

DEAN BATES AND THE MICHIGAN LAW SCHOOL

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FROM its opening in October, 1859, the Law School of the University of Michigan has been fortunate in the continuity of the service of the members of its faculty. The original faculty consisted of that remarkable trio, James V. Campbell, Charles I. Walker and Thomas M. Cooley. Instruction was given by lecture, and almost continuously for twenty-five years those three continued to expound the principles of the law to the students who flocked to the school.

At the outset, the least known of the three was Thomas M. Cooley. In time he came to occupy a foremost position, not only on the faculty of the law school, but also among jurists and legal scholars in the English-speaking world. First as secretary and then as dean he was the real leader during the first twenty-five years in the history of the school.

During the next decade the office of dean was filled successively for short periods by Charles A. Kent, Henry Wade Rogers and Jerome C. Knowlton. Though their terms as dean were short, both Kent and Knowlton served as members of the faculty for many years. In 1895 Harry B. Hutchins, who had previously been a member of the faculty for a short period, began his fifteen-year service as dean, to be followed by ten years as President of the University.

To these notables Henry M. Bates, in 1910, succeeded in the office of dean. He had already served for seven years as a member of the faculty, and it was only his birthday and a retirement rule of the University that put an end to his active incumbency in June, 1939. His term of service, therefore, covers almost half of the whole eighty years measuring the life of the Law School, and he was dean for more than a third of that period. There have been few, if any, heads of the law faculties of the leading American law schools who can equal this record for length of service, and his achievements for the progressive development of the school are a match for the length of his leadership.

The history of the school, known at first as the Department of Law, and recently as the Law School, falls into three periods of approximately a quarter of a century each. During the first period the faculty consisted of judges and practicing attorneys who took time out of their busy professional lives to give instruction to the law students. Two terms were required to take all the lectures and graduate. The school

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term was six months of each school year. The instruction was by lecture, with occasional oral quizzes of the senior class only.

There were no examinations for admission to the Department, no entrance requirements, except as to age and character. As to these the student's word was the evidence required. A good knowledge of English was recommended. Professor Cooley grew dissatisfied with these conditions, but for long the Regents and the other members of the faculty seem to have been content. For many years no other law school required more. The students could sit at the feet of great men in the law and, if they chose, drink at the fountains of knowledge of the wisdom pouring forth from the lecture desk, but the actual requirements for graduation and admission to the bar were nominal.

This is not to belittle the opportunities that were here. The professors were men learned in the law, Judge Cooley one of the most learned of his time. Out of the lectures he delivered to the students grew his great works on *Constitutional Limitations* and *Constitutional Law* which are classics and which give him a position of authority wherever the English law prevails. The law library was very limited, but it was open to such students as chose to resort to it, and from this system graduated not a few who have achieved high position on the bench and at the bar. In many parts of this country, particularly of the West, Michigan was long known chiefly for its Law School.

The second period was one of many changes. For the first time men were added to the faculty who devoted their whole time to teaching. The terms were extended to nine months each. Requirements for admission were set up, some written examinations were given, the study of certain text books, with recitations and examinations, was required of the first year class. After 1895 the curriculum required for graduation was extended to three years, and collections of selected cases to illustrate and supplement lecture or text book began to appear. Before the end of the second period most of the members of the faculty were full-time men, the so-called case system had been adopted in a number of courses, and written examinations were required for all credit courses. Early in the second period the requirements for admission to the Department were greatly increased, and at the end of this period it was announced that a preliminary year of college work would soon be required for admission to the Department of Law. During the last seven years of this second period Professor Bates was a member of the faculty and an active participant in the move to stiffen requirements for admission and for graduation. He had been the first to adopt the genuine case system in a class in the Michigan Law School.

In this connection, the enrollment figures are interesting. At the opening of the Department of Law in 1859, there were those who predicted that the professors would lecture to empty benches. The facts proved quite otherwise. Almost immediately the enrollment in the Law Department became greater than that in the Department of Literature, Science, and the Arts, and for many years the Reports of the President of the University called attention to the fact that this was the largest law school in the country. For a dozen years after the opening of the Department it was still uncertain whether the Harvard Law School, which had opened more than forty years before Michigan, would survive the case system which had been introduced by Langdell in 1871. Measured by enrollment figures, Michigan was the leading law school of the country in the first half century of its life. Just at the close of this second period the Department of Law at Michigan reached the highest enrollment of its history, 930 in 1909-10. This was not an unmixed blessing, and there has been no desire since then again to reach such a figure.

In 1910 Dean Hutchins became President Hutchins and Professor Bates became Dean Bates. With this sketchy background of the first and second periods of its history we may now consider the third period in the development of the Law School, the period under the leadership of Dean Bates and just closed with his retirement.

In the matter of enrollment the School has now settled to a student body of between 600 and 700. This is no accident, but the result of a definite plan to restrict the quantity and improve the quality of the student body. There may have been, in prior periods, prospective lawyers enrolled who had equal ability to any of the present enrollment, but there has been an extensive elimination of the less able and less well prepared candidates, with a great resulting improvement in the quantity and quality of the work that can be demanded and secured from those who are admitted. In this Michigan has been but keeping step with other first-class law schools of the country. There is a general recognition of the fact that the need is not for more, but for better lawyers. It is also recognized that much more effective work is possible with smaller sections. Satisfactory discussion is difficult, if not impossible, in classes of several hundred students, the size common in former days.

However, in restricting the enrollment, Dean Bates has had in view something more important and fundamental than limiting the size of sections. Not every man, even of ordinary intelligence, is equipped by nature for success in the practice of the law. To the man

who is not legally gifted, there is a needless waste of time and money in spending one or more years studying law. Moreover, the presence in the class of such men is a drag on the whole group. It must be admitted that no infallible test has been discovered by which it may be in all cases predetermined whether one is fitted to become a lawyer. There has been much study in the field of mental and occupational tests, and Dean Bates has been an interested student of the various schemes by which it is proposed to find in advance the aptitudes of students seeking to prepare for their life's work. Up to the present the most reliable single indication is found in an intelligent appraisal of the high school and college record of the candidate, read in the light of his hereditary and environmental circumstances. Here is where his long experience has given to Dean Bates an extremely valuable guide in passing on the credentials of would-be students in the school. The result has been a steady and marked improvement in the quality of the student body, which is continually shown in the success of Michigan graduates in bar examinations and in their practice as lawyers. The later achievements of the students, together with the quality of the faculty which the Dean has gathered around him, have been mainly responsible for the high standing of the school of which he has been the head.

One of the effective ways to test the fitness of the candidate and to improve his quality upon admission to the bar is to improve the scholastic training and maturity required before the study of the law begins. Some of the less fit will not spend the added time and effort if entrance to the profession is made more difficult, some will be weeded out in the prelegal years, and those who do persist will be able to do more and better work in the study in the law school, and thus at the outset of law practice be prepared to render better service to their clients and the public. At the opening of the Department of Law and during the whole of its first period, not even successful completion of a high school or a grammar school course was required as evidence of intellectual talents and training adequate for successful study of the law.

At the beginning of Dean Bates' term in office, it was announced that in 1912 and thereafter candidates for admission to the Department must present a certificate showing the completion of a year of college or university work in an approved institution, and that within a reasonable time after 1912 a second year would be required. Gradually further advances were made, and since 1928 the Law School has been practically a graduate school. The successful completion of a college course is a helpful, though, of course, not an infallible guide to determine fitness for law study and practice. Those only are admitted as candi-

dates for law degrees who have been graduated from an approved university or college or who have been admitted to certain combined curricula which permit the shortening by a year of the course for earning the arts, engineering or business degree and the degree in law.

And not all college graduates are admitted. They must have had "a uniformly satisfactory record of scholarship." Here the skill of Dean Bates, derived from long experience, has been used to separate the wheat from the chaff, so as to admit to law study only those whose previous achievements and discoverable talents promise well for success in the law. An increasing number of questionable candidates have been rejected. The legal profession is in a very special sense one of public service, and the right of the public to protection from unfit lawyers is put before the right of each individual to try to be a lawyer. There are, of course, a considerable number of law schools pursuing this policy of strictly limiting the admission of students as candidates for the law degree, but it is to be feared that there are still many that are reluctant to reduce their size and income by this self-denial.

But an able student body and a fine faculty would not alone have been enough to enable Michigan to maintain its position among the outstanding law schools of the country. The years covered by Mr. Bates' term of office as dean have witnessed the most rapid and complicated expansion of the law of all time. This is reflected not only in the many added subjects in the curricula of the good law schools, but still more in the subject matter of many of the subjects, both new and old. To realize this, one need only compare the present content with that of thirty years ago of such subjects as constitutional law, which has been the Dean's own special field, or taxation, or public utility law, or the law of business associations, or of labor relations. In these and other fields of the law there have been tremendous changes in social and economic conditions that have profoundly affected our laws and their application.

The better law schools have been awake to these changes and to their demands on the schools which are preparing the lawyers who must meet them, and if they are to serve society well, must meet them intelligently and sympathetically. In some law schools the teachers have added to their number men not lawyers who are specialists in such subjects as sociology and economics and have mixed in their curricula the usual law subjects and these related subjects taught by non-lawyers.

Dean Bates has been keenly aware of these problems, and for some years has directed the attention of his faculty to their solution. Long

studies have been made, reports have been drawn up, and there has been constant discussion in and out of faculty meetings of the wisest ways of solving them. He has felt, and with substantial unanimity his faculty has agreed with him, that these sociological and economic implications are inherent in and inseparable from all law and that their best presentation to the intended lawyer is by one trained in the law. The adequate law professor must be not merely a lawyer, but a sociologist and an economist as well. The law student not only needs instruction in these related subjects, but he needs it in every class hour and in every discussion of legal principles as these other subjects may be involved in the legal subject under consideration. One may study sociology or economics without much attention to law, but he cannot adequately study law without at the same time knowing and recognizing its implications as it is applied to the lives and affairs of men. The theory and practice at Michigan under Dean Bates favors for the law student a study of both sorts of subjects, not as separate courses, but as inseparable parts of one whole. Ideally, the student in his prelegal years should acquire foundation knowledge in these near-legal subjects so that in his law study he may be equipped to understand their implications.

This need that the law be taught, not as something static to be committed to memory, but as a living, growing part of the social organism was early urged by Dean Bates. In his report to the President in 1920-21 he said: "The naive, not to say primitive, conception of law teaching as merely the teaching, dogmatically, of the so-called leading principles, has long since become outworn and discarded by those at all well informed regarding legal education. Today the legal scholar and law teacher must study and teach law as it is, but also with the historical viewpoint and analytically. Further than that, he must today study and teach law functionally. He must ascertain and show how law is actually working." It is the law in action that must be presented to the student.

Later he referred to the legal web as only a part of the greater fabric of life in general from which it cannot scientifically be dissociated. "This seems to point strongly toward cooperative study by experts in law and in the other fields affected, if we would attain a scientific mastery of juristic principles and the administration of justice." Still later he said: "Law is not merely a set of arbitrary rules, but rather a schematic plan, designed to enable people to live and work with the greatest effectiveness and the greatest degree of freedom, consistent with order. And a legal order which would subserve

these purposes must be studied and developed in relation to many other fields of knowledge. Economic, biological, historical, sociological, and other considerations, have, in fact, contributed to the body of law which we now have. It is the hope of the stronger law schools to be of service in making these underlying bodies of knowledge contribute more freely and more scientifically to the improvement of law." To do this without destroying or diminishing the present undoubted effectiveness of legal training will require great wisdom, jealous care and much experimentation. Still later he wrote: "This involves, among other things, not only a study of how the law is actually affecting society—that is, as to whether it works well or works poorly from the point of view of efficiency—but also as to whether it permits a healthy and progressive development of society, or, on the other hand, cramps and restrains, thus producing maladjustment. Our faculty has carefully considered the many problems involved in this increased emphasis upon the social implications of law, but has not deemed it advisable to make radical changes in the curriculum. We are working over the materials with which we have to deal, planning reorganized case books and a reorganized curriculum. For several years we have dwelt upon the social implications of the law in our regular class-room work, and particularly in certain fields the professors have undertaken to qualify themselves to comment upon so-called legal rules, principles and policies in the light which economics, sociology, biology, psychology and other disciplines shed upon them." This is not being done by revolutionary methods. "Law is a social science, and, in a sense, a political science. It belongs in both fields and it must be changed by the learning available in many fields of knowledge. But after all, the practice of law is not the practice of social sciences generally, and the main effort in any law school must necessarily be directed toward an enlightened examination and teaching of the law itself."

Again he notes that law teachers must make a systematic study of the fields related to their special topics and engage in cooperative work with representatives of scholarship in extra-legal fields. Whether this is better done, as in some schools, by including in law faculties men learned in some of the extra-legal disciplines, but not intensively trained in law, is still a disputed question. It may be better to develop a law faculty saturated with the learning of appropriate related subjects who incorporate extra-legal matter in the students' law books and bring the non-legal material into the classroom for discussion. This is the solution that has been adopted at Michigan.

A related matter growing out of this rapid expansion of the law in modern life has been the greatly increased number of subjects to be taught. In the first period in the history of the Law Department every student was supposed to listen to the lectures in every subject. Under the plan then in vogue this was possible in two terms of six months each. In the second period many subjects were added to the curriculum and much was added to the content of each. The term was extended to the full college year of nine months, and three years were required to secure the degree. Still, with minor exceptions, every student was required to pursue and complete the work in every course. This made it necessary for students at times to carry as many as eight subjects at one time, and to that end, many courses had to be attenuated to one exercise per week.

In the third period it was recognized that satisfactory courses required more time and that the student could not with most profit to himself pursue so many subjects at one time. It was felt that the graduate would be better prepared for practice of the law by a more intensive study of fewer subjects, and by an enrichment of material in the subjects taken. The law school could not, and should not, attempt to teach each student all the law. It should, so far as possible, ground him in fundamentals and develop in him ability to find and apply the law in lawyer-like fashion to problems in any field, whether he had previously studied it or not. He cannot know all the law, but once equipped with the needed skill he should be able to find the law he requires in any given case and apply it to the solution of the problems involved.

New courses were added and the content of the old courses was so increased that it would have required six years, instead of three, to complete the whole curriculum. The student is now graduated without any instruction in many courses of the curriculum, except as it may be incidental in the discussion of other subjects which he may have elected. This means that, with the exception of certain so-called fundamentals, the courses offered are elective, and each student may choose which he will select to make up the total amount of work required for graduation. This is not to say that Michigan has been different from many other law schools in this, but merely to call attention to the fact that this school and its faculty under the leadership of Dean Bates has recognized and met these changed conditions.

However, this is not the whole story. It is not considered a virtue that a student should graduate without detailed study of every important subject. It is only that time limitations and the multiplicity of

subjects make it impossible for each student in three school years to pursue a satisfactory course in every subject of the law of today. However, if some way could be found by which more subjects could be well-taught, such a way should be sought and discovered. In the old-time law curriculum there was much duplication. Often the same topics appeared in several more or less related courses. For several years Dean Bates has directed a study by his faculty to see how by a reorganization of courses unnecessary duplication could be eliminated. A merger and fusion of topics common to related subjects not merely saves time by dealing once and for all with the common elements, but it has the great advantage that it permits a comparative study of the various methods which have been evolved for meeting similar situations in the related fields. Very concrete results have been obtained.

Little that was useless has been found in any of the courses. Rather, progress has been made by bringing together related subjects so as to include in an integrated course the subjects that formerly were given in several separate courses. It was recognized, for example, that Agency, Partnership and Corporations all dealt with business relations. The separate courses were integrated into courses in Business Associations and the whole enriched by a course in Corporate Organization and Finance. Trusts, Wills and Future Interests dealt with closely related topics. They were put into courses in Trusts and Estates, and the subject of Fiduciary Administration was expanded and applied to living trusts as well as to those arising under wills. Damages was found to be so involved in other courses that as a separate course it was dropped. A course in Creditors Rights was developed to include matter that previously had required several separate courses, and the same thing was accomplished by a new course in Securities.

The most evident way to increase the number of subjects pursued by each student is to add a fourth year to the law curriculum. At different times opportunity was announced for such a fourth year for such students as might elect it. To this there was little response. Most students, especially the stronger ones, at the end of the eighteen or nineteen years of school life now required to secure the law degree were eager to turn from the school room to active practice. One may go stale in study from too long continuous going to school. Moreover, even four years of law study could not cover satisfactorily courses in every important law subject.

On the other hand, such has been the expansion in every field

of the law, so great the increase in the number of law subjects and in present-day demands upon the lawyer, that the old-time preparation for practice becomes every day more inadequate. Whether to add this fourth year is still a moot question. Several times in his reports to the President the Dean called attention to the problem, and now as he retires he leaves the faculty taking up active discussion and weighing the pros and cons. He has had to leave some things to be settled by his successors.

It has always been recognized that "a primary function of law schools is to afford a broad training for the practice of law." And yet, more especially in recent years, it has been recognized at Michigan that it is highly important that there be adequate provision for the development of law teachers, scholars and writers. To this end there have been increasingly large offerings of advanced instruction in all the great divisions of the law. Graduate instruction leading to the degree of Master of Laws or that of Doctor of the Science of Law has been offered, and a considerable number have been enrolled in the graduate courses. This is not just an added year, or years, of law study. It requires specialization in some field, or fields, of the law and individual research under the direction of members of the faculty. To receive the doctor's degree the candidate must have demonstrated his capacity for independent research in law by the publication of an original study. Some of the courses for graduate students have been open by special permission to undergraduates of proved ability.

Research and scholarly activity by the student body could not be very fruitful unless the faculty were engaged in scholarly pursuits. Dean Bates has given every encouragement to research by the members of the faculty, and each year has called attention to the fruits of that study as shown by publication of the results in legal journals or in law texts and case-books.

Outwardly the most striking thing that has happened to the Law School during the administration of Dean Bates is the acquisition of the magnificent group of buildings in the Law Quadrangle, the gift of an alumnus, Mr. William W. Cook of the law class of 1882. As early as 1920 the great need of a new law building had been urged by Dean Bates in his "Report to the President Upon the History and Development of the Law School During the Period from October, 1909, to July 1, 1920." In later reports this need was reiterated. Quarters for the rapidly growing law library were especially inadequate, and, by reason of their construction, were a dan-

gerous fire hazard. It may be doubted, however, if even in his wildest dreams he hoped to secure such a group of buildings as he was to see erected and occupied during his term of office. In 1925 the first group of buildings, known as the Law Club, was opened. It contained living quarters for 150 students, a great dining hall and, between the two, the lounge, a splendid social and recreation center. In 1932, there were added the John P. Cook building where rooms for 112 students are provided, and the William W. Cook Research Library, which splendidly houses the large and rapidly growing law library. The group was completed in 1933 by the addition of the administration and recitation building, Hutchins Hall. The whole constitutes a group of buildings unmatched in the world for a law school. Splendid architecture and enduring stone do not always insure convenience and practicability. That criticism does not apply here. For convenience of arrangement and adequacy of provision these buildings leave nothing to be desired. Moreover, the grouping together in these beautiful halls and living quarters of the students of the Law School imparts to the Quadrangle a stimulating legal atmosphere that is breathed by all, and is no inconsiderable contribution to the high aim of the school to prepare its men worthily to fill their places in the great profession which they are entering.

Reference has been made to "the leadership" of Dean Bates. That term describes his conception of his office. He is the leader, not the dictator, of the faculty, and, together with his faculty, of the student body. Matters of policy and choice of the personnel of the faculty have been brought by him to the faculty meeting for open discussion. So insistent has he been on this principle that he has on occasion brought to the faculty matters that they would have been quite content to have settled in his own office, with a saving to himself of much time and trouble. In his relations with his faculty he has believed in the democratic form of government, but he has not shirked the special responsibility resting upon him as the leader.

In his relations with his students Dean Bates has been a stern upholder of the claims of the law upon the time and devotion of the law student. He has had little patience with an attitude that is either frivolous or indifferent. But for the earnest student and his success, both in the law school and in his after days in practice, no sacrifice of time and trouble on the part of the Dean has seemed too much. The time he has spent in his office, the number of letters he has written, in the twenty-nine years of his deanship, not only for present but also for former students, would fill a very large space in any man's life. His

wide acquaintance with lawyers and their confidence in his judgment have enabled him to be of great service to large numbers of graduates in securing positions. For this and other reasons he has been at great pains to develop and strengthen intimate relations between the law school and the bench and bar. One of his major interests in the last year of his active service has been a movement to organize the alumni of the Law School with the aim of securing great benefit both to the school and to the members in the active practice of the law. He has believed that each has much to contribute to the other, and the movement has met encouraging and enthusiastic response from the alumni.

Although this paper is concerned mainly with his work in the Law School, it would hardly be complete without reference to Henry Bates' loyalty and service to the University of Michigan. He graduated from the Department of Literature, Science, and the Arts in 1890 and then returned to his home in Chicago, where he took his law course in Northwestern University and practiced law for eight years. But he was always a true son of Michigan. While still living in Chicago and in the practice of the law in that city he was prominent in Michigan alumni affairs. Since coming to Ann Arbor he has traveled thousands of miles, made hundreds of addresses, and talked "Michigan" to great numbers of groups of its sons and daughters in every part of the country.

Dean Bates has held many positions in connection with important legal movements, including the following: He has been a member of several committees of the American Bar Association, including for many years the position of Commissioner from Michigan on Uniform State Laws. During almost the whole of his term as dean he was Chairman of the Michigan Bar Association Committee on Legal Education. He has long been a member of the Legal Research Committee of the Commonwealth Fund, was for several years a member of the National Association Science Research Council and of the Executive Committee of the American Institute of Criminal Law and Criminology. In 1913-1916 he was President of the National Order of Coif, and in 1913-1914 of the Association of American Law Schools.

The work of an administrator is never done. One who takes his administrative duties as seriously as Dean Bates did finds his literary or professional production greatly limited. His is a scholarly mind and in his special field of constitutional law he has made himself a highly respected authority. He has written a number of articles for various legal journals, has published many constructive reports on the prog-

ress of legal education, has prepared and delivered addresses for not less than twenty state bar associations and many for local bar associations. In 1932 he delivered the Alexander Morrison Memorial address before the California Bar Association and in 1926 gave a course of lectures at the University of Virginia on the nature of our federal government. It is expected that these will be published in book form.

Dean Bates has said that it has been his aim to see developed at Michigan a more scientific study, a much more serious study, and a more conscientious devotion to legal performance, as compared with earlier periods—in short, an improvement in the “spirit” of the entire institution. All these things have been accomplished in good measure.