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LAW CURRICULUM: THE AMERICAN EXPERIENCE
—AND THE JSP PROGRAM AT THE UNIVERSITY OF CALIFORNIA,
BERKELEY**

Address at Yamagata University, May, 2001

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HISTORICAL AND SOCIAL SCIENCE STUDIES IN RELATION TO THE LAW
CURRICULUM: THE AMERICAN EXPERIENCE – AND THE JSPP PROGRAM AT THE
UNIVERSITY OF CALIFORNIA, BERKELEY

HARRY N. SCHEIBER

In the last four years, Japan has undertaken a sweeping revision of its program for the training of lawyers and advancement of legal scholarship, and in this connection the Japan Society for the Promotion of Science invited Professor Scheiber to present lectures at four Japanese universities in May 2001. One of these lectures was presented to a special convocation at Yamagata University on the future of legal education. The faculty of Yamagata University invited legal scholars from several other universities in the Tohoku region of Japan to participate in the convocation. The convocation's organizers expressed an interest especially in the subject of how the unique doctoral program at UC Berkeley, the JSPP Program, and the distinguished role of the Center for the Study of Law and Society, had been formed and how they were contributing to law teaching and academic graduate studies at UC Berkeley and American higher education more generally. The following paper is Professor Scheiber's inaugural lecture for the Yamagata convocation and, as noted, later published in translation in Japan.

Times of intense debate about reforms in our educational institutions are always highly interesting because they focus our attention so powerfully on “alternative futures” that we hope to create for ourselves and our institutions. But such times also serve as an occasion for careful reappraisal of past experience — that is, reappraisal of both the accomplishments and the problems that we have experienced in the institutions as they stand. Every university that is considering reforms has special circumstances to take into account, and everyone of them has unique strengths on which to rely in undertaking new departures. Sometimes forgotten, in the enthusiasm for innovations, is the fact that every university also has a historic identity to be honored and an institutional mission to be respected. Reforms, to be viable, must build upon the institution's historic base and be sensitive to preserving its best assets while embarking on innovative plans and enterprises.

I am very much honored and grateful to be able to join you today, on an occasion such as this, when Yamagata University, along with other universities in Japan, is considering the possibilities of reform and change. It is a pleasure to be able to join, in this honored role, in the process of your examining the merits of varying proposals for curricular reform in the light of likely changes in the Japanese legal profession and the structure of legal education.

The title of my talk, as it was invited, concerns the place of historical and social scientific studies in legal education; and I was asked to discuss, in particular, how the integration of such studies in the law curriculum has been accomplished at my own institution, in the

Jurisprudence and Social Policy Program (called the JSP Program) at the University of California, Berkeley's, Boalt Hall School of Law. I apologize to you if I should express what seem to be excessive enthusiasm in discussing the JSP Program. However, in the spirit of what American lawyers call "full disclosure" I must confess openly to my long association with the program as a JSP faculty member, almost since its founding in 1978, and my intense pride in its successes. (I have chaired the program for eight years in three different terms since 1982, and I was chairman when most of the present JSP faculty in it were appointed.) I hope that my loyalty to the JSP Program at Berkeley will not stand entirely in the way of some objective comments about its place in American legal education today.

In any event, I will not be restricting this talk only to Berkeley's experience. I would like to begin with a few observations about the general problem of how legal education in the United States has accommodated—or in some eras in the past, stoutly resisted—the integration of law instruction or research with scholarship in the academic disciplines outside law.

The study of law takes several forms. First, there is advanced legal scholarship, as it is embodied in your postgraduate institutes and doctoral programs, and of course manifested also in the research done by scholars in a variety of university departments and institutes. Second, legal education has its strictly professional side—the training of lawyers, whether in general undergraduate programs or in the highly focused curriculum of the professional law schools that in America are postgraduate institutions. Third, there is the teaching of law as a field in the liberal arts. In this sense, the study of law is presented to students not to train them as professionals, but as part of a program of "liberal studies"—that is to say, taught alongside literature, anthropology, history, or other disciplines in the law is liberal art to give students a richer intellectual life; studies of law in the liberal arts, whether of legal history, jurisprudence, law and economics, legal sociology, or the like, are intended to broaden the students' understanding of their own potential, and to illuminate for them the possibilities of life and culture in the context of their own society and the context of societies outside their own nation. As we discuss historical and social-scientific studies in relation to law, it is important to keep in mind these three distinctive aspects of legal education.

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The modern form of law schools emerged in American universities in the late 19th century, organized as separate faculties for the purpose not of liberal education, but rather for the mission of training lawyers for professional life. ¹ Within the academic law community, there were profound differences of view as to how what was commonly termed (in the European way) “legal science” should be presented to students—whether from treatises and texts, as was the practice in the oldest law courses of Europe and America, or instead, as Dean Langdell of Harvard successfully contended, by use of the “case method”—distilling from the decisions of Anglo-American common-law courts the basic principles of law and justice. Langdell prevailed, well into the 1950s, in most of the leading law schools, as to the case method. But as to what kind of scholarship to expect and encourage from their faculty members, the law schools varied considerably. The Langdell vision of a “scientific” distillation of principles from cases meant that many law professors gave much of their time to collecting cases, editing casebooks, and writing case commentaries. The main focus of research, if not jurisprudence in the German and British tradition, was for most academics an exercise in the study of doctrine, either in public law or private law. ²

Dissent in academic circles against this type of research and writing, as well as teaching, was heard very soon after the initial triumph of Langdell’s case approach—an approach that one of its earliest and most famous critics, Justice Oliver Wendell Holmes, Jr., termed “legal theology”, with Langdell serving nobly as its high priest! ³ The skepticism with which Holmes approached the law led in a very different direction of research. Of course Holmes himself was a great master of doctrinal analysis. But his methodology was to examine the law in the contexts of its historical origins. Thus Holmes sought not only to trace changes in doctrine, but equally important he sought to understand the forces in society and politics that mounted the pressures for change. Holmes believed, in sum, that abstract doctrine should not be permitted to prevail unexamined except as to their logic, let alone should abstractions defined by lawyers be seen as eternal verities. The “life of the law,” he wrote, in a very famous passage in his book *The Common Law*, is not “logic,” rather it is “experience.” Legal history should be pursued to reveal the social realities in which such doctrines were first fashioned. In his unforgettable phrase, legal history was indispensable because it served to pull the dragon of the law out of its cave, and

out into the open daylight where it could be seen and tested. Holmes detested myths, as embodied in abstractions passing as legal dogma.

Others, in academic life and in the judiciary, took up Holmes' challenge (and that of Roscoe Pound and others who wrote in this skeptical vein); they pursued the cause of what became known as "legal realism" — the study of legal systems, institutions, and doctrinal impacts as subjects for empirical research and appraisal through application of social scientific and historical scholarship. Although they did not succeed in transforming legal history as a later generation would do (led by the great James Willard Hurst of Wisconsin); but they did contend persuasively for analyzing the law in terms of social realities — how the system actually worked, where power lay, the costs and benefits of legal rules and procedures — instead of confining research in inquiry to law as a self-contained, logical and autonomous system. ^{3a}

In the 1930s, there was great disillusionment in the United States with inherited institutions, with prevailing legal doctrines, and with a conservative judiciary that seemed unmovable in its devotion to old values and doctrines that clearly had failed to prevent social and economic disaster. In the arena of American legal education and research, the "school" of Legal Realists pushed hard for a reform of law studies. ⁴ The Realists wanted social scientific research to be encouraged in the law faculties. They proposed that organized (often large-scale) empirical research projects should be based in law schools, with close ties to academic departments outside the law; and they urged the law school faculties to appoint a modest number of scholars to the faculty who were non-lawyers (especially sociologists, psychologists, and economists) for research and teaching.

Two harsh realities of university culture and legal education frustrated these hopes of the Legal Realists. First, as Professor Rokumoto Kahe stated, in a splendid address given at my university last year, it was only a few elite (highly prestigious) American law schools that could afford to emphasize "academic and research oriented teaching, rather than a teaching more narrowly focused on training practitioners." These elite schools, few in number, thus responded to "the ideals and values of the faculty members," Prof. Rokumoto continues "[reflecting] the view that it is important not only to maintain... high academic standards... but also to produce future lawyersequipped with broadly based high intellectual capabilities to meet the challenges of innovation and development in the law in a changing world." ⁵

A second factor frustrating the Realist hopes was embedded in the academic culture of the now -highly-professionalized schools, including the elite schools that supported high level old-style “classical” legal research. The story almost everywhere was the same: The experiments failed because the professional and intellectual orientation of the law faculties was inhospitable to the idea of truly integrating social scientific scholarship and courses. The essential definition of a “law school,” in the minds of most legal academics and members of even the elite bar, had become rigidified and was hostile to what seemed radical innovation. The schools continued, of course, to teach legal history. But historical studies were devoted to the traditional doctrinal material; the socio -legal history that would be pioneered by Hurst in the 1950s and 1960s, and today the dominant style, lay in the future.⁶

Even the richest and most prestigious law schools did not prove receptive to the call of Realism for expanded social scientific research even for a more innovative style of work in legal history — a traditional part of the curriculum, but devoted entirely to doctrinal development. What we term the “law and society” approach or “socio -legal history” and “legal -economic history” (the styles of scholarship to which most of the top legal historians adhere today), did not come into prominence until much later, in the 1970s and after.⁷ As to the social sciences, a few of the elite schools did appoint some non -lawyers, among them very outstanding scholars. Hence they offered some courses in law and economics, and there were some seminars in which empirical work was required of students. But such aspects of law teaching remained quite marginal in nearly all the best schools — and almost non -existent below the top level of elite faculties.⁸

There was some movement, entailing a few important changes: The law schools began to move away from exclusive reliance on the case method and Socratic instruction, except in the first-year basic courses. And in the advanced courses, there was typically increasing interaction in the classroom as active student participation in discussions became accepted. Nonetheless, the prevailing paradigm in both teaching and research was the law as an autonomous and self-contained system, defined by its doctrines. The focus of texts and classes remained largely on the judicial system and the cases that came down from courts in constitutional and other aspects of public law, and the cases in private law. There was relatively little genuine interdisciplinarity in either scholarship or teaching. What is most interesting in light of today’s reform efforts is the dismaying record of repeated failure: Periodically great national attention was given to curricular

reform proposals in the elite schools — among them very sweeping curricular changes recommended by faculty committees and visiting committees at Columbia and other schools. And yet, despite this long parade of reform ideas, from the mid-1920s to the 1960s and 1970s, it was a tradition that largely prevailed. ⁹ Lipservice was always paid to the new hegemonic maxim, “Law in action” rather than “law in the books” must be understood if the realities of law were to be understood. But the main focus of teaching and scholarship still consisted of adherence to the “classical” formalist traditions. In one faculty or another scholars were to be found who broke through the constraints of tradition, and their studies and texts are exemplary of intellectual challenge at its best: For example, there was the work of Felix Frankfurter and James Landis on “the business of the Supreme Court,” a rudimentary but unprecedented study classifying the appellate dockets. ¹⁰ At Wisconsin just after World War II, Willard Hurst and Lloyd Garrison developed course material on law in industrial society, and within a few years Hurst had embarked on a path-breaking series of studies in legal history that transformed the conceptualization of American law in historical and societal perspective. ¹¹ And there were other individuals of great note: but they were the dazzling exception to a landscape of teaching and study that was wedded to a conception of law that was abstract and detached from social reality. ¹² In the schools of lesser reputation, the faculty and students were often almost exclusively concerned with the ‘trade guild’ side of legal education: preparing for practice, in the narrowest sense of the word “preparing”: that is, learning the technical information that was needed to function in routine practice, rather than contending with the empirics and the analysis of substantial and procedural law in social context.

As I began by noting, there was also a third distinctive aspect of law teaching, which was the study of law in the general liberal arts curriculum. The law schools continued to adhere largely to the model of professional educational training and research focused on doctrine, thus isolating their students from the other disciplines. Ironically, at the same time, the undergraduate liberal arts curricula in America were giving little attention to law. Typically a course in constitutional law would be offered by a history or political science department, and legal philosophy and basic courses in sociology of law would be found in most colleges’ curricula; but the study of law as a subject in the liberal arts seldom obtained systematic institutionalized form. In that respect, an older tradition had died out, the victim of the professionalization of studies in the law schools. My own university, for example, in the 1880s did have a department of

jurisprudence—albeit with only one professor, who heroically taught some tend different subjects in legal doctrine, history, institutions, and philosophy; and a student could make jurisprudence his or her major field (just as with, say, for example, Chemistry or Fine Arts or Literature) for the degree. The Jurisprudence Department at Berkeley was officially described by the University as being “of a strictly scientific character” with the purpose of offering liberal arts students the chance to study “law as a science and for its own sake,” in addition to giving students a basis for moving on to more technical professional preparation in the law.¹³

But by the 1890s, Berkeley too was moving determinedly to adopt the model of legal education that had prevailed in the older and best law schools of the East Coast (Columbia, Harvard, Pennsylvania, and Yale). Hence Berkeley established our modern Boalt Hall School of Law as a postgraduate professional faculty just after 1900. Not for several decades did the University of California at Berkeley reinstitute courses on legal rhetoric, jurisprudence and history as a major concentration field for undergraduates in liberal arts; and not until founding of the JSP Program in 1977 was the modern undergraduate Legal Studies curriculum instituted. In Berkeley’s Legal Studies Program, students are offered a full “major” for the degree. The program which involves courses in legal ordering, legal doctrine and philosophy, and “law and society” studies; represented in them are the specialized sub-disciplines of sociology of law, law and economics, legal history, legal philosophy and jurisprudence, psychology and law, and political science.

When the professional school that became Boalt Hall was proposed by a reformist president at UC Berkeley in 1899, it was in a context dramatically different from today’s: the entire student body of the university, graduate and undergraduate, numbered only 2,100—and as late as 1891 it had been only 700 (smaller than Boalt Hall’s graduate law student body today). Department faculties were of course also small, and the possibilities for variety and scope consequently limited in the curriculum. Nevertheless, when Boalt Hall was founded, the President insisted that its curriculum would be organized with a view toward emulating “the experience of Harvard and Columbia”—to hold to uncompromising standards, and to make the school an integral part of the university as a whole, committed to “the high type of legal education,” he declared, “and it is only that high type which will suit the rightful demands of our position and the wants and needs of this community.”¹⁴ Because California was still at the farthest western border of a vast country, many days by railroad travel away from the great universities of the East and of the Midwest, there was also a strong sense of regional pride. The

founders of the law school at Berkeley spoke explicitly of their desire to assure that the graduates of colleges in California and the Far West region need not go the distant East Coast for a first class legal education; and they argued for building up Boalt Hall as an institution of world distinction on grounds that this would assure the western U.S. region, and especially the State of California, of a supply of graduates who would enter the bar with an intention of remaining rather than settling elsewhere in the country to make their careers.¹⁵

William Carey Jones, the first law professor at Berkeley, demanded that “the academic and the technical study should be closely connected... I hope... that the work will be kept together—the theoretical and the technical...”¹⁶ Among the courses introduced early in the School’s history were several that reflected the special interests and needs of California and the western U.S. region, most notably, for example, mining law and the laws of irrigation and property rights in water.¹⁷ Despite this sensitivity to special problems of California and the West, Boalt Hall in its early period generally conformed to the conservative approach to teaching and research that then prevailed in the traditional elite law schools in the East.

In the depression years, as I have said, the arguments of the Legal Realists resonating vividly in academic circles; and in public life, the New Deal programs of President Roosevelt’s depression-era administration were creating a wave of successive challenges to traditional ideas in government and law.¹⁸ Boalt Hall proved receptive to innovation, and the School had some important accomplishments in curricular innovation in the 1930s — for example, in introducing new courses in administrative law and in tax law (taught by Roger B. Traynor, later Chief Justice of California) to reflect basic changes in the nation’s economic legislation and its administrative and regulatory regimes. In international law, Stefan Riesenfeld brought a Realist view to the study of ocean and coastal fisheries law and its history; and several Boalt Hall professors in the fields of labor law, family law, and tax incorporated empirical social-scientific research and analytical methods into their teaching and scholarship. Hence key members of the law faculty broke out of the traditional, conservative mold in many important respects; but the curriculum nonetheless maintained a stable face throughout the 1940s and 1950s, largely defined by the demands of the California bar examination. There was, in sum, a gap between the aspiration of faculty inclined to innovation and the realities of teaching a student body facing a difficult bar examination and the necessities of practice.

A highly important development at Berkeley — at first only marginally connected with Boalt Hall School of Law — was the founding in 1961 of the university's Center for the Study of Law and Society. The first director was the eminent sociologist Philip Selznick, who became its guiding spirit for the next quarter century and remains today a revered intellectual leader on the Berkeley campus. Professor Selznick was an organizational theorist in sociology, a pioneering scholar in socio-legal theory, and an important contributor to ongoing debates in jurisprudence. Dozens of distinguished senior scholars as well as younger postdoctoral students from throughout the world came to this Center to pursue their own research, engage in collaborative work, and advance their training in socio-legal studies. The Center was heavily sponsored by grants from American foundations, most notably the Russell Sage Foundation in a program that supported similar research centers at Yale University, the University of Wisconsin, and Northwestern University. Following Prof. Selznick, the leaders of the Center were Sheldon Messinger and Jerome Skolnick, socio-legal scholars; Malcolm Feeley, political scientist and constitutional scholar; and the present director, Robert Kagan, an eminent scholar in administrative process and law. I myself have been privileged to serve on two occasions as the Center's interim director.

The Center continues to play a major role on the campus in bringing together students and faculty members from Boalt Hall as well as the social sciences, history and philosophy, for programs of seminars, organized projects, conferences, and research collaborations. It is thoroughly interdisciplinary in all its activities. As an index of this interdisciplinary style, it may be pointed out that faculty members member of senior status associated with the Center have typically published in academic journals of three or even more disciplines rather than only one. Much of the faculty's research involves research assistance or collaboration as named co-authors by law students and by graduate students in the disciplines; and many of the projects are funded by outside agencies in government or foundations.²⁰ These projects, ranging from ocean law to criminal justice to women's rights, and many others, are conducted by faculty members at Boalt or university departments in the disciplines. None of them has a full-time appointment in the Center — even the director continues to teach; every faculty researcher is a full-time member of the Law faculty or some other academic department at UC Berkeley. The Center does not seek to supplant or replace the disciplines and departments. Rather it serves as an arena for active

intellectual interchange and fusing of relevant disciplines in the study of problems in law and society.

Both at its founding and today, the Center reflects the heritage of Legal Realism. But the approach established by Selznick as founder, and the enduring spirit of successive directors, has been that it emphasizes study of normative issues (law as it ought to be) and not only descriptive research and analysis (that is, the “law in action” without reference to the basic values of justice). The spirit of the Center therefore is to achieve genuine integration of perspectives from the humanities, social science, and policy studies with the perspectives of law. Those perspectives are mobilized to “truly inform each other,” and the study of legal values and of jurisprudence is not divorced from the empirical research that is sponsored. ²¹

As I have noted, Berkeley’s center was not the only interdisciplinary law center sponsored by the Russell Sage Foundation; and excellent empirical work and interdisciplinary studies are flourishing in many American law schools, including those mentioned earlier. But in two important ways, the experience at Berkeley has departed significantly from the norm elsewhere. One is the establishment and operation for more than 20 years of the JSP (Jurisprudence and Social Policy Program); and the other is the revitalization of law as an undergraduate curricular major, in the Legal Studies Program based in the Boalt Hall faculty. I will close my talk with brief discussions of each of these programs as they relate to reform of legal curricula and institutional organization more generally in the academic world.

When the University of California approved establishment of the JSP Program, it sought to create a Ph.D. program within the jurisdiction of the law school, with a set of new appointments from the disciplines in philosophy, history, economics, political science, and sociology to be made on the Law faculty. The new appointees were to be scholars who had specialized in socio-legal or jurisprudential research, though they had done so from their disciplinary bases in the humanities or social sciences. It was anticipated that these new faculty members would not only offer special seminars and courses for their doctoral students, but would also open some of those courses to law students — and, in addition, offer courses that would enrich the regular JD professional curriculum. The theory articulated by the program’s principal founders, Professor Selznick and Sanford Kadish, then Dean of Boalt Hall, was that systematic teaching from the literature and methodologies of these other disciplines should be introduced into the professional JD program, in order to broaden and deepen that program; but

also, that it should be done in a way that assured full integration of social scientists' perspectives and concerns into the collective life of the School and its governance. Hence all the new appointees had to meet the scholarly standards of the departments representing their disciplines at Berkeley; and they had to meet the Law School's standards in assessment of their scholarship; and, finally, they were made full members of the Law faculty, with the privilege of offering their courses and participating fully in the faculty's decisions on all matters, including curriculum and appointments. The plan called for appointment of up to 12 such new professors for JSP, or a fifth of the entire Law faculty; and this was done over the course of a few years in the 1980s. Numbers —critical mass— were important, in order to give the program depth and viability.²²

These decisions meant that the JSP faculty appointees would broaden the scope of the JD curriculum with new seminars and courses that would not have been within the competence of existing JD faculty members.²³ It also led to a result that was not fully expected: Numerous Law faculty members invited the new JSP faculty members to join them in jointly teaching in on subjects that benefited from collaboration across disciplinary lines. Thus a legal sociologist joined in teaching basic criminal procedure; the JSP Program's legal historian jointly law taught "Law, Resources and Technology" as a new course with a professor of environmental law; the legal historian and an international law specialist teach the advanced seminar in Ocean Law and Policy; the Law and Economics faculty members in JSP contribute important courses and seminars in the Business Law JD curriculum as well as courses in regulation, property, and contracts; a JD professor eminent in constitutional law and legal theory co-teaches seminars with a JSP legal and social philosopher in subjects such as "Privacy and the Law," and "Pluralism, Individualism, and Democracy;" and another sociologist on the JSP core faculty co-taught a seminar on "Feminism and the Welfare State" with a JD member.

Moreover, many of these seminars and courses taught by JSP faculty members, for example "Courts and Social Policy," a modern U.S. legal history course that scarcely deals with cases but stresses public economic policy and socio-legal change, or a heavily sociological course called "Law and the Employment Relationship," enroll JD and doctoral students in the same classes, and with the same course requirements—all studying the same materials, and in an atmosphere that encourages active student participation and intellectual exchange, all benefiting from the perspectives that the others bring.

What would it require for an interested university of law school to adapt for itself the model of Boalt Hall's initiative in development of the JSP Program at Berkeley? None of the aforementioned advantages for a law faculty require a formal and separate JSP-like *doctoral program* in legal studies; such advantages can be achieved, at least partially, through the active and intimate cooperation of law professors or a law program, in a general university, with the interested faculty members in other disciplines that are willing to play such a role. The difficulty lies in finding faculty members from outside the law school who have the experience and competencies in legal subject matter, whether in history, sociology, psychology, or other subjects of concern to a well-educated legal professional. Even if only three or four such scholars were to become involved in teaching a course or cooperating in team teaching, this in itself would give a law program a dimension that would attract the more seriously committed students who wanted to expand their intellectual horizons while also preparing for professional careers in law. And the influence would run both ways: In the academic disciplines outside law, in the same university, the opportunities for socio-legal or jurisprudential research and teaching, sometimes in collaboration with law colleagues or law students, might open interesting new lines of work for a few faculty members attracted to this field of intellectual work.

The model afforded by the Center for the Study of Law and Society was controlling when Berkeley planned the JSP Program. One critical component was that there would be a significant number of scholars — fulfilling the requirement of “critical mass” — so as to form an intellectual community. Second, there was the issue of attaining a wide scope of subject matter along with disciplinary diversity, with the aim of integrating the disciplines in the degree requirements and yet assuring that the doctoral graduates would be well qualified in their command of both law and at least one academic discipline in social science or humanities. And third, there was a commitment to systematic encouragement of collegiality and collaboration. All three of these ingredients of the Center's accomplished record were regarded as essential desiderata for JSP. And all the appointments to the JSP core faculty would contribute in their research activities to the life of the Center and its own continuing vitality as a place where scholars from throughout the Americas, Europe, and Asia come as visitors and researchers. The reciprocal reinforcement of goals, expertise, enthusiasm, and research products thus works to the advantage of both the teaching program and the Center's own ambitions.

Not the least important ingredient of future success for the JSP experiment was a vital “intangible” factor at Berkeley: This was a spirit, an atmosphere, supportive of interdisciplinary work on the campus as a whole — a tradition at Berkeley of valuing studies that mobilized the methods and efforts of scholars from various departments, and an absence of entrenched and hostile departmental boundaries that rewarded scholars only for work done inside the discipline’s jurisdictional enclosure.²⁴ Universities cannot adopt this spirit overnight, or by administrative reformers’ edict. And there is always the chilling concern of coercion that will dampen rather than stimulate scholarly work. But in fact there are respectable ways available to provide incentives to academic faculties and individuals to move an institution in this direction, once it is deemed important to do so. Such incentives and plans are, in fact, a prominent part of university planning more generally in the U.S. today; and some of the oldest and greatest of the Northern European universities are similarly attempting, now, to reorganize long-established structures so as to encourage collaborative and interdisciplinary opportunities for students and faculty.

A highly significant aspect of the JSP program design at its founding was astonishing to most members of the American academic community in law. This was the building of the JSP faculty within a few years to a level of 10 “core” faculty appointments, or fully 20 percent of the full faculty of Boalt Hall in 1970. No other law school in America has even a third that proportion, even today. And only New York University has joined Berkeley as having an academic doctoral program, interdisciplinary in its concept, based in and integrated with its law school; for twenty years, Berkeley’s program was the only one so organized in the entire country.²⁵ As I have said already, however, although the JSP model is one way of integrating social science and historical studies into the law curriculum, it is not a feasible model for most institutions; and there are other ways to achieve comparable results augmenting and enriching the law curriculum.

A final feature of the plan for JSP that we must note here was also unique — and, as time has proven, has been invaluable as a component of the success it has achieved. This was the founding of the Legal Studies undergraduate major program, designed as strictly a liberal arts major, with demanding prerequisite requirements in history, philosophy, and social science. Berkeley’s Legal Studies major represents the only one of its kind in America based in a school of law and staffed by a Law faculty — though in this case, of course the Law faculty members in question are primarily the JSP faculty with degrees in the academic disciplines. Some of the

faculty (i.e., those professors whose appointments had no connection to JSP originally) have now begun to design courses with a liberal arts purpose, specifically for undergraduates (not law students) in the Legal Studies major. And so the effects of his experiment in law teaching and law-related research continue to ramify in its influence on the university as a whole. We now have some forty Ph.D. students in the JSP Program (with most of four Ph.D. graduates now teaching in law schools and university departments, while others hold research posts in foundations or are in practice). The program has had enrollments of several hundred JD Law students in courses taught (or co-taught) by JSP professors and largely dealing with literature and methodologies outside formal, traditional “law;” and each year the faculty teaches more than 1,400 undergraduate course enrollments in the liberal arts program of Legal Studies. In a recent review by a panel of three scholars from other leading institutions, the verdict on the impact of the JSP program was highly complimentary: they characterized JSP as “the jewel in the crown” for Boalt Hall and a major contributor to scholarship in the university as a whole. ²⁶

The discussion I have offered of Berkeley’s experience with a quite radical innovation in legal scholarship and teaching reminds us of the continuing importance of seeing law in light of changing social values and structures. Globalization, as is now well recognized, is a powerful force in modern life. How it ramifies and impacts individuals, societies and the various legal systems of the world community is a difficult issue — a problem addressed brilliantly at Berkeley in recent lectures by two important Japanese socio-legal scholars, my friends and colleagues Professor Rokumoto Kahei and Professor Tanase Takao. ²⁷

Not only in the United States, but in all democratic countries, the legal system has become the focus of highly visible and controversial political debates. The issues about law and its proper role in our lives vitally concern public opinion in your country and mine, in the European Community as it “federalizes,” in the newly democratized nations that are struggling with the problem of “rule of law” in light of their own cultural imperatives and unique political heritages. Intensified international economic competition, accelerating technological change, mounting environmental issues, massive population pressures and migrations, ethnic tensions, and political instability in even the most firmly established democratic societies all have placed new demands on law. So too has the expansion of individual rights and the aspirations for still further redefinition of the zone of legal privacy and individual freedoms. To cope effectively with such challenges, we must seek to improve our way of investigating and analyzing change;

knowledge matters at these junctures, and matters in vital ways. We need to understand better the social and normative impacts of different kinds of legal intervention. We need to comprehend the full potential, for good and for ill, of various legal institutions and their typical dynamics. Well-trained lawyers must think about such problems, I believe, if they are to be more than mere technicians; and to make a contribution of value to debate such as surround these issues, and to help a concerned public to deal with the ethical questions involved—opportunities must be afforded to law students that make the grappling with such questions no less a part of basic legal education than the rudimentary knowledge of legal doctrine and procedural rules. If, as Justice Holmes so tellingly argued, the life of the law is experience and not only logic—if, as Professor Selznick has persuasively contended, social sciences should be mobilized in legal research in ways creatively fused with study of ethics—then we are bound to carry these lessons into the forum of legal education. Students preparing in professional law programs deserve to be given many academic windows, and not only the narrow technical window, through which they may view this present-day landscape of social change. In that way, they may help to best decide how they will lead their lives in the challenging milieu of their own country and of the 21st century's global community.

NOTES

¹The best introduction to the subject is Robert Stevens, *Law School: Legal Education in America from the 1860s to the 1980s* (1984). See also Stevens, "Two Cheers for 1870: The American Law School," in *Perspectives in American History*, 5 (1971), also published in *Law in American History*, ed. Donald Fleming and Bernard Bailyn (1971); and Lawrence M. Friedman, *A History of American Law* (2nd edition, 1985), 612-17 *et passim*.

²Stevens, *Law School*, *op. cit.*

³More specifically, Holmes referred to Langdell as "the greatest living legal theologian." Book review in *American Law Review*, 14 (1880), 234, quoted in William Fisher et al., *American Legal Realism* (1993), 297 n.5. (This last-cited book is an excellent collection of the centrally important writings of the Realists and some of their critics.) Of Holmes' writings on this score, see especially "The Path of the Law," *Harvard Law Review*, 10 (1897) 457 ff., in which he set forth, famously, his contention that "the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."

3a. Pound, although he was a seminal thinker on sociological jurisprudence, later became a determined critic of the Realists, most of whom, he charged, "merely substitute a psychological must for an ethical or political or historical must." (Pound, "The Call for a Realist Jurisprudence," *Harvard Law Review*, 697 [1931]. See N.E.H. Hull, "Some Realism about the Llewellyn-Pound Exchange over Realism," *Wisconsin Law Review*, 1987 Vol.) See, *inter alia*, Laura Kalman, *Legal Realism at Yale, 1870-1960* (1986); Wilfred Rumble, Jr., *American Legal Realism* (1968); John Henry Schlegel, *American Legal Realism and Empirical Social Science* (1995); G. Edward White, "From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early 20th-Century America," *Virginia Law Review*, 59 (1972); Morton Horwitz, *The Transformation of American Law, 1870-1960* (1992); and Edward Purcell, "American Jurisprudence between the Wars: Legal Realism and the Crisis of Democratic Theory," *American Historical Review*, 75 (1969), reprinted in *American Law and the Constitutional Order*, ed. L. Friedman and H. Scheiber (enlarged edn., 1987).

⁴Kalman, *Legal Realism at Yale*, *passim*; Scheiber, "New Deal," *Encyclopedia of the American Constitution*, ed. Leonard W. Levy et al., *Supplement I* (1992); Purcell, *op. cit.*

⁵"Notes on Law Teaching in America," manuscript provided by Prof. Rokumoto (text of his address to a visiting delegation of the Japanese Federation of Bar Associations, at Boalt Hall, University of California, Berkeley, Fall 2000).

⁶Harry N. Scheiber, "At the Borderland of Law and Economic History: The Contributions of Willard Hurst," *American Historical Review*, 75 (1970); Scheiber, "Public Economic Policy and the American Legal System," *Wisconsin Law Review*, 1980 Vol. ; see also symposium in honor of the late Willard Hurst, in *Law and History Review*, Fall 2000.

⁷See essay on historiography by Lawrence Friedman and Harry N. Scheiber in *American Law and the Constitutional Order*, *op. cit.*

⁸Schlegel, *op. cit.*, and Kalman, *op. cit.*, *passim*.

⁹See Sanford Kadish, "Foreword: Symposium — The Jurisprudence and Social Policy Program," *California Law Review*, 68 (1980), 202-5. Schlegel, *op. cit.*, 238 ff.

¹⁰Frankfurter and Landis, *The Business of the Supreme Court: A Study in the Federal Judicial System* (1927).

¹¹See articles by Daniel Ernst and others, in *Law and History Rev.*, *op. cit.* n.6 above, (Hurst symposium); I am also grateful to Prof. Kjell Åke Modéer of Lund University, whose biography in progress of Lloyd Garrison, loaned by courtesy of the author, is the source of information concerning Garrison's and Hurst's innovations at Wisconsin.

Exemplary of Hurst's later socio-historical writings, invaluable to legal scholarship and education, are his Carl L. Becker Lectures at Cornell University; Hurst, *Law and Social Order in the United States* (1977).

¹² Outside the law schools were critics such as Max Lerner and in political science departments critical scholars of great importance such as Edward S. Corwin at Princeton and Robert Cushman at Cornell; inside the law schools perhaps Thomas Reed Powell at Columbia was the most important single individual scholar in maintaining a critical stance on constitutional issues and in whose work a constant concern for social realities lying behind the law was a major factor in analysis.

¹³ University of California, *University Announcement for 1894-95*, quoted in Sandra Epstein, *Law at Berkeley: The History of Boalt Hall* (1997), 31. Emphases added.

¹⁴ Benjamin Ide Wheeler, Biennial Report of the President, University of California, quoted in Epstein, *op. cit.*, 35.

¹⁵ Dept. of Jurisprudence, Committee Report, January 1910, quoted in Epstein, *op. cit.*, 63.

¹⁶ Epstein, *op. cit.*, 61-62.

¹⁷ *Ibid.* 51-53. Articles on these themes, with emphasis on policy implications in, e.g., water law, written by members of the faculty in early volumes of *California Law Review*, 1910s-20s reflected this commitment.

¹⁸ See citations in notes 3a and 4, *supra*.

¹⁹ A forthcoming *Festschrift* volume for Prof. Selznick, edited by Robert A. Kagan, current director of the Center, contains essays by colleagues and students that analyze Selznick's contributions to the several fields of scholarship in which he has done pioneering work. See also Kagan's introduction to the new edition of Philip Selznick and Philippe Nonet, *Law and Society in Transition: Toward Responsive Law* (1978, 2nd edition 2001).

²⁰ Among the topics currently being pursued by the Center's approximately twenty-five associated faculty members are comparative regulatory style in the environmental and industrial regulatory fields in the U.S., Japan, and Europe (a large project headed by Professor Robert Kagan and employing senior and junior scholars in five countries outside the United States); ocean law and policy (including my own work on Japanese-US relations in international fisheries law and Law of the Sea); criminal justice (for example, studies of sentencing in the national courts on the Pacific Coast, and of police practices in the large cities, as well as comparative historical studies of women in the justice systems, conducted by Professor Malcolm Feeley); the impact of laws regarding sex education on the public schools, a project headed by Professor Kristin Luker; a study of adversarialism in the implementation of environmental law in the United States; Professor Selznick's ongoing studies of community values and the "commonwealth" in American jurisprudence and social policies; employment and discrimination policies, projects headed by Professor Lauren Edelman, who also works in organizational theory; civil liberties and civil rights; and a variety of studies in jurisprudence and legal philosophy that address not only abstract analytical aspects but also applied ethical questions, redistributive social policies, and war-guilt questions in relation to reparations, involving Professors Samuel Scheffler, Chris Kutz, Sanford Kadish, David Lieberman, and others. In addition, visiting scholars from the United States and abroad are presently working on a broad range of themes in law and philosophy, American and comparative legal history, comparative regulatory systems and policies, legal cultures, Japanese criminal law, and jurisprudence and legal theory in social-scientific contexts.

²¹ Philip Selznick, "Jurisprudence and Social Policy: Aspirations and Perspectives," *California Law Review*, 68 (1980).

²² The full integration of the JSP faculty into the law school, on that basis, assured against one of the hazards of interdisciplinary organization on American university campuses—the possibility that the program would be seen as having a lower standard than the relevant disciplines maintained in the regular departments organized by discipline. The decision at the founding of JSP, as conceived by then-Dean of Boalt, Sanford Kadish, was that to be successful

the new program must have a “critical mass”: a group of new faculty from humanities and social science large enough to represent well all the core disciplines in socio-legal and humanistic study, and to oversee the studies of doctoral students numbering a projected 35 to 40 while also giving courses in the JD program. Compare the attitudes and condition of traditional law schools in this regard, thirty-three years ago, as analyzed in a acerbic essay by the sociologist David Riesman, “Some Observations on Legal Education,” *Wisconsin Law Review*, 1986, pp. 82, 74, 86-7.

²³ It also meant that JSP doctoral students would have the advantage of top-level law teaching in the JD curriculum, as part of their own doctoral training as legal scholars (with approximately one full year of Law courses then normal expectation for the doctoral candidate).

²⁴ Today, partly as the result of the example of the natural and physical sciences, where interdisciplinarity has proven so essential to scientific advances, many American colleges and universities are taking strong measures to create programs across disciplinary lines and to break down departmental insularity. At Berkeley, it had long been a core tradition of the university’s special culture; and this had done much to impel the achievements of both the Law and Society Center and, later, the JSP Program.

²⁵ Reinforcing this element of the JSP faculty’s efforts is the fact that many of these scholars also have been extended formal appointments to the departments of their discipline; I myself, for example, have senior faculty status in the History Department, and I direct doctoral dissertations in History as well as in JSP. As one who has been active in scholarship in economic history and policy as well as legal studies, I have also served on the committees directing several Economics doctoral students majoring in economic history. This pattern is repeated for my colleagues in the Program, who have varying types of collateral or joint appointments in History, Political Science, Sociology, Philosophy, and Economics, and in the Graduate School of Public Policy.

²⁶ Report of outside experts’ review of the JSP Program, Spring 2001.

²⁷ Each of these two distinguished Japanese scholars has held the Sho Sato Chair for a visiting professor in Japanese law at Boalt Hall School of Law. Some of Professor Rokumoto’s analysis of this problem, in the context specifically of legal reforms in Japan, is presented in his article “Law and Culture in Transition,” in *American Journal of Comparative Law*, 49 (2001), 545 ff., along with other articles from papers presented to a Sho Sato Conference at UC Berkeley on Japanese and U.S. Law, one of a series of conferences sponsored by the Sho Sato Program at Boalt Hall. This Program is named in memory of the late Prof. Sho Sato, who taught at Berkeley and was the first Japanese-American professor to be appointed in a major American law school.