Readers and Lecturers), and customarily they are also productive scholars. Sir William Searle Holdsworth was a notable example; his History of English Law is a product of the years both before and after his succession in 1922 as the ninth Vinerian Professor. Professors, Readers and Lecturers are University officers, though they may have started their careers as tutors or fellows of one of the colleges, and may, as Harry Lawson did, continue membership in a College throughout their careers.

According to Professor Lawson, the quality of the Law Tutors has shown

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8. One of the most illuminating parts of Dr. Lawson's book consists of quotations from two American educators, the late Virgil M. Hancher of Worcester College, Oxford, who later became president of Iowa State, and Professor Sheldon Tefft of the Hastings Law School, formerly of Exeter College, Oxford. Both stress the cardinal role of the tutor at Oxford and the necessity for self-reliance which faces the student.

9. *See* H.G. HANBURY, THE VINERIAN CHAIR AND LEGAL EDUCATION (1958). Lawson cites Hanbury *passim*. This discussion owes much to the helpful friendship of Harold Hanbury, eleventh Vinerian Professor.

improvement in the twentieth century. They no longer divide their teaching time between law and history, and are usually appointed after attaining some distinction in the jurisprudence curriculum or in practice at the Bar. Coincidentally they have asserted increasing independence of the Professors, shunning any prospect of a curriculum of law dominated (as in Germany, they thought) by a small group of University officers bearing the higher rank.

The two great characteristics of Oxford education, Lawson writes, are the tutorial system, and the examination system.[10] Examination is a University function, not a College process. The subjects, and to some extent the books, on which the student is to be examined, are set forth in University Statutes. These statutes are frequently republished with revisions. The most recent edition in Harvard's Widener library, is that containing changes through the Trinity (summer) term, 1968. A board of examiners only infrequently includes the tutors who educated a candidate in law, eliminating the possibility of "feedback." The student is characteristically examined only twice in his Oxford career, once in a First Public Examination ("Moderations") set at the end of what an American would call the first academic year, and a final examination, whether for "Pass" or "Honors," at the end of the candidate's third year. Dr. Lawson tells us

> [The] history of the Schools has been one not of classes held by specialist professors but of examinations imposing a more or less remote control over a number of independent teachers, for the most part college tutors, each exercising a general supervision over his pupils. . . .[11]

Indeed, "at Oxford, perhaps more than anywhere else, examinations dominate the educational scene."[12]

At Law Moderations under the 1968 Statutes, the candidate is examined in Roman Law, Criminal Law, and Constitutional Law (which in Britain means the law of government, not, as in America, the conflict between a senior stratum of enacted law and other law). The Statutes guide the student's reading; at Law Moderations he is required to write, for example, a Roman Law paper of which the questions will be drawn from specified portions of Gaius' and Justinian's *Institutes*.

The Second Public Examination in Jurisprudence of those "candidates who do not seek Honours" ("Pass School") covers the law of contract. The material to be studied for this examination is found in Anson, Cheshire and Fifoot, "or in other works of similar character," and in specified titles of the *Institutes of Justinian*. Lawson tells us that "the pass man has almost disappeared from Oxford life. . . ."[13]

10. LAWSON, *supra* note 2, at 31.
11. LAWSON, *supra* note 2, at 6.
12. LAWSON, *supra* note 2, at 31. The American needs a reminder that "schools" mean "examinations."
13. LAWSON, *supra* note 2, at 42.

The Honor School is much more searching. Candidates after October 1, 1969 will be required under statutes of 1968 to write papers on eight of fifteen specified subjects: (1) Jurisprudence; (2) Contract; (3) Tort; (4) Land Law; (5) Roman Law I; (6) Roman Law II; (7) Comparative Law; (8) Criminal Law and Penology; (9) Public International Law; (10) History of English Law; (11) Trusts; (12) Administrative Law; (13) Family Law; (14) International Trade; and (15) Roman Dutch Law. The candidates will be required to write on 1, 2, 3; either 4 or 15; at least two from 5, 6, 7, 8, 9, and 10; and not more than two from 11, 12, 13, and 14. A typical set of examiners is comprised of a Professor or Reader and a number of tutors. They require *viva voce*[14] examination of any student whose grade is in doubt. The burden on examiners is as heavy as that on readers of "blue-books" at a large American law school. An examiner reads 400 papers, which takes him three weeks, and he will spend another week in *vivas*. First Class Honors are comparable to an American *Summa Cum Laude*, Second Class Honors to an American *Magna Cum Laude*. First Class Honors carry great distinction, and the examiners take their duties with consequent seriousness.

In place of the LL.M. and S.J.D. programs offered by American law schools, Oxford offers the advanced degrees of Bachelor of Civil Law, and Doctor of Civil Law. The B.C.L. program appears to an American to stress comparative law and advanced study of British law, and despite its title it is not predominantly a program in the Civil Law system. Lawson calls this degree "the natural crown of a young lawyer's academic career." For a graduate of another university, it requires at least five terms of resident study, with examination in the sixth term—a two-year program. An Oxford A.B. with First or Second Class Honors in jurisprudence may attain the B.C.L. after one additional year of residence. The Doctor of Civil Law degree is not granted for successful completion of a residential course of study and a dissertation. An Oxford Bachelor of Civil Laws of five years standing may apply ("supplicate" is the term) for the D.C.L. on submitting as evidence of his fitness—

> three copies of a published book or of published books or papers, treating in a scientific manner of one or more legal subjects and consisting of an original contribution to the advancement of knowledge of such substance and distinction as to give the candidate authoritative status in some branch or branches of legal learning.[15]

The Board of the Faculty of Law then appoints two judges who report to the Board on the sufficiency of "the evidence." If the Board approves, the candidate becomes a Doctor. Those holding degrees from Cambridge or Dublin, may supplicate for the D.C.L., though after a much longer period of study.

Oxford wisely provides a Diploma in Law for qualified persons who pursue a course of research at Oxford for at least three terms, or one of our academic

14. "Orals" for us non-classic colonials!
15. OXFORD UNIV. STATUTES 495 (1968).

years. This is a useful arrangement which permits one who comes to Oxford from another university, but who cannot stay for two years for the B.C.L., to have some record of his successful studies. Comparison of the Diploma and B.C.L. requirements suggests that the B.C.L. is somewhat more exacting than the Harvard LL.M., though this is difficult to judge fairly.

Winds of change are blowing at Oxford, as they are at other universities. Dr. Lawson tells us that while a man with an Oxford degree in jurisprudence has usually achieved a broad legal culture, this breadth has its cost and Oxonians appointed to teach at other universities often require time to acquire as much knowledge as graduates of other universities. He well says, however, that "[i]t is perhaps permissible to hold that there should be at least one law school run on these lines."[16] Certainly the roster of eminent practicing lawyers, judges and university scholars of law trained at Oxford, many of whom one meets in Lawson's pages, offers convincing evidence of the quality of their education. To be sure, training for active work at the Bar requires additional study while the graduate is enrolled at one of the Inns and even after his Call, necessitates reading with an established barrister. This phase of the barrister's training is currently under reexamination in England. A call to the Bar is much easier than qualification as a solicitor, and a newly called barrister is no more ready for practice than a young man who has just passed the Massachusetts or New York Bar examinations. A correspondent of the *Economist* observed in 1968—

> The Inns of Court, which were once responsible for the education of barristers, handed over this function to the specially created Council of Legal Education in 1852, after a select committee had criticised strongly the current state of legal education. The Inns, however, are still responsible for the admission of students who pay their fees to their Inn. . . . The Benchers of Gray's Inn recently revealed administrative inefficiency by the Council of Legal Education over the recent Bar exams; this gave Bar students the grievance they needed to join the fashion for student organisation. Reform committees and manifestos have sprouted since it was discovered after the May results came out that over 50 Part I students had been omitted from the pass list.
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> Students complain that the exams are not related to practice, and that the lectures are not related to the exams, while for law graduates there is needless repetition in the Part II syllabus for which no exemptions are granted. Many intending practitioners would like courses designed to encourage the acquisition of professional skills like drafting and advocacy. Tutorial classes vary in both quality and accessibility.
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> English lawyers insist, accurately, that passing the Bar exams does not in fact qualify anyone to practice at the Bar. It is necessary to serve a year of drudgery in a barrister's chambers after being called. . . . While all these inquiries and discussions are continuing, the CLE has been trying to put its house in order. Some years ago it

16. LAWSON, *supra* note 2, at 176.

> was ruled that students would be allowed only four attempts at any examination. Very recently a Dean of Studies has been appointed who will be responsible for both administration and teaching. He has already declared himself in favour of modernising the syllabus and teaching methods. Advertisements are now out for four full-time tutors, at a salary of about £1,100, to begin in September. . . .
>
> This is a major crisis in legal education. What is the role of a lawyer today: who should be training him and how?[17]

Of the Oxford system Lawson writes:

> How much longer this traditional type of legal education will be practised is uncertain. At the present time a greatly enlarged Faculty containing many new members is, of its own motion and under the stimulus of articulate undergraduate opinion, reconsidering the whole curriculum, and many changes are to be expected.[18]

Perhaps an indication of the direction of change at Oxford can be seen in the new Bodleian Law Library and Law Faculty Building in St. Cross Road. The main reading room has open stacks; there are teaching rooms, offices for the Faculty, and common rooms, which Dr. Lawson thinks "will almost inevitably bring law students and law teachers from different colleges much closer together than hitherto."[19]

Dean Griswold of Harvard opened the new center on October 17, 1964 with an address "The Community of Legal Scholarship,"[20] in which he spoke of "great new things in the coming picture of legal scholarship and legal education in this country." He told his audience that the greatest problem the world faced was to keep the peace, a problem which required great statesmen, experienced and well trained aides, and a receptive climate. An understanding and awareness of the thoughts of scholars in other legal systems will form the basis for world harmony. Though people are diverse, there is much in common in the law. The law can serve to adjust and avoid international disputes in a manner as effective as its operation in domestic concerns. World peace through world law may seem ideal, but, Dean Griswold said, it is also extremely practical.

III. A Modest Proposal

A fantasy of omnipotence is a harmless recreation, available to everyone, and happily unhampered by crude considerations of practicability. If I were an American Faculty of Law, Dean, University President, and Governing Board, all rolled into one man, what kind of law-school would I create? I fear that such improbable powers would be necessary for the drastic changes I here propose. Professors are deeply conservative folk. The pedagogical fixations of an American teacher of law can be almost immovable. Tapping Reeve's insistence on

17. The Economist, August 10, 1968, at 33-34.
18. Lawson, *supra* note 2, at 176-77.
19. Lawson, *supra* note 2, at 183.
20. Reprinted in 81 Law Quarterly Review 42, 50-51 (1965). The new library's exterior and interior are pictured in Dr. Lawson's book, *supra* note 2, at 30-31.

weekly "drill," Story's topical treatises, Langdell's ritual of student-teacher dialogue and course-examinations, it becomes clear that liturgies or procedures derived from all of these are so deeply ingrained that we depart from them grudgingly and then only a little at a time. The charisma of multiple classroom hours rules our curricula. Yet we may be wasteful, dull, less effective than we should be. What changes should we make?

At the outset, is our selection of students as successful as we tell ourselves? Dean Griswold, speaking of the difficulty of choosing among the great majority of applicants at Harvard, once said that their qualitative differences appear so minute that random selection among the large middle group might do as well as any other system. One can deeply sympathize with the predicament of a Dean of Admissions at any large law school who faces this problem, who must somehow find criteria for selection. If one assumes that the mission of such institutions is the identification and education of those who will lead the administration of justice in America thirty years hence, are our criteria the best for selecting able, wise and public-spirited future practitioners, judges, legislators, law teachers and the like? Do the Law Student Aptitude Tests and the course grades awarded by numerous widely differing college teachers effectively measure, in our postulants for admission, such essential qualities as energy, tolerance of people, or the sense of history which is so essential to wisdom in a career in law? Possibly our present criteria for selection are the best that could be devised; but our choice of students at the point of entry is the most important procedure in legal education, and one wonders if we encourage in admission officers enough ingenuity and wise daring. Are we perhaps, because of too much conventionality in selection, missing too many students we ought to take? To this essential type of examination should we divert some faculty time from the routine meetings in classrooms, from examinations of the type now customary, and even from committee and faculty meetings? Have we scrutinized other instances of selection in our society? How about selection of Rhodes Scholars? Does our Foreign Service do better or worse than we do in their comparable choice among many applicants? If I were all-powerful I should try a carefully devised essay-type written entrance examination, and then an oral discussion with each surviving candidate by one or more faculty committees. What is more worth the time and effort?

Once our man[21] is admitted, what dosage of ideas should we administer in his first year of study? For one thing we might at the outset tell him something about the profession he is entering. Interviews during the last twenty-five years or so, with college undergraduates and, for a few years, with applicants for admission to a law school, have led me to conclude that few young men know much about a lawyer's work, and some know what is scarcely true. I do not think a course in The Legal Profession is necessary or even desirable at this

21. "Words of the masculine gender include the feminine" in this discussion as in the New York General Construction Law § 22 (McKinney 1951).

stage, but we might take a leaf from the medical schools, and introduce our initiates comparatively early to some of the facts of life. I'd advise them to read an appropriate book; I'd have them visit a Neighborhood Law Office if one were available, or perhaps invite a staff attorney to come to the school and discuss his work with several small groups. Perhaps lawyers from large firms could be persuaded to discuss their work with groups of students. I would not "structure" this matter too much, nor take up too much time with it. When our grandfathers wanted to study law, perhaps they "read" in an office. It was not very systematic, but young men gained certain insights which allowed them to read lawbooks with more understanding. We might well seek some plan to supply comparable opportunities. To ward off criticism in advance, I now disclaim any intent or expectation thus to teach young men to practice law. The only way to learn to practice law is to work at it in a real life situation.

Another important aspect of "reading law" under a conscientious and learned counsellor was the continuing guidance he was able to give to his students. The law tutor at Oxford performs much the same function. At some American law-schools we briefly attempt similar training by using Teaching Fellows. A bit hesitantly I suggest that in our schools a preceptor-pupil relationship between older teachers and law students would be a wholesome institution. Some teachers would be better at this than others. Some would find it only burdensome. The same qualitative disparity now obtains among "thesis advisors" for Ph.D. candidates. In the Harvard Law School there is a ratio of one Assistant Professor or Professor for about each thirty students. In addition there are Teaching Fellows. Surely some arrangement for individual guidance should be possible and in many cases would be very beneficial.

The standard American first-year package of courses—torts, contracts, property, criminal justice, and procedure—seems to me quite satisfactory in subject-matter. After all, those are the fundamentals of the law. However, I think we spend more time with them than we need. I would start the year, as we do now, by the study of cases, but after, say, the middle of November I would turn my students to texts for preparation. I would use the classroom hour to question students concerning the application of what they read. I would cut classroom hours by 50%. I would use the time made available by reducing classroom hours for development of student skill in writing memoranda, appropriately documented. During this entire process, I would continually try to develop the student's capability to guide his own work.[22]

Professor Lawson tells his readers that the most significant features of the study of law at Oxford are the tutorial system and the examinations. The essential qualities of these examinations are their non-correlation with "courses" (for indeed courses in our sense do not exist there) and, secondly, the fact that

22. All teachers are nowadays much occupied in filling out recommendation forms for employment. I have been struck by the recurrence of the printed question, "Can he work independently, with little guidance?"

examinations are set and read, generally, by men who have not taught the candidates. The result is that students read all 'round a subject much more than we Americans do.[23] I would substitute for our course-examinations two days of general examinations at the end of each of the three years—eight one-hour essay questions, written four hours a day on two successive days. I would have these written in bluebooks identified by number, but not signed, and graded by committees of eight examiners, each of whom would prepare and grade one question. The committee would, of course, coordinate the several questions to avoid duplication. I would grade the essays fail; pass; honors; high honors; highest honors. I would average the grades of the eight essays by assigning numerical equivalents.

The first year students would all have had approximately the same intellectual diets, and preparation of the first year's comprehensive examination would present few difficulties. Also, the year's grade might well be affected by graded performance in first year written work. I would make the grade available to the student who earned it and to the faculty. Comparative rating is part of life; the student could disclose his transcript to others as his hopes or fears might suggest.

During the second and third years I would make available a good many more seminars than we now have, with perhaps two papers in each seminar, one in each semester. Any professor wishing to deliver a course of lectures could do so, drawing many or few hearers, as the hearers felt that the lectures were helpful, again as at Oxford and other ancient universities. This would eliminate lecture "courses" as we now have them. Students would attend lectures and read books which he and his advisers felt desirable for a rounded study of the law. At the end of the second year a general examination would be administered as at the end of the first year, but would cover an announced range of subjects with which the student would be expected to be familiar. Grading the second and third year general examinations would present more difficult problems than the process in the first year. Studies would obviously vary from student to student. The examiners would be expected to reward ingenuity in those candidates who used unusual material culled from wide reading. A colleague once asked me, when I was urging this scheme, what I would do with a man who had given special attention to Soviet law. I said that he ought to know enough American law, after two years of study at an American law school, to be able to make passable responses to questions touching preannounced areas; moreover, relevant comparative law references could be striking and effective touches.[24] I would expect a lot of such unusual matters to be covered in sem-

23. For a description of the process at Oxford which requires much more self-reliance, in addition to being much more difficult and much more educationally sound than our American system, *see* A. L. ROWSE, *supra* note 1.

24. A Bulletin of the Supreme Soviet of the U.S.S.R. is cited in the appellants' brief in the Massachusetts Sunday Law case, *Gallagher v. Crown Kosher Supermarket of Mass. Inc.*, 366 U.S. 617 (1961).

inars, in which the student wrote papers, which could be graded and averaged with the general examinations. The seminars, not today's lecture courses, would be the current graded exercises in this second-year curriculum.

The core of the third year would be preparation of a major documented dissertation. Most American law schools have gone over to the doctoral degree, and in the future we may well require a dissertation of doctoral quality. At the end of that year I would set a third general examination at which the student would be expected to demonstrate competence in preannounced areas suitable to one who has studied American law for three years. The third general examination, any third-year seminars, and the dissertation, appropriately weighted, would be averaged and would furnish the student's final rating—*i.e.*, *fail*, *pass*, *cum laude*, *magna*, or *summa*. The third year would thus more resemble the present Ph.D. program than the Oxford model.

Of course various problems would still remain. Would the course of study, arranged as I suggest, satisfy requirements of all States so as to allow the student to take the Bar examinations? What of selection for such honorific activities as the Law Reviews? Today's climate of opinion does not seem to favor intellectual hardihood. Would preparation for the general examination be so much more arduous than course examinations that students would rebel? The latter may be the most intractable obstacle. Bar rules can change as they have in the past, but the program I suggest would be more exacting than the present. In the long run, one is forced to admit, entirely aside from the matter of the program's failures and triumphs, the tolerance of the academic consumer would probably govern the extent of our well-meant reforms.

But what does this do to eliminate widespread complaints of boredom from American law-school students? Even if admissions could select only those men who can derive a lifetime's wonder and fascination from the diverse displays and reasoned ranking of social conflicts which make up the law, there would always be a curricular lag. Courses evolve much more slowly than society changes. Eliminating conventional courses shifts the responsibility for curricular selection to the student. If the burden of running courses is greatly reduced or eliminated, the American law-school teacher will have more time to help the individual student select and follow his own bent. If the student became bored by his self-selected subject-matter, he would have only himself to blame.

One-teacher-one-student has produced remarkable lawyers at Oxford, and individual initiative at the Inns of Court has turned brilliant university men into brilliant lawyers. Although ultimately, wise and imaginative lawyers will always emerge from imaginative men who use their own efforts to attain wisdom, this "modest proposal" might go far to help the process and create an environment in which that development might better occur.