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Then and Now: A Bit of Autobiography and an Argument

Vernon X. Miller*

I WAS A LAW STUDENT at Minnesota in the early 1920's, and I began to teach two years after graduation. During the later twenties legal education was in ferment. We who lived through them were lucky and we who were at Yale were even luckier. I did my graduate work at Yale in 1928-1929 when I studied under Green, Sturges and Corbin. At Minnesota I knew Fraser, Osborne and Ballantine. In my outside reading I soaked up Cook, Llewellyn, Lorenzen and Hohfeld. I was sold on the functional approach. There were a lot of law teachers like me and some of us are still in business. We can match our younger social science-minded colleagues with experience and understanding—we think!

But you begin to wonder. What have we been doing during all the years between the 1920's and now, because now is a time when there is ferment everywhere, and in legal education the excitement is comparable to the turmoil of the twenties. We came out of the twenties with our legalisms leavened, but we held on to the mystique of the profession. I am not so sure that we shall come out of the sixties intact, and I am trying to think out loud in this essay to convince myself and some of my colleagues that not all things in the sixties are good.

Our younger colleagues in their forties and our really young faculty men under forty can believe that the 1930's and the war years were necessarily frugal. Budgets had to be tight and enrollments were not large. But great things were going on in government and in the law. Even in depression years it was fun in law school living through the New Deal and having just a little bit to do with the political action that was changing the community and creating new worlds for lawyers. I was teaching commercial law in those days. People could not pay their bills. We had to concentrate on insolvencies and bankruptcies. Complete deflation and liquidation would have ruined society. Commercial lawyers had to think about conserving and rehabilitating. In school it was no longer a matter of the conceptual theory or the functional approach. We had to scrap theory and concentrate on reality. Much more was going on during the New Deal than changes in the bankruptcy laws. It is all so much a part of constitutional law today that it is hard to believe there was doubt in 1933 about the power of Congress to pass a labor relations act or anything like Fair Labor Standards. I have not stayed with commercial law. To men like me 77B and the Chandler Act loom larger than the Commercial Code, but Karl Llewellyn was crusading for the Code

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in the late thirties and exploring first the possibilities from Congress under the commerce clause.

I indulge in this history with a little bit of nostalgia but more importantly to point up the excitement of the thirties. So much was happening under our noses that we teachers had to be involved. Although most of us did our work in class, some law teachers took time out to work in government, and some of us helped to draft legislation, but we had no foundation support, and we did not earn much money on our outside jobs. Many of us were better classroom men in the thirties than most of our mentors were in the twenties.

The war years were not just a period for marking time. As in the thirties big things were happening in law and government, but we did not have many students, and most law schools had to get along with skeleton teaching staffs. I began my tour as an administrator with a skeleton staff, and I continued after the war years until 1968. During the war a dean had to concentrate on simple housekeeping with his small staff. He had to be a housekeeper after the war for different reasons. Law schools in 1946 did not have the physical facilities to cope with the post war student wave. Enrollments jumped, buildings were cramped and new faculty people had to be recruited fast. I look back at those immediate post war years with amazement. How did we do it! But we did—we taught, we wrote, we gave refresher courses to returning veterans, and we turned out a lot of good lawyers who are key men in the profession today. And we did it without the fringe benefits that so many of our colleagues think are necessary now.

The grand rush lasted about six years. During the let-down we had a chance to catch up, and the let-down, if that is what it was, lasted through the fifties. Our law students were the depression-born generation. Perhaps the fifties are too close to now for any of us to see them with perspective. Many law teachers who are flourishing today planted their roots in those years. It was a conventional time without the excitement of the New Deal. Nevertheless something big was sprouting in the 1950's. Law teachers began to tap foundations and to expand their interests into the fringe areas; they hunted for data like social scientists. We built a lot of new buildings. Students organized their bar associations and helped administrators with much of the housekeeping. But the tip-off to the fifties was the law reviews and the catalogues; they looked like they did in the thirties.

Eight years is not a long time, but the 1960's are already old. Certainly they are old with changes and happenings. We are in the middle of inflation everywhere. In the law schools that means budgets, curricula, tuition, faculties, libraries and student bodies. The student wave of the sixties is the war baby generation. Enrollments are down in 1968-69, but the influence of the draft is temporary, although budgets may be

affected in 1969. Nevertheless, the spirit of the community is extravagant, and that covers colleges and universities and law schools. I am not enjoying the sixties like the twenties and the thirties, and I do not want to believe it is only because I am older. I cannot believe that the generation gap is that concrete.

During all my teaching life I have been preaching that law belongs to the community, not just to lawyers. I have described law teachers as the third house of the profession who pierce shibboleths and cut logic and counteract the legalisms of lawyers and judges. Law teachers can bring a feeling for reality and a touch of humanism to the law. They do not have to be salesmen, and they do not have to suffer the drudgery of client caretaking. They do have to be historians and sociologists, and they are fortunate in that they can compare notes with colleagues from other departments in their institutions, but primarily law teachers are lawyers. They share the learning and experiences of lawyers, and they bring to the classroom a professional objectivity when they work with their students on the history and the utility of the civil suit for damages and when they explore with them the creative possibilities for community planning.

There is a kind of professionalism which is dangerous. We fought it in the 1920's. Some of our fathers were fighting it for many years before that. Law teachers must always resist it. Members of a profession can perpetuate mysteries. In the law they resist change and they resort to formulae which can stifle analysis and smudge justice. We law teachers are not blind to those afflictions, nor are the judges. Frequently lawyers join with laymen in state legislatures to enact remedial ground rules. In the law schools we are constantly restructuring our courses, and now we are restructuring curricula. We are expanding into areas where we can use economists, medical men, insurance adjusters and many other kinds of specialists. We are breaking up courses and offering seminars for study in depth, we are teaching writing skills, and we are hoping that bar examiners and lawyers will catch up with us.

Those things are good, and we have not waited for the sixties for all of them. Why then do I have my fingers crossed! Because in the late 1960's we are diluting our curricula. The danger is great that the law schools will lead the profession into a wasteland. Perhaps every learned man can be a judge. Perhaps we lawyers have been fooling the public just a little bit with our professionalism. But the signs of the times are ominous, and they point to a frightening possibility. If the community loses us, it can get the rough, strong ignoramus as a magistrate who is the hero in Bertoldt Brecht's "Caucasian Chalk Circle."

We can enrich our curricula with the help of economists, medical men, insurance adjusters and people from all walks of life because the law is that big, but we must use them as experts and not as colleagues.

Ours is a special kind of discipline. In the universities we cannot be just another department in the graduate school. We cannot let our colleagues from the other schools participate in planning our curricula, selecting our teachers, or setting standards for student achievement.

Student unrest has not yet hit the law schools. So far students have had a kind of unarticulated respect for the apprenticeship they must serve. By and large they expect to learn their trade under veterans in the profession. Student bar associations are vital to the success of the law schools. They deserve a voice in the determining of working conditions, but, like our university colleagues, they cannot share in curriculum planning, teacher choosing or the fixing of standards. If that ever happens, Brecht's kind of judge will be just around the corner.

I am old enough to give my younger colleagues (and a few of my contemporaries) some advice. Study the 1920's. They were a law teachers' decade. Even you, honestly sophisticated as you are, can find out how the profession got to where it is. No one of us can afford to stop growing. The profession needs you as lawyers because the profession is under siege. The university schools need you as lawyers because the schools just could forfeit their power in the profession.