

THE PLIGHT OF BUSINESS LAW--AND A RECOMMENDATION

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To understand today's academic status of "Business Law" in the undergraduate college program, one must examine its historic development. For the main part this history is closely associated with the creation and development of the field of business education.

The beginnings of an organized program of education for business took place in the opening years of the twentieth century, when the theory and practice of accountancy began to assume professional standing. Private schools and institutes were the first to organize courses. Some of the schools already had success in attracting students to courses in stenography, typewriting, and bookkeeping. These were essentially skills courses similar to those in trade schools, geared to the high school level. But the theory of accounts offered an opportunity for a broader and deeper educational scope. These accountancy courses combined training in skills with the development of a philosophy and a set of theories as to the keeping of business records which brought the subject matter up to the college level.

The early organizers of educational programs in accountancy recognized from the beginning that the solution of accounting problems frequently called for the application of legal principles to specific business transactions. A knowledge of the legal rules affecting and governing business transactions was, therefore, an essential component of education in accountancy. Teachers of law (for the most part practicing lawyers) were added, accordingly, to the teaching personnel of accountancy institutes, and courses in so-called "commercial law" were offered to parallel and implement the courses in accounting.

At about the same time, some of the traditional liberal arts colleges and universities took cognizance of this new area of professional education. Why shouldn't a student, qualified to enter college, be permitted to pursue his college education with the ultimate objective of becoming a professional accountant? To accomplish this purpose, however, required carving out of the total required curriculum hours, the time necessary for the projected courses in accountancy and in business law. The traditional faculties in the liberal arts and sciences cried out against the invasion of their programs. The requirements for the bachelor's degree could not, they said, be so diluted. Accountancy was not a liberal art or science, they asserted. It was not an equivalent to the existing liberal arts courses. The social science faculties were particularly opposed to the intruder. Business subjects, they maintained, had a taint of the high school and the trade school. They had no academic standards at a college level. The available teachers of business subjects, coming for the most part from the active business world, did not have the attitudes, or the teaching techniques, of the academic college teacher. So, from all points of view, business as a discipline could not be accepted into the ranks of the social sciences.

As a result, education for business was forced into a kind of academic ghetto, developing as a "School of Business" within the undergraduate college structure, but not integrally a part of it. The "School of Business" was and is an academic anomaly. It has its own Dean, its own semi-autonomous organization,

and develops its programs to a great degree separate and apart from the other academic departments of the college. There is no undergraduate "School of Economics," "School of French," or "School of Physics and Chemistry." The "School of Business" is unique.

It is easy to see how this peculiar manner of development of the "School of Business" had its impact on the field of business education. Living and growing in its own separate area, the School of Business rapidly developed courses of greater and greater specialization. Out of accountancy came auditing, cost accounting, budgeting, etc. When the business of the distribution of goods took on a professional aspect, marketing, advertising, and selling were added to the educational programs of the School of Business. These in turn developed specializations such as merchandising, retailing, advertising media, and the like. And now we have the broad and comprehensive field of management, the new child in the family of business, which has already taken on Herculean stature.

It is also easy to observe the effect which the manner of growth of business education within the School of Business has had on the subject of law. In the mad scramble to give legal implementation to the ever-increasing specializations in education for business, the undergraduate law teachers and the textbook writers have extended further and further the legal topics of their courses. Added to the basic principles of law, we have employer-employee relations, bankruptcy and creditors' rights, patents, trade-marks, copyrights, government regulation of business, etc., etc. Of necessity our law courses grow less in depth and more in extent of coverage. We continue to teach less and less about more and more.

While we teachers and writers of law texts have been blindly catering to the specialized demands of the School of Business, we have failed to see that these schools, and education for business generally, have, during the past twenty years, been undergoing significant changes. There is, for example, a steadily growing conviction that the undergraduate School of Business has become far too specialized. The undergraduate business curriculum loses force and effect unless the student is exposed at the same time to those disciplines--particularly, English, history, economics, psychology, and the like--which give richness and meaning to his professional business training. It has become apparent that education for business is only a part of education for life. This view was dramatically presented in a recent address given by a prominent New York clergyman. He was asked to talk about business ethics. He commenced his talk by saying that there was no such thing as "business ethics." Morals, he said, are indivisible. Ethical principles are universal in application. Business is only one phase of living. There can be no distinction among the ethical standards of human conduct, whether they are applied to the market place or elsewhere.

Recognition of the universality of the objectives of education is found in the changing curricula of Schools of Business. The changes have taken two directions. In some colleges and universities faculties engaged in business education have succeeded in breaking down the barriers between business disciplines and the traditional arts and sciences. The undergraduate School of Business has been taken into the fold of liberal education. It may be, in some cases, reorganized as a Division of Business, or a Department of Business, frequently combined with the correlative departments of economics and finance. In some of these institutions, the liberal arts student may pursue a major or minor in the field of business, leading to the B.S. degree. In such cases the area of undergraduate business education tends to lose some of its strictly business specialization and assumes the status of a social science. The specialized business courses are

then grouped under a post-graduate School of Business on an academic parity with Schools of Law, of Medicine, etc.

In other institutions, the undergraduate School of Business retains its autonomy, but either has been compelled, or has voluntarily accepted the obligation to draw on the traditional liberal arts and science departments of the college for implementing courses in English, history, economics and other cultural subjects.

So we find, as Professor Frasca points out, collegiate Schools of Business are demanding that from 40 to 50 per cent of the required curriculum hours shall be spent in the study of traditional liberal arts subjects.

Advanced thinking in the outside business world goes even beyond this. As the qualifications for junior executives in an era of automation are being weighed and analyzed by the top executives in big business, these men are saying publicly that they are most often discovering the essential and desired qualifications among graduates from the traditional liberal arts colleges. It may well be that if these outside pressures grow strong enough, every School of Business may be compelled to reorganize and to confine its specialized programs to a post-graduate school. The prospective business student will then take the traditional liberal arts course, enter business with his bachelor's degree, and return for the specialized post-graduate business courses as a part of his in-service training. Or he may stay at the university for his master's and doctorate degrees in business before taking a place in the business world.

Where will all this leave the study of law at the undergraduate level? If the undergraduate law teachers and writers continue to limit the content of their law offerings to the field of business transactions and continue to be satellites of the business education divisions of the college, they will find themselves melting away into outer space, if and when specialized business education leaves its outmoded place in the undergraduate college. Is there no alternative? This writer believes that there is.

History again gives us the guide for our future action--the history of the place of law in liberal education. It should be remembered that the great prophet of American legal education, Blackstone, gave his lectures at Oxford not for the training of legal practitioners but for the general culture of the layman. As far back as 1838, in the bulletin of Harvard Law School, Judge Story¹ stated that one of the aims of the law school was to afford elementary instruction in law for "gentlemen not destined for the bar but desirous of qualifying themselves either for public life or for commercial business." Professor Harold J. Berman, in his short book summarizing the work of the symposium "On the Teaching of Law in the Liberal Arts Curriculum,"² held at Harvard University in November, 1954, states that "the United States is one of the few civilized countries in which the study of law is not undertaken by a substantial proportion of undergraduates, regardless of their professional aspirations."

It would be an act of supererogation to enumerate here the cultural values of law as an undergraduate liberal arts discipline. The statements and opinions of the great law teachers and others, as summarized in Professor Berman's brochure, leave little more to say in that regard. Perhaps one of the many excellent ideas expounded at the Harvard Conference will bear repetition. It deals with an aspect of legal study which is not to be found in the study of any other liberal art or science subject. In no other field is the student stimulated to

¹Raphael, Law in the College Curriculum, 7 J. Legal Ed. 313 (1955).

²Foundation Press, 1956.

formulate decisions for desirable action within the practical limits of immediate realization. In the other social sciences, the student may be encouraged to think in terms of optimum solutions of human problems. He is not curbed by the sense of the practical. His conclusions as to what ought to be, need bear no relationship to what is, or now can be. But in the study of law, the intelligent student becomes rapidly aware that legal judgments are, of necessity, made to be carried out here and now. They must, therefore, be the result of a happy marriage between "ought" and "can." Such training in judgment technique is the sine qua non of intelligent modern citizenship.

Because we are educating for life in a democracy where ultimate judgments rest with the average citizen, we cannot afford to stop with the educational objective so brilliantly expressed by Professor Frasca. Our prime educational objective cannot be directed towards the acquisition of ultimate absolute truth. It will be sufficient if our students, the future citizen leaders of America, achieve the ability to make those sound judgments which can be carried out from day to day within the framework of our legal and political system. The study of law is the ideal tool for fashioning that kind of mind.

The future of law teaching in the undergraduate college depends on our ability to convince undergraduate liberal arts faculties that law is not only a science which transcends business, but that it is the social science par excellence--the strong thread of the social fabric essential to its durability, continuity, and flexibility.

But let us not for a moment imagine that we undergraduate law teachers and writers are at this moment equipped to take over the teaching of law in the undergraduate liberal arts college with the materials and attitudes now extant. No indeed! We shall have to do some original thinking. We shall have to discard many of our present techniques and attitudes. We shall have to learn how to teach in depth. We shall have to formulate new approaches to the study of law. We shall certainly have to discard the term "business" as applied to our new law courses. It would be wise to consider calling a series of educational conferences of members of the undergraduate teaching staffs in law and related subjects to attempt to come to some consensus as to the new objectives for law study, the content of law courses, new materials for law teaching, and new training for law teachers.

We are at the crossroads. The future of the study of law in the undergraduate college depends on the wisdom with which we choose the right road.