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REVIEW OF THE WORK OF THE COLLEGE OF LAW.

THURMAN ARNOLD*

In order to understand the work which the Law School is doing a brief statement of its aims and purposes will be useful. Law schools in this country may be roughly divided into three types. First, the so-called national law school, of which Harvard, Yale and Columbia are examples. Such schools tend to lay great emphasis upon cultivation of legal science. They attempt to be the leaders in the development of law as a social institution and are able to attract, by virtue of high salaries, men whose interests are far removed from mere professional training. They have definitely committed themselves to legal research and in that commitment have attempted to study problems from a nation-wide point of view.

The second type is the trade school, interested chiefly in turning out legal technicians. This type of school performs no social function because society is not interested in legal technicians. They have therefore come into great disfavor, and persist in spite of efforts on the part of the American Bar Association and leaders of public opinion generally to get rid of them.

The third type is the state law school. Its problem has two aspects. On the one hand it must be more than a mere trade school because it is part of a university. To justify the expenditure of taxpayers' money it must be interested in the law as a social agency, even though such interest is of no practical importance from the standpoint of a particular individual struggling to build up a practice under existing conditions in a small town. On the other hand in its interest in the law as a social agency the state law school should not attempt to imitate national law schools by trying to do the things which the national law schools can do better. It serves a particular state. In so far as it is interested in the cultivation of law as a legal science it should attempt to be a clearing house for the legal ideas of the state in which it functions rather than for the country as a whole.

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From the point of view of instruction also a state law school has its functions more clearly defined than national law schools. Without sacrificing its interest in the law as a social agency the state law school has a better opportunity to perform the functions of a trade school. In other words, because it is interested primarily in one jurisdiction, it can specialize in the practice of that jurisdiction. There is no real conflict between the law school as a social agency and as a training school for practitioners. The encouragement of intelligent law reform is not only useful socially but it makes the student a better practitioner. Anyone can use a tool better when he knows what it is for. The faculty of any state law school should be able to conscientiously advise a student who intends to practice in the state that that law school is the best place in the United States for him to attend, in spite of the fact that there are schools which have greater libraries, greater endowments and a more distinguished faculty. But this advice must be based on the theory that the state law school is more familiar with local problems than any other institution. That familiarity can only be obtained by study and research on local problems on the part of the faculty, which in turn leads to opportunities for the study of these problems by the students.

I. RESEARCH WORK ON STATE PROBLEMS IN CO-OPERATION WITH THE WEST VIRGINIA BAR ASSOCIATION.

Both from an instructional point of view and from the point of view of service to the state it is one of the functions of the law school to study problems peculiar to West Virginia. This cannot be effectively done without the active co-operation and support of the Bar Association. West Virginia has an unusual opportunity in that respect because it is the only school in the state and because the bar association is an active and influential body which is interested in what it is doing. A plan of co-operation has therefore been worked out with the State Bar Association, the machinery of which is as follows:

(1) The particular legal problems on which research will be done are to be approved by the Executive Committee of the State Bar Association. The purpose of securing this approval is to maintain a connection between the Bar Association and the Law School to the end that the experience of the Bar Association in determining the most important problems to be studied may be available to the law faculty.

(2) Selected members of the law faculty will devote their time in the summer to a study of these problems, for which time they will be paid additional compensation, so that they will not be deprived of the money which they might otherwise get for teaching in the summertime.

Under this plan the first important research problem consisted of a study of the pleading and practice of actions at law in West Virginia, which was undertaken by virtue of a resolution of the Bar Association passed at their annual meeting in 1928. Mr. Arnold, Mr. Simonton and Mr. Havighurst of the law faculty prepared the report which appeared in the *West Virginia Law Quarterly* for December, 1929. It was submitted to the Bar Association in 1929. The work consisted of two parts.

First, the drafting of an act providing for a Judicial Council for the continuous study of the administration of justice in the state. The act provides for the Law School to serve as a research unit for that council with the duty of submitting to the Judicial Council reports on the various problems in which the Judicial Council is interested. Second, a proposed method of pleading by an extension of the motion for judgment procedure was carefully worked out and commented on.

The Bar Association approved the work of the Committee on the Judicial Council and committed itself to that proposal. It reserved for further study the portion of the report concerning pleading. In the meantime the members of the Committee have discussed the report with the bar associations at Charleston, Huntington, Martinsburg, Wheeling, Fairmont, Ripley and Morgantown, and are planning to

meet members of the Bar Association at other points in the state where they may be interested. This has the double advantage of informing the bar as to the work of the Law School and also bringing the members of the faculty in touch with the practicing members of the profession, a contact which is lacking in too many of our state law schools.

A second project upon which some work has been done has been a study of the Lake Cargo Case, the results of which study have been discussed at meetings of coal operators in Fairmont and in Morgantown.

A third very important work has been done in the annotation of the Restatement of Laws, published by the American Law Institute. The Bar Association has been interested in this work sufficiently to appropriate five hundred dollars for it during the next year. Mr. Dickinson and Mr. Havighurst are now working on the Restatements of Conflicts and Contracts with committees of the State Bar Association. Students of high standing are permitted to assist in this work for credit. The work will be finally published by the American Law Institute. It will take some years to complete it but when completed will be a very useful contribution to the legal literature of West Virginia.

One of the most interesting investigations now under way at the Law School is the commencement of the judicial survey of the cases actually tried in the courts of first instance in the state. The idea behind this work is as simple as it is sound. It is based on the fact that it is impossible to get an adequate idea of what is actually happening in our courts by studying the way the Supreme Court talks in the one case out of two hundred which is appealed. No one knows how any of the rules of pleading or the rules of substantive law are actually working because there is no information available.

During the past year this work has been financed by Yale University, though funds to carry it to its completion must be sought elsewhere. This arrangement has given us the advantage of active contact and co-operation with a national law school in carrying it on. The work has been

more fully explained in the February number of the West Virginia Law Quarterly for 1930, at page 184. We can only briefly summarize it here. Men have been hired and funds furnished by Yale to collect judicial statistics in Morgantown, Wheeling, Charleston and Clarksburg. They are collected on a form containing about one hundred and fifty items of information relating to each particular case. This information is divided into general information as to court procedure and specialized information regarding such types of cases as divorce and negligence. The forms are so designed that each bit of information thereon is given a number. The numbers indicate holes which are punched in cards which are adapted to a machine which will sort them automatically and obtain results without the labor of counting the forms. The tabulation of the forms is all done at Yale.

1. *Co-ordination of the Plan of Statistics With Our Proposed Judicial Council.*

In the draft of the act providing for a judicial council which the law faculty proposed in its investigation of last summer, a bureau of statistics was proposed. It is our intention in gathering these judicial statistics to get this machinery in operation as soon as possible so that if and when a judicial council is provided for in this state it will find some machinery at hand with which to operate. The judicial council of Ohio, after many years of inactivity, started a complete statistical survey in the State of Ohio in connection with the Institute of Law at Johns Hopkins. At that time this work had already been under way in West Virginia, although not adequately financed as it is in Ohio. We feel it more fitting that a state law school should be active in doing such work rather than an outside institution such as Johns Hopkins.

The final aim is to devise a simple form giving information which will be kept by clerks of court or other court officials as it is done in England.

2. *Co-operation with the Hoover Commission.*

No single thing has given the idea of basing judicial reform on an actual examination of what the courts are doing so much impetus as President Hoover's so-called Prohibition Commission. This commission is actively making plans for the study of federal court administration in criminal cases. It operates from the point of view of results rather than that of logic. There is no other rational method of attacking problems of administration of justice than this. In co-operation with this national commission West Virginia University Law School has already hired one of our recent graduates who is working on criminal statistics in Charleston and Huntington. This work is being financed by the Hoover Commission.

It is impossible to predict just what these statistics will show but it is obvious that they will give a complete and unbiased picture of what is happening in the federal and state courts.

The introspective method of law reform is coming to an end. Courts are business institutions intending to give people seeking their aid the rights which facts entitle them to and to do this with a minimum expenditure of time and money. We cannot afford to waste either time or money and yet without exact information we are bound to waste both. It is impossible to change old processes of procedure without knowing how the rules are working. This cannot be discovered by an examination of the one case in one hundred decided by an appellate court, but only by an examination of the ninety-nine cases decided by the courts of first instance.

3. *Investigation of the Justice of the Peace System.*

The constitutional commission appointed by Governor Conley recently is interested in the organization of a judicial system in West Virginia. Mr. Havighurst of the faculty is engaged in a study of the operation of the justice of the peace system. Questionnaires have been sent to four hun-

dred fifty justices in West Virginia and it is hoped that some valuable information as to the number of cases these justices try, the results they get, the distribution of the work and general efficiency of the system can be obtained from these questionnaires. This information will be used as a basis for a general study of court administration in the state.

4. *Investigation of Water Power Legislation.*

During the summer of 1930 Mr. Simonton of the faculty will be engaged in a study of water power legislation, a report of which will be published next year.

II. INSTRUCTION IN LAW.

1. *Entrance Requirements.*

Three years of collegiate work will be pre-requisite to registration in the Law School in the fall of 1931. This increase in entrance requirements will put West Virginia with the first sixteen schools in the United States. The American Bar Association requirements demand only two years of college work. In making our decision to go beyond these requirements we recognize the fact that it will have a tendency to cut down our attendance materially. We will be surrounded by schools which require one year less than we do. Among the schools which attract West Virginia students are the University of Virginia, Washington and Lee, George Washington, Ohio State, and Georgetown, all of whom require only two years. Nevertheless we have felt that conditions warrant our increasing our standards and that, in the long run, the school will profit rather than lose by such increase.

There is no particular demand for numbers in the legal profession and there is a social need for lawyers with more background. The problem of taking care of the increasing numbers who are being admitted to the bar is a very difficult one for the profession to solve. There are many who believe that the unfit are eliminated after entering practice. Unfor-

tunately this does not seem to be so. A man of gentlemanly instincts and cultural background often finds himself seriously handicapped in competition with persons of inferior character and greater aggressiveness. In the law, as everywhere else, there is a tendency of the bad coin to drive out the good. The only sensible solution of the over-crowding of the bar seems to be an increase in requirements for admission. A state university should recognize this and have the courage to initiate it, in the hope that sooner or later the state requirements for admission will be raised to its standards.

From an instructional point of view the change will be an improvement. The classes will be smaller and they will be composed of men who for the last two years will not be concerned with the distractions of collegiate life because they will be graduate students. Only the first year men will be undergraduates and interested in undergraduate activities.

2. *Club Courts.*

In the last year a practicing lawyer, Mr. Robert T. Donley, has been added to the staff of the faculty as a part-time lecturer. Mr. Donley gives a course in the Use of Law Books in which he emphasizes the investigation of practical problems which arise in the ordinary course of business in a West Virginia office. He also takes general charge of the club courts. Students taking advantage of the club courts are given practical problems to solve, such as levying executions, getting out distress warrants, handling questions of state taxation and other similar tasks which confront everyone who first starts into business for himself. This work is entirely voluntary.

3. *Honors Courses.*

This year for the first time students of superior standing are given opportunity to do individual work on legal problems for credit. The credit given depends upon the amount and quality of the work and it must be arranged with the

instructor in advance. For example, some students have been working on the annotation of the Restatement of Laws with Mr. Dickinson and Mr. Havighurst, and on Procedure and Interstate Commerce with Mr. Arnold. This kind of work tests and develops the student's ability to handle and classify cases better than the ordinary law examination.

4. *Outside Lecturers.*

A policy has been inaugurated of having at least two distinguished outside legal scholars give a series of lectures at the Law School each year. In 1928-29 the lecturers selected were Mr. Green, Dean at Northwestern University Law School, and Mr. Goodrich, Dean at the University of Pennsylvania Law School. In 1929-30 Mr. Roscoe Pound, Dean of the Harvard Law School, and Mr. Walter Wheeler Cook, of Johns Hopkins University, each gave a series of lectures. These lectures have given both the students and the faculty an opportunity to hear and become acquainted with some of the most distinguished teachers in the law school world. This policy will be continued in the future.

5. *Practice Court.*

In addition to the outside lecturers the school maintains a very vital contact with the bar and the judiciary through its practice court. Members of the Supreme Court and Circuit Courts are kind enough each year to devote a week of their time to sitting as judges in the trial of cases conducted by students. Due to the fact that students are particularly anxious to make an impression on outsiders, and also due to the excellence of the judges selected, the practice court continues to be one of the outstanding successful experiments conducted by the Law School.

III. ENROLLMENT.

The enrollment of the Law School has doubled in the past eight years. This year it was 178, but with the increase in

entrance requirements in 1931 it will probably decrease very substantially. This however is as it should be because the problem before the state is not the problem of quantities of lawyers but rather one of quality.

The respect in which the Law School is held throughout the state is indicated by the few students who attend outside schools. The following list of the numbers from West Virginia attending other schools may be of interest:

University of Michigan Law School.....	2
George Washington University Law School.....	28
University of Pittsburgh Law School.....	1
Washington & Lee Law School.....	8
Yale University Law School.....	2
University of Virginia Law School.....	13
Harvard University Law School	9

IV. SCHOLARSHIP.

Unfortunately about one-third of each first-year class in the Law School are dropped on account of failures. This has been practically true for the past five years. It is hoped that with the increase in entrance requirements some of these failures may be eliminated. The policy of the school however is that the time to eliminate people is in their first year so needless time and money will not be spent pursuing a vocation for which the individual was not fitted.

V. LAW LIBRARY.

The aim of the school in building up a law library is that there should be one place in the state where all of the law reports published by countries governed by the common law of England are collected. The University has contributed ten thousand dollars a year to the upbuilding of the library for this year and the next year. If this can be continued some time longer we will have the library which we need. Such a library, of course, is not one that is needed on all occasions but it should be available within the borders of the state.

VI. FACULTY CHANGES.

The following changes are announced in the faculty. Mr. Havighurst has accepted a position at Northwestern University. The position offers great opportunity and Mr. Havighurst is to be congratulated upon being selected. The fact that he is leaving us indicates the necessity, sometime in the future, of raising the salary scale in the Law School so that men cannot be induced to leave on account of the higher salaries prevailing elsewhere. No announcement as to Mr. Havighurst's successor can be made at this time.

Dean Arnold has been given a year's leave of absence to accept an appointment as visiting professor at Yale University where he will do some teaching and will also work on the court administration investigation of Mr. Hoover's Law Enforcement Commission. His place will be taken by someone to be selected on a one-year appointment.

Mr. Snider returned the first of this year after a year's leave of absence during which time he was a visiting professor at the University of Pittsburgh Law School.

Mr. Robert T. Donley has been added as a part-time lecturer in law. It was felt that the addition of one practicing lawyer to the faculty group would be of benefit, both to the other members of the faculty and to the students.