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Western in the 1980's

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I. *Introduction*

When one is asked to write on the development of one's faculty over a decade, the most difficult part of the task is simply to determine where to begin. After some thought, I came to the conclusion that the most appropriate starting point is the statement of the objective that appears in the "Dean's Message" contained in our Calendar. We state that our objective is "to offer students a liberal education through the critical study of legal and related materials in preparation for the private practice of law, for government service and for kindred vocations." In short, we wish to provide an educational setting that emphasizes learning *about* law, rather than simply learning the law. This statement will be the focal point of this article.

The timing of the request is appropriate because my term as Dean is coming to an end. The myriad of administrative and personnel matters which continually find their way to the dean's desk (all of which are marked "urgent", and few of which seem as important in retrospect) tends to limit perspective. The writing of this note affords me an opportunity to step out of the trees and look at the forest. For that opportunity, I am grateful.

I was given two parameters for the article. First, I was to give an overview of our Faculty with sufficient detail to satisfy the curiosity of any reader who found his way by the first paragraph. Second, the article was not to be long, learned, or anything requiring extensive research. I took this second caveat as a vain attempt to limit vague philosophical ramblings of an outgoing Dean, a state of affairs, I am afraid, to which so many Deans are reduced towards the end of their terms. I shall try to follow the first limitation, but I fear that I shall take some liberties with the second, for I feel that it is impossible to discuss "Law at Western" (or anywhere else for that matter) without some context.

II. *Underlying Themes of the Law School*

In 1885, the London Law School, affiliated with the University of Western Ontario, was established. Four years later, with the introduction of the mandatory course at Osgoode Hall in 1889, the London Law School perished. Seventy years later, Western's Faculty of Law was established. I refer to Western's abortive attempt to establish a law school

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100 years ago because some of the tensions present then continue to exist today. There are at least three, and probably more, underlying themes giving rise to present day tensions that should be recognized.

1. *Intellectual Versus Professional Perspectives*

The first theme is the tension between the “intellectual” law school and the “professional” law school. I do not propose to examine whether there truly is a difference between the “intellectual” and “professional” schools. It is the tension between, and not the validity of, the differing viewpoints that is the interesting feature. This tension is generated, in part, because of the many constituencies to which a law school must respond. Perhaps more than any other Faculty in the university, a Law Faculty has different demands placed upon it by various groups. On a professional level, the Faculty must be responsive to the legitimate aspirations of its students (the majority of whom still plan to engage in the private practice of law), the Law Society or other accrediting body, and the local, provincial, and national bar and bench. On an academic level, the school has to develop within the community of legal scholars, both national and international, and within the broader context of university scholarship. A third important constituency is government, including those governmental bodies directly concerned with legal education and those agencies which seek assistance from legal scholarship. Finally, the private sector and various private interest groups are turning more and more to Law Schools for advice or research. All of these groups will have a subtle or not so subtle impact on curriculum or research directions of the Faculty.

I believe that most legal academics are aware of the tension between the “professional” and the “intellectual”, and recognize the constituencies to which I have referred. Fewer think of the impact that the rapid expansion of Law Schools, both in terms of numbers and size of faculty, has had on the attempt to accommodate both views of the law school.

In the late 1950’s, at least in Ontario, many law faculties came into existence. During the 1960’s and early 1970’s these schools doubled in size and then doubled again. Although it may have been possible to limit the number and size of law schools during those decades, that approach was not taken. Because of the increase in the numbers of both faculty and students, it is at least arguable that the “professional” school achieved limited dominance over the “intellectual” school. Indeed the “Arthur’s Report”, *On Law and Learning*, in the early 1980’s, could be viewed as an effort to recapture lost intellectual ground.

Law schools have responded to the Arthur’s Report with differing degrees of enthusiasm. Western has adopted a conservative approach; it sought changes at the margin, not at the core. Thus, for example, we have

retained a limited "core curriculum" of required courses in second and third years when many other schools dropped this concept. At the same time we have, within the constraints of a limited budget, attempted to develop more interdisciplinary, empirical, and theoretical courses.

2. *The Impact of Feminism*

A second underlying theme that is perhaps unique to the 1980's is the impact of feminism. There is no doubt that every law school has had to adjust to this phenomenon, whether in terms of hiring policies, course offerings or interpersonal faculty/student relationships. Again, one could respond to feminism by embracing its theories without reservation or by adopting a gradualist approach where change occurs at the margins; change by accommodation, not revolution. Although Western has a strong record in its hiring and promotion of women faculty, our approach has been more conservative than radical, for what I think are good reasons.

If one accepts the premises of feminism in their entirety, the feminist movement, by its own terms, should become less important as it succeeds. If equality of treatment, recognition, and acceptance of worth (goals with which one can not quarrel) are achieved in the broadest and most fundamental sense, feminism will have lost much of its "raison d'etre". However, a school which adopts feminism for its own sake, without carefully determining the results that are to be achieved, may do itself a disservice. A simple example may suffice. A policy of hiring feminists for the sole reason that the appointees are feminists, without regard to relative quality of candidate and without regard to the needs of the institution, will lead to problems in the long run. A school which hires the best available academics who support the legitimate goals of feminism gains valuable colleagues. A school which hires other individuals simply because they are feminists will suffer. These appointments may be with the school long after the movement has run its course. For these reasons, Western has adopted a policy of first looking at the quality of the applicants and then looking at the needs of the school. Preference will be given to under-represented groups only when these other factors are relatively equal.

3. *Law School Underfunding*

A third theme that has been with us for years is the underfunding of law schools and, indeed, all post-secondary education. There is little that is more depressing than preparing an academic plan for the faculty (and at Western such a plan is prepared annually, with a major plan prepared

every three years) which lists all of the initiatives that one would like to take and setting out what can reasonably be achieved with the resources available. The halcyon days of the comparatively rich 1970's are gone, perhaps never to return. Financial restraint forces hard choices. For example, our faculty members have taught in many other faculties, including medicine, nursing, social science, arts, engineering, journalism and business, and although we still teach in many of these faculties, limitations on our budget have forced us to review these commitments. The University, as a whole, is a very fiscally responsible institution, i.e., no deficits, and as a result, fiscal restraint has limited our ability to move decisively into new areas if we are to protect the central mission of the Faculty, which is to provide the best possible legal education.

When one looks at all three themes, one has to conclude that we have taken a conservative path. Whether this has been a conscious choice, an intuitive choice, a choice forced upon us, or simply one reflective of our environment (the University and the City of London are innately conservative), our underlying approach is this: Whatever we do, do it well and reinforce success. The question then becomes what is it that we do well, and the answer to this question brings us to the details of our programmes, our research, our student body, and our faculty.

III. *Law School Curriculum*

Our first year curriculum is similar to most other Ontario schools in that the students are required to take Criminal law, Torts, Constitutional law, Contracts, and Property. However, there are two distinguishing features. First, each one of the students will take one of those substantive courses in a small group (no more than 16 students) assisted by two teaching assistants and one professor. Within the framework of the substantive course the student develops the skills usually associated with a legal method course, e.g. library skills, legal writing, mootings. The second feature is the Legal Theory course, which is also required in the first year. That course exposes students to different schools of legal thought and analysis so as to provide different conceptual frameworks for the substantive principles taught in other courses. In second year the student must take Evidence, Income Tax, Administrative law, and Company law. In the third year the required courses are Civil Procedure and Trusts. As well, the student must take one course requiring a substantial paper and one course from a grouping of courses in jurisprudence or international law.

In addition to the usual courses found in a law school curriculum, which include a substantial clinical component, there are several specialized programmes. The LLB/MBA programme operates jointly

with the School of Business Administration and permits students to obtain both degrees over four years. In order to remain in the programme, the student must remain in the top $\frac{1}{3}$ of the class in both individual programmes. The programme has been a resounding success. The LLB/MA in Law and Philosophy permits the student to obtain the LLB degree and the MA degree in philosophy over four years. This programme is run in conjunction with the Department of Philosophy. The *Diplome de Français Juridique* is a three year programme in law offered with the cooperation of the French Department. The programme permits the student to obtain facility in French and requires, in addition to specific French courses, attendance at the *Trois-Pistoles* summer immersion programme. In the third year the student spends one term at Laval Law School under our exchange programme with Laval. We anticipate an extension of this programme with Laval so that a student who has gone through the exchange programme can remain at the opposite institution for an additional year and end up with both a civil law and common law degree. We have also a limited specialized programme within the LLB curriculum, the tax option, which enables the student to concentrate courses in the tax area. Although Western does not now offer a graduate programme it is very likely that our first graduate programme will specialize in taxation.

We have two active Centres within the Faculty. The oldest is the Canada-U.S. Law Institute which was founded in 1976, in conjunction with Case-Western Law School in Cleveland. The Institute promotes faculty and student exchanges and encourages research, particularly on matters of concern to the two jurisdictions. The National Tax Centre was created in 1982 and conducts tax research at the highest policy level. Professors associated with the centre have acted as consultants to the Canadian, New Zealand, and Australian governments. The Centre sponsors a major tax conference each year and specialized conferences have been held in Canada, Europe, and the United States.

The Faculty is also active in continuing education programmes for the practicing bar and the general public. For the last several years our two week course in "Law for Journalists" has attracted editors, reporters, publishers, radio and T.V. journalists to our faculty each spring. In recent years, with the opening of the Bar Admission Course in London, several of our Faculty have assisted in the teaching of particular subjects in the Bar Admission programme.

As I mentioned earlier, members of faculty also teach in other faculties in the University so as to provide a legal perspective for non-law students.

For the last several years we have run week long seminars in legal history and legal philosophy during the summer months. The instructors

in these seminars are drawn from the leading legal historians and legal philosophers in Canada, the United States and Great Britain. The purpose of the seminars is to expose legal academics with an interest in legal history or legal philosophy to the best academics in the field and to nurture the development of these interdisciplinary areas.

IV. *The Student Body*

The quality of our student body is very high. We admit approximately 150 students into first year and graduate approximately 140 students each year. Over the last few years we have received as many, but often more, applications than any other law school in Ontario (based on a ratio of applications to places available). Our admission criteria primarily involve consideration of grade point averages and the LSAT score. The records of our applicants compare favourably with other Ontario Law Schools. We draw our students from across Canada. About 13% of our students come from southwestern Ontario, 30% from the Metropolitan Toronto area, 27% from elsewhere in Ontario, and 30% from the other provinces, with the bulk of the last group coming from B.C., Alberta and Quebec. In most years, each province is represented in our student body. We do not have a significant number of international students because we do not offer a graduate programme.

Upon graduation our students are received favorably by prospective employers. Over the past few years our graduates have not had difficulty in obtaining good articling positions and, perhaps because of our orientation to the business, commercial and tax areas, our students are sought by the larger metropolitan law firms. A number of our students go on to do graduate work at American and British institutions and a smaller number engage in postgraduate studies at Canadian schools. Others go on to clerk with the Courts at the senior level.

V. *Research and Faculty at Western*

The research record of the Faculty is impressive. For example, from 1964 to 1984, our faculty authored or co-authored 222 books, and 879 articles, a record that is surpassed by no other faculty in Ontario. Since that time the pace of research has continued. Since 1982 we have averaged well over 50 publications a year.

Our research can be divided into three broad classifications. Fundamental research brings a critical perspective to bear on existing legal doctrine and proposes reforms where warranted. Its importance is in the building of a coherent body of Canadian jurisprudence. Most often this type of research results in a book or treatise that is used by other

academics, the Bar, and the Bench. My feeling is that most of our research falls into this category.

Theoretical research builds on fundamental research and often involves empirical, comparative and interdisciplinary components. Economics, history, philosophy and political science play a major role. Our objective is to increase this type of research in our Faculty. Our recently inaugurated Canadian Journal of Law and Jurisprudence is an effort to encourage theoretical research, not only in this faculty, but across Canada.

A second journal in the same vein is The Review of International Business Law, a journal in transnational corporate and commercial law.

A third journal, The Canadian Family Law Quarterly, provides an interdisciplinary forum for the exchange of ideas among academics and practitioners in law, society, and mental health disciplines.

Applied research draws upon both fundamental and theoretical research in an attempt to resolve a particular problem. It is usually generated by law reform commissions, government agencies, and the private sector. Since it is usually funded research, and since University underfunding remains a serious problem, it is important to the school to continue to engage in a substantial amount of applied research.

The Faculty has a very good teaching record. In relative terms we are small when compared with other faculties in the University. Nevertheless, our faculty members have won one national teaching award, two provincial teaching awards, and three university teaching awards. These figures become more impressive when one notes that these awards were won in competition with all university professors and not simply law professors. Our student teaching evaluations consistently rank our faculty at the top of the list in teaching when compared with other faculties at our University.

Our library holdings are very good. We have in excess of 200,000 volumes with an adequate acquisition rate. Our library staff is very able and provides invaluable service to the faculty under the leadership of Professor Margaret Banks, our Law Librarian who, unfortunately, is retiring this year. Our library budget, including staff salaries, is in excess of \$1,200,000. However, library space is limited and hence we are in the process of raising \$2,000,000 for a library extension. To date we are about half way to our goal, which we expect to meet in this academic year. Part of these funds will be used to expand our computer laboratory which commenced operation in October, 1988. At the present time we have only 20 work stations and we should double this capacity.

The Faculty operates on a budget of about \$2,800,000. (excluding the library). Presently we have a full-time complement of 33 professors of

which 17 are full professors, 9 are associate professors and 7 are assistant professors. Nine faculty members are women. In addition, we utilize 18 part-time faculty who are, in the main, practitioners in London and Toronto. Over the last seven years our full-time complement has varied from a low of 30 to a high of 34. Although we have had to face a shrinking budget in relative terms, we have been able to meet our budget limitations because several senior faculty have resigned or retired over the last few years. However, the loss of some senior faculty has thrown a greater share of the administrative burden i.e., law school and university committee work, on the more junior members of faculty. Such a result is not desirable.

In brief, our school is being asked to do more with fewer net resources. In order to avoid serious retrenchment, the managerial skills, not only of the office of the Dean but of the entire faculty, will have to be finely honed. At the same time, managerial considerations cannot be allowed to overshadow the academic mission of the school. Maintaining the appropriate balance between "management" and the academic integrity of the school will be one of the major concerns of the law school in the 1990's. Western is not alone in this regard for it is my belief that virtually every law school will be faced with the same challenge.

VI. *Conclusion*

In summary, let me conclude as follows. Western's Law Faculty has made considerable progress over the last several years but there is still much to do and resources are scarce. Our approach has been conservative as we sought change at the margins and even with a sound conservative approach, if continuing government underfunding of post-secondary education is to be the scenario for the next decade, more and more shall we be forced to turn to the private sector for support. To obtain this support without sacrificing academic development of the study of law will require all of our skill.