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THE STATUS OF AMERICAN LEGAL EDUCATION

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INTRODUCTION

Legal academics in Australasia must get tired of the constant run of reports on various aspects of American legal education. In recent months, for example, there have been several articles on the ideological schools now contending in America, including law and economics, critical legal studies and feminism.1 Nevertheless, over the years American developments (notably the casebook, the so-called Socratic method, university law reviews and clinical legal education) have swayed legal education elsewhere in the English-speaking world.2 Moreover, trends in legal education, both good and bad, seem to begin in the United States and then spread abroad. On the theory that forewarned is forearmed, therefore, Australasian legal academics may find useful yet one more report from America.

My objective in this paper is a little different from that in the *Legal Education Review* articles cited above. Rather than plead the case for a specific doctrine, I will try to present a broad survey of practical and theoretical developments in the last twenty years of American legal education and thus attempt to describe its current status. My view is necessarily personal, based on my experiences in four American law schools, on discussions with colleagues at many more and on reading almost everything published recently on American legal education. My view will also be informal. It is not based on any scientific survey and apart from references to pertinent articles I will not burden my remarks with extensive documentation. The paper should, therefore, be taken for what it is, a reflective analysis of a subject that has been dear to me for my entire professional life.

STUDENTS AND STAFF

Students and staff are the soul of any law school. There are other people about such as administrators, interested practitioners, alumni, judges and politicians, but these have much less impact on what goes on in law schools than is commonly supposed. I will therefore concentrate in this section on those who are most important to legal education, its consumers and its providers.

Students

Application and Enrolment Levels

The coming of age of the post-war baby boom in the late 1960s and early 1970s and changes in social attitudes regarding women's careers coincided with rapid growth of demand for lawyers. In New York, for example, the largest law firms became *so* desperate for new lawyers that in 1968 alone they raised the "going rate" for entry level salaries by 50 per cent, from $10,000 to $15,000 per year. The combination of these factors produced an astounding increase in applications to law schools. Universities responded by expanding enrolment at existing law schools and by opening new ones. As a result, the number of law students doubled within a short time, increasing quickly until existing facilities were full, then more slowly as new buildings and new law schools came on line. Despite these efforts to accommodate more students, applications grew faster than available spaces, with the inevitable result that increasing numbers of people who formerly would have been admitted to law school were excluded. That in turn meant that the quality of law students improved (at least as measured by undergraduate marks and Law School Admissions Test [LSAT] scores) even as their numbers grew.

When the baby boomers passed out of the normal age range for applications to graduate school, the number of law school applicants first slowed and then fell absolutely from 1982 to 1985.3 The fall in applications caused dire reports of a dearth of students4 and calls for lower entrance requirements or reductions in the number of spaces available.5 Instead, actual enrolments (as opposed to applications) held relatively firm. There had long been more applicants than spaces for them, so law schools continued to fill their seats at only a small cost in terms of student quality. Unexpectedly, the drop in applications halted in 1986; in 1988 applications jumped markedly throughout the nation,6 to the surprise of almost everyone connected with legal education.

No one is sure what caused the increase, but speculation centres on two factors. One is the share market crash in late 1987 with the subsequent revelations of breaches of ethics in the financial community.7 The crash wiped out some of the securities industry's demand for the brightest students and Wall Street's ethical problems may have deterred others from seeking careers in finance. (Given the popular perception in the United States of lawyers as rather shady creatures, it would be surprising and ironic if students flocked to law in search of an ethical profession, but nevertheless that is what many believe to be the case.) The other factor is the recent popularity of a television show, *L.A. Law,* which presented a glamourised view of legal practice.8 If these are the real reasons for the recent increase in applications, they are likely to prove ephemeral: Wall Street has already recovered from the crash and television fashions will no doubt change, perhaps to shows about accountants or advertising agencies rather than lawyers.

Composition of the Student Body

Of even more interest than the numbers of law students is their composition. The most notable change from 1967, when I entered law school, is the astoundingly large increase in the percentage of women students. Two decades ago perhaps 5 per cent of law students were female; now the figure is about 40 per cent and in many schools it exceeds 50 per cent. The change accounts in large part both for the increase in law school enrolments and for the improved quality of law students. It also provides a desirable diversity in backgrounds, interests and attitudes.

Perhaps surprisingly, the increase in female law students came about almost solely from the "consumer's" side of legal education. Apart from some extra marketing, such as recruiting at women's colleges, law schools have not had to engage in any "affirmative action" to get women to enrol. All that was necessary on the "producer's" part was to eliminate formal and informal restrictions on female applicants. Social changes in attitudes encouraged more women to apply and the female applicants' qualifications then ensured that they would be accepted in rising numbers. By and large, women have adjusted well to law schools and law schools have adjusted well to their presence. Women have moved proportionately into student leadership positions such as law review editorships and student bar association presidencies. This is not to say that the experience of female law students is uniformly happy, only that it is much better now than formerly and that it is still improving.9

Law schools, in contrast, have found it harder to attract and retain minority students. Most law schools adopted policies of reverse discrimination in the 1970s to increase the enrolment of minorities, especially blacks. Although somewhat camouflaged for legal reasons, these policies usually involve separate admission tracks in which the law schools either set a markedly lower qualification level for minorities or else accept as many minority applicants as necessary to produce a "suitable" percentage of the total student body. (By consensus, that figure hovers around 10 per cent in many schools.)

While successful in their main objective of increasing minority enrolment, reverse discrimination policies have spawned other ills. Minority applicants admitted under these programs generally have weaker undergraduate records and lower LSAT scores than other applicants.10 Often this means that they perform less well in classrooms and in examinations which in turn may largely account for their higher attrition rate.11 Poor performance also causes some animosity among minority students toward law teachers.

Many law schools have attempted to deal with these problems by establishing special tutorial programmes for minority students, with at best mixed success.12 Even when successful in terms of their stated objectives, these programmes may be resented by minority students, many of whom do not accept that their relative lack of academic qualifications starts them out at a severe disadvantage. At the University of South Carolina, for example, one teacher devoted several years to developing an assistance programme for black students. The programme deferred one first-year course (Constitutional Law) and substituted for it extensive oral and written work with faculty and carefully selected student assistants. In objective terms the programme worked marvellously: attrition among black students dropped dramatically. Nevertheless, the very students benefiting from her work felt that the programme stigmatised participants and deprived them of Constitutional Law. In response to these complaints she abandoned the programme. A few months later, an accreditation review committee criticised the law school because it had no programme to assist black students in academic difficulty. Anecdotal evidence suggests that a few individual teachers deal with similar problems on their own, by attempting to provide minority students with extra assistance or by special grading practices.

Reverse discrimination has contributed to law school racial tensions in other, especially corrosive, ways. The academic difficulties of minority students tends to reinforce negative stereotypes held by some white students. Majority students perceive themselves as victims of these preferential policies and resent those who benefit from them.13 Finally, reverse discrimination is seen to stigmatise its beneficiaries, erroneously branding all minorities as holding their places only because of their race. The stigmatisation is especially apparent to those stigmatised. A poignant example is the case of Dayna Bowen Matthews, who in 1987 became the first black to win a place on the *Virginia Law Review.* The same year the *Law Review* adopted an affirmative action policy that resulted in invitations to two other blacks who did not meet the normal criteria. Matthews understood that this tarnished her achievement and commented, "affirmative action was a way to dilute our personal victory. It took the victory out of our hands. I regard this well-intentioned, liberal-white-student affirmative action plan as an intrusion."14

Attitudes

It is of course difficult to discern or describe the attitudes of a diverse group of students. Nevertheless, there is general agreement among American legal academics on some points. I would not be at all surprised to learn that Australasian academics have experienced the same changes in their students.

The most remarked-upon attitudinal difference between contemporary law students and their predecessors of 20 years ago has to be the vocational concern prevalent today. Depending on one's view this can be described glowingly as a greater seriousness and attention to studies or disparagingly as a loss of social concern and activist enthusiasm. Whatever the terms, it is clear that our law students come to us with a much greater concern for the personal utility of law training. To put it simply, they want to know where the best jobs are and how to obtain them. While many still aim at (and a few actually accept) relatively unremunerative positions with legal aid societies and public defenders' offices, their numbers are smaller than in the 1960s or 1970s. I would suggest, however, that the vast majority of their allegedly socially-minded predecessors either went directly into traditional law practice or

found their way to it after short experiments with pro bono work.

The other notable attitudinal difference is an increased political and social conservatism. During the Vietnam era conservative law school students could have held their meetings in a broom closet. Now they are a large and recognised percentage. The Federalist Society, an organisation of conservative and libertarian lawyers and law students, has active campus chapters nationwide and provides a network for those seeking to influence the government's legal policies. The change is easily observable in the classroom. Twenty years ago a student expressing right-wing views in class was likely to suffer unmerciful heckling; today it is sometimes hard to find anyone who will even speak up for the left. Student bodies differ widely from school to school, however. The left is considerably stronger in elite northern schools than in southern state schools.

Staff

It is a little easier to describe the changes in law faculties because of their smaller numbers and greater homogeneity. Nevertheless, it should be kept in mind that I speak in generalities and that there are always exceptions.

Size

Law faculties grew along with student enrolments in the 1970s. It was common for faculties to double in the space of a few years. The typical law faculty now numbers about 30- 35 full-time staff although it is normal for American faculties to have more administrators drawn from faculty ranks, many of whom will have reduced teaching loads. In my own law school, for example, the dean does almost no teaching and his two associate deans carry only half loads. Research leave and reduced teaching loads for work on special projects are common so that the effective teaching force at any given time will be somewhat less than the stated number. There has also been a tendency to hire more adjunct faculty from the bar, usually for advanced courses of small enrolment and for "skills" courses.

Composition

The great rush of hiring from the late 1960s through the mid- 1970s resulted in an unintended homogeneity in most American law faculties. Newly-hired teachers were primarily white males since the hiring boom occurred before the dramatic increase in the number of female graduates and before the peak in pressures for reverse discrimination to favour minorities. Moreover, since most applicants for academic positions are recent graduates, most of those hired were in their late 20s or early 30s. Only in their age did they differ demographically from those who hired them. Once the expansion in law faculties was complete there were relatively few new positions available. Annual attrition amounted to far less than 10 per cent of the total number of positions even in 198015 and is probably lower now. The inevitable aging of the cohort hired in the 1970s means that the typical law teacher is a white male in his 40s.

There have been some changes in faculty composition, of course. As new positions opened up an increasing percentage of them have been filled by women. Women now account for 15.9 per cent of all regular faculty (up by a half from 10.8 per cent in 1981) and a third of all those not yet tenured.16 While female applicants have benefited from an informal (if often rigid) consensus on the need for more female teachers, they have generally been hired on their merits and without the necessity of formal reverse discrimination policies. This is to be expected from the increased number of highly qualified female law graduates. Despite some complaints that predominantly male tenured faculties judge women more strictly than men in the tenure and promotion process and that law schools fail to provide a supportive environment for their female teachers, more and more women are obtaining tenure and rising through the academic ranks.17

Minorities have not been as successful in breaking into law teaching, even though almost every law school has adopted firm reverse discrimination policies to encourage their hiring. The percentage of black faculty in the 144

non-minority-operated law schools did rise by a third from 1981 to 1987 but it is still only 3.7 per cent. In absolute numbers the change was only from 107 out of 3,886 to 159 out of 4,275 — barely more than a third of a faculty member per school.18 The two most often cited explanations for the small increase have to do with minority applicants' academic qualifications and their employment options.

No doubt partly as a result of their admission to law school with lesser qualifications, minority students as a group have not performed as well as their majority classmates. A smaller percentage graduate with honours or serve on law reviews, for example. Accordingly, when minority graduates apply for teaching positions their paper records often are less impressive than those of white candidates. Perversely, the well-intentioned efforts to enrol more minority students may have limited the number able to get teaching positions. Even for minority candidates, law faculties look for signs of academic distinction. Normally this provides a healthy egalitarianism among candidates as, say, the law review editor from the University of Iowa appears stronger than the undistinguished graduate of Harvard even though they may in all other respects be equal. In order to increase its percentage of minority students, though, the Harvards of the law school universe had to accept those who would not otherwise have been admitted but who might have made the law review at Iowa. Facing the much tougher competition at Harvard, these students might graduate with more modest records. When applying for a teaching position a few years later, the minority Harvard graduate may appear weaker than the Iowa law review editor who took the place he or she might have filled. In any event, the gap between the qualifications of minority and non-minority candidates is large enough so that even reverse discrimination — specifically, the willingness to hire minorities with lesser qualifications — does not enlarge the pool sufficiently to increase the number of minority law teachers.

The second reason for the lack of minority teachers is at least as important. Law firms have many of the same reasons to hire minority lawyers as do law schools but can pay more. It is understandable that most of the best qualified minority graduates, facing a new and welcome plethora of job opportunities and often burdened with student loans and other financial responsibilities, opt for the more lucrative world of private practice. In this they do not differ from comparable graduates, but the result is that law faculties have not been able to raise the percentage of minority staff to a level comparable to their enrolment of minority students. Indeed, market forces already oblige some law schools to pay minority teachers more than their peers — at the cost of some internal tension — but there is simply not enough money to eliminate the advantage held by private firms.

Even more distressing is the relatively high attrition rate among those minorities who are hired. Excluding deaths and retirements, 31 per cent of untenured minority teachers left teaching from 1981 to 1987, compared to only 17.2 per cent of whites. Twice as many tenured minority faculty also left teaching, 16.7 per cent compared with 7.5 per cent.19 Naturally opinions differ on the reasons for this attrition. Some minority teachers surely leave teaching simply to take up other positions they regard as more attractive but others must leave because they find teaching in a predominantly white institution difficult. The sole black on any faculty, for instance, is expected to deal with all the problems faced by all black students. Nevertheless, it is significant that the rate of tenure denial for blacks is about the same as for whites.20 Whatever the reasons for high minority turnover, apparently they do not include discrimination in tenure decisions. One should not be too critical of these limited changes. At least now the average law student is likely to encounter some female and minority law teachers during his or her time in law school. Twenty years ago that was not the case.

Attitudes

It is at least as difficult to generalise about the attitudes of law teachers as about law students. In so far as generalisations are possible, it would be safe to say that law faculties, today as always, are primarily concerned with professional and pedagogical matters. They are much less likely than twenty years ago to engage in political activism but are somewhat more likely to be interested in the ideological debates of legal education.

At the same time, the aging of the average faculty in the last two decades has contributed to an increased moderation, if not to political conservatism. One would never think of law faculties as especially radical, but those hired in the 1960s and 1970s were at least distinctly more liberal than their elders. Those same people today are

likely to be somewhat less liberal, while those hired in recent years show perhaps a variety of political opinions greater than the earlier generation did at the time of their hiring. One now at least sees a number of conservatives and libertarians among the applicants. That was much less common twenty years ago. The more senior members have a sprinkling of conservatives and libertarians, too. At least a dozen of the best known were appointed to the federal bench by President Reagan of whom the most familiar are Richard Posner and Frank Easterbrook, previously colleagues in the law and economics movement at the University of Chicago and now colleagues on the Court of Appeals for the Seventh Circuit.

Despite these noted exceptions, the average faculty member remains on the left of our political spectrum. (Of course the American political spectrum itself stands considerably to the right of the Australasian spectrum.) The remaining white male liberals are being assailed by critical legal studies activists, feminists and minorities. The result is a much greater intellectual diversity than was typical when I entered law school or began teaching. I find this refreshing but some of my more *engagee* colleagues undoubtedly find it a frustrating example of the way in which radical thought is marginalised in American society.

One other aspect of staff attitudes should be mentioned. Although it is perhaps impossible to prove, there is good reason to believe that there has been a lessening of the average law teacher's commitment to the strictly academic components of the job. To evaluate faculty performance, universities frequently refer to a trilogy of tasks — teaching, research and service. Everything else is "other." "Service" for the law teacher includes work internal to the university (work on faculty committees, advising student organizations and the like) and work external to it (participation in professional organizations, performing *pro bono* legal work and so on.). In addition, some "other" work has long been seen to complement teaching and scholarship. Some practice on specialties and consulting with government on policy matters, for example, may enrich lectures or provide valuable information for research.

The lessening commitment referred to involves a greater proportion of time and effort spent in the "service" or "other" categories. Some of this work is commendable although potentially troubling if it interferes with academic work. Some of it is initially troubling but ultimately tolerable, as in the case of the large amount of remunerative practice engaged in by a faculty member who nevertheless continues to teach and write well. Some, however, is simply intolerable, like the ostensibly full-time teacher who really carries on a full-time legal practice.

To put it concretely, many more law teachers are spending much more time outside the law schools than formerly. Part of the explanation is economic. As teachers' salaries dropped further behind those of practitioners in the late 1970s and early 1980s some began to solve the problem in a direct way by earning money in practice. Another part of the explanation is boredom. After receiving tenure the law teacher might wonder what the future holds. The answer for most is the same:

> they will continue to teach, grade examinations, and try to produce scholarly work. Some people, of course, will drop out of the scholarly race. They cannot, however, escape the inexorable pressures of teaching — usually, the same courses over and over again — and grading the same increasingly boring examinations.21

Whether for money or excitement these outside activities are seductive. Carried on beyond a minor level (and it is hard to resist the seduction), they have to come out of time properly devoted to teaching or scholarship.

Opinions will differ on the magnitude of the problem but not on its existence. There is no easy cure, for several reasons. First, although every teacher could name others whose outside endeavours limit their academic work, seldom does anyone really know how others spend the day. Presence in the office is an inaccurate measure since many prepare for class or write more efficiently at home. Without accurate information, however, it is impossible to know even the scope of the problem let alone the identity of those who cause it. Second, each hesitates to raise the issue lest his or her ox be gored in the process. One practises law, another travels hither and yon to professional meetings, a third speaks at continuing legal education seminars, a fourth plays golf every Friday. Who would dare to attack another's activity? Third, there are few tools with which to correct the problem even if one were so inclined. No one but a dean has authority over another. Even a dean could not initiate formal discipline except in the most flagrant cases. A dean may have some flexibility in the allocation of salaries and other benefits, but the flexibility is

usually quite limited; besides, the most serious offenders are likely to be earning more than they would lose. Finally, the whole topic is so sensitive that even those in authority hesitate to raise it: the potential gain just does not seem worth the almost certain pain.

Thus the problem of lessened commitment to academic work is likely to continue and, I fear, grow.

RESOURCES

Law school budgets grew apace as law schools expanded in the late 1960s and early 1970s. Thereafter, through a period of abnormally high inflation, budgets increased more slowly than expenses. Only recently has funding begun to increase faster than the inflation rate, but even so law school budgets are in real dollars still far below the peaks of the glory days. Relatively stringent budgets have necessitated difficult choices in resource allocation.

Staffing ratios provide a good indication of these choices. American law schools have traditionally operated on staff/student ratios that were low in comparison with other disciplines. Universities (and perhaps law school administrators and faculty members themselves) apparently assumed that participation of students through the Socratic method made small classes pedagogically unnecessary. Certainly the relatively low cost of law schools (which, after all, need only teachers and books rather than expensive scientific equipment) has long appealed to university administrators. In any event, staff hiring lagged behind enrolment increases for many years and the ratios worsened.

Law teachers began to question this assumption at least a decade ago. Some thought that the Socratic method lost effectiveness in extremely large classes, others that certain subjects required smaller classes and all agreed that clinical instruction could only be offered in very small groups and that workloads were generally too high. When resources finally increased many schools attempted to improve staffing ratios, but with limited success. The goal of the American Bar Association is a ratio of one full-time faculty member for each 20 students, but at most schools the ratio is about 1:25 and many are far worse.22 A few well-endowed research institutions (most notably Yale and Chicago) have relatively more staff; many less prestigious institutions whose sole mission is the production of the next generation of the local bar have relatively fewer.

The main uses for the additional revenues in recent years have been library costs (which in the United States as elsewhere have risen far faster than inflation) and faculty salaries. More recently equipment costs, primarily computers, have become a significant element in law school budgets. While not exactly flush with funds, law librarians have adapted to past stringency by improving efficiency, chiefly by relying more on microforms and computers and less on book purchases.

Faculty salaries deserve special comment. This is a touchy issue to address to a non-American audience because by the standards of almost any other nation American law teachers are extraordinarily well paid (if not actually overpaid). Any comments about American salaries thus risk being seen as insufferable carping by a group of ingrates. Nevertheless, perceptions of earnings are primarily relative: we all judge our earnings chiefly in light of our own economies, not in comparison with others around the world. More importantly, staff salaries are in fact one of the major issues in American legal education today; it would thus be incomplete to describe the status of legal education without mentioning salaries.

First, however, I should point out one major difference between American academic salaries and those in other parts of the English-speaking world, namely that ours are extremely variable. Not only do salaries vary between universities, sometimes enormously, they also vary within each institution. There is no egalitarianism across disciplines: for good or ill, those who teach in fields with high market demand such as law, medicine, engineering and accountancy earn far more than their colleagues who teach art or philosophy. Even more striking are the differences within a single department. A junior person might earn more than a senior of higher rank and two people of equal rank and seniority might earn substantially different amounts. These individual differences are supposed to represent market pressures and administrative evaluations of merit but inevitably other factors play a role.

Thirty years ago a new law teacher was relatively well paid in comparison with his or her contemporaries in practice. The senior teacher naturally earned less than partners in major firms but the difference could be measured in arithmetic rather than geometric terms.23 For at least the last twenty years, ever since the rapid rises in salaries paid by the largest big-city law firms to their newest associates, law teachers at all levels have fallen far behind their practising colleagues. Recently the gap has widened to chasm proportions. Even at the best law schools new teachers (most of whom have several years of experience in practice) start at $50,000 per year or less while the larger New York law firms pay newly-minted graduates $80,000 or more. It is now common for our top graduates to earn more in their first year in practice than most of those who taught them. The salary gap widens with time. At the senior level, a very few top law professors in well-funded institutions might earn $100,000 per year while senior partners in New York can earn $700,000 or more.24 Naturally this gap has hampered faculty recruitment and retention,25 prompting fears of a decline in quality.

In fact, the gap has not hurt as much as economists might expect from a bare comparison of nominal salaries. There are numerous non-financial advantages to teaching, of course, but beyond these there is reason to believe that nominal salary levels seriously overstate the actual differences in income. First, most law faculty live in university cities outside the main metropolitan areas, while the highest-paying law firms are concentrated in the big cities like New York, Washington and Los Angeles. Geography plays a far greater role in practitioners' earnings than in academics' salaries. Accordingly many law teachers' salaries are more closely in line with (and more fairly compared with) the local bar than with the New York bar. To give one example, new faculty at South Carolina earn only a little less than the best South Carolina firms pay their new lawyers and the average faculty salary exceeds the average practitioner's. There is still a large difference between the most successful teachers and practitioners, of course, but that is inevitable in any system.

Second, law faculty often receive compensation beyond the base salary. Since the base salary is presumed to be for work during the nine months of the academic year, some teachers receive additional amounts for summer research grants or summer session teaching opportunities. Others have endowed chairs which pay a stipend or receive supplementary pay for administrative tasks. These forms of compensation are seldom included in salary data used to plead for budgetary increases. Third, many law teachers supplement their salaries by consulting with law firms and governmental agencies, by engaging in part-time legal practice, by arbitrating, by lecturing in continuing legal education programmes and by book royalties.26 By custom and rule, law teachers typically may use up to 20 per cent of their time (or one day a week out of the presumed five for which they are paid) for such consulting. In a few cases teachers as much as double their university income by spending just one (official) day a week and vacation periods in the market place. Of course faculty are expected to prepare their courses and to engage in research but if they can do so and still have time for consulting there is no bar to them doing so. Fourth, many academics take part of their compensation in time rather than in money, for example in reduced teaching loads and paid research leave. As any economist will recognize, receiving the same income for less work is the economic equivalent of an increase in pay. Finally, average figures mask large individual variations. The most "marketable" teachers are often able to negotiate salary increases or supplements, reduced teaching loads, larger expense accounts and other benefits. The least marketable people receive less, but then they would by definition not do as well in the outside world, either. An accurate statement of the much-criticised salary gap would have to take account of all of these factors, yet I know of no study that has done so.

The outlook for resources is modestly favourable for most law schools. State budgets have improved in many places, alumni donations have helped in others and the stock market has risen enough to increase university endowments. Moreover, the debts from new buildings in the 1960s and 1970s are in many cases finally being paid off. With the exception of a few of the weakest components, the small private schools without the strong endowments or national reputations to tide them over rough economic times, American legal education should have adequate money in the foreseeable future to carry on its tasks. The only doubtful issue is whether it will have enough to improve staff/student ratios and continue to experiment with costly new teaching programmes.

PEDAGOGICAL CHANGES

Pedagogical changes in legal education are seldom revolutionary. Indeed, apart from Dean Langdell's introduction of the case method at Harvard more than a century ago it would be hard to think of a single change that would merit that term. Even incremental changes can over time be quite significant, though. From, say, the 1950s until 1967 the main changes were a mellowing of the Kingsfield-type approach to the case method and the introduction of new courses going beyond common law subjects. From the late 1960s until the 1970s the most important developments were the growth of the clinical movement and interdisciplinary courses. Since then there has been one major change in emphasis and several new developments worth mentioning.

Clinical and Skills Training

The change in emphasis is the movement from clinical to skills training. By the mid-1970s most American law schools had developed substantial clinical programmes, that is, methods to enable students to work on the practical problems of real clients. The programmes were of several types. Some involved external arrangements in which students worked for practitioners, public-interest organisations, prosecutors, or public defenders with only general law school coordination or supervision. Some involved "in-house" clinics, in which students performed legal work for indigents (who were means-tested to avoid poaching the clients of the private bar). Some of the in-house clinics were general, while others specialised in criminal law, landlord-tenant problems, consumer disputes, employment difficulties or other areas. Many of the programmes involved actual court appearances by students working under the supervision of a lawyer. These programmes shared some common elements, most importantly the relatively high staff/student ratio27 and instruction by staff selected for practical experience rather than for academic credentials.

When law schools first established their clinics there was a widespread feeling that clinical education was the wave of the future — that is, that practical work would and should come to dominate legal education and that theoretical courses would retreat to a secondary or preparatory role.28 Those predictions fell far short of reality. The clinical movement has levelled off, if it is not in actual retreat. The change of heart has several explanations. Cost was certainly a major reason: the clinics' relatively high staffing ratios drew scarce resources from other valuable areas. The magnitude of the difference between the cost of clinics and of classroom courses was astounding, as shown by some dated but representative figures provided by Elliot Burg. In 1978–79, he reports, "the average cost per student credit hour for law school-supervised clinics was in the $320–728 range, significantly higher than the $71 figure for classroom courses."29

Lack of quality control was another reason. The regular faculty found it difficult to evaluate clinical courses or their teachers and external programmes seemed to be beyond anyone's regulation; once students were out the door, even the coordinator of clinical programmes had little or no control (or even knowledge) of what they did.

A third reason involved a certain amount of professional squabbling. Clinical faculty were hired without the academic credentials of the regular staff and they generally did not engage in scholarly research or publication. As a result, other faculty tended to look down on them despite verbal commitments to the importance of the clinical programme. In many cases clinical instructors were distinctly second class citizens: they were often on term contracts rather than tenure arrangements, they usually earned less than other faculty and in many schools they could not even vote in faculty meetings. The accrediting agencies, the American Bar Association and the Association of American Law Schools, have obliged law schools to take several steps to improve the lot of clinical instructors,30 but these efforts may have come too late to restore them to their former glory. The bloom is off the rose.

Perhaps the most important explanation for the decline of the clinical movement was its failure to demonstrate its superiority in practical results. Course enrolment figures reflected this loss of the intellectual war, as students deserted the clinics in droves to enrol in advanced but very traditional courses in business law areas. Many law teachers who were initially quite receptive to (if not wildly enthusiastic about) clinical work came to believe that

the unique role of university legal education was in teaching theory. To put it in the colloquial, students could better learn “where the courthouse is” under the tutelage of an employer once they were in practice. The prime objective of clinical programmes, training students in legal skills as well as in legal knowledge, could better and more cheaply be achieved in “skills courses.” Thus, while most schools still operate clinical programmes the clinics’ star has waned a bit since its peak a decade ago.

“Skills courses” is a nebulous phrase. Certainly even the most traditional case-method course imparted some necessary skills and even traditional teachers and texts often use assigned problems which developed other skills.31 The new emphasis on skills thus suggests a broadening of what was already there. More and more casebooks and presumably more and more courses, employ the problem method to supplement case study. Some courses use the problem method exclusively even in common-law subjects. Others attempt to create clinical conditions in the classroom.32 Still others rely on role-playing and simulations.33 Many new courses teach practical skills apart from any particular subject matter: for example, courses in Negotiation, Mediation, Counselling, Alternative Dispute Resolution, Legal Drafting and Appellate Advocacy, among many others. Even the titles of these courses were unheard of in most law schools ten years ago.

The shift of emphasis from clinics to skills courses helped to solve some of the troubles plaguing clinical programmes. Skills courses are likely to be “in-house” so quality control is more easily assured. Problems can be set within controlled boundaries and even repeated from one year to the next, which makes assessment easier and reduces the teachers’ preparation time. Skills courses can often be taught by regular faculty with or without the assistance of clinical faculty; this raises the image of these courses and eases some of the professional conflicts between the two groups of faculty. Finally, skills courses are substantially cheaper than full- fledged clinics, chiefly because they do not require such high staff/student ratios.

The rise of skills courses has supplemented rather than replaced clinical programmes. The main retraction in the clinics has been to repatriate many external programmes. Thus there have been few redundancies among clinicians. Many who might otherwise have been made redundant have taken on skills courses. Since many former clinical teachers preserved their jobs and enhanced their professional status by shifting to skills training, there has been little objection to the new emphasis.

Training in Legal Ethics

The first of the new developments in legal education is that we now formally attempt to teach legal ethics. Every law school in the country is now required by accrediting authorities to offer compulsory instruction in legal ethics (or “professional responsibility” as it is often called). This salutary development includes a wide variety of options. Much ethical instruction takes place in traditional courses, but even the named courses in ethics are quite diverse. As in other courses, some teachers of ethics use case study and Socratic methodology while others use the problem method or some combination of the two. Some use inter-disciplinary materials (for example, historical or sociological studies) while others concentrate almost exclusively on the statutory and professional rules governing lawyers. Courses range from the level of high aspiration down to the “how to hold onto your licence” approach, but with many more toward the latter pole than the former. Sadly, despite several years of instruction in ethics, it would be hard to demonstrate any improvement in the ethics of the practising bar. The most one could say is that bar disciplinary authorities are now more vigorous in prosecuting those who breach their ethical obligations.

Computer-Assisted Legal Instruction (CALI)

The newest and potentially most significant pedagogical development has been the introduction of computers. Computerisation began with basic word-processing, which can quickly improve faculty, student and secretarial productivity. It then moved on to data retrieval, in particular the use of LEXIS and WESTLAW, which themselves increase their worth by enlarging their holdings almost daily. Still more pedagogically significant developments are now coming in, for example, on-screen tutorials on specific subjects and inter-active video discs.34 At least one

school, the IIT Chicago-Kent College of Law, has attempted to integrate computers into the entire law school experience, with some claims of success in first-year student performance.35 A few visionaries have suggested that computerisation might replace much traditional classroom instruction, but a safer prediction is that computers will more and more supplement traditional instruction.

New Courses and Programmes

Perhaps out of a feeling that traditional legal education was not working satisfactorily, several law schools have revised their courses of instruction in potentially significant ways. One of the benefits of the multiplicity of law schools in the United States is that some of them can experiment, even radically, without risk to the legal profession as a whole. I can mention here just a few of the recent experiments.

Many years ago the newly-opened Antioch law school in Washington, D.C. announced that it would serve a previously under-served clientele, poor and minority students who were themselves interested in serving the underrepresented part of the population. Admission was to be based in part on previously-demonstrated social activism and all students were to be required to engage in law-reform or similar activities as part of their law school training. The school went through a number of troubled years marked by disputes with its parent institution, Antioch College in Ohio, financial difficulties, accreditation problems, and questions about the qualifications of its graduates. At last the school closed down and transferred its assets to a new law school at the University of the District of Columbia.36

Several years after the Antioch school opened, the City University of New York opened a law school with a radically new pedagogy. Traditional course names disappeared so that subject matter appeared in new combinations. More importantly, students were assigned for their law school stay to groups organised as “law firms.” In these groups they were to learn by working together to solve progressively more complicated legal problems. The expectation was that students trained in such a practical way would be better equipped to begin practice than graduates of other schools. Opening of the new school was marked by much fanfare but problems soon developed. Contrary to the expectations of the school’s supporters, those trained intensively in legal problem solving had disappointingly low pass rates on bar examinations. The newest pedagogical theories, in other words, flunked their first test with reality. Then University authorities rejected several of the law faculty’s recommendations for tenure, ostensibly because the candidates had not published sufficiently. This attacked the school in a critical place because it was set up precisely to improve instruction; if faculty devoted the time necessary to make the problem method work they could not possibly publish as much as others who had many fewer contact hours of teaching. The school still exists and follows its own path, but some adjustments to meet internal and external criticism are under way.37

George Mason University’s school of law in Arlington, Virginia, a suburb of Washington, D.C., hired as its new dean a controversial figure in American legal education, Henry Manne. Prior to his appointment, Manne was best known while at the University of Miami and Emory University for summer courses in law and economics offered to professors of law and of economics, to federal judges and to government officials. Despite some complaints that he was “indoctrinating” judges, Manne’s courses were enormously successful and contributed greatly to the spread of the law and economics movement. At George Mason, he announced that the school would introduce more training in economics throughout its curriculum, hired several faculty members with interests in law and economics and began a programme that allowed students to “major” in certain subjects such as patent law. This last was the most notable educational change, for it represented a rejection of the claims by legal academics that law training was necessarily general — “the last of the generalists,” we often term lawyers. In contrast, the George Mason approach aims at producing graduates who can immediately take on significant responsibility in their chosen specialty. The hope is that its graduates will thus have an edge over the competition when they seek employment.

Several law schools have tinkered with the law school curriculum to greater or lesser degrees, among them Harvard, Stanford and Nova.38 Some of these changes involve only provision of more options, a trend that has been under way for half a century or more. This is what Professor John Weistart of Duke University refers to as “the phenomenon of the marginal accommodation — the embracing of reform ideas by the relatively low-cost device of

adding courses at the margin of the curriculum."39 Others seem only to change labels for subjects, or at most to shuffle the deck of subjects offered. In Weistart's pithy comment, "faculties have not wanted for ingenuity in switching the contents of the old vessels."40 A few offer new students the option of taking a radically different group of courses in their first year.41 Some of these experiments may prove to be of significance, but it will take some time to judge results. In fact, given the difficulty of measuring (or even defining) improvements in legal education, advocates of a particular change may never be able to convince other schools of the advantages of their innovations.

None of these experiments has yet been so successful as to attract much imitation. It is quite possible that lack of consensus on the direction of desirable curricular change will produce a lengthy period of trial-and-error experimentation. The law and economics scholars pull in one direction,42 the critical legal studies people in another43 the humanists in a third.44 As a result, most schools continue to operate within a small range of curricular and methodological options and thus look very much as they did years ago. Nevertheless, most of us watch the experiments with interest and are prepared to borrow from those that appear to work. In the meantime there are strong tendencies to add new courses without dropping old ones, thus spreading the faculty ever more thinly and to change the arrangement or credit hours of required courses — changes which, when undertaken without a real plan, will do nothing to improve legal education.

IDEOLOGICAL DEBATES

In General

Ideology has always been of secondary concern to American law faculty as it has been to the American legal profession in general. Pragmatism has been the American creed and in its service we downplay the significance of doctrinal approaches to law. Of course, in a broader sense every coherent set of beliefs is an ideology and perhaps that is why reaction has been unusually intense to the recent advent of warring schools of legal philosophy. By putting forward plausible but radically different analyses of the legal system the new ideologues have forced us, in many cases for the first time, to examine our own beliefs and, where they differ from the newly-asserted ones, to defend them from attack. There have been quite a number of intellectual waves washing up on the shores of legal education since the 1960s, but I will address only the three that have caused the greatest discussion in recent years.

Critical Legal Studies

Indisputably the loudest if not most successful movement has been that multi-faceted grouping that goes under the banner of critical legal studies (CLS). Legal academics have had ample opportunity elsewhere to learn what CLS is all about,45 so I will not go into detail on that. Suffice it to say that CLS represents the most thorough-going and vehement critique of the legal system in many years. Although it carries a distinct left-wing bias and uses a neo-Marxist analytical framework, CLS is perhaps most closely aligned to that most American of legal philosophies, the Legal Realism of the inter-war period. Like the Legal Realists, CLS advocates seem primarily concerned with demonstrating the "indeterminacy" (or, in the favoured CLS term, the "incoherency") of law and the inextricably political nature of legal decisions. For all the attention given to the CLS movement (and that has been an extraordinary amount in the popular press as well as in scholarly journals), it has had surprisingly little lasting impact within or without law schools.

Consider first the effect of CLS within specific law schools, which I will term its internal impact. A lengthy and well-publicised factional dispute within the Harvard law faculty (which led a professor who is now the dean to describe Harvard as "the Beirut of American legal education") and a few controversial hiring and tenure decisions there and elsewhere gave the public the misleading impression that CLS adherents were waging a war for control of the nation's law schools. That impression was a gross exaggeration. Even at its worst moments the Harvard dispute

never approached the level of the Macquarie controversy in Australia. Outside of Harvard there was no war; at most there were a few border skirmishes. In fact, apart from a handful of schools at which the CLS contingent has reached a critical mass (most notably, in addition to Harvard, the law schools at the State University of New York at Buffalo, Rutgers-Camden, Stanford and Georgetown) the movement's influence within law faculties has been almost nil. Moreover, despite the eagerness of the CLS advocates to describe their unhired or tenure-deprived members as martyrs, it is far more likely that individual decisions rested on sincere devaluation of the worth of CLS writings, on legitimate if debatable evaluations of candidates' teaching and scholarship and on the usual personality factors which apply in every personnel decision. The average American law teacher is simply too committed an agnostic to reject a candidate for ideological reasons.

Only if CLS people increase their numbers enormously are they likely to have much internal influence in the generality of law schools. Without that critical mass, they will represent only one point of view among others, with no more effect than any of the others. Given the number of interest groups struggling for intellectual dominance, it is far more likely that schools will settle for a CLS token or two than for a critical mass. Once again, the centre rnarginalises the extremes by incorporating them — or, to change the metaphor, inoculates itself by accepting a harmless dose.

The CLS influence in the legal education community generally, which I will refer to as its external impact, has been equally modest. The discrepancy between activity and results is so large that it deserves extended discussion. Several explanations come to mind.

The first relates to an aspect on which the CLS movement prides itself, its diversity, but which strikes others as (to borrow the CLS term) simple incoherency. Indeed, many of its members themselves caution outsiders not to regard CLS as a single, unified doctrine. Quite so. The flip side of that attribute, however, is a diffusion of impact. Some CLS participants are solely theoretical, others work in the trenches of the law; some seek reform of the legal system, others its destruction; some wish to expand individual and group rights, others reject the very concept of "rights" as useless or deceptive. In short, there is no point on which the movement can press for results. To the contrary, even those one would expect to be, CLS members, supporters, or at least allies, in particular left-wing feminists and ethnic minorities, have found significant differences with the CLS movement.46

A second factor is the movement's failure to go beyond trenchant criticism (or "trashing," in the CLS colloquialism47) of legal doctrines. Trashing can be great fun for bored academics but it does little to advance causes like social justice or economic prosperity. It is simply not sufficient to criticise. As a colleague of mine at South Carolina is fond of saying, "all doctrines are cripples," meaning that every position is open to criticism. If one wishes to change matters, one has to offer a less crippled alternative and this the CLS writers have generally not done. There is some indication that CLS writers are moving into a new and more constructive phase of scholarship,48 but far more is needed if CLS is to have a significant and positive influence.

A third factor concerns the thrust of the movement's critique. Its strongest messages are that political concerns influence the law and that all law is "indeterminate" (that is, that seldom if ever are there definite answers to difficult legal questions).49 To these the normal law teacher is almost compelled to respond, "So what else is new?" No lawyer who ever lived really believed that all legal disputes had a single, simple answer. To the contrary, the main reason lawyers are necessary to disputants is to make the best possible argument when there is in fact a serious debate. Nor at least since the 1920s has anyone doubted that legal decisions are in large part political. To the extent that legal decisions allocate power and resources, they are necessarily political. In sum, the CLS messages tell us little that we do not already know.

In my own field of labour law, for example, several well-known CLS-influenced articles and books have argued at great length that Congress and the courts have made decisions which limited the possibility of class conflict and deprived unions of some important weapons. That conclusion is simply not worth the number of trees that have died to produce the pages on which it appears. No one doubts it for a minute. What would be important is a plausible alternative approach which would produce better results for society as a whole. Apart from the most general references to the necessity for shop-floor militancy and a rejection of "contractualism" in labour relations, however, the CLS writers have offered no alternative. To the contrary, CLS labour lawyers seem almost

schizophrenically divided on such basic issues as the role of labour unions in a market economy.

The form of much CLS writing is another important factor. Its notorious density further reduces its impact. So complex and jargon-filled are many CLS articles that they have spawned almost as many parodies as serious refutations.50 One need not have a strong prose style to be influential — Marx proved that as well as anyone — but clarity certainly helps. Most CLS writing, in contrast, ranges from tedious to virtually incomprehensible. Even Mark Kelman's recent effort to explain CLS to the outside world, *A Guide to Critical Legal Studies*)51 is extremely hard going. As one generally favourable reviewer noted, Kelman's book "may confirm the simplistic dismissals of CLS by its many opponents on grounds of dense, convoluted, inaccessible stylistics alone. ... Important points can be sabotaged by the author's style as the eyes glaze over."52

One other reason for the CLS failure must be mentioned. Especially in the movement's formative years, CLS teachers went out of their way to be offensive or ridiculous and this has quite understandably limited the movement's influence. Most notable are Duncan Kennedy's tongue-in-cheek suggestions that law school janitors and deans should change jobs from time to time and that deans, teachers, secretaries and janitors should all be paid the same salary.53 Other CLS writers announce their intentions in military metaphors, going so far as to describe their endeavours as "guerilla warfare" against the traditional legal system.54 In some institutions the style of CLS challenge was more personal, flouting the accepted boundaries of academic debate. Playing at revolution and challenging one's elders in a rude fashion may do wonders for the radical's ego, but it does precious little to win converts.

Feminist Legal Theory

Almost contemporaneous with the CLS movement, and on some issues overlapping with it, has been the feminist critique of the legal system and of legal education. Again, the outlines of the critique are well known to legal academics,55 so I will not repeat them. For the purpose of this paper what counts is the movement's results in terms of legal education.

Consider first the practical concerns of women in legal education. There have been a number of undeniable improvements in the lot of female law students and faculty. There are more of each than before, for example, and they are at least beginning to occupy positions of responsibility in proportion to their numbers.56 There are far fewer examples of classroom discrimination or ridicule than formerly; nowhere is there any longer the single "ladies' day" at which professors condescendingly allow women to speak.57 Most at least attempt to avoid exclusive use of male pronouns as common pronouns and similarly try to pose female characters in classroom hypotheticals. Casebooks, too, are beginning to use gender-neutral language and to represent both genders in questions and problems. Whether these changes caused or were caused by feminist critiques is one of those unanswerable chicken-or-egg questions. Chronologically, however, both the day-today improvements and feminist consciousness followed the increased enrolment of women. An insensitive teacher might get away with insulting a small minority but not a large one. More positively, even the oldest curmudgeon eventually had to learn that many of his best students were women. Only when there was a sufficiently large group of women did feminist thought come to the fore in law schools. At the very least, though, feminism contributed to developments already under way.

But these are more matters of form than, of substance. What of the substance? Has the feminist critique changed the teaching of legal doctrines in any significant way?

To date the answer has to be a qualified no. Take the most notable example, Catharine MacKinnon's advocacy of censorship of pornography.58 Her argument, stated repeatedly in print and in her public appearances, is that offended persons should be allowed to stop, by injunction and actions for damages, the production and sale of books and movies showing women in sexually subservient roles.59 Anti-pornography crusades are nothing new; MacKinnon's twist is to describe hers as a matter of civil rights for women rather than as a matter of morality. (Ironically, though, MacKinnon has found her most receptive audience among those opposed to pornography on moral grounds, chiefly the religious fundamentalists — people who would likely not agree with her on any other issue.60) In the only two jurisdictions that have adopted her proposed legislation the courts have rejected the

proposal on free-speech grounds. She has persuaded few of the people, male or female, who teach constitutional law or related subjects.61 To the extent that her position represents a distinctly feminist critique of constitutional libertarianism, it has made no progress but in other, less controversial areas such as rape shield laws and domestic relations law, feminism has been more influential.62

Law and Economics

Of the three movements with which I deal, the law and economics school is the oldest, dating back in recognisable form for half a century. While it too has its varieties, its basic point is easily identifiable, namely that classical economic analysis can help to provide answers to legal issues. Some of its best known advocates treat economic principles as normative, regarding efficiency, to take one example, as a desirable end in itself. This tendency has been most pronounced in the so-called Chicago school of Richard Posner. Most are content with a utilitarian role for economic analysis, seeking, for example, to determine the most efficient way to solve a problem but recognizing that other values may on occasion outweigh efficiency. This approach is often identified with the so-called Yale school of Guido Calabresi.

Of the three movements, law and economics has indisputably been the most influential in American legal education. Many schools now have a resident economist or lawyer trained in economics and many offer courses specifically designed to train students in modes of economic analysis. More tellingly, almost all law school courses dealing with business matters (and many that do not) at least make a bow to principles and terms of economics. When I took courses in antitrust, corporations and securities regulation in the late 1960s, there was almost no mention of economic analysis of market definition, market control of managerial discretion, or the practices of capital markets. It was almost as if there was no law of supply and demand, or at least as if such a law could be repealed by legislative fiat. Today it is inconceivable that one could teach any of those courses without a measurable dose of economics.

Law and economics principles have spread far beyond their natural homes in business courses. Even the basic texts in the most traditional common law courses (contract, tort, property) routinely introduce readings and references designed to bring to bear considerations of economics. Those writing on such typical common law questions as whether manufacturers of goods should be subject to strict liability in tort or whether sellers must disclose a product's flaws to prospective buyers cannot publish in respectable reviews without some consideration of economic consequences of the options.

The most surprising recognition of the impact of law and economics comes from a totally unexpected source, Professor Robert Gordon of Stanford, who has long been associated with the CLS movement. His testimony is worth quoting at some length. Writing in the *Legal Education Review,* he states:

> What really has had an influence, and a deep and far-reaching one at that, is not the empirical brand of law and economics, but the theoretical brands pioneered by Posner and Landes at Chicago and Calabresi and later Williamson at Yale. So far the direct influence has been confined mostly to elite law schools, such as Chicago, Yale, Stanford and Virginia. My impression is that most teachers and practising profession still look on law and economics with beady eyes as suspiciously non-lawyerly. But its spread now seems inevitable, for it has invaded some of the major casebooks and textbooks, not to mention the opinions of law professors whom President Reagan has placed on the federal bench and in the administrative agencies. New law teachers, who come overwhelmingly from elite schools, will all have had some exposure to it. One major doctrinal field after another is gradually being reorganised around some vulgarised version of the paradigm of law as an efficiency-promoting mechanism, whose primary role is to facilitate joint maximising social interactions by reducing their transaction costs.64

In short, the major features of the law and economics approach have worked themselves so deeply into legal education and legal analysis that they would be almost impossible to eradicate. Who could argue against learning the most efficient way of collecting taxes or allocating welfare funds, for example?

This is not to suggest that law teachers uniformly agree with the economists' techniques or their answers. Far from it. I suspect that a sizeable majority are quite skeptical about the methodology of the law and economics school and even more would reject the notion that efficiency is the highest goal of public policy. No doubt many teachers discuss law and economics principles only to demonstrate their limitations. I suggest only that law teachers now must consider economic analysis as one indispensable tool, that some consideration of economics is, as Frank Easterbrook put it, "inevitable" in legal education.65

Even those who are most critical of the law and economics movement are influenced by it. They learn its language and debate on its terms, in some cases quite proficiently. Those few who reject it outright do so, it seems to me, not because they truly believe it worthless but because they recognize instinctively that economic principles will point away from their favoured solutions to questions of social policy. This is a short-sighted and ultimately self-defeating attitude. As some Australasian scholars have recognised,66 the use of economics is no more indoctrination in a particular ideology than is the use of history, sociology, or linguistics — other social sciences frequently used by critics of law and economics. By rejecting economics, these critics deprive themselves of a valuable analytical tool, one which will in any case continue to be used by their ideological opponents.

CONCLUSIONS

American legal education presents a mixed but distinctly interesting picture as it moves to the end of the century. It has weathered the shrinking of the age group from which its students have usually come with no more than a slight decrease in applicants' numerical qualifications. Its student body is more diverse in terms of gender and race than it used to be, even though it is not yet fully reflective of the nation's ethnic mix. Students are also more politically diverse, albeit less activist and are distinctly more concerned about careers than about reforming society.

Similarly, law faculties are larger and more politically and socially diverse. There are still problems ensuring that all are fairly treated and fully valued, but at least the problems are known and most law schools are seeking solutions to them.

Law school resources are finally increasing in absolute terms. Faculty salaries have improved somewhat, libraries are once again adding to their collections and long-deferred maintenance and purchasing needs are finally being met. The prospect for future increases is good as well. Law schools may never repeat the boom they once enjoyed but at least they are unlikely to suffer the stringency which followed the last boom.

Pedagogically, American law schools are still fruitfully experimenting. While clinics are no longer regarded as the wave of the future, some of their enthusiasm has shifted to the more productive field of skills courses. Legal ethics now enjoys a prominent and deserved place in the law school curriculum. Computers are beginning to infiltrate several aspects of legal education from the way we produce our documents to the way we do our research and to the way we teach our students. At many institutions the experimentation has gone to the point of restructuring the curriculum and at some it has involved radically new orientations.

Perhaps the most exciting development has been the ideological ferment generated by movements in law and economics, critical legal studies and feminism. The first has already had a powerful impact, as nearly every law student now faces some training in economic analysis before graduation. The second has for many reasons not been so successful, but it too is spreading. Given a few more years, it will be equally true that every law student will be likely to face at least one teacher using a critical approach. The third has contributed to practical improvements in the experience of female law students and staff, has influenced policy debates on issues such as rape shield laws and domestic relations law and will wield even more influence as the number of women in law teaching rises.

In sum, the field is set for a period of practical stability and theoretical excitement. Few could ask for a better situation in which to work or study.

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1 The first issue of the *Legal Education Review,* for example, contained articles by five Americans: Frank Easterbrook on law and economics, Gerald Frug and Robert Gordon on critical legal studies and Catharine MacKinnon and Lucinda Finley on feminism.

2 *See* for example, K Keith, The Impact of American Ideas on New Zealand's Educational Policy, Practice and Theory: The Case of Law (1988) 18 *Vic U Wellington L Rev* 327; M Hoeflich, The Americanization of British Legal Education in the Nineteenth Century (1987) 8 *J Legal Hist* 244; and W Twining, Britain Borrows Ideas from U.S. During Last Quarter Century (1985) 16 *Syllabus* (No 2) 1.

3 D Vernon & B Zimmer, The Size and Quality of the Law School Applicant Pool: 1982-1986 and Beyond (1987) *Duke LJ* 204, at 205.

4 A Scanlon, Can a Law School Market Itself Out of an Admissions Crisis? (1987) 37 *J Legal Educ* 58.

5 W Kaushenbush, Dealing With the Admissions Crisis: A Comment on Scanlon (1987) 37 *J Legal Educ 78.*

6 E Lempinen, The In Crowd (1988) 17 *Student Law* (December) 6.

7 Note, Law School Applications Take Off: Stock Market Woes Make the Law More Attractive (1988) 8 *Calif Law* (No l) 14.

8 W Clune, Who Is Admitted into Law School? The Year of "L.A. Law" (1988) 61 *Wis Bar Bull* (No *2*) 49.

9 For examples of the complaints still being made, see Symposium, Women in Legal Education — Pedagogy, Law, Theory, and Practice (1988) 38 *J Legal Educ* 1–193.

10 In one study by the Law School Admission Council, black students had average LSAT scores of 472 (on a scale of 200 to 800) versus 602 for non-minority students and undergraduate averages of 2.91 (on a 4-point scale) versus 3.25. See, Note, Minority Attrition in Law School (1987) 37 *J Legal Educ* 144.

11 About 22 per cent of entering minority students fail to complete law school, compared to only 14 per cent of other students. *Id*.

12 See for example, C Finke, Affirmative Action in Law School Academic Support Programs (1989) 39 *J Legal Educ* 55 and S Ripps, A Curriculum Course Designed for Lowering the Attrition Rate for the Disadvantaged Law Student (1986) 29 *How LJ* 457.

13 These attitudes transcend disciplines and have apparently persisted for decades. C Auerbach, The Silent Opposition of Professors and Graduate Students to Preferential Affirmative Action Programs: 1969 and 1975 (1988) 72 *Minn L Rev* 1233.

14 Quoted in F Ramos, Affirmative Action on Law Reviews: An Empirical Study of Its Status and Effect (1988) 22 *UMich JL* Ref 179.

15 Compare, E Zenoff & L Moody, Law Faculty Attrition: Are We Doing Something Wrong? (1986) 36 *J Legal Educ* 209.

16 R Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties (1988) 137 *U Pa L Rev* 537, at 548.

17 Most striking of these complaints is Marina Angel's plaintive article, Angel, Women in Legal Education: What It's

Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women (1988) 61 *Temp L Rev* 799. The only serious empirical study, however, reports that "departure and tenure rates were almost identical for men and women," Chused, *supra* note 16, at 550.

18 Chused, *supra* note 16, at 544.

19 *Id at* 544–45.

20 *Id* at 543.

21 G Christie, The Recruitment of Law Faculty [1987] *Duke LJ* 306, at 310.

22 T Shaffer, Four Issues in the Accreditation of Law Schools (1982) 32 *J Legal Educ* 224, at 227-–28.

23 Christie, *supra* note 21, at 306–07.

24 *Id.*

25 M Tapp, In the Battle of the New Associates Salaries, Could Law Schools End Up Losing Their Faculties? (1986) 15 *Student Law* (December) 9; E Zenoff & L Moody, *supra* note 15, at 217–19.

26 R Nahstoll, Current Dilemmas in Law-School Accreditation (1982) 32 *J Legal Educ* 236, at 253 observes, "[p]ractice, sometimes under the guise of consulting or arbitration, is for some law teachers a source of income, unmeasured and unknown in amount, but always disregarded in negotiation or demand for higher faculty salaries."

27 By one report the ratio for clinical courses was between 1:8 and 1:15 compared with the overall law school ratio of 1:25. A LaFrance, Clinical Education and the Year 2010 (1987) 37 *J Legal Educ* 352, at 354.

28 Some of these attitudes lingered among the clinicians even after the peak of clinical interests. A Amsterdam, Clinical Legal Education — A 21st- Century Perspective (1984) 34 *J Legal Educ* 612.

29 E Burg, Clinic in the Classroom: A Step Toward Cooperation (1987) 37 *J Legal Educ* 232, at 233.

30 For example, American Bar Association Accreditation Standard 405(e).

31 G Ogden, The Problem Method in Legal Education (1984) 34 *J Legal Educ* 654.

32 For example, Burg, *supra* note 28.

33 For example, P Fry, Simulating Dynamics: Using Role-Playing to Teach the Process of Bankruptcy Reorganization (1987) 37 *J Legal Educ* 253.

34 C Kelso & J Kelso, How Computers Will Invade Law School Classrooms (1985) 35 *J Legal Educ 507.*

35 D Maume & R Staudt, Computer Use and Success in the First Year of Law School (1987) 37 *J Legal Educ* 388.

36 E Lempinen, Not L.A. *Law:* Born Again in D.C. (1989) 17 *Student Law* (February) *7.*

37 P Dye, Queen's Row: Will Clashes Over Tenure and the Bar Pass-Rate Diminish CUNY Law School's Revolutionary Curriculum? (1988) 17 *Student Law* (October) 38.

38 *See,* for example, R Abrams & M Masinter, The New Nova Curriculum: Training Lawyers for the Twenty-First Century (1987) 12 *Nova L Rev* 77.

39 J Weistart, The Law School Curriculum: The Process of Reform [1987] *Duke LJ* 317,320.

40 *Id.* On the other hand, one could as easily keep the label and change the content.

41 For instance, Stanford's Curriculum B, discussed by Weistart. *Id* at 331.

42 For example, W Schwartz, The Future of Economics in Legal Education: The Prospects for a New Model Curriculum (1983) 33 *J Legal Educ* 314.

43 For example, K Klare, The Law-School Curriculum in the 1980s: What's Left? (1982) 32 *J Legal Educ* 336.

44 D Kershen, Humanities and the First-Year Curriculum in Law School (1981) 34 *Okla L Rev* 790.

45 M Kelman, A *Guide to Critical Legal Studies* (Cambridge Massachusetts: Harvard UP, 1987); RM Unger, *The Critical Legal Studies Movement* (Cambridge Massachusetts: Harvard UP, 1986).

46 For example, C Menkel-Meadow, Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School" (1988) 38 *J Legal Educ* 61. *See* also, Symposium, Minority Critiques of the Critical Legal Studies Movement (1987) 22 *Harv CR-CL L Rev* 297–447.

47 M Kelman, Trashing (1984) 36 *Stan L Rev 293.*

48 R Cordon, Critical Legal Studies as a Teaching Method [1989] LegEdRev 6; (1989) 1 *Legal Educ Rev* 59, at 76.

49 For example, M Tushnet, Critical Legal Studies: An Introduction to Its Origins and Underpinnings (1986) 36 *J Legal Educ 505.*

50 For example, D Benson, The You Bet Metaphorical Reconstructionist School (1987) 37 *J Legal Educ* 210; A D'Amato, The Ultimate Critical Legal Studies Article: A Fissiparous Analysis (1987) 37 *J Legal Educ* 369.

51 Kelman, *supra* note 45.

52 D Gregory, Book Review [1987] *Duke Law Journal* 1138, at 1150.

53 D Kennedy, Legal Education and the Reproduction of Hierarchy (1982) *J Legal Educ* 591, 615, to which the Harvard dean is said (perhaps apocryphally) to have responded that he thought the janitor might be able to do the dean's job satisfactorily, but that he doubted he could unstop a plugged toilet.

54 G Binder, On Critical Legal Studies as Guerilla Warfare (1987) 76 *Geo LJ* 1.

55 For example, see the articles by Catharine MacKinnon, Margaret Thornton and Lucinda Finley at [1989] LegEdRev 7; (1989) 1 *Legal Educ Rev* 85, 97 and 101.

56 E Schneider, Task Force Reports on Women in the Courts: The Challenge for Legal Education (1988) 38 *J Legal Educ* 87, at 89.

57 T Banks, Gender Bias in the Classroom (1988) 38 *J Legal Educ* 137.

58 Of course the position described is not MacKinnon's alone, but she has been its most visible and most vocal advocate.

59 For example, in C MacKinnon, Pornography, Civil Rights, and Speech (1985) 20 *Harv CR-CL L Rev* 1 and in her book, A Dworkin & C MacKinnon, *Pornography and Civil Rights: A New Day for Women's Equality* (Minneapolis:

Organizing Against Pornography, 1988).

60 R West, The Feminist-Conservative Anti-Pornography Alliance and the 1986 Attorney General's Commission on Pornography Report (1987) *Am B Found Res J* 681.

61 Apparently the radical feminists' pro-censorship campaign has not been any more successful in Australasia, if Selene Mize's thoroughgoing and persuasive response to it is any indication. S Mize, A Critique of a Proposal by Radical Feminists to Censor Pornography Because of Its Sexist Message [1988] OtaLawRw 5; (1988) 6 *Otago L Rev* 589.

62 As MacKinnon points out in C MacKinnon, Feminism in Legal Education [1989] LegEdRev 7; (1989) 1 *Legal Educ Rev* 85, at 89–90.

63 EW Kitch ed, The Fire of Truth: A Remembrance of Law and Economics at Chicago 1932–1970 (1983) 26 *JL & Econ* 163–234.

64 R Gordon, Critical Legal Studies as a Teaching Method [1989] LegEdRev 6; (1989) 1 *Legal Educ Rev* 59, at 73.

65 FH Easterbrook, The Inevitability of Law and Economics [1989] LegEdRev 2; (1989) 1 *Legal Educ Rev 3.*

66 For example, G Cooper, Inevitability and Use [1989] LegEdRev 3; (1989) 1 *Legal Educ Rev* 29 and A Duggan, Law and Economics in Australia (1989) 1 *Lega1 Educ Rev* 37.
