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SYMPOSIUM:
THE JURISPRUDENCE AND
SOCIAL POLICY PROGRAM

Foreword

Sanford H. Kadish†

This issue of the California Law Review celebrates the inauguration of the Jurisprudence and Social Policy (JSP) program at the School of Law at Berkeley, whose first class of seventeen graduate students enrolled in the fall of 1978. All of the contributions, except one, were written for this occasion by Law School people involved in the program, including two students. While these pieces by themselves hardly could identify the content of the JSP program, they do represent what some of our JSP people are thinking and writing about at the moment, and therefore offer some indication of the intellectual style and direction of the program. This is particularly true of Professor Selznick’s article, which deals with the spirit of the program, or, more accurately, one scholar’s vision of it. I will comment on the program’s form and on its historical setting.

The program has both a graduate and an undergraduate component. The former includes a nonprofessional Ph.D. and Masters track wholly within the Law School. Its faculty are all members of the Law School faculty. While some teach principally in the traditional J.D. program, the majority are specially appointed academicians in such disciplines as Sociology, Political Science, Criminology, Philosophy, and Economics, whose primary scholarly interest is law and legal insti-

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tutions. Its students include those interested in pursuing the academic study of law as a career, by itself or combined either with the academic study of other disciplines or with the professional study of law in the J.D. program. Its curriculun is interdisciplinary, emphasizing both humanistic and social science inquiries, whose results we hope will be brought to bear on the problems of the legal system. The undergraduate component of the program embraces a series of courses in legal studies formally offered in the College of Letters and Science, but taught by law school professors, primarily those from the core faculty of the JSP program. These courses, which shortly will develop into a major in Legal Studies, do not aim at either preprofessional training of future law students or instruction in the rules of law for future consumers. The emphasis is rather on liberal arts education, on the view that the values and methods of the legal experience have an important though long-neglected place in any program of general education.

While the JSP program is an innovation in the role of university law schools, it is at the same time a product of enduring features in the structure of American law schools that led to earlier cognate efforts to enlarge the scholarly dimension of the work done in law at the major American universities. A brief look backward at the relations between the universities and legal education will help illuminate the continuities between the JSP program and what has gone before.

The law is both a field of liberal scholarly inquiry and a profession. Early in America these two sides of the law were separately organized. Training for the profession was left, as in England, to the bar itself or, later, to proprietary schools that supplemented that training. The pursuit of scholarly inquiry into the law was seen as the proper domain of the universities. Accordingly, law professorships were created at a number of universities with the expectation that the chairholders would teach and develop legal study as part of the regular undergraduate curriculum in liberal education. But the division did not flourish. Neither these professorships nor apprenticeships and training schools took hold for long. They were replaced by a system under which law study came to be centered within the universities through the medium of the modern university law school, which assumed the task of training people to be lawyers after they had received their general liberal education in college.

This development had two consequences relevant to understanding the context of the JSP program. First, because the involvement of the universities with law was entirely through the graduate schools of law, separated in formal and informal ways from the liberal arts colleges, the undergraduate curriculum was deprived of any systematic courses in law. The second relevant consequence was that the law
schools themselves were beset by two conflicting pulls: the vocational and the academic. On the one hand their role was the preparation of students for professional careers in law; on the other, they were, after all, not only part of the university, but the only part equipped to foster liberal scholarly learning in law. The resulting tension was not, on the whole, a dysfunctional one. Academic study of law benefits from constraints of concreteness and practicality imposed by the demands of professional training. At the same time, professional training is enriched and deepened by the pursuit of liberal legal scholarship. But the proper balance is elusive and controversial.

The tension between the vocational and the liberally academic has proven an abiding characteristic of the law schools associated with the major universities. The basically professional curriculum, firmly established at the Harvard Law School by the turn of the century, was pervasively followed by other schools. But there were efforts at a number of schools to enlarge and liberalize it by infusion of such courses as International Law, Comparative Law, Jurisprudence, Economics, and Government. For example, as early as 1887, Yale created an alternative degree, the Bachelor of Civil Law (apparently copied from Oxford) designed "for those not intending to enter any active business or professional career, but who wish to acquire an enlarged acquaintance with our political and legal systems, and the rules by which they are governed." \(^1\) By 1916, only nine such degrees had been awarded and the degree was abolished, but not without efforts to produce a substitute in the form of "A Program for the Expansion of the Yale School of Law into a School of Law and Jurisprudence" with emphasis, among other things, on "Historical Comparative Analytical and Functional Jurisprudence." \(^2\) At Columbia Law School in the late 1920's a major curricular study was undertaken to transform the traditional law school along the lines of the new sociological jurisprudence, abandoning traditional categories of law and seeking to teach law as an integral part of the social sciences. It was "the first (and most serious) attempt to turn a law school into a scholarly institution." \(^3\) Its failure was due to the prevailing judgment that it tilted the balance too far toward scholarly inquiry and away from professional training of lawyers. The defeated faculty leaders packed up and founded the Johns Hopkins Institute for the Study of Law in 1928, in order that there should be "at least one school to become a 'community of scholars,' devoting itself 'primarily to the nonprofessional study of law, in order that the function of law may be comprehended, its results evaluated, and its development kept

\(^2\) Id. at 470-71.
\(^3\) Id. at 474.
more nearly in step with the complex developments of modern life.” It failed in a few years, a casualty of the depression.

The JSP program at Boalt is in the tradition of these attempts to enlarge the scholarly dimension of the work done in law at the major American universities. We can only hope that their failure is not a necessary part of the tradition they constitute. Two thoughts afford us some comfort. First, even though these earlier efforts did not succeed in achieving all their posited goals, in each case an important effect of the effort was the strengthening and deepening of the intellectual content of the curriculum, teaching, and scholarship in those schools and in American law schools generally. Second, the JSP program differs in significant ways from past interdisciplinary, scholarly innovations. Nothing in the JSP program entails any slighting of the role of this Law School in the professional preparation of lawyers. The JSP program is being wholly supported by an augmentation of resources made available by the closing of the School of Criminology. Its only effect on our J.D. program will be to enrich the professional training we offer, since its offerings will be available to J.D. students. Moreover, we do not proceed on the basis of any particular ideology, as, for example, the Columbia innovation did, with its commitment to sociological empirical inquiry and legal realism. Indeed, we mean to be as embracing as possible, by including humanistic as well as social science disciplines and by providing scholars and students with the atmosphere, the colleagues, and the resources to bring their own learning and special perspectives to bear on the range of ethical and policy issues at the root of the major legal problems of our times. Finally, the JSP program has the full support of the University administration, the great majority of our colleagues in the academic departments with intellectual connections to JSP activities, and the faculty of the Law School, numbers of whom have indicated interest themselves in teaching in the new program.

In sum, the JSP program promises a more coherent and constructive relationship between the Law School and the traditional academic departments of the University than that permitted by the historic relationship of separateness. With law faculty teaching undergraduate courses in the College of Letters and Science, with scholars in humanistic and social science disciplines teaching in and as part of the Law School, and with graduate students pursuing the study of law as a field of scholarly inquiry, without respect to disciplinary or professional constraints, not only will learning and research be expanded and deepened, but the regular Law School professional program will inevitably be enriched as well. That, at least, is our hope.