

5-1-1967

Education Planning at Yale

Abraham S. Goldstein

Follow this and additional works at: <https://repository.law.miami.edu/umlr>



Part of the [Legal Education Commons](#)

Recommended Citation

Abraham S. Goldstein, *Education Planning at Yale*, 21 U. Miami L. Rev. 520 (1967)

Available at: <https://repository.law.miami.edu/umlr/vol21/iss3/3>

This Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

EDUCATIONAL PLANNING AT YALE*

ABRAHAM S. GOLDSTEIN**

Professor Johnstone has asked me to speak about educational planning at the Yale Law School. I should like to paint in broad and impressionistic strokes the intellectual currents which frame the inquiry we have been conducting at Yale over the past several years, and then try to set those currents against some central problems of curricular planning.

We cannot begin to talk about curricular development and planning without understanding something of the impact of legal realism and the functional approach upon our attitudes toward legal education, the work of the scholar within the law and the shape of the profession. The legal realist movement, which was largely a product of the '20's and '30's, set out to explode the notion that legal doctrine existed in a world apart. In a remarkable set of writings, it demonstrated in considerable detail that there were important behavioral assumptions underlying legal doctrines, that legal doctrine was not exclusively judicial in nature, and that law could be understood only if its study encompassed not only the full range of adjudicative processes but also the informal processes which precede and follow the trial and the legislative and executive institutions which precede and shape controversies and implement decisions. There was a great deal of pressure to see law and legal institutions in their operational setting—to examine the men who make doctrine, the institutions which apply it, and the institutions which compete with law in the performance of social functions.

It is all too easy to assume that the intellectual ferment of that period and '30's was rapidly translated into detailed product. Nothing can be farther from the truth. If you examine the literature, you will find the period of ferment followed by one of remarkable quiescence. The reason for the change is not difficult to find. The depression, the New Deal and World War II diverted much of the available intellectual energy toward reshaping the society. During that period, law and lawyers were too busy doing to have much time to study what was being done. As a result, we came to the period following World War II with legal scholars never having had the time, the resources, or the constancy of purpose to do what had been called for in the '20's and '30's.

Meanwhile, law and legal institutions did not hold still waiting to be studied. Both the New Deal and World War II introduced us to the era of big government. Our experience with law as an instrument of social action made us turn more and more to law to solve the most fundamental

* A paper presented at the Round Table on Curriculum of the American Association of Law Schools, Washington, D.C., December 28, 1966.

** Professor of Law, Yale University.

problems of the society. This development coincided with another phenomenon we have all noted and commented on again and again. As the home, the church, and other elements in the society began to lose their cohesive force, "law" was increasingly looked to as a way not only of expressing preexisting norms but also of creating them.

What problems result from all this? Most of us who came into teaching after World War II felt quite keenly that we had been educated by our teachers to adopt an institutional approach—an operational approach, a close and critical approach—to a wide variety of legal institutions but the outlines had not been filled in. We had this marvellous intellectual heritage but we did not know, either technically or by way of detailed theory, what we were to do next. And as we reflected on our confusion, law was occupying ever more fields, creating ever more roles for the lawyer and compounding the confusion we already felt about how to do the jobs the legal realists and the functionalists had urged upon us.

If I may, I should like to translate these brush strokes to questions of educational policy: To what extent is our curriculum tied to archaic conceptions of the profession and of law practice? To what extent have we rationalized these archaic conceptions into a mystique of the lawyer as a generalist? To what extent have we committed our resources as educational institutions to fields which are important only to certain segments of the private practice of law, at the expense of other areas which may be more important either to the society or to the development of scholarship? And how can we bring into the curriculum, into our teaching materials and into our research, the full range of considerations which are relevant to the several roles I have mentioned—the role of the lawyer as practitioner, the lawyer as public official and the lawyer as student of his own processes? We face these questions at Yale in a setting and in a school which wants to do everything equally well. We want to prepare lawyers for the Bar. We want to prepare them for public service and we want to prepare them to take the lead in scholarship and research of the most adventurous sort.

As if these substantive questions were not enough, we confront them at a time when the society sends to us an entirely new breed of law students, who are much more demanding and much more critical than anything we have ever encountered before. We have at our law school, and this is an increasingly evident phenomenon around the country, law students who are better educated than ever before. We now get large numbers of students who know something about the disciplines which we have been exhorting each other to incorporate into the study of law. They come to us as well-trained economists, political scientists, etc., hearing of the promise of the Yale Law School, the whisper of interdisciplinary adventure, looking at us suspiciously to see if we can deliver on the promises. These students come also as products of a period of prosperity. They look

far less than in the past to the practicing lawyer or to the Bar examination to see what courses they should take. They tend to follow genuine interests and intellectual excitement. In short, they begin to resemble the general class of university students and to move away from the professional mold which had previously held them. Though they are more talented than their predecessors, they are less certain of their professional identification. And they are probably more moved to social action by a society which makes evident its reliance on law to solve its most complex legal problems.

In this time and place, with these currents and these students, we have tried through a broadly based educational planning committee to deal with a few major problems. We found ourselves operating within certain assumptions which proved to be widely shared. The first of these is that planners should not create structures which bind too tightly or which are not congenial to the institution and its resources. We agreed fairly early that we wished to retain the ideal of the relatively small law school—to put against the pressure for large size a counter pressure for intimacy, for relatively small sections through frequent seminars, for ample time for faculty and students to pursue their own interests. We took it as given that the heart of our enterprise must continue to be to prepare lawyers for the profession, but we were much less certain what it takes to do so today. And we operated within the context of a curriculum which already had a bare minimum of required courses and which already allowed for a very high degree of specialization, through a wide variety of elective offerings and seminars.

We began our work last year with two kinds of activities. The first was the beginning of a general curricular review. And the second was a more detailed examination of certain areas of work within the law school. So far as the curricular review is concerned, we determined fairly early to separate out the educational planning function from the curriculum committee function. We didn't want to contaminate the planning function with too close a concern with schedule making. Instead, we raised the large question of what new courses, what new seminars, and what kinds of research resources were needed to have the Yale Law School move ideally into the future?

We selected three trial areas to test the sorts of answers we might get: governmental regulation, criminal law and property. It soon became apparent in each of the fields that, to a quite remarkable degree, yesterday's advanced courses and seminars had become today's introductory courses. Courses like administrative law, labor law, land finance, land planning, criminal procedure, and psychiatry and law were drawing massive enrollments, including large numbers of second year students. And having elected them early, students wanted to pursue these specialties further.

In field after field, as we looked closely, it became apparent that we would have to develop a much more graduate-oriented curricular profile than anything we had ever contemplated in the past. The pressure came from a pervasive sense of promises unfulfilled—on the part of students asking how to examine the institutions we were urging them to examine; on the part of students and faculty as we wondered how one comes to know institutions well enough to examine them? What did we mean by examination, after all? Who did we want interviewed and with what kinds of techniques? What theoretical structures were we working with? Our first major conclusion was that we would have to develop a much more advanced curriculum. Fields like governmental regulation and property, for example, clearly demanded a great deal of curricular expansion. And we spent some time considering what such an expansion might involve in terms of course offerings, personnel and research resources.

There were, however, some areas which we regarded as extremely important and as requiring special consideration. Law and behavioral science, for example, was one such area because it was becoming ever more apparent that law students, who were being urged to examine legal institutions in terms of impact and interrelationships, should be taught either how to do empirical research or to work with those who were specialized in social research methodology. We soon realized that the problem could be met only by creating a new field of work. Sociologists and political scientists were not familiar enough with the legal process to produce impressive research and writing about it. Lawyers, on the other hand, were not sufficiently knowledgeable about research methodology and social or psychological or economic theory to do the work themselves. We concluded, therefore, that we should train a group of people who could become the interdisciplinary teachers of tomorrow and to do so through a post-doctoral training program in law and behavioral science. Our thought was to bring several behavioral scientists and some lawyers to us for a two-year period and encourage them to engage in serious field research under close supervision by interdisciplinary teams. Our hope is that in time monographs will be written which might begin to fill some of the void in the literature of legal institutions.

The next major problem we considered was that of comparative studies. We decided to move away from the notion of comparative law as a study essentially of civil law and to concentrate instead on comparative governmental regulation—on problems of comparative administrative processes and comparative regulatory mechanisms of various sorts—because we felt these were the major cutting edges of the future. Again, our primary interest is in attracting people from the United States and abroad to programs long enough in duration so that substantial research products might come of them.

Third, stimulated by a major grant from the Ford Foundation, we

decided to use urban studies as a vehicle for developing the curriculum in a way which would be more responsive to the current needs I described earlier. This required that we block out the major areas within which we would offer courses and seminars and that we develop a graduate program which would help provide the research and writing which the new courses would require. It became quite clear that to encompass the wide variety of phenomena falling within the rubric of urban studies, it would be necessary to do some things which had not been done before and to do them by putting along side of each other people of a wide variety of specialties and backgrounds. Our planning in this area is still going on but is nearing completion.

I am not going to take you through all of our deliberations. I shall mention briefly one or two others. We spent a good deal of time on clinical and internship programs. We are probably a little more obsessed than we should be with a fear of such programs. Nevertheless, we determined early that it was important to fulfill both the training and research focus and also to respond to the impulse to social action of some of our students—to provide a wide variety of occasions for students to get inside legal institutions and see what they are like. Our main thrust to date has been to build on what we have—to improve the legal aid offerings; to develop administrative and legislative workshops and to make available on an individual basis the sorts of clinical and internship exercises which are tailored to particular programs.

Another important area, which we have only just begun to address but which may in time pose the really critical issue for us, is the question of "graduate" objectives within the LL.B. curriculum. There is an increasing feeling that, as our students come to us better qualified for research and writing, we should provide within the LL.B. curriculum an alternate track alongside the professional one. Our thought is that a selected number of students might be accepted, by way of experiment, in a program moving after the first year toward a Ph.D. degree. When I say "Ph.D." it is less important what the degree will be called than that the degree encompass a notion of independence in research and independence in scholarship transcending anything toward which professional schools have aspired in the past. We should like to explore the possibility of drawing from the top fifteen percent of our student body a half dozen students and asking these young men to write books by the time they leave law school. Given the quality of our students, it seems a shame not to give them the opportunity to do work on a level comparable to that afforded by the best graduate faculties in fields like history, economics and political science.

The largest conclusions I would like to draw from this sprint through our educational planning venture is, first, that the implication for faculty size of the profile I have been sketching is quite clear. It contemplates a

movement of law schools toward faculty-student ratios which resemble those of graduate schools and graduate departments. Though the Yale Law School already has the most favorable faculty-student ratio in the country among law schools, it does not begin to compare with that of the economics department or the political science department. Our 16 to 1 ratio pales beside the exquisite tailoring—*e.g.*, the 6 to 1 ratio—that a genuine graduate program entails. Too often, our graduate students have simply been dropped along side our undergraduates and left to fare for themselves.

Second, there is implicit in what I have said the risk of a tremendous conflict between the objective of professional education and the objective of treating law as a branch of political or social science. My own feeling, and I think the feeling of many of us (and it may be a romantic one) is that there is a creative tension between the professional model and the graduate model, that the professional model forces a degree of responsibility upon the graduate model and that the graduate model would draw the professional model away from the smugness and self-satisfaction which has often pervaded it. The challenge we must face is how to bend each of the models to the purposes of the other without sacrificing the professional school as we have known it.