

SOME VIEWS ON LAW IN THE CURRICULUM OF THE COLLEGIATE SCHOOLS OF BUSINESS*

DOW VOTAW

"Clear out!" he cried, "disordered wench!
Nor come before me creeping,
Upon your knees if you appear,
'Tis plain you have no standing here."

Ambrose Bierce

The place of law in the business curriculum has, again, become uncertain, and some spokesmen have said, quite plainly, "you have no standing here." The issue is really not a new one. Many of the reasons for the current agitation are the same reasons for which the issue has been raised before, but there are additional reasons to distinguish the current controversy from its predecessors. Furthermore, the challenge to law is accompanied by a challenge to some of the basic premises on which most colleges and universities rest their curricula, especially undergraduate, in the field of business administration.

Although no issue in a university's curriculum is ever truly "settled," it is, perhaps, a bit surprising to see the issue of law raised so soon after it appeared to have been settled. In 1949, the American Association of Collegiate Schools of Business included as one of its requirements for membership a required course or courses in business law. The discussion that preceded that decision and the explanation given for it made a persuasive case for the inclusion of law in the business curriculum. Why has the case lost its persuasion? The answers fall into two quite distinct classes: practical difficulties, including those of staffing and teaching; and conceptual and theoretical difficulties brought on by an increasing trend away from narrow professionalism, especially in the undergraduate schools of business, and toward a broader, liberal arts training for undergraduates.

Many of those who now advocate the abolition of law in the collegiate business curriculum do so for reasons of frustration at the difficulty of providing acceptable courses in the field. Few fields in business administration are easy to staff these days, but certainly one of the most difficult is business law. Problems of alternative prestige, promotion, and pay are almost impossible to overcome. A person with the necessary background and experience to do an ef-

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fective job in teaching and research usually finds the alternatives, on all three counts, much more attractive than a school of business administration.¹ Some institutions manage to overcome the difficulty, but many are chronically faced with the use of untrained, ill-trained, or part-time personnel. The results of poor staffing are poor teaching and poor courses, and the charges that the law courses are too professional or too narrow or that they have no intellectual content or require too much learning of rule by rote become realities. It is unfortunate, however, that the charges do not discriminate the true causes of difficulty.

When the same defects develop in other subject-matter fields, the attack is made, not on the field itself, but on the methods of instruction or the instructor. The difference of treatment is partially explainable by the fact that the nonlaw instructors are likely to have had more or less similar graduate training in economics or business administration and a resulting familiarity with most of the subject-matter fields. Accordingly, when the marketing courses, for example, are badly taught and the product inadequate, or when they become narrowly professional in terms of sales or advertising or procurement, there is little clamor for abolishing the marketing curriculum. There is, instead, a general realization that something is wrong, but this is accompanied by an appreciation of the instructional problems and an awareness of how good a well-taught marketing course can be.

Some of the attacks on law courses, it is interesting to note, come from outside the schools of business. In many universities, the business curriculum, especially undergraduate, is constantly under assault from the liberal arts or letters and science faculties. Many of those responsible for the business curriculum, being anxious to please and to avoid conflict, and often on the defensive about their own courses, seek to appease their critics. And as often as not, it is the law courses that are picked out for sacrifice to the causes of peace and the liberal arts.

Probably the best explanation for the re-emergence of the business law problem at this time, however, is one that is rather unique. Both the Ford Foundation and the Carnegie Corporation have been financing major studies of collegiate business training. Neither of the studies has yet been published in final form [both have been published since this was written—Ed.], but speeches, articles², and other semiofficial leaks have provided a great deal of grist for the rumor mill. Much activity is already underway in reliance on the best guesses as to what the final reports will actually contain, and the final reports will probably provide fuel for academic rejoinders and surrejoinders for years to come. Enough is known about some of the general conclusions, however, to justify comment on matters relevant to the topic of this article.

The studies appear to recognize several trends in collegiate business education that were reasonably apparent long before the studies began. One of these was a realization by responsible persons in the better business schools that many of the professional aspects of business training should be postponed for grad-

¹See the writer's comments on this subject in Book Review, 41 *Calif.L.Rev.* 770 (1954).

²See, e. g., Gordon, "Some Current Issues in Business Education," 1 *Calif. Management Rev.* 56 (1958).

uate study and that the undergraduate curriculum should be more intellectual in character and less confining in scope. This is not the same as saying that undergraduate business training should be eliminated. Not all students who can benefit by business training have the time or the money to carry them over into graduate school. The feeling is more that the undergraduate program should provide the basic analytical and conceptual tools and the environmental background for business, leaving ample time for a broad, general education while the students are undergraduates, and reserving all but a very limited amount of specialization for the graduate years. Other trends are the growing importance of the quantitative method of analysis, especially mathematics, and the gradual appearance of a new intellectual discipline in the area of organization and organization theory. All of these trends indicate certain adjustments in the business curriculum as a whole, in the functional fields such as marketing and finance, and in the provisions for specialization by undergraduates.

The ramifications of these trends for law are plain. Some of the public statements by those involved in the studies referred to above reflect the problems and prejudices affecting business law that have already been mentioned. Accepting, without much question, the notion that business law is professional in character and lacking in intellectual content, some of the reports substantially eliminate law from the curriculum.³ Where an objective appraisal of the effect of the new trends on business law might have indicated changes in orientation or content or presentation, it is not at all clear that it dictates virtual or total abolition.

To some extent, the law schools have helped to substantiate the widespread impression that undergraduate business law courses have no standing in a reputable university's curriculum by advising prelegal students to avoid such courses unless required for an undergraduate major program. Although this caveat might possibly be interpreted as an attempt to preserve a professional monopoly, apparently it is rarely used for this purpose. The advice might also possibly be for the purpose of saving the student time on the theory that the courses would duplicate what the student will later get in law school, but this does not seem to be the purpose either, because there are never similar injunctions against constitutional law courses in political science or history departments or for tax or labor or trade regulation law courses in departments of economics. The only possible conclusion is that some law schools feel the law courses can do a student actual harm in his later study of law. No doubt, a poorly conceived or falsely oriented course in almost any related field could handicap a student in the study of law, but probably not much; and it is certainly not clear how the business law courses differ from the others.

I

SHOULD LAW BE TAUGHT AT ALL?

To explain the current challenge to law in the business administration curriculum and to analyze some of the difficulties involved in teaching law to students of business is only a negative justification for the presence of law in

³Id. at 66.

the first place. If no further evidence were introduced, one might easily come to the conclusion, and a reasonable one, that the difficulties involved justify the elimination of the legal courses from the business curriculum. The trail does not end with a negative justification, however, and an overwhelming argument can be made for law as an integral and indispensable part of the collegiate program in business administration. The case for law has two facets. The first sees law as being of direct and immediate importance to the student of business. The second makes law a vital part of a college education, whatever the major field of study happens to be; it is inconceivable that students of the social sciences, business, and the humanities, in particular, should complete their formal training without ever having been introduced to what is certainly one of the most pervasive aspects of Western thought and of Western society.

A. Law for the Business Student

Law consists of a group of basic ideas or social traditions out of which arises a vast system of rules and conventions that make possible the orderly conduct of society and its affairs. The law is concerned with almost all aspects of human conduct, but perhaps its closest concern is with the economic function and organization of the community and of the members of that community. During the feudal centuries of the common law, this concern was almost exclusively with land and with things related to land, and this concern is still important, but today the focus of the law in economic affairs has been shifted from property to transactions. The subject matter of the transaction is of lesser importance than the nature and purpose of the transaction itself. In this atmosphere, the contract stands out far above all other legal and economic techniques in terms of its importance to our modern economic society. Unlike land, which involves essentially passive concepts, the contract is of the essence of economic action. Few aspects of business or the administration of business are unrelated to the contract. Marketing, finance, accounting, and many of the other traditional fields of business administration operate within a conceptual framework that is essentially legal in character, and the contract is the most important part of that framework.

Using the field of marketing as an example, the importance of the law in general and the contract in particular becomes obvious. The whole process of distributing goods rests on a contract or a series of contracts whereby the ownership and possession of the goods and their components move from the producers to the ultimate consumers. The channels of distribution themselves are determined by contract considerations, *inter alia*, and the physical characteristics of the various channels have legal roots. Distribution through direct sales to retailers and distribution through selling agents are different and have different ramifications for the manufacturer because their legal characteristics are different. Decisions with regard to brand policies, price policies, and even sales promotion can be made only after due consideration has been given to such legal issues as contract commitments, contract liability, tort liability, copyrights, patents, trademark protection, and a host of statutory and common law rules covering everything from deceptive advertising to price discrimination. To provide

a collegiate curriculum in marketing without supplying the student with certain legal tools, both conceptual and practical, seems inconceivable.

The idea of the contract as a concept of economic action requires a bit of elaboration before its real significance becomes apparent; and the approach to its real significance lies, at first, in a somewhat different direction. In recent years, increasing emphasis has been placed on the theory and practice of making decisions, and a considerable body of literature has grown up around the decision function. Some of the analysis is deductive and some inductive, some quantitative and some qualitative, but all of the analysis is based on the assumption that a better understanding of the decision-making process is both necessary and desirable. Decisions are made for action, and it is hard to conceive of a business decision that does not have action, or non-action in preference to action, as its purpose. One of the most startling aspects of the modern interest in the decision process has been the dearth of references to that portion of our social organization which has had a thousand years of experience in making decisions for action. Our legal system, which has had an unbroken continuity for almost one thousand years, is primarily concerned with making decisions and, over the centuries, has built up a huge amount of experience and has developed some useful techniques for marshaling and screening data and reaching decisions. A contract is often a major part of the action which was the purpose of a business decision, and the original idea about the contract as economic action has been expanded into some general conclusions with regard to decisions and the decision-making process.

Among the decision-making techniques which have been evolved by our legal system during its long history of dealing with problems that called for decisions and action is the technique known as "legal reasoning." Judge Charles E. Wyzanski, Jr., said a few years ago at a conference on the teaching of law in the liberal arts curriculum:⁴

We all recognize that legal reasoning is different from the pure, unadulterated, limitless quest for truth. The scientist seeks truth without ever feeling pressed to reach a decision, and the lawyer and the judge are in a quite different position. Time is one of the elements imposed upon him, and the necessity for arriving at a conclusion is the very essence of his calling.

What applies to the judge, with regard to decision-making, applies with at least equal force to the businessman, who cannot pursue a limitless quest for truth if he ever expects to operate his business. Time presses on the businessman also, and the necessity for making a decision is forced on him at times when an attempt to carry on a limitless quest could mean only an abdication of responsibility. The business decision-maker can usefully employ some of the law's techniques for supplying, marshaling, analyzing, and appraising data for the purpose of making decisions that cannot wait until the absolute truth is revealed. Included among these useful techniques is legal reasoning. Obviously, businessmen do use some of the techniques of legal reasoning, perhaps without realizing it, and businessmen do employ rules of materiality, relevancy, com-

⁴Harold J. Berman, *On The Teaching of Law in The Liberal Arts Curriculum* 23 (1956).

petency, "best evidence," and other parts of the legal process of screening data. Where law, however, has had a framework and conceptual orientation of its decision-making techniques for many centuries, the growing theory of decision-making is only recently beginning to supply the businessman with comparable guides. The law provided for students of business should include substantial portions of legal reasoning and the decision-making process. There is much that business decision-makers can learn from legal reasoning, and, as the years go by, there will probably be much that legal reasoners can learn from the theory and practice of business decision-making.

Because of the close concern that law has for the economic functions of our society and its members, because of the essentially legal framework within which our business system must operate, and because of the importance of law in understanding and analyzing problems in all of the financial fields of business, there appear to be logical and persuasive reasons why law is a proper part of the collegiate curriculum in business administration. Of importance equal to the substantive rules of law are the techniques and conceptual tools of decision-making, in the use of which the law, over the centuries, has become expert.

B. Law as a Necessary Part of a Liberal Arts Education

In addition to the functional usefulness to the businessman and to the student of business of a knowledge of law and of some of its processes, there is another value which is of transcendent importance to every educated person, whether he be a businessman, a student, a poet, or a doctor. Archibald MacLeish, commenting on the influence of his legal education on his work as a poet, said that law "does not draw abstractions out of the disorder of human experience. What the law tries to do is to impose on the disorder of experience the *kind* of order which enables us to live *with* the disorder of experience. . . . What the law does is very much what poetry does." MacLeish went on to say that the law, like poetry, "is engaged constantly in building this same strange bridge from actual human life over into a kind of generalization which will not be abstracted out of it but will impose order on it."⁵ Whether or not one accepts all the implications of MacLeish's comments, there is no question that law is one of the most important aspects of human behavior, human psychology, and social anthropology and one of the most important elements of our social order. If the study of law is completely preempted by the professional law schools, the poet, businessman, or doctor of the future will be lacking an important part of what every educated man should have, a familiarity with one of the great currents of human existence.

No argument is here being made that American universities should offer a Bachelor of Arts degree in Jurisprudence, that being beyond the scope of this comment. The argument is being made, however, that a knowledge of law as a social institution is more important to a businessman, or to any educated citizen, than a knowledge of the rules of law at any given time and place. The writer believes that an important part of any undergraduate law

⁵Id. at 19.

course consists in at least an attempt to impart to the student an appreciation of the affinity of law and human experience.

This aspect of our discussion also has relevance to our earlier discussion of the importance of law to the business curriculum and to the business student. Strong evidence has appeared during the last few years that the orientation center of university business research and curriculum is gradually shifting away from economic theory, where it has been largely concentrated since business training entered the university picture toward the end of the nineteenth century, in the direction of a new intellectual discipline known as "organization theory." The new orientation is still somewhat uncertain in its content and limits, but it is clear that it will rely heavily on the behavioral sciences. It would be a bit of an exaggeration to say that law is a behavioral science, although the law is probably more concerned with actual human behavior, both in general and in particular, than most of the behavioral sciences themselves. But the law's close relation with human behavior and its centuries of experience in generalizing human behavior and imposing on it limits and standards makes the study of the law's conceptual and institutional aspects an invaluable source of information and guidance. Thus, a properly designed presentation of the law may improve the understanding of the behavioral phases of organization theory.

There is another angle from which the general educational usefulness of the law can be approached. The blending of abstract and uncrystallized political and social values into the structure of the law is, itself, a social phenomenon of which every educated person should be aware and which he should understand. Free speech, freedom of contract, and equality of opportunity are abstract values that have been given concrete form in the structure of the law. The process by which this has taken place is an important part of the society in which we live. The sense of justice on which the maintenance of the social order so heavily depends is reflected in the law and in the legal system, but, all too often, slavish reliance on the precise words of statute or decision leads lawyers and nonlawyers alike off the trail and into a void where the horizon disappears, the words become rationalizations for themselves, and the sense of justice is forgotten. The members of a legislature may become so engrossed with consistency of language that they ignore the need for consistency with underlying social values. The study of law is an admirable way to illustrate the translation of abstract values into concrete principles, and it is also a fine method of demonstrating how the underlying values sometimes get garbled in the translation or are forgotten.

If these arguments that the study of legal materials is of direct and immediate importance to the student of business administration and is a significant part of the training of an educated person are at all persuasive, the conclusion to be drawn from them is the obvious one that the law does have standing in the business curriculum—and, for that matter, in the liberal arts curriculum, without reference to business.

II

WHAT MATERIALS SHOULD BE INCLUDED?

The above discussion has foreshadowed the answers to the question of what materials should be included in a collegiate business law course. Certainly, the general conclusions have already been reached. What remains to be considered are the specific areas of subject matter and the techniques for their presentation. Although it may be unnecessary, it is probably wise to point out that although local differences in educational and business environment have little effect on the general conclusions, these differences will influence the decisions as to specific content and will have to be considered. In some universities, parts of the materials here included in the business law courses will be available in courses offered by political science, history, sociology, social relations, or even speech departments. The assumption is made in the discussion below, however, that no significant portion of the materials is conveniently available elsewhere.

A. Law for the Business Student

In spite of the fact that terms such as "professional," "traditional," and opprobrious epithets are commonly attached to those fields of substantive law that are normally taught in a college business law course, the writer feels that to leave *all* the fields of substantive law is to try to make a ham sandwich without any ham. The only alternative to total omission is not necessarily total inclusion. Many of the fields of substantive law that are normally included in a typical business law course are unnecessary, unilluminating, and unrewarding for the student of business; but, again, the solution is not abolition, but sensible selection. The argument that can be made against the inclusion of "wills and trusts" or "negotiable instruments," for example, cannot be made against "contracts" or "business organizations."

For a student who is engaged in a collegiate business program, whether the program is "narrow, professional" or "broad, liberal arts," to be denied exposure to the concept and value of the contract is unimaginable. The fact that every business law text on the market begins its discussion of the substantive fields of law with the topic of "contracts" is not accidental or alphabetical. Some knowledge of the contract device is fundamental to the understanding of the other fields of business law and, what is more important, is of major importance in analyzing almost all business transactions or decisions. There is no need to give the business student a law school course in contracts. His interests are not the same as the lawyer's. He is interested in the contract as a business technique and should be exposed to its strengths, weaknesses, and limitations, to its formation and its enforcement, and to its value as a business technique. The concepts of negotiability, of agency, of conditions and others should be introduced during the study of the contract. The student should be encouraged to look upon the contract as one of the basic legal instruments by which business decisions are

implemented and by which business objectives may be achieved. This part of the curriculum need be no more professional than mathematics or industrial psychology or economics.

The writer's opinion is that only one other "traditional" substantive field really needs to be included in the business law curriculum. (Perhaps it is time to stop using the term "business law" and refer instead to the "legal aspects of business." The former is historically connected with the fields of substantive law and little more, while the latter carries connotations of an emphasis outside the substantive fields.) Even in a simple form of society, the organization of its various functions is important to the success or even the survival of the society and its members; but the formal issues involving the organization of a simple society are themselves relatively simple, except to a social psychologist or a sociologist. In the incredibly complex society which is our environment, the formal features of the organization have become of tremendous importance. There is an increasing realization that organizations of all kinds have a great deal in common and that the study of organizations is gradually evolving into an organization theory that may some day preempt large areas of psychology, sociology, economics, and business administration. Until recent years, this work has been retarded by lack of any practical mathematical and computational means of analyzing problems containing large numbers of variables. An important part of any study of organizations is a knowledge and understanding of the legal framework within which all formal organizations must operate. It is a matter of great consequence for the student of business and the businessman, not to mention the ordinary citizen, to understand the framework and the public policy which created it, and to be able to recognize the areas of strain or inefficiency where changes in the framework may be necessary.

Rather than refer to this field of substantive law under the separate names given to its various parts—*e. g.*, "corporations," "partnerships," "agency," etc. it is perhaps better to delineate the entire area with the phrase "law of business organization." Probably the approach in the classroom should be along these lines as well. Whatever the approach, however, every student of business should be exposed both to the principles that make up the organizational framework and to the underlying public policies from which the principles themselves evolve. The student should be encouraged to wonder why particular organizations appeared on the scene and not others, and he should be given sufficient background to enable him to speculate fruitfully. If organization theory proves to be even a part of what is claimed for it by some of its proponents, a point is going to be reached where the theory will begin to influence the institutional framework of organizations, and it will become even more important that members of the business community be familiar with the legal nature and characteristics of that framework.

Where the particular school of business does not offer a course in social control or government regulation, some of the material ordinarily contained in a course of that type should also be included in a legal aspects course. Portions of the broad area of government regulation will appear in managerial

economics courses, or in courses in public utilities, marketing, or finance, but the piecemeal presentation never gives the student an integrated picture of the part that government plays in the conduct of a business enterprise. The law course would seem to be a logical place in which to present these materials. The particular subject matter considered and the amount of time devoted to the area will vary considerably from place to place, but the student should, at a minimum, be introduced in reasonable detail to one important field of regulation, such as some phase of antitrust or public utilities, and to the public policies behind the regulation. An opportunity must be provided for the student to draw some conclusions from the materials he has studied and to apply them to other problems of regulation or control.

Earlier, considerable discussion was devoted to the part that law can play in developing and using tools for making decisions. The argument was made that legal reasoning is a decision-making technique from an understanding of which nonlegal decision-makers can benefit and an intellectual process with which students of business should be familiar. Decision-making calls for the selection of a particular course of action from among two or more alternative courses of action. It assumes that there are alternatives and that there are standards or goals that can be used as guides for the final decision. The process of decision-making contains several steps:

(1) The need for a particular decision must arise. One ordinarily does not have to decide between a movie and a baseball game at ten o'clock in the morning on a working day, and a fifty-dollar-a-week filing clerk does not have to decide between blue-chip stocks and municipals as a proper place to invest his funds. Timing is important here also. One may, by waiting too long to make a decision, alter the nature of the decision that must be made.

(2) The alternative courses of action must be recognized and defined.

(3) Data applicable to all alternatives must be gathered and screened for probity and relevance.

(4) The outcomes of all the courses of action are then predicted. If possible, all the predicted outcomes are stated in the same type of measurement in order to make them easily comparable, but this is not always feasible.

(5) Some standard or goal is applied to the predicted outcomes. If all the alternative outcomes are measured in the same quantitative or qualitative terms, simple standards or goals are all that one needs. Fifty dollars is usually more desirable than twenty-five or ten dollars, as a new automobile is usually more desirable than an old one. Most outcomes, however, cannot be measured entirely in the same terms, and most decisions will call for a comparison between the proverbial bushels of wheat and miles per hour. Where this kind of decision is necessary, much more sophisticated, and at the same time more abstract, standards or goals must be employed, and concepts of long run and short run enter the picture.

Most wrong decisions are caused by errors at steps (3), (4), and (5), especially at step (3). No decision, except the rare intuitive one, can be any better than the data on which it is based and the skill with which those data are screened and used in predicting outcome. Perhaps one of the dangers of the modern emphasis on decision-making is that the practitioner

becomes so willing to make decisions that he makes them without an adequate background of knowledge. The difficulties of step (4) are obvious. Outside the physical sciences, predicting the outcomes of certain alternative courses of action is always beset by complex and abstract variables. Another major area of uncertainty and error occurs at step (5), where the recognition of abstract goals and the measurement of alternative outcomes against these goals may convert decision-making into little more than a lottery. The learning and experience that law has to offer are most useful at steps (3) and (5), although they may have some application to step (4) as well. At step (3), the law offers centuries of experience at screening data. The legal concepts of probity, relevance, and materiality have developed into a sophisticated system, whereby large quantities of data gathered in preparation for adversary proceedings can be screened and evaluated.

At step (5), the law can also provide valuable knowledge and training. The very structure and substance of the law is made up of centuries of decisions based on the application, both conscious and unconscious, of standards and goals of many kinds to predicted outcomes of actual controversies requiring immediate settlement. Most of the standards and goals applied by the law have been social, political, and institutional in character and have demanded much the same type of mental process required of a business decision-maker. Of course, sociology, psychology, anthropology, and economics are now providing new insights into the decision process and are supplying some additional sources of data on which to base decisions, but it must be recognized that the one important characteristic these social and behavioral sciences do not have in common with business and law is experience in making decisions under pressure of time. One tremendous advantage which the law has over the other areas of human experience is that the law records its reasoning processes, its evolution, and its mistakes. For those who can read with understanding and discrimination, the records of law contain an unique continuity of experience with making decisions for action. The student of business should not be denied the opportunity to study this register of human knowledge.

It would probably be wise at this point to direct a few words to the teacher of business law in an effort to explain, albeit briefly, why most of the cherished fields have been omitted. With the exception of contracts and the law of business organization, the fields of business law must give way to more important subject matter not directly concerned with the substantive fields. In the writer's opinion, it is much more important that the student see the law as a social institution of all-encompassing application or as an important part of the environment of business rather than as a group of highly technical little compartments containing a myriad of rules that will rarely be remembered and will never have much to do with the making of a business decision. It must be admitted that some knowledge of bailments and negotiable instruments might be useful to almost anyone, but most of what any layman could possibly use in these two areas could be acquired in an hour of leisurely reading. With limitless time, many of the substantive fields of laws could profitably be included among the legal

aspects of business; the students would not be the worse for it. But when time is limited and a choice must be made between bailments and negotiable instruments, on one hand, and the broader and more basic concepts, on the other, the choice seems clear. Once one goes beyond a few fundamental concepts in each field, most of the substantive fields of business law become of minor interest or importance to anyone except a lawyer. On the assumption that few, if any, reputable schools of business afford unlimited time to the courses in legal aspects of business, the choice must be made in favor of the general rather than the specific. What has been said here does not apply with equal force to all of the substantive fields. Contracts, business organization, and government regulation (if that really is a substantive field in the sense the term has been used here) have broader conceptual frameworks, more important and more general applications, and provide greater intellectual challenge than do most of the others.

B. Law as a Necessary Part of a Liberal Arts Education

No course in the legal aspects of business would be consistent with the philosophy being here expounded unless it included materials oriented to the broad social and institutional aspects of law, as well as to the direct business connections. There is substantial agreement among those who have considered this phase of the problem that the philosophy expressed is correct; but here, the agreement ceases. Although law courses are provided by many universities as a part of a program of general education, no two are alike. (Reference is not being made to the usual courses in constitutional or administrative law offered by political science or history departments or to other field-oriented courses offered in other liberal arts departments, but to the broader "law and society" type of course usually offered in a curriculum of general studies for students from all parts of the university.) Then, too, there are many supporters of the over-all philosophy who feel that it is infeasible even to attempt to teach undergraduates the essence of legal reasoning or an understanding of law as a social institution. It would seem, however, that if a state of perfection is being sought, the pessimistic view can be applied to any field of scholarly endeavor; but if a somewhat humbler goal is established, the difficulties of teaching any group of abstract concepts can be minimized and the chances of imparting something of value can be improved.

Many routes are available along which the goals may be sought. An intensive study of a single, narrow legal topic, such as defamation or conspiracy, avoids the danger of superficiality, gives the student a clear picture of the evolution of legal reasoning with regard to that single topic, and creates sufficient familiarity with the topic to enable the student to draw informed conclusions with regard to the values, forces, and standards that have shaped the law. However, this approach creates some risks, most important of which is that of missing entirely or conveying false impressions of the legal system as a whole. Two other approaches have been suggested, both of which have certain disadvantages as well as advantages. Woodrow Wilson, in his essay on "Legal Education for Undergraduates,"⁶ argued

⁶17 *A.B.A.Rep.* 439 (1894).

that the approach must at every step be both an historical and comparative study of law as a social institution. Though more encompassing than the first, this approach may still run the risk of failing to create a reasonable impression of the legal system as a whole. A third approach looks at the system as a whole and seeks to establish the interrelations among the various parts of the system, without examining any part in great detail. This latter approach is not in any sense a survey, but focuses attention on the whole rather than on one or more of the parts. Its major defect is that it requires a great deal of time both in and out of the classroom.

Which approach is best will depend upon the students, the instructor, the university, the circumstances under which the course is taught, and the time available. It may require considerable experimentation before any definite choice can be made. A proper choice can be made only if those making the choice keep constantly in mind the limited objectives that such a course can achieve. An undergraduate cannot be expected to absorb abstract ideas and concepts with the speed or accuracy of a carefully selected or specifically motivated mature law student; but, giving due consideration to the atmosphere in which he labors, it is always a bit amazing how much an intelligent undergraduate can absorb. The predicted end would seem to justify at least an attempt at the obvious means.

III

HOW SHOULD LEGAL MATERIALS BE PRESENTED?

It is not enough that we are plagued with a "whether" and a "what," with regard to law in the business school, but we must also shoulder the burden of a "how." Instructors in the collegiate business law field agree on many issues involving the courses they teach, but cannot seem to reach an accord on how the legal materials should be presented. Probably most adhere to the use of abridged law cases, but a significant proportion strongly oppose this technique and campaign for other methods of teaching. Persuasive arguments can be made for either position, but the writer's opinion is that the answer lies not in resolving the debate between the two extremes, but in evolving a technique that utilizes the better aspects of both. Most of the controversy over the presentation of legal materials is legitimate and has led to many improvements in both the case and the noncase methods, but some is mere quibbling. If one can ignore the quibbles and recognize the advantages of each of the basic methods, a superior method will probably be developed. Considerable experimentation is already going on, and the writer can claim no real originality in any of the specific proposals that are made below.

The law case method of teaching legal aspects of business has some important advantages. If the cases are wisely selected and intelligently condensed, the student is exposed directly to major parts of the legal process and legal reasoning and is placed in a position where he can see the flow of data from its collection, through its screening and appraisal, to the decision based upon it. The student becomes familiar with the legal techniques of

making decisions for action. Unfortunately, most of the case books designed for use by business students are so preoccupied with selecting and abridging cases that illustrate some narrow substantive rule that all the real advantages to be obtained from the case system of instruction are lost. Casebooks of this type are a wholesale waste of time, because there is nothing to be found in the case except the rule, and it probably would have been a great deal simpler to state the rule without bothering with the case. The case method at its best is a very slow method of teaching substantive rules of law. A page of text can convey more substantive law, together with an integrated framework, than can a hundred pages of even the most skillfully prepared cases. The law school student must study the cases because, for the lawyer, the cases are where the law is found. But the businessman does not go to the cases for his law; he goes to his lawyer. What the student of business should get from the cases is not primarily the law, but an understanding of the legal process. Cases prepared with this objective in mind will not closely resemble the usual, rule-oriented business law case. Certainly, every student of business should be introduced to the cases, but not for the purpose of teaching him substantive rules of law.

In addition to the law-case technique used in the manner suggested above, the student should also be confronted with *business* cases whereby his ability to recognize legal issues in business settings is developed. One of the main defects with the usual methods of teaching the legal aspects of business is that the emphasis is on the "legal" and not on the "business," and the chances that the student will ever recognize a legal problem in its natural business environment are minimized. A business student who is exposed only to condensed appellate reports has even less hope of learning what he needs to know than the man who tried to learn to play the clarinet by listening to recordings of symphony orchestras. Anyone who is attracted by the advantages of the business cases is going to discover sooner or later that there are none on the market. A few are in use on an experimental basis in two or three schools of business, but little else is available. Good business case materials will have to be developed and published before the business case will be widely used.

The business case has a further advantage, not mentioned before, in that a sequence of legal problems can be raised in connection with one business firm. Instead of the student's being confronted with a contract issue involving a grain dealer in Illinois, and an organization problem from a grocery chain in California, and a Robinson-Patman question concerning a small manufacturer in New York, business case materials would make it possible to raise all three types of problems in connection with a single firm. The student would no longer see the problems as isolated examples, but as events within the experience of one enterprise. He would also have an opportunity to examine the problem at an earlier stage than the *fait accompli* of the courtroom; he would get some practice at recognizing legal problems while there is still time to do something about them; he would be able to see some of the interconnections among legal problems. Following up the business case with some law-case materials might make it possible for

a student to trace his business problem, in the event that litigation cannot be avoided, through to the lawsuit, trial, and ultimate decision. Many other blends of law and business case materials would probably be possible.

The legal aspects course will also contain a substantial portion of expository material. There is no better way to deal with some of the legal aspects of business than through straight exposition. Substantive rules of law are most easily, conveniently, and efficiently supplied in this fashion, provided the student is developing other valuable insights and skills through his study of the case materials.

There is no single answer to the question of how legal subject matter should be presented to the business student. Some types of materials are best handled through law cases, others through business cases, and still others through straight exposition, and some types may benefit from a mixture of methods. The particular blend of techniques that is used in a given course will depend on a number of factors, including the ability and training of the instructor, the age, background, and intelligence of the students, and the availability of various types of material for use in the classroom. It will take much trial and error before any optimum blend can be determined, but the potential rewards seem large enough to justify the expenditure of considerable time and effort.

IV CONCLUSIONS

All of what has been said above was intended to apply to undergraduate training for business. Most of what was said applies with almost equal weight to graduate training as well, with certain obvious adjustments. The comments with regard to a broad, liberal education would not apply to someone who had already completed that phase of his education and was not interested in acquiring professional training at the graduate level. This change in orientation for graduate students, in order to take into account the admittedly professional character of most graduate business training, does not alter in any substantial respect the conclusions with regard to whether, what, and how law should be taught in schools of business. Essentially, the same materials are important and the same techniques useful in making the presentation, but the greater maturity of the students would give the course and the instructor increased flexibility with regard to both content and method.

The student of accounting who plans a professional career in that field presents a special problem that is not solved by the recommendations made in this article. Much of the undergraduate business curriculum today reflects the fact that accounting students make up a sizable portion of the school's population and that most of these accounting students look upon their undergraduate degree as being terminal. They are preparing for jobs in the accounting field and are looking ahead to certain professional examinations, the successful completion of which may be crucial to their careers. Because of the professional hurdles, these students may need a type of program different from the broad, liberal-arts type toward which many busi-

ness schools are moving, and the needs of these students may not be satisfied by the kind of law course described above.

A still unanswered question is whether, in the light of what has been said above with regard to the general educational value, the intellectual depth, and the importance to the curriculum of law, fields of emphasis in law should be permitted or degrees in business law be granted. While the writer is strongly in sympathy with the view that something should be done about the fact that the United States is alone among the nations of the Western world in not offering in its colleges and universities an undergraduate degree program in jurisprudence, this view is no justification for a college degree in business law. The area is too narrow, although some of the other areas in which university degrees are commonly granted are even narrower; the school of business administration is not the proper supervisor for an undergraduate law degree; much of the business law would necessarily overlap professional training in a school of law; and the field of business law is not coextensive with the field of jurisprudence. As far as a field of specialization is concerned, the answer may go by default. The trend seems to be toward deemphasizing fields of specialization on the undergraduate level, in keeping with the desire for a broad educational training in the four-year colleges. At the graduate level, a specialization in the legal aspects of business would not be objectionable and might be of real value in a graduate business program, although the writer cannot visualize the field's being a very popular one. Most students with this bent would be enrolled in a school of law.

In spite of the difficulties of staffing, the disagreements as to content and technique, the charges of professionalism and lack of intellectual content, the misconceptions of business curricula by liberal arts faculties, and the probable conclusions of the Ford and Carnegie studies, law is still a major part of the collegiate business program and of the background of an educated man. To remove law from the education of the businessman for the purpose of broadening that education is much like dumping a blimp's helium in order to lighten the load. Law provides one of the best means by which collegiate business training can be given increased scope and meaning beyond the professional business range. Not just any legal aspects course will perform this important function, but the course that does perform it will unquestionably have standing in collegiate business education.⁷

⁷In addition to the references specifically cited, the following contain interesting material relevant to the subject matter of this article:

Appeal, "Law as a Social Science in the Undergraduate Curriculum," 10 *J. Legal Ed.* 485 (1958); Britton, "The Teaching of Law in Schools of Business," 5 *Am. Law Sch. Rev.* 274 (1939); Currie, "The Place of Law in the Liberal Arts College," 5 *J. Legal Ed.* 428 (1953); Eliot, "Law in the Liberal Arts Curriculum," 9 *id.* at 1; Freund, "Law and the Universities, 1953 *Wash. U. L. O.* 367; Hancock, "Teaching Law in the Liberal Arts Curriculum," 7 *Stan. L. Rev.* 320 (1955); Powell, "Law as a Cultural Study," 42 *A.B.A. Rep.* 572 (1917); Raphael, "Law in the Liberal Arts College," 31 *College and University* 207 (1956); Spencer & Harno, "The Correlation of Law and College Subjects," 5 *Am. Law Sch. Rev.* 85 (1923); Stone, "The Importance of Law in the Education of the Business Student," 7 *id.* at 233; "A Symposium on the Place of Business Law in Higher Education," 3 *Am. Bus. L. Ass'n. Bull.* (1958).