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Jerome Hall

Indiana University School of Law

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A 2-2-2 PLAN FOR COLLEGE-LAW EDUCATION

LEGAL education is at low ebb in these hazardous days of national emergency. In a war for self-preservation, it is natural that every effort be strained to attain the vitally needed objectives. If the war were the sole cause for the lapse in prestige, legal educators could mark time, patiently awaiting the return of their students and the resumption of their tasks as in former times. But there is more than mere suspicion that the present condition is only the most aggravated symptom of the inadequacy of legal education that has been keenly felt for more than a quarter of a century. If the reader agrees as to the existence of the more serious defects in legal education described below, he should consider the problems and the adoption of the proposed reforms here and now; for there is every indication that in the post-war world these problems and reforms will be even more urgent than they have been at any time in the past.

PRELIMINARY QUESTIONS

Before one can fairly consider any important proposed change in legal education, it is necessary that certain preliminary issues be confronted squarely, and determined definitely. Most fundamental of these is the claim that legal education is seriously inadequate. This involves a consideration of the objectives of legal education and of the work being done by law school graduates. It involves, secondly, examination of what is perhaps the chief argument in support of recommendations for sharp revision of legal education, namely, that economic change has been so accelerated in recent years that lawyers are presented with basically new problems which they are ill-prepared to solve. Intertwined with the above are questions of more ultimate objectives and ideals. If these are envisioned in terms of service rather than in terms of personal emolument or other terms that refer solely to the practitioner, then — though these may not be mutually exclusive since remuneration should bear a rational relationship to service — the

difference in emphasis is sufficiently great to produce divergent views regarding the aims, contents, methods, and results of present legal education.

A major difficulty which complicates the achievement of a consensus of competent academic opinion is that some of the above problems are packed with political issues. The law professor cannot, any more than any other citizen, keep from evaluating contemporary economic and political change. Like lawyers generally, his judgment of collectivist trends is apt to be adverse. Quite naturally he is led to suspect that some of the recently proposed changes in legal education, especially those concerning integration with the social sciences, are motivated by desires to support the current economic reforms, or at least, involve tacit approval.

It is submitted that before any fair evaluation can be made of proposed substantial curricular changes, some common ground must be achieved with reference to the above issues. For such proposed changes must rest on a conviction that present legal education is very inadequate, and on the related, subordinate positions that the present-day law graduate faces a substantially different future than his predecessor in the hey-day of the case system: so many enter government service or business, or engage in types of practice which are so different from traditional individual-client representation, and even such client representation has changed so markedly, as to require substantial reform of legal education to provide the required general preliminary equipment. In brief, we need to modify our conceptions of "lawyers' work" and, *pro tanto*, of the general training necessary thereto.

In support of these premises, what can be said, which, if not fully persuasive, will at least lead to a willingness to experiment with suitable reforms? In the absence of substantial knowledge, one can simply point to commonly-known facts established by various studies and surveys: the known influx of graduates into government services (15-20%); the rise of administrative boards and practice; the large numbers who enter business, or join corporate organizations, not infrequently in only partially legal capacities. As to the fundamental cause, vast economic change, one may point to the history and effects of the Industrial Revolution, and to the legal as well as social science literature starting about the eighteen-seventies, that reflect drastic upheavals in population

movements and in working and living conditions generally. One need hardly dwell upon the wars and revolutions of our own times, nor upon the course of legislation and decision in this country, at least since the beginning of this century, as cogent evidence of major economic changes. It seems almost an inevitable inference that the practice of law would feel the impact of such changes no less than other social institutions.

It should not be difficult to reach a similar agreement concerning alleged or suspected political and ideological motivation. For if universities are in any sense worthy of their lofty affirmations, the scholars who compose their faculties perform functions that rise above partisanship. If truth-seeking differs from the pursuit of economic interests, then it is difficult to understand how any educator can deliberately ignore the common facts or fail to try to meet resulting needs — simply because as a citizen he does not approve of what is going on. If the changes are evanescent, they deserve little study; but if the contrary is true, they cannot be simply and indefinitely ignored. In any event, no legal scholar can completely withhold his criticism of legal proposals to solve economic and other social problems. A curriculum which provided opportunity for such criticism would not imply, by any stretch of the imagination, approval of current changes in law, decisions, or economic organization; nor, for that matter, would it imply disapproval. It would simply bring within the reach of competent criticism, legal problems that cry aloud for treatment by qualified scholars.

There remains one final preliminary consideration. Granted that lawyers' practices are in large degree substantially "different," that the differences and the problems result chiefly from sweeping economic changes, and that the issues that inhere in the current reforms, legislative and judicial, are a proper sphere for dispassionate analysis by legal educators — granted all of this — what evidence is there that traditional legal education does not meet the present needs as well as possible? What evidence is there of the alleged gross inadequacy of contemporary legal education?

The most obvious proof of this is the enormous volume of criticism that has filled legal periodicals since 1914, when Redlich published his epochal criticism of the case-method of instruction. Examine the *Index to Legal Periodicals* and you will find a mount-

ing flood of criticism and proposed reforms. Is this literature the product of extremists, of "agitators," and of replies by "conservatives"? If that were so, the issues could still not be brushed aside summarily since they at least merited the study and response of many well-recognized scholars and lawyers. But that is assuredly not the case. The periodicals contain constructive but nonetheless sweeping criticisms by distinguished scholars and lawyers of all political hues, including some known for their traditional "liberalism" or "conservatism."¹ For example, in light of the substantial number of law graduates who enter government service, it is important to know of their qualifications for such work. The adverse judgments of a number of competent observers could be cited; of these, perhaps the best informed, and certainly one of the most moderate of critics, is Dr. Leonard D. White, who writes:

It must be said that the training of the lawyer, based on precedent, and looking backward rather than forward for guidance, is not a training which is suited to make the ideal administrator. . . . Our legal education has not given emphasis to the proper preparation of lawyers for the public service; indeed, there is a strong sentiment among some law faculties that no special preparation is needed or useful. This view cannot be accepted in the light of modern conditions. . . .²

It would be possible to marshal considerable like criticism of many judges and lawyers in public office, *e.g.*, criminologists commonly criticize their qualifications to discharge penological functions. But what of the "general practitioner," for whom we are primarily concerned? Recent surveys suggest much regarding changed practice: the rise of administrative law is only one of many new conditions that call for additional equipment and the preliminary training necessary thereto. One could cite considerable respectable authority in support of this view. Perhaps the Presidential Address of Elihu Root before the American Bar Association as long ago as 1916 is as persuasive as any of the numerous emphases on the needs of the Bar, and especially the need "to reach the lawyer in the making and mold his habits of thought by adequate instruction and training so that when he comes to the Bar he will

¹ See, *e.g.*, Gilmore, *Presidential Address to the American Association of Law Schools* (1920) 7 A. B. A. J. 227, 229, and especially his quotations from numerous distinguished scholars and lawyers.

² WHITE, *GOVERNMENT CAREER SERVICE* (1935) 46-47.

have learned to think not merely in terms of law but in terms of jurisprudence.”³

Finally, we have had the actual example, during the past fifteen years, of numerous important changes in law curricula — some of them going to the point of providing four-year law school courses. These changes are the tacit, but perhaps also the most eloquent, testimony that careful scholars, after persistent study, concluded that traditional legal education is seriously inadequate to meet the present needs of the profession and of the public that patronizes it as the monopoly of legal services.

SOME MAJOR DEFECTS OF LAW-SCHOOL CURRICULA

Every criticism of existing legal education rests upon a judgment that the objectives that ought and can be fulfilled are only partially and inadequately realized. The objectives of legal education are logical inferences from the functions of the legal profession and these, in turn, refer to the role of law in society. These more ultimate aims may be stated in terms of various ideals, namely, maintaining order, securing life and property, dispensing justice, and the like. We need not elaborate these basic goals although they cannot be ignored without repercussion upon, and cost to, the profession.

The criticism of present law curricula in terms of the more immediate objectives⁴ may be divided into two general types: one focuses on the more or less traditional tasks of lawyers, and contends that there is much room for improvement. The other centers on the new functions, the “new lawyer,” and stresses the inadequacy of legal education to provide the general preliminary training required by such a practitioner. It is the position of this writer that there is considerable merit in both types of criticism.

In the last twenty years, there has been a great rise in public law, and numerous courses, chiefly in this field and, also, in juris-

³ (1916) 41 A. B. A. REP. 355, 366.

⁴ Dean Pound has suggested that they are the supply of: (1) good trial lawyers; (2) good advocates before appellate courts; (3) good office lawyers, including advisers to businessmen, property lawyers, advisers to trust companies, and commercial adjusters; (4) judges and legislators; (5) lawyers competent to lead in pressing necessary reforms and advisers on the legal aspects of public questions; (6) competent law teachers. Pound, *What Constitutes a Good Legal Education* (1933) 7 AM. L. SCHOOL REV. 887-94.

prudence, legal history, and legislation, have been added to law school curricula. Since the time factor has remained constant, the result has been a crowding of the curriculum to the point where no student can take all of the work offered — and in some of the leading schools these very courses in public law are the ones omitted despite their acknowledged importance. Furthermore, the result has been not only crowding but confusion, for both student and faculty. The student, being the more narrow utilitarian, consults the bar examination announcement and selects the “required” courses. Accordingly, despite the fact that in recent years many schools have included courses designed to broaden legal training, these remain largely window-dressing in the catalogues. Thus not only are the moderate advances rendered impotent but the bar examination looms up as a serious handicap to sound legal education.

Consequently one major need is for organization of existing curricula — not merely either the condensation of existing courses or the addition of short lecture courses in lieu of full courses — for existing law curricula are spontaneous, if not accidental, results of various revealed needs. Chronological examination of the catalogues of any of the older law schools demonstrates concretely that course has been piled upon course, exhibiting accretion and expansion rather than a thoroughgoing analysis of the entire curriculum. Failure to organize the curriculum may be but one phase of the modern movement disparaging logical analysis and traditional legal methods. It may be due to emphasis on the second type of criticism to be considered shortly. It may be due to specialization aggravated by the fact that only rarely have legal educators as groups attacked their problems over substantial periods of time; we have been individualists and, being specialists, this has meant improvement within our own specialties. Unfortunately, it has also led to serious neglect of the curriculum *as a whole*. With all the current stress on integration, it is amazing to note the almost total neglect of it within this area of greatest competence. That Contracts, for example, is closely connected with Sales, Negotiable Instruments, and Insurance is apparent. That the relationships between Torts and Criminal Law are numerous and intimate has been known at least since Terry's *Anglo-American Law* and Beale's pioneering on *Liability*. It is highly probable that the

various commercial courses cover much common ground and that this is similarly characteristic of public law courses. An intimate collaboration between the various legal specialists in related fields is required, not only to eliminate repetition and unimportant detail, but also to construct an organized body of materials throughout the traditional curriculum. In that endeavor we should free ourselves of the obsession that the student must be drilled on every detailed variation of every rule of law that he may conceivably encounter in practice. That sort of instruction is a law school version of mere accumulation of information. Organization of the curriculum alone cannot be expected to meet the present needs; it is one essential step, however, and it has special significance for the 2-2-2 Plan to be described. The resulting condensation would make room for the newer courses,⁵ giving students a comprehensive view of the whole *corpus juris*.⁶ Furthermore, it would make possible the attainment of other objectives presently lacking in our typical curriculum, *e.g.*, training in draftsmanship, brief-writing, and legal research.

The more debatable issues concern the second type of criticism of legal curricula, which emphasizes integration of law and social science. From this perspective, what is wrong with legal education? No effort will be made here to state the position of the various proponents of this view,⁷ since these are diverse, and it is apparent that they have rather generally failed to convince. The reasons for such failure are not difficult to apprehend. The integration of law and social science is relatively new. The theoretical bases for such integration have not yet been made explicit and clear. There are very few substantial contributions to exemplify what the integrators are advocating. The abundant literature advocating integration proceeds on a rather crude level of specific example, illuminated occasionally by remarkably fine insight.

But the chief arguments put forth are clear. They stress: the inadequacy of present legal education in providing necessary training for judges, legislators, government employees, and many

⁵ See Dickinson, *Legal Education and the Law-School Curriculum* (1931) 79 U. OF PA. L. REV. 424.

⁶ See Vanderbilt, *What Constitutes a Good Legal Education* (1933) 7 AM. L. SCHOOL REV. 902, 907.

⁷ The pioneering study is the SUMMARY OF STUDIES IN LEGAL EDUCATION BY THE FACULTY OF LAW OF COLUMBIA UNIVERSITY (1928).

private practitioners; the need for the study of law as a science rather than exclusively as a technology; the need for the study of law in relation to social requirements and problems; a functional study and understanding rather than a predominantly analytical study; the necessity for broadening the study of law by integrating it with the social sciences. The integration of law and social science is the foundation stone of this type of criticism. The opposition to such reform has been vigorous, and we must consider some of the reasons for this.

It must be noted that in the past there has been deep suspicion on the part of many highly competent legal educators that, as they sometimes put it: The social so-called "sciences" are not only not science, they are not even well-ordered disciplines. They are, at best, common sense descriptions of fact; at worst, a hodge-podge of confusion and propaganda. Why substitute them for a training that has a tradition of centuries, that is rigorous, that disciplines and is directly useful?

What must be recognized and emphasized is that this older and unqualified criticism has largely disappeared. It is not that the weaknesses and the difficulties of social science are forgotten, but that its importance, particularly in an era of tragic social tensions, is now widely conceded. The most cogent evidence of this newer attitude among legal educators was provided by the new Harvard and Minnesota curricula. Read in the light of Professor Simpson's remarks⁸ and Dean Fraser's report,⁹ this means that the highest level of knowledge in social science is now regarded as an essential part of the required equipment, but that it had best be studied after considerable training in law. The implications for legal education which ignores such knowledge are plain. The present major problem is — how can these disciplines best be utilized to improve legal education?

The argument most commonly heard from critics of integration of law and social science in the law school curriculum may be stated briefly as follows: The teaching of social science is the job of the colleges; let the student get it there, and let him get it before he enters the law school. There is little enough time as is to teach

⁸ HANDBOOK OF ASS'N OF AM. L. SCHOOLS (1939) 120-21.

⁹ REPORT OF THE LAW SCHOOL OF THE UNIVERSITY OF MINNESOTA (1938-40).

the law that the graduate needs to know. Finally, the attempt by the law school to do both jobs will damage present standards.

This criticism reaches the point of sharp opposition when it is realized that some of the reformers entertain philosophies that discount the value of law, and training in law. It must also be admitted that it is gross exaggeration to assert that law schools study only rules of law, since every case includes a statement of facts. In addition, the student brings some twenty years of living, observing, and learning with him into the classroom; this is supplemented by information presented by the professor. But, as noted, it has been very widely recognized during recent years that attainment of the newer objectives requires much greater knowledge than is provided by merely the legally relevant facts, amplified by fragmentary additional information. Recognition that knowledge of the social sciences, including the humanities and business disciplines, and of their methods of investigation is indispensable implies that *sustained efforts are required to provide the additional necessary equipment.*

The most persuasive single item of proof that the advocates of "integration" have failed to make their programs understood is the common insistence that the college impart social science prior to entrance into law school, and that the law school continue to teach only "law." The very form in which this objection is phrased reveals the almost complete lack of understanding of the problems of integration. This is hardly a culpable failing since the proponents of educational reforms, if they have entertained any definite theories of integration, have been reticent to expound them. At the same time, in fairness to the proponents of integration, it must be recognized that the advocates of a substantially new legal education are naturally enthusiastic to remedy keenly-felt needs, and consequently they are apt to forget that integration raises most difficult problems of theory and execution.

The simplest ground for opposing the continued rigorous total separation between teaching social science and teaching law is that law cannot be adequately understood unless it is studied directly and immediately in relation to the major social problems that confront individuals and groups, and produce the conflicts dealt with by law. This is not the revelation of a new legal philosophy; it is wisdom as old as Aristotle, and the grounds have been attractively

restated in Professor Whitehead's popular article on the need for relating fact to concept and theory, and of studying both in their various significant interrelations.¹⁰ It is in this sense that thoughtful scholars and officials have urged the "broadening of the study of *law*." Had the movement for reform not been impeded by adventitious and unsound detours, it is probable that it would have made much greater progress than it has, since, essentially, it follows in the tradition of teaching legal history and social policy in the law schools. The present stress on integration is founded on the premise that such teaching must be much more thorough and systematic than in the past.

Accordingly, this much must be insisted upon at this point: if social science must be integrated with law in order that law be more fully understood and the present-day needs of practice met, the task cannot be entrusted solely to the college. For law and legal problems constitute the focus of legal education. These provide not only the central problems for study, but they also initiate and direct the acquisition of nonlegal knowledge. But the integration of law and social science is tremendously difficult even for legal scholars who have studied the problem for years. Such integration remains largely in the realm of art and cultivated insight. No theory for the unification of diverse fields of learning has won general acceptance. Indeed, it is not unlikely that "unification" in any scientific sense is theoretically impossible — although we can and do have intelligent juxtaposition of significant knowledge from various fields. The several disciplines not only have distinctive terminologies — which alone might be mediated — but in addition, they deal with problems formulated on levels which are appropriate to their particular objectives and supply descriptions and theories relevant to their special inquiries. The employment of legal rules and theories to amplify social science is almost as feasible as the converse. Something of both must be done in the modern law school, but it will be generally agreed that the major undertaking will continue to be rooted, orientated, and directed from legal problems and law. This is sim-

¹⁰ *Harvard: The Future* (1936) 158 ATL. MONTHLY 260. Cf. Llewellyn, *On What Is Wrong with So-Called Legal Education* (1935) 35 COL. L. REV. 651; Lewis, *The Social Sciences as the Basis of Legal Education* (1913) 61 U. OF PA. L. REV. 531.

ply to assert that the law school will continue to be interested chiefly in law as technology, practical knowledge. But it is coming to be equally recognized that the extent of its success in discharging this task will depend more and more on its utilization of the social sciences and their methods to illuminate the law, its rules, doctrines, procedures, and practices. On that premise the conclusions are inescapable that the law school cannot insist on complete and rigorous separation of the teaching of law and social science, and that it cannot impose an impossible obligation on the college or graduate school. Nor will any legal scholar who has struggled with the enormously difficult problems of integrating law and social science be apt to imagine that even his best students will be able to accomplish that by themselves through some sort of spontaneous incorporation into the law courses of the social science acquired as undergraduates. It is the law school's job and must be confronted and dealt with as such.

FOUR-YEAR CURRICULA AS MAJOR RESPONSES TO THE NEEDS

The natural, initial adaptation to the two aforementioned major types of criticism has been the advocacy of, and the adoption by, several schools of a four-year curriculum. The relevant literature is extensive and the reader's familiarity with it is assumed.¹¹ We do need to recall, however, that advocacy of a four-year law curriculum goes back at least twenty years, that its advocates include such distinguished scholars as Beale and Wigmore, and that several first-rate law schools have embarked upon such programs. Although sufficient time has hardly elapsed for thorough studies of the results, it is possible to consider certain of the problems and difficulties involved. The overriding single fact has been the unwillingness of the vast majority of law schools to adopt a four-year law program. There are several reasons for this. There is the general reluctance to add a year to the total schooling of the law graduate. This unwillingness may be unsound but it is an attitude that can hardly be ignored. For those schools which require a college degree for entrance (a large proportion of these

¹¹ For convenient description, see Harsch, *The Four-Year Law Course in American Universities* (1939) 17 N. C. L. REV. 242; HANDBOOK ASS'N OF AM. L. SCHOOLS (1939) 100, 177.

permit their own college students to enter with three years) it would seem a simple matter to substitute a 3-4 plan, since no increase in the total time would result.¹² Generally, the better law schools require three years of college work as a prerequisite, with six years for the combined courses. Since a large number of these schools' entering law students are college graduates, it would not appear to be very difficult for these schools to adopt a 3-4 program, though here an additional year is involved.

In view of the prevailing distaste to add a year to the student's time in education, the law schools which have adopted a four-year program (except Washington) have met the situation by reducing the entrance requirements by one year: the 2-4 plan is presently the most frequent adaptation to the commonly recognized needs. As noted, this plan has not met with wide approval — at least if adoption is the test. Criticism centers on the pre-legal education since many legal scholars join their colleagues in the colleges in believing that two years is inadequate preparation for study of law. It must be noted and remembered, moreover, that this opinion is supplemented by the view that the four-year law curricula have not been worked out sufficiently well to overbalance the cutting-down of the pre-legal training. As to the former position, it must be conceded that we simply lack the knowledge for precise or objective judgment. It is debatable whether two, three, or four years of college is best. That, however, is not the problem. If that were the issue, there would usually be only one answer — the more the better; and by like standards, it could be argued that

¹² The writer is not unaware of the practical difficulties resulting from the tradition, especially in the east, of graduation from a four-year college prior to entering law school. That law school education should be permanently handicapped by treating the consequent restrictions as unalterable is inconceivable. In the east, a uniform policy by the leading law schools would go very far to solve this problem. The advantage there lies in the small number of these law schools. In the midwest and elsewhere, a similar advantage results from the dominance of the universities in college education and the frequency of admission into law school with less than a college degree. Cf. Bordwell, *Experimentation and Continuity in Legal Education* (1938) 23 IOWA L. REV. 316, 317. It should not be impossible to secure the further cooperation of the various colleges concerned to the point of encouraging their students to enter law school after completion of one year less of college work if the new program in its entirety provides a better liberal education than is presently available. Certainly it should not be assumed that college administrators will oppose arrangements that would provide a better education for their relatively few students who plan to study law.

four years of law training is better than three or two. Clearly judgment must be made on the whole education and *must focus constantly on the wisest allocation of the given time*. It is natural for college educators to stress the value of college education and to minimize the worth of what they call technical training. The major difficulty here is that the content of the four-year curricula has not been clarified to associates in the colleges. The importance of this may not be appreciated by most law professors, but it will be grasped immediately by those who have served on committees that have discussed four-year law programs with members of the college faculty — especially with reference to granting of appropriate degrees. As long as the college deans and faculties believe that anything taught in the law school is “vocational,” there will be strong opposition to every attempt to curtail the time devoted to sound liberal education by the colleges; this obstructs the adoption of 2-4 curricula. Again, the simplest, if not the wisest, method of meeting such opposition has been for the law school to set its own admission requirements, to grant all degrees itself, to go its own way.

This focuses attention on the four-year curriculum itself rather than on the pre-legal training, and raises more difficult questions. What assurance is there that it gets better results than the three-year curriculum? This depends on the answers to various subordinate inquiries which must be examined. It has been argued most effectively, for example, that up to the present time the most that legal educators can claim is that they have developed a very good program for the first two years of law school. In the opinion of many, the third year is grossly inadequate.¹³ In light of this major failure in the traditional three-year curriculum, it seems hardly feasible at the present time to add one more year of the same kind of work. On the other hand, if the introduction of social science is the chief basis for lengthening the law curriculum, it must be recognized that it has not been established that such integration requires more time; perhaps less time is needed if the student is given the additional insight at apt places in his law courses.

¹³ See Beale, *Aims and Methods of Legal Education* (1931) 7 AM. L. SCHOOL REV. 145-47; Mechem, *Remarks* in HANDBOOK OF ASS'N OF AM. L. SCHOOLS (1939) 112.

But existing four-year curricula give rise to much more serious doubts. The introduction of social science courses throughout the law curriculum at this time is likely to produce a confusion in subject matter that would magnify the present disorganization considerably. Certainly no school has succeeded thus far in introducing social science courses into the law curriculum or even social science into many law courses, and in organizing the total into an intelligible and rational whole.

The facts must be faced fairly. The most important one is that integration of law and social science is tremendously difficult. Furthermore, integration is a matter of years of cultivation, and the majority of law teachers, for no censurable reason whatever, have little specialized knowledge of the social sciences, even when they recognize the need and are sympathetic with the efforts in that direction by some of their associates. Is it not significant in this regard that even these colleagues are still in the state of cautiously introducing fragments of social science into their courses, and that they have hardly yet begun the enormous task of planning a complete law curriculum in these terms, much less actually providing all of the necessary materials? Under these conditions, and in light of the needs and objectives mentioned above, what is the best that can be done here and now?

THE PROPOSED 2-2-2 PLAN

The 2-2-2 Plan (for those who devote seven years to the whole program, or who think that seven years is the most desirable time, 3-2-2 should hereafter be substituted) was formulated and presented to his colleagues by the writer over a year ago. It provides for two years of pre-legal work; two years of "straight law" work; and two years of law and college work to be carried on simultaneously. The first division requires little discussion except to note that, if seven years are or become available, then three years rather than two should be spent on pre-law work, not so much because the additional pre-legal year has been demonstrated to be important for sound law study as because the resulting program of studies is thereby simplified and rendered more effective. The 2-2-2 Plan requires that the first two of the last four years be spent largely as at present, namely, devoted to "law" subjects.

With reference to the usual three-year law curriculum, this leaves one year of law to be completed; with reference to the usual three year pre-law curriculum, there also remains one year. The 2-2-2 Plan provides that for each of the last two years of the student's training, he carry approximately one-half a year's work in law simultaneously with one-half a year's work in college subjects. In further description of the 2-2-2 Plan it must be stated:

(1) There is no agreement concerning the content of the pre-law work except that there appears to be considerable emphasis on sound liberal education, and a reluctance by law teachers to rely on the social sciences to attain this end. There does appear, however, to be some fair agreement that the pre-law work should emphasize composition and oral expression, history, especially English and American constitutional history, mathematics or logic, and physical science. Electives could be in any recognized field including business courses, social science, and the humanities. But, as noted, there is an increasing opinion among law teachers that, for the most part, social sciences should be studied by law students after considerable legal training, not before. Furthermore, the division of college work into Junior and Senior (two years devoted to each), and the recent developments at Chicago imply that considerable progress can be made towards providing a sound general education in two years, especially if college entrance requirements are high. The writer hastens to add, to remove many doubts presently held regarding two years of pre-law work, that under the 2-2-2 Plan an entire year would later be devoted largely to social science. Moreover, as will appear, the 2-2-2 Plan could provide the finest liberal education ever offered.

(2) The second division of the 2-2-2 Plan has been described as devoted substantially to the present first and second years of the traditional law curriculum for purposes of orientating the reader. It is necessary now to add a number of qualifications. First, it must be recognized that important changes have already been made in the law curricula of leading schools. These changes, including courses in Legal History, Introduction to Law, Jurisprudence, and Legislation, have been well received, and there is every reason to continue them. Second, individual teachers here and there have already succeeded in effectively introducing social science materials into their courses. This movement should be con-

tinued and others should be encouraged to develop their courses likewise, wherever feasible. But in the main, the first two years in American law schools remain surprisingly uniform throughout the country — a matter for much gratification, indeed. The chief objectives during the first year are the imparting of basic legal principles and the logic of legal methods, whereas the second-year objectives are the concentrated learning of a very broad field of law, with methods subordinated, and ability to use the library assumed. These two years represent the peak achievement of American legal education to date, and it is important to preserve the progress in methods of instruction which our law schools are generally recognized to have contributed to education. But if the aforementioned remarks concerning the present crowding of the curriculum and disorganization of subject matter are valid, the problem and the challenge as regards the first two years of law study are clearly indicated. Since one-third of the law course is to be taken during the last two years under the 2-2-2 Plan, it is clear that this fact will need careful study when the work presently given during the first two years is re-examined. But the perfecting of the first two years of the law curriculum can be directed very largely by traditional and well-known methods of analysis. The task for improvement of these two years is clearly defined.

(3) Much more debatable questions concern the last two years of the 2-2-2 Plan. Here, as in each phase of the program, it is essential to bear in mind that the plan is intended for immediate adoption. Accordingly, rigorous separation of each of the above divisions of the Plan which might otherwise be arbitrary may be defended as reasonable and necessary in light of this purpose. The simplest initial program for these last two years consists in pairing each law course with a factually relevant course in the college. For example, Corporation Law may be paired with Corporate Financing, Labor Law with Labor Economics, Taxation with Economics of Taxation, Administrative Law with Administration, Evidence with Psychology, Trusts with Investment Banking, Criminal Procedure or Administration with Criminology, Jurisprudence with Philosophy or Social Theory, Trade Regulation with the Economics of Competition and Monopoly, Procedure with Logic, Constitutional Law with Political Theory or Advanced Constitu-

tional History.¹⁴ These courses would continue to be taught separately and by the present personnel, but there would be the following important differences, in addition to the juxtaposition in time. The college or graduate courses would be selected by the law school; presumably one consideration would be a preference for professors in the colleges and graduate schools who had had some legal training, were interested in law, or had particularly important contributions to make to social theory or to their specialties. Only a small number of such colleagues would be thus enlisted, and in most universities they are available, though their talents for the indicated contribution have been largely overlooked by the law schools. As far as possible, the nonlegal courses chosen would be given on a graduate level, indeed, where feasible, by a graduate faculty. In addition, it would be a very simple matter to provide

¹⁴ The writer trusts that it is quite clear that the above does not purport to be a curriculum. The purpose has been to develop a method to be used in constructing the new curriculum and merely to suggest what some of its contents might be. The construction of a curriculum, ready for actual operation, would require some months of careful study and consultation. There would be numerous problems to consider: just what law courses should be given in the last two years, the matter of electives, the fact that certain courses could not readily be paired with a nonlegal discipline, and so on.

From a purely theoretical viewpoint, every law course could be improved by increased knowledge of relevant facts and social theories. But the problem viewed practically is by no means so boundless. For if the method of constructing the new curriculum described above is valid, this decision (as to which courses should be allocated to the last two years and integrated) would be largely determined by the content of the present first two years of the curriculum. Modifications would be suggested by various factors, *e.g.*, problems of organization of the first two years' work, the subject matter of the law courses — especially the existence of closely related courses in the college, and the law professors' own interest in integration — a matter of very great importance, indeed. Again, with reference to the job of constructing the curriculum, the writer's initial thought is that Jurisprudence, Conflicts, and Advanced Procedure should be given in the last two years without being paired with a social discipline. As to Jurisprudence, because Philosophy and Social Theory are already integrated in it; as to Advanced Procedure, because the necessary Logic could very easily and preferably be integrated in the first-year course; as to Conflicts, because no nonlegal discipline readily suggests itself. In any event the indicated gaps could be taken up by allocating two nonlegal disciplines to parallel certain law subjects — which would allow some degree of specialization (*e.g.*, with Taxation might go the Economics of Taxation and Accounting).

A final suggestion with reference to the construction of the last two years of the 2-2-2 curriculum is that some of the accompanying courses in nonlegal disciplines, but by no means all, should be given in classes composed entirely of the law students. In that event the college professor might be especially encouraged to reorganize his own course so as to correlate it with the accompanying law course.

for *frequent* consultation between the law and college professors who give related courses, and for a regular meeting of both groups — the law and college professors who teach the last two years of the 2-2-2 program. Further, one member of each group might well form a steering committee of the entire two years' work; their special functions would be to consult with their respective colleagues and present jointly one or two courses on Methods that would parallel and relate to the entire two years' work. It is likely that as time went on, both sets of courses could be developed so as to allow easy reference back and forth by both groups. Finally, provision could be made for research and thesis work under joint supervision.¹⁵

Any evaluation of the 2-2-2 program must have one eye on objectives, both traditional and new, and the other on other curricula now proposed or in operation. The proposed Plan would implement the traditional objectives. Since the first two years of the law curriculum are left relatively unchanged except for the all-important improvements in organization of the materials, the gain in that direction is evident. And since the work presently given in the third year would continue to include the study of the same major legal problems, it is probable that traditional analysis of these problems would be considerably improved as the accompanying nonlegal courses shed light on the relevant fact situations and social issues. It is reasonable to expect, also, that there would be substantial savings in time, effected by careful synthesis, which would give opportunity for work in brief-writing and draftsmanship.

Will the 2-2-2 Plan facilitate attainment of the newer objectives? Obviously this question is more debatable, especially since it depends very much on administration of the program and on numerous other more or less intangible factors; but a number of pertinent observations may be hazarded. Admittedly, the ideal of single integrated courses covering both law and social discipline is not provided; but there are several considerations to be weighed in this connection before final judgment is passed. There is the

¹⁵ Under the 2-2-2 Plan, a B.S. in Law could be given at the end of four years, or, if preferred, both the A.B. and the LL.B. could be granted at the end of the six years. Where seven years are available and the program is 3-2-2, the A.B. could be given at the end of the first year of law study.

paramount need to tackle the problem in a simple manner and by methods that lead clearly to the new objectives without sacrificing existing assets. Although the law professor who is equipped with a specialized knowledge of even one social science is exceptional indeed, even such a professor, it may be suggested, will be stimulated, informed, and otherwise assisted by competent scholars in the colleges and graduate schools. If those scholars are carefully selected as suggested above, they have much to offer. Indeed, it would be difficult to exaggerate the potential contributions of such scholars to law and legal education. To develop such a body of lay critics would be a valuable achievement in itself.

There would be practical as well as theoretical advantages in such collaboration. The political scientists are familiar with government work and they know both the opportunities and the required qualifications. The sociologists are similarly familiar with the public welfare, including the penological, field; the economists are familiar with needs and developments in business. The assistance of these scholars is presently available — but largely only in theory! It would make a substantial difference if they were made partly responsible for the training — if they actually participated in the education.

The hearty collaboration of the college and especially of the graduate faculty would be assured because they would have an additional direct and immediate interest in the last two years of such a program, namely its utilization by their students in the social sciences, especially graduates, who either require certain technical legal knowledge or who wish to supplement their knowledge of government, economics, or sociology by well-elaborated examples of institutional processes, or by amplification of theory itself as provided by the teachers of law. There is little need to develop this suggestion here. But it should be noted that college and graduate faculties have become increasingly aware of the importance of law in an era of expanding governmental control, and that if certain legal subjects could be presented so as to be comprehensible by nonprofessional students, there would be considerable interest in that aspect of the law school's work. The classroom association of law students with graduate students of social science, especially in economics and social theory, offers additional important possibilities of improving the education of both groups.

In relation to attainment of the newer objectives *via* integration, the merits of the 2-2-2 Plan may be ascertained by comparison with existing programs that seek similar objectives. Although the latest Harvard catalogue includes a program, limited to students in Harvard College, which appears to be similar in important regards to the 2-2-2 Plan, the description is necessarily very brief. Apparently it has not yet been put into operation, and the official article, describing the new Harvard curriculum in detail, makes no mention of it.¹⁶ The two schools which have been teaching four-year law curricula designed to utilize the nonlegal disciplines are Chicago and Minnesota. Some detailed comment is required as to these.

The Chicago plan introduces nonlegal courses from the very beginning of the law curriculum. There are both practical and theoretical grounds to question the validity of this method. The major difficulty is that no law faculty is presently equipped to do the entire job of integrating law and social science throughout the curriculum, introduce complete courses in social science at various points, and organize all of this into a rational whole. Such systematization has not yet been achieved even with the traditional subjects and materials, and the inclusion of social sciences throughout the law curriculum under such circumstances can only increase the existing disorganization. And organization is not merely a logical or aesthetic desideratum. Its absence indicates a failure to think through the curriculum as a whole; it means duplication, confusion, and unwise allocation of time and effort. Secondly, the prevailing 3-3 program, as well as the proposed 2-2-2 Plan, preserves the undiminished rigor of the first two years of law study. (Whereas the prevalent 3-3 curricula include a deadly and demoralizing third year during which the student marks time awaiting the bar examination, the 2-2-2 Plan moves on to the new objectives.) The Chicago plan clearly threatens this continuity of rigorous legal education in the first two years of the traditional curriculum. But even more, under the Chicago plan it is impossible for the student to produce as good results in his study of the social sciences—at least during the first two years in law

¹⁶ Simpson, *The New Curriculum of the Harvard Law School* (1938) 51 HARV. L. REV. 965. This does state: "It is hoped . . . that joint seminars with other parts of the University may be developed." *Id.* at 979.

school. The proposed 2-2-2 Plan places the social sciences after considerable training in law. It would provide a more mature student — indeed, one who is substantially a lawyer — who could work in the social sciences on a graduate level. The student who has had two years of law work knows what to look for in the social disciplines. He is equipped with a body of theory, a knowledge of legal principles and doctrines, and considerable insight into their rationale. He is able to take the next step by formulating pertinent problems and evaluating the social science data and theories critically — although he is by no means self-sufficient in this regard. This, in the writer's opinion, has been the typical evolution of legal scholars who have contributed important studies in the integrated law-social science field.

If it be argued in behalf of the Chicago plan, that the 2-2-2 program would set out too late to integrate law with the social sciences, one may answer that the Plan sets out to do that as soon as feasible under existing limitations of time and theoretical knowledge. In addition, as noted, the 2-2-2 Plan does not render integration completely impossible during the first two years in law school. On the contrary, if, for example, the professor of Contracts, Criminal Law, or Agency has already succeeded partially in that direction or wishes to attempt it, he should be strongly encouraged. But there is a difference between using fragmentary empirical data at appropriate places, together with brief summaries of relevant social theory, and the insertion of complete courses in the social sciences. The former method increases the insight of the law student but does not injure the organization of the law courses, or their traditional analysis. The Chicago plan raises special difficulties because the haphazard insertion of full courses in social science from the very beginning imposes the unfortunate alternative, in teaching the law subjects, of either ignoring the accompanying social science courses, or disrupting the continuity and cohesion of the early law courses by dealing with them. Finally the Chicago plan decreases the amount of social science which could be introduced at the most desirable place — the last two years — as well as consequent intensification of the work in integration which could be possible there if the first two years of that curriculum were confined to law courses. The total time devoted to social science may be as much or more than that pos-

sible under the 2-2-2 Plan, but the latter concentrates this work, and does so at the most appropriate time.

Perhaps it will also be argued that a direct attack upon the entire front will achieve the commonly desired objectives more quickly than the narrower approach of the 2-2-2 Plan. This, however, may be doubted even if we ignore the inevitable neglect of the student during the interim in which the law faculty is being informed. There is no assurance whatever that we can get further by proceeding in all directions simultaneously than we can by concentrated attack on strategic points carried on under a clearly formulated plan. It seems preferable to proceed from known positions and to build thereon. We are familiar with the legal materials and should be able to improve them progressively over a period of time. We do *not* know that it is desirable to introduce nonlegal materials into every course or even into many of them, nor how best to organize a curriculum composed of law and social science courses throughout.

The proposed 2-2-2 Plan is closer to the Minnesota curriculum in certain respects. Under both, social science is taken after considerable study of law. The basic defect in the Minnesota program, if the writer's impressions are accurate, is that the four-year curriculum has become almost exclusively devoted to the study of law. Integration with social science seems to have been drastically subordinated. The writer hazards the opinion that this happened chiefly because there were no well-formulated methods of collaboration between the law and college faculties, or that they were not actually put into operation. The students were apparently left free to elect courses in the college or not. But if they did so elect, they were on their own so far as integration with law was concerned. Under such conditions of election and in light of the basic defect noted, the students have preferred to take additional law courses. Accordingly, Minnesota seems to have reached about the same position as that taken initially by the University of Washington (Seattle), which provides for four years of law studies (neither Legal History nor Jurisprudence is included at Washington!) except that at the latter school, three, instead of two, years of pre-law training are required. Finally to be noted is the proposal that integration of law and social science be confined to a post-graduate course. This has much merit; the pres-

ently all-defeating difficulty is that only an insignificant number of law school graduates enroll for graduate work.

CONCLUSION

Obviously there is nothing sacrosanct about 2-2-2, no more than about 3-3, but there are valid grounds for preferring it in addition to those stated above. As noted, after the present relative success of the first two years of law, there is the challenging failure in the third year. This condition, and not a whim or happenstance, requires that major reforms be instituted at the end of the second year of law work. Moreover, there are reasons beyond the circumstance that we must work with a given period of years (here six is assumed), and that two years is a minimum for pre-law education, to support two years for the final division. Formally, of course, two years for the final division of the 2-2-2 Plan is a necessary implication of the earlier decisions (the time remaining constant). But there is this real advantage: a substantially longer period than two years would tend toward diffusion and waste, and might degenerate into the mere imparting of detailed information. Two years are long enough to accomplish the chief objectives, especially concentrated integration (for which no existing law curriculum makes adequate provision), yet short enough to require close attention to organization and to direction of the work so as to keep it moving toward its objectives. In two years there will be time to impart the information necessary to understand social theory and its significance for law, and to emphasize methods of investigation, evaluation and use of empirical knowledge, but not for specialization or detailed fact gathering.

Collaboration with our colleagues in the colleges under the 2-2-2 Plan would be quite different from that undertaken in the past by law schools which have invited various scholars to participate in the joint presentation of law courses. No doubt this method was and is helpful, but it seems definitely on the decline, and the reasons are not difficult to surmise. Under it the lay scholar is compelled to do all the adapting, to accept the conditions of the law courses; he was fitted in in a rather subservient capacity. The 2-2-2 Plan assumes equal autonomy, and imposes equal responsibility. Moreover, it is not at all improbable that the joint pres-

entation of law courses was itself premature (except perhaps in a very few fields) because the law professor was himself struggling to construct the theoretical lines of the integrated course — and doing so in the presence of students and a lay colleague. But, after all, why must the lay scholar be in the very room with the law professor in order that law and social science be integrated?

The 2-2-2 Plan builds upon the existing division of work between college and law school, and rests firmly on the axiom that the training of lawyers is by no means the duty solely of the law school. Indeed, if time is the criterion, the duty is equally that of the college. Under present conditions the college appears to wash its hands of the student and its obligation to him once he enters the law school; the law school, in turn, all-too-frequently seems to insinuate that the student's *real* education is just beginning. As Dean Spencer remarked twenty years ago, "A certain feeling pervades the average university that the law school, though it may be in the university, is not of it."¹⁷ The 2-2-2 Plan reasserts the joint and equal obligation. It is moderate in its assumptions of available theory, personnel, materials, and organization. It provides decent conditions for collaboration between law school and college, and does so on a sufficiently wide scale to insure favorable results. Certainly not the least of the advantages would be an opportunity for law teachers to inform themselves systematically in relevant fields through continuous cooperation with competent scholars in the colleges. And, moreover, this can be done without requiring the student to bear the burden during the early years. The Plan recognizes the various preferences of the law professors themselves, and assumes allocation of functions accordingly.

But to some, who for years have devoted themselves to the arduous task of integrating law with social science, the 2-2-2 (or 3-2-2) Plan may seem too limited in scope. These scholars keep before them the ultimate vision of a completely integrated and organized curriculum; they see how far we remain from the desired results when the nonlegal disciplines are offered separately. The writer fully agrees with this position in its theoretical import. But construction of the best curriculum to be put into effect immedi-

¹⁷ Spencer, *The Correlation of Law and College Subjects* (1922) 5 AM. L. SCHOOL REV. 85.

ately is also a matter of practical judgment. In the writer's opinion, the 2-2-2 (3-2-2) Plan provides the greatest opportunity presently available for building constructively on what we wish to preserve, and, at the same time, for natural development toward the desired ends.

No proposals for important changes in legal education may end with any claim of perfection attained! Legal education is in a state of accelerated change; approaches and evaluations are in flux. Especially do we recognize the abiding contributions of those pioneering scholars who have long pursued the difficult path of deepening our understanding of law and legal institutions — whatever methods they employ. So, too, those schools which have introduced new courses into their curricula and revised old ones have demonstrated that the study of law can be placed upon the highest intellectual plane. And those few schools which have dared to embark upon relatively new and difficult four-year curricula have placed all in their debt; they merit every encouragement. The paths to the common goals are many and diverse; so long as we lack detailed studies of our educational processes, we must be tolerant of all sincerely held views, and grateful for all sound experiment.

With final reference to the experiment suggested above, it may be emphasized that the most difficult part of the 2-2-2 (3-2-2) Plan — the last division — would not be put into operation until two years after the law school's admission of students under it. In the meantime, legal educators would have the opportunity and the pleasure of grappling with the most vital problems of our times. No one can predict what form the law curriculum will eventually take, but this much is certain: the problems dealt with in creating the new program will be as fascinating as they are difficult. They would provide the most absorbing challenge to legal education since Langdell.

Jerome Hall.

INDIANA UNIVERSITY LAW SCHOOL.