





# DUKE LAW SCHOOL, 1868-1968: A SKETCH

by W. Bryan Bolich†

## I. 1850-1894

Tracing through Trinity College, Duke University's history began in 1838 when a group of Methodist and Quakers joined in the creation of a school in Randolph County called Union Institute, of which Brantley York was principal until succeeded by Braxton Craven in 1842. It was incorporated in 1851 as Normal College. A church-state institution emphasizing education for the profession of teaching in the public schools, its Board of Trustees included state officials with the governor as chairman. Having broadened its curricula and educational objectives in 1859 Normal College terminated its connection with the state and became Trinity College, an arm of the Methodist Church.<sup>1</sup>

The history of instruction in law at Duke began in 1850 as part of a liberal arts education when President Braxton Craven inaugurated his lectures on Political and Natural Law, which were replaced in 1855 by his lectures on Constitutional Law and International Law.<sup>2</sup> This utilization of law as part of a liberal arts curriculum, of which Braxton Craven was an ardent advocate, stemmed from the influence of Sir William Blackstone who in 1753 became a lecturer on law at Oxford University and was in 1758 made the first holder of its distinguished Vinerian Professorship of English law. It seems startling that this late date marked the first lectures on English law ever delivered in a university. At this time the Inns of Court were in eclipse, and the only avenue to the legal profession was through self-education and office apprenticeship, which generally produced legal craftsmen unlettered in the broad context and implications of the law. Blackstone contended that this situation could never "be effectually remedied but by making academical education a previous step to the profession of the common law, and at the same time making the rudiments of law a part of academical education." Blackstone's first lecture, the Study of Law, outlined and attempted unsuccessfully to introduce a system of legal education in England. However, his message bore fruit in America where his *Commentaries*, of which this lecture was the first part, became the legal bible of lawyers and law students. His thesis that all citizens should study and understand the law under which they lived was widely followed in this country.<sup>3</sup> Until the last half of the nineteenth century, the average American lawyer's preparation followed the English pattern of self-study and apprenticeship. In the late 1700's and early 1800's several chairs of law were established with able men such as Wythe (Wm. & Mary, 1779), James Kent (Columbia, 1793), and Parker (Harvard, 1815). The aim was not to train lawyers, but to lay a broad foundation in responsible citizenship for the further education of prospective lawyers and non-lawyers alike.<sup>4</sup>

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In 1865 Trinity adopted the university system of schools or departments, and the course of instruction was embraced in eleven schools, vis. Latin, Greek, Mathematics, English Literature, Natural Science, Modern Languages, Mental and Moral Philosophy, Engineering and Architecture, Analytical Chemistry, Theology, and Law.<sup>5</sup> Theology or Law might be studied exclusively, but in all other departments the student was required to take classes in at least three schools for a degree.<sup>6</sup> In a subsequent undated paper of President Craven entitled "Law No. 1 – Study of the Law," he stated that the above mentioned 1865 action of the Board of Trustees intended three things: "1. To furnish facilities for thorough collegiate education. 2. To give practical instruction in the arts and pursuits most generally followed by our citizens. 3. To bestow that superior literary finish rarely attained except by the most zealous scholars and the best talents. 4. To meet these views the study of law was introduced, and the department is open to all who have the qualifications, the inclination and the leisure to give it their attention."<sup>7</sup> Thus, study in the law department might constitute part of a student's academic education, or be "practical instruction" in a "pursuit," the profession of law.

The formation of a School or Department of Theology for the training of preachers occurred in 1866. To meet another need for specialized training, a School of Law was organized in 1868.<sup>8</sup> As to it, the catalogue of 1868-69 says: "This School is organized to meet a growing demand. The instruction will be as thorough as possible, and will be given by textbooks and lectures. Text Books: Blackstone's *Commentaries: Stephen on Pleading; Vattel's International Law; Law of Executors; Greenleaf's Evidence; Adams' Equity*, etc."<sup>9</sup> This institution of professional training in law after two decades of law teaching as part of an academic education seems a logical development and, emerging as it then was from the ashes and debris of defeat in the Civil War, North Carolina desperately needed training for leadership as provided by lawyers and preachers. But such was the poverty of the North Carolina Methodist Church Conference and the College that President Craven's pleas for funds for professorships of divinity and law went unmet, and he alone carried the teaching load for some years. In the Department of Law the catalogue of 1873-74 listed President Craven, D.D., LL.D., Professor of National and Constitutional Law and John W. Young, Esq., Instructor of Common and Statute Law. By way of description of the Department of Law it said: "complete instruction is given by daily lectures, examinations, etc. Students are fully prepared to obtain license. College students \$20 per annum. Law students exclusively \$60 per annum. Young gentlemen who desire to study law will find many advantages at Trinity, not usually found at Law Schools."<sup>10</sup> Three features may be noted: both academic and law students were enrolled in the school, the courses prepared one for the bar, and Trinity afforded "many advantages" over Law Schools. Except for omission of the name of a teacher of Common and Statute Law, the above quoted notice as to the Department of Law is substantially repeated in all catalogues until Craven's death.<sup>11</sup> When he died in November, 1882, his last class had dwindled to 6 students from an 1870-71 high of 37 as the college enrollment itself dropped from 200 to 100.<sup>12</sup> Counting both academic enrollees and law students in the Department or School of Law, approximately 150 studied law at Trinity from 1868 through 1882.<sup>13</sup> Nearly a third of these became lawyers, and over half of them studied law from 1874 through the academic year 1882-83.<sup>14</sup> This seems a fine record during the turmoil and poverty of Reconstruction, and the competition of office-apprenticeship and private law schools.<sup>15</sup> The key figure was Braxton Craven, father of Trinity College, a broadly educated man of vision, indefatigable energy, and

high ideals.<sup>16</sup> In 1875 he reported to the Methodist Conference that Trinity alumni "in recent years have made nearly one-fifth of the Legislature" of North Carolina.<sup>17</sup>

Following President Craven's death law teaching was in abeyance at Trinity until 1887 when it was resumed as an academic course in the School of History. The offering was prefaced by the following words: "every liberally educated young man should, whether he expects to make law a profession or not, know the principles and definitions of our common law." Begun as a required course in elementary law for seniors, its topical outline followed Blackstone's *Commentaries*, the prescribed collateral text; and it was first taught by Trinity's President Crowell.<sup>18</sup> The next instructor, N. C. English, enlarged the offering and permitted an election between it and a course in general jurisprudence.<sup>19</sup>

Coincident with the projected removal of Trinity in 1891 from Randolph County to Durham, the School of Law was re-opened in 1891 with Justice A. C. Avery of the North Carolina Supreme Court as its Dean, but he did not begin teaching until the College opened in Durham on September 1 the next year.<sup>20</sup> The public announcement noted the inadequacy of office law training and the aim of the school to provide such a broad legal education as to prepare one for practice in any state. The two-year curriculum covered in the first year the prescribed subjects of examination for admission to the North Carolina bar, and in the second year continued some of these and stressed historical growth of law and modern developments and practice. Completion of the two-year course led to the LL.B. degree. As was then generally true as to law school admission in most of the United States, no undergraduate work was required. The first-year courses and prescribed texts in the Law Department for 1891 included Rights and Wrongs (Blackstone's *Commentaries*), Pleading (Stephen), Evidence (1st Greenleaf); Real Property (Williams), Executors and Administrators (Schouler), Contracts (Smith), Corporations (Angell & Ames), Equity (Adams), and Civil Procedure (North Carolina Code). Professor B. B. Nicholson taught these courses in 1891. He was joined by Dean Avery at Durham in 1892 and the second year program was commenced. Fourteen students were in attendance during this epoch. The catalogue of 1893-94 states that "This Department as such will be discontinued after the year 1893-94."<sup>21</sup> This was done for financial reasons.

Although the aforementioned professional greats, such as Wythe, Kent, and Parker of the late eighteenth and early nineteenth centuries set an example of legal education for colleges, it did not prevail, and most American lawyers prior to the twentieth century came to the bar via the route of office apprenticeship, self-education or one-man proprietary law schools. It is said that in 1833 a total of only about 150 law students were enrolled in United States colleges, where the training was mostly by rote and bar oriented, and the teachers were part-time lawyers or retired judges. After 1865 industry, finance, and urban areas grew fast in the North, thereby creating new and complex legal problems, which demanded more broadly and rigorously trained lawyers.<sup>22</sup> In the 1870's Langdell at Harvard gave institutional legal education both a great shock and a boost when he upset prevailing notions that law should be studied through text or lecture and taught by retired or part-time judges or lawyers. He both inaugurated the professional law teacher and resurrected and perfected what was basically the case method of the English Inns of Court.<sup>23</sup> His was a scientific approach to principles winnowed from the vast body of Anglo-American cases, but studied in the relative vacuum of the appellate court opinion. It gave a new dimension to legal education and created self-reliant lawyers skilled in legal method. However, it was not until the 1920's that Langdell's narrow horizons gave way, and law study was integrated with study of related aspects of society and broadened with foundation and perspective courses.<sup>24</sup>





## II. 1894-1930

Following its removal from rural Randolph County to Durham, Trinity gained in stature, particularly through two factors: the forceful and enlightened leadership of Presidents John F. Crowell (1887-1894) and John C. Kilgo (1894-1910); and as it came under the aegis of the Duke family: Father Washington and his sons James Buchanan and Benjamin Newton.<sup>25</sup> The latter two provided the endowment for the Law School which reopened in September 1904. As set forth in a letter on the subject from President Kilgo, apparently to B. N. Duke, organization plans crystallized in the appointment of Samuel Fox Mordecai, distinguished Raleigh lawyer and part-time law teacher at nearby Wake Forest College, as Senior Professor of the Law Department, which in 1905 became the School of Law and Professor Mordecai its Dean. Kilgo wrote: "I feel sure you will be greatly pleased with him and that all the plans you and your brother had in the organization of this school will be conserved in him."<sup>26</sup> Incident to his assumption of the Deanship he visited the Law Schools of the following universities: Boston, Columbia, Harvard, Pennsylvania, and the New York Law School for purposes of observation and study of their organization, curricula, teaching methods and materials. In a detailed report to President Kilgo dated December 26, 1904, his evaluation and recommendations were outlined. He received courteous treatment and full cooperation from the deans and faculties of these institutions, especially Harvard.<sup>27</sup> I once asked Professor Joseph Beale if he remembered Mr. Mordecai's visit. He replied with a twinkle in his eye, "Did I? Mordecai was a sensation at Harvard."

The establishment of the Law School set new standards in Southern legal education in its requirement of two years of college work for admission, three years for the LL.B. degree, and adoption of the case method as the basis of instruction. This was a revolutionary innovation because, in the South in particular, institutional legal education was laggard. Elsewhere as well, instruction was through lectures or texts, teachers were seldom full-time and admission requirements, if any, seldom exceeded a high school diploma. In 1921 the American Bar Association inaugurated a movement to improve its profession by upgrading legal education and bar admission. As a first step, it established criteria for judging law schools and defined an approved school as one requiring two years of college work for admission, three years of study for a law degree, and having an adequate library and faculty.<sup>28</sup> In 1923 it published its first list of approved law schools. They numbered thirty-nine and only five of them were in the South: Emory, Texas, Trinity, Virginia and Washington and Lee.<sup>29</sup> Having adopted such advanced admission and degree requirements in 1905, and met its other high standards for membership, in 1905 Trinity joined the University of Tennessee as the other Southern member of the Association of American Law Schools.<sup>30</sup> When in 1925 and 1935 the University of North Carolina and Wake Forest, respectively, raised law school admission standards to two years of college work and degree requirements to three years of study, each was admitted to the Association of American Law Schools and approved by the American Bar Association.<sup>31</sup>

In order to make a hurried opening in September 1904, a tentative two-year curriculum was adopted utilizing the text and lecture system.<sup>32</sup> This was replaced in 1905 by a three-year curriculum with the case method as the basis of instruction,<sup>33</sup> and a suggested supplementary text in accord with Dean Mordecai's belief that the average























