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What makes a law school great?

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For reasons which I find totally elusive Dean Ronald Macdonald has invited me to comment upon Professor Willis Reese's reaction to the conundrum: What makes a Law School great? Professor Reese unconvincingly prefaces his remarks with a protestation that he has "no idea", and he equally unconvincingly punctuates those remarks repeatedly with the phrase "I don't know". Anybody who is acquainted with Professor Reese or his work will neither be surprised by, nor pay the slightest attention to, this display of genuine modesty. It is, however, to the question "What makes a Law School great?", not "What makes Professor Reese great?", that I am required to address myself.

It seems improbable that the author of "Twelfth Night" intended his proposition, that "some are born great, some achieve greatness, and some have greatness thrust upon them", to be fully applicable to Law Schools. The notion of birth is not even metaphorically apt, although perhaps some modern Law Schools may not infelicitously be described as abortions. Again, such is the blend of envy and distaste with which most societies regard their lawyers that any suggestion that the latter are at risk of having greatness 'thrust upon' their spawning grounds is not to be taken too seriously. There remains the question: can a Law School nevertheless "achieve" greatness, and, if so, how?

In the course of his remarks Professor Reese considers the significance of the building, the quality (using this term neutrally) and idiosyncracies (using this term euphemistically) of the Faculty, the calibre of the students having particular regard to their immunity to the effects of atrocious teaching, and, of course, the bloated prosperity and loyal sycophancy of the alumni. Perhaps I put a gloss on Professor Reese's words, but his actual comments on these phenomena are not open to rational contradiction: by this I mean that I agree with them.

On another matter, however, I have the misfortune to take issue with him. Is Professor Reese really being serious about the role of the law library? He mentions it seemingly only as an afterthought and as "a place where students can read the materials and are not miserable looking up the problems!!" In my judgment it would be

difficult to over-emphasize the importance of the size and quality of a law school's library facilities. Without an excellent law library no law school can ever hope to achieve greatness. A good library tends to attract a good faculty; a good faculty tends to attract good students; good students tend to become good (i.e. rich and generous) alumni. Again, I find the notion that students read only "the materials" difficult to reconcile with greatness. So, too, any implication that a library is primarily a place for students: indeed with the spread of literacy the time may come when the watchword striking terror into the hearts of law professors will be "*Read or perish!*"

An outstandingly good law library is then an indispensable extravagance for a school that aspires to greatness. A different but related factor making for greatness: it is a distinct advantage for a school to have a dean who is capable, not only of mastering simple propositions, but also of getting his priorities right. Such a dean, when told by his university's financial overlords that he must make major budgetary savings, will, of course, first explain to these power figures that such a course of action would be unthinkable. His arguments will be unoriginal, unanswerable and almost certainly totally ineffective. He must then be clear-headed and resolute. He must dismiss faculty, deprive students of all luxuries and some necessities, convincingly mislead alumni and even contemplate a modest reduction in the size of any increase in his own salary, — all this — before he presumes to irritate the librarian (often a sensitive man) with requests for economy. Harm done to humans is transitory for they are mortal. Damage to a book collection can be permanent and irreparable. Those who get maimed will surely be understanding and uncomplaining if they really have the interests of the school at heart. If they do not, there is no place for them in a GREAT law school.

Professor Reese, like many a distinguished expert witness, was cross-examined. The first question: "Does the size of the school make a difference?" This problem has been debated many times before, but to my mind there has often been a failure to consider separately the merits of three different, if obviously interrelated, questions. One concerns student numbers, another relates to the optimum size for a faculty and the third is as to what is an acceptable faculty/student ratio. The starting-point of my own thinking is the feeling that a small faculty can be a disaster. There are several reasons for this danger. I will mention only one. For a

person's potential as a scholar and as a teacher to be developed to the full it is almost imperative that he should, for anyhow a large part of his working life, be in day-to-day contact with another or other experts in his own field of interest. Some feel the absence of such contacts more than others: but those who least feel that they miss them are often those who in fact most need them. Lacking the intellectual stimulus of such associations a small faculty runs the risk of degenerating into a seedy inbred rump of isolated and self-opinionated local "experts" in different fields. Given the range of subjects taught in modern law schools there is thus a premium on having a faculty of not less than say, 50 full-time members. The faculty/student ratio is itself obviously very important; and, indeed, it is probably the most significant limiting factor on student numbers. The main countervailing factor is financial and stems from the student-fee element in the budget. In a school at which endowment income is not adequate to meet the short-fall, I would unhesitatingly, if reluctantly, advocate inflating student numbers so as to sustain a large faculty rather than risk the perils inherent in a small faculty situation.

Next question: "What about the graduate program?" I will content myself here with a collection of simple assertions. No graduate program at all is certainly better than a poor or indifferent one. No graduate program is probably also often better than one that can with some plausibility lay claim to modest intellectual respectability. Already too much graduate work is being laboriously and shoddily carried out by earnest hard-working mediocrities. Graduate programs should be ruthlessly elitist. Graduate work is for the A and A "type" student: he or she should be mercilessly encouraged and monstrously bribed to undertake it. Others should eschew academe and focus on the fleshpots. A graduate program is not an appropriate vehicle for the indulgence of faculty members' intellectual missionary zeal. It is a grievous error to regard a graduate program as a public relations exercise: poor (although often pretentious) graduate programs have probably done more than any other single factor to tarnish the reputations otherwise first-rate Law Schools.

In response to a question about the case method Professor Reese observes: "It's about the most time-consuming method you could devise". May I, as an Oxford tutor, venture to disabuse him: the Oxford tutorial system is infinitely more time-consuming so far as the teacher is concerned. In its historic and still very common form

it involves the tutor in teaching his pupils one at a time. With an excellent tutor and an excellent pupil, this is (I am told by excellent tutors) excellent. Unhappily, such conditions seldom obtain. At all events, the system is exorbitantly expensive of the tutor's time.

To assert the absolute superiority of any teaching method would be palpably absurd. There are simply too many variables. These include, to name but a few, the skills, techniques and personality of the teacher, the size of the class, its average calibre, the range of calibre within the class, the stage in legal education which it has reached, the nature of the subject and its inherent pedagogic potentialities. Moreover there is no catalogue of teaching methods. The possible combinations, permutations and variations are far too numerous for useful classification except in very broad terms. As Professor Reese understates, "it's obvious that there is no one socratic method." Any Harvard-pickled law professor who finds himself eye-ball to eye-ball with Socrates in the next world will be deserving of our pity if not our sympathy.

Professor Reese entertains no illusions about the difficulties of "clinical" legal education. Nor, I hope, do I. The implied analogy is obviously with medicine. I have therefore always found it somewhat perplexing that its enthusiasts should seek, to quote Professor Reese, "to get the students into something at the beginning." I am advised that it is not usual in medical schools to encourage beginners, with no knowledge of anatomy, physiology, bio-chemistry and the like, to undertake "practical exercises."

Question: "Would the public think that lawyers were any good if they were in Law School for only two years?" I tend to think that the public would not think that they were any good. I tend to think, too, that in this the public would be largely right. I also tend to think that the public would think no differently of many lawyers had they spent not two but twenty years in Law School, — and again *vox populi, vox Dei*.

Finally Professor Reese faced the crunch question: What ought the "major purpose" of a Law School to be? A broad answer could be: to train lawyers. But this provokes a further question: to train lawyers for what? What is expected of a lawyer? It is at this point that two clear divergences between the North American and the English situations manifest themselves. First, the practice of law in North America embraces more than does the practice of law in England. Much work on tax law is, for example, handled in England by accountants rather than by lawyers. A considerable

amount of corporate law work is dealt with by business and commercial consultants. The lawyer is less a person of immediate resort than he appears to be in North America. English clients are less inclined to treat their lawyers as general advisers. The role of the English legal practitioner is thus relatively a restricted one, and this is reflected in (and reflects) his training.

Secondly, one has the clear impression that in North America (and perhaps especially the United States) the study and practice of law is a much more well-worn route to success generally and to fame (or notoriety) in public life than is the case in England. It occurs to me that this could be a daunting thought for the North American law teacher as he confronts his class, — especially if the venue is a GREAT law school.