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What makes a law school great?

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What Makes A Law School Great?

It is very humbling to try and match the amusing candor and informed wisdom of Professor Willis Reese, and so I will try to use his anecdotal insights only as a launching pad for my long repressed ambivalence about law schools and legal education.

On the whole, Professor Reese comes down on the side of student brains as against the prepared onslaught of the faculty. Nothing can harm the good student and very little can be expected to help him since he often is abler than the teacher and even more often, believes it. Despite Professor Reese's affluent infrastructure — a sizable library, comfortable buildings, an enthusiastic and successful alumni — the creation of a triumphant school is still a subtle mystery. With the correct recipe, it seems to come together whether it uses the case method, or the lecture, or an injudicious mixture of both; whether there are small or large classes — all publicized by the occasional national figure on the staff, whom colleagues either cherish, or envy, or do both. With these assets, material and spiritual, the law school becomes something that Willis Reese remembers best from his Yale days and seems to make his model.

All of this is very well for the Ivy Leaguers who have had strong teaching and fulltime law schools for the better part of a century and whose admission standards have been geared not only to the puritan severities of the eastern establishment, but also have been able to rely on a strong undergraduate liberal arts tradition from whence to draw four or five generations of Phi Beta Kappas and their ilk.

This does not mean, of course, that the Canadian law schools have had no colourful or accomplished teachers, no brainy students, good libraries, or student creature comforts. But the truth is that we have had much less of them. The best of our teachers and students probably compare with those that Willis Reese has known — although at that level the Canadian teaching corps may have to be measured by the fingers on one, or at the most, two hands. Similarly, student brilliance at the top reflects the universality of brains, but again the numbers perhaps do not provide here the critical mass in any given classroom, or school, that makes the difference among competitive tension, a sparkling tone, and the occasional flash in the night.

As for libraries, it was a shock to discover some years that McGill, for example, which quite early had had one of the two or three best student law libraries in Canada was still only about 83rd on the North American Law Faculty list. While things have improved in Canadian schools during the past twenty years, I doubt if this gulf has been narrowed significantly, except to say that most of the Canadian law schools probably now have respectable collections required for basic instruction and study-research needs. A few may be emphasizing some exotics, from Air and Space Law at McGill to other valuable collections elsewhere — Law of the Sea at Dalhousie, Comparative Law at Toronto, Jurisprudence at York and at the University of British Columbia. As for accommodation, almost everywhere new Canadian law buildings dispell the step-child image of a few years ago, and these will probably suffice unless the present rush to the Bar strains facilities to new levels of discomfort. Already growing numbers have notable effects on student and teacher attitudes and contribute to the consequent grousing that every dean has to suffer.

Can we, in the context of Canadian experience, acquiesce to Professor Reese's central point, that it is the presence of good students year after year, and graduates with happy memories, that provide the central source for a good, or great law school? What does this do to the traditional goal of striving for excellence in teaching or even to the distinguishing between good teaching and bad?

I have long held to the theory that the quality of teaching really can't damage, or improve the first class student, but a good and influential teacher can effect him significantly with respect to his "enthusiasm" for a field, or a subject, or with respect to his way of looking at the "law". I say "influential", because it is an example of the lawyer's mind at work in the classroom, whether as a philosopher, linguistic analyst, or bare technician (whatever that may mean), that is the real contribution that any teacher can hope to make. But, what that teacher does for the A, or A-plus student is of little significance compared to the possible impact he has on pulling the B man up the ladder towards A minus, or better, and dragging the C mind, by sheer example, inspiration, or what have you, toward the respectable horizon of the B's. And this is no small achievement. To take latent possibilities, or even latent impossibilities, and make them flower more fully than if left to nature and themselves alone, is, at least, worth the teacher's keep and deserves

some unwritten footnote to his local immortality.

Of course, in a school where there are few C's and B minuses in the student body, the art of hoisting by the bootstraps to more forward positions (however mixed the metaphor) may seem irrevelant. But the tearful fact in Canada is that we have plenty of C's and B minuses, and the Bell curve doesn't demonstrate that our A's are in surplus supply. I don't know how this really compares with, say, the first ten American law schools, from Harvard, Yale and Columbia in the East, to Berkeley on the West, but I have a strong non-nationalist suspicion (that may need correction) that, Professor Reese is used to stronger student bodies at Columbia, Yale and Harvard than he would find at McGill, Dalhousie, Toronto or the University of British Columbia. Again, it is a question of numbers. We are able to match the few at the top where, in both countries, there are equivalents in capacity, even if the proportions are different. And so, the Canadian teacher, and most U.S. ones as well, find their largest satisfactions in what they do for "Mr. Middle-mind", of which there are many, and not for "Mr. Highbrow", of which there are few.

This brings me to question whether Professor Reese is entirely fair in dismissing teachers and teaching methods, or to the dilemma of writing or being a "public figure". "Big shot" teachers, who pontificate on a variety of subjects in or out of their own field, even if sometimes they have limited credibility among their peers, often provide a high profile for the school and also shine in the eyes of students, if the classroom performance matches their TV reputation. As to writing, I suppose it is an advantage to a Dean to be able to read without envy what a colleague has written and it is an advantage to the class to know that however pedestrian the lecturer, or uninspiring the classroom performance, there are, strangely, some felicitous phrases and valuable insights in his prose. Respect comes from many sources and no matter how bright the student body, a dull lot of teachers on the one hand, or an arid, or unreadable generation of scholarly output on the other, isn't likely to command a bow. To, therefore, downgrade the teacher as performer, or the teacher as writer-scholar and to leave the "greatness" of the school to be a product of rows of bright students and floods of graduates with happy memories, is to give each class of novices a place in the history of the school and the profession. There may be a more equitable distribution of the plaudits.

It is arguable that the "ham" performer, who catches their

drowsy first-year attention, or the acute analyst, who helps "to lift the scales from their eyes" — to quote a student emerging from his first bout with the common law — represent one-half of the beating heart of the school, even if the students are the other. It is even doubtful whether a university, or law school could function without some teaching; it is clear that it could not function without students. Even this last statement needs qualification in view of the number of non-teaching centers that provide high levels of brain products without a student in sight. Or, perhaps, we need to redefine who are "students" since every teacher worth his or somebody else's salt is always a student as the cliche has it. But a teacher learns from his class, as Professor Reese recognizes from the happy, or unsettling circumstance of discovering so often among the young beards below, a better mind than one's own.

It is surely this interaction of minds, teacher-student, student-student, and teacher-teacher, in a congenial setting, competitive but not a rat race with a suitable balance between work and leisure, and growing insights about the relationship of "principles" generally stated and life as generally lived, that combines to make a good legal education something more than the simplistic preparation for practice that the Bar once claimed was the primary goal.

Nor am I entirely happy with Professor Reese's nonchalance about the case methods that the now "classical system" stands for. Straight lecture can be brilliant in the hands of a performer, or dull to the point of sedation by inartistic pedantry, but even at best there is always the risk that analytical self-education will never be experienced by the student who has not had to prepare and be called upon in open class. The case method, whatever its variants, is, at least in the first year and perhaps in the second for basic courses, the instrument of choice for compelling the student to eschew the temptations of rote for the harder slugging of thinking about language and then recognizing alternative meanings and policies behind them.

The McGill national program is, after ten years, a good model for the endless debate over teaching methods. There are just as many good students on the Civil Law Ladder as there are on the common law side and many, of course, climb both toward the double degree. But the impression remains among many teachers and students that the analytical demands from the majority of common law courses and teachers may be more severe than those on the civil law side. Although cases and aspects of case methods are in vogue among

civilians, the approach to "principles" through the teacher, where the case becomes more illustration than raw material to be shaped by classroom dialectics, possibly gives the student a different perception of law in the making, the alternatives that language offers, and may pre-dispose him to taking too much for granted from book, from teacher, from language itself. Now, this is probably overstating it because brains are brains and at the end of the road in professional life the civilians match their common law colleagues at the Bar, or in negotiations, or elsewhere where life is hard and the game is for keeps. Moreover, there are few common law teachers who give that sweeping sense of system, or architecture that is in the grand tradition of civilian scholarship.

But I cannot ignore what were my own personal experiences about the teaching process. The ideal, of course, would be to have enough coverage, which the lecture method provides, with enough analytical growth in the student, which socratic devices, however used, hopefully offer. The debate will never be resolved to anyone's satisfaction, except to assert generally that teaching which provokes is better than teaching which informs, at least for beginning law students.

It is only since the nineteen fifties that legal education in Canada began its modern move toward standards that would match the kind of conditions Professor Reese has so modestly, but acutely set out. Although Canada has had superior scholars and teachers for three generations, a body of scholarship that is meaningful only begins to emerge in the past twenty-five years. The number of teachers that are able to move from philosophy to technique, from the world of the reported case to the world of the unreported battle, are far greater now than they were when the end of World War II launched the real beginnings of modern legal education in Canada. However, I doubt whether we shall ever put the question or give the answers in quite the same way that Professor Reese has done with his Columbia-Yale-Harvard model, shaping a heavy subject with his lighthearted view.

Curiously, it is in his remarks about clinical training that some special differences may seem to rise between the Canadian and American law school traditions. We are still closer to the working Bar, technically and administratively, than his good American Law School. The articling process for admission to the Bar; varieties of practice-oriented courses in the curriculum, as well as those run by the Bar in the Bar Admission Course systems, and the intellectual

links between these and law faculty courses; the summer employment in law firms of first and second year law students; the continuing high percentages of practitioners teaching practice-type subjects; and the governing administrative links between the Bar and the law schools of several provinces, all give a touch of professional association between Bar and law school that does not seem to have serious parallels in the United States among the more prestigious schools. Columbia and Yale probably would not willingly, or happily, accept such links that still operate in Canada.

As to graduate students, we are not as snobbish as Professor Thomas Reed Powell of Harvard, when he once said that the Harvard Law School undergraduate generally was much better than any post-graduate group. I doubt whether the same stern view applies in Canada, but we, too, have our double standards when it comes to the "third world" and so do Yale and Columbia.

However, there is a Canadian view — both in Quebec and the common law provinces — that is not yet entirely satisfied with our standards or progress, yet clearly these are better, overall, than under the unlamented, domination of the Bar situation thirty or even twenty years ago. At the same time, we are not so completely the lawyer-drenched society that is the United States. Our politicians are not so heavily drawn from the profession and the Courts not so deeply enmeshed with varieties of social policy and their initiation. Among "standing", consumerism, the constitution etc., the United States court system is unique in its reach and appetites. Given the somewhat more limited range and role of the lawyer and courts which characterizes Canadian social thought and action there will be subtle differences to shape our respective legal futures, the law schools no less than any other sectors of the total legal structure.

But we have learned from Professor Reese the advantages of a good-natured humility, even when the temptations of glory are almost irresistible. We certainly have no more and possibly less to shout about in Canada as law schools go and, therefore, our own humility may need occasional nourishing. In the present crisis of Canadian unity lawyers and law schools will have a good deal to say, certainly about the Constitution and maybe about the deeper issues of "community" as well. Professor Reese gives me some hope that the right kind of lawyer and law student within the traditions he so gently has explored, may have skills to offer that are particularly relevant to the political and social framework of the Canadian future.