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MODELS FOR CURRICULAR REFORM*

QUINTIN JOHNSTONE**

The basic purposes of legal education should be the major factors controlling the nature of law school curriculums. These purposes, however, can be inconsistent and they commonly lead to competition for curricular time and attention. More thought is needed on what purposes are worth pushing, how each purpose should be implemented and how conflicts among purposes should be resolved. But this whole process of evaluating and projecting purposes in legal education appears to have gone stale, despite considerable teacher discontent with what is being taught and how. An approach seems called for that will shake-up established patterns of looking at law schools, one that is uninhibited by the presence of well-rooted institutions and customs.

What follows is a set of four models outlining four very different kinds of law schools, no one of which closely resembles any institution now in being.¹ The discussion of each model is accompanied by some of the possible rationales supportive of the type law school described. It is not here proposed that any model merits adoption or that any one is better than the others. Nor are any of the rationales here endorsed as valid. What this presentation is intended to do is illustrate an approach that may prove helpful in rethinking the curriculum.

The approach suggested focuses on law school models that radically depart from prevailing forms and yet are designed to achieve purposes for which, at least in the abstract, there is substantial present-day support among law teachers. New conclusions conceivably may be reached as to the merits of traditional educational purposes and curricular forms when present curricular forms are measured against hypothetical models. These synthetic models may also help sharpen awareness of those conditions that shape and limit the curriculum, and may serve as short-hand means for suggesting some curricular and other educational innovations worth adopting. Study of actual lawyer training institutions in other places and times can provide similar insights into present ways of doing things and needs for change, but the synthetic model approach has an advantage in the unlimited number of controlled variations that can be advanced for consideration.

In setting up each model, an attempt has been made to avoid over-caricaturing and to create something that might appeal to a significant

* Report of the AALS Curriculum Committee.

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1. This general approach is obviously not original. Among others, it has been used on occasion by critics of the social scene. For example, see Goodman & Goodman, *Communitas* (2d ed. 1960).

number of law teachers. No doubt there are purposes worth emphasizing other than the three stressed by the models outlined. But to simplify this presentation, only the three are stressed that most often crop-up in discussions of legal education.

MODEL 1. A POLICY DIRECTED LAW SCHOOL

In addition to the many routine functions they perform, lawyers in American society have become important in setting policy. They are trusted counselors to the decision makers of most all major government and private organizations; and a substantial percentage of such key American decision makers as judges, legislators, top government and business executives and local government leaders are themselves lawyers. Lawyers, however, are inadequately trained to perform their policy roles. Familiarity with legal doctrine and competence in its application, their major professional assets, are generally but one of many elements required for rational policy determination. Whatever other knowledge and skill lawyers possess usually has been picked up in random experience and is likely to be applied unsystematically.

But what is more serious than the limitations of lawyers most effectively to operate in the policy making sphere is failure of the society as yet to develop and rely on better substitutes for lawyers as we know them. Legal education remains narrow-gauged and myopic, and occupational groups that could bring to the policy making process background and skills that lawyers lack tend to be ignored or insufficiently used. What is needed is development of new institutional forms for marshalling the requisite facts, theory and understanding needed for the most intelligent solutions to policy problems, and then to make full use of these new forms. This should involve not only more extensive resort to various experts now available, but also the training of a new species of lawyer who can effectively coordinate and apply in actual policy making situations all the needed intellectual resources.

The law schools should be the ones to initiate the desired reforms and by drastic internal changes begin to turn out this new kind of professional, one much better suited to policy making functions than the lawyer of today. If the law schools do not act, other occupational groups sooner or later will and the law schools are then likely to dwindle into obsolescence or into centers for training comparatively insignificant white collar artisans.

Law schools of the kind suggested here, which perhaps might better be called schools of law and applied science, would necessarily be influential parts of major universities and able to call on the time and research output of scholars working in many disciplines. They would be both training centers for lawyers and research centers for proposing solutions

to major policy problems. In part they would be activist arms of the scholarly world, taking data and proposals developed by others and injecting them into the policy formulation process. In part they would develop their own data and proposals. One of their principal aims would be to increase the intellectual community's influence on society by more closely relating that community to the decision making process.

The research work of the law schools would be determined largely by their clients who would contract for staff time to identify problems, explore solutions and formulate policies. Clients would include government instrumentalities, large corporations, trade and professional associations, unions, religious bodies and any other organizations desirous of such services and with the funds to pay for them. In addition, foundations might finance law school research projects of general public concern, and the universities approve research time for projects that their law faculties considered important but for which financing could not otherwise be obtained. On occasion, law school staff might appear in an advocate capacity for clients before such bodies as courts, administrative agencies and legislative committees, although the principal functions of the staff would always be teaching and research. Generally it would be expected that law school research would involve in some material way law as broadly conceived.

To the extent needed, either in teaching or research, the law schools could hire experts from other parts of the university or from outside, both lawyers and non-lawyers. Most of the research would be done by teams composed of law school faculty members, law students and such other experts as seemed desirable and could be afforded by the particular projects. All students would participate in research projects and be paid for this work in accord with their abilities and stage of development. The more advanced students would, of course, be given greater responsibility in the research work to which they were assigned, and greater remuneration. Student law reviews would be dropped, for the experience they supply would better be provided by required research participation. Law school could be completed in three years, but students with insufficient financial resources could extend this time and fully pay for their education as they went along by putting in more time on compensated research. Every law school faculty member would devote considerable time to research projects, and some professors would do nothing but research, dealing with students only as research assistants.

Students for the law schools would be selected from among the better young scholars emerging in the universities, and a master's degree in a relevant discipline would be an admission prerequisite. Disciplines from which most students would probably be drawn are economics, sociology, political science, psychology, social work, business and urban planning. Successful completion of law school would be sufficient for admission to

practice law any place in the United States, subject to the usual evidence of good moral character. However, some states might choose only to admit applicants provisionally until such applicants had taken a series of continuing legal education courses of instruction on local law and practice to be given under bar association auspices.

One objective of policy directed legal education would be to up-grade the legal profession and make lawyers more of an elite both in ability and function. If this goal were achieved, it probably would mean substantially fewer lawyers. But a smaller legal profession is probably desirable, for lawyers now perform many routine tasks in inefficient little one and two-man law offices, tasks that could be done better and cheaper by some lay organizations now more or less active in the legal services field. With the advent of policy directed law schools should come an easing of unauthorized practice of law restraints so that banks, insurance companies, accounting firms, collection agencies, automobile clubs and similar established lay organizations could take over the routine types of legal service work for others that they are qualified to do well. Steps should further be taken to develop new group service operations combining sub-professional lay personnel and a high degree of staff specialization to cut costs and increase output of routine legal work. Lawyers should be reserved for the more important and difficult legal tasks. A policy directed system of legal education also would probably lead to fewer law schools and, except perhaps as continuing legal education centers, elimination of law schools without university affiliations.

A suggested curriculum for a policy directed law school appears below. All subjects of instruction would extend throughout the academic year and each subject would be required. Numbers indicate annual units of course credit and the class hours that in most instances would be held each week. Regular class sessions would be scheduled for all offerings except Research. Extra time spent on research projects by those taking more than three years to complete law school would not lessen other academic obligations.

Suggested Curriculum

FIRST YEAR

Jurisprudence. The various schools of jurisprudential thought critically evaluated and related to modern conditions. (2)

Ethics. Comparative study of theories of ethics and values. (2)

The Social Process. Systems for describing and analyzing social phenomena explored, with samples drawn from a variety of disciplines and special attention given to integrated systems applicable to the methods and findings of any discipline. (3)

Research techniques. Different research techniques considered. Judicial fact finding and traditional research into legal authorities compared with scientific research procedures. (2)

Research. Work on law school research projects. (3)

SECOND YEAR

Social Issues. Contemporary American social issues and their historical development. (2)

Pressure groups and their tactics. (2)

Law Reform. Broad policy evaluation of major fields of legal doctrine, and development of basic reform proposals. (3)

Advanced Research Techniques. Mostly consideration of modern empirical research procedures and devices. (2)

Research. Work on law school research projects. (3)

THIRD YEAR

Law Reform. Continuation of the second-year course. (6)

Research. Work on law school research projects. (6)

MODEL 2. A LEGAL DOCTRINE DIRECTED LAW SCHOOL

Understanding and applying legal doctrine to client problems is the main job of lawyers, and the law schools should concentrate on training their students to do this job well. Knowledge of legal doctrine and its use is the source of lawyers' uniqueness, it is the foundation of their professional work and what justifies their monopoly privileges in the practice of law. However, law schools should concentrate on teaching legal doctrine not only because it is important, but because, as formal centers of legal education, the schools are uniquely suited to teaching this kind of subject matter. Derived from a great number of written sources, with concepts and rules that are highly systematized, legal doctrine lends itself to being taught by group instruction at centers with substantial libraries of source materials. And considerable professional competence in the use of legal doctrine can be acquired without the need for other professional experience, making this a desirable focus for pre-admission training.

Although they obviously cannot go into all subjects, the law schools should provide broad coverage of the law, giving each student working knowledge of all the more important legal principles. The great majority of lawyers are in general practice and need to be familiar with an extensive range of legal doctrine because they take most any kind of problem that comes along. The one-client lawyers in corporate and government law

departments also need broad training because of the great diversity of legal matters with which their clients are involved. Even the specialists who purportedly work in only one field of law are constantly encountering cross-strands from other fields that they must identify and deal with. In real life situations the law truly is a seamless web and it is their generalist training in many fields of law that gives lawyers such a decided edge over real estate agents, bankers, accountants and others who have sought to encroach into the legal services area.

In the wide scope of doctrinal coverage that they provide, law schools should be far more concerned with statutes and administrative regulations than has been true in the past. Case law is important to be sure, but statutes and regulations are the basis of most of our law today, and in some important fields there is no reported case law of any significance. Adequate instruction in statutes and regulations requires extensive use of teaching methods other than the traditional case book one. Law schools also should strongly emphasize legal history and comparative law. The present state of the law is the result of a long evolution, and to understand the law as it is or is likely to become requires an understanding of its historical development. Comparative law study is valuable for a number of reasons. It vividly illustrates, for example, that ours is not the only possible legal system nor necessarily the best. It also provides suggestions of what might profitably be borrowed from other systems.

Although broad doctrinal coverage should be an essential in a legal doctrine oriented law school, development of student facility in the use and application of doctrine should also be stressed. Students should be taught to solve factual problems in which the doctrinal issues are not neatly tagged and there is respectable authority on both sides of whatever issues emerge. They should be able to locate all relevant legal authorities and effectively manipulate them as do advocates and adjudicators. And they should learn the elements of codification: the distilling and consolidating of legal principles from appellate and other sources and the concise shaping of concepts to achieve desired results.

There are now so many significant fields of law, and the law is growing so rapidly in so many directions, that adequate doctrinal training of law students should take at least four intensive years. Students would enter the legal doctrine related law school after two years of college and the law school would be in session all year round, except for a two-week break between terms at the end of December and another such break between terms at the end of June. The program for full-time law students would take four years to complete, that for night-school students six to eight years. Admission tests for law school would emphasize applicant capacity for reasoning and for retaining substantial bodies of learned material. Efforts would also be made to test motivation and physical

stamina, as law school is a long grind. To insure adequate professional preparation, all law school courses would be required.

To complete successfully a law school education, students would be required to pass only two long examinations: one at the end of the first full year and the other after four full years of study. Both examinations would be of a comprehensive character. The initial one would be prepared and graded by the faculty of the school and test whatever was covered the first year. Those who failed this examination would be dismissed from the school. The second examination, covering all four years' work, would be prepared and graded under the supervision of a committee composed half of full-time law professors teaching in law schools within the state and half of in-state lawyers not actively engaged in teaching. The law professors would be selected by their respective schools, an equal number from each school. The remaining members would be selected by the supreme court of the state from a list proposed by the state bar association. Successful completion of this second examination, subject to results of a character inquiry, would entitle a student to be admitted to practice law. Those from law schools out of the state also could be admitted to practice by passing this second examination and fulfilling such additional requirements as were imposed by the supreme court of the state. A persistently poor record on the admitting examination by students from any particular school could result in that school losing its accreditation.

A possible curriculum for a legal directed law school appears below. It is anticipated that class sessions in each scheduled course would be supplemented by problem assignments requiring independent student research and doctrinal analysis, and considerable student preparation of such documents as legal memoranda, briefs, appellate opinions and proposed legislation. To the extent that staff time permitted, student problem solutions, including completed written work, would be discussed with a faculty member or teaching assistant in individual or very small group tutorial sessions. Reference librarians would actively assist in this program of problem solving: developing problems for assignment to students, assisting beginners in locating source materials and in some cases acting as research assistants and holding tutorial sessions. Before a student would be entitled to take either of the required examinations, he must have satisfactorily completed all supplemental problem work assigned to him. The second term of the fourth year would be intended principally as a period of review for the final comprehensive examination, so course work would be substantially cut down during that term and courses offered would be designed to facilitate review. An incidental effect of this should be elimination of the proprietary bar review operations that have developed outside the law schools. The numbers appearing below indicate semester units of course credit.

Suggested Curriculum

FIRST YEAR

First Term		Second Term	
Public Law I	(3)	Public Law I (continued)	(3)
Property I	(3)	Property I (continued)	(3)
Commercial Law I	(3)	Commercial Law I (continued)	(3)
Torts	(3)	Torts (continued)	(3)
Legal Logic and Analysis	(3)	Legal Research Methodology	(3)

SECOND YEAR

First Term		Second Term	
Procedure I	(4)	Taxation I	(4)
Business Organizations I	(4)	Comparative Law I	(4)
Criminal Law	(4)	Family Law	(4)
Legal History I	(3)	Legislation	(3)

THIRD YEAR

First Term		Second Term	
Public Law II	(3)	Procedure II	(3)
Property II	(3)	Business Organizations II	(3)
Commercial Law II	(3)	Taxation II	(3)
Legal History II	(3)	Comparative Law II	(3)
Codification	(3)	Public and Private International Law	(3)

FOURTH YEAR

First Term		Second Term	
Public Law III	(3)	Recent Legal Developments	(3)
Property III	(3)	Review Lectures	(3)
Commercial Law III	(3)		
Procedure III	(3)		
Taxation III	(3)		

MODEL 3. A SKILLS DIRECTED LAW SCHOOL

The principal concerns of a law school should be to develop more fully the essential skills needed by lawyers and to make certain that before being admitted to practice, each student has attained high competence in each of these skills. Lawyers should not only be good craftsmen, but should be broadly educated, with the ability readily to learn what is needed for solving the infinite variety of problems they encounter in their work. The presumption of this model is that best results will be attained if the broad education is left to other institutions, most particularly the liberal arts colleges, and if the law school concentrates on developing and sharpening basic skills. Such an approach leaves much to be learned in actual work situations after admission to practice, but this is inevitable in any system of legal education because of the range of problems lawyers encounter and the multivarious roles and functions they may be called on to perform.

Essential skills that a skills directed law school would concentrate on

include oral and written expression; reading and interpretation of written materials; rigorous conceptual analysis and reasoning; use of law library source materials, including the potential of new data processing and retrieval systems; factual investigation; and facility in certain interpersonal relations, such as negotiating, counseling, interviewing, interrogating, supervising and being supervised. To the extent feasible, law school skills training would be conducted in the context of lawyers' work, using legal materials and problems. This necessitates some instructional background, including a brief introduction to the nature of legal institutions and legal doctrine. But for skills training of this kind, no extensive coverage of legal doctrine is required and it makes little or no difference which doctrinal subjects are selected for consideration.

Entry into law school would require a bachelor's degree from a fully accredited college or university, with either a high-record of performance in a broad liberal arts program, or a high pass in a law school admission examination designed to test the achievement that should be expected of those who have received a good undergraduate liberal arts education. Admission to practice law would follow immediately upon completing law school, with showing of good moral character, but with no further examination. However, no lawyer would be permitted to become a partner of a law firm or practice by himself until he had worked for three years as an employee of a law office or equivalent institution.

Law school instruction would draw heavily on the services of experts who had displayed outstanding mastery of one or more essential lawyer-like skills: advocates, judges, legislators, labor negotiators, public relations advisers, psychiatrists and others. Full-time law teachers would be specially trained in teaching skills. This training would be available at a combined teaching and skills research center to be located in a major university department of education. It is expected that most students would complete law school in one academic year, but some might take more time and some less. Whenever possible, exceptional students would move ahead when they exhibited adequate mastery of the skills involved in a particular course or other unit of instruction. Those not showing sufficient mastery would not be advanced until their performance was up to standard. No grades would be given other than pass and inadequate mastery, and students with insufficient promise or poor performance records would be subject to dismissal.

A possible curriculum for a skills directed law school is as follows:

FIRST TERM

Introductory lectures and readings on legal process and legal institutions. (Full time for one month.)

Two casebook courses, using teaching methods currently prevalent in American law schools, but with different teachers, preferably teachers

with very different classroom styles. Perhaps one course should be in public law and one in private law or one in substantive law and one in adjective law. But the choice made is of so little moment that it can be left to the teachers, and each can select whatever field he finds most convenient or interesting to teach or maybe the one to which he currently has the deepest intellectual commitment. (One half time, four months.)

Legal Research and Writing. Requirements include writing one long paper during the term under supervision of an instructor, and writing one short paper per week to be considered in small class sessions. (One-half time, four months.)

SECOND TERM

Introductory lectures and readings on human personality and interpersonal relations. (Full time for one month.)

Problems in Oral Advocacy. Moot court and other simulated problem situations; individual corrective exercises; lectures and seminars. (One-half time for four months.)

Problems in Drafting and Interpretation. Each student to work out a series of problems that require drafting of instruments. Also class sessions will be held to consider the nature of ambiguity in language, means of limiting ambiguity, and statutory and case law guides to interpretation. (One-half time for four months.)

MODEL 4. A COMBINED PURPOSES LAW SCHOOL

To prepare students properly for entry into the legal profession, a law school must be multi-purposed and give major attention to training in policy, legal doctrine and skills. To attempt anything less is unrealistic, for lawyers should be competent in all three of these areas and there is no assurance that they will acquire this competence if a good start is not made in law school. To be sure, how best to structure a multi-purposed legal education and what methods and materials to use for training in each form of competence are indeed difficult questions. Many variations are possible. The model outlined here seeks to do so with a three-year law school program aimed at training every important kind of lawyer, elite and non-elite; it recognizes the significance of specialization as a professional characteristic and pedagogical aid; and it attempts to relate pre-admission legal education to a more effective and more extensively relied on post-admission training program. Given the heavy demand for legal education and the ever growing number of able college graduates, it also assumes that a bachelor's degree from an accredited institution should be required for admission to any law school. But to ease the financial burden of securing a legal education and to maintain a pro-

fession drawn from all social and ethnic segments of the society—important if the profession is to serve all segments of the society—part-time night-school programs should be available, but with educational standards equal to those of the day schools.

If doctrine controls the curricular structure, as has usually been the case, policy considerations tend to arise in an *ad hoc* way and without the factual foundation properly to deal with them. On the other hand, if some other organizational framework is used, then students are not likely to have the doctrinal foundation to deal adequately with the doctrinal issues involved. The problem of teaching law is further complicated by the varying pre-law academic backgrounds of law students. Student pre-legal educations can differ so greatly, with some students having many complete voids in coverage, that the law teacher cannot rely on every student's possessing any but the most commonplace knowledge when entering law school. Skill capacities among entering law students are also very disparate. Some students, for example, write well; others seem almost illiterate.

This combined purpose law school model attempts to work out these curricular problems with a required first-year program of broad introductory courses organized along lines of legal doctrine; a second-year program of elective courses, each one centered on some operational sector of the society and in which legal and policy problems would be considered within their functional setting; and a third-year program of specialization in one operational sector, probing in depth the legal and policy problems arising in that sector. During the first year, students would become familiar with legal sources, legal analysis and the broad doctrinal outlines of some of the principal fields of law. This should be enough of an introduction to legal doctrine so that students could deal with it effectively in upper class courses not organized in doctrinal terms. Upper class course assignments would also include extensive background readings relating to the subjects being covered, including relevant legal authorities. Although class sessions would be mostly of a seminar discussion type, far fewer such sessions would be held in upper class courses than is presently customary in law school. Students would be expected to do more of their learning by themselves on the outside and come to classes extensively prepared. Rigorous end-of-term examinations would be held in all courses; and before being admitted to practice, students would be required to pass a bar examination covering first-year subjects and a limited number of other subjects to be selected by the student from a list of options.

In addition to the skills development that could be expected of students from their participation in the curricular and extracurricular life of the school, remedial skills training would be provided. Periodic evaluations and tests would be made during the first and second years to determine competence of each student in such skills as the school thought merited attention. Students with below standard performance in any skill would be advised to take remedial instruction offered by the school. Any

student below standard at the end of the second year of law school would be required to concentrate on remedial training until he had made satisfactory progress, and he could not proceed into the third year until up to standard in all requisite skills.

In order to strengthen the third-year specialization program and because no law school could be expected to be strong in every specialized sector, students would be permitted to transfer to other schools for their last year. Most law schools would offer third-year instruction in only five or six sectors, thus making transfer commonplace. Joint law degrees from the schools they had attended would be awarded these transferring students.

The proposal for a specialized third year is based on the assumption that in-depth study of an important subject area that includes law is a valuable educational experience for a prospective lawyer whether or not he subsequently works in that particular subject area. And the system presumably will work best if responsibility is on the student to elect his sector of specialization. However, such a substantial degree of pre-admission concentration would mean that a lawyer might be ill-equipped to move into some other specialized field that he wanted to enter upon graduation from law school or at some later stage in his career. To accommodate such lawyers, post-admission legal education would be greatly expanded and improved; and the law schools would be the principal centers for such education, for they are best qualified and equipped to provide this service. Schools that offered specialized courses to third-year law students would offer similar specialist instruction to those members of the bar desiring it, although the post-admission courses would be more intensive and take only one to four months for completion. To the benefit of both groups, some class sessions might be composed of both pre-admission and post-admission students. For practitioners who wanted an introduction to a specialty, but without further law school study, carefully prepared texts and other teaching materials would be available. It might be worth experimenting with the new programmed learning methods in the designing of these materials, and they might be more effective if tied to some correspondence teaching program for guiding and testing the student's work.

A suggested curriculum for a combined purposes law school appears below. Courses taken in any one year would all carry equal academic credit.

FIRST YEAR

All courses to be continued throughout the year

Contracts

Torts and Criminal Law

Property

Constitutional Law

Procedure

SECOND YEAR

Students to elect ten courses, five each term from among the following:

Business Organization and Administration	International Political Relations
Manufacturing and Distribution	Foreign Trade and Foreign Assistance
Transportation	Education and Research
Agriculture	Communication Media
Natural Resources	Leisure Activities
Urban Land Use and Development	The Arts
Finance	Religion
Labor Relations	Health
The Professions	Family Relations
Government Organization and Administration	Deviant and Antisocial Behavior
National Defense	The Handicapped and Underprivileged

THIRD YEAR

Specialization in one of the sectors appearing in the above second-year list of subjects.

CONCLUSIONS

Law school curricular changes usually occur in little accretions and deletions, which is the way most organizational changes take place. This is perfectly normal and proper and in the long-run can produce a very different and much improved curriculum. But the little changes too often are merely responses to fortuitous circumstances or some effort to achieve a very limited end unrelated to the major purposes of legal education. In whatever manner curricular change is being sought, whether gradually or by big leaps, it obviously would be better if the proposed innovations were more often evaluated in terms of basic educational purposes and if there was more assurance that the purposes were sound. Perhaps the models outlined above can be of help not only in verification of purposes but in suggesting needed curricular innovations and the changes in educational institutions that may be necessary to make the curricular innovations work.

One peripheral point may be in order here. Generally ignored in law school curricular discussions is the fact that non-academic bodies within the legal profession indirectly exert heavy influence over law school curriculums through control over requirements for admission to practice, including the bar examinations. Any law school seriously planning a radical departure from the conventional curricular format, if that departure involves substantial enough change, must reach an accommodation with these other professional bodies before putting plans into effect. In other words, the admitting authorities potentially are major deterrents to really important law school curricular reform. Because of this, it might be well for the AALS Curriculum Committee to establish close ties with some of these other bodies so that the reasons for so many law teachers being dissatisfied with prevailing curriculums are better understood and

appreciated in these other quarters. Perhaps, for example, a few representatives of the National Conference of Bar Examiners should be encouraged to sit in on Curriculum Committee sessions and informally participate in the Committee's work. Who knows, maybe we could even learn something from them.