



PLAN FOR THE ORGANIZATION OF A LAW FACULTY

AND FOR A
SYSTEM OF INSTRUCTION IN LEGAL SCIENCE,
IN THE UNIVERSITY OF THE CITY OF NEW-YORK

Benjamin F. Butler

As Professor Nancy Rapoport explains above (beginning on page 55), now is a good time to look back at this thought-provoking early experiment in legal education conducted by one of our great universities.

— *The Editors*

New-York, July 6th, 1835.

To Rev. J.M. Mathews, D.D., Chancellor of the University of the City of New-York.

Sir,

In compliance with your request, I proceed to commit to paper, the details of the Plan for organizing a Faculty of Law, and for establishing a System of Instruction in Legal Science, in the University of

Benjamin Franklin Butler (1795-1858) spent most of his adult life in law practice and politics in New York (he should not be confused with the Civil War general and Massachusetts lawyer and politician of the same name), but was serving as Attorney General of the United States when he presented this plan. The plan was published as a pamphlet by the university's press in 1835.

Benjamin F. Butler

the City of New-York, heretofore submitted to the consideration of yourself and your associates in the government of that Institution.

In order to [present] a correct understanding of the object and merits of this plan, it will be necessary to state at the outset, the leading principles by which I have been guided in arranging its provisions.

1. I remark then, in the first place, that a Law School in the City of New-York – and especially one which is to form part of an University – to correspond with the advantages of its geographical position, and to meet, in any adequate degree, the necessities which call for it, should be organized upon an extensive scale; and that its courses of study and instruction should accord with the magnitude and dignity of the science intended to be taught, and with the enlarged and practical philosophy of modern times.

It is true that an institution which should furnish even a moderate amount of sound instruction, to only a few of our Law Students, would under existing circumstances, deserve to be regarded as a public blessing.* But though the means of professional education in

* For the information of those who may be unacquainted with the present state of Legal Education in New-York, it is proper to mention, that we have at this time no other facilities for acquiring such an education, than those afforded by clerkships in the offices of the practising Attorneys and Solicitors. In the year 1793, Chancellor Kent, then at the Bar of this City, was appointed Professor of Law in Columbia College, and subsequently delivered Law lectures to students in that institution. His appointment in 1798 to the Bench of the Supreme Court of this State, and his consequent removal to the seat of Government, withdrew him from the Professorship, and for a long season employed him in other duties. On the expiration of his office as Chancellor of the State in 1823, he returned to this City, resumed his station as Professor in the College, and in the course of three or four years delivered to a class of Law Students, the Lectures since published by him in his invaluable Commentaries on American Law. His labors as Professor have for several years been discontinued, and it is understood are not to be resumed. There has never been any public Law School in this State, except that connected with Columbia College, during the continuance of Chancellor Kent's Lectures. In a few instances, gentlemen of the Bar, who had retired from the active labors of the profession, have devoted themselves to the instruction of small classes of Law Students. The most distinguished, and probably the most useful of these private institutions, was that of the late Peter Van Schaack, of Kinderhook. This eminent Lawyer died in 1832, at the advanced age of eighty-four; and I am not aware that there is now any private Law School in the State.

Plan for the Organization of a Law Faculty

this city, are at present so defective, as to render any relief, however partial, a matter of great importance; the wants, in this respect, of our great and growing metropolis, are not to be satisfied by any half-way provisions. They demand a Scientific Institution for Legal Education, founded on a plan at once stable, appropriate, and expansive: an Institution which shall be capable of supplying to all who may desire to resort to it,— and this not for a few years only, but so long as the Law shall be cultivated as a science — the means of acquiring an accurate knowledge of its Principles and Practice: an Institution which shall be fitted to elevate the standard of professional attainments, and to exert an extensive and healthful influence on the character and conduct of the Bar, and through them, on the great interests of legislation and justice, and on the other departments of social life with which Lawyers are, in our country, so intimately connected.

Without enlarging on this fruitful topic, I will briefly advert to one or two points of prominent importance.

The great principle of division of labor, adopted with so much success in other departments of industry and science, is equally applicable to a Law School. The science to be taught embraces a great number of branches, many of which have but little connection with

Courses of Lectures on particular branches of the law, have also been occasionally given in the City of New-York, by Members of the Bar specially selected for the purpose by voluntary associations.

Instruction in Law offices is necessarily quite imperfect. A course of reading is usually marked out for the student; and if he be industrious and attentive, he will have opportunities to acquire considerable knowledge of the Practice. But as gentlemen engaged in extensive business can seldom find time to pay much attention to the improvement of their clerks, the progress of the latter in the Principles of Legal Science, is usually tardy and laborious. In many cases they are left to grope their way in the dark, with little or no assistance from their principals. And even where this disadvantage is not experienced, the means of instruction, in a Law office, will yet be found too limited to meet the wants of the student. The consequence is, that many of our Attorneys and Solicitors when licensed, are very ill qualified for the duties of their profession; and though they may afterwards, by proper exertions, acquire sufficient knowledge to guide them in the performance of those duties, much of this knowledge will have been gained by slow degrees, and sometimes, it may be feared, at the expense of their clients.

Benjamin F. Butler

each other, and some of which are so difficult and extensive, as to furnish to him who attempts their complete investigation, ample materials for years of laborious research. It admits, and to be taught with the utmost perfection, requires, as minute a subdivision of labor as Theology or Medicine. In the Law Faculties of those Universities on the continent of Europe, in which the Law is taught in a scientific and thorough manner, we accordingly find a professor for each of the important divisions. In some cases there are nine or ten professors of Law, ordinary and extraordinary, at a single university.*

* The means of instruction in Legal Science are more abundant in Germany than in any other part of Europe; and of the German Universities, those of Prussia have probably at the present time the ablest and most extensive Law Faculties. The report of M. Cousin on the system of primary instruction in Prussia, the English translation of which has been republished, and extensively circulated in this country, has given us a full and most interesting account of the elementary schools in that kingdom. His report in relation to the Gymnasia, (which very nearly answer to our colleges,) and to the Universities, has not yet reached us. The *Encyclopedia Americana*, (Vol. 12. p. 471,) contains a catalogue of the lectures delivered in the University of Berlin, during the winter session of 1829-30. The Law Lectures embraced in this catalogue are very numerous and diversified. The mere specification of the different subjects, and of the number of professors, gives an impressive view of the great interest with which this branch of learning is there regarded.

In the *Foreign Quarterly Review* for December, 1834, (Art. viii.) will be found a particular account of the manner in which lawyers and persons destined to other branches of the public service in Prussia, are usually trained for their respective vocations. The various grades through which they are required to pass, and the repeated and searching examinations to which they are subjected, are admirably adapted to ensure, in most cases, a large amount of sound learning and practical skill. And though many of the regulations are wholly inappropriate to our own country, their general spirit might be imitated by us with propriety and manifest advantage. I cannot help adding, that the contrast between the abundant provisions made in Prussia, for acquiring a knowledge of the Law, and the limited and defective systems of instruction in Legal Science in use in many parts of the United States, and even in England, is by no means flattering to the latter nations.

Being desirous to obtain the most accurate information within my reach, in regard to the Prussian Law Schools, I recently availed myself of an interview with Barton de Roenne, Charge d'Affaires from the Government of Prussia, near that of the United States, to solicit from him some account of their present state. This gentleman, who was bred to the Law under the tuition of the celebrated Savigny, and who is himself an accomplished jurist, cheerfully complied with this request,

Plan for the Organization of a Law Faculty

Whilst it would be far in advance of our condition and necessities, to copy the extended organization of the institutions just referred to, it yet appears to me, that it will be useful, so far as circumstances may allow, to adopt, in this respect, the principles by which they have been governed. A Law School conducted by a single individual of competent abilities, would, no doubt, be highly useful to its pupils, and probably more lucrative to its principal, than one organized upon a different plan. But no one man, even supposing him to possess such a knowledge of the various branches of the Law, as to qualify him to instruct in all of them, can find the time, or endure the labor, which such a task would require. After bestowing, on this part of the subject, the most deliberate reflection, I do not hesitate to express the belief, that you will not only find it safe in a financial view, but really indispensable to the success of your endeavors, to employ at least *three* regular Professors.

A suitable classification of the students, with a view to the adaptation of their studies to their respective years and attainments, is perhaps next in importance to a division of labor on the part of the Professors. The necessity and advantages of such a classification, in cases which admit of it, are too obvious to need comment; but it is only in schools attended by a considerable number of students, and possessing an extensive Faculty, that this arrangement can be adopt-

and communicated to me numerous particulars on the subject of my inquiries. His statements were so interesting and instructive, that I subsequently took the liberty of requesting him to commit the substance of them to paper, with a view to their publication, in connection with this letter. It will be seen from his communication, which will be found in the Appendix, that he not only complied with this application, but even exceeded it, by preparing for my use a translation of a recent paper of Professor Savigny, giving a general view of the German Universities. I am very sure that my professional brethren will concur with me, in awarding to this enlightened foreigner, their best thanks for the information contained in his letter; and I trust that the lively interest displayed by him in the cause of intellectual improvement in the United States, will secure for him the respect and regard of my other American readers. The essay of Professor Savigny has no particular reference to the faculties of law; but as it embraces an instructive view of the German Universities, and contains many profound reflections on the subject of education, I shall take some fit mode to bring it before the public.

ed with convenience or success.

2. The organization of the school, and its whole system of instruction, should be specially adapted to students who design to pursue their professions within this State.

Independently of the duty of providing in the first instance for our own wants, it may also be mentioned, that there are already in various parts of the Union, and particularly in the neighboring States of Connecticut and Massachusetts, several Law Schools of established reputation, which are fully adequate to the necessities of the States in which they are respectively situated. The opinion is, moreover, becoming generally prevalent, that an attendance on institutions of this sort, is a very necessary part of the education of a Lawyer; and under its influence, we may reasonably expect them to become still more numerous. At Hamilton College, in the western part of our own State, such an institution is soon to be organized, under circumstances highly favorable to its stability and usefulness, and which are likely to draw to it, a great proportion of the Law students in that region. Your School is therefore to be attended, for the most part, by students from this city and its vicinity; and though some of them may ultimately settle elsewhere, by far the greater part may be expected to remain with us. To this state of things, all your arrangements should be carefully conformed.

In the higher Courts of this State, we have two professional degrees. The first degree in the Supreme Court is that of Attorney, in the Court of Chancery that of Solicitor; the second and highest degree in both Courts is that of Counsel. The several offices of Attorney, Solicitor, and Counsel, in time, may be, and usually are, united in the same person. Attorneys and Solicitors are not entitled, until three years after having been licensed as such, to apply for admission to the further degree of Counsel. The full term of preparatory studies, classical and legal, for the Attorney and Solicitor, is seven years after the age of fourteen. In no case can more than four years be allowed for classical studies; and where the party has not pursued such studies for that period, after the age of fourteen, his legal clerkship will be from three to six years, or more, according to circumstances. The graduates of our Colleges being generally entitled to a

Plan for the Organization of a Law Faculty

deduction of the longest time allowed for classical studies, their term of professional education is usually three years; and as the means of Academical instruction are daily becoming more abundant in our country, it may be hoped that few persons will hereafter apply themselves to the study of the Law, in this city at least, without having first pursued classical studies for the whole period allowed.

We may therefore assume, that the ordinary term of Law studies in this city, will hereafter be *three years*; and I would also make that period the term of instruction in the Law School, so that the student may avail himself of its advantages, during his whole clerkship. This will be a longer course than is usually required in our American Law Schools; but it is very certain, that even this term will be quite too short for a complete course of instruction, theoretic and practical, in all the branches of a science, so extensive and complicated as the Law of this State. And yet it is equally certain that our young men will always present themselves at the earliest allowable day, for admission to the Bar. The regular period of clerkship, although short and insufficient, is therefore all that will be appropriated to the initiatory studies. What then is to be done? Are we to abandon the idea of teaching the Law as a Science? Not at all. The very fact that sufficient time is not allowed for thorough information in all its branches, makes it the more important to the student, that the limited instruction he may receive should be as scientific in its nature, and as perfect in degree, as it is possible to make it. Instruction of this sort can scarcely be obtained, except in a regular Law School; and even there it must be confined to the most important Titles, and in many cases to a mere outline of the Law on such Titles. The subjects selected may, however, so far as they are pursued, be treated scientifically, and as parts of a great system; and the mind of the student may thus be imbued with principles which will not only guide him in his subsequent investigations, but qualify him, to a considerable extent, for immediately engaging in professional employments on the expiration of his legal clerkship.

The selection of Titles for study and instruction, should be accommodated to the period of clerkship, and to other attending circumstances; and as a general rule, scientific method must also bend

to the necessities of the case. The great object of the School should be, to impart, within the given time, the largest amount of that kind of knowledge, which is best calculated to qualify the student for the practical duties of his profession; leaving it to him, in after years, and by diligent self-instruction, to fill up deficiencies. The term which intervenes between the two professional degrees, furnishes a good opportunity for this purpose; and under the imperfect system of legal education which has hitherto prevailed in this State, our junior Attorneys and Solicitors have found it indispensable, to devote a great portion of this period to a regular course of private study, preparatory to their admission as Counsellors. The Law School may be made extremely useful to such persons; and its instructions should be so regulated, as to induce them to attend it for one or more years. Of the junior Attorneys and Solicitors now established in this city, many, I should think, would be glad to avail themselves of such advantages. And as there will always be in this place, many members of the Bar who will not have enjoyed, during their clerkship, the benefits of a Law School, you may reasonably count, at all times, on some students of this class.

Lawyers in this State, as well as in other parts of our country, are generally obliged to apply themselves to the business of the Attorney and Solicitor, in connection with that of the Counsellor and Advocate; and to a greater or less extent, the multifarious duties of the different departments of the legal profession, are usually performed by the same individual. This renders it indispensable that the American Barrister should possess a thorough knowledge of Conveyancing, and of the practice in the Common Law and Equity Courts; and such knowledge is only to be acquired, by spending the whole, or nearly the whole, term of study, in the office of an extensive and accurate practitioner. Every man knows that the mere reading of books on naval architecture, or nautical science, will never qualify one to build, or to navigate, a ship. In like manner, the most laborious course of Law reading, superadded to the ablest lectures on the theory of the science, will be equally insufficient, without some practical training, to prepare the student for the arduous and responsible labors of the legal profession. Hence it is that our Courts

Plan for the Organization of a Law Faculty

require, as a general rule, that the whole term of clerkship shall be spent in the office of a practising Attorney and Solicitor, and under his direction, except when some portion of the term has been spent in the regular studies of a respectable Law School; and that only one year is usually allowed for such studies. This latter regulation has been the more necessary, because our American Law Schools, have, for the most part, been situated in small towns containing but few practising lawyers, and have therefore furnished little or no opportunity for instruction in the Modes of Proceeding. For the like reason their pupils have usually been required to devote their exclusive attention, to the lectures and other exercises of the school. In the few instances in which such institutions have been established in our great cities, similar regulations, have, I believe, been generally adopted, although not enforced by the same necessity. The location of your school, the peculiar wants of Law students in this place, and the comprehensive and permanent provisions you desire to make, all require that you should arrange them on a different plan.

The great number of Law offices in this city, in which a varied and instructive business is carried on, will afford facilities for the acquisition of practical knowledge which may be turned to great account. Instead of withdrawing the Law Clerks from the labors of the office, the University should endeavor so to regulate its Law Department, as to give new value to those labors, and to render them auxiliary to a systematic course of instruction in the principles of Legal Science. This, I think, may easily be done; and unless it be accomplished by your arrangements, you will confer but little benefit on those who are to form, in future times, the bar of the city and state. For if a choice is to be made between the School and the Office, on the supposition that the advantages of the former can only be enjoyed, at the expense of an entire abandonment of the latter, you may rely on it, that the system which has heretofore obtained, will be kept up. The necessity of acquiring an early and thorough knowledge of the practice, will, in the estimation of a great majority of the students, far outweigh the benefits of theoretic tuition. Most of them will prefer the Law Office for the whole term; and those who resort to the Law School, will not remain in it more than a sin-

gle year.

But whilst I would so connect the instructions of the School, with the business of the office, as to give to the student, the benefits of both, I would not make it indispensable, that he should, in all cases, actually attend as a Clerk in a Law Office. It has already been suggested, that the courses of study should be so regulated, as to be appropriate to junior Attorneys and Solicitors. They may also be so arranged, in perfect consistency with the other features of the plan, as to be well adapted to those persons who may choose to apply themselves exclusively to the lectures and other exercises of the school, without devoting any portion of their time to practical labors.

In the further application of these principles, the following has occurred to me, as a suitable plan for the organization of the school, and for the courses and method of instruction to be adopted in it.

I. ORGANIZATION OF THE SCHOOL.

This branch of the University may, with propriety, be divided into three separate Departments:— the Senior, to include those students who are in the last year of their clerkship; the Junior, those who are in the intermediate year or years; and the Primary, those who are in their first year. To each Department, a Professor should be assigned — the Principal Professor, who will also be the Head of the Faculty, being assigned to the Senior Department. Each Professor should instruct his Department in an appropriate course of study, to be completed in one year.

These three courses should embrace those Titles of our Law, which are of the most general and constant application, and in which early and thorough instruction is most needed by the student. The study and exposition of the branches thus assigned to the several Departments, will accordingly constitute the great business of the school, and to these branches the attention and labors, both of the Professors and the students, will be chiefly devoted.

In order to bring the students into contact with each other, and to make the institution a single school instead of three separate schools, as well as to supply deficiencies in the regular courses,

Plan for the Organization of a Law Faculty

there should also be a General or Parallel Course, to be given by the Principal Professor to the three Departments combined, upon subjects not embraced in the regular course of either Department. This General Course should embrace three years; so that no part of it may be repeated to students who go through all the Departments. In the selection of Titles for this course, some regard should be had to general method, and also to the regular studies of the several Departments. The subjects chosen for it should be less didactic and abstruse, than those allotted to the regular courses, so as not to require the same degree of labor on the part either of the Professor or the student; and so also as to furnish to both an agreeable change of study. Instruction in this course will accordingly be confined to elementary principles, and they will be discussed for the most part, in a very general manner.

II. COURSES OF INSTRUCTION.

1 • Beginning with the Primary Department, I would propose an important departure from the ordinary scientific course pursued by the Institutional writers. They more usually commence with the Law of Nature, as the foundation of all Legal Science, and go through a course of instruction in the Law of Nations, and in the Political or Constitutional Law of the country for which they write, before entering upon the peculiar system of Municipal Law which composes the great body of its civil and criminal jurisprudence. In treating of the Municipal Law, they commonly begin with the rights of persons and the relations of domestic life, which branches, as well as the whole Law of property, real and personal, are all expounded, before the modes of applying the rules of Law and of administering justice in pursuance of them, are taken up. The courses of instruction in Law Schools are generally arranged upon the same plan; though as before suggested, they do not often pay much attention to mere Practice.

The course adopted by the elementary writers, as just stated, is undoubtedly the philosophical order in which the Law, as a general science, ought to be unfolded. And when the term of study is long

Benjamin F. Butler

enough to allow it, the same method may, with advantage, be pursued in a Law School; but then the student, until he reaches the practical branches of the Municipal Law, should not enter the office of the Attorney or Solicitor.

Proceeding on the supposition, that the members of the Primary Department will all have taken their places in Law offices, I would here, in accordance with the principles above suggested, carefully adapt the course of instruction to their circumstances and wants.

To enable the student to derive any considerable advantage from the labors of the Law office, they should be elucidated by a corresponding course of study and instruction. This is rendered the more necessary at the commencement of his clerkship, by the peculiar character of legal proceedings, which, it must be confessed, are not very intelligible to a tyro.

On entering a Law office, the student is immediately brought in contact with the forms of conveyancing, and the proceedings in suits, many of which forms and proceedings he is required to read, copy and prepare. Nothing can be more inappropriate, and if custom had not made it common, nothing would strike us as more absurd, than to place in his hands, at the very commencement of these labors, and as his chief subjects of study, books treating of the Law of Nature and Nations. The first and second volumes of Blackstone, and the whole of Kent's Commentaries, are at this time almost equally inappropriate, because they have little or no connection with the practical business of the office, which will therefore be utterly unintelligible, unless his principal can make time to give him oral explanations – an advantage rarely enjoyed in our Law offices, and least of all, in those which afford the greatest amount of diversified and instructive practice.

Strict philosophical method must therefore give way to the necessities of the case; and what might otherwise be left to a later period, should, under the circumstances and for the reasons just stated, be taken up at the beginning. I would accordingly so far invert the present order of study as to direct the attention of the student, during his first year, chiefly to the science of Practice and Pleading, and though I would not entirely overlook the Law of Nature and Na-

Plan for the Organization of a Law Faculty

tions, and the other fundamental branches usually taught at this period, I would give them a secondary place, by transferring them to the General Course. To the Primary Department I would assign a full course of instruction upon *the Organization and Jurisdiction of Courts; their modes of proceeding in suits at Common Law, and in Equity, Admiralty, and Criminal cases; and the System of Pleading, generally, and in each of the Superior Courts*. As these subjects comprise a large portion of Blackstone's Commentaries, and of our own Statute Laws, as well as several extensive treatises on Practice and Pleading in the different Courts, a full year will be barely sufficient for proper instruction in them. They will therefore furnish abundant employment for one of the Professors. Nor will the task of instructing in these branches be unworthy [of] the efforts of an able and learned jurist. Our forms of proceeding, though generally prolix, and often encumbered by needless technicalities, are yet intimately connected with the principles of the Law. And as a general rule, he who best understands the nature and design of the instruments which the Law employs, will not only be most expert in the business of his profession, but be best qualified to look above the mere form, and to lay hold of, and appropriate to their true uses, the higher parts of his profession.

The advantages of this plan of study will, as I conceive, amply compensate for its departure from a strict scientific arrangement. The ordinary labors of the Law Office, properly explained to the intelligent student, will immediately become to him subjects of interest, and sources of improvement. What might otherwise be regarded as intolerable drudgery, will now be valued as instructive occupation; and he will therefore apply himself to his duties as a clerk with alacrity and diligence. His services will soon become sufficiently useful to his principal to remunerate him for the use of his library, and for the occasional instruction he may be able to give. One of my purposes, indeed, in this part of my plan, is to render the connection between the practising lawyer and his clerks a source of mutual benefit.

Another advantage will result from this course of study. In this city, some Court is almost constantly in session, which the student, after he has acquired such a knowledge of the modes of proceeding

as to enable him to understand the reasons on which they are founded, and the purpose to be accomplished by them, will find it very useful occasionally to attend. Under the present system, he can derive but little advantage from attendance in the Courts, in the earlier parts of his clerkship; but upon the plan above proposed, he will be qualified to understand proceedings and discussions in Courts of Justice at an early day.

The course of instruction thus proposed to be allotted to the First Department, though specially designed for those who intend to pursue their professions in this State, will not be without its use to those who may establish themselves in other parts of the Union. The general rules of Pleading are every where the same; and our system of Practice, though more complex and laborious than that of any one of our sister States, will yet confer on the Lawyer who has once mastered it, two decided advantages. From the similarity of our Practice to that of the English Courts, he will more readily understand their decisions, so frequently the subjects of reference in our legal discussions, than if he had been educated in a State where the Practice is more simple, and less analagous to that of England. And if occasion demands it, he will also be enabled to acquire, very easily, a correct knowledge of the practice of any other State; for it may be said with truth, that almost every form of action in use in the United States, is substantially embraced in some one or other of our multifarious modes of procedure. This remark may even be extended to the Civil Law Practice of Louisiana – our Equity proceedings being a good introduction to that system.

The separation of the Department of Practice and Pleading from the other classes, will, however, enable those students who may prefer to apply themselves to other branches, to do so without difficulty; and to consult, in the term and subjects of their studies, their respective wants and inclinations. This remark is equally applicable to junior attorneys and solicitors; who, as before suggested, will be enabled to select from the Regular and General courses, such Titles as they may prefer.*

* If it were necessary to add other reasons to those stated above, for commencing

Plan for the Organization of a Law Faculty

2. For the Junior Department, I propose as a regular course of study, *the Law of the Domestic Relations* and the various Titles forming the *Law of Personal Property*, including *Commercial and Maritime Law*. By far the greater part of our suits, and especially in this city, belong to these branches. An early introduction to them so that the student may be enabled, as speedily as possible, to understand the principles involved in the business of the office, will greatly facilitate his progress. It is almost needless to say that the numerous and important subjects embraced in this course, will open to the Professor to whom it may be assigned, an important and laborious field of duty. They compose the Second and Third Volumes of Kent's Commentaries; several of their particular Titles have been made the subject of extended treatises, and in some of them the explanations of a competent teacher, are peculiarly requisite.

3. *The Law of Real Property*, on account of its abstruseness and difficulty, should, in my judgment, be reserved until the last year. For this arrangement, I have also the authority of the distinguished Commentator on American Law, who has treated this subject in his last volume, and after having given a full exposition of the Law of Personalty, departing in this respect from the analysis of Hale, and the works of Blackstone, and other Institutional writers. I would also assign to the Senior Department, *the Law of Corporations, and the Law of Equity* – the former having become in this country, a most important title, the latter constituting a system by itself, and both

with the study and explanation of the Practice, it would be easy to show that such a commencement is much more agreeable to nature, and to the most approved methods of acquiring knowledge in analogous cases, than the more scientific course. The names and general uses of the things which surround him, and with which he most frequently comes in contact, are the first branches of knowledge which we attempt to impart to a child. The particular materials, with their various properties, of which any such thing is composed, and the scientific principles involved in its construction, and in the uses to which it may be applied, are all left to be studied and learned in maturer years. Instruction in the mechanical and other arts, is almost always given in the same way: the acquisition of the Practice, to a greater or less extent, usually accompanying that of the principles on which it is founded, and preceding the study of the higher branches of science connected with the art.

Benjamin F. Butler

being more or less connected with the Law of Real Property.

4. For the General or Parallel Course to be given to the whole School, and to occupy three years, it will be easy to select a sufficient number of appropriate and interesting subjects. The following have occurred to me as combining the various requisites proper to this course.

First Year. *Law of Nature and Nations; History of American Jurisprudence; Constitutional Law; Principles of Legislation; and Interpretation of Statutes.* As these subjects lie at the beginning of a systematic analysis of Legal Science, the propriety of placing them in the first year is too obvious to need comment. And though the time and labors of the student will be principally devoted to other and very different branches, there will yet be opportunity to give him such information on the Titles just mentioned as may impress upon his mind their leading principles and relations.

Second Year. *Criminal Law; and Law of Evidence.* In going through the regular courses of the several departments, the rules of Penal Law, and of Evidence will frequently be referred to, and some of them will be more or less discussed; but as each of these branches forms an entire system, which not only admits of scientific analysis, but of many interesting illustrations, they may, with great propriety and advantage, be made the subject of particular instruction. This course will also very usefully connect itself with the regular studies of the Junior Department.

Third Year. *Selections from the Roman Law;* and for the last term of the year, which will immediately precede the examination of the students for admission to the Bar, *Forensic Duties and Professional Ethics.*

The immense extent of the Civil Law, the time and labor which are necessary to the acquisition of even a moderate knowledge of its details, and the fact that the greater part of it has little or no connection with our system of Jurisprudence all conspire to demonstrate the impropriety of devoting to this subject, any very large portion of the usual period of clerkship. On the other hand, the laws of so many nations have been founded on the Roman code, and so much of what Gibbon calls its "public reason" has been transfused into particular branches of our own Law, that to overlook it entirely, would

Plan for the Organization of a Law Faculty

be equally objectionable. A general view of its history and spirit, and a reference to some of its most useful Titles, rather to guide the student in his subsequent investigations, than for immediate instruction, are all that can be attempted with advantage. It will, however, be easy for the Professor, in his treatment of this subject, to make it illustrative of the regular studies of the Senior Department. By contrasting the rules of the Civil Law in regard to Real Property, with the Feudal principles on which that portion of the Common Law is founded, the peculiarities of the latter system may be developed in a more striking and impressive manner, than if it were considered by itself. Other parts of the Roman code will discover the sources, and explain many of the rules, of the Law of Equity and of Corporations.

The other topics proposed to be assigned to the Parallel course during the third year, are not, strictly speaking, branches of Legal Science. And yet it is obvious that they constitute very important parts of a thorough professional education. Under the head of Forensic Duties, may be included such suggestions and advice concerning the preparation of cases for trial and argument, the composition of briefs, the examination of witnesses, and the style and manner of legal discussions and forensic eloquence, as the learning and experience of the Professor may enable him to offer. Professional Ethics will include every thing that relates to the duties and deportment of members of the Bar, in respect to each other, to their clients, to the courts in which they practice, and to the public generally. Under this head, the advantages of diligence and integrity may also be enforced; and the true methods of acquiring public esteem, and of rising to eminence in the profession, may be pointed out and recommended. On this subject, early and sound instruction is of the first importance. It is true that our courts, by their rules and decisions carefully inculcate on Gentlemen of the Bar the high obligations of fidelity and justice, and when occasion requires, they enforce these precepts by appropriate penal sanctions. But there are cases of chicanery and illiberality in practice, and sometimes of professional delinquency of a more serious character, which cannot be brought to the notice of the courts, and which must therefore pass without judicial censure. And even were it certain that every such instance

Benjamin F. Butler

would be detected and punished, how much more conducive to the interests of the community, and to the honor and usefulness of the profession, to secure, if we can, on the part of all its members, such a line of conduct as shall furnish no occasion for judicial rebuke or popular reproach?

One of the most effectual methods of promoting so desirable an end, is to combine moral training with professional education, and to imbue the mind of the student with correct notions of the nature and purposes of his calling, and of the responsibilities which belong to it. He should be taught, that though many of its duties grow out of the misfortunes, the errors, and the vices of mankind, the great object of his profession is not, as supposed by many without, and by some within, its pale, to derive wealth or livelihood from those evils, but to mitigate and correct them. He should also be informed, that the display of rare ingenuity or of great intellectual power, in forensic discussions, is by no means the most useful of Professional labors. On the contrary, he should be instructed, that it is an important and very honorable part of the business of a lawyer, by his learning, skill, and sound advice, to aid his fellow citizens in the correct transaction of their affairs, in the solution of difficult questions without resort to litigation, and in the amicable settlement of angry controversies. Above all, he should be impressed with the conviction, that in conducting such legal proceedings, either in or out of court, as may be necessary to the interests of his clients, he is called to the high dignity of ministering in the sanctuary of Justice, and that it behooves him to come to the altar “with clean hands” and “a pure heart” – that frankness and integrity towards his antagonists, are perfectly compatible with the manly support of the rights of his employers – that chicanery and artifice are not only, in the long run, injurious to professional success, but utterly inconsistent with the first principles of a science, whose grand business is “to command what is right and to prohibit what is wrong” – and that to form the character of a great jurist, it is necessary, first of all, to be a good man.

In the development of these principles, and in their application to the circumstances and relations of members of the Bar, there will be room for considerable detail. And I apprehend that no one who

Plan for the Organization of a Law Faculty

duly reflects upon the subject, will doubt the importance of assigning to it a prominent place in the exercises of the School.*

III. MODE OF INSTRUCTION.

Instruction in Law Schools is usually communicated through the medium of lectures; and when properly managed, this mode of teaching may undoubtedly be made extremely useful to the student. In most of the English, and in some of our American Law Schools, it has been used as an original means of exhibiting the elements of Legal Science – that is to say, the students have come to it with little or no previous knowledge, and with the expectation of deriving from it, their first impressions of the rules and principles of Law upon the subject intended to be discussed. The lectures in these cases have usually been in writing, and not unfrequently prepared with such accuracy and precision, as to fit them for the press on the completion of the series. This is an admirable method of composing institutional books; and we are indebted to it for the Commentaries of Blackstone and Kent, Woodeson and Story; but it appears to me not well adapted to the business of instruction in a Law School.

When the elements of a science are few and simple, or of such a nature as to address themselves to the affections as well as the understanding; and above all, when they admit of demonstration to the eye, the lecture alone, may often be found a fit method of teaching

* I am aware that it is only those students who commence their studies at the beginning of each triennial term, that will receive the instructions of the Parallel course, in the connection above indicated. But though such students will probably derive more benefit from it than the others, it will yet be intelligible, and I hope instructive, to all. Theoretical accuracy would require the instruction of each Department, by itself, in the branches above assigned to the corresponding year; but this would defeat what I think quite important – the union of the three classes, as a single school, in a part of their studies. It is however quite probable, that the labor of the Parallel course, in addition to his duties to the Senior Department, may be too severe for the Principal Professor; and that it may therefore become necessary, even on the plan above proposed, to employ all the Professors in each year of this course. This point, and some others of a practical nature, can only be settled by actual experiment.

Benjamin F. Butler

them; though even in such cases its usefulness will be increased by some prior knowledge or preparatory study of the subject. The Law, as a science, is addressed almost exclusively to the mind; and of all mental sciences it is at once the most extensive, multifarious and complex. Each leading Title embraces so many minor divisions, and is so intimately connected with other kindred topics as to require, in order to its complete exposition, a fulness and accuracy of treatment which cannot well be given in the lectures of a Law School, without overlooking other branches of equal, or perhaps of greater, importance.

The most useful kind of Law lectures, (I had almost said the only kind from which much benefit can be derived) is that which is designed to elucidate a preparatory course of Text reading previously assigned to the student, and to impress on his mind and memory, its leading principles. And for this purpose the oral lecture is by all means to be preferred; for whoever undertakes to discuss, in writing, any particular Legal subject, will necessarily find himself compelled to write a treatise or dissertation. But if treatises or dissertations are to be read, the pupil had better do it for himself, and under such circumstances as to enable him to peruse and digest them at his leisure. Besides, the rules of Law on almost any given subject, are too numerous and sometimes too abstruse, to be treasured in the memory without the aid of notes and memoranda which cannot be made whilst listening to a fluent reader. Many legal principles are also so artificial and refined, and others qualified by distinctions so subtle, as not to be understood without the closest attention, even when presented to the mind in a written page – much less when pronounced with the rapidity of ordinary reading.

The oral lecture is not only far more attractive and inciting, but it furnishes the opportunity of supplying the defects of the Text books, and of giving much useful information which would never be incorporated in a written lecture. The speaker not being confined to the precision of written language, nor to a strictly scientific examination of his subject, and his great object being to expound and illustrate the Text reading, he may select such topics as are most important, and when necessary may amplify and repeat, in a manner

Plan for the Organization of a Law Faculty

which may be very useful to his hearers, but which would not be allowed in written composition. Lectures, more or less of this nature, are now taking the place of the written dissertations formerly read in our Law Schools; and as their superiority to the old method is too obvious to need further remark, I proceed to point out the mode in which I think they should be given.

Each course of instruction should be divided into a convenient number of lectures, a Syllabus of which should, from time to time be printed for the use of the School. After stating with suitable minuteness, the subject and divisions of each lecture, and the time when it is to be delivered, the Syllabus should carefully specify the preparatory studies. They should consist of appropriate selections from the most approved elementary books, with references to the Statute Law, if there be any applicable to the subject, and to one or more leading authorities from the Reports. This preparatory reading should not be so voluminous, but that an intelligent and industrious student may go through it with care, during the interval between the lectures, and at the same time attend with fidelity to his office duties. On the other hand, it should be sufficiently extensive, to impart to such a student, a general knowledge of the state of the Law on the given subject. The Professor to be qualified for his lecture, must not only be thoroughly acquainted with the preparatory Text reading, but he must also extend his researches to other kindred sources; and without attempting to write a formal dissertation, he should yet draw up such a brief, as may enable him to speak on the topics he may select, in a fluent, perspicuous and accurate manner. With this special preparation, added to his general learning and experience, he will be enabled to elucidate the Text-reading, and to communicate a large amount of valuable instruction. In his remarks he should endeavor to bring before the mind, in a distinct and forcible manner, the general principles which belong to his subject; to state the leading rules, with their exceptions; and to develop the history and reason of all; with such illustrations as may be likely to impress on the memory the substance both of the Text Books and of the Lecture.

To derive from such a lecture all the instruction it is capable of

imparting, the preparatory course must have been faithfully studied and clearly understood; and to ascertain whether such be the fact, recourse must be had to personal examinations. These may, I think, be connected with the lecture, by interspersing it with appropriate questions, at the pleasure of the Professor, in such manner as to put at least one question, during the lecture, to each member of the class. If it be too large to admit an interrogatory to each pupil, the object may be sufficiently attained, by dividing the questions among the students at the pleasure of the Professor. These interrogatories should be connected with the points intended to be explained in the lecture; and should in no case be known to the student, except so far as his preparatory reading may have enabled him to anticipate and prepare for them. The answers to such interrogatories, if correct, will furnish instruction to the whole class; and in proportion to their fulness and accuracy, and to the promptitude and clearness with which they are given, will confer honor on the students from whom they come. If wrong in whole or in part, they will indicate the topics on which full and accurate illustration is particularly needed, and thus draw out such remarks from the Professor, as will be likely to make a lasting impression upon the understandings and memories of all.

Where the lecture is confined to the mere business of reading or speaking on the one side, and of listening on the other, it must soon become monotonous and tiresome, unless the teacher be endowed with considerable powers of language and elocution. And even when those advantages are possessed, though they may secure for the moment the attention of the audience, it is by no means certain that any lasting impression will be made on their memories. This sort of teaching is also defective in not sufficiently awakening and exercising the mental faculties of the students. The use of occasional interrogatories will not only give animation and excitement to the lecture; but accomplish other and more important purposes. It will compel the students to go through the preparatory course, in a careful manner; and to listen with interest to the lecture during its delivery. They will frequently be obliged to reflect, to reason, and to judge; their minds will be brought into contact with each other and

Plan for the Organization of a Law Faculty

with the mind of their teacher; and as the answers made to the questions which may be put to them, will furnish a decisive test of the industry and intelligence of those who give them, a generous and useful spirit of emulation will be excited in the class. Special recitations on the lectures as delivered, should also be attended to at stated intervals.

As a further means of promoting emulation, and with the higher view of preparing the students for speaking and writing on legal subjects, it will be useful to exercise their minds by forensic debates in moot courts, and by requiring from them written opinions on questions of law, and readings and dissertations on statutes and other themes, as circumstances may admit.

To avoid any interference with the attendance and duties of Law clerks in the offices of their principals, the exercises of the School may all be had in the afternoon and evening. Such an arrangement will also answer another valuable purpose: it will bring such students under the care of the Law Faculty, at hours when they least enjoy the supervision of their principals, and are most exposed to the temptations of a great city. The mornings of each day before office hours and the numerous intervals of leisure when in the offices, will be abundantly sufficient for reading and study.

To keep up with the lectures, to sustain with credit the examinations and other tests to which he will be subjected, and to derive any considerable advantage from the course of instruction here delineated, it will doubtless be necessary that the student apply himself with method and industry, to the studies and exercises of the School. For however able or unwearied may be the exertions of his teachers, his improvement will mainly depend on his own capacity and diligence. But this is an unavoidable condition of every scheme which may be projected for instruction in the science of the Law. Every man who is at all acquainted with the nature and history of the Legal Profession, will admit, that without a considerable degree of intellect, and a large amount of industry and perseverance, it is impossible to acquire even a moderate knowledge of its Principles and Practice. In a Law School well conducted on the plan above sketched, the intellectual and other qualifications of the students will very soon be devel-

oped; and those who are more than commonly deficient in natural endowments, in industry, or in any other requisite, will probably be induced to abandon the study of the Law, and to select some other calling more appropriate to their character and habits.



The foregoing plan has never, as a whole, been subjected to the test of actual experiment; but as many of its details have been successfully employed in our own country and elsewhere, it cannot be considered as entirely untried. In digesting it, I have endeavored to select from other institutions, whatever I thought valuable and appropriate; and to combine therewith such additions and improvements as were suggested by my own experience, or demanded by your location and by other attending circumstances. I am also indebted to several of my professional brethren, for valuable suggestions on the subject; and in this connection it may not be improper to add, that those of them to whom the scheme has been explained (and the number is not small) have stated, in very decided terms, their approbation of its general arrangements.

Under these circumstances, it will not be thought chimerical or presumptuous to express the belief, that an Institution conducted with ability on the above plan, with such modifications as experience may require, will prove extensively useful to the Bar, the City and the State. With reasonable diligence on the part of Professors and students, the progress of the latter in acquiring a knowledge of their profession, will be far more rapid than under the present system. Indeed, I have no doubt, that intelligent students who shall attend with fidelity on the whole course, will possess, at the end of the three years, a larger amount of elementary science, and more practical skill, than is now usually possessed by Attorneys and Solicitors of two or three years standing. It may therefore be expected, that the Courts will think it expedient to hold out some inducement to a general attendance on the school, by admitting those who shall have attended all the regular courses, to examination for the degree of Counsel at the end of a single year after their admission as Attor-

Plan for the Organization of a Law Faculty

neys and Solicitors, or in some other fit way. In the law concerning the practice of Medicine, there is a precedent for such a provision;—those who attend all the lectures delivered in a Medical College, being entitled to a deduction from the term of study which would otherwise be required. An attendance on these lectures, is also a necessary prerequisite to the degree of Doctor of Medicine from the Regents of the University. These regulations were designed to elevate the standard of Medical Science; and so extensive has been their influence, that a compliance with them is now generally considered a necessary introduction to the practice of Physic. As the like reason will apply to Law students whenever suitable Law Schools shall have come into existence in our State, it may be presumed that similar encouragements to frequent them, will be proffered by the Courts.

It is unnecessary in this place to enter into details in respect to financial arrangements, but it may be useful to offer two or three suggestions on the subject. Those students who are engaged as clerks in the Law offices, will probably find in them the requisite books; and of the Professors, each, doubtless, will have his own library. For the occasional use both of professors and students, and especially with a view to the collection of rare and expensive works, the University should take measures to provide a Law Library. You will of course furnish the appropriate lecture rooms, and perhaps defray the contingent expenses, but the Professors should rely, for their compensation, on the tuition fees. If the institution be such as to deserve support, they will amount to a considerable sum, which may be more or less increased by the private practice of the Professor. On this latter point, however, it will be necessary that definite limits should be prescribed and religiously adhered to. To do honor to themselves, and to make the school what it ought to be in usefulness and reputation, the Professors must give to it their best efforts:— it must be their principal employment. Nothing short of this will ensure success; without it, however able the Professors, whose names may figure in your catalogue, the whole scheme will prove abortive; and the mortification and disgrace of the failure, will be proportioned to the theoretical perfection of the plan, and to the promises of good it may have held out to the community. The du-

Benjamin F. Butler

ties of the Professorship must therefore be paramount to all others; and the members of the Faculty should engage in professional business, so far only, as may be necessary to keep up their connection with the courts and the bar; to retain and extend their practical knowledge; and to supply any deficiencies in their support. To accomplish these objects, without prejudice to the school, each professor will be obliged to confine himself to the business of Chamber counsel, and of some particular Court or Courts. But I forbear to enlarge on these topics, as they can more fitly be discussed and settled hereafter.

Before closing this exposition it should be remarked, that the organization and system of instruction above proposed, may be readily enlarged or varied, as the increased number of students, or other circumstances may require. The three departments, the general classification, and the regular courses of study may be substantially preserved; but the Faculty may from time to time be enlarged, as success shall justify, or necessity demand such a step. Each of the branches proposed to be assigned to the Parallel course, may very usefully be made the subject of fuller instruction than such as can be given on the above plan; and the labors of the regular courses may also be divided. In this way the institution you propose to establish, may gradually extend its means of usefulness, until at length it may be enabled to afford thorough and complete tuition in all the branches of Legal Science.

I have now, I believe, stated the more material particulars of the plan heretofore submitted to the Council. It has given me great pleasure to learn that its principles have been approved and adopted by that body; and I have also received, with becoming sensibility, the notice you have given me of my appointment as Principal Professor. In regard to that appointment, I can only repeat what I have before said to you in conversation. Such is my conviction of its importance and real dignity, that were I now at liberty to enter on its duties, I would do so with no other hesitation than that occasioned by a sense of my utter inability to realize, in any efforts I may make, my own conceptions of the manner in which those duties should be performed. You are fully acquainted with the circumstances which

Plan for the Organization of a Law Faculty

forbid, at present, any such attempt, and which may perhaps continue to forbid it until March, 1837. If life and health shall be spared to me until that date, and the University think it proper to wait for my services, they will then be at your command.

In the meantime, however, the other Professors may be appointed, the Primary and Junior Departments organized, and the courses of instruction assigned to them, commenced; and all this, I trust, will be done at an early day. In these incipient measures you may rely on my hearty co-operation, so far as my official duties, and my other avocations may allow. And should any unforeseen contingency prevent, on my part, any further participation in the enterprise, I shall yet feel, that in thus contributing to the establishment of a Law School in this place, on a foundation commensurate with the dignity of the science, the character of the age, and the wants of our community, I shall have done something towards discharging the debt, (in my case a very large one) which every Lawyer owes to his Profession.

I have the honor to be,
With great respect and esteem,
Your obedient servant,
B.F. BUTLER.

Postscript. There is a close correspondence between the leading principles and some of the details of the above plan, and those stated in one recently proposed for the organization of a Law School, on the Maynard endowment, at Hamilton College in this state, published in October, 1834, in the New-York Mirror, and in the American Jurist for April last. The preceding letter contains indeed a fuller exposition of the subject than the paper referred to: but the only essential difference between the two plans consists in the more extended organization proposed to be given to the Law Institution of the University, and in the provisions necessary to adapt it to the circumstances and wants of students in this city. The writer therefore thinks it proper to state, that it was not until after he had submitted his own views to the Council of the University, that he met with the article published in the Mirror and Jurist, or was even

Benjamin F. Butler

aware that such a paper had been published or prepared. The coincidence between the two *projets* will be sufficiently explained, when the writer informs the public, that the plan for Hamilton College was prepared at the request of the Trustees of that Institution, by his friend John C. Spencer, Esq. and that the prominent topics embraced in each plan had been on previous occasions, and with much unanimity of sentiment, very fully discussed between that gentleman and himself. It is understood that Mr. Spencer has been invite to execute, in the Law Professorship of Hamilton College the plan prepared by him; and it is to be hoped that he may be induced to comply with this invitation. The success and usefulness of a Law School in the interior of the State, under the charge of one who unites to rare talents and unrivalled industry, so large an amount of professional learning, experience, and skill, cannot be doubted. Nor can its competition with a School in this city, be otherwise than beneficial to both Institutions, to the Bar, and to the State.

GB