

Seattle University School of Law Digital Commons

Faculty Scholarship

1-1-1969

Universities, Law Schools, Communities: Learning or Service or Learning and Service?

Henry McGee

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/faculty>



Part of the [Law and Society Commons](#), and the [Legal Education Commons](#)

Recommended Citation

Henry McGee, *Universities, Law Schools, Communities: Learning or Service or Learning and Service?*, 22 *J. LEGAL EDUC.* 37 (1969).

<https://digitalcommons.law.seattleu.edu/faculty/538>

This Article is brought to you for free and open access by Seattle University School of Law Digital Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.

UNIVERSITIES, LAW SCHOOLS, COMMUNITIES: LEARNING OR SERVICE OR LEARNING AND SERVICE?

HENRY W. MCGEE, JR.*

“Nobody expects a hospital to give out Christmas packages to the neighborhood poor.”

—Jacques Barzun

“Charity begins at home and justice begins next door.”

—Charles Dickens

Introduction

UNIVERSITIES have moved from the hurricane's eye into its path. They “are in a state of transition where they, consciously or unconsciously, face exceedingly complex yet fundamental issues concerning their functions. . . .”¹ And they face the storm of social turmoil with their “institutional cohesion” impaired by a lack of accepted answers to increased questioning within and without the university as to their societal role.² The Cox Commission said much more than a paragraph-full when they observed:

“The increasing complexity and sophistication of all aspects of the industrial and social order have enormously increased the demands upon universities to join in applying to practical uses the knowledge, skills, and equipment they assemble. State and federal governments, industry, foundations, and community organizations are constantly calling upon individual professors for active participation in action programs as well as for expert opinion; and both the professors and their institutions value the opportunity. Universities, as others have said, have become knowledge factories with much wider and possibly more powerful constituencies than the students whom they educate. At least some branches of the university, moreover, are attracting to their faculties a new type of academician—the man of action as well as intellect whose interest is not the pursuit of truth for its own sake but to shape society from a vantage point combining academic security, intellectual weapons, and political action.”³

* Acting Professor of Law, UCLA.

¹ *Report of the Fact-finding Commission Appointed to Investigate The Disturbances at Columbia University in April and May, 1968*, known as the “Cox Commission Report,” 19 (1968).

² *Id.*

³ *Id.* at 20.

Law schools, as have the other colleges in university systems, are undergoing the now rhetorically trite, but painfully current "agonizing reappraisal" of their relationship to the community. The great centers of international and comparative law study at Columbia and Chicago, the centers for interdisciplinary research in criminal law, criminology and sociology at the University of Pennsylvania and Berkeley, California, indicate that the law schools as well as the universities have not been reluctant to assume leadership roles and contribute to the national and even global communities.

But the new challenge is in the university's backyard, in the streets of the ghettos in which universities often repose as white islands of affluence in oceans of black poverty. For the universities can not "escape the consequences of the continuing economic and social decay of the central city and the closely related problem of rural poverty. The convergence of these conditions in the racial ghetto and the resulting discontent and disruption threatens democratic values fundamental to our progress as a free society."⁴ The law schools, and universities of which they are so important a part, are at the edge of a volcano of repressed social and economic despair and frustration. How will they respond?

I. L'Ancien Régime and The Song of Roland

Defense of the university as citadel of learning rather than command post of action issues from other quarters of the academic community more readily than from the law schools. American lawyers often speak with delphic ambiguity on social issues. The same is only slightly less true of their academic mentors, who often espouse the rhetoric of change carefully conditioned by reverence for things tried and true. A clear-cut statement of the law school's role in the community is not likely to be developed by law professors.⁵ No doubt the celebrated skill of lawyers to proliferate issues and then confuse them has been a factor inhibiting development of forceful statements, one way or the other, of the law school's role as an institution in the community. Where there has been discussion of the law schools and the community, it has resembled the tedious and abstract pontification which has bored many a Law Day audience. Lawyers seldom climb out on limbs.

But other academics have not avoided battle. The most recent champion of the traditional idea of the university has been former Columbia University Provost Jacques Barzun. Now University Professor at Columbia, a title, which gives him the privilege to teach anywhere in the

⁴ *Report of The National Advisory Commission on Civil Disorders*, known as the "Kerner Commission Report," 229 (1968).

⁵ The "Final Consensus" of the 1959 Conference on Legal Education at the University of Michigan should be read as a masterpiece of obfuscation with very little significant discussion of the term "community." See discussion p. 13 *infra*.

university but presumably also a mandate to speak on issues central to the life of the academic community, Dr. Barzun warned a recent press conference that “. . . the university is getting to resemble the Red Cross more than a university, with direct help to whoever is suffering now.”⁶ Dr. Barzun’s wide-ranging scholarship and interests certainly impart more than passing attention to his views. Few would regard him as narrow, unless the pursuit of excellence is a constricted calling. His 15 books⁷ have ranged from the definitive work on Hector Berlioz⁸ to now celebrated reflections on the American educational scene.⁹

In his most recent volume,¹⁰ Dr. Barzun has described the sprawl of modern megaversity and argued for a restoration of authentic function. “Education,” he declaims, “is a full-time task. University endowment or state subsidy is for education; it is misuse of funds and talent to embark on other than education efforts.”¹¹ The university’s “present precarious state” is due in part to “[t]he notion that only when the university helps in garbage collection is it serving the public. . . .”¹² He marshalls more than sarcasm to make the charge:

“Just as the lower schools must organize transportation, free lunches, dental care, and ‘driver education,’ so the university now undertakes to give its students, faculties, and neighbors not solely education but the makings of a full life, from sociability to business advice and free psychiatric care to the artistic experience. Again, every new skill or item of knowledge developed within the academy creates a new claim by the community. Knowledge is power and its possessor owes the public a prompt application, or at least diffusion through the training of others. It thus comes about that the School of Social Work aids the poor, the School of Architecture redesigns the slum, the School of Business advises the small tradesman, the School of Dentistry runs a free clinic, the School of Law gives legal aid, and the undergraduate college supplies volunteers to hospitals, recreation centers and remedial schools.”¹³

⁶ N.Y. Times, October 25, 1968, § 1, at 1, col. 7.

⁷ Dr. Barzun has also produced ten major translations and literally scores of articles.

⁸ *Berlioz and the Romantic Century* (1951).

⁹ *The House of Intellect* (1959).

¹⁰ *The American University* (1968).

¹¹ *Id.* at 269.

¹² *Id.* at 270.

¹³ *Id.* at 11. “It is thus that a dozen of the leading universities—not all metropolitan—are now found managing large programs of urban renewal and race relations, engaging in the improvement of housing and rehabilitation of moral derelicts, uplifting economically depressed areas, or supplying art to the community—all this without evidence that they are equipped with the talent, organization, or experience to succeed. No one can cavil at the motives of good will and courage behind such departures from central university work, but no one should deny that they are improvisations, fraught with the great danger of social projects, the ‘rathole phenome-

A formulation of the ideology to which Barzun adheres is easier than an expression of the service-oriented philosophy which contends for academic commitment. The university is a center of learning. It is a question of function. Teaching is the central calling of the academies; activities which fail to complement that function are subversive of the university's mission. As a handmaiden of teaching, research opens new frontiers of learning with a correlative teaching feedback. To be sure, some service is inevitable. First, every new bit of knowledge makes the common lot of mankind so much the better. Second, universities produce cadres to accomplish the community's, the nation's, indeed the world's business if not always its thinking. In these ways, it might be claimed that in an ultimate sense the university serves the community. There need be no one to one ratio between what the university does and what the community requires. In the long run, and in a grand way, the universities and their constituent schools serve the community and mankind.

Without benefit of statistical measurement, it can be argued that the traditional ideology, although claiming the majority of adherents still, is on the wane. The time may be at hand soon when the Barzuns may stand at the pass almost alone—sounding a horn which contemporary ears are unable to hear above the din of battle in the streets of urban America.

II. Agents of Change and Unanswered Questions

There is division in the ranks of the academicians. The issue, says Dr. Clark Kerr of the Carnegie Corporation's Commission on Higher Education, is not whether the universities should provide service. It is who will be the recipients. "It is a question whether universities should serve the people in the urban ghettos or the military-industrial complex, whether they want to serve criticism and dissent or the status quo. People who say we should offer no service to society through the modern university overlook that the earlier universities to which they refer provided another, old type of service—to the aristocracy and to some of the elite professions."¹⁴

Dr. Kerr's call for universities to "provide service to the cities, the lower classes and the poor"¹⁵ has found a sympathetic response among students, if not uniform and uncritical acceptance at the upper reaches of the academic community. A recent report issued by Columbia Law School's Law Student Steering Committee¹⁶ contained a penetrating

non,' by which money is spent, honorably but without result. Whatever, the outcome, improvisation is hardly the article on which the university as a fount of knowledge has hitherto based its claims to trust and respect." *Id.* at 151.

¹⁴ N.Y. Times, October 31, 1968, § 1, at 20, col. 1.

¹⁵ *Id.*

¹⁶ Following a strike at Columbia Law School which lasted from May 2 to May 4, 1968, the law students ratified on May 6 a proposed Student Steering Committee

discussion of the relationship between Columbia and its next door neighbors. Eschewing the more traditional obscurantism which speaks evasively about "larger" issues when the term community is broached, the Columbia students were not afraid to look at the trees in the forest of poverty which abuts the university:

"A consideration of the Law School and the community should be prefaced by the observation that 'the community' about which we are concerned cannot be isolated as a physical unit. Columbia's location in West Harlem places it in the midst of one of America's largest and most festering urban ghettos, and consequently, our studies and conversations could not in any way be limited by such imagined neighborhood borders [as the bounds of the Columbia campus.] . . . For what we are concerned with here in reference to the Law School is a social problem that engulfs and shakes the foundations of the nation. For convenience we speak of 'the community' and that, sometimes properly so, implies the narrow locality. But the implication of our conclusions is meant to transcend Morningside Heights and to engender the plight of the urban poor generally and their relation to the future of an eminent law school."¹⁷

The students decried Columbia Law School's ". . . insignificant effort within the community to apply its expertise in ameliorating the impact of poverty on the people's legal and social rights."¹⁸ Finding ". . . the neutrality of the Law School as an institution to the culture of poverty surrounding it . . . indefensible," the students called for a "Columbia-community" law office which would range far beyond more orthodox notions of a legal aid office too numerous to explore in detail.¹⁹ Indeed, not only would the students move Columbia down from the Olympus of Morningside Heights into the valley of Harlem, they urged that law school immigration laws be liberalized to include those who cannot produce the B.S. or B.A. passport. Calling for ". . . study . . . at the Law School . . . of a para-professional program, wherein individuals with abbreviated legal training would be permitted to practice certain levels of law that are particularly significant to the urban poor,"²⁰ the Committee predicted the development of new career lines developed in the law schools ". . . for young urban poor interested in improving their own community."²¹

which then met officially for the first time on May 9. The Committee was formed as, in the words of the students, a "constructive" alternative. The report was circulated to the student body during the last week of October, 1968.

¹⁷ *The Report of the Law Student Steering Committee* 24 (unpublished, 1968).

¹⁸ *Id.* at 25.

¹⁹ *Id.* at 25-29. Among the suggestions were that the office function continuously to provide "off the street" advice and legal services, serve as a center for legal education of the community on such subjects as consumer rights, and initiate test cases.

²⁰ *Id.* at 28.

²¹ *Id.* at 29.

No detailed analysis of the Columbia student proposals is necessary to discovery of a fundamental shift in sentiment in the universities, a shift which has done much to undermine the common allegiance to the idea of the university espoused by Dr. Barzun and shared by the American academic establishment²² with only insignificant shades of difference. But while students are likely to state the service proposition in its baldest form, "activists" like Dr. Kerr indicate that dissent about the *ancien régime* exists among some faculty and administrators.

For a generation whose conquering sign is relevance, the abstractions implicit in the older notions of university service are inadequate. They may even be cowardly. There is no single function of the university. It plays many roles. The phrase community connotes less a search for "motes" in the international or national communities than an attack on the "beams" in the backyards of the campus neighborhood.

Is there here the proverbial angelic rushing in? Where is the line to be drawn between participation and intervention, between shared responsibility and domination? Has the estrangement of affluent and impoverished sectors in the national life isolated the university from an effective role in the community—no matter how altruistic the motivation? Can the community any longer distinguish between assistance and condescension? And finally, does not the imbalance of power between the university and poor make all but the most brutally symbiotic relationship feasible?

Consider issues suggested by one great law school's encounter with the community. In 1966, the United States Office of Economic Opportunity made a grant to a Community Action Agency in Michigan to operate a legal services program. A year later, evaluation of the program by O.E.O. consultants disclosed that although there was only one attorney working in the program, there were fifty law students who, at one time or the other during the course of a week, worked in the neighborhood law office.

A survey of community reception of the efforts of the law students and the law school's "presence" in the program revealed less than an un-mixed reaction to university involvement in the legal services office. Documenting instances in which residents had expressed satisfaction with the work of the students, one mother for instance suggesting that students were more effective than lawyers because they had "nothing to lose," the evaluators nevertheless pointed out:

"Others were not as enthusiastic about the use of the students. While those who criticized the use acknowledged a certain basic effectiveness, they were wary of the use of students and were fearful

²² If still possible, the word "establishment" is not used perjoratively.

that their wide use signaled an eventual submersion of the program in the educational program of the law school. It was our feeling that the criticism and fear of the use of the law students was a direct outgrowth of the estrangement that now exists in the community between what may loosely be described as articulate Negro leadership and the practicing lawyers as represented and symbolized by the County Bar Association.”²³

The evaluators expressed separate reservations about the use of the students:

“ . . . It is often dangerous to carry any proposition to its logical extreme. The use of law students is good. The use of too many law students may be too good. Despite his apparent ubiquity, the [program director] cannot adequately supervise 50 or more law students and discharge the other duties he must assume if the program is to move beyond its present minimal effectiveness. We urge that as an interim measure, the number of students participating in the program be reduced until such time as the additional staff lawyer is hired.”²⁴

This all too brief sketch of charitable overkill should, at the very least, illustrate the quicksand that sometimes overcomes university projects. While Dr. Kerr would no doubt suggest that quicksand is the stuff of life, Jacques Barzun might well rejoin that the university owl was meant to fly over, not walk and sink into community turmoil.

III. The Response of the Law Schools

“The Law School as a Vehicle of Public Service” was a major topic on the discussion agenda of the 1959 Conference on Legal Education at the University of Michigan. The intervening decade imparts enough perspective to make the conference proceedings a departure point for examination of the ways in which law schools have responded to pressures for community service. Among agenda questions were the queries, “Do service activities disturb or enrich teaching and research?” and “[d]oes the law school, as such, have obligations to the state, nation, society of nations, or public, to perform functions other than the training of a lawyer?”²⁵ While the “Final Consensus” of the conference opted for the conventional view of the university’s and law school’s function,²⁶ compromise was reached on the issue of public service by a

²³ Memorandum to O.E.O. Legal Services Program Director Earl Johnson, Jr. from O.E.O. consultants dated August 25, 1967, at 8.

²⁴ *Id.*

²⁵ *The Law Schools Look Ahead: 1959 Conference on Legal Education 4* (1959).

²⁶ *Id.* at 11. The Barzun thesis could not have been more precisely anticipated than the opening sentence of the section entitled “The Law School as a Vehicle of Public Service.” “In view of the traditional mission of a university to enlarge and

declaration that the "scholarly research of law professors, like their teaching, will in large measure be concerned with the administration of justice, with law reform, with instilling the sense of fairness and advancing the rule of law."²⁷ The crucial issue was collectively abdicated to conscience—"How these interests are translated into action, whether through influence on students, through publication, or through direct cooperation with professional organization, is a matter of preference of the individual professor."²⁸

At least one of the speakers at the conference spoke more candidly about the "brooding omnipresence" of the emerging community interests that a decade later would help grind to a halt one of the nation's greatest universities. Ralph S. Brown, Jr. of Yale flatly declared:

"No university law school, whether in a state or private university, has any obligation to provide research or other services for private persons. If the analogy of the university hospital is brought forward, it should be rejected as inapposite. Medical research in clinical fields must have access to patients, whence the university hospital. Legal research rarely requires clients. When it does, or when involvement in real-life problems is considered desirable as part of the teaching program, then the school may facilitate the arrangements desired by the faculty.

"An 'institutional program of service,' unless the services arise out of and advance the teaching and research of the faculty, is quite inconsistent with the idea of a university. To return to the first proposition . . . law schools are—and should be proud to be—part of the university tradition. They should not try to justify themselves as service stations to refuel the bar, or clean the community's windshield, or charge the government's batteries."²⁹

Leaving aside the confession of error about the inherent lack of reality of much law school research, the myopic nature of the remarks recalls an assertion of University of Chicago President Edward H. Levi that "[t]o a certain extent, the law schools are out of touch with what is going on."³⁰ However, a more rounder view of the proceedings must stress that while not many answers were suggested, there was no shortage of questions. The diffused focus of the discussion may be inferred from

transmit the body of learning entrusted to it, law school faculties have a clear obligation to carry on scholarly research as well as teaching. Indeed, research and teaching are the principal duties of a law faculty, viewed as members of a modern university community." *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 300.

³⁰ E. H. Levi, *Four Talks on Legal Education* 28 (1952). Six years after the Supreme Court's school desegregation decision, there was no discussion by conference participants of the *de facto* segregation in American law schools.

the some 35 questions that Georgetown's Chester James Antieau propounded in remarks which required only three and a half pages and slightly less than 1,200 words to print as an "advance memorandum," and which commenced:

"Above and beyond its prime responsibility to its students, it has been suggested that the American law school might have obligations or opportunities to (1) its alumni, (2) the local bar, (3) the local community (city and state), (4) the national community, and (5) the international community."³¹

The series of questions propounded by Professor Antieau were then developed from his initial sentence, most of which were institutional in emphasis.

While none of the papers really came to grips with the degree of law school participation as an institution, Rutgers Law School Dean Donald Kepner argued at least for an enhanced personal commitment:

"But apart from the matter of professional responsibility, law teachers should participate in activities other than teaching to further their competence. It is often said that law relates to all life and that it touches the activities of all social groups. If law teachers are to understand the function of law and to interpret the social forces that influence the development of law, they need first-hand knowledge which can be acquired only by experience. This does not mean that law teachers must engage in practice. The experience in practice is the experience in the use of the tricks of the trade, and represents only one small segment of the law in action. Other forms of valuable experience may be obtained by participation in governmental activities, by rendering advisory services to all types of organizations requiring legal services and by participating in civic affairs, interpreting the word civic in its broadest sense.

"Also the law school expects teachers to be experts. The teaching assignments of a school are made with this end in view. Moreover, it is desirable that teachers be compensated as highly trained experts. If these aims are achieved, it is a social waste to permit law teachers to be isolated from all activities except classroom work and consultation with students. Both society in general and the institutions that support the law school are entitled to more from the members of the law school staff than mere teaching."³²

Well, despite the fact that Dean Kepner did not carry his remarks forward to cover the law schools as institutions, the upshot of the matter is that in a variety of ways, law schools have in fact, *qua* law schools,

³¹ Law Schools, *supra* note 25, at 288.

³² *Id.* at 304.

have been involved directly in community ventures for a long time. Harvard has had a legal aid operation since 1913.³³ By 1966, Notre Dame Professor Thomas F. Broden, Jr. could declare that "approximately one-third of the nation's law schools now have some kind of legal aid program."³⁴ The legal aid movement, coinciding with the rise in interest in development of a clinical dimension in legal education, has been a powerful impetus to law school participation in community life. More often than not, this relationship has tended to congeal along orthodox legal aid lines. Nonetheless, it has provided law schools with an exposure to community problems denied many other sectors in university life. Even the most modest legal aid programs can impart a palpable aspect to legal education that it seriously requires. As President Levi has pointed out:

"A legal clinic is important as a device to show students how cases are tried and to bring students under the necessity of finding, organizing, and presenting facts in such a way that a case can be tried. In industrial centers such a case load certainly can be acquired. The purely service aspects of such a clinic are also important. There is greater recognition today than ever before of the need for such service."³⁵

Suggesting further that operation of a legal aid office is not necessarily a one-way charitable street, President Levi argues:

"If the law needs understanding, and if research is the way to that understanding, then the research must get at the facts. A clinic can focus attention on the difference between actual problems and the problems in the books. It can guide theory so that it arises out of cases and fits the needs of the people involved. Research, law teaching and law-making always must be, in a sense, theoretical. But as with medicine so with law, it is important that theory or criticism of theory be not far removed from the actual cases which pose the problems. A law school should have direct access to the problems. The combination of practice-training and service-giving should make it feasible for a clinic to be part of a research center."³⁶

Another development which promises to bring law schools closer to the facts of life is the increasing interest in law centers. Patterned in some fashion after England's Inns of Court, law centers "are now conducting legal research, improving legal education, providing continuing education for the bar, operating free legal aid bureaus, sponsoring institutes,

³³ E. A. Brownell, *Legal Aid in the United States* 108 (1951).

³⁴ T. F. Broden, "A Role for Law Schools in O.E.O.'s Legal Services Program," 41 *Notre Dame Lawyer* 898, 899 (1966).

³⁵ Four Talks, *supra* note 30, at 21.

³⁶ *Id.* at 24.

conferences and seminars, and contributing to the administration of justice.”³⁷ The law center institutionalizes interdisciplinary exchange and social and intellectual interchange with the different persons and communities served by the profession. Concentrating in one location working and living facilities where persons of different professional and socio-economic backgrounds can share a common experience, reflect the growing realization, expressed with characteristic eloquence by Harry W. Jones, that “[l]aw loses its power and abdicates its ordering function when it loses touch with the dynamics of social life.”³⁸

There is no effective short way to describe the varied ways in which law schools and law teachers have served the community. The point is that more often than not, the focus has not been on the role of the law school as institution, but upon the individual or collective efforts of law professors or students. Despite the emphasis, there have been those who have sensed the emergence of a need for an institutional as well as individual effort. Thus there no doubt will continue to be tension in the university community and in the law schools over the proper function of institutions of higher education and professional schools. Ultimately, the realization may dawn that universities, as do the people who live and work and hope in them, can experience multiple achievements, that service and learning need not be inconsistent goals.

³⁷ R. G. Storey, "The Modern Law Center," 4 S.W.L.Jour. 375, 388 (1950).

³⁸ H. W. Jones, "The Creative Power and Function of Law in Historical Perspective," 17 Vanderbilt L.Rev. 135, 140 (1963).